

Safeguards: friends or foes of liberalization in the Asia-Pacific?¹

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Highlights

There are several main insights arising from the review of a trade remedy measure known as safeguards and their usage by Asia-Pacific economies in the context of global and preferential trade in goods:

- The WTO Agreement on Safeguards allows for safeguards measures as a form of a temporary protection in unforeseen circumstances where increased imports cause or threaten to cause serious injury to domestic producers of like and directly competitive goods.
- The rationale for allowing this measure is to enable broader and faster liberalization by installing in place tools of emergency intervention capable or temporarily halting the liberalization efforts.
- The instances of countries using this type of protection at a global level reflect a decreasing trend, particularly among developed countries.
- However, use of safeguard measures by developing Asia-Pacific economies has been on a rise. Majority of Asia-Pacific countries implement their safeguard measures through an increase of specific tariff in sectors associated with chemicals and base metals.
- When it comes to safeguard provisions under preferential trade agreements (PTAs), countries differ widely in their approach. A review of notified trade agreements to the WTO by 2012 undertaken in Crawford, McKeagg and Tolstova (2013) shows that when it comes to treatment of global safeguards under PTAs, majority still retain rights extended by the Art. XIX of GATT and the Agreement on Safeguards.
- Only in 26% of all PTAs and 28% in those with Asia-Pacific members, there are specific clauses referring to possible or certain exclusions of PTA partners from the coverage of global safeguards, provided certain conditions are met, and thus effectively discriminating against non-members of PTAs. Two agreements allow this discriminatory non-application of global safeguards without any conditions.
- Small developing countries and least developed countries do not impose safeguard measures even though they might be facing situations of serious injury caused by increased competitive imports. In most cases they lack institutional and manpower capacity to undertake all actions linked to investigations and implementation of measures.

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Introduction

As part of the so-called trade defense instruments,² safeguard measures have been widely used by many WTO members in the Asia-Pacific region.³ The use of safeguards for the WTO members is permitted under the General Agreement on Tariffs and Trade (GATT) 1994, Article XIX, and WTO Agreement on Safeguards (SGA).⁴ Safeguards, similar to other types of contingent protection, act as “a pressure release valve without which liberalization would not be able to proceed” (Jackson, 1997 as cited in Prusa, 2014, p.5). Assuring local stakeholders that a country will be able to temporarily suspend its obligations in case import competition of a like or directly competitive product proves to be seriously injuring the relevant domestic industry serves as a means of a priori defusing potential pressure or resistance to liberalization of (uncompetitive) domestic interest groups. For this reason, existence of safeguard measures is seen as enabling broader and/or faster global or regional liberalization efforts. On the other hand, because they leave opportunity for countries to temporarily suspend liberalization commitments, safeguards may cause a perception of an increased unpredictability of the trading environment.

In addition to the safeguards that are applied among the members of the WTO without discrimination,⁵ the increasing number of ever more sophisticated and deeper preferential trade agreements (PTAs)⁶ bring in some new aspects into the safeguards disciplines. Not only countries can prescribe whether they will and under which conditions use multilateral or global safeguards against partners in those PTAs, but they also can make conditions of use of the safeguards different thereby effectively introducing so-called “bilateral or preferential safeguards” which are regulated by the disciplines of the bilateral or regional trade agreement and are not under the purview of multilateral rules. This note reviews safeguard provisions in the context of Asia-Pacific countries’ PTAs. It draws upon the WTO trade policy monitoring (i-TIP database) to examine recent safeguard actions taken by Asia-Pacific WTO members. Given that many United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) members have little or no experience in the use of global or bilateral safeguards, we also explain the efforts of ESCAP in helping such countries to develop capacity in this policy area as well as to enhance public awareness about impacts of such instruments.

Why do WTO members allow safeguard measures?

The multilateral trading system initiated by GATT in 1947, and expanded through the WTO agreements, set the conditions under which countries can undertake trade-affecting policies in order to defend domestic producers. For example, a country can *temporarily* apply safeguard measures as long as its imports of a like or directly competitive product have suddenly increased to such an extent that the relevant domestic producers have suffered *serious injury* or threat thereof. The purpose of such a

² These include Anti-Dumping, Anti-Subsidy and Safeguards’ instruments.

