INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Brazil

Reproduced herewith is a non-official translation of Resolution No. 00-1227 adopted by the Customs Policy Commission on 14 May 1987. This Resolution has to be read in conjunction with Decree No. 93.941 of 16 January 1987 and Decree No. 93.962 of 22 January 1987.

1/ See document ADP/1/Add.26.
CUSTOMS POLICY COMMISSION

Resolution No. 00-1227

The CUSTOMS POLICY COMMISSION (CPA), based on Articles 2 and 3 of Decrees Nos. 93-941 of 16 January 1987 and 93-962 of 22 January 1987, which promulgated, respectively, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-Dumping Code) and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Code on Subsidies and Countervailing Duties), and in view of the convenience of establishing rules to govern the administrative procedures of the aforementioned Agreements, hereby resolves to adopt the following complementary regulations:

PRELIMINARY PROVISIONS

Article 1 - Definitive anti-dumping and countervailing duties, as established in the Anti-Dumping Code and the Code on Subsidies and Countervailing Duties, constitute an additional import duty.

Article 2 - The Customs Policy Commission (CPA) shall establish the additional import duty provided for in Article 1, and shall define the terms, limits and conditions of its imposition.

Sole Paragraph - The additional import duty shall be calculated by imposing an ad valorem rate, fixed by the CPA, on the customs value of the merchandise.
Article 3 - As a provisional measure, the CPA may require that a cash security deposit be made, equivalent to the value provisionally estimated of the additional duty.

Paragraph 1 - The conversion of said deposit into federal revenue and/or its total or partial refund shall be determined by an act of the CPA.

Paragraph 2 - The Federal Revenue Bureau shall establish the procedures for collection and refund of the said deposit.

PETITION

Article 4 - All procedures followed to initiate an anti-dumping or countervailing duty investigation shall commence by the filing of a petition in the General Protocol Office of the Ministry of Finance in Rio de Janeiro. After the respective proceeding has been formed, all related documents shall be forwarded to the CPA.

Paragraph 1 - The petition shall be presented in accordance with the guidelines stipulated by the Technical Bureau of the CPA.

Paragraph 2 - The petition may be presented directly by an affected "domestic industry" or on its behalf. For the purpose of this Resolution, the expression "domestic industry" shall be interpreted in accordance with the
provisions of Article 4 of the Anti-Dumping Code and of Paragraphs 5 and 7 of Article 6 of the Code on Subsidies and Countervailing Duties, and shall include those industries producers of agricultural, mineral and industrial goods.

Paragraph 3 - The petition shall contain sufficient evidence of the existence of dumping or subsidy on the denounced imports and demonstrate that such practices cause "injury" to the said industry. For the purpose of this Resolution, the term "injury" shall be interpreted in accordance with the provision in footnote 3 of Article 3 of the Anti-Dumping Code and in footnote 6 of Paragraph 1 of Article 2 of the Code on Subsidies and Countervailing Duties.

Article 5 - Interested parties shall have a period of 20 (twenty) days to provide additional information, whenever the Technical Bureau so requests during the preliminary evaluation process of a petition, prior to the decision to initiate an investigation. This period shall be calculated as of the date of issuance of the communication of the Technical Bureau requesting additional information.

Article 6 - In case the CPA judges that there is not sufficient evidence of dumping or subsidy and/or injury, the petition shall be rejected, the proceeding terminated and the petitioner(s) informed of such decision.

Article 7 - The CPA may initiate an investigation of its own accord if it judges that there is sufficient evidence of dumping or subsidy and injury.
CONSULTATIONS

Article 8 - Prior to the initiation of any subsidy investigation, the CPA shall provide an opportunity to the government of the exporting country of the product which may be under investigation for consultation, with the aim of clarifying the situation and arriving at a mutually acceptable solution.

Article 9 - The Technical Bureau shall be responsible for notifying the government of the exporting country of the request to initiate a subsidy investigation. Such notification shall inform the deadline for holding consultations.

Sole paragraph - The government of the exporting country shall have a period of 15 (fifteen) days to express in writing its interest in holding a consultation. If interest is manifested, a hearing for this purpose shall be held within the maximum period of 1 (one) month. Both periods of time referred to herein shall be calculated as of the date of issuance of the communication of the Technical Bureau notifying the government of the exporting country of the opportunity for consultation.

Article 10 - Without prejudice to the obligation to afford reasonable opportunity for consultation, the provisions of Articles 8 and 9 herein shall not prevent the CPA from proceeding expeditiously with regard to reaching the decision to initiate an investigation.
INITIATION AND SUBSEQUENT INVESTIGATIONS

Article 11 - Once the petition is analyzed, the CPA shall initiate the investigation, provided that it rules the existence of sufficient evidence of dumping or subsidy and injury as a result of such practices.

