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INTERNATIONAL BEST PRACTICES ON COUNTERVAILING DUTY REGULATION

INDONESIA TRADE ASSISTANCE PROJECT (ITAP)

September 2009

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TABLE OF CONTENTS

Section I: International Best Practices for Countervailing Duty Regulation.....	4
Section II: Proposed Regulations for the Imposition of Countervailing Duties and Related Measures	25
Section III: Manual on Countervailing Duty Procedures and Methodology	44
Appendices.....	63
A: Countervailing Duty Application: Guidance and Format	64
B. Countervailing Duty Case Initiation Checklist	68
C: Countervailing Duty Case Timeline.....	71

Section I

International Best Practices for Countervailing Duty Regulation

Introduction

This report reviews 17 WTO member countries' countervailing duty (CVD) regulations with regard to several criteria, including conformity with the Agreement on Subsidies and Countervailing Measures (ASCM), transparency and applicability to the Indonesian context. The report provides guidance on the development of a CVD scheme that would conform to recognized best practices; it is also designed to support the Recommended Draft CVD Regulations proposed in Section II of the report.

Stakeholders, including the domestic authority and interested parties, find the existing Indonesian Regulation 34 on CVD to be difficult to understand and apply for a CVD investigation. Moreover, at least six aspects of Regulation 34 are arguably inconsistent with the General Agreement on Tariffs and Trade (GATT) and/or the ASCM. In addition to removing the potential inconsistencies with the GATT and ASCM, this review of best practices points to several ways Regulation 34 could be revised to mitigate these issues.

Foremost, this report recommends that the CVD regulations be distinct from those for antidumping as is the case in the major best practices countries' regulations (this approach is seen as promising by senior KADI officials). In addition, separation from the injury regulations, as is the case in the U.S. trade-remedy regulations, may be advisable. Having distinct CVD regulations would provide a significant degree of procedural and methodological clarity over that of the present regulations.

In addition, the report recommends that some additional methodological detail be articulated in Indonesia's CVD regulations. Such additional detail is called for in ASCM Article 14 for calculation of "benefit." For other methodological issues, greater detail would provide clearer guidance as well as greater transparency and reliability for all interested parties, including domestic producers considering application for a CVD investigation.

I. Defining “Best Practice” in a CVD regulatory context.

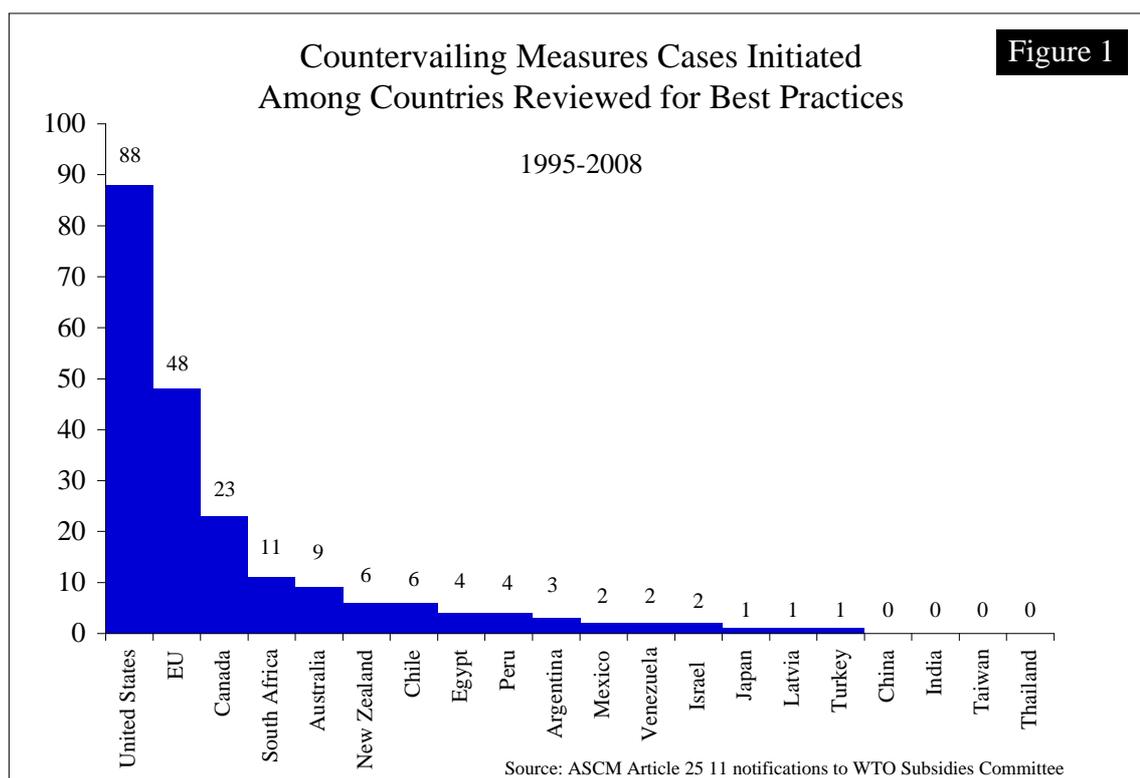
Any review of international CVD regulations for best practices must begin with a set of criteria for defining what constitutes a best practice for the purpose of drafting a new CVD regulation in an Indonesian context.

A. Challenges to defining “best practice”

Several challenges to defining international best practices for purposes of drafting a recommended CVD regulation are outlined below.

1. Few countries have significant experience with CVD regulations

The actual “practice” for a CVD regulation is best seen in its operation when a CVD case is underway, yet only a few countries account for the vast majority of all CVD cases brought pursuant to ASCM Article V. As shown in Figure 1 below, the United States, European Union and Canada accounted for 159 of the 215, or 74%, CVD initiations by WTO members through 2008.¹



The remaining CVD initiations are disbursed among 15 other WTO members and even the largest of these do not provide a sufficient number of completed CVD cases for an adequate review of the countries’ experiences with their CVD regulations. As can be seen in Figure 2 on page 8 below, South Africa was the fourth largest initiator with 11 CVD cases, but only four those led to definitive measures being imposed.

¹ Based on WTO members periodic reports to the WTO Subsidies Committee pursuant to ASCM Article 25.11.

Similarly, Australia initiated nine cases with two definitive measures being imposed.² It is not the low *ratio* of definitive measures to initiations that makes these countries' regulations difficult to consider as part of best practices (after all, the regulations may have provided perfectly legal bases for negative findings in each case); rather, it is the low absolute number of measures imposed that makes difficult the inference of conclusions regarding the operation of the *complete* CVD regime from application to eventual termination of measures.

2. The three countries with significant CVD experience have investigative resources not comparable to those of Indonesia

The three WTO members noted above – the United States, European Union and Canada – that have most experience with their CVD regulations are also three members with a deep well of investigative resources and extensive trade-remedy experience that precedes the development of the ASCM. In fact, this experience resulted in these members taking leading roles in the drafting of the ASCM. As such, their recent experiences in implementing their CVD regulations might not be directly transferable to Indonesia, which has fewer investigative resources and less experience in any form of trade-remedy actions (no CVD cases and few antidumping cases). As will be discussed below, the extensive CVD experiences of two of these three members – the United States and Canada – have translated into extremely detailed CVD regulations that perhaps would not provide appropriate regulatory guidance in an Indonesian context.

3. There are limited dispute settlement findings regarding the operation of members' CVD regulations to provide significant best-practice guidance

In theory, one avenue for assessing how well a given CVD regulation has operated is to consider its record in dispute settlement challenges regarding the CVD case outcomes. Here again the record is thin. Of the 20 dispute settlements regarding CVD measures that were reached through 2008, 14 were against the United States on a handful of narrow methodological issues (none of which affect the Proposed CVD Regulations set out in Section II below), two each against Brazil and Argentina, and one each against Peru and the EU.

² Notably, Brazil reported seven definitive measures being imposed during the 1995-2008 period but only three initiations, suggesting that several of the definitive measures were imposed early in this period based on initiations that occurred prior to Brazil's conformance with the ASCM Article V requirements and thus are of little use in a best practices review.

CVD Regulations and Actions

Figure 2

WTO Member	Cases Initiated		Measures Imposed	
	Count	Percentage	Count	Percentage
Total	215		132	
1 United States	88	41%	54	41%
2 EU	48	22%	23	17%
3 Canada	23	11%	14	11%
4 South Africa	11	5%	4	3%
5 Australia	9	4%	2	2%
6 New Zealand	6	3%	4	3%
7 Chile	6	3%	2	2%
8 Egypt	4	2%	4	3%
9 Peru	4	2%	3	2%
10 Argentina	3	1%	4	3%
11 Mexico	2	1%	8	6%
12 Venezuela	2	1%	1	1%
13 Japan	1	0%	1	1%
14 China	0	0%	0	0%
15 India	0	0%	0	0%
16 Taiwan	0	0%	0	0%
17 Thailand	0	0%	0	0%
Subtotal	207	96%	124	94%
18 Brazil	3	1%	7	5%
19 Costa Rica	1	0%	1	1%
20 Israel	2	1%	0	0%
21 Latvia	1	0%	0	0%
22 Turkey	1	0%	0	0%
Subtotal	8	4%	8	6%

B. “Best Practice” characteristics used in this report

For purposes of this report, and for purposes of the Proposed CVD Regulation (Section II below), seven criteria are used for determining international best practices for Indonesia’s CVD regulations.

1. GATT/ASCM-consistent

CVD regulations should be, on their face, consistent with the requirements of the GATT and the ASCM for imposing countervailing duties. Although no Member can effectively³ challenge a regulation until it gives rise to a GATT or ASCM violation in the imposition of a trade measure, the defense of a trade action (such as the imposition of a countervailing duty) before the Dispute Settlement Body is more likely to be successful if the underlying national regulation governing the trade action is considered by the Dispute Settlement Body to be GATT/ASCM consistent.

2. Coherent and accessible to the domestic authority and all interested parties

The CVD regulations must, of course, serve as a clear guide to the domestic authority to undertake a complete CVD investigation. The regulations should also serve as a clear guide to all other interested parties attempting to understand their rights under the CVD law and regulations. In particular, potential applicants (petitioners) should understand from the regulations, at least in broad terms, what actions they can take to seek trade-remedy relief and the conditions for obtaining that relief. Similarly, foreign exporters should understand what actions they can take to defend themselves in light of such actions.

The regulations should be reasonably coherent to non-specialists (including non-lawyers). For example, regulations should be reasonably complete if read from the first article to the last article with undue reference to other areas of the nation’s laws and with minimal use of technical jargon or undefined terms having special meaning.

A CVD *procedures manual* can provide additional guidance to the domestic authority on less-important details and on issues where the government chooses to grant to or retain for the domestic authority discretion rather than to constrain the authority to use the legal force of regulation.

Finally, ASCM Article 14 mandates that CVD calculations regarding “benefit” be “transparent and adequately explained.” Where the underlying CVD regulations for all decisions provide such transparent and adequate explanations of the domestic authority’s benefit methodology and where each case’s written determinations make reference to those regulations, then the risk that a single decision can be challenged as being inadequately explained is minimized. (In this regard, several of the dispute-settlement cases involving trade-remedy decisions have contained challenges to the domestic authority’s failure to explain a methodology adequately.)

³ Regulations may be challenged “as is,” but without a trade effect being established, there would be no compensation.

3. Sufficiently detailed to provide transparent guidance

There are several reasons why any CVD regulation that is considered to reflect a best practice should provide a significant degree of detailed, transparent guidance to the investigating authority's own staff as well as to all interested parties.⁴ First, regulations that lack detail typically do little more than identify the legal entity that constitutes the "domestic authority" and then reiterate the language of the ASCM verbatim. Because the ASCM provides very few methodological details on how to calculate a CVD rate, relying solely on ASCM language adds little value in terms of providing guidance to investigators.

Second, although such methodological detail can be subordinated into internal staff procedural manuals, such manuals are not widely available to actual or potential interested parties. Moreover, such manuals often provide too much technical detail for such parties, thus providing a impediment to understanding and, perhaps, deterring the use of the CVD trade-remedy option by domestic industry. Because regulations have the weight of law whereas manuals carry less such weight, there are jurisprudential reasons that weigh in favor of ensuring parties can rely on regulations, as opposed to manuals, for the basis CVD calculations. Thus, an appropriate balance must be struck between supplying detail in regulations and subordinating such detail to manuals.

