

Trade Remedies in Preferential Trade Agreements

Enhancing the contribution of PTAs to
inclusive and equitable trade:

Islamic Republic of Iran

13-15 August 2017

Tehran



Workshop outline

- Trade, growth and development
- Trade protection and liberalization: from efficiency to meeting social objectives
- PTAs and multilateral trading system and PTAs in Asia-Pacific
- Trade reforms and PTAs of Islamic Republic of Iran
- Towards PTA's contribution to inclusive and equitable trade
- Getting a PTA done:
 - ❖ Stakeholders
 - ❖ Negotiation
 - ❖ Implementation
- What if the expectations are not met?

**MANAGING THE IMPACTS OF TRADE LIBERALIZATION:
TRADE REMEDIES AND TRADE ADJUSTMENTS**

SESSION 8.2

Trade Remedies Provided by the GATT/WTO

- Anti-dumping actions
- Safeguards actions
- Use of countervailing duties for offsetting the use of subsidies

ANTI-DUMPING AGREEMENT

Anti-Dumping Agreement

- Article VI of the GATT; elaborated in Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
- Provides unilateral remedies that a WTO Member may apply after it has conducted an investigation and has found that dumping by a partner country is causing injury to its domestic industry

Conditions for Anti-dumping Action

- Dumping is taking place
- Domestic industry is facing material injury
- There exists *a causal link* between the dumped imports and the injury

Determination of Dumping

- Dumping is supposed to have taken place if a product introduced into another country at less than its “normal value”
 - ❖ If the export price of the product exported from one country to another is less than the comparable price for the like product when destined for consumption in the exporting country
- When there are no sales of the **like product** in the **ordinary course of trade** in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country , such sales do not permit a proper comparison, dumping margin would be determined by comparison
 - ❖ With a comparable price of the **like product** when exported to an appropriate third country
 - ❖ With the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits

Determination of Dumping

- Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit costs (fixed and variable costs of production plus administrative, selling and general costs) may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that the sales are
 - ❖ Made within an extended period of time
 - ✓ Normally one year but not less than six months
 - ❖ In substantial quantities
 - ✓ Weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs
 - ✓ The volume of sales below per unit costs are not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value
 - ❖ At prices which do not provide for the recovery of all costs within a reasonable period of time

Determination of Dumping

- Costs to be calculated on the basis of records kept by the exporter or producer under investigation
 - ❖ records are in accordance with the generally accepted accounting principles of the exporting country
 - ❖ reasonably reflect the costs associated with the production and sale of the product under consideration
- Administrative, selling and general costs and profits to be based on actual data pertaining to production and sales in the ***ordinary course of trade*** of the ***like product*** by the exporter or producer under investigation

Determination of Dumping

- In case data on administrative, selling and general costs and profits were not available, the following information can be used
 - ❖ Actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the ***same general category of products***
 - ❖ Weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin
 - ❖ Any other reasonable method, provided that the amount for profit so established does not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin

Determination of Dumping

- Fair comparison to be made between the export price and the normal value
 - ❖ Comparison to be made at the same level of trade, normally at the ex factory level, and in respect of sales made at as nearly as possible the same time
 - ❖ Differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics etc. to be taken into consideration
 - ❖ Authorities would indicate to the parties in question what information is necessary to ensure a fair comparison and would not impose an unreasonable burden of proof on those parties
- Subject to the provisions governing fair comparison
 - ❖ Existence of ***margins of dumping*** during the investigation phase shall normally be established on the basis of a comparison of
 - ✓ ***Weighted average normal value with a weighted average*** of prices of all comparable export transactions
 - ✓ A comparison of normal value and export prices on a transaction-to-transaction basis

Determination of Injury

- Determination of injury would have to be based on “positive evidence” and involve an “objective examination” of
 - ❖ Volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like products
 - ❖ Consequent impact of these imports on domestic producers of such products
- Investigating authorities may cumulatively assess the effects of such imports only if they determine that
 - ❖ Margin of dumping established in relation to the imports from each country is more than 2 per cent, expressed as a percentage of the export price (the de minimis level)
 - ❖ Volume of imports from each country is more than 3 per cent of imports of the like product in the importing Member
 - ❖ Cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product

