



External Trade

EC TRADE DEFENCE LAW AND PRACTICE

Introduction to Trade Defence Services

Who are we?

EU Commission - DG TRADE / Directorate H (TDI)

Main functions

- Trade defence investigations
- Monitoring TDI activities of third countries
- Policy (legislative developments in EU and WTO, methodology, TDI aspects in relations with third countries, etc.)
- Negotiation of TDI rules in the WTO

EU Anti-Dumping - Legal Basis

- WTO regulates trade defence actions of its members.
- EU TDI legislation fully transposes WTO rules: Council Regulation (EC) No 384/96 (the '**Basic Regulation**')
- EU TDI legislation goes beyond WTO rules in certain aspects.

EC Law and Practice

- EC applies WTO+:
 - there are elements in our legislation that go above and beyond WTO requirements
 - Lesser Duty Rule
 - Community (Public) Interest Test
 - Shorter deadlines

The Lesser Duty Rule

- Not required by WTO agreement, but ‘desirable’
- Removed altogether from the draft text issued by the Chairman of the Rules Negotiating Group, despite calls to make it mandatory

The Lesser Duty Rule

- **EC legal provisions:**

- Articles 7(2) and 9(4) of the Basic Regulation

“The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.”

The Lesser Duty Rule

Level at which injury is removed:

Calculation of an **injury margin** ('**price underselling**') based on the lowest price level at which Community transactions are considered not to result in injury ('**non-injurious price**').

The Lesser Duty Rule

Non-injurious price:

- full cost ($COP = COM + SG\&A$)
- + normal profit (profit that the industry would have achieved if injury had not occurred)

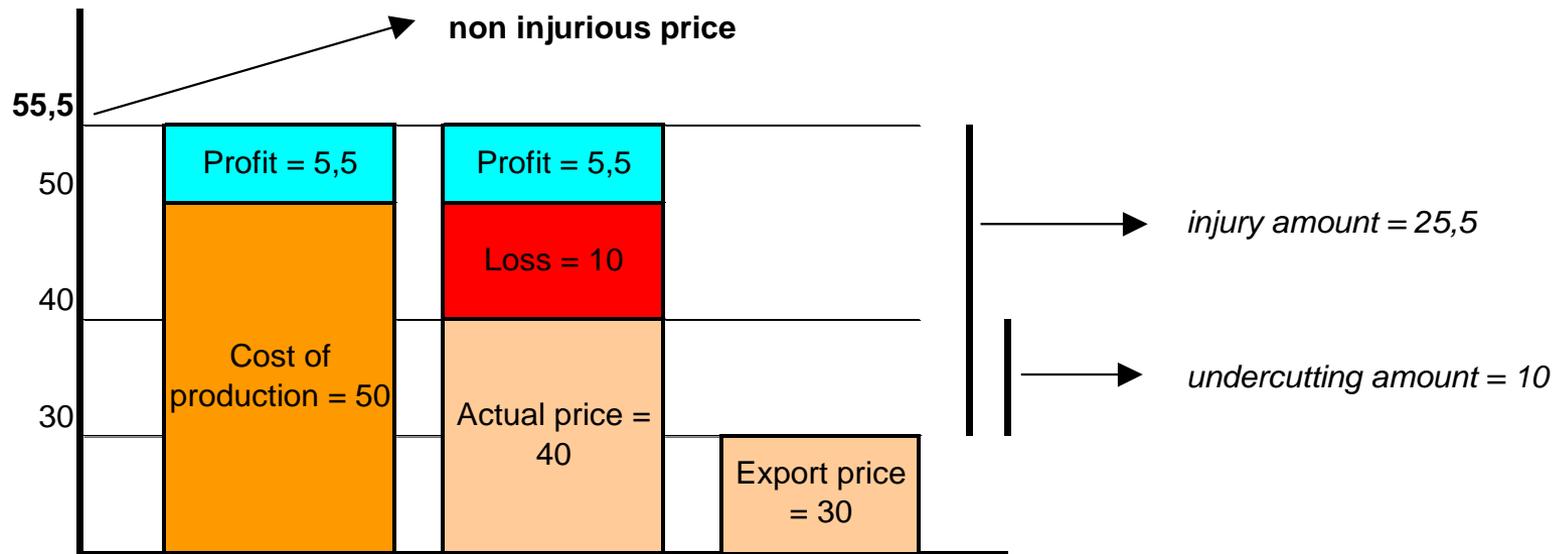
COP = Cost Of Production

COM = Cost of Manufacture

SG&A = Selling General & Administrative costs

External Trade

How to establish a non injurious price for the domestic industry



Normal profit= 10% on turnover

Non injurious price =

1. COP or break even price + profit
2. Actual price + losses + normal profit

Injury Margin (Price Underselling)

Concept: difference between prices:

- non- injurious price of the Community industry
- import prices (actual)
 - both adjusted
 - aggregated for the Community industry
 - for each of the exporters: prices aggregated per model, or prices at a transactions' level in case of targeting.

Injury Margin (Price Underselling)

$$\frac{\text{C. I. non injurious price} - \text{Imports' price}}{\text{CIF imports' price (Community duty unpaid)}} \times 100$$

- Denominator should be the same as the one used for the dumping calculation: margins are established at a comparable level

Injury Margin (Price Underselling)

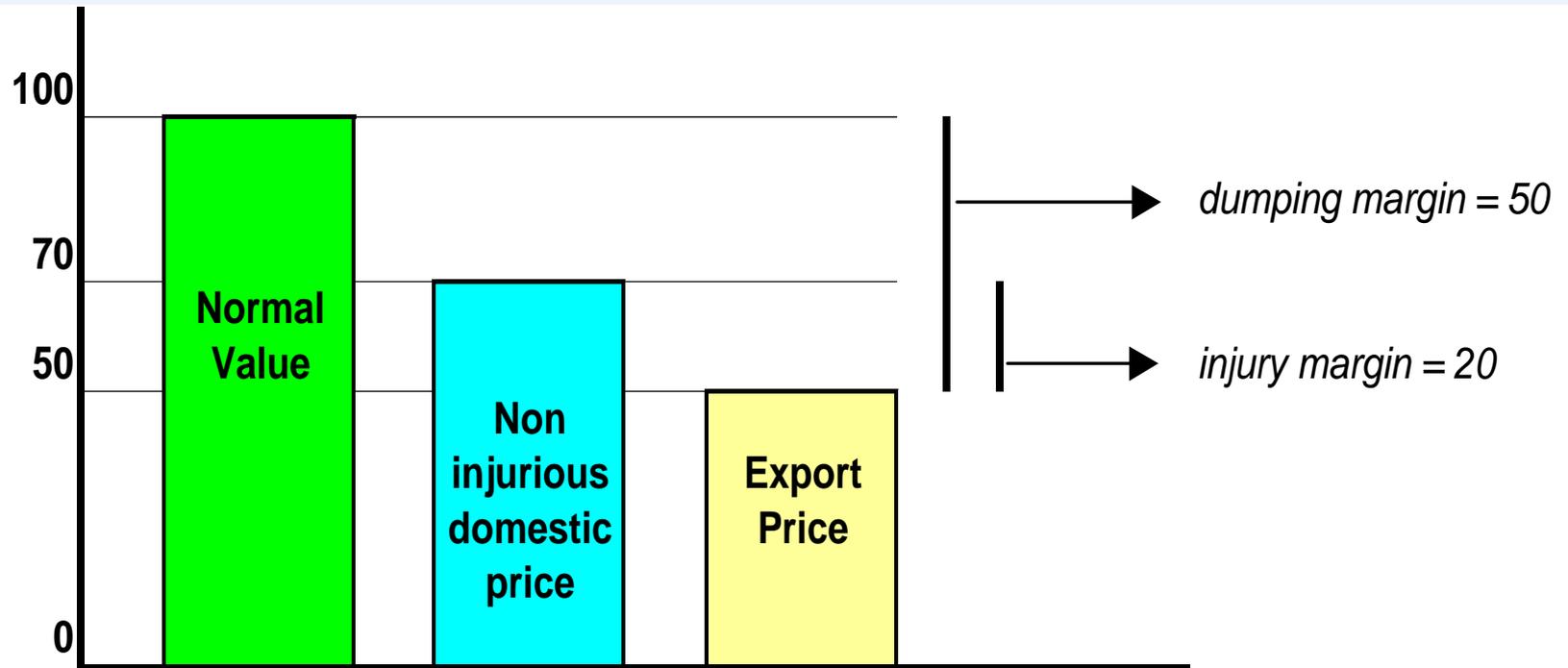
i.e. - Difference between:

