

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/Q1/TUR/1**

**G/SCM/Q1/TUR/1**

17 July 1996

(96-2796)

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

Original: English

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

Replies of TURKEY<sup>1</sup>  
to questions posed by ARGENTINA<sup>2</sup>, THE EUROPEAN COMMUNITY<sup>3</sup>,  
HONG KONG<sup>4</sup>, KOREA<sup>5</sup>, THE UNITED STATES<sup>6</sup> AND VENEZUELA<sup>7</sup>

The following communication, dated 3 July 1996, has been received from the Permanent Mission of Turkey.

### Legal status of the A-D and Subsidies Agreements

#### Hong Kong questions 1(a), (c), (d)

*(Also Argentina question 1, United States 1, EC Dumping and Subsidy and Venezuela 1)*

1. Turkey's notification contains the relevant Turkish legislation which has been in force since 1 October 1989. Turkey further states that in order to bring the legislation into conformity with the relevant WTO Agreement, an amendment law has been prepared but the domestic procedures for the enactment of the new legislation has not yet been completed. The new legislation will be submitted as soon as possible after the completion of necessary domestic procedures. Apparently numerous provisions of the WTO AD Agreement (the Agreement) are not reflected in the existing Turkish legislation and some Turkish provisions may be at odds with the WTO provisions.

- (a) What is the legal status of the Agreement in Turkey? Does it have the force of law?
- (c) How will Turkey ensure compliance with the Agreement before its laws are brought into total conformity with it?
- (d) What is the timetable of the completion of the domestic legislative procedures of the new legislation?

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<sup>2</sup>G/ADP/W/314-G/SCM/W/322, <sup>3</sup>G/ADP/W/330-G/SCM/W/338, <sup>4</sup>G/ADP/W/356-G/SCM/W/364, <sup>5</sup>G/ADP/W/365-G/SCM/W/374, <sup>6</sup>G/ADP/W/375-G/SCM/W/385, <sup>7</sup>G/ADP/W/374-G/SCM/W/384.

Answers

According to the Constitution of Turkey "International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional".

The Agreement Establishing the World Trade Organization was duly put into effect, that is to say, it was approved by a law and put into effect by a Decree, and consequently acquired the force of law in Turkey in accordance with the Constitution. Therefore, compliance with the provisions of the A-D and Subsidies Agreements will be ensured by acting in accordance with their provisions.

Turkey is aware of the fact that in certain respects, Legislation on Prevention of Unfair Competition in Importation does not coincide with the A-D and Subsidies Agreements. In order to bring the provisions of this Legislation into conformity with the Agreements, a law amending some provisions of the Law No. 3577, a new Decree and a new Regulation have been prepared. The new legislation reflecting the new understanding and principles brought by the Agreements will enter into force after the enactment of the amendment law which is being passed by the Parliament.

For the time being, it is not possible to set a timetable for the completion of the domestic procedures. But we do believe that the relevant procedures will be completed in the very near future.

However, the fact that the new legislation has not yet been put into force does not preclude implementation in accordance with the provisions of the Agreements because of the prevalence of the Agreements in case of conflict or ambiguity between the provisions of the domestic legislation and the Agreements or lack of provision in the domestic legislation.

Hong Kong question 1(b)

*Are Turkish AD officials required, legally or otherwise, to observe the provisions of the Agreement in the conduct of AD proceedings, or to consult them, for example on the interpretation of domestic legislation?*

Answer

The Turkish Constitution provides that public servants are under obligation to carry out their duties with loyalty to the Constitution and the laws. Therefore, Turkish officials are constitutionally required to abide by the Agreements which are in force of law.

Judicial review

Hong Kong question 2

*(Also United States question 8)*

*What judicial review procedures has Turkey put in place in observance of its obligations under Article 13 (Judicial Review) of the Agreement?*

Answer

In Turkey, the Constitution provides that recourse to judicial review shall be available against all actions of the Administration. Therefore, within the meaning of Article 13 of the A-D Agreement

and Article 23 of the Subsidies Agreement the administrative actions relating to final determinations and reviews of determinations fall within the jurisdiction of administrative courts.

Panel reports

Hong Kong question 3

*What is Turkey's policy and law for the implementation of WTO Panel Reports?*

Answer

Turkey does not have a specific law governing the implementation of WTO panel reports concerning anti-dumping and countervailing duty matters. Panel reports will be considered within the framework of the relevant provisions of the Agreements.

