

Overview of Trade Remedy Instruments in WTO

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Trade Remedies

- WTO Members aspire for free trade
- However, free trade is not always fair trade
- Distortions in international trade
 - - dumped exports
 - - subsidized exports
- Anti dumping duty to counteract unfair trade practice of exporters from specified countries causing injury to domestic industry of Importing country
- Countervailing duty to counteract subsidized exports

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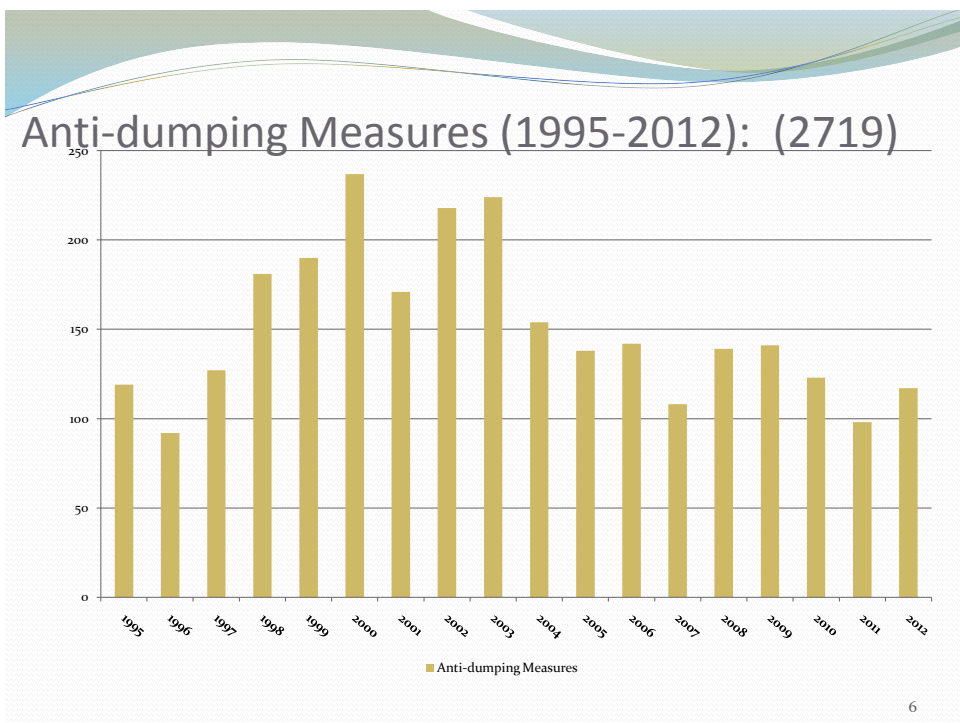
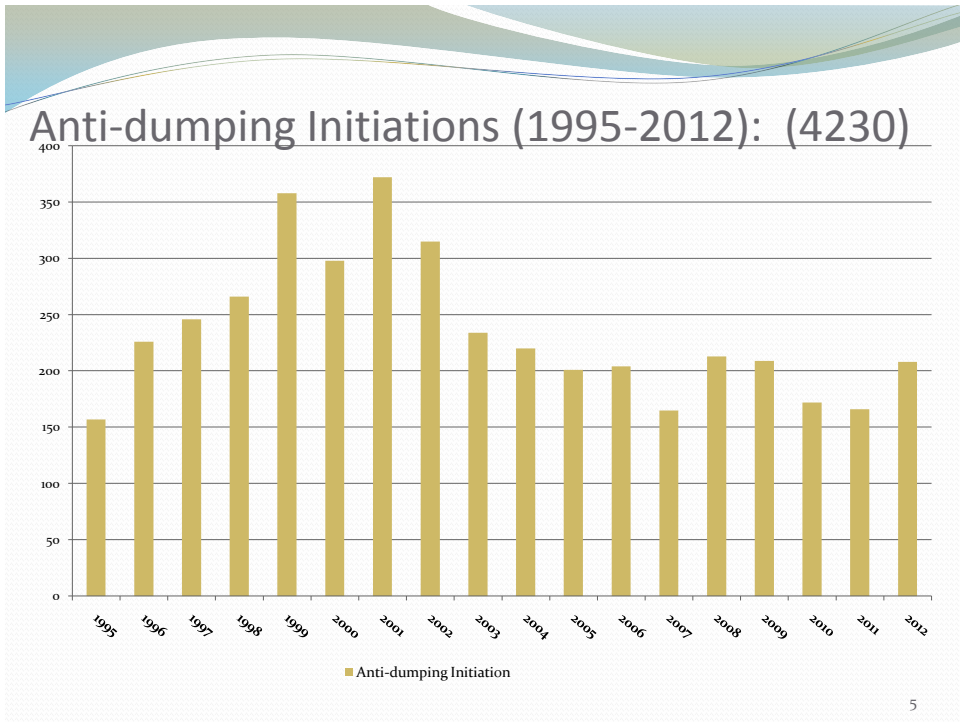
3 Trade remedy instruments

