

Chapter 7

SAFEGUARDS

OVERVIEW OF RULES

Article XIX of the GATT provides the rules to be observed when a Member government takes emergency means to restrict imports by what are called safeguard measures—measures used to prevent serious injury to domestic industry from a sudden surge of imports. However, this Article failed to clearly specify the conditions under which safeguard measures may be imposed. For instance, a clear definition of what constitutes serious injury or threat thereof to domestic industry was lacking. Neither time limits for the application of restrictions nor concrete modes of application (for example, the permissibility of selective application of measures to particular sources of imports) were specified. Consequently, the feeling grew that an elaboration and clarification of the rules for using safeguards was necessary, and the issue was debated during the Tokyo Round of multilateral trade negotiations.

A goal specified for these discussions in the Tokyo Declaration of September 1973 was “to include an examination of the adequacy of the multilateral safeguard system”. Pursuant to this declaration, debate focused on the following four points: (a) the propriety of selective application of safeguards and the terms of their authorization; (b) the clarification of requirements for implementation (such as the definition of “serious injury”); (c) the terms of safeguards (espe-

cially the obligation to liberalize progressively, maximum duration of safeguards, the obligation for structural adjustment); and (d) notification and consultation procedures, as well as the possibility of setting up an international supervisory mechanism. However, on the most important issue, the question of criteria for applying safeguards, the European Economic Community and the developing countries remained at loggerheads and no agreement could be obtained.

Thus a great many difficulties remained in the implementation of a formal safeguards system, including the fear that countries that are targets of safeguards will retaliate with their own restrictive measures. Since the 1970s there has been a tendency to move to voluntary export restrictions—the so-called “grey-area measures” that have no clear basis in the GATT, raising concerns that the GATT system might become empty of meaning and substance. The feeling grew that the rules concerning safeguards ought to be strengthened to deal with these grey-area measures. In this connection, the GATT Ministerial Meeting in 1982 issued a declaration that stated in part, “there is need for an improved and more efficient safeguard system”. However, a confrontation developed between some developing countries—especially the United States, Australia, and New Zealand—who argued that grey-area measures either should be scrapped or the rules on them strengthened, and the European Economic Community, who held that this position simply ignored reality. As a consequence, no concrete progress was made on the issue.

Negotiations on safeguards in the Uruguay Round proceeded on the basis of the aims spelled out in the Punta del Este Declaration of September 1986, the gist of which was that “[t]he agreement on safeguards (a) shall be based on the basic principles of the General Agreement; (b) shall contain, *inter alia*, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance, and dispute settlement; and (c) shall clarify and reinforce the disciplines of the General Agreement and should apply to all contacting parties”.

The resultant Agreement on Safeguards was incorporated in the WTO Agreement. It must be noted that special safeguard applications are permitted under the Agreement on Agriculture and the Agreement on Textiles and Clothing.

LEGAL FRAMEWORK

The Agreement on Safeguards

Article XIX of the GATT provides for safeguard measures (that is, emergency import restrictions) to counteract sharp increases in imports. Under this Article, import restrictions may be imposed if certain conditions are met: no discrimination in application, provision of compensation, or acceptance of countermeasures. These conditions were considered difficult for importing countries to meet, and in the past it was more common for governments of importing countries to request or force exporting countries to implement voluntary export restraints (“VERs”). VERs and other grey-area measures have been explicitly prohibited, and conditions for the invocation of safeguards clearly elaborated in the Agreement on Safeguards (see Figure 7-1).

The Agreement on Safeguards explicitly prohibits the introduction and maintenance of VERs, one of the classic “grey-area” measures, orderly marketing arrangements and like measures including export moderation, export or import price monitoring systems, export or import surveillance, compulsory import cartels, and trade-restrictive, discretionary export or import licensing schemes. It also prohibits Members from seeking adoption of grey-area measures by other Members. The Agreement on Safeguards permits a Member to maintain only one grey-area measure in effect on the date of entry into force of the WTO Agreement. To maintain these “grey-area measures,” however, Members were obligated to (a) notify the Committee on Safeguards of the measures within 90 days of the Agreement taking effect; (b) present to the Committee within 180 days a plan for elimination of the measure, and (c) eliminate the measure by 31 December 1999 (Article 11, paragraphs 1 and 2 of the Agreement on Safeguards).

In addition, Members shall neither encourage nor support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to “grey-area measures” (Article 11, paragraph 3).

Figure 7-1

Conditions for Invoking Safeguards

<i>Determination of Injury</i>	All relevant economic factors—such as imports, production, sales, and productivity—must be taken into account and a causal relationship between increase in imports and injury must be demonstrated (Article 4 of the Agreement on Safeguards).
<i>Investigation Procedures</i>	Investigation procedures must be specified prior to investigations and all interested parties must be given an opportunity to present evidence. In addition, the findings of investigation must be published (Article 3).
<i>Duration</i>	Four years initially, may be extended to the maximum of eight years (Article 7.1 and 7.3).
<i>Levels of Quantitative Restrictions</i>	Must, in principle, not fall below the average of imports in the last three representative years (Article 5).
<i>Prohibition on Reintroduction</i>	Measures may not be invoked again for a period equivalent to the period of the duration of a preceding measure or the minimum of two years (Article 7.5).
<i>Progressive Liberalization</i>	Where the duration of a safeguard measure exceeds one year, the Member applying the measure is obligated to gradually liberalize the measure. Where the duration of the measure exceeds three years, the Member applying the measure is obligated to conduct a mid-term review of the measure (Article 7.4).

