

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## ANTI-DUMPING LEGISLATION OF AUSTRIA

The permanent mission of Austria has transmitted to the secretariat the following text of the Austrian Anti-Dumping Law 1971.

### ANTI-DUMPING LAW 1971

Parliament has enacted:

#### Section 1

##### General Provisions

1. (1) The provisions of this law are applicable when importing products which are subject to dumping or for which in a foreign customs territory premiums or subsidies have been granted.  
  
(2) Subject to the existing international obligations the provisions of this law do not preclude other measures to be taken on the basis of other federal legal provisions.
2. When importing products which are subject to dumping, an anti-dumping duty shall be levied if the importation of these products causes or threatens to cause material injury to an established industry or materially retards the establishment of an industry the forthcoming establishment of which is envisaged.
3. When importing products for which a premium or a subsidy has been granted in the country of origin or in the exporting country, a countervailing duty shall be levied, provided that the importation of these products causes or threatens to cause material injury to an established industry or materially retards the establishment of an industry.
4. The term "injury" used in this law without further specification comprises all the cases as defined in paragraphs 2 and 3.
5. The dues mentioned under paragraphs 2 and 3 are exclusively federal dues.

SECTION IIDumping and Anti-Dumping Duties

6. A product is to be considered as being dumped, if its export price is less than its normal value.
7. (1) The normal value is:
- (a) the comparable price in the ordinary course of trade for the like product destined for use or consumption in the exporting country, or
  - (b) if a comparable price cannot be determined in accordance with the provision of sub-paragraph (a)
    - (aa) the highest comparable price for the like products upon exportation to a third country if this price is representative, or
    - (bb) the sum of production costs in the country of origin for the like product plus a reasonable amount for administrative costs, selling costs and other costs and for profits. The addition for profits shall not exceed profits normally realized on sales of products of the same general category in the domestic market of the country of origin.
- (2) If the exporting country is not the country of origin, regardless of paragraph (1) above the price in the country of origin can be taken instead of the price in the exporting country in order to determine the normal value if this corresponds better to the economic situation, particularly if products imported into the exporting country are re-exported without alteration or if such products are not produced in the exporting country or if a comparable price cannot be determined in the exporting country.
8. In cases where there is no export price or where it cannot be taken as a basis because of an association or a compensatory arrangement between the exporter on the one hand and the importer or a third party on the other hand, in order to determine whether a product is subject to dumping, an export price shall be calculated on the basis of the price at which the imported product is first resold to an independent buyer. If the product is not resold to an independent buyer or not resold in the condition as imported, the price which an independent buyer would be charged shall be taken.
9. (1) When comparing normal value and export price, the prices shall be taken for sales made at as nearly as possible the same time at the same level of trade - normally ex factory. Due allowance shall be made for the differences in conditions and terms of sales, for differences in taxation, and for other circumstances affecting price comparability, in particular differences in quality. In the cases referred to in paragraph 8 allowance for costs, including import duties and taxes, incurred between importation and resale and for profits accruing, should be made.

- (2) Allowance for quantity rebates shall be taken into account only if the exporter proves that he granted generally such quantity rebates of the same amount to all buyers of appropriate quantities in the domestic market or if he proves that by selling large quantities he was able to realize appropriate savings which justify these quantity rebates.
- (3) If after taking into account the differences in conditions and terms of sale different selling prices are determined, the selling price which prevails with regard to the quantities sold of products considered for the comparison of prices shall be taken.
10. A product shall not be considered as being dumped if only customs duties or taxes levied on the like product destined for use in the country of origin or the exporting country are not collected or reimbursed.
11. Margin of dumping shall be interpreted to mean the difference in prices established according to the provisions of paragraphs 6 to 9.
12. (1) Injury or threatening injury in terms of this federal law can be determined only when proof is produced that the import of products subject to dumping, is the principle cause of this injury. Moreover besides the effects of dumped imports on the industry concerned factors adversely affecting this industry shall be taken into account.
- (2) A determination of injury or of threatening injury shall not be based on allegations, conjecture or the remote possibility of a changing situation. The injury must have occurred or the change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
- (3) A determination of material retardation of an industry the forthcoming establishment of which is envisaged can be made only if the plans for its establishment are so advanced that its establishment has either already started or will be started immediately.
13. (1) A valuation of injury as material in the sense of this federal law shall be based on general judgment of all factors having a bearing on this industry or on their trend of development. As such factors are to be considered (e.g.): turnover, market share, profits, prices (including the margin at which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal domestic commercial transactions), export performance, employment, volume of dumped imports, volume and price of other imports, utilization or capacity of this industry and its productivity, competition between domestic producers, contraction in demand due to a supply of substitute products or to changes in consumer tastes.

