

# **A review of the International Trade Administration Commission's tariff investigation role and capacity<sup>1</sup>**

Prof. Fiona Tregenna<sup>2</sup> and Mr. Marko Kwaramba,<sup>3</sup>

## **1. Introduction**

This is one in a set of papers focusing on the functioning and capacity-building needs of certain economic regulatory bodies in South Africa.

This paper looks at the International Trade Commission of South Africa (ITAC). ITAC's responsibilities lie in three areas: tariff investigations, trade remedies, and import and export control. The focus here is on the tariff-setting function of ITAC rather than all the activities of ITAC. The limited scope of this study is not intended to form the basis for definitive conclusions or recommendations about ITAC's role in trade remedies and import and export control, although a number of aspects of the analysis apply to all the functions of ITAC.

The eventual purpose of this research is to assist in making recommendations towards capacity-building of ITAC. This is to enhance its role and functioning. An assessment of the capacity of ITAC and any needs must be guided by a critical understanding and assessment of ITAC's role and work. It is for this reason that this paper does not deal narrowly with issues of capacity and training. We thus take a broader perspective in analysing the role and functioning of ITAC. As part of that, we analyse two case studies of ITAC's role in tariff-setting. These cases are poultry and paper.

What is the best way in which a country should set its tariff structure and levels? This is a central issue in this research. There are various conceivable institutional arrangements. Tariffs could be set directly by a government department. Alternatively, this role could be mandated to an independent or semi-independent body. Apart from institutional arrangements, there are also different options as to what rules should govern the tariff setting process, what criteria and considerations should inform decisions, and so on. The current institutional arrangements and other aspects of tariff-setting in South Africa represent one set of possibilities in this regard. Different institutional arrangement, processes, criteria, and so on, will imply different capacity needs. The assessment of ITAC's human resource and capacity needs thus follows a broader discussion of the role of ITAC.

Several methodologies were used in this research. A literature review was conducted. Various documents were sourced and analysed, both documents in the public domain and those provided to the researchers for the specific purposes of this research. A number of interviews was conducted, including with ITAC staff, government departments, experts, and stakeholders

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- a. This is a preliminary draft report which is yet to be finalised, and as such is not for circulation or citation.
- b. This research was supported by the Regulatory Entities Capacity Building Project with funding from the Economic Development Department under a Memorandum of Agreement with the University of Johannesburg.
- c. The authors would like to thank all those who availed themselves for interviews and provided valuable information and insights. The list of interviewees is included as Appendix 1.

<sup>2</sup> University of Johannesburg

<sup>3</sup> University of Witwatersrand

involved in the two cases used as case studies. The interviews were conducted in a semi-structured manner, using a guiding set of questions while allowing for the free flow of discussion. The interviewees are listed in Appendix 1. Some information sourced from the interviews was of a factual nature while other information was respondents' opinions. Quantitative data was also analysed where necessary, including for the economic background on the two sectors analysed in the case studies.

The paper is structured as follows. The next section briefly reviews the evolution of trade policy in South Africa. Section 3 provides an overview of ITAC, focusing on its role and on the way in which it conducts tariff investigations. In section 4 we compare the institutional setting for tariff-setting in South Africa with that in some other developing countries. Case studies of ITAC's tariff investigations in the poultry and paper industries are presented in section 5. Section 6 evaluates the robustness of ITAC decisions in terms of legal challenges to these decisions. Thereafter, ITAC's human resources and existing capacity-building initiatives are discussed in section 7. Finally, section 8 provides an assessment of some key issues facing ITAC and offers some recommendations. Additional material is provided in the Appendices.

## **2. Overview of trade policy in South Africa**

ITAC is not responsible for setting trade policy, but rather for implementing trade policy that is set by the Department of Trade and Industry as well as within the broader economic policy framework of the South African government as articulated by the Economic Development Department in particular. However, given the latitude for interpretation within stated government policy, the line between policy development and implementation may arguably become blurred in practice. This is in the sense that the translation of broad government policy by an institution such as ITAC, including the balancing of sometimes competing objectives, can effectively become part of public policy.

Nonetheless, the trade policy of government provides the formal mandate within which ITAC operates and changes in government policy must and do affect ITAC's decision-making on tariffs. There have been distinct shifts in trade policy since the establishment of ITAC, as well as during the time of its predecessor the Board on Tariffs and Trade (BTT).

During Apartheid, trade policy was significantly more inward-oriented than is currently the case, with a greater emphasis on import-substituting industrialisation (ISI). However, it is worth noting that there had already been a shift away from ISI and a significant opening up of the economy to trade in the later years of Apartheid. This goes against a narrative that was put forward in the early years of democracy in particular, that associated Apartheid with protectionism as part of a rationale or justification for rapid tariff liberalisation.

According to McCarthy (1988), most of the possibilities for large-scale import substitution had becoming exhausted by the early 1970s, with remaining imports primarily in heavy industry in which domestic production was constrained. Feinstein (2005) argues that limited scope remained for import substitution in light industries, while substitution of intermediate and capital goods was constrained by poor skills and technology and the limited domestic market among other factors. From the 1970s onwards, policy shifted towards export orientation, with this shift manifest in reflected in for example export incentives and assistance. However, this was constrained by low global growth rates, a strong currency, growing international hostility towards South Africa, and poor international competitiveness of South African products (especially manufactures).

By 1990 there had been a further policy shift towards export promotion with the introduction of the General Export Incentive Scheme (GEIS). Protection against imports was also significantly

reduced in the first half of the 1990s, with import surcharges initially lowered and subsequently abolished, and tariffs lowered.

There was further trade liberalisation after democracy, notably in the second half of the 1990s and the early 2000s. This liberalisation seems to have been motivated in large part by a belief that the 'cold winds' of international competition would force improvements in efficiency and competitiveness in the domestic economy, especially in the manufacturing sector. The rapid liberalisation may also have been motivated by a desire to signal to international institutions that South Africa was committed to 'playing the rules' and to a broader market liberalisation of the economy.

The number of tariff lines was consolidated and tariff levels were significantly cut, below the levels required by South Africa's WTO commitments. In addition, bilateral trade agreements, notably with the European Union (EU), significantly reduced South Africa's levels of protection.

Edwards and Lawrence (2006) argue that the trade liberalisation undertaken in the 1990s not only reduced imports but boosted exports (through lowering import costs as well as reducing the relative profitability of domestic sales). However, rapid trade liberalisation arguably had significant negative impacts on productive capacity and employment, particularly in relatively labour-intensive manufacturing industries.

From around 2009, there was a significant shift in trade policy away from the rampaging liberalisation of the earlier post-democracy period. Government's recently released 20-year review describes this shift as follows: 'From the late 2000s, trade reforms shifted to more targeted efforts, with considered use of safeguard measures, local procurement and other interventions geared to fostering industrialisation and job creation.' (Presidency of the Republic of South Africa, 2014, p96.)

During this period there was also an increasing focus on the importance of strong industrial policy. Linked to this was closer integration between trade and industrial policy, and a move away from the previous implicit subordination of industrial policy to trade policy. Industrial policy is articulated through the National Industrial Policy Framework (NIPF), which is operationalised through rolling iterations of the National Industrial Policy Action Plan (IPAP).

In contrast to the previous push toward wholesale tariff liberation, the emphasis in this recent period has been on a case-by-case (or sector-by-sector) approach, with liberalisation or protection as considered appropriate in a particular instance.

The South African Trade Policy Review (TPR) draft document (2009) calls for a strategic review of tariffs to support industrial development (Department of Trade and Industry, 2009). The Trade Policy Review states that trade policy needs to be in compliance with the NIFP for it to promote diversification, which helps sectoral tariff determination. South African trade policy is thus seen as an important instrument of industrial policy. It means that the trade policy contributes to government economic development objectives as set out in the National Growth Path (NGP), National Industrial Policy Action Plan (IPAP), National Development Plan (NDP) and National Industrial Policy Framework (NIPF).

In the international trade policy arena, South Africa was an advocate of multilateral rules-based global trading regimes. More recently, as part of the BRICS group, South Africa has been pushing for a stronger link between international trade rules and economic development in developing countries. (Presidency of the Republic of South Africa, 2014)

The NGP sets out a developmental trade policy which 'seeks to promote exports while

addressing unfair competition against domestic producers and assisting new activities to achieve competitiveness'. It states that South Africa's trade policy must remain pragmatic and evidence-based in pursuing core socio-economic goals, particularly decent work and inclusive and balanced growth, without acceding unnecessarily to narrow interests or failing to respond to real economic needs. Of particular relevance to the issue of tariffs, the NGP calls for reciprocal commitments on applicants for tariff changes and rebates, efforts at the World Trade Organisation (WTO) to push for policy space for development strategies and resist rigid formula-driven reductions in industrial and agricultural tariffs that would undermine employment and growth, and effective enforcement by Customs.

ITAC has changed its outlook and decision-making in response to the changes in trade policy discussed above. The CEO of ITAC has noted that, whereas previously the push was towards tariff liberalisation, the approach now is evidence-based on a case-by-case basis, with no priors about whether tariffs should be increased or decreased. Instead, recommendations as to whether to increase or decrease tariffs are informed by a weighing up of strategic objectives and considerations on particular products.

The interviewee from the Economic Development Department notes that changes in trade policy over the past five years and the resultant changes in ITAC's mandate have the effect of requiring ITAC to be significantly more active and activist in its work, in particular more active in using import duties as a tool and much more strategically than previously. In his assessment, ITAC is sufficiently aware of the changes in mandate, they are indeed doing things differently from previously and are essentially managing to achieve the current mandate.

### **3. Overview of the role and functioning of ITAC**

#### **3.1. The role of ITAC**

The International Trade Administration Commission was established on 1 June 2003 in terms of the International Trade Administration Act 2002 (Act 71 of 2002) (the ITA Act), which replaced the Board on Tariffs and Trade Act 1986 (Act 107 of 1986) (the BTT Act). The aim of ITAC is to foster economic growth and development in order to raise incomes, promote investment and employment in South Africa and within the Common Customs Union Area (ITAC, 2013). ITAC intends to facilitate an efficient and effective system for the administration of international trade. The core functions of ITAC are customs tariff investigations, trade remedies and import and export control. To achieve these functions, ITAC is therefore composed of three main divisions or units: tariff investigations, trade remedies and import and export control. As of March 2014 it has produced 464 reports on investigations on various trade and tariff related issues.

ITAC reviews tariff investigation guidelines to align it to government policy. Currently, the Commission is therefore following a 'developmental or strategic approach to tariff setting with the objective of promoting domestic manufacturing activity, employment retention and creation, and international competitiveness' (ITAC 2013a, p11). Tariff decisions are evidence based and are evaluated on a case-by-case basis.

In general, South Africa uses tariffs as an instrument of industrial policy. It has a strategic tariff policy in terms of its Trade Policy and Strategy Framework. Tariffs are changed on a case-by-case basis and the Department of Trade and Industry identified certain industries as strategic in the department's Industrial Policy Action Plan (IPAP). These sectors include agro-processing, forestry, paper, capital equipment and transport equipment, among others.

### 3.2. The process of tariff investigations in ITAC

Under tariff investigations, ITAC receives and evaluates cases from local industry applications for either tariff reduction or increase. Local industry submits cases for either duty increases, in order to seek relief from external competition or tariff reduction cases to lower duties on goods like raw materials and intermediate inputs which are not manufactured locally to allow domestic companies to become competitive. ITAC therefore investigate these cases, analysing the impact on the economy and taking into account the effects on employment, growth and investment to mention a few. ITAC then forwards its recommendations to the Minister of Trade and Industry for final decision, who then forwards a recommendation to the Deputy Minister of Finance and, once approved, the tariff changes are submitted to the South African Revenue Services (SARS) for implementation.

