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Textile and Clothing Safeguards: from the ATC to the Future

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The Agreement on Textiles and Clothing established the textile and clothing safeguards regime from 1995 to 2004. The current safeguards regime for these products is defined in terms of the Agreement on Safeguards, the China Textile Safeguards, and the China Product-specific Safeguards. This article examines each of these three current safeguard options and assesses them in terms of a number of relevant dimensions. It also reviews safeguard actions to date to provide a sense of continued managed trade in this area.

Keywords: managed trade, protectionism, safeguards, textiles and clothing

Introduction

For the decade of 1995 to 2004, the safeguard regime for world trade in textiles and clothing was that of the Agreement on Textiles and Clothing (ATC).¹ Currently, the world trading system is in a new era of textiles and clothing safeguards that is fundamentally more complex and less transparent than was the regime under the ATC. Consequently, it is useful to assess the transition in regime and to speculate as to its future trajectory. In this article, we begin this assessment by summarizing the ten years of safeguard actions under the ATC. We then discuss the three current safeguard options that World Trade Organization member countries have access to under WTO agreements. These are: the Agreement on Safeguards; the China Textile Safeguards (CTS), available until 2008 under the China Accession Protocol; and the China Product-specific Safeguards (CPSS), available until 2013, also under the China Accession Protocol. We examine each of these safeguard options, summarizing our results in table 1. All indications suggest that this will be an active area of trade policy deliberations, with implications both within and beyond the textile and clothing sectors.

II. ATC Safeguard Activities

During the ten years of the ATC regime, there were a total 55 safeguard actions. The ATC provisions are summarized in table 1, and the safeguard actions themselves are summarized in table 2.² The first notable fact from table 2 is the large number of safeguard actions brought by the United States in 1995, actions that caused consternation for textile and clothing exporters, trade policy analysts, and the Textile Monitoring Body (TMB).³ Eight of these twenty-three actions were sustained, and three resulted in dispute settlement processes.⁴ The year 1996 saw only one U.S. action but seven actions brought by Brazil and two actions brought by Ecuador. Five of the Brazilian actions, all against South Korea, were sustained.

The year 1998 saw one case brought by the United States and four cases brought by Colombia. The U.S. action was sustained. The year 1999 saw another case brought by the United States and a total of ten cases brought by Argentina. The U.S. case proved to be contentious and resulted in dispute settlement proceedings.⁵ In all ten of the 1999 Argentina actions, as well as in three additional cases brought by Argentina in 2000, the target countries were Brazil, Pakistan, and Korea. Argentina's motivations in these thirteen cases reflected the devaluation of the Brazilian *real* in January 1999 and the subsequent balance of payments and political problems that developed during 1999 and 2000.⁶ The TMB upheld only two of the thirteen actions brought by Argentina (cases against Pakistan and Korea), and even here it imposed some

additional conditions. In addition, Argentina's actions against Brazil resulted in dispute settlement proceedings.⁷

Table 1 A Summary of Safeguard Provisions on Textile and Clothing Products

Dimension	ATC	AOS	CTS	CPSS
Legal foundation	The Agreement on Textiles and Clothing, Art. 6.	The Agreement on Safeguards and Art. XIX of the GATT 1994.	Report of the Working Party on the Accession of China, para. 242.	Report of the Working Party on the Accession of China, para. 245-250. Protocol of the Accession of the People's Republic of China, Art. 16.
Invoking criteria	Article 6.2: In such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry.	Article 2.1: In such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry.	Para. 242(a): Due to market disruption, threatening to impede the orderly development of trade.	Article 16.1: In such increased quantities or under such conditions as to cause or threaten to cause market disruption. Article 16.8: Causes or threatens to cause significant diversion of trade.
Causal link requirement	Article 6.2: Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.	Article 4.2: When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.	Para. 242(a): - The existence or threat of market disruption; - the role of products of Chinese origin in that disruption.	Article 16.4: - The volume of imports; - the effect of imports of such product on prices in the market of importing countries; - the effect of imports of such product on the domestic industry.
Non-discrimination	No	Yes	No	No
Transparency	Notify to the Textile Monitoring Body	Notify to the Committee on Safeguards	No requirements	Notify to the Committee on Safeguards
Quota level and growth level	Article 6.8: Not lower than the actual level of exports or imports during 12-month period terminating 2 months preceding month in which request for consultation was made. Article 6.13: Quota can grow at least 6% per year.	Article 5.1: Not lower than the average of imports in the last three representative years for which statistics are available. Article 7.4: Restraint must be lower than previous year (no specific rate).	Para. 242(c): Quota grows 7.5 % (6 % for wool products) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made.	No requirements.
Duration of measures	Article 6.12: Up to three years.	Article 7: Four years, with option to extend four more years once.	Para. 242(f): One year, with option to reapply.	No requirements.
Retaliation and compensation	No	Article 8.1: Trade compensation for the adverse effects of the measure on their trade.	No	Article 16.6: Right of suspension after two years of safe-guard measure in case of a relative increase and after three years in case of an absolute increase.