³ It may be noted that major developed WTO members such as the European Union and the United States use the safeguards’ instrument relatively infrequently. These members tend to rely more on the use of the anti-dumping and anti-subsidy instruments.

⁴ This document does not cover special safeguards allowed under the SGA or other disciplines such as related to infant industry, balance of payments (Article XII and Article XVIII:B), special safeguards applicable to agricultural products, or transitional special safeguards.

⁵ The exception applies to the developing countries protected by “de minimis” rule. Article 9.1 of the WTO Agreement on Safeguards mandates that safeguard measures must not be applied against a product originating in a developing country, as long as its share of imports of the product in the importing country does not exceed three per cent, provided that developing country with less than three per cent import share collectively account for not more than nine per cent of total imports of the product.

⁶ We use “preferential trade agreement” as a generic term for any form of reciprocal trade liberalization agreements (such as free trade agreement, customs union, comprehensive economic partnership, etc.). This term is used in a same way as “regional trade agreements”. When it comes to a number of parties, agreements can be bilateral (two partners) or plurilateral (more than two). The majority of agreements negotiated under the GATT/WTO are classified as multilateral agreements.

measure is to secure a space (in terms of time and relative competitiveness) for domestic producers to make the necessary adjustments in order to compete with the imported products once the safeguard measure is terminated. As safeguard measures allow for short-term relief for domestic industries, such a trade remedy is useful in securing the necessary political support for the successful liberalization agreement and subsequent implementation of the agreement, and ensures import-competing domestic industries will have access to protection to address unforeseen developments of liberalization. These safeguard measures were made available under GATT Art. XIX, and later under SGA. However, this multilateral instrument is being complemented (and in some sense replaced) in practice as a result of the proliferation of reciprocal preferential trade agreements in which such transitional safeguard measures have been included and applied only at the agreement's level. The latter have become known as the "bilateral safeguards" (or "preferential safeguard") as they refer to measures that only address issues that arise among the trading partners in the preferential trade agreements.

Global safeguards

Global safeguard provisions typically allow for recourse to the rights and obligations under GATT Art. XIX and the SGA.⁷ To give industry time to gradually adjust to the increased competition resulting from trade liberalization, GATT practice allows tariff cuts to be implemented or phased in over an agreed number of years. It also allows for a temporary restriction of imports for the purpose of providing relief to the affected domestic industry.

During the Uruguay Round, WTO members recognized that the safeguard-relating disciplines were on the one hand too vague and inadequate and on the other hand too strict and that therefore they needed to be clarified in order to re-establish multilateral control over safeguards and eliminate measures that escape such control, such as Voluntary Restriction Arrangements (VRAs) (Agreement on Safeguards: Preamble). Therefore, SGA allows for a period necessary to remedy serious injury and to facilitate adjustment up to four years (Article 7). The duration of the measure can be extended for another four years, provided that the continued surge in imports and serious injury to the domestic industry is sufficiently demonstrated.⁸ The agreement requires the importing country to conduct a proper investigation before invoking safeguards, and it defines "serious injury" more accurately. A country applying a safeguard measure (which typically takes the form of suspension of concessions or liberalizing obligations and can reflect use of quantitative import restrictions or of duty increases above the bound rates)⁹ must maintain a substantially equivalent level of concessions and other obligations with respect to the affected exporting countries. Any adequate means of trade compensation may be agreed through consultation, and absence of such agreement on compensation within 30 days authorizes the affected exporting countries to retaliate (Article 8). The authorized form of retaliation is the suspension of substantially equivalent concessions or other obligations under GATT 1994 (Article 8.2). The right to retaliation is suspended for the first three years that a safeguard measure is in effect unless either the applied measure does not conform to the provisions of the SGA or it is not based on an absolute increase in imports (Article 8.3). Other WTO agreements also provide for other special

⁷ Global safeguards are also under the provision of Article XII, XVIII:B and the "Understanding of the Balance-of-Payments Provisions of the GATT 1994", which allow a country to restrict the quantity or value of imports when the country is in serious balance of payments and external financial difficulties or threat thereof.

