



**Regional Training of Trainers  
on how to design, negotiate, and implement FTAs**

## **Session 3C: Trade Remedies**

**December 2022**



# Introduction

- ✓ WTO Members have retained their right to impose trade remedies, such as anti-dumping and countervailing duties, to correct the competitive imbalances created by unfair trade practices - dumping and subsidies -, when these cause injury.
- ✓ They have also agreed on multilateral disciplines governing the granting of subsidies.
- ✓ Members are also allowed to apply safeguard measures in case of a surge of imports that causes, or threatens to cause, serious injury.
  - ✓ The application of safeguard measures does not depend on unfair trade practices.

# Trade Remedies in FTAs

- ✓ WTO Members also have the right to determine the application of trade remedies in the free trade agreements they negotiate among themselves, provided that they respect the provisions of the WTO Agreements.
- ✓ Members have also negotiated special provisions with regard to safeguard measures in their respective FTAs.
- ✓ Some FTAs simply refer to the provisions of the applicable WTO Agreements, while others include new disciplines that apply between the Parties.

# Legal Base

- ✓ Anti-dumping and Countervailing Duties
  - ✓ GATT 1994 Article VI
  - ✓ Anti-dumping Agreement
  - ✓ Agreement on Subsidies and Countervailing Measures
  
- ✓ Safeguards
  - ✓ GATT 1994 Article XIX
  - ✓ Agreement on Safeguards
  
- ✓ FTAs
  - ✓ GATT 1994 Article XXIV
  - ✓ Specific provisions in FTAs

# What is Dumping?

- ✓ Dumping is a form of price discrimination, which takes place when the price of a product when exported to another country is less than the price of that same product when sold in the market of the exporting country
- ✓ Dumping is calculated on the basis of a fair comparison between the normal value (the price of the imported product in the “ordinary course of trade” in the country of origin or export) and the export price (the price of the product in the importing country).

# Anti-dumping

- ✓ The Anti-dumping Agreement provides that an anti-dumping measure shall be applied only after determining, pursuant to an investigation initiated and conducted in conformity with the provisions of the Agreement, the three following cumulative conditions:
  - a) Dumped imports;
  - b) Injury to the domestic industry producing the like product;  
and
  - c) Causal link between the dumped imports and the injury.

# Injury

- ✓ In order to impose anti-dumping measures, the investigating authorities of the importing Member must make a determination of "injury".
  
- ✓ There are three types of "injury":
  - i. Material injury to a domestic industry,
  - ii. Threat of material injury to a domestic industry,
  - iii. Material retardation of the establishment of a domestic industry.
- ✓ The Agreement does not provide guidance on the third one, which has rarely been invoked.

# Causal link

- ✓ It must be demonstrated that the dumped imports, through the effects of dumping, are causing injury
  - ✓ Based on an examination of all relevant evidence before the investigating authority
  
- ✓ Any known factors other than dumped imports which may be causing injury to the domestic industry at the same time shall be analyzed
  - ✓ Contraction in demand
  - ✓ Changes in the patterns of consumption
  - ✓ Developments in technology,
  - ✓ Export performance
  - ✓ Productivity of the domestic industry



# Application of Anti-dumping duties

- ✓ Anti-dumping measures take the form of customs duties, which may be in excess of the bound tariff provided in the Schedule of concessions of the Member applying the measure
- ✓ It is desirable that the imposition of the duty be permissive and that the duty be less than the margin of dumping if such "lesser duty" would be adequate to remove the injury to the domestic industry
- ✓ In any case, anti-dumping duties cannot exceed the margin of dumping calculated during the investigation

