

Judicial Review of Trade Remedies in Egypt

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Since 1997, Egypt has become one of the biggest users of trade remedies in Africa, which raises the possibility of judicial review. Despite the establishment of specialized Economics Courts, the Administrative Court, Cairo division – commonly known as State Council – has exclusive jurisdiction in trade remedies matters. All judicial reviews must be lodged with the competent court by a lawyer whose name appears on the roll list of the lawyers admitted to Administrative Court within sixty days of the publication of the investigating authority's final decision. The state Commissioner, which mostly consists of magistrates and retired judges, will assess the merits of the review and prepare a case for the judges. Judges do not have access to confidential information submitted in investigations and typically only consider administrative procedures to the exclusion of substantive issues. The Courts tend to rely on the use of outside experts, which cause significant delays in finalization of reviews. The Administrative Court may either find in favour of the applicant or the respondent and to date has never referred a decision back for reconsideration by the investigating authority or the Minister. Any Administrative Court decision may be appealed to the Supreme Administrative Court as the apex of the Administrative Courts may be appealed within sixty days from the date the Administrative Court hands down its decision. If appealed, the whole judicial review process could take as long as five years.

Keywords: Judicial review, trade remedies, Egypt, Egyptian Trade Remedies Sector, State Council Law, Code of Civil Procedure Law.

I INTRODUCTION

Although Egypt has initiated 118 anti-dumping investigations and imposed eighty anti-dumping measures,¹ and has initiated fifteen safeguard investigations resulting in the imposition of eight safeguard measures,² very little has been written about the Egyptian trade remedy system.³ Egypt adopted its first trade remedies legislation in 1963,⁴ but did not initiate its first anti-dumping investigation until 1997⁵ or its first safeguard

investigation until 1998.⁶ Egypt has yet to initiate a countervailing investigation. This lack of investigations prior to 1997, despite becoming a signatory of the Tokyo Round Anti-Dumping Code,⁷ resulted from Egypt's application of central planning and import restrictions.⁸

In 1998 Egypt enacted the Protection of the National Economy from Injurious Effects of Unfair Practices in International Trade Law, 161 of 1998 (International Trade Law) along with its Executive Regulations.⁹ The Executive Regulations cover procedural and substantive

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¹ https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

² https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm.

³ RAA Raslan, *Antidumping: A Developing Country Perspective* 59–98 (WoltersKluwer 2009) and Nathan Associates, *Assessment of Egypt's Compliance With the WTO's Anti-Dumping Agreement* (USAID 2003) essentially provide the only discussions on the Egyptian anti-dumping system, while a number of economic analyses on the impact of anti-dumping in Egypt have been undertaken – see e.g., Hatem Ghanem, *Assessment of the Impact of the Anti-dumping Measures in Egypt* (MBA Dissertation, ESLSA University 2010); Mohamed El Far & Mahmoud Momtaz, *On the Road of Establishing Criteria for Assessing the Anti-competitive Use of Trade Remedies in Egypt* SSRN Working Paper (2020), <https://ssrn.com/abstract=3516929>; Nada Hazem & Chahir Zaki, *Mind the Measure: On the Effect of Anti-Dumping Investigations in Egypt*, EMNES Working Paper No 31 (2020) https://ideas.repec.org/a/spr/jouafr/v7y2020i1d10.2991_jat.k.201217.001.html.

⁴ Decree of the President of the United Arab Republic Law No. 66 of the Year 1963.

⁵ https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

⁶ https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm.

⁷ Presidential Decree No. 181 for the year 1983.

⁸ Raslan, *supra* n. 3, at 59.

⁹ Egypt Ministerial Decree No. 549 of 1998 Law No.161/1998 Concerning the Protection of the National Economy from Injurious Effects of Unfair Practices in International Trade, issued on 24 Oct. 1998. Available at <https://www.gafi.gov.eg/English/StartaBusiness/Laws-and-Regulations/PublishingImages/Pages/TradeLaws/11-Dumping%20Law%20No.%20161%20of%201998%20with%20Its%20Executive%20Regulations.pdf>.

