

REPUBLIC OF LITHUANIA
LAW
ON COUNTERVAILING DUTIES

No XX of X (month) 1999

Chapter 1

General Provisions

Article 1. Objective of the law

The purpose of this law is to provide legal conditions for the protection of domestic producers against subsidised imports, if such imports causes injury to domestic producers.

Article 2. The main definitions used in this law

1. **Subsidy** means a direct or indirect financial contribution by the government in the country of origin or export, for the acquisition of short- term or long- term assets, manufacturing, production, export or transport of a product, reduction of its price, support of various programmes, debt repayment of enterprises or covering the losses sustained by enterprises and for similar purposes.
2. **Countervailable subsidies** means a subsidy, which is granted to a specific enterprise and (or) exporter or an association of specific enterprises or exporters, or a specific industry, or is granted to promote export of a product, or is granted with a view to promote the use of domestic over imported goods, and subsidy, which, if given in respect of products, imported into the customs territory of the Republic of Lithuania, makes them eligible for the countervailing duty.
3. **Non-countervailable subsidies** means a subsidy which if accorded in respect of products, imported into the customs territory of the Republic of Lithuania does not make them eligible for countervailing duty.
4. **Injury** means a material injury to domestic producers, resulting from import of subsidised products, or threat of material injury or material retardation of the establishment of the production of the like product in Lithuania.
5. **Domestic industry** means Lithuanian producers as a whole of the like products or those whose collective output of the products constitutes a major portion of the total production of such products in the customs territory of the Republic of Lithuania, as provided in paragraph 4 of Article 12 and paragraphs 4 and 5 of Article 9 of this law, excluding the exception provided in paragraphs 1, 2, and 3 of Article 9.
6. **Subsidized product** means the product which under this law is the object of investigation.
7. **Like product** means a product which is identical to the imported subsidized product , that is to say alike in all respects to the subsidized product exported into the customs territory of the Republic of Lithuania. In the absence of identical

product, another product which has characteristics closely resembling those of the product under consideration.

8. Customs territory of the Republic of Lithuania means the territory of the Republic of Lithuania, bordered by the customs boundaries of the Republic of Lithuania, unless the international agreements of the Republic of Lithuania provide otherwise.

9. Customs boundaries of the Republic of Lithuania means the border of the customs territory of the Republic of Lithuania, coinciding with the state border of the Republic of Lithuania, unless the international agreements of the Republic of Lithuania provide otherwise.

10. Countervailing duty means the duty which may be applied to imports subsidized with countervailable subsidy, if upon the release of such product for free circulation in the customs territory of the Republic of Lithuania injury is caused to domestic industry.

11. Provisional countervailing duty means the duty which may be imposed during the investigation period when it is determined preliminary that imported product is being subsidized with a countervailable subsidy and causes injury to the domestic producers.

12. Interested parties in respect of the procedures related to the calculation and application of countervailing duties means:

- 1) the Lithuanian producers of the like product (including potential producers) or business associations, a majority of the members of which are the producers of the like product;
- 2) exporters of the subsidized products, foreign producers or importers or business associations, a majority of the members of which are foreign producers, exporters or importers;
- 3) the governments of the countries exporting the subsidized product;
- 4) Lithuanian consumers, which use a subsidized product for the production of their products as well as non-industrial Lithuanian consumer associations;

13. The exporter means an economic entity of the country of origin or export, selling the subsidized product to the natural or legal person of the Republic of Lithuania or an undertaking not having legal personality, or who has concluded any other transaction with a foreign economic entity for the supply of such product.

14. Developing country means the country included in the list of countries provided in paragraph 4 of Article 46, which are eligible to concessions.

15. Final determination means the decision which is adopted by the Competition Council on the basis of not only the findings of the investigation, but also having taken into consideration the state interests of Lithuania, as provided for in Article 28 of this law.

Article 3. Public authorities in charge of the implementation of this law

1. The responsibility for the implementation of the Law on Countervailing Duties shall be vested in the Competition Council.
2. The administration officials authorised by the Competition Council (hereinafter referred to as authorised persons) shall carry out investigation for the determination of countervailable subsidy and injury, adopt decisions relative to sampling and perform selections, carry out reviews of the imposition of countervailing duty and an undertaking, prepare and submit to the Competition Council proposals concerning the investigation, its suspension or termination, on

the imposition of the provisional countervailing duty or review of application of an undertaking, on the changing of the amount of a countervailing duty or an undertaking and continuation or termination of imposition (after review) and refund of overpaid countervailing duty.

3. The Competition Council shall adopt decisions relative to the initiation of the investigation for the determination of countervailable subsidy and injury, its suspension or termination, the imposition of provisional countervailing duty, on the review of the application of a countervailing duty and review of an undertaking, on the changing of the rate of a countervailing duty and an undertaking and continuation or termination of its imposition (after review) and refund of the overpaid countervailing duty.

Chapter 2

Subsidies

Article 4. Existence of a subsidy

1. A subsidy shall be deemed to exist if the conditions provided for in paragraph 2 and 3 of this Article are met.
2. The government of the country of origin and/or export of a product or any other public body provides a financial contribution by:
 - 1) a direct transfer of funds (e.g. grants, loans, equity infusions) as well as providing conditions for the potential direct transfers of funds or liabilities (e.g. loan guarantees); or
 - 2) not collecting or deferring the collection of government revenue (e.g. fiscal incentives such as tax credits). However the exemption of an exported product from duties or taxes, borne by the like product when destined for domestic consumption, or the remission of such duties and taxes in amounts not in excess of those which have accrued shall not be deemed to be a subsidy, provided such an exemption is granted in accordance with the list provided for in paragraph 1 of Article 46; or
 - 3) providing goods or services other than general infrastructure, or purchasing goods;
 - 4) extending the repayment loans or entrusting or directing a private body to carry out one or more of the type of functions specified in points 1, 2, and 3 above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or
 - 5) providing support to income or prices in any form ;
3. As a result of the granted financial assistance a benefit is conferred to an enterprise or exporter.

Article 5. Countervailable subsidies

1. Subsidies shall be countervailable only if they are specific.
2. It shall be deemed that a subsidy is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as certain enterprises) if the granting authority or the legislation governing the operation of the granting authority explicitly limits access to a subsidy to certain enterprises.

3. If the granting authority or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. Objective criteria and conditions mean that they do not favour certain enterprises over others and they are horizontal in application (account is taken of the number of employees or size of enterprise, but not the type of production, etc.) Such criteria and conditions must be clearly set out by law, regulation or other official document, so as to be capable of verification.
4. If pursuant to paragraph 3 of this Article the subsidy is not specific, but in order to determine whether it is countervailable the following factors may be taken into consideration:
 - 1) use of a subsidy programme by a limited number of certain enterprises;
 - 2) the length of time during which a subsidy programme has been in operation;
 - 3) the granting of disproportionately large amounts of subsidy to certain enterprises;
 - 4) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy, taking into consideration the frequency with which applications for subsidies are refused or approved and the reasons of such decisions.
5. A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be deemed specific, with the exception of setting and changing of generally applicable tax rates by all levels of government.
6. Notwithstanding the provisions of the paragraphs above of this Article pursuant to which a subsidy is not specific, the following subsidies shall be deemed countervailable:
 - 1) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including the subsidies listed in paragraph 1 of Article 46 of this law. Subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings, The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy;
 - 2) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Article 6. Non-countervailable subsidies

1. Subsidies shall not be subjected to countervailing measures if they meet at least one of the following conditions:
 - 1) subsidies which are not specific within the meaning of paragraph 3 and 4 and the exemption provided for in paragraph 5 of Article 5 of this law.
 - 2) Subsidies which are specific, within the meaning of paragraphs 2 and 5 and 4 of Article 5 of this law, but which meet the conditions provided for in the other paragraphs of this Article;
 - 3) Subsidies which constitute an element of government support measures to agriculture. The list of such measures shall be drawn up by the Government of the Republic of Lithuania pursuant to paragraph 2 of Article 46 of this law or any other public body authorised by it.

