

# **WORLD TRADE ORGANIZATION**

**G/ADP/N/1/TUN/2**  
**G/SCM/N/1/TUN/2**  
9 January 2001

(01-0089)

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

Original: French

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

**TUNISIA**

The following communication, dated 11 December 2000, has been received from the Permanent Mission of Tunisia.

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The Permanent Mission of Tunisia in Geneva presents its compliments to the Secretariat of the World Trade Organization and has the honour to enclose copies of Law No. 99-9 of 13 February 1999 on protection against unfair import practices and Decree No. 2000-477 of 21 February 2000 establishing the criteria and procedures for determining unfair import practices.

## **LAWS**

### Law No. 99-9 of 13 February 1999 on Protection Against Unfair Import Practices<sup>1</sup>

In the name of the people,

Following adoption by the Chamber of Deputies,

The President of the Republic hereby promulgates the following law:

#### Article 1

The purpose of this Law is to define the rules applicable to unfair import practices and to establish the conditions under which they shall be offset.

## **CHAPTER I**

### **DEFINITIONS**

#### Article 2

For the purposes of this Law:

- "Anti-dumping duty" means a duty applied to remedy injury caused to a domestic industry by dumped imports.
- "Countervailing duty" means a duty applied to remedy injury caused to a domestic industry by subsidized imports.
- "Domestic industry" means the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.
- "Like product" means a product alike in all respects to the product dumped or subsidized or in the absence of such a product another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.
- "Margin of dumping" means the difference between the export price and the normal value obtained by comparing these two elements.
- "Normal value" means the price paid or payable, in the ordinary course of trade, by independent buyers in the exporting country.

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<sup>1</sup> Preparatory work: discussion and adoption by the Chamber of Deputies at its session of 26 January 1999.

- "Export price" means the price actually paid or payable for the product sold for export to Tunisia.
- "Injury" means material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry.
- "Objective criteria or conditions" means criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

## CHAPTER II

### **PROTECTION AGAINST DUMPING AND SUBSIDY PRACTICES**

#### SECTION I

##### **Determination of Dumping**

###### Article 3

A product shall be considered as being dumped, i.e. introduced into Tunisian commerce at less than its normal value, if the export price of that product is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

#### SECTION II

##### **Determination of Subsidy**

###### Article 4

A subsidy shall be deemed to exist if:

- (a) There is a financial contribution by a government or any public body within the territory of the country of origin or exportation, i.e. where:
  - A government practice involves a direct transfer of funds, potential direct transfers of funds or liabilities;
  - government revenue that is otherwise due is foregone or not collected;
  - a government provides goods or services other than general infrastructure, or purchases goods;
  - a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in the first three indents of subparagraph (a) which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

- (b) there is any form of income protection or price support in the sense of Article XVI of GATT 1994;

and

- (c) a benefit is thereby conferred.

### SECTION III

#### Countervailable Subsidies

##### Article 5

Subsidies as defined in Article 4 shall be countervailable only if they are specific within the meaning of Article 6 below.

##### Article 6

In order to determine whether a subsidy as defined in Article 4 is specific, the following principles shall apply:

- (a) Where the granting authority, or the applicable legislation, explicitly limits access to a subsidy to certain producing enterprises, such subsidy shall be specific;
- (b) where the granting authority, or the applicable legislation, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria are adhered to;
- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered;

- (d) a subsidy shall be specific if it is limited to certain enterprises located within a designated geographical region within the jurisdiction of the country of exportation granting the subsidy.
- (e) the following shall be deemed to be specific:
  - subsidies contingent, in law or in fact, whether solely or among other conditions, upon export performance.

- subsidies contingent, whether solely or among other conditions, upon the use of domestic over imported goods.

## SECTION IV

### **Initiation and Subsequent Investigation**

#### Article 7

An investigation to determine the existence, degree and effect of any alleged dumping or subsidy shall be initiated by the Minister responsible for trade only upon a written application by or on behalf of the domestic industry, except in the circumstances specified in Article 10.

A complaint under the previous paragraph must include evidence of the existence of dumping or subsidy liable to anti-dumping or countervailing duties, of injury or of a causal link between the imports allegedly being dumped or subsidized and the alleged injury.

