

FIJI

ACT NO. 23 OF 1998



I assent.

[L.S.]

K. K. T. MARA  
President

[19 June 1998]

**AN ACT**

TO PROVIDE FOR THE INVESTIGATION OF DUMPING AND SUBSIDISATION,  
FOR THE IMPOSITION OF DUMPING AND COUNTERVAILING DUTIES AND  
FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

*Short title and commencement*

1.—(1) This Act may be cited as the Dumping and Countervailing Duties Act, 1998.

(2) This Act comes into force on a date to be appointed by the Minister by notice in the *Gazette*.

*Interpretation*

2.—(1) In this Act, unless the context otherwise requires—

“amount of the subsidy” has the meaning given to it by section 7;

“Comptroller” has the meaning given to it in section 2 of the Customs Act, 1986;

“director” means the Director for Fair Trading and Consumer Affairs appointed under section 24 of the Fair Trading Decree, 1992 (Decree No.25 of 1992) and includes any other person who for the time being occupies the office or performs the duties of the Director;

“dumping”, in relation to goods, means that the export price of goods imported or intended to be imported into the Fiji Islands is less than the normal value of the goods as determined in accordance with this Act, and ‘dumped’ has a corresponding meaning ;

“export price” has the meaning given to it by section 4;

“exporter” means a person by or for whom goods are exported, and includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods on or at any time after entry for export and before they are exported;

“goods” means all kinds of movable personal property, including animals;

“foreign country” means any country other than the Republic of the Fiji Islands;

“foreign government” means —

- (a) the government of a foreign country;
- (b) a provincial, State, municipal, local or regional government or authority of a foreign country;
- (c) a body that exercises authority for an association of foreign countries;
- (d) a person, agency, or institution acting for, or on behalf of, a government or body referred to in paragraph (a), (b) or (c) of this definition;

“importer” means a person by or for whom goods are imported, and includes the consignee of goods and a person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the Customs Act, 1986.

“industry”, in relation to any goods, means—

- (a) the Fiji Islands producers of like goods; and
- (b) such Fiji Islands producers of like goods whose collective output constitutes a major proportion of the Fiji Islands production of like goods;

“like goods”, in relation to any goods, means—

- (a) other goods that are like those goods in all respects; or
- (b) in the absence of such goods, goods which have characteristics closely resembling those other goods;

“material injury” has the meaning given to it by section 8;

“normal value” has the meaning given to it by section 5;

“notice” has the meaning given to it by section 9;

“shipment” includes loading into an aircraft;

“specific subsidy” means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign government;

“subsidisation” means the payment of a specific subsidy;

“subsidised goods” means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of which a specific subsidy has been or will be paid, granted, authorised or otherwise provided, directly or indirectly, by a foreign government;

“subsidy” includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided or implemented by a foreign government, but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback;

“WTO Agreement” means the Agreement establishing the World Trade Organisation adopted at Marrakesh on 15th April 1994.

(2) For the purposes of this Act, a purchase or sale of goods is not to be treated as an arm’s length transaction if—

- (a) there is any consideration payable for or in respect of the goods other than their price;
- (b) the price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person; or
- (c) in the opinion of the Director, the buyer, or a person related to the buyer, will, directly or indirectly, be reimbursed or compensated, or will otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(3) Where the goods are imported into the Fiji Islands and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the Director is satisfied, having regard to—

- (a) the amount of the price paid or to be paid for the goods by the importer;
- (b) such other amounts as the Director determines to be costs necessarily incurred in the importation and sale of the goods;
- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
- (d) such other matters as the Director considers relevant,

that the importer, whether directly or through a related person, sells those goods in the Fiji Islands (whether in the condition in which they were imported or otherwise) at a loss, the Director may treat the sale of those goods as indicating that the importer or a related person will, directly or indirectly, be reimbursed or compensated or will otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of subsection (2)(c).

(4) For the purposes of this Act, a person is deemed to be related to another person if, within the meaning of subsection (5)—

- (a) one of them directly or indirectly controls the other (within the meaning of subsection (5)); or
- (b) both of them are directly or indirectly controlled by a third person (within that meaning); or
- (c) together they directly or indirectly control a third person.