- CIF price = 10 €
- Imports' price (px) = 14 €
- Com. industry non injurious price (pt) = 16 €

Expressed as a percentage of the CIF (EU border) import price

$$\frac{(pt - px)}{\text{cif price}} \times 100 = \frac{16 - 14}{10} \times 100 = 20\%$$

Calculation of Injury Margin (“Underselling”)



The Lesser Duty Rule

- A weighted average injury margin is calculated for each exporter.
- ⇒ Apply lesser duty rule:
- Dumping margin = 50%
 - Injury margin = 20%
- ⇒ **Duty imposed = 20%**

Community Interest Test

“Measures...may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.”

-Article 21 Basic Regulation

Community Interest Test

- Only the Community systematically applies a public interest test.
- Not required by WTO ADA
- Other WTO members apply it less systematically (e.g., Canada), others not at all (e.g., USA, Australia)

Community Interest Test

- Analysis of the economic effects of AD measures on Community parties;
- Special consideration: to remedy unfair conditions of competition;
- Presumption in favour of imposition – there must be compelling reasons not to impose measures.

Community Interest test

Whose interest?

The Community as a whole, not individual Member States

Art 21(2) Basic Regulation:

- Domestic industry (complainants + non-complainants)
- Importers/traders
- Representative users (intermediate goods)
- Representative consumer organisations

Community Interest Test

Likely effects of measures:

- What is likely to happen if measures are imposed?
 - ⇒ best case vs. worst case scenario
- What is likely to happen if they are not?
- Would the measures be effective?
- Would the benefits to the Community industry be disproportionate to the negative effects on other parties?

Community Interest Test

Balance of interests

- Viability of Community industry
- Market prospects
- Strategy of users, traders, importers
- Substitution effects
- Supply (choice, abundance)
- Competition aspects

EC Procedure

General

- No “automatic” imposition of AD duties
- Not all complaints lodged lead to the initiation of an investigation
- Only about 50% of AD investigations lead to the imposition of definitive duties

EC Procedure

Decision-Making:

- **The Commission**: decides on initiation of proceedings, on provisional measures, on termination of proceedings, on acceptance of undertakings
- **EU Member States**: consulted at different stages in the Advisory and Consultative Committees as well as in the Council working groups
- **The Council**: at minister level adopts the final decision on definitive measures

EC Procedure - Initiation

- General rule: initiations of investigations are generally EC industry-driven
 - ⇒ *ex-officio* initiation (upon Commission's initiative) very rare, only in special circumstances
- Within the legal deadline of 45 days after the Community industry lodges a complaint, the Commission must analyse it, examine "standing", perform all required procedural steps (consultation of Member States, notification of third countries concerned, publication of notice of initiation/decision to reject).

EC Procedure - Investigations

Main procedural steps:

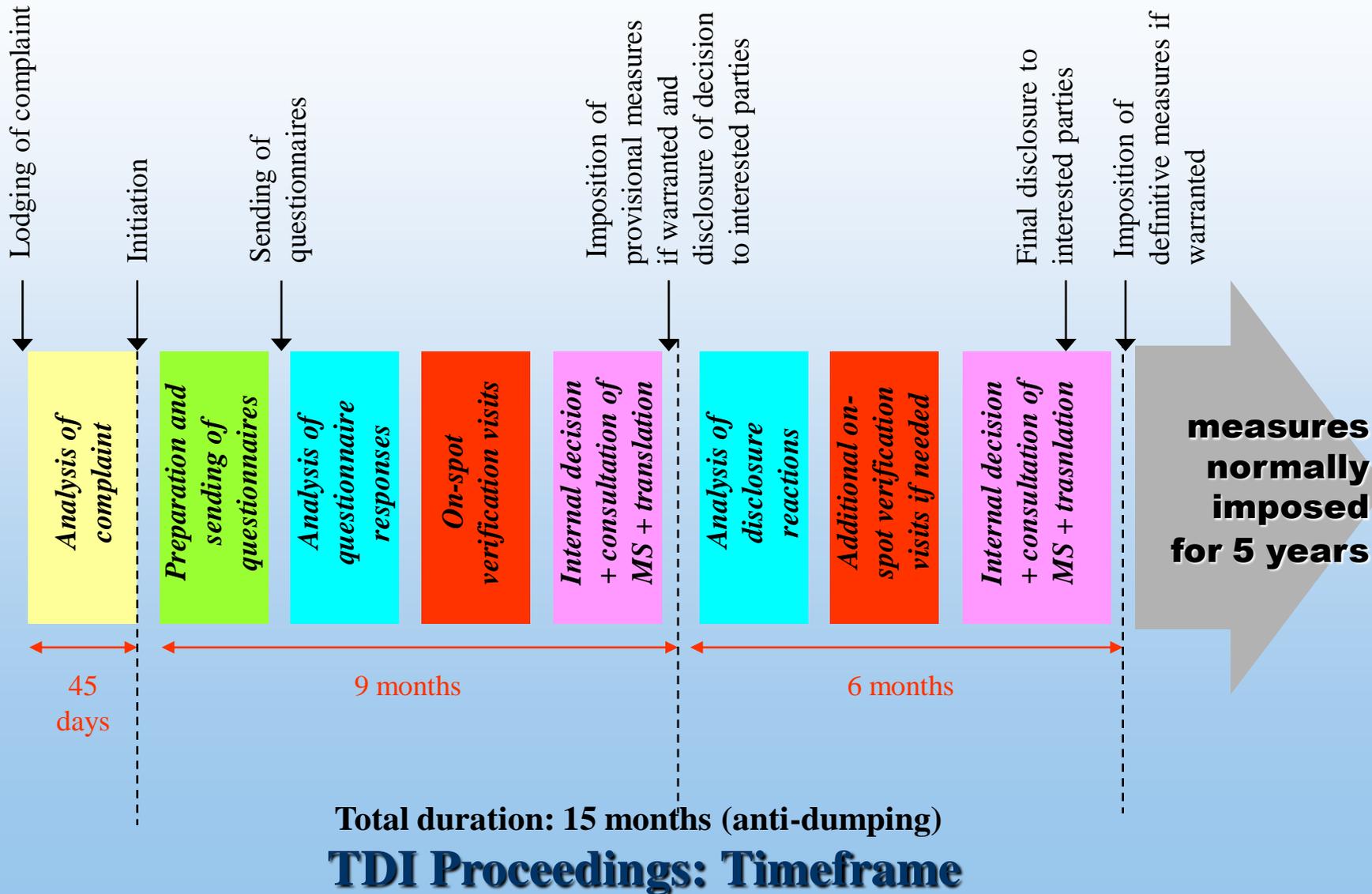
- Questionnaires: sent to parties usually on the initiation day of a proceeding (Notice published in the Official Journal)
- Replies to questionnaires (main questionnaires, sampling forms, claim forms for MET)
- Deficiency letters
- On-spot verification of questionnaire replies and of MET claims
- Analysis, hearings, consultations of Member States

