



**Asia-Pacific
Economic Cooperation**

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Experiences in Implementation of Safeguards and Transitional Safeguards from Business Perspective

Submitted by: Indonesia



**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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Trade Remedies In General (1)

- ❖ **Anti Dumping – Anti Dumping Agreement (ADA) GATT (Article VI)**
- ❖ **Subsidies and Countervailing Measures – Agreement on Subsidies and Countervailing Measures GATT 1994**
- ❖ **Safeguards – Agreement on Safeguards GATT 1994**
- ❖ **Members have the right to apply trade remedies in the form of anti-dumping duty, countervailing measure or safeguard measure.**

Trade Remedies in General (2)

- ❖ **Anti Dumping → Unfair Trade**
- ❖ **Anti Subsidies → Unfair Trade**
- ❖ **Safeguards-→ fairly traded goods, non discrimination, for restructuring due to increased import causing serious injury/threat of serious injury→ 3% and 9% rule of exception for developing Economies.**

Trade Remedies In General (3)

- ❖ **AD Duties → Fixed or AD Valorem or Mixed or reference price**
- ❖ **AS Countervailing Duties → Fixed or AD Valorem or reference**
- ❖ **Safeguards Duties:**
 - **duties → AD Valorem and Fixed Mixed (Variable)**
 - **Quota**
 - **duties + quota**

Safeguard Measures (1)

- ❖ Extraordinary nature as emergency action (AB Report Argentine-Footwear para 94)
- ❖ Article 2.1 WTO Agreement on SG→Requirements:
 - a) Increased import (Sudden, Sharp, Recent, Significant: quantitative and qualitative) → AB Report Argentina-Footwear para 131 and 8.33;
 - b) Serious injury or Threat of Serious Injury (higher requirements than anti-dumping and ASCM);
 - c) Causality;
 - d) Non Attribution Factors; (separately assessed from causality)
 - e) Unforeseen Development (Article XIX GATT>> adequate and reasoned analysis>> base line on tariff reduction under WTO; and
 - f) Public Interest.

Need to submit restructuring plan

Safeguard Measure (2)

- ❖ **Like products / directly competitive**
 - 1. Physical characteristics**
 - 2. substitutability**
 - 3. Price**
 - 4. Manufacturing process**
 - 5. Mechanical properties**
 - 6. Chemical composition**
 - 7. Consumer perception**

4. Safeguard Measure (3)

- ❖ Duties: Advalorem, Fixed, Reference Price
- ❖ Quota (three average recent years unless justified reason ineffective)
- ❖ 10 Years → Developing Economies (review every three years)
- ❖ 8 Years → (review every three years) Developed Economies
- ❖ May be initiated after 2 years of the imposition of definitive safeguard measures or after one year if definitive SG measure is 180 days or less and not applied more than twice in 5 years application of SG Measure
- ❖ Provisional SG Measure (200 days max with possible refund.
- ❖ Preliminary determination->consultation

5. Safeguard Measure (4)

- ❖ **Definitive measure: consultation on the form of measure; compensation after three years or immediately if illegal → retaliation**
- ❖ **Provisional measure: 200 days max—possible refund → only tariff → preliminary determination critical circumstances (irreparable damage)→immediate consultation**
- ❖ **Commonly used recently among others India and Indonesia, Thailand**
- ❖ **Indonesia on going: wheat flour, wire rods, I section, Galvalume (aluminium-zinc Galvanised), Yarns for extension**
- ❖ **India on going: Fatty alcohol, Sodium di-chromate, Flexible Slabstock Polyol of molecular weight 3000 to 4000", Not Alloyed Ingots of Unwrought Aluminium, Bare Elastomeric Filament Yarn**
- ❖ **Rarely used now by the USA and the EU**

Implementation (1)

- ❖ **Protecting the domestic industry but may have adverse impact on the downstream and consumers**
- ❖ **Killing good and bad guys**
- ❖ **Protracted measures (8-10 years)**
- ❖ **No clear provision on the deadline to conclude the investigation (may be not more than 200 days after the imposition of provisional measure)**
- ❖ **Some Economies problem with statistics (too general while the product being investigated is specific)**

Implementation (2)

- ❖ **No prejudicial effect (HS Code is too broad while many exclusion is necessary → statistically not valid)**
- ❖ **Problem with administration of quota (registration requirement, import licensing or pre-shipment inspection)**
- ❖ **Sometimes combined with other trade remedies (anti-dumping)**
- ❖ **Problem in refund**
- ❖ **Determination of compensation (equal to the effect of safeguard measures)**

