

Chapter 3

Trade remedies and safeguards in southern and eastern Africa

Willemien Denner

1. Introduction

Trade remedies are an important component for the achievement of overall trade liberalisation. Allowances are made for countries to temporarily suspend obligations for industries which are injured more significantly than negotiators anticipated due to increased liberalisation. Contingent protection measures can be seen as strategic tools for governments to reduce the political cost and internal domestic pressure involved in opening domestic markets to international trade. However, the implementation of these measures is often arbitrary, unilateral and lacking in transparency.

The aim of trade remedies is to increase the duty on a specific import product and to make the domestic market unattractive for foreign imports. Trade remedies traditionally consist of safeguards, anti-dumping duties and countervailing measures. However, seeing that safeguards provide temporary relief from import surges under 'fair', rather than 'unfair' trade conditions, this measure is strictly speaking not a trade remedy. Anti-dumping measures and countervailing duties (CVD), on the other hand, are trade remedies aimed at addressing 'unfair' low prices on import products and government subsidisation respectively.

Provision is made for the implementation of trade remedies in the General Agreement on Tariffs and Trade (GATT) 1994 and various WTO agreements on the multilateral level and in regional agreements on the bilateral level. Individual countries and regional configurations within southern and eastern Africa have not really played a role in the implementation of trade remedies or in disputes arising from their implementation. The lack of participation can be attributed to the complex rules and regulations involved in the system of trade remedies. Most African countries do not have the expertise, knowledge and financial and legal capabilities to implement these rules and regulations or to protect their exports from these policy instruments. Another possible factor contributing to the non-participation by African countries is that most trade remedies and safeguards are aimed at protecting

industrial products. Production in most African countries is focused on primary products such as agricultural products and not industrially manufactured goods.

This study provides an overview of the rules and regulations applicable to the implementation of multilateral and regional trade remedies and problem areas that must be addressed to improve the capabilities of African countries for utilising trade remedy provisions and protecting their exports from these complex policy instruments.

The first part of the study evaluates the justification of trade remedies, the role trade remedies fulfil in regional trade agreements (RTAs) and the participation of African countries in the multilateral trade remedy and safeguard system. The second part provides an overview of the multilateral trade remedy provisions, the special and differential treatment applicable to developing and least developed countries and bilateral and regional safeguards. The third part analyses four trade agreements within southern and eastern Africa, the Economic Partnership Agreements (EPAs) with the European Community (EC) and the SACU-EFTA free trade agreement (FTA). The last part focuses on the capability of African countries to participate in the trade remedy and safeguard system.

2. Trade remedies and safeguards

Trade remedies, also known as contingent protection, are legal instruments which can be taken by a domestic industry to protect itself against foreign imports. Countries take trade remedy action when it has been established that foreign producers are resorting to unfair trade practices (Trade Law Chambers 2009). Contingent protection traditionally includes anti-dumping measures, countervailing duties and safeguards. However, strictly speaking, safeguards are not trade remedies because these mechanisms are actions against fairly, rather than unfairly traded imports.

Anti-dumping measures and countervailing duties counteract unfairly low prices being charged in the importing market. These low prices can either be the result of dumping by foreign firms or of subsidisation by governments. The first allows for the implementation of anti-dumping measures by the importing country, the second for

countervailing duties. The aim of these measures is to limit either the size of the dumping or the subsidisation (Willkie Farr & Gallagher LLP 2006).

Anti-dumping measures are implemented to level the playing field between domestic and foreign producers in the same market, with the aim of promoting fair trade and thus enhancing economic growth and development. Dumping is not prohibited by any WTO agreement, but a problem arises when dumping causes or threatens to cause serious injury to the domestic manufacturers of products which are the same or similar to the imported products. Types of goods which are typically dumped are those produced by capital-intensive industries. The implementation of anti-dumping duties has been concentrated in the base metals, plastics, chemicals, textiles and electrical equipment sectors (Tsengiwe 2009).

Countervailing duties are imposed to restore fairness in international competition when a foreign competitor is being subsidised. Goods which are subsidised give foreign competitors an unfair competitive advantage over domestic manufactures, often undercutting domestic prices. Through the implementation of countervailing duties the duty applicable to subsidised imports is increased, restoring any imbalance caused by the subsidisation (Trade Law Chambers 2009).

Safeguard action can be taken when a surge of imports leads to domestic industries not being able to cope with an increase in competition. These temporary measures allow the domestic industry to adjust and improve its competitiveness (Tsengiwe 2009). Safeguard measures typically take the form of a quota or quantitative restriction on a specific import, rather than an increase in the tariff applicable to the import product (Trade Law Chambers 2009).

The argument has been made that the utilisation of trade remedies has minimal economic justification and that they are often used by governments and key industries to support an administered protection regime (Waincymer 2001). There is a large amount of empirical evidence to suggest that trade remedies are mostly used as non-temporary measures to benefit those with vested interests instead of protecting domestic industries from decline (De Cordoba et al. 2006).

According to Prusa and Skeath (2001) anti-dumping measures are simply a modern form of protectionism to improve the competitive position of the complainant against

other companies instead of aiming to neutralise 'unfair' trade. Waincymer (2001) found that although predation was the earliest justification for anti-dumping measures, it is not a significant factor in actual cases. It is mostly multi-national companies with significant worldwide market share which use anti-dumping measures in most jurisdictions.

According to Kohler (2001) the attention of trade remedy implementation is rather focused on the symptoms, like dumping or a surge in imports, than the source of the problem such as government intervention and ineffective industrial policies.

3. The role of trade remedies in regional trade agreements

The objective of regional trade agreements is the removal of barriers to intra-regional trade. In order for the process of regional trade integration to move forward, efforts for the reduction and removal of non-tariff barriers and the improvement of trade facilitation are required (Prusa and Skeath 2001). However, the elimination of intra-regional tariffs and non-tariff barriers may create new demands for the protective effects of trade remedies (Teh et al. 2007). Thus, in regional trade agreements there is a tendency to use trade remedies as a tool for the restriction of foreign imports (Prusa and Skeath 2001).

Trade remedy provisions are in most trade agreements designed to enhance the predictability and transparency of trade barriers. According to Kohler (2001) contingent protection measures are kept in agreements as a device to optimise liberalisation due to the mechanics of trade negotiations and incomplete information on the political costs involved in opening trade.

One explanation for the retention of trade remedy provisions in RTAs is the political economy of protectionism (Teh et al. 2007). The political science view is that trade remedies assist governments in administering protection in a manner which appears impartial, automatic and rule-based, but procedures may be biased towards a positive finding for the domestic industry (Waincymer 2001).

