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# Comparing Safeguard Measures in Recent Regional and Bilateral Trade Agreements

Willemien Viljoen



International Centre for Trade  
and Sustainable Development

Issue Paper



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## LIST OF ABBREVIATIONS

BLNS	Botswana, Lesotho, Namibia and Swaziland
c.i.f.	cost, insurance, freight
CEP	Closer Economic Partnership
COMESA	Common Market for Eastern and Southern Africa
ECA	Economic Cooperation Agreement
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
EU	European Union
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
HS	Harmonized System of Preferences
IEPA	Interim Economic Partnership Agreement
MERCOSUR	Common Market of the South
MFN	most favoured nation
PTA	preferential trade agreement
RoO	rules of origin
RTA	regional trade agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SPS	sanitary and phytosanitary
SSG	special safeguard
SSM	special safeguard mechanism
TBT	technical barrier to trade
TPP	Trans-Pacific Partnership
US	United States
WTO	World Trade Organization



## FOREWORD

Global market prices for a number of commodities have continued a steady decline from peaks in 2011, after a period of pronounced volatility and recurrent high prices that prevailed from 2006 onward. Slowing demand for commodities in major economies such as China, coupled with falling oil prices and a robust supply-side response to recent high price episodes, have contributed to the recent slide. The new market environment has also prompted concerns that “counter-cyclical” domestic support payments in some major producing countries may exacerbate the fall in prices by shielding producers from market signals and contributing to surplus farm production at the global level.

At the same time, recurrent extreme weather events and changing patterns of temperature and precipitation are having increasingly significant consequences for agriculture in developing countries, especially in areas reliant on rain-fed production systems. Analysts anticipate that these challenges will become more acute as a result of climate change in the years ahead – posing new obstacles to the international community as it seeks to achieve the ambitious Agenda 2030 target of ending hunger and malnutrition. In particular, increased weather-related volatility on global markets is likely to affect the “stability” component of food security in developing countries.

At the World Trade Organization (WTO), developing country negotiators from the G-33 coalition have highlighted their desire to be able to make use of a simple and effective safeguard mechanism to help protect domestic producers from sudden volume surges or price depressions. A decision at the WTO ministerial conference in Nairobi determined that the trade body’s members would pursue negotiations on this topic in dedicated sessions of the Committee on Agriculture.

At the same time, farm exporting countries from both developed and developing countries have argued that this issue should be addressed as part of broader talks on market access at the WTO. Negotiating dynamics in this area have been affected by market integration efforts in bilateral and regional trade negotiations, including the twelve-member Trans-Pacific Partnership (TPP) that was concluded in 2015.

As both importing and exporting country negotiators pursue talks on a workable safeguard mechanism that could be agreed upon at the WTO, it will be critical for them to have access to up-to-date and reliable information on the extent to which recent bilateral and regional trade deals include clauses on safeguards, as well as analysis on the potential significance of these provisions for ongoing efforts to craft an international instrument in this area.

This paper, by Willemien Viljoen, provides policymakers, negotiators and other stakeholders with an impartial, evidence-based analysis of the implications of recent bilateral and regional trade negotiations for developing countries’ ability to use safeguard measures to protect domestic producers from sudden surges in the volume of imports or price depressions. As such, it builds on and updates previous ICTSD analysis on this same topic by addressing developments in preferential negotiations on trade.



**Ricardo Meléndez-Ortiz**  
Chief Executive, ICTSD

## EXECUTIVE SUMMARY

The use of safeguard measures is regulated in multilateral trade agreements and regional and bilateral agreements. The applicable multilateral agreements are the General Agreement on Tariffs and Trade Article XIX, the World Trade Organization (WTO) Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture. The WTO Agreement on Safeguards provides clear guidelines and strict procedural obligations to which governments must adhere. Global safeguard measures are product specific and need to be applied on a most favoured nation basis, thus without discrimination against other WTO member countries. However, safeguard provisions provide for discriminatory treatment in two instances: 1) when excluding partner countries from global safeguard actions and 2) when excluding third countries and only imposing bilateral or regional safeguard actions on partner countries. These two exclusions were found in a number of the examined trade agreements (Kruger et al. 2009).

Bilateral and regional safeguard mechanisms are an integral part of most regional trade agreements to address the effects of trade liberalisation initiatives under the applicable agreement. However, there are still recently concluded agreements which are silent on the issue of bilateral or regional safeguards. Most free trade agreements concluded in recent years provide special and different safeguard mechanisms which share the same or similar grounds for the invocation of trade-restrictive measures such as the global safeguard mechanism, but only address the effects of certain bilateral or regional free trade agreements, and are thus only applicable between the contracting parties of such bilateral or regional agreements. Although there are some systematic differences between the global and general bilateral or regional safeguards, similar provisions to those found under WTO law are included in the trade agreements. Many of the agreements include exactly the provisions of the WTO Agreement on Safeguards, while several others make direct reference to the procedure and obligations contained in WTO rules (Kruger et al. 2009).

The study examined 26 agreements which were selected based on various criteria. The sample of agreements is geographically diverse, includes countries from all continents and includes a mix of older and more recently concluded ones in order to evaluate the development of safeguard provisions over time. Furthermore, the sample also includes a mix of North-North, North-South and South-South trade agreements.

Of the 26 chosen agreements, 23 have been notified to the WTO as being in force, while two are yet to be notified (the SADC-EU Economic Partnership Agreement and the Trans-Pacific Partnership Agreement), while one (the Tripartite Free Trade Agreement) is yet to be concluded. The agreements are divided into categories, based on the following characteristics:

- No bilateral or regional safeguard provisions;
- Bilateral or regional safeguards without special conditions; and
- Bilateral or regional safeguards with special conditions.

Furthermore, those agreements containing specific bilateral or regional safeguard provisions (mainly agricultural safeguards) are also highlighted and the provisions assessed.

Subsequent to the evaluation, the following determinations were made for the agreements examined.

- The only agreements without any reference to a bilateral safeguard measure are the Australia-Chile FTA, the New Zealand-Hong Kong Closer Economic Partnership Agreement and the New Zealand-Chinese Taipei Economic Cooperation Agreement.
- The only instance in which bilateral or regional safeguards do not specify additional conditions for implementation is in the case of the investigation procedures and the determination of serious injury or the threat of serious injury.
- The majority of agreements contain specific conditions for the implementation of general bilateral or regional safeguards. These specific provisions vary from agreement to agreement but mostly relate to the type of measures which can be applied, the period of application, notification, compensation and dispute settlement.
- The specific safeguards mostly apply to safeguard measures applicable to agricultural products. However, other specific provisions include safeguards specific to trade in textiles, forestry products and certain industrial products.
- Indications are that in recent years the use of specific safeguard measures in bilateral and regional trade agreements has gained in popularity; where previous analysis (reference) found limited utilisation of specific safeguards, six of the agreements included in this analysis contain different types of specific safeguard measures (Kruger et al. 2009). In some of the most recent agreements there are specific safeguard provisions for various products and member countries included within detailed and complex frameworks.
- Some of the recently concluded agreements are not only comprehensive in terms of coverage provided for in the agreement, but also contain the most comprehensive provisions regarding bilateral and regional safeguard measures, especially in the case of allowances for special safeguard provisions.
- The examination shows that there has been an evolution not only of safeguard provisions in trade agreements, but also the coverage, scope and structure of these trade agreements.
- Regional and bilateral agricultural safeguards can inform the multilateral negotiations to ensure a special safeguard mechanism which is transparent, predictable, accessible, manageable and effective, allowing for limited product coverage and asymmetry in application.
- However, this approach can be cumbersome and will require careful negotiation and drafting, industry and capacity needs-based assessments and preparedness by all parties concerned.

## 1. INTRODUCTION

The purpose of most trade agreements, whether multilateral, bilateral or regional is to liberalise trade by reducing tariffs and non-tariff barriers for freer movement of goods across borders. Safeguard mechanisms therein, on the contrary, authorise the contracting parties to take trade-restrictive measures where there are no unfair trade practices on the part of the exporting countries, and thus, in principle, place limitations on the effective implementation of the agreements. Such an apparent contradiction in the existence of safeguard mechanisms can be justified as emergency measures for the purpose of remedying the negative impacts on domestic industries incurred by surges in imports resulting from liberalisation. These measures can thus temporarily restrict imports of a specific product. They are permissible in order to correct serious injury caused or threatened to the domestic industry of a like or directly competitive product.

The use of safeguard measures is regulated in multilateral trade agreements and regional and bilateral agreements. The multilateral agreements applicable are the General Agreement on Tariffs and Trade (GATT) Article XIX, the World Trade Organization (WTO) Agreement on Safeguards and the Agreement on Agriculture (Article 5). The safeguards allowed for in the GATT and WTO Agreement on Safeguards are known as global safeguard measures, while the specific safeguards that the Agreement on Agriculture allows can only be applied by certain countries on specific agricultural goods in accordance with the specified requirements. Global safeguard measures are product specific and need to be applied on a most favoured nation basis, thus without discrimination against other WTO member countries. However, the special and differential treatment provisions allow for a manner of discrimination by excluding imports from developing countries in very limited circumstances. Although the use of global safeguards in the past was limited, the popularity of these measures to protect domestic industries has been on the rise in recent years; there has been quite a significant increase in the use of these measures over the last six

years, especially by developing WTO countries. Between 1995 and the end of 2015, a total of 311 global safeguard investigations was initiated. Of these 311 initiations a total of 155 final measures were implemented during this time period. Since 2009 there have been 139 initiations which have resulted in 67 final measures implemented. Of these 67 measures, 81 percent were implemented by developing and emerging economies with only 19 percent implemented by developed countries. The countries which mainly utilised these measures during the time period were Indonesia (16 measures) and India (10 measures). The sectors mostly affected by safeguard measures were base metals, food, beverages and tobacco products, and vegetable products (WTO Statistical Safeguard database 2016).

The special safeguard (SSG) measure allowed for in the Agreement on Agriculture was adopted in terms of the Uruguay Round of WTO negotiations and is a safeguard instrument available to WTO member countries which “tariffed” during the negotiations and which placed the symbol SSG by the specific tariff line in their Schedule of Commitments on Agriculture. This safeguard measure was deemed necessary by countries worried about the impact of import penetration for their sensitive agricultural products. The SSG allows the user to impose an additional duty on the product in that specific tariff line when an import surge takes place or when import prices decline by more than 10 percent below a fixed trigger price. However, only 39 WTO members are eligible to use this SSG due to the tariffication requirement, most of which are developed economies and none of which are least developed countries. Due to the inaccessibility of the SSG for developing and least developed economies, the WTO member countries expressed interest in a special safeguard mechanism (SSM) to fall under the special and differential treatment provisions and to give developing and least developed countries the facility to protect their sensitive agricultural products against import penetration. At the WTO, developing country negotiators from the G-33 coalition have highlighted their desire to be able to make use of a simple and

effective safeguard mechanism to help protect domestic producers from sudden volume surges or price depressions. A decision at the WTO Ministerial Conference in Nairobi at the end of 2015 determined that members would pursue negotiations on this topic in dedicated sessions of the WTO Committee on Agriculture (CEPR and World Bank 2011).

