RESTRICTED

ADP/W/286
SCM/W/230
18 April 1991

Special Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

Original: English

RESPONSES BY TURKEY TO QUESTIONS SUBMITTED BY HONG KONG CONCERNING THE TURKISH LEGISLATION ON THE PREVENTION OF UNFAIR COMPETITION IN IMPORTATION

I. Decree No. 89/14506

Article 2 (Retroactivity)

Question 1

Paragraph 3 of the Article provides that retroactive implementation is limited to 90 days. Could the Turkish authorities confirm that the 90-day limit refers to the period not more than 90 days prior to the date of application of provisional measures as provided in both Agreements on implementation of Article VI of the GATT?

Answer 1

Turkish legislation on the prevention of unfair competition in importation covering the procedures of measures against dumped or subsidized imports consists of the Law, the Decree and the Regulation which should be taken into account as a whole in the implementation.

Within this framework, Article 7 of the Law and Article 2 of the Decree on the Prevention of Unfair Competition in Importation should be considered together.

Article 7 of the Law states that the period of the retroactive implementation may not exceed 90 days as from the adoption date of provisional measures and Article 2 of the Decree defines the cases necessitating the retroactive imposition of duties.

In fact, those articles are parallel to Article 11:1 of the Anti-Dumping Code and Article 5:9 of the Subsidies Code of the GATT.

Article 3 (Provisional and Definitive Measures)

Question 2

Paragraph 2 of the Article provides that "in case of several exporters from the same country and impossibility of determining all exporters, provisional and definitive measures may be applied to all such investigated

products imported from that country". Could the Turkish authorities explain how they would impose provisional and definitive measures on the exporters which have been investigated and those which have not been investigated and whether any distinction would be made on the measures to be imposed on these two groups of exporters?

Answer 2

The implementation is based on the application of provisional and definitive measures only against the firms investigated in the country subject to investigation. However, in cases where several exporters from the same country are involved and it is impossible to determine all exporters, in conformity with Article 8:2 of the GATT Anti-Dumping Code, provisional or definitive measures are applied to all imports of the investigated product originating in that country, without making any distinctions.

Question 3

Also on paragraph 2 of the Article, could the Turkish authorities explain how they would deal with the imports of the product subject to provisional and definitive measures from exporters who start to export to Turkey only after the initiation of the investigations and from those who only started exporting after the completion of the investigations?

Answer 3

Under the provision of Article 3 - Paragraph 2 of the Decree, provisional or definitive measures which are decided to be imposed without making any distinction may be applied to the exporters who start exporting to Turkey after the initiation of the investigation or after the completion of the investigation.

But, in accordance with the provisions of the legislation on the prevention of unfair competition in importation, exporting firms may request the revision of the definitive measures at least one year after the conclusion of the investigation.

Question 4

Paragraph 3 of the Article provides that "in case the investigated product is imported from more than one country, measures may be taken on a non-discriminatory basis on imports of such product causing injury". Could the Turkish authorities explain what is meant by "on a non-discriminatory basis"?

Answer 4

The phrase "non-discriminatory basis" in this paragraph includes a similar meaning with those provided in Article 8:2 of the Anti-Dumping Code and Article 4:3 of the Subsidies Code of the GATT and the implementation is carried out in accordance with those provisions of both Codes.

Article 5 (Definitive measures)

Question 5

According to paragraph 2 of the Article, definitive measures shall remain in effect as long as necessary to remove the effects of the injury caused by such importation. Could the Turkish authorities explain under what circumstances and based on what kind of evidence they would consider that the effects of the injury have been removed?

Answer 5

Under Section 7 of the Regulation concerning "Injury", the criteria considered in the determination of injury are clearly mentioned. The removal of the effects of injury is also determined with respect to the results of the examination to be undertaken on the basis of those criteria.