Note that the ASCM mandates a higher standard for explaining benefit calculation than it does for other methodological aspects of a CVD case. Such other aspects, particularly "financial contribution" and "specificity," are more clearly defined by the ASCM itself. Article 14 of the ASCM governs the calculation of "benefit" – a key step in determining the magnitude of a countervailing duty. The opening paragraph of Article 14 states, for all WTO members, that:

any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained.⁵

Thus, the regulation itself must contain a fair degree of methodological detail regarding benefit. At a minimum, such methodologies must be explained in "each particular case."

4. Provides effective trade relief to applicants

The principal objective of CVD regulations is to provide a mechanism for domestic industry to obtain relief from subsidized imports that cause injury. CVD regulations entail a certain degree of complexity and, in many countries, contain certain

⁴ "Interested parties" in a CVD case includes (i) an exporter or foreign producer or the importer of a product subject to investigation or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and (ii) a producer of the like product in the importing member or a trade and business association a majority of the members of which produce the like product in the territory of the importing member. The domestic authority may allow other domestic or foreign parties to be included as interested parties. ASCM Article 12.9.

⁵ ASCM Article 14.

exceptions from obtaining relief.⁶ Although the ASCM provides a “cap” on the level of protection a domestic producer may obtain from the domestic authority (in particular, the CVD measure cannot exceed the amount of the subsidy and certain subsidies are not countervailable, such as under *de minimis* rules), the domestic authority is allowed to afford domestic producers less protection than a straightforward duty applied to the subsidy rate would imply.

Nonetheless, CVD regulations that allow for a high degree of discretion on the part of the domestic authority or other government entities (through the lesser-duty rule or the public-interest clause, for example) may give rise to such uncertainty in the CVD process that domestic producers are deterred from filing applications and thereby, be discouraged from pursuing their rights under the law. Such an outcome may be deliberate government policy, but should not be an unintended consequence of an overly complex or unduly discretionary process.

5. Provides a practical process, given Indonesia’s government resources

Several developed countries have CVD regulations that reflect assumption of a large staff within the domestic authority and extensive experience with CVD investigations. Such regulations contain complex procedures for tracking possible circumventions as well as detailed provisions for investigating complicated export-subsidies programs (namely, excessive duty or VAT drawback as governed by ASCM Annexes II and III). Best practices in the Indonesian context, however, require that the regulations should not be burdened with such procedures or that they mandate the domestic authority to pursue such complex investigations. The regulations should, however, allow the authority to pursue such complex subsidies at its discretion (subject to the ASCM requirements).

6. Reflects Indonesia’s public-policy priorities

As will be discussed further in the report, CVD regulations should reflect Indonesia’s public-policy priorities where the ASCM allows for discretion. Key areas as discussed below include the lesser-duty rule and the role of the public-interest clause.

7. Conforms to Indonesia’s legal framework

Any aspect of a foreign country’s CVD regulation looked to as a best practice must conform to Indonesia’s overall legal system if it is to be incorporated into Indonesia’s CVD regulations. Although a full examination of such legal considerations is beyond the scope of this report, there are some obvious modifications that must be made in some cases, such as the inability under Indonesia law for the Ministry of Trade to implement an import duty (this rests with the Ministry of Finance).

⁶ The foremost examples are the application, if any, of the “lesser duty rule” and the role, if any, of a consumer-interest element in the setting of the countervailing duty.

II – Best Practices Findings

A. General conclusions regarding best practices review

Of the three major countries reviewed, the EU has a balance of detail appropriate for Indonesia. In addition, China’s regulations were written relatively late in the WTO period and thus benefited from a greater background of experience, including a more formalized capacity-building process on the part of the WTO and individual donor countries. China’s regulations are both simple and clear and provide a significant level of methodological and procedural detail. Therefore, an amalgam the EU and Chinese CVD regulations form the starting point for the CVD regulations recommended to replace Regulation 34. (Figure 3 on the following page summarizes these findings.)

B. Review of existing Regulation 34 under best practices criteria

The review of Regulation 34 in this report was based on an unofficial, informal translation. Definitive conclusions regarding Regulation 34 must rely on a careful examination of the text in the original. Nonetheless, this review can serve as a starting point for assessing the existing Regulation 34 with an eye toward modification or replacement. This section discusses Regulation 34 in light of each of the seven best practices criteria outlined in the previous section.

1. GATT/ASCM-consistent

There are five key areas of Regulation 34 that appear, from the review of an unofficial translation, to be inconsistent with the GATT and/or ASCM:

- **Lack of clear specificity requirement.** ASCM Article 2 (and by reference Article 3) mandates that countervailable subsidies be deemed “specific” upon the production of positive evidence. Regulation 34 makes reference to some of the same words as ASCM Articles 2 (*e.g.*, “industry”) but does not make clear the specificity requirement or, importantly, the automatic deeming of export and import-substitution subsidies as specific.
- **Lack of explanation of the benefit calculation that will be used in CVD cases pursuant to the regulations.** As explained above, ASCM article 14 requires the methodology for calculation “benefit” to be explained in either the national legislation or in Regulation 34, which it is not. Article 2 makes reference to “benefit” but does not tie the concept to the calculation of the CVD rate.
- **Incorrect maximum duration of investigation.** ASCM Article 11, paragraph 11 mandates that investigations may take no longer than 12 months or, in special cases, 18 months from the time of initiation. Articles 10, 11, and 12 of Regulation 34, read together, indicate that *KADI* itself can take such time periods for its investigation before other elements of the Indonesian government begin their own phases of the country’s CVD investigation. This schedule is in violation of the ASCM (if implemented, as such, in an actual case for longer than 12 or 18 months).

CVD Regulations and Actions

Figure 3

	Reviewed Regulations	Separation of Regulations			Methodological Detail	Three Criteria Coverage *
		From AD	From Injury			
1	Argentina	Semi	No	Low	Good F/S, no B	
2	Australia	Semi	No	High	Good F/S/B	
3	Canada	Yes	No	High	Excellent F/S/B	
4	Chile	No	No	Low	None	
5	China	Yes	No	Medium	Good F/S/B**	
6	Egypt	No	No	Low	None	
7	EU	Yes	No	High	Excellent F/S/B	
8	India	No	No	Low	Some F/S	
9	Japan	Yes	No	Low	F/S refs ASCM, no B	
10	Mexico	No	No	Low	F/S, no B	
11	New Zealand	No	No	Medium	F/S, B is ASCM	
12	Peru	Semi	No	Medium	F/S, B is ASCM	
13	South Africa	Yes	No	High	Good F/S/B	
14	Taiwan	No	No	Medium	F/S, some B	
15	Thailand	Semi	No	Medium	F/S, B is ASCM	
16	United States	Yes	Yes	High	Excellent F/S/B	
17	Venezuela	No	No	High	Excellent F/S/B	

* Notes to abbreviations for three criteria for a countervailable subsidy:
 refs = makes reference to...
 F = Financial contribution
 S = Specificity
 B = Benefit
 ** Despite good section on benefits, it makes no reference to amortization.

- **Incomplete industry “standing” requirement for initiation.** ASCM Article 11.4 states that a valid industry application for a CVD measure must be “supported by those domestic producers whose collective output constitutes more than 50% 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% of total production of the like product produced by the domestic industry.”

- **Allows certain non-countervailable programs as countervailable.** Treatment of certain value-added tax programs and agricultural programs as countervailable

violates the ASCM prohibition on doing so. However, this problem arises from a lack of wording exempting these programs rather from a positive inclusion of these programs as countervailable.

As noted above, CVD regulations in the best practices review sometimes overcome these inconsistencies by simply making a blanket reference to the ASCM or perhaps to a particular ASCM clause, without reiterating the requirement in the regulation itself. This is a reasonable approach in most cases, but several aspects of the ASCM explicitly leave details for articulation by the domestic authority and therefore, should be included in national regulations.

2. Coherent and accessible to the domestic authority and all interested parties

As described above, Regulation 34 is among the less detailed of existing CVD regulations and because it is interwoven with the Indonesian antidumping (AD) regulation, deciphering Regulation 34 is difficult for both the domestic authority and interested parties. Over the 13-year period in which Regulation 34 has been in place, KADI has not received any applications from domestic industry for CVD relief against subsidized imports nor has KADI initiated such a case on its own. During meetings between USAID/ITAP experts and KADI officials, shortcomings in the provisions of Regulation 34 were identified as a reason that the CVD relief has never been sought. In particular, the CVD aspects of Regulation 34 are believed to be unclear to Indonesian industry (the potential applicants for relief) and considered to be uninformative to KADI investigators seeking guidance on undertaking such a case.

3. Sufficiently detailed to provide transparent guidance

Regulation 34 does not contain any methodological guidance as to how a subsidy “benefit” is defined or calculated to become the numerator in the basic subsidy-rate formula: *subsidy rate = benefit in the period of investigation divided by benefited sales in the period of investigation*. The absence in the Regulation of any guidance on calculating a benefit results in a corresponding absence of effective guidance in the Regulation for calculating a subsidy rate or therefore, any sort of definitive countervailing measure.

4. Provides effective trade relief to applicants

Perhaps the most informative commentary on the effectiveness of Regulation 34 is the fact that it has never been invoked for a countervailing duty case. This is despite several AD investigations, some of which are on countries and products that quite likely benefit from subsidies as evidenced by CVD cases initiated by other countries against the same countries and product groups. For example, KADI has initiated a steel beams case from China with regard to dumping and the United States had previously initiated a case against hot-rolled steel from China (typically the subsidy programs would overlap both types of steel).

One particular aspect of Regulation 34 prevents domestic producers from receiving the full measure of trade-remedy protection that would otherwise be afforded to them by the ASCM. Regulation 34’s Article 17(3) allows for only the “lower of” the antidumping margin or the subsidy rate to be applied as a duty. This appears to be a

misapplication of the GATT and ASCM rule that disallows double-counting of the trade remedy (i.e., application of both a countervailing duty and antidumping duty for the same unfair trade practice). In practical terms, best-practice regulations implement this GATT/ASCM rule by disallowing the use of both a countervailing duty on *export subsidies* and an antidumping duty (for technical reasons, the price effect of an export subsidy is considered to be reflected in sales at prices further below normal value than would otherwise be the case and thus included in the antidumping margin). Although the existing Article 17(3) does not violate the ASCM, it constrains the Ministry from approving a combined AD/CVD duty to the full extent allowed by the GATT and ASCM.

Interviews with Indonesian private parties and KADI officials suggest that Regulation 34 itself stands as a barrier to undertaking trade relief against subsidized imports. The complexity and unpredictability of outcome under the Regulations' provisions are two reasons often cited for this view.

5. Is practical, given Indonesia's government resources

KADI has undertaken several AD cases. AD cases tend to be more resource-intensive than CVD cases because 1) AD cases typically require examination of a large number of accounting transactions relative to the smaller set of facts that must be examined in a CVD case and 2) often the facts that must be established in a CVD case have already been reviewed by CVD authorities in other countries and are made easily available on internet-accessible databases. Consequently, nothing inherent in a CVD case is beyond KADI resources. This is particularly true if a parallel AD proceeding on the same like product is being conducted and thus the injury investigation is already being undertaken.

On the other hand, as discussed above, the ASCM allows for countervailing several types of complex subsidy schemes (most notably excessive duty-drawback programs) but only after the domestic authority meets a series of stringent requirements (such as those listed in ASCM Annexes II and III). Investigating and countervailing these types of subsidy programs would perhaps strain the resources and experience of KADI in the foreseeable future. Therefore, any regulatory undertaking to countervail such schemes should perhaps be left to the discretion of the Ministry of Trade rather than mandated under Indonesian law.

6. Reflects Indonesia's public-policy priorities

Regulation 34 implicitly contains a public interest clause by virtue of the fact that KADI's determination is only a recommendation to the Ministry that is followed by a phase during which the Ministry of Finance makes further decisions. Although this is a feature contained in other best-practice CVD regulations (most notably the EU and Canada), discussions with potential CVD applicants in Indonesia indicate that this phase of KADI's procedures (as has been experienced in the antidumping cases brought to date) introduces a degree of uncertainty into the process sufficient to be a deterrent to domestic industries pursuing their trade-remedy rights.

7. Conforms to Indonesia's legal framework

Comment on the degree to which Regulation 34 conforms to Indonesia's overall legal framework is beyond the scope of this report. However, in considering any proposed regulation as a replacement or amendment to Regulation 34, the language of such a regulation must be transferable to the Indonesian legal context or modified to do so.

III – Adoption of Best Practices for Recommended Draft CVD Regulation for Indonesia

Based on the best practices review discussed above, the Proposed CVD Regulations provided in Section II below of this report were developed as a starting point for modification or replacement of existing Regulation 34 if the Government of Indonesia should choose to do so. The discussion below provides background information on the approach used for the proposed Regulations and explains each of individual articles.

