The Increasing Need for Anti-Dumping Regulations in Africa: A Case Study of Zimbabwe.

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Contents

Chapter 1

1.1Overview of the study

This the following study will assess the current anti-dumping regulatory framework in Zimbabwe with the aim of highlighting the importance of anti-dumping regulatory framework.

Anti-dumping regulations are a form of trade remedies offered by the World Trade Organisation (WTO) under Article VI of the General Agreement on Trade and Tariffs 1994.[1] Trade remedies allow member of the WTO to take remedial action against any import that are causing material injury to their domestic industries.[2] These measures are usually applied to measure that governments can impliment in three specific cases that are provided for under the aforementioned Article, often referred to as the Anti-Dumping Agreement, and the other remedies are found under the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.[3] In today's trading climate where free trade areas, such as the African Continental Free Trade Area (AfCFTA), are being embraced more than ever, there needs to be a greater emphasis on the importance of protecting domestic industries from imports that may cause them injury upon entering their domestic markets.

In recent years Zimbabwe has been faced an increase in imported goods. This is a result of a few different factors. Among these factors is the political elite in the country who have vested interest in close economic relationships with China at the cost of the interest of the people of Zimbabwe.[4] Another factor that has been observed as contributing to the influx of imported goods is their foreign country's ability to dump their products with ease in the Zimbabwean market, flouting of rules of origin, porosity of borders, corruption, trade liberalisation and a lack of a competitive industry.[5]

With this in mind it is apparent that there is a need for Zimbabwean industries to be protected from these goods that may cause injury to their prosperity. Thus, this study will

[1] General Agreement on Tariffs and Trade 1994 (GATT), Article VI.
[2] Australian Government Department of Foreign Affairs and Trade 'Trade remedies: Anti-Dumping, countervailing measure and safeguards'.
[3] M Johnson 'Trade Remedies: Why do we need them and how do they work?' https://trade-knowledge.net/knowledge/trade-remedies-why-do-we-need-them-and-how-do-they-work/ (accessed 7June 2021).
[4] V Ojakorotu & R Kamidza 'Look East Policy: The Case of Zimbabwe- China Political and Economic Relations Since 2000' (2018) India Quarterly: A Journal of International Affairs.
[5] G Mugano 'Time to tighten screws on dumping' The Herald (Harare) 31 October 2013.

attempt to support those industries by providing empirical evidence that Zimbabwean industries are under threat of injury or have been injured by imported goods.

1.2 Research problem

Dumping is an issue face by both developed and developing states the world over.[6] At its core, dumping is the act of exporting products at less than its 'normal value' which is often defined as the price at which those products are sold in the home market.[7] This act can cause injury or may threaten to cause injury to industries of the market in which these exported goods are being imported. Thus, there is a compelling need to curb this malaise, and the best method to do so would be through the trade remedies offered under that WTO made specifically for such an issue.

The study will argue that under the trade remedies offered by the WTO, Anti-dumping regulations are the most effective way to curb this issue. It has been argued on many occasions that cheap imports have flooded the Zimbabwean market and are causing local products to go out of favour.[8] This has forced a large number of strategic industries to shut their doors or have been forced to turn their factories into warehouses for local distribution of imported products.[9] Zimbabwe does indeed have a regulatory framework that is intended to be used to combat dumping practice however they have yet to be made use of in the country. For the most part the country has made efforts to combat injuries to domestic industries through precautionary measures such as, increasing import duties on second hand vehicles or banning the importation of second-hand clothing.[10] These measure however, have been ineffective in supporting domestic industries. Which raises the question of why the Anti-dumping regulations have yet to be utilised in the country.

It is against this backdrop that the main objective of this study is to examine. The current anti-dumping regulatory framework in Zimbabwe under the new regime and in light of the AfCFTA there is a need for a stronger push for the creation of an effective anti-dumping regulatory system. In order to do so the study will analyse the current WTO anti-dumping framework and interrogate how member intend to use these provisions.

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[6] MJ Trebilcock & J Trachtman Advance Introduction to International Trade Law (2020).
[7] TR Howell & D Ballantine Dumping: Still a Problem in International Trade in National Research Council International Friction and Cooperation in High-Technology Development and Trade (1997).
[8] V Bhorama 'Product dumping is killing Zim Industry' NewsDay (Harare) 17 August 2018.
[9] (n 8).
[10] J Kachembere & N Majaka 'Car duty goes up, bale imports banned' 2015 https://nehandaradio.com/2015/07/31/car-duty-goes-up-bale-imports-banned/ (accessed 8 June 2021)

Furthermore, it is this framework that will form the basis for developing a more effective and successful anti-dumping regulations within Zimbabwe.

1.3 Purpose of the study

Zimbabwe has had an anti-dumping regulatory system for many years however no one has made use of it despite facing many economic issues that stem from dumping, which leads one to ask and speculate over why that is so. In conjunction with this, the focal point of the study will be centred around answering the question "Does the current Zimbabwean anti-dumping regulation need reforming in order to bolster its use?" In answering this main question, the study asks adjunct question. These questions will be answered to help support the answer to the main question. The adjunct question are as follows:

1. What are the procedures in place for the use and implementation of anti-dumping regulations under the WTO?
2. What are the issues with the current Zimbabwean anti-dumping regulation system and does this warrant a need for reform?
3. How is dumping regulated under the South African regulatory framework?
4. What impact will the AfCFTA have on Zimbabwe's anti-dumping regulatory framework?
5. What lessons can Zimbabwe learn from the South Africa regulatory framework given their apparent success in utilising anti-dumping regulations?

The purpose of answering these questions and the study as whole is to fill the gap in knowledge when it comes to information pertaining to the use of trade remedies in Zimbabwe. In gathering information for this study, it has been evident even to many professors and observers such as Professor G. Mugano who recognise that there are trade practices that are injuring the domestic industries yet there is a lack of information as to how to combat such practices. This study is being conducted in order to help add to the missing literature on trade remedies, particularly anti-dumping, in Zimbabwe. The study seeks to help not only educate but encourage other scholars into conducting further research on the topic.

Furthermore, as of February 2021 36 countries, including Zimbabwe, have ratified the Africa Continental Free Trade Area Agreement which seeks to promote and support the free movement of goods on the country. As such the continent will be seeing more movement of goods from all over the continent than ever before due to the trade barriers that the agreement seeks to tear down. Many countries will be attempting that in light of this, their domestic

industries are protected and including the Zimbabwean government that has expressed their fear of what this may mean for their domestic industries. The study seeks to help in creating strong structure framework for anti-dumping on order to combat goods that may be dumped into the domestic markets. As the AfCFTA grows, dumping practices may increase along with it because many countries will be able to export their goods all over the continent with more ease and at a cheaper price. The rules of origin section of the Agreement may play a large role as well when it comes to the issue of exports coming through African borders from members not a part of the Agreement at a cheaper export price.

1.4 Division of the study

Chapter 1- Introduction.

Chapter 2- Foundations and History of Anti-dumping and its regulation.

Chapter 3- South African Anti-dumping regulatory Framework.

Chapter 4- The African Continental Free Trade Area Impact.

Chapter 5- The Anti-dumping regulatory framework of Zimbabwe.

Chapter 6- Conclusion and recommendations.

Chapter 2 Foundations and History of Anti-dumping and its regulation.

2.1 Introduction

The summer of 1914, the same year of the beginning of the first world war, a practice that was later coined as dumping had been observed. During that fateful summer German cartels were underselling their products in order to undercut their competition.[11] The Germans were spending an exuberant amount of money into producing and exporting their products, and selling them at unprofitable prices, biding their time until they had cornered the market and they were able to raise the prices. By the beginning of the first world war the French were buying their machinery from Germany instead America and the French citizens were also purchasing carbolic acid produced in Germany rather than that produced within their own borders. This method of competition has been viewed as a menace to the countries of whom which are targeted by it, which is why special legislative measures have been evolved to combat this issue. Which leads us to where we are today. The following chapter will give a brief history of dumping and the special provision that GATT has provided to combat cases of dumping as well as outline the challenges with these anti-dumping rules.

2.2 History of dumping

Although dumping became a more prevalent issue come the turn of the 20th century, the practice of dumping in itself date back to the early 17th century. A prominent leader in the field of dumping and the practice of, Jacob Viner, speaks of the instances of dumping prior to 1880. He argues that the act of dumping in itself could not have occurred until the industrial revolution which brought about more large-scale production and the increase in need for more markets in which to facilitate the increase in the production of the goods.[12] He highlights how the British, who were the leaders in industrialisation at the beginning of the era, were the first who were observed practicing dumping tactics. The English manufactures were often accused of dumping their products in America, with the sole goal of "stifling" or "strangulating" the young but ever-growing American industries. These British tactics did not go unnoticed, Alexander Hamilton, an American politician often referred to as one of the founding fathers, proclaimed that "the greatest obstacle encountered by new industries in a

[11] Anti-Dumping Legislation. (1916). Scientific American, 115(9), 186–186.
[12] J Viner 'The Prevalence of Dumping in International trade: I' (1922) 30 The University of Chicago Press Journal of Political Economy.

young country is a system of export bounties maintained by foreign governments".[13] He was at the forefront of those seeking to put a halt to these practices, calling for the protection of American manufactures who were suffering injuries as a result of this. Albert Gallatin is also on record for calling out the British practices, pointing out that due to their superior manufacturing strength they were able to "sell on small profits, and … make occasional sacrifices".[14] The following years so a great back and forth between British manufactures and the American government who argued that this form of so-called competition was an unfair practice, however, from this we are able to deduce that the act of dumping products was prevalent long before it was given its name in the early 20th century.

As time went on the act of dumping became a tactic for many exporters and as stated earlier, by the 20th Century countries such as Germany had reduced it to a science. German cartels were observed to have been using this act to its fullest. They were able to sell at lower prices to foreigners than they were to domestic purchasers due to the protective tariffs that prevented foreign competitors from sharing in the high domestic prices.[15] Thus, they were able to export their articles and sell them at a lesser price than its domestic price so long as it did not make German prices exceed the price in foreign markets by more than the cost of transportation to Germany. However, this method of "competition" was then revered as menace by the countries whose industries were suffering as a result. By then the world began to see the emergence of anti-dumping policies.

By the year 1904, Canada had introduced a bill that was aimed at combating dumping practices. The bill came about due to cries from Canadian manufactures, more specifically Canadian steelmakers, who were seeking higher tariffs on steel rails.[16] Around this time Canada's first transcontinental railroad was in the green when it came to their profits which led to a surge in railroad building in the country. This caught the eye of the United States (U.S.) Steel Corporation, who then set out to sell steel rails to Canadian railroaders at a price lower than what they were selling domestically. Eventually this led to the bill which stated that "Whenever it appears to the satisfaction of the minister of customs … that … the actual selling price to the importer in Canada … is less than the fair market value … such article

[13] A Hamilton 'Report of the Secretary of the Treasure on the Subject of Manufactures' (1791).
[14] OL Elliot The Tariff Controversy in the United States 1789-1833 (1892).
[15] WH Dawson & W Morgenroth 'Die Exportpolitik der Kartelle' (1908) The Economic Journal, Volume 18, Issue 70.
[16] WT Easterbrook & HGJ Aitken Canadian Economic History (1988) 70-71.

shall … be subject to a special duty of customs…".[17] It is under these rules that we find most anti-dumping regulations of many countries are constructed under.

This move by the Canadian government was the catalyst for implementation of legislature by other governments that would regulate dumping practices. In 1905 we saw New Zealand implementing their own laws to combat price cutting that the New Zealand farm manufacturers were complaining about. At the time the U.S. trusts were attempting to monopolize the New Zealand market through price cutting,[18] this led the government to establish a commission to investigate complaints of unfair competition. It was through the findings and recommendations of this commission, that customs officials were empowered to provide subsidies to the nationals to match the unfair practices.

Following New Zealand, the Australian government attempted to establish an antidumping regulation. However, the law was never passed as it was deemed to be too complicated.[19] This led to an outpour of many different governments attempting to implement legislation including the South African government in 1914 and an attempt by the USA in 1916, which was later replaced in 1921 of which traces of it are found in the present U.S antidumping law. By the year 1921 even Great Britain had antidumping regulations, although they were as complicated as the failed Australian attempted regulation. It was through all these different antidumping regulations that basic tests found under present day international dumping rules were developed.[20] Tests such as the determination of normal value through the 'price on the home market of the country of exportation, price of the product when exported to other countries and cost of production the country of exportation.'[21] This test, among others, can be found under the present-day international law governing the regulation of dumping practices.

It was not until the end of the Second World War, however, that we began to see binding international rules aimed at combating dumping practices. With the inception of General Agreement on Tariffs and Trade, many felt the need to negotiate the implementation of rules on antidumping regulations. Among those was USA who submitted proposals

[17] WE Leonard & FD Foster The Substantive and Institutional Evolution of the U.S. Tariff Commission/U.S. International Trade Commission (1917-2016)
[18] JM Finger & World Bank The Origins and Evolution of Antidumping Regulation (1991)
[19] Viner (n 12).
[20] 'Anti-Dumping in the WTO, the EU, and China N ° 69'.
[21] F Snyder The EU, the WTO and Chine: Legal Pluralism and International Trade Regulation (2010).

modelled on their own Anti-Dumping Act 1921.[22] Thus, the rules were inserted into the GATT in 1947 under Article VI of the agreement.[23] It is under this article that contracting parties are able to develop "anti-dumping duties" in order to combat the practice the act of dumping within their border, so long as they can provide evidence that such dumping is or threatens to cause "material injury" to competing industries.[24] The article has remained unchanged over the years, however, it has seen continuous supplementation over the years during the 1967 Kennedy round and later on through the Anti-Dumping Code during the 1973-1979 Tokyo negotiations. Today, the rules on Antidumping regulation can are found under the Article VI of GATT 1994 and Implementation of Article VI of GATT 1994 which is also referred to as the Anti-Dumping Agreement ADA.

Over the years more and more countries have adopted anti-dumping laws and make use of them regularly. However, dumping as a topic is still highly complex and often misunderstood. There is a need for a strong understanding of what is meant by dumping both under the WTO and in its general use. Thus, the following section shall focus on defining and explaining what is dumping and anti-dumping.

2.3 Understanding dumping

In order to establish whether the practice of dumping is an issue that is causing problems in Zimbabwe, one needs to understand what the practice in itself is. Thus, the following section will be focused on defining the act of dumping as it is understood the world over.

Jacob Viner, a prominent scholar in the field of dumping has defined dumping from an economic perspective as "price discrimination between national markets".[25] This is simply the act of charging different prices to different customers for the same product. In international trade this would be the selling of material at a lower price than its prices within the domestic boundary.[26] Viner then goes on to explain that there are different forms of

[22] SA Riesenfeld 'Doctrine of Self-Executing Treaties and GATT: A Notable German Judgment' (1971) The American Journal of International law.
[23] Ndlovu L 'South Africa and the World Trade Organization Anti-Dumping Agreement nineteen years into democracy' (2013) Southern African Public Law 282.
[24] GATT Article VI.
[25] W Culbertson 'Dumping: A Problem in International Trade.' (1924) 18 The American Journal of International Law at 391-393.
[26] SJ Chapman 'Review of Principles of Economic.' (1912) 22 The Economic Journal at 63-66.

dumping,[27] these being (i) sporadic dumping, (ii) short run or intermittent dumping, and (iii) long run or continuous dumping.

(i) Sporadic dumping refers to the practice of dumping when the receipts of a product reflect a lower price on foreign sales that what was expected. It may also be dumping that occurs as a result of the desire to dispose the surplus of goods and they do so by selling the product in a foreign market. This allows them to keep producing the same amount without risking lowering the price of the product within the domestic market.[28]

(ii) Short run or intermittent dumping occurs when a private company seeks to develop trade connections in a new foreign market or seeks to retain a certain share in a share in a foreign market when prices within that foreign market have temporarily been depressed. This form of dumping could also be used to monopolise the market and prevent the competition from developing or even retaliating against foreign competitors in the exporters home market.[29]

(iii) Long run or continuous dumping is practiced in order to maintain economy of scale, maximising exports while minimising imports, and counter a protective duty in the export market.[30]

Although Viner defined dumping, this definition is largely an economic perspective of dumping. In law, the practice of dumping in itself is not an issue unless it is injurious. Thus, the next section shall focus on the law aspect of dumping.