II. Regulation on the Prevention of Unfair Competition in Importation

Article 3 (Complaint)

Question 6

Could the Turkish authorities explain how they would assess the standing of the complainant for the purpose of initiating an investigation, bearing in mind that both Agreements on implementation of Article VI of the GATT provide that an investigation shall normally be initiated upon written request by or on behalf of the industry affected and that the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products?

Answer 6

Article 4 of the Law defines the status of the complainant as well as the means of complaint. This article was prepared in conformity with Article 2:1 of the Subsidies Code and the implementation is carried on this frame.

Articles 8 and 9 (Evidence)

Question 7

Could the Turkish authorities explain who are the parties that have the right to request interview with the Turkish General Directorate under Article 8 and to examine non-confidential information relating to the investigation under Article 9? Would such parties include the government of the exporting countries as provided under both Agreements on implementation of Article VI of the GATT?

Answer 7

As is stated in Article 6 of the GATT Anti-Dumping Code, the parties that may request interview under Article 8 and examine non-confidential information under Article 9 of the Regulation are the complainant, the concerned exporters and importers and the government of the exporting countries.

Question 8

Could the Turkish authorities confirm whether an interested party to the investigation would be allowed to present in writing its views on the investigation and the provisional and definitive measures that might be taken, in addition to the questionnaire referred to in Article 5 and the interviews with the General Directorate mentioned in Article 8?

Answer 8

In the course of investigation, the General Directorate of Importation may take into account all information submitted by the concerned parties and those considered as useful in respect to the investigation.

Article 11 (Investigation Term and Announcement)

Question 9

According to paragraph 1 of the Article, conclusive decision "shall be rendered within one year from the initiation of the investigation to the latest". Could the Turkish authorities explain what does the "conclusive decision" refer to? Would it mean that definitive measures, if necessary, would have have to be imposed within one year from the initiation of the investigation?

Answer 9

According to Article 11 of the Regulation the conclusive decision regarding the investigation shall be taken within one year after the initiation of the investigation. This decision refers to the imposition of anti-dumping and countervailing duties as definitive measures or the termination of investigation without taking any measure.

Question 10

What kind of information would be included in the announcement of the investigation results? Would it include the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor as provided under both Agreements on the implementation of Article VI of the GATT?

Answer 10

Within the scope of the legislation on the prevention of unfair competition in importation, the announcement of investigation results is prepared according to the provisions of both Codes and this announcement provides the information concerning the investigated product, exporting firm, exporting country or country of origin, as well as other information appurtenant to the investigation and conclusive decisions.

Article 12 (Acceptance and validity of undertakings)

Question 11

Could the Turkish authorities explain under what circumstances they would accept quantitative type undertaking, bearing in mind that both anti-dumping and countervailing measures are aimed at addressing problems in pricing behaviour?

Answer 11

The subject of quantitative type undertaking is viewed within the framework of Article 11 of the Law on the Prevention of Unfair Competition in Importation and Article 4:5 a(i) of the GATT Subsidies Code.

Article 24 (Notion of Subsidy)

Question 12

Could the Turkish authorities explain what direct or indirect benefit in the transportation of a product would be deemed as subsidy?

Answer 12

Under the provisions of Article 24 - Paragraph 2 of the Regulation, the "Illustrative List on the Export Subsidies" referred to in the Annex of the Subsidies Code is taken into account in the determination of which direct or indirect benefit in the transportation of a product would be deemed as a subsidy.

Article 25 (Determination of the Subsidy)

Question 13

Could the Turkish authorities explain what is "reasonable distribution of the subsidy value", and how it is related to the calculation of subsidization per unit provided under the Subsidies/Countervailing Duties Code?

Answer 13

The expression "reasonable distribution of the subsidy value" in this Article means "appropriate allocation of the subsidy value".

Within the scope of this Article, in case where, a subsidy is not granted according to the manufactured, produced, exported or transported quantities, the amount of subsidy will be determined by the allocation of the subsidy value over the production and exportation levels of the investigated product in an appropriate period, on per product basis.

The implementation of this Article shall be carried on in conformity with the provisions of the Subsidies Code.