A. General Approach

The Proposed CVD Regulations were designed to meet the seven best practices criteria outlined above. On the broadest level, the countervailing duty regulation and the antidumping regulation should be separated and each should be separated from an injury regulation; however, the regulations should reference and rely upon an injury regulation. As shown in Figure 3 above, many countries combine CVD and AD into one regulation, although the clearer regulations at least provide a clear demarcation between AD and CVD when incorporated within the text of a single regulation. If Indonesia chooses to continue incorporation of AD, CVD, and injury in a single regulation, the proposed CVD regulations could simply be treated as a “module” within such a unified regulation with due allowance for any overlap between AD and CVD procedures.

This proposed CVD regulation attempts to strike balance between being coherent and detailed (best practices criteria #2 and #3, discussed above) and being practical in terms of Indonesia’s governmental resource constraints (criterion #5). The CVD regulations of the United States and Canada are arguable provide the most coherent and detailed methodological and procedural descriptions, but in doing so place relatively heavy burdens on the resources of their respective domestic authorities. On the other hand, those CVD regulations that mandate very few particular actions by their domestic authorities (typically the CVD regulations of smaller developing countries) tend to provide insufficient detail and guidance to either the authority or the interested parties.

In striving to achieve this balance, the proposed regulations address the challenge of providing transparency and clear guidance by most closely following two regulatory structures – those of the EU and China. Both provide reasonably solid methodological detail, but do so in a fairly straightforward manner. China can be regarded as a good best practices model for Indonesia because both countries have little or no experience with countervailing duty investigations. Moreover, both sets of regulations conform well to the GATT and the ASCM.

The procedural processes adopted for this proposed CVD regulation largely follow EU practice, modified in places to account for the differences in governmental structure between the EU (a union of sovereignties) and Indonesia (a single government). As noted below, other countries’ practices were sometimes adopted in particular instances where doing so constituted a best-practice for Indonesia in light of the seven criteria outlined above.

B. Discussion of Individual Articles

This section provides some background and explanation on each of the articles contained the Proposed CVD Regulations as set out in Section II of this report.

Article 1

[Principles and Injury Requirement]

This article is designed to establish that no countervailing duty investigation can proceed without a companion injury investigation as required by Article 15 of the ASCM. It is envisioned that the injury regulation will be promulgated as a distinct regulation from both CVD and AD. Once a decision is taken to separate AD and CVD regulations, setting out an injury regulation as a third element is logical because injury is a requirement for both AD and CVD; therefore, including injury regulations in both AD and CVD regulations would be duplicative.

However, the injury requirements for AD and CVD are not identical in every respect and requirements related only to one or the other must be so set forth in a separate injury regulation. For example, the cumulation formula and negligibility threshold for developing countries is different in the two cases; nonetheless, such differences are easily drawn within a stand-alone injury regulation.

Article 2

[Definitions]

This section should contain simple terms of art. Those terms that constitute complex concepts, such as financial contribution, specificity, and benefit – the three pillars of a countervailable subsidy – should be referenced here, but expanded upon in their own articles as cited in this Article 2.

Article 3

[Definition of a subsidy]

Although the ASCM provides domestic authorities wide scope on many issues, such as when “injury” exists or on the setting of deadlines, it is rather precise and provides fairly clear guidance on what constitutes as “subsidy.” There is, therefore, little reason to modify the language significantly from the ASCM language on defining a CVD in any national regulation.

Nonetheless, the language here follows the practice of several other countries (the EU and China in particular) that seeks to simplify the text structure of the specificity criteria. In part, this simplification is designed to help meet the goals criteria #2 and #5 above (i.e., coherent and accessible to the domestic authority and all interested parties, and practical given Indonesia’s government resources).

Paragraph (4) of Article 3 covers specificity of so-called “production” or “domestic” subsidies (i.e., subsidies that are not export or import-contingent, as covered in paragraph 5, which are deemed automatically specific).⁷

Moreover, paragraph (3) of Article 3 is designed to ensure that certain non-countervailable subsidy programs under the ASCM – certain value-added tax rebates and agricultural programs – are not deemed countervailable under the regulations.⁸

Article 4

[Calculation of benefit in the investigation period]

As noted above, Article 14 of the ASCM requires that any method used by the investigating authority to calculate the benefit to the recipient must be in the national legislation or implementing regulations.⁹ Yet many countries give little guidance in their regulations with regard to the calculation of “benefit,” the most fundamental aspect of calculating the CVD rate. At one extreme, the United States provides detailed methodological guidance, perhaps too much so for the Indonesian context. At the other extreme, there is no mention in many regulations as to how benefit is calculated (including Regulation 34).

The best practice for Indonesia to follow may be the level of detail incorporated in the benefit calculation clauses of the EU and China whereby the language of Article 14 is reiterated, yet augmented, with further guidance on the particularly challenging issue of how to allocate the receipt of larger, non-recurring benefits over time. Aside from U.S. regulations, which provide a formula for allocating benefits over time, the other countries that provide some degree of guidance on allocation over time make reference to following generally accepted accounting principles and/or recognizing the time value of money (discounting) in the allocation process. For Canada, Australia and the EU, this guidance in their respective regulations is interpreted by the domestic authorities to be an equal-payment formula as used here in Article 4, paragraph (4) of the Proposed CVD Regulations. (Paragraph (3) defines the period of investigation.)

Article 5

[Calculation of subsidy rate]

Once the benefit in the period of investigation is determined, the subsidy rate is calculated by dividing such benefit by those sales that are found to benefit from the subsidy. This is the basic subsidy formula as articulated by Part V of the ASCM which mandates that the countervailing measure cannot exceed the amount of benefit applied to the subject product. Article 5, paragraph (2) of the proposed regulations makes clear that subsidies found to be specific because they are export subsidies must have all of the benefit applied to the export sales, as would logically follow.

⁷ Version 1 of the Proposed CVD Regulations does not include the ability to consider regional subsidies as specific.

⁸ Other subsidies described as non-actionable subsidies by Part IV of the ASCM are no longer relevant; several CVD regulations (e.g., Thailand) still identify such subsidies as “non-actionable” despite the expiration of such exemptions in the ASCM.

⁹ ASCM Article 14.

Article 6

[Determination of countervailing duty]

The Proposed CVD Regulations provide for this article as a placeholder for Indonesia to decide whether the regulations will allow for a “lesser duty” rule (allowing the domestic authority to determine that the countervailing duty shall be less than the subsidy rate determined in Article 5), if such a lesser duty is sufficient to offset injury. Paragraph (2) must be drafted to reflect KADI’s policy decision regarding the applications of countervailing measures on a country-wide or company-specific basis; (however, in no case can the countervailing duty exceed the amount of the subsidy).

Article 7

[Reserved]

For drafting purposes, there is one reserved Article at the end of each Chapter to allow for additional clauses to be added without interfering with the numbering of all subsequent sections.

Article 8

[Initiation of proceedings]

Article 8 begins the procedural chapter of the proposed regulations. These procedures follow the substance and clarity of the EU regulations, modified to reflect the fact that Indonesia does not have the complicating dimension of being a union of countries rather than a sovereign country.

Article 9

[Investigation]

The timelines provided in Article 9 are those required by the ASCM. More detailed timelines are left to secondary documents, such as a Procedures Manual. The “investigation” referred to in Article 9 includes all aspects of Indonesia’s “investigation” for purposes of a countervailing duty measure, including any deliberative actions taken outside of KADI by the Ministry of Trade or the Ministry of Finance or any other body. In other words, to conform to the ASCM, this timeframe extends from KADI’s initiation to the government’s imposition of the final measure.

Article 10

[Provisional Measures]

The timeframes articulated here are those of the ASCM. The bracketed section reflects the policy decision that the government of Indonesia must make with regard to government-imposed prospective or retrospective measures, either of which are allowed by the ASCM so long as the chosen policy is articulated and followed. KADI officials indicate that Indonesia is likely to maintain its current policy of prospective measures in any future regulations; such a policy is recommended from a best practices standpoint to conform to the need for clarity of the regulations. Retrospective measures are more

complicated to implement and involve the potential for unlimited liability for importers, thus injecting additional uncertainty into the marketplace.

Article 11

[Termination]

The conditions of termination are designed here to provide KADI with a maximum of flexibility without loss of clarity. Other countries' CVD regulations provide similar discretion to their domestic authorities for termination upon application.

Article 12

[Undertakings]

The conditions for pursuing an undertaking are designed here to provide KADI with a maximum of flexibility within the limits of the ASCM's strictures. In form, this article follows the clarity of the EU and China; in substance, this follows the meaning of the more detailed CVD regulations (U.S. and Canada).

Article 13

[Sampling]

Although not required by the ASCM, this article provides useful guidance to the domestic authority and the interested parties regarding which companies will be thoroughly investigated. On the other hand, paragraph (2) of this article provides KADI with discretion to use other reasonable sampling methods if necessary. Overall, this method follows that of the EU.

Article 14

[Confidentiality]

This article follows the full practice allowed by the ASCM for the domestic authority to use or dismiss information for which confidentiality is requested. Indonesia does not have and, based on discussions with officials, does not contemplate adopting, a protective-order regime wherein confidential information is shared with legal representatives of the interested parties. Thus, no such regime is formed by these proposed regulations. (This follows best practices criteria #5 and #6).

Article 15

[Verification]

The ASCM requires domestic authorities to take steps to ensure within reason the accuracy of all information relied upon, but does not mandate a full, on-site verification. Moreover, governmental resources might constrain a domestic authority for doing so in each case. On the other hand, the ASCM requires verifications, if undertaken, to follow certain rules. The EU regulations allow flexibility and conform to WTO rules; they are thus followed here.

Article 16

[Non-Cooperation]

This article follows the full practice allowed by the ASCM for the domestic authority to respond to parties that do not cooperate in the investigation, while providing the domestic authority discretion to accept information from such parties should it so choose.

Article 17

[Disclosure]

This article simply sets out the requirements contained in the ASCM and follows the EU formulation.

Article 18

[Reserved]

Article 19

[Definitive Duties]

This article sets out the requirements contained in the ASCM and follows the EU formulation.

Article 20

[Prospective Application of Duties]

As discussed above, KADI officials indicate that Indonesia is likely to maintain its current policy of prospective measures in any future regulations; this is recommended from a best practices standpoint to conform to clarity of the regulations. Moreover, this conforms to current AD practice.

Article 21

[Interim Reviews]

This article sets out the requirements contained in the ASCM and follows the EU formulation.

Article 22

[Expiration of Measures]

This article sets out the requirement contained in the ASCM and follows the EU formulation.

Article 23

[Circumvention]

Although a strong circumvention regime is important for best practices criterion #4 (providing effective relief to domestic parties), fully enforcing non-circumvention is a resource-consuming exercise for the government (therefore, contrary to criterion #5). This article allows for circumvention, but consideration should be given to perhaps providing for discretion on the part of KADI to pursue anti-circumvention measures.

Article 24

[Reserved]

IV – Conclusion

A best practices review of other countries' CVD regulations provides guidance on how Indonesia's Regulation 34 could be modified or replaced to better meet a series of best practices criteria. These best practices are reflected in the Proposed CVD Regulations in Section II that follows.

Section II

Proposed Regulations for The Imposition of Countervailing Duties and Related Measures

Editor's Note

The following are proposed draft regulations for the imposition of countervailing duties and related measures. The text is intended for discussion purposes as part of a broader effort by the Indonesian Ministry of Trade to revise its trade-remedy regulations, in particular Regulation 34. Items in bracketed text ([]), but not the bracketed subtitles in bold ([]), require policy decisions by the Indonesian authorities or the adoption of parallel language from companion regulations (typically, injury regulations).

MINISTRY OF TRADE REGULATION

NUMBER: _____

CONCERNING

IMPOSITION OF COUNTERVAILING DUTIES
AND RELATED MEASURES

Considering:

In View of:

HAS DECREED

To Enact:

I – GENERAL PROVISIONS

Article 1

[Principles and Injury Requirement]

Where an imported product to which a subsidy is granted causes material injury or threat of material injury to an established domestic industry, or causes material retardation of the establishment of such an industry, a countervailing investigation shall be initiated and countervailing measures applied in accordance with the provisions of these Regulations.

Article 2

[Definitions]

Terms used in these Regulations are defined as follows:

“Benefit” – is a positive amount as defined in Article 4 as benefiting the foreign producer or exporter as a result of a subsidy as defined in Article 3.

