Chapter 10
Safeguards

Photo: Practitioner and former Chairman Will E. Leonard delivering document boxes to former Secretary Donna R. Koehnke.

Kara Reynolds[677]

Introduction

Since the late 1940s, the U.S. International Trade Commission (Commission) has played a vital role in the process through which U.S. industries have been able to obtain safeguard (or escape clause) protection. Safeguards essentially serve as a safety net for U.S. industries that are struggling in the face of increased import competition by providing a period of temporary protection that can be used by industries to adjust to the global marketplace. Evidence suggests, however, that the hurdles for obtaining safeguard protection are notably higher, both legally and administratively, than those for obtaining other forms of trade remedy relief such as antidumping and countervailing duties.

Current U.S. safeguard law is spelled out in section 201 et seq. of the Trade Act of 1974 (as amended).[678] Under this law, entities which are representative of an industry may file a petition with the Commission requesting import relief; if the Commission finds that the petition meets the requisite basis for instituting an investigation, the Commission must institute an investigation. The Commission is also required to institute an investigation upon receipt of a request from the President or the U.S. Trade Representative (USTR), or upon receipt of a resolution from either the House Committee on Ways and Means or the Senate Committee on Finance. Over the course of the investigation, which, under current law, must be completed within 180 days, the Commission obtains information through public hearings, questionnaires, and other sources with the goal of determining whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury (or threat thereof) to the domestic industry. If the Commission makes an affirmative injury determination, it must then recommend to the President the type and amount of import relief

[677] Professor Reynolds is a Professor in the Department of Economics at American University. Her publications include "Innovation through Protection: Does Safeguard Protection Increase Investment in Research and Development?" (with Benjamin Liebman), *Southern Economic Journal*, 2013, 80(1): 205–25.
[678] USITC, "Understanding Safeguard Investigations," https://www.usitc.gov/press_room/us_safeguard.htm (accessed March 14, 2016). Although several provisions of the 1974 Act deal with safeguards, proceedings are commonly referred to as "section 201" investigations.

that would remedy the serious injury or threat and facilitate the efforts of the domestic industry to adjust to import competition.

An affirmative Commission injury determination in a safeguard investigation does not guarantee relief. Instead, the Commission makes a recommendation to the President, who has the final say in whether and how much import relief to provide to the industry.

The safeguard law in place in the United States has evolved considerably since the late 1940s. This chapter will review the major changes in the safeguard law since that time, and how these changes relate to the safeguard provisions of multilateral trade agreements. The chapter will then provide a brief history of Commission safeguard determinations over the years, finally concluding with case studies of three industries that have received safeguard protection: footwear, motorcycles, and steel.

Evolution of U.S. Safeguard Laws

The modern concept of safeguard provisions in trade agreements and U.S. law arose during the 1930s in the context of the Trade Agreements Act of 1934, which allowed the President to enter into negotiations with foreign trade partners to reduce duties on goods on a reciprocal basis.[679] The concept of an escape provision, the forerunner of today's safeguard law, arose from the concern that duty reductions would place industries at risk with no possibility of relief if there was a surge in imports. Most agreements concluded after 1940 under the auspices of the Trade Agreement Act of 1934 included some form of escape clause in which countries could modify or terminate the agreement on short notice if either country experienced an undue amount of imports that might injure a major domestic industry.

The escape provision in the 1942 bilateral trade agreement with Mexico was the most recent of these escape provisions at the time of the General Agreement on Tariffs and Trade (GATT) negotiations and was the model for the U.S. draft provision submitted to the negotiating group that drafted the GATT in 1947. The bilateral agreement included language that allowed either government to withdraw trade concessions for individual products if increased imports were causing "serious injury" to domestic producers.[680] Although there were no formal procedures set out for invoking this provision, in practice it is likely that the U.S. Committee for Reciprocity Information (CRI) would have considered any requests for withdrawal of concessions.[681] At the time, the CRI was an inter-departmental committee, chaired by the Chairman of the U.S. Tariff Commission—the Commission's predecessor.

[679] See Alfred Eckes, *Opening America's Market* (Chapel Hill: North Carolina Press, 1995), Chapter 7 for an extensive review of the origins of U.S. escape clause provisions.
[680] Judith Goldstein, *Ideas, Interests, and American Trade Policy* (Ithaca: Cornell University Press, 1993), 186.
[681] George Bronz, "The Tariff Commission as a Regulatory Agency," *Columbia Law Review* 61, 1961, 468.

In February 1947, President Harry S. Truman signed Executive Order 9832 requiring that all future trade agreements negotiated under the authority of the Trade Agreements Act of 1934 include a safeguard provision. Executive Order 9832 set out criteria and procedures relating to the conduct of safeguard investigations and designated the Tariff Commission as the agency that would conduct investigations, make injury determinations, and make remedy recommendations to the President.[682] In his statement issuing the executive order, President Truman made clear that this order simply made mandatory the trade agreement procedures that were already in place to "make . . . doubly sure that American interests will be properly safeguarded."[683] The President further modified the safeguard criteria and procedures in Executive Orders 10004 and 10082 in October 1948 and October 1949, respectively.

The safeguard criteria and procedures in the Executive Orders were codified and further defined in section 7 of the Trade Agreements Extension Act of 1951. Specifically, the law required the Commission to institute a safeguard investigation at the request of the President, either House of Congress, the House Committee on Ways and Means, the Senate Committee on Finance, an application from an interested party (typically the domestic industry), or upon its own motion. The Commission was charged with determining whether increased imports of a product that had been granted tariff concessions had caused or threatened to cause serious injury to the domestic industry. The new law set out a list of factors that the Commission consider in its investigation: "a downward trend of production, employment, prices, profits, or wages in the domestic industry concerned, or a decline in sales, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, or a decline in the proportion of the domestic market supplied by domestic producers."[684]

If the Commission made an affirmative injury determination, it was required to recommend a remedy to the President. The remedy could be either through an adjustment in the rate of duty or through the establishment of an import quota.[685] The President could reject or accept (either in whole or in part) the Commission recommendation. Should the President reject the recommendation, he was required to report to the House Committee on Ways and Means and the Senate Committee on Finance as to why.

Section 7 of the 1951 Act was amended in 1953 and 1958. In a 1953 amendment, Congress reduced the time given to the Commission for completing investigations from 1 year to 9 months, and the 1958 amendment Congress further reduced the time to 6 months. The 1958

[682] Exec. Order No. 9832, 3 C.F.R. 126 (Supp. 1947); Gary Hufbauer and Howard Rosen, *Trade Policy for Troubled Industries* (Washington, DC: Institute for International Economics, 1986), 10.
[683] Remarks announcing Exec. Order No. 9832, February 25, 1947, http://trumanlibrary.org/publicpapers/viewpapers.php?pid=2207 (accessed July 15, 2016).
[684] *Ibid*.
[685] 1951 Act § 7(a), 65 Stat. 74.

amendments also provided that groups of employees could file petitions for safeguard relief with the Commission, and provided a legislative procedure under which a two-thirds majority of each House of Congress could direct the President to proclaim the remedy action recommended by the Commission.[686]

By the early 1960s, many observers noted that U.S. safeguard provisions limited the authority of U.S. trade negotiators, and bred mistrust among the foreign trade partners of the United States.[687] In this climate, several provisions of the U.S. safeguard law were revised in section 301 of the Trade Expansion Act of 1962 (TEA) that limited the ability of the United States to award safeguard protection.[688]

As Stanley Metzger—later a Commissioner—explained, under the 1951 law the Commission presumed a connection between an increase in imports that caused injury and the trade agreement concession that preceded the increase. In contrast, the TEA required the Commission to determine whether the increase in imports resulted "in major part" from trade agreement concessions.[689] The 1951 law allowed the Commission to make an affirmative determination when the increase in imports was "either actual or relative to domestic production." In other words, the Commission could make an affirmative determination even when imports were declining in actual terms but were increasing relative to domestic production. The TEA eliminated the phrase "relative to domestic production," thus only an absolute growth in imports would be considered for potential safeguard relief. The TEA also changed the language from requiring that imports "contributed substantially" towards causing or threatening serious injury to a requirement that the increase in imports must be a "major factor" in causing or threatening to cause serious injury.