Determination of Injury

- Impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry,
- Factors used for assessing the impact (non-exhaustive list)
 - ❖ Actual and potential decline in
 - ✓ Sales,
 - ✓ Profits
 - ✓ Output
 - ✓ market share
 - ✓ Productivity
 - ✓ Return on investments
 - ✓ Utilization of capacity
 - ✓ Factors affecting domestic prices;
 - ❖ Actual and potential negative effects on
 - ✓ Cash flow
 - ✓ Inventories
 - ✓ Employment
 - ✓ Wages
 - ✓ Growth, ability to raise capital or investments

Determination of Injury

- Demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities
- Authorities would also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports

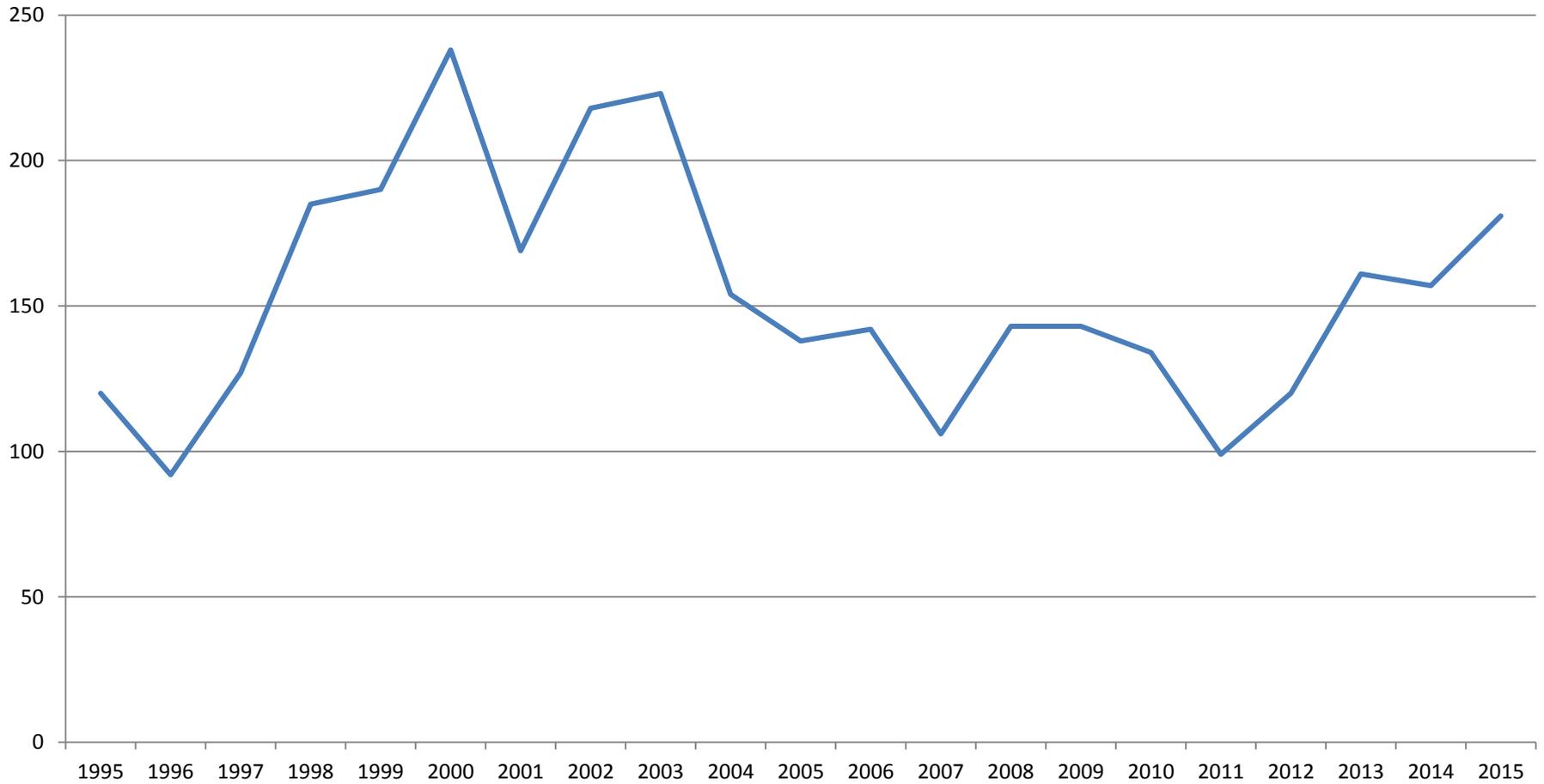
Initiation of Anti-dumping case and Investigation