The Commission meets once a month to evaluate investigations conducted by investigative staff and makes recommendations to the Minister of Trade and Industry (ITAC, 2013). ITAC has revised its investigation timeframes from 12 months to six months for ordinary tariff investigations and to four months for those sectors in distress.

The process of tariff setting takes place the basis of a reciprocity assessment approach. If the government decreases/increases tariffs it expects positive contribution to the economy.<sup>4 1</sup> Domestic beneficiaries from tariff changes should make reciprocal commitments such as increasing employment, investment and domestic manufacturing activities. This commitment is monitored and evaluated by the Commission. We return to this issue in the final section of the report.

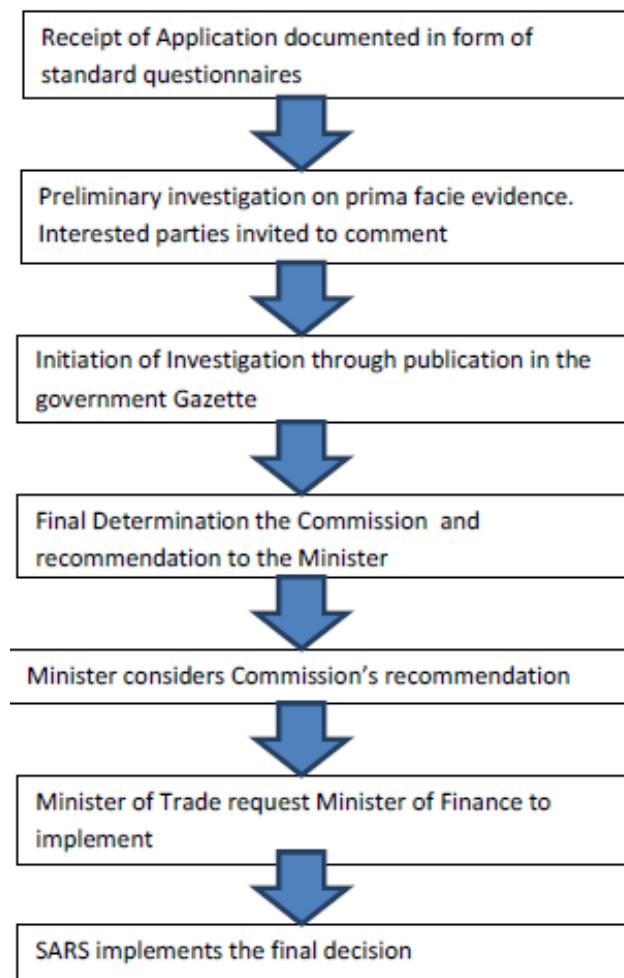
The tariff investigation is supposed to take four month for sectors in distress and six months for normal investigations<sup>5</sup> (ITAC, 2013). The tariff investigation process is illustrated in Figure 1.

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<sup>4</sup> Government decrease in tariff will entail reductions in revenue, which should therefore be compensated by respective companies by expanding production, employment. Examples of such reciprocity commitments in 2013 have been made in uncooked pasta, geosynthetic clay line, set-top boxes and frozen half- shell mussels.

<sup>5</sup> For trade remedies, according to ITAC the investigation process is completed within 10 months of the date of initiation.

**Figure 1: ITAC investigation process**



*Source: ITAC, 2013*

Once ITAC receives an application for tariff increase or reduction it starts the investigation process based on evidence presented by the interested parties. In assessing the submission ITAC relies on mutual trust on the information submitted. They do, however, visit companies in order to verify the information submitted. The International Trade Administration Act provides the legal basis for undertaking investigations and making recommendations regarding customs duty amendments. Section 38-45 of the ITAC Act of 2002 provides the legal basis for ITAC's powers of investigative search and inspection. The High Court or regional magistrate or a magistrate may issue a warrant to enter and search any premise (ITAC ACT, section 43). ITAC has also powers to enter and search without a warrant (ITAC Act, section 44). ITAC also operates under the Tariff Investigation Regulations (section 59), which provides clarity and assists parties who wish to bring in a customs duty amendment application. The Tariff Investigation Regulations were published in the Government Gazette in April, 2006.

Section 60 of the ITAC Act gives powers to ITAC to have Tariff Investigation Guidelines. The guidelines cover the procedures that parties can follow when they need to apply for tariff changes. The Tariff Investigation Guidelines (section 60) must be published in a Government Gazette, but are not binding on ITAC, any SACU institution or any court. The purpose of the guidelines is to operationalise the regulations. The Tariff Investigations Guidelines are revised in the context of changing policy as well as changing domestic and global conditions. The

focus of the revised guidelines is on thoroughness and strengthening analysis in support of the rationale behind any recommendations. They set out a systematic and coherent approach to analysing tariff applications, facilitating more effective comparison and focused assessment of applications. (Interview with Chief Economist)

ITAC obtains information by sending templates which companies are required to fill in. Companies are required to indicate financial information, costs, input and any other information that support the application. Appendix 3 shows the three data templates on market and trade, cost build up and reciprocity commitments. The Chief Economist for ITAC pointed out that there is also a need to strengthen the legal unit by enhancing its capacity and employing more legal personnel. This will reduce the outsourcing of legal advice which is currently the situation for all cases.

According to the Chief Economist, ITAC has adopted a more hands-on approach in the use of its instruments. The tariff application assessment and adjudication is no longer based only on information provided by an applicant (in the form of a company-wide approach). Investigations now entail an industry-wide approach, with the view to bring diverse perspectives into the analysis and create expert advice that will form the basis on which recommendations are made. Its processes are evidence-based, and are carried out on a case by case basis, employing simple trend and comparative methodology in interrogating applications. In addition, the Commission has now begun to make all tariff support conditional on reciprocal commitments by applicants with the view to gauge the performance of beneficiaries against the policy objectives of increased domestic manufacturing, investment, value addition and competitiveness.

## 4. International comparisons

This section compares ITAC's tariff investigation process with the equivalent process in three other developing countries: Brazil, India and Pakistan (Brazil and India are members of the BRICS bloc of countries).

Table 1 provides a summary of tariff investigation processes in South Africa, Brazil, India and Pakistan. The table shows the institutional setting of tariff investigations, the degree and nature of institutional 'independence', a brief summary of the process involved, and the number of days stipulated for the completion of a tariff investigation case.

**Table 1: International comparison of tariff-setting processes**

Country	Institutional Setting	Institutional Independence	Process	Timeframe
South Africa <sup>6</sup>	DTI is the parent ministry of ITAC.  Treasury is responsible for making tariff changes and	ITAC is independent but falls under the Department of Trade and Industry	ITAC makes investigations  and recommends to DTI which recommends to Treasury and	Four months for sectors in  distress and six months for normal investigations

<sup>6</sup> Information obtained from ITAC website: [www.itac.org.za](http://www.itac.org.za)

	effects the changes through South African Revenue Services		SARS implements the changes	
Brazil <sup>7</sup>	Department of International Negotiations (DEINT) falls under Ministry of Development, Industry and foreign trade (MIDC) and The Board of Foreign Trade (CAMEX) makes the final decisions.	DEINT is a department under the Ministry of Development, Industry and Foreign Trade	DEINT undertakes investigations and submits to CT-1 which will then submit to CAMEX for implementation in Brazil	CAMEX Resolution allows for changes to be made on 1 January or 1 July of every year <sup>8</sup>
India <sup>9</sup>	Tariff Commission, Ministry of Commerce and Industry	Tariff Commission is Independent but falls under Ministry of Commerce and Industry	Tariff Commission undertakes tariff Investigations and makes recommendations to Ministry of Commerce and Industry	-
Pakistan <sup>10</sup>	National Tariff Commission, Ministry of Commerce	NTC is an independent board but it falls under Ministry of Commerce	NTC makes investigations and submits its recommendations to Ministry of Commerce	120 days

*Source: Author compilation*

From the table above, it is clear that tariff investigations in South Africa, India and Pakistan basically follow a similar process. India and Pakistan's institutional set-up and processes mirror the South African system in the sense that the respective

<sup>7</sup>Information obtained from Ministry of Development, Industry and Foreign Trade: [www.mdic.gov.br](http://www.mdic.gov.br)

<sup>8</sup>This means tariff changes are effected only on 1 January and 1 July of every year

<sup>9</sup>Information obtained from Tariff Commission website: [www.tc.nic.in](http://www.tc.nic.in)

<sup>10</sup> Information obtained from National Tariff Commission website: [www.ntc.gov.pk](http://www.ntc.gov.pk)

commissions are independent and separate bodies that undertake investigations in which they recommend to the Ministry of Industry and Commerce for approval and enforcement of duties.

The Brazilian case is different in the sense that the Department of International Negotiations, which is responsible for investigating tariff changes, is a department in the Ministry of Development, Industry and Foreign Trade.<sup>11</sup> This suggests that it is not independent as other investigation authorities, and also the Board of Foreign Trade (CAMEX) is responsible for making the final decisions and enforcing the changes made. Furthermore, tariff changes can only be made twice a year, which is on the 1st of January or July of each year.

In terms of institutional setting, South Africa has similarities with India and Pakistan, where the equivalent bodies are located under Ministries of Commerce and Industry and Commerce respectively. This allows for the respective ministries to convey their industrial policy objectives to the Commissions' tariff investigation mandate, but at the same time allowing the Commissions to exercise independence in conducting their investigations.

For South Africa, ITAC replaced the Board on Tariffs and Trade, which is similar to the Indian Tariff Commission, which replaced the Tariff Board. However, an advantage of the India Commission's institutional setting is that it was merged with the Bureau of Industrial Costs and Prices in 1999. This can provide accurate assessment of pricing behaviour quickly and timely. Both countries, however, both have separate Competition Commissions. The duty of the Tariff Commission of India is to carry out various studies that are used by different department or stakeholders. This is different from ITAC, which carries out studies on behalf of the Department of Trade and Industry.

In terms of the number of days taken to complete investigations, the Pakistan Commission is relatively fast, as it takes 120 days on all cases, whereas ITAC takes between four to six months to complete investigations, depending on the state of the sector concerned. In Brazil it can take up to six months to complete an investigation and effect a tariff change.

In most countries – as in South Africa – there has been a shift to link tariffs and industrial policy objectives. The Brazilian government implemented a new industrial policy in 2011, 'The Greater Brazil Plan 2011-2014', which aims to offer solutions to its economic problems after the financial crisis. Almeida and Schneider (2013) argue that the Greater Brazil Plan differed from earlier industrial policies in that it relied more on trade protection and in particular federal excise tax on automobiles that did not have at least 65 percent of domestic content. Import taxes on cars and textiles were increased and modified respectively. The policy was adopted to protect industrial output and employment in labour intensive sectors that were suffering from external competition.

In the case of India, the use of tariffs in achieving India's industrial and trade policy objectives was high prior to 1991 as it relied on a restrictive trade policy which gave high levels of protection to domestic industry. The government changed this policy in 1991 as it opened up the economy to foreign competition. India, however, still maintains high tariffs in agriculture post the financial crisis as well as on intermediate products, and its tariff structure remains relatively protectionist compared to East Asian countries (Sally 2011).

Pakistan's National Tariff Commission gives expert advice on tariffs to the government in the broader context of trade and industry policy. Trade liberalisation started in 1996 and by 2003 it had managed to remove quantitative restrictions and significantly reduced import tariffs

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<sup>11</sup> Brazil is a member of the MERCOSUR Customs Union and as such applies a Common External Tariff.

(Pursell, Khan and Gulzar 2011). However with the onset of the financial crisis the government came up with measures aimed at pulling the economy out of the global recession by adopting policies that rationalise the tariff structure to discourage the exportation of raw materials required by the local industry, restricting imports of non-essential imports and rationalise bound and unbound tariffs (Government of Pakistan, 2011). In this case some of the measures involved increasing tariffs but taking into account the disadvantages of over protection.

