RESPONSES BY TURKEY TO QUESTIONS SUBMITTED BY THE EUROPEAN COMMUNITIES CONCERNING THE TURKISH LAW ON THE PREVENTION OF UNFAIR COMPETITION IN IMPORTATION

I. Law No. 3577 of 16 June 1989

1. Article 1 (Purpose and Scope)

Question 1:

1.1 Could the Turkish authorities explain in detail what kind of measures other than duties and undertakings could be adopted on the basis of Article 1 of this law?

Article 1 lays down the basic principles which show the aim and scope of the Law. This legislation covers only anti-dumping and countervailing measures and undertakings in conformity with both Codes.

Question 2:

1.2 It is not clear what is meant by "preventing the impairment of the market". Reference to this notion is also made in Article 2(i) and Article 3. Could the Turkish authorities explain the meaning of this notion?

The phrase "preventing the impairment of the market" is used in order to take into consideration the effects of dumped or subsidized goods upon the market of similar goods in Turkey.

Question 3:

1.3 Could the Turkish authorities:

1.3.1 - clarify the meaning of the words "direct" and "indirect";

In general, "indirect subsidies" mean the benefits granted for the inputs of the end product, and "direct subsidies" mean subsidies other than indirect subsidies.

1.3.2 - clarify whether the existence of a benefit for the recipient firm(s) is sufficient to determine the existence of a countervailable benefit;

For the implementation of countervailing measures, the existence of a subsidy alone is not sufficient and the existence of injury is also required.

1.3.3 - explain whether measures by subjects other than governments or other public bodies are encompassed by this definition;

Only subsidies granted by governments or other public bodies are covered by this provision.

1.3.4 - explain whether any measure, irrespective of its general availability, constitutes a countervailable benefit;

Within the scope of Article 24 of the Regulation, circumstances in which the goods shall be deemed subsidized are explained. If such a benefit as described in that article of the Law causes injury to the domestic industry, countervailing measures will be applied in conformity with the legislation.

1.3.5 - explain the absence of any reference to the concept of "charge on the public account" or otherwise "cost to the government"?

Within the scope of this article, it is recognized that the subsidies granted to the firms at the production, manufacturing, export or transport stages of any product in the country of origin or in the exporting country will have a charge on the public account in terms of the Subsidies Code, which is considered as national legislation in Turkey.

Question 4:

1.4 Is there any difference between "similar product" and "like product", and which are the differences if any?

There is no difference between a "similar product" and a "like product". Both have the same meaning.

Question 5:

2. Article 4 (Complaint and Examination)

Could the Turkish authorities give a more precise definition of relevant persons and institutions (bearing in mind that both Agreements provide that an investigation shall normally be initiated upon a written request by or on behalf of the industry affected)?
The term "relevant" in this article means "natural or legal persons or institutions who are involved in the industry or industries suffering from dumped or subsidized importation."

Question 6:

3. **Article 7 (Anti-dumping duty and countervailing duty)**

   Could the Turkish authorities explain the meaning of the term "quantity"?

   The term "quantity" in this provision means "imposition of a fixed amount of duty per unit of the product".

Question 7:

4. **Article 10 (Investigation)**

   Can the Turkish authorities confirm that "ex officio" initiations shall be limited to special circumstances, as is provided for by the two Agreements?

   The "ex officio" investigations referred to in this Article shall be limited to special circumstances stated in both Codes.

Question 8:

5. **Article 11 (Undertakings)**

   Could the Turkish authorities explain the absence of a provision like that of Article 4.5(a)(i) of the Subsidies/Countervailing Duties Code, which provides for the suspension or termination of proceedings if undertakings are accepted under which "the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects"?

   The term "exporter" in this article means both exporting firms and countries. The statement, "... the country of origin or the country of export or the exporter ...", used in Article 12 of the Regulation constitutes a corresponding expression to Article 4.5(a)(i) of the Subsidies Code.

   In addition, Articles 10 and 12 of the Regulation have also to be taken into consideration in the evaluation of this article.

Question 9:

6. **Article 12 (Provisional measures)**

   What procedural steps will be taken before provisional measures can be adopted?
Procedural steps to be taken before the adoption of provisional measures are described within the provisions of Article 12 of the Law and Articles 3 and 5 of the Regulation.

