THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 159/2024, 168/2024 and 169/2024

In the matter between:

INTERNATIONAL TRADE ADMINISTRATION COMMISSION	**FIRST APPELLANT**
MINISTER OF TRADE, INDUSTRY AND COMPETITION	**SECOND APPELLANT**
SOUTH AFRICAN POULTRY ASSOCIATION	**THIRD APPELLANT**

and

ASSOCIATION OF MEAT IMPORTERS AND EXPORTERS	**FIRST RESPONDENT**
MINISTER OF FINANCE	**SECOND RESPONDENT**
SOUTH AFRICAN REVENUE SERVICE	**THIRD RESPONDENT**

Neutral citation: *International Trade Administration Commission and Others v Association of Meat Importers and Exporters and Others* (159/2024, 168/2024 and 169/2024) [2025] ZASCA 173 (18 November 2025)

Coram: DAMBUZA, MAKGOKA, MEYER and BAARTMAN JJA and HENNEY AJA

Heard: 19 August 2025

Delivered: 18 November 2025

Summary: Revenue – Customs and Excise Act 91 0f 1964 (the Customs Act) – Anti-dumping duty – Schedule 2 to the Customs Act – decisions of International Trade Administration Commission (ITAC) to initiate sunset review and to recommend that anti-dumping duties on bone-in chicken be maintained – whether decision of the Minister of Trade, Industry and Competition to accept ITAC's recommendation and to request Minister of Finance to give effect to ITAC's recommendation should be reviewed and set aside – whether the Deputy Minister of Finance empowered to accept the recommendation of the Minister of Trade, Industry and Competition and to amend Schedule 2 to the Customs Act – whether that decision should be reviewed and set aside.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Retief J sitting as court of first instance):

1 The first appellant's appeal is upheld with costs, including those of two counsel where so employed.

2 The second appellant's appeal is upheld with costs, including those of two counsel where so employed.

3 The third appellant's appeal is upheld with costs, including those of two counsel where so employed.

4 The order of the high court is set aside and replaced with the following:

'The application is dismissed with costs, including those of two counsel where so employed.'

5 The cross-appeal is dismissed with costs, including those of two counsel where so employed.

JUDGMENT

Meyer JA (Dambuza, Makgoka and Baartman JJA and Henney AJA concurring)

[1] These three appeals and cross-appeal concern the imposition of anti-dumping duties that the second respondent, the Minister of Finance, imposed on bone-in chicken portions[1] originating in or imported from the Netherlands, Germany and the United Kingdom. This the finance minister did at the request of the second appellant, the Minister of Trade, Industry and Competition (the Minister of Trade), who, in turn, accepted the recommendation of the first appellant, the International Trade Administration Commission (ITAC), which body is responsible to investigate and evaluate applications about alleged dumping or subsidised exports in or into South

[1] These are frozen meat of fowls of the species *gallus domesticus* cut in pieces with bone in.

Africa or the Common Customs Area.[2] In international trade law, 'dumping' refers to 'the introduction of goods into the commerce of a country or its common customs area at an export price less than the normal value of those goods'.[3]

[2] The members of the third appellant, South African Poultry Association (SAPA), are local producers of poultry, who compete with the dumped products. SAPA initiated the process that led to the imposition of anti-dumping duties. The members of the first respondent, the Association of Meat Importers and Exporters (AMIE), are importers and exporters of such poultry products. AMIE resisted the imposition of the anti-dumping duties.

[3] Aggrieved by the imposition of such duties, AMIE launched an application in the Gauteng Division of the High Court, Pretoria (the high court). Therein it sought the review and setting aside of: (a) ITAC's decision to initiate the sunset review investigation; (b) ITAC's final determination to recommend to the Minister of Trade that anti-dumping duties be maintained on the relevant products for a further period of five years; (c) the decision of the Minister of Trade to approve ITAC's recommendation and to request the Minister of Finance to amend Schedule 2 to the Customs and Excise Act 91 of 1964 (the Customs Act) to give effect to ITAC's recommendation; and (d) the decision of the Minister of Finance to publish the amendment to Schedule 2 of the Customs Act.