EC Procedure - Investigations

Main procedural steps (contd.):

- Provisional measures: the Commission decides, published in the Official Journal
- Provisional disclosure
- Comments on disclosure
- Analysis, hearings, disclosure of definitive findings, consultation of Member States
- Definitive measures: the Council decides, published in the Official Journal

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EC Procedure - Timeframe

General timeframe:

from the initiation of a new investigation to the publication of

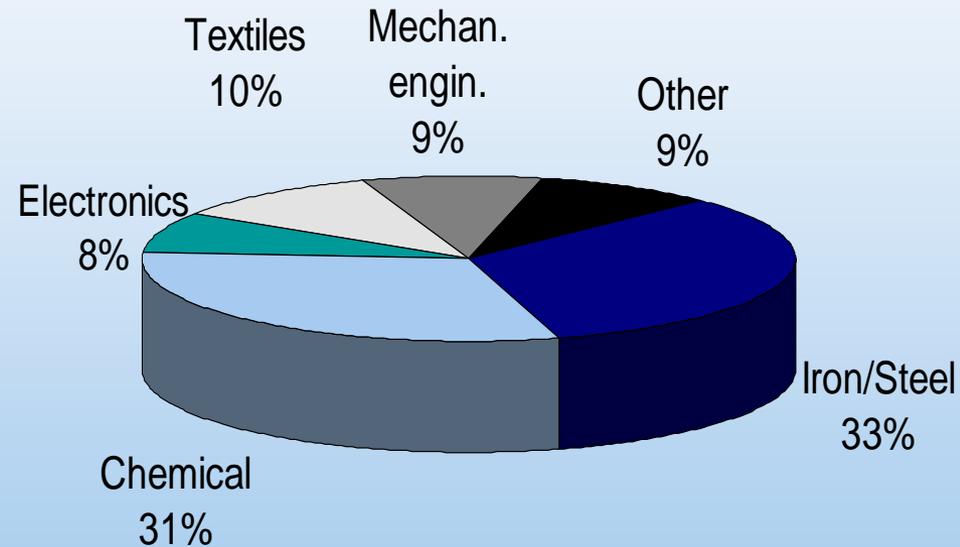
- provisional measures: 9 months
- definitive measures: 15 months

Examples and Figures

- **EU – moderate user of TDI**
- Initiation of on average **65 investigations** annually
- **60%** of investigations **result in measures**
- Yearly adoption of **85 Regulations** imposing, continuing, terminating or modifying measures on average
- Approximately **130 measures** currently in force
- **Half of measures expire** after 5 years
- **Countries mainly affected** by our measures: China, Russia, India, Thailand, Ukraine

Examples and Figures

- **Sectors mostly concerned:**
chemicals, metals, textile, electronics
- **Example of investigations:**
heavy industry (steel bars, fertilizers) and SMEs (textiles, shoes, bicycles, salmon)



TDI action against EU

- EU leading exporter worldwide, hence one of the main targets of TDI actions
- The Commission actively monitors all TDI actions taken against EU Member States by third countries
- The Commission strictly adheres to WTO rules on TDI and takes different types of action to ensure that its trading partners fully respect WTO rules and bilateral agreements
- If necessary, may use WTO framework to address unlawful actions by third countries in the area of TDI

TDI action against EU

Key facts and figures regarding trade defence actions by third countries vis-à-vis the EU:

- End 2005 : 153 measures in force against EU including 103 anti-dumping, 13 anti-subsidy and 37 safeguards
- Main users: United States (26 measures against EU), India (21), Brazil (12), China (10), Ukraine (10)
- Most affected sectors: chemicals, steel, agricultural/food products
- “New” users (notably developing countries) largely overtook “traditional” users

Use of TDI by Other WTO Members

- Nevertheless, most WTO member states are not using trade defence instruments. Many of them do not even have legislation in this area:
- AD: about 34 WTO members* used AD in 1995-(mid)2007; India, USA, EU, Argentina, Turkey most active users
- To use or not to use TDI is a trade policy choice, not an indicator of a country's level of development. If a WTO member decides to use TDI, it must do so in full conformity with all WTO rules.

** as reported to WTO, counting the EU as one*

More information on our website:

**[http://ec.europa.eu/trade/issues/
respectrules/index_en.htm](http://ec.europa.eu/trade/issues/respectrules/index_en.htm)**

**You are very welcome
to contact us if you have any questions!**

HellerEhrman

Solicitors and International Lawyers

海陸國際律師事務所

APEC Training Course on Anti-Dumping
(Ha Noi, Viet Nam, July 2008)