(2) The effect of the dumped imports shall be assessed in relation to the domestic production of the like products when a separate identification of production is possible in terms of criteria such as: the production process, the producers realizations and profits. When separate identification of the industry producing the like product is not possible in terms of such criteria or in the case that appropriate material is not available, the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product for which the necessary information can be provided.

14. (1) "Industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them, whose collective output of the products constitutes a major proportion of the total domestic production.

(2) When, however, producers are at the same time importers of the dumped product, "industry" shall be interpreted as referring to the rest of the producers.

15. The expression "the like product" shall be interpreted as referring to a product, which resembles in every respect the product it is compared with or - in the absence of such a product - has at least characteristics closely resembling those of the compared product.

Initiation, implementation and conclusion of investigations

16. Whether or not dumping or injury exists shall be investigated according to the provisions below.

17. (1) The Federal Minister for Trade, Commerce and Industry shall upon request proceed with investigations in the interest of an industry which considers itself injured or threatened by dumping or the establishment of which is materially retarded. When investigations cannot be initiated due to the fact that proof of the alleged dumping and injury cannot be established the applicant shall be informed without unnecessary delay.

(2) Applications according to sub-paragraph (1) can be made at the Federal Ministry for Trade, Commerce and Industry by the Federal Economic Chamber, by the Austrian Federal Chamber of Labour or by the Governing Board of the Austrian Chambers of Agriculture. They shall be done in writing and shall contain the following:

(a) precise description of the product which is the subject of alleged dumping

(b) name of exporting country

(c) name of country of origin, of the producer and of the exporter of the product provided these informations are available and can be expected to be produced by the applicant, and

(d) material proving the alleged dumping and injury resulting thereof.

(3) When the Federal Minister for Trade, Commerce and Industry has at his disposal material which proves the dumping and injury, investigations can be initiated officially in particularly urgent cases.

(4) The investigations shall be conducted and concluded with due respect for utmost expediency, quickness, simplicity and saving of costs.

18. Upon initiation of investigations representatives of the exporting country or exporting countries, exporters and importers officially known to be concerned, representatives of the industry concerned and, when investigations were introduced upon application, the applicant shall be notified in an appropriate way. The initiation of investigations shall be published in the "Austrian Official Gazette of the Wiener Zeitung" provided this is suitable in view of the situation or especially when in view of the large number of exporters or importers eventually concerned such action is necessary.

19. (1) During investigation proceedings the persons referred to in paragraph 18 shall be given opportunity to present within an appropriate period of time all evidence that they consider useful in respect to the investigations. They shall have opportunity to see all information that is relevant for the representation of their interests that is not confidential and that is used in the investigation by the Federal Ministry for Trade, Commerce and Industry, and to state their views with regard to it within an appropriate period of time.

(2) All information the disclosure of which would be of significant competitive advantage to a competitor or would cause material injury to the person supplying the information or to the person from whom he acquired the information, and information provided by the parties to the investigation on a confidential basis, unless the person who supplied the information specifically permits its disclosure, is considered to be confidential.

(3) On request the persons directly interested shall have the opportunity to meet with persons representing adversary interests so that opposite views may be presented and rebutted if need be. Provision of such opportunities must take into account the need to preserve confidentiality. The failure of individual persons to participate in a meeting shall not be prejudicial to their case when judging the outcome of the investigation.