- Investigation to determine the existence, degree and effect of any alleged dumping can be initiated upon a written application by or on behalf of the domestic industry
- Authorities can decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, provided they have sufficient evidence of dumping, injury and a causal link
- Investigation to be terminated as soon as the authorities are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case
- Investigations to be concluded within one year, and in no case more than 18 months, after their initiation

Anti-dumping Duties

- Amount of the anti-dumping duty cannot exceed the margin of dumping
- An anti dumping duty would remain in force only as long as and to the extent necessary to counteract dumping which is causing injury
- Any definitive anti-dumping duty must be terminated on a date not later than five years from its imposition (or its most recent review)
- Authorities to review the need for the continued imposition of the duty
 - ❖ Provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty
 - ❖ Upon request by any interested party which submits positive information substantiating the need for a review

Anti-Dumping Measures Since 1995



Some Facts Regarding Anti-Dumping Measures

- Top 5 countries taking anti-dumping measures
 - ❖ India, United States, European Union, Argentina, Brazil
- No anti-dumping measure has been adopted by a least developed country
- Four anti-dumping actions against Bangladesh
 - ❖ Brazil – on jute yarn
 - ❖ India – on lead acid batteries and jute yarn
 - ❖ Pakistan – on hydrogen peroxide

AGREEMENT ON SAFEGUARDS

Essentials of the Safeguards Agreement

- Extends the “import injury” clause (Article XIX of GATT)
- A member may apply a safeguard measure to
 - ❖ a product
 - ❖ only if that Member has determined . . .
 - ❖ that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production,
 - ❖ and under such conditions as to cause or threaten to cause
 - ❖ serious injury
 - ❖ to the domestic industry that produces like or directly competitive products.”
- Safeguard measures to be applied to a product being imported irrespective of its source

Cause of Action

- Investigation to determine if increased imports have caused or are threatening to cause serious injury to a domestic industry should evaluate all relevant factors of an ***objective and quantifiable nature*** having a bearing on the situation of industry concerned
- Existence of the causal link between increased imports of the product concerned and serious injury or threat thereof

Conditions for the Use of Safeguard Measures

- Safeguard measures can be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment
- A quantitative restriction, if used, should not reduce the quantity of imports below the level of a recent period which is the average of imports in the last three representative years for which statistics are available
- In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure following a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury
 - ❖ Not to exceed 200 days

Duration of Use

- Safeguard measures may be applied for a period of time which is necessary to prevent or remedy serious injury and to facilitate adjustment
- Safeguard measures can be applied for 4 years – in exceptional circumstances can be applied for a maximum period of 8 years
 - ❖ Developing countries can apply safeguard measures for 10 years

