

Decision 283, Rules for preventing or correcting distortions in competition caused by dumping or subsidy practices

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THE COMMISSION OF THE CARTAGENA AGREEMENT,

HAVING SEEN: Chapter VIII of the Cartagena Agreement, Decisions 230, 258, and 281 and the Board's Proposal 223/Rev. 3;

WHEREAS:

The Commission approved Decision 230, which contains rules for preventing or correcting practices that could distort competition;

Decision 258 stipulates that the Commission, at the proposal of the Board, shall review the rules on trade competition;

Decision 281 stipulates that the Commission, at the proposal of the Board and by March 31, 1991 at the latest, shall review the rules on trade competition established in Decision 230;

In order to achieve the objectives of the integration process in a context characterized by the opening of markets, it is convenient to perfect Subregional rules on competition in light of international experience so that they can act as effective mechanisms for preventing or correcting any distortions that could arise as a result of dumping or subsidies;

Due to their origin and scope, it is necessary to distinguish between the dumping and subsidies that are the subject-matter of this Decision, and practices that restrict free competition, in addition to restrictions placed on exports;

The rules regarding subsidies contained in this Decision shall be applicable until commitments are made to harmonize instruments for promoting foreign trade; also if the incentives that are covered in the context of that harmonization were to cause distortions in competition in specified isolated cases;

DECIDES:

I. SCOPE OF APPLICATION ➡

Article 1.- The purpose of the rules stipulated in this Decision is to prevent or correct distortions in competition caused by dumping or subsidies.

Article 2.- Member Countries or firms with a legitimate interest may ask the Board for authorization or a mandate to take measures to prevent or correct distortions in competition in the Subregional market caused by dumping or subsidies, in the following cases:

- a. When practices originating in the territory of another Member Country threaten to cause or do cause material injury to national production intended for the domestic market of the country affected;
- b. When practices originating in the territory of a Member Country threaten to cause or do cause material injury to national production intended for export to another Member Country;
- c. When practices originating in a country outside the Subregion threaten to cause or do cause material injury to national production intended for export to another Member Country; and

When practices originating in a country outside the Subregion threaten to cause or do cause material injury to its national production in the case of products to which the Common External Tariff is applied and in that case, corrective measures must be applied in more than one Member Country. In the other cases, the national regulatory provisions of each Member Country may be applicable.

For purposes of this Decision, a significant delay in building up national production is considered to be a threat injury.

II. DUMPING ➡

Article 3.- A good is imported at a dumping price when its export price is lower than the normal value of a similar product intended for consumption or use in the country of origin or export, in the course of normal business operations.

Article 4.- A similar product is a product that is equal in all aspects to the product being dumped; if that product does not exist, it is another with very similar characteristics, considering elements like its nature, quality, use and function.

Article 5.- The export price is that actually paid or to be paid for the product sold for export to a Member Country.

If there is no export price or if, in the judgment of the Board, that price is not reliable because an association or a compensatory arrangement exists between the exporter and the importer or a third party, the export price may be calculated on the basis of the price at which imported products are resold for the first time to an independent buyer. If the products are not resold to an independent buyer or if the products are not resold in the same state in which they were imported, the price may be calculated on a reasonable basis to be determined by the Board.

In calculating the export price, the necessary adjustments shall be made to take account of all expenses incurred up to the resale, including all import duties, taxes and a reasonable profit margin. Considered among these adjustments are the cost of transportation, insurance, maintenance and unloading; import duties and other taxes due after the export from the country of origin; a reasonable markup for overhead, administrative and selling

costs; a reasonable profit margin; and any fee normally paid.

Article 6.- For purposes of this Decision, the normal value is considered to be that actually paid or to be paid for a product similar to that imported into the Member Country when sold for consumption or use in the domestic market of the country of origin or export, in the course of normal business operations.

Normal business operations are those carried out between associated parties or parties that have reached a compensatory arrangement, provided that the prices and costs are comparable to those of operations between independent parties.

If a similar product is not sold in the course of normal business operations in the domestic market of the country of origin or export, or if those sales do not allow for a valid determination of the normal value, the latter shall be specified as follows:

- a. By considering the highest export price for a similar product that is exported to a third country, provided that it is representative;
- b. Otherwise, by considering the calculated price of a similar product. It will be obtained from the production cost in the normal course of business in the country of origin, plus a reasonable mark-up for administrative and selling expenses and a profit margin. That profit shall be no larger, as a general rule, than that normally obtained on the sale of products of the same category in the domestic market of the country of origin.
- c. If there is no export price to a third country that is representative or if the price of a similar product cannot be calculated, the normal value can be established on a reasonable basis to be determined by the Board.
- d. For imports coming from or originated in countries with centrally-planned economies, the normal value shall be obtained on the basis of the comparable price at which, in the course of normal business operations, a similar product is sold in a third country with a market economy at a similar degree of development, for domestic use or consumption. If that comparable price does not exist, the normal value may be calculated on a reasonable basis to be determined by the Board.

