

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO OTHER JUDGES: YES/NO
 (3) REVISED: ✓

7/3/2025
 DATE


 SIGNATURE

Case No: 2022-048142

In the matter between:

LUCKY CEMENT LIMITED

Applicant

and

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

1st Respondent

MINISTER OF TRADE, INDUSTRY AND COMPETITION

2nd Respondent

MINISTER OF FINANCE

3rd Respondent

CEMENT AND CONCRETE SA NPC

4th Respondent

(formally The Concrete Institute NPC)

JUDGMENT

(The matter was heard in open court and judgment was reserved. All the pleadings in the matter are uploaded onto the electronic file of the matter on CaseLines. The Reserved Judgment is uploaded onto CaseLines and the date of uploading onto CaseLines is deemed to be the date of the Judgment)

BEFORE: HOLLAND-MUTER J:

[1] It is a universal trend that governments, local trade and producer organisations continuously strive to expand the export of local goods to foreign markets and to introduce local manufactured goods to consumers worldwide and to create export opportunities for its citizens. This fosters economic growth and income to stimulate local development, to raise income and promote investment in the Republic of South Africa. Foreign countries on the other hand seek to promote similar opportunities to export its local goods and produce to the Republic to achieve the same outcome.

[2] The above trade trends necessitated the import and export markets be regulated to *inter alia* protect local producers from foreign export from **dumping** goods in the Republic.

LEGAL FRAME WORK:

[3] South Africa, in 1914, was the fourth country in the world to adopt anti-dumping legislation although it had already taken countervailing action against subsidized sugar imports as early as 1903. The Board of Trade and Industry was set up in 1921 to deal *inter alia* with dumped and subsidized imports. From this early start the current legal position prevent dumping of substandard goods and to protect local manufacturers the current legal frame work developed to the present network of legislation in operation. See **Guide to International**

Anti-Dumping Practice; Bienen Brink and Ciuriak published by Kluwer Law International 2013 p 519.

[4] Dumping (*see definition below*) in the Republic of South Africa, is regulated by the following interlocking legislation:

- The International Trade Administration Act, 71 of 2002 (the “**ITA Act**”);
- The Anti-Dumping Regulations;
- The Board on Tariffs and Trades Act 107 of 1996 (“**BTT Act**”);
- The Customs and Excise Act 91 of 1964 (“**Customs Act**”); and
- Party to the World Trade Organisation (“**WTO**”) and WTO Agreements including the General Agreement on Tariffs and Trade 1994 (“**GATT**”), and
- The WTO Agreement on Implementation of Article VI of GATT known as the Anti-Dumping Agreement.

[5] The legislator enacted the **International Trade Administration Act, 71 of 2002 (“ITA Act”)** to establish the **International Trade Administration Commission (“ITAC”)** which provides for the functions of the Commission and to regulate its procedures; to provide for implementation of certain aspects of the **Southern Africa Customs Union (“SACU”)** and to control the continued import and export of goods and amendment of custom duties and related aspects.

[6] **Dumping** means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) of the ITA Act that is less than the normal value, as defined in section 32(2) of those goods.

[7] Dumping has the potential to harm the domestic industry, as it gives the imported goods an unfair advantage over those locally produced. For this

reason, both international and domestic law provide for the imposition of ***“anti-dumping”*** duties to neutralise the advantage.

[8] There are international rules regarding “anti-dumping” which are contained in Article VI of the General Agreement on Tariffs and Trade (**“GATT”**) and the World Trade Organisation Agreement (**“WTO Agreement”**) on the Implementation of Article VI of GATT 1994. International treaties become law in South Africa when enacted into local law to be of force. Although the WTO Agreement and GATT has not been enacted into local law, with the passing of the ITA Act and the creation of ITAC and the promulgation of the Anti-Dumping Regulations effect was given to the agreements and treaties to be binding on South Africa in international law. See **Progress Machines CC v South African Revenue Services 2008(2) SA 13 (SCA) par [5]**.

The ITA ACT and the BTT Act:

[9] Section 26(1)(c)(i) of the ITA Act allows persons to apply to the ITAC for the amendment of custom duties with regard to anti-dumping duties. This implies the existence of original anti-dumping duties now applied to be amended. Section 64 (2) of the ITA Act and the Schedule 2 of the Act has the effect that anti-dumping duties are currently regulated by section 4 of the BTT Act.