Tariff liberalisation has led to tariff rates being reduced to worldwide low levels. However, import-competing sectors continue to have an incentive to secure protection through non-tariff barriers. Trade remedies are administered through

bureaucracies that can be indirectly influenced by political pressure. Administered protection is inherently biased in favour of import-competing sectors due to the fact that it is channelled through complaints regarding an excess of import competition. Retaining trade remedies in RTAs serves the purpose of obtaining political support for the agreement because import-competing sectors are given the assurance that they can protect themselves against the unanticipated consequences of increased intra-regional liberalisation.

A second explanation is that trade remedies are tools which can be used to deal with the political demands for protection due to an increase in regional liberalisation (Teh et al. 2007). Governments which are committed to reductions in trade restrictions may retain trade remedy provisions in regional trade agreements to ensure that domestic industries and import-competing industries have a place to turn to when in economic distress (Moore and Zanardi 2008).

Although the long-term benefits of trade liberalisation are well accepted, the process has associated short-term transitional and adjustment costs (De Cordoba et al. 2006). These costs can build political pressure to increase protectionism for domestic production and employment. The retention of trade remedies in RTAs can be seen as the anticipation of a difficult adjustment and an increase in political pressure for protectionism. This political pressure can be deflated by temporarily reversing liberalisation through the implementation of trade remedies. Trade remedies can have a cushioning effect by providing a specific set of conditions under which regional liberalisation can be temporarily suspended or partially reversed. This implies that the depth of liberalisation which can be achieved by an RTA may depend on the trade remedy provisions in the agreement which will allow governments to temporarily depart from liberalisation under specific circumstances and conditions (Teh et al. 2007).

The reduction or removal of trade remedy utilisation among regional trade partners will most likely lead to an increase in intra-regional trade; however, welfare might not necessarily be enhanced. This is due to the fact that preferential trade agreements have trade creation and diversion effects. Trade creation occurs when a decrease in trade barriers leads to an increase in imports from the RTA members, something that is beneficial to the exporting member countries. The net effect is beneficial for the

importing country as consumers gain more than the domestic producers may lose. Trade diversion takes place when imports from non-member countries are replaced by imports from members, resulting in a gain for the exporting RTA member and a loss for the non-RTA exporting country (Brückner 2004). The preference given to intra-regional trade through the abolishing of intra-regional trade remedies can be at the expense of cheaper imports from non-members to the agreement. As intra-regional trade increases due to the elimination of intra-regional tariffs, protection can be directed towards the imports from non-member countries, possibly leading to trade diversion. Trade diversion can also take place if strict rules are adopted in an RTA regarding the implementation of trade remedies against member countries, but not regarding the trade with non-members. The RTA members can discriminate against non-members leading to intra-regional imports being substituted for cheaper sources of imports from non-members (Teh et al. 2007).

A widely cited argument for the retention of safeguard and anti-dumping provisions in agreements is that they facilitate greater tariff liberalisation during trade negotiations (Crowley 2006). Ethier (2002) developed a multi-country model including countries which grow at different rates. The model shows that trade liberalisation is constrained by the world's slow-growing countries and negotiations on tariff reductions are influenced by uncertainty regarding future growth. According to the model when countries negotiate a trade agreement which does not allow for temporary tariff increases and the negotiating countries are unsure about their future growth, they will only negotiate small tariff reductions. When safeguards are included in the agreement, countries are enabled to negotiate larger tariff reductions because if there is slow growth they can temporarily increase their tariffs (Ethier 2002).

However, it has also been argued that safeguards and anti-dumping measures reduce the credibility of a trade agreement. If governments are not fully committed to liberalisation, productive factors may not be relocated to more efficient industries due to the expectation that government will use safeguards in future. According to Staiger and Tabellini (1987) productive factors are not efficiently allocated where trade agreements contain safeguard and anti-dumping provisions. However, in a trade agreement without these provisions, the efficient allocation of productive factors will

take place. Therefore there is a welfare loss associated with agreements which include these provisions.

4. Domestic legislation in SADC, SACU and COMESA

The WTO agreements applicable to trade remedies and safeguards allow for the utilisation of national laws, regulations and procedures. Domestic provisions need to be notified to the WTO and must be consistent with the qualifications and requirements set out in the various applicable WTO agreements.

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Article 18.4 and 18.5), for instance, states:

Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question, and Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

The Common Market for Eastern and Southern Africa (COMESA) Regulations on Trade Remedies and Safeguards also require the following:

Even before initiating the first action, a member State should have established its procedures for taking action and identified a competent authority to carry out investigations into the existence of the pre-conditions for safeguard, countervailing or anti-dumping action.

In the Southern African Development Community (SADC), the Southern African Customs Union (SACU) and COMESA combined, only eight countries have notified domestic legislation, regulations or procedures. This is shown in Table 1 below.

Table 1: Notification of domestic legislation/regulations

Country	Legislation/Regulations
Egypt	Law 161 of 1998 Concerning the Protection of the National Economy from Injurious Effects of Unfair Practices in International Trade as amended by the Decree of the Minister of Trade and Industry No 569/2008
Kenya	Customs and Excise Act Section 125 and 126; no domestic legislation on safeguards
Malawi	Customs and Excise Act Section 85 and 86; no domestic legislation on safeguards
Mauritius	No domestic legislation on trade remedies and safeguards, but has formulated procedures for anti-dumping actions based on the Anti-Dumping Agreement
RSA	International Trade Administration Act 71/2002; Customs and Excise Act; ITAC Anti-Dumping Regulations and ITAC Safeguard Regulations
Uganda	COMESA Treaty Articles 51-53; The Customs (Dumping and Subsidies: Rates) Act of 1964 and the Customs (Dumping and Subsidies) Act of 1970; no domestic legislation on safeguards
Zambia	Customs and Excise Act Sections 72-75 and 198 and the Customs and Excise Regulations 54/1994; no domestic legislation on safeguards
Zimbabwe	Customs and Excise Act Part VI Sections 73 and 77-81 and Competition Regulations 266/2002; no domestic legislation on safeguards

Source: WTO Member States notifications¹

South Africa is the only member state of SACU which has notified domestic legislation to the WTO. In SADC five member states and in COMESA seven members have notified some form of domestic legislation and procedures applicable. In SADC four of the five members (Malawi, Mauritius, Zambia and Zimbabwe) are also part of COMESA, with South Africa being the only additional country in SADC which has carried out WTO notification. In COMESA, apart from the four countries overlapping with SADC, Egypt, Kenya and Uganda made notifications. The majority of the notifications are in relation to the implementation of anti-dumping and countervailing duties. Only South Africa and Egypt have also notified domestic laws applicable to safeguard actions. Mauritius does not have any implemented legislation as such, but has notified the WTO of domestic procedures developed for the implementation of anti-dumping measures.

