



**Asia-Pacific
Economic Cooperation**

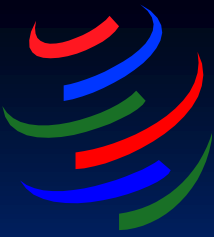
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RTA Safeguards Provisions in the APEC Region

Submitted by: WTO



**Workshop on Provisions of Regional Trade
Agreements and Free Trade Agreements in the
Asia-Pacific Region Concerning Safeguards,
Including Transitional Safeguards
Surabaya, Indonesia
10-11 June 2014**



RTA safeguards provisions in the APEC region

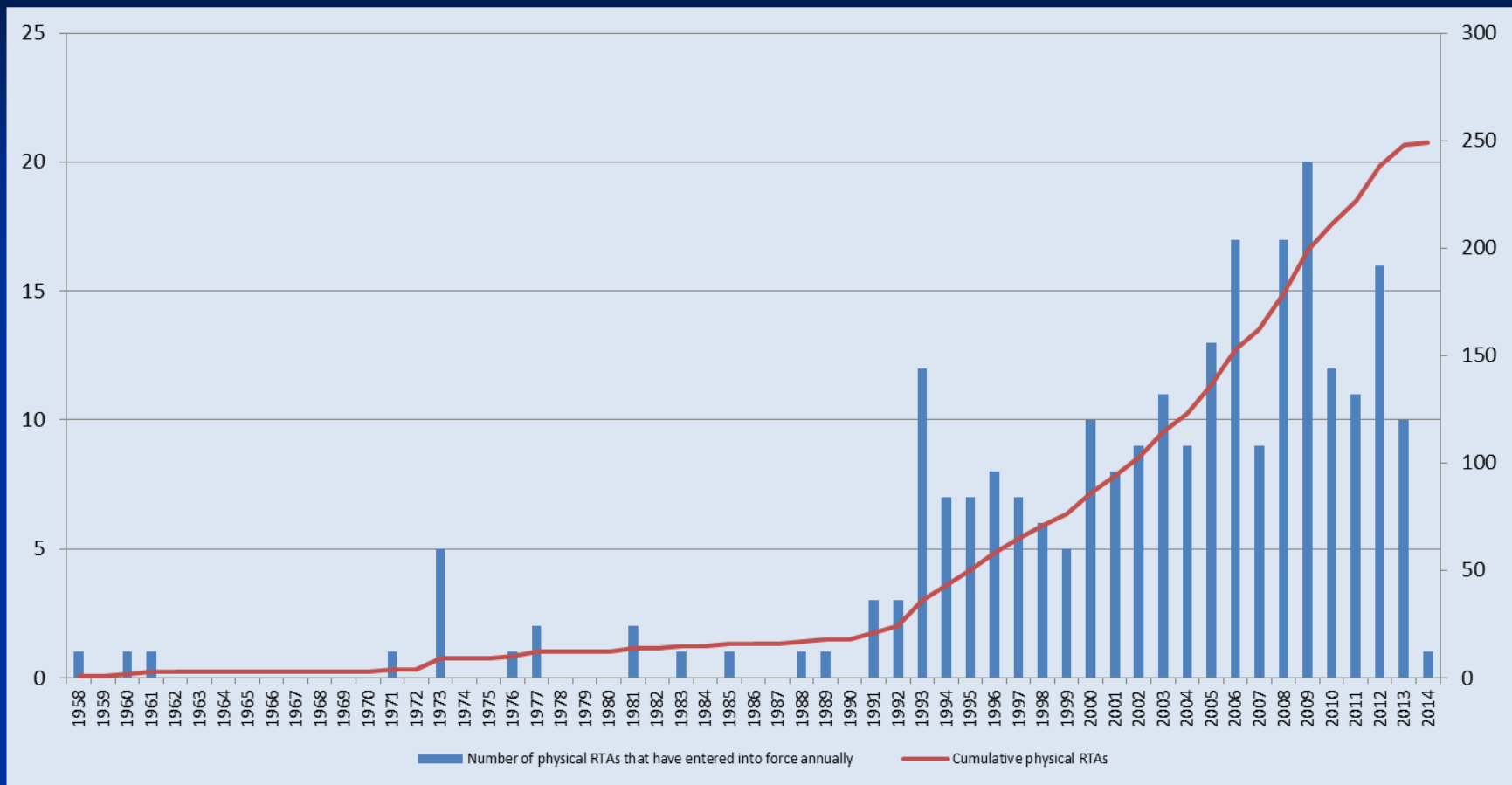
APEC Workshop on Provisions of RTAs in the
Asia Pacific Region concerning safeguards

