

INDEX

adjustment, see also industrial Bretton Woods, 5 adjustment; structural adjustment Canada facilitation, 294-7 user of safeguard measures during Agreement on Safeguards (WTO), 75 the GATT 1947 period, 37-8 coexistence with GATT Article XIX, capacity increases 136 - 9non-attribution analysis, 256-8 entry into force, 76 capacity utilization negotiating history, 57-76 changes in level, 213-14 users of safeguards, 76-9 case law aircraft industry anti-dumping, 117-19 EC – Aircraft case on subsidy Argentina - Footwear, 103, 105, 106, 124, 155, 172-3, 175, 182, 223, schemes, 118-19 alcoholic beverages 236-8, 252, 277-8, 337 Japan - Alcoholic Beverages II case, Argentina - Peaches, 154-5, 125-6, 131-2, 133 175-6,223Korea - Alcoholic Beverages III Chile - Price Band, 134, 153-4, case, 133 239, 262 anti-dumping measures, 79-81 Dominican Republic - Safeguard application of WTO Measures, 104-5, 156-7, 161-2, recommendations for 178, 250, 303-4, 305-6 determining POI, 108–10 EC - Aircraft, 118-19 disputes, 117-19 EC - Asbestos, 125-6, 128 Mexico - Pipes and Tubes case, 103, effect of GATT obligations in WTO 201 - 2disputes, 162 Argentina GATT dispute complaints, 40, 42–50 Japan - Alcoholic Beverages II, Argentina - Footwear case, 103, 105, 106, 124, 155, 172-3, 175, 182, 125-6, 131-2, 133 223, 236-8, 252, 277-8, 337 Korea – Alcoholic Beverages III, 133 Argentina - Peaches case, 154-5, Korea - Dairy, 155-6, 216, 217, 218, 175 - 6,223300-1,336asbestos like or directly competitive products EC - Asbestos case, 125-6, 128 cases, 123-6 Atlantic Charter, 4 list of GATT/WTO dispute Australia settlement reports, xxi Mexico - Olive Oil, 188-9 user of safeguard measures during the GATT 1947 period, 37-8 Mexico - Pipes and Tubes, 103, 201-2



> 384 INDEX consultations case law (cont.) criticism, 367 Mexico - Rice, 104, 105, 203 Norway - Textiles, 48-9 definitive safeguards, 352-4 procedures, 350-4 period of investigation (POI) cases, provisional safeguards, 354 Switzerland - Table Grapes, 50 customs unions (CUs), 284-5 unforeseen developments cases, 152 - 7dairy products US - Dried Figs, 47 Korea - Dairy case, 155-6, 216, 217, US - Fur Felt Hats, 42-7, 144, 218, 300-1, 336 degressivity, 59 152 - 3US - Hot-Rolled Steel, 202-3 developing countries US - Lamb, 104, 105-6, 123, 154, **GATT Uruguay Round** negotiations, 64 US - Line Pipe, 106, 108, 172, 178, notification of exclusion of imports 279, 310 from, 348-9 US - Spring Clothespins, 48 users of safeguard measures during US - Steel Safeguards, 151-2, 153, the WTO period, 78 230, 235, 238-9, 244-5, 251-2, whether imports excluded from 256-9, 280, 281-2, 337 safeguards, 166, 250, 287–90 US - Wheat Gluten, 156, 177, 200, direct competition, 131–4, see also like 246, 256, 278, 337 or directly competitive Chile - Price Band case, 134, 153-4, products dispute resolution, see also case law 239, 262 GATT, 29 clothespins safeguards during the GATT 1947 US - Spring Clothespins case, 48 period, 40-50 clothing sector domestic industry, 183-96, see also like market disruption, 53-4 or directly competitive Norway - Textiles case, 48-9 products; producers compensation consistency of definition throughout GATT Uruguay Round, 59 notification, 358 investigation, 196 definition, 185-96 procedures, 354-8 inefficiency in production, 258-9 quotas, 357 supranational level, 191-3 as rationale for safeguard whether imports made by mechanism, 91-3 safeguard measures during the domestic producers should be excluded from investigation, GATT 1947 period, 38-40 165-6,248trade compensation, 355-8 Dominican Republic - Safeguard competition, see also like or directly Measures case, 104-5, 156-7, competitive products conditions of competition analysis, 161-2, 178, 250, 303-4, 305-6 236 - 40dried figs trade-restrictive practices, 254-5 US - Dried Figs case, 47 Dunkel Draft, 73-4 concession, see tariff concessions confidentiality safeguard investigations, employment level 338-40, 367 serious injury assessment, 218-19



