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WTO: Trade Remedies in the Doha Round

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Summary

At the November 2001 Ministerial meeting of the World Trade Organization (WTO) in Doha, Qatar, trade ministers from the 146 WTO member countries launched a new round of trade talks known as the Doha Round. One of the negotiating objectives agreed to called for "clarifying and improving disciplines" under the WTO Antidumping and Subsidies Agreements. This objective was criticized by a number of Members of Congress who were concerned that future concessions by the United States could lead to the weakening of U.S. trade remedy laws.

Negotiations on antidumping, countervailing duties, and other trade remedies are ongoing as WTO Members stake out positions and provide suggestions for amendments to the Agreements. If adopted, many of these proposals would require changes to U.S. trade remedy laws. The positions of major actors in the negotiations are briefly discussed. It is too early to tell at this time whether an international consensus will develop over any one position. This report will be updated as events warrant.

Background

The United States and many of its trading partners use antidumping (AD) and countervailing duty (CVD) laws to remedy the adverse impact of alleged unfair trade practices on domestic producers. These statutes are permitted by the WTO as long they conform to the WTO Agreement on Implementation of Article VI (Antidumping Agreement, ADA) and Agreement on Subsidies and Countervailing Measures (ASCM) as adopted in the Uruguay Round. A review of the Agreements was included in the Doha Round under pressure from U.S. trading partners, despite concerns of some in Congress and the business community that concessions may lead to a weakening of U.S. trade remedy laws (i.e., make it harder for U.S. industries to gain relief from unfair trade practices).

Doha Ministerial Conference

At the fourth WTO Ministerial Conference in Doha, Qatar, in November 2001, trade ministers reached agreement on an agenda for a new round of trade talks. A group of major U.S. trading partners (including Japan, Korea, Brazil, Chile, Columbia, Costa Rica,

Thailand, Singapore, Switzerland, and Turkey) had become concerned with a perceived general increase in the use of trade remedy measures, and particularly with measures the United States had taken to protect the steel industry. The group demanded that the United States allow a review of the ADA and ASCM as a condition for launching the new round.

U.S. trade officials were not successful in keeping language on antidumping and subsidies out of the Doha declaration. After much discussion, WTO trade ministers agreed to negotiations seeking to clarify and improve the measures, "while preserving the basic concepts, principles, and effectiveness of these agreements."[1]

The upcoming fifth WTO Ministerial meeting to be held in Cancun, Mexico from 10-14 September, 2003, is considered an important "stock-taking" on the progress of Doha Round negotiations which are scheduled to be completed by January 2005. Several suggested changes to the ADA and ASCM have been presented during initial negotiations in the WTO Negotiating Group On Rules leading up to the Cancun Ministerial. The recently released draft Cancun Ministerial Text does not contain any specific objectives regarding the ADA or ASCM, but it does instruct the Negotiating Group on Rules to accelerate its work on antidumping and subsidies and countervailing measures "with a view to shifting its emphasis from identifying issues to seeking solutions."[2]

Congressional Interest

The Doha Round agenda has significant implications for the Congress because any required amendment of U.S. law resulting from the Doha agreements would require congressional approval before the agreements can be implemented by the United States. Congressional interest in AD and CVD negotiations has been especially high.

Prior to the Doha Ministerial, the Bush Administration faced considerable pressure from a number of Members of Congress to protect U.S. trade remedy laws from changes. On November 6, 2001, the House overwhelmingly passed (410-4) a concurrent resolution declaring that the negotiators should "preserve the ability of the United States to enforce rigorously its trade laws and should ensure that United States exports are not subject to the abusive use of trade laws by other countries"(107th Congress, H.Con.Res. 262). In the Senate, then-Senate Finance Committee Chairman Max Baucus and 61 other Senators sent President Bush a letter in May 2002 cautioning against allowing U.S. trade remedy laws to be weakened in a new round of talks. Not all Members held this view, however. In a November 9 letter, Senator Phil Gramm of Texas and six other Republican Senators argued for flexibility on negotiating on AD and CVD.[3] Bush Administration trade officials defended the decision to negotiate on AD and CVD issues by highlighting the U.S. need for an "offensive agenda" on trade remedies to address the increasing "misuse" of trade remedy measures in other countries against U.S. exporters.

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[1] World Trade Organization (WTO). Doha Ministerial Declaration, WT/MIN(01)/DEC/1.

[2] WTO. Draft Cancun Ministerial Text, JOB(03)/150/Rev.1, August 24, 2003.

[3] CRS Report RL31206, *The WTO Doha Ministerial: Results and Agenda for a New Round of Negotiations*, coordinated by William H. Cooper.