Surabaya, 10-11 June 2014

Outline

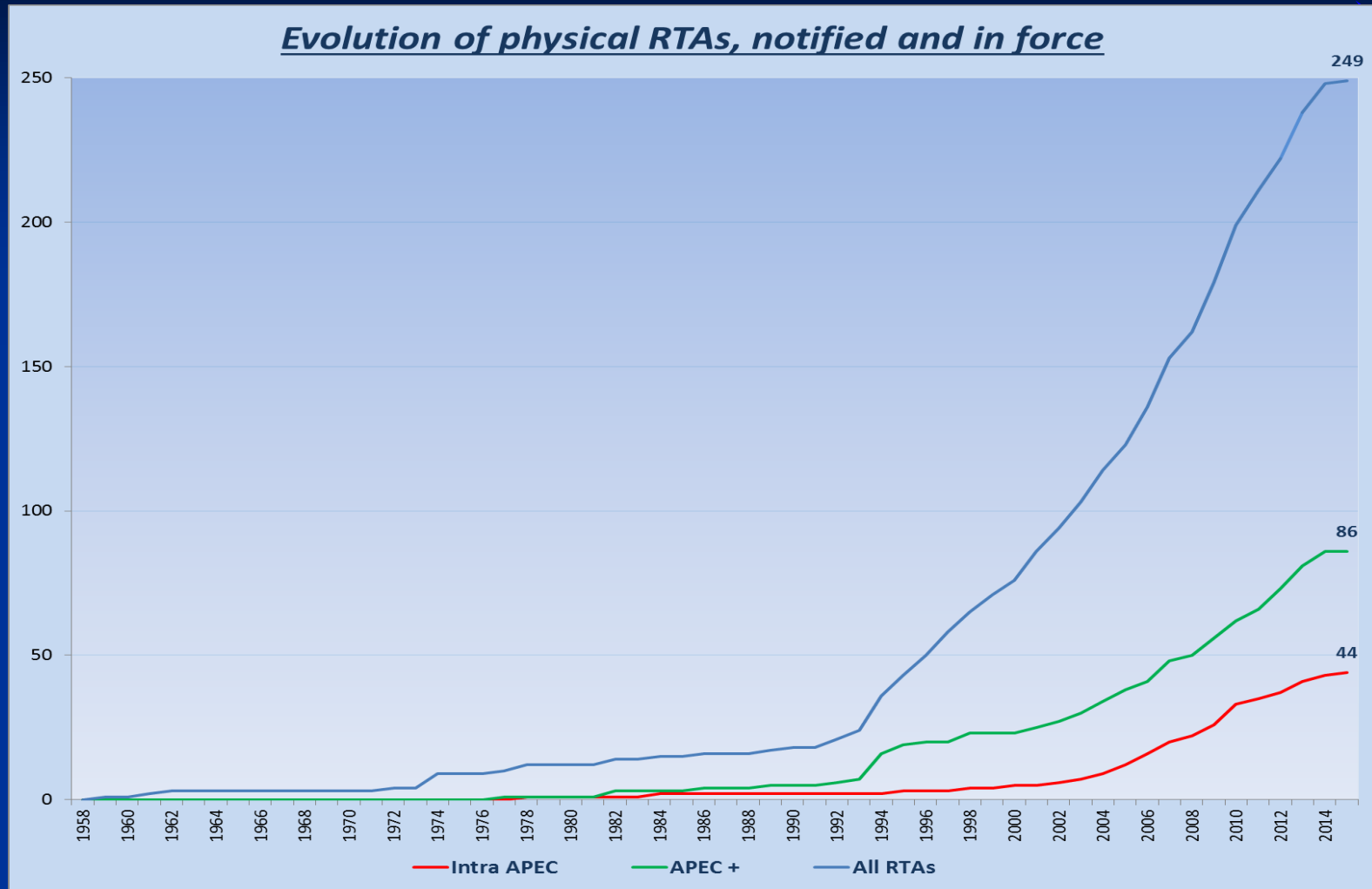
- Trends in APEC economies' RTAs
- Analysis of safeguard provisions in intra-APEC RTAs
 - Global safeguard provisions
 - Bilateral (or transitional) safeguard provisions
- Summary

