

[SB. 427] COUNTERVAILING AND ANTI-DUMPING DUTIES BILL, 2010

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A BILL

FOR

AN ACT TO REPEAL THE CUSTOMS DUTIES (DUMPED AND SUBSIDIED GOODS ACT) AND TO MAKE PROVISIONS FOR COUNTERVAILING AND ANTI-DUMPING DUTIES; AND FOR OTHER MATTERS CONNECTED THEREWITH

Sponsored by SENATOR PATRICK ENEBELI OSAKWE

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Commence-
ment.

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

Short Title.

1 1. This Bill may be cited as the Countervailing and Anti-Dumping Duties
2 Bill, 2010.

Interpretation.

3 2.—(1) In this Act, unless the context otherwise requires—
4 “Agreement on Agriculture” means the Agreement by that name set out
5 in Annex 1A to the World Trade Organisation Agreement;
6 “Agreement on Implementation of Article VI of the General Agreement
7 on Tariffs and Trade 1994” means the Agreement by that name set out in
8 Annex 1A to the World Trade Organisation Agreement;
9 “Agreement on Subsidies and Countervailing Measures” means the
10 Agreement by that name set out in Annex IA to the World Trade
11 Organisation Agreement;

Imposition of
Countervailing

12 “country” includes a customs union or customs territory;

13 “domestic industry” means—

- 14 (a) the domestic producers as a whole of the like goods; or
15 (b) the domestic producers whose collective output of the like goods
16 constitutes a major proportion of the total domestic production of
17 those goods, but shall not, if the Minister so determines, include
18 domestic producers who are related to the exporters or importers, or
19 are themselves importers, of the subject goods or, in relation to Part II,
20 like goods from other countries;

21 “dumping margin” means the amount by which the normal value of the

- 1 subject goods exceeds the export price;
- 2 “export price” means the export price of the subject goods as determined
- 3 in accordance with section 16;
- 4 “exporting country” means—
- 5 (a) the country of export of the subject goods; or
- 6 (b) where the subject goods are not exported directly to Nigeria
- 7 but are transhipped without substantial transformation through an
- 8 intermediate country, the country of origin of the subject goods;
- 9 “General Agreement on Tariffs and Trade 1994” means the Agreement
- 10 by that name whose parts are described in Annex IA to the World Trade
- 11 Organisation Agreement;
- 12 “interested party” means —
- 13 (a) a producer, exporter or importer of the subject goods;
- 14 (b) a trade or business association of which a majority of its members
- 15 are producers, exporters or importers of the subject goods;
- 16 (c) the government of a country in which the subject goods are
- 17 produced or from which they are exported;
- 18 (d) a producer of the like goods in Nigeria;
- 19 (e) a trade or business association of which a majority of its members
- 20 produce the like goods in Nigeria; or
- 21 (f) any other person the Minister considers appropriate;
- 22 “like goods” means any goods which the Minister determines are identical
- 23 in all respects to the subject goods or, in the absence of such goods, any
- 24 other goods which the Minister determines have characteristics closely
- 25 resembling those of the subject goods;
- 26 “Minister” means Minister charged with the responsibility of trade;
- 27 “non-market economy country” means any foreign country the government
- 28 of which has a complete or substantially complete monopoly of its trade
- 29 and where domestic prices are fixed by the government of the foreign
- 30 country;
- 31 “normal value” means the normal value of any subject goods as determined

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- 1 in accordance with section 15 or 18;
- 2 “producer” means such producer, manufacturer or processor as may be
3 prescribed;
- 4 “provisional measures” means—
- 5 (a) in relation to Part II, the requirement to pay the provisional duty
6 or furnish a security equal to the estimated subsidy found in the
7 preliminary determination; and
- 8 (b) in relation to Part III, the requirement to pay the provisional duty or
9 furnish a security equal to the estimated dumping margin found in the
10 preliminary determination;
- 11 “subject goods” means the goods imported, or sold for importation, into
12 Nigeria that are the subject of any countervailing or anti-dumping duty
13 investigation or review under this Act;
- 14 “Tribunal” means the Anti-Dumping Tribunal established under section
15 30;
- 16 “undertakings” means such undertakings as may be prescribed; and
- 17 “World Trade Organisation Agreement” means the Marrakesh Agreement
18 Establishing the World Trade Organisation done at Marrakesh on 15th April
19 1994.
- 20 (2) For the purposes of this Act, “subsidy”, in relation to goods that are
21 imported into Nigeria, means —
- 22 (a) a financial contribution by a government or public body of the country
23 of export that is made in connection with the production, manufacture or
24 export of those goods that involves—
- 25 (i) a direct transfer of funds from that government or public body,
26 (ii) a potential direct transfer of funds or liabilities from that government
27 or public body,
28 (iii) the forgoing, or non-collection of revenue (other than an allowable
29 exemption or remission) due to that government or public body,
30 (iv) the provision by that government or public body of goods or services
31 otherwise than in the course of providing normal infrastructure,

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- 1 (v) the purchase by that government or public body of goods; or
- 2 (b) any form of income or price support as referred to in Article XVI of the
- 3 General Agreement on Tariffs and Trade 1994 that is received from such a
- 4 government or public body, and a benefit is thereby conferred, but shall
- 5 not include any government action that satisfies the conditions described
- 6 in footnote 1 of the Agreement on Subsidies and Countervailing Measures.
- 7 (3) Subject to subsection (4), a subsidy shall be countervailable if the
- 8 receipt of the benefit is, in law or in fact—
- 9 (a) specific to an enterprise or industry or group of enterprises or industries
- 10 within the jurisdiction of the granting authority; or
- 11 (b) contingent upon—
- 12 (i) export performance;
- 13 (ii) the use of domestic over imported goods; or
- 14 (iii) location in a designated geographic region within the jurisdiction
- 15 of the granting authority.
- 16 (4) A subsidy shall not be countervailable if the Minister determines
- 17 that—
- 18 (a) the government action satisfies the conditions described in paragraph
- 19 (a), (b) or (c) of Article 8.2 of the Agreement on Subsidies and Countervailing
- 20 Measures;
- 21 (b) the government action has been notified in accordance with Article 8.3
- 22 of the Agreement on Subsidies and Countervailing Measures and there has
- 23 been no determination by the Committee on Subsidies and Countervailing
- 24 Measures or an arbitral body under Article 8.4 or 8.5 of that Agreement that
- 25 the action does not satisfy the criteria in Article 8.2 of that Agreement; or
- 26 (c) the government action is a domestic support measure that meets the
- 27 criteria or conditions set out in Annex 2 to the Agreement on Agriculture.
- 28 (5) The amount of countervailable subsidy shall be calculated in the
- 29 prescribed manner.
- 30 (6) For the purposes of this Act—
- 31 (a) parties shall be deemed to be related if—
- (i) one of them, directly or indirectly, controls the other;

- 1 (ii) both of them are, directly or indirectly, controlled by a third party;
2 or
3 (iii) together they, directly or indirectly, control a third party,
4 provided that there are grounds for believing or suspecting that the effects
5 of the relationship is such as to cause the parties concerned to behave
6 differently from non-related parties; and
7 (b) one party shall be deemed to control another when the first-mentioned
8 party is legally or operationally in a position to exercise restraint or direction
9 over the latter.

