

PNACL-352

**Commercial Law Development Program
NCJS/AOJS Judicial Education
Contract No. 263-C-00-95-00134-00
Administration of Justice Support Project
AMIDEAST/ AOJS Cairo
November 1999**

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**Commercial Law Development Program
Judicial Review Program
National Center for Judicial Studies
Cairo, Egypt**

November 8-11, 1999

Administration of Justice Support Project

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COMMERCIAL LAW DEVELOPMENT PROGRAM

Last year, the Commerce Department, through the Office of General Counsel, Commercial Law Development Program (CLDP), began a technical assistance and training program in Egypt. The program has strong support from USG agencies participating in the Gore-Mubarak Partnership as well as the U.S.-Egypt Presidents' Council. US Ambassador to Egypt Daniel Kurtzer has been very involved in the CLDP program and has joined Egyptian Government ministers to make opening remarks at many of the conferences. In addition, CLDP has received very positive reviews and endorsement from Egyptian Government officials, including Trade Minister Goweili. The program provides practical guidance and expertise to a wide range of Egyptian Government officials and the private sector. CLDP has supported development of Egypt's commercial laws and regulatory regimes in intellectual property rights protection and enforcement, WTO compliance and trade remedies (including anti-dumping, subsidies and safeguards), standards and regulatory quality controls, government procurement, commercial dispute resolution, and other commercial law areas. USAID funded the first two years of the program and has indicated that CLDP will receive funding for at least an additional eighteen months beginning January of 2000. Director Linda Wells, Deputy Director Christopher Delfino and Managing Attorney for Egypt conducted the initial needs assessments in Cairo that served as the foundation for the first two years of implementation.

The following are a few highlights of the CLDP program in Egypt. The first programs took place in September of 1998 in Cairo and Alexandria. The Ministry of Trade and Supply co-sponsored two seminars on "Implementation of the WTO Anti-dumping and Subsidies Agreements." Stephen Powell, Chief Counsel for Import Administration, spoke at those programs and held consultations with many Egyptian officials on trade remedies issues. CLDP also organized a conference in Cairo in December designed to train the Egyptian judiciary on numerous intellectual property rights substantive issues and judicial procedures. The program was headed by Judge Randall Rader of the U.S. Court of Appeals for the Federal Circuit. During the Summer of 1999, CLDP organized a study tour for a group of diplomatic attaches from the Ministry of Foreign Affairs on how to include the private sector in establishing trade policies. CLDP also hosted a delegation of young Egyptian commercial attaches in Washington for training on the WTO agreements and operating a WTO Unit within the Ministry of Trade and Supply.

In September of 1999, CLDP will co-sponsor with the Ministry of Trade and Supply a conference on "GATS 2000: Issues, Coordination and Private Sector Input for Trade in Services Policies." On November 14 - 16, CLDP will co-sponsor with the Ministry of Finance a project finance and infrastructure conference in Cairo on the "Elements of Successful BOOT Projects." Expected organizations participating in that program include the IFC, UNCITRAL, UNIDO, the International Law Institute and several US businesses and law firms. CLDP also will provide a workshop on trade remedies cases in November for judges at the National Center for Judicial Studies in Cairo. That training will be led by U.S. Court of International Trade Judge Delissa Ridgway.

Recently, CLDP has began working with ITA's Office of Service Industries and Finance on developing an insurance regulatory reform and training program for Egyptian insurance supervisors and regulators. In consultation with the American Embassy in Cairo, USTR, the U.S. Customs Service and USAID, CLDP also is considering a training program on customs procedures and practices as well.

September 1999

COMMERCIAL LAW DEVELOPMENT PROGRAM
JUDICIAL REVIEW PROGRAM
National Center for Judicial Studies
Cairo, Egypt
November 8 - 11, 1999

Judge Delissa Ridgway, U.S. Court of International Trade
Berniece Browne, Senior Attorney, U.S. Department of Commerce

Pre-Workshop Meetings (Sunday, November 7)

- 9am U.S. Embassy and USAID Officials
- 11am NCJS (Senior Judges, AOJS Representatives, MOEFT Officials)
- 1pm Lunch
- 3pm State Council Tour
- 4pm Final Workshop Planning

DAY 1 (Monday, November 8)

- Start of Training
- PROGRAM 1 (Morning Session, 10:00 AM - 1:00 PM)

GENERAL OVERVIEW OF THE UNITED STATES COURT OF INTERNATIONAL
TRADE, THE FIRST LEVEL COURT FOR REVIEW OF ANTIDUMPING AND
COUNTERVAILING DUTY MATTERS

Structure and Composition of the Court of International Trade ("CIT")

Overview of Court Jurisdiction

Specialized federal trial court with exclusive national jurisdiction over
customs and international trade matters (including discussion of advantages
and disadvantages of specialized courts)

Legal and Equitable Powers of Court

Rules of Procedure and Rules of Evidence

Walk-Through of Procedure of Typical Antidumping/Countervailing Duty Case
Appellate Review of Decisions of the Court of International Trade

Delissa

- PROGRAM 2 (Afternoon Session, 2:30 PM - 5:00 PM)

THE WORLD TRADE ORGANIZATION'S REQUIREMENTS FOR JUDICIAL REVIEW OF THE ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS OF A COUNTRY'S ADMINISTERING AUTHORITY

Judicial review requirements of the WTO

The importance in the international community of systems for judicial review

The relationship between the judicial review system of a country and the WTO dispute resolution system

Discussion

DAY 2 (Tuesday, November 9)

- PROGRAM 3 (Morning Session, 10:00 AM - 1:00 PM)

THE STANDARD OF REVIEW FOR ANTIDUMPING AND COUNTERVAILING DUTY CASES IN THE COURT OF INTERNATIONAL TRADE

Standards of Review:

Generally the standard of review for most determinations on antidumping and countervailing duty determinations is that the court will hold unlawful any determination, finding or conclusion found - to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

In certain types of agency determinations the standard is that the court will hold unlawful any determination, finding, or conclusion found - to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Examples of the types of determinations which are reviewed by the court under the arbitrary and capricious standard are determinations not to initiate an investigation or a determination by the International Trade Commission that there is no reasonable indication of injury

What does substantial evidence mean?

- 1) More than a scintilla
- 2) Evidence that a reasonable mind could conclude supports the determination
- 3) It is not the "weight of the evidence" and therefore the court should not re-weigh the evidence presented in the case

What does "on the record" mean?

- 1) The record submitted by the administering authority
- 2) The record the administering authority compiled as it conducted the administrative proceeding which resulted in the determination being challenged in the court
- 3) Will not hear testimony, oral or by written declaration, during the court review of the agency determination
- 4) Will not rely on "expert" witnesses

What does "in accordance with law" mean?

- 1) Is the statute clear on its face?
- 2) Can you rely on legislative history?
- 3) When do you "defer to the agency expertise"?

- PROGRAM 4 (Afternoon Session, 2:30 - 5:00)

WHO CAN CHALLENGE ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS, WHAT CAN THEY CHALLENGE AND WHEN CAN THEY CHALLENGE IT?

Who can challenge?

- 1) An interested party who participated in the administrative proceeding which resulted in the determination being challenged in court
- 2) Interested parties are defined in the United States Statute - The foreign producers of the product being investigated or reviewed, the United States Industry, who brought the petition, the importers of the product, certain associations, and the government of the country involved in the administrative proceeding
- 3) Why must a party participate in the proceeding in order to challenge the determination in court? Exhaustion of Administrative Remedies

What can they challenge?

- 1) Generally a party can challenge a "final" determination by the administering authority
- 2) A "final" determination is listed in the statute as a determination which can be challenged in court. It is usually a determination that ends an administrative proceeding and the determination has an impact on parties
- 3) In certain cases a party can challenge an action by an agency which is not specifically provided for in the statute

DAY 3 (Wednesday, November 10)

- PROGRAM 5 (Morning Session, 10:00 AM - 1:00 PM)

REMEDIES THAT THE COURT CAN GRANT TO PARTIES WHO CHALLENGE THE DETERMINATION OF AN ADMINISTERING AUTHORITY

Affirm the agency determination in whole or in part

Remand

- 1) When is a remand the appropriate remedy?
- 2) What is a remand?
- 3) Why is a remand sometimes necessary?