The new law modified the list of factors that the Commission was to consider in determining whether an industry was seriously injured or threatened with serious injury. The TEA specified that the Commission was to "take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment."[690]

---

[686] Stanley Metzger, "The Trade Expansion Act of 1962," *Georgetown Law Journal* 51 (1962), 442; William K. Ris, Jr., "Escape Clause Relief under the Trade Act of 1974," *Columbia Journal of Transnational Law* 16 (1977), 301. In practice, Congress has never voted to enact safeguard relief after the President has opted not to impose the Commission's recommendations.
[687] Ris, "Escape Clause Relief," 1977, 301.
[688] The Trade Expansion Act, Pub. L. No. 87-794, 76 Stat. 872 (1962). The TEA also included new trade adjustment assistance provisions that supplemented the tariff and quota relief available under the escape clause.
[689] Metzger, "The Trade Expansion Act of 1962" (1962), 444.
[690] *Ibid*.

Another important change in the TEA limited the length of time that safeguard protection could be in place.[691] Under the 1951 law, safeguard protection could essentially be in place for an unlimited amount of time, although the Commission was directed to review the need for the protection on an annual basis after the protection had been put in place for two years. The TEA set a four-year time limit on the initial period of relief, and a four-year time limit on any extensions of that relief.

As will be discussed in the next section, the President awarded very few industries safeguard protection under the TEA. Of the 29 industry investigations the Commission undertook between 1962 and 1974, only 5 resulted in temporary withdrawal of concessions. As Ris (1977) points out, "in the depressed economic climate of the early 1970s such stringent requirements became politically unacceptable."[692] Changes to legislation passed in the Trade Act of 1974 were designed to make it easier to obtain safeguard protection. Indeed, the Senate Finance Committee stated in its report on the bill that "the provisions of the Trade Expansion Act of 1962 for invoking the escape clause. . . have proven to be an inadequate mechanism for providing relief to domestic industries injured by import competition."[693]

Although there have been amendments to the law since 1974, safeguard investigations today are still conducted under the Trade Act of 1974.[694] A major change in the 1974 legislation was the elimination of the requirement that the increase in imports be tied to tariff concessions made by the United States. The second major change was the reinstatement in modified form of the causation test in the legislation that preceded the TEA. Instead of the "major" cause specified in the TEA, the 1974 legislation required the increased imports to be a "substantial" cause of injury or threat of injury; the 1974 Act defined "substantial cause" as "a cause which is important and not less than any other cause."[695] The 1974 law also once again allowed the Commission to calculate increases in imports as those increases relative to domestic production rather than absolute increases.

As enacted in the Trade Act of 1974, section 201 required the Commission to take into account "all economic factors which it considers relevant," including, with respect to serious injury, "the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry" when determining "serious injury," and with respect to

[691] The 1962 law also amended the provision by allowing Congress to direct the President to impose the remedy recommended by the Commission by a simple majority vote in both chambers, as opposed to a two-thirds majority.
[692] Ris, "Escape Clause Relief," 1977, 304.
[693] Senate Finance Committee, *Trade Reform Act of 1974: Report of the Committee on Finance . . . on H.R. 10710*, S. Rept. 93-1298 (1974) at 119.
[694] Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975).
[695] *Ibid.*

the threat of serious injury, "a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment."[696]

Section 201 specified four forms of import relief could result from a safeguard investigation: (1) tariff increases; (2) tariff rate quotas; (3) quotas; or (4) orderly marketing agreements. Tariff increases were limited to 50 percent above the tariff levels at the time of the President's proclamation. Finally, Congress limited the duration of import relief to 5 years, with provision for a one-time extension of up to 3 years.

The Omnibus Trade and Competitiveness Act of 1988 (OTCA) amended section 201 in several important ways.[697] First, in OTCA, Congress sought to address controversial determinations that had resulted from application of the "substantial" cause standard. As set out in the original and current version of section 201, the Commission needs to determine whether imports are at least as great as any other cause of injury to the domestic industry. In 1980, a three-Commissioner majority had applied this test leading to a negative injury determination based on the finding that the economic recession was a far greater cause of injury to the automobile industry than were imports.[698] One amendment adopted in 1988 directed the Commission to consider the condition of the domestic industry over the course of the business cycle. Intuitively, the Commission could still consider the effects of a recession, but as a set of distinct causal factors rather than as a single factor. The House report on the bill specifically stated that if the decline in industry production is "much more pronounced than would normally occur in a cyclical downturn, the industry may be suffering serious injury because of imports."[699]

The 1988 amendments also changed the duration of investigations. Under the 1988 amendments, the Commission must make an injury determination within 120 days of the filing of a petition; the Commission must also make a critical circumstances determination at this time if requested by the industry.[700] The Commission's final report must be sent to the President within 180 days of the filing of the petition. With an affirmative critical circumstances determination, the President would have only seven days to make a provisional relief determination.

Finally, the 1988 amendments direct the Commission to use a new standard for remedy recommendations and monitoring. Recall that the 1974 version of the law required the

---

[696] *Ibid*.
[697] Omnibus Foreign Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988).
[698] Warren Maruyama, "The Evolution of the Escape Clause—Section 201 of the Trade Act of 1974 as Amended by the Omnibus Trade and Competitiveness Act of 1988," *Brigham Young University Law Review* (1989), 407.
[699] 55 H.R. Doc. No. 33, 100th Cong., 1st sess. (1987).
[700] Critical circumstances occur when there has been a "substantial" increase in imports over a short period of time that could impair the effectiveness of import relief; the introduction of critical circumstances was intended to prevent trading partners from flooding the U.S. market during the safeguard investigation.

Commission to determine the level of import relief that would “prevent or remedy” serious injury. In contrast, the 1988 amendments emphasize the need for industries to make positive adjustments, requiring that the Commission recommend the level of import relief that would facilitate the ability of the domestic industry to compete successfully with imports after the relief is lifted. The Commission is directed to monitor developments in industries benefitting from safeguard relief to ensure that such “positive adjustment” is taking place.

U.S. Safeguard Law and the General Agreement on Tariffs and Trade

When Executive Order 9832 was issued in 1947, the drafting of the GATT was already well underway and the criteria in the Executive Order for making injury determinations were virtually the same as those proposed by the United States in the negotiations and later included in Article XIX.[701] As explained by Jackson, Article XIX of the GATT “was the result of United States desires.”[702] Article XIX of the original GATT reads:

> If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.[703]

The GATT language essentially stated that in order to invoke Article XIX, countries had to show imports in such increased quantities as to cause serious injury or threaten serious injury. These increased imports had to be a result of both concessions made under the GATT and “unforeseen developments.”

While Article XIX set out a standard to be applied in invoking Article XIX, it did not include detailed rules and procedures regarding the conduct of investigations, notification of affected

[701] There were some minor exceptions. For example, “like or similar” in the Executive Order was “like or directly competitive” in Article XIX because the English words for “like” and “similar” both translated into “similaire” in French.
[702] John Jackson, *World Trade and the Law of GATT* (Charlottesville: Michie Company, 1969), 553. See chapter 23 of Jackson’s book for an overview of developments leading to the drafting and early interpretations of the Article XIX text.
[703] General Agreement on Tariffs and Trade (GATT), October 30, 1947, 61 Stat. A3 (1947), T.I.A.S. 1700 (effective January 1, 1948).

exporting countries, and international consultations. The Trade Act of 1974 set out steps to be taken toward GATT revision, including “the revision of article XIX of the GATT into a truly international safeguard procedure.”[704] Although a group of countries (the Group of 7), including the United States, attempted to draft a new safeguard code under the Tokyo Round of trade negotiations between 1974 and 1979, countries were unable to reach an agreement.[705]

