



Recommendations on Anti-Dumping

Introduction

PBEC, since its inception, has stood for the promotion and advancement of trade in the Pacific Basin. In recent years, PBEC's message has turned towards organizations such as APEC and the WTO, urging them to commit to a path of trade liberalization and the reduction of trade barriers. PBEC has promoted the concept of an open food system that entails both liberalization and cooperation, the kind of challenge the region – and indeed, the world – needs to achieve growth and prosperity that can benefit all.

Serious impediments stand in the way of progress for freer trade, however. Among these, the misuse of Anti-dumping as a protectionist measure is a significant and growing problem.

Anti-dumping measures, as contemplated in Article VI of the WTO agreement (ADA), are an integral part of the legitimate tools governments can use to protect local industries from demonstrated injury resulting from discriminatory pricing by foreign exporting companies.

Unfortunately, while the agreement offers the conceptual and procedural basis upon which AD measures can be applied, there is justified business concern that widespread use is part of an increasing protectionist strategy worldwide affecting all economies.

In view of the danger this trend signifies to the integrity and credibility of the world trading system, PBEC, through its Anti-Dumping Committee, has embarked on a project to identify the extent of the problem and to develop a set of recommendations containing principled and appropriate solutions to the present situation.

The present situation

Increase in AD cases

Since the Uruguay Round, and as tariffs have progressively decreased, the number of anti-dumping actions has significantly increased. The proceedings of the WTO dispute settlement mechanism show that, to date, a significant majority of appeal cases against AD measures applied equally by developed and developing countries have been found in favor of the appellant as having no basis in fact.

Unjustified Application

Unjustified application of AD is very damaging to exporters and a threat to the competitive character of the world trading system: AD procedures are long and complicated and require substantial resources to respond. No compensation is available to successful appellants. Insufficient transparency and expediency in presenting evidence is often a problem. The application of dispositions is sometimes inconsistent and arbitrary, and initial findings are reviewed by administrative instances, which are not independent of government authority. The WTO review panel process as a last resort, while sound, is very slow and open only to WTO members.

The unjustified use of AD to shelter industries unable or unwilling to compete in an open international market may be expedient politically but is very damaging to the broader interest of the international business community and must be curtailed.



The committee does not wish to single any one economy in particular with regards to these practices, but simply to point out that all economies are victims of this increasing problem. Left unchecked, this trend can lead to increased punitive reciprocity and rising protectionism.

Limiting unjustified use

The Committee believes the solution lies in reviewing the weaknesses and inconsistencies of the AD Agreement and in tightening the rules of application to deter unjustified use, increase transparency and accountability, and dispose of trivial cases at an early stage.

Recommendations

PBEC as the voice of business in the Pacific Basin seeks to build on the positive outcomes of successive WTO multilateral negotiations. Therefore, PBEC strongly emphasizes the importance of minimizing impediments to free trade through illegitimate protectionist strategies.

PBEC calls on the private sector and governments to refrain from the trivial or inappropriate use of AD as a protectionist measure, and to support the inclusion in the new WTO round of negotiations in Qatar of a thorough review of the rules of the AD Agreement that would help eliminate the ADA's ambiguities, inconsistencies and provisions open to discretionary or arbitrary interpretation.

PBEC calls on all WTO members to consider a number of straightforward reforms to the AD rules of application that may help redress the trend of abuse and inappropriate use of the same. These include:

1. Transparency

Evidential responsibilities included in the ADA that require adequate disclosure of all relevant information for public review must be more closely and systematically adhered to, to provide adequate opportunity for public review of information used by the investigating authority. Inaccessibility makes the process less accountable and more likely to give suit to weak cases.

2. Lesser Duty

Evidence shows that the disregard of the Lesser Duty provision, Article 9 of the ADA, largely results in a penal application rather than a remedial elimination of injury, acting as a barrier to future trade, contrary to the purpose of AD measures. A mandatory provision would eliminate this undesirable outcome.

3. Review Process

The review process should be addressed in two ways:

- a) Independent internal national reviews should be established as contemplated in the case of some trade agreements, thereby providing cost effective and timely resolution of disputes.
- b) WTO dispute resolution mechanisms, as a last resort, must become more expeditious to minimize the compounded damage that undue delays can cause on appellants facing unjustified AD actions.



4. Trivial allegations

Considering raising the threshold of the "de minimis" margin, and that of the negligible volume by small amounts beyond the standards prescribed in Article 5 of the ADA, would serve to dispose at an early stage cases that can be considered trivial in the ADA definition.

5. Cost of production application to agricultural commodities

Given the uniqueness of agricultural commodities, the "cost of production" application should be discussed at the next round.

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