Table 2 A Summary of ATC Safeguard Actions, 1995 to 2004

Item	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total
Total number	23	10	0	5	11	3	1	0	2	0	53
Number by US ²³	1	0	1	1	0	0	0	0	0	0	26
By Argentina	0	0	0	0	10	3	0	0	0	0	13
By Brazil	0	7	0	0	0	0	0	0	2	0	9
By Ecuador	0	2	0	0	0	0	0	0	0	0	2
By Colombia	0	0	0	4	0	0	0	0	0	0	4
By Poland	0	0	0	0	0	0	1	0	0	0	1
Article 6.9 ^a	9	0	0	1	0	0	0	0	2	0	12
Article 6.10 ^a	14	1	0	4	1	0	1	0	0	0	21
Article 6.11 ^a	0	9	0	0	10	3	0	0	0	0	22
Dispute cases ^b	3	0	0	0	6 ^c	0	0	0	0	0	9

^a At introduction, though the category might have subsequently changed.

^b Actual date when a case was brought into the DSB may differ from the date the case was introduced to the TMB.

^c Five cases were by Brazil against Argentina.

The use of the ATC safeguard provisions by Latin American countries was notable. Argentina, Brazil, and Colombia are members of the Geneva-based International Textile and Clothing Bureau (ITCB). The ITCB took a relatively strong position against ATC safeguard actions. For example, in its 2001 Rio de Janeiro Communiqué, the ITCB Council of Representatives stated that the council “resolved to resist any trade harassment measures by [major developed restraining countries], such as unjustified recourse to antidumping, safeguards and/or changes in rules of origin” (ITCB, 2001). There was thus some evidence of potential mixed motives within the ITCB membership. As we will discuss below, this combination of mixed motives was intensified when Chinese exports increased after the phase-out of the ATC.⁸

The year 2001 saw only one case, that by Poland against Romania. This was the first time the ATC safeguard provision was invoked by a European country.⁹ The TMB found this action to be unjustified, and Poland subsequently rescinded the measure. There were not many safeguard activities during the final three years, from 2002 to 2004. There were only two cases in 2003, by Brazil against Taiwan and the Republic of Korea.¹⁰ Even these two new cases did not attract much attention since the measures were justified by the TMB and terminated in December 2004.¹¹

ATC Article 6 stated that safeguard actions were to be used “as sparingly as possible,” and this language was reiterated at the Singapore WTO Ministerial. The safeguard actions of the United States in 1995 and of Argentina in 1999 suggest that

this language was not always respected in the beginning. However, after the intensive safeguard use by the United States in the first year of the ATC and by the Latin American countries during the mid period of the ATC, WTO members became more circumspect.

Article 8.10 of the ATC allowed members unable to conform to the “further recommendations” of the TMB to bring the matter before the WTO Dispute Settlement Body (DSB). This occurred in nine of the fifty-five safeguard cases. The first three cases, one in 1995 and the other two in 1996, involved exports of, respectively, cotton and man-made fibre underwear from Costa Rica to the United States, woven wool shirts and blouses from India to the United States, and women’s and girls’ wool coats from India to the United States. The U.S.–Underwear case was notable in that the Appellate Body ruled that safeguard restraints could not be applied retroactively as under the old Multi-fibre Arrangement (MFA) regime.¹² The U.S.–Woven Wool Shirts and Blouses case was also notable in that the DSB panel found that a lack of TMB endorsement was not sufficient grounds for an exporting country to demand the removal of a restraint.¹³ This latter issue arose when a consultation began over “serious damage” and the TMB made a recommendation over “actual threat thereof.”

The remainder of the nine cases, brought to the DSB in 1999, involved exports of combed cotton yarn from Pakistan to the United States and exports of a number of items from Brazil to Argentina. The U.S.–Combed Cotton Yarn case was notable in that the DSB and Appellate Body concluded that a “product” approach to the definition of the domestic industry was superior to the “producer” view utilized by the United States. In doing so, the DSB panel clearly distinguished the ATC from the MFA, thus proscribing the United States from invoking the less stringent safeguard measures under the MFA.¹⁴ The U.S.–Combed Cotton Yarn case also stressed the superiority of multilateralism over regional favouritism by ruling that the United States failed to justify a serious damage to the domestic industry due to exclusion of import data from Mexico, a NAFTA partner. The Brazil vs. Argentina dispute case was important in that a regional dispute settlement mechanism, in the form of MERCOSUR, was able to solve the disputes before the DSB panel process took place at the WTO.

While in some sense a thing of the past, the ATC dispute settlement history will be important as a precedent when WTO members invoke the dispute settlement mechanism in future safeguard actions, as no doubt they will.

III. Future Safeguard Activities

Beginning in 2005, the transitional safeguard provisions of the ATC were no longer available. Except in the case of exports from China, all safeguard actions

against textile and clothing imports are now subject to the WTO Agreement on Safeguards. In the case of textile and clothing exports from China, WTO member countries can utilize the “special textile safeguard” provisions of the China Accession Protocol through 2008. We refer to these as the China Textile Safeguards (CTS).¹⁵ Also, in the case of textile and clothing imports from China, WTO member countries can utilize the “product-specific safeguard” provisions of the China Accession Protocol through 2013. We refer to these as the China Product-specific Safeguards (CPSS). However, WTO member countries cannot invoke both of the latter two options for the same products at the same time.¹⁶ We consider each of these three options in turn with reference to table 1.

The Agreement on Safeguards

WTO member countries have recourse to the Agreement on Safeguards for safeguard measures against all products covered in the ATC (see table 1). In general, the Agreement on Safeguards allows WTO member countries to invoke safeguard measures when “such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products” (Agreement on Safeguards, Article 2.1). The Agreement on Safeguards requires WTO member countries imposing safeguard actions to prove a causal link between serious injury and the imports of the product concerned (Article 4.2(b)) and to report measures to the Committee on Safeguards immediately upon embarking on an investigation (Article 11).

