

International Seminar

**WTO Membership and
Foreign Trade Law Reform**

**Anti-Dumping, Subsidy and Countervailing
Duty and Safeguard Measures**

Speaking notes of

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Presented to

**Ministry of Foreign Trade and Economic Cooperation
Asian Development Bank**

Beijing, China

October 2001

I. Antidumping

- **Latest developments:** (1) developing country "implementation" proposals requesting changes to antidumping rules; (2) broader debate over reopening Uruguay Round antidumping text as part of new WTO round; (3) dispute settlement proceedings (see below)
- **Key issues addressed in adopted panel/Appellate Body reports:**
 - *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan:* causation analysis, inclusion of margins based in part on "facts available" among the margins averaged together to establish "all others" margin
 - *United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from Korea:* methodology for determining whether dumping would likely resume after revocation of an order
 - *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea:* methodology for calculating dumping margins in the presence of significant currency movements
 - *Thailand - Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel H-Beams from Poland:* need for specific findings under each of the 15 injury factors listed in the *Antidumping Agreement*
 - *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed-Linen from India:* "zeroing" of negative dumping margins on particular models
 - *Guatemala - Definitive Anti-dumping Measure regarding Grey Portland Cement from Mexico:* standards for whether evidentiary record relied on by an authority to initiate an antidumping case can be considered "sufficient" to warrant initiation
- **Issues raised in pending dispute settlement cases:**
 - *Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy:* exporter's right to confidential treatment of sensitive business information; authority's obligation to disclose essential facts regarding decision to impose AD measures.
 - *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey:* findings of injury and dumping allegedly made (1) without proper establishment of the facts and (2) based on biased evaluation of the facts
 - *United States – Continued Dumping and Subsidy Offset Act of 2000:* whether CSDOA involves specific action against dumping not contemplated in, and violative of, the AD Agreement

- *Brazil – Anti-Dumping Duties on Jute Bags from India*: claim that AD finding was based on a forged document regarding a non-existing Indian company
- *United States – Anti-dumping duties on Seamless pipe from Italy*: consistency of fact-specific "likelihood" finding issued by DOC (in a sunset review) with standards in the AD Agreement
- *United States – Section 129(c)(1) of the URAA*: Whether URAA duty refund rules prohibit the US from complying fully with adverse DSB rulings
- *European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil*: challenge to EC's establishment and evaluation of facts
- *Mexico – Provisional Anti-Dumping Measure on Electric Transformers*: claim that provisional AD measures violated Articles 5.2, 5.3 and 5.8 of the AD Agreement (lack of sufficient evidence of dumping, injury and causation)
- *Philippines – Anti-Dumping Measures regarding Polypropylene Resins from Korea*: challenges regarding like product, injury, causality, and dumping calculations
- *Turkey – Anti-Dumping Duty on Steel and Iron Pipe Fittings*: failure to ensure proper notification; biased/unobjective evaluation of facts
- *United States – Anti-Dumping and Countervailing Measures on Steel Plate From India*: {various complaints}
- *Mexico – Measures Affecting Trade in Live Swine*: claim that threat determination failed (1) to evaluate all relevant economic factors having a bearing on the state of the industry and (2) to establish a clearly foreseen and imminent change in circumstances
- *Ecuador – Definitive Anti-Dumping Measure on Cement from Mexico*: final duties, provisional duties, and initiation challenged under Articles 1-7, 9, 12, 18 and Annex II of the AD Agreement
- *Trinidad and Tobago – Provisional Anti-Dumping Measure on Macaroni and Spaghetti from Costa Rica*: challenges under Articles 1-7, 10, 12, 18 and Annex I and II of the AD Agreement
- *Trinidad and Tobago – Certain Measures Affecting Imports of Pasta from Costa Rica*: additional challenges under Articles 2, 3, 5, 6 and 12 of the AD Agreement
- *Ecuador – Provisional Anti-Dumping Measure on Cement from Mexico*: whether provisional antidumping measure and actions preceding it violated Articles 1-7, 9, 12, 18 and Annex II of the AD Agreement

