ANTI-DUMPING LAW AS A TRADE BARRIER: A CASE OF SOUTH-AFRICAN POULTRY IMPORTS FROM USA

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ABSTRACT

In November of 1999, the Southern African Poultry Association, in conjunction with Rainbow Farms, went to the South African Board on Tariffs and Trade (BTT) to initiate a dumping investigation concerning the imports of chicken leg quarters from the United States. Their claim was that the United States was selling the leg quarters below the "normal cost" of the U.S. market. A dumping investigation proceeded which ended in the injunction of tariffs against the chicken leg quarters equal to the dumping margins calculated by the BTT. Although the BTT found in favor of the South African Poultry Associations' claim, the United States was not in fact dumping dark meat chicken into the South African market. Instead, the BTT engaged in a miscalculation and manipulation of the data in order to prove dumping in a case in which the United States was plainly engaging in fair trade practices. The reason the investigation began in the first place was not because dumping was actually taking place, but instead because the South African poultry industry was seeking protection for their industry against the low and competitive prices of the U.S. product. This case serves as an example of how countries are increasingly utilizing antidumping as a tool to protect domestic industries from foreign competition.

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INTRODUCTION

Dumping is defined as selling a product in an export market for less than it is sold for in the home market or for less than the importing country views as a fair value, which is usually based on estimates of average cost. Antidumping laws and duties are meant to curb the unfair trade practice of dumping. But beginning in the 1990s, many countries have come to rely on antidumping duties to protect domestic industries. Thus, antidumping duties have become a substitute for tariffs and other trade barriers that have been largely restricted because of the WTO (Dunn and Mutti, 2004).

Antidumping has become a popular trade weapon. In recent years there has been a proliferation of antidumping cases but this has not been due to a proliferation of unfair trade practices. What is more often the case is that import-competing industries within industrialized and developing countries alike are initiating antidumping cases to provide protection to their domestic industries from foreign products. Agricultural products, especially high-value perishable items like poultry, have become popular targets for dumping investigations because agriculture is a popular area for protection ("Trade Remedy Laws and Agriculture," 2002).

Supporters of antidumping measures say that these measures protect domestic industries that are being bombarded with products that are traded unfairly. When dumping is found to be occurring, it is supposed to uncover distortions in the foreign producers' market that allow the foreign producers to sell products at low prices abroad. Antidumping measures are then used to create a "level playing field" against the foreign producers (Lindsey and Ikenson "Coming Home to Roost," 2001).

Do antidumping measures ensure a "level playing field?" In some cases yes, when dumping is actually occurring. But more and more countries are being accused of dumping when dumping is not in fact occurring. An effective mechanism is absent in order to distinguish between fair low prices and unfair low prices. Even if a foreign producer can justify the lower price, a low price has increasingly come to mean dumping. The low price of a product can be due to perfectly fair marketplace behavior. But even in a case where a country can justify fair low prices, the misrepresentation and manipulation of data in a dumping investigation can mean an affirmative finding of dumping. This ensures import duties will be initiated and provide protection to the domestic industry (Ikenson, 2001).

The lower price of the foreign product compared to the domestic product does not automatically mean that there are market distortions present. Instead it may point to higher efficiency and cheaper inputs in the foreign market than in the domestic market. Better efficiency and cheaper inputs, in turn, means a cheaper output. It may also be a function of differing tastes between the two countries that allow a foreign industry to export a product at a low price. Furthermore, the market prices in the foreign country, determined by supply and demand, can create a situation where a product can be sold at a low price abroad, and sometimes can be sold abroad at a higher price than they would receive in their home market.

This can prove to be trouble for import-competing industries because they may not be able to match the low prices of the foreign competition. Their production costs instead may dictate that they have to sell their product at a higher price. It is this situation that forces import-competing industries to approach the trade council in their country to initiate dumping investigations. Dumping investigations are meant to target those countries that are engaging in unfair trade practices, but more and more, countries that are competing fairly are being targeted, simply because they have a competitive price and the importing country wants to protect its domestic industry by blocking outside competition.

III. POULTRY INDUSTRY

In order to understand the dumping case the South Africans brought against the U.S. dark meat chicken products, the nature of the U.S. and South African markets, the costing of chicken products, and information on the U.S. and South African poultry industries must be introduced. The market is such in the United States and other countries (such as the EU, Canada and Mexico) that the breast meat (the white meat) commands a higher price than the dark meat. This is because consumers in these countries prefer, and therefore demand, more white meat than they do dark meat (Sumner, 2001). Traditionally, dark meat pieces sell for less than half the price of a whole chicken and less than a quarter of the price of breast meat ("India," 2001).

Costs in the United States and other industrialized countries are based on net realizable value. That is, breast meat carries the highest cost of the bird because it is in highest demand. Because breast meat carries the highest cost and because of lower demand, the dark meat parts of the bird are assigned lower costs (different relative values of chicken parts). In this way, the producers recover most of their production costs from the sale of breast meat (for example the allocated cost of breast meat is 34.26 while the allocated cost for the legs is only 9.54 and the total cost of the bird is 49.31).

