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Safeguard and Free Trade Agreement

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**Workshop on Provisions of Regional Trade
Agreements and Free Trade Agreements in the
Asia-Pacific Region Concerning Safeguards,
Including Transitional Safeguards
Surabaya, Indonesia
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SAFEGUARD AND FREE TRADE AGREEMENT

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Asia-Pacific Region
Surabaya, 10-11 June 2014

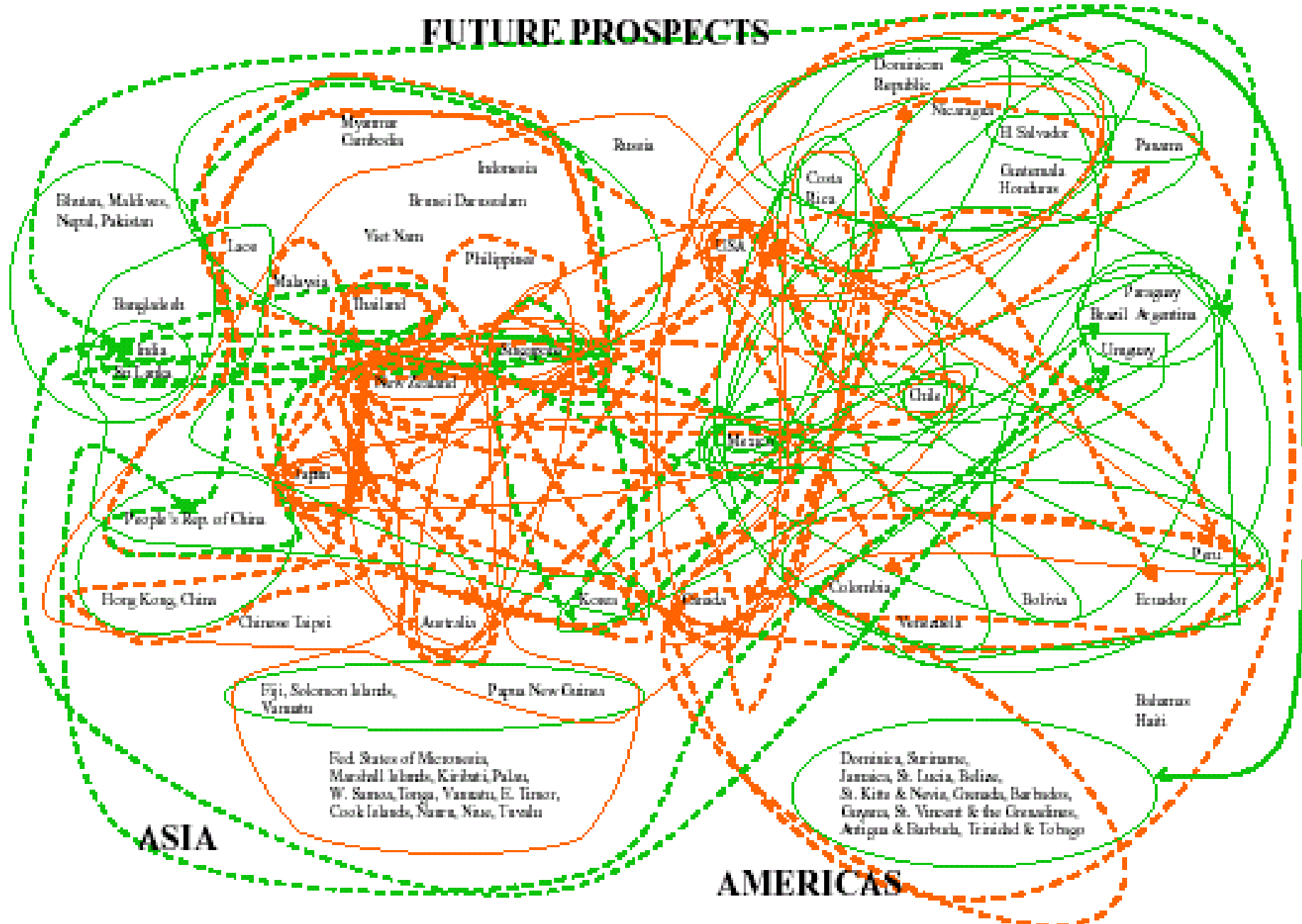
BACKGROUND

- International trade theory teaches us that trade is beneficial and that it can increase the economic welfare of the people. And as such trade should be increased as much as possible.
- This can be achieved if there are no trade impediments whatsoever. But in the world there is no free trade at all, even in the most liberal economy.
- All economies want to export as much as possible, but restraint imports to the minimum. This is expressed in the macro-economic theory where
$$Y = C + I + G + (X - M)$$

Exports are said to have a positive value to the economy, while imports effect the economy negatively through leakages to other countries.