⁸ An additional two years apply for developing countries.

⁹ But does not allow for bilateral voluntary export restraints, orderly marketing agreements, or similar measures (according to Art 11 of SGA examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection).

mechanisms for safeguard measures, such as the special safeguards mechanism for agricultural products under the WTO Agreement on Agriculture (Article 5).¹⁰

Treatment of safeguards within the PTAs¹¹

One of the most recent and comprehensive studies in this field (Crawford, McKeagg and Tolstova 2013) shows that in principle countries opt for many different approaches to safeguards when it comes to their PTAs (Table 1). The study observes a total of 232 trade agreements notified to the GATT/WTO up to the end of 2012 of which 122 involve Asia-Pacific countries. A significant number of agreements opt to either not refer to global safeguard rules (51) or to retain the multilateral rules (37). However, the third group of PTAs opts to exclude the imports from the PTA partners from the coverage of multilateral safeguards, and they do it either without conditions or with some conditionalities (34).

Table 1. Classification of Safeguard Provisions under PTAs

Classification	Asia-Pacific	World
1. No reference to global safeguard	51	117
2. Retention of rights under Art. XIX and the Agreement on Safeguards (with little embellishment)	37	53
3. Exclusion of imports from the PTA partner without conditions	2	2
4. Exclusion of imports from the PTA partner with conditions	13	34
5. Possible exclusion of imports from the PTA partner	19	26
Total	122	232

Source: Crawford, McKeagg, and Tolstova, 2013

No Reference to Global Safeguard Rules

About 50% of PTAs that are currently in force worldwide and 42% of those enforced by Asia-Pacific economies contain no general safeguard mechanism in their legal texts. While parties may not mention safeguards in the PTAs' texts, that does not preclude them from using global safeguards rules as per SGA. Examples of such agreements include the PTAs of Armenia, Georgia, the Kyrgyz Republic, and the Russian Federation¹² as well as Turkey's pre-2006 PTAs.

Retention of Rights under Art XIX and the Agreement on Safeguards

Another larger group includes agreements with provisions that reflect characteristics of the WTO Agreement on Safeguards. In principle, these agreements contain an explicit provision (sometimes with few elaborations) in which the parties adhere to the WTO Agreement when a global safeguard is invoked. About 23% of the total PTAs globally contain such safeguard provisions and the share goes to roughly 30% in the Asia-Pacific. All of Japan's PTAs, for example, permit the retention of rights and obligations in a global safeguard action, although different language is used. Other examples include some PTAs of ASEAN, Australia, New Zealand, China, India, Malaysia, and Pakistan. Some PTAs specify further restrictions that a bilateral and global safeguard measure may not be applied to the same

¹⁰ This note does not discuss the specifics of transitional and special safeguard measures.

¹¹ This section borrows heavily from Crawford, McKeagg and Tolstova 2013

¹² PTAs which entered into force before these countries became WTO Members and were notified following their accession. As some of these PTAs preceded the SGA or the countries were not members of the WTO at the time of signing such PTAs it is not surprising that they have no provisions on global safeguards.

product simultaneously, as in the case of ASEAN-Australia and New Zealand, China-Peru, China-Costa Rica, EU-Republic of Korea, and Singapore-Peru.

Exclusion of Imports from the PTA Partner without Conditions

There are only two PTAs that fall under this classification of safeguard provisions and they both include parties from Asia-Pacific: Singapore-New Zealand and Singapore-Australia. Such agreements include neither global safeguard measures within the meaning of GATT Art. XIX and the Agreement nor bilateral safeguard measure. Therefore, imports from the PTA partner are excluded from a global safeguard action, without being subject to any condition.

