

NOTICE 344 OF 2013**INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH
AFRICA****DRAFT GUIDELINES AND CONDITIONS PERTAINING TO A SAFEGUARD
APPLICATION IN TERMS OF ARTICLE 16 OF THE AGREEMENT ON
TRADE, DEVELOPMENT AND CO-OPERATION BETWEEN THE
EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE
REPUBLIC OF SOUTH AFRICA**

Emanating from the Agreement on Trade, Development and Co-operation between the European Community and its Member States and the Republic of South Africa ("the TDCA"), Article 16 provides for safeguard action in defined circumstances.

The International Trade Administration Commission of South Africa (the Commission) has drafted the attached reference and procedural guide pertaining to the application for safeguard action in terms of Article 16 of the TDCA.

All interested parties are invited to comment on the draft guidelines within 10 calendar days of the date of publication of this notice. The Commission will finalise the guidelines after considering all comments received.

Comments can be submitted to the Chief Commissioner, International Trade Administration Commission of South Africa, Private Bag X 753, Pretoria or delivered by hand to the DTI Campus (Block E), 77 Meintjies Street, Sunnyside, Pretoria, 0002.

Further information can be obtained from the Senior Manager: Trade Remedies I, Ms Carina Janse van Vuuren, at (012) 394 3594.



International Trade Administration Commission of South Africa

DRAFT GUIDELINES AND CONDITIONS PERTAINING TO A SAFEGUARD APPLICATION IN TERMS OF ARTICLE 16 OF THE AGREEMENT ON TRADE, DEVELOPMENT AND CO-OPERATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES AND THE REPUBLIC OF SOUTH AFRICA

1. PURPOSE

- 1.1 The purpose of this document is to provide a reference and procedural guide pertaining to the application for safeguard action in terms of Article 16 of the Agreement on Trade, Development and Co-operation between the European Community and its Member States and the Republic of South Africa ("the TDCA").

2. SCOPE

- 2.1 The scope of this document covers the application process by applicants for safeguard action in terms of Article 16 of the TDCA which provides as follows:

"Notwithstanding other provisions of this Agreement and in particular Article 24, if, given the particular sensitivity of the agricultural markets, imports of products originating in one Party cause or threaten to cause a serious disturbance to the markets in the other Party, the Cooperation Council shall immediately consider the matter to find an appropriate solution. Pending a decision by the Cooperation Council, and where exceptional circumstances require immediate action, the affected Party may take provisional measures necessary to limit or redress the disturbance. In taking such provisional measures, the affected Party shall take into account the interests of both Parties".

3. PROCEDURE

- 3.1 For the Department of Trade and Industry (dti) to raise the matter of an alleged serious disturbance in the Cooperation Council, it will need to have a

prima facie case to present to the Cooperation Council ("the Council"), i.e. facts demonstrating that imports from the EU are causing or threatening to cause a serious disturbance to the South African market. Further, if there is the need for immediate action pending a decision by the Council, a case will need to be made to the Commission why exceptional circumstances exist that warrants such action.

- 3.2 The South African industry therefore has to submit an application to the International Trade Administration Commission of South Africa ("the Commission") for its consideration.
- 3.3 The Commission will consider the application and if warranted, initiate an investigation and publish a notice in the Government Gazette for comment. A period of 20 days from the date of publication of the initiation notice will be provided for interested parties to submit comments to the Commission.
- 3.4 Taking comments into account, the Commission will then make a preliminary determination, which will form the basis for dti to raise the matter in the Council.
- 3.5 Should the applicant indicate that exceptional circumstances exist and the Commission agrees, it may, once the dti has raised the matter in the Cooperation Council, request the Commissioner for the South African Revenue Service (SARS) to impose provisional measures. Such measures will take the form of a provisional safeguard duty.
- 3.6 The provisional measures will stay in place until such time as a decision has been reached by the Council.

