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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

TURKEY

The following communication, dated 3 March 2000, has been received from the Permanent Mission of Turkey.

I would like to inform you that the legislation concerning the prevention of unfair legislation has been amended in conformity with the relevant WTO Agreements and also the customs union obligations. Accordingly, please find attached herewith:

- Law No. 3577 on the Prevention of Unfair Competition in Imports as amended by Law 4412 which entered into force on 27 May 1999;
- Decree on the Prevention of Unfair Competition in Imports (No. 23861) published in the Official Gazette dated 20 October 1999; and
- The relevant regulation (No. 23861) published in the Official Gazette dated 30 October 1999.

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**LAW NO.3577 ON THE
PREVENTION OF UNFAIR COMPETITION IN IMPORTS**
(As amended by Law No.4412, Official Gazette Date:25/07/1999, No:23766)

Aim and scope

Article 1- This Law sets forth the rules and principles as regards the procedures to be applied and measures to be taken for purposes of protecting a domestic industry against injury caused by unfair competition practices in imports namely, dumped or subsidised imports; formation of a Board that will establish principles and application decisions, and duties of such Board.

Definitions

Article 2- Following are the definitions of the terms used in this law:

- (a) Dumping: Export price of a product to Turkey being less than the normal value for the like product;
- (b) Subsidy: A direct or indirect financial contribution by the country of origin or export, which confers a benefit or any form of income or price support within the meaning of Article XVI of GATT 1994;
- (c) Export Price: The price actually paid or payable for the product when sold for export;
- (d) Like Product: A product which is alike in all respects to the product which is dumped or subsidised, or in the absence of such a product, another product with similar characteristics;
- (e) Normal Value:
 - (1) The comparable price paid or payable, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export;
 - (2) When there are no sales of the like product in the domestic market of the country of origin or export in the ordinary course of trade, or where such sales do not permit a proper comparison, the normal value shall be the export price of the like product when exported to an appropriate third country, provided that this price is representative or the price calculated on the basis of the cost of production in the country of origin plus a reasonable amount for profit;
- (f) Regulation: Regulation on the Prevention of Unfair Competition in Imports;
- (g) Dumping Margin: The amount by which the normal value exceeds the export price;
- (h) Amount of Subsidy: Direct or indirect financial contribution maintained by the country of origin or export for manufacture, production, export or transportation of the product sold for export, or total amount of benefits in any form of income or price support in the sense of Article XVI of GATT 1994;
- (i) Injury: Material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry;

- (j) Ministry: The Ministry to which the Undersecretariat for Foreign Trade is attached;
- (k) Directorate General: Directorate General of Imports;
- (l) Board: Board of Evaluation of Unfair Competition in Imports;
- (m) GATT 1994: General Agreement on Tariffs and Trade 1994;
- (n) Agreement on Subsidies and Countervailing Measures: Agreement at the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by Decision of Council of Ministers dated 3/2/1995 and No.95/6525,
- (o) Agreement on Implementation of Article VI of GATT 1994: Agreement in the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by the Decision of Council of Ministers dated 3/2/1995 and No.95/6525.

Circumstances warranting imposition of measures

Article 3- Measures shall be taken in cases where dumped or subsidised imports have caused material injury or threatened to cause material injury to the domestic industry or caused material retardation of an industry.

However, in order that measures be taken in respect of subsidised imports, it should also have been determined that the subsidy is specific to an enterprise/group of enterprises or industry/group of industries as defined in Article 2 of the Agreement on Subsidies and Countervailing Measures.

Complaint and examination

Article 4- The Directorate General may, upon complaint or, where necessary, *ex officio*, initiate a dumping or subsidy examination. Domestic producers or any natural or legal person or association acting on behalf of a domestic industry, who claim that material injury or threat thereof has occurred by reason of dumped or subsidised imports or that the establishment of an industry has been materially retarded due to such imports, may submit a written application to the Directorate General.

Procedures and principles as regards the complaint and the examination shall be set out in the regulation to be issued by the Ministry.

Duties of the Directorate General

Article 5- Duties of the General Directorate under this Law are as follows:

- (a) To carry out the preliminary examination in the light of the information and documents submitted or other information available, upon complaint or *ex officio* where necessary;
- (b) To submit its proposal to the Board on whether or not to initiate an investigation;
- (c) Where an investigation is initiated, to carry out such investigation and make proposals to the Board concerning the measures;

- (d) To act as the secretariat of the Board and to dispose of other duties to be assigned by the Board.

The Board of Evaluation of Unfair Competition in Imports and its duties

Article 6- The Board, headed by the Director General of Imports or the Deputy Director General assigned by the latter, consists of the representatives of the Ministry of Agriculture and Rural Affairs, Ministry of Industry and Commerce, the Under-secretariat of the State Planning Organisation, Under-secretariat of Customs, Union of Chambers of Commerce and Industry and Union of Chambers of Agriculture and the related head of department in the Directorate General of Imports.

The Board may request information from the universities and other institutions, where necessary.

The duties of the Board are as follows:

- (a) To decide whether or not to initiate an investigation or whether to suspend an ongoing investigation;
- (b) Where sufficient evidence exists, to submit its decision on the adoption of provisional measures, to the Ministry for approval;
- (c) To evaluate the results of the investigation, to take necessary measures and to submit the decision for definitive measures to the Ministry for approval;
- (d) To propose undertakings in the course of an investigation, to decide whether or not to accept an undertaking proposed and to take relevant measures where undertakings have been violated.

The working procedures and principles of the Board shall be set out in the regulation to be issued by the Ministry.

Anti-dumping duty and countervailing duty

Article 7- An amount equal to the margin of dumping or the amount of subsidy, specified by the Board and approved by the Ministry consequent to the investigation, shall be imposed on dumped imports as anti-dumping duty and on subsidised imports as countervailing duty, respectively. However, where it is determined that a rate or amount of duty lesser than the calculated dumping margin or amount of subsidy would be adequate to remove the injury caused by dumped or subsidised imports, such lesser rate or amount shall be imposed.

The principles on the retroactive application of such duties for products imported earlier, shall be determined by the Decree of the Council of Ministers. However, the period for retroactive application shall not exceed 90 days prior to the date of imposition of provisional measures.

Payer

Article 8- The payer of anti-dumping duty or countervailing duty is any natural or legal person importing the dumped or subsidised product.

Collection authority

Article 9- Anti-dumping duties or countervailing duties shall be collected or secured by the customs authorities, independent of other charges ordinarily imposed on imports.

Investigation

Article 10- An investigation shall be initiated, where consequent to an examination initiated either *ex officio* or upon complaint, it is determined that sufficient evidence on dumped or subsidised imports and injury resulting thereof exist.