(5) For the purposes of subsection (4), a person controls another person if the first-mentioned person is in a position, either legally or operationally, to exercise restraint or direction over the other person.

(6) For the purposes of this Act, where, during the exportation of goods to Fiji, the goods pass in transit from a country through another country, that other country must be disregarded in ascertaining the country of export of the goods.

*Act binds the Government*

3. This Act binds the Government.

*Export price*

4.—(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into the Fiji Islands which have been purchased by the importer from the exporter is—

- (a) where the purchase of the goods by the importer was an arm's length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—
  - (i) costs, charges, and expenses incurred in preparing the goods for shipment to the Fiji Islands that are additional to those costs, charges and expenses generally incurred on sales for home consumption; and
  - (ii) any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or
- (b) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts—
  - (i) the amount of any duties and taxes imposed under any Act in force in the Fiji Islands;
  - (ii) the amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
  - (iii) the amount of the profit, if any, on the sale by the importer or, where the Director so directs, an amount calculated in accordance with such rate as the Director determines as the rate of profit on the sale by the importer, having regard to the rate of profit that would normally be realised on sales of goods of the same category by the importer where such sales exist; or

- (c) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the Director in the circumstances of the case.

(2) Where—

- (a) goods are or are to be shipped to the Fiji Islands on consignment and there is no known purchaser in the Fiji Islands for the goods; or
- (b) there is no exporter's sale price or no price at which the importer or a person not related to the importer has purchased or agreed to purchase the goods,

the export price, for the purposes of this Act, is to be determined in such manner as the Director considers appropriate having regard to all the circumstances of the exportation.

*Normal value*

5.—(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into the Fiji Islands is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the Director is satisfied that the normal value of goods imported or intended to be imported into the Fiji Islands cannot be determined under subsection (1) because—

- (a) there is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or
- (b) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price; or
- (c) like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1),

the Director may determine that the normal value, for the purposes of this Act, is to be either—

- (d) the sum of—
- (i) such amount as is determined by the Director to be the cost of production or manufacture of the goods in the country of export; and
  - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—
    - (A) such amounts as the Director determines would be reasonable amounts for administrative and selling costs, delivery charges and other charges incurred in the sale; and
    - (B) an amount calculated in accordance with such rate as the Director determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or
- (e) the price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.

(3) Where the normal value of goods imported or intended to be imported into the Fiji Islands is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price must be compared by the Director—

- (a) at the same level of trade;
- (b) in respect of sales made at as nearly as possible the same time; and
- (c) with due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

(4) Where the normal value of goods exported to the Fiji Islands is to be ascertained in accordance with subsection (2), the Director must make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(5) Where—

- (a) the actual country of export of goods imported or intended to be imported into the Fiji Islands is not the country of origin of the goods; and
- (b) the Director is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,

the Director may direct that the normal value of the goods is to be so ascertained.

(6) Where the Director is satisfied, in relation to goods imported or intended to be imported into the Fiji Islands, that —

- (a) the price paid for like goods—
  - (i) sold for home consumption in the country of export in sales that are arm's length transactions; or
  - (ii) sold in the country of export to a third country in sales that are arm's length transactions,

is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—

- (iii) such amount as the Director determines to be the cost of production or manufacture of the like goods in the country of export; and
  - (iv) such amounts as the Director determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and
- (b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in paragraphs (a)(iii) and (iv) within a reasonable period of time,

the price so paid for those like goods is deemed not to have been paid in the ordinary course of trade.

*Export price and normal value*

6.—(1) Where the Director is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, or the normal value of goods to be ascertained under section 5, the export price or normal value, as the case may be, is such amount as is determined by the Director having regard to all available information.



(2) For the purposes of subsection (1), the Director may disregard any information that the Director considers to be unreliable.

*Amount of subsidy*

7.—(1) In this Act, the expression “amount of the subsidy” in relation to any subsidised goods means the amount determined by the Director as being the benefit conferred on the recipient of the subsidy.

(2) For the purposes of subsection (1)—

- (a) the provision of equity capital by a foreign government is not to be regarded as conferring a benefit, unless the investment decision in relation to the provision of that equity capital can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the exporting country;
- (b) the provision of a loan by a foreign government is not to be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient could obtain on the market, in which case the benefit to the recipient must be deemed to be the difference between those amounts;
- (c) the provision of a loan guarantee by a foreign government is not to be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case the benefit to the recipient must be deemed to be the difference between those amounts;
- (d) the provision of goods or services, or the purchase of goods, by a foreign government is not to be regarded as conferring a benefit, unless the goods or services are provided for less than adequate remuneration within the meaning of subsection (4), or the goods are purchased for more than adequate remuneration, as the case may be.