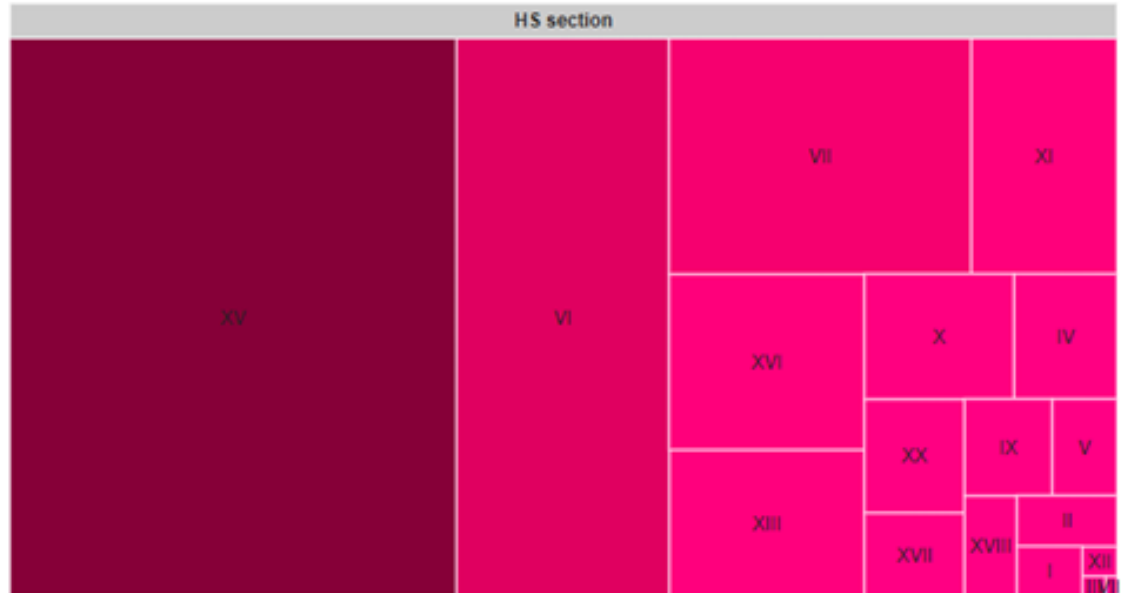
# Duration of Anti-dumping duties

- ✓ As a general principle, an anti-dumping measure shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury
- ✓ Investigating authorities are required to review the need for continued imposition of anti-dumping measures, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the measure, upon request by any interested party which submits positive information substantiating the need for a review



# Current Anti-dumping Measures

Measures in force on or after 01/01/2020, by  
**HS section**



Source: <https://trade-remedies.wto.org/en/antidumping/measures>

- 40% Base metals and articles of base metals
- 19% Products of the chemical or allied industries
- 11% Plastics, rubber, articles thereof

# CAREC Members

✓ China	140 reported AD measures
✓ Pakistan	70 reported AD measures
✓ Kazakhstan	29 reported AD measures
✓ Kyrgyz Republic	29 reported AD measures

Source: <https://trade-remedies.wto.org/en/antidumping/measures>

# Subsidies and Countervailing Duties

- ✓ The SCM Agreement - addresses two separate but closely related matters:
  - i. The multilateral disciplines on the use of subsidies; and
  - ii. The conditions under which Members may apply countervailing measures
  
- ✓ The SCM Agreement contains a definition of "subsidy", which applies in both of these areas

# Subsidies

- ✓ Three elements must be satisfied for a subsidy to be covered by the SCM Agreement:
  - a) A financial contribution;
  - b) By a government or any public body within the territory of a Member;
  - c) Which confers a benefit.
  
- ✓ Additional Requirement
  - ✓ The disciplines in the SCM Agreement only apply to "specific" subsidies -i.e. a subsidy available only to an enterprise, industry, group of enterprises, or group of industries within the jurisdiction of the granting authority.

