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### **Temporary Barriers and Local Industry Defense: Where does Guyana stand? Where Should It Head?**

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#### **Abstract**

This paper seeks to survey the global landscape for the use of trade defense measures, and anti-dumping measures particularly, to identify key trends and assess the implications for Guyana given its current pattern of trade. It assesses Guyana's legislative framework, as well as countries in the Americas, and identifies key policy issues for Guyana in order to build capacity to address anti-dumping concerns. Guyana currently does not have legislative capacity for anti-dumping measures. However, to provide a safety-valve to local industries, Guyana may find it useful to fill this deficit as well as develop the administrative capacity to satisfy the evidentiary requirements of the WTO.

Keywords: anti-dumping, exports, Guyana, legislative capacity, trade defense measures

## **Introduction**

**W**ith Guyana stepping into the world energy spotlight<sup>1</sup>, there have been increased calls by the local private sector for protection through a local content policy and related legislation, stemming from fears that an influx of foreign investors will marginalize local enterprises from business opportunities along the oil and gas value chain (Guyana Chronicle 2020). To date, a policy has been developed and a committee formed to ventilate the proposed policy (Stabroek News 2019). Relatedly or unrelatedly, there have been similar calls for trade defense measures to safeguard local industries against import-competing products (Newsroom 2018). It is within this context that this paper seeks to understand trade defense measures more thoroughly in order to provide trade policy direction for Guyana.

Trade defense measures include anti-dumping duties, countervailing duties and global safeguards (Chandra 2015). These are short-term restrictions against international trade. Emphasis is placed on anti-dumping measures which are deemed to be more pervasive and have become the most important protectionist tool in the global trading system (Niels 2000).

The research is framed within the context of key questions on global use of trade defense measures, current legislative capacity for addressing such measures, implications for Guyana given its current pattern of trade and appropriate policy recommendations for Guyana. In particular, the following questions form the nucleus of the research and determine its structure:

1. What are the stylized facts regarding global use of trade defense measures?
2. What theories provide the basis for the use of trade defense measures?
3. Generally, how do anti-dumping measures impact trade flows?
4. How do national legislations and Guyana's trade agreements address trade defense measures?
5. What is Guyana's pattern of trade with countries that are key targets and users of anti-dumping measures?
6. What are the policy directives for Guyana for developing legislative and regulatory capacity at the national level?

Given the focus of the research, it was necessary to collect and review secondary data on anti-dumping legislations and global use of anti-dumping measures from the Global Anti-dumping Database (World Bank), and the World Trade Organisation database.

The research reinforces earlier findings of increasing use of trade defense measures, with anti-dumping being the most frequently used trade defense instrument, by both developed and developing countries (Silberberger, Slany and Stender 2018). Among the

reasons for their use are increased protectionism in the multilateral trading system in response to lost protection due to trade liberalization (Chandra 2016), as well as retaliation by affected countries (Moore and Zanardi 2011), and an attempt to curb trade deflection (Zeng 2014).

At the national level, Guyana currently does not have the legislative and regulatory regime to address trade defense measures and would find it beneficial to have such legislations in place to provide capacity to respond to such measures when the need arises but should equally consider other lower-cost trade policy options.

### **Stylized Facts Regarding the Use of Anti-dumping Measure**

There are several stylized facts that are notable regarding the use of trade defense measures.

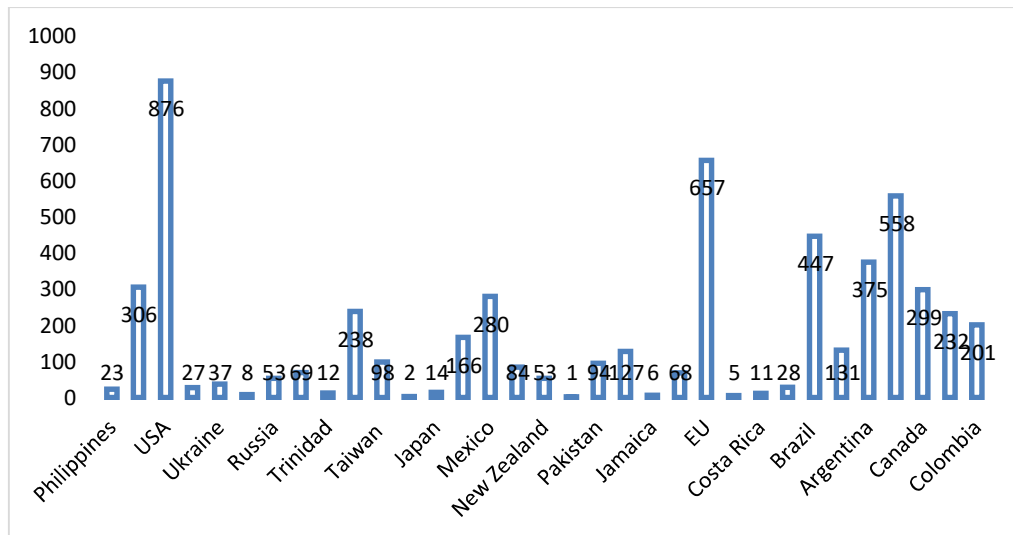
The *first* is increasing use of such measures, as extensively established in the empirical trade policy literature (Chandra 2016; Egger and Nelson 2011; Prusa 2005; Bown 2011; Kee, Neagu and Nicita 2013; Karacaovali 2011; Feinberg and Reynolds 2006).

