



UiO • **PluriCourts** – The Legitimacy of the International Judiciary
University of Oslo

Dumping and Subsidies in WTO Law

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OVERVIEW

- I. FAIR AND UNFAIR TRADE PRACTICES**
- II. DUMPING AND ANTI-DUMPING MEASURES**
- III. SUBSIDIES AND COUNTERVAILING MEASURES**
- IV. STUDENT PRESENTATION**
- V. COMPARISON**

I. FAIR AND UNFAIR TRADE PRACTICES

- “Free trade, free trade but we like protecting our own”
- **No WTO rules:**
 - cartel agreements
 - price fixing
 - abuse of dominant position
- **WTO rules:**
 - subsidies
 - anti-dumping

II. DUMPING AND ANTI-DUMPING DUTIES

What is dumping?

Product from Country A introduced into the commerce of Country B at a price *lower* than the normal price in country A

Legal sources

- **primary:** Art. VI GATT + Anti-Dumping Agreement
- **secondary:** WTO panel and AB reports

II. DUMPING AND ANTI-DUMPING DUTIES

- Dumping is done **by private companies**
- WTO law does **NOT** prohibit dumping! Only regulates state response to injurious dumping
- Why is it highly controversial?
- Why would companies use it?

How to counteract dumping?

- it is **a state's choice** whether to accept dumping or not
- State can impose *Anti-Dumping Measures* if
 - legislation notified to WTO
 - investigation carried out
 - **(1) dumping exists + (2) injury exists + (3) causal link**

(1) Is there dumping?

- Art. 2.1 ADA !!!
 - *product* from country A
 - introduced into the commerce of country B
 - at price less than *normal value in country A*

+

Export price < comparable price for the *like product* (art.2.6 ADA) in the *ordinary course of trade* in *exporting country!!*

(1) Is there dumping?

- Art. 2.4 ADA – fair comparison!
- **Margin of dumping** = export price – normal value
- Margin established for each exporter
- *Zeroing* inconsistent with WTO law - *US Zeroing 2006*

(2) Injury to domestic industry

- **Domestic industry** (art. 4.1 ADA) = all / major proportion
- **Injury** (art. 3 ADA)
 - **material injury**
 - threat of injury
 - material retardation of establishment of domestic industry
 - *China GOES 2012*, art 3.2 ADA vs 3.5 ADA, para. 147

(3) Causal Link

- Art. 3.5 ADA
- *US Hot Rolled Steel 2001*, paras. 222

Step 1 - all factors causing injury *must* be examined

Step 2 - ‘non-attribution’ requirement: separate effects

ANTI-DUMPING INVESTIGATION (Arts. 5-6 ADA)

Step 1: Initiation of Investigations

- on application by domestic industry (5.1 ADA)
- *proprio motu* (5.6 ADA)
- enough evidence must be provided!

Step 2: Conduct of Investigations

- must stop if *de minimis* (5.8 ADA)
- **due process requirements (6 ADA)**: notification (12 ADA), information, defense, transparency, judicial review (13 ADA)

Step 3: Imposition of Anti-Dumping Measures

ANTI-DUMPING MEASURES (Nothing Else Allowed!)

Provisional measures, Art 7 ADA

- short period
- if necessary

Price Undertakings, Art. 8 ADA – voluntary by exporter

Definitive anti-dumping duties, Arts. 9-11 ADA

- optional for the importing state
- **anti-dumping duty < dumping margin**
- retroactivity prohibited in principle (10 ADA)
- periodic/sunset reviews
- max 5 years

EXTRA

- Anti-Dumping Committee – Art. 16 ADA
- Special Dispute Settlement rules
 - art. 17.6(i) and (ii): standard of review and interpretation- *US Hot Rolled Steel 2001*, para 55
- Special rules for developing countries – art. 15 ADA

III. SUBSIDIES AND COUNTERVAILING MEASURES

What is a subsidy?

A financial contribution given by a govt/public body that confers a benefit

Legal sources

- **primary:** Art. VI & XVI GATT + SCM Agreement
- **secondary:** WTO panel and AB reports

III. SUBSIDIES AND COUNTERVAILING MEASURES

- Unlike dumping, **it is done by Government!**
- Unlike dumping, **WTO law also disciplines the granting of subsidies**
- **Not all subsidies** are prohibited
- Specific rules for agricultural subsidies

What can a state do against subsidies?

- Pursue *multilateral* remedies under arts 4-7 SCM (consultation, litigation, countermeasures)

OR

- Impose *unilateral* countervailing measures (only when injury to domestic industry!)
- **Only these are allowed!**

What is a subsidy?

- Subsidy exists if:
 - (a) **financial contribution** 1.1.a ADA
 - (b) **by govt/public body**
 - (c) **conferred a 'benefit'** – *Canada Civilian Aircraft 1999* –
better conditions than offered by the market + focus on recipient
 - (d) **specificity!!** – 1.2 and 2 ADA
 - **not generally applicable**: granted to specific (group)
enterprise/industry, geographic region + prohibited subsidies

What subsidies are covered by the SCMA?

- **Used to be 3 categories, now 2:**
 - (1) prohibited – Part II SCMA
 - (2) actionable – Part III SCMA
 - ~~(3) non-actionable – Part IV SCMA~~

(1) Prohibited Subsidies

- Art. 3 SCMA covers:
 - **Export subsidies**
 - **Import substitution subsidies**
 - Exception: Agreement on Agriculture
- **Art. 4 SCMA *multilateral* remedies:**
 - special rules prevail over DSU
 - PGE (4.5 SCMA) + shorter time frames
 - can result in countermeasures approved by DSB

(2) Actionable Subsidies

- Art. 5 SCMA - subject to WTO rules **if they cause adverse effects:**
 - **injury** to the domestic industry – similar to ADA!
 - **nullification/impairment** of GATT benefits
 - **serious prejudice** – Art 6 SCMA
- **Art. 7 SCMA – *multilateral remedies***
 - special rules prevail over DSU
 - no PGE + longer time frames
 - can result in countermeasures approved by DSB

COUNTERVAILING MEASURES

Unilateral alternatives only if injury!

- **Provisional measures**, Art 17 SCMA
- **Voluntary Undertakings**, Art. 18 SCMA
- **Countervailing duties**, Arts. 19-21 SCMA

Conditions (art. 11.2 SCMA):

- subsidy exists
- injury caused to domestic industry, arts 15-16 SCMA
- causal link

Countervailing Investigations

Step 1: Initiation of Investigations

- on application by domestic industry (11.1 SCMA)
- *proprio motu* (11.6 SCMA)
- enough evidence must be provided!

Step 2: Conduct of Investigations

- must stop if *de minimis* (11.9 SCMA)
- **due process requirements (12 SCMA)**: notification (22 SCMA), information, defense, transparency (12.3 SCMA), judicial review (23 SCMA)

Step 3: Imposition of Countervailing Measures

EXTRA

- Subsidies Committee – Art. 24 SCMA
- Special Dispute Settlement rules arts. 4/7 SCMA
- Special rules for developing countries – art. 27 ADA
- For agriculture rules in *Agreement on Agriculture* prevail over SCMA

V. Can you list similarities and differences between the WTO rules on anti-dumping and subsidies?