

# Applying Safeguard Measures in Jordan: A Framework for Protecting the Domestic Industry

Many countries have undertaken commitments to liberalize trade by lowering tariffs and non-tariff barriers. However, safeguard measures are intended to shield temporarily a domestic industry from increased imports that threaten to harm the domestic industry. Jordan, as member of the World Trade Organization (WTO), enacted its own laws to comply with WTO requirements. Law No. 50/2002 on the Protection of National Production sets conditions for imposing safeguard measures. The Law defines a domestic industry, outlines what constitutes “serious injury”, and establishes a serious injury test. The Law also provides procedures for conducting safeguard investigations. This article analyses the various aspects of the Protection of National Production Law in order to assess its provisions and impact.

De nombreux pays se sont engagés à libéraliser le commerce en abaissant les tarifs et les barrières non tarifaires. Cependant, les mesures de sauvegarde visent à protéger temporairement une industrie domestique de l'accroissement des importations qui menacent de lui nuire. La Jordanie, en tant que membre de l'Organisation mondiale du commerce (OMC), a promulgué ses propres lois pour se conformer aux exigences de l'OMC. La loi n ° 50/2002 sur la protection de la production nationale fixe les conditions pour la mise en place de mesures de sauvegarde. La loi définit ce qu'est une industrie domestique, décrit ce qui constitue un "dommage grave" et en établit le critère de détermination. La loi prévoit également des procédures pour mener des enquêtes de sauvegarde. Cet article analyse les différents aspects de la loi sur la protection de la production nationale afin d'évaluer ses dispositions et son impact.



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\* The views and opinions expressed in this article are those of the author and do not reflect the official policy or position of any government agency.

## Introduction

The World Trade Organization (WTO) Agreement on Safeguards requires each member to adopt appropriate domestic legislation before the member imposes safeguard measures.<sup>1</sup> Jordan enacted its first WTO-compatible safeguard law—known as Law No. 4/1998 on National Production Protection—in 1998 on the eve of Jordan's accession to the WTO. This law was amended in 1998. Jordan's safeguard system is now based on the amended NPP Law No. 50/2002 (the "NPP Law") and the Regulation on Safeguarding National Production (the "Safeguard Regulation").<sup>2</sup> The NPP Law is a framework law that does not cover, as its name might suggest, all trade remedy legislation such as antidumping and countervailing duties.<sup>3</sup> In other words, the NPP Law is in fact neither an anti-dumping law nor a countervailing duty law.

*The Safeguard Department conducts investigations into serious injury caused by increased imports and recommends initiation of investigation and relief measures.*

The organization in charge of the NPP Law is the Directorate of National Production Protection.<sup>4</sup> In particular, the Safeguards Department, a non-independent organ under the Ministry of Industry, Trade and Supply (MIT), is in charge of administering safeguarding cases.<sup>5</sup> The Safeguard Department conducts safeguard investigations of serious injury caused by increased imports and recommends initiation of investigation and relief measures.<sup>6</sup> Although the Safeguard Department may recommend to the Minister of Industry and Trade a particular course of action in a safeguard investigation, its recommendations are not binding.<sup>7</sup>

In effect, Jordan adopted a unified system in its safeguard law. In other words, one organ, the Safeguards Department, is the one which investigates increased imports and serious injury to a domestic industry.<sup>8</sup> This is reasonable because the Safeguards Department can perform its function quickly and efficiently. On the other hand, it

could be disadvantageous because the investigation of increased imports and the judgment of injury may lack objectivity by centralizing all authority into the same Department.

This article proceeds in three sections. Section I examines in detail the initiation of safeguard investigation under Jordan's law. Section II analyses the duration of safeguard measures and sunset reviews, if any. Section III highlights the interaction between applying domestic safeguard measures and WTO membership. The article concludes with a set of recommendations.

### A. SAFEGUARD INVESTIGATION

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The initiation of a safeguard proceeding starts with domestic producers or their representatives, such as trade associations or chief administrative officials of the domestic producers eligible to petition for an investigation into increased imports and serious injury.<sup>9</sup> A complainant who petitions for investigation must submit the required documentary evidence and the application form along with additional items specified in the Safeguard Regulation.<sup>10</sup> Among the documents provided those that are submitted on a confidential basis may not be open to the public without clear consent of the document provider.<sup>11</sup>

1. See Yong-Shik Lee, "Are Retaliatory Trade Measures Justified under the WTO Agreement on Safeguards?" 22 J. INT'L. ECON. L. 439, 441 (2019).

