



International Trade Administration Commission of South Africa

TRADE REMEDIES

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enabling



FAIR TRADE





INTRODUCTION

This pamphlet is designed to introduce South Africa's trade remedy system and provide our stakeholders with an overview of the trade defence instruments. The International Trade Administration Commission (ITAC or Commission) is the authority responsible for trade remedy action in South Africa.

This responsibility entails conducting investigations of possible actions against dumping; the possible introduction of countervailing duties to counteract subsidisation in foreign countries; and, the introduction of safeguard measures when a surge in imports is threatening to overwhelm a domestic producer, in accordance with domestic law and regulations, and consistent with WTO rules.

THE ROLE AND OBJECTIVES OF TRADE REMEDIES INSTRUMENTS

The trade remedy instruments are critical government interventions to retain jobs and promote investments. Regarding the Anti Dumping and Countervailing measures, the purpose is to level the playing field to ensure that foreign firms compete fairly with domestic firms.

The Safeguard measure is meant to protect a domestic industry against unforeseen and overwhelming foreign competition and not necessarily against unfair trade as is the case with the previously mentioned two instruments.

MORE ABOUT THE TRADE REMEDY INSTRUMENTS

ANTI DUMPING

Dumping, despite its name, has nothing to do with the importation of inferior, defective or hazardous goods. In the context of international trade, dumping is defined as a situation where imported goods are being sold in our market at prices lower than in the country of origin. If such discriminatory pricing is causing material injury to domestic producers of like goods, ITAC may recommend the imposition of additional duties on imports, duties equivalent to the dumping margin (or to the margin of injury, if this margin is lower).


Therefore, a duty is considered if there is *prima facie* evidence that:

- a) There is occurrence of **dumping**;
- b) The domestic industry producing the like product in the importing country is suffering material **injury or threat of injury**; and
- c) There is a causal link between the dumping and the injury experienced.

If there is *prima facie* evidence on **all** of the above, a detailed investigation is conducted according to specified WTO rules.

COUNTERVAILING MEASURES

Countervailing investigations are conducted to determine whether to impose countervailing duties to protect a domestic industry against the unfair trade practice of proven subsidised imports from foreign competitors that cause material injury to a domestic producer.



A countervailing investigation seeks to establish the extent to which the exported goods benefit from government assistance in a foreign country. This means identifying the subsidy programme concerned, and its nature and operation, including the product coverage and the form of assistance provided.

Countervailing duties can be imposed to offset the injury caused by the subsidy.

SAFEGUARD MEASURES

The safeguard measure can be introduced to protect a domestic industry against, not necessarily unfair, but nevertheless overwhelming foreign competition. The measures can be introduced against an unforeseen surge in imports that threatens to or causes serious injury to a domestic industry. Safeguard measures are temporary measures with timelines to allow a domestic industry to adjust and improve its competitiveness.

REVIEWS

Any interested party may request a review. The request must be supported by evidence justifying the need for a review. A review involves a re-examination of the level of dumping, material injury and/or the need for the continued existence of anti-dumping or countervailing duties.

There are different types of reviews, namely:

Sunset reviews – Anti-dumping and countervailing duties remain in place for a period of five (5) years after the imposition of the last substantive (margin of dumping and injury) review. Sunset reviews are intended to determine

whether there is a likelihood that the removal of the duty would lead to a continuation or recurrence of injurious dumping or injurious subsidised exports.

Interim reviews - Reviews conducted during the period that anti-dumping measures are in force, on the necessity of whether to continue those measures in the original form and the original level based on evidence that circumstances such as dumping margins have changed since the anti-dumping measures entered into force.

Anti-circumvention reviews - this type of review is undertaken in cases where it is alleged that the anti-dumping duty or countervailing duties are being circumvented.

New Shipper reviews – this type of review is conducted on request in cases where an exporter in a country that is subject to a residual anti-dumping duty, which did not export to SACU during the original investigation period, wishes to start exporting to SACU, and where such an exporter is not related to any other party in the exporting country specifically covered by the anti-dumping duties. The purpose of the review is to enable the new shipper to prove that it will not be dumping the product on the SACU market.

