



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**International Trade Administration Commission v SCAW South Africa (Pty) Ltd**

**CCT 59/09  
[2010] ZACC 6**

**Date of Judgment: 9 March 2010**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 9 March 2010 the Constitutional Court delivered judgment in the matter between *International Trade Administration Commission* (ITAC), the applicant, and *SCAW South Africa (Pty) Ltd*, the respondent.

The case concerns the duration of and procedure for reviewing anti-dumping duties. These are measures which are imposed by the state to counteract the harmful practice of introducing goods into the economy of a country or its common customs area for a price less than the production costs or market value of those goods.

South Africa is a member of the World Trade Organisation (WTO) and is bound by the obligations contained in the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (WTO Anti-Dumping Agreement). South Africa has honoured its international trade obligations through the enactment of domestic legislation, including the International Trade Administration Act 71 of 2002 (the Act) and its regulations (Anti-Dumping Regulations), which govern the requirements and procedures for the setting or changing of anti-dumping duties. The WTO Anti-Dumping Agreement and the domestic statutory regime provide that in general, absent the initiation of any reviews, anti-dumping duties are to remain in force for a period not longer than five years.

In 2002 the Minister of Trade and Industry (Minister) imposed anti-dumping duties on stranded wire, rope and cable of iron or steel products originating in or imported from foreign countries. In particular, the anti-dumping duties were placed on the products of

*Bridon International Limited* (Bridon UK), the biggest manufacturer of steel and wire ropes in the United Kingdom. The Minister based his decision on a recommendation made by the Board on Tariffs and Trade, the predecessor of ITAC.

SCAW is a South African company that manufactures steel products including those in respect of which the anti-dumping duties were imposed. In February 2007, prior to the lapsing of the five year period, SCAW lodged an application with ITAC for the initiation of a “sunset review” with a view to maintaining the anti-dumping duties in place. A sunset review is an investigation, initiated relatively shortly before the duties would otherwise lapse, which concerns the withdrawal, amendment or re-confirmation of an original anti-dumping duty on imported goods. ITAC initiated a sunset review and conducted an investigation into whether the removal of the duties was likely to lead to the continuation or recurrence of injurious dumping. In October 2008, ITAC made a recommendation to the Minister that the existing anti-dumping duties in respect of Bridon UK’s products should be terminated.

Unhappy with the recommendation, SCAW launched an urgent application in the North Gauteng High Court in Pretoria (High Court) and sought to interdict ITAC from forwarding its recommendation to the Minister for consideration, pending the final determination of SCAW’s application to review ITAC’s recommendation. SCAW further sought an order preventing the Minister and also the Minister for Finance from performing their respective duties in the implementation of a recommendation made by ITAC. The High Court granted the interim interdict against ITAC and both ministers.

In this Court, ITAC sought leave to appeal against the High Court order. It contended that it is in the interests of justice that this Court grant leave to appeal against the interim interdict because it is final in effect, alternatively, because it is likely to cause irreparable harm. It argued further that it was not competent for the High Court to grant an interdict which had the effect of extending the existing anti-dumping duty, because it was contrary to the domestic and international law regulating the lifespan of anti-dumping duties. In addition, ITAC contended that it was not appropriate for the High Court to grant the interdict, because it encroached on the domain of the executive branch of government, in breach of the doctrine of separation of powers.

In response, SCAW argued that this Court should not grant leave to appeal because the High Court order is an interim order with no final effect. If this Court were to grant leave to appeal, SCAW argued, it would prejudge SCAW’s pending application for judicial review. SCAW argued further that it was appropriate for the High Court to grant the interdict because the requirements for interim relief were satisfied. SCAW also argued that the granting of the interim interdict was within the powers of the High Court, because the domestic regulatory regime does not give rise to the lapse of the anti-dumping duties on the expiry of the five years and 18 month period. SCAW argued that if the domestic statutory regime had the meaning contended for by ITAC, it would extinguish its right to just administrative action, and thereby render the applicable regulation (regulation 20) unconstitutional.

In a unanimous judgment by Moseneke DCJ, the Court held that the interim interdict was final in effect and that it caused irreparable harm. The interests of justice therefore dictated that the interim interdict be appealable. The Court held further that leave to appeal against the interim interdict should be granted as it implicated questions of separation of powers and South Africa's international trade obligations, issues which are not the subject of SCAW's pending review application in the High Court.

In respect of the merits of the appeal, Moseneke DCJ found that the relevant regulations meant that anti-dumping duties will lapse on expiry of the statutorily determined 5 years and 18 month period, and that the initiation of a sunset review or a judicial review does not extend the lifespan of an anti-dumping duty beyond that period. Even though it was competent for the High Court to grant the interim interdict, it was inappropriate for it to do so because it had the effect of preventing the anti-dumping duties from lapsing, pending the finalisation of SCAW's review application. The Court held further that decisions regarding the setting or lifting of anti-dumping duties are patently within the domain of the executive, and that the interdict prevented the Ministers involved from performing their legislative functions. It was inappropriate for the High Court to grant the interdict, because it improperly breached the doctrine of separation of powers.

In the result, the Court granted the application for leave to appeal, set aside the order of the High Court and ordered SCAW to pay the costs of ITAC and of Bridon UK in this Court.