Exclusion of Imports from the PTA Partner with Conditions

Some 15% of globally enforced PTAs and less than 11% in Asia and the Pacific, mandate that imports shall be excluded from a global safeguard action, only if certain conditions are met. The most prominent condition is “unless such imports account for a ‘substantial share’ of total imports” and such imports “contribute importantly to the serious injury or threat thereof.” The term “substantial share” of total imports differs by agreements. For example, Guatemala-Chinese Taipei and El Salvador-Chinese Taipei PTAs define such term as “the top three suppliers in the most recent period.” EFTA’s PTAs with Hong Kong, China and the Hong Kong, China-New Zealand PTA state that imports from the partner shall be excluded from a global safeguard, if such imports “do not in and of themselves cause or threaten to cause serious injury.”

Possible Exclusion of Imports from the PTA Partner

About 11% of PTAs worldwide and 16% of those in Asia-Pacific economies’ PTAs introduce a possibility for imports from the PTA partner to be excluded from a global safeguard action, only under certain conditions. Such conditions vary greatly by agreements, but the most typical condition again requires that the global safeguard measure is to be imposed only if the party’s imports are a “substantial cause of serious injury or threat thereof”.¹³ This is the case for Singapore’s PTAs with India and Jordan; Thailand-Australia; India-Republic of Korea; US PTAs with Australia, the Republic of Korea, and Singapore. In the case of New Zealand-Malaysia and Thailand-New Zealand PTAs, the condition for exclusion is less stringent, allowing for the exclusion “if such imports are not the cause of serious injury or threat thereof”. In China-New Zealand and China-Singapore PTAs, the condition for exclusion states “non-injurious” import value in which the term is not defined in the agreement.

Use of global safeguard provisions by Asia-Pacific countries

Upon the imposition of global safeguard measures, WTO rules mandate that countries must adhere to notification and consultations requirements regulated under Article 8 and 12 of the Agreement on Safeguards. The investigating authority must notify the WTO Committee on Safeguards upon the initiation of an investigatory process as well as the findings of serious injury thereof caused by increased imports (Article 12.1). While most PTAs also include the notification requirement,¹⁴ such requirement does not imply notification to the WTO and thus such measures, if used, are not recorded

¹³ Only in case of Peru-Singapore PTA we can find a numerical definition of “substantial cause of serious injury”, which is less than 5% of the total volume of imports of that good (p. 7 of Crawford et.al, 2013).

¹⁴ The language in those clauses follows the WTO SGA Art 8 and 12 languages insisting in written and immediate notification as well as consultation (e.g. Japan-Singapore, Art. 18 No. 3) and often stipulates compensation (eg Japan-Singapore Art. 18 No. 4). See details in <http://www.mofa.go.jp/region/asia-paci/singapore/jsepa-1.pdf>

by any single authority which would then be making information publicly available for transparency and monitoring purposes. Even where the notifications for global safeguards are to be sent to the WTO, often countries fail to do so or do it with a considerable lag of time (Box 1), even though this is probably illegal in light of established WTO case law.

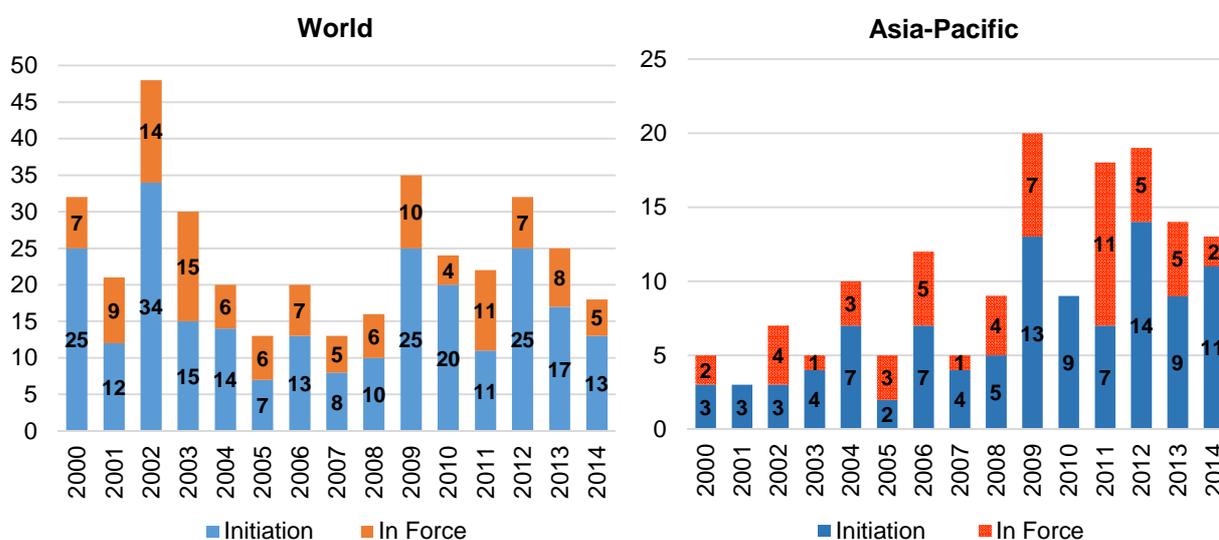
Box 1. Diversity in notification approached in the Asia-Pacific economies' PTAs

