

Safeguard Provisions in RTAs

WTO Seminar on Cross-Cutting Issues

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WTO OMC

Scope of the Study

- 232 RTAs notified to the WTO as of December 2012
- Safeguards on trade in goods
- Analysis was based on the RTAs' legal text and documents relevant to RTAs' consideration such as minutes of CRTA meetings and questions and replies.

Issues Covered

- Global safeguard provisions
- Bilateral or intra-RTA safeguard provisions
- Plus an inventory of infant industry, balance of payments and special safeguards

Global safeguard provisions

Do RTAs modify the conditions applicable to the RTA partner (either substantively or procedurally) in the event a global or WTO safeguard is invoked?

In the majority of RTAs there are no substantive changes.....

- About half of the 232 RTAs analysed make no specific reference to global safeguards in their legal text.
- Around a fifth of RTAs studied explicitly provide that the parties retain their rights and obligations under the WTO in a global safeguard action.

Global safeguard provisions



Do RTAs modify the conditions applicable to the RTA partner (either substantively or procedurally) in the event a global safeguard is invoked?

Other RTAs provide for either substantive or procedural changes.....

- Two RTAs definitively exclude their parties from applying a global safeguard measure against the goods of the other party.
- 60 RTAs provide for possible exclusion of RTA partner imports from a global safeguard action if certain criteria are fulfilled.
- A few RTAs (10) specify that tariff measures only may be applied to RTA partner imports in a global safeguard action.
- In some RTAs, the rules on compensation and retaliation have been tightened, e.g. suspension of equivalent concessions without a waiting period if no agreement on compensation.
- Procedural changes include provision for prior consultations, ad hoc notifications prior to imposing a global safeguard measure.

Bilateral or intra-RTA Safeguard Provisions



How many RTAs contain bilateral safeguard provisions and how frequently are they used?

- Over 80% of RTAs studied contain provisions governing the use of a bilateral safeguard mechanism on their intra-trade.
- However, we have little information on how often such measures are actually used. Anecdotal evidence suggests that they are used infrequently.
- 36 RTAs contain no specific provisions on bilateral safeguard provisions on trade in goods, but some of these provide for BOP safeguards or infant industry protection.

Bilateral or intra-RTA Safeguard Provisions

In what ways do the bilateral safeguard provisions in RTAs differ from GATT Article XIX and the Safeguards Agreement?

In some RTAs the conditions applying to the safeguard are looser.....

- The trigger mechanism refers to an increase in imports only (no mention of increases due to the reduction or elimination of customs duties under the RTA).
- Alternatives to determine serious injury, e.g. based on damage, serious disturbance or deterioration in the economic situation of a region.
- Lack of precision about the manner in which a safeguard investigation (if at all) would be conducted.

Bilateral or intra-RTA Safeguard Provisions

In what ways do the bilateral safeguard provisions in RTAs differ from GATT Article XIX and the Safeguards Agreement?

In others, conditions for application of measures are more stringent

- Length of permitted safeguard measure is shorter than in the SGA
- Limited to tariff-based measures only
- Re-application of the measure to the same product is prohibited
- Use of the bilateral safeguard mechanism is tied to the RTA's transition or tariff liberalization period
- No waiting period before retaliation