

Chapter 10

GATT/WTO Rules Governing the Use of Safeguard Measures

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1 History¹

The concept of safeguards under WTO law is based on the 'escape clause' of the United States-Mexico Reciprocal Trade Agreement of 1942.² The clause allowed the United States or Mexico to escape its import concessions under the agreement where such concessions resulted in increased imports that caused serious injury or threat thereof to a domestic industry. GATT Article XIX was the product of a proposal by the United States to provide an escape clause very similar to that of the US-Mexico agreement in the international trading system.³

The safeguards exception to GATT disciplines was included in GATT 1947 at the insistence of the United States and remains as Article XIX. There are also safeguard provisions in the *WTO Agreement on Textiles and Clothing (ATC)*,⁴ the *Agreement on Agriculture*,⁵ and China's WTO accession protocol. Unlike the so-called unfair trade practices – dumping and subsidisation – GATT Article XIX requires only a demonstration that increasing imports are causing, or threatening to cause, serious injury. Safeguards are not limited to increasing tariffs to pre-agreement levels but may include use of quotas or tariff-rate quotas as well. Use of safeguards was not extensive in the 1986–1995 period, in part because of the 'standstill' understanding effective throughout the Uruguay Round, and perhaps in part because WTO Members

1 This chapter is based on Chapter 6 of G Bowman, N Covelli, DA Gantz and IH Uhm, *Trade Remedies in North America* (The Netherlands: Wolters Kluwer Int'l, 2010).

2 *Agreement Between the United States & Mexico Respecting Reciprocal Trade*, 23 December 1942, Article XI, 57 Stat 833, 845–866 (1943); see also R Bhala, *International Trade Law: Interdisciplinary Theory and Practice* (Newark NJ: LexisNexis, 3rd edn, 2008), 1181.

3 *United States Suggested Charter*, Art 29, Dept of State Pub No 2598 (Washington, 1946), 22.

4 ATC, Art 6 ('transitional safeguard').

5 *Agreement on Agriculture*, Art 5, 15 April 1994, *Marrakesh Agreement Establishing the World Trade Organization*, Annex 1A, Art 5, 1867 UNTS 410.

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