Trade remedies

Anti-dumping

Subsidies

Countervailing Measures

Safeguard Measures

- The WTO Agreements include provisions which allow Members to depart from the basic rules/principles
- Members are allowed to impose trade remedies, such as anti-dumping and countervailing duties, to correct the competitive imbalances created by unfair trade practices or to prevent injuries or to adjust to…

1) **Anti-dumping measures** -Article-VI-of GATT 1994- explicitly authorize the imposition of anti-dumping measures by WTO Members, under certain conditions

- **Anti-dumping measures** are unilateral remedies which may be applied by a Member where it has been determined that an **imported product is being "dumped"** and that dumped imports are **causing** or threatening to cause **"material injury" to a domestic industry producing like products**

- Anti-dumping measures normally are applied in the form of customs duties on **imports of the product concerned from a particular source in excess of bound rates**.
- The **identification of dumping** involves a price comparison between a product's "normal value" and its "export price".
- A product is to be considered as being **"dumped"** (introduced into the commerce of another country at less than its "normal value“

Conditions for the Application of Anti-dumping Measures

-Substantive

-procedural requirements

The three cumulative conditions are :

- Dumped imports;
- injury to the domestic industry producing the like product; and,
- causal link between the dumped imports and the injury. Are condition for the application of anti-dumping Measures

1.What is Dumping? Art.VI and Art.2(1)

- Dumping is a form of price discrimination, which takes place when the export **price(normal value**) of a product when exported to another country is less than the price of that same product when sold in the market of the exporting country in the ordinary course of trade

- The determination whether sales in the exporting country market are made in "**the ordinary course of trade**".
- The challenge: to determine if there is dumping or not when there is no ordinary course of trade in home/exporting market. EX. circumstances in which home market sales at prices below the cost of production may be considered as not made in the "ordinary course of trade"
- Alternative methods: 1)the **comparable price of the like product when exported to an appropriate third country** (provided that this price is representative)

2)the **constructed normal value** of the product, which is calculated on the basis of the cost of production, plus a reasonable amount for administrative, selling and general costs and profits.

2.Determination of Export price;

- The export price will normally be based on the **transaction price** at which the foreign producer sells the product to an importer in the importing country
- When the transaction price cannot be used, the export price can be based on a **constructed export price** determined on the basis of the price at which the imported product is first resold to an independent buyer

3. **Fair Comparison between Normal value and Export Price**(merits, quantity, taxation and other cost for export price and production cost, profit margin for normal value)

2. What is injury?

-significant increase of dumped imports in relation to production and consumption of like domestic product

-**significant price undercutting by the dumped imports** as compared with the price of the like product of the importing Member; to depress prices to a significant degree, or to prevent price increases which otherwise would have occurred

-impacts of **Dumped Imports on domestic product in relation to:-**actual or potential declines in sales, profits, output, market share, productivity, return on investments, utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

PROCEDURAL REQUIREMENTS

- initiation of investigation and written application
- Evidence of dumping, injury and causation, as well as other information regarding the product, price, industry, importers, exporters
- Due process, transparency and public notice
- Judicial review
- duration –provisional 4 to 6month, final measure, as long as the effect is gone/ maximum 5 years

2. SUBSIDIES: Art.1 of SCM agreement

- A financial contribution by a government or any public body within the territory of a Member which confers a benefit.
- three elements must be considered and satisfied in order for a subsidy allowed
- In addition the above three requirement; Specific requirement specified under Art.2 should be considered: a subsidy available only to an enterprise, industry, group of enterprises, or group of industries within the jurisdiction of the granting authority

FINANCIAL CONTRIBUTION

- a subsidy may only exist where a measure takes the form of a financial contribution i.e. where there is any form of income or price support
- These include direct transfers of funds (e.g. grants, loans, and equity infusion) and potential direct transfers of funds or liabilities (e.g. loan guarantees)

- A financial contribution also exists where government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- Where a government provides goods or services other than general infrastructure, or purchases goods; or where a government entrusts or directs a private body to carry out these functions
- NB. If a measure confers regulatory - but not financial - advantages, it would not constitute a subsidy. For instance, assume that a government temporarily exempts a manufacturing facility in financial difficulties from the obligation to observe anti-pollution laws doesn't constitute a subsidy as far as there is no financial contribution involved.