RTA trends & characteristics

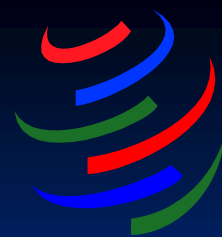


- As of May 2014, 249 RTAs have been notified to the GATT/WTO and are currently in force
- A number of RTAs are in force but not yet notified and many others are currently being negotiated

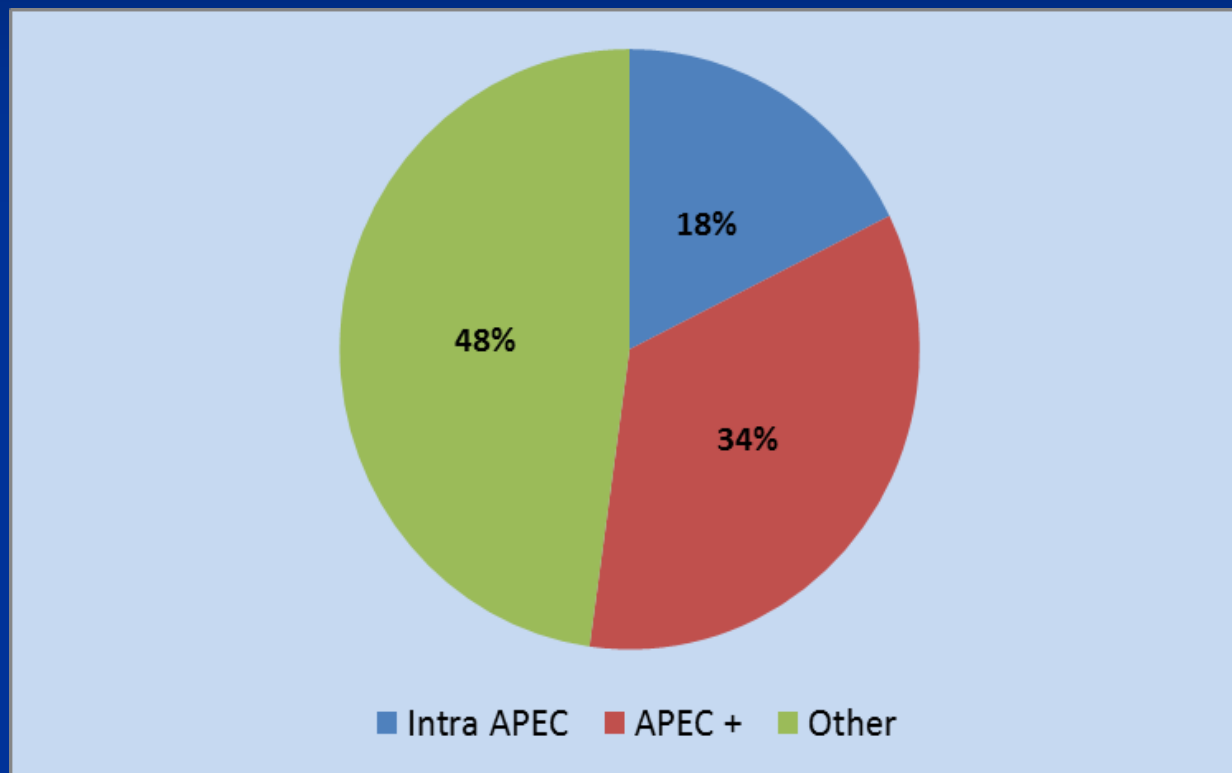
RTA proliferation among APEC economies



- RTAs involving APEC economies account for more than half of all notified RTAs in force

