

Overview of WTO Rules: Subsidies and Trade Remedies

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Trade Remedies

- WTO Members aspire for free 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 causing injury to domestic industry of Importing country
- Countervailing duty to counteract subsidized exports

Trade Remedy Measures under WTO framework

- Anti Dumping Duty
- Countervailing Duty
- Safeguard Measures

Trade remedies: Comparison

AD	CVD	SG
Dumping	Subsidization	Import surge (NOT “unfair”)
Material injury (or threat thereof)	Material injury (or threat thereof)	Serious injury (or threat thereof)
Domestic industry: Like products	Domestic industry: Like products	Domestic industry: Like or directly competitive products
Country Specific	Country Specific	Irrespective of Source
No compensation	No compensation	Compensation may be required

Anti-dumping Measures Taken by WTO Members – 1.1.1995 to 30.06.2013

Country	Cases Initiated	Measures Imposed
Argentina	305	210
Australia	252	99
Brazil	297	136
Canada	176	106
China	208	162
EU	453	293
India	690	513
Indonesia	96	43

Anti-dumping Measures Taken by WTO Members 1.1.1995 to 30.06.2013 -contd.

Country	Cases Initiated	Measures Imposed
South Korea	116	73
Mexico	112	90
South Africa	222	130
Turkey	166	148
USA	476	318

950 cases out of total 4358 initiations were against China.

683 Measures out of total 2795 Measures are against China

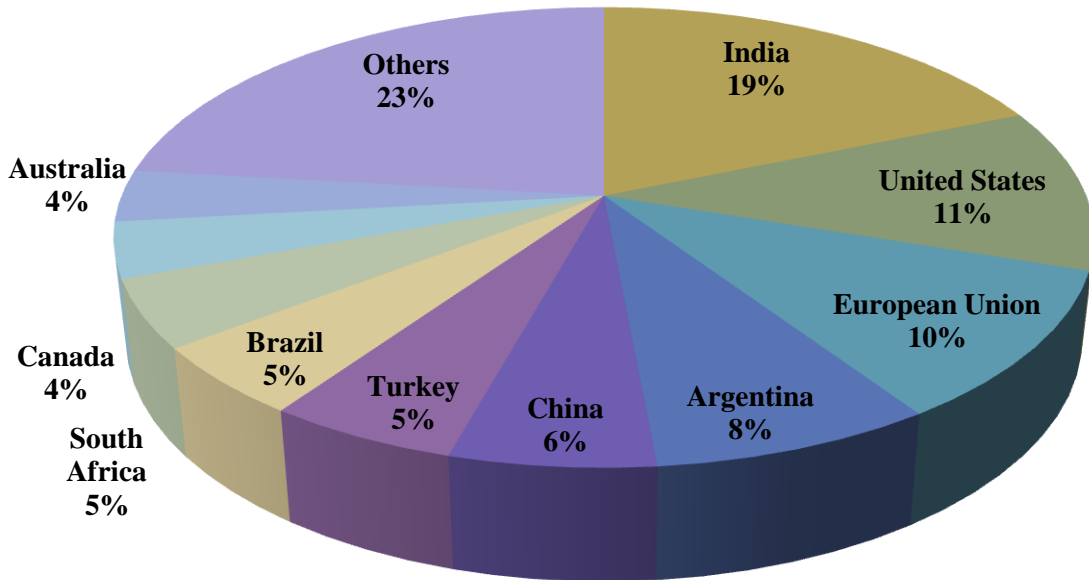
99 Measures against India.

