

The Rights and Obligations of Egyptian Investigation and the Parties

Dumping occurs if a country sells at a lower price in an export market than in its domestic market. If such dumping injures the domestic producers in the importing country, under certain circumstances the importing country authorities may impose anti-dumping duties to offset the effects of the dumping.

It goes back to the early twentieth century, when the German companies were conducting unfair price discrimination. The GATT rules established in 1947 contained the seed of Anti-Dumping (AD) in Art. VI of GATT. As time passed, rounds of negotiations were concluded to contribute to the current AD Agreement final form.

The ADA do provide for distinguished rights and obligations concluded in the Uruguay round for the investigating authorities and the parties to guarantee fair results.

The Egyptian Laws regulating Anti-Dumping

According to Egypt Presidential Decree No. 72/1995, concerning Egypt's approval to join the WTO and abide by the Agreements resulted of Uruguay Round Multilateral Negotiations.

In 1998 Egypt issued Law No. 161, regarding the protection of the national economy from the injurious effects of unfair trade practices in international trade. It delegated the authority to the Ministry of Trade and Industry to take decisions to protect the Egyptian Economy from injurious effects resulted from Dumping, Subsidy and Safeguard. The Ministry of Trade and Industry is the competent authority to implement this law, conduct studies to prove subsidy, dumping, safeguard, protect confidentiality of information and issue its executive regulations. Subsequently, Egypt conducted numerous anti-dumping and safeguard investigations.

The Executive Regulation No. 549/1998 of the law No. 161 is regulating the substantive and procedural rules of the trade remedies investigations.

I: The Statute which organize trade remedies provisions

- 1- According to the executive regulation No.549/1998, International Trade Policies Department under the Trade Agreement Sector is the investigating Authority conducting trade remedies investigations and issuing reports and findings.
- 2- The Advisory committee is the competent authority which studies the findings and reports prepared by the investigating authority. The Advisory committee raises its recommendations to the Minister of Trade and industry.
- 3- The Minister of Trade and Industry is the competent Minister who applies trade remedies provisions by ministerial decrees. He/she has the discretion to accept or reject the advisory committee recommendations.

II: The Obligations on the investigating authority:

- 1- The Head of Foreign Trade and Trade Agreements Sector and the Head of International Trade Policies Department are authorized by the Minister of Trade and Industry to request data and information required from the interested parties to conduct the trade remedies investigations and implement law 161.

In this regard, the investigation authority in the process of investigation to reach the determination of dumping is required to collect information to verify the allegation of dumping, injury and casual link.

- 2- Starting form the complaint, investigating authorities shall inform the applicant within seven working days whether

the application has been accepted or rejected. In case of acceptance, the authorities shall verify the accuracy and adequacy of evidence within 30 days. Consequently, prepare preliminary report to the Advisory Committee. In the basis of this report the advisory committee studies the findings of the investigating authority and raises its recommendation to the Minister.

The Minister has the discretion of accepting or rejecting the recommendation of the advisory committee. However, rejection of an application, initiation or termination of investigation, provisional or definitive measures or acceptance of price undertaking or any other measures shall be upon a decision by the Minister "Ministerial decree".

- 3- Upon initiation of investigation, the investigating authorities send questionnaire to parties (importer, exporters, exporters' producers, and domestic industry). The questionnaire include request on detailed information of the investigation period. The forms of questionnaires are different according to destined respondent. Also, the purpose for every questionnaire is different according to the respondent like for export questionnaire to calculate their dumping margin and to compare their prices charged by domestic producers.

Nevertheless, the parties shall be given 30 days for reply on questionnaire, but due flexibilities upon good cause is granted whenever extension is practical other wise resort to best available information.

- 4- The Investigating Authority shall prepare a detailed report including information concerning all notifications.

The investigation authorities have to publish notification of initiation, provisional and definitive notices

of the investigation in the official Gazette and the WTO, in addition to detailed reports of explanation of the determination and the methodologies, information and sources of information through process of investigation. These reports take three forms initiation, essential facts, and final report.