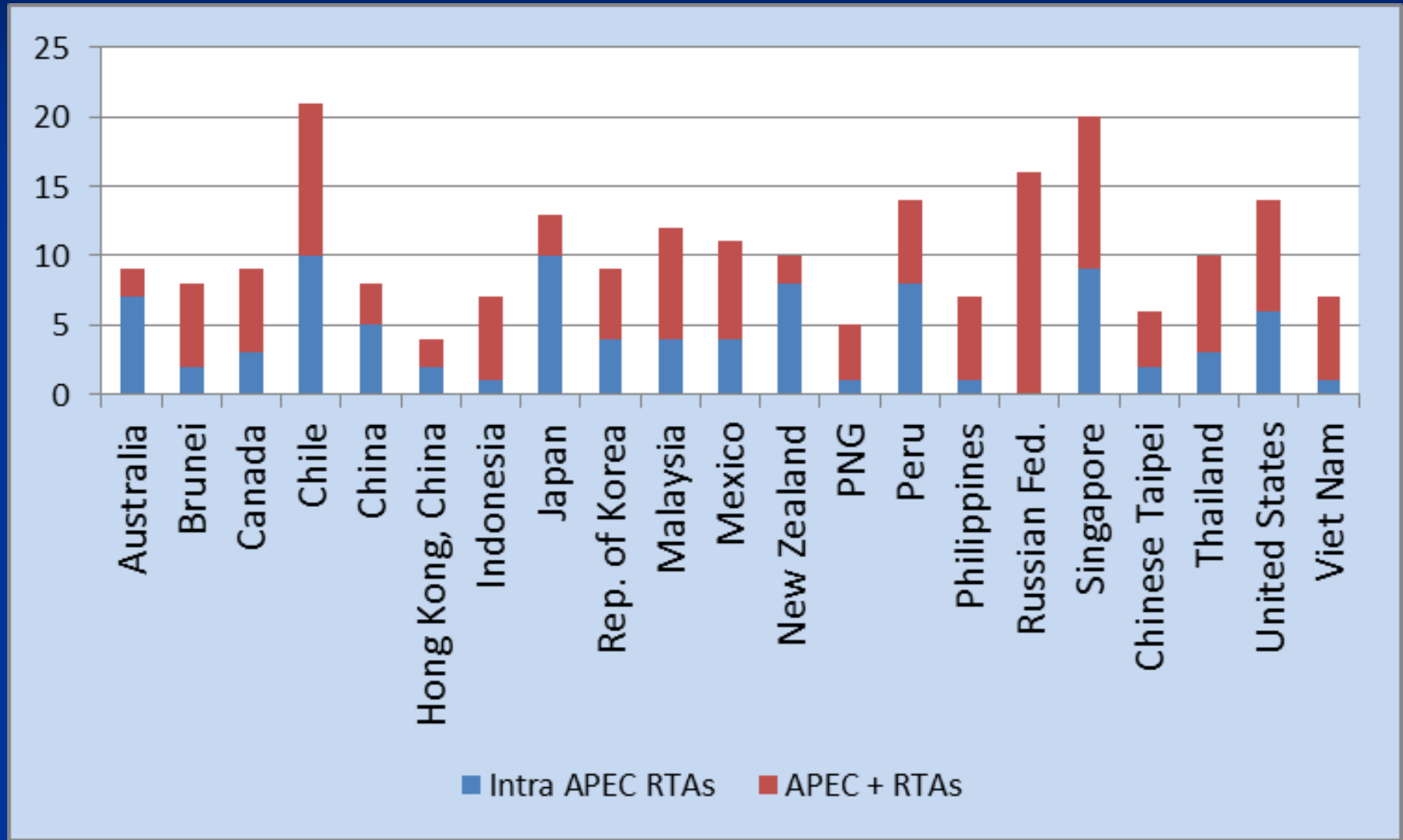


RTA proliferation among APEC economies



- Intra-APEC RTAs account for about a fifth of all notified RTAs
- RTAs between APEC economies and third parties (APEC +) account for an additional third of all notified RTAs

