



Seventieth Ordinary Session of the Council of Ministers

Abidjan, 20 & 21 June 2013

**REGULATION C/REG.6/06/13 RELATIVE TO DEFENSE MEASURES TO BE
IMPOSED ON IMPORTS WHICH ARE DUMPED FROM NON-MEMBER STATES
OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES**

THE COUNCIL OF MINISTERS

MINDFUL of Articles 10, 11, and 12 of the ECOWAS Treaty as amended, establishing the Council of Ministers and defining its composition and functions;

MINDFUL of Articles 35, 36, and 37 of the said treaty relating to trade liberalization, customs duties, and the common external tariff concerning all imported products from third countries into member states with the view to establishing a customs union in the community;

MINDFUL of Article 42 of the ECOWAS Treaty which amongst other issues mandating Member States to prohibit the practice of dumping goods within the Community;

MINDFUL of Decision A/DEC.17.01.0 of 17/10/06 on the adoption of the ECOWAS Common External Tariff, notably article 9 of the said decision authorizing the Council of Ministers to determine through a regulation the list of products, tax base, rate and duration of the imposition of the import safeguard tax;

CONSIDERING that anti-dumping measures constitute an additional protection mechanism to protect community production;

DESIROUS of ensuring a smooth implementation of the Common External Tariff by the adoption within this framework of a mechanism for the application of the Import safeguard tax, and in this regard, adopt anti-dumping measures

ON THE PROPOSAL of the 13th meeting of the joint ECOWAS-UEMOA committee for the management of the ECOWAS common external tariff held in Dakar on 29-30 April, 2013;

ON THE RECOMMENDATION of the 52nd session of the Technical Committee on Trade, Customs, and Free movement held in Dakar, on 02-03 May 2013;

ENACTS

GENERAL PRINCIPLES

Article 1: Definitions

For the purpose of this Regulation:

ECOWAS means Economic Community of West African States the establishment of which was reaffirmed by article 2 of the revised treaty signed in Cotonou on 24 July 1993;

Commission means the ECOWAS Commission created by article 17 of the ECOWAS Revised treaty as amended by Supplementary Protocol A/SP1/06/06 on the amendment of the said treaty;

Community means the Economic Community of West African States, the creation of which was reaffirmed by article 2 of the Revised Treaty signed in Cotonou on 24 July 1993;

Member State: Member State of the Community;

Third countries: countries other than Member States of the Community;

Exporting country: This is the country of origin. However, it could be an intermediate country, except when the product is in transit through that country, when the product in question is not manufactured there or when there are no comparable prices for the product in that country.

Like Product: Identical product, similar 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 to the Community industry, threat of material injury to the Community industry or material retardation of the establishment or development of such an industry and shall be interpreted in accordance with the provisions of this Article.

Community industry: Community producers as a whole of like products or those of them whose collective output of the products constitutes a major proportion of the total Community production of those products. However, when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers. Producers shall be considered to be related to exporters or importers only if:

- a) one of them directly or indirectly controls the other; or
- b) both of them are directly or indirectly controlled by a third person; or
- c) together they directly or indirectly control a third person provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Community's territory: all the territories of the Member States; in certain circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

- ✓ the producers within such a market sell all or almost all of their production of the product in question in that market; and
- ✓ the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major portion of the total Community industry does not suffer injury, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such a market.

Books: all documents kept in an enterprise retracing all the costs relating to commercial operations and the production of the product being considered.

Section 2 – DETERMINATION OF DUMPING

Paragraph 1 – Principles

Article 1

An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury or threatens to cause injury to a Community industry or if it causes substantial delay in the creation of an industry within the Community.

Article 2

A product imported from a third party country is considered to constitute dumping when it is introduced into the community at a price that is less than its normal value which corresponds to a comparable price during normal trade for a similar product meant for consumption in the exporting country.

