

## **The Act on Anti-Dumping, Countervailing and Safeguard Measures**

The Cabinet Ministers, at the meeting on 14/5/2017, has ratified this Act proposed by the Ministry of Industry, Mines and Trade ;

According to Article 138 of Constitution Law of Islamic Republic Iran

### **Article 1-Definitions**

In this **Act** following terms are meant as below:

- A. Dumping : Export of goods to Iranian market at a price below its normal value.
- B. Normal value: A comparable price in the ordinary course of trade (subject to article 4 of this **Act**) for a similar product intended for consumption in exporting country.
- C. Non-market economy: the economy of each country with history of central planning, which prices are controlled by the state, and market principles in the form of cost or price structures are not applied, so the selling price in such a country does not reflect the fair value of products.
- D. Anti-dumping measures: Articles 7 to 9 of this Act apply to counteract the effects of imports of goods priced under normal value.
- E. Price margin: The difference between export price and normal value of the product on investigation (in accordance with Article (4) of this **Act**).
- F. Subsidy :grants given by government or public entity of the exporting country or income support, which provides advantage beyond what is available on market terms. Subsidies are subject to Articles 7 to 9, which are granted only to an economic entity, industry or a group of enterprises of exporting country.
- G. Countervailing Measures: Measures set in Articles 7 to 9 of this **Act**, which are intended to counteract effects of subsidies granted on goods destined for the Iranian market.
- H. Like products: products whose characteristics are same in all aspects to the product under consideration. In the absence of such product, another product which, although not the same in all aspects, has close characteristics to those under consideration.
- I. Domestic producers: All manufacturers of the like product or a group of them, in accordance with paragraph (b) of Article 5 of this **Act**, whose total production

constitutes a major share of the domestic production of those products. This definition does not apply to producers who are related to foreign exporters or importers of the like product.

- J. Injury: In anti-dumping and countervailing investigations, determination of injury to domestic producers shall be done in accordance with the provisions of Article 6 of this Act.
- K. Serious injury: serious injury is to determine significant impairment in the position of the domestic industry.
- L. Risk of serious injury: serious injury that is imminent, in accordance with paragraph (a) of Article (12) of this Act.
- M. Interested parties shall include three groups:
  - 1-Domestic producers of a product; or trade or government on behalf of them.
  - 2. Foreign government; foreign producers or exporters of the product under investigation or importers of that product
  - 3. Major consumers and industrial and agricultural users of product under investigation.
- N. Article (1) Committee : committee subject to Export and Import Regulations.
- O. Ministry: Ministry of Industry, Mining and Trade.
- P. Investigation Group: the group subject to Article (2) of this Act.

**Article 2:** The investigation working group shall be composed of Ministries of Industry, Mines and Trade; Economic Affairs and Finance; Agricultural Jihad; the Country Planning and Budget Organization and other bodies, as the case may be (with the right to vote), to fulfill the duties in Article (3) of this Act.

**Note 1-**Chair secretariat of the investigation group shall be the Ministry.

**Note 2-**Investigation to determine dumping shall be initiated by the Secretariat, and occurrence of the injury to domestic industry shall be initiated in cooperation with the relevant manufacturing ministries, and written report about their findings and conclusions reached on issues has to be given to the Secretariat.

**Note 3-**The investigation group can, depending on the case, invite representatives from organizations, experts or representatives of the producers of the product under consideration to participate the investigation meetings (without the right to vote).

**Note 4**-Any decision for not starting investigations, imposing provisional measures,imposing price undertakings and safeguard would be applicable after the approval of Article(1)Committee .

**Article 3**-Responsibilities of the investigation working group for starting the process is as following:

- A. Written application by the domestic industry;or Chamber of Commerce, Industries, Mines and Agriculture of Iran ; or Iran Cooperative Chamber or any member of the investigation group.
- B. Examining accuracy of the evidence provided to determine whether there is enough evidence to justify the investigation.
- C. Asking for the opinions of the relevant ministry relevant to production and obtaining reports on the issue.
- D. Making a preliminary determination for applying provisional measures or anti-dumping duties.
- E. Performing research and collecting information through questionnaires, sampling, hearing comments, etc.
- F. Seeking of price according to article (7) of this Act and request for periodic information relevant to the fulfillment of such undertaking .
- G.Providing Proposals to the Ministers of Article (1)Committee on provisional measures , anti-dumping duties , countervailing measures and determining deadlines for revision.
- H. Giving public notice according to Article 11of this Act.
- I.Setting the indicators and standards for the investigation procedure.