[4] In a judgment handed down on 12 October 2023, the high court set aside the decision of the Minister of Finance to approve the recommendation of the Minister of Trade and remitted the decision to the Minister of Finance to make a fresh decision within 12 months. It ordered that the ministerial amendment of Schedule 2 to the Customs Act shall remain in force and effect until such time as the Minister of Finance has made a final decision. The judgment made it clear that ITAC's recommendation and the decision of the Minister of Trade stand. With leave of the high court, SAPA appeals against that order and AMIE cross-appeals against that part of the order

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[2] In terms of s 1 of the Customs and Excise Act 91 of 1994 the '"common customs area" means the combined area of the Republic and territories with the governments of which customs union agreements have been concluded under section 51'.

[3] *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC); 72 SATC 135 para 1.

remitting the decision to the Minister of Finance, for the ministerial amendment of Schedule 2 to the Customs Act to remain in force pending such decision, and not granting the relief sought against ITAC and the Minister of Trade.

[5] In South Africa, dumping is regulated by an interlocking suite of legislation. The legislation includes the International Trade Administration Act 71 of 2002 (the ITA Act), the Anti-Dumping Regulations published under GN 3197 in Government Gazette 25684 of 14 November 2003 (the Anti-Dumping Regulations), the Board on Tariffs and Trade Act 107 of 1986 (the BTT Act), and the Customs Act. At an international level, South Africa is party to the agreement establishing the World Trade Organisation (WTO) and the WTO Agreements, including the General Agreement on Tariffs and Trade, 1994 and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement). While the passing of the ITA Act and the promulgation of the Anti-Dumping Regulations were aimed at giving effect to the WTO agreements, this Court has emphasised that '[t]he text to be interpreted … remains the South African legislation and its construction must be in conformity with s 233 of the Constitution'.[4]

[6] Section 26(1)*(c)*(i) of the ITA Act allows application to ITAC for the amendment of customs duties with regard to anti-dumping duties. This provision contemplates the imposition of original anti-dumping duties and the amendment of those duties. The effect of s 64(2) of the ITA Act, read with item 2(1) of Schedule 2 to the ITA Act, is that applications in respect of anti-dumping duties are currently regulated by s 4 of the BTT Act as if it had not been repealed. In terms of s 4(2) of the BTT Act, upon receipt of a report or recommendation from the then Board on Tariffs and Trade (the BTT) regarding an anti-dumping duty, the Minister of Trade may 'accept or reject such report and recommendation, or refer them back to the BTT [now ITAC] for reconsideration'. If the Minister of Trade accepts the report and recommendations, he may request the Minister of Finance to amend the relevant Schedule to the Customs Act. Anti-dumping duties are contained in Schedule 2 to the Customs Act. Section 56(1) read with s

[4] *Progress Office Machines CC v South African Revenue Service and Others* [2007] ZASCA 118; [2007] 4 All SA 1358; 2008 (2) SA 13 (SCA); 69 SATC 231 para 6. Section 233 of the Constitution reads:
'When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.'

55(2)*(a)* of the Customs Act empowers the Minister of Finance, by notice in the Government Gazette and in accordance with a request by the Minister of Trade, to amend Schedule 2 to the Customs Act so as to impose an anti-dumping duty. Section 56(2) of the Customs Act, in turn, empowers the Minister of Finance, by notice in the Government Gazette (the Gazette) and in accordance with a request from the Minister of Trade, to withdraw, reduce or otherwise amend an anti-dumping duty.

