

MODALITIES OF SECURING POLICY AUTONOMY IN PREFERENTIAL TRADE AGREEMENTS

*Tae Jung Park & Kil Won Lee**

ABSTRACT

After the collapse of multilateralism, states began concluding Preferential Trade Agreements with a rapid clip. However, balancing the benefits of liberalization with policy autonomy¹ became a challenging issue. A topic that has gained less attention thus far is how parties employ various carve-out devices to secure their policy

* Tae Jung Park, Assistant Professor, Department of Law, Incheon National University. (email: tjpark81@gmail.com) A formal legal expert in the International Legal Affairs Division of the Ministry of Justice, Republic of Korea, and a former investment and services chapters PTA negotiator in the Ministry of Trade, Industry and Energy, Republic of Korea. The views or opinions expressed herein are the author's alone and do not reflect the views or opinions of the Ministry of Justice or the Ministry of Trade, Industry and Energy of the Republic of Korea; Kil Won Lee, Associate Professor, SungKyunKwan University (SKKU) Law School (email: klee21@skku.edu) (corresponding author). We are grateful to Professor William J. Davey for his invaluable comments throughout the development of this paper. All remaining errors and misconceptions are entirely the authors' responsibility.

¹ "Regulatory power", "policy space", "sovereignty power", "regulatory space", and "policy autonomy" are interchangeably used in the literature. This article uses the term "policy autonomy" for the purpose of this article. For the definition of "policy autonomy", see Veijo Heiskanen, *The Regulatory Philosophy of International Trade Law*, 38(1) J. WORLD TRADE 1, 2-5 (2004); Michael Trebilcock & Robert Howse, *Trade Liberalization and Regulatory Diversity: Reconciling Competitive Markets with Competitive Politics*, 6(1) EUR. J. L. & ECON. 5, 28, 32 (1998); Robert Howse, *Democracy, Science, and Free Trade: Risk Regulation on Trial at the World Trade Organization*, 98(7) MICH. L. REV. 2329, 2329-30 (2000); Michael Ming Du, *Domestic Regulatory Autonomy Under the TBT Agreement: From Non-discrimination to Harmonization*, 6(2) CHINESE J. INT'L L. 269, 271-72 (2007); Michael Ming Du, *Autonomy in Setting Appropriate Level of Protection Under the WTO Law: Rhetoric or Reality?*, 13(4) J. INT'L ECON. L. 1077, 1077-78 (2010); Emily Reid, *Regulatory Autonomy in the EU and WTO: Defining and Defending Its Limits*, 44(4) J. WORLD TRADE 877, 900-01(2010).

autonomy while expanding their markets. This study is the first to introduce modalities of securing policy autonomy in preferential trade agreements. We used typology to analyze this phenomenon and examine the extent to which parties can secure policy autonomy in each modality. The article also explains the comparative advantages and disadvantages of each modality, and illustrates the complex and difficult nature of selecting modalities.

KEYWORDS: *policy autonomy, regulatory power, carve out devices, modalities, exceptions, reservation lists, side letters, general exceptions, TBT, security exceptions*