Although there has been some controversy over the nature of the Agreement on Safeguards as a retrogression from full trade liberalization, its provisions have some advantages for exporters in comparison to ATC Article 6.¹⁷ This is illustrated in table 1. Textile and clothing exporting countries can now benefit from nondiscrimination and retaliation provisions, which did not exist under the ATC. Under the Agreement on Safeguards, WTO member countries cannot impose safeguard measures on imports from a specific country alone, and this Most Favored Nation (MFN) discipline will prevent distorted trade flows. Furthermore, the exporting countries whose exports are being restricted can request compensation or retaliate except in the case of an absolute increase of imports, which prohibits retaliation for the first three years of restrictions (Article 8). This compensation/retaliation provision could act as a deterrent to weakly justified safeguard efforts by importing countries.

There are, however, negative effects for exporting countries under the Agreement on Safeguards. These include the longer duration of safeguard measures, which can be imposed up to eight years (Article 7.3), and unclearly specified quota growth rates. Under the ATC, the quota level must have increased no less than 6 percent of the

previous year's level, but there is no specific level required under the Agreement on Safeguards except for the basic guideline that restraints must be lower than the previous years (Article 7.4). This might prove to be detrimental to exporters' interests.

China Textile Safeguards

China Textile Safeguard or CTS provisions did not appear in the Draft Protocol on the Accession of the People's Republic of China (China Accession Protocol) but were added as a part of China's accession arrangement later on, appearing in the Report of the Working Party on the Accession of China (Working Party Report). These special safeguard provisions have been criticized as discriminatory measures by economists and trade analysts.¹⁸ Therefore, it is important to examine whether the CTS provisions have the potential to undo what the ATC safeguard provisions achieved during their ten-year transitional period.

Under the CTS, a WTO member can request a consultation with China when it believes that "imports of Chinese origin of textiles and apparel products covered by the ATC..., were, due to market disruption, threatening to impede the orderly development of trade in these products" (para. 242.a). Thirty days are given before the beginning of an actual consultation. The WTO member concerned and China are given 90 days to produce a "mutually satisfactory solution" (para. 242.b). The consultation, however, can be extended if China and the WTO member concerned agree. Upon receipt of the request for consultation, China would impose a voluntary restriction on shipments of "textile or textile products [to the requesting WTO member] in the category or categories subject to these consultations to a level no greater than 7.5 percent (6 percent for wool products categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made" (para. 242.c).

If a mutually satisfactory solution cannot be reached, the two parties continue the consultation process, and the imposed restriction continues (para. 242.d). The restriction, however, can only continue up to 12 months, depending on its starting point. The Working Party Report specifies that "no action taken under this provision would remain in effect beyond one year, without reapplication" (para. 242.f). However, through a *bilateral* agreement between China and the WTO member concerned, the restriction period can be extended beyond 12 months until December 31, 2008, the CTS expiration date. Alternately, WTO member countries can reapply the restriction. Therefore, effectively, the CTS restrictions can last until 2008.

The CTS provisions can be compared with the ATC safeguard provisions with regard to the following issues: invoking criteria, causal link requirement, transparency, and duration of restriction (see table 1). We consider each in turn.

First, unlike the ATC safeguard provisions, the CTS provisions do not provide detailed guidelines for determining “serious damage or actual threat thereof.” Instead, the special textile safeguard provisions replace “serious damage, or actual threat thereof” under the ATC safeguard provisions with “market disruption.” The question is whether there is a significant difference between these two criteria. It is, in fact, not clear what “market disruption” means in the CTS.¹⁹ One definition can be found in the Multifibre Arrangement (MFA); another appears in Article 16 of the China Accession Protocol, the CPSS mechanism discussed below. The CPSS defines market disruption as the situation when “a significant cause of material injury, or threat of material injury to the domestic industry” occurs due to the rapid increase “either absolutely or relatively, of imports of an article, like or directly competitive with an article produced by the domestic industry” (emphasis added). On the other hand, the MFA required for the determination of market disruption the demonstration of “the existence of *serious damage* to domestic producers or actual threat thereof.”²⁰ Interestingly, the definition of market disruption in the China Accession Protocol seems looser than that in the MFA.²¹ Despite uncertainty as to the meaning of the term, it is clear that importing countries enjoy more room to define market disruption on their own unless the matter is soon clarified by the dispute settlement process.²²

Second, the CTS provisions on the criteria used to investigate market disruption and to establish a causal link between imports and market disruption are not as clear as the ATC safeguard provisions.²³ As to criteria, the CTS provisions do not provide any specific guideline for what conditions are required to prove the market disruption is preventing the “orderly development of trade.” By the same token, the special textile safeguard provisions do not provide specific guidelines for determining a causal link, although they require a “detailed factual statement” demonstrating “(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.”²⁴

The lack of specific guidelines may enable the importing countries to invoke safeguard measures under the CTS provisions with more ease than they could under the ATC. In the case of the United States, action under the CTS requires as the proof of a causal link a “description of how the Chinese origin textile and apparel product(s) have adversely affected the domestic industry producing like or directly competitive articles, such as the effect of imports from China on prices in the United States or any other data deemed to be pertinent.”²⁵ In its request for consultations with China under the CTS in the case of knit fabric (category 222) in 2003, the United States used only the average unit price of Chinese imports as proof of the role of Chinese imports in market disruption. This might be interpreted as abuse of the CTS provisions.