¹[Online]. Available: http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

5. Africa's experience

The experience of African countries in the trade remedy system, whether multilateral or bilateral, has been limited. On the one side, exports of various countries have been the target of mostly anti-dumping investigations and final measures, while on the other side, only South Africa and Egypt have played a major role in the implementation of anti-dumping duties, countervailing measures and safeguards.

5.1 African countries as exporters

The exports of various African countries have been the subject of a limited number of anti-dumping investigations and final duties. Since 1995 eight countries have been investigated for alleged dumping, and of those eight, seven had final duties imposed against them. These include Libya, Mozambique, Zimbabwe, Malawi, South Africa and Egypt. According to the WTO, African countries have been the subject of 79 anti-dumping investigations since 1995, of which 49 final duties were imposed.

South Africa and Egypt are the two countries which have been the most frequent targets of anti-dumping investigations and final duties by other WTO members. Of the 79 investigations launched since 1995, 58 targeted South Africa and 12 targeted Egypt. This represents 89 percent of the anti-dumping investigations launched against all the African countries. Final anti-dumping duties which were implemented against Egypt and South Africa represent 0.23 percent and 1.74 percent respectively of the total 2.24 percent of final measures taken against African countries.

Final duties have mostly been implemented in the base metal and chemical products sector. This compares to the implementation of duties against the rest of the WTO members. Of the total of 2190 final measures imposed from 1995-2008, 29 percent were concerned with base metals, 21 percent with chemical products and 13 percent with plastic products.

Minimal countervailing measures have been implemented against the subsidised imports from African countries, with South Africa and Côte d'Ivoire the only two countries against which duties have been imposed. Final duties on South African exports have been concentrated in base metals and food, beverages and tobacco

products; the one duty levied against Côte d'Ivoire concerned vegetable products (WTO 2009).

5.2 African countries as reporting countries

South Africa and Egypt have been active in the utilisation of anti-dumping investigations and the implementation of final duties. Egypt implemented 51 and South Africa 124 final duties in the 1995-2008 period. This represents 2.33 percent and 5.66 percent respectively of the total anti-dumping duties imposed by all the WTO member states. These duties have mainly been targeted at imports from China, India and the Republic of Korea.

Egypt has for the most part focused anti-dumping duties on plastic products (29%), machinery (27%) and base metals (18%). The main imports targeted by South Africa include base metals (25%), plastic products (21%) and chemical products (15%). The implementation of duties on these product sectors is compared with the sectors on which the rest of the WTO members have also been focusing their anti-dumping efforts.

South Africa is the only African country which has implemented countervailing measures. In the period 1995-2008, four countervailing duties were imposed against imports from India (three measures) and Pakistan (one measure) in the plastic products, textiles and base metals sectors. This represents three percent of the total final countervailing duties implemented by all WTO members.

Egypt, Morocco and South Africa have been responsible for initiating eight safeguard investigations, resulting in seven safeguard measures being implemented. Egypt implemented safeguards on live animals, animal products, chemical products, textiles and machinery. South Africa implemented a safeguard measure on chemical products while Morocco implemented safeguard measures on vegetable products and non-metallic minerals (WTO 2009).

6. Provisions on trade remedies and safeguards

Trade remedies and safeguards can be implemented on a multilateral or a bilateral level. The application of a multilateral trade remedy is governed by the provisions in Articles VI and XIX of GATT 1994 together with relevant WTO agreements. The

applicable WTO agreements are the Agreement on Safeguards, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (Willkie Farr & Gallagher LLP 2006). The various WTO agreements also make provision for the differential treatment of developing and least developed countries (LDCs) by WTO members when implementing anti-dumping measures, countervailing duties and safeguards.

Bilateral or regional trade remedies are provided for in regional agreements between member countries. These are measures which only apply within the regional configuration and must be implemented according to the rules and regulations provided for in the various agreements. Due to anti-dumping and countervailing measures being country-specific, provisions regarding the bilateral or regional application of these remedies are seen to be unnecessary. Safeguards, however, are the remedy which requires an indication of multilateral or bilateral application on account of the requirement that safeguards need to be applied on a non-discriminatory basis.

Special safeguard measures can also be implemented on a multilateral or bilateral level. These mechanisms provide additional protection to traditionally sensitive sectors, such as agricultural products and textiles and clothing. The Agreement on Agriculture regulates the special agricultural safeguard on a multilateral level and the Agreement on Textiles and Clothing regulated a transitional safeguard on certain textile products, but this expired in 2005. Bilateral special safeguards are also provided for in some regional trade agreements, but more prominent in North-South agreements than South-South agreements.

6.1 Multilateral trade remedy and safeguards provisions

In GATT 1994 the provisions regarding the implementation of anti-dumping measures and countervailing duties are contained in Article VI. The implementation of anti-dumping measures is further regulated by the Agreement on Implementation of Article VI of GATT 1994. This agreement is referred to as the Anti-Dumping Agreement (ADA) which has the aim of harmonising the anti-dumping practice among the major users of this trade remedy. Apart from Article VI of GATT 1994 the implementation of countervailing duties is also governed by the Agreement on

Subsidies and Countervailing Measures (SCM Agreement) with provisions on countervailing contained in Part V.

The substantive requirements for the implementation of anti-dumping and countervailing duties are quite similar. In order to succeed with an application for anti-dumping or countervailing duties, the applicant has to demonstrate that dumping by foreign firms or subsidisation by foreign governments has taken place, that material injury or the threat thereof to like products of the domestic industry exists, and that there is causation between the dumping or subsidisation and the material injury or threat.

Prior to GATT 1947, bilateral agreements contained a 'safety valve' which was safeguard measures. These safeguards provided trade partners with an alternative to withdrawing from trade agreements when their domestic markets were disrupted by foreign imports. The implementation of global safeguards is currently governed by GATT 1994 Article XIX and the Agreement on Safeguards.

The substantive requirements which must be shown prior to the implementation of safeguards are the following: an unforeseen increase in imports, serious injury or the threat thereof to the domestic industry, and causation between the surge in imports and the serious injury.

The Agreement on Agriculture came into force on 1 January 1995 with the aim of providing importing and exporting countries with more security and predictability. The agreement contains provisions regarding market access, domestic support and export subsidies. This agreement makes provision for a special safeguard (SSG) to be implemented on the imports of certain agricultural products. The difference between the SSG and other global safeguards are that the SSG does not require the importing member countries to prove serious injury or causation (Olsson 2006). The SSG can only be applied by countries which have undergone tariffication and reserved the right to use the SSG when a surge in imports of the agricultural products covered by Annex I to the agreement takes place.

Article 13 of the Agreement on Agriculture also contained a provision regarding the implementation of countervailing measures on domestic support and export subsidies for agricultural products, but expired in 2003.

