

# WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices  
Committee on Subsidies and  
Countervailing Measures**

Original: French

## **NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

Replies to the Questions Posed by EGYPT<sup>1</sup>, the UNITED STATES<sup>2</sup>, and the  
EUROPEAN COMMUNITIES<sup>3</sup> Concerning the Notification by Tunisia<sup>4</sup>

The following communication, dated 21 August 2001, has been received from the Permanent Mission of Tunisia.

### **INTRODUCTION**

The WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures have been adopted under Law No. 95-06 of 23 January 1995 ratifying the results of the Uruguay Round. Since that date, these Agreements have formed an integral part of Tunisia's domestic legislation.

In essence, Law No. 99-9 of 13 February 1999 on Protection against Unfair Import Practices, and Decree No. 2000-477 of 21 February 2000 specifying the criteria and methods for determining unfair import practices, are based on the relevant WTO Agreements mentioned, which lay down rules for the application of anti-dumping measures or countervailing measures. To date, Tunisia has not needed to apply these measures.

Nevertheless, if a particular provision is not covered by this legislation, either because of the special nature of the rules belonging to the legislative regime and those belonging to the regulatory regime or because the provision belongs to the category of rules that are purely treaty provisions, the rules in the WTO Agreements apply.

### **QUESTIONS POSED BY EGYPT**

**1. Article 3.2 of the WTO Anti-Dumping Agreement states that "With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member ...".**

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<sup>1</sup> G/ADP/Q1/TUN/2-G/SCM/Q1/TUN/2.

<sup>2</sup> G/ADP/Q1/TUN/3-G/SCM/Q1/TUN/3.

<sup>3</sup> G/ADP/Q1/TUN/4-G/SCM/Q1/TUN/4.

<sup>4</sup> G/ADP/N/1/TUN/2-G/SCM/N/1/TUN/2.

**What are the criteria applicable by the Authority in cases of determining the volume of the dumped imports whether in absolute or relative terms and consequently the effect of the dumped imports on prices, especially without the existence of any articles relating to these topics in the Law or the Regulation?**

Reply

Articles 19, 20 and 21 of Decree No. 2000-477 specifying the criteria and methods for determining unfair import practices allow the provisions in Article 3.2 of the Anti-Dumping Agreement to be applied when determining the existence of injury.

**2. Article 7 of the Tunisian Law sets out "... a complaint must include evidence of the existence of dumping or subsidy liable to anti-dumping or countervailing duties, of injury or of causal link between the imports allegedly being dumped or subsidized and the alleged injury".**

**How could the Authority, pursuant to Article 5.2 of the Anti-Dumping Agreement, verify "prices at which the product is sold when destined for consumption in the country of export and the history of the volume of the allegedly dumped imports" as the Law and Regulation do not refer to this information?**

Reply

This verification can be carried out using all the means of proof allowed.

**3. Article 12 in the Tunisian Law states that: "... the Minister responsible for trade shall send a request for information required for the investigation to the authorities of the exporting countries, as well as to the exporters concerned". However, Article 6.1 of the Anti-Dumping Agreement states that "All interested parties shall be given notice ...".**

**Please explain how will the Authority notify all of the interested parties referred to in Article 6.11 of the Anti-Dumping Agreement?**

Reply

Interested parties will be notified in writing in conformity with current administrative procedures through publication in the *Journal Officiel* (Official Journal) or through a diplomatic representative.

- **"A request for information shall be answered within the time-limits and in the form specified in the request."**

- **Please clarify the "specified time-limits" to receive the information required for the investigation within the meaning of Article 6.1.1 of the Anti-Dumping Agreement?**

Reply

The time-limits specified in the request for information are reasonable time-limits that allow the various parties to submit their views on the question and defend their interests.

- **"This notice shall indicate the nature of the product and the country or countries concerned and include a summary of the information received", this differs from the text of Article 12.1.1 of the Anti-Dumping Agreement.**

**How does the Authority plan to meet the requirement of Article 12.1.1 of the Anti-Dumping Agreement, as there are no references in the proposed Regulation to the rest of the requirements mentioned in the said Article?**

Reply

With regard to notifying the public, the provisions in Article 12 of the Law correspond to those in Article 12.1.1 of the Anti-Dumping Agreement. The summary of the information includes the adequate information called for in the latter Article.