2. See Provisional Law on National Production Protection No. 50/2002, Official Gazette No. 4560 (15 August, 2002). The NPP Law is essentially modeled on the old NPP Law of 1998. However, the new NPP Law has been elaborated upon in terms of adding new articles such as article 3, which states explicitly that NPP Law of 2002 applies to agricultural as well as industrial products or new definitions such as that of like products and serious injury. See also Regulation on Safeguard of National Production No. 55/2000, Official Gazette No. 4465 (16 Nov. 2000). The Safeguard Regulation of 2000 has a total of 39 articles. The Regulation sets forth basic principles and concepts. It stipulates the conditions, investigation, forms, time limits, and review of safeguard measures.

3. Jordan had to follow up the adoption of the NPP Law with implementing regulations. It seems that Jordan was not able to counter-argue that no implementing regulations were needed given that the NPP Law contained description of investigation concepts such as injurious practices, increase imports, and serious and material injury.

4. The National Production Protection Directorate, which was set up in 2001, is divided into two departments: the Safeguard Department and the Anti-Dumping Department (on file with author). There is also the Council on Tariffs, which is entrusted in recommending the application of safeguarding measures to the Council of Ministers.

5. As of 2019, the Safeguard Department comprises seven permanent staff whose members are presumably appointed by the Minister of Industry, Trade and Supply. It includes persons experienced in cost accounting and economics (on file with author).

6. See Regulation on Safeguard of National Production No. 55/2000, arts. 6, 11 and 23.

7. *Ibid.*, arts. 10-11. The Safeguards Department's report to the Minister is advisory. The Minister can override any course of action recommended by the Department.

8. This is compared with the dual system in which two organs, whether independent or not, conduct the investigation of increased imports and the determination of an injury.

9. In order to restrict frivolous petitions, the Regulation on Safeguard defines domestic producers as those who produce the total number of domestic product or a major portion of the total amount of domestic production. Moreover, the Regulation provides that a petitioner must not only be a member of the domestic producers, but also that firms accounting for no less than 25% of the total domestic production of the article involved must support the petition. *Ibid.*, arts. 2, 7 and 11. Therefore, a prospective petitioner ought to persuade as many other firms as possible to join in the petition because the Department would be reluctant to institute an investigation unless the petition has broad support within the domestic producers. The Safeguard Regulation does not recognize a union or a group of workers as an entity who may file a safeguard petition. This means that chief officials of the domestic producers are the ones who decide on petitioning. Additionally, the Safeguard Regulation does not include the National Assembly as petitioner. However, according to article 35, it includes the Ministry as a petitioner despite the fact that the Department is not at arm's length from the MIT. The record of the Safeguards Department indicates that it has never initiated a safeguard investigation on its own motion.

10. A petitioner, in its filing, must set forth the following information: (1) its identity (2) the identity of all known domestic producers of the domestic like product (3) the volume and value of the imported product (4) a description of the imported product (5) the name of each country in which the imported product originates (6) the identity of each known importer of the imported product and (7) the nature of its injury. *Ibid.*, art. 8.

11. The Safeguard Department may not demand confidential documents but only a summary report. *Ibid.* art. 17. Non-confidential documents are generally made available and could be obtained from the reading room in MIT. An example of confidentiality would be to remove concrete numbers for the level of profits by whitening out the information when the Department publishes its edited version of the safeguard decision. However, excessive confidential designation for submitted documents could undermine the Department's ability to issue reasons for its decisions publicly. The current language of article 17 of the Safeguard Regulation does not offer sufficient guidance on the treatment of confidential business documents. The Safeguard Department may need to supplement its obligation of protecting commercially sensitive information by developing manuals that include, among other things, how information could be designated as confidential, destruction of documents related to confidential information within specific period after the conclusion of a case, separate protected and public files, signing a declaration of non-disclosure, access of domestic and foreign experts and counsels to documents, commitments of the Safeguard Department's staff, and sanctions for any violation of confidentiality.