Because of the low consumer demand for dark meat in the United States, the producers look for other markets to export the dark meat to. Outside of the industrialized countries (in places like South Africa), dark meat is typically in higher demand because of different consumer preferences. Because it is in higher demand in South Africa, South African producers charge a higher price for the dark meat. This provides a perfect export market for the surplus of dark meat. The U.S. producers are able to sell dark meat at low competitive prices abroad because they make back the majority of the cost of production from the sale of breast meat at home. Because of the high demand in the export markets, U.S. producers are able to sell the dark meat at a higher price abroad then they are able to in their home market (Sumner, 2001). If producers find themselves in a situation where they have to sell a product below the market price, as a loss-minimizing option they would rather send it to the rendering plant than transport it and sell it overseas. For the U.S. poultry industry, the world market prices are the best value they can expect to get for their products. Any price below the world market price is not worth it (Ellis, 2000).

When competing firms in countries like South Africa realize that low-priced imports are adversely affecting their sales and profits they are quick to claim that the U.S. is engaging in unfair competition. This is why dumping investigations ensue, not because dumping is actually occurring, but because of the low competitive prices of the dark meat that the import-competing industry is unable to compete with. But the dark meat imports are not in fact being dumped because they are not being sold below the "normal cost" of the home market. Instead, the products are being sold above the "normal cost" of the home market per unit of the chicken production with our subsidization.

The United States happens to be the largest poultry industry in the world. Tyson Foods and Gold Kist, two companies at the center of the South African investigation, are the largest poultry companies in the United States. The success of the U.S. poultry industry can be attributed to several factors (Sumner, 2001). The industry is vertically integrated, it has the most updated technology, the production process is highly efficient, there is good disease control, the U.S. has a perfect climate for raising chicken and the U.S. has unlimited access to a cheap and plentiful grain supply which accounts for 50% to 60% of the production cost (Henry and Rothwell, 1995). These factors ensure that the cost of production is low, which makes the price of outputs low. The U.S. poultry industry is therefore highly competitive on the world stage. Also, it is important to note that the U.S. poultry industry has a big say in what the world poultry market looks like. Because the U.S. is such a large player in this market, the world market more closely resembles the U.S. market than any other poultry market (Ellis, 2000).

The United States is considered to be the benchmark of world poultry producers as the US producers can effectively compete with any poultry industry in the world (Henry and Rothwell, 1995). The strength of the U.S. poultry industry is that many export markets are so keen to initiate antidumping measures against the U.S. poultry industry, because the industry is too competitive for most foreign industries to handle. The foreign industries seek protection from the U.S. poultry products, not because they are actually being dumped, but because they lack the factors that can make them competitive with the U.S.

South African poultry producers have a hard time being competitive with the United States because the South African poultry industry is plagued by high production costs that can be attributed to several factors. This makes it difficult for them to compete against the products from the United States.

The production process in South Africa is highly inefficient (Shane "South Africa," 1999). Although South Africa has plenty of cheap labor, the workforce is poorly trained ("Poultry Meat," 1997). The South African poultry industry has also had problems with trade unions which have been disruptful to production (Johan Lambrechts & Associates, 2001). The chicken flocks are plagued by disease. What is more, diseased birds are not always contained and sometimes move freely within the flocks, making the entire flock sick (Shane "Economic Factors," 2002). The poultry industry has to contend with high transportation costs due to underdeveloped rail and roads (Ziggers, 2001). High shipping and packaging costs also add to the production cost ("Poultry Meat," 1997).

South Africa's biggest problem is its high feed costs. This is due to the price and availability of grain in South Africa. Grain is the most important part of the production process, as it accounts for 50% to 60% of the total cost of production (Henry and

Rothwell, 1995). South Africa has a low yield of grain due to erratic rainfall and temperatures in the country. This affects both the price and availability of the grain for the feed for chicken. Unlike the United States, which can count on a bountiful harvest every year, the South Africans cannot count on a high grain yield. Therefore, feed is a high cost input in the production process which in turn raises the price of the output (Ziggers, 2001).

The South African poultry industry must also contend with low feed conversion efficiency. The feed conversion efficiency is the amount of feed (in kilos) it takes to produce one kilo of meat. It therefore takes more feed and therefore more money to make a kilo of meat than it does in other countries, like the United States (Germishuis, 2000). Below is listed the FCR compared to the live chicken weight.

Chart 1

South Africa's Feed Conversion Rate vs. Live Chicken Weight

(in kilos)

Year	1996	1997	1998	1999	2000
FCR	1.990	2.036	1.999	1.953	1.919
Live Chicken Weight	1.71	1.77	1.71	1.75	1.80

Source: Republic of South Africa 2000 Gain Report (Germishuis, 2000).

South Africa's poultry industry is riddled with inefficiency and high expenses that make it difficult for it to compete against products from the United States. With each successive problem addressed above, more and more production costs are incurred. The United States is able to enter into the South African market with low priced dark meat because of the efficiency of its production and other factors within the U.S. market. Due to South Africa's inefficiency, they are unable to compete with the United States, not because the United States is engaging in unfair trade practices, but because of the various inefficiencies in the factors discussed above.

