ANTI-DUMPING LEGISLATION

At the meeting of the Committee on Anti-Dumping Practices on 21-24 September 1971 it was agreed that the secretariat should assemble in a document the information received in 1969/70 on anti-dumping legislation of countries members of the Committee on Trade in Industrial Products but not members of the Anti-Dumping Committee.

Reproduced hereafter are the anti-dumping laws of the following countries:

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Israel and Pakistan notified in 1969 that they had no anti-dumping legislation.

1 These Governments have confirmed that the texts submitted in 1969/70 have not been subsequently modified.
An Act relating to certain special duties of customs

Be it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

1. This Act may be cited as the Customs Tariff (Dumping and Subsidies) Act 1961-1965.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. (1) The following Acts are repealed:

   Customs Tariff (Industries Preservation) Act 1921;
   Customs Tariff (Industries Preservation) Act 1922;
   Customs Tariff (Industries Preservation) Act 1933;
   Customs Tariff (Industries Preservation) Act 1936;
   Customs Tariff (Industries Preservation) Act 1956;
   Customs Tariff (Industries Preservation) Act 1957.

   (2) Subject to the next succeeding sub-section, where immediately before the date of commencement of this Act, a special duty was payable on any goods under the Customs Tariff (Industries Preservation) Act 1921-1957 in consequence of the publication by the Minister of a notice in the Gazette specifying those goods, the special duty continues to be payable on those goods, and may be charged and collected, in accordance with that Act on and after that date notwithstanding the repeal of the Acts specified in the last preceding sub-section.

   (3) The Minister may, by notice published in the Gazette, revoke a notice referred to in the last preceding sub-section, and, upon the revocation of the notice, the special duty on goods specified in the notice ceases to be payable, and shall not be charged or collected, on goods entered for home consumption on or after the date of revocation.

1 The Customs Tariff (Dumping and Subsidies) Act 1961-1965 comprises the Customs Tariff (Dumping and Subsidies) Act 1961, as amended. Particulars of the Principal Act and of the amending Act are set out on the following table:

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2 For notices under this sub-section see Commonwealth Gazette 1961, page 2093; 1962, page 2640; and 1966, page 5311.
4.1 (1) In this Act, unless the contrary intention appears:

"delivery charges in the country of export", in relation to goods that have been exported to Australia, means charges or costs in respect of the handling (including the placing in outside packages), transporting or loading of the goods in the country of export with a view to exporting the goods from that country;

"export price", in relation to goods that have been exported to Australia, means an amount, expressed in Australian currency, equal to:

(a) where the goods have been sold by the exporter, on or before the date of exportation, to the person who imports them into Australia - the sum of:

(i) the price paid or to be paid for the goods by the importer, but not including any part of that price that, in the opinion of the Minister, represents a charge in respect of transport or insurance of the goods after they have been exported or in respect of any other matter arising after that time, or represents a charge in respect of the cost of supplying outside packages for the goods; and

(ii) any delivery charges in the country of export that have been incurred by the importer in relation to the goods and are not included in that price; or

(b) in any other case - the amount that, in the opinion of the Minister, would have been the export price of the goods in accordance with the last preceding paragraph if the export of the goods to Australia had been the result of a sale of the goods by the exporter to a person in Australia;

"exporter", in relation to goods that have been exported to Australia, includes a person who placed the goods on board the ship, aircraft or vehicle in which the goods left the country of export;

"the normal value", in relation to goods that have been exported to Australia, means whichever of the following amounts, as ascertained by the Minister, expressed in Australian currency, is determined by the Minister to be the normal value of those goods:

(a) an amount equal to the fair market value of like goods sold in the country of export for home consumption in the ordinary course of trade plus delivery charges in the country of export in relation to the

1 This section was amended by Section 3 of the Customs Tariff (Dumping and Subsidies) Act 1965. Section 13 of that Act provides as follows:

"13. The amendments made by Sections 3 and 8 of this Act do not apply in relation to goods that were entered for home consumption before the commencement of this Act."
goods, but not including any duties or other taxes paid or payable in that country in respect of the goods, being duties or taxes that are remitted or refunded on export;

(b) an amount equal to the highest comparable price paid for like goods sold in the country of export for export to a third country in the ordinary course of trade plus delivery charges in the country of export in relation to the goods, but not including any duties or other taxes paid or payable in the country of export in respect of the goods, being duties or taxes that are remitted or refunded on export;

(c) an amount equal to the fair market value of like goods produced or manufactured, and sold, in a third country selected by the Minister, being a country in which, in the opinion of the Minister, the costs of production or manufacture are similar to those in the country of export, in the ordinary course of trade for home consumption in that third country plus delivery charges in the country of export in relation to the goods, but not including any duties or other taxes paid or payable in the third country in respect of the goods, being duties or taxes that are remitted or refunded on export; or

(d) an amount equal to the sum of:

(i) the cost of production or manufacture of the goods or, if the Minister is of opinion that adequate information as to the cost of production or manufacture of the goods cannot be obtained, such amount as is estimated by the Minister to be the cost of production or manufacture of the goods;

(ii) delivery charges in the country of export in relation to the goods; and

(iii) such additional amount in respect of selling costs and profit as is determined by the Minister;

"The Tariff Board" means the Tariff Board established under the Tariff Board Act 1921-1960.

(1A) Where the Minister is of opinion that there are reasonable grounds for believing that, in relation to any goods, the amount of the price referred to in sub-paragraph (i) of paragraph (a) of the definition of "export price" in the last preceding sub-section, or the amount of any charge referred to in sub-paragraph (ii) of that paragraph, was fixed with a view to:

(a) avoiding the imposition on the goods or on other goods of a special duty under Section 7 or 8 of this Act; or

(b) reducing the amount of such a special duty that is payable in respect of the goods or causing such a special duty not to be payable in respect of the goods,
the Minister may determine an amount to be the export price of the goods for
the purposes of this Act, being the amount that, in the opinion of the
Minister, would have been the export price of the goods in accordance with
the definition of "export price" in the last preceding sub-section if the
fixing of the amount of that first-mentioned price or charge had not been
affected by either of the considerations referred to in paragraphs (a) and
(b) of this sub-section.

(1B) In forming an opinion in relation to goods for the purposes of
paragraph (b) of the definition of "export price" in sub-section (1) of this
section or for the purposes of the last preceding sub-section, the Minister
may have regard to any matter that he considers relevant and, in particular,
may have regard to:

(a) any dealing in, or any action taken with a view to dealing in, the
goods, whether before or after the importation of the goods into
Australia;

(b) any use of the goods after importation into Australia and any
value attributed to the goods in connexion with any such use; or

(c) any dealing in, or any action taken with a view to dealing in,
other goods in the production of which the first-mentioned goods have
been used or in which the first-mentioned goods have been incorporated.

(2) In this Act:

(a) a reference to an inquiry by the Tariff Board shall be read as
including a reference to such an inquiry held or commenced to be held
before the commencement of this Act; and

(b) a reference to a report by the Tariff Board shall be read as
including a reference to a report made upon such an inquiry.

5. The Customs Act 1901-1960 is incorporated and shall be read as one with this
Act.

6. Duties of customs are imposed in accordance with this Act.

7. (1) If the Minister, after inquiry and report by the Tariff Board, is
satisfied, as to any goods, that:

1This sub-section was substituted by sub-section (1) of Section 4 of the
Customs Tariff (Dumping and Subsidies) Act 1965. Sub-section (2) of that section
provides as follows:

"(2) A notice specifying any goods published in the Gazette before the
commencement of this Act in accordance with sub-section (1) of Section 7 of the
Principal Act and in force immediately before that commencement continues in
force as if it were a notice under sub-section (1) of Section 7 of the Principal
Act, as amended by this Act, duly specifying those goods, but may be amended or
revoked as if it were such a notice."
(a) the export price of any of those goods that have been exported to Australia is less than the normal value of the goods so exported; and

(b) the exportation of those goods is causing or threatening injury to an Australian industry producing or manufacturing like or directly competitive goods or may hinder the establishment of an Australian industry in connexion with the production or manufacture of like or directly competitive goods,

the Minister may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied.

(2) Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the dumping duty").

(3) The amount of the dumping duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

(4) The Minister may, by instrument in writing, exempt goods from the dumping duty if he is satisfied:

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed 10 per centum of the normal value and that the exemption would not cause injury to an Australian industry producing or manufacturing like or directly competitive goods;

(ba) that:

(i) the tariff classification in the First Schedule to the Customs Tariff 1965 that applies to the goods, or, where the goods are goods to which Section 20 of that Act applies, the item in the Second Schedule to that Act that applies to the goods, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available.

(bb) that the imposition of the dumping duty on the goods would be inconsistent with the obligations of the Commonwealth under any international agreement relating to tariffs or trade; or

(c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(5) Where the Minister exempts goods from the dumping duty under the last preceding sub-section by reason of his being satisfied as to a matter specified in paragraph (a), (b) or (ba) of that sub-section, the instrument of exemption shall be published in the Gazette.

8. (1) If the Minister is satisfied, as to any goods produced or manufactured in a particular country, that:

(a) the export price of any of those goods that have been exported to Australia is less than the normal value of the goods so exported; and

(b) the exportation of those goods is causing or threatening injury to the trade in the Australian market of producers or manufacturers in a third country of like or directly competitive goods,

the Minister may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied.

(2) Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the third country dumping duty").

(3) The amount of the third country dumping duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

(4) The Minister may, by instrument in writing, exempt goods from the third country dumping duty if he is satisfied:

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed 10 per centum of the normal value and that the exemption would not

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1No instrument of exemption had been published in the Commonwealth Gazette as at 1 March 1967.

2No notice had been published in the Commonwealth Gazette under this sub-section as at 1 March 1967.
cause injury to the trade in the Australian market of producers or manufacturers in the third country of like or directly competitive goods; or

(c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(5) Where the Minister exempts goods from the third country dumping duty under the last preceding sub-section by reason of his being satisfied as to a matter specified in paragraph (a) or (b) of that sub-section, the instrument of exemption shall be published in the Gazette.1

9. If the Minister, after inquiry and report by the Tariff Board, is satisfied, as to any goods, that:

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of any of those goods that have been exported to Australia, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) the exportation of those goods is causing or threatening injury to an Australian industry producing or manufacturing like or directly competitive goods or may hinder the establishment of an Australian industry in connexion with the production or manufacture of like or directly competitive goods,

the Minister may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied.

