

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

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**PART ONE  
Aim, Scope, Legal Basis, Definitions**

**Aim**

**Article 1-** This Regulation has been prepared for purposes of protecting a domestic industry against injury caused by unfair competition practices in imports; namely, dumped or subsidised imports.

**Scope**

**Article 2-** This Regulation embodies the procedures to be followed and measures to be taken for purposes of protecting a domestic industry against injury caused by unfair competition practices in imports; namely, dumped or subsidised imports.

**Legal Basis**

**Article 3-** This Regulation is prepared having regard to the provisions of Law No.3577 on Prevention of Unfair Competition in Importation.

**Definitions**

**Article 4-** Following are the definitions of the terms used in this Regulation:

**Dumping:** Export price of a product to Turkey being less than the normal value for the like product;

**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;

**Export Price:** The price actually paid or payable for the product when sold for export;

**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;

**Normal Value:**

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.

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;

**Dumping Margin:** The amount by which the normal value exceeds the export price;

**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;

**Injury:** Material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry;

Circumvention:

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 or countervailing duty in force, and that the remedial effects of the duty are being undermined or nullified.

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 Turkish markets 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;

Ministry: Ministry of Trade;

Directorate General: Directorate General of Imports;

Board: Board of Evaluation of Unfair Competition in Imports;

GATT 1994: General Agreement on Tariffs and Trade 1994;

The Agreement on Implementation of Article VI of GATT 1994: 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;

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.

## **PART TWO** **Determination of Dumping**

### **SECTION ONE** **Determination of Normal Value**

#### **Normal Value**

**Article 5-** Normal value is the comparable price paid or payable by independent customers, in the ordinary course of trade, for the like product when destined for consumption in the country of origin or export.

However, where the exporter in the exporting country does not produce or does not sell the like product, normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

When there are no or insufficient sales of the like product in the domestic market of the country of export in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the comparable prices of the like product when sold for export, to an appropriate third country, provided that those prices are representative.

As regards volume of sales of the like product, sales of the like product intended for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to Turkey. However, a lower volume of sales may also be accepted where it is determined that such sales are of sufficient magnitude to provide for a proper comparison.

Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below per unit production costs plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices, which are below per unit costs at the time of

sale, are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time mentioned in the preceding paragraph shall normally be one year but shall in no case be less than six months. Sales below unit costs shall be considered to be made in substantial quantities when it is established that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average unit costs, or that the volume of sales below per unit costs is not less than 20 per cent of the sales under consideration for the determination of normal value.

### **Costs and profits**

**Article 6-** Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and they reasonably reflect the costs associated with the production and sale of the product under consideration.

Consideration shall be given to evidence submitted by the producer or exporter on the proper allocation of costs, provided that it is shown that such allocations have been historically utilized. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover.

The amounts for selling, general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When the amounts for selling, general and administrative costs and for profits cannot be determined on this basis, the amounts may be determined on the basis of:

The actual costs and profits incurred and realised by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products, or

The weighted average of the costs and profits incurred and realised by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin, or

Any other reasonable method, provided that the amount for profits so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

### **Non-market economy countries**

**Article 7-** In the case of imports from non-market economy countries, normal value shall be determined on the basis of one of the following methods:

Price actually paid or payable for the like product when destined for consumption in the domestic market of a market economy third country, or

Export price from a market economy third country to other countries, including Turkey;  
or

Constructed value based on the unit cost of production plus selling, general and administrative costs and a reasonable amount for profits, in a market economy third country for the like product, or

Where those are not possible, any other reasonable basis, including the price actually paid or payable in Turkey for the like product or constructed value on the basis of the cost of production in Turkey for the like product, plus selling, general and administrative costs and a reasonable amount for profits.

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

**Article 8-** In cases where products are not imported directly from the country of origin but are exported from an intermediate country, normal value is the comparable price paid or payable for the like product in the domestic market of the exporting country.

However, price in the country of origin may be used for the determination of normal value, in cases where the products are merely transhipped through the country of export, or such products are not produced in the country of export or there is no comparable price for them in the country of export.

## **SECTION TWO**

### **Determination of Export Price**

#### **Export Price**

**Article 9-** Export price is the price that is actually paid or payable for the product when sold for export.

In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement 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 first resold to an independent buyer. If the products are not resold to an independent buyer, or are not resold in the condition as imported, the export price may be constructed on any reasonable basis.

