# REPORT OF THE INTERNATIONAL CONFERENCE ON TRADE REMEDY MEASURES

**9-10 APRIL 2015**

**ORGANIZED BY THE CENTRE FOR WTO STUDIES, INDIAN INSTITUTE OF FOREIGN TRADE, NEW DELHI**

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## International Conference on Trade Remedy Measures: 9-10 April, 2015

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|---|---|
| Ist Row - (L to R) | Prof. Abhijit Das, Head, CWS, Mr. J. K. Dadoo, Joint Secretary & Designated Authority, India, Mr Paul Piquado, Assistant Secretary, US Department of Commerce, Dr. Surajit Mitra, Director, IIFT, Mr. J. S. Deepak, Additional Secretary, Government of India, Mr. Johann Human, Director, Rules Division, WTO, Prof. Mukesh Bhatnagar, Professor, CWS |
| IInd Row- (L to R) | Mr. Han Yong, China, Mr. Saibal Sarkar, DGAD, Ms. Zhao Hui, China, Ms. Qi Xin, China, Ms. Dona Ghosh, DGAD, Ms. Shubhra, DGAD, Ms. Michele Govier, Canada, Mr. Dale Seymour, Australia, Mr. G.R Wadhwa, DGAD, Mr. I.P Singh, DGAD, Ms. Tripti Chouhan, Research Fellow, CWS, Mr. Steve Presing, USA |
| IIIrd Row- (L to R) | Mr. Demos Spatharis, EU, Mr. Woon-Ho Lee, Korea, Mr. Edwin Vermulst, VVGB – Avocats, Mr. D. P. Mohapatra, DGAD, Mr. S. S. Das, DGAD, Mr. Osamu Umejima, Japan, Ms. Lisa Foss , USA, Mr. Ryan Rhodes, USA, Mr. Gandharb Pradhan, DGAD, Mr. N. I. Chowdhury, DGAD, Mr. Satyan Sharda, DGAD, Mr. M. K. Sahoo, DGAD |

## Introduction

The Centre for WTO Studies, IIFT mooted the idea to hold an international conference on trade remedy measures on 9-10 April 2015 with a view to focusing on some key issues in the imposition of Anti-dumping duty. The conference, first of its kind organized by the IIFT, was a resounding success with participation from some key active users of Trade Remedy Measures viz., the US, EU, Canada, Brazil, China, South Korea, Australia and India. The conference benefitted with the presence of Dr Surajit Mitra, Director, IIFT, Mr. J.S. Deepak, Additional Secretary, Department of Commerce, Mr. J.K. Dadoo, Head of India's Investigating Authority, Mr. Johann Human, Director, Rules Division, WTO, Mr Edwin Vermulst and Mr Osamu Umejima.

The objectives of the conference were twofold: first, to encourage free and frank discussions on the key issues confronting the investigating authorities while imposing anti-dumping measures and, second, while providing a platform for discussion, to establish an international network amongst practitioners, academia, legal experts to encourage exchange of views on trade remedy measures. India being an active user of anti-dumping measures, it is all the more appropriate that such discussions take place in an open and constructive environment in an academic institution like the IIFT. There is uncertainty as to whether Doha Round negotiations in the area of Rules will resume and, even if these resume, what will be the level of ambition to resolve some of the key issues. Considerable work had happened on some of the contentious issues being discussed in the Negotiating Group on Rules (NGR) such as scope of the product under consideration, anti-circumvention, non-attribution analysis, sunset reviews, lesser duty rule, public interest, etc. The purpose of the conference was not to find a solution to these issues, but to continue and enliven the debate on these issues for a better informed discussion in the times to come. From that perspective the effort to organize this conference was much appreciated by all. The presence of a large number of Indian law firms, industry and academia in the conference enriched the deliberations.

Centre for WTO Studies gratefully acknowledges the efforts of Dr. James J. Nedumpara, Associate Professor and Ms. Adhiti Gupta, Research Fellow, Centre for International Trade and Economic Laws, Jindal Global Law School, rapporteurs of this conference, for preparing a meticulous record of discussions held in the conference and preparing this report. Programme schedule of the conference is in Annexure-1 of the report and the list of participants is in Annexure-2.

**ABBREVIATIONS**

| | |
|---|---|
| AD | Anti-dumping |
| ADA | Anti-dumping Agreement |
| ADIS | Anti-Dumping Information Service |
| AFA | Adverse Facts Available |
| CAMEX | Chamber of Foreign Trade |
| CBSA | Canada Border Services Agency |
| CIF | Cost, Insurance and Freight |
| CITT | Canadian International Trade Tribunal |
| CVD | Countervailing Duties |
| DECOM | Department of Trade Remedies |
| DGAD | Directorate General of Anti-Dumping and Allied Duties |
| EU | European Union |
| FAN | Friends of Anti-Dumping Negotiations |
| FTA | Free Trade Agreement |
| GVC | Global Value Chain |
| HTS | Harmonized Tariff Schedule |
| IA | Investigating Authority |
| LDR | Lesser Duty Rule |
| METI | Ministry of Economy, Trade and Industry |
| MOFCOM | Ministry of Commerce People's Republic of China |
| PUC | Product Under Consideration |
| ROCE | Return on Capital Employed |
| SEAE | Secretariat for Economic Monitoring |
| S,G & A | Selling, General and Administrative Expenses |
| SIMA | Special Import Measures Act |
| TPP | Trans-Pacific Partnership |
| TRU | Tax Research Unit |
| TTIP | Trans-Atlantic Trade and Investment Partnership |
| USA | United States of America |

| | |
|---|---|
| USDOC | United States Department of Commerce |
| USITC | United States International Trade Commission |
| WTO | World Trade Organization |

## EXECUTIVE SUMMARY

The International Conference on Trade Remedy Measures was held in New Delhi on April 9-10, 2015. It was organized by the Centre for WTO Studies, Indian Institute of Foreign Trade. It saw wide participation from investigating authorities from the leading trade remedy users such as the United States of America (USA), European Union (EU), China, Brazil, South Korea, Japan, Canada, Australia and India. The various sessions discussed some of the most contentious issues in the use of trade remedies and officials from different jurisdictions shared their practices and experiences on these issues. The audience included legal practitioners, government officials, policy makers and academicians in the field of trade remedies, which led to rich and engaging discussions. Some of the important themes discussed in the conference were as follows:

### DEFINING SCOPE OF PRODUCT UNDER CONSIDERATION

Different investigating authorities discussed their domestic regulations dealing with defining the product under consideration (PUC) observing that product scope was key to any investigation; however, a too narrow or too broad a definition would be problematic. All authorities agreed that the final prerogative of defining the PUC rested with the Investigating Authority (IA) and not the complainant. However, authorities differed on the various parameters which are used to define the PUC. The discussions also touched upon the issue of whether the scope of the PUC gets refined during the investigation or not

### ANTI-CIRCUMVENTION ENQUIRIES

Countries with anti-circumvention provisions in their legal framework shared their approaches for dealing with the problems of circumvention of anti-dumping (AD) and countervailing duty (CVD) measures. They also gave examples of cases of anti-circumvention inquiries from their jurisdiction. The authorities agreed that cases of pure transhipment should be considered as circumvention. Completion and assembly of the product in the home country or a third country and slight modification of the product were also seen as common modes of circumvention. It was further discussed whether unilateral anti-circumvention legislation was WTO consistent in the light of the absence of WTO rules in this area at present.

### SAMPLING IN ANTI-DUMPING INVESTIGATION AND ANTI-DUMPING MEASURES WHETHER EXPORTER SPECIFIC OR EXPORTER/PRODUCER SPECIFIC

Legal provisions and practices in various jurisdictions were discussed. In all jurisdictions, except India, the AD duties are producer specific and there is no practice of levying a combination duties, i.e., different duty rates for different exporters linked with the same producer. The core issue was whether a "pure" unaffiliated trading company should be given an individual margin of dumping or a "bundled" rate together with the producer concerned.

### USE OF FACTS AVAILABLE

Different circumstances in which the concepts of "facts available" and "adverse facts available" are applied were discussed. Authorities agreed that the use of these concepts was greatly dependent on the particular facts and circumstances of the case at issue. There was a view that the use of facts available was a tool of last resort; however, it was observed that there still existed a perception of the abuse of this concept in various jurisdictions.

### SUNSET REVIEWS

There was a general view that the sunset review provisions under the Anti-dumping Agreement (ADA) are weak. Provisions of sunset reviews were criticized from the exporter's perspective,

especially in relation to the fact that the AD Agreement did not provide evidentiary standards for initiating a sunset review; it was felt that the sunset reviews are routinely initiated without positive evidence.

LESSER DUTY RULE

The discussion on lesser duty rule (LDR) reflected the contrasting positions of WTO members on the role of trade remedy measures and the extent of the application of AD/CVD measures. Whereas India and Brazil focused on refining the application of the LDR, the United States openly spoke about their differences in implementing this concept. It was noted that there were variations in the methodology used to calculate the non-injurious price (NIP). For instance, in the determination of NIP, India calculated a fair return based on 22 percent return on capital employed (ROCE), whereas Brazil used a profit margin which was expressed as a percentage of the cost of production.

PUBLIC INTEREST EXAMINATION

Jurisdictions including Canada, Brazil and EU implemented the public interest provisions in their domestic law, but there were wide disparities in the use of such provisions. While separate public interest inquiries could be initiated on a case specific basis in Canada and Brazil, passing the Union interest test is a necessary condition to impose an AD or CVD measure in the EU. However, across jurisdictions it was seen that modifying or preventing the imposition of a measure on public interest grounds was an exceptional event and not the normal practice. It was also noted that the United States was opposed to having public interest provisions in their domestic or WTO law.

GLOBAL VALUE CHAINS & ANTI DUMPING AGREEMENT

In relation to Global Value Chains (GVCs), there was a wide consensus that anti-circumvention rules could be useful, to an extent, in addressing the issues posed by GVCs in AD investigations.

GLOBAL SAFEGUARDS v. BILATERAL SAFEGUARD MEASURES UNDER FTAs

The contentious issues were on the exclusion of FTA partners from global safeguard measures and how such a practice could be consistent with Article 2.2 of the Safeguards Agreement. Article 2.2 provides that safeguard measures should be applied to products irrespective of the source. A key issue was whether following the criteria laid out by the Appellate Body in the ***US- Line Pipe*** report was sufficient to exclude countries from the application of a global safeguard measure.


***Dr. Surajit Mitra, Director, Indian Institute of Foreign Trade (IIFT) delivering the inaugural address.***


***Mr. J.S. Deepak, Additional Secretary, Government of India addressing the participants***


***Mr. Johann Human, Director, Rules Division, WTO addressing the participants.***

***Day 1: April 9, 2015***

**INAUGURAL SESSION**

1. The inaugural session opened with Professor Mukesh Bhatnagar from the Centre of WTO Studies, Indian Institute of Foreign Trade welcoming all the delegates and participants to the conference.

***Mr. Johann Human***

*2.* This was followed by an address by Mr. Johann Human, Director, Rules Division, World Trade Organization (WTO). Mr. Human noted that this conference was the first of its kind bringing together investigating authorities from the major trade remedy users in the world.

3. Mr. Human noted the interest in the conference from the institutional perspective of the WTO. This was because there were many contentious issues and there is a keen interest to infuse life to the Rules negotiations under the Doha Round. Mr. Human provided a state-of-play of the trade remedy investigations by various WTO Members. His presentation entitled "Trade Remedies: The State of Play" provided certain key statistics and trends in trade remedies in recent times and highlighted the return of multi-targeted investigations especially in the steel industry. Countervailing duty (CVD) investigations also saw a surge with new players such as Brazil, Egypt, Peru and Russian Federation initiating fresh cases. There were also a large number of simultaneous AD and CVD initiations. In safeguards there was a slight increase in investigations in recent times.

4. Mr. Human highlighted four broad topics which could be important for investigating authorities, governments and legal practitioners:

- Increase in the complexity of investigations on account of globalization, nature of products, evolving WTO jurisprudence and domestic court decisions.
- Increasing work burden of investigating authorities (IAs) over time
- Uncertainty in the application of certain methodologies; whether such methodologies will stand scrutiny or not.
- WTO rules on trade remedies apply to all WTO members with equal force. However, some investigating authorities are more sophisticated than others. Members will have to be conscious of the impact of these sophisticated Rules on smaller trading countries, as they have an equal right to the safety net which is presented by the trade remedies. If the Rules are difficult to implement for these countries, the impact may be seen in the Rules negotiations.

***Mr. J.K. Dadoo***

5. Mr. J K Dadoo, Joint Secretary and Designated Authority of Antidumping and Allied Duties (DGAD) noted in his speech the increasing importance of trade remedies. Mr. Dadoo noted the developments India had made in the field in the last twenty years and highlighted its use in sectors such as chemicals and petrochemicals, textiles, fibres, plastics, steel and other metals, automotive products and electrical goods. It was also noted that the most common subject countries of Indian antidumping investigations include the European Union (EU), China, Korea and Taiwan.

6. Mr. Dadoo outlined the statutory role and functions of the DGAD in India. It was noted that the DGAD is only a recommendatory authority in India and that the final decision to impose the duty is to be taken by the Ministry of Finance in the Government of India. His presentation highlighted the five major and three subsidiary challenges often faced by the investigating authorities.

Main Challenges

- Determination of Product under Consideration
- Determination of Domestic Industry
- Determination of individual margins for exporters and producers
- Confidentiality and determination of Confidential Information
- Circumvention of duties by modifying the goods or changing the country of production or export

Subsidiary Challenges

- Type of AD duty to be imposed, whether fixed, reference type or ad valorem duty
- Issues related to transfer pricing
- Allocation of expenses in multiproduct companies if they are producing the PUC and other products. Sometimes the FOB/CIF prices do not match with the customs data.

7. Mr. Dadoo also noted that antidumping investigations in India have become intricate and demanding with increasing complexities; another difficulty was completing these investigations within the prescribed time limit.

***Mr. J.S. Deepak***

8. Mr. J.S. Deepak, Additional Secretary, Department of Commerce, Government of India, delivered the inaugural address. He observed that the Anti-Dumping Agreement is a very important measure to address needs of fair trade and gives authority in specific cases to impose duties beyond the bound rate. He suggested this measure should be used with responsibility and moderation. Member practices in the area differ greatly and there are challenges galore due to lack of uniformity in the use of best practices.

9. The use of AD duty does impact free trade and it is a matter of opinion as to what extent it promotes fair trade. Mr. Deepak reaffirmed India's commitment to multilateralism and sought to clarify that while India may have one of the largest number of antidumping measures in place, it also has the largest merchandise trade deficit. India has a huge and rapidly growing market and with the slowing down of the economy and spare capacity in other parts of the world there is a likelihood that dumping will not only continue but may also grow. India has ambitions to become a large manufacturing power which is borne out of a necessity to provide employment to the youth. This being the case India is committed to the legitimate protection of the domestic industry against dumping and the consequent injury; however, India is committed to the transparent use of AD measures with due diligence. In conclusion, Mr. Deepak proposed a few issues which needed some fresh thinking in relation to AD investigations:

- Extended life of anti-dumping duties in the absence of not-so-well-defined rules for sunset reviews
- Misuse of such mechanism by some members of the industry to ward off competition and to perpetuate monopolies
- Need for public interest examination in AD proceedings

***Dr. Surajit Mitra***

10. Dr. Surajit Mitra, Director, Indian Institute of Foreign Trade (IIFT) in his address highlighted some broad challenges in the use and practice of anti-Dumping. These include:

- Need for comprehensive rules to eliminate constructive ambiguities and gaps which lead to inconsistent application of rules and procedures;
- Lengthy nature of the investigations and the attendant problems to the industry; extended long procedures and the long-time taken during investigations and whether it can be shortened.
- Using antidumping law to address certain problems which could be better addressed by competition law.

11. Dr. Mitra expressed hope that some of these challenges could be addressed in the revived Doha Round of negotiations.

*Professor Abhijit Das*

12. The inaugural session ended with the vote of thanks by Professor Abhijit Das, the Head and Professor of Centre for WTO Studies, Indian Institute of Foreign Trade.

## SESSION I: GENERAL OVERVIEW OF TRADE REMEDY MEASURES

13. The first substantive session provided a general overview of some of the trade remedy practices and concerns among the key users such as the United States, European Union, India, Brazil and Australia. This session was chaired and moderated by Mr. Johann Human who stressed that there is a need for Members to know more about practices of other Members in this area.