Question 10:

7. Article 13 (Definitive measures)

Could the Turkish authorities clarify:

- Whether anti-dumping duties and countervailing duties can never apply concurrently and thus the higher one applies, or whether this latter rule only refers to those cases where anti-dumping duties and countervailing duties do not apply concurrently;

- if this latter is the case, under which conditions anti-dumping duties and countervailing duties can be wholly or partially applied concurrently;

- in any case, why is this rule of prevalence of the duty with higher rate considered appropriate to implement the provision of Article VI:5 of the GATT, according to which "No product of the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization"?

According to the provisions of Article 13 and of the Law, in case an identical or similar product investigated is both dumped and subsidized, an anti-dumping duty and a countervailing duty shall not be concurrently applied and the one with the higher rate shall only prevail. In this respect Turkish legislation is in conformity with both Codes.

(In the unofficial translation of this article, the wrong auxiliary verb was used.)

Question 11:

8. Article 14 (Refund) and Article 15 (Other legislation)

8.1 For the refund of duties and for other purposes reference is made to the dispositions of the Customs Laws. Could the Turkish authorities make this legislation available to the Committee on Anti-Dumping Practices?

8.2 Could the Turkish authorities also make Law No. 6183 on the "Prosecution of Public Receivables" available?

Copies of the Customs Law and the Law No. 6183 on the Prosecution of Public Receivables will be submitted to the Committee on Subsidies and Countervailing Measures.
II. Decree No. 89/14506

Question and answer 12:

1. Article 1 (Purpose and Scope)

See points 1.1 and 1.2 under I.

Question 13:

2. Article 3 (Rules governing provisional and definitive measures)

What is meant in paragraph 2 of the Article by the words "In case of ... impossibility of determining all exporters, provisional and definitive measures may be applied to all such investigated products imported from that country"?

Within the framework of this article it is provided that, when the determination of the exporters of investigated products is impossible or very difficult, a measure may be taken against all exporters of the products subject to investigation, in conformity with Article 8:2 of the Anti-Dumping Code.

Furthermore, the term "all" does not cover all the goods which are imported from that country, but only those which are subject to investigation.

3. Article 6 (Revision of definitive measures)

Question 14:

3.1 What kind of evidence is required when a party requests a review of definitive measures?

Article 6 of the Decree provides rules related to revision procedures of definitive measures. According to this article, decisions related to definitive measures may be revised upon the request of one of the concerned parties or "ex officio" at least one year after the conclusion of the investigation. In such circumstances, new evidence justifying the revision has to be submitted to the General Directorate of Importation.

Question 15:

3.2 Does this Article also apply to undertakings in force?

Within the framework of Article 6, only decisions relating to definitive measures may be revised. Undertakings cannot be revised under the provision of this article.

It is possible to revise undertakings within the context of general provisions concerning undertakings.
III. Regulation on the prevention of Unfair Competition in Importation

Question and answer 16:

1. Article 1 (Purpose and Scope)

   See points 1.1 and 1.2 under I.

Question 17:

2. Article 5 (Initiating investigation)

   Is it the intention of the Turkish authorities to send questionnaires also to domestic producers which have not supported the complaint?

   In the application of this Legislation, the questionnaires are not sent to domestic producers which have not supported the complaint.

Question 18:

3. Article 7 (Confidentiality of information)

   Could the Turkish authorities make available Article 20:4 of Law No. 2577 (Administrative Procedural Law).

   A copy of Article 20:4 of the Law No. 2577 (Administrative Procedural Law) will be submitted to the Committee on Subsidies and Countervailing Measures.

4. Article 12 (Acceptance and validity of undertakings)

Question 19:

4.1 Could the Turkish authorities explain the link between this provision and Article 4.5(a) of the Subsidies/Countervailing Duties Code, where undertakings by governments are those "to eliminate or limit the subsidy or take other measures concerning its effects" (i) whereas price undertakings are only expressly referred to in point (ii) (undertakings by the exporter)?

   The undertakings which will be offered by governments and firms, referred to in Article 4.5(a) (i)-(ii) of the Subsidies Code, are taken into account together in the first paragraph of Article 12. Since the provisions of the GATT Subsidies Code are to be implemented primarily according to the Turkish Legislation system, the undertakings offered by governments and firms will be considered within the framework of this Code.
Question 20:

4.2 For what reasons could undertakings be rejected?

The reasons of rejecting undertakings are explained in the second paragraph of Article 12 of the Regulation. According to this article, if the General Directorate shall conclude that the acceptance of the price undertakings shall not be appropriate because of the multitude of the actual or contingent exports or for other reasons, undertakings proposed may not be accepted. In this respect, the provision of Article 12 is parallel to the Subsidies Code.

