



Position Paper

International Trade Commission of Nigeria Bill and the Need for Trade Remedies Regime in Nigeria

This position paper is developed as part of the mapping and analysis of national legislations, regulations and policies relevant for business enabling environment, trade and competitiveness, MSMEs and value chains development in Nigeria, commissioned by Nigeria Competitiveness Project (NICOP) and implemented in partnership with Centre for Trade and Business Environment Advocacy (CTBA) and Federal Ministry of Industry, Trade and Investment. NICOP is co-funded by the European Union (EU) and the German Government; and implemented by GIZ SEDIN Programme with the Federal Ministry of Industry, Trade and Investment (FMITI) as national partner.

Introduction

Nigeria needs a trade remedies legislation and institution, especially as the country joins other African countries to commence trading under the AfCFTA. Trade remedies laws and institutions allow a country to protect its domestic industries from unfair import competition. It addresses such issues as safeguard from import surges, dumping, and subsidised imports. Many stakeholders have raised the concerns over the threat of dumping and sundry threats to local industries, most of which could be addressed by an effective trade remedies framework. The Nigerian Office for Trade Negotiations (NOTN) is reported to have worked on a trade remedies framework, including drafting a new Bill and making proposals for interim application based on extant laws pending the passage of the Bill. However, this Bill has neither been approved by the Federal Executive Council nor submitted to the National Assembly for consideration. The only Bill before the National Assembly on this issue is the International Trade Commission Bill.

Overview

The International Trade Commission of Nigeria Bill, which was also presented but not passed in the 8th Assembly seeks to set up the International Trade Commission of Nigeria (ITCON). The objectives of the proposed Commission include to promote efficiency, adaptability and sustainable development of the Nigerian economy through international trade; protect Nigerian industries from unfair trade practices; ensure, from time to time, that the multilateral rule-based international trading system is promoted in Nigeria and applied to Nigeria's advantage. The functions of the proposed Commission include the administration of Nigeria's trade remedy law in a fair and objective manner; the maintenance of the Harmonised Tariffs Schedule (HTS) of Nigeria; making recommendations to the relevant ministries, extra-ministerial departments and agencies regarding relief for an industry seriously injured by increased imports; etc (Section 8). Section 9 vests the Commission with the power to administer and implement the provisions of any law relating to dumping and subsidised (sic) imports, intellectual property in international trade, safeguards, and countervailing (sic), other related matters. Section 11 present a rather strange list of the proposed departments of the Commission; these include trade defence, trade diplomacy and negotiations, trade justice, etc.

Key issues



This Bill is defective in the following ways:

- It seeks to only set up an institution to implement the “provisions of any law” relating to trade remedies. But the challenge is that the only law that relates to trade remedies in Nigeria is the 1958 Customs Duties (Dumped and Subsidized Goods) Act. This law merely covers dumped and subsidised goods but not in line with the WTO rules on these issues. So, the gap occasioned by the absence of a substantive law on the subject can only be filled by enacting a WTO complaint trade remedies legislation. The closest attempt to do this was the Nigerian Trade and Competition Commission Bill that was championed by the Federal Ministry of Industry Trade and Investment (then Federal Ministry of Commerce and Industry) around 2007 which was never passed into law¹.
- In vesting the powers over trade remedies administration, the Bill has used the wrong terminologies: “dumping and subsidized (sic) good”; as well as “safeguards and countervailing”. Conceptually, the classifications ought to be “subsidy and countervailing measures”, “anti-dumping” and “safeguards” as separate categories as established under the WTO rules.
- The proposed power of the Commission with respect to “intellectual property in international trade” comes directly in conflict with the scope of some existing legislations such as the Patent and Designs Act, the Copyrights Act, the Trade Marks Act, the Trade Malpractices Act, and even the Customs and Excise Management Act, without any reference to those extant laws. This also runs counter to present efforts at reforming and streamlining the legal framework for intellectual property rights in Nigeria which is aimed at bringing intellectual property administration under one institution, as opposed to multiple institutions as obtainable at the moment.
- The Bill becomes even more confusing in the departments it proposes. For example, why would the Commission have a department for “trade diplomacy and negotiations” seeing that it would not be vested with powers for trade negotiations? This runs contrary to the mandate of Nigerian office for trade Negotiations (NOTN). Furthermore, what would be the role of the department for “trade justice” proposed under the Bill?

It is important to note that the WTO rules require member states to enact trade remedies laws (covering anti-dumping, safeguards, subsidies/countervailing measures), which must conform to the WTO Agreements on each of those listed issues. While Nigeria has failed to adopt a domestic law and institution for the administration of trade remedies, the country has continued to use sundry import restrictions or outright import prohibitions for the purpose of either protecting domestic industries from unfair import competition or just to improve local production in specific industries. This approach is contrary to the WTO rules and can potentially lead to a challenge at the WTO dispute settlement body. Beyond the risk of dispute, import prohibition is not able to capture the risk that could be posed to local industries by some items that are not on the prohibition list. However, the enactment and proper application of trade remedies law in Nigeria would ensure a legal means of protecting local industries from sharp rise in imports (safeguard rules would apply); dumping (anti-dumping rules would apply), and subsidised goods from other countries (countervailing measures would apply). The implication is that in using a short-cut route to protection, we deprive domestic businesses of the robust protection they deserve.

¹ This Bill had a collection of about five different Bills covering trade remedies (safeguards, subsidies/countervailing measures, anti-dumping); competition, consumer protection, and weight and measures. A later Bill emerged with only competition and consumer protection and was signed into law in 2019.



Recommendations

1. Ensure that the International Trade Commission Bill is passed with the substantive rules on trade remedies as well as other necessary amendments proposed in this position paper. To realise this, and make the present legislative process on the Bill worthy of the effort and resources invested in it, requires engagement between the Executive and the Legislature with the support of the private sector stakeholders. The aim of the engagement would be to ensure that the final report of the Committee for consideration by either the Senate or the House of Representatives incorporates the substantive rules. Ordinarily, after a public hearing on a Bill, the Committee of the Legislature to which the Bill was referred would produce a Report that ought to reflect accepted inputs from stakeholders. The Bill has not gone through public hearing and reporting by the Committee, so there is still an opportunity for improving on the Bill as proposed in this position paper.
2. The second option for enacting a law on trade remedies in Nigeria would be for the Executive to transmit an Executive Bill on the subject to the National Assembly.
3. In the interim, the President could issue an Executive Order to enable the skeletal implementation of trade remedies based on extant laws and policies, pending the enactment of a substantive law. indeed, this approach was reported to be under consideration by the Government in 2019.
4. Given the critical importance of a trade remedies framework in Nigeria, especially in the context of the AfCFTA, there is need to prioritise and expedite the process of enacting the Bill into law. NICOP could support this process in the form of broad-based stakeholders' engagement leading to the adoption of a proper trade remedies framework, which could then be presented to the relevant Committees of the National Assembly for their consideration and inclusion in the current Bill.
5. There is need for the Government (FMITI and NOTN) to exposes the draft Executive Bill to stakeholders for comments. This is important regardless of the eventual approach adopted in enacting the law. On the one hand, the draft Executive Bill could be the basis for reworking the Bill already before the National Assembly. On the other hand, if the Executive decided to transmit it as a fresh Bill, it would still benefit from the inputs of stakeholders.