

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/953
19 January 1959

Limited Distribution

Original: Spanish

ANTI-DUMPING AND COUNTERVAILING DUTIES

New Provisions received from the Government of Cuba

The secretariat has received from the Government of Cuba for the information of the CONTRACTING PARTIES to the General Agreement a copy of Presidential Decree No. 2032 of 19 June 1958 which was published in the Official Gazette of the Republic of 8 July 1958, and incorporates the Regulations relating to foreign dumping and subsidization and the levy of anti-dumping and countervailing duties.

The transitional provisions included in Decree No. 227 of 28 January 1958 establishing the new customs tariff of the Cuban Republic stipulated that the Ministerial Committee on Tariff Reform would, within a period of six months from the promulgation of the said Decree, prepare and submit to the Executive Power a proposed Decree incorporating Regulations establishing the various categories and methods of dumping and subsidization, as well as procedures for the determination and levy of anti-dumping and countervailing duties.

In pursuance of the above-mentioned provisions, the Ministerial Committee on Tariff Reform has drawn up the relevant Draft Regulations which have been duly approved by the Executive Power and are now included in the attached Decree. Such regulations are supplemental to the General Provisions of the new Customs Tariff which relate to anti-dumping and countervailing duties.

Decree No. 2032

WHEREAS Decree Law No. 2080 of 27 January 1955, published in the Official Gazette of 7 February 1955, authorizes the Executive Power to undertake the reform of the Customs Tariff and to fix customs duties and impose surcharges;

WHEREAS Article 3, paragraph 8, of the said Decree Law further authorizes the Executive Power to impose a surcharge on goods for which export bounties are granted in the countries of manufacture or production, or in countries where the rate of exchange is adjusted in a fictitious manner which has equivalent effect to the granting of an export bounty;

WHEREAS, in pursuance of the authorization conferred upon it by Article 3 of said Decree Law No. 2080 of 1955, the Executive Power promulgated Decree No. 227 of 28 January 1958 introducing a new Customs Tariff which includes General Provisions, a Schedule of Tare-weights, a Nomenclature and a Schedule of Tariff Duties;

WHEREAS Articles 51 and 53 of Chapter X of the said General Provisions authorize the Finance Minister to impose anti-dumping and countervailing duties for the purpose of offsetting the effects of dumping and/or of any bounties or subsidies bestowed, directly or indirectly, on the manufacture, production, export or transportation of any merchandise imported into Cuba;

WHEREAS Article 55 of the said General Provisions of the Customs Tariff provides that the Regulations shall lay down the various categories or methods of dumping and/or subsidization and shall establish adequate procedures for the determination and levy of anti-dumping and countervailing duties and whereas sub-paragraph (b) of paragraph 2 of the transitional provisions of said Decree No. 227 of 28 January 1958 provides that the Ministerial Committee on Tariff Reform shall prepare and submit to the Executive Power the proposed Decree incorporating Regulations for the determination and levy of anti-dumping and countervailing duties;

WHEREAS the relevant legal stipulations have to be carried out in pursuance of the Law governing the application of legal provisions for the safeguard of domestic production.

The President of the Republic, exercising the powers conferred upon him by the Constitution and by existing legislation, in particular by Decree Law No. 2080 of 27 January 1955 and Decree No. 227 of 28 January 1958, acting upon a proposal by the Finance Minister and the Ministerial Committee on the Tariff Reform, with the assistance of the Council of Ministers,

RESOLVES as follows:

REGULATIONS CONCERNING FOREIGN DUMPING AND SUBSIDIES AND THE
LEVY OF ANTI-DUMPING AND COUNTERVAILING DUTIES

CHAPTER I

DUMPING

Article 1

The importation into Cuban territory of merchandise at less than its normal value, which is such as to cause or threaten injury to a Cuban industry, to retard its development or hinder the establishment of a domestic industry, shall constitute dumping, due account being taken therefor of the provisions of paragraphs (a) and (b) of Article 51 of the General Provisions of the Customs Tariff.

Article 2

Any agreement with fraudulent intent between the foreign exporter and the Cuban importer, for the purpose of fixing the price of the merchandise at a level lower than its normal value with the intent of evading import duties, consular taxes or any charges levied by the Customs Services, shall also constitute dumping where, simultaneously with evasion, such action results in, or brings about, the consequences referred to in Article 1. Where such action does not result in or bring about such consequences, the importer shall incur the penalties set forth in Article 221 of the Customs Ordinance as amended by Decree Law No. 570 of 1953.

