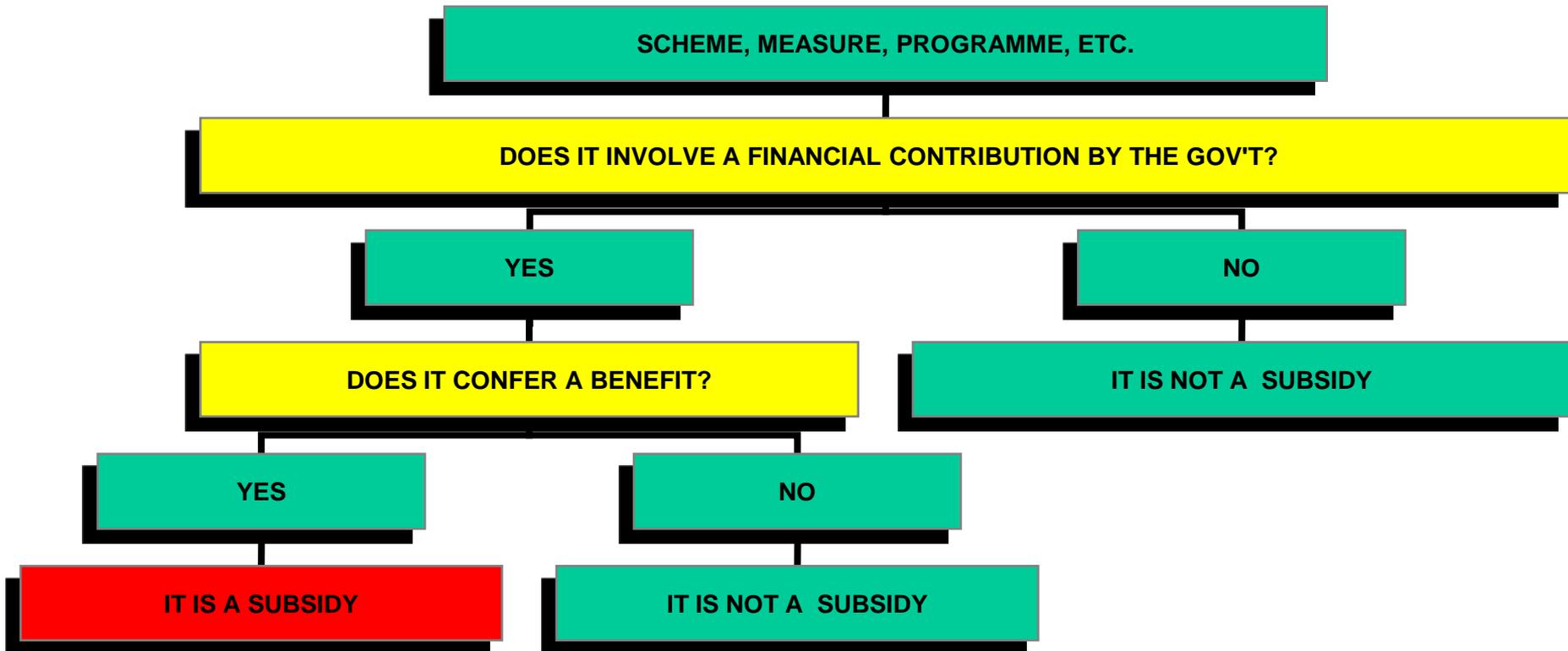


Countervailing Duty Investigations

Presentation by
Abhijit Das
Professor and Head
Centre for WTO Studies, IIFT

ELEMENTS OF A SUBSIDY



- *MAIN STEPS IN CVD INVESTIGATIONS*

Countervailing Duty Investigation

- Legal basis – GATT Article VI and ASCM Articles 10-23
- Basics 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)

