

Antidumping measures and competition in a highly concentrated domestic market

Abstract

In August, 2014, the National Commission of Foreign Trade¹ (hereinafter the CNCE, for its Spanish acronym) initiated an investigation for alleged dumping in exports to the Republic of Argentina of load cells from the People's Republic of China. The investigation was initiated at the request filed by FLEXAR S.R.L. (hereinafter "FLEXAR") an Argentine company dedicated to develop load cells in Latin America and which supplies industries worldwide.

Although the CNCE² estimated a presumed dumping margin of 482.86% for exports of load cells originating in China in 2014, the anti-dumping measure was rejected after the recommendation issued by the National Commission for the Defense of Competition (CNDC for its Spanish acronym), stipulating that anti-dumping measures on the involved market could generate an increase in the costs of national producers of weighing scales, and could reinforce FLEXAR's position on the load cells market, generating an enabling environment to price increases, disincentivizing investments and eventually, damaging the competitive functioning of the weighing scales market.

Sections I and II provide a description of the Argentine load cells market. Finally, Section III explains the arguments of the CNCE and refers to the recommendations issued by the CNDC.

I THE ARGENTINE LOAD CELL MARKET

A load cell is a transducer used to convert a mechanical signal (force) in an electrical signal (volts) that is processed and conditioned by a weighing scale or weight indicator. They are used as the main input for the production of every kind of weighing machines, such as those used in supermarkets, pharmacies, hospitals, veterinarians, laboratories or for industrial uses. In other words, load cells are the heart of weighing scales, as they make a weighing scale work, giving us the exact weight of any element.

In Argentina there are specific regulations for approving weighing scales models to be sold in the market, including the approval of the load cells to be used in the production of scales.³ This

¹ The CNCE is a decentralized body under the purview of the Foreign Trade Undersecretary (SSCE, for its Spanish acronym) of the Secretary of Commerce of the Ministry of Production of the Argentine Republic. The CNCE is a specialized body acting as the analysis, research and regulation authority in the determination of material injuries that may arise to domestic production due to international trade.

² In Argentina Anti-Dumping Law enforcement authority is the Secretary of Commerce of the Ministry of Production.

³ Instituto Nacional de Tecnología Industrial, Lista de control para aprobación de modelo de instrumentos de pesar.

regulation acts as a barrier to entry to the weighing scales market, where the weighing scale manufacturer has to bear the delay and costs associated to such approval.

While competition in the weighing scale market comes exclusively from the 42 producers acting in Argentina; the load cells market is highly concentrated, dominated by FLEXAR, which accounts for 80% of the domestic production, followed by ByM S.R.L, which uses load cells for self-consumption and for resale.

In Argentina, 70% of the load cells domestically produced are sold as inputs for weighing scales and weighing machines and the remaining 30% are sold to retailers.⁴ Due to the availability of different qualities, complexities and number of cells, load cells have an important impact on weighing scales production costs and, therefore, selling prices.

Local supply is complemented by imports from China, which represented 96% of total load cell imports during the period 2012-2015; and by imports from the United States of America and India to a lesser extent.

During said period, SYSTEL S.A.⁵ accounted for 56% of load cells imports from China, followed by FLEXAR⁶, ANDRES MORETTI E HIJOS S.A.⁷, KRETZ S.A.⁸ and VESTA S.A.⁹, among others. Said companies concentrated 84% of the imported load cells.¹⁰

According to the information gathered during the procedures, during the period under analysis, 6 scale producers purchased load cells exclusively from FLEXAR, while 17 exclusively from imports and 5 combined both domestic and import supplies.

Regarding commercialization channels, 70% of domestically produced load cells were sold directly to weighing scales manufacturers and 30% to retailers. On the other hand, 90% of

⁴ CNCE Record N° 41/14 file N° 1936.

⁵ SYSTEL S.A. is an Argentine company dedicated to the import of load cells, and to the design, manufacture and commercialization of electronic weighing scales. SYSTEL S.A. declared that it acquires exclusively load cells from china, due to quality reasons.

⁶ As declared by FLEXAR during the procedures, the company also imported load cells from China, at the request of one of its clients, who could not have competed in the weighing scales market if it were to use local load cells.

⁷ ANDRES MORETTI E HIJOS S.A. is an Argentine company dedicated to the manufacture of weighing scales. As declared during the procedures, since 2005, the company obtain its supplies of load cells exclusively from china, due to prices, quality, performance, and technical assistance reasons.

⁸ KRETZ S.A. is a company dedicated to the import of load cells and to the design, manufacture and commercialization of electronic weighing scales. KRETZ obtain its supplies from local load cells and also from imported load cells. The company declared that it imports certain load cells "*due to quality reasons*".

⁹ VESTA S.A. is a company dedicated to the import of load cells and the manufacture of weighing scales. At present VESTA uses exclusively load cells imported from china.

¹⁰ CNCE Record N° 41/14 file N° 1936.

