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**Committee on Anti-Dumping Practices**

Original: English

**Committee on Subsidies and Countervailing Measures**

NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

TURKEY

The following communication, dated 24 November 1995, has been received from the Permanent Mission of Turkey.

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With reference to our letters dated 15 March 1995 regarding the notifications under Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, I have the honour to enclose herewith the unofficial translation copy of the relevant Turkish legislation which has been in force since 1 October 1989.

In order to bring this legislation into conformity with the relevant WTO Agreements, an amendment law has been prepared but the domestic procedures for the enactment of new legislation has not yet been completed.

I would like to inform you that, new legislation of Turkey will be submitted to the relevant Committees as soon as possible after the completion of necessary domestic procedures.

UNOFFICIAL TRANSLATION

LAW ON PREVENTION OF UNFAIR COMPETITION  
IN IMPORTATION

Law No. 3577  
Official Gazette: 1.7.1989/20212

Date enacted: 16.6.1989

Purpose and scope

Article 1. The present Law covers the procedures and rules relating to administrative, financial, economic and other measures to be taken and actions to be made and the formation and duties of a Board to resolve upon the necessary rules and elementary matters with the aim of protecting an industry against unfair competition and/or preventing the impairment of the market due to dumped and/or subsidized imports, among unfair competition cases in importation.

Definitions

Article 2. Hereinafter are the definitions covered by this Law:

- (a) Dumping: The importation of a product exported to Turkey from a country with an export price less than the normal value of an identical or like product;
- (b) Subsidy: A direct or indirect benefit provided by the country of origin or exporting country to firms in the production, manufacturing, export and transport of a product exported to Turkey;
- (c) Export price: The price actually paid or payable for the product sold for export purposes;
- (d) Like product: A product which is completely identical to the product subject to dumping and/or subsidy or in the absence of such a product, another product having like characteristics;
- (e) Normal value:
  - 1. The comparable price actually paid or payable within the ordinary course of trade for an identical or like product subject to consumption in the exporting country or the country of origin; or
  - 2. When there are no sales of an identical or like product in the ordinary course of trade in the domestic market of the exporting country or the country of origin or when such sales do not permit a proper comparison, the comparable representative price of an identical or like product exported to a third country; or
  - 3. The price to be determined by adding a reasonable profit margin to the cost of production;
- (f) Comparable price: The price of an identical or like product comparable to the export price of the dumped and/or subsidized product determined with respect to the physical characteristics, quantity and conditions of sale and at the same commercial level, preferably at ex-factory level and taking into consideration the closest dates possible;

- (g) Dumping margin: The amount by which the normal value exceeds the export price;
- (h) Subsidy amount: The amount of direct or indirect benefits provided by the country of origin or exporting country to firms in the production, manufacturing, export and transport of such products;
- (i) Injury: The dumped and/or subsidized imports, causing material injury or threat of material injury or market impairment or physical retardation of the establishment of an industry due to dumping and/or subsidization;
- (j) Ministry: The Ministry to which the Directorate-General for importation is attached;
- (k) Directorate-General: The Directorate-General for importation;
- (l) Board: The Board of Evaluation of Unfair Competition in importation.

#### Cases requiring measures

Article 3. Cases requiring measures are those where dumped and/or subsidized imports cause material injury or constitute threat of material injury to an industry or cause the market impairment or physical retardation of an industry to be newly established in Turkey.

#### Complaint and examination

Article 4. The Directorate-General may, upon complaint or *ex officio* make or have made a dumping and/or subsidy examination.

The relevant natural or legal persons or relating professional institutions may submit a written application to the Directorate-General alleging that there is facing of material injury or threat of material injury or impairment of the market or that there is physical retardation of establishment of an industry resulting from dumped and/or subsidized imports.

Procedures and rules relating to the complaint and examination shall be determined by the Regulation to be enacted by the Ministry.

#### Duties of Directorate-General

Article 5. Duties of the Directorate-General in relation with the present Law are as follows:

- (a) To make the preliminary examination upon complaint or, where necessary, *ex officio* in the light of the information and documents submitted or other information available;
- (b) to submit proposal to the Board as to whether an investigation shall be initiated or not;
- (c) in case of a decision for initiating an investigation, to carry out such investigation and to submit to the Board the results thereof together with a proposal on contingent measures;
- (d) to fulfil the secretarial services of the Board as well as other duties to be assigned by the Board.

#### The Board of Evaluation of Unfair Competition in Importation and its Duties

Article 6. The Board shall be composed by an authorized representative from each of the Ministry of Finance and Customs, the Ministry of Agriculture, Forestry and Rural Affairs, the Ministry of Industry and Commerce, the Undersecretariat for State Planning Organization, the Union of the Chambers of Commerce, Industry, Maritime Commerce and Commodity Exchanges of Turkey, the Union of Chambers of Agriculture of Turkey and the relevant Head of Department of the Directorate-General for Importation, and presided by the Directorate-General for Importation or Deputy Directorate-General to be assigned.

The Board may, if necessary, solicit information from universities and other establishments and institutions.

The duties of the Board are:

- (a) To decide as to whether or not initiating or suspending an investigation;
- (b) to propose to the Ministry at any stage of the investigation, the adoption of provisional measures in case of existence of sufficient evidence;
- (c) to evaluate the investigation results, to take measures required thereby, to determine the dumping margin and/or subsidy amount and to submit all final decisions to be taken together with their justification through the Directorate-General to the Ministry;
- (d) to take necessary measures in case of violation of the undertakings.

Procedures and rules as regards the functioning of the Board shall be determined by the Regulation to be enacted by the Ministry.

