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SAFEGUARD MEASURES IN THE WTO AND THE EUROPEAN UNION: THE PROBLEM OF INDUSTRY ADJUSTMENT

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ÖZLEM ÇALIŞKAN

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ABSTRACT

This study makes a detailed analysis of the safeguard measures under the WTO Agreement on Safeguards and the Article XIX of the GATT; examines the place of such measures in the trade policy of the EU; and most importantly stresses the economic adjustment objective of the WTO Agreement on Safeguards and presents the relationship between safeguard measures and structural adjustment of domestic industries to international competition.

The safeguard measures are temporary trade restrictions (i.e. tariffs, quotas or tariff rate quotas) and they are designed to slow imports in case of a surge in imports that causes or threatens to cause serious injury to the directly competing domestic industry. So, countries could apply these measures, subject to certain rules and conditions, and restrict imports temporarily to provide some time to their domestic industries to adjust to changes in competition conditions. But instead of safeguards, countries, including the EU and Turkey, have preferred more protectionist instruments such as antidumping measures and VERs to protect their industries.

Safeguard measures allowed under the WTO are aimed at remedying serious injury and facilitating adjustment and they could only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Notwithstanding the foregoing, trade restrictions are not always the best policy instruments to target the adjustment problems of domestic industries. The first-best policy is free trade and if intervention is unavoidable then the governments should solve the problem at its source through tailor-made adjustment assistance policies, not by restricting imports.

ÖZET

Bu çalışma DTÖ' nün (Dünya Ticaret Örgütü) Korunma Önlemleri Anlaşması ve GATT'ın XIX. Maddesi çerçevesindeki ithalatta korunma önlemlerinin detaylı analizini yapmakta; bu önlemlerin AB ticaret politikasındaki yerini incelemekte; ve en önemlisi DTÖ Korunma Önlemleri Anlaşmasının ekonomik uyumu sağlama amacını vurgulamakta ve ithalatta korunma önlemleri ile yerel endüstrilerin uluslararası rekabete yapısal uyumu konuları arasındaki ilişkiyi ortaya koymaktadır.

İthalatta korunma önlemleri geçici ticaret kısıtlamalarıdır (tarife, kota veya tarife kotalar gibi) ve ithalatlardaki ani bir yükselmenin direkt olarak rekabet eden yerel endüstriye ciddi zarar vermesi veya ciddi zarar verme tehdidi oluşturması durumunda ithalatı yavaşlatmak için tasarlanmışlardır. Ülkeler, rekabet koşullarındaki değişikliklere uyum sağlamaları için yerel endüstrilerine biraz zaman tanımak amacıyla, önceden tanımlanmış kurallar ve koşullara tabi olarak, bu önlemleri uygulayabilir ve geçici olarak ithalatları kısıtlayabilirler. Fakat, yerel endüstrilerini korumak için ülkeler, AB ve Türkiye de dahil olmak üzere, korunma önlemleri yerine anti-damping veya Gönüllü İhracat Kısıtlamaları (GİK) gibi daha korumacı enstrümanları tercih etmektedirler.

DTÖ çatısı altında izin verilen ithalatta korunma önlemlerinin amacı ciddi zararı telafi etmek ve uyumu kolaylaştırmaktır ve bu önlemler ancak ciddi zararı engellemek veya telafi etmek ve uyumu kolaylaştırmak için gereken ölçüde uygulanabilirler. Yukarıda söylenenlere rağmen, ticaret kısıtlamaları yerel endüstrilerin uyum sorunlarına cevap verebilecek en iyi politika aracı değildir. En iyi politika serbest ticarettir ve eğer müdahale kaçınılmazsa o zaman hükümetler ithalatla rekabet etmeyi engelleyen problemi ithalatı kısıtlayarak değil uyum destek politikaları aracılığıyla kaynağında çözmelidirler.

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ACPs	African Caribbean and Pacific Countries
ADD	Antidumping Duty
ATC	Agreement on Textiles and Clothing
CCP	Common Commercial Policy
CEEC	Central and Eastern European Countries
CET	Common External Tariff
CU	Customs Union
CUD	Customs Union Decision
CVD	Countervailing Duty
DG	Directorate General
EC	European Community (or European Communities)
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Agreement
ERAs	Export Restraint Arrangements
EU	European Union
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
LDCs	Less Developed Countries
MFN	Most Favoured Nation
NCPI	New Commercial Policy Instrument
NTBs	Non-Tariff Barriers
OMAs	Orderly Marketing Arrangements
PTAs	Preferential Trade Agreements
SG	Safeguard
TBR	Trade Barriers Regulation
TSSC	Textiles-Specific Safeguard Clause
VERs	Voluntary Export Restraints
VRAs	Voluntary Restraint Arrangements
WTO	World Trade Organization

I. INTRODUCTION

The problems of domestic industries that are unable to cope with import competition have always been a major cause of concern and an impediment on the way of further trade liberalization. Despite several successive multilateral trade rounds protection still persists since countries want to protect their weak domestic industries. The attempts to liberalize trade have been constrained by the inability of weak domestic industries to compete with low-cost more efficient sources.

Countries, which enter into an international trading arrangement, require a safeguards regime that allows them to withdraw their concessions temporarily under certain conditions, in order to give some time to their domestic industries and to help them to adjust to heightened competition. As a result, nearly all international trade agreements include safeguard provisions.

The world trading system under the auspices of the WTO (World Trade Organization) includes certain mechanisms to facilitate the transition period of its members and allows the countries to restrict trade temporarily under certain predefined conditions. Safeguard measures, under the WTO Agreement on Safeguards and Article XIX of the GATT (General Agreement on Tariffs and Trade), are the main instruments designed to address the transition problems of the WTO members and to facilitate trade-impacted structural adjustment of domestic industries.

In the literature, the term "safeguards" is sometimes defined very broadly as to cover all escape clauses and permanent exceptions of GATT and the WTO, for instance Hoekman and Kostecki (1995)[1]. But in general, safeguards are used to define the industry-specific temporary escape clause of the GATT – Article XIX (titled "Emergency Action on Imports of Particular Products") and the WTO Agreement on

[1] See, Bernard M. Hoekman and Michel M. Kostecki. The Political Economy of The World Trading System, From GATT to WTO. Oxford and New York: Oxford University Press. P: 161-195. (1995)

Safeguards. In this study, the term "safeguards" is used to cover the import relief measures allowed under the general escape clause of the GATT and the WTO Agreement on Safeguards (i.e. tariffs, quotas and tariff rate quotas). It should be noted that this study is only limited to the trade in goods and does not cover the safeguards for trade in services.

The inclusion of safeguard provisions enabling temporary relief from imports in trade liberalizing agreements may seem contradictory to the nature of these agreements. But as will be discussed in the following parts of this study, these safeguard provisions are a *sine qua non* of international trade agreements, since they provide a means for the signatories to adjust their domestic industries to international competition and they encourage further trade liberalization because they serve as "insurance" and as a "safety-valve".[2] Safeguards bring flexibility to the trading system.[3] They provide insurance and so governments feel free to enter the agreement. Governments may face pressures in the future due to their trade liberalization attempts and safeguards act as a "safety-valve" within the framework of the agreement and so prevent resort to illegal ways to stop imports. Consequently the stability of the overall agreement will be maintained.

Safeguards are the main instruments designed to slow imports and they are allowed in case of a surge in imports in order to remedy serious injury and to facilitate adjustment. So, countries could apply safeguard measures, subject to certain predefined rules and conditions, and restrict fairly traded imports temporarily to provide a breathing period for import-competing industries/firms. In practice, we see that safeguards are not used frequently and this would have been a fact to be welcomed since it implies that the countries are not trying to stop fairly traded imports. But the countries have resorted to other ways to stop imports and they mostly preferred other import relief measures instead of safeguards which are imperfect substitutes; i.e. measures that are designed to be used against unfairly traded goods, such as

[2] Hoekman & Kostecki (1995), The Political Economy of The World Trading System From GATT to WTO, P: 161.
[3] Michael J. Trebilcock & Robert Howse. The Regulation of International Trade. London and New York: Routledge. P: 163. (1995)

antidumping duties and countervailing duties, or grey area measures such as voluntary export restraints (VERs).

The substitution of antidumping measures and other instruments for safeguards and the infrequent use of safeguard measures can be attributed to the requirements and rules of the Agreement on Safeguards and Article XIX of the GATT. As compared to other import relief measures such as antidumping measures, the rules governing the application of safeguards are much more demanding because these measures are used to restrict fairly traded imports in emergency situations. Under the WTO Agreement on Safeguards the safeguard-imposing country should offer compensation to affected countries after the initial three years of a safeguard measure; so the countries want to avoid the obligation to offer compensation and they want to escape the possibility of any retaliatory action by those affected. Another requirement is the non-discriminatory application of a safeguard measure which does not allow countries to discriminate between sources; a safeguard measure targets all suppliers of a particular product not just one exporter as in the case of an antidumping investigation. When imposed safeguard measures should be progressively liberalized in order to facilitate the adjustment of domestic industries to import competition. Furthermore the duration of the measure is limited to four years; though it is possible to extent the existing measure for four more years, in case of an extension the safeguard imposing country is obliged to demonstrate evidence that the protected industry is adjusting to import competition. Moreover the safeguard measures could only be applied to the extent that they remedy serious injury and facilitate adjustment. These and other reasons expressed in this study made countries prefer other import relief measures.

This study makes a detailed analysis of the safeguards mechanism of the WTO under the Agreement on Safeguards and the Article XIX of the GATT, and presents the relation between the safeguard measures and structural adjustment to international competition. It should be stressed that the main objective of allowing countries to apply safeguard measures is to remedy serious injury and most importantly to facilitate adjustment as presented in the preamble and other articles of the Agreement on Safeguards.

Notwithstanding the foregoing, trade restrictions in general and safeguard measures in particular are not always the best policy instruments to address the adjustment problems of industries. As will be discussed in the last chapter of this study especially in the presence of domestic distortions and market failures that are the reason of the inability of domestic industries to compete with imports, the best policy is to remove the problem at its source but not to restrict imports. It should always be remembered that any form of a protectionist policy could only be the second-best solution. The first-best policy is free trade that enables efficiency in resource allocation. When an industry requires temporary protection due to its inability to cope with international competition, then the first issue would be to determine whether protection is required and necessary for the overall well being of the economy and if so, which policy instrument should be used. The form of trade protection is also important. Empirical evidence show that a safeguard action in the form of an increased tariff applied on an MFN-basis is the least destructive trade protection instrument. But unfortunately, the governments have mostly preferred more protectionist and discriminatory instruments such as antidumping duties and VERs to protect domestic industries.

There is a vast literature on safeguards and other import relief measures. But the number of scholarly work on safeguards is small when compared to the works on antidumping measures and voluntary export restraints (VERs). Especially in Turkey the subject is rather neglected and seen as irrelevant for a detailed study. The reason of this negligence is the infrequent use of safeguard measures all around the world. But the rare use of safeguard measures as compared to antidumping measures does not mean that they have an insignificant effect on the trade flows. Safeguard measures target all sources of imports and also sometimes more than one product is covered in one safeguard application, consequently safeguard measures could be more effective than an antidumping measure that targets just one source and one product. For these reasons this study is devoted to the analysis of safeguard measures and their function in terms of structural adjustment of industries to international competition.

The organization of the study and the contents of the chapters are as follows:

In the second chapter of the study, theoretical explanations and analysis of the subject is prescribed in detail. First of all, safeguards, as a form of import relief measure, are explained with a brief reference to other import relief measures. Article XIX (titled "Emergency Actions on Imports of Particular Products") of the GATT 1947 is analysed as the background of the safeguards mechanism of the WTO trading system. Then, the improvements introduced in the Uruguay Round are explained with special emphasis on the issues of allowed policy instruments; selectivity and non-discrimination; compensation and retaliation; improvements in the conditions to apply safeguard measures; and surveillance. This is followed by a detailed analysis of the substantive requirements to apply a safeguard measure. Here the WTO rules and jurisprudence is mentioned and special attention is paid to the WTO jurisprudence arising from the safeguard cases brought to the review of the WTO Dispute Settlement Unit. Then the frequency of the use of safeguard measures is shown with relevant tables. The final part of chapter two, briefly explains the reasons and main rationales to include safeguard measures in a trade agreement.

In the third chapter of the study, the place of safeguards in the external trade policy of the EU is portrayed. First of all the institutional, legal and economic aspects of the EU's Common Commercial Policy is explained briefly. Then the trade policy instruments that the EU employs to pursue the objectives of its trade policy are examined. The EU has mostly preferred antidumping measures and VERs to protect its domestic industries. Then the historic use of safeguards by the EU is explained, together with the recent safeguard applications of the EU. This chapter shows that the EU does not prefer safeguards and uses antidumping measures and in a way hide behind the concept of "unfair". In the final part of the third chapter, the impact of the EU's trade policy on Turkey is briefly examined because after the Customs Union Turkey's trade practices are shaped by the rules and practices of the EU; similar to the preferences of the EU Turkey has not been an active user of safeguard measures.

In chapter four, the relationship between safeguard measures and the issue of industry adjustment (structural adjustment) is examined. First of all, trade liberalization and the concept of adjustment are explained, then the WTO rules and mechanisms that are designed to ease transition periods and facilitate adjustment are presented. In this context, the relation between safeguard measures and unfair trade remedies are expressed because the latter became to be used instead of safeguards and this has important results for the issue of adjustment. Then government adjustment assistance policies are analysed with special emphasis on the rationales in support of government assistance to the adjustment process and the problems associated with government assistance. In this part, the adjustment assistance policies are examined under two headings; adjustment assistance policies towards workers and towards businesses. In the final part of the chapter a recent case is presented briefly; the heightened import competition faced by the European and Turkish textiles and clothing industries due to the elimination of textiles quotas is an important sample case for safeguards and the adjustment of industries to the changes in the competition conditions. Finally, the major conclusions of this study are presented briefly.

II. SAFEGUARDS IN THE GATT AND THE WTO

2.1. Safeguards as Import Relief Measures

Safeguards are temporary import relief measures (i.e. in the form of tariffs, quotas or tariff rate quotas) that are allowed under the GATT and the WTO multilateral trading systems to be imposed against a particular product to protect a domestic industry, in case the increase in the importation of such product is causing or threatening to cause serious injury to the directly competing domestic industry. The GATT and later the WTO systems allow signatories to impose safeguard measures in order to assist a domestic industry and to facilitate its adjustment to increased foreign competition.

In the literature on safeguards, some scholars defined safeguards very broadly as to cover all provisions of GATT (and later the WTO) that allow import restrictions including temporary import relief measures such as Article XIX, renegotiation of concessions, antidumping measures and similar escape clauses as well as provisions that allow permanent protection. But generally, the term "safeguards" is used to define the industry specific general escape clause of the GATT – Article XIX – and later the Agreement on Safeguards of the WTO.

In this study the term safeguards is only limited to the meaning attributed in the Agreement on Safeguards of the WTO and the GATT's Article XIX – titled 'Emergency Actions on Imports of Particular Products' – which is known as the *General Escape Clause* or the *Safeguard Clause*.

The Asycuda (Automated System for Customs Data) Online Glossary defines the term safeguards as:

> "Temporary and selective measures (such as increased tariffs, tariff quotas or quantitative restrictions) explicitly designed to slow imports in order to enable a particular industry to adjust to heightened competition from foreign suppliers."[4]

To explain simply, the safeguards are used in case of a sudden surge in imports that causes or threatens to cause serious injury to the domestic producers of like or competing products. It should be noted that to invoke a safeguard measure under Article XIX of the GATT or the WTO Agreement on Safeguards, there is no need to demonstrate *unfairness*[5] in the actions of the exporters. Safeguards are used against fair trading practices of exporting countries in order to facilitate adjustment when domestic producers cannot compete with foreign producers and are seriously injured or are under threat of serious injury caused by the increase in imports. Under the WTO Agreement on Safeguards, a safeguard measure can be an increased tariff, a tariff-quota or a quota.

The Article XIX of the GATT (emergency action) as an escape clause gives the member countries the right to withdraw or alter their earlier concessions or to impose a new import restriction in case of an emergency, but the safeguard action must be *non-discriminatory* and must be *in conformity with the MFN (Most Favoured Nation) principle*[6] of the GATT. Under Article XIX, the country imposing a safeguard measure may maintain the restriction "for such time as may be necessary to prevent or remedy such injury". The country invoking Article XIX and taking a safeguard action must notify the exporting countries and make consultations with them and as a result must offer compensation to the exporting countries.[7] If the exporters are not satisfied with the compensation offered or they cannot agree on the compensation they have the right to take retaliatory action.

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[4] Definition of Safeguards is taken from Automated system for customs data (asycuda)/ Online glossary for customs and trade, Retrieved: December 21, 2004, World Wide Web: URL http://www.asycuda.org/cuglossa.asp?term=Safeguards

[5] "Unfairness" here refers to the illicit trade practices of exporters that could disrupt the competition conditions in the domestic market such as dumped imports or subsidized foreign products. These and similar trading practices would create an unfair competition and in order to invoke the measures that are designed to remedy such practices unfairness should be demonstrated.

[6] Article I of the GATT.

[7] The substantive requirements to invoke Article XIX and the conditions to take a safeguard action are explained in detail in David Robertson. GATT Rules for Emergency Protection. Trade Policy Research Centre-Thames Essays No. 57. London: Harvester Wheatsheaf. P: 41-42 (1992) and in Trebilcock & Howse (1997), The Regulation of International Trade, Chapter: 7. This subject will be detailed in the following parts of the chapter.

The Uruguay Round Agreements made significant changes in the conditions to invoke a safeguard action against imports of particular products and reformed the safeguards mechanism. Although this subject will be dealt with in the following parts of this section, the changes introduced by the WTO's Agreement on Safeguards can be summarized as; 1) in the first three years of the safeguard measure no compensation is required, 2) the import restricting measure must be gradually liberalized, 3) the duration of any safeguard measure should not be longer than four years but may be extended up to eight years (ten years for developing countries), 4) the country imposing a safeguard measure must put forward ways to adjust the protected industry, 5) the use of VERs by signatories are banned so the available instruments used to restrict imports are limited by the agreement, 6) The Agreement on Safeguards (contrary to the GATT 1947) requires a formal investigation and determination of injury by the national competent authorities before the safeguard measure is imposed but a provisional safeguard is allowed under certain circumstances before the investigation is finalized, and also 7) significant amendments were made in other WTO Agreements such as Dispute Settlement Understanding and the Agreement on Antidumping, etc.

Safeguards were required as a result of the shifting comparative advantages; the country taking a safeguard action against goods coming from foreign countries accepts that the domestic producers cannot compete with the low cost imports. As a result of rapid changes in the comparative advantages, some countries become more competitive in some industries and some other countries could not easily adjust to changing conditions and their producers of similar products could not cope with low cost imports. Such industries require temporary protection against international competition in order to make necessary adjustments. In these industries, the main problem is a market disruption in product or factor markets (for instance, an efficiency problem in the labour market) not an unfair import. But instead of dealing with the main causes of these domestic distortions, the governments generally use trade policy instruments such as safeguard actions, in the form of increases in tariffs or quantitative restrictions, in order to protect domestic industries temporarily and to give them some time to make necessary adjustments. They do not directly deal with the roots of the problem. So it

could be said that we are living in a "second-best world"[8] where countries prefer "second-best" policies, not the "first best". Temporary trade protection to facilitate adjustment is required by the countries and what is essential is to find the least costly trade protection instrument to do so.[9] For this reason, the framers of the GATT anticipated this need and they designed Article XIX, the safeguard clause, to be used for trade policy adjustments.