10 3.—(1) The Minister may impose a countervailing duty on the subject
11 goods imported into Nigeria where he determines—

Duties.

12 (a) that a countervailable subsidy is being provided with respect to the
13 subject goods; and

Initiation of
Investigation.

14 (b) that injury is found to exist in anyone of the following ways—

15 (i) the subject goods are, through the effects of the subsidy, causing
16 material injury to the domestic industry in Nigeria producing like goods;

17 (ii) the subject goods are, through the effects of the subsidy, threatening
18 to cause material injury to the domestic industry in Nigeria producing
19 like goods; or

20 (iii) the subject goods are, through the effects of the subsidy, causing
21 material retardation of the establishment of the domestic industry in
22 Nigeria.

23 (2) The amount of countervailing duty to be imposed —

24 (a) shall be equal to the countervailable subsidy determined to be provided
25 with respect to the subject goods; or

26 (b) if the Minister determines that a lower countervailing duty is sufficient
27 to eliminate the injury determined in subsection (1) (b) of this section, shall
28 be such lower duty.

29 (3) For the purposes of this section—

30 (a) it must be demonstrated that the subject goods are causing injury
31 within the meaning of this Act;

(b) the demonstration of a causal relationship between the subject goods

1 and the injury to the domestic industry shall be based on an examination
2 of all relevant evidence before the Minister;

3 (c) the Minister shall also examine any known factors other than the subject
4 goods which at the same time are injuring the domestic industry, and the
5 injuries caused by these other factors must not be attributed to the subject
6 goods.

7 (4) Where the country of origin of the subject goods is a non-market
8 economy country, the countervailable subsidy and countervailing duty shall
9 be determined in the prescribed manner.

10 4.—(1) A written petition requesting that a countervailing duty
11 investigation be initiated with regard to goods imported, or likely to be
12 imported, into Nigeria may be submitted to the Minister by any person on
13 behalf of the domestic industry producing like goods.

Consultations
with
interested

14 (2) A petition shall be in such form as may be determined by the Minister
15 and shall include evidence of each of the elements specified in section 3 (1)
16 of this Act and all other evidence that may be prescribed.

17 (3) The Minister shall, within the period prescribed, review the petition
18 and other available information and determine whether—

19 (a) sufficient evidence to warrant the initiation of an investigation into
20 whether the elements necessary for the imposition of a countervailing
21 duty as provided under section 3 (1) of this Act exists; and

22 (b) such an investigation is in the public interest.

23 (4) Where the Minister determines that sufficient evidence does not
24 exist to warrant the initiation of a countervailing duty investigation or that
25 such an investigation is not in the public interest, the Minister shall as soon
26 as practicable notify the petitioner of his determination not to initiate an
27 investigation.

28 (5) Where the Minister determines that sufficient evidence exists to
29 warrant the initiation of a countervailing duty investigation and that such an
30 investigation is in the public interest, the Minister shall notify the appropriate
31 interested parties and publish a notice of initiation of investigation.

(6) The Minister may, in special circumstances, initiate a countervailing

1 duty investigation on his own accord where he has sufficient evidence of
2 each of the elements specified in section 3 (1) of this Act.

3 (7) Where the Minister decides to initiate an investigation under
4 subsection (6) of this section, he shall notify the appropriate interested parties
5 and publish a notice of initiation of investigation.

6 (8) Notwithstanding any provision in this section, the Minister shall
7 not initiate an investigation unless he has determined on the basis of an
8 examination of the degree of support for, or opposition to, any written petition
9 submitted under subsection (1) of this section—

10 (a) that the written petition is supported by domestic producers of like
11 goods whose collective output constitutes more than 50% of the total
12 production of the like goods produced by that portion of the domestic
13 industry expressing either support for or opposition to the written petition;
14 and

15 (b) that the domestic producers of like goods expressly supporting the
16 written petition account for not less than 25% of the total production of
17 the like goods produced by the domestic industry.

18 (9) For the purposes of subsection (8) of this section, in the case of
19 fragmented industries involving an exceptionally large number of producers,
20 the Minister may determine the support and opposition by using statistically
21 valid sampling techniques.

22 5.—(1) Before initiating a countervailing duty investigation and
23 throughout such an investigation, the Minister shall provide any interested
24 foreign government an opportunity for consultation for the purpose of
25 clarifying matters relevant to the investigation and arriving at a mutually
26 agreed solution.

foreign
governments.

Duration of
investigation.

Preliminary

27 (2) The consultations shall not impede the conduct of the investigation.

determination
of subsidy
and injury.

28 6. All countervailing duty investigations shall, except in special
29 circumstances, be concluded by the Minister within one year, and in no case
30 more than 18 months after initiation.

31 7.—(1) The Minister shall, within such period as may be prescribed,
make a preliminary determination regarding—

Provisional
measures.

Final
determination

1 (a) whether a countervailable subsidy is being provided with respect to
2 the subject goods, and the amount of such countervailable subsidy; and

3 (b) whether injury is found to exist in anyone of the following ways—

4 (i) the subject goods are, through the effects of the subsidy, causing
5 material injury to the domestic industry in Nigeria producing like goods;

6 (ii) the subject goods are, through the effects of the subsidy, threatening
7 to cause material injury to the domestic industry in Nigeria producing
8 like goods; or

9 (iii) the subject goods are, through the effects of the subsidy, causing
10 material retardation of the establishment of the domestic industry in
11 Nigeria.

12 (2) If the Minister makes a negative preliminary determination under
13 subsection (1) of this section, he shall publish a notice stating the reasons
14 therefore and may terminate the investigation if the Minister is satisfied that
15 there is insufficient evidence of either subsidisation or of injury to justify
16 proceeding with the investigation.

17 (3) If the Minister makes an affirmative preliminary determination under
18 subsection (1) of this section, he shall continue the investigation and publish
19 a notice of—

20 (a) the affirmative preliminary determination stating the reasons for his
21 determination under subsection (1) (a) and (b) of this section; and

22 (b) the provisional measures applicable.

of subsidy
and injury.

23 8.—(1) The Minister shall apply provisional measures with regard to the
24 subject goods imported into Nigeria on or after the publication of the notice
25 of affirmative preliminary determination where the Minister determines that
26 such measures are necessary to prevent the injury referred to in section 7 (1)
27 (b) of this Act from occurring during the period of investigation.

28 (2) Provisional measures shall not be imposed sooner than 60 days from
29 the date of initiation of the investigation.

30 (3) Provisional measures shall take the form of a provisional duty or
31 a security equal to the amount of the estimated countervailable subsidy

1 determined under section 7 (1) of this Act.

2 (4) The application of provisional measures shall be limited to as short
3 a period as possible but shall in no case exceed 4 months.

4 9.—(1) The Minister shall, within such period as may be prescribed,
5 make a final determination regarding —

Termination
of
investigation.

6 (a) whether a countervailable subsidy is being provided with respect to
7 the subject goods, and the amount of such countervailable subsidy; and

Suspension of

8 (b) whether injury is found to exist in anyone of the following ways —

9 (i) the subject goods are, through the effects of the subsidy, causing
10 material injury to the domestic industry in Nigeria producing like goods;

11 (ii) the subject goods are, through the effects of the subsidy, threatening
12 to cause material injury to the domestic industry in Nigeria producing
13 like goods; or

14 (iii) the subject goods are, through the effects of the subsidy, causing
15 material retardation of the establishment of the domestic industry in
16 Nigeria.