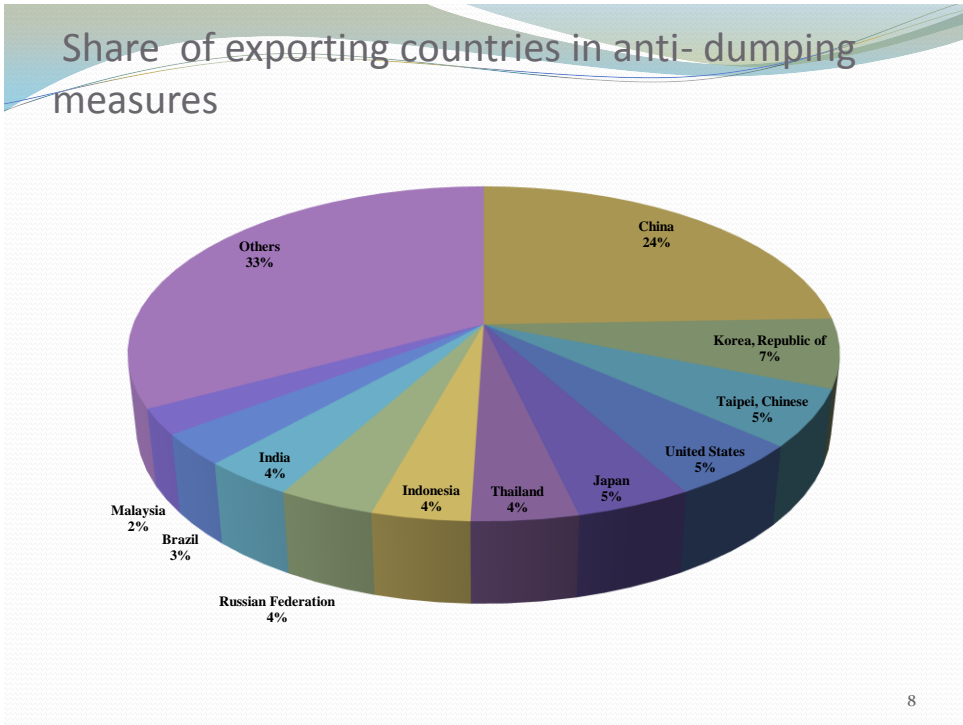
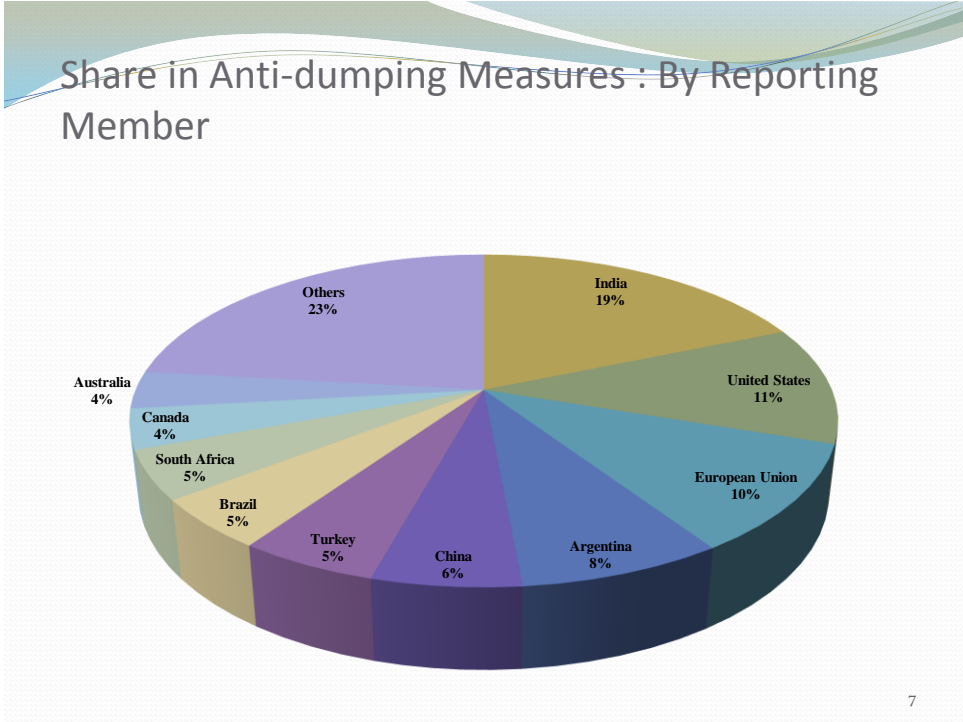
- Antidumping Agreement – Anti dumping duty
- Safeguards Agreement –Safeguard duty
- Subsidies Agreement - Countervailing duty (CVD)

