

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

ADP/W/265

SCM/W/215

21 February 1990

Special Distribution

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and
Countervailing Measures

QUESTIONS FROM THE EUROPEAN COMMUNITIES
CONCERNING THE TURKISH LAW ON THE
PREVENTION OF UNFAIR COMPETITION IN IMPORTATION
(SCM/1/Add.28 of 23 October 1989)

I. Law No. 3577 of 16 June 1989

1. Article 1 (Purpose and Scope)

1.1 From the definition of the purpose and scope of this law, as described in Article 1, it results that this law intends to deal with situations of dumped and/or subsidized imports.

Both the Agreement on Implementation of Article VI of the GATT and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT provide that, when the conditions for the adoption of anti-dumping or countervailing measures are fulfilled, anti-dumping or countervailing duties may be imposed or undertakings adopted.

In Article 1 of the Turkish Law it is provided that the law covers "procedures and rules relating to the administrative, financial, economic and other measures to be taken".

Could the Turkish authorities explain in detail what kind of measures other than duties and undertakings could be adopted on the basis of Article 1 of this law?

1.2 In Article 1 it is also provided that the law deals with imports of dumped and/or subsidized imports with a view to protecting an industry and/or preventing the impairment of the market.

The first notion, i.e. the one relating to the protection of an industry appears near to the injury caused to a domestic industry as provided for by both Agreements. However, it is not clear what is meant by "preventing the impairment of the market". Reference to this notion is also made in Article 2(i) and Article 3. Could the Turkish authorities explain the meaning of this notion?

1.3 In Article 2 (Definitions), lett. (b), a subsidy is defined as "the provision of a direct or indirect benefit". Could the Turkish authorities:

- clarify the meaning of the words "direct" and "indirect";
- clarify whether the existence of a benefit for the recipient firm(s) is sufficient to determine the existence of a countervailable benefit;
- explain whether measures by subjects other than governments or other public bodies are encompassed by this definition;
- explain whether any measure, irrespective of its general availability, constitutes a countervailable benefit;
- explain the absence of any reference to the concept of "charge on the public account" or otherwise "cost to the government"?

1.4 Again in Article 2, lett. (d) defines the term "similar product". Is there any difference between "similar product" and "like product", and which are the differences if any?

2. Article 4 (Complaint and Examination)

This Article provides that "the relevant natural or legal persons or relating occupational institutions claiming that they suffered or are threatened with suffering material injury" may lodge a complaint.

Could the Turkish authorities give a more precise definition of such persons and institutions (bearing in mind that both Agreements provide that an investigation shall normally be initiated upon a written request by or on behalf of the industry affected)?

3. Article 7 (Anti-dumping duty and countervailing duty)

In this Article it is provided that the duty shall be limited to the "quantity or rate" sufficient to eliminate the injury caused by dumping/subsidization. Could the Turkish authorities explain the meaning of the term "quantity" in this connection?

4. Article 10 (Investigation)

Can the Turkish authorities confirm that "ex officio" initiations shall be limited to special circumstances, as is provided for by the two Agreements?

5. Article 11 (Undertakings) provides for the possibility that the Board of Evaluation suspend an investigation following price or quantity undertakings by the exporter(s) concerned.

Could the Turkish authorities explain the absence of a provision like that of Article 4.5(a)(i) of the Subsidies/Countervailing Duties Code,

which provides for the suspension or termination of proceedings if undertakings are accepted under which "the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects"?

6. Article 12 (Provisional measures)

What procedural steps will be taken before provisional measures can be adopted?

7. Article 13 (Definitive measures) provides, in the third paragraph, that "In case an identical or similar product investigated is both dumped and subsidized the anti-dumping duty and the countervailing duty may not be concurrently applied, the one with higher rate shall only prevail.

Could the Turkish authorities clarify:

- whether anti-dumping duties and countervailing duties can never apply concurrently and thus the higher one applies, or whether this latter rule only refers to those cases where anti-dumping duties and countervailing duties do not apply concurrently;
- if this latter is the case, under which conditions anti-dumping duties and countervailing duties can be wholly or partially applied concurrently;
- in any case, why is this rule of prevalence of the duty with higher rate considered appropriate to implement the provision of Article VI:5 of the GATT, according to which "No product of the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization"?