17 (2) Where the Minister makes a negative final determination under
18 subsection (1), he shall—

19 (a) terminate the investigation;

20 (b) terminate any provisional measures applied under section 8 of this Act
21 and refund any provisional duty paid and release any security required by
22 such measures; and

23 (c) publish a notice of the negative final determination stating the reasons
24 therefore.

25 (3) Where the Minister makes an affirmative final determination under
26 subsection (1) of this Act, he shall—

27 (a) publish a notice of the affirmative final determination stating the reasons
28 therefore, the countervailing duties applicable and the subject goods on
29 which the countervailing duties apply;

30 (b) impose countervailing duties in accordance with section 3 (2) of this
31 Act on the subject goods imported into Nigeria on or after the date of
publication of the affirmative final determination; and

1 (c) impose countervailing duties in accordance with subsections (5) and
2 (6) of this section on imports into Nigeria for which provisional measures
3 were applied.

4 (4) Where an affirmative final determination has been made, the Minister
5 may take into consideration public interest in determining whether to impose
6 countervailing duties and the amount of such duties.

7 (5) The Minister shall impose countervailing duties on the subject goods
8 against which provisional measures were applied if the Minister—

9 (a) makes a determination of material injury under subsection (l) (b) (i) of
10 this section; or

11 (b) makes a determination of threat of material injury under subsection
12 (l) (b) (ii) of this section and finds that the import of the subject goods, in
13 the absence of the provisional measures, would have led to a finding of
14 material injury under subsection (l) (b) (i) of this section.

15 (6) With respect to the imposition of any countervailing duty under
16 subsection (5) of this section—

17 (a) where the countervailing duty is higher than the provisional duty or
18 the amount guaranteed by the security required under the provisional
19 measures, only the amount equal to the provisional duty or the security
20 given shall be imposed; and

21 (b) where the countervailing duty is less than the provisional duty or
22 the amount guaranteed by the security required under the provisional
23 measures, the full amount of the countervailing duty shall be imposed and
24 the excess provisional duty paid or security given shall be reimbursed or
25 released.

26 (7) Where no countervailing duties are imposed under subsection (5)
27 on the subject goods against which the provisional measures were applied,
28 the Minister shall refund the provisional duty paid and release the security
29 required by the provisional measures.

30 (8) Notwithstanding subsections (3) and (5), the Minister may impose
31 countervailing duties on the subject goods imported into Nigeria within a
period of 90 days prior to the application of provisional measures, but in no

1 case earlier than the date of initiation of the investigation, if—

2 (a) the Minister finds injury that is difficult to repair;

3 (b) such injury is being caused by massive imports of the subject goods in
4 a relatively short period of time and the Minister considers the retroactive
5 imposition of duties necessary to preclude the recurrence of such injury;
6 and

7 (c) countervailable subsidies are being provided with respect to the
8 subject goods in a manner inconsistent with the provisions of the General
9 Agreement of Tariffs and Trade 1994 and the Agreement on Subsidies and
10 Countervailing Measures.

11 (9) When a countervailing duty is imposed on the subject goods, such
12 countervailing duty shall, as provided in the regulations, be imposed in the
13 appropriate amount on a non-discriminatory basis on all imports of such
14 goods into Nigeria from the country found to be subsidising the subject
15 goods.

16 10.—(1) Notwithstanding any other provisions of this Act but subject
17 to subsection (2) of this section, an investigation may be terminated at any
18 time if—

19 (a) the petitioner withdraws the petition; or

20 (b) the Minister determines that such termination is in the public interest.

21 (2) An investigation shall be terminated immediately if the Minister
22 determines that the amount of countervailable subsidy is de minimis or
23 that the volume of subsidised imports, actual or potential, or the injury, is
24 negligible.

25 (3) For the purpose of subsection (2) of this section —

26 (a) the amount of countervailable subsidy shall be considered to be de
27 minimis if the amount is less than the prescribed percentage, expressed
28 as an ad valorem percentage; and

29 (b) the volume of subsidised imports shall be regarded as negligible if the
30 volume of subsidised imports from a particular country is found to account
31 for less than the prescribed percentage of the imports of the like goods
into Nigeria.

investigation.

Review by
Minister.

1 (4) If a termination under subsection (1) or (2) occurs prior to the
2 preliminary determination, the Minister shall publish a notice of such
3 termination stating the reasons therefore.

4 (5) If a termination under subsection (1) or (2) occurs after the
5 preliminary determination, the Minister shall—

6 (a) terminate any provisional measures applied and refund the provisional
7 duties paid or release the security required by such measures; and

8 (b) publish a notice of such termination stating the reasons therefore.

9 11.—(1) An investigation may be suspended if undertakings are
10 accepted by the Minister.

11 (2) Before accepting the undertakings, the Minister shall determine that
12 such undertakings—

13 (a) will eliminate the countervailable subsidy or the injurious effects caused
14 by the subject goods;

15 (b) can be monitored effectively; and

16 (c) are in the public interest.

17 (3) If the undertakings are accepted by the Minister, which undertakings
18 shall be accepted only after an affirmative preliminary determination, the
19 Minister shall—

20 (a) suspend the investigation;

21 (b) suspend any provisional measures applied under section 8 and refund
22 the provisional duty paid and release the security required by such
23 measures as the Minister may think appropriate; and

24 (c) publish a notice stating the reasons for the suspension of the
25 investigation and the actions under paragraph (b) of this subsection.

26 (4) Notwithstanding the acceptance of the undertakings, the
27 investigation shall be completed upon the written request of the interested
28 foreign government or if the Minister so decides.

29 (5) Where the Minister completes the investigation under subsection
30 (4) of this section or for any other reason, and makes an affirmative final
31 determination, the undertakings shall remain in effect subject to the
provisions of this Act.

1 (6) Where the Minister completes the investigation under subsection (4)
2 of this section or for any other reason, and makes a negative determination,
3 the undertakings shall lapse, except in circumstances referred to in subsection
4 (7) of this section.

5 (7) Where the negative determination referred to in subsection (6) is
6 due in large part to the existence of the undertakings, the undertakings may
7 be maintained subject to the provisions of this Act.

8 (8) The Minister may take any action under subsection (9) or (10) of this
9 section at any time if he determines that—

10 (a) the undertakings accepted under subsection (1) of this section no
11 longer meet the requirements of subsection (2) of this section; or

12 (b) there is a material violation of the undertakings.

13 (9) Where an investigation has not been completed despite subsection
14 (4) of this section, the Minister may resume the investigation and take
15 expeditious action to—

16 (a) make a preliminary determination under section 7 of this Act;

17 (b) apply provisional measures in conformity with section 8 of this Act if
18 appropriate; and

19 (c) make a final determination under section 9 of this Act within the
20 prescribed period after the publication of the preliminary determination.

21 (10) Where an investigation has been completed under subsection (4)
22 of this section, the Minister may forthwith make a final determination under
23 section 9 of this Act and collect the countervailing duties applicable.

