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POLICY BRIEF NO 17

Antidumping: Positions, negotiations, and Relevance for Syria

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What is dumping?

An exporting country is said to be dumping when it sells its goods abroad for a price that is either lower than the price it sells the goods for domestically consumption¹ or is below the cost of production. Normally, dumping countries tend to keep the weaker competitors out of the market, aiming to achieve full market-control, and then re-raise the prices again to gain doubled revenue. While consumers are protected by competition laws, antidumping laws protect the producers.

From the Uruguay Round to Hong Kong conference

The Uruguay Round Agreement on the implementation of Article VI of the GATT 1994 (to be referred to as the Antidumping Agreement) contains more comprehensive rules governing the use of antidumping than its predecessor agreement. Due to the increased use of antidumping to counter-act “unfair trade,” the Doha Round aims to clarify the rules related to antidumping, maintaining the basic idea behind the measure in the same time. Without fixed target date, the July Package briefly reaffirmed Members’ commitment to progress on negotiations on the WTO rules (covering anti-dumping, subsidies, countervailing measures and regional trade agreements). Hong Kong Ministerial Declaration Identified two parameters for the amendments: the need to avoid the unwarranted use of antidumping measures; and the desirability of limiting the costs and complexity of proceedings for interested parties and the investigating authorities alike. Moreover, it Gave priority to: Determinations of dumping, injury and causation, and the application of measures; and procedures governing the initiation, conduct and completion of antidumping investigations the level, scope and duration of measures, including duty assessment, interim and new shipper reviews, sunset, and anti-circumvention proceedings. The declaration affirmed the need to make the same improvements to both the antidumping and the subsidies agreements where applicable.

Main countries positions

Countries attitudes towards antidumping laws differ mainly according to whether they are exporting or importing parties. Thus, it worth mentioning some of main countries positions here. However, before dealing with those countries’ situations, a brief about “Friends of Antidumping” group, which is the most eye-catching feature in this relevance, is advisable to be presented.

Friends of Anti-Dumping

The “friends of antidumping” (FAN) is a group of developed and developing country Members that want the Doha Round to result in tighter disciplines on the use of antidumping measures. The FAN coalition has submitted numerous and detailed proposals to the WTO negotiations seeking to curtail the use of antidumping law. This coalition includes Brazil, Chile, China, Columbia, Costa Rica, Hong Kong, “Israel”, Japan, Korea, Norway, Mexico, Singapore, Switzerland, Thailand, Turkey, and some Separate Custom territories. This group have likely had its genesis in a coalition of countries brought together to oppose U.S. legislation (the Byrd Amendment) (2001) that gives antidumping duties collected to the U.S. firms that petitioned to initiate an investigation. FAN repeatedly seeks an explicit prohibition of the practice of zeroing². Currently, this practice means that positive dumping margins, which

¹ Or even for some other countries.

² For instance, this was asked strongly before Cancun 2003.

exist when export price is lower than normal value, are included in calculations, but “negative” dumping margins – when the export price is higher than normal value – are not.

US

US is a frequent user of antidumping measures. The US wants further consideration of antidumping provision to ensure that it is properly applied, likely a concern due to past and potential challenges to its domestic practices through the WTO. The US, the most vocal proponent of preserving and strengthening the ability of governments to use antidumping law, is the second heaviest user of such law. US companies are still exporting crops at prices below their cost of production onto world markets and that such dumping occurs in spite of the efforts of the WTO. Calculations from 1990-2003 for five commodities grown in the US and sold on world markets indicated to clear dumping. The commodities are wheat, corn, soybeans, rice and cotton. Analyzing the calculations showed that these products were exported by the US at between 10% and 48% below the price of production. Moreover, in the case of US cotton subsidies, the dispute settlement body of the WTO concluded that such practices hurt developing countries and are in violation of WTO rules. In terms of negotiations, The U.S. agenda seeks to discipline procedural aspects of trade remedy law by improving “transparency, predictability, and adherence to rule-of-law” to prevent U.S. firms from suffering from suits that are not administered in a manner consistent with WTO rules.

EU

Despite their WTO commitments to reduce trade-distorting subsidies, the European Union has used loopholes and creative accounting to continue dumping products on world markets. The EU and several other countries currently maintain a public interest clause in their domestic antidumping legislation³. The EU submitted (cooperating with Japan) a proposal that expresses concern over the escalating cost of responding to antidumping suits⁴. They propose to develop a standard format for antidumping rules to reduce the cost of investigations for both government and industry. The EU and other parties have also proposed implementation of a lesser duty rule, which specifies that if the duty required alleviating injury is lower than that to alleviate dumping, the lower duty should be imposed.