Third, transparency requirements under the CTS provisions are less clearly set out than they were under the ATC, a fact reminiscent of the MFA era.²⁶ There is no

specific requirement for any of the parties to report to a WTO body equivalent to the TMB under the ATC, or even to report to the Committee on Safeguards.

Finally, compared to the three-year duration for restrictions under the ATC, longer CTS restrictions have been possible if they were originally imposed before the end of 2005. In fact, reapplication of prior safeguard measures under the CTS has been attempted in some cases.²⁷ That said, the CTS provisions do expire in 2008, which limits their duration.

The CTS provisions are very similar to the “provisional unilateral restraint” under ATC Article 6.11 in that immediate restrictions (voluntary export restriction in the case of the CTS and import restriction under the ATC) are to be implemented upon receipt of a consultation request. Considering the fact that the “provisional unilateral restraint” under the ATC Article 6.11 was designed to prevent damage caused by the delay of safeguard measures in “*highly unusual and critical* circumstances” (emphases added), CTS actions can be seen to be more trade distorting than those under the ATC.

China Product-specific Safeguards

In addition to CTS actions, WTO members can pursue safeguard actions through the China Product-specific Safeguards or CPSS.²⁸ WTO members can seek safeguard measures *either* through the CTS *or* through the CPSS until 2008, but cannot invoke the two simultaneously.²⁹ When CTS provisions expire in 2008, WTO members can then rely on the CPSS provisions through 2013.

Under the CPSS, a WTO member can request a consultation with China in “cases where products of Chinese origin are being imported ... in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.”³⁰ If China and the WTO member concerned fail to reach a mutually satisfactory solution, the WTO member requesting consultation can impose safeguard measures without any retaliation for two years in the case of a relative increase and for three years in the case of an absolute increase (Article 16.6). As under the ATC, the importing countries can invoke provisional safeguard measures for 200 days under “critical circumstances.”³¹ Unlike the CTS provisions, the CPSS provisions require that all activities and actions by WTO members and China be notified to the Committee on Safeguards.

The CPSS provisions can be compared with the ATC safeguard provisions with regard to the following issues: causal link requirement, duration of restrictions, quota growth rate, and the trade diversion provision (see table 1). We consider each in turn.

First, as in the CTS provisions, instead of serious damage or threat thereof, market disruption is used as a criterion for safeguard invocation (Article 16.1). This definition of “market disruption” can be found in the CPSS Article 16.4.³² It defines “market disruption” as the situation when “*a significant cause of material injury, or threat of*

material injury to the domestic industry” occurs due to the rapid increase “either absolutely or relatively” of “imports of an article, like or directly competitive with an article produced by the domestic industry” (emphasis added).³³

Critically, the definition of market disruption is found in the phrase “*a significant cause of material injury*,” allowing importers a less stringent material injury test that only requires importing countries to show proof of “significant cause” rather than of real “material injury or threat thereof.”³⁴ The phrase “significant cause of material injury” later appeared in a revised format, namely “any material injury or threat of material injury,” in the transitional safeguard section of the Report of the Working Party on the Accession of China, which aimed to clarify CPSS implementation issues.³⁵ Either injury test threshold is in fact much less stringent than that of the ATC and even that of the MFA, where demonstration of the “existence of *serious damage* to domestic products or actual threat thereof” was required.³⁶ This problem reflects the fact that China WTO accession negotiations involved bilateral negotiations between China and the United States, beginning even before the establishment of the ATC.³⁷

Second, with regard to the duration of restrictions, the CPSS is vague except for a general criterion that allows countries to “limit import only to the extent necessary to prevent or remedy such market disruption” (Article 16.3). Thus, it is possible for importing countries to restrict textile imports from China until 2013 if they can provide rational reasons. However, China can retaliate after two years of restriction in the case of relative increase and three years in the case of an absolute increase (Article 16.6).

Third, the CPSS provisions do not specify any requirement for the growth rate of quotas on imports. Under the ATC, import quotas grew up to 6 percent annually. By the design of the safeguard mechanism of the CTS, imports from China can grow up to 7.5 percent from the starting point of restrictions. Although the Agreement on Safeguards does not provide a specific number for the growth rate on import quotas, it requires the import level under restrictions to be higher than the average level of the previous three years. Therefore, quota growth under the CPSS is the most trade-distorting measure among the four safeguard measures considered here.

Finally, the CPSS provisions allow a third WTO member country potentially affected by the safeguard actions of another WTO member country on imports from China to utilize safeguard actions against China’s products without providing proof of injury or even the diversion itself. As noted by Messerlin (2004), “As soon as one WTO member implements a transitional product-specific safeguard measure against Chinese exports, all other members can enforce a similar measure at almost no procedural cost (no investigation, no prior notification, no input from Chinese parties)” (p. 127). This trade-diversion provision thus has the potential to cause a cascade of safeguard actions against China.³⁸

IV. Post-ATC Safeguard Activities to Date

We next consider the activities to date under the China Textile Safeguards (CTS), the China Product-specific Safeguards (CPSS), and the Agreement on Safeguards (AS) in order to, at least in a preliminary way, assess the trajectory of future safeguard activities. As would be expected, most of the safeguard activities to date have been under the CTS rather than the CPSS or the AS.

China Textile Safeguards

With the expiration of the textile quota regime under the ATC, textile and clothing manufacturers in the United States and the EU responded quickly. Consequently, procedures under the CTS provisions began to emerge from the EU and the United States, as well as from other countries such as Brazil and Peru. Much of the activity through July 2005 was caught up in deliberations over China's exchange rate arrangements, which were alleged to be "unfair" by importers.³⁹ It is important to note that, as mentioned above, there is no requirement for notification of safeguard actions to the WTO under the CTS. These actions, therefore, are largely bilateral in nature.