Bilateral and regional safeguard mechanisms are an integral part of most regional trade agreements to address the effects of trade liberalisation initiatives under the applicable agreement. However, there are still recently concluded agreements which are silent on the issue of bilateral or regional safeguards. Most free trade agreements concluded in recent years provide special and different safeguard mechanisms which share the same or similar grounds for the invocation of trade-restrictive measures as the global safeguard mechanism, but only address the effects of certain bilateral or regional free trade agreements, and are thus only applicable between the contracting parties or among the member countries of such bilateral or regional agreements. The inclusion of bilateral or regional safeguard measures in the past has mostly been in North-North trade agreements, as well as North-South trade agreements (mostly when the EU or US are a party to the agreement) (Kruger et al. 2009). However, general bilateral or regional safeguards are increasingly being included in South-South agreements. South-South agreements which include general bilateral or regional safeguards include the COMESA Treaty, MERCOSUR-India PTA and the Tripartite FTA (still under negotiation). Apart from general bilateral and regional safeguards, some agreements also include specific safeguard measures. However, these are mainly included in North-South trade agreements, with the developed economy agreeing to a certain dispensation for specific products imported from less developed trading partners. Traditionally these provisions have been limited to agricultural safeguards and safeguards applicable to textile and apparel products. However, the recent conclusion of the Trans-Pacific Partnership (TPP) Agreement and

the SADC-EU Economic Partnership Agreement (EPA) has seen the inclusion of safeguards specific to products other than agricultural products, including forestry products and motor vehicles and country-specific products for certain less developed countries. Bilateral or regional safeguard mechanisms exhibit considerable and interesting differences in their respective regulations. The regulation of these measures exhibits some systemic differences, not only from those of the global safeguard mechanism, and also vary from agreement to agreement. The areas in which these measures differ mainly pertain to the type of measure which can be taken, the duration of implementation, consultations, compensation, notification and dispute settlement.

The aim of this study is to provide a comprehensive overview of the type of safeguard measures which have been included in recent negotiated and concluded regional trade agreements, irrespective of whether the agreements are free trade arrangements (FTAs), EPAs or closer cooperation agreements. This analysis will enable policy-makers, negotiators and other stakeholders with an impartial, evidence-based analysis of the implications of recent bilateral and regional trade negotiations for developing countries' ability to use safeguard measures to protect domestic producers from sudden surges in the volume of imports or price depressions. In order to achieve this objective, the study first provides an overview of the applicable multilateral safeguard provisions. Second, certain North-North, North-South and South-South trade agreements are selected and the global and bilateral or regional safeguard measures within each agreement are evaluated. Furthermore, the study evaluates the different special bilateral or regional safeguards included in the selected agreements. The study also compares the level of market integration with the type of safeguard measures found in different types of trade agreements. Lastly, the implications of recently drafted bilateral and regional safeguard provisions for the multilateral negotiations on a special agricultural safeguard measure are briefly highlighted.

## 2. GLOBAL SAFEGUARDS

An increase in imports is a natural consequence of trade liberalisation.<sup>1</sup> However, it has been recognised that in certain instances import liberalisation may be difficult to sustain and may lead to a stifling of the function of trade agreements. Countries under pressure from trade liberalisation commitments made would feel the need to withdraw from trade agreements or backtrack on commitments made. Prior to GATT 1947, bilateral agreements contained a “safety valve,” namely safeguard measures. These provided trade partners with an alternative to withdrawing from trade agreements, thus reducing overall liberalisation when their domestic markets were disrupted by foreign imports (CEPR and World Bank 2011).

GATT 1947 contained Article XIX entitled “Emergency Action” to prescribe the conditions under which safeguard measures may be imposed. Article XIX remains unchanged in the GATT 1994. An Agreement on Safeguards was negotiated in the Uruguay Round of WTO negotiations containing further safeguard rules which form an integral part of GATT 1994 Article XIX (United Nations 2003). The Agreement on Agriculture also provides for a SSG which can be implemented on agricultural products covered by the agreement. Article XIX of the GATT allows WTO member countries to take these emergency measures against imports of a particular product when certain requirements are met. The disciplines and rules of Article XIX have been clarified and expanded in the WTO Agreement on Safeguards. The GATT Article XIX and Article 2 of the Agreement on Safeguards set out the conditions to be satisfied prior to a safeguard measure being taken—an increase in imports due to an unforeseen development in such increased quantities and under such conditions as to threaten or cause serious injury to the domestic industry

producing similar products. Affected parties can apply various forms of import restrictions and deviate from their multilateral obligations only to the extent necessary to remedy the injury caused or threatened (Lissel 2015).

### 2.1 GATT 1994 Article XIX

Article XIX:1 contains the substantive requirements that must be demonstrated for the implementation of a safeguard measure. These are the following:

- An increase in imports must have taken place, which was unforeseen and due to an obligation under the GATT Agreement;
- The increase in imports must have caused or threatened to cause serious injury to the domestic producers of the importing country; and
- The remedial action which is taken must only be to the extent and for the time period necessary to rectify or prevent the serious injury from taking place (GATT 1994 Article XIX:1(a)).

According to Article XIX:1(a), the available remedial action is the suspension of obligations or the modification of concessions in respect of the product in which a surge in imports is experienced. Article XIX:2 states that prior written notification is needed before safeguard measures can be imposed. The advance notice must be practical and enable the interested exporters to consult with the implementing country on the suggested measure. If a delay in the imposition of a safeguard measure will cause damage that cannot be easily repaired, action can be taken without prior notification. This is only allowed if consultation takes place immediately after implementation (GATT 1994 Article XIX:2).

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<sup>1</sup> This section and subsections 2.1, 2.2, 2.3, and 2.4 draw heavily on Denner (2009).



## 2.2 The WTO Agreement on Safeguards

The substantive requirements for the adoption of a safeguard measure are set out in Articles 2 and 4. These substantive requirements are:

- The importing member country must make a determination that an increase in imports, absolute or relative to domestic production, has taken place;
- The increased imports must cause or threaten to cause serious injury to the domestic industry; and
- Safeguard measures must be applied to a product irrespective of the source of the import and only to the extent of remedying the injury caused or threatened (Article 2(1) and (2)).

Articles 9 and 11 of the agreement are important additions to GATT 1994. Article 9 contains the provisions regarding special and differential treatment for developing countries, while Article 11 expressly prohibits “grey area” measures of voluntary export restraints, orderly marketing arrangements or any similar measure. GATT 1994 did not make any provision regarding these measures which were taken by the exporting country or negotiated by exporting companies with the importing country.

## 2.3 Special and Differential Treatment

Article 9 of the Agreement on Safeguards allows for safeguard measures to be applied differently to developing member countries and by developing member countries in certain circumstances. Article 9(1) is applicable to safeguards on imports originating in a developing member state. The imports from developing countries will be excluded from the application of safeguard measures if their share of imports does not exceed three percent of the importing country’s imports of the product and if the total share of those developing countries which have less than a three percent share individually is not more than nine percent of the total product imports collectively.

Article 9(2) is applicable to the imposition of safeguard measures by developing countries. All member countries can apply safeguards for an initial period of four years. However, for developing countries these measures can be extended for a further maximum of six years, instead of the additional extension of four years available to developed nations. Safeguards imposed for more than 180 days can normally only be reintroduced after a period equal to the original duration of the safeguard measure. However, developing countries can implement a safeguard again after a period of only half the original implementation period has passed. Both developing and developed countries have a minimum non-application period of two years in which the same safeguard cannot be reintroduced.

## 2.4 Special Safeguard in the Agreement on Agriculture

The Agreement on Agriculture was signed at the end of the Uruguay Round of trade negotiations and came into force on 1 January 1995. The aim of this agreement is to provide importing and exporting countries with more security and predictability while focusing policies on market orientation. The agreement contains provisions on the three most important aspects of agriculture: market access, domestic support and export subsidies. The agreement covers basic and processed products, wines, spirits, tobacco products and fibres, but not fish or fish products or forestry products.

The special safeguard is contained in Article 5 of the Agreement on Agriculture (Part III Article 5.1(a) and (b)). The SSG is only applicable in certain circumstances:

- The product must be an agricultural product covered by the agreement according to Annex I;
- Non-tariff barriers on the product must have been converted to tariffs according to Article 4 of the agreement;
- The imposing country must have reserved the right to use the SSG by designating

the specific product in its tariff schedule as an SSG product (39 WTO members have reserved the right); and

- A surge in the volume of imports in the product has taken place or the import price is lower than a trigger price.

Article 5.4 provides a schedule to determine the trigger levels for determining whether a surge in imports has taken place. The trigger levels are based on the country's market access opportunities during the three preceding years. The additional duty that can be imposed may not exceed a third of the ordinary customs duty applicable to the product (Denner 2009).

The trigger price is the average import price including cost, insurance, freight (c.i.f.) of the product for the period 1986-1988 (Article 5.1(b)). However, the trigger price can also be the appropriate price according to the quality and stage of production of the product (Article 5.1(b) footnote 2). The additional duty which can be imposed depends on the difference between the c.i.f. import price and trigger price (Article 5.5). Additional duties imposed based on both volume and price triggers can only be invoked for the rest of the year they were implemented in.

The SSG is seen as easier to implement than the global safeguard mechanism provided for in GATT 1994 Article XIX. The main difference between the SSG and the global safeguard measure is that an injury test is not required and the safeguard can be activated according to either volume or price triggers. Furthermore, the proof of a causal link between injury and harm is not required—what is required is to show that there has been a surge in imports (it has reached a predetermined trigger level) or a predetermined trigger price has been attained. The burden of proof of the SSG is much lower when compared to the burden of proof (and evidentiary support) of the global safeguard measure: i.e. surge in imports which have led to the cause or threat of serious injury to a domestic injury. However, probably the most significant reason for the inaccessibility of the SSG for developing and least developed

countries is the requirement that the imposing country must have reserved their right to use the SSG in the tariff schedule at the time of the conclusion of the Uruguay Round of Negotiations. The SSG designation cannot be added at a later period of time; thus only 39 countries which are a member of the WTO fulfil this requirement, the majority of which are developed countries.

Due to the inaccessibility of the SSG to developing and least developed countries the need for a new SSM, available to developing and least developed countries was identified under the Doha Round of WTO negotiations. Under the Doha Round the debate is mainly focused on whether the SSG should be eliminated, reduced or constrained (CEPR and World Bank 2011). The SSM which was suggested under the round had the aim of giving developing countries the right to special recourse in the case of agricultural products that come under strain as a result of trade liberalisation. However, in 2008, talks regarding the SSM broke down due in part to countries' inability to agree on the level of protection which could be granted under the SSM (Lissel 2015). At the WTO Ministerial Conference in Nairobi, part of the Nairobi Package was a Ministerial Decision regarding a new agricultural safeguard mechanism (Ministerial Decision of 19 December 2015). However, this decision is limited in that it only states that developing countries will have access to a SSM and that countries need to pursue negotiations regarding the precise nature and application of such a measure in dedicated sessions of the WTO Committee on Agriculture. The decision only reiterates a previous decision taken at the Hong Kong Ministerial Conference. However, the value of the decision is to set a process in motion for continued discussion at a time when no further guidance is given on the conclusion of the outstanding matters of the Doha Development Agenda. Thus far, limited progress has been made, although proposals by some countries have been submitted to the Committee. Currently importing and exporting country negotiators are pursuing talks on what a workable safeguard mechanism can entail.



### 3. GLOBAL SAFEGUARDS IN REGIONAL TRADE AGREEMENTS

The majority of trade agreements have some reference to global safeguard measures. These typically allow countries to utilise the provisions of Article XIX of the GATT, WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture. The common provisions in these agreements are that parties to the agreement retain their rights and obligations in terms of the applicable multilateral agreements. However, there are some where certain agreements include the discretion to exclude partner countries from global safeguard actions, while others place an obligation of non-application if certain conditions are met (Kruger et al. 2009).

According to Article 2.16 (2) of the EFTA-Central American States FTA:

In taking measures according to paragraph 1, a Party shall exclude imports of an originating product from one or several Parties if such imports do not in and of themselves cause or threaten to cause serious injury. The Party taking the measure shall demonstrate that such exclusion is in accordance with the jurisprudence of the World Trade Organisation.

This will be of vital importance if a dispute arises or the utilisation of a safeguard is challenged since the basic principle of a global safeguard measure is that it has to be imported on a specific product, irrelevant of the source on the basis of non-discrimination (except in the limited cases of Special and Differential Treatment provisions).

