

## 1. Objective

The objective of this research is to organize and analyze actual safeguard measures applied by other WTO member countries and some relevant findings made by panels and the Appellate Body in the WTO.

## 2. Method

The data and information presented in the figure, and the table and statements below are taken from notifications to the Committee on Safeguards sent by member countries and WTO documents, such as reports of panels and the Appellate Body about safeguard measures and so on. We examined safeguard measures on agricultural products in more detail than industrial products.

## 3. Outline of the results

(1) The number of safeguard measures applied by WTO member countries per five years continued to decrease from 1980 to 1994, but it began to increase from 1995 to 2002 (see Fig. 1). Twenty safeguard measures on agricultural products were applied after 1995 when the Agreement of Safeguards (AS) came into effect.

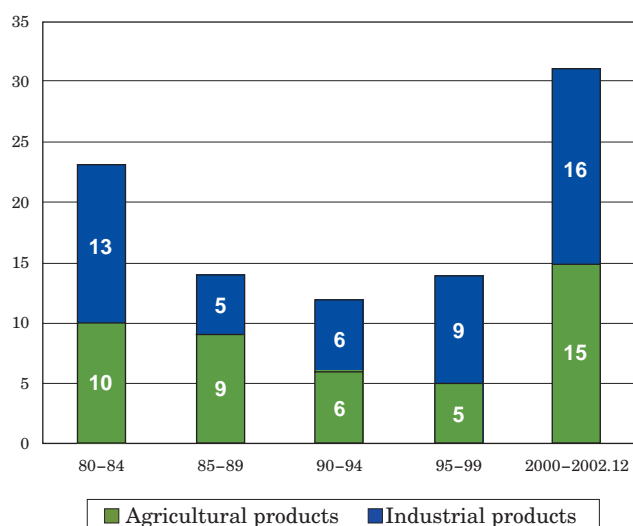


Fig.1. The Number of Safeguard Measures Applied by WTO Member Countries per Five Years (1980-2002)

(2) According to AS, WTO member may apply a safeguard measure to a product only if the member has determined that such product is being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. In addition, before

determining, the WTO member has to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular, the rate and amount of the increase in imports of the product concerned, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profit and losses, and employment. The actual situation of the relevant factors evaluated by WTO members in agricultural product cases is indicated in Table 1. In some cases, the rate and amount of the increase in imports or the share of the domestic market taken by increased imports decreases (indicated as minus sign). The other factors do not necessarily decrease together, and some factors are evaluated not quantitatively but only qualitatively. Moreover some factors are not evaluated at all.

(3) In agricultural product cases, three safeguard measures were discussed at panels and the Appellate Body, and they found all the measures to be inconsistent with the AS. The measures are applied on imports of certain dairy products by Korea, and wheat gluten and fresh, chilled or frozen lamb meat by the USA.

The chief points of contention and a summary of findings made by panels and the Appellate Body are stated below.

### a) The determination of the domestic industry

The determination of the domestic industry is based on the producers of the like or directly competitive products. The focus must be on the identification of the products, and their like or directly competitive relationship. Thus, when a safeguard measure is imposed on imports of raw material, domestic industry could only include the producers of the raw material, and couldn't include the producers of processed goods produced from the raw material.

### b) The determination of serious injury

The standard of review, set forth in the Understanding on Rules and Procedures Governing the Settlement of Disputes, which is appropriate to the examination of claims about the determination of a serious injury, has two elements. First, panels and the Appellate Body must review whether WTO members have evaluated all relevant factors, and, second, they must review whether WTO members have provided a reasoned and adequate explanation of how the facts support their determination.

**Table 1.** The Actual Situation of the Relevant Factors Evaluated by WTO Members in Agricultural Product Cases

Applying country	Product being imported	Like or directory competitive products	Increase in imports	Share of domestic market by imports	Sales	Production	Productivity	Capacity utilization	Profit and loss	Employment
Korea	Skimmed milk powder preparation	Raw milk/ Powdered milk	+	+	+	+	(+)	100%	-	-
Korea	Garlic	Garlic	+	+	-	+	+		-	-
USA	Wheat gluten	Wheat gluten	+	+	-	-	(-)	-	-	(-)
USA	Lamb meat	Lamb meat/Lamb	+	+	-	-	(stable)	-	-	(-)
Chile	Wheat/Wheat flour	Wheat	+/-			-			-	-
Chile	Sugar	Sugar/Beet	-			-			-	-
Chile	Edible vegetable oils	Colza oil/Colza	-			-			-	-
Chile	Powdered milk/ UHT-milk	Raw milk/ UHT-milk	+	-/+	+	stable			-	-
Chile	Fructose/ Fructose syrup	Sugar	+	+	-	+	+	+	-	-
Argentina	Canned peaches	Canned peaches	-		-	-	(-)	-	-	(-)
Brazil	Coconuts	Coconuts	+	+	-	-			-	-
Czech	Cane or beet sugar, and Sucrose	Sugar/Beet	+	+	-				-	-
Czech	Isoglucose	Sugar/Beet	+	+	-				(-)	-
Czech	Cocoa powder	Sugar	+	+	-				(-)	
Slovak	Cane or beet sugar, and Sucrose	Sugar/Beet	+	+	-	-		+	-	-
Latvia	Meat of swine	Swine	+	+	+	+	+	+	-	-
Lithuania	Non-dried pastry yeast	Non-dried pastry yeast	+	+	-	-	-	-	-	-
Jordan	Biscuit	Biscuit	+	+	-	-		-	(-)	-
Morocco	Banana	Banana	+	+	+	+	+		-	-
Egypt	Powdered milk	Raw milk	+		-				(-)	
Signs which indicate the injury to a domestic industry			+	+	-	-	-	-	-	-

Note: The sign "+" means upward trend, the sign "-" means downward trend, "( )" means qualitative evaluation, and blank means no evaluation.

### c) The determination of a causal link

When factors other than increased imports are causing injury to domestic industry at the same time, the determination about the existence of a causal link between increased imports and serious injury can be made after the effects of increased imports have been properly assessed, and this assessment follows the separation of the effects caused by other factors. The process of the determination must include a separation of the effects of the different causal factors. Judging from the findings made by panels and the Appellate Body, and the actual situation of the relevant factors evaluated by WTO members as described above, before we apply safeguard measures, it is essential for us to establish strict interpretations of the like or

directly competitive relationship of the products and to also establish methods of evaluating the relevant factors quantitatively and of assessing the effects of increased imports.

## 4. Related Publication

Katsumata K., T. Horikoshi, J. Nakagawa, I. Mamiya and Y. Naiki (2002.9) *Investigation Regarding Safeguard Measures Applied to Agricultural Products under the WTO Agreements*, The Document of PRIMAFF Research Project.

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