The procedures and principles of the investigation shall be set out in the regulation to be issued by the Ministry.

Undertakings

Article 11- The country of origin, country of export or the exporter may, in the course of the investigation, offer undertakings on their own initiative or upon proposal by the Board, as to eliminate the injury caused by dumped or subsidised imports subject to investigation. Upon acceptance of undertakings by the Board, the investigation may be suspended without imposition of provisional or definitive measures or concluded. The conclusion investigation shall not prevent the collection of provisional duties imposed prior to the entry into force of the undertakings.

In the case of breach of undertakings, the Board may impose provisional or definitive measures based on the facts available. The procedures and principles as regards undertakings shall be set out in the regulation to be issued by the Ministry whereas the validity and review principles of the undertakings shall be set out in the Decree of the Council of Ministers.

Provisional measures

Article 12- Where, in the course of the investigation on imports subject to complaint, preliminary affirmative determinations have been made as regards dumped or subsidised imports and injury caused by such imports, the imposition of provisional duties in the form of security at an amount equal to the margin of dumping or the amount of subsidy as specified by the Board or at a lesser rate or amount adequate to remove the injury may be decided, for purposes of preventing injury during the investigation, upon the approval of the Ministry. Such a decision shall be announced to the interested parties by way of publication in the Official Gazette. Provisional measures shall be imposed no earlier than 60 days from the initiation of the investigation. The duration of provisional measures shall be limited to 4 months. However, it may be extended to a period not exceeding 6 months by the decision of the Board and approval of the Ministry, upon request by exporters representing a significant percentage of the exports of the product concerned to Turkey. In the course of a dumping investigation, to examine whether a duty lower than the margin of dumping would be sufficient to remove the injury, these periods may be applied as 6 and 9 months. The application principles of provisional measures shall be set out in the Decree of the Council of Ministers.

Definitive measures

Article 13- Where, as a result of the investigation an affirmative determination has been made as regards dumped or subsidised imports and injury caused thereby, a definitive anti-dumping duty or countervailing duty at an amount equal to the dumping margin or the amount of subsidy as specified by the Board and finalised by the approval of the Ministry, or at a lesser amount or rate adequate to remove the injury, shall be imposed to prevent injury being caused. In the case where any security

deposit has been made, the provisions of Article 14 shall apply. However, when the decision for definitive measures has been taken as regards the threat of injury or material retardation of a domestic industry, in order that the security deposit made during the investigation be collected, the Board shall determine that injury would occur but for the imposition of provisional measures. Where no such determination has been made, any security deposit made during the period of investigation as provisional measures shall be refunded. The procedures and principles on the process to be applied as regards the duration, application, suspension, review, refund and the circumvention of the anti-dumping or countervailing duty in force, shall be set out in the Decree of the Council of Ministers. Anti-dumping and countervailing duties shall not be applied together for the purpose of counteracting the same situation where the product subject to investigation is both dumped and subsidised.

The imposition of anti-dumping or countervailing duty shall not hinder the importation of the product concerned.

Refunds

Article 14- If the definitive anti-dumping duty is higher than the security deposits made, the difference shall not be collected. If the definitive duty is lower than the security deposit made, the difference shall be released.

Where it has been decided to terminate the investigation, the provisional duties shall be revoked and any security deposit made shall be released.

The anti-dumping duty or countervailing duty previously collected for the product to be returned or destroyed due to the violation of a sales contract, shall be refunded in accordance with the provisions of the customs legislation on the reimbursement of the customs duties.

Other legislation

Article 15- The provisions of the customs legislation, procedural or substantive, as regards the registration, assessment, collection, reimbursement, pursuance and assurance of customs duty shall also be applicable for the registration, assessment, collection, reimbursement, pursuance and assurance of anti-dumping and countervailing duties, unless in contradiction with this Law.

The anti-dumping duty or countervailing duty not paid shall be collected by the customs authorities in accordance with the provisions of the Law No. 6183 on the Procedure of the Collection of Public Claims.

The provisions of the Agreement on Implementation of Article VI of GATT 1994 and Agreement on Subsidies and Countervailing Measures shall be followed in cases where this Law does not contain any relevant provision.

Repealed and not applicable provisions

Article 16- Article 21 of the Customs Code No. 1615 is hereby repealed.

In the implementation of this Law, the provisions of the Customs Code and other laws shall not be applicable if in conflict with this Law.

Decrees of the Council of Ministers and Regulations

Article 17-

- (a) The Decree of the Council of Ministers envisaged in Articles 7, 12, 13 and,
- (b) Regulations mentioned in Articles 4, 6, 10 and 11.

shall be issued within 3 months following the publication of this Law.

Entry into force

Article 18- This Law shall enter into force within 3 months following its publication.

Implementation

Article 19- The provisions of this Law shall be implemented by the Council of Ministers.

Termination and suspension of the investigation

Addendum 1- The investigation shall be terminated by the Board, where consequent to the investigation it is determined that the imports subject to investigation are not dumped or subsidised or that there is no injury caused by such imports or where the complaint has become futile. The investigation for dumping or subsidy shall also be terminated if it is determined that the margin of dumping or amount of subsidy or volume of imports is negligible. The negligible rates as regards the margin of dumping or amount of subsidy or volume of imports shall be established by the regulation. The Board may also decide to terminate the investigation, where the complaint is withdrawn. The investigation may be suspended upon acceptance of undertakings. The investigation may either be terminated or suspended if the provision of subsidies has ceased.

Review of definitive measures and undertakings

Addendum 2- The decision for definitive measures and undertakings may be reviewed at the request of one of the interested parties or *ex officio*. Where a review decision has been made by the Board, a new investigation shall be initiated and carried out. However, initiation of a new investigation shall not hinder the application of the definitive duties and undertakings in force. The decision whether to impose definitive measures and undertakings consequent to the investigation shall rest with the Board. The decision for the definitive measure may also be reviewed at the request of the producer or exporters which have not exported the product concerned during the period of investigation. Until the entry into force of the decision concerning the result of the investigation initiated upon such a request, definitive measures in force shall be subject to security deposit for the product subject to investigation exported by the producer or exporter who filed the request. As regards the security deposits made, relevant provisions of the Article 14 shall be followed consequent to the investigation.

**DECREE ON THE
PREVENTION OF UNFAIR COMPETITION IN IMPORTS**
(Official Gazette Date: 30/10/1999, No: 23861)

Aim and Scope

Article 1- This Decree sets forth procedures to be applied and measures to be taken for purposes of protecting a domestic industry against the injury caused by unfair competition practices in imports namely, dumped or subsidised imports.