The Safeguard Regulation sets procedures for the execution of a safeguard investigation, including time limits.<sup>12</sup> Once the Safeguard Department initiates an investigation, it conducts the investigation by consulting sources such as surveys, administrative organs, hearings, and on-the-spot verifications.<sup>13</sup> Any hearings held by the Safeguard Department are in principle open to the public, although the Safeguard Regulation does not have a clear-cut provision on this matter, except when it is necessary to protect the public interest or trade secrets.<sup>14</sup> The Safeguard Regulation contains a provision concerning public interest information supplied by downstream industrial users or consumers of the imported product or consumers.<sup>15</sup> For example, comments from the domestic coat industry would be taken into account if this industry could be affected by a tariff increase on leather imports causing serious injury to the domestic leather industry. This would allow for broader public interest participation in safeguard investigation by determining whether other interests would be harmed by the imposition of safeguard measures.

The NPP Law defines domestic industry for purposes of a safeguard investigation. However, it does not address the case where a domestic producer imports and produces different kinds of products including the one subject to a safeguard investigation. Moreover, it is unclear whether “domestic industry” should be interpreted to include producers who have special arrangement—through joint ventures for example—with an importer or exporter, where their economic interests coincide. Obviously, since Jordan is a small country, the case of a regionally dispersed industry, as opposed to a national market, would not raise a controversy.<sup>16</sup> In other words, because of the small geographical size of Jordan, producers would not be concentrated in one geographical region. Therefore, there is no question whether an injury to Jordanian producers in a certain area constitutes an injury to the “industry” in Jordan.

With respect to serious injury in the agricultural sector, including perishable agricultural products, the NPP Law and Safeguard Regulation do not set specific factors to be considered in analyzing serious injury different from those of other industries. Special factors in investigating serious injury to agriculture industries could include whether there is an idling of cultivated land. The seasonal nature of agricultural products such as garlic, onion, and potatoes, which have a longer production period and a shorter sale period, merits special treatment. Therefore, for investigation of serious injury of agricultural industries, greater details are needed.

The requirements for imposing safeguard measures includes:

- an increase in imports;<sup>17</sup>
- the existence of serious injury to a domestic industry or threat thereof;<sup>18</sup> and
- a causal relationship between the increase in imports and the injury.<sup>19</sup>

*A safeguarding measure will have to clearly demonstrate through an extensive analysis of import and industry trends that increased imports caused the alleged injury.*

A safeguarding measure will have to clearly demonstrate through an extensive analysis of import and industry trends that increased imports caused the alleged injury.<sup>20</sup> Additionally, if the Department recognizes that without urgent action, the industry subject to the investigation may suffer irreparable harm, provisional relief measures may be recommended to the Council of Ministers.<sup>21</sup> Although the Safeguard Regulation does not state whether a judgment on increase in imports or serious injury should pass by a majority vote of the Safeguard Department’s staff or by consensus, it is the practice that no voting occurs.

*As it stands, neither the NPP Law nor the Safeguard Regulation require the Safeguard Department to examine the existence of “unforeseen developments” in its investigation.*

The Safeguard Regulation does not mention of article XIX of GATT 1994.<sup>22</sup> For example, there is no reference in the Regulation of the

12. When a petition of investigation is filed with the Safeguard Department, the Minister of Industry Trade and Supply must decide within 30 days whether or not to initiate an investigation. Additionally, the investigation must be finalized within six months of its initiation. *Ibid.*, arts. 10.a. See also Provisional Law on National Production Protection No. 50/2002, arts. 12.a.

13. See Regulation on Safeguard of National Production No. 55/2000, arts. 13, 14 and 16. The Safeguards Department as a whole conducts a safeguard investigation. Therefore, no special investigation team is formed.

14. To increase public participation, the investigative authority in Jordan may need to hold some fact-finding hearings in different cities. This will make it possible for citizens to participate in the decision-making process. Also, these out-of-Amman hearings would enable the media to cover trade matters more extensively.

15. *Ibid.*, art. 15. Public interest information provided could include the likely effects of safeguard measures on domestic producers that use the imported product as input in their production of other goods or the effects on competition in the domestic market. See also Wentong Zheng, Reforming Trade Remedies, 34 MICH. J. INT’L L. 151, 179 (2012).