Source: WTO

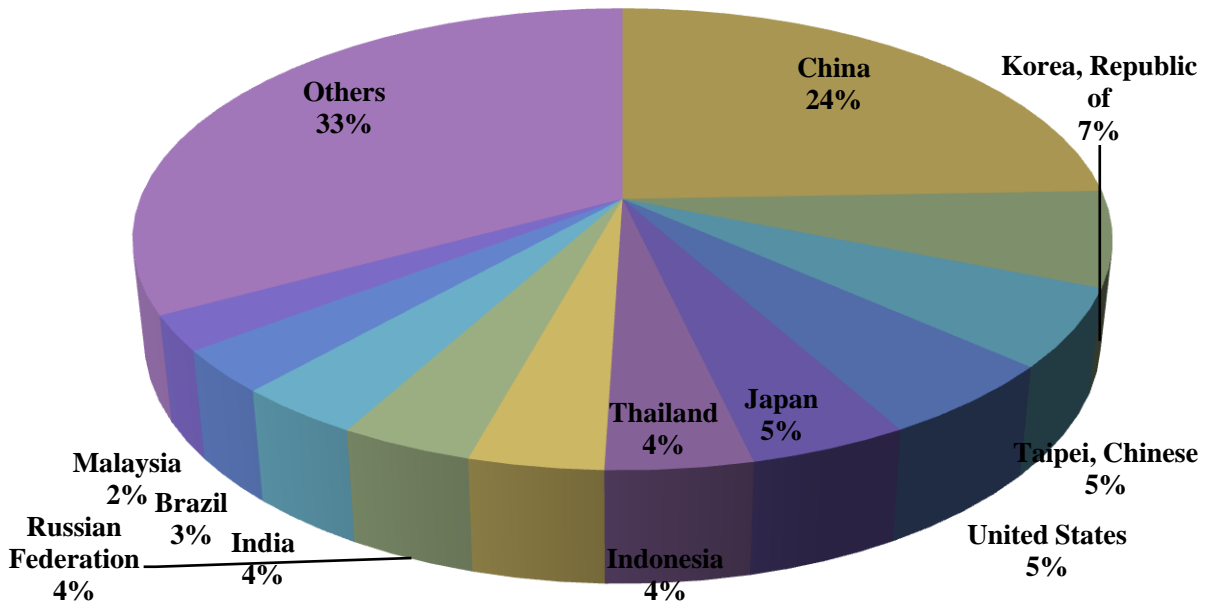
Main Sectors of Anti-dumping Measures

Sector	Number of Measures
Chemical and allied products	597
Plastics, resins and rubber articles	350
Paper, Paperboard and articles	122
Textiles and articles	240
Articles of Stones, Plaster, Glass	100
Base Metals and articles	804
Machinery, Mechanical Appliances, Electrical Equipments etc.	237
(Out of total 2795)	Source: WTO

Share in Anti-dumping Measures : By Reporting Member



Share of exporting countries in anti-dumping measures



Anti dumping

Legal texts/ provisions

GATT Article VI

Agreement to implement Article VI-Uruguay
Round outcome

Commonly known as the Anti Dumping
Agreement

LEGAL FRAMEWORK ON TRADE REMEDY

- ▶ **Customs Tariff Act, 1975 - Section 8B, 8C, 9, 9A, 9B & 9C.**
- ▶ **Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.**
- ▶ **Customs Tariff (Identification, assessment and collection of countervailing Duty on Subsidised Articles and for determination of Injury) Rules,1995.**
- ▶ **Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997.**
- ▶ **Customs Tariff (Transitional Product Specific Safeguard Duty) Rules 2002.**

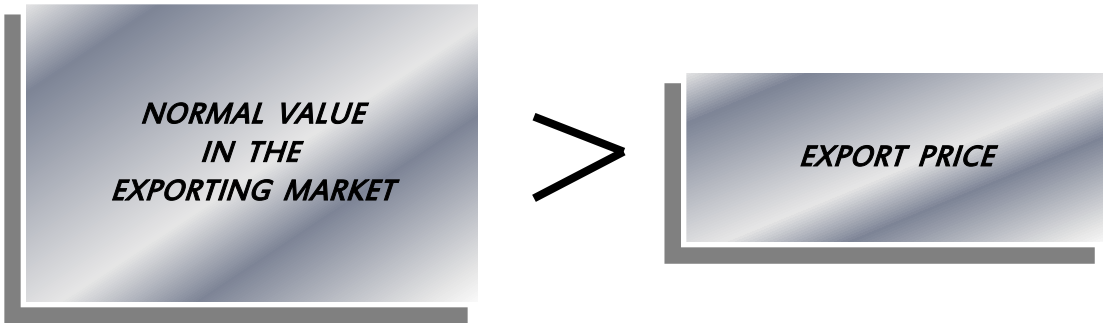
ANTI-DUMPING INVESTIGATION & IMPOSITION OF DUTIES

- ▶ **Initiation, Investigations & Recommendations by Designated Authority, Department of Commerce**
- ▶ **Imposition & collection of anti-dumping duty and countervailing duty by Department of Revenue, Ministry of Finance**

Anti dumping-Key concepts

- Dumping
- Injury
- Causal link

WHAT IS DUMPING ?



