

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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29 October 1992

Special Distribution

Committee on Anti-Dumping Practices

Committee on Subsidies and  
Countervailing Measures

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### LEGISLATION OF BRAZIL

Reproduced beneath is the text of changes which have been introduced in laws and regulations in Brazil regarding the domestic administration of anti-dumping and countervailing measures.

#### LAW No. 8,174/91

#### On Principles of Agricultural Policy, Establishing the Powers of the National Agricultural Policy Council - CNPA, Countervailing Duties on Agricultural Products, Protection for Small-Scale Producers and Rules for the Establishment and Disposal of Public Stocks

Whereas the President of the Republic has adopted Provisional Measure No. 293 of 1991, the National Congress has approved and I, Nelson Carneiro, President of the Federal Senate, pursuant to Article 62, single paragraph, of the Federal Constitution, promulgate the following Law:

Article 2 - Agricultural products receiving advantages, tax incentives or direct or indirect subsidies in their country of origin shall, when their prices of entry for consumption on the domestic market constitute unfair or predatory competition, be subject to countervailing duties, on the advice of the National Agricultural Policy Council (CNPA).

Article 6 - This Law shall enter into force on the date of its publication.

Article 8 - All provisions to the contrary are repealed.

30 January 1991

Official Gazette of 31 January 1991

DECREE NO. 174/91

Establishing regulations for the imposition of countervailing duties on imports of agricultural products as provided for in Article 2 of Law No. 8174 of 30 January 1991.

The President of the Republic, in the exercise of the powers conferred upon him by Article 84, Indent IV, of the Constitution, and having regard to Article 2 of Law No. 8174 of 30 January 1991, decrees:

Article 1 - Imported products of agricultural origin which receive in their country of origin direct or indirect subsidies, tax incentives or any other advantages, and of which the prices of entry for consumption on the domestic market constitute unfair or predatory competition shall be subject to the imposition of countervailing taxation in the form of an additional import duty.

Article 2 - For the purposes of investigation of the existence of unfair or predatory competition in connection with the import of agricultural products, the following elements shall be taken into account:

- I. importation in significant quantities in absolute terms or relative to domestic production and consumption;
- II. a price of the imported product, when entering the domestic market at the wholesale level, below the price of the like domestic product, taking into account a representative previous period of up to five years;
- III. other relevant economic factors.

Single paragraph - The Foreign Trade Department (DECEX) of the Ministry of the Economy, Finance and Planning shall, on its own initiative or at the request of a representative entity or of such entities through the National Agricultural Policy Council (CNPA), investigate the existence of unfair or predatory competition with domestic industry resulting from the import of agricultural products.

Article 3 - The amount of subsidies shall be calculated, per product unit, by the difference between the f.o.b. export price to Brazil and the estimated f.o.b. price, taking as a reference the price received by the producer in the country of origin.

Single paragraph - The amount of the subsidy referred to in the opening sentence of this Article may be calculated taking as a reference the cost of production in the country of origin.

Article 4 - In the interest of domestic supply, on the proposal of the Ministry of the Economy, Finance and Planning, after receiving the opinion

of the Ministry of Agriculture and Land Reform, the amount of the additional import duty may be lower than that calculated pursuant to the previous Article.

Article 5 - All importers, whether physical or legal persons in public or private law shall be subject to the rules established in this Decree.

Article 6 - The procedure provided for in Article 2 of this Decree shall also be followed in the case of products imported from intermediary or re-exporting countries, on the basis of the advantages granted in the country of origin.

Article 7 - The National Secretariat of the Economy - SNE, of the Ministry of the Economy, Finance and Planning shall establish within sixty days the necessary provisions and rules for the implementation of Article 2 and other provisions of this Decree, after receiving the opinion of the National Agricultural Policy Council.

Article 8 - The Foreign Trade Department (DECEX) of the Ministry of the Economy, Finance and Planning shall draw up the documents necessary for the implementation of this Decree and the provisions stemming from the previous Article.

Article 9 - This Decree shall enter into force on the date of its publication.

Brasilia, 10 July 1991,  
170th year of Independence and 103rd year of the Republic.  
Official Gazette of 11 July 1991.

DIRECTIVE NO. 974/91

The Acting Minister of State for the Economy, Finance and Planning, in the exercise of his powers and pursuant to Decree No. 174 of 10 July 1991, decides:

Article 1 - In the application to agricultural products of provisional or definitive anti-dumping duties and countervailing duties as referred to in Resolution No. 1227 of 14 May 1987 of the former Customs Policy Commission and Decree No. 174 of 10 July 1991, the amount of a subsidy shall be calculated, per unit of product, by the difference between the f.o.b. export price to Brazil and the estimated price, taking as a reference the price received by the producer in the country of origin.