**Article 4**-The investigation working group is required to observe the following criteria starting on investigation on dumping:

- A. The margin of dumping shall be determined by comparison of weighted normal value with average of prices of all comparable export transactions or by comparison of prices of each normal value transaction with individual export sales.

Note: In cases where the goods enter the country through intermediary country, the price of goods in that country will be the basis of comparison, unless the goods are transshipped through the intermediary country or no production activity has been made in relation to the goods or there is no comparable price in intermediary country.

- B. In cases where there is no export price,the price of similar goods exported from that country to third countries is considered to "normal value", provided the price can be statistically determined as price of a particular export goods in third countries. In the above circumstances, the method of determining the "normal cumulative value " that derives from the total cost of producing the good under investigation in the country of origin, taking into

account the amount the ordinary profits and costs related to administrative, sales and other expenses.

C. In cases where there is no export price or where appears to authorities concerned that the price is unreliable because of association or existence of a type of partnership between the exporter and importer or third party, the export price may be constructed on the basis of price at which the imported products are first resold to independent buyer, or if products are not resold to an independent buyer, or not resold in the condition as imported, reasonable price shall be determined by the investigation group.

D-In non-market economies, if domestic prices in the exporting country are unrealistic, normal value of the goods determined based on the costs and prices of that good in the third country based on market economy.

E-A fair comparison shall be made between export price and normal value. This comparison shall be made at the same level of trade. For differences which affect price due allowance shall be made in each case , including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristic, and other differences which also demonstrated affect price comparability . If in these cases price comparability has been affected, authorities shall establish at level of trade equal to level of trade of the constructed export price, or shall make allowance as appropriate, in this clause.

**Article 5**-Initiations of the investigation process as follows:

A – An investigation to determine dumping shall be initiated by request made on each or the representatives, or a written application by or on behalf of the domestic industry.

B- The request must include documentation and evidence of the existence of dumping or subsidy and existence causal link between the dumped imports and the occurred injury.

**Note**-The investigation shall be initiated when domestic producers expressly supporting the application whose output constitute for at least 25 percent of the total production produced by the domestic industry. In cases that some domestic manufacturers oppose to imposing anti-dumping measures , no investigation shall be initiated when domestic production of supporters should represent more than fifty percent of total production of the same product by total supporters and opponents of the request (and not only domestic producers). This Note shall also apply on indirect request made of domestic producers opposed by related trade groups or request made by each members of the investigation group.

C-The investigation shall be started after the receipt of documented application , if there is not sufficient evidence refer will be made to Ministers of the Committee of Article 1 for final decision-making. The decision whether or not to initiate an investigation shall be informed to

applicants within 30 days. Decisions not to initiate investigations will only be communicated to applicants. After receipt of a application and before proceeding to initiate investigation, decisions made by the investigation working group shall be notified to the government of the exporting Member.

D-The investigation working group can make use of questionnaires, sampling, hearing comments, and so on to collect information and initiate investigation.

E -Exporters or foreign producers receiving questionnaires used in anti-dumping investigation shall be given at least 30 days to reply. If requested by parties extension of this period is possible.

F- Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

G- With regard to protection of confidential information , as soon as investigation started, the authorities shall provide the full text of the written application received to the known exporters and to authorities of the exporting Member and shall make it available, upon request, to other interested parties involved.

H- The interested parties should provide information to the research team ,Otherwise, identification will be based on existing documentation, including information contained in the application.

I-Throughout the anti-dumping investigation all interested parties shall have a full opportunity for defense of interests. To this end, the authorities, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposed views may be presented. Provision of such opportunities must take account the need to preserve confidentiality and convenience to parties.

J-There shall be immediate terminations in cases where the authorities determine that the margin of dumping is minimize, or that volume of dumped imports, actual or potential, or the injury, is negligible. The margin shall be considered to be minimize if is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume is account for less than 3 per cent of imports of like products, unless countries which individually account for less than 3 per cent of the imports of the like product totally account for less than 7 per cent of imports of like products to Iran.