Article 12 - The decision to initiate an investigation shall be made public by the publication of a CPA act in the Federal Official Gazette.

Paragraph 1 - Such act shall indicate the exporter(s) and country(ies) concerned and contain a summary of the reasons justifying the initiation of an investigation as well as fix the period of time for the interested parties to prepare arguments and appoint legal representatives.

Paragraph 2 - The period of time referred to in the paragraph above shall be 20 (twenty) days, calculated as of the date of the publication in the Federal Official Gazette of the act initiating the investigation.

Article 13 - Once the investigation is initiated, the Technical Bureau shall notify the interested parties petitioners, domestic industry, exporters, importers and the governments of the exporting countries, the latter solely in the case of a subsidy investigation - of the initiation of the investigation and simultaneously forward to said parties pertinent questionnaires.
Article 14 - The importer, exporter and the government of the exporting country, the latter solely in the case of a subsidy investigation, shall have a period of 40 (forty) days to complete the questionnaire referred to in the Article above. This period of time shall be calculated as of the date of issuance of the questionnaires by the Technical Bureau.

Article 15 - In order to verify information provided and/or obtain complementary data, the Technical Bureau may carry out investigations in other countries, provided it obtains the agreement of the firms concerned and provided the government(s) of the country(ies) concerned does(do) not object.

Article 16 - Any interested party may request information available at the CPA on the ongoing investigation, provided that such a request is relevant to the defense of its interests and is not classified as confidential as defined in Paragraphs 3 and 4 of Article 6 of the Ant-Dumping Code and Paragraphs 6 and 7 of Article 2 of the Code on Subsidies and Countervailing Duties. For this purpose, such a request indicating the information desired shall be sent to the CPA.

Article 17 - Exporters and importers of the product under investigation, and in the case of a subsidy investigation, the government of the country of origin and/or exporting country may request to be informed of the fundamental issues and the reasons and basis for the imposition of provisional measures or definitive duties.
Sole paragraph - The requests for the purpose of this Article shall be sent to the CPA - Ministry of Finance within a maximum period of 30 (thirty) days as of the date of publication of the act in the Federal Official Gazette establishing the measure.

Article 18 - The parties concerned in an investigation may provide the Technical Bureau with additional written information. Nonetheless, information received 15 (fifteen) days prior to the date scheduled for the final decision shall not influence an imminent decision. For this purpose, the CPA shall publish in the Federal Official Gazette the scheduled date on which said decision may be reached.

Article 19 - The Technical Bureau may hold a hearing with the interested parties, provided they so request in writing, providing evidence that they are parties concerned and that they may be affected by the outcome of the proceeding.

Paragraph 1 - The interested parties shall formally indicate no later than 5 (five) days prior to the scheduled date of the hearing, their legal representative(s) who shall attend said hearing. Furthermore, the arguments to be raised at said hearing shall be sent to the CPA and received by the Technical Bureau no later than 10 (ten) days prior to the hearing.

Paragraph 2 - No party concerned shall be obligated to attend the hearing referred to above and the absence of any party shall not bear an influence on the decision to be reached.
Paragraph 3 - In accordance with the provisions herein, the holding of hearings shall not prevent the CPA from imposing provisional measures or definitive duties, based on preliminary or final determinations. Such hearings may be held only up to 15 (fifteen) days prior to the date scheduled for reaching the final decision.

TERMINATION OF THE PROCEEDINGS WITHOUT APPLICATION OF MEASURES

Article 20 - In case the CPA verifies no evidence of dumping or subsidy and/or injury, the proceedings shall be terminated, at any time, without imposition of measures.

Sole paragraph - In case the petitioner requests the termination of the proceeding, the CPA may use its own discretion to terminate or continue the investigation.

Article 21 - The decision of the CPA to terminate the proceedings shall be published in the Federal Official Gazette, by means of an act providing a summary of the reasons justifying such a decision. The Technical Bureau shall notify the interested parties of the termination of an investigation without imposition of measures.

SUSPENSION OF INVESTIGATIONS

Article 22 - In accordance with the provisions of Article 7 of the Anti-Dumping Code and of Paragraph 5 of Article 4 of the Code on Subsidies and Countervailing Duties, undertakings may be made to eliminate the injurious effects of dumping or subsidy. In case the undertakings
are accepted by the CPA, the investigation shall be sus­
pended and no provisional or definitive measures shall
be imposed, except in those cases provided for in Paragraph
3 of Article 7 of the Anti-Dumping Code and in Paragraph
5(b) of Article 4 of the Code on Subsidies and Countervailing
Duties.