## **5. Case studies**

### **5.1 Poultry**

The importation of chicken into the South African/SACU market has been the subject of longstanding contestation.<sup>12</sup> Policy reversals and disputes in tariff have characterised the poultry sector since at least the year 2000. Before the current tariff regime on poultry, ITAC imposed provisional anti-dumping duties on imports from Brazil. These ranged from between 46.59% on boneless cuts and 62% on whole birds in January 2012. This was challenged by the Brazilian government under the WTO's dispute settlement system and was subsequently reversed by the South Africa Minister of Trade and Industry on 8 March 2013 (ITAC notice 173 of 2013). Instead the Minister called for a comprehensive strategy to deal with these imports from Brazil.

In response to this, on 27 March 2013 the South African Poultry Association (SAPA) submitted an application to ITAC, requesting general tariff increases on imported whole birds, boneless cuts, bone-in portions and offal. Their request was granted at the end of September 2013, with tariff increases varying between 12% and 82% on all the products, as shown in Table 2 below. These increases, however, did not apply to EU and Southern SADC countries due to the existing free trade agreements (Government Gazette Number 36876). This has been followed by another bid by the domestic poultry industry to reduce imports of chicken from Europe. The fresh bid to have an imposition of anti-dumping duties of frozen bone-in chicken portions, classified under tariff heading 0207.14.90, originating in or imported from Germany, the Netherlands and the United Kingdom was started on 25 October 2013<sup>13</sup> (published in the ITAC Notice 1047 of 2013 (Cronje, 2013). This may indicate that ITAC decisions are not robust in giving a final decision of tariffs on the poultry sector.

Government has designated the poultry sector as a sector in distress, giving the chance to ITAC to increase the pace of tariff investigation. Given this background it is important to review what transpired in this sector and which resulted in ITAC's decisions.

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<sup>12</sup> Report Number 36 of ITAC (14 November, 2003) indicates demands of the South African Poultry Association (SAPA) in 2003 which was granted by ITAC for frozen poultry offal but could grant an increase in duty on whole frozen chicken and chicken cuts. According to Cronje (2013) imports of frozen bone-in pieces, classified under tariff heading 0207.14, from the United States of America have been subject to anti-dumping duties since December 2000.

<sup>13</sup> Government Gazette Number 36951 dated 25 October 2013 under Notice 1047 of 2013.

**Table 2: Increase in the rates of customs duty on frozen chicken meat**

<b>Tariff Subheading</b>	<b>Product description</b>	<b>General duty before the increase on 30 September 2013</b>	<b>Proposed duty by SAPA</b>	<b>Type of duty requested</b>	<b>New general duty</b>	<b>EU &amp; SADC</b>	<b>EFTA</b>
0207.12.20	Carcasses with all cuts removed	27%	991c/kg with a maximum of 82%	Specific duty capped with the bound rate	31%	Free	31%
0207.12.90	Other, whole bird	27%	1111c/kg with a maximum of 82%	Specific duty capped with the bound rate	82%	Free	82%
0207.14.10	Boneless cuts	5%	12% or 220c/kg with a maximum of 82%	Combination duty capped with a bound rate	12%	Free	12%
0207.14.20	Offal	27%	67% or 335c/kg with a maximum of 82%	Combination duty capped with a bound rate	30%	Free	30%
0207.14.90	Other: Bone-in portions	220c/kg	56% or 653c/kg with a maximum of 82%	Combination duty capped with a bound rate	37%	Free	37%

Source: Government Gazette Number 36358, 12 April 2013 & Government Gazette Number 36876, 30 September, 2013

SAPA initiated the investigation into the dumping of chicken imports from Brazil and other countries. This was supported by poultry associations in the other SACU countries, namely Namib Poultry Industries (Pty) Ltd, Swazi Poultry Processors, Botswana Poultry Association and Basotho Poultry Farmers Association. This process has also been supported by the Animal Feed Manufacturers Association, representing animal feed manufacturers in South Africa. SAPA requested an imposition of tariffs due to an increase in the volume of cheap frozen chicken imports, from almost 99 000 tonnes in 2008 to almost 239 000 tonnes in 2012.

Table 3 below shows domestic production and imports of chicken, in both levels and market share (percentage) terms. A significant increase in import penetration is evident, with the market share of imported chicken more than doubling between 2008 and 2012.

**Table 3: Comparison of domestic production and imports of chicken**

<b>Year</b>	<b>Domestic production (tonnes)</b>	<b>Imports (tonnes)</b>	<b>Domestic market share</b>	<b>Import market share</b>
2006	1 474 952.58	181 397.00	89.05%	10.95%
2007	1 534 417.87	144 888.00	91.37%	8.63%
2008	1 639 277.33	98 845.00	94.31%	5.69%
2009	1 652 353.27	123 230.00	93.06%	6.94%
2010	1 718 616.42	138 219.00	92.56%	7.44%
2011	1 736 492.73	201 696.00	89.59%	10.41%
2012	1 758 772.04	238 958.00	88.04%	11.96%

Source: SAPA, 2013

The reasons also given by SAPA (as in their non-confidential report) for tariff increases are already incurred jobs losses and the prospect of continued job losses due to company closure. It also cited the negative impact of low priced imports on further investment in the poultry industry, arguing that this could compromise SACU food security (Government Gazette Number 36358).

SAPA referred to five major SACU producers for justification. The poultry industry directly employs 48 000 employees with another 60 000 indirectly employed in supporting sectors. Five companies alone (Rainbow, Astral, Sovereign Food, AFGRI Poultry and Supreme Poultry) employ almost half (22 166) of the direct employees. These five companies claimed that 11 995 direct jobs and 14 892 indirect jobs are likely to be created when tariffs are imposed to their maximum rates of 82%. The poultry producers argued that they were in distressed financial situations due to low priced poultry imports. The request to increase tariffs was thus framed as being necessary in order to save the SACU poultry industry and employment.

In support of their request, SAPA presented projections as to the threatened losses in employment, restrictions on exports in South Africa's trading partners, cost disadvantages to

the local industries, regulatory disadvantages of producers versus importers, the consequences that South Africa faces if imports are not stopped and reversed. They argued that the imposition of duties would lead to benefits such as increased investment, employment and grain production, compared to costs such as increase in the prices for domestic consumers.

On the other hand, the Association for Meat Importers and Exporters (AMIE) opposed SAPA's call for a tariff hike. AMIE's challenge was also based on an argument that imports from non-EU countries had declined by 35% from 2006 to 2013, indicating no need for protection. It also submitted that the cost calculations by SAPA were wrong. According to AMIE, the depreciation of the rand had already provided a 25% protection for local producers. They also opposed SAPA's argument that the South African poultry industry was the least protected in the world by citing the previous duty of 27% on carcasses, other whole and offal as enough to protect the industry. Furthermore, AMIE characterised the domestic poultry industry as inefficient. By implication, tariff increases would be financing a bad business model of the poultry industry. The view presented by AMIE is that the poultry sector's problems derive from factors such as high input costs, including labour, electricity and animal feed, rather than from increased imports in recent years. Tariff increases or trade remedies will not thus solve the poultry sector's problems.

From the competition side, the view of the Competition Commission (as articulated by then-Commissioner Ramburuth) was that the poultry industry was not competitive. From its investigations, the Competition Commission found elements of collusion among domestic chicken producers (Vecchiatto, 2013). From the perspective of the Competition Commission, imports are necessary to force competition in the domestic poultry market. The Commission therefore opposed the tariff increase.

Following SAPA's request, ITAC followed the tariff investigation process by first publishing a notice in the Government Gazette (on 12 April 2013) inviting all interested parties to comment on the application by SAPA. The general tariff investigation process entails the stages illustrated in Figure 1. Interested parties commented and made oral presentations (on 11 June 2013) concerning the proposed request. After taking the concerns and issues raised by all parties, on 5 August 2013 ITAC submitted to the Minister of Trade and Industry a request for an increase on import duties on five poultry products. On 29 August 2013 the Minister granted the request which was then implemented on 30 September 2013 by SARS (Notice 715, Government Gazette Number 36876). The poultry sector was classified as a sector in distress.

The investigation by ITAC was not concluded in the stipulated four months. The tariff investigation process started on 27 March 2013 and ended on 30 September 2013. SAPA argued that this delay in announcing the final tariff decision led to speculation causing real market distortions.

Though ITAC increased the duty, it did not agree on customs duty combined with quantity restriction as it did not find evidence of under-invoicing as claimed by SAPA. Further, ITAC recommended a slight increase on offal and carcasses, given that they are an important source of protein for the poor. The differentiated outcomes for different types of poultry products are an important demonstration of the attempted balancing between different and often competing objectives. In this instance, protection of domestic industry (including employment) had to be balanced against the need for affordable food for low-income consumers. Tariffs were thus differentiated for different types of poultry products, with those consumed predominantly by low-income consumers being subjected to lower tariffs than those consumed predominantly by high-income consumers.

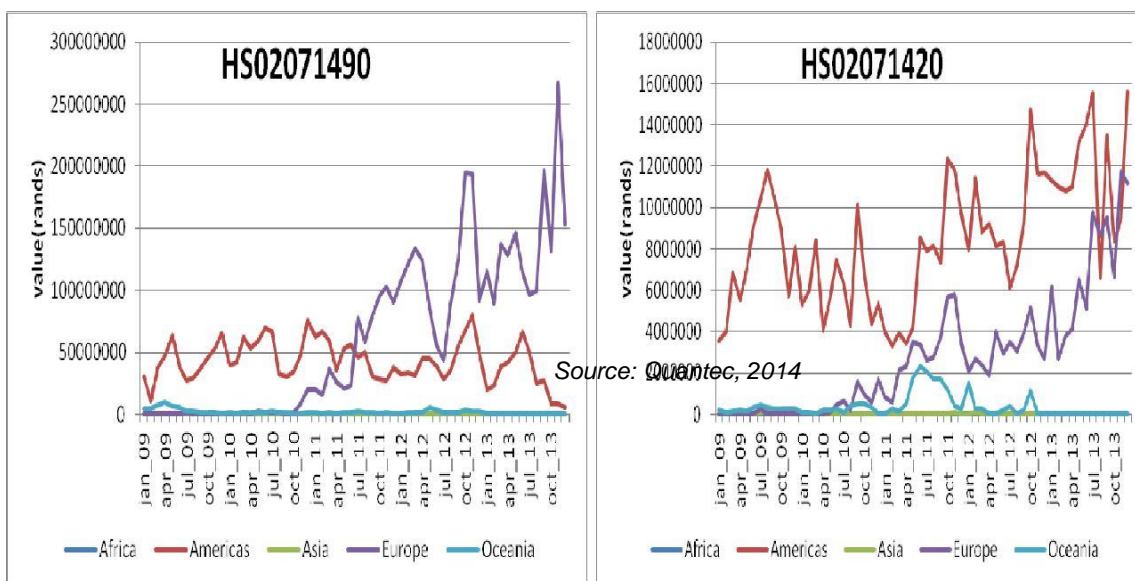
ITAC also recommends that the duties be reviewed after a period of five years to determine the impact on domestic production, investment and employment. In recommending the decision ITAC carried out a consumer impact assessment. ITAC's finding that it will not increase domestic prices contradicts Fourie (2013) findings that the tariff increase will lead to increase the costs to consumers especially on the poor.

