

Increased Imports, Serious Injury and Causation

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Relevant Provisions and explicit key obligations in Agreement on safeguard and GATT 1994

Article 2.1 –Characteristics of increased imports

-...is being imported

-...in such quantities—Absolute ...Relative

-...under such conditions

Article 4.2(a)-Operational Requirements

-...caused or Threaten to cause serious injury

...objective and quantifiable nature parameters having bearing on situation of industry

-...Rate and amount of increase in imports in Absolute / relative terms

-...Share taken by increase in imports in Domestic Market

Changes in level of sales , production , productivity ,CU , Profit and losses and employment

XIX:1(a)- unforeseen circumstances

Article 4.1(a), (b),©- Serious injury (significant overall impairment) , Threat, DI defined

Article 4.2(b); Causal link on basis of objective evidence

WTO jurisprudence(panel /AB Reports) – some select reports

AB Report Argentina Foot Wear- unforeseen circumstances, Increased imports recent, sudden, sharp and significant and to look at totality of trend

Korea Dairy-Panel- Evaluate causality – factors of objective and quantifiable nature

US wheat Gluten- Echoed AB Report of Argentina Footwear and establishing causality; Look at totality of trend of imports

US line pipe case against Korea- Length of POI and breakup

POI same for both increased imports and injury evaluation

Relevant Provisions in India's Act/Rules

Fully compatible with Agreement on safeguard

Section 8B(1) of customs Tariff Act 1995

...Such increased quantities and under such conditionsSerious injury

8B(6)(b) Defines DI

-Whole/Major Share like article or a directly competitive article

8B©- and 8B(d)- Serious injury and Threat of serious injury- significant overall impairment/ clear and imminent danger of serious injury

SG Rules- 1997 Rule 2-Critical circumstances

Rule 8 and annex- Objective and quantifiable parameters

Objective evidence for causal link

If factors other than increased imports cause injury- diverted to AD/CVD protection

Trade Notice 1997- POI most recent period of 3 years or longer

Investigation by India-Experience

-Characteristics/Nature of increased imports are evaluated

End to End and also trend of intervening period- Mixed Trends-To mutually reinforce outcome

Both Absolute and relative aspects

To Evaluate sharp, sudden, significant and recent attributes of increased imports

Out of 50 plus cases investigated, 50% measures imposed

Half of closed cases , increased imports characteristics not meeting requirements of rules

Other Half of closed cases , serious injury and causality not established

Only one POI for increased imports and injury and causality evaluation

POI recent as well as long enough to evaluate injury

Standard of serious injury much higher than material injury

In a few Cases where SG measure refused, ADD measure applied

DM and subsidy evaluation more mathematical and sufficient methodology clarity available unlike increased imports evaluation in an SG investigation which has analytic and interpretation challenges

Issues

Analysing increased imports - Any mathematical model which can capture trend and attributes of increased imports conclusively ?

What should be the POI duration?

How deep the injury analysis be done ?

Slicing POI for month wise causality analysis?

PUC's Grade/Model/form wise injury quantum?

Models of non attribution analysis?