



Government of the People's Republic of Bangladesh  
WTO Cell, Ministry of Commerce

## **Bangladesh Regional Connectivity Project-1**

Probashi Kollayan Bhaban  
Eskaton Garden, Dhaka-1000

Policy review/Policy Study/Policy Paper Preparation  
on

**The Antidumping Rules 1995, Countervailing Rules 1996  
and Safeguard Rules 2010,**



**February 2023**

**Policy Review/Policy Study/Policy Paper Preparation  
on  
The Antidumping Rules 1995, Countervailing Rules 1996 and  
Safeguard Rules 2010**

**[Package no. BRCP-1/MOC/SD-26]**

**Submitted to  
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**February 2023**

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## Preface

The final report intends to respond to the requirement according to the provision of the contract agreement signed between Bangladesh Regional Connectivity Project-1 (BRCP 1) and the South Asian Network on Economic Modeling (SANEM) for conducting “**Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)**”. The objective of this technical assistance project is to review the existing government policies related to trade to strengthen cooperation in trade, transport, and transit facilities and facilitate the economic empowerment of women traders. The ongoing context and challenges are compared with the existing policies. It has also analyzed the best practices of regional comparators to promote and improve trade-related activities as well as the relevance of SHE trade with the existing policies. Finally, based on the findings, the recommendation for future policy has been identified.

Consultancy services for conducting the “**Policy Review/Policy Study/Policy Paper Preparation under the Bangladesh Regional Connectivity Project 1)**” was provided by the South Asian Network on Economic Modeling (SANEM), Bangladesh. The study team consists of four senior-level experts. The major objective of the study is to depict a clear picture of the current state of the implementation of the rules, and challenges and to provide suggestions for future rules. Furthermore, Reviewing and identifying the gaps in the existing rules with the WTO agreement were also aimed to be found for this study.

The review of the **Antidumping Rules 1995, Countervailing Rules 1996 and Safeguard Measures Rules, 2010.**, has identified some specific areas including the overview rules, the current state of the implementation areas of the rules, and legal enforcement.

We are enthusiastic about the policy recommendations, which would support policymakers and other stakeholders to improve performance.

**Md. Mijanur Rahman**

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## Acknowledgements

It is indeed a great pleasure that Bangladesh Regional Connectivity Project 1 (BRCP-1), Ministry of Commerce has entrusted the International Development Association (IDA), and the World Bank to carry out “**Policy Review/Policy Study/Policy Paper Preparation**”. The report of the study has been prepared based on a mixed methodology. The studies are 1) National Integrated Multimodal Transport Policy, 2013, 2) Bangladesh Standard Testing Institute Act, 2018, 3) the Export Promotion Bureau Act, 2015, 4) the Trading Corporation of Bangladesh Order, 1972(Amendment up to 2015) and 5) Antidumping Rules 1995, Countervailing Rules 1996 and Safeguard Measures Rules, 2010.

The policy papers contain the objective, scope, and methodology for the studies, current context, and challenges, deviation from the international practices, and the relevance of the policies to the SHE trade. The consultants also described the best practices of regional countries adapted to facilitate trade-related activities. In the end, the findings from the analysis and recommendations for the upcoming policy papers are portrayed.

The authors wish to thank Md Mijanur Rahman, Project Director, Bangladesh Regional Connectivity Project 1, Md Mostafa Abid Khan and Md Munir Chowdhury, National trade expert, BRCP-1 for their valuable comments and continuous support in undertaking the study.

We are also thankful to all the officials and participants who took part in the consultation meetings, both online and in-person, for helping us with their constructive criticism and valuable suggestions during the study period.

This work would not have been possible without the participation of the relevant stakeholders in the Key Informant Interviews (KIIs) as well as in the Focus Group Discussion (FGD). Thanks are also due to all respondents of interviews, FGDS, and KIIs who helped us by providing their information during the data collection period.

The contribution and support provided by everyone for the study are greatly appreciated.



**Dr. Selim Raihan**

Executive Director, SANEM

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## List of Acronyms

<i>AD</i>	<i>Anti-dumping</i>
<i>ADD</i>	<i>Anti-dumping Duty</i>
<i>BIDS</i>	<i>Bangladesh Institute of Development Studies</i>
<i>BFTI</i>	<i>Bangladesh Foreign Trade Institute</i>
<i>BRCP-1</i>	<i>Bangladesh Regional Connectivity Project-1</i>
<i>BTTTC</i>	<i>Bangladesh Trade and Tariff Commission</i>
<i>COVID-19</i>	<i>Coronavirus disease of the year 2019</i>
<i>DGTR</i>	<i>Directorate General of Trade Remedies</i>
<i>EBA</i>	<i>Every Thing but Arms</i>
<i>EU</i>	<i>European Union</i>
<i>FGD</i>	<i>Focused Group Discussion</i>
<i>F.O.B</i>	<i>Free on Board</i>
<i>GATT</i>	<i>General Agreement on Tariffs and Trade</i>
<i>GNP</i>	<i>Gross National Product</i>
<i>GSP</i>	<i>Generalized system of preferences</i>
<i>IDA</i>	<i>International Development Association</i>
<i>ITC</i>	<i>International Trade Center</i>
<i>ITO</i>	<i>International Trade Organization</i>
<i>KIIs</i>	<i>Key Informant Interviews</i>
<i>LDCs</i>	<i>Least Developed Countries</i>
<i>MAV</i>	<i>Market value added</i>
<i>MCCI</i>	<i>Metropolitan Chamber of Commerce &amp; Industry</i>
<i>MFN</i>	<i>Most Favored Nation</i>
<i>MOC</i>	<i>Ministry of Commerce</i>
<i>NBR</i>	<i>National Board of Revenue</i>
<i>RD</i>	<i>Regulatory Duties</i>
<i>SD</i>	<i>Supplementary duties</i>
<i>SANEM</i>	<i>South Asian Network on Economic Modeling</i>
<i>SDG</i>	<i>Sustainable Development Goals</i>
<i>SMEs</i>	<i>Small and Medium Enterprises</i>
<i>SCM</i>	<i>Subsidies and Countervailing Measures</i>
<i>WTO</i>	<i>World Trade Organization</i>

## Executive Summary

The "Bangladesh Regional Connectivity Project 1 (BRCP-1)" was put into action by the World Bank, the International Development Association (IDA), and the government of the People's Republic of Bangladesh to strengthen regional connectivity and facilitate trade. The Ministry of Trade provided the equipment and carried out the umbrella project, component two (MoC). Assessment of present trade-related government policies and development of existing that would improve trade capacity are the key objectives of this umbrella project. This project also draws attention to the shortcomings in the rules established to guarantee persistent, active cooperation between the key stakeholders. To address the consequences of LDC graduation and trade remedies it is necessary to evaluate trade-relevant policies, rules and acts. Bangladesh's transition out of the LDCs will bring about a variety of opportunities and challenges. Thus, it is crucial to develop appropriate trade-related policies and put into practice present regulations that minimize the consequences of graduation.

Antidumping, Countervailing, and Safeguard Measures will be economic tactics and a major concern for bilateral trade in the age of globalisation and liberalisation when all bilateral, regional, and multilateral agreements are moving towards a tariff liberalisation goal. These three issues influence economic entities and the private sector. The Bangladesh Trade and Tariff Commission deals with antidumping, countervailing, and safeguard measures.

By undertaking in-depth desk research and conducting in-person interviews with key stakeholders, SANEM performed this policy review of the three existing rules of Bangladesh. After analysing the existing rules in Bangladesh, the vacuums of the existing rules in terms of WTO agreements are mentioned in the second, third and fourth chapters of this paper.

In chapter two the overview of the Antidumping Rules, 1995 is provided. In order to ensure that government responses to incidents of dumping are fair, transparent, and compliant with international trade laws, the WTO's Anti-dumping Agreement focuses on how states can do so. It addresses the potential detrimental impacts of dumping on domestic businesses while attempting to prevent the misuse of anti-dumping measures. Bangladesh, along with many other countries, is a member of the WTO's Anti-Dumping Agreement and is as a result bound by its rules and regulations. The framework provided by this agreement enables countries that participate to address incidents of dumping while ensuring that any subsequent actions are compliant with international trade laws. Bangladesh's Anti-Dumping Rules, which were enacted in 1995, are in line with WTO standards.

Chapter three reiterates the overview and vacuums of the Countervailing Rules, 1996. Bangladesh, like many other countries, is lowering import duties in the context of globalisation. As a result, the possibility of preserving local industry through the implementation of import charges is gradually declining. To stay competitive in this setting, local industries must enhance their skill sets. However, numerous countries offer a variety of subsidies to support their sectors, which, if they join the Bangladeshi market, might adversely affect domestic firms there. In light of the Agreement on Subsidies and Countervailing Measures of the World Trade Organisation, the Government of Bangladesh enacted the Identification of Subsidised Products, Exporting and Determination of Anti-Subsidy Benefits & Countervailing Duties Rules, 1996, using the authority provided under sections 18A sub-

section (7) and section 18C sub-section (2) of the Customs Act, 1969. These rules were created to protect local businesses from this type of unfair competition. In accordance with these rules, the Bangladeshi government may impose a countervailing duty to shield the local sector from subsidised import goods when they apply. The Subsidies and Countervailing Measures Agreement (the "SCM Agreement") in the WTO addresses two separate but related issues: the use of countervailing measures to lessen the harm caused by subsidised imports.

Furthermore, the overview of the Safeguard Duty Rules is portrayed in chapter four. Safeguard duties (SD) are levied when imports cause or threaten to cause harm to the domestic industry. This duty may take the form of import duty, import quotas, or a mix of the two. Article XIX of the GATT and the WTO Agreement on Safeguards Measures regulate this SD's regulation within the international trade regime. The three main reasons for the availability of such measures are as follows: first, under the WTO rules, countries are required to obey the MFN principle when imposing tariffs, and they cannot impose limitations in the form of quotas or licence requirements to protect domestic industry. Second, even while dumping and illegal subsidisation can be stopped by antidumping and countervailing measures, these cannot be implemented to address the threat to domestic producers if the definition of an "unfair practice" is not met. Thirdly, compared to other measures, safeguarding measures give a state greater flexibility to absorb the shock and threat to local industry, giving domestic manufacturers more time to adapt their businesses and themselves to the new import environment. The measures are only implemented if the preconditions outlined in those legal documents are met. The Safeguards Duty Rules, 2010 were established by the Government of Bangladesh under Section 18E of the Customs Act, 1969, after realising the necessity for legislation in this area.

This research paper offers a thorough analysis of the rules of Bangladesh as well as those of comparable countries like India, China, Malaysia, Singapore and Vietnam. Moreover, the activities carried out by the Trade Remedies Division of the BTTC are also discussed in chapter six. The current context regarding the rules is portrayed in chapter seven. The key stakeholders' perceptions are mentioned in chapter eight which includes the scarcity of human resources in the relevant sectors, high tariff regimes, access to audit review reports etc.

In chapters nine and ten the major findings and recommendations of the study are discussed. India has made several amendments to their rules with the update on the WTO agreement while the Bangladeshi rules remained the same as before. To conclude several aspects, need to be incorporated into the existing rules of Bangladesh such as the introduction of the lesser duty method, specification of the review system, clarification of the consultation and dispute settlement, introduction to anticircumvention issues etc.

# 1. Introduction

## 1.1 Background and Objectives

Governments can implement trade remedy measures to combat unfair trade practices that hurt domestic industries. Anti-dumping duties, countervailing duties, and safeguards are examples of such measures. International trade rules, such as those outlined in the World Trade Organization's (WTO) rules as well as other bilateral and regional trade agreements, govern the employment of trade remedy measures. These principles establish a framework for dealing with unfair trade practices while still making trade as free and open as conceivable. Trade remedy measures have a significant history, reaching back to the early twentieth century. The Tariff Act of 1916, for example, established provisions for imposing anti-dumping charges on imported goods sold in the United States at prices lower than their fair worth.

Trade remedy measures have become more common throughout time, with many countries enacting their laws and regulations to address unfair trade practices. Trade remedy measures are now an important instrument for defending domestic businesses and ensuring that trade takes place on an equal basis. The World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, establishes the legal foundation for WTO member countries to employ trade remedy measures, notably anti-dumping measures. The Anti-Dumping Agreement was negotiated in the 1980s as part of the Uruguay Round of international trade negotiations under the General Agreement on Tariffs and Trade (GATT). The goal of the discussions was to develop a set of rules to avoid and correct dumping, which occurs when an exporting country sells items in another country at a cheaper price than it charges in its domestic market.

Many of the largest importing nations in the WTO system most frequently employ antidumping and similar trade remedies as policy tools to stifle international trade. Given that Panel and Appellate Body rulings have nearly universally ruled that some component of each reviewed remedy was inconsistent with a WTO requirement, such trade remedies are also frequently the subject of dispute settlement activities under the WTO.<sup>1</sup>

The three rules (Anti-dumping, Countervailing and Safeguard Rules) cover the WTO agreement and the main purpose of the imposition of such rules is to apply trade remedial measures in the country. Anti-dumping measures are implied on the dumped imported goods, in case of countervailing duties it covers the subsidized goods of the exporting country, and safeguard measure is taken to prevent the loss in domestic industries as a result of increased imports. These are the three principal facts about the three measures.

The WTO member countries adopted the Anti-Dumping Agreement at the conclusion of the Uruguay Round in 1994, and it entered into force on January 1, 1995, together with the other accords that formed the foundation of the WTO. The Anti-Dumping Agreement establishes the legal framework for WTO member countries to use anti-dumping measures, including the conditions under which such measures may be imposed, the procedures for their investigation and imposition, as well as the rights and obligations of both importing and

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<sup>1</sup> <https://documents1.worldbank.org/curated/ar/479021468764048986/pdf/wps3540.pdf>

exporting countries. Apart from the Anti-Dumping Agreement, the WTO contains agreements on countervailing measures and safeguards, which give WTO member nations additional instruments to counteract unfair trade practices that affect the domestic industry. Overall, the use of trade remedy measures is a crucial component of the international trade system, enabling a method for countries to redress unfair trade practices while also ensuring that commerce remains as free and open as feasible.

In the age of globalization and liberalization, when all bilateral, regional, and multilateral agreements are heading toward a tariff liberalization agenda, the issues of antidumping, countervailing, and safeguard measures will be economic strategies and a major concern for bilateral trade. These three concerns relate to the private sector and commercial firms, and the government serves in this capacity as a quasi-judicial body. Antidumping, Countervailing, and Safeguard Measures are dealt with by the Bangladesh Trade and Tariff Commission. As a result of Bangladesh's graduation from the LDC category, NBR's revenue model can be modified to address the antidumping practices of Bangladesh's neighbouring nations and should impose antidumping duties under those practices. For offsetting issues, it is necessary to harmonize the customs documents, processes, and formalities through bilateral and regional activities. These policy directives ought to be reviewed, and the Customs Act ought to include them. The analysis will be based on these findings and incorporate reforms or changes that can be made to the existing rules.

## **1.2 Research questions**

The research team has mainly focused in this study on the following key research questions,

1. LDC graduation and its challenges will impact the country, thus, what new measures can be incorporated and if the existing rules need to be modified?
2. What is the current context in Bangladesh in terms of these three specific rules?
3. Do these rules deviate from international practices?
4. Why Bangladesh could not impose these duties on other countries?

## **1.3 Methodology**

Given the objectives and the key research questions of this study, the research team has primarily followed mixed methodologies in presenting the deliverables. The methodology will be based on two significant tasks in general.

- (i) Rigorous desk research of all relevant policy documents, literature, and secondary data, and
- (ii) Primary data collection and analysis by conducting Key Informant Interviews (KIIs) with stakeholders relevant to the study.

Therefore, the research methodology can be categorized as follows

### **1.3.1 Desk Research**

The research team conducted exhaustive desk research encompassing all documents and literature relevant to the locus of the study. This also involved examining and analyzing the available secondary data and identifying potential policy gaps and differences related to the competition act, international standards, and women entrepreneurship between Bangladesh

and the existing universal best practices. The research team focused on the following documents for desk review-

- Antidumping Rules 1995
- Countervailing Rules 1996
- Safeguard Measures Rules 2010
- The Customs Act of 1969
- Relevant literature on Antidumping, countervailing, and safeguard measures
- Global best practices

During the desk research, the research team followed the following steps,

- In-depth review of the policy documents, which includes all relevant and existing acts, ordinances, legislation, agreements, treaties, and literature.
- Finalizing the KII checklists based on the scanning of the stated documents.
- Complementing the preliminary analysis with the findings from the primary data.
- Assessing the current act and its loopholes based on the past events of transport policies implementation and global literature.

### **1.3.2 Primary data collection**

In collecting primary data, the research team followed a qualitative approach. Social aspects that are mostly unrepresented in the quantitative data can be addressed through qualitative data, which are expected to provide in-depth information on social dimensions and characteristics. As part of the qualitative data, the team will conduct Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs)

#### ***Focus Group Discussion:***

For this study, the research team has carried out one FGD at the Bangladesh Trade and Tariff Commission.

#### ***Key Informant Interview (KII)***

The KIIs are helpful for an in-depth understanding of the policies, assessment of projects, and identifying gaps.

The mode of contact for the KIIs includes face-to-face interviews, virtual meetings, and telephone interviews, depending on the situation. A detailed list of the interviewees is provided in the annexe section of this report.

### **1.4 Organisation of the Paper**

The structure of the policy review document is as follows. In Chapters Two, Three, and Four, the overview of the three existing rules in Bangladesh is discussed. The three rules of Bangladesh and their relevance to WTO are discussed. This chapter summarises the substantive issues and the procedural issues, the causal link between dumping and injury, the process that is being followed in Bangladesh and the things mentioned in WTO. Chapter five provides a comprehensive review of Bangladeshi rules/Acts as well as rules from comparable countries including India, China, Malaysia, Singapore, and Vietnam. Chapter Six provides a view of the activities carried out by the Trade Remedies Division of the BTTC. In chapter seven

the current context in Bangladesh is portrayed. Chapters eight, nine and ten discuss stakeholders' perceptions findings and recommendations.

## **2. Antidumping Rules 1995, Bangladesh and their relevance to WTO**

The insertion of a product at a price below its normal value into the trade with another country is referred to as "dumping" in the Agreement on Implementation of Article VI of the GATT 1994 (The Anti-Dumping Agreement). WTO Members may impose anti-dumping measures by Article VI of the GATT of 1994 and the Anti-Dumping Agreement if, following an investigation by the Agreement, it is determined that

- (a) Dumping is taking place,
- (b) The domestic industry producing the same product in the importing country is suffering a material injury, and
- (c) There is a causal link between the two.

The Agreement sets forth specific procedural rules for the start and conduct of investigations, the imposition of measures, and the length and evaluation of measures in addition to substantive rules controlling the assessment of dumping, injury, and causal link.

As per the Customs Act, 1969 (ACT NO. IV OF 1969), "Where any goods are exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to Bangladesh at less than the normal value, then, upon the importation of such goods into Bangladesh, the Government may, by notification in the official Gazette, impose an anti-dumping duty not exceeding the margin of dumping about such goods."

### ***2.1 Overview of the Anti-dumping rules***

When a company sells a product in an international market at a price that is lower than the price it typically charges in its domestic market, this practice is referred to as "dumping." However, the World Trade Organization (WTO) Agreement does not directly govern the actions of companies involved in dumping. Instead, its primary emphasis is on outlining the permissible ways in which governments can respond to instances of dumping. This aspect of the agreement is specifically addressed in what is commonly known as the "Anti-dumping Agreement."

In essence, the Anti-dumping Agreement provides a framework for regulating how governments can or cannot react when faced with dumped imports. It places constraints on the measures that governments can take to counteract the effects of dumping, ensuring that these measures are not used as a means to create unnecessary trade barriers or protectionist policies. The agreement aims to strike a balance between preventing unfair trade practices (such as predatory pricing through dumping) and maintaining an open and fair global trading system. Under the Anti-dumping Agreement, governments are allowed to impose anti-dumping duties on imported products that are being dumped and causing material injury to the domestic industry. However, these measures must be imposed in accordance with specific rules and procedures outlined in the agreement. This includes demonstrating that dumping is occurring, that it is causing harm to the domestic industry, and that the imposition of anti-dumping duties is the appropriate remedy.

In summary, the WTO's Anti-dumping Agreement focuses on how governments can respond to instances of dumping to ensure that the response is fair, transparent, and in line with international trade rules. It aims to prevent the misuse of anti-dumping measures while still addressing the potential negative effects of dumping on domestic industries.

Bangladesh, like many other countries, is a member of the World Trade Organization (WTO) and is therefore subject to the rules of the WTO's Anti-Dumping Agreement. This agreement provides a framework for how member countries can address instances of dumping while ensuring that any actions taken are consistent with international trade rules. The Anti-Dumping Rules of Bangladesh, established in 1995, are aligned with the principles of the World Trade Organization (WTO). When products are imported into Bangladesh from another country or territory (referred to as the exporting country or territory) at a price lower than their normal value, the government has the authority, upon the arrival of these goods in Bangladesh, to apply an anti-dumping duty. This duty is outlined in an official Gazette notification and is set at a level that does not surpass the margin of dumping associated with those specific goods.

Designated Authority and its responsibilities: Bangladesh Tariff Commission is the designated authority appointed by the Government which shall conduct the investigation and recommend the Government to impose the anti-dumping duty. The authority has five prime responsibilities. These are (a) to investigate the existence, extent and effect of alleged dumping in respect of imports of any product (b) To identify anti-dumping goods (c) report to the Government regarding (i) the normal value, export value and extent of dumping and (ii) injury or threat of injury or any impediment to the establishment of any industry in Bangladesh due to the importation of the said goods (d) Recommend the amount and date of imposing the anti-dumping duty to mitigate the injury to the local industry and (e) Reconsideration of the necessity of continuation of anti-dumping duty.

## ***2.2 The Articles of Antidumping Rules in WTO***

### **2.2.1 Calculation of Dumping Margin**

A product is considered dumped, or introduced into the commerce of another country at a price below its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. The Agreement specifies procedures for calculating dumping margins. The Agreement often requires a comparison of normal value and export price from transaction to transaction or a comparison of the weighted average normal value to the weighted average of all similar export prices (Article 2.4.2). If there is "targeted dumping," that is if there is a pattern of export prices considerably varying among various buyers, areas, or periods, a new foundation of comparison can be utilized. The weighted average normal value in this case can be contrasted with the export prices on individual transactions if the investigating authorities explain why such differences cannot be taken into account in weighted average-to-weighted average or transaction-to-transaction comparisons. When the exporting country's domestic market does not include any sales of the like product in the ordinary course of trade, or when such sales do not permit a proper comparison due to the particular market situation or the low volume of the sales in

the domestic market of the exporting country, the margin of dumping shall be determined by comparing the export price of the like product to a comparable price in an appropriate third country, subject to the provision that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits.<sup>2</sup>

### ***Determination of normal value in WTO***

In general, the normal value is the price of the product at issue in the ordinary course of the trade when destined for consumption in the market of the exporting country. In simple terms, the normal value is essentially the price at which the same or similar goods are sold in the exporting country's domestic market. In some cases, such as when there are no sales in the domestic market, determining the normal value on this basis may be impossible. In such cases, the Agreement provides alternative methods for determining normal value.

If sales in the exporting country market are not an appropriate basis for determining normal value, two alternatives are provided. These are (a) the price at which the product is sold to a third country; and (b) the product's "constructed value," which is calculated using the cost of production (cost of production in the country of origin) plus selling, general, and administrative expenses, as well as profits. The Agreement contains detailed and specific rules governing the information to be used in determining the amounts for costs, expenses, and profits, the allocation of these elements of constructed value to the specific product in question, and adjustments for special situations such as start-up costs and non-recurring costs.

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 Article- 2.2.1.1 mentions that costs are normally calculated using records kept by the exporter or producer under investigation, provided that such records following the exporting country's generally accepted accounting principles and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall take into account all available evidence on the proper allocation of costs, including that provided by the exporter or producer during the investigation, provided that such allocations have been historically used by the exporter or producer, particularly in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

shall be adjusted appropriately for non-recurring items of cost that benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations, unless already reflected in the cost allocations under this subparagraph.

### **Example**

Let, the delivered price is 115 and the freight is \$3.

<b>Domestic Price/ Normal Value</b>	
<b>Delivered Price</b>	\$115/unit
<b>Less: Freight</b>	\$3

<sup>2</sup>[https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_info\\_e.htm#:~:text=It%20establishes%20the%20principle%20that,and%20causality%20has%20been%20made.](https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm#:~:text=It%20establishes%20the%20principle%20that,and%20causality%20has%20been%20made.)

	\$112
<b>Less: Ex-factory</b>	\$2
	\$110

Source: <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf><sup>3</sup>

### **Determination of export price**

**General rule:** The export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. However, as is the case with normal value, the Agreement recognizes that this transaction price may not be appropriate for purposes of comparison. This is generally the Free on Board (FOB) price of the product. The FOB price does not include freight and insurance costs for the product.

### **Example**

Let, the export price is \$110/unit and the freight is \$2.

<b>Export Price</b>	
<b>FOB</b>	\$100/unit
<b>Less: Freight</b>	\$2
<b>Ex-factory</b>	\$98

Source: <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf><sup>4</sup>

**Exception:** If the export transaction is an internal transfer or the product is exchanged in a barter transaction, there may be no export price for that product. Furthermore, because of an association or a compensatory arrangement between the exporter and the importer or a third party, the transaction price at which the exporter sells the product to the importing country may be unreliable. In this case, the transaction price may not be an arms-length market price but may be manipulated for tax purposes, for example. The Agreement recognizes that an alternative method of determining an appropriate export price for comparison is required in such cases.

### **A fair comparison of normal value and export price**

**Fundamental requirements:** The Agreement requires a reasonable comparison of the export price to the normal value. The basic requirements for a fair comparison are that the prices being compared are those of sales made at the same level of trade, usually ex-factory, and at as close to the same time as possible.

The formula of this calculation is

Margin of dumping = Normal value – Export price

Or, Margin of dumping = (Normal value / Export price) - 1

### **Sample calculation of dumping margin**

Let, there are there exporters with three products in a country. A sample example of the calculation of the dumping margin

	Product	Units	Normal Value/Unit	Total Normal Value	Export Price/Unit	Total Export Price	Total (NV-EP)
<b>Exporter</b>	A	25	15	375	13.50	337.50	<b>37.50</b>

<sup>3</sup> <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf>

<sup>4</sup> <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf>

	Product	Units	Normal Value/Unit	Total Normal Value	Export Price/Unit	Total Export Price	Total (NV-EP)
<b>1</b>	A	35	16	560	14	490	<b>70</b>
	B	50	17	850	15	750	<b>100</b>
	B	40	17	680	14.50	580	<b>100</b>
	C	60	16.50	990	15.80	948	<b>42</b>
	C	30	15.60	468	16.20	486	<b>(18)</b>
	C	80	16.50	1320	17	1360	<b>(40)</b>
	<b>Total</b>	<b>320</b>	<b>17.38</b>	<b>5563</b>	<b>15.47</b>	<b>4951.50</b>	<b>611.50</b>
<b>Exporter 2</b>	A	25	14	350	15	375	<b>(25)</b>
	A	25	14.50	362.50	15	375	<b>(12.50)</b>
	B	30	15.50	465	15	450	<b>15</b>
	B	60	17	1020	15	900	<b>120</b>
	C	65	18	1170	15	975	<b>195</b>
	C	70	18	1260	16	1120	<b>140</b>
	<b>Total</b>	<b>275</b>	<b>16.83</b>	<b>4627.50</b>	<b>15.25</b>	<b>4195</b>	<b>432.50</b>

Source: <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf><sup>5</sup>

In terms of weighted average terms,

	Units	Weighted Average Normal Value	Total Normal Value	Weighted Average Export Price	Total Export Price	Margin of Dumping (NV-EP)	Margin of Dumping (% of Export Price)
<b>Exporter 1</b>	320	17.38	5563	15.47	4951.50	611.50	12.35
<b>Exporter 2</b>	275	16.83	4627.50	15.25	4195	432.50	10.31

Source: <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf><sup>6</sup>

As part of the Agreement's transparency and participation requirements, the investigating authorities must inform parties of the information needed to ensure a fair comparison, such as adjustments, allowances, and currency conversion, and may not impose an "unreasonable burden of proof" on parties.

i) The designated authority must make a fair comparison between the export price and the normal value when determining the margin of dumping. The comparison must be made at the same level of trade, typically at the ex-factory level, and for sales made as close to the same time as possible. Differences that affect price comparabilities, such as differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences that are demonstrated to affect price comparability, must be allowed for in each case on its own merits. If price comparability becomes impaired in certain situations, the authorities must set the normal value at a level of trade equivalent to the level of trade of the constructed export price, or make appropriate allowances. The authorities must inform the parties in question of the information required to ensure a fair comparison and must not impose an undue burden of proof on those parties.