Recognizing that strict requirements provided for in Article XIX of the GATT were partly responsible for the prevalence of “grey-area measures”, the Agreement on Safeguards has relaxed the conditions on invocation to some extent in the following two aspects. First, it provides for a special method for allocating import quotas (“quota modulation”) to exporting countries. Under Article XIII of the GATT, these allocations must be based on actual imports during a representative period of the past. However, where imports from a specific exporting country are growing faster than imports in general, the imposition of safeguards would negatively affect third countries from which there is no sudden increase in imports. Under the Agreement, if a country can demonstrate the need and justification for safeguards to the satisfaction of the Committee on Safe-

guards, this principle may be derogated and priority restrictions placed on imports from the country in question. For a period of no more than four years, restrictions may be placed mainly on the country that surged and restrictions on third countries may be made relatively lenient.

Second, the right of exporting countries to take countermeasures in reaction to safeguard actions is restricted for a certain period under the following terms and conditions. When invoking import restrictions under the safeguard provisions, an importing country is required to provide some sort of compensation to exporting countries, usually in the form of a tariff reduction on other items. If adjustments are not agreed upon in bilateral talks, and the importing country invokes safeguards notwithstanding, exporting countries may have recourse to retaliatory measures. However, the provision of compensation is often politically sensitive, since it may provoke conflicts between the interests of different industries in the importing country. Without a doubt, this was one reason why countries resorted to grey-area measures so frequently. Under the Agreement on Safeguards, if the measure is taken as the result of an absolute increase in imports and is consistent with the Agreement on Safeguards, retaliatory measures may not be invoked by exporting countries for the first three years of the safeguard measures. Under the GATT, 150 safeguard measures had been taken in total during the period between the establishment of the GATT and 31 December 1994, and 96 of these measures were invoked since 1970. They were invoked mainly by developed economies such as Australia, the European Union, and the United States (see Figure 7-2). This frequent use is partly because tariff rates in developed countries had been bound at such a low level that it was virtually impossible to protect domestic industries through the use of tariffs.

The United States and other developed countries have applied safeguard measures less often than before the conclusion of the Uruguay Round. Provisions for invoking safeguard measures entailed a fairly weighty burden of proof that serious injury had occurred and that imports were a substantial cause of the injury. Because safeguards must be applied against all exporting countries, the United States and the European Union have turned to other more easily triggered measures that single out specific countries while giving competitive advantages to imports from other countries. The use of measures having the effect of import restrictions has, in fact, increased through the abuse of anti-dumping measures, VERs, and unilateral measures (see Chapter 5 on Anti-Dumping Measures and Chapter 14 on Unilateral Measures).

As Figure 7-3 shows, 59 safeguard investigations have been initiated since

the entry into force of the WTO Agreement. Of this number, 31 have resulted in the invocation of safeguard measures (include provisional measures).

Figure 7-2

Application of Safeguard Measures Under the GATT

	1970-74	1975-79	1980-84	1985-89	1990-94	1995-99
United States	3	6	4(1)	0	0	5(2)
European Union	1	2(1)	7(4)	7(5)	4(4)	0
Canada	6(3)	7(1)	3(1)	1(1)	1	0
Australia	1	16(1)	4	0	1	0
Others	1	4	5(4)	6(3)	6(2)	17(7)
TOTAL	12(3)	35(3)	23(10)	14(9)	12(6)	22(9)

Source: WTO documents (ANALYTICAL INDEX and WTO notification). Numbers in parentheses are the number of safeguards on agricultural products.

Figure 7-3

Safeguard Investigation Under WTO Disciplines

(as of the end of January 2001)

	Date of Initiation	Initiating Country	Products	Status
1	29 Mar. 1995	United States	Fresh winter tomatoes	Withdrawn
2	30 Aug. 1995	Korea	Soybean oil	Increase in tariff rates of soy bean (raw material of the subject product within its bound tariff rates).
3	4 Mar. 1996	United States	Broom corn broom	Terminated (3 Dec. 1998) (tariff increase: 28 Nov. 1996 - 3 Dec. 1999)
4	11 Mar. 1996	United States	Fresh tomatoes, bell peppers	Negative
5	28 May 1996	Korea	Dairy products	Terminated (quantitative restriction: 7 Mar. 1997 - 28 Feb. 2001)

6	18 Jun. 1996	Brazil	Toys, video games, etc.	Invoking (extended) (originated: imposing safeguard duty: 1 Jan. 1997 - 31 Dec. 1999) (extended: imposing safeguard duty: 1 Jan. 2000 - 31 Dec. 2003)
7	27 Aug. 1996	Korea	Bicycles and their parts and accessories	Affirmative No safeguard measure taken
8	14 Feb. 1997	Argentina	Footwear	Terminated (safeguard duty: 13 Sep. 1997 - 25 Feb. 2000)
9	1 Oct. 1997	United States	Wheat gluten	Invoking (quantitative restriction: 1 Jun. 1998 - 1 Jun. 2001)
10	28 Nov. 1997	India	Acetylene black	Terminated (safeguard duty: 10 Dec. 1998 - 9 Dec. 2000)
11	19 Jan. 1998	India	Styrene-butadiene- rubber	Suspended (not to invoke) Switched to AD investigation
12	3 Feb. 1998	Argentina	Toys	Under investigation
13	5 Feb. 1998	India	Carbon black	Terminated (safeguard duty: 9 Oct. 1998 - 28 Feb. 1999)
14	26 Feb. 1998	India	Propylene glycol	Terminated (safeguard duty: 24 Dec. 1998 - 23 Jun. 2000)
15	26 Feb. 1998	India	Flexible-slabstock- polyol	Terminated (safeguard duty: 24 Dec. 1998 - 23 Jun. 2000)
16	24 Apr. 1998	India	High-density fibre board	Affirmative No safeguard measure taken
17	26 Jun. 1998	Australia	Swine meat	Affirmative No safeguard measure taken
18	5 Aug. 1998	Egypt	Safety matches	Invoking (safeguard duty: 19 Feb. 1999 - 4 Aug. 2001)
19	7 Oct. 1998	United States	Lamb meat	Invoking (quantitative restriction: 22 Jul. 1999 - 22 Jul. 2002)
20	15 Oct. 1998	Slovenia	Swine meat	Under investigation Provisional measure terminated (safeguard duty: 21 Nov. 1998 - 16 Jan. 1999)
21	12 Jan. 1999	United States	Steel wire rods	Invoking (tariff quota: 1 Mar. 2000 - 1 Mar. 2003)
22	12 Jan. 1999	Ecuador	Sandals	Under investigation
23	2 Feb. 1999	India	Phenol	Invoking Under investigation on extension (safeguard duty: 30 Jun. 1999 - 29 Jun. 2001)

