

Cambridge University Press  
978-1-107-07178-0 - The Challenge of Safeguards in the WTO  
Fernando Piérola  
Frontmatter  
[More information](#)

---

## THE CHALLENGE OF SAFEGUARDS IN THE WTO

*The Challenge of Safeguards in the WTO* provides a comprehensive overview of the safeguard mechanism in the multilateral trading system. It explains at length its historical and conceptual foundations and elaborates on the various requirements for the imposition of safeguards and the conduct of safeguard investigations. The author draws on his practical experience in order to analyse WTO case law as developed by WTO panels and the Appellate Body and to provide practical suggestions for the resolution of various complex issues that have arisen in practice. He also considers the challenges faced by companies involved in this type of cases.

FERNANDO PIÉROLA is Senior Counsel at the Advisory Centre on WTO Law (ACWL) in Geneva, Switzerland, and Lecturer in international trade law and dispute settlement at the University of Bern (World Trade Institute), the University of Lausanne and Saarland University (Europa-Institut). He also serves as arbitrator in international disputes under regional trade arrangements and is a regular commentator on international trade law issues.

Cambridge University Press  
978-1-107-07178-0 - The Challenge of Safeguards in the WTO  
Fernando Piérola  
Frontmatter  
[More information](#)

## CAMBRIDGE INTERNATIONAL TRADE AND ECONOMIC LAW

*Series Editors*

Dr Lorand Bartels, *University of Cambridge*  
Professor Thomas Cottier, *University of Berne*  
Professor William Davey, *University of Illinois*

As the processes of regionalization and globalization have intensified, there have been accompanying increases in the regulations of international trade and economic law at the levels of international, regional and national laws.

The subject matter of this series is international economic law. Its core is the regulation of international trade, investment and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labour, environment and culture, as well as sustainable development. These areas are vertically linked at the international, regional and national level, and the series extends to the implementation of these rules at these different levels. The series also includes works on governance, dealing with the structure and operation of related international organizations in the field of international economic law, and the way they interact with other subjects of international and national law.

*Books in the series*

*The Challenge of Safeguards in the WTO*

Fernando Piérola

*General Interests of Host States in International Investment Law*

Edited by Giorgio Sacerdoti, Pia Acconci, Mara Valenti and Anna De Luca

*The Law of Development Cooperation: A Comparative Analysis of the World Bank, the EU and Germany*

Philipp Dann

*WTO Disciplines on Subsidies and Countervailing Measures: Balancing Policy Space and Legal Constraints*

Dominic Coppens

*Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members*

Müslüm Yılmaz

*International Organizations in WTO Dispute Settlement: How Much Institutional Sensitivity?*

Marina Foltea

*Public Services and International Trade Liberalization: Human Rights and Gender Implications*

Barnali Choudhury

Cambridge University Press  
978-1-107-07178-0 - The Challenge of Safeguards in the WTO  
Fernando Piérola  
Frontmatter  
[More information](#)

---

*The Law and Politics of WTO Waivers: Stability and Flexibility in Public International Law*

Isabel Feichtner

*African Regional Trade Agreements as Legal Regimes*

James Thuo Gathii

*Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals*

Christiane R. Conrad

*Non-Discrimination in International Trade in Services: 'Likeness' in WTO/GATS*

Nicolas Diebold

*The Law, Economics and Politics of Retaliation in WTO Dispute Settlement*

Edited by Chad P. Bown and Joost Pauwelyn

*The Multilateralization of International Investment Law*

Stephan W. Schill

*Trade Policy Flexibility and Enforcement in the WTO: A Law and Economics Analysis*

Simon A. B. Schropp

Cambridge University Press

978-1-107-07178-0 - The Challenge of Safeguards in the WTO

Fernando Piérola

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-07178-0 - The Challenge of Safeguards in the WTO

Fernando Piérola

Frontmatter

[More information](#)

---

# THE CHALLENGE OF SAFEGUARDS IN THE WTO

FERNANDO PIÉROLA



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-07178-0 - The Challenge of Safeguards in the WTO  
Fernando Piérola  
Frontmatter  
[More information](#)

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107071780](http://www.cambridge.org/9781107071780)

© Fernando Piérola 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by Clays, St Ives plc

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Piérola, Fernando, 1975– author.

