

# Rules Negotiations in Doha Round

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# Rules Negotiations in WTO- NGR

- ✓ Anti Dumping Agreement
- ✓ Subsidies Agreement
- ✓ Fisheries Subsidies

# Doha Mandate - Para 28

- Negotiations are taking place in the Negotiating Group on Rules (NGR ) aimed at clarifying and improving disciplines under the Anti Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (ASCM), while preserving the basic concepts, principles and effectiveness of these agreements and their instruments and objectives. Members are also discussing new disciplines for fisheries subsidies.

# State of Play

- Chairs' first draft text of 30 November 2007  
(TN/RL/W/213 )
- Revised text of 19 December 2008  
(TN/RL/W/236 )
- In Fisheries Subsidies- Roadmap
- Intense negotiations in 2009, 2010 and up to March 2011
- Chair's revised text of 21 April 2011  
(TN/RL/W/254 )

# Anti Dumping

- WTO Members aspire for free and fair trade
- However, free trade is not always fair trade
- Distortions in international trade
  - – dumped exports
  - - subsidized exports
- Anti dumping duty to counteract unfair trade practice of exporters from specified countries
- Anti dumping duty-over and above the normal custom duties
- Dumping is export at less than normal value –
- Normal value – the selling price of the product in exporting country
- Injury and causal link

# Groupings in Rules Negotiations on Anti Dumping

- Friends of Anti Dumping Negotiations (FANs)
  - Brazil, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Korea, Republic of, Mexico, Norway, Singapore, Switzerland, Thailand, Turkey
  - African Group
  - APEC
  - LDCs
  - SVEs

# Rules Negotiations in NGR

## Unbracketed text

Allocation of costs (Article 2.2.1.1)

Use of Exchange rates (Article 2.4.1)

Model matching (Article 2.4.3)

Threat of material injury (Article 3.7)

Prior notice before initiation (Article 5.5)

No back to back initiation (Article 5.10 bis)

Maintaining of public file (Article 6.4 bis)

20 days response time at Disclosures stage (Article 6.9)

Price Undertakings (Article 8)

# Rules Negotiations in NGR

## Unbracketed text (continued)

- New shipper reviews (Article 9.5)
- Public notice at the stage of initiation and preliminary findings (Article 12)
- On the spot verification (Annex I)
- Use of facts available (Annex II)
- Review of Members' Anti dumping policy and practices (Annex III)



# Bracketed Issues in Anti Dumping Agreement

- Zeroing
- Sunset reviews
- Lesser Duty Rule
- Public Interest
- Anti Circumvention
- Causation – non-attribution
- Product under consideration
- Material retardation
- Definition of domestic industry – producers who are importers
- Information request to affiliated Parties
- Third country dumping and S&D for developing countries

# Sunset Reviews

- Automatic Sunset after [X] or 10 years.
- Improved Rules for likelihood analysis.
- SSR based on application of domestic industry having support as per Article 5.4.
- Suo moto SSR.
- Completion of review preferably before the end of five year period. + 6 months
- Completion of review to be effective at the end of five year period.
- If review results in termination of duty – obligation to refund duty **with interest**.

# Sunset Reviews

- SSR determination shall be based on positive evidence and objective examination of all relevant factors.
- Expeditious action by IA in case dumping causing injury again occurs within two years of termination of duty.
  - ✓Application of provisional measures.
  - ✓Retroactive provisional measures upto 90 days

# Review of Members Anti dumping policy and practices – Annex III

- New Annex to share AD practices of Members.
- Similar to TPR.
- Detailed information on all aspects of AD policy and practices of a Member to be prepared by Sectt.
- First cycle of review begins one year after Doha Round.
- The Members having initiated most cases to be reviewed first.

# Review of Members Anti dumping policy and practices – Annex III

- New Annex burdensome.
- Resource intensive.
- Several developing countries have opposed.

# Public interest

- To establish procedures in national laws to take due account of representations made by domestic interested parties whose interests might be affected.
- These may also include suppliers of inputs to the domestic industry.
- These procedures shall not be subject to DSU.
- These procedures shall not be subject to judicial review requirements.
- To keep the decisions taken on public interest outside the purview of national judicial review: Not possible

# Lesser Duty Rule

- Chair's text deleted the LDR provision, even on desirable basis.
- India, Japan and Brazil had moved proposal for mandatory application of LDR.
- US has been strongly opposed to mandatory LDR.

# Anti-circumvention -New Article 9 *bis*

- Imports of the product subject to duty supplanted by
  - Imports in parts or unfinished forms from the same country subject to duty
  - Imports start from a third country by assembling the parts/unfinished forms imported from country subject to AD duty.
- Value of parts/unfinished forms 60% or more of total value of parts in the finished product.
- Value addition 25% or less



# Anti-circumvention -New Article 9 *bis*

- Anti circumvention investigation to be initiated only on the basis of duly substantiated request made by domestic industry satisfying standing as per Art 5.4.
- Anti-circumvention duty can apply only if the imports of the parts/unfinished forms are found dumped
- However, no fresh injury determination is required.

# Causation-non attribution

- New text on non-attribution analysis perceived as weakening of non-attribution.
- Some relevant factors in the text relegated to footnote.
- New text requires qualitative analysis of evidence.
- Without obligation to quantify the injurious effects of dumped imports and other factors
- Disagreement continues on new text

# Causation-non attribution

- What should be the approach?
- Status -quo to be maintained
- Most Members do not support mandatory quantitative analysis.
- It can be a qualitative analysis.

# Material Retardation

- **Article 3.9** A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes. In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, *inter alia*, installed capacity, investments made and financing obtained, and feasibility studies, investment plans or market studies.



# Material Retardation - footnotes

- The authorities may however consider that an industry is in establishment notwithstanding the existence of established producers of the domestic like product, if those established producers are not able to satisfy domestic demand for the product in question to any substantial degree; provided that under no circumstances shall an industry be considered to be in establishment if the collective production capacity of established producers exceeds 10 per cent of domestic demand for the product in question.
- Members recognize that an examination of possible material retardation relates to the impact of dumped imports on the efforts of the industry to become established, and that this type of impact may not be reflected in actual or potential declines in performance. Nonetheless, the authorities shall evaluate, to the extent that data exists, available information with respect to all economic factors and indices relevant to an examination of material retardation of the establishment of the domestic industry in question.

# Material Retardation

- Issues
- Members generally support improved disciplines for injury determination on account of material retardation.
- Areas of concern / lack of clarity
- A like product not previously produced
- Domestic industry in establishment
- The threshold of 10% of meeting the domestic demand

# Fisheries subsidies

- As per the mandate, developing countries are seeking effective S&D treatment
- India's concerns on coastal fishermen and EEZ fishing activities
- About 14 million workers depend on fisheries
- India's submissions made in May 2008 and February 2010 seeking effective S&D
- India, Brazil, China and Mexico paper

# Fisheries Subsidies- Issues.

- Prohibited subsidies
- General exceptions
- S&D exceptions – Extent of S&D and the conditionalities
- General disciplines on use of fisheries subsidies
- Fisheries management
- Notification and surveillance





Thank you.