

“REMEDYING” THE REMEDY SYSTEM FOR PROHIBITED SUBSIDIES IN THE WTO: RECONSIDERING ITS RETROSPECTIVE ASPECT

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ABSTRACT

The problem of delayed implementation in prohibited subsidy disputes is a persistent problem in the WTO dispute settlement system. This article examines the WTO remedy system for enforcing WTO rulings in prohibited subsidy disputes to suggest some ways to improve the currently “ineffective” WTO dispute settlement mechanism, at least for resolving disputes involving prohibited subsidies promptly. Through a more detailed study of the WTO remedy system in action, several shortcomings and loopholes in the WTO jurisprudence involving prohibited subsidies are identified and analyzed. In particular, issues involving the “appropriate” level of retaliation, the meaning of “withdrawal” of a subsidy, and the prolonged dispute proceedings in contrast to the requirement to remove illegal subsidy measures “without delay” are analyzed in more detail. Applying the discussions on the principle of proportionality, and the different purpose of remedies, this article suggests that the “retrospective” application of the retaliation remedy should be introduced for

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effectively addressing non-recurring prohibited subsidies under the WTO system. On the other hand, the remedy of monetary compensation is not a viable option as a retrospective remedy for prohibited subsidies, while the existing “fast track” procedure in place for prohibited subsidies needs to be improved in application through broadened jurisdiction of compliance panels.

KEYWORDS: *prohibited subsidies, retaliation, retrospective remedies, monetary compensation, compliance*