6.2 Special and Differential Treatment

Special and differential treatment to developing countries and LDCs are aimed at meeting two criteria. It is intended to be a 'rule-based' system offering fair access and certain trading conditions for all to provide for efficient growth and to support development through favourable conditions for developing countries. Three types of special and differential treatment arrangements can be identified: (a) arrangements aimed at improving the access to developed country markets; (b) reducing the cost of the international trading system; and (c) permitting policies which will otherwise be against WTO rules since they reduce the benefits that other countries can receive from trade (Page and Kleen 2005).

The ADA, SCM Agreement and Agreement on Safeguards all provide for the special and differential treatment of developing countries and LDCs.

In terms of the ADA, the exporters of developing countries have the same rights and obligations as their counterparts in developed countries. Article 15 of the ADA provides for the special rules regarding developing countries and LDCs. Special regard must be given to the situation of developing countries and LDCs when developed countries consider the imposition of anti-dumping duties. If the application of the duties will affect the 'essential interest' of the LDC or developing country, 'constructive remedies' provided in the ADA must be considered prior to application. The only requirement for developed country members is to consider another remedy openly, willingly and actively.

In Article 27 of the SCM Agreement a distinction is made between countries referred to in Annex VII and other developing countries. Annex VII (Art. (a) and (b)) states that a country is least developed if it has been designated as such by the United Nations or if the Gross National Product (GNP) per capita is less than \$1000 per year.

LDCs are exempt from the prohibition on export subsidies and import-competing subsidies in the SCM Agreement. However, these prohibitions are applicable to other developing countries. A countervailing investigation on the imports from developing members must be terminated if the level of subsidisation on the import product is less than two percent of the value of the product or if the volume of the subsidised imports is less than four percent of the total imports of the product for the importing country. If

the imports of an individual country is below the four percent margin, but collectively more than a nine percent share in the total imports the termination of the investigation does not apply (Art. 27.10(a) and (b)). For Annex VII countries, the investigation is terminated if the level of subsidisation is less than three percent of the value of the imported product (Art. 27.11).

The Agreement on Safeguards Article 9 allows for the differential application of safeguards to and by developing members in certain circumstances. The imports from developing countries are excluded from safeguards if their share of imports does not exceed three percent of the importing country's imports of the product and if the total share of those developing countries which have less than a three percent share individually is not more than nine percent of the total product imports collectively (Art. 9(1)).

Safeguard measures applied by developed countries can be extended for four years after the initial implementation period of four years. Developing countries can extend the implementation for a maximum of six years after the initial four years. Safeguards imposed for more than 180 days can normally only be reintroduced after a period equal to the original duration of the safeguard measure. However, developing countries can implement a safeguard again after a period of only half the original implementation period has passed.

6.3 Bilateral and regional safeguard provisions

Bilateral and regional safeguards are only meant to apply to intra-regional imports. Regional and bilateral safeguards temporarily relieve RTA members from their RTA obligations allowing domestic industries to adjust to intra-regional liberalisation (Teh et al. 2007).

Most regional and bilateral trade agreements concluded in recent years provide special and different safeguards which share the same grounds for implementation as global safeguards. However, bilateral safeguard mechanisms only address the effects of bilateral or regional liberalisation initiatives and are only applicable between the members of the Preferential Trade Agreement (PTA) for this reason (Kotera and Kitamura 2007).

Since the conclusion of GATT, bilateral and regional safeguards have become a remedy of a special and limited nature. When an increase in imports resulting in serious injury is the result of liberalisation initiatives under a PTA, importing countries are allowed to implement a bilateral or regional safeguard under the regulations provided for in the agreement.

The global and bilateral safeguard mechanisms are different institutions dealing with problems that arise from different free trade initiatives. Regional safeguards have systematic differences from the global safeguard of the WTO. Most bilateral and regional safeguards only allow for tariff increases or the suspension of further tariff reductions as the appropriate measure, while under the global safeguard mechanism there are also other measures (such as quantitative restrictions) available for the importing country to invoke (Kotera and Kitamura 2007). The bilateral safeguard mechanisms are also usually only a temporary measure that can just be used during the transitional period when intra-regional tariffs need to be eliminated. The implementation period of bilateral and regional safeguards is normally shorter than the initial period of four years allowed for in the Agreement on Safeguards (Teh et al. 2007).

The compatibility of bilateral safeguard measures with GATT 1994 Article XXIV is questioned. The issue relates to the fact that bilateral safeguards can only be implemented against the imports of members to the regional agreement and not all sources of the import product. The only parties affected by the safeguard mechanism are those that are a part of the regional deal. In this instance the dispute will be referred to a regional forum in terms of the agreement. The argument has been made that when intra-regional safeguards are imposed the regional deal does not comply with Article XXIV. This is so because the requirement that restrictions on 'substantially all the trade' in the region have to be eliminated is not met when intra-regional safeguards are implemented. Article XXIV:8 contains a list of the continuation of some restrictions on intra-regional trade within a regional agreement. GATT 1994 Article XIX is not listed within this article and for this reason intra-regional safeguards are not seen as a restrictive policy that can continue within a regional trade arrangement. Pauwelyn (2004), however, states that the list in Article XXIV:8 is not an exhaustive one. Article XXIV requires only that restrictions need to be

eliminated on ‘substantially all the trade’ and not that the elimination of all trade restrictions (except those listed in the Article) must take place.

The flexibility provided in Article XXIV:8 allows for the application of intra-regional safeguards. Only if the safeguard is imposed on a significant percentage of the trade within the region, the question can arise whether the remaining trade that is free qualifies as ‘substantially all the trade’.

7. Trade remedy and safeguard provisions in RTAs

The rules of the WTO recognise that sometimes imports, fairly or unfairly traded, can cause harm to the domestic industry – which warrants temporary restraint. The elimination of anti-dumping measures in RTAs seems to be an exception rather than the rule. Most regional agreements allow for the use of anti-dumping and countervailing measures among the member states according to the WTO rules. RTAs have also dealt with safeguards in a range of ways. Some RTAs apply the WTO rules while others have strengthened their application. RTAs in which the implementation of safeguards among members has been prohibited are limited to a select few.

In most of the examined regional agreements it is either stated that member countries retain their rights and obligations under GATT 1994, the ADA and SCM Agreement to implement anti-dumping measures and countervailing duties or describe the requirements for the implementation of these measures which are identical to the WTO provisions. In a limited number of agreements the procedures are slightly varied or additional requirements are set out.

Of the examined regional agreements some provide different articles relating to global and bilateral safeguard mechanisms, while others combine these measures in one article. However, there is also agreements which only refer to the global safeguard mechanism. In some of the agreements a bilateral safeguard can be implemented for the protection of infant industries and food security, while only one agreement contains a special safeguard applicable to agricultural products.