In accepting the ITAC recommendation, the Minister of Trade and Industry stipulated five conditions that should hold for the tariff to remain in the future (DTI, 2013c). First, there is the need for an early review of the new tariff positions to assess its impact. Second, the Minister expects that the question of brining will be satisfactorily addressed through new regulations to be established by the Department of Agriculture Forestry and Fisheries and that the domestic industry will reduce brining in anticipation of these new regulations. Third, the Minister expects that the established poultry industry would make meaningful undertakings to support the development of small-scale poultry farmers. Fourth, the Minister expects that providing this support, the poultry industry will work to encourage fair competition in the domestic market. Finally, these measures are designed to support and promote the poultry producers across the entire SACU market to ensure a sustainable and competitive industry that is able to provide greater food security to the region's people.

ITAC's decision can be evaluated basing on time taken to impose the final decision, information used to evaluate different submitted position, position of EU imports and general view of industry stakeholders.

The fact that EU and SADC imports are duty free points to a possible loophole. There is a possibility of diverting imports to South Africa through these regional blocs. Evidence also shows that imports of chicken have of late been coming through EU countries rather than Brazil. For example considering continental imports it shows that Europe has overtaken the Americas in supplying other: bone in portions (HS02071490) to South Africa. This also applies for offal (tariff line HS02071420) where Europe is almost overtaking Americas.

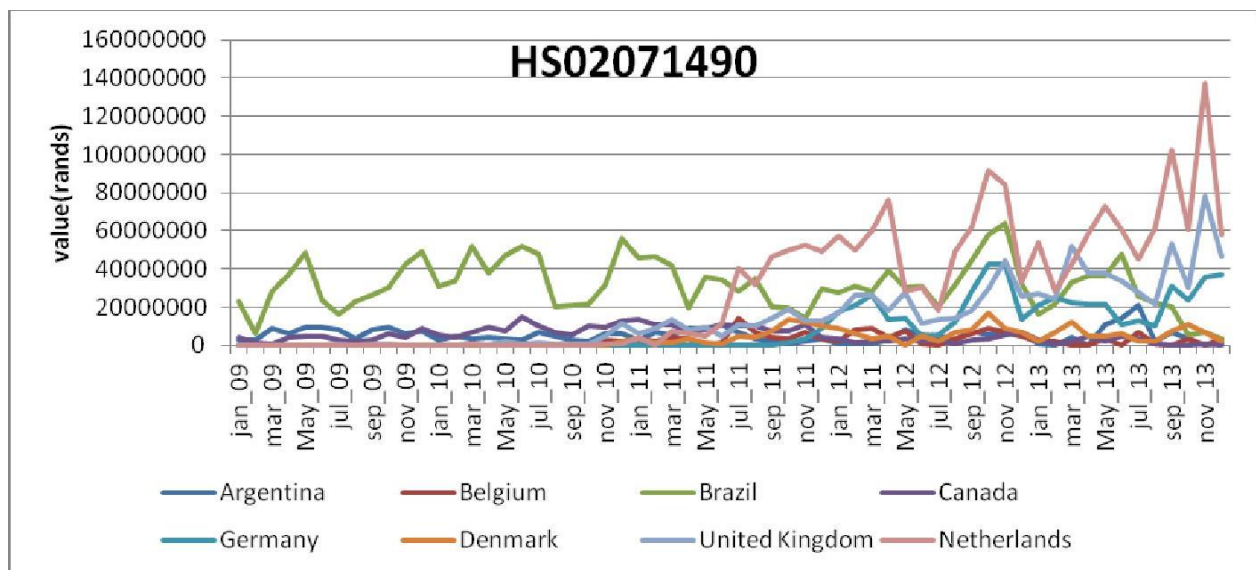
**Figure 2: Trends in HS lines across continents**



However, despite this trend, Brazil still dominates in other chicken products. At country level it

shows that Brazil was a major exporter to South Africa before May 2011, after which it was overaken by Nertherlands. There has also been an upward surge in exports of tariff line HS02071490 to South Africa by EU countries such as Germany and United Kingdom.

**Figure 3: Trend in the HS 02071490 line across countries**



Source: Quantec, 2014

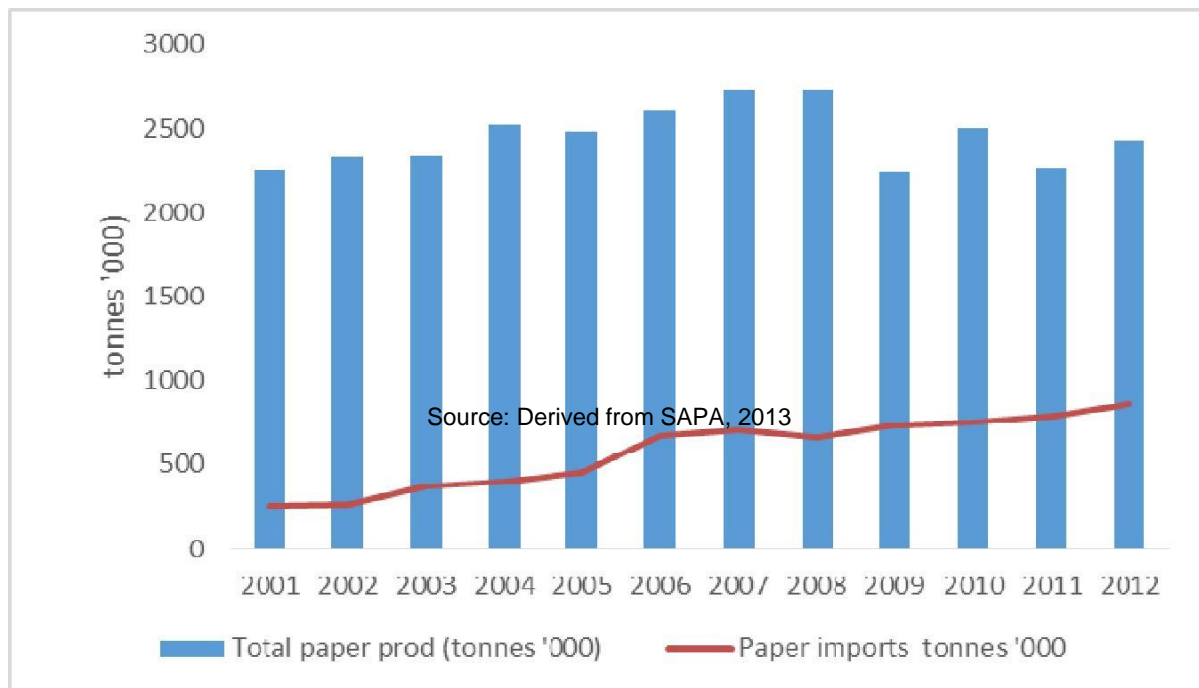
It should be clear that increasing tariffs and trading duty free with EU countries may not result in the intended benefits of the protection.

## 5.2 Paper

The Printing Industries Federation of South Africa (PIFSA) made a request to ITAC for a reduction in the rates of duty on paper and paperboard covering 81 tariff subheadings. The printing, publishing and packaging companies are involved in value addition of paper by converting it into a variety of products such as books, magazines and packaging material. The industry is composed of 844 members, which are small to medium sized companies. This is the opposite of the paper industry, which is dominated by Sappi and Mondi.

The paper industry contributed about 0.6%, 3.9% and 27.5% to gross domestic product (GDP), manufacturing GDP and agriculture GDP respectively in 2011 (PAMSA, 2013). Figure 4 below shows the production and import of total paper from 2001. Production has been oscillating (excepting in 2008, which showed a marked decline possibly due to the global crisis). The figure shows that imports were not very high pre-2006. This might be the reason for PIFSA requested a tariff reduction.

**Figure 4: Trends in total paper production and imports**



The application was published in the Government Gazette No. 27579 of 20 May 2005 and interested parties were asked to provide their submissions. Four companies in the industry together with the PIFSA supported the application, while one company and PAMSA objected to the application.

PIFSA and other companies gave various reasons for the need of tariff reduction on paper and paperboard. They argued that the domestic paper manufacturing industry was highly concentrated hence the need for imports to provide an alternative form of competition. The domestic paper manufacturing industry was highly concentrated with the five largest manufacturers, namely Sappi, Mondi, Nampak, Gayatri and Kimberly-Clark. The combined output of these five manufacturers was about 96% of pulp, paper and paperboard production in South Africa. The largest among these five was Sappi, which is ranked 20<sup>th</sup> in the world by turnover and Mondi ranked 15<sup>th</sup> in the world on the list of the largest pulp and paper.

The grouping in favour of the reduction of duties provided evidence in relation to employment, growth and sustainability of the industry from tariff reduction across the value chain industry. They also provided evidence suggesting that those who were against the duty reduction were only interested in protecting their uncompetitiveness, since the industry was highly concentrated with huge barriers to entry. They believed that a reduction in tariff would have a cost-cutting effect on the downstream industry, which is a major exporter.

Those who were against the duty reduction cited the evolution of custom duty dispensation in the industry since 1992, non-tariff barriers in some overseas countries and the price trends and the effects of import tariffs on the prices. PIFSA provided an argument for a growth strategy for the industry in the form of employment, investment and sustainability of the agricultural sector. Their case also drew on an argument that either some products were not manufactured in SACU or that sufficient time had passed for those large international corporations to become competitive in these markets. Another reason advanced by PIFSA for the import of paper products was due to long term contracts that paper manufacturers enter into with local printing,

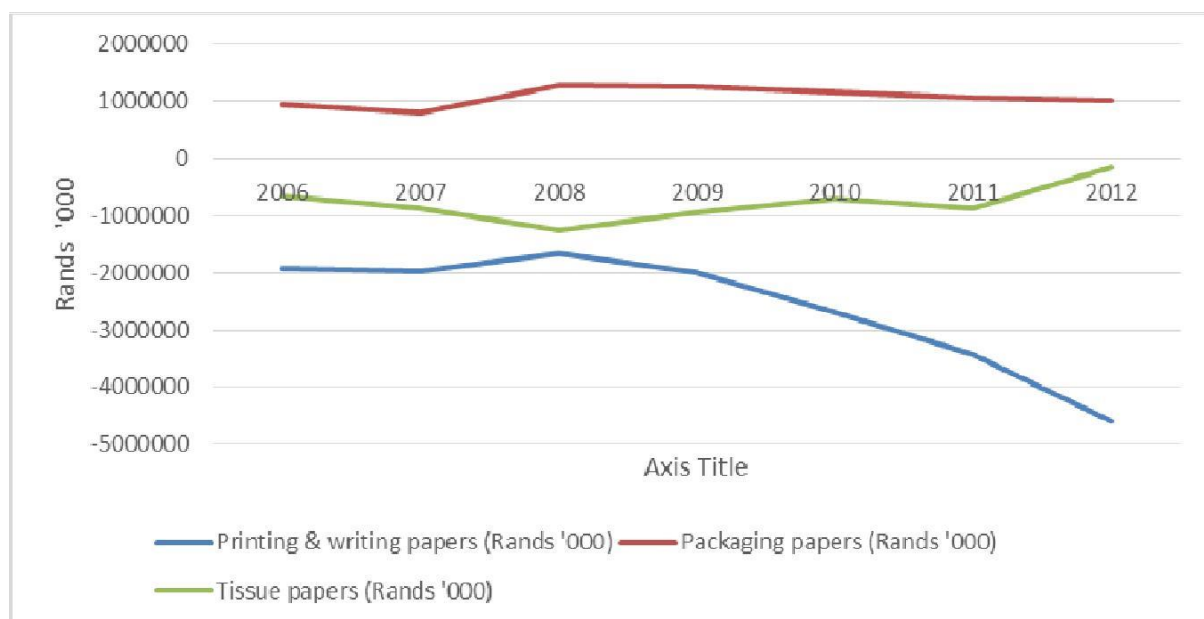
packaging and publishing companies. This creates inflexibility in the face of increased demand.