Under law, the definition of law goes further than the economic understanding. This being because the legal term for dumping has been extended to cover other forms of dumping such as (i) freight dumping and (ii) exchange dumping. The legal term also includes bounty-fed exports, which is a term used to describe dumping which results from the grand export bounties.

(i) Freight dumping refers to the act of applying lower freight rates on exports that the normal freight rates. An example of this can be seen in South Africa in 1911 when

[27] Culbertson (1924).
[28] (n 26).
[29] (n 26).
[30] (n 26).

Bloemfontein millers complained that "flour was not only dumped by means of cheaper export price, but also by means of freight when steamers require cargo to fill up".[31]

(ii) Exchange dumping occurs when the currency of a country is subject to progressive devaluation and as a consequence its internal purchasing power is higher than its external purchasing power. This occurred to European currencies during the post-war years.[32]

When looking at international law, the focus is no longer on the act of dumping in itself, but rather the on whether the practice has caused material injury.[33] This is reflected under the WTO's GATT 1994 Article VI which defines dumping as having occurred when "products of one country are introduced into the commerce of another country at less than the normal value of the products and causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic injury".[34] Broken down this provision of the article has not banned the act of dumping; however, it has condemned the practice in situations where it "causes or threatens to cause material injury to an established industry… or materially retards the establishment of a domestic industry". As such if we look back at the forms of dumping defined by Viner, the only form of dumping that the law is concerned with is intermittent dumping as it is predatory and aimed at monopolising the market and preventing the competition from developing within the market. For example, if a South African company is exporting product to Zimbabwe that is similar to a Zimbabwean manufactured product and is selling aforementioned product at a price lower than it would in its domestic market, this would not be an issue in the eyes of the law. However, if this practice is causing the domestic product it is competing with to be pushed out of the market due to its higher price, then under the GATT Article 6 and this is an issue. It is from this issue that one can justify the implementation of anti-dumping measures and the concept and understanding of what is meant by material injury being caused shall be expounded on in the sections to come.

Under the Anti-dumping agreement, dumping is defined in the same manner as is set in Article VI of the GATT. However, unlike the GATT definition, the ADA definition does not refer to material injury but instead refers to the export price. Although slightly different,

[31] A Plant 'The Anti-Dumping Regulations of the South African Tariff.' (1931) 31 Economic at 63-102.
[32] (n 30).
[33] WK Hastings 'International Trade and Material Injury: An Economic and Comparative Study of Anti-Dumping Legislation (1986) 16 Victoria University of Wellington Law Review 212.
[34] GATT 1994 Article VI.

this difference is insignificant given that the ADA should always be read in conjunction with the GATT Article. Having understood what is meant we can better understand and explain what anti-dumping regulations are and how they are made use of.

2.4 Anti-dumping

The following section, much like the previous section, will be focused on understanding antidumping regulations as they are set forth in the WTO. Having understood the complicated concept that is dumping, the following section seeks to briefly elaborate on what antidumping regulations are. The chapter will do so by addressing how these anti-dumping regulations under the WTO were developed, followed by a brief overview of how to use these regulations and how they are understood. This being because the antidumping regulations of the WTO are often misunderstood due to their complexity. Thus, in order to properly analyse the current Zimbabwean antidumping legislation and make recommendations towards its improvement, there needs to be an understanding of how to utilise this WTO trade remedy.

2.4.1 Development of Anti-dumping regulations under WTO

Under the WTO's regulations, national governments have been able to retain the authority through the GATT and other WTO agreements to impliment laws that can remedy any "unfair" trade practices.[35] It is through these agreements that these governments are able to set up procedures through which domestic industries and workers are able to petitions and use such trade remedy laws and provisions to limit competition from injurious imports. It is this injurious competition that the trade officials of Reagan era were outspoken about being opposed to, as their objective was to achieve a "level playing field" for the domestic industries.[36] To do so, they were enabled under international law to impose trade remedies.

In the development of the WTO's GATT 1947, its nature and its origins were deeply rooted in the remedial prototype that is found within it under Article XXIII before it was later developed further to incorporate aspects found in the inter-war U.S. bilateral trade agreements.[37] This resulted in the remedies being largely focused on a reciprocal tariff reduction mechanism. This meant that the format of remedies under GATT 1947 were initially intended to "restore" the complainants' interests back to the position that they were in prior to the injurious act that they a were reporting on.[38] It is here that

[35] 'Trade Remedies and World Trade Organization Dispute Settlement: Why Are So Few Challenged?'. https://openknowledge.worldbank.org/handle/10986/8817 accessed at 15 June 2021.
[36] 'Primer on United States Trade Remedies' https://core.ac.uk/download/pdf/216913349.pdf accessed at 15 June 2021.
[37] RE Hudec 'The GATT Legal System: A Diplomats Jurisprudence' (1970) 5 Journal of World Trade.
[38] C Wilcox A Charter for World Trade (1949).

we see the development of remedies, as a whole, through the growth and development of the GATT 1947. However, this is not to say that these remedies are what we speak of when we refer to "trade remedies". It is often argued that the remedies referred to in this paragraph, need to be distinguished from those we refer to as trade remedies.[39]

Trade remedies were incorporated into the GATT 1947, with the aim of dealing with "unfair" trade practices however the power to deal with those practices was retained in domestic statues. Trade remedies are a collection of domestic measures that are available to national governments who find themselves in a situation where they are on the receiving end of abusive or anti0competetive trade practices. For example, in the U.S. you find that trade remedies are laws that they impliment in an attempt to mitigate the adverse impact of various "unfair" trading practices that domestic industries have to compete with.[40] These trade remedies that are combating unfair foreign practices come in the form of the imposition of 1 of 3 remedies; imposing antidumping duties, imposing countervailing duties, or offering the domestic industries some form of subsidies.[41] These trade remedies were introduced during The Tokyo Round Codes and were further elaborated through other WTO side agreements that went on to expound on various procedural requirements for invoking these trade remedy laws.[42] Finally, we found these remedies embedded within the structure of the WTO, be it under the Article VI of the GATT 1994, the Antidumping Agreement (ADA), or the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

As previously mentioned, the "trade remedy laws" refers to the three forms of national laws, that are imposed by the governments of that nation, in order to impose import restrictions under specified circumstances. These national laws being.

a) Safeguard measures, which are simply temporary trade restrictions. These restrictions typically come in the form of tariffs or quotas, and they are often imposed in order to combat any surges that may cause or threaten to cause 'serious injury' to a competing industry in an importing nation.[43]
b) Antidumping duties, these are tariffs that are imposed in addition to the ordinary customs duties that are imposed to counteract specific 'unfair' pricing practices that are conducted my private firms. These pricing practices need to cause or threaten to cause material injury to a competing industry in the country that these pricing practices are directed towards.[44]

[39] AT Guzman & AO Sykes Research Handbook in International Economic Law (2007).
[40] 'Trade Remedies and the WTO Rules Negotiation' https://digital.library.unt.edu/ark:/67531/metadc491243/m1/1/high_res_d/R40606_2010Jun07.pdf accessed at 15 June 2021.
[41] S Cho 'The Nature of Remedies in International Trade Law' (2004) 65 University of Pittsburgh Law Review.
[42] JH Jackson The World Trading System: Law Policy of International Economic Relations (1997).
[43] Guzman (2007).
[44] (n 42).

c) Countervailing measures, these are duties that are imposed in the form of tariffs. These tariffs are imposed in addition to the ordinary customs duties that, in order to counteract certain subsidies placed on the exporters by their government when they cause or threaten to cause material injury to a competing industry.[45]

The definitions provided above, are permitted under the WTO treaty texts however there are not required. Given that the paper is focused on the antidumping regulations in Zimbabwe and the reformation thereof, then the following paragraphs will only be focused on antidumping regulations and duties.

Antidumping regulations are regulated under the WTO Article VI of The GATT and supplemented by the Implementation of Article VI of the GATT, also known as Anti-Dumping Agreement (ADA). Antidumping measures are the most commonly used form trade remedies used against injurious dumping. During the course of conceiving an International Trade Organisation after the wake of the second world war during the 1940s, the United States proposed the inclusion of a provision in the agreement establishing said organisation that would regulate antidumping measures. This being in order to ensure that such measure, which as mentioned in the previous chapter, could be abused and misused in a manner that would impede on competition of goods circulating within the market.[46] In the years to follow, when the drafters of the GATT were negotiating on the provisions, and policy measures of antidumping, the topic was not discussed at length. This being because at this time national antidumping legislations were permissible and on the rise. The objective of implementing antidumping measures into the structure of the GATT is said to "avoid (the) proliferation of antidumping measures that would frustrate the market access expectations created by the reciprocal tariff concession of GATT".[47] This simply meant that the aim of implementing antidumping regulations into the structure of the GATT would allow the contracting partners to ensure that antidumping regulations that are imposed by states are not used in a protectionist manner. As antidumping regulations were developing, additional discipline over antidumping measures were introduced in the 1960s during the fifth round of negotiations in Geneva. This was when discussions of the first GATT Antidumping Code were concluded. The code was then later revised during the Tokyo round and thereafter, during the Uruguay round, the ADA was established.[48]

This brings us to the current structure of the WTO structure. As has been highlighted, the provisions governing antidumping regulations under the WTO are found under Article 6 of the GATT 1995 and are supplemented by the ADA. Under these two documents, governments of the contracting

[45] (n 42).
[46] Cho (2004) supra note 40 on 11.
[47] J Jackson 'Review of World Trade and the law of the GATT, by J. H. Jackson' (1971) 71 Columbia Law Review.
[48] JP Trachtman 'John Jackson and the Founding of the World Trade Organization: Empiricism, Theory and Institutional Imagination' (1999) 20 Michigan Journal of International Law.

parties are enabled to develop their own antidumping statutes and impose antidumping duties, given they meet the requirements therein. These requirements, however, have a need to be well understood in order to make correct use of. As such, the following paragraphs will be aimed at understanding the elements of these provisions that are of importance in establishing and justifying antidumping measures.

2.4.2 Understanding Article VI and the ADA

The previous paragraphs and sections have highlighted that dumping practices are not banned under WTO, and the antidumping regulations that combat the practice are not compulsory. However, if dumping practices are observed in a country and the governors of said state seek to combat such practices through antidumping regulations, then these regulations need to be in line with WTO guidelines.

Members of the WTO have agreed that the implementation and use of antidumping regulations can only be done so given that they can provide evidence that dumping has occurred,[49] this is often referred to as 'determining dumping'. Article VI requires that an investigation to the claim of dumping practices is conducted through the appropriate authority.[50] The investigating authority needs to not only provide evidence of substantial dumping, but also has to prove that the dumping has resulted in the subsequent injury to a competing domestic industry as is required under Article VI. The investigation proceeding have several stages that are initiated through a petition from a domestic industry alleging that dumping has occurred and said dumping has caused injury,[51] and are concluded with the final determinations either affirming this complaint or dismissal of the complaint.[52] The antidumping provision of the GATT highlights key elements in determining whether dumping has occurred. These being 'the normal value', and 'injury' caused by the dumping

Normal Value

Under section 1 of Article VI, it holds that a products' pricing will be held as being dumped if the evidence shows that the price of the product is less than the 'normal value' of similar products sold within the exporters market. Within this the inclusion of the consideration of the export price is found in the ADA, however they are not mentioned under the GATT Article VI. The export price is the price at which the product is exported from one country to another.[53] When determining whether a product has been dumped, the transaction price at which the product has been sold by a producer to an importer needs to be considered. This being because it is this price that is allegedly dumped and as

[49] GATT 1994 Article VI (1).
[50] Guzman (2007).
[51] Anti-Dumping Agreement (ADA) Article 5.
[52] ADA Article 7.
[53] 'United Nations Conference on Trade and Development – Training Module on The WTO Agreement on Anti-Dumping' https://unctad.org/system/files/official-document/ditctncd20046_en.pdf accessed at 20 June 2021.

such it is crucial to determine that the 'normal value' is found to determine whether dumping has in fact taken place.

The ADA goes on to explain what is meant by 'normal value'. Under Article VI of the GATT, a product is considered to be priced lower than the 'normal value' given that it is priced lower than a comparable price, in the ordinary course of trade in the home market of the exporting market.[54] This means that, to determine the 'normal value' of a product a comparison is made between the exported product and identical or closely related forms of the product that are circulating in the domestic market of the exporter country. For example, if a product from China is being accused of being dumped in Zimbabwe, in order to determine the normal value of that product, its price will be compared to the price of an identical or similar good being sold within the Chinese market.

The method described above is referred to as the 'normal situation' in which 'normal value' can be determined. However, there are situations that may arise that fall outside of the scope of this 'normal situation'. This may occur due to the product, in the course of ordinary trade in the domestic market of the exporter, circulating at a low volume of sale in the domestic market or such sales do not permit a proper comparison. When this occurs there are alternative methods in which to determine the 'normal value'.[55] Under this provision, the 'normal value' can be determined through comparing the pricing of third country exports or it can be a constructed normal value.[56] This allows the dumping margin to be determined by comparing the price of the product with a comparable price of the like product when exported to an appropriate third country. However, there are situations in which the sales do not permit a proper comparison that allows for the determination of the normal value.

> Situation 1: if there are no domestic sales of the product in the ordinary course of trade, then the price will be compared to different models sold in the domestic and the export market.[57] For example, in the case of the selling of televisions, they operate on different systems depending on the country. Some operate under the PAL system while other run on the NTSC system, and authorities have held that these models are not comparable. As such comparing their prices would not be considered in determining the 'normal value'.
>
> Situation 2: situations may arise where there is an unrepresentative volume of domestic sales in order to make a proper comparison.[58] This is known as the 5% rule. When a producer may not sell the like product in the domestic market in representative quantities, then the comparison cannot be properly made. For proper determination of the 'normal value' to be

[54] ADA Article 2.1.
[55] ADA Article 2.2.
[56] UNCTAD Training module (n 52).
[57] (n 55).
[58] (n 59).

made, the sufficient quantity in order to make a proper comparison needs to constitute 5% or more of the sale of the product under consideration.[59]

Export Price

Once the 'normal value' of a product has been determined, then the investigating authority is able to compare that value to the 'export price' of the product. The 'export price' has not been defined in either the ADA or Article VI.[60] During discussion of both these governing documents, there was great debate on whether the normal value should be compared to the price of a like product when it left the exporting country, or the price after it has entered the importing country.[61] It has been clarified by the WTO that the 'export price' is the price at which the product is sold for export purposes.[62] The ADA provides that, in situations where this price is not available, much like with the 'normal value', a constructed export price is acceptable.[63] The comparison between this 'export price' and the 'normal value' is what the gives us what is known as the 'margin of dumping'. The margin of dumping is the percentage in which the price has been lowered. If this margin is less than 2% of the export price, then the imposition of antidumping duties is not permitted.[64] Having determined that the product has been dumped, the following stage in the investigation would be to determine whether said dumping has caused injury to the industry machining the dumping complaint.

Injury

Once it has been established that dumping has occurred, the following step towards the imposition of antidumping duties would be to establish that the said dumping has causes or threatens to cause "material injury" to an established industry in the domestic market importing the goods.[65] The determination of injury has been considered to be a more complicated procedure compared to the determination of the normal value.[66] However, all dumping investigations are required to focus on the question of whether dumped imports are a cause of current or threatened material injury to an established industry.[67] The following section shall then in turn focus on the determination of injury. Establishing that there is a domestic industry or that there is a retardation of the establishment of an industry is rather important in the process of determining injury. In order to do so there needs to be an

[59] ADA Footnote 2.
[60] J Czako et al A Handbook on anti-dumping investigations (2003).
[61] (n 19).
[62] WTO 'Anti-Dumping: Technical Information on anti-dumping' https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm accessed 25 June 2021.
[63] ADA Article 2.3.
[64] ADA Article 5.8.
[65] GATT Article VI.
[66] 'An Analysis of Factors Influencing ITC Decisions In Antidumping, Countervailing Duty, and Safeguard Cases' https://www.nber.org/system/files/working_papers/w4282/w4282.pdf accessed at 25 June 2021.
[67] Guzman (2007).

understanding of what a "like product" is and what is meant by "domestic industry" and the following paragraphs will be focused on this before delving into the injury aspect.