Injunctions

- PROGRAM 6 (Afternoon Session, 2:30 PM - 5:00 PM)

HOW TO HANDLE VARIOUS TYPES OF INFORMATION (BUSINESS PROPRIETARY INFORMATION, GOVERNMENT CLASSIFIED INFORMATION, INTERNAL GOVERNMENT DOCUMENTS)

The various types of information that a government agency and the courts will receive and how to handle this information

Business Proprietary Information and agency and judicial protective orders

Classified information

Internal government information

DAY 4 (Thursday, November 11)

- PROGRAM 7 (Morning Session, 10:00 AM - 1:00 PM)

A LOOK AT THE FUTURE OF JUDICIAL REVIEW

Questions from the participants on judicial review

Have we discussed any topics which the participants would like to hear more about in future sessions

What topics which have not been covered would participants like to hear about in a future session

What additional technical assistance should be planned for both administrative and substantive training for trade remedies cases

Completion of Evaluation forms / Lunch Reception / Training Certificates

3pm Wrap-up Meeting with senior judges and AOJS at NCJS

COMMERCIAL LAW DEVELOPMENT PROGRAM
JUDICIAL REVIEW PROGRAM

National Center for Judicial Studies
Cairo, Egypt
November 8 - 11, 1999

Judge Delissa Ridgway, U.S. Court of International Trade

Summary Overview
**Antidumping and Countervailing Duty Actions
in the U. S. Court of International Trade**

I. U.S. Court of International Trade ("CIT") – General Information

A. Structure, Composition and Jurisdiction of Court

1. Nature of Court

CIT is a *specialized* federal court

– Unlike most other federal trial courts (which are courts of general jurisdiction), CIT is court of specialized jurisdiction

customs

– CIT has exclusive jurisdiction over cases involving and international trade laws of United States

CIT is a *national* court

federal
geographic
jurisdiction

– Like the U.S. Supreme Court – and unlike most other courts (which handle cases for specific designated areas of the United States) – CIT has nationwide

trials
authorized to
States

– CIT Courthouse is located in New York, but hearings and may be held anywhere; indeed, CIT is expressly hold hearings in countries other than the United

2. Composition and Structure of Court

CIT consists of nine judges appointed by President of United States, subject to confirmation by U.S. Senate

To protect judicial independence, judges have life tenure

After reaching age 65 and completing certain number of years of service, a judge may decide to become a "senior judge"; senior judges are semi-retired, and handle a reduced number of cases

Each judge is assisted by a secretary and two law clerks (typically recent law school graduates); most CIT law clerks serve for two years

Chief Judge assigns each case to one judge

case
Presidential
or significant
customs

- Exception: Case may be assigned to three-judge panel if involves constitutionality of an act of Congress, a proclamation, or an Executive order, or has broad implications for administration or interpretation of laws

The Clerk's Office -- with approximately 40 employees -- handles general administrative and clerical matters for the Court

3. Jurisdiction of the Court/General

Traditional areas of CIT jurisdiction include cases involving challenges to administrative determinations of U.S. Government agencies under antidumping and countervailing duty laws, as well as:

- Customs classification and valuation of imported goods; charges or exactions within jurisdiction of Secretary of Treasury; exclusion of goods from entry into United States; "liquidation" of (final determination of customs duties on) an entry of goods; and denial of a claim for "drawback" (refund of customs duties paid upon goods previously imported into the U.S. and used in manufacture or production of articles which are subsequently exported)

CIT jurisdiction also includes review of decisions by Secretary of Treasury denying, revoking or suspending a customs broker's license; review of determinations by Secretary of Labor or Secretary of Commerce on eligibility for financial and technical assistance of workers, companies and communities suffering economic hardship due to influx of imports; cases filed by U.S. Government to recover civil penalties for fraud, gross negligence and negligence in entry of imported goods, or for violation of agreements to eliminate antidumping or foreign subsidies; cases filed by U.S. Government to recover customs duties or to recover on a bond covering importation of goods; and cases concerning requests for access (under protective order) to confidential information in possession of U.S. Department of Commerce or U.S. International Trade Commission

In addition, CIT has residual ("catch-all") jurisdiction over any civil case arising out of certain laws relating to international trade (including cases concerning the administration and enforcement of those laws)

CIT also authorized to handle counterclaims, cross-claims and third party actions

4. Court Jurisdiction Over Antidumping and Countervailing Duty Cases

CIT has exclusive jurisdiction to review administrative proceedings that precede imposition of antidumping or countervailing duties, and all final determinations by Department of Commerce or International Trade Commission (except matters subject to dispute resolution mechanisms of North American Free Trade Agreement or U.S.-Canada Free Trade Agreement)

-- Interlocutory administrative actions subject to judicial review include: decisions not to initiate an investigation; refusals to review a determination based on changed circumstances; and preliminary negative determinations as to existence of reasonable indication of material injury, threat of material injury, or material retardation.

-- Final determinations subject to review are: final affirmative determinations (including any negative part); final negative determinations; final determinations of a periodic review; suspension of countervailing duty or antidumping duty investigations; final affirmative determinations by U.S. Department of Commerce (when challenge is to negative determination by International Trade Commission based on size of dumping margins or net subsidy); injurious effect determinations by the International Trade Commission; and determinations as to whether a particular type of merchandise is within class or kind of merchandise described in an existing finding of dumping, or antidumping or countervailing duty order

B. Powers of Court

general

1. CIT has all powers in law and equity of U.S. federal trial courts of jurisdiction

1195 CIT is empowered to render money judgments either for or against the U.S. Government; to order retrials or rehearings, or to remand for further administrative proceedings by U.S. Government agency; and to fashion any other appropriate remedy (including issuance of injunction, writ of mandamus, or declaratory judgment)

- file
- C. Parties to Antidumping and Countervailing Duty Cases
 - 1. Any interested party who was a party to administrative proceeding may file case with CIT challenging agencies' antidumping and countervailing duty determinations

Interested parties include foreign manufacturers, producers or exporters; foreign governments; American importers; domestic manufacturers, wholesalers, and trade or business associations; and certified unions representing workers in domestic industries

- 2. Anyone not a party to CIT case, but who participated in the administrative proceeding, has right to intervene

- D. Court Rules of Procedure and Rules of Evidence

- 1. Procedure in CIT cases governed by Rules of U.S. Court of International Trade, which are patterned on (but differ somewhat from) Federal Rules of Civil Procedure used by federal trial courts of general jurisdiction

CIT has adapted Federal Rules of Civil Procedure to accommodate customs and international trade laws

- 2. With certain exceptions, Federal Rules of Evidence (used by federal trial courts of general jurisdiction) apply in CIT cases

- E. Scope of Review and Standard of Review Applied by Court

- 1. In antidumping and countervailing duty cases, Court's review is limited to administrative record compiled by U.S. Government agencies in agency proceedings

Administrative record consists of a copy of all information presented to or obtained by Secretary of Treasury, Department of Commerce, or International Trade Commission during administrative proceedings (including all government memoranda about the case and records of ex parte proceedings); copy of the administrative determination; all transcripts or records of conferences or hearings; and all notices published in *Federal Register*

- 2. In antidumping and countervailing duty cases, CIT reviews final determinations and decisions to suspend investigations, to determine whether determinations and decisions are supported by "substantial evidence on the record" and otherwise in accordance with law

11/95

In antidumping and countervailing duty cases, CIT reviews interlocutory

orders to ensure that orders are not arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with law