(ii) Where the export price is constructed, the comparison must be made only after determining the normal value at the equivalent level of trade.

(iii) When comparing currencies under this paragraph, the rate of exchange on the date of sale should be used, except when a sale of foreign currency on forward markets is directly

<sup>5</sup> <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf>

<sup>6</sup> <https://www.tpsaproject.com/wp-content/uploads/2017-07-17-Presentation-4-1211.11.3b.pdf>

linked to the export sale involved, in which case the rate of exchange in the forward sale shall be used. Exchange rate fluctuations shall be ignored, and exporters shall be given at least sixty days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

(iv) Subject to the provisions governing comparison in this paragraph, the existence of a dumping margin during the investigation phase shall normally be established based on a transaction-to-transaction comparison of a weighted average normal value and export prices. If a pattern of export prices that differ significantly among different purchasers, regions, or periods is discovered, and an explanation is provided as to why such differences cannot be appropriately taken into account by using a weighted average-to-weighted average or transaction-to-transaction comparison, a normal value established on a weighted average basis may be compared to prices of individual export transactions.

#### **Definitions of parameters that are affected due to dumping**

1. **Sales:** Sales of a like product meant for use within the exporting country's market are adequate to establish the standard value. This holds if these sales make up 5 percent or more of the total sales of the product being assessed to the importing country. However, it's possible to accept a lower percentage if proof shows that domestic sales at that lower percentage are still substantial enough for a valid comparison.
2. **Output:** Output is a quantity of goods or services produced in a specific time period (for instance, a year).
3. **Profits:** Profit is the difference between the revenue received from sales and the explicit costs of producing its goods and services, as well as any opportunity costs and other relevant costs. Dumping generally lowers the profit as the foreign producers are willing to accept a lower profit margin in order to gain market share by selling products at dumped prices. This can force domestic producers to lower their prices in order to compete, which can lead to lower profits.
4. **Market share:** Market share is the percentage of sales of an industry that is captured by a particular market. Dumping can reduce the market share of a domestic product by driving down prices, making it difficult for domestic producers to compete.
5. **Productivity:** Productivity is the amount of output produced by a unit of input. It is a measure of how efficiently resources are used in production. Productivity can be measured at the level of a firm, industry, country, or the global economy. Difficulty in competing due to the dumping, the local producers face productivity loss of factors.
6. **Return on investment:** Return on investment (ROI) is a measure of how much profit an investment generates relative to its cost. A higher ROI means that the investment is more profitable. ROI is calculated by dividing the profit from an investment by the cost of the investment. Due to the productivity loss and reduced profit margin, the return on investment also gets lowered.
7. **Capacity utilization:** The capacity utilization rate is a measure of how much of an economy's productive capacity is being used. A higher capacity utilization rate means that the company or economy is closer to reaching its full potential. Lower return on investment due to dumping has a negative impact on capital utilization.
8. **Employment:** Employment refers to the state of having a job or being employed. Dumping and consequently, reduced profit and productivity also have a negative effect on employment.
9. **Inventory/ stocks:** Inventory refers to the goods and materials that a business holds for the ultimate goal of resale, production, or utilization. It can include raw materials, work-in-progress, finished goods, and maintenance, repair, and overhaul (MRO) inventory. Dumping has a key role in reducing inventory and stocks.
10. **Investment:** An investment is a financial asset or other item purchased with the hope that it will generate income or appreciate in value. Investments can be made in a variety of assets, including stocks, bonds, real estate, and commodities. Lower return on investment due to dumping discourages investment.

## **2.2.2 Determination of Injury and Causal Link**

### ***Injury***

#### **Types of injury**

According to the Agreement, to impose anti-dumping measures, the investigating authorities of the importing Member must determine the injury. The Agreement defines "injury" as either (i) material injury to a domestic industry, (ii) the threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry, but it is silent on how material retardation of the establishment of a domestic industry should be evaluated.

#### **Basic requirements for determination of material injury**

The term "material" is not defined in the Agreement. It does, however, require that a determination of injury be based on positive evidence and include an objective examination of (i) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for similar products, and (ii) the consequent impact of the dumped imports on domestic producers of similar products. Article 3 contains some specific additional factors to be considered in the evaluation of these two basic elements, but it does not provide detailed guidance on how these factors should be evaluated or weighed, or on how the causal link should be determined.

#### ***Demonstration of the causal link***

According to the Agreement, confirmation of a link between the harm to the domestic industry and the dumping of imports is necessary. This demonstration must be supported by a review of all relevant information. The Agreement makes no mention of any specific criteria or recommendations for how to assess relevant evidence. However, Article 3.5 stipulates that injury caused by "other causes" other than dumped imports must not be imputed to them. It provides examples of "other factors" that may be relevant (such as changes in demand patterns and technological advancements) and mandates that they must be considered.

As previously stated, the dumping act of the country specified the rule of finding out the causal link between dumped imports and injury.

Moreover, the act of the country includes some other important factors like the appointment of the designated authority, duties of designated authorities, initiations of investigations, principles of governing investigations, the accuracy of the information, investigation in the territory of other specified countries, levy of provisional duty, suspension or termination of investigation on price undertaking, disclosure of information, imposition of duty on a non-discriminatory basis, refund of duty, the margin of dumping, for exporters not originally investigated, dumping causing injury to a third country. These rules are set as per the rules of the antidumping of WTO.

## **2.2.3 Procedural Requirements**

### ***Initiation of investigation***

The terms for starting investigations are outlined in Article 5 of the Agreement. According to the Agreement, investigations must typically be started as a result of a written request made "by or on behalf of" a domestic industry. To determine if there is enough domestic producer support to infer that the request is submitted by or on behalf of the domestic industry and, therefore, deserves initiation, this "standing" requirement comprises numerical thresholds. The Agreement specifies that in special circumstances where authorities initiate without a

written application from domestic industry, they shall proceed only if they have sufficient evidence of dumping, injury, and causality. The Agreement also establishes requirements for evidence of dumping, injury, and causality, as well as other information about the product, industry, importers, exporters, and other matters, in written applications for anti-dumping relief.

### ***Investigation***

After receiving a written application filled out by or on behalf of the local authority, the authority shall initiate an investigation into the existence, extent and effect of the alleged dumping. The application shall be supported by the “Questionnaire for Complaints” table prescribed by the competent authority following evidence; namely, Dumping, injury as the applicable and causal link between the dumped imported products and the alleged injury.

The designated authority shall not initiate any investigation based on the written complaint unless it is satisfied that- (i) the application is filled by the local industry and the domestic producers supporting the application produces 25% or more of the alleged product by the local industry (ii) the evidence submitted with the application is sufficient.

An application shall be deemed to have been filled by or on behalf of the local industry if it is supported by the domestic producers whose combined products exceed 50% of the total production of that part of the local industry supporting or as the case may be opposing the application. However, in exceptional circumstances, if the authority is satisfied after receiving the evidence of dumping, injury and the causal link between them, then the authority may initiate an investigation without any written complaints from the local industry. The designated authority shall inform the government of the export country before initiating an investigation.

### ***Conduct of investigation***

The Agreement's Article 6 lays forth specific guidelines for the investigative process, including the gathering of evidence and the application of sampling methods. Authorities are required to ensure the privacy of sensitive data and to confirm the data on which decisions are based. Authorities must also make the information on which decisions will be based available to interested parties and provide them with a reasonable opportunity to comment to ensure the transparency of procedures. The Agreement outlines the parties' rights to take part in the investigation, including the ability to interact with anyone who has opposing viewpoints, such as during a public hearing.

## **2.2.4 Provisional Measures and Price Undertakings**

### ***Imposition of provisional measures***

Rules for the imposition of provisional measures are laid out in Article 7 of the Agreement. These include the mandates that no provisional measures may be implemented earlier than 60 days following the start of an investigation and that authorities must first establish a positive preliminary determination of dumping, harm, and cause before implementing any provisional measures. Provisional measures can be in the form of a provisional duty or, more ideally, security by cash deposit or bond in an amount equal to the margin of dumping that has been tentatively estimated. The Agreement also specifies time limits for the application of temporary restrictions, which are typically four months but may be extended to six months upon exporters' requests. The period of temporary measures is typically six months, with a

potential extension to nine months at the request of exporters, if a Member, in its administration of anti-dumping duties, imposes duties lower than the margin of dumping where they are sufficient to remove injury.

### ***Price undertakings***

Regulations for the providing and acceptance of price promises, in place of the enforcement of anti-dumping duties, are included in Article 8 of the Agreement. It establishes the rule that undertakings to lower prices or stop exporting at dumping prices may be made between any exporter and the importing Member to resolve an investigation, but only after a preliminary affirmative finding of dumping, injury, and causality has been made. Additionally, it proves that both exporters and the investigating authorities gave their consent to the undertakings. Additionally, after an undertaking has been approved, an exporter may ask that the investigation be extended; but, if a final finding of no dumping, no harm, or no causality is made, the undertaking will automatically expire.

### ***Imposition and collection of duties***

Even when all conditions are met for imposition, Article 9 of the Agreement established the general principle that implementation of anti-dumping duties is voluntary. Additionally, it makes the case for using a "lesser obligation" rule. If the level of duties is sufficient to prevent harm, authorities may apply them at a level lower than the margin of dumping. The Agreement also includes provisions for applying tariffs to new shippers and preventing the collection of duties that exceed the dumping margin. The Agreement establishes the general rule that anti-dumping duties, both provisional and final, may only be applied as of the date on which dumping, harm, and causality have been determined. However, Article 10 offers guidelines for the retroactive implementation of dumping duties in some situations, acknowledging that injury may have occurred during the time of investigation or that exporters may have made efforts to avoid the imposition of an anti-dumping duty. Anti-dumping duties may be collected as of the date provisional measures were imposed if the application of anti-dumping duties is based on a finding of material injury rather than a threat of material injury or a material delay in the formation of a domestic industry.

## **2.2.5 Review and Public Notice**

### ***Review***

Article 11 of the Agreement establishes rules for the duration of anti-dumping duties as well as requirements for a periodic review of the ongoing need, if any, for the imposition of anti-dumping duties or price undertakings. These requirements address the issue raised by some countries' practice of leaving anti-dumping duties in place indefinitely. The "sunset" requirement states that dumping duties must normally be terminated no later than five years after they are first applied unless a review investigation conducted prior to that date determines that the duty's expiration is likely to result in the continuation or recurrence of dumping and injuries.

### ***Public Notice***

Article 12 establishes detailed requirements for investigating authorities to provide public notice of the start of investigations, preliminary and final determinations, and undertakings. The public notice must include non-confidential information about the parties, the product, the dumping margins, the facts discovered during the investigation, and the reasons for the

authorities' determinations, including the reasons for accepting and rejecting relevant arguments or claims made by exporters or importers. These public notice requirements are intended to increase the transparency of determinations and to increase the extent to which determinations are based on fact and sound reasoning.

### **2.2.6 Refund of Duty**

When the amount of the anti-dumping duty is assessed retrospectively, the final liability for payment of anti-dumping duties must be determined as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty is made. 20 Any refund shall be made promptly and normally within 90 days of the determination of final liability made following this subparagraph. If a refund is not made within 90 days, the authorities must provide an explanation if requested.<sup>1</sup>

## **2.3 The Articles in Antidumping Rules 1995, Bangladesh**

### **2.3.1 Calculation of Dumping Margin in Bangladesh**

Bangladesh also determines the normal value of a good as per the rules of the WTO. In the rule of 1995, it is stated that the Normal Value of a good will be measured as per the calculation of the seller or producer under investigation. But there are some terms and conditions that all the calculations and ledgers from the exporting countries must be consistent with the rules of WTO and must represent all the relevant costs of production. Some exceptions are also allowed in both of the rules. The following subsections divide the articles into five parts such as calculation of dumping, determination of injury, procedural requirements, provisional measures and other important rules.<sup>7</sup>

#### ***Calculating normal value, export price and dumping margin***

An article shall be considered as being dumped if it is exported from a country or territory to Bangladesh at a price that is less than the price at which the same article is sold in the exporting country or territory (normal value). In such circumstances, the designated authority shall determine the normal value, export price, and margin of dumping, taking into account the following factors:

- The price of the article in the exporting country or territory;
- The cost of production in the exporting country or territory;
- The price of the article in Bangladesh;
- The price of similar articles in other countries;
- The costs of transportation and marketing;
- The profit margin that would be earned by a normal firm in the exporting country or territory.
- The designated authority shall also consider any other factors that it deems relevant.

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<sup>7</sup>[http://bangladeshcustoms.gov.bd/trade\\_info/Anti\\_dumping\\_duties#:~:text=209%2DLaw%2F1995%2F1642,1995%2F1643%2FCus\).](http://bangladeshcustoms.gov.bd/trade_info/Anti_dumping_duties#:~:text=209%2DLaw%2F1995%2F1642,1995%2F1643%2FCus).)

The determination of normal value, export price, and the margin of dumping is a complex process. The designated authority must carefully consider all of the relevant factors to make a fair and accurate determination.

Moreover, in the rule of Bangladesh, it is stated that sales of a like product in the exporting country's domestic market or sales to a third country at prices less than the per unit (fixed and variable) costs of production plus administrative, selling, and general costs may be treated as not being in the ordinary course of trade due to price. In determining normal value, the designated authority may disregard these sales if it has determined that-

I) Such sales are made in substantial quantities within a reasonable time (not less than six months), i.e. when the weighted average selling price is less than the weighted average per unit costs or when the volume of sales below per unit costs represents not less than 20% of the volume sold in transactions under consideration, and (ii) such sales are at prices that do not provide for the recovery of all costs within a reasonable period. The said prices will be considered to provide for cost recovery within a reasonable time if they are higher than the weighted average per unit costs for the period of investigation, even if they were lower. The calculation of the export price and fair comparison between the export price and normal value is done based on the rules of WTO.

### **2.3.2 Determination of Injury in Bangladesh**

#### **Basic requirements for determination of threat of material injury:**

The Agreement specifies the factors to be considered in determining the threat of material injury. These include the rate of increase in dumped imports, the exporter(s)' capacity, the likely effects of dumped import prices, and inventories. There is no further explanation of these factors or how they will be assessed. The Agreement does, however, state that a determination of threat of material injury must be based on facts, not a mere allegation, conjecture, or remote possibility and that the change in circumstances that would result in dumped imports causing the material injury must be foreseen and imminent.

#### **Injury determination**

(1) In the case of imports from specified countries, the designated authority shall make a further finding that the import of such products into Bangladesh causes or threatens material injury to any established industry in Bangladesh or materially delays the establishment of any industry in Bangladesh

(2) Taking into account all relevant facts, including the volume of dumping imports, their impact on prices in the domestic market for like goods, and the subsequent impact of such imports on domestic producers of such goods, the designated authority shall determine the injury to domestic industry, the threat of injury to domestic industry, material delay in the establishment of domestic industry, and a causal link between dumped imports and injury.

(3) In rare circumstances, the designated authority may decide on injury even though a significant component of the domestic industry is unaffected, provided that:

(i) A concentrated amount of dumping imports into a small market; and

(ii) The producers of all or nearly all of the products within that market are being harmed by the dumped articles.

### **2.3.3 Procedural Requirements**

#### ***Initiation of an investigation of antidumping rules in Bangladesh***

(1) The designated authority shall launch an investigation to ascertain the existence, severity, and impact of any alleged dumping only upon receipt of a written request from or on behalf of the domestic industry.

(2) The designated authority may specify the format for applications under rule (1), and applications must be accompanied by proof of the following:

(a) Dumping,

(b) Harm, when appropriate, and

(c) If necessary, a proof of a connection between the alleged harm and these dumping imports.

(3) The designated authority will not begin an investigation in response to a request made by subrule (1) unless

(a) It decides that the application has been made by or on behalf of the domestic industry based on an analysis of the level of support for or opposition to the application expressed by domestic producers of the same product:

With the caveat that no investigation will be opened if less than 25% of the similar article's total domestic industry production is accounted for by domestic manufacturers who expressly support the application,

(a) It checks the application's evidence for accuracy and sufficiency and determines that there is enough evidence to support -

(i) Dumping,

(ii) Harm, as appropriate; and

**Explanation:** For this rule, an application will be deemed to have been submitted by or on behalf of the domestic industry if it receives the support of domestic producers whose combined output accounts for more than 50% of the total production of the same item produced by that segment of the domestic industry, as appropriate.

(4) Contrary to sub-rule (1), the designated authority may launch an investigation on its own if it determines from information obtained from the designated authority appointed under the Customs Act, 1969 or from any other source that there is sufficient evidence to support the existence of the circumstances.

(5) Before beginning an investigation, the authorized authority must notify the government of the exporting nation.

#### ***Principles governing investigations***

Once the designated authority has decided to initiate an investigation to assess the alleged dumping of a particular product and understand its extent and impact, it is required to release a public announcement detailing this decision. This notice must encompass sufficient information to effectively convey the decision and its implications. The designated authority is responsible for sending a duplicate of the public notice to identified exporters of the product accused of being dumped, the relevant governments of the exporting nations, and any other parties with a vested interest.

### ***Confidential Information***

Any confidential information provided to the designated authority by a party during an investigation will be treated as such by the authority and will not be disclosed to any other party without the specific authorization of the party providing the information.

### ***Accuracy of the information***

With the exception of cases, the designated authority is required to ensure the precision of the information provided by involved parties. This accuracy forms the basis of the authority's findings during the investigation.

### ***Investigation in the territory of other specified countries***

If the situation demands, the designated authority can conduct investigations in other countries. This can take place if the designated authority secures the agreement of the relevant individual, informs the representatives of the respective government, and the concerned government raises no objections to this investigative action.

### ***Conduct of investigation***

In Bangladesh,

- (1) The designated authority must notify the public of its decision to launch an investigation to ascertain the existence, scope, and effects of any suspected dumping of any object by publishing a public notice that includes sufficient details on the following, among other things: In the article in question, together with the exporting countries' names;
- (ii) The date the investigation was first conducted;
- (iii) The grounds for the application's allegations of dumping;
- (iv) A list of the elements upon which the injury claim is predicated;
- (v) The address where interested parties should send their representations; and
- (vi) The window of time given to interested parties to express their opinions.

Many more clauses are given for this purpose.

The procedure of investigation: After deciding to initiate an investigation, the authority shall issue a public notice which shall contain the following particulars, namely - (a) the name of the goods concerned and the country or countries exporting the goods, b) the date of commencement of payment, (c) the particulars on which the allegation of dumping is made in the application (d) a summary of the facts based on which the allegation of prejudice is made (e) the address for sending written statements of interested parties; and (f) time limit for sending written statements to the interested parties. A copy of the public notice shall be provided to the exporter of the product alleged to be dumped, the government of the exporting country and other interested parties.

### ***Preliminary findings***

The authorized body must promptly initiate and carry out an investigation. In cases deemed appropriate, it must document initial conclusions regarding export pricing, normal value, and the extent of dumping. Furthermore, when dealing with imports from specific nations, it must also make additional observations about potential harm to the local industry. These findings should provide comprehensive details necessary for the initial assessments on dumping and injury, referencing factual and legal aspects that have influenced the acceptance or rejection of arguments. They should also include:

- Names of suppliers, or if infeasible, the countries supplying the goods.
- A description of the product is sufficient for customs purposes.
- Clearly explained margins of dumping have been established, along with a thorough rationale for the method employed to compare export prices and normal values.
- Factors pertinent to determining injury.
- The primary reasons underlying the conclusions reached.
- Subsequently, the authorized body is obligated to publish a public announcement outlining its preliminary findings.

### **2.3.4 Provisional Measures**

#### ***Levy of Provisional duty***

Based on the initial conclusions documented by the designated authority, the government has the authority to apply a temporary duty that does not surpass the dumping margin. However, this duty cannot be enforced until sixty days have passed since the designated authority's public notice about its intention to start investigations. It's important to note that this duty will remain effective for a maximum of six months. However, if exporters who represent a substantial portion of the affected trade make a request, the Government can extend this period to the next three months.

#### ***Termination***

The designated authority, the tariff commission of Bangladesh can conclude an investigation through a public notice in the following situations such as upon receiving a written request from the affected domestic industry that initiated the investigation or if it finds insufficient evidence of dumping or, where relevant, injury to warrant continuing the investigation, if the dumping margin is less than two percent of the export price or if the volume of imports of the dumped product from a specific country is under three percent, except when the combined volumes of countries under three percent collectively exceed seven percent of the imports, or if it determines that the injury, if applicable, is negligible.

#### ***Suspension or termination of investigation on Price Undertakings***

The investigation conducted by the designated authority can be suspended if the exporter of the relevant product takes the action of providing a written commitment to the designated authority. This commitment entails adjusting the prices to ensure that no exports of the mentioned product are carried out to Bangladesh at prices considered to be dumped.

Such as (1) If the exporter of the product in question, - i) provides a written commitment to the designated authority to revise prices so that no exports of the said product are made to Bangladesh at dumping prices, or (ii) in the case of imports from specified countries, undertakes to revise prices so that the detrimental effect of dumping is eliminated and the designated authority is satisfied that the detrimental effect has been eliminated, the designated authority may suspend or terminate an investigation.

2) Until the designated authority has reached a preliminary determination of the dumping and the injury, no exporter's undertaking for a price increase under clause (ii) of subrule (1) may be accepted.

(3) The designated authority may, furthermore not accept undertakings given by any exporter, if it thinks that acceptance of such undertaking is impractical or unsatisfactory for any other reason

(4) The designated authority must notify the Government of the acceptance of an undertaking and the suspension or conclusion of the investigation, as well as make the information public. The non-confidential portion of the undertaking must be included in the public notice, among other things. Many more rules and remedies are mentioned in the act in this context.

### ***Disclosure of Information***

Prior to presenting its final findings, the designated authority must inform all relevant parties about the essential facts under consideration, which form the foundation for the decision-making process.

### ***Final Report***

The designated authority shall within one year of initiation of the investigation determine whether the product under investigation has been dumped and submit to the Government a final report. The designated authority shall issue a public notice after publishing the final report.

The final report shall contain the (a) export value, normal value and extent of dumping of the product, (b) actual injury or apprehension of injury or actual hindrance to the establishment of any industry in Bangladesh, (c) where applicable, the causal link between the dumped product and the injury caused (d) whether the imposition of retrospective duties is necessary, if so, the reasons therefor and the date of imposition, (e) recommendations as to the amount of duty imposed which would remove the injury of interest to the local industry. Provided that the Government may, in exceptional circumstances, extend the said period up to six months.

### ***Levy of Duty***

The Government may impose, by notification in the Official Gazette, an anti-dumping duty not exceeding the margin of dumping as determined by the designated authority within three months of the date of publication of the final findings by the designated authority. There are also other rules incorporated in the act to levy the duty.

If the designated authority has chosen a specific percentage of exported volume from a particular country, then any anti-dumping duty imposed on imports from exporters or producers not covered in the investigation should not surpass either of the following:

The average dumping margin is calculated using the selected exporters or producers. In cases where the obligation for anti-dumping duty payment is determined based on a projected normal value, the difference between the weighted average normal value of the chosen exporters or producers and the export prices of exporters or producers is not individually assessed.

### ***Imposition of duty on a non-discriminatory basis***

Any temporary or definitive anti-dumping duty imposed must be applied uniformly and without discrimination to all imports of the respective products, regardless of their origin if they are found to be dumped and causing harm to the domestic industry. The only exception is for imports originating from sources for which an undertaking has been acknowledged.

### ***Commencement of duty***

The anti-dumping duty that is imposed will become effective starting from the day it is published in the Official Gazette. However, in cases where a provisional duty has already been imposed, and the designated authority has made a final determination of injury or a final determination of a threat of injury along with a finding that the dumped imports would have caused the injury had there been no provisional duty, the anti-dumping duty can be applied to start from the day the provisional duty was imposed.

### **2.3.5 Other Important Articles**

#### ***Refund of Duty***

If the Government imposes an anti-dumping duty based on the final findings of the designated authority's investigation that is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer. If the anti-dumping duty determined after the investigation is less than the provisional duty already imposed and collected, the difference must be refunded to the importer. If the government withdraws the provisional duty imposed, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

#### ***Review***

The designated authority is responsible for assessing whether it is still necessary to maintain an anti-dumping duty. This assessment can be initiated by the authority itself or by a request from any interested party who provides valid information supporting the need for a review. The review should take place after a reasonable period has passed since the anti-dumping duty was initially imposed. If, upon conducting this review, the designated authority determines that removing or adjusting the anti-dumping duty would not likely result in ongoing or recurring harm to the domestic industry, they will recommend to the government that the duty be lifted, as it would no longer be justified. Any review initiated shall be concluded within a period not exceeding twelve months from the date of initiation of such review

#### ***Dumping causing injury to a third country***

The designated authority has the authority to begin an inquiry into any claimed instance of dumping that is reportedly occurring in Bangladesh and resulting in harm to the domestic industry of any other World Trade Organization member country.<sup>8</sup>

### ***2.4 Steps for imposition of Antidumping duty***

In short, the fundamental steps of imposing the antidumping duty will be

1. **Initiation of investigation:** The designated authority will start an investigation into alleged dumping when they receive a written application from the domestic industry, aiming to determine if lower-priced exports are affecting the local market.
2. **Principles Governing Investigations:** After the investigation begins, the authorized body will release a public notification announcing its decision to determine whether there is a serious injury or a threat of serious injury to the domestic industry due to the injury caused by dumping.

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<sup>8</sup> [http://bangladeshcustoms.gov.bd/trade\\_info/Anti\\_dumping\\_duties](http://bangladeshcustoms.gov.bd/trade_info/Anti_dumping_duties)

3. **Accuracy of the information:** Unless there are specific exceptional situations, the designated authority must, while conducting the investigation, ensure the reliability of the information provided by the involved parties, which forms the basis of its conclusions.
4. **Determination of normal value, export price and margin of dumping:** The designated authority will assess the regular value, export price, and dumping margin, considering various factors using the formula from the rules.
5. **Determination of injury:** The designated authority will evaluate the harm to the local industry, the potential risk of harm, a significant hindrance to the establishment of the domestic industry, and the connection between dumped imports and the harm. This evaluation will consider all important details, including the quantity of dumped imports, their impact on prices in the domestic market for similar items, and the resulting consequences on local producers. This process will align with the principles outlined in these regulations.
6. **Preliminary Findings:** The designated authority is required to expeditiously carry out the investigation and, when suitable, make an initial determination concerning export price, normal value, and the dumping margin.
7. **Levy of Provisional Duty:** Based on the preliminary findings documented by the designated authority, the government has the authority to enforce a temporary duty that does not surpass the dumping margin.
8. **Termination of investigation:** The designated authority can terminate an investigation through a public notice in situations such as receiving a written request from the affected domestic industry that initiated the investigation or if it finds insufficient evidence of dumping, etc.
9. **Disclosure of information:** Before presenting its ultimate conclusions, the designated authority is required to notify all involved parties of the fundamental facts being deliberated upon, which serve as the basis of the decision
10. **Final findings:** Within a year from the initiation of an investigation, the designated authority is obligated to decide whether the item under scrutiny is subject to dumping. It must then present its ultimate conclusion to the government regarding- The export price, normal value, and the dumping margin, whether the importation results in or poses a significant threat of harm to any local industry, if applicable, the connection between the imported dumped goods and the harm caused.
11. **Levy of duty:** Within three months from the date of the designated authority's published conclusions, the government has the option to apply an anti-dumping duty through an official notification in the Official Gazette. This duty should not exceed the determined dumping margin.
12. **Date of commencement of duty:** Any imposition of the antidumping duty will be enforced starting from the date when the notification is published in the Official Gazette

There are also scopes of refund of duty, review system, determination of amount paid in excess of actual margin of dumping, involvement of third country, etc<sup>9</sup>.