India

India, which has become the heaviest user of these laws, has proposed changes that would limit the ability of other countries to impose antidumping measures against it and other developing countries⁵. India has submitted several proposals on antidumping provisions. India argues that developing countries have not received the treatment specified in the Uruguay Round Antidumping Agreement, and advances specific rules to remedy this. Proposals applicable only to developing countries include increasing the de minimis requirement for the level of dumping from 2% to 5% and increasing the negligible import level from 3% to 5%. India proposes to make the application of the lesser duty rule mandatory when duties are being considered by industrial countries against imports from developing countries. As noted in the introduction, India has become the world’s most active user of antidumping law, which may explain its lack of involvement in the FAN coalition. However, like FAN, India has also advanced proposals to restrict the use of zeroing, to ensure that injury is addressed instead of dumping, and to restrict the profit margin used by national authorities in the determination of dumping.

³ Public interests have a role

⁴ The Antidumping Negotiations: Proposals, Positions and Antidumping Profiles, 2005.

⁵ The same source.

Egypt

One of the main defender of antidumping laws is Egypt, which views the increased number of antidumping suits by developing countries as legitimate and a reflection of an increased capacity in developing countries to defend their producers against industrial-country practices. Egypt supports the U.S. concern over circumvention. Egypt also argues that further elaboration of WTO antidumping law is unlikely to prevent abuse, and that additional complexity is a burden to developing countries and may prevent national authorities from exercising judgment when appropriate⁶.

Current negotiation

After Hong Kong, Countries are negotiating rules governing the use of antidumping duties in the World Trade Organization. The attention devoted to this issue may spring from the striking global increase in the use of antidumping measures during the last years. Many WTO members have not yet adopted antidumping law, and if they do so the global use of antidumping measures is likely to increase even more. WTO members differ markedly in their use of antidumping measures. These differences may be attributed to differences in political ideologies, costs of initiating a case against alleged dumping, the availability of institutional support to help complainants, national methodologies for determining dumping margins and injury, and the ability of the investigating authorities to initiate and conduct investigations. Proposals advanced in the negotiations are likely to reflect these differences, as some members desire to maintain the ability of national governments to use antidumping measures, while others want to reform antidumping law to make it more difficult to impose protectionist measures.

In several cases, free trade areas have negotiated rules for trade remedy law that differ significantly from the WTO approach. One motivation given for the establishment of free trade areas is that in agreements between two or relatively few members it may be possible to remove more obstacles to economic integration than is possible in the WTO, with its large and diverse membership.

Developments' trend

Drawing attention to the widespread economic impacts of antidumping measures, and before Hong Kong ministerial conference, the (FAN) submitted proposals advocating the inclusion of a clause allowing local concerned stakeholders such as consumer groups, producers and importers to be involved before a decision to impose anti-dumping measures is taken. The EU introduced very close proposal that advocates stricter rules on the substance, process, review, predictability, and transparency of anti-dumping proceedings and it virtually allow parties such as consumers and industrial users of purportedly dumped products to have some say in the process that determines whether or not additional duties should be imposed. In parallel, the FAN called after Hong Kong for all concerned stakeholders such as consumer groups, producers and importers to be involved before a decision to impose anti-dumping measures is taken. While the EU strongly supported the proposal, other Members including Peru, Brazil and India were concerned about the possible cost and time implications of the idea. The US also supported this concern and questioned the impact that such a policy would have on the affected domestic industry.

Alternatively to anti-dumping measures, Mexico suggested to put forward a legal draft text on 'price undertakings' where exporters are offered to raise the export price of their product in order to avoid the imposition of an anti-dumping duty. However, this proposal was not echoed in the ministerial Hong Kong conference.

⁶ The same source.

Suing a case in the WTO

Similar to other Uruguay Round agreements, the Antidumping Agreement provides rules to increase the information available to members and to provide a forum for the early discussion and resolution of disputes. A Committee on Antidumping Practices was instituted, and one of its functions is to review the consistency of national practices with the Antidumping Agreement. Requirements that countries notify the committee of both antidumping actions and changes to their antidumping law were enacted to increase the information available to interested parties. The committee also is to provide an arena for the discussion and informal resolution of disagreements between members.