The South African poultry industry is an oligopoly. Six producers are responsible for 65% of production (Shane "South Africa," 1999). The largest producer in South Africa is Rainbow Farms. Rainbow Farms would be expected to be the company best equipped to contend with competition from the U.S. This is not however the case. Rainbow Farms is plagued with internal issues and embodies all the problems discussed above. In 1996, 1997 and 1998 Rainbow reported huge losses (Ziggers, 2001).

It is then no surprise that the lead producer in South Africa, plagued by internal problems, could not effectively compete with the United States. Rainbow Farms, therefore, in conjunction with the Southern African Poultry Association, accused the United States of dumping dark meat into the South African market. They chose to target the dark meat products because it was the major component of U.S. chicken imports and they were low priced. Furthermore, the imports were entering a market where the demand for dark meat is about equal to the demand for breast meat and therefore the prices of dark meat and breast meat in South Africa are about equal (Shane "South Africa," 1999).

With high costs assigned to both cuts of meat in South Africa, the United States had a real advantage with their dark meat products. South Africans depended on the high market price of both their white and dark meat products to cover their high production costs. With the U.S. in the market with a lower priced product, the consumer was more inclined to buy the cheaper product, therefore diverting business from the South Africans and creating a troublesome situation for the South African producers. Rainbow Farms was drowning in the competitive prices offered by the United States so the company sought protection, not from unfair trade practices but from competition they just could not contend with.

IV. THE CASE OF SOUTH-AFRICAN POULTRY INDUSTRY

The South African poultry industry has been struggling ever since South Africa joined the WTO and was forced to let down its protectionist barriers, opening up the market to foreign competition. The foreign competition proved to be too competitive and the South African poultry industry sought protection from chicken imports. In 1997, in order to grant some relief to the South African poultry industry, the Board of Tariffs and Trade imposed a 2.20 rand per kilo tariff on all chicken products at the border ("South Africa," 2000).

However, this granted little relief to the highly inefficient and troubled South African poultry industry. Imports still entered the market, and even with the added tariff of 2.20 rand per kilo, the foreign chicken products remained competitive with the South African prices. The South African industry struggled on for several more years. Some producers, such as Rainbow Farms, were sicklier than others. In 1998, Rainbow Farms experienced an especially hard year and reported record losses. They needed some relief in order to stay afloat. It is then no coincidence that in 1999, Rainbow Farms, in conjunction with the Southern African Poultry Association, went to the Board on Tariffs and Trade accusing the United States of dumping chicken leg quarters into the South African market (Board on Tariffs and Trade, 2000).

The Board on Tariffs and Trade initiated an investigation into the dumping allegation on November 5, 1999. The period under investigation was from August 1998 to July 1999. On July 5, 2000 the Board on Tariffs and Trade imposed preliminary duties on the chicken leg quarters from the United States. In December 2000, the Board finalized the dumping duties after concluding that the United States had dumped chicken leg quarters into the South African market and that the South African poultry industry had experienced and was in threat of material harm (Board on Tariffs and Trade, 2000).

The dumping duties were equal to the dumping margins that had been calculated by the South Africans. In addition to the 2.20 rand per kilo tax at the border, Tyson Foods had to pay an additional 2.24 rand per kilo, Gold Kist had to pay 2.45 ran per kilo at the border and all other brands from the United States had to pay 7.25 rand per kilo. The rate for the other brands was later lowered from 7.25 to 6.96 rand per kilo ("South Africa," 2002). These duties were equal to the large dumping margins of 209 percent to 357 percent (Lindsey and Ikenson, 2001).

After the imposition of the 2.20 rand per kilo tariff in 1997, U.S. chicken leg quarter imports fell significantly in the following years. After the incredibly high dumping duties were initiated in 2000, chicken leg quarters from the United States basically stopped ("South Africa," 2002). This is illustrated in the chart below, where the

United States exported 37,583 metric tonnes in 1998, but this amount fell to just 2,032 tonnes in 2002.

Chart 2

Imports of Leg Quarters into South Africa

(in metric tonnes)

Year	1998	1999	2000	2001	2002
Leg Quarter (USA)	37,583	31,072	19,574	1,245	2,032
Leg Quarter (Brazil)	4,562	8,798	10,925	28,694	40,022
TOTAL IMPORTS (from all sources)	68,020	69,644	64,899	60,942	73,496
USA Market Share	55%	45%	30%	2%	3%
Brazil Market Share	7%	13%	17%	47%	54%

Source: ("South Africa's Broiler Situation," 2003).

The dumping duties achieved exactly what Rainbow Chicken and the Southern African Poultry Association had hoped. It effectively cut out the U.S. chicken imports and protected Rainbow Farms and the South African poultry industry from dealing with foreign competition in the area of dark meat.

Was the United States really guilty of dumping leg quarters into the South African market? According to the Board of Tariffs and Trades' finding, yes. But this was because of the way in which the data were collected and calculated that allowed the South Africans to find that dumping was occurring. The South Africa poultry industry argued that U.S. chicken leg quarters were being sold in South Africa at a price that was lower than the price for which it was sold in the United States.