(2) Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the countervailing duty").

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1 No instrument of exemption had been published in the Commonwealth Gazette as at 1 March 1967.

2 This sub-section was substituted by sub-section (1) of Section 6 of the Customs Tariff (Dumping and Subsidies) Act 1965. Sub-section (2) of that section provides as follows:

"(2) A notice specifying any goods published in the Gazette before the commencement of this Act in accordance with sub-section (1) of Section 9 of the Principal Act and in force immediately before that commencement continues in force as if it were a notice under sub-section (1) of Section 9 of the Principal Act, as amended by this Act, duly specifying those goods but may be amended or revoked as if it were such a notice."

3 For notices under this section see Commonwealth Gazette 1961, pages 3415, 1859, 2526, 3038a, 3121 and 3413; 1962, page 438.
(3) The amount of the countervailing duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance that the Minister is satisfied has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods.

(4) If the Minister is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined by the Minister.

(5) In this section, "financial assistance" includes the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales.

10. (1) If the Minister is satisfied, as to any goods produced or manufactured in a particular country, that:

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of any of those goods that have been exported to Australia a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) the exportation of those goods is causing or threatening injury to the trade in the Australian market of producers or manufacturers in a third country of like or directly competitive goods,

the Minister may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied.

(2) Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the third country countervailing duty").

(3) The amount of the third country countervailing duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance that the Minister is satisfied has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods.

(4) If the Minister is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined by the Minister.

No notice had been published in the Commonwealth Gazette under this sub-section as at 1 March 1967.
(5) In this section, "financial assistance" includes the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales.

10. Where the Minister is satisfied that, by reason of any circumstance, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried from the country of export to Australia freight free, or the amount or the net amount of freight, expressed in Australian currency, paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods:

(a) the Minister shall be deemed, for the purposes of sub-section (1) of Section 9, or sub-section (1) of Section 10 of this Act, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and

(b) where a special duty under Section 9 or Section 10 of this Act is chargeable (whether by virtue of this section or otherwise) on goods as to which the Minister is so satisfied, the Minister shall be deemed, for the purposes of sub-section (3) of Section 9, or sub-section (3) of Section 10, of this Act, to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of the goods is an amount equal to:

(i) in the case of goods carried freight free - the amount of the normal freight in relation to the goods; and

(ii) in the case of other goods - the amount by which the normal freight in relation to the goods exceeds the amount or the net amount of the freight, expressed in Australian currency, paid or payable in respect of the carriage of the goods.

(2) In this section:

"the normal freight", in relation to goods exported to Australia, means the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate, in Australian currency, in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of similar goods by general cargo vessels trading regularly with Australia, and to any other matter that the Minister considers relevant.

11. A reference in Section 7, 8, 9 or 10 of this Act, to an injury does not include a reference to an insubstantial injury and a reference in Section 7 or 9 of this Act to the hindering of the establishment of an Australian industry does

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1This section was amended by Section 3 of the Customs Tariff (Dumping and Subsidies) Act 1965. Section 13 of that Act provides as follows:

"13. The amendments made by Sections 3 and 8 of this Act do not apply in relation to goods that were entered for home consumption before the commencement of this Act."
not include a reference to an insubstantial hindrance to the establishment of such an industry.

12. (1) If the Minister is satisfied that any goods that are produced or manufactured in a particular country have been or are being imported into Australia under such conditions as to cause or threaten serious injury:

(a) to producers or manufacturers in Australia of like or directly competitive goods;

(b) to producers or manufacturers in the United Kingdom of like or directly competitive goods; or

(c) to producers or manufacturers in another country of like or directly competitive goods the rate of the duty of customs imposed on which in accordance with the First Schedule to the Customs Tariff 1965 is not greater than the rate of the duty of customs so imposed on goods of the same kind the produce or manufacture of the United Kingdom,

he may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied.

(2) Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the emergency duty").

(3) The amount of the emergency duty in respect of any goods is a sum equal to the amount, if any, by which the landed duty-paid cost of the goods is less than a reasonably competitive landed duty-paid cost ascertained as determined by the Minister.

(4) In making a determination under the last preceding sub-section in relation to goods produced or manufactured in a particular country, the Minister shall, if like or directly competitive goods produced or manufactured in another country are being imported into Australia, have regard to the landed duty-paid cost of the last-mentioned goods.

(5) In this section, "the landed duty-paid cost" means:

(a) in relation to goods that have been purchased by the importer - the amount, expressed in Australian currency, that is equal to the cost to the importer (including the amount of any duty of customs other than the emergency duty) of the goods landed in Australia; or

(b) in relation to any other goods (including goods consigned by the producer or manufacturer of the goods for sale in Australia) - the amount, expressed in Australian currency, that would have been the

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1No notice had been published in the Commonwealth Gazette under this subsection as at 1 March 1967.
landed duty-paid cost, in accordance with the last preceding paragraph, if the person who owned the goods at the time of their importation into Australia had, before the goods were imported, sold them to a person in Australia and that last-mentioned person had imported them into Australia.

(6) Where, in relation to any goods, the Minister is of opinion that:

(a) it is difficult to ascertain the landed duty-paid cost; or

(b) the purchase price or any other item of cost to be included in the landed duty-paid cost was not fixed in good faith on a commercial basis,

the Minister may determine the landed duty-paid cost, having regard to costs of production and manufacture in the country in which the goods were produced or manufactured and other relevant matters.

13. The Minister shall not cause a notice to be published under sub-section (1) of Section 8, 10 or 12 of this Act unless he is satisfied that the publication of the notice is not inconsistent with the obligations of the Commonwealth under any international agreement relating to tariffs or trade.

14. The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

15. (1) For the purposes of the imposition or calculation of any duty under this Act in respect of any goods, the equivalent amount in Australian currency of an amount calculated in a currency other than Australian currency shall be ascertained in accordance with a fair rate of exchange at the date of exportation of the goods.

(2) For the purpose of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the Gazette, a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency:

(a) on a date, or during a period, preceding the date of publication of the notice; or

(b) from and including the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3) The rate of exchange specified in relation to a currency in pursuance of the last preceding sub-section shall, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange that shall be applied for the purpose of sub-section (1) of this section in respect of the currency specified in the notice.

1 No notice had been published in the Commonwealth Gazette under this sub-section as at 1 March 1967.
16. (1) The powers given by this Act to the Minister to cause notices to be published specifying goods extend to the publication of notices specifying:

(a) goods of a particular class or kind;

(b) goods exported from a particular country;

(c) goods contained in a particular shipment;

(d) goods exported by a particular exporter;

(e) goods specified in such other manner as the Minister thinks fit; and

(f) goods entered for home consumption before the date of publication of the notice as well as goods entered for home consumption on or after that date.

(2) An instrument of exemption under sub-section (4) of Section 7, or sub-section (4) of Section 8, of this Act, may be expressed to apply to goods specified in any manner in which goods may be specified in a notice referred to in the last preceding sub-section.

(3) An instrument of exemption referred to in the last preceding sub-section may relate to goods that were entered for home consumption before the date of the instrument.

17. (1) The Minister may, by notice published in the Gazette, revoke a notice specifying goods published in pursuance of this Act.

(2) Upon the revocation of a notice, the special duty on goods specified in the notice ceases to be payable, and shall not be charged or collected, on goods entered for home consumption on or after the date of revocation.

18. The special duties payable under this Act are in addition to such other duties of customs (if any) as are payable under any other Act.

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1 For notices under this section, see Commonwealth Gazette 1965, page 566; and 1966, pages 4217, 4636 and 5429.
The Tariff Commission Act, 1951
No. 50 of 1951

An Act to provide for the establishment of a Tariff Commission and to regulate its duties and functions.

(12 September 1951)

CHAPTER III

Functions of the Commission

11. Reference of matters relating to protection of industries generally to the Commission. The Central Government may refer to the Commission for inquiry and report any matter requiring in its opinion:

(a) the grant of protection (whether by the grant of subsidies or the levy of protective duties or in any other suitable form) for the encouragement of any industry in India (including any industry which has not started production but which is likely to do so if granted suitable protection);

(b) an increase or decrease in the duties of customs or other duties in relation to any industry for the protection thereof;

(c) action to be taken in relation to the dumping of goods in the market occasioned by excessive import or otherwise;

(d) action to be taken where an industry is taking undue advantage of the tariff protection granted to it, particularly with reference to whether the protected industry is:

(i) charging unnecessarily high prices for its goods; or

(ii) acting or omitting to act in a manner which results in high prices being charged to consumers through limitation of quantity, deterioration in quality or inflation of cost of production and the like; or

(iii) acting in restraint of trade to the detriment of the public;
(e) further action to be taken in relation to the protection granted to any industry, with a view to its increase, decrease, modification or abolition according to the circumstances of the case.

13. Power of Commission *suo motu* to make inquiries. The Commission may on its own motion inquire into and report to the Central Government on any of the matters referred to in clauses (b), (c), (d) and (e) of Section 11.