In such cases, all costs and profits, incurred and realised between importation and resale shall be considered in the calculation. In this respect, items particularly for usual transport, insurance, handling, loading and ancillary costs; customs duties, other taxes and additional fiscal liabilities payable by reason of the importation or sale of the goods; selling, general and administrative costs and profits shall be taken into account.

## **SECTION THREE**

### **Comparison and Dumping Margin**

#### **Fair comparison**

**Article 10-** In order to ensure a fair comparison between the export price and normal value, such comparison shall be made at the same level of trade, preferably at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

For purposes of price comparison; due account shall be taken of differences in terms of sales, taxation, levels of trade, quantities, physical characteristics and any other differences which affect price comparability.

In order that any claim by interested parties for such differences are taken into account, they shall be made with supporting evidence.

#### **Dumping margin**

**Article 11-** Dumping margin shall be established by a comparison of normal value and export price on a weighted average or transaction basis. However, a normal value established on a weighted average basis may be compared to prices of individual export transactions, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the comparison on weighted average or transaction basis would not reflect the full degree of dumping being practised.

## **PART THREE**

### **Determination of Subsidy**

#### **Notion of subsidy**

**Article 12-** Subsidy shall be deemed to exist if there is a direct or indirect financial contribution by the country of origin or export which confers a benefit or there is any form of income or price support in the sense of Article XVI of GATT 1994.

In order that measures be taken in respect of subsidized imports, it should have been determined that the subsidy is prohibited as defined in Article 3 of the Agreement on Subsidies and Countervailing Measures, or that it is specific to an enterprise / group of enterprises or industry / group of industries within the meaning of Article 2 and unless the subsidy is non-actionable as defined in Article 8 of the Agreement.

#### **Calculation of the amount of the countervailable subsidy**

**Article 13-** The amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient during the investigation period. This period shall normally be the most recent accounting year of the beneficiary. However, it may be any other period of at least 6 months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

### **Calculation of the benefit to the recipient**

**Article 14-** As regards the calculation of the benefit to the recipient, the following rules shall apply:

Government provision of equity capital shall not be considered to confer a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin or export;

A loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In that event the benefit shall be the difference between the two amounts;

A loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;

The provision of goods or services or purchase of goods by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate payment or the purchase is made for more than adequate payment. The adequacy of payment shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

### **General provisions on calculation**

**Article 15-** The amount of the countervailable subsidies shall be determined in accordance with the following provisions:

The amount of the countervailable subsidies shall be determined on the basis of the per unit quantity of the subsidised product exported to Turkey. In establishing this amount, any application fee or other costs incurred in order to obtain the subsidy; and export taxes and all charges levied on the export of the product to Turkey specifically intended to offset the subsidy, may be deducted from the total subsidy. The interested party claiming such a deduction should prove that the claim is justified.

Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period.

Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period, which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in paragraph (b) of this Article. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with paragraph (b) of Article 14 of this Regulation.

Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in paragraph (b) of this Article, unless special circumstances arise justifying attribution over a different period.

## **PART FOUR Determination of Injury**

### **Notion of injury**

**Article 16-** The term injury shall be taken to mean material injury or threat of material injury to a domestic industry, or material retardation of the establishment of such an industry.

## Determination of injury

**Article 17-** A determination of material injury shall be based on positive evidence and shall involve an objective examination of both the volume of dumped or subsidised imports and the effect of such imports on prices in the domestic market for like products, and the consequent impact of those imports on the domestic industry.

With regard to the volume of dumped or subsidised imports; consideration shall be given to whether there has been a significant increase in such imports, either in absolute terms or relative to production or consumption in Turkey. With regard to the effect of the dumped or subsidised imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped or subsidised imports as compared with the price of the like product in Turkey, or whether the effect of such imports is to depress prices to a significant degree or prevent price increases. No one or several of these factors can necessarily give decisive guidance.

Where imports of a product from more than one country are simultaneously subject to investigation, the effects of such imports may be cumulatively assessed. Such assessment may be made only if margin of dumping or amount of subsidy established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible, and a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition among imported products and the conditions of competition between the imported products and the like domestic product.