24 (11) The Minister may use the facts available with respect to any
25 determination under subsection (9) of this section where a material violation
26 of the undertakings occurs.

27 (12) Where the Minister resumes an investigation under subsection (8)
28 (b) of this section, the Minister may impose countervailing duties in conformity
29 with section 9 of this Act on the subject goods imported into Nigeria within a
30 period of 90 days prior to the provisional measures applied under subsection
31 (9) (b) of this Act.

Imposition of
antidumping
duties.

1 (13) No retroactive assessment under subsection (12) of this section
2 shall be applied to the subject goods imported prior to the violation of the
3 undertakings.

4 12.—(1) Whenever any interested party provides information to the
5 Minister, or the Minister otherwise obtains information, that—

6 (a) the amount of countervailable subsidy has changed substantially;

7 (b) a refund of the countervailing duty imposed is appropriate;

8 (c) the imposition of a countervailing duty is no longer necessary;

9 (d) an undertaking is no longer necessary or should be modified;

10 (e) a countervailing duty or undertaking which is required to be terminated
11 under subsection (7) of this section should be maintained; or

12 (f) an expedited review is required for exporters who were not previously
13 investigated, the Minister shall conduct a review if he determines that
14 such review is in the public interest or is required under the Agreement
15 on Subsidies and Countervailing Measures.

16 (2) No review shall be undertaken under subsection (1) of this section
17 unless the period prescribed has lapsed.

18 (3) If the Minister decides to conduct a review under subsection (1) of
19 this section, he shall—

20 (a) publish a notice of the initiation of a review; and

21 (b) conduct such review and allow interested parties an opportunity to
22 provide comments.

23 (4) Any review conducted under this section shall be completed within
24 such period as may be prescribed.

25 (5) On the completion of the review, the Minister shall publish a final
26 determination in the review stating the reasons therefore.

27 (6) Except in the case of a review under subsection (l) (b) of this section or
28 an expedited review under subsection (l) (f) of this section, any determination
29 made under subsection (5) of this section shall apply to the subject goods
30 imported on or after the date of publication of the final determination in the
31 review.

1 (7) Countervailing duties shall not be collected on imports made after 5
2 years from the date of the publication of the notice of the final determination
3 and undertakings shall automatically lapse with respect to imports made
4 after 5 years from the date of publication of the notice of suspension of the
5 investigation, unless the Minister determines on the basis of a review under
6 this section that the termination of such duties or undertaking would be likely
7 to lead to continuation or recurrence of subsidisation and injury.

8 13.—(1) An interested party shall have the right of review by the Tribunal
9 against any—

10 (a) affirmative or negative final determination under section 9 of this Act;

11 or

12 (b) final review determination under section 12 (5) of this Act.

13 (2) An application for review shall be filed within 30 days of the date of
14 the notice of final determination under section 9 of this Act or of the date of
15 publication of the final determination under section 12 (5) of this Act.

16 (3) The Tribunal may, upon review, affirm the determination or remit
17 the matter to the Minister for reconsideration.

18 (4) The Minister shall implement any decision of the Tribunal under
19 subsection (3) of this section.

20 14.—(1) The Minister may impose an anti-dumping duty on the subject
21 goods imported into Nigeria where he determines—

22 (a) that the export price of the subject goods is less than the normal value;
23 and

24 (b) that injury is found to exist in anyone of the following ways—

25 (i) the subject goods are, through the effects of dumping, causing
26 material injury to the domestic industry in Nigeria producing like goods;

27 (ii) the subject goods are, through the effects of dumping, threatening
28 to cause material injury to the domestic industry in Nigeria producing
29 like goods; or

30 (iii) the subject goods are, through the effects of dumping, causing
31 material retardation of the establishment of the domestic industry in

Normal Value.

Export Price.

Comparison
of normal

1 Nigeria.

2 (2) The amount of anti-dumping duty to be imposed—

3 (a) shall be equal to the dumping margin determined to exist with respect
4 to the subject goods; or

5 (b) if the Minister determines that a lower anti-dumping duty will be
6 sufficient to eliminate the injury determined in subsection (1)(b) of this
7 section, shall be such lower duty.

8 (3) For the purposes of this section—

9 (a) it must be demonstrated that the subject goods are causing injury
10 within the meaning of this Act;

11 (b) the demonstration of a causal relationship between the subject goods
12 and the injury to the domestic industry shall be based on an examination
13 of all relevant evidence before the Minister;

14 (c) the Minister shall also examine any known factors other than the subject
15 goods which at the same time are injuring the domestic industry, and the
16 injuries caused by these other factors must not be attributed to the subject
17 goods.

value and
export price.

18 15.—(1) For the purpose of this Act, the normal value of any subject
19 goods shall be the comparable price actually paid or payable in the ordinary
20 course of trade for like goods sold for consumption in the domestic market
21 of the exporting country.

22 (2) Where there are no sales in the domestic market of the exporting
23 country under subsection (1) of this section, or where, because of the particular
24 market situation or the low volume of the sales in the domestic market of the
25 exporting country, such sales do not permit a proper comparison, the normal
26 value of the subject goods shall be—

27 (a) the comparable price actually paid or payable in the ordinary course of
28 trade for like goods exported to any appropriate third country, provided
29 that such price is representative; or

30 (b) the constructed value of the subject goods which shall include the
31 cost of production in the exporting country, plus a reasonable amount
for profits.

1 (3) For the purpose of subsection (2) of this section, sales of like goods
2 destined for consumption in the domestic market of the exporting country
3 or the appropriate third country shall normally be considered a sufficient
4 quantity for the determination of the normal value if such sales constitute 5%
5 or more of the sales of the subject goods to Nigeria, except that a lower ratio
6 shall be acceptable where the evidence shows that domestic sales at such
7 lower ratio are of sufficient magnitude to provide for a proper comparison.

8 (4) Sales of the like goods in the domestic market of the exporting
9 country or sales to a third country at prices below per unit cost of production
10 may be treated as not being in the ordinary course of trade by reason of price
11 and may be disregarded in determining normal value only if the Minister
12 determines that such sales are made within an extended period of time in
13 substantial quantities and are at prices which do not provide for the recovery
14 of all costs within a reasonable period of time.

15 (5) For the purpose of determining the cost of production referred to
16 in subsections (2) (b) and (4) of this section, the cost of production shall be
17 computed on the basis of all fixed and variable costs of manufacturing for sale
18 in the exporting country plus a reasonable amount for selling, administrative
19 and other general expenses.

20 (6) In the circumstances described in subsection (4) of this section, the
21 normal value of any subject goods may be determined on the basis of—

22 (a) the remaining sales in the domestic market made at a price which is
23 not less than the cost of production, provided that such remaining sales
24 are in sufficient quantities; or

25 (b) where the sale does not exist in sufficient quantities in the domestic
26 market, the remaining sales in the third country market made at a price
27 which is not less than the cost of production, provided that such remaining
28 sales are in sufficient quantities.

