

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

RESTRICTED  
ADP/1/Add.14/Rev.1  
SCM/181/Add.2  
13 September 1994  
Special Distribution

(94-1847)

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Committee on Anti-Dumping Practices  
Committee on Subsidies and Countervailing Measures

Original: English

INFORMATION ON IMPLEMENTATION AND  
ADMINISTRATION OF THE AGREEMENT

Legislation of Hungary

Revision

The following communication, dated 22 August 1994, has been received from the Permanent Mission of Hungary.

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Decree No. 69/1994 (V.4) of the Government on the  
rules relating to anti-dumping and countervailing duties<sup>1</sup>

Considering the rights and obligations of the Republic of Hungary under the General Agreement on Tariffs and Trade and the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, and pursuant to the authorization according to Article 20 of Act III of 1974 on Foreign Trade and Article 18 of Law Decree No. 2 of 1966 on the regulations of customs law the Government herewith ordains the following:

Section I

The objective of the Decree

Article 1

The objective of this Decree is to avert the injury to the domestic industry, including agriculture (hereinafter referred to as domestic industry), that arises or may arise from dumped or subsidized imports, by determining anti-dumping or countervailing duties and by regulating the acceptance of undertakings.

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<sup>1</sup>The Decree entered into force on 19 May 1994.

## Section II

### The anti-dumping duty

#### Article 2

1. An anti-dumping duty may be levied on dumped imports if it causes or threatens to cause injury.
2. The imported product shall be considered as being dumped if the export price is less than the normal value determined pursuant to Article 4(1).

#### Article 3

1. The export price shall mean the price actually paid or payable for goods sold for export to Hungary cleared by customs for domestic trade, taking into account the adjustments according to paragraph 2.
2. If there is no export price or the export price appears to be unreliable because of association or compensatory agreement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are resold to an independent buyer. If the products are not resold to an independent buyer or, if the products are not resold in the condition as imported, the export price may be constructed on a reasonable basis. In the course of determining the export price, the necessary adjustments will have to be made considering all the costs incurred before resale including all customs duties and taxes and a reasonable amount of profit.

#### Article 4

1. For the purpose of the present Decree, "normal value" shall mean the price actually paid or payable for the like products in the ordinary course of trade in the market of the exporting country or the country of origin.
2. The term "ordinary course of trade" shall mean transactions between independent parties. Transactions between parties that are associated or have reached a compensatory arrangement shall be regarded to be transaction in the ordinary course of trade if the prices and costs can be compared to prices and costs achieved in the transactions in the ordinary course of trade between independent parties.
3. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or the country of origin or such sales do not permit to determine the normal value, the following shall govern the determination of the normal value:
  - (a) the comparable price of a like product exported to any third country which may be the highest export price provided it is representative, or
  - (b) the cost of production of a like product in the country of origin (costs of material, costs of production and administrative, selling and other costs) to which a reasonable amount is to be added for profits (hereinafter referred to as constructed value). The addition for profit shall

not exceed the profit realized on sale of products of the same category under ordinary conditions in the domestic market of the country of origin.

#### Article 5

In the case of imports originating in a country where not all of the factors affecting prices prevail, the normal value is to be determined on the basis of one of the following criteria in an appropriate and reasonable manner:

- (a) the price at which the like product of a market economy third country intended for consumption is sold in the domestic market or to other countries, or
- (b) the constructed value of a like product of a market economy third country,
- (c) if the price or constructed value pursuant to either (a) or (b) provides no appropriate basis, the prices actually paid or payable for similar products in Hungary may be taken into account with the appropriate adjustments.

#### Article 6

In the case where the product is not imported directly from the country of origin, the price at which the product is sold from the exporting country to Hungary shall generally be compared with the comparable price in the country of export. The comparison may also be made with the price in the country of origin, if such a product is not produced, or there is no comparable price for it, in the country of export or if the product is merely trans-shipped through the country of export.

#### Article 7

A "like product" shall mean a product which is identical to the product under consideration, or in the absence of such a product, another product which has close similarities with the product under consideration with respect to its characteristics such as type, quality - including its environmental effects - use and functions.