The Omnibus Trade and Competitiveness Act of 1988 also identified safeguards as among the principal negotiating objectives of the United States for what became known as the Uruguay Round of trade negotiations. The GATT Contracting Parties this time reached agreement, and the Agreement on Safeguards, which was applicable to all members of the new World Trade Organization, was part of the Uruguay Round Agreements that became effective on January 1, 1995. Among other things, the Agreement on Safeguards set out the conditions for applying a measure; requirements regarding the conduct of investigations, including notice of proceedings and opportunity for participation; definitions for the terms “serious injury,” “threat of serious injury,” and “domestic industry;” a list of factors to be considered in determining whether increased imports are causing or threatening serious injury; a provision allowing members to apply a measure on a provisional basis pending completion of a full investigation when critical circumstances are found to exist; rules relating to the application of measures, including to developing country members; the duration and review of measures; rules relating to notification and consultation; and surveillance by a Committee on Safeguards.[706]

To implement the Uruguay Round Agreements, the United States made some modifications to its safeguard statute, including adding the Agreement's definition for such terms as “serious injury,” and revising the allowable duration of a safeguard measure. Between 1995, the year the Uruguay Round Agreements entered into force, and 2015, the President imposed safeguard measures on imports of six products or groups of products: broom corn brooms, wheat gluten, lamb meat, steel wire rod, circular welded quality line pipe, and certain steel products. U.S. trading partners filed complaints with the World Trade Organization’s Dispute Settlement Body challenging each of these measures, although complaints associated with the safeguard protection awarded to broom corn brooms and steel wire rod never proceeded to a panel determination. In four of the disputes, WTO panels and the WTO Appellate Body found that the

---

[704] Section 121(a)(2) of the Trade Act of 1974 (88 Stat. 1986).
[705] Jorge F. Perez-Lopez, “GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries,” *Case Western Reserve Journal of International Law* 23, no. 3 (1991), 534–38.
[706] World Trade Organization (WTO), Agreement on Safeguards, https://www.wto.org/english/tratop_e/safeg_e/safeint.htm (accessed March 11, 2016).

United States had acted inconsistent with its obligations.[707] All six safeguard measures were eventually terminated.

One of the key issues challenged in these disputes was the way in which the United States treated its preferential trade agreement (PTA) partners under the safeguard actions. As explained in Pauwelyn (2004), under the Safeguards Agreement WTO members evaluating the degree to which imports are causing serious injury can either (1) consider all imports or (2) consider just those coming from third parties, thereby potentially excluding imports from PTA partners in making the injury determination. At the same time, Article 2.2 of the Agreement states that if a WTO Member wants to apply safeguard measures, it must apply them to all imports (including those from PTA partners), while Article 5.1 of the Agreement limits the application of safeguard measures to that which would remedy the serious injury. A WTO dispute settlement panel on Argentinian safeguard measures seemingly reconciled these potentially contradictory Articles when they defined the concept of parallelism as "imports included in the [injury] determination made under Articles 2.1 and 4.1 should correspond to the imports included in the application of the measure under Article 2.2."[708] In other words, if the WTO member excludes imports from PTA partners when making their injury determination, these countries can later be excluded from the application of the safeguard measure. If the WTO members makes its injury determination using imports from all members, then the safeguard measure must be applied to all trading partners.

Dispute panels associated with U.S. safeguard measures on wheat gluten, lamb, line pipe and steel each found that the United States violated the Agreement on Safeguards when it made its injury determination using global imports but later excluded its PTA partners, including Mexico and Canada, from the resulting safeguard actions. In each of these rulings however, the Appellate Body stated that a gap between the imports considered during the investigation and the imports covered by the resulting safeguard measures can be justified if the WTO member can establish that only the imports from the countries covered by the measure cause or threaten to cause serious injury.[709]

---

[707] WTO panels and the WTO Appellate Body have not, as of this writing, fully upheld any of the global safeguard measures challenged under the WTO's dispute settlement procedures, and have upheld only one safeguard-like measure applied by a WTO Member. See Dispute DS399, United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China, downloaded from https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds399_e.htm, (accessed January 18, 2017).
[708] WTO, "Argentina Safeguard Measures on Imports of Footwear," —AB-1999-7—Report of the Appellate Body, WT/DS121/AB/R, adopted January 12, 2000.
[709] Jooste Pauwelyn, "The Puzzle of WTO Safeguards and Regional Trade Agreements," *Journal of International Economics Law* 7 (2004), 120.

Commission Investigations

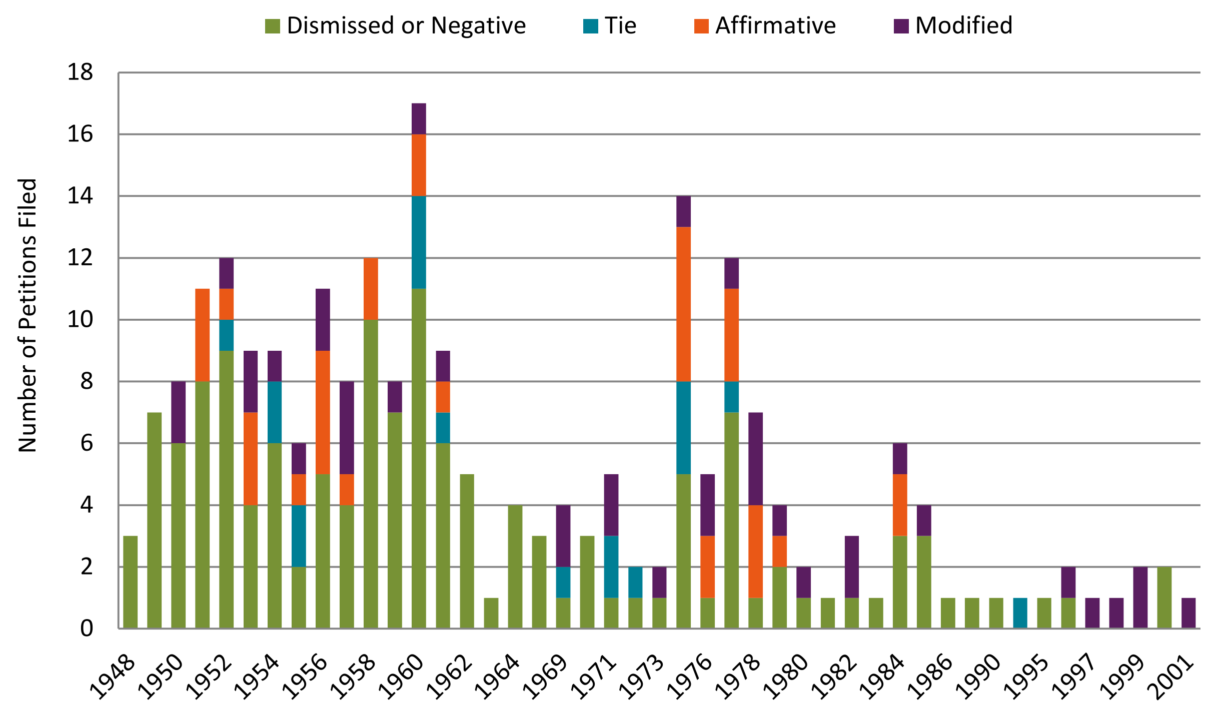
As illustrated in Figure 10.1, the number of petitions filed at the Commission has varied considerably over the years. While the Commission initiated a large number of safeguard investigations prior to 1962, nearly 10 per year, remedies rarely followed these investigations.[710] Of the 135 petitions, the Commission recommended action in 33 cases and the President chose to impose safeguard protection in just 15, an eleven percent success rate.[711] Examples of products awarded safeguard protection during this time period include fur hats, figs, watch parts, bicycles, clothespins, and sheet glass.

Only 28 industry petitions were filed during the 12 years in which the safeguard provisions in the Trade Expansion Act of 1962 were in effect. Of these 28 investigations, only five resulted in some form of safeguard measures, on products including pianos, earthenware, sheet glass (2 investigations), and ball bearings.