(3) For the purposes of subsection (1), the following amounts are not to be included in the amount of the subsidy—

- (a) any application fee or other fees or costs necessarily incurred in order to qualify for, or to receive the benefit of, the subsidy;

- (b) any export taxes, duties, or other charges levied on the export of the goods to the Fiji Islands that are specifically intended to offset the subsidy.

(4) For the purposes of subsection (2) (d), adequate remuneration is to be determined in relation to prevailing market conditions in the country concerned for the goods or services, taking into account price, quality, availability, marketability, transportation and other conditions of the provision or purchase.

(5) Where the Director is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Act, the amount of the subsidy is an amount determined by the Director having regard to all available information that the Director considers to be reliable.

*Material injury*

8.—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into the Fiji Islands from another country, the Director must examine—

- (a) the volume of imports of the dumped or subsidised goods;
- (b) the effect of the dumped or subsidised goods on prices in the Fiji Islands for like goods; and
- (c) the consequent impact of the dumped or subsidised goods on the relevant Fiji Islands industry.

(2) Without limiting subsection (1), or the matters that the Director may consider, the Director in making a determination under subsection (1), must have regard to the following matters—

- (a) the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in the Fiji Islands;
- (b) the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in the Fiji Islands (at the relevant level of trade) for like goods of Fiji Island producers;
- (c) the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of Fiji Island producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred;

- (d) the economic impact of the dumped or subsidised goods on the industry, including—
  - (i) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity;
  - (ii) factors affecting domestic prices;
  - (iii) the magnitude of the margin of dumping; and
  - (iv) actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments;
- (e) factors other than the dumped or subsidised goods that have injured, or are injuring, the industry, including—
  - (i) the volume and prices of goods that are not sold at dumped prices or that are not subsidised;
  - (ii) contraction in demand or changes in the patterns of consumption;
  - (iii) restrictive trade practices of, and competition between, overseas and Fiji Island producers;
  - (iv) developments in technology; and
  - (v) the export performance and productivity of the Fiji Islands producers;
- (f) the nature and extent of importations of dumped or subsidised goods by Fiji Islands producers of like goods, including the value, quantity, frequency and purpose of any such importations.

(3) For the purposes of this section, the Director may disregard any information that the Director considers to be unreliable.

*Form of notice*

9. For the purposes of this Act, reference to a notice means a notice which—

- (a) contains a brief summary of the reasons for the giving of the notice;
- (b) is given —

- (i) to the Government or Governments of the country or countries of the export of goods to which the notice relates;
  - (ii) to exporters and importers known by the Director to have an interest in those goods;
  - (iii) to the applicant in relation to those goods; and
  - (iv) where the Minister, Minister of Finance or Director is taking action under section 18, the Government of the third country on whose behalf the Minister, Minister of Finance or Director is taking action; and
- (c) is published in the *Gazette*.

*Initiation and subsequent investigation*

10.—(1) Subject to this section, on receipt of an application made by, or on behalf of, Fiji Island producers of like goods, and on being satisfied that sufficient evidence has been provided that—

- (a) goods imported or intended to be imported into the Fiji Islands are being dumped or subsidised; and
- (b) by reason thereof material injury to a Fiji Islands industry has been or is being caused or is threatened or that the establishment of an industry has been or is being materially retarded,

the Director may initiate an investigation to determine both the existence and the effect of any alleged dumping or subsidisation of any goods.