In theory this positive scenario prevails and countries seem to use the safeguard clause for temporary relief from fairly traded imports and in the meantime try to adjust the import competing firms through public or private adjustment assistance programmes. But when we look at the real world experience, we witness that safeguards were used only rarely in the past. The infrequent use of safeguard clause of the international trading system would have been a fact to be welcomed since it implies that the countries are not trying to stop fairly traded imports. But the countries have resorted to other ways to stop imports and they mostly preferred other import relief measures instead of safeguards which are imperfect substitutes; i.e. measures that are designed to be used against unfairly traded goods, such as antidumping duties and countervailing duties, or grey area measures such as voluntary export restraints (VERs), orderly marketing arrangements (OMAs), similar export restrained agreements (ERAs), etc. But these measures result in more protection and more discrimination as compared to a safeguard measure that must be imposed according to the equal treatment (MFN) rule. Countries have invoked unfair trade remedies or GATT-illegal grey area measures against fairly traded goods because of some structural problems of the GATT's safeguard provision, Article XIX.[10]

As mentioned above safeguard measures are used rarely, but this does not mean that their overall effect on trade flows is negligible. The effects of safeguard measures on the value and volume of trade is significant. Bown and Crowley (2003) reflect the findings of the empirical study of Hansen and Prusa (1995) that examined the safeguard

[8] Chad P. Bown, Why are Safeguards Under the WTO So Unpopular? World Trade Review, 1:1, 47-62, UK, P: 49, (2002).
[9] Ibid, p: 49
[10] This issue will be discussed at length in the following sections of this chapter.

measures imposed by the US between 1980 and 1988; they showed that the trade volumes decreased by an average of 34 percent after the US government imposed the safeguard measures.[11] They also investigated the effect of antidumping measures imposed during the same period and they found that trade volumes decreased by 11 percent with the imposition of antidumping measures.[12] The investigation of US safeguard and antidumping measures between 1980 and 1988 demonstrated that despite the relative effectiveness of safeguard measures in restricting trade as compared to antidumping duties, US industries and companies petitioned for antidumping duties far more than safeguard measures.[13] The authors also examined the outcome of such petitions and they found that 63 percent of antidumping petitions were resulted in imposition of measures whereas the success rate of safeguard petitions was 26 percent; and they concluded that industries preferred antidumping measures because it was easier to obtain antidumping.[14] Nonetheless the effectiveness of safeguard measures in restricting imports demonstrates the importance of the subject of this study.

Safeguards are not the only instrument to restrict imports; the other import relief measures used by the signatories of the GATT are explained in the following part of this chapter.

2.2. Other Import Relief Measures

The Article XIX -safeguards provision- that is invoked in case of a sudden increase in imports of a particular product, is not the only measure to use for import relief under both GATT and WTO systems. Besides Article XIX of the GATT or the WTO Agreement on Safeguards, the GATT 1947 and later the WTO systems include several escape clauses and permanent exceptions that enable their signatories to

[11] Chad P. Bown & Meredith A. Crowley, Safeguards in the World Trade Organization, Forthcoming in 'The World Trade Organization: Legal, Economic and Political Analysis'. A. Appleton, P. Macrory and M. Plummer, (Eds.) Springer. Retrieved: October 1, 2003. World Wide Web: URL http://people.brandeis.edu/~cbown/papers/bown_crowley_kluwer.pdf, (2003) p: 31. The full citation of the mentioned study is: Wendy L. Hansen and Thomas J. Prusa, The Road Most Taken: the Rise of Title VII Protection, The World Economy 18(2): 295-313, p: 295 (1995).
[12] Bown & Crowley, (2003), p: 31.
[13] Ibid, p: 31.
[14] Ibid, p: 31.

withdraw from some of their obligations (i.e. tariff concessions) under the system. In principle, these import relief measures are used to remedy different trade problems.

The signatories of GATT have also used some other instruments, which are outside the framework of GATT, to restrict imports or exports to their country. These GATT-illegal import relief measures are known as grey area measures. Even if they are not specified under the GATT and they are banned by the Uruguay Round Agreements, they need to be addressed as a different category of import relief measures due to their frequent use by major trading countries in dealing with fair import competition as a substitute for safeguards and also due to their effect in the deterioration of GATT trading system.

In this section, the import relief measures are categorized first of all according to their legality under the multilateral trading system. Then the import relief measures of the GATT and the WTO are divided into two; first group is the escape clauses, which are temporary derogations from the obligations under the agreement, and the second group is the permanent exceptions. [15] Finally, the escape clauses of the GATT and WTO are divided into two according to the fairness or unfairness of the imports[16]. The first category of escape clauses could be used against fair trading practices of exporting countries without a need to demonstrate unfairness, such as a safeguard action against a surge in imports or an import relief action to remedy a balance-of-payments problem. The second category of escape clauses deals with unfair trading practices of exporters, such as dumped imports or subsidized foreign products. Below Figure 2.1 shows the classification of import relief measures in this study.

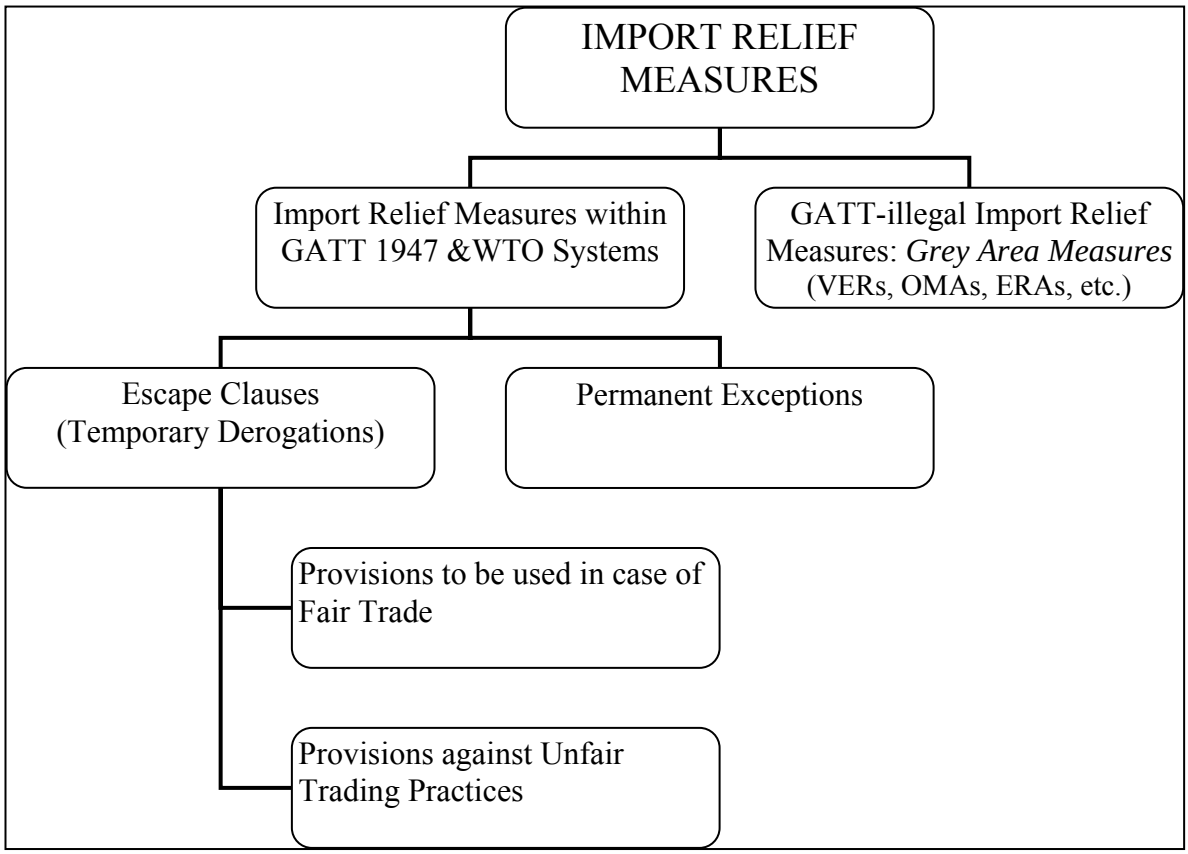
Among all import relief measures, special emphasis should be given to antidumping duties and VERs since they have been the major rivals of safeguard

[15] For the classification of GATT's import relief measures as exceptions and escape clauses and detailed analysis of these measures see Robertson (1992), GATT rules for Emergency Protection, p: 28-40 and Hoekman & Kostecki (1995), The Political Economy of The World Trading System From GATT to WTO, Chapter: 7.

[16] Robertson (1992), GATT Rules for Emergency Protection, p: 2 and Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 161.

measures and have been the most preferred and frequently used forms of trade protection by the signatories of the GATT.

Figure 2.1 – Classification of Import Relief Measures (under this study)



2.2.1. Import Relief Measures Within the GATT and the WTO Systems

Although GATT and the WTO aim at liberalizing international trade and removing barriers on the way to free trade, they also include several provisions that enable their signatories to suspend their obligations within the framework of the system. As mentioned before, the inclusion of such import relief measures in these international trade agreements could be explained on grounds of sustaining the continuity and integrity of the system.

Finger (1998) lists twenty provisions of GATT that permit the signatories to impose trade restrictions and points out that there are other provisions allowing import

restrictions such as the General Exceptions clause, Article XX, which include ten sub-categories of trade restrictions.[17] The Table 2.1 shows these twenty import relief provisions of the GATT and the frequency of their use until the establishment of the WTO. Each of these provisions has different objectives and is designed to remedy different needs.

As could be seen in the Table 2.1, Emergency Actions –the safeguard clause Article XIX- has been used only rarely as compared to other provisions such as Antidumping Duties, Countervailing Duties and Renegotiations. Between 1947-1994 there are only 150 safeguard actions. Between 1985-1994 the safeguard clause was invoked only 26 times which makes an average of 3.25 actions per year. When we look at the figures showing the frequency of use of antidumping and countervailing duties we see that between July 1985-June 1992, there are 1148 antidumping investigations and 187 countervailing duty investigations which makes an annual average of 164 antidumping duties and 27 countervailing duties. When these annual figures are compared to that of safeguard actions, it is clear that the preferred form of trade protection for the signatories have been the provisions designed to remedy unfair trade practices, not the main safeguard clause.

The import relief measures within the multilateral trading system can be divided into two categories as escape clauses (temporary) and permanent exceptions. Permanent exceptions and escape clauses differ from each other. Escape clauses allow for temporary import restrictions, but exceptions enable permanent relief from some obligations under the multilateral trading system. Robertson states the difference as follows:

> "Exceptions are more far-reaching than escape clauses. They provide for prior release from certain obligations because of foreseeable difficulties, whereas an escape clause allows for temporary withdrawal from obligations in the event of unforeseeable difficulties."[18] (Robertson, 1992, p: 27)

[17] Finger, (1998), GATT Experience with Safeguards, p: 3 and table showing the frequency of the use of GATT provisions on p: 20 of the same work.
[18] Robertson (1992), GATT Rules for Emergency Protection, p: 27

Table 2.1 - Frequency of Use of GATT Provisions that Allow Trade Restrictions

Instrument	Frequency of use
1. Provisions for renegotiating previous concessions and commitments	
Periodic - three year - renegotiations (at the initiative of the country wanting to increase a bound rate), §XXVII.1 and §XXVIII.5;	January 1955 - March 1994: 206 renegotiation procedures, 128 of these under §XXVIII.5.
Special circumstance renegotiations (requires GATT authorization), §XXVIII.4;	Sixty-four renegotiations since 1948.
Increase of a duty with regard to formation of a customs union, §XXIV.6;	Follows procedures of §XXVIII, hence included in figures above.
Withdrawal of a concession in order to provide infant industry protection, §XVIII.A.	Nine withdrawals, through March 1994.
2. Restrictions that can be imposed unilaterally	
General Exceptions, §XX	Notification not required. Between 1974-1987 six developing countries notified quantitative restrictions under §XX, covering 131 products.
Restrictions to apply standards, to classify, §XI.2.b	Notification not required. Between 1974-1987 six developing countries notified quantitative restrictions under §XX, covering 131 products.
Restrictions on agricultural or fisheries products, §XI.2.c	Notification not required. No information available.
National security exception, §XXI	One developing country, Thailand, notified under §XXI between 1974-1987. Further information not available.
Withdrawal of a concession initially negotiated with a government that fails to join GATT, or withdraws, §XXVII.	As of 1994, §XXVII has been used by 15 countries with regard to: (a) withdrawals by China, Syria, Lebanon and Liberia; (b) Colombia, who participated in the Annecy Round (1949) but did not accede then; and (c) Korea and the Philippines, who participated in the Torquay Round (1951) but did not accede then.
Non-application at the time of accession, §XXXV.	As of 1994, this article had been invoked (a) against Japan by 53 countries - invocations since withdrawn by 50; (b) by 16 other countries against 21 countries. Only 10 §XXXV invocations are presently operative.
Restrictions to safeguard the balance of payments, general §VII.	Three countries had such restrictions in place at least one time during the period, 1974-1986.
Restrictions to safeguard the balance of payments, developing countries; §XVIII:B.	Twenty-four countries had such restrictions in place at least one time during the period 1974-1986.
Emergency actions, §XIX. [*Safeguards*]	1950 through 1984: 124 actions (3.6 a year) 1985 through 1994: 26 actions (3.25 a year)
Countervailing duties, §VI.	July 1985 - June 1992: 187 investigations (27 a year), of which 106 by the United States, 38 by Australia
Antidumping duties, §VI.	July 1985 - June 1992: 1148 investigations (164 a year), of which 300 by USA, 282 by Australia, 242 by EU, 124 by Canada, 84 by Mexico.
3. Restrictions that require specific GATT approval	
Waivers, §XXV;	Through March 1994, 113 waivers granted, 44 still in force. Xiv
Retaliation authorized under dispute settlement, §XXIII;	Once.
Exceptions specified in accession agreement, §XXXIII;	Not tabulated.
Releases from bindings to pursue infant industry protection, §XVIII.C;	Nine countries in 47 years.
Releases from bindings by a 'more-developed' country to pursue infant industry protection, §XVIII.D.	Never.

Source: Finger, J. Michael. (1998). GATT Experience with Safeguards: Making Economic and Political Sense of the Possibilities that the GATT Allows to Restrict Imports. Washington DC: World Bank. Retrieved: May 10, 2004 on the World Wide Web URL: http://econ.worldbank.org/docs/256.pdf , p: 20.

2.2.1.1. Escape Clauses[19]

The GATT and later the WTO have several escape clauses that permit the signatories to withdraw their concessions under specified circumstances.[20] As noted above these provisions enable *temporary* suspension of obligations under the system, but subject to some predefined conditions. The basic rationale to include the escape clauses in trade agreements can be explained as:

> "Escape clauses are included in commercial treaties to give confidence to signatory governments that in an emergency – unforeseen circumstances – they may, under prescribed conditions derogate temporarily from their commitments under the treaty. "[21] (Robertson, 1992, p: 30)

So the continuity and stability of the overall system will not be in danger and further trade liberalization can be attained since the signatories will be insured in a way and they will have the necessary instruments to safeguard themselves under certain conditions.

The escape clauses of the GATT can further be separated into two according to the nature of imports they are designed to remedy; the first group of escape clauses are used against *fairly- traded imports* in case of an emergency situation and the second group are used to remedy *unfairly- traded imports*.[22]

The framers of the GATT designed different measures to cope with fair and unfair import competition. Robertson explains this difference as follows:

> "The different treatment given to fair and unfair competition under the General Agreement derives from the belief of the founding fathers in an open-market approach to the international trading system. …Any

[19] "Escape clause" includes but is not limited to safeguards, and can be referred to for several import relied measures. In some studies it is specifically used to mean safeguards (GATT's main escape clause).
[20] For a detailed analysis of escape clauses see Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 161-162 and Robertson (1992), GATT Rules for Emergency Protection, p: 30-34.
[21] Robertson (1992), GATT Rules for Emergency Protection, p: 30.
[22] Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 161 and Robertson (1992), GATT Rules for Emergency Protection, p: 33.

> interferences in competitive conditions should therefore be eliminated. But if competition happened to be too fierce for a domestic industry, some temporary relief would be in order, as long as the purpose of the remedial action is to allow the industry a respite in order to become competitive."[23] (Robertson, 1992, p: 34)

Despite their differences, escape clauses that are designed to remedy unfair trading practices became to be used instead of the main escape clause of the GATT. But, these measures (i.e. antidumping duties) are more discriminatory in nature as compared to a safeguard measure applied on a most-favoured-nation basis – such as a safeguard measure in the form of an increased tariff.[24]

2.2.1.1.1. Provisions to be used in case of fair trade

Article XIX (Emergency Protection) is the main safeguard clause of the GATT trading system. There are also other import restraint measures that have been used to safeguard a particular industry such as a newly developing infant industry or the balance of payments of a country. These provisions could be applied regardless of the fairness or unfairness of the imports.

Balance of Payments (BOP) Articles VII and XVIII (b): In order to protect the country's overall balance of payments position this article was designed.

Infant Industries Articles XVIII (a) and XVIII (c): These provisions are used to protect a newly developing domestic industry from international competition and help to provide assistance to the infant industry in the initial period.

General waivers under Article XXV [25]*:* This article allows a member to ask for permission to be exempt from an obligation of the GATT multilateral trading system. In

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[23] Robertson (1992), GATT Rules for Emergency Protection, p: 34

[24] Chad P. Bown, "How Different Are Safeguards from Antidumping? Evidence from US Trade Policies Toward Steel." Brandeis University Working Paper, Retrieved: August 10, 2004. WWW: URL http://people.brandeis.edu/~cbown/papers/steel_mfn.pdf , p:1, (July 2004).

[25] Although Hoekman & Kostecki (1995) mention the Article XXV General Waivers as a temporary escape clause, Robertson classifies the same Article among permanent exceptions to the Rules. See Robertson (1992), GATT Rules for Emergency Protection, p: 29 and Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 162 and p: 166-167.

order to be granted a waiver under this article, a majority vote of members (two-thirds majority) is required.

2.2.1.1.2. Provisions against unfair trading practices

Unfair trading practices of exporters can harm the competition conditions in the domestic market of an importing country. The GATT and the WTO systems provide the signatories with necessary instruments to deal with these unfair imports. The provisions dealing with unfair trading practices of exporting countries are Countervailing Duties (CVD) that are used to offset an export subsidy (products that are subject to export subsidies of foreign governments) and Antidumping Duties (ADD) that are used against unfairly priced products – whose export price is lower than the market price in the country of origin.

Antidumping Duties (Article VI of the GATT): Antidumping duties are designed to stop dumped imports that would harm the competition conditions in the domestic market. Historically, the major users of the antidumping measures have been the EU, Canada, Australia and the USA.[26] Recently, developing countries also started to use the antidumping measures as a form of relief from imports.

Countervailing Duties (Article VI of the GATT): These are measures designed to countervail the imports that are subsidized by exporters' governments. Just like antidumping duties, countervailing duties were allowed under the Article VI of the GATT. The Uruguay Round agreements made significant changes to this instrument.

The major user of the countervailing duties has been the United States while other developed countries such as the EU and Japan did not invoke this instrument very frequently. The infrequent use of the countervailing duties by the other developed countries could be explained on grounds of their subsidization of manufacturing and

[26] Hoekman & Kostecki, (1995), The Political Economy…, p: 171.

consequently a fear of retaliation from other countries to countervail their products that were supported by subsidies.[27]

2.2.1.2. Permanent Exceptions

As mentioned above, some areas and sectors are permanently exempted from the rules of the GATT system. The exceptions provided under the multilateral trading system can be listed as follows:

General Exceptions (Article XX of the GATT): These are measures used to protect national health, safety, public moral, etc.