#### Anti-dumping duty and countervailing duty

Article 7. Anti-dumping duty in the actual importation of the dumped product and countervailing duty in the actual importation of the subsidized product shall be levied on such dumping margin or subsidy amount as determined by the Board and approved by the Ministry as a result of the investigation. Nonetheless, in cases where it is determined that the injury caused by dumped or subsidized imports may be removed by the imposition of a duty at a lesser quantity or rate than the determined dumping margin or subsidy amount, such duty shall be applied.

Rules as regards the retroactive implementation of such duties to products previously imported shall be determined by the Statutory Decree. Nevertheless the period of retroactive implementation shall not exceed 90 days prior to the date of entry into force of provisional measures.

#### Duty payer

Article 8. The duty payers of the anti-dumping duty or the countervailing duty are the natural or legal persons importing the dumped and/or subsidized products.

#### Collecting authority

Article 9. The anti-dumping or the countervailing duty shall be collected or secured by the customs administrations independently of other duties levied on imports.

#### Investigation

Article 10. An investigation shall be initiated where it is determined that the examination carried out upon complaint or *ex officio* reveals injury caused by the dumped and/or subsidized importation.

The procedures and rules governing the investigation shall be determined by the Regulation to be enacted by the Ministry.

#### Undertakings

Article 11. The investigation may be suspended by the Board whenever the exporter shall accept and undertake, in the course of the investigation, to raise his prices to a level sufficient to remove the injury or the dumping margin and/or subsidy amount or shall declare and undertake to abide by a quantitative restriction in his exports or the determination of and the decision on the cessation of the injuring effects of the dumped and/or subsidized importation or the non-existence of the object of the complaint.

The suspension of the investigation shall not prevent the definitive collection of provisional duties previously imposed.

Rules as regards the undertakings shall be determined by the Regulation to be enacted by the Ministry.

#### Provisional measures

Article 12. Where in the course of the investigation on the imports subject to complaint the national interest call for immediate intervention and/or adoption of provisional measures, the deposit of a security in an amount equal to the dumping margin or the subsidy amount or in a rate sufficient to remove the injury determined by the Board may be decided upon the approval of the Ministry.

In case of a decision for a deposit of a security in an amount equal to the dumping margin or the subsidy amount or in a rate sufficient to remove the injury, such decision shall be announced to concerned parties by publication in the Official Gazette.

The application period of provisional measures is four months. This period, if necessary, may be extended for two months by the Ministry.

The rules as regards the implementation of provisional measures shall be determined by the Statutory Decree.

#### Definitive measures

Article 13. Where it is determined that cases requiring definitive measures existed after the conclusion of the investigation, an anti-dumping duty or a countervailing duty in an amount equal to the dumping margin or subsidy amount or to remove the injury as determined by the Board and as become decisive upon Ministerial approval shall be levied. For securities previously collected, action shall be taken in accordance with Article 14.

The application period of the rate and/or the amount of the anti-dumping duty or the countervailing duty in the form of definitive measures, the rules for the review of the implementation of such duties in accordance with changing circumstances and the rules governing the implementation of definitive measures shall be determined by the Statutory Decree.

In cases where an identical or like product under investigation is both dumped and subsidized, the anti-dumping duty and the countervailing duty shall not be concurrently applied, the one with higher rate shall only be prevailed.

The imposition of an anti-dumping duty or a countervailing duty shall not hinder the actual importation of the relevant product.

### Reimbursement

Article 14. If the definitive anti-dumping duty or the countervailing duty is higher than the security previously levied, the difference shall not be collected. If the definitive duty is lower than the security previously levied, the difference shall be reimbursed.

In case of determination of the non-existence of a dumping and/or subsidy as a result of the investigation, provisional measures shall be abolished and collected securities reimbursed.

The collected anti-dumping duty or the countervailing duty of a product to be returned or destroyed because of its inconformity with the provisions of the sales contract, shall be refunded in accordance with the Customs Law provisions on the refund of customs duties.

### Other legislation

Article 15. Such procedural and formal provisions of the Customs Law relating to the collection, prosecution and securing the customs duties not conflicting with the present Law shall also be applied in the procedures for the collection, prosecution and securing of the anti-dumping duty or the countervailing duty.

The anti-dumping duty or the countervailing duty unpaid shall be prosecuted by the customs administrations in accordance with the provisions of the Law No. 6183 on the Prosecution of the Public Receivables.

### Repealed and inapplicable provisions

Article 16. Article 21 of the Customs Law 1615 is hereby repealed.

In the implementation of this Law, the provisions of the Customs Law and other laws contradicting this Law shall not be applied.

### Statutory decrees and regulations

Article 17. Hereinafter:

- (a) The Statutory Decrees mentioned in the Articles 7, 12 and 13; and
- (b) the Regulations mentioned in Articles 4, 6, 10 and 11, shall be published within three months following the entry into force of this Law.

### Entry into force

Article 18. This Law shall enter into force after the third month following its publication.

### Execution

Article 19. The provisions of this Law shall be executed by the Council of Ministers.

DECREE ON PREVENTION OF UNFAIR COMPETITION  
IN IMPORTATION

Decree No. 89/14506

Official Gazette: 27.9.1989/20295

Purpose and scope

Article 1. The present Decree covers administrative, financial, economic and other measures to be taken and actions to be made with the aim of protecting an industry against unfair competition and/or preventing the market impairment due to dumped and/or subsidized imports, among unfair competition cases in importation.

Retroactivity

Article 2. The following are the cases for imposing duties retroactively:

(a) For dumped products:

- where there is a history of dumping which caused injury and the importer was, or should have been, aware that the exporter practices dumping and that such action would cause injury; and
- that the realization of dumped importation in quantities causing injury in a short period of time, to such an extent that, in order to preclude its recurrence, it appears necessary to impose an anti-dumping duty retroactively on those imports.