3/95

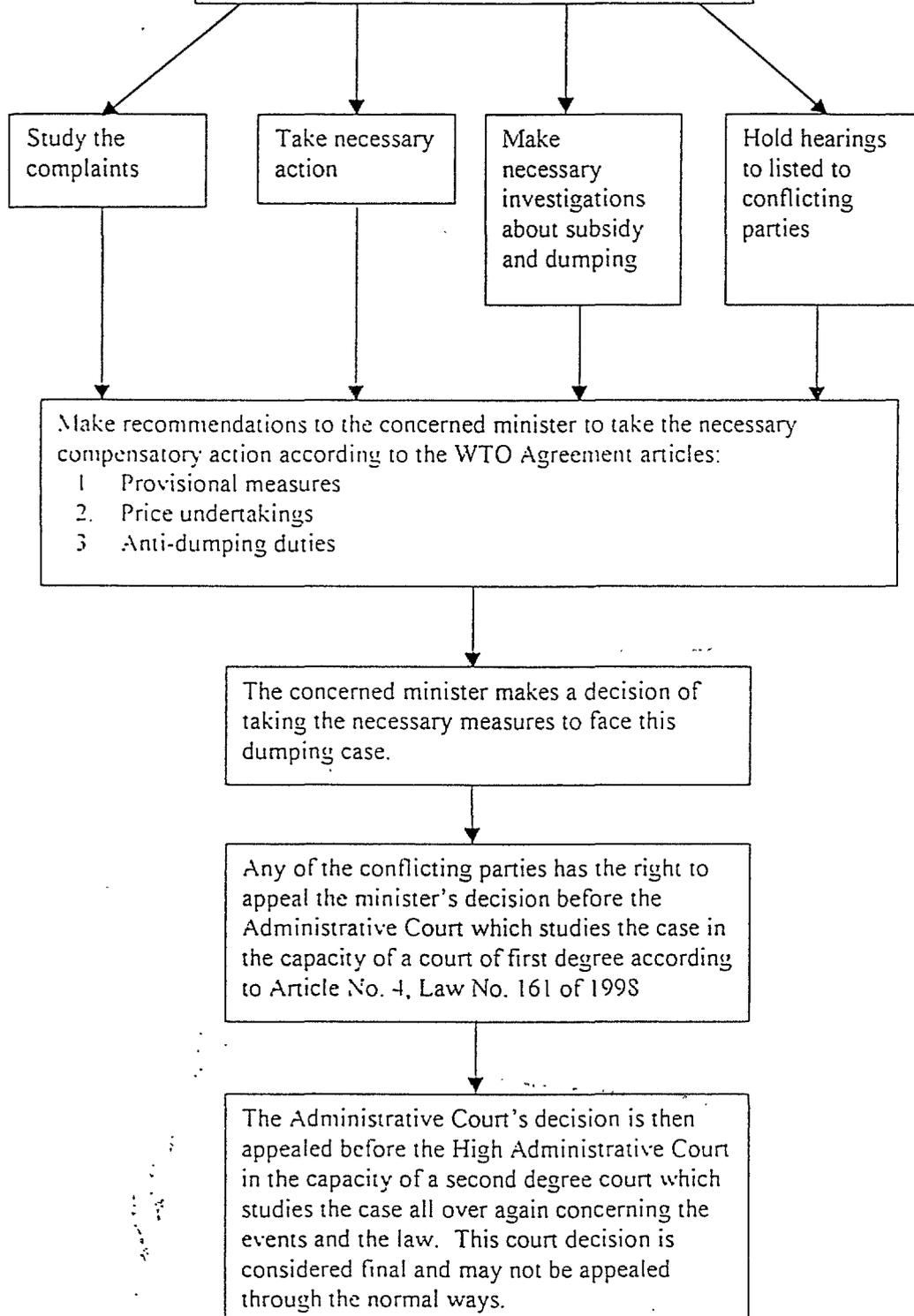
Extensive case law on CIT deference to administrative agencies, under *Chevron* (a leading U.S. Supreme Court case)

F. CIT Decisions and Appellate Review

- either stating
1. CIT judges required to memorialize decisions in all contested cases with statement of findings of fact and conclusions of law or written opinion reasons and facts upon which judge's decision is based
 2. Court decision is binding on all parties, unless retrial or rehearing is granted,
 3. Decisions of CIT may be appealed to U.S. Court of Appeals for the Circuit (based in Washington, D.C.), and -- ultimately -- party may Federal request writ of discretionary review by U.S. Supreme Court (by filing petition for certiorari)

Central Department for International Trade Policies established as per the Minister of Economy's decree No. 317 of 1995 then affiliated to the Ministry of Trade and Supply according to Law No. 161 of 1998.

Main Functions



Regulation of Law No. 161/1998 Concerning
The Protection of National Economy From Injurious
Effects of Unfair Practices in International Trade

Part I: "Definitions & General Provisions"

Section I: "Definitions"

Article 1

In applying the provisions of this regulation, the following terms shall be defined as follows :

- "Final Act" means the act including the Results of Multilateral Trade Negotiations of Uruguay Round.
- "W.T.O Agreement" means Marrakech Agreement establishing the World Trade Organization concluded in Marrakech, Morocco on April 15, 1994.
- "Anti-dumping Agreement" means the Agreement included in Annex (IA) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article VI of GATT 1994 and regulating the imposition of anti-dumping duties against dumped imports causing material injury to the domestic industry or threat thereof.
- "Agreement on Subsidies and Countervailing Measures" means the Agreement included in Annex (IA) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article XVI of GATT 1994 and regulating the imposition of countervailing duties against countries which provide subsidies for the goods exported from them and thereby causing injury to the domestic industry or threat thereof.
- "Agreement on Safeguard" means the Agreement included in Annex (IA) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article 19 of GATT 1994, regulating the imposition of safeguard measures against increased imports causing serious injury to the domestic industry or threat thereof.
- "Injurious Practices" means increase of imports of a product as a result of dumping or subsidy which causes material injury to the domestic industry or threat thereof , or the unjustifiable increase of imports which causes serious injury to the domestic industry or threat thereof .

- "Concerned parties" shall include the domestic industry (the applicant), those acting on behalf of the domestic industry, importers, exporters and governments of exporting countries.
- "Other interested parties" means industrial users of the product under investigation, consumer associations, government bodies responsible for consumer protection, government bodies responsible for making competition policies or any other foreign or domestic parties found to have an interest.
- " Domestic Industry" means the Egyptian producers of the like product whose collective output represents a major proportion of the domestic production of that product. This definition is applicable to both industrial and agricultural production.
- "Independent buyer" means a buyer who is in no way related to the importer: there is no commercial or production partnership between the buyer and the importer, there is no common relationship in another business, they are not directly or indirectly controlled by a third party or members of the same family.
- "Government of an exporting country" means :
 - a) The government of a foreign country
 - b) Any local or regional Government or authority of a foreign country
 - c) A body that exercises authority for an association of foreign countries
 - d) A person, agency or institution acting for or on behalf of a government or body referred to in (a) to (c) of this definition.
- "Members having substantial interest in supplying the product concerned" means those member states who export a significant proportion of the total imports of Egypt's imports of the product under investigation.
- "The Investigating Authority" means The International Trade Policies Department (Anti-dumping, Subsidy and Safeguard Department), Foreign Trade Sector.

Section 2 : General Provisions

Article 2

Foreign Trade Sector, Ministry of Trade and Supply, shall be the competent authority for implementing the provisions of law No. 161/1998 referred to.

Article 3

An Advisory Committee shall be formed upon a decree by the Minister of Trade and Supply to consider the results concluded by the Investigating Authority concerning the injurious practices in international trade, so that the committee can make recommendations to the Minister of Trade and Supply.
This decree sets out the competencies, rules and work system of that committee.

Article 4

Both Head of Foreign Trade Sector and Head of International Trade Policies Department of the Ministry of Trade & Supply shall be authorized to ask for the data required to prove the cases of subsidy, dumping or unjustifiable increase of imports.

Article 5

In cases where the Administrative Court refers cases to a competent expert, a time limit shall be set to complete the task and expert fees shall not be less than three hundred pounds per day.

Article 6

Notifications to interested parties, letters to complete documents or to ask for comments shall be sent by a registered mail, courier service, which confirms delivery to the interested party personally or to his legal deputy.

The above-mentioned procedures shall be taken in all correspondences with the parties concerned in foreign countries through their diplomatic missions or authorized consuls in A.R.E.

Article 7

The Investigating Authority shall prepare a detailed report including information and explanations concerning all notifications. This report shall be available to all parties concerned.

Article 8

The Investigating Authority shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence. Those parties may indicate that such information is not susceptible of summary. In this case a statement of the reasons why summarization is not possible must be provided.

The Investigating Authority may disregard data and information provided if confidentiality is not justified or the request for confidentiality is not warranted.

Article 9

All persons and bodies shall be required to protect the confidentiality of information and data in cases where it is necessary for the purpose of investigation or appeal, to have access to such information.

Article 10

Rejection of an application, initiation or termination of investigation, provisional or definitive measures or acceptance of a price undertaking or any other measures shall be upon a decision by the Minister of Trade and Supply and upon a recommendation by the Advisory Committee mentioned in article 3 of this regulation.

Article 11

The Investigating Authority shall be required to complete the investigation within 12 months from the date of initiation. The Minister of Trade and Supply may extend this period, upon recommendation by the advisory committee referred to, for another period of no more than six months.

Article 12

Procedures, measures and duties applied in accordance with this regulation shall be applicable to imported goods for which a custom statement has been made for final clearance.