29 (7) Where the remaining sales are not in sufficient quantities for the
30 calculation of normal value under subsection (6) of this section, the normal
31 value of any subject goods may be determined on the basis of the constructed

Subject goods from non-market	1 value as described in subsection (2) (b) of this section. 2 16.—(1) The export price of any subject goods shall be the price actually 3 paid or payable for the subject goods. 4 (2) Where there is no export price, or where there is an association or a 5 compensatory arrangement between the exporter and the importer or a third 6 party and it appears that the price actually paid or payable for the subject 7 goods is unreliable, the export price may be constructed on the basis of the 8 price at which the subject goods are first resold to an independent buyer or, 9 if the subject goods are not resold to an independent buyer or not resold in 10 the condition imported, on any reasonable basis. 11 (3) If the export price is constructed as described in subsection (2) of this 12 section, allowance shall be made for all costs incurred between importation 13 and resale.
economy. Initiation of investigation.	14 17.—(1) A fair comparison shall be made between the export price and 15 the normal value of any subject goods, due allowance shall be made in each 16 case on its merits for differences which affect price comparability. 17 (2) The comparison under subsection (1) of this section shall be made 18 at the same level of trade, normally at the ex-factory level, and in respect of 19 sales made at as nearly as possible the same time. 20 (3) Subject to subsections (1) and (2) of this section, the existence of the 21 margin of dumping shall, unless otherwise provided by regulations, normally 22 be established on the basis of a comparison of a weighted average normal 23 value with a weighted average of prices of all comparable export transactions 24 of the subject goods.
Duration of investigation. Preliminary determination of dumping and injury.	25 18. Where the country of origin of any subject goods is a non-market 26 economy country, the normal value of the subject goods shall be determined 27 in the prescribed manner.
Provisional	28 19.—(1) A written petition requesting that an anti-dumping duty 29 investigation be initiated with regard to goods imported, or likely to be 30 imported, into Nigeria may be submitted to the Minister by any person on 31 behalf of the domestic industry producing like goods. (2) A petition shall be in such form as may be determined by the Minister

1 and shall include evidence of each of the elements specified in section 14 (1)
2 of this Act and all other evidence that may be prescribed.

3 (3) The Minister shall, within the period prescribed, review the petition
4 and other available information and determine whether—

5 (a) sufficient evidence to warrant the initiation of an investigation into
6 whether the elements necessary for the imposition of an anti-dumping
7 duty as provided under section 14 (1) of this Act exists; and

8 (b) such an investigation is in the public interest.

9 (4) Where the Minister determines that sufficient evidence does not
10 exist to warrant the initiation of an anti-dumping duty investigation or that
11 such an investigation is not in the public interest, the Minister shall as soon
12 as practicable notify the petitioner of his determination not to initiate an
13 investigation.

14 (5) Where the Minister determines that sufficient evidence exists to
15 warrant the initiation of an anti-dumping duty investigation and that such an
16 investigation is in the public interest, the Minister shall notify the appropriate
17 interested parties and publish a notice of initiation of investigation.

18 (6) The Minister may, in special circumstances, initiate an anti-dumping
19 duty investigation on his own accord where he has sufficient evidence of each
20 of the elements specified in section 14 (1) of this Act.

21 (7) Where the Minister decides to initiate an investigation under
22 subsection (6) of this section, he shall notify the appropriate interested parties
23 and publish a notice of initiation of investigation.

24 (8) Notwithstanding any provision in this section, the Minister shall
25 not initiate an investigation unless he has determined on the basis of an
26 examination of the degree of support for, or opposition to, any written petition
27 submitted under subsection (1) —

28 (a) that the written petition is supported by domestic producers of like
29 goods whose collective output constitutes more than 50% of the total
30 production of the like goods produced by that portion of the domestic
31 industry expressing either support for or opposition to the written petition;

	1	and
	2	(b) that the domestic producers of like goods expressly supporting the
	3	written petition account for not less than 25% of the total production of
	4	the like goods produced by the domestic industry.
	5	(9) For the purposes of subsection (8) of this section, in the case of
	6	fragmented industries involving an exceptionally large number of producers,
measures.	7	the Minister may determine the support and opposition by using statistically
Final	8	valid sampling techniques.
determination	9	20. All anti-dumping duty investigations shall, except in special
of dumping	10	circumstances, be concluded by the Minister within one year, and in no case
and injury.	11	more than 18 months after initiation.
Termination	12	21.—(1) The Minister shall, within such period as may be prescribed,
of	13	make a preliminary determination regarding—
investigation.	14	(a) whether a dumping margin exists with respect to the subject goods,
	15	and the amount of such a margin; and
	16	(b) whether injury is found to exist in anyone of the following ways—
	17	(i) the subject goods are, through the effects of dumping, causing
	18	material injury to the domestic industry in Nigeria producing like goods;
	19	(ii) the subject goods are, through the effects of dumping, threatening
	20	to cause material injury to the domestic industry in Nigeria producing
	21	like goods; or
	22	(iii) the subject goods are, through the effects of dumping, causing
	23	material retardation of the establishment of the domestic industry in
	24	Nigeria.
	25	(2) If the Minister makes a negative preliminary determination under
	26	subsection (1) of this section, he shall publish a notice stating the reasons
	27	therefore and may terminate the investigation if the Minister is satisfied
	28	that there is insufficient evidence of either dumping or of injury to justify
	29	proceeding with the investigation.
	30	(3) If the Minister makes an affirmative preliminary determination under
	31	subsection (1) of this section, he shall continue the investigation and publish

1 a notice of—

2 (a) the affirmative preliminary determination stating the reasons for his
3 determination under subsection (l) (a) and (b) of this section; and

4 (b) the provisional measures applicable.

Suspension of
investigation.

5 22.—(1) The Minister shall apply provisional measures with regard to the
6 subject goods imported into Nigeria on or after the publication of the notice
7 of affirmative preliminary determination where the Minister determines that
8 such measures are necessary to prevent the injury referred to in section 21
9 (1) (b) of this Act from occurring during the period of investigation.

10 (2) Provisional measures shall not be imposed sooner than 60 days from
11 the date of initiation of the investigation.

12 (3) Provisional measures shall take the form of a provisional duty or a
13 security equal to the amount of the estimated dumping margin determined
14 under section 21 (1) of this Act.

15 (4) Provisional measures imposed under this section shall not exceed
16 such period as may be prescribed.

Review by
Minister.

17 23.—(1) The Minister shall, within such period as may be prescribed,
18 make a final determination regarding—

Review by

19 (a) whether a dumping margin exists with regard to the subject goods,
20 and the amount of such margin; and

21 (b) whether injury is found to exist in anyone of the following ways—

22 (i) the subject goods are, through the effects of dumping, causing material
23 injury to the domestic industry in Nigeria producing like goods;

24 (ii) the subject goods are, through the effects of dumping, threatening to
25 cause material injury to the domestic industry in Nigeria producing like
26 goods; or

27 (iii) the subject goods are, through the effects of dumping, causing material
28 retardation of the establishment of the domestic industry in Nigeria.

29 (2) Where the Minister makes a negative final determination under
30 subsection (1) of this section, he shall—

31 (a) terminate the investigation;

(b) terminate any provisional measures applied under section 22 of this

1 Act and refund any provisional duty paid and release any security required
2 by such measures; and
3 (c) publish a notice of the negative final determination stating the reasons
4 therefore.