[7] Part C of the Anti-Dumping Regulations deals with the procedures for the investigation of anti-dumping duties. Part D deals with the reviews of anti-dumping duties, including sunset reviews. An anti-dumping duty will remain in effect for a period not exceeding five years from the imposition or the last review thereof.[5] However, if a sunset review is initiated prior to the lapse of an anti-dumping duty, that duty shall remain in force until the sunset review has been finalised.[6]

[8] ITAC is required to publish a notice of imminent lapsing of the duty in the Gazette approximately six months prior to the lapse thereof, inviting interested parties to request a sunset review.[7] The Southern African Customs Union (the SACU) industry is then required to indicate whether it intends to request a sunset review.[8] If ITAC decides to initiate a sunset review pursuant to an application, it shall publish an initiation notice thereof in the Gazette prior to the lapse of the relevant duties.[9] A sunset review shall consists of a single investigation phase when ITAC may verify such information as it considers necessary.[10] ITAC is required to inform interested parties of the essential facts to be considered in its final determination and to allow them to comment thereon.[11] Pursuant to a sunset review, ITAC may make a recommendation that 'may result in the withdrawal, amendment or reconfirmation of the original anti-dumping duty'.

[9] Pursuant to ITAC's investigation of an application brought by SAPA in 2013, anti-dumping duties were imposed on bone-in chicken portions originating in or

[5] Regulation 53.1.
[6] Regulation 53.2.
[7] Regulation 54.
[8] Regulation 57.1.
[9] Regulation 54.5.
[10] Regulation 56.
[11] Regulation 43.

imported from the Netherlands, Germany and the United Kingdom by the publication of Government Notice R126 on 27 February 2015. The Notice amended Schedule 2 to the Customs Act to provide for anti-dumping duties for '[f]rozen meat of fowls of the species *Gallus Domesticus*, cut in pieces with bone in' at the following rates: (a) 31.3% for specified German producers; (b) 73.33% for all other producers or exporters from Germany; (c) 3.86% for Plukon in the Netherlands; (d) 22.81% for all other producers or exporters from the Netherlands; (e) 12.07% for Moy Park and Amber Foods in the United Kingdom; and (f) 30.99% for all other producers or exporters from the United Kingdom. The duties referred to in (a), (c) and (e) are known as 'company-specific duties' and those referred to in (b), (d) and (f) are known as 'residual duties'.

[10] SAPA applied for a sunset review of the original anti-dumping duties on 2 October 2019. ITAC liaised with SAPA to ensure that all required information had been submitted in the correct format and that all deficiencies were remedied. Following this process, ITAC determined that the application was properly documented and notified SAPA of this on 21 February 2020. After considering SAPA's application and other documents submitted by it, ITAC initiated the sunset review by publication of Notice 115 in Government Gazette 43044 on 24 February 2020 (the initiation notice). The initiation notice recorded that ITAC had found that there was prima facie proof that the expiry of the original anti-dumping duties would likely lead to a continuation of dumping and the recurrence of material injury. On 26 February 2020, ITAC addressed a letter to interested parties, including AMIE, notifying them of the initiation of the sunset review and attaching the non-confidential version of SAPA's sunset-review application and the importers' and exporters' questionnaires.

[11] On 28 April 2021, ITAC published an essential facts letter (the essential facts letter). This, after verifying the information submitted by SAPA and the participating importers and exporters, and after considering the submissions of all interested parties, including AMIE. ITAC indicated that it was considering determining anti-dumping duties on a per cut basis. In other words, rather than determining whether or not to retain the anti-dumping duties on bone-in chicken portions at the 7-digit tariff sub-heading (0207.14.9), ITAC was considering recommending new anti-dumping duties for each 8-digit sub-heading (for example, 0207.14.93 for leg quarters and 0207.14.95 for wings). Interested parties were given 14 days, until 12 May 2021, to

comment on the essential facts letter. SAPA responded to the essential facts letter on 12 May 2021. It also submitted a revised response to ITAC on 20 May 2021, which ITAC refused to consider since it was received after the deadline. After ITAC agreed to its request to do so, SAPA made oral representations to it on 8 June 2021.

