

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
ADP/1/Add.26/Suppl.5
SCM/1/Add.26/Suppl.5
2 February 1995

Special Distribution

(95-0198)

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

Original: English

INFORMATION ON IMPLEMENTATION AND
ADMINISTRATION OF THE AGREEMENT

Legislation of Brazil

The following communication, dated 16 January 1995, has been received from the Permanent Mission of Brazil.

Unofficial Translation

Provisional Measure No. 616 of 14 September 1994

Regulates the Application of duties established in the
Anti-Dumping Agreement¹ and in the
Subsidies and Countervailing Measures Agreement²
and establishes other provisions

The President of the Republic, pursuant to the attributions conferred to him by Article 62 of the Constitution, adopts this Provisional Measure, which will have the force of law:

Article 1: The anti-dumping and countervailing measures, either provisional or definitive, as established by the Anti-Dumping Agreement and by the Subsidies and Countervailing Measures Agreement, approved by Legislative Decree No. 22, of 5 December 1986, and promulgated by Decrees No. 93.941, of 16 January 1987, and No. 93.962, of 22 January 1987, based upon commitments assumed under the General Agreement on Tariffs and Trade - GATT, adopted by Law No. 313, of 30 July 1948, shall be applied by the levying, in Brazilian currency, of sums which correspond to the margin of dumping or to the amount of subsidy, as determined in an administrative process, in accordance with the terms of these Agreements and this Provisional Measure, so as to prevent injury or threat thereof to the domestic industry.

¹Tokyo Round Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

²Tokyo Round Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

Sole paragraph. Anti-dumping and countervailing duties will be charged independently of any other obligations of fiscal nature in relation to the products concerned.

Article 2: Provisional duties may be applied during the investigation period when, from a preliminary analysis, evidence is found that dumping is occurring or that subsidies are being granted, which are causing injury or threat thereof to the domestic industry, and it is deemed necessary to prevent such injury or threat of injury during the course of the investigation.

Sole paragraph. The term "domestic industry" used herein should be construed in accordance with the definition contained in Article 4 of the Anti-Dumping Agreement and in paragraphs 5 and 7 of Article 6 of the Subsidies and Countervailing Measures Agreement, and should be understood as referring to companies that produce industrial, agricultural or mineral products.

Article 3: The requirement that provisional duties be paid may be suspended until the final decision of the process, at the discretion of the authorities referred to in Article 6 of this Measure, as long as the importer offers a guarantee equivalent to the total value of the obligation and other legal charges, which will consist of:

- I - deposit in money, or
- II - bank guarantee.

§ 1. The guarantee must ensure, in all cases, the same level of correction for inflation used for the purposes of federal taxes, including interest, starting from the date provisional duties were imposed.

§ 2. The Federal Tax Department ("SRF") of the Ministry of Finance will specify the form in which the guarantee referred to in this article will be given or released.

§ 3. The release from customs of goods which are the object of imposition of provisional duties will depend on the provision of the guarantees referred to in this article.

Article 4. An undertaking to eliminate the injury effect of dumping or subsidies may be entered into with the exporter or with the government of the exporter's country.

§ 1. The undertaking referred to in this Article will be made before the Secretary for Foreign Trade ("SECEX") of the Ministry of Industry, Trade and Tourism and will be submitted to the approval of the authorities referred to in Article 6 of this Provisional Measure.

§ 2. In case the undertaking is approved, the investigation will cease without the imposition of provisional or definitive duties, without prejudice of the provisions of paragraph 3 of Article 7 of the Anti-Dumping Agreement and of letter (b), paragraph 5 of Article 4 of the Subsidies and Countervailing Measures Agreement.

Article 5. The Secretary of Foreign Trade - SECEX of the Ministry of Industry, Trade and Tourism is the competent authority to determine, through an administrative process, the margin of dumping and the amount of subsidy, the existence of injury or threat thereof, and the causal relation between them.

Article 6. The Minister of Finance and the Minister of Industry, Trade and Tourism are the competent authorities to determine, through a joint order, the imposition of provisional or definitive duties, as

well as to decide on the suspension of the application of provisional duties referred to in Article 3 of this Provisional Measure.

Sole paragraph. The order of imposition of anti-dumping or countervailing duties, both provisional and definitive, must indicate the duration of the application of the duty, the product concerned, the amount of the obligation, the country of origin or of exportation, the name of the exporter and the reasons why such decision was taken.

Article 7. The fulfillment of the obligations resulting from the application of anti-dumping or countervailing duties, both provisional and definitive, will be a condition for the entry into the Country of products found to be dumped or subsidized.

§ 1. The SRF of the Ministry of Finance is the competent authority to collect anti-dumping or countervailing measures, provisional or definitive, when paid in currency, as well as for refunds, in cases applicable.

§ 2. Upon verification of default in the compliance of obligations, the SRF will forward the appropriate documents to the Federal Tax Prosecutors Office for registration in the federal tax debts registry and institution of collection procedures.

Article 8. The anti-dumping and countervailing duties, provisional or definitive, will be applicable to goods dispatched for consumption from the date of the publication of the order establishing such duties, except in cases of retroactivity referred to in Article 11 of the Anti-Dumping Agreement and in paragraphs 5 and 9 of Article 5 of the Subsidies and Countervailing Measures Agreement.

Article 9. The duties will be temporary and their term will be determined by the order which imposes them, considering the following:

I - provisional duties shall not remain in force for a period of more than 120 days, except in the case of anti-dumping duties which, upon a decision of the Ministers of Finance and of Industry, Trade and Tourism, may be in force for a maximum period of 180 days, subject to the provisions of paragraph 4 of Article 10 of the Anti-Dumping Agreement;

II - definitive duties or approved undertakings shall only remain in force for the period and to the extent necessary to eliminate or neutralize the effects of dumping practices and of the concession of subsidies which are causing injury. Under no circumstances shall they remain in force for more than 5 years, except when, upon review, it is proved necessary to keep the measures in force, in order to prevent the continuation or recurrence of the injury caused by imports subject to dumping or subsidies.

Sole paragraph. Exporters involved in an investigation process who wish for an extension of the term of the provisional anti-dumping duties of up to six months, in accordance with item I of this Article, must present to SECEX a formal request to such effect 30 days before the term of application of such duties.

Article 10. For the purposes of budget, the income from anti-dumping and countervailing duties, classified as income of origin, will be entered in the category of compensatory income foreseen in the sole paragraph of Article 3 of Law 4320 of 17 march 1964.

Article 11. The Ministers of Finance and of Industry, Trade and Tourism may, together, publish complementary rules to this Provisional Measure.

Article 12. The administrative process referred to in Articles 1 and 5 shall comply, where applicable, with the provisions of Resolution 1227 of 14 May 1987, with the alterations of resolution 152 of 17 February 1989, of the extinct Commission of Customs Policy (CPA).

Article 13. This Provisional Measure shall come into force on the date of its publication.

Itamar Franco - President of the Republic

Celso Luiz Nunes Amorim

Ciro Ferreira Gomes

Élcio Álvares