(b) for subsidized products:

- that the importation caused injury which is difficult to relieve, on account of export subsidies granted inconsistent with the provisions of the Agreement of Interpretation and Application of Articles VI, XVI and XXIII of the GATT and the obligation for countervailing duties being retroactive in order to prevent the recurrence of such injury.

Retroactivity shall also be applied in case of violation of an undertaking for dumped or subsidized products. However, such implementation shall not cover the period before the violation of an undertaking.

Retroactive implementation is limited to 90 days.

Rules governing the implementation provisional and definitive measures

Article 3. The amount or the rate of the security or duty shall be determined by indicating the exporters of the products and the country of origin or the exporting country.

In case of several exporters from the same country and impossibility of determining all exporters, provisional and definitive measures may be applied to all the imports of investigated products from that country.

In case the investigated product is imported from more than one country, measures may be taken on a non-discriminatory basis on imports of such product causing injury other than such exporters or countries whose undertakings have been accepted.

Article 4. In case of definitive measure has been decided as a result of any investigation, provisional measures collected in the course of the investigation, if any, shall be levied definitively.

The acceptance of an undertaking and the suspension of an investigation shall not prevent collecting, previously imposed provisional measures definitively.

Article 5. In case of provisional or definitive measure decision has been taken against dumped and/or subsidized imports, the amount or the rate of the security or duty, the investigated product, the exporter or the country of origin or the exporting country as well as other information on the investigation shall be announced by publication in the Official Gazette.

Definitive measures taken against dumped and/or subsidized imports shall remain in force as long as necessary to remove the effects of the injury caused by such importation.

#### Review of the definitive measures

Article 6. Decisions as to definitive measures may be reviewed upon the request of one of the concerned parties or *ex officio*, provided that at least one year has elapsed since their imposition. In such event new evidences justifying the review shall be submitted to the Directorate-General for importation.

Where it is decided to hold a review, the investigation shall be re-initiated and carried out. However, the re-initiation of the investigation shall not prevent the implementation of measures previously taken and which are actually in force.

#### Entry into force

Article 7. This Decree shall enter into force on 1.10.1989.

#### Execution

Article 8. This Decree shall be executed by the Prime Ministry.



REGULATION ON PREVENTION OF UNFAIR COMPETITION  
IN IMPORTATION

Official Gazette: 27.9.1989/20295

SECTION ONE

Purpose, Scope, Definitions

Purpose and scope

Article 1. The present Regulation covers the procedures and rules relating to administrative, financial, economic and other measures to be taken and actions to be made with the aim of protecting an industry against unfair competition and/or preventing the market impairment due to dumped and/or subsidized imports, among unfair competition cases in importation, pursuant to the dispositions of the Law No. 3577 on Prevention of Unfair Competition in Importation.

Definitions

Article 2. Hereinafter are the definitions covered by this Regulation:

- (a) Directorate-General: The Directorate-General for Importation;
- (b) Board: The Board of Evaluation of the Unfair Competition in Importation.

SECTION TWO

Procedures and Rules Governing Complaint and Investigation

Complaint

Article 3. Complaints relating to material injury or threat of material injury or the market impairment or physical retardation of the establishment of an industry resulting from dumped and/or subsidized imports shall be submitted to the Directorate-General in writing and in a manner to include the information referred to in Annex 1.

Complaints should include sufficient evidence to initiate an investigation. In case of non-existence of sufficient evidence, the complainant shall be informed about the case.

Examination

Article 4. The Directorate-General shall complete the examination made upon complaint or *ex officio* within 60 days to the latest and shall submit proposal to the Board as to whether an investigation shall be initiated or not.

Initiation of an investigation

Article 5. Subsequent to the completion of the examination made upon complaint or, if necessary, *ex officio* by the Directorate-General within 60 days to the latest, the Board shall decide as to whether an investigation shall be initiated or not.<sup>1</sup>

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<sup>1</sup>Official Gazette, dated 11/05/1992 and No. 21396.

Where the decision is not to initiate an investigation, procedures shall not be continued and concerned parties shall be informed about this case.

Where the decision is to initiate an investigation, such decision shall be published in the Official Gazette and questionnaires provided in Annex 2 and Annex 3 shall be sent to the known importers and exporters of the product in question. The concerning parties obliged to supply information requested in the questionnaires in written form, as well as other information and documents they will deem useful for the investigation, to the Directorate-General within 30 days from the date of dispatch. This time-limit may be extended up to 15 days in case recourse shall be made by the parties concerned within due time.

The Directorate-General may where necessary request additional information and documents related to the investigation from the parties concerned.

#### Collection and verification of information

Article 6. In order to verify the information provided in the course of the investigation and completing insufficient information, examinations may be carried out at the premises of the natural or legal persons. Such examinations may be carried out outside Turkey as well, if deemed necessary. Whenever expedient, as regards to characteristics of the investigated product, information may be obtained from concerned public institutions as well.

In cases where any party refuses access to or does not provide necessary information within the specified time-limits or provides false or misleading information or significantly impedes the investigation, a decision may be made on the basis of the facts available.

#### Confidentially of information

Article 7. Information obtained shall be used only in dumping and/or subsidy investigations.

The parties concerned may request the confidentiality of the information provided. With the aim of ensuring transparency in the investigation and providing maximum protection of the mutual interests of the parties, requests to be made for such purposes should contain the grounds for the confidentiality and the non-confidential summary of the information, or in case of the impossibility of presenting such a summary, a document evidencing the justification thereof should be submitted.

In cases where the request for confidentiality is not warranted or the supplier is inconvenient of the total or even partial disclosure of the information, such information may be disregarded.