> INDEX 385

energy cost increases non-attribution analysis, 260-1 escape clause, see safeguard clause **European Communities** EC - Aircraft case, 118-19 EC - Asbestos case, 125-6, 128 European Economic Community (EEC) users of safeguard measures during the GATT 1947 period, 37-8 European Union user of safeguards during the WTO period, 78 export performance non-attribution analysis, 255-6 export-processing zones, 164-5 export restraint agreements (ERAs), 54-5, 313-15

footwear

Argentina - Footwear case, 103, 105, 106, 124, 155, 172-3, 175, 182, 223, 236-8, 252, 277-8, 337 free trade Atlantic Charter, 4

free trade areas (FTAs), 284-5, see also exportprocessing zones

General Agreement on Tariffs and Trade (GATT) amendment to Article XIX 1955, 34 basic obligations, 25-7 coexistence of Article XIX with the Agreement on Safeguards, 136 - 9dispute resolution, 29 effect of Article XIX obligations, 136 - 43effect of Article XIX obligations incurred, 157-62 entry into force on a provisional basis, 24 exceptions, 27-9 failed attempts to establish new rules on safeguards, 56-7 filed dispute settlement complaints

on safeguards, 42-50

GATT 1947, 24 GATT 1994, 24-5 list of dispute settlement reports, xxi-xxvi, 40 market disruption, 52-4 negotiations on the escape clause, 17 - 8, 21 - 2negotiations with ITO Charter, 16-7 notification of safeguard measures, 36 object and purpose, 25 rejected amendments to Article XIX, 34-6 safeguard clause Article XIX, 29-33 safeguards dispute resolution, 40-50 selective application of safeguards, 50-2 text of Article XIX, 29-30 Uruguay Round and negotiations on safeguards, 57–75 Switzerland - Table Grapes

grapes case, 50

hats US - Fur Felt Hats case, 42-7, 144, 152 - 3

import duty compensation, 356-7 safeguards in the form of, 308-9 imports, see also increase in imports; investigated product data gathering challenges, 168-9 definition, 164 exclusion of certain imports from safeguards, 164-8, 247-50, 277 - 90from regional trading partners excluded from safeguards, 249-50, 277-87

value, 170 relevance, 164-8 volume measurement challenges, 171 whether imports excluded because of negligibility, 166

measurement of volume vs.