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Trade remedies: Comparison

AD	CVD	SG
Dumping	Subsidization	Import surge (NOT “unfair”)
Material injury (or threat thereof)	Material injury (or threat thereof)	Serious injury (or threat thereof)
Domestic industry: Like products	Domestic industry: Like products	Domestic industry: Like or directly competitive products
Country Specific	Country Specific	Irrespective of Source
No compensation	No compensation	Compensation may be required





Anti-dumping Measures Taken by WTO Members – 1.1.1995 to 30.06.2013

Country	Cases Initiated	Measures Imposed
Argentina	305	210
Australia	252	99
Brazil	297	136
Canada	176	106
China	208	162
EU	453	293
India	690	513
Indonesia	96	43

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Anti-dumping Measures Taken by WTO Members 1.1.1995 to 30.06.2013 -contd.

Country	Cases Initiated	Measures Imposed
South Korea	116	73
Mexico	112	90
South Africa	222	130
Turkey	166	148
USA	476	318

950 cases out of total 4358 initiations were against China.
683 Measures out of total 2795 Measures are against China
99 Measures against India.

Source: WTO

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Main Sectors of Anti-dumping Measures

Sector	Number of Measures
Chemical and allied products	597
Plastics, resins and rubber articles	350
Paper, Paperboard and articles	122
Textiles and articles	240
Articles of Stones, Plaster, Glass	100
Base Metals and articles	804
Machinery, Mechanical Appliances, Electrical Equipments etc.	237
(Out of total 2795)	Source: WTO

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Anti dumping Legal texts/ provisions

GATT Article VI

Agreement to implement Article VI-Uruguay Round outcome

Commonly known as the Anti Dumping Agreement

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Anti dumping investigation

Starting points

- Product under consideration – the product alleged to be dumped
- Like product
- Domestic industry

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Article 5 ADA - Application for AD investigation

Pre-initiation procedure

- **Application for investigation -**
 - (a) by the domestic industry; or**
 - (b) suo moto initiation**
- **Pre-initiation examination**
 - **Product under consideration (product being dumped)**
 - **Determination of domestic like product**
 - **Standing of domestic industry (Article 5.4)**
 - **Accuracy/adequacy of evidence on both dumping and injury (Article 5.3)**

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Application for AD investigation -Article 5.2

- To include evidence of dumping, injury and causal link. All relevant particulars.
- Simple assertion, unsubstantiated by relevant evidence not considered sufficient for initiation of investigation.
- Application to contain information as is reasonably available to the applicant.

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Investigating Authority's obligations Article 5

- Obligation on Investigating authority to examine the 'adequacy' and 'accuracy' of evidence in application before initiation-Art. 5.3
- Inform the government of Exporting country before initiation of investigation -Art 5.5

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Application for AD investigation -Article 5

- Standing requirement for making application-Art. 5.4
 - Test of 50% support.
 - Test of 25%-domestic producers making application to account for 25% production of the product.