**SOUTH AFRICAN ANTI-DUMPING
EXPERIENCE**

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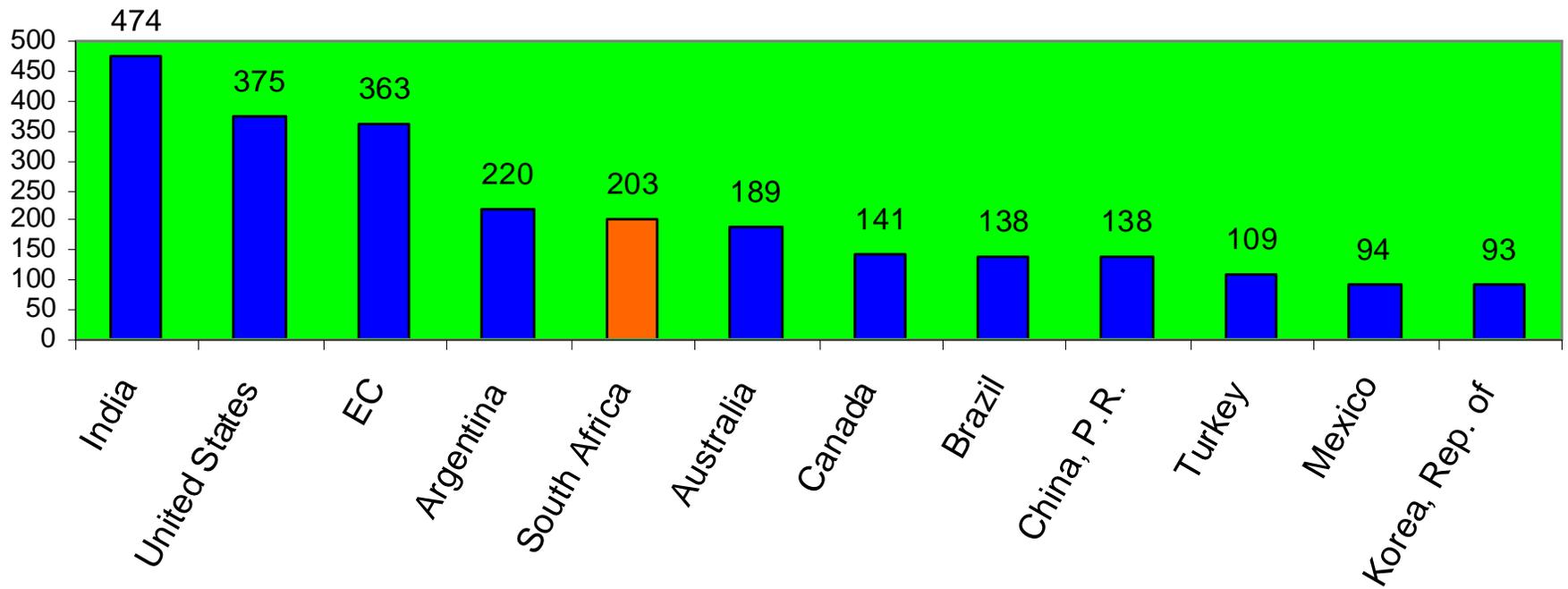
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SOUTH AFRICA ANTI-DUMPING HISTORY

- First anti-dumping provisions in 1914
- Investigations conducted by
 - Board on Tariffs and Trade (BTT): Injury
 - Customs: Dumping
- From 1992: separate unit in Board of Tariffs and Trade dealing with all trade remedy applications (Board on Tariffs & Trade Act), Customs not involved in investigations, only implementation of duties (Customs & Excise Act)
- Provisions hardly used until 1990's then South Africa became 4th largest initiator in the world

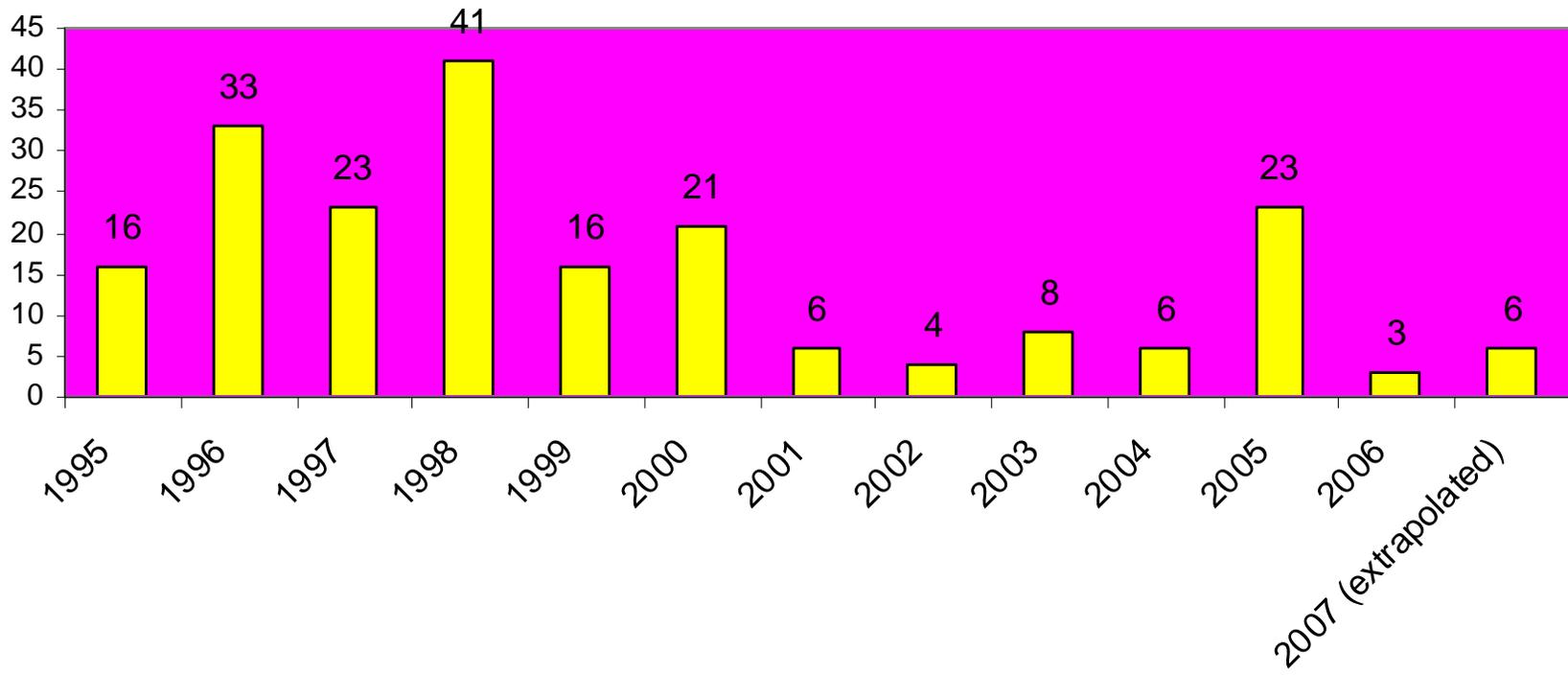
MOST ROBUST ANTI-DUMPERS

AD Initiations (01/01/95 to 30/06/07) (South Africa total = 203)



SOUTH AFRICAN AD INITIATIONS BY YEAR

South African AD Initiations (01/01/95 to 30/06/07)



BACKGROUND - PROCEDURE, LEGISLATION AND JURISPRUDENCE

- From 1996 – 2002 major increase in capacity, implementation of WTO Anti-Dumping Agreement in practice and procedures of BTT
- Broad enabling provisions in BTT and Customs & Excise Acts
- BTT used WTO Anti-Dumping Agreement as its official guidelines
- Relevant case law under old act
 - Chairman, BTT v Brenco Inc (May 2001)
 - Issue of non-disclosure of confidential information challenged in the light of procedural fairness and principles of natural justice
 - Court took cognisance of international practice and constraints faced by an authority in the fair and open conduct of anti-dumping investigations
 - BTT not required to inform the parties of every step and permit parties to be present at verification, would unduly hamper investigation
 - procedural fairness provided by BTT inquiry and report to the Minister, not necessary for every submission to be brought to Minister's attention