- It is not correct to say that imports will harm an economy, on the contrary imports also give value added to the economy. Imports provide an economy with goods and services that are not being produced in the Economy or are not available (machines, raw materials and intermediate products), better and cheaper products. It gives also value added to economy through distribution activities, transportation, insurance, banking, imported material that are needed to produce goods for exports, and other miscellaneous services.
- To increase the volume of trade, lately there is a proliferation of free trade arrangements. In total there are around some 400 arrangements all over the world forming the so-called spaghetti bowl.

FUTURE PROSPECTS



ASIA

AMERICAS

FREE TRADE AND TRADE DEFENSE MECHANISM

- The abolition of all import protection due to a free trade agreement will cause an increase in imports. Any particular product that is being imported in large amount into a Economy may cause injury to the domestic industry. In this case an economy has the right to take measures to protect its industry. There are three major trade defense measures: dumping, subsidies and safeguards.
- The case of dumping and subsidies is primarily about unfair trade practices. Safeguard is a case of fair trade and therefore it should be compensated for.
- According to comparative advantage theory, there are winning sectors and there are losing sectors, but the total effect is an increase in national welfare.

- Hence, trade defense measures and especially safeguard is an integral part of any free trade agreement.
- A safeguard is a measure to limit imports temporarily to protect a domestic industry.
- A member of the WTO shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side (Art. 11(b)). These are called “grey area” measures.
- The invocation of a safeguard measure is, in other words, working against the very basic principle of trade theory, namely comparative advantage, by allowing a losing sector to be protected.

- If a Economy has no free trade agreement, it is free to protect its domestic economy behind high tariff walls and other non-tariff measures. So, no safeguard measure is needed.
- Limiting the surge of large amounts of imports is not the problem, as long as the increase in exports is even bigger. Remember, trade is a reciprocal transaction, if a Economy limits imports from other member countries, vice versa the other countries will also limit the volume of exports from your Economy.

Characteristics of a safeguard measure

- It applies to a certain product.
- If a large amount of import of a particular product causes a serious injury or threat of such to the domestic industry, which must be proven through investigation.
- It can be applied for a certain period only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years unless it is extended under paragraph 2 (Art. 7). But it should not exceed eight years (par. 3). However, a developing Economy member shall have the right to extend the period of application for a period of up to two years beyond the maximum period (Art. 9.2)

- Under the WTO rules, tariffs are bound against further increases. So a Safeguard Measure is an exception and should be applied only temporarily.
- A member applying a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations as a means of trade compensation (Art. 8).
- A safeguard measure is not directed to a specific exporting Economy, but to all countries exporting that product (most favoured nation principle). This is not fair for countries that are not exporting in large amount.

- Safeguard measures shall not be applied against a product originating in a developing Economy member as long as its share of imports does not exceed 3 percent (Art. 9.1). (“de minimis” rule)
- A member shall immediately notify the Committee on Safeguards upon taking safeguard measures (Art. 12).
- Conclusion: it is not easy to undertake trade defense measures such as safeguard. (See Sykes)
- On the one side, safeguard measures become an “inefficient protectionism”. On the other side “... if formal safeguards actions become impractical because of legal impediments, WTO members may return to extra-legal alternatives , ...” (Sykes)

Variants of safeguard

- **Emergency safeguard** measures can be taken in the form of tariffs for a period of up to 200 days without compensation being offered provided that the measures are not definitely imposed. (Johnson: 15)
- **Transitional safeguard.** The transition period for a product shall begin from the date of entry into force of this Agreement and end five years from the date of completion of tariff elimination/reduction for that product. (ACFTA Art. 9.2)
- A Transitional Product-Specific Safeguard Mechanism is especially invoked against China. (Ahn)