In cases where the administration is due to adduce evidence on account of recourse to legal action against the implementation of the legislation on Prevention of the Unfair Competition in Importation, request shall be made to the relevant jurisdiction in order to have the information considered confidential subjected to the provisions of the Administrative Procedural Law No. 2577, Article 20/4.

#### Hearing of the parties

Article 8. In the course of the investigation the Directorate-General may individually or collectively hear the parties. Such hearings shall be arranged upon the request of the parties or the Directorate-General.

#### Right of examination

Article 9. Parties may be granted the opportunity to examine such non-confidential information not belonging to examinations pertaining to the investigations and provided that a written application is made to the Directorate-General.

#### Suspension of the investigation

Article 10. In cases where the undertakings are accepted or removal of the injurious effect of dumped and/or subsidized imports is determined and decided or the motive of the complaint is removed the investigation may be suspended by the Board upon the proposal of the Directorate-General, without imposing provisional or definitive measures.

However, the acceptance of the undertakings shall not necessarily mean the suspension of the investigation. The investigation may be concluded upon the request of the exporter or the country of origin or the exporting country or upon the decision of the Board.

#### Investigation period and announcement

Article 11. The final decision relating to the complaint subject to dumped and/or subsidized import is taken within one year from the initiation of the investigation.

This period can be extended up to six months by the Board of Evaluation of Unfair Competition in Importation where necessary.<sup>2</sup>

The result of the investigation shall be announced by publication in the Official Gazette.

### SECTION THREE

#### Undertakings

#### Acceptance and validity of undertakings

Article 12. In the course of the investigation the country of origin or exporting country or the exporter may accept and undertake to raise his price to a level sufficient to remove the dumping margin and/or the subsidy amount or abide by certain quantitative restrictions in his exports.

Whenever the Directorate-General concludes that the acceptance of the price undertakings is not appropriate on account of the multitude of the actual or contingent exporters or other reasons, proposed undertakings may not be accepted.

Undertakings may be suggested by the Directorate-General. However, the exporter or the country of origin or the exporting country are not obliged to accept proposed undertakings.

Undertakings shall remain in force until the dumping and/or subsidy is removed.

#### Violation of undertakings

Article 13. The Directorate-General may require information from the exporter or the country of origin or the exporting country whose undertaking is accepted as to whether his undertaking is fulfilled and may carry out researches for verifying such information. The failure of the exporter or the country of origin or the exporting country to provide information or his turning down the request for a research shall be deemed as a violation of the undertaking.

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<sup>2</sup>Official Gazette, dated 07/02/1992 and No. 21272.

Where the violation of undertakings is determined, a provisional or final measure may be imposed on the basis of the information available by the Board upon the proposal of the Directorate-General.

## SECTION FOUR

### Dumping

#### Notion of dumping

Article 14. A product exported to Turkey from a country with a price less than the normal value of an identical or like product is to be considered as being dumped and the determinations of dumping shall be made under the provisions of this section.

### PART ONE

#### Normal Value

#### Determination of the normal value

Article 15. The normal value is a comparable price actually paid or payable in the ordinary course of trade for the identical or like product subject to consumption in the exporting country or the country of origin.

In case of absence of the sales of the identical or like product in the ordinary course of trade in the domestic market of the exporting country or the country of origin or in cases where such sales do not permit a proper comparison, the comparable representative price of the identical or like product exported to a third country or the price determined by adding a reasonable profit margin to the cost of production may be accepted as normal value.

#### Calculation of the cost of production

Article 16. The cost of production shall be calculated by adding a reasonable amount of the selling, general and administrative costs to fixed and variable costs which include the material and production costs in the country of origin in the ordinary course of trade. The profit shall not exceed such profit margins taken as a basis in the sales of the identical or like product in the domestic market of the country of origin.

In cases where the data obtained from the calculation of the cost of production is unreliable or where the exporter in the country of origin neither produces nor sells the product concerned in the domestic market, the prices or costs of other sellers and producers of the identical or like product in that country shall be taken into account.

In other cases the cost of production and the profit margin shall be calculated on a reasonable basis by utilizing the information available.

#### Ordinary course of trade

Article 17. Sales shall be deemed as not being made in ordinary course of trade whenever the actual sales price of the identical or like product in the domestic market of the country of origin, is determined as being lower than its cost of production, such product is imported in substantial quantities in Turkey and the sales during the investigation period are not made on a price allowing to recover all expenses to be added to the cost of production.

In such event the normal value shall be determined as the export price to third countries or the price obtained by adding a reasonable profit margin to the cost of production or the price

corresponding to the lowest cost of production in the domestic market or to an amount obtained by adding a reasonable profit margin to a selling price which removes the injury occurred due to the sales made below the cost of production.

The provisions of above paragraphs shall also be applied in case of existence of association or a similar arrangement between the parties effecting the prices or the costs.

Available information shall be used in the calculation of the normal value according to this Article.

#### State trading countries

Article 18. In cases where imports from countries enumerated as State trading countries in the Importation Regime Decree and other non-market economy countries, normal value shall be determined on the basis of the below statements:

- (a) The price on which the identical or like product is actually sold for consumption purposes in a market economy third country or the export price to third countries;
- (b) the price determined by adding a reasonable profit margin to the cost of production of the identical or like product in a market economy third country;
- (c) in cases where the specified prices under paragraphs (a) and (b) do not establish an appropriate base, the price actually paid or payable for the identical or like product in Turkey adjusted in a manner to include a reasonable profit margin.

Macroeconomic data shall be utilized in the selection of the market economy third country.

#### Other cases in the determination of the normal value

Article 19. In cases where a product imported not directly from the country of origin but from an intermediate country, the normal value is the comparable price actually paid or payable for the identical or like product in the domestic market of the exporting country or the country of origin.