### *Mr. Paul Piquado, United States*

14. Mr. Paul Piquado, Assistant Secretary Enforcement and Compliance, US Department of Commerce gave a presentation giving an overview of the US practice of trade remedy measures and institutional framework for the conduct of the investigations. As part of the institutional mechanism, the responsibility for trade remedies is divided between two agencies: the US Department of Commerce (USDOC) responsible for investigating and determining the amount of dumping and subsidization, and the US International Trade Commission (USITC) responsible for determining injury and causal link. He also noted that the members of the USITC are independent. Another notable feature, according to him, was the absence of the public interest test in the trade remedy process, which was needed to avoid external non remedial policy considerations in the decision making process.

15. Mr. Piquado noted that the last several years have been exceptionally busy for the US trade remedy practice. He also said that the U.S. was heading for another busy year with 24 new petitions. He also noted that USDOC focuses on efficient and open proceedings with due process and transparency in implementation of Rules which are critical to fostering support.

16. On the process side, the U.S. has completed the final phase of the online document management system which gives parties the ability to file and access documents from anywhere in the world. He observed that the general approach of the US is to consider all materials available on record to be deemed to be public unless certain information can be classified as proprietary information. Mr. Piquado highlighted the role of procedural fairness as a key principle in the WTO agreements which would also promote confidence in the system. According to him, the role of trade remedy laws is not to serve as a hindrance to trade but help build confidence in fair trade.

17. Mr. Piquado highlighted two areas where there have been significant divergences among WTO members. The two areas are: (i) lesser duty rule; (ii) public interest. The text of the trade remedy statute authorises the government to remedy the full extent of the margin—dumping or subsidization. Mr. Piquado acknowledged the divergent views among the members on how to implement these concepts. However, the U.S. decision not to implement the lesser duty rule reflects the text of the domestic statute; Mr. Piquado noted that the application of these principles reflects a policy choice as these concepts are inherently in tension with the remedial purpose of the dumping and CVD remedies. In addition, the application of lesser duty also raises complex measurement questions and in certain cases even unknowable measurement issues. That even if it was possible to get past the methodological questions to determine injury, it would require Members to possess knowledge as to what level of price would be non-injurious to the domestic industry; creating and implementing a system based on these variables seems quite difficult, especially for authorities with

limited resources, as it substitutes the government's judgment with that of the market place. By contrast fully offsetting the antidumping allows the market to determine the appropriate responses. Mr. Piquado acknowledged that these considerations are very subjective, and noted that the U.S. recognises that other countries might view this differently based on their own objectives.

18. Mr. Piquado also discussed the uniqueness of the retrospective system in accommodating some of these concerns relating to the absence of a lesser duty rule in the U.S. In his view, many observers believed that the main difference between the U.S. retrospective system and others is that the final duties are not assessed at the time of importation in the case of the former. In his view, this may be true of prospective systems as well, since all systems of duty collection are required to provide an opportunity for refund review. In other words, even in a prospective system, duties assessed on importation are not final until the deadline for refund review has passed or the refund review is completed. In a prospective system the exporter needs to pay antidumping duty upon the merchandise entering the customs, but can seek a refund review and might get a refund, if the dumping margin has reduced. If the dumping margin has increased, prospective systems do not seek additional duties to cover the actual amount of duty and they do not change the amount of duty going forward unless there is a separate changed circumstance review. Requests for refund are relatively infrequent in most prospective systems whereas they are routine in a retrospective system as that of the United States. A retrospective system incentivises parties to revise their rates to remove dumping which, according to Mr. Piquado, fulfils the obligation under the WTO not to collect duty in excess of the dumping margin. In short, Mr. Piquado summarised that there are trade-offs between the retrospective system and the prospective system. Though the former is difficult and more burdensome, it is more detailed and provides full access to all documents to all parties and provides a greater access to a robust review system.

***Ms. Michele Govier, Canada***

19. Ms. Michele Govier, Chief of Trade Rules, Canada, gave a brief overview of Canada's trade remedy system. She pointed out that Canada was the first country to have a trade remedy legislation.

20. According to Ms. Govier, the institutional mechanism for the conduct of AD/CVD investigations in Canada is as follows: The Special Import Measures Act (SIMA) and the Regulations constitute the main trade remedy law of Canada. The Department of Finance has policy and legislative responsibility of Canada's trade remedy system. Similar to the U.S., Canada has a bifurcated system with two agencies: the Canada Border Services Agency (CBSA) does the dumping or subsidy investigation and, if the CBSA makes a positive finding of dumping or subsidizing, the Canadian International Trade Tribunal (CITT) examines the injury and causal link aspects. Once the measure is in place, the CBSA is also responsible for duty assessment and compliance. The duration of the investigation is around 7 months; 90 days for preliminary phase and 120 days for final phase.

21. In Ms. Govier's view, Canada's trade remedy system is different from other systems. Canada's AD and CVD investigations are independent from political considerations. When CITT issues the order, there is no further review of it. Canada follows the prospective normal value system, which means that a normal value is given to the exporters, which gives certainty to exporters and if the exporters sell at below normal value, then duty is charged. Canada also has provisions for public interest analysis.

22. Presently in Canada there are 27 trade remedy measures in place (8 of which are AD only and 19 which are AD and CVD measures). The industries affected by the measures are steel, industrial products, agriculture and consumer products. The products that attract ADD constitute a very miniscule fraction of Canada's trade.

23. Ms. Govier also highlighted some of the challenges which Canada faced in the trade remedy practice. These included issues of circumvention, increasing complexity of cases which gives rise to resource management challenges including response to parties in a timely and effective manner.

***Mr. Marco César Saraiva da Fonseca, Brazil***

24. Mr. Marco César Saraiva da Fonseca, Director, DECOM, Brazil, made a presentation giving a general overview of the trade remedy system in Brazil. The trade remedy system was established in Brazil in 1997. There are three trade remedy institutions in Brazil: DECOM (Department of Trade Remedies) is responsible for conducting investigations relating to dumping, actionable subsidies, injury and causality and safeguards; after a determination, the matter is referred to CAMEX (Chamber of Foreign Trade) which is the decision making authority; finally, RFB (Secretariat of Federal Revenue) is responsible for collection of duties. It is noteworthy that the CAMEX conducts the public interest analysis.

25. Mr. Fonseca stated that antidumping constitutes more than 95% of the share of trade remedies. He observed that the number of actions has spiked in 2011 and has maintained an upward trend in 2012 and 2013.

***Mr. J. K. Dadoo, DGAD, India***

26. Mr. J. K. Dadoo, Joint Secretary & Designated Authority gave a presentation of the general overview of trade remedy measures in India. He stated that the Directorate General of Anti-dumping and Allied Duties (DGAD) administers the anti-dumping and countervailing measures in India. The safeguard investigations are conducted by the Directorate General of Safeguards. Around 10 officers handle the entire system in India. The DGAD functions in the Department of Commerce in the Ministry of Commerce and Industry and is headed by the 'Designated Authority'.

27. The Designated Authority's function is to conduct the anti-dumping and countervailing duty investigations and make recommendations to the Central Government for imposition of anti-dumping or anti-subsidy measures. It is the Department of Revenue (Ministry of Finance), which imposes/levies the final duty through a notification within three months of the receipt of the recommendation. Within the Ministry of Finance the imposition of duty is examined in detail by the Tax Research Unit (TRU) before approval by the Finance Minister. The collection of anti-dumping and countervailing duty is also done by Department of Revenue, Ministry of Finance. In the case of safeguards, initiation, investigations and recommendations are done by DG (Safeguards), Department of Revenue, Ministry of Finance. The recommendation of the DG (Safeguards) is examined by the Board of Safeguards in the Ministry of Commerce and the imposition and collection of safeguard duty is by Department of Revenue, Ministry of Finance.

28. The legal framework in India for trade remedy measures consists of the Customs Tariff Act, 1975 and the Rules made thereunder. In respect of the review process, the Designated Authority conducts mid-term reviews and sunset reviews, which may be initiated on its own or upon request. An

application for mid-term review of anti-dumping duties shall not be filed earlier than 12 months from the date of the order of imposition of anti-dumping duties by Department of Revenue. The sunset review may be initiated within a reasonable period of time prior to expiry of anti-dumping duty and the duty may remain in force pending review the outcome of Sunset Review.

29. In terms of timeline for completion of cases as per the domestic statute the time limit for completion of Anti-dumping investigation is 12 months which may be extended up to 18 months by the Department of Revenue. However, as far as possible the investigations are completed within 12 months. The impediments in the investigation are mainly in relation to litigation, data gaps, complexities of the case and limited staff.

30. In relation to subsidy investigation, Mr. Dadoo stated that only one CVD application has come before the Designated Authority in 2014 which is under investigation.

31. In relation to safeguards, Mr. Dadoo observed that safeguards measures could be applied in the form of either safeguard duty or quantitative restrictions and in India presently there were safeguards measures in force for 4 products. Mr. Dadoo also highlighted that the DGAD now has a separate budget and a well-functioning office on Parliament Street in New Delhi.

32. Mr. Dadoo also gave a brief overview of the internal challenges faced by the DGAD, which include:

- Requirement of manpower with increase in anti-dumping cases.
- Need to involve industrial chambers and industry associations in educating industry specially MSMEs on these issues and to establish cells to assist DGAD.
- Creation of Directorate General of Trade Remedies to include defence of cases of anti-dumping and CVD against India in other jurisdictions

**SESSION II: DEFINING SCOPE OF PRODUCT UNDER CONSIDERTAION – EXPERIENCES**

33. Session II focused on product under investigation (PUC). The session was chaired and moderated by Professor Mukesh Bhatnagar of Centre for WTO Studies. He observed that the definition of PUC poses many challenges; that a too narrow and too broad a definition could be problematic.

***Mr. Woon-Ho Lee, Standing Commissioner, Korea Trade Commission***

34. Mr. Woon-Ho Lee, Standing Commissioner, Korea Trade Commission, began his presentation by giving an overview of Product under Consideration (PUC) under the WTO. He observed that neither the ADA nor the domestic regulations define PUC. Mr. Lee referred to Articles 2.1 and 2.6 of the ADA to indicate that the definition of PUC is always linked to the definition of "like product".

35. The Korea Trade Commission uses different expressions for PUC in different phases of the investigation. Before the initiation of investigation it is known as "Product under consideration"; after the initiation of investigation it is "Product under investigation", and at the final decision it is changed to "Product under anti-dumping duty". Some items which may have been included in the scope of PUC may be excluded from the scope of "Product under anti-dumping duty"

36. Mr. Lee observed that defining the PUC is a very important aspect of the investigation and often a significant amount of time is spent on it. It forms the starting point of an investigation and has

a substantial impact on the result of the investigation. The Korean Trade Commission usually defines the PUC narrowly. He further discussed how the scope of PUC is determined in practice and observed that applicant usually have consultations with the IAs before submitting the application. However, during the investigation, the scope of PUC may change to reflect new information. In Korea, it is common for interested party opinion to be included in defining the PUC. However, he recommended that the scope of the PUC should not change during the investigation.

37. The second issue is whether the PUC is a single product or not. According to Article 2.1 of the ADA, the PUC should be a single product. The product characteristics play a key role in determining whether a PUC is a single product or not. For example, black and white televisions and colour televisions were defined as one product in a certain case. As a matter of fact, Korean Trade Commission uses the criteria of sameness or likeness in physical, commercial, functional aspects, and production to make this determination.

38. Mr. Lee discussed the cases of *US – Softwood Lumber* and *Korea – Paper from Indonesia* on this issue. In the *Particle Board* investigation, the applicants were concerned with circumvention and wanted to include coated particle board in the PUC. However, the KTC found that the coated particle board had different physical characteristics and the coating process formed 50% of the cost. Therefore, coated particle boards were excluded from the scope at the stage of consultations with the KTC. In the *Wood-free Printing Paper* investigation, the exporters' opinion was examined after the initiation of an investigation, but not accepted. In *Aluminium Bottle Cans* investigation, the Japanese exporters insisted that products which are not and could not be produced by the applicant should be excluded from the scope of the PUC. The KTC found that for certain products the applicant did not have the facility to produce it and developing such production facility would require significant investment. The scope of PUC did not change during the investigation, but certain cans which could not be produced by using current facilities were excluded at the time of imposition of duties. In the sunset review on *Stainless Steel Bars*, the KTC reduced the scope of the product subject to the imposition of duties as certain kinds of products were not produced domestically and could not be substituted by domestic products as they were superior in function and quality.

***Mr. D.K. Mohapatra, Director, DGAD***

39. Mr. D.K. Mohapatra, Director, DGAD, made a presentation on the scope of PUC with specific reference to the Indian system.

40. According to Mr. Mohapatra, if the PUC is well defined in an investigation, the investigation becomes proper. He referred to the WTO case law in *EC — Salmon (Norway)* and *EC — Fasteners (China)* to reiterate his point that there is no specific definition of PUC either in the WTO treaty or in WTO dispute settlement jurisprudence.

41. That certain critical aspects of an investigation hinged on the definition of PUC, namely, the standing of the applicant, comparison of PUC with domestic like article, determination of non-injurious price, determination of normal value and export price, and consequently the determination of dumping margin and injury margin. According to Mr. Mohapatra, certain factors were used for the determination of PUC such as technical and commercial substitutability, physical and chemical characteristics, raw materials, consumables and other utilities, manufacturing process & technology, product specifications, functions and uses, consumer preferences, and pricing.

42. Drawing the analogy of an accordion, Mr. Mohapatra observed that the determination of PUC should not be either too broad or too narrow. On the issue as to who determines the PUC, it was suggested that the final decision should lie with the IA. It was further noted that once the scope of the PUC is defined, it cannot be expanded but can still be contracted. The presentation also dwelled upon other considerations which could be relevant for PUC definition such as: end-use, whether the domestic industry is manufacturing the like article (product) or not, existence of various types, grade, model, or categories of the PUC defined by the domestic industry from subject country, whether components could serve the purpose of PUC with minimal value addition, whether the domestic industry has opted for a wide definition to avoid the *de minimis* requirements on volume or dumping margin, etc.

43. On the issue of inclusion in the PUC of products which the domestic industry may not be producing or may not be capable of producing, a view was expressed that such products could still be included if it was a like article, is capable of replacing the PUC in the market and has technical and commercial substitutability. A critical aspect is how to determine technical and commercial substitutability; to a large extent it depends on how the PUC is defined. Another issue is whether use of different technologies could influence the PUC definition. In the *solar cells* investigation, the issue was whether solar cells of crystalline and thin film technologies were substitutable. This was answered in the affirmative and use of different technologies was not important as long as the products were technically and commercially substitutable. Another question is whether efficiency level makes the products different. This was addressed in the investigation of USB ports. Yet another question is whether quality parameters make the product types different. In Mr. Mohapatra's opinion this is not very critical and it depends on the cost and pricing of the products. In conclusion, he stated that the IA must be very judicious in defining the PUC and a case-by- case basis approach is required.

***Mr. Han Yong, MOFCOM, China***

44. Mr. Han Yong, Director, MOFCOM, China gave a presentation sharing the Chinese practice on defining the PUC. According to him, the PUC is defined in the very beginning of the investigation and remains in place even after the investigation is over. It is an issue which needs to be resolved at the start of an investigation because it is linked to fairness, effectiveness and efficiency of the investigation and the application of the measure.

45. Mr. Yong maintained that he is not in agreement with the use of the notion of commercial and technical substitutability. However, he noted that significant amount of discretion is exercised by investigating authorities in the absence of clear language in the treaty. According to him the key principle is that the product should be exclusively defined. Recourse was sought to Article 2.1, 2.6 and 5.2 (ii) of the AD Agreement. He also stated that in the case of China, the following factors were considered.

- Tier 1: physical or chemical characteristics, end-use;
- Tier 2: substitutability, competition relationship, HTS number, sales pattern;
- Tier 3: production specification and process, raw materials, packing, quality, etc.

46. Mr. Yong stated that in practice, sometimes, only one factor could be decisive. It is also typical to have certain exclusions from the product scope. As a matter of principle, PUC should be clearly defined and public notice be given and interested parties should be invited to give comments on the product scope. Usually it is easier to narrow the scope, but expanding the scope is more

complicated. Even after the enforcement of the measures, if there is a new product and it is unclear whether it can be included within the PUC, there should be a special procedure to address the same.

47. An issue was raised whether different types/models of the product, semi-finished products, key parts or components, and intermediate products could be included within the scope of a single product. Mr. Yong responded that the answer to this question depended upon their basic characteristics and end-use of the product and whether circumvention could take place in the future.

***Mr. Dale Seymour, Antidumping Commissioner, Australia***

48. Mr. Dale Seymour, Anti-dumping Commissioner, Australia, shared Australia's practice in defining the scope of product under consideration. In his opinion, a clear description of PUC is essential as it is central to determining whether there is an Australian industry producing like goods and also sets the parameters of products to be examined in the exporter's domestic market. The identification PUC also decides to what types of products can be exempt. Mr. Seymour also suggested that the onus is on the applicant to fully describe the PUC. Australia has detailed guidelines and instructions to assist the applicants in defining PUC. A general approach is to avoid using generalized terms and use of scientific nomenclature and instead, provide a sufficiently accurate description.