Another example is Article 2.13 (2) of the EFTA-Hong Kong FTA which states that countries “shall..... exclude imports of originating products from another Party referred to in this paragraph, in particular if such imports do not in and of themselves cause or threaten to cause serious injury.” However, the EFTA-Hong Kong FTA goes further, being one of the only agreements which exclude the application of multilateral safeguards in a specific instance.

According to Article 2.13 (1) Hong Kong, China and Norway cannot apply safeguards under GATT Article XIX and the WTO Agreement on Safeguards to products originating in one another. However, Hong Kong, China, Switzerland, Liechtenstein and Iceland can take multilateral safeguard action against imports from one another, but in this instance the proviso of Article 2.13 (2) comes into play, i.e. that import products from these countries must be excluded if the products do not cause or threaten to cause injury to the domestic industry of the importing country.

Under the EU-SADC EPA there is no qualification that imports from a member country can be excluded if it is found that these imports do not cause or threaten serious injury. Article 33 of the EPA specifies that the European Community has undertaken to exclude imports from the SADC member countries from all safeguards taken in accordance with Article XIX of the GATT, the WTO Agreement on Safeguards and Article 5 of the Agreement of Agriculture, irrespective of whether these import products have caused or threatened injury. However, there is a time qualification for the exclusion—the provision is only applicable for a period of five years from the date of entry into force of the agreement (although the provision can be extended after revision by the Joint Council). This Council is a joint institution (consisting of the relevant members of the Council of the EU, the European Commission and Ministers of the SADC EPA States) responsible for overseeing and administering the implementation of the agreement.

Furthermore, in the agreements which also provide for the application of bilateral or regional safeguards and/or SSMS the agreements explicitly state different measures cannot be used simultaneously on the same product. Thus any given product can only be subject to one type of safeguard measure at any given time period. Examples of these provisions can be found in the China-Singapore FTA, the Economic Partnership Agreement

between Australia and Japan and the Trans-Pacific Partnership Agreement. Article 43 (8) of the China-Singapore FTA states that: “When applying a bilateral safeguard measure, a Party shall not have simultaneous recourse to the WTO safeguard measures.”

Similarly, Article 2.19 (2) of the Economic Partnership Agreement between Australia and Japan states:

A Party shall not apply a bilateral safeguard measure or a provisional bilateral safeguard measure under this Section on a good that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, nor shall a Party continue to maintain a bilateral safeguard measure or a provisional

bilateral safeguard measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards or Article 5 of the Agreement on Agriculture.

The Australia-Japan EPA goes further, stating that if a product becomes subject to a multilateral safeguard the bilateral measure will stop being in force but that the period of application will not be interrupted through non-application. Thus if the multilateral safeguard is terminated and the bilateral safeguard re-instated, it is only applicable for the remaining period of application (Article 2.19 (3)). The TPP also refuses parties the facility to implement transitional safeguards, global safeguards, bilateral safeguards and specific bilateral safeguards at the same time on the same product (Article 6.2 (4)).

## 4. SAFEGUARDS IN REGIONAL AND BILATERAL TRADE AGREEMENTS

Since 1990, there has been a proliferation of regional and bilateral trade agreements. Since the beginning of 2009, 94 bilateral and regional trade agreements have been notified to the WTO as being in force. These exclude agreements which are still under negotiation, like the Tripartite Free Trade Agreement and agreements recently concluded (including the final EU-SADC EPA and the TPP), but not yet in force. The increased liberalisation due to these agreements can, however, set new demands for the protective effects of trade remedies. The import-competing sector, within a regional agreement, needs to be assured that it can protect itself against any unforeseen consequences due to regional liberalisation. Bilateral and regional safeguards only address the negative effects of the regional liberalisation and are for this reason only applicable between the contracting parties. Thus, when there is an adverse effect specifically due to the additional liberalisation under a regional agreement, the contracting parties can invoke these bilateral safeguards according to the procedures in the regional agreement (Denner 2009).

The majority of examined agreements include provisions relating to bilateral or regional safeguard measures, including general, specific (mostly agricultural safeguards), transitional and provisional safeguards. However, some agreements include combinations of the above: for instance, bilateral safeguards which are only applicable for a transitional period of application or bilateral safeguards which are product and country specific.

The stance on whether and when bilateral or regional safeguards should be allowed varies among different regional trade arrangements. Safeguards can thus be divided into three categories:

- Disallowed;
- Allowed with no specific provisions; or
- Allowed with specific provisions.

Some RTAs do not allow for safeguard measures to be applied between members of the agreement, while others allow bilateral or regional measures with or without special provisions (Lissel 2015). These safeguards can be general or specific; while the first can be used for all types of products the latter may only be used for specific products and under specific circumstances. In addition, there are also transitional and provisional safeguards which are only applicable for a specific time period. Transitional safeguards are only applicable for a set duration, to allow parties to adjust to the new tariff regime. Provisional safeguards are only applicable for a set time period and before the application of a definitive safeguard measure.

### 4.1 Methodology

Twenty-six agreements were selected based on various criteria. The sample of agreements is geographically diverse and includes countries from all continents. The sample includes a mix of older and more recently concluded ones in order to evaluate the development of safeguard provisions over time. The sample also includes a mix of North-North, North-South and South-South trade agreements (Kruger et al. 2009).

Of the 26 chosen agreements, 23 have been notified to the WTO as being in force, while two are yet to be notified (the SADC-EU EPA and the TPP), and one (the Tripartite FTA) is yet to be concluded. The agreements are divided into certain types based on individual characteristics:

- No bilateral or regional safeguard provisions;
- Bilateral or regional safeguards without special conditions; and
- Bilateral or regional safeguards with special conditions.

Furthermore, those agreements containing specific bilateral or regional safeguard

provisions (mainly agricultural safeguards) are also highlighted and the provisions assessed. Appendix B shows the agreements with global safeguard measures, agreements with general bilateral or regional safeguard provisions and the agreements which include specific bilateral or regional safeguard measures. Appendix D provides a summary and comparison of the substantive and procedural requirements of the WTO Agreement on Safeguards and those agreements which allow general bilateral or regional safeguards.

## 4.2 Types of Bilateral or Regional Safeguards in RTAs

### 4.2.1 Agreements with no bilateral or regional safeguard provisions

The only examined trade agreements without any reference to a bilateral safeguard measure are the Australia-Chile FTA, the New Zealand-Hong Kong Closer Economic Partnership Agreement and the New Zealand-Chinese Taipei Economic Cooperation Agreement. According to these agreements parties retain their rights and obligations in terms of the GATT Article XIX and the WTO Agreement on Safeguards. Furthermore, the trade agreements do not confer any additional rights and obligations on the parties regarding actions taken under the relevant multilateral provisions.

### 4.2.2 General bilateral or regional safeguards without any specific conditions

The only instance in which bilateral or regional safeguards in the evaluated agreements do not specify additional conditions for implementation is in the case of the investigation procedures and the determination of serious injury or the threat of serious injury. This is the case in 10 of the agreements, including the Australia-China FTA, Australia-Japan FTA, US-Panama FTA, Malaysia-Australia FTA, India-Korea Comprehensive EPA and the EFTA-Canada/Central America and Hong Kong agreements. In these agreements specific reference is made to the investigation procedures in Article 3 of the WTO Agreement on Safeguards and the determination of injury in accordance with

Article 4(2) of this agreement. Apart from these very limited provisions and areas of applications the agreements further include detailed additional provisions regarding the transition period, type of measures which can be used, prior notification, compensation and dispute settlement.

### 4.2.3 General bilateral or regional safeguards with specific conditions

The majority of agreements evaluated contain specific conditions for the implementation of general bilateral or regional safeguards. These specific provisions vary from agreement to agreement but mostly relate to the type of measures which can be applied, the period of application, notification, compensation and dispute settlement.

#### a) The type of measures to be taken

According to the WTO Agreement on Safeguards, safeguard measures should only be applied to the extent necessary to remedy the injury caused or threatened. This notion is supported by all the trade agreements which include bilateral or regional safeguards. Furthermore, the WTO Agreement on Safeguards allows for the utilisation of either an increase in tariffs or quantitative restrictions as a safeguard measure. However, here is where there are numerous variations across the evaluated bilateral and regional agreements. While some agreements allow for the utilisation of tariff quotas the majority of the agreements only allow the use of increases in import tariffs and some even state that the use of quotas is prohibited.

The majority of the agreements state that the following measures are available:

- 1) The suspension of the further reduction of import duties or
- 2) The increase in import tariffs to the lesser of either
  - i. The most favoured nation applied tariff at the date the safeguard measure is applied, or

- ii. The most favoured nation applied tariff applicable on the date immediately preceding the date of entry into force of the bilateral or regional agreement.

This is the case for agreements including the Australia-China FTA, Australia-Japan FTA, Canada-Korea FTA, EFTA-Central America FTA, TPP, EU-Central America EPA, US-Panama FTA and the Malaysia-Australia FTA.

Certain agreements do not allow for the suspension of further tariff reductions, but only for increases in the rate of import duty. These agreements include the EFTA-Canada FTA and the EFTA-Hong Kong FTA.

Only four of the agreements evaluated allow for the utilisation of tariff quotas as a safeguard measure. According to the SADC-EU EPA, the Central Africa-EU IEPA, Tripartite FTA (draft regulations) and Turkey-Mauritius FTA, bilateral or regional safeguard measures taken can include the utilisation of quantitative restrictions on the product concerned. Two agreements, the China-Singapore FTA and the Australia-China FTA explicitly state that no quantitative restrictions can be taken as a safeguard measure.

#### b) Duration of safeguard application

The WTO Agreement on Safeguards allows for the application of a safeguard to the extent necessary to remedy the injury, with the maximum initial application period being four years. After this initial period, an extension for a further four years is permissible. For developing countries there is additional flexibility in that the application period is extended to a maximum of 10 years. If the safeguard measure exceeds one year, the applying country needs to apply progressive liberalisation and if the measure exceeds three years the situation must be reviewed to determine the appropriate action to take.

All the agreements evaluated which allow for bilateral or regional safeguards have similar requirements. However, in the majority of the cases the duration of the safeguard is

typically shorter than the time frames in the WTO Agreement. The duration of the bilateral or regional safeguard varies from three years to eight years in total or until the transition period comes to an end. The majority of agreements allow for an initial application of two years with the possibility of a one or two year extension. Interestingly the EFTA-Hong Kong FTA allows for an initial application period of one year with the possibility of an extension for another two years. The SADC-EU EPA allows SADC and SACU member countries to implement bilateral safeguards on products imported from the EU for an initial period of four years with a further extension of another four years if deemed necessary. The EFTA-Canada FTA states that a safeguard can be taken for a period not exceeding three years and cannot be extended beyond the end of the transition period. The majority of the agreements also require progressive liberalisation if the duration of the safeguard measure is beyond one year.

While some agreements are silent on the repeated imposition of safeguard measures on the same product, others contain specific time frames for re-application and some even strictly prohibit re-application on the same product. The cooling-off period between applications mostly varies between one and two years. The provisions on re-application in the agreements can be distinguished as follow:

- Silent on re-application— examples are the China-Singapore FTA and the TPP;
- Specific time period—normally one or two years in the Turkey-Mauritius FTA and the Australia-China FTA;
- Rest period equal to the duration of the previously applied safeguard measure in the Tripartite FTA draft regulations, India-Korea FTA, India-Japan FTA and the Australia-Japan FTA;
- Agreements which explicitly state re-application on the same product is not permitted (EFTA-Canada/Central America/Hong Kong agreements and the Malaysia-Australia FTA); and



- The Australia-China FTA places a limit on the number of times the same product can be subjected to a bilateral safeguard—no product can be subject to a safeguard more than twice.

