

Safeguards

Introduction

- 10.1 Chapter 9 of the AUSFTA ‘provides a mechanism for protecting industries in both Australia and the United States from injury from increased imports during the transition to free trade under the Agreement’.¹ The ‘transition period’ operates for 10 years after the entry into force of the Agreement, except where a period of tariff elimination for a particular good is stated otherwise in Annex 2-B.² The Committee understands that this general transitional safeguard differs from other safeguards applicable under Agreement in that it is applied on the basis of an ‘injury test’.³
- 10.2 Parties retain their rights and responsibilities under Article XIX of GATT 1997 and the Safeguards Agreement. Article 9.5 states that the Agreement
- does not confer any additional rights or obligations on the Parties with regard to global safeguard measures, except that a Party taking a global safeguard measure may exclude imports of an originating good from the other Party if such imports are not a substantial cause of serious injury or threat thereof.⁴

1 DFAT, *Guide to the Agreement*, p. 41.

2 AUSFTA, Article 9.6.7.

3 Mr Stephen Deady, *Committee Briefing*, 2 April 2004, p. 20.

4 AUSFTA, Article 9.5.

- 10.3 The Committee notes that little specific evidence was received which commented on the purpose or operation of this Chapter.

The imposition of a safeguard measure

- 10.4 The Committee notes information from the *Guide to the Agreement* outlining the process by which the Parties may implement safeguard measures. During the transition period, where products from the other Party are being imported in increased quantities as a result of the reduction of tariffs under the Agreement, and this is causing or threatening serious injury to the domestic industry, then the Party suffering such injury may suspend further reductions of customs duties (tariffs) for products from the other Party, returning the tariff rate to either
- the most-favoured nation rate at the time of the decision (i.e. the rate applying to the same good from all other countries)
 - the rate that applied before the Agreement came into force, or
 - for horticultural goods, or other goods to which a seasonal tariff applies, the level that applied during the last corresponding season.⁵

Conditions and limitations

- 10.5 When applying a safeguard measure, Parties must also follow certain conditions and limitations under Article 9.2. The Committee notes that a measure can only be applied to the extent that it is necessary to prevent or remedy serious injury and to facilitate adjustment.⁶
- 10.6 The Party applying the measure must conduct an investigation in accordance with that required by the WTO, in order to justify the application of a safeguard.⁷ The investigation must be completed within one year of its initiation.⁸

5 DFAT, *Guide to the Agreement*, p. 41; AUSFTA, Article 9.1.

6 AUSFTA, Article 9.2.5(a).

7 DFAT, *Guide to the Agreement*, p. 41; AUSFTA, Articles 9.2.2 and 9.2.3.

8 DFAT, *Guide to the Agreement*, p. 41; AUSFTA, Article 9.2.4.

- 10.7 A safeguard measure can only be applied for a period of up to two years. It may then be extended only after a further investigation.⁹ The measure must only be applied during the agreed transition period,¹⁰ and can only be applied once on any given product.¹¹ Where the measure is expected to last for more than a year, the tariff is to be ‘progressively liberalised’.¹²

Provisional safeguard measures

- 10.8 The *Guide to the Agreement* states that

Where the threat of damage to an industry is particularly urgent, and delay would make the damage difficult to repair, either government may impose a safeguard measure on a provisional basis. The provisional safeguard may only apply for 200 days, during which the government is required to carry out an investigation and, where appropriate, apply a normal transitional bilateral safeguard under Article 9.2.¹³

- 10.9 The Committee notes that, where such investigation determines that the provisional safeguard measure was not justified, any tariff increases charged by a government during application of the measure must be refunded by that government.¹⁴

Compensation

- 10.10 Under Article 9.4.1, where a Party imposes a transitional safeguard measure, it must provide trade-liberalising compensation in the form of concessions on a tariff elsewhere in the Agreement. The application of the concessional tariff must occur through mutual agreement of the two parties.

9 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.2.5(b).

10 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.2.5(c).

11 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.2.6.

12 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.2.7.

13 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.3.

14 DFAT, *Guide to the Agreement*, p. 42; AUSFTA, Article 9.3.

- 10.11 Where the two Parties are unable to reach agreement on compensation arrangements, the Party whose goods are being subjected to the safeguard mechanism can

suspend the application of concessions with respect to originating goods of the other Party that have trade effects substantially equivalent to the safeguard measure.¹⁵

Global safeguard measures

- 10.12 According to the *Guide to the Agreement*, Article 9.5

commits each Party to consider excluding products from the other Party from any global safeguard measure (i.e. a safeguard measure applied to all imported products of a particular type, regardless of their country of origin, under the World Trade Organisation Agreement). Australian products may, for example, be excluded where they are not a substantial cause of the serious injury being suffered by the US industry.¹⁶

- 10.13 The Committee notes information from DFAT that in order to implement this obligation, the US will establish a process for advising the US President whether or not to exclude Australian products.¹⁷ Safeguards are also discussed in Chapter 5 of this Report.

Other remedies

- 10.14 The Committee notes that Australia and the United States will retain their rights to anti-dumping and countervailing action under WTO agreements, and that no legislative change is necessary as a result of Chapter 9 of the Agreement.
- 10.15 Textiles safeguards and agricultural safeguards are discussed under Chapters 5 and 7, respectively, of this Report.

15 AUSFTA, Article 9.4.2.

16 DFAT, *Guide to the Agreement*, p. 42.

17 DFAT, *Guide to the Agreement*, p. 42.