Definitions

Article 2- Following are the definitions of the terms used in this Decree:

- (a) Dumping: Export price of a product to Turkey being less than the normal value for the like product;
- (b) Subsidy: A direct or indirect financial contribution by the country of origin or export, which confers a benefit or any form of income or price support within the meaning of Article XVI of GATT 1994;
- (c) Export Price: The price actually paid or payable for the product when sold for export;
- (d) Like Product: A product which is alike in all respects to the product which is dumped or subsidised, or in the absence of such a product, another product with similar characteristics;
- (e) Normal Value:
 - (1) The comparable price paid or payable, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export;
 - (2) When there are no sales of the like product in the domestic market of the country of origin or export in the ordinary course of trade, or where such sales do not permit a proper comparison, the normal value shall be the export price of the like product when exported to an appropriate third country, provided that this price is representative or the price calculated on the basis of the cost of production in the country of origin plus a reasonable amount for profit;
- (f) Dumping Margin: The amount by which the normal value exceeds the export price;
- (g) Amount of Subsidy: Direct or indirect financial contribution maintained by the country of origin or export for manufacture, production, export or transportation of the product sold for export, or total amount of benefits in any form of income or price support in the sense of Article XVI of GATT 1994;
- (h) Injury: Material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry;
- (i) Circumvention:
 - (1) Cases where there is evidence that, a change in the pattern of trade between a third country and Turkey, stemming from a practice, process or work for which there is insufficient due

cause or economic justification other than to avoid the anti-dumping duty or countervailing duty, existed and that the remedial effects of the duty are being undermined or nullified in terms of the prices and/or quantities of the like products and there is evidence of dumping or continuance of subsidy in relation to the normal values previously established for the like products;

(2) Cases where, there is evidence that, due to the lowering of export prices, the expected effects of the anti-dumping duty on selling prices of the imported products subject to measures in the Turkish market are being undermined or nullified and thus the remedial effects of the duty in terms of removal of injury to the domestic industry are being weakened;

- (j) Ministry: The Ministry to which the Undersecretariat for Foreign Trade is attached;
- (k) Directorate General: Directorate General of Imports;
- (l) Board: Board of Evaluation of Unfair Competition in Imports;
- (m) GATT 1994: General Agreement on Tariffs and Trade 1994;
- (n) Agreement on Subsidies and Countervailing Measures: Agreement at the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by Decision of Council of Ministers dated 3/2/1995 and No.95/6525;
- (o) Regulation: Regulation on the Prevention of Unfair Competition in Imports.

Complaint, examination and the investigation

Article 3- The Directorate General may, upon complaint or, where necessary, *ex officio*, initiate a dumping or subsidy examination. Domestic producers or any natural or legal person or association acting on behalf of a domestic industry, who claim that material injury or threat thereof has occurred by reason of dumped or subsidized imports or that the establishment of an industry has been materially retarded due to such imports, may submit a written application to the Directorate General.

An investigation shall be initiated where, consequent to an examination initiated either *ex-officio* or upon complaint it is determined that sufficient evidence on dumped or subsidised imports and injury resulting therefrom exist.

The procedures and principles as regards complaint, examination and investigation shall be set out in the regulation.

Circumstances warranting imposition of measures and measures

Article 4- Measures shall be taken in cases where dumped or subsidized imports have caused material injury or threatened to cause material injury to the domestic industry or caused material retardation of an industry.

Where, in the course of the investigation on imports subjected to complaint, provisional affirmative determinations on the existence of dumped or subsidised imports and the injury caused by such imports have been made, a provisional duty in the form of security equal to the margin of dumping or amount of subsidy or at a lesser amount or rate adequate to remove the injury, may be imposed for purposes of preventing occurrence of injury during the investigation.

Undertakings offered in the course of the investigation, by country of origin or country of export or the exporter as to remove the injury caused by dumped or subsidised imports concerned may be accepted.

Where, as a result of the investigation it is determined that there are dumped or subsidised imports and that such imports are causing injury, a definitive anti-dumping duty or countervailing duty at an amount equal to the margin of dumping or amount of subsidy or at a lesser amount or rate adequate to remove the injury shall be imposed to eliminate such injury.

Principles on the application of provisional and definitive measures

Article 5- The amount or rate of the security deposit or the duty to be imposed shall be specified by naming the exporters and country of origin or export of the product concerned. However, if numerous suppliers from the same country or more than one country are involved, and it is impracticable to name all the suppliers, the provisional or definitive measures may also be applied by naming only the country or countries concerned. provisional or definitive duties shall be applied on a non-discriminative basis on imports of such product from all sources found to be dumped or subsidised and causing injury, except imports from companies or countries from which undertakings have been accepted.

Where, as a result of an investigation, it is decided to apply definitive measures, provisional measures, if any, imposed in the course of the investigation shall be converted to definitive measures. Suspension or conclusion of an investigation upon acceptance of undertakings shall not prevent collection of the provisional duties previously imposed.

Principles on retroactivity

Article 6- As regards dumped products; duties established may be applied retroactively where there is history of dumped imports causing injury or where the importer was or should have been aware that the exporter was dumping and that such practise would cause injury and where it is determined that the remedial effects of the definitive measure to be applied are undermined by reason of dumped imports realized in a relatively short period of time and at a quantity likely to cause injury.

As regards subsidised products; retroactive application may be made, where, products benefiting from subsidies inconsistent with the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures have been imported in a relatively short period of time at a quantity likely to cause injury that is difficult to repair, and it is deemed necessary to preclude the recurrence of such injury.

Retroactive application mentioned in the preceding two paragraphs shall be limited to 90 days prior to the date of imposition of provisional measures, provided that such date does not precede the date of initiation of the investigation, and the importers concerned shall be granted the opportunity to express their views on the issue.

In cases of breach of an undertaking given for dumped or subsidised imports, retroactive application may also be used, provided that any such retroactive application does not go beyond the date of breach of the undertaking and for a period not exceeding 90 days prior to the date of imposition of provisional measures.

Duration and review of definitive measures and undertakings

Article 7- Definitive measures shall remain in force as long as is necessary to counteract injury caused by dumped or subsidised imports.

Definitive measures may be reviewed, *ex officio* or upon request by an interested party, provided that at least one year has elapsed since their imposition. Parties requesting the review shall submit to the Directorate General evidence justifying the review. Depending on the circumstances justifying the review, a review investigation shall be initiated and carried out as to cover either dumping or subsidy and injury simultaneously or individually.

Definitive measures shall remain in force for 5 years, from the date of the conclusion of the most recent review investigation that has covered both dumping or subsidy and injury examination or from the date of their imposition.

Besides, an expiry review investigation may be initiated *ex officio* or upon a duly substantiated request by the domestic industry, before the expiry of the definitive measure in force. In such an investigation, whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping or subsidy and injury shall be examined.