The standing of a complaint

Korea question 1

*(Also United States question 3 and Venezuela 2.2)*

*In Article 4 of Law No. 3577, it is simply described that an anti-dumping investigation may be initiated upon the complaint of the relevant natural or legal person or related professional institution. We believe that this provision may cause the abuse of complaints, because it does not restrict the standing of complaint in detail. So it should be revised in accordance with Article 5.1 of the A-D Agreement.*

*Are there any specific provisions in the anti-dumping law of Turkey concerning the standing of a complaint in accordance with the A-D Agreement ?*

Answer

There is no specific provision concerning the standing of a complaint in accordance with Article 5.1 of the A-D Agreement. However, the provisions of the A-D Agreement must be observed by the Turkish officials, for the reasons explained earlier. Accordingly, Turkey will apply Article 5 of the A-D Agreement which appears fairly precise on the standing of complaints.

As for the second part of the US question, I would like to inform you that the Directorate-General has disregarded many complaints unsubstantiated by relevant evidence within the meaning of Article 5 of the A-D Agreement.

De Minimis rule

Korea question 2

(Also United States question 12 and Venezuela 2.4)

*In Article 4 of Law No. 3577, it is simply described that an anti-dumping investigation may be initiated upon the complaint of the relevant natural or legal person or related professional institution. We believe that this provision may cause the abuse of complaints, because it does not restrict the standing of complaint in detail. So it should be revised in accordance with Article 5.1 of the A-D Agreement.*

*Are there any specific provisions in the anti-dumping law of Turkey concerning the standing of a complaint in accordance with the A-D Agreement ?*

Answer

The Legislation on Prevention of Unfair Competition in Importation does not specify any particular percentage to determine whether the import volume is not negligible, nor does it contain any mention of the *de minimis* rule. However, the provisions of the A-D and Subsidies Agreements must be observed by Turkish officials, for the reasons explained earlier. Accordingly, the provisions of Article 5.8 of the A-D Agreement and Article 11.9 of the Subsidies Agreement which are fairly precise on these terms will be observed.

Duration of the definitive duty orders

Korea question 3

(Also United States question 15)

*Article 5 of Decree No. 89/14506 stipulates that the definitive measures shall remain in force as long as necessary to remove the effects of injury. But this provision is also contradictory to Article 11.3 of the A-D Agreement which stipulates “the definitive anti-dumping duty shall be terminated not later than five years from its imposition unless expiry of anti-dumping duty would be likely to lead to continuation of dumping and injury”. That means that the authority should review whether the expiry of anti-dumping duty occur the dumping and injury continuously in every 5 years. But Article 5 of Decree No. 89/14506 does not establish any condition or procedure of expiry of anti-dumping duty. So it is possible that the anti-dumping duty may last permanently.*

*What is your country's position on this?*

Answer

The second paragraph of Article 5 of the Decree is in full conformity with the provision of Article 11.1 of the A-D Agreement.

As for the five-year rule the Legislation on Prevention of Unfair Competition in Importation is silent. Therefore, the provisions of Article 11 of the A-D Agreement and Article 21 of the Subsidies Agreement will be observed.

## Undertakings

### Korea question 4

*The following Article is ambiguous and contrary to the A-D Agreement.*

*Article 11 in Law No. 3577: the suspension of the investigation shall not prevent the definite collecting of provisional duties previously imposed. Article 10 in Official Gazette 27.9 1989/20295: however, the acceptance of undertakings shall not necessarily mean the suspension of the investigation.*

*In general, the investigation should be terminated or suspended without imposition of any provisional measures or anti-dumping duty if the price undertaking is accepted. This is adopted and applied in the EU, US and the A-D Agreement. But the regulation of Turkey concerning this matter is far from the above general concept, if our understanding is correct.*

*How would you explain this?*

### Answer

Although the regulation does not track *verbatim* Article 8 of the A-D Agreement, the meaning of Article 10 of the Regulation and paragraphs 1 and 4 of Article 8 of the A-D Agreement is the same. That is, the proceedings may be terminated or completed upon receipt of satisfactory voluntary undertakings.

The second paragraph of Article 11 of the Law shall not be interpreted to result in the definitive collection of provisional duties without final determination of dumping and injury.

## Market impairment

### Argentina question 2

*(Also Venezuela question 2.1)*

*Article 3 of Law No. 3577 establishes that anti-dumping or countervailing duties may be applied when imports "... cause material injury or constitute threat of material injury to an industry or **cause the market impairment** or physical retardation of an industry ...".*

*This Article introduces a category - namely that of market impairment - not provided for in the definition of injury in footnote 9 to the WTO Anti-Dumping Agreement.*

### Answer

Turkey is aware of the fact that the concept "market impairment" is not in conformity with the A-D and Subsidies Agreements. However, for the reasons explained earlier, determination of injury shall be based on the relevant provisions of the A-D and Subsidies Agreements and within this context, the concept of market impairment will be disregarded. On the other hand, Turkey has neither initiated an investigation nor imposed any measures on the basis of market impairment criterion up until now.