16. In the United States, in some instances, the ITC may conduct a regional market analysis in dumping or countervailing duty investigations. See *Committee for Fairly Traded Venezuelan Cement v. United States*, 372 F.3d 1284, 1287–1288, 1290 (C.A. Fed. 2004) (in performing a regional market analysis, the ITC must find on a case-by-case basis a concentration of dumped imports into the regional market. In this context, the ITC must decide whether the ratio of subject imports to consumption is clearly higher in the regional market such as in Florida region than the rest of the US market. Additionally, the ITC must find that imports in the region in question must account for a substantial portion of total subject imports entering the United States.).

17. The term should be construed here to include both absolute and relative increases in imports. See Regulation on Safeguard of National Production No. 55/2000, arts. 3 and 6.a. This term is also specified in article 2.1 of the WTO Agreement on Safeguards. Increase in imports in absolute terms could be easily established compared with increase in imports in relative terms especially if the latter involves decline in imported quantities.

18. *Ibid.*, art. 3.

19. The Safeguard Regulation mentions, in particular, the rate and amount of increase imports as statistical correlation in investigating the causal relationship. *Ibid.* art. 6. However, it does not sufficiently describe methodologies for establishing a causal relationship between increase imports and serious injury when factors other than increase imports may cause serious injury. Therefore, it is important to establish procedures and criteria to analyze the causal relationship in a reasoned, clear, and adequate fashion. For example, the Safeguard Department may need to study the entirety of factors causing serious injury by separating every factor and the effects of such factor so as to establish a genuine and substantial causal relationship.

20. See J. Rivett Schick, “Agreement on Safeguards: Realistic Tools for Protecting Domestic Industry or Protectionist Measures?”, 27 SUFFOLK TRANSNAT’L L. REV. 153, 169 (2003) (Appellate Body views safeguard measures as an extraordinary remedy and is, therefore, hesitant to find a valid measure enacted by a member).

21. See Regulation on Safeguard of National Production No. 55/2000, art. 20. According to the provisions of article 6 of the WTO Safeguards Agreement the duration of provisional emergency duties may not exceed two hundred days.

22. The WTO Agreement on Safeguards and article XIX of GATT 1994 must be read cumulatively. This is supported by article 1 of the WTO Agreement on Safeguards which states that the Agreement establishes rules for the application of safeguard measures which shall be understood to mean those provided for in article XIX of GATT 1994.



circumstance of "unforeseen developments" as stipulated by article XIX.1(a) of GATT 1994. This circumstance is a prerequisite for imposing a safeguard measure before meeting other conditions.<sup>23</sup> As it stands, neither the NPP Law nor the Safeguard Regulation require the Safeguard Department to examine the existence of "unforeseen developments" in its investigation.<sup>24</sup> Requiring a WTO member to establish import surges as "unforeseen developments" as a condition for its application of safeguards could make it difficult for a member to utilize safeguarding measures, since such import surges may not easily be said to be unforeseen.

The Safeguard Department can recommend that the Minister take certain relief measures for a designated period of time.<sup>25</sup> Based on the recommendations, the Council of Ministers will finalize relief measures,<sup>26</sup> which could consist of quotas, tariff-rate quota, or an increase in tariffs.<sup>27</sup> Note that the Safeguard Regulation does not include among its relief measures financial assistance or training. This is an area that the Safeguard Regulation should address but does not.

*Safeguarding measures must not be applied beyond what is necessary to prevent or remedy serious injury and facilitate adjustment.*

The application of safeguarding measures is limited to the extent of the injury caused by increased imports.<sup>28</sup> In other words, safeguarding measures must not be applied beyond what is necessary to prevent or remedy serious injury and facilitate adjustment. The justification for such language is clear. The purpose of safeguard law is not to protect the domestic industry from unfair trade practices. The injury to domestic producers is the result of increased imports. If the damage inflicted on importers by the application of safeguarding measures is permitted to have effects beyond the share of injury

caused by increased imports, this will mean that these exceptional remedies could be applied in a more restrictive manner than anti-dumping duties.

The Safeguard Regulation addresses several issues of timing of safeguard investigation and implementation. Under articles 12.1 of the WTO Agreement on Safeguards, the emphasis in notification is on "immediately". Article 12 of the Safeguard Regulation requires notification of Jordan's initiation of a safeguard investigation. As an example, the probe on increase imports of aerated waters was launched on 17 September 2002 and the WTO Safeguards Committee was notified the same day.<sup>29</sup> A three to five-day delay between the time Jordan decides to apply safeguard measures and notification to the WTO could be acceptable. However, a 20-day wait could not be acceptable unless perhaps there were reasons that would justify such a delay.