20. (1) The evidence produced by persons referred to in paragraph 18 shall be judged by the Federal Minister for Trade, Commerce and Industry in free evaluation of the evidence. If there is not sufficient evidence from other sources, inquiries can be conducted by the authorities or if need be by experts and when necessary in co-operation with the Minister for Finance in order to examine the accuracy and completeness of the evidence. With respect to the co-operation of the Minister of Finance, the provisions of paragraphs 143 and the following paragraphs of the Federal Law on Taxation, Austrian Federal Legal Gazette No. 194/1961, apply accordingly.

(2) The outcome of the investigations according to sub-paragraph 1 may only be used for implementing this federal law.

21. Investigations shall be terminated and the persons referred to in paragraph 18 shall be notified in an appropriate way if the investigations prove that there is not sufficient evidence of either dumping or of injury.

22. (1) If the investigations prove that dumping or injury exists after hearing the advisory board (paragraph 31) a decree shall be issued that on importation of the product concerned an anti-dumping duty shall be levied if this does not have adverse effects on important interests of the economy as a whole.

(2) The decree according to sub-paragraph (1) shall determine the normal value of the product concerned (paragraph 7) and provide the imposition of an anti-dumping duty amounting to the difference (margin of dumping, paragraph 11), by which the export price (paragraphs 8 and 9) falls short of the normal value. Departing from this procedure it can be ruled that an anti-dumping duty amounting only to part of the margin of dumping shall be levied if this offers sufficient remedy with respect to the injury.

(3) A decree according to sub-paragraph (1) shall unless otherwise provided in sub-paragraph (5) contain the following additional information:

(a) the usual commercial description of the dumped product and the corresponding tariff number of the customs tariff (Customs Tariff Law 1958, Austrian Federal Legal Gazette No. 74);

(b) the exporting country or the country of origin;

(c) the producer or supplier.

(4) A decree according to sub-paragraph (1) shall be published in the "Official Gazette of the Wiener Zeitung".

(5) A designation of the individual producers or suppliers is not necessary when more producers or suppliers of a country or of different countries are concerned.

(6) When more producers or suppliers of one or several countries are concerned, instead of determining the individual normal values a uniform basic price according to sub-paragraph (7) may be determined by decree, provided this offers sufficient remedy for the injury.

(7) Basic price shall be interpreted to mean the lowest price calculated according to paragraph 7.

23. (1) Upon receipt of a voluntary undertaking by the exporters concerned after the start of investigations either to revise their prices so that the margin of dumping is eliminated or to cease to export the product under consideration to Austria, and, if supervision of such an obligation is considered practicable in particular in view of the number of exporters or potential exporters, the investigations shall not be continued.

(2) Regardless of the commitment according to sub-paragraph (1) the investigations shall be continued if the exporters concerned so desire. If during these continued investigations a determination of no injury of an industry is made, the undertaking given by the exporters concerned shall lapse unless they state that it shall not lapse.

24. Decrees according to paragraph 22, sub-paragraph (1) enter into force the day following their publication and become ineffective at the latest one year after their publication. They shall be annulled immediately if the circumstances upon which they were based have ceased to exist, or they shall be changed immediately, if the circumstances upon which they were based have substantially changed.

25. The authorities of the countries of export or origin concerned shall be notified according to paragraph 22 sub-paragraph (1) of the issuance or annulment of a decree.

### SECTION III

#### Premiums, Subsidies and Countervailing Duties

26. (1) When a determination is made that a premium or subsidy for a product is granted directly or indirectly in the country of origin or in the exporting country for the extraction, production or export of this product and when the import of this product causes or threatens to cause material injury to an established industry or materially retards the establishment of an industry a countervailing duty shall be levied by decree upon import of the product concerned if this does not have adverse effects on important interests of the economy as a whole.

(2) By decree according to sub-paragraph (1) the amount of premium or subsidy shall be determined and a countervailing duty shall be levied amounting to the premium or subsidy determined and if need be to the sum of all premiums or subsidies determined including each special subsidy granted for the dispatch of this product.

27. Anti-dumping duties and countervailing duties shall not be collected simultaneously with regard to one product to remedy a condition which either results from dumping or from granting a premium or subsidy.