K-The authorities shall, before the final determination made, inform interested parties of the facts under consideration which form the basis to apply definitive measures, this should take place in sufficient time for the parties to defend their interests.

L-Any information confidential, or which is provided on confidential basis by parties to investigation shall be, be treated as such by the authorities. Confidential information includes information which disclosure would be competitive advantage to competitor or would have adverse effect on a person supplying the information or a person that acquired the information .

**Note1-** Such information shall not disclose without permission of the party and the Secretariat shall take necessary procedures to keep the confidential information of the Parties.

**Note2-**The Secretariat shall require interested parties providing confidential information to provide nonconfidential summaries. These summaries shall be in sufficient detail to reasonable understanding of the substance of the information submitted in confidence. If such parties may indicate that such information is not susceptible of summary, the reasons for that must be provided.

**Note3-** If the investigation working group finds that a request for confidentiality is not warranted and supplier of the information to make the information public or to authorize disclosure in general or summary form, disregard such information and make its final decision upon documentations.

M- In order to verify information provided or to obtain details, investigation working group may carry investigations in the territory of other Members as required, provided the agreement of the firms concerned and notify the representatives of the government of Member in question .The procedures of common international practices shall apply to investigations carried out in the territory of other Members. Subject to protect confidential information, the investigation working group shall make the results of such investigations available, to the firms and may make such results available to the applicants.

N- All information related to price or subsidy is reviewed in the period of past 1 year. In the case of harm-related investigations, also three-year period is examined.

O- Investigations shall, except in special circumstances, be done within one year ,and in no case more than 18 months, after their initiation.

**Article 6 -**Determination of injury is done as follows:

A- Determination of injury shall be on an objective examination of the volume of the dumped or subsidized imports , the authorities shall consider whether there has been increase in dumped imports, either in absolute terms or relative to production or consumption or possible future increase ; significant price undercutting by the dumped

imports or the subsidy granted compared with the price of a like product of the importing Member in the importing country.

B- The examination of the impact of dumped imports or subsidy on the domestic industry shall include evaluation of all economic factors and indices of the state of industry, the fifteen indicators mentioned in this clause should be evaluated individually and carefully , including actual and potential decline in sales, market share, productivity, return of investments or capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

C- It must demonstrate that the dumped imports are, through dumping, the subsidy granted as set forth in paragraph E , causing injury. The demonstration of causal relationship between the dumped imports and the injury to the domestic industry shall be based on examination of all evidence by the investigation working group. Investigations must specifically demonstrate that the volume or the dumped imports or subsidy is causing injury to domestic industry and would have a major effect.

D-The authorities shall also examine factors which at the same time injuring the domestic industry, and the injuries caused must be attributed to the dumped imports. Factors which may be relevant in this respect include, the volume and prices of imports sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of domestic industry.

E- In making determination regarding the existence of threat of injury, the factors in paragraph B , also authorities should consider, factors as:

(i) Nature of subsidy in question and their trade effects;

(ii) Rate of increase of dumped imports into domestic market indicating substantial increased importation;

(iii) Sufficient disposable or increase in capacity of the exporter indicating the likelihood of substantial increased dumped exports to importing Member's market, taking account availability of other export markets;

(iv) Examination of whether imports are entering at prices that will have a depress or suppress effect on domestic prices, and would increase demand for further imports; and

(v) Depress or suppress effect on domestic prices

**Note-** No one of factors A-E can give guidance on material injury, the totality of factors by the investigation working group must lead to conclusion .

**Article 7-** Price undertakings may be suggested by authorities of the importing Member as following :

A- Proceedings may be suspended or terminated without the imposing provisional measures or anti-dumping duties by the investigation working group on receipt of voluntary undertakings from any exporter to revise prices or to cease exports to Iran at dumped prices .Also regarding subsidies , if the exporter agrees to revise prices or the government of exporting Member agrees to eliminate or limit the subsidy or take other measures concerning its effects , the investigation working group can according to Note4Article 2 accept the undertakings and finish the investigations.

B- Price undertakings may be suggested by the investigation working group, but no exporter shall be forced to accept. The fact that exporters do not offer such undertakings, or do not accept to do so, shall not prejudice the consideration of the case. However, authorities are free to determine that a threat of injury shall happen if the dumped imports continue to enter country.