Like products

Establishing that the domestic industry is producing a "like product" to that being dumped in the domestic market is of the utmost importance, this being because without a like product then the act of dumping is not an issue.[68] The ADA in conjunction with Article VI provides that the determination of injury relies on both the determination of like products as well as the determination of an established industry,[69] which shall be discussed further in the paragraphs to come. Under the ADA, a domestic product is considered to be a like product given that it is either identical to the dumped product or it has characteristics that closely resembles the dumped products.[70] In practice this definition has commonly been interpreted prima facie and is a concept that has to be analysed on a case-to-case basis. This was highlighted by the Appellate Body in Japan Alcoholic Beverages II, who proclaimed that the concept of likeness is a relative one that evokes the image of an accordion. They describe the accordion to be one that stretches and squeezes in different places as different provisions of the WTO-Agreement are applied.[71] Furthermore, when determining what a like product was, as defined by Article 2.6 of the ADA, they held that the product should remain consistent.[72] Establishing the like product when determining injury is of importance because it is the basis for determining which of the companies can be regarded as a domestic injury.[73] Thus, the next action point would be to understand and establish what is meant as 'the domestic industry'.

The Domestic Industry

The term 'domestic industry' is of importance under the Article VI and the ADA due to the fact that under these articles it is made clear that the dumping, that may or may not have been established, needs to have caused injury to said 'domestic industry'.[74] Under the ADA, the 'domestic industry' has been interpreted as meaning 'the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products'.[75] This definition unlike most of the definitions found under these articles is not open to much interpretation.[76] This was held in EC- Fasteners (China) by the panel

[68] (n 52).
[69] Article 3.1 of the ADA.
[70] Article 2.6 of the ADA.
[71] Appellate Body Report, Japan – Alcoholic Beverages II.
[72] Panel Report EC – Tube or Pipe Fitting para 7.247.
[73] (n 61).
[74] GATT Article VI (1).
[75] ADA Article 4.1.
[76] European Communities – Anti-Dumping Measures on Farmed Salmon from Norway WT/DS337/R.

who proclaimed that the 'plain language in Article 4.1 makes it clear that domestic producers of the "like product" are the starting point for the definition of the domestic industry'.[77]

Regardless of the definition being rather elementary in its interpretation, there are two principles held under ADA that are excluded from said definition. The first occurs where the domestic producers are related to the exporters or importers that are under investigation or the domestic producers themselves are importers of allegedly dumped products.[78] This relationship to exporter and importers only applies if (a) there is control between the two either directly or indirectly, (b) control is by third party between both parties and such control is either directly or indirectly or, (c) if both parties control a third person, and there are grounds which support that the relationship may affect the producer's behaviour from producers who are not.[79] Those producers that fall under this definition are excluded from the normal definition, this being because they are seen as a threat due to the fact that they could benefit from dumping and thus their inclusion would interfere with the injury analysis.[80] Although being an exception, the exclusion of these producers is not mandatory, and the decision remain in the investigating authorities' hands.[81] For example, if a foreign producer establishes a factory in the importing country, thereby qualifying them as a domestic producer and consequently having them fall under the category of domestic industry. If this is the case, then Article 4.1 (i) enables the investigating authority the possibility to exclude this producer from the investigation. In the New Zealand – Finish transformers case, the complainant divided the transformer market into four in order to find dumping and impose anti-dumping duties in an attempt to manipulate the definition of 'domestic industry'.[82] However, in this case the panel found that this method was not valid.

As indicated in the paragraph above there are two situations in which a producer shall be excluded from the normal definition of a 'domestic industry'. The first situation was provided for in the paragraphs preceding this one. The second situation occurs when the domestic producers in an isolated competitive market produce and sell all or almost their entire produce in that specific market and the demand is not to any significant degree supplied by the producers elsewhere in the territory.[83] This domestic producer falls outside the scope of a domestic industry and is regarded as a 'regional industry'. All though this term is not found under the ADA, the document provides for when such a situation arises. If such a situation were to arise, the territory of a member can be divided into

[77] European Communities – Definitive Anti-Dumping Measure on Certain Iron or Steel Fasteners from China WT/DS397/R.
[78] ADA Article 4.1(i) & United Nations Conference on Trade and Development Trade Organisation: Anti-Dumping Measures (2003) 26.
[79] Footnote 11 of the ADA.
[80] MW Catherine 'The Development of a Successful Anti-Dumping Regime in Kenya' unpublished Masters thesis, University of the Western Cape, 2013.
[81] 'UNCTAD Dispute Settlement in International Trade: Anti-Dumping Measures' https://unctad.org/system/files/official-document/edmmisc232add14_en.pdf accessed at 30 June 2021.
[82] KD Raju Agreement on Anti-dumping: A GATT/WTO and Indian Legal Jurisprudence (2008).
[83] ADA Article 4.1 (ii).

competitive markets that are two or more, and the producers of those market can be regarded as a separate industry.[84] They are regarded as a separate industry given that they sell all or most of their product within the boundaries of such market and, the demand of the market where they produce is not significantly met by producers located somewhere other than the said territory of the product in question.[85] This means, that in such a situation, injury may exist, even if a huge proportion of the 'domestic industry' are not injured. Injury to the regional industry falls outside of the scope of the normal definition of a 'domestic market', and as such they are excluded from the injury analysis. However, it is important to note that the existence of injury to a 'regional industry' may be permissible if it meets two requirements found under ADA Article 4.1 (ii). The first, requires that the dumped imports be concentrated into the market served by isolated industry. The second, requires that the dumped imports should be causing injury to production in its entirety or almost entirety of produces produced by the producers falling in the boundaries of such a market.

Having established that there was the production of a 'like product' and a 'domestic industry' has been established, the following step in the imposition of dumping duties would be to prove that injury has been caused. These two principals were required in proving that injury had been caused, as was indicated in the paragraphs preceding this. All dumping investigations that are initiated focus on the question of whether the dumped imports are a cause of threatened and material injury to an established industry.[86] Under the terms of the GATT a product that is considered to be dumped can only face antidumping duties when there is a factual finding of injury to an industry in the importing country. Therefore, there needs to be an understanding of what is considered to be injury under the ADA and Article VI.

Most argue that it is difficult to develop a general quantitative standard in which to determine injury.[87] However, Article 3 of the ADA has set forth rules in which to determine injury. Under this agreement 'injury' refers to three different things, 'material injury', 'threat of injury', or 'material retardation'.[88] These different forms of injury are not defined under the article; however, it provides for guidelines on how to establish each form of injury. As such the following paragraphs shall focus on understanding these forms of injury.

Material injury

Under GATT article VI, it holds that 'material injury' signifies something that is less than 'serious injury'. Whereas some argue that 'material' refers to anything that is more than immaterial so

[84] (n 82).
[85] (n 82).
[86] Guzman (2007) (n 38).
[87] 'The Ministry of Economy, Trade and Industry, Chapter 5 Anti-dumping Measures' accessed at: https://www.meti.go.jp/english/report/downloadfiles/gCT9905e.pdf 30 June 2021.
[88] Footnote 9 of the ADA.

that even negligible levels of injury can trigger measures.[89] Material injury refers to a substantial whole impairment in the situation of a domestic industry.[90] Material injury is determined through a superfluity of negative indicators that an industry can point to as evidence of dumping. This includes price decreases in the market, a decrease in sales by domestic producers, lower market share, or a depressed return on capital investment.[91] This list however, "is not exhaustive, nor can one or several of these factors necessarily give decisive guidance".[92] The ADA in its guidance of how to determine material injury, it holds there needs to be positive evidence done through an objective examination of the volume of dumped products, how they affect domestic prices in the market of the importing country and their subsequent effect on the domestic industry.[93]

In terms of the volume of the dumped imports and their effect on the prices in the domestic products, the investigating authorities are required to look at whether there has been a substantial increase in dumped imports. This is either in the absolute terms or relative to production or consumption in the importing country.[94] The effect this will have needs to be considered by the investigating authority, who must consider whether there has been a significant price undercutting, whether prices have been significantly depressed, or whether it prevented prices, that would have otherwise increased, from increasing.[95] Although this may seem clear cut, the investigation needs to ensure that when there was a decrease in production by the domestic producers, there needs to be an increase in the export levels of the like goods in order to establish injury.[96] The ADA also requires that there is an assessment of the impact of the dumped imports on the domestic industry.[97] This assessment needs to provide evidence of all economic factors that are relevant to the domestic industry.[98] Said factors include the "actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity, factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment'.[99]

Thus, it has been held that material injury is to be understood as the effect in which the dumping of like products has on the domestic market, measured through the deterioration in the

[89] R Wolfrum & P-T Stoll Max Planck Commentaries on World Trade Law (2006).
[90] V Mosoti & A Gobena 'Import Surges and Safeguard Provisions with a Particular Focus on Antidumping Measures' in V Mosoti & A Gobena International trade rules and the agriculture sector: selected implementation issues (2007).
[91] RM Bolton 'Anti-Dumping and Distrust: Reducing Anti-Dumping Duties Under the W.T.O Through Heightened Scrutiny' (2011) 29 Berkeley Journal of International Law.
[92] (n 90).
[93] (n 76).
[94] ADA Article 3.2.
[95] (n 76).
[96] (n 76).
[97] ADA Article 3.4.
[98] (n 96).
[99] (n 96).

operating performance of the domestic industry, "based on an overall assessment of all relevant economic factors".[100] However, it has been argued that ADA gives too much flexibility to an investigating authority to 'determine how to interpret evidence there is no obligation to the importing country to disclose all of the factors it considered in reaching its conclusion'.[101]

Threat of material injury

Threat of material injury occurs in the absence of actual material injury. This form of injury occurs when a domestic industry alleges that it is not yet suffering material injury, however, they believe that there is a threat of material injury which will develop into material injury unless measures are not taken.[102] Article 3.7 holds that such allegations need be based on objective facts rather than allegation, conjecture, or remote possibility.[103] Under the same article, there are special factors that need to be considered in determining the 'threat of material' given that any investigation into this form of injury is hypothetical at its core.[104] These factors include an increase in dumped imports, an increase in capacity of the exporter, imports entering at prices that will have a significant depressing or suppressing effect, and inventories of the imported product being investigated.[105] Once these four factors have been considered by the investigating authority, together the evidence they provide need should conclude that unless action is taken, material injury is imminent. It is important to note however that in determining 'threat of material injury', the consideration should not be limited to these four factors. This being because the investigating authority cannot make assumptions relating to the 'occurrence of future events because future events can never be definitively proven by facts'.[106] Rather, the panel in the Mexico-corn syrup case stated that an analysis of Article 3.4 was required as well.

Determination of material retardation

Unlike the former two forms of injury, material retardation is not a form of injury that brings rise to complaints of injury.[107] With that said however, it has been argued that the material retardation standard might find increased popularity with developing countries.[108] Much like the other two forms of injury, material retardation are not defined under the ADA apart from the mention that it is another

[100] (n 76).
[101] (n 86).
[102] (n 76).
[103] ADA Article 3.7.
[104] (n 76).
[105] ADA Article 3.7.
[106] Appellate Body Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States.
[107] Guzman (2007).
[108] P Narayanan 'Injury Investigations in "Material Retardation" Antidumping Cases' (2004) 25 Northwestern journal of international law & business.

form of injury.[109] However, unlike the former two, the agreement does not provide guidelines as to how to determine material retardation. Much like the determination of a threat of material injury, material retardation is connected to a hypothetical situation of whether the injury is suppressing the establishment of a domestic industry that would otherwise be established if not for the dumped goods. This is because material retardation is only applicable to unestablished industries.[110] A five-part test was provided in the Morocco-Hot Rolled Steel (Turkey) case which looked at, 'how long the domestic industry had been producing the domestic like product, the market share of the domestic like product, whether the domestic industry's production had been stable, whether the domestic industry had reached profitability/break-even point, and whether the domestic industry constituted a "new" industry'.[111]

2.5 Conclusion

This chapter was focused on the history and foundations of antidumping regulations under the WTO as this gives us the framework which we can use to determine whether the current national legislation of Zimbabwe is up to standard. It is through this framework that, once proven that there is a need for a reformation of said legislation, a new more efficient one can be built. This along with any lessons that can be learnt from the antidumping regulations of Zimbabwe's neighbours, South Africa, shall better inform the study into why the current framework is not function at its best and how it can be better improved. As such the following chapter shall focus on the antidumping regulatory framework of South Africa. The chapter shall outline the framework and from there draw where it is they have succeeded and where they have failed in applying the rules laid forth in this chapter. The aim is to learn from this framework, rather than critically analyse the framework. Given that South Africa is considered to be a developing state, much like Zimbabwe, and is one of two states in Africa that make use of this form of trade remedy, the paper seeks to draw out explanations as to how the country has been able to deal with dumped goods in their market to see if this would be applicable to Zimbabwe.

[109] Footnote 9 of the ADA.
[110] (n 108).
[111] Panel Report Morocco-Hot-Rolled Steel (Turkey).

Chapter 3 South African Anti-dumping regulatory Framework and lessons that can be learnt from it.

3.1 Introduction

As highlighted in the previous paragraphs, South Africa is amongst the few countries known for being the earlier users of anti-dumping regulations. To this day South Africa is among the top 10 users of anti-dumping duties as a method of trade remedy, raking up about 238 initiations of investigations into dumping complaints by their industries between the years of 1995 and the end of 2020.[112] Looking specifically at the continent, South Africa is only one of two countries that make use of their anti-dumping regulations. The other being Egypt. As a Southern African country, South Africa and Zimbabwe share very similar trading practices, not only due to their geographical location but also in part due them being a part of very similar economic zones such as SADC. It is also important to note that South Africa is also Zimbabwe's largest trading partner in both imports and exports.[113] With that in mind, the following chapter will be focused on the South African anti-dumping regulations, as the following chapters will go on to assess the lessons that can be learnt from these regulations that can be implemented into the Zimbabwean regulations to make them more efficient and usable.

As far as the antidumping regulations are concerned, South Africa has proven to have the best practices in Africa. Many countries can stand to learn from how they combat issues of dumping within their borders and amongst them is Zimbabwe. This is because the South African courts have made use of their regulations and as a result, they have been able to grow and develop these regulations over the many years.[114] This study then holds that South Africa has set the model standard for anti-dumping regulations in Africa, and an understanding of how anti-dumping is regulated within this country is a good starting point in proving that the current Zimbabwean framework is in need of reform. If it is proven that the need of reform is in fact necessary, then the starting point in which to build upon that reformation would be to base it off of the South African anti-dumping regulations.

This chapter shall be broken down into 5 different sections; section 3.1 is the introduction; section 3.2 is the history and development of anti-dumping regulations in South Africa; section 3.3 provides an overview of the South African current anti-dumping regulations; section 3.4 looks to

[112] 'Anti-dumping Initiations by Reporting Members 01/01/1995 – 31/12/2020' https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf accessed at 15 July 2021.
[113] 'Data from World Integrated Trading Solution' https://wits.worldbank.org/countrysnapshot/en/ZWE accessed at 15 July 2021.
[114] G Brink 'South Africa: a Complicated, Unpredictable, Long and Costly Judicial Review System' (2013) Domestic judicial review of trade remedies: experiences of the most active WTO members 247-268.

analyse the regulation to see where it works and where it falls short; and finally, section 3.5 is the conclusion.

3.2 History and Development of Anti-Dumping Regulation in South Africa

As mentioned in the chapters preceding this, South Africa is amongst the first users of trade remedies in the world.[115] Prior to 1910 South Africa had no form of anti-dumping regulation, in the year 1910 the Cullinan Commission was established in order to analyse the effectiveness of establishing local business.[116] This Commission created scenarios in which businesses would qualify for protection by the government. The work done by the commission paved the way in which the Customs Tariff Act of 1914 could be born. It was under this Act that the first forms of trade remedies in South African Law can be found. It is under section 8 of this Act that trade remedies were administered by what was known as the Customs Department during those times. This section holds that, any "products imported into the nation of a class or kind made or delivered in the nation" being sold at a price that is not the "genuine current estimation of similar merchandise when sold for home utilization", then this product will be deemed to have been dumped, and "dumping duties equivalent to the distinction between" the two products will be imposed.[117] This meant that under this Act, and subsequently under South African Law, the government was moving towards imposing dumping duties on any product that had been deemed to have been dumped in South Africa, following an investigation into the fact. This made South Africa one of the first countries to impliment laws to combat dumping, after Canada and Australia had done so in the years leading up to this.[118]

The years later to come saw the establishment of The Board of Trade and Industries in 1924. This board was established in order to take over the responsibility for dealing with Anti-dumping remedies.[119] Among those responsibilities, the board was used to conduct the investigations into the allegations of dumping and to then make recommendations based of their findings on whether to impose dumping duties or not. This led to South Africa being amongst the most prolific users of anti-dumping measures between the years of 1921 and 1947[120] with over 90 anti-dumping and countervailing investigations conducted in this time. By the year 1947, as mentioned in Chapter 2, the world had seen the dumping of goods and how this is regulated, included into the GATT 1947.