The *second* is that anti-dumping measures are the most frequently used trade remedy instruments (Besdes and Prusa 2017; Chandra 2016; Bown 2011; Kee, Neagu and Nicita 2013; Karacaovali 2011). Besdes and Prusa (2017) note that for “almost four decades anti-dumping has been the most important form of discretionary protection, outpacing all other forms of administered protection combined”. In fact, Niels (2000) considers it to be one of the most important instruments for protection in the international trade system. Wu (2012.3) notes that:

During the past five years, anti-dumping duties accounted for over ninety percent of the legal contingent of protection measures enacted worldwide. Within the United States and members of the European Union (“EU”), more cases have been filed under the anti-dumping statutes than under all other trade statutes combined.

*Thirdly*, developed countries such as the United States, the European Union, Canada and Australia were in the past the primary users of anti-dumping measures (Vandenbussche and Zanardi 2010; Bown 2008; Silberberger, Slany and Stender 2018). This is reaffirmed in figure 1 which identifies the leading initiators of anti-dumping cases over the period 1990 to 2015 as the US with 867 cases, the EU with 657 cases, and Australia with 558 cases.

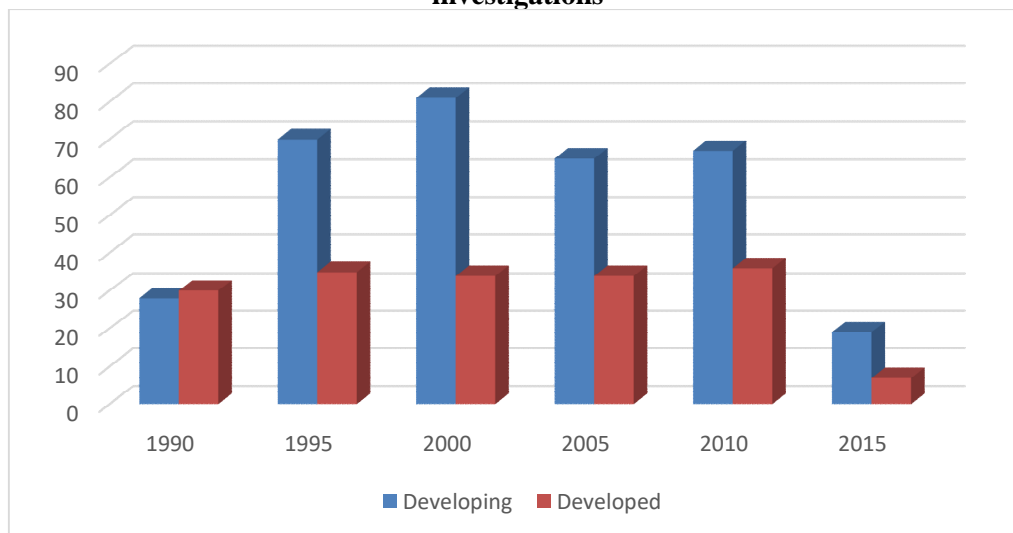
**Figure 1: Global users of antidumping measures**



**Source:** Author based on Global Anti-Dumping Database (World Bank)

Fourthly, since the 1990s, developing countries have increasingly been using trade defense measures (Bown 2007, 2008, 2013; Silberberger, Slany and Stender 2018). Egger and Nelson (2011) list Argentina, Brazil, Mexico, South Korea, Taiwan and Turkey as examples of key developing country users of anti-dumping measures. This is also reflected in figure 2 for the period 1990 to 2015.

**Figure 2: Developed and developing countries' initiation of antidumping investigations**



**Source:** Author based on Global Anti-Dumping Database (World Bank)

*Fifthly*, China is the more frequent target of anti-dumping filings (Karacaovali 2011; Silberger, Slany and Stender 2018). A case in point, Mexico had 316 anti-dumping cases between 1987 and 2015, 76 of those cases involved China (Global Anti-dumping Database). The World Bank (2011) notes that China was the subject of a number of high-profile protectionist policies including treatment of footwear in the European Union and the United States' safeguard on imports of tires; and China's retaliatory use of anti-dumping measures on steel fasteners from the EU and autos and chicken parts from the US.

While China is the most frequent target of anti-dumping filings it is also the sixth most frequent user of anti-dumping duties, which Osang and Warren (2019) link to possible retaliation on the part of China.

### **Theoretical Basis for Anti-dumping Measures**

Trade defense measures are permissible by the WTO for the protection of local competing industries hurt by "unfair" price setting by exporters (dumping), the use of subsidies, and to safeguard domestic industries from a temporary surge in imports (WTO n.d).

What the WTO refers to as "unfair" price setting or dumping is defined by Yarrow (1987) as a situation that is said to occur when the price of a product on an export market, corrected for the costs of transport and related items, is lower than the price of the same, or a substantially similar, product on the home market." (Yarrow 1987).<sup>2</sup> Dumping is linked fundamentally to Viner's (1923) conceptualization of the term as international price discrimination (Deardorff 1989; Kerr 2006). The use of the concept of 'normal value' to underscore the meaning of dumping, as evident in Article VI of the WTO GATT Agreement and Article 2 of the WTO Antidumping Agreement, is precisely linked to Viner's concept of international price discrimination. This however, according to Kerr (2006) conjures up other concepts such as 'abnormal value' and 'unfair' pricing that makes the concept of dumping inherently normative. Other conceptualizations of the term relate to predatory action and disposing of surplus production (Yandle and Young 1987). In essence, dumping and anti-dumping are dynamic concepts with definitional difficulties (Yandle and Young 1987; Kerr 2006).

