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COMPARATIVE ANALYSIS OF TEXTILE AND CLOTHING SAFEGUARDS REGIMES.

Within World Trade Organization (WTO), a member may take a safeguard action, such as restricting imports of a product temporarily to protect a domestic industry from an increase in imports causing or threatening to cause injury to domestic production. 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.

The Agreement on Textiles and Clothing (ATC) was one of a few sector-specific agreements in the WTO. It was limited in its scope and duration. It was sets out provisions to be applied during a 10-year transitional period, starting from 1995. Its basic purpose was to secure the integration of trade in textile and clothing into the normal rules of the GATT, through gradual phase-out of quota restrictions that have long been applied by major developed countries to imports from developing countries and economies. [1]

Actually, under the ATC, 55 safeguard actions were taken by the countries against T&C imports, out of which 26 were taken by the US alone. Perhaps this demonstrates the extent that protectionist interests went to extract maximum mileage out of a transition regime after which competition increased and the use of discriminatory safeguards was reduced. [2]

As all disputes under the ATC have so far pertained to transitional safeguard actions and, therefore Article 6 of the ATC has been the relevant ATC provision at issue.

The overall purpose of Article 6 is to give Members the possibility to adopt new restrictions on products not yet integrated into GATT, and that Article 6 establishes a three-step approach which has to be followed for a new restriction to be imposed.

First, the importing country must make a determination that the particular product, subject of a safeguard action, was being imported in increased quantities (in absolute terms, not merely relative to domestic production as is permitted, e.g., under the Agreement on Safeguards).

Second, the importing country must determine that the increase in imports was such as to cause serious damage or actual threat thereof to the domestic industry producing like and/or directly competitive products and, that the serious damage or threat of serious damage was due to increased imports, not to other factors

Third, after having satisfied the above conditions, the Member must attribute the serious damage or actual threat of serious damage to a particular Member or Members whose exports were responsible for it. [3]

WTO member countries have recourse to the Agreement on Safeguards for safeguard measures against all products covered in the ATC. 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).

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. 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). [4]

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.

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.

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." [5]

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. 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 " the existence or threat of market disruption; and the role of products of Chinese origin in that disruption." [6]

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. 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. [7]

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 [8].

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.

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).

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). [9].

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 [10].

To sum up, 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 focused on the CPSS. Thereafter, the AS took 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. The actions of major players, namely the United States, the European Union, and China, are 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.

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МІЖНАРОДНИЙ ЗАХИСТ ПРАВА ЛЮДИНИ НА СПРИЯТЛИВЕ СЕРЕДОВИЩЕ

Природне середовище є основою життєдіяльності людини, вона не може існувати поза ним. Тому забезпечення його безпеки та права людини на сприятливе навколишнє середовище є одними із першочергових завдань як кожної держави окремо, так і людства загалом. Поряд з цим, антропологічне навантаження на природні ресурси та їх поступове вичерпання, посилення забрудненості середовища є свідченням тенденції зростання обсягів сучасної екологічної кризи.

Метою роботи є аналіз сучасної міжнародно-правової законодавчої бази захисту права людини на сприятливе середовище та ефективності охорони цього права.

Право людини на сприятливе середовище можна трактувати як можливість для кожної людини і всього людства жити при такому стані біосфери Землі, який забезпечує максимальний рівень фізичного і психічного здоров’я, а також використовувати систему засобів, що усувають глобальні загрози біосфері,