ITAC's analysis was largely concerned with the analysis of imports. The import analysis showed that the EU and SADC accounted for 76% of imports for tariff headings 48.01, 48.02, 48.05, 48.07, 48.08, 48.10 and 48.11. These imports were either duty-free or their duties were in the process of being phased down to duty-free by 2012. The reduction in the rates of duty on paper and paperboard in 2006 was largely shaped by the tariff phase down schedule in terms of the SA-EU Free Trade Agreement.

ITAC recommended a blanket reduction of duties on different paper products to a duty free rate. For example, reduction from 5% ad valorem to duty free, those at 10% and 15% to duty free by 2012, and tariff line which were charged duty of 20% to duty free by 2015

In general since 2006, almost across the paper products, imports have been increasing at 3.5% per year (PAMSA, 2013). PAMSA is concerned about the effect of this on the sector as this might continue leading to further company closures. The 2008 crisis led to reduced imports but these have picked up to 30% since 2008 (PAMSA, 2012). This is all increasing pressure on local production capacity. The negative balance of the trade and value of paper and board (excluding pulp) has more than doubled since 2008. Figure 5 below shows that since 2006, the imports of printing are greater than exports, and this is marginally similar to tissue paper but the opposite of packing papers. This shows that after the imposition of duty rates on different HS lines, imports have been increasing for printing and writing paper.

**Figure 5: Balance of trade (exports-imports)**



A possible weakness of ITAC's technical analysis in this case lay in the strong basing of their decision on import analysis and trade agreement. The reduction of all tariffs over a number of years because of a trade agreement consideration tends to neglect other important economic considerations which are brought by dynamics in the industry. PAMSA takes the view that the decision to unilaterally decrease tariff on paper and paperboard based on EU-SA tariff phase was flawed. They argued that this is one of the reasons why they were applying for this tariff reduction reversal. (Interview with PAMSA). In 2013 PAMSA applied to reverse these tariff reductions. And in the same year PAMSA submitted

applications for tariff increase in various products where tariffs were reduced in 2006. For example they submitted an application for the increase of tariffs on 4810.19.90 and 4802.56.20 on 9 October 2012 and 18 October 2013 respectively. Table 4 shows reversals initiated on certain HS tariff lines by PAMSA.

**Table 4: Tariff lines for duty reversal**

<b>HS line</b>	<b>2006 Action (from demands by PIFSA)</b>	<b>2013/14 Demands by PIFSA</b>
48025620	Reduction of duty from 5% to duty free rate	Demand to reinstate duty of 5% (from duty free)
48025690	SA-EU tariff Phase down (from 15% to duty free by 2012)	Demand for increase from duty free to 20%
48101990	From 5% to duty free	Demand for provisional duty

In general, PAMSA believes that at some times ITAC process takes too long to conclude a tariff investigation case. (Interview with PAMSA). This tends to be costly to companies, particularly given changes in companies' cost structures and in macroeconomic variables. PAMSA also noted that there is need for common relations amongst the government departments because it looks like they work independently yet their objectives are interdependent. This will also reduce loopholes which are often utilised by other players to cheat the system by evading the tariffs. There is need for capacity building for example to SARS to enable them to understand and identify different paper products to reduce cheating as some other players cheat using different names and tariff lines. The other point raised by Sappi is that at sometimes decision to change tariffs by ITAC tend to favour small companies if it is cases of a big company versus a small company.

## **6. Robustness of ITAC responses to legal challenges**

The extent to which ITAC decisions hold up in court when subjected to legal challenge can be seen as one of the indicators of ITAC's performance.

Twenty-three ITAC decisions have been challenged in court since the establishment of ITAC in 2003. Four of these cases have been heard in the Supreme Court, one and in the Constitutional Court and the remaining nineteen in the High Court.

Of these 23 cases, the outcome was in favour of ITAC in 12 cases and against ITAC in 7, one was settled out of court in favour of ITAC and in a further 3 cases the outcome was subject to a confidentiality agreement. Considering the trend over time, there seems to be some improvement in terms of the proportion of ITAC decisions that are upheld by the Courts when subjected to challenge. For the period 2004-2008, 7 ITAC decisions were challenged in court of which 5 went against ITAC. For the period 2009-2013, 16 ITAC decisions were challenged in court, representing a significant increase in legal challenges. However, of the 13 of these where the outcome is not subject to a confidentiality agreement, only 2 went against ITAC (and in one of these two cases the consequence of the order is in favour of ITAC). This trend represents an improvement of the robustness of ITAC decisions when subjected to legal

challenge, and can be seen as an improvement in ITAC's performance over time.

Table 4 summarises the outcomes of cases in which ITAC decisions have been challenged in court, listing these by year for 2003-2013. More details on each of these cases is provided in Table 5.

**Table 5: Outcomes of court challenges to ITAC decisions**

Year	Number of cases	Number in favour of ITAC <sup>14</sup>	Number in favour of applicant	Other outcome
2004	1	1	0	
2006	3	1	2	
2007	2	0	2	
2008	1	0	1	
2009	2	2	0	
2010	7	4	1	2 - confidentiality agreement between parties
2011	1			1 - confidentiality agreement between parties
2012	2	1	1 <sup>15</sup>	
2013	4	3	0	1 – settled out of court in favour of ITAC
TOTAL	23	12	7	

Source: Derived from information provided by ITAC by email

**Table 6: Details of court challenges to ITAC decisions**

PRODUCT	PARTIES	COURT	DATE	OUTCOME
A4 paper – 5yr expiry date	Progress Office vs ITAC/Min	High Court	2004	In favour of ITAC
Carbon Black – export price in sunset reviews	Algorax vs ITAC/Min	High Court	2006	In favour of Algorax – ITAC ordered to reconsider recommendation
Shock tubes – termination of investigation	AEL vs ITAC	High Court	2006	In favour of AEL – ITAC ordered to re-initiate investigation
Electric Cable	Association of Electric Cable Manufacturers vs	High Court	2006	In favour of ITAC

<sup>14</sup> 11 Note that in some cases the respondent was ITAC together with another institution such as SARS or the Minister of Trade and Industry.

<sup>15</sup> ITAC has indicated that, although the order went against ITAC, the consequence of the order is in favour of ITAC.

	ITAC			
Lysine –imposition of provisional measures	Degussa vs ITAC	High Court	2007	In favour of Degussa: Interim order and therefore no precedent.
A4 paper	Progress Office vs ITAC/Min	Supreme Court	2007	In favour of Progress Office
Wire Rope – interdict to recommend termination of duties to Minister	Scaw vs ITAC/Min	High Court	2008	In favour of Scaw
Wire Rope – separation of powers	ITAC vs Scaw	Constitutional Court	2009	In favour of ITAC
Unlawfully imported trucks seized	Clear Enterprise v ITAC/SARS	High Court	2009	In favour of ITAC
Tyres – market economy status	SATMC vs ITAC/Min	High Court	2010	In favour of SATMC
Tyres	ITAC/Min vs SATMC	Supreme Court	2010	In favour of ITAC
Tyres – claim for damages	SATMC vs ITAC	High Court	2010	In favour of ITAC
5 year expiry date – declaratory judgement	ITAC/Others vs 74 others	High Court	2010	In favour of ITAC
Wire Rope - confidentiality	Scaw vs ITAC/others	High Court	2010	Confidentiality agreement between parties
Wire Rope - confidentiality	Casar vs ITAC/others	High Court	2010	Confidentiality agreement between parties
Copper scrap	Sungwong/ ITAC	High Court	2010	In favour of ITAC
Wire Rope - confidentiality	Bridon vs ITAC/others	Supreme Court	2011	Confidentiality agreement between parties
5 year expiry date	Aranda/others vs ITAC/Min	High Court	2012	In favour of ITAC
5 year expiry date	AMIE v ITAC/Others	Supreme Court	2012	In favour of AMIE (but the consequence of the order is in favour of ITAC)
Determination and confidentiality of information	AMIE v ITAC	High Court	2013	Settled out of court in favour of ITAC
Price Preference- interdict from implementing the	MRA v ITAC/Min	High Court	2013	In favour of ITAC

guidelines				
Sugar –interdict from finalising the investigation	ASASI v ITAC	High Court	2013	In favour of ITAC
Scrap metal permit	SA Metal Group v ITAC	High Court	2013	In favour of ITAC

*Source: Information provided by ITAC by email*

More detail on the seven cases in which ITAC's decision was overturned by the courts (that is, the courts ruled in favour of the applicant) is provided in Appendix 2. In two of these cases the issue was essentially procedural. In a further two cases the matter was around differing interpretations of the law, in one case the issue concerned the interpretation of information and method of calculation used by ITAC, and one case involved both the interpretation of the law and the interpretation of information and method of calculation used by ITAC.

While it would be ideal to have no successful legal challenges against ITAC decisions, in practice there will inevitably be different interpretations of the law and of appropriate economic methodologies to utilise in making calculations. The number of cases in which ITAC's decision was overturned by the courts is small, and decreasing over time, which is commendable. It will of course be desirable to reduce this even further. Enhanced legal capacity may be relevant in minimising challenges to or the eventual overturn of decisions on procedural grounds and on matters of legal interpretation, while enhanced capacity in economic analysis may be helpful regarding challenges related to methods of calculated and related issues.

## **7. Assessment of ITAC current human resources and capacity-building**

### **7.1 ITAC staff structure and human resources**

The Chief Commissioner is the Chief Executive Officer and head of ITAC. He is assisted by a Deputy Chief Commissioner (though currently vacant) and up to ten Commissioners. Currently there is a full-time Chief Commissioner with ten part-time Commissioners. There are four Senior Managers (Technical Advisory Services, Legal Services, Internal Audit and Policy and Research), one Deputy Chief Commissioner (which is currently vacant), one Chief Economist (Trade and Economic Analysis) and one General Manager (Corporate Services) who report directly to the Chief Commissioner. Under the Deputy Chief Commissioner, there are Senior Managers for Tariff Investigations I (agro-processing, chemicals, textiles, clothing and footwear), Tariff Investigations II (motors, metals and machinery), Trade Remedies I and II, and Import and Export Control. These three units have managers, senior investigators, investigators, administrators and secretaries.

The table below shows the different level of staff for each unit. The biggest unit (in terms

of staff complement at these levels) is tariff investigations.

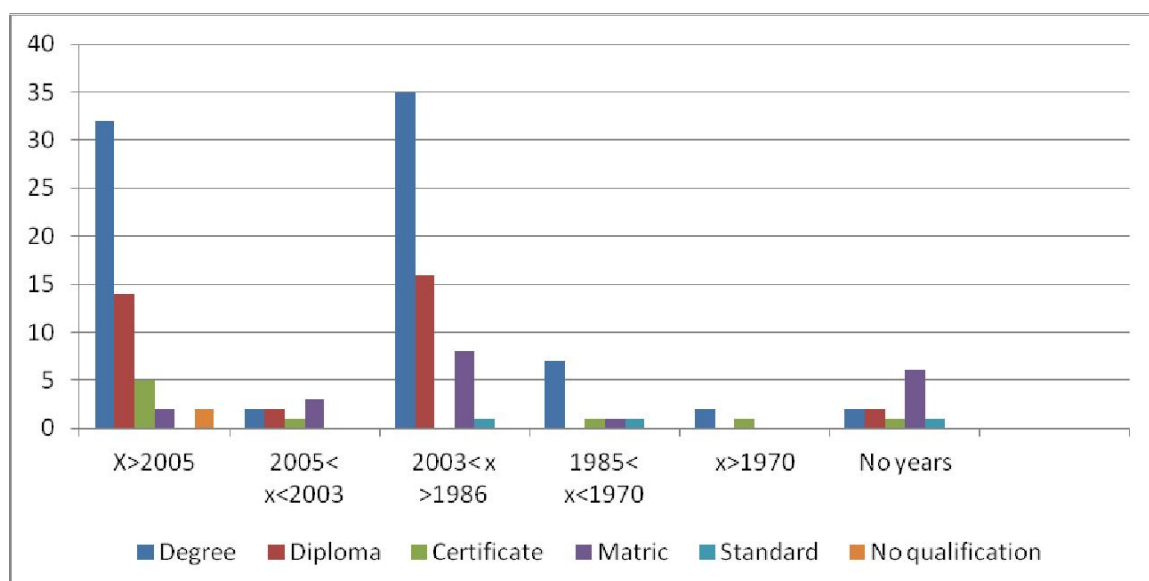
**Table 7: Composition of ITAC staff across units**

Unit	Senior Managers	Managers	Senior Investigators	Investigators
Tariff Investigation I	1	4	7	3
Tariff Investigation II	1	6	12	1
Trade Remedies I and II	2	10	9	2 <sup>16</sup>
Import and Export Control	1	3	4 <sup>17</sup>	

*Source: ITAC, Human Resources Manager (2013)*

ITAC employs about 149 staff in total. Of these, 54% hold degree level qualifications. In terms of experience, the majority of degree holders have an average of 15 years' experience.

