Cambridge University Press & Assessment 978-1-108-48428-2 — WTO Agreement on Safeguards and Article XIX of GATT Fernando Piérola-Castro Index More Information

### Index

abusive measures retaliation against, 385 risk of, 380-2 adjustment plan description and review of, 212-13 industrial adjustment, 212 need for, 210-12 administrative law, applicability of, 7-8 administrative procedures, notification of, 328-9 Agreement on Safeguards (Agreement) applicability, 2-3 Art. XIX GATT 1994, relationship with, 2-3 binding character, 7 general provision (Art. 1), 1-3 limits of scope, 3-9 negotiating history. See negotiating history analysis of imports absolute increases in imports determination of, 58 general analytical standards applied to, 58-65 same approach as for relative increases, 66 amount of increase analysis of, 138 cautions when assessing, 139-40 linkages with other aspects of investigation and application of safeguard measures, 140 share of domestic market taken by increased imports, 140-3 significance of, 138-9 trends in, 139 case law, 45-6 data gathering and selection, 55-6 definition of imported product, 41

escape clause, 10 excluded products, 46-9 export-processing zones, excluded products entering, 47 factual determination, 40-1 filling of information gaps and, 56 free zones, excluded products entering, 47 general analytical standards Art. 4.2(a), 58-9 magnitude-based measurement of import increase, 64-5 no need to show increase throughout the whole POI, 63 selection of POI segments or tranches, 63 - 4starting baseline to measure relevant import increase, 60-3 trend-based measurement of import increase, 64-5 horizontal coverage of product, 43-4 imported product as identified by domestic industry, 41-5 imports from regional trading partners, exclusion of, 48-9 imports made by producers, exclusion of, 47-8 increase in imports, 67 measurement units, coherent use of, 57-8 negligible imports, exclusion of, 48 normal circumstances, 46 period of investigation (POI) Committee on Anti-Dumping Practices, recommendations as to, 54-5 definition of, 49-50 end of, 51-2 legal standard for, 50-1

Cambridge University Press & Assessment 978-1-108-48428-2 — WTO Agreement on Safeguards and Article XIX of GATT Fernando Piérola-Castro Index More Information

#### 432

#### Index

analysis of imports (cont.) length of, 52-3 segmentation of, 53-4 selection of POI segments or tranches, 63-4 product being imported, 41 reasonable assumptions, use of, 56 relative increases in imports analysis of, 65 determination of, 58, 65 production levels, determination of, 65 qualified relative increases, 65-6 same approach as for absolute increases, 66 requirement for, 40-1 value or volume as basis, 56-7 vertical coverage of product, 44 analysis, counterfactual. See counterfactual analysis application of measures (Art. 5) adjustment plan description and review of, 212-13 industrial adjustment, 212 need for, 210-12 Art. XIII GATT 1994, and, 198, 223 context, title and structure, 197-8 extent necessary of a safeguard measure (Art. 5.1) interpretation of, 198-9 prevention or remedy of serious injury, 203-4 provision for, 198 theory of necessity, 202-3 import duties, suitability of, 217-19 non-injurious price methodology calculation of non-injurious price in normal circumstances, 207-8 concept of non-injurious price, 206-7 use of, 206 prevention or remedy of serious injury applicability of Art. 5.1, 203-4 industry impact of safeguard measure, 204-6 non-injurious price methodology, 206 volume-based methodologies, 208-9 quantitative restrictions (Art. 5.1), 213-14 quantitative restrictions, suitability of, 220-1 quota allocation among supplying countries (Art. 5.2(a)), 221-2 selective application of quotas (Art. 5.2 (b)), 222-3

tariff-rate quotas (TRQs), suitability of, 219-20 text of Art. 5, 197 Art. X GATT 1994, investigation procedures made public, 81-2 Art. XIII GATT 1994 allocation of quotas, 219, 221 Art. 5(2), and, 198, 223 non-discrimination and, 4, 68, 219, 221 Art. XIX GATT 1947 negotiating history, 377-82 tariffs and, 376-7 Art. XIX GATT 1994 Agreement, relationship with, 2-3 Art. 2, relationship with, 21 background to, 382-3 context, title and structure, 370-1 need for safeguard clause, 378-9 negotiation process and developments, 386-7 prior notification, consultations and provisional measures (Art. XIX:2), 373-4 rebalancing actions (Art. XIX:3), 374 Safeguard Clause (Art. XIX:1(a)), 371-3 safeguard measures, provision for, 10-15 text of, 369-70 unforeseen developments. See unforeseen developments Uruguay Round negotiation mandate, 383-6 AS. See Agreement on Safeguards bilateral rules, applicability of, 5-6 capacity increases, non-attribution, 189-91 capacity utilization, changes in cautions when assessing changes, 149 determination of, 148 linkages with other aspects of investigation and application of safeguard measures,