In order for dumping to be found, South Africa had to prove that the chicken leg quarters were in fact being sold in South Africa below "normal value." The "normal value" could be based on the price of the leg quarters in the United States. If this information was not available the "normal value" could be determined by the price of leg quarters in a third country. If both of these methods were rejected, the normal value could be determined by "constructed value," or the cost to produce the leg quarters plus some amount for profit. If dumping was found to have occurred, the cost test would then be employed after determining the "normal value." The purpose of the cost test was to determine if the leg quarters were sold at prices lower than the full cost of production (Lindsey and Ikenson *Antidumping Exposed*, 2003).

If the United States failed the cost test, the next step was to determine if the South African poultry industry was threatened with material injury from the leg quarters. If the United States was found to have dumped chicken quarters, failed the cost test and was found to threaten or cause material injury, then dumping duties would be imposed on the leg quarters equal to the dumping margins. The dumping margins are found by subtracting the export price from the normal value and then dividing the difference by the export price (Lindsey and Ikenson *Antidumping Exposed*, 2003).

The first step in the investigation process was determining the "normal value" of the leg quarters from the United States and then comparing them to the price of leg quarters in South Africa. As discussed earlier, the cost of leg quarters in the United States is based on net realizable value. Breast meat in the United States is in higher demand, and it therefore commands the higher price. Dark meat (leg quarters) is in lesser demand in the United States and therefore commands a lower price. The breast meat then covers the majority of the production cost per pound of the chicken.

In the United States, as long as the market price for the breast meat is high, that will allow producers to cost out the less desirable products at a lower relative cost. So, the return on the sum of the parts of the chicken will at least equal the cost of the whole chicken. The net realizable value technique is a longstanding practice employed by the U.S. poultry industry. The high valued products of the chicken receive the high cost and the low valued products of the chicken receive the low cost. The net realizable value is consistent with the generally accepted accounting practices (GAAP), recognized and practiced by both the United States and many countries in the world and is consistent with WTO law (Kdunlap@colliershannon.com, 2001).

The U.S. poultry industry, including Tyson Foods and Gold Kist, in accordance with article 2.2.1.1 of the WTO Antidumping Agreement,[1] provided their records to the Board of Tariffs and Trade in order to determine the "normal value" of the leg quarters. The records provided were consistent with the net realizable value and the GAAP and were not concocted or manipulated for the South Africans. After all, the case stood that the United States, due to the lack of demand in its market, was left with a surplus of leg quarters that was exported to South Africa because of the high demand for the leg quarters in South Africa. In this way, the United States sold its surplus at a higher price in South Africa than it was able to get in the United States, and furthermore, the United States priced its leg quarters in such a fashion that it was consistent with the net realizable value. So how could this case constitute dumping when the United States was selling the leg quarters in South Africa at a price above the "normal value" in the United States and at a price that was consistent with net realizable value?

Chart 3

Average Unit Value of U.S. Leg Quarter Exports to South Africa and Average U.S. Regional Price ($/lb)

Month/Year	U.S. Exports Leg Quarters	NE U.S. Region	S U.S. Region

[1] Article 2.2.1.1 of the WTO Antidumping Agreement: Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sales of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter ("Antidumping Agreement: Article VI of the GATT 1994").

Aug ’98	0.32	0.36	0.32
Sep ’98	0.77	0.29	0.22
Oct ’98	0.29	0.22	0.17
Nov ’98	0.26	0.20	0.17
Dec ’98	0.27	0.18	0.14
Jan ’99	0.26	0.17	0.14
Feb ’99	0.29	0.18	0.14
Mar ’99	0.25	0.16	0.13
Apr ’99	0.47	0.15	0.13
May ’99	0.24	0.19	0.15
Jun ’99	0.25	0.21	0.19
Jul ’99	0.29	0.22	0.19

Source: (Coleman, Fry and Payne, 2003).

The above chart shows the prices of leg quarter exports (207.14) to South Africa, compared to the price of chilled chicken leg quarters in two regions of the United States (Northeast and South) during the period of alleged dumping (August 1998 - July 1999). What is clear is that the leg quarter prices in South Africa are higher than the leg quarter prices of the United States.

The Board of Tariffs and Trade recognized the submission of the records provided by the U.S. poultry industry, and its key players, Tyson Foods and Gold Kist, but they decided to reject the cost allocation of the U.S. poultry industry based on the net realizable value. The Board did this even after recognizing that “this costing policy may generally be consistent with acceptable international accounting practices.” Further, the Board said that it “did not question or dispute the fact that the producer’s methodology is consistent with the application of generally accepted accounting practices (GAAP) in the USA” or that “such allocations have been historically utilized by the exporter” (Board on Tariffs and Trade, 2000).

After accepting the premise of net realizable value based on GAAP, the Board of Tariffs and Trade determined that the records kept by the U.S. poultry industry did not “reasonably reflect the costs associated with the production and sale of the product under consideration” (Article 2.2.1.1 Antidumping Agreement). On this premise, the Board rejected the records of the U.S. poultry industry as a basis for the calculation of the “normal cost” of the leg quarters. This was an unreasonable argument for the Board to make because the market determined the U.S. poultry costs, and the market determined that costs reflect the premium commanded by the breast meat. Breast meat therefore covered the majority of the cost of production allowing the U.S. to charge a lower price for the leg quarters. In this way, the U.S. poultry industry did in fact “reasonably reflect the costs associated with production and sale” because all costs were accounted for and covered under the U.S. cost allocation system.