2. A countervailing duty shall not apply in respect of subsidies for research activities conducted by firms or by higher education and or research establishments on a contract basis with firms (with the exception of civil aircraft), if the subsidies cover not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity specified in paragraph 6 of this Article, provided that such subsidies are limited exclusively to:
 - 1) wages costs of researchers, technicians and other supporting staff employed exclusively in the research activities;
 - 2) costs of instruments, equipment, land and buildings used exclusively for the research activity, except when disposed of on a commercial basis;
 - 3) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;
 - 4) additional overhead costs incurred directly as a result of the research activity;
 - 5) other running costs (such as those of materials, supplies and the like) incurred directly as a result of the research activity.

3. Subsidies to disadvantaged regions within the territory of the country of origin and/ or export, given pursuant to a general framework of regional development (when regional subsidy programmes are part of an internally consistent and generally applicable regional development policy) may be considered to be non – specific if the criteria laid down in paragraphs 2, 3, 4 of Article 5 of this law were applied to each eligible region concerned. Such subsidies shall not be subject to countervailing measures, provided that :
 - 1) each disadvantaged region is a clearly designated geographical area with a definable economic and administrative identity;
 - 2) the region is regarded as disadvantaged on the basis of neutral and objective criteria (which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities), indicating that the region's difficulties arise out of more than temporary circumstances. Such criteria must be clearly spelled out by law, regulation or any other official document of the country of origin and /or export, so as to be capable of verification;
 - 3) the criteria mentioned in item 2 of this paragraph include a measurement of economic development, based on at least one of the following factors, as measured over the period of three years:
 - income per capita, or household income or GDP per capita, which must not be above 85 per cent of the average for the territory of the country of origin and /or export;
 - unemployment rate, which must be at least 110 per cent of the average for the territory of the country of origin or export of the subsidized good.

4. A countervailing duty shall not be imposed on subsidies intended to promote adaptation of existing facilities which have been in operation for at least two years, to new environmental requirements imposed by laws and /or regulation, which result in greater constraints and financial burden on firms. But such subsidies must :
 - 1) be a one-off non recurring measure; and
 - 2) be limited to 20 per cent of the cost of adaptation
 - 3) not cover the cost of replacing and operating the subsidized investment, which must be fully borne by the firm;

- 4) be directly linked to and proportionate to a firm's planned reduction of nuisance and pollution, and not cover any manufacturing cost savings which may be achieved; and
 - 5) be available to all firms which can adopt new equipment and/or production processes.
5. Industrial research mentioned in paragraph 2 of this Article means planned research aimed at discovery of new knowledge, with the view to use such knowledge for developing new products, processor services or bringing about a significant improvement to existing products, processes or services.
 6. Pre-competitive development activity, mentioned in paragraph 2 of this Article, means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services, whether intended for sale or for use. Pre-competitive development activity also includes the creation of a first prototype which would not be capable of commercial use. It may also include the creation of alternative products, processes or services and initial demonstration and pilot projects, provided that they cannot be used for commercial exploitation. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other ongoing operations even though those alterations may represent improvements.
 7. Allowable levels of non-countervailable subsidy indicated in paragraph 2 of this Article, shall be established by reference to the total eligible costs incurred over the duration of an individual project. In the case of programmes which span both industrial research and pre-competitive development activity the allowable level of non-countervailable subsidy shall not exceed the simple average of the allowable levels of non-countervailable subsidy applicable to the above two categories, calculated on the basis of all costs indicated in all items of paragraph 2 of this Article.

Chapter 3

Injury to Domestic Industry

Article 7. Determination of injury

1. A determination of injury shall be based on positive evidence and on the objective examination of the volume of the subsidized imports and the effects of the subsidized imports on the prices of the like products in Lithuanian market and the impact of those imports on the domestic industry.
2. With regard to the volume of the subsidized imports, consideration shall be given to whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production and consumption in Lithuania. With regard to the subsidized imports on prices, consideration shall be given to whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the domestic 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. None of these factors give decisive guidance.

3. Where imports of a product from more than one country are simultaneously subject to investigation, the effects of such imports shall be cumulatively assessed only if it is determined that :
 - 1) the amount of countervailable subsidies established in relation to the imports from each country is more than the minimum set in paragraph 5 of Article 11 of this law and the volume of imports from each country is not negligible;
 - 2) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the like products of domestic producers.
4. The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having bearing on the state of industry, including:
 - 1) the fact that an industry is still in the process of recovering from the effects of past subsidization or dumping, the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity;
 - 2) factors affecting prices of the product concerned in Lithuania;
 - 3) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital on investments and in the case of agriculture – an increased burden on government support programmes. None of the above factors give a decisive guidance.
5. All the relevant evidence that prove injury , shall demonstrate that the import of subsidized products , namely the volume of imports and/or price level , determined in accordance with paragraph 2 of this Article are responsible for an impact on the domestic industry as provided for in paragraph 4 of this Article, and that this impact exists to a degree which enables it to be classified as injury.
6. In order to ensure that injury caused by these other factors is not attributed to the subsidized imports pursuant paragraph 5 of this Article, known factors other than the subsidized imports, which at the same time are causing injury to domestic producers shall also be examined. Factors which may be considered in this respect include the volume and prices of non-subsidized imports, contraction in demand or changes in the patterns of consumption, restrictive trade practices of and competition between third country and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
7. The effect of the subsidized imports shall be assessed in relation to the production of domestic 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 subsidized imports shall be assessed by examination of the production of the narrowest group or range of products including the like product, for which the necessary information can be provided.
8. A threat of material injury shall be based on facts. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, consideration should be given to, inter alia, such factors as:
 - 1) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

- 2) a significant rate of increase of subsidized imports into the customs territory of the Republic of Lithuania, indicating the likelihood of substantially increased imports;
- 3) freely disposable capacity of the exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased subsidized exports, taking into account the availability of other export markets to absorb any additional exports;
- 4) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which would otherwise would have occurred, and would probably increase demand for further imports;
- 5) inventories of the product under investigation.
9. None of the factors listed in this paragraph by itself can give a decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that unless protective action is taken, material injury will occur.

Article 8. Definition of domestic industry

1. Pursuant to the provisions of paragraph 5 of Article 2 of this law, if the Lithuanian producers are related to the exporters or importers or are themselves importers of such product, for determining whether the volume of collective output of certain group or producers constitutes a major portion of the total production of such products in the customs territory of the Republic of Lithuania, the volume of output of such group of producers shall be disregarded. In this case the definition of “domestic industry” shall not apply to them.

2. Producers shall be considered to be related to exporters or importers only if:

- 1) one of them is directly or indirectly controls the other;
- 2) both of them are directly or indirectly controlled by a third person;
- 3) together they directly or indirectly control a third party, provided that there are grounds to believe or suspect that the effect of the relationship is such as to cause the producer related to the exporter of the subsidized product to behave differently from non-related producers.

3. For the purpose of paragraph 2 of this Article, 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.

4. In exceptional circumstances, for the purpose of the examination of the production of a like product, the customs territory of the Republic of Lithuania may be divided into two or more markets. In each of these markets the producers may be regarded as a separate domestic industry if:

- 1) the producers within a such a market sell more than 80 percent of their production of the like product;
- 2) the producers within the remaining part of the customs territory of the Republic of Lithuania do not sell in that market or sell less than 20 per cent of the total volume of the like product.

5. In circumstances referred to in paragraph 4 of this Article, injury may be found to exist even where major portion of the total domestic industry is not injured, provided that there is a concentration of subsidized imports in such separate market and causes injury to domestic producers which producer not less than 80 per cent of the volume of output of such product in such market.

Chapter 4.