As in the initial history of the ATC, the United States has emerged as the most frequent user of CTS actions, initiating consultation processes for three groups of products from China in 2003, one in 2004, and nine in 2005.⁴⁰ The consultations for safeguard actions in 2003 and 2004 did not result in a mutually satisfactory solution. Consequently, according to the CTS provisions, all measures in 2003 and 2004 lasted for one year and were reapplied in 2005. With regard to the actions in 2005, none of the consultations with China resulted in a mutually satisfactory solution, and all measures were set to expire at the end of 2005.⁴¹ The EU also initiated investigations regarding seven product categories in April 2005 and requested consultations for T-shirts and flax yarns in May 2005. The safeguard actions by the EU and the United States angered the Chinese government and, in response, it withdrew its voluntary export tariffs on certain textile products and threatened to bring matters to the WTO Dispute Settlement Body.

In June 2005, the EU and China were able to reach a mutually satisfactory solution on restrictions on the two product categories, as well as on other categories under investigation. Subject to the approval of the EU members, the EU is now able to limit the imports of ten categories of products until 2008.⁴² The growth rate of imports of these products is to be from 8 percent to 12.4 percent annually, depending on the product categories and a specific year of restrictions.⁴³

Encouraged by this agreement, trade representatives of the Chinese and U.S. governments held several meetings in 2005. These consultations were more difficult than those between the EU and China, however. In the meantime, the actions by American textile exporters continued. In July 2005, U.S. textile exporters filed new

requests for safeguard actions against the imports of four textile products from China.⁴⁴ Despite these difficulties, the United States and China were able to sign a memorandum of agreement on import-level restraints on twenty-one categories of clothing and textile products from China through 2008.⁴⁵ The annual growth rate of imports of these products was limited to 10 percent in 2006, 12.5 percent in 2007, and 15 percent in 2008 for clothing products, and 12.5 percent in 2006 and 2007 and 16 percent in 2008 for textile products. In viewing the product categories, it is clear that this represents managed trade across a broad swath of textile and clothing products, albeit from a single country only.

These EU and U.S. actions were influenced by political concerns. For example, in the EU, the referendum for the EU Constitution influenced the decision to pursue textile safeguard measures against China. Facing potential defeat of the referendum in particular EU member countries, the EU decided that initiating actions would influence public perceptions of trade liberalization.

China Product-specific Safeguards

Safeguard actions under the CPSS were initiated by Peru at the end of 2003. This was in response to the Peruvian government's finding that "conditions for an immediate application of provisional transitional safeguards to Chinese textile clothing articles had been met, and that if these measures were not taken, the domestic industry that supplies the local market would suffer an injury that would be very difficult to repair" (Webb, Camminati, and Thorne, 2005, p. 27). These provisional safeguard measures were in existence for 200 days beginning in December 2003.⁴⁶ The expiration of these measures in June 2004 was accompanied by much political pressure on the government (including by the Chinese Embassy in Peru against further activity under the CPSS), resulting in further action being taken under the Agreement on Safeguards (see below). In June 2005, Brazil also had announced that it would begin to utilize CPSS actions against Chinese exports, putting in place decrees (numbers 5.556 and 5.5580) to make this possible. In September 2005, these safeguard measures appeared imminent, and provisional safeguards were introduced in November 2005. This was followed by a memorandum of understanding between Brazil and China in February 2006, the details of which were worked out during the December 2005 WTO Ministerial Meeting in Hong Kong.⁴⁷ Similar actions have been pursued by Argentina, Colombia, South Africa, and Turkey.⁴⁸

The Agreement on Safeguards

In 2004, Peru notified the Committee on Safeguards of its investigation of potential serious injury to its domestic textile industry, with an aim to invoke safeguard measures on certain textile products from selected countries.⁴⁹ This action drew some concern from the EU regarding its impact on the full liberalization of the textile and

clothing trade.⁵⁰ In October 2004, Peru notified its intention to adopt provisional safeguard actions against selected countries for 200 days.⁵¹ The provisional measures were terminated in May 2005 without any further action.⁵² While this case did not attract much attention from other WTO member countries, after 2013, the Agreement on Safeguards is where safeguard activities that pertain to trade in textiles and clothing will be concentrated.

V. Summary

This article has reviewed and assessed four safeguard regimes for trade in textiles and clothing. These are the Agreement on Textiles and Clothing, the Agreement on Safeguards, the China Textile Safeguards, and the China Product-specific Safeguards. With the end of the ATC regime in 2004, textile safeguard activity became concentrated under the CTS. However, between 2008 and 2013, activity will focus on the CPSS. Thereafter, the AS will take over. The CTS and the CPSS are less liberal than the ATC regime and, in some specific areas, even less liberal than the pre-ATC regime, the Multi-fibre Arrangement. For this reason, analysis of the 2005 through 2013 period as an example of continued managed trade in textiles and clothing will be of interest. The actions of major players, namely the United States, the European Union, and China, will be the primary focus, but other developing countries have been and will continue to be involved. Activity under the CTS provisions suggests that, for better or worse, managed trade across a large array of textile and clothing products is alive and well 45 years after the initiation of such policies.