***Q&A and Floor Discussion***

49. In the Q&A session, the following issues were discussed:

- It was affirmed by the various IAs that the onus to define the PUC lies with the IA and the domestic industry has the prerogative to define it only at the initiation of the investigation. Mr. Mohapatra observed that the PUC defined by the domestic industry was not 'sacrosanct'.
- The issue of change in scope of PUC in review proceedings was discussed. It was observed that in India the scope of PUC was never expanded in a review proceeding. Mr. Yong and Mr. Seymour both stated, based on the practice in their systems, that revisiting the product scope was possible in review proceedings. Mr. Yong also observed that exclusions from PUC often take place later in the investigations as it is not possible to take a decision at the beginning of the investigation, and the issue is sometimes clearly debated between the preliminary and final determinations. He stated that there is a problem of information asymmetry when the IA is defining the PUC, and it depends on a case specific situation.
- On the question whether some products not being produced by the domestic industry should be included in the PUC, Mr. Mohapatra observed that exclusion of a product from the scope of PUC which the domestic industry is not producing but is capable of producing, will be hazardous for the investigation. He also stated that the analysis would be made on case to case basis.
- On the issue of inclusion of intermediate products, components and semi-finished products in the scope of PUC, Mr. Yong observed that this was possible but subject to comments and debate amongst interested parties. If the facts show that these were not imported in the Chinese market, probably they would not be included in the PUC.
- There was also discussion on whether the PUC is identified first or whether it is defined first. A legal practitioner observed that the like product may be vitiated if the PUC is defined on the basis of the imported products in the market. Mr. Mohapatra observed that the applicant takes the lead in in the investigation and first looks outside to see which kind of products are

entering the market, identifies the product and then identifies the PUC. The scope of the PUC gets refined in the scope of the investigation.

**SESSION III: EXPERIENCES OF ANTI CIRCUMVENTION ENQUIRIES**

50. This session was chaired and moderated by Professor Abhijit Das, Head and Professor, Centre for WTO Studies. He recalled an 'ancient' discussion on this topic by highlighting the case of circumvention duties involving *hog bristle paint brush* imported to New Zealand.

***Mr. Paul Piquado, Assistant Secretary, U.S. Department of Commerce***

51. Mr. Paul Piquado, Assistant Secretary (Enforcement and Compliance), U.S. Department of Commerce gave a presentation on the approaches for addressing circumvention of AD and CVD measures. He stated that trade remedy laws exist to give relief to the domestic industry from unfair trade practices; however, if circumvention is allowed to exist, the trade remedy measure could be rendered meaningless. He stressed that if information comes to light that there is misreporting or circumvention, the U.S. authorities would pursue the allegation vigorously.

52. Mr. Piquado observed that issues of circumvention often arise in context of product scope as it is often difficult to include all variants of product merchandise within the PUC. This is often addressed in the U.S. by giving orders to Customs to impose duties on products which the authorities think are included in the scope.

53. The nature and forms in which circumvention is happening has been a matter of debate and there is no universally agreed answer to this question. In the Uruguay Round, an Informal Group on Anti Circumvention was created; however, this group has still not reached a definitive answer to the issues posed in this enquiry. However, there is a broad recognition that marginal alteration being made to the product and in the production or assembly of the product could fall within this enquiry. In the United States, anti-circumvention proceedings are initiated when there are specific allegations from the domestic industry. The four types of circumvention recognized by the U.S. statue are as follows:

- Completion or assembly in the United States;
- Completion or assembly in other foreign countries;
- The minor alteration of merchandise subject to an order; or
- Development of certain merchandise after an investigation resulting in an order.

54. The operation of anti-circumvention proceedings is similar to other proceedings. During the analysis to determine whether there is circumvention, several factors are examined such as the nature of alterations, cost of alterations, uses, physical characteristic of later developed products, expectation of users of products, channels of sales of the product etc. However, it is a fact specific analysis and there are no set thresholds which are established and examination of all relevant factors is crucial.

55. Mr. Piquado gave an example of anti-circumvention inquiry in the Carbon Steel Case in the U.S.. In 1993, the US had imposed AD measures on carbon-steel originating from Japan and Canada. The definition of PUC included a certain maximum percentage of boron levels in the steel. Allegations were made that companies in both Canada and Japan were exporting to the U.S. steel containing a higher percentage of boron than that stipulated in the measure as boron-steel There was a sharp increase in the exports of boron-steel after the imposition of the AD measure. Allegations were made that this was a minor alteration for circumvention of the AD measure. It was alleged that raising the boron content did not have an effect on the characteristics of the steel, that the process of

adding the boron was simple and the costs were minimal. In case of Canada, the U.S. authorities found that there was no change in characteristics between the two types of steel. Before the AD measure was imposed there was no sale of boron-steel and after the imposition of measures there were only exports of boron-steel to the US and there were no domestic sales. Therefore an affirmative finding of circumvention was made. However, in the case of Japan it was found that there was a significant change in the characteristic of carbon steel and there was a valid metallurgical reason for adding boron. Sale of boron-steel had been occurring prior to the imposition of the AD measure and there were both exports and domestic sales occurring, so there was a negative finding of circumvention. This example was discussed to highlight the importance of fact specific analysis in anti-circumvention proceedings.

***Mr. Demos Spatharis, Head of Unit, DG Trade***

56. Mr. Demos Spatharis, Head of Unit, DG Trade , Trade Defense Directorate of the European Commission spoke on the EU experience in anti-circumvention proceedings. He observed that there was no provision in the AD Agreement but a WTO Ministerial Decision sets out the desirability for it. In the EU, Article 13 of the Basic Regulations allows the extension of AD duties if circumvention is taking place. Usually anti-circumvention inquiries take nine (9) months and the imposition of measures is to tackle future imports. That the EU is a prudent user of these measures and excludes genuine users from the ambit of these measures. Most of the anti-circumvention measures are imposed in view of pure transhipments; other activities include change in assembly/completion of products and minor alteration of products.

57. The EU regulation defines circumvention as "… a change in the pattern of trade between some third countries and the EU or between individual companies in the country subject to measures and the EU, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established". He also discussed the specific regulation for anti-circumvention for the classic case of circumvention of assembly/completion of operation which is based on certain thresholds set out in the regulation. He observed that extension of duties was with retroactive effect from the date on which the registration of imports was imposed (initiation date). The level of duty levied is the same as the level of duty which has been circumvented, that is normally the residual duty He also reiterated that exemptions are given to exclude economic operators which did not engage in circumvention practices and genuine producers are not penalized. Exemptions can be granted either during the anti-circumvention investigation or after the imposition of the anti-circumvention measures and have retroactive effect from the date of initiation of the anti-circumvention investigation.

***Mr. Dale Seymour, Antidumping Commissioner, Australia***

58. Mr. Dale Seymour, Anti-dumping Commissioner, Australia, gave a presentation on Australia's views on anti-circumvention investigations. Mr Seymour informed that the legislative framework on anti-circumvention came into place in June 2013. The main types of circumvention activities prescribed in the Australian legislation and regulations are:

- Assembly of parts in Australia;
- Assembly of parts in a third country;
- Export of goods through one or more third countries;

- Arrangements between exporters;
- Slight modification of goods.

59. In Australia, Mr. Seyomour stated that there are two forms of inquiry, one which is subject to a 155 day frame and an expedited inquiry of 100 days. According to him, there has been only one major anti-circumvention matter in Australia till now. In this inquiry five importers identified by the applicant were found to be avoiding the intended effect of the duty by selling the goods without increasing the price commensurate with the total amount of duty payable.

60. Mr. Seymour, also discussed the features of the Anti-Dumping Information Service (ADIS) which is scheduled to be introduced as part of a package of reforms to Australia's anti-dumping system in July 2015. The ADIS seeks to provide economic and market analysis information that will be critical to identifying circumvention activity earlier in the investigation process. According to Mr. Seymour, the new agency will employ analysts who will proactively look for instances of circumvention

**SESSION IV: PANEL DISCUSSION ON INJURY DETERMINATION AND CAUSAL LINK ANALYSIS**

61. Session IV on injury determination and causation was chaired and moderated by Mr. Johann Human.

***Mr. Marco César Saraiva da Fonseca, Brazil.***

62. Mr. Marco César Saraiva da Fonseca, Director, DECOM, Brazil, made a detailed presentation on "Injury and Causation Determination". He informed that in Brazil there were new regulations in anti-dumping, in the form of a decree in 2013.

63. He began by discussing the definition of domestic industry. In the new decree "domestic industry" is referred to as the totality of producers of the domestic like product and where this is not possible and where duly justified, it shall refer to those domestic producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production. Thus a hierarchy is established. He stated that in Brazil, "major proportion" was understood to mean at least 25% of the production in Brazil, with an exception for a fragmented industry. If the application is supported by less than 25% of the domestic production by volume, the application is destined to fail; if it is between 25% and 50%, the application may thrive and if it is supported by more than 50%, the application will generally result in initiation of investigation. Domestic producers related to foreign producers, exporters, or importers and those producers whose collective share of imports of the product is significant may be excluded from the determination of domestic industry.

64. Mr. Fonseca referred to the concept of "subnational domestic industry" in the Brazilian regulations. He gave an example of investigation *on portland cement from Mexico and Venezuela* where the domestic industry was defined as producers located in the North Region of Brazil (comprising the Amazon forest). Due to exceptional circumstances presented by impact of dumping to an isolated region or market, the concept of subnational domestic industry was considered to be highly useful.

65. Mr. Fonseca discussed the concept of cumulative assessment of imports. This is typically done when goods from various countries are subject to simultaneous antidumping proceedings having

coinciding periods of investigation. The conditions applied for cumulative assessment is similar to the terms mentioned in the WTO AD Agreement.

66. Mr. Fonseca observed in relation to material injury that DECOM follows the standards stipulated in the AD Agreement. The determination of injury is based on the basis of an objective examination of the volume of the dumped imports, the effects of the dumped imports on the prices of the like product in the Brazilian market and the consequent impact of these dumped imports on the domestic industry. The volume of dumped imports is examined in absolute terms and in comparison with the total production in Brazil. The consumption in Brazil is also examined. While analyzing the effect of dumped imports on prices, undercutting, depression and suppression are examined. The economic factors and indices examined in the injury determination are similar found in Article 3.4 of the ADA.

67. The injury investigation period in Brazil is usually 5 years and in exceptional circumstances a minimum of 3 years. Mr. Fonseca, also elaborated on the timeline for the domestic investigation. He also mentioned that generally, the information provided by the domestic industry in the application is verified by the authorities. If there is a failure to give sufficient information or there are discrepancies in the information provided by the domestic industry, the investigation is terminated and the domestic industry would have to apply to restart the investigation.

68. Mr. Fonesca stated that only a couple of cases have been initiated based on a threat of material injury and that there is yet to be an investigation based on material retardation of the establishment of industry in Brazil. In Brazil, mere inability to produce a new type of product would not be considered to be a case of material retardation.

69. In the injury and causality determination, Brazil follows the methodology outlined in the AD Agreement. However, with respect to non-attribution analysis, some additional factors are also considered. The volume and market share of the imports are the two main pillars to determine whether dumping had an impact on the domestic industry. Regarding the non-attribution analysis, the new regulation had outlined a few additional factors whose role had to be examined. The factors are: (i) impact of possible import liberalization processes on domestic prices; (ii) captive consumption; and (iii) imports or resale of the imported product by the domestic industry.

70. In the investigation on ***BOPP*** (a type of polypropylene), the main exporters of BOPP were Peru and Ecuador. Due to signing of a Latin American Agreement, Brazil had reduced the level of import duty for this product. There was an expectation that the volume of imports of the product would increase and there would be a change in the price of product. Hence, in the investigation it was held that there was no causal link between dumping and injury from the subject countries.

***Mr. Osamu Umejima, White and Case, Tokyo***

71. Mr. Osamu Umejima, Partner, White & Case, Tokyo Office, and former Director, Ministry of Economy, Trade and Industry (METI), Japan, made a presentation on the exporter's perspective in the causal link analysis in anti-dumping investigations. Mr. Umejima reiterated the importance of transparency and disclosure of data in injury assessment. He noted that disclosure is an important aspect of the injury investigation process, and that disclosures should be made for data for the entire period of investigation.

72. Mr. Umeijima asserted that in the causal link analysis, the authority must first find competition in the market between imports and domestic like products. He observed that while price

comparison and correlation was important it was not in itself sufficient. He gave examples from the steel industry and also relied on WTO jurisprudence in the *China – GOES*, *China – Autos (US)* and *China – X-Ray Equipment* cases.

73. Mr. Umeijima noted that the current thresholds for injury and causation did not even require the imports to be one of the major factors to cause injury. He said that the Friends of Antidumping (FAN) proposal in the Rules negotiations that the dumped imports should be the primary cause of the injury, or "in and of themselves" are causing injury, was preferred from the exporter's perspective. He observed that according to the currently implemented standards on causation even if the imports are only one of the several factors causing the injury, the duty could be imposed.

74. Mr. Umeijima highlighted the difficulties in the non-attribution analysis. According to the Appellate Body, in *EC –Tube or Pipe Fittings*, the IAs are free to choose an appropriate methodology in separating the effects of other factors. Mr. Umeijima noted that in view of this wide discretion, the exporter cannot effectively counter the findings of the IA. He also referred to the jurisprudence in the *US – Countervailing Duty Investigation on DRAMs* where the Panel observed that there was no obligation to quantify the amount of injury caused by alleged subsidized and non-subject imports respectively.

75. He concluded by stating that the amount of anti-dumping duty should be limited to the extent necessary to counteract injury and currently there are no mandatory rules in the ADA to limit the duty to the extent of nullifying injury.

***Discussion***

76. In the Q&A at the end of the session, the following issues were discussed:

- Termination of investigation under Article 5.8 of the ADA was discussed. It was noted that Article 5.8 refers to the satisfaction of the authorities and the sufficiency of information, therefore should not be an obligation of immediate termination of investigation of finding negligible imports. Mr. Fonseca observed that the IA must ensure that it has the correct facts and figures before making this decision.

- In response to a question by a legal practitioner, Mr. Fonseca observed that the domestic industry is obligated to give all information in the application and no further questionnaires are sent for the same. Only an on the spot verification is conducted. If information is not correct or sufficient the investigation is terminated. The domestic industry then has the burden to submit a new petition. However, the same standard is not applicable to an exporter. If after receiving the exporter's response and conducting the verification, data is not matching or sufficient information is not available, the IA still goes ahead on the basis of "facts available" and the investigation is continued.

- Concerning the definition of domestic industry in Brazil, Mr. Fonseca observed that generally all the domestic producers are considered but in some cases not all domestic producers may be supporting the petition. For example, if there is a subsidiary of a foreign holding company, it may be prevented from participating. But after the initiation of the investigation, questionnaires are sent to all the producers in Brazil. If information is not received, the IA will try and get information from industry bodies and associations. If certain producers are not

considered as part of domestic industry, their role will be considered in the non-attribution analysis in causation. This may become problematic, if the producers supporting the application are less than 50%. Mr. Fonseca stated in the case of Brazil a domestic producer is never excluded because it is an importer, part of a foreign company or related to an exporter, although such a possibility is included in Brazil's regulation. He observed that Brazil's new regulation allowed exclusion of those producers whose collective share of imports of the product allegedly sold at dumped prices "is significant" in comparison with their production of the like product; however, there is no guidance available on the meaning of the term "significant".

**SESSION V: PANEL DISCUSSION ON SAMPLING IN ANTI-DUMPING INVESTIGATION AND ANTI-DUMPING MEASURES WHETHER EXPORTER SPECIFIC OR EXPORTER/PRODUCER SPECIFIC**

77. The session was chaired and moderated by Professor Mukesh Bhatnagar. He observed that this was an issue which is often faced by Indian IAs with different scenarios and different combinations of producers and exporters.

***Mr. Demos Spatharis, European Commission***

78. Mr. Demos Spatharis, Head of Unit DG Trade – Trade Defense Directorate, EC gave a presentation on sampling and explained the EU practice. He noted that the provision in the EU regulation relating to sampling was similar to Article 6.10 of the ADA.

79. Mr Spatharis noted that the basic principle was that the largest representative volume of production, sales or exports which can reasonably be investigated within the time available was examined. This was applied for exporters, EU producers, importers and producers in analogue country. Sampling was almost never used to examine product type and transactions.

80. For sampling of exporters the selection criteria is as follows: for exporters, the largest representative of EU exports is taken after also taking into account domestic sales. After the investigation, individual duty rate is levied for sampled companies, average of the sample for non-selected companies and residual duty for non-cooperating companies, which is generally higher than the sample average.