In economic theory, anti-dumping measures can be regarded as a controversial tool given the strong divergent views (Niels 2000; Howell and Ballantine, 1997). According to Yarrow (1987, 66) "there is no consensus about the negative welfare effects of the practice and about the desirability of counteracting policy measures". Deardorff (1989) using the theory of international price discrimination points to the fact that the welfare impact of prohibiting price discrimination could be ambiguous. Deardorff (1989) refers

to several situations that may lead to dumping as a natural phenomenon such as protection from foreign competition in the home market for a monopoly supplier facing a less elastic demand at home than abroad; a firm facing relatively lower sales costs abroad because of perfect competition or insulation of the domestic market from shocks in supply and demand that cause large fluctuations in the world market price. Under those conditions, Deardorff (1989) questions the merit of anti-dumping policies as the best policy instrument and believes that the welfare focus ought instead to be directed at the domestic market. Both Dale (1980) and Kerr (2006) argue that while Viner's work forms the foundation of modern anti-dumping practice it was flawed to begin, due to practical validity in its treatment of injury and lack of a sound theoretical basis and the extent to which it is a substantial real-world problem requiring remedial legislation.

Yandle and Young (1987) refer to the formidable impact of anti-dumping measures on competition. Dale (1980, 1990) had also underscored that "Viner himself drew attention to the protectionist dangers of anti-dumping action when, in 1955, he suggested that misuse of the anti-dumping laws might 'raise the effective tariff barriers more than all the negotiations in Geneva will be able to achieve in the other direction'". In fact, Kerr and Loppacher (2004) posit that the "methods that have been devised to calculate antidumping and countervailing duties are biased toward providing protection".

Notwithstanding the economic uncertainty regarding its welfare implications, anti-dumping measures have grown in use. To gain further insight into the rationale for the use of anti-dumping measures, three theories are examined.

The *first* is the 'safety valve' theory, which essentially links the use of anti-dumping measures to protection driven by adverse changes over the short-term (Wu 2012; Niels and Ten Kate, 2006). The basis for protection could vary. The WTO requires that injury form the basis for the use of the measures. However, Wu (2012) alludes to countering protection lost from trade liberalization, where the measures in essence become a way of securing and maintaining domestic support for trade liberalization. By and large, several authors point to a growing trend of protectionism, by both developed and developing countries (Vandenbussche and Zanardi 2010; Zanardi and Moore 2011). In fact, Kerr (2006) argue that the label of 'unfair' competition makes it easier for anti-dumping measures to gain public and political support.

Moore and Zanardi (2011) and Samuel (2016) provide evidence in support of protectionism. Moore and Zanardi (2011) examined whether the use of anti-dumping is influenced by the reduction of applied sectoral tariffs for 29 developing countries and six developed countries from 1991 to 2002 and found that there is a substitution of tariffs for contingent protection measures as non-tariff barriers, with anti-dumping

being the most popular measure. Samuel (2016) who examined the implementation of TTBs by 13 Latin American countries, examined market power and the use of anti-dumping duties and found that a one standard deviation increase in market power increases the probability that a country will impose anti-dumping duties by 71%. This points to anti-dumping measures as a predatory strategy to safeguard market share.

Wu (2012) empirically tested the safety valve theory using an econometric model for India and China. The author used product level data for 4,500 HS-6 product lines for China and 4,300 HS-6 product lines for India for eleven years spanning 1996 to 2006. Wu measures the safety valve theory as the “probability of an anti-dumping investigation being initiated for products where a tariff cut is either preceded by or accompanies: (a) surge in the quantity of imports; and/or (b) a decline in the average unit price of the product.” For both India and China, the author found minimal support for the safety valve theory as an explanatory factor in the country’s use of anti-dumping laws.

The *second* theoretical basis is the retaliation theory (Moore and Zanardi 2011; Blonigen and Bown 2003; Feinberg and Reynolds 2006; Vandenbussche et al. 2008). Feinberg and Reynolds (2006) using a probit model to analyse the WTO anti-dumping database, found retaliation as an explanatory factor for the rising use of anti-dumping measures.

Retaliation according to Blonigen and Bown (2012) is capacity for “reciprocal AD action by foreign countries through use of the: (1) Dispute settlement procedure of the GATT/WTO; or (2) Through reciprocal claims of dumping and the pursuit of AD duties in countries where there is an AD regime in place”.

Zeng (2014) points to anti-dumping measures having both a retaliatory effect and a deterrent effect. The former relates to the fact that countries with the capacity to do so can respond to threats of anti-dumping measures with similar action; and the latter refers to the fact that countries that are aware that affected partners with viable anti-dumping regimes can retaliate, may consider not using anti-dumping measures in a bid to avoid retaliation. Zeng (2014) found both effects in the case of China.

Feinberg and Reynolds (2006) pointed to retaliation as a significant factor in anti-dumping cases filed against the US. Based on a panel study of global anti-dumping filings and disputes filed with the WTO dispute settlement body over the period 1995 to 2011, Feinberg and Reynolds (2006) found that countries may retaliate for the imposition of anti-dumping duties by filing an anti-dumping petition or taking a dispute to the WTO.

Zeng (2014) pointed to retaliation as the basis for other countries’ use of the anti-dumping mechanism against Chinese firms and Osang and Warren (2019) alluded to

retaliation as a basis for China's use of anti-dumping, where they assessed retaliation as China's initiation of anti-dumping filings against a country within one year of that country initiating filings against China.

The *third* theoretical basis is the theory of endogenous trade policy which provides political economy characteristics that may influence the use of anti-dumping measures. The theory of endogenous trade policy formulation borrows from the theory of endogenous protection, which according to Trefler (1993, 138) "predicts that higher levels of import penetration will lead to greater protection."

Bown (2008) proved that anti-dumping measures are linked to endogenous trade policy formulation through econometric studies. In the case of Bown (2008), a cross-country panel study was conducted in which the author matched production data for 28 3-digit ISIC industries in nine developing countries with use of anti-dumping investigations, outcomes and imports at the 6-digit harmonized system product level to understand what motivates anti-dumping protection in Argentina, Brazil, Colombia, India, Indonesia, Mexico, Peru, Turkey and Venezuela. Bown (2008) identified factors such as size (employment and contribution to GDP), industry characteristics (such as high capital expenditures, and large sunk costs, growth rate), macroeconomic conditions such as currency appreciation, slowdown in GDP growth), and substantial import penetration.