**4. Article 5.5 of the Anti-Dumping Agreement states that "... after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned".**

**How do the Services plan to implement the provisions of the above-mentioned Article?**

Reply

According to Article 12 of the Law, the request for information is sent to the diplomatic representative in the exporting country.

**5. Article 44 of the proposed Tunisian Law states that "... the importer must submit a request, supported by evidence, to the Minister responsible for trade within six months from the date of assessment of the amount of the definitive duties imposed".**

**Could the Authority explain what is the legal basis for determining the six-month period mentioned in this Article and how does the Authority plan to implement the provisions of Article 9.3.2 of the Anti-Dumping Agreement?**

Reply

The six-month time-limit provided in Article 44 of the aforementioned Tunisian Law allows the application of the relevant provisions in Article 9.3.2 of the Agreement and observance of the time-limits prescribed therein.

**6. Article 45 of the proposed Law states that "No request for reimbursement of definitive anti-dumping duties or definitive countervailing duties shall be deemed to be duly supported by evidence unless it includes accurate details of the amount whose reimbursement is claimed and is accompanied by customs documents relating to the calculation and payment of that amount." Moreover, Article 46 of the Law states that "The request for reimbursement must include a statement by the exporter or producer establishing that the margin of dumping or the amount of the subsidy that gave rise to countervailing duties has been reduced or eliminated. Any request that does not include such a statement shall be rejected."**

**Could the Authority explain the legal basis for the text of these Articles? Please clarify how the provisions of Article 46 are consistent with the Agreements?**

Reply

In conformity with the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures, the Tunisian Law requires that the request for reimbursement be supported by evidence that the dumping practices or subsidies have been eliminated. The requirement that the exporter or producer should submit a statement establishing that the margin of dumping or the amount of the subsidy that gave rise to the duties has been reduced or eliminated is simply a form of evidence that allows such practices to be prevented in the future.

**7. It is noted that the Tunisian Law and Regulation did not include any text pertaining to the following:**

- (a) Special and preferential treatment of developing countries;**
- (b) dispute settlement procedures;**
- (c) notifying the WTO Committees on Anti-Dumping and Subsidies with preliminary and final determinations.**

Reply

These are rules that are purely treaty provisions and therefore apply in accordance with the law ratifying the results of the Uruguay Round.

**8. Article 20 of the Regulation states that: "The examination of the impact of the dumped or subsidized imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry ...". However, Article 3.4 of the Anti-Dumping Agreement states that "... Evaluation of all the economic factors and indices having a bearing on the state of the industry , including ..., ability to raise capital or investments".**

**We notice that Article 20 ignored two elements of the factors to be examined by the authorities. This is not consistent with the requirements of Article 3.4 of the Anti-Dumping Agreement.**

Reply

The list of economic factors and indices given in Article 20 of the Decree is not exhaustive but indicative. Any other indicator of the extent of the injury can be considered in conformity with Article 3.4 of the Agreement.

**QUESTIONS POSED BY THE UNITED STATES**

**Law No. 99-9 of 13 February 1999 on Protection Against Unfair Import Practices**

**1. Regarding the definition of "domestic industry" in Chapter I, Article 2, can Tunisia explain its treatment of domestic producers who are (or are related to) exporters or importers of the allegedly dumped or subsidized product?**

Reply

The Law on Protection Against Unfair Import Practices has objective scope in that it applies to dumping and subsidies practices and their results.

**2. Does Tunisia's Law provide for "regional industries" as contemplated by Article 4.1(ii) of the Anti-Dumping Agreement and Article 16.2 of the SCM Agreement?**

Reply

The Tunisian Law only concerns the domestic industry.

**3. Can Tunisia clarify the purpose of the reference to "country of origin" in Chapter II, Article 4(a), its description of the "financial contribution" element of a subsidy?**

Reply

The intention of the concept of country of origin in Article 4(a) of the aforementioned Law is to provide more detail in order to target the origin of subsidy practices and facilitate the task of the authority responsible for the investigation.

