



FEDERAL SUBSIDIARY LEGISLATION

COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993 [ACT 504]
P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994
Incorporating latest amendment - P.U.(A) 488/99

Publication in the Gazette :
Date of coming into operation :

16th June 1994
28th April 1994

ARRANGEMENT OF REGULATIONS

[Preamble](#)

PART I - PRELIMINARY

Regulation 1. [Citation and commencement.](#)

PART II - PETITIONS

Regulation 2. [Contents of petition.](#)

Regulation 3. [Notification of receipt of countervailing duty petition and consultations.](#)

Regulation 4. [Amendments to the petition.](#)

PART III - INVESTIGATION PROCEDURES

Regulation 5. [Scope of the investigation to be determined.](#)

Regulation 6. [Adequacy of petition.](#)

Regulation 7. [Initiation of investigation.](#)

Regulation 8. [Notice of initiation of investigation.](#)

Regulation 9. [Gathering of information and questionnaires.](#)

Regulation 10. [Preliminary determination.](#)

Regulation 11. [Negative preliminary determination.](#)

Regulation 12. [Affirmative preliminary determination.](#)

Regulation 13. [Provisional measures.](#)

Regulation 14. [Request for retroactive imposition of countervailing and anti-dumping duties.](#)

Regulation 15. [Final determination.](#)

Regulation 16. [Corrections of administrative errors.](#)

Regulation 17. [Mutually agreed solution through consultations.](#)

Regulation 18. [Undertakings and suspension of investigation.](#)

PART IV - INJURY DETERMINATIONS

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

- Regulation 19. [\[Deleted\]](#)
- Regulation 20. [Forms or subsidy.](#)
- Regulation 21. [Causation.](#)
- Regulation 22. [Threat of material injury.](#)
- Regulation 23. [Material retardation.](#)

PART V - SUBSIDIES AND DUMPING

- Regulation 24. [Specificity of subsidy.](#)
- Regulation 24A. [Prohibited subsidy.](#)
- Regulation 24B. [Non-actionable subsidy.](#)
- Regulation 25. [Basis for calculation of subsidy.](#)
- Regulation 25A. [Calculation of subsidy in term of benefit to recipient.](#)
- Regulation 26. [Determining normal value by examining sales in anti-dumping duty investigation.](#)
- Regulation 27. [\[Deleted\]](#)
- Regulation 28. [Basis for selection of a third country.](#)
- Regulation 29. [Constructed normal value.](#)
- Regulation 30. [Adjustment of export price.](#)
- Regulation 31. [Establishment of dumping margin.](#)
- Regulation 32. [Adjustments to ensure of fair comparison between normal value and export price.](#)
- Regulation 33. [Calculation of amount of subsidy and normal value of subject merchandise from a non-market economy country.](#)
- Regulation 33A. [Countervailing duty proceedings against exporters or producers from developing country Members.](#)

PART VI - REVIEWS

- Regulation 34. [Administrative review.](#)
- Regulation 35. [Notice of termination of countervailing or anti-dumping duties.](#)
- Regulation 36. [Refund review.](#)

PART VII - GENERAL

- Regulation 37. [Submission of oral or written information.](#)
- Regulation 38. [Verification of information.](#)
- Regulation 39. [Meeting of interested parties.](#)

LIST OF AMENDMENTS

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Preamble

IN exercise of the powers conferred by section 50 of the Countervailing and Anti-Dumping Duties Act 1993 [Act 504], the Minister makes the following regulations:

PART I - PRELIMINARY

Regulation 1. Citation and commencement.

These regulations may be cited as the Countervailing and Anti-Dumping Duties Regulations 1994 and shall be deemed to have come into force on the 28th April 1994.

PART II - PETITIONS

Regulation 2. Contents of petition.

(1) A petition requesting that a countervailing or an anti-dumping duty investigation be initiated shall contain the name and address of the petitioner and, to the extent reasonably available to the petitioner, the following particulars:

(a) the identity of the domestic industry on behalf of which the petition is submitted, including the names and addresses of the other producers of the like product in the domestic industry and in the case where the petition is submitted on behalf of the regional producers of the like product, information and details to support the carrying out of an investigation on a regional basis;

(b) a detailed description of the merchandise that defines the requested scope of the investigation, including its physical, technical and chemical characteristics, the technology and manufacturing processes involved, relevant industry specifications, pricing structures, distribution channels, functions and uses and its current Malaysian tariff classification;

[Am. P.U.(A) 488/99]

(c) the name of the country in which the merchandise is produced and, if such merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(d) the name and address of each party the petitioner believes is producing the merchandise for export or is exporting to Malaysia and-

(i) in relation to a countervailing duty petition, is receiving a subsidy; or

(ii) in relation to an anti-dumping duty petition, is selling the merchandise at prices below the normal value;

(e) any factual information, particularly documentary evidence, relevant to the alleged subsidy or dumping, including-

(i) in relation to a countervailing duty petition, the authority which provided the subsidy and the manner in which the subsidy is provided and an estimate of the value of the