24	3 Mar. 1999	Czech	Cane or beet sugar and chemically pure sucrose	Invoking (quantitative restriction: 20 Sep. 1999 - 19 Sep. 2002)
25	5 May. 1999	Slovak	Swine meat	Suspended Provisional measure terminated (tariff increase: 21 May. 1999 - 6 Dec. 1999)
26	20 May. 1999	Latvia	Swine meat	Terminated (tariff increase: 1 Jun. 1999 - 1 Jun. 2001)
27	16 Jun. 1999	India	Acetone	Invoking (safeguard duty: 27 Jan. 2000 - 26. Jul. 2002)
28	28 Jun. 1999	Colombia	Taxis	Negative
29	30 Jun. 1999	United States	Welded line pipes	Invoking (tariff increase: 1 Mar. 2000 - 1 Mar. 2003)
30	30 Aug. 1999	Chile	New rubber tyres	Negative
31	15 Sep. 1999	India	White/yellow phosphorus	Affirmative No safeguard measure taken
32	19 Sep. 1999	Egypt	Common fluorescent lamps	Invoking (tariff increase: 27 Feb. 2000 - 26 Feb. 2001)
33	30 Sep. 1999	Chile	Wheat, wheat flour, sugar and edible vegetable oils	Invoking (tariff increase: 19 Nov. 1999 - 22 Jan. 2001)
34	16 Oct. 1999	Korea	Garlic	Invoking (tariff increase: 1 Jun. 2000 - 31 Dec. 2002)
35	28 Oct. 1999	Ecuador	Matches	Under investigation Provisional measure invoking (tariff increase: 1 Dec. 2000 -)
36	17 Jan. 2000	El Salvador	Pig meat products	Under investigation
37	28 Jan. 2000	Venezuela	Flat-rolled products	Negative
38	9 Feb. 2000	Chile	Cotton socks, Synthetic fibre socks	Invoking (tariff increase: 16 Nov. 2000 - 15 Nov. 2001)
39	8 Mar. 2000	Venezuela	New pneumatic tyres for automobiles	Under investigation
40	15 Mar. 2000	United States	Crabmeat from swimming crabs	Negative
41	15 Jun. 2000	United States	Extruded rubber thread	Negative
42	21 Jun. 2000	Chile	Powdered milk, Liquid UHT milk	Under investigation Provisional measure invoking (tariff increase: 12 Jul. 2000-)
43	21 Jun. 2000	El Salvador	Husked rice, Semi-milled or wholly milled rice, Broken rice,	Under investigation

			Pre-cooked rice, Bran, sharps and other residues of rice	
44	26 Jun. 2000	Morocco	Fresh bananas	Under investigation Provisional measure invoking (tariff increase: 10 Aug. 2000-)
45	6 Jul. 2000	India	Gamma ferric oxide, Magnetic iron oxide	Affirmative
46	17 Jul. 2000	India	Methylene chloride	Affirmative
47	22 Jul. 2000	Argentina	Mopeds, motorcycles (up to 100cc)	Under investigation
48	25 Sep. 2000	Egypt	Powdered milk	Under investigation Provisional measure invoking (tariff increase: 26 Sep. 2000-)
49	20 Oct. 2000	Slovak	Cane or beet sugar, Chemically pure sucrose	Under investigation
50	24 Oct. 2000	Bulgaria	Ammonium nitrate	Under investigation Provisional measure invoking (tariff increase: 28 Nov. 2000-)
51	1 Nov. 2000	Czech	Footwear, Gaiters	Under investigation
52	8 Nov. 2000	El Salvador	Superphosphates, Miniral or chemical fer- tilizers	Under investigation
53	22 Nov. 2000	Jordan	Biscuits and chocolates	Under investigation
54	5 Dec. 2000	Morocco	Rubber plates and sheets	Under investigation
55	19 Dec. 2000	Chile	Mixtures of oils	Under investigation Provisional measure invoking (tariff increase: 13 Jan. 2001-)
56	20 Dec. 2000	Czech	Isoglucose, Isoglucose syrups, Glucose syrups	Under investigation Provisional measure invoking (tariff increase: 10 Jan. 2001-)
57	22 Dec. 2000	Poland	Nitrates of potassium	Under investigation
58	22 Dec. 2000	Japan	Tatami-omote, Welsh onion, Shiitake mushrooms	Under investigation
59	12 Jan. 2001	Argentina	Peaches preserved in wa- ter, sweetening	Under investigation Provisional measure invoking (tariff increase: 12 Jan. 2001-)

Source: WTO documents.