- ▶ **Difference between Normal Value and Export Price (based on fair comparison) is known as ‘Margin of dumping’**

Normal Value

- Comparable price, in ordinary course of trade, for like product in exporting country.
- **Home market sales in country of export-Default option.**

Other two options

- Comparable price of like product when exported to an appropriate third country, provided that this price is representative, **or**
- Cost of production in country of origin plus reasonable amount for SGA and profits.

Normal Value- other two options

Article -2.2 ADA

- Comparable price of like product when exported to an appropriate third country, provided that this price is representative, **or**
- Cost of production in country of origin plus reasonable amount for SGA and profits.

Injury

- Actual – Material Injury
- Threat of Injury
- Material Retardation to the setting up of an Industry

INJURY DETERMINATION

- Volume Effect
- Price Effect

VOLUME EFFECT

Volume of dumped imports

- Rise absolutely
- Rise relative to production or consumption

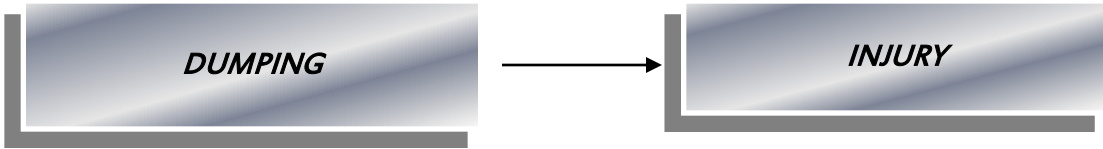
INJURY – Evaluation of all relevant Economic Factors and Indicators

- **Actual/Potential Decline in**
 - Sales
 - Output
 - Profits
 - Market share
 - Productivity
 - Return on investment
 - Capacity utilization

- **Factors affecting domestic prices**
- **Magnitude of margin of dumping**

- **Actual and potential negative effects on**
 - Cash flow
 - Inventories
 - Employment
 - Wages
 - Growth
 - Ability to raise capital or investment

CAUSAL LINK



- ❖ Dumping per se not actionable
- ❖ Causal relationship to be demonstrated
- ❖ Other factors to be considered
 - ❖ Volume and prices of other imports
 - ❖ Demand Contraction
 - ❖ Productivity
 - ❖ Technology
 - ❖ Trade Restrictive Practices and conditions of Competition
 - ❖ Export Performance

Anti dumping relief to Karnataka industry-Mulberry Raw Silk

- Mulberry Raw silk below 2A grade dumped from China
- Anti dumping duty originally imposed on 2 January 2003 for 5 years.
- After sunset review AD duty extended for another five years on 6 January 2009
- Domestic industry effort was coordinated by Central Silk Board, Ministry of Textiles, GOI

Anti dumping duty relief to Karnataka industry- Mulberry Raw Silk

- ▶ M/s Silk Reelers Association, Near Cocoon Market Kolar, Karnataka.
- ▶ M/s Ramanagaram Silk Reelers Welfare Association, Ramnagaram, Bangalore (Rural), Karnataka.
- ▶ M/s Kolar Silk Reelers Industrial Cooperative Society Ltd., Kolar Dist., Karnataka.
- ▶ The Progressive Silk Reeler's Industrial Cooperative Society Ltd., Sidlaghatta, Karnataka.
- ▶ M/s Karnataka State Multiend Silk Reelers Welfare Association (Regd), Ramnagaram, Bangalore (Rural), Karnataka.