Another basis for protection is stabilizing trade during periods of economic downturns. Bown (2011b) believes that the use of temporary trade barriers during the period of the global economic crisis may in fact have contributed to "the stability of the trading system during 2008-09" by preventing "potentially more draconian protectionist measures" from being implemented". Bown (2011b) argued generally that during the Great Recession governments actively used trade policy including anti-dumping, safeguard and countervailing-duty policies. Bown (2012) and Bown (2011) using data for 1990 to 2009 found that "at the height of the crisis, emerging economies sharply increased their share of import products subject to TTBs – i.e., an increase of 40% between 2007 and 2009. Karacaovali (2011) confirmed this for Turkey; Kang and Park (2011) for South Korea; Tovar (2011) and Bown (2012) for India.

Bown and Crowley (2013) also established that developed countries frequently applied dumping duties and other forms of variable protection during postwar periods in reaction to business cycles and exchange-rate movements. Feinberg and Reynolds (2006) by focusing on the case of the US posit that macroeconomic forces do indeed act as a motivation for the use of anti-dumping measures. This was also reinforced in a study of the US anti-dumping filings against Latin America and Caribbean nations from 1980 (Feinberg 2006). In this study, the author concluded that "global recessions are



likely to lead to a ratcheting up of protectionism to the disadvantage of all countries, but particularly to those in the developing world” (Feinberg 2006).

Notwithstanding the motives that may drive the use of anti-dumping measures, the WTO Anti-dumping Agreement requires that anti-dumping measures be used only on the basis of a detailed investigation that shows that injury linked directly to imports has taken place. It outlines procedures for initiating and conducting investigation and rules on implementation and duration of corrective measures, typically 5 years with scope for extension in some circumstances. The WTO also outlines the possible actions including withdrawing the measure or applying anti-dumping duties. These guidelines allow for a more logical and transparent use of such measures.

### **Impacts of Anti-dumping Measures on Trade Flows**

At the macro level, the impacts of anti-dumping measures could be summarized as trade reduction and trade deflection.

*Trade reducing effects* may occur due to higher prices concomitant with the size of the anti-dumping duty (Vandenbussche and Zanardi 2010; Bedes and Prusa 2017; Sandkamp 2020), lower volume of the traded commodity (Sandkamp 2020; Vandenbussche and Zanardi 2010; Felbermayr, Sandkamp and Felbermayr 2018), or suppliers existing the market (Felbermayr and Sandkamp 2019).

With respect to the volume of the traded commodity, Vandenbussche and Zanardi (2010) proved econometrically using the gravity model that the effects are not only at the product level but also at the aggregate level. For instance, with respect to new users, the authors found that imports were reduced by US\$14 billion a year (or 5.9%) as a result of anti-dumping measures. Bedes and Prusa (2017) found that exports reduce by 50-60% on average, for countries affected by anti-dumping duties.

The measures may begin to depress trade from the time an investigation is announced to after anti-dumping duties have been imposed. Interestingly, Bedes and Prusa (2017) note that the most significant effects of anti-dumping action, may be felt during the investigation and not when the final duty is levied, which means that the effect on the extensive margin being to take place upon initiation of an investigation.

Silberger, Slany and Stender (2018) undertook an econometric analysis of 746 anti-dumping cases that were imposed and removed by 14 G20 countries. They found that trade increased immediately following the removal of the barriers for those countries affected, especially China, corroborating that by and large, the trade-depressing impact occurs while the barrier is in place. Nevertheless, they argued that except for China, most countries were unable to re-establish pre-AD export levels. The latter is supported

by Sandkamp (2020) who argue that the trade dampening effects of anti-dumping duties may persist over time.

As it relates to exit, Bedes and Prusa (2017) also note that AD duties may completely drive suppliers out of a market and that the possibility of exit is directly correlated with the size of the anti-dumping duty. Interestingly, Feinberg (2006) in a study of the impact of US anti-dumping filings against Latin America and Caribbean nations, found that trade may be disrupted even if the case is unsuccessful.

Vandenbussche and Zanardi (2010) found that anti-dumping duties have a heterogeneous impact across countries. Bown (2013) finds that while China is able to respond quickly and aggressively to anti-dumping measures, for other emerging countries the response is tepid and slow.

*Trade deflection* occurs where the measures result in increased trade to third party markets (Chandra 2016; Moore and Zanardi 2011; Felbermayr, Sandkamp and Felbermayr 2018). Chandra (2016) proved this is in a study of the impact of US TTBs on China. Furthermore, Zeng (2014) notes that deflection of exports to developing countries has contributed to the rise in the use of anti-dumping duties by those countries against Chinese firms. Chandra (2016) found trade deflection to be higher for non-steel products.

## **Legislative Capacity for Anti-dumping Measures**

Twenty-seven out of the thirty-five independent states in the Americas have national legislations that provide for investigation into dumping and other matters such as subsidies, including seven member states of the Caribbean community (CARICOM). The countries without legislations are Cuba, Suriname, Guyana, Belize, The Bahamas, St. Kitts and Nevis, St. Lucia, and Saint Vincent and the Grenadines (SICE n.d).