Initiation of a review investigation shall not hinder the application of definitive measures in force.

The provisions of this Article regarding the duration and review of definitive measures shall apply as regards price undertakings as well.

The procedures and principles as regards the review investigations shall be set out in the regulation.

New exporter review

Article 8- The decision for definitive measures may be reviewed upon request by the new producer or exporters which have not exported the product concerned during the period of investigation and which can show that they are not related to any of the exporters or producers whose products are currently subject to the definitive measures. However, producers or exporters requesting such a review should have either actually exported the product concerned to Turkey following the investigation period or entered into an irrevocable contractual obligation to export a significant quantity of it. A new exporter review shall be carried out on an accelerated basis to determine the margin of dumping or amount of subsidy for those who made the request.

The procedures and principles as regards new exporter reviews shall be set out in the regulation.

Suspension of definitive measures

Article 9- Where, due to a temporary change in the market conditions, the injury to the domestic industry is unlikely to continue or recur as a result of the suspension, and provided that the related producers have been given an opportunity to comment, the measures for which at least one year has elapsed since the imposition, may be suspended by a decision of the Board and approval of the Ministry, for a period of 9 months. This period may be extended for a further period, not exceeding one year.

Where, the change in market conditions is due to situations of force majeure, such as warfare, natural disaster, fire, strike and lockout, the requirement that the measure be in force for at least one year, shall not be sought.

Measures may be reinstated by a decision of the Board and approval of the Ministry, if the reason for suspension is no longer applicable.

Decisions regarding suspension and reinstatement of the definitive measures shall be announced by a Communiqué published in the Official Gazette.

Refund of excessive duties

Article 10- Importers may submit a written application supported by evidence to the Directorate General to have duties paid in excess of actual margin of dumping or amount of subsidy reimbursed. Where, consequent to an investigation initiated after having determined that the request contained sufficient evidence, it is found that the anti-dumping duty or the countervailing duty collected is in excess of the actual margin of dumping or amount of subsidy, the refund of such excessive amount shall be decided by the Board.

The procedures and principles as regards the process and investigations to be carried out for refunds shall be set out in the regulation.

Prevention of circumvention

Article 11- Anti-dumping duties and countervailing duties imposed may be extended as to cover like products or parts thereof and imports of such product from third countries, where it is determined as a result of the investigation initiated that effects of definitive duties are being nullified consequent to a practice, process or work for which there is insufficient due cause or economic justification other than to avoid the anti-dumping duty or countervailing duty in force. Imports of the product subject to investigation may be made subject to registration during the investigations to be carried out under this paragraph.

Where, as a result of the investigation, it is determined that the definitive duties were nullified due to the lowering of the export prices, the anti-dumping duty shall be reassessed in accordance with the new dumping margin calculated. When investigations to be carried out under this paragraph, cover the re-examination of normal value, the imports of the product subject to investigation may be made subject to registration during the investigation.

Where, imports of the product concerned have been subject to registration and, consequent to the investigation it is decided to impose measures, such measures shall be applied from the date of registration.

The procedures and principles as regards the process and investigations to be carried out for the prevention of circumvention shall be set out in the regulation.

Repealed decree

Article 12- Decree No. 89/14506 and dated 8/9/1989 is hereby repealed.

Provisional Article 1- For purposes of paragraph 3 of Article 7 of this Decree; the 5 year period shall be deemed to have started, as of 26/3/1995 for definitive measures put into force before such date and the date of imposition for definitive measures and undertakings put into force thereafter.

Entry into force

Article 13- This Decree shall enter into force on the day of its publication and be effective as of 25/10/1999.

Implementation

Article 14- This Decree shall be implemented by the Minister to whom the Undersecretariat for Foreign Trade is attached.

**REGULATION ON THE
PREVENTION OF UNFAIR COMPETITION IN IMPORTS**
(Official Gazette Date:30/10/1999, No:23861)

PART ONE
Aim, Scope, Legal Basis, Definitions

Aim

Article 1- This Regulation has been prepared for purposes of protecting a domestic industry against injury caused by unfair competition practices in imports; namely, dumped or subsidised imports.

Scope

Article 2- This Regulation embodies the procedures to be followed and measures to be taken for purposes of protecting a domestic industry against injury caused by unfair competition practices in imports; namely, dumped or subsidised imports.

Legal Basis

Article 3- This Regulation is prepared having regard to the provisions of Law No.3577 on Prevention of Unfair Competition in Importation.

Definitions

Article 4- Following are the definitions of the terms used in this Regulation:

- (a) Dumping: Export price of a product to Turkey being less than the normal value for the like product;
- (b) Subsidy: A direct or indirect financial contribution by the country of origin or export, which confers a benefit or any form of income or price support within the meaning of Article XVI of GATT 1994;
- (c) Export Price: The price actually paid or payable for the product when sold for export;
- (d) Like Product: A product which is alike in all respects to the product which is dumped or subsidised, or in the absence of such a product, another product with similar characteristics;
- (e) Normal Value:

(1) The comparable price paid or payable, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export;

(2) When there are no sales of the like product in the domestic market of the country of origin or export in the ordinary course of trade, or where such sales do not permit a proper comparison, the normal value shall be the export price of the like product when exported to an appropriate third country, provided that this price is representative or the price calculated on the basis of the cost of production in the country of origin plus a reasonable amount for profit;

- (f) Dumping Margin: The amount by which the normal value exceeds the export price;
- (g) Amount of Subsidy: Direct or indirect financial contribution maintained by the country of origin or export for manufacture, production, export or transportation of the product sold for export, or total amount of benefits in any form of income or price support in the sense of Article XVI of GATT 1994;
- (h) Injury: Material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry;
- (i) Circumvention:

(1) Cases where there is evidence that, a change in the pattern of trade between a third country and Turkey, stemming from a practice, process or work for which there is insufficient due cause or economic justification other than to avoid the anti-dumping duty or countervailing duty, existed and that the remedial effects of the duty are being undermined or nullified in terms of the prices and/or quantities of the like products and there is evidence of dumping or continuance of subsidy in relation to the normal values previously established for the like products, or

(2) Cases where, there is evidence that, due to the lowering of export prices, the expected effects of the anti-dumping duty on selling prices of the imported products subject to measures in Turkish markets are being undermined or nullified and thus the remedial effects of the duty in terms of removal of injury to the domestic industry are being weakened;

- (j) Ministry: The Ministry to which the Undersecretariat for Foreign Trade is attached;
- (k) Directorate General: Directorate General of Imports;
- (l) Board: Board of Evaluation of Unfair Competition in Imports;
- (m) GATT 1994: General Agreement on Tariffs and Trade 1994;
- (n) The Agreement on Implementation of Article VI of GATT 1994: Agreement at the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by Decision of Council of Ministers dated 3/2/1995 and No.95/6525;
- (o) Agreement on Subsidies and Countervailing Measures: Agreement at the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by Decision of Council of Ministers dated 3/2/1995 and No.95/6525.

