



Trade Remedies and WTO Dispute Settlement: Current Issues

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Different types of WTO trade remedies

- Anti-Dumping measures
 - Measures against imports if such imports are at an export price below the price of same product sold in exporting country and cause injury to domestic industry.
- Countervailing measures
 - Measures against imports to offset subsidies granted to foreign producers and cause injury to domestic industry.
- Safeguard measures
 - Measures against imports if domestic industry is injured (or threatened with injury) by a surge in imports.

Obligations imposed by Anti-Dumping Agreement, Subsidies Agreement, Safeguards Agreement

- Procedural obligations:
 - Must only impose measure after investigation conducted according to rules
 - For instance: 30 days to answer questionnaires
 - Due process / right to a hearing
 - Right to see information relied upon by the investigating authority (vs) right to have confidential information protected
- Substantive obligations:
 - How authorities calculate dumping margin
 - How authorities determine existence of subsidy, if product benefits from subsidies
 - How authorities determine injury

What happens if the rules are not followed?

- Domestic judicial proceedings and/or
- WTO dispute settlement

Domestic judicial proceedings

- Article 13 of the Anti-Dumping Agreement:

“Judicial Review

Each Member whose national legislation contains provisions on anti dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question”

(see also Article 23 of the SCM Agreement)

WTO dispute settlement

- Panel of three decision-makers appointed *ad hoc* (ambassadors, former Ministers, trade negotiators, trade practitioners, etc.)
- Assisted / serviced by WTO Secretariat (Rules Division for trade remedies)
- Can be appealed to Appellate Body (standing body of seven “members” sitting in panels of three)

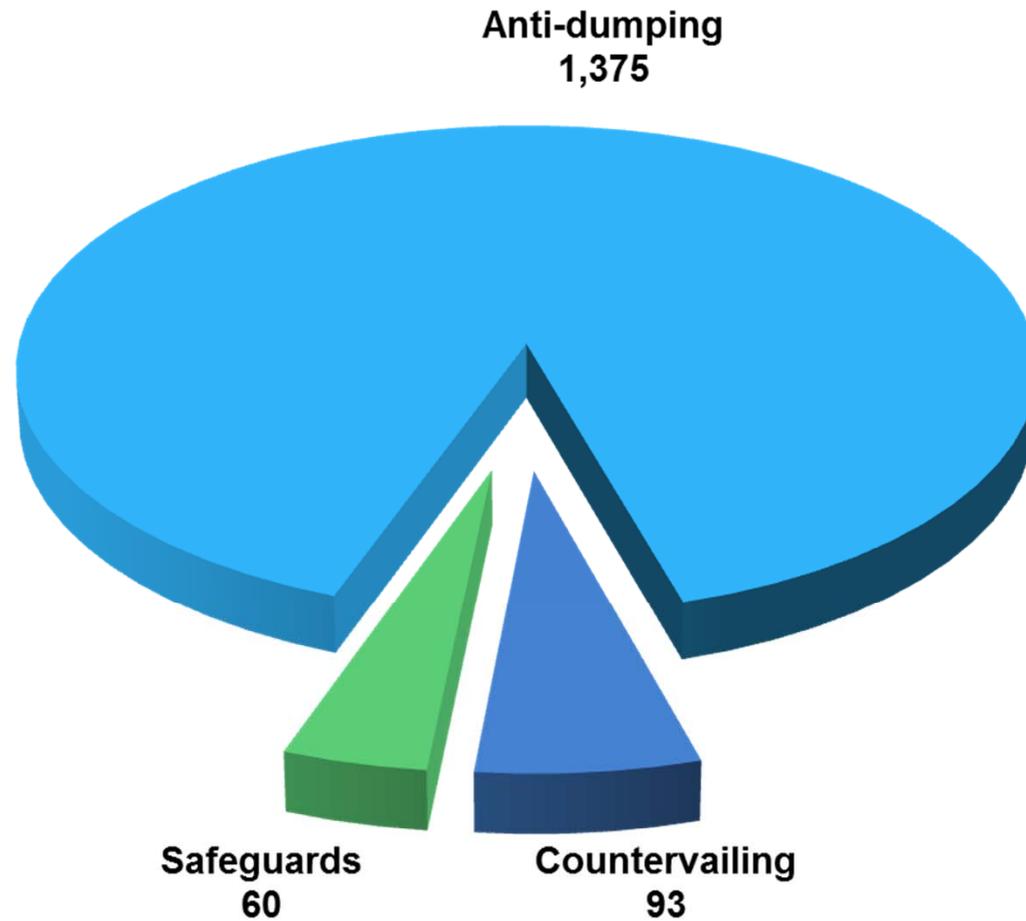
Domestic judicial proceedings vs. WTO dispute settlement

