

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/1/Add.19
19 July 1983

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Committee on Subsidies and
Countervailing Measures

Original: Spanish

INFORMATION ON INTERPRETATION AND APPLICATION OF THE AGREEMENT

Legislation of Uruguay

The Permanent Delegation of Uruguay has communicated the text of domestic legislation on countervailing duties, under Article 19.5 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

Attached are the texts of Law 15,025 of 10 June 1980 and of Decree No. 86/981 of 25 February 1981 which establishes the relevant implementing regulations.

Law 15,025

Council of State, 192nd meeting, 10 June 1980

IMPORTS

THE EXECUTIVE IS EMPOWERED TO IMPOSE ANTI-DUMPING OR COUNTERVAILING
DUTIES ON CERTAIN GOODS¹

The Council of State has approved the following

BILL

Article 1. The Executive may impose anti-dumping or countervailing duties on the import of any product declared at dumping prices or on which subsidies have been granted in the exporting country or country of origin when:

- A. it causes or threatens material injury to a domestic producing activity;
- B. it materially retards the starting-up of a domestic producing activity which is in the process of becoming operational.

Article 2. For the purposes of the law, dumping shall be deemed to exist when the export price of the product imported is less than the comparable price for sale in the ordinary course of trade of the like product when intended for consumption in the exporting country or country of origin.

If it is not possible to determine the comparable price referred to in the preceding paragraph, the existence of dumping shall be established by application of the procedures laid down for that purpose in the regulations to be issued by the Executive.

Article 3. For the purposes of the law, subsidization shall be deemed to be any subsidy, bounty or aid of a permanent or temporary character which, directly or indirectly, reduces artificially the cost of production, transport or the export price of a product.

Article 4. The Ministry of the Economy and Finance shall be responsible for verification and surveillance of the unfair trading practices referred to in this law.

¹Published in the Official Gazette on 27 June 1980

Article 5. For the purposes of application of this law, the Ministry of the Economy and Finance shall have responsibility for determining the cases in which anti-dumping duties or countervailing duties are to be imposed, and for proposing the amount thereof, and likewise for advising the removal of such duties and the adoption of the precautionary measures referred to in Article 11.

For the purposes of adequate ministerial co-ordination, before proposing the imposition of the duties referred to in Article 1, the Ministry of the Economy and Finance shall seek the opinion of the Ministry of Industry and Energy or of the Ministry of Agriculture and Fishery, according to the product concerned.

Article 6. The amount of anti-dumping duties shall not exceed the dumping margin, and the amount of countervailing duties shall not exceed the amount of the subsidization.

Both these duties shall be calculated in accordance with the regulations established by the Executive.

Article 7. Anti-dumping and countervailing duties shall remain in effect to the extent and during the period necessary to offset the effects of the dumping or subsidization causing injury.

Article 8. The Ministry of the Economy and Finance shall act upon a complaint made by an interested party, or on its own initiative.

Such complaints must furnish full information substantiating the existence of dumping or subsidization.

The Ministry of the Economy and Finance may:

- A. seek from any natural or legal person, whether public or private, information of any kind relevant to the case under reference which he considers necessary for determining the existence of dumping or subsidization;
- B. require from the complainant such security as it considers appropriate - according to the case - but which shall not exceed 10 per cent of the customs value of the product to which the complaint refers.

Any information furnished on a confidential basis by parties to an investigation shall be treated as such by the Ministry of the Economy and Finance.

Article 9. When an anti-dumping duty or countervailing duty is imposed on a product, such duty shall be charged in an amount corresponding to each case and in a non-discriminatory manner on imports of that product from any

source where a finding has been made in respect of those imports that the product has been the subject of dumping or subsidization.

Article 10. No import may be the subject simultaneously of anti-dumping duties and countervailing duties.

Article 11. The Executive may adopt precautionary measures if the Ministry of the Economy and Finance makes a preliminary finding that there is dumping or subsidization of an import and that there is sufficient evidence of material injury, on the basis of the investigations carried out.

Precautionary measures shall take the form of provisional duty, in an amount not exceeding the margin of dumping or the amount of the subsidization provisionally calculated; the importer may pay such amounts or may lodge a sufficient security.

These measures shall be applied for as short a period as possible, not exceeding six months in cases of anti-dumping duties, nor four in cases of countervailing duties.