#### Article 8

An investigation shall not be initiated pursuant to Article 7 unless it has been determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the complaint has been lodged by or on behalf of the domestic industry.

The complaint shall be considered to have been lodged 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 complaint.

However, no investigation shall be initiated when the domestic producers expressly supporting the complaint account for less than 25 per cent of total production of the like product produced by the domestic industry.

#### Article 9

The provisions of Article 8 notwithstanding, the initiation of an investigation shall be decided after examination of the accuracy of the evidence provided concerning the existence of dumping or subsidy and the alleged injury.

#### Article 10

The Minister responsible for trade may, in exceptional circumstances, decide to initiate an investigation without having received a written application by or on behalf of the domestic industry concerned, if he has sufficient evidence of the existence of dumping or subsidy, injury and causal link, as specified in Article 7, to justify the initiation of an investigation.

#### Article 11

The Minister responsible for trade may reject a complaint lodged under Article 7 and terminate the investigation promptly if his services find that there is not sufficient evidence of either dumping or subsidy or of injury to justify proceeding with the case.

#### Article 12

Where it is decided to initiate an investigation, the Minister responsible for trade shall take the following steps:

- Send a request for information required for the investigation to the authorities of the exporting countries, as well as to the exporters concerned, who shall provide the information requested and forward it to the services of the Ministry responsible for trade.

A request for information shall be answered within the time-limits and in the form specified in the request.

A request for information shall be deemed to have been received by the exporter within seven days of the date on which it was dispatched or transmitted to the diplomatic representative of the exporting country.

- Place a notice in the *Journal Officiel* (Official Journal) of the Tunisian Republic announcing the initiation of an investigation into the dumped or subsidized product.

This initiation notice shall indicate the nature of the product and the country or countries concerned and include a summary of the information received.

#### Article 13

Subject to the requirement to protect confidential information, evidence presented by one interested party shall be made available promptly to other interested parties participating in the investigation.

#### Article 14

Any information which is confidential by nature or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the administration. Such information shall not be disclosed without specific permission of the party submitting it.

#### Article 15

Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof.

In exceptional circumstances, such parties may indicate that such information is not susceptible of summary, in which case they shall state their reasons why.

#### Article 16

If it is found that a request for confidentiality is not warranted and if the supplier of the information is unwilling to make it public or to authorize its disclosure in summary form, the information may be disregarded, unless it can be demonstrated from appropriate sources that the information is correct.

#### Article 17

If an interested party refuses access to, or otherwise does not provide, necessary information within the period laid down by this Law, or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

#### Article 18

Exporters and importers of the product under investigation, as well as the applicants, may be informed of the progress and outcome of the investigation.

However, this information, which may be furnished in writing, shall be without prejudice to the decisions to be taken.

#### Article 19

Once a complaint lodged in accordance with Article 7 has been allowed and before an investigation is initiated, the Minister responsible for trade shall notify the government of the country of exportation concerned.

The previous subparagraph notwithstanding, if the complaint concerns imports subject to countervailable subsidies, the Minister responsible for trade shall invite the government of the country concerned to hold consultations with a view to establishing the facts and arriving at a mutually agreed solution.

#### Article 20

The services responsible for the investigation may give the parties concerned a hearing at their request, or for the purposes of the investigation, either together or separately, so that opposing views may be presented.

There shall be no obligation on any party to attend a hearing and failure to do so shall not be prejudicial to that party's case.

During such hearings, the need to preserve the confidentiality of information shall be taken into account.

Oral information may be taken into account only in so far as it is subsequently reproduced in writing and made available to other interested parties.

Interested parties intending to participate in a hearing shall inform the Minister responsible for trade of the identity of their representatives at least seven days before the date of the hearing.

#### Article 21

The investigation shall be terminated immediately in cases where it is determined that the margin of dumping or the amount of the subsidy is *de minimis* or where the volume of dumped or subsidized imports, actual or potential, lies below the threshold specified in the decree establishing the criteria and procedures for determining unfair practices.

