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

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

Replies of ZIMBABWE¹ to Questions posed by the EUROPEAN COMMUNITY², HONG KONG³, JAPAN⁴ and the UNITED STATES⁵

The following communication, dated 10 March 1997, has been received from the Permanent Mission of Zimbabwe.

REPLY TO QUESTION FROM THE EUROPEAN COMMUNITY

The countervailing duty legislation of Zimbabwe consists of only one section e.g. Section 79 divided into 4 paragraphs and one section on general procedural issues. Could Zimbabwe explain how it intends to apply the provisions, such as definition of subsidy, specificity requirements, calculation of subsidy, etc. of the WTO Subsidies Agreement in conducting countervailing duty investigations?

Section 235 of the Customs and Excise Act provides for the mechanism. It gives the Minister power to make such regulations as he may deem expedient to prescribe anything to be prescribed under the provisions of this Act, to give force or effect to the Act or for its better administration. Regulations may therefore be made to deal with such cases.

REPLIES TO QUESTIONS FROM HONG KONG

Questions

- (a) *What is the legal status of the Agreement in Zimbabwe? Does it have the force of law? If the domestic legislation is in conflict with the Agreement, which will take precedence?*

Section III(b) of the Constitution of Zimbabwe provides that international agreements do not form part of our laws unless incorporated into law by or under an Act of Parliament. Therefore the Agreements do not have the force of law. However, once the Agreements have been incorporated they form part of our laws and they will be given effect to. They shall prevail

¹G/ADP/N/1/ZWE/2-G/SCM/N/1/ZWE/2.

²G/ADP/Q1/ZWE/2-G/SCM/Q1/ZWE/2, ³G/ADP/Q1/ZWE/4-G/SCM/Q1/ZWE/4,
⁴G/ADP/Q1/ZWE/3-G/SCM/Q1/ZWE/3, ⁵G/ADP/Q1/ZWE/1-G/SCM/Q1/ZWE/1.

even when they are in conflict with any other law including the Customs and Excise Act itself, section 102 of the Act.

- (b) *Are the A-D officials of Zimbabwe required, legally or otherwise, to observe the provisions of the Agreement in the conduct of A-D proceedings, or to consult them, for example on the interpretation of domestic legislation?*

No.

- (c) *What is the timetable of the review and any subsequent amendments to the domestic legislation?*

Zimbabwe is in the process of revising its laws to reflect the provisions of the A-D Agreement. We have no precise indication of when these revisions will be completed, it is an on-going process.

- (d) *How will Zimbabwe ensure compliance with the Agreement before its laws are brought into total conformity with it?*

Section 235 of the Customs and Excise Act provides for the mechanism. It gives the Minister power to make such regulations as he may deem expedient to prescribe anything to be prescribed under the provisions of this Act, to give force or effect to the Act or for its better administration. Regulations may therefore be made to deal with such cases.

2. *What judicial review procedures has Zimbabwe put in place in observance of its obligations under Article 13 (Judicial Review) of the Agreement?*

Order 33, Rule 256 of the High Court of Zimbabwe rules, provided for the review of decisions or proceedings of any inferior court, or any tribunal, board or officer performing judicial, quasi judicial or administrative functions. Order 33, Rule 256 is in conformity with Article 23 of the Agreement on Anti-Dumping.

3. *What is Zimbabwe's policy and law for the implementation of WTO Panel Reports?*

Our policy is to adhere to them. Panel reports are automatically adopted, these are adapted by making regulations in pursuance to Section 235.

REPLY TO QUESTION FROM JAPAN

Article 73(1) of the Zimbabwean Law stipulates a definition of "local content" at the beginning. However, the words "local content" do not appear at all throughout the following provisions of Part IV concerning anti-dumping duties and countervailing duties.

- Q. Why are the words "local content" defined in Part IV of the Zimbabwean Law?*

Section 85(1) defines "local content" for purposes specified in sections 89(1)(b)(i), 89(2) and 89(3).

REPLIES TO QUESTIONS FROM THE UNITED STATES

1. *Are you in the process of revising your law to reflect the provisions of the Uruguay Round Anti-Dumping and Subsidies and Countervailing Measures Agreements? Do you have any indication of when these revisions will be completed?*

Yes, Zimbabwe is in the process of revising its laws to reflect the provisions of the Uruguay Round Agreements. We have no precise indication of when these revisions will be completed, it is an on-going process.