Article 3: Condition for the imposition of anti-dumping measures

An antidumping measure can only be imposed by competent authorities of the Commission on articles imported from third-party States if they are in conformity with article (vi) of the General Agreement on Tariffs and Trade (GATT) of 1994, and of the Agreement on the implementation of article (vi) whose terms and conditions are reiterated in the present Regulation. The authorities referred to in the first clause will initiate, if need be, an investigation to determine:

- A. that the product referred to constitutes dumping;
- B. that a Community industry has suffered injury or has come under threat of injury, and
- C. that there is a link between the injury caused or the threat of injury and the importation constituting dumping.

Paragraph 2 – Calculation of normal value

Article 4: Normal value

The normal value of a product is determined in accordance with whether the product comes from a market-economy country or from a non-market economy country in accordance with the rules defined in articles 5 to 11 here-below.

Article 5: Importation

In the case of importations coming from market-economy countries, the normal value is the price paid or payable, in the ordinary course of trade, by independent customers in the exporting country. Where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers. Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

Article 6: Like product

1. When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation or of low sales volumes in the local market of the exporting country such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the export prices, in the ordinary course of trade, to an appropriate third-party State, provided that those prices are representative, or on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits.
2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5 % or more of the sales volume of the product under consideration to the Community.

However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

Article 7:

Sales of a like product in the local market of the exporting country or sales to a third-party State at prices less than the retail production price (fixed or variable) increased by administrative and commercialization costs and costs of a general nature cannot be considered as inconsequential during normal trade because of their price and cannot be ignored when the normal value is being determined unless it is found that such sales are made:

- a. Over a period of six months or at most less than twelve months;
- b. In substantial quantity, and
- c. At prices that do not allow all the costs to be covered within a reasonable time limit. If the prices which are less during sales are higher than average unit prices during the period of investigation it is deemed that the prices help to cover the costs within a reasonable time limit. It is taken that sales at prices less than unit costs are made in substantial quantities during the period envisaged in paragraph (a) above, *when it is established that the average sales price is less than average unit of any cost or that the volume of sales at prices less than unit cost does not represent less than 20% of the sales used to determine the normal value*

Article 8: Calculation of cost relating to considered or similar products

1. Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration. Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production. If during the period covered by the investigation, costs are affected by the operation of the takeoff of a production, the adjustment takes account of the cost at the end of the period of the takeoff or, if that period is longer than the period covered by the investigation, the most recent cost supplied in the three months starting from the time the investigation was opened.

2. The amounts for selling, for general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:
 - a. the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
 - b. the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
 - a. any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

Article 9: Determining the normal value for imports from non-market economy States

In the case of imports from non-market economy countries, especially from planned economy countries, the authorities responsible for investigation may, to the extent that they consider the methods for determining the normal value as specified in the present regulation to be inappropriate, determine the normal value on the basis of:

- a) a comparable price paid or payable, in the normal course of trade, during the sale of a like product meant for sale in an appropriate market-economy third party State;
- b) a comparable price paid or payable, in the course of normal trade, for the export of a like product coming from a market-economy third party State;
- c) the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin corresponding to the margin expected from the sector being considered given present economic circumstances;
- d) any other reasonable basis.

Article 10 :

An appropriate market-economy third party State shall be selected in a reasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time-limits; where appropriate, a market-economy third party State which is subject to the same investigation shall be used. The parties to the investigation shall be informed shortly after its initiation of the market-economy third-party State envisaged and shall be given 15 days from the date of receipt of notification to present their comments.

Article 11:

The provisions of articles 5 to 8 above may be applied in relation to firms of a non-market economy facing an investigation on the request, made in writing and containing sufficient evidence, of one or more producers, that the producer operates under market economy conditions, where:

- ✓ the decisions of the firms regarding the factors of production and trade policies are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values;
- ✓ the firms have one clear set of basic accounting records which are independently audited in line with international accounting standards;
- ✓ the production costs and financial situation of the firms are not subject to significant distortions due to their situation in relation to the State;
- ✓ the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms. A determination whether the producer meets the above-mentioned criteria shall be made within three months of the initiation

of the investigation, after specific consultation of the Advisory Committee and after the Community industry has been given an opportunity to comment. This determination shall remain in force throughout the investigation.