PART TWO

Determination of Dumping

SECTION ONE

Normal Value

Determination of normal value

Article 5- Normal value is the comparable price paid or payable by independent customers, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export.

However, where the exporter in the exporting country does not produce or does not sell the like product, normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

When there are no or insufficient sales of the like product in the domestic market of the country of export in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the comparable prices of the like product when sold for export, to an appropriate third country, provided that those prices are representative.

As regards volume of sales of the like product, sales of the like product intended for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to Turkey. However, a lower volume of sales may also be accepted where it is determined that such sales are of sufficient magnitude to provide for a proper comparison.

Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below per unit production costs plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices, which are below per unit costs at the time of sale, are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time mentioned in the preceding paragraph shall normally be one year but shall in no case be less than six months. Sales below unit costs shall be considered to be made in substantial quantities when it is established that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average unit costs, or that the volume of sales below per unit costs is not less than 20 per cent of the sales under consideration for the determination of normal value.

Costs and profits

Article 6- Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and they reasonably reflect the costs associated with the production and sale of the product under consideration.

Consideration shall be given to evidence submitted by the producer or exporter on the proper allocation of costs, provided that it is shown that such allocations have been historically utilized. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover.

The amounts for selling, general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When the amounts for selling, general and administrative costs and for profits can not be determined on this basis, the amounts may be determined on the basis of:

- (a) The actual costs and profits incurred and realised by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products, or
- (b) The weighted average of the costs and profits incurred and realised by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin, or
- (c) Any other reasonable method, provided that the amount for profits so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

Non-market economy countries

Article 7- In the case of imports from non-market economy countries, normal value shall be determined on the basis of one of the following methods:

- (a) Price actually paid or payable for the like product when destined for consumption in the domestic market of a market economy third country, or
- (b) Export price from a market economy third country to other countries, including Turkey; or
- (c) Constructed value based on the unit cost of production plus selling, general and administrative costs and a reasonable amount for profits, in a market economy third country for the like product, or
- (d) Where those are not possible, any other reasonable basis, including the price actually paid or payable in Turkey for the like product or constructed value on the basis of the cost of production in Turkey for the like product, plus selling, general and administrative costs and a reasonable amount for profits.

Other cases in the determination of normal value

Article 8- In cases where products are not imported directly from the country of origin but are exported from an intermediate country, normal value is the comparable price paid or payable for the like product in the domestic market of the exporting country.

However, price in the country of origin may be used for the determination of normal value, in cases where the products are merely transhipped through the country of export, or such products are not produced in the country of export or there is no comparable price for them in the country of export.

SECTION TWO

Export Price

Determination of export price

Article 9- Export price is the price that is actually paid or payable for the product when sold for export.

In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer. If the products are not resold to an independent buyer, or are not resold in the condition as imported, the export price may be constructed on any reasonable basis.

In such cases, all costs and profits, incurred and realised between importation and resale shall be considered in the calculation. In this respect, items particularly for usual transport, insurance, handling, loading and ancillary costs; customs duties, other taxes and additional fiscal liabilities payable by reason of the importation or sale of the goods; selling, general and administrative costs and profits shall be taken into account.

SECTION THREE

Comparison and Dumping Margin

Fair comparison

Article 10- In order to ensure a fair comparison between the export price and normal value, such comparison shall be made at the same level of trade, preferably at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

For purposes of price comparison; due account shall be taken of differences in terms of sales, taxation, levels of trade, quantities, physical characteristics and any other differences which affect price comparability.

In order that any claim by interested parties for such differences be taken into account, they shall be made with supporting evidence.

Dumping margin

Article 11- Dumping margin shall be established by a comparison of normal value and export price on a weighted average or transaction basis. However, a normal value established on a weighted

average basis may be compared to prices of individual export transactions, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the comparison on weighted average or transaction basis would not reflect the full degree of dumping being practised.

PART THREE

Determination of Subsidy

Notion of subsidy

Article 12- Subsidy shall be deemed to exist if there is a direct or indirect financial contribution by the country of origin or export which confers a benefit or there is any form of income or price support in the sense of Article XVI of GATT 1994.

In order that measures be taken in respect of subsidized imports, it should have been determined that the subsidy is prohibited as defined in Article 3 of the Agreement on Subsidies and Countervailing Measures, or that it is specific to an enterprise / group of enterprises or industry / group of industries within the meaning of Article 2 and unless the subsidy is non-actionable as defined in Article 8 of the Agreement.

Calculation of the amount of the countervailable subsidy

Article 13- The amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient during the investigation period. This period shall normally be the most recent accounting year of the beneficiary. However, it may be any other period of at least 6 months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

Calculation of the benefit to the recipient

Article 14- As regards the calculation of the benefit to the recipient, the following rules shall apply:

- (a) Government provision of equity capital shall not be considered to confer a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin or export;
- (b) A loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In that event the benefit shall be the difference between the two amounts;
- (c) A loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;

- (d) The provision of goods or services or purchase of goods by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate payment or the purchase is made for more than adequate payment. The adequacy of payment shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

General provisions on calculation

Article 15- The amount of the countervailable subsidies shall be determined in accordance with the following provisions:

- (a) The amount of the countervailable subsidies shall be determined on the basis of the per unit quantity of the subsidised product exported to Turkey. In establishing this amount, any application fee or other costs incurred in order to obtain the subsidy; and export taxes and all charges levied on the export of the product to Turkey specifically intended to offset the subsidy, may be deducted from the total subsidy. The interested party claiming such a deduction should prove that the claim is justified.
- (b) 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.
- (c) Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period, which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in paragraph (b) of this Article. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with paragraph (b) of Article 14 of this Regulation.
- (d) Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in paragraph (b) of this Article, unless special circumstances arise justifying attribution over a different period.

PART FOUR

Determination of Injury

Notion of injury

Article 16- The term injury shall be taken to mean material injury or threat of material injury to a domestic industry, or material retardation of the establishment of such an industry.

Determination of injury

Article 17- A determination of material injury shall be based on positive evidence and shall involve an objective examination of both the volume of dumped or subsidised imports and the effect

of such imports on prices in the domestic market for like products, and the consequent impact of those imports on the domestic industry.