#### Article 8

"Dumping margin" shall mean the amount with which the export price is less than the normal value. In case of different dumping margins, weighted average may be calculated. In order to effect a fair comparison, the two prices shall be compared at the same level of trade, in general at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. Prices are to be compared at the official medium rate quoted by the National Bank of Hungary.

### Article 9

1. The normal value and the export price shall be compared taking into account sales made at as nearly as possible the same time. In order to effect a fair comparison, due allowance shall be made in each case, in the form of appropriate adjustments, for the differences effecting price comparability, that is the following differences:

- (a) differences in physical characteristics;
  - (b) differences in import costs and indirect taxes;
  - (c) differences in sales costs arising as a result of different levels of trade, different quantities or different conditions and terms of sale.
2. The party asking for adjustment shall demonstrate the justifications for its claim.

### Article 10

Adjustments for the differences affecting price comparability listed in Article 9 shall be made pursuant to the following rules:

- (a) The normal value shall be adjusted with an amount corresponding to the reasonably estimated value of the difference between the physical characteristics of the product concerned.
- (b) The normal value shall be reduced by an amount corresponding to the costs or indirect taxes levied on, a similar product or the materials physically used in it, if they are intended for use in the country of export or in the country of origin and which are not collected or are refunded on the exported product.
- (ca) The normal value shall be reduced by the direct costs of the delivery of the product concerned from the premises of the exporter to the first independent buyer. The export price shall be reduced by all costs borne by the exporter for delivering the product concerned from its premises in the country of export to the premises of the domestic addressee. In both cases, these costs shall include transportation, insurance, handling, loading and ancillary costs.
- (cb) The normal value and the export price shall be reduced by the direct costs relating to the packaging of the product concerned.
- (cc) The normal value and the export price shall be reduced by the costs of any loan granted for the sales in question.

The amount of the reduction is to be calculated in view of the ordinary commercial lending rate valid in the country of the export or in the country of origin with respect to the currency indicated in the invoice.

- (cd) The normal value and the export price shall be reduced by the direct costs of guarantee, warranty, technical service and repair service.

- (ce) The normal value and the export price shall be reduced by the amount corresponding to the commissions paid on the sales in question. The wages paid to salespersons, that is to the employees directly pursuing selling activity, shall also be deducted.
- (d) The amount of the adjustment shall be calculated on the basis of the relevant data of the period of investigation or of the data of the last available financial year.
- (e) Requests for insignificant adjustments pertaining to the price or value of the transactions concerned shall be disregarded. Adjustments shall be regarded as insignificant if their impact is less than 0.5 per cent of the price or value.

### Section III

#### The countervailing duty

#### Article 11

1. A countervailing duty may be levied if the imported product directly or indirectly receives any subsidy, aid or bonus in the course of its production, manufacturing, export or transportation in the exporting country or in the country of origin and thereby injury or threat of injury is caused to the domestic industry.
2. A non-exhaustive list of export subsidies is contained in the Annex to the present Decree.
3. The exemption of the exported products or of the materials incorporated in them from import duties or indirect taxes according to the Annex or the refund of these duties or taxes shall not be qualified as subsidy.

#### Article 12

1. The amount of the subsidy shall be determined with respect to the unit of the subsidized product imported to Hungary deducting the following amounts from the full amount of the subsidy:
  - (a) any costs incurred in order to become eligible for the subsidy;
  - (b) taxes, customs duties and other levies on export, imposed on the export of the products to Hungary and which expressly serve the purpose of offsetting the effects of the subsidy.
2. If, in the course of the investigation, a party asks for a deduction of this kind, that party will have to justify its request by evidence.

## Section IV

### General provisions

#### Article 13

"Injury" shall mean material disadvantage caused to a domestic industry or the measurable retardation of the establishment of a domestic industry.

#### Article 14

1. The determination of injury shall be based on actual evidence and an objective investigation. The investigation shall extend to the volume of dumped or subsidized imports, the prices of the like product in the domestic market and the impact of such imports on domestic producers.