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<sup>9</sup> [http://bangladeshcustoms.gov.bd/trade\\_info/Anti\\_dumping\\_duties](http://bangladeshcustoms.gov.bd/trade_info/Anti_dumping_duties)

## **2.5 The Vacuums in the Antidumping Rules of Bangladesh**

**Lesser Duty Method:** [Article 9.1](#) of the agreement contains the provision of a lesser duty method. This Article provides that it is not mandatory to impose a final measure at the level of full margin of dumping. If it is found that the imposition of measures is permissive and that measures if imposed at a lesser level would be adequate to remove the injury then such a lesser duty may be imposed.

When all criteria for imposition have been met, the importing Member's authorities decide whether or not to impose an anti-dumping duty and whether the amount of the anti-dumping duty to be imposed shall represent the whole margin of dumping. If a lesser duty is adequate to mitigate the injury to the domestic industry, it is preferable that the imposition be permissible in all Member territories and that the duty be less than the margin. In Bangladesh's rules, the lesser-duty approach is not included. According to our rules, anti-dumping duties will only be imposed if the dumping margin is met. This law was incorporated into Indian regulations. Since they utilise these rules the most, they incorporate them annually into WTO. In our country, it was built in 1995 and has not yet been upgraded. The Anti-dumping rule of Bangladesh does not have any such provision. This is one of the loopholes or vacuum of the rule.

### **Issues Related to Price Undertakings:**

1. Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receiving satisfying voluntary undertakings from any exporter to revise its prices or cease exports to the area in question at dumped prices if the authorities are satisfied that the injurious effect of the dumping has been eliminated. The act of Bangladesh does not include the term "cease". That means Bangladesh cannot cease export at the dumped price as per the act.
2. Authorities of an importing Member may involve any exporter from whom an undertaking has been accepted to provide information relevant to the fulfilment of such an undertaking regularly and to allow for the verification of relevant data. In the event of a breach of an undertaking, the authorities of the importing Member may, in accordance with the provisions of this Agreement, take expeditious actions, which may include the immediate application of provisional measures based on the best information available. In such cases, definitive duties may be imposed in accordance with this Agreement on products entered for consumption within 90 days of the imposition of such provisional measures, provided that any such retroactive assessment does not apply to imports entered prior to the violation of the undertaking. However, as per the rule of Bangladesh, the designated authority can only recommend the government for imposing a duty.

**Duration:** As per the agreement of WTO, regardless of the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated not later than five years from its imposition (or from the date of the most recent review if that review covered both dumping and injury or under this paragraph), unless other conditions are applicable. The Anti-dumping rule of Bangladesh does not specifically mention the duration of the antidumping duty on a product. [Article 11.3](#) of the Agreement prescribes rules for the duration of anti-dumping duty.

However, no such time period for anti-dumping duty is mentioned in the anti-dumping rules 1995.

**Consultation and Dispute Settlement:** If the Member who requested consultations believes that the consultations under paragraph 3 failed to produce a mutually acceptable solution, and if the administering authorities of the importing Member have taken final action to levy definitive anti-dumping duties or accept price undertakings. It has the authority to refer the case to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member who requested consultations believes that the measure was taken in violation of [Article 17](#) of the agreement provides for Consultation and Dispute Settlement. This provision provides an opportunity for the member states for a consultation to find an amicable settlement before imposing the duty. Therefore, the States should incorporate this provision as a precautionary measure to settle disputes. However, there is no such provision in the Bangladesh legislation.

**Detailed Review System:** Bangladesh has a review mechanism. But it is not as detailed as WTO. [Article 11](#) offers two types of reviews that are distinct from routine evaluations to update dumping margins. An interested party has the right, under Article 11.2 after a reasonable amount of time has passed from the application of the final anti-dumping duty. The right to ask the authorities to investigate whether the continuous imposition of duty is required to counteract dumping, whether the injury would likely persist or reoccur if the obligation were removed or changed, or both. Additionally, Article 11 stipulates a new and potentially significant "sunset review" that mandates the termination of definite anti-dumping measures after five years.

The WTO agreement includes a detailed review of the system regarding the antidumping duty. The "sunset" requirement of the review system states that dumping duties must normally end no later than five years after they are first applied unless a review investigation conducted prior to that date determines that the duty's expiration would be likely to result in the continuation or recurrence of dumping and injury. That means any definitive anti-dumping duty shall be terminated five years after its imposition (or from the date of the most recent review under paragraph 2 if that review covered both dumping and injury or under this paragraph), unless the authorities determine, in a review initiated before that date on their initiative or upon a duly substantiated request made by or on behalf of the domestic country. This five-year "sunset" provision also applies to price undertakings. Under the new-shipper review system, the investigating authorities are required to conduct an expedited review in order to determine a specific margin of dumping attributable to such a "new shipper's" exports. While that review is ongoing, the authorities may request guarantees or withhold appraisal on imports, but they may not collect anti-dumping duties on those imports. The agreement of Bangladesh regarding antidumping does not have a detailed review system.

Rule 23 of the anti-dumping rules of Bangladesh provides for review. However, apart from the time period for completing the review process, the rules do not prescribe any other details. Whereas, WTO has in addition to the time period for review, specifications regarding the termination period of anti-dumping duty and also detailed procedures for conducting the review.

**On-the-spot Investigation:** The authorities of the exporting Member and the firms reported to be involved should be notified of the intention to carry out on-the-spot investigations upon the initiation of an investigation. The agreement of Bangladesh does not have rules regarding the on-the-spot investigation of the dumping case. However, the agreement of WTO includes the rule regarding this investigation procedure in its annex<sup>10</sup>.

### **3. Overview of Identification of Subsidized Products, Imposition of Duties, Determination of Injury and Countervailing Duties Rules, 1996**

In the era of globalization, Bangladesh, like many countries, is reducing its import duty rate. As a result, the opportunity to preserve the local industry through the imposition of import duties is gradually decreasing. In this situation, it is essential to increase the skills of local industries to survive in the competition. However, many countries provide various types of subsidies to promote their industries, which may harm local industries in Bangladesh if they enter the Bangladeshi market. In order to protect the local industry from this kind of unfair competition, in the light of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, the Government of Bangladesh by the power conferred upon under section 18A sub-section (7) and section 18C sub-section (2) of the Customs Act, 1969 enacted the Identification of Subsidized Products, Exporting and Determination of Anti-Subsidy Benefits and Countervailing Duties Rules, 1996. According to these rules, the Government of Bangladesh may impose a countervailing duty to protect the local industry from subsidized import products on the application of the local industry.<sup>11</sup>

In WTO, the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") deals with two distinct but linked issues: the employment of countervailing measures to mitigate harm brought on by subsidized imports.

#### **3.1 Subsidy**

Subsidy in general means financial assistance or help. Under the guidelines of the SCM Agreement of the WTO, Subsidy has been defined as financial assistance given directly or indirectly by the government of a country or any other state agency in any one or more cases of product position and export level which provides any benefit to the concerned person or institution. However, to apply countervailing measures, three conditions must be satisfied. These are:

- (1) The exporting country is subsidizing the goods imported into Bangladesh,
- (2) The import of subsidized goods has caused or is likely to injure the domestic industry producing similar goods
- (3) The Causal Link between the said injury and the importation of subsidized goods

According to the laws, the officer appointed by the domestic industry shall ascertain the appropriate three points by investigating the application of the domestic industry. o<sup>12</sup>

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<sup>10</sup>[https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_info\\_e.htm#:~:text=Under%20Article%20VI%20of%20GATT,the%20importing%20country%20is%20suffering](https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm#:~:text=Under%20Article%20VI%20of%20GATT,the%20importing%20country%20is%20suffering)

<sup>11</sup> Guidelines regarding Countervailing Duties

<sup>12</sup> Ibid

### **3.2 Countervailing Measures**

Countervailing duties (CVDs), also known as anti-subsidy duties, are trade import duties imposed under WTO rules to offset the negative effects of subsidies. Countries may impose a countervailing duty (CVD) on imported products to counteract the benefit of prohibited or actionable subsidies. Countervailing duties may only be imposed if the investigating agency of the importing country determines that imports of the product in question are being subsidised and are causing harm to a domestic industry.<sup>13</sup> According to World Trade Organization rules, a country can launch its investigation and decide to charge extra duties, provided such additional duties are in accordance with the GATT Article VI and the GATT Agreement on Subsidies and Countervailing Measures.

#### **3.2.1 Imposition and Collection of Countervailing Duties**

If, after making reasonable efforts to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that the subsidized imports are causing injury as a result of the effects of the subsidy, it may impose a countervailing duty in accordance with the provisions of this Article 19 unless the subsidy or subsidies are withdrawn. The decision whether or not to impose a countervailing duty in cases where all requirements for imposition have been met, as well as whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, is made by the importing Member's authorities. It is preferable that the imposition be permissive in all Members' territories, that the duty is less than the total amount of the subsidy if such a lower duty would be sufficient to remove the injury to domestic industry, and that procedure is established to allow the authorities concerned to take due account of representations made by domestic interested parties whose interests might be affected. When a countervailing duty is imposed on any product, such countervailing duty shall be levied on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except imports from sources that have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not investigated for reasons other than a refusal to cooperate is entitled to an expedited review so that the investigating authorities can establish an individual countervailing duty rate for that exporter as soon as possible. There shall be no countervailing duty imposed on any imported product in excess of the amount of the discovered subsidy, calculated in terms of subsidization per unit of the subsidized and exported product.<sup>14</sup>

Provisional measures and countervailing duties shall be applied only to products that enter the market after the decision under paragraph 1 of Article 17 and paragraph 1 of Article 19, respectively, enters into force, subject to the exceptions outlined in this Article. Where a final determination of injury (but not of a threat thereof or material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

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<sup>13</sup> <https://www.trade.gov/trade-guide-wto/subsidies#:~:text=A%20countervailing%20duty%20investigation%20is,being%20injured%20by%20subsidized%20imports>

<sup>14</sup> [24-scm.wpf \(wto.org\)](#)

Although consultation is not mandatory, Under [Article 4](#) of the AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES, it is highly encouraged for mutual resolution of any conflict. On the other hand, under Rule 6 of the [Identification of Subsidized Products, Exporting and Determination of Anti-Subsidy Benefits and Countervailing Duties Rules, 1996](#) there is a provision for investigation, but no provision for consultation.

### **3.2.2 Duration and Review of Countervailing Duties and Undertakings**

A countervailing duty shall be in force only for the duration and to the extent necessary to counteract subsidization that causes injury. Where warranted, the authorities shall review the need for the continued imposition of the duty on their initiative or, if a reasonable period has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party that submits positive information substantiating the need for a review. Interested parties may request that the authorities investigate whether the continued imposition of the duty is required to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. Regardless of the provisions of paragraphs 1 and 2, any definitive countervailing duty shall be terminated not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review covered both subsidization and injury or under this paragraph), unless the authorities determine, in a review initiated before that date on their initiative or upon a duly substantiated request made by or on behalf of the doe, that the duty should be terminated earlier. The duty may continue in effect pending the outcome of the review.

### **3.2.3 Public Notice and Explanation of Determinations**

When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation under Article 11, the Member or Members whose products are the subject of such investigation, as well as other interested parties known to the investigating authorities to have an interest in such investigation, shall be notified, and a public notice shall be issued. Public notice of the start of an investigation must include, or make available via a separate report, adequate information on the following:

- i) the name of the exporting country or countries and the product in question;
- ii) the date the investigation was launched;
- iii) a description of the subsidy practice or practices to be investigated; and
- iv) a summary of the factors on which the allegation is based.
- v) the address to which representations from interested Members and interested parties should be directed; and
- vi) The time limits for making their views known to interested Members and interested parties.

### **3.2.4 Judicial Review**

Each Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral, or administrative tribunals or procedures for, among other things, expediting the review of administrative actions relating to final determinations and conducting reviews of determinations under Article 21. Such tribunals or procedures must be independent of the authorities in charge of the determination or review in question, and they

must provide access to review to all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions.

### **3.2.5 Actionable and Non-actionable Subsidies**

#### ***Actionable subsidies***

A subsidy granted by a WTO member government is considered "actionable" under the Agreement, with certain exceptions for agricultural subsidies, if it causes harm to the domestic industry of another country or leads to significant harm to the interests of another country. This significant harm, referred to as "serious prejudice," can occur in situations where a subsidy:

- Hinders or displaces the exports of another country into the market of the subsidizing country.
- Hinders or displaces the exports of another country to third-party countries.
- Substantially lowers the price of a product similar to the one being subsidized, produced by another country.
- Boosts the global market share of the subsidizing country for a specific primary product or commodity

#### ***Non-actionable subsidies***

Non-actionable subsidies are not subject to countervailing duties. Examples of non-actionable subsidies are subsidies that are not specific, assistance for research equipment, land and building for research, consultancy for research, assistance to disadvantaged regions, and adaptation to new environmental requirements. The Member granting or maintaining the subsidy program shall enter into consultation upon request. If no mutually acceptable solution can be reached within 60 days, the requesting Member has the option of referring the matter to the Committee. The Committee must present its findings within 120 days. Agriculture subsidies are dealt with separately in the WTO. Long-term goals include providing significant progressive reductions in agricultural support and protection. There is also a list of agricultural products identified. Long-term goals include providing significant progressive reductions in agricultural support and protection. There is also a list of agricultural products identified. The export subsidy discipline requires developed countries to reduce the value of their subsidies by 36% over six years. Developing countries must cut this by 24%. The commitment to reduce emissions was waived for the least developed countries. Export subsidies as a market development tool are not available to LDCs due to a lack of financial resources. Bangladesh should advocate for more restraint in the use of export subsidies by developed countries.

Under the [Ministerial Decision on Export Competition \(WT/MIN\(15\)/45\)](#) adopted in Nairobi, developed countries have agreed to immediately remove export subsidies, except for a handful of agriculture products for which the deadline was the end of 2020. Developing countries agreed to do so by 2018, with a longer time frame until the end of 2022 in some limited cases. In addition, developing countries keep the flexibility of covering marketing and transport costs for agriculture exports until the end of 2023, while the poorest and food-importing developing countries will enjoy additional time to cut export subsidies.

[The elimination of agricultural export subsidies](#) - in parallel with new disciplines on export credits, international food aid and agricultural exporting state trading enterprises - is one of

the central elements of the “Nairobi Package” adopted at the WTO’s Tenth Ministerial Conference in December 2015.

### **3.3 The procedure for imposition of a countervailing duty in Bangladesh**

By virtue of the powers conferred in sub-rule (1) of rule 3 of the Exclusion (Identification of Subsidized Products, Promotion and Anti-Subsidy and Assessment of Prejudice) Rules, 1996, the Government has appointed the Chairman of the Bangladesh Tariff Commission as the Designated Authority. After verifying the sufficiency and accuracy of the information and data provided in the application form, the Chairman will investigate to confirm the three points mentioned. After the investigation, the Chairman will recommend to the Government to determine the level of subsidy and impose a countervailing duty on the accused products accordingly. The government can impose a countervailing duty in light of the recommendations within a maximum of three months.<sup>15</sup>

#### **3.3.1 Initiation of Investigation**

The competent authority shall initiate the investigation regarding the existence, extent and effect of the alleged subsidy only on receipt of a written application filed on its behalf by the local industry. The application under sub-rule shall be supported by the table prescribed by the competent authority and the evidence as to the following: -

- (a) The subsidy and, if applicable, the amount thereof;
- (b) Injury, as applicable, and
- (c) Causal link between subsidized imports and the alleged injury, as applicable.

The designated authority shall not initiate any investigation based on the written complaint unless it is satisfied that- (i) the application is filled by the local industry and the domestic producers supporting the application produces 25% or more of the alleged product by the local industry (ii) the evidence submitted with the application is sufficient.

An application shall be deemed to have been filled by or on behalf of the local industry if it is supported by the domestic producers whose combined products exceed 50% of the total production of that part of the local industry supporting or as the case may be opposing the application.

#### **3.3.2 Principles Governing Investigations**

After making the decision to launch an investigation aimed at ascertaining the presence, extent, and impact of any purported subsidization of a particular product, the designated authority is required to release a public announcement detailing this decision. The notice shall contain the following particulars, namely: the name of the country or countries exporting the goods and goods, time for initiation of the investigation, alleged subsidy custom or details of such customs, a summary of the facts on which the charge is based, the address of the written statement of injured parties and the time limit for sending their written statement. The Bangladesh Tariff Commission established under the Bangladesh Tariff Commission Act, 1992 (Act No. 43 of 1992) shall, on receipt of an application filed by or on behalf of domestic producers proceed. A copy of the public notice shall be provided to the exporter of the

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<sup>15</sup> [http://bangladeshcustoms.gov.bd/trade\\_info/countervailing\\_duties](http://bangladeshcustoms.gov.bd/trade_info/countervailing_duties)

product alleged to be subsidized, the government of the exporting country and other injured parties.

### **3.3.3 Confidentiality**

The designated authority shall if it deems it appropriate maintain the confidentiality of the application and shall not disclose any information without the consent of the applicant or the provider of the information. The authority may if necessary direct the party to provide a non-confidential summary of the said information. If a non-confidential summary cannot be provided, then the party shall disclose the reasons for the confidentiality. However, if the concerned authority is not satisfied regarding the reasons for confidentiality, he may disregard such information.

### **3.3.4 Accuracy of the information**

Unless there are specific exceptional situations, The designated authority must verify the accuracy of the information provided by the involved parties, which forms the basis of its findings, throughout the investigation process.

### **3.3.5 Investigation in the territory of other specified countries**

The designated authority may carry out investigations in the territories of other countries, in order to verify the information provided or to obtain further details: Provided that the designated authority notifies such country in advance and such country does not object to such investigation

### **3.3.5 Nature of Subsidy**

The designated authority while determining the subsidy shall ascertain whether the subsidy under investigation -

- a) relates to export performance including those illustrated in Annexure to these rules, or;
- b) relates to the use of domestic goods over imported goods in the export article, or
- c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article unless such a subsidy is for
  - I. research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or
  - II. assistance to disadvantaged regions within the territory of the exporting country; or
  - III. assistance to promote the adaptation of existing facilities to new environmental requirements

### **3.3.7 Determination of Injury**

The examination of the impact of subsidized imports on domestic industry shall include an assessment of all relevant economic factors affecting the industry's state, such as actual and potential declines in output, sales, market share, profit, productivity, return or investment, and so on. Under certain conditions, temporary measures may be implemented. Provisional measures may not be implemented earlier than 60 days after the investigation is launched.

### **3.3.8 Providing benefits**

a) Government equity investments should not be considered a benefit unless they deviate from the typical investment practices of private investors in the country of origin or export, including risk capital provision.

(b) Government loans should not be seen as conferring a benefit unless the terms of the loan are more favourable than what the firm could obtain from the commercial market. In such cases, the benefit is calculated as the difference between the government loan terms and those of a comparable commercial loan.

(c) Government loan guarantees should not be considered a benefit unless they result in more favourable loan terms than what the firm could secure without the government's guarantee. The benefit is determined as the difference between the guaranteed loan terms and market terms, adjusted for any fee differences.

(d) The provision of goods or services by a government or the purchase of goods from a government should not be viewed as a benefit unless the compensation is inadequate for the prevailing market conditions in the country of provision or purchase. Market conditions include factors like price, quality, availability, marketability, transportation, and other relevant conditions of sale or purchase.

### **3.3.9 Preliminary Report**

The investigating authority shall complete its investigation and, where appropriate, prepare a preliminary report on the existence of subsidy, its nature and its importation from the country concerned and the said report shall contain, with adequate explanation, primarily the loss of injury of the local industry, and the nature of the loss, and the description of the incident, in accordance with the law. The authority shall issue a public notification after preparing its preliminary report. Based on the preliminary report the authority can impose the provisional duty.

### **3.3.10 Levy of Provisional Duty**

Provided that the decision to initiate an inquiry by the responsible authority shall not be made before the expiry of sixty days from the issuance of the notification and this provisional duty shall be valid for a period not exceeding four months.

### **3.3.11 Termination of investigation**

The designated authority has the responsibility to immediately terminate an investigation based on the following circumstances:

(a) If it receives a written request from the affected domestic industry, which had originally prompted the investigation, to terminate it.

(b) If, during the investigation, it determines that there isn't sufficient evidence to continue the investigation, either in terms of subsidization or, if applicable, injury.

(c) If it establishes that the subsidy amount is less than one percent of the product's value, except for products originating from developing countries where the subsidy is less than two percent.

(d) If it concludes that the volume of subsidized imports, whether actual or potential or the extent of injury, if applicable, is negligible. For products from developing countries, if the volume of subsidized imports is less than four percent of the total imports of that product into Bangladesh, still could continue the investigation if the combined share of imports from developing countries with individual shares below four percent collectively constitutes more than nine percent of total imports of the same product into Bangladesh.

### **3.3.12 Suspension or termination of investigation on acceptance of price undertaking**

The designated authority holds the authority to temporarily suspend an investigation if:

(a) The exporting country's government takes the following actions:

- I. Offers a commitment to withdraw the subsidy.
- II. In the case of specific countries, pledges to restrict the amount of the subsidy to a reasonable level or adopt other appropriate measures to counterbalance the impact of the subsidy, provided that the designated authority confirms that the detrimental impact of the subsidy has been neutralized.

(b) In the case of specific countries, the involved exporters agree to adjust their prices in a way that eliminates the harmful effect of the subsidy. The designated authority must be content that the detrimental influence of the subsidy has indeed been eliminated.

### **3.3.13 Disclosure of Information**

Prior to presenting its final findings, the designated authority must inform all relevant parties about the essential facts under consideration, which form the foundation for the decision-making process.

### **3.3.14 Final report**

The designated authority shall within one year of initiation of the investigation determine whether the product under investigation has been dumped and submit to the Government a final report. The designated authority shall issue a public notice after publishing the final report. The final report shall contain (a) the nature and amount of the subsidy, (b) actual injury or apprehension of injury or actual hindrance to the establishment of any industry in Bangladesh due to the import of the subsidized product, (c) where applicable, the causal link between the subsidized product and the injury caused (d) whether the imposition of retrospective duties is necessary, if so, the reasons therefor and the date of imposition, (e) recommendations as to the amount of duty imposed which would remove injury to the local industry. Provided that the Government may, in exceptional circumstances, extend the said period up to six months.

### **3.3.15 Levy of duty**

When a countervailing duty is imposed, it should be levied on the imports of such products from all sources found to be subsidized and causing injury. No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist. The definitive countervailing duty may be assessed on imports that were entered for consumption, not more than 90 days before the date of provisional measures. Countervailing duty shall be terminated not later than five years.

### **3.3.16 Date of commencement of duty**

The countervailing duty that is imposed will become effective starting from the day it is published in the Official Gazette. However, there is an exception

(a) If a provisional duty has already been imposed, and the designated authority has made a finding of injury or a finding of a threat of injury along with a further finding that the subsidized imports would have caused injury had there been no provisional duty, the countervailing duty can be applied starting from the day the provisional duty was imposed.

### **3.3.17 Refund of Duty**

(1) In cases where the Government sets a countervailing duty based on the final findings of the investigation carried out by the designated authority, and this duty is higher than the provisional duty that was already imposed and collected, the importer will not be required to pay the difference.

(2) When the countervailing duty established following the investigation's conclusions is less than the provisional duty that was previously imposed and collected, the importer will receive a refund for the difference.

(3) If the government withdraws the provisional duty in line with the provisions, any provisional duty that had been imposed and collected will be refunded to the importer.

### **3.3.18 Review**

The designated authority is required to assess whether there is a continuing need for the countervailing duty. If, based on the information it receives, the authority determines that there is no valid reason to keep the duty in place or to impose an additional duty, it will take appropriate action

## ***3.4 Steps for the imposition of the countervailing duty***

In short, the fundamental steps of imposing the countervailing duty will be

1. **Initiation of investigation:** The designated authority will start an investigation into the existence, degree and effect of the alleged subsidy when they receive a written application from the domestic industry.
2. **Principles Governing Investigations:** After the investigation begins, the authorized body will release a public notification announcing its decision to determine whether there is a serious injury or a threat of serious injury to the domestic industry due to the injury caused by subsidy. This public notice will include sufficient information.
3. **Accuracy of the information:** Unless there are specific exceptional situations, The designated authority must verify the accuracy of the information provided by the involved parties, which forms the basis of its findings, throughout the investigation process.
4. **Nature of subsidy:** The designated authority shall determine the nature of the subsidy under investigation such as whether it is related to the export performance, use of domestic goods over imported goods in the export article or it has been conferred on a limited number of persons, engaged in manufacturing or producing with some exceptions.
5. **Determination of injury:** For imports originating from particular countries, the authorized body must additionally conclude whether the entry of such goods into the country leads to substantial harm poses a significant risk of harm to a local industry, or significantly hampers the development of a domestic industry.
6. **Preliminary Findings:** The designated authority must carry out the investigation expeditiously. In appropriate instances, it should make a preliminary determination about the presence and type of subsidy. When it comes to imports from specified countries, it should also provide an initial judgment about the harm inflicted on the domestic industry. This preliminary decision should offer a thorough explanation, with adequate detail.
7. **Levy of Provisional Duty:** Based on the preliminary findings documented by the designated authority, the government has the authority to enforce a temporary duty.

8. **Termination of investigation:** The designated authority can conclude an investigation through a public notice in the following situations such as upon receiving a written request from the affected domestic industry that initiated the investigation or if it finds insufficient evidence of subsidy or, where relevant, injury to warrant continuing the investigation or if the amount of subsidy is less than one percent ad valorem or in the case of a product originating from a developing country the amount of subsidy is less than two percent, or some other cases where applicable.
9. **Disclosure of information:** Before presenting its ultimate conclusions, the designated authority is required to notify all involved parties of the fundamental facts being deliberated upon, which serve as the basis of the decision
10. **Final findings:** Within a year from the initiation of an investigation, the designated authority is obligated to decide whether the item under scrutiny is subject to countervailing duty.
11. **Levy of duty:** Within three months of the designated authority's final findings being published, the government has the option to enforce a countervailing duty through an official notification in the Official Gazette. This duty applies to the imported item identified in the final findings and should not surpass the determined subsidy amount specified by the designated authority.
12. **Date of commencement of duty:** The imposition of the countervailing duty will be enforced starting from the date when the notification is published in the Official Gazette. There are also scopes of refund of duty, review system and involvement of the third country, etc<sup>16</sup>

### ***3.5 The Vacuum in the Countervailing Rules of Bangladesh***

**Investigation:** [Article 11.6](#) provides for the provision of exceptions for launching an investigation without first receiving a written application. [Rule 6\(1\)](#) of the Identification of Subsidized Products, Exporting and Determination of Anti-Subsidy Benefits and Countervailing Duties Rules, 1996 provides the exception for launching an investigation with the reports of the designated authority under rule 4 without first receiving a written application.

If in exceptional circumstances, the authorities concerned decide to launch an investigation without first receiving a written application from or on behalf of a domestic industry, they must do so only if they have adequate proof of the existence of a subsidy, injury, and causal link, as defined in paragraph 2, to justify the launch of an investigation. But in Bangladesh, no exceptional provision is portrayed.

