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WTO Rules Against Safeguard Measure of Indonesia

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In a ruling by the World Trade Organization's highest court for trade disputes, the Appellate Body has ruled that claims against Indonesia, under the WTO agreement on safeguards, should be dismissed on grounds that the duty was not a safeguard measure.

The three parties involved in the dispute—the complainants, Taipei and Vietnam, and the defendant Indonesia—had argued that the duty imposed by Indonesia on iron and steel was a safeguard measure.

NOTE: Appellate Body

- The Appellate Body was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).
- It is a standing body of seven persons that hears disputes brought by WTO Members.
- The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel, and Appellate Body Reports, once adopted by the Dispute Settlement Body (DSB), must be accepted by the parties to the dispute.
- The Appellate Body has its seat in Geneva, Switzerland.

Background

- In 2014, Indonesia imposed a specific duty on galvalume, a type of flat-rolled iron or steel. The three-year duty was imposed following an investigation under Indonesia's safeguards legislation.
- The complaining parties in this dispute, Chinese Taipei and Viet Nam, argued that the specific duty was a safeguard measure within the meaning of the WTO Agreement on Safeguards, and violated Indonesia's Most Favored Nation obligation under WTO rules.

NOTE: What is the Most Favoured Nation (MFN) principle?

- According to the MFN principle of the WTO's General Agreement on Tariffs and Trade (GATT) — to which India is a signatory/contracting party — each of the WTO member countries should “treat all the other members equally as ‘most-favoured’ trading partners.”
- For instance, if a country improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain “most-favoured”.
- Hence, though MFN sounds like special treatment, in effect it means non-discrimination.

Indonesia agreed that its measure was a safeguard within the meaning of the Safeguards Agreement, but argued that the duty was consistent within the MFN agreement.

What is a Safeguard Measure?

- WTO members are entitled to impose safeguard measures to curb sudden and unforeseen surges in imports that cause “serious injury to a member’s domestic industry”.
- Members subjected to safeguard duties can challenge them if the safeguard-imposing country fails to follow the conditions set out in the WTO’s agreement on safeguards.

How have other countries reacted?

- India along with China, the EU, Japan, Korea, Australia, Russia, the US, and Ukraine had participated as third parties. India, China, the EU, Korea, and Japan said the measures imposed by Indonesia must be treated as safeguard measures.
- The countries other than the United States have argued that the appellate body’s reasoning is flawed and was aimed at helping the US to argue that Section 232 duties on steel and aluminium were acceptable.

What are the United States Section 232 duties?

- The United States imposed a 25% duty on steel and 10% on aluminium imports for an unspecified period under Section 232, which deals with national security provisions under Article 21 of the GATT (General Agreement on Tariffs and Trade) 1994.
- In justifying the measure, the US administration invoked a national security law – wherein countries are allowed this kind of recourse in times of war and other emergencies.
- However, other countries have maintained that they were justified to impose retaliatory measures on the US as the punitive duties imposed by the US constituted a “disguised safeguard” measure.