issues related to the initiation of investigations,¹⁰ investigations,¹¹ definitive measures,¹² undertakings,¹³ retroactivity,¹⁴ reviews of definitive anti-dumping duties,¹⁵ determination of normal value,¹⁶ export price,¹⁷ the margin of dumping,¹⁸ material injury,¹⁹ and the imposition of preliminary²⁰ and definitive measures.²¹ On the other hand, the International Trade Law deals mostly with the powers and functions of the relevant ministry,²² and treatment of confidential information supplied by the interested parties during the period of investigation.²³

The Trade Remedies Sector (Sector) is the responsible authority to undertake trade remedies investigations.²⁴ The Sector conducts investigations on anti-dumping, countervailing and safeguards in line with the International Trade Law and its Executive Regulations, read with the relevant WTO Agreements. Any decision related to the initiation of the investigation and the imposition of preliminary or definitive trade remedy measures or to terminate any measures is the prerogative of the Minister of Investment and Foreign Trade (Minister),²⁵ under which the Sector resides. The Minister is also responsible for setting out procedures, methods, and decision-making processes necessary to protect the Egyptian economy against the injurious effects of international trade.²⁶ Once the Sector concluded its investigation it must forward its recommendation to the Advisory Committee for consideration.²⁷ The Advisory Committee will then make a recommendations to the Minister for final decision.²⁸ The Minister's decision to accept or reject Advisory Committee's recommendation is

published in the Egyptian Gazette.²⁹ If the Minister approves the Advisory Committee's recommendation to impose anti-dumping, he will instruct the Egyptian Customs Authority to implement the trade remedy measure according to the relevant Ministerial Resolution as published in the Egyptian Gazette.³⁰

In light of the foregoing considerations, the Egyptian judicial review on anti-dumping determination will be discussed as follows: the competent court to hear a judicial review on anti-dumping determination; eligible parties to lodge judicial review; judicial review due process; appeal procedures; specialized court; assessment of the Administrative Court's decision on anti-dumping reviews, refund procedures; and conclusion.

2 COMPETENT COURT TO HEAR JUDICIAL REVIEWS ON ANTI-DUMPING DETERMINATION

The Anti-Dumping Agreement³¹ and the Agreement on Subsidies and Countervailing Measures³² require WTO Members to maintain judicial, arbitral or administrative tribunals or procedures for the prompt review of final trade remedy decisions. Neither of the agreements specify a particular national forum as the appropriate tribunal to adjudicate reviews relate to anti-dumping disputes.

At present, Egypt does not have a specialized court that deals with judicial reviews of trade remedies. This is despite legislation in 2008 establishing an Economic Court to exclusively hear disputes on investment and

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¹⁰ Article 1 of Executive Regulations.

¹¹ Article 2 of Executive Regulations.

¹² Article 4 of Executive Regulations.

¹³ Article 5 of Executive Regulations.

¹⁴ Article 6 of Executive Regulations.

¹⁵ Article 7 of Executive Regulations.

¹⁶ Articles 32 & 34 of Executive Regulations.

¹⁷ Articles 32 & 33 of Executive Regulations.

¹⁸ Articles 36 & 37 of Executive Regulations.

¹⁹ Article 39 of Executive Regulations.

²⁰ Article 44 of Executive Regulations.

²¹ Article 45 of Executive Regulations.

²² Articles 2 1, 2 & 3 of the International Trade Law.

²³ Article 6 of the International Trade Law.

²⁴ Articles 7 & 10 of the International Trade Law.

²⁵ Article 10 of Executive Regulations.

²⁶ Article 1 of International Trade Law.

²⁷ Article 11 of Executive Regulations.

²⁸ Article 17 of Executive Regulations.

²⁹ Article 46 of Executive Regulations.

³⁰ See Art. 5 of Custom Law No. 66 of 1963.

³¹ Article. 13 of Anti-Dumping Agreement.

³² Article 23 of the Agreement on Subsidies and Countervailing Measures. The Agreement on Safeguards does not contain a similar provision. See Müslüm Yılmaz, *Introduction, in Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 7 and 8 (Yılmaz ed. 2013).

trade-related matters in an expedited manner.³³ The Economic Court has jurisdiction on the below specific law on related commercial, investment and international trade subject-matters, including on ‘Crimes contained in the Act of Protection the national economy from the effects of harmful practices in international trade’.³⁴

The reference in the Economic Court Law to the ‘protection of national economy from harmful practices in international trade’ corresponds to the full title of the main Egyptian legislation on trade remedies – ‘Law No. 161 of the year 1998 concerning the protection of national economy from the effects injurious practices in International trade’.

