

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/376**

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(96-1516)

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

Original: English

QUESTIONS POSED BY  
THE UNITED STATES TO SOUTH AFRICA<sup>1</sup>  
CONCERNING THE LATTER'S NOTIFICATION OF LAWS AND  
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 16 April 1996, has been received from the Permanent Mission of the United States.

1. Could you please explain how the provisions of paragraph 12 of the Board on Tariffs and Trade Amendments Act, No. 39 of 1995 (the Act) [pages 6-7] concerning the Board's ability to summons witnesses relates to Article 6.2 of the A-D Agreement which states "there shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case"?
2. Can the sanctions of paragraph 19 of the Act [pages 9-10] be applied to foreign firms that fail to provide information?
3. Neither the Act, the Customs and Excise Act ("C&E Act) or the Board on Tariffs and Trade Guide (the Guide) appear to require a finding that a financial contribution confers a benefit or is specific prior to imposing countervailing duties. Is this an accurate reading of South Africa law? If so could you please explain the apparent omission?
4. There does not appear to be any provision under South African law by which a subsidy, which is otherwise countervailable could be found non-countervailable under Article 8 of the SCM Agreement. Is this accurate?
5. Paragraph 23(b) of the Guide [page 22] requires that a petition provide, to the extent possible, details of the volume and value of domestic production. However, the South African law does not appear to grant the board the authority not to initiate an investigation if the thresholds for industry support contained in Article 5.4 of the A-D Agreement are not met. Could you please explain?
6. What provision has been made for conducting reviews provided for under Article 9.5 of the A-D Agreement (the so called "new shipper reviews")?
7. Concerning paragraph 40 of the guide [page 25] what is earliest date from the filing of a petition that the board can impose provisional duties?

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<sup>1</sup>G/ADP/N/1/ZAF/1-G/SCM/N/1/ZAF/1

8. What provision has been made for termination of anti-dumping or countervailing duties or reviews of these duties as provided for under Article 11.3 of the A-D Agreement and 21.3 of the SCM Agreement?

9. Paragraph 54 of the Guide [page 27] appears to allow Undertakings prior to the imposition of a preliminary duty. Is this accurate and if so how is it consistent with Article 8.2 of the A-D Agreement?

10. There does not appear to be a provision under South African law for completion of the investigation within one year or within 18 months in exceptional circumstances as provided for in Article 5.10 of the A-D Agreement. Could you please explain?

11. The South African law does not appear to have included any of the procedural safeguards provided under Annex II of the A-D Agreement concerning the use of facts available under Article 6.8 of the A-D Agreement. Under what circumstances will facts available be resorted to?

12. How does South African law implement the requirement of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement requiring the investigating authorities to consider whether there has been a significant increase in dumped or subsidized imports?

13. How does South African law implement the provisions of Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement requiring the investigating authorities to consider whether there has been significant price undercutting by the imports or whether the effects of such imports is otherwise to depress prices to a significant degree or prevent price increases to a significant degree?

14. Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement require an evaluation of all relevant economic factors in the examination of the impact of the dumped or subsidized imports on the domestic industry. What factors do the South African authorities consider in assessing impact? Are the factors set forth in paragraph 6 of the Guide to be considered in assessing the impact of dumped or subsidized imports?

15. Paragraph 11(c) of the Guide states that in assessing causation, consideration is to be given to "factors such as political influences; the state of the economy; labour matters; boycotts; product quality and range; delivery periods; technology employed; the utilisation of production factors; and the policies of the industry concerning production, marketing and finance." How are these factors to be taken into account under South African law? Specifically, how are "political influences" and the "state of the economy" relevant to causation of injury?

16. Paragraph 12 of the Guide states that the Board may introduce anti-dumping or countervailing duty actions pursuant to "internationally accepted principles . . . ." To what internationally accepted principles is this provision referring?

17. There is no provision addressing the issue of the cumulative assessment of the effects of the imports from more than one country as provided for in Article 3.3 of the A-D Agreement and Article 15.3 of the SCM Agreement. Does South African law contemplate cumulation, and if so, under what circumstances?

18. How does South African law implement the requirement of Article 3.6 of the A-D Agreement and Article 15.6 of the SCM Agreement requiring that imports be assessed in relation to the domestic production of the like product or, if not possible, by examination of the narrowest group or range of products?

19. Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement list specific factors that the investigating authorities should consider when analysing threat of material injury. Under South African law do the authorities take these factors into account? Paragraph 25 of the Guide requires that parties provide certain information regarding threat of material injury, but it covers only one of the factors considered by the A-D and SCM Agreements (relating to rate of increase of imports). Paragraph 25(c) of the Guide also requires that the petitioner provide information regarding the state of the relevant industry in the foreign country for purposes of threat of material injury. How is such information taken into account?
20. South African law does not appear to implement the requirement in the SCM Agreement that the nature of the subsidies be considered for purposes of making threat determinations. Is this consistent with Article 15.7 of the SCM Agreement?
21. The term "related" in paragraph 19 of the Guide is not defined. Is this term intended to have the same meaning as in Article 4 (note 11) of the A-D Agreement and Article 16 (note 48) of the SCM Agreement?
22. Does South Africa engage in a regional industry analysis of the domestic industry as set forth in Article 4.1(ii) and 4.2 of the A-D Agreement and 16.2 of the SCM Agreement? If so, please indicate how South Africa conducts a regional industry analysis.
23. Under what circumstances will the South African authorities initiate an investigation that is not brought on behalf of a domestic industry?
24. Paragraph 30 of the Guide states that the governments of the countries concerned will be notified of the Board's decision to initiate an investigation at the same time the notice of initiation is published in the Government Gazette. This appears to conflict with Article 5.5 of the A-D Agreement that requires authorities to notify the government of the exporting Member before proceeding to initiate an anti-dumping investigation. Please indicate how this requirement will be met.
25. South African law does not appear to implement the requirements of Article 5.8 of the A-D Agreement and Article 11.9 of the SCM Agreement concerning prompt termination of investigations in circumstances when there is insufficient evidence of dumping/subsidization or injury; when the margin of dumping/subsidization is *de minimis*; or when the volume of dumped/subsidized imports, or the injury, is negligible. Please indicate how these requirements will be addressed.
26. South African law does not appear to require that investigations be concluded within one year, and no more than 18 months in special circumstances, pursuant to Article 5.10 of the A-D Agreement and Article 11.11 of the SCM Agreement. Please indicate what the time frame for completion of investigations is under South African law.
27. Section 31 of the Guide does not provide for extensions for exporters or foreign producers to reply to anti-dumping and countervailing duty questionnaires as do Article 6.1.1 of the A-D Agreement and Article 12.1.1 of the SCM Agreement. Are extensions ever granted under South African law? If so, under what circumstances?
28. How does South African law implement the provisions regarding oral presentations that are required by Articles 6.2 and 6.3 of the A-D Agreement and Articles 12.2 and 12.3 of the SCM Agreement?

29. Section 4(a)(i) of the Board on Tariffs and Trade Act appears to allow the Board on Tariffs and Trade to investigate dumping or subsidization beyond the Republic of South Africa to the common customs area of the South African Customs Union. In such cases, would producers in the entire area of the common customs area of the South African Customs Union be taken to be the domestic industry as contemplated in Article 4.3 of the A-D Agreement?

30. Section 4(2) of the Board on Tariffs and Trade Act states that the Minister of Trade and Industry may accept or reject a report and recommendations made by the Board on Tariffs and Trade regarding an anti-dumping or subsidization investigation. What are the criteria for rejection of a negative recommendation and report? Would the Minister provide a written report setting forth the reasons for rejecting the Board's recommendation? If a negative recommendation of the Board is rejected by the Minister, on what basis would an anti-dumping or countervailing duty order be issued?

31. Is section 14 of the Board on Tariffs and Trade Act limited to the territory of South Africa?

32. Under South African law will the results of investigations carried out in other Members' territories be made available to the firms to which they pertain as required by Article 6.7 of the A-D Agreement and Article 12.6 of the SCM Agreement?

33. Article 6.9 of the A-D Agreement and Article 12.8 of the SCM Agreement state that the authorities shall inform interested parties of "the essential facts under consideration" before a final determination is made and provide sufficient time for the parties to defend their interests. How will this requirement be addressed under South African law?

34. How does South African law implement the requirement of Article 6.13 of the A-D Agreement and Article 12.11 of the SCM Agreement, which require the authorities to take into account parties' difficulties in supplying the information requested?

35. Where does South African law address Article 7.3 of the A-D Agreement and Article 17.3 of the SCM Agreement which state that provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation?

36. Article 7.4 of the A-D Agreement and Article 17.4 of the SCM Agreement state that provisional measures shall not exceed four months, unless a request by an exporter is made, in which case such measures shall not exceed six months. How is South African law consistent with these provisions given that paragraph 44 of the Guide provides for longer periods?

37. Please explain how the requirements regarding price undertakings set forth in Articles 8.2, 8.4 and 8.5 of the A-D Agreement and Articles 18.2, 18.4 and 18.5 of the SCM Agreement will be fulfilled under South African law.

38. Please explain how the requirements limiting retroactivity set forth in Articles 10.1, 10.2, 10.4, 10.5 and 10.8 of the A-D Agreement and Articles 20.1, 20.2, 20.4, and 20.5 of the SCM Agreement will be fulfilled under South African law.

39. South African law does not appear to implement the requirements of Article 11 of the A-D Agreement and Article 21 of the SCM Agreement which, among other things, require a finding that the expiry of a duty would be likely to lead to a continuation or recurrence of dumping or subsidization and injury to maintain anti-dumping and countervailing duty laws past five years. Please explain how these matters are addressed under South African law.

40. Pursuant to Article 12 of the A-D Agreement and Article 22 of the SCM Agreement, will interested parties be provided with the final report of all fact-finding investigations; decisions with respect to provisional measures; decisions with respect to price undertakings; and decisions with respect to conclusion or suspension of investigations? Will public notice and explanation be given as to termination of undertakings or definitive anti-dumping duties as required by Article 12.2 of the A-D Agreement and Article 22.2 of the SCM Agreement?

41. Where does South African law address the requirements of Article 27 of the SCM Agreement which provides for termination of an investigation of products originating in a developing country in specific circumstances?

42. Where does South African law provide for judicial, arbitral, or administrative review as required by Article 13 of the A-D Agreement and Article 23 of the SCM Agreement?

43. How does South African law implement the requirements of Article 10.4 of the A-D Agreement and Article 20.4 of the SCM Agreement which require the refund of provisional duties in the event of a finding of threat of material injury (except under the circumstances specified in Article 10.2 of the A-D Agreement and Article 20.2 of the SCM Agreement)?

44. Sections 56(3) and 56A(3) of the Customs and Excise Act No. 91 of 1964 state that the provisions of section 48(6) shall apply with respect to sections 56 and 56A (concerning the amendment, withdrawal or reduction of anti-dumping and countervailing duties). Please provide the text of section 48(6) as it was not submitted with the other relevant excerpts of the South African anti-dumping and countervailing duty law.