2. It shall be examined whether there has been a significant increase in the imports in question in absolute terms or relative to domestic production or consumption. With regard to the effect of the imports on prices, it shall be examined whether the price is substantially lower than the price of the similar Hungarian product, whether the effect of these imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The existence of one or more of the above criteria does not necessarily lead to the determination of injury.

3. The examination of the impact on domestic industry shall include an evaluation of all economic factors and indices having a bearing on the state of domestic industry (actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacities, factors influencing domestic prices, factors of actual or potential effects on cash flow, inventories, employment, wages, ability to raise capital or investment, etc.).

4. It must be demonstrated that the effects of the dumped or subsidized imports are causing injury. Injury caused by other factors shall not be attributed to such imports.

#### Article 15

1. The existence of the threat of injury shall be supported by facts. The threat of injury caused by dumped or subsidized imports must be clearly foreseen and imminent.

2. In the case of a threat of injury, the application of measures must be studied and decided with particular care.

#### Article 16

1. In determining injury, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the products - including like products - or to those of them whose collective output of this product represents a major proportion of the total domestic production. When producers are related to the exporters or importers of the allegedly dumped or subsidized product, the term "domestic industry" may be interpreted as referring to the rest of the producers.

2. Producers shall be deemed to be related to exporters or importers if:
  - (a) one of them directly or indirectly controls the other, or
  - (b) both of them are directly or indirectly controlled by a third person, or
  - (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this provision, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

### Section V

#### Procedural rules

#### Article 17

1. Investigations aiming at levying anti-dumping or countervailing duties shall be conducted by the Ministry of International Economic Relations (hereinafter referred to as the Ministry).
2. In the course of the procedure, the Ministry shall make its decisions involving the Ministry of Finance, the Ministry of Environment Protection and Regional Development, the Ministry of Labour, the Customs and Excise Service, the Economic Competition Office and the competent interest groupings and in agreement with the Ministry of Industry and Trade and/or the Ministry of Agriculture. The Ministry shall alone decide whether the measure envisaged is in accordance with international obligations.

#### Article 18

The industry or its representative may request the Ministry in a written application to conduct an investigation and to determine an appropriate anti-dumping or countervailing duty.

#### Article 19

1. The application shall contain as far as possible such information as is reasonably available to the applicant on the following:
  - (a) the identity of the applicant, the volume and value of the domestic production of the like product produced by the applicant, the list of all the known domestic producers of the like product and the volume and value of the domestic production of the like product produced by these producers;
  - (b) the description of all the allegedly dumped or subsidized products, the names of the country or countries of origin or export in question, the identity of all known exporters or foreign producers and the identity of all known importers of the product in question;

- (c) information on prices at which the product in question is sold when destined for consumption in the domestic market of the country or countries of origin or export, information on export prices or on the constructed price of the product and, where justified, information on the prices at which the product is first resold to an independent buyer in the importing country;
  - (d) information on the evolution of the volume of the allegedly dumped or subsidized imports, on the effect of the imports on the prices of like product in the Hungarian market and on the effect of the imports on the domestic industry concerned.
2. Based on the request received, the Ministry shall prepare questionnaires for the applicant, the importer and the exporter and based on the answers received shall take the necessary measures.

#### Article 20

The applicants, the exporters and importers known to be interested and the governments of the exporting countries shall be provided the opportunity to see all information that is not confidential in view of the provisions of Article 21 and to prepare their presentations on the basis of this information.

#### Article 21

Any information which by nature is to be regarded as confidential, or which is provided on a confidential basis by the parties shall be treated as such in the course of the investigation. Such information shall not be disclosed without the express consent of the party submitting it. The parties may be requested to provide a non-confidential summary of the data that they qualified as confidential. If the parties believe that such information cannot be summarized, they have to make a statement on the causes thereof.

#### Article 22

1. Based on the examination of the request, the possibly requested explanations and supplementary information, the Ministry shall inform the applicant whether he complied with the requirements referred to in Article 19.