Although there appears to be overlapping jurisdiction between the Administrative Court and the Economic Court with respect to judicial reviews on trade remedies, the Economic Court’s jurisdiction is limited in two ways: it only relates to ‘crimes’ under the International Trade Law and its jurisdiction is restricted to disputes of a value not exceeding 5,000,000 EGPs (approximately USD 99,000), which means that trade remedy reviews would fall outside its jurisdiction.³⁵ Another jurisdictional limitation of the Economic Court arises from the fact that it is not permitted to preside over related economic disputes ‘arising from the application of any other law’.³⁶

Accordingly, although in theory there is a specialized court that can review trade remedy disputes, in practice the Administrative Court has exclusive jurisdiction.

Accordingly, in Egypt the Administrative Courts have exclusive jurisdiction to hear all judicial reviews on trade remedies.³⁷ The Administrative Court is

commonly known as the State Council.³⁸ The Egyptian Constitution provides that:

*The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts to which the state or any public entity is a party. Other competencies are to be determined by law.*³⁹

The State Council Law⁴⁰ is the main source of law for Administrative Court proceedings. However, in cases where the State Council Law does not contain the relevant provisions, the provisions of the Code of Civil Procedure Law⁴¹ may provide guidance.⁴²

With regards to judicial review of trade remedies, interested parties must approach the Administrative Court as court of first instance.⁴³ Gramon⁴⁴ indicates that all administrative decisions, other than those that are made by the state as sovereign decision-making authority, are subject to review in the Court of Administrative Justice (Administrative Court).⁴⁵ When it comes to territorial jurisdiction, Administrative Court in Cairo is designated to hear all judicial review on trade remedies⁴⁶ since that is where the Trade Remedies Sector is situated.

A review may be lodged on the grounds of a violation of the law or the proper procedures, a decision handed down by an incompetent authority, decisions based on an

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³³ Economic Court Law 120 of 2008.

³⁴ Article 6 of Economic Court Law.

³⁵ See Administrative Court – Case No.8962 of the fourth Judicial year 2002, Fourth Circuit, Session of 5 Jan. 2002; Supreme Administrative Court – Appeal No.3216 of the forty-eighth judicial year 2008, First Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Jan. 2008; Supreme Administrative Court – Appeal No.4786 of the forty-eighth judicial year 2009, First Circuit, Session of 14 May 2009; Administrative Court of Cairo – Economic and Investment Disputes Department Supreme Administrative Court – Appeal No.37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015.

³⁶ Fathi Waly, *Civil Procedure in Egypt* 63 (2d ed. Kluwer Law International BV, Netherlands 2020).

³⁷ Article 4 of Executive Regulations.

³⁸ See Art. 3 of State Council Law, which provides that the State Council consists of four courts;

- (1) Disciplinary courts;
- (2) Administrative courts;
- (3) Courts of Administrative Justice;
- (4) The Supreme Administrative Court; and
- (5) State Commissioners’ Authority.

³⁹ Article 190 of the Constitution of the Arab Republic of Egypt of 2014 (Constitution, 2014). See also Art. 25 of the Supreme Constitutional Court’s Law 48 of 1979 which bestows exclusive jurisdiction on the Supreme Constitutional Court to determine the constitutionality of laws and regulations.

⁴⁰ State Council Law 47 of 1947.

⁴¹ Code of Civil Procedure Law 36 of 1968.

⁴² Article 3 of State Council Law. See also Ahmed el-Sawi, *Procedural Law (Civil Procedure, Criminal Procedure, Administrative Procedure)*, in *Egypt and Its Laws* 181 (Nathalie Bernard-Maugiron & Baudouin Dupret eds, Arab and Islamic Law Series 2002).

⁴³ Article 4 of International Trade Law.

⁴⁴ H. S. Gramon, *International Trade Remedies in Purgatory: Anti-Trust, Anti-dumping and the Pitfalls of Policy Choices* (LLM thesis, the American University in Cairo) (2007), available at https://fount.aucegypt.edu/retro_etds/2041 (accessed 19 Feb. 2025).

⁴⁵ *Ibid.*, at 41.