It is clear from the statistics above that after the Agreement on Safeguards relaxed the requirement in Article XIX of the GATT, the number of safeguards being invoked increased, as did the number of panels established to dispute them. Panels and the Appellate Body have clarified the disciplines on safeguards in disputes raised after the Agreement on Safeguards took effect, particularly in the Argentine footwear and Korean dairy cases, where they ruled: 1) members must

consider all factors listed in Article 4.2 of the Agreement on Safeguards before invoking safeguards, 2) safeguards require a rapid increase in imports resulting from “unforeseen developments” as described in Article XIX of the GATT, and 3) customs unions which consider imports including from member countries of the union when determining injuries, cannot omit them from the application of the safeguard measures.

Agreement on Textiles and Clothing

From 1974 to the end of 1994, trade in the field of textiles and clothing was governed by the special rules of Arrangement Regarding International Trade in Textiles, so called the Multi-Fibre Arrangement (“MFA”), with rules for application different from ordinary GATT regulations.

The MFA provided for special safeguard measures that were easier to invoke than normal safeguard measures based on Article XIX of the GATT. For example, the MFA allowed the application of discriminatory import restrictions (import restrictions covering specific sources only) and did not require countries imposing restrictions to offer compensation or to accept retaliatory measures. In December 1994, the MFA membership consisted of 43 countries and the European Union. Of this number, the United States, the EU, Canada, and Norway had invoked import restrictions based on MFA provisions (Article 3 or Article 4). In the Uruguay Round negotiations that took place between 1986 and 1994, it was agreed that trade in the field of textiles and clothing would be liberalized by way of gradual integration of this sector into GATT disciplines with a ten-year transition period (see Figure 7-4). When the WTO Agreement took effect in 1995, the Agreement on Textiles and Clothing (“ATC”) also entered into force. The import restrictions that had been maintained under the MFA will be gradually eliminated by this integration. Trade in textiles and clothing, which up to this point had been subject to less restrictive rules than ordinary GATT disciplines, will be completely integrated into the GATT by the end of 2004 when the ATC terminates.

During the transition period, the ATC provides for transitional safeguards (TSG), which are applicable only for non-integrated items of textiles and clothing and different from normal safeguard measures stipulated in the Agreement of Safeguards. Certain countries have frequently invoked TSG since the ATC took effect, but the number of the measure is decreasing due to the strict examination being undertaken by the TMB(Textiles Monitoring Body) (see Figure 7-5).

Figure 7-4

Method of Integration Under the ATC

<i>Transitional Period</i>	Ten years from the date of the entry into force of the WTO Agreement. (Article 9)
<i>Integration Rates</i>	Products to be integrated in three stages of three years, four years, and three years. This integration into the GATT shall be made in respect of items whose trade volume is no less than 16 percent, 17 percent, and 18 percent (total of 51 percent) of the total volume of textiles trade at the beginning of each stage, with the remaining 49 percent to be integrated by the end of the final (tenth) year. (Articles 2.6 and 2.8)
<i>Method of Integration</i>	At the beginning of each stage, integration programmes for each country will be submitted to the Textiles Monitoring Body ("TMB"). (Articles 2.6, 2.7 and 2.8 and 2.11)
<i>Products Covered</i>	The ATC covers essentially all of the textiles and clothing covered by the MFA. Pure silk products were not covered in the MFA, but have been included in the ATC. (Article 1.7 (Annex)) ¹
<i>Handling of Residual MFA Restrictions</i>	The integration of restricted items into the GATT/WTO will gradually eliminate MFA restrictions. Until that time, residual MFA restrictions may continue, but the level of each remaining restriction shall be liberalized annually by certain prescribed ratios. (Articles 2.13 and 2.14)
<i>Handling of Non-MFA Restrictions</i>	Restrictions contravening the GATT/WTO must be brought into conformity within one year of the ATC taking effect or must be phased out over a period of ten years. (Article 3.2)
<i>Transitional Safeguards</i>	Any WTO Member may invoke TSG in respect of non-integrated items (Integrated items will fall under the general safeguard disciplines.)
<i>Exclusions From Safeguards</i>	<p>Actions under the safeguard provisions in Article 6 of the ATC shall not apply to the following:</p> <ul style="list-style-type: none"> (a) developing country Members' exports of handloom abrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textile and clothing products, provided that such products are properly certified under arrangements established between the Members concerned; (b) historically traded textile products that were internationally traded in commercially significant quantities prior to 1982, such as bags, sacks, carpetbacking, cordage, luggage, mats, mattings and carpets typically made from fibres such as jute, coir, sisal, abaca, maguey, and henequen; (c) products made of pure silk.

Figure 7-5

Invocation of TSG Under the ATC

¹ The MFA covered cotton, wool, artificial fibres, flaxen, and other plant fibre products and partial silk weaves. Pure silk products were not included.

(as of the end of January 2001)