Some Members remained unconvinced that trade negotiations on AD and CVD laws would be beneficial to U.S. interests, and on May 14, 2002, during floor debate on trade promotion authority (TPA, H.R. 3009, 107th Congress), the Senate passed by voice vote the so-called Dayton-Craig amendment (S. Amend. 3408). Under the amendment, trade agreement implementing legislation would have been subject to a point of order if the legislation included any provisions that would modify or amend, or require a modification or amendment of U.S. trade remedy laws. If a point of order were raised, the provision would be stripped from the legislation unless a 51-vote majority waived it. Bush Administration trade officials had warned that they would recommend that the President veto the bill if it was amended to contain the provision.

The Dayton-Craig amendment was dropped in conference. However, the H.R.3009 conference report (H.Rept. 107-624) contained compromise language that: (1) added an additional negotiating objective instructing trade officials to "preserve the ability of the United States to enforce rigorously its trade laws" and "address and remedy market distortions that lead to dumping and subsidization;" (2) added a reporting requirement that required the U.S. Trade Representative (USTR) to report on ways that a proposed trade agreement might affect trade remedy laws; and (3) allowed for a procedural disapproval resolution in either House (using specified language) stating that the proposed changes in trade remedy laws were inconsistent with the negotiating objectives specified in the Act.

Major Issues in Trade Remedy Negotiations

Recent Developments

On June 20, 2003, the United States submitted a paper to the WTO Negotiating Group on Rules suggesting measures to strengthen the ADA "standard of review" provision. In the paper, U.S. trade officials asserted that the ADA contains a number of general obligations, but leaves Members flexibility on the precise means of by which to implement those obligations in practice. The officials state that Article 17.6 of the ADA (provides guidelines for dispute settlement in AD cases), if correctly applied, will help the WTO dispute system to "respect the balance of commitments inherent in the ADA and not operate so as to impose on Members obligations to which they did not agree."

The paper also addressed additional issues U.S. negotiators want to discuss in rules negotiations, including preliminary determinations in AD and CVD investigations, the definition of "affiliated parties" when analyzing relationships between foreign producers and resellers, clarification of exchange rate calculations, disclosure of calculation methods used when setting AD and CVD rates, the definition of "dumped" imports, and the treatment of pre-privatization subsidies.[4]

In June 2003, the "Friends of Antidumping" group submitted a proposal advocating an explicit ban on "zeroing." This method of calculating antidumping margins is used when multiple comparisons of the export price and home market price are made for

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[4] WTO Negotiating Group on Rules, *Further Issues Identified under the Anti-Dumping and Subsidies Agreements*, United States. TN/RL/W/130.

different types of the subject merchandise. Zeroing refers to the practice of treating "negative"dumping margins as zero values when averaging the values to determine a dumping margin for the product as a whole.[5]

U.S. Position

U.S. application of some trade remedy laws has been found in recent years to be in violation of the WTO agreements in certain WTO dispute settlement proceedings. U.S. trade officials and many Members of Congress have at times been dissatisfied with the standard of review used by the WTO when evaluating dispute resolution complaints — accusing WTO panels of going beyond the scope of the Uruguay Round Agreements (URA) to decide cases. Some Members of Congress have notified the USTR that it is essential that U.S. negotiators address these dispute settlement issues.[6]

U.S. negotiators have emphasized the importance of establishing a proactive agenda on trade remedy issues. The following issues have been presented in negotiations:

- Maintaining the strength and effectiveness of the trade remedy laws and the WTO agreements;
- Encouraging openness and transparency in the operation of trade remedy laws within WTO Member countries;
- Eliminating "trade-distorting practices" that lead to the need for trade remedy laws;
- Tightening of dispute panel and appellate body "standard of review" provisions so that panels do not add to the obligations, nor diminish the rights of WTO member nations; and
- Preserving the certainty and predictability of a rules-based trading system.[7]

"Friends of Antidumping" Proposals

A coalition of developed and developing WTO Member countries (known as the "Friends of Antidumping") including Brazil, Chile, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Thailand, and Turkey, have been concerned about a "continuing increase in the use of contingency measures worldwide." During the Doha Ministerial, it was largely this group of nations that insisted that the ADA and ASCM be opened up for negotiations.

The "Friends" group seeks to clarify and improve the disciplines under the WTO agreements, largely by providing more precise definitions of certain language in the

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[5] WTO. Negotiating Group on Rules. *Proposal on Prohibition of Zeroing*. Brazil, et. al. TN/RL/W/113, June 6, 2003. The practice has been struck down by WTO panels as violative of article 2.4.2 of the ADA. An EC challenge to the U.S. use of "zeroing" is pending.

[6] "Zoellick Raises Two Objections to WTO Draft Declaration," *Inside U.S. Trade*, November 2, 2001; "Baucus Lays Out Demands for Changes in WTO Dispute Settlement," *Inside U.S. Trade*, April 19, 2002.

