



Free Trade Bulletin

No. 62 • October 19, 2015

Antidumping Fowls Out: U.S.–South Africa Chicken Dispute Highlights the Need for Global Reform

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Introduction

The United States and South Africa recently resolved a long-standing dispute over trade in chicken. Fifteen years ago, South African authorities, in response to domestic industry claims that American poultry farmers were “dumping” chicken meat in South Africa by selling at unfairly low prices, imposed antidumping tariffs on chicken from the United States. These duties were so high that American producers were locked out of the market entirely. The U.S. government has long claimed that those duties were improperly calculated.

An agreement reached in June 2015 has now settled the dispute by establishing an import quota that enables U.S. producers to sell a set amount of chicken in South Africa without paying the antidumping duties. This sort of managed trade may be better than no trade, but the market is sure to remain politicized and inadequately competitive.

The dispute aptly demonstrates the need for new international rules to rein in abusive antidumping practices. South African authorities relied on an illogical, result-oriented method for determining whether U.S. producers were “dumping” chicken. Nevertheless, the U.S. government continues to resist the kinds of reform proposals that would have prevented these duties from being imposed in the first place. U.S. exporters should be pressing Washington to join efforts to reform antidumping rules at the World Trade Organization.

Antidumping Abuse

Many countries have antidumping laws that enable their domestic industries to petition the government to impose special duties that will ostensibly remedy the effects of “unfair trade.” Antidumping duties are imposed if imports are being sold at prices below “normal value” and causing material injury to the domestic industry. Typically, normal

value is considered to be the price at which a producer sells its product in its home market.¹

Supporters of antidumping laws argue that price differences between markets demonstrate the existence of distortions at home that make producers unfairly competitive abroad. These distortions might be trade barriers, monopoly privileges, subsidies, or anything that prevents re-importation of low-priced exports from driving down home market prices.²

In reality, however, antidumping laws can be used to penalize all sorts of legitimate pricing practices.³ For one thing, the existence of price discrimination is simply not sufficient to prove anticompetitive behavior or “unfair” conditions. But if foreign firms discriminate between markets or sell at prices below the cost of production—both common, legal, and often profit-maximizing choices of U.S. companies producing and selling in the United States—antidumping law deems it proof positive of the existence of foreign government policies that bestow unfair advantages on their exporters. Moreover, the complexity inherent in the administration of antidumping laws means that the authorities have discretion to make countless adjustments and approximations in their calculations.⁴ As a result, dumping margins often bear little relationship to a producer’s own prices and are therefore not indicative of any market distortions or unfair practices.⁵

South Africa’s Blatant Trick

The duties South Africa has imposed on imports of chicken from the United States for the last 15 years are particularly egregious. The case offers a good example for how authorities can abuse the complexities of antidumping law to justify duties that have no meaningful relationship to actual market conditions.⁶

In South Africa, and many other countries, consumers prefer dark meat chicken (thighs and legs), while Americans have a strong preference for white meat (breasts and wings). As a result, U.S. chicken producers were able to sell cer-

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tain dark meat chicken products for a higher price in South Africa than they could in the United States.

If export prices are higher than home market prices, it would seem that there is no dumping. According to one study of the case, the average value of U.S. chicken producers' exports to South Africa minus transportation costs exceeded the U.S. market price consistently throughout the period of investigation used by South African antidumping authorities.⁷ Nevertheless, the South African Board of Tariffs and Trade imposed antidumping duties on U.S. chicken ranging from 209 percent to 375 percent.⁸

They were able to arrive at these high duty rates by ignoring U.S. producers' home market sales and instead using a methodology known as "constructed value," which estimates normal value by calculating cost of production and adding estimated amount for profit. The WTO Antidumping Agreement allows the use of constructed value in two circumstances.⁹ Specifically, those circumstances are when (1) a "particular market situation" exists or (2) a lack of sufficient sales "in the ordinary course of trade" means that domestic sales "do not permit a proper comparison." South African authorities claimed that both problems were present in the U.S. chicken market.¹⁰

