

Table 1: Indicators and Their Descriptions in Terms of the Global Safeguard Clause

Indicators		Global Safeguard Clause (Safeguard Agreement),
1. Injury (threat of injury)	① Criteria for injury	“serious injury (Art.2.1)” defined as “a significant overall impairment in the position of a domestic industry (Art.4.1(a))”
	② Criteria for threat of injury	“threat of serious injury” defined as “serious injury that is clearly imminent” whose determination “be based on facts and not merely on allegation, conjecture or remote possibility (Art. 4.2(b))”
	③ Indicators for determination	“all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment (Art.4.2(a))
2. Increased Imports	Mode of increase	“absolute or relative to domestic production (Art.2.1)”
3. Causation	① Criteria for causation	no specific regulation
	② Method for determination	non-attribution rule, stated as “when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports (Art.4.2(b))”
4. Application	① Period of initial application	“4 years (Art.7.1)”
	② Period of extension	“a total maximum period of 8 years (Art.7.3)”
	③ Need for liberalization	progressive liberalization at regular intervals where the expected duration of a measure is over 1 year (Art.7.4)
5. Adjustment	Reference to the concept of “adjustment”	In relation to the determination of the period of initial application (Art.7.1), the allowability of the extension (Art.7.2), and the purpose of the progressive liberalization of the initial measures (Art.7.4)
6. Reapplication	Interval for reapplication	“a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least 2 years (Art 7.5)”
7. Domestic Investigation	Mode of domestic investigation	“investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporter and other interested parties could present evidence and their views (Art.3.1)”
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 (Art.12.1)., consultation with affected parties prior to application (Art.12.3)
9. Dispute Settlement Procedure	Applicability of neutral dispute settlement procedure	applicable (Art.14)

Table 2: Actual Regulations of the Selected Bilateral Safeguard Clauses (GSC stands for the provisions of the global safeguard clause described in Table 1)

indicators	NAFTA (1994)	EFTA (1960, amended in 2001)	AFTA (1993)
1-①	GSC	“If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Member State may unilaterally take appropriate measures ”	“serious injury”
1-②	GSC		“threat of serious injury”
1-③	GSC+”may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital”		no specific regulation
2	“in absolute terms”		no specific regulation
3-①	“the imports of such good from that Party alone constitute a substantial cause”		no specific regulation
3-②	GSC		no specific regulation
4-①	“3 years”	no specific regulations	no specific regulation
4-②	“1 year”	no specific regulation	no specific regulation
4-③	no specific regulation	no specific regulation	no specific regulation
5	as a condition for extension	no specific regulation	no reference
6	not reapplicable	no specific regulation	no specific regulation
7	more detailed than GSC, especially on the institution of a proceeding, the contents of a petition or complaint, and the notice requirement, determinations by investigating authority subject to review by judicial or administrative tribunals to the extent provided by domestic law	no specific regulation	no specific regulation
8	notification to and consultation with the affected parties at institution of a proceeding that could result in emergency action	notification and consultation in the Council prior to application, notification to the Council where measures are taken, consultations in the Council every 3 month after their adaption	notification to the Council where measures are taken
9	not applicable	submission to the Council comprising the representatives from each Member State	submission to the minister level Council comprising one nominee from each Member State and the Secretary-General of the ASEAN Secretariat, or the ASEAN Economic Minister (AEM)

