

Trade Remedies in Regional Trade Agreements

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Trade Remedies in the WTO System

- Antidumping Duties
 - GATT, Article VI
 - Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“AD Agreement”)
- Countervailing Duties
 - GATT, Articles VI and XVI
 - Agreement on Subsidies and Countervailing Measures (“SCM Agreement”)
- Safeguards
 - GATT, Article XIX
 - Agreement on Safeguards (“Safeguards Agreement”)

Regional Trade Agreements in the WTO System

- RTAs: Permitted Under Article XXIV of the GATT
- Definition of a “Free Trade Area”
 - “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.” GATT, Art. XXIV(8)(b)
 - Trade remedies are not among the enumerated exceptions
 - Arguably contemplated that trade remedies would be eliminated in RTAs

Trade Remedies in RTAs

- Methodology
 - Reviewed approximately 110 FTAs and EIAs notified to the WTO
 - Reviewed for “antidumping,” “countervailing” and “safeguard” provisions
 - Identified departures from WTO provisions

Trade Remedies in RTAs: Antidumping Duties

- Majority of RTAs simply affirm Parties' rights under WTO
- Small number exempt imports from AD laws
- Remainder modify WTO provisions
 - Procedural
 - Substantive
 - Dispute settlement

Trade Remedies in RTAs: Antidumping Duties

- Procedural
 - Pre-Initiation Consultations/Notification
 - Referral to a “joint committee”
 - Price undertakings
 - Governmental “Contact Point”
 - Treatment of Incomplete Information
 - Timing of Investigation
 - Sunset
 - Overlap with Safeguards
 - Successive Investigations

Trade Remedies in RTAs: Antidumping Duties

- Substantive
 - Negligibility
 - Standards for *De Minimis* Margins
 - Price Comparisons
 - “Zeroing”
 - Lesser Duty Rule
 - Public Interest
 - Third Country Dumping

Trade Remedies in RTAs: Countervailing Duties

- Majority of RTAs simply affirm Parties' rights under WTO
- One exemption found
- Remainder modify WTO provisions
 - Procedural
 - No substantive modifications

Trade Remedies in RTAs: Antidumping & Countervailing Duties

- Dispute Settlement
 - NAFTA
 - Modification of DSU Procedures

Trade Remedies in RTAs: Safeguards

- Bilateral Safeguards
- Global Safeguards
 - Most affirm Parties' rights under Article XIX
 - Consultation requirements
 - Possible country-specific exclusion from global safeguards
 - No simultaneous application of bilateral and global safeguards

Trade Remedies in RTAs: The U.S. Experience

- No substantive changes to trade remedies
- Disputes continue with RTA partners
 - Softwood lumber
 - Cement
 - HFCS

Negotiating Objectives and Political Realities

- Achieving modifications of trade remedy provisions – a common RTA negotiating objective
- Reality:
 - Political importance of trade remedies to domestic constituencies
 - Experience of principal users in making concessions
 - Experience of principal targeted countries in obtaining concessions

Conclusions

- Realistic expectations
 - Substantive weakening unlikely
 - Improve procedural aspects of investigations
- Source for Doha Round proposals
 - Referral to ad hoc “Joint Committee”

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