Article 23 - The decision accepting an undertaking
shall be made public by publication of a CPA act in the
Federal Official Gazette. The Technical Bureau shall notify
the interested parties of the signed undertaking.

Article 24 - In case an undertaking is accepted,
the exporter or the government of the exporting country,
the latter in the case of a subsidy investigation, shall
have a period of 15 (fifteen) days as of the publication
date of the CPA act accepting the undertaking to request
in writing the continuation of the injury investigation.

Sole paragraph - The decision to proceed with
the injury investigation shall be made public by publication
of a CPA act in the Federal Official Gazette. The Technical
Bureau shall notify the interested parties of such decision.

Article 25 - The Technical Bureau may request
any exporter of the government of the exporting country
with which it has signed an undertaking accepted by the
CPA to provide periodically information relevant to the
fulfilment of such undertakings. In case of violation
of undertakings or evidence of their violation, after having
provided the opportunity for a hearing to the exporter or to the government of the exporting country, the CPA, using the best information available, may immediately adopt provisional anti-dumping or countervailing measures, in accordance with the provisions of Paragraph 5 of Article 7 of the Anti-Dumping Code and Paragraph 6 of Article 4 of the Code on Subsidies and Countervailing Duties. In such a case, the investigation shall be reinitiated following the procedures established in this Resolution.

Article 26 - The Technical Bureau shall notify the interested parties of the termination of the undertaking and of the imposed provisional measure. The CPA shall make this fact public by publication of an act in the Federal Official Gazette containing a summary of the reasons justifying the decision.

PROVISIONAL MEASURES

Article 27 - After the initiation of an investigation and when a preliminary investigation verifies the existence of dumping or subsidy and sufficient evidence of injury caused by such practices, the CPA may impose provisional anti-dumping or countervailing duties, in case it finds it expedient to prevent the injury during the investigation. In such a case, the product under investigation may be released for consumption in Brazilian territory only after the importer has deposited the provisional duty, in accordance with the provisions of this Resolution.
Article 28 - The Technical Bureau shall notify the interested parties of the imposed provisional measures. The CPA shall make the fact public by publishing an act containing a summary of the reasons justifying the decision in the Federal Official Gazette.

Article 29 - Provisional measures shall not remain in force for a period of more than 4 (four) months except in the case of anti-dumping measures which may remain in force for a period of up to 6 (six) months, in accordance with Paragraph 3 of Article 10 of the Anti-Dumping Code and Paragraph 3 of Article 5 of the Code on Subsidies and Countervailing Duties.

Article 30 - Exporters wishing an extension of the period of application of the provisional anti-dumping measure shall submit a written request in this regard to the CPA, no later than 1 (one) month prior to the termination of the period of application of such measure.

FINAL DECISION

Article 31 - Once the investigation is completed, the CPA shall publish in the Federal Official Gazette an act containing its final decision.

Article 32 - Whenever a final decision has been reached that there is no dumping or subsidy or that even with their existence no injury has occurred as a result of such practices, the provisional duties, if deposited, shall be refunded and the proceeding terminated.
Article 33 - Whenever an injury investigation is continued, after an undertaking has been established and if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat or injury is due in large part to the existence of an undertaking.

Article 34 - Whenever a final decision is reached that there is dumping or subsidy and injury to domestic industry resulting from these practices, definitive anti-dumping and countervailing duties shall be imposed without detriment to the provisions of Paragraph 1 of Article 8 of the Anti-Dumping Code and of Paragraph 1 of Article 4 of the Code on Subsidies and Countervailing Duties.

Article 35 - Whenever the duty fixed by the final decision is lower than the provisionally deposited duty, the difference shall be refunded to the importer. Such a fact shall be recorded in the CPA act announcing the final decision.

Article 36 - The conversion of a portion or of the total amount of the provisional duties into federal revenue shall be made solely in those cases where the final decision is based on facts proving that dumping or subsidy and injury has occurred.

sole paragraph: The word "injury" for this purpose shall be construed as exclusive of material retardation of the establishment of a new domestic industry or threat of material injury to such industry, except when there is evidence that injury could occur had provisional measures not been imposed.
REVIEW

Article 37 - The decisions made by the CPA on the imposition of an anti-dumping or countervailing duty as well as those on the establishment of undertakings shall be reviewed entirely or partially solely after a period of 1 (one) year and provided that a "new fact" justifies reinitiation of the investigation.

