

ANTI-DUMPING PROCEDURES : LESSONS FOR DEVELOPING COUNTRIES WITH SPECIAL EMPHASIS ON THE SOUTH AFRICAN EXPERIENCE

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1. Introduction

Before the negotiations of the General Agreement on Tariffs and Trade (GATT) Uruguay round, the favoured barriers to trade used by most countries were tariffs, import quotas, import bans, discretionary permits, etc. Although anti-dumping measures date back as far as the early 1920's when it was discussed by the then League of Nations, this "sophisticated trade instrument" has remained the "tool of protection of the elite" (Vermulst,1997:5). In 1988 it was estimated that 95 per cent of the 1 456 new anti-dumping cases reported since the conclusion of the Tokyo Round Anti-Dumping Code, have been initiated in Australia, Canada, the European Community and the United States (Vermulst & Waer,1991:6). These four have been the traditional users of anti-dumping measures.

However, after the conclusion of the latest round of multilateral negotiations, traditional barriers to trade such as tariffs, are being replaced by measures such as anti-dumping and countervailing duties. Thus, more and more developing countries are also adopting anti-dumping legislation and entering the international arena of anti-dumping investigations. Since the Uruguay Round there have been an explosion of anti-dumping measures world-wide, especially in developing countries. The problem is that the Uruguay Round Anti-Dumping Agreement is a complicated, technical and sometimes confusing document, which complicates matters for new users. Often these countries don't have the technical staff to handle these investigations.

Therefore, as anti-dumping seems to become a more and more popular trade instrument, it is necessary to look at the experience of some developing countries that have successfully applied anti-dumping measures in recent years. There are quite a few good examples, Korea for instance has applied its first anti-dumping duty in 1991 and has managed to implement a workable system. South Africa is also a typical case, having in the past relied heavily on the use of formula duties to counteract disruptive competition. In 1993 it had anti-dumping duties on only three products. This changed dramatically and during 1996 South Africa introduced 30 anti-dumping actions, more than any other country in the world (Cohen,1997). This paper will look at the lessons that other developing countries can draw from South Africa's experience, while also considering the examples of countries such as Venezuela, Israel, Korea and Turkey.

2.South Africa

South Africa was one of the founding members of the original GATT treaty that came into being in 1947. Since then, the trade regime in South Africa has changed from a decisively inward looking orientation, to a more outward oriented approach. This is in line with the prescriptions of GATT and specifically with the

requirements of the Uruguay Round, which was completed during December 1993. On 2 December 1994 South Africa became a member of the World Trade Organisation (WTO), which replaced the GATT. South Africa is becoming more and more outward oriented, moving away from the protectionist regime and import substituting philosophies which it had followed for decades. This trade liberalisation accompanied the political transformation process as South Africa finally left behind its isolated past.

South Africa has committed itself, in accordance with the agreements reached during the Uruguay round to the lowering of tariff rates. It is estimated that once the tariff cuts proposed by South Africa in the Uruguay round have been implemented, the simple average for industrial products will fall to 13,9 per cent (DTI, 1996:64). A recent study by the Industrial Development Corporation (IDC) predicted an effective rate of protection for the total industry of 14 per cent by 1999. (IDC,1997:20). Tariff quotas were terminated on 31 October 1992, import surcharges were abolished by October 1995 and the general export incentive scheme was being phased out during 1997 (GEAR, 1996). Since it doesn't have recourse any longer to some of the traditional barriers to trade, anti-dumping measures have increased at a rapid pace, as mentioned above. By the end of 1996, South Africa had 61 anti-dumping measures in place, placing it alongside countries such as Argentina, with 53 measures and Australia with 64. Other developing countries had less in place, for example Brazil 41, Turkey 37 and India 35. The United States leads the world by far with 332 actions in force by the end of 1996 (Cohen,1997).

3. Procedure

International anti-dumping procedures are ruled by the provisions of Article VI of the General Agreement on Tariffs and Trade (GATT) and specifically by the Agreement on Implementation of Article VI of the GATT 1994. Most countries have based their domestic anti-dumping laws on article VI. Dumping is normally deemed to be the export of merchandise at a price below its normal value in the home market. All of these concepts are clearly defined in article VI, but there is ample space for interpretation and therefore these concepts and their application will be dealt with in detail below.