In the event that the products are not imported directly from the country of origin, but from a third country, the price at which the products are sold from the country of export to the Member Country shall be compared with the comparable price in the country of export. However, it may be compared with the price in the country of origin when, among other things, the products merely move through the country of export, or such products are not produced or there is no comparable price for them in the exporting country.

Article 7.- The dumping margin is the amount by which the export price is less than the normal value. That margin shall be calculated by unit of the product that is imported at a dumping price.

The export price and the normal value should be examined on a comparable basis with regard to the physical characteristics of the product and amounts and terms of the sale, bearing in mind the differences in taxes and other criteria that could affect the comparison of the prices. This comparison shall be made at the same point in the business transaction, generally at the ex-factory level, based on the sales made on the closest dates possible.

III. SUBSIDIES ➡

Article 8.- An import has been subsidized when the production, manufacture, transport or export of the imported product or of its raw materials or inputs has received, directly or indirectly, any premium, aid, bonus or subsidy in the country of origin or export. With regard to transport, Bolivia's landlocked situation will be taken into account.

The existence of multiple exchange rates for commercial and financial transactions in the country of origin or export could generate a subsidy and in that case would be considered as such for purposes of this Decision.

Article 9.- The amount of the subsidy shall be calculated in monetary units or ad valorem, per unit of subsidized product that is imported.

That amount shall be established by subtracting, among other things, the expenses necessarily incurred to obtain access to the subsidy and taxes and other levies that had to be paid for the export.

If multiple exchange rates do exist, the amount of the subsidy shall be determined on the basis of such rules as may be established within the context of exchange policy harmonization. In the absence of such harmonization, the Board shall issue a technical opinion about the amount of the subsidy.

In determining the subsidy, a similar product shall be considered to mean a product that is the same in all aspects as the product being subsidized. If such a product does not exist, it shall mean another product with very similar characteristics considering elements like its nature, quality, use and function.

IV. PROCEDURE ➡

Article 10.- The following are empowered to submit a petition:

- a. Member Countries through their respective liaison institutions; and
- b. The firm or firms that invoke a legitimate interest, in the degree allowed by national law.

The written petition must contain the following information:

- the nature of the practices and their duration;
- the characteristics of the products that are the object of the practices;
- the firms involved;
- the evidence which allows to presume the existence of injury or actual injury to national production or exports created by the importation during the previous or current twelve months, of products that are the object of those practices and which are

similar to those being produced or exported;

- the level of duties requested.

On receipt of the complaint, the Board shall proceed to inform the liaison institutions of the countries where the firms involved in the investigation carry out their economic activities.

Article 11.- The Board shall not start the investigation if the petition is incomplete. In that case, it shall so advise the claimant, indicating in detail what information is missing, within twenty working days after presentation of the petition.

If the petition is deemed adequate, within twenty working days after its presentation, the Board shall go on record with its opinion through a reasoned Resolution. Furthermore, that Resolution shall be communicated to the claimant firm or firms.

Article 12.- During the investigation, the Board may request and collect evidence and information from the liaison institutions and, either through them or directly, from the producers, exporters, importers or consumers with a legitimate interest in the investigation. They may also furnish information or, as the case may be, lodge pleas with the Board.

In cases where the Board requests, collects or receives evidence and information directly, it shall report this to the respective liaison institutions.

The Board may, furthermore, request and collect evidence and information from the exporters and the authorities of countries outside the Subregion, whose products are being investigated. Those exporters or authorities may also supply information or, as the case may be, lodge pleas with the Board.

In no case may the investigations that are undertaken pursuant to this Decision obstruct the clearance through customs of the respective products.

Article 13.- In exercise of its power to request and collect evidence, the Board may decide to treat the information given to it confidentially if the furnisher of that information asks for and justifies that treatment, for it is the source of that information and its disclosure may have unfavorable consequences for it.

The parts of internal documents prepared by the Board or the Member Countries which contain that kind of information, may also be of a confidential nature.

When confidential treatment of evidence is sought, the petitioner shall provide a summary of the information that may be disclosed or an explanation of why that information cannot be summarized. In the latter case, the Board does not have to accept that explanation, in which case it may not take the evidence into consideration.

Likewise, even if the request is justified, the information may not be taken into account if the entity offering it fails to submit a non-confidential summary of its contents, provided that these are capable of being summarized.

Those interested in the investigation may submit a written request for the information furnished or prepared pursuant to this Decision and this will be supplied to them if it is not confidential in nature.

This article does not impede the disclosure of general information and, in particular, of the grounds for the Resolutions to which this Decision refers, if they are demanded in the course of a judicial proceeding. In making that disclosure, it shall be kept in mind that the trade secrets of those that have a legitimate interest in the investigation must not be revealed.

Article 14.- In the course of the investigation, the Board may, on its own initiative or at the petition of any of the interested parties, call meetings for the purpose of seeking a direct solution; the commitments made and the results of these meetings shall be recorded in the minutes.

No interested party shall be compelled to attend a meeting and the absence of said party shall not be detrimental to its case.