	Date of Request	Invoking Period	Invoking Country	Country Concerned	Products Concerned	Status
1	27 Mar. 1995	27 Mar.1995 - 17 Jul.1996	United States	El Salvador	Cotton and manmade fibre pyjamas and other night wear	Withdrawn
2	27 Mar. 1995	27 Mar.1995 - Jul.1995	United States	Honduras	Cotton and manmade fibre pyjamas and other night wear	Withdrawn
3	27 Mar. 1995	27 Mar.1995 - 17 Jul.1996	United States	Jamaica	Cotton and manmade fibre pyjamas and other night wear	Withdrawn
4	27 Mar. 1995	27 Mar.1995 -28 Mar.1997	United States	Costa Rica	Cotton and man-made fibre underwear	Terminated (i) (Appellate Body Report issued)
5	27 Mar. 1995	27 Mar.1995 -26 Mar.1998	United States	Honduras	Cotton and man-made fibre underwear	Terminated
6	27 Mar. 1995	27 Mar.1995 -26 Mar.1998	United States	Dominican Rep.	Cotton and man-made fibre underwear	Terminated
7	27 Mar. 1995	21 Mar.1995 -20 Mar.1998	United States	El Salvador	Cotton and man-made fibre underwear	Terminated
8	28 Mar. 1995	28 Mar.1995 -27 Mar.1998	United States	Turkey	Cotton and man-made fibre underwear	Terminated
9	29 Mar. 1995	27 Mar.1995 -26 Mar.1998	United States	Colombia	Cotton and man-made fibre underwear	Terminated
10	29 Mar. 1995	29 Mar.1995 -Jul.1995	United States	Thailand	Cotton and man-made fibre underwear	Withdrawn
11	18 Apr. 1995	18 Apr.1995 -Sep.1995	United States	India	Men's and boys' wool coat other than suite-type	Withdrawn
12	18 Apr. 1995	18 Apr.1995 -24 Apr.1996	United States	India	Women's and girls' wool coat	Withdrawn
13	18 Apr. 1995	18 Apr.1995 -Dec.1996	United States	India	Woven wool shirt and blouse	Withdrawn (Appellate Body Report issued)
14	24 Apr. 1995	24 Apr.1995 -30 Sep.1997	United States	Honduras	Women's and girls' wool coat	Withdrawn
15	24 Apr. 1995	24 Apr.1995 -Sep.1995	United States	Philippine	Man-made fibre luggage	Withdrawn
16	26 Apr. 1995	n.a.	United States	Brazil	Men's and boys' wool coat other than suit-type	Call only (without invocation)
17	27 Apr. 1995	27 Apr.1995 -Nov.1995	United States	Hong Kong	Woven wool shirt and blouse	Withdrawn
18	27 Apr. 1995	27 Apr.1995 -Jun.1996	United States	Sri Lanka	Man-made fibre luggage	Withdrawn
19	28 Apr. 1995	28 Apr.1995 -Sep.1995	United States	Thailand	Man-made fibre luggage	Withdrawn
20	28 Apr. 1995	28 Apr.1995 -Sep.1995	United States	Thailand	Artificial staple yarn	Withdrawn
21	31 May 1995	31 May 1995 -30 May 1998	United States	Guatemala	Cotton and man-made fibre skirt	Terminated
22	31 May 1995	31 May 1995 -30 May 1998	United States	Colombia	Women's and girls' wool suits	Terminated
23	31 May 1995	31 Mar.1995 -Sep.1995	United States	Philippine	Women's and girls' wool suits	Withdrawn

24	29 Jun. 1995	29 Jun.1995 -Oct.1995	United States	Costa Rica	Cotton and man-made fibre pyjamas and other night wear	Withdrawn
25	29 Mar. 1996	29 Mar.1996 -28 Mar.1999	United States	El Salvador	Cotton and man-made fibre skirt	Terminated
26	Jun. 1996	1 Jun.1996 -31 May 1999	Brazil	Korea	Woven fabrics containing 85 percent or more by weight of artificial staple	Terminated
27	Jun. 1996	1 Jun.1996 -31 May 1999	Brazil	Korea	Woven artificial filament fabric	Terminated
28	Jun. 1996	1 Jun.1996 -31 May 1999	Brazil	Korea	Polyester filament fabric	Terminated
29	Jun. 1996	1 Jun.1996 -31 May 1999	Brazil	Korea	Other synthetic filament fabric	Terminated
30	Jun. 1996	1 Jun.1996 -31 May 1999	Brazil	Korea	Sheeting of staple filament fibre combination	Terminated
31	Jun. 1996	1 Jun.1996 -31 Dec.1997	Brazil	Hong Kong	Woven artificial filament fabric	Terminated
32	Jun. 1996	1 Jun.1996 -6 Jan.1997	Brazil	Hong Kong	Men's and boys' shirt, knitted or crocheted	Withdrawn (ii)
33	Apr. 1997	n.a.	United States	Pakistan	Cotton yarn, containing 85 percent or more by weight of cotton	Call only (without invocation)
34	Aug. 1997	1 Oct.1997 -30 Sep.2000	United States	Thailand	Yarn for sale 85 percent or more by weight artificial fibre	Terminated
35	17 Apr. 1998	17 Jul 1998 -5 Aug.1998	Colombia	Brazil	Denim	Withdrawn
36	17 Apr. 1998	17 Jul 1998 -5 Aug.1998	Colombia	India	Denim	Withdrawn
37	17 Apr. 1998	n.a.	Colombia	Chile	Denim	Call only (without invocation)
38	17 Apr. 1998	n.a.	Colombia	Peru	Denim	Call only (without invocation)
39	17 Apr. 1998	n.a.	Colombia	Venezuela	Denim	Call only (without invocation)
40	17 Aug. 1998	26 Oct.1998 -25 Oct.1999	Colombia	Korea	Plain polyester filaments	Terminated
41	17 Aug. 1998	26 Oct.1998 -25 Oct.1999	Colombia	Thailand	Plain polyester filaments	Terminated
42	17 Aug. 1998	n.a.	Colombia	United States	Plain polyester filaments	Call only (without invocation)
43	17 Aug. 1998	n.a.	Colombia	Malaysia	Plain polyester filaments	Call only (without invocation)
44	24 Dec. 1998	17 Mar.1999-	United States	Pakistan	Combed cotton yarn	Continuing (iii)
45	29 Jul. 1999	31 Jul.1999 -13 Apr.2000	Argentina	Brazil	Woven cotton and cotton mixtures fabric of yarns of different colours	Withdrawn
46	29 Jul. 1999	31 Jul.1999 -13 Apr.2000	Argentina	Brazil	Duck/special-weave cotton and cotton mixtures fabric	Withdrawn