**Appeal:** When a request for consultations is made under paragraph 1, ( which refers to paragraph 1 of [Article 4](#) of the Agreement on Subsidies and Countervailing Measures. The provision states that Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another Member, such Member may request consultations with such another Member) the Member suspected of granting or maintaining the subsidy practice in question must respond as soon as possible. If consultations do not produce a

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<sup>16</sup>[https://btc.gov.bd/sites/default/files/files/btc.portal.gov.bd/policies/f4555e49\\_1520\\_49b1\\_b8be\\_d1ed39f65fb4/CountervailingRules.pdf](https://btc.gov.bd/sites/default/files/files/btc.portal.gov.bd/policies/f4555e49_1520_49b1_b8be_d1ed39f65fb4/CountervailingRules.pdf)

mutually agreed-upon solution within 60 days, any Member party to the consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides not to establish a panel by consensus. The composition of the panel and its terms of reference must be established within 15 days of its formation. The panel will conduct an investigation and issue a final report to the parties to the dispute. The report must be distributed to all Members within 120 days of the panel's composition and establishment of its terms of reference. The report must be adopted by the DSB within 30 days of the panel's report being distributed to all Members unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides not to adopt the report by consensus. When a panel report is appealed, the Appellate Body must issue its decision within 60 days of the party to the dispute formally notifying its intention to appeal. When the Appellate Body believes it will be unable to provide its report within 60 days, it must notify the DSB in writing of the reasons for the delay, as well as an estimate of when it will submit its report. In no case shall the proceedings last more than 90 days. Unless the DSB decides by consensus not to adopt the appellate report within 20 days of its issuance to the Members, the appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute. If a panel report or an Appellate Body report determines that a subsidy has resulted in adverse effects on the interests of another Member within the meaning of Article 5, the Member granting or maintaining the subsidy must take appropriate steps to remove the adverse effects or withdraw the subsidy. If the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months of the date when the DSB adopts the panel report or the Appellate Body report, and there is no agreement on compensation, the DSB shall grant the complaining Member authorization to take countermeasures commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensual decision. If a party to the dispute requests arbitration under Article 22 paragraph 6 of the DSU, the arbitrator must determine whether the countermeasures are proportionate to the degree and nature of the adverse effects determined to exist. However the rule of Bangladesh does not incorporate any issue related to the appeal and remedy system. The WTO Agreement on Subsidies and Countervailing Measures provides a detailed procedure of remedies in the form of consultation and appeal before the Dispute Settlement Body ("DSB") prior to initiating an investigation for imposing countervailing duty under Article 4. However, Bangladesh has not incorporated any such method in its legislation.

**Consultation:** Members whose products may be subject to such investigation shall be invited for consultations as soon as possible after an application under Article 11 is accepted, and in any case before the initiation of any investigation, to establish the facts as to the issues discussed in section 2 of Article 11 and approach at a mutually agreed remedy. Furthermore, during the investigation period, Members whose products are the subject of the inquiry must be given a reasonable chance to continue their consultations to clarify the facts and reach a mutually agreed-upon solution. Without prejudice to the obligation to provide a reasonable opportunity for consultation, these consultation provisions are not intended to prevent a Member's authorities from acting expeditiously in initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative or implementing provisional or final measures in accordance with the provisions of this Agreement. As to imposing the countervailing duty, the government plays the role of the party itself. It is necessary to include the provision of Consultancy in the rules of Bangladesh. The Bangladesh

legislation only provides for an investigation prior to the imposition of duty. However, consultation provides an opportunity for both countries to discuss and reach an amicable settlement before imposing the duty. The issue of consultancy should be more explicitly explained and included in the rules of Bangladesh.<sup>17</sup>

#### **4. Overview of Safeguard Duty Rules, 2010**

Safeguard Duties (SD) are imposed when there is the existence of injury or threat of injury to the domestic industry by imports. This duty can be in the form of import duty or import quotas, where it is allowed or a combination of both. In International Trade Regime the regulation of this SD is regulated by the GATT article XIX and the WTO Agreement on Safeguards Measures. The rationale behind the availability of such measures is mostly three-fold, firstly, under the WTO regime, countries are bound to respect the MFN principle while imposing tariffs and to save domestic industry they cannot apply restrictions in the form of quotas or license requirements. Secondly, while unfair trade practices like dumping and prohibited subsidization can be checked using antidumping and countervailing measures, these cannot be initiated to address the threatening situation to domestic producers if the condition as to 'unfair practice' is not met. Thirdly, safeguards measures provide a state more freedom compared to other measures to absorb the shock and threat to domestic industry, allowing the domestic producers some more time to adjust their operations and themselves to the new import situation.

The measures are only applied when the preconditions under those legal instruments are complied with. Realizing the need for a rule as to this matter, the Government of Bangladesh has introduced the Safeguards Duty Rules, 2010 under Section 18E of the Customs Act, 1969.

##### **4.1 Rules Related to Safeguard Measures in WTO**

The Agreement on Safeguards ("SG Agreement") establishes the rules for implementing safeguard measures under GATT 1994 Article XIX. Safeguard measures are defined as "emergency" actions taken in response to increased imports of specific products that have caused or threatened to cause serious harm to the domestic industry of the importing Member (Article 2). Such measures, which in general take the form of suspending concessions or obligations, can include quantitative import restrictions or duty increases to higher-than-bound rates. They are one of three types of contingent trade protection measures available to WTO Members, along with anti-dumping and countervailing measures. The guiding principles of the Agreement about safeguarding measures are that they must be temporary; that they may be imposed only when imports are found to cause or threaten serious injury to a competing domestic industry; that they (generally) be applied on a non-selective (i.e. most-favoured-nation, or "MFN") basis; that they are gradually liberalized while in effect; and that the Member imposing them must pay compensation to the Members. Thus, unlike anti-dumping and countervailing measures, safeguard measures do not require a finding of "unfair" practice and must (generally) be applied on an MFN basis.<sup>18</sup>

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<sup>17</sup>[https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm#:~:text=Countervailing%20duties%20are%20a%20unilateral,the%20SCM%20Agreement%20are%20satisfied.](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm#:~:text=Countervailing%20duties%20are%20a%20unilateral,the%20SCM%20Agreement%20are%20satisfied.)

<sup>18</sup>[https://www.wto.org/english/tratop\\_e/safeg\\_e/safeg\\_e.htm#:~:text=A%20WTO%20member%20may%20take,serious%20injury%20to%20the%20industry.](https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm#:~:text=A%20WTO%20member%20may%20take,serious%20injury%20to%20the%20industry.)

#### **4.1.1 Conditions for application of safeguard measures**

The main purpose of imposing a safeguard duty is to protect the domestic industry from loss or probability of loss due to the increased quantity of imports.

##### ***Increased quantity of imports***

Article 2 specifies the circumstances under which safeguard measures may be used. These are the conditions: i) increased imports, and (ii) serious injury or threat of serious injury as a result of such increased imports. It also requires that such measures be applied on an MFN basis.

The rule of Bangladesh also incorporates the same rule when "critical circumstances" arise. "Critical circumstances" refer to situations in which there is clear evidence that imports have occurred in such large quantities and under such conditions as to cause or threaten serious injury to the domestic industry, and a delay in imposing provisional safeguard duty would cause irreparable harm to the domestic industry.

#### **4.1.2 Injury: Two possibilities**

##### ***Serious injury***

The Agreement defines "serious injury" as a significant overall impairment in a domestic industry's position. In determining whether a serious injury has occurred, investigating authorities must consider all relevant factors affecting the industry's condition. The absolute and relative rate and amount of increase in imports, the market share taken by the increased imports, as well as changes in sales, production, productivity, capacity, utilization, profits and losses, and domestic industry employment must all be considered.

##### ***The threat of serious injury***

"Threat of serious injury" refers to a threat that is imminent as evidenced by facts, rather than an allegation, conjecture, or remote possibility. If no present serious injury is discovered, a safeguard measure can be implemented if a serious injury threat is discovered.

#### **4.1.3 Causation**

A serious injury determination cannot be made unless objective evidence exists of a causal link between increased imports of the product in question and serious injury. Furthermore, when factors other than increased imports are causing harm to the domestic industry at the same time that harm cannot be blamed on increased imports. However, the causal link criterion falls short of proposals made during the Uruguay Round that would have required imports to be the "primary cause" of injury.

#### **4.1.4 Need for investigation**

New safeguard measures may be implemented only after an investigation by competent authorities is conducted under established procedures. There was no explicit requirement for an investigation under GATT Article XIX in 1947.

To investigate the matter of increasing import and injury to the domestic industry, a designated authority is assigned by the government keeping accordance with the rules of WTO.

#### **4.1.5 Procedural transparency**

Before use, investigation procedures must be established and published. Although there are no detailed procedural requirements in the Agreement, it does require reasonable public notice of the investigation. The relevant authorities are required to publish a detailed analysis of the case in the form of a report that presents and explains their findings on all relevant issues, including a demonstration of the relevance of the factors investigated.

#### **4.1.6 Participation by interested parties**

Prior to use, investigation procedures must be established and published. Although there are no detailed procedural requirements in the Agreement, it does require reasonable public notice of the investigation. The relevant authorities are required to publish a detailed analysis of the case in the form of a report that presents and explains their findings on all relevant issues, including a demonstration of the relevance of the factors investigated.

#### **4.1.7 Confidential information**

The Agreement also specifies how confidential information should be handled during an investigation. In general, information requiring confidential treatment must be accompanied by a public summary or an explanation as to why no such summary is possible. If confidentiality is not warranted, and the party submitting the information is unwilling to summarize or authorize its disclosure, the authorities may disregard the information, unless it can be demonstrated through other sources that the information is correct.

#### **4.1.8 Definitive safeguard measures**

##### ***Tariff Measures***

Aside from the general requirement that safeguard measures be used only to remedy or prevent serious injury and to facilitate adjustment, the Agreement provides no guidance on how the level of a safeguard measure in the form of a tariff increase above the bound rate should be determined.

##### ***Level of quotas and quota modulation***

If the measure is quantitative, the level must not be lower than the actual import level of the most recent three representative years, unless there is clear justification for setting a different, lower level. Rules also govern how quota shares are distributed among supplier countries based on previous market shares.

The maximum duration of any safeguard measure is four years unless it is extended following the provisions of the Agreement. A measure, in particular, may be extended only if it is determined through a new investigation that its continuation is required to prevent or remedy the serious injury, and only if evidence shows that the industry is adjusting.

##### ***Level of concessions and other obligations***

Members who use safeguard measures must generally "pay" for them through compensation. When implementing a safeguard measure, a Member must maintain a substantially

equivalent level of concessions and other obligations toward affected exporting Members. To that end, any adequate means of trade compensation may be agreed upon through consultation among the affected Members. If no agreement on compensation is reached within 30 days, the affected exporting Members may suspend substantially equivalent concessions and other obligations individually (i.e., "retaliate") unless the Council for Trade in Goods disapproves. Exceptions are allowed.

#### ***Provisional safeguard measures***

Provisional measures may be imposed in critical circumstances, defined as circumstances in which a delay would cause damage that would be difficult to repair, based on a preliminary determination that increased imports have caused or threaten to cause serious injury. Such measures should take the form of refundable tariff increases and be in effect for no more than 200 days. The duration of any provisional measure must be included in the overall duration of a safeguard measure.

#### ***De minimis import exemption (Special and differential treatment)***

Low volume from developing country members will not be subject to a safeguard measure. That is, where imports from a single developing country Member account for no more than 3% of total imports of the product in question, and where developing country Members below this threshold collectively account for no more than 9% of those imports, such imports are exempt from the measure.

#### **4.1.10 Other Articles**

##### ***Duration of extensions of measures***

In applying safeguard measures, developing country Members may apply a safeguard for an additional two years beyond what is normally permitted (i.e. developing countries may apply a measure for a total of ten years, as opposed to the usual eight).

##### ***Committee on Safeguards back to top***

The Committee's general role is to monitor (and report to and make recommendations to the Council for Trade in Goods on) the Agreement's implementation and operation, to review Members' notifications, and to make findings as to Members' compliance with the Agreement's procedural provisions for the application of safeguard measures, to assist with consultations, to monitor the phase-out of pre-existing measures, to review proposed retaliation, as well as to any other functions determined by the Council for Trade in Goods.

##### ***Dispute Settlement***

Consultations and disputes arising under the Agreement must be conducted in accordance with GATT 1994 Articles XXII and XXIII, as elaborated by the Dispute Settlement Understanding.<sup>8</sup>

## **4.2 Overview of the Rules in Safeguard Duty Rules, 2010 of Bangladesh**

### **4.2.1 Safeguard Authority and Its Responsibilities**

Under the Rules, the Chairman of the Bangladesh Tariff Commission is the Safeguard Authority and he is to provide with necessary manpower and other amenities.<sup>19</sup> The authority has three main responsibilities. These are a. Identifying products that can be subjected to safeguard duty; b. Conduct an investigation on the existence of any injury to the domestic industry or threat of injury to domestic injury by the increased imports of a product and c. Reporting on the injury or threat of injury to the domestic industry by the increased imports of any product from any specific country. Apart from these, He will recommend the amount of safeguard duty, the period for which the safeguard duty will be applied, and review the continuation of the safeguard duty.<sup>20</sup>

### **4.2.2 Substantive issues**

In this category, the issue of identifying whether the injury occurs or not is explained. The area includes many steps of investigation and all the rules are set keeping accordance with the rules of the WTO.

### **4.2.3 Investigation**

The investigation into the injury or threat of injury to the local industry by increased imports is initiated after the receipt of the written application by the local producer of similar products or directly competitive products. This application has to be in the format provided under the rule and supported by the evidence on a. increase Imports; b. injury or threat of injury to local industry; c. relation or link between imports and injury or threat of injury; and d. plan of measure or measures are taken to calibrate with the new import situation. However, among these conditions, the existence of evidence on the first three things is mandatory to start an investigation. Rule 6 has outlined the principles of conducting the investigation. Accordingly, after taking the decision to conduct an investigation the authority will first proclaim a public notification which will include, inter alia, the name of the product and the exporting country, the reasons for initiating the investigation, a summary of the information based on which the allegation of injury or threat of injury has been made, and the deadline for the interest parties to submit or send their argument. Furthermore, this public notice shall be sent to concerned ministries, the exporter and the exporting country and the Committee on the Safeguard of the World Trade Organization.

### **4.2.4 Confidentiality**

Echoing the Agreement on Safeguard Measure, the rules provide that the authority will ensure the confidentiality of the information that is confidential. If needed, the authority will only ask for non-confidential parts of the information from the information provider; in that case, that information provider will have to provide a report reasoning why he cannot provide such confidential information. However, the authority has been provided with the discretion to have the last say on this issue on the condition that he is satisfied that the claim of confidentiality is not tenable.

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<sup>19</sup> Rule 2 of the Safeguard Duty Rules.

<sup>20</sup> <http://www.bch.gov.bd/page/33/Safeguard%20Duties>

#### **4.2.5 Primary Investigation Report and Imposition of Provisional Duty**

During the crisis, the authority will expedite its investigation process and make a primary investigation report. However, a public notice must be issued, with a copy of the notification being sent to the Ministry of Commerce and the National Board of Revenue. The designated authority may impose a duty under section 18E (2) of the Customs Act after such primary investigation. However, the WTO must be informed of so and the period for which the duty may be imposed shall not be more than 200 days from the date on which the imposition of duty has been started.

#### **4.2.6 Final Report**

The authority will within 8 months or within such time as the government approves, decide a. if the increased imports of the investigated product have injured or are causing the threat of injury to the local industry; b. if there is a relation or link between the increased imports and the injury or threat of injury to the domestic industry. Moreover, it will also recommend the amount of duty to be imposed and the period for which such imposition of duty shall continue. If the recommended time period is more than one year, then he will prescribe a deadline for the progressive liberalization of the safeguard measure.<sup>21</sup> The report shall be issued as public notification and a copy of it shall be sent to the Ministry of Commerce and the National Board of Revenue.

#### **4.2.7 Levy of Safeguard Duty**

The duty is to be imposed based on section 18E of the Customs Act, 1969. The purpose of such is averting injury to local industry and positive adjustment to the situation and the amount of duty shall not be more than necessary to serve these two purposes. Further, if the final report comes negative and any provisional duty is imposed, the duty must be withdrawn within 30 days of the publication of the report.

#### **4.2.8 No Discrimination**

Safeguard duty will be imposed with any discrimination, depending on the source of the product. But conditions are applicable if importing from a developing country

- I. The import of a particular product from a developing country is less than three percentages of the total import of that product in Bangladesh.
- II. Developing countries (with less than 3 percentage import of a product) cannot have imports of more than 9% of the total import of that particular product.

#### **4.2.9 Date of Commencement**

The Safeguard duty that is imposed will become effective starting from the day it is published in the Official Gazette, as mentioned in the notification for the imposition of the duty.

If a provisional duty has already been imposed, and the designated authority determines that augmented imports have resulted in or pose a substantial threat of causing severe harm to the domestic industry, it will be indicated that the safeguard duty will be applicable from the date when the provisional duty was levied.

#### **4.2.10 Duty Refund**

The act also incorporates rules for duty refunds. If after the investigation the imposed duty is less than the previously imposed duty and collected duty, then the difference between the latter two will be given to the importer.

#### **4.2.11 Duration**

The duty imposed according to rule 12 will be applicable only for the duration required to avert or address serious injury and to facilitate constructive adaptation. The lifespan of the duty is preliminarily 4 years which can be extended to 8 years and then to another 2 years by meeting conditions under rules 5,6,7, and 8.

#### **4.2.12 Review**

The authority is required to periodically assess whether the ongoing application of the safeguard duty is necessary. Based on the information presented to the authority, the following actions may be taken:

- (i) If it is confirmed that the safeguard duty is essential to counteract or alleviate significant injury and there is evidence that the industry is making positive adjustments, the authority may propose to the Government that the duty should continue.
- (ii) If there is no valid reason to maintain the safeguard duty, the authority may suggest to the Government that it should be removed.

Additionally, if the safeguard duty has been in place for more than three years, the designated authority must review the situation by the midpoint of this period. If appropriate, the authority may recommend either the withdrawal of the safeguard duty or an increase in the relaxation of the duty.

### ***4.3 Steps for the Imposition of Safeguard Rules***

In short, the fundamental steps of imposing the countervailing duty will be

1. **Initiation of investigation:** Upon receiving a written request from the domestic producer of a similar or directly competitive article, the designated authority will begin an investigation to ascertain whether the import of an article in significantly larger quantities, either absolutely or in relation to domestic production, is leading to "serious injury" or the "threat of serious injury" to the domestic industry. (a) increased imports (b) injury, and (c) a causal link between such imports and the alleged injury.
2. **Principles Governing Investigations:** After the investigation begins, the authorized body will release a public notification announcing its decision to determine whether there is a serious injury or a threat of serious injury to the domestic industry due to the increased import of an article. This public notice will include sufficient information.
3. **Determination of Serious Injury or Threat of Serious Injury:** During the investigation aimed at establishing whether increased imports have led to, or are posing a threat of, significant harm to a specific industry, the authorized body will assess all factors that are objective and measurable.
4. **Preliminary Findings:** The designated authority is required to expeditiously carry out the investigation and he may record a preliminary finding regarding serious injury or threat of serious injury. The designated authority shall issue a public notice regarding his preliminary findings and send a copy of the public notice to the relevant institutions.

5. **Levy of Provisional Duty:** Based on the preliminary findings documented by the designated authority, the government has the authority to enforce a temporary duty but it cannot exceed two hundred days from the date on which it was imposed
6. **Final findings:** Within 8 months from the commencement of the investigation, or an extended duration permitted by the government, the authorized body will ascertain whether: (a) The increased imports of the article being investigated have resulted in or posed a risk of significant harm to the domestic industry, and (b) There exists a cause-and-effect relationship between the escalated imports and the occurrence of serious injury or the potential for serious injury.
7. **Levy of duty:** The government can enforce a safeguard duty, through an official notification in the Official Gazette, on the imported product specified in the final determination. This duty should not surpass the determined amount necessary to prevent or address severe harm and to support positive adaptation.
8. **Date of commencement of duty:** Any imposition of the safeguard duty will be enforced starting from the date when the notification is published in the Official Gazette

There are also scopes of refund of duty, review system, imposition of duty on a non-discriminatory basis, etc.

#### ***4.4 The Vacuum in the Safeguard Rules of Bangladesh***

**The rule for the only imposition of duty<sup>22</sup>:** The rules of WTO also include quantitative restrictions like a quota to protect the domestic industry from injuries. However, the safeguard rule of Bangladesh only includes the imposition of a duty to safeguard domestic industries. Under [Article 5](#) (2) of the WTO Agreement on Safeguards, the WTO provides for a quota system as a safeguard measure. Bangladesh can also incorporate this restrictive approach as an alternative measure in its legislation.

On November 4, 2019, India initiated its first Safeguard (Quantitative Restrictions) Investigation regarding Isopropyl Alcohol (IPA) imports. After conducting a thorough investigation, the Directorate General of Trade Remedies (DGTR) concluded on 30 September 2021 that quantitative restrictions are necessary. Increase in imports in its application, the industry demonstrated that between April 2016 and June 2019, imports of IPA increased abruptly, dramatically, and significantly. <sup>23</sup>

The Authority observed that the volume of imports continued to rise, while the domestic industry's production and capacity utilisation remained low. Since domestic IPA production was limited to the propylene route, the industry was severely impacted.

**Imposition:** No safeguard measure will be put into effect again to the import of a product that was already subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a time frame equal to that during which such measure had been applied, given that the duration of non-application is at least two years. A safeguard measure of 180 days or

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<sup>22</sup>[https://www.google.com/search?q=safeguard+act+of+wto&rlz=1C1CHBF\\_enBD1036BD1038&oq=&aqs=chrome.3.69i59i450l8.710317024j0j15&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=safeguard+act+of+wto&rlz=1C1CHBF_enBD1036BD1038&oq=&aqs=chrome.3.69i59i450l8.710317024j0j15&sourceid=chrome&ie=UTF-8)

<sup>23</sup> <https://www.mondaq.com/india/product-liability--safety/1212248/isopropyl-alcohol--indias-first-safeguard-investigation-for-quantitative-restrictions>

less may be applied again to the import of a product if: (a) at least one year has passed since the date of introduction of the safeguard measure on the import of that product, and (b) such a safeguard measure has not been imposed on the same product more than twice in the five years immediately preceding the date of introduction of the measure. However, the rule of Bangladesh did not have incorporated these issues.

Article 7 provides for the Duration and Review of Safeguard Measures. Articles 7(5) and 7(6) of the Agreement provide the above rules of limitation for imposing safeguard measures. Although The [Safeguard Duty Act of Bangladesh](#) rule 16 provides that the duration of duty shall be 4 years unless extended for another 4 or 2 years, it does not provide for any such provision of a non-application period.

There is no proof that such a circumstance existed in Bangladesh. However, the matter of concern is that the lack of a specific prohibition on recurrent safeguard measures could increase the probability of a future occurrence of such a situation. Therefore, it would be convenient in future for the laws of Bangladesh to be modified to prohibit the repetitive imposition of safeguard measures. This could help in ensuring that the safeguard measure is implemented fairly and transparently.

**Duration:** The total duration of a safeguard measure, including the duration of any provisional measure, the duration of the initial application, and any extensions, shall not exceed eight years. But the rule of Bangladesh provides the chance to extend it for a further two years, in total ten years. This is indeed not a vacuum of the rule of Bangladesh. The WTO agreement has the rule of giving a years extension beyond eight years for developing countries but Bangladesh has given the extension to all countries.

Under [Article 9](#), The WTO agreement has the rule of giving two years extension beyond eight years only for developing countries, whereas Bangladesh under rule 16 (2) Safeguard Duty Act of Bangladesh has given the extension to all countries. This denotes that under the framework of Bangladesh legislation, even developed countries can exercise the extension period of 2 years imposition of duty against Bangladesh.

**Consultation Settlement:** If no agreement is reached in the discussions under paragraph 3 of Article 12, the affected exporting Members will have the freedom, not later than 90 days after the measure is implemented, to suspend the application of substantially equivalent concessions or other obligations under GATT 1994 to the trade of the Member applying the measure. The right to suspend referred to in paragraph 2 shall not be practised for the first three years that a safeguard measure is in effect, given that the safeguard measure was implemented in response to an absolute increase in imports and that such a measure complies with the provisions of this Agreement. But the rule of Bangladesh did not have incorporated these issues.

This provision of suspension of concessions against the party imposing safeguard measure under article 8 (2) is essential to maintain a balance between the affected and measure imposing country. However, such a step is taken only if the members fail to come to an agreement after consultation under Article 12(3).

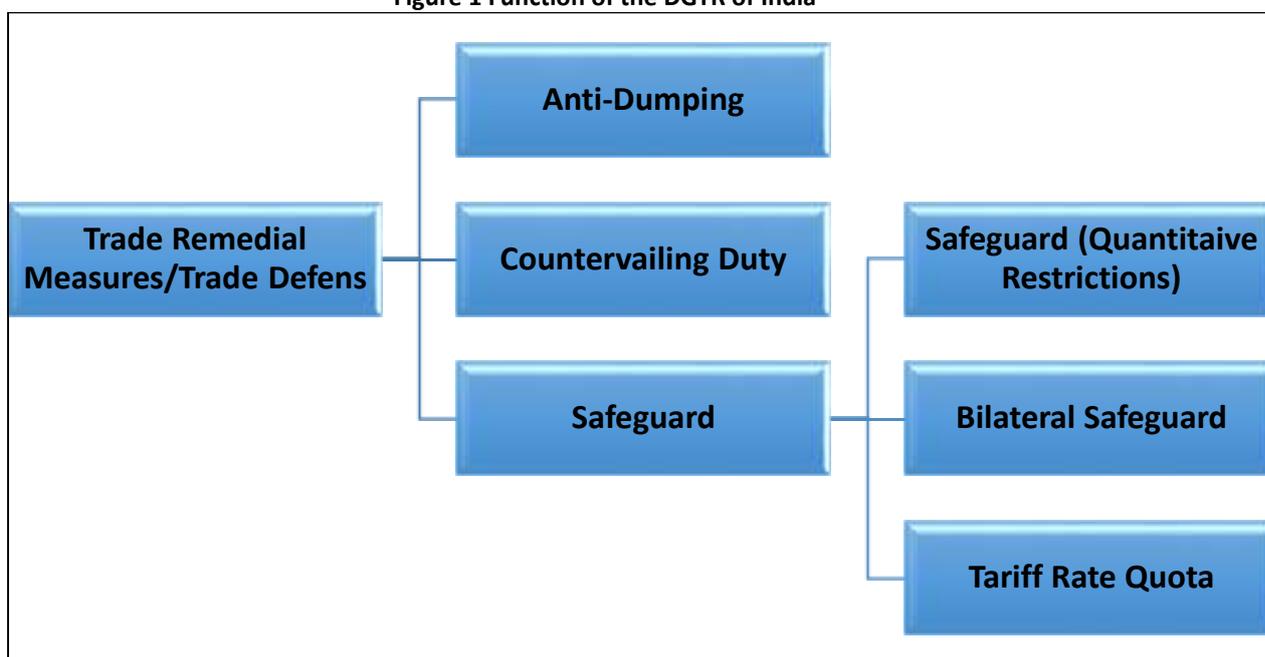
The Safeguard Rules of Bangladesh do not contain any such provision of consultation and concession. After conducting the investigation, consultation is recommended for both parties to reach an amicable solution before applying safeguard measures. Thus, Bangladesh should include these provisions of consultation and concession.

## 5. Country comparison

### 5.1 India

The Directorate General of Trade Remedies is the designated authority for trade redressal actions under Article VI of the General Agreement on Tariffs and Trade (GATT 1947) on anti-dumping, countervailing duties, and safeguard duties in India. In India, the DGTR is an associated office of the Ministry of Trade and Industry's Department of Commerce. It is a professionally integrated organisation with officers from several services and specialisations bringing a wide range of skill sets. The DGTR is in charge of the following Trade Remediation functions:<sup>24</sup>

Figure 1 Function of the DGTR of India



Source: <https://commerce.gov.in/wp-content/uploads/2021/06/DGTR-Reform-booklet-1.pdf>

In terms of the provision, the three rules of India are quite similar to that of Bangladesh and emphasis should be given to the proper implementation of the rules of Bangladesh. Some specific provisions which are not in the current rules of Bangladesh are discussed below. However, the major difference lies in the appropriate implementation.

#### 5.1.1 Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 of India

The Central Government hereby perpetrates the following rules in accordance with the authority granted by subsections (6) of section 9A and subsection (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975), which supersedes the Customs Tariff (Identification, Assessment and Collection and for of Duty or Additional Duty on Dumped Articles Determination of Injury) Rules, 1985, except actions taken or omitted to be taken prior to such supersession.