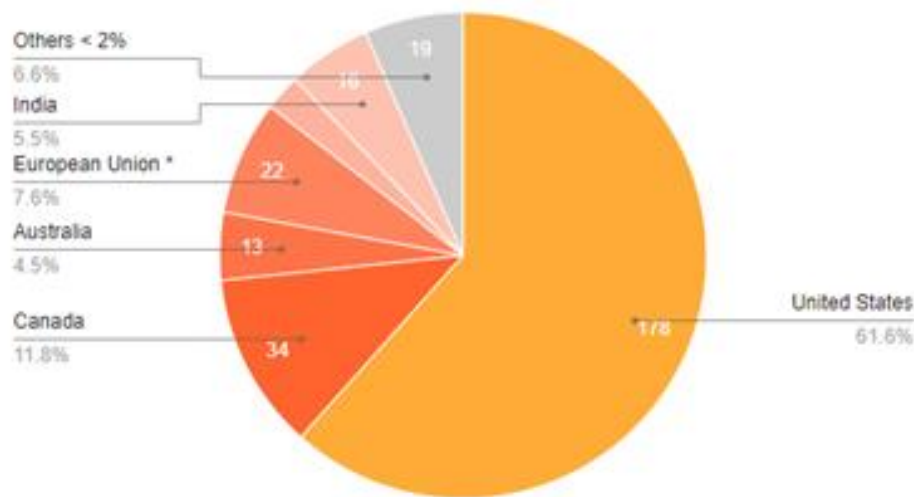
# Countervailing Duties

- ✓ A Member may impose a countervailing measure only after determining, pursuant to an investigation, the existence of the three following cumulative requirements:
  - a) Subsidized imports;
  - b) i) Material injury to the domestic industry producing the like product, ii) threat of material injury or iii) material retardation of the establishment of a domestic industry; and
  - c) Causal link between the subsidized imports and the injury.