> 386 INDEX International Trade Organization imports (cont.) (ITO), proposal for whether imports made by domestic producers should be excluded failure, 23 GATT, 16-8, 21-2 from investigation, 165-6, 248 Geneva discussions on increase in imports, 84, 163-82, see also imports safeguards, 18-22 absolute, 172-9 Havana discussions on analysis of causal link with serious safeguards, 22-3 injury, 226-40 London discussions on assessment of trends, 173-4 safeguards, 9-16 baseline determination, 174-6 New York discussions on comparisons of segments, 178 safeguards, 17-8 entries into export-processing Preparatory Committee zones, 164-5 meetings, 9 evaluation, 171-2 Suggested Charter 1946, 7-9 exclusion of certain imports from investigated product, 111-19, safeguards, 164-8, 247-50, see also imports absence of legal standard, foreseen increased imports excluded 116 - 19,365from safeguards, 166-8, 247-8 business considerations, 113–16 data gathering challenges, 168-9 GATT Article XIX, 29-30 measurement of increase, 178-9 definition, 116-19, 163-4 price analysis, 181-2 discrepancy of scope with like or directly competitive products, recent past against overall POI, 176 - 8267 - 8horizontal coverage, 114-15 recent, sudden, sharp and significant, 172-3 legal implications, 111-13 scope, 265-72 related to effect of GATT significance, 111-16 obligations, 166-8 vertical coverage, 115-16 relative with respect to domestic production, 179-80 investigations, 77, see also case law; retaliation, 180-1 period of investigation (POI) competent authorities, 327-8 whether imports made by confidential information, domestic producers should be 338-40, 367 excluded from investigation, consultations, 350-4, 367 165-6,248India domestic procedure, 325-40, 366-7 user of safeguard measures, 78, 79 information gathering, 330-2 main users, 78-9 Indonesia multilateral proceedings, 341-63, 367 user of safeguard measures, 78, 79 practical aspects of requests for, 110 industrial adjustment, 295-7 as rationale for safeguard public notice, 329-30 mechanism, 93-5 reasoned and adequate findings, conclusions, explanations and input cost changes non-attribution analysis, 259 analyses, 332 right of defence, 330-2 International Bank for Reconstruction and Development, 5 self-initiation, 195 WTO notification, 329-30, 342-9 International Monetary Fund (IMF), 5



> INDEX 387

ITO, see International Trade Organization Japan - Alcoholic Beverages II case, 125-6, 131-2, 133 Korea - Alcoholic Beverages III case, 133 Korea - Dairy case, 155-6, 216, 217, 218, 300-1, 336 lamb meat US - Lamb case, 104, 105-6, 123, 154, 254, 337 like or directly competitive products, 120-35, 185-7 burden of establishing likeness or direct competitiveness, 134-5 case law, 123-6 consumers' tastes and habits as criterion for, 127-9 criteria for determination of likeness, 125-30 definition, 185-7 direct competitiveness, 131-4 discrepancy of scope with investigated product, 267-8 end uses as criterion for, 129 evaluation of likeness, 130-1 like products, 123-31 meaning of concepts, 120-1 properties, quality, nature and physical characteristics as determination of likeness, 126 - 7

manufacturing sectors safeguards imposed, 77-8 market disruption, 52-4

178, 279, 310

relationship between like and

directly competitive

of likeness, 129-30

tariff classification as determination

US - Line Pipe case, 106, 108, 172,

products, 120

line pipes

meaning, 53 textiles and clothing, 53-4 marketing policies, lack of non-attribution analysis, 261-2 Marrakesh Agreement Establishing the World Trade Organization, 24 Mexico Mexico - Olive Oil case, 188-9 Mexico - Pipes and Tubes case, 103, 201 - 2Mexico - Rice case, 104, 105, 203 most-favoured-nation (MFN) application of safeguards, 274-6 effect of GATT obligation, 161-2 exceptions to non-discrimination, 276 - 7GATT obligation, 25-6, 50-1, 273 - 6multilateral trading system, see also General Agreement on Tariffs and Trade (GATT) establishment, 3 meaning of safeguards, 1-2 national treatment obligations GATT, 26 new products safeguard issues, 269-70 non-discrimination exceptions, 276-90 GATT obligation, 25-6, 51 requirement in application of safeguards, 272-6 Norway - Textiles case, 48-9 notification burden, 367 cessation of safeguard, 349 compensation, 358 reviews, 349 exclusion of imports from developing countries, 348-9

consultation results and mid-term GATT Article XIX safeguard measures, 36 provisional safeguard measures, 347 - 8retaliation, 359-60



