

**DECREE ON THE
PREVENTION OF UNFAIR COMPETITION IN IMPORTS**

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Aim and Scope

Article 1- This Decree sets forth procedures to be applied and measures to be taken for purposes of protecting a domestic industry against the injury caused by unfair competition practices in imports namely, dumped or subsidised imports.

Definitions

Article 2- Following are the definitions of the terms used in this Decree:

- a) Dumping: Export price of a product to Turkey being less than the normal value for the like product,
- b) Subsidy: A direct or indirect financial contribution by the country of origin or export, which confers a benefit or any form of income or price support within the meaning of Article XVI of GATT 1994;
- c) Export Price: The price actually paid or payable for the product when sold for export;
- d) Like Product: A product which is alike in all respects to the product which is dumped or subsidised, or in the absence of such a product, another product with similar characteristics;
- e) Normal Value:
 - i) The comparable price paid or payable, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export;
 - ii) When there are no sales of the like product in the domestic market of the country of origin or export in the ordinary course of trade, or where such sales do not permit a proper comparison, the normal value shall be the export price of the like product when exported to an appropriate third country, provided that this price is representative or the price calculated on the basis of the cost of production in the country of origin plus a reasonable amount for profit;
- f) Dumping Margin: The amount by which the normal value exceeds the export price;
- g) Amount of Subsidy: Direct or indirect financial contribution maintained by the country of origin or export for manufacture, production, export or transportation of the product sold for export, or total amount of benefits in any form of income or price support in the sense of Article XVI of GATT 1994;
- h) Injury: Material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry;
- i) Circumvention:
 - i) Cases where there is evidence that, a change exists in the pattern of trade between a third country and Turkey or the country subject to measures and Turkey or individual companies in the country subject to measures and Turkey, stemming from a practice, process or work for which there is insufficient due cause or economic justification other than the avoidance of the anti-dumping duty or countervailing duty in force, and that the remedial effects of the duty are being undermined or nullified.
 - ii) Cases where, there is evidence that, due to the lowering of export prices, the expected effects of the anti-dumping duty on selling prices of the imported products subject to measures in the Turkish market are being undermined or nullified and thus the remedial effects of the duty in terms of removal of injury to the domestic industry are being weakened;
- j) Ministry: Ministry of Trade;
- k) Directorate General: Directorate General of Imports;
- l) Board: Board of Evaluation of Unfair Competition in Imports;

m) GATT 1994: General Agreement on Tariffs and Trade 1994;

n) Agreement on Subsidies and Countervailing Measures: Agreement at the Annex-1 to the Agreement Establishing the World Trade Organisation, approved by the Law dated 26/1/1995 and No.4067 and ratified by Decision of Council of Ministers dated 3/2/1995 and No.95/6525;

o) Regulation: Regulation on the Prevention of Unfair Competition in Imports.

Complaint, examination and the investigation

Article 3- The Directorate General may, upon complaint or, where necessary, *ex officio*, initiate a dumping or subsidy examination. Domestic producers or any natural or legal person or association acting on behalf of a domestic industry, who claim that material injury or threat thereof has occurred by reason of dumped or subsidized imports or that the establishment of an industry has been materially retarded due to such imports, may submit a written application to the Directorate General.

An investigation shall be initiated where, consequent to an examination initiated either *ex-officio* or upon complaint it is determined that sufficient evidence on dumped or subsidised imports and injury resulting therefrom exist.

The procedures and principles as regards complaint, examination and investigation shall be set out in the regulation.

Circumstances warranting imposition of measures and measures

Article 4- Measures shall be taken in cases where dumped or subsidized imports have caused material injury or threatened to cause material injury to the domestic industry or caused material retardation of an industry.

Where, in the course of the investigation on imports subjected to complaint, provisional affirmative determinations on the existence of dumped or subsidised imports and the injury caused by such imports have been made, a provisional duty in the form of security equal to the margin of dumping or amount of subsidy or at a lesser amount or rate adequate to remove the injury, may be imposed for purposes of preventing occurrence of injury during the investigation.