81. For sampling of EU domestic producers, the selection criteria included the largest representative volume of production and sales, geographical spread in the EU based on the specific case (after taking into account small and medium enterprises depending on the product, and product segmentation). For injury assessment, both micro and macro indicators are taken into account.

82. For sampling of importers, Mr. Spatharis observed that, if possible, all the importers were examined and sampling was undertaken only if there were too many importers; that the idea is to encourage importers to come forward. While sampling, care is also take to ensure that importers are not related.

***Mr. Han Yong, MOFCOM, China***

83. Mr. Han Yong, Director, MOFCOM, China, in his presentation dealt with the issue of whether anti-dumping measures should be exporter-specific or exporter-and-producer specific. He observed that this issue is being faced by most IAs and needed clarity. It was an issue of law and fact. Mr. Yong stated that the core issue was whether a "pure" unaffiliated trading company should be

given an individual margin of dumping or a "bundled" rate may be applied to it together with the producer concerned.

84. To address this issue, he examined the language used in Article 6.10 of the ADA which referred to "exporter or producer". This language gave discretion to the IAs. Mr. Yong elaborated by explaining two scenarios: in the first case, the PUC is directly exported by the producer and the AD measure is specific to the producer; in the second scenario, there an intermediate trading company, i.e. exporter which exports the PUC. In the latter, several related factors will have to be considered including the relationship between the exporter and the producer, export transaction process, role and position of that trading company in realizing those transactions and expense coverage and profit recognition process of that trading company. According to Mr. Yong, if the producer and exporter are related, there should be a single dumping margin, driven by the producer. If the producer and exporter are unrelated, then the nature of the transaction between them will have to be examined. In a principal-agent relationship-- the trading company is earning only a commission--the AD measure should be borne by the producer. However, if there is buyer-seller, manufacturer-exporter or OEM relationship, the possibility of a bundled rate can be examined as the trading company has greater power. However, practicality of implementing a bundled rate, such as requirements of customs, will have to be examined. Mr. Yong, concluded by observing that this area had even more complicated issues such as a case where the trading company may be located in a third country which is not subject to the investigation.

***Discussion***

85. In the Q&A at the end of the session, the following issues were discussed:

- The determination of AD rates for the following scenarios was discussed: (1) the exporter co-operates in the investigation, but the related producer does not co-operate; (2) the producer has cooperated, but an unrelated third party exporter does not co-operate. It was pointed out that there are combination duties for producer and a different exporter in India. Accordingly, each set of producer-exporter may have different duty rates. While such combination of duties appears routine in India, Mr. Spatharis observed that in the case of the European Union, in more than 99% of the cases, mostly exporting producers are investigated. In the odd case where the export is done by an unrelated trader, the situation of non-cooperation has hardly arisen. In the case of any non-cooperation, the of "facts available" methodology is used. In the above context, the practice of recommending a combination of duties, i.e., multiple duties for a combination of a single producer and multiple exporters does not arise. Mr. Fonseca added that in the case of Brazil the dumping duty is producer specific for the exporters. He noted that in exceptional cases where the producer cannot be identified, exporter specific duties may be calculated; for example in the case of *imports of garlic from China*, it was impossible to identify the producers of garlic, hence and the margin of dumping was calculated for the exporter rather than the producers. In response to a question, Mr. Spatharis reiterated that the duty is based on the producer and only in an exceptional case was an exporter specific duty considered. Mr. Spatharis drew reference to a rare and exceptional practice that happened several years ago when exporter specific duties were determined especially involving large export trading houses. It was also noted that the problems of on non-cooperation between exporter and producer were not common in market economy cases. However, in non-market economy cases they deal with these issues. Ms. Govier remarked that the Canadian experience was similar to the U.S. experience.

- A fact situation which was discussed was, if there is one producer has co-operated and is exporting for three different channels for the product and only one of the channels and has co-operated, while the other have not co-operated. Mr. Spatharis stated that he had never seen this situation and it would be surprising that a trader which has a business relationship with the producer would not co-operate. However, in this situation the principle of "facts available" would be applied to proceed with the investigation. An official from the USDOC added that this would be a very fact specific analysis.For instance, if the producer does not have control over the other two entities and is making an effort to co-operate, that will be taken into consideration or if there are suspicious circumstances and no rational reason for other exporters not to co-operate, it will be viewed from a different perspective. .

- On the issue of using macro and micro indicators in injury assessment, Mr. Spatharis stated that there was no prohibition under the ADA for this practice. He clarified that the macro-indicators are for the whole EU industry and the micro-indicators are for the sampled industry. The sampled industry may consist of the complainant and non-complainants.

- Another issue which was discussed was the duty rate for a new shipper request. Mr. Spatharis observed that in a sampling case, the new shipper will get the sampling average of the duty rate but in a non-sampling case an individual duty rate.

- The issue of remaking the sample under Article 17.4 of EC regulations was also discussed. The fact situation posed was the following: if out of a sample of 5 exporters, 4 were non-cooperative, what would be done in such a scenario. Mr. Spatharis observed that in the EU practice, the sample cannot consist of 1 exporter and it would be remade to have at least 2 exporters. On the appropriate time at which the sample would be made, Mr. Spatharis observed that as far as it is possible to conclude the investigations within the time limits, remaking of the sample would be considered.

**SESSION VI: TRANSFER PRICING ISSUES IN ANTI-DUMPING INVESTIGATIONS**

86. The session was chaired and moderated by Professor Mukesh Bhatnagar. He observed that the main issue was how to price the inputs which are obtained from related companies in the course of an anti-dumping investigation.

***G. Ramachandran, DGAD, India***

87. Mr. G. Ramachandran, Adviser, DGAD, India, made a presentation on transfer pricing in the context of anti-dumping investigations in India. He particularly examined the issue of determining the export price and normal value in related party transactions. He gave an overview of transfer pricing provisions in the Indian taxation law noting that the key principle is whether the transaction between related parties is at arm's length. Apart from anti-dumping investigations, he noted that this concept is also important in Customs Tariff Act when duty is levied on goods imported from related parties and also under the Central Excise Act when excise duty is levied on goods manufactured and sold to related entities.

88. On the determination of export price in relation to related party transactions, Mr. Ramachandran observed that the DGAD relies on the decision of the concerned authorities under the Income Tax Act and the Customs Tariff Act regarding the valuation of the goods. He stated that the provision of Article 2.3 of the ADA is invoked only when the related party transactions are not

reliable. He stated that if the exporter has pleaded before the Customs authorities that the transaction price is at arm's length, for the purpose of anti-dumping, he cannot be allowed to claim that the transaction was not at arm's length and the first sale price to an independent buyer should be considered. When export price of the goods sold to both related and unrelated parties are compared, and if there are no justifiable reasons for significant variations in price, the export price is ignored. Furthermore, in accordance with the principles incorporated in Article 2.3 of the ADA, price at which such goods were resold to the first independent buyer is considered as export price after adjusting the post importation expenses and reasonable profit.

89. Transfer pricing issues are important in the context of determination of normal value, especially in considering the domestic sales and the cost of production/sales. In the first situation, certain sales by an exporter in the home market would be to related parties. When such sales are made to related and non-related entities, the DGAD compares the prices after considering factors such as terms and timing of such domestic sales. If there is significant variation in prices without sufficient justification, home market sales to related parties are ignored. In relation to the determination cost of production/sales which are integral steps in the dumping investigation, the following aspects are often crucial: (i) exporters purchasing raw materials from related parties; and (ii) pricing of captively produced raw materials. Mr. Ramachandran noted that the DGAD would need to be satisfied that the procurement of inputs is at arm's length price. In this regard, exporters are required to provide documentary evidence to the effect that the raw materials are procured at arm's length price.

90. Transfer of inputs by integrated companies was specifically addressed. When the integrated companies that captively produce the raw materials transfer such raw materials/ inputs at cost to the next process within the same unit, the DGAD considers the cost of manufacture as recorded in the books of accounts plus a margin of 22 percent on the capital employed in the manufacture of the captively produced raw materials. However, in respect of captively produced raw materials transferred to other units, there is a different calculation methodology; the DGAD accepts the price at which captively produced raw materials are transferred to other units as recorded in the books of accounts.

***Discussion***

91. In the Q&A at the end of the session, the following issues were discussed:

- The practice of taking into account a return of 22 percent on capital employed in addition to the cost of manufacture for captively produced raw materials within the same unit was deliberated in the Q& A session. Mr. Ramchandran clarified that this practice was only used for domestic producers and for exporters only the price reflected in the books of account was taken. The basis and appropriateness for taking using 22% return on capital employed (ROCE) was also briefly discussed. It was also pointed out during the discussions that the 22% ROCE is not often a proxy for the operating profit.

- To a question on the definition of related party, it was clarified that the term related party was defined in the AD Agreement only in context of the definition of domestic industry and not exporters. Mr. Ramachandran noted that Indian authorities depend on the related party transactions as identified in the books of accounts. It was also observed that related parties were understood within the broader ambit of transactions in the ordinary course of trade.

**SESSION VII: USE OF FACTS AVAILABLE: ISSUES**

92. This session was chaired and moderated by Professor Abhijit Das, Head and Professor, Centre for WTO Studies. He observed that it is a very contentious issue with many dimensions.

***Mr. Han Yong, MOFCOM, China***

93. Mr. Han Yong, provided an introduction to Article 6.8 and Annexe II of the AD Agreement that deal with 'facts available'. Mr. Yong observed the rules in the ADA on this provision are relatively more detailed when compared to other issues, although it is not free from ambiguities. Mr. Yong said that there was general consensus on two elements: (i) facts available should be used only for filling missing information; (ii) should not be punitive. Some of the issues that posed consideration were:

- What should be the obligations of the IA before using facts available and what would be the consequence if the IA fails to perform its obligations under facts available.
- The criteria for the IA to determine the necessity of missing information and the consequent use of facts available and whether the reason for the information to be missing should form part of this determination
- There are no objective criteria to judge whether the interested party has "acted to the best of its ability". If an allegation of extra burden on the interested party is made, how will it be judged?
- Dealing with information from a secondary source is an issue. How should its reliability and accuracy be determined and whether interested parties should be allowed to comment on it? What should be the scope of the disclosure made pursuant to Article 6.9 of the ADA in relation to secondary information, especially from a confidentiality perspective?
- Another issue was use of adverse facts available (AFA) for non-cooperation. The criteria and circumstances for non-cooperation were not clear. Also, whether non-cooperation should inevitably result in AFA whose consequence is punitive.
- How can a situation of "partial facts available" result in "full facts available" and if the former is adopted, how will it affect other submitted information?
- When determining weighted average margin using sampling methodology whether dumping margin calculated based on "partial facts available" should be excluded and what would happen if all the dumping margins in the sample were based on "facts available"?
- The last issue was how facts available should be used in injury determination and causal link analysis.

***Mr. Steve Presing, USDOC***

94. Mr. Steve Presing, Director, Anti-Dumping Rules Negotiations, US Department of Commerce, made a presentation on the approaches to the use of facts otherwise available, giving the US perspective.

95. Mr. Presing observed that Article 6.8 read with Annexe II required that any information be taken into account, if it is verifiable, submitted in a timely fashion and can be used without undue difficulties. The AD Agreement attempts to strike a balance between the responsibilities of the authorities and the responding parties. It is difficult to pinpoint exactly as to what should be done in each circumstance without offsetting the balance. He observed that the ADA obliges the authority to use information which is verifiable. However, these cannot be viewed in isolation. For example, if there is no cost information available, it is difficult to construct the normal value in the first place. Mr. Presing said that the United States does not consider these situations in isolation. It looks at the information in context of the broader investigation, making a case specific analysis. The authorities

have the obligations and the responsibility to consider the link between the information which is submitted and the missing information. In the U.S. practice, when using AFA or partial facts available, the authorities must explain the reasons for doing so. On the issue of confidential information, Mr. Presing noted that in such details are released to the parties under the Administrative Protective Order and they have an opportunity to comment on it.

96. Mr. Presing noted that the Section 776 of the U.S. Tariff Act, 1930 along with the applicable regulations govern the use of 'facts available'. The circumstances which could result in use of 'facts available' are the following:

- Necessary factual information is not on the record
- An interested party withholds information
- An interested party fails to provide information in a usable format
- An interested party "significantly impedes a proceeding"
- The information cannot be verified.

97. Mr. Presing also outlined situations in which 'facts available' would not be used:

- When a respondent notifies Commerce that it is unable to submit the information, Commerce may try to find an alternative in this situation.
- When the information submitted does not meet all the requirements, but:
    - The information was submitted on time
    - The information can be verified
    - The information can still serve as the basis for our calculations
    - The party acted to the best of its ability
    - Commerce can use the information "without undue difficulty."

98. Mr. Presing also discussed circumstances in which "total" or "partial facts available" would be used. He said that total facts available would be used when there is no response, parties do not allow verification, do not co-operate at all or the response is so deficient that it cannot serve as a basis for calculations. Partial facts available is used when the response is essentially complete, but some data is missing. The missing data must be filled using available information. Gap-filling typically makes use of respondents' own data. For instance, if a company is missing data of some sales and is unable to find information, data from comparable sales at that particular time may be used. Mr. Presing noted that adverse inference are used only in cases where a respondent "fails to cooperate by not acting to the best of its ability" to provide requested information, which is quite a high threshold. He said that the idea of using facts available is to encourage co-operation and participation, so that respondents do not pick and choose the information they wish to supply. Commerce does not wish to use outdated or aberrational data.

99. Examples of sources used for "facts otherwise available" include the respondent firm's own data submitted in the proceeding, the original petition, a final determination in an investigation, any previous administrative review and "any other information placed on the record." Mr. Presing also discussed corroboration of secondary information stressing that to the extent possible the effort is to ensure that the information is valid, reasonable and makes sense. An inability to corroborate does not necessarily mean that the information will not be used. Mr. Presing also stated that before the decision to use "fact available" is made, it should be seen that the necessary data is not on the record, unusable, or cannot be verified. Commerce must notify parties of deficiencies and permit them to correct information, or submit the missing information. Usually multiple requests for information will be made before facts available is used. In short, 'facts available' is a tool of last resort.

***Discussion***

100. In the Q&A at the end of the session, the following issues were discussed:

- Different circumstances for the use of the 'facts available' situation were discussed. Mr. Presing stated that if a company is selling through an unrelated party and the producer is unable to seek co-operation of the unrelated party, 'facts available' may be used. For example, if 80% of the sales were going through this entity and without that information the dumping margin could not be calculated. A contributing factor would be if the producer is making efforts to obtain the information. In another case, if the producer is selling through five different entities, and only one of them is non-cooperating, and majority of the sales have been accounted for then the attempt may be to find a neutral plug in.

- Some participants expressed the view that the 'facts available' provision was often abused. One of the participants provide an example where an anti-subsidy of around 200 percent was imposed in the United States on a product from India for a certain delay in uploading the information in the suggested format, that too, on an allegation of subsidisation attributable to certain outdated and expired subsidy programmes. Mr. Presing noted that the U.S. authorities go great lengths to get information, send questionnaires and seek co-operation. Mr. Presing refuted any suggestion of abuse of 'facts available' by the USDOC.

- Another situation was discussed where the exporter submits a less than full response to the standard questionnaire, but does not receive any response from the authorities until verification which happens months later. The exporter tries to comply with the request of the authorities for providing any missing information, and the authority receives and verifies the data. But the authority rejects the information during the final disclosure indicating that the data was not provided in totality or was supplied outside the standard questionnaire response which was provided immediately after the initiation. Mr. Presing said that in the context of the United States, if the data was not complete or was received with caveats, the agency would seek clarifications and send deficiency questionnaires. This is partly because all information is shared with both sides and there is a very active Respondent's Bar in the U.S.. However, even if the U.S. authorities did not issue the deficiency notice in advance and the verifier was provided this information on site, the verifier will confirm with her supervisor before accepting the information. If the information is accepted and verified, it is very rare that the information will not be used for investigation. The decision to accept or reject any information would be made before the information is collected and verified. The circumstance behind giving the information will also be examined before 'facts available' is used.

**SESSION VIII: GENERAL OVERVIEW OF TRADE REMEDY MEASURES**

101. This session was chaired and moderated by Mr. Johann Human. The countries which had not given an overview of their trade remedy systems on Day One made their presentations in this session.

***Mr. Han Yong, MOFCOM, China***

102. Mr. Han Yong, Director, MOFCOM, China, gave a general overview of China's trade remedy measures. He observed that China being one of the world's largest trading countries has also become a leading user of trade remedy measures and one of the biggest targets of such actions.

103. China had two separate institutions for trade remedy investigations similar to the United States and Canada. Now these institutions have been merged into one, which is the Bureau of Trade Remedy and Investigation, MOFCOM. The main responsibilities of this institution are:

- To undertake trade remedy investigations
- To monitor practices of trade remedies by other countries.
- Rules negotiations and negotiations of trade remedy clauses in FTAs.