The examination of the impact of dumped or subsidised imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

It must be demonstrated, with reference to the factors mentioned above, that the dumped or subsidised imports are causing injury to the domestic industry. The demonstration of a causal relationship between the dumped or subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence. Injury caused by factors other than dumped or subsidised imports must not be attributed to these imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping or subsidised prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

The effect of the dumped or subsidised imports on the domestic production shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped or subsidised imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumped or subsidised imports would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

A significant rate of increase of dumped or subsidised imports into the domestic market indicating the likelihood of substantially increased importation;

Sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped or subsidised exports to Turkey, taking into account the availability of other export markets to absorb any additional exports;

Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;

Inventories of the product being investigated;

As regards the subsidy investigations, the nature of the subsidy in question and the trade effects likely to arise therefrom.

No one of these factors by itself can necessarily give decisive guidance. The totality of the factors considered must lead to the conclusion that further dumped or subsidised exports are imminent and that, unless protective action is taken, material injury will occur.

**PART FIVE**  
**Complaint, Examination and Procedure and Principles of the Investigation**

**SECTION ONE**  
**Complaint and Examination**

**Domestic industry**

**Article 18-** The term domestic industry refers to the domestic producers as a whole of the like product in Turkey or to those of them whose collective output of the product constitutes a major proportion of total domestic production of those products.

However, where producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidised products, the term domestic industry may be interpreted as referring to the rest of the producers.

Producers shall be deemed to be related to exporters or importers only if;

One of them directly or indirectly controls the other; or

Both of them are directly or indirectly controlled by a third person; or

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 paragraph, 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.

**Complaint and examination**

**Article 19-** Domestic producers or any natural or legal person or association acting on behalf of domestic industry, claiming that they are materially injured or that threat of material injury existed by reason of dumped or subsidised imports or that the establishment of an industry is materially retarded due to such imports, may make a written application to the Directorate General.

The complaint shall include evidence of dumping or subsidy, injury and the causal link between dumped or subsidised imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence shall not be considered a complaint.

The application shall contain such information reasonably available to the applicant on the following:

Identity of the complainant and a description of the volume and value of the domestic production of the like product by the complainant; where a written complaint is made on behalf of the domestic industry, a list of all known domestic producers or associations of the like product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers and the domestic industry on behalf of which the application has been filed;

A complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of importers of the product in question;

As regards the complaint for dumping, information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the value of the product established on the basis of cost of production plus a reasonable amount for profit) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in Turkey;

As regards the complaints for subsidy; evidence with respect to the existence, amount and nature of the subsidy;

Evidence showing that alleged injury is caused by dumped or subsidised imports (such evidence shall include information on the evolution of the volume of the dumped or subsidised imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices, listed in Article 17 of this Regulation).

The illustrative application form, prepared as a guideline in light of the above set factors, may be obtained from the Directorate General.

The Directorate General shall initiate an examination, where it is determined that the complaint is made by or on behalf of the domestic industry and sufficient evidence is thereby provided. This date shall be deemed to be the initiation date of the examination. Where, the complaint is not properly documented, the complainant shall be so informed.

The General Directorate shall examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

The complaint withdrawn during the examination phase shall be considered not to have been lodged.

## **SECTION TWO** **The Investigation**

### **Initiation of investigation**

**Article 20-** The Directorate General shall complete its examination initiated upon complaint or *ex-officio* within 45 days and shall make a proposal to the Board on whether or not to initiate an investigation.

For the initiation of an investigation, it should be determined that the complaint is made by or on behalf of the domestic industry and there is sufficient evidence on the existence of dumped or subsidised imports and injury on the domestic industry caused by such imports. As regards *ex officio* initiation of an investigation, sufficient evidence, as defined in Article 19, of dumped or subsidised imports and existence of injury on the domestic industry caused by such imports should be present.

The complaint shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application and shall not be less than 25 per cent of total production of the like product produced by domestic industry in Turkey. In the case of fragmented industries involving an exceptionally large number of producers, support and opposition of the domestic industry may be determined by using statistically valid sampling techniques.

An investigation shall not be initiated where it is determined that the dumping margin, amount of subsidy or volume of imports is negligible.