7.1 Free Trade Agreement with the European Free Trade Association

The European Free Trade Association (EFTA) member states (Iceland, Liechtenstein, Norway and Switzerland) have negotiated trade agreements with various countries and regional arrangements. Here only the agreement with SACU is evaluated.

The parties retain their rights and obligations to implement countervailing measures, anti-dumping duties and safeguards in terms of GATT 1994 and the various WTO agreements covering these remedies (Art. 16, 17 and 18).

The SACU-EFTA FTA states that notification to the relevant parties must take place before countervailing, dumping and global safeguard investigations are initiated. The parties can also enter into consultation to find an accepted solution on request. A bilateral emergency safeguard measure is provided which allows the parties to take action to remedy difficulties in the form of the suspension of further duty reductions or an increase in the rate of duty which is applicable to a product. Before emergency action can be taken all the relevant information must be given to the Joint Committee which will examine the information to facilitate a solution. The bilateral safeguard can normally only be invoked for a maximum of one year, but under exceptional circumstances a maximum of three years implementation is possible. If the delay in the application of the safeguard will result in damage which will be difficult to repair, a provisional measure can be taken before consultations take place. This provisional measure must be terminated within six months of implementation (Art. 19).

Article 20 of the SACU-EFTA FTA provides for a special safeguard on agricultural products. The safeguard consists of either an increase in duties to the Most Favoured Nation (MFN) rate or a tariff quota for preferential trade based on historical trade volumes. The measure must be implemented according to the provision on bilateral safeguards and can be invoked for a maximum of one year.

The detailed provisions regarding the substantive and procedural requirements for the implementation of each trade remedy are not provided for in the agreement, but should be obtained from the GATT 1994 provisions, Agreement on Safeguards, ADA, SCM and Agreement on Agriculture.

7.2 Southern African Development Community

The SADC Trade Protocol contains very limited provisions regarding the implementation of trade remedies. The protocol provides that anti-dumping and countervailing duties can be implemented according to the WTO provisions (Art. 18,19). The agreement provides a detailed section on the implementation of safeguards which refers to and is quite similar to the Agreement on Safeguards. The conditions for implementing safeguard measures, the serious injury determination and the method of application are those found in various articles of the Agreement on Safeguards².

7.3 Southern Africa Customs Union

The 2002 SACU Agreement does not contain details regarding the implementation of trade remedies. Article 41 states only that the Council will develop the policy and instruments necessary to address unfair trade practices among member states.

In Annex C Article 8 of the agreement provision is made regarding what national bodies should consider and recommend in terms of trade remedies. The national bodies should ensure that the procedures and recommendations for the implementation of trade remedies are consistent with the Agreement on Safeguards, SCM, ADA and other trade arrangements by SACU. The national body can decide whether an investigation should be initiated into the alleged action which led to the application for remedial action. If an investigation is launched the SACU Secretariat must be notified immediately.

The agreement does not provide for requirements and procedures that need to be complied with for the implementation of trade remedies and it is mostly governed by the various WTO agreements, domestic legislation and authorities within each member state.

² SADC Trade Protocol Article 20 is the same as Article 2, 4 and 7 of the Agreement on Safeguards.

7.4 Common Market for Eastern and Southern Africa

The COMESA Agreement provides detailed provisions regarding the implementation of trade remedies and safeguards. Implementation is also subject to the regulations made by the Council, set out in the Trade Remedy and Safeguard Regulations.

Article 51 of the agreement provides for anti-dumping duties which can be implemented against other member states or the imports from third countries. Anti-dumping duties against a member country are allowed if the country causes or threatens material injury. The provisions regarding the determination of dumping and the procedures which need to be followed are identical to those provided in the ADA (Art. 51.1-51.4). Dumping by a third country is prohibited and the affected member can levy an anti-dumping duty according to the procedures for intra-COMESA dumping (Art. 51.5). The Trade Remedy Regulations determine the conditions for the implementation of anti-dumping measures. Dumping must be present, the dumping margin must not be less than two percent of the normal export price, serious injury or threat thereof and a causal link between the dumping and the injury must be demonstrated.

Countervailing duties can be implemented against the imports of a member country or third country to offset the effect of a subsidy (Art. 52.2 and 52.4 respectively). The duty must be equal to the estimated subsidy amount on the manufacture, production or export of the product. The preconditions which must be present for the invocation of the countervailing duties are supplied by the regulations. Article 53 states that countervailing duties can only be applied if the effect of the subsidy causes or threatens serious injury to a member state.

In Article 61 provision is made for safeguard measures when trade liberalisation and development cooperation cause serious disturbance, while Article 83 allows safeguards when there is an adverse effect due to financial and monetary cooperation. According to Article 61 the necessary safeguard can be implemented after other member states and the Secretary General has been informed. The safeguard can be implemented for a year, but can be extended through the approval of the Council. Article 83 states that this safeguard can only be implemented on the approval of the Council. For the implementation of an Article 83 safeguard or an

extension in terms of Article 61, the member state must prove to the Council that the necessary and reasonable steps have been taken to overcome any imbalances caused and that the safeguard was implemented on a non-discriminatory basis. According to the regulations the measures which can be implemented are tariff type measures, including a levy, tariff increases or quantitative restrictions.

7.5 East African Community (EAC)

The EAC Agreement provides two clauses only with regard to the implementation of safeguards. Further, it states that a protocol regarding anti-dumping, subsidies and countervailing measures, safeguards, rules of origin and dispute settlement (Art. 75) will be provided. Annex IV (Implementation of subsidies and countervailing measures), Annex V (Implementation of safeguards) and Annex VI (Implementation of anti-dumping measures) to the Customs Union Protocol I (Protocol on the Establishment of the East African Customs Union) contain the rules and regulations regarding the implementation of the trade remedies. These requirements and procedures are identical to the provisions in the various WTO agreements.

If a member state incurs serious injury due to trade liberalisation within the region the necessary safeguard measure can be implemented after the Secretary General and other members have been informed (EAC Agreement Art. 78). Article 88 of the EAC Agreement allows for a safeguard to remedy adverse effects caused by monetary and financial liberalisation, including the removal of exchange rate restrictions on imports and exports, the liberalisation of the financial sector, harmonising tax policies, free movement of capital and integrated financial systems between EAC member States (Art. 83 and 86).

Dumping is prohibited if it causes material injury or a threat thereof to an established industry, retards the establishment of a domestic industry or frustrates the benefits which were expected from the removal of duties and quantitative restrictions. In exceptional circumstances the territory of the member states can be divided into two or more competitive markets with the producers in each market being regarded as separate industries (Customs Union Protocol I Art. 16).