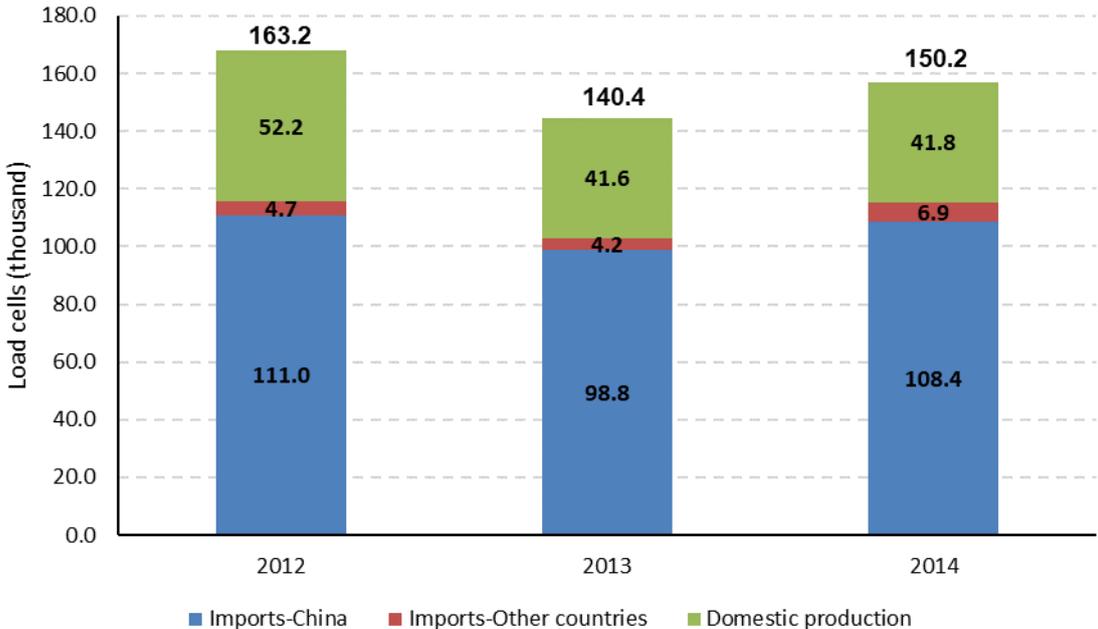
imported load cells were used as inputs for the production of weighing scales, while the remaining 10% were used for re-sale.

It should be noted that national weighing scale producers mentioned that they would rather purchase the imported product because of its higher quality, fewer failures and lower delays at delivery. On another hand, FLEXAR mentioned that load cell importers had systematically avoided the National Law of Measurement No. 19,511, and Resolution 2307/1980, importing cheap load cells from China and distorting local prices.¹¹

I.1 Evolution of the Argentine load cell market

Figure 1 shows the evolution of total consumption, domestic production and imports of load cells. As shown, total consumption of load cells in Argentina decreased by 7.98% from 163.2 thousand cells in 2012 to 150.1 thousand in 2014. Domestic production decreased by 26.7%, while imports of this product increased by 6% in the same period.

Figure 1. Consumption, imports and domestic production of load cells (2012-2014)



Source: CNCE Record N° 41/14 file N° 1936.

Imports from China accounted for 96% of total imports in 2012 and 94% in 2014. In terms of total consumption, imports from China increased their participation from 68% of total consumption in 2012 to 72% in 2014. Even FLEXAR increased its own consumption of Chinese load cells from 12% in 2012 to 17% in 2015.

¹¹ Law N° 19,511 and Resolution 2307/1980 establish the requirements to be met by measurement instruments in Argentina.

II LOAD CELLS MARKET: ANTIDUMPING MEASURES VERSUS COMPETITION

According to the World Trade Organization (WTO), dumping is a situation of international price discrimination, in which the price of a product when sold in the importing country is lower than the price of that product in the market of the exporting country. Thus, in the simplest case, dumping could be simply identified by comparing prices in two markets. However, the situation is rarely, if ever, that simple, and in most cases it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country (known as the “normal value”) and the appropriate price in the market of the importing country (known as the “export price”) so as to be able to undertake an appropriate comparison.¹²

II.1 The Proceedings

During the course of the investigation, the CNCE, in compliance with the requirements obliged by law towards the application of anti-dumping measures,¹³ established that national production of load cells had been affected by Chinese imports under dumping conditions.

Regarding damages caused by imports, the CNCE observed that during the period under analysis, local industry had been affected by load cell imports from China.

However, the CNCE also stated that before actually imposing anti-dumping measures in this particular market, it was important to take into account the arguments set out by weighing scales manufacturers, as they were the main importers and users of load cells.¹⁴ During CNCE’s procedures, manufacturers said that the application of anti-dumping measures against load cell imports from China could have a negative impact on weighing scales production and exports, as they could leave those weighing scale models which had been approved to be produced with imported load cells out of the market and would not have generated new sales for FLEXAR, as manufacturers would not have been able to replace load cells that have been approved for the production of certain products with different load cells.

Subsequently, the Secretary of Commerce¹⁵ (hereinafter the “SC”), asked for the intervention of the CNDC, as a consequence of a complaint submitted by the Chamber of Weighing Scales Manufacturers against FLEXAR before Argentina’s Antitrust Agency.