Where it is decided by the Board to initiate an investigation, the government of the exporting country shall be notified and the investigation shall be initiated by a Communiqué published in the Official Gazette. Such Communiqué shall contain, information on the date of initiation of the investigation, the product concerned, the name of the country of origin or export, the bases on which the allegation of dumped or subsidised imports and causation of injury are claimed and the time limits granted to the interested parties to make themselves known to the Directorate General.

If the Board decides not to initiate an investigation, the complainant shall be so informed.

No information concerning the complaint may be publicised until the initiation of the investigation.

### **Gathering and verification of information**

**Article 21-** Following the initiation of the proceeding, questionnaires shall be sent to the known importers and exporters of the product concerned. As regards subsidy investigations, the government of the exporting country shall also be sent questionnaires. Questionnaires shall be deemed to have been received one week from the date on which they were mailed and parties shall be given 30 days to reply. An extension to this period may be granted, due account being taken of the time limits of the investigation, provided that the party so requests within time limits and shows due cause for such extension.

The Directorate General may also request additional information and documents from the interested parties at any stage of the investigation, where necessary.

In order to verify information provided or to obtain further details, verification visits may be carried out at the premises of the interested parties. Verification visits shall be carried out if the agreement of the firms concerned is obtained and the related country has been notified and has not objected to the investigation.

### **Confidentiality**

**Article 22-** Information received for purposes of dumping or subsidy investigations shall be used only for the purpose for which it was requested.

Any information which is by nature confidential, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the providing party.

Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries should be in sufficient detail to permit a reasonable understanding of the substance of the information. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible should be provided.

If it is considered that a request for confidentiality is not warranted and if the supplier of the information is unwilling to authorize its disclosure in any form, such information may be disregarded unless the accuracy of the information is satisfactorily demonstrated from other sources.

### **Interested parties**

**Article 23-** The following parties shall be deemed to be interested parties for purposes of dumping or subsidy investigations:

An exporter or foreign producer or the importer of a product subject to investigation, or a business association a majority of the members of which are the exporters, foreign producers or importers of such product;

The government of the exporting country;

A producer of the like product in Turkey or a business association a majority of the members of which are producers of the like product in Turkey.

Nevertheless, this provision shall not preclude the other domestic or foreign parties not listed above and likely to be affected by the results of the investigation to be treated as interested parties for purposes of dumping or subsidy investigations.

### **Hearings**

**Article 24-** Throughout the investigation, the Directorate General shall provide opportunities for all interested parties, for industrial users of the product concerned and for representatives of consumer organisations in cases where the product is commonly sold at retail level, to express their views. To this end, hearing meetings may be arranged upon written request from interested parties or upon invitation made by the Directorate General, so that opposing views may be presented.

Information submitted orally by the interested parties shall be taken into account by the Directorate General in so far as it is submitted in writing.

### **Disclosure**

**Article 25-** As soon as an investigation has been initiated, non-confidential copy of the complaint shall be sent to the known exporters and to the authorities of the exporting country. Where the number of exporters involved is so large, such information shall be provided only to the authorities of the exporting country or to the relevant trade association. Furthermore, other interested parties shall be given the opportunity to access such information provided they file a written application to that end.

Upon written request to the Directorate General and whenever practicable, interested parties shall be provided with the opportunity to see all information that is relevant to the presentation of their cases and not confidential. This provision shall only be applicable for the documents provided by the parties to the investigation and it can under no circumstances be extended to the documents prepared by the Directorate General for internal purposes.

In cases where a provisional measure has been imposed, interested parties may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be met, with due regard being paid to the protection of confidentiality, provided that they are made in writing and immediately following the imposition of provisional measures.

Before a final determination is made, all interested parties shall be informed of the essential facts and considerations, which form the basis for the decision whether to impose definitive measures with due regard being paid to the protection of confidentiality. Where the number of interested parties is so large, the necessary information shall be provided through the related business association or the representative of the country concerned.

### **Non-cooperation**

**Article 26-** In cases where an interested party does not provide necessary information within time limits provided or refuses access to or significantly impede the investigation or supplies false or misleading information, such party shall be deemed to be non-cooperative. In such cases, provisional or final findings, affirmative or negative may be made on the basis of the facts available.

If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result of the investigation may be less favourable to that party than if it had cooperated.

### **Sampling**

**Article 27-** In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of the information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

Selection for exporters, producers, importers or types of products shall be made by the Directorate General preferably in consultation with and with the consent of the exporters, producers or importers concerned.