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Article -4 of ADA Definition of Domestic Industry

- Domestic producers as a whole of the like product or those whose collective output constitutes a **major proportion** of the total domestic production of the product.
- Producers related to the exporters and importers, or who are themselves importers **may** be excluded from the domestic industry for the purpose of definition of domestic industry.
- WTO Case Law on 'Domestic Industry'- Argentina Poultry (DS 241), EC Fasteners (DS 397)

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Initiation and subsequent procedures

- ▶ Gazette Notification of Initiation
- ▶ Information Gathering- Questionnaires
- ▶ Preliminary determination
- ▶ Verification of information of domestic industry & exporters
- ▶ Oral Hearing
- ▶ Issue of Disclosures statement
- ▶ Final Determination
- ▶ Overall timeline of investigation- One year normally, extendable by six months (Article 5.10)

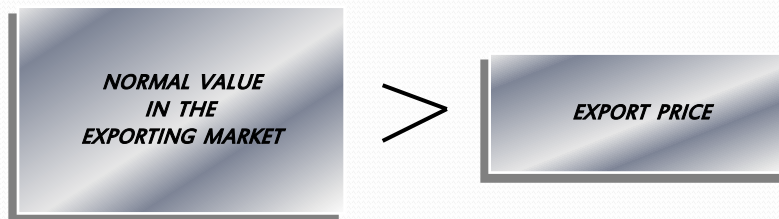
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Key concepts

- Dumping
- Injury
- Causal link

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WHAT IS DUMPING ?



- **Difference between Normal Value and Export Price (based on fair comparison) is known as 'Margin of dumping'**
- **< 2% De Minimis**

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Normal Value Article 2.1

- Comparable price, in ordinary course of trade, for like product in exporting country.
- Home market sales in country of export-Default option.

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Normal Value Article -2.2

- If home market sales not in ordinary course of trade or insufficient, then other two options for Normal Value.
- Sufficiency test- home market sales 5% or more of export from exporting country of the product under consideration. (Footnote 2 of ADA)

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Normal Value- other two options Article -2.2 ADA

- Comparable price of like product when exported to an appropriate third country, provided that this price is representative, **or**
- Cost of production in country of origin plus reasonable amount for SGA and profits.

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Ordinary course of trade Article -2.2.1 ADA

- Ordinary course of trade test- by reason of price
 - 80/20 test-
 - Representative sales in home market-
 - Recovery of Cost
 - to exclude sales at below cost if more than 20%
- Arms length transactions: Association/Affiliation of buyers and sellers
 - As a general practice to examine shareholding patterns in the transacting parties to determine affiliation if any;

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Issue in Normal Value determination

- Sufficient home market sales
- Model matching
- Cost of production data
- Profitability Test 80:20 test
- Comparison methodology- Zeroing
- Sampling

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Article -3 ADA Injury

- Injury determination based on positive evidence.
- Material Injury
 - “harm which is not inconsequential, immaterial, or unimportant”
- Threat of Material Injury
 - “clearly foreseen and imminent”
 - Lesser used provision. Used along with Material Injury claim
- Material Retardation
 - A situation generally not used- criteria not very clear.

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Article -3.2 ADA - Injury

- Determination of ‘volume effect’ and ‘price effect’ of the dumped imports on the domestic industry
 - Volume effect:
 - Significant rise in imports in absolute terms or relative to production or consumption in the importing country
 - Price effect
 - Consequent impact on prices
 - Significant Price undercutting, underselling, price suppression and/or price depression

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Article -3.4 ADA - Injury

- Mandatory examination Article 3.4 Economic Parameters
- Relevant economic factors that are considered when determining material injury include:
 - Actual or potential decline in output, sales, market share, profits, productivity, return on investment, and capacity utilization;
 - Factors affecting domestic prices;
 - Magnitude of margin of dumping;
 - Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment;

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Article 3.5- Causation and Non-Attribution

- It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The 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. The authorities shall 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.

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Article 5.8- De Minimis provisions

- De Minimis margin of dumping <2%
- Negligible volume of imports-De minimis <3% of total imports in importing country.
- Individually <3% but together with other countries >7%- not treated as De Minimis or negligible.