149–50 significance of, 148–9

trends in, 149

causal link analysis

breaking of causal link, 177-8

causal link as, 161

coincidence in time, 163–7

concept of, 133

conditions of competition, examination of, 167–72

demonstration of, 161-3

determination of, 159-60

# CAMBRIDGE

#### Index

433

existence of, 160 non-attribution requirement, 172-94 cessation investigations, 332-3 rebalancing actions, 269 safeguard measures, 332-3 civil procedure, applicability of, 8 coincidence in time, analysis of basis for, 163-5 consequence of, 165-6 elements of, 163 reasoned and adequate explanations, 166-7 Committee on Anti-Dumping Practices, recommendations as to import analysis period, 54-5 Committee on Safeguards, notifications to (Art. 12.10), 330-1 compensation agreement on adequate means of, 260-1 notification of, 325-8 competent authorities for investigations, 78-9 competition. See conditions of competition concessions and other obligations (Art. 8) adverse effects caused by safeguard measure, 254, 256-7, 259-60, 304, 351, 371, 374, 395 consultations absence of agreement, 255 mechanism for (Art. 12.3), 255 notification of results, 261 provision for, 255, 259-60 context, title and structure, 254-6 exporting Members affected by measures, 259-60 incentive for adoption of exceptional and WTO-consistent Safeguard Measures (Art. 8.3), 269-72 maintenance of substantially equivalent level of concessions and other obligations under GATT 1994 (Art. 8.1) agreement on adequate means of trade compensation, 260-1 level of concessions and other obligations affected by safeguard measure, 257-8 members affected by safeguard measure, 250-60 obligation to endeavour to maintain substantially equivalent level, 258-9 provision for, 256-7

rebalancing actions (Art. 8.2) absence of agreement on maintenance of level concessions and other obligations, 262-2 adoption of a rebalancing measure, 263-4 against provisional safeguard measures, 272-3 duration and termination of rebalancing measure, 269 measure consisting of, 266 notification requirement, 267-8 provision for, 261-2 selective application of rebalancing measure, 268-9 timeframe for exercising right to adopt rebalancing measure, 266-7 reviews (Art. 7.2), relationship with, 248-9 substantial interest, Members with, 260 text of Art. 8, 254 concessions, modification or withdrawal by safeguard measures, 13-14 conditions for application of safeguard measures (Art. 2) analysis of imports. See analysis of imports application of safeguard measure on imports irrespective of source (Art. 2.2) exclusion of developing country imports under Art. 9.1, 69 exclusion of RTA imports despite Art. 2.2, 69-71 MFN principle, relationship with, 67-9 scope of provision, 67 Art. XIX relationship with, 21 context, title and structure, 19-20 determination and assessment of facts (Art. 2.1), 20-1 increase in imports, 67 reviews (Art. 7.2), relationship with, 246-7 text of Art. 2, 19 unforeseen developments requirement. See unforeseen developments conditions of competition, examination of basis for, 167-8 limitations of, 171-2 price analysis, importance of, 169-71 purpose of, 168 use of, 167 confidential information, non-disclosure of (Art. 12.11), 331

#### Index

confidentiality, protection of (Art. 3.2) cause for confidentiality, showing of, 99-100 confidential information, 97 information, 98-9 non-confidential summaries of confidential information concerns addressed through, 100-1 content of, 102-4 non-compulsory character of, 101-2 requirement for, 100 protection against disclosure, 104 provision for, 96-7 refusal to accept information submitted as confidential, 104-5 construction. See interpretation consultations Committee on Safeguards, assistance from, 344-5 disputes arising under Agreement, on. See dispute settlement (Art. 14) holding of (Art. 12.3), 319-23 notification of results of (Art. 12.5), 325-8 prior consultations on provisional measures, requirement for, 237 provisional measures (Art. 12.4), 323-5 rebalancing consultations and DSU/GATT consultations distinguished, 351 consumption patterns, changes in, 184-5 counterfactual analysis measures imposed on basis of maintenance of import volumes, 245-6 measures imposed on basis of non-injurious price method, 243-5 coverage of the Agreement (Art. 1) Agreement, 3-10 Art. 3 (investigations), relationship with, 7 bilateral rules, 5-6 context, title and structure, 1-3 direct application of international rules at domestic level, 7 domestic rules applicable to investigations, 7-9 extra-conventional rules, 6-7 impact of Art. 1, 15-17 international law, applicable, 4-7 investigations, domestic rules applicable to, 7-9 limits of scope of Agreement, 3-9 multilateral rules, 4-5 regional rules, 5-6