National Security (Article XXI of the GATT): This provision enables protection in the name of national security.

Tariff renegotiation (Article XXVIII of the GATT): Under this article the GATT signatories have the right to renegotiate and withdraw their previous tariff concessions. When a signatory raises a bound tariff rate, then it should offer compensation to the adversely affected members. The renegotiations to modify a bound rate can be made every three years after binding the rate, or under special circumstances if approved by GATT members or at any time within the three year period if an interested member makes a notification as a result of its "reserved right".[28]

Besides above provisions some areas are also exempted from the rules of the GATT. Finlayson & Zacher explain the areas that are permanently left outside the rules of the GATT as follows:

> "In the General Agreement a number of trade spheres are exempted permanently from GATT regulations. These are government procurement practices *[Article III: 3]*, from the MFN rules; customs unions and free trade areas *[Article XXIV]*, from the MFN rules; agriculture and fisheries, from the prohibition on quotas (provided

[27] Hoekman & Kostecki (1995), The Regulation of International Trade, p: 184
[28] ibid, p: 165

> domestic production control is practiced) *[Article XI: 2]*; export subsidies on primary products *[Article XVI: 3],* from the prohibition on export subsidies; and action taken in connection with national security imperatives and policies related to health, safety and public morals *[Articles XXI and XX]*, from GATT rules generally. In addition, thanks to the 'grandfather clause', states only accede to the GATT 'provisionally' and are thereby allowed to continue trade practices domestically legislated at the time of accession."[29] (Finlayson & Zacher, 1983, p: 290-291) *[Article numbers are added]*

In addition to the above permanent exceptions and the other areas mentioned by Finlayson & Zacher, Robertson states the following exceptions[30] to the rules of the GATT multilateral trading system; Trade in Textiles and Clothing from developing countries under the MFA and the general exception provided to the developing countries under Article XVIII. Since this study deals with the temporary safeguard measures, these permanent exceptions are not detailed here. But it should be noted that the WTO agreements made significant changes and consequently most of the above areas such as public procurement practices, agriculture and fisheries are brought under the rules of the multilateral trading system.

2.2.2. GATT-illegal Import Relief Measures: The So-Called *Grey Area Measures*

Instead of the above provisions of GATT that allow import restriction, in time countries developed another GATT-illegal instrument that provided relief from imports. Due to some discrepancies and imperatives of GATT's safeguard clause, the countries switched to these instruments to restrict trade, which are generally known as Voluntary Export Restraints (VERs).[31] These 'negotiated export restraints'[32] are informal trade limiting agreements which are outside the framework of GATT. They differ from the other import relief measures, because in this case the exporting country controls the

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[29] Jock A. Finlayson and Mark W. Zacher, "The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions" in Stephen D. Krasner (Ed.) International Regimes, London: Cornell University Press, p: 290-291, (1983).
[30] For a detailed explanation see Robertson (1992), GATT Rules For Emergency Protection, p: 27-30.
[31] These trade-limiting agreements have several names and forms such as Orderly Marketing Arrangements (OMAs), Voluntary Export Restraints (VERs), Export Restraint Arrangements (ERAs), export forecasts and the like. But they are mostly referred to as Voluntary Export Restraints.
[32] This term was used by Finger (1998), GATT Experience with Safeguards, p: 5

restriction on trade.[33] Although VERs are not explicitly prohibited by the GATT, they are contrary to the principles and the spirit of the GATT; for this reason they have been called as the grey-area measures and Robertson states the grounds of their illegality as follows:

> "Export restraints are of doubtful legality under the General Agreement because they infringe Article I (non-discrimination), Article XI (elimination of quantitative restrictions), Article XII (non-discriminatory administration of quantitative restrictions) and Article X (transparency)."[34] (Robertson, 1992, p: 3)

In history, the first use of an export restraint as a trade policy instrument took place in the early 1930s between France and Belgium, which was a form of industry-to-industry cartel arrangement.[35] During the period of GATT, starting from the 1960s[36], countries preferred to use VERs instead of safeguards and the use of VERs increased in 1980s.[37] The main reason is that there is no need to offer compensation to the affected exporting countries in return for the trade restricting action, since VERs are outside the framework of GATT. Actually, a VER arrangement included an automatic way to compensate the loss of quantity, by increasing the price of the good in the domestic market. And there is no threat of retaliation because both of the parties benefit from these export restraint arrangements.

Under a voluntary export restraint arrangement, the exporting country voluntarily –as could be understood from the name- accepts to limit its exports and puts a quota on the exports of the good in question. Due to the quantitative restriction, the price of the good increases in the export market and the difference between the normal price of the good and the increased price after the quota arrangement is called as "quota rent". On the contrary to the normal quota or tariff application of the importing country, under a VER arrangement the exporting country's firms get the quota rents. So, even if

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[33] Kent Jones, Voluntary Export Restraint: Political Economy, History and the Role of the GATT. Journal of World Trade Vol.23, No.3, 125-140, p: 125, (1989).
[34] Robertson (1992), GATT Rules for Emergency Protection, p:3
[35] Jones (1989), Voluntary Export Restraint, p: 128. For detailed information on the early history of VERs see p: 128-130 of the same work.
[36] Finger (1998), GATT Experience with Safeguards, p: 5
[37] ibid, p: 22. For the number of VERs, see the below table.

the quantity of the goods sold decreases, the exporting firm receives the "quota rent" and earns an equal amount of money and guarantees a certain share in that market. The importing country in return controls the imports. But it is deprived of a source of revenue since the quota rent goes to the exporting firms. Nevertheless, both of the parties are pleased with this arrangement because VERs restrict imports and compensate the exporters at the same time. The price and welfare effects of a VER are mentioned in Appendix 4 at the back of this study.

During the period of GATT, there were a considerable number of Voluntary Export Restraint Arrangements and they dealt with the major sectors such as textiles, automobiles, machinery and etc., which constituted the important part of world trade.[38] The Table 2.2 shows the export restrained arrangements in force as of September 1989, before the Uruguay Round. The restraint arrangements are listed first of all according to the period of introduction and then according to products. As could be understood from the table, VERs were used to control imports in major sectors.

Table 2.2 - Export Restraint Arrangements in Force as of September 1989

A. By period of Introduction		**B. By Product**	
Prior to 1975	36	Food and other agricultural products	59
		Textiles and clothing*	44
1975 – 1979	39	Steel and steel products	44
		Electronic products	22
1980 – 1984	69	Motor vehicles and equipment	20
		Footwear	12
1985 – 1989	105	Machine tools	12
		Other	36
Total	**249**	**Total**	**249**

**Excluding bilateral quantitative restrictions on textiles and clothing imposed under the Multi Fiber Arrangement.*
Note: The restraint arrangements included in the table include voluntary export restraints, orderly marketing arrangements, export forecasts and discriminatory import systems, plus non-governmental and/or arrangements on an individual industry or industry association level, as well as unilateral restraint decisions.
Source: Finger, J. Michael. (1998). "GATT Experience with Safeguards, Making Economic and Political Sense of the Possibilities That the GATT Allows to Restrict Imports", Washington DC: World Bank, p:22

[38] ibid, p: 5

The WTO Agreement on Safeguards made a significant change by prohibiting the use of VERs by signatories – Article 11 of the Agreement on Safeguards titled "Prohibition and Elimination of Certain Measures"[39]. Furthermore, under the Agreement on Safeguards the existing measures were to be phased out until 1 January 2005.

The ban on the use of such measures is a significant step in regulating the global trade since VERs were distorting worldwide trade flows and causing trade deflection. This was the most destructive instrument used to stop imports. As mentioned above, under a VER arrangement the importing government could not receive any revenue from the quota application and this has a negative impact on the income distribution.[40] As a result of a VER arrangement, consumers of the importing country purchase the goods with a higher price than the normal value. But the exporting firms receive the quota rents and also they benefit from a guaranteed place in that export market. The USA – Japan automobile VER of 1981 is a very good example for the impact of a VER arrangement on the prices in the export market; this famous VER arrangement increased the price of the Japanese cars in the US market by 14% both in 1983 and 1984.[41]

2.3. Background: From Article XIX of the GATT 1947 to the WTO

The origin of the general escape clause or the safeguard clause of the GATT (Article XIX)[42] can be traced back to the U.S. - Mexico Reciprocal Trade Agreement of 1943.[43] The U.S. Government was concerned that the lowering of tariffs may cause huge increases in imports and as a result the domestic producers would be harmed.[44] So,

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[39] WTO, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts, Geneva: World Trade Organization, p: 321, (1995)
[40] For a detailed analysis of the negative impact of VERs on income distribution in the importing country, see Jones (1989), Voluntary Export Restraint, Political Economy, History and the Role of the GATT.
[41] Chad P. Bown & Meredith A. Crowley, Safeguards in the World Trade Organization, Forthcoming in 'The World Trade Organization: Legal, Economic and Political Analysis'. A. Appleton, P. Macrory and M. Plummer, (Eds.) Springer. Retrieved: October 1, 2003. World Wide Web: URL http://people.brandeis.edu/~cbown/papers/bown_crowley_kluwer.pdf, (2003) p: 7
[42] Full text of the Article XIX of the GATT is annexed in Appendix 1 at the back of this study.
[43] Trebilcock & Howse (1995), The Regulation of International Trade, p: 163 and Bown & Crowley (2003), Safeguards in the World Trade Organization, p: 4
[44] Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 4.

they wanted an instrument to safeguard themselves against imports coming from Mexico and they included a general escape clause in the agreement.

In 1947, the contractors of the GATT saw that the liberalization of trade via multilateral trading agreements may cause the same problem and they incorporated a similar escape clause into the GATT.[45] Article XIX was the General Escape Clause (or the Safeguard Clause) of the GATT and it was designed to allow the signatories to protect their domestic industries temporarily if as a result of unforeseen developments a surge in imports causes or threatens to cause serious injury to domestic firms.

The founders of the GATT believed that through trade liberalization only barriers in international trade across countries would be tariffs and they would also be lowered gradually. If a country realized a sudden increase in the importation of a product as a result of the tariff concessions, then the country could protect its domestic import-competing industries by taking a safeguard action.

In theory, Article XIX was intended to be the main instrument to be used against fairly traded imports in case of an emergency situation, in order to make necessary adjustments in the domestic market. But the experience of GATT revealed that the signatories used the safeguard clause infrequently and instead they invoked other import relief provisions of GATT; provisions that were designed to remedy unfair trading practices such as a dumped or subsidized product. Also they sought ways outside the framework of the multilateral trading system to stop imports and they used VERs to control imports to their countries.

Article XIX of the GATT allowed the signatories to take safeguards actions if a number of conditions were existent[46]: (1) there should be an increase in imports as a result of unforeseen developments and (2) there must be a causality between the

[45] Trebilcock & Howse, (1995), p: 163 and Bown & Crowley, (2003), p: 4.
[46] For an analysis of the conditions to invoke Article XIX see Robertson (1992), GATT Rules for Emergency Protection, p: 41-42 and Trebilcock & Howse (1997), The Regulation of International Trade, chapter: 7 and Bown & Crowley (2003), Safeguards in the World Trade Organization, p: 7.

increase in imports and the serious injury to the domestic import competing industries[47], (3) the safeguard action must be temporary[48] and non-discriminatory (in conformity with GATT's Most Favoured Nation principle-Article I), (4) the type of safeguard measure that could be used is defined in Article XIX :1(a) as "…to suspend the obligation in whole or in part or to withdraw or modify the concession" (5) the country invoking Article XIX must notify the other countries before the action is taken in order to start consultations and as a result agree on a trade compensation (6) if the countries cannot agree on a compensation then the signatories have the right to retaliate against the country taking safeguard action under Article XIX: 3(a).

In the GATT's first and a half decades the signatories were gradually making concessions and lowering tariffs and during this period they benefited from the renegotiation provision of the GATT (Article XXVIII) as a means to restrict trade.[49] Initially, GATT rounds were mainly bilateral negotiations[50] and the GATT's main instrument to remove trade barriers was reciprocal negotiation and bilateral concessions (i.e. tariff reductions) that applied to all signatories due to MFN principle. The renegotiation provision gave the signatories the right to renegotiate earlier concessions automatically after three years. GATT's renegotiation procedure was used to re-institute tariff reductions or to modify earlier concessions. In practice countries used renegotiation procedure together with Article XIX; first, the signatories were restricting trade and then they gave compensation via renegotiations.[51] Under both renegotiation and safeguard provisions, the compensation was to offer a tariff reduction in some other product that the suppliers deemed as equally valuable and this was also subject to MFN principle.[52]

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[47] The meaning of injury is so vague in Article XIX, this issue has always been debated by the signatories of the GATT.

[48] Although the safeguard actions under Article XIX were intended to be temporary, the article does not state the maximum duration to impose a safeguard action. Article XIX:1(a) states the duration as "…for such time as may be necessary to prevent or remedy such injury,…".

[49] Finger (1998), GATT Experience with Safeguards … , p: 4. Finger shows this in the Chart 1 attached to his work.

[50] Ibid, p: 3, footnote 4

[51] Ibid, p: 4.

[52] J. Michael Finger & Francis Ng & Sonam Wangchuk, Antidumping As Safeguard Policy, Washington DC: World Bank. Retrieved: May 10, 2004 on the World Wide Web URL: http://econ.worldbank.org/files/3172_wps2730.pdf , p: 2, (2001).

If the countries could not agree on compensation, the Article XIX: 3(a) of the GATT 1947 gave the contracting parties the right to retaliate against a safeguard measure. But in practice the affected exporting countries did not frequently use their right of retaliation. Between 1947 - 1994, 150 formal safeguard actions were taken by the signatories[53]; only in thirteen of these cases the affected countries appealed to retaliation formally or referred to Article XIX: 3[54] and only in twenty cases (out of 150 formal safeguard actions) payment or an offer of compensation took place[55]. The total number of formal safeguard actions point out that Article XIX was used infrequently as compared to other import restricting GATT provisions. As mentioned earlier and indicated in Table: 2.1; antidumping duties, countervailing duties and renegotiations were the preferred form of trade protection instead of Article XIX safeguard actions.

In the 1960s and 1970s countries were lowering their tariffs gradually, in this period they still could agree on compensation packages for safeguard measures.[56] But as the tariff rates fell the main safeguard clause became very strict and less preferable by the signatories, in the sense that it requires compensation and embodies a threat of retaliation. As a result countries resorted to other import restricting measures. Finger mentions this process as follows:

> "Over time, countries whose tariffs have been effectively bound under the GATT have used different instruments to deal with troublesome imports: renegotiations were eventually replaced by negotiated quantitative restraints (VERs), VERs in turn gave way to antidumping. The problem was always the same -- troublesome imports -- but the politically and legally most convenient instrument to deal with these troublesome imports changed."[57] (Finger, 1998, p: i)

[53] Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 168 and Bown & Crowley (2003), Safeguards in the World Trade Organization, p: 6, footnote: 5. Also see Table 2.5 in the following part of this section for the number of Article XIX cases resulting in protection during the period of GATT.
[54] Hoekman & Kostecki (1995), The Political Economy…, p: 168. Hoekman & Kostecki mention the number of retaliations as 13 but Bown & Crowley (2003) state that there were 11 retaliations out of 150 safeguard cases in their work "Safeguards in the World Trade Organization", p: 6, footnote: 5.
[55] Hoekman & Kostecki (1995), The Political Economy of the World Trading System, p: 168.
[56] Bown & Crowley (2003), Safeguards in the World Trade Organization, p: 6
[57] Finger (1998), GATT Experience with Safeguards, p: i

As mentioned by Finger, the countries wanted to protect their industries against import competition instead of adjusting to the changing conditions and the safeguard mechanism of the GATT did not give them the required level of protection, and above all there was a threat of retaliation and an obligation to compensate the affected parties as a result of a safeguard application. The unpopularity of the safeguard clause gave rise to the extensive use of Voluntary Export Restraints as a form of trade policy instrument in 1970s and 1980s.[58] As explained in the previous part of this chapter, VERs were preferred because they included an automatic way of compensating the exporters and enabled the importing government to restrict imports at the required level without being concerned of a retaliatory action by the exporting country.[59] The period of 1970s and 1980s witnessed the rise of new protectionism in the form of VERs and Non-tariff barriers (NTBs).

In this period, besides VERs GATT signatories also started to use unfair trade remedies such as antidumping and countervailing duties as a safeguard measure; even if they were originally designed to remedy illicit trade practices of exporters that harm the competition conditions and price structure in the importing country's market. Especially in 1980s and 1990s, countries preferred to use these measures not as an instrument to remedy anticompetitive practices of exporters but as a safeguard instrument.[60] The reasons of this preference were similar to those of VERs; the country imposing an antidumping duty was not required to offer compensation in return for its trade limiting action and moreover this instrument allowed for selectivity; the importing government could discriminate between the sources of imports since antidumping measures are applied against specific exporters. As a result, imposition of an antidumping duty instead of a safeguard measure was more discriminatory.[61]

Consequently, the infrequent use of the Article XIX was due to the strictness of the rules governing the application of the safeguard measures and also the demand of

[58] Bown & Crowley (2003), Safeguards in the World Trade Organization, p: 6
[59] As explained above under 2.2.2, VERs are selective in nature and they enable discrimination between sources. The importing country makes these export restraint arrangements with certain selected producers form certain countries and so compensates only those that have a share of the quota. So the quota rents go to these producers and they are compensated in return for the trade restriction.
[60] Ibid, p: 7
[61] Ibid, p: 7

countries for greater degree of protection. For the governments that desired trade protection, the conditions to invoke Article XIX and to apply a safeguard measure were strict as compared to antidumping or countervailing duties. First of all, it was impossible to discriminate between sources and there was a threat of retaliation accompanied with an obligation to offer compensation.

Article XIX had some problems and so the countries intended to improve the safeguards mechanism of the multilateral trading system in the Uruguay Round in order to re-vitalize this mechanism and make it more effective. Before explaining the reforms introduced with the Agreement on Safeguards of the WTO, it is necessary to point out the inadequacies of Article XIX briefly.

The problems of the Article XIX can be summarized as follows[62]: 1) due to the obligation to offer compensation for taking a safeguard action and the threat of retaliation, the countries were using grey area measures (such as VERs) and unfair trade remedies (such as Antidumping duties and Countervailing duties) instead of safeguards; 2) there was a vagueness in the injury criteria of the Article XIX; 3) some developed countries, especially the EC, were demanding selectivity in the application of a safeguard measure; 4) countries were concerned that a temporary safeguard might be applied permanently because the Article XIX does not prescribe time limits for the application of a safeguard measure. 5) in order to monitor the application of safeguard rules, the issue of surveillance was important, especially for the developing countries.

The above problems urged the members of the WTO to make the reforms introduced with the WTO Agreement on Safeguards. Finally, since other import relief measures of the GATT - especially the unfair trade remedies- became to be used as a substitute for safeguard measures, not only the safeguard mechanism but also the rules for other import relief measures and other areas of the GATT had to be amended and improved as well.

[62] For an analysis of the problems of the Article XIX see Trebilcock & Howse (1995), p: 169-176

2.4. The WTO Agreement on Safeguards[63]

The Agreement on Safeguards made significant changes in the safeguards provision of the GATT 1947 and improved the safeguards mechanism by addressing the shortcomings of the Article XIX.

The WTO Agreement on Safeguards reaffirms and reinforces the principles of Article XIX of the GATT 1947 but also improves the safeguard mechanism by introducing new rules and procedures in order to overcome the inherent problems of Article XIX and to introduce a much effective and transparent safeguard mechanism. Similar to the Article XIX of the GATT, under this agreement the countries are allowed to impose safeguard measures in case of an increase in imports that causes or threatens to cause serious injury to the domestic industry of like or competing products, subject to certain rules and conditions, in order to facilitate the adjustment of the industry concerned.