National interest

Argentina question 3

*Article 12 of Law 3577 establishes that provisional measures shall be adopted when "... **the national interest** calls for immediate intervention and/or adoption of provisional measures ...". The concept of national interest is not one of the requirements under Article 7.1 of the Anti-Dumping Agreement for the application of provisional measures.*

*Does this imply that the reference to the national interest will allow non-compliance with the requirements laid down in the above-mentioned Article 7.1?*

Answer

The answer to this question is "No". The provisions of Article 7 of the A-D Agreement will be fully observed. And within this context the concept "national interest" is disregarded.

Duration of provisional measures

Argentina question 4

*Article 12 of Law 3577 establishes that provisional measures may "... be extended for two months by the Ministry ...". This provision does not appear to meet the requirements of Article 7.4 of the Agreement for extending such measures.*

*How does Turkey intend to comply with the provisions of the Agreement?*

Answer

During the course of an investigation, Turkey applies the lesser duty rule systematically. Therefore, in accordance with the A-D Agreement provisional measures may be applied for four months and can be extended to six months by the decision of the authorities. Within this context, a two month extension decision of the Ministry is in compliance with Article 7.4 of the A-D Agreement.

By the way, since the Agreement prevails in the case of non-compliance, as explained earlier, relevant provisions of the Agreement will be applied.

Comments of importers

Argentina question 5

*Article 2 of Decree 89/14506 establishes the requirements for imposing anti-dumping or countervailing duties retroactively. The Article does not refer to the need to give importers the opportunity to comment before such retroactive application, as is required under Article 10.6(ii) of the Anti-Dumping Agreement.*

*Will Turkey comply with this requirement?*

Answer

Although Article 2 of the Decree does not track verbatim Article 10.6 of the A-D Agreement, it does not preclude the authorities from giving importers concerned opportunities to comment.

On the other hand, because of the reasons explained earlier, Turkey will observe the relevant provisions of the A-D Agreement.

Individual margins

Argentina question 6

*Article 3 of Decree 89/14506 establishes that "... 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 ...".*

*Where importers so request, may individual margins be calculated for each particular importer?  
Will Turkey apply the provisions of Articles 9.4 and 9.5 of the Anti-Dumping Agreement?*

Answer

Save for the circumstances specified in Article 6.10 of the A-D Agreement, Turkey will determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation, and within this framework Turkey will observe Article 9 of the Agreement.

Non-conforming provisions of Law No. 3577 with the Agreements

United States question 2

*Under Turkish law what legal authority would administrators have to disregard the Law on Prevention of Unfair Competition in Importation (the Law) when that law is not in conformity with the Uruguay Round Agreements?*

Answer

There are no specific written rules on the very situation. The implementation will be directed towards our international obligations.

Provisional measures

United States question 4

*Under Article 12 (Page 5) what is the earliest time, after initiation of an investigation, that a provisional measure can be imposed?*

Answer

There is no provision on this issue. Hence the relevant provisions of the A-D and Subsidies Agreements will be observed. That is to say; provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

United States question 5

*Under Article 12 (Page 5) do preliminary findings of dumping and injury have to be made prior to imposing a preliminary duty?*

Answer

The answer to this question is "Yes". Provisional measures may be applied only if a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry.

New shipper

United States question 6

*What provision has been made for granting reviews of new shippers as provided for under Article 9.5 of the A-D Agreement?*

Answer

There is no specific provision concerning new shippers in the Legislation on Prevention of Unfair Competition in Importation. Hence Article 9.5 of the A-D Agreement will be observed.

Specificity

United States question 7

*(Also Venezuela question 2.3)*

*Section six of the Regulation on Prevention of Unfair Competition in Importation (page 16) makes no reference to specificity as defined by Article 2 of the SCM. Under Turkish law is a finding that a subsidy is specific required in order to impose a countervailing duty?*

Answer

The concept of "specificity" is not mentioned in the Legislation on Prevention of Unfair Competition in Importation. However, for the reasons mentioned earlier the relevant provisions of the Subsidies Agreement will be observed.