<sup>24</sup> <https://commerce.gov.in/wp-content/uploads/2021/06/DGTR-Reform-booklet-1.pdf>

**Table 1 Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995**

Issues	Highlights	Takeaways/ proposed recommendations
<p><b>4. Duties of the designated authority. –</b></p>	<p>It shall be the duty of the designated authority in accordance with these rules (d) to recommend to the Central Government –                      (i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in Annexure III to these rules;</p>	<p>The Designated Authority is required to recommend the amount of anti-dumping duty and the start date of such duty, which should be equivalent to the margin of dumping or less and would prevent harm to the domestic industry.</p>
<p><b>24. Review</b></p>	<p>1(A)The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur if the said anti-dumping duty is removed or varied and is therefore no longer warranted.</p> <p>(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.</p>	<p>Specifying the time period in the Bangladeshi Rules.</p>
<p><b>25. Circumvention of anti-dumping duty.</b></p>	<p>(1) Where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if, -                      (a) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and                      (b) The value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of the assembled, finished or complete article.</p>	<p>Inclusion of the provisions on anticircumvention issues regarding antidumping duty.</p>

Issues	Highlights	Takeaways/ proposed recommendations
	<p>Explanation I. – ‘Value’ means the cost of assembled, complete or finished article less the value of imported parts or components</p> <p>Explanation II. - For the purposes of calculating the ‘value’, expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.</p> <p>(2) Where an article subject to anti-dumping duty is imported into India from the country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti-dumping duty in force if the alteration of the description or name or composition of the article subject to anti-dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.</p> <p>(3) Where an article subject to anti-dumping duty is imported into India through exporters or producers or a country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti-dumping duty.</p> <p>Explanation. - For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely: -</p> <p>(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;</p> <p>(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.</p>	
<p><b>26. Initiation of investigation to determine circumvention.</b></p>	<p>(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry.</p> <p>(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify the initiation of the anti-circumvention investigation.</p> <p>(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti-dumping duty in force.</p> <p>(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the antidumping duty in force where it is satisfied that imports of the article circumventing an anti-dumping duty in force are found to be dumped:</p>	<p>Specification of the provisions for the initiation of the investigation to determine circumvention</p>

Issues	Highlights	Takeaways/ proposed recommendations
	<p>Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.</p> <p>(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.</p> <p>(6) Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.</p>	
<b>27. Determination of circumvention.</b>	<p>(1) The designated authority, upon the determination that circumvention of anti-dumping duty exists, may recommend imposition of anti-dumping duty to imports of articles found to be circumventing an existing anti-dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the antidumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.</p> <p>(2) The designated authority shall issue a public notice recording its findings.</p> <p>(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti-dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.</p>	
<b>28. Review of circumvention</b>	<p>(1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of the review.</p>	Introduction to the review system of the circumvention

Source: Compiled by authors from [https://www.dgtr.gov.in/sites/default/files/Compendium\\_of\\_Law%26Regulations\\_for-mail%281%29.pdf](https://www.dgtr.gov.in/sites/default/files/Compendium_of_Law%26Regulations_for-mail%281%29.pdf)

### 5.1.2 Customs Tariff (Identification, assessment and collection of countervailing duty on subsidies articles and for determination injury) Amendment) Rules 2006.

**Table 2 Customs Tariff (Identification, assessment and collection of countervailing duty on subsidies articles and for determination injury) Amendment ) Rules 2006.**

Issues	Highlights	Takeaways
<b>Calculation of the amount of the countervailable subsidy</b>	<p>(3) The amount of the countervailable subsidies shall be determined per unit of the subsidized product exported to India and while establishing this amount the following elements may be deducted from the total subsidy:</p> <p>(a) any application fee or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;</p> <p>(b) export taxes, duties or other charges levied on the export of the product to India specifically intended to offset the subsidy and in cases where an interested party claims a deduction, he must prove that the claim is justified.</p>	A detailed and more clarified guideline for the Calculation of the amount of the countervailable subsidy may be incorporated into the

Issues	Highlights	Takeaways
	<p>(4) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of 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 products concerned during the investigation period for subsidization.</p> <p>(5) 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 and 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 sub-rule (4) and, where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with clause (b) of sub-rule 2 (b) above.</p> <p>(6) 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 sub-rule (4), unless special circumstances justify its attribution over a different period.</p> <p>(7) The designated authority while calculating the amount of subsidy in countervailing duty investigation shall take into account, inter-alia, the guidelines laid down in Annexure IV to these rules.</p>	<p>existing rule of Bangladesh.</p>
<b>Annexure III</b>		
<p><b>Part- 1 Illustrative List of Export Subsidies</b></p>	<p>(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.</p> <p>(b) Currency retention schemes or any similar practices which involve a bonus on exports.</p> <p>(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.</p> <p>(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for the provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.</p> <p>Explanation: The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.</p> <p>(e) The full or partial exemption remission or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.</p> <p>Explanation: For the purpose of this paragraph:</p> <p>(i) The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;</p> <p>(ii) The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that is levied on imports;</p> <p>(iii) The term "indirect taxes" shall mean sales, excise, turnover, value-added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;</p>	<p>Inclusion of the illustrative list of export subsidies in the Bangladeshi rules</p>

Issues	Highlights	Takeaways
	<p>(iv) "Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;</p> <p>(v) "Cumulative" indirect taxes are multi-stage taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;</p> <p>(vi) "Remission" of taxes includes the refund or rebate of taxes;</p> <p>(vii) "Remission or drawback" includes the full or partial exemption or deferral of import charges.</p> <p>(f) The allowance of special deductions directly related to exports or export performance, over and above those granted with respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.</p> <p>(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.</p> <p>(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste) and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 of this Annexure. This paragraph does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).</p> <p>(i) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a number of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 of this Annexure and the guidelines in the determination of substitution drawback systems as export subsidies contained in Part-3 of this Annexure.</p> <p>(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.</p> <p>(k) The grant by governments (or special institutions controlled by or acting under the authority of governments) of export credits at rates below those which they have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms. Provided, that if a country is a party to an international undertaking on official export credits to which at least twelve original World Trade organization Members are parties as of 1 January 1979 (or a successor undertaking which has been adopted by</p>	

Issues	Highlights	Takeaways
	<p>those original Members), or if in practice a country applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by these rules.</p> <p>(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.</p>	
<p><b>Part-2 Guidelines On Consumption of Inputs in the Production Process</b></p>	<p>1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making a normal allowance for waste).</p> <p>2. The Illustrative List of Export Subsidies in Part 1 of Annexure III of these rules makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in the exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding the consumption of inputs in the production of the exported product.</p> <p>II</p> <p>1. Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts that are consumed in the course of their use to obtain the exported product. In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to these rules, the designated authority should proceed on the following basis, namely: -</p> <p>(1) Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the designated authority should first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the designated authority should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The designated authority may it necessary if he considers carrying out certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.</p> <p>(2) Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred.</p> <p>If the designated authority considers it necessary, a further examination would be carried out in accordance with sub-paragraph 1 above.</p>	

Issues	Highlights	Takeaways
	<p>2. The designated authority should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. An input need not be present in the final product in the same form in which it entered the production process.</p> <p>3. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.</p> <p>4. The designated authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The designated authority should bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste when such an amount is intended to be included in the tax or duty rebate or remiss</p>	

Source: *Compiled by authors from [https://customsandforeigntrade.com/wp-content/uploads/2020/rules\\_customs/Customs%20Tariff%20\(Identification,%20Assessment%20And%20Collection%20Of%20Countervailing%20Duty%20On%20Subsidized%20Articles%20And%20For%20Determination%20Of%20Injury\)%20Rules,%201995.pdf](https://customsandforeigntrade.com/wp-content/uploads/2020/rules_customs/Customs%20Tariff%20(Identification,%20Assessment%20And%20Collection%20Of%20Countervailing%20Duty%20On%20Subsidized%20Articles%20And%20For%20Determination%20Of%20Injury)%20Rules,%201995.pdf)*

### 5.1.3 The Safeguard Measures (Quantitative Restrictions) Rules, 2012 of India

**Table 3 The Safeguard Measures (Quantitative Restrictions) Rules, 2012**

Issues	Highlights	Takeaways
<b>Definitions.</b>	(f) "quantitative restrictions" means any specific limit on the number of goods imposed as a safeguard measure under the Act;	Inclusion of the definition of "quantitative restriction" in the existing rule of Bangladesh.
<b>Determination of serious injury or threat of serious injury</b>	<p>The Authorized Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely: -</p> <p>(a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorized Officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment; and</p>	

Issues	Highlights	Takeaways
	(b) the determination referred to in clause (a) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the goods concerned and serious injury or threat thereof: Provided that when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports and in such cases, the Authorized Officer may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.	
<b>10. Imposition of safeguard quantitative restrictions.</b>	The Central Government may based on the recommendation of the Authorized Officer, by notification in the Official Gazette, under sub-section (1) of section 9A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.	WTO rules also incorporate quantitative limits, such as quotas, to shield domestic industries from injury. However, Bangladesh's safeguard rules only impose a duty to protect domestic industry.

Source: Compiled by authors from <http://www.bareactslive.com/ACA/ACT2092.HTM>

## 5.2 China

### 5.2.1 Regulations of the People's Republic of China on Anti-dumping and Countervailing Measures

**Table 4 Republic of China on Anti-dumping and Countervailing Measures**

Issues	Highlights	takeaways
<b>Lesser duty</b>	If the definitive anti-dumping duty determined in a final determination is higher than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected; if the definitive duty is lower than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be refunded or the duty recalculated, as the case may be.	The lesser duty approach entails imposing a low duty that falls between the dumping margin and the injury margin. In the rules of Bangladesh, the lesser-duty approach is not introduced. It may be incorporated.
<b>Circumvention of anti-dumping measures</b>	<b>Article 55</b> The Ministry of Commerce may take appropriate measures to prevent the circumvention of anti-dumping measures.	The Ministry of Commerce may take reasonable actions to prevent anti-dumping measures from being circumvented.
<b>Price undertakings</b>	<b>Article 36</b> In cases where an exporter violates his price undertaking, the Ministry of Commerce may decide to resume the anti-dumping investigation immediately in accordance with the provisions of these Regulations, or, on the basis of the best information available, decide to apply provisional anti-dumping measures and levy anti-dumping duties retroactively on the products imported not more than 90 days prior to the	

Issues	Highlights	takeaways
	application of such provisional anti-dumping measures, except the products imported before the violation of the price undertaking.	

Source: Compiled by authors from <https://enforcement.trade.gov/trcs/downloads/documents/china/index.html>

## 5.2.2 Regulations of the People’s Republic of China on Countervailing Measures

**Table 5 Regulations of the People’s Republic of China on Countervailing Measures**

Issues	Highlights	takeaways
<b>Calculation of the amount of the countervailable subsidy</b>	<p><b>Article 6</b> The amount of a subsidy to an import shall be calculated according to the following methods by distinguishing among differing cases:</p> <ol style="list-style-type: none"> <li>(1) where the subsidy is granted in the form of a grant, the amount of the subsidy shall be calculated based on the actual amount received by an enterprise;</li> <li>(2) where the subsidy is granted in the form of a loan, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise should pay on a loan in the ordinary commercial loan conditions and the amount of interest the enterprise pays on this loan;</li> <li>(3) where the subsidy is granted in the form of a loan guarantee, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise should pay on a commercial loan without such guarantee and the amount of interest the enterprise actually pays on a loan guaranteed;</li> <li>(4) where the subsidy is granted in the form of an equity infusion, the amount of the subsidy shall be calculated on the basis of the actual amount of the capital an enterprise receives;</li> <li>(5) where the subsidy is granted in the form of the provision of goods or services, the amount of the subsidy shall be calculated on the basis of the difference between the price of the goods or services at normal market price and the price that an enterprise actually pays;</li> <li>(6) where the subsidy is granted in the form of the purchase of goods, the amount of the subsidy shall be calculated on the basis of the difference between the actual price the government pays and the normal market price of the goods; and</li> <li>(7) where the subsidy is granted in the form of forgoing or not collecting due revenue, the amount of the subsidy shall be calculated on the basis of the difference between the amount payable under the law and the actual amount an enterprise pays.</li> </ol> <p>The amount of subsidies granted in forms other than those enumerated in the preceding paragraph shall be calculated fairly and reasonably.</p>	A detailed and more clarified guideline for the Calculation of the amount of the countervailable subsidy may be incorporated into the existing rule of Bangladesh.
<b>List of Export Subsidies</b>	<ol style="list-style-type: none"> <li>1. The provision of direct subsidies by the government of an exporting country (region) to an enterprise or industry contingent upon export performance.</li> <li>2. Foreign currency retention schemes or any similar practices which involve a bonus on exports.</li> </ol>	A detail list might be incorporated into the

Issues	Highlights	takeaways
	<p>3. Internal transport or freight charges on exports, provided for or approved by the government of an exporting country (region), on terms more favourable than for domestic goods.</p> <p>4. The provision of goods or services by the government of an exporting country (region) either directly or indirectly to the production of exports, on terms more favourable than for the provision of like goods or services to the production of domestic goods, except for special circumstances.</p> <p>5. The full or partial remission, exemption or deferral of direct taxes or social welfare charges specifically related to exports which have been paid or are payable by enterprises.</p> <p>6. The deductions directly related to exports or export performance, over and above those granted with respect to domestic production, in the calculation of the base on which direct taxes are charged.</p> <p>7. The remission, exemption or reimbursement, in respect of the production and distribution of exports, of indirect taxes in excess of those levied in respect of the production and distribution of like domestic products.</p> <p>8. The remission, exemption, reimbursement or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exports in excess of the remission, exemption, reimbursement or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like domestic product, except for special circumstances.</p> <p>9. The remission, exemption or reimbursement of import charges on imported inputs for the production of exports in excess of those levied on such inputs when they are imported, except for special circumstances.</p> <p>10. The provision by the government of an exporting country (region) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.</p> <p>11. The grant by the government of an exporting country (region) of export credits at rates below those which are paid for the employment of such funds, or the payment by it of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in order that that could attain advantages in the field of export credits terms, except for special circumstances.</p> <p>12. Any other charges on the public account constituting an export subsidy</p>	existing rules of Bangladesh

Source: Compiled by authors from <https://enforcement.trade.gov/trcs/downloads/documents/china/index.html>

### 5.2.3 Regulations of the People’s Republic of China on Safeguards

Table 6 Regulations of the People’s Republic of China on Safeguards

Issues	Highlights	takeaways
<b>Quantitative restrictions</b>	Article 19 The Ministry of Commerce shall promptly notify the Committee on Safeguards of the decision on the application of a safeguard measure and the related information.	WTO rules also incorporate quantitative limits, such as quotas, to shield domestic industries from injury. However, Bangladesh's safeguard rules only impose a duty to protect domestic industry.

Issues	Highlights	takeaways
	Article 20 Where a quantitative restriction is applied and it is necessary to allocate quantity among exporting countries (regions) or countries (regions) of origin, the Ministry of Commerce may consult with the exporting countries (regions) or countries (regions) of origin concerned in the allocation of quantity	
<b>Consultation</b>	Article 24 Prior to the application of a safeguard measure, the Ministry of Commerce shall provide adequate opportunities for consultations with those governments of countries (regions) having substantial interests as the exporters of the products concerned.	The Safeguard rules of Bangladesh do not contain any such provision of consultation and concession. After conducting the investigation, consultation is recommended for both parties for reaching an amicable solution before applying safeguard measures. Thus, Bangladesh should include these provisions of consultation and concession.

Source: Compiled by authors from <https://enforcement.trade.gov/trcs/downloads/documents/china/index.html>

## 5.3 Malaysia

### 5.3.1 Regulation of Malaysia regarding antidumping duties

Table 7 Countervailing and Anti-Dumping Duties (Amendment) Regulations Of 1999

Issues	Highlights	takeaways
<b>Imposition of antidumping duties</b>	<p>15. (1) The Government may impose an anti-dumping duty on the subject merchandise imported into Malaysia where it determines:</p> <p>a) That the export price of the subject merchandise is less than its normal value; and  (b) that injury is found to exist in any one of the following ways:  (i) The domestic industry in Malaysia producing a like product is materially injured by reason of the subject merchandise;  (ii) the domestic industry in Malaysia producing a like product is threatened with material injury by reason of the subject merchandise; or  (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise</p> <p>2) The amount of anti-dumping duty to be imposed:  (a) Shall be equal to the dumping margin determined to exist with respect to the subject merchandise; or  (b) if the Government determines that a lower anti-dumping duty will be sufficient to eliminate the injury determined in paragraph (1)(b), may be such lower duty.</p>	The Designated Authority is required to recommend the amount of anti-dumping duty and the start date of such duty, which should be equivalent to the margin of dumping or less and would prevent harm to the domestic industry.

Issues	Highlights	takeaways
<b>Administrative Review<sup>25</sup></b>	6) No anti-dumping duty shall be collected on imports made after five years from the date of its imposition, or five years from the date of the conclusion of the most recent administrative review under subsection (1) that covered both dumping and injury, and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of the investigation, unless the Government determines, in an administrative review initiated before that date on the Government's initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty or undertaking would be likely to lead to a continuation or recurrence of dumping and injury.";	
<b>Anti-circumvention measures.</b>	37. The Government may take action to prevent circumvention of the application of countervailing and anti-dumping duties as may be prescribed.	The Designated Authority is required to recommend the amount of anti-dumping duty and the start date of such duty, which should be equivalent to the margin of dumping or less and would prevent harm to the domestic industry.

Source: Compiled by authors <http://www.customs.gov.my/en/pg/Other%20Act/Countervailing%20And%20Anti-Dumping%20Duties%20Act%201993.pdf>

### 5.3.2 Regulation of Malaysia regarding Countervailing Duties

**Table 8 Countervailing and Anti-Dumping Duties (Amendment) Regulations Of 1999**

Issues	Highlights	takeaways
<b>Subsidy</b>	2A. For this Act, "subsidy", in relation to merchandise that is imported into Malaysia, means (a) a financial contribution by a government or a public body, or by a private body entrusted or directed by the government or public body to carry out a governmental function, that is made in connection with the production, manufacture or export of the merchandise and that involves one or more of the following: (i) a direct transfer of funds from the government or public body or private body to the enterprise by whom the merchandise is produced, manufactured or exported (after this referred to as "the enterprise"); (ii) a potential direct transfer of funds from the government or public body or private body to the enterprise contingent on the occurrence of particular circumstances; (iii) the acceptance of liabilities, actual or potential, of the enterprise by the government or public body or private body;	A more precise and clear definition of countervailable subsidy may be introduced into Bangladesh's existing rule.

<sup>25</sup> <https://enforcement.trade.gov/trcs/downloads/documents/Malaysia/GSCMN1MYS1A1.pdf>

Issues	Highlights	takeaways
	(iv) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to the government or public body or private body from the enterprise (v) the provision by the government or public body or private body of goods or services to the enterprise other than general infrastructure; (vi) the purchase by the government or public body or private body of goods provided by the enterprise; (vii) the making of payments to a funding mechanism by the government or public body; or (b) any form of income or price support as specified in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from a government or public body, if that financial contribution or income or price support confers a benefit in relation to the merchandise	

Source: Compiled by authors from <https://enforcement.trade.gov/trcs/downloads/documents/malaysia/GSCMN1MYS1A1.pdf>

### 5.3.3 Regulation of Malaysia regarding safeguard duties

Table 9 Safeguards Regulations 2007, Malaysia

Issues	Highlights	takeaways
<b>Form and application of a definitive safeguard measure</b>	28. (1) A definitive safeguard measure can be applied in the form of: (a) a safeguard duty; or (b) a quota on imports; or (c) a safeguard duty and a quota on imports. (2) Subject to section 34, any definitive safeguard measure under paragraphs (1)(a) and (b) shall be applied to all imports of the product under investigation, irrespective of source, entered on or after the date on which the measure takes effect.	Inclusion of quantitative restrictions like a quota to protect the domestic industry from injuries in the present rules of Bangladesh.
<b>Consultation</b>	(2) Before a definitive safeguard measure is applied, the Government shall provide adequate opportunity for consultation with those Members having a substantial interest as exporters of the product under investigation, with a view to: (a) reviewing the information notified to the Committee regarding the finding of serious injury or threat thereof caused by increased imports and the proposed measure; (b) exchanging views about the measure; and (c) reaching an understanding of ways to achieve the objective to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Malaysia and the exporting Members which would be affected by such a measure. The Government may endeavour to provide any adequate means of trade compensation for the adverse effects of the measure on their trade. (3) The Government shall notify the Council for Trade in Goods of the WTO immediately, through the Committee, of the results of the consultation.	The Safeguard Rules of Bangladesh do not contain any such provision of consultation and concession. After conducting an investigation, consultation is recommended for both parties for reaching an amicable solution before applying safeguard measures. Thus, Bangladesh should include these provisions of consultation and concession.

Issues	Highlights	takeaways
<b>Reapplication Of a Safeguard Measure</b>	<p>(2) Notwithstanding the provisions of subsection (1), a definitive safeguard measure with a duration of hundred and eighty days or less may be applied to the imports of a product under investigation which was the subject of an earlier safeguard measure if:</p> <p>(a) at least one year lapsed since the date of imposition of the earlier safeguard measure on the imports of that product; and</p> <p>(b) such a safeguard measure has not been applied to the same product more than twice in the five years immediately preceding the date of introduction of the measure.</p>	<p>There is no confirmation that such a situation existed in Bangladesh. However, the lack of a stated prohibition on recurring safeguard measures raises the possibility of such a situation occurring in the future. As a result, it would be preferable if Bangladeshi laws were changed in the future to ban the repeated implementation of precautionary measures. This could contribute to the safeguard measure being implemented equally and transparently.</p>

Source: Compiled by authors <https://enforcement.trade.gov/trcs/downloads/documents/Malaysia/GSGN1MYS2.pdf>

## 5.4 Singapore

### 5.4.1 The Statutes of The Republic of Singapore on Anti-Dumping Duties<sup>26</sup>

**Table 10 THE STATUTES OF THE REPUBLIC OF SINGAPORE on COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1996**

Issues	Highlights	takeaways
<b>Imposition of anti-dumping duties</b>	<p>14. (2) The amount of anti-dumping duty to be imposed —</p> <p>(a) is equal to the dumping margin determined to exist with respect to the subject goods; or</p> <p>(b) if the Minister determines that a lower anti-dumping duty will be sufficient to eliminate the injury determined in subsection (1)(b), is such lower duty.</p>	<p>The Designated Authority is required to recommend the amount of anti-dumping duty and the start date of such duty, which should be equivalent to the margin of dumping or less and would prevent harm to the domestic industry.</p>
<b>Obligation of secrecy</b>	<p>45. (1) No person who has access to any statement, account, record, correspondence, document, information or any other material obtained pursuant to the provisions of this Act or any regulations made under this Act may disclose such statement, accounts, record, correspondence, document, information or other material to any other person unless such disclosure is —</p> <p>(a) authorised by the Minister; or</p> <p>(b) made for the purposes of this Act.</p>	<p>Inclusion of the penalty provision in case of violating the secrecy.</p>

<sup>26</sup> <https://sso.agc.gov.sg/Act/CADDA1996?WholeDoc=1#pr45->

Issues	Highlights	takeaways
	(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.	
<b>Price undertakings</b>	12) Where the Minister resumes an investigation under subsection (8)(b) that mentions material violation of the undertakings, the Minister may impose anti-dumping duties in conformity with section 23 on the subject goods imported into Singapore within a period of 90 days prior to the provisional measures applied under subsection (9)(b).	But as per the rule of Bangladesh, the designated authority can only recommend the government for imposing a duty.

Source: Compiled by authors THE STATUTES OF THE REPUBLIC OF SINGAPORE on COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1996

#### 5.4.2 The Statutes of the Republic of Singapore on Countervailing Duties

**Table 11 THE STATUTES OF THE REPUBLIC OF SINGAPORE on COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1996**

Issues	Highlights	takeaways
<b>Imposition of countervailing duties</b>	The amount of countervailing duty to be imposed — (a) is equal to the countervailable subsidy determined to be provided with respect to the subject goods; or (b) if the Minister determines that a lower countervailing duty is sufficient to eliminate the injury determined in subsection (1)(b), is such lower duty	A detailed and more clarified guideline for the Calculation of the amount of the countervailable subsidy may be incorporated into the existing rule of Bangladesh.
<b>Subsidy</b>	(2) For the purposes of this Act, “subsidy”, in relation to goods that are imported into Singapore, means — (a) a financial contribution by a government or public body of the country of export that is made in connection with the production, manufacture or export of those goods that involves — (i) a direct transfer of funds from that government or public body; (ii) a potential direct transfer of funds or liabilities from that government or public body; (iii) the forgoing, or non-collection of revenue (other than an allowable exemption or remission) due to that government or public body; (iv) the provision by that government or public body of goods or services otherwise than in the course of providing the normal infrastructure; or (v) the purchase by that government or public body of goods; or (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or public body, and a benefit is thereby conferred but does not include any government action that satisfies the conditions described in footnote 1 of the Agreement on Subsidies and Countervailing Measures.	A more precise and clear definition of countervailable subsidy may be introduced into Bangladesh’s existing rule.

Source: Compiled by authors from THE STATUTES OF THE REPUBLIC OF SINGAPORE on COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1996

## 5.5 Vietnam

**Table 12 ORDINANCE ON SAFEGUARDS IN THE IMPORT OF FOREIGN GOODS INTO VIETNAM**

Issues	Highlights	takeaways
<b>Quantitative restrictions</b>	<p>Article 3.- Safeguard measures</p> <p>The safeguard measures imposed on imports of foreign goods into Vietnam include:</p> <ol style="list-style-type: none"> <li>1. Raising the import tariffs;</li> <li>2. Imposing import quotas;</li> <li>3. Other measures to be stipulated by the Government</li> </ol>	Inclusion of quantitative restrictions like a quota to protect the domestic industry from injuries in the present rules of Bangladesh.
<b>Consultation</b>	<p>Article 7.- 1. The Ministry of Trade may consult the interested parties in the process of investigation and application of safeguard measures at their request in order to create conditions for all the interested parties to express their opinions and supply the necessary information.</p> <p>2. The interested parties shall not be obliged to attend consultations; any parties not present at consultations shall still have their interests related to safeguard measures preserved</p>	The Safeguard Rules of Bangladesh do not contain any such provision of consultation and concession. After conducting the investigation, consultation is recommended for both parties for reaching an amicable solution before applying safeguard measures. Thus, Bangladesh should include these provisions of consultation and concession.

Source: Compiled by authors from <https://enforcement.trade.gov/trcs/downloads/documents/vietnam/GSGN1VNM1.pdf>

## 5.6 Country Comparison Matrix

### 5.6.1 Country Comparison of Antidumping Rules/Acts

**Table 13 Country Comparison of Antidumping Rules/Acts**

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
<b>Lesser duty method</b>	It shall be the duty of the designated authority in accordance with these rules (d) to recommend to the Central Government – (i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the	If the definitive anti-dumping duty determined in a final determination is higher than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not	14. (2) The amount of anti-dumping duty to be imposed – (a) is equal to the dumping margin determined to exist with respect to the subject goods; or	15. (1) The Government may impose an anti-dumping duty on the subject merchandise imported into Malaysia where it determines: a) That the export price of the subject merchandise is less than its normal value; and (b) that injury is found to exist in any one of the following ways: (i) The domestic industry in Malaysia producing a like product is materially injured by reason of the subject merchandise;	The lesser duty approach entails imposing a low duty that falls between the dumping margin and the injury margin. In the rules of Bangladesh, the lesser-duty

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	domestic industry, after considering the principles laid down in Annexure III to these rules;	be collected; if the definitive duty is lower than the provisional anti-dumping duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be refunded or the duty recalculated, as the case may be.	(b) if the Minister determines that a lower anti-dumping duty will be sufficient to eliminate the injury determined in subsection (1)(b), is such lower duty.	(ii) the domestic industry in Malaysia producing a like product is threatened with material injury by reason of the subject merchandise; or (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise  2) The amount of anti-dumping duty to be imposed:  (a) Shall be equal to the dumping margin determined to exist with respect to the subject merchandise; or (b) if the Government determines that a lower anti-dumping duty will be sufficient to eliminate the injury determined in paragraph (1)(b), may be such lower duty.	approach is not introduced. It may be incorporated.
<b>Circumvention of anti-dumping measures</b>	Where an article subject to anti-dumping duty is imported into India through exporters or producers or a country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or	<b>Article 55</b> The Ministry of Commerce may take appropriate measures to prevent the circumvention of anti-dumping measures.	N/A	37. The Government may take action to prevent circumvention of the application of countervailing and anti-dumping duties as may be prescribed.	The Ministry of Commerce may take reasonable actions to prevent anti-dumping measures from being circumvented.

