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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.