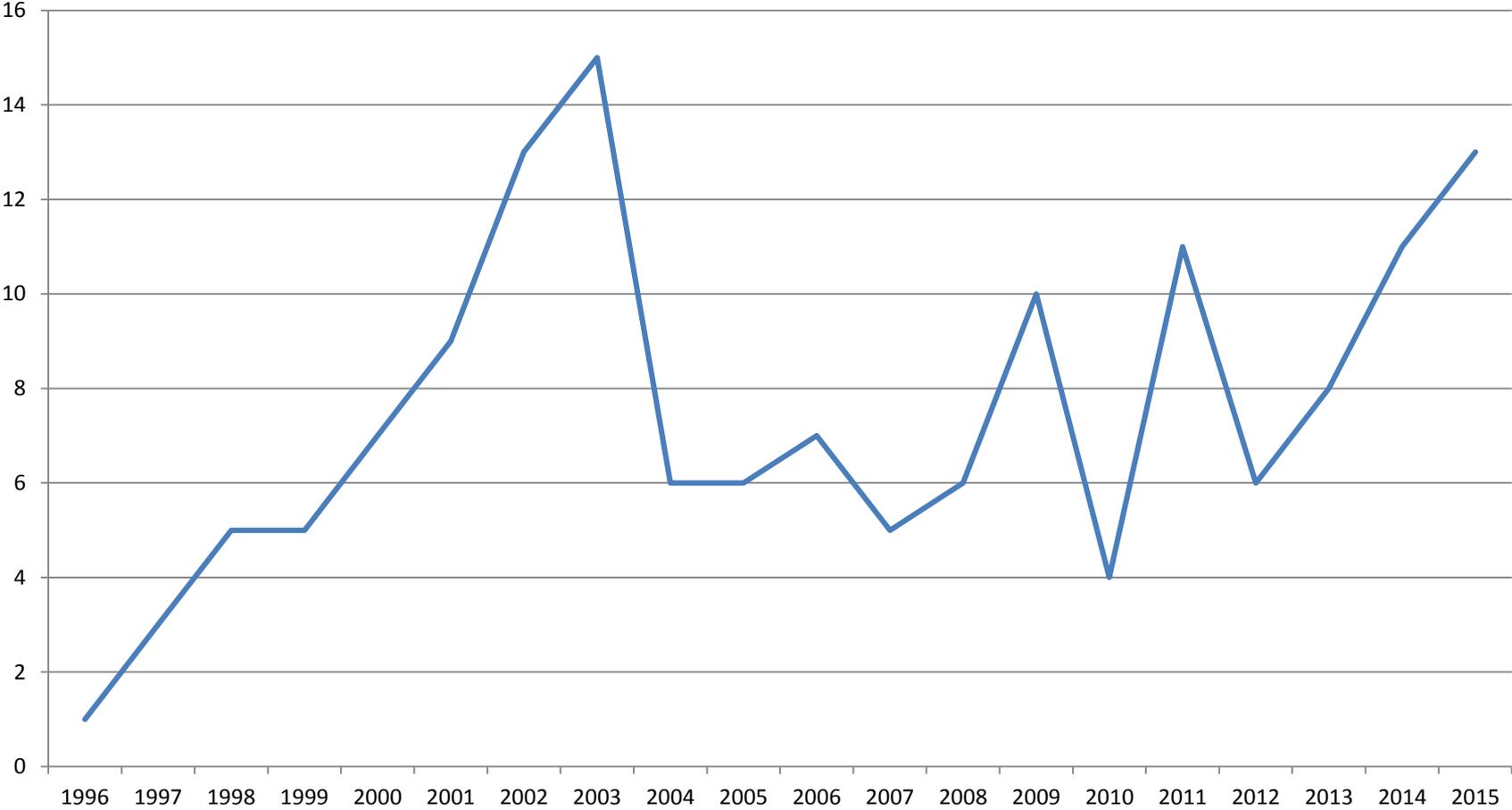
Trade Compensation

- A Member proposing to apply a safeguard measure against a trading partner must provide adequate means of trade compensation for the adverse effects of the measure on latter's trade
- In the absence of such compensation, the affected exporting Members may suspend substantially equivalent concessions and other obligations

Special and Differential Treatment for Developing Countries

- Safeguard measures should not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member
 - ❖ does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned

Safeguard Actions Undertaken since 1995



Some Facts about Safeguard Measures

- Top 5 countries adopting safeguard measures
 - ❖ India, Indonesia, Turkey, Chile, Jordan
- As in the case of anti-dumping, no least developed country has adopted a safeguard measure

AGREEMENT ON SUBSIDIES AND COUNTERVAILING DUTIES

What are Subsidies?

- A benefit accruing from
 - ❖ Financial contribution by a government or any public body within the territory of a Member which confers a benefit
 - ❖ A government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees)
 - ❖ Government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)
 - ❖ Government provides goods or services other than general infrastructure, or purchases goods
 - ❖ Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions referred to above

Subsidy has to be Specific in its Use

- Has to be specifically provided to an enterprise or industry or group of enterprises or industries
 - ❖ Enterprise-specificity
 - ❖ Industry-specificity
 - ❖ Regional specificity
- What is not a specific subsidy
 - ❖ When the subsidy granting authority establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy