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

subsidy to producers or exporters of the merchandise; or

(ii) in relation to an anti-dumping duty petition, information relevant to the calculation of the normal value and export price of the merchandise;

(f) the volume and value of the merchandise imported into Malaysia during the most recent three year period and during any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported into Malaysia during the three year period, information as to the likelihood of its sale for importation into Malaysia;

[Am. P.U.(A) 488/99]

(fa) information on the evolution of the volume of the merchandise imported;

[Ins. P.U.(A) 488/99]

(fb) the effect of the importation of the merchandise on the price of the like product in the domestic market;

[Ins. P.U.(A) 488/99]

(g) the name and address of each party who the petitioner believes is importing or, if there were no importations, is likely to import the merchandise;

(h) evidence of injury to the domestic industry by reason of the merchandise included in the petition;

(i) if the petitioner believes that the circumstances described in subsections 10(7) and 25(7) of the Act may occur, factual information regarding-

(i) material injury which is difficult to repair;

(ii) massive imports of the merchandise in a short period of time prior to the submission of the petition; and

(iii) in relation to -

(A) a countervailing duty petition, information about an export subsidy that is inconsistent with the international obligations of the foreign government, if applicable; or

(B) an anti-dumping duty petition, evidence of a history of dumping by the exporters or evidence that the importer was aware or should have been aware that the merchandise was being sold in Malaysia at prices less than the normal value; and

[Subs. P.U.(A) 488/99]

(j) any other factual information on which the petitioner relies.

(2) In relation to paragraph (1)(h), a petitioner should include factual information on relevant economic factors and indices which have a bearing on the condition of such domestic industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, factors affecting domestic prices and actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital and investment.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

[Am. P.U.(A) 488/99]

(3) The petitioner shall submit, together with the petition, a non-confidential version of such petition which can be released publicly.

(4) The Government shall not consider any factual information in the petition for which the petitioner requests confidential treatment unless the petitioner meets the requirements of section 39 of the Act.

Regulation 3. Notification of receipt of countervailing duty petition and consultations.

(1) On receipt of a countervailing duty petition, the Government shall, as soon as practicable, notify the representative of the interested foreign government in Malaysia of such receipt of petition for the purpose of subsection 5(1) of the Act.

[Am. P.U.(A) 488/99]

(2) The provision of an opportunity for consultations as provided in the Act shall not prevent the Government from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations or applying provisional or final measures in accordance with the provisions of the Act and these Regulations.

Regulation 4. Amendments to the petition.

(1) Subject to subregulation (2), a petitioner may make amendments to the petition submitted under subsection 4(1) or 20(1) of the Act prior to the preliminary determination unless exceptional circumstances justify an amendment to be made after the preliminary determination.

(2) The Government shall be entitled to refuse to accept any amendments where it determines that the amendments would seriously impede or disrupt the investigation or would adversely affect the rights of interested parties under the Act.

PART III - INVESTIGATION PROCEDURES

Regulation 5. Scope of the investigation to be determined.

(1) Upon receipt of the countervailing or anti-dumping duty petition, the Government shall review the petition and determine the class of merchandise that is to be the scope of the investigation and whether the petition is being submitted by or on behalf of the domestic industry in respect of that class of merchandise.

[Am. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

(2) Where there are more than one class of merchandise specified or described in the petition, the Government may decide to segregate the investigation into two or more categories of subject merchandise, where appropriate.

Regulation 6. Adequacy of petition.

(1) The Government shall make a determination as to the adequacy of the countervailing or anti-dumping duty petition within thirty days from the date of receipt of a written petition.

[Am. P.U.(A) 488/99]

(2) A petitioner whose petition has been rejected under subsection 4(4) or 20(5) of the Act shall only be allowed to submit a new petition six months after the date of the notification under subsection 4(5) or 20(6) of the Act.

[Subs. P.U.(A) 488/99]

Regulation 7. Initiation of investigation.

(1) Where the Government is satisfied that:

(a) sufficient evidence has been presented with regard to the elements necessary for the imposition of countervailing or anti-dumping duties;

(b) the petition is submitted by or on behalf of the domestic industry producing the like product; and

[Am. P.U.(A) 488/99]

(c) such an investigation would be in the public interest, the Government shall initiate an investigation.

(2) For the purposes of paragraph (1)(b), a petition shall be deemed to be submitted by or on behalf of the domestic industry if-

(a) the petition is supported by those domestic producers whose collective output constitutes more than fifty per centum of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the petition; and

(b) the domestic producers who expressed their support for the petition account for more than twenty-five per centum of the total production of the like product produced by the domestic industry.

[Ins. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 8. Notice of initiation of investigation.

A notice of initiation of investigation to be published under subsections 4(7) and 20(8) of the Act shall contain the following information:

- (a) the name of the country in which the subject merchandise is produced or, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; *[Am. P.U.(A) 488/99]*
- (b) a description of the subject merchandise; *[Am. P.U.(A) 488/99]*
- (c) a brief description of the alleged subsidy or dumping to be investigated; *[Am. P.U.(A) 488/99]*
- (d) a brief summary of the elements on which the allegations of injury are based;
- (e) the address where information and comments may be submitted;
- (f) the date of initiation of the investigation; and
- (g) the proposed time limits for interested parties to make their views known. *[Am. P.U.(A) 488/99]*

Regulation 9. Gathering of information and questionnaires.