(Signed) K.V.K. Sundaram
Secretary to the Government of India
IRELAND

Imposition of Duties (Dumping and Subsidies) Act, 1968

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Export price
3. Fair market price
4. An Coimisiún Dumpála
5. Officers and servants of Commission
6. Membership of either House of the Oireachtas by members of Commission
7. Investigation by Commission
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9. Restriction on interested person acting as member
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15. Repayment of provisional duty
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17. Security for payment of provisional duty in case of glass containers
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20. Import levy on goods previously imported
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22. Relief in respect of duties and levy
23. Power of Revenue of Commissioners to require information
24. Regulations
25. Laying of orders and regulations before Houses of Oireachtas
26. Expenses
27. Short title and construction
AN ACT TO PROVIDE FOR THE IMPOSITION OF SPECIAL CUSTOMS DUTIES ON GOODS FROM ABROAD WHICH HAVE BEEN DUMPED OR SUBSIDIZED. TO PROVIDE FOR THE ESTABLISHMENT OF A COMMISSION TO BE KNOWN AS AN COIMISIUN DUMPALA WITH POWER TO INVESTIGATE COMPLAINTS OF DUMPING AND, WHERE APPROPRIATE, RECOMMEND THE IMPOSITION OF SPECIAL CUSTOMS DUTIES AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. (5 June 1968)

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. (1) In this Act:

"anti-dumping duty" means a duty imposed under Section 14 of this Act;

"the Commission" means An Coimisiún Dumpála established under Section 4 of this Act;

"country" includes territory, area and place;

"countervailing duty" means a duty imposed under Section 18 of this Act;

"dumping" means, in relation to goods, importing goods whose fair market price exceeds their export price, and cognate words shall be construed accordingly;

"duty" means duty of customs;

"export price" means, in relation to goods, the price of goods determined under Section 2 of this Act;

"injurious dumping" means dumping that causes or threatens to cause material injury to an industry in the State or retards materially the establishment of an industry in the State;

"margin of dumping" means, in relation to goods, the amount by which the fair market price of the goods exceeds the export price of the goods;

"the Minister" means the Minister for Industry and Commerce, but where, but for this provision, a power, function or duty under this Act would fall to be exercised or fulfilled by that Minister in relation to any goods which are an agricultural product within the meaning of the Agricultural and Fishery Products (Regulation of Export) Act, 1947, and in respect of which the powers of the Minister for Agriculture and Fisheries under that Act are not vested for the time being in the Minister, the power, function or duty aforesaid shall be exercised or fulfilled by the Minister for Agriculture and Fisheries and "Minister" shall be construed accordingly;
"fair market price" means, in relation to goods, the price of the goods determined under Section 3 of this Act;

"produced" includes grown and manufactured in whole or in part and cognate words shall be construed accordingly;

"provisional duty" means a duty imposed under Section 13 of this Act;

"subsidy" has the meaning assigned to it by Section 19 of this Act.

(2) References in this Act to the country in which goods were produced shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.

(3) References in this Act to the country from which goods are exported are, in the case of goods exported to the State, references to the country from which they were consigned to the State and goods which in course of consignment from any country to the State pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Act as having been exported from that third country.

2. (1) The export price of goods shall be determined by the Commission and, subject to sub-section (2) of this section, where goods are imported into the State under a contract of sale which is a sale in the open market between a buyer and seller independent of each other, the export price of the goods shall be the price under the contract of sale, subject to a deduction for the cost of insurance and transport of the goods from their port or other place of export to their port or other place of import and any other costs, charges or expenses incurred in respect of the goods after they have been moved from their port or other place of export, except so far as any such costs, charges or expenses are required to be met separately by the buyer.

(2) The export price of any goods shall, in cases where sub-section (1) of this section does not apply or the Commission is unable to ascertain the facts from which to determine the export price under that sub-section, be such price as the Commission shall determine by reference to such sale of those or comparable goods (or of any goods in which they were incorporated) as it may select, with such adjustments as may appear to it to be proper.

3. (1) The fair market price of goods in any country shall be determined by the Commission and, subject to sub-section (2) of this section, the fair market price of goods in any country shall, where those or comparable goods are sold in that country in the ordinary course of trade for consumption or use in that country, be the price at which they are so sold, subject to such adjustments for differences in conditions or terms of sale, taxation or any other matter as may be necessary to ensure that the export price and the fair market price of the goods are the prices of the goods under two similar contracts of sale.
(2) The fair market price of goods in any country shall, in cases where sub-section (1) of this section does not apply or the Commission is unable to ascertain the facts from which to determine the fair market price under that sub-section, be such price as the Commission shall determine by reference to any price obtained for goods of the same kind or similar goods exported from that country, with such adjustments of the kind specified in sub-section (1) of this section as may appear to it to be proper or, if the Commission thinks fit, by reference to the cost or estimated cost of production of goods of the same kind or similar goods, with such adjustments of the kind aforesaid as may appear to it to be proper.

(3) No adjustment shall be made under this section in respect of restrictions or charges on the export of materials from any country so as to favour manufacturers in that country who use those materials in goods produced by them.

4. (1) There shall be a commission to be known, and in this Act referred to, as an Comisiún Dúmpála.

(2) The Commission shall consist of a chairman and four ordinary members, of whom the chairman and two ordinary members shall be appointed by the Minister and two ordinary members shall be appointed by the Minister for Agriculture and Fisheries.

(3) Whenever the business of a meeting of the Commission is concerned with goods in relation to which powers, functions and duties under this Act are exercised and fulfilled by the Minister for Agriculture and Fisheries, a member of the Commission who was appointed by that Minister and who shall be chosen by the Commission for the purpose shall act as chairman of the meeting, and the chairman shall act as an ordinary member of the Commission.

(4) A member of the Commission may be removed from office by the Minister of State who appointed him.

(5) The first members of the Commission shall be appointed as soon as may be after the passing of this Act.

(6) A casual vacancy occurring among the members of the Commission appointed by the Minister thereto shall be filled by an appointment made by the Minister and a casual vacancy occurring among the members appointed by the Minister for Agriculture and Fisheries thereto shall be filled by an appointment made by that Minister, and a member so appointed shall hold office for the remainder of the period for which his predecessor, if he had continued to be a member, would have held office.

(7) A member of the Commission may resign his office.

(8) The term of office of a member of the Commission shall be fixed at the time of his appointment by the Minister of State who appoints him and shall not exceed five years.
(9) An outgoing member of the Commission shall be eligible for reappointment.

(10) A member of the Commission shall hold office on such terms and conditions as may be fixed at the time of his appointment by the Minister of State who appointed him after consultation with the Minister for Finance.

(11) A member of the Commission shall be paid such remuneration (if any) and allowances (if any) for expenses as the Minister of State who appointed him determines with the consent of the Minister for Finance.

(12) The Civil Service Regulation Acts, 1956 and 1958, shall not apply to the office of member of the Commission.

5. (1) The Minister, with the consent of the Minister of Finance, may appoint such officers and servants as he thinks necessary to assist the Commission in the performance of its functions.

(2) The officers and servants so appointed shall hold office on such terms and conditions (including terms and conditions for the granting of superannuation allowances by way of pension or gratuity or both to or in respect of such officers and servants) and receive such remuneration as the Minister for Finance determines.

6. (1) Where a member of the Commission is nominated either as a candidate for election to either House of the Oireachtas or as a member of Seanad Éireann, he shall thereupon cease to be a member of the Commission.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall, while so entitled, be disqualified from becoming a member of the Commission.

7. (1) Whenever:

(a) (i) in relation to any goods, a request is made to the Commission by a person who produces goods of the same kind or of a kind whose sales might be adversely affected by the dumping of those goods or by a trade association representing such producers to investigate whether those goods have been or are being dumped; and

(ii) the Commission considers it probable that the goods to which the request relates have been or are being dumped and that the dumping was or is injurious dumping; or

(b) the Minister consider it probable that any goods have been or are being dumped, that the dumping was or is injurious dumping and that there are exceptional circumstances which warrant a request by him to the Commission to investigate whether those goods have been or are being dumped, and the Minister so requests,

the Commission shall carry out an investigation of the matter and shall make a report in writing to the Minister of the result of its investigation.
(2) Whenever the Minister considers it probable that another government or authority outside the State has given a subsidy on the production or export of goods of any kind which have been or are being imported into the State, he may request the Commission to investigate whether the importation is such as to cause or threaten to cause material injury to an industry in the State or to retard materially the establishment of an industry in the State, and the Commission shall carry out the investigation and shall make a report in writing to the Minister of the result of its investigation.

(3) The Commission shall have regard to any international agreements or conventions to which the State is a party.

8. (1) The Commission shall cause to be published in Iris Oifigiúil and in such national daily newspaper or newspapers as it thinks fit notice of its intention to hold an investigation.

(2) Any person may make a submission to the Commission in the manner directed by the Commission.

9. If a member of the Commission is personally interested in a particular matter with which the Commission is dealing, he shall inform the Minister of State who appointed him to the Commission accordingly and shall not act as a member during the consideration of the matter, unless that Minister, being of opinion that his interest is not such as to interfere with the impartial performance of his duties, authorizes him to act and publishes in accordance with the procedure in Section 8 the fact that such an authorization has been given.

10. (1) The Commission may for the purposes of its functions:

(a) request witnesses (other than the Revenue Commissioners and their officers) to attend before it;

(b) examine the witnesses attending before it; and

(c) request any such witness to produce to the Commission any document in his power or control.

(2) (a) A person who knowingly or recklessly makes a statement or representation either verbally or in writing to the Commission which is false in a material particular shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment.

(b) Where an offence under this sub-section or under Section 11(3) or 22(9) of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or any person purporting to act in any such capacity, he as well as the body shall be deemed to be guilty of the offence.
(3) The Commission may request the Revenue Commissioners to furnish to it such particulars of information furnished to them in documents for customs purposes as are necessary for the performance of its functions and the Revenue Commissioners shall comply with a request under this sub-section.

11. (1) No person shall disclose information available to him by virtue of his being a member of the Commission or an officer or servant of the Commission or through being present at a meeting of the Commission without the consent of:

(a) in the case of information furnished by the Revenue Commissioners and furnished to them by another person, that other person; and

(b) in any other case, the person who furnished the information.

(2) Sub-section (1)(b) of this section does not apply to:

(a) a communication made by a member of the Commission or an officer or servant of the Commission in the execution of his duties under this Act; or

(b) the disclosure of information in a report of the Commission to the Minister or for the purpose of legal proceedings under this Act.

(3) If any person contravenes sub-section (1) of this section, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment.

12. (1) The quorum for a meeting of the Commission shall be two.

(2) Every meeting of the Commission shall be held in private.

(3) Subject to sub-section (1) of this section, the Commission may act notwithstanding vacancies in its membership.

(4) Subject to the provisions of this Act, the Commission may regulate, by standing orders or otherwise, its procedure and business.

13. (1) The Commission may, during an investigation by it under this Act in relation to goods of any kind, recommend to the Minister that a provisional duty of such an amount (not exceeding the margin of dumping estimated by it in relation to the goods) as the Commission may specify be imposed on such goods of that kind as the Commission may specify for such period or periods not exceeding six months as the Commission may specify.

(2) Whenever the Commission makes a recommendation to the Minister under sub-section (1) of this section, the Minister may, if he thinks so fit, by order impose a duty (to be known and in this Act referred to as a provisional duty) of such amount, not exceeding the amount specified by the Commission in the recommendation, on such goods imported into the State (being goods of a kind specified in the recommendation) and for such period not exceeding six months as may be specified in the order.
(3) Whenever the Government impose an anti-dumping duty on goods of a kind on which there is for the time being a provisional duty, the order imposing the provisional duty shall expire.