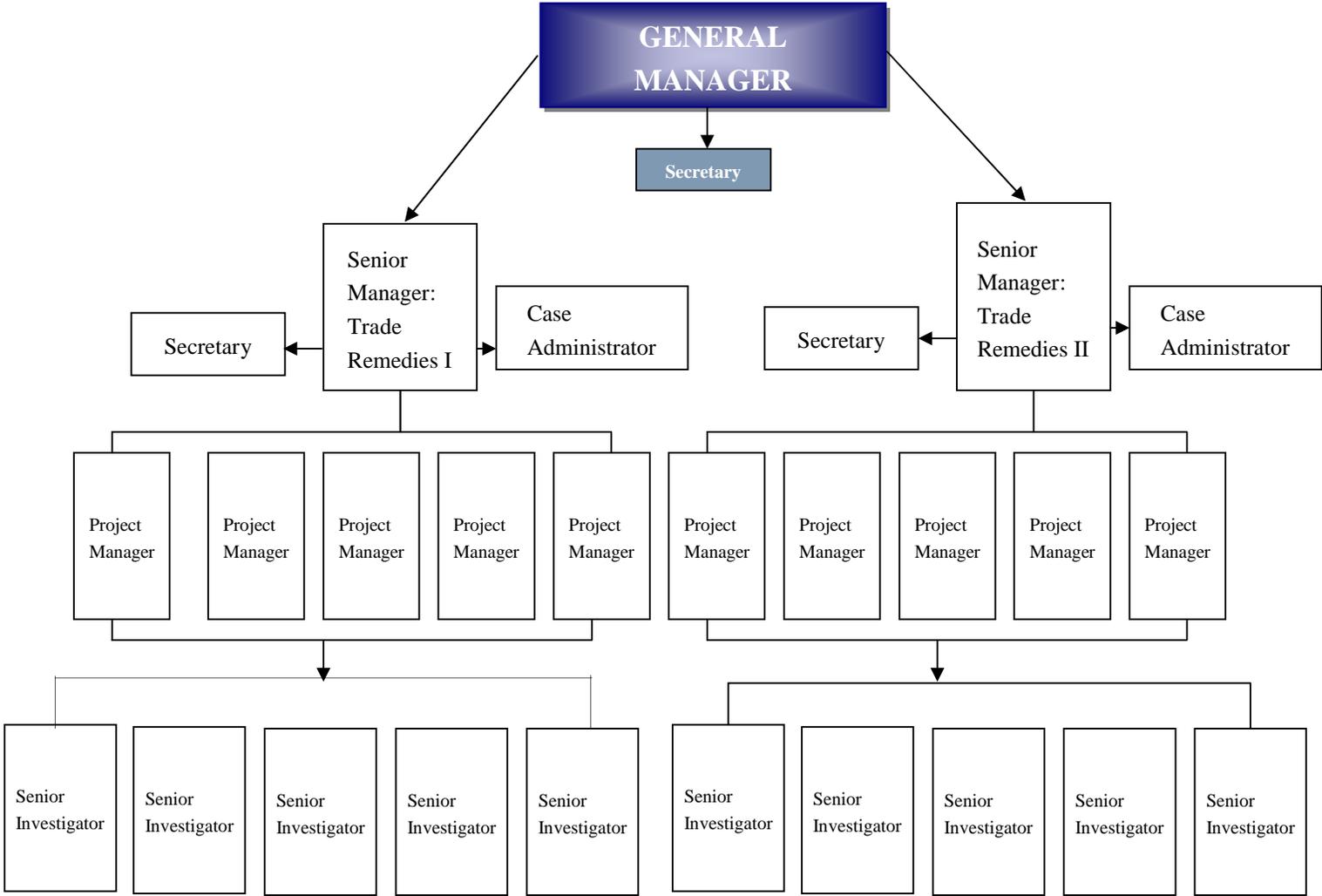
BACKGROUND - PROCEDURE, LEGISLATION AND JURISPRUDENCE

- Rambaxy Laboratories Limited & Others vs Chairman, BTT & others (March 2001)
 - International treaties not part of municipal law unless incorporated by legislative enactment
 - SA bound in terms of constitution to consider customary international law, strong indication that legislature intended to capture the spirit of the international agreement
 - Applicants contended that the BTT Act cannot be interpreted in accordance with GATT and WTO Agreements, with regard to “normal value” and “export price”, dismissed by Court

INTERNATIONAL TRADE ADMINISTRATION COMMISSION (ITAC)

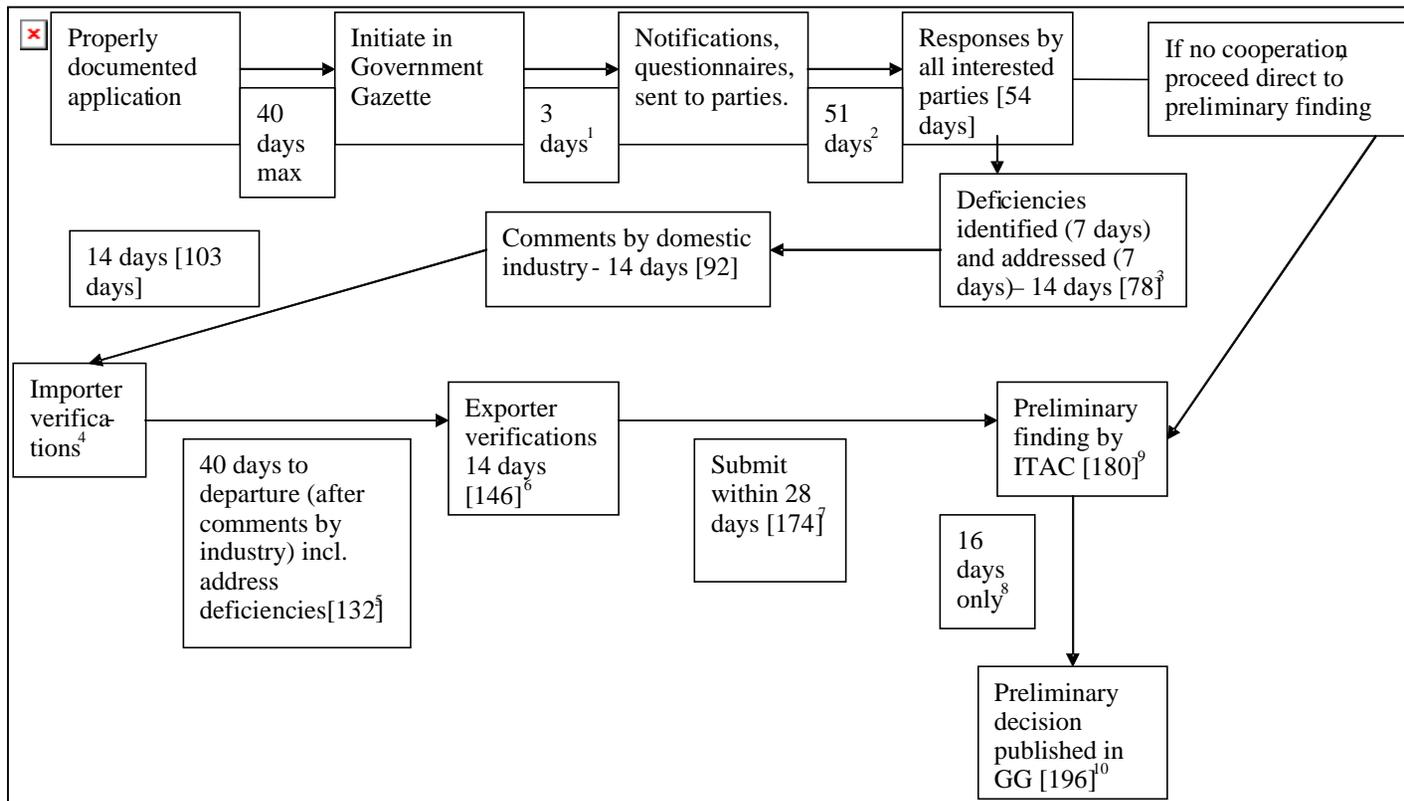
- Significant structural and legislative changes after 2002
- ITAC Established 1 June 2003, in accordance with the International Trade Administration Act, No. 71 of 2002.
- Replaced Board on Tariffs and Trade
- The Directorate Trade Remedies responsible for conducting investigations with regard to unfair trade practices (anti-dumping, countervailing and safeguards).
- One institution deals with dumping and injury