[12] ITAC made a final determination to recommend that the anti-dumping duties, for the most part, be maintained. ITAC's report was finalised on 15 June 2021 and was submitted to the Minister of Trade on that date. The Minister of Trade approved ITAC's recommendation and requested the Deputy Minister of Finance to amend the relevant Schedule to the Customs Act in order to give effect to that recommendation. The amended anti-dumping duties for frozen meat of fowls of the species *Gallus Domesticus* 'cut in pieces with bone in' with tariff heading 0207.14.9 were in due course published in Notice R752 of 23 August 2021 in terms of s 56 of the Customs Act by the Deputy Minister of Finance. These amended anti-dumping duties were: (a) 73.33% for Germany; (b) 22.81% for the Netherlands, excluding that produced by Plukon; and (c) 30.99% for the United Kingdom, excluding that produced by Moy Park, 2SFG, and Amber Foods.

[13] In its amended notice of motion, AMIE sought the review and setting aside of ITAC's initiation of the sunset review. AMIE continues to seek this relief in its notice to cross-appeal. It is well-established that an administrative act has legal consequences and must be treated as valid until it is set aside. In *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others,*[12] this Court held:

'Forsyth points out that while a void administrative act is not an act in law, it is, and remains, an act in fact, and its mere factual existence may provide the foundation for the legal validity of later decisions or acts. In other words "…an invalid administrative act may, notwithstanding its non-existence [in law], serve as the basis for another perfectly valid decision. Its factual existence, rather than its invalidity, is the cause of the subsequent act, but that act is valid since the legal existence of the first act is not a precondition for the second."

. . . .

[12] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA); [2004] 3 All SA 1 (SCA).

If the validity of consequent acts is dependent on no more than the factual existence of the initial act then the consequent act will have legal effect for so long as the initial act is not set aside by a competent court.'[13]

[14] ITAC, in making its recommendation, and the ministers in acting upon that recommendation, were authorised to do so by the fact of the initiation of the sunset review. In its amended notice of motion, AMIE belatedly seeks condonation for its failure to comply with the 180-day rule in s 7(1)*(b)* of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), which provides that any proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days. ITAC initiated the sunset review on 24 February 2000. AMIE's original notice of motion did not seek to review ITAC's decision to initiate the sunset review. Its amended notice of motion in which such relief is sought was filed together with a supplementary founding affidavit on 20 June 2022. It follows that 28 months elapsed after the initiation decision was made and before AMIE applied for the review and setting aside of the initiation decision. AMIE was informed of the initiation of the sunset review on 26 February 2020. ITAC furnished the reasons to AMIE, and others, at the same time that it communicated the initiation decision. The reasons were contained in the initiation notice.

[15] In its amended notice of motion that was filed on 20 June 2022, AMIE did not seek condonation for its failure to comply with the 180-day period in PAJA. The first occasion on which AMIE sought such condonation was in its supplementary affidavit on 26 August 2022. This was also when AMIE amended its notice of motion to seek condonation. However, it failed to explain why it sought to challenge the initiation decision in June 2022 but did not seek condonation at the same time. In other words, AMIE has not explained why it only sought condonation for its late challenge in August 2022.

[16] The basis upon which AMIE seeks condonation is that it alleges that the initiation notice was 'misleading'. According to AMIE, it stated that ITAC had found that

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[13] Ibid paras 29 and 31. Also see *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (2) BCLR 121 (CC) 2011 (4) SA 42 (CC) para 62 *(Harrison)*.

