An Introduction to Trade Remedies in the Multilateral Trade System

INTRODUCTION

Across the globe, the adoption of trade remedies is increasingly becoming a part of national trade policy in order to protect domestic industries from the adverse consequences of trade liberalisation. The term “trade remedies” refers to anti-dumping duties, countervailing duties and safeguards. There are specific World Trade Organisation (WTO) agreements on Tariffs and Trade (GATT) system which preceded it, that the ability of member states to have recourse to trade remedies when needed is tied to achieving one of the fundamental aims of the multilateral trade system, that is a high degree of reciprocal tariff liberalisation. In this regard, the reasoning is that in certain circumstances liberalized imports (supported by certain trade practices) may cause injury to an importing member state’s industry and that member’s commitment to further liberalisation might be jeopardized if it is unable to take measures to address the issue. In the context of safeguards, one WTO Dispute Settlement Panel recognized this nexus, noting that:

If WTO law were not to offer a ‘safety valve’ for situations in which, following trade liberalization, imports increase so as to cause serious injury or threat thereof to a domestic industry, Members could be deterred from entering into additional tariff concessions and from engaging in further trade liberalization. It is for this reason that the safeguard mechanism in Article XIX has always been an integral part of the GATT.¹

The WTO Agreements relating to anti-dumping measures, subsidies and countervailing measures and safeguards are part of the single undertaking that all members must subscribe to.

It is to be noted however, that unlike what obtains with other agreements such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) WTO member states are not obliged to implement into domestic law the commitments enshrined in these agreements. Rather the approach adopted is that if WTO members wish to discipline imports which cause injury to domestic industries, they must do so in a manner consistent with commitments they have entered into.

It is for this reason, that only a few Caribbean states have implemented trade remedies legislation as (i) many see themselves under no positive obligation to do so and (ii) many of our states believe that their economic structures are characterised by a relatively low level of industry and hence does not warrant trade remedy protection. For other states, the concerns about the cost of implementing the necessary legislative regime and maintaining the requisite administrative bodies is a very real concern.

These matters will be further explored in the final part of this paper.

¹ WTO Dispute Settlement Panel in United States: Safeguard Measures on Lamb
DUMPING

In the WTO, the rules concerning the circumstances in which a WTO member may take action to discipline dumped imports, is governed by Article VI of the General Agreement on Tariffs and Trade 1994 (the GATT 1994) and the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the Anti-dumping Agreement or ADA). It is to be noted at the outset, that the approach adopted in the agreement is not to declare that the practice of dumping is inconsistent with the multilateral trading regime and hence ought to be “outlawed” by member states. On the contrary, dumping is inherently recognised as a regular commercial practice used by many manufactures wishing to gain market share in a foreign market and hence the approach adopted in the agreement is that dumping may be disciplined by a member state only when it causes or threatens to cause injury to a domestic industry.

The ADA defines dumping as the practice of an exporter introducing its product “into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.” In practical terms, dumping can therefore be conceptualized as selling into one country, goods at a price less than that which the same or comparable goods are sold for in the country of production.

Because sales in these circumstances are in the long run unsustainable for an exporter, if left unchecked, market economics might very well in the long run, correct the practice. The danger however, is that before this correction occurs, an exporter employing the commercial strategy of dumping might succeed in his aim of driving local players out of the market thereby eliminating all effective competition and thereafter being able to employ monopoly pricing. For many states therefore, being able to discipline dumping is an essential part of national social and economic policy.

Protection for domestic producers is achieved by the Investigating Authority of the importing state imposing an anti-dumping duty not in an amount not greater than the assessed margin of dumping of the imported product. This duty which is imposed at the time of importation, has the effect of raising the price for the imported product to a level whereby the unfair advantage enjoyed by the exporter or importer of that product is eliminated.

DETERMINING WHEN DUMPING IS OCCURRING.

The essence of dumping is sales of a product below normal value. Depending upon the type of and the sufficiency of the data available, this can be determined in the following ways:

- By comparing the price at which the product is sold in the importing country and that at which it is sold in the country of export in the normal course of trade. In this
scenario, from Country B’s perspective (the importing country), dumping would be deemed to be occurring if the goods are sold at for example, $50 per unit in Country A, the country of origin but are sold at $40 per unit in Country B.

