

GENERAL AGREEMENT ON
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ANTI-DUMPING AND COUNTERVAILING DUTIES
LEGISLATION OF PORTUGAL

Legislative Decree No. 247/77 and Implementing Decree No. 38/77
of 11 June 1977

The secretariat has received from the permanent mission of Portugal the enclosed two Government decrees aimed at adjusting the Portuguese national anti-dumping legislation to commitments deriving from Portugal's acceptance of the Anti-Dumping Code. These decrees replace decree-law No. 46828 of 5 January 1966. The Portuguese mission has pointed out that references in decree-law No. 46829 of 5 January 1966, which remains in force, to "overseas provinces", "Ministry for Overseas", etc. are no longer relevant in view of the fact that Portuguese colonies have since acceded to independence. These references should therefore be disregarded.

Legislative Decree No. 247/77 of 11 June

The Standing Committee for the Application of Anti-Dumping and Countervailing Duties, established by Legislative Decree No. 46829 of 5 January 1966, is constituted in accordance with the provisions of Legislative Decree No. 249/76 of 7 April.

It is necessary, nevertheless, to modify its existing composition, in order to adapt it to changes that have occurred meanwhile in the organizational structure of the Government.

Accordingly,

Acting in pursuance of Article 201, paragraph 1(a) of the Constitution, the Government hereby decrees as follows:

Article 1 - 1. As from this date, the Standing Committee for the Application of Anti-Dumping and Countervailing Duties, established by Article 10 of Legislative Decree No. 46829 of 5 January 1966, shall be composed of representatives of the Ministries of Finance, of Justice, of Trade and Tourism, and of Industry and Technology.

2. Any references to the Ministry of the Economy, in Legislative Decree No. 46828 of 5 January 1966 and other legal texts regarding the application of anti-dumping and countervailing duties, shall be deemed to concern the Ministry of Trade and Tourism.

Article 2 - Legislative Decree No. 249/76 of 7 April is hereby rescinded.

Article 3 - The present Legislative Decree shall enter into force on the day following its publication.

Implementing Decree No. 38/77 of 11 June

Legislative Decree No. 46829 of 5 January 1966 established the basic principles which, in accordance with the obligations taken on by Portugal at international level, govern resort to the imposition of anti-dumping or countervailing duties; the latter, being a means of defending domestic economic activities against competition from exporters in other countries at dumping or subsidized prices are not of a fiscal character.

The provisions of the above-mentioned legal text were supplemented by Implementing Decree No. 46823 of 5 January 1966 which, inter alia, laid down the criteria for determining dumping margins or the importance of subsidies granted.

The preamble to Legislative Decree No. 46829 provided for publication of the latter as a means of revising the implementing provisions, without cumbersome formalities, in the light of experience gained through the application of the said provisions to concrete cases.

Following the adoption of this domestic legislation, an agreement on implementation of Article VI of the General Agreement on Tariffs and Trade (known as the "Anti-Dumping Code") was negotiated within GATT. This Code has been accepted by Portugal, and the domestic legislation must therefore be harmonized with its provisions.

It is considered that the fundamental principles established by Legislative Decree No. 46829 are consistent with the provisions of the above-mentioned Code; it is merely necessary, therefore, to adapt the provisions of the implementing decree on certain points of detail.

Accordingly,

Acting in pursuance of Article 202(c) of the Constitution, the Government hereby decrees as follows:

Article 1 - For the purposes of application of the provisions of Legislative Decree No. 46829, the term "exporting country of goods imported into Portuguese territory" shall be interpreted as referring to the country of consignment of the said goods, except where the latter actually originated in another country and were merely trans-shipped through the country of consignment without being released to the market in the latter country, or where it is not possible to determine the comparable price in the domestic market of the latter country, in which case the country of origin shall be taken into consideration.