rules for application of safeguard measures, establishment of, 9-10 safeguard measures Art. XIX GATT 1994 provision for, 10-15 constituent features of, 11-13 suspension, 15 suspension of GATT obligation or modification or withdrawal of concession, 13-14 text of Art. 1, 1 critical circumstances damage difficult to repair, 229-30 definition of, 229 delays in adoption of safeguard measures, 230 preliminary determination, relationship with, 232-3 provision for, 229 customs law, applicability of, 8 damage difficult to repair, 229-30 data collection and analysis assessment of different industry segments, 132-3 basis for, 131 consistent use of data, 131-2 degressivity. See progressive liberalization demand, contraction in, 182-4 determination of serious injury or threat thereof (Art. 4) causal link analysis causal link as, 161 coincidence in time, 163-7 concept of, 133 conditions of competition, examination of, 167-72 demonstration of, 161-3 determination of, 159-60 existence of, 160 non-attribution requirement, 172-94 coincidence in time, analysis of basis for, 163-5 consequence of, 165-6 elements of, 163 reasoned and adequate explanations, 166-7 conditions of competition, examination of basis for, 167-8 limitations of, 171-2 price analysis, importance of, 169-71

purpose of, 168 use of, 167 context, title and structure, 178 data collection and analysis assessment of different industry segments, 132-3 basis for, 131 consistent use of data, 131-2 detailed analysis, publication requirement for, 194-5 domestic industry data collection and analysis, basis for, 121-2 definition of, 112 like or directly competitive products of, 114-15 reasoned conclusions as to like or directly competitive products, 122-3 domestic producers identification of, 123 location of production, 125-8 non-exclusion of selected categories of producers, 124-5 general analytical standards (Art. 4.2(a)), 58-9 increase in imports, rate and amount of analysis of, 138 cautions when assessing, 139-40 linkages with other aspects of investigation and application of safeguard measures, 140 share of domestic market taken by increased imports, 140-3 significance of, 138-9 trends in, 139 level of capacity utilization, changes in cautions when assessing changes, 149 determination of, 148 linkages with other aspects of investigation and application of safeguard measures, 149-50 significance of, 148-9 trends in, 149 level of employment, changes in cautions when assessing changes, 154 determination of, 153 linkages with other aspects of investigation and application of safeguard measures, 154 significance of, 153 trends in, 153-4

## Index

435

cautions when assessing changes, 146 determination of, 145 linkages with other aspects of investigation and application of safeguard measures, 146-7 significance of, 145 trends in, 145–6 level of productivity, changes in cautions when assessing changes, 148 determination of, 147 linkages with other aspects of investigation and application of safeguard measures, 148 significance of, 147 trends in, 147-8 level of profits and losses, changes in cautions when assessing changes, 151-3 determination of, 150 linkages with other aspects of investigation and application of safeguard measures, 153 significance of, 150-1 level of sales, changes in cautions when assessing changes, 144-5 determination of, 143 linkages with other aspects of investigation and application of safeguard measures, 145 significance of, 143-4 trends in, 144 location of production extraterritorial production, 125-6 intra-country production, 126-7 supranational production, 127-8 non-attribution requirement absence of methodology and conceptual steps suggested by Appellate Body, 174 breaking of causal link, 177-8 capacity increases, 189-91 changes in consumption patterns, 184-5 competition from other sources, including other producers and substitutable goods, 186-8 compliance with, 172 consolidation of buyers, 185 contraction in demand, 182-4 criteria for, 173-4 domestic production inefficiencies, 191-2 drought effects on domestic production, 194 energy costs increases, 192-3

level of production, changes in

#### Index

determination of serious injury or threat thereof (Art. 4) (cont.) export performance, 188-9 identification of factors other than imports, 174-5 imports excluded from application of the safeguard measure, 180-1 imports made by industry itself, 181-2 imports made in low proportion and below thresholds provided in Art. 9.1, 182 input costs changes, 192 lack of effective marketing policies, 193-4 other factors that may give rise to nonattribution, 180 practical considerations as to, 178-9 quantification of effects caused by other factors, 175-7 rationale for, 172-3 reasoned and adequate explanations, 170-80 subsidies payments, cessation of, 193 technology developments, 188 trade-restrictive practices, 186 publication requirement for detailed analysis, 194-5 reviews (Art. 7.2), relationship with, 246-7 serious injury assessment analytical criteria, 137-8 concept of, 133 detailed analysis, publication requirement for, 194-5 increase in imports, rate and amount of, 138-40 level of capacity utilization, changes in, 148-50 level of employment, changes in, 153-4 level of production, changes in, 145-7 level of productivity, changes in, 147-8 level of profits and losses, changes in, 150-3 level of sales, changes in, 143-5 reasoned and adequate explanations, 138 requirement for, 133-4 significant overall impairment, evaluation of, 137, 155-6 specific factors listed in Art. 4.2(a), evaluation of, 136-8 threat of serious injury, 156-9 share of domestic market taken by increased imports