Evidence of a Countervailable Subsidy

Article 9. Initiation of investigation

1. An investigation to determine the existence, amount and effect of a countervailable subsidy shall be initiated when the Competition Council receives a written application of domestic producers or any other person acting on their behalf (in the manner established in paragraph 4 of Article 11) and adopts the decision to carry out investigation. The contents of the application must be in compliance with the requirements set forth in paragraph 1 of Article 10.
2. A written application may be lodged by a natural or legal person or any other economic entity without a legal personality acting on behalf of domestic producers (as referred to in paragraph 4 of Article 11).
3. If in exceptional circumstances the Competition Council decides to carry out investigation without having received a application referred to in paragraph 1 of this Article , it may do so if it is in possession of sufficient evidence referred to in paragraph 1 of Article 10 of this law that there is a countervailable subsidy and an injury to domestic industry and a causal link between them.

Article 10. A application to investigate a countervailable subsidy

1. A application to investigate a countervailable subsidy shall include evidence of the existence of countervailable subsidy (indicating , if possible, their amount), injury and a causal link between the subsidized imports and injury. The application shall contain such information as is available to the applicant on the following:
 - 1) full name and address of the applicant (applicants), in case of a legal person the name and address of its head office and a description of the volume and value of the production of the like product by the applicant in the customs territory of the Republic of Lithuania, indicating what portion it accounts for in the total output of the like product in the customs territory of the Republic of Lithuania;
 - 2) where the volume of production of the applicant(s) is less than that referred to in paragraph 4 of Article 11, the application shall identify the domestic producers on behalf of which the application is lodged by a list of all known domestic producers of the like product in Lithuania (or associations of domestic producers of the like product in Lithuania). This list shall provide a description of the volume and value of each of these producers of the like product in the customs territory of the Republic of Lithuania;
 - 3) a complete description of the subsidized product so as it would be possible to classify it according the Combined Nomenclature and Common Customs Tariffs and Foreign Trade Statistics Nomenclature;
 - 4) the names of the countries of origin of a subsidized product and /or exporters , as well as lists of all known foreign producers of this product and exporters into the customs territory of the Republic of Lithuania and lists of importers;
 - 5) evidence proving the subsidization of a product, the amount, nature and countervailability of the subsidy;
 - 6) information on changes in the volume of the subsidized imports, the effect of those imports on prices of the like product in the Lithuanian market and the consequent impact of the imports on the domestic producers, including the factors

and indices, having a bearing on the state of the domestic industry, referred to in paragraphs 2 and 4 of Article 7 of this law;

2. The application shall not be publicised until the decision to initiate investigation is adopted. However upon the receipt of the application which meets all the requirements set forth in paragraph 1 of this Article and intending to carry out investigation on its own initiative, (pursuant to paragraph 3 of Article 9 of this law), the Competition Council shall notify the governments of the countries of origin and/or export of subsidized products, in order to be able to consult them with the aim of clarifying the issues referred to in paragraph 1 of this Article and reach a mutually agreed solution.

Article 11. Consideration of an application

1. Upon receipt of an application to investigate a countervailable subsidy, the Competition Council shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.
2. Having examined the evidence provided in the application, the investigation may be carried out also in order to determine whether an alleged subsidy is specific or non-countervailable.
3. If upon the examination of evidence provided in the application it becomes evident that there is no sufficient evidence of countervailable subsidy and injury to justify the investigation, the Competition Council shall adopt the decision to initiate investigation.
4. The application shall be considered to have been made by or on behalf of domestic producers, if it is supported by those domestic producers whose collective out of the like product constitutes more than 50 per cent of the total production of that product produced by that portion of domestic industry expressing either support or opposition to the application. However, no investigation shall be initiated when domestic producers supporting the application account for less than 25 per cent of total production of the like product produced in Lithuania, with the exception of the case provided for in paragraph 3 of Article 9.
5. The investigation shall not be carried out if the amount of the countervailable is de minimis, i.e. when it constitutes less than 1 per cent of the value of subsidized imports. When examining imports from developing countries, it shall be deemed that the countervailable subsidy is de minimis, if its volume constitutes less than 2 per cent of the value of subsidized imports, whereas the volume of the minimum countervailable subsidy of developing countries which are members of WTO and which are listed in paragraph 4 of Article 46 of this law shall be 3 per cent.
6. An investigation shall not be carried out in respect of that country, the subsidized imports of which accounts for less than 1 per cent of the Lithuanian market share, with the exception of cases when the total volume of imports from all the countries, from which the subsidised products are imported constitutes 3 or more percent of the consumption volume of the like product in the customs territory of the Republic of Lithuania. The investigation shall not be carried out if the volume of subsidized imports from a developing country constitute no more than 4 per cent of the of the total volume of the imports concerned into the customs territory of the Republic of Lithuania, with the exception of cases when such imports from

each developing country separately do not exceed 4 per cent and from all developing countries together constitute more than 9 per cent of the total volume of the subsidized imports into the customs territory of the Republic of Lithuania. If the subsidized imports are not in excess of the volume indicated in this paragraph, it shall be deemed that the injury is negligible.

7. If the application is withdrawn prior to the adoption of the decision to initiate investigation, it shall be deemed that the application has not been lodged.

Article 12. Adoption of the decision to initiate investigation

1. The Competition Council, having examined the evidence submitted by the authorised officials, whether it is sufficient to initiate investigation, shall adopt a decision to initiate or not an investigation not later than within 45 calendar days from the receipt of an application.
2. If the application to investigate a countervailable subsidy meets the requirements laid down in paragraph 1 of Article 10 of this law and satisfy not a single condition referred to in paragraphs 3, 4, 5, 6, and 7 of Article 11, the competition Council shall adopt the decision to initiate investigation. In the opposite case the application shall be refused.
3. The Competition Council, having adopted the decision to initiate investigation, shall publish a notice in the Official Gazette pursuant to paragraphs 2 and 3 of Article 42.
4. Upon the adoption of the decision to initiate investigation, the Competition Council shall inform the exporters, importers and associations, representing importers or exporters known to it to be concerned with the results of investigations, as well as the country or origin and /or export and the applicants, of the initiation of investigation. Without prejudice to the provisions of Article 44 of this law pursuant to which an investigation is carried out, the text of application must be submitted to the known exporters and to the governments of the country of origin and/ or export, and must be available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the text of the application shall be provided only to the public authorities of the country of origin and /or export or to the relevant trade association.
5. An investigation shall not hinder the procedures of customs clearance.

Article 13. The duration of investigation

The investigation of countervailable subsidy shall be concluded within one year. In any case the duration of investigation may not exceed 13 months.

Article 14. The Investigation

1. Following the adoption of the decision to initiate investigation, questionnaires shall be provided to all known interested parties, indicating what information is required for investigation.
2. The interested parties which have received questionnaires shall be given at least 30 days to reply. This time limit shall be counted from the date of receipt of the questionnaire. It shall be deemed that the questionnaire has been received by an exporter one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic mission of the relevant exporter. The Competition Council may extend the time limit for replay of the questionnaire, having taken due account of the time limits of investigation, provided that the

interested party shows due cause for such extension, in terms of its particular circumstances.