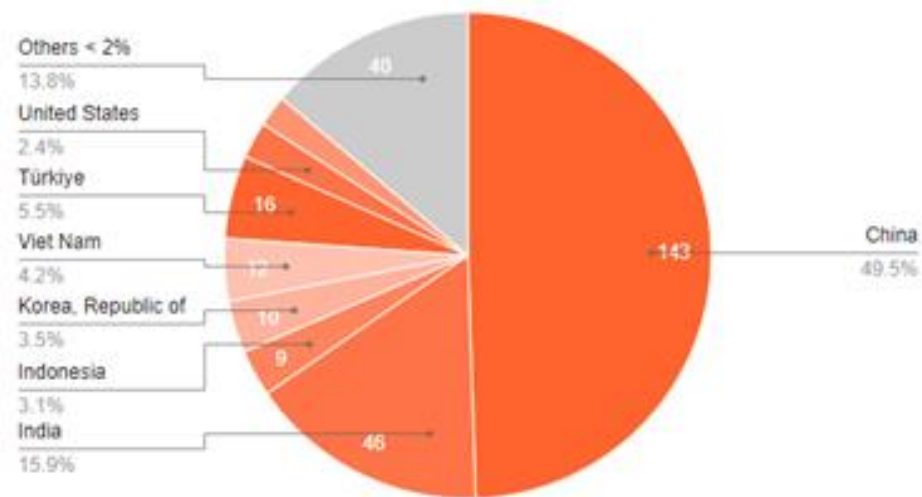


# Current Countervailing Measures

Measures in force on or after 01/01/2020, by Reporting Member



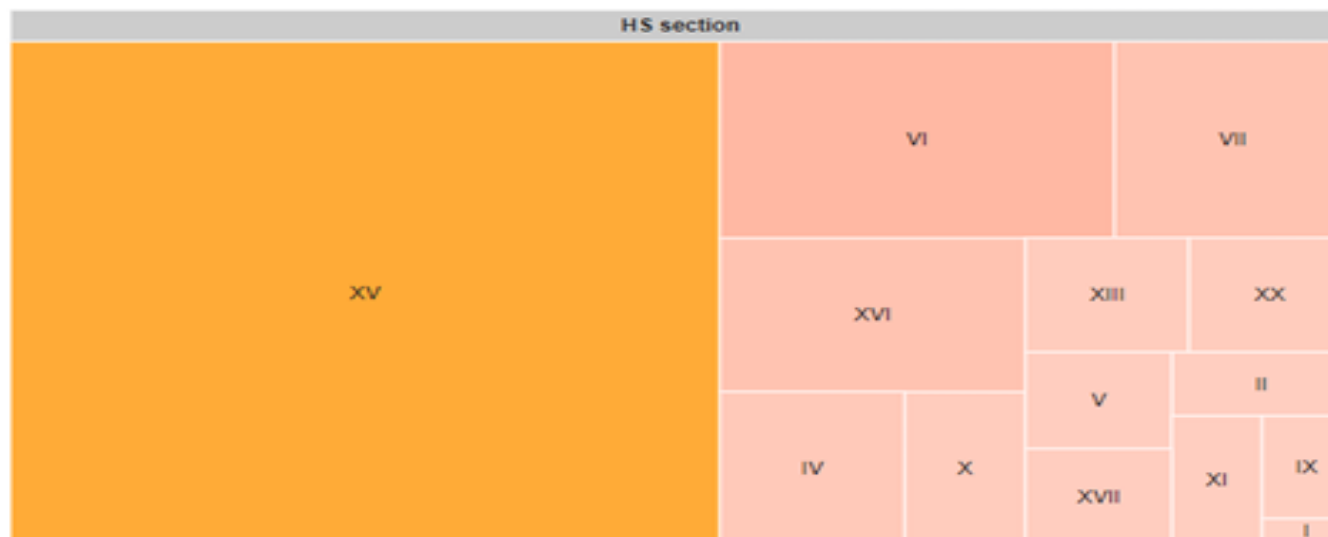
Measures in force on or after 01/01/2020, by Exporter (country / customs territory)



Source: <https://trade-remedies.wto.org/en/countervailing/measures>

# Current Countervailing Measures

Measures in force on or after 01/01/2020, by  
**HS section**



Source: <https://trade-remedies.wto.org/en/countervailing/measures>

- 53% Base metals and articles of base metals
- 11% Products of the chemical or allied industries
- 7% Plastics, rubber, articles thereof

# CAREC Members

✓ China

7 reported CVD measures

Source: <https://trade-remedies.wto.org/en/antidumping/measures>

# Safeguard Measures

- ✓ Unlike anti-dumping and countervailing measures, the application of safeguard measures does not require an unfair trade action
- ✓ The objective of safeguard measures is to provide a temporary remedy while facilitating structural adjustment of the industry adversely affected by increased imports, thereby enhancing competition in international markets
- ✓ Safeguard measures shall be applied to a product being imported irrespective of its source. Thus, safeguard measures must be applied, in principle, on an MFN basis

# Conditions for the application of Safeguard Measures

- ✓ Safeguard measures may only be applied as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under the GATT
  
- ✓ A Member may apply a safeguard measure only after determining, pursuant to an investigation, the existence of the following conditions:
  - a) Increased quantity of imports in absolute or relative terms;
  - b) Serious injury caused, or threatened to be caused, to the domestic industry producing the "like or directly competitive" products; and,
  - c) Causal link between the increased imports and the injury.

# Causal link

- ✓ The determination of serious injury cannot be made unless there is objective evidence of the existence of a causal link between increased imports of the product concerned and serious injury
- ✓ The causal link between increased imports and serious injury may exist, even though other factors are also contributing, at the same time, to the situation of the domestic industry
  - ✓ However, when factors other than increased imports are causing injury to the domestic industry at the same time, such injury must not be attributed to increased imports (the so-called "non-attribution requirement")

# Application of Safeguard Measures

- ✓ While the Safeguards Agreement does not expressly delimit the possible form of a safeguard measure, it envisages that safeguard measures may take the form of tariffs above the bound rate or quantitative restrictions
- ✓ In the case of quantitative restrictions, the level must not be below the actual import level of the most recent three representative years for which statistics are available, unless there is clear justification that a different level is necessary to prevent or remedy serious injury