104. Mr. Yong observed that in China there was flexibility in forms of measure, depending on case specific situations. In most of the antidumping cases, the authorities apply an *ad valorem* duty but in certain cases price undertakings are also used. In special circumstances, the application may also be suspended. The investigation can also be terminated due to non-cooperation of the industry. During sunset reviews, there could be partial expiry of the measures or even shortening of the period. According to available statistics, out of 69 cases where measures were imposed, duties expired on 26 of such measures.

105. Majority of the antidumping measures cover traditional sectors such as chemical, steel and paper. A recent trend has emerged in providing antidumping relief in high tech and new energy products. In relation to CVD cases, Mr. Yong observed that seven (7) CVD cases were initiated against US and EU since 2009 and six (6) CVD measures have been imposed.

106. China is not a major user in safeguard and only one measure was imposed since China joined the WTO. The lone safeguard measure which was imposed 13 years ago had already been terminated.

107. Mr. Yong tried to explain the reasons for the use of large trade remedy cases against China. China is one of the major manufacturing countries and the largest exporting country in the world. Mr. Yong observed that the industry coverage of trade remedy measures had shifted from traditional labor-incentive sectors to high-tech, new energy sectors, with major actions taking place on products such as the solar panel cases. Mr. Yong noted that the total value of Chinese exports affected by the measure was approximately USD 30 billion. He said that there was also a norm of simultaneous AD and CVD investigation against the same product from China. He concluded by stating that a positive resolution to such issues by bilateral dialogue and consultation, such as price undertakings and co-operation between industries is slowly emerging.

***Mr. Dale Seymour, Antidumping Commissioner, Australia***

108. Mr. Dale Seymour, Anti-dumping Commissioner, Australia, gave an overview of the trade remedy practices in Australia. He observed that the system of trade remedies had been constantly undergoing reforms. He stated that the trade remedy department in Australia was independent and not controlled by civil servants. The focus is on principles of integrity, fairness and transparency.

109. He observed that the reforms in the Australian system were focused on strengthening the AD system. The governance model in this system was independent with the Anti-Dumping Commissioner being an independent person as opposed to being a civil servant. The new reforms initiated in 2015 build on the earlier reforms and should reduce red tape and ambiguity. The antidumping authority in Australia has two units, the first is a business liaison unit and the second is a market intelligence unit.

***Mr. Demos Spatharis, DG Trade, EU***

110. Mr. Demos Spatharis, Head of Unit DG Trade–Trade Defense Directorate, EC gave an introduction to the EU trade remedy system. He observed that the European Commission (EC) had exclusive competence for trade remedies on behalf of the 28 EU States which has been strengthened by the Lisbon Treaty. The European Commission has enhanced powers on trade remedies and the EC proposal on trade remedies can be overturned by an individual Member State only by a qualified majority.

111. The structure within the EC for trade remedies is as follows: the EC is administratively divided into 17 Directorate Generals (DG). Trade remedies come under DG Trade which has 8 directorates, one of them being the Trade Defense Directorate which is responsible for trade remedies. The Trade Defence Directorate is further divided into six (6) units. Out of the six (6) units, one unit is responsible for WTO, legal affairs and policy work and the remaining 5 units are responsible for investigations and other functions such as the Trade Defense committees to consult with trade experts from Member States and monitoring of trade remedy actions by other countries against the EU. The EU constantly intervenes in the proceedings before other authorities, when there is a substantial economic interest or systemic issues especially in safeguard cases.

112. The EU follows a prospective trade remedy system, with measures normally being imposed for 5 years. After 5 years, if there is a request for expiry review, it is conducted, otherwise the measure lapses. Interim reviews and refund reviews of measures are also possible. He observed that EU trade remedy practices include certain WTO plus features such as the public interest test and the lesser duty rule.

113. It was also noted that in light of certain budgetary constraints, the Trade Defence Directorate has placed reliance on IT and new technology tools to make up for lost resources as well as for streamlining. There is a case handling system and an IT system for electronic source files. A confidential version and an open (non-confidential) version for interested parties is also provided. A new system called TRON is being developed where interested parties can download and submit questionnaires on the web and access open files.

114. Mr. Spatharis observed that over the past years trade defence activities have been stable in comparison to earlier years. He noted that safeguards measures are not favoured by the EU since they target both fair and unfair trade. He further noted that the EU is a moderate user of trade remedy measures and that the measures imposed by EU account for less than 1 percent of its total imports.

115. In 2013 a legislative amendment proposal was made to other institutions of the EU. The proposal had two main aspects: first, on the lesser duty rule, the EC proposed a partial removal of application of lesser duty in AD cases whenever there has been distortion of prices of inputs and a complete removal of lesser duty in all CVD cases; second, on transparency and shipping clauses, it was proposed that for imposition of provisional measures, two weeks' notice be given to interested parties and a further one week to make comments as opposed to the absence of such a notice requirement at present. When the proposal was circulated, there were concerns in bringing social dumping, i.e. considering factors such as human rights and environmental issues within the Union interest test. However the EC is opposed to this suggestion. The proposal is presently on hold as the Member States are equally divided on this proposal. Mr. Spatharsis also mentioned a specific policy regarding SMEs that the EC wants to help SMEs file petitions and complaints by introducing simpler questionnaires as they do not have sufficient resources and are faced with high legal costs. He also observed that the Hearing Officer was completely independent and could even hold confrontational hearings between interested parties. He was not controlled by civil servants.

***Discussion***

116. In the Q&A at the end of the session, the following issues were discussed:

- A query was raised regarding the treatment of exporters as non-cooperative under the revised antidumping rules in Australia and whether such rules are WTO compliant. Mr. Seymour noted that as a matter of principle the draft rules could not go outside the perimeter of the WTO rules, and added that the focus of the reforms is on compliance and to receive information in an orderly and timely fashion.
- Concerning the Chinese antidumping practices, a question was raised whether the final determinations were in public domain and where they could be accessed. A second question was raised regarding any bilateral cooperation, especially in the possibility of cross verification of export price between Indian antidumping authorities and the Chinese Customs Authorities. Mr. Yong replied that in relation to public files, there is an earmarked room in China which can be visited by interested parties to access the public files; however, he noted that there may be difficulties regarding language. Mr. Yong observed that generally industries are encouraged to solve cases through bilateral dialogues. In practice, it may be hard to reach a settlement, but if a solution is reached, China may withdraw the applications. He also stated that the possibility of bilateral talks with the government is also open and in specific cases, the government has also intervened.

**SESSION IX: PANEL DISCUSSION ON SUNSET REVIEWS**

117. The session on Sunset reviews was chaired and moderated by Mr. Paul Piquado.

***Mr. Osamu Umejima, White and Case, Tokyo***

118. Mr. Osamu Umejima, gave a presentation examining the rules in the ADA for sunset reviews and highlighting the exporter's perspective. According to Mr. Umejima, in terms of Article 11.3 of the ADA, termination of the AD duty after 5 years is the norm and continuation of the duty beyond this term is the exception. To extend the AD duty there must be a sunset review to make the determination of the likelihood of continuation or recurrence of dumping and injury.

119. A sunset review can be initiated by the authorities, on their own initiative, or upon a duly substantiated request by or on behalf of the domestic industry. According to Mr. Umejima, the drafters did not wish to impose any evidentiary standards on the self-initiation of sunset reviews. This view was supported by the WTO panel decision on *US — Corrosion-Resistant Steel Sunset Review* (WT/DS244/R, para. 7.26). This was a moot point for discussion as to whether sunset reviews could be initiated without any evidentiary basis. In other words, the question was whether sunset reviews could be considered as mandatory, i.e. whether it entails an automatic initiation if there is an application from the domestic industry?

120. The rules applicable for sunset reviews are also not fully clear, especially the substantive rules under Article 2 and 3 of the AD Agreement. There is a view that Article 2 and 3 of the AD Agreement will not apply to sunset reviews (*see EU- Footwear (China),* WT/DS 405/R). However, if the likelihood of dumping is determined using dumping margin, there is a need to determine this in conformity with Article 2.4 of the AD Agreement (*see* Appellate Body, *US- Corrosion Resistant Steel,* WT/DS 244/AB/R). In short, there is ambiguity in the treaty provisions and the sunset review provisions under the AD Agreement are weak. On the procedural rules, the AD Agreement provides

opportunities for interested parties to participate. However, apart from Article 6, no other provisions of the AD Agreement are applied to sunset reviews. Importantly, even Article 6.10 is not applicable and there is no requirement to have exporter specific determinations in a sunset review. Mr. Umejima noted that this approach is contradictory as the Appellate Body has often observed that dumping is the behaviour of individual exporters. If a country wide review is conducted, an individual exporter who has rectified its behaviour will not get relief. However, IAs have the discretion to make terminations on an individual basis. This is also a problem with the exporters.

121. Mr. Umejima noted that there is no specific methodology for finding a likelihood of dumping and injury. Further, in a sunset review, the finding of a causal link is also not mandated. The Appellate Body, however, observed that there must be a "nexus" between the expiry of the duty and continuation or recurrence of dumping and injury. The requirement to establish this nexus and the type of nexus is unclear. In short, the causality standards are weak under the current framework.

122. Mr. Umejima concluded that the current AD Agreement was concluded 20 years ago when sunset reviews were a relatively new concept, but most trade remedy authorities have gained substantial experience in conducting sunset reviews. Therefore, the time has arrived for the WTO members to introduce some more rules and guidance for conducting sunset reviews. Mr. Umejima supported the proposal in the Chair's Text of November, 2007 in improving the sunset provisions.

***Ms. Michele Govier, Canada***

123. Ms. Michele Govier, Chief of Trade Rules, Canada, gave a presentation on Canada's approach to sunset reviews, noting that they are called expiry reviews in Canada. The provision for expiry reviews was contained in Section 76.03 of the Special Import Measures Act (SIMA). The measures expire five years after the date of the last order if no expiry review has been initiated, either as a result of no party making such a request or the CITT determining that an expiry review is not warranted. In the expiry review, following factors are addressed:

- Is dumping or subsidization likely to resume/ continue if a measure expires?; and
- Would such dumping or subsidizing be likely to result in injury or retardation?

124. Ms. Govier outlined the process for carrying out an expiry review. The CITT has the ability to self-initiate an expiry review, however, in practice the review is always initiated upon the request of an interested party. To determine whether an initiation of review is warranted, CITT considers the following factors:

- Likelihood of a continuation or resumption of dumping/subsidization
- Likely volume and price ranges of imports if dumping/subsidization were to continue or resume
- Domestic industry's recent performance
- Likelihood of injury to the domestic industry if the finding expired

125. CITT may also examine the broader domestic and international context. On initiation of review CITT and CBSA conduct separate analyses of continuation or resumption of dumping/subsidization and the likelihood of injury, respectively. The period of review is usually 3-4 years and the focus is on the near and immediate term consequences. The common factors examined in these analyses are:

- Likely future performance of the foreign industry
- Potential for foreign producers to switch to production of subject goods

- Whether AD/CVD measures have been imposed by other countries on similar goods, and whether that could cause diversion of goods to Canada
- Any changes in market conditions domestically or internationally
- Any other factors that are relevant in the circumstances

126. Ms. Govier also discussed the factors considered in the dumping/subsidization analysis and the factors considered in the injury analysis. It was also mentioned that the value of the Normal Value is updated during the expiry review. As a result of the findings CITT may rescind, continue or modify its original finding. In practice, the CITT decision for the expiry review is usually made before the time period for the measure has expired.

127. It was noted that in a majority of expiry reviews conducted in Canada, there was a finding for continuation. The average duration of measure since 1984 was 7.1 years. Ms. Govier concluded that there was no clear trend that the measures are staying in place for a term longer than needed. There is chronic dumping/subsidization in sectors such as the agriculture where longer-term measures are warranted. She said that it was important to demonstrate in an expiry review that the decisions were not arbitrary or automatic and this was ensured in Canada by maintaining arm's length process and transparency.

128. Ms. Govier agreed that in terms of the WTO framework there was little guidance on how to assess if measures are still warranted. The Canadian approach was consistent with rules, and the expiry reviews were conducted within the five (5) year limit.

***Mr. Robert Bolling, USDOC***

129. Mr. Robert Bolling, Senior Import Analyst, US Department of Commerce, gave an overview of the US practice of sunset reviews. He observed that Sunset Reviews were one of the contentious issues in the Doha round of negotiation, with differences running on philosophical grounds. Mr. Bolling noted that the U.S. does not support automatic sunsets. Sunset reviews are designed to provide a timely review of AD duties. In the U.S., reviews are conducted regularly for assessment purposes, to update the rates and to ensure that the AD duty is based on the most current information.

130. In the U.S., sunset reviews are governed under Section 751 of the Tariff Act and Section 351.218 of the Department of Commerce's Regulations. Section 751 requires the Department and the ITC to conduct a sunset review no later than five years after the issuance of an AD or CVD order which is consistent with the ADA. Sunset reviews, unlike administrative reviews, are conducted on an order-wide, rather than company-specific basis. In the U.S., the interested parties have the opportunity to participate in the review every five years. Public notices at various stages are published in the Federal Register. The factors considered in making the determination are:

- Likelihood of continuation or recurrence of dumping
- Magnitude of dumping margin likely to prevail

131. Mr. Bolling stated that there are usually 3 types of sunset reviews in the United States, namely:

- Full sunset review where domestic parties and respondents submit responses. Preliminary results given only for this type of review.
- An expedited sunset review when only domestic interested parties, and no respondent parties, submit a substantive response.
- When domestic party response is inadequate and the review is terminated.

132. Mr. Bolling observed that sunset reviews require a re-examination of injury by the ITC. Orders are revoked or suspension agreements are terminated when domestic interested parties do not participate in the sunset review, or when there is a finding that this would not lead to a continuance or recurrence of dumping/unfair subsidization and the ITC finds that revocation or termination would not result in a continuance or recurrence of material injury.

***Discussion***

133. In the Q&A at the end of the session, the following issues were discussed:

- There was a question to the U.S. as to which duty is extended in the sunset review, as there are administrative reviews conducted to examine the margin of dumping. The U.S. responded by stating that once it is determined that there is a likelihood of dumping the matter is sent to the ITC for injury determination. If the finding is positive the existing duty is extended and there is no change in the magnitude of the duty levied. Any revision on the duties during the extended period will be based on the periodic review.
- Ms. Govier explained in response to a question explained that in a sunset review, the fact of an AD duty being levied against some other country is a relevant factor in making a finding for another country, though in practice it was rare for this to be considered. She also said that conceivably, if there are similar products on which there are measures in place, and if an AD measure is removed, there may be switching of producers.
- A question was raised on the mandatory nature of the sunset reviews. Ms. Govier stated that the WTO rules provide that an AD measure should expire after five years but a sunset review can be initiated to extend it. An opinion was expressed by a participant that the language of Article 11 of the AD Agreement indicated that the initiation of sunset review was not mandatory and that some positive information on the likelihood of the recurrence of dumping or injury would be required for the same. However, no conclusive view was expressed on this issue.
- A question was raised that in a sunset review investigation there was a finding of continued dumping and injury, was it sufficient to establish likelihood of continuation of dumping or injury or whether further analysis was required. Ms. Govier responded that finding of dumping or injury could be indicative of likelihood of dumping but a few other factors are also examined.
- An issue was raised whether there is obligation on the authorities to conduct injury and causality analysis under Article 11 of the AD Agreement and whether the likelihood of injury could be attributable to other factors. Mr. Umejima observed that the ADA should require causation under Article 11 , but an explicit requirement is absent as the AD Agreement currently stands. Based on that view, an IA is not required to find out whether other factors are causing injury or to conduct a strict 'non-attribution' analysis.

**SESSION X: PANEL DISCUSSION ON LESSER DUTY RULE**

134. The session was chaired and moderated by Mr. Jayant Dasgupta, former Ambassador and Permanent Representative of India to the WTO and Partner, Lakshmikumaran & Sridharan.

*Dr. Rajiv Arora, Director, DGAD, India*

135. Dr. Rajiv Arora, Director, DGAD, India made a presentation on the lesser duty rule (LDR). The basic principle is that a duty which could be less than the dumping margin be imposed if it is sufficient to eliminate the injury to the domestic industry. The basic issue, however, is how can a surrogate price lower than the dumping margin be determined when globally no rules have been agreed upon to calculate such a surrogate benchmark.