14. (1) If, as a result of an investigation by the Commission under this Act, the Commission is satisfied that there has been injurious dumping of goods of any kind, the Commission may recommend to the Minister that an anti-dumping duty of such amount (not exceeding the margin of dumping in relation to the goods) as the Commission may specify be imposed on those goods or on such goods of that kind as the Commission may specify for such period or periods as the Commission may specify.

(2) (a) Whenever the Commission makes a recommendation to the Minister under sub-section (1) of this section in relation to goods of any kind and the Minister is satisfied that there has been injurious dumping of goods of that kind; or

(b) whenever the Minister is satisfied that goods of any kind have been dumped and that there is danger that they will continue to be dumped and that the dumping is such as to cause or threaten to cause material injury to an industry in a country other than the State or the country from which they were imported or in which they were produced, and the Government of the first-mentioned country so request,

the Government may, if they so think fit, by order impose a duty (to be known and in this Act referred to as an anti-dumping duty) of such amount, not exceeding the margin of dumping in relation to the goods, and on such goods imported into the State (being goods of a kind specified in the recommendation or request) as may be specified in the order.

(3) Whenever the Commission makes a recommendation to the Minister under sub-section (1) of this section in relation to any goods on which a provisional duty has been paid and the Minister is satisfied that there has been dumping of those goods and that the dumping has caused or would, but for the provisional duty, have caused material injury to an industry in the State, the Government may, if they so think fit, by order under sub-section (2) of this section impose an anti-dumping duty on those goods of such amount (not exceeding the margin of dumping in relation to the goods or the provisional duty on the goods, whichever is the lesser) as may be specified in the order and, upon the making of such an order in relation to goods, the payment of so much of the provisional duty chargeable in respect of the goods as is equal to the amount of the anti-dumping duty chargeable on the goods shall be deemed to have been a payment of the anti-dumping duty.

(4) (a) The Minister may, if he considers it in the public interest so to do, by order:

(i) suspend an anti-dumping duty or its application to goods of a particular class or description; or
(ii) exempt from the duty goods of a particular class or description.

(b) An order under this sub-section may be made without limit as to time or for a specified period.

15. (1) Any provisional duty paid on goods shall be repaid by the Revenue Commissioners:

(a) If the Commission does not make a report to the Minister in relation to the goods or goods of the same kind within six months after the date of the imposition of the duty;

(b) if an anti-dumping duty is not imposed on the goods within six months after the date on which a report of the Commission in relation to the goods or goods of the same kind is presented to the Minister; or

(c) if the order imposing the provisional duty is revoked.

(2) Where an anti-dumping duty is imposed on any goods as a result of an investigation by the Commission at a rate lower than the rate of a provisional duty imposed on those goods as a result of a recommendation of the Commission made during the investigation, the amount by which the provisional duty paid on those goods exceeds the amount of the anti-dumping duty on those goods shall be repaid by the Revenue Commissioners.

16. Whenever the Minister is of opinion that a price or prices quoted in a tender by any person for a contract between the person and a Minister of State, the Commissioners of Public Works, the Irish Land Commission or a local authority for the purposes of the Local Government Act, 1941, is such that if the contract were made and embodied the terms of the tender, goods would, in the course of or for the purpose of carrying out the terms of the contract, be dumped, the Minister may, after consultation with any other Minister of State concerned, request the Commission to investigate the matter and thereupon the Commission shall carry out an investigation with a view to ascertaining whether, if the contract aforesaid were made and embodied the terms aforesaid, the goods would, in the course of or for the purpose of carrying out the terms of the contract, be dumped and shall make a report to the Minister of the result of its investigation.

17. (1) The Minister may, whenever he so thinks fit, provide by order that glass containers of any kind specified in the order shall not be imported into the State unless security is given to the Revenue Commissioners in such form as the Revenue Commissioners may require for the payment in whole or in part of any provisional duty which may become payable on containers of that kind in pursuance of this Act.

(2) The extent of the security to be given pursuant to an order under this section in relation to the importation of any glass containers shall be specified in the order by the Minister after consultation with the Commission but shall not exceed 50 per cent of the value of the containers.
(3) Where security is given under this section in relation to the importation of any glass containers:

(a) in case a provisional duty is imposed on containers of the kind to which the security relates within thirty days after the giving of the security, it shall be charged and levied on the containers to which the security relates and the amount of the duty payable thereon shall be paid out of the security and shall not exceed the amount of security, the balance (if any) of the security remaining after payment of the duty shall be discharged and the order providing for the giving of the security shall, in so far as it relates to containers of the kind on which the provisional duty is chargeable, expire; and

(b) in any other case, the security shall be discharged.

(4) The Commission or the Minister may request the Revenue Commissioners to discharge a security given under this section or to allow containers of a kind to which an order under this section applies to be imported into the State without giving the security provided for in the order, and the Revenue Commissioners shall comply with the request.

(5) A security under this section shall be deemed for the purposes of Sections 15 and 16 of the Finance Act, 1952, but not otherwise, to be a duty.

18. Whenever the Government are satisfied that another government or any other authority outside the State have given a subsidy on the production or export of goods of any kind which have been or are being imported into the State and that:

(a) the importation is such as to cause or threaten to cause material injury to an industry in the State or to retard materially the establishment of an industry in the State and the Minister so recommends; or

(b) the importation is such as to cause or threaten to cause material injury to an industry in a country other than the State or the country in which a government or other authority have given or are giving the subsidy and the government of the first-mentioned country so request,

the Government may, if they so think fit, by order impose a duty (to be known and in this Act referred to as a countervailing duty) of such amount not exceeding the estimated amount of the subsidy on goods of that kind imported into the State (being goods of a kind in relation to which the subsidy was given) as may be specified in the order.

19. In this Act references to a subsidy are references to a bounty or subsidy on the production or export of goods given directly or indirectly by way of grant, loan or tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else and include:
(a) a special subsidy given on the transport of a particular product;

(b) favourable treatment given to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export,

but do not include restrictions or charges applied on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

20. (1) Whenever the Government are satisfied in relation to the dumping of goods of any kind on which a provisional duty is chargeable:

(a) that it is necessary to impose a levy under this section in order to prevent a recurrence of such dumping and that the dumping caused material injury to an industry in the State, was on a substantial scale and occurred for a relatively short period of time; and

(b) (i) that on a previous occasion there was dumping of goods of that kind which caused material injury to an industry, or

(ii) that the person who imported the goods knew, or ought reasonably to have known, that the person who exported the goods exported goods on other occasions for the purpose of dumping them and that the dumping was of a kind which, if it occurred in the State, would cause material injury to an industry in the State,

the Government may by order impose on such goods as may be specified in the order imported during the period (or such part or parts thereof as may be specified in the order) of ninety days ending immediately before the day on which the provisional duty was imposed a levy of such amount not exceeding the margin of dumping in relation to the goods as may be specified in the order.

(2) A levy imposed under this sub-section on any goods shall be paid to the Minister by the person who, if a duty were chargeable on the goods, would be liable to pay the duty to the Revenue Commissioners and shall be recoverable from that person by the Minister as a simple contract debt in any court of competent jurisdiction.

(3) The time of importation of goods shall, for the purposes of this section, be the time of the passing, under the Customs Consolidation Act, 1876, of the entry, under that Act, of the goods for home use.

(4) A levy shall not be imposed under this section on goods imported before the passing of this Act.
(5) Any levy paid to the Minister under this section shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

21. (1) The matters by reference to which the description of goods in an order under this Act imposing a duty or levy is framed shall include either the country in which the goods were produced or the country from which the goods were exported to the State.

(2) Subject to sub-section (1) of this section, an order under this Act may include such provisions with respect to the description of the goods chargeable with duty or levy and with respect to the cases in which duty or levy is chargeable as may appear to the Government or the Minister, as the case may be, to be necessary and, in particular, but without prejudice to the generality of the preceding part of this section:

(a) provisions limiting the description of the goods by reference to the particular persons by whom the goods were produced or who were concerned with the production of the goods in some specified manner;

(b) provisions limiting the description of the goods to goods of a particular class, kind or description or to goods exported from or produced in a particular country or to a specified consignment of goods;

(c) provisions defining the rate of duty by reference to value or weight or other measure of quantity;

(d) provisions directing that duty be charged if more than a specified proportion of the value of the goods was added in a specified country or if any process or a specified process or processes was or were carried out in a specified country;

(e) provisions directing that duty be charged for any period or periods, whether continuous or not, or without any limit of period; and

(f) in connexion with the commencement, variation or termination of a duty or levy provisions authorizing repayments in respect of duty on levy where it is shown that conditions (if any) prescribed in the order are fulfilled.

(3) A duty or levy may be imposed under this Act either with or without qualifications, limitations, drawbacks, allowances or exemptions.

(4) A duty or levy imposed on goods under this Act shall be in addition to and not in substitution for any other duty or levy chargeable on the goods.

(5) A duty imposed under this Act shall be placed under the care and management of the Revenue Commissioners.
(6) An order under this Act made by the Government or the Minister may be amended or revoked by an order made by the Government or the Minister, as the case may be.

22. (1) A person who imports any goods chargeable with a provisional duty or an anti-dumping duty may, not later than three months after the date of the payment of the duty on the goods, apply to the Commission for relief from the duty on those goods.

(2) If, on an application to the Commission under this section in relation to any goods chargeable with a provisional duty or an anti-dumping duty, the Commission is satisfied that the export price of the goods together with the amount of such duty exceeds the fair market price of the goods, the Commission shall notify the Revenue Commissioners of the amount of the excess, and the Revenue Commissioners shall remit or repay that amount of the duty.

(3) A person who imports any goods chargeable with a provisional duty or an anti-dumping duty and whose application to the Commission for relief from the duty has been refused in whole or in part may, not later than three months after the date on which he was notified by the Commission of its refusal of his application aforesaid, apply to the Minister for relief from the duty on those goods.

(4) A person who imports any goods chargeable with a countervailing duty or a levy under Section 20 of this Act may:

(a) in the case of the duty, not later than three months after the date of the payment of the duty on the goods; and

(b) in the case of the levy, not later than three months after the date of the imposition of the levy,

apply to the Minister for relief from the duty or levy on those goods.