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Article 6 ADA - Evidence/ Principles Governing Investigations

- 6.1 -exporters are generally given 30 days time to furnish questionnaire response. Extensions allowed on cause shown.
- 6.2- All interested parties full rights to defend their interests.
- 6.3 - oral hearings.
- 6.4- Obligation on Authority to provide timely opportunity to all to see the information- maintenance of Public file.
- 6.5- Confidential information- to be treated confidential on good cause shown

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Confidential information-Article 6

- 6.5 Confidentiality-
- 6.5.1-Non-confidential summaries- sufficient details and meaningful.
- 6.5.2- If confidentiality not warranted/parties not willing to make information in sufficient non confidential form, Authority may disregard such information BUT cannot make such information public.

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Imposition and Forms of Duty

- Fixed Duty
- Variable Duty
- Ad Valorem Duty

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Article 11-Reviews

- Article 11.2 – Changed circumstances review
- Article 11.3 – Expiry or sunset review

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Article 11- Reviews

- Article 11.1 provides that an AD duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury;
- 11.2- If there is a changed circumstance in which either dumping or injury to the domestic industry ceased or changed an interested party can request for an interim review

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Article 11.2 - Reviews

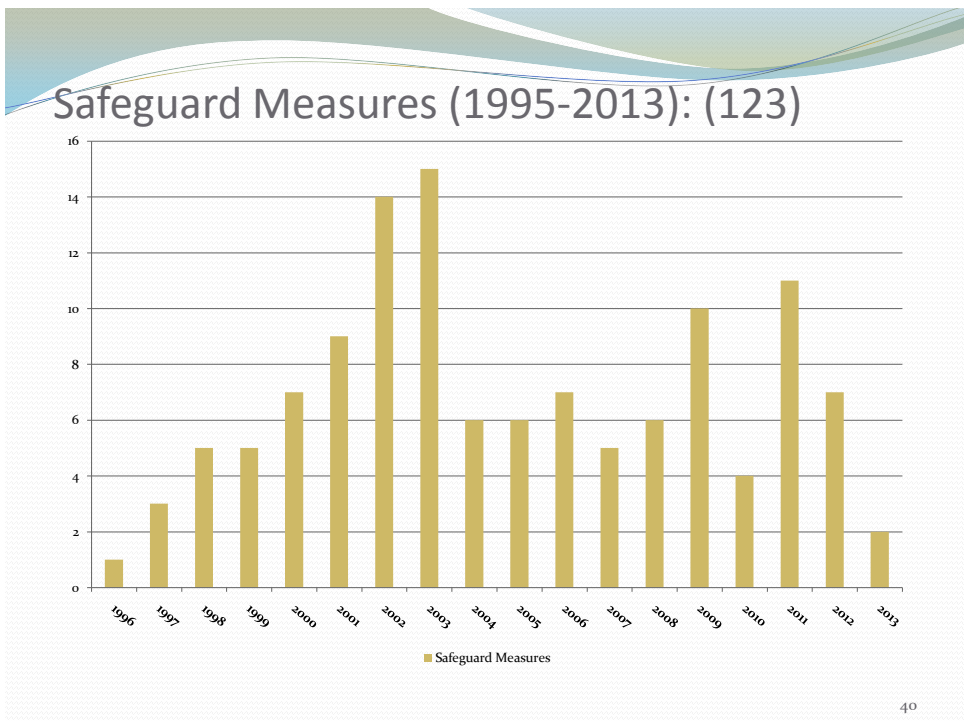
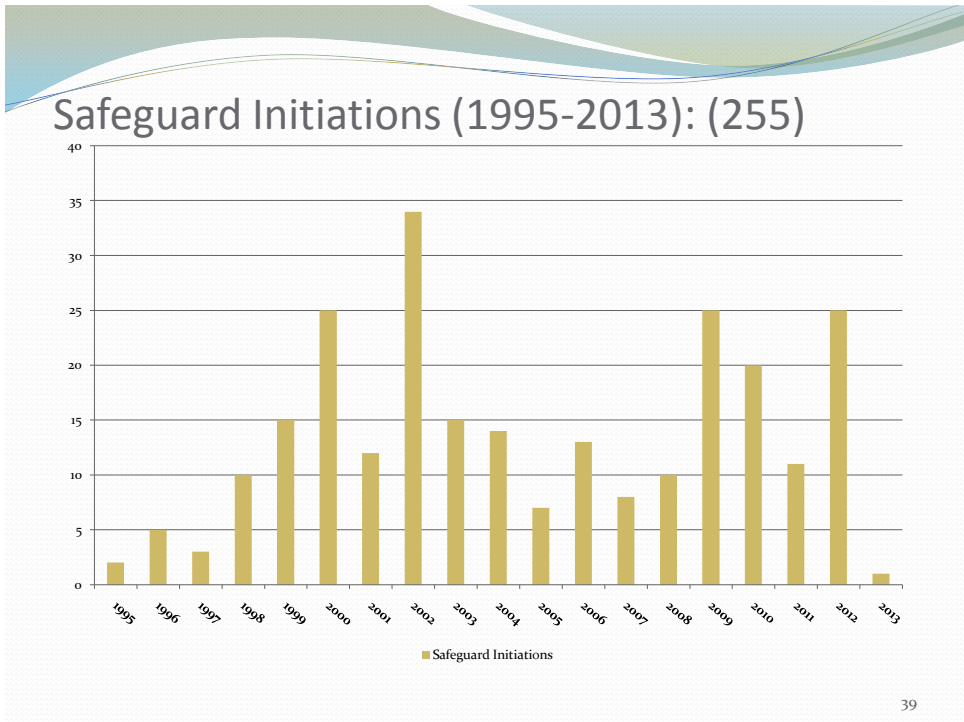
- Could be *suo moto*, by the authorities
- Or upon a substantiated request from any interested party
- After a reasonable period has passed from the date of its imposition: generally one year
- Follows same procedure as in the original investigation except interim findings.
- May lead to termination or modification of the definitive duty