Categories of subsidies

➤ Prohibited subsidies

- ❖ Export subsidies
- ❖ Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods

➤ Actionable subsidies

- ❖ Subject to challenge, either through dispute settlement mechanism or through countervailing action, when they cause adverse effects to the interests of another Member
 - ✓ Injury to a domestic industry caused by subsidized imports in the territory of the complaining Member
 - ✓ *Serious prejudice* - adverse effects in the market of the subsidizing Member or in a third country market
 - ✓ Nullification or impairment - improved market access presumed to flow from a bound tariff reduction is undermined by subsidization

Other Prohibited Subsidies

- Currency retention schemes or any similar practices which involve a bonus on exports
- Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments
- Use of imported or domestic products or services for use in the production of exported goods, on terms/ conditions more favourable than those available for the production of goods for domestic consumption
- Full or partial exemption remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by commercial enterprises
- Duty drawback schemes

Countries that can Use Prohibited Subsidies

- Least developed countries designated as such by the United Nations which are Members of the WTO
- Developing countries till their GNP per capita is below \$1,000 per annum

Status of Agricultural Subsidies

- Export subsidies are not prohibited by the SCM Agreement, although they may be subjected to the use of countervailing duties
- Domestic supports are not actionable multilaterally, although they also may be countervailed
- Domestic supports within the “Green Box” of the Agriculture Agreement are not actionable multilaterally nor are they subject to countervailing duties

Countervailing Measures: Initiation of investigations

- Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of the Agreement on Subsidies and Countervailing Measures
- An investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry
- The application would be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry
- Investigation would be terminated in cases where the amount of a subsidy is less than 1 per cent ad valorem (the *de minimis* level)
- Investigations would normally be concluded within one year, and in no case more than 18 months, after their initiation

Information to be Provided

- Application for the initiation of investigations should include sufficient evidence of the existence of
 - ❖ Evidence with regard to the existence, amount and nature of the subsidy in question
 - ❖ Evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies

Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

- The method used by the investigating authority to calculate the benefit to the recipient conferred by a subsidy shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained
- Proposal to include the effect of “pass through”
 - ❖ In case of subsidy granted to an input used to produce a product, no benefit from the subsidy in respect of the input shall be attributed to the product if it is found that the producer of the product obtained the input on terms more favourable than otherwise would have been commercially available to that producer in the market