SAPA's sunset-review application satisfied the requirements of Regulations 25 and 26 and that it complied with s 26 of the ITA Act. AMIE says that this was misleading because ITAC's answering affidavit contends that it was not required to verify SAPA's information. However, ITAC's initiation notice made no mention of Regulations 25 and 26 and did not state that the requirements of these regulations had been complied with. It stated that ITAC had found, based on information submitted by SAPA, that there was prima facie proof indicating that the expiry of the anti-dumping duties would likely lead to a continuation of dumping and a recurrence of material injury. Furthermore, AMIE was advised in April 2020 that SAPA's information had not been verified before initiation. In its submissions to ITAC dated 4 May 2020, AMIE noted that '[a]s of 28 April 2020 (2 months after initiation), ITAC had still not completed the verification of the applicant [SAPA]' and '[i]t is not disputed that ITAC have not verified the application, and this alone should stop the matter proceeding'. AMIE is, therefore, erroneous in saying that ITAC's initiation notice in the Gazette was misleading. AMIE has thus failed to proffer an acceptable explanation for its delay in challenging the initiation decision within the 180-day period prescribed by PAJA, let alone an explanation that covers the entire 28-month period of the delay.[14] Furthermore, AMIE proffered no explanation for its delay in seeking condonation.[15]

[17] Apart from these insurmountable procedural hurdles, AMIE's contention that ITAC failed to comply with Regulations 25 and 26 before its initiation of the sunset review, is unmeritorious. In essence, AMIE's contention is that ITAC was obliged to conduct a process of verification before it initiated the sunset review. This is grounded in Regulation 25, which provides '[ITAC] shall satisfy itself of the accuracy and adequacy of the information provided in the application'. But, these regulations do not apply to a sunset review. There is a difference between an original investigation and its initiation on the one hand, and a sunset review and its initiation, on the other. In an original investigation, it must be demonstrated that dumped imports are causing or

[14] See, for example, *Camps Bay Ratepayers' and Residents' Association v Harrison [*2010] ZASCA 3; [2010] 2 All SA 519 (SCA) para 54, where this Court held that 'the party seeking it [an extension of the 180-day period] must furnish a full and reasonable explanation for the delay which covers the entire period thereof'.

[15] In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* [2013] ZASCA 5; [2013] 2 All SA 251 (SCA) para 13, this Court said:

'An appellant should, whenever it realises that it has not complied with a rule of court, apply for condonation without delay (*Commissioner for Inland Revenue v Burger* 1956 (4) SA 446 (A) at 449 G-H).'

threatening to cause material injury to the domestic industry. This is very different from a sunset review, where it must be demonstrated that the removal of the anti-dumping duty will likely lead to a continuation or a recurrence of dumping and injury. Moreover, the Anti-Dumping Regulations do not impose any specific methodology that ITAC must follow in a sunset review; in contrast to the detailed prescribed procedure (including the pre-initiation procedure) that applies to an original investigation.

[18] The Anti-Dumping Regulations deal with these two procedures in different Parts. Part C Sub-part II is headed 'pre-initiation procedure'. That sub-part includes regulations 25 and 26, which apply to original investigations. Part D Sub-part IV is headed 'sunset reviews'. That sub-part includes regulation 54, which is headed 'Initiation of sunset review'. It makes no mention of the verification of information prior to the initiation of a sunset review. In terms of regulation 54.4, all that is required to initiate a sunset review is that there must be 'a proper application' containing 'the necessary information' to establish a prima facie case that the removal of the anti-dumping duty would likely lead to the continuation or a recurrence of injurious dumping. It makes no mention of verification.

[19] Once a sunset review is initiated, the investigation commences. Regulation 56.1 provides that a sunset review consists of a single investigation phase and regulation 56.2 adds that ITAC 'may verify such information as it deems necessary to confirm the accuracy and the adequacy of any information submitted by any interested party'. Regulation 56.2 thus confers a broad discretion on ITAC to verify information of 'any interested party' (which is defined as including producers in the SACU as well as trade or business associations whose members are SACU producers) as part of the sunset-review investigation.

[20] The Anti-Dumping Regulations, therefore, make it plain that ITAC was entitled to verify the information contained in SAPA's sunset-review application after the initiation of the sunset review. ITAC was not required to do so before it initiated the sunset review. The less onerous regime for the initiation of a sunset review is consistent with the approach adopted in the WTO Anti-Dumping Agreement, which indicates that the standard for the initiation of a sunset review is much lower than the standard for the initiation of an original ant-dumping application.