Safeguard Measures RTA

- ❖ Possible under the RTA Agreement
- ❖ Normally, implemented based on investigation according to the WTO Agreement on Safeguards
- ❖ Transitional limited for certain years after FTA concluded
- ❖ tariff → cannot be higher than MFN rate and can be in the form of suspension of concession
- ❖ At least never takes place with ASEAN and ASEAN-RTAs (Japan, Korea, India, Australia-New Zealand, China)
- ❖ Not implemented in case of Australia-NZ
- ❖ Global safeguard sometimes excluded: NAFTA, MERCOSUR, Turkey (yarn) → Permitted by Panel Argentina –footwear but reversed by AB
- ❖ Measures can go back to the most recent MFN rate during the RTAs negotiation

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- ❖ **Already low so that safeguard measures under RTAs would be no effective**
- ❖ **The types of measures that may be taken are not prescribed but could include tariff measures, quantitative restrictions or other measures.**
- ❖ **Normally, safeguard measure may be maintained for an initial period of up to 3 years and may be extended for a period not exceeding 1 year.**

Safeguard Initiations by Reporting Member

Safeguard Initiations by Reporting Member

Period: 01/01/1995 to 30/04/2014

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total	
	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	Initiations	
Argentina	0	0	1	1	0	1	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	6
Australia	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	2	0	0	4
Brazil	0	1	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	1	0	0	0	4
Bulgaria*	0	0	0	0	0	1	1	3	1	0	0	0	0	0	0	0	0	0	0	0	0	6
Canada	0	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	0	0	3
Chile	0	0	0	0	2	3	2	2	0	1	0	1	0	0	1	0	0	1	2	0	0	15
China, P.R.	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Chinese Taipei	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Colombia	0	0	0	0	1	0	0	0	0	2	0	0	0	0	0	0	0	0	4	0	0	7
Costa Rica	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	1	0	3

Continue

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total	
	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	Initiati	
	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	ons	
Croatia*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Czech Republic*	0	0	0	0	1	2	1	5	0	0	0	0	0	0	0	0	0	0	0	0	0	9
Dominican Republic	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	2	0	0	0	0	0	5
Ecuador	0	0	0	0	2	0	0	1	4	0	0	0	0	0	0	1	0	0	0	0	0	8
Egypt	0	0	0	1	1	1	0	0	0	0	0	0	0	1	0	0	1	4	0	0	0	9
El Salvador	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Estonia*	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
European Union*	0	0	0	0	0	0	0	1	1	1	1	0	0	0	0	1	0	0	0	0	0	5
Hungary*	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	3
India	0	0	1	5	3	2	0	2	1	1	0	0	0	1	10	1	1	1	3	4	4	36

Continue

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons
Indonesia	0	0	0	0	0	0	0	0	0	1	1	1	0	2	0	7	4	7	0	2	25
Israel	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	2
Jamaica	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Japan	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Jordan	0	0	0	0	0	1	0	8	0	0	1	1	1	2	0	1	0	1	0	0	16
Korea, Rep. of	1	2	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Kyrgyz Rep.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0	0	1	0	4
Latvia*	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2
Lithuania*	0	0	0	0	0	0	1	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	0	0	0	1	0	0	0	1

Continue

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons
Mexico	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	2
Moldova	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	2
Morocco	0	0	0	0	0	2	0	0	0	0	1	0	0	0	1	1	0	1	0	0	6
Pakistan	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Panama	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Peru	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2
Philippines	0	0	0	0	0	0	3	0	3	0	0	1	0	1	1	0	0	0	2	0	11
Poland*	0	0	0	0	0	1	0	4	0	0	0	0	0	0	0	0	0	0	0	0	5
Russia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	3
Slovak Republic*	0	0	0	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	3

Continue

Reporting Member	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total	
	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	Initiati ons	
Slovenia*	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
South Africa	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	1	0	0	3
Thailand	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	2	0	1	0	4
Tunisia	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	2
Turkey	0	0	0	0	0	0	0	0	0	5	0	5	3	1	1	0	1	0	1	0	0	17
Ukraine	0	0	0	0	0	0	0	0	0	0	0	0	2	1	2	3	2	0	1	0	0	11
United States	1	2	1	1	2	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10
Venezuela	0	0	0	0	0	4	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	6
Viet Nam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	2
Totals for 01/01/1995 -	2	5	3	10	15	25	12	34	15	14	7	13	8	10	25	20	11	24	18	8	279	



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THANK YOU