The number of safeguard petitions filed temporarily increased under the Trade Act of 1974, but then declined after 1980. Relatively few petitions resulted in the imposition of safeguard actions. A notable example was a 1980 case on certain motor vehicles, chassis, and bodies, in which the Commission made a negative determination; this was one of the biggest cases in terms of product value in the Commission's history, and one of the most publicized. In fact, the imposition of safeguard relief is rare in the United States, particularly when compared to the number of countervailing duty and antidumping duty orders. The Commission conducted 73 global safeguard investigations between 1975 and 2015, with 44 of the 77 investigations completed between 1975 and the end of 1980. The President imposed relief in only 19 cases during this time.[712] The President last imposed a safeguard remedy, on a large number of steel products in 2001. Each investigation that resulted in protection since the 1974 Trade Act is listed in Table 10.2.

[710] Note that this average includes all "preliminary investigations" that resulted in the Commission dismissing the petition without instituting a formal investigation because there failed to be a "good and sufficient reason" to do so. USITC, *Investigations Under the Escape Clause of Trade Agreements*, 1963, 2.
[711] The Commission was equally divided in its determination in nine other investigations. In those instances, the President was authorized under section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) to impose a safeguard measure if he considered the determination of the Commissioners voting in the affirmative to be the determination of the Commission. The President has only rarely imposed a safeguard measure under such circumstances.
[712] This includes a 1995 safeguard investigation on imports of fresh winter tomatoes that was terminated by the Commission at the request of the petitioner following a negative preliminary determination by the Commission and before the Commission made a determination in a full investigation.

Figure 10.1: U.S. safeguard investigations, 1948–2016



Source: Compiled by the author from: (1) U.S. Tariff Commission, "Investigations Under the Escape Clause of Trade Agreements," TC Publication 116, 1963; (2) U.S. Tariff Commission, "Investigations Under section 301 of the Trade Expansion Act of 1962," TC Publication 472, 1972; and (3) USITC, *Annual Report*, various volumes.

Table 10.1: Safeguard protection, 1975–2016

Case No.	Product	Initiation	Termination	Years of Protection	Form of Protection
201-005	Stainless steel and alloy tool steel	6/14/1976	2/13/1980	3.7	Quota, OMA
201-018	Footwear	7/28/1977	6/30/1981	3.9	OMA
201-019	Television receivers	7/1/1977	6/30/1982	5.0	OMA
201-029	CB radio receivers	3/27/1978	4/11/1981	3.0	Tariff
201-035	High-carbon ferrochromium	11/3/1978	11/13/1981	3.0	Tariff
201-036	Clothespins	2/18/1979	2/22/1984	5.0	Quota
201-037	Bolts, nuts, and screws of iron or steel	12/26/1978	1/5/1982	3.0	Tariff
201-039	Non-electric cookware	1/17/1980	1/16/1984	4.0	Tariff
201-043	Mushrooms	11/1/1980	10/31/1983	3.0	Tariff
201-047	Heavyweight motorcycles	4/1/1983	10/9/1987	4.5	TRQ
201-048	Stainless steel and alloy tool steel	7/19/1983	9/1/1989	6.1	TRQ, OMA
201-051	Carbon and certain alloy steel products	10/1/1984	9/31/1989	5.0	OMA
201-056	Wood shingles and shakes	7/6/1986	6/1/1991	4.9	Tariff
201-065	Broom corn brooms	11/28/1996	12/3/1998	2.0	Tariff
201-067	Wheat gluten	5/30/1998	6/1/2001	3.0	Quota
201-068	Lamb meat	7/7/1999	11/15/2001	2.4	TRQ
201-069	Certain steel wire rod	3/1/2000	3/1/2003	3.0	TRQ
201-070	Circular welded carbon quality line pipe	3/1/2000	3/1/2003	3.0	Tariff
201-073	Steel	3/20/2002	12/5/2003	1.7	TRQ, Tariff

Source: Reproduced from Liebman and Reynolds (2013).

As listed in Table 10.2, between 1975 and 2016 the duration of safeguard measures has ranged from approximately two years to slightly more than six years. In addition to the steel industry, other firms benefitting from protection include producers of such diverse products as lamb meat, clothespins, motorcycles, and wood shingles.

Since 1975, the United States has been equally as likely to award tariff protection, tariff rate quotas (TRQs), and other quantitative protection, which can take the form of either Orderly Marketing Agreements (OMAs) or quotas. Although the level of protection is typically clear when a tariff is put in place, the level of protection from quantitative protection is harder to manage. For example, in 1998 the United States imposed quantitative restrictions on U.S. imports of wheat gluten. While quota fill rates from individual countries reached or exceeded 100 percent in the first year of protection, a number of important trading partners (including Canada and Mexico) were excluded from the quota, which limited its effectiveness.[713]

What accounts for the limited use of safeguard protection in the United States? As argued in Hansen and Prusa (1995), it could simply be due to the higher legal and administrative thresholds than antidumping and countervailing duty protection. Safeguard regulations require that imports are a substantial cause of “serious” injury, compared to the “material” injury standard in countervailing duty and antidumping cases. Congress has stated that the serious injury standard should be harder to prove than material injury.[714] Unlike in antidumping and countervailing duty investigations, the final decision to apply safeguard measures is made by the President in a final procedural stage. As a result, safeguard investigations tend to be more political and the outcomes more uncertain than antidumping and countervailing duty cases.[715]

Safeguard protection is also relatively rare among other countries in the WTO. For example, between 1950 and 1994 GATT members invoked safeguard protection only 150 times; U.S. cases accounted for 19 percent of total GATT safeguard protection during this time period.[716] Between 1995 and 2015, WTO members initiated 311 safeguard investigations; of these investigations, nearly half (155 investigations) resulted in the imposition of safeguard measures,

---

[713] USITC, *Wheat Gluten: Evaluation of the Effectiveness of Import Relief*, USITC Investigation No. TA-204-7, USITC Publication 3478 (Washington, DC: USITC, 2001).
[714] Wendy L. Hansen and Thomas J. Prusa, “The Road Most Taken: The Rise of Title VII Protection,” *World Economy* 18, no. 2 (1995), 299.
[715] *Ibid*.
[716] Perez-Lopez, “GATT Safeguards,” 1991, 524, and WTO, *WTO Analytical Index*, 2007.

compared to more than 3,000 antidumping measures and 202 countervailing duty measures enacted by WTO members over this same time period.[717]

Special Safeguards

Note that the Commission does not administer all safeguard regulations in the United States. For example, since the Uruguay Round Agreements became effective in 1995, the U.S. Department of Agriculture has administered Special Agricultural Safeguards. Similarly, the Department of Commerce administered the transitional safeguard associated with the elimination of textile and apparel quotas.

In recent years the Commission has been charged with administering two special safeguard programs. The first is a special safeguard program for industries that have experienced serious injury following tariff reductions under a U.S. free trade agreement. Typically, the Commission is authorized to conduct such special FTA safeguard investigations within 10 years of the implementation of a new FTA, and the rules that govern such investigations are very like those governing global safeguard investigations.[718] In practice, the Commission has not conducted any investigations under special FTA safeguard provisions.

The Commission was also charged with administering section 421 of the Trade Act of 1974, which implemented a special safeguard program to help U.S. industries adjust to import surges from China.[719] China agreed to these special safeguard provisions as part of an agreement with the United States that would allow for its accession to the WTO.[720] The rules governing section 421 safeguards differed significantly from those governing global safeguard investigations. For example, section 421 states that Commission must determine whether products from China are being imported in such "increased quantities. . . as to cause or threaten to cause market disruption to the domestic producers."[721] Importantly, the law defines market disruption as increased imports (either relative or in absolute terms) that are a significant cause of material injury or threat of material injury, rather than the more stringent serious injury requirement in global safeguard investigations. Under the "significant cause" requirement, increased imports

---

[717] The United States has accounted for a much smaller share of global safeguard protection since 1995, accounting for just 3.2 percent of safeguard investigations and 3.8 percent of safeguard measures made by all WTO members between 1995 and 2015. World Trade Organization, https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm (accessed July 18, 2016).

[718] USITC, *Summary of Statutory Provisions Related to Import Relief*, USITC Publication 4468 (Washington, DC: USITC, 2014), 31.