The major improvement of the WTO agreement is the prohibition of voluntary export restraints and similar grey-area measures.[64] As mentioned above, this agreement introduces new rules and clarifies the conditions and procedures to impose a safeguard measure. Moreover, before imposing a safeguard measure the WTO agreement requires the signatories to make a full investigation (by a competent authority) and to give reasonable public notice in order to take into consideration the views of all interested parties.[65]

The safeguard measures are designed to provide a breathing period to domestic industries that face import competition in order to help them to adjust to changing economic conditions. To follow from here, the Agreement requires progressive liberalisation of imposed safeguard measures to facilitate adjustment. The Agreement

[63] Most important provisions of the WTO Agreement on Safeguards are summarized in the Appendix 2 (Box A-2) at the back of the study and full text of the Agreement on Safeguards is also annexed as Appendix 3.
[64] Article 11 of the WTO Agreement on Safeguards prohibits the use of such trade restrictions.
[65] Productivity Commission, Australia (2001), Pig and Pigmeat Industries: Safeguard Action Against Imports. Inquiry Report. Canberra: AusInfo. … , p:9

on Safeguards also clarifies the duration of safeguards; the maximum duration of a safeguard measure is four years but it can be extended for four more years (and shall not exceed a total of eight years). In case of an extension competent authorities must demonstrate evidence of adjustment in the safeguard-protected industry.

The reforms introduced with the WTO Agreement mainly aim at making the safeguards mechanism of the multilateral trading system more preferred and effective. The areas of reform introduced with the Agreement on Safeguards are mentioned in detail below.[66] As could be seen in the previous part of this chapter these areas were the reasons of unpopularity of the safeguards as a form of trade policy instrument and the improvements tried to address this problem.

2.4.1. Major Reforms Introduced With The Agreement on Safeguards

2.4.1.1. Allowed Policy Instruments and Prohibition of VERs

The major reform of the WTO Agreement on Safeguards is the prohibition of the grey-area measures (VERs and similar restraint arrangements) as an available policy instrument for governments seeking trade protection. These export restraint arrangements were the major rival of the safeguard measures and widely used by the GATT signatories to control imports. Besides prohibiting VERs the Article 11 of the Agreement brought the existing export restraints under control and stipulated that they must be phased out or brought into conformity with the provisions of the agreement.

Under the Agreement on Safeguards, the allowed policy instruments to be used to restrict imports are tariffs, tariff-rate quotas and quotas.[67] So, contrary to the GATT, this agreement allows the members to use quantitative restrictions but subject to some rules and conditions. Allowing quantitative restrictions have important economic

[66] For a more detailed analysis of the areas of improvements introduced with the Agreement on Safeguards see Trebilcock & Howse, (1995), The Regulation of International Trade, p: 169-176 and Bown & Crowley, (2003), "Safeguards In the World Trade Organization", p: 8-18.
[67] Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 10.

effects, since the impact of any safeguard measure on the exporters depends also on the instrument used. For instance, empirical studies showed that a safeguard in the form of a quota, which is allocated according to historical market shares, favours historically established exporters and so they will have greater market share at the expense of the new entrants to the market.[68] Furthermore, quotas are much more restrictive than tariffs since there is no possibility of importing that product when the allowed quantities have already been imported. But in principle tariffs do not limit the importation of a product if there is a demand for that product in the market, despite the increase in its price due to the imposed tariff (only if the product is not so much price-sensitive).

2.4.1.2. Non-discrimination and Selectivity

The Article XIX of the GATT explicitly required the signatories to apply safeguards in a non-discriminatory way and did not allow them to discriminate between sources when imposing a trade restriction. During the period of GATT this was one of the reasons of infrequent application of safeguards as compared to VERs, antidumping and countervailing duties. As mentioned above some developed countries, especially the EC, wanted to apply safeguards selectively.[69] The Agreement on Safeguards of the WTO tried to find a compromise between non-discrimination principle and the need for selectivity and resolved the issue by providing some exceptions to the general MFN principle in the following ways.

Although the Article 2:2 of the agreement explicitly requires the application of safeguards to be non-discriminatory, there are some exceptions to this general principle[70]. Under certain conditions safeguards can be applied in a discriminatory way.

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[68] Chad P. Bown & Rachel McCulloch, "The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact", Brandeis University Manuscript, Retrieved: February 14, 2004. World Wide Web: URL http://people.brandeis.edu/~cbown/papers/bown_mcculloch_1.pdf, (2003). P: i.
[69] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 170-171
[70] The substantive requirement of "non-discrimination" in the application of safeguard measures will be detailed in the following part of the study with reference to WTO rules and jurisprudence.

First, footnote 1 of the Article 2:1 of the Agreement on Safeguards allow the members of regional trade agreements, customs unions and free trade areas, to exclude their trade partners from the application of a safeguard measure.[71]

Second, the Article 5:2(b) allows the countries to discriminate between sources when allocating a quota if the safeguard imposing country can provide clear demonstration to the Committee on Safeguards that the imports coming from certain countries have increased in disproportionate percentage as compared to the overall increase in imports of the product in the representative period.[72] Nonetheless in case of a discriminatory application of a safeguard measure in the form of a quota, subject to above conditions, the *duration* of the measure shall not be extended beyond the initial period. It must be noted that the Article 5.2 (b) does not permit discriminatory application of a safeguard measure between sources in case of a *threat of serious injury*.

Third, the Agreement on Safeguard provides an exception to the developing countries under Article 9:1.[73] According to this article, a safeguard imposing country can't restrict imports coming from a developing country that has a share of less than three percent of total imports; but if the total share of all developing countries is more than nine percent of the total imports then the importing country can restrict their imports as well.

Fourth, under Article 5:2(a) the Agreement on Safeguards makes an implicit authorization to discriminate between sources when applying a safeguard in the form of a quota.[74] The quota application tends to favour historically established suppliers rather than new suppliers that have entered the market recently, since the article 5:2(a) calls

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[71] Yong-Shik Lee, "Safeguard Measures: Why Are They Not Applied Consistently With The Rules?", Journal of World Trade 36 (4): 641-673, 2002, The Netherlands: Kluwer Law International. p: 648. See this issue detailed in the following part of the study under "substantive requirements to apply safeguards."

[72] Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 11. Also see the Article 5:2 of the Agreement on Safeguards in WTO, (1995), The Results of the Uruguay Round of Multilateral Trade Negotiations, p: 317-318.

[73] Bown & Crowley, (2003), p: 11.

[74] Chad P. Bown & Rachel McCulloch, "The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact", Brandeis University Manuscript, Retrieved: February 14, 2004. World Wide Web: URL http://people.brandeis.edu/~cbown/papers/bown_mcculloch_1.pdf, (2003). See this source for a detailed empirical analysis of discriminatory impact of safeguard applications and also for implicit discrimination under the Agreement on Safeguards.

for the allocation of quotas according to the market shares in a representative period prior to the application of a safeguard.[75] The discriminatory impact of safeguard applications in the form of a quota was proved by Bown & McCulloch (2003) who made an empirical analysis of the differential impact of safeguard applications under the WTO Agreement on Safeguards in a recent work.[76] Authors analyse 14 safeguard applications during 1995 - 2000 in this first empirical study of discriminatory impact of the form of the safeguard measure (tariff, quota or tariff rate quota) on the market shares of the exporting countries. They conclude that the safeguard measures applied in the form of quotas favour historical exporters and so make a discrimination against new exporters.

2.4.1.3. Compensation and Retaliation

The major factors that caused the infrequent use of safeguards as a trade policy instrument were the obligation to offer compensation to the affected countries and the threat of retaliation by the affected countries if parties cannot agree on compensation. The Agreement on Safeguards tried to find a compromise between the issue of compensation and retaliation and aimed at making safeguards a more preferred tool of protection.

As a general rule Article 8 of the agreement require the offer of a compensation to the affected countries in the form of "substantially equivalent concessions" but provides an exception to this rule.[77] Under article 8:3 of the Agreement, the safeguard imposing country is not required to offer compensation to the affected parties for the first three years of the safeguard application, if the safeguard measure is in conformity with the provisions of the Agreement and also if it is imposed as a result of an absolute increase in imports.[78]

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[75] Ibid, p: 7.
[76] Bown & McCulloch, (2004), "The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact".
[77] Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 11.
[78] See article 8:3 of the Agreement on Safeguards. WTO, 1995, The Results of Uruguay Round…, p: 320.

So, if the imposed safeguard measures are in conformity with the rules of the Agreement, there is no need to offer compensation during the first three years of the measure and the exporting countries should not take a retaliatory action. But after the first three years of the measures and if the measures are not applied inconformity with the rules then the safeguard imposing country should offer compensation. Under Article 8:1 when a country applies a safeguard measure "it should endeavour to maintain a substantially equivalent level of concessions and other obligations to exporting Members affected by such a measure…". So the safeguard imposing country should offer an appropriate level of trade compensation to the affected exporting countries. If the countries could not reach an agreement about the trade compensation then Article 8:2 gives the exporting country the right to suspend "the application of substantially equivalent concessions or other obligations under GATT 1994". So the Article 8:2 of the Agreement gives the affected exporting countries the right to retaliate by suspending equivalent concessions or other obligations under GATT 1994 if the parties could not agree on a trade compensation.

2.4.1.4. Reforms in the Conditions to Apply a Safeguard Measure

As an improvement over the provisions of Article XIX of the GATT, the Agreement on Safeguards clarifies the conditions, rules and substantive requirements to apply a safeguard measure.

First of all, under the Agreement on Safeguards a safeguard measure can only be applied after a "full investigation" by a competent authority which would investigate whether a safeguard measure is necessary or not. On the contrary to the vagueness in the Article XIX that simply define injury as "significant overall impairment in the position of the domestic industry", the Agreement on Safeguards clarifies the injury requirement under Article 4:1(a).[79] Injury definition is very important since this is the substantive requirement of applying a safeguard measure.

[79] The injury requirement is detailed in the following part of this chapter under substantive requirements to impose a safeguard measure.

Besides injury criteria, other substantive requirements such as "increase in imports", "causal link" and "non-discrimination" are also clarified and detailed in this agreement and new rules are introduced as well.[80]

Furthermore, the agreement sets forth the maximum duration of a safeguard measure on the contrary to the Article XIX. The failure of Article XIX to specify a time limit for the safeguard applications was corrected at the Uruguay Round. Under the WTO Agreement of Safeguards, the maximum duration for a safeguard measure to be in place is four years but this period can be extended up to eight years subject to some conditions and if the competent authorities can demonstrate clear evidence that the industry protected by the safeguard measure is adjusting. Developing country members can apply a safeguard measure for a maximum period of ten years.

2.4.1.5. Surveillance

The Article 13 of the Agreement on Safeguards stipulates the establishment of a Committee on Safeguards to monitor the safeguard applications of WTO members and to control whether they apply safeguard measures in conformity with the rules and conditions set forth in the Agreement. This is a very important step especially for developing countries that wanted a multilateral monitoring body as a compromise for their acceptance of selectivity that was demanded by developed countries.[81]

2.4.1.6. Other Reforms Under the Uruguay Round Agreements

The Uruguay Round Agreements are different from the GATT in the sense that provisions of all agreements apply to all members including developing country members. When acceding to the WTO the countries have to sign all agreements and they are bound by the entirety of the agreements. So, the rules on trade remedies including safeguards apply to all members. But under the GATT, many developing countries had bound only some of their tariffs and they had the chance to increase their

[80] The substantive requirements are detailed in the following part of this study under 2.4.2.
[81] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 174.

tariffs easily since they were not bound, as a result available trade remedies were not so relevant for them.[82]

Also there were changes in the Agreement on Antidumping and the Dispute Settlement Understanding that have impacts on the safeguards mechanism. In the below table (Table 2.3), a summary of significant changes in the safeguards mechanism of the multilateral trading system introduced with the Uruguay Round Agreements are mentioned and compared with the provisions of GATT 1947.

[82] Finger, (1998), p: 2

Table 2.3 - Comparing Key Elements of the GATT 1947 and WTO Systems

Area	GATT 1947	Uruguay Round Agreement
Safeguards (Compensation)	*Article XIX: 3(a)* '[i]f agreement among the interested contracting parties with respect to the action is not reached ... the affected contracting parties then be free ... to suspend ... such substantially equivalent concessions ... of which the CONTRACTING PARTIES do not disapprove.'	*Agreement on Safeguards* Article 8:3 '[t]he right to suspension [of concessions] shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports …'
Safeguards (managing trade)	*NA*	*Agreement on Safeguards* Article 11:1(b) ' … a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or import side.'
Antidumping (managing trade)	*NA*	*Agreement on Antidumping* Article 8:1 '[p]roceedings may be suspended or terminated without the imposition of provisional measures or antidumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices …'
Dispute Settlement (compensation)	*Article XXIII:2* '[i]f the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances.'	*Dispute Settlement Understanding* Article 22:4 [t]he level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment [imposed by the original policy].'

Source: Bown, Chad P. (2002). Why are Safeguards Under the WTO So Unpopular? World Trade Review, 1:1, 47-62, UK, p: 52

2.4.2. Substantive Requirements For the Application of A Safeguard Measure: The WTO Rules and Jurisprudence

The WTO Agreement on Safeguards and the GATT 1994 prescribe several conditions that need to be met in order for the signatories to take a safeguard action. In this part of the study, the conditions required for the application of safeguard measures

are explained with special emphasis to the interpretations of these provisions by the WTO's dispute settlement Panels and the Appellate Body in the safeguard cases.

The Article XIX: 1(a) of the GATT 1994 states the following conditions for taking "emergency action on imports of particular products":

1- There must be an increase in the imports of a product into the territory of the contracting party as a result of "unforeseen developments" and "of the effect of the obligations incurred by a contracting party under this Agreement [the GATT], including tariff concessions…"

2- Product should be imported into the territory of the contracting party in "such increased quantities" and under "such conditions"[83].

3- The increase in the imports of that product should be causing or threatening to cause serious injury to domestic producers of like or directly competitive products. So there must be causality between the imports and the serious injury.

The WTO Agreement on Safeguards reaffirms and clarifies the conditions for the application of safeguard measures under the Article XIX of the GATT 1994 and also brings about additional conditions. The requirements stipulated in the Agreement on Safeguards are as follows:

1- Increase in Imports: There must be an increase in imports absolute or relative to domestic production: Article 2:1 of the Agreement on Safeguards states:

> "A Member may apply a safeguard measure to a product only if that Member has determined … that such product is being imported into its territory in such increased quantities, *absolute* or *relative* to *domestic production*…"[84] (emphasis added) Article 2:1 (WTO, 1995, p: 315)

[83] "Such Conditions" are mentioned above under item 1.
[84] WTO, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts, Geneva: World Trade Organization, p: 315, (1995).

In this article the Agreement on Safeguards clarifies the Article XIX of the GATT, which does not set forth any criteria for the determination of the increase in imports.

2- Causal Link Between the Increase in Imports and Serious Injury: Serious injury or the threat of serious injury must be a result of the increase in imports. The Article 2:1 of the Agreement on Safeguards stipulates this as follows:

> "…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."[85] Article 2:1 (WTO, 1995, p: 315)

So, there must be a causal link between such increased quantities in the importation of that product and serious injury.

The injury maybe a result of other factors not an increase in imports then, such an injury cannot be a basis for the application of a safeguard measure. The article 4:2(b) states as follows:

> "…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"[86] Article 4:2(b) (WTO, 1995, p:317)

3- Determination of Serious Injury and Threat Thereof: Since serious injury constitutes the basis for applying a safeguard measure, then injury determination is a key factor. First of all the causal link between the increase in imports and the serious injury should be demonstrated, then national competent authorities must examine the injury factors prescribed under Article 4:2(a) which stipulates:

[85] ibid, p: 315
[86] ibid, p: 317

> "In the investigation to determine whether increased imports have caused or threatening to cause serious injury…, competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment"[87] Article 4:2(a) (WTO, 1995, p: 317)

4- Non-discriminatory Nature of Safeguard Measures: As mentioned in the previous parts of this study, on the contrary to the antidumping and countervailing duties, safeguards are non-discriminatory in nature and they are applied to all exporters of the product concerned without making any selection between sources. The Agreement on Safeguards explicitly reaffirms the non-discrimination principle in the application of safeguard measures in Article 2:2, which is as follows:

> "Safeguard measures shall be applied to a product being imported irrespective of its source."[88] Article 2:2 (WTO, 1995, p: 316)

But the footnote 1 of the Article 2:1 of the Agreement on Safeguards allows the members of customs unions and free trade areas to apply safeguard measures to non-member countries as a whole or on behalf of a member and so enables some exemptions for customs unions and free trade areas. [89] This footnote reads as follows:

> "A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole…"[90] Article 2:1 footnote: 1 (WTO, 1995, p: 315)

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[87] ibid, p: 317
[88] ibid, p: 316
[89] Lee, (2002b), "Safeguard Measures: Why Are They Not Applied Consistently With The Rules?", p: 648.
[90] WTO (1995), The Results of the Uruguay…, p: 315

Although the Agreement on Safeguards reinforces the non-discrimination rule, it also allows for selectivity and discrimination among sources under certain conditions and due to some of its procedures.[91] (The issue of non-discrimination and the WTO Agreement on Safeguards is detailed below under section 2.4.2.5.)

5- Proportionality in the Application of Safeguard Measures: According to Article 5:1, the injury and the safeguard action taken to remedy such injury must be proportionate. The article explicitly states this as follows:

> "A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment…"[92] Article 5:1 (WTO, 1995, p: 317)

The WTO Dispute Settlement Panels and the Appellate Body has made interpretations about these requirements of the Agreement on Safeguards and the Article XIX of the GATT 1994 in the safeguards cases. The Panel Reports and Appellate Body Decisions created a WTO jurisprudence that is significant in understanding the above provisions. In order to analyse the implementation of these safeguard rules in practice, a thorough examination of these interpretations is necessary. Also the safeguards cases show that the member countries are not applying safeguard measures consistently with the rules of the WTO Agreement on Safeguards.[93]

2.4.2.1. "Unforeseen Developments": Is it Still Effective?

The "Unforeseen Developments" clause was a condition for the application of a safeguard measure under the Article XIX of the GATT, but this clause was omitted from the text of the WTO Agreement on Safeguards and it is not an explicit requirement

[91] Chad P. Bown & Rachel McCulloch, "The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact", Brandeis University Manuscript, 2003, Retrieved: February 14, 2004. World Wide Web: URL http://people.brandeis.edu/~cbown/papers/bown_mcculloch_1.pdf ,P:1

[92] WTO (1995), The Results of the Uruguay…, p:317

[93] For a detailed analysis of the inconsistent application of the safeguard rules see Cliff Stevenson, "Are World Trade Organization Members Correctly Applying World Trade Organization Rules in Safeguard Determinations", Journal of World Trade 38(2): 307-329, The Netherlands: Kluwer Law International, 2004 and Lee, Yong-Shik (2002b), "Safeguard Measures: Why Are They Not Applied Consistently With the Rules?", Journal of World Trade 36(4): 641-673, The Netherlands: Kluwer Law International.

of this Agreement.[94] Since the Article XIX of the GATT is applicable alongside the Agreement on Safeguards[95], the above inconsistency between the texts of Article XIX and the WTO agreement caused a controversy between the scholars in the literature about the applicability of the "unforeseen developments" clause as a legal requirement. While Stevenson (2004) and Mueller (2003) take this clause as a condition for the application of a safeguard measure since the Appellate Body Korea-Dairy Products case confirmed the applicability of the clause[96]; Lee (2001) argues that this clause does not form a legal condition and states that the majority of the academia agrees on this issue.[97]

WTO Panel Reports and Appellate Body Decisions are also contradictory on this issue.[98] The Panel in *Korea-Dairy Products* mentioned that the "unforeseen developments" clause is merely explanatory and the Panel did not consider it as a legal condition.[99] The Panel in *Argentina-Footwear* concluded in the same way. [100] Contrary to these two Panel decisions, the Appellate Body ruled that Member States applying a safeguard action must demonstrate the "unforeseen developments" and it also considered the clause as a legal condition, not only explanatory in nature.[101]

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[94] Yong-Shik Lee, "Destabilization of the Discipline on Safeguards? Inherent Problems with the Continuing Application of the Article XIX after the Settlement of the Agreement on Safeguards", Journal of World Trade, 35(6), 1235-1246, The Netherlands: Kluwer Law International, 2001. Also see: Lee (2002b), "Safeguard Measures: Why Are They Not Applied Consistently …", p: 645-646 and Stevenson (2004), "Are World Trade Organization Members …", p: 310 .