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[115] N Joubert 'The reform of South Africa's anti-dumping regime' in P Gallagher et al *Managing the Challenges of WTO Participation* (2005).
[116] 'Trade Remedies in Africa: Experience, Challenges, and Prospects' https://www.econstor.eu/bitstream/10419/196330/1/GEG-WP-070.pdf accessed at 15 July 2021.
[117] The Customs Tariff Act of 1914 secs 8(1).
[118] M Tao 'Dumping and antidumping regulation with specific reference to the legal framework in South Africa and China' unpublished Masters thesis, The University of the Free State, 2006.
[119] (n 110).
[120] (n 110).

Once the WTO had been established and the anti-dumping code was to be developed, South Africa was not a signatory to this code. After the country's independence in 1961, the Customs and Excise Act was enacted giving power to sections 55 and 57 of the Act that were known as the anti-dumping duties. Under section 55, the situations in which dumping duties should be imposed were highlighted along with the types of anti-dumping duties that were to be used. However, the Act was then letter amended in 1967[121] and under this new Act, any and all anti-dumping measures enacted prior to this year were repealed. Five years later in 1977, the Board on Trade and Industries (BTI) released its annual report under which they recommended that all anti-dumping duties in place in South Africa should be withdrawn as of the start of 1978.[122] In the five years leading up to this, the BTI had only approved the imposition of anti-dumping duties only twice, due to South African producers being well protected through high tariff barriers.[123] It is important to note that this significant decrease in the use of the anti-dumping regulations in South Africa was also the result of the sanctions imposed on them by the international community because of the atrocities of the apartheid regime.[124]

Following their democratic independence during the 1990s, South Africa began to reduce the high tariffs and once again increase in their anti-dumping activities. This gave rise to the Directorate of Dumping Investigations that was established in 1992 within the department of Trade and Industry to assist the BTI.[125] By this year, the BTI had been replaced by the Board on Tariffs and Trade (BTT) through the amendments made to the Board on Tariffs and Trade Amendment Act of 1992[126] and the BTT Act.[127] This amendment revised the anti-dumping laws in order to create a precise explanation of dumping and how the law should apply.[128] South Africa's National Economic Forum in 1995 went on demand for a law to be created that would govern dumping and countervailing measures, and to provide for the authority to oversee the application of the Board of Tariffs and Trade Amendment Act. This then led to the amendment to the BTT Act,[129] which amended the definition of dumping and other terminologies. These amendments were made in order to align them with those found under the WTO's ADA and the GATT article VI, as South Africa had now been accepted back into the WTO.[130]

[121] Customs and Excise Act of 1967.
[122] (n 110).
[123] G Brink Anti-Dumping and Countervailing Investigations in South Africa: A Practitioner's Guide to the Procedures and Practices of the Board on Tariffs and Trade (2002).
[124] K Gupta & C Choadhury 'Anti Dumping & Developing Countries' (2011) 10 Korean University Law Review 117.
[125] Board on Tariffs and Trade Amendment Act 1992 & The Customs and Excise Amendment Act 1992.
[126] (n 124).
[127] The Board of Tariffs and Trade Act of 1986.
[128] C. Lombard Trade remedies decade (2014) https://www.engineeringnews.co.za/article/trade-remedies-decade-2014-01-17 accessed on 15 August 2021.
[129] The Board of Tariffs and Trade Amendment Act 1995.
[130] RJ Tabane 'An Examination of the Effectiveness of Anti-dumping Laws in South Africa' unpublished Masters dissertation, University of KwaZulu-Natal, 2018.

With South Africa once again being a part of the WTO was the catalyst to the creation and enactment of the International Trade Administration Act (ITA Act) 2002 along with the Anti-Dumping Regulations of 2003 that were aimed at having the South African law on dumping complying with those of the WTO.[131] The introduction of this act meant that the BBT Act had to be repealed in order for it to be fully functional. The ITA defined words such as "dumping", "export price", "fair comparison" and "normal value"[132]. The ITA was promulgated into South African law in 2003 with the objective of doing what the Board of Tariffs and Trade could not do effectively, this being to embody international law agreements into South African law while in tandem implementing the South African Customs Union Agreement.[133] The new SACU agreement held that the final decision in regard to the anti-dumping duties of the member states of SACU, the Counsel of Ministers within SACU were to be the ones who sign off on it.[134]

Once the ITA Act was created, this act gave birth to the International Trade Administration Commission. This commission was an institution created in order to carry out customs tariff investigations, impose trade remedies, and oversee the control of imports and exports. This body was made under the new law in order to replace the BTT.[135] The ITA Act was working still in conjunctions with The Customs and Excise Act, which formed part of the dumping law in South Africa due to its outline of the types of duties that are to be imposed as a measure to prevent dumping from happening.[136] Despite having created these bodies and harmonized WTO into its own laws, The ADA is still not a part of the South African law because it has not been promulgated by parliament as is required.[137] Having this in mind, the courts however, have been instructed still to use International Law such as the WTO ADA, in its interpretation of the legislation governing its anti-dumping regulations.[138] This was seen in many cases the years over including the case of Brenco[139] where the courts held that the investigating officials were not obligated to adhere to agreements that South Africa had not signed, however International Law would assist in evaluating how fair the administration of the investigative officials were when they carried out the anti-dumping investigations.

By the time of the advent of the GATT South Africa had already been among the more prolific users of the anti-dumping duties as a trade remedy for the many years to come.[140] Once the

[131] (n 119).
[132] The International Trade Administration Act 2002 (ITA 2002).
[133] ITA 2002 sec 2.
[134] (n 110).
[135] (n 124).
[136] Customs and Excise Act 71 of 1965 sec 56.
[137] The Constitution of the Republic of South Africa 1996 as set out in sec 231(1).
[138] The Constitution of the Republic of South Africa 1996 as set out in sec 39.
[139] The Chairman of the Board of Tariffs and Trade v Brenco 2001 4 SA511 SCA.
[140] G Brink 'A theoretical framework for South African anti-dumping law' unpublished PhD thesis University of Pretoria, 2004.

GATT was enacted, in the 10 years to follow South Africa accounted for more than half of all anti-dumping cases in the world, having imposed nearly 60% of the worlds anti-dumping duties.[141] Even during the years of the ban on anti-dumping duties between the years of 1978 and the end of 1994, South Africa had initiated a further 270 cases.[142] And as mentioned before, between the years of 1995 and 2020 South Africa had accounted for 238 case initiations, with a large sum of those initiations occurring between the years of 1995 and 2000. It has been argued that this is due to South African Industries growing evermore post-apartheid and a somewhat protectionist need to help them grow during a time of great globalisation.

South Africa during this time was competing with great economies not only from the west but from within the continent its. During this time the Zimbabwean economy was at the beginning of its steep decline,[143] however there was a time where it was thought to be on par with the economy of South Africa. To this day, although being one of the largest economies in Africa, South Africa is still considered to be a relatively small economy with industries that only have a single or a limited number of producers.[144] The companies within the borders do not enjoy the same economies of scale as their competitors and it is because of this they are more likely to experience material injury.[145] It is because of this that South Africa is amongst the highest users of anti-dumping investigations and the reason why this study has chosen to look to the South African Legislation as a guideline for developing functional anti-dumping regulation within Zimbabwe. Having looked at the journey leading up to where the legislation is today, lessons can be drawn on how a country in Africa can best develop such regulations. Having understood this, the next step would be to understand the intricacies of the South African anti-dumping legislation and how it is used to protect South Africa industries and help them grow.

3.3 How anti-dumping is governed in South Africa

This section of the chapter will now focus on the current South African anti-dumping system by providing a brief, but detailed, overview of the applicable legislation and its use, as well as institutional structure and the substantive issues that these legislations and institutions deal with. Therefore, this subchapter is split into 2 subsections; section 3.3.1 will provide for the South African legislations and institutions, and section 3.3.2 will provide for the substantive issues found within the structures of the previous section.

[141] (n 139).
[142] (n 139).
[143] CL Munangagwa 'The Economic Decline of Zimbabwe' (2009) 3 The Gettysburg Economic Review 9.
[144] G Brink 'One Hundred Years of Anti-Dumping in South Africa' (2015) 49 Journal of World Trade.
[145] Board Report 3384 (1993).

3.3.1 Legislations and institutions

As mentioned in the previous section, following the ITA Act being promulgated in 2003, The International Trade Administration Commission (ITAC) was then established.[146] This commission was established to be an independent super agency that has been bestowed the powers to administer South Africa's unitary anti-dumping regime. ITAC is bound by the law, the constitution and any Trade Policy Statement, Directive, or Notice issued by the Minister of Trade and Industry.[147] The functions of the ITAC are elaborated under the Anti-dumping Regulations,[148] which sets out rules and principles on anti-dumping law and practice. It is important to note, that ITAC upon its establishment also had to act as an authority for other SACU members for an interim period, which was up until the other SACU member had set up their own national bodies that was able to carry out similar function.[149] This involved investigating and evaluating alleged dumping complaints in the Republic or the Common Customs Area[150] and to make recommendations directly to the SACU Tariff Board.[151]

ITAC also imposes definitive anti-dumping duties in the form of a final recommendations that they give to the Minister of Trade and Industry.[152] This means that ITAC will conduct its investigations in order to make the appropriate determinations. It is on the basis of these investigations that ITAC will make recommendations to the Minister as aforementioned, who consequently, upon making a decision based off that recommendation, requests that the Minister of Finance impliment s that duty. ITAC fulfils its functions alongside the South African Revenue Services. While ITAC handles applications for the anti-dumping investigations[153], and hearings [154], makes preliminary findings and imposes provisional measures, ITAC makes those provisional measures in the form of a request to the SARS Commissioner.[155]

The primary legislation in anti-dumping laws is the ITA Act, which, as aforementioned, established the ITAC. Under this agreement, it provides for the responsibilities of the ITAC investigations,[156] it defines dumping,[157] defines normal value[158] as well as the export price,[159] and

[146] ITA (2002).
[147] OS Sibanda South African anti-dumping law and practice: a juridical and comparative analysis of procedural and substantive issues (2011) https://ssrn.com/abstract=2140084 accessed at 25 August 2021.
[148] ITAC 2002 & Anti-Dumping Regulations 2003 (ADR 2003).
[149] SACU Agreement 2002 article 14.
[150] ITA 2002 sec 1(2).
[151] (n 149) sec 16(3).
[152] ADR 2003 sec 47.
[153] ADR 2003 secs 3, 7 & 28.
[154] ADR 2003 sec 5.
[155] ITA (2002) sec 30(5)(a) & ADR 2003 secs 33 & 39(4)/
[156] ITA (2002) sec 16.
[157] ITA (2002) sec 1(2).
[158] ITA (2002) sec 32(2)(b).
[159] ITA (2002) s.32(2)(a), (5), and (6).

lastly it provides for the treatment of confidential information.[160] While the Anti-Dumping Regulation 2003 (ADR 2003) provides for the substantive and procedural issues which are to be covered in the following section. This synergy between the two agreements allows for the South African government to ensure that they are in compliance with the WTO while maintaining its best practices.[161]

Ultimately, it is the South African Constitution that provides for all these laws and as such they must be consistent with the provisions of the Constitution.[162] This is because the Constitution of South Africa 'is the supreme law of the Republic'.[163] When it comes to the provisions of the constitution that are relevant to anti-dumping investigations are those that guarantee everyone access top 'any information held by the state';[164] those that guarantee the right to 'reasonable and procedurally fair' administrative action;[165] and lastly, those that require that written reasons must be given in each instance where a party's rights have been adversely affected by an administrative action.[166] These provisions affect the anti-dumping legislation as they promote transparency, which is within the ethos of the anti-dumping investigations at the WTO level. Along with this there are other laws that impact the anti-dumping investigations. Among these is The Promotion of Access to Information Act,[167] this act holds the basic principles of access to information, both regarding information held by the state and by individuals. It was enacted as a result of the 'constitutional right of access to any information held by another person required in exercising or protecting any rights'.[168] The Promotion of Administrative Justice Act, alongside the previous act, provides for fair administrative action,[169] this provision is of importance because it allows to ensure that the investigation process is not always abused.

Finally, it is important to reemphasize that that The WTO Agreement, this includes the ADA and other dumping agreements, are not a part of South Africa's municipal law as they have not been promulgated by Parliament.[170] However, as highlighted before with the Brenco[171] case, the courts are implored to interpret anti-dumping cases and investigations using international law despite not being an obligated to do so through WTO regulation. Having understood the legislative structure and the

[160] ITA (2002) s.33-37.
[161] G Brink 'X-Raying Injury Findings in South Africa's Anti-Dumping Investigations' (2015) https://repository.up.ac.za/bitstream/handle/2263/52019/Brink_XRaying_2015.pdf?sequence=1&isAllowed=y accessed at 30 August 2021.
[162] The Constitution of the Republic of South Africa, 1996.
[163] The Constitution of the Republic of South Africa as set out in sec 2.
[164] The Constitution of the Republic of South Africa as set out in sec 32.
[165] The Constitution of the Republic of South Africa as set out in sec 33.
[166] The Constitution of the Republic of South Africa as set out in sec 33(2).
[167] Promotion of Access to Information Act 2 of 2000.
[168] Preamble of Promotion of Access to Information Act 2 of 2000.
[169] Promotion of Administrative Justice Act 3 of 2000.
[170] The Constitution of the Republic of South Africa sec 231(2).
[171] (n 124).

institutions that govern them, the following section will now be focused on the substantive issues behind them.

3.3.2 Substantive issues

Determination of Dumping:

As was highlighted in Chapter 2, the WTO states that "before imposing any anti-dumping measures a national government must undertake an investigation".[172] South Africa, although not bound by this law, follows this model and conducts investigations into dumping complaints before imposing and anti-dumping duties. This investigation is conducted by the ITAC as indicated in the previous section, and in accordance with the ADR 2003 and the ITAA the Commission needs to come to the conclusion that dumping has occurred and said dumping has caused material injury to a domestic industry. Thus, much like in the WTO the first element that needs to be investigated will be whether dumping has in fact occurred.

The determination of dumping in South Africa is conducted in a similar manner to that of the WTO determination of dumping. The first step would be to look at establishing the normal value. The normal value is defined under the ITA Act as "the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin".[173] This is similar to the definition given under the ADA article 2.1 and has been supported in the South African courts who have held that if a product is exported into South Africa or SACU at a price that is lower than the ordinary price in the country of origin, then the product will be deemed to have been dumped.[174]

Under the ADR 2003, normal value is defined under this act as "the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export or the country of origin by the exporter, the producer or its related party under investigation".[175] This just reenforces the definition found under the ITAA that the normal value of a product is the price of the like product in the normal course of trade in the country of origin, or the country of origin by the exporter. Both these Acts also provide for the determination of the normal value given that there is no known price of that manner[176], however these provisions have never been applied despite some exporters not selling the like product on its domestic market.[177]

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[172] ADA article 1.
[173] ITA sec 1.
[174] The International Trade Administration Commission & Others v SA Tyre Manufacturers Conference (PTY) Ltd & Others (738/2010) [2011] ZASCA 137.
[175] ADR 2003 sec 32(2)(b)(i).
[176] ADR 2003 s32(2)(b)(i) & ITAA s1.
[177] G Brink 'Anti-Dumping in South Africa' (2012) https://www.tralac.org/files/2012/07/D12WP072012-Brink-Anti-Dumping-in-SA-20120725final.pdf Accessed on 1 September 2021.