RTA proliferation among APEC economies



APEC Economies' RTAs in force



	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan	Rep. of Korea	Malaysia	Mexico	New Zealand	PNG	Peru	Philippines	Russian Fed.	Singapore	Chinese Taipei	Thailand	United States	Viet Nam	
Australia	Diagonal			Blue						Blue		Blue					Blue			Blue		
Brunei		Diagonal		Blue				Blue									Blue					
Canada			Diagonal	Blue							Blue			Blue						Blue		
Chile	Blue	Blue	Blue	Diagonal	Blue			Blue	Blue	Blue	Blue	Blue		Blue			Blue			Blue		Blue
China				Blue	Diagonal	Blue						Blue		Blue			Blue	Blue				
Hong Kong, China				Blue		Diagonal						Blue										
Indonesia							Diagonal	Blue														
Japan		Blue		Blue				Diagonal		Blue	Blue			Blue	Blue		Blue		Blue	Blue		Blue
Rep. of Korea				Blue					Diagonal					Blue			Blue			Blue		
Malaysia	Blue			Blue						Diagonal		Blue										
Mexico			Blue	Blue				Blue			Diagonal			Blue						Blue		
New Zealand	Blue	Blue	Blue	Blue	Blue	Blue				Blue		Diagonal					Blue	Blue	Blue	Blue		
PNG	Blue												Diagonal									
Peru			Blue	Blue	Blue			Blue	Blue		Blue			Diagonal			Blue		Blue	Blue		Blue
Philippines								Blue							Diagonal							
Russian Fed.																Diagonal						
Singapore	Blue	Blue		Blue	Blue			Blue	Blue		Blue			Blue			Diagonal	Blue	Blue	Blue		Blue
Chinese Taipei					Blue							Blue						Diagonal				
Thailand	Blue							Blue	Blue		Blue			Blue					Diagonal			
United States	Blue		Blue	Blue					Blue		Blue			Blue			Blue			Diagonal		
Viet Nam				Blue				Blue	Blue												Diagonal	

Intra-APEC RTAs (44)

APEC economy (No. of RTAs)	APEC economy (No. of RTAs)
Australia (7)	New Zealand (8)
Brunei Darussalam (2)	Papua New Guinea (1)
Canada (3)	Peru (8)
Chile (10)	Philippines (1)
China (5)	Russian Federation (0)
Hong Kong, China (2)	Singapore (9)
Indonesia (1)	Chinese Taipei (2)
Japan (10)	Thailand (3)
Korea (4)	United States (6)
Malaysia (4)	Viet Nam (1)
Mexico (4)	

Intra-APEC RTAs (44) - characteristics

- Most are recent RTAs (5 predate 1990, 28 are from period 2000-09, 11 from 2010-14)
- Most are bilateral RTAs (exceptions are NAFTA, Transpacific SEP)
- All APEC economies except Russia have RTAs with other APEC members

Safeguards Provisions in intra-APEC RTAs (44)

- Singapore-Australia and Singapore-New Zealand permit neither bilateral nor global safeguards
- Five RTAs have no bilateral safeguard provisions (Australia-Chile, Korea-Chile*, New Zealand-HKC, New Zealand-Chinese Taipei, and Transpacific SEP)
- In CER and NAFTA, safeguard measures may no longer be applied (in NAFTA only with consent)
- In those RTAs where safeguards are permitted, the RTA text often follows the structure of the WTO's Safeguards Agreement (SGA)

* except for agricultural goods

Global Safeguard Provisions in intra-APEC RTAs

Application of global safeguard measures to RTA parties

- How are imports from RTA parties treated in the application of a global safeguard measure?
- What do the WTO rules on safeguards say about RTAs?

Global Safeguards Provisions in intra-APEC RTAs (44)

Issue	No. of RTAs
No provisions on global safeguards	3
Neither party may take safeguard measures against the other from RTA's entry into force	2
Retains rights and obligations under GATT Art. XIX and WTO Safeguards Agreement, without substantive changes (sometimes enhanced notification requirements)	21
Imports from an RTA partner "may be excluded" from a global safeguard measure <u>if</u> such imports are not a substantial cause of serious injury	12
Imports from an RTA partner "shall be excluded" from a global safeguard measure <u>unless</u> such imports account for a substantial share of total imports	6
Total	44

Global Safeguards Provisions in intra-APEC RTAs (44): a sample

APEC economy (no. of intra-APEC RTAs)	Retains rights and obligations under WTO (no substantive changes)	Partner imports "may be excluded" if ...	Partner imports "shall be excluded" unless...	May not apply safeguard measures to RTA partner	No global safeguard provisions
Japan (10)	10				
Chile (10)	8		2		
Singapore (9)	4	3		2	
Peru (8)	3	4	1		
New Zealand (8)	1	3	2	1	1
Australia (7)	2	2		1	2
USA (6)	1	4	1		
China (5)	2	2			1

- Considerable variation in the approach to global safeguard provisions, even for a given country

The WTO Agreement on Safeguards (SGA): what does it say about RTAs?