[95] The Articles 1 and 11.1(a) of the Agreement on Safeguards refers to Article XIX and as mentioned by Lee (2001) the Appellate Body referred to these articles as a justification for the applicability of unforeseen developments clause. See: Lee (2001), "Destabilization of the Discipline on Safeguards?", p:1237.

[96] Stevenson (2004), "Are World Trade Organization Members…", p: 310. For a detailed analysis of the applicability of "Unforeseen Developments Clause" see also: Mueller, Felix. (2003). Is the General Agreement on Tariff and Trade Article XIX "Unforeseen Developments Clause" Still Effective Under the Agreement on Safeguards? Journal of World Trade 37(6): 1119-1151. The Netherlands: Kluwer Law International.

[97] Lee (2002b), "Safeguard Measures…", p: 646 footnote 24. In this footnote Lee mentions the scholars that think "unforeseen developments" clause is not a legal requirement, such as Trebilcock and Howse; and M. Bronckers.

[98] See: Lee (2002b), "Safeguard Measures: Why Are they not Applied Consistently…", p: 645-647.

[99] ibid, p: 646

[100] ibid, p: 646

[101] ibid, p: 646-647. Appellate Body rulings: *Korea-Dairy Products* WT/DS98/AB/R, para.85 and *Argentina-Footwear*, WT/DS121/AB/R, para.92.

As a result, since the Appellate Body rulings are superior to Panel Reports the competent authorities of the importing country must demonstrate the existence of unforeseen developments before applying a safeguard measure.[102]

2.4.2.2. Increase in Imports

As mentioned above, according to the Agreement on Safeguards in order to take a safeguard action against imports of a certain product, there must be an increase in the imports of the product concerned. In *Argentina-Footwear* case The Appellate Body defined the increase in imports as:

> "… the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause, or threaten to cause serious injury"[103](Stevenson, 2004, p: 311)

In this case (*Argentina-Footwear*), the Appellate Body concluded that the increase shown by the Argentina's national competent authority was not meeting the above criteria.[104] The Appellate Body showed that "an increasing trend in imports over the investigation period" is not sufficient for the application of a safeguard measure.[105]

> "This decision is justifiable since gradual and long-term increases in imports are unlikely to put domestic industry in emergency that calls for the application of a safeguard measure."[106] (Lee, 2002, p: 650)

Argentina-Footwear decision is important in defining the condition "an increase in imports" and can prevent possible statistical manipulations of national competent investigating authorities.[107] In order to understand how national authorities can make

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[102] For a detailed analysis of the "Unforeseen Developments" clause of the Article XIX, its applicability and the interpretations of the Appellate Body see Mueller, Felix (2003). Is the General Agreement on Tariff and Trade Article XIX "Unforeseen Developments Clause" Still Effective Under the Agreement on Safeguards? Journal of World Trade 37(6): 1119-1151. The Netherlands: Kluwer Law International.
[103] Appellate Body decision is reflected from Stevenson (2004), "Are World Trade Organization Members Correctly…", p: 311. Also see: Lee (2002b), "Safeguard Measures…", p: 650
[104] Stevenson (2004), "Are World Trade Organization Members…", p: 311.
[105] Lee (2002b), "Safeguard Measures…", p: 650
[106] ibid, p: 650
[107] ibid, p: 650

statistical manipulations and to see what does not constitute "an increase in imports", the data of *Argentina-Footwear* case must be examined. The data used by the Argentina's national competent authorities as a basis for the application of a safeguard measure is shown below in Table 2.4.

Table 2.4 – Increase in Footwear Imports, 1991- 1996 (*Argentina-Footwear*)

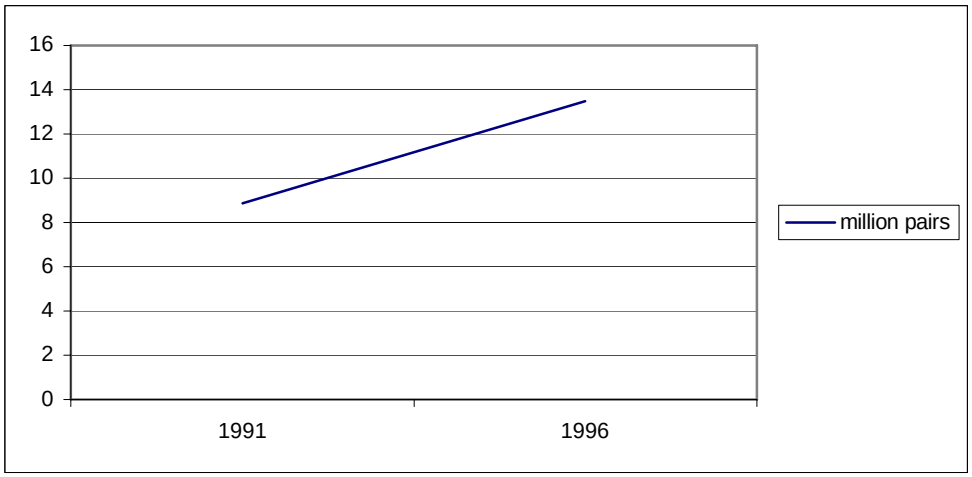
	1991	**1992**	**1993**	**1994**	**1995**	**1996**
Million Pairs	8.86	16.63	21.78	19.84	15.07	13.47

Source: Stevenson, Cliff (2004). "Are World Trade Organization Members Correctly Applying World Trade Organization Rules in Safeguard Determinations?". Journal of World Trade 38(2): 307-329. The Netherlands: Kluwer Law International. P: 311.

Argentina authorities just compared the total footwear imports for 1991 (8.86 million pairs) with the total of 1996 (13.47 million pairs) and concluded that the imports have increased significantly.[108] But a correct calculation for an increase should have compared the totals for each year over the investigating period. In its decision the Appellate Body said that the "intervening period" has to be taken into account.[109] Below are two different figures showing how national authorities can make statistical manipulations in calculating an increase. The Figure 2.2 represent the data relied on by the national investigation authority of Argentina, the Figure 2.3 demonstrates the difference between a correct calculation and the calculations of the Argentina's authorities.

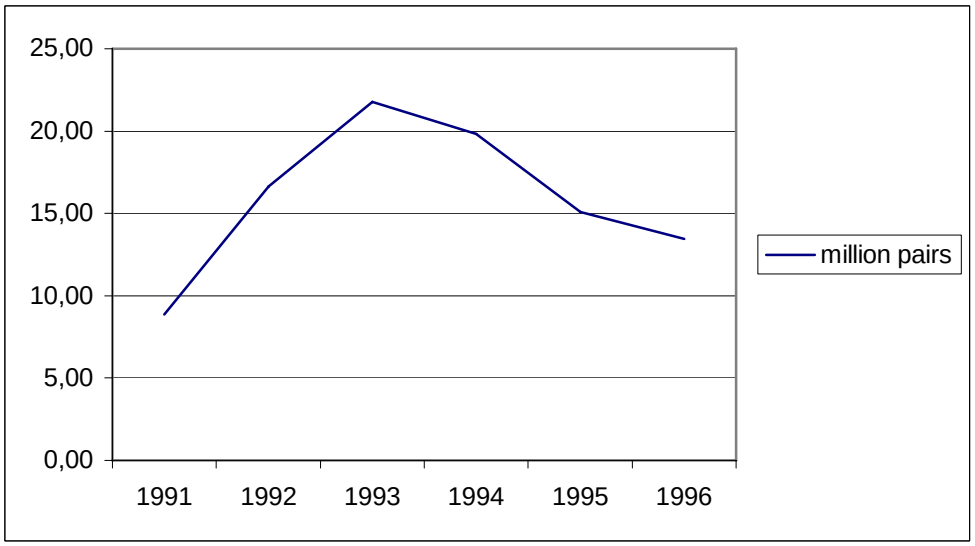
[108] Stevenson (2004), "Are World Trade Organization Members…", p: 311
[109] ibid, p:311

Figure 2.2 – Argentina Footwear Imports in 1991 and 1996



Source: Stevenson, Cliff (2004). "Are World Trade Organization Members Correctly Applying World Trade Organization Rules in Safeguard Determinations?". Journal of World Trade 38(2): 307-329. The Netherlands: Kluwer Law International. P: 311

Figure 2.3 – Argentina Footwear Imports between 1991-1996



Source: Stevenson, Cliff (2004). "Are World Trade Organization Members Correctly Applying World Trade Organization Rules in Safeguard Determinations?". Journal of World Trade 38(2): 307-329. The Netherlands: Kluwer Law International. P: 311

As could be seen from the Figure 2.3, the increase is not "recent, sudden, sharp or significant"[110]. On the contrary starting from the peak of 1993, the imports decreased gradually every year.

[110] ibid, p: 312

Another question about the condition of "increase in imports" is whether the increase needs to be continuing up to the final period of the safeguard investigation.[111] The Panel in *US-Line Pipe* case concluded that this is not necessary since the imports were still at high levels despite the fall during the final period of the investigation[112]. Lee reflects this decision as follows:

> "…the recent decline in the amount of imports does not necessarily negate the claim for the increase in imports where the imports remain at a significantly increased level."[113] (Lee, 2002, p: 651)

But this Panel decision was not appealed and it is not clear whether the Appellate Body would agree with this decision (if it was appealed), since in the *Argentina-Footwear* case the Appellate Body required the increase to be "recent" and "sudden".[114] So this point remains debatable and the national competent authorities must investigate whether the decrease in the final period is a minor and temporary deviation from the general increase in imports or a significant downward trend in imports, because in the latter a safeguard measure may not be required.

On the contrary to the above example of *US-Line Pipe* case, in the *US-Wheat Gluten* case there was a decrease in the early period of the investigation but then the imports increased sharply.[115] The Panel for *US-Wheat Gluten* said that the increase in imports does not need to be constant and in this case the decrease in the beginning of the investigation period is followed by the sharp and recent increase, as a result the competent authority's claim for the increase in imports is justifiable.[116]

2.4.2.3. Causation

As stated above, the Article XIX of the GATT 1994 and the Article 2:1 of the WTO Agreement on Safeguards require a causal link between the "increase in imports"

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[111] ibid, p: 312 and Lee, (2002b), "Safeguard Measures…", p: 651
[112] Lee, (2002b), "Safeguard Measures…", p:651
[113] ibid, p: 651. US-Line Pipe WTO Panel decision is reflected from Lee (2002).
[114] ibid, p: 651 and Stevenson, (2004), "Are World Trade Organization Members…", p: 312
[115] Lee, (2002b), "Safeguard Measures…", p: 651
[116] ibid, p: 651

and "serious injury" or "threat of injury" to the domestic industry. Furthermore Article 4:2 (b) of the WTO Agreement on Safeguards requires that the injury caused by factors other than increased imports must not be attributed to the increase in imports. The Panels and Appellate Body examined this "non-attribution" requirement in several cases such as *US-Wheat Gluten*, *US-Line Pipe*, *US-Lamb Meat*, *Argentina-Footwear* and etc.[117] In the light of the Panel Reports and Appellate Body rulings, the competent authorities should separate the injurious effects of increased imports and other factors and examine them separately.[118] Stevenson reflects the decision of the Appellate Body in *US-Lamb Meat* as follows:

> "…the final identification of the injurious effects caused by increased imports must follow a prior separation of the injurious effects of the different causal factors. If the different factors are not separated and distinguished from the effects of increased imports, there can be no proper assessment of the injury caused by that single decisive factor."[119] (Stevenson, 2004, p: 312)

2.4.2.4. Determination of Serious Injury and Threat Thereof

Once the causal link is demonstrated then the serious injury or threat of serious injury caused by the increase in imports must be examined and evaluated before the application of a safeguard measure. As mentioned above, the Article 4:2(a) of the WTO Agreement on Safeguards prescribes eight injury factors that need to be examined by the national competent authorities for injury determination in the industry concerned. At this point an important question is whether all of these injury factors must be investigated or it is sufficient to examine only some of them.[120] In *Korea-Dairy Products* case the Panel concluded that the wording of the Article 4:2(a) requires the national authorities to investigate each of the eight factors listed in the article and consequently some of the factors may be disregarded or given lesser importance if they do not show serious injury.[121] This decision was reinforced by the Panel and Appellate

[117] See: ibid, p: 655-657
[118] ibid, p: 657 and Stevenson, (2004), "Are World Trade Organization …", p: 312
[119] Stevenson, (2004), "Are World Trade Organization Members…", p: 312. He reflects the para.180 of the Appellate Body decision in *US-Lamb Meat* safeguard case.
[120] Lee, (2002b), "Safeguards Measures…", p: 652.
[121] ibid, p: 652

Body decisions in the *Argentina-Footwear* case.[122] Whether all or some of the factors demonstrate serious injury is not the important point; as concluded by the Appellate Body in the *Argentina-Footwear* case the outcome of the examination of injury factors must point to an overall impairment of the industry in question.[123]

Another question raised about the "serious injury" rule is the meaning of "serious"; what is the standard of serious injury? Appellate Body in the *US-Lamb Meat* ruling emphasised that the standard of serious injury as mentioned in Article 4:2(a) is too high and stated as follows:

> "…We believe that the word 'serious' connotes a much higher standard of injury than the word 'material'."[124] (*Reflected from* Stevenson, 2004, p: 312)

The provisions and the interpretations of the Article 4:2(a) (i.e. the Appellate Body decision stated above) require the national competent authorities to present evidence of a really negative situation in the domestic industry as a result of their examination of injury factors.

2.4.2.5. Non-discrimination

Contrary to the antidumping and countervailing duties, in principle safeguard measures are applied to all exporters of a specified product on an MFN basis regardless of the source of the imports. As stated above, the Article 2:1 of the Agreement on Safeguards explicitly reaffirms the non-discrimination rule of the Article XIX of the GATT; but some provisions and procedures of the agreement explicitly or implicitly allow the signatories to discriminate between sources under certain conditions.[125] The footnote 1 of the Article 2:1 explicitly allow the members of a customs union or free trade area to make a discrimination in its application of a safeguard measure to the advantage of the members of that customs union or free trade area. Also some

[122] ibid, p: 652. See deep note 48 of Lee's work.
[123] Ibid, p: 652
[124] Stevenson, (2004), "Are World Trade Organization Members…", p: 312. Appellate Body decision in US-Lamb Meat case is reflected from this work.
[125] Bown & McCulloch, (2003), "The WTO Agreement on Safeguards: An Empirical Analysis of Discriminatory Impact", p: 1.

procedures of the agreement imply that the signatories are permitted to discriminate between exporters.[126] A safeguard measure applied in the form of a quota tends to favour historically established suppliers rather than new ones, because the quotas are allocated by taking into consideration the quantities imported in the previous years. Consequently, although non-discrimination rule is reaffirmed and is a general condition to be met in the application of a safeguard measure, the Agreement on Safeguards allows selective application of safeguards under certain conditions, as explained in the preceding part of this study. [127]

2.4.2.6. Proportionality in the Application of Safeguard Measures

As stated above, the Article 5:1 of the Agreement on Safeguards explicitly requires the safeguard actions of the member states to be proportionate to the injury caused by the increase in imports. Under this article, the safeguard measures can only be applied to the extent that they prevent or remedy the injury attributed to the increase in imports, not all the injury experienced by the domestic industry can be remedied with a restriction on imports. The WTO dispute settlement Panels and Appellate Body decisions acknowledge this requirement.[128] The Appellate Body in *US-Line Pipe* safeguard case concluded that:

> "… in Article 5.1, first sentence, must be read as requiring that safeguard measures may be applied *only to the extent that they address serious injury* attributed to increased imports"[129] (reflected from Stevenson, 2004, p:313) [*emphasis added*]

In order to apply the safeguard measures to the extent necessary to prevent or remedy only the serious injury attributed to the increase in imports, it is important to make a prior separation of the injury caused by the increase in imports from the effects

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[126] Ibid, p: 1.
[127] For an analysis of non-discrimination and selectivity under the Agreement on Safeguards see the previous section 2.4.1.2 of this study. Also see Bronckers, M.C.E.J. Selective Safeguard Measures in Multilateral Trade Relations: Issues of Protectionism in GATT European Community and United States Law. The Netherlands: Kluwer Law and Taxation Publishers.
[128] Lee, (2002b), "Safeguard Measures…", p: 657-658. The Panel and Appellate Body decisions in the safeguard cases of Korea-Dairy Products and US-Line Pipe are some examples.
[129] Stevenson, (2004), "Are World Trade…", p: 313. Appellate Body decision in US-Line Pipe case is reflected from this work.

of different injurious factors.[130] This is mentioned in Article 4:2(b) "non-attribution" requirement of the Agreement on Safeguards as a precondition in identifying the causal link between the increase in imports and the serious injury, which is detailed above.

In the *Korea-Dairy Products* case the Appellate Body concluded in parallel to its ruling in the above *US-Line Pipe* case and moreover mentioned that the obligation under the Article 5.1 (the obligation to impose safeguards to the extent necessary to remedy the injury attributable to the increase in imports) applies regardless of the form of safeguard measure used.[131]

> "… We agree with the Panel that the wording of this provision leaves no room for doubt that it imposes an *obligation* on a Member applying a safeguard measure to ensure that the measure applied is commensurate with the goals of preventing or remedying serious injury and of facilitating adjustment. We also agree that this obligation applies regardless of the particular form that a safeguard measure might take. Whether it takes the form of a quantitative restriction, a tariff or a tariff rate quota, the measure in question must be applied "only to the extent necessary" to achieve the goals set forth in the first sentence of Article 5.1."[132] (WTO, 2005, Appellate Body Repertory, Korea-Dairy, WT/DS98/AB/R)

Furthermore, safeguard measures are intended to provide a breathing period for the domestic industry and -as stipulated under Article 5.1- to facilitate its adjustment to international competition and when applied these measures must be liberalized progressively in order to make sure the industry is adjusting to international competition. At this point it should be stressed that the form of the safeguard measure is also important. As explained above in the part 2.4.1.1, under the Agreement on Safeguards the safeguard measures may take three forms; tariffs, tariff rate quotas or quotas and the form of the measure could affect the degree of protection and would

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[130] ibid, p: 313

[131] WTO, 2005, Appellate Body Repertory, Available online at the website of the WTO http://www.wto.org/english/tratop_e/dispu_e/repertory_e/s1_e.htm#S.1.34.1, Access date March 11, 2005

[132] WTO, Appellate Body Repertory, available online at the website of the WTO, Access date: March 11, 2005,WWW URL: http://www.wto.org/english/tratop_e/dispu_e/repertory_e/s1_e.htm#S.1.34.1 Could also be accessed from: WTO, Documents Online, Dispute Settlement, Korea - Dairy, para.96, Document no: WT/DS98/AB/R. Online document http://docsonline.wto.org/DDFDocuments/t/WT/DS/98ABR.DOC p: 30, para.96.

have an impact on the adjustment of the safeguard-protected industry. The measures in the form of quotas are much more restrictive than tariffs and isolates the domestic industry from international developments since the changes in the international prices would not be felt by the industry. Consequently the adjustment of the industry to international competition could be difficult. But, if a high degree of protection is required than quotas would enable this.

