

Trade Remedies and Dispute Settlement under RTAs

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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

Anti-dumping Measures Taken by WTO Members – 1.1.1995 to 31.12.2012

Country	Cases Initiated	Measures Imposed
Argentina	303	215
Australia	247	99
Brazil	279	133
Canada	166	106
China	200	156
EU	451	285
India	677	508
Indonesia	96	43

Anti-dumping Measures Taken by WTO Members 1.1.1995 to 31.12.2012 -contd.

Country	Cases Initiated	Measures Imposed
South Korea	113	72
Mexico	109	89
South Africa	217	129
Turkey	162	146
USA	469	312

916 cases out of total 4230 initiations were against China.
664 Measures out of total 2719 Measures are against China
97 Measures against India.

Source: WTO

Main Sectors of Anti-dumping Measures

Sector	Number of Measures
Chemical and allied products	585
Plastics, resins and rubber articles	338
Paper, Paperboard and articles	121
Textiles and articles	239
Articles of Stones, Plaster, Glass	93
Base Metals and articles	769
Misc. Manufactured articles	64

Source: WTO

Anti dumping Legal texts/ provisions

GATT Article VI

Agreement to implement Article VI-Uruguay Round
outcome

Commonly known as the Anti Dumping Agreement

Key concepts

- Dumping
- Injury
- Causal link

Anti Dumping in RTAs

- General Approach: To retain rights to invoke Anti dumping measures as per the WTO Agreement
- Whether to commit no Anti dumping/ CVD action on each other?
- Difficult to give such a commitment!

Anti Dumping in RTAs- WTO plus provisions

Usual agreeable conditions

- Advance sharing of information regarding anti dumping application- 7-10 days before initiation.
- Disclosure of essential facts- 10 days time line.
- Use of lesser duty.
- No use of zeroing in dumping margin.
- Prohibition on back-to-back investigation.

Safeguards

- WTO Safeguard Agreement (Global Safeguards)
- Increased imports (surge in imports) in absolute terms or relative to domestic production.
- Serious injury or threat of serious injury to domestic industry.
- Global Safeguard duty applicable on all countries except developing countries having less than 3% share in the imports of importing country
- Duration of measures: 4 + 4 years
 - Additional 2 years available to developing countries

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	

Bilateral Safeguards under RTAs

To take bilateral safeguards action on increased imports due to tariff liberalization

Different from global safeguards as no necessity to establish unforeseen developments

Conditions 'Serious injury' or 'threat' of serious injury

Investigation process

- Similar to WTO Safeguards investigation
- Notification obligation

Bilateral Safeguards-Forms

- Suspension of further liberalization
- Quantitative restrictions
- Raising tariffs to MFN level