Article 12. Where the Ministry of the Economy and Finance makes a final finding of material injury, or a finding that, in the absence of precautionary measures adopted in good time, injury would have occurred, it may recommend the retroactive imposition of anti-dumping duties or countervailing duties with effect from the date of application of the precautionary measures.

The imposition of anti-dumping duties may apply retroactively to goods despatched within ninety days prior to presentation of the relevant complaint in cases where the Ministry of the Economy and Finance concludes:

- A. that there is a history of dumping which caused material injury;
- B. that the importer was aware that his supplier was practising dumping and that such dumping would cause material injury;
- C. that the injury is caused by sporadic dumping to such an extent that it is necessary to impose an anti-dumping duty retroactively on those imports.

Article 13. Once the amount of definitive duty has been fixed, any difference between that definitive duty and the provisionally paid duty shall be paid and any security lodged shall be released.

Article 14. If any false statements are made in the complaints provided for by this law or in the relevant proceedings which have or could have the effect of non-application or incorrect application of its provisions, a fine shall be imposed in an amount of one to five times the normal customs value of the goods in respect of which the false statement was made.

Article 15. In no case shall the clearance process for goods imported be affected directly or indirectly as a consequence of the provisions of this law pending the establishment of any measures that may be decided by the Ministry for the Economy and Finance.

Article 16. The Executive shall transmit to the legislature any resolutions adopted in pursuance of this law.

Article 17. This law shall be communicated, etc.

Meeting room of the Council of State, Montevideo, 10 June 1980.

Ministry of the Economy and Finance
Ministry of External Relations
Ministry of Industry and Energy
Ministry of Agriculture and Fishery

Montevideo, 17 June 1980

This Act shall be implemented, ... etc.

Decree 86/981

IMPORTS

IMPLEMENTING REGULATIONS FOR THE SYSTEM OF ANTI-DUMPING OR
COUNTERVAILING MEASURES HEREBY MADE EFFECTIVE¹

Ministry of the Economy and Finance
Ministry of External Relations
Ministry of Industry and Energy
Ministry of Agriculture and Fishery

Montevideo, 25 February 1981

Having regard to Law 15,025 of 17 June 1980 by which the Executive is empowered to impose anti-dumping or countervailing duties on certain imports;

Whereas:

- I. it is necessary to lay down implementing measures for, and to bring into effect, the system of anti-dumping measures established by that law;
- II. it is likewise appropriate to designate the authority responsible for implementing the procedures deriving from that system;
- III. these mechanisms, when made effective, will afford adequate preventive protection to domestic-producing sectors against the unfair trading practices utilized in world trade;
- IV. the adoption of such measures will be consistent with the country's economic policy guidelines, laid down at the Solis Government Assembly in December 1977.

¹Published in the Official Gazette on 13 March 1981.

Having regard to the report by the Tariff Commission established under Decree 736/978 of 26 December 1978,

The President of the Republic

HEREBY DECREES AS FOLLOWS:

Article 1. For the purposes of determining the existence of material injury to a domestic-producing activity as referred to in Article 1(a) of Law 15,025 of 17 June 1980, the party affected must show that the said injury has been caused exclusively by imports in conditions of dumping or subsidization.

Article 2. In the case provided for in Article 1(b) of Law 15,025, the party affected must show that the difficulty in starting up its activity has been caused exclusively by imports in conditions of dumping or subsidization.

An activity shall be deemed to be in the process of being made operational when substantial costs are shown to have been incurred with a view to establishment of such producing activity, such as the existence of a plant or factory in the course of construction, machinery or equipment already purchased, or other elements of like importance.

Article 3. For the purposes of application of the law, like products shall be interpreted to mean products which are alike in all respects to the product to which the complaint refers.

In the absence of such a product account may be taken of another product which, although not alike in all respects, has characteristics closely resembling those of the product under investigation.

Article 4. Where a product is exported to Uruguay directly from the country of origin, the price at which it is exported to Uruguay shall be compared with the domestic market price in the latter country in the ordinary course of trade.

Article 5. In the case where a product is not imported directly from the country of origin, the determination of dumping or subsidization shall be made by comparing its price with that of a like product in the domestic market of the country of export. However, comparison may be made with the price in the country of origin if the product is trans-shipped through the country of export, or such product is not produced in the country of export, or there is no comparable price in the said country of export.