- China's Accession Protocol provides for a transitional safeguard clause that other WTO Members can rely upon to limit imports from China. This clause is applicable for 12 years after China's accession. (Montaguti: 7)

- The **Special Safeguard Provision (SSG)** in the WTO's Agreement on Agriculture is an instrument that is regularly used by a number of developed countries to protect their agricultural sector. Most developing countries do not have access to the SSG. The **Special Safeguard Mechanism (SSM)** has been proposed by a large number of developing countries in the Doha Round so that they too can avail of a similar and an even more effective safeguard mechanism than the SSG. (South Centre)
- The SSG was provided only to 16 developed countries and 22 developing countries, and for a selected range of agricultural products. Thus far, it has mainly been the developed countries that have regularly used the SSG. (South Centre)
- In overall, the SSG is more favourable than the SSM.

CONCLUSION

- The Safeguard Measure is in reality not effective. Even if the case is brought to the Dispute Settlement Body of the WTO. (Ahn)
- Hence the number of Safeguard cases is very small.

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SG Initiations by Member and Sector																			
Reporting Member	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XV	XVI	XVII	XVIII	XX	Total
Argentina	0	1	0	0	0	0	0	0	0	0	0	1	0	0	2	1	0	1	6
Australia	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Brazil	0	1	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	1	4
Bulgaria*	0	0	0	0	0	3	0	0	0	0	0	0	0	3	0	0	0	0	6
Canada	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	1	0	0	3
Chile	3	3	1	1	0	0	1	0	0	0	1	0	0	2	0	0	0	1	13
China, P.R.	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Colombia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	3
Costa Rica	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Croatia	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Czech Republic*	0	0	0	3	0	2	0	0	0	0	0	1	0	3	0	0	0	0	9
Dominican Republic	0	0	0	0	0	0	0	0	0	2	2	0	1	0	0	0	0	0	5
Ecuador	0	0	0	0	0	1	1	0	1	1	0	1	3	0	0	0	0	0	8
Egypt	1	0	0	1	0	2	0	0	0	0	3	0	0	1	1	0	0	0	9
El Salvador	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Estonia*	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
European Union*	1	1	0	1	0	0	0	0	0	0	0	0	0	1	0	1	0	0	5
Hungary*	0	0	0	1	0	1	0	0	0	0	0	0	0	1	0	0	0	0	3
India	0	1	1	0	0	18	2	0	2	2	1	0	0	2	0	0	0	0	29
Indonesia	1	1	0	1	0	1	3	0	0	0	3	0	2	9	0	0	1	1	23
Israel	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	2
Jamaica	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Japan	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Jordan	0	0	0	3	2	1	0	0	0	0	0	1	4	3	2	0	0	0	16

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XV	XVI	XVII	XVIII	XX	Total
Korea, Rep. of	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	4
Kyrgyz Rep.	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Latvia*	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Lithuania*	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Malaysia	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Mexico	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	2
Moldova	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Morocco	0	1	0	0	0	0	2	0	0	0	1	0	1	1	0	0	0	0	6
Pakistan	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Panama	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Peru	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Philippines	0	0	0	1	1	1	0	0	0	1	0	0	4	1	0	0	0	0	9
Poland*	0	0	0	0	0	3	0	0	0	0	0	0	0	1	1	0	0	0	5
Russia	0	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0	3
Slovak Republic*	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Slovenia*	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
South Africa	0	0	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	0	3
Thailand	0	0	0	0	0	0	0	0	0	0	1	0	1	1	0	0	0	0	3
Tunisia	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	2
Turkey	0	0	0	0	1	3	1	1	0	0	1	1	2	0	3	1	3	0	17
Ukraine	0	0	0	0	1	3	1	0	0	0	0	0	1	2	1	1	0	0	10
United States	1	3	0	1	0	0	1	0	0	0	0	0	0	3	0	0	0	1	10
Venezuela	0	0	0	0	0	0	1	0	0	1	0	1	0	3	0	0	0	0	6
Viet Nam	0	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2
Totals for 29/03/1995 - 31/03/2013	18	18	4	21	6	43	14	1	4	7	16	7	23	42	15	7	4	5	255