4. APPLICATION

- 4.1 Applications for safeguard action in terms of Article 16 of the TDCA must be addressed to the Chief Commissioner, International Trade Administration Commission of South Africa, Private Bag X 753, Pretoria or delivered by hand to the DTI Campus (Block E), 77 Meintjies Street, Sunnyside, Pretoria, 0002.
- 4.2 Applications must be submitted according to the requirements reflected in the attached application form (See Annexure A).
- 4.3 Applicants should provide full and accurate information and wherever possible provide supporting documentary evidence from commercial or governmental sources, e.g. commercial invoices or offers, official trade and production statistics. Failure to do so could detrimentally affect the case. The Commission will not consider unsubstantiated information. All cost related information should be reconcilable to the financial statements or management accounts.
- 4.4 ITAC's Trade Remedies unit offers a public liaison service and if any party has particular problems in answering the application or requires more information or clarification on policy issues, the staff of the Trade Remedies section is ready to discuss these issues and to provide assistance. Please feel free to contact Ms Carina van Vuuren (012 394 3594).
- 4.5 If the application is based in part on confidential material, the application must contain a non-confidential version of the confidential material together with an explanation of why it is confidential. Section 33 of the International Trade Administration Act, 2002 (Act No. 71 of 2002) ("the ITA Act") provides as follows:
- "(1) A person may, when submitting information to the Commission, identify information that the person claims to be information that –
 - (a) is confidential by its nature; or
 - (b) the person otherwise wishes to be recognized as confidential.
 - (2) A person making a claim in terms of subsection (1) must support that claim with -

- (a) a written statement in the prescribed form-
 - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 1(2); or
 - (ii) motivating, in the case of other information, why that information should be recognized as confidential; and
- (b) either –
 - (i) a written abstract of the information in a non-confidential form; or
 - (ii) a sworn statement setting out the reasons why it is impossible to comply with subparagraph (i).”

Therefore where confidential and non-confidential versions are supplied, parties must:

- (1) Provide reasons for confidentiality in each instance;
- (2) Indicate where confidential information has been omitted in each case;
- (3) Provide a summary of the omitted confidential information in sufficient detail to permit a reasonable understanding of the substance of the omitted confidential information in each instance; and
- (4) Where confidential information is not susceptible to a non-confidential summary, indicate this in each instance and provide a sworn affidavit setting out the reasons why the information is not susceptible to summarization.

The Commission will not formally accept an application until a proper non-confidential version has been submitted in accordance with the above guidelines. If, in terms of section 34 of the ITA Act, the Commission finds that a request for confidentiality is not warranted and if the applicant is either unwilling to make the information public or to authorize its disclosure in summarized format, the Commission will not consider such information in determining the merits of the application.

Please take note that the rules relating to confidential information and the submission of non-confidential versions of submissions applies to ALL correspondence, which unless clearly indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and

be made available to other interested parties. If a document is indicated to be confidential but a proper non-confidential document complying with the above-mentioned rules is not filed, then the document will not be taken into consideration by the Commission. The public file is available for inspection at the Commission's offices by all interested parties, by appointment.

4.6 Note that interested parties are encouraged to inspect the public file regularly. The Commission and the Trade Remedies section will not check the public file on interested parties' behalf.

4.7 Information should be submitted in hard copies as well as in electronic format, such as on compact disks or flash disks. The Commission's computer system is based on Windows and it uses Excel and MS Word software. The discs must not be write protected and labeled clearly indicating:

1. Applicant's name;
2. Product(s) concerned;
3. Type of information on the disc;
4. Software used; and
5. Whether or not confidential.

4.8 The Commission may verify information submitted. Should it be found that you have submitted false or misleading evidence the Commission may decide not to proceed with the investigation.

5. CONDITIONS

5.1 South African producers of the like or directly competitive product representing at least 50% of the total volume produced by all producers that express an opinion on the investigation must support the application, and a minimum of 25% (by production volume) of the total industry must support the application. Without this support ITAC cannot accept an application for investigation. Letters of support for or opposition to the application must be attached to the application as Annexure B.3 Additionally, the Commission

may not make a preliminary or final determination of serious disturbance unless it has considered evidence relating to "a major proportion" of the South African industry.