With regard to the volume of dumped or subsidised imports; consideration shall be given to whether there has been a significant increase in such imports, either in absolute terms or relative to production or consumption in Turkey. With regard to the effect of the dumped or subsidised imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped or subsidised imports as compared with the price of the like product in Turkey, or whether the effect of such imports is to depress prices to a significant degree or prevent price increases. No one or several of these factors can necessarily give decisive guidance.

Where imports of a product from more than one country are simultaneously subject to investigation, the effects of such imports may be cumulatively assessed. Such assessment may be made only if margin of dumping or amount of subsidy established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible, and a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition among imported products and the conditions of competition between the imported products and the like domestic product.

The examination of the impact of dumped or subsidised imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

It must be demonstrated, with reference to the factors mentioned above, that the dumped or subsidised imports are causing injury to the domestic industry. The demonstration of a causal relationship between the dumped or subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence. Injury caused by factors other than dumped or subsidised imports must not be attributed to these imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping or subsidised prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

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

A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumped or subsidised imports would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) A significant rate of increase of dumped or subsidised imports into the domestic market indicating the likelihood of substantially increased importation;
- (b) Sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped or subsidised exports to Turkey, taking into account the availability of other export markets to absorb any additional exports;
- (c) Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
- (d) Inventories of the product being investigated;
- (e) As regards the subsidy investigations, the nature of the subsidy in question and the trade effects likely to arise therefrom.

No one of these factors by itself can necessarily give decisive guidance. The totality of the factors considered must lead to the conclusion that further dumped or subsidised exports are imminent and that, unless protective action is taken, material injury will occur.

PART FIVE

Complaint, Examination and Procedure and Principles of the Investigation

SECTION ONE

Complaint and Examination

Domestic industry

Article 18- The term domestic industry refers to the domestic producers as a whole of the like product in Turkey or to those of them whose collective output of the product constitutes a major proportion of total domestic production of those products.

However, where producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidised products, the term domestic industry may be interpreted as referring to the rest of the producers.

Producers shall be deemed to be related to exporters or importers only if;

- (a) One of them directly or indirectly controls the other; or
- (b) Both of them are directly or indirectly controlled by a third person; or
- (c) Together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Complaint and examination

Article 19- Domestic producers or any natural or legal person or association acting on behalf of domestic industry, claiming that they are materially injured or that threat of material injury existed by reason of dumped or subsidised imports or that the establishment of an industry is materially retarded due to such imports, may make a written application to the Directorate General.

The complaint shall include evidence of dumping or subsidy, injury and the causal link between dumped or subsidised imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence shall not be considered a complaint.

The application shall contain such information reasonably available to the applicant on the following:

- (a) Identity of the complainant and a description of the volume and value of the domestic production of the like product by the complainant; where a written complaint is made on behalf of the domestic industry, a list of all known domestic producers or associations of the like product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers and the domestic industry on behalf of which the application has been filed;
- (b) A complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of importers of the product in question;
- (c) As regards the complaint for dumping, information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the value of the product established on the basis of cost of production plus a reasonable amount for profit) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in Turkey;
- (d) As regards the complaints for subsidy; evidence with respect to the existence, amount and nature of the subsidy;
- (e) Evidence showing that alleged injury is caused by dumped or subsidised imports (such evidence shall include information on the evolution of the volume of the dumped or subsidised imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices, listed in Article 17 of this Regulation).

The illustrative application form, prepared as a guideline in light of the above set factors, may be obtained from the Directorate General.

The Directorate General shall initiate an examination, where it is determined that the complaint is made by or on behalf of the domestic industry and sufficient evidence is thereby provided. This date shall be deemed to be the initiation date of the examination. Where, the complaint is not properly documented, the complainant shall be so informed.

The General Directorate shall examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

The complaint withdrawn during the examination phase shall be considered not to have been lodged.

SECTION TWO

The Investigation

Initiation of investigation

Article 20- The Directorate General shall complete its examination initiated upon complaint or *ex-officio* within 45 days and shall make a proposal to the Board on whether or not to initiate an investigation.

For the initiation of an investigation, it should be determined that the complaint is made by or on behalf of the domestic industry and there is sufficient evidence on the existence of dumped or subsidised imports and injury on the domestic industry caused by such imports. As regards *ex officio* initiation of an investigation, sufficient evidence, as defined in Article 19, of dumped or subsidised imports and existence of injury on the domestic industry caused by such imports should be present.

The complaint shall be considered 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 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application and shall not be less than 25 per cent of total production of the like product produced by domestic industry in Turkey. In the case of fragmented industries involving an exceptionally large number of producers, support and opposition of the domestic industry may be determined by using statistically valid sampling techniques.

An investigation shall not be initiated where it is determined that the dumping margin, amount of subsidy or volume of imports is negligible.

Where it is decided by the Board to initiate an investigation, the government of the exporting country shall be notified and the investigation shall be initiated by a Communiqué published in the Official Gazette. Such Communiqué shall contain, information on the date of initiation of the investigation, the product concerned, the name of the country of origin or export, the bases on which the allegation of dumped or subsidised imports and causation of injury are claimed and the time limits granted to the interested parties to make themselves known to the Directorate General.

If the Board decides not to initiate an investigation, the complainant shall be so informed.

No information concerning the complaint may be publicised until the initiation of the investigation.

Gathering and verification of information

Article 21- Following the initiation of the proceeding, questionnaires shall be sent to the known importers and exporters of the product concerned. As regards subsidy investigations, the government of the exporting country shall also be sent questionnaires. Questionnaires shall be deemed to have been received one week from the date on which they were mailed and parties shall be given

30 days to reply. An extension to this period may be granted, due account being taken of the time limits of the investigation, provided that the party so requests within time limits and shows due cause for such extension.

The Directorate General may also request additional information and documents from the interested parties at any stage of the investigation, where necessary.

In order to verify information provided or to obtain further details, verification visits may be carried out at the premises of the interested parties. Verification visits shall be carried out if the agreement of the firms concerned is obtained and the related country has been notified and has not objected to the investigation.

Confidentiality

Article 22- Information received for purposes of dumping or subsidy investigations shall be used only for the purpose for which it was requested.

Any information which is by nature confidential, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the providing party.

Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries should be in sufficient detail to permit a reasonable understanding of the substance of the information. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible should be provided.

If it is considered that a request for confidentiality is not warranted and if the supplier of the information is unwilling to authorize its disclosure in any form, such information may be disregarded unless the accuracy of the information is satisfactorily demonstrated from other sources.

Interested parties

Article 23- The following parties shall be deemed to be interested parties for purposes of dumping or subsidy investigations:

- (a) An exporter or foreign producer or the importer of a product subject to investigation, or a business association a majority of the members of which are the exporters, foreign producers or importers of such product;
- (b) The government of the exporting country;
- (c) A producer of the like product in Turkey or a business association a majority of the members of which are producers of the like product in Turkey.