[21] Article 11.3 of the Anti-Dumping Agreement deals with sunset reviews. It provides that an anti-dumping duty shall be terminated not later than five years after its imposition 'unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry . . . that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury'. In contrast, Article 5.3, which deals with the initiation of an original anti-dumping investigation, provides that 'the authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation'.

[22] The Panel of the WTO has interpreted the standard required for the initiation of a sunset review (which they refer to as an expiry review) as follows:[16]

'The absence of any cross-reference in Article 11.3 to Article 5.3 must be understood to imply that the standard for the initiation of an expiry review is different from the standard required for the initiation of an original investigation, and that the standard in Article 5.3 of the Anti-Dumping Agreement does not apply to an expiry review. We also agree that it follows from a plain reading of the text that the appropriate standard against which to determine whether an expiry review has been properly initiated under Article 11.3 of the Anti-Dumping Agreement is whether the complainant has provided sufficient evidence that dumping and injury are likely to recur in the absence of anti-dumping measures to warrant initiation. The request is not required to demonstrate, as a certainty, that if the measures were to lapse, dumping and injury would be likely to recur or continue.'

[23] AMIE's contention that it was a jurisdictional requirement in terms of Regulations 25 and 26 that ITAC had to verify the information contained in SAPA's sunset-review application before the initiation of the sunset-review, therefore, is wrong. For all these reasons, AMIE's challenge to the initiation of the sunset review falls to be dismissed.

[16] Panel Report, European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia – (Second complaint). WT/DS494/R, adopted 24 July 2020, para 7.333; and see paras 7.325 to 7.332.

[24] AMIE's ground of review in respect of ITAC's final determination is that the sunset review was procedurally unfair and vitiated by bias. Its argument of procedural unfairness and bias is based on the following: (a) the essential facts letter contemplated that the anti-dumping duties would be imposed on the 8-digit tariff level; (b) ITAC allowed SAPA an opportunity to make oral representations, among others, on its submission that the duties should rather be imposed on the 7-digit tariff level; (c) ITAC accepted SAPA's submission; (d) AMIE was not given an opportunity to rebut SAPA's contention as the public file was not updated during the period in which ITAC granted SAPA's request for an oral hearing; and (e) AMIE's request for an oral hearing was refused.

[25] The essence of AMIE's argument is that SAPA protested against the use of the 8-digit tariff structure for the first time in oral representations and other parties were not given an opportunity to counter SAPA's submissions on this score. The evidence, however, refutes AMIE's contention in this regard. SAPA's objection to the use of the 8-digit tariff structure was set out in detail in SAPA's response to the essential facts letter dated 12 May 2021. XA, the trade advisers acting for AMIE, made comments to ITAC on SAPA's response on 15 June 2021, but did not respond to this aspect of SAPA's letter.

[26] AMIE's contention of procedural unfairness is also at odds with the following: In response to the fact that SAPA's sunset-review application calculated duties based on the 7-digit tariff level, Merlog made representations to ITAC contending that the 8-digit tariff level should be used. The essential facts letter made clear that 'ITAC had not yet made its final determination and nothing in the letter should be construed as such' and that '[t]he final determination will only be made once [ITAC] has considered all parties' comments on this essential facts letter'. The letter thus indicated the approach ITAC was considering adopting and interested parties were open to persuade it to adopt a different approach. AMIE did not comment on the essential facts letter. SAPA's oral representations were not materially different from its response to the essential facts letter dated 12 May 2021. Despite the initiation notice stating that interested parties 'may request an oral hearing at any stage of the investigation' and that ITAC may refuse a request 'if granting a hearing will unduly delay the finalisation of a determination', the requests for oral hearings from AMIE and Merlog on 28 June

and 5 July 2021, were made too late. AMIE should have been aware that the time period for the sunset review was drawing near and that a final determination from ITAC would be imminent. ITAC made its final determination and communicated it to the Minister of Trade on 15 June 2021. The fact that SAPA was able to persuade ITAC to change the approach proposed in the essential facts letter and rather to determine the anti-dumping duties at the 7-digit tariff level, is in all the circumstances, neither procedurally unfair nor indicative of bias.