**Note -** The Investigation working group may require any exporter accepting an undertaking to provide periodic information to fulfillment and to permit verification of data. In case of violation of an undertaking, the investigation working group may take, under this Act , actions which may constitute application of provisional measures using the information available. In such cases, duties may be on products on dumped or subsidized price not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

**Article 8 –** The application , amount and duration of provisional measures will be as follows

A-Provisional measures may be applied only if ,

(I) Investigation has been started according to this act, public notice has been given and interested parties have been given opportunities to provide information and make comments;

(ii) Preliminary determination has been made by the investigation group of dumping and consequent injury to a domestic industry; that subsidy exists and that there is injury to domestic industry; and

(iii) Aforementioned actions shall be adopted after approval of the ministers of Article 1 Committee of this Act.

B-Provisional measures may take form of provisional duty - equal to the amount of the anti-dumping or countervailing duty, not greater than the provisionally margin of dumping or subsidy.

C- Provisional measures shall not be applied sooner than 60 days from the date of the start of the investigation.

D- The application of provisional measures shall be limited to a short period, not exceeding four months, on proposal of the investigation group and approval of Article (1) Committee, and upon request by exporters representing a significant share of the trade involved, to a period not exceeding six months. When authorities, in an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

#### **Article 9-Imposing and collection of Anti-Dumping and Countervailing Duties**

A- If the investigation proves existence of dumped or subsidized products and the injury occurrence, the imposition of anti-dumping or countervailing duty shall be in the form of specific commercial benefit tax not less than the full margin of dumping or determined amount of the subsidy declared by investigation group which shall be submitted to the Council of Ministers for approval.

**Note-**If upon the determination of the investigation group imposition of the duty less than the full margin of dumping or the determined amount of the subsidy would be adequate to remove the injury caused to domestic industry, with the approval of Article (1) Committee, specific commercial benefit tax equivalent to the less duty would be applicable.

B- When anti-dumping or countervailing duty is imposed in respect of any product, such duty shall be collected in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources, except as to imports from those sources from which price undertakings under Article 7 have been accepted.

C- The Article (1) Committee shall name each of the supplier or suppliers of the product concerned as well as duty imposed in all of its approved decisions.

If, however, several suppliers from the same country are involved, and it is impracticable to name them, the authorities may name the supplying country or all the supplying countries involved.

D- If provisional measures are applied at the time of deciding for definitive anti-dumping or countervailing duties, provisional measures shall be replaced. An anti-dumping duty shall remain in force only to the extent necessary to counteract dumping or subsidization which is causing injury.

D- Extension of any definitive antidumping or countervailing duty more than five years from its imposition is subject to review and reinvestigation.

#### **Article 10- Retroactivity**

A- Provisional measures and anti-dumping or countervailing duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 8 and paragraph 1 of Article 9, respectively, enters into force.

B- In cases where provisional measures have been applied, if the investigation group determines dumping or subsidized importation and injury to domestic industry, whether definitive duty has been determined or not, the investigation group must announce on the amount of the provisional duties which must be collected from the importer.

**Note-** Injury in this paragraph does not include a threat or of a material retardation of the establishment of an industry, and in these cases after final decision for imposition of anti-dumping or countervailing duties any cash deposit made during the period of the application of provisional measures shall be refunded, and definitive anti-dumping duty may be imposed from the date of determination of threat of injury or material retardation. In the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to determination of injury, anti-dumping duties may be for the period for which provisional measures, if any, have been applied.

C- If the definitive anti-dumping duty is higher than the provisional duty paid, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid, the difference shall be reimbursed or the duty recalculated, as the case may be.

D- A definitive anti-dumping or countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

- (i) There is a history of dumping or subsidized imports which caused injury or that the importer was, or should have been, aware that the exporter practices dumping or the government of the exporting country granting subsidy would cause an injury, and
- (ii) The injury is caused by massive dumped or subsidized imports of product in a relatively short time which in light of the timing and the volume of the dumped or subsidized imports and other circumstances (such as a rapid build-up of inventories of the imported product) is

likely to undermine the remedial effect of the definitive anti-dumping or countervailing duty, provided that the importers have been given opportunity to comment.

E- No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the investigation.

