Safeguards Agreement: Overview

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Requirements on a user of Safeguards duty

• Legal and institutional framework
• Notify and implement domestic laws in conformity with Article XIX of GATT and the Agreement on Safeguards
• Investigating authority
Legal Basis

- GATT article XIX+SG Agreement
- Domestic law
- Regional rules
Safeguards

- Investigation necessary before applying a safeguard measure
- Safeguard measures differ from AD/CVD measures:
  - No “unfair” trade practice
  - Higher *injury* threshold
  - Applied on an MFN basis
  - Have to *pay compensation* for it
  - Non-application of same measure
  - Wider *like product* definition
Article XIX of GATT: Substantive Criteria

- As a result of:
  - Unforeseen developments
  - Importing Member’s GATT/WTO obligations
- Increased imports
- Causing or threatening to cause serious injury
Increased Imports

- **Absolute**, or
- **Relative** to domestic production
- Important distinction--certain legal effects will depend on the type of increase.
- Recent enough, *sudden enough, sharp enough, and significant enough*, both *quantitatively* and *qualitatively*, to cause or threaten to cause "serious injury".

(AB, *Footwear*, para. 131; US – *Steel Safeguards*, paras. 345-346)
Domestic Industry

Like or directly competitive products
Injury in SG Investigations

• **Higher standard:** “Serious injury"
  
  – “Serious injury” (current)
  
  – “Threat of serious injury” (imminent)

• **Definition:** “Significant overall impairment in the position of the domestic industry” (Art. 4.1(a))

• List of factors to be examined

  ➢ Rate and amount of increase in imports; domestic market share; changes in sales, production; productivity; capacity utilisation; profits and losses; employment
Threat of Serious Injury

• Must be clearly imminent...The anticipated serious injury must be on the very verge of occurring. (AB, *Lamb*, para. 125)

• Based on facts and not allegation conjecture or remote possibility
Causation

- Causal link
- Non-attribution
- "Genuine and substantial relationship of cause and effect between increased imports and serious injury" (AB, Wheat Gluten, para. 69)
Procedure

• Procedural rules are more general in SG compared with AD and CVD investigations.
• Prerequisite: must carry out an investigation!
• Must establish and publish investigative procedures.
Procedure

- Complaint
- Initiation: No standing requirement
- Collection of information
- Preliminary determination
- Hearings
- Final determination
- Imposition of final measure
Safeguard Measures

- Can take different forms (e.g., quotas, tariff quotas, tariff surcharges...)
- Must choose the most suitable measure (Art. 5.1)

Duration
- 4 years
- Can be extended to 8 years
Application of Measures

• Must apply to all imports **irrespective of their sources** (Art. 2.2)

• Only to **the extent necessary** to remedy serious injury and to facilitate adjustment (Art. 5.1)
Provisional Measures

Conditions

- **Critical circumstances** where delay would cause damage difficult to repair
- Preliminary determination that there is clear evidence about serious injury or threat thereof.
Provisional Measures

- Only in the form of tariff increases
- Maximum 200 days
- Duration counted towards that of the definitive measure
- Notification requirements
Symmetry/Parallelism

• Imports subject to investigation vs. imports subject to the measure
Duration

- **Progressive liberalisation** if longer than 1 year
- **Mid-term review** if longer than 3 years
  - Withdraw the measure or increase its pace, if necessary.
  - **Notify** the CTG immediately on the results of the mid-term review (Art. 12.5)
Re-imposition

- Special rules limiting re-imposition (Art. 7.5)
- Equivalence in on–off period, but 2 years minimum cooling off period
Compensation?

- Have to pay for a safeguard measure.
  - Maintain equivalent level of concessions and other obligations vis-à-vis affected Members
Retaliation

- Prior consultations
- Agree on a compensation?
- If not, retaliation
  - Subject to conditions

- No compensation for first 3 years if safeguard measure applied as a result of absolute increase in imports
S & D Treatment

Measures against developing countries:

- 3 per cent – 9 per cent

Measures by developing countries:

- Extra two years in total application (10 years instead of 8)
- Shorter non-application periods (off period half of the on period, but minimum 2 year limit applies)
Transparency

- **Notify** the Committee immediately on:
  - Initiation
  - Finding of serious injury or threat
  - Decision to apply or extend a SG measure
  - Legislation
Thank You