Paragraph 3 – Determining the export price

Article 12:

1. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.
2. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed:
 - a. on the basis of the price at which the imported products are first resold to an independent buyer, or,
 - b. if the products are not resold to an independent buyer, or are not resold in the condition in which they were imported, on any reasonable basis which may be determined by competent authorities.

Article 13:

In case where the export price is constructed, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation.

Paragraph 4 – Determining the margin of dumping

Article 14:

A fair comparison shall be made between the export price and the normal value.

This comparison shall be made at the same level of trade and in respect of sales made at, as closely as possible, the same time and with due account taken of other differences which affect price comparability.

Where the normal value and the export price as established are not on such a comparable basis, due allowance in the form of adjustments shall be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability.

When the specified conditions are met, the factors for which adjustment can be made are conditions of sale, taxation, level of trade, quantity, physical characteristics and all other elements which are necessary to ensure fair comparability, provided that adjustments already made are not repeated.

Article 15:

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except when a sale of foreign currency on forward markets is directly linked to the export sale involved, in which case the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of

invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

Article 16:

The dumping margin is the amount by which the normal value is greater than the export price. When the dumping margins vary, an average weighted dumping margin perhaps based on a comparison of an average weighted value with average weighted price of all export to the Community.

However a normal value worked out on a weighted average can be compared to export transactions considered individually, if the configuration of export prices is remarkably different between different buyers, regions or periods and if an explanation is given as to why it is not possible to duly take into account such differences by using a weighted average to weighted average comparison or a transaction to transaction comparison.

Section 3 – Determination of the existence of injury and a causal link

Paragraph 1 – Determining the existence of injury

Article 17:

A determination of injury shall be based on positive evidence and shall involve an objective examination of:

- a. the volume of the dumped imports ;
- b. the effect of the dumped imports on prices in the Community market for like products; and
- c. the consequent impact of those imports on the Community industry.

Article 18:

With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree.

Article 19:

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:

- a. the margin of dumping established in relation to the imports under investigation from each country is more than *de minimis* as defined in Article 30 of this regulation and that the volume of imports under investigation from each country is not negligible within the meaning of the same article
- b. a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

Article 20 :

1. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including:

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

This list is not exhaustive, nor can any one or more of these factors necessarily provide decisive guidance.

- 2. The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 21 :

- 1. The threat of injury shall be established by any foreseen and imminent index of danger of significant injury to a Community industry and whose probability of occurrence is demonstrated based on facts and not merely on an allegation, conjecture or remote possibility.
- 2. Regarding the indices which may characterise the threat of material injury, consideration should be given to such factors as :
 - a. a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;
 - b. freely disposable production or exportation capacity of the exporter which surpasses the level required to meet its local needs or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;
 - c. whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and
 - d. Comparative development of growth in market share represented respectively by importations constituting dumping and the production in the community of the same product or similar product denoting an actual or potential decrease of profitability of the Community industry;
 - e. inventories of the product being investigated.
- 3. If each of the indices which could characterise injury within the meaning of this article is to be specially investigated, none among them constitutes in principle a determining basis for judgment. However one or only some of these indices can suffice to demonstrate that other importations which constitute dumping are imminent and that an important injury will occur if defensive measures are not taken.
- 4. When the complaint is based only on one or some of the indices which could characterise the threat of injury within the meaning of the present article, the Commission may invite exporters/producers mentioned in the complaint to stay their own side within 15 days from when they are invited, on the existence, relevance and the consequences of the indices and on the threat of the alleged injury. If on the basis of the complaint and the consultation eventually undertaken the injury is proved, the Commission will envisage and decide with special care, the application of antidumping

measures within the emergency procedure referred to in article 31 of the present regulation.

Paragraph 2 – Determining the existence of a causal link

Article 22 :

1. It should be demonstrated with all the relevant elements of proof presented, that the importation constituting dumping causes injury within the meaning of the present regulation. In this case, it involves demonstrating that the volume and/or the level of prices referred to in article 17 have an impact on the Community industry and that the impact is such that it could be considered to be significant;
2. Known factors, apart from importations constituting dumping which at the same time cause injury to the Community industry, are also investigated in a way that the injury caused by the factors are not attributed to importations constituting dumping. Factors that can be considered as relevant in that respect include, among others:
 - a) volume and prices of importation that are not sold at dumping prices;
 - b) the shrinking of demand or the adjustment in the configuration of consumption;
 - c) restrictive commercial practices of third party country and community producers and the competition among the same producers;
 - d) progress in techniques;
 - e) exportation and productivity results of the Community industry.