[719] Section 421 of the Trade Act of 1974, 19 U.S.C. § 2451(b)(1) (2000).

[720] U.S.-China WTO Market Access Agreement, November 15, 1999. The provisions of this agreement are similar to those on special safeguards that were included in China's Accession Protocol to the WTO. WTO Ministerial Conference, *Protocol on the Accession of the People's Republic of China*, WT/L/432, November 23, 2001, http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/L/432.doc (accessed March 16, 2016).

[721] Section 421 of the Trade Act of 1974, 19 U.S.C. § 2451(b)(1) (2000).

from China need not be "equal to or greater than" any other cause, an easier requirement to meet than the "substantial" cause required for global safeguards.[722]

Under section 421, if the Commission reached an affirmative injury determination, the Commissioners voting in the affirmative transmitted their remedy recommendation to the USTR. In turn, the statute authorized the USTR to enter into negotiations with China as to the best way to remedy the material injury or threat of material injury. If those negotiations failed, the President could then decide whether and how much safeguard protection to award. Unlike global safeguard actions, there was no legal restriction on the length of time that safeguard protection could be awarded under section 421.

The Commission launched seven section 421 safeguard investigations between 2002 and 2009. Under the less stringent injury requirements, the Commission recommended safeguard action in five of these cases. However, the President declined to impose protection in all but one: passenger vehicle and light truck tires.[723] Specifically, the President chose to impose tariffs starting at 35 percent on September 26, 2009 that would gradually be phased out after a three-year period.

Under the U.S.-China WTO Market Access Agreement, section 421 safeguards were designed to be phased out over the 12 years following China's accession to the WTO, a period that ended on December 11, 2013.

Case Studies in Safeguard Protection

A 1982 Commission study on the effectiveness of safeguard protection defined "adjustment to import injury" as "an end to the industry's state of injury." The study went on to specify that this adjustment can happen in one of two ways: (1) the industry could modernize and improve its performance so that it becomes more competitive or (2) the industry could contract so that only the most competitive firms survive.[724]

The remainder of this chapter consists of three case studies in safeguard protection to assess the degree to which these industries could adjust, and whether such adjustment took the form of modernization or contraction. The three safeguard actions highlighted, each of which was filed under the Trade Act of 1974, are representative of the wide range of possible outcomes that one might expect from safeguard protection. For example, the footwear industry

---

722 *Ibid*.
723 U.S. Government Accountability Office (GAO), *U.S.-China Trade: The United States Has Not Restricted Imports under the China Safeguard*, GAO-05-1056 (Washington, DC: GAO, 2005).
724 USITC, *The Effectiveness of Escape Clause Relief in Promoting Adjustment to Import Competition*, Investigation No. 332-115, USITC Publication 1229 (Washington, DC: USITC, 1982), 6.

continued to contract in the 1970s and 1980s despite safeguard protection, and many of the firms remaining in the industry have refocused their efforts on high-value operations such as design and marketing while outsourcing the actual manufacturing to lower-cost foreign producers. In contrast, many analysts point to the safeguard protection awarded to the U.S. motorcycle industry, which provided Harley Davidson time to reorganize and innovate, as a clear success story. Although the safeguards awarded to the steel industry provided a temporary period of relief to firms, the case study highlights the fact that industries will continue to face challenges from increasing import competition and fluctuating demand well after periods of safeguard protection are lifted.

Case Study 1: Footwear

The Commission launched a section 201 investigation (Investigation No. 201-18) on footwear on September 28, 1976 at the request of the Senate Finance Committee. The Commission had been following economic conditions in the footwear industry closely. The first safeguard investigation involving the footwear industry had been instituted in 1970 (TEA-18), and resulted in a deadlocked decision by the Commission that resulted in no Presidential action. The footwear industry sought out safeguard protection again in 1975; that investigation (201-007) resulted in the Commission recommending import relief through either tariffs or tariff-rate quotas. President Gerald Ford found that import restraints would not be in the national interest at that time, and instead recommended expedited adjustment assistance to firms.[725]

The number of U.S. footwear producers had declined slightly more than 6 percent between 1969 and 1975, while production had decreased 22 percent between 1969 and 1973. Meanwhile, imports of non-rubber footwear had increased 30 percent between 1970 and 1975 and the import penetration ratio had risen from 48 percent to 82 percent during this same time period. In 1975, Taiwan accounted for 33 percent of U.S. imports of non-rubber footwear, with other leading import sources including Italy, Spain, and Brazil. Although not a leading supplier of footwear yet, accounting for just 12 percent of U.S. imports, imports from South Korea doubled in 1974–75 alone. The Commission report in the case noted that the footwear industry was extremely labor-intensive, and wage rates in the United States significantly exceeded those in Taiwan and South Korea.[726] While all the Commissioners found evidence that imports were a substantial cause of serious injury, four of the Commissioners recommended relief in the form of a tariff-rate quota system and one Commissioner recommended an increase in tariffs of

[725] USITC, *Footwear: Report to the President on Investigation No. TA-201-18 under section 201 of the Trade Act of 1974*, USITC Publication 799 (Washington, DC: USITC, 1977), A-4.
[726] *Ibid*.

30 percent. The final Commissioner recommended firm-specific adjustment assistance rather than the imposition of import protection.[727]

Instead of imposing the tariff-rate quotas suggested by the Commission, President Jimmy Carter ordered that Orderly Marketing Agreements be negotiated only with Taiwan and South Korea. The agreements, which were in effect from 1977 through 1981, initially limited Taiwanese and South Korean imports of footwear to 78 and 75 percent, respectively, of their footwear imports from 1976. Restrictions were divided across categories, but there was some flexibility to shift quotas across categories and borrow from future periods.[728]

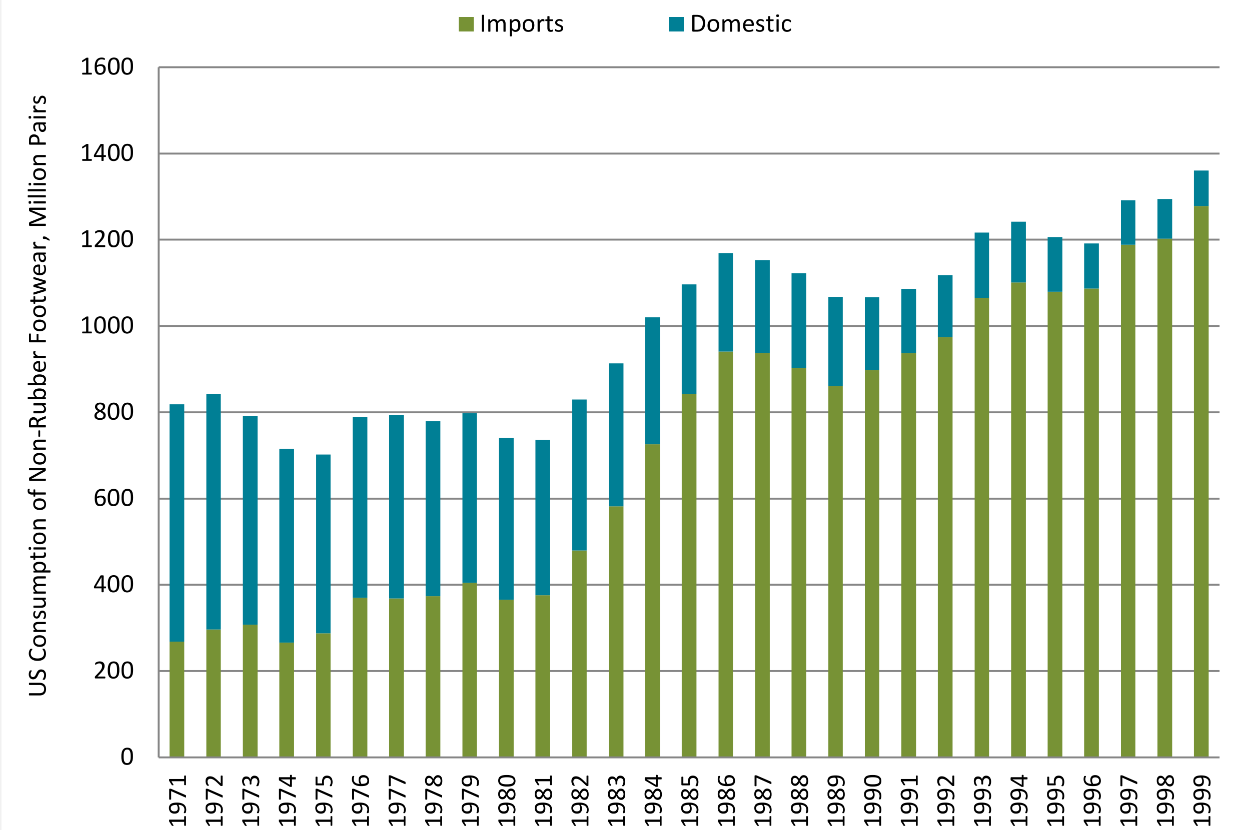
The quotas dramatically limited imports from Taiwan and South Korea, and raised average unit prices for affected footwear from those countries. Other countries could take advantage by increasing their U.S. market share, with imports from unconstrained countries growing 50 percent in 1978 alone.[729] The quotas restrained the growth of footwear imports during the four years they were in place; between 1976 and 1981 U.S. imports of footwear grew 2.6 percent compared to a growth of 25 percent in the five years before the quotas were in place, as illustrated in Figure 10.2.[730]