The Board shall go on record with its opinion through a reasoned Resolution that will state what commitments have been assumed and whether the investigation shall be suspended or shall continue at the request of the claimant.

The exporters or the authorities of the country where the practice originated shall furnish the necessary information for verifying compliance with the commitments assumed. If these commitments fail to be fulfilled or the pertinent information is not furnished, the Board shall resume the investigation. It shall then immediately set anti-dumping or countervailing duties at levels based on the available information or, in its absence, at levels requested by the firms that have been affected. In issuing its final decision, the Board shall determine whether those duties shall be maintained, modified or eliminated.

Article 15.- The Board shall have a period of four months in which to make its investigation, starting on the date of publication of the Resolution referred to in Article 11 of this Decision.

In special cases, the deadline may be extended up to two additional months, in which case the claimant shall be informed thereof.

Article 16.- In order to issue its decision, the Board must consider the existence of positive evidence regarding:

- a. The dumping or subsidy practices that are distorting competition;
- b. The threat of injury or actual injury caused by those practices in the terms of Article 2 of this Decision; and
- c. A cause-and-effect relationship between the practices and the threat of injury or actual injury.

Article 17.- The determination of the existence of the threat of injury or actual injury and of the cause-and-effect relationship with the practices may be based, among other things, on the examination of:

- a. The volume of imports that are the object of those practices, particularly to determine if they have increased significantly, both in absolute terms and in relation to the production and consumption of the Member Country affected, or in relation to the imports of the claimant Member Country;

- b. The prices of imports that are the object of those practices, particularly to determine whether they are considerably lower than the prices of similar products without such practices. Furthermore, to determine if the effect of those imports is to make prices drop significantly or to impede the rise in price that would have occurred otherwise; and
- c. The effects on the production or exports of the Member Country, as deduced from real or virtual trends in pertinent economic factors like: production, domestic sales, exports, market share, use of installed capacity, employment, stocks and profits.

Article 18.- At the conclusion of the investigation, within twenty working days after the event provided for in Article 15, the Board shall go on record with its opinion through a reasoned Resolution, in accordance with its conclusions and based on the available information.

The Resolution shall indicate what levels of duties shall be established, the imports that are the object of practices to which those duties shall apply, the deadlines for their adoption and their duration. Also, when applicable, the conditions that will determine the duration of those duties.

Article 19.- Once the Board has verified, at the request of the liaison institutions or of the interested parties, the change in or elimination of the causes that gave grounds for the Resolution to which the previous article refers, it shall revoke that Resolution partially or totally by amending or derogating it. The Board shall have three months in which to issue its decision.

The Board may also verify on its own initiative the change in or elimination of the causes that gave grounds for the Resolution in question, amending or annulling that Resolution.

V. MEASURES ➡

Article 20.- In cases of dumping, anti-dumping duties shall be applied to imports that are the object of that practice; these duties shall be equivalent to the dumping margin determined or less, if sufficient to resolve the threat of injury or actual injury.

Article 21.- In the cases of subsidies, countervailing duties shall be applied to imports that are the object of that practice; these duties shall be equivalent to the amount of the subsidy or less, if sufficient to resolve the threat of injury or actual injury.

Article 22.- Corrective measures intended to prevent or correct distortions caused by dumping and subsidy practices may not be applied simultaneously to the same imported product.

Article 23.- In the event that the threat of injury or actual injury is evident, the Member Country or the firms with a legitimate interest may ask for authorization or a mandate from the Board to take immediate corrective measures.

The Board, if it considers the petition admissible, may authorize or determine the establishment of provisional measures, which could take the form of anti-dumping or countervailing duties, or of furnishing guaranties —through cash deposits or bonds— equivalent to those duties, for which it shall have twenty working days as of the date of the petition indicated in the previous clause. Suspension of the customs valuation shall be an

appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty are indicated.

In the course of the investigation, the Board may suspend application of the provisional measures and in its final decision shall determine whether to maintain, amend or eliminate the measures established.

If the definitive duties are higher than the provisional duties paid or guaranteed, there will be no cause for collection of the amount in surplus of the payment or of the guaranty which shall be collected. Otherwise, there shall be cause for the return of the difference or the reduced collection of the guaranty.

If no definitive duties are established, the entire sum paid as provisional duties shall be refunded or the guaranty shall be refunded or released.

Article 24.- The Board may likewise provide for the application of definitive anti-dumping or countervailing duties to products cleared through customs for home use up to 90 days before the establishment of provisional duties.

These definitive duties may be applied for the purpose of keeping the injury from reoccurring in cases where the Board determines the existence of an injury difficult to redress, caused by massive imports at dumping or subsidized prices over a short period of time. In cases of dumping, it is also necessary to determine the existence of a precedent of dumping with injury or that the importer was aware or should have been aware that the exporter was engaged in that practice.

VI. FINAL PROVISION ➡

Article 25.- This Decision replaces Decision 230 as regards the rules for preventing or correcting distortions in competition caused by dumping or subsidies.

Signed in the city of Lima on the twenty-first of March of nineteen ninety-one.