Most of the PTAs negotiated by the Asia-Pacific economies include provisions regarding the notification requirements through reference to the SGA. However, more recent PTAs tend to be more prescriptive in terms of the form and timing of the notification. In India-MERCOSUR, for example, the parties agree to notify the exporting party of the decision to initiate an investigation and apply provisional or definitive safeguard measures. The decision is to be notified by the party within a period of seven days from the publication and is to be accompanied by the appropriate public notice. Chinese Taipei's PTAs with Guatemala, Honduras and El Salvador specify that in general notifications in safeguard proceedings are to be made in writing within 15 days of the date resolutions are issued. However, most other PTAs do not define a specific timeline. Instead, they refer to immediate notifications (we presume that "immediate" may mean "simultaneous" with making decision to take action such as investigation). Japan's PTAs typically require immediate written notice upon initiating an investigation and taking a decision to apply or extend a bilateral safeguard measure. In some PTAs (for example, most Turkey's PTAs) the requirement to provide written notification is not explicit.

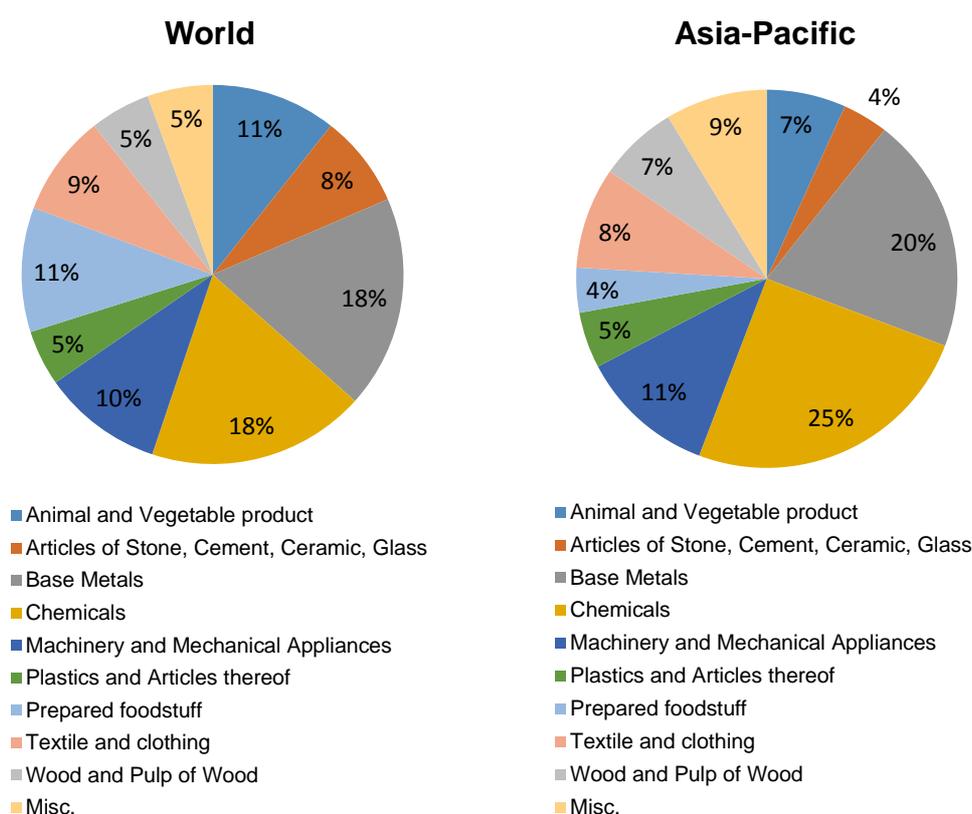
Source: Crawford, McKeagg, and Tolstova, 2013

