



MAKING SENSE OF THE VALLES RULES DRAFT

-- SPEAKING NOTES --

Presentation to Global Business Dialogue

Washington, DC

John R. Magnus
TRADEWINS LLC
December 13, 2007

MAKING SENSE OF THE VALLES RULES DRAFT

-- SPEAKING NOTES --

Welcome and congratulations on an excellent decision to attend this morning's GBD panel. I'm John Magnus and am thrilled to be with you this morning, especially at the front of the room with this distinguished crew.

The Valles Draft came out 12 days ago, although it had not been expected until release of next-generation Ag and NAMA papers. Rules issues are now, for good or ill, part of everyone's discussions about the Round. Judge was smart to convene a panel, especially this panel, on the subject.

We'll hear different perspectives on whether the draft is ambitious, but the work schedule certainly is -- one meeting a month with the goal of putting out a new draft in February or March.

The draft is bracketed in its entirety and, as predicted by its author, has been criticized by stakeholders on all sides.

It either reflects or departs from the negotiating mandate established in the Doha Declaration and elaborated in the Hong Kong Declaration -- to "clarify and improve" disciplines.

Another set of potentially relevant criteria are the directives in the (now-expired) TPA legislation, to "preserve the effectiveness" of the existing U.S. trade remedy regime.

I will not undertake to summarize the draft, but to get us started will briefly identify some notable elements.

EXAMPLES OF PROPOSED NEW OBLIGATIONS

The draft contains some new obligations for AD/CVD investigating authorities. Examples include:

- Obligation to solicit views of users of products found to be dumped or subsidized
- Mandatory sunset after 10 years, and standing requirements in all sunset reviews
- New rules governing anti-circumvention measures

- New rules limiting which domestic producers are excludable from domestic industry for standing purposes
- Limitations on re-filing cases after a negative determination

FATE OF U.S. OBJECTIVES

The United States has participated actively in the RNG, making many proposals and responding to innumerable others. One element of the review here in Washington is how U.S. objectives fared. Here are a few examples:

USG Objectives Met in Whole or in Part

- *Roll-back of DS results on “zeroing”*: Draft allows in some contexts, not in others
- *Clarification of non-attribution requirement*: Draft codifies requirement to “separate and distinguish” causes of injury, but has additional language that may or may not address the problem this entails
- *Lesser duty rule*: Not included; existing (non-binding) reference to LDR is even deleted
- *Transparency obligations*: Will require significant changes in the administration of some Member’s laws
- *Subsidy allocation rules*: Set out in Art. 14, but may have some implications outside Part V

USG Objectives Not Met

- *Dispute settlement*: Cabining the dispute settlement process as it applies to challenged AD and CVD determinations
- *Perishable products*: Improving the ability of producers of perishable products to use AD/CVD remedies
- *Tax parity*: Reducing disparity in ASCM’s treatment of direct and indirect taxes
- *Subsidy discipline*: Increasing discipline on industrial subsidies through expansion of the “prohibited” category
- *Pre-privatization subsidies*: Restoring the ability to reach these subsidies under the ASCM
- *Byrd Amendment*: Confirmation of right to determine how to use collected AD/CV duties, subject only to ASCM disciplines

FATE OF FAN OBJECTIVES

The Friends of Antidumping Negotiations (FAN) group got some items on its wish list but saw several high-priority demands denied. Examples of FAN objectives not met include:

- Mandatory lesser-duty rule
- Mandatory public interest rule, enforceable through dispute settlement
- Outright prohibition on zeroing

HOUSEKEEPING

And then there are some interesting housekeeping items, not headline-grabbing but potentially significant. One example, on which I will be interested to see if our panelists have a view, is new language clarifying the relationship inside the ASCM between Annex I and Articles I and III.

ON TO THE PANEL

I think that's all we need to get launched here. We have terrific panelists, and it is our good fortune that they will be able to enlighten us in two key areas:

- the substance and policy issues within the AD/CVD/subsidies context, and
- the connection to, and implications for, the "pulse" of the broader Doha Round

Followed by introductions of Tim Reif (W&M), Angela Ellard (W&M), Alan Wolff (Dewey LeBoeuf) and Linda Menghetti (ECAT)