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On the Comparison of Safeguard Mechanisms of FTAs

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GATT XIX

-What is Safeguard?-

If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession

- **WTO Safeguard Agreement elaborates the Regulations of GATT on the SG.**

Nature of FTAs' SG

- WTO's SG and FTAs' SG are two different mechanism dealing with problems arising from two different free trade initiatives.



- In order to evaluate the liberalization effects of FTAs' SG, we need not consider the relationship with the WTO's SG.

Indicators for Analysis

1. Injury (threat of injury) ① Criteria for injury “serious injury” ② Criteria for threat of injury “threat of serious injury” ③ Indicators for determination “all relevant factors of an objective and quantifiable nature
2. Increased Imports: Mode of increase “absolute or relative” to domestic production
3. Causation ① Criteria for causation specific regulation ② Method for determination-attribution rule
4. Application ① Period of initial application “4 years” ② Period of extension ③ Need for liberalization progressive liberalization at regular intervals where the expected duration of a measure is over 1 year
5. Adjustment: Reference to the concept of “adjustment”, the allowability of the extension and the purpose of the progressive liberalization of the initial measures
6. Reapplication Interval for reapplication “: a period of time equal to that during which such measure had been previously applied.
7. Domestic Investigation: Mode of domestic investigation
8. Notification and Consultation: Need for notification and consultation notification to the Committee at initiation of investigation, finding of serious injury, and determination of application, consultation with affected parties prior to application
9. Dispute Settlement Procedure: Applicability of neutral dispute settlement procedure applicable.

(We do not use compensation and rebalancing as indicators as all 9 FTAs adopt the same formula.)

Generic Characterization of SG in each FTA -1-

- **NAFTA:** Very rigid and detailed substantial conditions, rigid and detailed procedural conditions, very detailed and extensive domestic investigation proceedings, neutral international dispute settlement procedure not available
- **EFTA:** Unique and extremely broad grounds for the invocation of measures, lax and nonspecific procedural conditions, no specific regulation on domestic investigation proceedings, dispute settlement procedure politically oriented.
- **AFTA:** Lax and nonspecific conditions both substantial and procedural, no specific regulation on domestic investigation proceedings, dispute settlement procedure politically oriented
- **EU-Mexico:** Lax and nonspecific substantial conditions, rigid and detailed procedural conditions, no specific regulations on domestic investigation proceedings, consultation prior to the application of measures, neutral dispute settlement procedure not available, “serious disturbances in any sector of the economy” and “difficulties which could bring about serious deterioration in the economic situation of a region of the importing country” as grounds for the invocation of measures
- **US-Australia:** Rigid and detailed conditions both substantial and formal, detailed domestic and international proceedings

Generic Characterization of SG in each FTA -2-

- **Australia-New Zealand:** Transitional character between GATT 19 and Safeguard Agreement, lax and nonspecific substantial conditions, relatively detailed procedural conditions, relatively detailed regulations on domestic investigation, pursuit of political solutions prior to application of the measures, annual review, neutral dispute settlement procedure not available
- **US-Singapore:** Similarity with Safeguard Agreement, rigid and detailed conditions both substantial and formal, detailed domestic and international proceedings
- **Japan-Mexico:** Similarity with Safeguard Agreement, rigid and detailed conditions both substantial and formal, very detailed domestic proceedings, detailed international proceedings
- **Japan-Singapore:** Similarity with Safeguard Agreement, very rigid and detailed conditions both substantial and formal, detailed domestic and international proceedings
- **Korea-Chile:** Safeguard measures not applicable on the products under the FTA
- **Korea-Singapore:** Similarity with Safeguard Agreement, rigid and detailed conditions both substantial and formal, detailed domestic and international proceedings
- **China-ASEAN:** Great Similarity with Safeguard Agreement, general adoption of Safeguard Agreement regulations with few exceptions arising from structural differences between FTA and WTO

Classification of the FTAs' SG

1. **No General SG Type** Korea-Chile FTA
2. **Quasi Global SG Type**
 - (1) **WTO Type (rigid and detailed conditions, detailed domestic and international proceedings)** Japan-Singapore FTA, China-ASEAN FTA, Japan-Mexico FTA, US-Australia FTA, US-Singapore FTA, Korea-Singapore FTA
 - (2) **NAFTA Type (rigid and detailed conditions, especially detailed and through domestic investigation, no neutral international dispute settlement)** NAFTA
 - (3) **GATT Type (lax and non specific conditions, politically-governed implementation)** AFTA, Australia-New Zealand FTA
3. **European Type (Broader Grounds for Invocation)** EFTA, EU-Mexico FTA

Note

SG mechanism serves as a safety valve for liberalization.

To evaluate the overall liberalization effects of SG, we should analyze the whole structure of liberalization of goods in each FTA.