

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5738

30 November 1984

Limited Distribution

Original: English

SURVEILLANCE AND SAFEGUARD MEASURES

Note by the Portuguese Delegation

The following notification, dated 9 November 1984, has been received from the Portuguese Delegation.

1. The Portuguese market became particularly vulnerable to external competition as a result of the degree of free trade already achieved through the free trade agreements linking Portugal to the EFTA countries, to the European Economic Community and to Spain.
2. It is a well-known fact that all legal instruments, such as the GATT, foresee, in exceptional cases, certain protective measures, should there be serious disturbances of the market.
3. Since in its existing national regulations Portugal had no instruments that could allow for recourse to these forms of protection it was apparent that there was a gap that had to be filled.
4. This is the reason behind the legislation that has recently been published: Decree-Law No. 47/84 and Government Order No. 6/84 of 4 February. It allows for a system of surveillance and safeguard to be set up in circumstances defined in accordance with the obligations assumed by Portugal at the international level.
5. The field of application, the definition of the measures and the principle of notifying Portugal's trading partners of measures taken are all covered in the above-mentioned Decree-Law. In the Government Order the rules of procedure are established, namely the facts that must be taken into consideration in determining injury or the threat of injury as a condition for recourse to the aforementioned measures.

6. This legislation fits into the policy adopted by the Portuguese Government for making commercial mechanisms in defence of the market as straightforward and obvious as possible. It is not, therefore, a question of reinforcing protectionism but, quite the opposite, a precise delimitation of the situations that can call for the strict application of these measures.

7. Furthermore, in establishing this legislation Portugal's trading partners will in the future be aware of the legal framework supporting any defence measures which may be taken. Portugal is thus taking a step forward with regard to its forthcoming accession to the European Communities.

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DECREE-LAW No. 47/84 OF 4 FEBRUARY 1984

(Unofficial translation)

The rules that bind Portugal on the international level make it possible, in certain circumstances, to recourse to market protection measures whenever the import of products competing with those produced in the country is likely to cause prejudice to national production or constriction at a sectorial or regional level.

Up to now, no regulations have been established in Portugal for the use of the above-mentioned instruments of protection, contrary to what is the case in our main trading partners, namely in the EEC.

The present Decree-Law, and those published in drawing it up, are intended to fill this gap by instituting and regulating legal mechanisms which will subject imported products to surveillance and safeguard measures, taking into account the need for compatibility between the principle of free trade and the indispensable protection of national production when there is serious injury or threat of serious injury in the aforementioned circumstances.

Such mechanisms, in line with the commitments that Portugal had assumed at the international level in this field, are a decisive step in our approach to the regulations in force in the EEC.

These measures also fit into the Government's objective of clarifying external trade policy through procedures characterized by their objectivity, impartiality and transparency.

Thus:

The Government, under the terms of alinea a) of No. 1 of Article 201 of the Constitution, decrees the following:

Article 1
(Range of application)

The present Decree-Law applies to the import of all products, except for those which have already been subject to import quantitative restrictions established in accordance with international commitments assumed by the country or introduced in exceptional cases, due to balance of payments difficulties.

Article 2
(Surveillance System)

1. Where developments on the market are taking place in such a way as to lead to the conclusion that the import of a product is likely to cause injury to national production of a like product or of a product directly competing with it, as well as compromising the development of a particular sector or region, it may be determined that such an import be subject to a surveillance system.

2. The surveillance system will consist on the adoption of precautionary measures, in addition to prior registration of the imports, namely the call for additional information deemed indispensable and which the importer can reasonably be expected to have available.

3. Whether a product is subject or not to the control system will be determined by a resolution from both the Minister of Trade and Tourism and the Minister heading the respective sector, at the proposal of the Directorate General for Foreign Trade, which will define the terms of the surveillance system applicable.

4. Surveillance measures shall be temporary, expiring at the end of the six-month period following the one in which they were adopted or when it is decided to introduce safeguard measures under the cover of the following Article.

Article 3
(Safeguard measures)

1. Where, through the application of the system laid down in the previous Article, it is demonstrated that the import of a product causes or threatens to cause serious injury to the national production of a similar product or one which is directly competitive, as well as hindering or seriously injuring the development of a particular sector or region, restrictive measures can be taken as a safeguard device against the import of that product.

2. The measures foreseen in the previous paragraph can be taken independently of prior adoption of a surveillance system whenever it can be shown that injury or the threat of injury makes immediate action essential for the defence of national interests.