“Enterprise” – is the recipient of the benefit and includes “enterprises” plural.

“Subsidy rate” – is the amount of benefit allocated to the period of investigation as defined in Article 4 divided by benefited product as defined in Article 5, expressed as an *ad valorem* number and applied on a per-unit basis on imports of the like product.

“Countervailing duty” – is the actual duty applied by the Authority, which must be equal to or less than the subsidy rate, subject to Article 6 [or Article 19(4)].

“De minimis” – is the threshold subsidy rate, as defined in Article 6(4), below which duties shall not be imposed.

“Like product” - a product which is identical; in other words, alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

““Injury,” “material injury,” and “threat”- are terms defined in the [Regulations Regarding Injury].

“Domestic industry” or “industry” – Indonesian producers of the like product and applicants for relief under these Regulations as set forth in Article 8(6)

“Interested party” – includes foreign producers of the like product allegedly subsidized, the foreign public bodies allegedly providing the subsidy, foreign governments in countries of interested parties, and domestic industry [*and consumers if public interest clause Article 19(4) is adopted*].

“Country” – Country or territory as defined by the Agreement on Subsidies and Countervailing Measures and location of the production or export of the allegedly subsidized product.

“Authority” – [KADI, *The Ministry of Trade*]

II – IDENTIFICATION AND MEASUREMENT OF SUBSIDY

Article 3

[Definition of a subsidy]

- 1) A subsidy shall be deemed to exist if:
 - a) there is a financial contribution by a government in the country of origin or export, where:
 - i) a government practice involves a direct transfer of funds (for example, grants, loans, equity infusion), potential direct transfers of funds or liabilities (for example, loan guarantees); or
 - ii) government revenue that is otherwise due is foregone or not collected (for example, fiscal incentives such as tax credits); or
 - iii) a government provides goods or services other than general infrastructure, or purchases goods; or
 - iv) a government makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated in clauses (i), (ii) and (iii) which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;
 - b) or there is any form of income or price support within the meaning of Article XVI of the GATT 1994;
 - c) and a benefit as defined in Article 4 is thereby conferred.
- 2) Notwithstanding Article 3(1)(a)(ii), the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.
- 3) Notwithstanding Article 3, agricultural like products meeting the criteria of Annex 2 on the Agreement on Agriculture are deemed to have not met the conditions set forth in Article 3.
- 4) A subsidy is specific if:
 - a) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;
 - 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. For the purpose of this paragraph, objective criteria or conditions mean criteria or conditions which are neutral, which do not favor certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise. These criteria or conditions must be clearly set out by law, regulation or 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 laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy program by a limited number of certain enterprises; predominant use by certain enterprises; the granting of disproportionately large amounts of subsidy to certain enterprises; and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.
- 5) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance and subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods are deemed to be specific notwithstanding Article 3(4).

Article 4

[Calculation of benefit in the investigation period]

- 1) For each subsidy program, the Authority shall determine the benefit to the enterprise in the period of investigation.
- 2) The total amount of benefit received by the enterprise shall be calculated according to the following methods:
 - a) where the subsidy is granted in form of a grant, the amount of the benefit is the amount received by an enterprise;
 - b) where the subsidy is granted in the form of an equity infusion or other such capital participation on terms not reasonably available in normal capital markets, the amount of the subsidy shall be calculated on the basis of the actual amount of the capital the enterprise receives;
 - c) where the subsidy is granted in form of a loan, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise would pay on a loan in the ordinary commercial loan conditions and the amount of interest the enterprise pays on this loan, taking due account of differences in contract terms such as loan length, collateral held, and the risk profile of the borrower;
 - d) where the subsidy is granted in form of a loan guarantee, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise would pay on a commercial loan absent such guarantee and the amount of

interest the enterprise actually pays on a loan guaranteed, taking due account of terms as in paragraph (b);

- e) where the subsidy is granted in form of the provision of goods or services, the amount of the subsidy shall be calculated on the basis of the difference between the price of the goods or services at normal market price and the price that an enterprise actually pays;
 - f) where the subsidy is granted in form of purchase of goods, the amount of the subsidy shall be calculated on the basis of the difference between the actual price the government pays and the normal market price of the goods determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).
 - g) where the subsidy is granted in form of foregoing or not collecting due revenue, the amount of the subsidy shall be calculated on the basis of the difference between the amount payable under generally applicable law for similarly situated enterprises and the actual amount the enterprise pays;
 - h) where a product receives excessive duty drawback, the benefit shall be calculated pursuant to Annex II of the Agreement on Subsidies and Countervailing Measures.
 - i) in all other cases, the Authority shall use a method that reflects the principle of determining the difference between the amount the enterprise received and the amount the enterprise would have received absent the subsidy program under normal market conditions.
- 3) The investigation period shall be the most recent fiscal-year period for the enterprise or government, or other period considered appropriate and practicable by the Authority, for which audited or auditable accounts are available.
- 4) In the case of large-scale benefits relative to the size of the enterprise in terms of assets or sales, or benefits demonstrably attributable to the acquisition of long-lived assets, the total benefit shall be allocated:
- i) over the average depreciable life of enterprise assets, but no more than 10 years,
 - ii) using the enterprise's average cost of borrowing to determine the annual benefit using the following formula:

$$A_k = \frac{y}{\left[\frac{1 - \frac{1}{(1+d)^n}}{d} \right]}$$

where:

- | | | |
|-------|---|---|
| A_k | = | Benefit in year i, where i=1 at time of receipt. |
| Y | = | Amount of the total benefit found in (2) |
| d | = | Enterprise's average cost of borrowing at the time of the receipt of the benefit found in (4)(ii) |
| n | = | Life of enterprise assets as found in (4)(i). |

- 5) For loans subject to (2)(c) and (2)(d), the benefit in the period of investigation is that period's cost reduction as a result of receiving the loan, and thus benefits expire when the loan expires.
- 6) Subtracted from the total benefit amount found in Article 4(2) shall be any application fee.

Article 5

[Calculation of subsidy rate]

- 1) The benefits in the period of investigation from subsidies found to be specific under Article 3(4) shall be divided by that period's sales of all of the products (including but not limited to the like product) deemed to benefit from the subsidy. The result is the *ad valorem* subsidy rate.
- 2) A subsidy deemed to be specific as a result of the application of Article 3(5) shall be deemed to benefit, for purposes of Article 5(2), only those exports to which the subsidy was granted.

Article 6

[Determination of countervailing duty]

- 1) The Authority [may find the countervailing duty to be equal to the subsidy rate or to be less than the subsidy rate if such lesser duty would be adequate to remove the injury to the domestic industry]¹⁰
- 2) [Policy Decision: Apply country-wide rate vs. individual rates].

¹⁰ [Policy Decision: The GOI must decide whether it wants to adopt the "lesser duty rule"]

- 3) No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidization.
- 4) The amount of the countervailable subsidies shall be considered to be *de minimis* if such amount is less than 1% *ad valorem*, except that:
 - a) as regards investigations concerning imports from developing countries the *de minimis* threshold shall be 2% *ad valorem*, and
 - b) for those developing country Members of the WTO referred to in Annex VII to the Agreement on Subsidies and Countervailing Measures as well as for developing country Members of the WTO that have completely eliminated export subsidies as defined in Article 3 of this Regulation, the *de minimis* subsidy threshold shall be 3% *ad valorem*; where the application of this provision depends on the elimination of export subsidies, it shall apply from the date on which the elimination of export subsidies is notified to the WTO Committee on Subsidies and Countervailing Measures and for so long as export subsidies are not granted by the developing country concerned.

Article 7

[Reserved]

III – PROCEDURES

Article 8

[Initiation of proceedings]

- 1) Any domestic industry or natural person, legal person or relevant organization on behalf of the domestic industry (hereinafter collectively referred to as “the applicant”) may make a written application to KADI for a countervailing investigation in accordance with the provisions of these Regulations.
- 2) The application shall contain the following information:
 - a) the name, address, and other relevant information of the applicant;
 - b) a complete description of the imported like products in question, including the names of the products, the country or origin or export, the identity of known exporters or producers, etc.;
 - c) [a description of the volume and value of domestic production and of imports of the like product];¹¹
 - d) other information that the applicant considers probative to submit.
- 3) The application shall be supported by the following evidence regarding the subsidy:
 - a) reasonably available evidence regarding the nature of the public body providing the financial contribution or income or price support as defined in Article 3.
 - b) positive evidence that the subsidy was specific as defined in Article 3(4).
 - c) reasonably available evidence that identified enterprises received a benefit, as defined in Article 4, from the subsidy.
- 4) The Authority shall, within 60 days from the date of receipt of the application and relevant evidence submitted by the applicant, examine whether the application is made by or on behalf of the domestic industry and the contents of the application and the evidence attached thereto, and shall decide whether or not to initiate an investigation. Under special circumstances, the examination period may be extended.
- 5) Prior to the decision to initiate an investigation, the government of the country in which the alleged subsidy occurred and the like product of which may be subject to such investigation was manufactured or exported shall be invited for consultation regarding the subsidy in question.
- 6) During the period after application, but before initiation, the Authority shall not make public the existence of the application or its contents.

¹¹ [Policy Decision: This clause is likely to be duplicative with injury regulations.]

- 7) The application shall be accepted only if it is supported by those Indonesian 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.
- 8) Upon initiation, all interested parties shall be notified as practicable of the nature of the investigation, including the identification of the like product, the countries involved, basic information regarding the subsidy, the procedural timeline, and the opportunities for representations.

Article 9

[Investigation]

- 1) Investigations shall be concluded within one year of initiation. If the Authority makes a determination the special circumstances prevail, the case may extend to a total of 18 months after initiation.
- 2) Interested parties also shall have the right to submit written argumentation and documentation to the Authority.
- 3) Interested parties also shall have the right, upon request and justification, to present information orally at a public hearing.
- 4) Notwithstanding Article 9(3), decision of the Authority can be based on only such information and arguments as were on the written record and available to interested parties participating in the investigation, due account having been given to the need to protect confidential information as in Article 14.

Article 10

[Provisional Measures]

- 1) Provisional duties may be imposed if:
 - a) proceedings have been initiated in accordance with Article 9;
 - b) a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 9(2) and 9(3);
 - c) a provisional affirmative determination has been made that the imported product benefits from countervailable subsidies and of injury;
 - d) The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings, but no later than nine months from the initiation of the proceedings.

- 2) The amount of the provisional countervailing duty shall not exceed the total amount of countervailable subsidies as provisionally established under Article 6.
- 3) Provisional duties shall [be secured by a guarantee and the release of the products concerned for import shall be conditional upon the provision of such guarantee.]¹²
- 4) Provisional countervailing duties shall be imposed for a maximum period of four months.

Article 11

[Termination]

- 1) Where the application is withdrawn, the proceeding may be terminated at the discretion of the authority.
- 2) There shall be immediate termination of the proceeding where it is determined that the amount of countervailable subsidies is *de minimis* in accordance with Article 6(3) or where the volume of subsidized imports, actual or potential, or the injury is negligible.

Article 12

[Undertakings]

- 1) The Authority may at its discretion suspend an investigation with respect to any party upon the adoption of an undertaking between the Republic of Indonesia and that party if there has been a provisional finding of subsidization pursuant to Article 10 at or above the applicable *de minimis* levels as set forth in Article 6(4) and there has been a provisional or, if the investigation has proceeded to such a point, a definitive finding of injury, and:
 - a) the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
 - b) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies, so that the Authority is satisfied that the injurious effect of the subsidies is eliminated.
- 2) Price increases under such undertakings shall not be higher than is necessary to offset the amount of countervailable subsidies and should be less than the amount of countervailable subsidies, if such increases would be adequate to remove the injury to Indonesian industry.
- 3) If the undertakings are accepted, the investigation of subsidization and injury may be completed upon the discretion of the Authority. In such a case, if a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, it may be required that an undertaking be maintained for a reasonable period.

¹² [Policy Decision: This procedure must conform to existing Indonesian customs measures; note interaction with duty imposition measures in Chapter IV.]

- 4) The Authority shall require any country or exporter from whom undertakings have been accepted to provide, periodically, information relevant to the fulfillment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.
- 5) If the Authority determines that the undertaking has been breached, the investigation shall resume at the point at which it was suspended.

Article 13

[Sampling]

- 1) In cases where the number of exporters or types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection; or to the largest representative volume of the production, sales or exports which can reasonably be investigated within the time available.
- 2) The selection of parties, types of products or transactions made under this Article shall rest with the Commission, though preference shall be given to choosing a sample in consultation with and with the consent of the parties concerned, provided that such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.
- 3) In cases where the examination has been limited in accordance with this Article, an individual amount of countervailable subsidization shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Regulation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.
- 4) Where it is decided to sample and where there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article __ (on non-cooperation) shall apply.