⁴⁶ See State Council Decision No. 224 of 2002.

error of law, decisions based on an abuse of power, or on the basis that the decision negatively impacts persons not subject to the decision.⁴⁷

The Administrative Court only has the powers to either find in favour of the applicant or the respondent and cannot refer the decision back for reconsideration by the Trade Remedies Sector, the Advisory Council or the Minister. Where a matter touches on constitutional issues, the Administrative Courts will not have jurisdiction,⁴⁸ as only the Supreme Constitutional Court has jurisdiction in such matters.⁴⁹

All Administrative Court decisions must be reported and published in the State Council's website and the Official Gazette.⁵⁰ This notwithstanding, very few decisions on anti-dumping determinations are made available to the public, which presents a hurdle to give an overall assessment of the Egyptian judicial system on anti-dumping determination.

Any decision of the Administrative Court may be appealed to the Supreme Administrative Court as the apex of the Administrative Courts.⁵¹

3 ELIGIBLE PARTIES TO LODGE JUDICIAL REVIEW

Any interested party to a trade remedy determination may approach the Administrative Court for relief. According to the Executive Regulations, interested parties include domestic producers, importers, exporters, governments of exporting countries, the Sector, consumer associations, government agencies responsible for consumer protection, and any other party having a substantial interest in the decision.⁵² To date, most of the judiciary reviews pertaining to anti-dumping determination were filed by importers and exporters.⁵³

However, in case where the Sector refuses to initiate an anti-dumping investigation or termination duties in place, the affected domestic industry or association may file a judicial review against Sector's determination.⁵⁴ In theory, both preliminary and definitive trade remedy decisions are subject to judicial review. In practice, however, only the Minister's decisions as published in the Egyptian Gazette may be taken for on review and no interdict may be obtained preventing the Sector or the Advisory Committee from submitting its recommendation to the Minister.

4 JUDICIAL REVIEW DUE PROCESS

Any interested party not satisfied with the Minister's decision to impose trade remedies measures or to terminate an investigation may approach the Administrative Court within sixty days from the date such decision was published in the Official Gazette.⁵⁵ A review application should be filed with the competent court by a lawyer admitted to Administrative Court.⁵⁶ An application for review has no effect on the enforcement of the Minister's decision to implement or terminate anti-dumping duties. However, the Administrative Court may suspend the implementation of the Minister's decision provided that there is prima facie evidence showing that the applicant would suffer irreparable harm.⁵⁷

One problem that hinders judicial review is the court's lack of access to confidential information, as the Sector may not submit confidential information to the court unless the relevant party agrees thereto.⁵⁸ Even where the court does obtain access to the confidential information, there is no provision for such information to be made available to an expert appointed to assist the court.⁵⁹

Once a judicial review has been properly lodged, the clerk of the court must file a report within twenty-four

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⁴⁷ *Ibid.*, at 42.

⁴⁸ Article 10 of State Council Law.

⁴⁹ Article 192 of the Constitution 2014 states that the Supreme Constitutional Court (SCC) 'is exclusively competent to decide on the constitutionality of laws and regulations, interpret legislative texts, and adjudicate in disputes pertaining to the affairs of its members, in disputes between judicial bodies and entities that have judicial mandate, in disputes pertaining to the implementation of two final contradictory rulings, one of which is issued by any judicial body or an agency with judicial mandate and the other issued by another body, and in disputes pertaining to the implementation of its rulings and decisions'.

⁵⁰ Article 8 of State Council Law.

⁵¹ Article 22 of State Council Law.

⁵² Article 7 of Executive Regulations. In theory this could also include upstream providers of raw materials and the downstream industry.

⁵³ See decided court's decisions available to public; Administrative Court – Case No.8962 of the fourth Judicial year 2002, Fourth Circuit, Session of 5 Jan. 2002; Supreme Administrative Court – Appeal No.3216 of the forty-eighth judicial year 2008, First Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Jan. 2008; Supreme Administrative Court – Appeal No.37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015; Supreme Administrative Court – Appeal No.89002 of the sixty-fifth Judicial year 2019. See also Ghanem, *supra* n. 3, Exhibit 2(a), which indicates that all fifty-three judicial reviews brought against anti-dumping decisions between 1998 and 2008 were lodged by importers.

⁵⁴ To date, none of the Sector's determination with regards to its decision to decline initiation or to terminate an investigation without the adoption of measures has been challenged in court.