- (1) The Government may prepare and distribute questionnaires to any party relevant to the countervailing or anti-dumping duty investigation within a reasonable period from the date of publication of the notice of initiation of investigation in order to obtain information which it deems necessary for making a determination under the Act.
- (2) A party receiving a questionnaire shall be given at least thirty days to reply.
- (3) An extension of the time period specified in subregulation (2) may be granted by the Government if requested by a party in writing and if the Government is satisfied with the reason given for the request.
- (4) Any reply to the questionnaires submitted to the Government after the due date shall not be considered by the Government.
- (5) For the purpose of this regulation, a questionnaire shall be deemed to have been received by a party one week from the day on which it was sent to the party or to the appropriate representatives of the interested foreign government in Malaysia, as the case may be.
- (6) The Government may, if it deems it necessary, issue any party with a supplementary questionnaire, a request for clarification or a request for additional information relevant to the countervailing or anti-dumping duty investigation and the party shall respond to the supplementary questionnaire or request within the time specified in the questionnaire or request.

[Ins. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 10. Preliminary determination.

(1) The Government shall make a preliminary determination under section 8 or 23 of the Act within one hundred and twenty days from the date of publication of the notice of initiation of investigation.

[Am. P.U.(A) 488/99]

(2) In special circumstances, the Government may extend the time period for making a preliminary determination by an additional thirty days.

Regulation 11. Negative preliminary determination.

Where the Government makes a negative preliminary determination under subsection 8(2) or 23(2) of the Act, the Government shall continue the investigation unless it is satisfied that the elements necessary for the imposition of countervailing or anti-dumping duties will not be found to exist even if the investigation is continued.

[Am. P.U.(A) 488/99]

Regulation 12. Affirmative preliminary determination.

A notice of a preliminary affirmative determination under subsection 8(3) or 23(3) of the Act shall include all relevant information on the matters of fact and law that have led to arguments being accepted or rejected, due regard being given to the requirement for the protection of confidential information, and in particular-

- (a) the names of the exporters and producers of the subject merchandise, where practicable, and the name of the country in which the subject merchandise is produced or any intermediate country involved;
- (b) a description of the subject merchandise that is sufficient for customs purposes, including the current Malaysian tariff classification;
- (c) the amount of subsidy or margin of dumping found to exist and the basis for such determination;
- (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made;
- (e) any other reasons leading to the preliminary determination;
- (f) the reasons why provisional measures are necessary; and
- (g) the proposed time limits for making a final determination.

[Subs. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 13. Provisional measures.

(1) Provisional measures may be taken only after the publication of the notice of affirmative preliminary determination and shall not be applied earlier than sixty days from the date of the initiation of the investigation.

(2) Unless the Government grants an extension of time that is consistent with Malaysia's international obligations in such matter, the period for the application of provisional measures shall not exceed one hundred and twenty days from the date of the publication of the notice of the affirmative preliminary determination.

Regulation 14. Request for retroactive imposition of countervailing and anti-dumping duties.

(1) With respect to subsections 10(7) and 25(7) of the Act, a petitioner may make a written request to the Government at any time prior to thirty days before the final determination for the retroactive imposition of countervailing and anti-dumping duties.

(2) Such request shall contain factual information of-

(a) material injury to the domestic industry which is difficult to repair;

(b) massive imports of the subject merchandise in a short period of time; and

(c) in relation to-

(i) the imposition of countervailing duties, the export subsidy that is being provided with respect to the subject merchandise contrary to the interested foreign government's obligations; or

(ii) the imposition of anti-dumping duties-

(A) the history of dumping that caused injury to the domestic industry; or

(B) the importer's awareness that the exporter practises dumping and that such dumping would cause injury to the domestic industry.

[Subs. P.U.(A) 488/99]

Regulation 15. Final determination.

(1) A final determination under sections 10 and 25 of the Act shall be made within one hundred and twenty days from the date of the publication of the notice of the preliminary determination.

(2) A notice of a final determination, affirmative or negative, shall include all relevant information on the matters of fact and law considered material by the Government, due regard being given to the requirement for the protection of confidential information, and in particular-

[Am. P.U.(A) 488/99]

(a) the names of the exporters and producers of the subject merchandise, where practical, and the name

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

of the country in which the subject merchandise is produced or any intermediate country involved;

[Am. P.U.(A) 488/99]

(b) a description of the subject merchandise that is sufficient for customs purposes, including the current Malaysian tariff classification;

(c) the amount of subsidy or margin of dumping found to exist and the basis for such determination;

[Am. P.U.(A) 488/99]

(d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made;

[Am. P.U.(A) 488/99]

(e) any other reasons leading to the final determination;

(f) [Deleted by P.U.(A) 488/99]

(g) the reasons why final countervailing or anti-dumping duties should be collected with regard to the subject merchandise for which provisional measures were applied; and

[Am. P.U.(A) 488/99]

(h) the reason for the retroactive imposition of duties under subsection 10(7) or 25(7) of the Act, if applicable.