2.4.3. Safeguard Actions: Implementation of Agreement on Safeguards

It is evident from the Appellate Body rulings and Panel reports that the signatories are not applying safeguards correctly and consistently with the rules of the WTO Agreement on Safeguards.[133] At least this argument is true for the safeguard measures that were brought to the review of the dispute settlement mechanism of the WTO.[134] The recent work by Stevenson (2004) examines the application of Agreement on Safeguards and tries to evaluate whether WTO members apply safeguard measures consistently with the rules.[135] Stevenson (2004) points out the inconsistencies in the competent authorities' safeguard determinations and findings in the safeguard investigations that served as a basis for their application of definitive measures. He suggests a methodology for collecting and analysing evidence for the above substantive requirements to impose a safeguard measure. He concludes that most of the safeguard actions taken were WTO inconsistent due to the problems in the evidence used as a basis for imposing the measures.

The Table 2.5 below shows the historical use of safeguards during the period of GATT (between 1947 and 1994) and during the first six years of the WTO system (between 1995 and 2000). The number of safeguard actions between 1947 and 1994 is 150, while the number between 1994 and 2000 is 20. When compared to the number of

[133] Stevenson, (2004), p: 329 also see the entire study. See Lee, (2002), Safeguard Measures...
[134] See Stevenson, (2004), Are World Trade Organization Members Applying …" and Lee, (2002b), "Safeguard Measures: Why are they not Applied Consistently With the Rules?" for a detailed analysis of inconsistent implementation of safeguards by WTO members.
[135] Stevenson, (2004), Are World Trade Organization Members Applying World Trade Organization Rules in Safeguards Determinations.

antidumping and the countervailing duties mentioned in the previous part of this chapter, it is evident that the GATT or the WTO members did not prefer safeguards.

Table 2.5 - Historic Use of the GATT's Article XIX and the WTO's Agreement on Safeguards (between 1947 and 2000)

Country	Number of Article XIX cases resulting in protection 1947 – 1994	Number of Agreement on Safeguards cases resulting in protection 1995 – 2000
Australia	38	0
EEC	26	0
US	25	5
Canada	22	0
Austria	8	0
South Africa	4	0
Chile	3	1
Finland	2	0
New Zealand	1	0
Norway	1	0
Czech Republic	1	1
India	0	6
Egypt	0	2
Korea	0	2
Latvia	0	1
Argentina	0	1
Brazil	0	1
Other	19	0
TOTAL	**150**	**20**

Source: Chad P. Bown, Why Are Safeguards Under The WTO So Unpopular?, World Trade Review (2002),1: 1, 47-62, UK, p:48. [*Total numbers of formal safeguard actions are added by the author*]

When comparing the initiations of safeguard investigations and antidumping investigations, the number of safeguard investigations is negligible. Below Table 2.6 indicates the number of antidumping investigations initiated between 1995 and 2001, by country and at the bottom part of the table the number of safeguard investigations initiated during the same period is shown. This table clearly exhibits the gap between the use of the two trade policy instruments and demonstrate that antidumping measures are preferred. The total number of antidumping investigations initiated was 1,845 while the number for safeguards was 73 during the period 1995-2001.

Table 2.6 – Initiations of Anti-dumping Investigations by Reporting Member, 1995 - 2001

Reporting country	1995	1996	1997	1998	1999	2000	2001	Total 1995-2001
United States	14	22	15	36	47	47	74	255
India	6	21	13	27	65	41	75	248
European Union	33	25	41	22	65	32	28	246
Argentina	27	22	15	8	24	45	26	167
South Africa	16	33	23	41	16	21	6	156
Australia	5	17	42	13	24	15	23	139
Canada	11	5	14	8	18	21	25	102
Brazil	5	18	11	18	16	11	16	95
Mexico	4	4	6	12	11	7	5	49
Korea, Rep. of	4	13	15	3	6	2	4	47
Indonesia	0	11	5	8	10	3	4	41
New Zealand	10	4	5	1	4	10	1	35
Turkey	0	0	4	1	8	7	14	34
Egypt			7	8	5	1	6	31
Venezuela	3	2	6	10	7	1	1	30
Israel	5	6	3	7	0	1	5	27
Peru	2	7	2	3	8	1	0	23
Colombia	4	1	1	6	2	3	6	23
Malaysia	3	2	8	1	2	0	1	17
Philippines		1	2	3	6	2	0	15
Chile	4	3	0	2	0	5	0	14
Trinidad and Tobago	0	1	0	4	3	1	0	9
Poland	0	0	1	0	7	0	0	8
Costa Rica	0	4	1	1	0	0	0	6
Chinese Taipei	0	0	0	0	0	3	3	6
Thailand	0	1	3	0	0	0	1	5
Uruguay	0	0	0	0	0	1	3	4
Czech Republic	0	0	0	2	1	0	0	3
Japan	0	0	0	0	0	0	2	2
Nicaragua	0	0	0	2	0	0	0	2
Panama	0	0	0	2	0	0	0	2
Ecuador	0	0	0	1	0	0	0	1
Guatemala	0	1	0	0	0	0	0	1
Slovenia	0	0	0	0	1	0	0	1
Jamaica	0	0	0	0	0	0	1	1
Total	**156**	**224**	**243**	**250**	**356**	**281**	**330**	**1,845**
Memorandum item								
Initiations of safeguards investigations	2	5	3	10	15	26	12	73

Source: Bacchetta, Marc & Jansen, Marion. (2003). Adjusting to Trade Liberalization. WTO Special Studies 7. Geneva: WTO Publications. (April). P: 57.

Below, Table 2.7 shows the number of safeguard investigations initiated between 1995 and 2002, by countries. As mentioned above the number of safeguard investigations is small as compared to that of antidumping but it must be stressed that sometimes safeguards may have a larger scope since one safeguard investigation covers goods coming from several different countries whereas an antidumping investigation targets one product from one source.[136]

[136] Bacchetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 49.

Table 2.7 - Number of notifications of safeguard investigations initiated, between 1995 and 2002

	1995	1996	1997	1998	1999	2000	2001	2002*	Total
India			1	5	3	2		1	12
United States	1	2	1	1	2	2	1		10
Chile					2	3	2	2	9
Jordan						1		7	8
Czech Republic					1	2	1	3	7
Venezuela						3	2		5
Korea	1	2			1				4
Argentina			1	1		1	1		4
Bulgaria						1	1	1	3
Egypt				1	1	1			3
El Salvador						3			3
Japan						3			3
Philippines							3		3
Poland						1		2	3
Brazil		1					1		2
Ecuador					2				2
Latvia					1			1	2
Morocco						2			2
Slovak Republic					1	1			2
Australia				1					1
Canada								1	1
Colombia					1				1
Costa Rica								1	1
European Comm.								1	1
Hungary								1	1
Slovenia				1					1
Total	2	5	3	10	15	26	12	21	94
Memorandum item									
Total number of anti-dumping initiations	156	224	243	250	356	281	330	NA	1,845

** See cut-off date. Cut-off date for the information on safeguards: 30 July 2002.*
Source: Bacchetta, Marc & Jansen, Marion. (2003). Adjusting to Trade Liberalization. WTO Special Studies 7. Geneva: WTO Publications. (April). P: 57.

Table 2.7 gives detailed information about the safeguard investigations initiated by WTO members between 1995 and 2002. When we look at the total number of safeguard investigation per each initiating member, the major users of this instrument are India, the United States, Chile, Jordan and the Czech Republic respectively. During this period the EU initiated only one safeguard investigation (on steel products, see Table 2.9) whereas Turkey did not take any action under the Agreement on Safeguards. But recently, at the beginning of January 2005, Turkey imposed quotas on certain textiles products from the People's Republic of China on the basis of the Textiles-Specific Safeguard Clause included in the Accession Protocol of China to the WTO.[137]

[137] Dünya. (Turkish Daily) "Çin, Türkiye'yi DTÖ'ye şikâyete hazırlanıyor" p: 1&6. (2005, 17th February). Note that Turkey did not impose these measures under WTO Agreement on Safeguards.

As mentioned above, the calculation of safeguard investigations are different from that of antidumping investigations; each safeguard measure is counted as one although it covers products from different sources.[138] Also, a safeguard investigation that includes several different products is counted as one, even if these products are not always directly competitive.[139] For instance the US steel safeguard included 33 different steel products and the EU steel safeguard investigation included 21 steel products.[140] Nonetheless, as could be seen in the above tables, the WTO and most of the studies calculate each of them as one safeguard investigation. But the value and volume of trade affected by safeguard actions are high. In the below table Stevenson (2004), used a methodology similar to the one used in antidumping investigations and calculated the number of safeguard investigations initiated according to the number of products covered by the investigation. As a result the number of safeguard investigations in 2001 and 2002 increased significantly as compared to the figures presented in Table 2.7 (see below Table 2.8).[141]

Table 2.8 – The Number of Safeguards Investigations Initiated between 1995-2002

YEAR	Number of Investigations Initiated
1995	2
1996	5
1997	3
1998	10
1999	15
2000	26
2001	53
2002	132

Source: Cliff Stevenson (2004), "Are World Trade Organization Members Correctly Applying World Trade Organization Rules in Safeguard Determinations?", Journal of World Trade 38(2): 307 - 329. The Netherlands: Kluwer Law International, p: 308.

[138] Bacchetta & Jansen, Adjusting to Trade Liberalization, p: 49.
[139] Stevenson, (2004), p: 308.
[140] Ibid, p: 308. Also see the following chapter for the EU's safeguard investigation on steel products.
[141] Please note that the number of safeguard investigations in 2002 mentioned in table 2.7 includes investigations up to 30 July 2002.

Table 2.9 – Safeguard Investigations Initiated, by country & product, 1995-2002

	Industrial products	Agricultural products
Argentina	- Footwear - Toys - Motorcycles	- Peaches
Australia		- Swine meat
Brazil	- Toys	- Coconuts
Bulgaria	- Non aqueous ammonium nitrate - Corks - Ammonium nitrate	
Chile	- Tyres - Socks (synthetic and cotton) - Steel - Lighters	- Wheat, wheat flour, cane/beet sugar, vegetable oils - Liquid and powdered milk - Mixed oils - Glucose
Colombia	- Taxis	
Costa Rica		- Rice
Czech Republic	- Footwear - Citric acid - Wires, ropes and cables - Tubes and pipes	- Cane/beet sugar - Isoglucose - Cocoa powder
Ecuador	- Sandals - Matches	
Egypt	- Safety matches - Common fluorescent lamps	- Powdered milk
El Salvador	- Fertilizers	- Pork - Rice
European Communities	- Steel	
Hungary	- Steel	
India	- Acetylene Black - Carbon Black - Slabstock polyol - Propylene glycol - Hardboard - Styrene Butadiene Rubber - Phenol - Acetone - White/Yellow Phosphorus - Gamma ferric oxide / magnetic iron oxide - Methylene chloride - Epichlorohydrin	
Japan		- Tatami-Omote - Welsh Onion - Shiitake mushrooms
Jordan	- Magnetic tapes - Tiles - Cooking appliances - Electronic accumulators - Sinks	- Biscuits / chocolates - Pasta
Korea	- Bicycles and parts	- Soybean oil - Dairy products - Garlic
Latvia		- Swine meat - Pork

(Table 2.9 is continued in the next page)

Table 2.9 (continued) – Safeguard Investigations Initiated, by country & product, 1995-2002

	Industrial products	Agricultural products
Morocco	- Rubber plates and sheets	- Bananas
Philippines	- Grey Portland cement - Ceramic floor tiles	- Tomato paste
Poland	- Potassium nitrate - Calcium carbide - Steel	
Slovak Republic		- Swine meat - Sugar
Slovenia		- Swine meat
United States	- Brooms - Steel wire rod - Line pipe - Crab meat - Extruded rubber thread - Certain steel products	- Tomatoes - Tomatoes and peppers - Wheat gluten - Lamb meat
Venezuela	- Cold rolled steel - Hot rolled steel - Tyres - Paper - Iron/steel U sections	

Note: Cut-off date for the information on safeguards: 30 July 2002.
Source: Bacchetta, Marc & Jansen, Marion. (2003). Adjusting to Trade Liberalization. WTO Special Studies 7. Geneva: WTO Publications. (April). P: 51-52.

Above Table 2.9 exhibits the products covered in the safeguard investigations of WTO members between 1995 and 2002. As could be seen in the Table 2.9 both industrial and agricultural products are targeted by these safeguard actions.

2.5. Reasons for a Safeguards Mechanism

The inclusion of safeguard provisions enabling temporary relief from imports in trade liberalizing agreements may seem contradictory to the nature of these agreements. But these safeguard provisions are a *sine qua non* of international trade agreements, since they provide a means for the signatories to adjust their domestic industries to international competition and they encourage further trade liberalization because they

serve as a "safety-valve" and also have an "insurance" effect.[142] Safeguards bring flexibility to the trading system.[143] These escape clauses provide insurance and so governments feel free to enter a trade liberalizing agreement and easily lower their tariffs. Also, governments may face pressure in the future due to their trade liberalization attempts and safeguards act as a "safety-valve" within the framework of the agreement and they can prevent resort to illegal ways to stop imports. Consequently the stability of the overall agreement will be maintained.

The most cited arguments in favour of including a safeguard mechanism in a trade agreement are detailed below. These are Trade Liberalization, Economic Adjustment and Political Economy or Non-Economic Arguments.

2.5.1. Trade Liberalization

This argument considers safeguards as a "safety-valve" that would enable further trade liberalization.[144] At first sight trade restricting safeguard measures and trade liberalization through trade agreements may seem contradictory. But as this rationale argues that in the presence of an escape clause the hesitant countries would much easily enter into a trade liberalizing agreement and lower their tariffs if they have a safety-valve safeguard instrument to be used to withdraw prior concessions in case of an emergency situation. This instrument would allow them to increase their tariffs or apply a quota in case of a surge in imports.

Furthermore, safeguards have a second function. Inclusion of safeguards in trade agreements also has an "insurance" effect. Safeguards serve as an insurance against

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[142] See Hoekman & Kostecki, (1995), The Political Economy of The World Trading System…, p: 161 and Trebilcock & Howse, (1995), The Regulation of International Trade, p: 163.
[143] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 163.
[144] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 166. See also Hoekman & Kostecki (1995), The Political Economy of …, p:161 and Bown & Crowley, (2003), "Safeguards in the World Trade Organization" p: 20-22.

sudden increases in international prices.[145] In such a case countries would have an instrument at their disposal to increase their tariffs temporarily.

Also, it is better to have a multilateral safeguards mechanisms rather than bilateral or unilateral secret import relief measures. Availability of a multilateral safeguard instrument would preserve the overall integrity of the multilateral system by reducing the chances of seeking a protective instrument outside the system, such as VERs.

2.5.2. Economic Adjustment

The second argument for including safeguard measures in a trade liberalizing agreement is the economic adjustment rationale which was advanced by Jackson.[146] This rationale points to the possible need of domestic industries to undertake structural adjustment when faced with international competition as a result of trade liberalization. Some domestic industries could be incapable of competing with more efficient foreign suppliers and they may need some time to adjust to heightened import competition. In such situations safeguards are an available policy measure for governments to apply temporary trade restrictions in order to help domestic industries by giving them the required time to make adjustments. It is evident that the economic adjustment rationale is the major objective of the WTO Agreement on Safeguards, since the need for structural adjustment is explicitly mentioned in its preamble.[147] The issue of structural adjustment and safeguards is detailed in the last chapter of this study.

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[145] Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 22. See also Hoekman & Kostecki, (1995), p:161.
[146] Jackson, J.H., The World Trading System: Law and Policy of International Economic Relations, Cambridge MA: MIT Press, (1989), P: 150. See also Trebilcock & Howse, (1995), The Regulation of International Trade, p: 167.
[147] WTO, (1995), The Results of the Uruguay Round of …, p: 315. (Preamble)

2.5.3. Non-Economic / Political-Economy Motives

Safeguards mechanism may also have some non-economic or political-economy motives behind it since the decision to apply a safeguard measure sometimes rests on some political factors.[148] Due to the losses suffered by some parts of the society as a result of import competition – such as factory close-ups, displaced workers and capital and severely affected immobile workers or those who have sector-specific skills and in the presence of huge senescent industries – the government may feel obliged to protect them via import restrictions. So equity considerations may be effective in the government intervention to the adjustment process through an application of a safeguard measure to compensate the losers of freer trade.[149] Even though free trade brings efficiency gains to the whole society, with the effect of the argument that the costs and losses are suffered by a small but politically effective part of that society so the government may choose to intervene and protect the interests of the losers.[150] This rationale shows that safeguards may be employed as a tool of income redistribution and promotion of justice or other political ends, such as securing the elections.

[148] See Trebilcock & Howse, (1995), The Regulation of International Trade, p: 168-169 and Bown & Crowley, (2003), Safeguards in the World Trade Organization, p: 27. For political economy of trade policy see: Baldwin, R.E. (1985). The Political Economy of US Import Policy. Cambridge: MIT Press. Hillman, A.L. (1989). The Political Economy of Protection. Chur: Harwood.
[149] Banks, Gary & Tumlir, Jan, (1986), Economic Policy and the Problem of Adjustment, Trade Policy Research Centre Thames Essays No. 45, London: Gower. P: 31-35.
[150] Trebilcock & Howse, (1995), p: 168.

III. SAFEGUARDS IN THE TRADE POLICY OF THE EU: THE EU'S IMPORT RELIEF MEASURES & IMPLICATIONS FOR TURKEY

The European Union is a very important international player and it is the largest trading group in the world. As a result, trade policies of the EU have important effects on the economies of its trading partners and to global trade as a whole.

The EU's share of total world trade in goods is 19% and 24% of trade in services, altogether the EU's share in total world trade accounts for 20%. Given these figures, the EU is the largest exporter and second largest importer in the world.[151]

Even though the EU is the largest trading entity in the world, approximately 80% of the EU's trade is within Europe; either intra-EU, with the EFTA, with CEECs (most of which have joined the Union recently on May 1st, 2004) or the rest of Europe. With 2001 figures, intra-EU trade accounts for 60 % of the EU's total trade.[152]

The EU's trade policy is implemented by means of certain trade policy instruments. Safeguards measures are among these instruments but it is one of the least important ones. Historically, the EU has preferred antidumping duties and Voluntary Export Restraints to provide import relief for its domestic industries.

Most of the EU's trade is covered by bilateral or regional association or trade agreements, and the Commission coordinates these arrangements. By the mandate of the Council, the Commission negotiates multilateral and bilateral trade agreements,

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[151] European Commission – DG Trade, "The European Union Trade Policy; Our Work at DG Trade" (powerpoint presentation), Brussels: February 2004. Retrieved: 21.08.2004 on the WWW URL: http://europa.eu.int/comm/trade/gentools/ourwork.ppt , p: 6. See Also the WTO, (2004), Trade Policy Review: The European Communities, (dated: 27.10.2004). WTO Doc. No. WT/TPR/S/136. Retrieved: January 15th, 2005 on the WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm p: xi.