As the normal value determination is based off the comparable price of the similar or like product, the Commission must first identify what the 'like product' is in order to do such a comparison. The ADR 2003 defines the 'like product' as a "product which is identical… to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration".[178] This definition is taken straight from Article 2.6 of the ADA as can be seen in Chapter 2 of this paper. The definition also provides a criterion to be used in the determination of a like product, as is seen once again in the WTOs ADA.[179] This means that a 'like product' in South Africa is a product that is either 'identical' to the product that is said to be dumped, or it shares characteristics that closely resemble the dumped product. The first case in which 'like products' were of contention was the Unmodified starch case, in which they held that, given the products were all derived from carbohydrates, and were produced using similar production processes, this meant they were classifiable under the same subheadings.[180] Through this case we were able to see that, despite the dumped products not being identical to the products of the industry complaining of dumping, they were similar in characteristics and application, and it was found that the maize starch was indeed a like product to all imported unmodified starches.

Although it is rare that the 'normal value' investigation will use other methods other than that of the price of the product in the normal course of trade test, to determine the normal value, ITAC is still able to revert to alternate methodologies as they are provided for under the ITAA. Unlike the ADA, the ITTA provides for the constructed normal value. Under this Act, the Commission may use the price found in an appropriate third or surrogate country as the 'normal value'.[181] Through this method, the Commission can determine the price on the basis of either; a) the cost of production in the country of origin when destined for domestic consumption and then adds reasonable cost of administrative costs and selling, general administrative costs and profit; b) the highest comparable price for the like product when exported to an appropriate third or surrogate country as long as that price is representative.[182] This method was used in a few investigations, including "the Picks, Shovels and Spades, Rakes and Forks Originating from the People's Republic of China"[183], in this review they held that the normal value was constructed using the costs of like products found in SACU, as ITAC was of the view that the costs of production in China and the costs of production in SACU industries were "alike". The only issue with this method is that neither the ADA or the ITAA define what an

[178] ADR 2003 1.
[179] (n 177).
[180] Board Report 346 – Investigation into Alleged Dumping of Unmodified Starches, Exported from or Originating in Belgium, Denmark, Germany, the Netherlands, Portugal, Switzerland and Thailand (04/07/1994).
[181] ITA (2002) sec 32(4) & ADR 2003 8.14-8.16.
[182] (n 180).
[183] Report No. 251 Sunset review of the anti-dumping duties on picks, shovels and spades, rakes and forks originating in or imported from the People's Republic of China: Final determination.

appropriate third country is, and this may lead to confusion, and opens up to abuse in its use by the Commission. The ITAA requires however, that the Commission makes reasonable allowances in the terms and conditions of sales, differences in taxation and other differences that may affect the price comparability.[184] In this respect, the ADR 2003 also provides for adjustments to be made for the terms and conditions of trade, taxation, and the level of trade.

Having established the 'normal value' the commission then needs to move towards determining the 'export price'. The 'export price' seems to hold a greater level of importance in the South African anti-dumping structure than in the WTO structure. The ITAA has defined the 'export price' as "the price paid or payable for goods sold for exports, this includes all the taxes, discounts and rebates that are directly and indirectly connected to the sale".[185] In its determination of the 'export price' the Commission uses the official SARS import statistics.[186] However, if there is no such export price that exists or can be found, then the export price will be the price that the first buyer in the importing country paid for the product.[187] This consumer is usually the wholesaler in the importing country.[188] This method is also used when the export price is unreliable due to arrangements compensatory in nature with respect to the export price between the concerned parties.[189] Where the imported product has not been resold, or resold in the same condition, the export price may bay determined on any reasonable basis.[190]

The ADR 2003 also provides for the constructed 'export price' much like the ADA. This price will be determined on the basis of deducting all the costs incurred in the course of trade from the exporter's ex-factory price and the first independent buy, plus a deduction for profit realised by the importer.[191] If the construction of the 'export price' is the methodology that the Commission uses in its investigation, then evidence should be provided in order to support using this method.[192]

Once both the 'normal value' and the 'export price' have been determined then a comparison can be made in order to determine the 'margin of dumping', which provides whether dumping has occurred. The ITAA defines the margin of dumping as "the extent to which the normal value is higher than the export price, after adjustment have been made for comparison purposes".[193] Calculating the

[184] ITA (2002) sec 32(3).
[185] ITA (2002) sec 32(2)(a).
[186] The ITAC Report 476: Investigation into the alleged dumping of disodium carbonate (soda ash) originating in or imported from the United States of America (USA): Final Determination http://www.itac.org.za/upload/document_files/20140923010155_Report-no-476.pdf accessed at 2 September 2021.
[187] ITA (2002) sec 32(5).
[188] G Brink 'A Nutshell Guide to Anti-dumping Action' (2008) 71 Journal for Contemporary Roman Dutch Law.
[189] ITA sec 32(6)(b).
[190] (n 185).
[191] Brink (2012) (n 176).
[192] ADR secs 10.2(a) & (b).
[193] ITA (2002) sec. 1.

'margin of dumping' can be done in a number of ways, and the ADR 2003 provides for the methodology that is to be used when determining the margin of dumping. The ADR 2003 holds that when the investigation involves more than one product, then the Commission determines the margin of dumping separately for products that can be identified by SARS.[194] In the cases where the products cannot be separately identified by SARS then the Commissioner will have to calculate the margin of dumping "for each product separately and determine the weighted average margin of dumping for all products on the basis of the individual export volume for each product".[195]

It has been argued that the determination of the margin of dumping can be rather problematic.[196] This being because, situations may arise where there are diverse models of the same 'like product' that is imported. An example of this was given in the form of 'bed linen'[197], which involved products such as fitted sheets, flat sheets, and duvet covers. In this case SARS had formerly imposed separate duties on various bed linen models despite a weighted average margin of dumping having already established for each model, meaning a weighted average of dumping was determined for all sheets, another for duvets and another for pillow cases. This was in contrast to the EC – Bed Linen case where it was held that, in such a scenario, only a single margin of dumping may be determined in respect to that product.[198] Meaning that in that case, they held that all these different forms of products should be classified under one umbrella term, and not be investigated separately.

Determination of Injury:

Having established that dumping has occurred in the Commission investigation, the following step would be to determine whether that dumping has caused any injury. Under the WTO regulations, in the absence of injury then a domestic government cannot impose any dumping duties. Material injury is not mentioned under the ITAA, however, mention of it can be found under the Customs and Excise Act.[199] It is the ADR 2003 that provides for how ITAC shall consider whether there has been injury, through the consideration of whether there has been substantial suppression or depression on the SACU prices.[200] Although the ADR 2003 does not require that injury needs to be established before any anti-dumping measures are imposed, it is implied that injury must be determined. This is because Act provides factors that are to be considered in determining the injury, these include: sale, volume, profit and loss, output, market share, productivity, return on investment, capacity, cash flow,

[194] ADR 2003 sec. 12(2)(a).
[195] ADR 2003 sec. 12(2)(b).
[196] G Brink 'One hundred years of anti-dumping in South Africa' (2015) 49 Journal of World Trade 3.
[197] G Brink Determining the Weighted Average Margin of Dumping https://www.tralac.org/files/2012/07/D12WP072012-Brink-Anti-Dumping-in-SA-20120725final.pdf accessed at 10 September 2021.
[198] EC – Bed Linen WT/DS141/AB/R.
[199] The Customs and Excise Act 35 of 1944 sec. 82(1).
[200] ADR 2003 sec. 13.1.

inventories, employment, wages and growth, and the ability to raise capital or investments.[201] It has been held that some of these consideration factors hold more weight than others in determining injury[202], for example the volume of sales, the price depression and the price suppression. This was theory was supported in the South African courts when it was held that price undercutting, price depression, and decline in profits were major determinants of injury in dumping investigations.[203] This holds that in determining that injury, the investigation conducted by the Commission needs to prove that one or more of these factors have been adversely affected by the dumping of the products. ITAC is then required after the investigation to 'provide only the summarised indications to each item of the injury determination' which in practice is collecting data and listing said data in a report without evaluating that data.[204] This goes against WTO practice as they have held that an investigating authority should not only gather the data, but it is also required to analyse and interpret the data in accordance with art.3.4 of the ADA, which speaks to the determination of the impact of dumping.[205]

3.4 Conclusion

South Africa are among the more prolific users of anti-dumping measures due to the seemingly high number of dumped products circulating in their market.[206] This has resulted in positive socio-economic effects as they have been able to protect not only their domestic producers, but their consumers as well. As such this paper chose to highlight their anti-dumping regulations in order to see how it is they conduct their anti-dumping practices in the hope that lessons can be learnt from it, that can be applied to the Zimbabwean anti-dumping regulatory system. This is not to say, however that the South African anti-dumping law in itself perfect. In fact, most argue that it is far from being where it needs to be, and many scholars have published studies seeking to reform the anti-dumping regime i.e. Niel Joubert. However, lessons can still be learnt from their current regime, and the lessons will be discussed further in Chapter 5 that looks directly at the Zimbabwean anti-dumping system.

[201] ADR 2003 sec. 13.2.
[202] Brink (2012).
[203] Rhone Poulenc v Chairman of the Board on Tariffs and Trade 1998/658937(T).
[204] N Junji Antidumping Laws and Practices of the New Users (2006).
[205] WTO Panel Report Egypt – Definitive Anti-dumping Measures on Steel Rebar from Turkey WT/DS211/R.
[206] O. S. Sibanda (2011), South African Anti-dumping law and Practice: A juridical and Comparative Analysis of Procedural and Substantive issues

Chapter 4 The Impact of the African Continental Free Trade Area.

4.1 Introduction

The African Continental Free Trade Area (AfCFTA), is an agreement between the countries on the continent of Africa in which they have agreed to establish the largest free trade area in the world, in terms of the number of countries that will be participating within it.[207] The agreement came into force in 2019 and there has been an eagerness for its establishment the world over,[208] due to the estimated $84 billion in untapped intra-African exports that will come from this agreement, so reports the African Export – Import Bank.[209] The prospects of the agreement far exceed anything that the spaghetti bowl that is the many Regional Trade Agreements that are already on the continent could achieve, however, that is not to say that this agreement does not come with its own risks and downfalls. Within a smaller regional trade market such as the Southern African Development Community (SADC), we have seen Zimbabwe already suffering from goods being dumped in their market being exported from their largest trading partner South Africa. Due to their trade agreement, South African producers are able to sell their products at a price lower than that in their own market without the risk of making a loss.[210] The risks for an increase in dumped products becomes evermore present with the introduction of the AfCFTA. As such this following chapter seeks to highlight that the introduction of the AfCFTA more reason for Zimbabwe to ensure that there are effective and functional anti-dumping measure in place. Otherwise, the hopes to revitalise the economy through the development of the local industries will dissipate in a matter of years. This Chapter is split into 4 subchapters, 4.1 is the introduction, 4.2 focus on giving an overview of the AfCFTA, 4.3 will focus on highlighting the implications of the AfCFTA on the Zimbabwean industries, and finally 4.4 is the conclusion.

4.2 The AfCFTA Overview

4.2.1 The development

The AfCFTA has quite a lot to live up to due to the amount of excitement it has created the whole continent over. Its development dates back to the end of decolonization, when the continent

[207] The World Bank, The African Continental Free Trade Area https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area accessed at 05 August 2021.
[208] Excitement as Africa counts down hours to start of trading under AfCFTA https://www.africanews.com/2020/12/31/excitement-as-africa-counts-down-hours-to-start-of-trading-under-afcta// accessed at 05 August 2021.
[209] (n 208).
[210] TT Dari 'A critical assessment of Zimbabwe's Anti-Dumping Laws' Masters thesis, The University of the Western Cape (2019).

was looking for direction, and two contrasting visions for the future emerged.[211] The more dominant vision, whose popularity comes from its polarizing nature, was the Pan-Africanist vision, that looked to unite the continent under one supra-governing body. This gave birth to The Organization of African Unity (The OAU) in 1963, which was meant to be an inter-governmental institution that strived to unite Africa under its leadership. From The OAU, sub-continental organizations began to emerge, ironically, in order to support the institution to achieve better co-operation in the sub-regions. As the years went on, and the number of Regional Economic Communities (REC) increased significantly and the vision of integration was put at the bottom of the priority list for The OAU and subsequently the REC's.[212] The OAU was then replace by the African Union (AU) in 2002, who's plans were focused on economic integration, envisioning an African Economic Community (AEC) by the year 2018.[213] However, as the years went on this seemed to be far out the reach for the AU.

It was not until 2012 at the African Union 18th Session, that the African Heads of State and Government (The Assembly) recognized that 'the promotion of intra-African trade is a fundamental factor for sustainable economic development'[214], and it was agreed upon that there needed to a push towards establishing the Continental Free Trade Area by the year 2017. This was a great step in the direction towards achieving was what envisioned by the OU when they sought to establish the AEC.[215] It was under this premise that the Heads of State and Governments launched Agenda 2063[216], which was described as 'as shared framework for inclusive growth and sustainable development for Africa to be realized in the next 50 years'[217]. Under this Agenda there was an attempt to build upon past attempts of creating an integrated economic community and the implementation of the past and existing continental initiatives for growth and sustainable development[218].

In the true nature of the AU, the deadlines were not met. The AfCFTA was proposed in 2012 with the intention of an agreement being reached by 2017. However, The Agreement Establishing the AfCFTA[219] was signed at the 10th Extraordinary Summit of the AU Assembly on 21 March 2018 and it came into force in 2019. At the time only 27 countries had ratified the instruments of the AfCFTA

[211] L Fioramonti & F Mattheis 'Is Africa Really Following Europe? An Integrated Framework for Comparative Regionalism' (2015) 54 Journal of Common Market Studies 3.
[212] F Viljoen 'The Realization of Human Rights in Africa Through Subregional Institutions' in F Viljoen International Human Rights Law in Africa (2012)
[213] Fioramonti (2015).
[214] International Trade Centre 'A business guide to the African Continental Free Trade Area Agreement' (2018) https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/AfCFTA%20Business%20Guide_final_Low-res.pdf accessed on 15 September 2021.
[215] United Nations Economic Commission of Africa 'Key Pillars of Africa's Regional Integration' https://archive.uneca.org/oria/pages/key-pillars-africa%E2%80%99s-regional-integration accessed on 15 September 2021.
[216] African Union Member States Reporting on Agenda 2063.
[217] (n 213).
[218] (n 213).
[219] The Agreement Establishing the African Continental Free Trade Area 2018 (AfCFTA Agreement).

and as of 4 September 2021, 38 countries have ratified the agreement including Zimbabwe and South Africa.[220] The scope of the Agreement covers issues of trade in goods, trade in services, investment, intellectual property rights and the competition policy. In implementing the agreement, members agreed upon doing so in phases. Subsequently The AfCFTA Negotiations are scheduled in phases, Phase I covered the trade in goods and trade in service, Phase II covers the Intellectual Property Rights, and Phase III cover E-Commerce.[221] As of February 2020 The Assembly adopted the decision to commence Phase III immediately after the Phase II Negotiations. Today the AfCFTA holds the hopes of the pan-Africanist as a move towards uniting the continent.