**Figure 6: Comparing experience across qualifications of ITAC staff**



*Note: x indicates the starting date of the employees.*

*Source: ITAC, Human Resources Manager (2013)*

The high level of experience of staff is positive for maintaining continuity and institutional memory. It is also important as some of the skills needed in ITAC work are learnt on the

<sup>16</sup> There are called case administrators.

<sup>17</sup> It also has three assistant managers.

job.

However, the Chief Economist of ITAC has suggested that a possible disadvantage of too much staff longevity is that at some times staff may become 'too rigid'. They tend to use an 'experience based' approach in analysing the cases rather than 'technical based' methods. This may hamper new methods in assessing tariff changes cases. (Interview with Chief Economist). This observation is not necessarily an argument against experience or staff retention per se, but rather highlights the need for ongoing training and up-skilling. This includes the training of even experienced personnel with current technical methodologies as necessary and appropriate. This is discussed further in section 8.

Overall, the CEO and senior management of ITAC feel that the organisational structure is appropriate (Interview with the ITAC CEO). However, they identified a few human resource-related issues needing review. First, the staff complement is too small. They would want the creation of additional positions, which they believe would assist in speeding up the investigation process. Second, the CEO and senior management put forward a view that a number of important positions at ITAC are 'under-graded' relative to equivalent positions at the Department of Trade and Industry and elsewhere, which poses a problem for staff retention. Third, and related to the aforementioned point, vertical mobility within ITAC is limited in that employee growth and promotion prospects are constrained once they have reached a certain level, for example senior management level.

In a contrary view, ITAC's Senior Manager for Human Resources has stated that staff turnover at ITAC is not a big threat. (Email communication from Human Resources manager, 12 March 2014). In support of this she indicates that 'only [29] employees...terminated their services [from 1 April 2012 to date] and the reasons for termination of service are different'.

Of these 29 staff who left ITAC during this period, the contract came to an end in five cases, one staff member passed away, one was pensioned, one left ITAC because of misconduct and 21 resigned. The table below summarises the departure of ITAC staff (for whatever reason) during this period, by level. The levels range from administrative assistants at level 2 to General Manager and above at level 14.

**Table 8: Departure of ITAC staff, by level, from 1 April 2012 to date**

<b>Level</b>	<b>Number</b>
14	2
13	2
12	4
10	7
9	1
7	2
6	1
3	2
2	2
Temp and interns	6
Total	29

Source: Derived from information provided by ITAC by email

According to the Senior Manager for Human Resources, different reasons were given in resignations but most of the employees left ITAC for better work opportunities and career advancement (Email communication from Senior Manager for Human Resources, 12 March 2014). Some of the reasons given for those who resigned is lack of employee growth prospects within ITAC. She indicates that ‘according to our exit trend analysis report, none of the employees who were interviewed during their exit cited under-grading of positions as their reasons for leaving ITAC’. She indicated that salary grading is not a problem as ITAC is using the Equate System that is used by all government entities to grade positions and that the policy framework and guidelines governing job evaluation are those provided by the Department of Public Service and Administration, as with other government departments.

A rather high proportion of the staff departures were at senior levels, as shown in Table 7 above. In particular, it is worth noting that six Senior Investigators (at level 10) departed during this period, five of whom resigned. This is potentially of concern given the importance of these staff in the core work of ITAC, as well as the fact that significant skills for these roles are acquired on the job.

There does seem to be some discrepancy between the view of the Senior Manager for Human Resources and her interpretation of the exit interview data, and the view put forward by the CEO and other member of senior management, regarding whether under-grading of positions is a factor in the turnover of ITAC staff (especially senior staff). However, it is worth noting that implicit in the reason of ‘better work opportunities and career advancement’ cited by the Senior Manager for Human Resources may be an issue of under-grading of positions, even if that is not explicitly cited as such in the exit interviews. That is, staff may hypothetically be able to obtain better opportunities elsewhere if their positions at ITAC are ‘under-graded’. This issue is discussed further in section 8.

In terms of perceptions of stakeholders, both PAMSA and SAPPI have pointed to what they consider to be insufficient capacity at ITAC. An example cited was that at one point ITAC had to change the dates three times for verification of A4 paper, which in the view of the party is indicative of capacity problems. SAPPI also suggested that at times ITAC shows some inconsistencies, which points to lack of experience or the use of inexperienced staff (new recruits) for the verification process. The CEO of SAPA has argued that investigation teams need to understand the dynamics of the market, and has recommended that they should learn more about the sector they will be investigating before starting their investigation. SAPA also raised the issue of what it regards as inadequacy of skills in some cases, in particular among staff that do company visits for verification, and have recommended that these staff need continual up-skilling.

## **7.2 ITAC skills development and capacity-building**

ITAC has a Skills Development Plan as well as a Workplace Skills Plan, which it submits to the Department of Public Service and Administration, with which they need comply every year. ITAC also submit an Annual Training Report every year. ITAC undertakes a range of staff training programmes, as discussed further below. There is also 'on the job training' which is always ongoing. Furthermore, internship programmes were introduced in 2012 and students from the programme will be employed if there is a vacancy.

ITAC has trained its staff across the board to acquire relevant skills. It trained a total of 117 staff. Twenty-eight economists were trained in areas varying from customs clearing, project management and advanced computer courses. Human resources staff were trained in skills ranging from project management, planning and labour relations.

Specialised training has also been outsourced on tender and developed specifically to meet the needs of ITAC. The University of Witwatersrand (Wits) won a tender to develop a customised training course for ITAC and is delivering this training. This is a two-week intensive Certificate-level course, leading to a Certificate in Trade and Financial Analysis. This course has been co-developed by DNA Economics and Wits. The basic aims of the course are to equip ITAC investigators with a common level of understanding of key economic and accounting concepts and to provide them with the necessary tools and data to conduct comprehensive economic analysis of trade policy interventions. The training on the economics side has a core module which focuses on issues such as gains from trade, pricing and industry structure and elasticities, as well as an advanced module which focuses on effective protection analysis, anti-dumping models and cost-benefit analysis. On the accounting side the core module focuses on accounting conventions and principles, cash flow statement analysis and key ratios, while the advanced model focuses on analysis of pricing, profitability and other indicators of financial performance. The course, however, lacks training in research skills, which could be relevant in the application of advanced methodologies in investigating and assessing cases.

From the interviews (with the Human Resources Manager) it is clear that ITAC also needs other training institutes as National Treasury has expressed a preference for diversity of training organisations. Furthermore, in addition to the existing courses, the CEO of ITAC pointed out that it still needs to strengthen the course that it has. It still needs capacity building or skills programme that would enhance the functioning of ITAC. In the organisation's view, it needs more training in *inter alia* international obligations, economics, legal issues, and trade remedies. We return to issues of capacity-building at ITAC in the next section.

## **8. Discussion and recommendations**

This final section discusses and assesses some key issues related to the role and functioning of ITAC. Where appropriate, recommendations are offered. First, we note some additional views expressed about ITAC in the interviews which are not reflected elsewhere in this report. The following issues are then discussed: institutional location of tariff-setting; position of ITAC under two line departments; co-operation between ITAC and other economic regulators; strengthening of reciprocity requirements; duration of tariff investigations; part-time commissioners; joint capacity-building among the economic regulators; the in-sourcing of research and strengthening of research capacity; the strengthening of economics capacity; the strengthening of inspections capacity; and a review of the grading levels of ITAC staff.

### **8.1 Additional stakeholder and party perceptions of ITAC**

Stakeholders and parties in cases before ITAC expressed various views about ITAC in the interviews conducted for this research. Most of these comments have been reported in other sections of this report. We note some additional comments here, in particular from the parties involved in the cases of the two case studies.

Both PAMSA and SAPA stated that they have a positive and productive relationship with ITAC. The SAPA Chief Executive Officer noted the speed with which ITAC helped to draft safeguards in terms of the Trade Development and Cooperation Agreement (TDCA) in a very short time. They also cited many other cases in which ITAC has helped. Furthermore, SAPA indicated that almost all applications which they have made to ITAC have been dealt with.

PAMSA indicated that ITAC always has an intention to help. PAMSA cited a good relationship with ITAC from the recycled paper sector, as companies are required to seek export permits before they export waste paper. However, according to Sappi they have observed some bias in the treatment of some cases, for example if there is a case between a small versus a big company they believe that ITAC tends to favour small companies over big companies.

The interviewee from the Economic Development Department expressed a positive view that ITAC is not just falling in line with what parties say but is able to make independent decisions in line with its mandate.

### **8.2 Institutional location of tariff-setting**

Locating the roles of tariff investigations and of making recommendations as to tariff changes in a semi-independent institution such as ITAC is one possible institutional arrangement. An alternative is to locate these roles directly inside a government department, for example as a directorate of the Department of Trade and Industry. Brazil is an example of the latter case, as discussed in the earlier section on international comparisons.

The decision as to the most appropriate institutional location for these functions depends in part on a perspective as to how tariff-setting fits into broader economic policy, as well as on the types of the considerations that should inform tariff decisions. If tariff-setting is viewed as a technical economic process that should be purely objective in nature, then it makes sense

to locate this in an independent institution outside of government. Conversely, the more that tariff-setting is viewed as inherently political, with no right answers but with winners and losers associated with every possible outcome, the more it could make sense to locate it directly within a government department. Such an arrangement could also have the benefit of allowing for public policy objectives to be directly translated into tariff-setting without intermediation.

The South African institutional arrangement could be understood as attempting to achieve some sort of balance in this regard. Public policy is brought into the orientation and work of ITAC in various ways. Senior appointments are made by government. The institution as a whole is accountable to government (the Economic Development Department). There is ongoing communication of government's strategic economic objectives to ITAC. Crucially, ITAC's tariff recommendations are subject to approval by the Minister of Trade and Industry. It is noteworthy that the Minister in fact does not always approve ITAC's recommendations, indicating the active role played by the Minister in ensuring that government's policy objectives are consistently at the forefront. There does not however seem to be a disjuncture between ITAC's work and government's policy objectives, and ITAC does appear to be advancing these objectives.

ITAC's location outside of government does give it a degree of distance and independence. The role of the part-time Commissioners, who are mostly employed outside of government, brings an additional measure of independence.

There could be advantages and disadvantages to locating the functions of ITAC directly within a government department. We raise this issue here for further debate.

### **8.3 Position of ITAC under two line departments**

The positioning of ITAC under two line departments (the Economic Development Department and the Department of Trade and Industry), while understandable, is not ideal. On the one hand, ITAC is central to South Africa's trade policy, which falls squarely under the Department of Trade and Industry). On the other hand, the Economic Development Department is responsible for other economic regulators (with which close co-ordination with ITAC is important) as well as the broader co-ordination of economic policy. In the current institutional ITAC falls under the Minister of Economic Development, but the mandate around trade policy and any changes therein come from the Minister of Trade and Industry, with such changes being communicated through the Economic Development Department, and with the Minister of Trade and Industry having the power to take final decisions on tariffs.