Section 4 – Initiation and conduct of investigations

Paragraph 1 - Conditions for the initiation of investigations

Article 23:

With due regards to measures in article 37 of the present regulation an investigation aimed at determining the existence, the extent and the effect of any alleged dumping shall be initiated on complaint presented in writing by the Community industry or any physical or moral person acting in its name.

The complaint may be addressed to the Commission or to a Member State who will forward it to the Commission. The Commission will send to Member States a copy of each complaint it receives. The complaint should be submitted the first working day of its receipt at the Commission by registered letter or one with acknowledgement of receipt by the Commission. When in the absence of complaint a Member State is in possession of elements of sufficient proof about a dumping and the injury that result from it to the Community industry, it shall quickly communicate it to the Commission.

Article 24:

A request presented according to Article 23 above shall include elements of proof of the existence of dumping, of injury and of a causal link in the sense meant in articles 17 to 23 of the present regulation. It shall contain information that can reasonably be available to the complainant on the following points:

- a. the name and the address of the complainant
- b. the industry on behalf of which the complaint is made, comprising a list of all known Community producers;
- c. information on the degree of support of the industry, such as :

- i. the volume and value of Community production of the like product accounted for by such producers, and
 - ii. the volume and value of production of the like product accounted for by the claimant and by each identified Community producer.
- d. a complete description of the allegedly dumped product, including its technical characteristics, its uses and its ranking in the tariff regime in force;
 - e. the country where the product alleged to constitute dumping is manufactured or produced and the intermediary country where it is imported from;
 - f. the name and the address of each person who to the knowledge of the claimant sells the product that is alleged to constitute dumping and the total size of exportation to the community that is attributed to it for the last twelve months;
 - g. information on the price at which the product is sold for consumption in the local market, its country of origin or country of export and information on the export price or, if the need arises, on the price at which the product alleged to constitute dumping is resold for the first time to an independent buyer in the community;
 - h. Information on the evolution of the volume of importation of the product that is alleged to constitute dumping, the effect of the importations on the price of similar products on the community's market and the effect of these importations on the industry.

This information can be obtained either from the Commission or from Member States

Article 25:

The Commission shall not publicise the complaint seeking the initiation of an investigation unless a decision has been made to initiate an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

Article 26:

The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

Article 27:

An investigation shall not be initiated pursuant to Article 23 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry.

Article 28:

In special circumstances, Community authorities may decide to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation.

This shall be done on the basis of sufficient evidence of dumping, injury and a causal link, within the meaning of Articles 17 to 22 of this Regulation, justifying such initiation.

Article 29:

The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

Article 30:

The evidence of both dumping and injury shall be considered simultaneously in the decision on whether or not to initiate an investigation.

A complaint shall be rejected and the investigation promptly terminated when the concerned authorities are satisfied that there is insufficient evidence of either dumping or of injury to justify proceeding with the case.

The closing of the investigation shall be immediate, in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of imports, actual or potential, subject to dumping or the injury is negligible.

The margin of dumping shall be considered *de minimis* if, when expressed as a percentage of the export price, it is less than 2%.

In case of investigations concerning several countries at the same time, the volume of dumped imports shall normally be regarded as negligible if, from a particular country, it represents less than 3% of the Community's imports of the like product, unless these countries collectively account for at least 7% of the Community's imports.

Paragraph 2 - Procedures for initiating and conducting investigations**Article 31:**

Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 30 days of the date on which the complaint is lodged with the Commission. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 30 days of the lodging of the complaint and shall publish a notice in the Official Journal of the Commission.

However, when the Commission disposes, on the basis of an initial assessment of the complaint and the possible consequences of the invitation referred to in paragraph 4 of Article 21 of this Regulation, of the first elements sufficient to characterise a threat of injury within the meaning of that section, it shall promptly initiate an investigation within thirty days after the filing of the complaint. The countries concerned shall be notified of the initiation of proceedings and investigation, by a communication giving a summary of the information received. Interested parties may make themselves known, present their views in writing and submit relevant information to the Commission.