[152] Eurostat, Economic Portrait of the European Union 2001, Luxembourg: European Commission, Office for Official Publications of the European Communities, (2001), p: 68

monitors and applies trade policy and proposes new legislation. Concerning the trade policy, the EU has the exclusive competence and this policy field is not subject to unilateral action by individual member states.

The legal basis of the EU's Common Commercial Policy is the Articles 110-113 of the Treaty of Rome that are now Articles 131-135 of the Maastricht Treaty (Treaty on European Union). These articles cover the trade in goods and the amendments introduced with the Amsterdam Treaty and the Nice Treaty brought most of the trade in services and intellectual property under these articles as well.

In this chapter, the first part deals with the common trade policy of the EU which is called as the "Common Commercial Policy" (CCP). In this part the legal basis and the institutional context of CCP is mentioned and its basic features are briefly explained. In the second part, the trade policy instruments of the CCP are examined. Trade protection and the costs of protection to the EU Economy are portrayed in the third, and it is followed by a detailed analysis of the Safeguards in the trade policy of the EU in the fourth part. In the final part, the impact of EU's external trade policy and especially the trade policy instruments on Turkey is explained. In this part special emphasis is given to the trade defence actions of the parties against each other.

3.1. Common Commercial Policy of the EU: An Overview

Common Commercial Policy (CCP) gives the EU mainly exclusive competence for external trade relations and trade policy-making. The area of external trade is one of those policy areas where Member States of the EU have transferred most of their sovereign powers to the EU institutions.

Establishment of a customs union between the members of the then European Economic Community was required by the Treaty of Rome and a common commercial policy was needed to co-ordinate the external trade policies of the members. The member states felt the need to develop a common commercial policy from the very beginning of the European integration because without a common policy in the area of

trade there would be problems in the internal market of the EU and the purpose of a single market could not be completed. Moreover, a common commercial policy strengthens the bargaining power of the individual member states in the multilateral framework. Nevertheless, it must be stated that it is not always very easy to reach a common position among members when important concessions to third parties are in question.[153] And Member states have started to dispute the extent of Community competence for trade relations as trade began to account for a growing share of GDP and as the international system grew more complex.

Common Commercial Policy (CCP) is composed of a Common External Tariff (CET), common trade arrangements with third countries or regions and a uniform application of trade policy instruments for imports and exports as well as protection in the case of unfair trade practices such as dumping or subsidization and also protection to provide adjustment assistance to community industries.[154]

In its recent Trade Policy Review for European Communities, the WTO Secretariat stated that the EU has a "generally open trade regime" for non-agricultural products and "somewhat protected regime" for agricultural products.[155]

> "The EC market is open for non-agricultural products and somewhat protected for agricultural goods. The EC is the world's leading exporter and the second-largest importer of goods. This is indicative of the importance of trade to the EC, and of the significance of the EC market for the world at large…"[156] (WTO, 2004, p: iv)

In accordance with the trade policy review of the WTO, it could be said that the external trade policy of the EU is rather liberal for industrial goods as compared to agricultural products but it also involves protectionist instruments that could be employed to protect sensitive domestic industries or to fight against unfair imports. In

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[153] For a detailed analysis of the problem of reaching a common position in international trade negotiations see Özer, Yonca (2000), The Problem of the EU in Reaching and Maintaining a Common Position in International Trade Negotiations, Marmara Journal of European Studies, Vol.: 8, No: 1-2, 129-154.
[154] See Article 133.
[155] WTO, (2004), Trade Policy Review: European Communities (dated: 27.10.2004), WTO Doc. WT/TPR/S/136, document available at, http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm,
[156] Ibid, p: iv.

fact, the WTO's Trade Policy Review mentions that the EU is one of the top users of contingency trade remedies.[157] A recent notable work by Patrick A. Messerlin (2001) demonstrated the level of overall protection in the European Union trade policy and the costs of this trade protection to the European Economy.[158]

> "The EC remains a leading user of contingency trade remedies; in 2002 and 2003, it initiated a total of 27 anti-dumping, 4 countervailing and 3 safeguard investigations."[159] (WTO, 2004, p: iii)

Before examining the basic characteristics and trade policy instruments of the CCP, the legal basis and institutional context of the trade policy of the EU is explained briefly in the following section.

3.1.1. Legal Basis and Institutional Context

The legal basis for the EU's Common Commercial Policy and external trade relations was prescribed under articles 110-116 of the Treaty of Rome which are now Articles 131-135 of the Maastricht Treaty (Treaty on European Union – TEU).

Article 131 (Article 110 of the Treaty of Rome) states that:

> "By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.
>
> The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States."

But the cornerstone of the CCP is the Article 133 (Article 113 of the Treaty of Rome), which states that:

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[157] Ibid, p: iii, item: 12.
[158] See Messerlin, Patrick A. (2001), Measuring the Costs of Protection in Europe: European Commercial Policy in the 2000s. Washington DC: Institute for International Economics.
[159] WTO, (2004), Trade Policy Review: European Communities, (Summary part), p: iii

> "The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies."[160]

As mentioned above, the EU has exclusive competence for trade policy making and implementing the Common Commercial Policy that includes the trade in goods and trade in most of the services. The amendments introduced with the Nice Treaty, extended the coverage of the CCP to include negotiation and conclusion of agreements about trade in services and commercial aspects of intellectual property.

Trade Policy (or the Common Commercial Policy) is one of the few community policies that are decided by majority rather than unanimous vote in the Council. Even before the Single European Act (SEA which entered into force in 1987) Article 113 (Article 133 of the Maastricht Treaty) was subject to qualified majority vote. And this is one of the few articles that have been subject to majority voting in the Council.[161] The majority voting procedure Consequently, this feature gives the Commission a strong political role in the field of external trade relations, because Council can decide only on the basis of a commission proposal and can overturn a Commission proposal only by unanimity.[162] Furthermore, Article 228 (now Article 300) gives the Community the authority to conclude international agreements; again Council acts with majority voting.

Article 133 (the article 113 of Rome Treaty) also describes the Commission-Council relationship by stipulating that the Council must approve Commission proposals to implement the CCP and must also approve Commission recommendations to open negotiations for agreements with third countries (in both cases acting by a majority vote). In addition, Article 133 provides for a special committee appointed by the Council to assist the Commission: this is the Article 113 Committee (Article 133 Committee with the Maastricht Treaty) composed of member state civil servants that

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[160] Article 133: (1) of the Treaty on European Union (Maastricht Treaty)
[161] McAleese, D., "External Trade Policy" in Ali M. El-Agraa (Ed.) The Economics of the European Community, Third Edition, Hertfordshire: Phillip Allen, (1990), p:422
[162] ibid, p: 422

meet regularly with the Commission to approve the Commission's negotiating strategy and proposals.

Implementation of Articles 133 and Article 300 (article 228 of the Treaty of Rome) has been dominated by two controversies that could be summarized as: 1) nature and conduct of the Commission-Council relationship; 2) the extent of EC competence given the emergence of new trade issues and rapidly changing international trade agenda. Both are classic examples of the struggle between supra-nationalism and inter-governmentalism within the EU.

3.1.2. Basic characteristics of the CCP

The basic characteristics of the Common Commercial Policy of the EU could be listed as a Common External Tariff, commonality of trade policies, preferential trade agreements with third countries and regions, emphasis on regionalism rather than multilateralism, trade protection and attention to sensitive industries.

EU trade policy has multilateral, bilateral/ regional and unilateral dimensions. Since the EU is a member of the WTO, the external trade policy of the EU is implemented within the framework of WTO agreements and rules. The EU also concludes bilateral or regional trade agreements with third countries. So we can say that EU develops rules beyond the multilateral framework. Also, the EU implements unilateral measures and makes unilateral or asymmetrical concessions to some least developed or developing countries in order to support democracy, promote economic development and political stability in favour of the EU's political priorities.

3.1.2.1. CET (Common External Tariff)

Common External Tariff (CET) is the key feature of the CCP and was established in 1968. CET is the common customs tariff of the EU that is applied by all members to imports coming from third counties. The average MFN Tariff rate of the

EU / EC is 6.5% as mentioned in the WTO Secretariat's Trade Policy Review of October 2004 for the European Communities.[163] CET as a trade policy instrument of the EU is examined in the following part of this chapter.

3.1.2.2. Common Trade Policies: Uniform rules and principles

The trade policies of the EU member states are identical with each other and they include uniform rules and principles. Commonality does not mean that all traded goods are treated equally. This term also does not signify that there is no difference in the treatment of third countries. Commonality signifies the uniformity of treatment by EU members in trade relations with the third countries. It must be stated that this basic feature could not be attained at least until 1992 Single Market because of non-tariff barriers that the member states employed individually regardless of Commission's approval.

3.1.2.3. Emphasis on Regionalism and discrimination: Preferential Trade Agreements with Third countries and Regions

As mentioned above most of the EU's trade with third countries is covered by an association or trade agreement. The EU has created a network of highly developed and institutionalised regional and bilateral trading relationships involving almost every part of the world. These trade agreements and arrangements are one of the trade policy instruments of the EU and they have different types such as customs unions, free trade areas, trade agreements with Less Developed Countries in Africa, Caribbean and the Pacific that are in the form of unilateral concessions, trade and cooperation agreements, etc. The below Table 3.1 demonstrates all trade agreements of the EU classified according to type of trade regime.[164]

[163] WTO, (2004), Trade Policy Review: European Communities (dated: 27.10.2004), WTO Doc. WT/TPR/S/136, WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm, p: 37.
[164] See also Table 3.2 that lists the regional trade agreements of the EU notified to the WTO as of May 2004.

Table 3.1 – The EU's Trade Agreements, as of May 2004
(Classified according to type of trade regime and preferential treatment)

Type of trade regime	Name of agreement	Countries involved
Single market	European Economic Area (EEA)	Iceland, Liechtenstein, Norway
Customs union		Turkey, Andorra, San Marino
Free-trade area		Bulgaria, Chile, Croatia, Faroe Islands, FYROM, Israel, Jordan, Lebanon, Malta, Mexico, Morocco, Palestinian Authority, Romania, South Africa, Switzerland, Tunisia
Partnership and cooperation agreements (MFN treatment)		Russia and other former Community of Independent States countries
Non-reciprocal: contractual preferences	Mediterranean Agreements, Cotonou Agreements	African, Caribbean and Pacific countries, Algeria, Egypt, Syria
Non-reciprocal: autonomous preferences	Generalized System of Preferences (GSP), and Stabilization and Association Agreements.	Other developing countries and members of the Commonwealth of Independent States Albania, Bosnia and Herzegovina, and Serbia and Montenegro (including Kosovo)
Purely MFN treatment		Australia; Canada; Chinese Taipei; Hong Kong, China; Japan; Republic of Korea; New Zealand; Singapore; and the United States.

***Source*:** WTO Secretariat. (2004). Trade Policy Review: European Communities (dated: 27 October 2004). WTO document WT/TPR/S/136. WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm. P: 23.

Even though the Article 110 of the Treaty of Rome describes the guiding principle of CCP as "to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers", the EU favours regionalism rather than multilateral trade.[165] The EU has a very developed network of regional trade agreements with different integration degrees. A list of EU's regional trade agreements is mentioned in the above table. Under these regional trade agreements, the EU makes discriminatory treatment to its trading partners instead of an MFN treatment to all countries.[166] Regional Trade Agreements of the EU are mentioned in Table 3.2 below.

[165] For an analysis of regionalism and discrimination in the trade policy of the EU see Akman, M. Sait (1999a), "The Political Economy of Protectionism and the World Trade Organisation: A Public Choice Approach to the Trade Policies of the European Union and the U.S.", p: 284-285.
[166] Ibid, p: 284.

Table 3.2- The EU's Regional Trade Agreements Notified to the WTO, as of May 2004

Agreement	Date of entry into force	GATT/WTO notification			
		Date	Related provisions	Type of agreement	Document series
EC – Chile	1-Feb-03	18-Feb-04	Article XXIV	Free trade agreement	WT/REG164
EC – Lebanon	1-Mar-03	4-Jun-03	Article XXIV	Free trade agreement	WT/REG153
EC – Croatia	1-Mar-02	20-Dec-02	Article XXIV	Free trade agreement (interim Agreement)	WT/REG142
EC – Jordan	1-May-02	20-Dec-02	Article XXIV	Free trade agreement	WT/REG141
EC – Mexico	1-Mar-01	21-Jun-02	GATS Art. V	Services agreement	WT/REG109 S/C/N192
EC – FYROM	1-Jun-01	21-Nov-01	Article XXIV	Free trade agreement (interim Agreement)	WT/REG129
EC – South Africa	1-Jan-00	14-Nov-00	Article XXIV	Free trade agreement	WT/REG113
EC – Morocco	1-Mar-00	8-Nov-00	Article XXIV	Free trade agreement	WT/REG112
EC – Israel	1-Jun-00	7-Nov-00	Article XXIV	Free trade agreement	WT/REG110
EC – Mexico	1-Jul-00	1-Aug-00	Article XXIV	Free trade agreement	WT/REG109
EC – Tunisia	1-Mar-98	23-Mar-99	Article XXIV	Free trade agreement	WT/REG69
EC – Andorra	1-Jul-91	25-Feb-98	Article XXIV	Customs union	WT/REG53
EC – Palestinian Authority	1-Jul-97	30-Jun-97	Article XXIV	Free trade agreement	WT/REG43
EC – Bulgaria	1-Feb-95	25-Apr-97	GATS Art. V	Services agreement	WT/REG1 S/C/N/55
EC – Faroe Islands	1-Jan-97	19-Feb-97	Article XXIV	Free trade agreement	WT/REG21
EC – Turkey	1-Jan-96	22-Dec-95	Article XXIV	Customs union	WT/REG22
EC – Bulgaria	31-Dec-93	23-Dec-94	Article XXIV	Free trade agreement	WT/REG1
EC – Romania	1-May-93	23-Dec-94	Article XXIV	Free trade agreement	WT/REG2
EC – Egypt	1-Jul-77	15-Jul-77	Article XXIV	Free trade agreement	WT/REG98
EC – Syria	1-Jul-77	15-Jul-77	Article XXIV	Free trade agreement	WT/REG104
EC – Algeria	1-Jul-76	28-Jul-76	Article XXIV	Free trade agreement	WT/REG105
EC – Norway	1-Jul-73	13-Jul-73	Article XXIV	Free trade agreement	WT/REG137
EC – Iceland	1-Apr-73	24-Nov-72	Article XXIV	Free trade agreement	WT/REG95
EC – Switzerland and Liechtenstein	1-Jan-73	27-Oct-72	Article XXIV	Free trade agreement	WT/REG94
EC – OCTs	1-Jan-71	14-Dec-70	Article XXIV	Free trade agreement	WT/REG106

Source: WTO. (2004). Trade Policy Review: European Communities (dated: 27 October 2004). http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm. P: 149-150 (Table AII.1 of Appendix Tables.)
Note: The above table is based on the Appendix Table AII.1 of the WTO Secretariat's Trade Policy Review for European Communities. The original table is modified as follows: the Accession Treaties of the EC/EU members and the Treaty of Rome establishing the customs union of the EC are excluded from the above table, although they were included in the original table by the WTO Secretariat.

3.1.2.4. Protection and attention to sensitive community industries

Protection is an important feature of the EU trade policy. The EU has not used trade protection only to fight against unfair trade practices but also employed protection as a means to shelter declining community industries such as textiles, steel, shipbuilding, etc. Although, the principle of trade liberalization is mentioned in the external trade policy of the EU, CCP has always been shaped by protectionism and discrimination. The EU provided instruments of protection to the organized industries that have strong lobbying power and are able to influence decision-making.[167] Mainly those that are sensitive or declining industries of the community have been granted protection. The overall level of trade protection in the EU is very high; in a recent work Messerlin (2003) calculated overall EU protection as 12 % in 1999 and mentioned that this figure is higher than normally stated elsewhere.[168]

Furthermore the EU's protection has a discriminatory and selective nature; some of the community industries are much more protected than others.[169] As a consequence of several multilateral trade negotiations, the EU's tariffs especially in industrial goods were lowered but in some sensitive sectors such as agriculture, dairy products, fishery products, textiles, etc. tariffs are still high.[170] Furthermore, Messerlin (2001) demonstrated that protection via non-tariff barriers have been very effective in various sectors especially in declining industries that have lost their comparative advantage and cannot compete with low-cost imports from developing or transition countries.[171]

3.2. Trade Policy Instruments

The EU uses certain trade policy instruments to put the objectives and principles of its Common Commercial Policy into effect. The main instruments of the CCP are the

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[167] Ibid, p: 287.
[168] Messerlin, Patrick A. (2001), Measuring the Costs of Protection in Europe, p: 21
[169] Messerlin, (2001), p: 21
[170] For the MFN tariffs of the EU, see section "3.2.1.CET and Preferential Treatment" on page: 71 of this study and Appendix 5 Table A-5.1 at the back of the study.
[171] Ibid. See the chapter … of

Common External Tariff (CET) and the trade agreements with third countries that were mentioned above. These are complemented with a set of import relief measures and common rules for exports. Since this study is concerned with import relief measures in general and safeguards in particular, the EU's common rules for exports are excluded from the analysis of EU's trade policy instruments.

The EU makes preferential treatment to its trade partners under the trade agreements and arrangements. So, most of the merchandise imports coming from these trade partners enters the Union at tariff rates lower than the MFN tariff. Although the CCP of the EU is liberal in principle for the trade in goods, it also embodies certain trade remedies to be used for import relief and is characterized by trade protection either for the purpose of protecting sensitive industries or fighting against unfair trade practices. So, besides the CET and international trade agreements there are other trade policy instruments that are used to protect community industries.[172]

Safeguards are one of these trade defence instruments, but are used only rarely by the EU. In this part a general overview of the safeguards in the trade policy of the EU will be portrayed and they will be discussed at length in the following part.

Some prominent scholars have demonstrated in their works that the EU's trade policy is biased towards contingency trade protection and that trade protection is effective and costly for the EU economy.[173] The EU has a wide range of trade policy instruments available for the interest groups and national governments to demand protection.

> "…EC's political market allows a considerable product differentiation for redistributive trade barriers. The instruments are suitable for very diverse policy interests because of the institutional details regulating the application of each instrument. And … intermediaries (lawyers in lobby firms and associations) help the "shoppers" to find the right personal

[172] Below these are classified as "Import relief measures: trade defence and protection instruments of the EU" since they are employed in protecting the community industries against imports and defending them in cases of unfair trade practices of exporters.
[173] For example: Messerlin, Patrick A. (2001); Schuknecht, L. (1992); Hindley, Brian (1992); etc.

> policy package. But can the EC afford to be protectionist"[174] (Schuknecht, 1992, p: 53)

Despite the importance of external trade in its GDP, protection against imports remains to be effective not only for the purpose of avoiding unfair trade practices but also for protecting declining community industries that face fair import competition. These are losing their competitiveness *vis a vis* developing countries that produce cheaper products due to their low-waged labour.

3.2.1. CET and Preferential Treatment

Common External Tariff or Common Customs Tariff is one of the basic features of the EU's external trade policy and also an important trade policy instrument. As mentioned above members of the EC started to apply a Common Customs Tariff to third countries on July 1st, 1968. As a consequence of successive multilateral trade rounds the MFN tariff rates fell significantly, especially for industrial goods. And as a result tariffs lost their importance as a form of trade protection. Nevertheless still some sensitive sectors and products are protected by high tariff rates in the EU, such as the agriculture and fisheries, dairy products, live animals, textiles, etc.

The average applied MFN tariff rate of the EU was 6.6% in 2002 and has been 6.5% in 2004. [175] The EU's average MFN tariff rates range from zero to 209.9% and the agricultural products have the highest rates.[176] This means that tariffs are an important form of trade protection for agricultural products in the trade policy of the EU. The summary of the EC MFN tariffs is mentioned in Appendix A-5.1 at the back of this study.