[27] In its amended notice of motion, AMIE sought the decision of the Minister of Trade to be reviewed and set aside. AMIE and one of its members, Merlog, addressed letters to the Minister of Trade on 12 July 2021, raising various alleged irregularities in respect of ITAC's process. AMIE contends that, in light of these irregularities, the Minister of Trade was obliged to give AMIE and Merlog a hearing, and his failure to do so rendered his decision irrational. AMIE adds that the Minister of Trade ignored the allegations in these letters.

[28] In his answering affidavit, the Minister of Trade correctly stated that he was in law not required to give a hearing to AMIE. He further stated that AMIE had an opportunity to make submissions before ITAC and that it would be 'onerous if not impractical to open up the process again for interested parties to make submissions to [the Minister of Trade] and it can lead to numerous submissions to be considered by [the Minister of Trade] notwithstanding that all interested parties had the opportunity to take part in the ITAC investigation process'.

[29] In *Chairman, Board on Tariffs and Trade, and Others v Brenco Inc and Others*,[17] this Court said:

'Section 4(2) of the BTT Act does not contemplate and fairness does not require that the second appellant [the Minister of Trade] should afford to persons in the position of the respondents a further and independent hearing before acting in terms of the subsection. If the second appellant in the light of policy factors considers that the terms of the recommendation should be amended, or that further investigation is required, he has no option but to refer the matter back to BTT. He has no power to reconsider the matter or to effect such changes

[17] *Chairman, Board on Tariffs and Trade, and Others v Brenco Inc and Others* 2001 (4) SA 511 (SCA) para 71 (*Brenco*).

himself. Any further consideration is to be undertaken by BTT, the body which conducted the investigation, and not the second appellant. This underscores the fact that it is BTT, and only BTT, which must entertain the representations of the parties affected by its report and recommendations. I agree with the appellants' submission that there would be no point in requiring the second appellant to receive from the parties affected representations in addition to those already made to BTT. Neither s 4(2) of the BTT Act, nor s 56 read together with s 55(2) of the [Customs] Act, nor fairness, requires the [Minister of Finance] to give to parties affected by the imposition of anti-dumping duties a further and independent hearing before acting in terms of those provisions.'

[30] The purpose for which the Minister of Trade is empowered to accept or reject ITAC's recommendation is not to second-guess ITAC's process; it is rather to decide whether to act on the recommendation having regard to policy considerations relating to international trade. The decision of the Minister of Trade constitutes executive action; not administrative action. In *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*,[18] the Constitutional Court observed:

'The setting, changing or removal of an anti-dumping duty is a policy-laden executive decision that flows from the power to formulate and implement domestic and international trade policy. That power resides in the heartland of national executive power.'

[31] The Minister of Trade, despite not being obliged to do so, considered AMIE's concerns as well as ITAC's response. AMIE's challenge to the decision of the Minister of Trade, therefore, also falls to be dismissed. I now turn to its challenge to the decision of the Minister of Finance.

[32] In its amended notice of motion, AMIE sought the review and setting aside the decision of the Minister of Finance, which was taken by the Deputy Minister of Finance. AMIE challenges this decision on two bases: First, the Deputy Minister of Finance did not have authority to amend Schedule 2 to the Customs Act as this power was not properly delegated. Second, the decision of the Deputy Minister of Finance was procedurally irrational. The high court rejected the first argument but upheld the second.

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[18] *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 (CC); 72 SATC 135 para 44 (*SCAW*).