Article 14

[Confidentiality]

- 1) Any information that is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information), or that is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the Authority.
- 2) Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a

reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

- 3) If the Authority determines that a request for confidentiality does not constitute good cause and if the supplier of the information is either unwilling to make the information available or to authorize its disclosure in generalized or summary form, such information may be disregarded. Requests for confidentiality shall not, however, be rejected arbitrarily.
- 4) This Article shall not preclude the disclosure of general information by the Authority and in particular of the reasons on which decisions taken pursuant to this Regulation are based nor disclosure of the evidence relied on by the Authority in so far as is necessary to explain those reasons in appeal proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business or governmental secrets should not be divulged.
- 5) The Authority shall not, nor shall any official thereof, reveal any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier.
- 6) Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

Article 15

[Verification]

- 1) The Authority may, at its discretion, carry out visits to examine the records of public bodies, importers, exporters, traders, agents, producers, trade associations and organizations to verify information provided on subsidization.
- 2) When the authority carries out verifications in third countries, it must obtain agreement of the entities concerned and notify the country in question and obtain agreement that the latter does not object to the investigation. As soon as the agreement of the entities concerned has been obtained, the Authority should notify the country of origin and/or export of the names and addresses of the firms to be visited and the dates agreed.
- 3) The entities concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, although this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

Article 16

[Non-Cooperation]

- 1) In cases in which any interested party refuses to provide necessary information within the time limits provided in this Regulation or significantly impedes the investigation, the

Authority may make provisional or definitive findings, affirmative or negative, on the basis of the facts available.

- 2) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available.
- 3) Interested parties should be made aware of the consequences of non-cooperation.
- 4) If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons there for and shall be granted an opportunity to provide further explanations within the time limit specified by the Authority. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.
- 5) If determinations are based on the provisions of paragraphs 1 or 2, including the information supplied in the application, it shall, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources that may be available, including information obtained from other interested parties during the investigation.
- 6) If an interested party does not cooperate or cooperates only partially so that relevant information is thereby withheld, the result may be less favorable to the party than if it had cooperated.

Article 17

[Disclosure]

- 1) Any interested party and their representative associations may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures and/or definitive measures have been imposed. Requests for such disclosure shall be made in writing within 10 business days following the imposition of the measure and the disclosure shall be made in writing within 10 business days thereafter.
- 2) Representations made after final disclosure is given shall be taken into consideration in the imposition of provisional or definitive duties only if received within 20 business days of disclosure.
- 3) Disclosure shall not prejudice any subsequent decision which may be taken by the Authority.

Article 18

[Reserved]

SECTION IV – IMPOSITION AND ENFORCEMENT

Article 19

[Definitive Duties]

- 1) Upon a definitive finding of both a countervailing duty and injury, a definitive duty shall be imposed on the import of the like product.
- 2) A countervailing duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury, except as to imports from those sources from which undertakings have been accepted by the Authority. The regulation imposing the duty shall specify the duty for each supplier or, if that is impracticable under Article 6(2) regarding country-wide rates, the supplying country concerned.
- 3) If the definitive countervailing duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the difference shall be refunded. Where a final determination is negative, the provisional duty shall be refunded.
- 4) [Notwithstanding any other provision of this Article, the Authority may determine, public interest, that no definitive duties shall be imposed.]¹³

Article 20

[Prospective Application of Duties]

- 1) [Policy Decision: The GOI must decide how it chooses to adhere to ASCM requirements regarding application of duties. Two basic options are used by other countries: retrospective duties and prospective duties. The prospective-duty option is recommended for ease of application and certainty in the marketplace. Indonesia currently applies prospective duties in antidumping proceedings].

Article 21

[Interim Reviews]

- 1) During the period in which definitive measures have been in place for more than one year, the Authority shall initiate an interim review upon a request from an interested party that contains sufficient evidence substantiating the need for such an interim review.
- 2) An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset the countervailable subsidy and/or that the injury would be unlikely to continue or recur if the measure were removed or varied or that the existing measure is not, or is no longer, sufficient to counteract the countervailable subsidy which is causing injury.

¹³ [Policy Decision: Should this discretionary authority, based on a public interest determination, be granted to the Authority.]

- 3) In carrying out investigations pursuant to this Article, the Commission may consider whether the circumstances with regard to subsidization and injury have changed significantly or whether existing measures are achieving the intended results in removing the injury previously established under Article 8. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

Article 22

[Expiration of Measures]

- 1) A definitive countervailing measure shall expire five years from its imposition or five years from the date of the most recent Article 21 review that has covered both subsidization and injury unless it is determined in a review that the expiration would be likely to lead to a continuation or recurrence of subsidization and injury. Such an expiration review shall be initiated by the Authority or upon a request made by or on behalf of domestic industry and the measure shall remain in force pending the outcome of such review.
- 2) An expiration review shall be initiated where the request contains sufficient evidence that the expiration of the measures would be likely to result in a continuation or recurrence of subsidization and injury. Such a likelihood may, for example, be indicated by evidence of continued subsidization and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters or market conditions are such that they would indicate the likelihood of further injurious subsidization.
- 3) In carrying out investigations under this Article, the interested parties shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request; conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely or unlikely to lead to the continuation or recurrence of subsidization and injury.
- 4) A notice of impending expiration shall be published in the [Gazette] at an appropriate time in the final year of the period of application of the measures as defined in this Article. Thereafter, the domestic industry shall, no later than three months before the end of the five-year period, be entitled to apply for a review request in accordance with paragraph 2. A notice announcing the actual expiration of measures under this Article shall be published in the [Gazette].

Article 23

[Circumvention]

- 1) Countervailing duties imposed pursuant to this Regulation may be extended to imports from third countries of like products or parts thereof when circumvention of the measures in force is taking place.
- 2) Circumvention shall be defined as a change in the pattern of trade between third countries and Indonesia which stems from a practice, process or work for which there is insufficient

cause or economic justification other than the imposition of the duty and where there is evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like products and that the imported like product and/or parts thereof still benefit from the subsidy.

- 3) Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in Article 23(2).

Article 24

[Reserved]

Section III

Manual on Countervailing Duty Procedures and Methodology

I – Introduction

This Manual on Countervailing Duty Procedures and Methodology is intended to provide Indonesia’s Antidumping Committee (KADI) with procedural and methodological guidance for conducting a countervailing duty (CVD) investigation.

- **Procedural Aspects.** Section I of this Manual outlines the procedural aspects of a CVD investigation in roughly chronological order. Many of CVD procedures are identical to those of antidumping (AD) investigations. As with AD investigations, an injury investigation must be undertaken in conjunction with any CVD investigation. This document, therefore, is designed to augment existing KADI AD and injury procedures for use in the context of a CVD case rather than to supersede or materially alter them.

- **Methodological Aspects.** Section II of this Manual describes the methodological aspects of a CVD investigation, *i.e.*, those aspects that require calculations (for example, the subsidy benefit from a loan) or a determination of whether a certain fact pattern meets the required criteria for countervailability (for example, whether a subsidy program is “specific”).

There are three Appendices to this Manual that will be referenced as necessary. Common or well-defined technical terms, when introduced, are identified in ***bold italics*** and simple examples are provided for key concepts.

II – Procedural Aspects

Overview

A CVD investigation begins either by the *application* by the *domestic industry* or as a “self-initiation” by KADI itself. The standard of evidence regarding the countervailability of the alleged subsidies on the *subject product* is the same in both cases; if this standard is met, KADI *initiates* the CVD case to determine the presence or absence of countervailable subsidies. If such subsidies are found to be present, a determination must be made of the corresponding *subsidy rate* and the amount of the proposed *countervailing duty* itself (which may be equal to or less than the subsidy rate). During the initiation phase, certain parties must be given *notification* of certain facts of the proceeding.

After initiation, KADI issues *questionnaires* to the *interested parties* (allegedly subsidized foreign producers or exporters as well as the allegedly subsidizing foreign governments,¹⁴ which may include governments at the sub-national level) and collects whatever other information it believes to be relevant to the countervailability of the subsidy on the subject product. KADI may also issue *supplemental questionnaires* to the same interested parties. The official “clock” for the investigation begins with the initiation.

Upon review of this informational material, KADI will make a determination for the recommendation¹⁵ of the *provisional* countervailing duty. KADI may then conduct on-site *verifications* of the information it has received from the questionnaire respondents and must provide the opportunity for a *hearing* if requested to do so by an interested party, although all determinations must be based on documentary (usually written) evidence only.

Based on this further evidence collected since the provisional determination as well as on the arguments submitted to KADI by the interested parties, KADI makes a recommendation for a *definitive* countervailing duty. Such countervailing duties are imposed *prospectively* under Indonesian practice, as are antidumping duties.

At any point in this process after initiation, KADI may recommend that the investigation be terminated and an *undertaking* (a unilateral price or quantity measure adopted by the foreign interested parties) be implemented in its stead. If a definitive countervailing duty is imposed, *reviews* may be performed to reset the countervailing duty; such reviews operate procedurally as do reviews for AD cases, except that the re-set amount of the duty cannot exceed the subsidy rate found on the subject product.

Appendix C to this Manual is a week-by-week timeline for the foregoing process; the steps of this process are described in more detail in the following section. Critical steps to avoid inconsistency with the Agreement on Subsidies and Countervailing Measures (ASCM) are indicated in the Appendix C timeline by a solid circle.

The entire process from the date of initiation to the imposition (not the KADI recommendation) of the definitive countervailing duty should not normally exceed 12 months

¹⁴ Domestic interested parties, including the applicant(s) may be issued a questionnaire but typically receive only a questionnaire for the injury aspect of the unfair-trade proceeding.

¹⁵ Under Indonesian law, KADI can recommend, not impose, countervailing duties.

(the duration of the timeline set out in Appendix C), but cannot exceed 18 months. Extension from 12 to 18 months should occur only after a written determination is issued of the reasons that KADI considers the investigation to be a “special case;” this determination must be made available to the interested parties. Provisional countervailing duties may remain in place for no more than four months; therefore, such an extension of the total duration of the case beyond 12 months creates a longer period in which no duties may be in place.

1. Application by Domestic Industry.

A CVD application format, along with guidelines for potential applicants, is provided in Appendix A. This format should be used by potential applicants for both a draft application (if there is one) as well as the actual application. KADI should not, however, reject an application that clearly contains the required substantive elements of an application simply because the application does not follow exactly the desired application format.

a. Request to KADI for review of a draft application.

KADI may consult with potential applicants prior to the formal application regarding the information required. Moreover, KADI may choose to direct potential applicants to additional sources of information. When draft applications are received for comment, KADI should attempt to take no more than 10 business days to review the draft and give substantive comments to the potential applicant or its counsel.

Draft applications should be reviewed as thoroughly as an officially filed application under the criteria set forth below regarding initiation. KADI should ensure that the proposed product scope of the application is an accurate reflection of the product for which the domestic industry is seeking relief.

A list of problems areas in the draft application shall be produced, placed in the file, and shared with the potential applicant.

Draft applications are not discussed with anyone outside of KADI and its legal counsel, other than the applicant. Any inquiries concerning possible filings of applications should be responded to in the form of a statement that no application has been officially filed. Only when an application has been filed officially can KADI indicate that it is considering an application on the product.

All applications must be filed by a domestic interested party, including a manufacturer or a union within the domestic industry producing the “domestic-like product” that competes with the imports that are allegedly subsidized. Applications may be several hundred pages long because the applicant must submit reasonably available data in support of the subsidization allegations.

b. Processing the filed application

When an application is officially filed, a determination on whether or not to initiate an investigation is usually made within 20 days after the date of filing. This

determination is based on the information submitted in the application and any supplements to the application according to the factors set out in section 3, Initiation of Case, below.

The application should be immediately distributed to the appropriate KADI offices and its counsel for review. **A public version of the application is to be delivered immediately by KADI to the embassy of the country in question.**

The day after the application is filed begins the statutory 20-day period (for example, if the application is filed on March 1, the first day of the initiation period will be March 2). The applicant must also file copies of the application and any amendments. Every document that is submitted during the initiation period by the applicant is collectively considered to be “the application.”

During the 20-day pre-initiation period, KADI will not accept oral or written communication from interested parties regarding an application except inquiries concerning the status of the proceeding and regarding the issue of industry support and by extension, the issues of scope and like product. *Notices of appearance* (such as letters from law firms notifying KADI about whom they are representing in the investigation) are also acceptable. In situations where the domestic industry must be polled or determined (see number 3, Questionnaires, below), a maximum of 40 days may be taken in order to make the initiation determination.