(3) The Government shall make a negative final determination whenever it determines that any one of the elements required under section 10 or 25 of the Act does not exist or where the amount of subsidy or the margin of dumping is de minimis or the volume of subsidized or dumped imports, actual or potential, is negligible.

[Am. P.U.(A) 488/99]

Regulation 16. Corrections of administrative errors.

(1) Interested parties may submit comments regarding administrative errors within ten days from the date of publication of the notice of final determination.

(2) If the Minister is satisfied that administrative errors exist, the final determination shall be amended within thirty days from the date of the publication of the notice of final determination.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 17. Mutually agreed solution through consultations.

(1) Without prejudice to any other provisions of the Act, a mutually agreed solution may be reached through consultations under section 5 of the Act.

(2) Where a mutually agreed solution is reached, the Government shall publish a notice setting forth the terms of the mutually agreed solution.

Regulation 18. Undertakings and suspension of investigation.

(1) The Government may consult the domestic industry before accepting any undertaking and suspending a countervailing or anti-dumping duty investigation under section 12 and 27 of the Act.

(2) The Government may accept the following forms of undertakings:

(a) in relation to a countervailing duty investigation-

(i) the government of the exporting country agrees to eliminate, offset or limit the subsidy;

(ii) *[Deleted by P.U.(A) 488/99]*

(iii) the exporters agree to revise their prices to eliminate the injurious effect of the subsidy; or

(iv) the government of the exporting country or the exporters agree to take such other action so as to eliminate the injurious effects of the subsidy; and

(b) in relation to an anti-dumping duty investigation-

(i) the exporters agree to revise their prices to eliminate the injurious dumping; or

(ii) the exporters agree to take such other action so as to eliminate the injurious effects of the dumping.

[Am. P.U.(A) 488/99]

(3), (4) & (5) *[Deleted by P.U.(A) 488/99]*

(6) A request to complete the investigation under subsection 12(5) or 27(5) of the Act shall be made in writing by the interested foreign government or exporter, as the case may require, within fourteen days from the date of publication of the notice of suspension of investigation.

[Am. P.U.(A) 488/99]

(7) Where the Government receives the request for the completion of investigation within the time specified under subregulation (6), the Government shall publish a notice of the continuation of the investigation, and shall make the final determination within one hundred of eighty days from the date of the request for the completion of investigation.

[Am. P.U.(A) 488/99]

(8) Where a material violation of the undertakings occurs before the final determination can be completed

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

under subregulation (7), the Government shall immediately apply provisional measures based upon the preliminary determination.

[Am. P.U.(A) 488/99]

(9) Where a material violation of the undertaking occurs after the final determination has been completed under subregulation (7), the Government shall immediately impose countervailing or anti-dumping duties based upon that final determination.

(10) Where applicable, the amount of duties to be imposed under subsection 12(12) and 27(12) of the Act shall be based upon information available.

PART IV - INJURY DETERMINATIONS

Regulation 19. [Deleted]

[Deleted by P.U.(A) 488/99]

Regulation 20. Forms or subsidy.

(1) In determining the injury to the domestic industry from subsidized or dumped imports for the purposes of sections 7A and 22A of the Act, the Government shall evaluate all relevant economic factors and indices having a bearing on the state of the industry.

[Subs. P.U.(A) 488/99]

(2) The factors and indices referred to in subregulation (1) shall include-

(a) actual and potential decline in output, sales, market share, profits, productivity, return on investments or utilization of capacity;

[Am. P.U.(A) 488/99]

(b) factors affecting domestic prices;

(ba) in relation to section 22A of the Act, the margin of dumping; and

[Am. P.U.(A) 488/99]

(c) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

[Am. P.U.(A) 488/99]

(3) The factors and indices mentioned in subregulation (2) shall not be exhaustive nor shall one or several of such factors or indices be necessarily conclusive.

Regulation 21. Causation.

(1) In determining whether the injury to the domestic industry is caused by the subject merchandise through the effects of subsidy or dumping, the Government shall consider, among other factors-

(a) in relation to the volume of the subsidized or dumped imports, whether there has been a significant increase in subsidized or dumped imports, either in absolute terms or relative to production or consumption in Malaysia; and

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

(b) in relation to the effect of the subsidized or dumped imports on prices-

(i) whether there has been a significant price undercutting by the subsidized or dumped imports as compared with the price of a like product of Malaysia; or

(ii) whether the effect of the subsidized or dumped imports is otherwise to depress prices to a significant degree or to prevent price increase, that otherwise would have occurred, to a significant degree.

[Subs. P.U.(A) 488/99]

(1A) The factors referred to in subregulation (1) shall not be exhaustive not shall one or several of such factors be necessarily conclusive.

[Ins. P.U.(A) 488/99]

(2) The Government shall assess the effect of subsidized or dumped imports in relation to the domestic production of the like product where available data permit the separate identification of production in accordance with such criteria as the production process and producer's sales and profits.