2. As soon as possible after a request for initiation of a countervailing duty investigation is appropriately submitted, and in any event before the investigation, the authorities of the country the product of which may be subject to such investigation shall be afforded an opportunity for consultations with the aim of clarifying the facts relating to the matter and arriving at a mutually acceptable solution. Such opportunity shall also be afforded throughout the investigation.

#### Article 23

1. If, in the course of the evaluation of the request for an anti-dumping or a countervailing duty, the Ministry finds grounds for the initiation of the investigation, it shall pass a decision on this as soon as possible and publish it in the Magyar Közlöny.<sup>2</sup>

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<sup>2</sup>"Magyar Közlöny" is the official journal, of the Republic of Hungary.

2. The decision shall be notified to the known interested exporters and importers as well as to the representatives of the country or countries of export or origin.

3. If the Ministry does not find grounds for the initiation of the investigation, it shall inform the applicant of this and give the reasons for the decision without delay.

#### Article 24

1. The Ministry shall conclude the investigation within a period of less than nine months from the receipt of the request. In exceptional cases, the period of the investigation may be extended by an additional period of three months.

2. In case of need, the Ministry *ex officio* or upon the request of those referred to in Article 23.2, may request additional evidence or information. The parties concerned may submit any evidence to the Ministry which they consider relevant in respect of the proceedings. In justified cases, the parties shall also be entitled to submit the evidence orally.

#### Article 25

1. Wherever after the initiation of the investigation the Ministry finds sufficient preliminary evidence of injury or threat of injury, it may impose by a reasoned decision and as a provisional measure an anti-dumping or countervailing duty being not greater than the estimated margin of dumping or the estimated amount of subsidy the purpose of which is exclusively to prevent injury being caused during the investigation. The application of a provisional measure shall be limited to as short a period as possible, not exceeding four months or, in the case of a dumping investigation and upon request of a significant part of the domestic industry, to a period not exceeding six months.

2. The payments referred to in paragraph 1 may be substituted by a customs bond, taking into account the period determined in the decision taken by the Ministry, to be deposited with the customs office regionally competent according to the place of customs clearance for domestic trade. Such a bond may be deposited by an institution supervised by the State Banking Supervision.

3. The decision shall be notified by the Ministry in accordance with the provisions of Article 23.

#### Article 26

If the definitive duty is higher than the provisional duty paid or covered by a customs bond the amount of the surplus shall not be retroactively collected. In the contrary case, the customs authorities shall reimburse the difference or shall collect the reduced amount of the customs bond. Where a final determination is negative, the full amount of the provisionally determined and collected duty shall be reimbursed and the customs bond shall be returned.

#### Article 27

1. The Ministry may also conduct investigations in other countries provided that it obtains the agreement of the firms concerned and notifies the representatives of the government of the states in question and unless these states object to the investigation.

2. In cases in which the interested parties do not provide the necessary information within a reasonable period of time or noticeably impede the investigation, the preliminary and the final determinations may be made on the basis of the data available.

3. Throughout the investigation, the applicant and the exporters and importers of the product subject to the investigation may request that the parties with opposing interest be heard together.

#### Article 28

1. When during the investigation, the representatives of the exporters of the country of export or origin or the representatives of its government offer an undertaking, the investigation may be terminated without the imposition of provisional or definitive anti-dumping or countervailing duty. If the undertaking is accepted, the amount paid in lieu of the provisional anti-dumping or countervailing duty or provided as a customs bond shall be reimbursed.

2. An undertaking shall mean a commitment by the exporter of the country of export or origin or of its government whereby:

(a) it shall abolish or reduce the subsidy or introduce other measures to eliminate the injurious effect, or

(b) it shall modify the prices to an extent that eliminates the dumping margin or the subsidy or the injurious effects.

3. If the Ministry accepts the offer according to paragraph 2, the investigation is terminated. The decision concerning this fact shall be notified in the form and to the persons referred to in Article 23. The Ministry shall state in the decision that if the authority, producer or exporter making the undertaking fails or refuses to provide periodical information relevant to the fulfilment of such an undertaking, the Ministry may decide the application of provisional measures using the best information available and the reinitiation of the investigation.