28. Paragraphs 10, 12, sub-paragraph (3) and paragraphs 16 to 25 apply to this section accordingly.

#### SECTION IV

##### Protection of Third Countries

29. (1) Proceedings according to Sections II and III while taking into account international obligations can be introduced upon request of the authorities of a third country on its behalf if reciprocity is assured.
- (2) The provisions of Sections II and III of this federal law shall apply to proceedings according to sub-paragraph (1) considering that upon examination the effects as a whole of alleged dumping or alleged granting of premiums or subsidies on the industry concerned in the third country shall be taken into account. The evaluation of injury shall not be made only with respect to the effects on the exports of the third country's industry whether with regard to Austria or generally.

#### SECTION V

##### Investigations Abroad and by Foreign Officials in Austria

30. (1) To the extent that constitutional provisions in State treaties permit, the necessary investigations (paragraph 20 sub-paragraph (1)) to determine whether or not dumping and injury exists can also be carried out in a foreign State provided the government of this State and the firms concerned agree.
- (2) To the extent that constitutional provisions in State treaties permit, the necessary investigations in this course of foreign proceedings to determine whether or not dumping and injury exists can be carried out also by officials of foreign States in Austria with the consent of the Federal Minister for Trade, Commerce and Industry and the domestic firms concerned. Such foreign officials are however not allowed to resort to coercive measures while investigating in Austria.
- (3) The consent of the Federal Minister for Trade, Commerce and Industry required according to sub-paragraph (2) shall be refused if reciprocity is not assured.
- (4) Necessary investigations in the course of foreign proceedings in Austria in order to determine whether or not dumping or injury exists can also be carried out without prejudice to sub-paragraph (2) by domestic officials upon request of a foreign State if reciprocity is assured.

(5) When investigations cannot be carried out in a foreign State because the government of this State or the firm concerned do not agree, conclusions shall be drawn on the basis of available evidence.

(6) Investigations to be carried out by Austrian officials abroad shall be subject to the principles in force for domestic proceedings unless this is in opposition to foreign provisions.

## SECTION VI

### Advisory Board

31. (1) For the examination of measures taken under this federal law an advisory board shall be established at the Federal Ministry for Trade, Commerce and Industry.

(2) The advisory board shall be convened without delay by the Federal Minister for Trade, Commerce and Industry if this federal law provides for its consent. The advisory board is considered duly convened if the invitation together with information on the main facts have been dispatched at least two weeks before the scheduled date of the session.

(3) The advisory board shall decide with simple majority about its rules of procedure which shall be approved by the Federal Minister for Trade, Commerce and Industry. The rules of procedure shall organize the activities of the advisory board with utmost expediency taking account of sub-paragraphs (1) and (2). The rules of procedure shall be approved when this requirement is met.

32. (1) The advisory board shall be constituted as follows:

(a) two representatives of the Federal Ministry for Trade, Commerce and Industry and one representative of the Federal Ministry of Interior, the Federal Ministry for Social Administration, the Federal Ministry for Finance and the Federal Ministry for Agriculture and Forestry respectively;

(b) one representative of the Federal Economic Chamber, the Austrian Federal Chamber of Labour, the Governing Board of the Austrian Chambers of Agriculture and the Austrian Federation of Trade Unions respectively.

(2) Apart from persons referred to in sub-paragraph (1) other persons can participate in the meetings of the advisory board as experts with the consent of the chairman (paragraph 33, sub-paragraph (1)).

- (3) All persons invited to or participating in the meetings of the advisory board are committed to keep confidential all restricted information coming to their knowledge whether it concerns their office, business or a firm. In cases of violations of this commitment of confidentiality paragraphs 251 and 252 of the Financial Penal Law, Austrian Federal Legal Gazette No. 129/1958, apply.
33. (1) The Federal Minister for Trade, Commerce and Industry, who can be represented by an official of his Ministry, shall act as chairman of the advisory board. The activities of the advisory board shall be conducted within the Federal Ministry for Commerce, Trade and Industry.
- (2) In order to enable the advisory board to carry out its business at least two thirds of its members shall be present. If the required number of members is not present at the time of the scheduled beginning of the session the advisory board shall convene again one hour later than the time scheduled in the invitations and act according to its agenda irrespective of the number of representatives present.
- (3) When the members present of the advisory board do not achieve unanimous opinion the statement of each member present of the advisory board shall be recorded in the minutes.

