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SP2 - Prevent or Resolve Barriers to Trade that Hinder U.S. Food and Agricultural Exports

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Report Highlights:

This report contains an unofficial translation of Tunisia's Law #94-41 on external trade. It serves as the legal basis for Tunisia's legal requirements for excluding certain products from being freely traded, enforcing technical controls at the border, applying anti-dumping and countervailing duties, and international trade promotion.

Law No. 94-41 of March 7, 1994, on External Trade¹

(OGRT No. 19 of March 8, 1994)

In the name of the people;

The Chamber of Deputies having adopted;

The President of the Republic promulgates the law whose content follows:

First article. - The purpose of this Law is to define the foreign trade regime applicable to the import and export operations of the goods hereinafter referred to as: goods

**CHAPTER I
OF THE REGIME FOR IMPORTS AND EXPORTS OF PRODUCTS**

Art. 2. - The import and export of products are free with the exception of products subject to the restrictions provided by law.

Art. 3. - All products related to safety, public order, hygiene, health, morals, protection of fauna and flora and cultural heritage are excluded from the regime of freedom of trade.

The list of products referred to in this Article shall be fixed by decree.

Art. 4. - Except in the case of occasional operations without commercial character, imports and exports of products are carried out by natural or legal persons whose activity involves the use, production or sale of imported or exported products and who exercise in accordance with the regulations governing their activities in Tunisia.

Art. 5. - The products excluded from the regime of the freedom are imported or exported under authorizations of import and export granted by the Minister of Commerce.

Art. 6. - The procedures for carrying out import and export operations shall be fixed by decree.

Art. 7. - Import and export operations are subject to the application of the procedures and methods of regulation provided for by the exchange legislation in force.

**CHAPTER II
TECHNICAL CONTROL OF IMPORTS AND EXPORTS**

Art. 8. - Imported products may be subject to a technical control of conformity with national technical standards or regulations or international standards or, where appropriate, with the special conditions agreed between the supplier and the importer insofar as these specifications are not contrary to national and international standards and the interests of the consumer.

¹ Preparatory work. Debated and adopted by the Chamber of Deputies in its meeting of February 22, 1994.

Art. 9. - The exported products may be subject to a technical control of conformity with the national technical standards or regulations or the international standards in force, or the technical specifications applicable in the importing country, and if necessary, with the special conditions provided between the exporter and the customer to the extent that these conditions are not contrary to national and international standards and the interests of the consumer.

Art. 10. - Technical controls for import and export as provided for in Articles 8 and 9 shall be carried out without prejudice to the regulations relating to specific veterinary and phytosanitary controls carried out by the competent services of the Administration.

Art. 11. - The methods of technical control as well as the organizations authorized to exercise it are fixed by decree taken on the proposal of the Minister of Commerce.

Products subject to the technical control are fixed by decree of the Minister of Commerce.

CHAPTER III **OF DEFENSE AGAINST UNFAIR IMPORT PRACTICES**

SECTION I *OF THE INSTITUTION OF COUNTERVAILING RIGHTS*

Art. 12. - Any import operation of dumped or subsidized products which, on release for consumption, causes or threatens to cause material injury to a similar domestic production, or substantially delays, is deemed to be an unfair import practice the creation or development of a similar national production.

Art. 13. - Any product is considered to be the subject:

- of dumping, if the export price to Tunisia is lower than its normal value or that of a like product found in the ordinary course of trade in the country of export or of origin.

- of a subsidy, if it has benefited in the country of export or origin from a direct or indirect premium on production, processing, export or transport.

Art. 14. - A countervailing duty on imports may be imposed on any dumped or subsidized product.

The amount of this duty may not exceed the dumping margin or the amount of the subsidy.

Definitive and provisional countervailing duties are established by order of the Minister of Finance on the proposal of the Minister of Commerce.

These duties are recovered as in the case of customs duties.

Art. 15. - Where a preliminary examination shows that an imported product shows evidence of dumping or subsidization causing or threatening to cause, material injury to a similar domestic production, its release for consumption on the Tunisian market, may be subject to the posting of a security equal to the margin of dumping or the amount of the subsidy, as a provisional countervailing duty.

The provisional countervailing duty shall be valid for a maximum period of four months from the date of its application.

However, the Minister of Finance may, on the proposal of the Minister of Commerce, extend it for an additional period of two months.