The WTO collects all information provided through the countries' notifications and provides public access through i-TIP database that is very useful and allows for a comparative analysis of use of global safeguards. In what follows, we compare the use of global safeguard measures in Asia-Pacific countries with those used globally (Figure 1). The number of safeguard measures both initiated and in force in Asia-Pacific has been gradually increasing, reaching a peak in 2011 where 100% of the safeguard measures imposed was from the Asia-Pacific region.

Figure 1. Pattern of safeguard measures usage in world vs. Asia-Pacific, 2000-2014



Source: WTO, i-TIP, 2014

Figure 2. Safeguard measures by product, 2000-2014

Source: WTO, i-TIP, 2014

The WTO database shows that half of the safeguard measures used by Asia-Pacific countries consist of a specific tariff increase, followed by ad valorem tariff increase (26%). The use of a Tariff Rate Quota is approximately 10% by Asia-Pacific countries. The rest of the world follows a similar trend in terms of the type of remedy being applied. Specific tariff increases cover about 36% of the safeguard provisions, followed by ad valorem tariffs (30%). However, the Tariff Rate Quota in the rest of the world is more practiced, covering approximately 23% of the total safeguard measures identified by the WTO.

In the Asia-Pacific region, it is observed that the sectors which are associated with the largest number of investigations were chemicals (25%), and base metals - mostly iron and steel products (20%).¹⁵ Whereas agricultural or food products are not the major target of safeguard provisions in the Asia-Pacific region, the global trend of safeguard measures shows that animal and vegetable products and prepared foodstuffs combined represent the most affected sectors by the imposition of safeguards (22%), followed by base metals (18%) and chemicals (18%).¹⁶

¹⁵ This can be compared to findings for APEC economies for the period up to 2012. The 93 safeguards affecting APEC economies were related to 153 types of products at the HS chapter level. The most affected sectors were articles of iron and steel (HS chapter 73; 11 cases); iron and steel (HS chapter 72; 11 cases); and organic chemicals (HS chapter 29; 9 cases). Based on "Perceptions on the use of NTM within the APEC region" by the APEC Secretariat, http://publications.apec.org/publication-detail.php?pub_id=1531

¹⁶ Import regulations for agricultural products are mandated under special safeguard measures. As noted earlier, this note focuses only on the broader definition of bilateral safeguards and does not touch on specific types.

Bilateral or preferential safeguards

As already noted, partners of bilateral and regional trade agreements increasingly tend to stipulate their own safeguards to be used for those specific PTAs, and at the same time they retain the WTO disciplines of safeguards to use outside these agreements. In contrast to the rules under the WTO, which state that safeguard measures must be applied to all exporters, including those that may not be primarily responsible for the serious injury or threat thereof, bilateral (or intra-PTA) safeguard measures are only applicable between the participating parties of the preferential trade agreements. As with other disciplines such as rules of origin, bilateral safeguard provisions and conditions for implementation differ from agreement to agreement, and result in increased complexity of rules policymakers, regulators and private sectors to understand.