In reviewing the application, KADI must review anew all the elements of the application that KADI may have reviewed in the application draft. If a draft was submitted previously, there will be a copy of the list of problem areas that were pointed out to the application. This will assist KADI in analyzing the officially filed document.

Under the proposed CVD regulations, the information required for a CVD application must be “reasonably available” to the applicant. Two important checks should be made:

- Ensure that all factual information is certified by an appropriate company official and (if applicable) the company’s counsel.
- Check whether there is a proper summary of any information claimed to be confidential by the applicant (see number 10 below on confidentiality).

Every effort should be made to have the same KADI analyst or analysts review the draft and subsequently filed application. However, when different reviewers are involved, the new analysts should always coordinate with the analysts who first handled the draft in order to determine whether problem areas have been corrected. If the analyst finds additional problems with the application, these should not be discussed with the applicant until they have been reviewed internally and a meeting to consider such problems has been held within KADI. This meeting should take place no later than seven days after the application is filed.

After the meeting within KADI to discuss application problems, the applicant should be notified in writing of areas in the application that need further support or information. Once the requested revisions are received, they should be analyzed immediately to determine if they are complete. If the revised application still requires further support or information, KADI must make a decision as to whether to request further information or deny the initiation.

2. Initiation of Case

KADI will initiate a CVD case when 1) there is proper *domestic industry support* for an application, 2) the proper *like product* has been established, and 3) KADI determines that the application, combined with other relevant evidence that KADI may choose to rely upon, contains sufficient evidence that the imports of the subject product during the investigation period benefit from a countervailable subsidy.

2.1 Domestic industry support

Applications must be filed by an interested party that has the support of the industry producing the domestic like product in Indonesia. KADI must make a determination with respect to like product during the initiation for purposes of calculating industry support. Since the domestic like product is the domestic product most like the subject merchandise, typically the domestic like product is identical to the scope.

An application meets the minimum requirements if the domestic producers that support the application account for 1) at least 25% of the total domestic production of the domestic like product and 2) more than 50% of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the application. This standard is mandated by the ASCM. The methodologies used to determine industry support may vary from industry to industry depending upon the factual circumstances of performing a reasonable calculation.

The applicant must provide the volume and value of its own production of the domestic like product for the most recently completed calendar year, as well as the production of that product by each member of the industry, to the extent that such information is reasonably available to the applicant. In addition, the applicant must provide information on the total volume and value of Indonesian production of the domestic like product.

The information supporting the industry support submitted by the applicant must always be reviewed for validity. KADI can determine the existence of industry support based on the volume or value of production, but should favor the determination based on volume. It may be necessary to corroborate the data from publicly available independent information.

KADI may contact non-applicant domestic producers to determine their production. However, this should be considered an absolute last resort and does not constitute officially “polling the industry” for purpose of determining support. A memo of any such contacts must be included in the record.

KADI should normally review production figures over the most-recently completed calendar year. However, there may be circumstances in which this twelve-month period may not be appropriate. In those instances, KADI will identify the appropriate period on a case-by-case basis. If actual production data for the relevant period are not available, production levels may be established on the basis of alternative data that KADI determines to be indicative of production levels. For some industries or firms, shipment data may correspond directly with production data and, thus, be deemed to be a reliable alternative.

As noted above, during the pre-initiation review period for an application, interested parties other than the applicants may only comment on the question of industry support and on scope or like product as related to the calculation of industry support. If KADI receives substantive information on any subject other than industry support, KADI will consider it to be inappropriately filed and will return it to the party that filed it, noting such.

2.2 Like Product

As described above, KADI will determine whether an application has been filed by or on behalf of a domestic industry. “Industry” can be defined as “the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.” Therefore, in order to determine whether there is adequate industry support for the application, it is necessary to identify the domestic like product and then examine that industry’s production.

When filing an application, the applicant is required to include a detailed description of the merchandise that will be covered under the investigation. This detailed description generally defines the scope of the investigation and should include the technical characteristics and uses of the merchandise and its current international harmonized system (HS) classification number as defined to the level of detail appropriate and available for Indonesia. A single investigation involves a single like product.

The focus of the scope should be on the physical characteristics of the merchandise rather than the end use of the product. Criteria that KADI may rely upon in making the determination are, among others, 1) physical characteristics and uses; 2) interchangeability; 3) channels of distribution; 4) customer and producer perceptions; 5) common manufacturing facilities, processes, and employees; and 6) price.

In evaluating the application’s proposed scope language, KADI should attempt to ensure that the scope of an investigation is defined as accurately as possible and that products in which the affected industry has no interest are removed or not included in the scope of the investigation. KADI should perform two procedures when analyzing a proposed scope:

- If the applicant seeks pre-application filing consultations, KADI should ensure that the proposed scope of the application is an accurate reflection of the product for which the domestic industry is seeking relief.
- KADI should designate a period early in the investigation for interested parties to raise issues regarding product coverage. In most cases, this comment period is the 20-day period following publication of the notice of initiation.

In addition to reviewing whether an application's proposed product scope language is overly inclusive, KADI shall try to ensure that:

- the description of the product is not so narrow that obvious circumvention issues could arise in the future should a countervailing duty be imposed.
- the merchandise is not being defined in an artificially narrow manner for industry support purposes, and
- the merchandise is not covered by an existing countervailing duty order.

Unless KADI finds the applicant's definition of the domestic like product to be inaccurate, KADI will adopt the domestic like product definition set forth in the application.

2.3 Sufficient evidence of a countervailable subsidy

A CVD investigation is initiated if there is at least one subsidy program alleged for which there is sufficient evidence that the subsidy is countervailable. Two considerations to note:

- Subsidies are initiated upon on a *program-by-program* basis. For example, if the application contains an allegation that a foreign exporter receives tax subsidies and electricity subsidies, KADI may initiate a case based on one allegation, but not the other. Which alleged programs are contained in the initiation shall be made clear in the written determination and notices of the initiation.
- Subsidies are initiated upon on if there is sufficient qualitative evidence that the subsidy is countervailable with respect to the subject product. In other words, there need not be, at this stage, sufficient quantitative evidence for a subsidy rate to be calculated.

The required elements for initiation are contained in the checklist in Appendix B. Upon initiation, KADI must provide public notice of the initiation, including the countries and products involved, a description of the alleged subsidies under investigation, and a likely timeline for the investigation.

3. Questionnaires

KADI will issue questionnaires, including possibly supplemental questionnaires, to interested parties as appropriate. Special care must be taken to ensure the confidentiality of non-public responses as outlined below (see number 10, Confidentiality, below).

3.1 Interested Parties

Interested parties in a CVD case that receive a CVD questionnaire include the foreign government(s) that allegedly provided the subsidy and the foreign producers and/or exporters that allegedly received the subsidy. The questionnaire must be tailored to the recipient.

If the number of alleged recipients of the subsidy is large and sending questionnaires to each is determined to be impractical, KADI should select from the largest entities and also select from a statistically reasonable sample of the remaining entities. Caution is given to not rely too much on the respondents to identify questionnaire recipients although they may be consulted in this regard.

3.2 Questionnaire Content

The questions asked in a CVD questionnaire are highly dependent on the nature of the alleged subsidy.

3.2.1 Alleged subsidy recipients

In addition to the specific data required to perform the calculations outlined in section III (Methodological Aspects), each questionnaire to alleged subsidy recipients should seek information regarding:

- a. Corporate structure, including the location of manufacturing and distribution facilities by product.
- b. Product line, including products not subject to the investigation. The benefit from the alleged subsidy may properly be allocated (“spread”) over both the subject product and non-subject products.
- c. Value and volume for each product line identified above. These values should be at the factory (factory gate) point of trade but, in any case, the point of trade for the submitted data needs to be specified. The time period for determining relevant value and volume is the period of investigation.

3.2.2 Alleged subsidy providers (governments)

Government questionnaires will generally seek information regarding the provision of the subsidy to the alleged recipients as well as to other recipients, even those in other industries (in order to determine the specificity of the subsidy,

as discussed in section III, number 3, Specificity, below). For each alleged subsidy program, the questionnaire should seek information regarding:

- a. The legal basis on which the subsidy was provided, with reference to specific citations to laws, regulations, administrative determinations, and/or government transactions.
- b. The government entity or entities responsible for determining subsidy recipients, approving transactions and transferring the funds or setting the terms of the allegedly subsidized transaction (examples of the latter include loans, tax benefits, and provisions of good or services).
- c. The amounts of the subsidies (or other relevant quantifiable measures, such as the amount of loans or tax credits claimed) by recipient and by date.

In certain circumstances other information may be required:

- If the alleged subsidy is being investigated as an export subsidy, the questionnaire should request the government to provide the total exports of the subject product to all markets for the period of investigation.
- The questionnaire should request the annual average corporate-borrowing interest rate (and its definition, such as “prime rate charged by banks to their best customers”) for the industry under investigation for any year in which there is either a subsidized loan under investigation or the provision of a non-recurring subsidy (see part III, number 4, Benefit, below).

The government questionnaire should also address any other information that would facilitate the creation of the required *subsidy benchmarks* needed for calculations under part III, number 4, Benefit, below. For example, if the government is alleged to be selling widgets to a company for below the prevailing market price, the questionnaire should ask for widget prices in the country from sources other than the government as well as what prices are being charged other widget customers by the government.

Note that “subsidy providers” may include local or regional governments. Such governments may also be issued questionnaires tailored to their alleged role in subsidization. Moreover, in the case of an indirect subsidy, the intermediate party in the subsidization process may be issued a questionnaire. For example, if the government mandates that a private bank provide a non-commercial loan to an alleged subsidy recipient, then a questionnaire may be issued to that bank.

3.3 Questionnaire Timing

KADI should usually give respondents 20 weekdays from the issuance of the questionnaire to complete and submit. Extensions can be granted, upon receipt of a letter explaining a reasonable justification, for no more than 14 days. For

supplemental questionnaires, the deadline should depend on the time remaining before a provisional determination or verification. Generally, extensions should not exceed four days.

4. Information Relied Upon and Verification

The information derived from the questionnaires, and from whatever relevant information KADI chooses to rely upon, is then processed pursuant to the methodological formulas presented in section II, below. If for any reason the responding interested parties fail to provide information requested by the questionnaires, KADI may use other *facts available* in place of the missing information. If the respondent has not cooperated to the best of its ability in supplying information, KADI can make an *adverse inference* from all facts available, choosing which facts to use. The potential use of adverse facts available gives respondents an incentive to cooperate fully in providing the information requested by KADI.

KADI has the right to *verify* all the information provided in response to the questionnaires, should it choose to do so. The procedures for such verification are parallel to those in an antidumping investigation and the formalities of notifying and interacting with the foreign parties must be strictly adhered to, as defined in Article 12.6 and Annex VI of the ASCM. In the case of a CVD investigation, the allegedly subsidizing government(s) may also be verified under the same procedures.

In addition to the questionnaires issued by KADI, the record in an investigation or review will likely contain numerous documents submitted by the domestic and foreign interested parties to the proceeding. The types of documents submitted by applicants and respondents include: submissions of factual information, comments on KADI's methodology, legal arguments, case briefs and rebuttal briefs.

Throughout the proceedings, counsel to the parties may request meetings with the analysts and case managers in KADI to discuss issues as they develop. When KADI analysts and/or case managers meet with outside parties, a memo is written to document what issues are discussed. Prior to the final determination, interested parties may request that hearings be held on the arguments addressed in the briefs submitted by the parties.

Copies of all written communication and records of all telephone calls and meetings with interested parties to the investigation are placed in the record of the proceeding.

5. Provisional Measures

Under Article 17.3 of the ASCM, the Government of Indonesia may impose provisional countervailing duties no earlier than 60 days (8 or 9 weeks) after the initiation date. Moreover, provisional measures may remain in place no more than four months (about 16 weeks) under Article 17.4 of the ASCM until either duties are removed or definitive measures are adopted. To avoid a forced lapse in duties while remaining ASCM conformant, KADI should seek make its recommendation regarding the provisional countervailing duty on or around the 36th week on the timeline contained in Appendix C,

if the goal is to impose definitive measures within the 12-month timeframe under ASCM recommendations.

The amount of the provisional countervailing duty is equal to or less than that calculated in accordance with the subsidy rate found in accordance with section III.

