

Trade Remedial Measures

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Issues surrounding the escalation in protectionist practices via anti-dumping (AD) and countervailing and subsidies measures (SCM) prompted WTO members to initiate discussions on them within the framework of the Doha Round of trade talks. Clarification and improvement on disciplines, under AD and SCM agreements were demanded by many of them.

The rise in the use of these protectionist measures is significantly reducing gains from trade liberalisation by means of tariff cuts. At present, WTO members have initiated 1,510 AD actions against each other between 1995 and 2003. Increasingly it is the developing countries, which are employing AD measures more than developed countries. Developing countries have carried out 441 investigations as against 190 investigations by developed countries between 2002 and 2004. Such use of trade measures as protection of domestic industries may regretfully negate trade liberalisation benefits.

Members proposals to make changes in the AD and SCM agreements have been both narrow and complex, considering the delicate nature of these agreements. The same agreements, of which texts were meticulously amended, were eventually completed after three rounds of discussions under the General Agreement on Tariffs and Trade: the Kennedy, Tokyo and Uruguay rounds. As the chairman of the WTO Negotiating Group on Rules stated: "We are not dealing with a very restricted number of big picture issues, but with a very large number of highly specific questions".

Direction of Negotiations

WTO members are at a fork in the road as far as negotiations on AD and SCM issue are concerned. On the one hand, the friends of anti-dumping¹ negotiations have taken the route of curtailing AD/SCM measures. On the other hand, the US and Egypt have chosen the direction of strengthening such measures. EU seems to be uncertain on which path to take. A considerable number of specific issues are brought to the fore in such discussions and they are as follows:

- *New pre-initiation procedure:* Fast track WTO panels should be allowed to consider whether dumping is occurring within a country at question, before that country initiates AD or SCM investigations. Many friends of AD negotiations and EU support such an approach.
- *Effective Sunset Reviews:* Canada proposes a new structure in the way sunset reviews take place. Although, the agreements provide that AD and SCM measures shall be removed after a maximum of five-year period unless the removal of such measures would lead to detriment of the protected domestic industry; it can be seen that such measures continue past their deadlines and their removal is delayed. Often Members are seen to conduct their review of measures for 12 months or longer. This is the

case in many disputes such as US-offset Act, which is still ongoing after five years and US-Oil Tubular goods. Canada suggests improving the agreements that demand members to complete their review of measures before the maximum five-year expiry. This proposal would positively endeavour to reduce long-term AD/SCM measures already in place.

- *Guidance for Dumping Investigation Authorities:* US presents discussion on investigating authorities abilities to demonstrate a causal relationship between the dumped imports and injury to the domestic industry, in the context of a dispute. The WTO's Appellate Body in the US-Steel case acknowledged that there was no guidance, for investigating authorities, in the AD and SCM agreements to implement investigation regarding 'any other factors' that may find such causal relationship.

The US reasoning affirms that the investigative authority does not need guidance or common instructions, rather simply a valid explanation of its evidence. Such reasoning must be contested, as although investigative authorities would then be flexible, without common methods in analysis of dumping disputes, it would be possible, in disputes, for complainant members to question the method of the investigative authority, delay proceedings and lengthen the AD/SCM measure in place.

- *Revision of 'Dumped Goods'*: Friends of Anti-dumping indicated that often when members dispute anti-dumping measures, they take into account the total volume of a member's imports rather than the actual dumped amount of imports. In our view, the total volume of a member's imports being placed under an anti-dumping investigation, rather than simply the dumped imports, should be taken into consideration. The WTO Appellate Body's reasoning from Argentina-Poultry and EC-Bed linen cases support such arguments. Amendment to the AD agreement would be beneficial to all exporters alike who are subjected to such negligent protective practices.
- *Lesser Duty² to be made mandatory*: Lesser duty rule must be made mandatory, as supported by India, especially in AD/SCM investigations where developed countries consider duties against developing countries.
- *Eliminate Zeroing³*: The practice of zeroing violates WTO rules according to the WTO's Appellate Body in the EU-Bed linen case. This is because zeroing does not take into account all comparable export transactions and hence, fallaciously enlarges the amount of dumping taking place. It has been estimated that the elimination of zeroing would reduce dumping margins by 87 percent in eighteen previous US cases and hence, reduce the number of invalid anti-dumping investigations substantially. (Lindsey B. and Ikenson D., "Reforming the Anti-dumping Agreement: A Road Map for WTO Negotiations", *Trade Policy Analysis*, 2002)

Conclusions

About 150 submissions by WTO members between 2002 and mid 2004 on these issues indicate that consideration is desired in aligning these proposals to the task of clarifying the AD and SCM agreements. The establishment of an effective framework, which comprises of consensus objectives amongst WTO members for negotiations on trade remedial measures, is essential. Otherwise such talks will amount to nothing.

Developing countries and least developed countries (LDCs) shall contrast in their view on the reform of AD and SCM agreements, depending upon the extent of progress that their domestic and exporting industries have undertaken.

It would be worthwhile for developing countries such as India and China, to strengthen AD and SCM rules for the future, bearing in mind considerably lower production costs that these countries maintain in the vital areas of textiles and agriculture, which concern many livelihoods. Reduction of AD action against such sectors would certainly be beneficial to the poor.

However it is difficult to answer whether LDCs should align to either strengthening or curtailing AD and SCM agreements. Infant industries in these countries may be rewarded by protective measures under these agreements until a satisfactory level of efficiency/profitability/growth has been acquired. However, such infant industries may become dependent upon such measures and remain in a backward and inefficient state. It is well known that prospects for the development in such countries would not lie in answering the aforementioned question alone, but on an expanding number of questions relating to trade liberalisation and domestic policy reforms.

¹Friends of Anti-dumping negotiations include: Brazil, Chile, Columbia, Cuba, Hong Kong (China), Israel, Japan, South Korea, Mexico, Norway, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Thailand and Turkey.

²Lesser duty – maintains that if the duty required to alleviate the injury is lower than that to alleviate the dumping, the lower duty should be imposed.

³Zeroing – is a method by which a country calculates the amount of dumping taking place. When the export price is lower than the normal value of the good (which injures the domestic industry, dumping is taking place) the difference is known as positive dumping margin. Alternatively when the export price is greater than normal value, the difference would substantiate to a negative dumping margin. However countries reduce this negative dumping margin to zero 'Zeroing' as it is not considered to be dumping, however that only leaves positive dumping margin to be added up and hence enlarges the amount of dumping taking place evident in an investigation and increases the likelihood of antidumping action occurring.