Generally speaking an anti-dumping investigation usually develops along the following lines : a domestic producer makes a request to the relevant authority to initiate an anti-dumping investigation. This body then investigates the foreign producer to determine if the allegation is valid. It uses questionnaires completed by the interested parties to compare the foreign producers export price to the normal value, i.e. the price in the home market of the exporter. If it is found that the foreign producer is dumping his products, then injury to the domestic industry has to be proved. Lastly the investigating body has to prove a causal link

between the alleged dumping and the injury suffered by the domestic industry. Article VI of GATT specifies that dumping investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months after initiation. Anti-dumping measures must expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue to recur.

Some of the more traditional user countries make a division between the determination of dumping and the determination of injury and the calculation of dumping margins. The European Community (EC) has been using separate agencies since 1995 (Vermulst,1997:8). In the United States, there is also a division. The Department of Commerce investigates dumping while it is the task of the International Trade Commission to determine whether the domestic industry is being injured by the dumping (White,1997:118). Korea, a more recent user, also separates the two : the Korean Trade Commission determines whether an investigation is necessary and also determines injury, while the Korean Customs Administration is responsible for the preliminary and final determination of dumping and the collection of the anti-dumping duties (Kim, 1996:105).

Yet, although there seem to be certain merits to the above division of determination of injury and dumping, it would make more sense for developing countries to appoint one investigating body who would run the whole exercise. Especially as there would probably be only a few cases in the beginning and the learning curve would be steeper for the staff involved if they go through the whole exercise and not only a part of it. In Venezuela there is one agency, the Antidumping and Subsidies Commission (CASS), which determines both the anti-dumping margins and the injury to the domestic industry. CASS consists of an Executive Body and a Technical Secretariat, the latter being responsible for the day-to-day investigative activity and the preparation of the technical reports (Castro-Bernieri et al,1996:127).

Vermulst (1997:7) mentions three major problems that will face developing countries in the application of anti-dumping laws.

A lack of expertise.

Lack of financial resources, and

A lack of manpower.

Therefore, if all the functions are concentrated in one agency, it could minimise these problems. Anti-dumping investigations are multi-disciplinary and therefore require people from different fields. For the day-to-day administration the following disciplines should be represented : law, economics and accountancy. Israeli law makes provision for an advisory committee to administer anti-dumping. It has seven members, three representatives of the public, two staff members of the Ministry of Industry and Trade, one staff member of the Ministry of Finance and a staff member of the Ministry of Agriculture. It specifies that the committee chairman should be a jurist. In South Africa, there is a Board of Tariffs

and Trade that is responsible for conducting anti-dumping investigations, with a technical anti-dumping unit within the Department of Trade and Industry.

4. Interested parties

Different countries have different specifications as to who might request an investigation. In Japan, applications for protection against dumping may be requested by “Any person who has an interest in an industry in Japan”(Hagiwara et al,1988:38). The Korean anti-dumping law makes provision for “interested parties of the domestic industry” to submit a petition for the imposition of an anti-dumping duty. But it explains that : “interested parties include producers and associations of producers”. Labour unions are specifically excluded (Kim, 1996:106). Under Venezuelan Anti-Dumping Law, only domestic producers of identical or like-products have standing to file petitions requesting the initiation of investigations (Castro-Bernieri et al,1996:128). The agreement on article VI states that an investigation should be initiated “upon a written application by or on behalf of the domestic industry”. This is then explained as being “by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry”. It is important to note here that two different denominators should be used, the first being the portion of the domestic industry either supporting or opposing the application and the second being the total production of the like product.

Vermulst & Komuro (1997:32) say that the most likely areas where new users of anti-dumping laws could err are :

- constructed normal values
- level of trade, allowable adjustments, averaging
- injury and causation
- standing
- duration and review
- motivation

Industry standing has been addressed and some of the other areas will be discussed below, looking at the experience of other developing countries.

5. Constructed Normal Values

According to article 2 of the Anti-Dumping Agreement a product is being dumped if it is “introduced into the commerce of another country at less than its normal

value”(GATT,1994:145). Therefore the normal value of the product has to be determined and this is done by looking at the comparable price, in the ordinary course of trade, of the product when sold in the exporting country. This information is obtained from the questionnaires completed by the exporters. If this information is readily available, then the calculation of the normal value is simple.

However, article 2 also provides for a situation where there are no sales of the like product in the ordinary course of trade in the exporting country for some reason. Then the normal value is determined by using the export price of the like product to an appropriate third country or by constructing normal value by calculating the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits. The problem usually arises with this last option. Vermulst (1997:18) identifies this method of a constructed normal value as one of the methods used by the traditional user countries to inflate the dumping margin. He suggests that in real dumping situations, the dumping margins will be high enough without any need of inflating them artificially. The 1994 Anti Dumping Code requires more specific data than before, for the calculation of the constructed normal value : “...the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation” (GATT,1994:146).