The majority of the safeguard provisions are only applicable during the transition period. This is due to the aim of these measures, which is to address challenges resulting from the liberalisation of trade in goods: thus these safeguards are only supposed to be applicable during the transition period in order to allow an industry to adapt and improve its competitiveness. This transition period differs from agreement to agreement, but mainly ranges between three and five years from the date of entry into force. The majority of the agreements clearly state that no bilateral or regional safeguard will be maintained or can be implemented beyond the transition period. However, some agreements are silent on this point, including the Turkey-Mauritius FTA and the EFTA-Hong Kong FTA, but the latter states that the safeguard provisions need to be evaluated five years after the date of entry into force to determine whether the provisions are necessary or should be terminated. According to the Australia-Japan FTA, bilateral safeguards applications can only be extended beyond the transition period with the consent of all relevant parties.

#### c) Provisional application of safeguards

Provisional safeguard measures are emergency measures that countries can take normally after a preliminary determination has been made and before definitive safeguards are put in place. These measures are only applicable for a very short time period to stop irreparable damage to the domestic industry of the like or directly competitive product. In the trade agreements evaluated, the majority allow for the provisional application of bilateral or regional safeguards. However, there are slight differences in the time period during which these measures can be applied for, and some member countries differentiate between time periods for the different member countries. Furthermore, some agreements require the

prior notification of provisional measures, while the majority of the agreements state that the provisional application period must form part of the total application period of the safeguard measure, and also require the increase in import tariffs to be refunded to the relevant party if the final determination does not support the implementation of a safeguard measure.

In most of the agreements the provisional application period cannot exceed 200 days. The only exceptions to this time period can be found in the case of the Central Africa-EU IEPA, SADC-EU EPA and the Turkey-Mauritius FTA. In these agreements the less developed countries (Cameroon, SADC and SACU member states, and Mauritius) can apply provisional measures for 200 days, while the EU and Turkey can only implement provisional measures for 180 days. The agreements which require prior written notification before a provisional measure is implemented include the EFTA-Central America FTA, EFTA-Hong Kong FTA, EU-Central America EPA, Japan-Switzerland FTA and the India-Japan FTA. The Canada-Korea FTA requires notice of a provisional measure to be given through publication in an official journal. The publication needs to include information regarding the procedure relevant parties must follow to obtain non-confidential copies of the application. Interested parties must be afforded at least 20 days after the publication of the notification to submit evidence regarding the measure. No safeguard is allowed to be implemented within 45 days after the preliminary investigation has been initiated. A few agreements also require countries to enter into consultations directly after the provisional measure has been put in place and that the provisional measure be referred to the relevant Committee for examination.

#### d) Dispute settlement

In all of the examined agreements (except one) all partner countries have recourse to all the dispute settlement procedures stipulated in the various bilateral or regional agreements. The majority of these procedures

include consultations, arbitration and the establishment of panel proceedings. The only exception is the Canada-Korea FTA. This agreement specifically states that parties are unable to request the establishment of a panel in terms of Article 2.16 of the agreement regarding the implementation of a proposed safeguard measure. Furthermore, the SADC-EU EPA specifically states that the dispute resolution process of the WTO is not applicable to general bilateral safeguards undertaken in accordance with the agreement.

#### e) Compensation

Most of the examined agreements provide for compensation in the form of concessions for the loss of trade due to a bilateral or regional safeguard being put in place. Furthermore, the agreements state that parties must agree on the compensation to be granted, but if no agreement can be reached the affected country can retaliate to achieve an equivalent effect. Some agreements also require prior notification of the suspension of concessions, including the US-Panama FTA, TPP and New Zealand-Malaysia FTA. Seven of the agreements evaluated are silent on the matter of compensation. These are the MERCOSUR-India PTA, China-Singapore FTA, EFTA Agreements with Canada, Central America and Hong Kong, Tripartite FTA and the SADC-EU EPA.

Two agreements pertaining to trade between India and her trading partners (Korea and Japan) contain specific provisions regarding compensation and retaliation. The India-Japan FTA suspends a party's right to claim compensation and retaliate within the first two years of a bilateral safeguard being in place. According to the India-Korea FTA, parties are unable to retaliate within the first two years during which a safeguard measure has been implemented or within the first three years if

a measure has been extended. However, both these agreements qualify the circumstances in which these suspensions are applicable—the bilateral safeguard measure must have been taken based on an absolute increase in imports and implemented in accordance with the provisions provided for in the relevant agreements.

#### f) Notification

All the evaluated trade agreements require a notification process to take place when a bilateral or regional safeguard measure is to be implemented. The main notification requirements include written notification to the affected party when a safeguard investigation is initiated and prior to the implementation of a measure. The notification should include all pertinent information regarding the implementation of the safeguard, including the relevant evidence, the grounds for introducing the measure, the date of introduction and the expected notification. Furthermore, the agreements require notification throughout the whole investigation and implementation process. For instance, the TPP requires countries to notify the other parties to the agreement not only when an investigation is initiated, but also once a finding of serious injury or threat thereof is made, when the decision is made to apply a safeguard measure and when the decision is made to modify any existing safeguard in effect. The notification should include the evidence on which the determination of injury is based, a precise description of the good subject to the safeguard measure, a detailed description of the measure to be implemented, the date the measure is to be introduced and the period it will be implemented for, and the timetable for progressive liberalisation of the measure. These notification requirements are also required if an existing measure is to be extended by the implementing country.

## 5. SPECIFIC BILATERAL OR REGIONAL SAFEGUARD MEASURES

Bilateral or regional safeguard measures can either be general or specific. These specific safeguards mostly apply to agricultural products. However, other provisions include safeguards specific to trade in textiles, forestry products and certain industrial products. This is due to the notion of these provisions being put in place specifically for the purpose of protecting sensitive industries in importing countries. The RTA member countries are typically allowed to impose additional duties on these sensitive imports once the indicated price or volume threshold is crossed. However, the tariff should not exceed the most favoured nation rate. In the implementation of these measures the injury to the domestic industry need not be demonstrated. The measures can be invoked without any serious injury or threat of serious injury to the domestic industry and they normally contain a specific time period. Most measures can extend past the transitional period provided for in the RTA (Kruger et al. 2009).

In recent years the use of specific safeguard measures in bilateral and regional trade agreements has gained in popularity; where previous analysis found limited utilisation of specific safeguards, six of the agreements included in this analysis contain different types of specific safeguard measures (Kruger et al. 2009). In some of the most recent agreements, including the TPP and the SADC-EU EPA there are specific safeguard provisions for various products and member countries included within detailed and complex frameworks. Appendix C shows those agreements which include specific bilateral or regional safeguard measures.

### 5.1 Agricultural Safeguard Measures

Six of the agreements examined contain provisions regarding specific safeguards on agricultural products. All of the agreements provide detailed information on when and how the safeguards can be implemented, the majority of which utilise quantity-based safeguard measures. These measures can be applied once imports from a trading partner increase past the volume trigger level. None of the agreements which include agricultural safeguard measures utilise a price trigger. The applicable trigger levels are set out in the annexure, and normally increase over a specific time period. The additional duty that can be applied once the trigger volume is reached may not exceed the MFN tariff that was applied when the agreement came into force or when the action is taken, whichever one is the least. (Kruger et al. 2009). Appendix E provides a comparison and summary of the substantive and procedural requirements of Article 5 of the WTO Agreement on Agriculture and those agreements which include agriculture specific safeguard measures.

#### 5.1.1 Australia-China FTA

According to Article 2.14, China can apply a special agricultural safeguard to those agricultural products listed in Annex 2-B to the agreement when a trigger level is reached within a specific calendar year. The products this safeguard is applicable to are certain beef products and milk powder.



Table 1. Trigger levels beef

Stage	Trigger Level (tonnes)
1	170,000
2	170,000
3	170,000
4	170,000
5	174,454
6	179,687
7	185,078
8	190,630
9	196,349
10	202,240
11	208,307
12	214,556
13	220,993
14	227,623
15	234,451
16	241,485
17	248,729

Source: Annex 2-B Australia-China FTA

The safeguard measure which can be utilised is an additional customs duty which can be levied on the product. However, the normal customs duty applicable to the product plus the additional duty levied cannot exceed the lesser of the MFN applied tariff applicable on the date the safeguard is applied or the date immediately preceding the date the agreement entered into force. The safeguard can only be applied for the duration of the calendar year in which it was applied. If a SSG is to be implemented the implementing country must notify the affected party as soon as possible, but at least within 10 days of the implementation. Furthermore, information regarding import values of beef and milk powder must be published regularly and accessible to all parties.

#### 5.1.2 Japan-Australia FTA

Article 2.18 of the agreement allows the parties to the agreement to implement an agricultural safeguard only on those agricultural products which have been designated by PS\* or PS\*\* within its schedule. The only products designated are

Table 2. Trigger level milk powder

Stage	Trigger Level (tonnes)
1	17,500
2	18,375
3	19,294
4	20,258
5	21,271
6	22,335
7	23,452
8	24,624
9	25,855
10	27,148
11	28,506
12	29,931
13	31,427
14	32,999
15	34,649
16	241,485
17	248,729

Source: Annex 2-B Australia-China FTA

in the schedule of Japan and the products are fresh or chilled beef (HS 02.01) (PS\*) and frozen beef (HS 0202) (PS\*\*). The distinction between PS\* and PS\*\* is the trigger volumes. The trigger levels for fresh or chilled beef range from 130,000 tonnes in year one to 145,000 tonnes in year 10. The trigger levels for frozen beef are higher, ranging from 195,000 tonnes in year one to 210,000 tonnes in year 10.

The safeguard measure which is applicable is an increase in the customs duty that does not exceed the lesser of either the most favoured nation applied tariff at the date of the safeguard implementation or the most favoured nation applied tariff on the date immediately preceding the date the agreement came into force. Any agricultural safeguard can only be applied until the end of the year (running from 1 April-31 March) in which it was implemented. In the tenth year, from the date of entry into force of the agreement, the trigger levels indicated in the schedule need to be reviewed by the parties to determine the trigger levels applicable after the tenth year. If no agreement can be reached, the

trigger level shall continue unchanged until an agreement is reached.

### 5.1.3 EU-Korea EPA

Section B allows parties to implement a higher import duty on agricultural products listed in its schedule if the aggregate volume of imports in any year is higher than the trigger level determined in its schedule included in

Annex 3 to the agreement. Korea is the only country with applicable safeguards indicated on its schedule. The agricultural safeguards are applicable to certain products; i.e. beef, port, dextrin, alcohol (HS 2207109010), sugar, ginseng, potato starch, malt and malting barley and apples. An example of the trigger level and safeguard duty applicable on apple imports into Korea from EU member states are included in the table below.

**Table 3. Trigger levels and safeguards applicable to apple imports**

Year	1	2	3	4	5	6	
Trigger level (metric tonnes)	7 500	7 500	7 650	7 803	7 959	8 118	
Safeguard duty (%)	45.0	45.0	45.0	45.0	45.0	45.0	
Year	7	8	9	10	11	12	
Trigger level (metric tonnes)	8 280	8 446	8 615	8 787	8 963	9 142	
Safeguard duty (%)	33.8	33.8	33.8	33.8	33.8	27.0	
Year	13	14	15	16	17	18	
Trigger level (metric tonnes)	9 325	9 511	9 702	9 896	10 094	10 295	
Safeguard duty (%)	27.0	27.0	27.0	27.0	22.5	22.5	
Year	19	20	21	22	23	24	25
Trigger level (metric tonnes)	10 501	10 711	10 926	11 144	11 367	11 594	N/A
Safeguard duty (%)	22.5	22.5	22.5	22.5	22.5	22.5	0

Source: Annex 3 EU-Korea EPA

Any agricultural safeguard must be applied in a transparent manner and may not exceed the lesser of the prevailing most favoured nation applied tariff or the most favoured nation applied tariff applicable on the date preceding the date of the entry into force of the agreement. Within 60 days of an agricultural safeguard being implemented the relevant parties must be notified and all relevant data regarding the measure must be supplied to the affected country. Countries can also enter into consultations in order to review measures implemented. The agreement specifies the period of application of a safeguard measure—a measure cannot be applied if the period specified in the relevant schedule for that product has expired or if it will result in an increase in the in-quota duty.