**4. Tunisia's Law at Chapter II, Article 7, indicates that an anti-dumping or countervailing duty complaint must include evidence of (1) the existence of dumping or subsidy, (2) of injury *or* of (3) a causal link between the allegedly dumped or subsidized imports and the alleged injury (emphasis added). Use of the disjunctive "or" in this sentence infers that the complaint need not include evidence of all three of these elements, particularly inferring that so long as there is evidence of dumping or unfair subsidization and injury, the complaint need not include evidence of the causal link between injury and the offending imports. Is this a correct interpretation of the Tunisian law?**

Reply

Tunisia's legislative texts on unfair import practices were drawn up in Arabic, which is the official language for enacting laws in Tunisia and is the authentic language text. The Arabic version of this Law requires a combination of the three conditions, namely, the existence of dumping or a subsidy to which anti-dumping duties or countervailing measures are applicable, injury, and a causal link. Consequently, Tunisia confirms that these three conditions must be met.

**5. If so, contrast this with Chapter II, Article 10, of the Tunisian Law, which indicates that the Minister responsible for trade may self-initiate an investigation only if he has sufficient evidence of the existence of "dumping or subsidy, injury *and* causal link, as specified in Article 7, to justify the initiation of an investigation" (emphasis added).**

Reply

See the reply to question 4.

6. Chapter II, Article 12, indicates that the Minister responsible for trade will place a notice of initiation of a dumping or subsidies case in the *Journal Officiel*. There appears to be no requirement in Article 12 that the notice include the address to which representations by interested parties should be directed, or the time-limits by which interested parties are to make their views known. How is this consistent with the requirements of Article 12.1.1 of the Anti-Dumping Agreement and Article 22.2 of the SCM Agreement?

Reply

All parties concerned have the right of defence. The fact that the response to a request must be given within the time-limits and in the form specified in the request does not exclude the right of defence available to all parties concerned.

7. Chapter II, Article 18, states that parties to the investigation may be informed of the progress and outcome of the investigation, but it does not specify at what points during the investigation the parties will be so informed. Does Tunisian law provide that, before the final determination is made, all interested parties will be informed of the essential facts under consideration in time for them to defend their interests, consistent with Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement?

Reply

Article 18 of the Law on Unfair Import Practices allows the application of the provisions in Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement. Consequently, the competent Tunisian authority will always inform interested parties of the essential facts so that they can defend their interests.

8. Regarding Chapter VI, Article 50 (provision for judicial review), can Tunisia explain how the requirement that recourse to judicial review within 20 days of an anti-dumping or countervailing duty determination by the investigating authority compares to other requests for judicial review made to the competent court of first instance?

Reply

The time-limit of 20 days is the public policy time-limit allowed for judicial appeals in Tunisia.

**Decree No. 2000-477 of 21 February 2000 Establishing the Criteria and Procedures for Determining Unfair Import Practices**

9. Can Tunisia explain its practice of resorting to the establishment of normal value in the "country of origin" rather than the exporting country when the product is not produced in the country of export or when there is no comparable product for it in the country of export, as provided in Article 2, second paragraph?

Reply

Pursuant to the Decree of 21 February 2000, the normal value is established on the basis of the comparable price paid or payable in the ordinary course of trade either in the country of origin or in the exporting country.

If it proves difficult to utilize this method, one of the following methods may be used:

- The export price for the same product to a third country;
- the constructed value, in other words the cost of production of the product in question plus a reasonable amount for administrative, selling and general costs and for profits.

**10. Does Tunisia deem prices not to be in the "ordinary course of trade" in circumstances other than those in which parties "appear to be associated" or "have concluded a compensatory arrangement," as stated in Article 2, third paragraph, or in which parties have sold the product below the cost of production, as stated in Article 4?**

Reply

Tunisia confines itself only to the cases set out in Articles 2 and 4 of this Decree, in conformity with the relevant WTO Agreements.

**11. Can Tunisia explain what sources it refers to in determining the exchange rate as described in Article 12?**

Reply

According to Article 12 of this Decree, the exchange rate is fixed by utilizing the rate in effect on the date of sale, which is usually the date of the contract, the order, the confirmation of the order or the invoice, according to the document setting out the material terms for the sale. The rates used are those communicated by the Central Bank of Tunisia.