Question 21:

4.3 What is the meaning of the last sentence of the third paragraph: "Nevertheless proposed undertakings are not due to be accepted by the exporter or the country of origin or the country of export"?

The third paragraph of Article 12 is in conformity with Article 4-5-c of the Subsidies Code and Article 7-4 of the Anti-Dumping Code. According to this article the General Directorate of Importation may also suggest undertakings, but no exporter shall be forced to accept these undertakings.

Question 22:

5. Article 16 (Calculation of the cost of production)

On what basis will a reasonable amount of the administrative, sales and other sundry expenses be calculated?

The reasonable amount of the administrative, sales and other sundry expenses will be calculated on the basis of reliable and profitable sales of the investigated product under the conditions of ordinary course of trade.

6. Article 18 (State trading countries)

Question 23:

6.1 Could the Turkish authorities provide the list of countries enumerated in the "Importation Régime Decree"?

State Trading Countries had been listed in the annex of the Importation Régime Decree which was in effect in 1989. With the 1990 Importation Régime Decree, this list was abolished and this article will be rearranged as soon as possible.
Question 24:

6.2 Could the Turkish authorities clarify their position in respect of the use of countervailing duty proceedings in case of imports from a state trading country?

In case of imports from a state trading country, the use of countervailing duty proceeding shall be carried out in conformity with the provisions of this Legislation and Subsidies Code.

Question 25:

7. Article 24 (Notion of Subsidy)
   (See point 1.3)

In addition, there is a difference between the third paragraph of Article 24 and items h) and i) of the Illustrative List of Export Subsidies annexed to the Subsidies/Countervailing Duties Code. In particular, the exemption from customs duties and indirect taxes seems to be allowable without reference to physical incorporation and without reference to whether the finished product is destined to be exported or sold on the domestic market. Could the Turkish authorities explain these differences, as well as whether they consider that the hypothesis covered by the third paragraph of Article 24 is not a subsidy at all or just not an export subsidy?

The meaning of the third paragraph of Article 24 is not clear. This article shall be rearranged, and studies on the matter are in progress.

8. Article 25 (Determination of the Subsidy)

Question 26:

8.1 Could the Turkish authorities clarify the meaning of the expression used in the first paragraph of Article 25, "In case the establishment of a subsidy not made according to manufactured, produced, exported or transported quantities ..."?

It is necessary to interpret the first paragraph of this article as: "In case a subsidy is not granted according to produced, manufactured, exported or transported quantities, the amount of the subsidy will be determined by a reasonable distribution of the subsidy, value over production and exportation levels at an adequate period."

Question 27:

8.2 Could the Turkish authorities clarify the meaning of the second paragraph of Article 25: "In case of actual or contingent acquisition of fixed assets as subsidy, the subsidy value shall be calculated by deducting the ordinary amortization shares of such assets. In case of assets not subject to amortization, the subsidy shall be assessed as interest free loan"?
It is necessary to change the English translation of this paragraph as "... of such assets. In case of fixed assets not subject to amortization, the subsidy shall be assessed as an interest free loan."

Question 28:

8.3 Does the third paragraph of Article 25 mean that if any information on the amount of a subsidy does not specify the allocation of such amount in relation to the beneficiary's production, the entire amount will be allocated to the beneficiary's exports to Turkey?

The phrase "the amount of the subsidy shall be calculated within the context of the imported quantity and the importation value of the said product" means that, in case of impossibility to determine the subsidy amount on the basis of production, exportation and transportation, this amount is calculated not only on the basis of exportation to Turkey, but also on the basis of total exports of the product and of other information available.

Question 29:

8.4 On imports from State Trading Countries see point (8).

See points 6.1 and 6.2 under III.

Question 30:

8.5 What does the last paragraph of Article 25 mean by "cases of variance of subsidy amounts"?

"In cases of variance of subsidy amounts" covers the cases where the rates of the subsidies granted to the beneficiary or beneficiaries are more than one and/or in variable rates.