LEGAL FRAMEWORK

- a) The International Trade Administration Act No. 71 of 2002 (ITA Act) provides the legal basis for investigating dumping and subsidisation and for the imposition of anti-dumping and countervailing duties when dumping and subsidisation of imported product causes or threatens to cause material injury or materially retards the establishment of an industry. The Act also provides the legal basis for



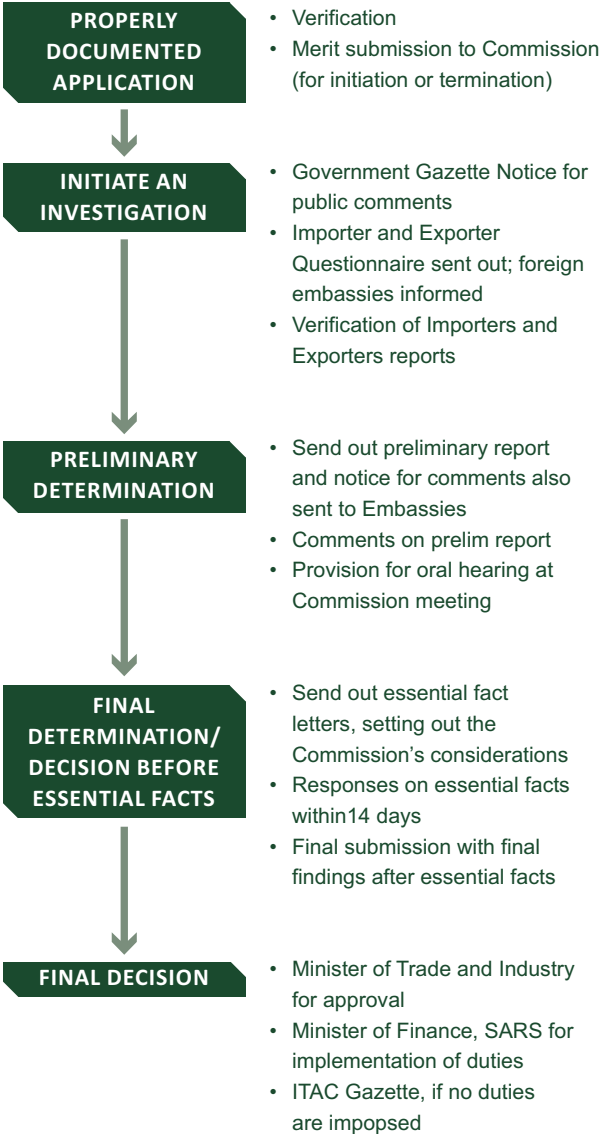
undertaking investigations and making recommendations regarding safeguard action to allow an industry to adjust to increased competition from abroad.


- b) The Anti-Dumping Regulations and Countervailing Regulations provide clarity with a view to assist parties who wish to participate in the trade remedy process.
- c) The provisions of the WTO Anti-Dumping Agreement (formally known as the Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade 1994) and the Agreement on Subsidies and Countervailing Measures are reflected in the ITA Act, the Anti Dumping Regulations and Countervailing Regulations.
- d) The Safeguard Regulations provide clarity and to assist parties who wish to participate in the safeguard action. The Regulations also reflect the provisions of the WTO Agreement on Safeguards.
- e) The Commission has to comply with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (“PAJA”), which deals with the general rules for the performance of administrative action. PAJA does not give powers to administrators but indicates how the powers given to administrators by other laws must be exercised. More information can be found on the ITAC website: www.itac.org.za.

THE INVESTIGATION PROCESS AND TURNAROUND TIME

The Trade Remedies Unit carries out its investigations speedily and with rigour. The timelines have been revised resulting in significantly shorter completion periods, on

average within 10 months of the date of initiation. The investigation follows the process below:





Notices are published in the Government Gazette and on ITAC's website and are given for initiations, preliminary determination without measures and final determination without measures in a sunset review. Notice is given in the Gazette if the duties are unchanged. In instances where measures are recommended for imposition by SARS, publications are prepared by SARS on its website (www.sars.gov.za).

HOW TO APPLY

The SACU industry can apply to ITAC for an Anti-Dumping, Countervailing or Safeguard investigation. The Minister of Trade and Industry has the sole authority to impose a duty or a measure upon receipt of a recommendation from ITAC.

Questionnaires/application forms can be obtained on ITAC's website (www.itac.org.za) or directly from the Trade Remedies Unit. The contact details appear at the end of this pamphlet.

CONFIDENTIAL INFORMATION

The ITA Act includes provisions dealing with the treatment of confidential information provided to the Commission. The Commission must ensure that confidential information is protected, but is also required to make available, on request, non-confidential information, including non-confidential summaries of confidential information, which is used in dumping, countervailing and safeguard investigations.

The Trade Remedies Unit operates a Public File system for all investigations. These files contain all non-confidential information relating to the investigation. These files are available for viewing or copying.

DISCLAIMER: The information contained is for reference purposes only. It should not be regarded as providing a definitive statement of law.

Further information is available on ITAC's website www.itac.org.za, or contact details:

The Senior Manager: Trade Remedies
Private Bag X753
Pretoria
0001

OR

The Trade Remedies Unit
Block E – Uuzaji Building
the dti Campus
77 Meintjies Street
Sunnyside
Pretoria

Tel: +27 12 394 3594/3641

Fax: +27 12 394 0516