136. The lesser duty rule is WTO compliant as it does not go beyond the ceiling of the duty prescribed by the ADA. Article 9.1 gives discretion to the IAs to impose a lower duty than the dumping margin. It provides for the desirability of duty which is adequate to remove the injury, however how the quantum will be determined is the issue. Mr. Arora also elaborated on the principles of lesser duty rule in the Indian AD Rules. The injury margin does not truly reflect a quantification of all the injury factors. In 2011 the parameters to determine the non-injurious price (NIP) were added in the Indian AD rules. Different countries have different methodologies to arrive at the NIP. The most common method is using the cost of production method and allowing for reasonable profit, which is also followed in India. The surrogate price is only determined for the period of investigation. The NIP determination also strengthens the non-attribution analysis in the injury and causality determination.

137. Dr. Arora elaborated upon the principles for NIP determination in India. To determine the cost of production he stated that the best utilisation of raw materials, utilities and production capacities by the constituents of the domestic industry are examined during a three year period in addition to the period of investigation. Expenses grouped and charged to the cost of production are examined but no extraordinary or non-recurring expenses are charged. The reasonableness of amount of depreciation charged to cost of production is also ensured. All common expenses are apportioned and segregated. Post-manufacturing expenses are excluded as NIP is determined on ex-factory basis. Reasonable return (pre-tax) on average capital employed is allowed, which is determined as 22 percent in India for the sake of consistency. Interests cost should also be reasonable. The NIP is determined on a weighted average basis for the whole of the domestic industry.

138. Dr. Arora dwelled upon the key features and experience while implementing the lesser duty rule. He mentioned that there is detailed data collection and analysis of domestic industry producers and the on-site verification is more rigorous than for exporters. A transaction-to-transaction analysis is done without zeroing. At least in two-thirds of the time, the AD duty is restricted to the injury margin. In his experience, the domestic industry does not complain that the protection inadequate, however, there are certain concerns by the domestic industry in the use of the comparison methodology.

139. While dwelling on some of the positive attributes of the LDR, Dr. Arora also highlighted some of its drawbacks. It puts an onerous data burden on the investigation. Furthermore, there are no uniform globally accepted practices for determining injury margin. However, if the WTO community can reach an agreement on the method used for determining dumping margin, it should be possible to reach an agreement on the parameters to be used for determination of injury margin as well. Another apprehension is that if AD duty is restricted to injury margin, exporter with higher dumping margin will be in a more beneficial position. There is also an issue of transparency in determining NIP, but this can be resolved. He also discussed the interface between LDR and public interest provisions.

***Mr. Marco César Saraiva da Fonseca, DECOM, Brazil***

140. Mr. Marco César Saraiva da Fonseca, gave an overview of the lesser duty rule from the Brazilian perspective. In Brazil, the provision for lesser duty rule has existed since 1995. Under the current regulation, Brazilian investigating authority is bound to calculate AD duty based on the lesser

duty but certain exceptions are laid down in paragraph 3 of Article 78 of the Brazilian regulation. If the behaviour of the exporter is not fair, the duty can be imposed at the full margin of dumping.

141. The lesser duty rule is just a comparison of the constructed non-injurious price NIP (constructed in a manner similar to India or actual price) and the import price. The NIP is cost of manufacturing plus S,G &A expenses plus profit. The main issue is how to calculate the margin of profit. It is either the margin of profit before the injurious effects of imports on the domestic industry were felt or the margin of profit of other companies producing the same category of products, but not the "like product". The import price is the CIF price plus the import duty. While making a fair comparison, several factors have to be accounted for internal freight, indirect taxes, level of trade, channel of distribution, quantities, credit expenses, category of product (similar to CONNUM in the US). Therefore for different exporters there could be different duties, depending on the category of the product imported. Mathematically the formula for LDR can be represented as Domestic Industry Price minus Import Price. The *ad valorem* duty is expressed as a percentage of the CIF price.

***Mr. Steve Presing, USDOC***

142. Mr. Steve Presing, Director, Anti-Dumping Rules Negotiations, U.S. Department of Commerce, discussed the U.S. perspective on LDR. He admitted that United States had come under quite a bit of pressure to take a different approach to the lesser duty rule; however, it remains unpersuaded and does not apply the lesser duty rule while calculating the AD duty.

143. Mr. Presing explained the differences the U.S. had with the LDR. He observed that U.S. has a detailed and complex system for trade remedy measures. The complexity of the system will further increase if the injury margin is to be calculated. He also said that the LDR does not address the injury in its entirety but just arrives at an approximation to address injury. Under the AD Agreement, dumping duty can be levied at the full dumping margin or at lesser levels to offset injury at the discretion of the investigating authority. In the U.S., the application of the lesser duty rules is seen as a policy oriented decision. He posed a question to countries seeking a mandatory LDR, whether they are prepared to be taken before the WTO dispute settlement body on the exact quantum of the duty to be levied. According to Mr. Presing, the LDR is closely tied to the public interest test and he stressed that it could become highly politicised. In terms of calculation of the lesser duty, there are a variety of methodologies, which are so complicated that it would be very difficult in the negotiations to agree on one particular methodology. More importantly, if it is mandatory, the domestic industry would not be easily satisfied with the quantum of lesser duty calculated, adding an additional layer of complexity. If the rule becomes mandatory, it poses a more fundamental question to the injury calculation and to the fundamentals of free and fair trade. The companies which will benefit the most are the one which are dumping the most and the companies which will suffer are those which are not dumping. The lesser duty is only a margin which is calculated to find out what is acceptable level to the domestic industry, the application of which does not seem realistic in the present U.S. system.

144. Mr. Presing, concluded that the U.S. is not opposed to other countries applying lesser duty rule. It should be permissive, but the application of the lesser duty should be as transparent as possible.

***Discussion***

145. Mr. Dasgupta observed that the application of the lesser duty rule was a question of political economy in different countries. In the Q&A at the end of the session, the following issues were discussed:

- There was a discussion on the basis of calculation of reasonable profit margin and the basis in India of adopting 22 percent on return of capital employed. Dr. Arora observed that there are no discussions presently to change the 22 percent threshold. Mr. Wadhwa from the DGAD stated that the 22 percent threshold was pre-tax. It was further noted that the cost of capital in India as compared to other countries is much higher, and that this figure is an approximation for a fair return. A reference was made to the practice followed for fixing the price for essential drugs under the Drugs Price Control which used a 22 percent return on capital employed. From an accountant's perspective, this was a preferred methodology, as opposed to taking profit margin as a percentage of cost of production. Mr. Fonseca observed that in Brazil there is no specific percentage for calculating reasonable profit margin and it was determined on a case-by-case basis. Generally, the profit margin of the domestic industry, before the effects of dumping were felt by the industry is considered. A weighted average of the profit margin of all producers is also taken for a five year period. A view was also expressed from the floor that while the use of 22 percent ensures consistency, the real regret was the failure of the trading community to effectively implement the refund mechanism—a mechanism which is far superior to the LDR— in their domestic systems.
- The application of price undertakings in India was discussed. Dr. Arora said that taking price undertaking is a cumbersome process and monitoring becomes even more difficult. At the same time, the domestic industry and the investigating authorities needs to be comfortable with the price level set. Mr. Arora also said that globally the use of price undertakings has been minimal.
- A question pertaining to injury analysis was whether under Article 3 of the ADA, non-dumped imports needs to be excluded. Drawing on the Appellate Body ruling in ***EC-Bed Linen*** (Art. 21.5 proceedings) the non-dumped imports should be excluded and only dumped imports should be considered in the injury analysis. Mr. Arora, stated that India does not follow the practice of zeroing in injury and causation analysis, i.e. India does not exclude the non-dumped transactions of an exporter found to be dumping the subject goods. Having stated this, it needs to be clarified that India does not include the imports of an exporter who is not determined to be dumping the product under investigation in the injury and causation analysis.
- A question was raised regarding Brazil's practices in considering factors such as quantities, channel of distribution and credit expenses for fair comparison between the NIP and import price. Mr. Fonseca explained that the channel of distribution was important to determine whether the imports were directly for users or would be further distributed in Brazil. Quantity was an important factor to determine the different level of the domestic industry and whether the domestic distribution was at a lower level. Credit expenses would take into account the period for which the buyers have to make the payment.
- A comment on the overlapping or interchangeability of lesser duty rules and public interest in the Rules negotiations was also made. Mr. Bhatnagar said that during the Rules negotiations, the proponents of the lesser duty rule had maintained that if made mandatory, LDR would be subject to the provisions of the WTO dispute settlement. Mr. Bhatnagar, however, added that on public interest there were proposals to leave the provisions from the ambit of dispute settlement.

**SESSION XI: PANEL DISCUSSION ON PUBLIC INTEREST EXAMINATION**

146. The session on public interest was chaired and moderated by Mr. Dale Seymour.

*Ms. Michele Govier, Chief of Trade Rules, Canada*

147. Ms. Michele Govier gave an overview of public interest in Canada's trade remedy system. She explained the rationale for public interest provisions. Fundamentally trade remedy measures protect domestic industry and raise prices but it also affects other parties such as consumers. The provisions allow other affected parties to raise concerns over detrimental effects of trade remedy measures. Canada introduced public interest in its trade remedy system in 1984. Increasing competition was a key driver for it at that time. Amendments were made in the year 2000 which reduced the discretion of the CITT, and added legislation specified interested parties, factors for consideration of public interest, added timelines, etc.

148. Ms. Govier briefly described the process of a public interest inquiry which can be initiated within 45 days of the findings. Interested parties can make submissions and participate during the inquiries. Interested parties are defined widely to include domestic producers, importer, exporters, upstream producers, downstream users, consumer advocacy groups and other authorized to participate. In practice requests are usually focused on downstream industries. CITT considers a variety of factors during the inquiries essentially looking at effects on upstream suppliers, downstream users, and availability of goods from other sources, effects on competition and other relevant factors. If CITT is of the opinion that imposition of full duty would not be in public interest, it issues a report to the Minister of Finance with the facts and reasons. It can recommend a level of reduction of the AD or countervailing duties or a price or prices that are adequate to remove the injury. If there is a negative finding, no report is issued to the Ministry but only a statement of facts and reasons for the findings is released. Ministry has discretion to adopt the recommendations and can modify duties on prospective or retrospective basis.

149. Ms. Govier shared statistics regarding public inquiries in Canada, stating that only 4 cases had been implemented up to date; ***grain corn*** (1987), ***baby food*** (1998), ***contrast media*** (2000) and ***stainless steel round wire*** (2005). All the four cases pertained to imports from the United States. She examined the trends in the CITT decision making stating that the reasons for initiation/recommending a public interest inquiry included competition, consumer and welfare impact and the utility of higher duties. For instance, in the ***baby food*** and ***stainless steel wire*** case, implementing the AD duties would have left a monopoly in Canada; in the ***baby food*** case there were further concerns relating to family health involving low income families and infant health. Ms. Govier also discussed reasons concerning why the CITT did not make a public interest decision. This included cases where there was adequate supply of goods from countries not covered by the measure or with low margins of dumping/ subsidy rates, or there was good competition among the supplier in Canada. CITT also has some concern over using public interest inquiries to revisit exclusion decisions made in the context of initial inquiries.

150. Ms. Govier also highlighted administrative issues in implementing public interest decisions. The duties need to be set in such a way that they (i) affect actual prices in the market, and (ii) are enforceable. In the four cases, duties have been implemented in different ways; in the ***baby food*** case and ***contrast media*** cases normal AD duty was reduced through benchmark prices and a complex formula whereas in the ***grain corn*** and ***stainless steel wire*** cases, the CVD and AD duties respectively were lowered or refunded. The obligation to apply such reduced duties across the board was also discussed. For instance, in the ***stainless steel wire case***, CITT recommendation were limited to imports from U.S. but in implementing the measures, the duties were reduced irrespective of the source. There is also an issue of retrospective and prospective application of remission of duties.

151. Ms. Govier also added that in Canada public interest inquiries are the only means for allowing for the application of a lesser duty. Further, it was pointed out that in some of the recently concluded Canadian FTAs, such as the Canada- EU and Canada-Korea, there are provisions to allow for the application of a lesser amount, in accordance with each party's domestic law. In conclusion, Ms. Govier stated that public interest provisions are an important aspect of Canada's trade remedy law and allow authorities to consider broader public interest issues in the imposition of AD and CV duties.

***Mr. Demos Spatharis, European Commission***

152. Mr. Demos Spatharis, gave a presentation on the 'Union interest test' in the EU trade remedy system. As a general principle in order to impose AD and CVD measures, besides the mandatory conditions under the WTO, there is also a Union interest test. It is a WTO plus requirement. The legal basis for this requirement is Article 21 of the EU Basic Regulation. Essentially it is a negative test to ensure that there are no reasons as to why the imposition of the measures is not in EU interest. For this an economic analysis of the imposition/non-imposition of the measure needs to be taken into consideration. The analysis is not limited to a single Member State.

153. The outcome of the analysis does not determine the level of the measure. It is an either or situation, i.e. either the measure is imposed or there is no imposition. That is, there is no modulation of the measure unlike the Canadian system. Mr. Spatharis also explained the process of determining the EU interest. The parties to be examined are the whole of the domestic industry, importers and traders, users, consumer organizations and suppliers located in the Union. Information is gathered using questionnaires and submissions in writings from various parties. Notice of initiation may provide for sampling if there is a belief that the users of importers of the product may be large in number. A variety of information is collected such as turnover, purchasers of the product, cost of the product concerned, user's profitability and employment, total imports in comparison with the import of the product under investigation, profitability and employment records of the importers, etc. There is a proactive information gathering approach. Independent information such as expert's reports is also gathered. The impact of the measures is evaluated looking at issues such as competition, how the market would evolve and potential shortages of products for downstream industries especially where there are limited producers. Welfare impact is also examined. For instance, in the investigation on *footwear from China*, children's footwear was excluded based on the potential impact on low income of families. In exceptional cases, the duration of the duty was modified. The Union interest is not examined in new shipper reviews, anti-circumvention reviews and refund reviews.

***Mr. Marco César Saraiva da Fonseca, Brazil***

154. Mr. Marco César Saraiva da Fonseca, gave a presentation on the Brazilian experience regarding the public interest provisions. Mr. Fonesca observed that although WTO rules are silent on public interest provisions, some indications can be found in Article 6.12 of the ADA and a similar reference is found the SCM agreement and the relevant footnote.

155. In the current regulation in Brazil there are public interest provisions which are worded as "national interest" provisions. The decision for this is taken by the Council of Ministers and they are not bound by the opinion of the investigating authorities. The provision is to be applied only under special circumstances. In terms of preliminary determination, for public interest considerations, the measure may not be imposed but in case of final determination, the duty is only suspended. The duty is first suspended for one year and the suspension can be extended by another year. After the

suspension, the duty may be reapplied. If there is no decision to reapply, the measure will be terminated. The decision of reapplication of measure can be made at any time during the period of suspension. Public interest analysis can also be used to apply the full margin of dumping as opposed to the lesser duty. However, this is not frequent and public interest provisions are usually used to suspend duties.

156. In 2012, there was a CAMEX resolution to create a Technical Group on Public Interest. It has seven (7) Members and the Secretariat of the Group is from the Ministry of Finance, i.e. Secretariat for Economic Monitoring (SEAE). SEAE is also in charge of competition law and, therefore, its vision is different from the vision and outlook of the AD authorities. While the DECOM is invited to give comments, it is not part of this group. A public interest analysis can be requested by a private party or it can be an *ex officio* initiation, i.e. at the request of a public body. The analysis is totally independent from the analysis by the Investigating Authority. Neither is this an administrative review nor an appeal of the decision of the IA. The time-limit to conclude the analysis is four (4) months but may be extended. Full opportunity is given to all interested parties to defend their interests and submit information. The interested parties are not allowed to reopen issues decided by the IA such as the determination of injury, scope of PUC, definition of domestic industry and the margin of dumping. The SEAE has powers of *sub-poena* unlike the IA. The SEAE prepares a report containing the factual and the legal basis and submits a report to the Council of Ministers. The Council is not bound by the recommendation of the SEAE. Mr. Fonseca highlighted that in the case of *Non-Oriented Silicon Steel* where there was no suspension of duties but there was reduction of duties to zero for a certain volume of imports on the ground that there was only one producer in Brazil making this type of steel and the importers in Brazil were domestic users such as manufactures of motors etc.

157. Mr. Fonseca also mentioned that public interest is specifically mentioned in the Safeguards Agreement. However, in the domestic regulations of Brazil, no such public interest provisions are available.