8. Article 14 (Refund) and Article 15 (Other legislation)

8.1 For the refund of duties and for other purposes reference is made to the dispositions of the Customs Laws. Could the Turkish authorities make this legislation available to the Committee on Anti-Dumping Practices?

8.2 Could the Turkish authorities also make Law No. 6183 on the "Prosecution of Public Receivables" available?

II. Decree No. 89/14506

1. Article 1 (Purpose and Scope)

See points 1.1 and 1.2 under I.

2. Article 3 (Rules governing provisional and definitive measures)

What is meant in paragraph 2 of the Article by the words "In case of impossibility of determining all exporters, provisional and definitive measures may be applied to all such investigated products imported from that country"?

3. Article 6 (Revision of definitive measures)

3.1 What kind of evidence is required when a party requests a review of definitive measures?

3.2 Does this Article also apply to undertakings in force?

III. Regulation on the prevention of Unfair Competition in Importation

1. Article 1 (Purpose and Scope)

See points 1.1 and 1.2 under I.

2. Article 5 (Initiating investigation)

Is it the intention of the Turkish authorities to send questionnaires also to domestic producers which have not supported the complaint?

3. Article 7 (Confidentiality of information)

Could the Turkish authorities make available Article 20/4 of Law No. 2577 (Administrative Procedural Law).

4. Article 12 (Acceptance and validity of undertakings)

4.1 The first paragraph of Article 12 refers to the possibility that "the country of origin or the country of export or the exporter may accept and undertake that he will raise his price".

Could the Turkish authorities explain the link between this provision and Article 4.5(a) of the Subsidies/Countervailing Duties Code, where undertakings by governments are those "to eliminate or limit the subsidy or take other measures concerning its effects" (i) whereas price undertakings are only expressly referred to in point (ii) (undertakings by the exporter)?

4.2 For what reasons could undertakings be rejected?

4.3 What is the meaning of the last sentence of the third paragraph: "Nevertheless proposed undertakings are not due to be accepted by the exporter or the country of origin or the country of export"?

5. Article 16 (Calculation of the cost of production)

On what basis will a reasonable amount of the administrative, sales and other sundry expenses be calculated?

6. Article 18 (State trading countries)

6.1 Could the Turkish authorities provide the list of countries enumerated in the "Importation Régime Decree"?

6.2 Could the Turkish authorities clarify their position in respect of the use of countervailing duty proceedings in case of imports from a state trading country?

7. Article 24 (Notion of Subsidy)

(See point 1.3)

In addition, there is a difference between the third paragraph of Article 24 and items h) and i) of the Illustrative List of Export Subsidies annexed to the Subsidies/Countervailing Duties Code. In particular, the exemption from customs duties and indirect taxes seems to be allowable without reference to physical incorporation and without reference to whether the finished product is destined to be exported or sold on the domestic market. Could the Turkish authorities explain these differences, as well as whether they consider that the hypothesis covered by the third paragraph of Article 24 is not a subsidy at all or just not an export subsidy?

8. Article 25 (Determination of the Subsidy)

8.1 Could the Turkish authorities clarify the meaning of the expression used in the first paragraph of Article 25, "In case the establishment of a subsidy not made according to manufactured, produced, exported or transported quantities"?

8.2 Could the Turkish authorities clarify the meaning of the second paragraph of Article 25: "In case of actual or contingent acquisition of fixed assets as subsidy, the subsidy value shall be calculated by deducting the ordinary amortization shares of such assets. In case of assets not subject to amortization, the subsidy shall be assessed as interest free loan"?

8.3 Does the third paragraph of Article 25 mean that if any information on the amount of a subsidy does not specify the allocation of such amount in relation to the beneficiary's production, the entire amount will be allocated to the beneficiary's exports to Turkey?

8.4 On imports from State Trading Countries see point (8).

8.5 What does the last paragraph of Article 25 mean by "cases of variance of subsidy amounts"?