Some stakeholders have expressed dissatisfaction with this arrangement. For example, the view from PAMSA is that it would be better to have ITAC under the department that makes policy. They cited the Australian case as a positive example in this regard, where according to PAMSA decisions are taken speedily due to the tariff role being housed under one roof with the relevant department.

The view from the interviewee from the Economic Development Department is that, while the arrangement is slightly cumbersome and may lead to slower communication in certain instances, it is basically working. The arrangement also has some benefits. One of these is enhanced policy co-ordination, and related to this the communication of government's strategic economic priorities and refraction of these in ITAC's work. The Economic Development Department has also been able to link ITAC up with the Industrial Development Corporation (IDC) where ITAC is working on a particular sector that the IDC

has existing specialised knowledge and research on.

Consideration could be given to simplified lines of accountability while ensuring the coherence of trade policy (including coherence between tariff-setting and other aspects of trade policy), coherence between trade and industrial policy, and optimal coordination between ITAC and other economic regulators.

#### **8.4 Increased co-operation with other economic regulators and relevant institutions**

It does not appear that there is sufficient communication and co-operation between ITAC and other economic regulators with related mandates. An obvious case is between ITAC and the Competition Commission.

PAMSA has also expressed the need for closer relationships between ITAC, the Economic Development Department, the Department of Trade and Industry and SARS in order to speed up the implementation of decisions. It cited the example that the imposition of tariff on a certain line may see traders diverting their products to another HS line with a lower tariff, which can be partly mitigated by the relevant departments working closely with each other.

ITAC acknowledges that there is scope for increased co-operation with other economic regulators, in particular with the Competition Commission. The CEO of ITAC noted the example of the poultry sector, where it increased the duty while the Competition Commission raised the issue of the anti-competitive behaviour in the sector, as an illustration of the need for increased co-operation. It already plans to improve communication and co-operation with the Competition Commission.

#### **8.5 Strengthening of reciprocity requirements**

ITAC may include reciprocity requirements as part of its recommendations on tariffs. These can require companies that are in some way ‘beneficiaries’ of a particular tariff decision to reciprocate with specific commitments of for example investment or employment.<sup>18</sup>

Reciprocity agreements can be a key tool of industrial policy and an important link between trade and industrial policy. They are essential for ensuring that gains from tariff protection do not just become windfall gains that are privately accrued by individual companies, but rather become broader economic gains that contribute to national economic objectives such as increasing employment. Reciprocity agreements can be understood as part of ‘rent management’ in the sense of the state managing rents that would otherwise be captured by private agents. The fact that ITAC has the legal power to pursue reciprocity agreements is a powerful policy tool, which needs to be fully utilised.

A view expressed by an interviewee from EDD is that ITAC is not always strong enough in negotiating sufficient commitments from industry and in pushing industry hard enough. In some instances industry may present to ITAC a plan for what it would have done anyway, without really making any substantial new commitments directly linked to the gains from tariff protection.

Negotiating stronger reciprocity commitments needs specific types of skills, notably in negotiations, which staff such as researchers may not have. Training could assist in this regard, but it may also require the employment of people who already have those sorts of skills and mentality. This needs to be complemented with strong economic analytical skills

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<sup>18</sup> The template used by ITAC for reciprocity commitments is included as Appendix 3.

in order to assess what sorts of commitments from industry are feasible, and to distinguish between what industry may have done anyway and net new commitments.

## **8.6 Duration of tariff investigations**

The timeframes taken in completing tariff investigations are important, for several reasons. First, where domestic industry is under pressure from imports it is essential that any decisions to protect industry through tariff increases be made speedily to minimise negative effects on production, production capacity and employment. Second, domestic and international economic conditions that are germane to tariff decisions change rapidly, so the longer the duration of a tariff investigation the less accurate is likely to be the economic information upon which the decision is eventually based. Third, while tariff investigations are in progress, there is uncertainty for business, which may hamper investment.

Concerns have been raised by some stakeholders about the length of time taken in ITAC tariff investigations. A comprehensive survey of perceptions is beyond the scope of this research, so the comments reflected here are from the parties involved in the two cases studies and are indicative but not necessarily representative. According to these parties, the time between companies submitting their information on the template provided by ITAC and time when ITAC comes for company visits is too long. In some instances it takes too long for ITAC to come for verification process though they will have valid reasons for the delay. SAPA also raised the decision lag problem. The problem is that it took time for the political decision to be made. According to them, the time between ITAC completing its investigation process and the time when the Minister announces the decision is too long. PAMSA raised a concern that sometimes it takes quite long for a decision to be made whilst the industry is suffering. They cited an example where it took two years for the application for a tariff increase on A4 bond paper tariff to be heard. Another challenge which has been noted by parties is with regard to scheduling of the next meeting from the day of visit, which has been said to be too long. For example regarding A4 paper verification, the visit was done in December and the next meeting was only carried out in February. In addition, according to some parties, in most cases further information will be required which always invalidate the data which would have been provided. The interviewee from EDD also mentioned that, while ITAC has succeeded in reducing the time of investigations over the past five years, there is still room for improvement in this regard.

A related concern raised by companies is around the implications of changing market dynamics in the course of cases. While cases are under way, there are relevant changes in exchange rates, input costs such as electricity prices, and so on. This means that if ITAC asks for resubmission subsequent to such changes it will mean starting the whole process in data collection since market related information will have changed. Revising the figures from the company's point of view is very costly and time consuming.

ITAC recognises the importance of concluding tariff investigations within as short a time period as possible. Progress has been made in reducing the timeframes of tariff investigations. However, there is still room for improvement, both in terms of ensuring that all investigations are completed within the stipulated timeframes and also for making them as short as possible even within these maxima. Of course, this cannot compromise the rigour of investigations or the following of due process.

Enhancing capacity within ITAC could be one way of reducing the timeframes of investigations. This capacity-building could take the form of increasing the number of staff in specific 'bottle-neck' areas that may be delaying or prolonging the pace of the investigations. It could also take the form of up-skilling of existing staff so as to increase productivity and

thence the speed of investigations.

## **8.7 Part-time Commissioners**

Part-time Commissioners play an important role at ITAC. One aspect of this lies in bringing a fresh and ‘independent’ perspective on ITAC’s recommendations before these are brought to the Minister. This can improve the rigour and quality of ITAC recommendations. The fact that recommendations have been subject to this additional layer of ‘independent’ scrutiny can also be relevant in any subsequent legal challenges.

The part-time ITAC Commissioners come from a range of backgrounds and bring a diversity of skills, experiences and perspectives. This seems to be a positive feature and our impression is that this part of the organisation is working well.

There may be scope for additional specialised capacity-building among the part-time Commissioners. Given their different backgrounds, some may for example lack legal expertise while others may lack knowledge of trade economics. While collectively they possess all the requisite skills, each individual Commissioner ideally needs some knowledge in all the core areas of ITAC’s work.

ITAC has run some training for incoming Commissioners in the past but this does not seem to be conducted on a regular basis. A thorough analysis of the needs in this regard could inform what additional training might be needed to address gaps in knowledge or skills among Commissioners. Such training could for example be divided between those needing additional training on the legal and economic sides. Training could also be undertaken at different times on different topics, including at increasing levels of advancement, rather than being once-off. Of course, it needs to be recognised that the part-time Commissioners have full-time employment elsewhere and hence are likely to have limited time availability for training.

## **8.8 Joint capacity-building among the economic regulators**

ITAC has identified its primary weakness in current capacity as being in the area of detailed analysis of corporate financial information, and has identified this as an area in which capacity-building could be needed. ITAC takes the view that this expertise is highly specialised and specific to their particular role, such that any training in this area would need to focus on ITAC specifically.

We share ITAC’s view as to the importance of ITAC having strong in-house capacity in analysing corporate financial information. Without this capacity, ITAC staff would be unable to make rigorous and accurate assessments of companies’ financial positions. This is essential for assessing the potential impact of alternative tariff decisions on companies, and for weighing up the validity and veracity of companies’ arguments in this regard.

However, our view is that the need for these skills is not restricted to ITAC but is shared by several other economic regulators. In particular, the Competition Commission, the National

Energy Regulator of South Africa (NERSA) and the Independent Communications Authority of South Africa (ICASA) all require such skills in order to play their roles effectively. For instance, the Competition Commission must analyse detailed company financial information in order to make assessments of costing and pricing, the presence of uncompetitive practices and their effects. NERSA must make assessments about appropriate price structures and levels in the energy sector based in part on financial information of the companies involved.

This suggests that there is scope for some common training where particular skills are required by more than one of the economic regulators. Instead of the regulators procuring such training individually, this could be jointly provided, either using existing in-house capacity or external training providers (or a combination thereof). This would reduce the costs of such training. It could also provide for a fruitful interaction amongst staff who are working on related issues or using similar skills in the different economic regulators. Naturally, there may be a need for further specialised training in addition to the common training, to address the particular needs of individual regulators.

Based on the needs identified by ITAC, training in financial accounting – specifically the reading and critical analysis of companies' financial information – presents itself as one strong possibility for common training. This could be done jointly with economic regulators such as NERSA, the Competition Commission and ICASA. Common training in this area could be supplemented by advanced specialised training in this area, tailored to the specific needs of the individual regulators.

## **8.9 In-sourcing of research, strengthening of research capacity and strengthening of economics capacity**

ITAC currently utilises both in-house and outsourced research. Most of the research activities at ITAC are done by the Policy and Research Unit. However, the limitation is an organisational structure that does not allow it to employ more staff to speed up the research process. ITAC has far fewer researchers and less research capacity than, for example, the Competition Commission.

ITAC requires rigorous and reliable research for its investigations and to contribute to informing their findings. ITAC also provides research-based technical and policy analysis to the Economic Development Department and the Department of Trade and Industry in relation to the work of ITAC. For instance, it is required to give feedback to government on jobs that could be created after the implementation of tariff changes to specific sectors, and research findings on whether the reciprocity commitments have been met.

ITAC also conducts impact assessments in order to provide feedback to government as to whether the support has led to changes in employment, investment, value addition and competitiveness. For its analyses it assesses these economic variables three years before the interventions and three years after the intervention. It also reviews tariff investigation guidelines to align it to government policy. Ultimately from the research output it should advise on the alignment of ITAC policies, regulation, guideline and practices to the NGP, IPAP and South Africa's Trade Policy and Strategic Framework (SATPSF). In carrying out the research on cases for example on poultry they have done a consumer impact assessment.

One issue pertaining to ITAC's research is the extent to which it should be externally commissioned as opposed to conducted in-house. Commissioning research from outside an organisation does have certain advantages. These include the opportunity to engage skills that are not available within the organisation and which are unnecessary or unaffordable for an organisation to employ internally.

However, excessive reliance on outsourced research has several drawbacks. First, it does not allow for skills and knowledge to be built up within an organisation. Second, an outside service provider may not share the same understanding of policy and views of the organisation, which can have implications for the types of methods and assumptions utilised. For example, a private economics research company may have its own views about

trade liberalisation, which may differ from government's policy stance, and these views could implicitly or explicitly find their way into research commissioned from them. Third, commissioning research externally can be costly, as payments must be made to service providers who are conducting research as a business enterprise.

Much of ITAC's research has hitherto been contracted out. According to the Chief Economist it also typically makes use of consultants to verify company information such as input cost and Free on Board (FOB) prices.

ITAC has expressed a desire to build up its own internal research capacity. Already, ITAC is doing more research in-house than was previously the case, and the employment of a Chief Economist has assisted in this regard.