Duration of bilateral safeguards

- Less than the WTO Safeguards
- Generally two to three years

Other conditions of bilateral safeguards

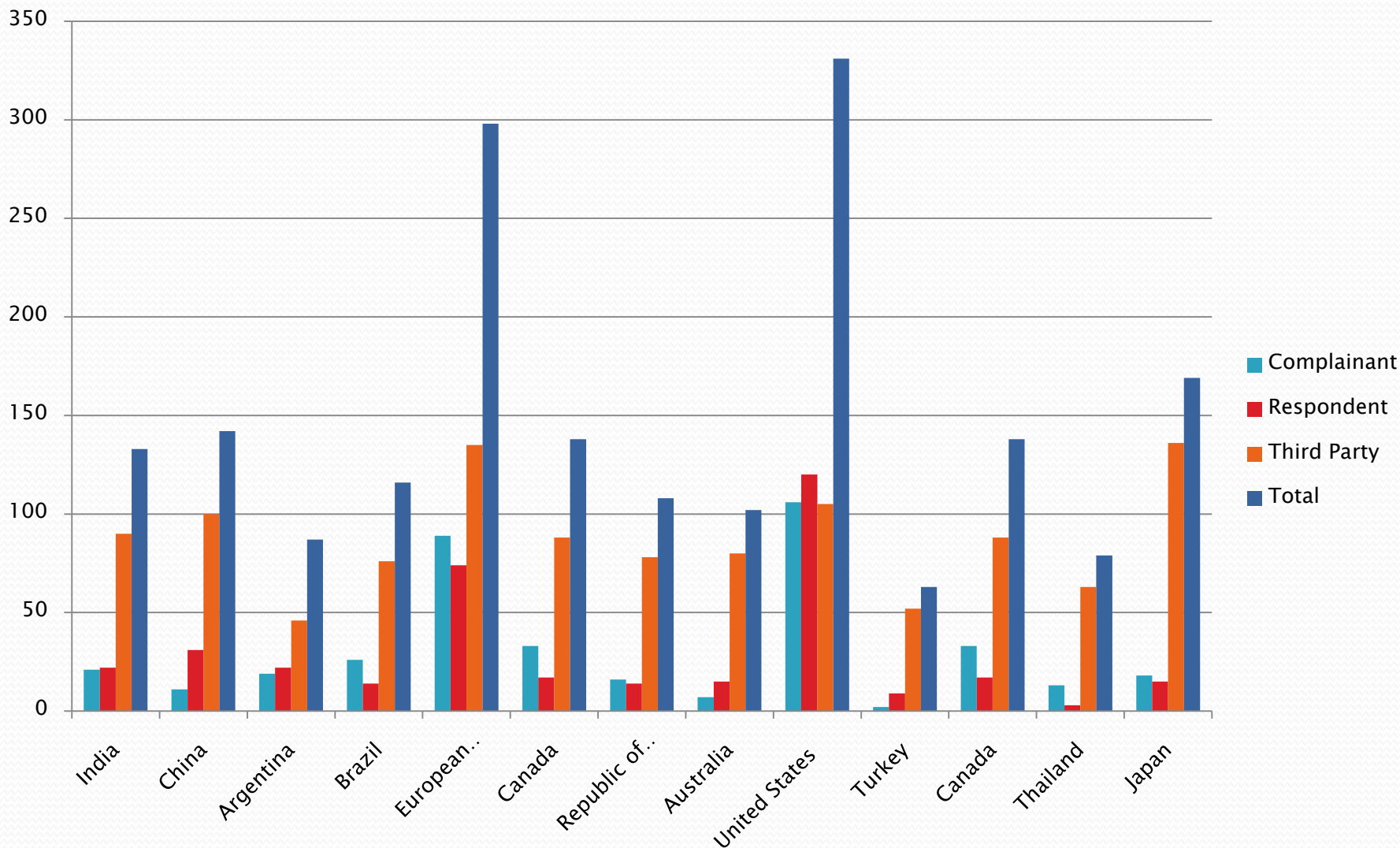
- Compensation
- Provisional safeguards for 200 days
- Re-imposition ?
- De minimis imports
- Overall Transition period for imposition of bilateral safeguard measure 5 or 7 or 10 years after end of liberalization period

WTO safeguards vs bilateral safeguards

- If WTO safeguards in force, no bilateral safeguards may be taken
- If WTO safeguards action taken, then any existing bilateral safeguards measure shall be terminated
- Exempting the RTA partner from global safeguards?
Mandatory or discretionary

DSM in RTAs

MAJOR USERS OF THE WTO DSM BETWEEN 1995-2013



Various stages in the dispute Settlement Process

- Consultations,
- panel establishment,
- report of the panel,
- Appeal procedure,
- compliance, compliance panel, arbitration, compensation/retaliation
- DSB adopts panel/ AB reports by negative consensus

Not all Disputes go to Panels



As on September 2013

- Disputes brought to the WTO- 467
- At Consultations stage: 146
- Settled or terminated (Withdrawn or Mutually agreed solutions): 94
- Panel stage and thereafter: 227

(source- WTO)



Mapping of DSM in RTAs

WTO Economic Research and Statistics Division

Staff Working Paper ERSD-2013-07 dated 10 June 2013

Claude Chase, Alan Yanovich, Jo-Ann Crawford and
Pamela Ugaz

Why negotiate an RTA-DSM

- In some cases WTO DSU may not be available to enforce deeper RTA commitments (WTO plus)
- Simpler DSM process
- Speedier dispute resolution with less 'legalism'
- Costs

Types of RTA DSMs

- Political or Diplomatic dispute settlement
- Quasi-judicial Model (Ad hoc arbitral panels)
 - Most common 147 out of 226 RTAs reported up to 2012
- Judicial Model (institutional permanence)

Main provisions in DSM of RTAs

- Forum selection- WTO DSU or RTA DSM
- Mostly quasi-judicial models of DSM contain provision “Fork in the Road” – choose any forum, but once chosen the option of choosing other forum is closed
- Carve outs in DSM RTAs for specific areas such as SPS, TBT or Trade Remedies

Main provisions in DSM of RTAs

- Consultations
- Ad-hoc panels-
- Generally three panellists –selection from the roster maintained
- Duration of Adjudication process varies between 60-225 days

Main provisions in DSM of RTAs

- Implementation of panel recommendations
- Time period for implementation
- Compliance review
- Remedies
- Costs-sharing of expenses
- Appellate Review not a typical feature of RTA-DSM



Thank you.