#### Article 22

Other than in exceptional circumstances, investigations shall be concluded within one year, and in no case more than 18 months, after their initiation by the Minister responsible for trade.

Public notice of any preliminary or final determination, whether affirmative or negative, and of any acceptance of an undertaking or termination of such an undertaking under this Law, as well as any decision to terminate an investigation, shall be given in the *Journal officiel* of the Tunisian Republic.

#### Article 23

An anti-dumping or subsidy proceeding shall not hinder Customs clearance.

### SECTION V

#### **Application of Anti-Dumping and Countervailing Duties**

#### Article 24

Provisional anti-dumping duties or provisional countervailing duties may be applied by decree, issued at the proposal of the Minister responsible for trade, where:

- An investigation has been initiated in accordance with Articles 7 and 10 of this Law;
- public notice has been given to that effect, in the *Journal officiel* of the Tunisian Republic;
- interested parties have been given adequate opportunities to submit information and make comments;
- a preliminary affirmative determination has been made of dumping or subsidy and injury caused to a domestic product and of a causal link between the dumping or subsidy and the injury;
- such measures are judged necessary by the Minister responsible for trade to prevent injury from being caused during the investigation.

#### Article 25

Provisional anti-dumping duties and provisional countervailing duties shall be applied not sooner than 60 days from the date of initiation of the investigation procedure.



#### Article 26

The amount of the provisional anti-dumping duty shall not exceed the margin of dumping provisionally determined and may be lower than that margin if a lesser anti-dumping duty is sufficient to remove the injury to the domestic industry.

#### Article 27

The amount of the countervailing duty provisionally determined shall not exceed the full amount of the subsidy that gave rise to its application.

#### Article 28

Provisional anti-dumping duties may be applied for a period of four months. However, they shall be extended to six months upon request by exporters representing a significant percentage of the trade involved.

Where a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

Provisional countervailing duties may be applied for a period of four months.

#### Article 29

Provisional countervailing duties and provisional anti-dumping duties may take the form of cash deposits or bonds.

#### Article 30

A definitive anti-dumping or definitive countervailing duty shall be imposed by decree when the final ascertainment of the facts shows that there is dumping or subsidy and consequent injury.

- The amount of the definitive anti-dumping or definitive countervailing duty shall not exceed the assessed margin of dumping or the amount of the subsidy. However, the amount of these duties may be lower than the margin of dumping or the amount of the subsidy, if such duties are sufficient to remove the injury caused to the domestic industry.

#### Article 31

Anti-dumping or countervailing duties shall be collected in the same way as customs duties.

## SECTION VI

### Price Undertakings

#### Article 32

A dumping investigation may be terminated without the imposition of provisional or definitive anti-dumping duties upon receipt of satisfactory voluntary undertakings from the exporter to revise his dumping prices, provided the Ministry responsible for trade finds that the injurious effect of the dumping is eliminated.

#### Article 33

A subsidy investigation may be terminated without the imposition of provisional or definitive countervailing duties upon acceptance of a satisfactory voluntary undertaking under which:

- (1) The government of the country of origin and/or exportation agrees to eliminate or limit the subsidy or take other measures concerning its effects;
- (2) the exporter undertakes to revise its prices or no longer to export to Tunisia products benefiting from the countervailable subsidy.

#### Article 34

Price undertakings may not be sought or accepted from exporters unless the Ministry responsible for trade has made a preliminary affirmative determination of dumping or subsidy and consequent injury.

In the case of a subsidy, an undertaking made by an exporter shall not be accepted unless the authorities of its country have previously given their consent.

#### Article 35

Parties offering an undertaking shall furnish a non-confidential version thereof so that it can be communicated to the parties concerned by the investigation.

#### Article 36

If an undertaking is accepted, the investigation of dumping or subsidy and injury shall normally be completed if the exporter so desires or the Minister responsible for trade so decides.

In this case, if a negative determination of dumping or subsidy and injury is made, the undertaking shall lapse.

In the event of an affirmative determination of dumping or subsidy and injury, the undertaking shall continue consistent with its terms and the provisions of this Law.

### Article 37

The Minister responsible for trade may require any country of origin or exportation or any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking.

