



Using Trade Laws to Protect African Interests

As African stakeholders increase trade with their counterparts in other countries, they are falling under foreign trade laws or themselves utilising domestic trade laws in their battle for market share. However, not all governments are adequately equipped to tackle trade-related issues and continued diligence needs to come from the private sector (both businesses and individuals) to protect foreign and domestic market share.

One area where African governments and businesses have been quite active in recent years has been in the area of trade remedy laws - anti-dumping and countervailing duty, or safeguard measures. African countries, whether it be the companies or the governments themselves, have recently been named in antidumping duty actions in countries ranging from the United States and the European Union to China, India, Brazil, and Mexico. In other words, stakeholders have convinced their governments to initiate actions to protect them from unfairly traded (or dumped) African imports. And the trade remedy actions are not just against the strongest African trading nations like South Africa and Egypt, but increasingly against a new group of manufacturing and exporting countries on the continent like Nigeria, Kenya, and Tunisia. The products named have varied from the simple (copy paper and flowers) to the more highly manufactured (steel, machinery, and chemicals), so nothing is off limits these days. This demonstrates that African imports are trading at significant levels in a number of countries and if they want to maintain market share, they must be prepared to defend themselves.

In a typical trade remedy action, the amount of tariff imposed (if any) depends on the capability of the African stakeholders to mount a legal defence demonstrating that there was little or no dumping or material injury caused by the imports to the local industry. In many cases, African stakeholders have gone into these foreign legal jurisdictions and demonstrated that they were not in the wrong and have continued trading with success. But it was only by actively partaking in the process that this could occur. Failure to participate normally results in the assessment of a high tariff on imports and loss of the market.

In turn, some African countries have learned their lesson from these experiences and are now themselves initiating actions against imports into their countries, either on their own initiative or at the behest of local industries that feel harmed by increasing levels of imports. Recent actions have been initiated by the governments of Egypt and South Africa on products such as tyres, steel, chemicals, and paper products. And these actions have been against some of those countries' largest and strongest trading partners. For example, in recent years, there have been at least 18 cases initiated against China, 9 against India and the European



Trade Hound

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Union, and a handful against the United States and other Asian countries. Local industries have, in some instances, received the needed protection in the form of prohibitive tariffs to continue their own businesses and the countries have not been significantly impacted by taking such action. Has anyone seen or heard of China slowing down trade with South Africa or Egypt? No. The fear frequently uttered by trade remedy skeptics - that taking a trade action will cause large trading partners such as China, India, or the United States to cut off trade relations - is both misinformed and unfounded. The only real action being taken is that foreign manufacturers are increasingly asking their respective trade associations to monitor these actions to make sure that the African trade remedy regimes are abiding by international trading obligations. In other words, they are being forced to sit up and pay attention to what is going on in their African markets and can no longer take them for granted.

Other African countries have felt both inspired by these actions and emboldened to lay the trade remedy groundwork themselves. For example, Kenya has already considered a safeguard action against, among others, Egypt, and Ghana is quickly developing the necessary administrative agencies to commence trade remedy actions. The time has come for others to follow while there is still any local industry left to protect or develop. If the laws and necessary agencies are not already in place, it is high time that governments seriously begin focusing on doing so or risk being seen as disinterested in whether home grown industries live or die. And what politician wants that image?

The trade law area, however, is not only limited to trade remedies. There are other ways to make sure that products are traded fairly before entering the country. When one country is cut-off from a market whether due to higher tariffs (no duty free treatment) or increased country scrutiny (poorly manufactured products from China), traders often try to transship product through an intermediate

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country and claim a different country of origin to overcome these barriers. In some cases, minimal action such as label changing or minor assembly is taken in these intermediate countries in an attempt to change the country of origin. For example, products facing a high tariff when coming from outside a trading bloc like COMESA or SACU will ship 90% of a finished product into a "better tariff" country, add the final 10%, and then claim the intermediate country as the country of the product's origin to try to claim the lower tariff rate. And this is being done at the expense of the local industry in the final destination market, putting local jobs at risk. Whether done with a legitimate intent or not, African import agencies are increasingly scrutinising these shipments to ensure that manufacturers and importers are acting within the bounds of the law. But they are not doing it alone. Again, local industry is working with and educating the governmental authorities so that the trading patterns can be identified and appropriate action taken where warranted.

The bottom line is that trade laws can be and are powerful tools when used effectively. Just ask those using them to keep their markets open.

The views of Mr. Mrocza are his own and should not be attributed to any of his clients or his firm

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... SO HELP ME GOD



•The new Chief Judge of Ondo State, Justice Olasehinde Kumuyi, taking his oath of office before the State Governor, Dr. Olusegun Mimiko at his inauguration as Chief Judge ... last week