In principle, bilateral or in-PTA safeguards can never be more restrictive than the treatment granted to non-PTA partners. Suppose, for example, that the applied duty on the product in question in country A is 10% and PTA partner X is subject to a zero duty, then the maximum bilateral safeguard measure that can be taken is withdrawal of tariff concessions whereby the duties for PTA partner will become 10%. On the other hand for non-PTA countries (i.e. for global safeguard action) an additional duty of more than 10% can be imposed globally (and thus the total duty will be 20% - 10 % MFN duty +10% Safeguard duty).¹⁷ However, PTA partners are found to be willing to introduce quantitative restrictions as a possible emergency safeguard measure which is not much used under the multilateral rules, even though allowed under SGA. This is because quantitative restrictions allow a certain quantity of imports at lesser rate of duty. Russian Federation, for example, is an active user of the quantitative restrictions when safeguard measures are invoked. Such cases are seen in Russian Federation's PTA with Georgia, Azerbaijan, and Kazakhstan. On the other hand, the length of time that a measure can be used may be and is usually shorter than the time allowed under the SGA, as well as limiting the investigation to one year (e.g. European Union).¹⁸ Furthermore, some PTAs prohibit reapplication of the measure to the same goods, and (importantly) some, but not all, tie the use of the bilateral safeguard mechanism to the length of a defined transition period.¹⁹ Unlike the SGA which imposes three years delay on retaliation, the rules on compensation used in PTAs in many cases do not require a waiting period before the suspension of equivalent concessions can be activated so compensation potentially becomes a real issue. Rather than referring to the SGA on notification requirements, bilateral safeguard measures often contain specific provisions relating to notification in which the parties agree to notify the participating parties within a specific timing (Box 1). Given that there is no obligation to notify investigation and implementation of bilateral safeguards to the WTO secretariat or any other multilateral body, it is not possible to provide statistics on the use of these measures in a comparative way to global safeguards. There is very limited literature that attempts to quantify bilateral safeguard use by partners in PTAs. One more recent study is already cited Crawford, McKeegg, and Tolstova (2013). They find that majority of the agreements (80%) permit the use of bilateral safeguard mechanism on their intra-trade.

Preparedness of low income developing countries and the role of United Nations ESCAP

The data on the use of global safeguards (and anecdotal information on the use of bilateral ones) indicate that small developing countries and least developed countries never use these measures even though they probably also face situations of serious injury caused by increased imports. One of the

¹⁷ We thank Edwin Vermulst for this example.

¹⁸ We thank Victor Mroczka for this information.

¹⁹ We thank Jo-Ann Crawford (personal communication) for this insight.

reasons for that is in their weak institutional capacity to put in place domestic regulation and implement such measures.

While most developing countries in Asia and the Pacific are already WTO members, and thus signatories of the WTO Agreement on Safeguards, only a few are using this trade remedy. The reason is not the absence of serious injury due to a surge in imports, but rather a lack of capacity to understand the relevant rules, translate them into effective domestic regulation and put in place the necessary institutions and manpower to implement the measures effectively in particular in connection with a necessary adjustment plan. This situation is made worse with the addition of safeguard provisions contained in various PTAs, which increase the overall complexity of trade rules for the affected private sectors and negotiators/regulators. These also impact the incentives to undertake or engage in further liberalization, as an introduction of bilateral safeguards may affect the market access that they thought they had secured. If the PTA members choose not to apply the global safeguard on intra-PTA imports, and they do not provide for the bilateral safeguards, there will be a possible trade diversion because the total burden of the safeguard measure, if imposed, will be faced by the non-PTA members. On the other hand, in case where there are specific bilateral PTAs, the third countries might benefit as the focus of those would be on PTA members allowing for a possibility of an increase of imports from the non-PTA members. With this remaining an empirical issue, there could be a significant number of countries thinking that disciplines in use of trade remedies are getting less transparent and this could make further WTO-drive liberalization even more difficult than it is now.

