

Letters to the Editor

The *World Trade Review* welcomes comments on articles published in the journal. All letters are published at the discretion of the editor and editorial board and may be subject to editing.

To the Editor:

I wish to respond to Joanna Gomula's commentary of my book *Safeguard Measures in World Trade: The Legal Analysis* (Kluwer Law International, 2003), published in the *World Trade Review*, 3(2) (2004): 329–341.

The author appreciates the substantial commentary, but also wishes to point out certain assertions and observations made by the reviewer, which, in the author's opinion, do not correctly represent the relevant contents of the book.

First, the review states in its second paragraph:

'The author explains that the focus of the book is on "general safeguard measures" under Article XIX (p. 4), but three related topics are discussed in separate chapters: proposals to include safeguard provisions in the General Agreement on Trade in Services, other emergency import restrictions, and safeguard regulations in the law of the United States and the European Union. Unfortunately, the reader is left with the impression that the extension of the subject matter has been at the expense of a more profound analysis of general safeguard measures and related WTO jurisprudence. It is also regrettable that the additional topics have been approached with little comparative analysis in relation to the main theme of the book.'

The review states that the extension of the subject matter seems to have been made at the expense of a more profound analysis of general safeguard measures and related WTO jurisprudence, but the reviewer also comments later that Part III presents WTO jurisprudence on a variety of issues pertaining to general safeguards. The latter comment is indeed correct; six chapters in Part III have been devoted to the analysis of general safeguards and related WTO jurisprudence. Thus, it is not clear from these two conflicting comments as to what has been sacrificed. A clarification was also made in the book that Chapter 4 provides an introduction of the Agreement on Safeguards and more detailed analysis and discussion of WTO jurisprudence appear in Part III.

The review also points out that those additional topics (Chapters 5, 6, and 7) have been written with little comparative approach to the main theme of the book. The topic of Chapter 5 is the applicability of the concepts of general safeguards to the currently discussed safeguard mechanism in the service trade. Chapters 6 and 7 also make frequent comparisons to the relevant concepts of general safeguards. Thus, despite the author's comment, comparative analysis is one of the main elements found in these chapters.

Next, the third paragraph of the review states:

‘Another general drawback of the book is that the author has largely ignored the WTO law and jurisprudence relating to “unfair trade” counterparts to safeguards, that is, anti-dumping and anti-subsidy measures. Some concepts applicable to these measures, and many provisions in the respective agreements, bear considerable similarities to those of the Agreement on Safeguards. For example, when reviewing an anti-dumping dispute between Japan and the United States, the Appellate Body agreed with the panel that, with respect to the non-attribution of injury, adopted panel and Appellate Body reports relating to the Agreement on Safeguards can “provide guidance” in interpreting the Anti-Dumping Agreement. In a later report the Appellate Body confirmed that “this reasoning applies both ways” and sought guidance in an antidumping report in order to interpret a provision in the Agreement on Safeguards. However, there is no discussion of these developments.’ (Footnotes omitted.)

Despite this assertion, the author has provided a discussion of the recent development in the interpretation of causation in the anti-dumping case as follows (page 133, third paragraph, footnotes omitted):

‘The Appellate Body in *United States – Line Pipe* also reiterated, “competent authorities must separate and distinguish the injurious effects of the increased imports from the injurious effects of the other factors.” In the interpretation of Article 5.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) which also includes the non-attribution provision, the Appellate Body repeated its previous position and stated, “In order that investigating authorities ... are able to ensure that the injurious effects of the other known factors are not ‘attributed’ to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports.” The Appellate Body acknowledged the practical difficulty in separating and assessing the injurious effects of the factors other than the increased imports, but it was fortified in the position that such a separate assessment was envisaged by the non-attribution requirement.’

Apparently, the author has provided a discussion of the Appellate Body point to which the review is referring. The author has completed a second edition of *Safeguard Measures in World Trade: The Legal Analysis* (Kluwer Law International, 2005) which is now available in the market, and an entire chapter is devoted to the discussion of anti-dumping measures in relations to safeguards.

The review also mentions structural and editorial issues. The original idea of the first edition was to present an overview of the Agreement on Safeguards first and then provide in-depth discussions in subsequent chapters. This structure has its merits, but at the same time, has caused certain repetitions of arguments and discussions. The new edition modifies the previous structure and

reduces such repetitions. Editorial improvement is also made with the second edition.

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Joanna Gomula replies:

I much appreciate the comments on my review and look very much forward to the author's second edition of *Safeguard Measures in World Trade: The Legal Analysis*.