Countervailing measures can be implemented according to Annex IV on imports from a foreign country to offset the effect of a subsidy. The duty which can be imposed

must be equal to the estimated subsidy on the manufacturing, production or export of the imported product (Customs Union Protocol I Art. 18).

According to Article 19 of the Customs Union Protocol I safeguards can be implemented when a surge in imports occurs under conditions which cause or threaten serious injury to the domestic producers of the product or competing products. If a member country suffers serious injury due to the application of a common external tariff a safeguard can be implemented for a transitional period of five years after the protocol came into force. The Secretary General needs to be informed of the proposed measures prior to implementation. Article 36 provides a general safeguard provision. If the application of the protocol leads to the serious injury or threat thereof to the economy of a member state, the Secretary General needs to be informed after which a necessary safeguard measure can be implemented.

7.6 Economic Partnership Agreements

The relationship between the EU and the African Caribbean and Pacific Group of countries (ACP) was governed by the Cotonou Agreement until the end of 2007. Cotonou provided for the conclusion of reciprocal trade relations which led to the negotiations of individual bilateral treaties between the EU and the participating ACP countries. When the EPAs are concluded they will provide specific rights and obligations for the six defined clusters of countries. These clusters are West Africa, Eastern and Southern Africa, Central Africa, SADC, the Caribbean and the Pacific. The EPAs are aimed at being comprehensive FTAs based on reciprocity, differentiation, deeper regional integration and the coordination of trade and aid (tralac 2008).

The EPA negotiations are still continuing; only the Caribbean countries signed a full EPA in October 2008. The state of play regarding the EPA negotiations is the following:

- In Central Africa an interim EPA (IEPA) has been initialled by Cameroon;
- In West Africa IEPAs were signed by Côte d'Ivoire and Ghana;

- In East Africa an IEPA was initialled by Zimbabwe, Seychelles, Mauritius, Comoros, Madagascar and Zambia and one initialled by EAC countries Burundi, Kenya, Rwanda, Tanzania and Uganda;
- In SADC, Botswana, Lesotho, Namibia, Swaziland and Mozambique initialled an IEPA after which Botswana, Lesotho, Swaziland and Mozambique signed an IEPA; and
- Papua New Guinea and Fiji initialled an IEPA in the Pacific country cluster.

The text regarding trade remedies within the various EPAs is almost identical. Small differences occur in terms of the implementation periods of a trade remedy after the agreements come into force. The trade remedy provisions resort under the trade defence instruments or measures chapter within the agreements. In all the agreements provision is made for anti-dumping and countervailing measures, multilateral safeguards and bilateral safeguards. The application of bilateral safeguards for the protection of infant industries and food security is provided for in most but not all of the agreements.

The anti-dumping and countervailing provision allows the contracting parties to keep their rights and obligations in terms of the applicable WTO agreements. The EC must also consider constructive remedies provided in the WTO agreements before a definitive measure is adopted. Some of the agreements provide that when measures are imposed on more than one of the ACP states involved in a cluster, only one judicial review will take place and measures imposed by national and regional authorities cannot be imposed on the same product at the same time³.

The multilateral safeguard clause in all the agreements is identical. The contracting parties retain their rights and obligations to implement safeguards according to Article XIX of GATT 1994, the Agreement on Safeguards and Article 5 of the Agreement on Agriculture. For a period of five years after the EPAs are enforced the EC will exclude the imports from the ACP contracting countries from any multilateral safeguard which the EC will invoke against a surge in imports.

³ IEPAs with Cameroon, Pacific countries, eastern Africa and the EAC, and the final EPA with the Caribbean countries.

The requirements for the implementation of bilateral safeguards are the same for all the EPAs. Bilateral safeguards can be implemented if the imports from a contracting state cause or threaten serious damage or disrupt a sector of the economy or markets for similar agricultural products in another contracting party. The measures which can be implemented are a suspension of further duty reductions, an increase in the customs duty to the MFN rate or a tariff quota on the product concerned. Safeguards can be implemented for a maximum of two years which can be extended for a further two years. If the ACP clusters as a whole or the individual signatories apply the safeguard measure or if the EC applies a measure only on the territory of the outermost regions, the measure can be implemented for four years and extended for an additional four years. If a signatory considers a bilateral safeguard the individual EPA Committee for each agreement must be notified. The Committee can then evaluate all the relevant information and can make a suitable recommendation. If no recommendation or satisfactory solution is made by the Committee the affected party can adopt the appropriate measure. When adopting a measure, priority must be given to an instrument which will solve the problem with the least distorting effect on the agreement. In exceptional circumstances, when a delay will cause damage not easily repaired, the contracting parties can take a provisional measure without complying first with all the procedural requirements. The EC can implement the provisional measure for 180 days and the ACP signatories for 200 days.

Most of the EPAs, except those with eastern Africa and the EAC, allow for a specific bilateral safeguard when the implementation of the EPAs leads to problems regarding the availability and access to foodstuffs necessary for food security. Thus, if the removal of trade barriers between the EC and ACP signatories leads to difficulties for ACP country producers in the sectors of agriculture, food and fisheries, bilateral safeguards may be implemented. The original SADC IEPA did not make provision for a food security safeguard, but in March 2008 new legal texts were agreed upon by the SADC EPA contracting parties. These will be included in the full EPA and contain Article 27(bis) allowing for food security protection identical to the other EPAs.

The biggest difference in the trade defence instruments of the EPAs is the provisions pertaining to bilateral safeguards for the protection of infant industries in the ACP

signatories. The difference between the various agreements is due to the different implementation periods allowed for after the EPAs come into force. If an import product from the EC causes or threatens a disruption to the establishment of an infant industry or an existing infant industry in an ACP signatory country, a bilateral safeguard can be implemented in the production of a 'like product'.

Most of the EPAs provide for a period of ten years in which the ACP signatories can utilise infant industry safeguards after the agreements come into force⁴. The EPA with Cameroon allows for an implementation period of 15 years, while the rest of the EPAs make a distinction between least developed and non-least developed countries. Article 21.5(b) of the eastern Africa EPA allows for a 15-year implementation for least developed countries and 10 years for other countries.

The Pacific countries' signatories can implement an infant industry safeguard for the promotion of productive and sustainable industries to raise the standard of living. The measure may be implemented for 20 years after the agreement comes into force. The initial duration of the measure for the Small Island states and Pacific least developed states is 12 years – a period which can be extended for a further three years. The initial duration for the other countries is seven years which can also be extended for another three. The infant industry measure which is taken may not raise the tariffs on the EC imports for more than three percent of the tariff lines or 15 percent of the total value of imported goods from the EC⁵.