(3) Where the domestic production of the like product has no separate identity as described in subregulation (2), the Government shall assess the effects of the subsidized or dumped imports by examining the production of the narrowest group or range or products, which includes the like product, for which necessary information can be provided.

(4) For the purposes of subsections 7A(4) and 22A(4) of the Act, the factors that may be relevant include the following:

(a) in relation to-

(i) a countervailing duty investigation, the volume and prices of non-subsidized imports of the merchandise in question; or

(ii) an anti-dumping duty investigation, the volume and prices 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 the foreign and domestic producers;

(d) developments in technology; and

(e) the export performance and productivity of the domestic industry.

[Subs. P.U.(A) 488/99]

(5) *[Deleted by P.U.(A) 488/99]*

(6) The Government shall provide an explanation as to how the factors in subregulation (1) have been considered in any determination of injury.

[Am. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 22. Threat of material injury.

(1) In determining whether a threat of material injury exists, the Government shall consider all relevant factors including-

(a) in relation to a countervailing duty investigation, the nature of the subsidy in question and the trade effects likely to arise from the subsidy;

(b) a significant rate of increase of subsidized or dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized or dumped exports to the Malaysian market, taking into account the availability of other export markets to absorb any additional exports;

(d) whether imports of the subject merchandise are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports of the subject merchandise; and

(e) inventories of the subject merchandise being investigated.

(2) No one of the factors referred to in subregulation (1) shall by itself be necessarily conclusive but the totality of the factors considered must lead to the conclusion that further imports of the subsidized or dumped imports are imminent and that, unless protective action is taken, material injury would occur.

(3) A threat of material injury shall be clearly foreseen and imminent.

[Subs. P.U.(A) 488/99]

Regulation 23. Material retardation.

(1) In determining whether material retardation of the establishment of a domestic industry exists, the Government shall consider all relevant factors including-

(a) whether a domestic industry producing the like product is in the process of being established;

(b) whether such an industry is viable;

(c) whether the establishment of such an industry is imminent; and

(d) whether the subsidized or dumped imports are through the effects of the subsidy or dumping causing material retardation of the establishment of such an industry.

(2) For the purposes of subregulation (1), the Government shall consider, among other factors-

(a) feasibility studies;

(b) negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants; and

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

(c) whether there has been significant investment for the establishment of such an industry.

(3) A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility.

[Subs. P.U.(A) 488/99]

PART V - SUBSIDIES AND DUMPING

Regulation 24. Specificity of subsidy.

(1) In order to determine whether a subsidy is specific for the purposes of subsection 3(2) of the Act to an enterprise or industry or a group of enterprises or industries (in this regulation referred to as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

(a) where the granting authority or the legislation pursuant to which the granting authority operates explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

(b) where the granting authority or the legislation pursuant to which the granting authority operates establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to and are clearly spelt out in written law or in any other official document so as to be capable of verification;

(c) if notwithstanding any appearance of non-specificity resulting from the application of the principles specified in paragraphs (a) and (b) there are reasons to believe that the subsidy may in fact be specific, the factors specified in subregulation (3) may be considered;

(d) a subsidy that is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific; and

(e) the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy.

(2) For the purposes of paragraph (1)(b), the expression "objective criteria or conditions" means criteria or conditions that are neutral, that do not favour certain enterprises over others, and that are economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.

(3) For the purposes of paragraph (1)(c) -

(a) the factors that may be considered are-

(i) the use of a subsidy programme by a limited number of certain enterprises;

(ii) predominant use by certain enterprises;

(iii) the granting of disproportionately large amounts of subsidy to certain enterprises; and

(iv) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy; and

(b) account shall be taken of the extent of diversification of economic activities within the

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

jurisdiction of the granting authority as well as of the length of time during which the subsidy programme has been in operation.

(4) For the purposes of paragraph (3)(a), information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

(5) A determination of specificity under these Regulations shall be clearly substantiated on the basis of relevant evidence.

[Subs. P.U.(A) 488/99]

Regulation 24A. Prohibited subsidy.

(1) For the purposes of paragraph 2B(a) of the Act, the subsidies referred to in Annex I to the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement are prescribed to be prohibited subsidies.

(2) For the avoidance of doubt it is declared that the reference to Annex I to the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Annex as may be amended from time to time.

[Ins. P.U.(A) 488/99]

Regulation 24B. Non-actionable subsidy.

(1) For the purposes of paragraph 2D(b) of the Act, the conditions referred to in Article 8.2 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement are prescribed to be conditions that render a subsidy that is specific a non-actionable subsidy.

(2) For the avoidance of doubt it is declared that the reference to Article 8.2 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Article as may be amended from time to time.

[Ins. P.U.(A) 488/99]

Regulation 25. Basis for calculation of subsidy.