First, they claimed that Americans' peculiar and strong preference for white meat was so abnormal that it created a "particular market situation." The authorities claimed that strong consumer preference for white meat caused the price for dark meat chicken in the United States to be "artificially low" and noted that U.S. production of dark meat was largely meant for overseas markets. These facts, they claimed, made U.S. dark meat prices inappropriate as a gauge of normal value.¹¹

Second, they determined that U.S. producers' sales of dark meat in the United States were not in the ordinary course of trade because they were made below the cost of production. In order to make that claim, however, authorities had to reject long-standing cost accounting methods of the U.S. chicken producers.

The problem with determining the cost of producing dark meat is that you can't get chicken legs without producing an entire chicken. Up until the animal's parts are separated from each other, those parts incur joint costs of production. To determine the costs of producing just some of a chicken, you have to allocate those joint costs between the different parts. The most reasonable method is to allocate joint costs based on the relative value of the different end products.¹² The products that command a higher price are assigned a larger share of the joint costs. That's how chicken producers do it in their own accounting records.

The WTO Antidumping Agreement states: "costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."¹³ South African authorities acknowledged that value-based cost allocation was consistent with accepted accounting principles but nevertheless decided that the method was unreasonable and chose to assign costs based on weight.¹⁴

Using weight-based cost allocation, South African authorities determined that most U.S. producers' home market sales were made at prices below the cost of production. This meant that home market sales were generally not made "in the ordinary course of trade" and so could not serve as a proper comparison with export prices. They used that observation to justify the use of constructed value instead of home market prices to determine normal value.

Remember that constructed value is ultimately based on costs of production. So using weight-based cost allocation not only enabled South African authorities to use constructed value, it also inflated that value, and by extension, the dumping margins by basing normal value on these unrealistic costs of production.

It's worth pointing out that this practice is not only abusive toward importers, it also contravenes the rationale for antidumping laws. The idea is that foreign producers benefitting from trade barriers or monopoly conditions in their own country are able to use those high profits to offset losses abroad, thus enabling them to consistently undersell domestic producers.¹⁵ Higher prices in the home market are supposed to be evidence of a "sanctuary market" where higher-than-normal profits cross-subsidize lower-priced export sales.

The existence of below-cost sales in the home market is direct evidence that there is no sanctuary market.¹⁶ When authorities use a methodology that utilizes those sales in a way that increases dumping margins, they reveal just how illogical antidumping practice has become.

An Ill-Conceived Settlement

Fifteen years since the duties were first imposed, an agreement has now been reached that will restore limited market access for U.S. chicken in South Africa. Under the settlement, South Africa agreed to establish a large quota for imports of chicken from the United States that will be exempt from the antidumping duties.¹⁷

This result is certainly beneficial for U.S. chicken producers but it is far from ideal. For one thing, instituting a quota establishes a permanent regime for managed trade. The quota for imports of U.S. chicken will be set at 65,000 tons—only slightly more than the amount imported prior to the imposition of antidumping duties 15 years ago.¹⁸ South African authorities will have to decide who gets to import up to the quota limit and who gets left out. There is no fair or economically rational way to do that, so import licenses will be granted on the basis of political clout, bribery, or (at best) an arbitrary formula.

Reports claim that South Africa will establish a review board to reconsider the quota on an annual basis and potentially raise it if the market for chicken consumption grows.¹⁹ This set up enables authorities to operate like a cartel manager dividing up market share and managing prices. The result will inevitably be a market driven by established firms—both American and South African—lobbying to maintain and grow the value of their privileged access to consumers.