Part II: "Application and Procedures of Investigation"

Section I: "The Application"

Article 13

A written application of the effects caused by subsidy, dumping or unjustifiable increase of imports shall be submitted to the Investigating Authority in the form provided for this. The applicant shall attach a non-confidential summary to the application, in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence.

Article 14

The application shall be accepted only if it is lodged by or on behalf of the domestic industry, chamber of the industries concerned, federation of industries, producers associations or the ministries supervising any of the production sectors.

The application shall include evidence of the existence of dumping, subsidy or unjustifiable increase of imports, the injury caused by each and the causal link between each and the injury caused or threatened to the applicant.

Article 15

In applications where the domestic industry alleges that dumped or subsidized imports have materially retarded the establishment of a new industry, the applicant should provide:

- 1- Whether the domestic industry of the like product has already been established and the time required to establish this industry if it hasn't been established yet.
- 2- Possibilities of continuing this industry.
- 3- Feasibility studies.
- 4- Negotiated loans.
- 5- Contracts concluded to purchase new machinery to implement new investment or to expand the existing factories.

Article 16

The Investigating Authority should inform the applicant, within seven working days from the date of receiving the application, whether the application has been accepted in principle. The Investigating Authority may ask the applicant to provide information required to consider the acceptance of the application. The application shall be registered promptly after acceptance.

Article 17

The Investigating Authority shall examine the accuracy and adequacy of the evidence provided within thirty days from the date of registering the application. The Investigating Authority shall submit a preliminary report to the Advisory Committee showing the results of considering whether to reject the application or to initiate an investigation. This committee shall present its recommendations to the Minister of Trade and Supply within ten days from the date of receiving this report.

Article 18

The Investigating Authority shall notify the applicant of the reasons why the application was rejected within no more than seven days of the Ministerial determination.

Section 2: "Investigation Procedures"

Article 19

An investigation shall not be initiated unless the application is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

Article 20

The Investigating Authority may, after presenting the report to the Advisory Committee and after approval of the Minister, initiate an investigation without having received a written application by or on behalf of the domestic industry for the initiation of such investigation only if they have sufficient evidence of dumping, subsidy or unjustifiable increase of imports, injury and a causal link to justify the initiation of an investigation.

Article 21

The Investigating Authority shall notify the governments of the countries concerned with the applications already accepted before proceeding to initiate an investigation, except in respect to safeguard applications.

Article 22

The Investigating Authority shall publish the notice of the initiation of an investigation in the Official Gazette. The notice shall include:

- 1- Names of the countries of origin or export of the product under investigation.
- 2- A description of the product in question.
- 3- A description of the allegations and practices under investigation.
- 4- A summary of the basis for alleged injury.
- 5- Time limits for other parties concerned to reply.
- 6- The address the interested parties should send their replies to.

Article 23

The Investigating Authority shall send all known interested parties and the representatives of the exporting countries a copy of the non-confidential version of the application, the notice of initiation and questionnaires to get the data necessary for the investigation. The parties concerned should send their responses within 37 days from the date of receiving the questionnaires. This period may be extended upon good cause accepted by the Investigating Authority.

Article 24

In cases where the number of the parties concerned or the types of products involved is so large as to make such investigation impracticable, the Investigating Authority may limit their investigation to a representative sample of the parties or types of products involved.

Article 25

The Investigating Authority shall provide fair opportunities for all parties concerned to defend their interests during the period of investigation and may, upon request hold hearings for the interested parties to present their views and arguments. All interested parties can present verbal information during the hearings, however this information shall not be taken into consideration unless it is provided in writing later on.

Article 26

The Investigating Authority may conduct on-the-spot verification visits inside and outside the country to obtain the information and data required for the investigation provided they obtain the approval of the parties concerned.

Article 27

In case of absence of the data required, failure to submit data within the time limit or non-cooperation with the Investigating Authority, the Investigating Authority may proceed in the investigation procedures and come to conclusions according to the best information available.

Article 28

Investigation procedures shall not prevent clearance of consignments of the subject goods from customs.

Article 29

Subject to the requirement to protect confidential information, the Investigating Authority shall make available all information and data, relevant to the investigation, to all the parties concerned. The Investigating Authority shall disclose the confidential information to the court or the expert it appoints upon written permission from the party providing such information.

Article 30

Investigation shall be terminated if the Investigating Authority finds no sufficient evidence on injurious practices, injury or causal link between both.

Article 31

The Investigating Authority shall, where conditions of an injurious practice in international trade are met, prepare a report of the conclusions reached in the investigation within three months from the date of the notice of initiation.

Part III: "Anti-dumping"

Section I: "Dumping Calculations"

Article 32

- *Dumping* is the introduction of a product into Egypt at an export price which is less than its normal value in the ordinary course of trade.

Export price shall be the price paid or payable by the importer other than any part of the price that represents:

(i) Costs, charges, and expenses incurred in preparing the goods for shipment to Egypt that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) Any other costs, charges, and expenses resulting from the exportation of the goods or arising from their shipment from the country of export.

- *Normal value* shall be the price paid for the like goods in the ordinary course of trade for home consumption in the country of origin/export or the cost of production plus the selling, general and administrative costs in addition to the amount of profit normally realized on sales of goods or the price at which the like product is exported to a third country.

The Investigating Authority may construct the normal value for goods originating in or exported from a state-economy country or on the basis of the data of a free-economy country with similar conditions or on any other basis it deems appropriate.

Article 33

In cases where there is no export price for the product concerned or where it appears to the Investigating Authority that the export price is unreliable because of association, relationship or a compensatory agreement between exporter and the imported or a third party, the export price may be calculated on the basis of the selling price to the first independent buyer in the domestic market or any other basis the authority deems appropriate.

Article 34

The normal value shall be constructed according to the cost of production in the country of origin plus an appropriate amount for selling, general and administrative costs and a reasonable margin of profit, or according to the export price of the goods to a third country in the following cases:

I. where there is no sales in the domestic market of the country of export or where domestic sales are made at a loss.

2. where domestic sales of the subject goods account for less than five percent of the export sales to Egypt.

Article 35

In cases where there is no sufficient data to determine the export price or the normal value, the Investigating Authority may determine them on the basis of the best information available.

Article 36

The margin of dumping is the difference between the normal value and the export price.

In calculating the margin of dumping, the Investigating Authority shall make the calculations on the same level of trade for as nearly as possible the same period, taking into consideration the factors which affect price comparability pursuant to the provisions of Article 2.4 of the Anti-dumping Agreement.

Article 37

The Investigating Authority shall calculate a separate margin of dumping for each exporter. The highest margin of dumping shall be imposed on the unknown or non-cooperative exporters.

If the number of exporters is large, the Investigating Authority may limit the investigation to a representative sample in which case the margin of dumping shall be applied as follows:

1. Individual margins of dumping or the weighted average of these margins shall be applied to the representative sample of exporters.
2. The weighted average of the dumping margins calculated for the representative sample of exporters shall be applied to the cooperative exporters not included in the sample.
3. The highest dumping margin shall be applied to the unknown or non-cooperative exporters.

Article 38

The Investigating Authority shall prepare a report to recommend the termination of the investigation in the following cases:

- a- If the volume of dumped imports from a particular country is less than 3% of the volume of imports of the subject goods unless countries which individually account for less than 3% of the total imports of the like product collectively account for more than 7% of the total imports.
- b- If the margin of dumping is less than 2% of the export price.

Section 2: "Determination of Injury"

Article 39

The Investigating Authority, having examined all positive evidence, shall determine the material injury suffered by the domestic industry and shall verify the following:

- 1- Existence of significant increase in dumped imports, either in absolute terms or relative to production or consumption in Egypt. With regard to the effect of the dumped imports on prices the authority shall consider:
 - a. Whether there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product.
 - b. Whether the effect of such imports is to depress prices of the like product to a significant degree, or
 - c. whether the effect of such imports is to prevent price increases which otherwise would have occurred.
- 2- The economic effects of the dumped imports on the domestic industry reflected in the following:
 - a. Actual and potential decline in sales, profits, production, market share, productivity, return on investment or utilization of capacity.
 - b. Factors affecting domestic prices.
 - c. Magnitude of the margin of dumping.
 - d. Actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital.
 - e. Any other factors the Investigating Authority deem to be significant.

