

WORLD TRADE ORGANIZATION

RESTRICTED

G/SG/W/147

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(96-1407)

Committee on Safeguards

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QUESTIONS CONCERNING THE NOTIFICATION PROVIDED BY SOUTH AFRICA¹ OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 12 April 1996, has been received from the Permanent Delegation of the European Commission.

1. The European Community has certain concerns relating to the conformity with the WTO Agreement on Safeguards of the Safeguard legislation notified by South Africa. For example,

- the concept of "material injury", used for the definition of "disruptive competition" in Section 1 of the Board on Tariffs and Trade Act, has a precise meaning in the WTO legal system (in the Agreements on Anti-Dumping and on Subsidies and Countervailing Measures), and indicates a threshold of injury different from that of "serious injury" used in the WTO Agreement on Safeguards; thus South Africa's legislation would appear to allow safeguard measures to be taken when injury which is not "serious" is present;
- there are no provisions on the procedural requirements of an investigation, notably on the rights of interested parties,
- there are no provisions on the way safeguard measures are implemented (level of a quota, etc.);
- there are no provisions on the duration of a safeguard measure;
- there are no provisions on the non-discriminatory application of a safeguard measure.

Could South Africa indicate if it therefore intends to modify its legislation in the foreseeable future to bring it into line with the disciplines of the WTO Agreement on Safeguards?

2. *If South Africa takes a safeguard measure against Members of the WTO, will the provisions of the WTO Agreement on Safeguards be applicable to such proceedings?*

3. *Under Section 19 of the Board on Tariffs and Trade Act, any person (including an exporter) who does not cooperate to an investigation is subject to criminal prosecution. Does this provision apply in case of safeguard investigations?*

¹G/SG/N/1/ZAF/1.