

FTAS AND SAFEGUARD NORMS: THEIR VARIATION AND COMPATIBILITY

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ABSTRACT

A variety of safeguard mechanisms under WTO agreements and FTAs are based on different rationales that perform different functions. The primary function of multilateral safeguards such as global safeguards and special safeguards is to accord temporary relief to domestic industries after an agreed level of trade liberalization is already complete. To accord such relief, WTO members enjoy a certain level of policy flexibility and discretion. The mutual exemption of the global safeguards application among FTA parties is not inconsistent with WTO rules, provided that the parallelism condition is met. An FTA party may also take safeguards against another party as long as the restriction level from those safeguards does not harm the requirement associated with eliminating barriers with respect to “substantially” all the trade.

On the other hand, bilateral safeguards under FTAs are designed to be mechanisms for adjusting the pace of further liberalization once FTA parties implement the tariff elimination plan. Because of this fundamental function, the “substantially all the trade” requirement under FTA provisions in the GATT represents the only relevant provision under which bilateral safeguard measures are

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disciplined. Any bilateral safeguards, which are applied to sectors subject to FTA tariff elimination during the tariff elimination period and within the limit of MFN tariff rates, are consistent with WTO rules. In drafting bilateral safeguards, FTA negotiators should consider these conditions of legitimacy.

Any overlapping application of many safeguards is not incompatible with WTO rules and practically possible. Given the possibilities of many forms of overlapping application, FTA negotiators may take effective legislative solutions by including FTA provisions that explicitly proscribe certain forms of unwanted overlapping applications.

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