47	29 Jul. 1999	31 Jul.1999 -13 Apr.2000	Argentina	Brazil	Pile tufted cotton and cotton mixtures fabric	Withdrawn
48	29 Jul. 1999	31 Jul.1999 -13 Apr.2000	Argentina	Brazil	Sheeting/twill cotton and cotton mixtures fabric	Withdrawn
49	29 Jul. 1999	31 Jul.1999 -13 Apr.2000	Argentina	Brazil	Sheeting fabric/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures	Withdrawn
50	29 Jul. 1999	n.a.	Argentina	Korea	Polyester fibre	Call only (without invocation)
51	29 Jul. 1999	n.a.	Argentina	Korea	Polyester fibre yarn	Call only (without invocation)
52	29 Jul. 1999	n.a.	Argentina	Indonesia	Polyester fibre yarn	Call only (without invocation)
53	29 Jul. 1999	n.a.	Argentina	Malaysia	Polyester fibre yarn	Call only (without invocation)
54	4 Aug. 1999	31 Jul.1999 -7 Mar.2000	Argentina	Pakistan	Woven cotton and cotton mixtures fabrics of yarns of different colours	Withdrawn
55	4 Aug. 1999	31 Jul.1999 -7 Mar.2000	Argentina	Pakistan	Duck / special-weave cotton and cotton mixtures fabric	Withdrawn
56	4 Aug. 1999	31 Jul.1999 -7 Mar.2000	Argentina	Pakistan	Pile tufted cotton and cotton mixtures fabric	Withdrawn
57	4 Aug. 1999	31 Jul.1999 -7 Mar.2000	Argentina	Pakistan	Sheeting / twill cotton and cotton mixtures fabric	Withdrawn
58	4 Aug. 1999	31 Jul.1999 -30 Jan.2001	Argentina	Pakistan	Sheeting fabrics / twill and stain / staple-filament fibre combinations of cotton and cotton mixtures	Continuing
59	5 Nov. 1999	29 Oct.1999 -28 Oct.2002	Argentina	Korea	Woven fabrics of pure polyester filaments	Continuing
60	5 Nov. 1999	29 Oct.1999 -2000.	Argentina	Korea	Other woven fabrics of synthetic filaments	Withdrawn
61	5 Nov. 1999	29 Oct.1999 -2000.	Argentina	Korea	Special woven fabrics / other woven fabrics of mixed filaments	Withdrawn

- (i) Appellate Body examined that measure violated to the Agreement on Textiles and Clothing.
 - (ii) TMB determined that TSG should not be imposed before bilateral consultation.
 - (iii) TMB determined that the measures were unjustified and recommended termination.
- However, the United States insists that they are justified and is continuing those measures.

Agreement on Agriculture

See Chapter 3 on Quantitative Restrictions.

ECONOMIC IMPLICATIONS

Safeguards based on Article XIX of the GATT are meant to shelter the products of importing countries from a surge of imports from exporting countries and thus avoid serious injury to domestic production. The potential negative impact on domestic industries that is induced by increasing imports often contributes to economic or social costs and it also may cause political and social problems. It is thus expected that, in such cases, safeguard measures could work as “safety valves”: this means that in the course of trade liberalization within the framework of the WTO, each Member may utilize “safety valves” so that it can positively implement measures on trade liberalization.

However, the too-ready implementation of safeguard measures tends to contravene the basic objectives of the WTO, which are the “substantial reduction of tariffs and other barriers to trade” and “the elimination of discriminatory treatment in international trade relations”.

PROBLEMS OF TRADE POLICIES AND MEASURES IN INDIVIDUAL COUNTRIES

1. THE UNITED STATES

Wheat Gluten

On 19 September 1997, the United States Wheat Gluten Industry Council petitioned the United States International Trade Commission (ITC) to invoke safeguard measures under Section 201 of the Trade Act of 1974, arguing that a rapid increase in wheat gluten imports caused serious injury to the domestic industry. An investigation initiated on October, and voting on injury findings was held on 15 January 1998, with three out of the six commissioners finding serious injury. On 18 March, the commission issued a recommendation to the President of the United States on proposed relief measures for serious injury. The commission recommend the President to impose quantitative restrictions for a period of four years, and on 30 May, the official government record contained notice of a presidential decision on quantitative restrictions for the period 1 June of that year until 1 June 2001.

On 17 March 1999, the EU requested consultations with the United States under WTO dispute settlement procedures, and on 3 June the EU requested the establishment of a panel. The panel was established on 26 July, with Canada, Australia, and New Zealand participating as third countries.

The panel issued its report on 31 July 2000, finding: 1) members imposing safeguards must consider factors raised by interested parties in addition to the factors listed in Article 4:2 of the Agreement on Safeguards; 2) there must be causal relationship in which imports on their own have caused serious injury; 3) when imports from specific countries are excepted from safeguard measures because they are members of free trade agreements, the imposing authority must find that imports from other countries caused serious injury; and 4) members imposing safeguard measures must make required notices before the safeguard takes effect. The panel therefore found that the US safeguard measures are inconsistent with Article XIX of the GATT and the Agreement on Safeguards. The

United States appealed the panel decision to the Appellate Body on 26 September 2000.

