Post from International Economic and Law Economic Blog (Nov. 7, 2021)

"Antidumping and Subsidies (Trade Remedies) Revision for the WTO? …. No."

by Sungjoon Cho

Former Deputy Director-General Alan Wm. Wolff appears to think so. In his remarks ("Defining Success for MC12") delivered at Harvard JFK School on October 29, 2021, Wolff spelled out several candid, and controversial, prescriptions to revive the currently languishing WTO enterprise of both negotiation and dispute resolution. Here are some relevant excerpts from his remarks:

"An overarching principle is that the WTO is to provide fairness – in line with the founding of the system; part of the answer is to restore trade remedies to their rightful place in the system."

"The dispute settlement pillar; *Quasi-judicial overreach*; trade remedies are not to be treated as exceptions to the rules."

"Re-balancing; Trade remedies are recognized as a necessary price paid for greater openness on average."

I suspect the enduring popularity of antidumping measures, for either political or intellectual reasons, is here to stay in the contemporary U.S. trade circle. Jennifer Hillman, former Appellate Body member-turned-academic expressed similar views that demand more deferential standards of review from the Appellate Body, which would undo its current "zeroing" jurisprudence.

I beg to differ. Like many scholars, I believe antidumping remedy is fundamentally anti-competitive, catering to the narrowly-defined special interests at the expense of both national and global economic welfare. Former Federal Reserve Board Chairman Alan Greenspan observed that:

"While these forms of protection have often been imposed under the label of promoting "fair trade," oftentimes they are just simple guises for inhibiting competition. (…) Contrary to popular notions about antidumping suits, under U.S. and WTO law, it is not required to show evidence of predatory behavior, (…)."

After all, the WTO is an international organization that actively promotes "free trade." To what extent *should* the titular "managed trade" be tolerated in the name of political expediency within a *legal* organization like the WTO? Note that it was the European Union that had accepted the Appellate Body's first-ever anti-zeroing decision (*EC – Bed Linen*) in 2001. It then began to challenge the same practice by the U.S. government in the WTO, triggering a series of anti-zeroing case law authored by the Appellate Body. Isn't it the "rule of law" that characterizes the merits of the WTO system? Isn't it the "rule of law" within the context of the *trade* organization that disciplines an individual member's political preferences leading to protectionism? Do we really want to go back to the old GATT system, which late John Jackson portrayed as "power-oriented"?

In sum, we must see through what we will have lost before jumping to any solution that might seem obvious in a political sense.