Nevertheless, this provision shall not preclude the other domestic or foreign parties not listed above and likely to be affected by the results of the investigation to be treated as interested parties for purposes of dumping or subsidy investigations.

Hearings

Article 24- Throughout the investigation, the Directorate General shall provide opportunities for all interested parties, for industrial users of the product concerned and for representatives of consumer organisations in cases where the product is commonly sold at retail level, to express their views. To this end, hearing meetings may be arranged upon written request from interested parties or upon invitation made by the Directorate General, so that opposing views may be presented.

Information submitted orally by the interested parties shall be taken into account by the Directorate General in so far as it is submitted in writing.

Disclosure

Article 25- As soon as an investigation has been initiated, non-confidential copy of the complaint shall be sent to the known exporters and to the authorities of the exporting country. Where the number of exporters involved is so large, such information shall be provided only to the authorities of the exporting country or to the relevant trade association. Furthermore, other interested parties shall be given the opportunity to access such information provided they file a written application to that end.

Upon written request to the Directorate General and whenever practicable, interested parties shall be provided with the opportunity to see all information that is relevant to the presentation of their cases and not confidential. This provision shall only be applicable for the documents provided by the parties to the investigation and it can under no circumstances be extended to the documents prepared by the Directorate General for internal purposes.

In cases where a provisional measure has been imposed, interested parties may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be met, with due regard being paid to the protection of confidentiality, provided that they are made in writing and immediately following the imposition of provisional measures.

Before a final determination is made, all interested parties shall be informed of the essential facts and considerations, which form the basis for the decision whether to impose definitive measures with due regard being paid to the protection of confidentiality. Where the number of interested parties is so large, the necessary information shall be provided through the related business association or the representative of the country concerned.

Non-cooperation

Article 26- In cases where an interested party does not provide necessary information within time limits provided or refuses access to or significantly impede the investigation or supplies false or misleading information, such party shall be deemed to be non-cooperative. In such cases, provisional or final findings, affirmative or negative may be made on the basis of the facts available.

If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result of the investigation may be less favourable to that party than if it had cooperated.

Sampling

Article 27- In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of the information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

Selection for exporters, producers, importers or types of products shall be made by the Directorate General preferably in consultation with and with the consent of the exporters, producers or importers concerned.

In cases where the authorities have limited their examination as provided for in this paragraph, an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation shall nevertheless be determined, except where the number of exporters or producers is so large that individual examination would be unduly burdensome to the authorities and prevent the timely completion of the investigation.

Where it is decided to employ sampling and there is a degree of non-cooperation by some or all of the parties selected which is likely to affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the provisions of this Regulation on non-cooperation shall apply.

Negligible rates

Article 28- Negligible rates as regards the margin of dumping or amount of subsidy or volume of imports are as follows:

- (A) Regarding dumping investigations, cases where;
 - (a) Margin of dumping, expressed as a percentage of the export price is less than 2 per cent; or
 - (b) The volume of dumped imports from the country concerned is found to account for less than 3 per cent of imports of the like product and where more than one country is involved, imports from countries accounting for less than 3 per cent individually, does not account collectively for more than 7 per cent of imports of the like product.
- (B) Regarding subsidy investigations, cases where;
 - (a) Amount of subsidy is less than 1 per cent of the value of the product concerned; or
 - (b) As regards imports from developing countries;
 - (1) Having reserved the provisions of Article 27.11 of the Agreement on Subsidies and Countervailing Measures, the amount of subsidy does not exceed 2 per cent of the value of the product concerned; or
 - (2) The volume of subsidised imports from the country concerned is found to account for less than 4 per cent of the total imports of the like product and where more than one developing

country is involved, imports from developing countries accounting for less than 4 per cent individually, does not account collectively for more than 9 per cent of the total imports.

Termination and suspension of investigation

Article 29- Where, as a result of the investigation, it is determined that imports concerned are not dumped or subsidised or that no injury is caused by such imports or margin of dumping, amount of subsidy or volume of imports is negligible, the investigation shall be terminated by the Board.

In cases where the complaint is withdrawn, the reason for complaint disappeared or the complainant no longer cooperates, the investigation may be terminated by the Board.

Where undertakings are accepted, the investigation may be suspended.

On the other hand, a subsidy investigation may be terminated or suspended when the provision of subsidy is ceased.

Duration of proceedings

Article 30- Investigations shall except in special circumstances be concluded within one year. The Board may extend such period up to 6 months, where necessary.

Public notices regarding the investigation

Article 31- The decision to initiate a dumping or subsidy investigation and any decisions for provisional and definitive measures, undertakings, suspension and termination, shall be announced by a Communiqué published in the Official Gazette. Such notices shall contain information on the product concerned, exporting company, the country of export or origin and due regard being paid to the confidentiality, findings and determinations reached in the investigation. All such notices shall be forwarded to the countries concerned and to all known producers and exporters of the product concerned.

PART SIX Undertakings

Acceptance of undertakings

Article 32- Under the following circumstances, dumping or subsidy investigations may be suspended without imposition of provisional or definitive measures:

- (a) Where, in the course of a dumping investigation, the exporter undertakes to revise its export prices or to cease exports at dumped prices and the Board accepts such undertaking; or
- (b) Where, in the course of a subsidy investigation, the exporter undertakes to revise its export prices or the exporting country undertakes to cease or to limit the application of subsidies or undertakes to impose new measures in that respect and the Board accepts such undertaking.

Undertakings may also be proposed by the Board. No exporter or exporting country shall be obliged to accept such undertakings.

Investigations shall be completed if the exporter in a dumping investigation or the exporting country in a subsidy investigation so requests or the Board so decides in both cases.

For undertakings to be sought or accepted by the Board, provisional affirmative determinations of dumped or subsidised imports and injury caused by such imports should have been made. As regards subsidy investigations, undertakings offered by the exporter may only be accepted if the approval of the country concerned is obtained.

Breach of undertakings

Article 33- The Directorate General may require the party from whom undertakings have been accepted, to provide periodical information as regards to the fulfilment of such undertaking and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of undertaking.

In case of breach of undertakings, a provisional or definitive duty may be imposed on the basis of the facts available.

PART SEVEN

Review Investigations, Refund Investigations and Other Investigations

SECTION ONE

Review Investigations

Interim review investigation

Article 34- An interim review may be initiated for the review of the measure in force, at the request of the exporter, importer or domestic producer of the product concerned (plus the country of origin or export for subsidy investigations) or *ex officio* provided that at least one year has elapsed since the imposition of the definitive measure. Such requests should contain sufficient evidence justifying the initiation of the review.