In cases where the authorities have limited their examination as provided for in this paragraph, an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation shall nevertheless be determined, except where the number of exporters or producers is so large that individual examination would be unduly burdensome to the authorities and prevent the timely completion of the investigation.

Where it is decided to employ sampling and there is a degree of non-cooperation by some or all of the parties selected which is likely to affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the provisions of this Regulation on non-cooperation shall apply.

### **Negligible rates**

**Article 28-** Negligible rates as regards the margin of dumping or amount of subsidy or volume of imports are as follows:

Regarding dumping investigations, cases where;

Margin of dumping, expressed as a percentage of the export price is less than 2 per cent;

or

The volume of dumped imports from the country concerned is found to account for less than 3 per cent of imports of the like product and where more than one country is involved, imports from countries accounting for less than 3 per cent individually, does not account collectively for more than 7 per cent of imports of the like product.

Regarding subsidy investigations, cases where;

Amount of subsidy is less than 1 per cent of the value of the product concerned; or As regards imports from developing countries;

Having reserved the provisions of Article 27.11 of the Agreement on Subsidies and Countervailing Measures, the amount of subsidy does not exceed 2 per cent of the value of the product concerned; or

The volume of subsidised imports from the country concerned is found to account for less than 4 per cent of the total imports of the like product and where more than one developing country is involved, imports from developing countries accounting for less than 4 per cent individually, does not account collectively for more than 9 per cent of the total imports.

#### **Termination and suspension of investigation**

**Article 29-** Where, as a result of the investigation, it is determined that imports concerned are not dumped or subsidised or that no injury is caused by such imports or margin of dumping, amount of subsidy or volume of imports is negligible, the investigation shall be terminated by the Board.

In cases where the complaint is withdrawn, the reason for complaint disappeared or the complainant no longer cooperates, the investigation may be terminated by the Board.

Where undertakings are accepted, the investigation may be suspended.

On the other hand, a subsidy investigation may be terminated or suspended when the provision of subsidy is ceased.

#### **Duration of proceedings**

**Article 30-** Investigations shall except in special circumstances be concluded within one year. The Board may extend such period up to 6 months, where necessary.

#### **Public notices regarding the investigation**

**Article 31-** The decision to initiate a dumping or subsidy investigation and any decisions for provisional and definitive measures, undertakings, suspension and termination, shall be announced by a Communiqué published in the Official Gazette. Such notices shall contain information on the product concerned, exporting company, the country of export or origin and due regard being paid to the confidentiality, findings and determinations reached in the investigation. All such notices shall be forwarded to the countries concerned and to all known producers and exporters of the product concerned.

### **PART SIX Acceptance of Undertakings**

#### **Undertakings**

**Article 32-** Under the following circumstances, dumping or subsidy investigations may be suspended without imposition of provisional or definitive measures:

Where, in the course of a dumping investigation, the exporter undertakes to revise its export prices or to cease exports at dumped prices and the Board accepts such undertaking; or

Where, in the course of a subsidy investigation, the exporter undertakes to revise its export prices or the exporting country undertakes to cease or to limit the application of subsidies or undertakes to impose new measures in that respect and the Board accepts such undertaking.

Undertakings may also be proposed by the Board. No exporter or exporting country shall be obliged to accept such undertakings.

Investigations shall be completed if the exporter in a dumping investigation or the exporting country in a subsidy investigation so requests or the Board so decides in both cases.

For undertakings to be sought or accepted by the Board, provisional affirmative determinations of dumped or subsidised imports and injury caused by such imports should have been made. As regards subsidy investigations, undertakings offered by the exporter may only be accepted if the approval of the country concerned is obtained.

### **Breach of undertakings**

**Article 33-** The Directorate General may require the party from whom undertakings have been accepted, to provide periodical information as regards to the fulfilment of such undertaking and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of undertaking.

In case of breach of undertakings, a provisional or definitive duty may be imposed on the basis of the facts available.

## **PART SEVEN**

### **Review Investigations, Refund Investigations and Other Investigations**

#### **SECTION ONE**

#### **Review Investigations**

##### **Interim Review investigation**

**Article 34-** An interim review may be initiated for the review of the measure in force, at the request of the exporter, importer or domestic producer of the product concerned (plus the country of origin or export for subsidy investigations) or *ex officio* provided that at least one year has elapsed since the imposition of the definitive measure. Such requests should contain sufficient evidence justifying the initiation of the review.