Undertakings offered in the course of the investigation, by country of origin or country of export or the exporter as to remove the injury caused by dumped or subsidised imports concerned may be accepted.

Where, as a result of the investigation it is determined that there are dumped or subsidised imports and that such imports are causing injury, a definitive anti-dumping duty or countervailing duty at an amount equal to the margin of dumping or amount of subsidy or at a lesser amount or rate adequate to remove the injury shall be imposed to eliminate such injury.

Principles on the application of provisional and definitive measures

Article 5- The amount or rate of the security deposit or the duty to be imposed shall be specified by naming the exporters and country of origin or export of the product concerned. However, if numerous suppliers from the same country or more than one country are involved, and it is impracticable to name all the suppliers, the provisional or definitive measures may also be applied by naming only the country or countries concerned. provisional or definitive duties shall be applied on a non-discriminative basis on imports of such product from all sources found to be dumped or subsidised and causing injury, except imports from companies or countries from which undertakings have been accepted.

Where, as a result of an investigation, it is decided to apply definitive measures, provisional measures, if any, imposed in the course of the investigation shall be converted to definitive measures. Suspension or conclusion of an investigation upon acceptance of undertakings shall not prevent collection of the provisional duties previously imposed.

Principles on retroactivity

Article 6- As regards dumped products; duties established may be applied retroactively where there is history of dumped imports causing injury or where the importer was or should have been aware that the exporter was dumping and that such practise would cause injury and where it is determined that the remedial effects of the definitive measure to be applied are undermined by reason of dumped imports realized in a relatively short period of time and at a quantity likely to cause injury.

As regards subsidised products; retroactive application may be made, where, products benefiting from

subsidies inconsistent with the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures have been imported in a relatively short period of time at a quantity likely to cause injury that is difficult to repair, and it is deemed necessary to preclude the recurrence of such injury.

Retroactive application mentioned in the preceding two paragraphs shall be limited to 90 days prior to the date of imposition of provisional measures, provided that such date does not precede the date of initiation of the investigation, and the importers concerned shall be granted the opportunity to express their views on the issue.

In cases of breach of an undertaking given for dumped or subsidised imports, retroactive application may also be used, provided that any such retroactive application does not go beyond the date of breach of the undertaking and for a period not exceeding 90 days prior to the date of imposition of provisional measures.

Duration and review of definitive measures and undertakings

Article 7- Definitive measures shall remain in force as long as is necessary to counteract injury caused by dumped or subsidised imports.

Definitive measures may be reviewed, *ex officio* or upon request by an interested party, provided that at least one year has elapsed since their imposition. Parties requesting the review shall submit to the Directorate General evidence justifying the review. Depending on the circumstances justifying the review, a review investigation shall be initiated and carried out as to cover either dumping or subsidy and injury simultaneously or individually.

Definitive measures shall remain in force for 5 years, from the date of the conclusion of the most recent review investigation that has covered both dumping or subsidy and injury examination or from the date of their imposition.

Besides, an expiry review investigation may be initiated *ex officio* or upon a duly substantiated request by the domestic industry, before the expiry of the definitive measure in force. In such an investigation, whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping or subsidy and injury shall be examined.

Initiation of a review investigation shall not hinder the application of definitive measures in force.

The provisions of this Article regarding the duration and review of definitive measures shall apply as regards price undertakings as well.

The procedures and principles as regards the review investigations shall be set out in the regulation.

New exporter review

Article 8- The decision for definitive measures may be reviewed upon request by the new producer or exporters which have not exported the product concerned during the period of investigation and which can show that they are not related to any of the exporters or producers whose products are currently subject to the definitive measures. However, producers or exporters requesting such a review should have either actually exported the product concerned to Turkey following the investigation period or entered into an irrevocable contractual obligation to export a significant quantity of it. A new exporter review shall be carried out on an accelerated basis to determine the margin of dumping or amount of subsidy for those who made the request.