***Discussion***

158. In the Q&A at the end of the session, the following issues were discussed:

- A question raised was if there is a huge demand and supply in the country, what would be the weightage given to the claims of importers that the domestic industry would not have the capacity to supply the product .Mr. Fonseca stated that as an IA, total supply and demand in Brazil is not important for the purpose of their investigation. The measure would be imposed if there is dumping, injury and causal link. However, while determining the causal link, this could become a relevant factor. Ms. Govier stated that in Canada this is one of the factors examined in the context of a public interest inquiry, i.e., to what extent duties in the subject goods could impact the prices for consumers/user industry. Mr. Spatharis observed that the potential of shortage in supply and competition are factors examined under the public interest test.
- Another question was whether an interested party can request for an interim review on public interest considerations. Mr. Spatharis observed that public interest was not considered in an interim review.
- There was a question on how the impact on users is measured. Mr. Spatharis responded that in the EU users are given detailed questionnaires which are verified on spot and then used to determine the exact financial impact on users. After doing a 360 degree review, the IA would seek to balance the interests of the users and the domestic industry.

**SESSION XII: GLOBAL VALUE CHAINS & ANTI DUMPING AGREEMENT: NEED FOR CHANGE**

159. This session was chaired by Professor Abhijit Das, Head and Professor, Centre for WTO Studies. He stated that session proposed to look into the future by examining the impact of the emerging paradigm of Global Value Chains (GVC) on AD rules and how should the AD rules be changed or adapted.

***Dr. Edwin Vermulst, VVGB-Avocats, Brussels***

160. Dr. Edwin Vermulst, made a presentation on GVCs, examining the consequences of GVCs on the AD Agreement and whether it requires changes or adaptations. Dr. Vermulst gave examples from various industrial sectors examining the production process in the sector. He started with footwear, observing that the production process starts with R&D and design, raw materials, assembly, distribution, branding and then pricing. He remarked that the biggest producer of footwear in the world was a Chinese company which produced for most global brands. In the WTO, an example of GVCs is usually the i-phone and i-pad. However, footwear is an example where there are traditional companies do the entire production process while global brands generally do the entire process except the assembly. Therefore, footwear is a sensitive product which has attracted several cases in different countries. He said that 80-90 percent of the cost is the R&D design, distribution and branding and assembly is less than 10 percent of the total cost.

161. Dr. Vermulst gave the example of another product hot-rolled steel. In most countries the entire production process is carried out by the same producer. It is an example of a sector where there is no global value chain. The third example was that of WWANN modem. The raw material for this product is the computer chip/processor. No matter who the producer of this product is, the chip comes from Qualcomm, an American Company. However, the chips are not made in the U.S., but in countries such as Korea and Japan. The assembly takes place in China and the products are sold to the telecom operators which are further sold to the consumers. From a dumping perspective a European company doing R&D design in EU brings a case against Chinese equipment supplier. However, the chips used by both companies are the same and the assembly is also done in China. Therefore, there is a question as to the difference between the complainant and respondent. Does a producer with minimum domestic operation have standing to bring the case. The main question is what makes a local producer a local producer or part of the domestic industry. Dr. Vermulst also gave the example of solar panels and its production process. The production process starts with silicon metal which is mined in various countries and turned into poly silicon, and ends at sales. A major producer of solar panels is China which has been the target of many AD case.

162. Dr. Vermulst in context of these examples addressed four main questions. First, when is the domestic producer a domestic producer? If Origin Rules are applied, in the modem case, the domestic producer would not be considered a local producer. The processor is about 50% of the value of the product. The production of the processor would be considered as indicative of origin. Though the ADA does not mandate the application of Origin Rules, all modems would have the same origin, on application of the Origin rules. Taking into account the various possibilities of increased globalization, the first question to be addressed is to what extent domestic content or a specified level of activity be performed by a domestic producer to be considered as a domestic producer

163. The second issue relates to the treatment of domestic producers which are importing or are related to exporters. Dr. Vermulst outlined three circumstances listed below:

- Domestic producer complainant has a related producer /exporter in targeted country.

- Domestic producer is non-complainant and has a related producer /exporter in targeted country.
- Domestic producer is also importing from targeted country, with different level of import.

164. According to Dr. Vermulst, there is no clear answer but under the ADA, investigating authorities have complete discretion in this matter. This has been upheld in domestic court cases in the EU. In his experience, if a complainant is related to the importer or exporter, its main interest is seen to be protecting the domestic industry. However a non-complainant related domestic producer tends to be excluded by the IA as such a party is apparently against the initiation of the case. The issue is as to what extent rules should bind the authority's discretion in this area.

165. The third area identified by Dr. Vermulst is GVCs and public interest. He discussed certain EU cases of involving different interested parties such as the producers, distributors/retailers, importers, suppliers/upstream operators, users/downstream operators, and consumers/end-users. The examples, lent credence to the perceptions that the interests of the domestic producers often override the interests of distributors and importers.

166. The next issue he identified was Rules of Origin. Long term users of the ADA such as EU, Canada, USA, South Africa and Australia impose duties by defining the product in terms of where it originated. In such a scenario, there is always the possibility of changing the country of shipment so as to avoid the AD duty. The crucial issue then is, how to determine the country in which a product originated. Countries would use non-preferential rules of origin. Some ASEAN countries do it on the basis of ASEAN Rules of Origin. This area is not governed by the ADA. Non-preferential rules of origin have still not been harmonized partially because of its linkages to anti-dumping. The stricter the rules of origin, the harder it is to circumvent an AD duty. The problem of using these rules of origin is that its determination stops at the factory gate, giving only a partial account of the reality of GVCs. For instance in the footwear example the determination will stop when it left the factory gate in China; however, assembly constitutes only a fraction of the cost in the GVC. Dr. Vermulst further alluded to the rules of origin issues in the footwear and solar panels cases in the EU to show that these rules do not develop in a vacuum. The rule in relation to solar panels was formulated shortly after imposing AD measures on solar panels from China and was used to reinforce the AD measures.

167. The last issue he identified was the problem of circumvention. Circumvention can be seen as a side effect from globalization as the trade between countries has become easier. In the EU, as Mr. Spatharis pointed out, transhipment was the main type of circumvention. All reasonable people would agree that action should be taken against this type of circumvention. However, the problematic issue is circumvention by assembly in third countries. For instance in the case of a photocopier, if the assembly is done by putting together two parts, it may be seen a circumvention, but if the assembly is done by putting together 10,000 parts it could be sufficient to confer origin. Therefore, the problem remains depending on where the lines are drawn. In Dr. Vermulst's opinion, unilaterally adopted circumvention legislations are WTO inconsistent. However, from a pragmatic perspective, if the circumvention rules are clear, then companies would not have a problem. Origin rules are not clear and do not give a company or exporter complete guidance. The anti-circumvention rules, such as those found in the EU are much clearer and the firms have advance notice of the consequences of their actions. Therefore, anti-circumvention rules are very useful and are better than the alternative of rules of origin.

168. In conclusion, Dr. Vermulst observed that the problem should not be exaggerated. In some sectors, such as steel, there are no real global value chains while in other sectors such as automotive

products, GVCs prevent filing of cases as the industry has become globalized and there are cross-shareholding around the world. However, in other sectors such as footwear, there are some problems.

***Discussion***

169. In the Q&A at the end of the session, the following issues were discussed:

1. A hypothetical was presented to outline a problem: a global company with operation in five different countries is making a product; then which all countries would be considered within the scope of the investigation. Further, how will the cost of production be determined? Who will be the exporter and which normal value will be considered? Dr. Vermulst responded by stating that the issues addressed by him are cutting edge issues which might not have clear answers. It is important that long time users of ADA use rules of origin. They do it to avoid circumvention and assist effective enforcement of the imposition of an AD duty. If rules of origin are used as a basis for determining and applying AD duties, then it solves problems which would occur otherwise. Taking the example of the WANN modems, the PUC is defined by the domestic industry, but the IA makes the final decision. Similarly, it is up to the authorities to use rules of origin to make AD calculations. Dr. Vermulst gave the example of television sets from Hong Kong and China. In the investigation, by applying the origin rules, it was found that no television sets originated in Hong Kong but originated in China. If there is a case against a product made in several countries, the authorities would depend on the complaint to initiate the case. At the end of the day the starting point is the complaint. In this example, the normal value could be the costs and price in China or an analogue country. After initiation of the case, it is the discretion of the IA, and the IA must think in advance and there should be an interplay between the IA and the domestic industry to have a meaningful investigations
2. In response to a question on the impact of raw material suppliers, Mr. Vermulst referred to his earlier example of solar panels. This is a case in Europe against solar panels from China, and the producer of poly-silicon is in Europe. Technically, there is no link. However, if there is a poly-silicon producer which exports a lot to China, the producer and others may make a link. Some people also state that there may be retaliation, but no one has clean hands in this domain.
3. There was a question on the starting point for the production process of a solar cell. It was observed that for an AD investigation, the starting point may be the wafer and not the silicon and Mr. Vermulst agreed with this.
4. Another question was on the relevance of the person raising the invoice. Dr. Vermulst stated that the question as to who raises the invoice may not necessarily be relevant, what would be more important is who the producer is and this should be the approach taken by most authorities.
5. Mr. Spatharis commented that although he agrees with most of Mr. Vermulst's discussion on GVC and anti-circumvention, he differed with him that anti-circumvention measures were WTO inconsistent. He stated that the prevailing view was that in the absence of express provisions on anti-circumvention, Members would be free to adopt their own. Dr. Vermulst, in response cited the WTO dispute of *US- Antidumping Act of 1916* as the legal basis for his argument that the ADA provided the maximum action which can be taken against dumping. The case was one in which the 1916 US legislation imposed treble damages where foreign exporters were found to be dumping with predatory intent which was challenged by EU and Japan. The Panel and the Appellate Body found the maintenance of this legislation inconsistent with U.S. obligations under the WTO. Therefore, according to Mr. Vermulst, if actions are taken outside the scope of the ADA it is treading on thin ice.

6. Mr. Yong observed that there was no retaliation by China in cases such as the solar cells and footwear but it was a natural reaction of the industry. For instance, as the demand for poly-silicon decreased, the price movement had to be examined and for the domestic industry to maintain its market share, the AD measure had to be imposed. To solve this problem, considering value chains and price undertakings was one possible solution.
7. In response to a question on whether anti-circumvention can be seen as a part of duty evasion instead of anti-dumping, Dr. Vermulst observed that the two actions are not mutually exclusive. For instance in a transshipment case, there could be a customs investigation, investigation for fraud, imposition of criminal charges and initiation of a trade case and the levy of AD duties retrospectively.
8. In response to a question on country of origin, Dr. Vermulst observed that under the ADA country of origin and country of export were used interchangeably. Under the ADA, it is possible to go different ways, by imposing duties on the basis of country of origin, country of production or country of export. The discretion lies with IA. In his opinion, the strongest position legally and conceptually would be to use country of origin, especially since the rules of origin are not harmonized, and each country could use its own rules of origin.

**SESSION XIII: GLOBAL SAFEGUARDS VS BILATERAL SAFEGUARD MEASURES UNDER FTAS: ISSUES**

170. The last session was chaired and moderated by Dr. Edwin Vermulst

*Mr. Woon-Ho Lee, Korea Trade Commission*

171. Mr. Woon-Ho Lee, Standing Commissioner Korea Trade Commission, made a presentation on exclusion of free trade agreement (FTA) partners from global safeguard measure. He observed that the KTC had never been faced with this issue and did not have any regulations on this subject. Therefore, the presentation was based on his personal study and thinking.

172. He began his presentation by examining relevant WTO provision on this issue. Mr. Lee noted that Article XXIV:4 of GATT allows formation of a free trade area and Article XIX permits use of safeguard measures under certain conditions. Article 2.2 of the Safeguards' Agreement states that a safeguard measure should be applied irrespective of its source. Article XIII of GATT requires non-discriminatory administration of quantitative restrictions (QR). Since safeguards are a kind of QR, the non-discriminatory principle could be applied to safeguard too. Therefore the issue was how exclusion of FTA partners from safeguard measures could be allowed irrespective of these provisions.

173. Examining the WTO jurisprudence, in *Argentina-Footwear (Safeguards)* , Argentina had excluded MERCOSUR members from the safeguard investigation. The Appellate Body ruled that only an investigation based on all sources can lead to the imposition of safeguard measures. However, it emphasized that it was not making a ruling on the general proposition of excluding FTA partners from a safeguard measure. In *US- Line Pipe Safeguard* , the Appellate Body noted that a "gap" between imports covered under the investigation and imports falling within the scope of the measure can be justified only if the competent authorities "establish explicitly" that imports from sources covered by the measure satisfy the conditions for the application of a safeguard measure. U.S. had violated Art. 2 and 4 of the Safeguards' Agreement by including Canada and Mexico in the analysis of whether increased imports had caused or threatened to cause serious injury, while excluding Canada and Mexico from the application of the safeguard measure, "without providing a reasoned and

adequate explanation that establishes explicitly that imports from non-NAFTA sources by themselves satisfied the conditions for the application of a safeguard measure." An examination of the cases shows that there is no general conclusion by DSBs as to exclusion of FTA partners from global safeguard measures. Instead the panel and the Appellate Body considered as moot the question whether excluding FTA partners from global safeguards measures is consistent with GATT and WTO obligations. Instead, Panel and AB focused on the aspects of parallelism and causation between measure and injury.

174. Mr. Lee also gave examples of clauses in FTAs providing for exclusion of FTA partners from safeguard measures. He noted that there were two types of expressions used, one is "shall exclude" and the other is "may exclude". In both there are certain conditions for exclusion. The latter will give more discretion to the IA. According to him regardless of the conditions in the FTA, countries should be required to follow all the conditions in the Safeguards Agreement. He also gave examples of such clauses from FTAs in which Korea was involved. In all seven (7) FTAs involving Korea, the authorities were given the discretion.

175. Mr. Lee posed several questions at the end of his presentation: (i) how to measure the extent of share of and injury by Imports from FTA partners; (ii) whether rules of origin for FTA tariff treatments may differ from general rules of origin; (iii) what is the real cause of an import surge and serious injury? If an import surge is caused by FTA partners on account of the FTA, can global safeguard actions be taken to address the serious injury? Are not the non-FTA partners victims, rather than a cause of serious injury? (iv) in the case of multiparty FTAs, is it possible to select or exclude a party or some parties of a multipartyFTA from a global safeguard measure? Lastly, Mr. Lee raised a fundamental question whether the excluding FTA partners raise barriers to the trade of other WTO Members in the context of GATT XXIV:4. Further even if all the conditions under the Safeguard Agreement are satisfied, how can a country be excluded from a safeguard measure without contravening Article 2.2 of the Safeguards Agreement.

***Mr. Marco César Saraiva da Fonseca***

176. Mr. Marco César Saraiva da Fonseca, Director, DECOM, Brazil, gave a presentation on this issue discussing the Brazilian experience in imposition of safeguards. The iconic case in Brazil on safeguards was on wine, where the measure was not finally introduced.

177. Mr. Fonseca started by discussing the legal framework in Brazil. He stated that he Agreement on Safeguards was incorporated into the Brazilian Legislation which also established the administrative proceedings and guidelines for the investigation and imposition of safeguard measures in Brazil. He stated that the legal nature of safeguard duty was in the form of an import duty. Therefore if there was an agreement with a country to exempt import duties, safeguard duty would also not be levied.

178. There have been only four cases of safeguard investigations in Brazil out of which only two safeguard measures were imposed. In the investigation on toys there was an additional duty and in the case of coconuts it was a quantitative restriction. He observed that there are some bilateral and regional agreements signed by Brazil or by MERCOSUR which provide for preferential safeguards regimes. They usually consist of the suspension of the tariff reduction schedule or the reduction of the agreed preference margin. Safeguard investigations may be conducted and safeguard measures may

be imposed in the name of MERCOSUR as a whole or in the name of a specific Members State. In Brazil, despite having several free trade agreements, the bilateral safeguards mechanism has never been used. Mr. Fonseca gave examples of agreements such as ACE- 35 between MERCOSUR and Chile, ACE-18 and the MERCOSUR-Israel agreement, examining the different types of exclusion clauses.

*Discussion*

179. In the Q&A at the end of the session, the following issues were discussed:

- The Appellate Body decision in *US-Line Pipe* was discussed. The main question was whether the criteria laid out by the Appellate Body in this report was sufficient to exclude countries from the application of a global safeguard measure. Mr. Umejima observed that in this case the Appellate Body had dealt with the issue only in the context of the Safeguards Agreement and had avoided the relationship with Article XXIV. Mr. Human observed that in this case the Appellate Body was very careful not overstep the issue before it. Another issue was why the exclusion clause was included in the FTAs. It was observed that clauses including the "may exclude" type of clause were usually a gesture though there may be very little intention to actually exclude. Mr. Human observed these clauses were included to be nice to each other. He stated that excluding FTA partners from global safeguard measures was part of the broader problems of the fragmentation of the Rules negotiations. Further, it would be interesting to see the developments in TPP and TTIP negotiations since none of the players have used safeguard measures since the early 2000s.

**CONCLUDING SESSION**

180. Mr. Mukesh Bhatnagar delivered the vote of thanks and Mr. Abhijit Das took feedback from the participants on the proceedings of the conference.