### Article 38

In case of violation or withdrawal of an undertaking, provisional anti-dumping duties or provisional countervailing duties may be immediately applied, and in such cases definitive anti-dumping or definitive countervailing duties may be levied on products entered for consumption not more than 90 days before the date of application of the provisional anti-dumping or provisional countervailing duties.

However, no definitive anti-dumping or definitive countervailing duty shall be applied retroactively to imports entered before the violation or withdrawal of the undertaking.

## CHAPTER III

### **DUMPING AND SUBSIDY PRACTICES THAT PRECEDE THE IMPOSITION OF DUTIES**

### Article 39

Provisional measures and definitive anti-dumping or definitive countervailing duties may only be applied to products which enter for consumption after the time when the decision to apply these measures enters into force, subject to the exceptions set out below:

- (a) A definitive anti-dumping or definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of the provisional anti-dumping or countervailing duty, but not prior to the investigation, when it is determined that:

either

- there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
- the injury is caused by massive dumped imports of a product over a relatively short period which in light of the timing and the volume of the dumped imports and other circumstances is likely seriously to undermine the remedial effect of the definitive anti-dumping duty to be applied;

or

- there are critical circumstances where, for the products in question on which subsidies have been paid or bestowed inconsistently with the provisions of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures, injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies and, in

order to preclude the recurrence of such injury, it is deemed necessary to assess countervailing duties retroactively on those imports.

- (b) Where a determination of threat of injury or material retardation is made, a definitive anti-dumping or countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released.
- (c) If the definitive anti-dumping duty or the definitive countervailing duty is higher than the provisional duty, the difference shall not be collected.

If the definitive anti-dumping duty or the definitive countervailing duty is lower than the provisional duty, the difference shall be reimbursed.

#### CHAPTER IV

### **DURATION, REVIEW AND REFUND OF DUTIES**

#### SECTION I

#### **Duration and Review of Duties**

##### Article 40

The period of application of definitive anti-dumping and definitive countervailing duties shall end after five years from the date of their imposition or after five years from the date of the last review of dumping or subsidy and consequent injury, unless the review showed that expiry of the duties would be likely to lead to continuation or recurrence of the dumping or subsidy.

##### Article 41

Upon expiry of the period of application of definitive anti-dumping or definitive countervailing duties, the desirability of continuing to impose those duties may be reviewed on the initiative of the Minister responsible for trade or upon request by any party concerned which submits information substantiating the need for a review.

The definitive anti-dumping or definitive countervailing duties shall remain in force pending the outcome of the review.

These provisions shall also apply to price undertakings under Chapter II, Section VI of this Law.

##### Article 42

Definitive anti-dumping and definitive countervailing duties may be reviewed on the initiative of the Minister responsible for trade or upon request by one of the exporters or importers or representatives of the domestic industry, if that request includes sufficient evidence to show the need for an interim review, provided that a period of at least one year has elapsed since the imposition of the definitive anti-dumping or definitive countervailing duties.

### Article 43

If a product is subject to anti-dumping duties under this Law, the Minister responsible for trade shall promptly carry out an accelerated review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to Tunisia during the period of investigation.

No review shall be carried out under the previous paragraph unless the exporters or producers concerned can show that they are not related to any of the exporters or producers in the exporting country on whom anti-dumping duties have been imposed in respect of the product in question.

No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out in accordance with the first paragraph of this Article.

However, the Minister responsible for trade may request the exporters or producers concerned to furnish guarantees in order to ensure that, should this review result in a determination of dumping in respect of such exporters or producers, anti-dumping duties can be levied retroactively to the date of initiation of the review.

The provisions of Articles 11 to 20 concerning evidence and procedure shall apply to any review carried out under this Article.

## SECTION II

### **Refund of Anti-Dumping and Countervailing Duties**

#### Article 44

To obtain reimbursement of duties levied in excess of the margin of dumping or the actual amount of the subsidy, the importer must submit a request, supported by evidence, to the Minister responsible for trade within six months from the date of assessment of the amount of the definitive duties imposed.