We are of the view that most research should be conducted in-house, with outsourced research being the exception. This is likely to imply the need for additional posts to be created. While this would have cost implications, these could be offset against cost savings from a reduction in commissioned research. Improving research capacity could also potentially improve the quality of ITAC investigations and recommendations and enhance their robustness to legal challenges.

Closely related to the above is the need for an overall strengthening of research capacity and improvement in the quality of research. The interviewee from the Economic Development Department, who is also a part-time Commissioner at ITAC, suggested that there could be more rigour and accuracy in ITAC's research work. This is particularly in the context of ITAC's decisions now being potentially more controversial than previously due to shifts in their mandate. These changes mean that ITAC's work is compelled to be more rigorous and of higher quality. One suggestion which he made in this regard is that work done by junior staff needs to be subject to stronger screening and quality control by middle and senior staff.

A related issue is the need to increase ITAC's economic capacity in particular. Our sense is that ITAC's capacity is currently stronger on the legal side than on the economic side. The appointment of a Chief Economist has significantly improved ITAC's economic capacity compared to previously. However, it is arguably still not strong enough given the nature of the work which ITAC is involved in and the economic capacity of parties (and their consultants) that appear before ITAC. Excellent in-house economic capacity is essential for ITAC to be able to evaluate the validity and veracity of economic evidence presented before it, to reach its own judgements, and to be able to assess the economic impact of alternative decisions. It would also be helpful in obtaining stronger reciprocity commitments from companies, as discussed earlier.

According to the ITAC Chief Economist, the methodology that it has been using is predominantly simple Excel analysis, scenario analysis and simulation analysis. He suggests that this could be strengthened by making use of robust econometric methods, as it currently does not normally use econometric methods in its research, as well as modelling tools such as Social Accounting Matrices (SAMs) and Computable General Equilibrium (CGE) models for impact analysis.

ITAC has begun conducting impact assessments, and these seem to be becoming an increasing important part of ITAC's economics and research work. Impact assessments are not easy to undertake. If not done accurately, they become virtually without value (and may actually be damaging if misleading). The skills needed for doing impact assessments are highly specialised and are not necessarily fully taught in standard academic training of

economists. Concrete evidence-based empirical analysis is fundamental. ITAC has already made progress in developing a methodology for impact assessments, although as acknowledged by the Chief Economist, this still needs further improvement.

### **8.10 Strengthening of inspections capacity**

Company inspections form an important part of ITAC's work. One aspect of this is in ensuring that companies are indeed complying with requirements, such as compliance with labour legislation and Bargaining Council agreements (where relevant). Tying companies that are benefiting from tariff protection to such requirements is a good way of improving compliance with the laws of the land. The efficacy of this, however, depends on the degree to which such requirements are enforced in practice. Inspections are essential in this regard.

Views have been expressed by some stakeholders that ITAC's inspection capacity is currently not strong enough. Inspectors need to have a clear idea of what they are looking for and how to obtain or ascertain it. It is unclear whether improving ITAC's inspections could require additional staff, additional training of existing staff, or simply better management and organisation of existing staff.

### **8.11 Review of the grading of ITAC staff levels**

ITAC management has raised a strong concern around the grading of positions within ITAC. The view of the ITAC CEO and senior management is that a number of important positions in the ITAC staff structure are graded at too low a level, in particular relative to the Department of Trade and Industry and related institutions. From their perspective, this is a significant cause of staff turnover and the loss of important skills that have been developed through experience and capacity-building at ITAC. A different view was however expressed by the Senior Manager for Human Resources, as discussed earlier.

Staff turnover at managerial and professional levels is of concern given the importance of on-the-job training at ITAC. Even if suitably qualified replacement candidates are found, additional time and training is required to make them proficient in the required competencies. An organisational review (to be conducted by an external organisation) has previously been recommended to investigate the grading of positions at ITAC, and ITAC is desirous of this being undertaken. Under-grading of positions may indeed be a problem at ITAC, but it must also be recognised that the staff of an organisation may have direct interest in the upgrading of positions, hence an independent review would be valuable.

An organisational review of the ITAC staffing structure is beyond the scope of this report. However, we would recommend that such a review take place in the near future. Of particular importance is to benchmark positions at ITAC to positions at similar regulatory bodies and the Department of Trade and Industry, in terms of inter alia the levels of skills required for the positions and the responsibilities entailed in the position. Such a review could also systematically examine the reasons for departure of senior staff at ITAC, utilising exit interviews among other sources. This could be informative as to the reasons for turnover and the extent to which inappropriate grading of positions is a factor in that regard. The findings of such a review could then provide a basis for identifying the merit, if any, for regrading of specific positions at ITAC.

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## **Appendix 1: List of Interviewees**

The following persons were interviewed for the purposes of this research.

Mr. S. Tsengiwe , Chief Executive Officer, ITAC , 3 December 2013

Ms. Z. Xabendlini, Senior Manager: trade Remedies II, ITAC, 3 December

2013 Ms. R. Theart, Senior Manager: Tariff Investigations I, ITAC, 3 December

2013 Mr. T. Chauke, Director, DTI, 3 December 2013

Prof S. Roberts, Director, Centre for Competition, Regulation and Economic Development

Director, 12 December 2013

Ms L. Mndebela, Senior Manager: Human Resources, ITAC , 17 December 2013

Dr. M. Obinyeluaku, Chief Economist, ITAC, 17 December 2013

Ms. J. Molony, Chief Executive Officer, PAMSA, 24 January 2014

Mr. P. Bortolon, Business Manager Paper, Sappi, 24 January 2014

Mr. L. Kelvin, Chief Executive Officer, SAPA Chief Executive Officer , 31 January 2014

Mr. E. Vlok, Trade Specialist, Economic Development Department and Part-time

Commissioner, ITAC, 14 March 2014



## Appendix 2: Details on ITAC Decisions Overturned in Court

Table A1 provides detailed explanations on the seven cases in which legal challenges against ITAC decisions were successful, from the time of ITAC's establishment in 2003 up to 2013. This follows the discussion in section 6 of this report.

**Table A1: Details on ITAC decisions overturned in Court**

Product and case details	Parties	Court	Date
<p>Carbon Black – export price in sunset reviews</p> <p>The subject of this case was not an administrative procedural issue, but a matter of interpretation of the information and the method of calculation used by the Commission. As there were no exports to SACU during the period of investigation, in determining the export price, the Commission decided to use an average export price of all exports from Egypt in order to determine whether there is a likelihood of dumping. The court decided that this was not a reasonable method to use. The court was of the opinion that the Commission should rather select one appropriate country to which exports took place, and use that export price in the calculation of the dumping margin.</p>	Algorax vs ITAC/Min	High Court	2006
<p>Shock tubes – termination of investigation</p> <p>The subject of this case was an administrative procedural issue. The Commission initiated an investigation based on information provided by the Applicant regarding the domestic selling price of its subsidiary company in Ghana. After initiation, it became clear that the information provided was not for a manufacturer in Ghana, but for an assembler of the product, making it an unsuitable price to use. In addition, the</p>	AEL vs ITAC	High Court	2006

Applicant stated in its application that it was the only producer of the product. After initiation, Sasol alerted the			
Commission that it was also a manufacturer of the product and in fact the largest producer of the product. As the Commission was of the opinion that the Applicant provided incorrect information to the Commission, it decided to terminate the investigation. The Court was of the opinion that the decision by the Commission to terminate the investigation was procedurally unfair.			
<p>Lysine –imposition of provisional measures</p> <p>This was an administrative procedural issue. The Commission investigated and imposed provisional safeguard measures on imports of Lysine, as it was of the opinion that there were critical circumstances where a delay in imposing the duties, would cause further injury to the domestic industry – as is provided for in the WTO Agreement. The court was of the opinion that it was administratively unfair to impose these measures without affording the importers an opportunity to make representations.</p>	Degussa vs ITAC	High Court	2007
<p>A4 paper</p> <p>The subject of this case was not an administrative procedural issue, but a matter of interpretation of law. The principal issue in the appeal, which was also the principal issue in the court <i>a quo</i>, was how the five year period during which such anti-dumping duties were payable, is to be calculated.</p>	Progress Office vs ITAC/Min	Supreme Court	2007

Progress Office Machines and ITAC contended for different commencement dates for this five year period. Progress Office Machines contended that the five year period commenced on the date of the imposition of the provisional measures, which was 27 November 1998, while ITAC contended that the commencement date was 28 May 1999, being the date on which the Minister's final determination was published in the Government Gazette. The judges in the Appeal Court found that the strongest indication for holding			
that the duty was "imposed" on 27 November 1998 is to be found in section 57A(3) of the Customs and Excise Act which leaves no doubt that the duty imposed is a definitive anti-dumping duty for the payment of which any provisional payment already imposed serves as security. The court further found that the anti-dumping duty was fully effective on 27 November 1998 just as if it had been "imposed" on that very day. The court also mentioned the fact that the Minister had stated that the duty was to be applicable retrospectively to 27 November 1998. This was, according to the judge a clear indication of the commencement date.			
Wire Rope – interdict to recommend termination of duties to Minister.  The subject of this case was not an administrative procedural issue, but a matter of interpretation of law. The Commission investigated dumping from a number of companies in a number of countries. The Commission found that one of the exporters were not dumping the product and recommended	Scaw vs ITAC/Min	High Court	2008

<p>termination of the investigation and the duties pertaining to this exporter. The domestic industry approached the court for an interdict preventing the Commission from forwarding the recommendation to the Minister pending a judicial review of the matter. The court granted the interdict.</p>			
<p>Tyres – market economy status</p> <p>The subject of this case was not an administrative procedural issue, but a matter of interpretation of law and the method of calculation used by the Commission. The granting of market economy status to China amended the method of calculation of the dumping margin for China. The Applicant was of the opinion that the granting of market economy status by the President did not have legal effect on ITAC to deviate from the method of calculation previously used for China. The</p>	<p>SATMC vs ITAC/Min</p>	<p>High Court</p>	<p>2010</p>

<p>court was of the opinion that the Memorandum of Understanding (in which it was clearly stated that South Africa granted China market economy status in 2004) is an international treaty between South Africa and China but that the MoU is not couched in such terms that it gives legislative recognition to the free market economy in China.</p>			
<p>5 year expiry date: After the decision of Progress ITAC approached the High Court for an order that would declare the rest of the anti-dumping duties that were affected by</p>	<p>AMIE v ITAC/Others</p>	<p>Supreme Court</p>	<p>2012</p>

<p>Progress machines, invalid and another order that would suspend the declaration of invalidity. The aim was to mitigate the far-reaching consequences of the Progress Machines decision and to ensure that all the affected local industries were protected against the dumped imports. Both these order were granted by the High Court. AMIE appealed against this decision to the Supreme Court of Appeal. The court did not agree with ITAC in this issue but states that Progress Machine was also not authority and completely distinguishable from this issue. The appeal was upheld as the court felt that ITAC was always correct in its computation of the 5-year period and therefore it was unnecessary for ITAC to approach the High Court for the 2 orders. The local industries remain protected.</p>			
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## **Appendix 3: Templates used to collect company data on market and trade, cost and price structure and reciprocity commitments**

***Market and trade data***

***Cost and price structure***

## Reciprocity commitments

No. items	Should the support be given		
	year 1	year 2	year 3
1 Expected total production volume (Kg/li/units)			
2 Expected ex-factory selling price/per (Kg/li/unit)			
3 Expected total investment (R)			
Plant & Machinery			
Buildings			
4 Supply side measures (R)			
Research and development			
Skills development and training			
Upgrading machinery & equipmt.			
Other (list)			
5 Expected total export			
Volume (Kg/li/units)			
Value (R)			
6 Expected total Employment			
Skilled			
Semiskilled			
Unskilled			
7 Expected total wage (R)			
Skilled			
Semiskilled			
Unskilled			