Based on the Global Anti-dumping database and WTO databases, the following countries in the Americas have initiated AD investigations: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago, Uruguay, the United States, and Venezuela. In fact, these countries – minus Jamaica and Trinidad are among twenty-six (26) countries that are regarded to have accounted for over 90% of all anti-dumping investigations by WTO members during 1995 to 2008 (Bown 2014). This is supported by the WTO World Trade Report (2009, 43) which notes that “The 1990s saw an increase in the use of trade remedies, especially anti-dumping actions, by developing countries. Many Latin American countries began introducing trade remedy legislation and started using these measures intensively.”

The WTO (2009) links the increased use of AD legislations by Latin American countries, to increased liberalization starting from the 1980s and consequent reforms to

the anti-dumping laws of those countries to ensure consistency with WTO regulations. Vandebussche *et al.* (2008) point to a rapid spread of antidumping laws among developing countries, noting that between 1980 and 2003 the number of countries in the world with an AD law in place more than doubled, moving from 36 to 97 countries.

### *Trade Defense Measures Under Guyana's Trade Agreements*

Several of Guyana's regional and bilateral trade agreements refer to antidumping, subsidies and safeguard measures.

The Revised Treaty of Chaguaramas (RTC) establishing the Caribbean Community, Part five, deals explicitly with dumping under Articles 125 to 133. Subsidies and safeguard measures are also addressed under Articles 96 to 124 and Article 150, respectively. Articles 125 to 133 cover issues related to the determination of dumping, determination of injury, initiation of investigation, provisional measures, conduct of investigations leading to definitive determination of injury, cooperation by competent authorities and interested parties and imposition of anti-dumping duties.

The CARIFORUM-EU Economic Partnership Agreement under Chapter 2 contains provisions for trade defense instruments including anti-dumping and countervailing measures (Article 23), multilateral safeguards (Article 24) and safeguard clause (Article 25). The agreement recognizes the right of all parties to adopt relevant trade defense measures in accordance with the relevant WTO agreements.

As it relates specifically to anti-dumping, the EU committed to considering the possibility of applying constructive remedies before imposing anti-dumping duties on CARIFORUM imports, and to informing CARIFORUM member states before initiating any investigations.

The CARIFORUM- Great Britain Economic Partnership Agreement addresses the same issues as does the CARIFORUM-EC EPA, because the former is a roll-over of the latter to take account of the United Kingdom's exit from the EU and to provide for continuity in preferential access to the UK market by CARIFORUM states.

The CARICOM-Costa Rica Free Trade Agreement addresses the issue of dumping (Chapter IV) and safeguard measures (Article III.16). The agreement recognizes the provisions of the WTO agreement and only seeks to provide improvements and clarifications to the relevant provisions. For instance, it expresses a desire for parties to establish a domestic process that gives consideration to the broader public impact of imposing anti-dumping duties; providing for the possibility of imposing anti-dumping duties that are less than the full margin of dumping in appropriate circumstances; having a transparent and predictable method for the imposition and collection of anti-dumping duties; and assessing the condition of competition among the imported products.

The Brazil-Guyana-Saint Kitts and Nevis Economic Complementation Agreement, Agreement on Trade, Economic and Technical Cooperation between CARICOM and Colombia, Agreement on Trade, Economic and Technical Cooperation between CARICOM and Venezuela, and Guyana - Venezuela Partial Scope Agreement address the issue of safeguard measures. The Agreements with Colombia and Venezuela also have a broad provision that speaks to Unfair Trade Practices including dumping and the use of subsidies. The language is essentially the same across the agreements. The agreements provide the parties with the right to apply appropriate measures to address distortions due to dumping and the application of export subsidies or domestic subsidies, providing that these are consistent with their domestic legislation and the provisions of the GATT.

**Table 3: Treatment of Trade Defense Measures in Guyana’s Trade Agreements**

<b>Agreement</b>	<b>Issue</b>
Revised Treaty of Chaguaramas establishing the Caribbean community	Subsidies- Article 96 to 124 Dumping Article 125 to 133 Safeguard measures- Article 150
CARIFORUM- European Community Economic Partnership Agreement	Anti-Dumping and countervailing measures (Article 23), Multilateral safeguards (Article 24) Safeguard clause (Article 25).
CARIFORUM - Great Britain Economic Partnership Agreement	Anti-Dumping and countervailing measures (Article 23) Multilateral safeguards (Article 24) Safeguard clause (Article 25).
CARICOM- Costa Rica Free Trade Agreement	Safeguard measures- Article III.16 Anti-Dumping measures- Chapter VI
Brazil-Guyana-Saint Kitts and Nevis Economic Complementation Agreement	Chapter IV- Safeguard measures
Agreement on Trade, Economic and Technical Cooperation between CARICOM and Colombia	Safeguard clauses- Article 16 Unfair Trade Practices- Article 17
Agreement on Trade, Economic and Technical Cooperation between CARICOM and Venezuela	Safeguard clauses- Article 15 Unfair Trade Practices- Article 16
Guyana - Venezuela Partial Scope Agreement	Safeguard clauses- Article VI
<b>Source:</b> <a href="http://www.sice.oas.org/TPD/CAR_GBR/Texts/CAR_GBR_EPA_index_e.asp">http://www.sice.oas.org/TPD/CAR_GBR/Texts/CAR_GBR_EPA_index_e.asp</a>	

## **Guyana's Pattern of Trade with Key Users and Target Countries of Anti-Dumping Measures**

Guyana conducts trade with many of the countries that are considered to be key active users of anti-dumping. Figure 3 summarizes Guyana's exports over the last 20 years, at five year intervals, to the following key users: Argentina, Brazil, Mexico, Canada, China, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago, South Korea, Taiwan and Turkey, Uruguay, United States, and Venezuela (based on Egger and Nelson 2011; Bown 2014; Osang and Warren 2019). The figure reinforces that the United States, Canada, Trinidad and Tobago and Jamaica are among Guyana's key export markets.