Article 3

Dumping shall be legally remedied and offset through the levy of anti-dumping duties. The procedures set forth below for determining the margin of dumping existing in each case shall be intended to safeguard the legitimate interests of domestic producers, due consideration being given to the legitimate interests of domestic importers, without impeding the normal flow of goods into the import market.

CHAPTER II

SUBSIDIES

Article 4

Any product or merchandise benefiting from premiums, grants, fictitious exchange rates, concessional adjustments in freight rates or any other bounty or subsidy bestowed directly or indirectly upon the manufacture, production or export of such product or merchandise, shall be subjected upon importation into Cuba to special countervailing duties for which the rates and method of

levy are set forth below, where importation is such as to cause or threaten injury to a Cuban industry, or is such as to retard its development or to hinder its establishment.

Article 5

Countervailing duties may also be imposed on merchandise imported from countries in which the State acts as entrepreneur or fixes export prices, wherever the importation of such merchandise into Cuba is such as to cause or threaten injury to a domestic industry.

CHAPTER III

PROCEDURES FOR THE DETERMINATION OF CASES OF DUMPING OR
OF GOODS BENEFITING FROM SUBSIDIZATION AND FOR THE
LEVY OF ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 6

Where it deems it appropriate to do so, the Special Commission on Tariffs shall submit to the Minister for Foreign Affairs and the Finance Minister, through the Executive Committee of the National Economic Council, a detailed report listing those products, merchandise or articles manufactured or produced, or about to be manufactured or produced in Cuba, which it suspects may be imported into Cuba at less than normal value. Such reports shall be circulated to Cuban Consuls for the purposes referred to in paragraphs (a), (b), (c), (d) and (e) of Article 17 of Instruction No. 14 issued by the Minister for Foreign Affairs and dated 27 February 1933, or any other provision substituting or supplementing such instruction.

When certifying or attesting consular or commercial invoices relating to merchandise listed in such reports, in pursuance of paragraph (b) of the said Article, Cuban Consuls shall inform the Technical Tariff Commission of the normal prices ruling in the principal markets of the country concerned. Where they observe discrepancies between such prices and those declared, they shall so notify the Technical Tariff Commission as promptly as possible.

The above-mentioned reports shall also be circulated to the Director-General of Customs and to the Customs Collectors throughout the Republic, in order that they should scrutinize prices declared at the time of the customs clearance of merchandise listed in such reports.

Article 7

The National Bank of Cuba, the Cuban Bank for Agricultural and Industrial Development, the Cuban Foreign Commercial Bank and the Bank for Economic and Social Development may bring to the knowledge of the Technical Tariff Commission any information which may be of interest for the purpose of

controlling dumping or subsidies bestowed on any merchandise in foreign countries trading with Cuba, with a view to preventing and avoiding the harmful effects referred to in Article 1.

The Director General for Industries in the Ministry of Agriculture shall in the appropriate manner, and after consultation with domestic industries, notify the Technical Tariff Commission of the effects of any importation prejudicial to domestic producers.

Article 8

Producers, crop-pickers, manufacturers or industrialists, acting individually or through their respective associations, or such associations acting on their own initiative, may address information directly to the Technical Tariff Commission in order to offset dumping or subsidies in respect of goods imported or to be imported from abroad where such imports threaten or cause prejudice to domestic production, such information to include specific details relating to the case under consideration and, wherever possible, documentary evidence or an indication as to where such evidence can be obtained.

Article 9

Officials who, by reason of their functions, are concerned in any manner with the forwarding or shipping of any goods previously notified by the Technical Tariff Commission and coming under the provisions of Article 7 of these Regulations, where they have cognizance of existing dumping practices, or of the granting of premiums or subsidies in respect of such goods, shall forthwith report to their superiors who shall promptly inform the Technical Tariff Commission.

Article 10

The domestic producers concerned may by written information addressed to the Technical Tariff Commission denounce any dumping practices or the granting of any premiums or subsidies upon the exportation of goods to Cuba which are like products, or products similar to those which are produced or manufactured domestically, irrespective of whether such goods are subject to customs duty upon importation into Cuba, such written denunciation to mention the relevant data and facts relating to the "Patente Unica" and "Licencia Municipal" to evidence the status as producer.