[10] Section 4(2) of BTT empowers the Minister of Trade, after receiving a report or recommendation from the Board on Tariffs and Trade (**“BTT”** now ITAC), to refer the recommendation back to BTT/ITAC for reconsideration or if the Minister of Trade accepts the recommendation, to request the Minister of Finance to amend the relevant Schedule to the Customs Act.

The Customs Act:

[11] Anti-dumping duties are contained in Schedule 2 of the Customs Act. The Minister of Finance is empowered by section 56(1) and 55(2)(a) of the Customs Act to amend existing anti-dumping duties or impose new anti-dumping duties to be published in the Government Gazette ("**Gazette**").

[12] Section 56(2) of the Customs Act empowers the Minister of Finance to withdraw, reduce or amend existing anti-dumping duties.

The Anti-Dumping Regulations:

[13] Part C of the Anti-Dumping Regulations deals with the procedures to investigate anti-dumping duties and Part D deals with reviews of anti-dumping duties. This includes interim reviews, new shipper reviews and sunset reviews. The current application concerns a *sunset review*.

[14] Regulation 53.1 provides that imposed Anti-Dumping duties will remain effective for a period of five (5) years not exceeding five years from imposition or its last review. Regulation 53.2 provides for instances where a sunset review is initiated before the imposed anti-dumping duty lapses, the imposed anti-dumping duty will remain in force until the sunset review is finalised.

Sunset Review: (Brief summary):

[15] ITAC has to publish a notice of the imminent lapsing of an anti-dumping duty in the Gazette approximate six (6) months prior to then lapsing thereof, inviting the interested parties to request a ***sunset review***. The SACU Industry is required to indicate whether it intends to request a sunset review.

[16] Regulation 54.4 contemplates that the SACU industry may request for the maintaining (retention) of the anti-dumping duty and the applicant for a sunset review must *prima facie* show that the removal of that duty is likely to lead to a continuation or recurrence of injurious dumping.

[17] Should ITAC decide to initiate a sunset review it must publish a notice in the Gazette prior to the lapsing of the relevant duty.

[18] Regulation 56 specifies that a sunset review consist of a single investigation phase and that ITAC may verify such information considered necessary. A sunset review does not require ITAC to publish a preliminary report as is a prerequisite for an original investigation. Regulation 43 requires ITAC to inform all interested parties of the essential facts under consideration in the final determination and invite comments. Regulation 54 prescribes the information ITAC should consider in a sunset review and Regulation 59 entitles ITAC to make a recommendation that *“may result in the withdrawal, amendment or reconsideration of the original anti-dumping duty”*.

Dumping:

[19] The WTO Anti-Dumping Agreement describes the practice of dumping as: *“a product is to be considered as being dumped, i e introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product destined for consumption in the exporting country”*.

[20] The ITA Act defines **“export price”** and **“normal value”** as:

- **“export price”** in terms of section 32(2)(a) means the price actually paid or payable for goods for export, net of all taxes, discounts and rebates actually granted and directly related to that sale; and
- **“normal value”** in respect of any goods, in terms of section 32(2)(b) means:
 - (i) the comparable price paid or payable in the ordinary course trade for like goods intended for consumption in the exporting country of country of origin; or,
 - (ii) in the absence of information on a price contemplated in subparagraph (i) either:
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as the price is representative”.

[21] The inference is that dumping occurs when goods are sold into the export market at a lower price than the identical locally produced or manufactured goods are sold in the domestic market.

[22] The margin of dumping is the difference between the normal value and the export price after adjustments have been made for any differences affecting price comparability. Regulation 11 of the Anti-Dumping Regulations sets the manner in which adjustments should be made. It provides for a comparison of normal value and export price to be made in each case on its merit for differences which affect price justifying adjustments considering (i) conditions and terms of trade, (ii) taxation, (iii) levels of trade, (iv) physical characteristics, and (v) quantities.

[23] Adjustments should be requested from the parties' original response to complete the relevant questionnaires and must be substantiated and verified. This leads to ITAC to determine the margin of dumping for each individual case.

Factual Matrix:

[24] The ITAC initiated the original investigation into the alleged dumping of Portland cement originating from the Islamic Republic of Pakistan ("**Pakistan**") following an application lodged on behalf of SACU Industry during 2014.

[25] The original investigation by ITAC resulted in a recommendation to the Minister of Trade to impose an anti-dumping duty of 14,29% on the imported cement from Pakistan. It is not necessary for the adjudication of the present dispute to dissect the original recommendation but to conclude that the imposed anti-dumping duty was made final by publication thereof on 17 December 2015 in Notice R 246 in Gazette 39527.