[7] World Trade Organization. Negotiating Group on Rules. *Basic Concepts and Principles of the Trade Remedy Rules*. United States. TN/RL/W/27. October 22, 2002.

agreements, providing more specific guidelines for calculation of dumping margins, and other procedural changes, including the following:

- Narrower definitions of terms such as "dumped" imports, "like product"[8] and "domestic industry;"
- Changes in investigating authority calculations by providing specific definitions and guidelines in the ADA and ASCM for calculating dumping and subsidy margins;
- Amending the ADA to prevent antidumping duty orders from being extended beyond five years through sunset reviews.[9]

European Union (EU) Issues

In a July 8, 2002 paper, the EU said that WTO Members, especially developing countries, have increasingly relied on antidumping measures, and that there were major differences between countries in the interpretation and application of trade remedy rules. The EU emphasized that "antidumping is now a global instrument and every country is now both a potential user and a potential target of antidumping action." EU proposals to strengthen the disciplines related to implementing trade remedies include the following:

- Provide greater disclosure and access to nonconfidential documents;
- Apply a mandatory "lesser duty" rule when imposing antidumping margins if the lesser duty is adequate to remove the injury to the domestic industry;
- Apply a "public interest test" by requiring or allowing investigating authorities to examine the impact of an antidumping order on the economy as a whole;
- Provide for accelerated WTO dispute settlement proceedings prior to the initiation of investigations under certain conditions;
- Reduce the costs of investigations so that firms, especially in developing countries, can more readily participate in proceedings;
- After trade rules are updated, provide a package of concessions to allow for the special needs of developing countries; and
- With regard to subsidies, amend the definition of "subsidies" so that less detectable types of actionable subsidies can also be disciplined.[10]

Developing Countries' Position

The ADA and ASCM provide some "special and differential treatment" for developing countries. Article 15 of the ADA recognizes that "special regard must be given by developed country Members to the special situation of developing country Members when considering the application of antidumping measures under this

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[8] "like product" refers to determining the product or products like, or most similar in characteristics and uses with the article subject to an AD investigation.

[9] World Trade Organization. Negotiating Group on Rules. *Antidumping: Illustrative Major Issues,* Paper from Brazil, Chile, Colombia, Costa Rica, Hong Kong, China, Israel, Japan, Mexico, Norway, Singapore, Switzerland, Thailand, and Turkey. TN/RL/W/6. April 26, 2002.

[10] World Trade Organization. Negotiating Group on Rules. Submission from the European Communities. TN/RL/W/13. July 8, 2002.

Agreement." Although developed countries are instructed to apply "constructive measures," Article 15 provides no specifics as to what measures should be implemented. In the ASCM, Article 27 allowed governments of developing countries to provide certain subsidies on a time-limited basis (generally, five years from the entry into force of the Agreement for developing country members and eight years for least developed country members); however, this provision has expired.

Subsidies Agreement. India has submitted several WTO discussion papers representing the views of developing nations. According to India, in order to foster economic development of smaller industries in these countries, the state must play a more active role in assisting industries. India suggests the measures for discussion in order to address the needs of developing countries:

- The *de minimis* level of subsidy should be raised above 3%. When a countervailing duty is assessed, the duty should be applied only to that amount by which the subsidy exceeds the *de minimis level*;
- The "negligible volume of imports" threshold should be raised from less than 4% of total imports of the product to less than 7%;
- Export subsidies should be permitted if they account for less than 5% of the f.o.b. value of the product; and
- Subsidies provided as incentives for using domestic over imported intermediate goods when making products for export should be allowed on an indefinite basis.

Antidumping Agreement. India points out that from January 1, 1995 to June 30, 2001, more than 60% of antidumping measures imposed were directed against developing country imports. India suggests that "positive efforts" to implement Article 15 of the ADA could include:

- Raise the current 2% *de minimis* dumping margin to 5% for developing countries;
- Apply the 5% *de minimis* level retroactively in review and refund cases, not only in newly initiated cases;
- Increase the negligible volume of dumped imports from 3% of total imports to 5% and delete the provision allowing for antidumping action below the threshold if countries collectively account for more than 7% of total imports; and
- The "lesser duty rule" (applying only the amount of duty necessary to offset injury to the domestic industry) should be made mandatory when imposing antidumping duties against imports from developing country Members by any developed country Member.[11]

Concluding Perspectives

The procedures in the Negotiating Group on Rules leading up to the Cancun Ministerial have largely involved presenting suggested topics for trade remedy negotiations and defining the positions of the major stakeholders in the debate. It is too early to tell if an international consensus will develop on any one position.

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[11] World Trade Organization. Negotiating Group on Rules. *Proposals on Implementation-Related Issues and Concerns,* India. TN/RL/W/4, April 25, 2002.