(5) If, on an application to the Minister under this section in relation to any goods chargeable with a provisional duty or an anti-dumping duty, the Minister is satisfied that the export price of the goods together with the amount of such duty exceeds the fair market price of the goods, the Minister shall notify the Revenue Commissioners of the amount of the excess, and the Revenue Commissioners shall remit or repay such amount (if any) of the duty as when added to the sum (if any) remitted or repaid under sub-section (2) of this section in respect of the goods equals the said excess.

(6) If, on an application under this section, the Minister is satisfied, in the case of goods chargeable with a countervailing duty, that the amount of such duty exceeds the amount of the subsidy on such goods, the Minister shall notify the Revenue Commissioners of the amount of the excess, and the Revenue Commissioners shall remit or repay that amount of the duty.
(7) If, on an application under this section, the Minister is satisfied, in the case of goods chargeable with a levy under Section 20 of this Act that the amount of the levy is excessive, the Minister shall notify the Government of the amount of the excess, and, if the Government so direct, that amount of the levy shall be repaid.

(8) A person making an application under this section shall furnish to the Minister such information in his possession or procurement as the Minister may require for the purpose of ascertaining the export price or the fair market price of the goods to which the application relates.

(9) If a person, for the purposes of an application under this section:

(a) makes any statement which is false in a material particular; or

(b) produces any account, estimate, return or other document which is false in a material particular,

the amount of any duty or levy remitted or repaid under this section may, without prejudice to any other mode of recovery, be sued for and recovered, by action or other appropriate proceeding, at the suit of the Attorney General in any court of competent jurisdiction and if the statement was made or the document was produced knowingly or recklessly, the person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment.

23. (1) The Revenue Commissioners may require a person who imports goods to state such facts concerning the goods and their history as they may think necessary to determine whether the goods are goods produced in a country specified in an order under this Act or to determine the country from which the goods were exported and to furnish them in such form as they may require with proof of any statements so made and, if such proof is not furnished to their satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Act to have been produced in, or as the case may be, to have been exported from such country as they may determine:

Provided that the Revenue Commissioners shall require proof of the country in which goods were produced in relation to any duty under this Act in the case only of goods exported from such countries as the Minister may direct in relation to that duty.

(2) Where an order under this Act limits the description of goods in respect of which duty is chargeable under this Act or the cases in which duty is so chargeable so that the question whether any and if so what duty is chargeable on the goods depends on other matters besides the country in which the goods were produced or from which they were exported, the Revenue Commissioners may require the person who imports the goods to state such facts as they may think necessary to determine that question so far as regards those other matters and to furnish them in such form as they may require with proof of any statements so made, and,
if such proof is not furnished to their satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Act to be such as they may determine.

24. The Minister may make such regulations as he may consider necessary or desirable for the purpose of carrying this Act into effect.

25. Every order and regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution is passed by either House within the next twenty-one days upon which that House has sat after the order or regulation, as the case may be, has been laid before it annulling the order or regulation, as the case may be, the order or regulation, as the case may be, shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

26. The expenses incurred by the Minister for Finance and, to such extent as may be sanctioned by that Minister, the expenses incurred by the Minister and the Minister for Agriculture and Fisheries or the Commission in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

27. (1) This Act may be cited as the Imposition of Duties (Dumping and Subsidies) Act, 1968.

(2) This Act, so far as it relates to duties, shall be construed together with the Customs Acts.
129. Dumping duty

(1) In any of the cases specified in sub-section (2) of this section the Minister may from time to time direct that there shall, in addition to any other duties of customs, be imposed on goods imported into New Zealand a special duty of customs (in this section referred to as a dumping duty), and such duty shall be levied, collected, and paid accordingly.

(2) If in the opinion of the Minister the importation into New Zealand from any country (whether or not it is part of the Commonwealth) of any goods of a class or kind produced or manufactured or intended to be produced or manufactured in New Zealand, or in some other part of the Commonwealth, has or is likely to have any effect prejudicial to any industry carried on in New Zealand or in some other part of the Commonwealth (not being the country from which the goods are imported) or to the establishment of any industry in New Zealand or in such other part of the Commonwealth as aforesaid, a dumping duty may be levied in respect of any such goods imported into New Zealand in any of the following cases, namely:

(a) if the actual selling price of the goods to any importer is less than their current domestic value determined in accordance with the provisions of this Act;

(b) if the actual selling price of the goods to any importer is in the opinion of the Minister less than the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to New Zealand at the time of such exportation;

(c) if the Minister is satisfied that, in respect of the goods, any special concession (whether by way of railway or shipping or air freight, subsidy, bounty, rebate or otherwise) has been or is to be allowed, taken or granted.

(3) For the purposes of this section, the determination by the Minister of the amount of any concession to which paragraph (c) of sub-section (2) of this section relates shall be final.
The rate or amount of dumping duty levied under this section shall be determined as follows:

(a) in the case of goods to which paragraph (a) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and their current domestic value;

(b) in the case of goods to which paragraph (b) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to New Zealand at the time of such exportation;

(c) in the case of goods to which paragraph (c) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the amount of the special concession referred to in that paragraph.

For the purposes of this section, the actual selling price of any goods shall be deemed not to exceed the amount payable in accordance with usual commercial practice by the importer or purchaser in respect of those goods, exclusive of any charges that are not taken into account in determining the current domestic value of goods in accordance with this Act. In every such case the amount payable as aforesaid in respect of any goods shall be ascertained as if the parties had agreed that payment for those goods should be made in New Zealand. If in relation to this section any question arises as to whether or not any payment is in accordance with usual commercial practice, it shall be determined by the Minister.

If at any time it appears to the Minister that the payment of any dumping duty is being evaded or avoided by the importation of any goods otherwise than on sale or in any other manner, he may determine, for the purposes of this section, the actual selling price of the goods, the cost of production, or the current domestic value thereof, and dumping duty may be levied accordingly.

Without limiting the power to make regulations conferred by Section 306 of this Act, regulations made under that section may provide for the exemption from dumping duty of any goods or class of goods in cases where it is shown to the satisfaction of the Minister that such goods, or goods of such class, are not made or sold in substantial quantities in New Zealand or any other part of the Commonwealth, as the case may be, or that such goods are not offered for sale in New Zealand or such other part of the Commonwealth as aforesaid, to all purchasers on equal terms under like conditions.
PORTUGAL

ANTI-DUMPING AND COUNTERVAILING DUTIES

Decree-law Nos. 46828 and 46829 of 5 January 1966

LEGAL PROVISIONS AGAINST DUMPED AND SUBSIDIZED IMPORTS IN PORTUGAL

Decree-law No. 46829

The obligations accepted by Portugal under the various international trade agreements to which this country is a party impose strict limitations upon the choice of the means that may be employed in defending the nation's economy against the strong competition from foreign exporters in the form of dumping practices and price subsidizing.

Since under the GATT regulations - which apply to a number of other international organizations as well - defensive measures such as quantitative restrictions and the like may not be resorted to, the only remaining means to effectively curb the practice of dumping and price subsidizing appears to be the enactment of anti-dumping and compensation duties, the rates of which should be fixed in such a manner as not to exceed the dumping margin or the premium of the price subsidy in each specific case.

The limitations pointed out above make it necessary to accurately define the legal boundaries within which the Government is free to move in view of defending, as is imperative, the vital interests of Portuguese manufacturers and producers against the difficulties which confront them as a result of the dumping and price subsidizing practices frequently resorted to by the foreign firms. This, in substance, constitutes the justification of the present act, by means of which a system of rules and basic conditions is laid down for the application of adequate anti-dumping and compensation duties.

The provisions of the present decree-law will in due course be supplemented by a regulating decree specifying the methods of calculation, rules of procedure, and institutional competences whose precise definition is indispensable in order to ensure the necessary uniformity of criterions and to improve the efficiency of the anti-dumping and compensation duties that will be applied.

It is considered advantageous - and this is one of the main reasons for enacting in a separate regulation decree the precepts relating to the lesser important aspects of the subject - to make the rules herein laid down revisionable in the light of the experience to be gained as a result of their practical application to the various cases as they arise.
It will however in any case be necessary to ensure, precisely as is the purpose of the present act, a minimum of practical possibilities destined to provide, wherever required, and within the limits allowed by GATT regulations, an effective defence against competition by foreign undertakings in the form of dumping practices and price subsidizing to the detriment of this country's domestic production.

Thus the present decree-law and its subsequent regulations do not merely serve the purpose of definitely establishing a lawful field of application for the measures designed to counteract dumping and price subsidizing practices. In fact, one of its more important functions consists in advising domestic producers as to the information data they should collect in order to ascertain the competition directed against them is actually chargeable to dumping practices or to price subsidizing.

In these conditions:

Making use of the faculty granted under the first part of Section 2 of Article 109 of the Constitution, the Government decree, and I promulgate, with force of law, the following provisions:

Article 1. In the event of serious damage accruing, or being likely to accrue, to production branches established in Portuguese territory, or of considerable delay being caused in the installation of a new domestic branch of production, as a result of dumping practices resorted to in respect of a given merchandise or of goods of a given nature imported into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces, the importation of such merchandise or of such goods may be subject, by force of a decree to be published in due course by the Ministry of Finance or by the Ministry for Overseas, to a special duty, designated as anti-dumping duty, the amount of which shall not exceed the dumping margin of the aforementioned goods.

Article 2. In the event of serious damage accruing, or being likely to accrue, to production branches established in Portuguese territory, or of considerable delay being caused in the installation of a new domestic branch of production, as a result of price subsidizing in respect of a given merchandise or of goods of a given nature, imported into continental Portugal, the Portuguese Atlantic Islands or the Portuguese overseas provinces, the importation of such merchandise or of such goods may be subject, by force of a decree to be published in due course by the Ministry of Finance or by the Ministry for Overseas, to a special duty, designated as compensation duty, the amount of which shall not exceed that of the subsidy granted to the aforementioned goods.

Article 3. Apart from the cases referred to in Articles 1 and 2 above, anti-dumping and/or compensation duties may be levied, by force of a decree to be published in due course by the Ministry of Finance, or by the Ministry for Overseas, on a given merchandise or on goods of a given nature, imported into the territory of continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces, in respect of which dumping practices or price subsidizing have been ascertained, provided that, without infringing other
international convenants, the Portuguese Government has agreed with other
governments on the levying of such duties on a basis of reciprocity in order to
compensate dumping or subsidizing practices causing, or likely to cause, serious
damage to the respective production branches of the countries who export such
goods to the territory of continental Portugal, the Portuguese Atlantic Islands,
or the Portuguese overseas provinces.