Anti dumping duty relief to Karnataka industry- Silk Fabric 20-100 gms./meter from China

- Anti dumping duty originally imposed on 31 May 2006 for 5 years
- After sunset review AD duty extended for 5 years on 21 April 2011

Silk Fabric- beneficiary domestic industry of Karnataka

- ▶ The Mysore Power Loom Silk Manufacturers Co-operative Society Ltd., Bangalore, Karnataka;
- ▶ M/s Karnataka Weavers Federation, Bangalore, Karnataka;
- ▶ M/s Bangalore District and Bangalore Rural District Power-Loom Weavers Production and Sales Co-operative Federation Ltd., Dodda Ballapur, Karnataka;
- ▶ M/s Karnataka Silk Industries Corporation Ltd (KSIC), Bangalore;
- ▶ M/s Chamundi Silk Ltd, Bangalore.

Countervailing Measures

Basis

- WTO Agreement on Subsidies and Countervailing Measures (ASCM)

Definition of subsidy Article 1 ASCM

- Financial Contribution
 - Grants, loans, equity
 - Government revenue due is foregone
 - Government provides goods or services other than general infrastructure
- Benefit is conferred

-
Financial contribution by government or public body within the territory of the country

Direct transfer of funds
Grants
- Loans

Potential direct transfer of funds/liabilities
- Loan guarantee

Government revenue, otherwise due, is foregone
- Tax

Government provides goods or services

Government purchases goods

Government entrusts, or directs a private body to undertake above functions or pays to a funding mechanism

Concept of Benefit

- Cost to government v. benefit to recipient

Benefit = advantage (to recipient), not cost to government

Issue: “whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution.”

Basis for comparison = marketplace

Issue: Is the financial contribution “provided on terms which are more advantageous than those that would have been available to the recipient on the market.”

Concept of Benefit (Contd.)

- **Govt. equity infusions** do not confer a benefit unless: “the investment decision can be regarded as inconsistent with the usual investment practice (including ...risk capital) of private investors in the territory of that Member”
- **Govt. loans** do not confer a benefit unless: “there is a difference between the amount that the firm receiving the loan pays on the Govt. loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market.”

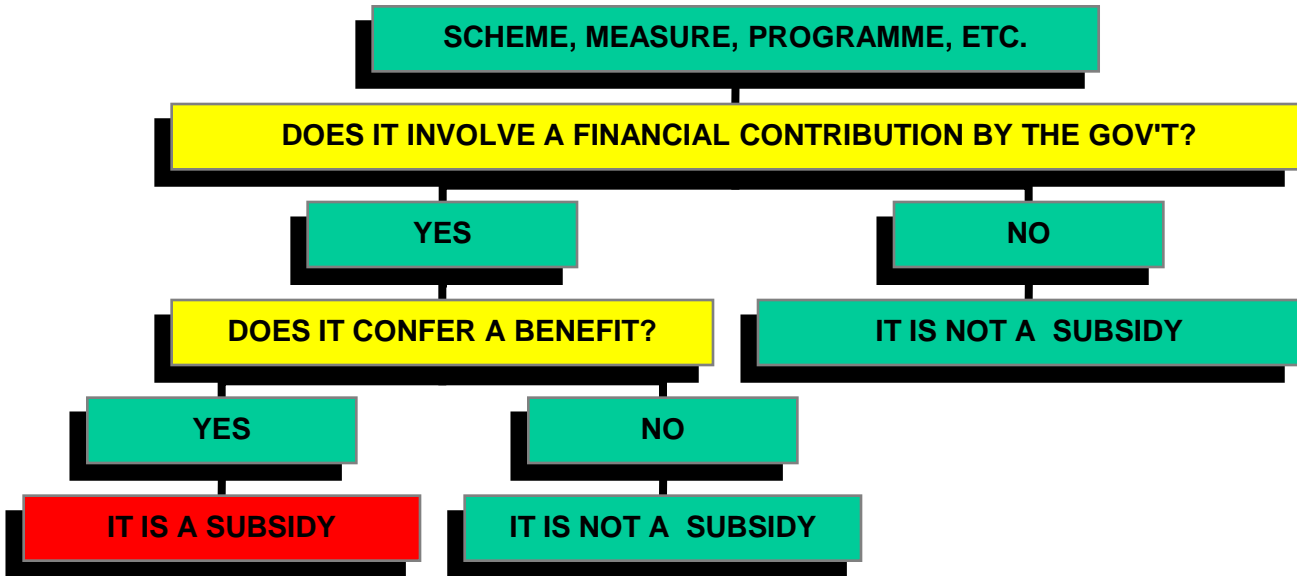
Concept of Benefit (Contd.)