¹² WTO, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Part. 1, Article 2.

¹³ Pursuant to Chapter III, Decree 2121/1994.

¹⁴ In Argentina there were identified 42 companies that produce weighing scales, which employ approximately 1300 workers and were mainly supplied by imported load cells.

¹⁵ The Secretariat of Commerce acts as the enforcement Authority of Foreign Trade.

Within the framework of its authority, the Secretary of Productive Transformation of the Ministry of Production (hereinafter the “STP” for its Spanish acronym),¹⁶, also took intervention saying that the eventual application of anti-dumping measures could result in an increase in the costs of the national production of weighing scales, which would lead to a loss of competitiveness against imports from China.

II.1.1 Harm to the domestic industry

First of all, the CNCE observed the increase in absolute terms since 2014 in the consumption of Chinese load cells. In fact, the relationship between subject imports and domestic production increased significantly throughout the period analyzed, from 158% in 2012 to 226% in 2014 and 447% in January-February 2015.

In this context, the SC observed that FLEXAR was producing with excess capacity, which had direct effects on the Argentinian market. Indeed, according to the SC, FLEXAR had enough capacity to supply the entire domestic market.¹⁷

Second, prices of imports from China were significantly lower than domestic prices even in comparison with the U.S.¹⁸ The average Chinese load cell price was USD 12.6 in 2012, USD 15.25 in 2013 and USD 16.77 2014, in comparison with the lowest price from U.S., which was USD 482.6 in 2014.

For those reasons, the CNCE concluded that the impact of Chinese import prices on the local market was harmful to the domestic industry of load cells.

II.2 Dumping in a potentially monopolistic market

As mentioned previously, FLEXAR concentrates most of the domestic supply of load cells in Argentina. In markets with a small number of firms, which may enjoy domestic market power, imports may be the only source of competition that may prevent domestic firms from increasing prices to monopolistic (or oligopolistic) levels. Therefore, anti-dumping measures that create a sufficiently high import barrier might create incentives for domestic agents to raise domestic prices, creating harming domestic consumers. In the particular case of load cells, weighing scale producers would be forced to pay more for inputs and, therefore, sell weighing scales at higher prices.

¹⁶ Secretariat of the Productive Transformation brings analytics to design public policies that favor the development of domestic production, such as the national production plan and sectorial agreements. The SPT promotes the enhancement of the capabilities available in a sustainable way, generating new areas of high productivity.

¹⁷ CNCE Record N° 41/14 file N° 1936.

¹⁸ The rest of the total imports came from India and U.S.

For this reason, it was recommended by Anti-Dumping Authorities that the file be referred to the CNDC to provide its opinion on the conditions of competition in the relevant market before awarding any anti-dumping measure in this market.

II.3 The recommendations issued by the CNDC

When issuing its recommendation, the CNDC said that the economic theory of competition often emphasizes that in markets with few domestic suppliers, the existence of imports may be key to prevent domestic suppliers from exercising their market power through supra-competitive prices. This implies that an antidumping measure in such a market is likely to generate incentives for domestic producers of inputs to increase their prices, as competition from imported inputs becomes less effective.

The CNDC explained that anti-dumping policy may damage local industry if there is a high concentration of dumped products in the relevant market. High levels of concentration of dumped products might have negative effects on the industry and the downstream segment of the market because it creates incentives to increase local prices, absent effective competitors.

FLEXAR stated along the proceedings that its intention was not to avoid the entry of imports to Argentina, but to avoid excessively low prices in the local market of load cells. On the other hand, weighing scales manufacturers stated that prices were not the only element they take into account when choosing imported load cells as inputs. The CNDC, based on those declarations, concluded that an obstacle to low prices could lead to an increase in weighing scale production costs, without increasing in the demand of local inputs.

Finally, following the CNDC's intervention, the Ministry of Production issued Resolution 551/2016, dated October 17, 2016 by which it decided to close the investigation without imposing any anti-dumping measures because the harm to competition (and domestic customers) outweigh the potential benefits to domestic producers.

III CONCLUSION

The load cells market case shows the importance of the interaction between different bodies. While the legal framework establishes theories based on the economic analysis of law in order to obtain certain thresholds towards the application of anti-dumping measures, the interaction between the CNCE, the CNDC, the STP and the SC, has demonstrated that cooperation

between agencies and the participation of the different stakeholders¹⁹ along the procedures, are the key to a better protection of the general economic interest²⁰.

The competition concerns raised by the CNDC and the STP were the determining factors taken into consideration by the Ministry of Production; from the importance of the weighing scales industry in Argentina and the sources of employment the industry generates, to the special characteristics of the load cells and weighing scales markets, also taking into consideration that said products are used along every single industry and are embedded everyone's everyday life, when we cook, buy groceries, go the doctor, etc.

Finally, the Ministry of Production considering the arguments raised by the stakeholders, decided to close the investigation, without the application of anti-dumping measures.

¹⁹ On this case, manufacturers, importers, competitors, the Chamber of Weighing Scales Manufacturers; and the Municipal Governments of the places where weighing scale producers carry out their activities.

²⁰ As the legal right protected by Argentine Competition Act, 25,156.