

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

Original: English

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

KENYA

The following communication, dated 24 April 1996, has been received from the Permanent Mission of Kenya.

Kenya has in place provisions for protecting the domestic producers from dumped imports. Such imports are considered to have been dumped where the goods are sold at prices which are made artificially low by hidden or overt subsidies from the governments in their countries of origin.

Selective dumping duties are normally imposed on subsidized imports where these are adversely affecting local manufacturers. Industries which find themselves victims of dumping are required to contact the Ministry of Finance of the Republic of Kenya and to supply evidence of the nature and source of the dumped imports as well as substantiation that their industry is being damaged by the dumped imports. On the basis of this information, the Treasury will take action where it is convinced that dumping has actually taken place and that the industry in question has actually suffered injury, by imposing anti-dumping duties on the imports in question. The anti-dumping duties are decided upon by the Treasury. Once the Minister approves the imposition of anti-dumping duties, a Gazette notice is issued by the Attorney General's Chambers to that effect.

Kenya has requested for technical assistance from WTO to redraft her legislation on Anti-Dumping, and Subsidies and Countervailing Measures to ensure conformity with WTO rules.

The WTO has responded positively to this request and modalities and timing of this exercise are currently being worked out.

Enclosed is a reproduction of Sections 125 and 126 of the Customs and Excise Act, Cap 472 of the Laws of Kenya which deal with legislation on anti-dumping in Kenya.

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<sup>1</sup>G/ADP/N/1/KEN/1, dated 2 May 1996, has been cancelled and reissued as G/ADP/N/1/KEN/1-G/SCM/N/1/KEN/1.

Imposition of  
dumping duty

**125.** (1) Where it appears to the Minister -

- (a) that goods of any description are being or have been imported into Kenya in circumstances in which they are, under this Act, to be regarded as having been dumped; or
- (b) that some government or other authority outside Kenya has been giving a subsidy affecting goods of any description which are being or have been imported into Kenya,

the Minister may, by order in the Gazette, impose on goods of a description specified in the order a dumping duty at such rate and in such circumstances as may be determined in accordance with the provisions of this Act:

Provided that where the Minister is not satisfied that the effect of the dumping or the giving of a subsidy is such as to cause or threaten material injury to an established industry in Kenya or is such as to retard materially the establishment of an industry in Kenya, he shall not make an order under this section.

(2) The matters by reference to which the description of goods in an order made under this section is framed shall include either the country in which the goods originated or the country from which the goods were exported to Kenya.

(3) Subject to subsection (2), an order may include such provisions with respect to the description of the goods chargeable with dumping duty as may appear to the Minister to be required for the purposes of this Act and, in particular, provisions limiting the description of the goods by reference to the particular persons or organizations by whom the goods were produced or who were concerned with the production of the goods in some specified manner.

(4) Dumping duty imposed by an order on goods shall be chargeable in addition to any other duty for the time being chargeable thereon.

(5) The Minister may by order in the Gazette amend or revoke an order made under subsection (1).

Dumping and  
subsidy defined

**126.** (1) For the purposes of section 125 imported goods shall be regarded as having been dumped -

- (a) if the export price from the country in which the goods originated is less than the fair market price of the goods in that country; or
- (b) in a case where the country from which the goods were exported to Kenya is different from the country in which they originated -
  - (i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country; or

- (ii) if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country.

(2) References in section 125 to giving a subsidy are references to giving, directly or indirectly, any bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else) and include -

- (a) the giving of a special subsidy on the transport of a particular product; and
- (b) the giving of a favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where that treatment has the effect of assisting a reduction of the price of goods offered for export,

but do not include the application of restrictions or charges on the export of materials from a country so as to favour producers in that country who use those materials in goods produced by them.