Injury determination

United States question 9

*Does Turkey follow the requirements of Article 3 of the A-D Agreement and Article 15 of the SCM Agreement in reaching material injury determinations?*

Answer

The answer to this question is "Yes". Article 3 of the A-D Agreement and Article 15 of the Subsidies Agreement will be fully observed.



Definition of domestic industry

United States question 10

*In conducting an injury investigation, does Turkey apply the definition of domestic industry contained in Article 4 of the A-D Agreement and Article 16 of the SCM Agreement?*

Answer

The answer to this question is "Yes". Article 4 of the A-D Agreement and Article 16 of the Subsidies Agreement will be observed.

Threat of material injury

United States question 11

*In an analysis of threat of material injury, does Turkey construe or apply its law consistent with Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement which require that threat "must be clearly foreseen and imminent," and which require the authority to examine certain factors in its analysis of threat?*

Answer

The answer to this question is "Yes". Turkish officials will act in full conformity with Article 3.7 of the A-D Agreement and Article 15.7 of the Subsidies Agreement.

Evidence

United States question 13

*How does the Turkish law fulfil the requirements of Article 6 of the A-D Agreement and Article 12 of the SCM Agreement, which require that interested parties be given notice of the information which authorities require and ample opportunity to present evidence in anti-dumping and countervailing duty proceedings?*

Answer

Although there is no specific provision in the Legislation on Prevention of Unfair Competition in Importation that track verbatim Article 6.1 of the A-D Agreement and Article 12.1 of the Subsidies Agreement, it does not preclude that interested parties be given notice of information which Turkish officials require and ample opportunity to present evidence in anti-dumping and countervailing duty proceedings.

Furthermore, the target of the competent authorities is to put the understanding of the Agreement into effect. Having this in mind and for the reasons explained earlier, they will directly apply Article 6 of the A-D Agreement and Article 12 of the Subsidies Agreement which are fairly precise.

Public notice

United States question 14

*How is Turkish law consistent with the requirements of Article 12 of the A-D Agreement and Article 22 of the SCM Agreement concerning public notice and explanation of determinations?*

Answer

Although some provisions concerning public notice are lacking there is no inconsistency between the Legislation on Prevention of Unfair Competition in Importation and Agreements. Furthermore, because of the reasons explained earlier Turkish officials will abide by the provisions of Article 12 of the A-D Agreement and Article 22 of the Subsidies Agreement.

In fact, Turkey fulfilled the obligations concerning public notice of initiation of an investigation in the review investigation initiated for differential gear units originating in Hungary.

This is the only investigation initiated for a Member country after the establishment of the WTO.

Price comparison

Venezuela question 2.5

*Do the Turkish authorities take into account the provisions of Articles 2.4, 2.4.1 and 2.4.2 of the WTO's A-D Agreement which requires a fair comparison between the export price and the normal value at the same level of trade, normally at the ex-factory level, and a currency conversion that should be made using the rate of exchange on the date of sale? Moreover, do they consider that the existence of dumping during the investigation phase should normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis?*

Answer

The answers to the questions asked in paragraph 2.5 of Venezuela are "Yes". Turkish officials will act in full conformity with Article 2.4 of the A-D Agreement.

Material injury

Venezuela question 2.6

*Do the Turkish authorities take into account the last sentence of Article 15.2 of the WTO's SCM Agreement which states that no one or several of these factors can necessarily give decisive guidance?*

Answer

The answer to this question is "Yes". Article 15.2 of the Subsidies Agreement will be observed.

Separate identification

Venezuela question 2.7

*What is the significance and scope of this provision within the context of Article 2.6 of the A-D Agreement and footnote 46 to Article 15 of the SCM Agreement, where it is stated that in the absence of a like product the term "like product" shall be interpreted to mean another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration?*

Answer

The second paragraph of Article 30 of the Regulation reproduces the provisions of Article 3.6 of the A-D Agreement and Article 15.6 of the Subsidies Agreement. Therefore, the significance and scope of this paragraph shall be interpreted within the context of Article 3.6 of the A-D Agreement and Article 15.6 of the Subsidies Agreement.

Ex officio

Venezuela question 2.8

*Do the Turkish authorities take into consideration the criterion established in Article 5.6 of the WTO's A-D Agreement, according to which the authorities should proceed with the initiation of an investigation ex officio only if they have sufficient evidence of dumping, injury and a causal link to justify such action?*

Answer

If the Turkish authorities decide to initiate an investigation without having received a written application by or on behalf of the domestic industry for the initiation of such investigation, they will proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in Article 5.2 of the A-D Agreement, to justify the initiation of the investigation.