An investigation shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping or subsidy and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping or subsidy which is causing injury.

An interim review investigation may be carried out separately as to cover either dumping or subsidy and injury simultaneously or individually. In the course of this investigation, whether the circumstances with regard to dumping or subsidy and injury have changed significantly or whether the existing measures are achieving the intended results in removing the injury previously established, shall be examined.

##### **Expiry review investigation**

**Article 35-** A definitive measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping or subsidy and injury.

A notice of impending expiry shall be given in a communiqué published in the Official Gazette in the final year of the period of application of the measures. Domestic producers of the product concerned may, no later than 3 months before the end of the five-year period, submit a written request to the Directorate General containing sufficient evidence, for the initiation of a review investigation.

Moreover, a notice announcing the expiry of the five-year period and the revocation of measures shall also be published in the Official Gazette.

An expiry review shall be initiated upon the written request by the domestic producers or *ex officio* and the measure concerned shall remain in force pending the outcome of such review.

An expiry review shall be initiated where there is sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping or subsidy and injury. In this respect, such a likelihood may, for example, be indicated by evidence of continued dumping or subsidy and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping or subsidy.

In the course of this investigation; exporters, producers, the representative of the exporting country and the domestic producers of the product subject to measures (plus the country of origin, for subsidy investigations), shall be provided with the opportunity to comment on the matters set out in the review request and express their opposing views. Conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation

or recurrence of dumping or subsidy and injury.

#### **New exporter review investigation**

**Article 36-** Exporters or producers which have not exported the product subject to measures to Turkey during the period of investigation, may submit a written application to the Directorate General, requesting the determination of individual margins of dumping or subsidy amount.

The exporter applying for such review should demonstrate that it is not related to any of the exporters or producers in the exporting country which are subject to anti-dumping or countervailing measures on the product, and that it has actually exported the product concerned to Turkey following the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after domestic producers have been given an opportunity to comment.

### **SECTION TWO Refund Investigation**

#### **Refund investigation**

**Article 37-** An importer requesting the reimbursement of duties collected by such reason that margin of dumping or amount of subsidy, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force, shall submit a written application supported by evidence to the Directorate General, within 6 months from the date on which definitive duties were collected. An application for refund shall only be taken into account where it contains precise information on the amount of duties claimed and all customs documentation relating to the calculation and payment of such amount, besides the evidence, for a representative period, of the normal value and export prices to Turkey of all sales of this exporter or producer.

In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the margin of dumping or amount of subsidy has been reduced or eliminated, and that the relevant supporting evidence will be provided to the Directorate General. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

Following the request for refund, the Board may decide to what extent the refund should be granted or where deemed necessary may decide to initiate a refund investigation whether to grant such application.

The decision with respect to the refund requests shall be made within 12 months following a request duly supported with evidence. Such period may be extended up to 18 months where necessary. The payment of any refund authorised shall be made within 90 day of such decision.

### **SECTION THREE Other Investigations**

#### **Circumvention investigations**

**Article 38-** Domestic producers, claiming that the definitive duty or countervailing duty in force is being circumvented, may submit a written request to the Directorate General duly supported with evidence, to initiate a circumvention investigation. An investigation may also be initiated *ex officio* upon proposal by the Directorate General.

Investigations initiated for cases where there is evidence for a change 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 imposition of the anti-dumping duty or countervailing duty, and where the remedial effects of the duty are being undermined or nullified, the regulation's provisions concerning dumping, subsidy and injury determination are not applied.

#### **Reopening of the investigation**

**Article 39-** The domestic industry, alleging that the definitive duties were neutralized due to a fall in export prices, may submit a written request to the Directorate General for the reopening of an investigation. An investigation may also be initiated *ex officio* upon the proposal by the General Directorate. The request shall contain sufficient evidence showing that measures have led to no movement or insufficient movement in sales prices of the product subject to measures in the Turkish market. Following the request, where it is decided by the Board

to reopen an investigation, exporters, importers and producers of the product concerned shall be provided with the opportunity to submit comments on the sales prices of the product.