## B. DURATION OF SAFEGUARD MEASURES

The duration of relief measures may not exceed four years.<sup>30</sup> However, the measures may be extended through a sunset review process for a period not exceeding ten years, included in the ten-year the period of initial application. On record, no extension in the application of safeguard measures has been requested by Jordanian domestic industries. It would be interesting to see whether future sunset reviews would lead to the continuation of safeguard measures as a *de facto* matter.

The Safeguard Department should review the effectiveness of the relief measures.<sup>31</sup> Based on this analysis, the corresponding measures may be phased out or cancelled. In order to restrict indiscreet petitions, the Safeguard Regulation provides that the Safeguard Department may not commence a second escape clause investigation of the same subject matter unless half the earlier safeguard measures period or two years have passed since the previous investigation, except if the new safeguard measures do not exceed 180 days.<sup>32</sup>

## C. SAFEGUARDING MEASURES AND WTO MEMBERSHIP

The NPP Law can also apply to products of non-WTO members.<sup>33</sup> For example, as a *de jure* matter, Jordan would apply its safeguard laws and regulations to imported products from Egypt since the latter is member of the WTO. On the other hand, Jordan may not rely on its laws to impose safeguard measures on imports from Lebanon since the latter is not a WTO member. However, as a *de facto* matter, nothing could prevent Jordan from imposing safeguard measures on imports from Lebanon, especially given that the latter is in the pipeline of acceding to the WTO.

Although the "rebalancing" principle is not addressed directly, article 33 of the Safeguard Regulation contains it as required by article 8 of the WTO Agreement on Safeguards. It requires the MIT to conduct prior consultations with interested WTO members before applying or extending definitive safeguard measures. The purpose of the rebalancing principle is to maintain a substantially equivalent level of concessions between a member imposing a safeguard measure and

23. According to some commentators, earlier in the history of article XIX of GATT, the requirement of "unforeseen development" was not required. See Ezra Ginzburg, *An Analysis of Article XIX: The Safeguard Problem after the Uruguay Round*, 17 *NEB. L. REV.* 566, 568 (1992) (the unforeseen development requirement has little meaning. It has been read out of existence under the GATT). However, recent WTO Appellate Body decisions have restored the requirement of "unforeseen developments" in applying safeguard measures. See Report of the Appellate Body, *United States-Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, May 1, 2001, WTO Doc. No. WT/DS177/AB/R, para. 69.

24. In reality, the Safeguard Department had factored "unforeseen developments" requirement in all safeguard cases it examined. However, this practice may not be satisfactory until the Safeguard Regulation is amended to explicitly make reference to "unforeseen developments". The WTO Appellate Body in the *Lamb* case rejected the U.S. argument that the "unforeseen developments" needed to justify a safeguard measure could be inferred from the factual record of the investigating authority and demonstrated during WTO dispute settlement proceedings. See *United States-Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat*, *supra*, note 23, at paras. 67 and 74. Sources in the Safeguards Department indicated that it currently prepares a draft regulation implementing the requirement of "unforeseen developments".

25. The Minister shall recommend to the Tariff Council his or her decision. In turn, the Tariff Council recommends its decision to the Council of Ministers. *Ibid.*, art. 23. Relief measures proposed by the Department have often been accepted by the Minister.

26. The Council of Ministers must decide within 30 days of the Minister's suggestions whether the relief measures will be implemented. See Provisional Law on National Production Protection No. 50/2002, art. 17.a. The NPP Law does not specify whether in imposing a relief measure, there must be evaluation of the impact of the relief measure on international trade relationships and the domestic economy.

27. See Regulation on Safeguard of National Production No. 55/2000, arts. 25, 26 and 27. In Jordan, quotas restrictions could be more effective than tariff measures because the tariff rate increase may not significantly affect the total price for cheap imports.

28. *Ibid.*, art. 27.

29. See Committee on Safeguards-Notification under Article 12.1(a) of the Agreement on Safeguards on Initiation of an Investigation and the Reasons for it-Jordan, Sep. 20, 2002, WTO Doc. No. G/SG/N/6/JOR/9.

30. *Ibid.*

31. *Ibid.*, art. 30.

32. *Ibid.*, art. 28.