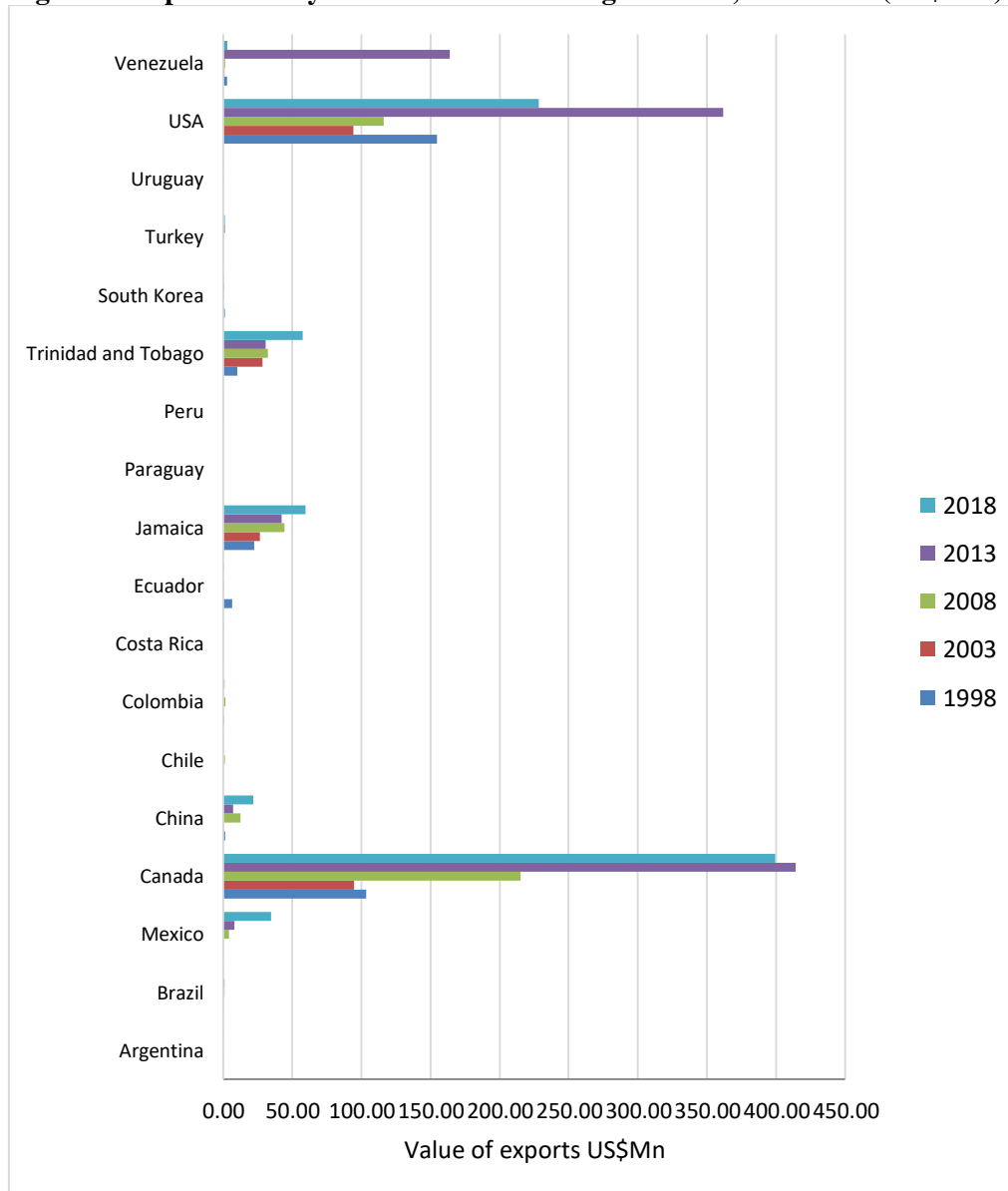
Neither the Global Anti-Dumping Database nor the WTO Anti-Dumping Database record any instance of Guyana's exports being the target of anti-dumping investigations by any of its trading partners, including its neighbouring CARICOM and Latin American trading partners with established anti-dumping regimes and that have had anti-dumping investigations<sup>3</sup>. The country faces several constraints in the normal course of trade that inhibit even considering dumping as a strategic option to penetrate foreign markets.<sup>4</sup> Non-tariff barriers linked to technical measures such as sanitary and phytosanitary regulations have been the key barrier to trade concern for Guyana (Guyana Draft National Trade Strategy 2020).

There is much more to be concerned about imported products being dumped in the Guyanese market given evidence of trade deflection, mainly to developing countries, by countries that are the key targets of anti-dumping measures. This is in fact the nature of private sector concern. Figure 4 summarizes Guyana's imports from countries that are considered key targets of anti-dumping measures including Indonesia, China, India, South Korea, Japan, Thailand, Turkey over a 20-year period (1998 to 2018), at five-year intervals.

It reveals that from among the list, Guyana's import relationship is stronger with China and Japan. Further, it shows substantial growth in imports from China. In 1998, imports from China were about US\$11.5 million. Ten years later (2008), imports are about US\$76.2 million. By 2018 imports were equivalent to approximately US\$220 million. Therefore, over the last 20 years, imports have grown by almost 2,000%.

Grieger (2016) in reference to EU antidumping duties that will expire by 2020, pointed to the fact that antidumping duties are "concentrated in labour-and resource-intensive sectors, such as bicycles, ceramics, chemicals, solar panels and steel sectors...". Labour and resource-intensive sectors are precisely the sectors in which Guyana has a comparative advantage and may have manufacturing interests.