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	producers or country not subject to anti-dumping duty.				
<b>Price undertakings</b>	N/A	<b>Article 36</b> In cases where an exporter violates his price undertaking, the Ministry of Commerce may decide to resume the anti-dumping investigation immediately in accordance with the provisions of these Regulations, or, on the basis of the best information available, decide to apply provisional anti-dumping measures and levy anti-dumping duties retroactively on the products imported not more than 90 days prior to the application of such provisional anti-dumping measures, except the products imported before the violation of the price undertaking.	12) Where the Minister resumes an investigation under subsection (8)(b) that mentions material violation of the undertakings, the Minister may impose anti-dumping duties in conformity with section 23 on the subject goods imported into Singapore within a period of 90 days prior to the provisional measures applied under subsection (9)(b).	N/A	However as per the rule of Bangladesh, the designated authority can only recommend the government for imposing a duty.

Source: Compiled by authors from different sources

### 5.6.2 Country Comparison of Countervailing Rules/Acts

**Table 14 Country Comparison of Countervailing Rules/Acts**

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
<b>Subsidy</b>	<p>(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.</p> <p>(b) Currency retention schemes or any similar practices which involve a bonus on exports.</p> <p>(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.</p> <p>(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for the provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.</p> <p>Explanation: The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.</p> <p>(e) The full or partial exemption remission or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.</p> <p>Explanation: For the purpose of this paragraph:</p> <p>(i) The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all</p>	<p>Article 3 The term "subsidy" means a financial contribution or any form of income or price support which is provided by the government or any public body of an exporting country (region) and which will benefit the recipients.</p> <p>The government or any public body of an exporting country (region) is hereinafter collectively referred to as the government of an exporting country (region).</p> <p>The term "financial contribution" in Paragraph 1 of this Article shall include:</p> <p>(1) the government of an exporting country (region) directly provides funds in the form of grants, loans, equity infusion, etc., or potentially directly transfers funds or liabilities in the form of loan guarantees or otherwise;</p> <p>(2) the government of an exporting country (region) forgoes or does not collect</p>	<p>(2) For the purposes of this Act, "subsidy", in relation to goods that are imported into Singapore, means —</p> <p>(a) a financial contribution by a government or public body of the country of export that is made in connection with the production, manufacture or export of those goods that involves —</p> <p>(i) a direct transfer of funds from that government or public body;</p>	<p>2A. For the purposes of this Act, "subsidy", in relation to merchandise that is imported into Malaysia, means</p> <p>(a) a financial contribution by a government or a public body, or by a private body entrusted or directed by the government or public body to carry out a governmental function, that is made in connection with the production, manufacture or export of the merchandise and that involves one or more of the following:</p> <p>(i) a direct transfer of funds from the government or public body or private body to the enterprise by whom the merchandise is produced, manufactured or exported (after this referred to as "the enterprise");</p> <p>(ii) a potential direct transfer of funds from the government or public body or private body to the enterprise contingent on the occurrence of particular circumstances;</p> <p>(iii) the acceptance of liabilities, actual or potential, of the enterprise by the government or public body or private body;</p>	<p>A more precise and clear definition of countervailable subsidy may be introduced into Bangladesh's existing rule.</p>

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	<p>other forms of income, and taxes on the ownership of real property;</p> <p>(ii) The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;</p> <p>(iii) The term "indirect taxes" shall mean sales, excise, turnover, value-added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;</p> <p>(iv) "Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;</p> <p>(v) "Cumulative" indirect taxes are multi-stage taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;</p> <p>(vi) "Remission" of taxes includes the refund or rebate of taxes;</p> <p>(vii) "Remission or drawback" includes the full or partial exemption or deferral of import charges.</p> <p>(f) The allowance of special deductions directly related to exports or export performance, over and above those granted with respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.</p> <p>(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and</p>	<p>revenue that is otherwise due;</p> <p>(3) the government of an exporting country (region) provides goods or services other than general infrastructure, or purchases goods; and</p> <p>(4) The government of an exporting country (region) carries out the above-mentioned functions by making payments to a funding mechanism or entrusting or directing a private body to carry out the above-mentioned functions.</p>	<p>(ii) a potential direct transfer of funds or liabilities from that government or public body;</p> <p>(iii) the forgoing, or non-collection of revenue (other than an allowable exemption or remission) due to that government or public body;</p> <p>(iv) the provision by that government or public body of goods or services otherwise than in the course of providing the normal</p>	<p>(iv) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to the government or public body or private body from the enterprise</p> <p>(v) the provision by the government or public body or private body of goods or services to the enterprise other than general infrastructure;</p> <p>(vi) the purchase by the government or public body or private body of goods provided by the enterprise;</p> <p>(vii) the making of payments to a funding mechanism by the government or public body; or</p> <p>(b) any form of income or price support as specified in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from a government or public body, if that financial contribution or income or price support confers a benefit in relation to the merchandise</p>	

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	<p>distribution of like products when sold for domestic consumption.</p> <p>(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste) and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 of this Annexure. This paragraph does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).</p> <p>(i) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and</p>		<p>infrastructure; or</p> <p>(v) the purchase by that government or public body of goods; or</p> <p>(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or public body, and a benefit is thereby conferred but does not include any government action that satisfies the conditions described in</p>		

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	<p>characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 of this Annexure and the guidelines in the determination of substitution drawback systems as export subsidies contained in Part-3 of this Annexure.</p> <p>(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.</p> <p>(k) The grant by governments (or special institutions controlled by or acting under the authority of governments) of export credits at rates below those which they have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a</p>		<p>footnote 1 of the Agreement on Subsidies and Countervailing Measures.</p>		

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	<p>material advantage in the field of export credit terms.</p> <p>Provided, that if a country is a party to an international undertaking on official export credits to which at least twelve original World Trade Organization Members are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a country applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by these rules.</p> <p>(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.</p>				
<b>Calculation of the amount of the countervailable subsidy</b>	<p>(3) The amount of the countervailable subsidies shall be determined per unit of the subsidized product exported to India and while establishing this amount the following elements may be deducted from the total subsidy:</p> <p>(a) any application fee or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;</p> <p>(b) export taxes, duties or other charges levied on the export of the product to India specifically intended to offset the subsidy and in cases where an interested party claims a deduction, he must prove that the claim is justified.</p> <p>(4) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as</p>	<p>Article 6 The amount of a subsidy to an import shall be calculated according to the following methods by distinguishing among differing cases:</p> <p>(1) Where the subsidy is granted in the form of a grant, the amount of the subsidy shall be calculated on the basis of the actual amount received by an enterprise;</p> <p>(2) Where the subsidy is granted in the form of a loan, the amount of the subsidy shall be calculated on</p>	N/A	<p>The calculation of the amount of A subsidy in terms of the benefit to the recipient shall be based on the following guidelines:</p> <p>(a) Government provision of equity capital shall not be considered as conferring a benefit unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Member;</p> <p>(b) A loan by a government shall not be considered as conferring</p>	<p>A detailed and more clarified guideline for the Calculation of the amount of the countervailable subsidy may be incorporated into the existing rule of Bangladesh.</p>

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
	<p>appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.</p> <p>(5) 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 and 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 sub-rule (4) and, where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with clause (b) of sub-rule 2 (b) above.</p> <p>(6) 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 sub-rule (4), unless special circumstances justify its attribution over a different period.</p> <p>(7) The designated authority while calculating the amount of subsidy in countervailing duty investigation shall take into account, inter-alia, the guidelines laid down in Annexure IV to these rules.</p>	<p>the basis of the difference between the amount of interest an enterprise should pay on a loan in the ordinary commercial loan conditions and the amount of interest the enterprise pays on this loan;</p> <p>(3) Where the subsidy is granted in the form of a loan guarantee, the amount of the subsidy shall be calculated on the basis of the difference between the amount of interest an enterprise should pay on a commercial loan without such guarantee and the amount of interest the enterprise actually pays on a loan guaranteed;</p> <p>(4) Where the subsidy is granted in the form of an equity infusion, the amount of the subsidy shall be calculated on the basis of the actual amount of the capital an enterprise receives;</p> <p>(5) Where the subsidy is granted in the form of the provision of goods or services, the amount of the subsidy shall be calculated on the basis of the difference</p>		<p>a benefit unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount the enterprise would pay on a comparable commercial loan that the enterprise could obtain on the market, in which case the benefit shall be the difference between these two amounts</p> <p>(c) A loan guarantee by a government shall not be considered as conferring 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 on a comparable commercial loan absent the government guarantee, in which case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and</p> <p>(d) The provision of goods or services, or the purchase of goods, by a government, shall not be considered as conferring</p>	

Issues	Remarks				
	India	China	Singapore	Malaysia	Takeaways
		<p>between the price of the goods or services at normal market price and the price that an enterprise actually pays;</p> <p>(6) Where the subsidy is granted in the form of purchase of goods, the amount of the subsidy shall be calculated on the basis of the difference between the actual price the government pays and the normal market price of the goods; and</p> <p>(7) Where the subsidy is granted in the form of forgoing or not collecting due revenue, the amount of the subsidy shall be calculated on the basis of the difference between the amount payable under the law and the actual amount an enterprise pays.</p> <p>The amount of subsidies granted in forms other than those enumerated in the preceding paragraph shall be calculated fairly and reasonably.</p>		a benefit unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration	

Source: Compiled by authors from different sources

### 5.6.3 Country Comparison of Safeguard Rules/Acts

Table 15 Country Comparison of Safeguard Rules/Acts

Issues	Remarks				
	India	China	Vietnam	Malaysia	Takeaways
<b>Quantitative Restrictions</b>	The Central Government may based on the recommendation of the Authorized Officer, by notification in the Official Gazette, under sub-section (1) of section 9A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.	Article 19 The Ministry of Commerce shall promptly notify the Committee on Safeguards of the decision on the application of a safeguard measure and the related information.  Article 20 Where a quantitative restriction is applied and it is necessary to allocate quantity among exporting countries (regions) or countries (regions) of origin, the Ministry of Commerce may consult with the exporting countries (regions) or countries (regions) of origin concerned in the allocation of quantity	Inclusion of quantitative restrictions like a quota to protect the domestic industry from injuries in the present rules of Bangladesh.	28. (1) A definitive safeguard measure can be applied in the form of: (a) a safeguard duty; or (b) a quota on imports; or (c) a safeguard duty and a quota on imports. (2) Subject to section 34, any definitive safeguard measure under paragraphs (1)(a) and (b) shall be applied to all imports of the product under investigation, irrespective of source, entered on or after the date on which the measure takes effect.	WTO rules also incorporate quantitative limits, such as quotas, to shield domestic industries from injury. However, Bangladesh's safeguard rules only impose a duty to protect domestic industry.
<b>Consultation</b>	N/A	Article 24 Prior to the application of a safeguard measure, the Ministry of Commerce shall provide adequate opportunities for consultations with those governments of countries (regions) having substantial	Article 7.- 1. The Ministry of Trade may consult the interested parties in the process of investigation and application of safeguard measures at their request in order to create conditions	(2) Before a definitive safeguard measure is applied, the Government shall provide adequate opportunity for consultation with those Members having a substantial interest as exporters of the product under investigation, with a view to: (a) reviewing the information notified to the Committee regarding the finding of serious injury or threat thereof caused by	The Safeguard Rules of Bangladesh do not contain any such provision of consultation and concession. After conducting the investigation, consultation is

Issues	Remarks				
	India	China	Vietnam	Malaysia	Takeaways
		interests as the exporters of the products concerned.	for all the interested parties to express their opinions and supply the necessary information. 2. The interested parties shall not be obliged to attend consultations; any parties not present at consultations shall still have their interests related to safeguard measures preserved	increased imports and the proposed measure; (b) exchanging views about the measure; and (c) reaching an understanding of ways to achieve the objective to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Malaysia and the exporting Members which would be affected by such a measure. The Government may endeavour to provide any adequate means of trade compensation for the adverse effects of the measure on their trade. (3) The Government shall notify the Council for Trade in Goods of the WTO immediately, through the Committee, of the results of the consultation.	recommended for both parties for reaching an amicable solution before applying safeguard measures. Thus, Bangladesh should include these provisions of consultation and concession.

Source: Compiled by authors from various sources

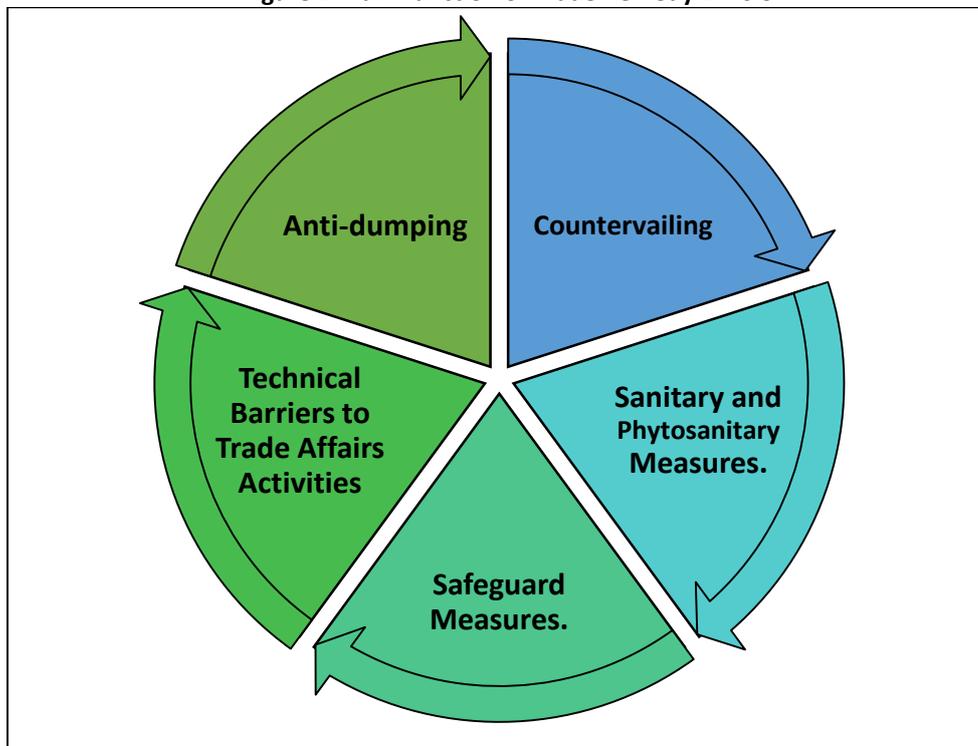
## 6. Activities Carried out by the Trade Remedies Division of the BTTC<sup>27</sup>

The Trade Remedies Division of the Bangladesh Tariff Commission is responsible for preventing unfair trade in order to defend the legitimate interests of local industries. When a foreign product is exported to Bangladesh at a price lower than its factory price, it is considered dumping and detrimental to local industries, as well as unjust trade. To protect local industries from such damage, anti-dumping duties may be imposed in this situation.

Similarly, for the sake of fair trade, countervailing measures may be implemented in the case of the export of any product to Bangladesh at subsidized prices, which eliminates comparable domestic products from competition on the domestic market, causing the domestic industry to contract and close. In addition, safeguard measures may be enacted if the importation of a product in sufficient quantities harms domestic industries.

The Trade Remedies Division of the Bangladesh Tariff Commission is authorized to receive and examine petitions from local industries alleging such injury and to recommend appropriate Anti-dumping and Countervailing duties and Safeguard Measures in accordance with the relevant WTO agreements. It does so on behalf of the Commission's Chairman, who is authorized to consider such petitions. The responsibility involves conducting investigations to determine whether the allegations of such unfair trade practices are true, whether local industries have suffered damages, and whether there is a causal relationship between such unfair trade practices and the damages suffered by local industries.

Figure 2 Main Function of Trade Remedy Division



Source: Bangladesh Trade and Tariff Commission

<sup>27</sup> <http://www.btc.gov.bd/site/page/79e1197c-07c6-42d6-9497-0cd0e2f057b8/->

## **Injury determination of local industries caused by dumping, subsidy or import surge and recommend the government for remedy:**

- (a) Submitting the questionnaire to the relevant industries after receiving a request to determine dumping, subsidy, and harmful impact on local industries.
- (b) After receiving primary evidence of dumping or subsidy and injury to local industries, issuing a public notice of initiating an investigation;
- (c) After initiating an investigation, send a questionnaire to exporters, importers, and relevant industries.
- (d) After receiving information from all relevant parties, if necessary, arranging a public hearing and preparing a preliminary report with recommendations by issuing a public notice;
- (e) After receiving and analyzing all information and, if necessary, after visiting the factory of the exporting country and receiving comments from all relevant parties through a public hearing, issuing a recommendation by issuing a public notice.

Bangladesh's current tariff structure provides a high measure of protection due to its status as an LDC. Moreover, the infeasible and complex application procedure hinders the imposition of such trade remedy measures such as anti-dumping, countervailing and safeguard measures against other countries.

## **7. Current Context in Bangladesh**

### ***7.1 Problems after LDC graduation<sup>28</sup>***

If all goes well, Bangladesh will be out of the LDC category by 2026. As an LDC, Bangladesh currently enjoys the WTO's Duty-Free Trade Facility (GSP). After graduation, it will not be so. So, protecting the domestic industries would get even harder considering that those will no longer be able to capitalize on low tariffs.

The National Board of Revenue (NBR) currently imposes a minimum import price on foreign goods through the national budget. After LDC graduation, Bangladesh will no longer be able to do so under the WTO's Customs Valuation Agreement. Also, all types of para-tariff imposition would be risky after graduation. These sorts of issues can threaten the competitiveness of domestic products in our domestic market.

Also, NBR has been protecting domestic industries from the aggression of foreign products for more than 20 years by fixing supplementary duties (SD), regulatory duties (RD) and tariffs on imported goods. After LDC graduation, however, Bangladesh will lose the opportunity to fix such SD, RD and tariff prices of imported goods.

Hence, to protect domestic producers from these harmful effects of competition, the Government of Bangladesh can take three steps:

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<sup>28</sup> [How Bangladesh can protect its domestic industries after LDC graduation \(tbsnews.net\)](https://www.tbsnews.net)

1) the imposition of 'anti-dumping' duties, 2) the imposition of 'countervailing' duties on imports of prohibited subsidised goods and 3) the imposition of 'safeguard' duties in an increased import situation.

### **SDG 8 and 10 (Antidumping)**

SDGs 8 and 10 emphasize economic growth and equality. For decent economic growth, a country needs to excel in its domestic industries. Thus, if Anti-dumping measures are not applied, then the domestic industries will not be able to survive among the giant foreign companies. So far Bangladesh has failed to take any anti-dumping measures whereas several countries have imposed anti-dumping duties on Bangladesh. Therefore, unless there is any action of imposing anti-dumping duty from the concerned Ministry of Bangladesh, SDG 8 can never be achieved as there will always be inequality between the domestic industries and the big foreign companies. Being dependent on foreign companies will also lead to unemployment and decreased economic growth failing to attain SDG 10.

### ***7.2 Loopholes of the rules and guidelines (countervailing rules)***

According to the WTO Agreement on Subsidies and Countervailing Measures (SCM), the lower a Member nation's level of development, the more favourable the treatment it receives with respect to subsidy disciplines. Thus, for example, LDCs and Members with a GNP per capita of less than \$1000 per year listed in Annex VII are exempted from the prohibition on export subsidies.<sup>29</sup>

Moreover, in terms of countervailing measures, developing country Members' exporters are entitled to more favourable treatment with respect to the termination of investigations where the level of subsidization or volume of imports is small.<sup>30</sup>

The Countervailing rules of Bangladesh have not incorporated any measures to be adopted for maximizing the advantages during the LDC period. After the LDC graduation, Bangladesh will lose the flexibility to offer export incentives and subsidies to the exporters. In this context, the incentives the current industries are enjoying will no longer be available and that will create pressure on the competitiveness and profitability of Bangladeshi companies.

Under [Article 27.10](#) of the Agreement on Subsidy and Countervailing Measures, developing country Members' exporters are entitled to more favourable treatment with respect to the termination of investigations where the level of subsidization or volume of imports is small. As a least-developed country, Bangladesh should exercise the advantage of this provision to maximize its export to countries where the amount of export has not yet reached the ceiling. In these circumstances, Bangladesh should incorporate a dedicated provision for its approach during the LDC period.

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<sup>29</sup> Article 27.7 of the AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

<sup>30</sup> Article 27.10 of the AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Although many countries such as India have imposed countervailing duties on Bangladeshi products<sup>31</sup>, so far Bangladesh has failed to apply the rules and protect its domestic industries. On September 6, 2011, India approved Bangladesh of duty-free, quota-free access to 46 textile tariff lines of greatest sensitivity. Following that, on November 9, 2011, India allowed Saarc LDCs, including Bangladesh, duty-free, quota-free access to all items except tobacco and alcohol and related products.<sup>32</sup>

Due to this move, the Indian clothing manufacturers claimed that the competitiveness of Indian garments was being hampered. In 2013, therefore, the Indian government exempted a 10 percent basic duty on garment imports from Bangladesh, but retained a 12 percent countervailing duty plus a 3 percent education cess (tax) on this CVD, bringing the total duty on Bangladeshi garments to 12.36 percent and declared this rate of CVD to continue that existed in fiscal year 2012-13.<sup>33</sup> The High Commission of India in Dhaka clarified at the time that India had not imposed any new duty on garments and that no new countervailing duty (CVD) had been imposed in the Indian Union Budget 2013-14 on imports of ready-made garments.<sup>34</sup>

Although Bangladesh has yet to impose such duties, various countries around the world have been imposing such duties on Bangladeshi products for nearly 30 year.<sup>35</sup>

### **7.3 SDG 8 and 10 (Countervailing rules)**

There is no provision for suo moto investigation on behalf of the designated authority. Thus, even after so many years of enforcement of this Act, no investigation has been initiated yet. As a result, although many countries such as India have taken countervailing measures against Bangladesh, Bangladesh has failed to take any action against these countries. Thus, even after decent work of the domestic industries, they are unable to compete with the giant foreign companies, which in turn, is increasing inequality and decreasing economic growth failing to attain SDGs 8 and 10.

Under rule 4 of the Identification of Subsidized Products, Exporting and Determination of Anti-Subsidy Benefits and Countervailing Duties Rules, 1996, the designated authority can initiate an investigation only upon receipt of a complaint. There should be provision for suo moto investigation.

The need for such provision is that often small and Medium Enterprises cannot file an application and be united under an organisation, and they are the ones who may be likelier to be affected by the increased imports. Hence, the rules should have directly incorporated a provision reflecting the policy that the Government or the authority may initiate an investigation.

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<sup>31</sup> [India plans to slap countervailing duty on Bangladesh jute goods \(newagebd.net\)](http://www.newagebd.net)

<sup>32</sup> [https://www.bgmea.com.bd/page/India\\_clarifies\\_duty\\_on\\_RMG](https://www.bgmea.com.bd/page/India_clarifies_duty_on_RMG)

<sup>33</sup> <https://www.textiletoday.com.bd/india-cuffs-apparel-import-from-bangladesh-with-cvd/>

<sup>34</sup> <https://www.textiletoday.com.bd/india-cuffs-apparel-import-from-bangladesh-with-cvd/>

<sup>35</sup> <https://www.tbsnews.net/features/panorama/how-bangladesh-can-protect-its-domestic-industries-after-ldc-graduation-336127>

#### **7.4 Issues with the Instrument Keeping in view the LDC graduation and the SDG goals (safeguard)**

There will not be a major impact on Bangladesh under the concerned WTO agreement if it graduates LDC. However, the surveillance of Bangladesh's trade by various countries will be increased drastically once it graduates LDC. Bangladesh will not be able to use tools like setting up 'minimum import price' or fixing Supplementary duties and Regulatory duties. So it will have to heavily depend on measures like safeguard measures to protect its domestic industries.

SDG goals 8 and 10 are related to economic matters and they preach economic equality. This instrument has also tried to do so. However, there remain some issues.

The first one is that there are no other clear instructions as to authority except that it shall be the Chairman of the Tariff Commission. In order to make the instrument more transparent and efficient, an outline of the authority could be produced.

The second issue is that there is no rule stating or encouraging the government or the authority to take suo motu initiative to initiate an investigation to prevent injury to the domestic industry. Under the concerned WTO agreement, there is no bar on suo motu investigation if the WTO is notified about it. The need for such provision is that often small and Medium Enterprises cannot file an application and be united under an organisation, and they are the ones who may be likelier to be affected by the increased imports. Hence, the rules should have directly incorporated a provision reflecting the policy that the Government or the authority may initiate an investigation.<sup>36</sup>

#### **7.5 Insufficient coordination and motivation**

An industry in need of protection is required by the anti-dumping, countervailing, and safeguard rules to give a variety of information about dumping and subsidies, the increase in imports, the industry's knowledge of the injury, and the causal links between them. The majority of Bangladesh's domestic industries are unable to deliver the needed information on time. Additionally, they frequently lack the necessary knowledge, which prevents them from making a proper application. Bangladesh is therefore unable to implement such duties. Bangladesh must gradually decrease its reliance on SD, RD, or tariffs to protect indigenous businesses to successfully graduate from the LDC status.

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<sup>36</sup> [https://www.wto.org/english/tratop\\_e/safeg\\_e/safeg\\_info\\_e.htm](https://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm)

## **8. Stakeholders' perception**

### ***8.1 Human resources scarcity***

In the case of India, the DGTR only deals with cases related to trade remedies. In the Tariff Commission, there are three departments of which one team deals with the trade remedy. In the remedy department, the number of officers employed is not adequate. For the investigation, it requires an investigation officer, a cost accountant, a law officer and two or three supporting officers. India manages a case with at least five people whereas in our country there are only two people. For managing a case, India assigns an additional DG which is equivalent to a member or joint secretary in our country. In Bangladesh, there is no joint secretary in the trade remedy department.<sup>37</sup>

### ***8.2 High tariff regime***

In the current context, since being an LDC, the tariff structure provides a high level of protection in Bangladesh. Despite we stated in accordance with the WTO that we would drop our tariff protection and open our economy, we were unable to do so. The customs charge is 25%, but some products have a higher tariff rate. As a supplementary duty, the highest tariff is charged. We are keeping the economy close by using supplementary duty. Yet, as we go from LDCs, we intend to reduce the tariff rate to rationalise. When we do this, the scenario will change. The protection will deteriorate as we reduce the duty. Then many would strive to seize the market by dumping prices or pushing certain products.

### ***8.3 Lesser access to audit reviews***

The export price following the post-investigation, domestic prices, taxes, cost of production, selling and administrative price, the case for review, and audit review are all taken into account when deciding whether to impose anti-dumping duties on foreign nations. Due to the producers' (owners of businesses and enterprises) typical reluctance to provide the authority with the audit review documents, audit reviews are hard to come by, which is one of the main bottlenecks. For instance, when India's authority looked into Bangladesh's jute products for dumping, they claimed that the information provided by the domestic producers contained inconsistencies.

### ***8.4 No Justification for dumping restrictions***

Because Bangladesh has a high tariff regime, there is no room for dumping for foreign companies. This won't be able to impose under the high protective tariff regime.

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<sup>37</sup> Information from KII with stakeholders

## **9. Findings of the study**

### ***9.1 Lack of skilled manpower in implementing the rules***

There is a lack of skilled manpower in terms of implementing the rules. In the trade remedy department, the number of officers involved is not adequate which makes it difficult for the appropriate implementation.