#### Article 29

The Ministry shall take its decision on the basis of the evidence and data available and in view of the arguments of the interested parties, that is shall notify pursuant to Article 23. The decision shall define the rate of the duty and the conditions of its application (duration, the customs tariff number of the products concerned and other data necessary for the imposition and collection of the duty) in accordance with the provisions in force of the customs law.

#### Article 30

1. The anti-dumping and countervailing duty shall not exceed the amount of the dumping margin or of the subsidy.

2. The anti-dumping or the countervailing duty shall remain in force to the extent, and as long as, necessary to offset the effect of the dumping or subsidy which is causing injury but for a period not exceeding five years from its entry into force.

3. No products may be subject at the same time to the imposition of both an anti-dumping and a countervailing duty to offset the same situation of dumping or export subsidization.
4. The Customs and Excise Service shall levy, collect and manage the anti-dumping and countervailing duties and the customs bonds deposited to provide coverage for them in accordance with the provisions in force of the customs law.
5. The investigation shall not impede the customs clearance of the products concerned.

#### Article 31

The applicants or the exporters may appeal a decision on the imposition of the duty to the Minister of International Economic Relations within 15 days from its publication.

#### Article 32

A decision on anti-dumping or countervailing duty or an acceptance of undertaking may be reviewed, where warranted, upon request by an interested party which demonstrates a change in circumstances that substantiates the need for the review provided that at least one year has elapsed since the conclusion of the investigation. As a result of the review, the Ministry may modify or withdraw the measure.

#### Article 33

When the importer demonstrates that the customs duty collected exceeds the actual dumping margin or the amount of the subsidy, the surplus amount shall be reimbursed. The importer may submit the request for reimbursement to the Ministry within three months from the date of the exact determination of the amount of the duty to be collected. The Ministry shall decide on the acceptance of the request and the extent to which it shall be satisfied.

#### Article 34

The present Decree shall be applied in accordance with the international agreements.

#### Article 35

The procedures regulated by the present Decree shall be applied, *mutatis mutandis*, subject to the provisions of Act I of 1981 on the amendment and consolidated text of Act IV of 1957 on the General Rules of Administrative Procedures.

#### Article 36

This Decree shall enter into force on the 15th day following its publication. At the same time, Government Decree No. 111/1990 (XII.23) on anti-dumping procedures shall cease to be in effect.

Annex to Government Decree No. 69/1994 (V.4)

List of the usual export subsidies

- (a) The provision by the government of direct subsidies to a firm or an industry contingent upon export performance.
- (b) Currency retention schemes or any similar practices which involve a bonus on exports.
- (c) Internal transport and freight charges on export shipments, provided or mandated by government, on terms more favourable than for domestic shipments.
- (d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are favourable than those commercially available on world markets to their exporters.
- (e) The full or partial exemption, remission or deferral specifically related to exports, of direct taxes of social welfare charges paid or payable by industrial or commercial enterprises.
- (f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption in calculation of the base on which direct taxes are charged.
- (g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes and excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.
- (h) The exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on the like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated in the exported product.
- (i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated in the exported product, provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and the same characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, normally not to exceed two years.
- (j) The provision by governments (or special institutions controlled by the governments) of export credit guarantee or insurance programmes against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

- (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if the country of origin or export is a party to an international undertaking on official export credits to which at least 12 original signatories to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT are parties as of January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice the country of origin or export applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy.

- (l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement.

## Notes

For the purpose of this Decree:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties and all other of income and taxes on the ownership of real property.

The term "import charges" shall mean tariffs, duties and other fiscal charges not elsewhere enumerated in this note that are levied on imports.

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes and all taxes other than direct taxes and import charges.

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product.

"Cumulative" indirect taxes are multi-staged level where there is no mechanism for subsequent crediting of the tax if the goods or services subject to the tax at one stage of production are used in a succeeding stage of the production.

"Remission" of taxes includes the refund or rebate of taxes.