When informal discussion does not resolve an issue, members who believe that the antidumping actions of other members have violated WTO standards may use the Dispute Settlement Understanding (DSU) to press a complaint. Ultimately, the effectiveness of the Antidumping Agreement depends on the effectiveness of the DSU.

A country that is prompted by its domestic industry to accuse another of dumping must carry out an investigation to determine whether this is indeed the case before it can impose anti-dumping duties on the offending imports. During the course of this process, exporters have to provide investigating authorities from the importing country with a wide range of information regarding their cost structures and pricing strategies. Usually, representatives of import-competing firms petition their national authorities for the initiation of an investigation. If filing requirements are met, the national authorities conduct an investigation to determine if the foreign firm has engaged in dumping. The national authorities must also determine that an industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded by reason of imports being sold at less than their "normal value". If both conditions are met (dumping and injury), the national authorities can implement antidumping duties on these imports, using possibly prices from a third-country market or can construct the normal value using production costs, other expenses, and a specified profit margin; if both conditions are not met, the investigation is terminated. If a dispute on the application of antidumping law reaches the WTO Dispute Settlement Body (DSB), the current WTO agreement states that the panel must find the national authorities to be in conformity with the agreement if its actions are based on an allowable interpretation of the rules. WTO now imposes a five-year limit to the imposition of these duties (the "sunset clause"), unless the investigating authorities conclude that the removal of the duty would be likely to lead to continuation or recurrence of dumping and injury. Furthermore, the concerned parties can request a review of duties before five years have elapsed. A third possible outcome from an antidumping investigation is a price undertaking. Price undertakings, provided for under WTO rules, occur when the exporter reaches an agreement with the investigating authorities of the importing country to raise its export price to a level sufficiently high to eliminate injury. Duties and price undertakings have the same effect on trade, but in the case of the former the importer collects revenue from the duty while with an undertaking it goes to the exporter.

Statistics about antidumping cases

Disagreement over the use of antidumping law is an important component of trade disputes. Variation also exists upon using the antidumping duties and their procedures and rules in a way that possibly protect the domestic industries to a greater degree than other countries. A WTO member may press a complaint against another member that they believe has violated WTO antidumping rules. Since 1995 till 2004, 321 cases have been initiated under the Dispute Settlement Understanding. Of these, at least 111 cases were concerned with antidumping, countervailing duties, or safeguards, and 59 cases with antidumping measures alone. There has also been an increase in overall antidumping activity as reflected in both investigations and the imposition of new antidumping measures. Between 1995 and 2003, 2,416 cases were initiated by

41 importers against 97 exporters. This represented a 38% increase in cases over the previous nine-year period, during which there were 1,746 investigations by 25 importers against 90 exporters. The growth is more striking when countries' antidumping actions are considered in terms of measures imposed. 38 countries reported imposing 1,511 new antidumping measures against 85 exporters between 1995 and 2002. Between 1986 and 1994, only 18 countries reported imposing 783 measures against 62 exporters. The number of new measures imposed has increased by 93% during the post-Uruguay Round period⁷. The chances that an investigation would result in a measure (an antidumping duty or undertaking) increased from 45% between 1986 and 1994 to 63% between 1995 and 2003.

Sample of some important cases

Chinese and Vietnamese Shoes

Since early 2006, the EU has been planning to impose anti-dumping duties of up to 20% on leather shoes from China and Vietnam. After an investigation by the European Commission found what was described as "compelling evidence" that Beijing and Hanoi were helping shoe producers export at prices lower than domestic ones in violation of international trade rules. They said this was done by providing manufacturers with cheap rent and loans, tax breaks and other trade-distorting measures. The recommended tariffs would be phased in starting at 4 percent, and gradually rise through October 2006.

Shrimps dispute

In December 2003, the Southern Shrimp Alliance (SSA), a group of shrimp harvesters and processors in the United States, filed antidumping petitions with the United States International Trade Commerce (USITC) alleging that Brazil, China, Ecuador, India, Thailand, and Vietnam were dumping shrimp (primarily farmed shrimp) with an approximate annual value of \$2.4 billion into the U.S. market. The SSA was petitioning for tariffs on imports of shrimp from these countries ranging from 30% to 267%. It argued that "a variety of financial incentives provided by national governments and international institutions over a number of years have over-stimulated the infrastructure and production of farm-raised shrimp in these countries." Thus it seems that the investment by organizations such as the World Bank and others in helping build an export industry in some of these countries is perceived to have created unfair subsidies for these shrimp-exporting nations. In November 2004, the US Agricultural Department decided that frozen and canned warm-water shrimp from China and Vietnam were sold at less than fair value, setting duties on their exports of it. And in December 2004, the US upheld a finding that Brazil, Ecuador, India and Thailand were dumping shrimp at unfair prices, inflaming a sizzling seafood row⁸. However, Ecuador requested the establishment of a panel concerning the US anti-dumping measures involving certain frozen Warm water Shrimp from Ecuador. Ecuador argued that the US practice of zeroing had a very negative effect on Ecuador's shrimp industry, which represented 10% of Ecuador total export in 2005. The Dispute Settlement Body, on 19 July 2006, responded positively to the Ecuadorian request, and established a panel to examine US measures on shrimp from Ecuador. In addition; Thailand, India, Brazil, China, Japan, the EC and Korea reserved their third-party rights in the case.