### 5.1.4 EU-Columbia and Peru FTA

Article 29 states that an additional import duty, as a specific safeguard measure, can be implemented on an agricultural good specified

in Annex IV to the agreement. However, the additional duty cannot exceed the lesser of the most favoured nation applied duty applicable or the indicated base rate. For Columbia, Annex IV sets out the specific agricultural products imported from the EU on which Columbia can implement safeguards, as well as the trigger volume over varying years. Section B, relating to Peru, allows for the utilisation of an agricultural safeguard if the current level of imports exceeds the volume of the tariff-rate quota given in Section C of Appendix 1 by 10 percent. The products on which Peru can implement safeguards include various meat products, milk and cream, cheeses and sausages.

This quantity-based measure can be implemented for the duration of the calendar in which it is implemented if the trigger level in Annex IV is exceeded. Within 10 days of the safeguard being implemented the affected country must be notified and the relevant data regarding the measure provided. Furthermore, the

implementing country must provide justification for the implementation of the measure and be allowed an opportunity for consultations regarding the matter. An agricultural safeguard cannot be applied as from the date a product is subject to duty-free treatment or after the transition period as indicated in Annex IV, or if the safeguard measure will result in the increase of a customs duty within a tariff-rate quota.

#### 5.1.5 SADC-EU EPA

Article 35 allows SACU member countries to implement an agricultural safeguard measure, in the form of an increase in an import duty. The safeguard can be implemented during a 12 month period if the volume of imports from the EU into SACU countries exceeds the reference quantity as specified in Annex IV. The safeguard measure can be implemented on the imports of 23 agricultural products in total. These products are edible offal (HS 02061090, 02062100, 02062900, 02063000 and 02064900), worked cereals (HS 11041910, 11042910, 11071010, 11072010 and 11081110), meat preparations (HS 16021000, 16025030, 16025040 and 16029020), long-life milk (HS 04011007, 04012007, 04014007 and 04015007), preserved cucumbers and olives (HS 20011000 and 20019010) and chocolate (HS 180631, 180632 and 180690).

The available safeguard measure is the highest of 25 percent of the current WTO bound rate or 25 percentage points, but cannot exceed the prevailing most favoured nation applied rate. The safeguard measure is only applicable for the remainder of the calendar year in which it was implemented or five months, whatever is largest. Agricultural safeguards must be implemented in a transparent manner and the implementation must be notified to the EU within 10 days of implementation and within 30 days to the Trade and Development Committee. These agricultural safeguard measures are only available during a transition period: 12 years from the date of entry into force of the agreement.

#### 5.1.6 Trans-Pacific Partnership

The TPP contains detailed and highly complex provisions regarding agricultural safeguards.

These safeguard measures are country specific (for utilisation by Japan and the United States) as well as product specific. Appendix B-1 governs the use of these agricultural safeguard measures by Japan. The appendix sets out the agricultural goods subject to a safeguard measure, the trigger levels for applying measures and the maximum rate of customs duty that may be applied. Japan can implement a safeguard on agricultural goods which have been indicated accordingly in its schedule. These goods are beef, pork, processed pork, whey protein concentrate, whey powder, fresh oranges and race horses. Within the appendix there are designated sections for each particular agricultural product. Each of these sections provides complex provisions regarding the trigger volume applicable within each year as well as the safeguard duty which can be implemented. Furthermore, the required rate of liberalisation of a safeguard measure is also set out within the sections. In general the increase in the rate of customs duty which can be applied may not exceed the lesser of the most favoured nation applied tariff in effect or the most favoured nation applied tariff on the date immediately preceding the date of entry into force of the agreement or the duty rate specified within each section. Within 60 days of a safeguard being implemented, Japan must notify the relevant parties of the implemented measure and provide relevant data pertaining to the matter.

Contrary to the safeguard provisions which can be utilised for Japan being only product specific, the safeguard measures which can be utilised by the US are both product and country specific. Appendix B to the TPP sets out the conditions under which the US can impose agricultural safeguards on specific products imported from specific member countries. Accordingly the US must implement agricultural safeguards in a transparent manner and disclose the volume of the specified products which enter the market under the safeguard. Furthermore, as soon as practically possible after an application for a safeguard has commenced, the affected party must be notified (in writing) of the application and any relevant data concerning the measure must be provided. On request consultations

must also be entered into regarding any applied agricultural safeguard measure. The products on which the US can implement these measures include Swiss cheese and milk powders imported from Australia, other cheeses and whole milk from New Zealand, and condensed and evaporated milk and cheese from Peru. The appendix contains detailed provisions regarding the agricultural safeguard measure applicable in each of the product circumstances mentioned. Each provision contains the detail related to the trigger volume which warrants the implementation and the maximum rate of duty which can be applied in each instance. The trigger volume, rate of duty, liberalisation of the safeguard measure and the provisional application period differ from product to product. However, there are some similarities: i.e. that safeguard measures need to be designated in the Schedule of the US an agricultural safeguard can only be maintained until the end of the calendar year in which it was implemented and that no agricultural safeguard measure shall be applied or maintained beyond the provisional time period (varies mainly between 24 and 34 years from when the agreement enters into force).

## 5.2 Textile and Apparel Safeguard Measure

A special textile safeguard mechanism is included in the TPP. Chapter four of the agreement governs the implementation of such an emergency action and contains special provisions regarding the notification requirements, strength and length of the measure, the requirements for compensation, the option of recourse to retaliation and the determination of serious damage. According to Section 4.3, a safeguard can be implemented, as an increase in the rate of duty on a textile or apparel good benefiting from a preferential tariff treatment, if the product is imported in such increased quantities and under such conditions as to cause serious damage to the domestic industry of a like or directly competitive good. The measure can be implemented to the extent necessary to remedy or prevent the damage and to facilitate the needed adjustment. In determining damage the country can take into account factors like changes in such relevant

economic variables as output, productivity, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, but not changes in technology and consumer preferences. The importing country must also publish the criteria which will be taken into account and the investigation procedure for such a safeguard measure before any measure can be taken. Furthermore, the section places restrictions on the application of a safeguard measure in that an emergency action will not be maintained for longer than two years (but can be extended for a further two year period), measures can only be applied during the transition period and no safeguard can be taken on the same product more than once. Any country which implements a textile or apparel safeguard will also further liberalisation and provide compensation to the affected party in the form of concessions. However, these concessions are limited to textile and apparel goods, unless the parties agree otherwise.

## 5.3 Specific Safeguard on Forestry Products

Appendix B-2 of the TPP allows for the utilisation of a safeguard measure on certain forestry products imported by Japan. The products these safeguard measures can be applied to are country and product specific. According to the tariff schedule of Japan, it is able to apply special safeguards on a wide range of wood, board and plywood products—coniferous, oriented strand board, particular board and plywood imports from Canada, particular board and plywood imports from New Zealand and plywood imports from Malaysia, Vietnam and Chile. The appendix contains detailed provisions regarding the trigger volume of imports in each instance; however, the type of measure which can be implemented remains consistent: an increase in the rate of customs duty to a level not exceeding the lesser of the most favoured nation applied tariff on the date the safeguard measure is applied or the most favoured nation applied duty on the day immediately preceding the date of entry into force of the agreement. Any forest good safeguard can only be applied until the end of

the year within which it was applied, with a year running from 1 April until 31 March.

#### 5.4 Specific Safeguard Applicable to Motor Vehicle Imports

Appendix D of the TPP provides for a special dispensation for the import of motor vehicles between Canada and Japan. According to Article 3, these parties can implement a transitional safeguard measure on motor vehicles (under HS 8703) in accordance with the provisions of the general application of bilateral safeguards in Chapter 6. However, there are some clarifications:

- The transition period is 12 years from the date of entry into force of the agreement;
- The safeguard measure can only be applied for an initial period of three years after which it can be extended for a further two years; and
- Within 30 days of a safeguard measure being implemented parties will consult to determine the level of compensation required. If no consensus can be reached, the affected party can retaliate through the suspension of concessions. However, retaliation will not take place within the first 24 months the safeguard measure is in effect if the measure was implemented in accordance with the general bilateral safeguard provisions and the provisions of Appendix D.

#### 5.5 Food Security Safeguards

Article 36 of the SADC-EU EPA allows for the application of a specific safeguard to address any challenges which might arise in the agricultural and food sectors in the SADC member states. If any such challenges are experienced the obligation is on countries to first enter into consultations with one another regarding the matter. However, if relief is needed in order to ensure food security in the SADC EPA countries, the countries can implement a general bilateral safeguard in accordance with the procedures set out in Article 34 of the agreement. However,

these measures must be reviewed on a yearly basis and removed as soon as the circumstances which justified their implementation have ceased to exist.

#### 5.6 Infant Industry Protection Safeguards

Two agreements evaluated, the Turkey-Mauritius FTA and the SADC-EU EPA, allow for the utilisation of safeguard measures to protect the development and competitiveness of certain infant industries. The provision in the Turkey-Mauritius FTA is basic and gives a very broad scope for the utilisation of such a safeguard measure. According to Article 19.5 (b):

Mauritius may take safeguard measures where a product originating in Turkey as a result of the reduction of duties is being imported in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products. Such provision is only applicable for a period of 10 years from the date of entry into force of this agreement. Measures must be taken in accordance with the procedures laid down in paragraphs 6 to 9.

On the contrary, Article 38 of the SADC-EU EPA gives slightly more detail regarding the implementation of such a measure. However, both agreements lack a clear definition of what precisely an infant industry is under the applicable provisions.

In accordance with the EPA, Botswana, Lesotho, Namibia, Mozambique and Swaziland are able to implement an increase in the customs duty if a product imported from the EU threatens the establishment of an infant industry or causes disturbances to an infant industry producing like or directly competitive products. A safeguard measure can be implemented for a maximum duration of eight years and can only be extended by a decision made by the Joint Council. Any measure taken must be notified to the Trade and Development Committee for review and recommendation in order to find an acceptable solution to address the matter. Furthermore, Article 38.5 allows for the utilisation of a

provisional safeguard if critical circumstances prevail for a period of no longer than 200 days.

### 5.7 Country-Specific Safeguard Measure

Article 37 of the SADC-EU EPA provides for a transitional safeguard measure which can be utilised by Botswana, Lesotho, Namibia and Swaziland (BLNS) if the importation of certain sensitive products from the EU threatens or causes serious injury to the domestic industry in any of the BLNS countries. Annex V provides a list of goods the safeguard can be applied to, including chicken products, milk and cream, natural honey, sweetcorn, spinach, flours, cocoa powder, chocolate, prepared or preserved vegetables, fruit jams and jellies,

grape and apple juice, malt beer, toilet paper, candles, paper and umbrellas.

The safeguard measure which can be utilised can be an increase in the duty up to a level which does not exceed the most favoured nation applied tariff or the introduction of a zero duty tariff-rate quota. Prior to the safeguard measure being taken, written notification must be given to the EU and consultations must be entered into afterward. These safeguard measures can be applied for an initial period of four years and extended by a further four years if warranted. This safeguard measure is only available to the BLNS countries for a transition period of 12 years from the date the agreement enters into force.



## 6. MARKET INTEGRATION AND BILATERAL AND REGIONAL SAFEGUARD CLAUSES

Some of the most recently concluded agreements, like the TPP and the final SADC-EU EPA are not only comprehensive in the level of coverage provided for in the agreement, but also contain the most comprehensive provisions regarding bilateral and regional safeguard measures, especially in the case of allowances for SSG provisions. These agreements contain complex and detailed provisions regarding the conditions under which safeguards can be implemented. However, the same is not the case for the Tripartite FTA provisions. Although the Tripartite FTA is set to include comprehensive coverage, in terms of trade in goods, services and other trade-related matters, the safeguard provisions included in the Draft Trade Remedy Implementation Guidelines are relatively basic and there is extensive overlap with the GATT Article XIX and the WTO Agreement Safeguards.