Article 2 - The Minister of the Economy, Finance and Planning shall set the additional import duty on the proposal of the Department of Foreign Trade.

Article 3 - This Directive shall enter into force on the date of its publication, all contrary provisions being revoked.

16 October 1991  
Official Gazette of 17 October 1991

DIRECTIVE NO. 444/91

The National Secretary of the Economy, in the exercise of his powers and having regard to Article 7 of Decree No. 174 of 10 July 1991 and Directive No. 974 of 16 October 1991 of the Ministry of the Economy, Finance and Planning, decides:

Article 1 - The provisions of Resolution No. 1227 of 14 May 1987 of the former Customs Policy Commission as well as the provisions of this Directive shall apply to investigations for countervailing and anti-dumping duties concerning imported agricultural products.

Article 2 - The expression "unfair or predatory competition" shall be understood in accordance with the provisions of Footnote 3 to Article 3 of the Anti-Dumping Code and of Footnote 6 to Article 2, paragraph 1, of the Subsidies and Countervailing Duties Code, as referred to in Customs Policy Commission Resolution No. 1227/87.

Article 3 - For the purposes of determining the existence of unfair or predatory competition in connection with the importation of subsidized or dumped agricultural products, account shall be taken of the following elements, inter alia, as well as of the criteria established in Article 3 of the Anti-Dumping Code and Article 6 of the Subsidies and Countervailing Duties Code:

- I. Importation of like products in significant quantities in absolute terms or relative to domestic production or consumption, "significant quantity" being understood as:
  - (a) importation over the previous twelve months of a cumulative volume greater than 2.08 per cent of average domestic production or consumption for the three years preceding the beginning of the period under consideration;
  - (b) importation of a volume greater than 1.04 per cent of the average referred to in the previous indent in a period of up to thirty days, while also having regard to the limit stipulated in paragraph (a) of this Article;
- II. A price of the imported like product entered for consumption, at the wholesale level, below the price of the domestic product, taking into account a prior representative period of up to five years preceding the start of the period under consideration as defined in Paragraph I; and in addition:
  - (a) The average monthly wholesale market price, in accordance with Article 2, Paragraph II, of Decree No. 174 of 1991, shall be calculated using the procedures and rules set out in Chapter III, Section I, of Interministerial Directive No. 657 of 10 July 1991

of the Ministers of Agriculture and Land Reform and of the Economy, Finance and Planning;

- (b) In the case of a product not covered by the public stocks policy or for which the public stock disposal price of the product has not been established, two simple averages of wholesale prices shall be calculated on the basis of official data, corrected and updated by the broad national consumer price index of the Brazilian Institute of Geography and Statistics, biggest market for the product concerned during the last sixty months, having regard also to the other provisions of Chapter III, Section I, of Interministerial Directive 657/91.

III. Other relevant economic factors as may be suggested by the National Agricultural Policy Council.

Article 4 - With regard to requests for investigations channelled through the National Agricultural Policy Council, the Foreign Trade Department shall decide whether or not to impose a provisional duty, in conformity with Article 3 and Article 27 of Resolution No. 1227/87, within a maximum period of sixty days from the date of receipt of the petition by the Registry of the Secretariat of the Economy of the Ministry of the Economy, Finance and Planning.

Article 5 - This Directive shall enter into force on the date of its publication.

17 October 1991  
Official Gazette of 18 October 1991.

DIRECTIVE NO. 132/92

The Minister of State for the Economy, Finance and Planning, in the exercise of his powers, decides:

Article 1 - The decisions of the Foreign Trade Department as to whether or not to initiate investigations concerning dumping or subsidization or the injury or threatened injury from such practices as referred to in the Anti-Dumping Code promulgated by Decree No. 93.941 of 1 January 1987, the Subsidies and Countervailing Duties Code promulgated by Decree No. 93.962 of 22 January 1987 and complementary legislation, shall be adopted in any case within a period of forty-five days.

Article 2 - The period referred to in the previous Article shall run from the date of registration of the petition referred to in Articles 4 and 7 of Resolution No. 00-1127 of 14 May 1987 of the former Customs Policy Commission.

Article 3 - In the event of the initiation of an investigation, the decision on the imposition of provisional duties in accordance with Article 27 of Customs Policy Commission Resolution No. 00-1227 shall be adopted within a period of twenty days from the date of initiation of the investigation.

Article 4 - This Directive shall enter into force on the date of its publication in the Official Gazette.

10 February 1992  
Official Gazette of 19 February 1992.