

Anti-dumping duties are a complex balancing act

By  Freddie Terblanche

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The imposition of anti-dumping duties is the equivalent of building a wall around local industries, to protect jobs and industries against unfair competitive practices from abroad. To build such protection around a particular local industry, an anti-dumping application can be used, but it must be properly documented and based on relevant information.



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Dumping is a practice where goods are exported to South Africa at an export price which is lower than the normal selling price of such goods in the exporting country. At its core, dumping enables a process of undercutting which has the potential of pricing local producers out of the market, thereby threatening jobs and the livelihood of South African people. Although it is not per se illegal to gain market share by selling goods under their market value, the potential repercussions of dumping are such that it is considered a highly undesirable practice. In addition, nothing prevents the foreign exporter of dumped goods from increasing its prices once local producers have been driven out of the market.

ITAC recommendations followed

To safeguard local industry against the effects of dumping, government has the power to impose anti-dumping duties, pursuant to recommendations from the International Trade Administration Commission (ITAC). ITAC has very wide powers to investigate dumping practices and to recommend appropriate remedial action. When government imposes an anti-dumping duty, the import price of goods is artificially inflated, so that local industry is able to compete with the prices at which goods can be imported into South Africa.

Although the imposition of anti-dumping duties plays a vital role in our economy, it does not happen automatically, or overnight. Industry leaders must keep a watchful eye on the marketplace to identify potential dumping practices; otherwise such practices may go unnoticed.

Once a possible dumping practice is identified, a properly documented application should be submitted to ITAC, with a

request to investigate whether or not dumping is in fact occurring. This application would then set in motion an extensive anti-dumping investigation by ITAC, which on average could take about 10 months to complete.

Recent examples

Recent examples of anti-dumping investigations conducted by ITAC include:

- An investigation was performed in respect of Portland cement originating from Pakistan. It was found that dumping occurred, which resulted in anti-dumping duties being imposed.
- ITAC investigated whether dumping occurred in respect of wheelbarrows imported from China. The outcome of the investigation confirmed it.

Once anti-dumping duties are imposed they do not last indefinitely. Such impositions are only valid for a period of five years and local producers who are concerned that the expiry of anti-dumping duties would result in the continuation or recurrence of dumping, should apply for a so-called sunset review, if they wish for duties to be maintained. Conversely, exporters, who would like anti-dumping duties to be removed, are entitled to make submissions to ITAC, in support of the removal of such duties.

‘Sunset’ reviews

Some examples of recent sunset review applications include:

- Franke Kitchen systems, a local producer of stainless steel sinks, applied for a sunset review in respect of sinks imported from China. This resulted in a recommendation by ITAC that duties be maintained.
- The local Garlic Growers Association applied for a sunset review in respect of garlic imported from China. This too resulted in duties being maintained.
- PGF, a manufacturer of float glass in South Africa, initiated an application for a sunset review on float glass imported from China. The outcome of that investigation was yet another recommendation that anti-dumping duties be maintained.
- At present ITAC is conducting sunset reviews in respect of polyethylene terephthalate (which is a resin used in the manufacture of clothing and containers for liquids and foods, among other things) and unframed glass mirrors.

High Court reviews

Not all anti-dumping applications are successful. The remedy available to unsuccessful applicants is to apply to the High Court for a review of the unfavourable determination made by ITAC. Further, there is no reason why foreign exporters of goods in respect of which anti-dumping duties have been recommended cannot apply to the High Court for a review of such a recommendation, provided that such application is brought within a reasonable period of time.

An example of a reported case where an exporter of goods successfully opposed the imposition of anti-dumping duties is

ITAC v SA Tyre Manufacturers Conference 2011, which concerned an application by a group of local tyre manufacturers for anti-dumping duties to be imposed on tyres originating from China. In that case, the Supreme Court of Appeal overturned the High Court's decision and found that there was no evidence that the prices at which the tyres in question were exported to South Africa were lower than the normal prices of such tyres, when sold in China.

In the end, the imposition of trade remedies such as anti-dumping duties involve a complex balancing act between the need to encourage trade between countries by giving effect to international trade agreements, on the one hand, and the need to protect local industry against unfair trade practices from abroad.

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