The United States seems to be one of the countries that will have to adjust its calculation methods under this new provision of the 1994 Agreement. Most of the criticism against the US Department of Commerce’s administration of the anti-dumping law, pertains to the constructed value method. White (1997:119) reports that constructed value is used in the majority of dumping cases. Over two-thirds of the 1987 cases involved cost of production or constructed value methods. Furthermore it was found that in the USA anti-dumping determinations are made in 89 per cent of the cases in which constructed value is used; which is a greater percentage than in cases where home-market (82 per cent) or third-country prices (32 per cent) are used. This would confirm a definite bias towards determination of dumping when the constructed value method is used.

During 1996 and 1997, South Africa has completed 13 investigations where the basis for determination of the normal value have been reported. Of these, 7 used the home market price, 3 the constructed value method and in 3 cases a combination of the home market and constructed values was used. All three these cases dealt with the export of circuit breakers to South Africa, originating in France, Japan and Spain and imported from France, Italy, Switzerland and Japan. The reason why a combination was used, was that some of the circuit breakers (NA100) imported from France by a company called Groupe Schneider were specifically developed for use in South Africa and therefore not sold in Groupe Schneider’s domestic market or anywhere else. For the other circuit

breakers, normal values could be determined by looking at the price for which they were sold in the French domestic market. The normal value of the various products not sold in France was determined with reference to cost build-ups, in accordance with article 2.2.1 of the Agreement. For the products that were sold in France, the normal value was determined on the basis of domestic sales less adjustment for general, selling and administrative costs. A combination of methods were also used for circuit breakers from Japan as there were significant differences between the product destined for the home market and those exported to South Africa. Hydraulic-magnetic products were exported to South Africa while thermal-magnetic breakers were sold in Japan.

South Africa used in most cases the home market price, only in a few cases was a constructed value calculated and sometimes a combination of the two methods was used. This is reassuring, as the abuse of the constructed value method might indicate unnecessary protection, based on higher dumping duties.

In order to calculate the anti-dumping duty, the export price or dumped price must be compared to the normal value and if the export price is less than the normal value, this will prove dumping. The determination of the export price is not as controversial as that of the constructed normal value. The dumping (or export) price is simply the price really paid for the exported good. Article 2.3 of the Agreement makes provision for a constructed export price, if there is an association or an agreement of such a nature between the exporter and the importer or a third party which makes the export price unreliable. In such a case the price may be determined on the basis of the price at which the imported products are first resold to an independent buyer, or if not resold in the condition as imported, then on such reasonable basis as the authorities may determine.

The usual formula is

$$\text{Dumping Rate} = \frac{\text{Adjusted Normal Value} - \text{Adjusted Export Price}}{\text{Adjusted Export Price}} \times 100$$

Another problem arises when the weighted-average of the normal values is compared to the dumping price of a specific transaction. In the European Community dumping margins used to be established by comparing the normal value which is the weighted-average of such values for the investigation period, and the export price which was determined on a transaction-by-transaction basis (Kim, 1996:117). After much criticism, this issue was discussed in the Uruguay Round negotiations and the 1994 Agreement (article 2.4.2) now specifies that : "...margins of dumping...be established on the basis of a comparison of a weighted average normal value with the weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-by-transaction basis". This provision will also necessitate a change in United States procedures as USA practice had been to compare individual export prices to weighted average normal value. Palmetier (1996:47) found that this method is inherently biased in proving dumping. The Korean practice is to calculate a separate dumping duty for each company, if sufficient

data is available. Otherwise a single dumping rate for all exporters from a given country is determined (Kim,1996:117).

South Africa also follows the practice of calculating individual dumping margins for each exporter. Only in a few isolated cases were dumping margins calculated for the entire industry. In a recent investigation of the dumping of glazed and unglazed ceramic tiles from Italy, five exporters were selected. As there were approximately 200 exporters it was administratively impossible to calculate margins for each. The five that were chosen exported the biggest volumes to South Africa. For each of these, individual dumping margins were calculated. Three companies had negative dumping margins and were therefore exempted. The weighted average duties of the other two were used to calculate the general dumping duty applicable to all other Italian exporters whose export price was beneath a certain benchmark price. Thus developing countries, implementing anti-dumping laws, should be careful not to disregard the provisions of article 2.4.2 by comparing weighted average normal values with individual export prices.