### ***9.2 English translation of the three rules***

The three rules have no English equivalent, which makes it challenging for foreign nations to comprehend our regulations. If the English translations of these three rules were published in the official gazette, they would be accessible to everyone.

### ***9.3 Less availability of audit reviews***

To impose dumping duties on foreign countries, the export price after the post-investigation, domestic prices, taxes, cost of production, selling and administration price, the argument in favour of review, and audit review is considered. One of the main bottlenecks is that the availability of audit reviews is scarce because the producers (owners of businesses and enterprises) are usually reluctant to provide the authority with the audit review documents. For example, when India's authority investigated Bangladesh's jute products for dumping, they stated that there are anomalies in the information provided by the domestic producers.

### ***9.4 Absence of proper knowledge***

The rules made in 1995 were sufficient for that time. But these rules are not in practice and as a result, there is complicity in terms of understanding the gaps. If these rules are exercised or if there was a chance for a debate with an international body, a lot about these rules can be understood.

### ***9.5 Problem with documentation***

One of the main issues is that India comes with full preparation along with supporting documents and data, whereas, as their counterpart, Bangladesh lacks such practice and falls behind in adequately presenting the information. Hence, dumping duties are imposed on the country.

### ***9.6 Producers are less aware***

The producers while claiming regarding dumping should be prepared along with the questionnaire that is provided by the Bangladesh Trade and Tariff Commission (BTTC). This will accelerate the process of initiating the investigation step. In reality, the producers are unaware of the questionnaire and usually is very reluctant to provide information after getting the lengthy set of questionnaires as it is time-consuming to fill up. Moreover, the private sector is usually very reluctant to provide information that is mentioned in the

questionnaire as it is extremely lengthy. Therefore, both the public and private sector needs to be trained in providing adequate data and face the investigation process more effectively.

### ***9.7 Capacity building***

One of the major recommendations is to enhance and initiate private sector capacity building, especially for exporters. When the government initiates undertaking such dumping investigation, initially they should first build the capacity of the private sector so that the private sector precisely understands the concept of dumping and will effectively lodge claims of dumping to the authority body. This is important because Bangladeshi producers only grasped the idea of trade but the legitimacy of the activities behind the scene that occurs usually remains unnoticed by the private sector.

## **10. Recommendations**

### ***10.1 lesser duty method for antidumping rules***

Even when all conditions are met for imposition, Article 9 of the Agreement established the general principle that implementation of anti-dumping duties is optional. Additionally, it makes the case for using a "lesser duty" rule. If the level of duties is sufficient to prevent harm, authorities may apply them at a level lower than the margin of dumping. The Agreement also includes provisions for applying tariffs to new shippers and preventing the collection of duties that exceed the dumping margin.

The lesser duty approach entails imposing a low duty that falls between the dumping margin and the injury margin. In the rules of Bangladesh, the lesser-duty approach is not introduced. according to our statute, anti-dumping duties will only be applied based on the dumping margin. This statute was integrated into Indian rules. Since they use these laws the most frequently, they annually incorporate them into WTO. In our country, it was constructed in 1995 and it is not upgraded yet.

### ***10.2 Review system***

Rules regarding the length of anti-dumping duties are outlined in Article 11 of the Agreement, along with requirements for periodic reviews of the ongoing necessity, if any, for the application of anti-dumping duties or price commitments. These standards address the issue presented by some nations' practice of indefinitely maintaining anti-dumping duties. The "sunset" requirement states that dumping duties must typically end no later than five years after they are originally applied unless a review investigation conducted earlier determines that the duty's expiration would likely result in continued dumping or repeated injuries. The "sunset" provision of five years also applies to price undertakings.<sup>38</sup>

The Agreement allows for anti-dumping duties to be levied on exports from manufacturers or exporters who were not sources of imports evaluated during the inquiry period. In this case, the investigating authorities must perform an expedited review to ascertain a particular

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<sup>38</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_info\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm)

margin of dumping related to such a "new shipper's" exports. Throughout the review, the authorities may request guarantees or withhold appraisal on imports, but they may not collect anti-dumping charges on those imports.<sup>39</sup>

### ***10.3 Consultation and Dispute Settlement***

**Antidumping:** If the Member that requested consultations feels that the consultations under paragraph 3 did not result in a mutually acceptable solution and if the importing Member's administrative authorities have taken final steps to levy definitive anti-dumping duties or accept price commitments. It is empowered to recommend the case to the Dispute Settlement Board ("DSB"). Where a provisional measure has a significant impact and the Member who requested consultations feels it violated Article 7, paragraph 1, that Member may take the matter to the DSB. The WTO agreement includes several concerns about the appeal mechanism, which is absent in Bangladeshi rule.

**Countervailing:** If the Member who requested consultations believes that the consultations under paragraph 3 failed to produce a solution that was acceptable to both parties and if the administering authorities of the importing Member have taken the necessary steps to impose firm duties or accept price commitments. It is permitted to refer the matter to the Dispute Settlement Body ("DSB"). The DSB may be consulted when a provisional measure has a significant impact and the Member who requested consultations thinks that the measure was taken in breach of Article 7, paragraph 1. The WTO agreement includes various problems relating to the appeal mechanism that are not covered by Bangladeshi legislation. Therefore, the appeal system should be reconsidered and addressed in the existing rules anti-dumping and countervailing rules of Bangladesh.

### ***10.4 On-the-spot Investigation***

The Bangladesh agreement contains no provisions for the on-the-spot examination of dumping cases. Nonetheless, the WTO agreement provides the rule governing this investigative mechanism in its annex.

### ***10.5 Circumvention Issue in Antidumping***

When an article subject to anti-dumping duty is imported into the country in an unassembled, unfinished, or incomplete form from any country, including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, and is assembled, finished, or completed in such country, such assembly, finishing, or completion shall be considered to circumvent the anti-dumping duty in force if the operation began or expanded after, or shortly before, the anti-dumping investigations, and the parts and components are imported from the country of origin or country of export notified for anti-dumping duty purposes; and the value resulting from the assembly, finishing, or completion operation is less than 35% of the cost of the assembled, finished, or complete article. In the antidumping rules of Bangladesh, there is no provision for circumvention issues. There should be specific provisions

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<sup>39</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_info\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm)

for the initiation of the investigation to determine circumvention, determination of circumvention, and review of circumvention in the existing Bangladeshi rules.

### ***10.6 Quantitative Restriction in safeguard rules***

WTO rules also incorporate quantitative limits, such as quotas, to shield domestic industries from injury. However, Bangladesh's safeguard rules only impose a duty to protect domestic industry.

## 11. Recommendation matrix

### 11.1 Antidumping Rules

Table 16 Recommendation Matrix for Future Antidumping Rules

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<b>1. Short title and commencement</b> (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.	Yes	N/A	N/A
<b>2. Definitions. - In these rules, unless the context otherwise requires-</b> In this section, the definitions of several terms are provided such as article, Act, clarification of the interested party, designated authority, provisional duty, specified country, domestic industry, annexure, antidumping duty etc.	Yes	N/A	N/A
<b>3. Appointment of designated authority. –</b> (1) The Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of Bangladesh or such other person as that Government may think fit as the designated authority for purposes of these rules.	Yes	N/A	N/A
<b>4. Duties of the designated authority. –</b> It shall be the duty of the designated authority in accordance with these rules. (a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article; (b) to identify the article liable for anti-dumping duty; (c) to submit its findings, provisional or otherwise to the Government as to (i) normal value, export price and the margin of dumping in relation to the article under investigation, and (ii) the injury or threat of injury to an industry established in Bangladesh or material retardation to the establishment of an industry in Bangladesh consequent upon the import of such article from the specified countries. (d) to recommend to the Government the amount and the date of commencement of such duty (e) to review the need for continuance of anti-dumping duty.	Yes	For managing a case, India assigns an additional DG which is equivalent to a member or joint secretary in our country. In Bangladesh, there is no joint secretary in the trade remedy department. The trade remedy department may assign an officer similar to this grade.	N/A
<b>5. Initiation of investigation. -</b> (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of –</p> <p>(a) dumping</p> <p>(b) injury, where applicable, and</p> <p>(c) where applicable, a causal link between such dumped imports and alleged injury</p> <p>(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –</p> <p>(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry: Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry, and</p> <p>(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -(i) dumping(ii) injury, where applicable; and (iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.</p> <p>Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.</p> <p>(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo moto if it is satisfied from the information received from the domestic industry or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (1).</p> <p>(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.</p>			
<p><b>6. Principles governing investigations. -</b></p> <p>(1) The designated authority shall, after it has decided to initiate an investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following: -</p> <p>(i) the name of the exporting country or countries and the article involved;</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>(ii) the date of initiation of the investigation;</p> <p>(iii) the basis on which dumping is alleged in the application</p> <p>(iv) a summary of the factors on which the allegation of injury is based;</p> <p>(v) the address to which representations by interested parties should be directed; and</p> <p>(vi) the time limits allowed interested parties for making their views known.</p> <p>(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties under sub-rule (1).</p> <p>(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -</p> <p>(i) the exporters or to the concerned trade association where the number of exporters is large, and</p> <p>(ii) the governments of the exporting countries:</p> <p>(iii) any other interested party who makes a request therefor in writing.</p> <p>(4) The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.</p> <p><i>Explanation: For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.</i></p> <p>(5) The designated authority shall also provide the opportunity to the industrial users of the article under investigation, and to representative consumer organizations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.</p> <p>(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.</p> <p>(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.</p> <p>(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the</p>			

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Government as it deems fit under such circumstances.			
<p><b>7. Confidential information-</b>  (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.  (2) The designated authority may require the parties providing information on a confidential basis to furnish a non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible to summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.  (3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.</p>			Inclusion of the penalty provision in case of violating the secrecy.
<p><b>8. Accuracy of the information. –</b>  The designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.</p>	Yes	N/A	N/A
<p><b>9. Investigation in the territory of other specified countries. –</b>  The designated authority may carry out the investigation in the territories of other countries if the circumstances of a case warrant.  Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation.</p>	Yes	N/A	N/A
<p><b>10. Determination of normal value, export price and margin of dumping-</b>  An article shall be considered as being dumped if it is exported from a country or territory to Bangladesh at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.			
<p><b>11. Determination of injury. –</b>  (1) In the case of imports from specified countries, the designated authority shall record a further finding that the import of such article into India causes or threatens material injury to any established industry in Bangladesh or materially retards the establishment of any industry in Bangladesh.  (2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.  (3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if-  (i) there is a concentration of dumped imports into an isolated market, and (ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.</p>	Yes	N/A	N/A
<p><b>12. Preliminary findings. –</b>  (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and with respect to imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain: -  (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;  (ii) a description of the article which is sufficient for customs purposes;  (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;  (iv) considerations relevant to the injury determination; and  (v) the main reasons leading to the determination.  (2) The designated authority shall issue a public notice recording its preliminary findings.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p><b>13. Levy of provisional duty –</b>  The Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional duty not exceeding the margin of dumping:  Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations:  Provided further that such duty shall remain in force only for a period not exceeding six months which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Government to three more months.</p>	Yes	N/A	N/A
<p><b>14. Termination of investigation. –</b>  The designated authority shall, by issue of a public notice, terminate an investigation immediately if-</p> <p>(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;</p> <p>(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;</p> <p>(c) it determines that the margin of dumping is less than two per cent of the export price;</p> <p>(d) it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or</p> <p>(e) it determines that the injury where applicable, is negligible.</p>	Yes	N/A	N/A
<p><b>15. Suspension or termination of investigation on price undertaking–</b>  (1) The designated authority may suspend or terminate an investigation if the exporter of the article in question, -</p> <p>(i) furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or</p> <p>(ii) in the case of imports from specified countries undertake to revise the prices so that the injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated:</p> <p>Provided further that the designated authority shall complete the investigation and record its findings, if the exporter so desires, or it so decides.</p>			The rule of Bangladesh does not include the term “cease”. However, as per the rule of Bangladesh, the designated authority can only recommend the government for imposing a duty.

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>(2) No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority has made a preliminary determination of dumping and the injury.</p> <p>(3) The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.</p> <p>(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.</p> <p>(5) In cases where an undertaking has been accepted by the designated authority the Government may not impose a duty under sub-section (2) of section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.</p> <p>(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data: Provided that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Government of the violation of the undertaking and recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.</p> <p>(7) The designated authority shall, suo moto or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier</p>			
<p><b>16. Disclosure of information. –</b> The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.</p>	Yes	N/A	N/A
<p><b>17. Final findings. –</b> (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submitted to the Central Government it's final finding – (a) as to, - (i) the export price, normal value and the margin of dumping of the said article;</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in Bangladesh or materially retards the establishment of any industry in Bangladesh;</p> <p>(iii) a causal link, where applicable, between the dumped imports and injury;</p> <p>(iv) whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such retrospective levy;</p> <p>(v) Recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry after considering the principles.</p> <p>Provided that the Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months:</p> <p>Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,</p> <p>(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding-</p> <p>(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;</p> <p>(ii) a description of the product which is sufficient for customs purposes;</p> <p>(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;</p> <p>(iv) Considerations relevant to the injury determination; and</p> <p>(v) the main reasons leading to the determination.</p> <p>(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned with the article under investigation:</p> <p>Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of</p>			

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:            Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submits necessary information in time, except where the number of exporters or producers is so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.            (4) The designated authority shall issue a public notice recording its final findings.</p>			
<p><b>18. Levy of duty. –</b>            (1) The Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into Bangladesh of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17.            (2) In cases where the designated authority has selected a percentage of the volume of the exports from a particular country, as referred to in sub-rule (3) of rule 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -            (i) the weighted average margin of dumping established with respect to the selected exporters or producers or,            (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value/ the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined:            Provided that the Government shall disregard for this sub-rule any zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second provision to sub-rule (3) of rule 17.            (3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub -clause (b) of rule 2, a duty shall be levied only after the exporters have been allowed to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.</p> <p>(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Government shall, within forty-five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.</p>			
<p><b>19. Imposition of duty on non-discriminatory basis. –</b> Any provisional duty imposed under rule 13 or an anti-dumping duty imposed under rule 18 shall be on a non-discriminatory basis and applicable to all imports of such articles, from whatever sources found dumped and, where applicable, causing injury to domestic industry except in the case of imports from those sources from which undertaking in terms of rule 15 has been accepted.</p>	Yes	N/A	N/A
<p><b>20. Commencement of duty. –</b> (1) The anti-dumping duty levied under rule 13 and rule 18 shall take effect from the date of its publication in the Official Gazette. (2) Notwithstanding anything contained in sub-rule (1) - (a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty; (b) in the circumstances referred to in sub-section (3) of section 18B of the Act, the antidumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty: Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation: Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.</p>	Yes	N/A	N/A
<p><b>21. Refund of duty. –</b> (1) If the anti-dumping duty imposed by the Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
<p>(2) If the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.</p> <p>(3) If the provisional duty imposed by the Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.</p>			
<p><b>22. Margin of dumping, for exporters not originally investigated. –</b></p> <p>(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties on the product.</p> <p>(2) The Government shall not levy anti-dumping duties under sub- section (1) of section 18B of the Act, on imports from such exporters or producers during the period of review as referred to in sub -rule (1) of this rule: Provided that the Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.</p>	Yes	N/A	N/A
<p><b>23. Review. –</b></p> <p>(1) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, the designated authority shall recommend to the Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur if the said anti-dumping duty is removed or varied and is therefore no longer warranted.</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.</p> <p>(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.</p>		There is a provision in India that any definitive antidumping duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of	The WTO agreement includes a detailed review of the system regarding the antidumping duty. The "sunset" requirement of the review system states that dumping duties must normally end no later than five years after they are first applied unless a review investigation conducted prior to that date determines that the duty's expiration would be likely to result in the continuation or recurrence of dumping and injury.

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
		the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. This may be extended in the rules of Bangladesh	
<p><b>24. Dumping causing injury to a third country. –</b>  (1) The designated authority may initiate an investigation into any dumping alleged to be taking place in India and causing injury to the domestic industry of any third country which is a member of the World Trade Organisation.  (2) The designated authority in such cases shall follow the procedures laid down in Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade, 1994, as contained in the Final Act of Uruguay Round Multilateral Trade Negotiations</p>	Yes	N/A	N/A
<p><b>Lesser duty method</b>  No such provision exists in the rules of Bangladeshi Antidumping rules.</p>			The lesser duty approach entails imposing a low duty that falls between the dumping margin and the injury margin. In the rules of Bangladesh, the lesser-duty approach is not introduced. It may be incorporated.
<p><b>Circumvention of anti-dumping duty, Initiation of investigation to determine circumvention, Determination of circumvention, Review of circumvention</b>  No such provision exists in the rules of Bangladeshi Antidumping rules.</p>			<p>Inclusion of the provisions on anticircumvention issues regarding antidumping duty.</p> <p>Specification of the provisions for the initiation of the investigation to determine circumvention</p>

Chapter and Stated provision in the Antidumping Rules, 1995	Unchanged	Extension	New inclusion
			Introduction to the review system of the circumvention  The Ministry of Commerce may take reasonable actions to prevent anti-dumping measures from being circumvented.
<b>On-the-spot Investigation</b> The authorities of the exporting Member and the firms reported to be involved should be notified of the intention to carry out on-the-spot investigations upon the initiation of an investigation.			The agreement of Bangladesh does not have rules regarding the on-the-spot investigation of the dumping case. The agreement of WTO includes the rule regarding this investigation procedure in its annexe
<b>Consultation and Dispute Settlement</b> If the Member that requested consultations feels that the consultations under paragraph 3 did not result in a mutually acceptable solution and if the importing Member's administrative authorities have taken final steps to levy definitive anti-dumping duties or accept price commitments. It is empowered to recommend the case to the Dispute Settlement Board ("DSB"). Where a provisional measure has a significant impact and the Member who requested consultations feels it violated Article 7, paragraph 1, that Member may take the matter to the DSB. The WTO agreement includes several concerns about the appeal mechanism, which is absent in Bangladeshi rule.			The Consultation and Dispute settlement issue may be incorporated in the Bangladeshi rule.

Source: Compiled by authors from different sources

## 11.2 Countervailing Rules

Table 17 Recommendation Matrix for Future Countervailing Rules

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<b>1. Short title and commencement.-</b> (1) The Rule may be called Customs Tariff (Identification, assessment and collection of countervailing duty on subsidies articles and for determination injury) Rules, 1996	Yes	N/A	N/A
<b>2. Definitions. - In these rules, unless the context otherwise requires-</b>			A more precise and clear definition of countervailable subsidy may be introduced

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
In this section, the definitions of several terms are provided such as Act, clarification of the interested party, designated authority, provisional duty, specified country, domestic industry, annexure, antidumping duty etc.			into Bangladesh's existing rule.
<b>3. Appointment of designated authority. –</b> (1) The Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of Bangladesh or such other person as that Government may think fit as the designated authority for purposes of these rules. (2) The Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.	Yes	N/A	N/A
<b>4. Duties of the Designated Authority.-</b> It shall be the duty of the designated authority in accordance with these rules- (a) to investigate the existence, degree and effect of any subsidy in relation to the import of an article; (b) to identify the article liable for countervailing duty; (c) to submit its findings, provisional or otherwise to the Government as to - (i) the nature and amount of subsidy in relation to an article under investigation. (ii) the injury or threat of injury to an industry established in Bangladesh or material retardation to the establishment of an industry in Bangladesh consequent upon the import of such articles from the specified countries. (d) to recommend the amount of countervailing duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty; and (e) to review the need for continuance of countervailing duty	Yes	N/A	N/A
<b>5. Decision as to country of origin.-</b> In cases where articles are not imported directly from the country of origin but are imported from an intermediate country, the provisions of these rules shall be fully applicable and any such transaction shall, for the purpose of these rules be regarded as having taken place between the country of origin and the country of importation.	Yes	N/A	N/A
<b>6. Initiation of investigation.-</b> (1) Except as provided in sub-rule (4) the designated authority shall initiate an investigation to determine the existence, degree and effect of the alleged subsidy only upon receipt of a written application by or on behalf of the domestic industry.	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority on this behalf and the application shall be supported by evidence of –</p> <p>(a) subsidy and, if possible, its amount, (b) injury where applicable, and (c) where applicable, a causal link between such subsidized imports and the alleged injury.</p> <p>(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -</p> <p>(a) It determines, based on an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like article, that the application has been made by or on behalf of the domestic industry: Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like product by the domestic industry, and</p> <p>(b) It examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence under the sub-rule (2)</p> <p>Explanation. - For the purpose of this rule, the application shall be considered to have been made "by or on behalf of domestic industry" if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.</p> <p>(4) (a) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu, if it is satisfied from the information received from the Bangladesh Tariff Commission appointed under the Bangladesh Tariff Commission Act, 1992 (43 of 1943) or any other source that sufficient evidence exists as to the existence of the circumstances.</p> <p>(b) On the basis of the aforesaid report the Government may direct the initiation of inquiry under sub-rule (1).</p> <p>(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.</p>			
<p><b>7. Principles governing investigations. -</b></p> <p>(1) The designated authority shall after it has decided to initiate an investigation to determine the existence, degree and effect of any alleged subsidization of any article, issue a public notice notifying its decision. Public notice regarding the initiation of investigation shall, inter alia, contain adequate information on the following:</p> <p>(i) the name of the exporting countries and the article involved;</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(ii) the date of initiation of the investigation;</p> <p>(iii) a description of the subsidy practice or practices to be investigated;</p> <p>(iv) a summary of the factors on which the allegation of injury is based;</p> <p>(v) the address to which representations by interested countries and interested parties should be directed; and</p> <p>vi) the time-limits allowed interested countries and interested parties to make their views known.</p> <p>(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been subsidized, the government of the exporting country concerned and other interested parties referred to in sub-rule (1)</p> <p>(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of rule 5 to –</p> <p>(i) the known exporters or the concerned trade association where the number of exporters is large, and</p> <p>(ii) the government of the exporting country:</p> <p>Provided that the designated authority shall also make available a copy of the application, upon request in writing, to any other interested party.</p> <p>(4) The designated authority may issue a notice calling for any information in such form as may be specified by it from the exporters, foreign producers and governments of interested countries and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.</p> <p>Explanation. - For the purpose of this sub-rule the public notice and other documents shall be deemed to have been received one week from the date on which these documents were sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.</p> <p>(5) The designated authority shall also provide the opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level to furnish information which is relevant to the investigation regarding subsidization and where applicable injury and causality.</p> <p>(6) The designated authority may allow an interested country or an interested party or its representative to present information relevant to the investigation orally, but such oral information shall be taken into consideration only when it is subsequently reproduced in writing.</p>			

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(7) The designated authority shall make available the evidence presented by one party to other interested parties participating in the investigation.</p> <p>(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of facts available to it and make such recommendations to the Government as it deems fit under such circumstances</p>			
<p><b>8. Confidential information.-</b></p> <p>(1) Notwithstanding anything contained in sub-rule (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 17 copies of applications received under sub-rule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of the investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.</p> <p>(2) The designated authority may require the parties providing information on a confidential basis to furnish non-confidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.</p> <p>(3) Notwithstanding anything contained in sub-rule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information</p>	Yes	N/A	N/A
<p><b>9. Accuracy of the information. -</b></p> <p>Except in cases referred to in sub-rule (8) of rule 7 the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.</p>	Yes	N/A	N/A
<p><b>10. Investigation in the territory of other specified countries. -</b></p> <p>(1) The designated authority may carry out investigations in the territories of other countries, in order to verify the information provided or to obtain further details: Provided that the designated authority notifies such country in advance and such country does not object to such investigation.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(2) The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the country in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.</p>			
<p><b>11. Nature of subsidy.-</b>  (1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation -  (a) relates to export performance  (b) relates to the use of domestic goods over imported goods in the export article, or  (c) it has been conferred on a limited number of persons, engaged in manufacturing, producing or exporting the article unless such a subsidy is for –  (i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or  (ii) assistance to disadvantaged regions within the territory of the exporting country; or  (iii) assistance to promote adaptation of existing facilities to new environmental requirements:  Explanation.- (1) For the purposes of sub-clause (i) of clause (c) the term "subsidy for research activity" means assistance for research activities conducted by commercial organisations or by higher education or research establishments on a contract basis with the commercial organisations if the assistance covers not more than seventy-five percent of the costs of industrial research or fifty per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to -  (i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);  (ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;  (iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;  iv) additional overhead costs incurred directly as a result of the research activity; and  (v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity  (2) For the purposes of sub-clause (ii) of clause (c), the term "subsidy for assistance to disadvantaged regions" means assistance to disadvantaged regions within the territory of the exporting country given pursuant to a general framework of regional</p>			<ul style="list-style-type: none"> <li>• Inclusion of the illustrative list of export subsidies in the Bangladeshi rules (In Indian Rule, there is a separate list of export subsidies)</li> <li>• A detailed and more clarified guideline for the Calculation of the amount of the countervailable subsidy may be incorporated into the existing rule of Bangladesh</li> </ul>

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>development and such subsidy has not been conferred on the limited number of enterprises within the eligible region:</p> <p>Provided that-</p> <p>(a) each disadvantaged region must be a designated contiguous geographical area with a definable economic and administrative identity;</p> <p>(b) the region is considered disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be spelled out in the law, regulation, or other official documents, so as to be capable of verification;</p> <p>(c) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors –</p> <p>(i) one of either income per capita or household income per capita, or Gross Domestic Product per capita, which must not be above eighty-five per cent of the average for the territory concerned;</p> <p>(ii) unemployment rate, which must be at least one hundred and ten percent of the average for the territory concerned, as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.</p> <p>(3) For the purposes of sub-clause (iii) of clause (c), "subsidy for assistance to promote adaptation of existing facilities to new environmental requirements" means assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on commercial organizations :</p> <p>Provided that the assistance –</p> <p>(i) is a one-time non-recurring measure; and</p> <p>(ii) is limited to twenty per cent of the cost of adaptation; and</p> <p>(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by commercial organizations; and</p> <p>(iv) is directly linked to and proportionate to a commercial organisation's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and</p> <p>(v) is available to all firms which can adopt the new equipment and/or production processes.</p> <p>(3) The designated authority while determining the subsidy of a kind as referred to in sub-clause (c) to sub-rule (1) shall take into account, inter alia the principles laid down in Annexure I to these rules.</p>			