[26] Prior to the lapse of the 5 year period set for the initial anti-dumping duty, the fourth Respondent lodged an application for a sunset review. ITAC initiated

a sunset review on 11 December 2020. ITAC set a deadline for interested parties to comment by 19 January 2021,

Response by Lucky Cement:

[27] Lucky Cement, like all foreign manufacturers of the subject product from Pakistan, received a questionnaire from ITAC to complete. Lucky Cement requested an extension to complete the questionnaire and ITAC granted the request and Lucky Cement submitted the completed questionnaire on 2 February 2021.

[28] ITAC issued a *deficiency letter* to Lucky Cement on 15 February 2021 and Lucky Cement responded on 22 February 2021 submitting its *Deficiency Resubmission*, by resubmitting its first exporter submission amended and supplemented in light of ITAC's queries and request for clarification. ITAC verified the information supplied in the questionnaire between 24 and 26 March 2021 and thereafter issued Lucky Cement with the *Verification Report*.

[29] Lucky Cement again provided a comprehensive verification explaining its production process, storage of products, packaging, accounting system and its sales of cement. Lucky Cement made adjustment proposals to ITAC to consider.

[30] ITAC sent its verification report to XA International Trade ("XA") who acted as Lucky Cement's advisor. The Verification Report stated that Lucky Cement's proposed adjustments to the normal value and the SACU export price of its cement has been verified and found to be correct. The verification process however does not constitute a decision of determination by ITAC.

[31] ITAC issued an '*essential facts letter*' on 28 July 2021 to Lucky Cement explaining that ITAC calculated a dumping margin of 93.62% and was considering making a final determination that Lucky Cement be subjected to an anti-dumping duty of 25% (based on the lesser duty rule). ITAC informed Lucky Cement that ITAC has decided that at the expiry of the existing anti-dumping duty on the product imported from Pakistan, the adjusted anti-dumping duty of 25% will be imposed after Gazetted by the Minister of Finance.

THE LESSER DUTY RULE:

[32] Regulation 17 of the Anti-Dumping Regulations provides that ITAC shall consider applying the '*lesser duty rule*' if both the corresponding importer and exporter have fully cooperated.

[33] The lesser duty rule is the anti-dumping duty to be imposed at the lesser margin of dumping or the margin of injury and which is deemed to be sufficient to remove the injury caused by the dumping.

[34] Article 9.1 of the Anti-Dumping Agreement states that it is desirable that the duty be less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry. It is custom that in South Africa the lesser duty rule determines that should the calculated anti-dumping exceed 25%, a maximum anti-dumping duty of 25% be imposed irrespective whether the calculation arrives at more than 25%.

The final determination by ITAC:

[35] ITAC made a final determination after hearing the oral address by Lucky Cement and verified the questionnaire completed by Lucky Cement. ITAC

allowed the following adjustments to normal value ie (i) packaging costs and (ii) transport costs.

[36] ITAC, in making its final determination, did not allow the following proposed adjustments to normal value namely (i) cost of payment terms; (ii) sales commission, (iii) transportation of coal, (iv) power cost, (v) sales tax, (vi) federal excise duty, (vii) general sales and distribution, (viii) selling and administration expenses and (ix) corporate tax.

[37] ITAC made a final determination to allow the following adjustments to the export price (i) packaging costs, (ii) sales commission, (iii) transport and handling costs and (v) taxation.

[38] ITAC disallowed adjustments to (i) export price, (ii) transportation of coal, (iii) power costs, and (iv) selling and administration costs.

[39] Taking into account the above allowed and disallowed items, ITAC made a final determination that the margin of dumping on the cement imported by Lucky Cement from Pakistan was calculated 93,62%, subject to the lesser duty rule.

[40] It is within the discretion of ITAC to allow or disallow certain items when making a final determination of the margin of dumping. A court will be reluctant to interfere with a decision by an organ if the organ exercised its discretion in good faith and considering all relevant issues. A court will not second-guess the organ's evaluation, even if the court would have reached a different view on the matter if the exercising of the discretion by the organ was done with the necessary competence finding on the facts. See **Bosch Home Appliances (Pty) Ltd v International Trade and Administration Commission of South Africa 2021 JDR 0041 (GP)** at par [69.1.3].