6. Material Injury

In order to levy an anti-dumping duty, it is not enough only proving that dumping has occurred. Article 3 of the Agreement requires that injury to the domestic industry also has to be proved. During the 1967 Kennedy Round, the Anti-Dumping Code was made more specific, requiring that a country has to show : “that the dumped imports are demonstrably the principle cause of material injury”. This provision was vehemently opposed by the United States, who argued that it placed a heavy burden of proof on the authorities to prove “material injury” rather than simply injury. However, during the Tokyo Round (late 1970s), the “principle cause” provision disappeared, but “material injury” remained, although reduced to a footnote (Palmer,1996:44). But it seems that through the years (although still only in a footnote in the 1994 Agreement), injury has come to mean *material injury*. It is the phrase used in the national anti-dumping laws of New Zealand, Turkey and Japan, to name a few. South Africa also uses this term in its anti-dumping law as well as in its anti-dumping reports.

To prove the existence of material injury, the GATT Agreement specifies certain criteria which should be considered. The primary criteria are the volume of the dumped imports and their effect on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers. With regards to the effect on prices, consideration should be given to price undercutting, price suppression and price depression. But quite a few other criteria are also listed : actual and potential decline in sales, profits, output, market share, productivity, utilisation of capacity, etc. But it is stated that : “The list is not exhaustive, nor can several of these factors necessarily give decisive guidance”(GATT,1994).

Most countries have copied this list in their domestic anti-dumping laws, some have simplified it, naming only a few criteria. The important point here is that “A determination of injury ...shall be based on positive evidence...”(article 3.1). Facts and figures have to be given for criteria such as increases in import volumes, price undercutting, declines in profits, etc. Therefore, it is advisable for newcomers to the anti-dumping arena to limit their investigations to the more easily quantifiable criteria. South Africa has also followed this approach, usually limiting their investigation to the effect on import volumes, domestic prices, sales, profits, production and production utilisation, market share and inventories. In some cases the effect on employment was also considered, if the data was available.

6.1 Injury Margins and The Lesser Duty Rule

Article 9 of the Agreement states that : “It is desirable...that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.” This provision is not mandatory and the Agreement does not specify how these “lesser duties” should be calculated. Therefore, there are relatively few countries that implement this lesser duty rule. The EC has the practice of routinely calculating two separate duties, an injury margin and a dumping margin. The lower of the two is then used as the punitive duty. The United States and Canada on the other hand are examples of countries that do not calculate injury margins, they use the dumping margin to determine the dumping duty (Vermulst, 1997:19).

If one looks at the methodology of the EC in calculating injury margins, it appears to be rather complicated. As the provision of article 9 is not mandatory, it would probably be simpler for developing countries to follow the example of the United States and Canada and calculate only a dumping margin, using this as the basis for the dumping duty. Korea is one of the newcomers to the anti-dumping field, that implements the lesser duty rule. Korea also uses a rather complicated method, their use of the lesser duty rule is based on the concept of proper profit. Average profits for different industries (as calculated by the Bank of Korea), is used to determine “proper profit” and the duty necessary to ensure this. This calculation has not proved satisfactory as the duty based on this method was higher in some cases than the duty based on the dumping margin, e.g. in *Certain Ball-Bearings from Thailand* and *Phosphoric Acid from the People’s Republic of China* (Kim,1996:109).

South Africa uses the lesser duty rule in almost all of their investigations. In the case of *Circuit-Breakers originating in France, Italy , Spain and Japan*, it is stated that:”..the Board felt that in the light of the extremely high dumping margin of products exported from Bticino, that imposing the anti-dumping duty at the dumping margin, would be punitive and would price their products out of the market, rather than levying the playing field, as was the intended result of the imposition of a final anti-dumping duty”(BTT,1997:46). In another case,

Insecticide containing aldicarb originating and imported from the United States of America there was a substantial difference between the dumping margin (99.3%) and the final duty based on the lesser duty rule (11,5%). Both are expressed as a percentage of the export price. South Africa does not use the same complicated methods as the EC. In the *aldicarb* case, the duty was based on a calculation of the price disadvantage (BTT,1997). In *Glazed and unglazed ceramic tiles originating and imported from Italy*, the Board explains its stance in the preliminary determination: “The Board considered that the provisional payment should be the lesser of the margin of dumping and the price disadvantage, as this could be considered to remove the injury to the domestic industry” (BTT,1998:52). Thus the practice is to calculate both the price disadvantage and the dumping margin. As illustrated in the *aldicarb* case the duty based on the price disadvantage is usually lower than the dumping margin and deemed by the BTT in most cases to be sufficient to remove injury or to “level the playing field”. Therefore, for developing countries who doesn’t want to use the complicated methods of the EC, it might be advisable to follow the South African example and calculate the price disadvantage and use this as a basis for the application of the lesser duty rule.