In cases where the product is merely transshipped through the exporting country, is not produced in the exporting country or the comparable price for that product does not exist in the exporting country, the price in the country of origin may be taken as basis.

## PART TWO

### Export Price

#### Determination of the export price

Article 20. The export price is the price actually paid or payable for the products sold for export purposes.

Where there is no export price or the establishment of a beneficial association or similar arrangement between the exporter and importer or a third party or price actually paid or payable for the product sold for export purposes being unreliable by any other reasons whatsoever, the price on which the product is resold to an independent buyer may be taken as basis.

If the product is not resold to an independent buyer or not resold in the conditions as imported, the export price may be calculated on any reasonable basis.

In these cases all costs and expenses incurred between the importation and the resale, including the customs and other duties, as well as a reasonable profit margin shall be taken into account.

Points to be taken into account in the determination of the export price

Article 21. The following items shall be taken into account in the determination of the export price:

- Usual transport, insurance, handling, loading and ancillary expenses;
- customs duties, anti-dumping duties, countervailing duties and other taxes as well as additional fiscal liabilities to be paid in the importing country on account of imports or the sale of products;
- a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

## SECTION FIVE

### Comparison

#### Price comparison

Article 22. The comparison of the normal value with the export price shall be made as nearly as possible at the same time.

Following items shall be taken into account in order to have the prices fairly compared, provided that such a request should be forwarded and affirmative evidences should be presented by the parties:

- Physical characteristics;
- import charges and indirect taxes;
- selling expenses such as transport, insurance, handling, loading charges and ancillary costs such as packing, credit, guarantees, warranties and other after-sales services depending on trading terms.

#### Averaging and sampling techniques

Article 23. In cases where investigated prices vary, normal value and the export price shall be calculated by using the weighted averages, sampling techniques and other statistical methods.

## SECTION SIX

### Subsidies

#### Notion of subsidy

Article 24. A direct or indirect benefit provided by the country of origin or exporting country to the firms in the production, manufacturing, export and transport of a product exported to Turkey shall be deemed as subsidy.

The "Illustrative List on the Export Subsidies" referred to in the Annex to the Agreement on the Interpretation and Application of the Articles VI, XVI, and XXIII of General Agreement on Tariffs and Trade shall be taken into account in evaluations as to which cases shall be considered as being a subsidy and as to the calculation of the subsidy amount on itemized basis.

The exemption of the component items entering into the structure of the identical or like product subject to export in the country of origin or exporting country from custom duties or indirect taxes or the refund of such duties and other disbursements shall not be deemed as being a subsidy.

#### Determination of the amount of subsidy

Article 25. In cases where it is determined that the subsidy is not granted by references to the quantities manufactured, produced, exported or transported, the amount of subsidy shall be determined by allocating the value of the total subsidy as appropriate over the level of the production or export of the product concerned for an appropriate period. Usually such a period is the accounting year of the party benefiting subsidy.

In cases where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the subsidy value shall be calculated by deducting the ordinary amortization shares of such

assets. In cases where the assets are not depreciating, the subsidy shall be valued as an interest-free loan.

In case information required in the course of the subsidy investigation is not submitted in accordance with produced, exported or transported quantities, the amount of the subsidy shall be calculated within the context of quantity and value of imports the investigated product as well as other information.

For imports from non-market economy countries, the amount of the subsidy shall be determined in accordance with the provisions of Part 1, 2 of Section IV and Section V.

The weighted average method may be used in cases where the amounts of subsidy vary.

### Deductions

Article 26. In determining the amount of subsidy the following items shall be deducted from the total amount of subsidy:

- (a) Charges for the application and other expenses incurred for benefiting from the subsidy;
- (b) export taxes, customs duties and other like fiscal liabilities imposed on the product exported to Turkey for reducing subsidy and other additional fiscal liabilities other than these.

The implementation of above deductions is contingent on the documentation of the concerned party.

## SECTION SEVEN

### Injury

#### Notion of injury

Article 27. Material injury or threat of material injury or market impairment to an industry or physical retardation of the establishment of an industry caused by dumped and/or subsidized imports shall be deemed as injury.

The industry indicates all producers in Turkey of the identical or like product or the producers realizing the substantial amount of the Turkish production for these products.

However, exceptionally, in cases where the producers have trade relations with the exporters or importers or are themselves the importers of the allegedly dumped and/or subsidized product, an industry shall be interpreted as referring to the rest of the producers.

#### Material injury

Article 28. In the determination of material injury the following factors shall be taken into account:

- (a) The volume of dumped and/or subsidized imports for the purpose of determining whether a significant increase particularly absolute or relative occurred with respect to production and consumption in Turkey;



- (b) the prices of dumped and/or subsidized imports as to whether a significant price undercutting has been made with respect to the price of the identical or like product in Turkey;
- (c) effects on development of such following economic indices of the concerned industry:
  - production;
  - capacity utilization;
  - inventories;
  - sales;
  - market share;
  - prices;
  - profits;
  - return on investment;
  - cash flow;
  - employment.

#### Threat of material injury

Article 29. In determination of a threat of material injury, the development of the following factors shall be taken into account:

- (a) The export capacity actually available in or to be realized in the near future in the country of origin or the exporting country and exports which is likely to be directed to Turkey;
- (b) the rate of increase of the dumped or subsidized exports to Turkey;
- (c) the nature of dumping and/or subsidy and the trade effects likely to arise therefrom.

#### Effect of injury

Article 30. The effect of the dumped and/or subsidized imports on the domestic production of the identical or like product shall be determined on the basis of available data.

In cases where an identical or like product could not be identified, the effects of the dumped and/or subsidized imports shall be assessed through examination of the production of the narrowest group of product which includes necessary information available for like product.