The Government shall calculate the amount of subsidy provided with respect to the subject merchandise based upon the following principles:

(a) the Government will calculate the total subsidy provided with respect to the subject merchandise during the designated period of investigation;

(b) the Government will regard a subsidy to be received at the time when there is a cash flow effect on the enterprise or industry receiving the subsidy:

[Am. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Provided that were this methodology will significantly distort the subsidy level, the Government may use any other reasonable method to determine when a subsidy is received;

(c) the Government will either calculate the entire subsidy received by the enterprise or industry as to be expended in a single year or on an annual basis for two or more years, as it deems appropriate;

[Am. P.U.(A) 488/99]

(d) the Government will allocate the subsidy to those products to which the subsidy is associated;

(e) the Government will calculate a weighted average subsidy applicable to the product on a country wide basis;

(f) the amount of subsidy shall be determined per unit, on an *ad valorem* basis, or on any other reasonable basis;

(g) the Government may subtract the amount of-

(i) any application fee, deposit or similar payment paid in order to qualify for, or to receive, the subsidy; and

(ii) export taxes, duties or other charges collected on the export of the merchandise to Malaysia specifically intended to offset the subsidy received.

Regulation 25A. Calculation of subsidy in terms of benefit to recipient.

(1) Without prejudice to regulation 25, the calculation of the amount of a subsidy in terms of the benefit to the recipient shall be based on the following guidelines:

(a) government provision of equity capital shall not be considered as conferring a benefit unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Member;

(b) a loan by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount the enterprise would pay on a comparable commercial loan that the enterprise could actually obtain on the market, in which case the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the enterprise receiving the guarantee pays on a loan guaranteed by the government and the amount that the enterprise would pay on a comparable commercial loan absent the government guarantee, in which case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and

(d) the provision of goods or services, or the purchase of goods, by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration.

(2) For the purposes of paragraph (1)(d), the adequacy of remuneration shall be determined in relation to

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

prevailing market conditions for the goods or services in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(3) In this regulation, the expression "enterprise" means the enterprise by whom the subject merchandise is produced, manufactured or exported.

[Ins. P.U.(A) 488/99]

Regulation 26. Determining normal value by examining sales in anti-dumping duty investigation.

(1) For the purpose of determining normal value under section 16 of the Act, the Government will normally examine any sale of the like product in the domestic market of the exporting country during the six-month period preceding the initiation of an investigation or any additional or alternative period that the Government deems relevant or necessary if such sales permit a proper comparison.

[Am. P.U.(A) 488/99]

(2) Sales of the like product in the domestic market do not permit a proper comparison where-

[Am. P.U.(A) 488/99]

(a) the quantity of merchandise sold for consumption in the domestic market of the exporting country during the period of investigation is less than five per centum of the sales of the subject merchandise to Malaysia, unless there is evidence to demonstrate that such ratio is nonetheless of sufficient magnitude to provide for a proper comparison;

[Subs. P.U.(A) 488/99]

(b) the sales in the domestic market are not in the ordinary course of trade; or

(c) a particular market situation exists.

[Ins. P.U.(A) 488/99]

(3) For the purposes of paragraph (2)(b), the sales in the domestic market are not in the ordinary course of trade if-

(a) the sales below per unit costs are made within an extended period of time where the extended period of time is normally one year but shall in no case be less than six months;

(b) the sales below per unit costs are made in substantial quantities where the Government establishes that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than twenty per centum of the volume sold in transactions under consideration for the determination of the normal value; and

(c) the sales below per unit costs are made at a price that does not provide for the recovery of all costs within a reasonable period of time where the price is below per unit costs at the time of sale.

[Ins. P.U.(A) 488/99]

Regulation 27. [Deleted]

[Deleted by P.U.(A) 488/99]

Regulation 28. Basis for selection of a third country.

(1) The Government generally will select the third country for the purposes of paragraph 16(2)(a) of the Act based on the following criteria:

[Am. P.U.(A) 488/99]

(a) the merchandise exported to the third country is similar to the merchandise exported to Malaysia and the Government determines that the value of sales to the country is adequate;

(b) the market in the third country, in terms of structure and development, is similar to the Malaysian market:

(c) the sales in the third country are in the ordinary course of trade; and

[Am. P.U.(A) 488/99]

(d) any other criteria the Government deems relevant based on the circumstances of a particular industry.

(2) *[Deleted by P.U.(A) 488/99]*

Regulation 29. Constructed normal value.

[Am. P.U.(A) 488/99]

(1) *[Deleted by P.U.(A) 488/99]*

(2) A transaction directly or indirectly between related parties or among parties which appear to have compensatory arrangements with each other may be disregarded.

(3) If a transaction is disregarded under subregulation (2) and there are no other transactions available for consideration, then the determination of the amount required to be considered under paragraph 16(2)(b) of the Act shall be based on the best information available as to what the amount would have been if the transaction had occurred between unrelated parties or parties without the compensatory arrangements.

[Am. P.U.(A) 488/99]

Regulation 30. Adjustment of export price.

In calculating the export price under section 17 of the Act, the Government will deduct the amount of any anti-dumping duty that the producer or reseller-

(a) has paid directly on behalf of the importer; or

(b) has reimbursed to the importer.