⁵⁵ Article 19 of State Council Law.

⁵⁶ Article 23 of State Council Law.

⁵⁷ See 245 of Code of Civil Procedure. Note that the court would unlikely to suspend Minister's decision imposing anti-dumping duties because the importer concern would be refunded for any duties paid in excess. See below discussion on refund procedure.

⁵⁸ See <https://ccica.org/wp-content/uploads/2022/10/Rights-Oblig.s-of-Egyp.-Investigation.pdf>, at 12 (accessed 19 Feb. 2025).

⁵⁹ *Ibid.*

hours with the State Commissioner.⁶⁰ The State Commissioner is largely composed of Magistrates and retired judges with administrative law knowledge and expertise.⁶¹ The State Commissioner's role is to assess the merit of the review and prepare a case for the judges.⁶² In preparation for the case, the State Commissioner will then contact the Sector to obtain necessary documents related to the trade remedy measures in question.⁶³ In some cases, the State Commissioner may request clarity or additional information from the Sector and the interested parties concerned.⁶⁴ Upon receiving all necessary documents concerning the dispute, the State Commissioner will provide a legal opinion on the dispute.⁶⁵ The State Commissioner's report is accessible to interested parties upon paying the prescribed fee.⁶⁶ Its report should be submitted to the President of Administrative Court within seven days from the date of submission, but in practice it may take longer for the Commissioners' Authority to present its report, depending on the complexity of the dispute.⁶⁷ The Administrative Court may either uphold the applicant's request to terminate or suspend the Minister's decision or uphold Minister's decision.⁶⁸ To date, the Administrative Court has never referred a matter back to the Sector or the Minister for further investigation, which is an area of concern, as the fundamentals underlying the Minister's decision are not addressed.⁶⁹ In other jurisdictions the courts often remand a matter to the investigating authority for further investigation, with or without guidelines or instructions.⁷⁰

5 APPEAL PROCEDURE

Any party may appeal a decision of the Administrative Court to the Supreme Administrative Court within sixty days from the date on which the contested decision was issued.⁷¹ The Supreme Administrative Court has exclusive jurisdiction to hear appeals against decisions issued by the Administrative Court based on an alleged lack of jurisdiction, violations of the relevant legislation, or errors in the application or interpretation of the law or facts.⁷² An appeal may be lodged any interested party, including the Sector and the Minister.⁷³ Where the Minister appeals against a decision, such appeal may be supported by the affected domestic industry.⁷⁴ For instance, in an appeal against an Administrative Court decision that suspended the Minister's decision to impose provisional anti-dumping measures on billet raw material imported from China, the appeal was supported by Egyptian producers whose collective output represented a major proportion of the total iron and steel production in Egypt.⁷⁵ An appeal should include inter alia the appealed decision, its date, the party's grounds of appeal (including issues of law and facts), the Sector's investigation report, as well as the State Commissioner's report.⁷⁶

Once the notice of appeal is properly received by the clerk of the court it is forwarded to the Appeal Review Department. The Appeal Review Department will assess the merits of an appeal before it is heard by the Supreme Administrative Court. If the Appeal Review Department deems it necessary, it may request the opposing parties,

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⁶⁰ Article 26 of State Council Law.

⁶¹ Article 19 of State Council Law Mahmoud Elsaman has proposed that professionals such as lawyers and other administrative law experts should form part of the State Commissioners Authority. See E. Mahmoud, *Introducing Mandatory Mediation to Egypt's Administrative Courts: Two Feasible Approaches*, 2(1) Courts & Just. L. J 8 (2020), doi: 10.1142/9789811220531_0009.

⁶² In some instance, the Commissioners may propose a settlement offer parties concerns in line with Art. 28 of State Council Law.

⁶³ Article 27 of State Council Law.

⁶⁴ Article 27 of State Council Law.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Article 25 of State Council Law.

⁶⁸ Article 21 of State Council Law *see also* reported cases Supreme Administrative Court – Appeal No.37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015; Supreme Administrative Court – Appeal No.4786 of the forty-eighth judicial year 2009, First Circuit, Session of 14 May 2009, Administrative Court of Cairo – Economic and Investment Disputes Department; Administrative Court – Case No.8962 of the fourth Judicial year 2002, Fourth Circuit, Session of 5 Jan. 2002; Supreme Administrative Court – Appeal No.3216 of the forty-eighth judicial year 2008, First Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Jan. 2008.