3. During the course of investigation, normally information covering the most recent financial accounting period of the beneficiary is examined, but may be selected any other period (which shall be indicated in the determination to initiate investigation) of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data is available.
4. During the investigation the evidence of both subsidies and of injury shall be considered simultaneously.
5. The investigation shall be based only on written information.
6. If the information submitted by the applicant and exporter, as well as information obtained from other sources is contradictory, the Competition Council may address the governments of the interested parties involved in the investigation, with a request to carry out investigation in their territory and having received their consent and the consent of enterprises involved in investigation, to carry out such investigation. The procedures for investigations in the territory of another country shall be established by the Government of the Republic of Lithuania in accordance with paragraph 5 of Article 46 of this law or any other body authorised by it.
7. The Competition Council, on the basis of the provisions of paragraph 6 of this Article, may arrange verification visits to examine the records of exporters, importers, traders (or their representatives), producers, trade associations involved in the investigation and information provided on subsidies and injury to verify information. Such visits shall be possible only if the replies to the questionnaire were submitted properly and in due time. Prior to such visits, relevant enterprises shall be informed of the nature of the information to be verified and any further information which needs to be provided during such visits. This should not preclude requests made during the verification for further details in the light of information obtained. At the request of the Competition Council, in the course of on-site inspections, it may be assisted by the officials of the country in which the inspection is performed.
8. If the interested party refuses access to or otherwise does not provide, necessary information, or provides it after the expiry of all time limits or it is established that the interested party has provided false information, false information shall be disregarded and findings shall be based on the information and evidence received from other sources. The Competition Council shall inform the interested parties in writing of the consequences incurred due to the failure to submit information, delayed submission of information or submission of false information.
9. Failure to give a computerised response shall not be considered to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or additional cost.
10. If the information submitted by the interested party is not ideal in all respects, provided that any deficiencies are not such as to cause undue difficulty in using it and it is verifiable, and that the party has acted to the best of its ability, such information should not be disregarded.
11. If evidence and information is not accepted, the supplying party shall be informed of the reasons therefore and shall be granted the opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or

information shall be given in the decisions provided for in paragraph 2 of Article 42.

12. Information, supplied by the interested parties and /or on which investigation findings are based (referred to in paragraph 8 of this Article) and on the basis of which the Competition Council adopts its determinations taking into consideration the time limits of the investigation and possibilities to check it by reference to information from other interested parties or information from other independent sources, such as published price lists, official import statistics and customs returns, etc.
13. The Competition Council shall have to hear interested parties, which within the time limits specified in paragraph 3 of Article 42 submitted the applications in writing, indicating how they may be affected by investigation result and for what particular reasons they should be heard.
14. If the interested parties so request, the Competition Council shall arrange consultations between interested parties having adverse interest. During such consultations the parties may exchange their views and offer rebuttal arguments. There shall be no obligation on any party to attend consultations.
15. The interested parties, upon submission of a written request, may familiarise with the information provided by the information provided by other interested parties, on the basis of which determinations are made by the Competition Council and which is not confidential within the meaning of Article 44 of this law. These interested parties may supply explanations relative to the information submitted however regard shall be given only in respect of well substantiated explanations.
16. Throughout the investigation the Competition Council shall afford the country of origin and /or export of the subsidized product to continue consultations with a view to clarify the factual situation and arrive at a mutually agreed solution.

Article 15. General provisions on the calculation of the amount of the countervailable subsidy

1. The amount of countervailable subsidy shall be calculated according to the methodology provided for in paragraph 3 of Article 46 of this law, in terms of the benefit conferred on the recipient which is found to exist during the investigation period referred to in paragraph 3 of Article 14 of this law.
2. The amount of the countervailable subsidies shall be determined per unit of the subsidized product exported to the customs territory of the Republic of Lithuania. If the interested party requests and submits necessary evidence, in establishing the amount of the countervailable subsidy, the following elements may be deducted from the total subsidy:
 - 1) all fees or other costs necessarily incurred in order to qualify for, or to obtain the subsidy;
 - 2) export taxes, duties and other charges levied on the export of the product to the customs territory of the Republic of Lithuania, if they are specifically intended to offset the subsidy.
3. Where the subsidy is not granted by reference to the quantities manufactured, processed, exported, or transported, the amount of the countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the product concerned during the investigation period for subsidization.

4. Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in paragraph 3 of this Article. The subsidy intended for the acquisition of the fixed assets which are non-depreciating, shall be valued as an interest free loan, and be treated in accordance with point 2 of paragraph 1 of Article 16.
5. Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period and allocated as described in paragraph 3 of this Article, unless special circumstances arise justifying attribution over a different period.

Article 16. Calculation of benefit to the recipient

The benefit to the recipient conferred by a countervailable subsidy shall be calculated in accordance with the methodology provided for in paragraph 3 of Article 46 of this law and the following rules:

- 1) government provision of equity capital shall not be considered to confer benefit, unless the investment 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 country of origin and/ or export of the subsidized product;
- 2) a loan by the government shall not be considered to confer benefit, unless there is a difference between the amount that the enterprise receiving a loan pays on the government loan and the amount that the enterprise would pay for a comparable commercial loan which the enterprise could actually obtain on the market. In that event the benefit shall be the difference between these two amounts;
- 3) a loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the enterprise receiving the guarantee pays on a loan guaranteed by the government and the amount that the enterprise would pay in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;
- 4) the provision of goods and services by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or services in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase.

Article 17. Sampling

1. In cases where the number of applications to investigate countervailable subsidy, exporters or importers, types of product or transactions is large, the investigation may be limited.

2. The investigation may be limited to:

- 1) a reasonable number of entities, products and transactions by using samples;

- 2) to the largest representative volume of the production, sales, or exports which can reasonably be investigated within the investigation period.
3. The samples indicated in item 1 of paragraph 2 of this Article must be statistically valid on the basis of information available at the time of the selection. Decision concerning sampling shall be adopted by the officials authorised by the Competition Council. Preference shall be given to choosing a sample in consultation with and with the consent of , the parties concerned, provided that such parties make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sampling to be chosen.
4. In cases where the investigation has been limited in accordance with this Article, an individual amount or countervailable subsidization shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in due time.
5. If after the selection of the samples, there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select , the provisions of paragraphs 8, 9, 10, 11, and 12 shall apply.

Article 18. Conclusion of investigation

The investigation shall be concluded and an appropriate determination adopted

- 1) if the existence of a countervailable subsidy and injury is affirmed and decision adopted to impose countervailing duty and its rate is established;
- 2) if taking into account the countervailable subsidy, scope of injury and the interest of the Republic of Lithuania it has been decided not to impose a countervailing duty;
- 3) if in the course of investigation it has been established that there is no countervailable subsidy and /or injury, or that in accordance with paragraphs 5 and 5 of Article 11 of this Article they are negligible;
- 4) upon the withdrawal of the application by the applicant and when the Competition Council determines that the termination of investigation without imposing countervailing duties (in accordance with paragraph 4 of Article 28) is in the interest of the Republic of Lithuania.

CHAPTER 5

APPLICATION OF PROVISIONAL COUNTERVAIOING DUTY

Article 19. Terms and Conditions for the Application of Provisional Countervailing Duties

1. If it is suspected that the imported product benefits from subsidies, a provisional countervailing duty may be imposed during the investigation of import of the product provided that the following conditions are satisfied:

- 1) the investigation has been initiated in accordance with the provisions set forth in Articles 9, 10, 11 and 12 of this Law;
- 2) a notice has been given to that effect in accordance with Article 42 of this Law and interested parties have been given adequate opportunities to submit information and make comments;

3) a provisional affirmative determination has been made that the imported product benefits from countervailing subsidies and of consequent injury to domestic industry;

4) the application of provisional countervailing duty (in accordance with Article 28, paragraph 4 of this Law) is in compliance with the interests of the Republic of Lithuania and is necessary to prevent injury being caused during the investigation.

2. However, if an anti-dumping duty (including provisional anti-dumping duty) is imposed or already applied in respect of a subsidized imported product for the purpose of eliminating injury to the domestic producers, the provisional countervailing duty may not be applied even though all the conditions specified in paragraph 1 hereof are met.

Article 20. Taking a Decision to Apply a Provisional Countervailing Duty

1. Where all the requirements set forth in Article 19 of this Law have been fulfilled, the Competition Council shall take a decision to impose the provisional countervailing duty, set the amount of the duty and the date from which it is to be applied (so as to allow for the preparation for the application of the duty).

2. The provisional countervailing duty shall be imposed no earlier than 60 calendar days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings. Provisional countervailing duties shall be imposed for a maximum period of four months.