In a 1980 investigation into whether the OMAs should be extended, U.S. footwear producers reported to the Commission that they had attempted to improve their competitiveness vis-a-vis imports by engaging in (1) marketing efforts, (2) increased investment, (3) efforts to reduce costs, and (4) efforts to streamline management. And, there was some evidence that the health of the industry was significantly better in 1981 than it had been at the time the OMAs were enacted; before-tax profit margins in the U.S. footwear industry were 80 percent higher in 1981 than they had been the year prior, reflecting higher prices associated with the OMAs. However, the Commission report also found that industry efforts to reduce their labor costs through automation were hampered by a number of factors and that labor productivity had increased only 1 percent between 1975 and 1979.[731] Despite the reduced growth of imports and efforts to become more competitive, domestic shipments continued to decline over the period of quota protection, falling almost six percent between 1976 and 1980. Based on the results of this report, the Commission unanimously recommended that the OMA with Taiwan be

---

[727] *Ibid*., 4.
[728] Congressional Budget Office (CBO), *Has Trade Protection Revitalized Domestic Industries?*, by Daniel P. Kaplan, (Washington, DC: Congress of the United States, 1986), 62.
[729] *Ibid*., 63.
[730] *Ibid*., 65.
[731] USITC, *Nonrubber Footwear: U.S. Production, Exports, Imports for Consumption, Producers' Price Index, and Consumer Price Index, First Calendar Quarter 1981: Report to the President on Investigation No. 332-93*, USITC Publication 1148 (Washington, DC: USITC, 1981), A19.

Figure 10.2: U.S. consumption of non-rubber footwear, 1971–99



Source: USITC, *Nonrubber Footwear Statistical Report*, various issues.

extended an additional two years; Commissioners noted that while the footwear industry had stabilized it was "by no means healthy" and that it would take time for the effect of investments made during the OMA period to be felt.[732] Despite this recommendation, the President did not continue the OMAs.

The Commission launched two more safeguard investigations involving non-rubber footwear: one in January 1984 (201-050) and a second in December 1984 (201-055) both at the request of the Senate Finance Committee. The number of domestic footwear producers had declined another 6.5 percent between 1977 and 1982, while imports of non-rubber footwear increased 65 percent between 1981 and 1984. By 1984, the import penetration rate had increased to 72 percent by quantity and 54 percent by value, reflecting the fact that by this point the U.S. industry had abandoned production of the lowest value-added footwear. Taiwan and South Korea continued to be the major source of U.S. imports of footwear, particularly of low-cost athletic footwear, followed closely by Brazil. [733] Although the Commission unanimously

[732] *Ibid*., 7.
[733] *Ibid*., 5.

recommended safeguard action in the latter case, President Ronald Reagan declined to implement the Commission's recommendation. Legislation passed by Congress in 1985 and 1990 that would have implemented the Commission's recommendation was vetoed by President Reagan and President George Bush, respectively.[734] According to Fawn Evenson, former director of the Footwear Industries of America, after the 1990 legislation was vetoed the footwear industry gave up trying to protect the industry from imports, explaining "We literally spent millions of dollars on trade cases. We almost went broke trying to protect jobs . . . We are importers. We're going to spend a lot more time on market access and on exports."[735]

As of 2013, the total number of domestic footwear manufacturers had fallen to 214 from 409 in 1974. The majority of U.S. footwear companies that remain have focused on outsourcing the production of footwear, while focusing U.S. efforts on design, branding and distribution. Imports account for 98.5 of the U.S. footwear market, with almost 71 percent of these coming from China.[736]

Case Study 2: Motorcycles

In 1982, the Commission launched a safeguard investigation to determine whether imports were the cause of serious injury or threat to serious injury in the heavyweight motorcycle industry at the request of Harley-Davidson Motor Co. Although the health of the U.S. motorcycle industry was fairly strong in the period immediately preceding the safeguard investigation, the recession of 1981–82 hit the industry quite hard. Domestic production and consumption declined dramatically, while inventories (primarily of imports from Japan) increased from 108,000 to more than 200,000 in a single year.[737]

At the time of the investigation, there were three producers operating in the United States, Harley-Davidson and two Japanese owned companies, Kawasaki and Honda. Of the three, Harley-Davidson was on the shakiest ground. The U.S.-owned firm had accounted for 20 percent of the American market in the late 1970s, but by 1982 its market share had fallen to just 14 percent, and the firm had experienced financial losses in both 1981 and 1982. According to one analysis, "due to the change in market demand, its own entrepreneurial deficiencies,

---

[734] Textile and Apparel Trade Enforcement Act of 1985, H.R. 1562, 1985.
[735] *Encyclopedia of American Industries*, s.v. "SIC 3143 Men's Footwear," http://www.referenceforbusiness.com/industries/Leather/Men-s-Footwear-Except-Athletic.html (accessed March 17, 2016).
[736] USITC, *Shifts in U.S. Merchandise Trade 2014*, 2014, https://www.usitc.gov/research_and_analysis/trade_shifts_2014/footwear.htm, accessed March 17, 2016.
[737] Daniel Klein, "Taking America for a Ride," *Cato Policy Analysis* No. 32, January 12, 1984.

and a crushing debt problem," the firm, which had just returned to private ownership in 1981, was quickly approaching bankruptcy.[738]

Commissioners found heavyweight motorcycles were being imported at such increased quantities as to be a threat of serious injury to the domestic industry, warning particularly of the high levels of inventories, and that tariffs on these products should be increased for a five year term—starting at 45 percent in the first year and gradually decreasing to 10 percent by the last year of the safeguard action.[739] On April 1, 1983, President Reagan approved the Commission's proposal with minor modifications.[740]

Under the safeguard tariffs, U.S. imports of heavyweight motorcycles for consumption declined 86 percent in volume and 78 percent in value between 1982 and 1985.[741] The ratio of imports to consumption declined from 95 percent to 20.3 percent in volume. The volume of imports in the smaller engine category of motorcycles increased 89 percent over the same time period.[742] Average U.S. prices of heavyweight motorcycles increased over this time period, from slightly less than $4,000 in early 1984 to $5,800 by the end of 1986.

During the period of safeguard protection, Harley-Davidson "improved and redesigned virtually every component of its motorcycles."[743] Although the redesign of its motors had started in 1980, Harley- Davidson reported that the safeguard tariffs provided the protection necessary for these adjustments to be fully operationalized and successful. The company also instituted improvements in its product design and manufacturing processes, as well as new marketing programs. Perhaps just as important, the company restructured its debt and launched an initial public offering of stock in 1986. Harley-Davidson also acquired Holiday Rambler Corp., a producer of recreational vehicles, in 1986 which nearly doubled its annual revenues. In May, Harley-Davidson announced record quarterly sales and earnings.

