

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

Questions Posed by the UNITED STATES Regarding the Notification of TUNISIA¹

The following communication, dated 9 April 2001, has been received from the Permanent Mission of 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?
2. Does Tunisia’s law provide for “regional industries” as contemplated by Article 4.1(ii) of the AD Agreement and Article 16.2 of the SCM Agreement?
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?
4. Tunisia’s law at Chapter II, Article 7 indicates that an antidumping 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?
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).
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

¹ G/ADP/N/1/TUN/2; G/SCM/N/1/TUN/2

consistent with the requirements of Article 12.1.1 of the AD Agreement and Article 22.2 of the SCM Agreement?

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 AD Agreement and Article 12.8 of the SCM Agreement?

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 antidumping or countervailing duty determination by the investigating authority compares to other requests for judicial review made to the competent court of first instance?

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?

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?

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

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)?

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 AD 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?

14. Tunisia indicates in Article 21 that its authorities will consider four of the five factors enumerated in AD 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?

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 AD Agreement Article 5.2 and SCM Agreement Article 11.2?

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 AD 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 AD Agreement Article 5.2 (iv) and SCM Agreement Article 11.2 (iv)?