ORGANOGRAM OF ITAC TRADE REMEDIES DIRECTORATE (28 personnel)



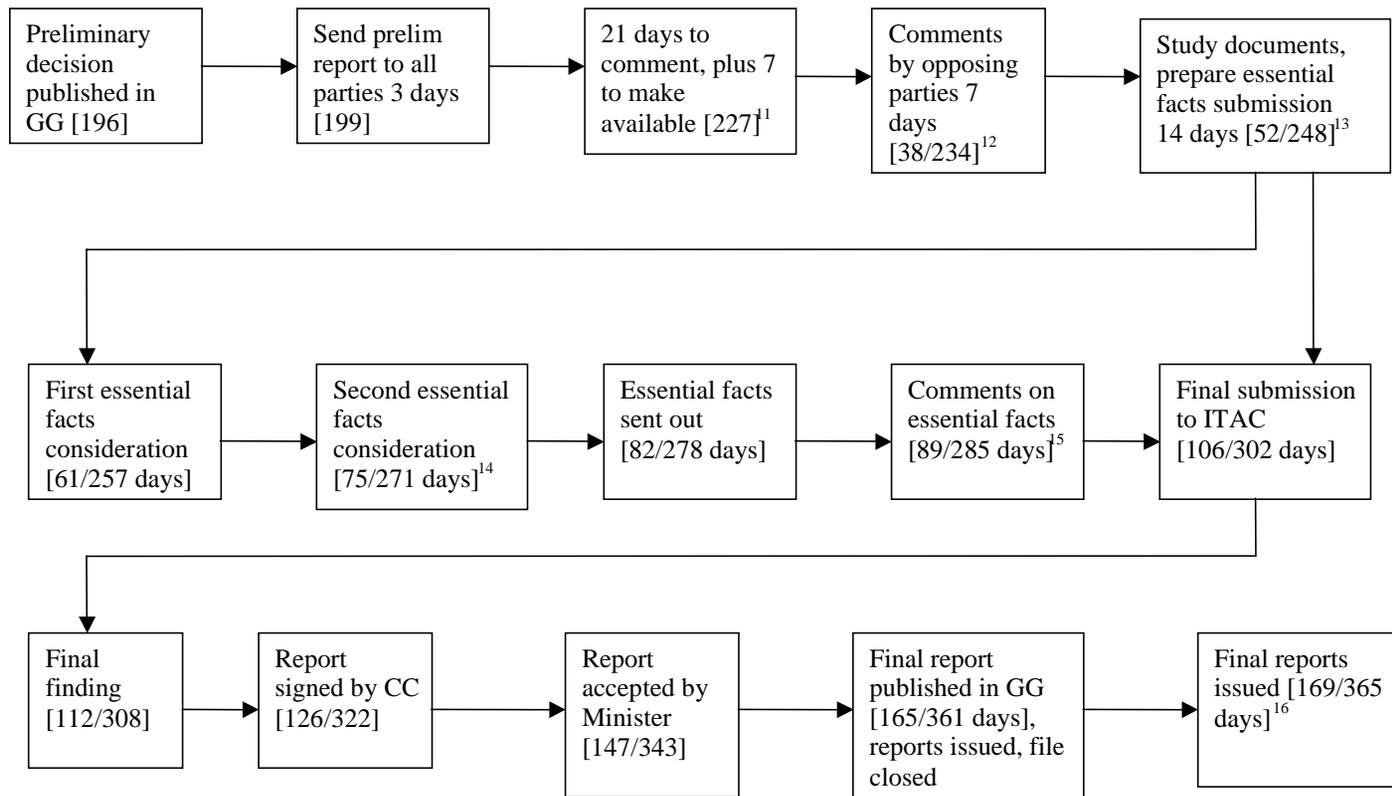
INVESTIGATION PROCESS

TIME FRAME: PRELIMINARY INVESTIGATION PHASE



PROCESS

TIME FRAME: FINAL INVESTIGATION PHASE



LEGAL DEVELOPMENTS: NEW ACT AND REGULATIONS

- International Trade Administration Act, No. 71 of 2002
- Anti-Dumping Regulations prescribed by the Minister of Trade and Industry on 14 November 2003
- Concerns raised about vagueness and WTO compatibility of certain provisions of new regulations by EC and US in WTO Committee meetings

ITA ACT AND CONFIDENTIALITY

- Issues and procedures relating to claims for confidentiality set out in Act
- SA generally treats confidentiality in accordance with AD Agreement (no administrative protective orders)
- ITAC can refuse to take information into account where confidentiality is claimed but not recognised as being confidential by ITAC
- ITAC determination concerning confidentiality can be appealed to the High Court
- Party can seek access to information that is determined by ITAC to be confidential by application to High Court, if mediation with other party fails
 - Uncoated Woodfree A4 Paper from Brazil and Indonesia, mediation successful
 - Tyres from China, mediation failed, interdict granted giving access to confidential information to lawyers

OTHER POLICY AND PRACTICAL ISSUES ARISING OUT OF ACT & REGULATIONS

- Oral Hearings
 - strict requirements, request can be limited and refused
- Adverse Party Meetings
 - must be reasons for not relying on written submissions only, can be refused
 - not been requested yet
- Response to preliminary report reduced to 14 days
 - practice previously 30 days

OTHER POLICY AND PRACTICAL ISSUES ARISING OUT OF ACT & REGULATIONS

- Limitation of exporters /products
 - selection represents largest portion of products / exporters, in consultation with parties
 - Other co-operating exporters get weighted average (exclude negative, de minimus margins and those based on facts available)
 - Residual duty for non-cooperating exporters
 - Exporters only limited in one investigation (Ceramic tiles from Italy)
- Lesser Duty Rule
 - Price disadvantage: extent to which price of imported product lower than unsuppressed selling price of domestic product
 - Applied if exporter and importer have co-operated fully

OTHER POLICY AND PRACTICAL ISSUES ARISING OUT OF ACT & REGULATIONS

- Reviews
 - Interim review
 - not less than 12 months from final finding
 - changed circumstances
 - New shipper review
 - only exports that did not export to SACU during the original investigation
 - not related to any party to which AD applied
- Refund
 - request for reimbursement of duties where shown that the dumping margin has been eliminated or reduced
 - must be submitted during anniversary month of AD duty relating to preceding 12 months, only 1 refund application