cautions when assessing import market share, 142-3 declining markets, 142 determination of, 140-1 growing markets, 141-2 market share as business indicator, 141 reasoned and adequate explanations, 143 stable markets, 141 trends in, 141 text of Art. 4, 178 threat of serious injury absence of prescribed methods, 157-8 additional analysis to the general industry assessment, 156-7 bases for determination of threat, 112 definition of, 111, 156 relationship between threat and serious injury, 158-9 developing countries imports from, exclusion from safeguard measures (Art. 9.1), 69 notification of exclusion (Art. 9.1), 332 status as developing country, 277-8 developing country members (Art. 9) context, title and structure, 274-6 exclusion of imports from developing countries from application of safeguard measure (Art. 9.1) application of rule, 277 case law, 280-2 counting of relevant imports, 278-80 developing country status, 277-8 exclusion and inclusion of imports from developing countries on continuous basis, 280 provision for, 276-7 extension of period of application of safeguard measure application of rule, 282-3 flexibility in reintroduction of safeguard measures for developing countries, 283-4 provision for, 282 text of Art. 9, 274 disclosure, protection against, 104 dispute settlement (Art. 14) alternative means for dispute resolution, 367-8 consultations on disputes arising under Agreement

#### Index

energy costs increases, 192-3

consultations and rebalancing consultations, 351 fruitfulness of action under the DSU and likelihood of a settlement, 354-5 general DSU/GATT consultations and special proceedings, 352 grounds for DSU/GATT consultations, 351-2 identification of challenged measures, requirement for, 352-3 legal basis of claims, 352-3 participation of other WTO Members, 354 requirements for, 352-3 context, title and structure, 349-50 negotiating history, 385-6 panels, 360-4 rebalancing actions challenges to, 363-4 distinction between DSU/GATT consultations and rebalancing consultations, 351 relationship between Agreement, GATT 1994 and DSU, 350-1 safeguard matters, on alternative means for dispute resolution, 367-8 appeals, 365-7 fruitfulness of pursuing WTO dispute settlement proceeding, 358-60 general overview of WTO rules on dispute settlement, 356-7 implementation challenges, 367 measure at issue, 357-8 panels, 360, 364-5 provision for, 355-6 text of Art. 14, 349 Dispute Settlement Understanding (DSU). See dispute settlement (Art. 14) domestic industry capacity increases, 189-91 changes in consumption patterns, 184-5 competition from other sources, including other producers and substitutable goods, 186-8 consolidation of buyers, 185 contraction in demand, 182-4 data collection and analysis, basis for, 131-3 definition of, 112 drought effects on domestic production, 194

distinction between DSU/GATT

# 437

export performance, 188-9 identification of domestic producers, 123 input costs changes, 192 lack of effective marketing policies, 193-4 like or directly competitive products of, 114-15 location of production extraterritorial production, 125-6 intra-country production, 126-7 supranational production, 127-8 non-exclusion of selected categories of producers, 124-5 production inefficiencies, non-attribution, 191-2 reasoned conclusions as to like or directly competitive products, 122-3 share of domestic market taken by increased imports cautions when assessing import market share, 142-3 declining markets, 142 determination of, 140-1 growing markets, 141-2 market share as business indicator, 141 reasoned and adequate explanations, 143 stable markets, 141 trends in, 141 subsidies payments, cessation of, 193 technology developments, 188 trade-restrictive practices, 185-6 domestic law administrative law, applicability of, 7-8 applicability to safeguard investigations and impositions, 7-9 civil procedure, applicability of, 8 customs law, applicability of, 8 direct application of international law, 7 drought effects on domestic production, 194 dualism, 7 due process, 76-7, 86, 100, 102, 243, 286, 367, 394 duration provisional measures 200-day period, 234-5 part of overall period of application, as, 235-6 provision for, 234 rebalancing measures, 235-6