- **Govt. loan guarantees** do not confer a benefit unless: “there is a difference between the amount the firm receiving the guarantee pays on a loan guaranteed by the Govt. and the amount the firm would pay on comparable commercial loan absent the Govt. guarantee.
- **Govt. provision of goods or services** does not confer a benefit unless for less than adequate remuneration based on prevailing market conditions

Concept of Benefit (Contd.)

- **Govt. purchase of goods** does not confer a benefit unless: for more than adequate remuneration based on prevailing market conditions.

ELEMENTS OF A SUBSIDY



Concept of Specific Subsidy

▶ Specificity

- Certain enterprises,
- industry or
- regions

▶ De facto

OR

▶ De jure

Specific Subsidies – de-jure

- A subsidy is de-jure specific if
 - ❖ Access to the subsidy explicitly limited to “certain enterprises” (covers enterprise, industry and regional specificity)
- If access is limited based on objective criteria then it may not be a specific subsidy – **conditions apply**
- **Prohibited subsidies are deemed specific**
- Specificity to be determined with reference to the jurisdiction of the granting authority.

De-facto Specificity -2.1(c)

- Notwithstanding any appearance of non-specificity, the subsidy may in fact be specific. Following factors may be considered
 - ❖ Use by a limited number of enterprises
 - ❖ Predominant use by certain enterprises
 - ❖ Granting of disproportionately large amounts to certain enterprises
 - ❖ Manner in which discretion has been exercised.

Subsides...

- ▶ Very sensitive matter in international trade relations
 - On one hand, subsidies evidently used by governments to pursue legitimate objective of economic and social policy.
 - On the other hand, subsidies may have adverse effects on the interests of trading partners, whose industries may suffer from unfair competition
- ▶ Subsidies: can distort trade flows if they give an artificial competitive advantage to exporters or import competing industries.
- Examples of subsidies: aid to the poor, aid for technological development, special aids for education & health, aid to disadvantaged groups and regions, food subsidies, fertilizer subsidies, industrial subsidies, fuel subsidies etc.

Categorisation of subsidies

- **Non-actionable subsidies:** Non specific subsidies
- **Prohibited Subsidy:** – Art. 3: Local content and exports subsidies.
- **Actionable subsidies:** specific subsidies that cause adverse effects

Non-actionable subsidy

- No action can be taken against subsidies that are non-specific - determined on the basis of
 - ❖ Eligibility based on objective criteria or conditions
 - ❖ Eligibility automatic, criteria strictly adhered to
 - ❖ Criteria are neutral, economic in nature and horizontal in application
 - ❖ No predominant use by certain enterprises
- Up to 1999 specific given for R &D, assistance to disadvantaged regions and for environmental purposes were non-actionable. Now lapsed

Prohibited Subsidies

- **Local content** subsidies: subsidies contingent upon use of domestic goods over imported goods
- **Export subsidies** prohibited "except as provided in the Agreement on Agriculture" (Article 3 SCM Agreement)
- ❖ *Subsidies contingent upon export performance, including those illustrated in Annex I*
- ❖ *Subsidy is tied to actual or anticipated exportation or export earnings*

Export subsidies

- General prohibition
- Exceptions
- Developing countries
 - LDCs
 - Developing countries
 - - Annex VII (21 countries including India)
 - - non-Annex VII

Domestic content subsidies

- Subsidies contingent upon use of domestic over imported goods

Prohibited Subsidies: Remedy

- Remedy through DSU
- Complaining country needs to establish that prohibited subsidy is being granted
- PGE may assist the panel – existence and nature of the subsidy
- Defaulting member required to ***withdraw the subsidy without delay*** or face counter-measures

Actionable Subsidies

Actionable subsidy – link with specificity

- ASCM provides that a subsidy shall be actionable only if such a subsidy is **specific and causes adverse effects**