References

- American Manufacturing Trade Action Coalition. 2005. U.S. Industry Files Petitions to Limit Textile and Clothing Imports from China. Press Release, 11 July.
- Bagchi, S. 1994. The integration of the textile trade into GATT. *Journal of World Trade* 28(6): 31-42.
- Baughman, L., R. Mirus, M. E. Morkre, and D. Spinanger. 1997. Of tyre cords, ties and tents: window-dressing in the ATC? *The World Economy* 20(4): 407-434.
- Committee on Safeguards. 2005a. Information to Be Notified to the Committee Where a Safeguard Investigation Is Terminated with No Safeguard Measure Imposed, G/SG/N/9/PER/1. World Trade Organization, 20 May.
- Committee on Safeguards. 2005b. Notification under Article 12.1(a) of the Agreement on Safeguards on Initiation of an Investigation and the Reasons for It, G/SG/N/6/PER/1, Geneva: World Trade Organization, 2 May.
- Committee on Safeguards. 2005c. Transitional Product-Specific Safeguard on Imports of Textile Products and Clothing into Peru from the People's Republic of China, G/SG/N/16/PER/1. Geneva: World Trade Organization, 2 May.
- Committee on Safeguards. 2005d. Transitional Product-Specific Safeguard on Imports of Textile Products and Clothing into Peru from the People's Republic of China, G/SG/N/16/PER/1/Suppl.1/Rev.1. Geneva: World Trade Organization, 2 May.
- Committee on Safeguards. 2005e. Minutes of the Regular Meeting, G/SG/M/26. Geneva: World Trade Organization, 14 March.
- Committee on Safeguards. 2004a. Notification under Article 12.4 of the Agreement on Safeguards before Taking a Provisional Safeguard Measure Referred to in Article 6, G/SG/N/7/PER/1. Geneva: World Trade Organization, 19 October.
- Committee on Safeguards. 2004b. Transitional Product-Specific Safeguard on Imports of Textile Products and Clothing into Peru from the People's Republic of China, G/SG/67. Geneva: World Trade Organization, 14 January.
- Council for Trade in Goods. 2004a. Turkey's Contribution to the Debate on Post-ATC Related Issues, G/C/W/497. Geneva: World Trade Organization, 25 October.
- Council for Trade in Goods. 2004b. Post-ATC Adjustment-Related Issues, GC/W/496/Rev.1. World Trade Organization, 22 November.
- Dispute Settlement Body. 1997a. Appellate Body Report, United States – Restriction on Imports of Cotton and Man-made Fibre Underwear, WT/DS24/AB/R. Geneva: World Trade Organization, 10 February.
- Dispute Settlement Body. 1997b. Panel Report, United States – Measures Affecting Import of Woven Wool Shirts and Blouses from India, WT/DS33/R. Geneva: World Trade Organization, 6 January.
- Dispute Settlement Body. 2001. WTO Panel Report, United States – Transitional Safeguard Measures on Combed Cotton Yarn from Pakistan, WT/DS192/R. Geneva: World Trade Organization, 31 May.

- European Union. 2005. Details of EU-China Textile Agreement. Press Release No. 62/05, 13 June.
- Finger, J. M. 1996. Legalized backsliding: safeguard provisions in the GATT. In *The Uruguay Round and Developing Countries*, eds. W. Martin and L. A. Winters, 316-340. Cambridge: Cambridge University Press.
- General Agreements on Tariffs and Trade Secretariat. 1974. *Arrangement Regarding International Trade in Textiles*. Geneva: The Secretariat.
- Hoekman, B. M., and M. M. Kostecki. 2001. *The Political Economy of the World Trading System*. Oxford: Oxford University Press.
- Huang, D. 2006. Legal Interpretation of Paragraph 242 of the Report of the Working Party on the Accession of China under the World Trade Organization Legal Framework. *Journal of World Trade* 40(1): 137-152.
- International Textile and Clothing Bureau (ITCB). 2001. Rio de Janeiro Communiqué, CR/33/BRA/9. Geneva, 14 June.
- International Textile and Clothing Bureau (ITCB). 2005. Bali Communiqué, CR/41/IND/8. Geneva, 7 April.
- Kim, S. J, K. A. Reinert, and G. C. Rodrigo. 2002. The Agreement on Textiles and Clothing: safeguard actions from 1995 to 2001. *Journal of International Economic Law* 5(2): 445-468.
- Latin America News Digest*. 2005. Brazil to set limits to Chinese imports. LexisNexis Academic, 24 May.
- Liu, H., and L. Sun. 2004. Beyond the phase-out of quotas in the textile and clothing trade: WTO-plus rules and the case of US safeguards against Chinese exports in 2003. *Asia-Pacific Development Journal* 11(1): 49-71.
- Ma, J. 2004. Product-specific Safeguard in China's WTO Accession Agreement: an analysis of its terms and its initial application in Section 421 investigations. *Boston University International Law Journal* 22(1): 189-217.
- Messerlin, P. A. 2004. China in the World Trade Organization: antidumping and safeguards. *World Bank Economic Review* 18(1): 105-130.
- Nordås, H. K. 2004. The Global Textile and Clothing Industry Post the Agreement on Textiles and Clothing. Discussion Paper No. 5, World Trade Organization, Geneva.
- Raffaelli, M., and J. Jenkins. 1995. *The Drafting History of the Agreement on Textiles and Clothing*. Geneva: International Textiles and Clothing Bureau.
- Reinert, K. A. 2000. Give us virtue but not yet: safeguard actions under the Agreement on Textiles and Clothing. *The World Economy* 23(1): 25-55.
- Spadi, F. 2002. Discriminatory safeguards in the light of the admission of the People's Republic of China to the World Trade Organization. *Journal of International Economic Law* 5(2): 421-43.
- Sykes, A. O. 2003. The safeguards mess: a critique of WTO jurisprudence. *World Trade Review* 2(3): 261-295.

