The WTO and Export Processing Zones (EPZs)

What do present WTO rules say about EPZs?

WTO rules do not refer to Export Processing Zones (EPZs) by that name and there is no official WTO definition of "EPZ". However, some aspects of the different rules that apply in EPZs relative to the rest of a national territory (with regard to issues such as preferential access to infrastructure, and provision of financial incentives such as tax exemptions or lower tax rates) are not in line with the principles of WTO agreements.

Such prohibited aspects of EPZs concern, in particular, the WTO Agreement on Subsidies and Countervailing Measures (ASCM). This Agreement disciplines the use of subsidies and it regulates the actions countries can take to counter the effects of subsidies.

The disciplines in the agreement apply to "*specific subsidies*", which are subsidies available only to an enterprise, industry, group of enterprises or group of industries in the country that gives the subsidy. *Specific subsidies* under the agreement can be either "*prohibited*" or "*actionable*". There was once a category of "*non-actionable* [specific] *subsidies*" but that came to an end in 1999.

The Agreement on Subsidies and Countervailing Measures currently only applies to subsidies for goods as the subsidies part of the GATS agreement is still under negotiation.

Prohibited Subsidies

Prohibited subsidies are specific subsidies that require recipients to meet certain export targets or to use domestic goods as inputs instead of imported goods. Thereby, they constitute a "distortion" of free trade. Examples are 1. provision of goods and services by the government at prices lower than for domestic production; 2. remission or deferral of direct taxes and social welfare charges, specifically related to exports; 3. internal transport and freight charges more favourable than those available for domestic shipments; and 4. government provided export credit guarantees or insurance.

Actionable Subsidies

Actionable subsidies are specific subsidies that have adverse effects on another country's interests, either because the subsidies hurt the domestic industry in an importing country; or they hurt rival exporters in a third country's market; or they hurt other exporters in the domestic market.

The exemption or remission of indirect taxes on an export product, such as value added tax, is permitted.

Exemptions

There are two exemptions on the prohibition of the use of export subsidies. First of all the LDCs and developing countries with a GNP per capita of less than US$ 1000 per year are exempted from this regulation and are allowed to provide export subsidies. They lose this exemption when they graduate from LDCs status or have a GNP of over US$ 1000 per year.

Other developing countries got a period of exemption (Art 27.4 of the ASCM). The period of exemption ended in 2002, but a number of developing countries negotiated an extension in Doha till the end of 2007 (G/SCM/39), accompanied by a two-year phase out period resulting in an effective end date of 2009. Countries covered by this are Antigua and Barbuda, Barbados, Belize, Colombia, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St Lucia, St. Vincent and the Grenadines, Thailand and Uruguay.

In April 2006 a number of countries (Antigua and Barbuda, Barbados, Belize, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Jamaica, Mauritius, Papua New Guinea, St.Kitts and Nevis, St. Lucia and St. Vincent & the Grenadines) submitted a proposal (G/SCM/W/535) in which they asked for an extension of export subsidy programmes until the end of 2018. Another proposal was tabled in June 2006 (G/SCM/W/537) by Panama and was subsequently co-sponsored by Costa Rica, Uruguay and Jordan. The proposal also asked for an extension of export subsidy programmes till the end of 2018.

On 13 July 2007, the SCM Committee adopted a draft decision for the extension of export subsidies until the end of 2013 with a two year phase out period. The draft decision is now awaiting final approval by the General Council, which meets on the 27th of July. Countries that will benefit from this extension are Antigua and Barbuda, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Fiji, Grenada, Guatemala, Jamaica, Jordan, Mauritius, Panama, Papua New Guinea, St. Kitts and Nevis, St Lucia, St. Vincent and the Grenadines and Uruguay. Four countries that are exempted from the prohibition of export subsidies because of their low GNP per capita (below US$1,000 per year) reserved their rights to benefit from the extension in case they graduate before 2015.

The prohibition of export subsidies: what effects will this have on EPZs?

If EPZ authorities are prohibited from using the forms of export subsidies described above, they are likely to look to other incentives or circumstances for attracting foreign direct investment (FDI), as follows:

- EPZs can continue to exempt exports from indirect taxes, border taxes and import charges.

- Other incentives such as lower tariffs on machinery used in production would be WTO-compatible.

- Incentives can be maintained if governments eliminate the restriction of making them available only to exports, by allowing the products to be sold in the domestic market as well.

- Governments can provide new incentives that are not contingent on export performance.

Another consequence – and perhaps that of greatest concern to trade unions – is that some governments may look to increasing the pressure on labour regulations in EPZs in order to reduce export costs and attract FDI in that manner instead.

WTO rules and labour incentives

Although most governments using EPZs do not apply labour legislation adequately in EPZs, whether through legal exemptions or simply by de facto non-enforcement of labour law in such zones, the WTO Agreement on Subsidies and Countervailing Measures does not say anything about such matters. It only has disciplines with regard to very tightly-defined financial subsidies. The definition provided in Art. 1 of the ASCM[1] would make it hard to argue that an exemption of labour legislation (even including prohibition of trade unions) would fall under such subsidies, notwithstanding the evident financial benefits of exemption of labour legislation for the companies concerned.

There appears to be no precedent in other WTO Agreements that would prohibit the use of exemptions from labour legislation in EPZs. The only thing that would be prohibited is the provision of more favourable treatment to national companies as compared to foreign companies, which is not the case in EPZs; or to give more favourable treatment to some foreign companies rather than to others, which normally is not the case either. But in any case, under current WTO practices the WTO would be unlikely to make any recommendation concerning labour legislation.

Initial Proposals for WTO measures against labour rights abuses in EPZs

Article 1 of the ASCM should be amended to include a provision prohibiting non-financial forms of export subsidy, that would cover violations of labour rights under that definition.

Negotiations on subsidies in the Doha Round (paragraph 28 of the Doha Agreement), aimed at clarifying and improving existing disciplines, should provide for new disciplines against weakening labour legislation in EPZs.

GATT Article XX (e) on prison labour should be used in relation to forced overtime in EPZs. This would apply particularly in cases where workers are locked in the factories until production targets are met. It would also apply, in keeping with ILO jurisprudence, in cases where workers are required to undertake the overtime under threat of dismissal or other sanction if they should refuse.

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[1] *Article 1: Definition of a Subsidy*

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits) [1];

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and

(b) a benefit is thereby conferred.