6. Hearings and Briefing

Prior to the definitive determination, interested parties may request that hearings be held on the arguments addressed in the briefs submitted by the parties. If such hearings are held, public notice should be issued at least 15 weekdays prior to the hearing to allow time for interested parties to participate. The ASCM mandates that all decisions be based on written evidence only; oral argumentation and evidence must be reduced to written form before it can be relied upon for a KADI decision.

Interested parties may submit *case briefs* within 40 days after the preliminary determination in an investigation unless KADI decides otherwise. The case briefs must be submitted to KADI one week prior to any hearing in order to be considered for inclusion in the case record. Interested parties may submit *rebuttal briefs* in response to others' case briefs within 10 days after the time limit for filing the case brief unless KADI alters this time limit. As part of their case brief and rebuttal briefs, parties should provide a summary of their arguments not to exceed five pages as well as a table listing their legal citations/authorities and the factual basis for their arguments. Case briefs must contain all arguments the parties believe are relevant so that KADI has the opportunity to address these issues in the definitive determination recommendation. Rebuttal briefs may only address issues raised in the case briefs.

7. Definitive Measures

In case of any revisions (subject to the methodologies set out in section II, below) to the provisional countervailing duty rate calculation based on additional evidence and arguments gathered subsequent to its provisional determination, KADI will recommend a definitive countervailing duty (if any) to allow the government of Indonesia to impose such a measure within the 12-month (or in special cases, the 18-month) timeframe mandated by ASCM Article 11.11.

Extension of the investigation beyond the 12-month timeframe should only be undertaken upon a positive determination, in writing and notified to the public, by KADI that the investigation is a "special case," giving the reasons for such determination.

8. Reviews

Each year upon the anniversary of the definitive measure, a review may be requested by an interest party to determine 1) if the extent of subsidization has changed since the imposition of the countervailing duty or since the prior review period and 2) the actual amount of countervailing duties to be assessed on the imports of subject product from each producer or exporter being reviewed. Following the same procedural and methodological processes as for an investigation (except without the imposition of a

provisional duty), KADI will determine the new subsidy rate and countervailing duty to recommend.

9. Notifications and consultations

KADI must deliver a public version of the application immediately (within two days) to the embassy of the country allegedly providing the subsidy. As soon as possible after an application is accepted, and in any event before the initiation of any investigation, foreign governments of the subject products shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

Furthermore, throughout the period of investigation, foreign governments, the products of which are the subject of the investigation, shall be afforded a reasonable opportunity to continue consultations with a view to clarifying the factual situation and to arriving at a mutually agreed solution. KADI must also, on request, provide a public summary of the state of the proceedings to such governmental interested parties.

When KADI analysts and/or managers meet with outside parties, a memo is written to document what issues are discussed. Copies of all written communications and records of all telephone calls and meetings with interested parties to the investigation are placed in the record of the proceeding.

Public notice of the state of the proceedings, with detail sufficient for interested parties to understand the factual situation with regard to their rights under the proceeding, shall be given at five stages (or more if appropriate): initiation, provisional determination, holding of public hearings, definitive determination, and the commencement of reviews.

10. Confidentiality

An interested party is permitted to claim confidential treatment for certain information (for example: interest rates paid, sales market destinations, etc.) in its filings, including applications, questionnaire responses, briefs, etc. This information is typically enclosed in single brackets with spaces after and before the brackets, for example: [**XXX**]. This information must be accompanied with an explanation as to why each bracketed entry is entitled to confidential treatment.

KADI may choose to not accept the information as being justifiably confidential. Such information is not accepted for the case record in the case but is not to be disclosed as public information for any purpose.

III – Methodological Aspects

The purpose of the CVD methodology is convert the alleged subsidy amount (typically expressed in currency terms, such as “ten million Euros to company X”) into a subsidy rate (typically expressed as a percentage, such as “10 percent of the import price of company X’s product.”) The alleged subsidy must be shown to meet the three basic criteria for being a countervailable subsidy as established by the ASCM. The first two of these are addressed in numbers 2 and 3, below, of this section. Whether the third criterion is met – that the product benefited from the subsidy – emerges from the calculations addressed in numbers 4 and 5, below.

Because there is a wide variety of possible ways for a government to subsidize a company, there is no single technique for measuring all subsidies. Thus, numbers 4 and 5 regarding the calculation of the benefit and then the subsidy are an attempt to 1) cover the most widely used forms of subsidization and 2) provide some conceptual principals regarding such calculations if other forms of subsidization are encountered.

Most subsidy programs employed around the world that affect exports to Indonesia have been investigated by the CVD authorities in the United States and/or the European Union. Detailed examinations of these subsidy programs, which often benefited products other than those KADI may be investigating and were therefore analyzed for other purposes by these other CVD authorities, can provide nearly ready-made determinations of the “financial contribution” and “specificity” elements covered in numbers 2 and 3, below. Such analysis and determinations can be found at:

- For the EU: www.ec.europa.eu/trade/issues/respectrules/anti_subsidy/stats.htm. Click on the words “by clicking here” found at beginning of the discussion on the web page. This will provide a list of all EU CVD cases and links to written determinations, at each phase, in which financial contribution and specificity are discussed.
- For the US: www.ia.ita.doc.gov/esel/eselframes.html. Enter a country of interest and then follow the on-screen instructions, noting that the user may filter the type of subsidy several ways as shown on the upper left portion of the screen. In addition, cites for entire online written determinations are also available through this website.

Even if the exact subsidy program KADI is investigating has not been examined by other authorities, similar programs almost certainly provide guidance on how KADI should make “financial contribution” and “specificity” findings in its own investigations.

1. Investigation Period.

The *investigation period* is the period during which KADI is attempting to measure the degree of subsidization of the subject product. Typically, the period addressed is the most recently completed fiscal year of the subsidy recipient. Other time periods can be used if they are more practical or deemed to be more representative.

Note that because the benefits of some types of subsidies are long-lived (such as long-term loans and “non-recurring” grants, as discussed in number 4), KADI will sometimes

need to investigate subsidies given prior to what is called the “period of investigation” and therefore, the term when used in a CVD context is somewhat misleading.¹⁶

2. Financial Contribution¹⁷

There is a *financial contribution* by a government or any public body within the territory of a foreign country whenever any of the following occurs:

- a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion) or potential direct transfers of funds or liabilities (e.g. loan guarantees);
- government revenue that is otherwise due is forgone or not collected (e.g. fiscal incentives such as tax credits);
- a government provides goods or services other than general infrastructure or purchases goods; or
- a government makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions illustrated in the three items above which would normally be vested in the government and the practice differs, in no real sense, from practices normally followed by governments.

In other words, if there is virtually any government role in bringing about a benefit to a producer or exporter, there is a “financial contribution” even if the government itself is not expending funds. An example would be a situation when a government directs a private bank to make a non-commercial loan. This is an important point: subsidy amounts need not be related to the cost to the government of providing the subsidy. Note, too, that the government need not be the central government and can be a regional or local government or even a government-sponsored independent public body.

There can also be considered to be a “financial contribution” if there is any form of income or price support in the sense of Article XVI of GATT 1994 although these are rare.

¹⁶ The term emerges from an antidumping context in which all the relevant information comes from the “period of investigation,” meaning the year investigated to determine the degree of dumping in that year. Here, the goal is similarly to determine the degree to which the product is subsidized in the “period of investigation,” but this may require examining an earlier period in which the subsidy generating the benefit was given.

¹⁷ This requirement is articulated in Article 1 of the ASCM.

3. Specificity¹⁸

Overall, a subsidy is specific if it is not available or provided to the entire production side of the economy or to a reasonably large segment thereof, such as “all manufacturing,” “agriculture,” or “small businesses.” As noted below however, “all exporters” is deemed to be specific. A carefully defined but nonetheless distinct group, such as “heavy chemical, plastics, semiconductors, aviation, and automobiles” is specific. As the ASCM rules define the decision process, a subsidy is specific if any of the following conditions are present:

- where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;
- 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. For the purpose of this paragraph, objective criteria or conditions mean criteria or conditions which are neutral, which do not favor certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise. These criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification;
- if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs above, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy program by a limited number of certain enterprises; predominant use by certain enterprises; the granting of disproportionately large amounts of subsidy to certain enterprises; and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance and subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods are deemed to be specific notwithstanding any other of the criteria above.

4. Benefit

There is a difference between the amount of the “subsidy” and the amount of the “benefit” on the product in question. For example, if the government provides \$1 million dollars per year to a company to make 1,000 widgets for 10 years, the benefit on each widget is \$100. The goal of the benefit methodologies is to determine the benefit from various types of subsidies.

¹⁸ This requirement is articulated in Articles 2 and 3.1 of the ASCM.

Any application fee to receive the subsidy shall be subtracted from the total benefit amount found.

4.1 Basic subsidy benefits

Where the subsidy is provided in form of a grant, the amount of the benefit is the amount received by an enterprise. Where the subsidy is granted in the form of an equity infusion or other such capital participation on terms not reasonably available in normal capital markets, the amount of the subsidy shall be calculated on the basis of the actual amount of the capital the enterprise receives. In either case, this benefit shall be allocated entirely to the year in which it was provided unless it meets the criteria for allocation over time, as discussed in number 4.5, below.

4.2 Loan benefits

Where the subsidy is granted in form of a loan, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise would pay on a loan under ordinary commercial loan conditions and the amount of interest the enterprise pays on this loan, taking due account of differences in contract terms, such as loan length, collateral held and the risk profile of the borrower.

To determine the amount of the benefit in the period of investigation, perform the following calculation twice, once in which “d” is the enterprise’s average cost of borrowing at the time of the receipt of the loan (the “benchmark interest rate”) and once in which “d” is the actual (allegedly subsidized) interest rate on the loan. The difference between the two results for “Ak” is the amount of the benefit in the period of investigation.

$$A_k = \frac{y}{\left[\frac{1 - \frac{1}{(1+d)^n}}{d} \right]}$$

Where:

- A_k = Benefit in POI (year k).
- Y = Amount of the loan.
- d = Interest rate.
- n = The life of the loan.

Where the subsidy is granted in form of a loan guarantee, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise would pay on a commercial loan, absent such guarantee, and the amount of interest the enterprise actually pays on a loan guaranteed, taking due account of terms as noted above.

For loans and loan-related benefits, the benefit in the period of investigation is that period's cost reduction as result of receiving the loan; thus, benefits expire when the loan expires.

4.3. Goods and services

Where the subsidy is granted in form of the provision of goods or services, the amount of the subsidy shall be calculated on the basis of the difference between the price of the goods or services at normal market price and the price that an enterprise actually pays.

Where the subsidy is granted in form of purchase of goods, the amount of the subsidy shall be calculated on the basis of the difference between the actual price the government pays and the normal market price of the goods determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

4.4 Tax benefits

Where the subsidy is granted in form of forgoing or not collecting due revenue, the amount of the subsidy shall be calculated on the basis of the difference between the amount payable under generally applicable law for similarly situated enterprises and the actual amount the enterprise pays.

4.5 Non-recurring or long-lived subsidies

In the case of large-scale benefits, particularly under number 4.1 above, relative to the size of the enterprise in terms of assets or sales, or benefits demonstrably attributable to the acquisition of long-lived assets, the total benefit shall be allocated

- (i) over the average depreciable life of enterprise assets, but for no more than 10 years,
- (ii) using the enterprise's average cost of borrowing to determine the annual benefit, using the following formula:

$$A_k = \frac{y}{\left[\frac{1 - \frac{1}{(1+d)^n}}{d} \right]}$$

Where:

A_k	=	Benefit in the period of investigation (year k).
Y	=	Amount of the total subsidy benefit
d	=	Enterprise's average cost of borrowing at the time of the receipt of the benefit.
n	=	Life of enterprise assets.

5. Subsidy Rate

Each producer or exporter investigated is given its own *subsidy rate* and the ultimate countervailing duty rate must be at or below this level. For each subsidy program, to determine the subsidy rate in the period of investigation (POI) on the subject product, divide the POI benefit “numerator” found in number 4, above, into the sales of all (not just subject) products “denominator” that are found to have benefited from the subsidy.

For example, if an automobile manufacturer receives a \$10 million tax benefit in the POI and has \$100 million in sales of both cars (\$50 million) and trucks (\$50 million), but the CVD case is against cars, not trucks, the subsidy rate on cars is nonetheless 10 percent because it can be considered that cars benefited from only one-half of the \$10 million tax break with trucks receiving the other half (allocation done on the basis of sales value). If only \$2 million of those cars were shipped to Indonesia, the subsidy rate is still 10 percent on those exports.