#### Article 45

No request for reimbursement of definitive anti-dumping or definitive countervailing duties shall be deemed to be duly supported by evidence unless it includes accurate details of the amount whose reimbursement is claimed and is accompanied by all the customs documents relating to the calculation and payment of that amount.

#### Article 46

The request for reimbursement must include a statement by the exporter or producer establishing that the margin of dumping or the amount of the subsidy that gave rise to countervailing duties has been reduced or eliminated.

Any request that does not include such a statement shall be rejected.

#### Article 47

The reimbursement of definitive anti-dumping or definitive countervailing duties shall be decided by order of the Minister of Finance at the proposal of the Minister responsible for trade within

12 months and in any circumstances within 18 months of from the date of dispatch of the request, duly supported by evidence.

#### Article 48

The Ministry of Finance shall refund the amount authorized within 90 days from the date of the reimbursement order.

### CHAPTER V

#### **AUTHORIZED OFFICIALS AND POWERS OF INVESTIGATION IN COMBATING DUMPING AND SUBSIDY PRACTICES**

#### Article 49

Information furnished during the investigation shall be verified and complaints lodged by the domestic industry in connection with protection against dumping or subsidy practices shall be examined by the officials duly authorized by the Minister responsible for trade.

For this purpose, they may visit and inspect the work and production premises of natural or legal persons involved in the investigation.

Likewise, they may conduct their investigations outside Tunisian territory, by agreement with the exporters and competent authorities of the countries concerned.

If necessary, taking into account the particular circumstances of the case, information may be gathered from Tunisian or foreign institutions and public establishments inside or outside the country.

### CHAPTER VI

#### **JUDICIAL REVIEW**

#### Article 50

Interested parties may apply to the competent court of first instance for reconsideration of decisions taken in relation to final determinations and their review and to determinations concerning the refund of duties.

Recourse to such judicial review must be had within 20 days at most from the date of publication of the notice for which Article 22 of this Law provides.

### CHAPTER VII

#### **OTHER PROVISIONS**

#### Article 51

Officials required to acquaint themselves with the contents of the investigation file shall be bound by professional secrecy and shall be subject to the provisions of Article 254 of the Penal Code.

Article 52

The criteria and procedures for determining unfair import practices relating to dumping and subsidy concerning the normal value, export price, price comparisons, the determination of injury and causal link, the margin of dumping, the calculation of the amount of the countervailable subsidy and the requirements for lodging a complaint shall be laid down by decree.

Article 53

All previous provisions contrary to this Law and, in particular, Chapter III on protection against unfair import practices of Law No. 94-41 of 7 March 1994 on foreign trade are hereby repealed.

This Law shall be published in the *Journal officiel* of the Republic of Tunisia and enforced as State law.

Tunis, 13 February 1999.

Zine El Abidine Ben Ali

## **MINISTRY OF TRADE**

### **Decree No. 2000-477 of 21 February 2000 Establishing the Criteria and Procedures for Determining Unfair Import Practices**

The President of the Republic,

At the proposal of the Minister of Trade,

Having regard to Law No. 94-41 of 7 March 1994 on foreign trade,

Having regard to Law No. 95-6 of 23 January 1995 ratifying the Uruguay Round Agreements,

Having regard to Law No. 99-9 of 13 February 1999 on protection against unfair import practices and, in particular, its Articles 21 and 52,

Having regard to Decree No. 94-1745 of 29 August 1994 establishing the criteria and procedures for determining unfair import practices,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Tribunal,

Decrees:

#### **Article 1**

The purpose of this Decree is to establish the criteria and procedures for determining unfair import practices.

### **CHAPTER I**

#### **DETERMINATION OF NORMAL VALUE**

#### **Article 2**

The normal value, as defined by Article 2 of Law No. 99-9 of 13 February 1999 on protection against unfair import practices, is established on the basis of the comparable price paid or payable, in the ordinary course of trade, on the sale of the like product when destined for consumption in the exporting country.

The provisions of the first paragraph of this article notwithstanding, the services responsible for the investigation may establish the normal value on the basis of the comparable price paid or payable, in the ordinary course of trade, on the sale of the product when destined for consumption in the country of origin if the product is merely transshipped through the country of export, or such a product is not produced in the country of export, or there is no comparable price for it in the country of export.