- (In cases where there insufficient data allowing for the price comparison stated above) by comparing the price at which the product is sold in the importing country and a third country to which the goods are exported in the country of production. In this scenario, from Country C’s perspective, dumping would be deemed to be occurring if the goods are produced in Country B, exported to Country B where they are sold at $50 per unit but are sold at $40 per unit in Country C.

- Alternately, where either of the above will not be appropriate, by a calculation of the cost of production of the product in the country of origin adjusted to reflect a reasonable sum for administrative, selling and general expenses as well as profit markup. In this scenario, from Country B’s perspective, dumping would be deemed to be occurring if the adjusted price of the goods in Country A, the country of origin is $50 per unit but the goods are sold in Country B at $40 per unit.

In all of the above scenarios, the Investigating Authority in the importing country must make appropriate adjustments to the export price and costs of production.

COUNTERVAILING DUTIES

...whilst subsidies might be good for stimulating economic development in one country, they may produce adverse economic effects in another when goods benefitting from the subsidies enter into the market of an importing country at prices with which domestic producers cannot compete...

Many governments use subsidies as a means of effecting essential elements of its social and economic policy such as stimulating export competitiveness in an industry. However, whilst subsidies might be good for stimulating economic development in one country, they may produce adverse economic effects in another when goods benefitting from the subsidies enter into the market of an importing country at prices with which domestic producers cannot compete. In this scenario, unlike as is the case with dumping, the exporter does not aim to drive out local producers out of the market of the importing country so as to achieve monopoly or a dominant status, but this may be the result when domestic industries are injured during the inevitable process of price competition.

It is because of these considerations, that the approach of the SCMA is, subject to certain exceptions, not to prohibit outright the practice of member states subsidising their domestic industries, but rather to provide that goods benefitting from a subsidy can be disciplined when they cause or threaten to cause injury to a domestic industry. Protection for domestic producers is achieved by the Investigating Authority of the importing state imposing a countervailing duty in an amount not greater than the assessed margin of subsidization, on the imported product. The countervailing duty which is imposed at the time of importation, has the effect of raising the price for the imported product to a level at which the domestic industry can compete.

WHAT IS A SUBSIDY?

In accordance with the terms of the SCMA, a subsidy will be deemed to exist if an entity or industry derives a benefit from any of the following practices:

- There is a financial contribution by a government or any public body within the territory of a member to an industry or a producer. An example of this is a grant from the government to an entity.
- A government practice involves a direct transfer of funds or potential direct transfers of funds or liabilities to an industry or a producer. An example of this is the government giving a loan to an entity on non-commercial terms or standing giving a guarantee on the industry’s behalf as a result of which the entity receives a loan on more favourable terms than that which would apply under normal commercial circumstances.
- A government forgoes revenue which is due from an industry or does not collect it from that industry or producer. An example of this is a government forgiving the taxes due from an entity.
- A government provides goods or services other than general infrastructure or purchases goods for an industry or a producer. An example of this is when a government supplies raw materials to an entity.

2 Private entities to whom the government entrusts governmental type functions are also covered within the ambit of this.
• A government provides income or price support to an industry or a producer which has the direct or indirect effect of increasing exports of a product by that industry or producer.
• A government (or a private body to which it entrusts this function) makes payment to funding mechanism for the benefit of an entity or industry.

In accordance with the terms of the SCMA, subsidies granted by a government in the country of production, can only trigger countervailing measures in an importing country when they are specific to an industry or producer in the country of import. This prerequisite for the imposition of a countervailing duty has the effect of preserving a government’s policy space to use broad based subsidies available to different economic sectors. A subsidy will be deemed to be specific to an industry, or a group of enterprises or industries in the following cases:

• The government or government agency which grants the subsidy or the law pursuant to which the subsidy is granted, explicitly limited access to the subsidy to certain enterprises only.
• A subsidy is made available only to certain enterprises located within a designated geographical region within the jurisdiction of the government or government agency granting the subsidy.
• If it is an export subsidy.
• It is a subsidy aimed at promoting import substitution.

