



International Trade Administration Commission of South Africa

The Complexities of Trade Remedies

Trade remedies are amongst those international trade instruments that tend to be misunderstood not only by the general public but even some sections of commerce and industry. Trade remedies refer to antidumping actions, countervailing measures and safeguards. Given their complexity and technical nature, this misunderstanding is not surprising.

The International Trade Administration Commission (ITAC), successor to the Board of Tariffs and Trade is the expert body that, among other things, advises the Minister of Trade and Industry on matters pertaining to trade remedies. The Minister of Trade and Industry, upon making a decision, requests the Minister of Finance, as the custodian of the Customs and Excise Act to implement amendments. Ultimately, the implementation is done by the South African Revenue Service.

Amongst the responsibilities of ITAC provided for in the Act that established ITAC, the International Trade Administration Act, is to inform the public about the instruments it administers. Despite the technical nature of these instruments, anyone who will read this brief article should find this area of work much less intimidating.

Dumping, despite its name, has nothing to do with foreign countries exporting inferior, defective, or hazardous goods into our borders. Dumping in the international trade context is a concept used to refer to a situation where imported goods are being sold at prices less than in the country of origin. In other words, charging a lower price in a foreign market than in a home market. The determination of dumping entails complex and technical calculations, using the following principle: normal value in the country of origin minus the export price in the country of destination is equal to the dumping margin. This margin, expressed as percentage of the free on board export price, is the anti-dumping duty to be imposed. Firms and exporters dump to penetrate a foreign market and maximize profits. It is not an uncommon business practice and should not be viewed as a criminal activity. No country is immune from this practice by its producers.

Dumping is not prohibited by the WTO Agreement but the problem arises when dumping threatens and/or causes injury (i.e. loss of market share; decrease in prices; decrease in sales volumes; decrease in profits; job losses etc.) to the domestic manufacturers of products that are the same or similar to the imported product. It is therefore not

sufficient to just prove dumping, but that there must also be evidence of injury and causality. In other words, the injury must have been caused by dumping and not by other factors.

The types of goods that are typically dumped are those goods produced by capital-intensive industries. This is due to the particular operations of these industries and the ratio between variable and fixed costs. Globally, anti-dumping actions tend to be concentrated in the following sectors: base metals, plastics, chemicals, textiles and electrical equipment. It is no surprise that in South Africa these are more or less the same sectors in which most actions take place. Historically, South Africa has been among the early users of the anti-dumping instrument, starting in the 1920s, and it continues to be more active with respect to this particular trade remedy instrument than the others.

Actions against injurious dumping remain a critical government intervention to protect jobs and sustain investments, in cases where action is supported by evidence. The instrument is used to level the playing field. The aim is to promote fair trade and thereby enhance economic growth and development.

Countervailing measures are used against subsidised imports that threaten and /or cause injury to the domestic manufacturers. The domestic industry must therefore provide evidence of subsidies, injury and causality. On countervailing measures ITAC has not been as active as on anti-dumping. For the past three years the Commission has not initiated any countervailing investigation except recently against China and Malaysia in respect of kitchen sinks.

Safeguards are actions against fair trade that overwhelms domestic manufacturer(s), which differentiates it from anti-dumping and countervailing measures that are actions against unfair trade. Safeguards are used against an unforeseen surge of imports that threatens and/or causes serious injury and are temporary measures to allow the domestic industry to adjust and improve its competitiveness level. The standard for introducing safeguards is higher than the two other instruments, given that it entails action against trade that is regarded as fair but is nevertheless overwhelming. In the long history of this institution which dates back to the 1920s under the Board of Trade and Industry (BTI), predecessor of the Board of Tariffs and Trade, the institution has never initiated a safeguard measure except for one in 2007 on Lysine, an animal feed supplement. This is partly because, under very high tariff walls prior to 1994, the need for safeguards never arose. Although, in the Lysine safeguard investigation ITAC started at a preliminary stage with very high safeguard duties, in the final finding the duties were lowered substantially upon consideration of the cost-raising impact on animal feed production whilst at the same time providing adequate protection for domestic producers of Lysine.

In order to initiate any of the trade remedies investigations, ITAC must obtain the requisite information according to the requirements of domestic law, which includes Regulations, and consistent with the

relevant WTO Agreements, from the domestic industry affected. This includes confidential business information. Industry information is therefore at the centre of these investigations. In light of this reality, and although nothing precludes ITAC from self-initiating (proactive investigations), in all cases the initiations have been in reaction to applications from businesses.

These trade policy instruments have enormous economic significance. They have a direct impact on the bottom line of firms. The nature of the trade remedy investigations is such that in almost all applications there are different and opposing interests (domestic producers; importers; and end users). As a result, in the majority of our investigations, there is always an unhappy party. This unhappiness has in some instances led to ITAC being taken to court.

Litigation in respect of trade remedies is not unique to South Africa. All jurisdictions active in the field of these same instruments have to contend with this fact. In some jurisdictions, such as the USA, specially dedicated trade law courts exist to handle the careful jurisprudence that is required in cases similar to the ones that ITAC has been involved in.

During 2008, ITAC issued a total of 11 recommendations as a result of completed trade remedy investigations. Only one of ITAC's recommendations was taken on review to the High Court. There are two other pending cases relating to litigation that commenced prior to 2008.

In conclusion, this brief introduction is an attempt to elucidate a complex and technical area in terms of the main thrust of the instruments that ITAC administers. Since its inception in 2003, ITAC has developed and harnessed its expertise in this area to respond to documented unfair and disruptive trade. ITAC has recently reviewed the time it takes to finalise investigations, which should yield shorter completion periods. This should result in an institution that is more responsive to current and future challenges in this area of international trade policy.

For more information, please visit our website at:
www.itac.org.za

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