Article 2 - For the purposes of application of the provisions of Legislative Decree No. 46829, the term "export price of goods shipped to Portuguese territory" shall be interpreted as referring to the price at which the goods are sold, in the ordinary course of trade, by the exporter or for his account to the importer in the national territory or to the party for whose account the goods are imported into Portuguese territory, allowance having been made for the following adjustments:

- (a) Deduction of the costs of transport, loading, unloading and insurance from the port or locality of the exporting country from which the goods were despatched, to the locality or port of import in Portuguese territory, wherever the above-mentioned costs are included in the price of the goods as invoiced by the exporter;
- (b) Deduction of commissions and other costs, and likewise of expenses incurred by the exporter for the distribution and sale of the goods in Portuguese territory and included in the price invoiced by him;
- (c) Deduction of export duties or other charges having equivalent effect, paid by the exporter upon despatch of the goods to Portuguese territory, unless such charges have been invoiced separately;
- (d) Deduction of all other costs and expenses connected with the export of the goods and their delivery to the importer in Portuguese territory, paid by the manufacturer or the exporter and included in the price invoiced by the exporter, and which would not be necessary if the same goods were sold in the domestic market of the exporting country;
- (e) Inclusion of import duties and other charges having equivalent effect that are applicable in the exporting country and which, by reason of a drawback or similar régime, have not been collected or refunded by reason of the export of the goods;
- (f) Inclusion of indirect taxes and other fiscal charges of equivalent effect that are applicable directly or indirectly in the exporting country at the stage of production, manufacture or marketing of the goods concerned and that are refunded or not collected by reason of the export of the goods.

Article 3

1. Where determination of the export price in accordance with the provisions of the preceding Article is impossible or is unreliable in particular because of association or a compensatory arrangement between the exporter and the importer or third parties, the export price may be constructed on the basis of the price at which the goods are first resold in the original course of trade to an independent buyer; where the goods are not resold to an independent buyer or not resold in the condition as imported, the export price may be constructed on any other reasonable basis

2. In the determination of the export price on the basis of the resale price, the following adjustments shall be made in addition to those mentioned in the preceding Article:

- (a) Deduction of all expenses or costs, ascertained or estimated, connected with the transport, storage, distribution and sale of the goods in the Portuguese market, including a reasonable profit margin on distribution and sale;
- (b) Deduction of the customs duties applicable on the goods upon their import into Portuguese territory and likewise of all additional charges or expenses for customs clearance;
- (c) Deduction of any indirect taxes and other fiscal charges having equivalent effect, collected upon resale of the goods.

Article 4

1. For the purposes of application of the provisions of Legislative Decree No. 46 829, two prices shall be deemed to be comparable where they meet the following conditions:

- (a) They apply to goods that are like or identical and of the same quality;
- (b) They correspond to the same stage of marketing, which shall normally be the ex-factory stage;
- (c) They concern sales effected at as nearly as possible the same time and in quantities of the same magnitude;
- (d) They have been adjusted to allow for differences in conditions and terms of sale, packaging costs, taxation and any other differences that may affect price comparability.

2. The term "like goods" shall be interpreted to mean goods which, while not entirely identical, have characteristics closely resembling those of the goods under consideration.

Article 5 -- The simple exemption or simple refund of import duties, indirect taxes or other fiscal charges having equivalent effect and applied on like or identical goods when destined for consumption in the exporting country shall not be deemed to constitute dumping practices.

Article 6

1. In the determination of injury or threat of injury resulting from dumping, account shall be taken, on the one hand, of the effect of the dumping and, on the other hand, of all other factors which, taken together, may be adversely affecting the industry.

2. The valuation of injury attributable to the dumping shall be based on examination of all factors that can have a bearing on the state of the industry, in particular:

- (a) development and prospects with regard to trade volume, market share, profits, prices, export performance, employment level, volume of dumped imports in relation to volume of other imports, utilization of installed capacity, and productivity;
- (b) restrictive business practices.

3. In the valuation of other injury, account shall be taken of all other factors which may be adversely affecting the industry, in particular: the volume and price of undumped imports of the goods in question, competition between Portuguese producers, contraction in demand due to substitution of other products or to changes in consumer tastes.