The Appellate Body published its report on 22 December 2000, finding for the second point above that it was not necessary to demonstrate that imports need not to be sole cause of serious injury. If serious injury was caused in conjunction with other factors but there was still a genuine and substantial causal relationship between imports and damages, safeguards could be invoked. Nonetheless, the Appellate Body upheld the conclusion of the panel that the US measure was inconsistent with Article XIX of the GATT and the Agreement on Safeguards.

This was a reasonable judgment. However, care must be exercised in identifying a "genuine and substantial causal relationship" between imports and damages. Japan will continue to vigilantly monitor administration in this area.

Lamb Meat

On 7 October 1998, seven American lamb producers, the American Sheep Industry Association, Inc., and the National Lamb Feeders Association filed a petition to the ITC, claiming that a surge of imports of fresh, chilled, or frozen lamb meats were causing serious injury to the domestic industry and asking for the invocation of safeguard measures under Section 201 of the Trade Act of 1974.

On 9 February 1999, ITC announced its determinations regarding injury. All six ITC Commissioners found that lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic lamb meat industry.

On 5 April 1999, the report and recommendation on remedy, issued by ITC to the President, recommended that the President impose a tariff-rate quota on imports of lamb meat for a four-year period.

On 7 July 1999, with the public announcement of the determination by the President to introduce a safeguard measure in the form of a tariff-rate quota, the measure was introduced. The introduction of the measure was not prevented despite the prior consultations requested by Australia and New Zealand and made between them and the United States under Article 12.3 of the Agreement on Safeguards.

Australia and New Zealand requested consultations under the DSU with the

United States on July 1999. On 14 October 1999, both countries requested establishment of the panel, and panel has established on 19 November 1999. Japan, Canada, the EU, and Iceland joined as third parties.

The main issues in this case were: 1) the meaning of “result of unforeseeable developments”, 2) the scope of domestic industry, and 3) demonstrating a causal relationship between imports and serious injury.

The panel circulated its report on 31 July 2000, ruling that: 1) authorities investigating cases and invoking safeguard measures must demonstrate in their determination what the “unforeseeable developments” were; 2) manufacturers producing the like or directly competitive products constitute “domestic industry”, and that raw material suppliers are not included in the definition of “domestic industry”; and 3) imports must be the sole cause of serious injury, as was the case in the wheat gluten panel report described above.

The United States appealed the panel decision to the Appellate Body on 1 February 2001. Japan is particularly interested in the judgment that the Appellate Body will render on the third point because of the potential for abuse of safeguards.

Steel Wire Rods

On 30 December 1998, eight American steel mills and the steelworkers’ unions filed a petition with the United States International Trade Commission (ITC), claiming that a surge of imports of steel wire rods was causing serious injury to the domestic industry and asking for the invocation of safeguard measures under Section 201 of the Trade Act of 1974 (the so-called escape clause).

Due to the incompleteness of the original petition, the petitioners filed the revised petition on 12 January 1999 and the investigation was initiated on that day.

On 12 May 1999, ITC announced its determinations regarding injury. Three out of six ITC Commissioners made negative determinations, finding that the steel wire rods are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic steel wire rod industry. Two Commissioners found that certain steel wire rods are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic steel wire rod industry. One Commissioner found that certain steel wire rods are being imported into the United States in such increased quantities as to be a sub-

stantial cause of the threat of serious injury to the domestic steel wire rod industry.

On 12 July 1999, the report and recommendation on remedy issued by the ITC to the President was equally divided on the question of what action should be taken in response to imports.

The Commissioners who found the serious injury or threat thereof made a recommendation that the increase of the tariff should be taken as a measure, and that Canada, Mexico, Bolivia, Columbia, Ecuador, Peru, and Switzerland should be excluded from the application of the measures.

On 11 February 2000, the President of the United States announced the introduction of safeguard measures:

- (i) the measure is a tariff-rate quota,
- (ii) period of the measure is three years and one day,
- (iii) quota level will increase by two percent annually,
- (iv) threshold level is 1.58 million net tons,
- (v) quota will be subject to an additional import duty of 10 percent in the first year; 7.5 percent in the second year; and 5 percent in the third year,
- (vi) pursuant to Section 311(a) of the North American Free Trade Agreement Implementation Act (the “NAFTA Implementation Act”)(19 U.S.C. 3371(a)), the remedy will not apply with respect to imports of steel wire rods from Mexico and Canada.

The EU requested consultations under the DSU with the United States on 1 December 2000.

Welded Carbon Quality Line Pipes

On 30 June 1999, eight American steel mills and the steelworkers’ union petitioned ITC, claiming that a surge of imports of welded carbon quality line pipe were causing serious injury to the domestic industry and asking for the invocation of safeguard protection under Section 201 of the Trade Act of 1974.

On 28 October 1999, the ITC announced its determinations regarding injury. Three out of six ITC Commissioners made affirmative determinations,

finding that the circular welded carbon quality line pipes are being imported in such increased quantities as to be a substantial cause of serious injury to the domestic circular welded carbon quality line pipe industry. Two Commissioners found that certain steel wire rods are being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry. One Commissioner made a negative determination, finding that the pipes are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

On 8 December 1999, the reports and recommendation on remedy issued by the ITC to the President was divided. Commissioners who made affirmative determinations recommended that the President impose a tariff rate quota on imports of circular welded carbon quality line pipe for a four-year period. Commissioners who found substantial cause of the threat of serious injury recommended that the President impose a duty, in addition to the current rate of duty, on imports of the pipe for a four-year period. The Commissioner who made a negative determination did not recommend that import relief is appropriate.