- 5.2 A like product is defined as "a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration", while a directly competitive product is a product, other than a like product, that competes directly with the product under investigation.
- 5.3 The following injury factors will be considered by the Commission in making a determination of serious disturbance:
- a. the rate and volume of the increase in imports of the product concerned from the EU
 - (i) in absolute terms; or
 - (ii) relative to the production in South Africa; and
 - b. whether the South African industry is experiencing:
 - (i) price suppression;
 - (ii) price depression;
 - (iii) price undercutting/price disadvantage with regard to EU as well as other imports;
 - (iv) a decline in exports;
 - (v) a change in market share;
 - (vi) any other relevant factors placed before the Commission.

The information requested must relate only to the affected South African product that is a like or directly competitive product to the product under investigation.

- 5.4 The South African industry should provide the information as requested in Annexure A.

ANNEXURE A

INTERNATIONAL TRADE ADMINISTRATION
COMMISSION OF SOUTH AFRICA

APPLICATION FOR SAFEGUARD MEASURES IN TERMS
OF ARTICLE 16 OF THE TDCA ON

[product]

APPLICANT

Name:

Address:

APPLICATION: ARTICLE 16 TDCA SAFEGUARD: JAN 2013

INTRODUCTION

1. The purpose of this questionnaire is to help industry bring together in a concise and logical form the information needed by the International Trade Administration Commission of South Africa (the Commission) to decide whether or not to initiate a formal investigation, and will also serve as a basis for further investigation.
2. The legal framework is the International Trade Administration Act, 2002 (Act No. 71 of 2002) (the ITA Act), which authorises the Commission to investigate safeguard applications as well as those under Article 16 of the Agreement on Trade, Development and Co-Operation between the European Community and its Member States and the Republic of South Africa (the TDCA).

SECTION A APPLICANT

- A1 State the name, postal and street addresses, the telephone and fax numbers (including codes) and the E-mail address of your company.

Company: _____

Postal Address: _____

Physical Address: _____

Tel: (____) _____

Fax: (____) _____

E-mail: _____

- A2 State the names, telephone numbers of and positions held by the company's officers to be contacted.

Person: _____

Designation: _____

Direct line: (____) _____

Direct fax: (____) _____

E-mail: _____

APPLICATION: ARCILE 16 TDCA SAFEGUARD: JAN 2013

- A3 Indicate the exact location of your manufacturing site(s). (Map to reach your offices)

- A4 Provide a diagram of your company's group structure and indicate the percentage stockholdings and cross-holdings. --- Attach as Annexure A4.

- A5 Indicate the legal structure of your firm, i.e. public or private company, closed corporation, etc.

- A6 Give a summary of any franchise, manufacturing, licensing, know-how, technology and distribution agreements in respect of inputs, manufacturing and outputs with regard to all products under investigation.

- A7 Have you appointed a consultant, legal or other representative to assist you in this application and/or ensuing investigation?

Yes/No.

If affirmative, please attach a copy of the letter of appointment, setting out the scope and duration of the appointment, as Annexure A7.

APPLICATION: ARCILE 16 TDCA SAFEGUARD: JAN 2013**SECTION B DOMESTIC INDUSTRY**

B1 If there is a representative organisation submit the following information:

- (a) Names, address, telephone and fax numbers and E-mail addresses of and position held by the organisation's officers to be contacted;

Name of organisation: _____

Name of contact person: _____

Designation: _____

Postal address: _____

Physical address: _____

Tel: (____) _____ Fax: (____) _____

E-mail: _____

- (b) Name the producers in the industry affiliated to the organisation. (Supply the company names, postal, street and E-mail addresses, telephone and fax numbers and the names of contact persons).

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____
Tel: (____) _____	Tel: (____) _____
Fax: (____) _____	Fax: (____) _____
E-mail: _____	E-mail: _____

B2 Name all other producers constituting the SA industry concerned. Give their company names, postal and physical addresses, telephone and fax numbers, E-mail addresses and the names of contact persons.