388	INDEX
notification (<i>cont.</i>) safeguard investigation, 329–30 WTO, 329–30, 342–9	production level changes serious injury assessment, 210–12 productivity non-attribution analysis, 255–6
olive oil Mexico - Olive Oil case, 188-9 orderly marketing arrangements (OMAs), 54-5, 313-15	serious injury assessment, 212 products at issue, identification of, 111, see also investigated product; like or directly competitive products
parts and components safeguard issues, 270–1 peaches Argentina – Peaches case, 154–5, 175–6, 223	discrepancy of scope with safeguard scope, 268–72 order of analysis, 135 scope, 265–72 profits and losses
period of investigation (POI) application of WTO anti-dumping recommendations, 108–10 case law, 103–8 comparisons of segments, 178 critical for determination of right t apply safeguard, 101–10	serious injury assessment, 214–18 provisional safeguard measures, 317–18, 319–23 consultations, 354 notification, 347–8
increase in imports to be assesssed against the whole POI, 108 long enough to suit the facts, 105–7 meaning, 102 most recent data available to be included, 107	quotas compensation, 357 safeguard measures in the form of, 311–13
most recent past, 103–5 practical aspects of requests for safeguards, 110 segments should be free of manipulation or bias, 108 should not be based on fragmented periods, 108	raw material safeguard issues, 270–1 regional imports exclusion from safeguards, 249–50, 277–87 remedies, <i>see</i> compensation; retaliation retaliation
political economy and safeguard mechanisms, 95–7 price analysis increase in imports, 181–2 producers all or major proportion, 193–5 geographical location, 190–1 identification of relevant, 188–93 minimum production threshold, 189	duration, 361 GATT Article XIX, 32–3, 39–40, 41 GATT Uruguay Round, 59 increase in imports, 180–1 notification, 359–60 procedures, 358–63, 367 selective, 361 rice Mexico – Rice case, 104, 105, 203
supranational level, 191–3 unclear issues, 365 product coverage safeguard measures during the GATT 1947 period, 38	safeguard clause, see also Agreement on Safeguards (WTO); safeguard measures; safeguard mechanism; unforeseen developments



INDEX 389

GATT Article XIX, 29-33 GATT negotiations, 17-8, 21-22 history of negotiations, 5-23 ITO Draft Charter, 9-23 non-discriminatory application in Havana Charter for ITO, 22-3 requirements to be observed in imposition, 31 Suggested Charter 1946 Article 29,7-16text of GATT Article XIX, 29-30 United States, 18 United States proposals 1945, 5-7 safeguard disputes, see case law; dispute resolution; investigations safeguard investigations, see case law; investigations; period of investigation (POI) safeguard measures, see also Agreement on Safeguards (WTO); retaliation; safeguard clause; safeguard mechanism; unforeseen developments compensation as rationale for, 91-3 compensation during the GATT 1947 period, 38-40 compensation negotiations GATT Uruguay Round, 59 definition, 83 GATT Uruguay Round and negotiations, 57-75 grey-area measures, 36, 54-5, 313-15 multilateral surveillance, 59-60 notification under GATT Article XIX, 36 provisional, 317-18, 319-23 right to apply, 101-10 selective application under GATT, 50-2 time limits, 31, 59, 73, 315–16 transparency, 32, 58 unforeseen developments, 29-30 users during the GATT 1947 period, 37-8 users WTO years 1995-2013, 76-9

WTO Agreement on Safeguards negotiating history, 57-76 safeguard mechanism, see also Agreement on Safeguards (WTO); General Agreement on Tariffs and Trade (GATT); retaliation; safeguard clause; safeguard measures; unforeseen developments efficiency counter-argument, 89-91 expectation-protecting role as rationale for, 84-6 flexibility as rationale for, 83-9 history of negotiations, 75-6 industrial adjustment as rationale for, 93-5and political economy, 95-7 practical problems, 88 rebus sic stantibus approach, 86-7, 137usefulness, 88-9 safeguards, see also Agreement on Safeguards (WTO); retaliation; safeguard clause; safeguard measures; safeguard mechanism choice of appropriate trade policy instrument, 307-15 dispute resolution during the GATT 1947 period, 40–50 extent, 291-301, 366 geographical scope, 272-90 nature of, 302-7 necessity, 291-2 product scope, 265-72 progressive liberalization over time, 316 - 18prospective character, 294 renewal, 318-19 scope, 265-90, 366 terminology, 1 safeguards, right to apply, 31, 99-101, 364-6, see also increase in imports; period of investigation (POI); products at issue; serious injury; unforeseen developments