Adverse effects of the subsidy – 3 examples

- Serious prejudice
- Injury to domestic industry
- Nullification and impairment

Adverse effects – SERIOUS PREJUDICE

- Serious prejudice – effect of subsidy is:
 - ❖ Imports of like product displaced or impeded in the market of subsidising member
 - ❖ Exports displaced or impeded in third country market
 - ❖ Significant price undercutting, price suppression, price depression or lost sales of another member
 - ❖ Increase in world market share for the subsidised primary product of the subsidising country

ANTI-SUBSIDY (COUNTERVAILING DUTIES)

- **To deal with the trade distortion due to Government subsidies**
- **Action is primarily oriented against the policies and programmes of the Exporting country**
- **Injury and Causal link must necessarily be proved**

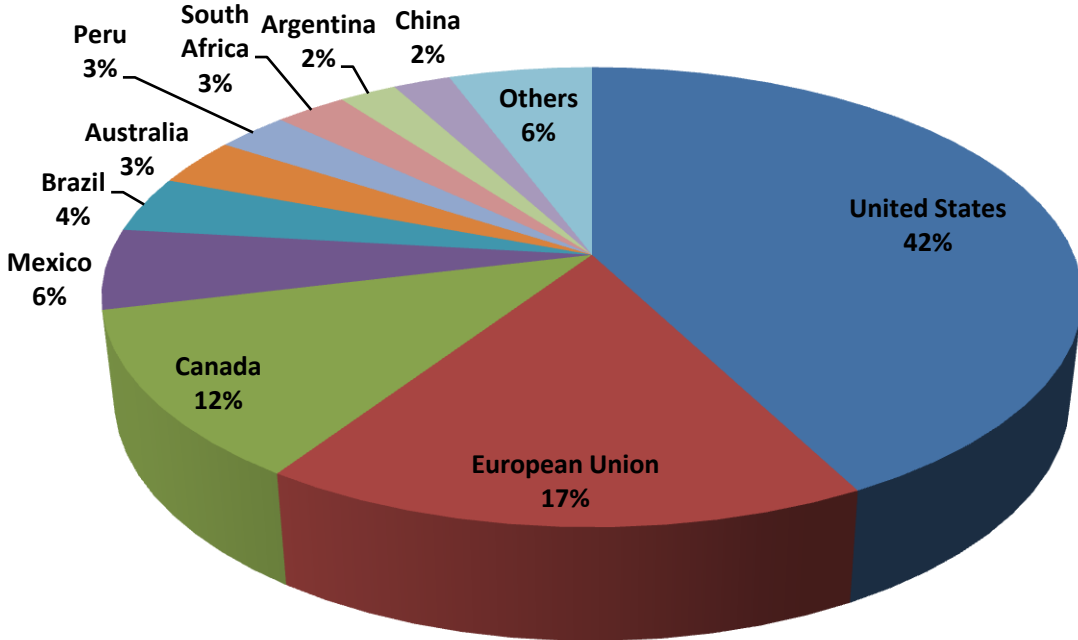
CVD Measures taken by Members from 1-1-1995 to 30-06-2013

Country	Number of Measures imposed
Canada	21
EU	31
Mexico	10
Brazil	7
Australia	6
Peru	5
South Africa	5
US	79
Total	182*
*Above are main users of CVD Measures. India has not imposed any CVD Measure	Source: WTO