(2) An application under subsection (1) must be properly documented and must include—

- (a) evidence of—
  - (i) dumping or subsidisation, as the case may be;
  - (ii) injury to the industry; and
  - (iii) a causal link between the alleged dumping or subsidisation and the alleged injury; and
- (b) such information as is reasonably available to the applicant in relation to—

- (i) the names of the Fiji Islands producers making the application;
- (ii) the names of all other known Fiji Islands producers of like goods;
- (iii) a description of the volume and value of the domestic production of like goods, both by the producers referred to in subparagraph (i) and by the producers referred to in subparagraph (ii);
- (iv) a complete description of the allegedly dumped or subsidised goods;
- (v) the names of the countries of origin or export of the allegedly dumped or subsidised goods;
- (vi) the name of each known exporter or overseas producer of allegedly dumped or subsidised goods;
- (vii) the names of persons known to be importing the allegedly dumped or subsidised goods;
- (viii) in the case of subsidised goods, the existence, amount, and nature of the subsidy;
- (ix) normal values of the allegedly dumped goods when destined for consumption in the domestic markets of the countries of origin or export (or, where appropriate, either the prices at which the goods are sold from the countries of origin for export to third countries, or the prices based on a constructed value);
- (x) the export prices of the allegedly dumped or subsidised goods (or, where appropriate, the prices at which the goods are first resold in arm's length transactions in the Fiji Islands);
- (xi) the import volumes into the Fiji Islands of the allegedly dumped or subsidised goods;
- (xii) the effects that the imports of the allegedly dumped or subsidised goods have had, or will have, on prices of like goods in the Fiji Islands;
- (xiii) the consequent impact of those imports on the industry;
- (xiv) relevant factors affecting the industry that may have a bearing on the information required under subparagraphs (xii) and (xiii).

(3) An investigation must not be initiated under this section unless the Director is satisfied that the collective output of those Fiji Islands producers who have, in writing, expressed support for the application constitutes—

- (a) 25% or more of the total Fiji Islands production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than 6 months); and
- (b) more than 50% of the total production of like goods produced for domestic consumption (as so assessed) by those Fiji Islands producers who have, in writing, expressed support for, or opposition to, the application.

(4) Where the Director initiates an investigation under subsection (1) in respect of the existence and effect of any alleged dumping or subsidisation of goods, notice of the initiation of the investigation must be given.

(5) Upon the initiation of an investigation by the Director under subsection (1) and during the course of the investigation, evidence of the dumping or subsidisation and of the material injury to an industry must be considered at the same time.

(6) The Director, after initiating an investigation subsection (1), must ensure that all interested parties to the investigation are given reasonable opportunity—

- (a) to present in writing all evidence relevant to the investigation and, upon justification being shown, to present such evidence orally;
- (b) unless the information may be withheld under any law relating to official information, to have access to all non-confidential information relevant to the presentation of their case that is used by the Director in the investigation, and to prepare representations on the basis of that information;
- (c) on request being made, to meet those parties which have adverse interests in order to present opposing views.

(7) Where a party has submitted information to the Director under subsection (6) and has shown good cause for the Director to believe—

- (a) that the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would otherwise have a significant adverse effect upon—

- (i) the party who submitted the information;
- (ii) the party from whom the information was acquired by the party who submitted the information; or
- (iii) any party to whom the information relates; or

(b) that the information should for other reasons be treated as confidential,

the Director must not disclose the information without the express permission of any such party that would be adversely affected by its release.

(8) The Director may request parties who have provided confidential information under subsection (6) to furnish—

- (a) a non-confidential summary of the information; or
- (b) if it is claimed that such a summary is not possible, a statement of the reasons why it is not possible,

and the Director may disregard any information for which the party submitting it fails to provide either a satisfactory summary or satisfactory reason why a summary cannot be provided.

(9) Before initiating an investigation under subsection (1), the Director must—

- (a) notify the government or governments of the country or countries of export of the goods that are the subject of the proposed investigation; and
- (b) in the case of an application for the investigation into the subsidisation of any goods, give that government or those governments a reasonable opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

*Notice to parties to investigation*

11.—(1) Subject to subsection (2), where the Director initiates an investigation under section 10, the Director must within 150 days after the initiation give to the parties mentioned in section 9(b) written notice of the essential facts and conclusions that are likely to form the basis for any final determination by the Minister under section 13.

(2) Subsection (1) does not limit section 10(7) or any Act relating to official information.