3. After the Competition Council takes a decision to impose the provisional countervailing duty, a notice to the effect must be publicised in accordance with the procedure established in Article 42 paragraph 5 of this Law.

4. The amount of the provisional countervailing duty shall not exceed the total amount of countervailable subsidies as provisionally established but it should be less than this amount, if such lesser duty would be adequate to remove the injury to the domestic producers.

Article 21. Application of the Provisional Countervailing Duty

1. The provisional countervailing duty may be applied only in respect of the imported subsidized products which are released for free circulation in the customs territory of the Republic of Lithuania from the date stated in the decision to apply the provisional countervailing duty.

2. Where the facts as finally established upon the completion of investigation show, that no injury has been caused or would have been caused even if the provisional countervailing duty had not been imposed, any collected amount of the provisional countervailing duty must be refunded.

Article 22. Securing the Payment of the Provisional Countervailing Duty

The provisional countervailing duty on the subsidized imports must be paid in accordance with the procedure laid down in the Law on Customs Tariffs of the Republic of Lithuania; the set amount of the duty not paid by the due date according to the above procedure shall be recovered.

CHAPTER 6 PROCEDURES FOR ACCEPTING UNDERTAKINGS

Article 23. Acceptance of Undertakings

1. During the investigation the country of origin and/or export of the subsidized product may offer undertakings under which:

- 1) the country of origin and/or export of the subsidized product agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
- 2) any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports benefit from countervailable subsidies.
2. Price increases under such undertakings must not be higher than is necessary to offset the amount of countervailable subsidies and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the domestic producers.
3. The country of origin and/or export of the subsidized product may be suggested the undertaking specified in paragraph 1 hereof by the Competition Council, but no country or exporter shall be obliged to enter into such an undertaking. The fact that countries or exporters do not offer such undertakings or do not accept an invitation of the Competition Council to do so shall in no way prejudice consideration of the case.
4. The Competition Council may not suggest to offer undertakings or accept the offered undertakings unless a provisional or affirmative determination of subsidization and injury caused by such subsidization to local industry has been made.
5. The undertaking to reduce the price offered by the exporting country or exporter after the lapse of the time period set in Article 43 paragraph 5 of this Law shall not be accepted except in cases when the Competition Council decides to accept the undertaking due to the extraordinary economic circumstances in Lithuania or the exporting country.
6. The Competition Council may refuse to accept the offered undertaking if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. In such cases, if possible, the exporter and/or the country of origin and export concerned must be provided with the reasons for which it is proposed to reject the offer of an undertaking and be given an opportunity to make comments thereon. The Competition Council, however, must not take into consideration the reasons for rejection. The reasons for rejection must be set out in the definitive decision of the Competition Council.
7. Where undertakings are accepted from certain exporters during the course of an investigation shall be deemed to take effect from the date on which the investigation is concluded for the country of origin and/or export.

Article 24. Actions Following the Acceptance of Undertaking

1. If, upon accepting the undertaking, the Competition Council establishes that the offered undertaking is adequate to remove the preliminarily or definitively determined injury to the domestic producers, the Council shall terminate the investigation by its decision, except in cases where continuation of the investigation is requested by the exporting country.
2. Upon the termination of the investigation the calculation of its duration shall be also terminated.
3. If, having accepted the undertaking, the Competition Council, taking into consideration the insufficiency of the available information, makes a determination that the accepted undertaking is inadequate to offset the subsidies and/or remove the injury or if the exporting country so desires, the investigation shall be continued.
4. In the case specified in paragraph 3 hereof, when the undertaking has been accepted upon preliminary determination of the countervailable subsidy and/or injury, and, after further investigation, a negative determination of subsidization and injury is made, the undertaking shall lapse as from the day of entry into force of the determination. However, where negative determination of subsidization and injury is

due to the existence of the accepted undertaking, the Competition Council may require that the undertaking be maintained.

5. In the event of an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms.

Article 25. Supervision of Fulfilment of the Undertaking

After the Competition Council accepts the undertaking, any country or exporter from whom undertakings have been accepted must periodically provide information relevant to fulfilment of such undertaking and permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

Article 26. Breach of Undertaking

In case of breach or withdrawal of undertakings, if the investigation has not been terminated upon acceptance of the undertaking and was continued and concluded with a final determination as to subsidization and/or injury, the Competition Council shall take a decision in accordance with the provisions of Articles 28, 29 and 30 of this Law to impose a countervailing duty. Before imposing the countervailing duty, the exporter concerned or the country of origin and/or export must be given an opportunity to comment, except in the case of withdrawal of the undertaking by the exporter or such country. A provisional duty may be imposed in accordance with the provisions of Articles 19, 20, 21 and 22 on the basis of best information available. In the event of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

Article 27. Duration of Undertakings

The accepted undertaking must remain in force maintained as long as it is necessary to counteract subsidization which is causing injury to the domestic producers. The need for the continued duration of undertakings shall be reviewed in accordance with the provisions of Chapter Eight of this Law. In any case an accepted undertaking shall be terminated on a date not later than five years from the date of the decision to accept the undertaking or from the date of the most recent review when it was determined that expiry of the undertaking would be likely lead to continuation or recurrence, taking into account the provisions of Article 37 paragraph 5 of this Law, of subsidization and injury to the local producers.

CHAPTER 7 COUNTERVAILING DUTY AND ITS IMPOSITION

Article 28. Taking of a Definitive Decision by the Competition Council

1. Taking into consideration provisions of Articles 29, 30 and 31 of this Law and the information collected by the authorised officials during the investigation as well as the submitted proposals, the Competition Council shall take a definitive decision whether or not to impose a countervailing duty. Where a provisional duty is in force, a proposal for definitive action duty must be submitted to the Competition Council not later than one month before the expiry of the provisional duties.

2. Where the facts as finally established during the investigation show the existence of countervailable subsidies and injury caused thereby and Lithuania's national interest calls for the impositions of countervailing duties (in accordance with paragraph 3 hereof), the Competition Council shall take a definitive decision to impose a

countervailing duty. The Competition Council shall establish the amount of the countervailing duty and specify the date from which it shall be applied (so as to allow sufficient time to prepare for the application of such duty). After consultation with the Ministry of the Economy, the definitive decision of the Competition Council to apply a countervailing duty shall be published, in accordance with the provisions of Article 42 of this Law, in the *Official Gazette*.

3. Where the facts as finally established show that the subsidies have been withdrawn or no longer confer any benefit on the exporters involved, the Competition Council shall take a definitive decision not to apply a countervailing duty. The decision shall be published, according to the provisions of Article 42 of this Law, in the *Official Gazette*.

4. A determination as to whether Lithuania's national interest call for the application of a countervailing duty should be based on an appraisal off all the various interests taken as a whole, including the interests of the applicants, the importers and their representative associations, representative users and representative consumer organisations. In such an examination, the need to eliminate trade-distorting effects of injurious subsidization and to restore effective competition shall be given special consideration. It must be established in this respect what effect the countervailing duty will have for all the entities constituting Lithuania's national interest taken as a whole and the effect in the event the countervailing duty is not applied.

5. Before the Competition Council makes a decision as to whether or not the imposition of countervailing duties is in Lithuania's national interest, the applicants, importers and their representative associations, representative users and representative consumer organisations must be given the opportunity to make themselves known and provide information on the issue. Pursuant to this Law (Article 43 paragraphs 2, 3, 4 and 5), non-confidential information and appropriate summaries thereof must be made available to the other parties specified in this paragraph, and they shall be entitled to respond to such information, however, the decision shall be taken only based on the information supported by actual evidence.

Article 29. Imposition of Countervailing Duties

1. A countervailing duty may be imposed on subsidized imports released for free circulation in the customs territory of the Republic of Lithuania from the date specified in the decision to apply the countervailing duty, except in cases listed in Article 33 of this Law.