In addition to these cases, an Investigating Authority may conclude that a subsidy is specific if it manifests any of the following features:

• Only a limited number of certain enterprises use the subsidy.
• It is predominantly used by certain enterprises.
• Disproportionate amounts of a subsidy are granted to certain enterprises.
• The granting authority exercises its discretion to grant a subsidy in favour of certain enterprises only.

SAFEGUARDS

The legal basis for WTO Member States being able to implement a safeguard is afforded by Article XIX of the GATT 1994 and The Agreement on Safeguards (AS). In accordance with both of these instruments, a safeguard may be implemented when as a result of unforeseen circumstances a product is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause injury to a domestic industry.

Thus stated, a safeguard is conceptually different from an anti-dumping duty or countervailing measure because its use is not in response to a trade practice that may be deemed to be unfair. Rather the imposition of a safeguard measure will be in direct response to enhanced conditions of competition for imported goods fostered by the importing state having lowered its tariffs.

The main trigger for a safeguard is therefore increased imports of a product which may overwhelm a domestic industry producing like or directly competitive products. The exposure of the domestic industry to injury does not stem from any unfair competitive advantage enjoyed by the imported products, but rather from having to compete with a large amount of imports at a time when this industry may already be in a weakened state or otherwise unable or unprepared to compete effectively with imports.

Because a safeguard is not triggered by a particular trading or economic practice specific to certain countries, but rather by increased imports of a product from any source, it follows that a safeguard measure must be applied to all products irrespective of origin. The safeguard may take the form of an increase in the applied rate of duty for the product or a quantitative restriction (quota). When applied as an increase in the applied rate of duty, the effect is to increase the price at which the imported product is sold, thereby making it less competitive vis a vis the domestically produced product. When applied as a quantitative restriction, the effect is to reduce the amount of the imported product that will reach the domestic market, thereby allowing the domestic product a change at greater marketability.
In all three cases, trade remedies are for the protection of the domestic industry and a trade remedy investigation is usually initiated at the request of the domestic industry. There are important differences however, between what constitutes a domestic industry for the purpose of anti-dumping and countervailing investigations on the one hand and safeguard investigations on the other.

In the case of anti-dumping and countervailing investigations, the domestic industry is subject to certain exceptions, defined as:

The domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

It is evident from the foregoing, that the linchpin to understanding precisely which entities will constitute a domestic industry depends on the concept of which products are “like” the imported product.

Both the ADA and the SCM provides that a like product is one which is identical / alike in all respects to the imported product under consideration or in the absence of such a product, another product which although not alike in all respects has characteristics closely resembling the product under consideration. An abundance of GATT and WTO jurisprudence on the issue of the concept of a “like product” has established that relevant considerations are:

- Whether the two products bear the same tariff classification (this points to the views that customs experts have on the matter)
- Consumer perceptions and taste (for example, are the products deemed to be substitutable from a consumer point of view.
- How the relevant industry itself segments and markets the products under consideration
- The physical and other characteristics of the products under consideration.

For the purposes of a safeguard investigation, the domestic industry does not only comprise producers of a like product to the imported product, but also producers of a separate category of products, namely those which are directly competitive with the imported product. This latter category embraces a wider range of products than the concept of “like” products and is to be determined by examining the competitive relationship enjoyed by various products in the importing market.
To succeed in obtaining trade remedy protection, a domestic industry as defined above, must establish that it is being injured or will likely be injured as a result of the adverse effects produced by the imported product. A different standard of injury applies in anti-dumping and countervailing duty investigations than that which applies in safeguard proceedings.

WHAT IS AN INJURY?

In anti-dumping proceedings and countervailing duty proceedings, injury is defined as “material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.” Each of these elements can be explained as follows:

- Material injury means that at the time of the investigation, the domestic industry must be able to show that some proof of actual injury occasioned by the presence of the dumped or subsidized imports although such imports may not have been the sole cause of the injury.
- A threat of material injury means that the injury has not yet occurred but that actual material injury is clearly foreseen and imminent and will occur unless action is taken to discipline the dumped or subsidized imports.
- Material retardation is a much less precise concept and points to the inability of industry to establish itself owing to the negative economic effects caused by the dumped or subsidized imports. Because the establishment of an industry can only be materially retarded if the industry has not yet been fully established, it is unclear as to what economic indicators will suffice to establish the fact of material retardation.