4.2.2 Architecture

The AfCFTA being the continents most ambitious integration initiative, it seeks to liberalize trade between African countries across the continent. Being that the agreement was born of the aims of the OUA and the AU, it builds upon the existing structures including those of the RECs that are already in place. With that, the AfCFTA has recognised eight RECs as the building blocks for the Area. These are the Arab Maghreb Union (AMU), the Common Market for Easter and Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC). Under the agreement, the AfCFTA holds that states that are a party to these RECs shall be able to maintain those communities even once the agreement is in force.[222] This is significant because it shows that the AfCFTA is following the path set before them by the institutions that developed these RECs, with the aim of eventually having them integrate into one body. By allowing Member States to maintain their existing RECs, this gives the AfCFTA a foundation in which they can build off, taking lessons from the success and failures of these RECs and learning from them in their development of the Area.[223]

As aforementioned, the AfCFTA scheduled Negotiations Phases focused on different aspects of the scope of the Agreement. The scope of the agreement can be found in the objectives of the AfCFTA. The main objectives were to 1) Create a single continental market for goods and services, with free movement of business persons and investments, 2) expand the intra-Africa trade across the regional economic communities and the continent in general, and finally 3) to enhance

[220] Trade Law Centre 'The African Continental Free Trade Area' (2021) https://www.tralac.org/documents/resources/infographics/2605-status-of-afcfta-ratification/file.html accessed on 20 September 2021.
[221] AfCFTA Agreement article 6.
[222] AfCFTA Agreement article 19(2).
[223] International Bank for Reconstruction and Development 'The African Continental Free Trade Area Economic and Distribution Effects' (2020) https://openknowledge.worldbank.org/bitstream/handle/10986/34139/9781464815591.pdf accessed on 20 September 2021.

competitiveness and support economic transformation.[224] The Agreement takes this scope and has created a framework agreement covering Trade in Goods and Services, Investment, Intellectual Property Rights and Competition Policy. The trade in goods overarching aims are to progressively eliminate tariffs, progressively eliminate non-tariff barriers, enhance the efficiency of customs, trade facilitation and transit, promote cooperation on technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS), developing and promoting regional and continental value chains, and lastly to promote socioeconomic development, diversification, and industrialisation across Africa.[225] When looking at the objective of progressively emanating tariffs, the agreement requires that the members progressively remove tariffs on at least 97% of tariff lines. However, it does provide for a special dispensation for seven least developing countries. The Agreement holds that upon its entry into force, the least developing countries are only expected to meet a reduced level of 85% of tariff lines with a grace period of 15 years to reach 90% of tariff lines.[226] In terms of trade in services the Agreement aimed to enhance competitiveness of services, promote sustainable development, foster investments, accelerate the efforts in industrial development to promote the development of regional value chains and finally progressively liberalizing trade in services.[227] These aims have been divided under the agreement into the general objectives[228] and specific objectives.[229]

4.2.3 Institutions

The objectives are not only provided for under the Agreement in the Articles, but they are also provided for in the institutional architecture. The Agreement provides for the different institutions that are found under the AfCFTA and how they conduct themselves. The institution found at the is the aforementioned Assembly of the African Union, which is comprised of all the AU Heads of States and Governments, not exclude those of State Parties that are not a party to the Agreement. The Assembly has been tasked with providing oversight and strategic guidance on the AfCFTA.[230] Following in the hierarchy, The Council of Ministers (The Council) comes under the Assembly, and they are comprised of the Minister of Trade or other nominees from State Parties. The Agreement has empowered the Council to take decisions in accordance with the Agreement, and it works in collaboration with the relevant AU organs and institutions.[231] The Council reports to the Assembly through the Executive Council of the AU and makes recommendations on the interpretation of the Agreement. Then there is The Committee of Senior Trade Officials, which consists of Permanent

[224] Tralac 'A tralac guide to The African Continental Free Trade Area' (2020) https://www.tralac.org/documents/resources/booklets/4062-afcfta-a-tralac-guide-7th-edition-august-2020/file.html accessed on 20 September 2021.
[225] AfCFTA Agreement Article 4.
[226] (n 222).
[227] (n 222).
[228] AfCFTA Agreement Article 3.
[229] AfCFTA Agreement Article 4.
[230] AfCFTA Agreement Article 10.
[231] AfCFTA Agreement Article 11.

Secretaries or other officials designated by the State Parties. This Committee has been tasked with the overseeing the development of programmes and action plans for the implementation of the Agreement.[232] Finally there is the AfCFTA Secretariat[233] and The Dispute Settlement Mechanism[234] which replicates the WTO dispute settlement system.

4.3 Implications of the AfCFTA on Zimbabwean trading.

It is often asked why Africa's economy is not the one of the largest in the world? Despite possessing advantageous natural resources, with approximately 35 of 48 sub-Saharan economies being net food exporters at the end of the 2000s.[235] The answer boils down to the continents' leaders, or as Zwelinzima Vavi better put it 'Politics is economics and economics is politics.'.[236] In spite of this however, we have seen the Assembly which consists of the Continents leaders, establishing the AfCFTA, a great leap that has been described as being the 'most ambitious expression yet of the dream of Pan-African leaders such as W.E.B Du Bois… Kwame Nkrumah… and others that began the long journey towards African Unity…'.[237] The excitement around the implementation of this Area is not without merit, as the benefits that arise from this agreement are far beyond what those Pan-Africanists would have imagined during the age of decolonization.

The AfCFTA although being the first trade agreement of this magnitude in terms of numbers of Party States is expected to have a number of positive effects on the African trading environment and subsequently the economy. [238] Among these benefits, it has been highlighted the Agreement will benefit both the consumers and the producers by lowering the costs of products. As mentioned before, the agreement seeks to progressively eliminate at least 97% of tariff lines.[239] This will mean that the prices of imported goods for consumers will be significantly lower, and the same is applicable for the producers purchasing intermediate goods[240]. Lower tariffs reduces the costs that industries incur in the process of exporting the goods as such they are able to price their products at a lower price than they normally would have, if they were in the situation in which they were paying the higher tariffs. Not only does the AfCFTA seek to progressively eliminate the tariff lines, but non-tariff barriers (NTBs) such as sanitary and phytosanitary (SPS)[241] and technical standards have been implemented to protect the consumers welfare and safety. This is significant to the benefits of the AfCFTA because it

[232] AfCFTA Agreement Article 12.
[233] AfCFTA Agreement Article 13.
[234] AfCFTA Agreement Article 20.
[235] G Mills Why Africa is Poor and What Africans can do about it (2011).
[236]Z Vavi Sunday Times (Johannesburg) 24 May 2009.
[237] M Leshoele 'AfCFTA and Regional Integration in Africa: Is African Union Government a Dream Deferred or Denied?' (2020) Journal of Contemporary African Studies.
[238] CM Nwankwo & CC Ajibo 'Liberalizing Regional Trade Regimes Through AfCFTA: Challenges and Opportunities' (2020) 64 Journal of African Law 297 – 318.
[239] (n 225).
[240] (n 222).
[241] AfCFTA Agreement Article 22.

establishes a standardised regulatory system for these NTBs. Due to the numerous RECs that are found on the continent, NTBs such as these act as trade barriers due to the costs that exporters incur attempting to comply to them.[242]. This was highlighted by the United Nations Conference on Trade Development (UNCTAD) as they reported that the trade costs of NTBs are now more than double that of tariffs[243]. This then deters some producers from trading with States that have complicated or conflicting SPS or technical standards than those found within their domestic markets. Thus, with a continent wide standard, the AfCFTA seeks to reduce the costs that arise from these trade barriers.

Although a reduction in tariff lines can cause a reduction in prices for both producers and consumers, this can also be a cause for weary for industries in some countries. During the initial signing of the Agreement that establishing the AfCFTA, Nigeria was highlighted for its delay in signing. This being because they were instrumental in garnering support to finalise the AfCFTA as one of the largest economies in Africa.[244] However, it is important to highlight why this was the case. When addressing the situation the president exclaimed that "we(Nigeria) will not agree to anything that will undermine local manufacturers and entrepreneurs, or that may lead to Nigeria becoming a dumping ground for finished products"[245]. The president, backed by the Manufactures Association of Nigeria (MAN), foresaw the success of the AfCFTA in support free movement of goods and worried that this posed a threat to their industries'. Nigeria argued that the lower tariffs will pave the way for bigger manufacturing countries, such as South Africa, to seize on the opportunity to dump products into their markets. The President argued that Nigeria lacked the capacity to effectively supervise and ensure that the countries' fellow member states will not dump goods into their market to the detriment of the young industries[246].

Zimbabwe is currently in the process of revitalising their economy in an attempt to revert it back to its glory day. Some may say it is going through a modern form of industrialisation as they attempt to rebuild what they lost in the last two decades. In recent years we have seen complaints from companies such as Capri Zimbabwe, who have been suffering in sales of refrigerators due to the injurious dumping practices of South African companies such as Defy[247]. With the lower tariff lines, there will undoubtably an influx of products in the African market, a predicted amount of a 33% boost

[242] (n 222).
[243] Asia-Pacific Trade and Investment Report 2019 https://unctad.org/news/trade-costs-non-tariff-measures-now-more-double-tariffs accessed 25 September 2021.
[244] South Africa, Nigeria and the AfCFTA: 6 key questions answered https://www.africaportal.org/features/south-africa-nigeria-and-afcfta-6-key-questions-answered/ accessed 25 September 2021
[245] M Buhari in (n 243)
[246] M Buhari in a meeting with the National Council of the Manufactures Association of Nigeria https://venturesafrica.com/why-president-buhari-is-still-reluctant-to-sign-the-afcfta/ accessed on 21 September 2021.
[247] RG Muganda 'Lets enforce dumping Laws' The Herald (Harare) https://www.herald.co.zw/lets-enforce-dumping-laws/ accessed on 21 September 2021.

in intra-Africa trade.[248] Given that large economies such as Nigeria, fear dumped products in their markets resulting from the ever-praised free movement of goods. This paper seeks to highlight the increasing need for trade remedy measures such as anti-dumping regulations, to be in place in order to combat this issue that will inevitably arise from the implementation of the AfCFTA. It is important to note that the Agreement des indeed provide for trade remedies[249], however it simply reaffirms what is held under the WTO. This being that a government is to conduct its own anti-dumping investigations and implements its own measures to combat unfair trade practices such as dumping of price. Thus, for a country to combat unfair trade practices such as dumping, it would need to undertake its own remedial measure. As it stands, most African countries lack the required domestic arrangement to bring on such an undertaking.[250] Prior to signing the Agreement, the Nigerian Federal Government has had to reassure its constituents that it shall make efforts to establish a trade remedies authority that will conduct investigations and ensure its industries are protected from unfair trade practices.[251] However, it is still unclear as to whether they have the capacity in order to pull off such an undertaking.

It is important to note however, that this fear of an increase in dumped goods resulting from the AfCFTA do not go without opposition. Arguments opposing this theory have come to late stating that, the possible gains that arise from the AfCFTA far outweigh the potential risks of dumped products surging the markets of small economies. For example, in the case of Nigeria, the Chief Economic Adviser to Governor Ifeanyi Okowa, highlighter that the AfCFTA was not a one-way agreement.[252] By this he sought to showcase the potential gains in the AfCFTA by emphasising on point that the agreement was set in place to "liberalise trade so that African countries can trade more among themselves and through that, African economies will be integrated.".[253] With that he also showcased the potential growth that will be seen in the profits from oil palm, aquaculture and other products that are sourced in Nigeria, and can now be exported in a larger market. The same argument can be applied to the Zimbabwean market. Whereas an influx in products in the market could potentially result in goods being dumped in the Zimbabwean market, the argument holds that the potential for growth may outweigh the potential of dumped goods. However, the Zimbabwean market

[248] I Maluleke 'Africa trade agreement could generate significant gains' (2020) https://sagrainmag.co.za/2020/02/25/africa-trade-agreement-could-generate-significant-gains/ accessed on 21 September 2021.
[249] AfCFTA Agreement Part V: Protocol on Trade in Goods Annex 9.
[250](n 247)

[251] Y Kolawole AfCFTA: Concern over dumping mounts as trade deficit widens (2021). https://www.vanguardngr.com/2021/04/afcfta-concern-over-dumping-mounts-as-trade-deficit-widens/ accessed on 21 September 2021.
[252] AfCFTA'll not lead to dumping in Nigeria, says Adebayo (2021) https://punchng.com/afcftall-not-lead-to-dumping-in-nigeria-says-adebayo/ accessed on 21 September 2021.
[253] (n 251).

and the Nigerian market are vastly dissimilar. This dissimilarity, also highlights the fact that the AfCFTA has the greatest levels of income disparity among its members compared any other free trade agreement.[254]

These disparities in economic strength will allow the major players in the African economic community to take advantage of the greater market and access thereof, more than those members with smaller economies. Zimbabwe was once the second largest economy in Southern Africa, second only to South Africa. However, between the years of 1997 and 2009 the countries per capita income had halved[255]. Once a net exporter of grains, and tobacco, the country has only been able to produce about one-third of its grain needs while tobacco had fallen to one-sixth of the 1999 peak of 250 000 tonnes.[256] As of 2016 Zimbabwe has been the main Intra-Africa importers of maize, a product that can be produced within the country, accounting for 62% of the market share[257]. There can be an argument made for the potential growth in intra-African export of tabaco for the country, given the larger market the AfCFTA provides. Given the calls to support domestic industries from both consumers and producers in Zimbabwe[258], directing efforts towards the implementation of strong trade remedy measures such as anti-dumping measures would seem to be more effective than hoping for the success of the AfCFTA in boosting exports when competing on a large market.

Another issue that arises, that was once again brought to light by the Nigerian president in their delays to sign the agreement, was an issue pertaining to rules of origin. Rules of origin are the criteria that is needed to determine the national source of a product[259]. The rules of origin (RoO) may seem rather tedious; however, they are of the utmost importance. It is through this criterion that duties and restrictions are based off of.[260] There is an emphasis on RoO especially in trade agreements such as the AfCFTA and RECs because of the emphasis on the preferential treatment that comes with it. For example, because Zimbabwe is a member of SADC, they are able to export products into South Africa with reduced customs duties that non-members do not receive[261]. Thus, any product originating from Zimbabwe, if it satisfies the required RoO stated under the SADC mandate, enjoys these lower duties. Given that, RoO are necessary when implementing certain trade policy measure such as anti-dumping duties as they determine whether that product receives any preferential treatment. RoO are

[254] (n 237).
[255] (n 234).
[256] (n 234).
[257] W Viljoen 'Intra-Africa agricultural trade – an overview' 2018 https://www.tralac.org/documents/events/tralac/1845-willemien-viljoen-intra-africa-agricultural-trade-tralac-poster-presentation-2018/file.html accessed on 21 September 2021.
[258] See https://twitter.com/bmusonza/status/1143436326576041984
[259] WTO Technical Information on Rules of Origin. https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm accessed on 21 September 2021.
[260] (n 258).
[261] SADC Protocol on Trade 1996.

provided for under Article 4 of the AfCFTA Rules of Origin[262] where it states that a product shall be considered to originate from a state party if it was wholly obtained in that state party or underwent substantial transformation in that state party[263]. The AfCFTA preferential RoO are yet to be a harmonized into an applicable standard, however, given that the Agreement still recognises some RECs, the RoO within those RECs will still apply. One of the main issue that RoO deal with is the issue of trans-shipment. Trans-shipment is when a product destined for a country is moved from one vessel to another while in transit to that country[264]. In this regard, RoO are used to prevent trade deflection in which goods are shipped to a party in a trade agreement with low tariffs and duties and then re-exported to the party with higher tariffs in order to avoid paying those higher tariffs. With manufacturing representing only 10% of the total GDP of there is a possibility of developed manufacturing economies transhipping in Africa once the AfCFTA is implemented[265]. This was the argument brought to the president of Nigeria by MAN when they sought the delay of signing on to the AfCFTA. The association held that signing on to the AfCFTA without clarity on the enforcement of RoO could lead once again to the issue of dumped products in the Nigerian market. This argument is not without basis given that some African countries have already concluded trade agreements with non-African countries. The specific example used by MAN in this argument is, Morocco, a member of the ECOWAS, shares a trade pact with the EU. In this scenario, the Nigerian authorities are weary that European firms may seize on the opportunity to trans-ship products through Morocco and into the Nigerian market at a lower price and with the benefit of the reduced tariffs offered under the AfCFTA.[266]

This is an issue that Zimbabwe could equally face once the AfCFTA is implemented. South Africa, being home to what is known as Africa's most active general cargo port in, Port of Durban, receives an exuberant number of imports that pass through its borders on their way to the final destination[267]. Given the similar situation, as the one in Nigeria, in which South Africa has negotiated agreements with the European Free Trade Association, the United Kingdom and Mercosur[268], Zimbabwe could face the same trans-shipping issues that the Nigerian government are weary of. Zimbabwe already deal with issues of corruption at its borders which makes the issue of verifying RoO certificates all the more difficult. It is of the opinion of the study, that given the potential risk of strong manufacturing economies taking advantage of the uncertain RoO under the AfCFTA, there

[262] AfCFTA Agreement Annex 2.
[263] AfCFTA Agreement Annex 2 Article 6.
[264] UNCTAD 'Rules of origin and origin procedures applicable to export from Least Developed Countries' (2011) https://unctad.org/system/files/official-document/ditctncd20094_en.pdf accessed on 21 September 2021.
[265] (n 258).
[266] (n 258).
[267] 'Africa's biggest shipping ports' http://www.fahamu.org/ep_articles/africas-biggest-shipping-ports/ accessed on 21 September 2021.
[268] 'South Africa – Country Commercial Guide' 2021 https://www.trade.gov/country-commercial-guides/south-africa-trade-agreements accessed on 25 September 2021.

needs to be functional and succinct anti-dumping measures in place that are capable of combating unfair trade practices such price undercutting. This being because it is better to have such a structure in place that the growing, or soon to be established, industries in Zimbabwe can rely on given they find themselves in situations in which larger economies choose to abuse the oversights of the AfCFTA,

4.4 Conclusion

The African Continental Free Trade Area is a great achievement in African economic development and integration. It gives rise to hopes of a more unified Africa as envisioned by our forefathers and many of people today. Although it has its risk, the potential growth that it offers in terms of employment, trade development and economic growth. With forecast such as intra-Africa trade being boosted by 33% by 2035 and an increase in GDP of most countries GDP by 1-3%[269] it would be a disservice to say the Area causes more issues than development. Far from, the AfCFTA is still young and as it grows and develops so will its members. The aim of this chapter was simply to highlight the need for protection for African countries, specifically Zimbabwe, who seek to grow their industries or build new industries as this new age of African trade begins. The more goods circulating in such a large market, the higher the probability of unfair trade practices. Zimbabwe has standing regulations to combat unfair trade practices such as the dumping of goods however it has yet to make use of them. The following chapter seeks to assess why this is the case and whether new anti-dumping regulations should be implemented.