Acceptance of ITAC's recommendation and the amendment of Schedule 2 of the Customs Act:

[41] ITAC made a final determination after considering all inputs by stake holders including Lucky Cement and forwarded such determination to the Minister of Trade for approval. Should the Minister agree with the determination, it is forwarded to the Minister of Finance to amend Schedule 2 to the Customs Act by gazetting the recommendation to give effect thereto. The Minister of Trade can also refer the determination back to ITAC if not satisfied with it.

[42] It is not necessary for the adjudication of the dispute before the court to dwell into detail regarding the further route of the determination to the South African Revenue Services (SARS) to have Schedule 2 amended and subsequent introduction thereof. The effect of publication of the Tax Law Amendment Act 2022 confirmed the adjustment of the anti-dumping duty levied on the cement imported from Pakistan by Lucky Cement.

[43] ITAC decided on 30 November 2021 to recommend that an anti-dumping duty of 25% be imposed on cement manufactured and imported from Pakistan and this decision was recorded in its final 2021 Determination Report. This final determination was done after ITAC issued the essential facts letter granting Lucky Cement the opportunity to respond thereto and make further oral submissions which was heard by ITAC on 12 October 2021. It was after hearing the oral submissions that the recommendation was made to amend the existing anti-dumping duty and to adjust it as recommended in final determination.

[44] The Minister of Trade accepted ITAC's recommendation of the 25% anti-dumping duty and recommended such to the Minister of Finance who published the amended recommendation of 25% on cement manufactured or

imported from Pakistan by amending Part 1 of Schedule no 2 of the Customs and Excise Act in Government Gazette Notice R 2143 to provide for the amended anti-dumping duty.

RELIEF SOUGHT BY THE APPLICANT:

[45] The relief sought by Lucky Cement as per Notice of Motion is: (i) to review and set aside the final determination by the First Respondent and recommendation that the anti-dumping duty of 25% imposed on cement manufactured or produced by the applicant as contained in the final investigation report No 673 of 30 November 2021; (ii) to review and set aside and declaring invalid the decision of the second respondent to implement the aforementioned final determination by the first respondent and subsequent request to the third respondent to amend Part 1 of Schedule 2 to the Customs and Excise Act and (iii) reviewing and setting aside and declaring invalid, the decision by the third respondent to impose the 25% anti-dumping duty on cement manufactured or produced by the applicant.

[46] The decision taken by ITAC, the Minister of Trade and the Minister of Finance are administrative actions capable of review in terms of Promotion of Administrative Justice Act, 3 of 2000 (**PAJA**). See **International Trade Administration Commission v South African Tyre Manufacturers Conference (Pty) Ltd [2011] ZASCA 137 par [40] (23 September 2011)**. It is not necessary to venture onto the review of executive action (by the Ministers) under the principle of legality.

[47] It follows that should the decision and recommendations of ITAC be reviewable, so too must the Minister's decision be reviewable. This is because the legality of the Minister's decision is dependent upon the legality of the decision of ITAC.

[48] The corollary also applies. Should the decision and recommendations of ITAC not be reviewable under PAJA, the decision of the Minister is equally not reviewable. There is no support of a contention by the applicant that should the recommendation of ITAC not be reviewed, the decision of the Minister remains reviewable. The Minister's decision will stand or fall by the outcome of the review of the decision and recommendations of ITAC.

[49] Lucky Cement's complaint against ITAC is about how ITAC calculated the margin of dumping. It contends that ITAC '*misdirected itself*' in refusing to allow, or incorrectly calculating certain adjustments to the normal value and export price. Set differently, Lucky Cement argues that ITAC's final determination was '*irregular*' because ITAC made material mistakes of fact and failed to take into account relevant considerations by refusing to allow the following adjustments sought by Lucky Cement to the *normal value* of its cement namely *sales tax; Federal excise duty; cost of payment terms, sales commission; general sales and administrative expenses; corporate tax; coal transport; power cost; packaging and level of trade*. These irregularities, if proved, will render the recommendation of ITAC reviewable.

[50] Lucky Cement further contends that ITAC committed further irregularities when refusing to allow the following adjustments to the export price of the cement namely *cost of payment terms; general selling and administrative expenses; coal transport; power cost and levels of trade*.

[51] Lucky Cement contended that ITAC committed reviewable irregularities when it refused to allow certain of the adjustments sought by Lucky Cement resulting in material mistakes of fact. Lucky Cement further contends that ITAC failed to take relevant considerations into account. When scrutinising the evidence (answering affidavit) by ITAC it is clear that it considered *all* proposed considerations made by Lucky Cement but did not approve all proposals. This in my view does not amount to an irregularity or material mistake by ITAC.