Company: _____	Company: _____
Postal address: _____	Postal address: _____
Physical address: _____	Physical address: _____
Contact person: _____	Contact person: _____
Designation: _____	Designation: _____

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Tel: (____) _____	_____
Fax: (____) _____	Tel: (____) _____
Email: _____	Fax: (____) _____
	Email: _____

B3 Indicate the industry support and/or opposition to the application in the following format:

Industry Standing (Total domestic production of like goods for the 12 months preceding the lodging of the application)			
Producer	Production volume- Support Application	Production volume- Oppose application	Production volume- Neutral
Your Company			
Other producers 1. 2. 3.			
Total SA			

SECTION C PRODUCTS**C1 Imported (subject) product**

Note If more than one type of imported product form part of this application, information should be submitted separately for each such product type.

C1.1 Describe the imported product in the following detail:

(a) Detailed physical description:

- scientific name
- common name and
- trade name

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- (b) Main raw materials/components/inputs used
- (c) Production/manufacturing process used
- (d) Technical characteristics
- (e) Application/use
- (f) Categories of users

Substantiate your description with catalogues, brochures and other literature/samples.

C1.2 Enumerate in detail any differences between the imported product and the South African product that is like or directly competitive.

C1.3 Customs classification

Supply the following information:

Tariff subheading	Description	Unit	Rate of duty

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C1.4 Possible tariff loopholes

Indicate if you are aware of any loopholes in the tariff classification.

C2 South African like or directly competitive product

C2.1 Describe the subject product that you produce (attach photograph or brochure):

- (a) Detailed physical description
 - Scientific name (if any)
 - Common name
 - Trade name
- (b) Main raw materials/components/inputs used
- (c) Production/manufacturing process used
- (d) Technical characteristics
- (e) Application/use
- (f) Categories of users

Substantiate your description with catalogues, brochures and other literature/samples.

C2.2 Statutory or other standards/specifications

Give details of all standards/specifications applicable to the product concerned in South Africa prescribed by law or otherwise.

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SECTION D SERIOUS DISTURBANCE

D1 General Information

- D1.1** Provide a flow chart of your marketing/distribution channels for the product(s) concerned in the application and indicate the percentage off-take for each channel.
- D1.2** Provide full details of your terms and conditions of sale and selling price to each class of customer, e.g. wholesaler, retailer, downstream producer, etc. Attach a copy of your standard terms and conditions as **Annexure (D1.2)**.
- D1.3** Give the reasons and basis for your categorisation of customers.
- D1.4** Enumerate major changes over the past three years in your answers to the above questions.

D2 FINANCIAL INFORMATION

Note: All financial information should be in a reconciled format. If such requested information is not readily available in the same format or needs adjustment or re-apportionment please qualify by way of explanatory notes or discuss the merits of the situation with the Commission.

- D2.1** Indicate your normal accounting period.
- D2.2** Provide copies of your audited financial statements, including detailed manufacturing, trading and profit and loss statements for the most recent three financial years. If your statutory statements do not include detailed accounts/schedules, please provide such accounts/schedules separately.
- D2.3** Provide copies of your year-to-date management accounts, including detailed manufacturing, trading and profit and loss accounts for the period between the last financial year-end and the most recent month end. Provide ancillary schedules if not part of published accounts.

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D2.4 Provide a separate sales and profit (before tax) contribution analysis of all the product line items manufactured by your company, including a percentage analysis. The information should be sufficient to allow proper verification of your like (or directly competitive) product information.

The requested income statements should be analysed in a departmental or divisionalised format detailing the product concerned as a separate activity. The analysis should also be in respect of three prior financial years and the most recent year-to-date management accounts period. **If the requested information is not available from your financial database, please discuss alternatives with officials of the Commission.**

D3 IMPORTS

Give the following information on the imports of the product, being the subject of the application, for the latest three calendar years and separately on a monthly basis for the period subsequent to the end of the last calendar year.