The Commission shall ensure the protection of confidential information during and after the investigation. The information provided shall not be disclosed without the express permission of the party who provided the information.

Article 32:

Anti-dumping investigations consist of research for the most reliable information to take appropriate measures with a view to their closure.

They may consist of sending survey forms to interested parties, of checks carried out by the Commission or at its request by the Member States.

Article 33:

1. Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. The time limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received seven days from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country. An extension not exceeding 30 days may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.
2. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to respond to such requests. They shall send to the Commission the information requested together within the results of all inspections, checks or investigations carried out.
3. Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.
4. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to respond to such requests from the Commission. Officials of the Commission shall be authorized, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.
5. Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants, which have made themselves known in accordance with Article 31 above, to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.
6. The complainants, importers and exporters and their representative associations, users and consumer organisations may, upon written request, inspect all information made available by any party to an investigation, with the exception of internal documents prepared by the authorities of the Community or its Member States provided that such information is relevant to the defense of their interests and not confidential and are used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.
7. Except in the circumstances provided for in Article 61 of this Regulation, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

Article 34:

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations and to verify information provided on dumping and injury. In the absence of a proper and timely response, a verification visit may not be performed.
2. The Commission may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the

government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed. Also, the Commission may delegate this responsibility to staff of diplomatic representations of Member States who are in Foreign Service.

3. The firms concerned shall be advised of the nature of the information to be verified and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3 of the present article the Commission shall be assisted by officials of those Member States who so request.

Article 35:

Investigations shall, except in special circumstances, be concluded within one year, and in any event within a period not exceeding 18 months after opening.

However, the investigation carried out under the urgency procedure referred to in the third paragraph of Article 31 of this Regulation, shall be completed within a maximum period of four months after its opening in the manner provided in Section V of this regulation.

Article 36:

An anti-dumping investigation shall not hinder the procedures of customs. Following the adoption of measures, no formalities other than those necessary for the implementation of these measures are imposed.

Section 5 - Termination of Investigation

Article 37:

A complaint made under article 23 above may be withdrawn at any time after the initiation of an investigation, in which case the investigation is terminated without any actions taken, unless such a termination is not in the interest of the Community.

Article 38:

For a proceeding initiated pursuant to Article 23, injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 30 above. For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 %, expressed as a percentage of the export price, provided that it is only the investigation that shall be terminated where the margin is below 2 % for individual exporters and they shall remain subject to the proceeding and may be reinvestigated in any subsequent review carried out for the country concerned pursuant to Articles 55, 56 and 57 of this Regulation.

Article 39:

The Commission shall make public, with due regard to the obligation to protect confidential information, a notice of termination of an investigation without the imposition of measures, which describes in sufficient detail the findings and conclusions reached on all issues of fact and of law that it deems important, including those that led to the acceptance or rejection of arguments.

Paragraph 1 – Provisional measures and price undertakings

Article 40:

1. Provisional measures, which take the form of provisional duties, may be imposed if:
 - a. proceedings have been initiated in accordance with Article 23 above, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
 - b. if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury during the period of proceedings;
 - c. an emergency investigation procedure was initiated within the meaning of the third paragraph of Article 31 above.
2. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings
3. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 and 2 of this Article are met, the Commission shall within a maximum of five working days of receipt of the request, decide whether a provisional duty shall be imposed.
4. The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.
5. Provisional duties are covered by a guarantee (bond or cash deposit), and the release for consumption of the product concerned in the Community is subject to the provision of this warranty.
6. The opening of an investigation in emergency, as provided in Article 31 above, may also justify the adoption of emergency measures. These can be taken at any time during the course of the investigation and shall not prejudice the outcome of the latter.
7. The Commission shall inform the Member States of any decision on provisional or emergency measures.

Article 41:

Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for a period of nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object upon notification by the Commission.