OTHER POLICY AND PRACTICAL ISSUES ARISING OUT OF ACT & REGULATIONS

- Anti-Circumvention Reviews
 - Types of anti-circumvention addressed
 - country hopping (if importer, following imposition of AD duties, switches to a related supplier based in another country) eg Gypsum Plasterboard from Indonesia
 - absorption of anti-dumping duties (exporter decreases price to compensate importer or third party without corresponding decrease in normal value or importer does not increase price in line with duty) e.g. PVC from China
 - minor modifications of the product subject to duty e.g. Blankets from PRC and Turkey
 - export of parts, components and sub assemblies with assembly in a third country or in SACU
 - If complaint lodged within a year of final determination, not required to update injury information and may use NVs previously established to determine DM until exporter submits proper information, for purpose of preliminary determination

OTHER POLICY AND PRACTICAL ISSUES ARISING OUT OF ACT & REGULATIONS

- Sunset review
 - AD in place for period not exceeding 5 years from imposition or last review
 - if review initiated prior to lapse of AD duty, duty remain in force until sunset review finalised
 - Progress Office Machines CC v ITAC & Others (September 2007),
 - Supreme Court of Appeal
 - Relates to the date of the “imposition of the final duties” from which the 5 year sunset review period calculated, and prior to which the sunset review application must be initiated - date of calculation from imposition of provisional or final duty?
 - Court held that as final duty imposed “retrospectively” to date of provisional duty, date of imposition of final duties is former date
 - Huge implications since all duties considered to have lapsed before sunset reviews initiated, as ITAC calculated the period from latter date
 - Some 17 final duties affected

OTHER POLICY AND PRACTICAL ISSUES

- Judicial review
 - Normal administrative review
 - Can also challenge preliminary decisions or Commission's procedures prior to finalisation of investigation
 - Interdict brought against Minister of Trade & Industry in the Sunset Review of Uncoated Woodfree White A4 Paper from Indonesia preventing him from approving Commission's recommendation to terminate the investigation, subject to judicial review
 - Interdict brought against ITAC in Carbon Black from Egypt and India
 - Commission decision can be varied to give effect to WTO Dispute ruling or to negotiations under WTO Dispute Settlement Mechanism - never been done
 - Lack of clarity of effect of these provisions

CASE LAW: AFTER ITA ACT

- Raise interesting constitutional issues (constitutional rights vs South Africa's regulatory role and international obligations)
- South Africa struggling to define its regulatory system in the constitutional arena
- Act provides for various remedies that are additional to administrative law remedies
 - invites more litigation
 - results may make administration of anti-dumping investigations and meeting WTO commitments more difficult for ITAC

NON-MARKET ECONOMY TREATMENT

- Until recently South Africa has followed the traditional surrogate methodology
- Embodied in Section 32(4) of the ITA Act, the regulations and practice
- Petitioner proposed and motivated a particular surrogate country, with an industry at a similar level of development as the NME industry
- NME country provided with an opportunity to comment on the selection and to propose an alternate
- If other market economies in the investigation, one of those countries would normally be selected
- Where no market economy countries are involved in an investigation, the domestic industry encouraged to obtain the cooperation of a manufacturer in a market economy
- Individual companies were not given the opportunity to show that governed by market principles

INDIVIDUAL MARKET ECONOMY TREATMENT: QUESTIONNAIRE

- China consistently challenged NME treatment and methodology in bilateral negotiations
- In December 2003, ITAC's questionnaire was changed to reflect the general international trend in allowing individual market economy status for companies
- Permitted in accordance with the new regulations
- Special questionnaire for Chinese companies requesting to be treated as a company operating in terms of market economy principles and to use its own costing and sales data
- If full information not received within time indicated, ITAC could make provisional and/or final findings on the best information available (including normal value indicated for surrogate)

INDIVIDUAL MARKET ECONOMY TREATMENT: QUESTIONNAIRE

- The following factors were considered in determining whether to grant individual market economy status
 - Ownership and stockholding
 - Independence regarding decisions on purchases, output and sales
 - Costs of major inputs should reflect market values
 - Accounting standards
 - Lack of distortions from current or previous government intervention
 - Insolvency laws
 - Exchange rate conversions
 - Treatment of profit

INDIVIDUAL MARKET ECONOMY TREATMENT: INVESTIGATIONS

- Number of investigations where Chinese companies granted market economy status on this basis:
 - Grinding Media (November 2004)
 - 2 cooperating companies granted market economy status, found not to be dumping while non-cooperating companies found to have margins of 52.9%, investigation terminated because no causal link
 - Steel Wheels (August 2005)
 - cooperating company considered to be operating under market conditions and found to have margin of 2,5%, non-cooperating companies found to have margin of 56%, no causal link so terminated
 - Toughened Motor Vehicle Glass (September 2006)
 - cooperating company considered to be operating under market conditions, found not to be dumping, residual dumping margin on non-cooperating exporters based on surrogate value, duty of 73% imposed

MARKET ECONOMY STATUS

- SA agreed to recognise China's market economy status (only in the context of anti-dumping)
- Formal Record of Understanding signed in September 2006
 - can still use surrogate methodology for the purpose of initiation
 - after initiation Chinese exporters can provide information to determine if sales made in the ordinary course of trade
 - same questionnaire as all other exporters
- No. of cases that have treated Chinese exporters the same as other exporters after initiation if co-operation by exporters and information shows that sales in the ordinary course of trade

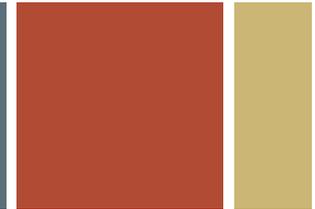
MARKET ECONOMY STATUS - CASES

- Factors that determine if sold in normal course of trade
 - competition, marketing, advertising, input cost of main raw materials and whether supplied at arms length, ownership of company, source of long term finance, human resources policies)
- Applicable investigations
 - Tyres (March 2007)
 - Used PRC pricing and sales data for co-operating exporters resulting in zero or de minimis duties, surrogate normal value used for non-cooperating exporters, duties from 26.2 – 44.21%
 - Sunset Review on Picks, Shovels, Spades, rakes and Forks (October 2007)
 - Exporters did not cooperate, surrogate normal values used, high duties between 24 – 118%

- 
- Extruded Aluminium Profiles – Preliminary (February 2008)
 - all co-operating exporters got no duty, others over 10%
 - Welded Link Steel Chain (February 2008)
 - co-operating exporters received 0 and 2.4% duty, all other 53%
 - Plates, Sheets, Film, Foil and Strips of Polymers of Vinyl Chloride (April 2008)
 - no or deficient cooperation, duty of 32.7%,
 - South Africa is likely to the start using countervailing methodology against China

Definitive Duties in Place in SA (as of Dec 2007)

Total = 55



Country/Custom Territory	Product	Date of Imposition (Review)
Australia	Flat-rolled products of iron or non-alloy steel	02/04/04
Brazil	Suspension PVC	27/03/97 (18/10/02)
	Uncoated woodfree paper	13/02/98 (20/02/04)
	BOPP Film	13/04/07
	Uncoated woodfree A4 paper	28/05/99
China	Aluminium hollowware	07/02/97 (31/01/03)
	Acrylic fabrics	12/11/04
	Acetaminophenol	20/08/93 (18/06/99) (15/07/05)
	Blankets	18/06/99 (15/06/05)
	Bolts and nuts of iron or steel	06/08/99 (03/06/05)
	Float glass	28/05/99 (05/11/04)
	Flat glass	28/05/99 (05/11/04)
	Garlic	20/10/00 (10/03/06)