5 (3) Where the Minister makes an affirmative final determination under
6 subsection (1) of this section, he shall—

7 (a) publish a notice of the affirmative final determination stating the reasons
8 therefore, the anti-dumping duties applicable and the subject goods on
9 which the anti-dumping duties apply;

10 (b) impose anti-dumping duties in the amounts determined in the final
11 determination in accordance with section 14 (2) of this Act on the subject
12 goods imported into Nigeria on or after the date of publication of the final
13 determination; and

14 (c) impose anti-dumping duties in accordance with subsections (5) and
15 (6) of this section on imports into Nigeria for which provisional measures
16 were applied.

17 (4) Where an affirmative final determination has been made, the Minister
18 may take into consideration public interest in determining whether to impose
19 anti-dumping duties and the amount of such duties.

20 (5) The Minister shall impose anti-dumping duties on the subject goods
21 against which provisional measures were applied if the Minister —

22 (a) makes a determination of material injury under subsection (l) (b) (i) of
23 this section; or

24 (b) makes a determination of threat of material injury under subsection
25 (l) (b) (ii) of this section and finds that the import of the subject goods, in
26 the absence of the provisional measures, would have led to a finding of
27 material injury under subsection (l) (b) (i) of this section.

28 (6) With respect to the imposition of any anti-dumping duty under
29 subsection (5) of this section—

30 (a) where the anti-dumping duty is higher than the provisional duty or
31 the amount guaranteed by the security required under the provisional
measures, only the amount equal to the provisional duty or the security

1 given shall be imposed; and

2 (b) where the anti-dumping duty is less than the provisional duty or
3 the amount guaranteed by the security required under the provisional
4 measures, the full amount of the anti-dumping duty shall be imposed and
5 the excess amount of the provisional duty paid or security given shall be
6 reimbursed or released.

7 (7) Where no anti-dumping duties are imposed under subsection (5) of
8 this Act on the subject goods against which the provisional measures were
9 applied, the Minister shall refund the provisional duty paid and release the
10 security required by the provisional measures.

11 (8) Notwithstanding subsections (3) and (5) of this section, the Minister
12 may impose anti-dumping duties on the subject goods imported into
13 Singapore within a period of 90 days prior to the application of provisional
14 measures, but in no case earlier than the date of the initiation of the
15 investigation, if—

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

19 (b) the injury is caused by massive dumped imports of the subject goods
20 in a relatively short period of time which in the light of the timing and the
21 volume of such imports and other circumstances (such as a rapid build-up
22 of inventories of the subject goods) is likely to seriously undermine the
23 remedial effect of the anti-dumping duty to be imposed.

24 (9) When an anti-dumping duty is imposed on the subject goods, such
25 anti-dumping duty shall be imposed in the appropriate amount as provided
26 by regulations made under this Act.

27 24.—(1) Notwithstanding any other provisions of this Act but subject
28 to subsection (2) of this section, an investigation may be terminated at any
29 time if—

30 (a) the petitioner withdraws the petition; or

31 (b) the Minister determines that such termination is in the public interest.

(2) An investigation shall be terminated immediately if the Minister

Tribunal.
Administrative
matters.

1 determines that the margin of dumping is de minimis or that the volume of
2 imports of the subject goods, actual or potential, or the injury, is negligible.

3 (3) For the purpose of subsection (2) of this section—

4 (a) the margin of dumping shall be considered to be de minimis if the
5 margin is less than 2%, expressed as a percentage of the export price; and

6 (b) the volume of imports of the subject goods shall normally be regarded
7 as negligible if the volume of imports of the subject goods from a particular
8 country is found to account for less than 3% of imports of the like goods
9 into Nigeria, unless the subject goods from countries which individually
10 account for less than 3% of imports of the like goods in Nigeria collectively
11 account for more than 7% of imports of the like goods into Nigeria.

12 (4) If a termination under subsection (1) or (2) of this section occurs
13 prior to the preliminary determination, the Minister shall publish a notice of
14 such termination stating the reasons therefore.

15 (5) If a termination under subsection (1) or (2) of this section occurs
16 after the preliminary determination, the Minister shall—

17 (a) terminate any provisional measures referred to in section 22 of this Act
18 and refund the provisional duties paid or release the security required by
19 such measures; and

20 (b) publish a notice of such termination stating the reasons therefore.

21 25.—(1) An investigation may be suspended if undertakings are
22 accepted by the Minister.

23 (2) Before accepting the undertakings, the Minister shall determine that
24 such undertakings—

25 (a) will eliminate the dumping margin or the injurious effects caused by
26 the subject goods;

27 (b) can be monitored effectively; and

28 (c) are in the public interest.

29 (3) If the undertakings are accepted by the Minister, which undertakings
30 shall be accepted only after an affirmative preliminary determination, the
31 Minister shall—

(a) suspend the investigation;

1 (b) suspend any provisional measures applied under section 22 of this Act
2 and refund the provisional duty paid and release the security required by
3 such measures as the Minister may think appropriate; and

4 (c) publish a notice stating the reasons for the suspension of the
5 investigation and the actions under paragraph (b).

6 (4) Notwithstanding the acceptance of the undertakings, the
7 investigation shall be completed upon the written request of the exporters
8 of the subject goods submitted by the interested foreign government or if
9 the Minister so decides.

10 (5) Where the Minister completes the investigation under subsection
11 (4) of this section or for any other reason, and makes an affirmative final
12 determination, the undertakings shall remain in effect subject to the
13 provisions of this Act.

14 (6) Where the Minister completes the investigation under subsection (4)
15 of this section or for any other reason, and makes a negative determination,
16 the undertakings shall lapse, except in circumstances referred to in subsection
17 (7) of this section.

18 (7) Where the negative determination referred to in subsection (6) of
19 this section is due in large part to the existence of the undertakings, the
20 undertakings may be maintained subject to the provisions of this Act.

21 (8) The Minister may take any action under subsection (9) or (10) of this
22 section at any time if he determines that —

23 (a) the undertakings accepted under subsection (1) of this section no
24 longer meet the requirements of subsection (2) of this section; or

25 (b) there is a material violation of the undertakings.

26 (9) Where an investigation has not been completed despite subsection
27 (4) of this section, the Minister may resume the investigation and take
28 expeditious action to —

29 (a) make a preliminary determination under section 21 of this section;

30 (b) apply provisional measures in conformity with section 22 of this section
31 if appropriate; and

(c) make a final determination under section 23 of this section within 120

1 days after the publication of the preliminary determination.

2 (10) Where an investigation has been completed under subsection (5) of
3 this section, the Minister may immediately make a final determination under
4 section 23 of this Act and collect the anti-dumping duties applicable.

5 (11) The Minister may use the facts available with respect to any
6 determination under subsection (9) or (10) of this section where a material
7 violation of the undertakings occurs under subsection (8) (b) of this section.

8 (12) Where the Minister resumes an investigation under subsection (8)
9 (b) of this section, the Minister may impose anti-dumping duties in conformity
10 with section 23 of this Act on the subject goods imported into Nigeria within a
11 period of 90 days prior to the provisional measures applied under subsection
12 (9) (b) of this section.

13 (13) No retroactive assessment under subsection (12) of this section
14 shall be applied to the subject goods imported prior to the violation of the
15 undertakings.

liability.