Another troubling part of the settlement is the way that the United States pressured South Africa to finally make a deal. The agreement was reached shortly after Congress reformed the African Growth and Opportunity Act, a pro-

gram that grants duty-free access to the U.S. market for a wide range of products from sub-Saharan Africa. The reforms, which were championed by members of Congress sympathetic to the chicken industry, make it more likely that South Africa (or any other country whose policies catch the ire of an American industry) could lose its benefits under the program.²⁰

The Need for Reform

Rather than merely pressuring South Africa to accept managed trade schemes, the U.S. government ought to be addressing the core problem of overly permissive antidumping rules at the WTO that enabled the chicken duties in the first place.

The WTO's Antidumping Agreement currently lays out the parameters within which national governments' antidumping laws and regulations must operate. The purpose of the agreement is to prevent countries from abusing the antidumping process as a tool for ordinary protectionism. But those rules allow too much discretion on the part of national authorities.

There is no shortage of ideas for how to improve the administration of national antidumping laws. The most recent work among WTO members has been to consider reforms aimed at increasing transparency, due process, and predictability.²¹ A Cato Trade Policy Analysis from 2002 laid out a comprehensive list of 21 potential reforms to the WTO Antidumping Agreement that would help bring national antidumping practices into closer conformity with the rationale for antidumping laws. They include requiring evidence of market distortion, eliminating the cost test, revising the criteria for using constructed value, restricting various methodological abuses, and increasing the rigor and transparency of injury determinations.²²

In particular, the proposals to eliminate the cost test—that is, the practice of weeding out home market sales sold at prices below the cost of production, which has the effect of artificially raising the average home market price or causing resort to constructed value as the basis for normal value—could have prevented South African authorities from imposing such high duties on U.S. chicken.

Unfortunately, one of the greatest impediments to achieving global antidumping reform is the United States government. The U.S. trade negotiating agenda is staunchly opposed to any antidumping reform under domestic or international law. The recently passed Trade Promotion Authority bill includes as an objective “to preserve the ability of the United States to enforce rigorously its [antidumping] laws.”²³ That legislation also included special, more onerous procedures for considering agreements that require any changes to U.S. antidumping law.²⁴

This is especially unfortunate because, like other forms of protectionism, U.S. antidumping laws are not good for the United States. They work to benefit a handful of U.S. industries at the expense of consumers and other U.S. manufacturers who rely on imported materials. Approximately 80 percent of U.S. antidumping measures are imposed on intermediate goods like steel and chemicals, driving up the prices downstream U.S. companies have to pay to get

those materials.²⁵ Despite the argument of proponents that antidumping laws are needed to redress “unfair trade,” the fact is that antidumping laws, as they are currently applied, punish perfectly legitimate economic activity and drive up manufacturing costs, impeding U.S. economic growth and competitiveness.

Moreover, U.S. exports are a prime target for foreign antidumping duties. Since 1995 the United States has been the fourth most common target of foreign antidumping actions.²⁶ And while antidumping was historically a tool used by developed countries, in recent years India, Brazil, and China have emerged as some of the most prolific users. For the developing and newly developed countries using antidumping, U.S. companies have been the biggest or second biggest target.²⁷

Clearly, U.S. exporters have a strong interest in reigning in antidumping abuse because current practices are too permissive to prevent foreign governments from closing their markets to U.S. products, even in the absence of any evidence of dumping.

Conclusion

The way South African authorities justified steep duties on U.S. chicken is a particularly egregious example of the larger global phenomenon of antidumping abuse. Rather than seek to mitigate these abuses one at a time through managed trade arrangements, the U.S. government should spearhead efforts to reform antidumping rules at the WTO.

If the United States is going to be a leader in improving the global trading system and reducing protectionism around the world, U.S. exporters should insist that antidumping reform be part of the U.S. trade agenda. They should not let a handful of domestic industries control the debate and block an important avenue for economic progress.