Regulation 31. Establishment of dumping margin.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

(1) For the purposes of subsection 18(1) of the Act, the existence of dumping margins shall be established on the following basis:

(a) by a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions;

(b) by a comparison of normal value and export prices on a transaction-to-transaction basis; or

(c) by a comparison of a weighted average normal value with prices of individual export transactions, if the Government finds a pattern of export prices that differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a comparison under paragraph (a) or (b).

(2) If the comparison under this regulation requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

(3) For the purposes of subregulation (2) -

(a) the date of sale shall be the date of invoice, contract, purchase order or order confirmation, whichever establishes the material terms of sale; and

(b) fluctuations in exchange rates shall be ignored and the Government shall allow exporters at least sixty days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

(4) The Government shall determine an individual dumping margin for each known exporter or producer concerned of the subject merchandise.

(5) Notwithstanding subregulation (4), where the number of exporters, producers or importers involved or the types of subject merchandise involved is so large as to make it impracticable to determine individual dumping margins as required under subregulation (4), the Government may limit its examination to-

(a) a reasonable number of interested parties or types of subject merchandise by using samples that are statistically valid on the basis of information available to the Government at the time of the selection; or

(b) the largest percentage of the volume of the exports from the country in question that can reasonably be investigated.

(6) Any selection of exporters, producers or importers or types of subject merchandise made under subregulation (5) shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

(7) Where the Government has limited its examination under subregulation (5), the Government shall nevertheless determine an individual dumping margin for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Government and prevent the timely completion of the investigation.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

(8) Voluntary responses shall not be discouraged under this regulation.

[Subs. P.U.(A) 488/99]

Regulation 32. Adjustments to ensure of fair comparison between normal value and export price.

(1) The Government will make the following adjustments to ensure a fair comparison between the normal value and the export price of a merchandise:

(a) the Government will make reasonable allowances for transport expenses such as freight, shipping, insurance or other similar expenses to ensure the prices are comparable normally at an ex-factory level;

(b) the Government will make reasonable allowances for differences in the physical characteristics of merchandise compared if the Government is satisfied that the amount of any price difference is wholly or partly due to such physical differences;

(c) the Government will make reasonable allowances for a bona fide difference in the selling conditions of the sales compared if the Government is satisfied that the amount of any price difference is wholly or partly due to such differences in the selling conditions such as commissions, credit terms, guarantees, warranties, technical assistance and servicing;

(d) the Government will make reasonable allowances for differences in selling costs incurred by the producer or reseller but only to the extent that such costs are assumed by the producer or reseller on behalf of the purchaser;

(e) the Government will calculate normal value and export price based on comparable quantities of merchandise, but where the quantities are not comparable and the Government is satisfied that the amount of any price is wholly or partly due to such difference in quantities, the Government may make a reasonable allowance for the difference;

(f) the Government will calculate normal value and export price based on sales at the same commercial level of trade, but where the levels of trade are different and the Government is satisfied that the amount of any price difference is wholly or partly due to such difference, the Government may make a reasonable allowance for the difference;

(g) the Government will make any other adjustments it deems necessary to ensure a fair price comparison.

(2) Any price used to establish either normal value or export price shall be net of all discounts and rebates directly linked to the sales under consideration, provided that the exporter furnishes sufficient evidence that any such reduction from the gross price has actually been granted.

(3) The Government may recognize deferred discounts if they are directly linked to the sales under consideration and if evidence is produced to show that the discounts were based-

(a) on consistent periods; or

(b) on an undertaking to comply with the conditions required to qualify for the deferred discount.

(4) The Government may disregard adjustments to normal value or export price which are insignificant in nature.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 33. Calculation of amount of subsidy and normal value of subject merchandise from a non-market economy country.

Where the country of origin of the subject merchandise is a non-market economy country, the Government shall-

(a) in the case of subsidy, deem the amount of subsidy to be the difference between the ex-factory price of the like product sold by domestic manufacturers in the Malaysian market and the ex-factory price of the subject merchandise imported from the non-market economy country; and

(b) in the case of dumping, calculate the normal value of the subject merchandise based on-

(i) the prices of comparable merchandise sold in the ordinary course of trade in a surrogate country;

(ii) the cost to make and sell comparable merchandise in the ordinary course of trade in a surrogate country;

(iii) the prices of comparable domestically produced merchandise sold in Malaysia in the ordinary course of trade; or

(iv) any other appropriate method.

Regulation 33A. Countervailing duty proceedings against exporters or producers from developing country Members.

(1) For the purposes of section 14 of the Act, countervailing duty proceedings against exporters or producers from developing country Members of the World Trade Organization shall be carried out in accordance with Article 27 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement.

(2) For the avoidance of doubt it is declared that the reference to Article 27 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Article as may be amended from time to time.

[Ins. P.U.(A) 488/99]

PART VI - REVIEWS

Regulation 34. Administrative review.

(1) An administrative review to be conducted by the Government under sections 13 and 28 of the Act shall be undertaken only after one year has lapsed from the date of publication of the decision of which the review is sought.

(2) An administrative review undertaken by the Government shall normally be completed within one hundred and eighty days.

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 35. Notice of termination of countervailing or anti-dumping duties.