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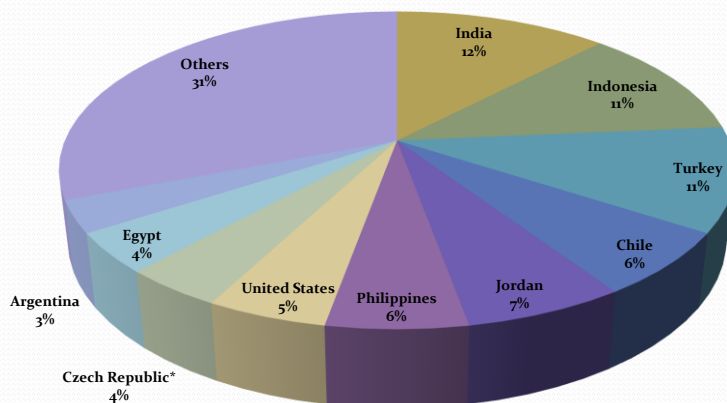
Article 11.3 - Expiry or Sunset Reviews

- Article 11.3 of ADA provides that
 - Any definitive AD Duty shall be terminated on a date not later than five years from its imposition , or from a most recent review if that covered both dumping and injury;
 - Unless the authorities conduct a review before this date, *suo moto* or on a substantiated request from the domestic industry, and find continuation or likely recurrence of dumping and injury

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Share in Safeguard Measures by Reporting Member



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Safeguard Measures by Members 1996 to 2013

Member	Number of SG Measures
India	15
Indonesia	14
Jordan	8
Turkey	13
Egypt	5
EU*	3
Chile	8
Argentina	4
Philippines	7
US	6
Total	123
*Does not include other EU Member states before accession	

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Legal Basis

- GATT Article XIX
- WTO Agreement on Safeguards



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Safeguards

- Safeguard measures differ from AD/CVD measures:
 - **Emergency** Measures
 - No “**unfair**” trade practice Higher **injury** threshold
 - Applied on an **MFN** basis
 - Have to **pay** for it
 - **Non-application** of same measure
 - Wider **like product** definition

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Substantive Criteria

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

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Unforeseen Developments

- Unforeseen means “unexpected”, **not** “unforeseeable” (AB, *Korea-Dairy*, para. 84& AB, *Footwear*, para. 91)

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Increased Imports

- **Absolute**, or
- **Relative** to domestic production
- Important distinction--certain legal effects will depend on the type of increase.