- 5- In the context of due process rights of the interested parties, the Investigating Authority shall disclose all non-confidential information to the interested parties and shall allow them to access to the public files upon request made by them.
- 6- The Investigating Authority shall protect the confidential information submitted by interested parties as it confidential upon good cause shown. Thus, confidential information may not be disclosed by the authorities without specific permission of the party concerned.

The AD protects confidential information and business information. Article 6-5 divides the obligation into two types. First, the information which is by nature confidential because its disclosure would be significant competitive advantage to a competitor or adverse effects on the person supplying the information. Second, information provided on a confidential basis. As the investigation authorities request parties to submit information on costs and pricing through the process of investigation.

However, the authorities shall require interested parties providing confidential information to submit non-confidential summary of information. In some case the parties may argue that summarization is not possible. In this context, the parties shall provide justification of the reasons why it is not possible. Accordingly, if the investigation authorities disagree, and on the other side,

the parties insist on confidentiality treatment, the authorities might disregard the information.

7- The Investigating Authority shall complete the investigation within 12 months from the date of initiation.

The competent Minister may extend this period, upon recommendation by the Advisory Committee referred to, for another period of no more than six months.

8- The Investigating Authority should inform the applicant, within seven working days from the date of receiving the application, whether the application has been accepted in principle.

9- The Investigating Authority shall notify the applicant of the reasons why the application was rejected within no more than seven days of the Ministerial determination.

10- The Investigating Authority shall notify the governments of the countries concerned with the applications already accepted before proceeding to initiate an investigation.

10-The Investigating Authority shall provide fair opportunities for all parties concerned to defend their interests during the period of investigation via access to public file, hold hearing, timely informed with the essential facts to submit written arguments, and respond to comments provided by parties on the reports.

III: The Obligations of the Concerned and other interested Parties:

Definitions:

“Concerned parties”: shall include the domestic industry (the applicant), those acting on behalf of the domestic industry, importers, exporters and governments of exporting countries.

“Other interested parties”: means industrial users of the product under investigation, consumer associations, government bodies responsible for consumer protection, government bodies responsible for making competition policies or any other foreign or domestic parties found to have an interest.

1- Submit Complaint

The investigation procedure starts with official submission of a written complaint of the domestic industry of the Egyptian Investigating Authority. The complaint shall include identity of the applicant, volume and value of domestic production of the like product, a description of the allegedly dumped imports, the names of the country, the identity of each known exporters, information on prices of the export price and prices in the country of origin (dumping) and illustrate the effects of imports on prices and the impact of the imports on the domestic industry.

The Investigating Authority shall require concerned or other interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence. Those parties may indicate that such information is not susceptible of summary. In this case a statement of the reasons why summarization is not possible must be provided.

The application shall be accepted only if it is lodged by or on behalf of the domestic industry, chamber of the industries

concerned, federation of industries, producers associations or the ministries supervising any of the production sectors.

2- Respond to Questionnaire

The investigation authorities shall send the same day of initiation of investigation the questionnaire to exporters, producers exporters, domestic industry, and importers. The questionnaire shall request information concerning the investigation period to dumping and injury. The concerned parties shall fully cooperate with the Investigating Authority by submitting their complete responses, sufficient information on the questionnaires required during the investigation in due time starting from 37 to guarantee the consideration of the Investigating authorities of this information in the final determination.

Furthermore, response to deficiency letters and subsequent correspondents is an obligation on the parties.

The lack or non- cooperation considers sufficient reason to the Investigating Authority to resort for the final determination on the available information.

In this regard, final determination is based on questionnaire responses, verification and analysis of information.

3- Accept of verification visit if requested

The parties shall accept verification to check the accuracy of information and cure further details on the information provided submitted in the questionnaire. This obligation established as a sequence of authorities obligation to satisfy themselves as to accuracy of the information supplied by interested parties. In other words, the investigating authorities shall check the information provided in the questionnaire. The

accuracy and tracking of information is always conducted on the verification.