- GATT Article XIX makes no mention of RTAs.
- Footnote 1 to Article 2 states that a customs union may apply a safeguard measure as a single unit or on behalf of a member state with all requirements for the determination of serious injury or threat thereof to be based, respectively, on the customs union as a whole, or on the member.
- Footnote 1 to Art. 2 further states that nothing in the SGA prejudices the interpretation of the relationship between Article XIX and GATT Article XXIV:8.
- Article 2.2 of the SGA states that “safeguard measures shall be applied to a product being imported irrespective of its source”.

The WTO Agreement on Safeguards: can it be applied selectively to RTA partners?

- Appellate Body has ruled in several instances on the “parallelism” issue, i.e. that if imports from RTA partners are included in the injury determination, then the safeguard measure must be applied to them.
- However, no definitive judgement on whether GATT Article XXIV permits selective application of global safeguard measures to RTA partners

Bilateral (or transitional) Safeguard Provisions in intra-APEC RTAs

Application of bilateral or transitional safeguards within an RTA

- What do the WTO rules on RTAs say about intra-RTA safeguard measures?
- Trigger Mechanism and Investigation
- Type of safeguard measures found in intra-RTAs
- Length of measures
- Is use of the bilateral safeguard mechanism time-bound, i.e. tied to the RTA's transition period
- Retaliation and Compensation

What do WTO rules on RTAs say about safeguards?

- GATT Article XXIV:8 states that “duties and other restrictive regulations of commerce (except where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories...”
- Given that GATT Article XIX is not in the bracketed list of exceptions, are intra-RTA safeguards permitted among RTA parties?
- In other words, is the bracketed list of exceptions illustrative or definitive?

Bilateral Safeguard Provisions: Trigger Mechanism

- Most intra-APEC RTAs condition the application of safeguards on the reduction or elimination of duties under the RTA and increased imports that “cause or threaten to cause serious injury to the domestic industry” (as in the SGA) or are “a substantial cause of injury...”
- Most refer to an increase in imports in absolute terms or relative to domestic production (as in SGA). Exceptions include PATCRA, some of Japan’s RTAs and China-HKC where no reference is made to domestic production.

Bilateral Safeguard Provisions: Investigation

- Almost all intra-APEC RTAs make reference to conducting an investigation prior to imposing safeguard measures. Exceptions are PATCRA, China-HKC, China-Singapore
- Many RTAs make direct reference to conducting an investigation along the lines of Article 3 of the SGA (public notice of hearings, publishing a report setting out findings, provision of non-confidential summaries, completing the investigation within one year)

Types of bilateral safeguard measures: duties and QRs

- Most intra-APEC RTAs permit suspension of further duty reductions and a duty increase to a level not exceeding the lesser of the current MFN rate and the duty in force at EIF
- QRs are not listed as an option in most intra-APEC RTAs (Art. 5 of the SGA permits them)
- A few RTAs expressly prohibit the use of QRs as safeguard measures, e.g. Chile-China, Peru-China, China-Singapore, Peru-Korea, US-Chile, US-Peru
- Many of Japan's RTAs do not permit application of a bilateral safeguard measure up to the limit of quota quantities granted under TRQs in the RTA
- Considerable variation vis-à-vis SGA.

Types of bilateral safeguard measures: simultaneous application

- The majority of intra-APEC RTAs have a provision stating that a bilateral safeguard measure cannot be applied at the same time as a global measure on the same good

Types of bilateral safeguard measures: provisional measures

- In urgent situations, most intra-APEC RTAs allow provisional safeguard measures to be taken of 180-200 days duration* (SGA allows 200 days)
- Also, most RTAs provide for a refund if the subsequent investigation does not find that increased imports caused injury (as in the SGA)

* In Thailand-New Zealand, 120 days

Duration of bilateral safeguard measures: length of measures

- Considerable variation is found in intra APEC RTAs
- Lack of a systematic approach, but less than SGA
- Measures can be applied for a period of 1-5 years (WTO SGA permits 4 plus 4 years, plus 2 years for developing countries)

Length of measure plus extension (in years)	No. of RTAs
1 (no extension)	1
1+1	1
1+2	2
2+1	10
2+2	6
3 (no extension)	4
3+1	7
3+2	2
4+1	1
Not specified	2
Total	36

Duration of measures: progressive liberalization, reapplication

- Most intra-APEC RTAs provide for progressive liberalization of the safeguard measure, usually for measures lasting more than one year (as in SGA)
- About half of intra-APEC RTAs provide for re-application of the safeguard measure to the same good if certain conditions are fulfilled, e.g. shall not be reapplied for a period of time equal to the duration of the previous measure or one year, whichever is longer (period of non-application in the SGA is at least two years)
- In other RTAs, either the safeguard measure cannot be reapplied to the same good, or no specific reference to reapplication is made

Is use of the bilateral safeguard mechanism time-bound?

