



NATIONAL ASSEMBLY

QUESTIONS FOR WRITTEN REPLY

QUESTION NO.: 3137

Mr C G Niehaus (EFF) to ask the Minister of Trade, Industry and Competition:

- (1) With reference to his reply to question 1291 on 5 May 2026, wherein he asserts that any financial and economic sanctions imposed by the Republic against the Zionist state of Israel would violate the World Trade Organisation (WTO) principle of non-discrimination and expose our country to legal challenge because both countries are members of the (WTO) (details furnished), what (a) specific clauses and/or articles of the relevant WTO agreements that allegedly impose such unreasonable conditions on our country and would compel it to violate its foreign policy based on human rights and its leading role in the International Court of Justice (ICJ) genocide case against Israel and (b) concrete steps has his department, in conjunction with the Department of International Relations and Cooperation, taken to support and/or sponsor a United Nations motion for multilateral financial and economic sanctions against Israel, including specific sanctions prohibiting the export of coal to Israel, consistent with the position of the Republic that Israel is committing genocide in Gaza;
- (2) whether he has found that the country's continuing economic and financial ties with apartheid Israel and the failure to assess the manner in which such ties supports Israel's actions in Gaza, (a) constitute a fundamental contradiction with the role of the Republic as lead applicant in the ICJ genocide case and (b) render the Government grossly hypocritical; if not, what is the position in each case; if so, what are the relevant details in each case;



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- (3) what are the reasons that his department has not conducted any study on the extent to which coal exports to Israel sustain the Israeli economy and enable its actions in Gaza, given the leading role of the Republic in the ICJ genocide case;
- (4) whether he has found that the absence of such a study amounts to dereliction of duty and directly contradicts the stated commitment of the government to (a) support the liberation of the Palestinian people and (b) oppose the genocide being committed by apartheid Israel; if not, what is the position in each case; if so, what are the relevant details? NW3206E

Reply:

1. (a) It is important to reiterate that both South Africa and Israel are members of the World Trade Organization (WTO). One of the foundational principles of the WTO is non-discrimination. In general, countries are expected to observe this principle as an underpinning principle governing trade. Further, it is critical to state that sanctions applied by one member against another in the absence of multilateral sanctions by the United Nations (UN), would violate the WTO principle of non-discrimination and would open the country to legal challenge.

Under the General Agreement on Tariffs and Trade (GATT), in particular the first article dealing with the most favoured nation treatment, countries cannot normally discriminate between their trading partners. However, this principle is not absolute. GATT Article XX is the WTO's main general exception clause that allows measures that would otherwise violate WTO obligations where they pursue certain legitimate public policy objectives.

In essence, it allows a member to justify a measure that would otherwise breach trade rules if the measure fits one of the listed policy goals and passes a final anti-abuse test. It gives WTO members policy space, but not unlimited discretion. A country can defend trade restrictions for health, morals, environment, or legal compliance, but it must show a close fit / connection between the measure and the stated objective and must apply it even-handedly.



It is important to emphasize that the WTO exceptions are not self-judging and are subject to legal scrutiny. The exceptions operate within a structured legal framework and are constrained by guardrails developed through WTO case law. *The rule is: exceptions exist, but they come with guardrails.*

The guardrails are the listed grounds plus the chapeau / introductory clause of Article XX, and WTO jurisprudence / case law has repeatedly used both to distinguish legitimate regulation from disguised trade restrictions.

The most commonly used exceptions include:

- (i) Public morals. This is the broadest and most flexible exception, and WTO panels have accepted that members get some room to define public morals for themselves, though not unlimited room.
- (ii) Protection of human, animal, or plant life or health. This covers health and safety measures, but the measure must be shown to be genuinely aimed at that objective and not just protectionism in disguise.
- (iii) Compliance with laws or regulations. This allows trade-restrictive measures that are necessary to secure compliance with domestic laws that are themselves WTO-consistent.
- (iv) Conservation of exhaustible natural resources. This is the main environmental exception and has been read broadly enough to cover living resources in some cases.
- (v) Products in general or local short supply. Narrower and has very limited jurisprudence.



Even if a measure fits one of the policy categories in Article XX, it must still satisfy the chapeau / introductory clause of Article XX. This requires that the measure must not be applied in a way that causes arbitrary discrimination, unjustifiable discrimination, or a disguised restriction on international trade. WTO law has consistently applied a two-step test/ analysis:

- Does the measure fit one of the listed exceptions?
- Is it being applied fairly and honestly, without hidden protectionism?

As a result, a WTO Member seeking to justify trade restrictions based on human-rights concerns must link the measure to one of the specific exceptions listed in Article XX. The most relevant exception is often Article XX(a) (protection of public morals).

The case law suggests that public morals may provide some scope for measures responding to serious human-rights concerns, but such measures would still have to satisfy the necessity test and the chapeau/ introductory requirements. It must show that the measure genuinely pursues the moral objective, materially contributes to that objective, and is necessary in light of reasonably available alternatives. In addition, the measure must comply with the chapeau / introductory clause by being applied consistently and without arbitrary or unjustifiable discrimination.

Therefore, while in terms of Article XX, human-rights or moral concerns may be relevant, particularly under Article XX(a), members must still demonstrate necessity, a genuine connection to the protected objective, and compliance with the chapeau's requirement of non-discriminatory application. This prevents Article XX from becoming a general foreign-policy exception that could undermine the predictability of the multilateral trading system.



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Ultimately, the debate is not whether WTO exceptions exist - they clearly do. The debate is whether a coal export ban would satisfy the legal requirements of those exceptions if challenged before the WTO.

Furthermore, currently, there is no United Nations resolution that bans export of coal to Israel. Consequently, any action outside multilateral sanctions, can be considered discriminatory and expose South Africa to legal challenges.

South Africa is focusing its efforts on the International Court of Justice (ICJ) genocide case against Israel.

1. (b) DIRCO leads the development of positions and efforts in the UN. **the dtic** will support and cooperate with DIRCO, as appropriate, when called upon, in line with its mandate.
2. (a) South Africa stands in solidarity with the Palestinian cause through consistent support. The ICJ genocide case against Israel articulates South Africa's position on the situation in Gaza. There are no contradictions in South Africa's approach.

(b) South Africa is not being hypocritical in separating the two issues – the ICJ case is currently ongoing and fully supported by the South African Government. In considering any further action, South Africa has to assess all factors before it, including implications for the South African economy, and take the decisions that advance South African interests.
3. When allocating resources to research and analysis, it is necessary to see Israel in the context of its importance in South Africa's exports. On average over the past five years, it ranked 48th as export destination, in terms of value. In addition, Israel appears to report its trade data in limited detail to the readily available, quality international data bases, which could lead to unreliable research results. Determining that South Africa's coal exports enable Israel's



genocide in Gaza requires establishing a causal link and proving both the specific intent of the exporter and the material contribution of the coal to Israel's military operations which may be difficult to ascertain without understanding the complexity of the Israeli supply-chains. Commodity trading involves complex supply chains, determining complicity may be a challenge. While it is true that South African coal to some extent powers Israel's electricity grid, a direct link to military operations might be difficult to ascertain.

4. (a),(b) The lack of studies has not affected government's support for the liberalisation of the Palestinian people as demonstrated by the ICJ genocide case against Israel and therefore does not amount to dereliction of duty.

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