2. A countervailing duty shall be imposed on imports of all products found to benefit from countervailable subsidies and causing injury to the domestic producers, except as to imports from those sources from which undertakings under Article 23 of this Law have been accepted and those which export such products from the countries from which undertakings have been accepted under Article 23 of this Law.

3. When under Article 8 paragraph 4 of this Law local producers are deemed to be producers located in a certain part of the customs territory of the Republic of Lithuania, countervailing duty may be applied if during the investigation the exporters or the subsidizing country have been provided the opportunity to make undertakings specified in Article 23 paragraph 1 of this Law. In the event of failure by the exporter or public authority of the subsidizing country to offer an appropriate undertaking by the due date or fulfil the undertaking, countervailing duty may be imposed under Article 26, paragraph 2 of this Law on the whole amount of subsidized imports into the customs territory of the Republic of Lithuania, whereas in cases specified in Article 26 paragraph 2 of this Law provisional countervailing duty may be imposed.

7. Countervailing duty, including provisional countervailing duty, shall be applied irrespective of other duties, taxes or levies generally imposed on imports, except in the case specified in Article 30.

Article 30. Imposition of Countervailing Duty and Anti-dumping Duty

No imports may be simultaneously subject both to countervailing duty and anti-dumping duty if the purpose of their application is settlement of the problem created by dumping or export subsidization.

Article 31. Amount of Countervailing Duty

1. In the decision of the Competition Council to impose the countervailing duty on subsidized imports, a countervailing duty shall be imposed in the appropriate amounts in each case. Where it is impracticable to specify the duty for each supplier, the amount of the countervailing duty shall be established on imports individually according to the country of origin and/or export of the product.

2. The amount of the countervailing duty must not exceed the amount of countervailable subsidies from which the exporters or producers have been found to benefit, but must be less than the total amount of countervailable subsidies, if such lesser duty were to be adequate to remove the injury to the domestic producers.

3. When the examination has been limited in accordance with Article 17 of this Law, any countervailing duty applied to imports from exporters or producers which were not included in the examination but which have made themselves known (in accordance with the above-mentioned Article) shall not exceed the weighted average amount of countervailable subsidies established for the parties in the sample. In this case any zero and *de minimis* amounts of countervailable subsidies (under Article 11 paragraph 5) and amounts of countervailable subsidies established in the circumstances referred to in Article 14 paragraph 8 of this Law. Individual duties shall be applied to imports from any exporter or producer for which a individual amount of subsidization has been calculated as provided for in Article 17 paragraph 4 of this Law, except in cases when the amount of duty is established for the country of origin or export.

Article 32. Accelerated reviews

1. Any exporter or producer who was not individually investigated during the original investigation for reasons other than a refusal to cooperate with the authorised officials conducting the investigation but whose exports are subject to a definitive countervailing duty shall be entitled, upon request, to an accelerated review in order that the Competition Council may promptly establish an individual countervailing duty rate for the exporter.

2. The accelerate review specified in paragraph 1 hereof shall be initiated after the domestic producers have been notified thereof in writing and have been given an opportunity to comment within a 20-day period (counting from the day of sending of the notice).

3. Accelerated reviews must be carried out on a fast track basis and may not last longer than 12 months.

4. Unless this Article provides otherwise, requirements laid down for the conduct of investigation in Articles 11, 12, 14, 45, 46, 17, 18 and 28 of this Law must be applied to accelerated review procedures and evidence. Article 37 paragraphs 4 and 5 shall also be applicable in respect of the reviews.

Article 33. Retroactivity

1. Where a provisional countervailing duty has been applied during the investigation and the facts, finally established following the investigation show the existence of countervailable subsidies and/or injury to the domestic producers, it shall be decided, irrespective of whether a definitive countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, “injury” shall not include threat of material injury, not material retardation of the establishment of the domestic industry in Lithuania, except where it is found that this would, in the absence of provisional measures, have developed into material injury. The above provisions must not restrict the application of provisions of paragraph 4 hereof.

2. If in the case specified in paragraph 1 hereof the definitive countervailing duty is higher than the provisional duty, the difference shall not be collected. If the countervailing duty is lower than the provisional duty, the duty must be recalculated and the overpayment must be refunded in accordance with the procedure laid down in the Law of the Republic of Lithuania on Customs Tariffs.

3. If upon the completion of investigation a definitive determination is made that no injury has been made or would have been made even in the absence of provisional measures and the Competition Council takes a decision not to apply countervailing duty, it shall not be imposed for the period of application of provisional duty. The provisional duty paid for the period must be refunded and any bonds deposited with the customs released.

4. A definitive countervailing duty may be levied on products which were released for free circulation in the customs territory of the Republic of Lithuania not more than 90 calendar days prior to the date of application of provisional measures but not prior to the initiation of investigation, provided that all following conditions are satisfied:

1) there are critical circumstances where for the product in question (which benefits from a subsidy granted under this Law) injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies;

2) the Competition Council deems it necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports;

3) the importers have been given an opportunity to comment prior to the taking of a decision to apply provisional duties.

34. Refund of Countervailing Duty

1. An importer may request reimbursement of the countervailing duty collected where it is shown that the amount of countervailable subsidies, on the basis of which duties were paid, has been either reduced to a level which is below the level of the duty in force or eliminated.

2. In requesting a refund of the countervailing duty which exceeds the amount of countervailable subsidy, the importer shall submit an application to the Competition Council. The application must be submitted within six months of the date on which a decision was made definitively to impose retroactively a countervailing duty or from the day of expiry of the countervailing duty.

3. An application for refund shall be considered to be duly supported by evidence only when it is accompanied by:

1) precise information on the amount of refund of the countervailing duties claimed, the customs declaration and other customs documentation relating to the calculation

and payment of the claimed amount (specifying the customs which collected the duty);

2) evidence, for a representative period, of the amount of countervailable subsidies for the exporter or producer for which the duty applies;

3) in cases where the importer is not associated with the exporter or producer concerned and the information specified in subparagraphs 1 and 2 hereof is not immediately available, or where the importer or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the countervailable subsidy has been eliminated or its amount has been reduced and that the relevant supporting evidence will be provided to the Competition Council.

4. Where the evidence specified in item 3, paragraph 3 hereof that the countervailable subsidy has been eliminated or its amount reduced is not forthcoming from the exporter or producer within 2 months of the submission of the application for the refund of the countervailing duty, the importer's application shall be rejected.

5. The Competition Council must decide whether and to what extent the application should be granted and establish the refundable amount, or it may decide to initiate an interim review, whereupon findings from such review shall be used to determine whether and to what extent a refund is justified. The review shall be carried out in accordance with the provisions of Article 37 paragraph 4 of this Law.

6. The Competition Council must make a decision whether and to what extent the application for refund should be granted within 12 months after the date of submission of the application specified in paragraph 2 hereof. The payment of any refund authorised should be made (by transfer) within 90 calendar days of the above-mentioned decision.

7. In the cases specified in paragraph 1 hereof a countervailing duty shall be refunded in accordance with the procedure laid down in the Law of the Republic of Lithuania on Customs Tariffs on the proposal of the Competition Council. The proposal shall be sent by the Competition Council to the territorial customs, which collected the countervailing duty. The said proposal must contain the following information: the economic entity (name, address and identification code) which is to be refunded the countervailing duty; numbers and dates of customs declarations based whereon the countervailing duty has been collected; the amount of the refund authorised (in figures and in words).

8. In the cases that are not specified in paragraph 1 hereof the countervailing duty shall be refunded in accordance with the procedure established by the Law of the Republic of Lithuania on Customs Tariffs.