Article 4. To the effects of the present decree-law, dumping practices in the
importation of a given merchandise into Portuguese territory are considered as
existing in fact whenever the export price of the said merchandise is lower than
its comparable normal value, as which shall be understood:

(a) The comparable price, such as practised in normal trade operations in
respect of identical or similar goods intended for domestic consumption in
the exporting country;

(b) Or, in the event of precise data on said price in the exporting
country's home market not being available:

(1) The highest comparable price practised in the country in question,
in normal trade operations, when exporting identical or similar goods
to third countries;

(2) The actual or estimated production cost of the goods in question
on the home market of their respective country of origin, with the
addition of a reasonable supplement to cover sales charges and profit
margin.

Paragraph 1. On establishing within the rules of the present article a comparison
between the export price of a given merchandise and the normal comparable value
of that same merchandise, the differences in sales conditions and terms, the
differences in fiscal charges and any other differences affecting the compara-
bility of prices shall be taken duly into account.

Paragraph 2. If in the case of imports in provenance or originating from
countries whose trade constitutes a complete or almost complete State monopoly,
and where domestic prices are fixed by the State, the price referred to in
Section (a) of the present article is considered as not being sufficiently
representative, said price may be replaced by a comparable price such as practised
in wholesale trade, in normal commercial operations, in respect of identical or
similar goods produced in third countries and intended for the latter's domestic
consumption.

Article 5. To the effects of the present decree-law the difference between the
normal value and the comparable export price of a given merchandise shall be
considered as the dumping margin of the said merchandise whenever the latter is
imported under cover of dumping practices.
Article 6. To the effects of the present decree-law the importation of a given merchandise into Portuguese territory shall be considered as subsidized whenever the government of the country of origin or of provenance of the said merchandise, or any official organism depending from that government, shall have granted, directly or indirectly, any premium, bonus, or financial advantage to the production, the processing, the purchase, the sale, the importation or the exportation of the merchandise in question, including:

(a) Any special reduction or subsidy in respect of the transportation costs of such merchandise.

(b) The granting of favoured treatment to the manufacturers or to the exporters of the said merchandise in the matter of exchange regulations enforced by the State, whenever such treatment actually helps in lowering the export price of the merchandise concerned.

(c) Any loss borne in the course of the sale of the merchandise in question by the government of the respective country of origin or of provenance, or by any official organism depending from that government.

Paragraph 1. Not considered as subsidies are: the exemption or the refund, granted for exportation of a given merchandise, of import duties and indirect taxes levied during one or several phases of production or of commercialization on identical goods intended for home consumption in the country of origin or of provenance, although such exemption or refund, whenever applied, may not exceed the amount actually collected through the levy of the above-mentioned import duties or indirect taxes.

Paragraph 2. Whenever the endeavours undertaken to ascertain the real amount of the subsidy granted to a merchandise imported into Portuguese territory prove unsuccessful it shall be permissible, to the effects of the present decree-law, to assess the value of such subsidies as being the equivalent of an amount obtained through indirect estimation by means of procedures appropriate for the case in point.

Article 7. An anti-dumping or compensation duty may be instituted, as deemed justified in view of the circumstances of each particular case, in respect of:

(a) A certain specified importation, or a group of specified importations;

(b) Imports of a given merchandise, or of goods of a given nature, produced or shipped by a given foreign firm, or by a given group of foreign firms;

(c) Imports of a given merchandise, or of goods of a given nature, originating or provenant from a given country, or a given group of countries.
Article 8. The anti-dumping or compensation duties referred to in Articles 1, 2 and 3 respectively, are collected by the customs of continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces, together with the normal duty to which the merchandise concerned is subject, and are exigible even in respect of goods which by virtue of a special provision of law are exempt from the payment of normal import duties.

Article 9. In all cases where unavoidable delay in the collecting and analyzing of data and/or definite evidence of dumping practices and the ascertainment of their respective margin, or of the existence of price subsidies and the ascertainment of their respective amounts may cause serious hindrance or detriment to production branches established in Portuguese territory, or bring about considerable delay in the installation of a new domestic branch of production, the customs may demand, in respect of the goods concerned and on the strength of a rescript to that effect by the Ministry of Finance or the Ministry for Overseas, adequate security in form of a bonded deposit or of a bank guarantee in order to ensure payment of anti-dumping or compensation duties that may eventually be levied on the goods in question, whenever there is good reason to assume that dumping is being practised in respect of those goods, or price subsidies granted to the same.

Article 10. A Permanent Commission for the Application of Anti-Dumping and Compensation Duties is hereby instituted within the General Superintendence of Customs. The said Permanent Commission shall have on its staff representatives of the Ministries of Finance, Justice, Economy and Overseas, its functions to consist of:

(a) Receiving and examining all petitions for the enactment of anti-dumping or compensation duties in continental Portugal and the Portuguese Atlantic Islands.

(b) Facilitating and arranging of co-operation between the departments of the Ministries of Economy and/or for Overseas, on the one side, and the Ministry of Finance, on the other, for the purpose of expediting all matters connected with the enactment of anti-dumping and compensation duties in continental Portugal and the Portuguese Atlantic Islands.

(c) Collecting, either directly or through its members, all evidence, information data or documents required for the adequate processing of its files.

Single paragraph. Whenever it should become necessary to devise or to propose solutions for the enactment of anti-dumping or compensation duties as per Article 3 of the present decree-law, a representative of the Ministry of Foreign Affairs shall be aggregated to the Commission referred to in the present article.
Article 11. Any importer of goods subject to anti-dumping or compensation duties by force of a decree as provided for under the foregoing Articles 1, 2 and 3, may apply to the Minister of Finance or to the Minister for Overseas, as the case may be, for modification or cancellation of the decree enacting said duties, provided that evidence is submitted to show that either no dumping or price subsidizing is taking place, or that excessively high anti-dumping or compensation duties are being exacted on the dumping margin or the price subsidy effectively ascertained.

Article 12. The Minister of Finance, or the Minister for Overseas shall, after consultation of the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, decide on all petitions submitted in accordance with the preceding article.

Article 13. The Minister of Finance may order, whenever deemed necessary, either on his own initiative or upon proposal by the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or from the Minister for Overseas, following proposal to that effect from the governors of the overseas provinces, an inspection and survey of the accounts, ledgers, correspondence and any other documents belonging to the importers of goods under investigation for alleged dumping or price subsidizing practices, or of the dealers or industrialists having purchased such goods, the respective dispatch to designate the experts to be entrusted with that task, who shall in turn be assisted by a member of the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or by an official of the government of the overseas province concerned.

Article 14. Any individual person or body corporate, regardless of whether possessing or not a private interest in an investigation conducted for the purpose of ascertaining the existence and the amounts of the dumping practices and/or the subsidies granted in respect of goods imported into Portuguese territory, is in duty bound to render to the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or to the governors of the overseas provinces where the goods were imported, all assistance deemed necessary to discover the truth, designedly by submitting all available evidence, information or documents demanded to that end by the authorities concerned.

Article 15. Non-compliance with the rules of the preceding article, or the submitting of declarations, evidence, information or documents containing inaccuracies or falsehoods due to negligence or to bad faith and likely to hinder or to jeopardize the discovery of the truth, shall constitute an offence against the country's economy, and shall be punishable as hereunder set forth:

(1) Three days to two years imprisonment, plus a fine of Esc 50,000.00, to Esc 200,000.00, in the case of individual persons;

(2) Bodies corporate shall be fined Esc 50,000.00 to Esc 200,000.00, and the members of their managements imprisoned from three days to two years.
Article 16. The bringing of legal action and the trial of judicial proceedings for the offences referred to in Articles 14 and 15 of the present decree-law is incumbent upon the criminal courts and ruled by the Code of Criminal Law and complementary legislation. Independently therefrom, the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or the governor of the overseas province into which the goods were imported, shall inform the examining magistrate of all facts known to them and having a bearing on the case.

Article 17. The Government shall cause all provisions necessary for the execution of the present decree-law to be published in a separate regulation decree.

To be published and compiled with as herein specified.


To be submitted to the National Assembly

To be published in the Official Bulletin of all overseas provinces.

J. da Silva Cunha.

Decree-Law No. 46829

Making use of the faculty granted under Section 3 of Article 109 of the Constitution, the Government decrees, and I promulgate the following provisions:

Article 1. To the effect of the application of the provisions of Decree-Law No. 46829, the definition "exporting country of a merchandise imported into Portuguese territory" shall be understood as applying to:

(a) The country of provenance of said merchandise, except in the case of the said merchandise actually originating from another country and having merely transmitted through the country of provenance without entering into consumption in the latter.

(b) The country of origin in all cases not comprised in the foregoing section.
Single paragraph. Goods having undergone a process of transformation in a given country shall be considered as having entered into that country's domestic consumption.

Article 2. To the effect of the application of the provisions of Decree-Law No. 46629, the definition "export price of a merchandise shipped to Portuguese territory" shall apply to the price at which that merchandise is sold in normal commercial practice by the exporter, or for the exporter's account, to the importer in Portuguese territory, or to the party for whose account the goods are imported into Portuguese territory, after the following adjustments have been effected:

(a) Deduction of all transportation, loading, unloading, and insurance costs from the port or the locality of the exporting country from which the goods were shipped, to the locality or port of importation in Portuguese territory, whenever the aforementioned costs are included in the price of the goods as billed by the exporter.

(b) Deduction of commissions and other charges, as well as of expenses incurred by the exporter with the distribution and sale of the goods in Portuguese territory and comprised in the price charged by him.

(c) Deduction of export duties or other charges of an equivalent effect, paid by the exporter on shipping the goods to Portuguese territory, unless such charges were billed by him separately.

(d) Deduction of all other charges and expenses connected with the exportation of the goods and their delivery to the importer in Portuguese territory, paid by the manufacturer or by the exporter and included in the price of the goods as billed by the exporter and which would not be required if the same goods were sold in the home market of the exporting country.

(e) Inclusion of import duties and/or other charges of an equivalent effect levied in the exporting country and which, by reason of drawback or a kindred regime were either not collected, or refunded because of the fact that the goods were exported.