The three trade agreements which are silent on bilateral safeguard measures (Australia-Chile FTA, New Zealand-Hong Kong CEP and New Zealand-Taipei ECA) entered into force in three different years—2009, 2011 and 2013 respectively—and contain similar levels of market integration. One of the agreements is an economic partnership agreement, one is an economic cooperation agreement and the other a free trade agreement; however, all three levels include similar provisions. The agreements cover a variety of areas: in addition to goods trade (including tariff liberalisation, sanitary and phytosanitary (SPS) provisions, technical barriers to trade (TBTs), rules of origin (RoO) and trade remedies), trade in services, competition policy, customs cooperation, intellectual property rights, movement of persons and electronic commerce are also included in all the agreements. Services sectors specified in the Australia-Chile FTA and the New Zealand-Taipei ECA are telecommunication, professional services and financial services. The only difference is in the New Zealand-Taipei ECA which also includes provisions regarding trade and the

environment and cooperation on indigenous issues.

All the agreements which include general bilateral or regional safeguards include provisions beyond tariff liberalisation and trade in goods. These agreements all came into force between 2009 and the beginning of 2015 (except the Tripartite FTA which is yet to enter into force). The majority of these agreements include provisions related to trade in services (with some specific sectors indicated like financial services and telecommunications), intellectual property rights, investment, competition policy, customs cooperation, electronic commerce and government procurement. The Tripartite FTA also aims to cover comprehensive sectors through a two-stage negotiation process: thus trade in services is currently being negotiated and it is unclear what will be included under provisions on trade-related matters (competition policy, trade and development, intellectual property rights).

The majority of the six trade agreements which allow for comprehensive special safeguard measures within the agreements (Australia-China FTA, Japan-Australia EPA, EU-Korea FTA, EU-Columbia and Peru Trade Agreement, SADC-EU EPA and the TPP) are also some of the most recent trade agreements to enter into force or which have been recently concluded. The oldest of the six agreements is the EU-Korea FTA, which entered into force in 2011 and covers similar provisions to those agreements which include general bilateral or regional safeguard provisions (including goods, services, investment, electronic commerce and intellectual property rights). The same applies to the EU-Columbia and Peru Trade Agreement which entered into force at the beginning of 2013. However, it seems there are variations on the standard provisions in the agreements which came into force in 2015 (Japan-Australia EPA and the Australia-China FTA) and those yet to enter into force (TPP and

SADC-EU EPA). Although the Australia-China FTA also includes the standard provisions found in the majority of the trade agreements (goods, services, investment, movement of persons, etc.) what is interesting is the structure of the agreement, as all the annexes applicable to the provisions are directly incorporated into the agreement within each article it pertains to. This is a variation on the standard rule where the annexes are normally annexed to agreements at the end. The Japan-Australia EPA includes some interesting additional provisions. These include provisions relating to the food supply in each country (export restrictions, facilitation and investment), energy and mineral resources and consumer protection.

The trend in the expansion of coverage in trade agreements and deeper forms of market integration is illustrated by the provisions in both the TPP and the SADC-EU EPA. Not only do these agreements include additional coverage within the agreements, but also the layout and structure differ significantly from earlier trade agreements. The SADC-EU EPA mainly focuses on provisions regarding sustainable development and areas of cooperation. These provisions include issues regarding the environment and

investment (sustainable development) and development, fiscal adjustment, intellectual property, public procurement, competition and trade-related matters (areas for cooperation). The agreement then goes further and includes detailed provisions regarding specific matters, including non-tariff measures, customs and trade facilitation, TBTs, SPS, agriculture, payments and capital movements and services and investment. The TPP is a vast agreement with highly complex rules and provisions regarding coverage (product and country-specific) as well as the safeguard measures applicable to certain countries in certain circumstances. The TPP covers a wide variety of topics, including country-specific rules regarding goods trade, textile and apparel trade, customs administration and trade facilitation, cross-border and financial services, the movement of business persons and government procurement. However, a variety of topics are included in the TPP, some of which have not yet appeared in other agreements: cooperation and capacity building, labour, state-owned enterprises, competitiveness and business facilitation, development, small and medium-sized enterprises, regulatory coherence and provisions relating to anti-corruption.



## 7. IMPLICATIONS OF RECENT TRENDS IN BILATERAL AND REGIONAL SAFEGUARD MEASURES FOR A NEW MULTILATERAL AGRICULTURAL SAFEGUARD MECHANISM

The analysis shows that in recent years concluded bilateral and regional trade agreements have moved to being more comprehensive compared to previously concluded ones. They are not just becoming increasingly comprehensive in the topics which are included, but also comprehensive in the safeguard provisions which are included in these agreements. In summary the study finds that increasingly less bilateral and regional trade agreements exclude the use of general bilateral or regional safeguards and increasingly more agreements are including unique SSMs, especially measures applicable to agricultural products. There has been significant development in the terms of utilisation which have been included for using bilateral and regional safeguard measures—the provisions are getting increasingly detailed and complex, but also more limited in the scope of application regarding product coverage. It can be said that these agreements have been successful in building in safeguard flexibility to the extent not before seen in regional agreements. These agreements allow for the use of regional measures which are product and country specific with unique requirements and processes for implementation. This promotes certainty and transparency in the use of measures under precise conditions and makes the protection of sensitive sectors accessible and manageable.

The designs of the latest safeguard provisions can inform the multilateral agriculture safeguard negotiations to ensure a mechanism which functions in a rules-based manner which promotes certainty, transparency, effectiveness, accessibility and manageability. It provides a different view on how safeguard measures can be designed, not just in a one-measure-fits-all approach, but creating the following specific requirements for different countries based on their individual needs:

- The product coverage is specific and limited. All products are identified at the

HS8 and 10 tariff line level and include only those products viewed as vital for the individual economies. For such measures to be less burdensome (especially for developing and least developed trading partners) preparedness and careful drafting is required. Countries need to determine clear developmental benchmarks and strategies prior to trade negotiations taking place. Key industries and domestic sectors need to be identified and safeguards need to be negotiated according to the needs of these sectors and industries.

- It seems that quantity-based safeguards are preferred with trade agreements due to the certainty, transparency, accessibility and manageability of these triggers. However, in all the agreements evaluated the volume triggers are very specific, it is a tiered approach by product and even by product and country in the case of the TPP. This will require in-depth analysis of domestic industries and import quantities to determine the level of protection required.
- Asymmetry in the application of measures: although the basic rules regarding utilisation are the same, there are also country-specific rules in place. These are in terms of the set trigger volumes and the rate of additional duty applicable. Furthermore, the level of product coverage differs among the countries and some countries only have product-specific safeguards available to them while others are limited to product- and country-specific rules.

This approach can be complex when you are looking at building an efficient mechanism among numerous countries all at different levels of development and each with its own agricultural interests. Countries should take into account the level of protection required

in relation to developmental goals to maintain a balance between allowing countries to apply safeguards to prevent serious economic disruptions to vital domestic industries and the assurance that these measures will not defeat the purpose of trade liberalisation.

Countries need to assess their capacity needs for utilising these detailed rules and do a needs assessment regarding existing technical capacity and skills and resource availability as well as those skills, expertise and resources which will be necessary to ensure the drafted safeguards are manageable and accessible. Country-specific and product-specific measures need to be clear and transparent. Implementation procedures and requirements need to be clear. The type of measures that can be implemented, the requirements for investigation of an alleged surge in imports, the notification of an investigation and preliminary and final findings to interested parties, the required consultation process and the available dispute resolution process

must all be identifiable, understandable and usable. Allowing for the utilisation of specific measures by certain countries on particular products within a framework which allows for simplified required conditions, prerequisites and processes and which promotes certainty and transparency in the rules can reduce the cost of implementation and increase accessibility and ease of use.

These comprehensive and flexible measures will only be accessible and manageable for developing and least developed countries if: the capacity needs of the countries are assessed prior to negotiations and drafting; the vital industries which might require protection are required beforehand and development strategies and pathways identified; the rules and regulations are clear, transparent and functional for the relevant countries; and substantive and procedural requirements for implementations and the available measures are clearly identified within a simple, understandable and usable framework.

## 8. CONCLUSION

The examination of the regional and bilateral safeguards in trade agreements shows that there is an increased inclusion of general bilateral or regional safeguards, as well as specific safeguard measures. Although general bilateral and regional safeguards have traditionally formed part of North-North and North-South trade agreements, these mechanisms are increasingly being incorporated within South-South trade agreements. However, specific safeguards are still reserved for use mainly in North-North trade agreements or North-South trade agreements where the more developed country gives a special dispensation (normally during a transition period) to a less developed trading partner to allow for the adjustment of a certain domestic industry to the new normal of trade liberalisation. However, the exception to this rule can be found in the TPP, which allows for developed countries to implement specific safeguards against imports from other developed and even developing country members. However, these exceptions come with very strict conditions and complex rules for implementation.

The examination shows that numerous similarities exist between safeguards included in regional and bilateral agreements and global safeguards, but also that there are numerous similarities and areas of overlap among the safeguard provisions in different trade agreements. The main differences between the global safeguard measures and general bilateral and regional measures lie in the type of measures which can be utilised and the transitional nature of the majority of the bilateral or regional safeguard measures (although some agreements are silent on this matter).

Furthermore, the examination shows that there has been an evolution not only of safeguard provisions in trade agreements, but also the coverage, scope and structure of trade agreements. The three agreements which exclude the use of bilateral safeguards all came into force before 2014 and include

relatively standard provisions on trade in goods, services, intellectual property rights, competition issues, dispute settlement and trade remedies. The agreements which allow for the utilisation of general bilateral or regional safeguards all came into force between 2009 and the beginning of 2015 and all include similar market integration efforts (goods, services, competition, investment, intellectual property rights, customs cooperation) with limited to no variation. The only exception is the Tripartite FTA which is yet to enter into force. The aim of the agreement is to go beyond the basic provisions covering goods trade, by including services and other trade-related matters, and the safeguard provisions included in the agreement are also global and preferential measures. However, the safeguard provisions included in the Draft Regulations on Trade Remedies show extensive overlap with the GATT Article XIX and the WTO Agreement on Safeguards.

The most interesting developments can be found in the two latest agreements, the SADC-EU EPA and the TPP. The scope, coverage and structure of these agreements vary significantly from previous concluded agreements. These two agreements also include the most complex bilateral or regional safeguard rules, especially in the case of specific safeguard measures. These agreements include coverage which has not yet been included in other agreements, while the same goes for the specific safeguard provisions, not only going beyond the normal agricultural safeguard measures but also allowing for differentiating rules regarding specific products imported from specific countries for specific periods of time. If these two agreements are to become the “new normal,” then it seems that the wider the scope and coverage of an agreement, the more specific and complex the bilateral and regional safeguard provisions become.

These regional or bilateral measures are seen as a way of building flexibility into safeguard measures, often setting out specific conditions,

prerequisites and processes for implementation to ensure developing and least developed countries have access to this trade defence instrument. The TPP and the SADC-EU EPA build in true safeguard flexibility not previously seen in regional agreements. These agreements allow for the use of regional measures which are product and country specific with unique

requirements and processes for implementation. This promotes certainty and transparency in the use of specific measures and although these measures are extensively detailed and seem complex it provides an option for drafting safeguards in a manner which truly reflects flexibility in a transparent, effective, accessible, manageable and rules-based manner.