7. Causation

For dumping to be determined all three requirements have to be fulfilled, dumping has to be proved, injury and causation, i.e. that it was the dumping that caused the injury to the domestic industry. Therefore, all other factors that might have caused the injury have to be isolated and investigated separately. Article 3.5 of the Agreement explains : “Factors which may be relevant in this respect include *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.”

Some countries (e.g. New Zealand and Turkey) do not distinguish in their national anti-dumping laws clearly between determination of injury and proving a causal link, although they also investigate the factors that would prove causality. Japan (Hagiwara et al, 1988:43) and Korea (Kim,1996:125) analyse material injury and causation separately. Although there is a considerable overlap between the two, it makes more sense to separate the two. Vermulst (1997:19) also supports this : “It seems best that importing country authorities follow a two-step approach...it should first be established whether the domestic industry has been materially injured...then be determined whether the material injury is caused by the dumped imports”. South Africa also separates these two factors in all their investigations. South African domestic laws also name a few other factors that might indicate causation : political factors, state of the economy, marketing and finance. Therefore, broadly speaking, determining causation

requires a wider look at macro-economic indicators, than proving injury which considers micro-economic indicators pertaining to a specific industry.

8. National Interest

The 1994 WTO Anti-dumping Agreement does not include a national interest clause. If dumping, injury and causation are proved, then an anti-dumping duty is levied. In the United States, for example, the imposition of anti-dumping duties is mandatory once dumping and resulting injury are found (Vermulst,1997:20). The main exception here is the EC. Apart from proving dumping and injury, EC law specifies that anti-dumping measures may only be imposed if they are shown to be in the interest of the importing country.

The Community Interest clause was reinforced and broadened in the 1995 Basic Regulation of the EC. This new Community Interest provision has since taken on new meaning when it became a serious issue in *Unbleached (grey) cotton fabrics from China, Egypt, India, Indonesia, Pakistan and Turkey*. Heavy opposition to imposition of provisional duties came from the downstream industry. The EC provision gives wider powers to consumers, traders, importers, upstream suppliers and downstream users (Vermulst & Driessen,1997:155).

The question here is whether developing countries should add such a national interest clause to their anti-dumping laws, as this is not required by the 1994 Agreement. From the experience of those that have adopted such a clause, it would seem that it is not as often used as one might expect. The Korean Anti-Dumping law has as a third requirement (apart from dumping and material injury), the necessity to protect the domestic industry must be proved. However, in practice, the Korean government does not review this requirement separately in its determinations. If dumping and injury are proved, that is deemed to be sufficient to impose an anti-dumping duty (Kim,1996:126).

Vermulst (1997:20) recommends that developing countries should adopt a national interest provision, as it could offer :”a safety valve if anti-dumping action, for whatever reason, seems undesirable”. He foresees that some developing countries might need such a provision if they don’t want to impose a duty. South Africa does not have a national interest clause in their domestic anti-dumping laws. They do consider the impact of the duty on the domestic industry when injury is determined, but no provision is made for a broader definition of interested parties, to include consumers and downstream users.

9. Confidentiality

Another problem that new users of anti-dumping laws may face, is how to handle the sensitive nature of some of the information used in anti-dumping procedures.

The United States and Canada have a rather complicated (but efficient) system, whereby confidential information, submitted by one party, can be accessed by the attorneys of the other parties. The attorneys are not allowed to disclose this information to their clients, but they may use it to double-check the correctness of the information and the use thereof.

But for developing countries it might be far better to adopt the EC system, whereby interested parties have to submit a non-confidential version of every confidential document (Vermulst, 1997:14). The EC is strict about this rule and in *Unbleached (grey) cotton fabrics from China, Egypt, India, Indonesia, Pakistan and Turkey*, the Commission used only the information from one hundred questionnaires from an approximate two hundred submitted, because the rest did not have the prescribed non-confidential summary attached (Vermulst & Driessen, 1997:154). How should one determine whether information should be considered as confidential or not? Venezuela asks the following questions: "Would a competitor gain an advantage based on access to this information? Would access to this information have a prejudicial effect on its provider or on a third party? Is the information provided otherwise generally available?" (Bernieri et al, 1996:130).