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Jordan	1	0	8	0	0	1	1	1	2	0	1	0	1	0
Korea, Rep. of	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kyrgyz Rep.	0	0	0	0	0	0	0	0	0	2	1	0	0	0
Latvia*	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Lithuania*	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Malaysia	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Mexico	0	0	1	0	0	0	0	0	0	0	1	0	0	0
Moldova	0	0	0	1	1	0	0	0	0	0	0	0	0	0
Morocco	2	0	0	0	0	1	0	0	0	1	1	0	1	0
Pakistan	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Panama	0	0	0	0	0	0	1	0	0	0	0	0	0	0
Peru	0	0	0	0	1	0	0	0	0	1	0	0	0	0
Philippines	0	3	0	3	0	0	1	0	1	1	0	0	0	0
Poland*	1	0	4	0	0	0	0	0	0	0	0	0	0	0
Russia	0	0	0	0	0	0	0	0	0	0	0	0	3	0
Slovak Republic*	1	0	1	0	0	0	0	0	0	0	0	0	0	0
Slovenia*	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Africa	0	0	0	0	0	0	0	1	0	0	0	0	1	1
Thailand	0	0	0	0	0	0	0	0	0	0	1	0	2	0
Tunisia	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Turkey	0	0	0	0	5	0	5	3	1	1	0	1	1	0
Ukraine	0	0	0	0	0	0	0	2	1	2	3	2	0	0
United States	2	1	0	0	0	0	0	0	0	0	0	0	0	0
Venezuela	4	1	1	0	0	0	0	0	0	0	0	0	0	0
Viet Nam	0	0	0	0	0	0	0	0	0	1	0	0	1	0
Totals for 29/03/1995 - 31/03/2013	25	12	34	15	14	7	13	8	10	25	20	11	25	1

SG Initiations by Sector, 2000 - 2013

Sector	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
I	3	0	1	1	1	0	1	1	0	2	1	0	1	0
II	3	2	1	0	2	1	0	0	0	1	0	0	3	0
III	1	0	1	0	0	0	0	0	0	0	0	0	1	0
IV	4	3	3	3	0	1	0	0	1	1	0	0	3	1
V	0	1	0	1	0	0	1	0	1	0	1	1	0	0
VI	5	0	8	2	2	1	1	1	2	6	2	1	4	0
VII	3	0	0	1	0	0	1	1	0	1	0	3	1	0
VIII	0	0	0	0	0	0	0	1	0	0	0	0	0	0
IX	0	0	2	0	0	0	0	0	0	1	0	0	0	0
X	1	0	0	1	0	0	0	0	0	4	1	0	0	0
XI	1	0	0	0	1	0	0	0	2	3	4	2	3	0
XII	1	0	1	0	0	1	2	0	0	0	0	0	0	0
XIII	0	1	2	5	3	1	2	1	1	3	2	1	1	0
XV	2	4	12	1	0	0	0	1	2	3	7	2	6	0
XVI	0	0	3	0	3	0	4	1	1	0	1	0	1	0
XVII	1	0	0	0	0	1	1	0	0	0	1	1	0	0
XVIII	0	0	0	0	2	0	0	1	0	0	0	0	1	0
XX	0	1	0	0	0	1	0	0	0	0	0	0	0	0
Totals for 29/03/1995 - 31/03/2013	25	12	34	15	14	7	13	8	10	25	20	11	25	1

SG Measures by Member and Sector

Reporting Member	I	II	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XV	XVI	XVII	XVIII	XX
Argentina	0	1	0	0	0	0	0	0	0	0	1	0	0	1	1	0	0
Brazil	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bulgaria*	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0
Chile	2	2	1	0	0	0	0	0	0	1	0	0	1	0	0	0	0
China, P.R.	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Croatia	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Czech Republic*	0	0	3	0	1	0	0	0	0	0	0	0	1	0	0	0	0
Dominican Republic	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ecuador	0	0	0	0	1	0	0	1	0	0	0	2	0	0	0	0	0
Egypt	1	0	0	0	1	0	0	0	0	1	0	0	0	1	0	0	0
European Union*	1	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Hungary*	0	0	1	0	1	0	0	0	0	0	0	0	1	0	0	0	0
India	0	1	0	0	12	1	0	0	0	0	0	0	0	0	0	0	0
Indonesia	1	0	1	0	0	1	0	0	0	3	0	1	6	0	0	0	0
Jordan	0	0	2	0	1	0	0	0	0	0	1	2	0	1	0	0	0
Korea, Rep. of	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kyrgyz Rep.	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Latvia*	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lithuania*	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Moldova	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Morocco	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Panama	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Philippines	0	0	0	1	0	0	0	0	1	0	0	4	1	0	0	0	0
Poland*	0	0	0	0	2	0	0	0	0	0	0	0	1	1	0	0	0
Slovak Republic*	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
South Africa	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Thailand	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Turkey	0	0	0	1	2	1	1	0	0	1	1	0	0	3	1	2	0
Ukraine	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0
United States	1	1	0	0	0	0	0	0	0	0	0	0	3	0	0	0	1
Totals for 29/03/1995 - 30/04/2012	10	9	12	2	25	4	1	1	1	8	3	11	18	7	2	2	2