- Tang, X. 1998. The integration of textiles and clothing into GATT and WTO dispute settlement. In *Dispute Resolution in the World Trade Organization*, eds. J. Cameron and K. Campbell, 171-203. London: Cameron May.
- Textile Monitoring Body. 1997. Comprehensive Report of the Textile Monitoring Body, G/L/179. Geneva: World Trade Organization, 31 July.
- Textile Monitoring Body. 2003. Report of the Ninety-Eighth Meeting, G/TMB/R/97. Geneva: World Trade Organization, 2 May.
- United States Committee for the Implementation of Textile Agreements. 2003. Procedure for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China, 68 Federal Register 227787, May 21.
- United States Committee for the Implementation of Textile Agreements. 2004. Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China, 69 Federal Register 75516, 17 December, 69 Federal Register 77232, 27 December 27, 69 Federal Register 77998, 29 December.
- United States Trade Representative. 2005. *Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products*. Washington, DC, 8 November.
- Vermulst, E., and P. Mihaylova. 2001. EC commercial defense actions against textiles from 1995 to 2000: possible lessons for future negotiations. *Journal of International Economic Law* 4(3): 527-555.
- Webb, R., J. Camminati, and R. L. Thorne. 2005. Antidumping mechanisms and safeguards in Peru. World Bank Policy Research Working Paper 3658. Washington, DC.
- Working Party on the Accession of China. 2001. Report of the Working Party on the Accession of China, WT/ACC/CHN/49. Geneva: World Trade Organization, 1 October.
- World Trade Organization. 2001. *Protocol on the Accession of the People's Republic of China*, WT/L/432. Geneva, 23 November.

Endnotes

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1. For the drafting history of the ATC, see Raffaelli and Jenkins (1995). For its general outlines, see Reinert (2000).
 2. ATC safeguard actions took place under the provisions of Article 6. Article 6.7 provided for a consultation process in which a WTO member proposing a safeguard action informed the Textiles Monitoring Body (TMB) of a consultation request. If the consultation process yielded a "mutual understanding that the situation calls for restraint on the exports" (ATC Article 6.8), then an *agreed restraint* was the result. If the consultation process did *not* lead to a mutual understanding, a *proposed unilateral restraint* could have resulted (ATC Article 6.10). Alternatively, "In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair," a member could have

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- imposed a *provisional unilateral restraint* “on the condition that the request for consultation and notification to the TMB [would] be effected within no more than five working days after taking the action” (Article 6.11).
3. See Textile Monitoring Body (1997), Baughman et al. (1997), and Reinert (2000).
 4. On these dispute settlement cases, see Tang (1998) and Reinert (2000).
 5. On this dispute settlement case, see Kim, Reinert, and Rodrigo (2002).
 6. Argentina also imposed antidumping actions during this time, one of which, that against Italian ceramic tile, went to the Dispute Settlement Body.
 7. Again, see Kim, Reinert, and Rodrigo (2002).
 8. As we will discuss below, a few ITCB members initiated safeguard procedures either under the China Textile Safeguards or the China Product-specific Safeguards, although the ITCB Council of Representatives issued its 2005 Bali Communiqué confirming that it “resolved to make determined efforts for further liberalization of trade in textiles and clothing.” For the ITCB position, see International Textile and Clothing Bureau (2005).
 9. The lack of European involvement in ATC safeguards is not a sign of a lack of protection. Rather, it is a sign of a preference for antidumping actions within the European Union. See Vermulst and Mihaylova (2001) and Messerlin (2004).
 10. During this period, there were requests by the United States for consultation with the Chinese government regarding certain textile and clothing products under the China Product-specific Safeguards. Since these safeguard actions were outside the scope of the ATC, we discuss them below in a separate section.
 11. In February 2003, Brazil notified the TMB of its agreed restraints of some woven fabric products under ATC Article 6.9 against imports from Taiwan and the Republic of Korea separately. The TMB found these measures to be consistent with Article 6. The restraint lasted until December 2004. See Textile Monitoring Body (2003).
 12. See Dispute Settlement Body (1997a).
 13. See Dispute Settlement Body (1997b).
 14. See Dispute Settlement Body (2001).
 15. See Working Party on the Accession of China (2001).
 16. Working Party on the Accession of China (2001), para. 242(g). Some argue that the products under the CTS should not continue to be subject to import restrictions under the CPSS upon the expiration of the CTS in 2008. See Huang (2006).
 17. For a negative view on the Agreement on Safeguards, see Finger (1996). A more recent analysis is provided by Sykes (2003).
 18. See Spadi (2002) and Liu and Sun (2004).
 19. There is no definition of “market disruption” in the CTS safeguard provisions. See Working Party on the Accession of China (2001), para 242.
 20. See Annex A of GATT (1974).
 21. Huang (2006) argued that the definition of market disruption in CTS must be based on the definition under Article 16.4 of the CPSS.
 22. See Spadi (2002).