33. See also Provisional Law on National Production Protection No. 50/2002, art. 3.b.

exporting members affected by the measure.<sup>34</sup> Therefore, Jordan has to offer compensation for the adverse effects of a safeguard measure on trade of other WTO members.

Articles 32 and 38 of the Safeguard Regulation make a special reference to developing countries. They exempt developing countries such as Egypt from safeguarding measures if their share of imports does not exceed 3% of total imports of the product covered by the measure. On this basis, an exporting developing country would argue that its own exports of the product covered by the safeguarding measure represent less than 3% of the Jordanian market and therefore should not be subject to safeguard measures.

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In principle, safeguarding measures may not be targeted at imports from a particular country and safeguard investigations should not be country-specific. In other words, safeguarding measures must be applied to an imported product irrespective of its source.<sup>35</sup> However, in the case of China, a safeguarding measure could be country/product-specific.<sup>36</sup> Therefore, Jordan may want to implement paragraph 16 of China's Protocol of Accession to the WTO into domestic law.

## Conclusions

One could argue that Jordan's NPP Law and Safeguard Regulation as being to a large extent in accordance with the requirements of the WTO Safeguards Agreement, but there are several comments worth mentioning regarding Jordan's safeguard law and practice.

34. To achieve this, the members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade. If no agreement on compensation is reached, the exporting members may proceed to suspend the application of "substantially equivalent concessions". Normally, exercising the right to retaliate may not occur during the first three years a safeguard measure is in place. However, retaliation may occur before then if the measure is found not to comply with the provisions of the Safeguards Agreement or if it was not in response to an absolute increase in imports. The right to retaliate under article 8 of the WTO Safeguards Agreement must be exercised with a 90-day period from the date the safeguard was imposed. However, in practice, nothing could prevent the country from imposing the safeguard measure and other WTO members from reaching a procedural agreement on exercising the right to retaliate beyond the 90-day deadline.

35. See Provisional Law on National Production Protection No. 50/2002, art. 19.

36. Paragraph 16 of China's Protocol of Accession provides that where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause "market disruption" to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected "shall be free", in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. The application of China's safeguard provision will be terminated 12 years after the date of accession. See Accession of the People's Republic of China, Nov. 23, 2001, WTO Doc. No. WT/L/432, para. 16. Rather than adopting a "market disruption" standard, the WTO Agreement on Safeguards in article 2.1 requires that a product is being imported under such conditions as to cause or threaten to cause "serious injury" to the domestic industry.

Jordan's NPP Law refers to manufactured as well as agricultural products in a safeguard investigation, but there is no reference to services.<sup>37</sup> It seems that the current NPP Law is not sufficient in addressing an injury to the domestic industry due to rapid import increase in services. One could interpret the absence of reference to services on the ground that the MIT is a government ministry, as its name indicates, concerned with "industry" while insurance and banking for example could fall under the jurisdiction of other government entities. Another interpretation is that a service safeguard could be unprecedented. As such, it would be a contentious issue. At any rate, it is unclear how a service safeguard would work in practice because it requires a mechanism to track increasing imports which can be difficult in the case of services.

The Safeguard Regulation in article 30 requires the Safeguard Department to submit a mid-term evaluation report of the relief measures. It seems that in few instances have relief measures been evaluated. Therefore, in order to apply the safeguard system constructively, the Safeguard Department needs to evaluate whether the safeguard measures effected positive adjustment.<sup>38</sup> This would help to re-orient the NPP Law and Safeguard Regulation from being simply a relief system to an adjustment system, since safeguard measures are extraordinary measures to be taken only in emergency situations.

Jordan, in its attempt to improve its regime of safeguard measures, must take note that the WTO Agreement on Safeguards is a procedural agreement establishing certain minimal procedural requirements.<sup>39</sup> Jordan does not have to adhere to the exact words of certain provisions of the Safeguards Agreement. In other words, Jordan could modify its law in a way that is different from the Agreement. The WTO Agreement on Safeguards permits the use of safeguard for up to eight or ten years. However, for example, Jordan could apply safeguard measures for three years. Moreover, Jordan must take into account the WTO panel decisions. For example, WTO panel decisions have brought to life the requirement of "unforeseen developments" or require the competent authority to provide "explicit" findings that are "clear and unambiguous" and "do not merely imply or suggest an explanation".<sup>40</sup>

*To meet the future demand of relief measures, Jordan should put in place a plan to help small and medium-sized firms access the safeguard system.*

To meet the future demand of relief measures, Jordan should put in place a plan to help small and medium-sized firms access the safeguard system. The current system may pose problems for these companies in terms of the costs of complying with the Law or Regulation requirements including paper burden, formality,

37. A provision for a service safeguard would say that if import of services causes or threaten to cause serious injury to domestic industries that provide like or directly competitive services, the Department may adopt relief measures as necessary to remedy such injury or threat thereof.

