Trade Remedies in Africa: Taking Stock and Considerations for Newbies in the Game

By:

Saweria Mwangi

February 25, 2019

Kenya is in the process of establishing a trade remedies agency, having recently adopted its trade remedy legislation. Upon establishment of the trade remedies agency, Kenya would be in a position to legally carry out trade remedy investigations and potentially impose sanctions as a result. This legal reform has been touted as potentially contributing to "Africa's industrialisation goals … and [needs to be] implemented creatively to ensure the continent addresses its supply side constraints and produces the goods that it requires for countries to trade with each other".

Trade remedy measures are permitted under the rules of the World Trade Organization (WTO) provided that they are taken in accordance with the prescribed procedures. Trade remedy measures may take the form of anti-dumping measures, which counter situations where products are introduced into a foreign market at a price which is lower than the domestic price of like

products. They may also take the form of anti-subsidy or countervailing measures, which counter subsidization of goods by governments or public bodies. Anti-dumping and anti-subsidy measures both counter what is considered as unfair trade. Additionally, countries may impose safeguard measures, which while not aimed at unfair trade, may be used to address importation of products in increased quantities which cause serious injury to domestic industry.

Despite these mechanisms being available, African countries have, unlike their Asian and Latin American counterparts, recorded a low uptake of trade remedy measures. Currently, only South Africa, Egypt, Morocco, Tunisia, Mauritius and Madagascar have trade remedy laws and investigating authorities. Kenya and Ghana are in the process of establishing their investigating authorities. As more African countries take up implementation of trade defence to protect their domestic industry from unfair competition instruments, the following factors ought to be considered:

- **Impact of the measures to domestic consumers**

The utility of trade remedy measures has been questioned, particularly due to their negative impact on the domestic market. This is particularly so because the price effect these measures have is primarily borne by consumers in the domestic market. Where the targeted products are intermediate or capital products, increased prices would adversely impact industrialization and development by the imposing country. Thus trade remedy measures may have counterintuitive consequences. Further, governments should consider whether the domestic industry protected by these measures is robust enough to meet the supply needs in the domestic market. The Kenya Trade Remedies Act has provided for these considerations by granting the Minister power to consider national interest (including the needs of industrial users of the investigated product and the interest of final consumers) in deciding whether to impose anti-dumping measures.

- **Customs Unions**

Africa comprises multiple regional economic blocs, some of which are customs unions. By definition, customs unions entail elimination of trade restrictions within the customs union and application of a common external tariff. Where

countries in customs unions impose trade remedy measures, companies could export the targeted products to other members of the customs union after which the goods would be transshipped to the imposing country, due to the free movement of goods within the customs union. Countries imposing trade remedy measures might therefore need to put in place anti-circumvention measures to ensure the measures are not undermined.

- **Contribution of measures to intended objective**

The objective of trade remedy measures is to protect domestic industry from unfair competition, or in the case of safeguards to protect domestic industry from sudden increase in imports. However, other factors make African industry uncompetitive, which ought to be addressed. These include high red-tape, infrastructural shortcomings such as inconsistent power supply, high logistical costs and high cost of credit. Therefore, while trade remedies are an available avenue to protect domestic industry, those alone are not the solution to Africa's lagging industrialization.

- **Notification requirements**:

The Agreements on Anti-Dumping, Subsidies and Countervailing and Safeguards include notification requirements which are summarized below.

Anti-Dumping Agreement	**Subsidies and Countervailing Agreement**	**Safeguards Agre**
Authorities competent to carry out investigations	Authorities competent to carry out investigations	Initiation of safegu investigations
Domestic procedures on investigations or change in these procedures	Domestic procedures on investigations	Finding of serious i thereof caused by imports
Preliminary or final anti-dumping actions taken	Preliminary or final countervailing actions taken	Decision to apply c safeguard measure

Governments ought to comply with the notification requirements in the respective agreements, whose purpose is to ensure transparency of procedures and laws. For example, Kenya's last notification regarding its anti-dumping legislation was filed in 2009, referring to the East African Community Customs Management Act. It is yet to notify its enactment of the Kenya Trade Remedies

Act, which came into force in 2017.

View online: Trade Remedies in Africa: Taking Stock and Considerations for Newbies in the Game

Provided by Afronomicslaw