In safeguard proceedings, the relevant standard of injury that must be met by the domestic industry is serious injury or a threat of serious injury. The Agreement on Safeguards defines serious injury as a “significant overall impairment in the position of a domestic industry” and as is the case with the Anti-dumping agreement and the SCM, specifies that a threat of serious injury must be clearly imminent.

The requirement for the injury being faced by the domestic industry seeking the imposition of safeguard be serious as opposed to material, suggests that in safeguard proceedings, a higher standard of injury exists as compared to that which must be established in anti-dumping or countervailing duty investigations. This was made clear by the WTO Appellate Body which in the case of US: Safeguard Measures on Lamb concluded as follows:

“We believe that the word ‘serious’ connotes a much higher standard of injury than the word ‘material’... It accords with the object and purposes of the [AS] that the injury standard for the application of a safeguard measure...
should be higher than the injury standard for [anti-dumping duties] and [countervailing duties].

The differentiated standard is to be understood in the context of noting that the imposition of a safeguard runs counter to the fundamental aims of the multilateral trade systems in dismantling tariff and quantitative based trade barriers and hence states should only have recourse to such measures if their industries can prove injury at a very high standard. In other words, proof of exceptional circumstances is required to justify action inconsistent with the fundamental aims of the multilateral trading system.

In all three proceedings, relevant factors that must be examined to ground a finding of injury are:

- The rate and amount of the increase in imports of the product concerned in absolute terms or relative to domestic production.
- The share of the domestic market taken by imports (safeguards) or the dumped or subsidized imports (AD / CVD).
- Changes in the level of sales, production, capacity, utilization, profits and losses and employment by the domestic industry.
- Price depression
- Price suppression
- Inventory

In all three proceedings, it must be established that the injury to the domestic industry has been caused by either the increased imports (safeguards) or the dumped or subsidized imports (AD and CVD). This notwithstanding, the WTO appellate body has in various cases confirmed that the increased imports or the dumped or subsidized imports as the case may be, need not be proven to be the sole cause of the injury to the domestic industry. This means that the domestic industry may still succeed in obtaining trade remedy protection even if other factors such as natural disasters or a general economic downturn have also contributed for the downturn in its fortunes.
ANTI-DUMPING AND COUNTERVAILING DUTY PROCEEDINGS.

These proceedings can only commence upon the receipt by the competent authority of a properly documented complaint from the domestic industry. A properly documented complaint is one which contains sufficient information / evidence (as far as such information is reasonably known to the applicant) on:

- Identity of applicant.
- Description of volume and value of domestic production.
- List of all known domestic producers and description of volume and value of production.
- Description of allegedly dumped/subsidized product.
- Names of country/countries of origin.
- Identity of each known foreign exporters/foreign producers, list of known importers.
- Evidence of injury to the domestic industry caused by the dumped or subsidized products.
- Information on evolution of and the volume of allegedly dumped/subsidized imports and their price effects and overall impact on domestic industry. • Proof that the imported product is being dumped or subsidized.

An Investigating Authority receiving a complaint from a domestic industry must satisfy itself that the information being provided by the applicant is both accurate and adequate. This is the first level of procedural fairness imposed by the agreements in order to ensure that an Investigating Authority does not proceed in a biased manner against the exporters of the allegedly dumped or subsidized products. The Investigating Authority is therefore obliged to refuse to initiate an investigation where it is not satisfied itself that the information presented by the applicant is either adequate or accurate.

The Investigating Authority may in special circumstances, itself initiate an investigation in the absence of a written application by the domestic industry. Before doing so however, the Investigating Authority must satisfy itself that it has sufficient evidence of dumping or subsidization of goods, and injury being caused to the domestic industry by such goods.