⁷ The Antidumping Negotiations: Proposals, Positions and Antidumping Profiles, 2005.

⁸ Global Agricultural Trade and Developing Countries, 2005.

Cotton dispute

In September 2004, the WTO released the panel report on the United States – Subsidies on upland cotton dispute, in a case brought against the US by Brazil. Hearing evidence brought by Benin and Chad as third parties to the case, the panel found that US cotton subsidies have a price suppressing effect causing serious prejudice not only to Brazil but other cotton exporting countries. Countries in West Africa are the worst hit by current US cotton subsidies; in West Africa alone, 10 million people depend on cotton for their livelihoods.

The essence of the case is that the US, in violation of their WTO commitments, are paying subsidies which encourage the overproduction of cotton, which in turn leads to the dumping of excess produce on global markets, thereby depressing the global price of this commodity. As a consequence of the rulings, the US was legally obliged to cease the subsidies in excess of its WTO commitments.⁹ Later, alleging that the US had missed the 21 September 2005 deadline to comply with a March 2005 WTO ruling on its cotton subsidy program, Brazil formally requested the right to retaliate against US patents, copyrights, and services providers. The US asked the WTO Dispute Settlement Body for arbitration in this dispute, arguing that both the type and amount of retaliation that Brazil was seeking were inappropriate. Procedurally, the panel that first ruled on the dispute or an arbitrator appointed by the WTO Director-General should determine whether Brazil's demands are appropriate, but Brazil suspended its cross-retaliation request in this case in November 2005.

Relevance for Syria

Due to the previous protectionist period, Syrian economic sectors haven't dealt with anti-dumping cases yet; therefore, there is a lack of expertise and qualified human resources in this arena. In addition, there is no particular institution or administrative framework to handle such cases¹⁰. Thus, there is an urgent need to legislate special antidumping law, which should be in consistent with the WTO rules, too. The necessity springs from two reasons: first, the Syrian-European partnership, which was signed initially in 2004, implies in its 28th article that the anti-dumping agreement of the UN ought to be applied in Syria; second, Syria is increasingly practicing some antidumping cases. For example, some Chinese products began to dump the domestic ones. Moreover, the expected law should act as loyal base for establishing a special department branched from the ministry of economy to deal in a straight way with antidumping cases. This, in turn, needs to build well human resources' capacities, and to present proper skills to the involved people, either those who belong to the private or public sector. Consequently, building the skilled cadre would require much more internal and external multi-trainings. In this sequence, a proposed antidumping law is currently under discussion in the people assembly and other concerned institutions. The suggested name for the law is "protecting national economy from the impacts of harmful practices in the international trade" law. Moreover, the proposal was launched by the ministry of economy, aiming to tackle the harmful practices in the international trade, which include dumping, prohibited support, and the injuries resulted from the irrational over-importing. According to the proposed law, a special committee should study the sued cases and report its recommendation to the minister, who has the right to take the proper decision.

⁹ Negotiations' Position of the Main trading partners and their Rationale, unpublished review paper, NAPC, 2005.

¹⁰ For instance, each of Egypt and the EU complained that their products are being dumped by Syrian clothes; however, the complaint was treated locally only by an administrative approach.

Controversial points

Applying the law in case it is approved implies several questions should be answered. These following points are a sample of that:

- How can we prove evidently that dumping occurred in this case or that?
- How can we calculate the dumping margin?
- How can we define the domestic price of the dumping product in its origin country?
- How can we prove that the injury is substantial (more than 5%)?
- How can we prevent the misusing of antidumping measures?
- How can we train the involved staffs? What programs should be applied? And who will pay for them?
- Which role should be offered to the industry chamber?

These questions must be discussed and answered as soon as possible.

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