The Board went on to state that the consumer preference for breast meat in the

United States over dark meat constituted a "particular market situation" that existed in the United States. But they went on to recognize that the preference for breast meat "is also prevalent in a number of other countries, such as Canada and the European Union" (Board on Tariffs and Trade, 2000). The Board recognized that the preference for breast meat was not just a fact of the United States, but also a fact of a number of other countries. It further recognized the longstanding cost allocation system of the United States, which was utilized by other poultry industries of the world. But by declaring it a "particular market situation," the Board was able to reject allocations of cost based on the net realizable value because they deemed the U.S. market as an abnormal situation. They chose to ignore the realistic and valid nature of the cost basis of leg quarters in the U.S. and other markets because of the U.S. consumers' preference for white meat, and instead chose to focus on the South African consumers' equal taste for both white and dark meat, effectively nullifying net realizable value.

The question arises of which country actually constituted the abnormal situation when it comes to consumer preferences, the United States or South Africa? This is a matter of discretion, and the Board happened to have the power to make that decision. The United States poultry market does not represent an "unusual market situation" because, as stated in a previous section, the United States reflects the world market. And in the world market, there is a premium for light meat over dark meat. Furthermore, because the United States is a major player in the world poultry market, the world market more closely resembles the U.S. market than it does the South African market. So the model of the United States should have in fact been used by the Board to calculate "normal cost" because it is an accurate portrayal of the world market (Ellis, 2000). But by calling the U.S. a "particular market situation," the Board was able to deface net realizable value and replace it with their own construed calculations.

The U.S. cost allocation system was further rejected by the Board based on the premise that the accumulation of costs principle was not used. The South Africans made the argument that any part priced below the cost of producing the whole chicken was dumping. South Africa used this unfathomable reasoning to argue that the United States could not sell leg quarters for less than the cost to produce the whole chicken and thus suggested that the price of leg quarters should be equal to the price of a whole chicken. This argument is completely illogical, yet an argument made by the Board in order to reject net realizable value.

The Board had to reject net realizable value because they would otherwise have had no grounds to proceed with the dumping case because, under net realizable value, the U.S. was selling leg quarters above "normal value" and was selling above the cost of production. By rejecting net realizable value, the Board was able to utilize "constructed value" as its tool for determining the "normal value" of the U.S. leg quarters. This ensured that dumping would be found and that high dumping duties would be put into effect (Lindsey and Ikenson "Coming Home to Roost," 2001).

The Board on Tariffs and Trade determined that the appropriate way to reallocate costs was by weight. This allocated the whole chicken cost over the weight of the whole chicken. A cost was assigned to each cut of the bird, regardless of the type of meat (dark or white) (Ellis, 2000). Under the Board's weight-based cost allocation system, the Board claimed that dark meat made up the greatest percentage of the chicken and therefore was assigned the highest cost (Coleman, Fry and Payne, 2003). This method resulted in a significant reassigning of costs from the breast meat to the dark meat. Based on this system, the dark meat had to cover the majority of the cost of production.

The weight-based method was faulty. The dark meat and light meat portions of the chicken are just about equal in parts, so the assignment of a higher cost to the dark meat is faulty because the ratio to dark meat and white meat is about the same. As shown in Chart 4 on the following page, the breast meat makes up 29% of the bird and the dark meat makes up 29% (wings + thighs + drumsticks).

<u>Chart 4</u>

Makeup of the Chicken

Cut	% of Carcass
2 breasts	29.0
2 wings	8.0
2 thighs	11.0
2 drumsticks	10.0
Back bone	11.0
1 gizzard	2.5
1 liver	1.5
1 neck	3.0
1 heart	0.05
2 feet	3.0
Feathers, entrails, blood	20.95
TOTAL	100

Source: ("Association of Meat Importers and Exporters Report," 2003).

The Board then went back to review the data provided by the U.S. poultry industry. Based on the weight-based allocation system, the United States was guaranteed to be found selling the leg quarters below "normal value" because leg quarters were assigned a significantly higher price by the Board. This made it look as if the United States was selling below the cost of production. This, however, was far from reality. The high market price of breast meat in the United States made up the majority of the cost of production allowing the leg quarters to be sold for a low price, so costs were in fact met. What is more, the leg quarters were being sold in South Africa at a higher price than in the United States. But with this reallocation of costs, the United States was made to look as if it was selling the dark meat below "normal value" in the South African market and it ensured that the U.S. leg quarters failed the cost test.

The next step for the Board was determining if the U.S. leg quarters had threatened or caused harm to the South African poultry industry. The Board proceeded with an equally problematic material injury investigation.