4. The valuation of injury shall be made in relation to domestic production of like or identical goods whenever information can be obtained that permits separate identification of the production in terms of criteria based on the production process, the producers' realizations, or profits.

5. Where separate identification in terms of the preceding paragraphs is not possible, the effect of the dumping shall be assessed on the basis of the narrowest possible group of domestic products, comprising like or identical products, for which the necessary information can be provided.

6. The valuation of a threat of injury shall be based on concrete facts supporting a determination that substantially increased imports of the goods concerned at dumped prices would bring about a clearly foreseen and imminent change in circumstances that would inevitably cause injury.

Article 7

1. In evaluating injury, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like or identical products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products;

2. When producers are also importers of the dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers of like or identical products.

Article 8

1. Domestic producers who believe they are suffering serious injury or the threat thereof by reason of dumped imports may request the Standing Committee for the Application of Anti-dumping or Countervailing Duties to examine whether anti-dumping duties should be imposed on the goods in question in pursuance of the provisions of Articles 1 and 2 of Legislative Decree No. 46 829, submitting together with their request all supporting justifications and evidence, and indicating in particular:

- (a) the description and tariff classification of the dumped products;
- (b) the country exporting those products;
- (c) the country of origin, the producer and the exporter of the products;
- (d) evidence of dumping and of injury resulting for the industry.

2. The Standing Committee for the Application of Anti-dumping and Countervailing Duties shall consider the evidence furnished by the applicants, in accordance with the provisions of the present article, in order to determine whether or not a dumping investigation should be initiated.

3. If, following this preliminary examination, it is decided that the evidence furnished by the applicants is not sufficient to justify a dumping investigation, the Standing Committee for the Application of Anti-dumping and Countervailing Duties may decide not to initiate the investigation and shall notify its decision to the applicants, the latter being given the opportunity to present new evidence.

Article 9 - The services of the Ministries of Finance, of Trade and Tourism, and of Industry and Technology may take the initiative of proposing to the Standing Committee for the Application of Anti-dumping and Countervailing Duties the initiation of a dumping investigation, independently of any complaint from producers affected by the dumping.

Article 10

1. In the cases referred to in Article 3 of Legislative Decree No. 46 829, the Standing Committee for the Application of Anti-dumping and Countervailing Duties may initiate a dumping investigation proceeding at the request of the government of another country, such request being transmitted through the intermediary of the Ministry of Foreign Affairs.

2. The request mentioned in the preceding paragraph must be accompanied by evidence of the existence of dumping and of injury resulting, or that could result, therefrom for the industry of the country concerned.

Article 11

1. Domestic exporters who consider themselves to be suffering serious injury or the threat thereof by reason of dumping of goods, from another country with which the Portuguese Government has agreed on the application of anti-dumping duties on the basis of reciprocity, may request the Standing Committee for the Application of Anti-dumping and Countervailing Duties to examine whether the government of the country concerned should be requested to impose anti-dumping duties on those goods; this request shall be made through the intermediary of the Ministry of Foreign Affairs.

2. The request mentioned in the preceding paragraph must be accompanied by evidence of dumping and of injury resulting, or which could result, therefrom for domestic industry.

Article 12

1. Once the dumping investigation is initiated on the basis of evidence deemed sufficient, it shall be brought to the notice of the parties known to be concerned, in particular exporters and government representatives of the countries in question, importers of the goods suspected of being dumped and domestic producers. At the same time, a notice shall be published in the "Diário da República" /Official Gazette/ specifying the product in question and the country of origin or export, and indicating that any relevant information can be communicated to the Standing Committee for the Application of Anti-Dumping and Countervailing Duties.

2. The interested parties mentioned in the preceding paragraph shall be granted a time-limit of not less than fifteen days for the submission of any information and any evidence they may consider useful for the investigation.

3. An opportunity may be given to the parties concerned to familiarize themselves with the information and the evidence obtained in the course of the investigation, with the exception of cases where the information or evidence is, by its nature, considered confidential where its disclosure has not been authorized, at the request of the party that furnished it.