[Am. P.U.(A) 488/99]

(1) The Government shall publish a notice of the impending termination of the imposition of countervailing or anti-dumping duties at least six months prior to the end of the five year period referred to in subsections 13(6) and 28(6) of the Act.

(2) The Government shall specify in the notice the period within which any interested party may present their views on such termination of imposition of duties.

(3), (4) & (5) *[Deleted by P.U.(A) 488/99]*

Regulation 36. Refund review.

[Am. P.U.(A) 488/99]

(1) An importer may request for a refund review under sections 13A and 28A of the Act for any twelve month period after the final determination of a countervailing duty investigation or an anti-dumping duty investigation.

[Am. P.U.(A) 488/99]

(2) The Government shall conduct a refund review as requested by the importer under subregulation (1) only if the importer has-

(a) filed a refund application with the Customs Department within thirty days of entry of the merchandise into Malaysia; and

(b) submitted sufficient and complete evidence to show that the amount of countervailing or anti-dumping duties collected during that twelve month period exceeds the amount of the countervailable subsidy or dumping margin determined.

[Am. P.U.(A) 488/99]

(3) *[Deleted by P.U.(A) 488/99]*

(4) A refund review shall be completed within one hundred and eighty days from the date the Government decides to conduct such a review.

(5) The results of the refund review shall determine the final countervailing or anti-dumping duty applicable for each entry for which the refund was requested.

[Subs. P.U.(A) 488/99]

(6) & (7) *[Deleted by P.U.(A) 488/99]*

PART VII - GENERAL

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Regulation 37. Submission of oral or written information.

(1) Any interested party may submit any information that they consider relevant to a countervailing or anti-dumping duty investigation or reviews in writing.

(2) An interested party may submit any relevant information orally only if permitted to do so by the Government.

(3) Where an interested party is permitted to submit information orally, he must reduce such oral information to writing and properly submit it to the Government within seven days from the date of the oral submission.

(4) An interested party shall provide five copies of the confidential version of the submission and three copies of the non-confidential version.

(5) Any document submitted which is in a foreign language shall be accompanied by a translation in the national language of Malaysia or in English, unless the Government waives in writing this requirement for an individual document.

(6) The Government may require submission of factual information on computer tapes, diskettes or discs or on any other data storage medium compatible with the computer systems used by the Government unless the Government is satisfied that the party submitting the information does not maintain records in computerized form or cannot supply the requested information in computer format without unreasonable additional burden in time and expense.

[Am. P.U.(A) 488/99]

(7) & (8) *[Deleted by P.U.(A) 488/99]*

(9) Any party submitting information may apply to the Government to treat such information as confidential if its disclosure is likely to have a significant adverse effect upon the supplier of the information or other interested party.

Regulation 38. Verification of information.

(1) Where the Government decides to verify the accuracy of any information submitted during an investigation or an administrative review, the Government shall-

(a) inform the interested party concerned of the intention to carry out a verification visit;

(b) obtain the written agreement of the interested party concerned to the verification visit;

(c) notify the representative of the government of the exporting country concerned of the names and addresses of the enterprises, industry or exporters to be visited and the dates agreed;

(d) advise the interested party concerned of the nature of the information to be verified during the verification visit and of any further information that may need to be provided during the visit though this should not preclude requests being made during the verification visit for further details to be provided in the light of information obtained; and

(e) in exceptional circumstances, inform the interested party and the representative of the

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

government of the exporting country concerned if non-government experts are to be included in the investigating team.

[Subs. P.U.(A) 488/99]

(2) The authorized representatives of the Government may request access to all files, records and personnel that they consider relevant to the investigation or review.

(3) Where the Government decides that, because of the large number of parties under investigation, it is impractical to verify relevant factual information for each party, the Government may select and verify a sample and apply the results of the verification of the sample to all the parties included in the investigation.

(4) Where the Government decides not to conduct an on-site verification, the Government may request for the interested party to submit copies of the original documents of which the information was based or statements from independent auditors as to the accuracy and completeness of the submitted factual information or may use any other method it deems reasonable.

Regulation 39. Meeting of interested parties.

(1) This regulation shall only apply in respect of an anti-dumping duty investigation.

(2) A request from an interested party to meet the parties with adverse interests for the purpose of defending its interests shall be made in writing to the Minister.

(3) The interested parties shall be notified of the date, time and place of the meeting at least fourteen days before the date specified for the meeting.

(4) Any interested party, other than the interested party requesting the meeting, proposing to attend the meeting shall submit a written request to the Minister at least seven days before the date specified for the meeting and shall provide a valid justification for participating in the meeting.

(5) The Minister may refuse a request under subregulation (2) or (4), as the case may be, if the Minister is of the opinion that there is no valid justification for the meeting or that there is no valid justification for participating in the meeting, as the case may be.

[Ins. P.U.(A) 488/99]

P.U.(A) 233/94
COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

LIST OF AMENDMENTS

<i>Amending Law</i>	<i>Short title</i>	<i>In force from</i>
P.U.(A) 488/99	Countervailing and Anti-Dumping Duties (Amendment) Regulations 1999.	1-12-1999