[52] There is no irregularity when considering all proposals and thereafter refuse to allow certain proposed considerations. I could not find any proof that ITAC consideration amounts to irregular action. There is no evidence that ITAC's action was procedurally unfair, materially influenced by error of law, considering irrelevant considerations or ignoring relevant considerations. There is no ground for review made out that the recommendations by ITAC towards the Minister of Trade was arbitrarily or capriciously reached. The converse is clear from the recommendations that ITAC considered all relevant proposals and allowed Lucky Cement further to make oral submissions after completing the questionnaire. In my view the application falls short of the requirements in section 6 of PAJA for a review.

[53] Although South Africa has a Competition Tribunal that may review Competition Commission determinations; a Consumer Affairs Tribunal and a special customs court that may review decisions of Commissioners and Ministers, there is no such tribunal for administrative review of decisions of Commissioners and Ministers, all such judicial reviews must be pursued through the High Court. See **South Africa Judicial Review of Trade Remedies in South Africa by G Brink in Global Trade and Customs Journal Volume 20, June 3**. Lucky Cement approached the correct forum for review, but that does not result in finding in favour of Lucky Cement.

[54] ITAC contended that if the focus for the dispute to be adjudicated was on the **three largest adjustments** sought by Lucky Cement, namely ITAC's refusal to include sales tax, federal excise duty and the packaging adjustment, the margin of injury would be such that if these proposals were allowed, these adjustments would have a significant impact on the margin of dumping and would reduce the calculated margin of dumping from 93,62% to 10,99%. This would result in an imposed anti-dumping duty on Lucky Cement of less than half of the imposed 25% imposed in terms of the lesser duty rule. The applicant and other parties to the dispute agreed to this approach in the respective heads of arguments and oral arguments presented to court.

[55] It is trite that the calculation of anti-dumping duties is an inherently technical exercise involving the appraisal of facts against a particular conceptual framework. It requires specialised expertise and for this reason the task is entrusted to a specialised institution. See **Chairman, Board of Tariffs and Trade, and Others v Brenco Inc and Others 2001 (4) SA 511 (SCA)** at par [17]. ITAC is a specialised institution vested with a discretion when considering and calculating anti-dumping duties.

[56] The court will be slow to interfere with ITAC's discretion because ITAC as specialised institution is the specialist regulator and best placed to undertake the required analysis applying the criteria in Regulation 11 in each individual case. See **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (4) SA 490 (CC)** at par [48]. The court will be reluctant to intervene and replace ITAC's consideration of the criteria merely with its own decision only because Lucky Cement complains that ITAC was wrong in its assessment.

[57] In **Dumani v Nair and Another 2013 (2) SA 274 (SCA)** at par [32] it was held that *"In sum, a court may interfere where a functionary exercises a competence to decide facts, but in doing so fails to get the facts right in rendering a decision, provided the facts are material, were established, and meet a threshold of objective verifiability. That is to say, an error as to material facts that are not objectively contestable is a reviewable error. The exercise of judgment by the functionary in considering the facts, such as the assessment of contested evidence or the weighing of evidence, is not reviewable even if the court would have reached a different view on these matters were it vested with the original competence to find the facts"*.

[58] For Lucky Cement to succeed on a mistake of fact ground of review, it had to point out an established verifiable and uncontested fact that ITAC got wrong. Lucky Cement failed to do so.

[59] Lucky Cement has to show that ITAC acted *unlawfully* and not merely reached a wrong conclusion. Lucky Cement has to make out a proper case on review and meet the requirements for a review.

[60] It is clear from the final submissions that ITAC refused to allow these three items because the proposals did not meet the criteria in Regulation 11.2 because it was not property claimed in the initial response as required by regulation 11.2. ITAC further held that the sales tax and federal excise duties were not demonstrated to be directly related to the sale under consideration. It cannot be argued that ITAC failed to consider relevant proposals.

[61] It is clearly stated in the final report that the adjustment was not substantiated in the exporter's response to the questionnaire. ITAC held that the sales tax and federal excise duty are not borne by Lucky Cement but is collected from the customer and paid to the Government treasury. It is therefore clear that ITAC did not make an error on these proposals and did not make a finding on incorrect facts. This aspect is therefore not reviewable.