- Most intra-APEC RTAs provide for the use of a bilateral safeguard mechanism only during a specified transition period, though some allow its use beyond the TP with the other party's consent, e.g. US-Korea, Canada-Chile, NAFTA
- In a few RTAs, use of the mechanism does not appear to be time-bound, e.g. Canada-Peru, Peru-Chile, China-HKC, Korea-Singapore, Singapore-Chinese Taipei
- In Japan's RTAs*, the mechanism is not time-bound but the agreements provide for a review of the safeguard mechanism (5 -15 years after EIF)

* Except Japan-Singapore

Time-frame of the safeguard mechanism: a sample

RTA	Date of EIF	Use of bilateral safeguard mechanism permitted until*
Japan-Brunei	2008	not specified, subject to review 5 years after EIF
Canada-Peru	2009	7 years from EIF, i.e.2016
Chile-Japan	2007	not specified, subject to review 10 years after EIF
China-New Zealand	2008	Tariff elimination plus 2 years, i.e. 2021
US-Korea	2012	Tariff elimination, i.e. 2031, or longer with consent of both parties
New Zealand-Malaysia	2010	Tariff elimination plus 2 years, i.e. 2018
Peru-China	2010	Tariff elimination plus 5 years, i.e. 2031
Peru-Mexico	2012	Tariff elimination plus 3 years, i.e. 2026

* For the product with the longest transition period

Retaliation and Compensation

- Almost all intra-APEC RTAs provide for compensation to be paid and for suspension of equivalent concessions if compensation is not agreed upon (as in the SGA). Exceptions are PATCRA, China-HKC, and Peru-Chile
- However, most RTAs do not require a waiting period before the suspension of equivalent concessions can be activated (unlike the WTO SGA where the right of suspension cannot be exercised for the first three years a safeguard measure is in effect)

Other types of safeguards found in intra-APEC RTAs

- Most intra-APEC RTAs provide for safeguards in the event of balance of payments problems. Exceptions include Canada-Peru, China-HKC, US-Korea, US-Peru which have no provisions
- Some RTAs contain sector-specific safeguards, usually on agricultural products, e.g. Peru-Korea, Thailand-New Zealand, US-Australia. Such SSGs are often asymmetrical (to be used by only one Party) and subject to a volume or price trigger

Summary of intra-APEC safeguard provisions

- Most RTAs have safeguard provisions that closely mirror the WTO SGA but with certain nuances.
- In a global safeguard action, almost half of intra-APEC RTAs provide for imports from the RTA partner to be excluded (subject to conditions)
- In general, less flexibility than SGA in terms of measures that may be used in a bilateral safeguard (QRs often not permitted)
- The duration of measures including extension ranges from 1-5 years (less than the SGA)
- Most, but not all, RTAs limit use of the bilateral safeguard mechanism to a given transition period
- About half of RTAs surveyed do not permit reapplication of a safeguard to the same good
- Most RTAs do not require a waiting period before the suspension of concessions can be activated (if no agreement is reached on compensation)

The Russian Federation's RTAs

- Of its 16 notified RTAs, half are bilateral RTAs that will be superseded by the new CIS agreement which entered into force in 2012.
- Of the remaining 8 RTAs, half predate Russia's accession to the WTO (2012).
- Only a few of Russia's RTAs have safeguards provisions. They tend to be much less detailed than those found in intra-APEC RTAs and do not follow the structure of the WTO Safeguards Agreement.

RTAs and the WTO

Negotiations on RTAs mandated in the Doha Round are being held in the Negotiating Group on Rules (NGR):

- The Transparency Mechanism for RTAs
 - Applied provisionally since 14 December 2006
 - Must be reviewed and made permanent as part of the overall results of the Doha Round
- No significant recent movement on systemic issues (clarification of WTO rules on RTAs)
 - Membership divided on amending Article XXIV
 - WTO Secretariat has prepared a number of cross-cutting papers on RTAs
- No current negotiations on the WTO Safeguards Agreement

Thank you

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