(f) Inclusion of indirect taxes and/or other equivalent fiscal charges, levied directly or indirectly in the exporting country on the production, manufacture, or trade of the goods concerned, and either refunded or not collected because of the fact that the goods were exported.

Article 3. To the export price of goods imported into Portuguese territory may be assessed a different value from the one which would obtain under the provisions of the preceding article, in the event of:

(a) The exportation not conforming to normal commercial practice;

(b) the exportation being effected on consignment;
(c) the exporter or the producer and the importer not being mutually independent from each other, either because of one of them sharing financial participation in the other's business, or because of both being under joint management or control;

(d) there being reasonable grounds for doubting the accuracy of the export price declared by the importer.

Single paragraph. On fixing, within the provisions of the present article, the value to be assessed to the export price of a given merchandise, the method considered as best conforming to the circumstances of the case in question shall be employed, preference to one of the following procedures:

(a) Calculation of the assessable value of the goods by means of the adjustments enumerated hereunder, and starting from the lowest price practised in normal trade procedure on the Portuguese home market in respect of the sale of goods identical with, or similar to, the goods in question, such as originally shipped by the same exporter, or coming from the same exporting country, to wit:

(1) Deduction of all expenses or charges, ascertained or estimated, connected with the transportation, storage, distribution and sale of such goods in the Portuguese home market, including a reasonable profit margin on their distribution and sale;

(2) deduction of the import duties levied on the said goods upon their entry into Portuguese territory, as well as of all additional charges or expenses resulting from customs clearance;

(3) deduction of all transportation, loading, unloading, and insurance charges, from the port or locality whence the goods were shipped, to the locality or the port of importation in Portuguese territory;

(4) deduction of export duties or other charges of an equivalent effect paid by the goods on shipment from the exporting country to their destination in Portuguese territory;

(5) deduction of all other charges and/or expenses connected with the exportation of the goods to Portuguese territory and borne by the producer, by the exporter, or by the importer, and which would not be required in the event of the goods being sold on the home market of the exporting country;

(6) inclusion of the adjustments referred to in Sections (e) and (f) of the preceding article.
(b) Definition to the assessable value:

(1) same to be the comparable f.o.b. price obtaining in the exporting country in normal trade practice for exports to third countries;

(2) or, failing the information data required to ascertain that price, and in so far as its substitution may be permissible as representing a comparable current f.o.b. price on the world market for identical or similar goods, regardless of the country from which they were shipped.

Article 4. To the effect of the application of the provisions of Decree-Law No. 46329, the two prices mentioned above shall be considered as comparable whenever they fulfill any of the conditions enumerated hereunder, to wit:

(a) In accordance with the prevailing circumstances and the available data, albeit conforming to the order of preference outlined hereunder, the aforementioned prices must apply to:

(1) identical goods, produced by the same manufacturer;

(2) similar goods, produced by the same manufacturer;

(3) similar goods, produced by other manufacturers of the same exporting country.

(b) Except as established in paragraph 1 of the present article, they must apply to the date of the contract for the exportation of the goods, or in the event of same not being available, to a previous date closely approaching it;

(c) they must refer to quantities of the same general size of the shipments concerned and, in so far as possible, they must have been corrected in such a manner as to eliminate the estimated influence of those quantities on the per unit prices;

(d) in the case of goods intended for domestic consumption in the exporting country, they must refer to wholesale trade;

(e) they should be expurgated of all influences, whether ascertained or estimated, resulting from differences in packing costs, credit conditions, inland freight costs to the port or locality of shipment in the exporting country, or to the ports of distribution for home consumption in the exporting country, as well as from influences resulting from any other cost differences likely to affect the comparability of prices.

Paragraph 1. In the case of shipments on consignment or in other cases, where a shipment of goods to Portuguese territory is effected without a contract of sale having been signed between an independent exporter and an independent importer,
the date of the sales contract referred to under Section (b) of the present article shall be replaced with the date of shipment of the goods from the territory of the exporting country.

**Paragraph 2.** In the event of sufficient evidence being available to infer the date of the contract or, in case the shipment is not effected, within a term - as counted from the date of contract - conforming to normal market practice, the rule referred to under Section (b) of the present article may be disregarded, and prices may be assessed in accordance with a date prior to the date of shipment, albeit approaching the latter as closely as possible.

**Paragraph 3.** For the purpose referred to in Section (a) of Article 4 of the Decree-Law No. 46329, and whenever by reason of accidental conditions in the market situation, or owing to end-of-season sales, the comparable prices prevailing in the exporting country's home market do not reflect the normal rates, the rule referred to under Section (b) of the present article may be disregarded, and a comparable average price may be assessed in accordance with the rate practised during a reasonable period of time, which, however, should not exceed the six months immediately preceding the date of the shipping contract of the goods concerned.

**Article 5.** The decree by which an anti-dumping or a compensation duty is eventually enacted shall lay down the conditions under which such duties are to be levied, designedly by specifying:

(a) the goods or the nature of the goods to which the said duty shall be applicable, mentioning wherever required the date defining the shipment, the specifications, the brands, the names of the respective manufacturers and/or exporters, and the country of origin or of provenance of such goods;

(b) the specific or the ad valorem rate of the duty, which shall in no case exceed the ascertained or the estimated per unit amount of the dumping margin or of the subsidy;

(c) the continuous, or non-continuous period of time, limited or unlimited in duration, during which the said duty shall be exigible.

**Paragraph 1.** Any decree subjecting, within the provisions of Section (a) of the present article, a given merchandise to an anti-dumping or to a compensation duty if said merchandise originates or is shipped from a given country, shall also specify the conditions under which such merchandise is to be considered as originating or in provenance from the country in question, while stating at the same time what kind of evidence is admissible as proof of such origin or provenance.

**Paragraph 2.** In all cases in which an anti-dumping or a compensation duty with indefinite validity shall have been enacted under the provisions mentioned in Section (c) of the present article, a revision shall be made at least once a year as counted from the date of publication of the decree enacting that duty, of all
investigation data leading to the adoption of the said duty, so as to ascertain whether its continued maintenance is justified, or if it has in the meantime become necessary to effect alterations in respect of its rate or method of collection.

**Paragraph 3.** The period of time mentioned in the provisions of Section (c) of the present article as to the term within which an anti-dumping or compensation duty can be levied, may actually commence before the date of the decree enacting that anti-dumping or compensation duty, on condition, however, that at that time a bonded security as specified in Decree-Law No. 46829 has already been exigible.

**Article 6.** In respect of goods which will be subject to anti-dumping or to compensation duties if found to come within the rules established under Section (a) of the preceding article, the customs services shall solicit from the importer such declarations and/or evidence as may be deemed necessary to ascertain whether the above-mentioned conditions for levying the anti-dumping or compensation duties do or do not exist.

**Single paragraph.** Failing reliable declarations furnished in accordance with the provisions of the present article, anti-dumping or compensation duties as enacted by the decree published within the terms of the preceding article shall be levied on the goods in question.

**Article 7.** Producers in Portuguese territory considering themselves harmed or in danger of being harmed as a result of dumping practices or of subsidized imports of goods into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces, may request the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or the governor of the overseas province concerned, to investigate the possibility of applying an anti-dumping or a compensation duty to such goods, in accordance with Articles 1 and 2 of Decree-Law No. 46289, the respective positions to be accompanied by all available data of justification and evidence on which such claims are based.

**Article 8.** On receiving the petitions submitted by the producers, in accordance with the provisions of the preceding article, the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or the governor of the overseas province concerned, as the case may be, shall proceed, with the assistance of other official departments and in so far as deemed necessary, to examine the data and evidence submitted by the petitioners, and to collect and analyze additional data and evidence considered relevant for the purpose, in order to ascertain:

(a) If there is sufficient reason to consider as proven the existence of dumping and/or subsidizing practices and, if so, to determine the actual margin of such dumping and/or the precise amount of such subsidies;
(b) if there is sufficient reason to justify the inference that from such dumping and subsidizing practices favouring the goods in question imported into continental Portugal, the Portuguese Atlantic Islands, and/or the Portuguese overseas provinces, there results, or may result, serious damage to the producers established in Portuguese territory, or undue delay in the installation of a new domestic branch of production.

Single paragraph. Collecting of the data and evidence, as well as the investigation work mentioned in the present article, may also be conducted on the initiative of the services of the Ministry of Economy, of the General Superintendent of Customs, or of the Overseas Ministry, who shall co-operate to that end with the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or with the governor of the overseas province concerned, as the case may be, even in the event of no petitions being received from producers harmed by the presumed dumping or subsidizing practices in respect of goods imported into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas province concerned.

Article 9. Whenever as a result of the investigation conducted in accordance with the rulings of the preceding article, evidence is obtained of dumping or of subsidizing practices in favour of goods imported into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces, and of the fact that serious damage has accrued or may accrue therefrom to production activities established in Portuguese territory, and/or considerable delay has arisen or may arise in the establishment of a new branch of domestic production, the Permanent Commission for Anti-Dumping and Compensation Duties, or the governor of the overseas province concerned, shall propose to the Minister of Finance or to the Minister for Overseas, within a maximum term not exceeding ten months as counted from the date of reception of the petition referred to in Article 7, or of the notification mentioned in the single paragraph of the preceding article, the enactment of a decree conforming to the provisions of Articles 1 and 2 of Decree-Law No. 46829 in respect of anti-dumping and compensation duties on the goods in question.

Single paragraph. In all cases where no evidence is available to prove the existence of dumping or subsidizing practices in favour of certain imports from abroad, nor any proof furnished of serious losses suffered by production activities established in Portuguese territory, or of considerable delay caused in the installation of new domestic branches of production as a result of such practices, the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, or the governor of the overseas province concerned shall, within a term not exceeding ten months, as mentioned in the present article, inform the Minister of Finance or the Minister for Overseas, as the case may be, of the results of the investigation work carried out, as well as of the reasons which make it impossible to reach definite conclusions in the matter.
Article 10. The publication of a decree enacting anti-dumping and/or compensation duties as per Article 3 of Decree-Law No. 46829 shall be proposed to the Minister of Finance or to the Minister for Overseas, at the request of the foreign country concerned, by the Minister of Foreign Affairs or by the Minister of Economy.