Article 40

Subject to the provisions of article 39 of this regulation, in determining the threat of injury to the domestic industry, the Investigating Authority shall verify that the threat of injury is clear and imminent and shall consider the following:

1. The rate of increase of the dumped imports.
2. Likelihood of significant increase in dumped imports into Egypt in the light of contracts (future purchase orders).
3. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
4. The existence of significant export capacity or inventories of the product in question in the exporting companies.
5. Any other factors which the Investigating Authority determines to have an economic effect on the industry.

Article 41

The Investigating Authority shall verify that the injury suffered by the industry is caused by the dumped imports and not due to any other causes.

Article 42

The Investigating Authority shall, on receiving an application of dumped imports that led to materially retard a new industry, evaluate the contents of the application and prepare a report with their recommendations on it.

Article 43

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

1. The margin of dumping established in relation to the imports from each country is 2% or more of the export price.
2. The volume of imports from each country is 3% or more of the total volume of imports of the like product into Egypt.
3. The existence of competition among the imported products and between the imported products and the like domestic products.

Section 3: "Provisional Measures"

Article 44

Provisional measures may take the form of a cash deposit which is not greater than provisionally estimated margin of dumping. Such provisional measures shall not be applied sooner than 60 days from the date of initiation of investigating and a conclusion is made by the Investigating Authority that there exists dumping which caused injury to the domestic industry.

Provisional measures shall be applied for a period not exceeding four months, which may be extended to six months.

If the provisional measures are less than the margin of dumping, they shall be applied for six-months which may be extended to nine months.

Section 4: "Definitive Anti-dumping Duties"

Article 45

The Investigating Authority shall determine the amount of definitive anti-dumping duties, which will not exceed the margin of dumping.

Such duties shall be imposed on dumped imports of the product from all sources found to be causing material injury to the domestic industry, except for imports from those sources from which price undertakings have been accepted

Article 46

Definitive anti-dumping duties shall be imposed for a period which will not exceed 5 years from the date of publishing the final determination of imposition in the Official Gazette.

Article 47

In cases where products subject to definitive anti-dumping duties are exported to Egypt by exporters or producers who have not exported the product to Egypt during the period of investigation, the authority shall promptly carry out a review for the purpose of determining individual margins of dumping for each of them provided that they can show that they are not related to any of the exporters or producers referred to during the course of the review.

In these cases the Investigating Authority may request guarantees that are equal to the definitive anti-dumping duties imposed on other exporters from the date of initiating the review.

Section 5: "Undertakings"

Article 48

Exporters may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping established by the Investigating Authority.

In accepting, rejecting or amending undertakings the following issues shall be taken into consideration:

1. The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the margin of dumping unless the exporters ask to continue the investigation.

2. Informing the exporters in case of rejection and the reasons for that rejection if practicable.
3. The Investigating Authority may also require any exporter from whom an undertaking has been accepted to periodically provide information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data.

Article 49

Subject to the provisions of section 7 of this part, price undertakings shall be maintained for a reasonable period of time sufficient to eliminate the margin of dumping.

Undertakings shall automatically lapse if a decision was taken to terminate the investigation as there is no evidence of dumping or no injury was caused to the domestic industry.

Article 50

In case of violation of an undertaking the Investigating Authority may prepare a report to impose a provisional duty using the best available information or impose definitive duties. In such cases, definitive duties may be levied retroactively on the products which entered on the date of violation of the price undertaking and not more than 90 days before the application of such provisional measures.

Section 6 : "Retroactivity"

Article 51

Where a final determination of injury or threat thereof is made, anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied.

Article 52

If the definitive anti-dumping duty is higher than the provisional duty paid, the difference shall not be collected. However, if the definitive duty is lower than the provisional duty paid, the difference shall be reimbursed.

Article 53

Where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty shall not be imposed retroactively.

Article 54

A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a- There is a history of dumping which caused injury or that the importer was aware or should have been aware that the exporter practiced dumping and that such dumping would cause injury, and
- b- The injury is caused by increased dumped imports of a product in a relatively short time which is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

Section 7: "Review of Definitive Anti-Dumping Duties"

Article 55

The Investigating Authority may, after one year from the date of imposition of definitive anti-dumping measures, review the need for the continued imposition of the duty, where warranted, upon request by any interested party which submits positive information substantiating the need for a review.

If, as a result of the review, the Investigating Authority determines that the definitive anti-dumping duty is no longer warranted it shall be terminated immediately.

If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

The Investigating Authority may, at any time, carry out a review on its initiative if necessary.

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Article 56

The Investigating Authority shall carry out a review on its initiative or upon request by a concerned party, six months before the expiry of the five-year period from the date of the imposition of definitive duties. The Investigating Authority shall review whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury. The duty shall remain in force pending the outcome of such a review.

Any such review shall be concluded within 12 months of the date of the initiation of the review.

Part IV: "Subsidy and Countervailing Measures"

Section 1: "Definition of Subsidy"

Article 57

Subsidy is any financial contribution provided directly or indirectly, by the government of the country of origin or any public body within its territory and a benefit is thereby conferred to the recipient of subsidy either producer(s) or exporter(s).

Subsidy includes any financial or other commercial benefit that has occurred or will accrue, directly or indirectly, to persons engaged in the production, manufacture, or trade of goods as a result of any scheme, program, practice, or thing done, provided, or implemented by a foreign government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or will be relieved by means of refund or drawback.

Measures can be taken against subsidy only if it confers a benefit on the recipient, is directed or specific to certain enterprises or industries and causes material injury or threat thereof to the domestic industry or materially retards the establishment of a new industry.

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Section 2: "Consultations"

Article 58

Upon acceptance of an application, the Investigating Authority shall take necessary measures to invite the governments of the exporting countries of the subsidized products under consideration to conduct consultations with the purpose of reaching mutually accepted solutions.

The Investigating Authority shall give the opportunity, as well, in the course of investigations, to conduct the above mentioned consultations.

Conduct of consultations shall not prevent the initiation or completion of investigation.

Section 3: "Subsidy Calculations"

Article 59

The amount of subsidy is the amount of money which represents the benefit conferred on the recipient. Investigating Authority shall calculate the amount of subsidy according to the following rules:

1. Determining the total amount of the subsidy provided to the products under investigation during the period of investigation.
2. A weighted average shall be used if the amount of the subsidy varies among the exporters of the country providing a subsidy.
3. Expenses and charges spent to get the subsidy shall be deducted from the amount of a subsidy.
4. The amount of the subsidy shall be calculated on a unit basis and as a percentage of the value of this unit.
5. The amount of the subsidy does not include:
 - a. the provision of equity capital by a foreign government unless the investment decision in relation to the provision of that equity can be regarded as inconsistent with the usual investment practice of private investors in the territory of the exporting country;
 - b. the provision of a loan by a foreign government unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient would obtain on the market, in which case, the benefit to the recipient shall be deemed to be the difference between those two amounts;
 - c. the provision a loan guarantee by a foreign government unless the amount that the recipient of the loan pays under the government

guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case, the benefit of the recipient shall be deemed to be the difference between those two amounts.

The Investigating Authority shall establish the amount of the subsidy according to the reliable available data if it does not have sufficient data to verify the amount of the subsidy

Article 60

Investigating authority shall prepare a report recommending the termination of investigation if it is found that the amount of the subsidy is less than 1% of the value of subsidized goods; or where the imposition of a countervailing duty on the subject goods is inconsistent with Egypt's obligations under GATT 1994.

Section 4: "Determination of Injury"

Article 61

The Investigating Authority, having examined all positive evidence, shall determine the material injury suffered by the domestic industry and shall verify the following:

- 1- Existence of significant increase in subsidized imports, either in absolute terms or relative to production or consumption in Egypt. With regard to the effect of the subsidized imports on prices the authority shall consider:
 - a. Whether there has been a significant price undercutting by the subsidized imports as compared with the price of the domestic like product,
 - b. Whether the effect of such imports is to depress prices of the like product to a significant degree, or
 - c. whether the effect of such imports is to prevent price increases which otherwise would have occurred.
- 2- The economic effects of the subsidized imports on the domestic industry reflected in the following:
 - a. Actual and potential decline in sales, profits, production, market share, productivity, return on investment or utilization of capacity.
 - b. Factors affecting domestic prices.
 - c. Actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital.

- d. The increase of burden on government subsidy programs for agricultural goods.
- e. Any other factors the Investigating Authority deems to be significant.