Although the safeguard tariffs were due to expire on April 16, 1988, Harley-Davidson requested in a letter filed with the Commission in March of 1987 that the safeguard relief be terminated

---

[738] *Ibid*.
[739] USITC, *Heavyweight Motorcycles and Engines and Powertrain Subassemblies Thereof*, *Report to the President on Investigation No. TA-201-47*, USITC Publication 1342 (Washington, DC: USITC, 1983), 2. Note that both Kawasaki and Honda produced their motorcycles in U.S. foreign trade zones, and thus had the choice of paying either the safeguard tariff upon entry into the United States or the rates of duty on the imported components on those motorcycles.
[740] President Reagan allocated duty-free allowances to several smaller importers (West Germany, Britain, Italy) each year, so that the duties almost exclusively impacted Japanese producers.
[741] USITC, *Heavyweight Motorcycles: Report to the President on Investigation No. TA-203-17*, USITC Publication 1988 (Washington, DC: USITC, 1987), 74.
[742] *Ibid*.
[743] *Ibid*., A-28.

early. As a result, safeguard tariffs were removed on October 9, 1987, with Harley-Davidson in a position of fiscal health.

Today, Harley-Davidson remains a safeguard success story. As of 2016, Harley-Davidson continued to hold an estimated 59 percent of the U.S. motorcycle market. One of the primary hurdles facing the company today is declining domestic demand due to the aging of the baby boomer population. As a result, Harley-Davidson and other motorcycle manufacturers are looking more and more to serving international markets. In 2013, Harley-Davidson announced that it would manufacture two motorcycle lines outside of the United States to serve foreign markets rather than serve these markets through exports.

Case Study 3: Steel

Between 1975 and 2001, the Commission conducted six safeguard investigations involving the U.S. steel industry. Petitions filed in 1975, 1982, 1984, and 1999 had all resulted in safeguard protection in at least a subset of the steel products under consideration in the investigations.[744] This case study will be limited in scope to the safeguard investigation launched in 2001.

As background, the U.S. steel industry is divided into two distinct types of firms: traditional or "integrated" steel mills produce steel out of iron ore and other raw materials while "mini-mills" produce new steel products from scrap metal. In the 1990s, the integrated mills had both a large number of retired workers relative to the size of their current workforce, which generated significant pension costs (so called legacy costs) and high overhead costs.[745] In contrast, mini-mills had lower labor and capital costs. Despite these apparent advantages, integrated mills could produce products such as large, flat rolls of steel that mini-mills were incapable of producing. By 2002, U.S. production was approximately evenly split between these two types of firms.[746]

U.S. steel producers were also struggling to compete with imports,[747] both for the reasons discussed above and others. For example, U.S. firms had much higher labor and environmental costs when compared to their foreign competitors. The U.S. industry also alleged that unfair practices of foreign producers such as subsidization and high tariff barriers gave foreign producers an artificial advantage in the U.S. marketplace. The United States started to import

[744] The steel industry had also filed numerous successful petitions for antidumping and countervailing duty protection over this time period.
[745] Robert A. Blecker, "US Steel Import Tariffs: The Politics of Global Markets," in *Contemporary Cases in U.S. Foreign Policy*, edited by Ralph G. Carter (Washington, DC: CQ Press, 2004), 256.
[746] *Ibid*.
[747] Susan Rosegrant, *Standing Up for Steel: The US Government Response to Steel Industry and Union Efforts to Win Protection from Imports (1998–2001)*, Case Program at the John F. Kennedy School of Government, Harvard University (Cambridge: 2002), 194.

significant amounts of steel from Western Europe and Japan starting in the 1960s. Imports from newly industrializing countries such as Brazil, South Korea, and Taiwan grew throughout the 1970s and 1980s. In the 1990s, steel imports from transition economies such as Russia, China, and the Ukraine started to grow.[748]

In the late 1990s, the U.S. steel market was booming due to a period of rapid growth in the United States, but with the strong value of the U.S. dollar during this period much of this growth was met by low-priced imports from countries whose own economies had suffered downturns. In the aftermath of the Asian Financial Crisis in 1997–98, U.S. steel imports increased 37 percent in 1998 alone. Although U.S. steel firms were for the most part still profitable at this time, employment in the industry had dropped by nearly 10,000 workers between 1997 and 1999 alone, and there was considerable lobbying for the imposition of protection to limit this surge in imports. The steel industry filed record numbers of antidumping and countervailing duty petitions over this period, while the Clinton administration launched a plan to respond to increased imports which included plans to negotiate voluntary export restraints with Japan and a steel import monitoring program. The administration approved safeguard restrictions on two narrow categories of steel products in early 2000: a tariff on imports of welded line pipe and a tariff rate quota on imports of steel wire rod. Meanwhile, Congress was pushing the administration to impose more broad-based relief; the House passed legislation imposing steel quotas for a period of three years which was later killed in the Senate, while additional legislation was proposed that would make it easier for the industry to obtain safeguard relief by changing the “serious” injury standard to the “material” injury standard used in antidumping investigations.

Between 1999 and 2002, 30 U.S. steel companies filed for bankruptcy, and thousands of steel workers lost their jobs. The U.S. recession in 2001 that was concurrent with an appreciation of the U.S. dollar aggravated conditions in the industry; import penetration increased to 30 percent by 2000 while average prices fell sharply, particularly in 2000–01.[749] In the wake of these developments, the Commission launched a safeguard investigation on four broad categories of steel products at the request of USTR in June 2001. At the conclusion of the investigation, the Commission made determinations in 27 separate industries (individual steel products): 15 negative determinations, 8 affirmative determinations, and four split decisions.[750] Commissioners were split in their determination of the level of safeguard relief that should be imposed, with some Commissioners recommending tariffs ranging from 20 to 40 percent and others recommending quotas.[751] For some products, the Commission recommended that

[748] Blecker, “US Steel Import Tariffs,” 2004, 252.
[749] *Ibid*., 250.
[750] Alan O. Sykes, “The Persistent Puzzles of Safeguards,” *Journal of International Economic Law* 7 no. 3 (2004), 547.
[751] Robert Read, “The Political Economy of Trade Protection,” *The World Economy* 28 (2005), 1120.

nations with which the United States had preferential trading agreements (including Canada, Mexico, Israel, and Jordan) be excluded from safeguard actions.

On March 5, 2002, President George W. Bush instituted safeguard protection on 10 distinct steel products; safeguard tariffs of up to 30 percent and some tariff-rate quotas were imposed for a period of three years, with annual reductions in the level of protection. With only a few exceptions, the levels of protection put in place were higher than those recommended by the Commission.[752] Most of these safeguard protections exempted U.S. preferential tariff agreement partners, in addition to Australia and South Korea, and Brazil and Russia were given relatively high quotas compared to their production levels in 2000. The countries most affected by the safeguard protection included China, Japan, and the members of the European Union. Exclusions were made for individual products at the request of U.S. steel consumers and foreign producers. In total, the safeguard policies covered 24 percent of steel imports by volume and 31 percent as measured by value.[753]

U.S. foreign trade partners filed numerous WTO complaints against the United States. The EU introduced its own steel safeguards in March 2002 for a period that would not exceed the length of time that the U.S. safeguards were put in place; the EU also released a list of products that would be subject to retaliatory tariffs should the U.S. choose not to lift its safeguard protection. The WTO Dispute Settlement panel and Appellate Body found that the United States had violated WTO safeguard obligations in a report circulated in November 2003.

Meanwhile, the Commission was charged with evaluating the effectiveness of the import relief in a report issued in September 2003. The Commission report found that in the first 18 months of the safeguard actions the U.S. steel industry had undergone significant restructuring and consolidation, including several large mergers. There had also been significant investment and restructuring of labor contracts, although the USITC noted that these changes were not necessarily due to the safeguard actions.[754] Steel prices increased modestly during the period of protection, although the industry continued to shed jobs. The Commission did not make any recommendations as to whether the steel safeguards should be continued. In December 2003, the Bush administration announced that it was rescinding the steel safeguard tariffs after just 15 months, stating at the time that the protection had been successful, and thus were no longer needed.