Article 42:

1. An investigation may be suspended or terminated without the imposition of provisional or definitive duties when the exporter is committed voluntarily and adequately to revising its prices or to cease exports to the area in question at dumped prices, so that the Commission, after consulting is satisfied that the injurious effect of the dumping is eliminated. The Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and should be less than the margin of dumping if they are sufficient to remove the injury to the Community industry.

2. Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice consideration of the case. However,

it may be determined that a threat of injury is more likely to materialise if the dumped imports continue.

Article 43:

1. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made
2. Undertakings offered need not be accepted if their acceptance is considered impractical, if such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy.

The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

3. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

4. The Commission shall require any exporter from which an undertaking has 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

Article 44:

If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping 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 a price undertaking.

In such cases it may be required that an undertaking be maintained for a reasonable period in accordance with the provisions of this Regulation. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

Article 45:

1. In case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded a provisional duty may be imposed on the basis of the best information available
2. In case of breach or withdrawal of undertakings by any party to the undertaking, a definitive duty shall be established in accordance with Article 47 below on the basis of facts established within the context of the investigation which led to the undertaking, provided that the investigation was concluded by a final determination of dumping and injury and that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

Paragraph 2 - Imposition and Collection of Anti-dumping duties

Article 46:

Provisional or definitive anti-dumping duties shall be imposed by Regulation, and collected by Member States in the form, at the rate specified and according to the other criteria laid down in the Regulation imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports

Article 47:

Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention, a definitive anti-dumping duty shall be imposed by the Council of Ministers, acting on a proposal from the Commission.

Where provisional duties are in force, a proposal for definitive action shall be submitted no later than one month before the expiry of such duties.

The amount of the anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

Article 48:

Dumping duty is *ad valorem*. It is imposed in addition to other import duties levied on imported goods concerned. An anti-dumping 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 be dumped and causing injury, except for imports from those sources from which undertakings under the terms of this Regulation have been accepted.

The decision imposing the duty shall specify the amount of the fee imposed and the name of the supplier of the product in question.

However, in the case where several suppliers from the same country are involved, and it would be impossible to mention them all, the decision can make known the name of the supplier country concerned. If several suppliers from different countries are involved, the decision may name either all the suppliers involved, or if this is impracticable, all the supplying countries involved.

Article 49:

The procedure for assessment and collection of the revenues from the anti-dumping measures shall be the same as in the case of the Community Levy (CL)

Article 50:

Revenues from anti-dumping measures shall be paid into a special fund to be created by the Authority of Heads of States and Government

Article 51:

The competent authorities may, in the interest of the Community, decide to suspend the implementation of measures imposed under this Regulation for a specific period. They can only suspend the measures in the event that market conditions have temporarily changed and the application of the measures would not be in the interest of the Community, taking into account the observations of the industry concerned.

Article 52:

1. Notwithstanding Article 54 paragraph 1 of this Regulation, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated or reduced to a level which is below the level of the duty in force.

2. To obtain a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, and within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

3. An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the Community for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be provided to the Commission.

Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

4. The decision on the refund of duties shall normally take place within twelve (12) months and, in any event, not more than eighteen months after the date on which the request for refund, duly supported by evidence, was introduced by an importer of the product subject to the antidumping duty. Authorized a refund plus, where applicable, default interest should normally be made by Member States in ninety days after the above decision.

Article 53:

1. The public shall be notified of decisions imposing provisional or definitive antidumping duties, and regulations or decisions accepting undertakings or terminating investigations or proceedings. Such regulations or decisions shall contain in particular and with due regard to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations.

In each case, a copy of the regulation or decision shall be sent to known interested parties.

The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

2. The Commission may, after consultation of the CET Management Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by the Commission's decision which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

The decision to submit the imports to registration may occur upon initiation of the investigation.

3. Member States shall report to the Commission every quarter, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Regulation.

Article 54:

Subject to the exceptions set out in this Regulation, provisional and definitive duties are applied to products which enter for consumption after the date on which the decision taken in accordance with Articles 41, 46 and 47 above came into force.