Article 62

Subject to the provision of article (61) of this regulation, in determining the threat of injury to the domestic industry, the Investigating Authority shall verify that the threat of injury is clear and imminent and shall consider the following:

1. The rate of increase of the subsidized imports.
2. Likelihood of significant increase in subsidized imports into Egypt in the light of contracts (future purchase orders).
3. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
4. The existence of significant export capacity or inventories of the product in question in the exporting companies.
5. Any other factors which the Investigating Authority determines has an economic effect on the industry.

Article 63

The Investigating Authority shall verify the injury suffered by the industry is caused by the subsidized imports and not as a result of any other causes.

Article 64

The Investigating Authority shall, on receiving an application of subsidized imports which led to materially retard a new industry, evaluate the contents of the application and prepare a report with their recommendations on it.

Article 65

Where imports of a product from more than one country are simultaneously subject to subsidy investigation, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

1. The amount of subsidy established for each unit of the product under investigation is 1% or more.
2. The existence of competition among the imported products and between the imported products and the like domestic products.

Section 5: "Provisional Measures"

Article 66

Provisional measures may take the form of a cash deposit which is not greater than the amount of subsidy. Such provisional measures shall not be applied sooner than 60 days from the date of initiation of investigation and a preliminary conclusion is made by the Investigating Authority that there exists subsidy which caused injury to the domestic industry.

The application of provisional measures shall be limited to a period not exceeding four months.

Section 6: "Definitive Countervailing Duties"

Article 67

The Investigating Authority shall determine the amount of definitive duties. This amount of definitive duties should not exceed the amount of the subsidy calculated for each unit under investigation.

These duties shall be imposed on the subsidized imports from all sources if it is found that they cause injury to the domestic industry. Duties will not be imposed on all countries subject to the investigation which eliminated the subsidy under investigation or those whose undertakings were accepted.

Article 68

Definitive countervailing duties shall be imposed for a period not exceeding 5 years starting from the date of publishing the notice of imposition in the Official Gazette.

Article 69

If the products subject to definitive countervailing duties are imported into Egypt by producers or exporters, not included in the proceedings for reasons other than non-cooperation with the Investigating Authority, they may ask for an expeditious review to evaluate their countervailing duties.

Section 7: "Undertakings"

Article 70

Governments of the exporting countries or exporters, provided they get the approval of their governments, may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping established by the Investigating Authority.

In accepting, rejecting or amending undertakings the following issues shall be taken into consideration:

1. The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the margin of dumping unless the exporters ask to continue the investigation.
2. Informing the exporters in case of rejection and the reasons for that rejection if practicable.
3. The Investigating Authority may also require exporters or governments from which undertakings have been accepted to periodically provide information relevant to the fulfillment of such undertakings and to permit verification of pertinent data.

Article 71

Subject to the provisions of section 9 of this part, price undertakings shall be maintained for a reasonable period of time sufficient to eliminate the amount of subsidy.

The undertaking shall automatically lapse if a decision was taken to terminate the investigation where there is no evidence of subsidization or material injury to the domestic industry.

Article 72

In case of violation of an undertaking the Investigating Authority may prepare a report to impose a provisional duty using the best available information or impose definitive countervailing duties. In such cases, definitive duties may be levied retroactively on the products which entered on the date of violation of the price undertaking and not more than 90 days before the application of such provisional measures.

Section 8: "Retroactivity"

Article 73

Where a final determination of injury or threat thereof is made, definitive countervailing duties may be levied retroactively for the period for which provisional measures have been applied.

Article 74

If the definitive countervailing duty is higher than the provisional duty paid, the difference shall not be collected. However, if the definitive duty is lower than the provisional duty paid, the difference shall be reimbursed.

Article 75

Where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty shall not be imposed retroactively.

Article 76

A definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a) there is material injury caused by large quantities of imports, in a relatively short time, of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994, and
- b) it is necessary, in order to preclude the recurrence of such injury, to impose countervailing duties retroactively.

Section 9: "Review of Definitive Countervailing Duties"

Article 77

The Investigating Authority may, after one year from the date of imposition of definitive countervailing measures, review the need for the continued imposition of the duty, where warranted, upon request by any interested party which submits positive information substantiating the need for a review.

If, as a result of the review, the Investigating Authority determines that the definitive countervailing duty is no longer warranted it shall be terminated immediately.

If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

The Investigating Authority may, at any time, carry out a review on its initiative if necessary.

Article 78

The Investigating Authority shall carry out a review on its initiative or upon request by the domestic industry, six months before the expiry of the five-year period from the date of the imposition of definitive duties. The Investigating Authority shall review whether the expiry of the duty is likely to lead to continuation or recurrence of subsidy and injury. The duty shall remain in force pending the outcome of such a review.

Any such review shall be concluded within 12 months of the date of the initiation of the review.

Part I: "Safeguard Measures Against the Unjustifiable Increase in Imports"

Section 1: "Application of Safeguard Measures"

Article 79

Safeguard measures against unjustifiable increase of imports are those applied against products (other than dumped or subsidized) imported into Egypt in such increased quantities, absolute or relative to domestic production and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Section 2: "Determination of Serious Injury or Threat Thereof"

Article 80

"*Serious injury*" shall be understood to mean a significant overall impairment in the position of a domestic industry.

"*Threat of serious injury*" shall be understood to mean serious injury that is clearly imminent and that would cause impairment in the position of the domestic industry.

Article 81

The Investigating Authority shall determine the serious injury caused to the domestic industry on the basis of facts and the existence of a causal link between the increased imports of the product concerned and serious injury or threat thereof. The Investigating Authority shall verify the following:

1. An increase in imports of the product under investigation either absolute or relative to production in Egypt.
2. The impact of increased imports on the situation of the domestic industry, including sales, production, productivity, utilization of capacity, profits and losses, employment and market share.

Section 3: "Provisional Safeguard Measures"

Article 82

Provisional safeguard measures against unjustifiable increase of imports may be imposed if the Investigating Authority finds a clear evidence that increased imports have caused or are threatening to cause serious injury that can not be easily remedied or would be difficult to remedy should the imposition of these measures be delayed.

Article 83

Provisional safeguard measures shall take the form of tariff increases, taking into consideration the following:

1. The duration of the provisional measure shall not exceed 200 days.
2. Should such measures take the form of tariff increases, they shall be promptly refunded if the investigation does not determine that increased imports have caused or threatened to cause serious injury to the domestic industry.

Section 4: "Definitive Measures"

Article 84

If it is found that the imports of the product under investigation have caused serious injury to the domestic industry or threat thereof, the Investigating Authority shall recommend to apply definitive safeguard measures in the form of quantitative restrictions or increase in customs duties or both, taking into consideration the following:

1. The definitive safeguard measure shall be applied to the extent necessary to prevent or remedy the serious injury caused to the domestic industry.
2. Where a quantitative restriction is used, the determined quantities for each country shall not be less than the average volume of imports for the most recent 3 years or any period the investigating authorities may consider necessary to remove the injury provided that it is justified.
3. In cases where a quota is allocated among members having a substantial interest in supplying the product, shares shall be allotted based upon the proportions, supplied by such members during a previous representative period, of the total quantity or value of imports of the product, unless justified reasons for not applying this rule are provided.
4. The period of application of a definitive safeguard measure shall be four years which may be extended to not more than 10 years including the period of application of provisional measures.
5. No safeguard measure shall be applied to the imports of a product which has been previously subject to a safeguard measure, provided that the period of non-application is at least two years.

Part VI: "Final Provisions"

Article 85

The Minister of Trade and Supply may accept or reject the recommendations of the Advisory Committee. He may also terminate or reduce countervailing duties.

Article 86

The Minister of Trade and Supply may apply the provisions of this regulation against imports from countries that are not members in the WTO or apply protective measures against the injurious practices of these countries in international trade for the purpose of Egypt's interest.

Article 87

The Minister of Trade & Supply may impose additional duties or any other restrictions on imports in accordance with the agreements included in the Final Act of Multilateral Trade Negotiations of Uruguay Round.

Article 88

Where a decision by the dispute settlement panels of the WTO or a final judgment is issued for termination of any measures taken in accordance with the provisions of this regulation, the Minister of Trade and Supply may terminate these measures or give directions to the Investigating Authority to reconsider these measures in the light of recommendations made by the dispute settlement panels or the final judgments.

Article 89

Member states and parties concerned shall have full opportunity to conduct consultations in consistency with the provisions of the agreements referred to.