An investigation shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping or subsidy and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping or subsidy which is causing injury.

An interim review investigation may be carried out separately as to cover either dumping or subsidy and injury simultaneously or individually. In the course of this investigation, whether the circumstances with regard to dumping or subsidy and injury have changed significantly or whether the existing measures are achieving the intended results in removing the injury previously established, shall be examined.

Expiry review investigation

Article 35- A definitive measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping or subsidy and injury.

A notice of impending expiry shall be given in a communiqué published in the Official Gazette in the final year of the period of application of the measures. Domestic producers of the product concerned may, no later than 3 months before the end of the five-year period, submit a written request to the Directorate General containing sufficient evidence, for the initiation of a review investigation.

Moreover, a notice announcing the expiry of the five-year period and the revocation of measures shall also be published in the Official Gazette.

An expiry review shall be initiated upon the written request by the domestic producers or *ex officio* and the measure concerned shall remain in force pending the outcome of such review.

An expiry review shall be initiated where there is sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping or subsidy and injury. In this respect, such a likelihood may, for example, be indicated by evidence of continued dumping or subsidy and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping or subsidy.

In the course of this investigation; exporters, producers, the representative of the exporting country and the domestic producers of the product subject to measures (plus the country of origin, for subsidy investigations), shall be provided with the opportunity to comment on the matters set out in the review request and express their opposing views. Conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping or subsidy and injury.

New exporter review investigation

Article 36- Exporters or producers which have not exported the product subject to measures to Turkey during the period of investigation, may submit a written application to the Directorate General, requesting the determination of individual margins of dumping or subsidy amount.

The exporter applying for such review should demonstrate that it is not related to any of the exporters or producers in the exporting country which are subject to anti dumping or countervailing measures on the product, and that it has actually exported the product concerned to Turkey following the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after domestic producers have been given an opportunity to comment.

SECTION TWO

Refund Investigation

Refund investigation

Article 37- An importer requesting the reimbursement of duties collected by such reason that margin of dumping or amount of subsidy, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force, shall submit a written application supported by evidence to the Directorate General, within 6 months from the date on which definitive duties were collected. An application for refund shall only be taken into account where it contains

precise information on the amount of duties claimed and all customs documentation relating to the calculation and payment of such amount, besides the evidence, for a representative period, of the normal value and export prices to Turkey of all sales of this exporter or producer.

In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the margin of dumping or amount of subsidy has been reduced or eliminated, and that the relevant supporting evidence will be provided to the Directorate General. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

Following the request for refund, the Board may decide to what extent the refund should be granted or where deemed necessary may decide to initiate a refund investigation whether to grant such application.

The decision with respect to the refund requests shall be made within 12 months following a request duly supported with evidence. Such period may be extended up to 18 months where necessary. The payment of any refund authorised shall be made within 90 day of such decision.

SECTION THREE

Other Investigations

Circumvention investigations

Article 38- Domestic producers, claiming that the effects of the definitive duty or countervailing duty in force are being eliminated, may submit a written request to the Directorate General duly supported with evidence, for the initiation of a circumvention investigation. An investigation may also be initiated *ex officio* upon proposal by the Directorate General.

Reopening of the investigation

Article 39- The domestic industry, alleging that the definitive duties were neutralized due to a fall in export prices, may submit a written request to the Directorate General for the reopening of an investigation. An investigation may also be initiated *ex officio* upon the proposal by the General Directorate. The request shall contain sufficient evidence showing that measures have led to no movement or insufficient movement in sales prices of the product subject to measures in the Turkish market. Following the request, where it is decided by the Board to reopen an investigation, exporters, importers and producers of the product concerned shall be provided with the opportunity to submit comments on the sales prices of the product.

If during the investigation, it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established, export prices shall be reassessed and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that a lack of movement in the prices is due to a fall in export prices which has occurred prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

The requests, as regards the examination of normal value to be involved in the investigation shall only be taken into account where complete information on revised normal values, duly substantiated by evidence, is made available to the Directorate General within time limits set out in the Communiqué on the initiation of an investigation.

SECTION FOUR

General Provisions

Procedure

Article 40- Unless otherwise specified, examinations and investigations set out under this part shall be subject to the procedural rules followed in ordinary investigations.

Methods

Article 41- Investigations set out in this section shall be subject to the provisions on calculations of dumping margin or amount of subsidy and on sampling applied for normal investigations.

Measures

Article 42- Consequent to the investigations defined in Articles 34, 35 and 36 of this Regulation; decisions may be made as to the revocation, alteration or continuation of the duties in force.

PART EIGHT

Board of Evaluation of Unfair Competition in Imports

Structure of the Board

Article 43- The Board, headed by the Director General of Imports or the Deputy Director General assigned by the latter, consists of the representatives of the Ministry of Agriculture and Rural Affairs, Ministry of Industry and Commerce, the Under-secretariat of the State Planning Organization, Under-secretariat of Customs, Union of Chambers of Commerce and Industry and Union of Chambers of Agriculture and the related head of department in the Directorate General of Imports.

Working procedures and principles of the Board

Article 44- Where necessary, the Board shall convene upon invitation from the head of the Board. The Directorate General shall prepare the agenda of the meeting and information on the items to be discussed shall be sent to the members of the Board in advance.

The Board shall meet with simple majority. Where majority could not be obtained in the first meeting, no majority shall be sought for the meeting to be held the following working day.

The Board shall decide by majority of the votes cast. Where the votes are equal, the side for which the head of Board voted shall be deemed to account for the majority.

The head of Board, depending on the nature of the subjects to be discussed and only for consultation purposes may invite representatives from universities and relevant institutions. Such persons can not participate in voting.

Members of the Board are not allowed to participate in the meeting, if they are determined to be in relation with the interested parties, as defined in Article 245 of the Law on Civil Procedure.

It is obligatory that such members of the Board representing business associations not themselves be producers, exporters or importers of the product subject to investigation and shall under no circumstances deal with trade of such products. Otherwise, the provisions of the above paragraph shall apply.

PART NINE

Final Provisions

Authorisation

Article 45- The Undersecretariat for Foreign Trade is authorised to enact Communiqués related to the subjects governed by this Regulation.

Repealed regulation

Article 46- Regulation on the Prevention of Unfair Competition in Imports, published in the Official Gazette No.20295, dated 27/09/1999 and the amendments thereto are hereby repealed.

Entry into force

Article 47- This Regulation shall enter into force on the day of its publication and be effective as of 25/10/1999.

Implementation

Article 48- This Regulation shall be implemented by the Minister to whom the Undersecretariat for Foreign Trade is attached.