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Increased Imports

- 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)

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Domestic Industry

Like or directly competitive products –Article 4.1

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Injury in SG Investigations

- **Higher standard: “Serious injury”**
 - “Serious injury“ (current)
 - “Threat of serious injury“ (imminent)
- List of factors to be examined

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Serious Injury

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

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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

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Injury Factors

Evaluation of **all relevant factors**

Objective and quantifiable nature

Increase in imports- rate and amount, absolute and relative

Market share

Sales, Production, Productivity, Capacity utilization, Profits & losses, Employment

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Causation

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

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Procedure

- Procedural rules are more general in SG compared with AD and CVD investigations.
- Views on public interest
- Must carry out an investigation
- Must **establish** and **publish** investigative procedures.

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Procedure

- Complaint
- Initiation
- Collection of information
- Preliminary determination
- Hearings
- Final determination
- Imposition of final measure

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Confidentiality

- By nature confidential vs. claim of confidentiality
- **Specific permission** needed for disclosure

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Safeguard Measures

- Measures can be in the form of Tariff or Quota
- Mix of both
- Must choose the most suitable measure (Art. 5.1)

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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)

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Definitive Measures

Duration

- 4 years
- Can be extended to 8 years

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Definitive Measures

Quantitative restrictions

- Level of the quota
- Distribution of the quota

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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.

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Provisional Measures

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

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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.

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Re-imposition

- Special rules limiting re-imposition (Art. 7.5)
- Period of time for which SG was imposed
- Period of non-application at least two years

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Compensation?

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

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Retaliation

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

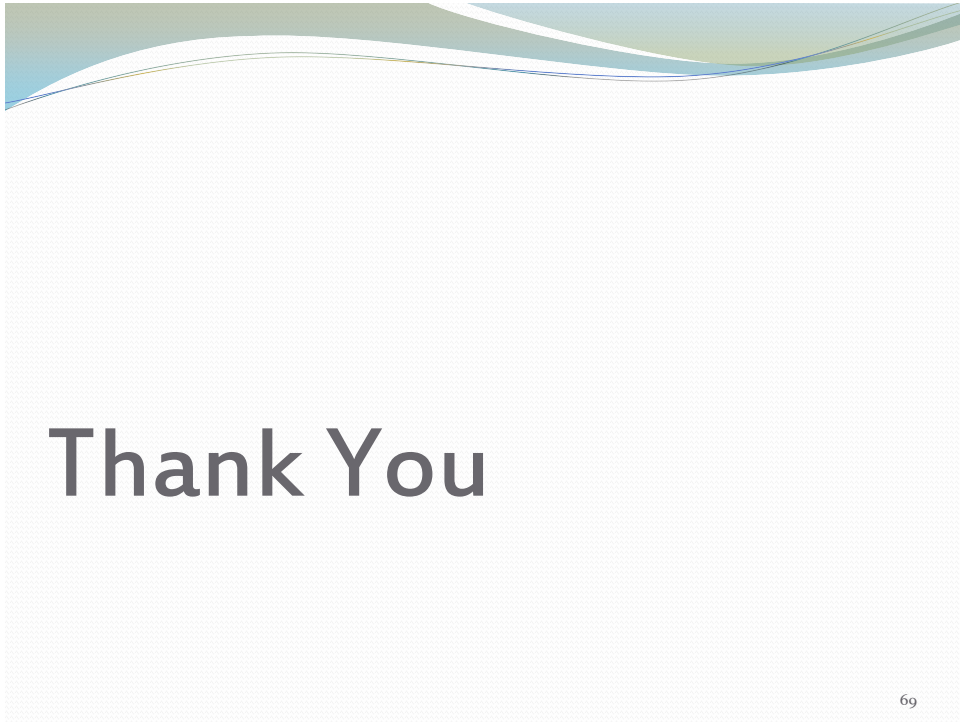
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S & D Treatment

Measures against **developing countries** :

- *De-minimis* 3 per cent in volume of imports– 9 per cent

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Thank You