Article 90

The Investigating Authority shall advise the committees concerned in the WTO of the notices stated in the agreements referred to.

Article 91

In applying the provisions of the agreements referred to, the Investigating Authority shall give special regard to the special situation of the developing countries.

Article 92

The Investigating Authority may give notice to initiate a new investigation or a review of the measures in force if it found that there is circumvention which affects the effectiveness of these measures.

Article 93

In cases where anti-dumping and subsidy investigations for the same product are involved simultaneously only one duty shall be imposed.

Article 94

Provisions of the agreements referred to shall be applied on matters which are not stated in this regulation.

Article 95

Parties concerned have the right of appeal to the Administrative Court concerning the measures and decisions taken pursuant to the provisions of this regulation and in accordance with the relevant rules and procedures.

**The Legal Measures which should be pursued
To Challenge the Minister of Commerce
Decisions Related to Cases of Subsidization,
Dumping and The Unjustified Increase of the Imports**

**The Competent Administrative Authority to Issue the
Decisions:**

The law No # 161, 1998 regulating the protection of the national economy against the effects resulting from harmful practices during the course of international trade.

This law empowers the Ministry of Commerce and supply to undertake the necessary measures to safeguard the national economy from damages due to subsidization, dumping and the unjustified increase of imports, under the scope determined by the treaties incorporated in the final document of the outcomes of Uruguay round for the commercial multi-parties negotiations; that has been approved by A.R.E. and came into effect with the presidential decree No # 72, 1995.

Therefore the before mentioned Ministry became the sole competent power responsible for enforcing that law.

The Minister's Decisions:

The Minister of Commerce and Supply issues a decision containing the compensate measures stated on the treaties within the final document of Uruguay round's outcomes against cases of subsidization, dumping or the unjustified increase of the imports; according to the frame and the limits declared by those treaties.

Court Jurisdiction:

The administrative court of the State council is the only court that has jurisdiction to rule in the disputes related to the enforcement of the before mentioned articles, challenging the judgements shall be brought before the Supreme administrative Court.

The ruling "discharge" in such disputes and challenges should speedy; according to the rules stated in article (1) of the law.

Reasons For Challenges:

As stated in the State Council's Law, the reasons for challenges could be matters of general jurisdiction, formality default, disobeying laws and regulations,

misapplication of laws, misinterpretation or misuse of authority finally, not following the rules and procedures stated in the treaty considered disobeying the law.

Refusing or abstaining on behalf of the administrative authority issuing a decision which should be issued according to laws and regulations.

Who has The Right to File the Suit?

It is required to accept the suit to be filed from any natural or juristic person who has a personal interest in this legal action.

Designated Time to File the Suit or Challenging the Court Judgement:

It is 60 days before the administrative courts from the publishing date of the administrative decision on the official journal, on the public office publications or notifying the litigant.

If the lawsuit is filed after the 60 day period, the ruling the case unacceptable for that reason.

Unless the litigant filed a petition before the Minister or The Cabinet

The petition should be discharged during 60 from the date of its filing

If the passed decision is negative, it should contain the reasoning for its denial. Moreover, abstention on behalf of the competent power from issuing a decision is considered refusal and the time to file the lawsuit is 60 days from the date the before mentioned 60 days "abstaining period" is consumed.

The Procedures to File the Lawsuit before the Administrative Court:

A request is submitted to the court secretaryship, signed by a lawyer registered in the records as one of the lawyers recognized before the appellate court. The request should contain beside the general data related to the name of the plaintiff, the defendant to whom the request is served and their domicile, the subject matter of the request, the date of the petition from the administrative decision if there is, the outcome of the petition, the claim- supporting documents and a brief for the challenged decision.

The requester can submit with his request a memorandum explain the legitimacy of his claim. He should also present to court secretaryship sufficient number of copies from the request, the memo and the documents except in case of originals he does not have to do that.

The request and its attachments shall be served to the competent administrative authority and to the opponent in a period, which must not exceed 7 days from the filing date.

The office of the lawyer signed the request is considered a chosen "elected" domicile; at the same time the retained lawyer for the opponents his office is considered a chosen domicile.

Unless they defined another chosen domicile.

The president of the court decides the date of the session to handle the dispute as an urgent case. Finally, the parties are notified by the session's date.

The Urgent hearing of the Lawsuit:

The law stated that the suit should be handled in an urgent manner. That means that the court should rule in the dispute regarding the urgent part of the claim without referring the case to the state council commission to prepare it. The court will concentrate on the possibility to suspend the decision and rule in this request either by acceptance or refusal because it is the urgent matter. Then afterwards refer the subject matter to the state commission to deliver a report explaining the legal grounds for this subject.

The judgement passed from the court by suspending the challenged decision is only a judgement on the urgent part of the case to confront the situation.

The passed judgement in this part of the case is executable, and does not band the court afterwards to rule opposite to its ruling in the urgent part.

The judgement in both parts of the case "urgent - subjective" is executable and can be challenged before the supreme administrative courts

Experts Assistance:

The court hears each party's view and supportive defense. The court may seek experts assistance from the table established by the law No # 161, 1998; this table is in the Ministry of Justice and designed to record experts in the fields required in order to apply the before mentioned treaties.

The Procedures to Challenge the Administrative Court Judgement before the Supreme Administrative Court:

The challenge should be filed within 60 days from the date the challenged judgement is passed.

It is presented from one of the parties by a report submitted to the court clerk signed by a lawyer accepted before this court. The report should have in addition to the

44

general data regarding names of the parties, their titles and their domicile. Also, the challenged judgement its date, the challenges and their legal ground for them. The demands of the challenger, if the challenge does not meet those requirements, it may be ruled invalid "null".

The court secretaryship, should receive the file of the case from the lawyer court before referring to state commission.

The circuits of examining challenges in the S.A.C. look into the matter after hearing the clarification of the state commission and the parties.

If the president of the circuit and the circuit of examining challenges deserve to be presented to the S.A.C.; In two cases: First, because the challenge is more likely to be accepted. Second, because the ruling on this challenge require approving a new legal principle the court had not passed before. On the other case if this circuit decided unanimously that the challenge is unacceptable due to reasons of its formality, null, or not worth to be presented to the S.A.C. refused it.

It is sufficient to mention the decision or the judgement in the session's record. The court should clarify its point of view and if the ruling is denial it might not be challenged by any other way.

If the circuit of examining challenges decided to its referral to the S A C.

The secretaryship of the court record this in the challenge report and notify the parties and the state commissions by the decision.

The same rules defined to discharge the dispute before the S.A.C. apply to the circuit for examining the challenges.

Challenging the judgement before the S.A.C. does not mean to suspend the challenged judgement unless the C.E.C. order otherwise.

S.A.C.= the supreme administrative court

C.E.C= circuits of examining challenges

State Council

Administrative Court

1 St. circuit

Case N# 10346 year 52 (judicial year)

Parties:

- 1- Abdallah Mohamed Abdel Rahman (owner of the Middle East Company for imports and exports).
- 2- Hamdy Abdel Maksoud (owner of El Gowhara Company).

V. S

- 1- The Minister of Commerce and Supply.
- 2- The Minister of Finance.
- 3- Director of Customs Administration

Facts:

The Minister of Finance issued a ministerial decree N# 396/1198 on 5/8/1998 that includes imposing customs duties at a rate % 46 of the goods imported value CIF. The imports are wooden matches which are under the customs restraint. The head of the central administration for international policies -antidumping, subsidization and protection apparatus- customs duty administration, had been notified on 13/8/1998 that this duty ratio should be enforced for the date it is issued on.

These duties are applied over any shipments are not yet released from customs and the shipments opened for them "L C" (letter of credit) or that has been shipped before the decree was passed. The custom administration shall collect the duties as a trust for the the Ministry of Commerce and Supply /the sector of Overseas Trade until the opening of an account designated for this purpose. The publication no #28/1998 was passed declaring the collection of the customs duties which are %46 out of the goods value C.I.F, in addition to the import taxes %35 according to the customs tariff, sales taxes and general taxes.

The two plaintiffs requested for the customs administration to release the goods but their request was rejected.

Claim's legal ground:

The two decisions of imposing the duties and not releasing the goods are violating both the law and the constitution. They also contain a misuse of power. For the following reasons: -

- The goods which suffered the duties were subject to legal action before the decree was passed imposing the duties and their commitments was decided based upon the present situation – not expecting such decree to be passed.
- The goods were already shipped from the exporting port on the 11th, 16th, 24th /7/1998 prior to the challenged decision on 5/8/1998; therefore, these goods are not subject to the decree imposing those taxes.