## SECTION VII

### Collection of Duties

34. (1) The responsibility for the collection of anti-dumping or countervailing duties lies with the customs offices.
- (2) Unless otherwise stated in the federal law the legal provisions in force with respect to customs duties, especially the Customs Law 1955, Austrian Federal Legal Gazette No. 129, the Customs Tariff Law 1958, Austrian Federal Legal Gazette No. 74, the Federal Law on Taxation, Austrian Federal Legal Gazette No. 194/1961 and Financial Penal Law, Austrian Federal Legal Gazette No. 129/1958 apply accordingly with respect to the collection of anti-dumping and countervailing duties.
- (3) The declarant of the product shall provide in the goods declaration (paragraph 52, Customs Law 1955) also all information necessary for the collection of anti-dumping or countervailing duties such as the quantity, the kind and quality and the export price of the products unless this information was already contained in the goods declaration according to the provisions of customs law.

- (4) No duty shall be collected when proof can be produced that the product has been dispatched directly to Austria before a decree according to paragraphs 22 sub-paragraph (1) or 26 sub-paragraph (1), entered into force, that the product has become liable to customs control for the first time not later than four months after the effective date and that the product is presented to customs for clearance for home use at the latest one month after it had first become liable to customs control. A duty however shall be collected if at the time of dispatch the product was subject to a decree according to paragraphs 22 sub-paragraph (1) or 26 sub-paragraph (1).
35. (1) The Federal Minister for Finance in agreement with the Federal Minister for Trade, Commerce and Industry shall in certain cases on application of the person from whom the duty is due (importer) grant full or partial exemption from anti-dumping or countervailing duties when proof can be produced by the person from whom the duty is due (importer):
- (a) with regard to anti-dumping duty, that the product was not subject to dumping or that the margin of dumping was lower than the anti-dumping duty collected, or
  - (b) with regard to countervailing duty that no premiums or subsidies were granted for this product or that the amount of premiums or subsidies granted was lower than the countervailing duty collected.
- (2) Applications referred to in sub-paragraph (1) shall be made within three months of notification of the decision concerning duties on clearance for home use, either directly or after temporary admission for the product concerned.
- (3) When substituting a decision concerning duties, which subsequently shall be based on a decision under sub-paragraph (1), by a new decision, the provisions of paragraph 295 of the Federal Law on Taxation apply accordingly.

#### SECTION VIII

##### Transitional and Final Provisions

36. (1) When entering into force this federal law shall apply to products presented for customs clearance for home use after 31 December 1971 or - in the case of products under temporary admission - when the payment of duties for these products takes place after that date or when the obligation to pay duty for these products has arisen by virtue of law after that date.

(2) The Anti-dumping Law 1967, Austrian Federal Legal Gazette No. 227, shall become ineffective upon entry into force of this federal law except, that it is applicable after this date with regard to products presented for customs clearance for home use by 31 December 1971 or - in the case of products under temporary admission - when the payment of duties for these products takes place after that date or when the obligation to pay duty for these products takes place after that date or when the obligation to pay duty for these products has arisen by virtue of law after that date.

(3) Paragraph 1 of the Customs Tariff Law 1958, Austrian Federal Legal Gazette No. 74, does not apply as long as this federal law is in force.

37. (1) The Federal Minister for Trade, Commerce and Industry in agreement with the Federal Minister for Finance shall implement this federal law with regard to paragraphs 22 sub-paragraph (1) and 26 sub-paragraph (1) unless otherwise stated in this federal law; if the implementation of paragraphs 22 sub-paragraph (1) and 26 sub-paragraph (1) concern products for which according to Foreign Trade Law 1968, Austrian Federal Legal Gazette No. 314, import or export licences issued by the Federal Minister for Agriculture and Forestry are required, his consent is required as well.

(2) The Federal Minister for Finance shall implement paragraphs 2, 3, 5 34, 35 sub-paragraphs (2) and (3) and paragraph 36 sub-paragraphs (1) and (2).

(3) The Federal Minister of Justice shall implement paragraph 32 sub-paragraph (3).