If during the investigation, it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established, export prices shall be reassessed and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that a lack of movement in the prices is due to a fall in export prices which has occurred prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

The requests, as regards the examination of normal value to be involved in the investigation shall only be taken into account where complete information on revised normal values, duly substantiated by evidence, is made available to the Directorate General within time limits set out in the Communiqué on the initiation of an investigation.

## **SECTION FOUR General Provisions**

### **Procedure**

**Article 40-** Unless otherwise specified, among procedural rules used in dumping and subsidy investigations only appropriate ones in terms of content and essence are applicable to examinations and investigations set out in this part.

### **Methods**

**Article 41-** Unless otherwise specified, among investigations set out in this part, the provisions concerning dumping, subsidy and injury determinations are applied to those investigations appropriate in terms of content and essence only when deemed necessary.

### **Measures**

**Article 42-** Consequent to the investigations defined in Articles 34, 35 and 36 of this Regulation; decisions may be made as to the revocation, alteration or continuation of the duties in force.

## **PART EIGHT Board of Evaluation of Unfair Competition in Imports**

### **Structure of the Board**

**Article 43-** The Board, headed by the Director General of Imports or the Deputy Director General assigned by the latter, consists of the representatives of the Ministry of Agriculture and Rural Affairs, Ministry of Industry and Commerce, the Under-secretariat of the State Planning Organization, Under-secretariat of Customs, Union of Chambers of Commerce and Industry and Union of Chambers of Agriculture and the related head of department in the Directorate General of Imports.

### **Working procedures and principles of the Board**

**Article 44-** Where necessary, the Board shall convene upon invitation from the head of the Board. The Directorate General shall prepare the agenda of the meeting and information on the items to be discussed shall be sent to the members of the Board in advance.

The Board shall meet with simple majority. Where majority could not be obtained in the first meeting, no majority shall be sought for the meeting to be held the following working day.

The Board shall decide by majority of the votes cast. Where the votes are equal, the side for which the head of Board voted shall be deemed to account for the majority.

The head of Board, depending on the nature of the subjects to be discussed and only for consultation purposes may invite representatives from universities and relevant institutions. Such persons cannot participate in voting.

Members of the Board are not allowed to participate in the meeting, if they are determined to be in relation with the interested parties, as defined in Article 245 of the Law on Civil Procedure.

It is obligatory that such members of the Board representing business associations not themselves be producers, exporters or importers of the product subject to investigation and shall under no circumstances deal with trade of such products. Otherwise, the provisions of the above paragraph shall apply.

**PART NINE**  
**Final Provisions**

**Authorisation**

**Article 45-** The Undersecretariat for Foreign Trade is authorised to enact Communiqués related to the subjects governed by this Regulation.

**Repealed regulation**

**Article 46-** Regulation on the Prevention of Unfair Competition in Imports, published in the Official Gazette No.20295, dated 27/09/1999 and the amendments thereto are hereby repealed.

**Entry into force**

**Article 47-** This Regulation shall enter into force on the date of its publication.

**Implementation**

**Article 48-** The provisions of this Regulation shall be implemented by the State Minister whom the Undersecretariat for Foreign Trade is attached to.

**Addendum 1-** In dumping investigations with regard to imports from non-market economy countries, where if the producer(s) subject to the investigation in the country concerned demonstrate(s) in accordance with the criteria set out below on the basis of sufficient evidence that market economy conditions prevail, in respect of the manufacture and sale of the product under investigation, for these producer(s) Article 5 of Regulation will apply in the determination of normal value.

if the firm is making its decisions regarding prices, costs and inputs including raw materials, cost of technology and labor, output, sales and investment in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,

if the firm has accounting system on which financial statements and basic accounting records rest, which is independently audited in line with international accounting standards,

if the production costs and financial situation of the firm are not subject to significant distortions sourcing from the non-market economy system, in particular in relation to depreciation of fixed assets, other write-offs, barter trade and payment via compensation of debts,

if the firm is subject to bankruptcy and property laws which guarantee legal certainty and stability for its operations, and

if exchange rate conversions are carried out at the market rate.

this producer will be accepted to operate under market economy condition.

**List of Legislation Changing Articles in The Regulation**

Number of the Legislation	Changed/Added Articles	Date of Issue
-	Addendum 1	02/05/2002
-	7(d)	12/01/2005
-	4(i-1), 38, 40, 41	26/01/2006