

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

BRAZIL

The following communication, dated 15 March 1995, has been received from the Permanent Mission of Brazil.

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With reference to documents G/ADP/N/1/Suppl. 1, dated 6 March 1995 and G/SCM/N/1, dated 30 January 1995 and to Articles 16.5 and 18.5 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and Articles 25.12 and 32.6 of the WTO Agreement on Subsidies and Countervailing Measures, I have been instructed to notify the Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures that:

- (a) the Marrakesh Agreement Establishing the World Trade Organization and its Annexed Agreements, contained in the Final Act Embodying the Results of the Uruguay Round Multilateral Trade Negotiations, have been incorporated into the Brazilian legal system, in their full text, by Decree No. 1355, of 30 December 1994;
- (b) Provisional Measure No. 616, of 14 September 1994<sup>1</sup> has been amended so as to reflect the incorporation of the above referred Agreements into the Brazilian legal system, and has been republished as Provisional Measure No. 926 of 1 March 1995 (English version enclosed herewith); and
- (c) the Government of Brazil is presently drafting a new regulation on measures to avoid the effects of unfair trade practices, in accordance with the provisions of the above referred Agreements; this new regulation, when in force, will be duly notified to the Committee.

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<sup>1</sup>See documents ADP/1/Add.26/Suppl.5 and SCM/1/Add.26/Suppl.5.

(UNOFFICIAL TRANSLATION)

**Provisional Measure No. 926 of 1 March 1995**

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

The **Vice-President of the Republic**, acting as 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<sup>2</sup> and by the Subsidies and Countervailing Measures Agreement<sup>3</sup>, 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, and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures annexed to the Agreement Establishing the World Trade Organization, which is part of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations of the GATT, signed in Marrakesh on 12 April 1994, approved by Legislative Decree No. 30, of 15 December 1994 and promulgated by Decree No. 1355 of 30 December 1994, shall be applied by the levying, in Brazilian currency, of sums which correspond to the percentage of the margin of dumping or to the amount of subsidy, as determined in an administrative process, in accordance with the terms of those Agreements, of Decisions PC/13, PC/14, PC/15 and PC/16 of the Preparatory Committee of the WTO and of the GATT CONTRACTING PARTIES, dated 13 December 1994, and of this Provisional Measure, in sufficient amounts so as to prevent injury or threat thereof to the domestic industry.

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 the Agreements on Anti-dumping and Agreements on Subsidies and Countervailing Measures referred to in Article 1, and should be understood as referring to companies that produce industrial, agricultural or mineral products.

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<sup>2</sup>Tokyo Round Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

<sup>3</sup>Tokyo Round Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

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 the Agreements on Anti-dumping and of the Agreements on Subsidies and Countervailing Measures referred to in Article 1.

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 fulfilment 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 only be applied to goods dispatched for consumption from the date of the publication of the order establishing such duties, except in cases of retroactivity foreseen in the Agreements on Anti-dumping and in the Agreements on Subsidies and Countervailing Measures referred to in Article 1.

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 the Anti-Dumping Agreements referred to in Article 1;
- 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<sup>4</sup>, with the amendments of Resolution 1582 of 17 February 1989<sup>5</sup>, of the extinct Commission of Customs Policy (CPA).

Article 13: All acts undertaken according to Provisional Measure No. 879, of 30 January 1995, are hereby validated.

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<sup>4</sup>See ADP/1/Add.26/Suppl.1 and SCM/1/Add.26/Suppl.1.

<sup>5</sup>See ADP/1/Add.26/Suppl.2 and SCM/1/Add.26/Suppl.2.

Article 14: This Provisional Measure shall come into force on the date of its publication.

Article 15: Paragraph 2 of Article 1 of Decree-Law No. 1.578, of 11 October 1977 is hereby revoked.

Brasília, 1 March 1995  
174th Year of the Independence  
107th Year of the Republic

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