The challenge of safeguards in the WTO / Fernando Piérola.

Includes bibliographical references and index.

ISBN 978-1-107-07178-0 (hardback)

1. World Trade Organization.
2. Foreign trade regulation.
3. Tariff – Law and legislation.
4. Abuse of rights.

II. Title: The challenge of safeguards in the World Trade Organization.

K4610.P54 2014

382'.92–dc23

2014020709

ISBN 978-1-107-07178-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

## CONTENTS

<i>List of figures</i>	page xvii
<i>Preface</i>	xix
<i>GATT/WTO dispute settlement reports</i>	xxi

<b>PART I</b>	<b>Foundation of the safeguard mechanism</b>	<b>1</b>
<b>1</b>	<b>History of the safeguard mechanism</b>	<b>3</b>
1	Introduction of the safeguard mechanism	3
1.1	General context	3
1.2	The Atlantic Charter	4
1.3	The new economic order after the Second World War	5
1.4	Negotiating history of the safeguard clause	5
1.4.1	US proposals of 1945	5
1.4.2	The Suggested Charter	7
1.4.3	Preparatory Committee negotiations	9
1.4.4	London discussions	9
1.4.5	The initiative of the GATT	16
1.4.6	New York redrafting	17
1.4.7	Geneva discussions: the GATT safeguard clause	18
1.4.8	The Havana Conference	22
1.5	ITO failure and the ‘provisional’ application of the GATT over forty-seven years	23
2	The GATT: objectives, disciplines, exceptions	25
2.1	Object and purpose	25
2.2	Basic obligations	25
2.3	Exceptions	27
2.4	Dispute settlement	29
3	Article XIX: the safeguard clause	29
3.1	Article XIX:1(a) – the clause	31
3.2	Article XIX:1(b) – safeguard for tariff preferences	31
3.3	Article XIX:2 – transparency	32

3.4	Article XIX:3 – retaliation	32
3.5	Summary of overall structure	33
4	From the GATT up to the Uruguay Round	34
4.1	Post-GATT refinements and application	34
4.2	Operation of Article XIX during the GATT 1947 period	36
4.3	Disputes on safeguards during the GATT 1947 period	40
4.3.1	<i>United States – Fur Felt Hats</i> (complaint by Czechoslovakia)	42
4.3.2	<i>United States – Dried Figs</i> (complaints by Greece and Turkey)	47
4.3.3	<i>United States – Spring Clothespins</i> (complaint by Denmark and Sweden)	48
4.3.4	<i>Norway – Textile Products</i> (complaint by the United Kingdom (for Hong Kong))	48
4.3.5	<i>Switzerland – Table Grapes</i> (complaint by the EEC)	50
4.4	Concerns raised during the GATT 1947 period	50
4.4.1	Discriminatory application of safeguards	50
4.4.2	Market disruption	52
4.4.3	Grey-area measures	54
4.4.4	Clarification of requirements and establishment of procedural rules	55
4.5	Attempts to establish new rules on safeguards	56
5	Negotiating history of the WTO Agreement on Safeguards	57
5.1	Punta del Este Mandate	57
5.2	Negotiation process: structure and initial steps	60
5.3	The First Draft Agreement (June 1989)	61
5.3.1	Content	61
5.3.2	Follow-ups	65
5.4	The Second Draft Agreement (January 1990)	65
5.4.1	Content	65
5.4.2	Follow-ups	66
5.5	The Third Draft Agreement (July 1990)	67
5.5.1	Content	67
5.5.2	Follow-ups	70
5.6	The Fourth Draft Agreement (October 1990)	70
5.6.1	Content	70
5.6.2	Follow-ups	72
5.7	The Fifth Draft Agreement (June 1991)	72
5.7.1	Content	72



