

## Preventing Dumping of Agricultural Surplus on Vulnerable DC Markets

### Presentation of NGO Demands

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## What Kind of Surplus Nowadays?

- By-products
- below-standard products
- Waste products
- Second-hand products
- Products without a market in some countries, not meeting the high-quality demand or taste of certain consumers

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## Trends of Sub-Standard Dumping

- The higher the quality and safety standards on high priced markets, the more rejects need to be disposed on low priced markets.
- The higher the level of support for the high quality market products, the more cross-subsidisation is possible at the low quality market.
- The closer the rejects reach the point of waste disposal, the higher the inclination to dump.
- The lower the price elasticity for the low quality products on domestic markets, the more it makes sense for the companies to dispose excess quantities on external markets.

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## Trade Effects of the New Forms of Sub-Standard Dumping

- They bypass all trade disciplines and rules.
- The domestic industries of importing DC have no chance to enter into a fair competition.
- Local farmers of poor countries compete with cost of waste disposal in rich countries in the last instance.
- For poor consumers there is total substitution, thus definition of „like products“ apply („even if not alike in all respects, they have characteristics resembling those of the product under consideration“)

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## How to Curb the Destructive Impact of this Trade?

- Disciplines for the exporting countries and companies.
- Importing countries use existing trade defense instruments.
- Imp. countries negotiate extended protecting safeguard measures in multilateral and bilateral trade talks.
- Introducing new rules into the multilateral trade regime.
- Litigation under existing rules.
- Litigation under new rules: a simplified complain mechanism

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## Defence Instruments for Dev. Countries in Agriculture

- Raise nominal tariffs to bound level
- General Safeguard
- Special Safeguard Mechanism
- Special Products
- Sensitive Products
- Anti Dumping Measures
- Subsidies and Countervailing Measures

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## Special Products + Special Safeguard Mechanism

- Still under negotiation in WTO and RTA
- Exempt sensitive sectors from liberalisation
- Top priority for G 33 in Doha Round
- Prospects are not encouraging for effective tools for DCs, due to
  - - limitation to number of tariff lines, in scope and timeframe,
  - - too stringent, restrictive, burdensome and offer too little protection,
  - - sub-standard dumping too huge to capture with this instrument.

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## Difficulties with Anti Dumping Measures

- How to define „comparable price in the ordinary course of trade“ or „cost of production in the country of origin“
- How to determine the threat of material injury (positive evidence“, price undercutting, like products, evaluation of all necessary factors, indices having a bearing of the state of the industry, etc. )
- How to prove the cause of injury (based on examination of all relevant evidence, of any known factors other than the dumped imports, changes in the pattern of consumption)
- How to meet the „Standing requirement“ (majority of affected industry must petition the government in writing)
- Costs and capacity to meet requirements

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## Countervailing Measures

- Difficulty how the Agreement on SCM defines governmental subsidy and support,
- Difficult to prove support by the foreign government to its producers (of the exported product),
- A broadened definition of product specific support (like by OECD-standards) should be applied,
- Differential treatment for exports to LDC: ban exports of heavily supported products.

## Burden of Proof

- Highly sophisticated empirical data and methodology needed,
- Preferential treatment of DCs for the level of proof that suffices to establish a „prima facie case“ to presume that the claim is valid,
- From that onward, reverse of the Burden of Proof: the onus shifts to the accused Developed Country.
- This party will fail unless it submits sufficient evidence to disprove the claim.

## Why Litigation is not an Option for LDC

- Only one case of a dispute whereby the complainant was a DC (Bangladesh),
- Pol., econ. and financ. leverage of large countries sufficient to browbeat the aggrieved LDC into inaction,
- When seeking remedy action, fear that it causes retaliation in other fields,
- Fear of negative reactions in various other negotiations,
- Costs and complications are immense,
- Even if they win, little hope for remedy and no sanctioning power.
- However: no dispute yet against an DC either; just go ahead with anti-dumping measure.

## Simplified Complain Procedure for LDC

- Procedure and costs for a DSU are the same for a dispute of a large and a small trading volume.
- Existing preferential measures for D.C. ineffective (fast track, mediation, conciliation, good office).
- DSU is not size-neutral; reduce systems „user fee“ for small countries and DCs.
- Introduce „Ombudsman“, like „Public Prodecutor“ in EU legal system: has the right and obligation to initiate legal proceedings against defiant government in the general interest of upholding the treaties)

## Excess to Ombudsman by Stakeholders of Civil Society

- Clash of interests between government of importing country and the affected farmers of dumping,
- In accordance to the affected industry's „standing requirement“, affected farmers' organisations shall have the right to file a simplified complain with the ombudsman.

## Extending Responsibility for Food Safety Beyond Point of Export

- EU consumers' protection ends with the exit of the product from its territory.
- The exporter should have the responsibility for the safety of food at least one step further in the globalized food chain.
- He needs to make sure that the standard of „good business practice“ by the importer of his product is guaranteed.

## Trade with Deep Frozen Meat

- Deep frozen meat is to be handled like other risk products.
- The Codex Alimentarius Code on the Trade with Deep Frozen Meat needs to become mandatory for the EU.
- The exporter needs to submit a license by the importing state that the importer is authorised to trade with deep frozen meat.

Thank you for listening

On behalf of all co-organising NGOs