Notes

1. But alternative methods for calculating “normal value” are permitted under World Trade Organization rules. See World Trade Organization, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.1.
2. Greg Mastel, *Antidumping Laws and the U.S. Economy* (Armonk, NY: M. E. Sharpe, 1998), p. 43.
3. N. Gregory Mankiw and Phillip L. Swagel, “Antidumping: The Third Rail of Trade Policy,” *Foreign Affairs*, July/August 2005.
4. See Daniel Ikenson, “Abuse of Discretion: Time to Fix the Administration of the U.S. Antidumping Law,” Cato Trade Policy Analysis no. 31, October 6, 2005.
5. See Brink Lindsey and Daniel J. Ikenson, “Antidumping 101: The Devilish Details of ‘Unfair Trade’ Law,” Cato Trade Policy Analysis no. 20, November 26, 2002.
6. See Brink Lindsey and Dan Ikenson, “Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U.S. Exports,” Cato Trade Policy Analysis no. 14, July 30, 2001, pp. 14–15.
7. Jonathan R. Coleman, John Fry, and Warren S. Payne, “Use of Antidumping Measures by Developing Countries: The Impact on U.S. Exports of Agricultural Products” (paper presented at Agricul-

tural Policy Reform and the WTO: Where Are We Heading? Capri, Italy, June 23–26, 2003).

8. South Africa Board on Tariffs and Trade, “Investigation into the Alleged Dumping of Meat of Fowls of the Species *Gallus Domesticus*, Originating in or Imported from the United States of America: Final Determination,” report no. 4088, 2000, p. 96.

9. World Trade Organization, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.2.

10. South Africa Board on Tariffs and Trade, “Investigation into the Alleged Dumping of Meat of Fowls,” report no. 4088, 2000, pp. 18–35.

11. *Ibid.*, pp. 18–21.

12. See Charles T. Horngren, et al., *Cost Accounting: A Managerial Emphasis* (Upper Saddle River, NJ: Prentice Hall, 14th ed., 2011), chap. 16.

13. World Trade Organization, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.2.1.1.

14. According to the South Africa Board of Tariffs and Trade, value-based allocation was unreasonable because even after separate costs, the dark meat had a lower production cost than a whole unprocessed chicken. South Africa Board on Tariffs and Trade, Report no. 4088, p. 22.

15. Brian Hindley and Patrick A. Messerlin, *Antidumping Industrial Policy: Legalized Protectionism in the WTO and What to Do*

About It (Washington: AEI Press 1996), pp. 6–14.

16. Brink Lindsey and Dan Ikenson, “Reforming the Antidumping Agreement: A Road Map for WTO Negotiations,” *Cato Trade Policy Analysis* no. 21, December 11, 2002, p. 15.

17. *World Trade Online*, “U.S., South Africa Settle Longstanding Poultry Spat, Address SPS Issues,” June 12, 2015.

18. *Ibid.*

19. *Ibid.*

20. “Isakson Applauds Committee Action to Extend African Growth and Opportunity Act,” press release, April 22, 2015.

21. WTO Negotiating Group on Rules, “Anti-Dumping: Issues of Transparency and Due Process,” June 15, 2015, TN/RL/W/257, and “Anti-Dumping Negotiations,” July 15, 2015, TN/RLW/259.

22. Lindsey and Ikenson, “Reforming the Antidumping Agreement.”

23. Bipartisan Congressional Trade Priorities and Accountability Act of 2015, §2(b)(16).

24. *Ibid.* §5(b)(3).

25. See World Trade Organization Committee on Anti-Dumping Practices, “Semi-Annual Report under Article 16.4 of the Agreement—United States,” G/ADP/N/265/USA, February 26, 2015; Daniel Ikenson, “Economic Self-Flagellation: How U.S. Anti-dumping Policy Subverts the National Export Initiative,” *Cato Trade Policy Analysis* no. 46, May 31, 2011.

26. World Trade Organization statistics on anti-dumping https://www.wto.org/english/tratop_e/adp_e/adp_e.htm.

27. *Ibid.*