## CONTENTS

ix

5.7.2 Follow-ups	73
5.8 The Sixth Draft Agreement (December 1991)	73
5.9 The Secretariat's suggested corrections	74
6 Conclusion on the negotiating history of the safeguard mechanism	75
7 Operation of the safeguard mechanism during the WTO period (1995–2013)	76
<b>2 The rationale of the safeguard mechanism</b>	<b>83</b>
1 Flexibility	83
1.1 Expectations and transaction costs	84
1.2 <i>Rebus sic stantibus</i>	86
1.3 Practical problems and usefulness of the safeguard mechanism	88
2 Compensation and adjustment	89
2.1 Efficiency counter-argument	89
2.2 Compensation	91
2.3 Industrial adjustment	93
3 Political valve and institutional channel	95
4 Conclusion on the rationale for the safeguard mechanism	97
<b>PART II Right to apply a safeguard</b>	<b>99</b>
<b>3 Period of investigation and products at issue</b>	<b>101</b>
1 Period of investigation	101
1.1 Significance	101
1.2 Legal guidance	103
1.2.1 POI focused on the most recent past	103
1.2.2 POI long enough to suit the facts	105
1.2.3 POI should include most recent data available	107
1.2.4 POI segments should be free of manipulation or bias	108
1.2.5 POI should not be based on fragmented periods	108
1.2.6 Could guidance be drawn from the recommendations of the WTO Committee on Anti-Dumping Practices?	108
1.3 Practical remarks	110
2 Products at issue	111
2.1 The investigated product	111
2.1.1 Significance	111
2.1.1.1 Legal implications	111
2.1.1.2 Business considerations	113

2.1.1.2.1	Horizontal coverage	114
2.1.1.2.2	Vertical coverage	115
2.1.2	The question of the legal standard	116
2.2	The domestic like or directly competitive products	120
2.2.1	Like products	123
2.2.1.1	Criteria for the determination of likeness	125
2.2.1.1.1	Properties, quality, nature and physical characteristics of the products	126
2.2.1.1.2	Consumers' tastes and habits	127
2.2.1.1.3	End uses	129
2.2.1.1.4	Tariff classification	129
2.2.1.2	Evaluation of likeness	130
2.2.2	Direct competitiveness	131
2.2.3	The burden of establishing likeness or direct competitiveness	134
2.3	The order of analysis: investigated product or like or directly competitive product?	135
<b>4</b>	<b>Unforeseen developments and the effect of GATT obligations</b>	<b>136</b>
1	Relationship between unforeseen developments and the effect of GATT obligations and the other requirements for the imposition of a safeguard	136
1.1	Coexistence of Article XIX:1(a) with the AS	136
1.2	Unforeseen developments and effect of GATT obligations as circumstances and not as conditions for the imposition of a safeguard	140
1.3	Logical connection and the question of causation	140
1.4	Reasoned and adequate conclusions on unforeseen developments and the effect of GATT obligations	142
2	Unforeseen developments	143
2.1	Meaning	143
2.2	Function	146
2.3	Operative aspects of unforeseen developments	147
2.4	Types of developments that have been discussed in case law	152
3	Effect of GATT obligations incurred, including concessions	157
3.1	Rationale	157
3.2	Scope	159

## CONTENTS

xi

3.3	Could the effect of the obligations include the MFN obligations?	161
3.4	Discussion of the requirement in WTO disputes	162
<b>5</b>	<b>Increase in imports</b>	<b>163</b>
1	Definition of ‘imports’, data gathering and the measurement of imports	163
1.1	Relevant imports	164
1.1.1	Entries into export-processing zones	164
1.1.2	Exclusion of imports made by domestic producers	165
1.1.3	Exclusion of imports because of their negligibility	166
1.1.4	Exclusion of imports unrelated to the unforeseen developments or the effect of GATT obligations?	166
1.2	Challenges in gathering import data	168
1.3	Measurement in terms of volume vs. value	170
1.4	Challenges in measuring volumes	171
1.5	Increase in imports	171
1.6	Absolute increase in imports	172
1.6.1	Recent, sudden, sharp and significant increases, and Article 4.2(a) of the AS	172
1.6.2	Assessment of trends	173
1.6.3	Baseline	174
1.6.4	Recent past against overall POI	176
1.6.5	Comparisons of segments	178
1.6.6	The measurement of the ‘increase’	178
1.7	Relative increase in imports	179
2	Increase in imports and retaliation	180
3	Increase in imports and evolution of prices	181
<b>6</b>	<b>Serious injury</b>	<b>183</b>
1	Domestic industry	183
1.1	Strategic incentives shaped by the definition of domestic industry	184
1.1.1	Definition	185
1.1.1.1	Relevant producers	188
1.1.1.1.1	Minimum production threshold	189
1.1.1.1.2	Geographical location of producers	190

