

CLIVE VINTI  
LECTURER:UFS PUBLIC LAW  
DEPT

TITLE OF PAPER:

A SPRING WITHOUT WATER: THE CONUNDRUM  
OF ANTI-DUMPING DUTIES IN SOUTH AFRICAN  
LAW

# PEEK INTO THE OPTICS

## PROGRESS OFFICE MACHINES

- \* **1.LITIGANTS:** the ITAC ;SARS; the Minister of Finance and the Minister of Trade and for Industry and for Economic Co-ordination .
- \* **2.LEGAL ISSUE:** date of commencement termination of anti-dumping duties.
- \* **3.COURT ORDER:** duties lapsed

## AMIE

- \* the ITAC ;SARS; the Minister of Finance and the Minister of Trade and for Industry and for Economic Co-ordination .
- \* date of commencement termination of anti-dumping duties
- \* Duties extant

# THE LEGAL FRAMEWORK

## \* 1.INTERNATIONAL FRAMEWORK

- \* 'Dumping' def - as the introduction of a product into the commerce of another at below the normal prices.
- \* Article 6 of the GATT-allows imposition of anti-dumping duties.
- \* The ADA provides that the duties are calculated based on the "margin of dumping" .
- \* Article 11.3 - duties must terminate after 5 years from the date of imposition unless sunset review is triggered.
- \* Article 7.2- provides for the imposition of "provisional anti-dumping duties"

# THE LEGAL FRAMEWORK

## \* 2.THE SA LEGAL FRAMEWORK

- \* SA seeks to give effect to the ADA through the Customs and Excise Act and the ITAC Anti-Dumping Regulations.
- \* The Regulations 38 and 53 provided for the commencement and termination of the anti-dumping duties . The AMIE and POM seek to interpret the meaning of the “**date of imposition**” of the duties according to the Customs and Excise Act and the Regulations.

# LEGAL ISSUES

- \* 1.Date of commencement of ‘Provisional Payments’
- \* -paid in respect of goods as ‘security’ s 55 and 56 of the CEA and this accords with Article 7.2 of the ADA.
- \* -ss 55 and 56 also provide for “set off” of the provisional payment against the amount of any retrospective anti-dumping duty.
- \* -s55 (2) provides that the duty can be imposed with effect from the date on which the provisional duties are imposed.

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# LEGAL ISSUES

- \* 2.Date of Publication theory

- \* POM - duties are 'imposed' from the date on “**which the burden took effect**”: that is the date from which the provisional payments were imposed.

- \* However, in AMIE, the court formulated the **publication theory**: that 'imposition' means the date on which the amendment **to the Schedule was published**.

- \* 3.Article 11 of the ADA

- \* In AMIE the court held that a restriction of the duties according to the Act is not possible.

- \* The effect of section 233 on that interpretation.

# LEGAL ISSUES

- \* 4. Backtracking of the SCA
- \* It is held in AMIE that POM has little bearing on this matter other than to explain its **genesis**.
- \* The court seems **to defer to the interpretation** proffered by the litigants on Article 11's applicability to SA.
- \* AMIE also held that POM decided **nothing at all** on the effects of the Regulations.
- \* The court in AMIE harps on the word **'indication'** as used in POM as meaning that the court did not believe that the SA had ratified the ADA.

# LEGAL ISSUES

- \* 5. Ratification or not: “The Flirtatious and yet non-committal approach of the SCA”
- \* The use of the word ‘**indication**’ in POM
- \* The slavish adherence to the orthodox method of **ratification**
- \* AMIE’s decision that POM’s interpretation of the ADA was only authoritative **domestically**
- \* That Article 11.3 creates **no rights; does not operate directly to terminate duties yet POM held that s59 of ITAA seeks to give effect to ADA.**



# LEGAL ISSUES

- \* 6. Definitive Anti-Dumping Duty
- \* The court in AMIE held that the term “provisional measures” is superfluous in the provisions as the provisional measures that have been chosen are not a provisional duty but ‘security’.

# CONCLUSION

- \* Inconsistencies in interpretation; uncertainty as to the status of the ADA in SA law; the courts are prone to a laissez faire approach that creates more uncertainty; it is not clear anymore which duties should exist and which duties should not exist .I recommend that the provisions be clear by amendment and must reflect international law to avoid retaliation as seen with the US/SA Poultry dispute spilling over to AGOA.