According to Article 6-7 which states that the authorities may conduct verification provided that the companies accept the verification. Moreover, Annex I is regulating the procedures of the on spot verification.

4- Submit non-confidential summary of all the confidential information provided, as was noted earlier.

IV. Rights of the Parties

Article 6-2 of the ADA stipulates parties' rights to have full opportunity to defend their interests.

1. Comments on the reports issued by the investigating authorities.

In regular AD investigation, the authorities will first issue a provisional determination (essential facts report) followed by final determination. In Egypt case, the provisional determination mirrors the final one. In this respect, Art 6-9 only requires the authorities to inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, before a final determination is made and in sufficient time for the parties to defend their interest.

The disclosure of the essential facts report to give the parties ample time to comment on the findings concluded by the investigation authorities is accompanied by the investigating authorities' obligation to respond to arguments submitted by the parties individually.

2. Access to public file.

Due process shall be given promptly to other interested parties subject to the investigation to access public file upon request. Notwithstanding, the requirement to protect confidential information (which can not be excuse for denial access), evidence presented in writing by one interested parties shall be made available to other parties. In this regard, the investigating authorities shall maintain non-confidential case file for interested parties to access. In other words, the interested parties participating in the investigation shall have timely opportunities to access information relevant to the case provided that this information is not confidential.

The interested parties right to access information related to presentation of the case, non confidential, and used by the authorities.

3. Hold hearing.

The investigating authorities provide opportunities for all interested parties to meet the other parties which have counter interest to submit arguments, bearing in mind the preservation of confidentiality. However, parties are free to attend the meeting, in other words their absence would not jeopardized their situation in the case, and to submit their arguments orally. Therefore, the investigating authorities shall give full opportunity for the parties to defend their interests through arguing other party claims.

There is one condition in order that the investigating authorities take the oral presentation of arguments by parties is to draft them in writing to make them accessible to other parties.

4. Judicial review.

According to Article 13 Members who adopted AD legislation must maintain judicial tribunal to review administrative final and review determinations. In the following

part of the part is illustration of Egyptian Experience concerning judicial review.

Egyptian Experience Concerning Judicial Review

Since 1998 Egyptian Administrative Courts have reviewed the legality of trade remedy determinations in 44 cases, 19 were settled in the court whether due to suspension, abandon or the court reached a decision. Recent trends indicate that challenges to trade remedies investigations are likely to rise in the future affected parties are likely to challenge. While judicial reviews of trade remedy determinations will continue to be conducted within the framework of Egyptian Law, Egyptian courts should draw lessons from the practice of other WTO Members which have extensive experience in reviewing the legality of trade remedy determinations. Indeed, the particular nature of trade remedy determinations warrants a specific approach of the judicial review of these measures.

Article 13 of the Anti-Dumping Agreement provides that every WTO member shall establish judicial courts for a rapid review of the administrative procedures related to the imposition of duties. These courts and procedures are supposed to be independent from the investigating authority imposing such duties (Article 23 of the Subsidy Agreement includes a similar provision). Article 4 of Law No. 161 of 1998 and Article 95 of the Executive Regulations affirm that the Administrative court is the competent court before which disputes challenging trade remedy measures should be raised.

The judicial bodies involved in the review procedures in accordance with the Egyptian Legislation are as follows:

1. Dispute Settlement Committees:

They are administrative committees with judicial competence that were established by virtue of law No. 7 for the year 2000 to reconcile among the dispute parties and the Administrative bodies, and they are headed by one of the judicial bodies members. Representatives from the Administrative and interested (injured) parties are included in this committee. In this regard, Article 11 from the above-mentioned law which clarifies that the court shall not accept the case regarding the disputes subject to this law before filling mediation complaint to the concerned committee and exceeding the time limits to issue recommendation, or the date to review it without being accepted.