[33] The power to amend Schedule 2 to the Customs Act to impose, withdraw or reduce anti-dumping duties is sourced in s 56 of the Customs Act. Section 118(1) provides that the Minister of Finance may delegate his powers or assign his duties arising from sections 48, 49, 51, 52, 53, 56, 56A, 57, 60(3), 75(15), 99(4), 105 and 113(4) to the Deputy Minister of Finance. On 8 May 2018, the then Minister of Finance, acting in terms of s 118, delegated various powers and duties to the then Deputy Minister of Finance, including the powers and duties contemplated in s 56. There can thus be no doubt that the Deputy Minister of Finance was empowered to amend Schedule 2 to the Customs Act. The high court, therefore, correctly rejected AMIE's argument on this score.

[34] AMIE and one of its members, Merlog, addressed letters to both the Minister Trade and the Minister of Finance on 12 July 2021, raising various alleged irregularities in respect of ITAC's process. AMIE contends that, considering these irregularities, the Deputy Minister of Finance was obliged to give AMIE and Merlog a hearing, and that his failure to do so rendered his decision irrational. AMIE adds that the Deputy Minister of Finance ignored the allegations in these letters. This argument is unmeritorious. First, the Deputy Minister of Finance was not legally obliged to afford AMIE and Merlog an opportunity to make representations, in circumstances where ITAC already afforded them such an opportunity as part of its investigation.[19] The setting, changing or removal of an anti-dumping duty is the exercise of executive power and, therefore, only subject to a legality review. Procedural fairness is not a component of a legality review.[20]

[35] Nevertheless, the evidence indicates that the Deputy Minister of Finance did consider the procedural complaints raised by AMIE and Merlog. The Rule 53 record filed by the Deputy Minister of Finance included the letter from Merlog's attorneys of 12 July 2021 as well as their follow-up email of 2 August 2021, which indicates that the Deputy Minister of Finance considered this correspondence. There is considerable overlap between the issues raised in the letter from AMIE's attorneys of 12 July 2021 and the letter from Merlog's attorneys of that date. AMIE acknowledged that the

[19] *Brenco* fn 17, referred to in para 29 *supra*.
[20] *SCAW* fn 18, referred to in para 30 *supra*.

Deputy Minister of Finance 'was aware of the issues raised by [AMIE] (and Merlog), in respect of the flawed process followed by ITAC' but asserts that the ministry does not disclose a document which shows that the issues raised by AMIE and Merlog were considered. This complaint, in my view, amounts to an exercise in pedantry.

[36] The high court, therefore, erred in finding that the decision of the Deputy Minister of Finance was irrational. AMIE's challenge to the deputy minister's decision also falls to be dismissed.

[37] In the result, the following order is made:

1 The first appellant's appeal is upheld with costs, including those of two counsel where so employed.

2 The second appellant's appeal is upheld with costs, including those of two counsel where so employed.

3 The third appellant's appeal is upheld with costs, including those of two counsel where so employed.

4 The order of the high court is set aside and replaced with the following:

'The application is dismissed with costs, including those of two counsel where so employed.'

5 The cross-appeal is dismissed with costs, including those of two counsel where so employed.

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P A MEYER
JUDGE OF APPEAL

Appearances

For first appellant:	E Muller with JW Kiarie
Instructed by:	State Attorney, Pretoria
	State Attorney, Bloemfontein
For second appellant:	H Maenetje SC with M Sahukazana
Instructed by:	State Attorney, Pretoria
	State Attorney, Bloemfontein
For third appellant:	I Goodman SC (heads of argument having been prepared by A Cockrell SC)
Instructed by:	Webber Wentzel, Johannesburg
	McIntyre Van der Post, Bloemfontein
For first respondent:	J G Wasserman with S Tshikila and Y S Ntloko
Instructed by:	Malatji & Co. Attorneys, Johannesburg
	Phatshoane Henney Attorneys, Bloemfontein.