Prices made between parties that appear to be associated or to have concluded a compensatory arrangement may not be deemed to be prices made in the ordinary course of trade and



used to determine the normal value unless it is established that these prices are not affected by the relationship.

### Article 3

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when such sales are insufficient or do not permit a proper comparison because of the particular market situation or the low volume of sales in the domestic market of the exporting country, the normal value of the like product shall be established on the basis of:

- (a) Either a comparable price of the like product when exported to an appropriate third country, provided that this price is representative;
- (b) or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Sales of the like product destined for consumption in the domestic market of the exporting country or sales to an appropriate third country shall be considered sufficient quantities for the determination of the normal value if the volume of these sales constitutes 5 per cent or more of the sales volume of the product investigated. However, the services responsible for the investigation may use a lower volume if they are satisfied on the basis of evidence furnished by the interested parties or otherwise available to them that the sales at such lower ratio are nonetheless of sufficient magnitude to make a proper comparison.

### Article 4

Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus selling, administrative and general 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 only if it is determined that such sales are made:

- (a) Within an extended period of time, which shall be taken to mean at least six months;
- (b) in substantial quantities, that is to say when the services responsible for the investigation establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average costs, or that the volume of sales below costs represents 20 per cent or more of the volume sold in transactions under consideration for the determination of the normal value;
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

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

### Article 5

The costs referred to in Articles 3 and 4 of this Decree 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 reasonably reflect the costs associated with the production and sale of the like product.

#### Article 6

The amounts for selling, administrative and general 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 such amounts cannot be determined on this basis, they may be determined on the basis of:

- (a) The actual amounts incurred and realized by the exporter or producer in question in respect of production and sales, in the normal course of trade, of the same general category of products in the domestic market of the country of origin;
- (b) the weighted average of the actual amounts incurred and realized 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;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin of the like product.

#### Article 7

Where the country exporting the product investigated is a non-market economy country, the services responsible for the investigation may, in so far as they consider the methods of determining normal value set out in this Decree to be inappropriate, determine the normal value on the basis of:

- (a) The comparable price paid or payable, in the ordinary course of trade, on the sale of a like product when destined for consumption in a market economy country;
  - (b) the comparable price paid or payable, in the ordinary course of trade, for the exportation of the like product from an appropriate market economy country to other countries, including Tunisia;
  - (c) the price paid or payable in Tunisia for the like domestic product, duly adjusted if necessary to include a profit margin corresponding to the margin that might be expected in the prevailing economic circumstances for the sector in question;
- or
- (d) on any other reasonable basis.

## CHAPTER II

### DETERMINATION OF THE EXPORT PRICE

#### Article 8

In cases where there is no export price, as defined by Article 2 of Law No. 99-9 of 13 February 1999 on protection against unfair import practices, or where it appears that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed:

- (a) On the basis of the price at which the imported products are first resold to an independent buyer;
- or
- (b) if the products are not resold to an independent buyer, or not resold in the condition as imported, on any reasonable basis.

#### Article 9

If, in the circumstances envisaged in Article 2 of this Decree, the services responsible for the investigation determine the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the product investigated when sold for export in the country of origin.

## CHAPTER III

### PRICE COMPARISON AND MARGIN OF DUMPING

#### Article 10

The services responsible for the investigation shall make a fair comparison between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, in respect of sales made at as nearly as possible the same time and with due allowance for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences which are demonstrated by the interested parties to affect price comparability.

#### Article 11

Where the export price is constructed on the basis of the price at which the imported product is first resold to an independent buyer, allowance may also be made for costs, including duties and taxes, incurred between importation and resale, as well as for a reasonable amount for profits accruing.

#### Article 12

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale.

The date of sale shall normally be the date of contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale.

#### Article 13

The existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of normal values and individual prices for export to Tunisia transaction to transaction, or on the basis of a comparison of a weighted average normal value with a weighted average of prices of all exports to Tunisia for the product in question.

#### Article 14

The services responsible for the investigation shall determine an individual margin of dumping for each exporter or producer of the product under investigation.

When the margins of dumping vary, a weighted average margin of dumping may be established.