Type of subsidy:

a. Prohibited Subsidies(Red-light subsidies)
b. Actionable Subsidies(yellow light subsidies)

➢**Export Subsidies and Import substitution subsidies are prohibited subsidies:** These two categories are prohibited because they are **presumed** to distort international trade, and are therefore most likely **to have adverse effects** on the interest of other Members

-Exception agricultural export subsidies if a Member has reserved the right to use export subsides in their respective Schedules are not prohibited , but members are allowed to apply countervailing measure

-LDCs are exempt from the general prohibition on export subsidies according to SDT principle exa, marketing cost, transportation cost, processing cost, lower reduction commitment and long implimentation time in relation to schedule of tariff commitment.

-Members with a GNP per capita of less than US$ 1000 per year are also exempt from the general prohibition.

-Other developing country Members had an eight-year period

-The prohibition on **import substitution subsidies** did not apply to LDCs for a period of eight years and five years for developing members.

B. ACTIONABLE SUBSIDIES(YELLOW LIGHT)

- Actionable subsidies are not prohibited
- BUT they are subject to challenge, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another Member
- The complaining Member has to show that this specific subsidy causes adverse effects such as

-**injury**: to domestic industry in exporting country,

-**Serious prejudice**: usually arises where the effect of a subsidy is (i) displacement or impedance of the complaining Member's exports, either in the market of the subsidizing Member or in a third country market; or, (ii) significant price undercutting, price suppression or depression or lost sales of the complaining Member's product in a given market; or, (iii) an increase in the subsidizing Member's world market share in a subsidized primary product or commodity.

-Nullification or impairment of benefits: arises most typically where the improved access to a market that is presumed to flow from a bound tariff reduction is undercut by subsidization in that market

3. Countervailing measures

- are unilateral tools, which may be **applied by a Member after conducting a domestic investigation** in which it has been determined that **subsidized imports are causing** or threatening to cause **injury to the domestic industry producing the like products**.
- As in the case of anti-dumping, countervailing measures are normally applied in the form of **customs duties in excess of bound rates**
- The main difference is that in the case of countervailing measures, the issue to be determined is whether there are "**subsidized imports** instead of "dumped imports
- A Member may impose a countervailing measure when the existence of the three following cumulative requirements:

-Subsidized imports

-Material injury to the domestic industry producing the like product, threat of material injury or material retardation of the establishment of a domestic industry; and,

-Causal link between the subsidized imports and the injury

In addition to the above substantive requirements. The required Procedural conditions are :

-the initiation and conduct of countervailing investigations,

-the imposition of preliminary and final countervailing measures,

-the duration of the measures, provisional [4-6 month], Final measure[only as long as the effect is prevented/maximum 5 years]

-transparency of investigations,

--due process (e.g. that all interested parties have a full opportunity to defend their interests); and

-Public notice: investigating authorities adequately explain the bases for their determinations.

4. SAFEGUARD MEASURES:

- A unilateral action in the form of tariff above bound rate or quantitative restriction when a product is being imported in such increased quantities and to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products
- It is a result of unforeseen developments and of the effect of the obligations incurred by a Member under the GATT
- Unlike anti-dumping and countervailing measures, the application of safeguard measures **does not require an unfair trade action**.
- Instead, the objective of safeguard measures is to provide a temporary remedy while **facilitating structural adjustment of the industry adversely affected by increased imports**, thereby enhancing competition in international markets

Conditions for the Application of Safeguard Measures

- Increased quantity of imports in absolute or relative terms ex. Factors to be considered by investigating authorities: the **increase in imports must have been recent, sudden, sharp and significant enough, both quantitatively and qualitatively**
- Serious injury caused, or threatened to be caused, to the domestic industry producing the "like or directly competitive" products; Factors: the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment of the domestic industry.
- Causal link between the increased imports and the injury. Factors:when factors other than increased imports are causing injury to the domestic industry at the same time, such

Procedural conditions

The investigations under the Agreement on Safeguards have to fulfil certain requirements, which are similar to those provided for the investigations on anti-dumping and countervailing measures

-The application

-Evidence based on the substantive requirement

-Due process, public notice and transparency

-Duration for application of safeguard measures

-Provisional measure 200 days.

ex. Final measure Maximum four year and more four year extension is allowed upon the fact that the problem continue to prevail, and ten year for developing countries(permanent measure)

-Compensation for affected members

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