Article 35. Duration of Countervailing Duties

A countervailing duty shall remain in force only as long and to the extent necessary to counteract subsidization which is causing injury to the domestic producers. The need for the continued imposition of the countervailing duty shall be determined upon assessing the findings of the review carried out in accordance with the provisions of Chapter eight of this Law. In any case a countervailing duty shall be terminated on a date not later than five years from the date of the definitive decision to impose the countervailing duty or, where reviews have been carried out, from the date of the most recent review when it was established that the expiry of the countervailing duty would be likely to result, taking into consideration the provisions of a 37 paragraph 5 of this Law, in a continuation or recurrence of injury to the domestic producers.

CHAPTER 8

REVIEWS OF APPLICATION OF COUNTERVAILING DUTIES AND UNDERTAKINGS

Article 36. Initiating the Review of the Application of a Countervailing Duty and Undertaking

1. A review of the application of a countervailing duty or undertaking shall be carried out:

1) upon the expiry of the 5-year period from the date of imposition of the countervailing duty or acceptance undertaking as established by Articles 27 and 35 of this Law, on the initiative of the Competition Council or upon a duly substantiated request made by domestic producers, where the request contains sufficient evidence that the expiry of a countervailing duty or undertaking would be likely to result in a continuation or recurrence of injury;

2) on a request made by domestic producers containing evidence that the amount of the imposed countervailing duty or accepted undertaking is not sufficient to offset the countervailable subsidy which is causing injury. The request may be lodged not earlier than 12 months after the date of coming into force of the decision to impose a countervailing duty or accept and undertaking, except in the case, specified in paragraph 1 subparagraph 5 hereof.

3) on a request made by the exporters, importers or the country of origin and/or export containing evidence that the countervailing duty or undertaking is no longer needed to offset the countervailable subsidies and that the expiry of the countervailing duty or release from an undertaking or reduction of the amount thereof is not likely to lead to continuation or recurrence of injury. The request must be lodged within 12 months after the coming into force of the decision to impose a countervailing duty or accept an undertaking;

4) on a request made by the Competition Council containing evidence that the amount of the levied countervailing duty or accepted undertaking is not sufficient to offset the countervailable subsidy which is causing injury or that the continued imposition of the measure is no longer necessary to offset the countervailable subsidy and/or that the injury would be unlikely to continue or recur if the measure were removed or varied;

5) on a request made by domestic producers, containing evidence that the imposition of countervailing duties or acceptance of undertakings have led to no movement, or insufficient movement, of resale prices of the imported product in the customs territory of the Republic of Lithuania. The request may be lodged not earlier than 4 months after the date of coming into force of the decision to impose a countervailing duty or accept an undertaking. In this case the review shall be carried out if the amount of the imposed countervailing duty is less than the established amount of the countervailable subsidy and the review period must not last longer than 6 months.

2. The request made by domestic producers to review the need for the continued imposition of the countervailing duty or undertaking must be lodged no later than 3 months before the end of the five-year period from the imposition the countervailing duty or acceptance of the undertaking.

3. A request for the review of the need of continues imposition of the countervailing duty or undertaking must be duly substantiated and contain evidence.

4. In the case specified in paragraph 1 subparagraph 1 hereof documents which contain evidence of continued subsidization of imports or injury caused thereby or evidence that the removal of injury is partly or solely due to the existence of imposed countervailing duties or accepted undertakings or evidence that market conditions are

such that they would indicate the likelihood of further injurious subsidization may be regarded as evidence that the expiry of the countervailing duty or undertaking would be likely to result in a continuation or recurrence of subsidization or injury.

5. The decision to review the need for continued imposition of the countervailing duty or undertaking must be taken by the Competition Council no later than 2 months before the end of the five-year period from the imposition the countervailing duty or acceptance of the undertaking.

6. A notice of impending expiry must be published in the *Official Gazette* no earlier than 12 months and no later than 8 months before the end of the five-year period from the imposition a countervailing duty or acceptance of an undertaking. If the duration of the countervailing duty or undertaking is not extended, a corresponding notice must also be published in the *Official Gazette* and delivered to every known interested party.

Article 37. Review Procedures

1. Unless this Article establishes otherwise, provisions of Articles 11, 12, 14, 15, 16, 17, 18 and 28 of this Law regarding the conduct of investigation shall apply to the review procedures.

2. The review of the need for the continued imposition of measures must be concluded within 12 months of the date of initiation of the review, except in the case specified in Article 36 paragraph 1 subparagraph 5 of this Law.

3. In carrying out a review initiated under Article 36 paragraph 1 of this Law the exporters, importers, the country of origin and/or export and domestic producers must be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request.

4. Provided that circumstance have not changed, the same methodology as in the investigation which led to the imposition of a countervailing duty or acceptance of an undertaking must be applied in all review investigations.

5. The amount of the countervailing duty or undertaking must remain unchanged pending the outcome of the review. Where a review of measures is in progress at the end of application of measures as defined in Articles 27 or 35 of this Law, the application of the measures must continue until the completion of the review. The above provision shall not limit the possibility of continued application of the above measures under Articles 27, 35 and 38 (4) of this Law in case if it is determined during the course of the review that the continued application of the countervailing duty of undertaking is necessary to offset subsidization and remove injury to the domestic producers.

Article 38. Review Results

1. If, as a result of a review, it is determined that the continued imposition of the measure is no longer necessary to offset the countervailable subsidy and/or injury would be unlikely to continue or recur if the measure were removed or varied, the amount of the countervailing duty and/or undertaking shall be reduced to zero and applied until the expiry of the measures as defined in Articles 27 and 35 of this Law.

2. At the close of the period set in Articles 27 and 35 of this Law, if individual countervailing duties have been imposed or individual undertakings have been accepted, the duties at the rate reduced to zero shall remain in force in respect of the exporters or producers as long as definitive duty at any rate (except zero rate) or the countervailing duty reduced to zero rate after the recent review (under paragraph 1

hereof) is applied in respect of imports from the appropriate country or origin or export or the accepted undertaking remains in force.

3. If, as a result of a review, it is determined that after the reduction of the rate of the countervailing duty and/or of the undertaking it would not be necessary to offset the countervailable subsidy and injury would not be likely to continue or recur, the countervailing duty and the undertaking must be reduced accordingly.

4. If, as a result of a review, it is determined that the accepted undertaking is not sufficient to offset the countervailable subsidy and remove injury, an additional undertaking may be accepted or countervailing duty imposed. Where the applied countervailing duty is not sufficient to offset the countervailable subsidy and remove injury, the duty may be increased without prejudice to Articles 28, 30 and 31 of this Law.

CHAPTER 9 CIRCUMVENTION

Article 39. Cases of Circumvention

1. Circumvention of the imposed countervailing duty shall be deemed to take place when all following conditions are met:

- 1) there is a change in the pattern of trade between third countries and Lithuania which stems from a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the countervailing duty;
- 2) there is evidence that the remedial effects of the countervailing duty are being undermined in terms of the prices and/or quantities of the like products;
- 3) there is evidence that the imported like product and/or parts thereof still benefit from the subsidy.

Article 40. Actions in the Cases of Established Circumvention

1. Countervailing duties imposed pursuant to this Law may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place.

2. Investigations shall be initiated pursuant to this Article where the request is lodged with the Competition Council by the domestic producers or on their behalf which contains sufficient evidence regarding the factors set out in Article 39 of this Law. The investigation shall be carried out on the decision of the Competition Council.

3. The investigation must be concluded within 9 months.

4. In order to ascertain that there is circumvention of countervailing duty, investigation shall be conducted in accordance with Articles 11, 12, 14, 15, 16, 17, 18 and 28 of this Law, and information on the investigation and taken decisions shall be provided in accordance with the provisions of Chapter Eleven.

CHAPTER 10 APPEALING AGAINST THE DECISIONS CONCERNING COUNTERVAILING MEASURES

Article 41. Appealing against the Decisions of the Competition Council

1. The interested party which disagrees with the decisions of the Competition Council made in the course of the investigation or objects to the actions of the Competition Council or authorised officials, may appeal to the Supreme Administrative Disputes

Commission or, in case of disagreement with the Commission's decision, appeal against it to the High Administrative Court.