- *South Africa – Anti-dumping Duties on the Import of Certain Pharmaceutical Products from India*: calculation of normal value; injury determination allegedly not based on positive evidence and lacking an evaluation of all relevant economic factors
- *Argentina – Anti-Dumping Measures on Imports of Drill Bits from Italy*: whether investigation exceeding 18 months violated Article 1 of the AD Agreement
- *European Communities – Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India*: challenge to determination of industry support, initiation, selection of the sample, injury finding, and alleged failure to take into account the special situation of India as a developing country
- *Mexico - Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States*: challenge under Articles 5 and 6 of the AD Agreement
- *United States - Anti-Dumping Measures on Imports of Solid Urea from the Former German Democratic Republic*: challenge under Articles 9 and 11 of AD Agreement
- **Noteworthy developments in U.S. law and practice:** (1) CDSOA regulations; (2) response to DSB-adopted decisions
- **Suggestions concerning PRC's anti-dumping system:** (1) law enforcement/non-political approach; (2) retrospective vs. prospective system; (3) appropriateness of attempting to isolate "injury margin" or otherwise offset something less than the calculated margin of dumping; (4) philosophy for making decisions in areas where WTO rules vest discretion in investigating authority

II. Subsidies and Countervailing Measures

- **Latest developments:** (1) developing country "implementation" proposals to modify SCM rules negotiated in Uruguay Round; (2) broader debate over reopening Uruguay Round SCM text as part of new round; (3) completed and pending dispute settlement proceedings over CVD measures; (4) dispute settlement proceedings over subsidy measures (United States/FSC, Brazil/Aircraft, Canada/Aircraft, Australia/Leather)
- **Pending challenges to CVD measures:**
 - *United States – Continued Dumping and Subsidy Offset Act of 2000*: whether CDSOA constitutes specific action against subsidization that is not contemplated in, and violates, the SCM Agreement
 - *United States – Section 129(c)(1) of the URAA*: whether URAA duty refund rules prohibit the US from complying fully with adverse DSB rulings

- *United States- Countervailing duties on certain carbon steel products from Brazil **and** United States – Countervailing Measures concerning Certain Products from the European Communities*: U.S. methodology for determining when pre-privatization subsidies remain countervailable
- *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*: standards for determining, in sunset review, whether subsidization would likely continue or recur after revocation of an order
- *United States – Anti-Dumping and Countervailing Measures on Steel Plate From India*: {various challenges}
- *United States – Countervailing Duty Investigation with respect to Live Cattle from Canada*: evidentiary basis for initiating investigation
- *Argentina – Countervailing Duties on Imports of Wheat Gluten from the European Communities*: investigation exceeding 18 months -- SCM Article 11.11
- *Peru - Countervailing Duty Investigation against Imports of Buses from Brazil*: challenge to initiation decision
- *United States - Countervailing Duty Investigation of Imports of Salmon from Chile*: evidence of injury required to justify initiating investigation
- **Key substantive issues arising in recent/pending CVD investigations:** (1) allocating subsidies over time and across products; (2) treatment of post-bestowal events which allegedly impact the ongoing benefit of subsidies already allocated over a period of years; (3) "adequate remuneration" standard for government provisions of goods and services; (4) "indirect" subsidies
- **Noteworthy developments in U.S. law and practice:** (1) CDSOA regulations; (2) revision of change-in-ownership methodology; evolution of "specificity" doctrine
- **Suggestions concerning PRC's CVD system:** (1) law enforcement/non-political approach; (2) conceptual model of a subsidy; (3) additionality of antidumping and countervailing duties

III. Safeguard Measures

- **Latest developments:** (1) pending WTO challenges; (2) adopted dispute settlement decisions involving causation analysis and unforeseen circumstances; (3) relationship between global safeguard rules and the safeguard mechanisms established in China's protocol of WTO accession
- **Pending dispute settlement cases challenging safeguard measures**

- *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea* (complaint by Korea)
- *United States – Definitive Safeguard Measures on Imports of Steel Wire Rod and Circular Welded Carbon Quality Line Pipe* (complaint by the EC)
- *Argentina – Measures Affecting Imports of Footwear* (complaint by United States)
- *Chile – Price Band System and Safeguard Measures relating to Certain Agricultural Products* (complaint by Argentina)
- *Chile – Safeguard Measures and Modification of Schedules regarding Sugar* (complaint by Colombia)
- *Chile – Provisional Safeguard Measure on Mixtures of Edible Oils* (complaint by Argentina)
- *European Communities – Tariff-Rate Quota on Corn Gluten Feed from the United States* (complaint by United States)
- *Chile – Price Band System and Safeguard Measures relating to Certain Agricultural Products* (complaint by Guatemala)
- *Hungary – Safeguard Measure on Imports of Steel Products from the Czech Republic*, (complaint by Czech Republic)
- *United States - Safeguard Measure Against Imports of Broom Corn Brooms*, (complaint by Colombia)
- **Noteworthy developments in U.S. law and practice:** (1) response to DS decisions on Wheat Gluten and Lamb safeguards