	1.1.1.1.3 Domestic producers at the supranational level	191
	1.1.1.2 Number of producers: 'all' or a 'major proportion'	193
	1.1.1.3 Lack of standing rules for the initiation of a safeguard investigation	195
	1.1.1.4 The domestic industry as the basis for the injury analysis	196
2	Serious injury	197
2.1	Meaning of serious injury	197
2.2	Considerations for the evaluation of serious injury	198
2.2.1	Factors having a bearing on the state of the industry	199
2.2.2	Selection of factors of an objective and quantifiable nature and data collection	201
2.2.3	Evaluation of the specific injury indicators listed in Article 4.2(a)	203
2.2.3.1	Rate and amount of the increase in imports in absolute and relative terms	207
2.2.3.2	The share of the domestic market taken by increased imports	207
2.2.3.3	Changes in the level of sales	208
2.2.3.4	Changes in the level of production	210
2.2.3.5	Changes in the level of productivity	212
2.2.3.6	Changes in the level of capacity utilization	213
2.2.3.7	Changes in profits and losses	214
2.2.3.8	Changes in the level of employment	218
2.3	Evaluation of the significant overall impairment	219
3	Threat of serious injury	220
3.1	Meaning of threat of serious injury	220
3.2	Evidentiary requirements	220
3.3	Methodological considerations	222
3.4	Relationship between the threat of serious injury and serious injury	224
7	<b>Causal link</b>	226
1	Appropriateness of the causal link between increased imports and serious injury	226
2	Demonstration of causation as a multilayered process	228

## CONTENTS

xiii

2.1 Evaluation of causation based on objective evidence	229
2.1.1 The analysis of coincidence in time	232
2.1.2 Analysis of conditions of competition	236
2.2 The non-attribution analysis	240
2.2.1 Appropriateness of non-attribution	241
2.2.1.1 Functioning	242
2.2.2 Examples of other sources	247
2.2.2.1 Other imports contributing to the serious injury	247
2.2.2.1.1 Foreseen increased imports	248
2.2.2.1.2 Imports that cause injury but were made by the domestic industry itself	248
2.2.2.1.3 Could <i>de minimis</i> imports be excluded from the investigation?	248
2.2.2.1.4 Imports from regional trading partners	249
2.2.2.1.5 Imports from developing countries excluded under Article 9.1?	250
2.2.2.2 Demand-related changes contributing to the serious injury	250
2.2.2.2.1 Contraction in demand	251
2.2.2.2.2 Changes in consumption patterns that may modify demand	253
2.2.2.3 Trade-restrictive practices and competition	254
2.2.2.4 Developments in technology	255
2.2.2.5 Export performance and productivity	255
2.2.2.6 Capacity increases	256
2.2.2.7 Inefficiency in domestic production	258
2.2.2.8 Change in input costs	259
2.2.2.9 Purchaser consolidation	259
2.2.2.10 Increases in energy costs	260
2.2.2.11 Cessation of subsidies payments	261
2.2.2.12 Lack of effective marketing policies	261
2.2.2.13 Other factors	262