**Figure 3: Exports of Guyana to Selected Trading Partners, 1998-2018 (US\$ Mn)**

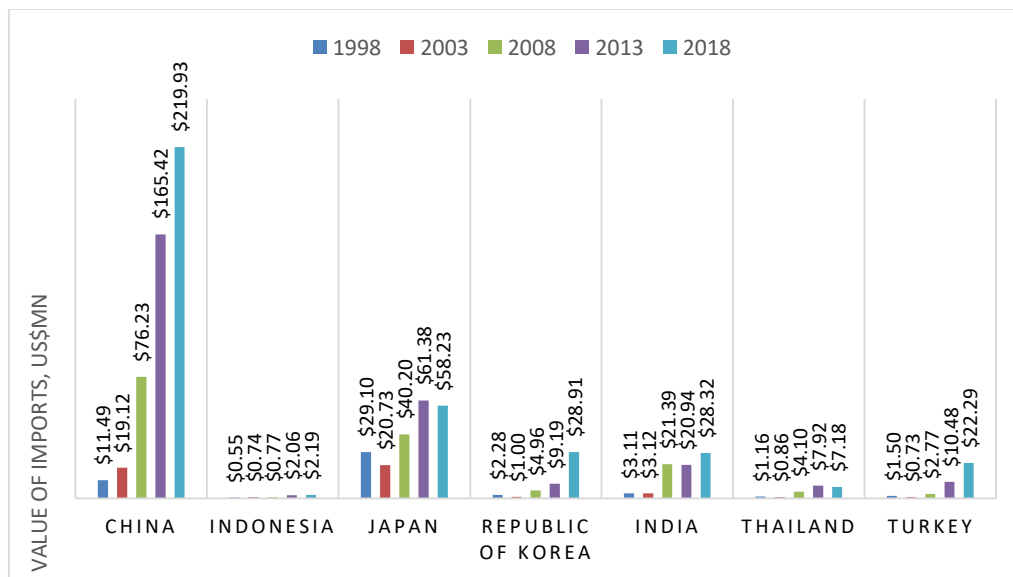


Source: Author based UNCOMTRADE Database

Some of the products exported by key trading partners have been the subject of investigations by other countries. For instance, cases have been initiated against the Dominican Republic by Jamaica involving inorganic fertilizers and Portland cement; the European Union initiated a case against Trinidad and Tobago in 1990 involving wire rods and in 2019 against urea, which had also been investigated in 1987. Mexico faced investigations for Gray Portland cement and white cement and sorbitol 70% solution by

neighboring countries in South America including Uruguay and Peru. China has faced investigations on a range of basic consumer and other products such as Syringes, thermometers, cotton textiles, electric incandescent lamps, air condition equipment, bolts and nuts, undergarments etc.; the United States on products such as hot-rolled steel coils, apples, pork, beef, partially hydrogenated fatty acid, chicken, epoxidized soya oil and cotton; and the United Kingdom on Taoxifen.

**Figure 4: Imports of Guyana from Selected Countries, 1998-2018 (US\$ Mn)**



Source: Author based UNCOMTRADE Database

## Conclusion and Policy Recommendations for Guyana

The research was framed in the context of key questions on global use of trade defense measures, notably antidumping measures; Guyana’s current regime for trade defense measures; and implications given its current pattern of trade. Within this context, there are two policy concerns that merit further concern so that appropriate recommendations could be made for Guyana. The first is *whether to develop the legislative and regulatory capacity to investigate imported products that may present a threat to local industries*. The second *relates to whether there are other related trade policy instruments that can achieve the same level of protection as anti-dumping duties*.

At the national level, Guyana currently does not have the legislative and regulatory regime to address trade defense measures, even though several of its trade agreements refer to such measures. However, this is not the case for seven out of the 15 member

states of the Caribbean community or the countries of Latin America. *A key policy concern for Guyana is therefore whether to develop the legislative and regulatory capacity to investigate imported products that may present a threat to local industries.* The growing use of trade defense measures by both developed and developing countries is indicative of increased protectionism in the multilateral trading system in response to lost protection due to trade liberalization (Chandra 2016). The use of anti-dumping measures is also linked to retaliation by countries affected by actual or pending investigations (Moore and Zanardi 2011) and is also an attempt to curb trade deflection by countries that are key targets of increased global use of such measures (Zeng 2014). The increased calls by the private sector could be a subterfuge for protectionism or could emanate from legitimate concerns regarding threats to local industries. Regardless, such concerns should at minimum be investigated; the evidentiary requirements of the WTO will determine ultimately whether the concerns are sufficiently legitimate for anti-dumping duties to be imposed.

Jamaica between 2001 and 2010 had 6 anti-dumping cases, 5 of which involved Portland cement coming from the Dominican Republic, India, China, and the United States. Trinidad over the period 1998 to 2014 initiated 12 cases, 3 of which were against China. Both Trinidad and Jamaica's initiation of cases, point to legislative and regulatory capacity to investigate such measures. Guyana's Draft National Trade Strategy makes no explicit recommendation for Guyana to pursue anti-dumping measures, given the costs of anti-dumping regimes. However, the absence of legislation means that Guyana is unable to proceed with investigations to ascertain injury directly linked to imported products where concerns arise. It is important at the policy level that Guyana considers its capacity to be able to monitor the possibility of products being dumped onto the local market as per the safety valve theory, especially considering the substantial growth in imports from China, which has been a major target country for such measures by both established and emerging users of anti-dumping measures. It is therefore worthwhile for Guyana to equip itself through passing of its draft anti-dumping bill (Kaieteur News 2019).