D3.1 Annual import statistics

Import volumes and values per annum (State unit of measurement)

	Year 1	Year 2	Year 3	Current year
Volume				
Value				
Average unit price				

D3.2 Import volumes and values per month

Attach as Annexure D3.2 a table indicating the monthly volumes, values and unit prices of imports for the last 18 consecutive months.

D3.3 Own imports

Provide the following information on your own imports of the product:

	Year 1	Year 2	Year 3	Current year
Volume				
Value				
Average unit price				

State your reasons for importing the product.

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D4 Effects on the South African prices

Definitions:

- Price undercutting** is the extent to which the price of the imported product is lower than the price of the South African product. The price should be compared at the same level of trade and with the same terms of condition of trade, normally at the South African ex-factory level compared to the landed cost of the imported product.
- Price depression** is the extent to which the South African industry has been forced to reduce its prices, i.e. price depression takes place where there has been an absolute decrease in prices.
- Price suppression** takes place where the South African industry is not able to increase prices in line with the increase in costs, i.e. where there is a relative decrease in prices.

D4.1 Price undercutting

D4.1.1 Provide the following information with regard to your selling price per unit and the selling price per unit of the imported product:

(R/unit)	YEAR 1	YEAR 2	YEAR 3
Your company			
Average landed cost (incl. duty) of imported product-			
Undercutting per unit			
Undercutting %-			

Undercutting %: express the undercutting per unit as a percentage of your price.

Indicate the level of trade and selling conditions of your product and the imported product, i.e. ex-factory/delivered, payment terms, distributor/wholesaler/retailer.

D4.1.2 Comment on the trends indicated by this information and substantiate how this factor is indicative of serious injury. (If the trends do not support your argument, you must provide other substantiating evidence as prove.)

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D4.2 Price suppression and depression

D4.2.1 Provide the following information with regard to your average per unit ex-factory selling prices:

Per unit	YEAR 1	YEAR 2	YEAR 3
Your production cost			
Your total cost (incl. Selling, general and admin costs)			
Your ex-factory price			
Total cost % of selling price			

D4.2.2 If your cost or prices changed significantly during the last 18 calendar months please additionally supply the abovementioned information on a monthly or quarterly basis. Please attach as Annexure D4.2.2.

D4.2.3 Indicate any other factors that have depressed your ex-factory selling price that do not reflect in the above table, e.g. longer payments terms, higher year-end rebates, additional free stock, etc.

D4.4 Cost build-up

D4.4.1 Please supply a cost build-up in the format indicated in **Annexure D4.4.1**. Where your management accounts do not allow for the specific cost elements indicated in the pro forma, please indicate the information that is available and supply as much detail as possible.

D4.4.2 Please supply a Bill of Materials for the domestic like or directly competitive product.

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D5 SOUTH AFRICAN INDUSTRY SALES AND MARKET SHARE

D5.1 Please supply the following information on your sales volume in South Africa.
State the unit of measurement.

	YEAR 1	YEAR 2	YEAR 3
Your sales volume			
Sales by other SA producers			
Total volume of SA sales by SA producers			
Volume of imports			
Your market share			
Total market share held by SA producers			
Market share held by imports			

D5.2 Attach as Annexure D5.2 a table indicating, in the same format as under section D5.1, the quarterly volumes, values and unit prices of imports for the last six consecutive quarters.

D5.3 Indicate how the information in Tables D5.1 and D5.22 supports your allegation of serious disturbance in the market.

D5.4 If sales of the product is of a cyclical nature comment on the nature thereof, indicating the length of the cycle and the prices both during the up and down phases.

D6 Other information

Please indicate any other injury information to be considered by the Commission and not covered by the questions above.