	<b>PART III Application of a safeguard</b>	<b>263</b>
<b>8</b>	<b>Scope of a safeguard</b>	<b>265</b>
1	Product scope	265
1.1	Lack of symmetry between the scope of the investigated product and the scope of the like or directly competitive product	267
1.2	Lack of symmetry between the scope of the products at issue and the scope of the safeguard	268
1.2.1	Expansion of a safeguard beyond the scope of the products at issue	269
1.2.1.1	Products with differentiated features or ‘new’ products	269
1.2.1.2	Parts and components, raw material, inputs	270
1.2.2	Contraction of the product scope of a safeguard	271
2	Geographical scope: non-discrimination, MFN application and exceptions	272
2.1	Non-discrimination in the application of safeguards	272
2.1.1	Does Article 2.2 incorporate the MFN clause?	273
2.1.2	MFN application of safeguards	274
2.2	Exceptions to non-discrimination	276
2.2.1	Regional imports and parallelism	277
2.2.1.1	Parallelism	277
2.2.1.2	Exclusion of imports from regional trading partners	284
2.2.2	Exclusion of developing country imports under Article 9.1 of the AS	287
<b>9</b>	<b>The extent of the safeguard</b>	<b>291</b>
1	Necessity of the safeguard	291
2	Prevention or remedy of the serious injury	293
3	Facilitation of the adjustment	294
4	The establishment of the extent	297
<b>10</b>	<b>The form of a safeguard measure</b>	<b>302</b>
1	Nature of a safeguard	302
1.1	Safeguards in the nature of the suspension of GATT concessions and other obligations	302
1.2	Safeguards that do not involve the suspension of GATT concessions or other obligations	304

Cambridge University Press

978-1-107-07178-0 - The Challenge of Safeguards in the WTO

Fernando Piórola

Frontmatter

[More information](#)

## CONTENTS

xv

2	The selection of the appropriate trade policy instrument	307
2.1	Safeguards in the form of duties	308
2.2	Safeguard measures in the form of TRQs	309
2.3	Safeguard measures in the form of quotas	311
2.4	Trade policy devices that are not allowed as safeguards	313
<b>11</b>	<b>Temporal application and provisional safeguards</b>	<b>315</b>
1	Duration of safeguards	315
2	Progressive liberalization of safeguards	316
3	Review and renewal and prohibition to reinstate applied safeguards	318
4	Provisional safeguards	319
	<b>PART IV Procedures for the application of safeguard measures</b>	<b>323</b>
<b>12</b>	<b>Domestic investigation</b>	<b>325</b>
1	General considerations	325
2	Obligation to establish competent authorities and procedures	327
2.1	Competent authorities	327
2.2	Procedures	328
3	Public notice of investigation	329
4	Right of defence	330
5	Reasoned and adequate findings, conclusions, explanations and analyses	332
5.1	Content of Article 3.1, last sentence, and Article 4.2(c)	333
5.2	Importance of reasoned and adequate determinations	335
5.3	Types of failures to provide 'reasoned and adequate' findings and conclusions	337
6	Confidential information	338
<b>13</b>	<b>Multilateral proceedings</b>	<b>341</b>
1	General considerations	341
2	Notifications to the WTO	342
2.1	Notification of the initiation of investigation	344
2.2	Notification of a finding of serious injury or threat thereof	345
2.3	Notification of the decision to apply or extend a safeguard	346

Cambridge University Press

978-1-107-07178-0 - The Challenge of Safeguards in the WTO

Fernando Piérola

Frontmatter

[More information](#)

xvi

## CONTENTS

2.4	Notification of the decision to apply a provisional safeguard	347
2.5	Notification of the exclusion of imports from developing countries under Article 9.1	348
2.6	Notification of results of consultations, mid-term reviews, and of 'any form of compensation' and 'proposed' retaliation	349
2.7	Notification of the cessation of a safeguard	349
3	Consultations	350
3.1	Consultations with respect to a definitive safeguard	352
3.2	Consultations with respect to a provisional safeguard	354
4	Compensation	354
4.1	Maintenance of a substantially equivalent level of concessions and other GATT obligations	355
4.2	Trade compensation	355
5	Retaliation or suspension of concessions or other obligations	358
	<i>Concluding remarks</i>	364
	<i>Bibliography</i>	369
	<i>Index</i>	383