*Termination of investigation*

12.—(1) Where the Minister, at any time before making a final determination under section 13, is satisfied in respect of some or all of the goods under investigation, that—

- (a) there is insufficient evidence of dumping or subsidisation to justify proceeding with the investigation;
- (b) there is insufficient evidence that material injury to a Fiji Islands industry has been or is being caused or is threatened or that the establishment of a Fiji Islands industry has been or is being materially retarded by means of the dumping or subsidisation of the goods;
- (c) in the case of subsidisation, the imposition of a countervailing duty in respect of those goods would be inconsistent with the State's obligations as a party to the WTO Agreement;
- (d) the application for the investigation has been withdrawn in writing by those Fiji Islands producers by or on whose behalf the application was made; or
- (e) Fiji Islands producers who previously expressed support for the application for the investigation have withdrawn that support in writing to such an extent that, by reason of section 10 (3), the investigation could not have been initiated,

the Minister must—

- (f) terminate the investigation with respect to those goods; and
- (g) give notice of such termination.

(2) For the purposes of subsection (1) (a), evidence of dumping or subsidisation is insufficient where—

- (a) in the case of dumping, the margin of dumping is less than 2% (expressed as a percentage of the export price);
- (b) in the case of subsidisation, the amount of the subsidy is less than 1% of the value of the goods at the time of import; or
- (c) in the case of either dumping or subsidisation, the volume of imports of dumped or subsidised goods, expressed as a percentage of total imports of like goods into the Fiji Islands, is negligible, having regard to Fiji's obligations as a party to the WTO Agreement.



(3) Where—

- (a) an investigation is terminated under subsection (1) and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such a nature as materially to affect the decision to terminate the investigation; or
- (b) an investigation is terminated pursuant to an undertaking given by the government of the country of export or by an exporter, as the case may be, under section 15 (1) and that government or that exporter violates that undertaking,

the Director may initiate a further investigation and the relevant provisions of this Act will apply accordingly.

(4) Notice must be given of the initiation of every further investigation under subsection (3) of this section.

*Final determination*

13.—(1) Subject to section 12, within 180 days after the initiation of an investigation under section 10, but not less than 30 days after the provision of information in accordance with section 11, the Minister must make a final determination as to whether or not, in relation to the importation or intended importation of goods into the Fiji Islands—

- (a) the goods are being dumped or subsidised; and
- (b) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

(2) Notice of a final determination by the Minister under this section must be given as soon as practicable after it is made.

*Anti-dumping and countervailing duties*

14.—(1) At any time after the Minister makes a final determination under section 13 (1) in relation to goods, the Minister may require the Minister of Finance to determine a rate or amount of duty under subsection (4) and must give notice of the amount of duty so determined (which notice may be given at the same time as, or at any time after, the notice given under section 13 (2)) and there must, with effect on and from the applicable date referred to in section 17, be imposed—

- (a) in respect of those goods that are dumped, a duty to be known as anti-dumping duty;

(b) in respect of those goods that are subsidised, a duty to be known as countervailing duty.

(2) Anti-dumping duty or countervailing duty, as the case may be, imposed under subsection (1), must be collected and paid on the demand of the Comptroller on and from the day after the date on which notice under subsection (1) is published in the *Gazette*.

(3) Notwithstanding subsection (1) (b), no countervailing duty may be imposed under this section if to do so would be inconsistent with the State's obligations as a party to the WTO Agreement.

(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies must be a rate or amount determined by the Minister of Finance—

(a) in the case of dumped goods, not exceeding the difference between the export price of the good and their normal value; and

(b) in the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

(5) In determining a rate or amount under subsection (4), the Minister of Finance must have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

(6) The Director may—

(a) on the initiative of the Director;

(b) where a request for a reassessment is submitted to the Director by an interested party who submits evidence justifying the need for a reassessment; or

(c) following the completion of a review carried out under subsection (8),

initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4), including any elements of any formula used to establish such a rate or amount and in the light of such reassessment the Minister of Finance may determine a new rate or amount in accordance with subsection (4), and, in that event, the Minister responsible for the administration of this Act must give notice of the new rate or amount.

(7) The Minister responsible for the administration of this Act may, by notice, terminate, in whole or in part, the imposition of any anti-dumping or countervailing duty imposed under this section, with effect from the date specified in the notice, which date may be prior to the date of the notice.

(8) The Director may, on his or her own initiative, and must, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and must complete that review within 180 days of its initiation.