4. In any case in which a request for confidential treatment of information or evidence is not found to be warranted or its disclosure is not authorized by whoever furnished it, such information or evidence may be disregarded for the purposes of the investigation, unless it can be convincingly demonstrated to be correct.

Article 13

1. An investigation initiated in accordance with the provisions of the preceding article shall be terminated if it is found that the dumping has not been proved or if the evidence presented is not sufficient to demonstrate the existence of dumping or of injury; such decision shall be notified to the interested parties mentioned in paragraph 1 of the preceding article.

2. The decision referred to in the preceding paragraph shall be adopted in the form of an order of the Minister of Finance on the recommendation of the Standing Committee for the Application of Anti-dumping and Countervailing Duties.

3. The dumping investigation may also be terminated when the exporters of the goods suspected of being dumped voluntarily undertake to revise their prices so that the difference represented by the margin of dumping is eliminated, or to cease exporting the said goods at dumped prices provided that this is considered practicable.

Article 14

1. Whenever, by reason of an investigation carried out in accordance with the provisions of the foregoing articles, the existence of dumping is demonstrated and this results, or could result, in material injury to domestic industries, or a significant delay in the establishment of a domestic industry, the Standing Committee for the Application of Anti-Dumping and Countervailing Duties shall recommend to the Minister of Finance the promulgation of a decree imposing, under the provisions of articles 1 and 2 of Legislative Decree No. 46 829, anti-dumping duties on imports of the goods in question.

2. In the circumstances referred to in Article 10, the Standing Committee for the Application of Anti-Dumping and Countervailing Duties shall recommend to the Minister of Finance the promulgation of a decree imposing anti-dumping duties, whenever the allegations of the government of the country concerned in respect of dumping are considered to be well founded and it is deemed proved that such dumping is causing, or may cause, material injury to the industry of the country in question exporting identical or like products to the territory of Portugal.

3. The recommendations made in accordance with the provisions of this article shall be accompanied by a report on the results of the investigation conducted in accordance with the preceding articles, and by information necessary for determining the conditions under which the anti-dumping duties shall be payable in keeping with the provisions of the next following article.

Article 15

1. The decree imposing anti-dumping duties shall lay down the conditions under which such duties shall be payable, indicating in particular:

- (a) the nature of the goods to which the duties apply and the relevant tariff classification, mentioning, where appropriate, the trade description, the country of origin or consignment and the names of the producers or exporters;
- (b) the specific or ad valorem rate of duty, which may never be greater than the unit margin of dumping that has been determined;
- (c) the period, whether continuous or discontinuous and whether or not of a fixed duration, over which the duties are payable.

2. In cases where under sub-paragraph (c) of the preceding paragraph, anti-dumping duties have been imposed for an indefinite period, a review of the information and evidence which led to the imposition of such duties shall be undertaken upon a duly justified request by the interested parties or upon the initiative of the Standing Committee for the Application of Anti-Dumping and Countervailing Duties, and at least once annually, in order to verify whether their continuation is still justified or whether it is necessary to modify the rate of those duties or the conditions for their collection.

3. The decree imposing anti-dumping duties on the import of goods originating in or imported from a particular country shall also determine the conditions necessary for the goods in question to be regarded as originating in or imported from the country concerned, as well as the evidence that will be accepted to demonstrate the origin or provenance of the product.

Article 16

1. Where the goods imported are identical or like goods of several suppliers from one or more countries, the anti-dumping duties may be calculated for each import by comparing the export price to a basic price fixed in advance.

2. The basic price shall be established in the decree imposing the anti-dumping duties; it may not exceed the comparable lowest normal price that can be ascertained in the country or countries of origin or consignment of the goods in question.

3. The anti-dumping duties charged on each import shall not exceed the difference between the export price and the basic price.

4. The decree imposing anti-dumping duties shall specify the adjustments to be made, in accordance with the provisions of Article 2, to make the export price comparable.

5. As regards imports subject to anti-dumping duties under the provisions of this article, a new dumping investigation shall be undertaken whenever the interested parties so request and their request is supported by what is considered to be sufficient evidence.