⁶⁹ <https://crica.org/wp-content/uploads/2022/10/Rights-Oblig.s-of-Egyp.-Investigation.pdf>, at 14, has also called for the ability of the Administrative Court to remand trade remedy decisions to the Sector for re-investigation.

⁷⁰ In South Africa, the High Court in *Degussa Africa (Pty) Ltd v. ITAC (Unreported Case 22264/2007 (T)*, referred the matter back to the International Trade Administration Commission for further investigation. *See also* Gustav Brink, *South Africa Judicial Review of Trade Remedies in South Africa*, 20(3) Global Trade & Cust. J. 222 (2025), doi: 10.54648/gtcj2025027; Gustavo A. Uruchurtu Chavarín & Cesar Alejandro Hernández Corona, *Mexico Judicial Review of Trade Remedies Determinations*, 20(3) Global Trade & Cust. J. 201 (2025), doi: 10.54648/gtcj2025019; James P. Durling *Judicial Review of Trade Remedy Decisions in the United States*, 20(3) Global Trade & Cust. J. 238 (2025), doi: 10.54648/gtcj2025029.

⁷¹ Article 14 of State Council Law.

⁷² Article 10 of State Council Law.

⁷³ Article 13 of State Council Law.

⁷⁴ Supreme Administrative Court – Appeal No. 89002 of the sixty-fifth Judicial year 2019.

⁷⁵ *See* Supreme Administrative Court – Appeal No. 95060 of the sixty-fifth Judicial year 2019; Supreme Administrative Court – Appeal No. 91134 of the sixty-fifth Judicial year 2019.

⁷⁶ *See* Art. 230 of Code of Civil Procedure.

including the head of the State Commissioner, to make oral representations.⁷⁷ The Appeal Review Department may decide to refer the appeal to the Supreme Administrative Court based on the State Commissioner's report or oral presentation.⁷⁸ However, the Appeal Review Department may dismiss an appeal application if it finds that there is no prospect of success based on the evidence before it.⁷⁹ In practice, the Appeal Review Department often accepts an application on form but rejects it in substance.⁸⁰

The matter before the Supreme Administrative Court is presided over by five judges.⁸¹ The court's decision is issued after hearing arguments from opposing parties and taking into consideration an expert report in complex disputes such as substantive issues in anti-dumping investigations. Usually, all disputes on trade remedies are decided in the Economic and Investment Disputes Department of the Supreme Administrative Court.

6 ASSESSMENT OF THE COURT'S DECISION ON ANTI-DUMPING DETERMINATION

The assessment of the Administrative Court and Supreme Administrative Court's decision on anti-dumping determination is limited to the availability of those decisions to the public. As indicated above, very few court decisions are reported. Based on available decisions, the issues discussed below have been identified as challenges for effective judicial review of trade remedies determinations.

6.1 Court's Decision Lacks Substantive Issues

Most of the Administrative Court's and Supreme Administrative Court's decisions on trade remedies available in the public domain lack analysis on the substantive issues.⁸² The substantive issues deal with the most complex part of the anti-dumping investigations, such as the determination of normal value, the export price, making appropriate adjustments for differences that affect price

comparability, the margin of dumping calculations, the assessment of material injury to the domestic industry, and the link between the dumping and injury, including the non-attribution analysis. Since anti-dumping investigations entail procedural and substantive issues and it is highly unlikely that substantive issues are never challenged and court decisions should typically reflect on both procedural and substantive issues. It is submitted that the lack of reference to substantive issues in the courts' decisions suggest a lack of relevant skills and knowledge by the judges presiding over anti-dumping disputes.⁸³

6.2 Excessive Use of Experts

In deciding matters related to trade remedies, the Administrative Court often recruits experts to deal with the technical issues of the dispute. For instance, in an appeal against the Minister's decision to impose a definitive anti-dumping duty of 40% on hot-rolled galvanized steel from Russian Federation's exporters, the Supreme Administrative Court appointed an expert to investigate whether the domestic product constituted a like product to the imported products.⁸⁴ Based on the expert report, Supreme Administrative Court decided that the domestic product was identical in all respects to the imported product and could therefore be regarded as a like product. Article 2.6 of the Anti-Dumping Agreement defines a like product as either an identical product or another product that, although not identical, has characteristics closely resembling those of the subject product. Considering that the products were identical, it raises questions as to why an expert was required to assist the court. Had there been technical differences between the products that could have affected its use in different applications, this might have been different.