3. The decision on safeguard measures foreseen in the previous paragraph will be taken through a joint enactment from the Minister of Trade and Tourism and the Minister heading the respective sector, at the proposal of the Directorate General for External Trade. The measures to be adopted, the conditions and the range of their application and the respective period of time shall all be identified in the same joint enactment.

4. The period of time mentioned in the previous paragraph, which shall be the minimum necessary to avoid the real or potential injuries caused by the imports, may be prolonged if, at the end of that period, the factors that justified recourse to safeguard measures still remain.

Article 4
(Notifications)

Portugal's trading partners will be notified of the measures adopted within the scope of the present Decree-Law, in accordance with the ruling agreements in force at international level.

Article 5
(Regulating provisions)

The measures necessary for the implementation of this Decree-Law will be established through a Government Order.

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GOVERNMENT ORDER No. 6/84 OF 4 FEBRUARY 1984

(Unofficial translation)

Considering Article 5 of Decree-Law No. 47/84 there is a need to regulate the conditions under which surveillance and safeguard measures foreseen in that Decree-Law may be applied.

Hence:

The Government, in accordance with paragraph c) of Article 202 of the Constitution, decrees the following:

Article 1

(Procedures for the application of surveillance and safeguard measures)

1. When the way in which imports are developing render necessary the adoption of the surveillance and safeguard measures foreseen in Decree-Law 47/84, and provided that the conditions foreseen in paragraphs 2 and 3 of that Decree-Law are met, the Directorate General for External Trade, either on its own initiative or at the request of other departments within the Ministry of Trade and Tourism, as well as by the relevant departments of the Ministries of Industry and Energy, of Agriculture, Forestry and Food and of the Sea, or of other interested parties, individually or through their associations, shall propose the application of the measures it considers adequate.
2. To justify the proposal mentioned in the previous paragraph the Directorate General of External Trade shall base it on the available elements and also on the elements supplied by the departments of the competent Ministries or any others.

Article 2

(Nature of the information)

1. The information gathered for the application of the present Government Order may only be used for the purpose for which it was requested.

2. Information of a confidential nature or supplied confidentially may be disclosed only with express authorization given by whosoever supplied the information.

3. In the request for confidential handling of information the reasons justifying that request shall be given.

4. Whenever a request for confidential handling of information has been made and when such handling does not seem justified or when whoever providing the information does not wish it to be disclosed, even in general terms or in a summarized version, such information may not be taken into consideration.

5. Information whose disclosure could have significant and unfavourable consequences for the person who supplied it or from whom it originated will always be considered confidential.

6. The application of the previous paragraphs will not hinder the overall disclosure of the basis of the decisions taken by the relevant entities, who shall, however, consider legitimate interests regarding the protection of commercial secrecy or of the production process.

Article 3
(Determination of injury)

1. In the analysis of the way in which imports are developing and the circumstances in which they are being handled, as well as in the determination of the serious injury or threat of serious injury resulting from imports whether for the national producers of similar products or directly competitive products or for the development of a particular sector or region, the following factors shall be taken into consideration:

- (a) the volume of imports, particularly when there has been a considerable rise in volume, either in absolute terms or in relation to national production or consumption;
- (b) the price of imported products, particularly when it is a question of determining if there is a price significantly lower than the price of the corresponding national products;

- (c) the consequences arising for national producers of similar products or directly competitive products evaluated on the basis of the registered tendencies of certain economic factors in the respective sector, such as:

production
capacity utilized
stocks
sales volume
market share
prices (price degradation or the hindrance to price rises which would have normally occurred)
profits
recovery of invested capital
settlement flow
employment.

2. When it is a question of a threat of serious injury, the Directorate General of External Trade in co-ordination with the departments of the Ministries of the respective sectors, will make an appraisal of the situation to see if it is clearly foreseeable that a particular situation is likely to become truly prejudicial. In order to make this appraisal the following factors will be taken into consideration:

- (a) rate and growth of exports made to Portugal;
- (b) present or foreseeable capacity, in the near future, of exports from the country of origin or from the source country, as well as the probability that exports coming from that country will be sent to Portugal.

Article 4

(Criteria for the application of surveillance measures)

1. When restrictive measures against imports become necessary for a particular product for safeguard reasons these measures shall be taken in accordance with Article 3 of Decree-Law No. 47/84. These measures shall be established in such a way as to cause the least possible disturbance to the respective traditional trade flows with the countries with which Portugal is committed to freeing trade exchanges.

2. When the restrictive measure adopted takes the form of an import quota, the following shall be considered:

the interest in maintaining, whenever possible, traditional trade links;

the volume of contracts negotiated in normal circumstances before the safeguard measures came into force;

the fact that the objective considered in fixing a quota shall not be compromised.

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