**12. What type of evidence does Tunisia require from interested parties that wish to deduct administrative costs or other offsets from the total subsidy, as explained in Article 17(b)?**

Reply

Interested parties are requested to submit all evidentiary documents drawn up in the prescribed form.

**13. Article 20 of the Decree indicates that, for purposes of determining material injury or threat thereof, Tunisia examines several factors having a bearing on the state of the industry as described in Anti-Dumping Agreement Article 3.4 and SCM Agreement Article 15.4. Article 20 does not, however, specify that the investigating authority must examine the domestic industry's ability to raise capital or investments. Does Tunisia consider this to be a relevant factor having a bearing on the state of the industry for purposes of determining material injury or threat thereof?**

Reply

The economic factors and indices listed in Article 20 of the Decree for the purpose of examining the effect of dumped or subsidized imports on the domestic industry are listed for indicative purposes and are not exhaustive.

Any other factor deemed important may also be taken into account, for example, the ability to raise capital or investments.

**14. Tunisia indicates in Article 21 that its authorities will consider four of the five factors enumerated in Anti-Dumping Article 3.7 and SCM Article 15.7 in making a determination of the threat of material injury. The one factor referenced in these Articles of the WTO Agreements that is not contained in Article 21 of the Tunisian Law references a substantial increase in the capacity of the exporter, taking into account the availability of other export markets to absorb any additional exports. Can Tunisia explain why it is not required to consider this factor in making a determination of the threat of material injury?**

Reply

Article 21 of the Decree takes into account, but does not exclude, factors used to determine the existence of a threat of serious injury listed in Article 3.7 of the Anti-Dumping Agreement and 15.7 of the SCM Agreement.

**15. Chapter II, Article 7 of Tunisia's Law No. 99-9 requires that a request for an antidumping or countervailing duty investigation be made "by or on behalf of the domestic industry". However, Article 25 of the Tunisian Decree, which describes the information that must be provided in a complaint against unfair import practices, does not require that the complaint identify the industry on behalf of which the application is made. How is this consistent with Anti-Dumping Agreement Article 5.2 and SCM Agreement Article 11.2?**

Reply

The aforementioned Decree is a general regulatory framework for the implementation of the Law on Protection Against Unfair Import Practices. The first paragraph of Article 25 of the Decree refers to Articles 7 and 8 of the Law.

Pursuant to these Articles, any complaint must necessarily indicate the domestic industry on whose behalf the request is made.

**16. While Article 25 does require that the complaint contain evidence of dumping or unfair subsidization and injury, it does not require other elements required by Anti-Dumping Agreement Article 5.2(iv) and SCM Agreement Article 11.2(iv), such as information on the volume of the allegedly dumped/subsidized imports. Per the WTO Agreements, it must also require information on the effect of the imports on the prices of the like product in the domestic market, and the consequent impact of the imports on the industry as demonstrated by relevant factors having a bearing on the state of the domestic industry. How is Article 25 of the Decree consistent with Anti-Dumping Agreement Article 5.2(iv) and SCM Agreement Article 11.2(iv)?**

Reply

Article 25 of the Decree concerning the criteria for complaints must be read in the light of Article 20 of the same Decree and Article 9 of the Law on Protection Against Unfair Import Practices.

These Articles show that any request must contain information on the scope of the injury caused to the domestic industry, as required by Article 5.2(iv) of the Anti-Dumping Agreement and Article 11.2(iv) of the SCM Agreement.



## QUESTIONS POSED BY THE EUROPEAN COMMUNITIES

The notification of Decree No. 2000-477 of 21 February 2000 states on page 21 that "[a] subsidy liable to provisional countervailing duty shall be considered *de minimis* if the subsidy is less than 1 per cent *ad valorem*".

1. Can Tunisia please confirm that neither provisional nor definitive countervailing duties will be imposed if the subsidy is less than 1 per cent *ad valorem*?
2. Does the threshold of 1 per cent also apply to imports originating in developing countries or do the thresholds laid down in Articles 27.10(a) and 27.11 apply?

### Reply

The subsidy liable to a provisional countervailing duty is considered *de minimis* if it is less than 1 per cent *ad valorem*, as provided in Article 18 of Decree No. 2000-477 and in accordance with Article 11.9 of the SCM Agreement.

For developing countries, the relevant provisions agreed by the Members of the WTO apply.

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