[269] (n 247).

Chapter 5 The Anti-dumping regulatory framework of Zimbabwe.

5.1 introduction

Anti-dumping regulations have been used in many ways and at times have been described as being a protectionist measure. However, anti-dumping regulations have been used as a tool during times of economic restructuring and trade reform[270]. "Trade remedies are not protectionism, it's protection against unfair trade practices"[271]. As highlighted in Chapter 1 unfair trade practices have often been used by countries looking to crush their computers and monopolise and dominate the market with their own products. Dumping practices are among the most commonly used forms of unfair trade practices and this is evident by the fact that Anti-dumping regulations are the most frequently used form of trade remedies[272]. Arguments have been pushed forward that claim that the rebuilding of the Zimbabwean economy is almost impossible, and that the task of doing so can be equated to an entire economy from the ground up[273]. In this new era with the introduction of the AfCFTA, an opportunity to rebuild the economy while utilising this new greater market has presented itself. The country houses over 60 minerals, including natural gas, diamonds, and copper[274] and is among the top intra-African exporters of tobacco second only to Uganda.[275] As the African market expands, Zimbabwe needs to the seize this opportunity to begin reforming their economy through the revitalisation of their industries. In South Africa anti-dumping regulations allowed them to increase their 'manufacturing output and recapture the domestic market' in recent years[276], a lot can be learnt from the South African regulations that can help Zimbabwe in its economic reformation. This chapter will focus mainly on the Zimbabwean anti-dumping regulations and how they can be improved in order to support this economic rebuilding. The chapter will be divided into four sub-chapters, 5.1 is the introduction, and 5.2 will be an overview of the current anti-dumping regulations.

5.2 Overview of Current Regulatory System

5.2.1 Legislative Framework and Institutions

Zimbabwe is among the few countries that have dedicated legislation focused on anti-dumping measures, however, there has never been an anti-dumping investigation initiation by the

[270] J Miranda Should Anti-Dumping Laws be dumped (1997).
[271] 'Trade remedies needed for African free trade implementation – Tola Onayemi (2020). https://nairametrics.com/2020/09/24/trade-remedies-needed-for-african-free-trade-implementation-tola-onayemi/ accessed on 27 September 2021.
[272] CRS Report 'Trade Remedies: Antidumping' (2020).
[273] 'Zimbabwe's Road to Economic Recovery' https://www.managementstudyguide.com/zimbabwes-road-to-economic-recovery.htm accessed at 27 September 2021.
[274] Democracy Works Foundation 'Policy Brief 24: Rebuilding Zimbabwe' https://democracyworks.org.za/policy-brief-24-rebuilding-zimbabwe/ accessed at 27 September 2021.
[275] W Viljoen (2018).
[276] ITAC Annual Report 2015-2016.

country. Zimbabwe's main anti-dumping regulation is house under the Competition (Anti-Dumping and Countervailing Duty) (Investigation) Regulations, 2002 (Statutory Instrument 266 of 2002).[277] No where in this legislation do they define what dumping in itself however, the definition of dumping can be found under the Customs and Excise Act 2014 Article 90 (Chapter 23:02). The two documents work in tandem, where the Customs Act holds most of the definitions to the terminology used in Anti-dumping regulations, where as the Statutory Instrument deals with the substantive issues and the procedural requirements for enacting anti-dumping measures. Similar to South African law, the Constitution of Zimbabwe is the law that governs all laws in the country. This holds that any 'law, practice, custom or conduct is inconsistent with it is invalid to the extent of the consistency'.[278] In line with the core pillars of anti-dumping investigation under the WTO, the constitution ensures that the law, including those governing anti-dumping investigations, allows for access to information[279], right to administrative action[280] and good public administration and leadership[281].

Along with these pieces of legislation, there is the Administrative Justice Act [Chapter 10:28] which deal with administrative procedures. This Act holds that any administrative authority should act within the bounds of the law or, within a reasonable period, where there is no specified time, and supply written statements explaining the reasoning behind their actions. Once again this is aligned with the three pillars of the anti-dumping investigations under WTO, as any authority that conducts the investigation is bound by this law. As for the authority that conducts the investigations of unfair trade practices as a whole, the Competition and Tariff Commission (CTC) is the statutory body that was established under the Competition Act. The present Commission is a product of the merger in 2001 of the former Industry and Trade Competition Commission (ITCC) and Tariff Commission (TC)[282]. The CTC is an independent body; however, it falls under the Ministry of Industry, Commerce and Enterprise Development[283]. Under this Ministry the statutory functions of the Commission, they are "to undertake investigations and make reports to the Minister of Industry, Commerce and Enterprise Development relating to tariff charges, unfair trade practices and the provision of assistance or protection to local industry"[284]. As seen under this section, the CTC is the body that conducts anti-dumping investigation.

[277] Statutory Instrument 266.
[278] The Zimbabwean Constitution Amendment Act 20 of 2013 sec. 2(1).
[279] The Zimbabwean Constitution sec. 62.
[280] The Zimbabwean Constitution sec. 68.
[281] The Zimbabwean Constitution secs. 194-198.
[282] Competition & Tariff Commission 'Background & Mandate' https://www.competition.co.zw/background-mandate/ .
[283] (n 281).
[284] Competition Act [Chapter 14:28] sec. 5.

The CTC is divided into four divisions, competitions, tariffs, legal and corporate, research unit and the financial & admin services[285]. It has two principal arms comprising of the Board of Commissioners as the adjudicative arm and the Directorate as the investigative arm.[286] The CTC has a team of investigatory that fall under the Directorate who then analyse any injury and establish casual links. This team is to carry out the anti-dumping investigations and make a prima facie case before submitting any reports to the commissioner who has been given the power through legislature to take decisions in meetings and make a final decision.[287]

5.2.2 Substantive procedures

As the previous chapters have shown, when implementing anti-dumping measures, the substantive issues are of great importance. For such measures to be imposed in the form of dumping duties, there is a need for the investigating body to provide evidence showing that the dumping has taken place, and if it has caused any injury. Zimbabwe makes no attempt to alter this as legislation holds that anti-dumping duties may be imposed on a product in Zimbabwe where it has been determined by the Minister that 'the export price of the subject product is less than normal value'[288] and that then in turn, 'the subject products are, through the effects of dumping, causing or threatening to cause material prejudice to the domestic industry in Zimbabwe producing like products'[289] or they are 'materially impeding the establishment of the domestic industry producing like products in Zimbabwe.'.[290] With that we can see that the WTO standard of what is needed to be met in imposing anti-dumping duties can be found under Zimbabwean law, what is to follow is the substantive procedures that are to be considered in determining whether to impose those duties.

5.2.2.1 Determination of Dumping

As we have seen from the previous chapters, when attempting to impose anti-dumping duties on to a product, the first step in dumping investigations is to determine what the normal value is. We have seen different manner in which to do so, both from the WTO and South Africa. As seen in the previous section, a product in Zimbabwe is deemed to be dumped if the 'normal value' of the product is below the 'export price'. Under the same Statutory Instrument, it holds that the 'normal value of any such products shall be the comparable price actually paid or payable in the ordinary course of trade for like products sold for consumption in the domestic market'[291]. This means that the 'normal value' has been deemed to be the price of the product when it is sold in the ordinary course of trade in the country that it originates from. The legislation also provides for situations in which the 'normal

[285] (n 281).
[286] A Kububa 'Overview of competition and policy and Law in Zimbabwe' (2009).
[287] UNCTAD 'Voluntary Peer Review of Competition Law and Policy: Zimbabwe Overview' (2012).
[288] Statutory Instrument 266 sec. 14(1)(a).
[289] Statutory Instrument 266 sec. 14(1)(b)(i).
[290] Statutory Instrument 266 sec. 14(1)(b)(ii).
[291] Statutory Instrument 266 sec. 15(1).

value' cannot be determined through the comparison of the price of the product in the ordinary course of trade in the country of origin. It hold that, in such a scenario, the 'normal value' shall be determined by comparing the price to that of any like products exported to any appropriate third country[292]. This is similar to what we have seen in Chapter 3, under the South African law where it also holds that the normal value can be determined in such a manner. In addition to this, the 'normal value' can also be constructed through the cost of the production of such product in the exporting country, taking into account a reasonable amount for profits.[293] It is important to note however, that despite providing the alternatives, there is no definition in Zimbabwean law for what is meant by 'ordinary course of trade'. Given that, it brings to light the question of when the alternative methods can be used given that they have not provided for an understanding of how to interpret what is meant by 'ordinary course of trade.

As we have seen, in the Zimbabwean regulations as well as the WTO and South African standards, in order to determine the normal value, one would have to have an understanding of what is meant by 'like products'. This being because under all these regulations, it is held that the 'normal value' is to be determined using the price of the 'like product' in the 'ordinary course of trade' in the exporting country's market. As such, a 'like product' has been defined as any product which the Minister has "determined to be identical in all respects to the subject products or any products which the Minister determines to have characteristics close resembling those of the subject".[294] This is interesting, because this definition suggest that the CTC has no capacity to determine what a 'like product' is, as this has been left to be determined by the Minister.[295] It is also important to note that this definition of a 'like product' is not found under the laws pertaining to anti-dumping regulations but rather to the countervailing measure. As found the sections pertaining to anti-dumping, no such definition is provided.

The following step in dumping investigations usually holds that there needs to be the determination of the 'export price'. As we have seen, the export price is of importance because this is what is used to compare to the 'normal value' in order to determine the 'margin of dumping'. This has been defined under the Statutory Instrument as the "price actually paid of payable for the subject products".[296] The Instrument does not provide for how to calculate the export price, however on the CTC application form for the initiation of dumping investigations, it provides that there are which in which this can be calculate. Under this application form it holds that deducting transportation costs, duty, tax, selling and distribution expenses incurred in Zimbabwe and resale profit for the importer's

[292] Statutory Instrument 266 sec. 15(2)(a).
[293] Statutory Instrument 266 sec. 15(2)(b).
[294] Statutory Instrument 266 sec. 2.
[295] Dari (2019) (n 209).
[296] Statutory Instrument 266 sec. 16(1).

resale price in Zimbabwe.[297] The Statutory Instrument also provides for scenarios in which there is no export price[298]. Given rise to such a situation, the 'export price' may be constructed "on the basis of the price at which the subject products are first resold to an independent buyer or not resold in the condition imported, on any reasonable basis".[299] If the 'export price' is to be determined in this manner, then the investigating authority needs to include all sustained costs between importation and resale[300].

Finally, having established both the 'export price' as well as the 'normal value' the two are compared in order to determine the 'dumping margin'. The 'dumping margin' has been defined as "the amount by which the normal value of the subject products exceeds the export price"[301]. This 'dumping margin' can be established on the basis of a "comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions of the subject products"[302]. This is known as the average-to-average method under the ADA[303].

5.2.2.2 Determination of injury

As is held under the Instrument, there needs to be the determination of injury in order for dumping duties to be imposed wants it has been established that the dumping has occurred. Under the ADA and Article VI, it holds that injury occurs when there is 'material injury' to the domestic market, 'threat of material injury' or if the injury cause 'material retardation to the establishment of a domestic industry'.[304] Under the Statutory Instrument 266, it uses different language in this respect, as it provides for the word prejudice rather than injury however the understanding of it does not change. Upon the recommendation the Minister may impose anti-dumping duties after the CTC has concluded in its investigation that dumping has occurred and through that dumping it has caused prejudice, be it material, threat or the impeding of the establishment of the domestic industry producing like products in Zimbabwe.[305]

Prejudice under this understanding, takes place in one of two ways. The first, occurs where prejudice or potential prejudice actually causes or threatens to cause prejudice to Zimbabwe's domestic industry. Secondly, it occurs where the material injury impedes the establishment of a domestic industry which seeks to produce 'like products' in Zimbabwe.[306] This understanding shows

[297] CTC Application Form for The Imposition of Anti-Dumping Duties sec. 2.4.
[298] Statutory Instrument 266 sec. 16.
[299] (n 297).
[300] (n297).
[301] Statutory Instrument 266 Preliminary
[302] Statutory Instrument 266 sec. 17(3).
[303] ADA Article 2.4.2.
[304] See Chapter 2.4.2 *Injury* of this paper.
[305] Statutory Instrument 266 sec. 14(b)(i-ii).
[306] (n 304).

that the Zimbabwean legislation follows the WTO method of understanding of injury, however, as to why the language differs to that of the WTO is not clear. Furthermore, the legislation does not provide a definition as to what it means when it refers to 'material injury', nor does it provide guidance as to what the CTC is looking at in the determination of prejudice or potential prejudice. Once again, guidance is provided for under the application form for the initiation of dumping investigations. Under this application it provides that CTC look at whether there has been significant "depression and/or suppression of the Zimbabwean industry's prices by considering injury in respect of the following potential injury factors sales volume; profit and loss; output; market share; productivity; return on investment; capacity utilisation; cash flow; inventories; employment wage; growth; ability to raise capital or investments; and any other relevant factors placed before it"[307]. These guidelines are clear and reminiscent of those that are to be considered by ITAC during the South African anti-dumping investigations.[308]

It is important to have an understanding of what a 'domestic industry' is, as the Zimbabwean legislation makes reference to prejudice occurring to the 'domestic industry' of Zimbabwe. under the Statutory Instrument, the 'domestic industry' is one that produces a 'like product' to that of the product being investigated.[309] It also defines it as 'domestic producers of like products; or the domestic producers whose collective output of like products constitute a major proportion of the total domestic production of those products'.[310] It is important to note, that similar to the WTO standards, producers that have agreements with the exporters importer are excluded from the understanding of the 'domestic industry' as this would cause distortion to the evidence.[311]

[307] (n 296).
[308] See Chapter 3.2.2 *Determination of Dumping* of this paper.
[309] Statutory Instrument 266 sec. 14.
[310] Statutory Instrument 266 sec. 2.
[311] (n 309).

Chapter 6 Conclusion and recommendations

This final chapter will summarise this paper as a whole and make conclusions based off the finding of this paper. Under this chapter, the questions posed in the opening chapter will be answered in order to prove whether or not Zimbabwe is among the many African countries that are in need of stringent anti-dumping regulations. It is the hope of this paper, that even in conclusion, if all signs indicate that it is not necessary to impliment anti-dumping regulations in African countries, the importance of trade remedies such as this should be highlighted. It is unfortunate that many industries are unaware of these remedies that are offered to them, as such it is of importance that more emphasis is put in educating people on these trade remedies offered to them.