Art.16. - Where a provisional countervailing duty has not been imposed on imports of dumped or subsidized products and released for consumption and the injury or threat of injury caused by such imports, has been definitively established, the Minister of Finance may, on the proposal of the Minister of Commerce, institute a countervailing duty on such imports with retroactive effect, provided that a period of ninety days has not passed since the date of declaration of the said customs products for their release for consumption.

Art. 17. - The regularization of the guarantee of the provisional countervailing duty provided for in article 15 of this law is, as the case may be, carried out as follows:

- if the definitive countervailing duty is equal to the provisional duty, subject of the guarantee deposited, it will be definitively recovered,
- if the definitive countervailing duty is higher than the provisional duty subject to the security posted, the difference will be recovered,
- if the definitive countervailing duty is lower than the provisional duty subject to the security posted, the excess amount is reimbursed.

Art. 18. - Where it is found after investigation that the exporter bears the countervailing duty, in whole or in part, directly or indirectly, an additional countervailing duty may be imposed in accordance with Articles 14 and 15 of this Law.

Art. 19. - The terms and conditions for assessing the normal value, the injury suffered by the domestic industry, the dumping or subsidy margin, the procedures for the application of the provisional and definitive countervailing duties and the other related procedures in defense against dumping and subsidy practices, are fixed by decree.

SECTION II

INHERENT PROCEDURE IN REQUESTS AND INVESTIGATIONS

Art. 20. - Applications relating to dumped or subsidized imports shall be lodged with the Ministry of Commerce either by natural or legal persons or by the bodies concerned.

The written request to the Minister of Commerce must contain sufficient evidence of dumping or subsidization causing or likely to cause material injury to like domestic production.

Art. 21. - When, following a preliminary examination of the application, it appears that there is sufficient evidence, the Minister of Commerce immediately orders the initiation of an investigation in the matter and officially informs the parties concerned.

The initiation of an investigation does not preclude clearance operations of the products concerned.

Art. 22. - When the opening of an investigation is decided, the Minister of Commerce makes the following arrangements:

- send the requests for information necessary for the investigation to the parties concerned who must, after completing them, forward them to the services of the Ministry of Commerce, within thirty days from the date of receipt. This period may, if necessary, be extended for a further 15 days;
- the announcement in the Official Gazette of the Republic of Tunisia of the opening of an investigation concerning the dumped or subsidized product.

Where the request has not been accepted for lack of sufficient evidence, the applicant is informed.

Art. 23. - For the verification of the information provided during the investigation, the agents of the Ministry of Commerce or other authorized agents may make visits and carry out examinations at the work and production sites belonging to the natural or legal persons concerned by the investigation.

The same procedure may be initiated outside Tunisian territory, in agreement with the exporter and the competent authorities of the country concerned.

If necessary, and taking into account the particularities of the file to be treated, information can be collected from various Tunisian institutions or public institutions or foreigners inside or outside the country.

The investigation continues on the basis of the data available in the hands of the investigators when it appears that one of the parties concerned cannot provide, for any reason, the information required, provides false information, refuses to provide information or seeks to obstruct the investigation.

Art. 24. - Information obtained during the investigation may not be used for purposes other than those of the dumping or subsidy proceeding.

Stakeholders are required to provide investigators with a non-confidential summary of such information when requested.

The Tunisian Administration is entitled, in the event of legal recourse, to provide the confidential information, or presumed such by the parties concerned, in order to justify its action in justice tending to the application of the regulation concerning the defense against dumping and subsidy practices.

Art. 25. - The investigating authorities may hear the parties involved on their request, or for the purposes of the investigation, together or separately.

Interested parties may, when they so request in writing, take cognizance of non-confidential information with the exception of that relating to the investigation.

Art. 26. - The agents of the economic control as well as all the other persons called to know the investigation file, are held to the professional secrecy and they are applicable, the provisions of Article 254 of the Penal Code.

Art. 27. - The exporters and importers of the product under investigation, as well as the applicants, may be informed of the progress and the results of the investigation.

Such information which may be provided in writing does not, however, prejudge decisions to be taken.

Art. 28. - Each party concerned has the right to request in writing to the Minister of Commerce to consult with a view to reaching an amicable settlement of the disputes that may arise in the fight against the practices of dumping or subsidy.

Art. 29. - Upon the announcement in the [Official Gazette of the Republic of Tunisia](#) of the initiation of the investigation provided for in Article 22 of this Law, the operators who are about to import the dumped or subsidized product shall inform the Minister of Commerce of the quantities and values of the proposed importation before carrying out customs clearance formalities of said product.

