AGREEMENT ON SAFEGUARDS (SA)

Preamble

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby agree as follows:

Bibliography


Case Law


Documents

Negotiating Group on Safeguards, Work Already Undertaken in the GATT on Safeguards, Note by the Secretariat, MTN.GNG/NG9/W/1, 7 April 1987.

Cross-References

Arts 4.1, 5.1, 7.4 SA; Art. 1 ADA.

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BOURGEOIS
A. General

I. Introduction

There is an obvious tension between the economic aims WTO Members seek to achieve through international trade under the WTO rules and the ability of WTO Members to take safeguard measures. According to most economists, trade leads to a redistribution of resources from inefficient domestic industries to more efficient ones. Yet, this redistribution and the economic adjustment may take time and have social costs. In 1947, the GATT Contracting Parties were not prepared to enter into trade liberalizing commitments without some safety-valves, one of which was a clause providing for emergency action on imports of particular products, which became art. XIX GATT 1947.¹

The same basic attitude prevailed in the Uruguay Round, i.e., there was a broad consensus on the need to keep the compromise underlying art. XIX GATT 1947, which is reflected by the fact that it remained unchanged in GATT 1994 incorporated in the WTO Agreement. Art. XIX GATT 1947 was inspired by the escape clause of the 1942 US Reciprocal Trade Agreement with Mexico, which a 1947 executive order of the President required to be included in every subsequent US trade agreement.²

Art. XIX GATT 1947 lays down the conditions in which a safeguard measure may be applied (art. XIX:1(a)), deals with existing trade preferences (art. XIX:1(b)), requires prior notice and consultations (art. XIX:2), and provides for compensation and retaliation (art. XIX:3).

II. History

Experience shows that political considerations may lead governments to rely abusively on art. XIX GATT, inter alia, in the absence of detailed proce-

¹ See generally, Bourgeois & Wagner, Article XIX GATT.
² Lee, 5, 17, 166; Trebilcock & Howse, 227.