On 11 February 2000, the President of the United States announced the introduction of safeguard measures:

- (i) the measure is a imposition of an additional import duty,
- (ii) period of the measure is three years and one day,
- (iii) the additional duty is 19 percent *ad valorem* in the first year; 15 percent *ad valorem* in the second year; and 11 percent *ad valorem* in the third year,
- (iv) each year, the first 9,000 short tons of imports from each supplying country will be excluded from the increase in duty,
- (v) pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the “NAFTA Implementation Act”)(19 U.S.C. 3371(a)), the remedy will not apply with respect to imports from Mexico and Canada.

On 13 June 2000, Korea requested consultation with the United States under WTO dispute settlement procedures, and on 26 September Korea requested the establishment of a panel. The panel was established on 23 October with the United States, and Japan and EU participating as third countries.

WTO Consistency of Section 201 of the Trade Act of 1974

Much of the basic structure for the WTO Agreement on Safeguards comes from Section 201 of the Trade Act of 1974 under US law. This provision was the most developed safeguards legislation in the world at the time the agreement was negotiated, and served as a model for the negotiators. That is why the Uruguay Round Agreements Act of 1994, which amended existing trade laws for the implementation of the WTO Agreement in the United States, contained only very minor amendments to Section 201 (in contrast to the relatively major overhaul that was given to antidumping legislation).

From this perspective, Section 201 is not at wide variance with the WTO Agreement and its existence *per se* is certainly not inconsistent with the WTO agreement. However, it could violate some WTO provisions, depending on how it is administered (for example, if safeguards are invoked based on inadequate investigation, or if they are selectively invoked against imports from particular countries), and will thus require careful monitoring.

We should underscore, however, that some of the measures possibly to be invoked pursuant to Section 201 are not permitted under the WTO rules. Specifically, the request for voluntary quantitative restrictions from exporting countries or exporting firms is not permitted. (We should also note that in the past voluntary export restraints were sought for speciality steel from Japan as a result of an Orderly Marketing Arrangement concluded as a result of Section 201 procedures.)

Invocation of Transitional Safeguards

On 24 December 1998, under Article 6 of the Agreement on Textiles and Clothing, the United States sought consultation with Pakistan regarding the import of combed cotton yarn. They failed to make an agreement, and the US introduced the transitional safeguard measure on 17 March 1999.

In a regular meeting of the Textiles Monitoring Body (TMB) in April 1999, TMB recommended the withdrawal of the measure based upon its finding of the inappropriateness of the measure. In the regular meeting in June 1999, the United States—despite this recommendation—insisted that the measure was proper and saw no reason to change it. On 3 April 2000, Pakistan requested the establishment of a panel under WTO dispute settlement procedures, and the panel was established on 19 June with the United States, with India and EU partici-

pating as third countries. Japan should closely monitor the development of the Panel procedure examining the consistency of the measure.

2. ARGENTINA

As of 21 February 1997, the government of Argentina initiated a safeguard investigation on footwear, and invoked provisional safeguard measures. After consultations with interested countries, it invoked formal safeguard measures as of 13 September 1997. On April 1998, the EU and Indonesia requested consultations with Argentina, but failed to settle and, the EU requested the establishment of a panel. The panel was established on 23 July 1998.

On 25 June 1999, the panel report found: 1) in the safeguards investigation, Argentina should have considered all of the factors listed in the Agreement on Safeguards for consideration in the finding of injury, but Argentina had not considered some of them and had not explained the reasons of the failure to do so; 2) it is not justifiable to count imports from customs union (MERCOSUR) partners when finding injury, and then exclude them when invoking safeguard measures.

The panel therefore ruled that safeguard measures imposed by Argentina were inconsistent with the WTO Agreement. Argentina appealed, but the Appellate Body, in its report of 4 December 1999, upheld conclusions by the panel. With respect to the exclusion of MERCOSUR countries from the application of safeguard measure, the Appellate Body found that exclusion of customs union partners from safeguard measures was not justifiable due to the principle of non-discriminatory administration of quantitative restrictions.

Both reports comment on the need for a rigorous analytical justification to invoke safeguard measures. According to the reports, the condition in Article XIX of the GATT that the increase of imports has to be “as a result of unforeseen developments”, as well as the conditions listed in the Agreement on Safeguards all must be met. This represents an additional restriction on safeguard measures. The case also clarified the relationship between safeguard measures and custom unions, and fully upheld the position—which was argued by Japan in the Committee on Safeguards and other forums—that a safeguard measure is an exceptional measure and should only be invoked for emergency action on imports of particular products with strict conditions to apply. We are pleased with the fact that the panel and Appellate Body upheld and clarified our position, and we will continue to monitor safeguard measures invoked by member coun-

tries.

With respect to the issue regarding the possibility to exclude the partners of MERCOSUR from the application of the safeguard measure, the Appellate Body concluded that the exclusion was not allowed due to the non-discriminatory principle under Article 2.2 of the Agreement of Safeguard, and reversed the panel decision on this issue, stating that Article XXIV:8 of GATT was irrelevant to the case.

3. INDIA AND OTHER COUNTRIES

On 29 July 1997, India announced a revision of its domestic safeguard laws (Customs Tariff [Identification and Assessment of Safeguard Duty] Rules 1997), and began investigations regarding nine cases, especially concerning chemicals. Safeguard duties were levied in five of these cases.

The Middle East and Latin America, areas that have traditionally not resorted to safeguards, have initiated investigations and taken safeguard measures in some instances. Wider ranges of members are therefore invoking safeguards.

The safeguards are emergency relief measures to be invoked only in exceptional cases that meet rigorous requirements. Before safeguards are invoked, it must be fully demonstrated that a causal relationship existed between a rapid increase in imports and serious injury to domestic industry (or threat thereof). Japan will continue to monitor measures for consistency with the Agreement on Safeguards and reasonableness as trade policy.