One major problem with determining if there is material injury is that there is a lack of clear standards available for judging whether there is actually a link between the dumped products and a real threat or injury to the import-competing industry. Often times, any coincidence of dumped imports and injury suffered by the competing industry is regarded as an affirmation of material injury. The job of the investigating body, in this case the Board, is to disentangle all the factors that could possibly be causing material injury and determine if the dumped imports are in fact causing and threatening material injury (Lindsey and Ikenson *Antidumping Exposed*, 2003).

This is embodied in Article 3.5 of the WTO Antidumping Agreement.[2] This article was later affirmed by the WTO Appellate Body decision in the Japanese challenge to the U.S. antidumping investigation of hot-rolled steel (WT/DS184/AB/R). The Body affirmed that imports could not be lumped with other factors that might be causing material injury to the import-competing industry. The factors must be disentangled and the impact of each factor on the industry must be separately examined (Lindsey and Ikenson *Antidumping Exposed*, 2003).

In the South African antidumping case, the Board failed to take into account the other factors that might have caused material harm to the South African poultry industry. In the final report, the Board took note that there might have been factors within the domestic industry that led to injury, but they failed to investigate them further (Board on Tariffs and Trade, 2000).

The Board failed to investigate important evidence that pointed to the deep-seeded problems of the industry. If the internal factors of the domestic industry had been examined, the Board would have found that the industry was not threatened or suffering material harm due to the low prices of the U.S. dark meat, but instead because they had many problems - from inefficiency, to disease, to poor transportation, to unavailability of cheap and plentiful grain – and that these were in fact the issues that were causing harm to the South African poultry industry.

There were other problems with the investigation of material injury. Based on Article 3.2 of the WTO Antidumping Agreement,[3] the Board found that the volume of leg quarters in the South African market was ground to convict the United States of material injury. South Africa claimed that the volume of U.S. leg quarters had increased but this was not in fact the case. The volume of U.S. leg quarters in South Africa had fallen from

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[2] Article 3.5 of the WTO Antidumping Agreement: The demonstration of a casual relationship between the dumped imports and the injury to the domestic injury shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumping imports ("Antidumping Agreement: Article VI of the GATT 1994").

[3] Article 3.2 of the WTO Antidumping Agreement: With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member ("Antidumping Agreement: Article VI of the GATT 1994").

previous years, including the time period under investigation (refer to Chart 2, pg. 11, where the imports fell from 37,583 metric tonnes in 1998 to 31,072 metric tonnes in 1999). This was largely due to the 2.20 rand per kilo tariff that had been initiated at the border in 1997. The U.S. poultry products did make up a significant share of the South African poultry market, this does not mean there was a direct correlation between the volume of U.S. poultry products and material injury. A direct correlation between the volume and material injury must be proved in order to prove material injury, and the Board failed to do this (Kdunlap@colliershannon.com, 2001).

In accordance with Article 4.1 of the WTO Antidumping Agreement,[4] the Board was responsible for investigating the material injury of the industry as a whole, not just a couple of key players that claimed to be injured from the U.S. leg quarters imports. The Board only investigated a couple companies that claimed injury. This investigation process was problematic for a couple reasons. The Board only collected information from three companies, Rainbow Farms, Early Bird Farms and Country Bird (Board on Tariffs and Trade, 2000). The Board relied solely on this data provided to prove that material injury had occurred. These were the companies, especially Rainbow, that were in the most financial trouble. There is no doubt that a company like Rainbow Chicken was suffering, but it certainly was not suffering from the so-called dumped U.S. leg-quarters. They had severe problems long before the period under investigation, but this of course was not considered by the Board.

While the Board did a good job of collecting data from the three domestic firms that were in trouble, the Board turned away information from firms that did not support the claim of material injury. Under WTO rules, the Board is under instruction to examine claims from the majority of the domestic industry. The three firms only made up 46% of the industry (Board on Tariffs and Trade, 2000). Simply examining a couple sickly companies that supported the case and turning away evidence that did not support the case created a situation where the results of the investigation could not be trusted.

In the end, the Board found that the South African poultry industry had experienced material injury and that they were threatened with further injury if the United States was allowed to continue to export leg quarters into the South African market (Board on Tariffs and Trade, 2000). The result was the implementation of import tariffs (equal to the dumping margins calculated by the Board). With the reallocation of costs and the use of constructed value, the leg quarters were assigned a significantly higher cost than they were being sold at in either market. Therefore, the difference between the "normal cost" (calculated by the Board) and the export price was huge. The dumping margins were then translated into dumping duties that equaled 209% to 357% (Lindsey and Ikenson "Coming Home to Roost," 2001). This basically put an end to leg quarter imports from the United States because it was no longer a reasonable market for the United States to sell to (refer to Chart 2 on pg. 11). Thus the South African poultry industry and Rainbow Chicken got what they wished, the exclusion of U.S. leg quarters from South Africa, or in other words, protection for the South African poultry industry

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[4] Article 4.1 of the WTO Antidumping Agreement: For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products ("Antidumping Agreement: Article VI of the GATT 1994").

against foreign competition.