#### Index

duration and review of measures (Art. 7) context, title and structure, 239-40 extensions (Art. 7.3), 240-2 measures concluding at different points in time, 242 necessary duration of measures (Art. 7.1), 240 no reinstatement of certain measures (Arts. 7.5 and 7.6), 251-2 progressive liberalization (Art. 7.4) mid-term reviews, 251 provision for, 249 staggered system of incentives, 249-51 reviews (Art. 7.2) compliance with multilateral disciplines under Arts. 8 and 12, 248-9 counterfactual analysis if measure imposed on basis of non-injurious price method, 243-5 counterfactual analysis if safeguard measure imposed on basis of maintenance of import volumes, 245-6 existence of evidence that industry is adjusting, 247-8 need to maintain safeguard measure, 243 procedure for, 242-3 provision for, 242 text of Art. 7, 238-9 energy costs, increases in, 192-3 evidence presentation of, 85-9 provisional measures, 232 export performance, non-attribution, 188-9 export-processing zones, products excluded from import analysis, 47 extension of measures developing country members (Art. 9) application of rule, 282-3 flexibility in reintroduction of safeguard measures for developing countries, 283-4 provision for, 282 duration and review of (Art. 7), 240-2 notification of (Art. 12.1(c)), 313-15 extra-conventional rules, applicability of, 6-7 extraterritorial production, 125-6

facts, pertinent issues of fact and law, 94–6 free zones, products excluded from import analysis, 47 GATT 1994 dispute settlement. See dispute settlement (Art. 14) general provisions (Arts. 1 and 2). See conditions for application of safeguard measures (Art. 2); coverage of the Agreement (Art. 1) import duties as most suitable measure, 217-10 imports counterfactual analysis if safeguard measure imposed on basis of maintenance of import volumes, 245-6 excluded from application of safeguard measures, 180-1 increase in. See analysis of imports made by domestic industry itself, 181-2 made by producers, 47-8 made in low proportion and below thresholds provided in Art. 9.1, 182 magnitude-based measurement of, 64-5 negligible imports, 48 prices of, no requirement to assess, 66-7 regional trading partners, from, 48-9 trend-based measurement of, 64-5 value or volume, measurement of, 56-7 information confidential. See confidential information; confidentiality, protection of (Art. 3.2) filling of gaps in, 56 non-disclosure of information with effects on law enforcement or third-party interests (Art. 12.11), 331 provided with notifications (Art. 12), 315-19 input costs, changes in, 192 institutions. See multilateral surveillance and institutions (Art. 13) international law applicability of, 4-7 bilateral rules, 5-6 binding character of, 7 direct application at domestic level, 7 dualist incorporation of, 7 extra-conventional rules, 6-7 monist incorporation of, 7 multilateral rules, 4-5 regional rules, 5-6

interpretation, 74 intra-country production, 126–7

investigation of imports. See analysis of imports

Index

439

investigations challenges to specific safeguard measures in respect of, 360-2 notification of initiation, 306-10 notification of termination, 332-3 investigations (Art. 3) Art. 1, relationship with, 7 competent authorities, 78-9 conclusions, 92-4 confidentiality, protection of (Art. 3.2) cause for confidentiality, showing of, 00-100 confidential information, 97 information, 98-9 non-confidential summaries of information, 100 protection against disclosure, 104 provision for, 96-7 refusal to accept information submitted as confidential, 104-5 context, title and structure, 76-7 domestic rules applicable to, 7-9 due process, 76-7, 86, 100, 102, 243, 367, 394 evidence and views, presentation of, 85-9 explanations, 90-1 findings, 91-2 investigation-related guarantees (Art. 3.1), 82-3 non-confidential summaries of confidential information concerns addressed through, 100-1 content of, 102-4 non-compulsory character of, 101-2 requirement for, 100 pertinent issues of fact and law, 94-6 procedures made public under Art. X GATT 1994, 81-2 procedures previously established, 79-81 public hearings, 84-5 public interest-related views, presentation of, 89-90 publication of reports, 91-2 reasonable public notice, 83-4 reasoned and adequate explanations, 00-1 reasoned conclusions, 92-4 requirement for (Art. 3.1), 77-8 text of Art. 3, 76 transparency, 76-7, 100 issues of fact and law, pertinent, 94-6

law enforcement, non-disclosure of confidential information with effects on (Art. 12.11), 331 law, pertinent issues of fact and law, 94-6 laws challenges to statutory provisions, 360 notification of, 328-9 level of employment, changes in cautions when assessing changes, 154 determination of, 153 linkages with other aspects of investigation and application of safeguard measures, 154 significance of, 153 trends in, 153-4 liberalization progressive. See progressive liberalization tariffs, of, 385 litigation. See dispute settlement (Art. 14) location of production extraterritorial production, 125-6 intra-country production, 126-7 supranational production, 127-8 market share business indicator, as, 143 cautions when assessing import market share, 142-3 declining markets, 142 determination of, 140-1 growing markets, 141-2 market share as business indicator, 141 reasoned and adequate explanations, 143 stable markets, 141 trends in, 141 marketing policies, lack of effective, 193-4 monism, 7 most-favoured-nation (MFN) treatment application of safeguard measure on imports irrespective of source (Art. 2.2), relationship with, 67-9 non-discrimination, and, 67-8 multilateral rules, applicability of, 4-5 multilateral surveillance and institutions (Art. 12) Committee on Safeguards (Art. 13.1) any other function assigned by Council for Trade in Goods, 340 assisting in consultations under