6. Where, after the investigation mentioned in the preceding paragraph carried out by the Standing Committee for the Application of Anti-Dumping and Countervailing Duties, it is determined that there is no dumping, the anti-dumping duties collected shall be refunded; moreover, if it is found that the duties collected exceed the margin of dumping, the difference shall be reimbursed.

Article 17

1. For the purposes of application of the provisions of Article 9 of Legislative Decree No. 46 829, the Standing Committee for the Application of Anti-Dumping and Countervailing Duties may recommend to the Minister of Finance, at the request of the interested parties referred to in Articles 8 and 9, the publication of an order requiring the lodging of a security in cases where after preliminary investigation it is determined that there are strong presumptions of dumping and of material injury to domestic industries.

2. The recommendations made in accordance with the provisions of this article shall be accompanied by a report on the results of the preliminary investigation and by information necessary to determine the conditions under which the security shall be payable in accordance with the provisions of the next following paragraph.

3. The order mentioned in paragraph 1 of this article shall specify inter alia:

- (a) the nature of the goods in respect of which the security is required, their tariff classification and, where appropriate, the trade description, the country of origin or consignment and the names of the producers or exporters;
- (b) the unit amount of the security, which shall be established on a specific or an ad valorem basis and which may in no case exceed the presumable maximum value of the supposed dumping;
- (c) the period during which the security may be held and which shall not exceed three months although it may be extended to six months if the importer and exporter so request.

Article 18

1. The legal texts imposing anti-dumping duties or requiring the lodging of a security may not have retroactive effect and shall be applied only to goods released to the market as from the date of their entry into force.

2. However, where a determination of material injury is made, anti-dumping duties may be applied retroactively for a period of not more than three months.

3. In cases where the provisions of the preceding paragraph apply, if the anti-dumping duties imposed are higher than the amount of the security, the difference shall not be collected; if, on the other hand, the said duties are lower than the amount of the security, the difference shall be reimbursed.

4. Retroactive application of anti-dumping duties shall also be permitted in the case of sporadic imports of a dumped product over a period of not more than three months prior to the time when the security was required whenever the volume of such imports is considered sufficiently high, of itself, to cause material injury to domestic industries.

5. Likewise, in cases where the importer knew, or should have known, that the exporter was engaged in dumping and that such dumping would cause material injury, anti-dumping duties may be applied retroactively to goods released to the market over a period of not more than three months prior to the date on which such duties were imposed.

Article 19

1. The collection and analysis, in accordance with the provisions of this decree, of information and evidence on dumping for the Standing Committee for the Application of Anti-Dumping and Countervailing Duties shall be within the special competence of the representative of the Ministry of Trade and Tourism.

2. The representative of the Ministry of Trade and Tourism shall prepare a detailed report and draw up relevant conclusions which shall be submitted for consideration, together with the case-file, to the Standing Committee for the Application of Anti-Dumping and Countervailing Duties.

3. The representative of the Ministry of Trade and Tourism shall be appointed by a ministerial order which shall specify the services of the Ministry that are to provide him with the necessary support in matters of administration.

4. Administrative tasks that are the direct responsibility of the Standing Committee for the Application of Anti-Dumping and Countervailing Duties shall be entrusted to the services of the General Directorate of Customs designated by the Director-General of Customs.

5. The final opinions of the members of the Standing Committee for the Application of Anti-Dumping and Countervailing Duties on the cases submitted to the Committee shall be deemed to reflect the position of the Ministries they represent.

6. The representative of the Ministry of Trade and Tourism responsible for the collection and analysis of information and evidence concerning dumping may make direct contact with all parties, public or private, from whom he has to obtain information or evidence, except as otherwise provided by Legislative Decree No. 46 829 or by this decree.

Article 20 - The imposition of countervailing duties shall be governed by the provisions of Articles 6 to 19, to the extent that they are applicable.

Article 21 - Legislative Decree No. 46 828 of 5 January 1966 is hereby rescinded.