The initialled SADC EPA text makes provision for the implementation of the infant industry safeguard for 12 years by Botswana, Namibia and Swaziland and 15 years for the least developed countries – which can be extended after the agreement comes into force (IEPA with SADC Article 34.5(b)). The new legal text has a stand-alone infant industry clause. Botswana, Lesotho, Namibia, Swaziland and Mozambique can temporarily suspend a decrease in customs duties or increase the current applied customs duties when the importation of a product from the EC causes or threatens disruption to an existing or new infant industry. This measure can be

⁴ The IEPA with Côte d'Ivoire, Ghana and the EAC and the final EPA with the Caribbean.

⁵ See the IEPA with the Pacific countries, Article 21.5(b)

implemented for eight years and can be extended by the Trade and Development Committee⁶.

8. Capacity of African countries to participate in the trade remedy system

The requirements necessary for the successful application of trade remedies have resulted in most African countries not playing a major role in the invocation of anti-dumping and countervailing duties and safeguards on the multilateral and bilateral level. On the multilateral level, only Egypt and South Africa have played an active role in implementing trade remedies and safeguards. In the regional context, bilateral measures have only been implemented within COMESA through Kenya's implementation of bilateral safeguards on sugar and wheat flour imports from other member states.

African developing and least developed countries for various reasons do not implement or defend their exports against contingent protectionist measures. These countries are faced with three main constraints: (a) the necessary expertise; (b) financial resources; and (c) available manpower. The application of trade remedies requires substantial financial and human resources as well as expertise for the detailed investigations necessary to comply with all the relevant provisions of the WTO agreements and regional arrangements. Not all developing countries have these resources available to them and if there is no compliance with the various requirements a country runs the risk of being challenged before either the WTO dispute settlement or a regional body. These constraints, coupled with the lack of technical equipment, make it difficult for countries to defend themselves against the application of trade remedies. The expensive legal costs and long time periods involved in trade remedy disputes restrict the defence against allegations of dumping, subsidies or a surge in imports (Neufeld 2001). The complex economic and accounting considerations involved in the implementation of trade remedies need to be integrated into a legal system which provides for substantive and procedural rights and obligations. The legal system needs to be fair and efficient to ensure that trade remedies do not constitute indirect trade barriers (Waincymer 2001).

⁶ New legal texts agreed upon in March 2008 to be included in the full EPA.

Small and medium-sized export companies have difficulty in defending themselves due to the complexity of the trade remedy system involved in participating in the investigation process. Governments of these countries can also only provide limited, if any, assistance to firms wanting to defend themselves against implemented action. The degree of complex procedures weighs highly against African countries due to less developed administration, incomplete knowledge of laws, regulations and administration practices of the importing countries and limited experience and expertise in dealing with allegations of dumping, subsidisation and a surge in imports.

The growing jurisprudence on the application and implementation of trade remedies makes it difficult for trade officials to master both substantive and procedural aspects of WTO law. Small administrations normally do not have the manpower to assign officers to a dispute because these officials can be busy with the process for up to two years. Also, small economies cannot endure the economic harm caused by the implementation of a trade barrier for the entire period of the dispute process. A trade remedy undermines the exports of developing countries, and if the remedy is found to be inconsistent, the withdrawal can sometimes only take place two to three years after the complaint was filed at the WTO (United Nations 2006).

These shortcomings create problems for developing countries to defend their rights and obligations which lead to some exporters withdrawing from the market rather than defending themselves (United Nations 2000).

9. Conclusion

The economic rationale for the retention of trade remedies in regional trade agreements has been the cause of debate among many economists. Those supporting the retention of trade remedies have argued that these measures are a method to maintain cooperation among member states in volatile trade periods, that international trade agreements are given a degree of acceptance by these 'escape valves' for trade protection, that tariff liberalisation is stimulated and that the negative effects of these trade defence instruments are due to the deficiencies in the legislation governing their implementation rather than the underlying concept. Others see the economic basis for these measures to be rather weak – with governing legislation often reflecting political rather than economic considerations and

governments utilising trade remedies to support an administered protection regime. Using these instruments as protectionist tools is seen as being an inefficient strategy. Because anti-dumping and countervailing measures are country-specific, the gap created by a successful dumping or subsidisation investigation can be filled by alternative sources of supply and these measures create a dead-weight loss for the domestic industry in terms of recurring legal costs.

Most of the African countries against which measures have been taken lack financial resources and manpower. This is coupled with the complexity of the trade remedy system, the limited assistance by government and incomplete knowledge of the laws and regulations of the importing country. The result is that it is impossible for most African developing and especially least developed countries to defend themselves against an allegation of dumping, subsidisation or a surge in imports. Matters are also complicated by a lack of domestic legislation and regulations dealing with the implementation of trade remedies in many southern and eastern Africa countries and the vague and ambiguous language in many of the examined trade agreements. The 2002 SACU Agreement, for instance, contains no detailed provisions regarding the implementation of trade remedies and safeguards and requires the development of common policies regarding unfair trade practices. However, these common policies have not been developed and the agreement contains no provisions regarding the procedures to implement trade remedies against members or third parties. Therefore members are left with utilising the complex rules set out in the GATT 1994 and WTO agreements. South Africa is also the only SACU member which has notified domestic legislation to the WTO and has a national body to investigate allegations and make determinations in terms of dumping, subsidisation and import surges. In some of the agreements further complications are found in the fact that regulations are included in protocols and annexes to the agreements which are added to existing regulations. This requires member states of, for instance, COMESA and the EAC to have not only knowledge of their treaties but also about additional protocols and annexes in order to implement trade remedies successfully.

Currently, only South Africa and Egypt can successfully participate in the trade remedy system and defend their exports against allegations. Although the special and differential treatment available in multilateral trade remedy provisions protects

developing and least developing countries from the implementation of global safeguards, countervailing measures and anti-dumping duties, this protection is limited. The EPAs also state that the implementation of global safeguards will not be applicable to the ACP contracting parties for a period of five years after the agreements come into force. This provides additional protection for the exports of developing African countries. However, after five years the imports from the ACP countries will also be subject to global safeguards under the EPAs, except if the imports are excluded under the Special and Differential Treatment clause in the Agreement on Safeguards. Developing and developed countries also have the same rights and obligations under the global anti-dumping provisions. Thus, developing and least developed countries are not to a great extent protected from anti-dumping measures, which have shown the highest level of increase since the second semester of 2008.

Capacity, domestic legislation and procedures and technical expertise need to be developed in eastern and southern African countries to address the increased implementation of contingent protectionism. As regional integration in Africa deepens there must be a focus on clear, simple and unambiguous rules to enable countries to participate in the trade remedy and safeguard system in accordance with WTO rules.