WTO
INTERNATIONAL CONFERENCE
on
PAUL PUGLIESE
STEVE PRESING

**Annexure-1**

**International Conference on Trade Remedy Measures**
**9-10 April 2015**

***Organized By***

**The Centre for WTO Studies (CWS), Indian Institute of Foreign Trade**

**New Delhi**

**Venue: 2nd Floor Conference Hall, IIFT**

| **9 April 2015**<br>**Day 1** | | |
|---|---|---|
| **Time** | **Topic** | **Speaker** |
| 9.15- 9.45 hrs. | *Registration* | |
| 9.45-10.30 hrs. | *Inaugural Session*<br><br>Welcome Remarks by CWS<br>Address by Rules Division, WTO<br><br>Address by Designated Authority, India<br><br>Address by Department of Commerce, GoI<br><br>Inaugural Address by Director, IIFT<br>Vote of thanks | <br><br>CWS<br>Mr Johann Human, Director Rules Division, WTO<br>Mr. J. K. Dadoo, Joint Secretary & Designated Authority, India<br><br>Shri J. S. Deepak, Additional Secretary, Government of India<br>Dr. Surajit Mitra, Director, IIFT<br>CWS |
| 10.30-10.45 hrs | ***Tea/Coffee Break*** | |
| 10.45- 11.45 | **General Overview of Trade Remedy Measures-** Moderator Mr. Johann Human, Director Rules Division WTO<br><br>US Overview of Trade Remedy Measures<br><br>Canada's overview of Trade Remedy<br><br>Brazil's overview of Trade Remedy Measures<br><br>India's overview of Trade Remedy Measures | <br><br>Mr Paul Piquado, Assistant Secretary, US Department of Commerce<br>Ms. Michele Govier<br>Chief of Trade Rules, Canada<br>Mr. Marco César Saraiva da Fonseca<br>Director, DECOM, Brazil<br><br>Mr. J. K. Dadoo, Joint Secretary & Designated Authority, |

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| | | DGAD |
| 11.45-13.00 hrs | Defining of scope of **Product under consideration**-experiences: Moderator- Prof Mukesh Bhatnagar<br><br>Presentation by Korea- (15 minutes)<br><br>Presentation by India – (15 minutes)<br><br>Presentation by China- (15 minutes)<br><br>Presentation by Australia-(15 minutes)<br><br>Q & A- 15 minutes | Mr. Woon-Ho Lee<br>Standing Commissioner Korea Trade Commission<br><br>Mr. D. P. Mohapatra, Director, DGAD, India<br>Mr. Han Yong, Director MOFCOM China<br><br>Mr. Dale Seymour<br>Anti-dumping Commissioner Australia |
| 13.00-13.45 hrs | Experiences of **Anti Circumvention** Enquiries: Moderator- Prof Abhijit Das, Head CWS<br>Presentation by US Department of Commerce (15 minutes)<br><br>EU's experience of Anti Circumvention investigations (15 minutes)<br><br>Australia's views on Anti Circumvention investigations (15 minutes) | Mr Paul Piquado, Assistant Secretary, US Department of Commerce<br><br>Mr. Demos Spatharis, Head of Unit DG Trade -Trade Defense Directorate EC<br>Mr. Dale Seymour<br>Anti-dumping Commissioner Australia |
| 13.45-14.30 hrs | ***Lunch Break*** | |
| 14.30-15.45 hrs | Panel Discussion on **Injury Determination and Causal Link Analysis**<br>Chaired by: Mr. Johann Human, WTO<br><br>**Injury Determination** in Anti-dumping Investigations – (20 minutes)<br><br>**Non-Attribution Analysis** in Anti-dumping Investigations – US Experiences (20 minutes)<br><br>**Causal Link Analysis** in Anti-dumping Investigations: Exporters' Perspective (20 minutes) | Mr. Marco César Saraiva da Fonseca<br>Director, DECOM, Brazil<br>Mr. Marco César Saraiva da Fonseca<br>Director, DECOM, Brazil<br>Mr. Osamu Umejima<br>Japan |
| 15.45-17.00 hrs | Panel Discussion on **Sampling** in Anti-dumping Investigation and **Anti-dumping Measures whether Exporter specific or Exporter/Producer specific**<br>Chaired by: Mr. Mukesh Bhatnagar, Professor CWS<br><br>Sampling in Anti-dumping Investigation: Issues (20 minutes) | Mr. Demos Spatharis, Head of Unit DG Trade – Trade Defense Directorate, EC |

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| | Anti-dumping Measures: Exporter specific or Exporter/Producer specific- India's experience (20 minutes)<br><br>Anti-dumping Measures: Exporter specific or Exporter/Producer specific- China's views (20 minutes) | Mr. D. P. Mohapatra, Director & Mr M. K. Sahoo, Joint Director, DGAD India<br><br>Mr. Han Yong, Director MOFCOM China |
| 17.00-17.15 hrs | ***Tea/Coffee Break*** | |
| 17.15-17.45 hrs | **Transfer Pricing Issues** in Anti-dumping investigations Moderator: Prof Mukesh Bhatnagar<br><br>Presentation by DGAD India (20 minutes)<br>Questions and Answers 10 minutes | Mr G Ramachandran, Adviser DGAD India |
| 17.45-18.30 hrs | **Use of facts available** Moderator- Prof Abhijit Das, Head CWS<br>**Use of facts available** in Anti-dumping investigations: Issues (20 minutes<br><br>Use of Adverse Facts: US practice (20 minutes) | Mr. Han Yong, Director MOFCOM China<br>Mr. Steve Presing, Director Anti Dumping Rules Negotiations, US Department of Commerce |
| **10 April 2015<br>Day 2** | | |
| 9.00-9.45 hrs | **General Overview of Trade Remedy Measures-** Moderator Mr. Johann Human, Director Rules Division WTO<br><br>Overview of Trade Remedy Measures and current reforms to Australia's AD System<br><br>Overview of Trade Remedy Measures by China<br><br>Overview of Trade Remedy Measures by EU | Mr. Dale Seymour Anti-dumping Commissioner Australia<br>Mr. Han Yong, Director MOFCOM China<br><br>Mr. Demos Spatharis, Head of Unit DG Trade – Trade Defense Directorate, EC |
| 9.45-11.00 hrs | Panel Discussion on **Sunset Reviews**<br>Chaired by: Mr. Paul Piquado, US Assistant Secretary of Commerce<br>Sunset Reviews – Are the AD Rules Weak (20 minutes)<br><br>Likelihood Analysis in Sunset Reviews – US Experience(20 minutes)<br><br>Sunset Reviews – Canada's Experience(20 minutes) | Mr. Osamu Umejima Japan<br><br>Mr. Robert Bolling, Senior Import Analyst, US Department of Commerce<br>Ms. Michele Govier Chief of Trade Rules, Canada |
| 11.00-11.15 hrs | ***Tea/Coffee Break*** | |

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| 11.15-12.30 hrs | Panel Discussion on **Lesser Duty Rule**<br>Chaired by: Mr. Jayant Dasgupta, India's former Ambassador to WTO<br>Practice of Lesser Duty Rule by India(20 minutes)<br>Lesser Duty Rule: Brazil's Practice (20 minutes)<br><br>Lesser Duty Rule: US Perspective(20 minutes) | Mr. Rajiv Arora, Director, DGAD India<br>Mr. Marco César Saraiva da Fonseca, Director DECOM Brazil<br>Mr. Steve Presing, Director, US Department of Commerce |
| 12.30-13.45 hrs | Panel Discussion on **Public Interest Examination**<br>Chaired by: Mr Dale Seymour, Australia<br>Examination of Community Interest – EU's Experience(20 minutes)<br><br>Public Interest Examination – Canada's Experience(20 minutes)<br><br>Public Interest Examination – Brazil's Experience (20 minutes) | Mr. Demos Spatharis, DG Trade EC<br>Ms. Michele Govier Chief of Trade Rules, Canada<br><br>Mr. Marco Fonseca, Director DECOM Brazil |
| 13.45-14.45 hrs | ***Lunch*** | |
| 14.45-15.30 hrs | **Global Value Chains** & Anti Dumping Agreement: Need for change<br>Moderator: Professor Abhijit Das, Head CWS<br>Presentation<br>Talk / presentation: 30 minutes<br>Discussion: 15 minutes | Mr Edwin Vermulst, Partner, VVGB-Avocats, (Law firm), Brussels |
| 15.30-16.30 hrs | **Global Safeguards vs Bilateral Safeguard Measures** under FTAs:<br>Moderator: Mr Edwin Vermulst Partner, VVGB-Avocats<br><br>Exclusion of FTA partner from Global Safeguard Measures: Issues (20 minutes)<br><br>Exclusion of FTA partner from Global Safeguard Measures: Issues (20 minutes)<br><br>*Questions and Answers* | Mr. Woon-Ho Lee Standing Commissioner Korea Trade Commission<br>Mr. Marco César Saraiva da Fonseca, Director DECOM Brazil |
| 16.30-17.00 hrs | *Questions and Answers*<br>*Wrap up* | |
| 17.00-17.30 hrs | Tea/Coffee | |

**Annexure 2**

**International Conference on Trade Remedy Measures**

**9-10 April 2015**

**List of Participants**

| Sl. No. | Name | Designation | Organization |
|---|---|---|---|
| 1. | Mr. Paul Piquado | Assistant Secretary | US Department of Commerce |
| 2. | Mr. Ryan Rhodes | Special Adviser | US Department of Commerce |
| 3. | Ms. Lisa Foss | Senior Policy Analyst | US Department of Commerce |
| 4. | Mr. Steve Presing | Director Anti Dumping Rules Negotiations | US Department of Commerce |
| 5. | Mr. Robert Bolling | Senior Import Analyst | US Department of Commerce |
| 6. | Mr. Wesley Mathews | Economic Officer | US Embassy, New Delhi |
| 7. | Ms. Nisha Wadhawan | Commercial Specialist | US Embassy, New Delhi |
| 8. | Ms. Nisha Rajan | Economic Specialist | US Embassy, New Delhi |
| 9. | Mr. Demos Spatharis, | Head of EU's Trade Remedies Directorate. | DG Trade EC |
| 10. | Ms. Michele Govier | Chief of Trade Rules | International Trade Policy Division, International Trade and Finance Branch, Department of Finance, Canada |
| 11. | Mr. Woon-Ho Lee | Standing Commissioner | Korea Trade Commission, Republic of Korea |
| 12. | Mr. Sang-Deok Han | Senior Deputy Director | Korea Trade Commission, Republic of Korea |
| 13. | Mr. Osamu Umejima | | White & Case LLP / White & Case Law Office, Japan |
| 14. | Mr. Marco César Saraiva da Fonseca | Director | Department of Trade Remedies, DECOM Brazil |
| 15. | Mr. Dale Seymour | Anti-dumping Commissioner | Australia |
| 16. | Mr. Johann Human | Director | Rules Division, WTO |
| 17. | Mr. Edwin | Partner | VVGB – Avocats (Law firm) |

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|---|---|---|---|
| | Vermulst | | Brussels |
| 18. | Mr. Han Yong | Director | Trade Remedy Investigation Bureau (TRB), Ministry of Commerce (MOFCOM), China |
| 19. | Ms. Zhao Hui | Deputy Director | Trade Remedy Investigation Bureau (TRB), Ministry of Commerce (MOFCOM), China |
| 20. | Ms. Qi Xin | Deputy Director | Trade Remedy Investigation Bureau (TRB), Ministry of Commerce (MOFCOM), China |
| 21. | Mr. G.J Lee | Executive Director | TECC, Taiwan Embassy, New Delhi |
| 22. | Mr. J.K Dadoo | JS &DA | DGAD, India |
| 23. | Mr. G. Ramachandran | Adviser (Cost) | DGAD |
| 24. | Mr. D.P Mohapatra | Director | DGAD |
| 25. | Mr. M.K Sahoo | Joint Director | DGAD |
| 26. | Mr. Rajiv Arora | Director | DGAD |
| 27. | Shri I.P Singh | Adviser (Cost) | DGAD |
| 28. | Shri G.R Wadhwa | Adviser (Cost) | DGAD |
| 29. | Shri Satyan Sharda | Director (FT) | DGAD |
| 30. | Ms. Shubhra | Director (FT) | DGAD |
| 31. | Shri S.S Das | Director (FT) | DGAD |
| 32. | Shri Pawan Kumar | JD (Cost) | DGAD |
| 33. | Shri Saibal Sarkar | JD (Cost) | DGAD |
| 34. | Shri Gandharb Pradhan | Deputy Director | DGAD |
| 35. | Ms. Dona Ghosh | Deputy Director (FT) | DGAD |
| 36. | Mr. J.S Deepak | Additional Secretary | Department of Commerce |
| 37. | Mr. Tapan Majumdar | Director | Department of Commerce |
| 38. | Prof. Abhijit Das | Head | Centre for WTO Studies |
| 39. | Mr. Mukesh Bhatnagar | Professor | Centre for WTO Studies |
| 40. | Mr. Murali Kallummal | Associate Professor | Centre for WTO Studies |
| 41. | Dr. Sachin Kumar Sharma | Assistant Professor | Centre for WTO Studies |

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| 42. | Dr. Pralok Gupta | Assistant Professor | Centre for WTO Studies |
| 43. | Ms. Tripti Chouhan | Research Fellow | Centre for WTO Studies |
| 44. | Mr. Jayant Raghu Ram | Research Fellow | Centre for WTO Studies |
| 45. | Mr. Jaikant Singh | Addl. DGFT | DGFT, New Delhi |
| 46. | Mr. K.C Rout | Addl. DFGT | DGFT, New Delhi |
| 47. | Mr. Satish Kumar | Joint DGFT | Addl. DFGT, New Delhi |
| 48. | Mr. R.P Goel | Joint DGFT | Addl. DFGT, New Delhi |
| 49. | Mr. Rajesh Bhatt | Superintendent | DG (Safeguards) |
| 50. | Mr. M.P Gangar | Superintendent | DG (Safeguards) |
| 51. | Dr. Vijaya Katti | Chairperson | IIFT |
| 52. | Mr. Anil Rajvanshi | Chairman | SRTEPC |
| 53. | Mr. V. Anil Kumar | Executive Director | SRTEPC |
| 54. | Mr. Kripabar Baruah | Deputy Director | SRTEPC |
| 55. | Mr. Jayantha Poojary | | SRTPEC |
| 56. | Mr. Anil Mungad | Vice President | Reliance Industries Ltd. |
| 57. | Shri James J. Nedumpara | Associate Professor & Executive Director, CITEL | Jindal Global Law School |
| 58. | Ms. Adhiti Gupta | Research Fellow, CITEL | Jindal Global Law School |
| 59. | Shri Manab Majumdar | Assistant Secretary General | FICCI |
| 60. | Mr. Shivramkrishnan.H | Chief Commercial Officer | ESSAR |
| 61. | Mr. Rishabh Bhandari | Deputy Manager | ESSAR |
| 62. | Mr. A.K Gupta | MD | TPM Consultants |
| 63. | Shri Sanjay Notani | Partner | ELP |
| 64. | Shri Ambarish Sathinathan | Associate Manager | ELP |
| 65. | Shri Mrugank Kamdar | Associate Manager | ELP |
| 66. | Shri Vikram Naik | Associate | ELP |
| 67. | Mr. M.S Pothal | CA | M.S Pothal & Associates |
| 68. | Mr. Ratheesh Malottu | Advocate | M.S Pothal & Associates |
| 69. | Mr. S. Seetharaman | Executive Partner | Lakshmikumaran & Sridharan |
| 70. | Mr. Atul Gupta | Advocate | Lakshmikumaran & Sridharan |
| 71. | Mr. Bhargav Mansatta | Principal Associate | Lakshmikumaran & Sridharan |
| 72. | Shri Sharad Bhansali | Managing Partner | APJ-SLG Law Offices |

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| 73. | Mr. Jitendra Singh | Partner | APJ-SLG Law Offices |
| 74. | Ms. Surbhi Mehta | Advocate | APJ-SLG Law Offices |
| 75. | Mr. Jinendra Singhvi | FA | APJ-SLG Law Offices |
| 76. | Mr. Shailendra Dubey | FA | APJ-SLG Law Offices |
| 77. | Ms. Reena Khair | Partner | TLC Legal |
| 78. | Mr. Neeraj Varshney | Partner | ITS Legal |
| 79. | Ms. Tashi Kaul | Director | Ernst & Young LLP |
| 80. | Ms. Ameeta V. Duggal | Advocate | DGS Associates & Advocates |
| 81. | Mr. Raju Dey | Consultant | World Trade Consultant & Advocates |
| 82. | Mr. Anmol Jain | | World Trade Consultant & Advocates |
| 83. | Mr. Rajeev Jain | | World Trade Consultant & Advocates |