Country/Custom Territory	Product	Date of Imposition (Review)
China	Garden picks	03/12/93 (08/03/02) (02/11/07)
	Spades, shovels, rakes, forks	03/12/93 (08/03/02) (02/11/07)
	Door locks and door handles	25/01/02
	Wire ropes	28/08/02
Egypt	Aluminium hollowware	07/02/97 (31/01/03)
	Carbon black	10/09/99
France	Acetaminophenol	18/06/99 (15/07/05)
	Automatic circuit breakers	08/08/97 (17/10/03)
	Suspension PVC	27/03/97 (18/10/02)
Germany	Wire ropes	28/08/02

Definitive Duties in Place in SA (as of Dec 2007)

Country/Custom Territory	Product	Date of Imposition (Review)
India	Carbon black	10/09/99
	Float glass	28/05/99 (05/11/04)
	Flat glass	28/05/99 (05/11/04)
	Garden picks	11/10/96 (14/02/03)
	Paper insulated lead covered electric cable	31/03/00 (11/11/05)
	Welded Galvanised Steel Pipe	14/06/02
	Polyethylene terephthalate (PET)	30/05/06
	Unframed glass mirrors	25/10/06
Indonesia	Gypsum Plasterboard	02/07/04
	Drawn and float glass	03/10/06
	Unframed glass mirrors	25/10/06
	Uncoated woodfree A4 paper	28/05/99
Italy	Automatic circuit breakers	08/08/97 (17/10/03)
Korea, Republic of	Welded stainless steel tubes and pipes	18/06/98 (16/07/04)
	Polyethylene terephthalate (PET)	30/05/06
	Paperboard	22/12/06
	Wire ropes	28/08/02

Country/Custom Territory	Product	Date of Imposition (Review)
Malaysia	Welded stainless steel tubes and pipes	18/06/98 (16/07/04)
Poland	Uncoated woodfree paper	13/02/98 (20/02/04)
Chinese Taipei	Nuts of iron or steel	06/08/99 (03/06/05)
	Welded stainless steel tubes and pipes	18/06/98 (16/07/04)
	Polyethylene terephthalate (PET)	30/05/06
Thailand	Carbon black	13/10/00 (25/10/06)
	Gypsum Plasterboard	13/02/04
Turkey	Acrylic fabrics	10/11/04
	Blankets	18/06/99 (15/07/05)
United Kingdom	Wire ropes	28/08/02
	Suspension PVC	27/03/97 (18/10/02)
United States	Acetaminophenol	18/06/99 (15/07/05)
	Chicken meat portions	27/12/00 (27/10/06)
	Lysine	25/01/02
	Suspension PVC	27/03/97 (18/10/02)

NO. OF SOUTH AFRICAN INITIATIONS PER COUNTRY (01/01/95 – 30/6/07)

EXPORTING COUNTRY	NO. OF INITIATIONS
<i>China, P.R.</i>	28
<i>India</i>	20
<i>Korea, Rep. of</i>	15
<i>Chinese Taipei</i>	11
<i>Germany</i>	11
<i>Indonesia</i>	9
<i>United States</i>	9
<i>Brazil</i>	8
<i>Hong Kong</i>	7
<i>Malaysia</i>	7
<i>Spain</i>	7
<i>United Kingdom</i>	7
<i>Australia</i>	5
<i>Belgium</i>	5
<i>France</i>	5
<i>Thailand</i>	5
<i>Italy</i>	4
<i>Turkey</i>	4
<i>Egypt</i>	3
<i>Ireland</i>	3
<i>Netherlands</i>	3
<i>Austria</i>	2

EXPORTING COUNTRY	NO. OF INITIATIONS
<i>Russia</i>	2
<i>Saudi Arabia</i>	2
<i>Sweden</i>	2
<i>Zimbabwe</i>	2
<i>Argentina</i>	1
<i>Bahrain</i>	1
<i>Bulgaria</i>	1
<i>Hungary</i>	1
<i>Iran</i>	1
<i>Israel</i>	1
<i>Japan</i>	1
<i>Malawi</i>	1
<i>Mozambique</i>	1
<i>Pakistan</i>	1
<i>Poland</i>	1
<i>Portugal</i>	1
<i>Singapore</i>	1
<i>Slovak Republic</i>	1
<i>Switzerland</i>	1
<i>Ukraine</i>	1
<i>Yugoslavia</i>	1
<i>Total</i>	203

APEC TRAINING COURSE IN ANTI-DUMPING LAW

A SHORT COMPARATIVE STUDY ON ANTI-DUMPING LAW OF THE UNITED STATES OF AMERICA, AUSTRALIA AND INDIA

Bao Anh Thai

In this presentation

1. AD administration in three studied countries;
2. Dumping calculation methods;
3. Determination of injury to domestic industry; and
4. “Public interest” in anti-dumping imposition.

AD Administration

AD state agencies

Countries	Determining Dumping	Determining Injury	AD duty
USA	Department of Commerce (DOC)	International Trade Commission (ITC)	DOC
India	Directorate General of Anti-Dumping and Allied Duties (DGAD)		Ministry of Finance
Australia	Australian Customs		Minister of Justice and Customs

Dumping calculation method

$$\text{Dumping Margin} = \text{NV} - \text{EP}$$

NORMAL VALUE

	NV can be determined by (i) Home market price, (ii) Third country price, and (iii) Constructed Value	NME	Economies in transition
U.S.A	Yes	Yes	
AUSTRALIA	Yes	Yes	Yes
INDIA	Yes	Yes	

Dumping calculation method

$$\text{Dumping Margin} = \text{NV} - \text{EP}$$

NORMAL VALUE

	NV can be determined by (i) Home market price, (ii) Third country price, and (iii) Constructed Value	NME	Economies in transition
U.S.A	Yes	Yes	
AUSTRALIA	Yes	Yes	Yes
INDIA	Yes	Yes	

Dumping calculation method

$$\text{Dumping Margin} = \text{NV} - \text{EP}$$

- EXPORT PRICE
- ADJUSTMENTS
- ANTI-DUMPING MARGIN:

USA	AUSTRALIA	INDIA
Antidumping duty is based on dumping margin	Antidumping duty is based on dumping margin	Antidumping duty is the lesser of the follows: (i) dumping margin; or (ii) injury margin. Calculate injury margin & apply Lesser Duty Rate Rule.

Determination of injury

- CUMULATIVE EFFECT

USA	AUSTRALIA	INDIA
Use cumulative effect in determining injury	Use cumulative effect in determining injury	No

•PUBLIC INTEREST IN CONSIDERATION OF IMPOSITION OF AD DUTY

USA	AUSTRALIA	INDIA
AD duty shall be imposed where: (i) Dumping (ii) Injury	Public interest shall be considered	AD duty shall be imposed where: (i) Dumping (ii) Injury

THANK YOU!