38. Examples of positive adjustment include consolidation, increase investment, transfer of resources to different products along the production line, or transfer resources to different industries all together.

39. The WTO Agreement on Safeguards does not impose a simple arithmetic standard for determining increased imports or requires a certain pattern of imports.

40. None of these terms appears in article 3.1 of the WTO Agreement on Safeguards which requires only publication of the findings and reasoned conclusions reached on all pertinent issues of fact and law. The ordinary meaning of these terms does not establish any level of clarity for the competent authority or require that it states its findings with a particular explicitness.

complexity, and duration of the process, lack of knowledge and expertise about Safeguard Law and its procedures, the need to work with other small producers or producer associations, and the cost of hiring external counsel.

The Safeguard Department may want to self-initiate safeguard investigation rather than wait for domestic industry to petition for it. Self-initiation of safeguard investigation may enable the Safeguard Department to limit imports more quickly. If the domestic industry petitions for safeguard measures, it would take longer time to impose restrictions on imports because the safeguard investigation would require longer process. Therefore, self-initiation of safeguard investigation could produce faster results by cutting time needed to investigate. Courts in Jordan have not developed an extensive jurisdiction in the area of trade remedy laws. This may be attributed to the inexperience of Jordan's courts in reviewing remedy law cases.

A modification to procedural requirements would result in a more efficient and eco-friendly manner of conducting safeguard investigations. For example, safeguard applications could be filed via email with hard copy required. The primary and supporting documents should be searchable. In addition, all questionnaire responses, submissions, and communications could be made via email. Oral hearings could be conducted via videoconference. The MIT should have the right to waive other procedures as and when required.

*If the purpose of a policy is to protect Jordan's industries, it is more advantageous to use anti-dumping and countervailing duty laws.*

Over the years, there has not been any major structural change in Jordan's trade remedy policies. If the purpose of a policy is to protect Jordan's industries, it is more advantageous to use anti-dumping and countervailing duty laws. For example, if Jordan uses its anti-dumping law to protect its domestic industry, it can target a particular industry of a country rather than imposing a safeguarding measure against all countries as required under article 2.2 of the WTO Agreement on Safeguards. In this way, Jordan will not upset its trade relationship with other countries. Moreover, Jordan does not need to provide compensation to the exporting country in the case of imposing an anti-dumping duty, while under article 8.1 of the WTO Agreement on Safeguards, Jordan must maintain the same level of concession if it imposes a safeguard measure. Finally, by imposing an anti-dumping duty, Jordan will tell the world that its industries are just as competitive as other countries, but because these countries dump their products in the Jordanian market, the domestic industry in Jordan cannot compete.

تعهدت العديد من الدول بتحرير التجارة من خلال خفض الحواجز الجمركية وغير الجمركية. ومع ذلك تهدف تدابير الحماية إلى حماية الصناعة المحلية مؤقتاً من الاستيراد المتزايد الذي يهدد بإلحاق الضرر بالصناعة المحلية. قامت الأردن، بصفتها عضواً في منظمة التجارة العالمية، بسن قانون خاص بها للامتثال إلى متطلبات المنظمة. يحدد القانون رقم 2020/50 المتعلق بحماية المنتج الوطني شروط فرض تدابير الحماية. يعرف القانون المنتج الوطني ويحدد ما يشكل "ضرراً خطيراً" ويقدم اختباراً للضرر الخطير. ينص قانون حماية المنتج الوطني على إجراءات التحقيق في مسألة الحماية. تقدم هذه المقالة تحليلاً لعدة جوانب من القانون لمعاينة أحكامه وتأثيره.

## BIOGRAPHY

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Jordan – International Trade Law – WTO – Safeguard Measures

Jordanie – Droit de commerce international OMC – Mesures de sauvegarde