Establishment

16 26.—(1) Whenever any interested party provides information to the
17 Minister, or the Minister otherwise obtains information, that —

- 18 (a) the dumping margin has changed substantially;
19 (b) a refund of an anti-dumping duty is appropriate;
20 (c) the imposition of an anti-dumping duty is no longer necessary;
21 (d) an undertaking is no longer necessary or should be modified;
22 (e) an anti-dumping duty which is required to be terminated under
23 subsection (7) of this section should be maintained; or
24 (f) an expedited review is required for exporters or producers who did not
25 export the subject goods to Nigeria during the period of investigation, the
26 Minister shall conduct a review if he determines that such review is in the
27 public interest or is required under the Agreement on Implementation of
28 Article VI of the General Agreement on Tariffs and Trade 1994.

29 (2) No review shall be undertaken under subsection (1) of this section
30 unless the period prescribed has lapsed.

31 (3) If the Minister decides to conduct a review under subsection (n) he

1 shall—

2 (a) publish a notice of the initiation of a review; and

3 (b) conduct such review and allow interested parties an opportunity to
4 provide comments.

5 (4) Any review conducted under this section shall be completed within
6 such period as may be prescribed.

7 (5) On the completion of the review, the Minister shall publish a final
8 determination in the review stating the reasons therefore.

9 (6) Except in the case of a review for a refund under subsection (1) (b)
10 of this section or an expedited review under subsection (1) (f) of this section,
11 any determination made under subsection (5) of this section shall apply to
12 the subject goods imported on or after the date of publication of the final
13 determination in the review.

14 (7) Anti-dumping duties shall not be collected on imports made after 5
15 years from the date of publication of the notice of the final determination and
16 undertakings shall automatically lapse with respect to imports made after 5
17 years from the date of publication of the notice of suspension of investigation,
18 unless the Minister determines on the basis of a review under this section
19 that the termination of such duties or undertaking would be likely to lead to
20 continuation or recurrence of dumping and injury.

21 27.—(1) An interested party shall have the right of review by the Tribunal
22 against any—

23 (a) affirmative or negative final determination under section 23 of this Act;

24 or

25 (b) final review determination under section 26 (5) of this Act.

26 (2) An application for review shall be filed within 30 days of the date of
27 the notice of affirmative or negative final determination under section 23 of
28 this Act or of the date of the final review determination under section 26(5)
29 of this Act.

30 (3) The Tribunal may, upon review, affirm the determination or remit
31 the matter to the Minister for reconsideration.

of Anti-
Dumping
Tribunal.

	1	(4) The Minister shall implement any decision of the Tribunal under
	2	subsection (3) of this section.
	3	28.—(1) Subject to the provisions of this Act, any investigation or action
	4	to be conducted or taken under this Act or any regulations made thereunder
Delegation.	5	shall be conducted or taken by any person authorised in writing by the
	6	Minister.
	7	(2) If any question arises as to whether any particular goods are or are
	8	not included in any notification given under this Act or any regulations made
	9	thereunder, the Minister shall determine the scope of the notification after
	10	giving interested parties an opportunity to comment on the scope of the
	11	notification.
Currency conversion.	12	29. No suit or other legal proceedings shall lie against any person
	13	authorised under this Act for or on account of or, in respect of, anything which
Notice of	14	is in good faith done or intended to be done in the execution or purported
	15	execution of this Act or any regulations made thereunder.
information and opportunities to present evidence.	16	30.—(1) There shall be established an Anti-Dumping Tribunal to perform
	17	the functions specified in sections 13 and 27 of this Act.
	18	(2) The Minister shall appoint the Chairman of the Tribunal who shall
	19	be a legal practitioner of not less than 10 years post call and not more than
	20	2 other persons as members of the Tribunal.
	21	(3) The Chairman and members of the Tribunal shall hold office for such
	22	period not exceeding 3 years as may be determined by the Minister and shall
	23	be eligible for reappointment.
	24	(4) The Minister shall determine the remuneration and other terms and
	25	conditions of the appointment of the Chairman and members of the Tribunal.
	26	(5) No person shall be appointed or shall continue to hold office as a
	27	member of the Tribunal if he—
	28	(a) is of unsound mind;
	29	(b) is an undischarged bankrupt or has made any arrangement or
	30	composition with his creditors; or
	31	(c) is convicted of an offence involving dishonesty, fraud or moral turpitude

1 and has not received a free pardon.

2 (6) The Chairman or any member of the Tribunal may at any time resign
3 from his office by giving notice in writing to the Minister.

4 (7) The Chairman and members of the Tribunal shall be deemed to be
5 public servants.

6 (8) The Tribunal shall review the evidence on the record to ascertain
7 whether there is substantial evidence on the record to support the decision
8 of the Minister. (9) In any review—

9 (a) the procedure to be followed is within the Tribunal's discretion; and

10 (b) the Tribunal—

11 (i) is not bound to act in a formal manner; and

12 (ii) is not bound by the rules of evidence.

13 (10) The Tribunal shall have powers to do all things necessary or
14 convenient to be done for or in connection with the performance of its
15 functions under this Act.

16 (11) The Minister may make such rules as may be necessary or expedient
17 for the purpose of enabling the Tribunal to carry out its functions and,
18 in particular, may make rules to provide for the constitution, officers and
19 proceedings of the Tribunal.

20 (12) For the purposes of this section, "Minister" means the Minister
21 charged with the responsibility for justice.

22 31.—(1) The Minister may, by writing under his hand, delegate to any
23 person, either generally or otherwise, all or any of his powers and functions
24 under this Act or any regulations made thereunder except his powers under
25 sections 3, 9, 14, 23 and 46 of this Act; and any reference in this Act or those
26 regulations to the Minister shall, unless the context otherwise requires, include
27 a reference to a delegate.

28 (2) A delegate of the Minister is, in the exercise of his powers and
29 the performance of his functions under this Act or any regulations made
30 thereunder, other than in his being satisfied or having an opinion as to any
31 matter, subject to the directions of the Minister.

Submission of
confidential
information.

Direction by Minister.	1	32.—(1) If, for the purposes of this Act, the comparison of the export prices of goods exported to Nigeria and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsections (3) and (5) of this section, shall be made using the rate of exchange on the date of sale.
	6	(2) The date of sale shall, in so far as is appropriate, be the date of contract, purchase order, order confirmation or invoice as determined by the Minister as that which establishes the material terms of the sale of the exported goods.
	10	(3) If, in relation to goods exported to Nigeria, a forward rate of exchange is used, the Minister shall, in any conversion of currencies under subsection (1) of this section, use that rate of exchange.
	13	(4) If—
	14	(a) the comparison referred to in subsection (1) of this section requires the conversion of currencies; and
	16	(b) the rate of exchange between those currencies has undergone a short- term fluctuation, the Minister shall, for the purposes of that comparison, disregard that fluctuation.
	19	(5) If—
	20	(a) the comparison referred to in subsection (1) of this section requires the conversion of currencies; and
	22	(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement during the period of investigation,
Facts available.	25	the Minister shall allow exporters at least 60 days to adjust their export prices to reflect the sustained movement.
Other practices discovered	27	33.—(1) All interested parties in a countervailing or anti-dumping duty investigation or review shall be given notice of the information required by the Minister and opportunities to present all evidence they consider relevant.
	30	(2) The Minister shall, whenever practicable, provide timely opportunities for all interested parties to see information submitted that is not confidential
	31	

1 and which is relevant to the presentation of their case.