South Africa also uses the EC practice, interested parties are required to submit a non-confidential version of all confidential information. This is easily done by using a base year, the first year of data covered is used as the base year. This system seems to be more appropriate for developing countries, as it is easier to administer and chances of confidential information being leaked are minimised.

10. Price undertakings

Article 8 of the Agreement makes provision for proceedings to be suspended or terminated without imposing an anti-dumping duty, if the exporters concerned make satisfactory voluntary undertakings to revise its prices or to cease exports at dumped prices. Undertakings can not be accepted, before a preliminary determination of dumping and injury has been made. Under Korean law, either the exporter or the Korean anti-dumping authority may propose an undertaking. Although their law makes provision for either a price revision or a decrease or cessation of exports, in practice it was the latter method that was used as an undertaking. The same applied for the EC, where anti-dumping proceedings were typically terminated through voluntary restraint arrangements. Japan also used this provision to terminate some of its investigations, e.g. *Korean Cotton Yarn* and *Norwegian-French ferrosilicon* (both terminated during 1984). (Hagiwara et al, 1988:49).

Therefore it seems that the more popular of the undertakings was the export restraint undertaking. However, with the conclusion of the Uruguay Round, any measures on exports, such as voluntary export restraints are prohibited

(Kim, 1996:108). Developing countries implementing anti-dumping laws should be careful not to step outside the boundaries of the GATT 1994.

11. Anti-Circumvention

As anti-dumping measures are becoming increasingly popular, so are methods to circumvent it. Exporters and importers will increasingly be looking for new means of circumvention. The Anti-Dumping Agreement, however contains no provisions regarding permitted measures against circumvention. Both the European Community and the United States were hopeful that such measures might be adopted during the Uruguay Round. Palmetier (1996:65) believes that their failure to obtain this :”...was perhaps their major significant set-back in the anti-dumping negotiations”. Both the EC and the United States, as well as a number of other countries have resorted to unilateral anti-circumvention measures.

The EC has adopted a detailed anti-circumvention provision in their 1994 Basic regulation. Assembly remains the principal form of circumvention. The EC has broadened their anti-circumvention provision to include third-country assembly. Another strict requirement is the so-called value-of parts test, which they set at 60 per cent. Circumvention will be proved if the imported parts constitute 60 per cent or more of the total value of the parts of the assembled product. But if the value added to the imported parts exceeds 25 per cent of the manufacturing costs, then it will not be considered circumvention. The EC has initiated a few proceedings under this new provision (Vermulst & Driessen, 1997:147).

It seems that presently, anti-circumvention is the privileged domain of the more experienced anti-dumping users, in particular the EC. Circumvention remains a controversial issue and at Marrakesh it was decided that the Committee on Anti-Dumping Practices should work on uniform rules that could be added to the Agreement. Therefore, for the moment it might be wise for developing countries to accept the advice of Vermulst(1997:21) :”...developing countries might find it in their interest to get experience with ‘regular’ anti-dumping investigations before embarking upon anti-circumvention investigations.

Conclusion

The increase in anti-dumping investigations over the last years since the conclusion of the Uruguay Round, seem to confirm their increasing importance as the trade-restrictive instruments of choice. Since 1980 two thousand new cases have been initiated by OECD countries (Hoekman & Mavroidis, 1996:27). Developing countries are also increasingly adopting anti-dumping laws. From the experience of some developing countries which have successfully implemented antidumping laws, it is clear that these laws should be as close as possible to Article VI of the GATT, but that they should preferably be a simplified version. South Africa has also followed this approach, adopting a simplified version of the GATT Anti-Dumping Agreement. Developing countries must be careful not to

step outside of the GATT boundaries and should give special attention to the problem areas discussed above, such as constructed normal values, material injury, causation, price undertakings, confidentiality, etc.

The main problem at present with the increase in anti-dumping investigations, is that this could be a form of neo-protectionism. The U.S. International Trade Commission has published a report in 1996 on U.S. anti-dumping measures, in which they used a cost-benefit analysis to evaluate the impact of such measures. It was estimated that the costs to the U.S. economy far outweighed the benefits that U.S. producers derived from anti-dumping relief (Bronckers, 1996:18).

Therefore, in the future it will be necessary for policy-makers to discipline this trade instrument. This could take the form of more comprehensive anti-circumvention measures prescribed by the WTO. For developing countries, this means that they should take care from the beginning that anti-dumping measures do not become a protection tool for domestic producers.

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