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### Multilateral Agreements

- General Agreement on Tariffs and Trade, 1947 and 1994
- World Trade Organization Agreement on Agriculture, 1995
- World Trade Organization Agreement on Safeguards, 1995

### Bilateral/Regional Trade Agreements

- Agreement between Japan and Australia for an Economic Partnership, 2015
- Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinwen, and Matsu on Economic Cooperation, 2013
- Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinwen, and Matsu in Economic Partnership, 2014
- Agreement Establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community, signed 2015
- Agreement establishing an Association between the European Union and Central America, 2014
- Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation, 2014
- Australia-Chile Free Trade Agreement, 2009
- Canada-Korea Free Trade Agreement, 2015
- China-Singapore Free Trade Agreement, 2009

Comprehensive Economic Partnership Agreement between Japan and the Republic of India, 2011

Comprehensive Economic Partnership Agreement between the Republic of India and the Republic of Korea, 2009

Economic Partnership Agreement between the European Union and the SADC EPA states, signed 2016

Free Trade Agreement between Canada and the states of the European Free Trade Association, 2009

Free Trade Agreement between the EFTA states and Hong Kong, China, 2012

Free Trade Agreement between the EFTA states and the Central American states, 2014

Free Trade Agreement between the European Union and the Republic of Korea, 2011

Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China, 2015

Free Trade Agreement between the Republic of Turkey and the Republic of Mauritius, 2013

India-MERCOSUR Preferential Trade Agreement, 2009

Interim Agreement to an Economic Partnership Agreement between the European Community and the Central African Party, 2014

Malaysia-Australia Free Trade Agreement, 2013

New Zealand-Hong Kong, China Closer Economic Partnership Agreement, 2011

New Zealand-Malaysia Free Trade Agreement, 2010

Trade Agreement between the European Union and Columbia and Peru, 2012

Trans-Pacific Partnership Agreement, signed 2016

United States-Panama Trade Promotion Agreement, 2012

## APPENDIX A: SUMMARY TABLE OF SAFEGUARD MEASURES IN RECENTLY CONCLUDED RTAS

Safeguard measure	Detail of implementation
1. Global safeguards	Mainly retain rights and obligations in terms of GATT and WTO Agreement. Global safeguards and other safeguard measures cannot be implemented on the same product at the same time. Certain agreements allow for the exclusion of imports from member countries when global measures are implemented.
2. Bilateral/regional safeguards	
2.1 General without specific requirements	Refer to the investigation process and the determination of serious injury in accordance with the provisions of the GATT Article XIX and the WTO Agreement.
2.2 General with specific requirements	
a) Type of measure	<ul style="list-style-type: none"> <li>• Increase in import tariffs.</li> <li>• Suspension of reduction of import tariffs.</li> <li>• Sometimes allow for the use of tariff quotas.</li> </ul>
b) Duration of safeguards	<ul style="list-style-type: none"> <li>• Mainly a shorter timeframe than in the WTO Agreement (from 3-5 years).</li> <li>• Cooling-off period allowed between the re-implementation of measures on the same product.</li> <li>• Some agreements place a limit on the number of re-implementations.</li> <li>• Some agreements do not permit re-implementation on the same product.</li> <li>• Mainly only applicable for transition period.</li> </ul>
c) Provisional application	Mainly for only 200 days with either prior notification or notification immediately after implementation of a measure.
d) Dispute settlement	Recourse to the dispute settlement procedures in the agreements, including consultation, arbitration and the establishment of a panel (except in one agreement).
e) Compensation	Parties can make compensatory arrangements through consultation. If no agreement can be reached retaliation measures can be taken.
f) Notification	Written prior notification when a safeguard investigation is initialised and the decision made to implement a measure. Evidence needs to be provided to justify the measure.

Safeguard measure	Detail of implementation
2.3) Special safeguards	
a) Agriculture	Detailed and complex provisions regarding trigger levels, additional duties to be implemented and the liberalisation period. Mostly transition period application. Mainly applicable for specifically identified products within the agreement by a specific member country. However, certain measures are country and product specific with a developed country able to implement measures on the import of agricultural products by less developed countries.
b) Textile and apparel	Detailed and complex provisions are included in the agreement. The implementing country must publish the criteria to be evaluated and taken into account. The measure can be implemented for a maximum of four years.
c) Forestry products	Detailed and complex rules for implementation. Product- and country-specific measures can be taken during a transition period.
d) Motor vehicles	Product-specific application (by a specific HS code) between two countries in a regional trade agreement for a transition period.
e) Food security	Broad provisions available for less developed countries to address challenges which arise due to liberalisation commitments in the food and agricultural sectors.
f) Infant industries	Broad scope for application for less developed countries to protect the development and competitiveness of certain infant industries.
g) Country-specific	Certain less developed countries can implement a safeguard on a specific list of goods identified as sensitive products for the domestic industries of these countries.



**APPENDIX B: DIVISIONS AMONGST THE EVALUATED AGREEMENTS—  
THOSE WITH GLOBAL SAFEGUARDS, THOSE WITH PROVISIONS  
REGARDING GENERAL REGIONAL OR BILATERAL SAFEGUARDS AND  
THOSE WITH PROVISIONS REGARDING SPECIFIC BILATERAL OR  
REGIONAL SAFEGUARDS**

	Agreements	Global Safeguard	General Bilateral Safeguard	Specific Bilateral Safeguard
1	Japan-Australia	X	X	X
2	New Zealand-Taiwan	X		
3	Singapore-Taiwan	X	X	
4	Tripartite FTA	X	X	
5	EU-Central America	X	X	
6	Japan-Switzerland	X	X	
7	Australia-Chile	X		
8	Canada-Korea	X	X	
9	China-Singapore	X	X	
10	Japan-India	X	X	
11	India-Korea	X	X	
12	EU-SADC EPA	X	X	X
13	Canada-EFTA	X	X	
14	EFTA-Hong Kong	X	X	
15	EFTA-Central America	X	X	
16	EU-Korea	X	X	X
17	Australia-China	X	X	X
18	Turkey-Mauritius	X	X	X
19	India-Mercosur	X	X	
20	EU-Central Africa IEPA	X	X	
21	Malaysia-Australia	X	X	
22	New Zealand-Hong Kong	X		
23	New Zealand-Malaysia	X	X	
24	EU-Columbia and Peru	X	X	X
25	TPP	X	X	X
26	US-Panama	X	X	

## APPENDIX C: AGREEMENTS WITH SPECIFIC BILATERAL OR REGIONAL SAFEGUARD PROVISIONS

	Agreements	Agriculture SG	Textile and apparel SG	Motor vehicle SG	Food security SG	Infant industry SG	Forestry SG	Country-specific SG
1	Japan-Australia	X						
2	EU-SADC EPA	X			X	X		X
3	EU-Korea	X						
4	Australia-China	X						
5	Turkey-Mauritius					X		
6	EU-Columbia and Peru	X						
7	TPP	X	X	X			X	

## APPENDIX D: WTO SAFEGUARD AGREEMENT AND GENERAL BILATERAL SAFEGUARDS PROVISIONS

Substantial and procedural requirements								
Agreements	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
WTO Safeguard Agreement	Application irrespective of source: not applicable to developing countries if the share of individual country imports do not exceed 3% and countries not exceeding 3% collectively do not account for more than 9% of total imports	Measures can include suspension of further tariff reductions, a temporary increase in duty or quantitative restrictions	Max. 200 days after written notification to the Committee on Safeguards	Initial 4 years and 4 year extension (developing countries 10 years in total)	Not for time equal to previous safeguard measure was implemented, but at least 2 years (developing countries: time equal to half the period of the previous safeguard measures with a minimum of 2 years)	Countries may agree on trade compensation. If no agreement is reached within 30 days then suspension of concessions can take place 30 days after the written notice for suspension is received by the WTO Council for Trade in Goods. Suspension of concessions cannot take place in the first 3 years of a safeguard measure.	Written prior notification must be given to the Committee on Safeguards and consultations must take place with interested exporters of a product prior to a measure being implemented or extended	Article XXII and XXIII of GATT and the Dispute Settlement Understanding apply to consultations and the settlement of disputes

Substantial and procedural requirements									
Agreements	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement	
Japan-Australia	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days	Transitional measure (10 years since date of entry into force of the agreement; however, measures can be extended past the end of the transition period with the consent of all parties); initial application of 3 years and possible extension of a further 1 year	After a period of time equal to the time of the previous safeguard application or 1 year, whichever is longer	Consultations on compensation and if no agreement can be reached suspension of concessions can take place	Prior written notification to any measure implemented or extended	General provisions of the agreement	
Singapore-Taiwan	Only between parties to the agreement	Measures can increase the suspension of further tariff reductions or the temporary increase in duties	Max. 200 days	Initial application of 3 years and a possible extension of a further 2 years		Consultations on compensation need to take place; if no agreement is reached then the party can take action with respect to goods of the other party that has trade effects substantially equivalent to the safeguard measure	Prior written notification and consultation before a safeguard measure is implemented	General provisions of the agreement	

Substantial and procedural requirements								
Agreements	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
Tripartite FTA	Only between parties to the agreement	Measures can include a temporary increase in duties, quantitative restrictions and any other measure to remedy the injury and to facilitate adjustments	Max. 200 days, but can only be a temporary increase in duties	Initial application of 1 year with a possible extension of a further 3 years but can only be decision of the Tripartite Council	After a period of time equal to the time of the previous safeguard application or 2 years, whichever is longer		Reasonable public notice to all interested parties and the Tripartite Committee of Trade Experts on Trade Remedies	General provisions of the agreement
EU-Central America	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days	Transitional measure (10 years since date of entry into force of the agreement); initial application of 2 years and possible extension of a further 2 years	After a period equal to half the duration of the previous safeguard measure	Consultations on compensation to take place and if no agreement can be reached suspension of concessions can take place	Notification needs to be given to all relevant parties prior to implementation and extension	General provisions of the agreement

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
Japan-Switzerland	Only between parties to the agreement	Measures can include the suspension of further tariff reductions or the temporary increase of duties	Max. 200 days after prior written notification	Transitional measures (review of provisions 10 years after the date of entry into force of the agreement or thereafter to determine whether still relevant); initial implementation period of 2 years with possible extension of a further 1 year	After time equal to the duration of the previous safeguard or 1 year, whichever is longest	Mutually agreed trade compensation in the form of concessions or customs duties on imports substantially equivalent to the additional customs duties on imports expected to result from the safeguard. If no agreement is reached suspension of concessions can take place	Prior written notification and consultation before a safeguard measure is implemented	General provisions of the agreement

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
Canada-Korea	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days only after public notice in the official journal has been made on how copies of the non-confidential application request can be obtained and cannot be implemented before 45 days after the investigation was launched	Transitional measure (the earliest of 15 years since the date of entry into force of the agreement or 10 years after the end of the tariff elimination periods as per the tariff schedules); initial application period of 2 years with a possible extension of a further 2 years		Consultations on compensation need to take place and if no agreement is reached concessions can be suspended; suspension of concessions cannot take place in the first 2 years a safeguard is in place	Prior written notification to the implementation of and extension of a safeguard	Parties may not request the establishment of a panel regarding a proposed safeguard measure
China-Singapore	Only between parties to the agreement; if the share of total imports is less than 3% then no safeguard measure can be implemented	Measures can only consist of an increase in customs duties		Transitional measure (5 years from the date of the completion of tariff elimination for the specific product according to the tariff schedules); initial application of 3 years and possible extension of a further 1 year		Consultations on compensation need to take place and if no agreement is reached concessions can be suspended	Notification needs to take place to all relevant parties prior to implementation and extension	General provisions of the agreement