Agreement, 344-5

Cambridge University Press & Assessment 978-1-108-48428-2 — WTO Agreement on Safeguards and Article XIX of GATT Fernando Piérola-Castro Index More Information

#### 440

#### Index

multilateral surveillance and institutions (Art. 13) (cont.) general functions of, 338 general surveillance by, 338-9 making findings on compliance with procedural requirements, 341-4 phasing out of measures covered by Arts. 10 and 11, 346 provision for, 336-8 receipt and review of notifications, 339-40 reviewing of substantial equivalence of rebalancing measures, 345-6 specific functions of, 340-1 context, title and structure, 335-6 negotiating history, 385-6 text of Art. 13, 334-5 WTO Secretariat, assistance for preparation of Annual Report on Operations (Art. 13.2), 346-7 negotiating history 1st draft of Agreement, 387-91 2nd draft of Agreement, 391-3 3rd draft of Agreement, 393-6 4th draft of Agreement, 396-8 5th draft of Agreement, 398-9 6th draft of Agreement, 399–401 Art. XIX GATT 1947, 377-82 Art. XIX GATT 1994 background to, 382-3 negotiation process and developments, 386-7 Uruguay Round, 383-6 assessment of, 401-2 checks and balances as to application of safeguard measures, 380-2 need for safeguard clause, 378-9 negotiating periods, 375-7 risk of abuse of safeguard measures, 380-2 safeguard measures checks and balances as to application of, 380-2 coverage, 384 dispute settlement, 385-6 multilateral surveillance, 385-6 notifications and consultations, 385 objective criteria, 384-5 progressive liberalization (degressivity) of, 385 retaliation against abusive, 385 risk of abuse of, 380-2 scope and extent of, 379-80

structural adjustment, as, 385 substantive conditions for application of, 379 temporary nature, 385 transparency, 384 scope and extent of safeguard measures, 379-80 substantive conditions for application of, 379 Uruguay Round negotiation mandate, 383-4 safeguard measures, 384-6 non-attribution. See determination of serious injury or threat thereof (Art. 4) non-discrimination allocation of quotas, 221 Art. XIII GATT 1994, and, 4, 68, 219, 221 most-favoured-nation (MFN) treatment, and, 67-8 selective application of measures, 222-3, 394 tariff-rate quotas (TRQs), 4 non-injurious price (NIP) calculation in normal circumstances, 207-8 concept of, 206-7 counterfactual analysis if measure imposed on basis of, 243-5 methodology for calculation of, 206 notice/notification challenges to omissions or deficiencies in, 363-4 investigations, of, 83-4 rebalancing actions, of, 267-8 receipt and review of notifications by Committee on Safeguards, 339-40 notifications and consultations (Art. 12) consultations holding of (Art. 12.3), 319-23 notification of results (Art. 12.5), 325-8 provisional measures (Art. 12.4), 323-5 context, 301-3 negotiating history, 385 notifications cessation of safeguard measure or termination of investigation without imposition of safeguard measure, 332-3 Committee on Safeguards, to (Art. 12.10), 330-1 consultations results, mid-term reviews, compensation and rebalancing (Art. 12.5), 325-8

#### Index

441

decision to apply or extend safeguard measure (Art. 12.1(c)), 313-15 exclusion of imports from developing countries under Art. 9.1, 332 finding of serious injury and threat (Art. 12.1(b)), 310–13 information to be provided with (Art. 12.2), 315-19 initiation of safeguard investigations (Art. 12.1(a)), 306-10 laws, regulations and administrative procedures, 328-9 measures to be phased out (Art. 12.7), 320-30 non-disclosure of confidential information with effects on law enforcement or third-party interests (Art. 12.11), 331 not required by Art. 12, 331-2 provisional measures (Art. 12.4), 323-5 safeguard investigations (Art. 12.1), 305-6 third members, by (Arts. 12.8 and 12.9), 330 reviews (Art. 7.2), relationship with, 248-9 structure, 304-5 text of Art. 12, 300-1 title, 303-4 obligations. See also concessions and other obligations (Art. 8) absence of agreement on, 262-3 substantial equivalence agreement on adequate means of trade compensation, 260-1 level of concessions and other obligations affected by safeguard measure, 257-8 members affected by safeguard measure, 259-60 obligation to endeavour to maintain substantially equivalent level, 258-9 provision for, 256-7 rebalancing actions, 264-6 suspension by safeguard measures, 13-14 suspension, modification or withdrawal of, 216-17 unforeseen developments Art. XIX:1(a) GATT 1994, interpretation of, 40 effect of, 35-6 extra-GATT 1994, 36-7 intra-GATT 1994, 37-8 non-market access-related, 38-40

