

CECILIA MALMSTRÖM

MEMBER OF THE EUROPEAN COMMISSION

Brussels, **11 JAN. 2017**
PVM/cz S(2016)7504706

Dear Minister Davies,

Thank you for your letter concerning the agricultural safeguard investigation by South Africa concerning EU frozen chicken exports.

The matter was indeed discussed during the meeting of the EU-South Africa Trade Cooperation Council on 17 November 2016. Unfortunately the views of the EU and South Africa appeared to be widely diverging on certain very important issues.

I am disappointed to note that despite of the acknowledgement of the diverging views, instead of further discussing the matter, South Africa decided to impose provisional bilateral safeguard duties.

Let me first draw you attention to the fact that my services have closely followed this case and still seriously doubts that the imposition of the bilateral safeguard measures is justified. Indeed, it appears that the real problems of the South African poultry industry are not so much caused by the imports from the EU, but that it is rather suffering from structural problems affecting its competitiveness. Such problems cannot be resolved with safeguard measures. Quite to the contrary, increased protection would actually serve as a disincentive for the South African industry in making the necessary structural adjustments to the changed market circumstances.

Furthermore, we have a disagreement regarding the legal basis of any measures. Indeed, during the meeting in Brussels, your services explained that safeguard measures would be based on Article 34 of the Economic Partnership Agreement (EPA). As you know, the EPA has just come into force and has in fact replaced the trade part of the EU South Africa Trade, Development and Co-operation Agreement (TDCA) which served as a basis for the initiation of your investigation. The relevant legal basis and the corresponding institutional framework have therefore changed. Article 34 of the EPA, the proper legal basis currently in force, requires the respect of certain criteria to impose bilateral safeguards that are different than those foreseen by Article 16 of the TDCA.

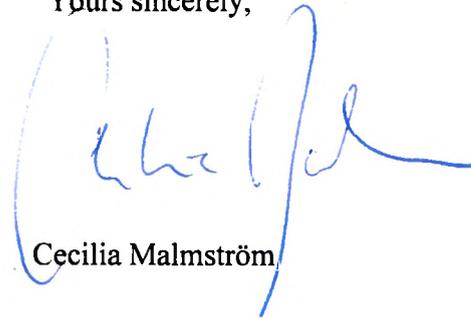
Finally, given the fact that anti-dumping measures are already in place on the same product imported from several EU Member States, I would find it objectionable to cumulate the two duties – for the companies subject to anti-dumping duties. Economically it is unjustified since imports would no longer be possible for those exporters subject to a double remedy simultaneously, and illogical to remedy twice the same injury allegedly suffered by the South African poultry industry. Rather, the anti-dumping duties should be suspended during the period when safeguard measures are in force. This would be in line with South Africa's own practice applied recently in the frozen potatoes investigations and I see no reason why a different approach should be taken for the frozen chicken.

Dr Rob Davies
Minister of Trade and Industry, Republic of South Africa
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South Africa

Procedurally I have strong concerns as well. The EPA clearly foresees an obligation to notify the other Party about the imposition of the provisional safeguard measures as well as to refer the matter to the Trade and Development Committee for examination. None of these was done when the measures were imposed.

I trust that you will seriously consider the above elements when making a final decision because there seem to be no clear economic and legal grounds to justify the imposition of the bilateral safeguard measures. I am sure you would agree with me that at a time when South Africa and the EU just started to provisionally apply an ambitious trade agreement, unwarranted measures and disrespect for procedural rules would not give a positive signal to economic operators in both South Africa and the EU.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. Malmström', is written over the typed name. The signature is fluid and cursive, with a large initial 'C' and a long horizontal stroke at the end.

Cecilia Malmström