

Ad hoc Expert Group Meeting on
**Domestic Requirements and
Support Measures in Green Sectors:
Economic and Environmental Effectiveness and Implications for Trade**

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**Local Content Requirements, WTO
Rules, and Third Party Institutions**

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Local Content Requirements, WTO Rules, and Third Party Institutions

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Problem

- Subsidies contingent on LCRs *may* be desirable
- Illegality under WTO law
- Can't rely on 'evolutionary interpretation' of WTO rules – loss of normativity
- Need for rules to reflect reality

Proposals

- Comprehensive Energy Agreement
- Sustainable Energy Trade Agreement (in or out of WTO)
- Amendment (a X WTO)
- Waiver (a IX WTO)

Waiver

- $\frac{3}{4}$ of membership needed
- Proposed at Ministerial Conference
- Annual review
- Waive what?
 - AIII:4 GATT, A 2 TRIMs, A 3 SCM
- Waive how?
 - SR protection under conditions
 - Medium term competition on international level
 - Access to DSM
 - Subject to notification requirement

Conditionality of Waiver

- 2 Important elements
 - Dynamic technology/flexible rules
 - Technical/Industrial policy knowledge
- Where have we seen this before?
 - SPS Agreement a. 3
 - TBT Agreement a. 2

Conditionality based on Standards

- Availability of waiver conditional on conditions set by third party, including
 - Adherence to max LCR limits tailored to, e.g.:
 - Market size of country
 - Know-how (existing deployment as proxy?)
 - Sunset clause

What would this look like?

‘Initial maximum LCR of A% increasing to B% over x years, for a maximum y years, based on an existing installed capacity of Z GW’

Outside the Waiver

- When time expires, normal rules enforceable
 - forces competitiveness in medium term
- Accordance with Waiver conditionality challengeable under the DSU

Further Questions

- What would the waiver cover? RE generation products/services or more?
- Which institution?
Inclusivity/legitimacy/technical expertise
- IRENA?
- IEA?
- UNCTAD?

Conclusions

- General agreement that subsidies with LCR's may – under certain circumstances - be desirable, for environmental, industrial and/or social reasons
- Agreement on 'macro' level enables rule change.
- 'Micro' level conditions flexible + allow to technical/IP expertise on part of third party institution
- DSM still available
- Rules are being broken already – better to feasibly try to limit LCR use than ignore.