- Only by law according to the article 119 from the constitution; however the challenged decree is a ministerial decree shall not impose taxes and duties.
- The refusal to release the goods unless the duties were paid constitute taxes duplication and against equity.
- Finally, the decree violated the international agreement approved by A.R. E by the presidential decree No # 72 /1995.

Plaintiffs' demands:

- To rule in the urgent part suspending the two challenged decisions and their effects and ordering the enforcement of the judgement with its draft and without notification.
- To rule on the subject, abolishing the two decisions and their effects ~~and their effects~~ and to order the defendant to pay the court and lawyers' fees.

The judgement on the urgent part on 11/5/1999:

- The case initiation and formalities are proceeded according to the law.
- Denying the plaintiffs their urgent demand, which is suspending the two decisions and ordering them to pay court and lawyers fees for this part.
- Order the case to be referred to the State Council Commission to prepare and to submit a report including the legal opinion on the subject.

Reasoning:

The claim to suspension on a temporary bases according to article 49 of the State Council law two core elements first, the element of seriousness means that the

challenge is based upon reasons suggest that the ruling will be to abolish the challenged decision.

Second, urgency means that the continuous enforcement for the challenged decision cause further injuries and consequences which can be cured in case the decision is abolished.

According to the law No 161/1998 concerning the protection of National Economy from injurious effects of unfair practices in international trade: The judgement concluded from the documents presented "face value" that the administration has conducted a preliminary investigation upon a complaint of the domestic industry and based on clear evidences discovered that the like imports to the domestic product caused significant injury.

The existence increase in dumped imports depressed the price of the domestic industry and cut dower its marked share {EL NILE Company for matches} that lead to weakened the total industrial position. Therefore, it is clear for the Minister of Trade & Supply the necessity of preserving the domestic industry and to cure their negative effects.

He passed the challenged decree No # 396/1998 imposing an interlocutory measure to face those circumstances.

This decree has been passed from the proper authority and according to the law. It is not suggested to be abolished which exclude the element of seriousness in

claiming to suspend the decree with no need of further review for the urgency element.

Concerning what have been said by the plaintiffs that the decree violated article 119 of the constitution is not true because this article empowers the legislative authority solely to impose taxes. We must differentiate among taxes and other financial duties; such as duties can be imposed within the limits defined by the law. The decree in question was not passed imposing custom taxes but custom duty according to GATTs Annexes and within the limits of the law 161/1998 and its executive regulations; which stated in article 83 "provisional safeguard measures shall take the form of tariff increases..." The rationale is to accomplish a balance between the unjustified increase in dumped imports and the injury suffered by domestic product.

As for their claim that the decree applied retroactively over imports contracted for or opened L.C. for them or shipped to the arrival port or which have not released.

This argument is not valid because the decree passed to modify the tariff by increasing the ratio to 46%; it must be enforced from the date it is passed upon imports, which has not been released because this tariff is collected because of the arrival of goods. Decisions to impose customs tariffs or to modify them are applied immediately. The sphere of the application for the law No 161/1998 solely over the unjustified imports that has not been released - and applying the law in any other manner will cause serious damage to the domestic industry - impossible to recover. It is present injury

suffered by the domestic industry, not future injury. Also, according to the rules stated in the protection convention; that the measures over the imports entering the consumption are applicable immediately after the decision imposing those measures was passed.

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THE HONORABLE DELISSA A. RIDGWAY

Delissa A. Ridgway was sworn in as a Judge of the US Court of International Trade in May 1998. The Court of International Trade - which is based in New York - is a special federal court with nationwide jurisdiction over matters involving US international trade and customs laws.

Prior to her 1998 appointment to the US Court of International Trade, Judge Ridgway served as Chair of the Foreign Claims Settlement Commission of the US (FCSC), an independent quasi-judicial agency within the US Department of Justice. The FCSC's primary mission is to adjudicate claims by US nationals (corporations and individuals) against foreign governments under special claims programs. In her capacity as Chair of the Commission, Judge Ridgway served both as the administrative head of the agency and the president of the Three-member international tribunal.

Before her 1994 appointment to the FCSC by President Clinton, Judge Ridgway was a member of an international practice group. She is a recognized authority in the areas of international commercial law, international transactions and international commercial arbitration litigation, and has published and lectured widely.

Judge Ridgway is currently an Adjunct Professor of Law on the international law faculty of Cornell Law School, and has previously taught International Business Transactions and International Commercial Arbitration in the LL.M. program at American University in Washington, DC. She has also served as a consultant on international law to organizations including the United Nations Centre on Transnational Corporations, the Helsinki Commission, the Council of Europe, and the US Information Agency (advising developing countries on matters of international law and commercial law reform). In addition, while in private practice, she was a member of the panels of both the ICC International Court of Arbitration (Paris) and the American Arbitration Association, and served as arbitrator, counsel or secretary to the tribunal in arbitrations under the rules of most of the major arbitral institutions.

Judge Ridgway is a 1975 honors graduate of the University of Missouri-Columbia, where she completed coursework for an M.S. in Community/International Development. She received her law degree from Northeastern University School of Law in 1979.

BERNIECE A. BROWNE

In 1972 Ms. Browne received her BA in History from the University of Maine in Orono, Maine, USA. She received her JD from The Catholic University of America in Washington, D. C. in 1976. In 1977 she went to work as a lawyer working on Antidumping and Countervailing duty issues for the United States Customs Service in Washington, D.C. Ms. Browne transferred to the Office of the General Counsel at the Department of Commerce in January of 1980 when the function of enforcement of the Antidumping and Countervailing duty laws was transferred to the Commerce Department from the Treasury Department.

Ms. Browne is currently the Chief for Antidumping Litigation in the Office of the Chief Counsel for Import Administration at the Department of Commerce. The Office of the Chief Counsel for Import Administration is the legal office which reviews for legal sufficiency, the work of the Import Administration, the office which administers the antidumping and countervailing duty investigations and reviews. In this position she supervises staff attorneys on all aspects of litigation against the Department's antidumping and countervailing duty determinations. This work involves reviewing briefs and planning strategy with the staff attorneys and the attorneys at the United States Justice Department who defend the Import Administration determinations in the United States courts. Another aspect of this work involves working with Commerce officials to explain how the courts work, the court's standard of review, and what Import Administration officials need to write and document to produce defensible decisions. After court decisions are issued Ms Browne assists the staff attorneys in explaining court decisions and remand instructions to the responsible client personnel in the Department.

Commercial Law Development Program

Judicial Review Program

List of Participants

Deputies to the State Council:

1. Dr. Ibrahim Ali Hassan
2. Cnslr. Ahmed Amin Hassaan
3. Cnslr. Mamdouh Hassan Youssef Rady
4. Cnslr. Mahmoud Ahmed Abdul Rahman El Sokkary
5. Cnslr. Adham Hassan Ahmed El Kashef
6. Dr. Hany Ahmed El Dardeery
7. Cnslr. Moataz Kamel Mordy
8. Dr. Abdullah Ibrahim Farah Nassef
9. Cnslr. Hamdy Yassin Okasha
10. Cnslr. Ahmed Abdul Tawwaab Mohamed Moussa
11. Cnslr. Mounir Sedky Youssef Khalil
12. Dr. Samir Abdul Malak Mansour

Deputies at State Council:

13. Cnslr. Usama Youssef Shalaby Youssef
14. Cnslr. Bahaa El Din Yehia Ahmed Zohdy

Counselors at State Council:

15. Cnslr. Eleiwa Moustafa Eisa Fath El Bab
16. Cnslr. Hatem Mohamed Dawood Farag

Members of State Council:

17. Mr. Mohamed Abdul Meguid Ismail
18. Mr. Tamer Abdullah Mohamed Ali Hassan
19. Mr. Khalid Mohamed Mahmoud El Atrees

20. Mr. Ihab Mokhtar Mohamed Farahat
21. Mr. Mohamed Ahmed Shalaby El Gank
22. Mr. Moataz Ahmed Abdul Fattah Sheeir
23. Mr. Adel Ateyatullah Raslan
24. Mr. Sameh Gamal Wahba Nasr
25. Mr. Ahmed Gamal Ahmed Othman
26. Mr. Moustafa Abdul Mohsen Ibrahim El Habashy

National Center for Judicial Studies:

27. Ms. Mona Gamal El Din