(9) Anti-dumping duty or countervailing duty applying to any goods ceases to be payable on those goods from the date that is 5 years after—

- (a) the date of the final determination made under section 13 in relation to those goods; or
- (b) the date of notice of any reassessment of duty given under subsection (6), following a review carried out under subsection (8),

whichever is the later, unless, at that date, the goods are subject to review under subsection (8).

(10) Without limiting the ability of the Minister of Finance to require refunds in other circumstances, where a reassessment under subsection (6) results in a lower duty being imposed on any goods, the Minister of Finance may require the Comptroller to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

*Price undertaking*

15.—(1) Subject to subsection (2), where, in relation to the exportation of any consignment of goods to the Fiji Islands, the Director has initiated an investigation pursuant to section 10, the Minister may terminate consideration of that consignment if the Minister is given and accepts a written undertaking by the government of the country of export or by the exporter of the goods, that the government or the exporter, as the case may be, will so conduct future export trade to the Fiji Islands of like goods to the goods in the consignment as to avoid causing or threatening material injury to an industry or materially retarding the establishment of an industry.

(2) Before accepting an undertaking given under subsection (1), the Minister must have reasonable cause to believe, in relation to the importation or intended importation of goods into the Fiji Islands, that—

- (a) the goods are being dumped or subsidised; and

(b) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

(3) Any price increases specified in respect of any goods in an undertaking accepted under subsection (1) must not exceed the difference between the export price of the goods and their normal value or the amount of subsidisation, as the case may be.

(4) The Minister may be given and may accept any amendment made because of altered circumstances.

(5) If the Minister accepts an undertaking, the investigation of the extent of injury to an industry must nevertheless be completed if the Minister, or the government of the country of export, or the exporter, as the case may be, so desires.

(6) If an investigation referred to in subsection (5) is completed and no determination of material injury, threat thereof, or material retardation to the establishment of an industry is made, the undertaking accepted under subsection (1) must automatically lapse, except in cases where a determination of no threat of injury is attributable to a significant degree to the existence of the undertaking, in which case the Minister may require that the undertaking be maintained for such reasonable period as the Minister may determine.

(7) The Minister may require any party from whom an undertaking has been accepted under subsection (1) to provide information relevant to the fulfillment of the undertaking.

(8) The Director may, on his or her own initiative, and must, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of any undertaking accepted under subsection (1) and must complete that review within 180 days of its initiation.

(9) An undertaking accepted under subsection (1) will lapse on the date that is the later of 5 years after—

(a) the date of the acceptance of the undertaking; or

(b) where, following a review under subsection (8) the undertaking has been continued in the same or a modified form, the date of the initiation of that review,

unless, at that date, the undertaking is subject to review under subsection (8).

(10) If an investigation is terminated in accordance with subsection (1), notice of the termination must be given.

*Provisional directions*

16.—(1) Where an investigation in relation to the importation or intended importation of any goods into the Fiji Islands has been initiated by the Director under section 10 and has not been terminated under section 12, if the Minister—

(a) has reasonable cause to believe that—

(i) the goods are being dumped or subsidised; and

(ii) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and

(b) is satisfied that action under this section is necessary to prevent material injury being caused during the period of investigation,

the Minister of Finance at the request of the Director may, within 60 days of the investigation being initiated, by notice, give a provisional direction that payment of duty in respect of the goods must be secured in accordance with section 35 of the Customs Act, 1986.

(2) Where an investigation has been initiated by the Director under section 12(3)(b), the Minister of Finance at the request of the Director may at any time, by notice, give a provisional direction that payment of duty in respect of the goods the subject of the investigation must be secured in accordance with section 35 of the Customs Act 1986.

(3) Where a direction is given under subsection (1) or (2) the rate or amount of duty to be secured must not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.

(4) A provisional direction given under subsection (1) or (2) ceases to have effect upon the Minister responsible for the administration of this Act making a final determination under section 13.

(5) When a provisional direction given under subsection (1) or (2) ceases to have effect, any security given pursuant to the provisional direction must be released, except to the extent that duties are payable on goods imported prior to the direction ceasing to have effect.

(6) Where the amount of anti-dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or (2) exceeds the amount of duty determined under section 14 (4), the amount of any excess paid by the importer must be remitted by the Comptroller if so required by the Minister of Finance.

(7) Where the amount of anti-dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or (2) is less than the amount of duty determined under section 14 (4), the amount of the difference must be collected from the importer on the importation which was the subject of the provisional direction.