# Maximum Duration

- ✓ The maximum duration of any safeguard measure is four years, unless it is extended consistent with the Agreement's provisions
- ✓ A measure may be extended only if it is found, through a new investigation, that its continuation is necessary to prevent or remedy serious injury, and only if evidence shows that industry is adjusting
- ✓ The total period generally cannot exceed eight years, although -- for developing countries – it may last a maximum of 10 years



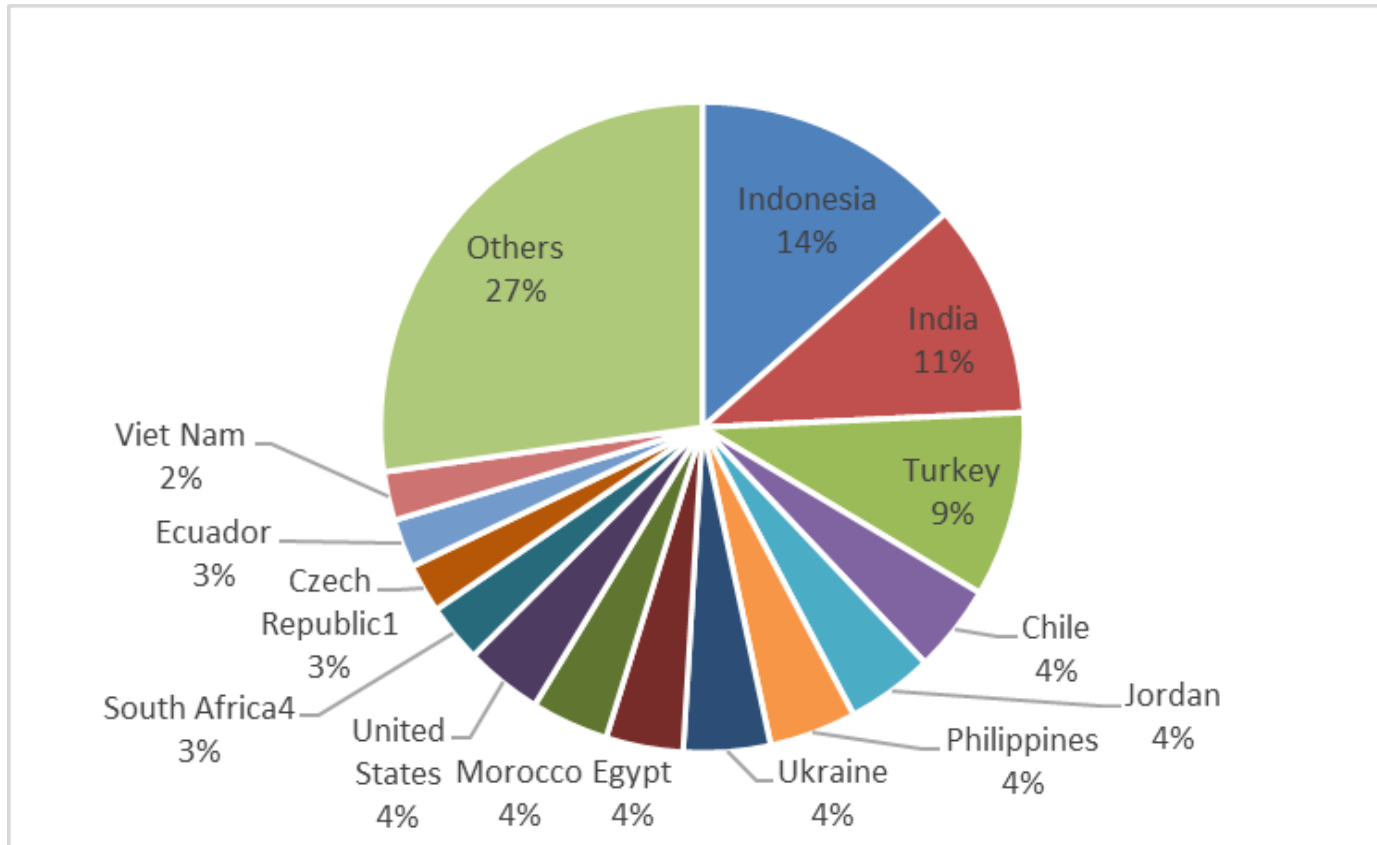
# Payment of Compensation

- ✓ A Member proposing to apply a safeguard measure must endeavor to maintain a substantially equivalent level of concessions and other obligations with respect to affected exporting Members
- ✓ To do so, any adequate means of trade compensation may be agreed among the affected Members through consultations

# Payment of Compensation

- ✓ If no agreement on compensation within 30 days, the affected exporting Members individually may suspend equivalent concessions and other obligations, unless the Council for Trade in Goods disapproves
- ✓ The right to suspend concessions cannot be exercised during the first three years of application of a safeguard measure if the measure is taken based on an absolute increase in imports, and otherwise conforms to the provisions of the Agreement

# Safeguard Measures by Reporting Member



Source: [https://www.wto.org/english/tratop\\_e/safeg\\_e/safeg\\_e.htm#statistics](https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm#statistics)  
Period: 01/01/1995 to 31/12/2021

# Safeguard Measures by Reporting Member

- ✓ 26% Base metals and articles of base metals
- ✓ 17% Products of the chemical or allied industries
- ✓ 8% Textile and Textile Articles

Source: [https://www.wto.org/english/tratop\\_e/safeg\\_e/safeg\\_e.htm#statistics](https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm#statistics)  
Period: 01/01/1995 to 31/12/2021

# CAREC Members

- ✓ China 2 reported safeguard measures
- ✓ Kyrgyz Republic 2 reported safeguard measures