The U.S. steel industry continues to face significant competition from foreign producers. For example, although steel prices initially soared in the initial recovery from the 2008 global recession, global overcapacity caused sharp reductions in steel prices by 2012. The strong U.S.

---

[752] *Ibid*., 1121.
[753] Blecker, "US Steel Import Tariffs," 2004, 265.
[754] Read, "The Political Economy of Trade Protection," 2005, 1129.

dollar has further hampered performance by the U.S. steel since 2015. Import penetration rates in the domestic steel market increased from 27 percent in 2011 to 32 percent in 2014. Large U.S. steel firms have tried to become more competitive by acquiring smaller, more efficient mills, while the least efficient firms have been forced to exit the market.

Conclusion

The Commission has played a vital role in the process through which U.S. industries can obtain temporary relief from import surges through U.S. safeguard law. Although the regulations governing the imposition of relief have been modified throughout the years, some aspects of the law have stayed consistent—the Commission must determine whether imports are causing or threatening to cause serious injury to the domestic industry. Should the Commission make an affirmative determination, the President can choose whether to impose temporary protection that would allow the domestic industry to adjust to increasing levels of import competition. Current U.S. laws regulating the imposition of safeguard actions mirror those regulations implemented multilaterally under the Uruguay Round of trade negotiations in 1995.

Safeguard protection has the potential to provide more comprehensive relief to domestic industries when compared to other laws administered by the Commission such as antidumping or countervailing duties. However, in practice this form of trade remedy has rarely been used. Consider, for example, that between 1995 and 2014 the United States awarded safeguard protection to only 6 industries, compared to the 345 antidumping measures awarded by the United States over this same time period. There are many potential explanations for this. Because safeguard law requires that imports be a source of "serious" injury rather than the "material" injury standard of antidumping and countervailing duty law, the Commission is less likely to find that safeguard protection is warranted under the law. The Commission has recommended safeguard relief in only 45 percent of cases it considered since 1975. Because safeguard protection must be approved by the President, industries also face more political hurdles in being awarded safeguard protection when compared to other forms of import relief. Of the 33 investigations in which the Commission made affirmative determinations between 1975 and 2001, only 19, or slightly more than half, of these resulted in safeguard protection.

For those industries that have been awarded safeguard protection, the period of import relief has resulted in two types of adjustment. Some industries, such as the footwear industry, have adjusted by contracting to include only the most efficient firms or transforming into an industry that engages in significant amounts of outsourcing. Other industries, such as the motorcycle industry, have been able to invest in new products and production processes, lowering costs and increasing demand for their products so that when safeguard protection is lifted they can once again compete in world markets. As highlighted by the case study associated with steel safeguards, though, virtually all industries continue to face increasing import competition after safeguard protection is lifted, thus readjustment might be better thought of as a continual process rather one that ends when safeguard protection is lifted.

Bibliography

Bale, Malcom D. “Adjustment Assistance under the Trade Expansion Act of 1962.” *Journal of International Law and Economics* 9 (1974): 49–79.

Blecker, Robert A. “US Steel Import Tariffs: The Politics of Global Markets.” *Contemporary Cases in US Foreign Policy*. Washington, DC: CQ Press, 2004: 249–279.

Bronz, George. “The Tariff Commission as a Regulatory Agency.” *Columbia Law Review* 61, no. 3 (1961): 463–489

Congressional Budget Office. *Has Trade Protection Revitalized Domestic Industries?*, by Daniel P. Kaplan. Washington, DC: Congress of the United States, 1986.

Eckes, Alfred E., Jr. *Opening America's market: US Foreign Trade Policy Since 1776*. University of North Carolina Press, 1999.

Goldstein, Judith. *Ideas, Interests, and American Trade Policy*. Ithaca: Cornell University Press, 1993.

Hansen, Wendy L., and Thomas J. Prusa. “The Road Most Taken: The Rise of Title VII Protection.” *The World Economy* 18, no. 2 (1995): 295–313.

Hufbauer, Gary Clyde, and Howard F. Rosen. *Trade Policy for Troubled Industries*. Washington, DC: Institute for International Economics, 1986.

Jackson, John H. *World Trade and the Law of GATT*. Charlottesville: Michie Company Law Publishers, 1969.

Klein, Daniel. “Taking America for a Ride: the Politics of Motorcycle Tariffs.” *Cato Policy Analysis* No. 32, January 12, 1984.

Liebman, Benjamin H., and Kara M. Reynolds. “Innovation through Protection: Does Safeguard Protection Increase Investment in Research and Development?.” *Southern Economic Journal* 80, no. 1 (2013): 205–225.

Ma, Jing. “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 (2004): 189–217.

Metzger, Stanley D. “The Trade Expansion Act of 1962.” *The Georgetown Law Journal* 51 (1962): 425–469.

Maruyama, Warren. “The Evolution of the Escape Clause—Section 201 of the Trade Act of 1974 as Amended by the Omnibus Trade and Competitiveness Act of 1988.” *Brigham Young University Law Review* (1989): 393–429.

Pauwelyn, Joost. “The Puzzle of WTO Safeguards and Regional Trade Agreements.” *Journal of International Economic Law* 7, no. 1 (2004): 109–142.

Perez-Lopez, Jorge F. “GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries.” *Case Western Reserve Journal of International Law* 23 (1991): 517–591.

Read, Robert. “The Political Economy of Trade Protection: the Determinants and Welfare Impact of the 2002 US Emergency Steel Safeguard Measures.” *The World Economy* 28, no. 8 (2005): 1119–1137.

Ris Jr, William K. “Escape Clause Relief Under the Trade Act of 1974: New Standards, Same Results.” *Columbia Journal of Transnational Law* 16 (1977): 297–325.

Rosegrant, Susan. *Standing Up for Steel: The US Government Response to Steel Industry and Union Efforts to Win Protection from Imports (1998–2001)*. Kennedy School of Government, Harvard University, 2002.

Sykes, Alan O. “The Persistent Puzzles of Safeguards: Lessons from the Steel Dispute.” *Journal of International Economic Law* 7, no. 3 (2004): 523–564.

U.S. Government Accountability Office (USGAO). *The United States Had Not Restricted Imports Under the China Safeguard*. GAO-05-1056. Washington, DC: USGAO, 2005.

U.S. International Trade Commission (USITC). *The Effectiveness of Escape Clause Relief in Promoting Adjustment to Import Competition*. USITC Publication 1229. Washington, DC: USITC, 1982.

———. *Heavyweight Motorcycles and Engines and Powertrain Subassemblies Thereof*. USITC Publication 1342. Washington, DC: USITC, 1983.

———. *Heavyweight Motorcycles*. USITC Publication 1988. Washington, DC: USITC, 1987.

———. *Footwear*. USITC Publication 799. Washington, DC: USITC, 1977.

———. *Nonrubber Footwear*. USITC Publication 1139. Washington, DC: USITC, 1981.

———. *Nonrubber Footwear*. USITC Publication 1717. Washington, DC: USITC, 1985.

———. *Shifts in U.S. Merchandise Trade 2014*. USITC Publication 4536. Washington, DC: USITC, 2014.

———. *Summary of Statutory Provisions Related to Import Relief*. USITC Publication 4468. Washington, DC: USITC, 2014.

———. *Wheat Gluten: Evaluation of the Effectiveness of Import Relief*. USITC Publication 3478. Washington, DC: USITC, 2001.

Senate Finance Committee. Report to the Senate on Trade Reform Act of 1974 (93 S. Rpt. 1298). Text from: Committee Reports. Available from: LexisNexis® Congressional; Accessed: March 14, 2016.

U.S. Tariff Commission. *Investigations Under the Escape Clause of Trade Agreements*. TC Publication 116. Washington, DC: USTC, 1963.