> 390 sales changes surveillance serious injury assessment, 208-10 Uruguay Round negotiations, 70 Switzerland - Table Grapes case, 50 serious injury, 84 Agreement on Safeguards (WTO), tariff classification 197-225 analysis of causal link with increase as determination of likeness, in imports, 226-40 129 - 30capacity utilization changes, 213-14 tariff concessions data collection, 201-3 effect of GATT Article XIX demand-related changes, 250-4 obligations incurred, 157-62 employment level changes, 218-19 tariff preferences evaluation, 198-220 GATT Article XIX, 31-2 extent of safeguard, 291-301, 366 tariff rate quotas (TRQs), 309-13 factors having a bearing on the state compensation, 357 of the industry, 199-201 technology developments GATT Article XIX, 29-30 non-attribution analysis, 255 GATT Uruguay Round, 58-9 textiles meaning, 197-8 market disruption, 53-4 non-attribution analysis, 240-63 Norway - Textiles case, 48-9 objective factors, 201 threat of serious injury, 220–5 overall impairment requisite, evidentiary requirements, 220-1 219 - 20meaning, 220 methods for determining, 222-4 production level changes, 210-12 productivity level changes, 212 relationship with serious injury, profit-and-loss analysis, 214-18 224 - 5quantitative measurement, 201 time limits rate and amount of the increase in safeguards, 31, 59, 73, 315-16 imports in absolute and relative trade barriers terms, 207 GATT obligation to reduce, 26-7 relationship with threat of serious trade compensation, 355-8 injury, 224-5 trade-restrictive practices, 254-5 requirements for determination transparency of, 183 GATT Article XIX, 32 sales changes, 208-10 GATT Uruguay Round, 58 share of the domestic market taken Turkey by increased imports, 207-8 user of safeguard measures, 78, 79 specific injury indicators, 203-14 threat of, 220-5 UN Economic and Social Council steel industry (ECOSOC) Mexico - Pipes and Tubes case, 103, Suggested Charter for an 201 - 2International Trade *US – Hot-Rolled Steel* case, 202–3 Organization of the UN US - Steel Safeguards case, 151-2, 1946, 7-9153, 230, 235, 238-9, 244-5, unforeseen developments, 84 case law discussions, 152-7 251-2, 256-9, 280, 281-2, 337 structural adjustment, 59 coexistence of GATT Article XIX with the Agreement on subsidy payments, cessation of non-attribution analysis, 261 Safeguards, 136-9

INDEX



INDEX 391

function, 146-7 GATT Article XIX, 29-30, 136-43 GATT obligations as circumstances for imposition of safeguard, 140 logical connection issue, 140-2 meaning, 143-6 operative aspects, 147-52 reasoned and adequate explanations a GATT requirement, 142-3 rebus sic stantibus approach, 87, 137, 144 unclear issues, 365 **United States** Reciprocal Trade Agreements, 6-7 safeguard clause, 18 safeguard clause proposals 1945, 5-7US - Dried Figs case, 47 *US – Fur Felt Hats* case, 42–7, 144, 152 - 3US - Hot-Rolled Steel case, 202-3 US - Lamb case, 104, 105-6, 123, 154, 254, 337 US - Line Pipe case, 106, 108, 172, 178, 279, 310

US - Spring Clothespins case, 48 US - Steel Safeguards case, 151-2, 153, 230, 235, 238-9, 244-5, 251-2, 256-9, 280, 281-2, 337 US - Wheat Gluten case, 156, 177, 200, 246, 256, 278, 337 user of safeguard measures during the GATT times, 37 user of safeguards during the WTO period, 78 voluntary export restraints (VERs), 54-5, 313-15 wheat gluten US - Wheat Gluten case, 156, 177, 200, 246, 256, 278, 337 World Bank, 5 World Trade Organization (WTO), see also Agreement on Safeguards (WTO) list of dispute settlement reports, xxi-xxvi Marrakesh Agreement

Establishing, 24

notificaton, 329-30, 342-9