The first paragraph of this article notwithstanding, where the number of exporters, producers, importers or types of products involved is so large as to make the determination of an individual margin of dumping difficult, the examination may be limited to a reasonable number of interested parties or products under investigation by using samples which are statistically valid on the basis of information available to the services responsible for the investigation at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

The selection of exporters, producers, importers or types of products under this article shall be chosen after consultation with the exporters, producers or importers concerned.

#### Article 15

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price.

### CHAPTER IV

#### **CALCULATION OF THE AMOUNT OF THE COUNTERVAILABLE SUBSIDY**

#### Article 16

The amount of the countervailable subsidy shall be calculated in terms of the benefit to the recipient, as recorded and determined for the investigation period.

This period shall normally correspond to the recipient's last accounting year, but may be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other data are available.

#### Article 17

The amount of the countervailable subsidy shall be calculated in accordance with the following provisions:

- (a) The amount of the countervailable subsidy shall be calculated per unit of subsidized product exported to Tunisia;
- (b) at the request of the interested party and upon good cause shown, the following may be deducted from the total subsidy:
  - (1) Any administrative costs and other costs necessarily incurred in order to obtain entitlement to or to benefit from the subsidy;
  - (2) export taxes, duties or other charges levied on exportation of the product to Tunisia and specially intended to offset the subsidy.

#### Article 18

A subsidy liable to provisional countervailing duty shall be considered *de minimis* if the subsidy is less than 1 per cent *ad valorem*.

### CHAPTER V

#### **DETERMINATION OF INJURY AND CAUSAL LINK**

#### Article 19

A determination of injury shall involve an objective examination of the volume of the dumped or subsidized imports and the effect of these imports on prices in the domestic market for like products, as well as their impact on the domestic producers of such products.

#### Article 20

The examination of the impact of the dumped or subsidized 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, such as 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 or the amount of the subsidy, and actual and potential negative effects on cash flow, inventories, employment, wages and growth.

#### Article 21

In making a determination regarding the existence of a threat of material injury, the services responsible for the investigation shall consider, *inter alia*, the following:

- Nature of the subsidy in question and the trade effects likely to arise therefrom;
- a rate of increase of dumped or subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

- entry of imports at prices that have a significant depressing or suppressing effect on domestic prices;
- inventories of the product being investigated.

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

#### Article 22

The volume of dumped imports shall be regarded as negligible if it accounts for less than 3 per cent of imports of the like product into Tunisia, unless countries which individually account for less than 3 per cent of imports of the like product collectively account for more than 7 per cent.

#### Article 23

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

#### Article 24

The existence of a causal relationship between the dumped or subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the services responsible for the investigation.

The services responsible for the investigation shall also examine any factors other than the dumped or subsidized imports which are simultaneously injuring the domestic industry, and the injury caused by these factors must not be attributed to the dumped or subsidized imports. These factors shall include:

- The volume and prices of imports not sold at dumping or subsidized prices;
- contraction in demand or changes in the patterns of consumption;
- developments in technology.

### CHAPTER VI

#### **REQUIREMENTS FOR LODGING A COMPLAINT**

#### Article 25

A complaint lodged under Articles 7 and 8 of the Law on protection against unfair import practices shall contain, in particular, the following information:

- (1) The indemnity [sic] of the complainant;

- (2) an indication of the volume and value of the domestic production of the like product;
- (3) a complete description of the allegedly dumped or subsidized product;
- (4) the names of the country or countries of origin and/or export in question and the identity of each exporter or foreign producer;
- (5) evidence concerning the existence of dumping and the alleged injury or the amount and nature of the subsidy and the consequent injury.

## CHAPTER VII

### OTHER PROVISIONS

#### Article 26

All the provisions of Decree No. 94-1745 of 29 August 1994 establishing the criteria and procedures for determining unfair import practices are hereby repealed.

#### Article 27

The Minister of Finance and the Minister responsible for trade shall be responsible, in their respective spheres of competence, for the implementation of this Decree, which will be published in the *Journal officiel* of the Tunisian Republic.

Tunis, 21 February 2000.

Zine El Abidine Ben Ali

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