- Which one to pursue?
 - Advantages of domestic judicial proceedings:
 - Faster/slower??? (depends - WTO takes 1.5 to 3 years).
 - May be retroactive vs. WTO: mostly prospective
 - Private party can launch case (WTO: only government)
 - Advantages of WTO dispute settlement
 - Not dependent on limits of national administrative law
 - Can contest the anti-dumping /CVD /safeguard legislation itself as being WTO-inconsistent



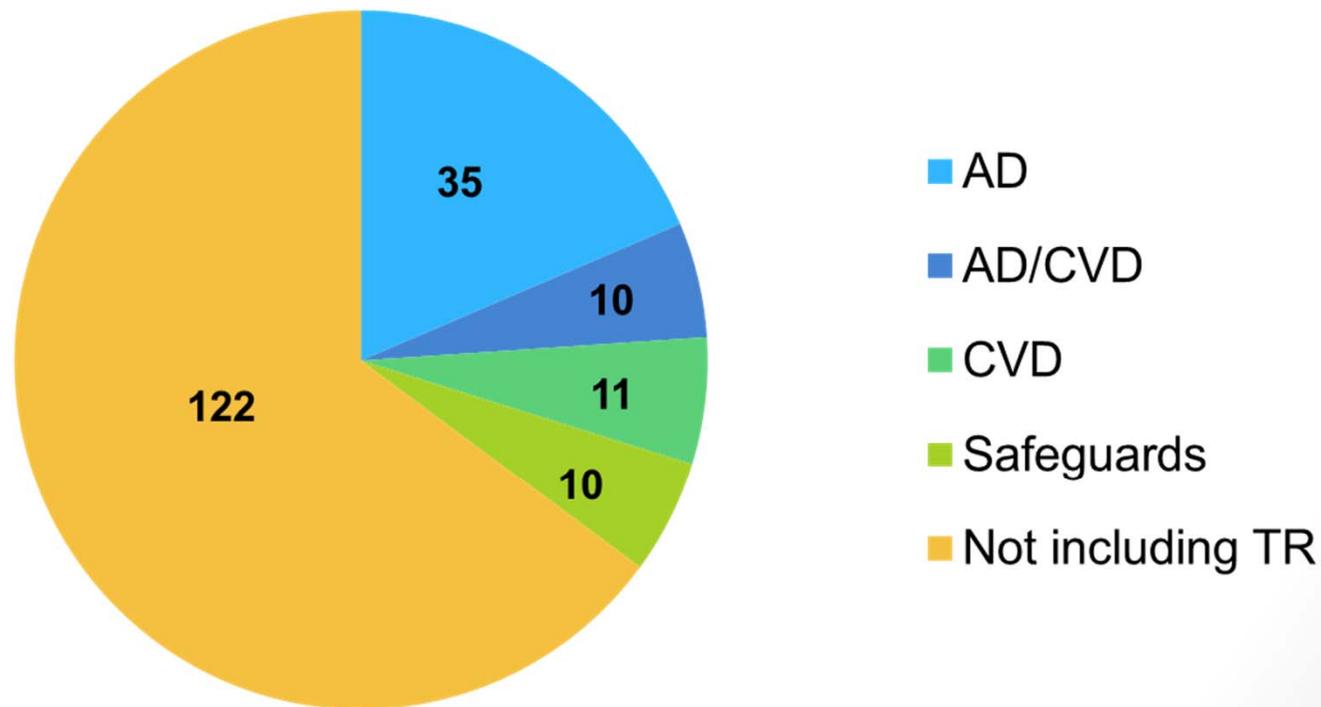
Can do both

Trade remedy measures in force as of end 2013



Disputes resulting in rulings: trade remedies, 1995-2013

Disputes resulting in rulings, and including:



Issues in recent trade remedy disputes –procedural obligations

- What to do when foreign producers do not cooperate in the investigation?
- How much information must the authorities disclose to the foreign producers?
- Are foreign producers allowed to have a “hearing”?

Issues in recent trade remedy disputes – substantive obligations

- Anti-dumping:
 - Issues pertaining to the calculation of production costs
 - Treatment of NMEs
 - Zeroing
- Countervailing duties:
 - “Public bodies”
 - Benchmarks to determine whether subsidy confers benefit

Inputs at regulated or distorted prices

- Article 2.2 of the Anti-Dumping Agreement: dumping margin is calculated by comparing export price (EP) to domestic price (“normal value”, or NV).
- If, *inter alia*, product is sold at a loss (compare to costs of production), may use other method (ex. construct on basis of costs of production).
- Article 2.2.1.1 of Anti-Dumping Agreement: to calculate production costs, must normally use producers’ costs as recorded in their books if comply with Generally-Accepted Accounting Principles (GAAP) and reasonably reflect the costs of production / sale.

Inputs at regulated or distorted prices

- Authorities of some Members consider that where domestic price for the input is regulated or distorted, then should not value input at price actually paid by foreign producers.