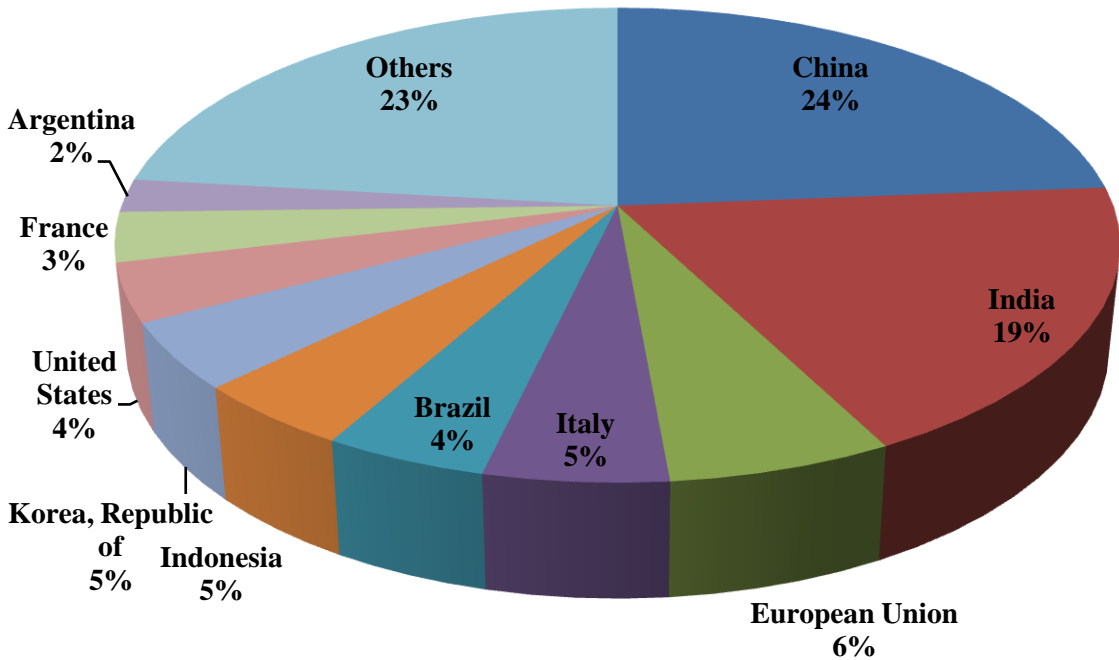
CVD Measures imposed against exporting countries from 1-1-1995 to 30-06-2013

Exporting Country	Number of Measures
China	45
Brazil	8
EU	11
India	33
Indonesia	8
Canada	3
US	7
Italy	9
South Korea	9
(Out of total 182)	Source: WTO

Share in Countervailing Measures : By Reporting Member



Share of exporting countries in Countervailing measures



Countervailing Duty Investigation

- Legal basis – GATT Article VI and ASCM Articles 10-23
- Objective- to determine the existence and degree of alleged subsidisation
- Basics of injury and causality are similar to those in anti-dumping investigation.
- However, pre-initiation consultations with the exporting country provided for in Article 13.1.
- Govt. of the exporting country actively involved

CVD Investigations - Framework

- A measure covered by Agreement?
 - ❖ Subsidy?
 - ❖ Specificity?
- If a specific subsidy, what type?
 - ❖ Enterprise, industry, regional, or Article 3 prohibited subsidies?
- *Ad valorem* subsidization > *de minimis*?
 - ❖ Special and differential treatment?
- Injury and Causation?

CVD investigation: 2- fold evidence gathering

- Evidence on subsidisation, specificity and amount of subsidy
 - ❖ Mainly from questionnaire response for the exporting country, exporters and during verification visit of the exporters.
 - ❖ Objective- to determine the existence and degree of alleged subsidisation
- Evidence on injury and causality
 - ❖ Mainly from questionnaire response of the domestic industry

CALCULATING AMOUNT OF SUBSIDY

Calculations must be done programme-by-programme/subsidy-by-subsidy

- **Determine** amount of subsidy provided to/received by company in question under a given programme
- **Calculate** rate of subsidization during POI: Subsidy amount in POI / relevant sales (vol. or value)
- **Calculate** the rate of subsidisation during POI for each programme
- **Calculate** the total rate of subsidisation during POI for all programmes
- **Determine** if the total rate of subsidisation exceeds de minimis

Safeguard duty

- Against surge in imports
- Temporary measures
- Global safeguard measures
- Apply to all countries- except developing countries having less than 3% share in imports
- Bilateral Safeguard measures under FTAs
 - Specific to the trading partner

Role of States in Trade Remedy Measures

- Alerting Department of Commerce in case of surge in imports which is causing injury to domestic industry
- What trade remedy measure can be taken?
- Anti dumping or CVD or Safeguard Duty

Role of States in Trade Remedy Measures

- Data gathering-challenges
- Identifying domestic industry
 - Challenges in case of cottage/ fragmented industry, agricultural products, plantation crops
- Gathering industry –wide data for establishing injury
- Role of private sector/Industry Associations-examples Anti dumping duty on silk yarn and silk fabric

Questions ???

Thank YOU