2. *The A-D Agreement does allow comparison of the export price with a price in a third country provided that such price is “representative” (A-D Article 2.2); however, under II.77(1)(b) of Zimbabwe’s law the highest comparable price must be used. Could you please explain this apparent inconsistency?*

This statement is not accurate. Section 90 of the Customs and Excise Act (Chapter 23:02), basically provides for any three methods of comparison, and the highest comparable price when there is no domestic price to compare the goods with, is one of them. The others are the cost of production or manufacture or when it cannot be found, the domestic price as the investigating authority may determine.

3. *When can a provisional measure be imposed under paragraph 78?*

A provisional measure can be imposed under Section 91 of the Act if in the Minister's opinion:

- (a) any goods have been or are being or are likely to be imported in circumstances in which they are deemed in terms of subsection (1) of section 90 to be dumped (section 90(4)(a)) and when the effect of such importation has been or will be to cause or threaten detriment to an established industry in Zimbabwe or to affect detrimentally the establishment or expansion of an industry in Zimbabwe (section 90(4)(b)). The Minister may by notice in the gazette impose a provisional measure that will be effective from the date of publication in the gazette.

4. *Under paragraph 79(3) how is the amount of the countervailing duty determined?*

The amount of countervailing duty is determined under section 92(3) by reference that it shall not exceed the amount as determined by the investigating authority of the bounty or subsidy referred to in paragraph (a) of subsection (2) of section 92. Section 92(3) conforms with Article 19.4 of the Agreement on Subsidies and Countervailing Measures which requires a countervailing duty to be equivalent to the subsidy found to exist.

5. *What provision has been made for conducting reviews of new shippers as provided for under A-D Article 9.5?*

No provision has been made for conducting reviews of new shippers as provided for under A-D Article 9.5.

6. *What provision has been made for judicial review as provided for under A-D Article 13?*

Order 33, Rule 256 of the High Court of Zimbabwe rules, provided for review of decisions or proceedings of any inferior court, or any tribunal, board or officer performing judicial, quasi judicial

or administrative functions. Order 33, Rule 256 is in conformity with Article 23 of the Agreement on Anti-Dumping.

7. *What provision has been made for termination of an order as required by A-D Article 11.3?*

Section 93(7) provides that once a substantive order has been put in place, it can be repealed by the Minister. A provisional anti-dumping charge is limited to three months and may be extended for a further period not exceeding three months. Section 94, in addition provides that the notice should be laid before parliament, if not it shall cease to be in force.

8. *What provision is made under Zimbabwe's law for adjusting normal value or export price as appropriate to ensure a fair comparison as required under A-D Article 2.4?*

Section 90(2)(a) - the comparison of prices shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time; or when there is no export price the investigating authority may determine export price on the basis of the price of when the imported goods are first resold to an independent buyer or if not resold, on such basis as the investigating authority thinks under section 90(2)(b).

9. *Why is reference made in section 73 to "local content"?*

Section 85(1) defines "local content" for purposes specified in sections 89(1)(b)(i), 89(2) and 89(3).

10. *Zimbabwe's law does not appear to have any requirements for filing a petition or conducting an investigation such as those required by A-D Article 5? Can you please explain what information is required to be presented in order for the government to initiate a case and how investigations are conducted?*

Investigations are initiated by or on behalf of a domestic industry. Regulations with this information were made in terms of section 235(1)(c) which provides for making of regulations dealing with the manner in which complaints as to the dumping of goods shall be made and the investigations thereof by a board or a person appointed for this purpose. Zimbabwe's law has requirements for filing of a petition or conducting investigations as provided by the customs and excise (Anti-Dumping and Countervailing Duties) (investigation) Regulations Statutory Instrument 429 of 1984. Information required to be presented to initiate investigations is set out in section 4 of the Regulations and the conduct of investigations is set out in section 5. These provisions basically comply with A-D Article 5.

11. *What is the relationship between the WTO Agreements and Zimbabwe's law?*

Section III(b) of the Constitution of Zimbabwe provides that international agreements do not form part of our laws unless incorporated into law by or under an Act of Parliament. Therefore the Agreements do not have the force of law. However, once the Agreements have been incorporated they form part of our laws and they will be given effect to. They shall prevail even when they are in conflict with any other law including the Customs and Excise Act itself, section 102 of the Act.

12. *What is the earliest date that an A-D or CVD investigation can be completed?*

Our legislation does not provide for an early completion of investigations.