panels. See dispute settlement (Art. 14) period of investigation (POI). See analysis of imports pertinent issues of fact and law, 94-6 pre-existing measures (Art. 10) application of rule, 286-8 context, title and structure, 285-6 due process, 286 phasing out of measures covered by Art. 10, 346 text of Art. 10, 285 production levels, changes in cautions when assessing changes, 146 determination of, 145 linkages with other aspects of investigation and application of safeguard measures, 146-7 significance of, 145 trends in, 145-6 productivity levels, changes in cautions when assessing changes, 148 determination of, 147 linkages with other aspects of investigation and application of safeguard measures, 148 significance of, 147 trends in, 147-8 profits and losses, changes in cautions when assessing changes, 151-3 determination of, 150 linkages with other aspects of investigation and application of safeguard measures, 153 significance of, 150-1 progressive liberalization mid-term reviews, 251 negotiating history as to, 385 provision for, 249 staggered system of incentives, 249-51 prohibition and elimination of certain measures (Art. 11) compliance with Art. XIX GATT 1994 and Agreement (Art. 11.1(a)), 291-3 context, title and structure, 290-1 non-applicability of Agreement to measures subject to other provisions of GATT 1994 and other WTO agreements (Art. 11.1(c)), 295-7 phasing out of measures covered by Art. 11, 346 phasing out of prohibited measures (Art. 11.2), 297-8

scope of, 36

#### Index

prohibition and elimination of certain measures (Art. 11) (cont.) prohibited measures (Art. 11.1(b)), 203-5 prohibition from encouraging equivalent measures (Art. 11.3), 298 text of Art. 11, 289-90 provisional measures consultations (Art. 12.4), 323-5 rebalancing actions (Art. 8.2), 272-3 provisional measures (Art. 6) context, title and structure, 227-9 critical circumstances damage difficult to repair, 229-30 definition of, 229 delays in adoption of safeguard measures, 230 preliminary determination, relationship with, 232-3 provision for, 229 duration of 200-day period, 234-5 part of overall period of application, as, 235-6 provision for, 234 preliminary determination critical circumstances, relationship with, 230-4 reasoned and adequate explanations, 232 requirement for, 231-2 timing of, 233 prior consultations, requirement for, 237 tariffs that may be reimbursed, measures to be in form of, 236-7 text of Art. 6, 226-7 public hearings, 84-5 public interest-related views, presentation of, 89-90 public notice of investigations, 83-4 publications reports of investigations, 91-2 serious injury analyses, 194-5 quantitative restrictions most suitable measure, as, 220-1 tariffs preferred to, 388 quotas allocation among supplying countries, 221-2 selective application of, 222-3

reasonable public notice of investigations, 83-4 reasoned and adequate explanations coincidence in time, analysis of, 166-7 conclusions of investigations, in, 92-4 determination of serious injury or threat thereof (Art. 4) coincidence in time, analysis of, 166-7 non-attribution requirement, 179-80 serious injury assessment, 138 share of domestic market taken by increased imports, 143 investigations (Art. 3), 90-1 investigations, in, 90-1 preliminary determination of provisional measures, 232 serious injury assessment, 138 share of domestic market taken by increased imports, 143 rebalancing actions absence of agreement on maintenance of level concessions and other obligations, 262-3 adoption of, 263-4 challenges to, 363-4 Committee on Safeguards, review of substantial equivalence of actions, 345-6 consisting of, 266 duration of, 235-6, 269 negotiating history, 374 notification of, 267-8, 325-8 provision for, 261-2 provisional safeguard measures, against, 272-2 rebalancing consultations and DSU/GATT consultations distinguished, 351 selective application of, 268-9 termination of, 269 timeframe for exercising right to adopt, 266-7 regional rules, applicability of, 5-6 regional trade agreements (RTAs), exclusion of imports from safeguard measures despite Art. 2.2, 69-71 regulations, notification of, 328-9 reports of investigations, 91-2 reviews. See also duration and review of measures (Art. 7) notification of mid-term reviews (Art. 12.5), 325-8 notifications. See also duration and review of measures (Art. 7)