## FIGURES

1.1	Deviations contemplated in the GATT	<i>page 28</i>	
1.2	Types of actions provided in GATT Article XIX	33	
1.3	Safeguard measures introduced and notified during the GATT 1947 period	37	
1.4	Main users of safeguard measures during the GATT 1947 period	39	
1.5	Imposition of safeguard measures from 29 March 1995 to 31 March 2013		77
1.6	Initiation of safeguard investigations from 29 March 1995 to 31 March 2013	78	
1.7	Ranking of main users of safeguard measures	79	
1.8	Ranking of main users of safeguard investigations	80	
1.9	Comparison of the use of safeguards and other trade remedies (absolute figures)	80	
1.10	Comparison of the use of safeguards and other trade remedies (relative use)	81	
3.1	The period of investigation in the context of the investigation process		102
3.2	Implications of the definition of the investigated product	112	
3.3	Distinctions to consider in the determination of the investigated product	114	
3.4	Implications of the like product or directly competitive product determination	121	
3.5	Relationship between like and the directly competitive products	121	
3.6	Criteria developed by the panel in <i>Argentina – Footwear</i>	125	
3.7	Order of analysis in the question of the like products	127	
4.1	Concessions affected in WTO dispute settlement proceedings	160	
5.1	Situations covered by safeguard action	167	
5.2	Total imports of footwear into Argentina, 1991–1996 (quantity)	175	
5.3	Total imports of footwear into Argentina, 1991–1996 (value)	176	
5.4	Total imports of wheat gluten into the United States, 1993–1998 (quantity)	177	
6.1	Impact of the definition of domestic industry	184	
6.2	The question of the like product in the determination of serious injury		186
6.3	Relationship between like and directly competitive products and the determination of serious injury	187	

Cambridge University Press

978-1-107-07178-0 - The Challenge of Safeguards in the WTO

Fernando Piórola

Frontmatter

[More information](#)

xviii

## LIST OF FIGURES

6.4	Order of analysis in the determination of serious injury	187
6.5	Determination of serious injury in the context of a customs union	192
6.6	Comparison of serious injury indicators in trade remedy agreements	205
6.7	Sales level determinants	210
6.8	Production level determinants	211
6.9	Productivity determinants	213
6.10	Profits determinants (I)	215
6.11	Profits determinants (II)	215
6.12	Evidentiary requirements for threat of serious injury (I)	221
6.13	Evidentiary requirements for threat of serious injury (II)	222
8.1	Symmetry between investigated product and scope of safeguard investigation	266
8.2	Symmetry between investigated product, like product and scope of safeguard investigation	266
8.3	Asymmetry between investigated product, like product and scope of safeguard investigation (I)	267
8.4	Asymmetry between investigated product, like product and scope of safeguard investigation (II)	268
8.5	Sequence of allegations in the question of parallelism (I)	279
8.6	Sequence of allegations in the question of parallelism (II)	281
8.7	Burden of proof in the demonstration of parallelism	282
8.8	Evolution of parallelism in WTO case law	283
9.1	Impact of a safeguard on the state of the domestic industry (I)	292
9.2	Impact of a safeguard on the state of the domestic industry (II)	298
12.1	Procedural considerations in a safeguard investigation	327
12.2	Main sources of evidence and information	332
12.3	Reasoned and adequate explanations and conclusions in the context of a safeguards investigation	336
12.4	Submission of confidential information	339
13.1	Overview of the requirements for the imposition of a safeguard	342

## P R E F A C E

This book is focused on the establishment, functioning and practice of one of the allegedly basic, though most complex mechanisms in the multilateral trading system: the mechanism of safeguards under Article XIX of the General Agreement on Tariffs and Trade and the WTO Agreement on Safeguards. It is as basic as the core tenets of the system. Article XIX was introduced to restore the negotiated balance should it be distorted by anomalous circumstances unforeseen by the negotiators at that time. However, its functioning over the last half of the twentieth century proved that its complexities were larger than expected. Its limitations resulted in resort to alternative, though legally dubious, trade policy devices. This led to the establishment of the WTO Agreement on Safeguards, which elaborates and clarifies many of the general concepts provided in Article XIX.

