



Trade Law

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Simplifying International Trade

TRADE REMEDIES

What are trade remedies?

Trade remedies are legal instruments which businesses may use to safeguard themselves against unfair foreign competition. Typically trade remedies have as its aim the increase of tariffs (tax on imports) in order to make a certain market less attractive for foreign competitors.

Trade remedies could take on of the following forms:

- Anti-dumping duties;
- Countervailing measures;
- Safeguards;
- Tariff amendments.

What are anti-dumping duties?

Dumping occurs where foreigners are selling their goods in your country at prices (called the “export price”) lower than what they charge for the same product in their country (called the “normal value”). Foreign competitors are therefore allowed to sell their goods at cheaper prices than what you may sell it at domestically, but they are prohibited

from selling it at prices below what they would charge their own nationals. Thus if the export price is lower than the normal value, dumping has occurred.

If business thus suspects that dumping does occur and such dumping causes injury to the domestic industry, the domestic industry could potentially make use of the anti-dumping trade remedy. An anti-dumping duty is essentially an additional duty being imposed on products which are being dumped. In simple terms the anti-dumping duty imposed will be the same as the difference between the normal value and the export price. If the export price is thus 50% cheaper than the normal value, the anti-dumping duty which will be imposed will be an additional 50% on that particular product originating in the countries which are found guilty of dumping.

During the investigation into the alleged dumping, the investigating officials will attempt to fairly compare the two different prices, thus the normal value and export price. As such the prices will be compared at the same level, normally

the ex-factory price in the country of export. The prices will therefore be adjusted to allow for different levels of trade, conditions of sale, physical characteristics, taxation and any other differences which may affect a fair price comparison. Methods also exist to determine the normal value in the event that the particular product is not being sold in the exporter's domestic market.

It is important that business realise that although dumping has occurred, it may still be that you will not be entitled to have anti-dumping duties imposed. Part of the investigation of an alleged dumping of a good is that the domestic industry has to prove that the dumping caused material injury to the domestic industry. As such where other possible causes could have caused the material injury (such as loss of sales or market share), the domestic industry will not be entitled to the imposition of an anti-dumping duty.

Anti-dumping duties will remain in force for a period of five years and may often be renewed for further periods through the use of what is called a sunset review.

What are countervailing measures?

Countervailing measures are often referred to as countervailing duties. It is therefore also a duty which is being imposed in order to restore the fairness in international competition. Countervailing measures may be used where business suspects that a foreign competitor is being subsidised.

A subsidy is considered as the provision of specific assistance either directly or indirectly by the government of a country. Such assistance may take the form of a financial contribution (such as a direct transfer of funds or some or other tax incentive) by a government or the government may provide assistance for the provision or acquisition of goods or services. The assistance must also be specific to an enterprise of industry. In other words, the access to the assistance must be limited.

Goods or services which receive a subsidy from a government are called subsidized goods or services and provides foreign competitors with an unfair competitive

advantages and often subsidized goods or services undercut the domestic price.

When businesses suspect that subsidized products are being imported into their country, they may make use of countervailing measures to restore the balance which the unfair subsidisation has caused. Consequently the countervailing measures that may be imposed on will have the effect of increasing the duty applicable to the subsidised products originating from the country guilty of providing the unfair governmental assistance.

As with anti-dumping duties, before countervailing measure may be imposed the investigating officials need to determine whether subsidisation has indeed occurred. Furthermore not all forms of subsidisation are illegal in terms of the WTO rules and therefore not all subsidies are capable of having a countervailing measure imposed against them. The investigating officials will therefore have to determine whether the subsidy being complained of is capable of being countervailed. The domestic injury complaining of the

importation of subsidised products must also prove that they suffered material injury as a consequence of the importation of subsidised products and not due to other market forces.

Countervailing measure may be imposed for a period of five years and may often be renewed for further periods through the use of a sunset review procedure.

What are safeguards?

Safeguards are temporary measures which the domestic industry can use to protect itself from a sudden surge of imports. Typically safeguards do not take the form of an increase in the tariff applicable to a product, but takes the form of a quota (or quantitative restriction). Thus a quota on the amount of products allowed to be imported into a country will be imposed. As soon as the quota has been reached, no further imports of that product will be allowed into the territory of the country making use of the safeguard measure. However, the investigating officials may decide to increase the customs duty applicable to the product in

question, usually to the level to attain the same result as a quota.

Safeguards may only be used to prevent or remedy serious injury or to facilitate the adjustment to increased competition for the domestic industry due to further trade liberalisation. It is vital to prove that the surge in imports is responsible for the serious injury or threat thereof and that no other market forces are at play.

Due to the nature for which safeguard measures are normally used, the application procedure is more expedient than anti-dumping duties and countervailing measure. However the time period for which a safeguard measure may be used is also shorter, namely four years although this may be increased for further periods. However, where a safeguard measure is imposed for longer than a year, the investigating officials will normally impose conditions for its liberalisation during the period for which it is imposed.

What are tariff amendments?

The domestic industry may also make use of tariff amendments to give itself a competitive advantage. Business may apply to either have a tariff increased (to protect the domestic industry against foreign competition) or to have a tariff decreased (in order to source cheaper foreign inputs to become more competitive).

Businesses are allowed to apply for these increases or decreases due to the difference which exists between the bound tariff (a country's international legal obligation) and the applied tariff (a country's rate of taxation which is actually applied).

For further information on trade remedies, kindly contact our offices or Rian Geldenhuys (rian@tradelawchambers.co.za)