### SECTION EIGHT

#### The Board of Evaluation of Unfair Competition in Importation

#### Working Procedures and Rules of the Board of Evaluation of Unfair Competition in Importation

Article 31. The Board shall be composed by an authorized representative from each of the Ministry of Finance and Customs, the Ministry of Agriculture Forestry and Rural Affairs, the Ministry of Industry and Commerce, the Undersecretariat for State Planning Organization, the Union of the Chambers of Commerce, Industry, Maritime Commerce and Commodity Exchanges of Turkey, the Union of Chambers of Agriculture of Turkey and the relevant Head of Department of the Directorate-General for importation and presided by the Director-General for importation or Deputy Director-General to be assigned.

The Board shall convene whenever necessary, upon the call by the President of the Board. The agenda of the meeting shall be drawn up by the Directorate-General and summary information relating to the agenda items shall be forwarded to the Members of the Board in advance.

The quorum is the simply majority. In case such a majority shall not be obtained in the first meeting, no majority shall be required in the meeting to be held in the following day.

The Board shall resolve upon the majority of participants to the meetings. In case of a close vote, the vote of the President shall be the casting vote.

According to the nature of the agenda items to be taken up, the Board President may invite on advisory basis, the representatives from the universities or other relevant establishments and institutions to attend the Board meetings. Such persons shall not participate in votes.

Board Members shall not take part to meetings when their relation in a manner provided under the Code of Civil Procedure Article 245, paragraphs 3 and 4 with concerned parties is established to exist.

Board Members who are representatives of the professional institutions should not be the producers, exporters or importers of the identical or like product or should not deal with the trade thereof by any manner whatsoever. Otherwise action shall be taken according to the provisions of above paragraph.

## SECTION NINE

### Final Provisions

#### Submission of information

Article 32. Whoever imports a product subject to an anti-dumping duty or a countervailing duty in importation imposed as a result of an investigation, shall inform the Directorate-General on the quantity and value of such imports prior to importation procedures and within one week after the importation is realized effectively.

#### Entry into force

Article 33. The present Regulation shall enter into force on 1.10.1989.

#### Execution

Article 34. The present Regulation shall be executed by the Prime Ministry.

## ANNEX 1

### ANTI-DUMPING AND/OR SUBSIDY QUESTIONNAIRE FOR COMPLAINANTS

The applicants should answer the questionnaire completely and exactly and provide all the other documents concerned (such as bills, bids, statistics of trade and production) as far as possible. In cases where the complaint includes confidential information, such information should be submitted in an additional confidential annex and in this case complaint should include non-confidential summary and statements describing the reasons for confidentiality.

The following details should be provided by all applicants in complete and exact manner within their own knowledge and considerations. They should prove that they are the representatives of the other firms, when they are acting on behalf of the others.

1. Complainant:
  - 1.1 Name and address;
  - 1.2 producers on whose behalf the complainant is acting<sup>3</sup>;
  - 1.3 proportion accounted by the represented producers to total Turkish production.<sup>4</sup>
2. Imported products subject to dumping and/or subsidy:
  - 2.1 Precise description of the products (technical characteristics, exact use, etc.);
  - 2.2 tariff headings or subheadings;
  - 2.3 customs duty;
  - 2.4 country of origin;
  - 2.5 exporting country;
  - 2.6 name and addresses of producers in the country of origin;
  - 2.7 name and addresses of exporters to Turkey in the country of origin.
3. Normal value and export price:
  - 3.1 The normal value of products subject to dumping and/or subsidy should be determined in accordance with the provisions of Chapter IV, Part I of the Regulation on Prevention of Unfair Competition in Importation. For the purpose of a fair comparison of normal value and export price, the provisions of the Article 22 of the mentioned Regulation should be taken into consideration.
    - 3.1.1 Normal value;
    - 3.1.2 export price.

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<sup>3</sup>Addresses should be clear and full including telephone, telex and fax numbers.

<sup>4</sup>Where the complainant is not representing the whole domestic production, names and addresses of the other producers should be given.

4. Injury

Below requested information should be submitted relating to the allegedly dumped and/or subsidized imports. Figures should cover the last three calendar years and present year.

4.1 Development of domestic consumption:

Quantity

19..  
19..  
19..  
19..

4.2 Market share of the dumped and/or subsidized imports:

Quantity

19..  
19..  
19..  
19..

4.3 For the domestic producers:

4.3.1 Costs;

4.3.2 sales;

4.4 Development of domestic production:

Quantity

19..  
19..  
19..  
19..

4.5 Development of capacity utilization;

4.6 Development of inventories;

4.7 Sales (volume and value):

4.7.1 In the domestic market;

4.7.2 in the foreign markets;

4.8 Market share of the domestic producers:

Quantity

19..  
19..  
19..  
19..

- 4.9 Price development (in particular depression of prices or prevention of price increases which would otherwise have occurred).
- 4.10 Profits/losses (before tax as a percentage of turnover);
- 4.11 Level of employment;
- 4.12 The export capacity actually available in or to be realized in the near future in the country of origin or the exporting country and exports which is likely to be directed to Turkey.

ANNEX 2

ANTI-DUMPING AND/OR SUBSIDY QUESTIONNAIRE FOR IMPORTERS

Unless otherwise specified, replies should cover a period of 12 months prior to the first day of the month in which the notice of the investigation was published in the Official Gazette.

If there is insufficient space in any section of the questionnaire to provide the details asked for, additional information should be submitted in an annex to the questionnaire.

1. General information:

- 1.1 Legal form and full address of the firm;
- 1.2 relationship, if any, with the country of origin or export;<sup>5</sup>
- 1.3 under which status do the imports made (industrialist, importer, fiduciary agent);
- 1.4 range of products in question.