Selected Bilateral Safeguard Clauses

indicators	EC-Mexico (2000)	US-Australia (2005)	Australia-New Zealand (1983)
1-①	“serious injury”	GSC	“severe material injury”
1-②	“threat of serious injury”	GSC	“an imminent and demonstrable threat”
1-③	no specific regulation	GSC	no specific regulation
2	no specific regulation	GSC	no specific regulation
3-①	no specific regulation	“substantial cause” defined as “important and not less than another cause”	no specific regulation
3-②	no specific regulation	no specific regulation	no specific regulation
4-①	“1 year”	“2 years”	“2 years”
4-②	“a total maximum period of 3 years”	“2 years”	no specific regulation
4-③	“shall contain clear elements progressively leading to their elimination at the end of the set period , at the latest”	GSC	no specific regulation
5	no reference	as a restriction to the duration of initial application, and as a condition for extension	no reference
6	“3 years”	not reapplicable	no specific regulation
7	no specific regulation	GSC	an opportunity for evidence to be presented from the other party be provided
8	referral of the difficulties of the importing country for examination to the Joint Committee, which may take any decisions needed to put an end to such difficulties, notification to and consultation with the Joint Committee when measures are applied	notification to the other party at initiation of investigation, consultation with the other party prior to application	consultation with the other party to seek a mutually acceptable solution before investigation, at determining material injury, annual review with the other party of the need for the continuation of measures
9	applicable	applicable	not applicable

Selected Bilateral Safeguard Clauses

indicators	US-Singapore (2004)	Japan-Mexico (2005)	Japan-Singapore (2002)
1-①	GSC	GSC	GSC
1-②	GSC	GSC	GSC
1-③	GSC	GSC+”prices”	GSC
2	GSC	“in absolute terms”	“in absolute terms”
3-①	“substantial cause” defined as “important and not less than another cause”	“substantial cause”	“the imports of that originating good alone constitute a substantial cause “
3-②	GSC	GSC	GSC
4-①	“2 years”	“3 years”	“1 year”
4-②	“2 years”	“a total maximum period of 4 years”	“a total maximum of 3 years”
4-③	GSC	“shall present the other party a schedule leading to its progressive elimination”	no specific regulation
5	as a restriction to the duration of initial application, and as a condition for extension	as a restriction to the extent of a measure	as a restriction the duration of initial application
6	not reapplicable	“a period of time equal to the duration of the previous measure or 1 year”	not reapplicable
7	GSC	more detailed than GSC, especially on the procedure and the content of public notice at initiation of investigation, and access of information related to investigation to interested parties	GSC
8	notification to the other party at initiation of investigation, consultation with the other party prior to application	notification to the other party at initiation of investigation, and prior to application, consultation with the other party prior to application	notification to the other party at initiation of investigation, finding of serious injury, and determination of application, consultation with the other party prior to application
9	applicable	applicable	applicable

Selected Bilateral Safeguard Clauses

indicators	Korea-Chile (2004)	Korea-Singapore (2005)	China-ASEAN (2003)
1-①	no general bilateral safeguard clause	GSC	GSC
1-②		GSC	GSC
1-③		GSC	GSC
2		GSC	GSC
3-①		“substantial cause” defined as “important and not less than any other cause”	GSC
3-②		GSC	GSC
4-①		“2 years”	“3 years”
4-②		“2 years”	“1 year”
4-③		GSC	GSC
5		as a restriction to the duration of initial application, and as a condition for extension	GSC
6		no specific regulation	GSC
7		GSC	GSC
8		notification to the other party at initiation of investigation, consultation with the other party prior to application	GSC
9		applicable	applicable

Table 3: Generic Characterization of Respective Bilateral Safeguard Clause

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
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

Table 4: Classification of the Selected Bilateral and Regional Safeguard Clauses

1. No General Safeguard Type

No General Bilateral Safeguard Clause

Korea-Chile FTA

2. Quasi Global Safeguard Type

(1) WTO Type

Similarity with the Safeguard Agreement (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) GATT Type

Similarity with the GATT 19 (lax and non specific conditions, politically-governed implementation)

AFTA, Australia-New Zealand FTA

(3) NAFTA Type

Implementation Secured through Detailed Domestic Investigation (rigid and detailed conditions, especially detailed and through domestic investigation, no neutral international dispute settlement)

NAFTA

3. European Type

Broader Grounds for Invocation (grounds for invocation other than the normal “Injury to Domestic Industries” requirements)

EFTA, EU-Mexico FTA