 - EU AD investigations on 3 products from Russia (ammonium nitrate , welded iron tubes and pipes, seamless steel pipes): considered that regulated price of gas (input in production process) in Russia not representative of costs of production.
 - EU AD investigations on biodiesel from Argentina and Indonesia: considered that export tax regime depressed price of soybeans, soybean oils in Argentina and of palm oil in Indonesia.
- DS473 and DS474: Argentina and Russian Federation challenge EU cost adjustments / costs calculations (e.g. use of international rather than domestic prices).

Constructing normal value – allocation of costs of production (co-products; by-products)

- Other situation: how to allocate costs of production between two products produced together. Example: chicken breasts vs. chicken feet
 - USA producers said they used value-based allocation.
 - China: cost allocation by US producers did not “reasonably reflect cost of production”; should allocate costs on basis of weight.
 - DS427 Panel: Chinese investigating authorities did not explain why they rejected the producers’ costs.

Zeroing

- Question: what if you have four sales, 2 at $EP < NV$; and 2 at $EP > NV$?
- Example:
 - NV of 100 RUB
 - 4 export sales:
 - Sale 1: 80 RUB (dumping of 20 RUB)
 - Sale 2: 60 RUB (dumping of 40 RUB)
 - Sale 3: 100 RUB (no dumping)
 - Sale 4: 130 RUB (“negative dumping” of 30 RUB)
 - What is dumping margin: 30 RUB (no zeroing) or 60 RUB (“zeroing”)?
- In several disputes:
 - EU, then USA, argued that zeroing was consistent with AD Agreement.
 - Appellate Body disagreed, found that zeroing was contrary to AD Agreement.

Active trade remedy disputes

- DS429 *US – Shrimp II (Viet Nam)*
- DS436 *US – Carbon Steel (India)*
- DS437 *US – Countervailing Measures (China)*
- DS440 *China – Autos (US)*
- DS460 & DS454 *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP SSST") from the EU, and from Japan*
- Other disputes at various stages (e.g., consultations requested; establishment of panel requested; or in composition)

Thank you!

Questions?