Article 11

Within two working days from the date on which the written denunciation is received, or on its own initiative by a majority vote, the Technical Tariff Commission shall:

- (a) order the goods concerned to be held by the relevant Customs Station or Stations for a period not to exceed ten working days; provided that any such order may be issued by telegrams, subject to confirmation within two working days;

- (b) report any decision which it may make to the Director General of the Customs;
- (c) summon the denouncing party who shall be granted a period of five working days - which shall not be extended - to provide banking security against any damage or prejudice, storage costs, delays, etc. which might be suffered by the importing party should the Commission determine that the denunciation intended to prevent dumping or importation of subsidized goods involves wilful misrepresentation or any alien intention. The amount and nature of the security to be provided shall be determined by the Technical Tariff Commission;
- (d) order a summary investigation to be carried out for the purpose of determining, on a provisional basis, without conducting hearings whether there is prima facie evidence that any of the circumstances referred to in Articles 51 to 54, both inclusive, of the General Provisions of the Customs Tariff, do exist in fact.

Article 12

Where the summary investigation leads to a determination that the circumstances referred to in Article 11 (d) above do not exist, the merchandise shall be released, in the form and according to the procedures set forth in paragraph (a) of said Article.

Article 13

Where initial investigation shows that any of the circumstances referred to in Articles 51 to 54, both inclusive, of the General Provisions of the Customs Tariff do exist, the Technical Tariff Commission shall pass a Resolution to the effect that:

1. The importer shall be advised by the Customs Collector:

- (i) that the merchandise may be cleared for home consumption, subject to an effective deposit or banking security being provided for the amount which the Commission shall, in its judgement, determine to be appropriate; or
- (ii) failing the above, that the merchandise shall be held in bond or in bonded warehouse for importer's account until such time as may be necessary.

2. Provide for a time limit of fifteen working days for all parties to notify and produce all the evidence which they propose to invoke. It shall be open to the Commission to prolong the above-mentioned time limit for another fifteen days, at the instance of any interested party who produces valid reasons, before the expiry of the initial period. In exceptional circumstances, the Commission may, of its own accord, extend the time limit for the notification and submission of evidence, such extension to be regarded as extraordinary.

Article 14

Within the time limit referred to in the preceding Article in respect of the taking of evidence, the Technical Tariff Committee may order investigations to be conducted and require supporting or supplementary documents or technical reports to be submitted, as it may deem appropriate.

Article 15

Upon the expiration of the time limit for the submission of evidence, the Commission shall rule that substantiation of the case has ended; however, evidence, reports or documents which may be submitted and deemed to be appropriate to the case within the period allowed for submission of evidence may be annexed in the case before commencement of hearing, and to that end:

1. The Commission shall summon all the parties concerned to an oral and public hearing to be held in the meeting room of the Commission within a period of fifteen days from the day on which substantiation of the case ended.
2. The parties shall be at liberty to appear at the hearing which shall not be suspended for any reason whatever, to present their arguments either in person or by means of their legal representatives.

The Chairman shall first call on the denouncing party, or failing the existence of a denouncing party, to the rapporteur; next, to the importer, and lastly to the foreign exporter or his representative. Interruptions shall not be allowed. There shall be made minutes of the hearing to which there shall be annexed a shorthand note of the arguments to be taken obligatorily. Upon conclusion of the argument of the speaker last called upon, the hearing shall be closed.

Article 16

Within five days after the day on which the hearing is closed, the Technical Tariff Commission shall make a Resolution stating the reasons on which it is based, such Resolution to include the following:

- (a) Number of Resolution - which must be numbered successively and separately for each calendar year; title; names of the parties appearing or of their representatives, as the case may be.
- (b) Subject; a summary and objective description of the problem and a brief indication of the person intervening.
- (c) The facts of the case, in the form of a succinct and objective presentation listing in successive and chronological order the reported facts, exonerating evidence, the proofs received and their appropriateness in the case, together with a brief record of the arguments.
- (d) Conclusions in the form of incorporating, in succinct form, a legal and economic analysis of the case under consideration; and
- (e) Recommendations addressed to the Finance Minister which shall expressly indicate:

- (i) whether or not dumping has actually occurred or whether or not premiums or subsidies have actually been granted;
- (ii) whether prejudice is caused or threatened to a domestic industry, whether a domestic industry may be materially retarded or whether the establishment of a new industry is being impeded;
- (iii) the margin of dumping or the amount of the subsidy, as the case may be;
- (iv) the rate of anti-dumping or countervailing duty to be imposed upon imports of the goods or merchandise in question, within the limits fixed by Articles 52 and 53 of the General Provisions of the tariff;
- (v) the necessity that without previous substantiation and on the basis of past practice, anti-dumping or countervailing duties should be imposed or not upon imports of goods or merchandise originating in one or several places regardless of whether several different exporters or countries are involved;
- (vi) an appreciation of the conduct of the denouncing party from the point of view of the correctness of the facts and his good or bad faith.