V. AFTERMATH OF THE INVESTIGATION

Needless to say, the poultry producers in the United States were not pleased with the outcome of the South African case for one very important reason. The South Africans' case, and the tools they used to prove their dumping case against the United States, could easily be adopted by other countries whose import-competing industries were also struggling under the intense competition from the low price of U.S. leg quarters. Compared to the other markets the United States exported leg quarters to, the South African market was small (Sumner, 2001). But a dangerous precedent could be allowed to set, which could potentially result in the U.S. loosing its biggest export markets, like Russia and China/Hong Kong ("Poultry Meat," 1998). It was on this basis that the U.S. poultry industry insisted that this case be appealed to the WTO. The United States Trade Representative has so far refused the U.S. poultry industry's request to take the matter to the WTO (Sumner, 2001). Instead, the U.S. government reported that it is working cooperatively with the South African government to address the poultry industry's concerns ("USTR," 2002).

When it comes to production, the South African poultry industry remains disadvantaged in areas like grain production, which will continue to keep their production costs high and therefore the price of their products high (Shane "South Africa," 1999). Even with the high antidumping duties, there will be little growth in the industry and there is not expected to be any new producers entering into the market (Shane "Economic Factor," 2002). The industry has to engineer its own internal restructuring in order for it to do better, because it is the sickly state of the industry that got it into trouble in the first place. It was the low leg quarter prices from the United States that exposed the industry's problems, not caused them. The dumping duties ensured the South African poultry industry would be protected from competition from abroad, but the South African consumers are the ones who pay for the industry's protection. The consumers, especially those in the lower income bracket, are worse off than before the antidumping duties. By 2001, the prices of leg quarters had already risen by 30% (Cook, 2001).

VI. CONCLUSION

This case is a clear-cut case of protectionism. The United States was not dumping leg quarters into the South African market. The cost-allocation system of the U.S. poultry industry, net realizable value, was historically used and longstanding. It not only reflected the reality of the U.S. market but also was representative of the world market for poultry as well. Based on net realizable value, the records of the United States should have been used to determine the "normal value." The U.S. industries were selling the leg quarters in South Africa for a higher price than they were being sold in the United States. The reasons used to reject the U.S. records, because of an "abnormal market situation" and that the costs did not accurately cover the costs of producing the whole chicken, had absolutely no sounds basis. The basis for claiming material injury did not stand up because the South Africans failed to take into account the sickly state of their domestic poultry industry, which in fact was responsible for the industry's injury.

In the end, the South African poultry industry was seeking protection, not from dumped leg quarters, but from the competition, based on fair trade, the leg quarters brought with them. Since joining the WTO and letting down most of their barriers to trade, South Africa's poultry industry was opened up to foreign competition from foreign industries that simply had more factors going for them, allowing them to come out with low priced quality products. The South African poultry industry sought protection in 1997 with a 2.20 rand per kilo tariff at the border against leg quarters ("South Africa," 2000). When this failed to adequately protect them from the foreign competition, they took advantage of what the industrialized countries had been using for years, antidumping measures. This not only provided protection, it provided such good protection that it effectively shut the U.S. leg quarters out of the South African market.

Further proof of the South African poultry industry's search for protection came when the Brazilians stepped in to take over the U.S. market share of leg quarters. The Brazilians provided the same competitive prices that the United States had, not due to unfair trade practices, but because of the success of Brazil's poultry industry ("Association of Meat Importers and Exporters Report," 2003). In order to protect the South African poultry producers from Brazil's competition, the South African poultry industry approached the Board again in 2003 and asked for a dumping investigation of all poultry products originating from all countries ("South Africa," *International Egg and Poultry Review*, 2003). It is not plausible that every chicken product originating in all countries is being dumped into South Africa. It is more likely that South Africa is simply trying to protect its domestic poultry industry.

If the United States were to appeal the case at the WTO, there is no doubt that the United States would win its case against the South Africans. Furthermore, it is important that this case is appealed because of the dangerous precedent it has set for other countries to follow. Already the U.S. poultry industry is seeing the repercussions from countries like India and Russia that are filing similar bogus charges. Not only would appealing the case to the WTO prevent similar cases from springing up in the future, it would also set a precedent that dumping cases are not meant for protection, they are meant to prevent dumping. It is too simple for countries to accuse and prove dumping, and the proof is in the increasingly high number of dumping cases initiated each year, especially by developing countries. The majority of dumping cases are brought to protect industries that simply cannot compete with low prices. Low prices do not necessarily mean dumping, low prices might be attributed to different factors including supply and demand, consumer preferences and low production costs.