*Retrospective measures*

17.—(1) Except as provided in this section, the day on and from which anti-dumping duty or countervailing duty is payable on goods to which section 14 applies is—

- (a) where a provisional direction has been given under section 16 in relation to those goods, the day after the date of the decision of the Minister of Finance to give that direction; and
- (b) in any other case, the day after the date that the Minister of Finance determines a rate or amount of duty under section 14(4).

(2) Where —

- (a) a final determination of material injury to an industry (but not of a threat thereof or of material retardation to the establishment of an industry) is made by the Minister; and
- (b) in the case of a final determination of threat of material injury the effect of the dumped or subsidised goods would, in the absence of provisional measures, have led to a finding of material injury,

anti-dumping duty or countervailing duty, as the case may require, may be levied retrospectively for the period in respect of which any provisional direction has been given.

(3) Where the Minister determines—

- (a) in respect of dumped goods—
  - (i) that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; and
  - (ii) that material injury has been caused by substantial dumped imports of a product in a relatively short period and that in order to preclude it recurring it is necessary to impose an anti-dumping duty retrospectively; or

- (b) in the case of subsidised goods,
  - (i) that material injury which is difficult to repair has been caused by massive imports in a relatively short period, of goods benefiting from export subsidies paid or bestowed inconsistently with the provisions of the WTO Agreement; and
  - (ii) that in order to preclude the recurrence of such material injury it is necessary to impose countervailing duty retrospectively,

the Minister may require the Minister of Finance to impose, on goods that have been entered for home consumption in accordance with the Customs Act, 1986 an anti-dumping or countervailing duty, as the case may be, not more than 60 days prior to the date of the giving of a provisional direction under section 16.

(4) Where the government of the country of export or the exporter, as the case may be, from whom the Minister has accepted an undertaking pursuant to section 15 violates the undertaking and the Minister of Finance, in accordance with section 16, gives a provisional direction, anti-dumping duty or countervailing duty may be imposed on goods that have been entered for home consumption in accordance with the Customs Act, 1986 with effect from a date not more than 60 days before the giving of the provisional direction, except that such retrospective duty must not apply to goods that have been delivered for home consumption in accordance with the Customs Act, 1986 before the date of the violation of the undertaking by the government of the country of export or the exporter, as the case may be.

*Third country anti-dumping and countervailing duties*

18. Where the government of a third country advises the Director that—

- (a) goods imported or intended to be imported into the Fiji Islands—
  - (i) were produced or manufactured in another country; and
  - (ii) have been dumped or subsidised; and
- (b) by reason of the dumping or subsidisation,—
  - (i) material injury to a domestic industry of a third country (being a country other than the Fiji Islands and other than the country in which the goods were produced or manufactured) has been or is being caused or is threatened; or
  - (ii) the establishment of a domestic industry of such a country has been or is being materially retarded,

the provisions of this Act (including, but without being limited to, sections 10, 12, 14, 15, 16 and 17) will, with all necessary modifications, apply with respect to the effect of those goods on that third country's domestic industry in the same manner as they apply with respect to the effect of those goods on a Fiji Islands industry.

*Enforcement*

19. For the purposes of the discharge of the functions of the Director under this Act, sections 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 119, 122 123, 124 and 134 of the Fair Trading Decree, 1992 apply, with necessary modifications.

*Amendment of the Custom Act 1986*

20.—(1) Section 2(1) of the Customs Act 1986 is amended by inserting “Dumping and Countervailing Duties Act” before “and” in the definitions of “duty”.

(2) Section 35 of the Customs Act 1986 is amended—

(a) by re-numbering it as subsection (1);

(b) by adding the following new subsection—

“(2) In the case of anti-dumping and countervailing duties, the Comptroller, on receipt of a provisional notice under section 16 of the Dumping and Countervailing Duties Act, 1998, may release the goods after the amount of duty specified in the notice has been paid in cash or by such other means as the Comptroller may accept.”.

Passed by the House of Representative this Eighteenth day of May, in the year of our Lord One Thousand, Nine Hundred and Ninety-Eight.

Passed by the Senate this Fourth day of Jure in the year of Lord One Thousand, Nine Hundred and Ninety-Eight.