Article 6. When there are no sales of the like product in the domestic market of the country of export or country of origin, or when, because of the particular situation in that market, such sales do not permit a proper

comparison, dumping shall be deemed to exist if the price at which the product is exported to Uruguay is less than:

- (a) The highest comparable price of a like product when exported to any third country, in representative volumes;
- (b) its cost of production in the country of origin, plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on products of the same category in the domestic market of the country of origin.

Article 7. When it is not feasible to determine the export price in accordance with the procedures established in the preceding articles, or when the export price is unreliable because of the existence of association or arrangements between the exporter and the importer or between either of these and a third party, the said price shall be constructed on the basis of the price at which the imported product is first resold to an independent buyer or, if the product is not resold in the condition as imported, on any other reasonable basis.

Article 8. The comparison between the export price and the domestic price in the country of origin, or in the country of export, or the price of the product when sold to a third country, or the price referred to in Article 6(b), shall be based on prices prevailing at the same level of trade (normally the ex-factory price) and in respect of sales made in like volumes and at as nearly as possible the same time.

In each case, due allowance shall be made for the differences between compared prices, for the conditions and terms of the transaction, for differences in domestic taxation and for any other differences affecting comparability.

In the cases referred to in Article 7, allowance may be made for the costs involved in importation, resale and for profits accruing.

In cases where the comparison concerns prices of seasonal products or products whose prices vary appreciably according to the time of year when they are marketed, the price to be used shall be that of the time of the year in which the major part of transactions in the product concerned normally take place.

Article 9. In the case of imports from countries where trade takes place on the basis of a complete or substantially complete monopoly, or where domestic prices are fixed by the State, the provisions of Article 7 shall be applicable.

Article 10. An imported product which has been exempted from the indirect charges applied on like products intended for consumption in the country of origin or country of export shall not be deemed to be subsidized or dumped.

Article 11. The Ministry of Economy and Finance, acting on its own initiative or upon a complaint made by an interested party, shall decide whether to initiate an investigation to determine the existence of dumping or subsidization and determine the criteria required for imposition of the relevant duties.

A complaint shall be deemed to be made by an interested party when it is made by a party affected by the dumping or subsidization.

Article 12. Complaints must include the following information:

- (a) Identification and clear description of the goods alleged to be the subject of dumping or subsidization with an indication of price, NADI classification and NABALALC classification where relevant;
- (b) origin of the product and country of consignment when other than the country of origin;
- (c) indication of three representative foreign producers of the goods complained of, situated in different economic regions, one of which must be the country of origin; when in the opinion of the implementing authority it is not feasible to obtain all this information, that authority may decide that the case is to be examined on the basis of the data available;
- (d) account of the circumstances pointing to the existence of dumping or subsidization; and
- (e) elements which tend to substantiate the injury caused or threatened by imports of the product complained of.

Article 13. Lodging of the complaint shall not imply the automatic opening of an investigation. The latter shall be initiated when - after examining the data furnished by the complainant and any which it has assembled - the Ministry of the Economy and Finance arrives at the conclusion that the complaint is well-founded.

Article 14. To determine whether the complaint is well-founded the Ministry of the Economy and Finance shall have a time-limit of forty-five days as from the day following that on which it is lodged.

If the Ministry of the Economy and Finance finds the complaint to be warranted, it shall decide to open an investigation and publish a notice to that effect in the Official Gazette, and shall order the release of any security already lodged in terms of Article 15. The resolution opening the investigation shall be notified personally to the importer and to the complainant in respect of the product on which there is a presumption of dumping or subsidization.

A similar notification shall be made, as appropriate, when the Ministry of the Economy and Finance decides, on its own initiative, to open an investigation.

The notifications shall be made within three days as from the day following the date of the resolution announcing the opening of the investigation or the day following the date of automatic approval of the complaint as referred to in the preceding paragraph.

If by the end of the forty-five day period referred to in the first paragraph of this article the Ministry of the Economy and Finance has not ordered the opening of an investigation or expressly rejected the complaint, the latter shall be approved automatically.

Article 15. When the complaint is lodged the Ministry of the Economy and Finance may require from the complainant the security referred to in Article 8(b) of law 15,025; such security must be lodged within ten days following the date on which it is requested. If within that period the security is not lodged, the complaint shall be rejected automatically. In all cases securities must be lodged with the National Treasury.

Article 16. When the investigation has been decided, the Ministry of the Economy and Finance shall immediately communicate the relevant resolution to the Bank of the Eastern Republic of Uruguay and the National Directorate of Customs, indicating the products and transactions concerned.