Excessive recourse to experts in trade remedy reviews underlines the lack of requisite skills and knowledge by judges.⁸⁵ Although it is a standard practice for the court

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⁷⁷ Article 46 of State Council Law.

⁷⁸ Article 50 of State Council Law.

⁷⁹ Note that the petitioner may challenge such decision of the Appeal Review Department.

⁸⁰ See Supreme Administrative Court – Appeal No. 4786 of the forty-eighth judicial year 2009, First Circuit, Session of 14 May 2009, Administrative Court of Cairo – Economic and Investment Disputes Department; Supreme Administrative Court – Appeal No. 37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015; Supreme Administrative Court – Appeal No. 89002 of the sixty-fifth Judicial year 2019.

⁸¹ See Transitional justice program, *Egypt Court System 101*, Tahrir Institute for Middle East Policy (TIMEP) (2016), <https://timep.org/wp-content/uploads/2016/01/TJP-Court-System-101-1.pdf> (accessed 18 Feb. 2025).

⁸² See Supreme Administrative Court – Appeal No.89002 of the sixty-fifth Judicial year 2019; Administrative Court of Cairo – Economic and Investment Disputes Department Supreme Administrative Court – Appeal No.37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015; Administrative Court – Case No.8962 of the fourth Judicial year 2002, Fourth Circuit, Session of 5 Jan. 2002.

⁸³ Cairo Regional Centre for International Commercial Arbitration (CRCICA), *Rights and Obligations of Egyptian Investigations and Parties* 12–13, <https://cricca.org/wp-content/uploads/2022/10/Rights-Oblig.s-of-Egypt.-Investigation.pdf> (accessed 18 Feb. 2025).

⁸⁴ Supreme Administrative Court – Appeal No. 4786 of the forty-eighth judicial year 2009, First Circuit, Session of 14 May 2009, Administrative Court of Cairo – Economic and Investment Disputes Department.

⁸⁵ This over-reliance on experts makes it even more perplexing that court decisions seldom engage in substantive elements in anti-dumping reviews.

to request an expert to assist,⁸⁶ the expert's role should be limited to providing an opinion on technical issues rather than a de novo review of the matter. The courts should also not be bound by an expert's opinion.⁸⁷

On the other hand, one of the major criticisms expressed in other countries' judicial reviews of trade remedies is that judges do not understand the substantive issues before them.⁸⁸ In that sense, Egypt's appointment of experts to assist judges, if used appropriately, may be something that other countries could learn from.

6.3 Prolonged Judicial Process

In Egypt, before any review is accepted by the competent court it must first be referred to the State Commissioners. This referral process causes delays in finalizing the lawsuit. Usually, it takes at least two months for the State Commissioners to submit its report to the court.⁸⁹ Other delays include the referral of the dispute to experts to deal with the complex issues of anti-dumping investigations. A request for the appointment of an expert is facilitated by a clerk of the court who must clearly articulate the terms of reference and issues on which expert services are required. Upon acceptance of the request, the expert must be granted sufficient time depending on the complexity of the matter to prepare a comprehensive report, without being provided with the confidential information inherent to the original investigation. In some cases, experts must give an oral presentation to court and the report can be interrogated by the parties involved.⁹⁰ Consequently, the expert referral process can significantly add to the delays in finalizing the judicial review. This means that most judicial reviews in Egypt are not in line with the requirement of the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures which require that judicial reviews must be 'prompt'.⁹¹

7 REFUNDS PROCEDURE AND DAMAGES

The Executive Regulations permit importers to apply for a refund of provisional anti-dumping measures where the level of the provisional measure paid is higher than the level of the definitive duties.⁹² In that event, the differences between provisional and definitive duty paid shall be refunded to the importer concerned.