Article 55:

An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with

Article 51 paragraph 2, the Commission has allowed the importers an opportunity to submit their comments, and:

(a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; and

(b) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

2. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation no more than ninety days before the application of provisional measures, provided that imports have been registered in accordance with Article 51 paragraph 2, and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

Article 56:

Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Commission shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, injury shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

2. If the definitive duty is higher than the provisional duty paid or payable, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, the difference will be reimbursed or the duty recalculated, as appropriate. Where a final determination is negative, the provisional duty shall not be confirmed.

Paragraph 3 - Duration, reviews of anti-dumping duties and price undertakings

Article 57:

An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

1. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury.

2. The review of measures at expiry shall be initiated on the initiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

3. An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such likelihood may be supported by evidence of continued dumping 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 new practices of injurious dumping.

4. Community producers are entitled to submit a request for review in accordance with paragraph 1 not later than three months before the end of the period of five years. During investigations carried out during the review, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to

amplify, rebut or comment on the matters set out in the review , and conclusions shall be reached with due account taken of all relevant and duly documented evidence, presented in relation to the question of whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

Article 58:

The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review.

Article 59:

A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based. The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping on the product, and that it has actually exported to the Community following the investigation period, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

2. In all review or refund investigations carried out pursuant to this section and sections 50, 55 and 56 above, the Commission shall, to the extent that circumstances have not changed, apply the same methodology as in the investigation which led to the duty.

Article 60:

The provisions of Articles 54, 55 and 56 of this Regulation shall apply *mutatis mutandis* to price undertakings.

Article 61:

1. Where the Community industry provide sufficient information showing that the measures did not result in a change or resulted only in insufficient movement in the resale prices or subsequent selling prices of the imported product in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on the abovementioned prices.

2. During a reinvestigation pursuant to this section, exporters, importers and Community producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices, and if it is concluded that the measure should lead to a change in these prices to eliminate the injury previously established in accordance with Article 17, the export price should be reassessed in accordance with Article 13 and the dumping margins must be recalculated to take account of the reassessed export prices. If we consider that the stability of prices in the Community is due to a decrease in export prices before or after the imposition of measures, the dumping margins may be recalculated to reflect these lower export prices.

3. Where a reinvestigation pursuant to this Article shows increased dumping, the measures in force may be amended in accordance with the new findings on export prices.

4. The relevant provisions of this regulation shall apply to any reinvestigation carried out pursuant to this Article, except that such reinvestigation shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the reinvestigation.

5. Alleged changes in normal value shall only be taken into account under this section where complete information on revised normal values, duly substantiated by evidence, is made

available to the Commission within the time-limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be required pending the outcome of further investigation for possible enforcement action against them from the date of registration.

Article 62:

The relevant provisions of corresponding procedure of this regulation for the initiation and conduct of investigations shall apply to any reinvestigation carried out pursuant to sections 55 and 56 above. Such reinvestigation shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the reinvestigation.

Section 6 - Special Provisions

Article 63:

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Regulation, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. 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 facts available. Interested parties should be made aware of the consequences of non-cooperation.
2. When the necessary information is not provided or not accepted, the Commission may use other independent sources.
3. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 64:

1. Where the Commission is satisfied that the evidence is sufficient to justify the initiation of a dumping investigation all interested parties receive notice and a notice may be made public.
2. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible, and normally one month at the latest before the final decision. Where the Commission is not able to disclose certain facts or considerations in the period, this must be done as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission based on different facts and considerations; these shall be disclosed as soon as possible.
3. 3) Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days.

Article 65:

A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination shall only be made where all parties have been given the opportunity to make their views known on the imposition of measures or non-action.

As part of this review, special attention is paid to the need to eliminate the trade-distorting effects of injurious dumping and to restore effective competition.

Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures. Final decisions are communicated to the interested parties who may submit comments.

Section 7 - Final Provisions

Article 66:

This Regulation shall be published by the Commission in the official journal of the community within thirty (30) days of its signature by the President of the Council of Ministers. It shall equally be published by each member state in her official journal thirty (30) days after notification by the Commission.

DONE AT ABIDJAN THIS 21ST DAY OF JUNE 2013



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H.E. CHARLES KOFFI DIBY

CHAIRMAN

FOR COUNCIL