However, the functioning of the safeguard mechanism in its current format under the WTO system has also not proven to be an easy business. There is no guidance, or assistance, on how Members should organize themselves to structure domestic procedural rules, conduct a safeguard investigation and comply with the requirements of Article XIX and the Agreement on Safeguards. Furthermore, the application of these requirements is plagued by open-ended questions; some of them may appear labyrinthine. Thus far in WTO history, no multilateral safeguard has ever survived to a challenge before WTO panels and the Appellate Body. The reason is partly because of the law itself. While elaborating or clarifying Article XIX, the Agreement on Safeguards has also opened new areas of enquiry, the requirements of which remain unclear. Obligations are based on concepts leading to tests that are not evident from the wording of the provisions. Sometimes they must be figured out only through or after a challenge. Panels and the AB may have resolved various disputes in a pragmatic fashion. However, some of the answers given have raised new concerns.

This book provides a legal overview of the safeguard mechanism since its creation to 2014. The focus is mainly legal, with particular emphasis on

practice and case law. It examines the requirements provided in Article XIX and the AS from the perspective of WTO litigation. However, it starts off in Part I with a historical discussion of the origins of the regime and the general theory behind it. Part II examines the complexities involved in the determination of the right to apply a safeguard. Part III explains the considerations involved in the application of a safeguard. Finally, Part IV discusses the procedural aspects that accompany a national investigation and the multilateral proceedings attached to the investigation and adoption of a safeguard.

I want to give recognition to Prof. Thomas Cottier and Prof. Marion Panizzon, who gave me comments on an earlier draft of this work. In addition, I also want to thank Martha D. Piérola for her comments on the economic arguments for or against the safeguard mechanism. Of course, the final expression of points of view will always remain that of the author.

## GATT/WTO DISPUTE SETTLEMENT REPORTS

Short title	Full case title and citation
<i>Argentina – Footwear</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
<i>Argentina – Footwear</i>	Panel Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS121/AB/R, DSR 2000:II, 575
<i>Argentina – Peaches</i>	Panel Report, <i>Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches</i> , WT/DS238/R, adopted 15 April 2003, DSR 2003:III, 1037
<i>Argentina – Poultry</i>	Panel Report, <i>Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil</i> , WT/DS241/R, adopted 19 May 2003, DSR 2003:V, 1727
<i>Canada – Renewable Energy</i>	Appellate Body Report, <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector</i> , WT/DS412/AB/R, adopted 24 May 2013
<i>Chile – Price Band</i>	Panel Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/R, adopted 23 October 2002, as modified by Appellate Body Report WT/DS207/AB/R, DSR 2002:VIII, 3127
<i>Colombia – Ports of Entry</i>	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R and Corr.1, adopted 20 May 2009, DSR 2009:VI, 2535
<i>Dominican Republic – Import and Sale of Cigarettes</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R, DSR 2005:XV, 7425

Short title	Full case title and citation
<i>Dominican Republic – Safeguard Measures</i>	Panel Report, <i>Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric</i> , WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, adopted 22 February 2012
<i>EC – Aircraft</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135
<i>EC – IT Products</i>	Panel Report, <i>European Communities and its Member States – Tariff Treatment of Certain Information Technology Products</i> , WT/DS375/R, WT/DS376/R, WT/DS377/R, adopted 21 September 2010, DSR 2010:III, 933-DSR 2010:IV, 1567
<i>EC – Salmon</i>	Panel Report, <i>European Communities – Anti-Dumping Measure on Farmed Salmon from Norway</i> , WT/DS337/R, adopted 15 January 2008, and Corr.1, DSR 2008:I, 3
<i>Egypt – Steel Rebar</i>	Panel Report, <i>Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey</i> , WT/DS211/R, adopted 1 October 2002, DSR 2002:VII, 2667
<i>Indonesia – Autos</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1 and 2, adopted 23 July 1998, and Corr. 3 and 4, DSR 1998:VI, 2201
<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, 97

