



# SEZ and WTO regulation

**Hildegunn Kyvik Nordås**

**WTO**

# Relevant WTO agreements

- **Subsidies and countervailing measures (SCM)**
- **Trade related investment measures (TRIMs)**

# SCM

- **Definition of subsidy:**

- **Financial contribution** by government or any public body
  - Direct transfer of funds (e.g. grants, loans, equity infusion)
  - Potential transfer of funds (loan guarantees)
  - Foregone government revenue (e.g. tax credits)
  - Government provides goods or services (other than general infrastructure)
  - Also when government provides these subsidies through a funding mechanism or entrust a private body to carry out the measures.
- Which confers a **benefit**
- Which is **specific**

# SCM cont.

- **Definition of ‘specific’**

- **The subsidy is explicitly limited to certain companies, industries or regions**
- **Prohibited subsidies are always specific**
- **(Subsidies are not specific if horizontal and neutral criteria for eligibility apply and subsidies are granted automatically when the criteria are satisfied – e.g. company size, number of employees)**

# Types of subsidies

- **Prohibited**

- **Subsidies contingent on export performance**
- **Subsidies contingent on the use of domestic over imported goods**

- **Actionable**

- **Not illegal, but can be subject to countervailing measures if:**
  - **Injury to domestic industry (in importing country)**
  - **Serious prejudice (e.g. in third markets)**
  - **Nullification or impairment of e.g. improved market access**

# Actionable cont.

- **If subsidies exceed a certain level, burden of proof of no injury, prejudice or nullification is on the subsidizing Member**
- **If subsidies are below that level, or the subsidizing Member is LDC or on the list of exempted members, the burden of proof of injury, prejudice or nullification falls on the complaining Member**

# Example of export subsidies

- **Direct subsidies contingent on export performance**
- **Currency retention schemes which involve a bonus on exports**
- **Internal transport and freight charges on export shipments on favourable terms**
- **Government provision of inputs on favourable terms if prices are lower than market prices**
- **Tax exemption related to exports**
- **Subsidized export credit**

# Special and different treatment

- **Which countries?**

- LDC and a list of developing countries with GDP per capita < \$1000 – **including India**

- **Which exemptions?**

- Export subsidies are not prohibited – **but they are still actionable**
- Burden of proof of injury on the importer

- **Under which conditions?**

- Export subsidies must be phased out over a period of 8 years if export competitiveness has been reached (> 3.25% of world exports)

# TRIMs

- **The TRIM agreement applies to investment measures related to trade in goods only**
- **Investment measures cannot be conditioned on local content or export performance.**

# China's SEZ and the WTO

- **China has reached export competitiveness – is not subject to S&D**
- **SEZ subject to WTO compatible regulation upon accession**
  - **Tariff policies applied uniformly throughout China's customs territory**
  - **Preferential treatment of FDI applied on a non-discriminatory basis**

# WTO-compatible SEZ for India

- Offers good infrastructure and efficient government services
- Services provided by government (inputs, loans, guarantees, utilities) at 'market' prices
- Subsidies (if any) **must not** be contingent on local content
- Subsidies (if any) contingent on exports allowed, but can be countervailed
- India probably has reached export competitiveness in textile and clothing – if so, export subsidies to these sectors must be phased out