In these proceedings also, the applicant must satisfy a standing requirement namely that it is presenting the applica-
Standing to present the application on behalf of the domestic industry is demonstrated by the applicant being able to establish that the application is supported by domestic producers whose collective output constitute 50% or more of the like product produced by that portion of domestic industry expressing either support for or opposition to the complaint.

This standing requirement can be illustrated as follows:

Assuming that there are 5 members comprising the domestic industry with market share as follows:

- A – 20%
- B – 20%
- C – 40%
- D – 5%
- E – 15%

If the position of each of the 5 with respect to the application is as follows:

<table>
<thead>
<tr>
<th>Support</th>
<th>Opposition</th>
<th>Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td>A – 20%</td>
<td>B – 20%</td>
<td>D – 5%</td>
</tr>
<tr>
<td>C – 40%</td>
<td></td>
<td>E – 15%</td>
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<td></td>
<td>60%</td>
<td>20%</td>
</tr>
</tbody>
</table>

Then the standing requirement is satisfied as the supporters can show that they have more than 50% of total production of AC + B, that is, they have more than 50% of 80%.

If however, the position of each of the 5 members with respect to the application is as follows:

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<thead>
<tr>
<th>Support</th>
<th>Opposition</th>
<th>Silent</th>
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<tbody>
<tr>
<td>D – 5%</td>
<td>C – 40%</td>
<td>B – 20%</td>
</tr>
<tr>
<td>E – 15%</td>
<td></td>
<td>A – 20%</td>
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<td></td>
<td>20%</td>
<td>40%</td>
</tr>
</tbody>
</table>

Then there can be investigation as the supporters cannot show that collectively they account for more than 50% of the total production of D, E + C, that is, they have more than 50% of 60% = 30%.

Finally, if the position of each of the 5 members with respect to the application is as follows:

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<tr>
<th>Support</th>
<th>Opposition</th>
<th>Silent</th>
</tr>
</thead>
<tbody>
<tr>
<td>B – 20%</td>
<td>E – 15%</td>
<td>D – 5%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C – 40%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A – 20%</td>
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<tr>
<td></td>
<td></td>
<td>65%</td>
</tr>
</tbody>
</table>

Then there can also be no investigation as B the lone supporter can account for more than 50% of total of B + E, (the members expression support for or opposition to the complaint) but overall accounts for less than 25% of total domestic producers, that is, total of B, E, D, C + A.
SAFEGUARD PROCEEDINGS:

The Agreement on Safeguards is silent as to the requirements that must be satisfied by the domestic industry in order for the investigating authority to be able to commence a safeguard investigation. Given however that the domestic industry is only entitled to safeguard protection if it can be satisfactorily established that it is being injured by increased imports, at a minimum, an application for a safeguard should contain evidence of the following:

- Increased imports in absolute terms or relative to domestic production
- Evidence of injury caused by the increased imports.

Unlike the ADA and the SCMA, the Agreement on Safeguards does not expressly allow an investigating authority to commence a safeguard investigation on its own initiative.

PROCEDURAL PROTECTION DURING AN INVESTIGATION

In keeping with the obligations imposed by the relevant WTO agreements, in all three types of proceedings, certain rules to ensure the transparency of the proceedings and procedural fairness for exporters, importers and other interested persons must be obeyed. These rules translate into the following requirements:

- Reasonable public notice must be given to all interested parties
- Public hearings or other appropriate opportunities must be presented for interested persons to present their views on all relevant matters (in safeguard proceedings these views can be on the issue of whether the safeguard is in the public interest) and meet with those persons with opposing views.
- All interested persons must be given an opportunity to examine and comment on all information of a non-confidential nature which has been submitted to the investigating authority
- Investigating Authorities must publish a report setting out their findings and conclusions.
- Each State must ensure that there is the possibility to have judicial review of the determinations of the investigating authority.
Anti-dumping and countervailing duty investigations must be concluded within one year from the date of initiation unless there are exceptional circumstances, in which case, they must be concluded within eighteen months of the date of initiation of the investigation.