BIBLIOGRAPHY AND REFERENCES

1) "Antidumping Agreement: Article VI of the GATT 1994." http://www.worldtradelaw.net/uragreements/adagreement.pdf, 3 Nov. 2004.
2) Association of Meat Importers and Exporters Report." South Africa: AMIE, 2003.
3) Board on Tariffs and Trade. *Investigation Into the Alleged Dumping of Meat of Fowls of the Species Gallus Domesticus, Originating in or Imported from the United States of America (USA): Preliminary Determination*, Report No. 4065. July 2000.
4) Coleman, Jonathan R., John Fry and Warren S. Payne. "Use of Antidumping Measures by Developing Countries: The Impact on U.S. Exports of Agricultural Product." June 2003. http://www.ecostat.unical.it/2003agtradeconf/Contributed%20papers/Coleman,%20Fry20and%20Payne.PDF, 3 Nov. 2004.
5) Cook, Louise. "Antidumping Duty Imposed on Chicken." *Business Day* 4 Jan. 2001.
6) Dunn, Robert M. and John H. Mutti. *International Economics.* 6th ed. New York: Routledge, 2004.
7) Ellis, Matt. "Ellis Testimony." 2000. USA Poultry and Egg Council. Toby Moore e-mail to Michael Strear, 3 Dec. 2003.
8) Filipov, David. "Russia Threatens Retaliation for U.S. Increase in Steel Tariffs." *Knight Rider Tribune Business News* 7 Mar. 2002. *ABI/INFORM Complete,* http://proquest.umi.com, November 7, 2004.
9) Germishuis, Harry. "South Africa, Republic of: Poultry and Products Annual 2000." *Foreign Agricultural Service GAIN Report* 2000. http://www.fas.usda.gov/gainfiles/200008/30677778.pdf, 5 Nov. 2004.
10) Henry, Richard and Graeme Rothwell. *The World Poultry Industry.* United States of America: The World Bank and International Finance Corporation, 1995.
11) Ikenson, Dan. "The Antidumping Epidemic." 30 Oct. 2001. CATO. http://www.freetrade.org/pubs/speeches/cf-103001.html, 22 Nov. 2004.
12) "India: Fears Over Dumping of U.S. Chicken Legs Discounted." *Businessline* 13 Apr. 2001. *ABI/INFORM Complete,* http://proquest.umi.com, 7 Nov. 2004.
13) Jenvey, Nicola. "Rainbow on the Road to Recovery." *Business Day* 17 May 2001.
14) Johan Lambrechts and Associates. "The South Africa Broiler (Chicken) Industry: An Economic Assessment Focussing on Issues Relevant to an Antidumping Action by Members of the South African Poultry Industry Against Certain USA Suppliers of Chicken and/or Chicken Portions." 27 Jan. 2001.
15) Kdunlap@colliershannon.com. "South Africa Talking Points." E-mail to wroenigk@ChickenUSA.org. 8 Feb. 2001.
16) Lindsey, Brink and Daniel J. Ikenson. *Anitdumping Exposed: The Devilish*

Details of Unfair Trade Law. United States of America: Cato Institute, 2003.

17) Lindsey, Brink and Dan Ikenson. “Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to U.S. Exports.” *Center for Trade Policy Studies* 14 (30 July 2001):1-32.

18) “Poultry Meat and Products: Trade Policy Developments.” 1997. USDA. http://ffas.usda.gov/dlp2/circular/1997/97-03/poultry.htm, 5 Nov. 2004.

19) “Poultry Meat and Products – U.S. Export and Price Developments.” *Livestock and Poultry* Oct. 1998. *FASonline*. http://ffas.usda.gov/dlp2/circular/1999/99-03LP/price.htm, 9 Nov. 2004.

20) Salgado, Ingrid. “Rainbow Chicken Cock-a-Hoop as Earnings Triple to R94m.” *Business Day* 17 May 2001.

21) Shane, Simon. “South African Broiler Industry Faces Uncertain Future.” *Poultry International: Production, Processing and Marketing Worldwide* 38:2 (Feb. 1999).

22) Shane, Simon M. “Economic Factors Drive the South African Broiler Industry.” *World Poultry* 18:10 (2002): 12-13.

23) “South Africa.” *International Egg and Poultry Review* 6:37 (16 Sept. 2003). USDA. http://www.ams.usda.gov/poultry/mncs/International/2003Reports/x091603.pdf, 5 Nov.2004.

24) “South Africa.” 2000. USTR. http://www.ustr.gov/pdf/2000_safrica.pdf, 3 Nov. 2004, 367-369.

25) “South Africa.” 2002. USTR. http://www.ustr.gov/reports/nte/2002/southafrica.PDF, 3. Nov 2004, 383.

26) “South Africa’s Broiler Situation.” 2003. USDA. http://ffas.usda.gov/dlp/countrypages/sfchsit.pdf, 3 Nov. 2004.

27) Sumner, James. “The Antidumping Epidemic.” 30 Oct. 2001. CATO. http://www.freetrade.org/pubs/speeches/cf-103001.html, 22 Nov. 2004.

28) “Trade Remedy Laws and Agriculture.” *Agriculture Outlook* Aug. 2002. USDA. http://www.ers.usda.gov/publications/agoutlook/aug2002/ao293h.pdf, 3 Nov. 2004.

29) “USDA Broiler/Fryer Market News Report.” July, Sep. & Aug. 1999. http://www.ams.usda.gov/poultry.mncs/BroilerReport/USDABROILER.html, 3 Nov.2004. “USTR Releases 2002: Inventory of Trade Barriers.” 2 Apr. 2002. USTR.

30) http://www.ustr.gov/Document_Library/Press_Release/2002/April/USTR_Releases_2002Inventory_of_Trade_Barriers.html, 5 Nov. 2004.
Ziggers, Dick. “South Africa’s Fragile Feed Industry Struggles in Competitive Market.”*Food Tech* 5:4 (15 Aug. 2001): 13-1