References

Brückner, M. 2004. *Regional Trade Agreements*. 7th WTO/UNESCAP Trade Policy Course. [Online]. Available: http://www.unescap.org/tid/projects/7tpcourse_s3.pdf.

Crowley, M.A. 2006. *Why are safeguards needed in a trade agreement?* [Online]. Available: http://www.chicagofed.org/publications/workingpapers/wp2006_06.pdf.

De Cordoba, S.F., Laird, S., Maur, J. and Serena, J.M. 2006. *Adjustment costs and trade liberalization*. [Online]. Available: <http://192.91.247.38/tab/events/namastudy/fullreport-version14nov-p076-095.pdf>.

Ethier, W.J. 2002. Unilateralism in a Multilateral World. *Economic Journal*, 112: 266-292.

Kohler, P. 2001. *The role of contingent protection in WTO agreements*. [Online]. Available: <http://www.karyiuwong.com/confer/germ02/papers/kohler.pdf>.

Kotera, A. and Kitamura, T. 2007. *On the Comparison of Safeguard Mechanisms of Free Trade Agreements*. RIETI Discussion Paper Series. [Online]. Available: <http://www.rieti.go.jp/jp/publications/dp/07e017.pdf>.

Moore, M. and Zanardi, M. 2008. *Trade Liberalization and Antidumping: Is there a substitution effect?* [Online]. Available: <http://www.ecares.org>.

Neufeld, I.N. 2001. *Anti-Dumping and countervailing procedures – Use or Abuse? Implications for Developing countries*. United Nations Conference on Trade and Development. [Online]. Available: http://www.unctad.org/en/docs/itcatab10_en.pdf.

Olsson, C. 2006. *Developing Countries and Emergency Safeguard Measures in World Trade Law*. Thesis (Master's): Faculty of Law, University of Lund. [Online]. Available: [http://www.jur.lu.se/Internet/Biblioteket/Examensarbeten.nsf/0/42F01B3247B554DEC125719B005CF10F/\\$File/exam.pdf?OpenElement](http://www.jur.lu.se/Internet/Biblioteket/Examensarbeten.nsf/0/42F01B3247B554DEC125719B005CF10F/$File/exam.pdf?OpenElement).

Page, S. and Kleen, P. 2005. *Special and Differential treatment of Developing Countries in the World Trade Organization*. [Online]. Available: http://www.egdi.gov.se/pdf/study/40725_GI%20Dev%20Stud%202.pdf.

Pauwelyn, J. 2004. The Puzzle of WTO Safeguards and Regional Trade Agreements. *Journal of International Economic Law*, 7: 109-142.

Prusa, T.J. and Skeath, S. 2001. *The Economic and Strategic Motives for Antidumping filings*. National Bureau of Economic Research Working Paper Series. [Online]. Available: <http://www.nber.org/papers/w8424>.

Staiger, R. and Tabellini, G. 1987. Discretionary Trade Policy and Excessive Protection. *American Economic Review*, (77): 823-837

Teh, R., Prusa, T.J. and Budetta, M. 2007. *Trade Remedy Provisions in Regional Trade Agreements*. WTO Economic Research and Statistics Division, Staff Working Paper. [Online]. Available: http://www.wto.org/english/res_e/reser_e/wpaps_e.htm.

Trade Law Chambers. 2009. *Trade Remedies*. [Online]. Available: <http://www.tradelawchambers.co.za>.

tralac. 2008. *EPA Background: Introduction*. [Online]. Available:

http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=36879&cat_id=1052

Trade Law Chambers. 2009. *Trade Remedies*. [Online]. Available:

<http://www.tradelawchambers.co.za>.

Tsengiwe, S. 2009. *ITAC Chief Commissioner: The Complexities of Trade Remedies*.

[Online]. Available: <http://www.tariffandtrade.co.za/archive/NB/200904035D16%20-%20Complexities%20of%20Trade%20Remedies.pdf?PHPSESSID=urxcjutgs>

United Nations Conference on Trade and Development. 2000. *Impact of Anti-dumping and Countervailing duty actions*. [Online]. Available:

<http://www.unctad.org/Templates/Page.asp?intlItemID=2028&lang=1>.

United Nations Conference on Trade and Development. 2006. *Training Module on the WTO Agreement on Anti-dumping*. [Online]. Available:

<http://www.unctad.org/Templates/Page.asp?intlItemID=2028&lang=1>.

Waincymer, J. 2001. *Implications for anti-dumping and countervailing*. [Online].

Available: <http://www.apec.org.au/docs/waincyemrfta.PDF>.

Wilkie Farr and Gallagher LLP. 2006. *Barriers to African exports: Current problems and future risks*. [Online]. Available:

http://www.givengain.com/unique/tralac/pdf/20060922_Geneva.ppt.

WTO. 2009a. *Member States' notifications*. [Online]. Available:

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

WTO. 2009b. *Statistics on Anti-Dumping Measures*. [Online]. Available:

http://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

WTO. 2009c. *Statistics on Safeguard Measures*. [Online]. Available:

http://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm.

WTO. 2009d. *Statistics on Subsidies and Countervailing Measures*. [Online].

Available: http://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

Multilateral Agreements

Agreement on Agriculture

Agreement on Safeguards

Agreement on Subsidies and Countervailing Measures

Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

General Agreement on Tariffs and Trade 1947

General Agreement on Tariffs and Trade 1994

Bilateral Trade Agreements

Agreement on the Global System of Trade Preferences among Developing Countries (1988)

COMESA treaty - The common market for eastern and southern Africa (1993)

EAC treaty – East African Community (1999)

Free Trade Agreement between the Arab Republic of Egypt and the EFTA States (2007)

Free Trade Agreement between the EFTA States and the SACU States (2006)

Southern African Customs Union Agreement (2002)

Southern African Development Community Protocol on Trade (1996)

Treaty of ECOWAS – Economic Community of West African States (1993)

Economic Partnership Agreements

Agreement establishing a framework for an Economic Partnership Agreement between the Central African States, of the one part, and the European Community and its Member States, of the other part (text initialled 2007)

Agreement establishing a framework for an Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Community and its Member States, of the other part (text initialled 2007)

Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (2008)

Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern Southern Africa States, of the one part, and the European Community and its Member States, of the other part (text initialled 2007)

Interim Agreement establishing a framework for an Economic Partnership Agreement between the Pacific States, of the one part, and the European Community and its Member States, of the other part (text initialled 2007)

Interim Agreement establishing a framework for an Economic Partnership Agreement between the SADC EPA States, of the one part, and the European Community and its Member States, of the other part (text initialled 2007, signed 2009)

Interim Agreement establishing a framework for an Economic Partnership Agreement between the Ivory Coast, of the one part, and the European Community and its Member States, of the other part (text initialled 2007)