These time frames presuppose that the investigation will run its course and at the end of the process, the investigating authority will make a determination either to impose or not impose a definitive measure because the requisite legal elements have not been established. These proceedings may however be terminated at a much earlier stage, as the Investigating Authority must promptly terminate the investigation at any time that it appears that there is insufficient evidence of dumping or subsidisation of goods or injury to the domestic industry caused by the importation of such goods. The investigation must also be terminated if the investigating authority concludes that the margin of dumping or subsidisation is too insignificant (de minimis) or the volume of imports or the actual or potential injury is negligible and therefore not significant enough to cause injury to the domestic industry.

With respect to safeguard proceedings, the AS does not specify particular investigatory time frames. There is thus a great scope for WTO member states to establish their own timeframes in their implementing legislation. Given that an industry that seeks safeguard protection usually needs the remedy as a matter of urgency to prevent further injury or to prevent injury from occurring, member states in their implementing legislations have by and large adopted investigatory time frames that are in the same time frames as that which they have adopted for anti-dumping and countervailing duty investigations.

In the Agreement on Safeguards, there is also no express requirement for the Investigating Authority to terminate the investigation at any time it is satisfied that the legal elements of increased imports, and injury to the domestic industry caused by these imports are not satisfied. However, once it is clear that the necessary elements cannot be established, an investigating authority cannot in a sense of fairness continue the proceedings. If it does so, this would suffice to ground a challenge to the legality of the determination at the WTO.
In all three proceedings, before concluding an investigation, an investigating authority is empowered to impose provisional measures upon making a preliminary determination that the relevant legal elements have been established and that such measures are needed to protect the domestic industry pending the final resolution of the investigation. This means that in the case of anti-dumping and countervailing duty proceedings, provisional measures can only be imposed upon the Investigating Authority making a preliminary determination that goods are being dumped or subsidized and as a result have caused injury to a domestic industry. A provisional measures imposed in these cases cannot be imposed for longer than six months in the case of anti-dumping proceedings and four months in the case of countervailing duty proceedings.

In the case of safeguards, provisional measures can only be imposed upon the investigating authority making a preliminary determination that increased imports have occurred and that such imports have caused or are threatening to cause serious injury to a domestic industry. These measures cannot be maintained for longer than 200 days.

Definitive measures can only be imposed in all three types of investigations, upon the investigating authority being satisfied that the requisite legal elements have been established as set out above. A definitive anti-dumping or countervailing measure can be imposed for four years in the first instance, but in theory can be maintained in perpetuity for successive four year periods upon the investigating authority conducting a review prior to the expiry of the measure and concluding that if the measure is terminated, dumping or subsidisation of goods and injury to the domestic industry is likely to recur. Such reviews which are unofficially but universally called “sunset reviews”

Many countries such as the United States have been accused at the WTO of abusing the review process by using it as a means of trade protection for their industries.

The general rule regarding the duration of a safeguard measure, is that such measures can only be maintained for such period “as may be necessary to prevent or remedy serious injury or to facilitate adjustment” but that this period shall unless extended not be longer than four years. Safeguard measures can be extended for up to a further period of four years, provided that trade concessions are being offered to states whose importing interests have been affected, the continuation of the measure remains necessary in order to

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The term originated in reference to the fact that such reviews are conducted on the eve of the sun setting on the original measure, that it, its expiry at the end of a four year period.
protect the domestic industry from injury caused by increased imports and there is clear evidence that the domestic industry is adjusting. This reference to adjustment by the domestic industry means that it is under a positive obligation to use the period of protection to restructure and strengthen itself so as to be able to compete effectively in the new trading dynamic which has been facilitated by tariff liberalization, that is, to compete with imported products.

As a special concession to developing countries, these countries can impose a safeguard for up to ten years and safeguard measures cannot be imposed against them if their share of imports in the member state adopting the measure does not exceed three percent.5

...developing countries...can impose a safeguard for up to ten years and safeguard measures cannot be imposed against them if their share of imports in the member state adopting the measure does not exceed three percent.5

Provided that all developing countries who have less than a three percent market share do not collectively account for more than 9% of total imports of the product concerned.