2 (3) Throughout a countervailing or anti-dumping investigation or
3 review, all interested parties shall have a full opportunity for the defence of
4 their interests.

5 (4) The Minister shall, on request, provide timely opportunities for
6 all interested parties to meet those parties with adverse interests, so that
7 opposing views may be presented and rebuttal arguments offered.

8 (5) Provision of such opportunities shall take account of the need to
9 preserve confidentiality and of the convenience to the parties.

10 (6) There shall be no obligation on any party to attend a meeting, and
11 failure to do so shall not be prejudicial to that party's case.

12 (7) Interested parties shall also have the right, on justification, to present
13 other information orally which shall be reproduced in writing.

14 (8) The Minister shall, before a final determination is made in an
15 investigation or review, inform all interested parties of the essential facts
16 under consideration which form the basis for the decision.

during
investigation
or review.

17 34.—(1) Any information which is by its nature confidential, or any
18 information which is provided on a confidential basis to the Minister, the
19 Tribunal or any other person authorised by the Minister shall, for good cause
20 shown, be treated as such by the Minister, the Tribunal and any person having
21 access to such information.

22 (2) The confidential nature of a document shall not be used as a reason
23 for refusing to provide it to the Minister, the Tribunal or any person authorised
24 by the Minister.

25 (3) The Minister and the Tribunal shall be responsible for ensuring the
26 confidentiality of such documents.

27 (4) Confidential information shall not be disclosed without specific
28 written permission from the party submitting the confidential information.

29 (5) The Minister or the Tribunal shall require parties providing
30 confidential information to furnish non-confidential summaries that are
31 sufficient in detail to permit reasonable understanding of the substance of

	1	the confidential information.
	2	(6) Where such parties indicate that such information is not susceptible
	3	of summary, a statement of reasons why summarisation is not possible shall
	4	be provided.
	5	(7) The Minister or the Tribunal may disregard information presented
	6	if—
	7	(a) the Minister or the Tribunal finds that a request for confidentiality
	8	under subsection (1) of section is not warranted and the supplier of the
	9	information nevertheless is unwilling to make the information public;
	10	(b) the non-confidential summaries as required under subsection (5) of
	11	this section are not in sufficient detail; or
	12	(c) the reasons given for not providing non-confidential summaries under
	13	subsection (6) of this section are inadequate and the supplier of the
	14	information nevertheless refuses to provide non-confidential summaries.
Conduct of investigation where no international obligation apply. Transshipment.	15	35. The Minister may give to the Comptroller-General of Customs, any
	16	public officer or any officer of any statutory board such written directions in
	17	connection with the carrying out or giving effect to the powers and duties
	18	of the Minister under this Act as the Minister thinks fit, and the Comptroller-
	19	General of Customs, public officer or officer shall comply with the directions
	20	so given.
Publication of notices. Double counting not permitted.	21	36. Where any interested party refuses access to, or otherwise does not
	22	provide, necessary information within a reasonable period or significantly
	23	impedes an investigation or review, including refusal to allow verification of
	24	its information, preliminary and final determinations may be made on the
	25	basis of the facts available.
	26	37.—(1) If, in the course of an anti-dumping investigation or review, the
	27	Minister discovers practices which appear to be dumping but which were not
	28	included in the matters alleged in the petition, the Minister may, if there is
	29	sufficient time, investigate those practices.
Customs clearance not to be hindered. Public servants.	30	(2) If, in the course of a countervailing duty investigation or review, the
	31	Minister discovers practices which appear to be countervailable subsidies but

1	which were not included in the matters alleged in the petition, the Minister	
2	may, if there is sufficient time, investigate those practices.	
3	38. When no applicable international obligation on countervailing	Obligation of
4	and anti-dumping duties exists between Nigeria and any interested foreign	secrecy.
5	government, the Minister may take such action as may be prescribed.	Regulation to
6	39. Where goods are not imported into Nigeria directly from the	give effect to
7	country of origin, but are exported to Nigeria from an intermediate country,	treaties, etc.
8	the provisions of this Act and any regulations made thereunder shall be	Power
9	fully applicable and the transaction, for the purposes of this Act and those	to make
10	regulations, shall be regarded as having taken place between the country of	regulations.
11	origin and Nigeria.	6484-11-2006.
12	40. All notices required to be published under this Act shall be published	
13	in the Gazette, unless otherwise specified.	
14	41. No goods shall be subject to both anti-dumping and countervailing	
15	duties to compensate for the same situation of dumping and export	
16	subsidization.	
17	42. Any investigation conducted under this Act shall not hinder	
18	procedures for customs clearance.	
19	43. Any person acting for and on behalf of or under the direction of the	
20	Minister under this Act or any regulations made thereunder shall be deemed	
21	to be a public servant.	
22	44.—(1) No person who has access to any statement, accounts, record,	
23	correspondence, document, information or any other material obtained	
24	pursuant to the provisions of this Act or any regulations made thereunder	
25	shall disclose such statement, accounts, record, correspondence, document,	
26	information or other material to any other person unless such disclosure is—	
27	(a) authorised by the Minister; or	
28	(b) made for the purposes of this Act.	
29	(2) Any person who contravenes subsection (1) shall be guilty of an	
30	offence and shall be liable on conviction to a fine not exceeding x50,000 or	
31	to imprisonment for a term not exceeding one year or to both.	

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- 1 45. The Minister may make regulations—
- 2 (a) to modify the application of the provisions of this Act—
- 3 (i) to any goods exported or originating from any country; or
- 4 (ii) to any country or person or description of persons; and
- 5 (b) to exempt any goods exported or originating from any country from all
- 6 or any of the provisions of this Act, in order to give effect to any obligation
- 7 binding on Nigeria under any international agreement or arrangement.
- 8 46.—(1) The Minister may make such regulations as may be necessary
- 9 or expedient for giving full effect to or for carrying out the provisions of this
- 10 Act.
- 11 (2) Without prejudice to the generality of subsection (1) of this section,
- 12 regulations may be made—
- 13 (a) to prescribe the time periods for any action to be taken under this Act;
- 14 (b) to provide for extensions of time for any action to be taken and the
- 15 circumstances when extensions may be granted;
- 16 (c) to provide for the form and content of notices required for the purposes
- 17 of this Act and the procedures related to the giving of such notices;
- 18 (d) to provide for the procedures of investigations, reviews and appeals;
- 19 (e) to provide for any fee to be charged in respect of any matter required
- 20 for the purposes of this Act;
- 21 (f) to provide for the forms of undertakings which may be accepted by the
- 22 Minister and the procedures related thereto;
- 23 (g) to provide for the applicable currency to be used in any computation
- 24 required for the purposes of this Act and the rate of exchange applicable
- 25 for any conversion of currency required;
- 26 (h) to prescribe matters necessary or convenient to be prescribed for
- 27 carrying out or giving effect to the World Trade Organisation Agreement,
- the Agreement on Countervailing and Subsidies Measures, the Agreement
- on Implementation of Article VI of the General Agreement on Tariffs
- and Trade 1994 and the Agreement on Agriculture as amended or
- supplemented by any protocol or agreement to which Nigeria is a party;