Paragraph 1. The request of the government of the foreign country concerned, referred to in the present article, must be accompanied by the data and evidence on which it bases itself to allege:

(a) the practice of dumping or the granting of subsidies in respect of the goods concerned and imported into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces;

(b) the existing or impending risk, as a result of the alleged dumping and subsidizing practices, of serious losses accruing to the respective production branches of the country concerned, who export a given merchandise, or the goods in question, to destinations in Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces.

Paragraph 2. The proposals to the Minister of Finance and/or to the Minister for Overseas mentioned in the present article shall not be submitted until after the competent departments of the Ministry of Foreign Affairs or of the Ministry of Economy are satisfied that the enactment of the anti-dumping or compensation duties in question will not infringe any of Portugal's foreign commitments.

Paragraph 3. The minister of Finance or the Minister for Overseas shall only decide on a request formulated in accordance with the provisions of the present article if, upon consultation of the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, and/or of the governor of the overseas province concerned, the said authorities express the view, based on the data and evidence prescribed in Paragraph 1 of the present article, that the claims of the foreign country concerned, as per Sections (a) and (b) above, are founded on actual fact.

Article 11. The proposal submitted to the Minister of Finance and to the Minister for Overseas in accordance with the provisions of Articles 9 and 10 must be accompanied by:

(a) a report on the results of the investigation work carried out in accordance with the rules of Article 8 and of paragraph 3 of Article 10;

(b) information data as required to ascertain the conditions in which the anti-dumping or compensation duty shall be exigible, including designedly the data mentioned in Article 5.
Article 12. The proposals concerning the exigibility of bonded security in accordance with the rulings of Article 9 of Decree-Law No. 46829 may be addressed to the Permanent Commission for the application of Anti-Dumping or Compensation Duties, or to the governor of the overseas province concerned, either by the domestic producers affected by presumed or subsidising practices, or through the competent departments of the Ministry of Economy, the General Superintendence of Customs, or the Overseas Ministry, whenever import licenses or certificates of preliminary registration for importation are issued to the respective applicants on the strength of the declarations submitted by them to the authorities for the importation of the goods concerned, even before the actual ingress of the merchandise into the Customs houses of continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces.

Single paragraph. Proposals submitted in accordance with the provisions of the present article must be accompanied by a statement giving the reasons which have led to the assumption of the existence of dumping or subsidising practices in respect of the goods concerned. Furthermore, and in addition to the said statement, the proposals must contain the information data mentioned in Article 14.

Article 13. Following scrutiny of the proposals submitted in accordance with the provisions of the foregoing article, the Permanent Commission for Application of Anti-Dumping and Compensation Duties, or the governor of the overseas province concerned, shall inform the Minister of Finance or the Minister for Overseas of the results of the investigation work carried out and, if necessary, propose the publication of a rescript making it compulsory for the importers of the goods in question to give security in the form of a bond or guarantee as prescribed in Article 9 of Decree-Law No. 46829.

Article 14. The rescript by force of which a bonded security within the provisions of the preceding article may be rendered compulsory in order to ensure payment of eventual anti-dumping or compensation duties on imports into continental Portugal, the Portuguese Atlantic Islands, or the Portuguese overseas provinces of a merchandise or goods of a specified kind, shall lay down the conditions in which the said security is to be exerted, designedly by specifying:

(a) the merchandise, or the nature of the goods in respect of which the said security is exigible, mentioning wherever necessary the data defining the shipment of such goods, their specification, marking, manufacturers, and/or the respective countries of origin or of provenance;

(b) the per unit amount of the exigible security, which shall be based on a specific or on a ad valorem criterion, and which may in no case exceed the presumable maximum value of the supposedly existing per unit dumping margin or subsidy premium;

(c) the maximum term during which the security may be withheld until the amount of the eventual dumping margin or of the subsidy premium can be definitely ascertained, said term in no case to exceed twelve months.
Article 15. In accordance with the provisions of Articles 8 and 13 of the present decree, the collecting, scrutiny, and analyzing of the available evidence of dumping and/or subsidizing practices, by the Permanent Commission for the Application of Anti-Dumping and Compensation Duties, shall be incumbent especially upon the representative of the Ministry of Economy or of the representative of the Ministry for Overseas, according to whether the domestic producers affected by the presumed dumping and/or subsidizing practices are residents of continental Portugal and the Portuguese Atlantic Islands, or of the Portuguese overseas provinces.

Paragraph 1 The representative of the Ministry of Economy or of the Ministry for Overseas mentioned in the present article shall draw up a detailed report of all pertinent facts and circumstances, and formulate the respective conclusions to be submitted, together with the respective file, to the Permanent Commission for the Application of Anti-Dumping and Compensation Duties for scrutiny.

Paragraph 2. The representatives of the Ministry of Economy or of the Ministry for Overseas mentioned in the present article shall be appointed by Ministerial order specifying which department of the respective Ministry is to provide the assistance they may require in matters of administrative procedure.

Paragraph 3. All official business for which the Permanent Commission for the Application of Anti-Dumping and Compensation Duties is directly responsible, shall be performed by the services of the General Superintendence of Customs designated to that effect by the respective Director General.

Paragraph 4. The final positions assumed by the members of the Permanent Commission for the Application of Anti-Dumping and Compensation Duties in respect of the cases submitted to the said Commission shall conform to the opinion of the Ministries whom the said members represent.

Paragraph 5. The representative of the Ministry of Economy or of the Ministry for Overseas in charge of examining, collecting, and analyzing the evidence of dumping practices in accordance with the provisions of the present article is empowered to establish direct contact with all official or private parties from whom he may require information, except in such cases as are expressly provided for in Decree-Law No. 46829, or in the present law.


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Anti-Dumping Duties provided for in Schedule No. 2

Section 55

(1) Subject to the provisions of this section and of the regulations, the goods specified in Schedule No. 2 shall, upon entry for home consumption or, in the case of goods subject to sales anti-dumping duty, at such time as the Minister may prescribe by regulation, be liable, in addition to any other duty payable under the provisions of this Act, to the appropriate anti-dumping duties provided for in respect of such goods in that Schedule at the time of such entry or the time so prescribed, if they are imported from or originate in a territory specified in that Schedule in respect of those goods.

(2) The Minister may from time to time by notice in the Gazette, on the recommendation of the Board of Trade and Industries, amend Schedule No. 2 whenever he is satisfied, in respect of goods which are of a class or kind produced or manufactured in the Republic, that circumstances as set forth in sub-section (5) exist, that detriment may from one or more of the said circumstances result to an industry within the Republic and that it would be in the public interest to impose the appropriate anti-dumping duty specified in sub-section (5) in respect of such goods: Provided that the Minister may limit the amount of any anti-dumping duty mentioned in sub-section (5) to a percentage of the value for duty purposes of the goods, or alternatively to a specific rate per unit of quantity, volume or weight, which percentage or alternative specific rate shall be determined by him.

(3) (a) Whenever the Minister is satisfied in terms of sub-section (2) that it would be in the public interest to impose a freight anti-dumping duty on any goods, he may for that purpose determine the minimum rate of freight which shall be applicable to that class or kind of goods when conveyed from any particular territory or place to any place of discharge in the Republic or to any place in Africa at which goods are discharged for removal overland into the Republic: Provided that the minimum rate of freight so determined shall in no case exceed the normal rate of freight as certified in terms of paragraph (c) of sub-section (5).

(b) The Minister shall notify such determination by amendment of Schedule No. 2 which shall be effected by notice in the Gazette.
(4) The provisions of Section 48(5), (6) and (7) shall mutatis mutandis apply in respect of any amendment made under the provisions of sub-section (2), (3) or (5).

(5) The anti-dumping duties which may be imposed and the circumstances in which such anti-dumping duties may be imposed in terms of sub-section (2) shall be the following, namely:

(a) "ordinary anti-dumping duty", which may be imposed when goods have been or are being or are likely to be exported to the Republic at a free on board price (as defined in Section 67 excluding the proviso thereto) which is less than the domestic value (as defined in Section 66) thereof, and which shall be the amount by which the said domestic value exceeds the said free on board price or, in the case of goods in respect of which no charge is made, a price which the Secretary may in his discretion determine;

(b) "bounty anti-dumping duty", which may be imposed when goods have been or are being or are likely to be exported to the Republic and a bounty has been or will be granted in respect thereof in the territory in which they were produced or manufactured or from which they were exported, and which shall be the amount of such bounty, whether such bounty is by way of a bonus, rebate, subsidy or otherwise, and whether it is granted by a government or other authority or person;

(c) "freight anti-dumping duty", which may be imposed when goods have been or are being or are likely to be conveyed to the Republic from a particular territory or place of despatch at a rate of freight less than the rate certified by the South African Shipping Board or other person designated by the Minister, as being the normal rate chargeable on that class or kind of goods from that territory or place and which shall be the amount by which the minimum rate of freight determined by the Minister in terms of sub-section (3) exceeds the rate of freight actually paid;

(d) "exchange anti-dumping duty", which may be imposed when goods have been or are being or are likely to be imported into the Republic from a territory the currency of which is depreciated in relation to the currency of the Republic or when the currency of the territory of origin of such goods which have been or are being or are likely to be imported into the Republic is likewise depreciated, and which shall be the amount by which the free on board price (as defined in Section 67) of the goods is less than such price expressed in the currency of the territory of origin or export of the goods and converted into the currency of the Republic at a rate which the Minister is hereby authorised to determine and to notify by means of an amendment of Schedule No. 2 which shall be effected by notice in the Gazette; or
(e) "sales anti-dumping duty", which may be imposed when goods are being or are likely to be sold or offered for sale at a place in the Republic in the ordinary course of trade in wholesale quantities for an amount which is less than the domestic value (as defined in Section 66) thereof plus freight, insurance and all charges to that place, including landing, transportation and delivery charges and any duty (other than an anti-dumping duty imposed under the provisions of this Chapter) payable under this Act, and which shall be the amount by which the said domestic value of the goods, plus the expenses and charges set forth in this paragraph, exceeds the wholesale selling price in the Republic.
TURKEY

Anti-Dumping Legislation

PROVISION OF ARTICLE 14 OF CUSTOMS LAW NO. 5383, DATED 2 MAY 1949

Article 14 - The Council of Ministers has authority to apply high tariffs and to resort to other measures with respect to goods originating in countries which encourage the shipment of goods to Turkey, by means of premiums, dumping measures and the like, whether concealed or overt, which thwart the objectives of the Tariff Law, with a view to rendering such action ineffective.