#### **Article 11. Public Notice and Explanation of Determinations**

A- The exporting Member or Members of the products which are subject to such investigation and other interested parties known to the investigation group as having interest, shall be notified and public notice shall be given. The public notice of the initiation of an investigation shall contain adequate information on the following:

- (i) The name of the exporting country or countries and the product involved;
- (ii) The date of initiation of the investigation;
- (iii) The basis on which dumping is in application;
- (iv) A summary of factors on which the injury is based;
- (v) The address to which representations by interested parties should be directed;
- (vi) The time-limits allowed to interested parties for making their views known.

B- Public notice shall be given of any preliminary or final determination, whether positive or negative, of any decision to accept an undertaking pursuant to Article 7, of termination of such an undertaking, and of termination of a definitive anti-dumping duty. Each such notice shall set forth in detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities.

**Note 1-** public notice of the imposition of provisional measures shall contain, detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments with regard to the requirement for the protection of confidential information, and shall contain in particular:

- (i) The names of the suppliers, or when impracticable, the supplying countries;
- (ii) Description of the product which is sufficient for customs purposes;

- (iii) The margins of dumping or full amount of the subsidy established and full explanation of the reasons for the methodology used in the establishment of each according to this Act;
- (iv) Considerations relevant to the injury determination set out in this Act;
- (v) The main reasons leading to determination.

**Note 2-** A public notice of conclusion or suspension of investigation in the case of an affirmative determination providing for imposition of a duty or the acceptance of a price commitment shall contain, all relevant information on the matters of fact and law and reasons which have lead to imposition of final measures or acceptance of a price commitment, with regard to the requirement for the protection of confidential information.

**Note 3-** Public notice of termination or suspension of an investigation following the acceptance of undertaking pursuant to Article 7 shall include, the non-confidential part of this undertaking.

## **Article 12- Safeguard Measures**

A- Safeguard measures shall be applied in the form of a commercial benefit tax or quantitative restrictions only if that Member has determined, that such product is being imported into its territory in such increased quantities to cause or threaten serious injury to the domestic industry that produces like products.

B- The investigating group shall evaluate all factors of an objective and quantifiable nature having of the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in level of sales, production, productivity, capacity, profits and losses, and employment .

C-Safeguard measures shall be applied in non-discriminatory way to all exporting countries.

D-If injury to domestic industry is due to undertakings resulting from trade agreements with other countries , in order to prevent or remedy, full or partial suspension of such undertakings shall take place. These agreement safeguards shall only be subject to the provisions of agreement and would be applicable to its parties.

E-If a quantitative restriction is used, the level of imports in the last three years shall be the measure unless higher restrictions would be justifiable. Meanwhile, allocation of quota for different countries in accordance with their previous import share, would be based on any special factors which may be affecting the trade in the product. If imports from one country

or more shows a disproportionate increase, application of quota may be limited to those members.

F- A Member may apply safeguard measure only following an investigation by the competent authorities. The investigations should determine the absolute or relative increase of a product being imported has caused serious injury or threat. The investigations are pursuant to procedures established for anti-dumping and countervailing duties regardless of their specific cases (like questionnaires) and shall be applied by the group subject to Article 2.

G- In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is evidence that increased imports have caused or are threatening to cause injury. This measure would be in the form of a special commercial benefit tax and its duration shall not exceed more than 200 days .

H- A Member shall apply safeguard measures only for such period of time necessary to prevent or remedy serious injury, The total period of application of safeguard measure including the period of application of a provisional measure, shall not exceed four years. This period may be extended provided that the authorities of the importing Member have determined, measure continues to be necessary to prevent or remedy the injury. The extension shall not be more limited and shall liberalize progressively. If the duration of a safeguard measure is over one year, the Member applying it shall progressively liberalize it at intervals during the period of application. If the duration exceeds three years, the Member applying such measure shall review the situation not later than the mid-term of the measure and withdraw , or increase the pace of liberalization

I- The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension shall not exceed ten years.

J- Safeguard measures shall not be applied against product originating in a developing country Member as long as its share of imports concerned in the importing Member does not exceed 3 per cent, provided that developing country Members totally account for more than 9 per cent of total imports of the product concerned.

**Article 13-** Purchases of products by Governmental Organizations by bidding is exempted from this Act.

**Article 14-** This Act shall replace the previous Act dated 2007/08/07.