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SECTION E CAUSE OF SERIOUS DISTURBANCE

- E1 Give the reasons for your belief that the imports are the cause of the alleged serious disturbance.
- E2 Give a comparison between your actual ex-factory selling prices and the actual landed costs of the imported products concerned over the latest three financial years, and indicate what your actual (unsuppressed) prices ought to have been.
- E3 Give the details of any depression of your ex-factory selling prices to enable you to compete with the imported products (indicate price depression, extended payment terms or lower discounts granted, etc.)
- E4 Give the details of any suppression of your ex-factory selling prices to enable you to compete with the imported products. Refer to matters such as unavoidable increases in the cost of inputs that had to be absorbed partially or totally by your firm.
- E5 Indicate the view that your clients have regarding:
- (a) the quality of your product;
 - (b) your delivery times;
 - (c) your service; and
 - (d) your after sales service, including guarantees and warranties and technical training to customers.
- Please elaborate on all of the above issues.
- E6 Indicate the state of your workforce and its attitude towards the company, indicating *inter alia* how wage negotiations are conducted.
- E7 Have you had any strikes, go-slows or lock-outs during the past twelve calendar months? Please elaborate.
- E8 Has there been a contraction in demand for your product or has there been a change in consumption patterns? Please elaborate.
- E9 Indicate the technology developments that have taken place since you last updated your manufacturing process.
- E10 Comment on your productivity vis-à-vis that of the foreign manufacturer(s) of the product being investigated.

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SECTION G GENERAL

Provide any other evidence you wish to bring to the attention of the Commission.

SECTION H CERTIFICATION

The information submitted must be accompanied by the following certificate:

"I, the undersigned, certify that the information given above is complete and correct to the best of my knowledge and belief and that I have been authorised to represent

_____.
Company

Date

Signature of authorised person

Name and title of authorised person (in print)

NB: HAVE YOU COMPLETED YOUR NON-CONFIDENTIAL SUBMISSION?

IN THE ABSENCE OF A PROPER NON-CONFIDENTIAL VERSION THE COMMISSION WILL NOT BE IN A POSITION TO REGARD YOUR COMPLAINT AS A PROPERLY DOCUMENTED APPLICATION AND NO INVESTIGATION CAN BE INITIATED.

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Annex D4.4.1	Products under investigation	All other products	Company total cost
1. <u>DIRECT COST:</u> Materials # - Imported - Domestic Waste recovery * Components * - Imported - Domestic Direct labour & related costs Re-tooling * Power & fuel Royalties, etc Variable overheads * Other *	<div style="border: 1px solid black; padding: 5px;"> Separate cost analyses must be provided for each of the subject products in this format. Note that the cost data should reconcile to your company's income statement. </div>		
2. <u>FIXED OVERHEAD COST:</u> Direct labour Utilities * Repair & maintenance Rates & insurance R & D Plant depreciation Other *			
3. <u>TOTAL PRODUCTION COST:</u> 4. Operating profit			
5. <u>IN-STORE COST:</u> (3&4) 6. <u>SELLING & ADMINISTRATIVE EXPENSES:</u> Administrative expenses - salaries & wages - rent - rates & insurance - depreciation - other * Selling expenses - salespersons salaries - advertising - warranties & guarantees - warehousing - other * Other costs *			
7. <u>TOTAL COST:</u> (5&6) 8. <u>PROFIT, ETC:</u> Subsidies Selling profit			
9. <u>SELLING (LIST) PRICE</u> (7&8) 10. <u>DISCOUNTS, ETC:</u> Discounts Settlements discounts Rebates			

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11. <u>NET EX-FACTORY PRICE</u> (9&10)			
12. Distribution costs *			
13. <u>NET DELIVERED PRICE</u> (11&12)			

- Supply a full Bill of materials, indicating the cost and volume of each material or component

* - Supply a detailed breakdown of the items.

Indicate the production volume on which the above cost and price build-ups are based.

This format serves as an indication of the details required by the Commission. However, you may use your own format, provided that the required amount of detail is submitted. This information should be reconcilable to your income statements. Provide a detailed breakdown of the basis of allocation in each case that an allocation has been made.

The cost and price build-ups should refer to the average costs for the 12-month period under investigation.