Short title	Full case title and citation
<i>Japan – Alcoholic Beverages II</i>	Panel Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by Appellate Body Report WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I, 125
<i>Korea – Alcoholic Beverages III</i>	Appellate Body Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, 3
<i>Korea – Alcoholic Beverages III</i>	Panel Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/R, WT/DS84/R, adopted 17 February 1999, as modified by Appellate Body Report WT/DS75/AB/R, WT/DS84/AB/R, DSR 1999:I, 44
<i>Korea – Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
<i>Korea – Dairy</i>	Panel Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/R and Corr.1, adopted 12 January 2000, as modified by Appellate Body Report WT/DS98/AB/R, DSR 2000:I, 49
<i>Korea – Vessels</i>	Panel Report, <i>Korea – Measures Affecting Trade in Commercial Vessels</i> , WT/DS273/R, adopted 11 April 2005, DSR 2005:VII, 2749
<i>Mexico – Olive Oil</i>	Panel Report, <i>Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities</i> , WT/DS341/R, adopted 21 October 2008, DSR 2008:IX, 3179
<i>Mexico – Pipes and Tubes</i>	Panel Report, <i>Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala</i> , WT/DS331/R, adopted 24 July 2007, DSR 2007:IV, 1207
<i>Mexico – Rice</i>	Appellate Body Report, <i>Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice</i> , WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, 10853

Short title	Full case title and citation
<i>Mexico – Rice</i>	Panel Report, <i>Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice</i> , WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R, DSR 2005: XXIII, 11007
<i>Norway – Textiles</i>	GATT Panel Report, <i>Norway – Restrictions on Imports of Certain Textile Products</i> , L/4959, adopted 18 June 1980, BISD 27S/119
<i>Thailand – H-Beams</i>	Appellate Body Report, <i>Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland</i> , WT/DS122/AB/R, adopted 5 April 2001, DSR 2001: VII, p. 2701
<i>Turkey – Textiles</i>	Appellate Body Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, 2345
<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R, adopted 5 November 2001, DSR 2001:XII, 6027
<i>US – Fur Felt Hats</i>	<i>Report on the Withdrawal by the United States of a Tariff Concession under Article XIX of the General Agreement on Tariffs and Trade</i> , GATT/CP/106, adopted 22 October 1951
<i>US – Hot-Rolled Steel</i>	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, 4051
<i>US – Lamb</i>	Panel Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/R, WT/DS178/R, adopted 16 May 2001, as modified by Appellate Body Report WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX, 4107



Short title	Full case title and citation
<i>US – Line Pipe</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/AB/R, adopted 8 March 2002, DSR 2002:IV, 1403
<i>US – Line Pipe</i>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/R, adopted 8 March 2002, as modified by Appellate Body Report WT/DS202/AB/, DSR 2002:IV, 1473
<i>US – Softwood Lumber V</i>	Panel Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/R, adopted 31 August 2004, as modified by Appellate Body Report WT/DS264/AB/R, DSR 2004:V, 1937
<i>US – Stainless Steel (Mexico)</i>	Appellate Body Report, <i>United States – Final Anti-Dumping Measures on Stainless Steel from Mexico</i> , WT/DS344/AB/R, adopted 20 May 2008, DSR 2008:II, 513
<i>US – Steel Safeguards</i>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, WT/DS259/R, and Corr.1, adopted 10 December 2003, as modified by Appellate Body Report WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, DSR 2003:VIII, 3273
<i>US – Steel Safeguards</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, adopted 10 December 2003, DSR 2003:VII, 3117
<i>US – Upland Cotton</i>	Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, Corr.1, and Add.1 to Add.3, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, 299

Cambridge University Press  
 978-1-107-07178-0 - The Challenge of Safeguards in the WTO  
 Fernando Piórola  
 Frontmatter  
[More information](#)

xxvi GATT/WTO DISPUTE SETTLEMENT REPORTS

Short title	Full case title and citation
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717
<i>US – Wheat Gluten</i>	Panel Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/R, adopted 19 January 2001, as modified by Appellate Body Report WT/DS166/AB/R, DSR 2001:III, 779