  - Actions taken before it became member of the Eurasian Economic Union

Source: [https://www.wto.org/english/tratop\\_e/safeg\\_e/safeg\\_e.htm#statistics](https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm#statistics)  
Period: 01/01/1995 to 31/12/2021

# Current Controversies

- ✓ Zeroing,
- ✓ Non-Market Economy
- ✓ National Security

# Considerations in Negotiating FTAs

- ✓ FTAs contain provisions on trade remedies
- ✓ Some FTAs simply refer and incorporate the provisions of the WTO Agreements
- ✓ Other FTAs contain additional provisions to trade remedies, to be applied among the Parties

# CPTPP

- ✓ Incorporates the provisions of WTO Agreements on Global Safeguards, Anti-dumping and SCM
  
- ✓ Includes special provisions on:
  - a) Transitional Safeguard Measures;
  - b) Special Safeguards from certain Members on specific products;
  - c) Emergency actions on textiles and apparel goods
  
- ✓ Includes specific Annex on transparency and due process rules for anti-dumping and countervailing duty investigations
  
- ✓ Excludes the provisions of Trade Remedies Chapter from the dispute settlement mechanism of the Agreement



# USMCA

- ✓ Excludes the Parties from the application of Global Safeguards, except in special circumstances
- ✓ Incorporates WTO Agreements and provision on anti-dumping and countervailing measures, but creates additional procedural rights and obligations
- ✓ Cooperation on preventing duty evasion of trade remedy laws
- ✓ Review and dispute settlement in anti-dumping and countervailing duty matters
  - ✓ Special panelist roster
- ✓ Excludes the provisions of Trade Remedies Chapter from the dispute settlement mechanism of the Agreement

# EU-Vietnam FTA

- ✓ Incorporates the provisions of WTO Agreements on Global Safeguards, Anti-dumping and SCM
- ✓ Calls for careful consideration on imposing anti-dumping and countervailing duties, as they can be abused and obstruct trade
- ✓ Calls for transparency, consideration of public interest, and transparency
- ✓ Includes specific provisions on Transitional Bilateral Safeguard Measures

# THANK YOU