Safeguard Clause. See Art. XIX GATT 1944 safeguard measures abusive measures retaliation against, 385 risk of, 380–2 adjustment plan description and review of, 212-13 industrial adjustment, 212 need for, 210-12 application of. See also application of measures (Art. 5) establishment of rules for, 9-10 factual determination of right to, 40-1 Art. XIX GATT 1994 provision for, 10-15 concluding at different points in time, 242 constituent features of, 11-13 counterfactual analysis of. See counterfactual analysis definition of, 10-15 delays in adoption of, 230 dispute settlement. See dispute settlement (Art. 14) domestic law, and. See domestic law negotiating history as to. See negotiating history negotiation of Art. XIX GATT 1947 and GATT 1994. See negotiating history no reinstatement of certain measures, 251-2 notification of measures to be phased out, 329-30 provisional measures. See provisional measures (Art. 6) simultaneous application with other remedies, 225 structural adjustment, as, 385 suspension, 15 suspension of GATT obligation or modification or withdrawal of concession, 13-14 tariff-rate quotas, 4, 14, 204, 219–20 tariffs. See tariffs unforeseen developments, and, 11 Safeguards Committee. See Committee on Safeguards sales levels, changes in cautions when assessing changes, 144-5 determination of, 143

#### linkages with other aspects of investigation and application of safeguard measures, 145

#### Index

443

significance of, 143-4 trends in, 144 serious injury definition of, 108-10 detailed analysis, publication requirement for, 194-5 determination of. See determination of serious injury or threat thereof (Art. 4) negotiating history, 371-3 notification of finding of, 310-13 suspensions, 15 threat of. See threat of serious injury serious injury assessment analytical criteria, 137-8 concept of, 133 detailed analysis, publication requirement for, 194-5 increase in imports, rate and amount of, 138-40 level of capacity utilization, changes in, 148-50 level of employment, changes in, 153-4 level of production, changes in, 145-7 level of productivity, changes in, 147-8 level of profits and losses, changes in, 150-3 level of sales, changes in, 143-5 reasoned and adequate explanations, 138 requirement for, 133-4 significant overall impairment, evaluation of, 137, 154-6 specific factors listed in Art. 4.2(a), evaluation of, 136-8 threat of serious injury, 156-9 statutory provisions. See laws structural adjustment, safeguard measures as, 385 subsidies payments, cessation of, 193 substantial equivalence concessions and other obligations agreement on adequate means of trade compensation, 260-1 level of concessions and other obligations affected by safeguard measure, 257-8 members affected by safeguard measure, 259-60 obligation to endeavour to maintain substantially equivalent level, 258-9 provision for, 256-7 rebalancing actions, and, 264-6, 345-6 review by Committee on Safeguards, 345-6 supranational production, 127-8

#### Index

surveillance. See multilateral surveillance and institutions (Art. 13) suspensions suspension by safeguard measures, 13-14 tariff-rate quotas (TRQs) impact of, 204 most suitable measure, as, 219-20 non-discrimination requirement, 4 option for, 14 tariffs Art. XIX GATT 1947, and, 376-7 import duties other than, 11 imposition of, 216, 384 introduction of, 218 modification of, 218 option for, 4-14 preference over quantitative restrictions, 388 progressive liberalization of, 385 reduction of, 26 reimbursing of, 236-7 scope and extent of safeguard measures, 379-80 tariff classification, 118 technology, developments in, 188 termination. See cessation third members, notifications by (Arts. 12.8 and 12.9), 330 third parties, non-disclosure of confidential information with effects on (Art. 12.11), 331 threat of serious injury absence of prescribed methods, 157-8 additional analysis to the general industry assessment, 156-7 bases for determination of threat, 112

definition of, 111, 156 notification of finding of, 310-13 relationship between threat and serious injury, 158-9 trade-restrictive practices, non-attribution, 185-6 transparency investigations, of, 76-7, 100 negotiating history as to, 384 unforeseen developments Art. XIX:1(a) GATT 1994 provision, 21 case law, 30-5 concept of, 25-8 enforceability and logical connection with conditions for application of safeguard measures, 23-5 existence of, 21 GATT obligations Art. XIX:1(a) GATT 1994, interpretation of, 40 effect of, 35-6 extra-, 36-7 intra-, 37-8 non-market access-related, 38-40 scope of, 36 historical developments, 22-3 negotiating history as to, 371-2, 376 operational aspects of, 28-30 safeguard measures and, 11 WTO dispute settlement. See dispute settlement (Art. 14)

WTO Secretariat, assistance from, for preparation of Annual Report on Operations, 346–7