United Nations ESCAP secretariat has been made aware that developing and least developed countries in the region do not have an effective mechanism to implement safeguard measures, despite often facing the challenge of domestic industries being seriously affected by increased imports. As part of its technical assistance and advisory services in the area of trade and trade policy, the secretariat works with member states to design appropriate legislation and build institutions for the effective use of existing safeguard provisions. Special efforts are exerted in the area of training government officials to adequately implement investigatory and notification procedures, establishing monitoring and impact analysis, and providing support to countries that are under local or other interest group pressures.²⁰

Recommended actions to improve effective use of safeguards

1. Balance the need to liberalize and need to protect

Countries consider safeguards as a buffer against the adverse impact of liberalization when domestic industry is too weak to face efficient import competition and so the existence of such measures also allows them to engage in further bilateral or multilateral liberalization. Without such a mechanism, countries would be more reluctant to open to international trade, in turn stifling their growth opportunities. However, as with any other measure, safeguards create winners and losers. Put in PTA-jargon, safeguards and other trade remedies allow trade creation by providing space for trade liberalization, but they can also cause trade diversion if provisions on the application of global safeguards within the PTA provide for the exclusion of PTA partners.²¹ It is thus crucial to strike a fine balance between the application of safeguard measures and the achievement of trade liberalization when incorporating safeguard provisions into the PTAs.

²⁰ For more details see “Bridging the Gap in Trade and Investment Capacity Building for Least Developed and Landlocked Developing Countries - Myanmar”, ESCAP 2013 and ESCAP (2014) Manual on use of safeguards (forthcoming).

²¹ Prusa (2011) also discusses a possibility that trade diversion through the exclusion of PTA partners from safeguard measures would doubly penalize non-PTA partners, first by not allowing them preferential market access, and secondly by making them bear the full cost of the import surge caused by others.

2. Pay attention to countries with specific needs and sectors of special development

In line with supporting diversification of least developed countries through international trade, perhaps a consideration would be desirable to allow a higher de minimis rule in the application of safeguards, or automatic exemptions from the implementation of safeguards by developed countries in both global and bilateral safeguards. On the other hand, when thinking about negotiations on safeguards, developing countries must pay special attention to their sensitive sectors, most notably agriculture. Agriculture is the largest employer in most low income developing countries and could be made more efficient and productive by further opening, but because of the absence of proper safeguarding, often these countries just choose to not liberalize sufficiently. Thus, PTAs could be used to start liberalization of this sector with the cushion of bilateral safeguards. It must be understood that agriculture is sensitive to many types of shocks and thus may need additional relief, but a specific instruments must be chosen carefully. Developing countries face the challenge of adequately incorporating safeguards that might, if supported by other policies, help stabilize specific sectors identified as important in development strategies of such countries.

3. Increase awareness and transparency

As the purpose of a safeguard measure is for the domestic industry to obtain necessary relief to adjust to the serious injury (or threat thereof) being caused by imports, the "temporariness" of trade measures is vital in order to reach this goal. Thus, domestic stakeholders must be clearly informed²² of not only due processes in investigation, cost of safeguards for consumers but also the finality of implementation periods. Moreover, sharing information with all stakeholders would perhaps increase number of instances where the imposition of a safeguards was abandoned in favour of public interest (as in case of several decisions in the United States and on in India).

Furthermore, it is very important for more information and data to be collected on the use of the bilateral safeguard measures. At the recent APEC workshop,²³ it was proposed that the APEC secretariat engage in building an inventory of types and instances of bilateral safeguard uses as well as when PTA partners are excluded from a global safeguards for all APEC member economies.

4. Use of Aid for Trade to improve capacity to handle safeguards

Aid for Trade is an effective channel of assisting developing and least developed countries to promote the use for trade for development. Thus, assisting these countries with technical, financial and legal support through Aid for Trade projects can greatly improve these countries procedural and institutional capacity to use both the general and bilateral safeguard mechanisms available to them. Given that increasingly Aid for Trade donors seek to engage directly with private sector in recipient countries and that in many cases domestic industry seeking safeguard protection lacks capacity to formulate effective adjustment packages that need to be provided to the local authority prior to approval of safeguards, tailored Aid for Trade may be deployed to enhance capacity of private sector in preparation of efficiency improvement business plans.

²² While transparency provisions of the SGA very clearly state that the investigating agency has to issue notices to all 'interested parties' including the governments of exporting countries as well as WTO, it is not clear if this is practiced in case of bilateral-only safeguards.

²³ APEC Workshop on Provisions of RTAs/FTAs in the Asia Pacific Region Concerning Safeguards, Including Transitional Safeguards, 10-11 June 2014, in Indonesia.

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