In addition to passing an anti-dumping law, there would be need for efforts to augment trade policymaking and implementation capacities. According to Bown (2007) adopting anti-dumping laws have implications for endogenous trade policymaking because the WTO Anti-dumping Agreement imposes a structure for assessing the evidentiary requirements required to implement anti-dumping measures. This structure leads to an administrative procedure for investigations and the application of antidumping duties (Bown 2007). Investigations require substantial economic evidence including export prices and average export costs, to satisfy the technical and legal



criteria mandated by the WTO including: that a domestic industry suffers “material injury” and that this injury is the result of “dumped” imports (Bown 2007). There is also the potential for litigious challenges by other WTO members that may become the subjects of investigations. The United States for instance, which is one of the biggest users of anti-dumping measures has also been the biggest target of lawsuits at the WTO (more than 50 cases), a disproportionate amount of which it has lost (Kucik 2018). Guyana must therefore have the legal and financial capacity to support a defense of its actions, if required, the outcomes of which cannot be predetermined *a priori*.

It is therefore important that Guyana consider an appropriate institutional structure and the related resource implications, which largely relate to human and financial, in considering a regime to implement anti-dumping measures. According to Kerr (2006), at the national level, anti-dumping measures are addressed mainly by quasi-judicial bodies.

Guyana’s proposed legislation will assign the responsibility of antidumping investigations to the Ministry of Foreign Affairs and International Cooperation as the Ministry with responsibility for foreign trade policy matters. Therefore, the Ministry of Foreign Affairs and International Cooperation would need to have its human resource capacity augmented to provide scope for investigations, which can involve econometric and quantitative skills to ascertain dumping and injury margins, and legal capacity to respond to any litigation that may follow a decision to apply AD duties, at the level of the WTO.

Ten of the countries in the Americas with anti-dumping laws (Argentina, Brazil, Canada, Chile, Colombia, Guatemala, Mexico, Panama, Trinidad and Tobago, United States) seem to assign the responsibility for administering their anti-dumping legislation to their Ministry responsible for foreign trade policy matters. The other ten countries (Jamaica, Cost Rica, Ecuador, El Salvador, Honduras, Nicaragua, Paraguay, Peru, Uruguay, Venezuela) have assigned this responsibility to their Ministry with responsibility for industry, investment or commerce matters. However, this approach does not ensure independence from political interference and is unlike the institutional model of the United States which has a separate institution responsible for determining whether dumping is taking place and a different institution determining whether or not there has been injury. However, understandably as a small developing country, Guyana’s proposed approach is perhaps what is permissible within the country’s resource constraints and therefore an acceptable starting point.

Specifically, as it relates to trade implementation, there may be need for complementary amendments to other legislations such as the Customs Act to give the

Guyana Revenue Authority, as the chief trade policy implementation body, the authority to apply antidumping duties.

*The second policy issue relates to whether there are other related trade policy instruments that can achieve the same level of protection as antidumping duties.* Niels (2000) points to conflicting views on anti-dumping duties. Guyana's Draft National Trade Strategy believes that the administrative costs of antidumping measures can outweigh the benefits but leaves the ultimate decision regarding the use of such measures to national stakeholders. Finger (2000) and Blonigen and Prusa (2003) also note that antidumping is more costly than protection through tariffs given the welfare implications for consumers and the domestic economy. Within the context of Regional Trade Agreements, the national board of trade argues for the use of competition rules. Finger (2000) also argues that domestic competition laws are preferable because they create a more level playing field between domestic and foreign firms and research has seldom corroborated concerns regarding predatory pricing. The author further notes that where there are exceptional cases that require the use of antidumping measures, action should be determined by clear criteria that evaluate the gains and losses.

Guyana's national tariff schedule reflects the Common External Tariff (CET) tariff schedule under the Revised Treaty of Chaguaramas (RTC). Invoking the safeguard mechanism or requesting a suspension of the CET either to temporarily increase or lower the CET on extra-regional goods is currently afforded to Guyana under Article 84 of the RTC. This process is fairly efficient.

### ***Recommendations***

Given the foregoing Guyana should:

1. Implement legislations for antidumping and other trade defense measures to provide a safety valve for addressing instances of unfair trading practices that may pose genuine threats to local industries.
2. Augment capacity for addressing the evidentiary requirements through current trade policy making bodies so that those resources could be put to other use when not required for anti-dumping investigations.
3. However, given that capacity needs are likely to be costly and will take time to fill, consideration should be given to lower cost policy options such as temporary derogations from current applied tariff rates, within the context of what is accepted by the WTO and the Caribbean Community under the Revised Treaty of Chaguaramas.
4. Assuming that it is able to move ahead with implementation of its anti-dumping legislation, Guyana should still time the use of anti-dumping measures based on when there is sufficient administrative capacity in place for investigations, while continuing to rely on low-cost policy options.

5. Also, assuming that it is able to move ahead with implementation of its anti-dumping legislation, still carefully consider situations and weigh whether an anti-dumping response is required or whether other lower-cost options could be employed.

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## Endnotes

<sup>1</sup> In 2015, Exxon Mobil discovered more than 90 meters of high-quality oil-bearing sandstone reservoirs about 200 km off Guyana’s coastline. To date, with additional discoveries, Guyana is now poised to produce an estimated 750,000 per day by 2025.

<sup>2</sup> The reference to costs, according to Deardorff (1989), is an expanded consideration of the term above previous notions that it was simply selling abroad at a price below domestic price, albeit this is precisely how the concept is treated in the WTO Agreements, considering costs only in the absence of domestic price data (Howell and Ballantine, 1997; Kerr 2006).

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<sup>3</sup> Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Paraguay, Peru, Trinidad and Tobago, Uruguay, the United States and Venezuela.

<sup>4</sup> This may emanate from the fact that the country has a restricted productive export capacity to begin with due to challenges in the business sector, such as high energy costs (Guyana National Trade Strate