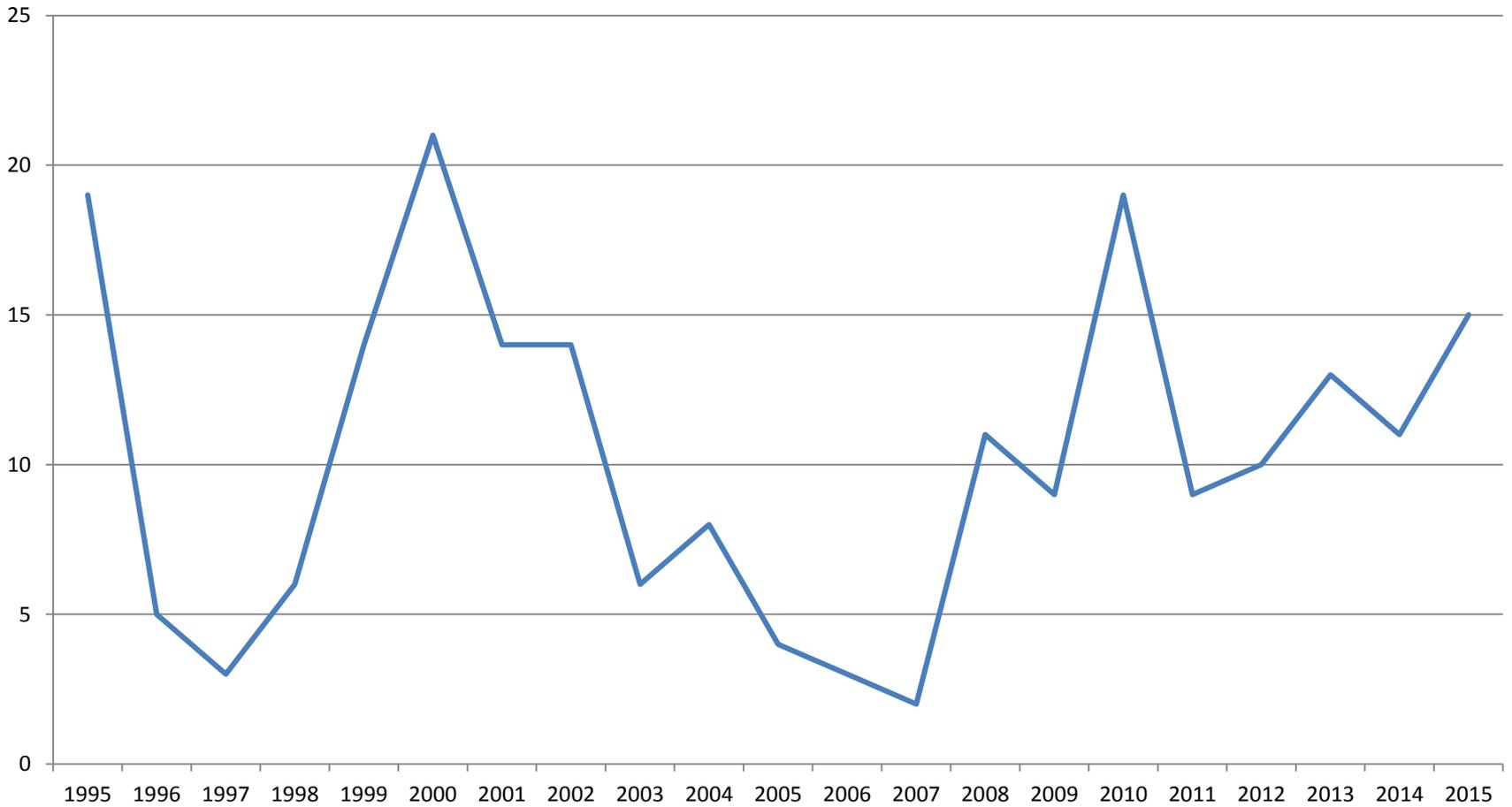
Determination of Injury

- Determination of injury should be based on positive evidence and involve an objective examination of
 - ❖ Volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products
 - ❖ Consequent impact of these imports on the domestic producers of such products
- Investigating authorities should consider whether there has been significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member
- Investigating authorities should consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member
- Demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry based on an examination of all relevant evidence before the authorities

Determination of Injury

- Impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry,
- Factors used for assessing the impact (non-exhaustive list)
 - ❖ Actual and potential decline in
 - ✓ Sales,
 - ✓ Profits
 - ✓ Output
 - ✓ market share
 - ✓ Productivity
 - ✓ Return on investments
 - ✓ Utilization of capacity
 - ✓ Factors affecting domestic prices;
 - ❖ Actual and potential negative effects on
 - ✓ Cash flow
 - ✓ Inventories
 - ✓ Employment
 - ✓ Wages
 - ✓ Growth, ability to raise capital or investments

Trends in Countervailing Measures



Some Facts about the use of Countervailing Duties

- Top 5 users of Countervailing Duties
 - ❖ China, India, Korea, Indonesia, United States
- No least developed country has used this form of trade remedy

Trade Remedies and PTAs

➤ Article XXIV.8(b) of the GATT

❖ “A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (***except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX***) are eliminated on substantially all the trade between the constituent territories in products originating in such territories”

✓ Does not refer to Articles VI (Anti-dumping), XVI (Subsidies) and XIX (Safeguards)

Trade Remedies in 74 PTAs Formed Prior to 2007

➤ Anti-dumping

- ❖ 9 PTAs disallowed use of anti-dumping rules
- ❖ 18 PTAs had no rules on anti-dumping
- ❖ 47 PTAs had rules on anti-dumping

➤ Bilateral Safeguards

- ❖ 5 PTAs disallowed use of anti-dumping rules
- ❖ 4 PTAs had no rules on anti-dumping
- ❖ 65 PTAs had rules on anti-dumping Anti-Subsidies

➤ Countervailing Duties

- ❖ 5 PTAs disallowed use of anti-dumping rules
- ❖ 30 PTAs had no rules on anti-dumping
- ❖ 39 PTAs had rules on anti-dumping

Trade Remedies in 23 PTAs Involving an Asian Partner since 2010

➤ Anti-dumping

- ❖ Except one PTA, all others included rules on anti-dumping

➤ Safeguards

- ❖ All PTAs had rules on safeguards

➤ Countervailing Duties

- ❖ 5 PTAs had no rules