Article 17

Anti-dumping and countervailing duties shall not be imposed:

- (a) concurrently to offset or counteract one case of dumping one export premium, or subsidy;
- (b) on the grounds that the goods or merchandise concerned are exempt from the duties and charges levied on the like product when intended for home consumption in the country of origin or export, or on the grounds that such duties and charges are reimbursed.

Article 18

In any case where the Technical Tariff Commission determines that the denunciation which had been intended to prevent dumping or importation of subsidized goods does not involve any bad faith or an alien intention the Finance Minister shall order the deposits or security provided by them to be released, without prejudice to action which may be undertaken, under existing legislation, by the parties which are presumed to suffer damage.

Article 19

Within a period of three working days from the day on which it makes the Resolution referred to in the preceding Article, the Technical Tariff Commission shall forward the dossier including a certified copy of the Resolution to the Finance Minister.

Article 20

Within a period of fifteen working days from the date of receipt, the Finance Minister shall enact the relevant Resolution in accordance with a proposal by the Technical Tariff Committee, such Resolution to be forwarded to the Director General of Customs and the original dossier shall be returned to the Technical Tariff Commission which shall transmit the Resolution to the relevant Customs Collector who shall notify it to the parties concerned.

The parties concerned and the Technical Tariff Commission shall be free directly to lodge an administrative appeal against the Resolution by the Finance Minister within a period of thirty working days from the date of last notification of the Resolution.

CHAPTER IV

THE LEVY OF ANTI-DUMPING OR COUNTERVAILING DUTIES

RESPONSIBILITIES

Article 21

Upon a determination by the Finance Minister that the Customs Administration is entitled to levy anti-dumping or countervailing duties, such duties shall be levied on a firm basis. Where the parties lodge an administrative appeal against the Resolution by the Finance Minister, the Customs Collectors shall levy 75 per cent of the differential duty or margin of dumping or of the countervailing duties, and the balance of 25 per cent shall be deposited with the General Treasury of the Republic pending the outcome of the administrative appeal. The same procedure shall be followed in respect of banking security where the goods are entered for home consumption under the guarantees provided for in Article 13 1(1).

Where the importer of the goods held in bond or in bonded warehouse has not entered them for home consumption, the relevant Customs Collector shall require him to enter them for consumption within a period of ten working days and, upon liquidation, the anti-dumping or countervailing duties, as determined by the Finance Minister, shall be levied in addition to the customs duties. Where the importer has not been identified or has allowed the time limit for entering the goods for home consumption to lapse without doing so, the merchandise shall be placed in the General Warehouse and shall be sold by public auction and notification thereof shall be made to the Consul of the country of shipment.

The auction price shall not be lower than the amount of customs duties and charges to be paid on account of the merchandise plus any anti-dumping or countervailing duties which may have been determined.

Where the goods have already ceased to be under customs jurisdiction, the relevant Customs Collector shall reconsider the clearance form or declaration, taking into account the anti-dumping or countervailing duties, and upon fresh liquidation the relevant amount shall be ordered to be paid and notification thereof made to the importer, or his successor or executor; any amount receivable shall subsequently be regarded as liquidated in favour of the Treasury, and a distraint shall forthwith be levied.

Article 22

Where the denouncing party has submitted a wanton statement or acted in bad faith, where it has been ascertained that the facts referred to in the denunciation are not proven, or when it is clearly demonstrated that denunciation has been effected for another purpose than to prevent dumping, or importation of subsidized goods, the party affected can institute appropriate proceedings against the author of such action and, to that end, the security provided by denouncer shall be maintained for a period of one year from the date on which notification of the Resolution is made by the Finance Minister. If the time limit expires without proceedings having been instituted, the security shall be released by the Customs Collector.

Where civil or criminal proceedings have been instituted, the security shall be maintained until such time as the final judgment is carried out.

Article 23

The Finance Minister or the Director General of the Customs, as the case may be, shall enact such Resolutions as are most appropriate to ensure the implementation of this Decree.

Article 24

The Finance Minister and the Technical Tariff Commission, each within its own sphere of competence, shall be responsible for the implementation of this Decree which shall take effect as from the date on which it is published in the Official Gazette of the Republic.