2. Information relating to imports:

2.1 Total imports of the product in question during the last four years and current year per exporting country concerned:

	<u>Quantity</u>	<u>Country</u>
19..		
19..		
19..		
19..		
19..		

2.2 Prices paid or payable to the exporter(s) for the product subject to investigation:<sup>6</sup>

- 2.2.1 Unit price;
- 2.2.2 currency specified in sales contract;
- 2.2.3 terms of sale (f.o.b., c.i.f., etc.);
- 2.2.4 terms of payment (30, 60 days, L/C, etc.);
- 2.2.5 reductions, discounts, rebates or commissions, etc. deducted from the above-mentioned prices and conditions for granting these should be explained;

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<sup>5</sup>In cases where there is an association or a compensatory arrangement with the exporter(s) together with details of prices charged and quantities involved and the relation should be explained.

<sup>6</sup>Where the price varies because there is more than one exporting company or according to the specifications of the product, the range of prices prevailing should be indicated and full details should be provided, including an indication of the quantities imported at the different prices.

- 2.2.6 legible copies of import licences, customs entrance manifests and invoices which are related to these manifests should be submitted.
- 2.3 Nature and amount of cost items resulting from import expenses should be specified taking the following into consideration:
  - 2.3.1 Outland freight;
  - 2.3.2 insurance;
  - 2.3.3 customs duties;
  - 2.3.4 share held by the municipality;
  - 2.3.5 stamp and quay duty;
  - 2.3.6 fund imposed on imports;
  - 2.3.7 other expenses in customs;
  - 2.3.8 banking costs;
  - 2.3.9 inland transport;
  - 2.3.10 other costs (packaging, handling, storage, etc.).
- 3. Information relating to resale<sup>7</sup>
  - 3.1 Resale of the product subject to investigation to third parties which have no relation to the exporter(s):
    - 3.1.1 Unit price;
    - 3.1.2 terms of sale (ex-factory, delivery, etc.);
    - 3.1.3 terms of payment;
    - 3.1.4 reductions, discounts, rebates or commissions, etc. deducted from the above-mentioned prices and conditions for granting these should be explained.
  - 3.2 Nature and amount of any payment made to third parties as a result of sales (commissions, etc.);
  - 3.3 Percentage of total domestic sales made to different types of customer (stockist, end user, etc.).
- 4. The net profit margin per unit sold of the product subject to investigation should be calculated and together with the result the method used in calculation should be explained

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<sup>7</sup>In cases where the prices vary in respect to the specifications of the product or location of producers the list of prices prevailing should be indicated and the quantities at different prices should be submitted in full details. Additionally, the list of customers who are related to or have a compensatory agreement with the importer, should be indicated together with the quantities and prices of the sales to them in detail.

ANNEX 3

ANTI-DUMPING AND/OR SUBSIDY QUESTIONNAIRE FOR EXPORTERS  
AND OTHER INTERESTED PARTIES

Unless otherwise specified replies should cover a period of 12 months prior to the first day of the month in which the communiqué of the investigation was published in the Official Gazette.

Where the information and documents are submitted confidentially, a non-confidential summary and a statement of the reasons why it is considered confidential should be explained.

If there is insufficient space in any section of the questionnaire to provide the details asked for they should be given in an annex to the questionnaire indicating clearly to which section it relates.

All producers and exporters receiving this questionnaire should complete it. However, if you are not a producer of the good in question then, in addition to completing the questionnaire yourself, you should request your supplier to complete it.

Replies to the questionnaire are required to be in Turkish.

1. General

- 1.1 Legal form of your firm;
- 1.2 range of goods produced and/or marketed;
- 1.3 total sales;

<u>For the last accounting year</u>	<u>For the current year</u>
Value-quantity (f.o.b.)	Value-quantity (f.o.b.)

- 1.3.1 Sales of goods in question;
- 1.3.2 exports of goods in question;
- 1.3.3 exports of goods in question to Turkey.
- 1.4 Production capacity:
  - 1.4.1 Theoretical capacity;
  - 1.4.2 capacity utilization.
- 1.5 Financial and accounting data<sup>8</sup>.

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<sup>8</sup>Annual reports, audited or published consolidated financial statements for the last three years and indicate separately profit/loss situation for product concerned, should be attached. The methods, used to allocate costs among organizational units, e.g. parent company charges to subsidiaries, plant-wide charges to specific departments of a plant and allocation between this good and other activities, should be described.



2. Quantities sold:

Details by type of the good in question should be given and it should be indicated that which exports, if any, are made to related companies.

19..	19..	19..	19..	19..
_____	_____	_____	_____	_____
				(Current year)

2.1 Sales on the domestic market;

2.2 exports to Turkey;

2.3 exports to other countries.

3. For sales during the investigation period, together with export price to Turkey and reductions, discounts, rebates or commissions available from the price (specify precise conditions for granting) should be declared<sup>9</sup>

3.1 Price paid or payable by the customer:

3.1.1. Unit price;

3.1.2 currency specified in sale contract;

3.1.3 terms of sale (f.o.b., c.i.f., etc.);

3.1.4 terms of payment.

3.2 Nature and amount of any costs or charges beyond the ex-factory level included in prices indicated above:

3.2.1 Freight:

3.2.1.1 within exporting country;

3.2.1.2 outside exporting country.

3.2.2 insurance

3.2.3 other costs should be listed separately (packaging, handling, loading, customs clearance, etc.)

3.3 Nature and amount of any payment made to third parties as a result of your sales (commissions, etc.). Indicate whether included in price.

3.4 Do you have any association or compensatory arrangement with any purchaser in Turkey, either directly or through a third party? If so, give a brief description.

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<sup>9</sup>Where the price varies according to the specifications of the good or the type or location of purchaser the range of prices prevailing should be indicated and full details should be provided, including an indication of the quantities sold at different prices.