CHAPTER 8
Specific Challenges for Caribbean States

CARIBBEAN CHALLENGES

Conducting a trade remedy investigation can be a lengthy and resource intensive process, calling for specific technical expertise in many areas. Because an investigating authority’s determinations may be subjected to WTO Dispute Settlement Processes WTO Member States which intend to take trade remedies must ensure that their legal regimes and investigative processes are beyond reproach.

Given that in many of our states, the relevant WTO Agreements are not automatically a part of the national legal order, the process of being able to adopt trade remedies must commence with the drafting and implementation of WTO compatible implementing legislation. This can pose a significant challenge for our states both from the perspective of staff constraints in the legislative drafting departments and from the perspective of a lack of the relevant technical skills of such staff in the subject area, so as to ensure that the requirements of the WTO agreements are correctly interpreted.

After implementation of the legislation, challenges may be faced with staffing Investigating Authorities with competent personnel so as to ensure that the determinations of this body are of the highest quality. For example,
challenges for an Investigating Authority being able to satisfy itself that the requisite standing requirements have been met by the applicant for anti-dumping or countervailing duty protection.

It is no surprise therefore that in the relatively few trade remedy cases which have occurred in the Caribbean, the domestic industry has been comprised of one dominant player or just a few dominant players exhibiting an oligopolistic hold on the market.

CONCLUSION

There is little that an Investigating Authority can do to assist a domestic industry hampered by a lack of information and resources, while complying with its obligations to remain impartial in the process as investigator and adjudicator. What is therefore required is other governmental initiatives to enhance the capabilities of small Caribbean manufacturers to institute proper document management, import monitoring, market trends and to provide a forum for such manufacturers to mobilise in order to seek trade remedy protection. Given that the region has now embarked on active bilateral trade agenda, governments should make it a priority to seek an essential component of trade agreements, targeted support for enhancing the overall capacity of small manufacturers.

...seek technical assistance under a range of trade instruments. Donor assistance can be aimed at getting the funds needed to hire experts to advise on the drafting of legislation as well as to train local personnel.

conducting a countervailing duty investigation calls for a high level of technical expertise owing to the complexity in determining when a subsidy exists and calculating the amount of the subsidy received by an individual producer in the granting country.

One solution to this problem is for Caribbean States wishing to implement trade remedy legislation, to seek donor assistance from the international donor community or seek technical assistance under a range of trade instruments. Donor assistance can be aimed at getting the funds needed to hire experts to advise on the drafting of legislation as well as to train local personnel.

The domestic industry itself must weigh the pros and cons of seeking trade remedy protection. Because of the nature of the evidence to be garnered and presented to the Investigating Authority as well as the need for legal representation in what can be a process lasting over one year, domestic industries will normally shoulder a very large bill for the involvement in the process. Not surprisingly therefore, successful engagement in the process call for a vibrant manufacturing sector with the resources to monitor import statistics, properly document industry trends and hire qualified legal representation.

This brings to the fore, one of the major obstacles facing many Caribbean industries. Many of our industries are small and fragmented and this makes it difficult to precisely state the scope of the domestic industry both in terms of the number of players and the market shares of each player so that the critical mass needed for the presentation of an application can be gained. The fragmentation of the industry as described also poses.

ABOUT US

Our Vision
Caribbean Export is a catalyst for regional economic prosperity through strategic interventions on export development and trade and investment promotion.

Our Mission
To increase the competitiveness of Caribbean countries by providing quality export development and trade and investment promotion services through effective programme execution and strategic alliances.

Key Result Areas and Goals
Fostering an enabling environment
For trade and investment within the region through regional integration, cooperation and advocacy initiatives designed to position the region more effectively in the world economy.

Enhancing Competitiveness
Increase the competitiveness of firms in CARIFORUM countries in selected sectors through investment, management and product development, market expansion and export diversification.

Promoting Investment
Promote the Caribbean region as a premier destination for foreign direct investment and intra-regional investment.

Strengthening Institutional Capacity and Networking
Enhance the capacity of public and private sector Business Support Organisations (BSo), particularly sector associations, trade promotion organisations and investment promotion agencies, and support the development of vibrant Caribbean business networks to improve services to clients.

This Tradewins is a publication of the Caribbean Export Development Agency (Caribbean Export).

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We are very interested in your feedback.
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