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23. Article 6.2 of the ATC required the complaining party to prove that damage not be caused by such factors as “technological changes or changes in consumer preference.”
 24. Working Party on the Accession of China (2001), para 242(a).
 25. See The United States Committee for the Implementation of Textile Agreements (2003).
 26. See Nordås (2004).
 27. In December 2004, the Committee for the Implementation of Textile Agreements of the United States made a notification in the Federal Register regarding reapplication of the restrictions imposed in 2003. See the United States Committee for the Implementation of Textile Agreements (2004).
 28. The impacts of the CPSS on textile and clothing exports from China were reviewed by Liu and Sun (2004). However, their focus on the CPSS to evaluate the impact on China’s textile exports might have been somewhat misleading since, as discussed below, the CTS provisions have been rather extensively used.
 29. See Working Party on the Accession of China (2001), para. 242(g).
 30. World Trade Organization (2001), Article 16.1.
 31. See World Trade Organization (2001), Article 16.7.
 32. See World Trade Organization (2001), Article 16.4.
 33. See World Trade Organization (2001), Article 16.4 and Ma (2004).
 34. See Liu and Sun (2004).
 35. See Working Party on the Accession of China (2001).
 36. See Annex A of GATT (1974). The definition of “market disruption” was applied loosely under the MFA because there was not a robust dispute settlement mechanism to settle the conflicts among exporting and importing countries. See Spadi (2002).
 37. See Report of the Working Party on the Accession of China (2001), para. 1 and Spadi (2002). With regard to the general provisions for accession under the WTO, Hoekman and KostECKI (2001) noted that “A key aspect of this ostensibly multilateral proceeding is its bilateral component. Accession negotiations are held between the acceding government and all members interested in enhancing their access to the markets of the country seeking membership The bottom line is that a country that desires to enter the WTO is a *demandeur*” (pp. 66-67). In the specific case of China, these authors noted that “China must accept that WTO members have the right to impose measures of contingent protection on the basis of criteria that do not conform to the WTO” (p. 405).
 38. See also Liu and Sun (2003).
 39. The July 2005 move to a currency-basket peg, despite the very modest revaluation involved, was certainly to be welcomed. Further moves towards a managed float must eventually take place. It needs to be emphasized that a move to managed floating does *not* necessitate that China remove its capital controls. In fact, keeping these controls in place is probably wise given fragility in the Chinese banking system. There is, therefore, less concern about exchange rate volatility as a consequence of introducing flexibility into China’s currency arrangements than is often alleged.

40. In December 2003, quantitative restrictions were imposed on knit fabric (category 222), brassieres and other body-supporting garments (category 349/649), and cotton and man-made fibre dressing gowns and robes (category 350/650). In October 2004, a one-year trade limit was imposed on cotton, wool, and man-made fibre socks. On May 20, 2005, a restriction that was to expire at the end of 2005 was imposed on cotton knit shirts and blouses (category 338/339), cotton trousers (category 347/348), and cotton and man-made fibre underwear (category 352/652). In addition, in May 2005, combed cotton yarn (category 301), men's and boys' cotton and man-made fibre shirts, not knit (category 360/640), man-made fibre knit shirts and blouses (category 638/639), and man-made fibre trousers (category 647/648) were also restrained with a trade limit that lasted through December 2005. In September 2005, restrictions were imposed on certain cotton and man-made fibre brassieres and other body-supporting garments (category 349/649) and other synthetic filament fabric (category 620) until the end of 2005.
41. There have been twenty-seven requests, of which ten were reapplications of 2004 and 2005 safeguards. All of the safeguard investigations were terminated after the United States and China signed a pact on the import limit on certain textile and clothing products in November 2005.
42. See European Union (2005). The products included are pullovers, men's trousers, blouses, T-shirts, dresses, brassieres, flax yarn, cotton fabrics, bed linen, and table and kitchen linen.
43. Again, see European Union (2005).
44. See American Manufacturing Trade Action Coalition (2005). The four products were women's and girls' cotton and man-made fibre woven shirts (category 341/641), cotton and man-made fibre skirts (category 342/642), cotton and man-made fibre nightwear (category 351/651), and cotton and man-made fibre swimwear (category 359-S/659-S).
45. See United States Trade Representative (2005). The covered products are sewing thread and combed cotton yarn (category 200/301), knit fabric (category 222), special purpose fabric (category 229), hosiery (category 332/432/632), cotton knit shirts (part category 338/339), men's and boys' woven shirts (category 340/640), sweaters (category 345/645/646), cotton trousers (category 347/348), cotton and man-made fibre brassieres and other body-supporting garments (category 349/649), cotton and man-made fibre underwear (category 352/652), cotton and man-made fibre swimwear (359-S/659-S), pile towels (363), men's and boys' wool suits (category 443), men's and boys' wool trousers (category 447), polyester filament fabric (category 619), other synthetic filament fabric (category 620), glass fabric (622), man-made fibre knit shirts (part category 638/639), man-made fibre trousers (part 647/648), window blinds and shades (part category 666), and trousers, breeches and shorts (category 847).
46. See Committee on Safeguards (2005c,d). Webb, Camminati, and Thorne (2005) addressed the choice of safeguard action versus antidumping action on the part of the Peruvian government.
47. These safeguards cover synthetic fabrics, textured polyester threads, silks, velvets, sweaters and pullovers, embroidery, and knitted shirts.

48. It is again worth noting that Argentina, Brazil, Colombia, and Peru are members of the International Textiles and Clothing Bureau, an exporters group generally opposed to the use of safeguards.
49. See WTO Committee on Safeguards (2005b).
50. See WTO Committee on Safeguards (2005e), para. 64.
51. See WTO Committee on Safeguards (2004a).
52. See WTO Committee on Safeguards (2005a).

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