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p><b>13. Determination of injury.-</b>  (1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in Bangladesh, or materially retards the establishment of an industry in Bangladesh.  2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the causal link between the subsidised import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.  (3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –  (i) there is a concentration of subsidised imports into an isolated market, and  (ii) the subsidised imports are causing injury to the producers of almost all of the production within such market.</p>	Yes	N/A	N/A
<p><b>14. Preliminary findings.-</b>  (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding the existence of a subsidy and its nature and with respect to imports from specified countries, it shall also record its preliminary finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed explanation for the preliminary determination on the existence of a subsidy and injury and shall refer to the matter of fact and law which have led to arguments being accepted or rejected. Such finding shall contain –  (i) the names of the suppliers or, when this is impracticable, the supplying countries involved;  (ii) a description of the product which is sufficient for customs purposes;  (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;  (iv) considerations relevant to the injury determination; and  (v) the main reasons leading to the determination.  (2) The designated authority shall issue a public notice recording its preliminary findings.</p>	Yes	N/A	N/A
<p><b>15. Levy of provisional duty.-</b></p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>The Government may, in accordance with the provisions of sub-section (2) of section 9 of the Act, impose a provisional duty on the basis of the preliminary findings recorded by the designated authority:            Provided that no such duty shall be imposed before the expiry of sixty days from the date of issue of the public notice by the designated authority regarding its decision to initiate investigations: Provided further that such duty shall remain in force for a period not exceeding four months</p>			
<p>16. Termination of investigation.-            (1) The designated authority shall, by issue of a public notice terminate an investigation immediately if –            (a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;            (b) it is satisfied in the course of an investigation, that there is no sufficient evidence either for subsidisation or, where applicable, injury to justify the continuation of the investigation;            (c) it determines that the amount of subsidy is less than one per cent ad valorem or in the case of a product originating from a developing country the amount of subsidy is less than two per cent.            (d) it determines that the volume of the subsidized imports, actual or potential or injury where applicable, is negligible or in the case of a product originating in a developing country the volume of the subsidized imports represents less than four per cent of the total imports of the like product into Bangladesh, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of the like product into Bangladesh.</p>	Yes	N/A	N/A
<p><b>17. Suspension or termination of investigation on acceptance of price undertaking.-</b>            (1) The designated authority may suspend or terminate an investigation, if –            (a) the government of the exporting country –            (i) furnishes an undertaking that it would withdraw the subsidy.            (ii) in case of specified countries, undertakes to limit the quantum of subsidy within reasonable limit, or to take other suitable measures to neutralise the effect of such subsidy, provided that the designated authority is satisfied that the injurious effect of the subsidy is eliminated, or</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(b) in the case of specified countries, the exporters concerned agree to revise their prices so that the injurious effect of the subsidy is eliminated and the designated authority is satisfied that the injurious effect of the subsidy is eliminated:  Provided that the increase in price as a result of this clause is not higher than what is necessary to eliminate the amount of subsidy :  Provided further that the designated authority shall complete the investigation and record its findings if the Government so desires or the government of the exporting country so decides.</p> <p>(2) No undertaking as regards price increase under sub-rule (1) shall be accepted unless the designated authority has made a preliminary determination of subsidization and the injury:  Provided that an undertaking from an exporter shall be accepted only when the designated authority has also obtained the consent of the exporting country.</p> <p>(3) The designated authority, may also not accept undertakings offered by any country or any exporter, if it considers the acceptance of such undertaking as impracticable or as unacceptable for any other reason.</p> <p>(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Government and also issue a public notice in this regard. The public notice shall contain inter alia, the non-confidential part of the undertaking.</p> <p>(5) In cases where an undertaking has been accepted by the designated authority the Government may not impose a duty under sub-section (2) of section 9 of the Act for such a period the undertaking acceptable to the designated authority remains valid.</p> <p>(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the government of the exporting country or the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data: Provided that increase in price as a result of this clause is not higher than what is necessary to eliminate the amount of subsidy :  Provided further that the designated authority shall complete the investigation and record its findings if the Government so desires or the government of the exporting country so decides.</p> <p>(2) No undertaking as regards price increase under sub-rule (1) shall be accepted unless the designated authority has made a preliminary determination of subsidization and the injury:</p>			

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>Provided that an undertaking from an exporter shall be accepted only when the designated authority has also obtained the consent of the exporting country.</p> <p>(3) The designated authority, may also not accept undertakings offered by any country or any exporter, if it considers the acceptance of such undertaking as impracticable or as unacceptable for any other reason.</p> <p>(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Government and also issue a public notice in this regard. The public notice shall contain inter alia, the non-confidential part of the undertaking.</p> <p>(5) In cases where an undertaking has been accepted by the designated authority the Government may not impose a duty under sub-section (2) of section 9 of the Act for such a period the undertaking acceptable to the designated authority remains valid.</p> <p>(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the government of the exporting country or the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data.</p> <p>Provided that in case of any violation of any undertaking, the designated authority will intimate the Government and complete the investigation expeditiously.</p> <p>(7) The designated authority shall suo motu or on the basis of any request received from exporters or importers of the article in question or any other interested person review from time to time the need for the continuance of any undertaking given earlier.</p>			
<p><b>18. Disclosure of information.-</b> The designated authority, shall, before giving its final findings, inform all interested parties and interested countries of the essential facts under consideration which form the basis of its decision and permit the interested parties to defend their interest.</p>	Yes	N/A	N/A
<p><b>19. Final findings.-</b> (1) The designated authority shall, within one year from the date of initiation of an investigation determine as to whether or not the article under investigation is being subsidized and submit to the Government its final finding, as to – (a) (i) the nature of the subsidy being granted in respect of the article under investigation and the quantum of such subsidy; (ii) whether imports of such articles into India in the case of imports from specified countries, cause or threaten material injury to an industry established in Bangladesh or materially retards the establishment of any industry in India and a causal link between the subsidized imports and such injury; and</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>(iii) Whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such levy</p> <p>(b) its recommendation as to the amount of duty which if levied, would be adequate to remove the injury to the domestic industry:</p> <p>Provided that the Government may in circumstances of exceptional nature extend further the aforesaid period of one year by six months:</p> <p>Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 17 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the said period of one year.</p> <p>(2) The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding –</p> <p>(i) the names of the suppliers, or, when this is impractical, the supplying countries involved;</p> <p>(ii) a description of the product which is sufficient for customs purposes;</p> <p>(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;</p> <p>(iv) considerations relevant to the injury determination; and</p> <p>(v) the main reasons leading to the determination.</p> <p>(3) The designated authority shall issue a public notice regarding its final findings</p>			
<p><b>20. Levy of duty.-</b></p> <p>(1) The Government may, within three months of the date of publication of the final findings by the designated authority under rule 19, impose, by notification in the Official Gazette, upon importation into India of the article covered under the final finding, a countervailing duty not exceeding the amount of subsidy as determined by the designated authority under rule 19 :</p> <p>Provided that in case of imports from specified countries, the amount of duty shall not exceed the amount which has been found adequate to remove the injury to the domestic industry.</p> <p>(2) Notwithstanding anything contained in sub-rule (1) where a domestic industry has been interpreted according to the proviso to clause (b) of rule 2, a countervailing duty shall be levied only after the exporters have been allowed to cease exporting at subsidized prices to the area concerned or otherwise give an undertaking pursuant to</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
<p>rule 17 and such undertaking has not been promptly given and in such cases duty cannot be levied only on the product of specified producers which supply the area in question.</p> <p>(3) If the final finding of the designated authority is negative, that is contrary to the prima facie evidence on whose basis the investigation was initiated, the Government shall within forty-five days of the publication of final findings by the designated authority under rule 19, withdraw the provisional duty, imposed if any.</p>			
<p><b>21. Imposition of duty on non-discriminatory basis.-</b> Any countervailing duty imposed under rule 15 or 20 shall be on a non-discriminatory basis and applicable to all imports of such article if found to be subsidised and where applicable, causing injury except in the case of imports from those sources from which undertakings in terms of rule 17 have been accepted.</p>	Yes	N/A	N/A
<p><b>22. Date of commencement of duty.-</b> (1) The countervailing duty levied under rules 15 and 20 shall take effect from the date of publication of the notification in the Official Gazette. (2) Notwithstanding anything contained in sub-rule (1) – (a) where a provisional duty has been levied and where the designated authority has recorded a finding of injury or where the designated authority recorded a finding of threat of injury and a further finding that the subsidised imports, in the absence of provisional duty would have led to injury, the countervailing duty may be imposed from the date of imposition of provisional duty: (b) in the circumstances referred to in subsection (4) of section 9 of the Act, the countervailing duty may be levied retrospectively from the date commencing ninety days prior to the imposition of provisional duty: Provided that in case of violation of an undertaking referred to in sub-rule (6) of rule 17, no duty shall be levied retrospectively on imports which have entered for home consumption before violation of such terms of the undertaking.</p>	Yes	N/A	N/A
<p><b>23. Refund of duty.-</b> (1) If the countervailing duty imposed by the Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected the differential shall not be collected from the importer. (2) If the countervailing duty fixed after the conclusions of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Countervailing Rules, 1996	Unchanged	Extension	New inclusion
(3) If the provisional duty imposed by the Government is withdrawn in accordance with the provisions of sub-rule (3) of rule 20, the provisional duty already imposed and collected, if any shall be refunded to the importer.			
<p><b>24. Review.-</b></p> <p>(1) The designated authority shall, from time to time, review the need for the continued imposition of the countervailing duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty or additional duty, recommend to the Government for its withdrawal.</p> <p>(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 12 months from the date of initiation of such review.</p> <p>(3) The provisions of rules 6, 7,8, 9,10,11,12,13,16,17,18,19,20,22 and 23 shall mutatis mutandis apply in the case of review.</p>			<p>If the Member who requested consultations believes that the consultations under paragraph 3 failed to produce a solution that was acceptable to both parties and if the administering authorities of the importing Member have taken the necessary steps to impose firm duties or accept price commitments. It is permitted to refer the matter to the Dispute Settlement Body ("DSB"). The DSB may be consulted when a provisional measure has a significant impact and the Member who requested consultations thinks that the measure was taken in breach of Article 7, paragraph 1. The WTO agreement includes various problems relating to the appeal mechanism that are not covered by Bangladeshi legislation. Therefore, the appeal system should be reconsidered and addressed in the existing rules anti-dumping and countervailing rules of Bangladesh.</p>

Source: Compiled by authors from different sources

### 11.3 Safeguard Rules

Table 18 Recommendation Matrix for Future Safeguard Rules

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
<b>1. Short Title and Commencement</b> -These rules may be called "Safeguard Rules, 2010".	Yes	N/A	N/A
<b>2. Definitions</b> In these rules, unless the context otherwise requires: (1) "like article" means an article which is identical or alike in all respects to the article under investigation; (2) "Act" means the Customs Tariff Act, 1969 (Act IV of 1969); (3) "Interested Party" includes (a) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard duty or a trade or business association, the majority of the members of which are producers, exporters or importers of such an article; (b) the government of the exporting country; and (c) a producer of the like article or directly competitive article in India or a trade or business association, a majority of members of which produce or trade the like article or directly competitive article in Bangladesh; (4) Authority means the Safeguard Authority responsible under Rule 3 (5) "Inquiry" means any inquiry conducted pursuant to the provisions of these Rules for the purposes of section 18E of the Act; (6) "Directly competitive product" means a product that is a substitute for the product under investigation; (7) "Increased quantity" includes an increase in imports whether in absolute terms or relative to domestic production; (8) "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry; (9) "Provisional Duty" means a safeguard duty imposed under sub-section (2) of section 8B of the Act; (g) "Specified Country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment; (h) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.	N/A	N/A	<ul style="list-style-type: none"> <li>• Inclusion of the definition of "quantitative restriction" in the existing rule of Bangladesh.</li> <li>• WTO rules also incorporate quantitative limits, such as quotas, to shield domestic industries from injury. However, Bangladesh's safeguard rules only impose a duty to protect domestic industry.</li> </ul>

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
<p><b>3. Safeguard Authority</b>            (1) The Chairman of the Bangladesh Trade and Tariff Commission shall act as the Bangladesh Safeguard Authority for conducting investigations and reporting on any application relating to product safeguards for the purposes of these rules.            (2) The Government may provide to the designated authority the services of such other persons and such other facilities at it deems fit</p>	Yes	N/A	N/A
<p><b>4. Duties of the Designated Authority</b>            Subject to the provisions of these rules, it shall be the duty of the designated authority            (1) to identify the article liable for safeguard duty            (2) to investigate the existence of “serious injury” or “threat of serious injury” to domestic industry as a consequence of increased import of an article into Bangladesh;            (3) to submit his findings, provisional or otherwise to the Government as to the “serious injury” or “threat of serious injury” to domestic industry consequent upon increased import of an article from the specified country.            (4) to recommend,            (i) the amount of duty which if levied would be adequate to remove the injury or threat of injury to the domestic industry;            (ii) the duration of levy of safeguard duty and where the period so recommended is more than a year, to recommend progressive liberalization adequate to facilitate positive adjustment.            (5) to review the need for continuance of safeguard duty</p>	Yes	N/A	N/A
<p><b>5. Initiation of Investigation</b>            (1) Except as provided in sub-rule (4), The Designated Authority shall, on receipt of a written application by or on behalf of the domestic producer of like article or directly competitive article, initiate an investigation to determine the existence of “serious injury” or “threat of serious injury” to the domestic industry, caused by the import of an article in such increased quantities, absolute or relative to domestic production.            (2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority in this behalf and such application shall be supported by,            (a) evidence of, -            (i) increased imports;            (ii) serious injury or threat of serious injury to the domestic industry;            (iii) a causal link between imports and the alleged serious injury or threat of serious injury; and            (b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
<p>(3) The Designated Authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless he examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding-</p> <p>(a) increased imports;</p> <p>(b) serious injury or threat of serious injury; and</p> <p>(c) a causal link between increased imports and alleged injury or threat of serious Injury.</p> <p>(4) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo moto if he is satisfied with the information received from any Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as referred to in clause (a), clause (b) and clause (c) of sub-rule (3).</p>			
<p><b>6. Principles Governing Investigations</b></p> <p>(1) The Designated Authority shall, after he has decided to initiate an investigation to determine the serious injury or threat of serious injury to domestic industry, consequent upon the increased import of an article into Bangladesh, issue a public notice notifying his decision thereto. The public notice shall, inter alia, contain adequate information on the following namely: -</p> <p>(i) the name of the exporting countries and the article involved;</p> <p>(ii) the date of initiation of the investigation;</p> <p>(iii) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;</p> <p>(iv) reasons for initiation of investigation.</p> <p>(v) the address to which representations by interested parties should be directed; and</p> <p>(vi) the time limits allowed interested parties to make their views known.</p> <p>(2) A copy of the public notice shall be forwarded by the Designated Authority to the Government in the Ministry of Commerce, Ministry of Industries and National Board of Revenue under the Department of Internal Resources, known exporters of the article the increased import of which has been alleged to cause or threaten to cause serious injury to the domestic industry, the governments of the exporting countries concerned and other interested parties.</p> <p>(3) The Designated Authority shall also provide a copy of the application referred to in sub-rule (1) of rule 5 to:</p> <p>(i) the known exporters, or the concerned trade association,</p> <p>(ii) the governments of the exporting countries; and</p> <p>(iii) Ministry of Commerce</p> <p>Provided that the Designated Authority shall also make available a copy of the application, upon request in writing, to any other interested party.</p>	Yes	N/A	N/A

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
<p>(4) The Designated Authority may issue a notice calling for any information in such form as may be specified by him from the exporters, foreign producers and governments of interested countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.</p> <p>Explanation: For the purpose of this rule the public notice and other documents shall be deemed to have been received one week after the date on which these documents were sent by the Designated Authority by registered post or transmitted to the appropriate diplomatic representative of the exporting country.</p> <p>(5) The Designated Authority shall also provide the opportunity to the industrial user of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level to furnish information which is relevant to the investigation.</p> <p>(6) The Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently submitted in writing.</p> <p>(7) The Designated Authority shall make available the evidence presented to him by one interested party to the other interested parties, participating in the investigation.</p> <p>(8) In the case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Designated Authority may record his findings on the basis of the facts available to him and make such recommendations to the Government as he deems fit under such circumstances.</p>			
<p><b>7. Confidential Information</b></p> <p>(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, sub-rule (2) of rule 9 and sub-rule (5) of rule 11, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Designated Authority and shall not be disclosed without specific authorisation of the party providing such information.</p> <p>(2) The Designated Authority may require the parties providing information on a confidential basis to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the designated authority a statement of reasons why summarisation is not possible.</p> <p>(3) Notwithstanding anything contained in sub-rule (2), if the Designated Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is unwilling either to make the information public or to authorise its disclosure in a generalized or</p>	Yes	N/A	N/A

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
summary form, he may disregard such information unless it is demonstrated to his satisfaction from appropriate sources that such information is correct.			
<b>8. Determination of Serious Injury or Threat of Serious Injury</b> The Designated Authority shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the principles laid down in Annex to these rules.	Yes	N/A	N/A
<b>9. Preliminary Findings</b> (1) The Designated Authority shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury. (2) The Designated Authority shall issue a public notice regarding his preliminary findings. (3) The Designated Authority shall send a copy of the public notice to the Government in the Ministry of Commerce and the NBR.	Yes	N/A	N/A
<b>10. Levy of Provisional Duty</b> The Government may in accordance with the provisions of sub-section (2) of section 18E (2) of the Act, impose a provisional duty on the basis of the preliminary findings of the Designated Authority: (a) To be imposed after notification to the Committee on Safeguards of the World Trade Organization (b) Provided that such duty shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.	Yes	N/A	N/A
<b>11. Final Findings</b> (1) The Designated Authority shall, within 8 months from the date of initiation of the investigation or within such extended period as the Government may allow, determine whether, (a) the increased imports of the article under investigation has caused or threatened to cause serious injury to the domestic industry, and (b) a causal link exists between the increased imports and serious injury or threat of serious injury. (2) The Designated Authority shall also give its recommendation regarding the amount of duty which, if levied, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment. (3) The final findings if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion.	Yes	N/A	N/A

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
(4) The Designated Authority shall issue a public notice recording his final findings and shall send a copy of the public notice regarding his final findings to the Government in the Ministry of Commerce, National Board of Revenue and other concerned authorities.			
<b>12. Levy of Duty</b> (1) Safeguard duty under section 18E of the Act may be levied on imports into Bangladesh of goods covered by the final report under Rule 11, which shall not exceed the amount to prevent or eliminate the loss of interest and positive adjustment to the local industry. (2) If the final finding of the Designated Authority is negative, that is contrary to the prima facie evidence on whose basis the investigation was initiated, the Government shall within thirty days of the publication of final findings by the Designated Authority under the rule 10, withdraw the provisional duty imposed, if any.	Yes	N/A	N/A
<b>13. Imposition of Duty on Non-discriminatory Basis</b> Any safeguard duty imposed under rule 10 or rule 12 shall be on a non-discriminatory basis and applicable to all imports of such article, irrespective of its source. Provided that safeguard duty shall not be levied on imports of such goods from any developing country if - a) The import of the concerned product from the said country is less than three percent of the total import of the concerned product into Bangladesh and b) The imports of the developing member countries concerned with imports of less than three per cent of the said product alone do not exceed nine per cent of the total imports of the said product.	Yes	N/A	N/A
<b>14. Date of Commencement of Duty</b> (1) The Safeguard duty levied under Rule 10 or Rule 12 shall take effect from the date of publication of the notification, in the Official Gazette imposing such duty. (2) Notwithstanding anything contained in sub-rule (1), where a provisional duty has been levied and where the designated authority has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification under sub-rule (1) that such safeguard duty shall take effect from the date of levy of provisional duty.	Yes	N/A	N/A
<b>15. Refund of Duty</b> If the safeguard duty imposed after the conclusions of the investigations is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer under the condition of section 18 (E) of the Act.	Yes	N/A	N/A
<b>16. Duration</b>	Yes	N/A	N/A

Chapter and Stated provision in the Safeguard Rules, 2010	Unchanged	Extension	New inclusion
<p>(1) The safeguard quantitative restrictions imposed under rule 12 shall be for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Provided that safeguard duty imposed under rule 10 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition.</p> <p>(2) The period of validity of Safeguard duty may be extended for a further period of four years in the manner described in rules 6 2 7 subjects to the fulfilment of the conditions of rules 5 and 8 as the case may be and its application, subject to the conditions and conditions described in rules 5, 6, 7 and 8, further Can be extended for two years.</p>			
<p><b>17. Liberalization of Duty</b> If the duration of the duty levied under rule 12 exceeds one year, the duty shall be progressively liberalized at regular intervals during the period of its imposition.</p>	Yes	N/A	N/A
<p><b>18. Review</b> (1) The Designated Authority shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if he/she is satisfied on the basis of information received by him/her that, (i) safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Government for the continued imposition of duty; (ii) there is no justification for the continued imposition of such duty; recommend to the Government for its withdrawal: Provided that where the period of imposition of safeguard duty exceeds three years the designated authority shall review the situation not later than the mid-term of such imposition, and, if appropriate, recommend for withdrawal of such safeguard duty or the increase of the liberalization of duty. (2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 months from the date of initiation of such review or within such extended period as the Government may allow. (3) The provisions of rules 5, 6, 7 and 11 shall mutates mutandis apply in the case of review.</p>	Yes	N/A	N/A
<p><b>19. English translation publication</b> (1) After the promulgation of this rule the Government shall, by notification in the Official Gazette, publish a reliable text of this Act translated into English, which shall be called the Authentic English Text of this rule. (2) In case of conflict between these Rules and the English text, the Bengali version of the rule shall prevail.</p>	N/A	The implementation of Authentic English Text of the Safeguard Rules may be incorporated.	N/A

Source: Compiled by authors from different sources

## 12. Conclusion

Trade remedy measures can be implemented by governments to address unfair trade practices that harm domestic industries. These include, for instance, safeguards, countervailing duties, and anti-dumping duties. The application of trade remedy measures is governed by international trade rules, such as those established in the World Trade Organization's (WTO) norms and other bilateral and regional trade agreements. These guidelines provide a framework for addressing unfair trade practices while keeping commerce as free and open as is practical. Trade remedial measures have a long history that dates back to the first decades of the 20th century.

The three rules (Anti-dumping, Countervailing and Safeguard Rules) cover the WTO agreement and the main purpose of the imposition of such rules is to apply trade remedial measures in the country. Anti-dumping measures are implied on the dumped imported goods, in case of countervailing duties it covers the subsidized goods of the exporting country, and safeguard measure is taken to prevent the loss in domestic industries as a result of increased imports. These are the three principal facts about the three measures. Antidumping, Countervailing, and Safeguard Measures will be economic strategies and a fundamental problem for bilateral trade in the age of globalisation and liberalization when all bilateral, regional, and multilateral accords aim for tariff liberalisation. These three concerns have an impact on economic entities as well as the private sector. The Bangladesh Trade and Tariff Commission handles antidumping, countervailing, and safeguard measures.

SANEM conducted this policy evaluation of Bangladesh's three existing rules by conducting in-depth desk research and in-person interviews with relevant stakeholders. After reviewing the existing rules in Bangladesh, the second, third, and fourth chapters of the paper have discussed the gaps in the existing rules in terms of WTO agreements. The second chapter has provided a detailed overview of the Antidumping Rules, 1995. The WTO's Anti-dumping Agreement focuses on how countries can ensure that government responses to dumping occurrences are fair, transparent, and in accordance with international trade laws. It addresses the possible negative effects of dumping on domestic enterprises while aiming to prevent anti-dumping laws from being abused. Along with many other countries, Bangladesh is a signatory to the WTO's Anti-Dumping Agreement and is therefore subject to its rules and guidelines. The framework offered by this agreement enables countries that participate to address instances of dumping while ensuring that any follow-up actions comply with international trade regulations. WTO guidelines are followed by Bangladesh's 1995 anti-dumping rules.

The synopsis and vacuums of the Countervailing Rules, 1996 have been rehashed. In the context of globalisation, Bangladesh is reducing import taxes like many other nations. As a consequence, there is less chance of preserving local industry by the imposition of import fees. Local industries need to enhance their skill sets if they want to remain competitive in this environment. However many countries provide a range of subsidies to boost their industries, which, if they enter the Bangladeshi market, might have a detrimental effect on native enterprises there.

In addition, this report provides an outline of the Safeguard Duty Rules. When imports impair or threaten to undermine domestic industry, safeguard duties (SD) are imposed. This duty may take the form of import duty, import quotas, or a combination of the two. Article XIX of the GATT and the WTO Agreement on Safeguards Measures govern the control of this SD under the international trade environment. There are such measures available for the following three primary reasons: First, under WTO regulations, countries have to adhere to the MFN principle when imposing tariffs and are not permitted to apply restrictions to safeguard domestic industry in the form of quotas or licence requirements. Second, even while antidumping and countervailing measures can curb dumping and illegal subsidisation, they cannot be used to address the threat to domestic producers if the criteria for an "unfair practice" are not satisfied. Thirdly, compared to other measures, safeguarding measures provide a state more flexibility to absorb the shock and threat to local industry, providing domestic producers more time to adapt their companies and themselves to the new import environment. The measures are only put into effect if the requirements stated in those legal documents are satisfied. The Government of Bangladesh enacted the Safeguards Duty Rules, 2010 in accordance with Section 18E of the Customs Act, 1969, after understanding the need for legislation in this area.

The rules and regulations of Bangladesh as well as those of comparable countries like India, China, Malaysia, Singapore, and Vietnam are all thoroughly analysed in this report. Additionally, the key tasks performed by the Trade Remedies Division of Bangladesh Trade and Tariff Commission. Moreover, a description of the current context rules is also elaborated such as the problems after LDC graduation, loopholes in the rules etc. Furthermore, the major stakeholders' perceptions, which include the dearth of human resources in the pertinent industries, the high tariff structures, the availability of audit review reports, etc. are also discussed.

The main findings of the paper include a lack of skilled manpower in implementing the rules, the inadequacy of audit review, the absence of appropriate knowledge, less awareness among the producers and business community and so on. With the update to the WTO agreement, India has made various changes to its rules, but Bangladesh's rules remain unchanged. Several elements, including the adoption of the lesser duty method, the specification of the review system, appeal methods, specifying some definitions and calculation methods, the clarification of the consultation and dispute settlement, the introduction of anticircumvention issues, quantitative restriction system safeguard rules etc., need to be incorporated into the present rules of Bangladesh.

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## Annexure

### List of Participants

Representatives from Bangladesh Trade and Tariff Commission	<ul style="list-style-type: none"> <li>• Md. Mamun-Ur-Rashid Askari, Joint Chief</li> <li>• Md. Abdul Latif, Deputy Chief</li> </ul>
Representative from the Ministry of Commerce	<ul style="list-style-type: none"> <li>• Md. Abdur Rahim Khan, Additional Secretary (Export)</li> </ul>
Think Tank	<ul style="list-style-type: none"> <li>• Dr Kazi Iqbal (Senior Research Fellow, BIDS)</li> <li>• Farhan Mashuk, Research Associate, BFTI</li> </ul>
Representatives from MCCI	<ul style="list-style-type: none"> <li>• Md. Saidul Islam, Additional Secretary-General, MCCI</li> <li>• Asif Ayub, Joint-Secretary General, MCCI</li> <li>• M. Abdur Rahman, Deputy Chief</li> </ul>

### Participants of FGD

Name	Designation	Organization
Md. Mamun-Ur-Rashid Askari	Joint Chief	BTTC
Md. Abdul Latif	Deputy Chief	BTTC
S.M Sumaiya Zabeen	Deputy Chief	BTTC
Kazi Monir Uddin	Assistant Chief	BTTC

### Team Composition:

Name of staff	Area of expertise relevant to the assignment	Designation for this assignment	Assigned tasks or deliverables
Dr. Bazlul Haque Khondker	Economist, Institutional analysis expert, Survey expert, FGD and KII expert	Team Leader	Finalize questionnaire, FGD, and KII checklists, Evaluation, and analysis, Draft synthesizing summary, Draft short summaries Finalizing reports
Dr. Selim Raihan	Economist, Political economy and institutional analysis expert, Survey expert, FGD and KII expert	Co-Team Leader, Trade Expert	Coordinating and monitoring the team, monitoring all the activities performed by the team members, finalizing questionnaire, FGD, and KII checklists, Evaluation, and analysis Draft synthesizing summary, and Finalising reports.
Mahtab Uddin	Policy analysis and evaluation, Survey expert, FGD and KII expert	Policy Analyst	Monitoring all the activities performed by the team members, finalizing questionnaires, Coordinating FGDs and KIIs, Evaluation and analysis, and Draft synthesizing summary.
Mohammad Golam Sarwar	Legislative consultant, development law practitioner	Legal Expert	Analysing the legal terms and provisions of the study, identifying the possible grounds for alterations, extensions, and exclusion of current legal provisions, and providing legal recommendations.

Name of staff	Area of expertise relevant to the assignment	Designation for this assignment	Assigned tasks or deliverables
Afia Mubasshira Tiasha	Data analyst, Survey Experts	Research Associate	Desk review, analysing secondary data, designing survey questionnaires for KIIs, supervising the survey, conducting FGDs, analysing primary data, and drafting the reports.
Papri Das	Data analyst, Survey Experts	Research Associate	Desk review, analysing secondary data, designing survey questionnaires for KIIs, supervising the survey, conducting FGDs, analysing primary data, and drafting the reports.
Samantha Rahman	Data collection and Supervision	Research Associate	Desk Review, developing KII questionnaire, assisting in conducting the KIIs, conducting FGDs.
Abdul Zabbar Sakil	Data collection and Supervision	Research Associate	Assisting in developing the KII questionnaire, assisting in conducting the KIIs, and conducting FGDs.



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