Thus, the subsidy rate “denominator” is sales of all products that benefit from the subsidy, not just the subject product.

The resulting subsidy rate must equal or exceed 1.0 percent *ad valorem* or 2.0 or 3.0 percent in the case of certain developing countries described in ASCM Article 27, (the categories of countries changes and thus reference to the ASCM and its referenced lists is necessary for each investigation).

Appendices to
Manual on Countervailing Duty
Procedures and Methodology

Appendix A

Countervailing Duty Application: Guidance and Format¹⁹

Introduction

The purpose of this guide is to explain how to draft an application to Indonesia's Ministry of Trade and its Antidumping Committee (KADI) for a countervailing duty investigation into a particular product imported into Indonesia. A recommended format for doing so is provided.

This guide sets out the information needed for KADI to decide whether to open a formal investigation on allegedly subsidized imports which are causing injury to an Indonesian industry.

By guiding the potential CVD applicant through the contents and form of an application, KADI hopes to clarify many of the questions that may arise during the drafting of such a document. However, this guide is not a legally binding document; moreover, its contents are not compulsory. It is meant only to provide advice to the applicant who may choose to take another approach that may seem more reasonable at any time. Therefore, no conclusions can be drawn from this document as to what constitutes standards of acceptability in KADI applications. Equally, the use of this guide in drafting an application does not imply the automatic acceptance of the application.

KADI personnel will endeavor to answer any queries regarding the filing of a CVD application. Once the application has been drafted, KADI will evaluate the application and decide whether it contains sufficient evidence of subsidization. If deemed acceptable, an investigation concerning the allegedly subsidized imports will be initiated within 30 days from the filing of the application. If you experience difficulties during the drafting of the application, do not hesitate to contact KADI informally at any time. Complainants are advised to meet with KADI officials before formally submitting an application in order to discuss its contents and to clarify the procedure to be followed.

Documentation

Applicants should provide full and accurate information and wherever possible, give supporting documentary evidence from commercial or governmental sources. All sources of data used should be stated clearly. KADI's standard for initiation is whether the applicant has relied upon all the information reasonably available to the applicant.

Confidentiality

Information submitted in an application is treated as strictly confidential by KADI. In order that all parties to a proceeding may defend their interests, a public, non-confidential version

¹⁹ For injury elements of a CVD investigation, the injury element of the existing application for antidumping cases ("INDONESIA ANTIDUMPING COMMITTEE GUIDANCE TO THE ANTI DUMPING INVESTIGATION REQUEST") should be added.

of the application must be submitted at the same time as the confidential version. The public version shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

The public version should show the trends and/or levels which the confidential data depict by using indices. For example:

Confidential version – Sales volumes in tons: 25,000 23,750 19,700

Public version – Sales volume in tons: 100.0%, 95.0%, 78.8%

Applicants are asked to provide both the confidential and public versions in the form of hard copies and also on electronic media if possible.

Parts of a CVD Application

A CVD application should provide the following information.

1. Applicant.

The name, address, telephone and fax numbers, and contact person of the applicant should be given. The applicant can be any natural or legal person or association not having legal personality which has been created to represent individual companies supporting the application.

2. Representativeness of the applicant.

The applicant must act on behalf of a major proportion of the industry in Indonesia. The complainant must state that: (i) it is acting on behalf of the Indonesian industry of the product concerned and (ii) the portion of Indonesian industry represented accounts for a major proportion of total Indonesian output.

An applicant has support of a “major proportion” of total Indonesian output when: (i) the production of the companies supporting the application accounts for more than 50 percent of total Indonesian production (i.e. production of the product concerned in a recent period) or (ii) the production of the companies supporting the application accounts for more than 25 percent of total Indonesian production and this portion is larger than the percentage of production of producers of the product concerned which express opposition to the application. In short, support for the application should be larger than opposition to it and not less than 25 percent of total production.

The production quantities of Indonesian producers that are related to exporters/importers may be excluded from the total Indonesian production when assessing representativeness. Indonesian producers can be considered to be related to exporters or importers when one of the parties is legally or operationally in a position to exercise restraint or direction over the other.

3. Allegedly subsidized product of concern.

Identifying the product affected by the imports is essential as it defines the scope of the proceeding. Within the product, there may, of course, be different varieties which share similar characteristics and are thus relatively interchangeable. The product concerned, covering all its different varieties, will be the product considered in the proceeding. The following information should be provided:

- **Product definition.** This is a short definition which, quoted in legal texts, will precisely depict the scope of the proceeding. It may (or may not) be the definition stated in the relevant product codes for international trade (harmonized system, or HS) or other industry coding systems. It should be borne in mind that the customs authorities should be able to identify whether an imported product falls under the scope of the proceeding on the basis of such a definition.
- **Product description.** This will include: HS codes, a general description, a physical description, a description of the uses of the product and its market, sales channels, and types of the product concerned.

4. Countries of origin/export.

A CVD application concerns imports of products “originating in” one or more countries. For each country, the name and address (together with telephone and fax numbers if available) of the known producing/exporting firms should be provided. If products originating in the countries concerned are also being exported to Indonesia via another country which has no production of the product concerned, this exporting country should be stated, together with its known exporters.

5 Other known parties concerned.

For each known importer of the product concerned, state the name and address (together with telephone and fax numbers, if available). Please include details of the names and addresses of the main users/consumers and their respective associations, where known.

6 Subsidization of the product of concern.

Sufficient evidence must be provided of the existence of countervailable subsidies (including, if possible, of their amount). A subsidy is subject to countervailing duties where it is granted, either directly or indirectly, for the manufacture, production, export or transport of any product whose import into Indonesia causes injury.

A subsidy has the following three elements:

- (i) a financial contribution by a government (meaning almost any direct or indirect contribution of a government) of the country of export that confers a benefit to the producer, trader or exporter of the subject product;

- (ii) is specific (in other words, limited in law or in fact) to an enterprise or industry or group of enterprises or industries. A subsidy will always be specific when it is conditional on export performance or where it is conditional on the use of domestic goods over imported goods; and
- (iii) benefits the producer, trader, or exporter of the subject product in a way that benefits the product.

The application should identify, for each alleged subsidy, evidence that each of these three elements is present. Precise calculations of the amount of the subsidy are not necessary, but sufficient evidence that each element exists *is* necessary.

Such subsidies can include direct transfers of funds (e.g. grants), government revenue foregone or not collected (e.g. tax exemptions), loans on terms more favorable than those provided by the market to such enterprises, or the provision by government of certain goods or services.

Ideally, information from government/public sources should be the basis for demonstrating the existence of subsidies. However, information on subsidies is not always publicly available. In such circumstances, other sources may be used, e.g. extracts from the international press of the availability of subsidies in a particular country, privately financed surveys of the availability of subsidies, etc. More detailed discussion of this issue with KADI may be useful when preparing an application.

If the country has a number of subsidy schemes that can be separately identified, these should be listed, together with a description of how these schemes operate. A calculation of the amount (i.e. benefit to the industry or to specific companies) of the scheme should also be given, if possible.

If the country subsidizes its industry through ad-hoc subsidy measures (e.g. occasional injections of capital or debt write-offs), details of these should also be given, together with details/estimations of the amount of subsidy and benefit to the companies/industry concerned.

Appendix B

Countervailing Duty Case Initiation Checklist

For use by KADI staff for recommending initiation

1. SUBJECT: _____

2. CASE NUMBER: _____

3. APPLICANTS (S):

Name: _____

Location(s)/ Address(es): _____

4. COUNSEL: _____

5. RESPONDENT(S):

Country 1: _____

Producers/Exporters: _____

Country 2: _____

Producers/Exporters: _____

(more as needed)

6. PRODUCT SCOPE: _____

7. IMPORT STATISTICS:

Volume and value of imports for the most recently completed three calendar years:

8. CASE CALENDAR:

Application filed: _____

Initiation deadline: _____

Recommended 12-month definitive measure imposed, if any: _____

9. INDUSTRY SUPPORT: Does the applicants(s) account for more than 50% of production of the domestic like product?

- Yes
- No

If No, do those expressing support account for the majority of those expressing an opinion and at least 25% of domestic production?

- Yes
- No - do not initiate

Was the entire domestic industry identified in the application?

- Yes
- No

Describe how industry support was established - specifically, describe the nature of any polling or other step undertaken to determine the level of domestic industry support.

Was there opposition to the application?

- Yes
- No

Are any of the parties who have expressed opposition to the application either importers or domestic producers affiliated with foreign producers?

- Yes
- No

10. APPLICATION REQUIREMENTS:

Does the application contain the following:

- the name and address of the applicant;
- the names and addresses of all known domestic producers of the domestic like product;

- _ the volume and value of the domestic like product produced by the applicant and each Indonesian producer identified for the most recently completed 12-month period for which data is available;
- _ a clear and detailed description of the merchandise to be investigated, including the appropriate HS numbers as defined by Indonesian product descriptions;
- _ the name of each country in which the product originates or from which the product is exported;
- _ an adequate summary of the confidential information was provided;
- _ a certification of the facts contained in the application by an official of the applying firm(s) and its legal representative (if applicable).

12. ALLEGATION ELEMENTS

For each alleged countervailable subsidy, is there a clear allegation and sufficient supporting evidence of each of the following elements:

- ___ The foreign government provided or played a role in the alleged subsidy. (“Financial contribution”).
- ___ The subsidy was “specific” (meeting any of the criteria of ASCM Articles 2 and 3.1 as elucidated by the relevant Indonesian CVD regulation).
- ___ The subsidy provided a “benefit” to the subject product in the investigation period (typically the most recent closed fiscal year).
- ___ If and only if the subsidy was alleged to have been provided prior to the investigation period, there is evidence that the subsidy was “non-recurring” in nature (large, unusual, and/or tied to the acquisition of physical assets).

The absence of any of these four items implies that the alleged subsidy shall not be initiated upon.

13. RECOMMENDATION:

Based on sources readily available to KADI, we have examined the accuracy and adequacy of the evidence provided in the application and recommend determining that the evidence is sufficient to justify the initiation of a CVD investigation on the following alleged subsidy programs:

We also recommend determining that the application has been filed by or on behalf of the domestic industry.

CVD Case Timeline

Week	Key Event	Activities
1	Receive Application	<ul style="list-style-type: none"> > Establish document control file. > Complete <i>Initiation Checklist</i>. ● > Notify foreign government. ● > Offer consultations.
2		
3		
4	Initiation Decision	<ul style="list-style-type: none"> > Notify interested parties. > Begin drafting questionnaires.
5		<ul style="list-style-type: none"> > Continue drafting
6	Issue Questionnaires	<ul style="list-style-type: none"> > Issue questionnaires.
7		<ul style="list-style-type: none"> > Conduct independent research, if warranted, such as discussed in Part II.
8		
9		
10	Receive Questionnaires	<ul style="list-style-type: none"> > Receive questionnaires. > Check completeness.
11		<ul style="list-style-type: none"> > Draft supplemental questionnaires. > Attempt draft CVD calculation.
12	Supplemental Questionnaires	<ul style="list-style-type: none"> > Issue supplemental questionnaire (if necessary).
13		<ul style="list-style-type: none"> > Conduct other research as needed. 

Week	Key Event	Activities
14		↓
15	Receive Questionnaires	↓ > Check completeness.
16		> Conduct CVD calculations by program by company.
17		↓
18		↓
19		↓
20		↓
21		> Begin drafting provisional CVD recommendation notice.
22		↓
23		> Consult with team (legal, etc.) on key issues of case
24		↓
25		> Circulate draft CVD notice, withdraft CVD calculations.
26		↓
27		> Revise CVD notice, with CVD calculations.

Week	Key Event	Activities
28		↓
29		↓
30		> Obtain approval of CVD recommendation.
31		↓
32		> Arrange verification logistics, including notifications (see Part I) ●
33		↓
34		↓
35		↓
36	Provisional Measures	> Make provisional CVD recommendation.
37		> Issue verification agenda to interested parties to be verified.
38		
39	Verification	> Verification.
40		> Begin drafting definitive CVD recommendation notice.
41		> Set hearing date (upon request) and make notifications.

Week	Key Event	Activities
42		> Review case briefs.
43		> Review case and rebuttal briefs.
44		> Review case and rebuttal briefs.
45	Hearing	> Hearing
46		> Continue drafting definitive CVD recommendation notice.
47		> Obtain approval of definitive CVD notice
48		↓
49	KADI Makes Recommendation	> Obtain approval of definitive CVD notice
50		> Parties notified.
51		
52	Implement Definitive Measures	> Indonesian government imposes duties (may be extended to 18 months) ●