To claim refund, an importer is required to submit a refunds application to the Egyptian Customs Authority, including information related to bill of landing, customs clearance and proof of payment for the paid duties. Once the Customs Authority is satisfied regarding the veracity of the documents supplied, it will send the application to Minister of Finance to make the final decision.⁹³ Prior to making a final decision, the Minister of Finance will notify the Sector and the Ministry of Investment and Foreign Trade about the refund application. Normally, the refunds are reimbursed to the importer within ninety days of the date of the publication of the imposed measures in the Official Gazette.⁹⁴

No provision is made in Egyptian legislation for an importer to claim a refund if it can show that the duty levied was higher than the actual margin of dumping for the period of review.

The Administrative Court is yet to order that duties paid should be refunded with retrospective effect should it find that duties were incorrectly levied.

8 CONCLUSION

The Administrative Court is the competent court to adjudicate judicial reviews on trade remedies despite apparent overlapping jurisdiction with the Economic Court. To date, most judicial reviews related to trade remedies before the Administrative Court and the Supreme Administrative Court have been decided in

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⁸⁶ Waly, *supra* n. 36, at 86.

⁸⁷ This principle is provided in Art. 156 of Egyptian Law of Evidence No. 25 of 1968.

⁸⁸ Rabih A. Nasser & Luciana B. Costa, *Brazil: The Need for Enhanced Effectiveness*, in *Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 118 (Yilmaz ed. 2013) indicate that there is in Brazil there is 'scepticism regarding the willingness of the courts to examine the technical issues', presumably because of a lack of expertise. Luis Alberto Leon & María Antonieta Merino, *Peru: A Sophisticated but Underused System*, in *Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 171–172 (Yilmaz ed. 2013) indicate that 'judges do not have legal or technical expertise on trade remedies or possess the technical knowledge'. Müslüm Yılmaz, *Turkey: A Judicial Review System in Need of Change*, in *Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 219 (Yilmaz ed. 2013) bemoans judges' 'lack of technical expertise on trade remedies'. Jaemin Lee, *Korea: Increasing Attention & New Challenges*, in *Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 346 (Yilmaz ed. 2013) indicates that judges 'hearing cases on trade remedy determinations usually do not have expertise in trade disputes or disputes of international character'. Finally, Erry Bunjamin, *Indonesia: A System in Need of Restructuring*, in *Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members* 372 (Yilmaz ed. 2013) indicates that 'the judges sitting in these proceedings did not have in-depth knowledge that would have allowed them to conduct a more rigorous review'. See also <https://crica.org/wp-content/uploads/2022/10/Rights-Oblig.s-of-Egypt.-Investigation.pdf>, at 13, where it is indicated that in Egypt 'judges still do not have the requisite background and qualification to review these cases'.

⁸⁹ Supreme Administrative Court – Appeal No. 37258 of the sixty-sixth Judicial year 2015, Seventh Circuit, Administrative Court of Cairo – Economic and Investment Disputes Department, Session of 28 Feb. 2015.

⁹⁰ Waly, *supra* n. 36, at 85.

⁹¹ See Supreme Administrative Court, *supra* n. 89, where the dispute was only concluded after five years.

⁹² Article 52 of Executive Regulations.

⁹³ Article 36 of Egyptian Customs Law No. 207 of 2020, amending Customs Law No.68 of 1963.

⁹⁴ Articles 36 & 37 of Egyptian Customs Law No. 207 of 2020.

favour of the Sector's determinations, with the courts showing significant deference to the investigating authority. Despite the importance of substantive issues in trade remedies investigations, court verdicts deal strictly with administrative issues, underscoring judges' lack of understanding of the substance of investigations. Accordingly, it is proposed that, based on the skills set of its judges, the Economic Court should have exclusive jurisdiction in trade remedies judicial reviews, regardless the value of the dispute.⁹⁵

Judicial reviews take an inordinate amount of time, as the process is convoluted. Thus, it is proposed that the process should be streamlined significantly. This could be achieved through less frequent recourse to experts, the training of judges and reallocation of jurisdiction to the Economic Court, where judges have a better understanding of trade and economic issues.⁹⁶ The State Commissioner could also be circumvented, as their role essentially appears to be a duplication of the judges' evaluation of the matter.

Notes

⁹⁵ Tshepo Ramatabane, *Egyptian Anti-Dumping System: A Critical Analysis of Egyptian Anti-Dumping System* 117 (Unpublished LLD thesis, University of Pretoria 2025).

⁹⁶ *Ibid.*, at 112.