CALCULATION OF TOTAL SUBSIDY AMOUNT

- **Agreement foresees two bases to calculate total subsidy amount in CVD context**
 - **Benefit to recipient** (how much advantage to the recipient, compared with what it could obtain on the market) (Art. 14 Guidelines)
 - **Cost to government** (how much did it cost the government to provide the subsidy) (no guidance in Agreement)

SCM SUBSIDY CALCULATION RULES

SCM Agreement tells only part of the story

- **Article 14 Guidelines** - only relevant for determining (total) amount of benefit
 - Establish principle of market as comparator for determining and measuring benefit
 - Provide specific guidance in this respect for four kinds of financial contribution
- **No guidance** on how to translate total benefit amounts into per unit or *ad valorem* subsidization rates

ARTICLE 14 GENERAL REQUIREMENTS

- **If benefit to the recipient approach chosen**, methodology must be provided for in legislation or regulations
- **Application in each individual case** of benefit to recipient methodology must be transparent and adequately explained
- **Agreement contains no similar rules** in respect of use of cost-to-government methodology

Calculation of amount of the subsidy

Pass through of benefit

- The benefit of a subsidy may pass through from the recipient of the financial contribution to other entities.
- Even if the ultimate recipient of benefit has not received the financial contribution, a subsidy would exist if in fact some one has received it
- Recipient of financial contribution and recipient of benefit could be different.
- Establish pass through before countervailing indirect subsidies

Steps in Calculating the Subsidy

- A. Calculation should reflect the amount of subsidy found to exist during the period of investigation and not simply the face value of the financial contribution.
- B. Check whether benefit is expensed during period of investigation. Otherwise allocate
- C. Calculate per unit subsidy (Article 19.4) during the period of investigation for each scheme
- D. Arrive at the total per unit subsidy for all schemes.

A. Calculation of Certain Types of Subsidy

- Grant
- Provision of equity capital
- Loans
- Loan guarantees
- Provisions of goods and services by the government
- Purchase of goods by government

A. Grants

- Direct Transfer of funds :Amount received
- Tax exemption: Amount of tax payable at applicable rate
- Tax reduction: Amount of tax payable at applicable rate – tax paid
- Accelerated depreciation: Amount of tax payable under normal depreciation schedule – amount actually paid
- Interest rate subsidies: Amount of interest saved by the recipient
- In all above cases add an amount for interest during period of investigation.

A. Equity infusion: ARTICLE 14 GUIDELINES

Equity infusions - Do not confer a benefit unless:

- “the investment decision can be regarded as **inconsistent with the usual investment practice . . . of private investors** in the territory of *that Member*”
 - share price, if available
 - risk / return
- Subsidy = Price paid by the government for the shares – normal market price for the shares

Loans: ARTICLE 14 GUIDELINES

Loans - Do not confer a benefit unless:

- “there is a *difference* between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a **comparable commercial loan of commercial benchmark**”

A. Loans from the Government Art 14 (b)

- Subsidy = Interest normally payable on comparable commercial loan during period of investigation – amount of interest paid
- Comparable commercial loan: a loan of a similar amount with similar repayment period obtainable by the recipient from a representative private bank operating on the domestic market
- Commercial interest rate
- ❖ Preferably established on the basis of the rate actually paid by the concerned company on comparable loan from private bank.
- ❖ If not, then interest paid on comparable loans to companies in similar financial situation in the same sector/in any sector

Loan Guarantees: ARTICLE 14 GUIDELINES

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 government and the amount the firm would pay on a **comparable commercial loan** absent the government guarantee”
- Adjust for any difference in fees

A. Loan Guarantee Art. 14 (c)]

- If no guarantee fee paid
- ❖ Subsidy= amount of interest payable for comparable loan in absence of government guarantee – amount of interest paid on the guaranteed loan.
- If guarantee fee paid
- ❖ No subsidy if fee is sufficient to enable the guarantee program to cover all its costs and earn a reasonable profit margin
- ❖ If fee is not sufficient to enable operation on a commercial basis then treat as if no guarantee fee paid.

