

**SOUTH AFRICA – ANTI-DUMPING DUTIES ON FROZEN MEAT
OF FOWLS FROM BRAZIL**

Request for Consultations by Brazil

The following communication, dated 21 June 2012, from the delegation of Brazil to the delegation of South Africa and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Republic of South Africa (South Africa) pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), and Article 17 of the *Agreement on Implementation of Article VI of GATT 1994* (AD Agreement), with respect to South Africa's preliminary determination and the imposition of provisional anti-dumping duties on frozen meat of fowls of the species *Gallus Domesticus*, whole bird and boneless cuts, originating in or imported from Brazil, as set forth in the International Trade Administration Commission's (ITAC) Report No. 389 and published in Notice No. R.105 of *Government Gazette* No. 35030, dated 10 February 2012, as well as any subsequent determinations or related measures.

2. Brazil considers the preliminary determination and the imposition of provisional anti-dumping duties, as well as the initiation and conduct of the investigation, to be inconsistent with South Africa's obligations under the provisions of GATT 1994 and the AD Agreement, including, but not limited to:

- Article 2.4 of the AD Agreement because South Africa did not make a fair comparison between the export price and the normal value of exporters, including in the establishment of the residual dumping margin. South Africa failed to, inter alia: (i) make reported and verified deductions to the normal values so as to bring them to the same level as the export price; (ii) make reported and verified due allowances for differences that affect price comparability; (iii) exclude, from the establishment of the normal value, sales of a type of boneless chicken cuts that was apparently not considered to be a like product; and (iv) exclude, from the establishment of the export price, sales of products outside the scope of the product under investigation. Furthermore, South Africa failed to indicate what specific information was necessary to ensure a fair comparison, thus imposing an unreasonable burden on exporters;
- Article 2.4.2 of the AD Agreement because South Africa did not make a comparison between a weighted average normal value with a weighted average of all prices of all comparable export transactions in the calculation of the residual dumping margins for

boneless chicken cuts and for whole chicken. By using sales of only *one* type of boneless chicken cuts and one type of whole chicken to establish normal value, and comparing them with the export price of *all* types of boneless cuts and whole chicken sold to the SACU market (even products outside the scope of the investigation), South Africa failed to compare the normal value with all comparable export transactions;

- Articles 3.1 and 3.2 of the AD Agreement because South Africa did not make an objective examination, based on positive evidence, of the volume of dumped imports and the effect on prices in the domestic market. South Africa incorrectly considered, *inter alia*: (i) the volume and price of products outside the scope of the product under investigation; (ii) import data provided by Petitioner, which grossly overstated official import statistics for the products; and (iii) the existence of a negative effect of dumped imports on domestic prices, when the data indicated otherwise;
- Articles 3.1 and 3.4 of the AD Agreement because South Africa did not make an objective examination, based on positive evidence, of the impact of the alleged dumped imports on domestic producers, as the overwhelming majority of domestic injury indicators for whole chicken and for boneless chicken cuts were positive or showed positive trends;
- Article 3.5 of the AD Agreement because South Africa's causal link analysis was not based on an examination of all relevant evidence before it. South Africa failed to consider other known factors causing injury to the domestic industry, *inter alia*, imports from other origins at significantly higher volumes and lower prices, and with relevant increase in market share;
- Article 4.1 of the AD Agreement because South Africa did not demonstrate that the collective output of the three domestic producers, considered as the domestic industry for purposes of the injury analysis, constituted a "major proportion" of the total domestic production, since individual or collective output data for these domestic producers were not made available by South Africa, not even by means of a non-confidential summary;
- Articles 5.3 and 5.8 of the AD Agreement because the application to initiate the investigation did not include sufficient evidence of dumping, injury and causal link as established in Article 5.2 of the AD Agreement, and, accordingly, South Africa failed to examine the accuracy and adequacy of the evidence provided in the application to determine whether there was sufficient evidence to justify the initiation of the investigation. In particular, South Africa failed to examine the accuracy and adequacy of the information provided in the application relative to items (i), (ii) and (iv) of Article 5.2, and, by doing so, failed to reject the application and to promptly terminate the investigation;
- Article 6.1 of the AD Agreement because South Africa did not give notice of the information required regarding sales and cost data of the like product sold in Brazil, thus failing to provide ample opportunity for exporters to present the required evidence prior to the preliminary determination and the imposition of provisional duties;

- Article 6.1.2 of the AD Agreement because South Africa failed to make available to other interested parties participating in the investigation evidence presented in writing, *inter alia*, by the government of the exporting Member;
- Article 6.2 of the AD agreement because South Africa did not afford full opportunity for the defense of all interested parties in the investigation;
- Article 6.4 of the AD Agreement because South Africa did not provide timely opportunities for all interested parties to see all relevant, non-confidential information so as to prepare presentations on the basis of that information;
- Articles 6.5.1 and 6.5.2 of the AD Agreement because South Africa: (i) did not require the applicant to furnish non-confidential summaries of relevant information, and (ii) failed to find that a request for confidentiality of certain information was unwarranted, and, consequently, failed to disregard that information;
- Article 6.7, in conjunction with paragraphs 7 and 8 of Annex I, of the AD Agreement because South Africa did not apply the procedures described in Annex I of the AD Agreement for the on-the-spot investigation in the verification visits carried out in certain exporters. South Africa failed, *inter alia*, to advise exporters, prior to the visit, of substantial additional information that needed to be provided, and to answer questions made by exporters, which were essential to a successful on-the-spot investigation, before the verification visit;
- Article 6.8, in conjunction with paragraphs 1, 3, 5, 6 and 7 of Annex II, of the AD Agreement because South Africa made preliminary determinations for certain exporters based on facts available although these exporters did not refuse access to, or fail to provide, necessary information within a reasonable period, nor did they significantly impede the investigation. South Africa failed to, *inter alia*: (i) specify in detail, as soon as the investigation was initiated, the scope of the like product sold in Brazil so that the exporters would know the sales and cost information required; and (ii) take into account in the preliminary determination all data and information provided by exporters, which was verifiable, appropriately submitted and supplied in a timely fashion;
- Article 6.9 of the AD Agreement because South Africa did not provide interested parties with information about the essential facts under consideration which form the basis for the decision whether to impose definitive measures. In the essential facts letter, South Africa simply repeated and confirmed its preliminary determination without considering essential facts, such as information and data submitted in response to the preliminary determination;
- Article 6.10 of the AD Agreement because South Africa only determined an individual dumping margin for one exporter, when it should have done so for all known exporters;
- Article 7.1 of the AD Agreement because South Africa applied provisional measures even though: (i) the investigation had not been initiated in accordance with Article 5 of the AD Agreement and interested parties were not given adequate opportunities to submit information and make comments; (ii) the preliminary determination was

inconsistent with Articles 2 and 3 of the AD Agreement; and (iii) there was no injury being caused during the investigation;

- Article 12.2.1 of the AD Agreement because South Africa did not set forth in the public notice of imposition of provisional measures, or in the separate report, sufficiently detailed explanations for the preliminary determinations on dumping, injury and causal link, and did not refer to the matters of fact and law which led to arguments being accepted or rejected. The notice or report did not contain, *inter alia*: (i) a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value; (ii) considerations relevant to the injury determination; and (iii) the main reasons leading to the determination.

3. South Africa's measures, therefore, nullify and impair benefits accruing to Brazil directly or indirectly under the cited agreements.

4. Brazil reserves the right to raise additional factual claims and legal matters during the course of consultations, and looks forward to receiving South Africa's response to the present request and to setting a mutually convenient date for consultations.