[62] ITAC further contended that there was no mistake of law in considering the provisions of Regulation 11.2 together with Regulation 11.1. The court is satisfied that ITAC computed the calculations as required by the regulation. Lucky Cement's argument that regulation 11.2 does not require it to request an adjustment expressly but it is permissible for it to do so impliedly. This argument fails because regulation 11.1 and 11.2 is clear. The requestor must complete the questionnaire in detail as requested and there is no authority that it is permissible to allow a person to rely on so-called impliedly request to allow an adjustment.

Failure to take relevant considerations into account:

[63] Lucky Cement contends that ITAC failed to take relevant considerations into account. But for this vague allegation, noting was found in the pleadings or the heads of arguments to support this contention. In view of the vagueness of the contention, the court is unable to find that this allegation is a proper ground for review.

Packaging:

[64] Lucky Cement claimed an adjustment for packaging costs which ITAC allowed. The adjustment was initially calculated to be PKR0,07/ ton. This was later established to be a calculation in error. Lucky Cement did not bring this error to the attention of ITAC during the public participation process to enable ITAC to correct the calculation.

[65] The error was found not to be material but ITAC revisited the calculation and corrected the packaging costs to be PKR558,07/ton and this was the precise adjustment Lucky Cement says in the founding affidavit para 99.2 that this is what was claimed.

[66] The price disadvantage was recalculated and the Commission decided to apply the lesser duty rule because the calculation was still more than 25%, as claimed by Lucky Cement in the founding affidavit.

[67] Lucky Cement tried to change its case in the replying affidavit contending now that the packaging adjustment should have been calculated at PKR609,79/ton instead of the admitted calculation at PKR558,07/ton as in the founding affidavit.

[68] A party has to formulate its case in its founding affidavit and cannot attempt to change its case in its replying affidavit. See **Betlane v Shelly Court CC 2011 (1) SA 368 (CC) at par [29]** where it was held that *'It is trite that one ought to stand or fall by one's notice of motion and the averments made in one's founding affidavit. A case cannot be made out in the replying affidavit for the first time'*.

[69] Lucky Cement has to stand with the case as formulated in its founding affidavit. The mistake made with the calculation is further not material and does not alter the imposed anti-dumping duty. The margin of error as contended by Lucky Cement amounts to a deduction of 12,62% from the calculated margin of 93,62% resulting in a calculated anti-dumping duty of 81% which is much higher than the imposed anti-dumping duty of 25% considering the application of the lesser duty rule as applied in this matter. The mistake is non-material and does not warrant reviewing ITAC' recommendation to the Minister of Trade and subsequent amendment of the Schedule. The application on this ground must fail.

The Remaining Adjustments:

[70] It is clear from the heads of arguments on behalf of Lucky Cement that only the above three adjustments be addressed for adjudication by the court. This amounted to Lucky Cement abandoning this portion of its case. The court was similarly addressed so during the hearing of the matter. There are no facts before the court to consider to what extent the other adjustments would have impacted on the margin of dumping as calculated and it would amount to speculation what impact it may have had on the margin of injury. This aspect needs no further attention.

ORDER:

[71] The court is of the view that after considering all the evidence and arguments presented, the applicant has failed to make out a case for review and the application is dismissed with costs.

COSTS:

[72] Costs are in the discretion of the court and the normal rule is the costs will follow success. I am of the view that the respondents were successful and should not be out of pocket. There is however no reason why a punitive cost order be granted. The appropriate scale will be on a party-and-party scale including the costs of two counsel where appointed, the scale to be Scale C.

A handwritten signature in blue ink, which appears to be "Holland-Muter J", is written over a black rectangular redaction box. The signature is fluid and cursive.

HOLLAND-MUTER J
7/3/2025
Judge of the Pretoria High Court

Matter was heard in open court in the Third Court on 8 & 9 October 2024

Reserved judgment was handed down by uploading the judgment onto the electronic file of the matter on 7 March 2025.

Post Script: I would like to thank all the parties for the professional way in which the matter was argued and the very helpful heads of arguments which were presented. It was of great assistance in preparing judgment.

APPEARANCES:

Applicant:

Adv M Chaskalson SC

Adv E Webber

First Respondent:

Adv M Gwala SC

Adv I Cloete

Second Respondent:

Adv P J Pretorius SC

Adv N January

Third Respondent:

No appearance

Fourth Respondent:

Adv F Snyckers SC