Substantial and procedural requirements									
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement	
Japan-India	Only between parties to the agreement	Measures can include the suspension of tariff reductions of a temporary increase in duties	Max. 200 days after prior written notification	Transitional measure (review after 10 years of the date of entry into force or earlier if the parties agree); initial application period of 3 years with possible extension of 2 years	After time equal to the application of a previous safeguard measure, but at least 1 year since expiry	Consultations on compensation and if no agreement can be reached suspension of concessions can take place	Prior written notification before a measure is implemented or extended	General provisions of the agreement	
India-Korea	Only between parties to the agreement	Measures can include the suspension of further tariff reduction or the temporary increase in duties	Max. 200 days	Transitional measure (from the date of entry into force until 10 years from the date of the completion of tariff elimination or completion of tariff reductions); initial application of 2 years with a possible extension of a further 2 years	After time equal to the application of a previous safeguard measure, but at least 2 years since expiry	Consultation for compensation to take place; if no agreement is reached then measures can be taken which have trade effects substantially equivalent to the measure applied. However, these measures cannot be applied for the first 2 years the safeguard is in place or 3 years if the safeguard measure has been extended	Prior written notification to the implementation and extension of a safeguard	General provisions of the agreement	



Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
EU-SADC EPA	Only between parties to the agreement	Measures can include the suspension of further tariff reductions, the temporary increase in duties or the introduction of tariff quotas on the product concerned	Max. 200 days for SADC countries and 180 days for EU member states	EU member states (Initially 2 years and possible extension of further 2 years); SADC countries (initially 4 years and possible extension of further 4 years)	After 1 year since the expiry of the previous safeguard measure		Refer to Trade and Development Committee for evaluation prior to implementation and if no recommendations are made or a satisfactory solution found the measure can be implemented within 30 days of the referral to the Committee; safeguard measures are subject to periodic consultations within the Committee	Safeguards are not to be subject to the WTO Dispute Settlement provisions

		Substantial and procedural requirements						
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
Canada-EFTA	Only between parties to the agreement	Measures can only consist of an increase in customs duties		Transitional measure (5 years from date of entry into force of the agreement countries must decide whether to extend the provisions); application and extension may not exceed 3 years in total	Not allowed on the same product	Consultations need to take place with the Joint Committee regarding compensation and if no agreement can be reached the suspension of concessions can take place	Prior notification and consultation need to take place with the Joint Committee	General provisions of the agreement
EFTA-Hong Kong	Only between parties to the agreement	Measures can only consist of an increase in customs duties	Max. 200 days	Transitional measure ( 5 years since the date of entry into force the provisions need to be reviewed to see if it is still relevant); initial application of 1 year with possible extension of 2 years		Consultations on compensation need to take place and if no agreement is reached concessions can be suspended	Prior written notification to any measure implemented or extended	General provisions of the agreement

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
EFTA-Central America	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days	Transitional measure (5 years from date of entry into force of the agreement); initial application of 2 years and possible extension of a further 2 years		Consultations on compensation need to take place and if no agreement is reached concessions can be suspended	Prior written notification to any measure implemented or extended	General provisions of the agreement
EU-Korea	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days	Transitional measure (from the date of entry into force of the agreement until 10 years from the date of the completion of tariff reduction or elimination); initial period of 2 years with the possible extension of a further 2 years; safeguards can be utilised after the transitional period with the consent of the other party		Consultation for compensation and if no agreement can be reached suspension of concessions can take place	Prior written notification before a measure is implemented or extended	General provisions of the agreement

		Substantial and procedural requirements						
Agreements	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
Australia-China	Only between parties to the agreement	Measures can include the suspension of further tariff reductions and the temporary increase in duties	Max. 200 days	Transitional measure (3 years since the date of entry into force of the agreement); initial application period of 2 years with a possible extension of 1 year	After a period equal to the duration of a previous safeguard measure or 2 years, whichever is longer. A safeguard measure cannot be applied to the same product more than twice	Consultations on compensation and if no agreement can be reached suspension of concessions can take place	Prior notification must take place to all interested parties	General provisions of the agreement
Turkey-Mauritius	Only between parties to the agreement	Measures can include the suspension of further tariff reductions, the temporary increase in duties or the introduction of tariff quotas on the product concerned	Max. 200 days for Mauritius and 180 days for Turkey	Initial application of 2 years and possible extension of a further 1 year	After 1 year since the expiry of the previous safeguard measure		Prior notification to the Joint Committee for recommendations prior to a safeguard being implemented	General provisions of the agreement

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
India-Mercosur	Only between parties to the agreement; safeguards cannot be implemented for the first year after the tariff preferences come into force	Measures can include the suspension or reduction of tariff preferences. A quota must be established by the implementing country which is not less than the average imports of the product in the 36 months prior to the determination of serious injury. If a quota is not established then the reduction of preferences may not be greater than 50% of the tariff preference in the agreement	Max. 200 days after prior notification to relevant parties	Total application period of no more than 2 years	After 1 year since the expiry of the previous safeguard measure		Public notice to be given prior to implementation; consultations must take place prior to implementation of a definitive measure and can also be requested at any stage of the investigation	General provisions of the agreement

Substantial and procedural requirements									
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement	
EU-Central Africa IEPA	Only between parties to the agreement	Measure can include suspension of tariff reductions, increase in duties or the introduction of tariff quotas	Max. 200 days if implemented by Cameroon and 180 days if implemented by a member of the EU	EC member states have an initial implementation of 2 years with a possible extension of a further 2 years; Cameroon can implement a safeguard for 4 years and extend it for another 4 years		Compensation is subject to consultations with the EPA Committee	Prior notification and consultation need to take place with the EPA Committee	General provisions of the agreement	
Malaysia-Australia	Only between parties to the agreement	Measures can include the suspension of further tariff reductions or the temporary increase of duties	Max. 200 days	Transitional measures (from the date of entry into force of the agreement until 2 years after the date on which the custom duty on that good is to be eliminated or reduced to its final commitment in terms of the tariff reduction schedules); initial application period of 2 years with the possible extension of a further 1 year	Not allowed on the same product	Consultations for compensation need to take place and if no agreement can be reached the suspension of concession can take place after a 30-day notification period. Suspension of concessions cannot take place for the first year a safeguard is in place	Prior written notification and consultation before a safeguard measure is implemented	General provisions of the agreement	

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
New Zealand-Malaysia	Only between parties to the agreement	Measures can include a suspension of further tariff reductions or temporary increase in duties	Preferably not longer than 120 days, but max. 200 days with consultations to follow immediately after application	Transitional measure (from the date of entry into force of the agreement until 2 years after the date on which duties are to be eliminated); initial application 2 years and possible extension of 1 year (application must end at the end of the transitional time period)	Not for time equal to previous safeguard measure implemented or 2 years, whichever is longest	Consultations on compensation to take place and if no agreement can be reached suspension of concessions can take place 30 days after prior written notification is given but not for the first year of the safeguard being in place	Written notification and consultations prior to a measure being implemented or extended	General provisions of the agreement



Substantial and procedural requirements								
Agreements	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
EU-Columbia and Peru	Only between parties to the agreement	Measures can include the suspension of tariff reduction or the temporary increase in duties	Max. 200 days without consultations	Transitional measure (10 years from the date of entry into force of the agreement or if the tariff elimination period is longer 3 years after the tariff elimination period); initial implementation period of 2 years and a possible extension of a further 2 years	Only once on the same product after time equal to half the time period a previous safeguard was in place, but at least 1 year	Consultations on compensation and if no agreement can be reached suspension of concessions can take place	Prior notification and consultations to the implementation and extension of a measure. If the consultations do not lead to a satisfactory resolution within 45 days a safeguard can be implemented	General provisions of the agreement
TPP	Only between parties to the agreement	Measures can include suspension of further tariff reductions or a temporary increase in customs duty		Transitional measure (3 years since the date of entry into force of the agreement or the time of the staged tariff elimination if longer than 3 years); initial implementation 2 years and further extension of 1 year	Not on the same product	Mutually agreed compensation following consultations. If no agreement can be reached suspension of concessions can take place 30 days after prior written notification has been given of the suspension	Written notification and consultation prior to measure being taken or extended	General provisions of the agreement

Substantial and procedural requirements								
Agree-ments	Conditions	Application	Provisional	Duration	Re-application	Compensation	Notification and Consultation	Dispute Settlement
US-Panama	Only between parties to the agreement	Measures can include the suspension of further tariff reductions or the temporary increase of duties		Transitional measure (10 years since the date of entry into force of the agreement or the tariff elimination period as set out in the schedule if the elimination period is longer than 10 years); maximum period of application is 4 years and all safeguards must come to an end at the end of the transitional period	Not on the same product	Consultations on compensation to take place and if no agreement can be reached the suspension of concessions can take place after a 30 day notice period has lapsed	Prior written notification to the implementation and extension of a safeguard	General provisions of the agreement

## APPENDIX E: WTO AGREEMENT ON AGRICULTURE AND AGRICULTURE SPECIFIC BILATERAL SAFEGUARDS

Substantial and procedural requirements						
Agree-ments	Scope	Trigger	Measure	Application	Duration	Notification and Consultation
WTO Agreement on Agriculture	SSG designated products in schedules	Volume or price trigger	Volume trigger based—additional duty not exceeding a third of the MFN applied tariff; price trigger based—additional duty based on the degree of price depression using a tiered formula	Remainder of implementation year	Remain in force for the duration of the reform process under Article 20	Written notice as far in advance as practicable to the Committee on Agriculture, but at least within 10 days of implementation
Japan-Australia	PS* or PS** designated goods in Japan's schedule (2 HS 8 tariff lines)	Volume trigger	Increase in duty to the lesser of MFN rate when safeguard is implemented or when agreement enters into force or the base rate (38.5%)	1st day of the second month after the month when the volume exceeded the trigger and only until the end of the implementation year (12 months running from April)	Transitional measure (review in 10th year following entry into force of the agreement or a date agreed upon by the parties; whichever is soonest)	
EU-SADC EPA	Products imported from EU into SACU listed in Annex IV (20 HS 8 tariff lines)	Volume trigger	Increase in duty which do not exceed 25% of the WTO bound rate or 25 percentage points, but cannot exceed prevailing MFN applied rate	Remainder of the calendar implementation year or 5 months, whichever is longer	Transitional measure (12 years from the date of entry into force of the agreement)	Notification within 10 days after application to the EU and within 30 days to the Trade and Development Committee

Substantial and procedural requirements						
Agree-ments	Scope	Trigger	Measure	Application	Duration	Notification and Consultation
FU-Korea	Designated goods in Korea's schedule and Annex 3 (24 HS 10 tariff lines)	Volume trigger	Increase in duty must not exceed lesser of prevailing MFN rate or the MFN rate on the date before the entry into force of the agreement or the rate in Korea's schedule	Remainder of the implementation year which is 12 months from the date of entry into force of the agreement	Transitional measure (comes to an end when the period in Annex 3 comes to an end)	60 days after implementation written notification to the concerned parties and consultations can take place on request
Australia-China	Designated goods in China's schedule and Annex 2-B (6 HS8 tariff lines)	Volume trigger	Additional customs duty and any other duties may not exceed the lesser of the MFN rate when the safeguard is implemented or the base rate	Remainder of the implementation calendar year	Transitional measure (review in the last stage of application by the Committee on Trade and Goods. If found still necessary it will be reviewed every subsequent 6 years)	Written notice as far in advance as practicable, but at least within 10 days of implementation

Substantial and procedural requirements						
Agreements	Scope	Trigger	Measure	Application	Duration	Notification and Consultation
EU-Columbia and Peru	Goods in Annex IV (Columbia 26 HS10 tariff lines and Peru 29 HS10 tariff lines)	Volume trigger	Additional customs duty and any other duties may not exceed the lesser of the MFN rate when the safeguard is implemented or the base rate	Remainder of implementation calendar year	Transitional measure (comes to an end when products are subject to duty-free treatment or after expiry of the transitional period in Annex IV)	Written notification within 10 days after application and countries must enter into consultation regarding conditions of implementation
TPP	Products identified in Annexes (US-country and product specific measures and Japan-product specific measures)	Volume trigger	Additional customs duty must be the lesser of the MFN rate at the date the safeguard is implemented or the MFN rate in effect on the date immediately before the agreement comes into effect or the base rate	Remainder of the implementation year		Written notification to concerned party as soon as practicable after implementation and on request countries must enter into consultations regarding the application

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