The procedures and principles as regards new exporter reviews shall be set out in the regulation.

Suspension of definitive measures

Article 9- Where, due to a temporary change in the market conditions, the injury to the domestic industry is unlikely to continue or recur as a result of the suspension, and provided that the related producers have been given an opportunity to comment, the measures for which at least one year has elapsed since the imposition, may be suspended by a decision of the Board and approval of the Ministry, for a period of 9 months. This period may be extended for a further period, not exceeding one year.

Where, the change in market conditions is due to situations of force majeure, such as warfare, natural disaster, fire, strike and lockout, the requirement that the measure be in force for at least one year, shall not be sought.

Measures may be reinstated by a decision of the Board and approval of the Ministry, if the reason for suspension is no longer applicable.

Decisions regarding suspension and reinstatement of the definitive measures shall be announced by a Communiqué published in the Official Gazette.

Refund of excessive duties

Article 10- Importers may submit a written application supported by evidence to the Directorate General to have duties paid in excess of actual margin of dumping or amount of subsidy reimbursed. Where, consequent to an investigation initiated after having determined that the request contained sufficient evidence, it is found that the anti-dumping duty or the countervailing duty collected is in excess of the actual margin of dumping or amount of subsidy, the refund of such excessive amount shall be decided by the Board.

The procedures and principles as regards the process and investigations to be carried out for refunds shall be set out in the regulation.

Prevention of circumvention

Article 11- When it is determined as a result of an investigation that definitive duties are circumvented as a consequence of a practice, process or work for which there is insufficient due cause or economic justification other than avoidance of anti-dumping duties or countervailing duties in force, anti-dumping duties and countervailing duties in force may be extended to cover like products or parts thereof from countries subject to measures or like products or parts thereof from third countries. In cases where anti-dumping or countervailing duties are imposed individually for exporters/ producers located in a country subject to measures, individual duties of the companies may be increased such that those duties shall not exceed the highest duty in force for the country in question. During the investigations to be carried out in accordance with this paragraph, imports of product under investigation may be subject to a security deposit at an amount not exceeding the provisionally determined level of circumvention.

Where, as a result of the investigation, it is determined that the definitive duties were nullified through lowering of export prices, the anti-dumping duty shall be reassessed in accordance with the new dumping margin calculated. When investigations carried out under this paragraph cover the re-examination of the normal value, during the investigation imports of the product under consideration may be made subject to a security deposit at an amount not exceeding the provisionally determined circumvention level.

Where imports of the product concerned have been subject to a security deposit during the investigation and as a result of the investigation measures are imposed, the difference between determined measures to remove the circumvention and definitive measure in force is transferred to the treasury. The amount of security deposit exceeding the difference between determined measure and definitive measure in force is released, however no security deposit shall be collected if the amount is lower than the difference. If the authority decides to terminate the investigation without implementing any measure, collection of security deposit will be ceased and collected deposits will be refunded.

The procedures and principles regarding the processes and investigations to be carried out for the prevention of circumvention shall be set out in the regulation.

Repealed decree

Article 12- Decree No. 89/14506 and dated 8/9/1989 is hereby repealed.

Provisional Article 1- For purposes of paragraph 3 of Article 7 of this Decree; the 5 year period shall be deemed to have started, as of 26/3/1995 for definitive measures put into force before such date and the date of imposition for definitive measures and undertakings put into force thereafter.

Entry into force

Article 13- This Decree shall enter into force on the day of its publication and be effective as of 25/10/1999.

Implementation

Article 14- This Decree shall be implemented by the Minister to whom the Undersecretariat for Foreign Trade is attached.

List of Legislation Changing Articles in Decree No:99/13482

Number of Decree	Changed Articles	Date of Issue
2005/9840	2 and 11	31/12/2005