The interested party must bring the case before the court otherwise the case will not be accepted. Also, the case brought by the interested party should include an immediate request for terminating the application of the duties. The recommendations of these committees are considered binding upon the approval of the Minister and approval of the interested party. However, in case of objection, the matter resorts to the court.

2. The Administrative Court:

The Administrative court is competent by virtue of Article 4 of Law No. 161 of 1998 to address challenges to Ministerial Decrees regarding the imposition of Anti-Dumping, Subsidy and Safeguard duties. Seeking to unify the judicial and legal principles regarding these disputes, State Council Decision No. 244 of 2002 was issued to establish a competent circuit [Rania, did you mean "circuit"?] in the Judicial Administrative Court in Cairo to be the only competent body to address these disputes.

3. The Role of the Administrative Court:

The case is raised before the court within 60 days from the date of the Dispute Settlement Committee decision. To avoid the slowness of the committee procedures, the legislator decided that the interested party has the right to bring the matter before

the court even if a decision is not issued within 60 days from the date of presenting the request. The Administrative Court examines the accuracy of the investigation and whether the determinations, time limits and procedures comply with the trade remedies agreements.

4. The Role of the Supreme Administrative Court:

Decisions issued by the Administrative Court are challenged before the Supreme Administrative Court within a period of 60 days from the date of issuing the Administrative Court decision. The Supreme Court is a right granted by the legislator to appeal the decisions of the Administrative Judicial Court to ensure the compliance of the decision with the international Agreements and domestic laws.

The Obstacles Facing the Legal System in Egypt

Confidential material and information:

Article 6.5 of the Anti-dumping Agreement provides that confidential information shall not be disclosed without specific permission of the party submitting it. The investigating authority finds itself in a serious problem when the Court request such information to be reviewed especially when the party submitting this information refuses to disclose it to the Court. The investigating authority faced this situation in the past when the Court requested the investigating authority to provide a feasibility study. This study was submitted by the interested party in the case, but the company refused to provide it to the court. The investigating authority can not disclose this information because it does not have permission from the party that submitted this information. Should the authority have disclosed this information, it would have been considered a violation of the Anti-dumping Agreement and would have

affected the cooperation and trust between the investigating authority and interested parties, and it would have discouraged interested parties in the investigation to submit confidential information again. On the other hand, the authority would have faced a major problem in providing the information to the court as it would have violated the confidentiality obligation.

Even if strict limitations are put on information disclosed to the Court, the latter would still face problems of confidentiality as the Court often relies on affiliated experts for specialized economic or accounting issues (and thus would have to disclose the information to them).

2. The Administrative Court assigns a special circuit to review investment and trade remedy cases. However, judges still do not have the requisite background and qualifications to review these cases. Therefore, the circuit, relying on affiliated experts, may intervene in the technical aspects of the case or even re-conduct the investigation. In these cases, the circuit carries out new determination and extends the limit of judicial review from judicial review to trade remedies determinations. Thus, the extent of those reviews should be limited to the practical application of judicial review.

3. The circuit in its assessment of the fact of the matter lacks a clear scope. As a result, reaching a decision takes a long time and extends the circuit's mandate in these cases. It has to be clear that the circuit's role is to assess the procedural side and determine whether the competent authority's establishment of the fact was proper and whether its evaluation of those facts was unbiased and objective.

The Nature of the Judgment in the Administrative Court:

The nature of the judgment in Egyptian Administrative Courts is to cancel the administrative decisions in cases where the Court finds any violation of the law or regulation related to the

decision. The nature of Trade Remedies cases is different and should be applied differently. The judgment in such cases should not cancel the decision. The Court should remand the matter to the investigation authority for disposition consistent with the final disposition of the court.

Conclusion

Effective participation in trade remedies and other WTO rules would bring case whether before the national courts or dispute settlement body. These topics require a very particular knowledge. Thus, it is important to build the needed capacity to face this challenge on the national and international level. National law firms shall meet these requirements in international trade field through exposure, transfer experience and changing the prospective of the Egyptian lawyers to participate more in WTO cases.