4. Normal value based on domestic sales:

- 4.1 Price paid or payable by unrelated purchaser(s) on the domestic market for the good in question<sup>10</sup>:
  - 4.1.1 Unit price;
  - 4.1.2 terms of sale (ex-works, delivered, inclusive/exclusive of sales or like taxes, etc);
  - 4.1.3 terms of payment.
- 4.2 List of customers who are related to your group or with whom you have compensatory agreement, together with details of prices charged to them and quantities involved.
- 4.3 Nature and amount of any charges beyond the ex-factory level included in the price indicated in the paragraphs (4.1 and 4.2):
  - 4.3.1 Freight;
  - 4.3.2 insurance;
  - 4.3.3 other costs should be listed separately (packaging, handling, loading, customs clearance, etc.).
- 4.4 Nature and amount of any payment made to third parties as a result of your sales (commissions, etc.). Indicate whether included in price.
- 4.5 Percentage of total domestic sales made to different types of customer (stockholder, wholesaler, end user, associated or related companies, etc.)

5. Normal value based on exports to third countries or costs of production:

This section only to be completed where:

- (a) There are no domestic sales of a like good; or
- (b) domestic sales of the like good do not permit a proper comparison; or
- (c) domestic sales of the like good are made at a loss; or
- (d) your are requested to do so.

5.1 Export sales to third countries:

In export to third countries, reductions, discounts, rebates or commissions available from the unit price actually paid or payable (specify precise conditions for granting). Where price varies according to the specifications of the good or the type or location

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<sup>10</sup>Where the price varies according to the specifications of the good or the type or location of purchaser, it should be indicated that above the range of prices prevailing and should be provided full details separately, including an indication of the quantities sold at different prices. If price lists are available, copies of those valid during the period concerned should be supplied.

of purchaser, indicate the range of prices prevailing and provide full details separately, including an indication of the quantities sold at the different prices.

- 5.1.1 Unit price;
  - 5.1.2 currency specified in sales contract;
  - 5.1.3 terms of sale (f.o.b., c.i.f., etc.);
  - 5.1.4 terms of payment.
- 5.2 Nature and amount of any charges beyond the ex-factory level included in the price indicated above:
- 5.2.1 Freight;
    - 5.2.1.1 within exporting country;
    - 5.2.1.2 outside exporting country.
  - 5.2.2 insurance
  - 5.2.3 other (specify packaging, handling, cartage, loading, customs clearance, etc. and list amounts separately);
  - 5.2.4. nature and amount of any payment made to third parties as a result of your sales (such as commissions). Indicate whether included in price;
  - 5.2.5 Do you have any association or compensatory arrangements with any purchaser in the countries of destination, either directly or through a third party? If so, give a brief description.
- 5.3 Cost of production for the good in question:

Figures should relate to the sales made during the period specified in the general instructions. If data are based on standard, rather than actual costs, describe the method used to determine standards, the frequency of revision and the treatment of variances:

5.3.1 Costs of raw materials:

Please indicate the total costs of raw materials including inward transport, duties and other costs incurred in obtaining the raw materials. Identify separately at least the major raw material elements, their input rate and their cost per input unit.

5.3.2 Cost of direct labour:

This should include the cost of any labour which can be identified or associated with a particular product or process. The cost includes basic pay, overtime pay, incentive pay, bonuses, shift differentials, employee benefits (housing, holiday pay, retirement, social security programmes) and any other employee-related expenses. Specify average labour productivity as measured in units normally used in your industry.

5.3.3 Overheads:

5.3.3.1 Manufacturing overheads:

These include all expenses incident to and necessary for the production of the good. The following items at least should be separately identified: indirect labour (including contract labour), supervision, depreciation, rent, power, maintenance and repairs, any other cost which is 5 per cent or more of total manufacturing overhead. Also include and identify here accounting adjustments to inventory (e.g. year-end adjustments based on physical inventory, inventory reserves);

5.3.3.2 financing costs;

5.3.3.3 packing costs;

5.3.3.4 selling, general and administrative costs:

These include all other costs incurred. Each item accounting for over 5 per cent of the total under this heading should be separately identified.

5.3.4 profit/loss (net before tax) after deducting the above costs from the sales revenue;

5.3.5 level of profit considered reasonable for this good;

5.3.6 is any item which inputs directly into the production of the good concerned supplied by a party with whom your firm is associated or has a compensatory agreement?

5.3.7 describe the general and cost accounting system used by your firm. The description should include, but not be limited to:

5.3.7.1 Methods used to account for incidental revenue;

5.3.7.2 methods used to account for work performed by the company which is capitalized;

5.3.7.3 methods used to account for the cost and revenue of any by-products;

5.3.7.4 depreciation methods used and useful life adopted by asset group or class;

5.3.7.5 details of any material differences between the production cost data supplied in your reply to this questionnaire and the costs normally determined using your accounting system.

## 6. Allowances

6.1 Differences in physical characteristics of the good:

Where the product sold in your domestic market or in third markets is not identical with that exported to Turkey. Indicate the nature of any difference, its effect on the market value in your country and its effect on production costs.

6.2 Differences in quantities:

Where any difference between the export price and the normal value arises wholly or partly because they relate to different quantities and you wish to claim an allowance for this, indicate:

6.2.1 The period during which any quantity discount has been made freely available in the normal course of trade in the market used to establish normal value and the proportion of trade in that market to which it has been applied.

6.2.2 The savings in costs from producing different quantities.

6.3 Differences in conditions and terms of sale:

Where you wish to claim an allowance for differences in conditions and terms of sale, indicate:

6.3.1 The nature of difference;

6.3.2 its effect on your costs;

6.3.3 its effect on the value of the good.