6.2 Recommendations

The Zimbabwean legislation on dumping was constructed long after the ADA and Article VI, as such its compliance to the WTO standards are expected to be high. This being because in the construction legislature such as Statutory Instrument 266 should have been done with reference to the standards as a member of the WTO. In looking at Statutory Instrument 266 it is evident that they follow the WTO structure in some areas, however, it falls short of the WTO standards in a few areas. For example, looking at the alternatives given for the comparable price when the product under investigations is exported to a third appropriate country, the legislature fails to provide an understanding as to what an 'appropriate third country' is. This creates a gap in which the investigating authority can abuse, and given that such a definition is provided for under the ADA it is an oversight in the legislation that this paper recommends needs to be remedy when reforming the Zimbabwean anti-dumping legislation. Another example of this would be in the case of the definition of the 'like product'. The definition of a 'like product' is provided for in the Statutory Instrument, however it is only found under the sections pertaining to countervailing measure and is not provided for under those pertaining to anti-dumping regulation. The Appellate Body in the case of Korea – Alcoholic Beverages, they highlighted that the term 'like product' may have different understanding under different agreements . This another example of how the Zimbabwean legislature having been enacted after the guidelines to the establishment anti-dumping regulations, provided for under the WTO, falls short of what has been asked for them as members of the WTO. This paper suggest that given this and other reasons to be highlighted, the Zimbabwean anti-dumping regulation needs reflection in order to comply with WTO standards.

Following this, there it needs to be highlighted however, that the Statutory Instrument as a whole deals with both countervailing measure and anti-dumping regulations. It has been argued that having one piece of legislation dealing with two measures such as this is rather problematic. This is because some provisions are not clear if they deal with anti-dumping and countervailing measures

together, and there needs to be an enactment of separate legislation that deals specifically with either issue respectively. This further supports the argument that was provided for in the statement by the Appellate Body in Korea – Alcoholic Beverages. Both countervailing issues and anti-dumping issues are both trade remedies, definitions for the issues that they deal with may differ. It may be the case that when drafting Statutory Instrument 266, there was a general feeling to not need to provide definitions for similar topics found under the countervailing measures, in the sections dealing with anti-dumping measures. However, as we see from the aforementioned Appellate Body report, definitions differ at times for the two trade remedies. This paper argues that given this issue, drafting legislation that deals with these issues separately needs to be done and as such argues that there indeed needs to be a reformation of the Zimbabwean anti-dumping regulations.

Although the CTC is supposed to be the independent governing body that conducts the dumping investigation, as highlighted in the previous chapter, the Minister has been given the authority to determine what is meant by a like product and other issues that are to be the concern of the CTC as the conductors of the investigation. As we saw in the South African Regulations the Minister should only be involved once the investigation has been concluded, in order to impose provisional measures. The Minister being the determining body during the investigation process as this creates bureaucracy and opens up avenues of abuse and corruption. This is an issue of high stature because of the high levels of corruption in Zimbabwean authorities and constituents. Zimbabwe has is consistently in the spotlight for its high levels of corruption and in order to mitigate such an issue in the anti-dumping regulations, there needs to be separation of powers within the anti-dumping system. This paper argues that the starting point for such a mitigating system would be to separate the Minister from the investigations process to allow the investigating body to do its just free of bias.

In terms of the Commission, there have been arguments indicating that the empowering statutory instruments of the CTC do not capacitate the commission with the investigating authority to make a determination of whether unfair practices are caused by dumping and subsidised imports and suggest that more power needs to be given to the body. Nor does the Commission have the institutional capacity to use the trade remedy measures that are in place. There has been attempts made in order to strengthen the commissions capacity, for example, promises were made under the Zimbabwe National Trade Policy 2012-16 . However, there has yet to be any action moving towards this. Suggestions have been made in terms of establishing a separate Commission that deal with tariffs only , however this paper argues that given the degree of administration and government funds this would require, the feasibility of such an action is very low. This paper suggest that, given the new market created under the AfCFTA an established body that already conducts anti-dumping investigation would be a stronger body to defer this work too. As we saw under the South African legislation, SACU countries were using ITAC as the investigating body for their anti-dumping investigations until they were able to build, they're own commissions with the capacity to conduct

their own investigations. Given that SADC is recognised under the AfCFTA this paper argues that Zimbabwe seeks to their trading partner in South Africa for support in allowing them to defer their anti-dumping investigations to through ITAC. This will allow for Zimbabwean professional to be able to train under ITAC and use those lessons to help build the Zimbabwean commissions capacity building.

It is also important to note that Zimbabwe in its legislation uses different words and terminology in their definitions and interpretations. Under the Statutory Instrument 266 it has been observed for example, in the determination of injury, there was the use of the term 'prejudice' instead of the normal use of 'injury' as seen under the WTO and the South African legislation. Brink has emphasised that in order to understand anti-dumping action is important to understand anti-dumping terminology. Therefore, it is important to note that the legislation is drafted in a manner that is clear to the understanding of what anti-dumping rules that do not create questions on which standards are to follow.

Finally, another oversight in the Zimbabwe anti-dumping is the issue in which some guidance's that are provided, for example, guidance in determining what is understood as prejudice to an industry, or as it is better known, injury to an industry. As shown in the previous chapter, this guidance is not provided for under legislature but rather under the CTC's application form for the initiation of anti-dumping investigations. This is an issue because this application is not binding, and although this is simply just guidance, there needs to be binding rules for what is to be considered when determining injury to an industry. Without binding rules for such, then this opens up room for misuse and abuse from those conduction the anti-dumping investigation. This paper recommends that rules such as those found under the South African legislation[312], be added to the Zimbabwean legislation governing anti-dumping regulations.

6.2 Conclusion

With the advent of the AfCFTA and global trade on the rise, this paper argues that the need for anti-dumping regulations in Africa are of the most importance. Many small economies are now opened to grow, however the risks that they are to face should not be overlooked. Greater and more free markets open the risk for small economies such as Zimbabwe to industries looking to monopolise such a market. With that being an issue, you will find that growing industries and those looking to establish themselves will have a difficult time in this new and greater market. With that in mind it is important to prioritise a countries domestic industry and ensure they have the space to grow and compete in this larger market against the many other industries. This study highlighted the need for Zimbabwe to reform its anti-dumping regulations not only because of this greater market, but also

[312] ADR 2003 sec. 13.1.

because the current anti-dumping regulations fall short of the standards set by the WTO and even their neighbours South Africa.

Dissertation bibliography

Books

Wolfrum, R., Stoll, P.-T., & Kobele, M. (2008). *WTO - Trade Remedies*. Leiden: BRILL.
Guzmán, A. T., & Sykes, A. O. (2008). *Research handbook in international economic law*. Cheltenham: Edward Elgar.
Ye, H., Wang, L., & 2012 19th International Conference on Management Science and Engineering (ICMSE 2012). (September 01, 2012). Construction and application of anti-dumping early-warning system: Case study on Sino-US steel trade. 909-915.
In Blonigen, B. A., In Prusa, T. J., & Edward Elgar Publishing,. (2019). *Dumping and antidumping trade protection*.
UNCTAD., & UNCTAD. Division on International Trade in Goods and Services, and Commodities. Trade Negotiations and Commercial Diplomacy Branch. (2006). *Training module on the WTO Agreement on Anti-Dumping*. New York: UN.
Trade Remedies and World Trade Organisation Dispute Settlement: Why Are So Few Challenged? (2005), Chad P. Brown

Steagall, J. W., Baldwin, R. E., & National Bureau of Economic Research. (1993). *An Analysis of Factors Influencing ITC Decisions in Antidumoing, Countervailing Duty and Safeguard Cases*. Cambridge, Mass: National Bureau of Economic Research.

Finger, J. M., & World Bank. (1991). *The origins and evolution of antidumping regulation*.

Journal Articles

"Anti-Dumping Legislation." Scientific American, vol. 115, no.9, Scientific American, a division of Nature America, Inc, 1916, pp.186-186

Yarrow, G 'Economic Aspects of Anti-Dumping Policies' (1987) 3 Oxford Review of Economic Policy 1

Viner, J 'The Prevalence of Dumping in International Trade: I' (1922) 30 Journal of Political Economy, pp. 655-680

Plant, A 'The Anti-Dumping Regulations of the South African Tariff' (1931) Economica, no.31

Hastings, WK 'International trade and material injury: An economic and comparative study of anti-dumping legislation' (1986) Victoria university of Wellington Law Review pp. 213-233

Trachtman, J. (January 01, 2006). John Jackson and the Founding of the World Trade Organization: Empiricism, Theory and Institutional Imagination. *The International Economic Law Revolution and the Right to Regulate*, 63-69.

Narayanan, P. (January 01, 2004). Injury Investigations in "Material Retardation" Antidumping Cases. *Northwestern Journal of International Law & Business, 25*, 1, 37-68.

Finger, J. M. (July 01, 1992). Dumping and Antidumping: The Rhetoric and the Reality of Protection in Industrial Countries. *The World Bank Research Observer, 7*, 2, 121-143.

Cho, S. (January 01, 2004). The Nature of remedies in International Trade Law. *University of Pittsburgh Law Review, 65*, 4, 763-809.

Hathaway, C. M., Horlick, G., Stewart, T., Ellard, A., & Mastel, G. (October 01, 2003). Antidumping, Countervailing Duties and Trade Remedies: Let's Make a Deal??. *The International Lawyer, 37*, 3, 821-825.

Sandler, M. (July 01, 1985). Primer on United States Trade Remedies. *The International Lawyer*, *19*, 3, 761-791.

Bolton, R. M. (January 01, 2011). Anti-Dumping and Distrust: Reducing Anti-Dumping Duties Under the W. T. O. Through Heightened Scrutiny. *Berkeley Journal of International Law*, *29*, 1, 66-93.

Knoll, M. S. (January 01, 1990). An economic approach to the determination of injury under United States antidumping and countervailing duty law. *New York University Journal of International Law and Politics*, *22*, 1, 37-116.

Joubert, N. (January 01, 2005). The Reform of South Africa's Anti-Dumping Regime. *Managing the Challenges of Wto Participation : 45 Case Studies*, 516-531.

Brink, G. (January 01, 2012). Anti-dumping and Judicial Review in South Africa: An Urgent Need for Change. *Global Trade and Customs Journal*, *7*, 5, 275-282.

Brink, G. (April 01, 2015). One Hundred Years of Anti-dumping in South Africa. *Journal of World Trade*, *49*, 2, 325-350.

Brink, G. (March 01, 2014). Anti-dumping and China : three major Chinese victories in dispute resolution. *Comparative and International Law Journal of Southern Africa*, *47*, 1, 1-37.

Vinti, C. (January 01, 2019). "Dumping" and the Competition Act of South Africa. *De Jure*, *52*, 1, 207-220.

Working papers

Fofack, H ‘Making the AfCFTA work for ‘The Africa We Want’

Theses

MW Catherine ‘The Development of a Successful Anti-Dumping Regime in Kenya’ unpublished Masters thesis, University of the Western Cape, 2013.

OS Sibanda South African anti-dumping law and practice: a juridical and comparative analysis of procedural and substantive issues (2011) https://ssrn.com/abstract=2140084 accessed at 25 August 2021.

RJ Tabane ‘An Examination of the Effectiveness of Anti-dumping Laws in South Africa’ unpublished Masters dissertation, University of KwaZulu-Natal, 2018.

Tao, M., & University of the Free State. (2006). *Dumping and antidumping regulations with specific reference to the legal framework in South Africa and China*.

Legislation

The Constitution of the Republic of South Africa, 1996.

International Trade Administration Act (ITA Act) 2002

Competition (Anti-Dumping and Countervailing Duty) (Investigation) Regulations, 2002 (Statutory Instrument 266 of 2002).

Regulations

General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194

Internet Sources

A tralac guide "The African Continental Free Trade Area" (2020) https://www.tralac.org/publications/article/13997-african-continental-free-trade-area-a-tralac-guide.html

World Bank Group "The African Continental Free Trade Area Economic and Distributional Effects" (2020) https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area

A tralac "African Continental Free Trade Area" (AfCFTA) Frequently Asked Questions https://www.tralac.org/publications/article/13784-afcfta-questions-and-answers.html

A Business Guide To The African Continental Free Trade Area Agreement, International Trade Centre (2016) https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/AfCFTA%20Business%20Guide_final_Low-res.pdf

Ikageng Maluleke, Africa trade agreement could generate significant gains (2020) https://sagrainmag.co.za/2020/02/25/africa-trade-agreement-could-generate-significant-gains/

William Ukpe, Trade remedies needed for African free trade implementation – Tola Onayemi https://nairametrics.com/2020/09/24/trade-remedies-needed-for-african-free-trade-implementation-tola-onayemi/

A tralac guide, The African Continental Free Trade Area (2019) http://www.thedtic.gov.za/wp-content/uploads/Booklet_5th_edition.pdf

Excitement as Africa counts down hours to start of trading under AfCFTA https://www.africanews.com/2020/12/31/excitement-as-africa-counts-down-hours-to-start-of-trading-under-afcta//

Africa's new free trade area is promising, yet full of hurdles (2019) https://www.weforum.org/agenda/2019/09/africa-just-launched-the-world-s-largest-free-trade-area

Onyinye Nkechi Onwuka & Kingsley Chigozie Udegbunam 'The African Continental Free Trade Area Prospects and Challenges' (2019) https://www.accord.org.za/conflict-trends/the-african-continental-free-trade-area/

Nigeria's Buhari explains failure to sign continental free trade agreement https://www.africanews.com/2018/03/23/nigeria-s-buhari-explains-failure-to-sign-continental-free-trade-agreement//

Why Nigeria had good reasons delay signing Africa's free trade deal (2018) https://theconversation.com/why-nigeria-had-good-reasons-to-delay-signing-africas-free-trade-deal-100203

African Free trade bloc opens for business, but challenges remain. https://www.weforum.org/agenda/2021/01/african-free-trade-bloc-business-challenges

'Nigeria risks becoming dumping ground if free trade zones don't function' Bassey Udo https://www.tralac.org/news/article/10977-nigeria-risks-becoming-dumping-ground-if-free-trade-zones-don-t-function.html

'AFCFTA: Experts fear Nigeria becoming dumping ground' https://www.sunnewsonline.com/afcfta-experts-fear-nigeria-becoming-dumping-ground/

'Intra-Africa agricultural trade – an overview' Willemien Viljoen (2018) https://www.tralac.org/documents/events/tralac/1845-willemien-viljoen-intra-africa-agricultural-trade-tralac-poster-presentation-2018/file.html

African Trade Statistics (2020) https://au.int/sites/default/files/documents/39607-doc-af-trade_yearbook2020_v4_comp-compresse_1.pdf

Africa Agriculture Trade Monitor (2020) https://www.resakss.org/sites/default/files/AATM-Report-2020-final-1009.pdf

AfCFTA: Concern over dumping mounts as trade deficit widens (2021) https://www.vanguardngr.com/2021/04/afcfta-concern-over-dumping-mounts-as-trade-deficit-widens/

Farai Shaw Mataishe 'Can Zimbabwe take advantage of Africa's new free trade zone?' https://www.theafricareport.com/55974/can-zimbabwe-take-advantage-of-africas-new-free-trade-zone/

AfCFTA promises more opportunities for Zimbabwean businesses beyond its sub region – trade export https://www.uneca.org/stories/afcfta-promises-more-opportunities-zimbabwean-businesses-beyond-its-sub-region-trade-expert

Zimbabwe expect positive transformation of its economic landscape with full AfCFTA implementation https://www.un.org/africarenewal/news/zimbabwe-expects-positive-transformation-its-economic-landscape-full-afcfta-implementation

Are Trade Remedies important for achieving the AfCFTA Goals? https://www.tralac.org/blog/article/12764-are-trade-remedies-important-for-achieving-the-afcfta-goals.html

'Trade costs of non-tariff measures now more than double that of tariffs' (2019) https://unctad.org/news/trade-costs-non-tariff-measures-now-more-double-tariffs

Key Pillars of Africa Regional Integration https://archive.uneca.org/oria/pages/key-pillars-africa%E2%80%99s-regional-integration

Perspectives on Africa's trade and integration https://www.tralac.org/blog/article/15090-afcfta-phase-ii-and-iii-negotiations-update.html

Tralac The African Continental Free Trade Area https://www.tralac.org/documents/resources/infographics/2605-status-of-afcfta-ratification/file.html

The Benefits of The AFCFTA for the African Economy https://borgenproject.org/the-afcfta/

Reports

WTO 'Report on Compliance by Major Trading Partners with Trade Agreements' (2017)

Jones, V. C., & Library of Congress. (2010). *Trade Remedies and the WTO Rules Negotiations*.

WTO Report: Anti-dumping Initiations by Reporting Member 01/01/1995 – 31/12/2020

Report No. 251 Sunset review of the anti-dumping duties on picks, shovels and spades, rakes and forks originating in or imported from the People's Republic of China: Final determination

Report: The African Continental Free Trade Area – will it promote fair trade, economic development decent work?