2. If, before making an appropriate decision, the Competition Council has rejected the allegations of the interested party or has refused to respond or if the interested party has not been informed before the decision was taken (as it is established in Chapter Eleven of this Law), the interested party shall be entitled under paragraph 1 hereof to lodge a complaint with the Supreme Administrative Disputes Commission and the High Administrative Court.

3. If the allegations of the interested party were rejected, the decision may be appealed within 2 months of the publication of the definitive decision of the Competition Council in the *Official Gazette*, if the interested party has not been duly informed, the decision may be appealed within 6 months of the publication of the definitive decision in the *Official Gazette*.

4. Unless the High Administrative Court establishes otherwise, the appeal to the High Administrative Court shall not suspend the validity of the decisions of the Competition Council.

CHAPTER 11 INFORMATION

Article 42. Publication and Entry into Force of Decisions

1. The Competition Council must make a public announcement of the decisions made by the Competition Council.

2. The Official Gazette must publish the following decisions of the Competition Council regarding:

- 1) the initiation of investigation or review;
- 2) the acceptance of the undertaking (including a decision on the suspension of investigation);
- 3) the application of provisional countervailing duty;
- 4) the application of a countervailing duty (including retroactive application of the duty) or refusal to apply;
- 5) termination or suspension of investigation;
- 6) continued application, after a review, of the countervailing duty and extension of duration of the undertaking, change of the amount of the imposed countervailing duty or the accepted undertaking or termination of application thereof;
- 7) the refund of the countervailing duty.

3. The decision to initiate investigation or review must contain information on the following:

- 1) the identity of the exporter or producer or, if reasonably not available, the country of origin or export;
- 2) a complete description of the allegedly subsidized product so as to allow for its classification according to the Combined Nomenclature of Tariffs and Trade and the product code according to the Nomenclature;
- 3) date of initiation of investigation or review and the representative period;
- 4) evidence with regard to the existence of the subsidy in question (in the application for investigation of a countervailable subsidy) or of the change in the amount of subsidization (in the application for review);
- 5) evidence of the injury caused or of the change in the amount of injury;
- 6) the address to which the information must be supplied;
- 7) time period allotted for the filing of statements by the interested parties.

4. The decision to accept or refuse to accept an undertaking, taking account of the confidentiality requirements, all material information regarding the facts, legal provisions and reasons on the basis whereof the decision has been made. If investigation is suspended by a decision to accept an undertaking, the decision must contain, with due consideration taken of the confidentiality requirement, all information specified in paragraph 5 hereof, the reasons for acceptance or rebuttal of arguments presented by the exporters, importers, countries of origin or export, a reference to a publicly accessible document where the non-confidential part of the undertaking is presented. The document must be deposited with the Competition Council.

5. The decision to impose provisional countervailing duty shall contain, taking into account the confidentiality requirements, the following information:

- 1) the name of the exporter or producer or, if reasonably not available, the country of origin or export;
- 2) a complete description of the allegedly subsidized product so as to allow for its classification according to the Combined Nomenclature of Tariffs and Trade and the product code according to the Nomenclature;
- 3) factors on the basis of which a positive determination of subsidy has been made and the amount of subsidy has been determined;
- 4) evidence on the basis of which injury has been determined;
- 5) justification of the decision;
- 6) time period for making comment (not in excess of 1 month after the imposition of provisional countervailing duty);
- 7) facts and legal acts and provisions on the basis of which the arguments presented by the interested parties have been accepted or rejected;
8. the amount of the provisional countervailing duty, calculation method and date from which the duty is imposed.

6. The decision to impose the countervailing duty, including retroactive application of the duty, shall contain the description of the duty calculation method, the amount of the duty imposed on each individual exporter or producer (with the exception of cases where the duty is determined for a country), the date from which it will be levied and other required facts. The decision shall contain, taking into account the confidentiality requirement, all the material information relating to the facts, legal provisions and reasons on the basis of which the decision has been taken, also the information specified in paragraph 5 hereof, the reasons for acceptance or rebuttal of arguments presented by the exporters, importers, countries of origin or export. The above-mentioned information shall be presented accompanied by information relating to the decision to retroactively impose a countervailing duty.

7. The decision to terminate the investigation without imposing a countervailing duty where there is a positive determination of a countervailable subsidy and/or injury shall contain, with due consideration taken of the confidentiality requirement, all the material information relating to the facts, legal provisions and reasons on the basis of which the decision has been taken, also the information specified in paragraph 5 hereof, the reasons for acceptance or rebuttal of arguments presented by the exporters, importers, countries of origin or export.

8. The decision specified in paragraph 2 subparagraph 6 hereof must contain all material information relating to the facts, legal provisions and reasons on the basis of which the decision has been taken. When the duration of the countervailing duty or undertaking is extended after a review, the amount of the imposed duty and/or undertaking is changed by the decision, it must also contain the information specified

in paragraph 5 hereof and the reasons for acceptance or rebuttal of arguments presented by the exporters, importers, countries of origin or export.

9. Every known interested party must be within 15 calendar days provided copies of the Competition Council's decisions specified in paragraph 2, subparagraphs 2, 4, 5 and 6 hereof.

Article 43. Disclosure

1. The interested parties may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Such requests must be responded to if made to cc in writing within 15 calendar days after the announcement of the decision to impose provisional measures. In such case disclosure must be made by the Competition Council in writing within 30 days after the announcement of the decision to impose provisional measures.

2. The interested parties may request final disclosure of the essential facts and considerations (especially those which differ from the facts and considerations substantiating the necessity of provisional measures) on the basis of which it is intended to recommend the imposition of countervailing duty or the termination of an investigation without the imposition of measures.

3. Request for final disclosure of facts and considerations specified in paragraph 2 hereof shall be addressed to the Competition Council in writing. In cases where a provisional duty has been applied, the requests must be received not later than one month after the publication of that imposition. Where a provisional duty has not been imposed, parties shall be provided with an opportunity to request final disclosure within time limits set by the Competition Council.

4. Final disclosure shall be given in writing, due regard being had to the protection of confidential information, not later than 30 calendar days prior to a decision to impose countervailing duty or terminate investigation without imposing any measures. Where the Competition Council is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Competition Council but where such decision is based on any different facts and considerations these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within the period to be set by the Competition Council in each case, which shall be at least 10 days.

Article 44. Confidentiality

Any information which is by nature confidential (because its disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities implementing this law and may not be disclosed without the consent of the supplier of the information. The received information may be used only for the purpose it has been requested.

2. Interested parties providing confidential information to the authorities implementing this Law shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional cases such parties may indicate that such information is not susceptible of

summary. In such exceptional circumstances a statement of the reasons why summarisation is not possible must be provided.

3. If it is considered by the authorities implementing this Law that a request for confidentiality is not warranted and if the supplier of information is unwilling to make the information available (in generalised or summary form) such information may be disregarded. Requests for confidentiality shall not be arbitrarily rejected.

CHAPTER 12 FINAL PROVISIONS

Article 45. International Agreements

If international agreements to which the Republic of Lithuania is a party contain provisions other than those laid down in this Law, the provisions of international agreement shall apply.

Article 46. Proposals to the Government

1. To form a working group for the drafting of legal acts necessary for the implementation of this Law.
2. To charge the working group:
 - 1) to compile an explanatory list of export subsidies;
 - 2) to compile a list of government support measures to agriculture;
 - 3) to prepare the methodology of calculating the countervailable subsidies and benefit conferred by them;
 - 4) to compile and approve the list of developing countries in respect of whose imports into the customs territory of the Republic of Lithuania provisions of Article 12 (4,6) of this Law shall apply.
 - 5) to determine the procedures to be applied in the course of investigation of countervailable subsidies in the territory of another country.

I promulgate this Law passed by the Seimas of the Republic of Lithuania

President of the Republic

Valdas Adamkus