Paragraph 1 - For the purpose of this Resolution, the expression "new fact" shall mean a thitherto unalleged fact that has never been brought to the attention of the Technical Bureau nor been the object of any decision.

Paragraph 2 - In exceptional cases where significant changes in the circumstances occur, or when it is a matter of national interest, the CPA may use its own discretion to conduct reviews more frequently, either on its own initiative or upon request from the party concerned.

Article 38 - Whenever a new fact justifying a review is verified, the investigation shall be reinitiated and continue in accordance with the provisions of Articles 11 and 19 of this Resolution. No alterations in the measures in force may be made until the review is terminated.

Article 39 - Whenever justified by a review, the CPA may revoke, maintain or modify the previously imposed measure.
Article 40 - Whenever an interested party demonstrates within the time limit established by the CPA, that the termination of the period of application of the measure shall cause injury to the domestic industry the CPA may review the period of validity of an anti-dumping duty, of a countervailing duty or of an undertaking.

Article 41 - The CPA shall publish in the Federal Official Gazette 6 (six) months prior to the fact, the date of termination of validity of an anti-dumping duty, of a countervailing duty or of an undertaking, and also inform such fact to the domestic industry.

Sole paragraph - The parties concerned shall have a maximum period of 1 (one) month as of the date of publication of the CPA act to present arguments in writing justifying the convenience of reviewing the period of application of the aforementioned duties or undertaking as well as to request a hearing.

REFUNDS

Article 42 - Whenever the anti-dumping or countervailing duty collected exceeds over a reasonable period of time the actual margin of dumping or the total amount of subsidy, the importer may forward a request to the CPA for the total refund due, provided that it has not been indemnified in another form.
Sole paragraph - The request referred to in the caput of this Article shall be presented in accordance with the guidelines stipulated by the Technical Bureau and be accompanied by pertinent documentation which proves the alleged facts.

Article 43 - Upon examining the request referred to in Article 42, the CPA may decide to initiate a review. In this case, determination of the amount of the refund due shall be suspended until termination of the review.

Article 44 - Once the request has been analyzed, the CPA shall decide whether the dumping margin or the total subsidy has been lowered or eliminated, and indicate whether and to what extent the refund is valid. In an affirmative case, the CPA shall publish an act in the Federal Official Gazette, indicating the amount eligible for refund.

Sole paragraph - The refund shall be made by the Federal Revenue Bureau, upon request from the importer and in accordance with the pertinent legislation.

FINAL PROVISIONS

Article 45 - The rules of confidentiality, as provided for in Paragraphs 3 and 4 of Article 6 of the Anti-Dumping Code and in Paragraphs 6 and 7 of Article 2 of the Code on Subsidies and Countervailing Duties, shall apply to all information on dumping or subsidy proceedings received by the CPA, provided they are considered as such by the interested party.
Article 46 - The CPA act related to the imposition of a provisional or definitive ant-dumping or countervailing duty shall indicate the duty(ies) imposed, the product(s) affected, the country(ies) of origin or the exporting country(ies), the name(s) of the exporter(s) and the reasons that led to such a decision.

Article 47 - The provisional or definitive anti-dumping or countervailing duties shall be applied solely to products released for consumption as of the date the CPA act enters into force, except in those cases provided for in Article 11 of the Anti-Dumping Code and in Paragraphs 5 and 9 of Article 5 of the Code on Subsidies and Counter-vailing Duties.

Article 48 - The anti-dumping or countervailing duty as well as any accepted undertaking may not remain in force for a period of more than 5 (five) years, except as provided for in Article 40 of this Resolution.

Article 49 - The Portuguese language shall be the official language used in all the proceedings provided for in this Resolution.

Article 50 - All documentation related to dumping or subsidy proceedings shall be sent in 20 (twenty) copies to the CPA by the parties concerned.

Article 51 - All deadlines established in this Resolution may be extended in exceptional cases at the sole discretion of the CPA, except for those established in Article 29 of this Resolution.
Article 52 - No requests for reconsideration of the decisions of this Resolution shall be accepted.

Article 53 - The Federal Revenue Bureau, wherever competent, shall issue complementary regulations to this Resolution.

Article 54 - This Resolution shall enter into force as of the date of its publication in the Federal Official Gazette.

14 May 1987
JOSÉ TAVARES DE ARAÚJO JR.
Executive Secretary

Issued on 29 May 1987.
Approval of Resolution No. 00-1227 of 14 May 1987 of the Customs Policy Commission, JOSÉ TAVARES DE ARAÚJO JR., Executive Secretary.