Those authorities shall immediately inform the Ministry of the Economy and Finance of any import transaction registered in respect of like goods, until such time as the said Ministry decides otherwise. Once an investigation has been opened, the Ministry of the Economy and Finance may impose on the importer the precautionary measures established by Article 11 of the aforementioned Law.

Article 17. As from the day following the date of the notification announcing the opening of an investigation, a period of seventy days for cases of dumping and of twenty-one days for cases of subsidization shall run, within which evidence of dumping or subsidization must be submitted.

Article 18. After the stage of submission of evidence the Ministry of the Economy and Finance shall communicate the submissions to the importer and the complainant, who shall have a period of ten days within which to dispute them, to run from the day following the date of the communication, which must be made personally.

Article 19. When the period established in the preceding Article has elapsed, and whether or not any reply has been made to the communication, a period of seventy days in cases of dumping and of ten days in cases of subsidization shall run, within which the Ministry of the Economy and Finance must decide on the imposition of any anti-dumping or countervailing

duties. If by the end of that period the above-mentioned Ministry has announced no decision in that respect, the possibility of imposing such duties in the case under investigation shall lapse automatically. If any express decision is made, the corresponding resolution shall be published in the Official Gazette, without prejudice to personal notification thereof to the importer of the goods and to the complainant, as appropriate.

Article 20. For fulfilment of the tasks entrusted to it by the law to which the present regulations refer, the Ministry of the Economy and Finance shall have broad facilities of investigation and may, in particular, demand to see the books and correspondence of the importer of the goods alleged to the subject of dumping or subsidization. It may likewise request information from third parties and order them to appear when such information is not found sufficient.

Article 21. For cases of special products, the Ministry of the Economy and Finance may reduce the maximum periods established in Articles 14, 17 and 19; in such cases due mention must be made thereof in the resolution announcing the opening of the investigation.

Article 22. Once the investigation has been initiated in accordance with Article 16 of this decree, the Ministry of the Economy and Finance may accept undertakings from the foreign exporter (whether a public or private person) to revise its export prices to Uruguay, so as to eliminate the dumping or subsidization which is causing injury.

If the undertakings are formally accepted, the Ministry of the Economy and Finance shall suspend the relevant investigation and not adopt in consequence the precautionary measures referred to in the above-mentioned article, nor impose the corresponding definitive duties.

Once the undertaking has been given by the exporter, the latter shall provide the Ministry of the Economy and Finance with information relevant to the fulfilment of such undertaking, periodically as requested by the latter.

The fact that exporters do not accept an invitation to offer price undertakings may be considered as a material indication of the existence of dumping or subsidization.

Article 23. With prejudice to the provisions of the preceding article, the Ministry of the Economy and Finance may proceed with the investigation of injury to domestic industry.

In such a case, if a determination of no injury or threat thereof is made, the price undertaking shall automatically lapse, except in cases where a determination of no injury or threat thereof is due in large part to the existence of a price undertaking.

Article 24. In the event that the exporter fails to observe an undertaking already offered, the Ministry of the Economy and Finance shall propose the adoption of the precautionary measure provided for in Article 16 of the Agreement on the basis of the information available to it at that time. It may likewise propose the imposition of definitive anti-dumping duties with effect as from not more than ninety days prior to the complaint provided for in Article 12.

Article 25. The amount of the anti-dumping duties referred to in Article 1 of law 15,025 shall be equal to the difference between the comparable selling price defined in terms of Articles 3 to 10 of this decree and the f.o.b. export price.

Article 26. The amount of the countervailing duties referred to in Article 1 of law 15,025 shall be equal to the amount of the subsidization.

Article 27. Any information which is by nature confidential, or which is provided on a confidential basis by the parties to an investigation, shall not be disclosed without specific permission of the party submitting it.

If the parties refuse to authorize disclosure of any information on the grounds that it is confidential, the Ministry of the Economy and Finance may disregard it as evidence relevant to the investigation, unless it can be demonstrated that the information is correct.

Article 28. There is hereby established a Commission to have responsibility for implementing the system under reference. It shall comprise a representative from the Ministry of the Economy and Finance, who shall be its chairman, one from the Ministry of Industry and Energy and one from the Ministry of Agriculture and Fisheries. The Commission shall act under the auspices of the Ministry of the Economy, which shall provide the necessary facilities for its proper functioning.

Article 29. This decree shall be communicated, published, etc.