SG Measures by Reporting Member, 2000 - 2013

Reporting Member	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Argentina	0	2	0	0	0	0	0	1	0	0	0	0	0	0	4
Brazil	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Bulgaria*	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Chile	2	1	2	0	0	1	1	0	0	0	0	0	1	0	8
China, P.R.	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Croatia	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Czech Republic*	0	1	1	2	0	0	0	0	0	0	0	0	0	0	5
Dominican Republic	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Ecuador	0	1	0	1	1	0	0	0	0	0	1	0	0	0	4
Egypt	1	1	0	0	0	0	0	0	1	0	0	0	1	0	5
European Union*	0	0	1	0	1	1	0	0	0	0	0	0	0	0	3
Hungary*	0	0	0	3	0	0	0	0	0	0	0	0	0	0	3
India	1	0	2	0	0	1	0	0	0	3	0	1	2	0	15
Indonesia	0	0	0	0	0	0	1	0	0	2	0	7	3	1	14
Jordan	0	1	1	2	0	1	0	1	0	0	1	0	0	1	8
Korea, Rep. of	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Kyrgyz Rep.	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Latvia*	0	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Lithuania*	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Moldova	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Morocco	0	1	0	0	0	0	1	0	0	0	0	0	0	0	2
Panama	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Philippines	0	0	1	1	3	0	0	0	0	1	0	1	0	0	7
Poland*	0	0	0	4	0	0	0	0	0	0	0	0	0	0	4
Slovak Republic*	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
South Africa	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Thailand	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Turkey	0	0	0	0	0	2	4	1	4	1	0	1	0	0	13
Ukraine	0	0	0	0	0	0	0	0	1	1	0	0	0	0	2
United States	2	0	1	0	0	0	0	0	0	0	0	0	0	0	6
Totals for 29/03/1995 - 31/03/2013	7	9	14	15	6	6	7	5	6	10	4	11	7	2	123

SG Measures by Sector, 2000 - 2013

Sector	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
I	0	2	0	1	0	1	1	0	0	1	0	0	1	0
II	2	2	1	0	0	2	0	0	0	1	0	0	1	0
IV	0	3	3	2	2	0	0	0	0	1	0	0	0	0
V	0	0	0	1	0	0	1	0	0	0	0	0	0	0
VI	1	1	3	5	0	2	0	1	0	5	0	1	2	0
VII	0	0	0	0	0	0	0	1	0	0	0	1	1	0
VIII	0	0	0	0	0	0	0	0	1	0	0	0	0	0
IX	0	0	0	1	0	0	0	0	0	0	0	0	0	0
X	0	0	0	0	0	0	0	0	0	0	0	1	0	0
XI	1	0	0	0	0	0	0	0	2	0	2	3	1	0
XII	0	0	0	0	0	0	1	1	0	0	0	0	0	0
XIII	0	0	1	1	4	0	2	0	0	0	2	1	0	0
XV	2	0	5	3	0	0	0	0	1	2	0	4	1	2
XVI	1	0	1	1	0	0	2	1	1	0	0	0	0	0
XVII	0	1	0	0	0	0	0	1	0	0	0	0	0	0
XVIII	0	0	0	0	0	1	0	0	1	0	0	0	0	0
XX	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Totals for 29/03/1995 - 31/03/2013	7	9	14	15	6	6	7	5	6	10	4	11	7	2