Government Provision of Goods and Services: ARTICLE 14 GUIDELINES

Government provision of goods and services does not confer a benefit unless:

- For *less* than adequate remuneration
- Based on **prevailing market conditions** in the country of provision

A. Provision of Goods and Services by the Government- Art. 14(d)

- Subsidy = Adequate remuneration for the product/service in relation to prevailing market conditions in the domestic market – price paid by the firm
- Adequacy of remuneration
- ❖ Establish that same goods/services provided both by government and private operation

Government Purchase of Goods: ARTICLE 14

GUIDELINES

Government purchase of goods does not confer a benefit unless:

- For *more* than adequate remuneration
- Based on **prevailing market conditions** in country of purchase
- Jurisprudence - 3 exceptions permitting out of country benchmarks
- ❖ Government monopoly supplier
- ❖ Predominant role of the government in the market
- ❖ Government determines the market price

A. Purchase of Goods by Government

- Subsidy = Price paid for the like product by government – highest price offered for a comparable purchase of the same goods by the private sector
- If concerned company makes no comparable sales to private operators, then
- ❖ Subsidy = Price paid for the like product by government – price paid by private operators to comparable companies in the same sector / in the economy as a whole

PERSISTENCE OF BENEFITS OVER TIME

- Benefits from certain subsidies can be viewed to persist beyond the period in which received.
 - For **purchase of fixed assets** - benefits over full useful life of the assets.
 - **Large, non-recurring** subsidies - analogous.
 - **Subsidized loans** - benefits over life of loan.
- Benefits from other subsidies can be viewed as fully used/exhausted during the period in which received (certain tax subsidies; **small, non-recurring** subsidies)

HOW MUCH SUBSIDY BENEFIT IN POI?

- For subsidies with **persistent** effect, **ALLOCATE** total subsidy amount over multi-year period.
- For subsidies with **non-persistent** effect, **EXPENSE** total subsidy amount in POI

SCM Agreement contains no rules on this

B. Expense Vs. Allocation

- Under what circumstances should subsidies be allocated over some multi-year period, versus expensed during a single year?
- In absence of allocation
 - ❖ A large subsidy would have no effects beyond the year in which granted
 - ❖ Subsidization amount would be overstated in certain cases.

B. Three presumptions for Allocation

- Subsidies linked to purchase of fixed assets to be allocated.
- R&D subsidies to be presumptively allocated except, when demonstrated that doing so is inappropriate.
- Non-recurring subsidies should be presumptively allocated, except when demonstrated that doing so is inappropriate.

B. General Principles for Allocation

- Affirmative answers to any one of the following would normally point towards allocation
 - ❖ Whether the purpose of the subsidy was for purchase of fixed assets
 - ❖ Whether non-recurring and / or large
 - ❖ Whether oriented towards future production
 - ❖ Whether consisting of equity infusion
 - ❖ Whether carried forward in recipients accounting records.

C. Allocation of Subsidy to per unit of Like Product

- If export subsidies, then amount attributed to POI may be divided by export volume during POI
- For non-export subsidies domestic plus export sales in POI to be used as denominator
- If benefit of subsidy not limited to a particular product, total recipient sales to be used as denominator.

D. Total per unit subsidy

- Add per unit subsidy for all schemes to arrive at the total per unit subsidy

Definitive Countervailing Duty

- Imposed after all requirements fulfilled
- Imposed on products from all sources found to be subsidized and causing injury –exceptions for de minimis subsidies (1% for developed and 2% for developing countries) and negligible volume (4%/ 9%).
- No duty in excess of amount of subsidy.
- Restriction on double remedy to address the same situation of dumping and subsidisation

Duration and Review

- Duty to remain in force as long as and to the extent necessary to counteract injurious subsidization.
- Review possible for examining whether continued imposition of duty is necessary to offset subsidization, whether injury would be likely to continue or recur if the duty were removed or varied
- Sunset review not later than 5 years from impositions.

Thank you