Art. 30. - The investigation ends either by its closure without provisional or definitive measure, or by the acceptance of the offered undertakings provided for in Article 31, or when the subject of the complaint has ceased to exist.

Any decision closing the investigation is announced in the Official Gazette of the Republic of Tunisia.

When acceptable commitments are offered during the investigation, the investigation may be terminated.

The termination of the investigation does not preclude the definitive collection of amounts secured by provisional countervailing duties.

Art. 31. - Commitments means any act or action by which:

- (a) the Government of the country of origin or export of the subsidized product, eliminates or restricts it, or takes other measures to put an end to its adverse effects;
- (b) the exporter concerned revises its prices or withdraws its exports in order to eliminate the dumping margin or the resulting adverse effects.

In the event of non-compliance with the undertakings offered, the procedure resumes its normal course, on the basis of the party's recognition of the practice of dumping or subsidization and of its detrimental effects to domestic production.

SECTION III

REVIEW AND RESTITUTION

Art. 32. - Decisions imposing countervailing duties and accepting the undertakings provided for in Article 31 of this Law may be subject to review.

This review may take place at the request of interested parties who submit evidence of a change of circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since date of the imposition of the countervailing duties.

Art. 33. - The request for review is addressed to the Minister of Commerce. Where it appears that a review is necessary, the investigation shall be reopened in accordance with Articles 22, 23, 24 and 25 of this Law.

The reopening of the investigation does not affect the measures taken.

The conclusion of the investigation concerning the reconsideration of the measures may lead either to the modification of the latter or to their confirmation.

In the case of a revision of the countervailing duties, the difference will be refunded.

CHAPTER IV

OF THE NATIONAL COUNCIL FOR EXTERNAL TRADE

Art. 34. - It is created a National Council of Foreign Trade charged in particular to:

- advise on the export promotion strategy and foreign trade policy;
- follow the measures relating to the defense against dumping and subsidy practices;
- monitor the evolution of exports and imports and propose provisions and measures to improve the trade balance;
- order the program of national and international fairs and economic events organized in Tunisia and abroad;
- propose the budget for the financing of the national program of fairs and exhibitions.

The composition and operating methods of the National Council for Foreign Trade are set by decree on the proposal of the Minister of Commerce.

Art. 35. - Fairs and events within the meaning of this Law are deemed to be any event of a general or specialized character whose main purpose is to exhibit or present samples and types of products or other materials with a view to making them known or marketing them.

The methods of classification, organization and operation of fairs and exhibitions are fixed by decree on the proposal of the Minister of Commerce.

CHAPTER V MISCELLANEOUS

Art. 36. - Imports or exports of products which violate the procedures and formalities provided for in Articles 3, 4, 7, 8, 9, 10 and 38 of this Law and the texts adopted for its application shall be suppressed in accordance with the legislation in force, especially in customs, tax, foreign exchange, economic control, technical control, hygiene, health and safety.

Art. 37. Any importation of products not conforming to the provisions of Articles 8 and 10 of this Law is liable to suppression in accordance with the legislation in force.

Art. 38. - Infringements of the provisions of the present Law and the texts taken for its application are recorded by minutes drawn up by inspectors of the economic control and agents duly mandated by the Minister of Commerce, the Minister of Finance or any other Department or public body authorized for this purpose.

Art. 39. - Notwithstanding the provisions of Sections 2 and 3 of this Law, certain products, the list of which is fixed by decree, remain on a transitional basis placed under the authorization of importation and during the period of implementation of the program for the liberalization of foreign trade.

Art. 40. - The provisions of this law come into force from July 1, 1994, and consequently, all previous provisions contrary to this law are repealed and in particular:

- the provisions of Article 41 of the Exchange Code and of foreign trade annexed to [Law 76-18](#) of January 21, 1976, relating to recasting and codification of the legislation of the currencies and foreign trade, regulating the relations between Tunisia and the foreign countries.

- [Law 66-1](#) of January 28, 1966, on the creation of a national council of fairs and exhibitions and [Law 88-9](#) of February 23, 1988, which amended and completed it.

- [Decree-Law No. 85-11](#) of September 27, 1985, on the regulation of the exercise of import trade, ratified by Law No. 85-95 of November 25, 1985.

This law will be published in the Official Gazette of the Republic of Tunisia and executed as the law of the State.

Tunis, March 7, 1994.

Zine El Abidine Ben Ali