As could be seen in the Appendix Table A-5.1; according to the WTO definitions, the EU's average MFN tariff rate for the agricultural products is 16.5% and

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[174] Schuknecht, L., (1992), Trade Protection in the European Community, Chur: Harwood, p: 53.
[175] World Trade Organization, (2004), Trade Policy Review: European Communities (dated: 27 October,.2004), WTO document No: WT/TPR/S/136, Retrieved from WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm P: 41.
[176] Ibid, p: 37

non-agricultural products have an average MFN tariff rate of 4.1%.[177] When we look at the ISIC (Rev.2) sector definition, the average MFN tariff rates are as follows: 10% for agriculture and fisheries, 6.4% for manufacturing and 0.2% for mining.[178] So, agricultural products are most tariff-protected goods. Also, some non-agricultural products have high tariff rates such as textiles and clothing with an average MFN tariff of 8% and fish and fishery products with an average MFN tariff of 12.6%. The applied MFN tariff for some textiles go up to 11.7% and contrary to other metals, aluminium has a higher tariff rate; 6.3%.[179]

The EU has a highly developed network of preferential trade agreements and arrangements[180], and under these agreements imports coming from EU's trade partners are subject to special treatment in general, i.e. special tariff rates that are lower than the MFN tariff rates. Consequently, the EU applies its MFN tariff rates only to a limited number of WTO member countries.[181] These countries are the United States, Australia, New Zealand, Canada, Japan, Chinese Taipei, Hong Kong, China, Republic of Korea, and Singapore, and the EU's trade with these nine countries represents 36% of its total merchandise trade.[182] However some of the EU's trade with its preferential trade partners is also subject to MFN tariff rates as well. According to the recent Trade Policy Review of the WTO Secretariat for the European Communities, the European Commission calculates that 74% of its overall trade is under MFN tariff regime and since trade with above mentioned nine countries account for 36% then the MFN trade with trade partners is approximately 38% of EU's overall trade.[183]

Table 3.1, in the previous part, demonstrates the trade agreements of the EU classified according to type of trade regime. The EU makes preferential treatment to its trade partners under its preferential trade agreements (PTAs), which include the EEA;

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[177] ibid, p: 41. Here the definition of agricultural products is based on WTO definition. Refer to the table.
[178] ibid, p: 41. ISIC: International Standard Industrial Classification.
[179] WTO, (2004), Trade Policy Review: European Communities (dated: 27 October, 2004), Retrieved from the website of the WTO, WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm, p: 151-154. See Table titled "EU's Applied MFN tariff averages by HS2, 2004".
[180] See tables 3.1 and 3.2 above for a list of EC's preferential trade agreements and arrangements.
[181] Aylin Ege, Avrupa Birliği'nin Ortak Ticaret Politikası ve Türkiye, ODTÜ Geliştirme Dergisi, 26 (3-4) 1999, 253-279, p: 257.
[182] WTO, 2004, Trade Policy Review: European Communities, p: 22, see also deep note: 39.
[183] Ibid, p: 22.

Europe agreements; customs union with Turkey; Euro-Mediterranean agreements, stabilization and association agreements; and free-trade arrangements with Mexico, South Africa, and Switzerland.[184] When we look at the EU's tariff preferences, the EU permits duty-free entry to most of the industrial goods coming from its partners under these PTAs on a reciprocal basis, but some exceptions exist such as textiles, aluminium, etc.[185] These exceptions are not surprising since these products are protected by higher tariff rates as mentioned above. The EU provides its trading partners with tariff preferences for some agricultural goods as well.[186]

3.2.2. Import Relief Measures: Trade Defence &Protection Instruments of the EU

3.2.2.1. Safeguard Measures

Safeguard measures are one of the trade policy instruments of the EU that could be used to pursue the objectives of the CCP. The EU's safeguards regulation complies with the rules of the WTO/GATT in the sense that the safeguard measures can be applied in case of a significant increase in imports which causes or threatens to cause serious injury to the community producers, subject to rules and conditions stipulated in the regulation.[187] But the EU has rarely imposed measures under the Article XIX of the GATT and the Agreement on Safeguards. Even after the Uruguay Round amendments to the safeguards mechanism introduced with the Agreement on Safeguards, the European Commission and protectionist lobbies did not prefer this instrument. The EC took safeguard action used the Article XIX only 26 times between 1947 and 1994 and after the Uruguay Round between 1994 and 2000 did not take any action under the Agreement on Safeguards.[188] But in 2002, the EU imposed safeguard measures on certain steel products in retaliation to the US Steel safeguard application and most

[184] WTO, (2004), Trade Policy Review: European Communities, p: 51. Also see the deep notes.
[185] Ibid, p: 51.
[186] Ibid, p: 51.
[187] See the following part for detailed information about safeguards in the trade policy of the EU.
[188] Bown, Chad P., (2002), Why Are Safeguards Under the WTO so Unpopular?, p: 48. Also, see Table 2.5 in the previous chapter of this study

recently took safeguard action against Farmed Salmon from Norway and Citrus Fruits (mandarins) from China.[189]

As will be seen in the following parts, historically the EU mostly preferred to use antidumping duties and VERs in order to secure a higher degree of protection for community industries and for an effective control of imports. The EU has not preferred to use safeguards for a number of reasons that will be detailed in the following part of this chapter.

3.2.2.2. Antidumping Duties

Antidumping measures are one of the trade defence instruments of the EU used against unfair trade practices of exporters. It must be noted that these measures are the most preferred form of protection in the EU trade policy, which is evident from the statistics on the use of certain import relief measures. Under the WTO rules antidumping duties are intended to remedy dumped imports that would harm the competition conditions and distort the price structure in the domestic market. Especially after the prohibition of VERs with the Uruguay Round Agreements, antidumping measures became the key trade protection instrument of the EU.[190]

As mentioned above Article 133 of the Maastricht Treaty (Article 113 of the Treaty of Rome) provided the basis for common measures designed to protect trade against dumped or subsidized imports. The legal basis of the EU's application of antidumping measures is the Council Regulation 384/96 that was amended several times and recently on 23 July 2003 was extended to cover the goods under the European Coal and Steel Community Treaty.[191] The regulation stipulates some substantive requirements for the imposition of an antidumping measure; 1) there must be a "dumping" (dumping occurs when the export price of the product is lower than its normal value in the country of origin, but sometimes it is difficult to calculate the

[189] WTO, (2004), Trade Policy Review: European Communities, p: 55-56.
[190] Auboin, Marc & Laird, Sam. (1998). EU Import Measures and Developing Countries. World Trade Organization Trade Policy Review Division Staff Working Paper TPRD-98-01, Retrieved: August 25, 2004 on the WWW URL: http://www.wto.org/english/res_e/reser_e/tp9801_e.htm, p: 1.
[191] WTO, 2004, Trade Policy Review: European Communities, p: 56. See deep notes as well.

normal value especially in case of a product originating from a non-market economy and also sometimes dumping is justifiable on grounds of differences in the two markets); 2) the dumping must cause a material injury to the Community Industry in question; 3) the antidumping measure should be in the interests of the Community (interests of the Community means the interests of producers as well as interests of the consumers or users of that product.) But Akman (1998) demonstrates that the requirement of community interests is not properly considered.[192]

So, the use of antidumping measures is a legal tool for the EU. But there are suspicions that this instrument is abused by the EU since the meaning of unfair is vague and the Commission of the EU is biased in finding unfairness in the actions of the exporters and that there are flaws in the dumping calculations of the Commission.

All of the dumping actions cannot be considered as illegal. As a general definition dumping occurs when the Export Price of a good is lower than its Normal Value in the domestic market of the exporter. But some dumpings are justifiable on grounds of differences between per capita income levels of the countries or the differences in preferences of customers. So not all dumping practices are illegal or predatory[193] and not all of them cause material injury. Also, it is not always easy to find the normal value of the product in question especially when the exporter is a state trading enterprise or the goods are coming form a country with a centrally planned economy. Even so, the Commission of the EU has always been biased to finding a dumping practice and has taken measures against anti-dumping as if they were predatory. The works about the common commercial policy of the EU demonstrated that the Commission has used arbitrary calculations to find dumping practices.[194] Below

[192] Akman, (1998), "The Political Economy of Protectionism and the World Trade Organisation: A Public Choice Approach to the Trade Policies of the European Union and the U.S.", p: 316.
[193] *Predatory dumping* means that the exporting firm wants to drive its competitors out of the market and does not want to get profits in the short-run and so intentionally sells its products with a very low price, sometimes even below the cost level. This type of dumping creates an unfair condition in the market and can be remedied with an antidumping measure. But the other two types of dumping, persistent dumping (market structure and international price discrimination) and sporadic dumping, are not unfair and should not be targeted with an antidumping measure.
[194] Hindley, Brian (1992), "Trade Policy of the European Community" in Patrick Minford (Ed.) The Cost of Europe, Manchester: Manchester University Press, p: 84-101.

Table 3.3 shows the antidumping measures of the EU between 1998 and 2003.[195] Also see the Table 2.6 for the antidumping investigations initiated by all WTO members between 1995 and 2001.

Table 3.3 – The EU's Anti-dumping measures, 1998-2003

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Initiations	20	39	21	43	33	24	42	21	66	31	27	20	7
Definitive measures imposed	19	17	19	19	13	23	23	26	18	40	12	25	3
Measures in force	101	114	117	124	129	143	138	139	151	175	175	174	156

Source: WTO, 2004, Trade Policy Review: European Communities, WTO Doc. No. WT/TPR/S/136, Retrieved from the WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm, p: 58.

3.2.2.3. Countervailing Measures

In case of a subsidized import entering the Union the Countervailing Measures are used (also referred to as Anti-subsidy measures). But these measures have been used infrequently by the European Union; between 1977 and 1983 only ten cases were initiated and between 1984 and 1996 there were only two initiations of countervailing measures.[196] And these cases did not result in definitive measures, because at the same time antidumping investigations were initiated and instead of countervailing measures antidumping measures were imposed.[197] Below table shows the number of the EU's countervailing measures between 1996 and 2004. First the number of investigations initiated then definitive measures and finally the measures in force are mentioned.

Table 3.4 - The EU's Countervailing measures, 1996-2004

	1996	1997	1998	1999	2000	2001	2002	2003	2004 (3 months)
Initiations	1	4	8	20	0	6	3	1	0
Definitive measures imposed	0	1	2	3	11	0	3	2	1
Definitive measures in force	2	3	3	5	17	16	19	17	18

Source: WTO, (2004), Trade Policy Review: European Communities (dated 27 October, 2004), WTO Doc. No. WT/TPR/S/136, Retrieved from the WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm. P: 59

[195] See Appendix 5, Table A-5.2 for the EU's antidumping measures between 1990 and 1996.
[196] Messerlin, Patrick A. (2001), Measuring the Costs of Protection in Europe, p: 361.
[197] Ibid, p: 361.

When compared to the above mentioned number of antidumping measures, it is clear that countervailing duties are not a preferred policy instrument for the EU. Nevertheless, as could be seen from the above table, since 1996 there has been an increase in the EU's use of this measure, especially against India, South Korea and Saudi Arabia, targeting steel and chemicals (polypropylene and polyethylene).[198] Messerlin (2001) makes a notable comment on the recent countervailing measure investigations of the EU; he mentions that these investigations indirectly enabled the EU to have new arguments for protection, i.e. the trade and subsidization of labour as demonstrated in the Salmon case against Norway where the EU investigated if the subsidies to labour ("differentiated social security schemes") are countervailable.[199]

3.2.2.4. VERs (Voluntary Export Restraints): *Not applicable anymore*

Voluntary Export Restraints (VERs) were one of the most important trade defence instruments of the EU/EC together with Antidumping Duties. VERs had several advantages for the EU/EC, since export restraint arrangements do not bring the obligation of compensating every exporter affected, on the contrary to the safeguard measures that require the offer of compensation to adversely affected parties. Instead, the administrative authorities of the EU/EC negotiated with the most prominent exporters and just compensated their loss by giving a satisfactory portion of the quota rent as a gift. The EC used VERs mainly in the sensitive and important sectors like textiles and clothing, footwear, automobiles, consumer electronics, steel, etc.[200] In 1988 there were 261 voluntary export restraints in the world, 138 of them were in the EC and 51 of these were national restraint arrangements of the EC members.[201] These restraint arrangements had significant protectionist effects as demonstrated by the EC automobile VERs as follows:

> "The market share of Japanese cars in the EC was 10% in 1986. In Germany with a lax VER, it was 14%. …the Japanese market share in

[198] Ibid, p: 361. Also see WTO (2004), Trade Policy Review: European Communities, p: 59.
[199] Ibid, p: 362.
[200] Schuknecht, L. (1992), Trade Protection in the European Community, Chur: Harwood, p: 63.
[201] Ibid, p: 63.

> the EC would at least double if the current national barriers were abolished."[202] (Schuknecht, 1992, p: 63)

As mentioned in the previous chapter of this study, VERs were prohibited by the Uruguay Round Agreement on Safeguards and the existing measures were to be phased out or brought into conformity with the provisions of the Agreement. So, VERs are no longer an available policy instrument for the EU. It should be noted that the new safeguards mechanism introduced with the Uruguay Round allows quantitative restrictions to be used as a safeguard measure[203], but subject to rules and conditions set out in the agreement.

3.2.2.5. Internal Trade Protection: *Article 115 of the Treaty of Rome*

The Article 115 of the Treaty of Rome has been used to restrict the free movement of the goods in the internal market and this is the main legal instrument. Under this article, a member state after obtaining the necessary authorisation from the Commission, could take a protective action to stop some goods coming from a non-member country via another member state of the EU. This article can be used in case there is a risk of deflection of trade and in case differences still existing between national regimes of the member states pave the way to economic difficulties in one or more of the member states. It is clear that the founders of the Community wanted to have a safeguard mechanism at the beginning in order to prevent problems that can arise from the differences in the trade policy regimes of the member states. But this safeguard mechanism has been invoked even after the introduction of the single market.

Still differences in technical regulations, norms and standards can be a form of trade protection within the EU. These Non-Tariff Barriers (NTBs) cause hindrance to free circulation of goods in the internal market.

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[202] Ibid, p: 63.
[203] See Article 5 of the WTO Agreement on Safeguards. Also see the first chapter of this study, section 2.4.1.1. Allowed Policy Instruments and Prohibition of VERs.

3.2.3. Instruments for Third Country Defence Actions Against the EU: TBR[204] and NCPI[205]

In 1984 the EC has introduced a regulation, the New Commercial Policy Instrument (NCPI), which was proposed to respond to any "illicit commercial practice" of non-EC countries with a view to removing the injury resulting thereof and to ensure "full exercise of the Community's rights with regard to the commercial practices of third countries". The EC was inspired from the section 301 of the U.S. Trade Agreements Act of 1979 as a model for this new regulation.[206]

This new regulation was formulated to protect the rights of EC industries in export markets against unfair practices and allowed an EC industry to initiate a complaint to the Commission in case of any unfair practice. NCPI did not put forward any specific measures for protection. This instrument pointed the GATT's safeguard measures (Article XIX) or the dispute settlement procedure. Although initially it raised fears of "Fortress Europe", it was used only rarely.

In the recent years the EU is much more concerned about the unfair trade practices of others and desires to promote its export opportunities abroad. In 1994, a new regulation replaced the 1984 regulation. This new regulation (which is called as the Trade Barriers Regulation to ensure the exercise of Community's rights under international trade rules) is a result of the belief in the EU that the previous regulation was not effective and that it is necessary to establish new and improved procedures.

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[204] TBR (Trade Barriers Regulation) is Council Regulation 3286/94 dated 22 December 1994 which asserts Community procedures for the area of the common commercial policy and which aims at ensuring the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization, OJEC 1994 L349/71.

[205] NCPI (New Commercial Policy Instrument) is Council Regulation 2641/84 of 17 September 1984on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices, OJEC 1984 L252/1.

[206] Schuknecht, (1992), Trade Protection in the European Community, p: 61.

TBR is the successor of 1984 NCPI.[207] The aim of the EU in establishing this new instrument was to take full advantage of its rights under the WTO agreements and also other international agreements as well.[208]

3.3. Trade Protection in the EU and The Costs of Protection

As discussed above, one of the features of the EU's trade policy is protection and attention to sensitive sectors. There has been several prominent works about trade protection in the EU/EC and the costs of protection for the EU or for its member states.[209] A recent work by Patrick A. Messerlin (2001) examines the level of trade protection in the EU during 1990s and measures its costs to the EU economy as a whole, and also shows the costs of protection in the highly protected industries.[210] The findings of Messerlin support the above feature of the EU trade policy, i.e. protectionism and a bias towards sensitive industries, and present the losses suffered by the EU consumers due to high costs of protection.

3.3.1. Trade Protection Level in the EU

The above analysis of the trade policy instruments of the EU shows that tariffs are not the main instrument for trade protection in the EU; the EU employs other more significant protection instruments to restrict trade such as antidumping measures, quantitative restrictions imposed on certain imports from non-market economies and also NTBs (i.e. technical regulations and norms, specific tariffs for some agricultural products, public procurement regulations, etc.). Before the Uruguay round VERs were also a significant protection instrument for the EU in important sectors like automotive,

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[207] Marco Bronckers & Natalie McNelis. The EU Trade Barriers Regulation Comes of Age. Journal of World Trade 35(4): 427-482. (2001). p: 427

[208] ibid, p: 427

[209] See Hindley, Brian (1992), "Trade Policy of the European Community" in Patrick Minford (ed.) The Cost of Europe. Manchester: Manchester University Press. P: 84-100. Schuknecht, 1992, Trade Protection in the European Community, Chur: Harwood. Greenaway, David & Hindley, Brian, 1985, What Britain Pays for Voluntary Export Restraints, Thames Essays No.43, London: Trade Policy Research Centre.

[210] Messerlin, (2001), Measuring the Costs of Protection in Europe, Washington: Institute for International Economics.

textiles and clothing, steel, electronics, etc. Below Table 3.5 is adopted from Messerlin (2001) and demonstrates the level of protection in the EU by industry in 1990, 1995 and 1999 respectively. Messerlin computes the rate of overall protection by combining the tariffs with the ad valorem equivalents of main Non-tariff barriers (NTBs) and antidumping duties.[211]

[211] Ibid, p: 24 and 29.

Table 3.5 - An overview of EC protection, by industry, 1990, 1995 and 1999

		1990						1995							1999						
					Antidumping measures				MFN tariffs			Antidumping measures				MFN tariffs			Antidumping measures		
ISIC4	Sectors	Number of tariff lines	Average MFN tariffs[a] (percent)	Non-tariff barriers[a] (percent)	Number of tariff lines	Rates[c] (percent)	Rate of overall Production[d] (percent)	Number of tariff lines[d]	Average rates[a] (percent)	Maximum rates[a] (percent)	Non-tariff barriers[b] (percent)	Number of tariff lines	Rates[c] (percent)	Rate of overall Production[d] (percent)	Number of tariff lines	Average rates[a] (percent)	Maximum rates[a] (percent)	Non-tariff barriers[b] (percent)	Number of tariff lines	Rates[c] (percent)	Rate of overall Production[d] (percent)
100a	Cereals (rice excluded)	16	20,0	63,0			63,0	21			48,0			48,0	21	14,0	15,2	5,0			19,0
100b	Meat (bovine and ovine)	44		74,0			94,0	41	20,0	20,0	29,0			49,0	26	11,2	12,1	64,8			76,0
100c	Dairy products	67		1,04.0			104,0	91			108,0			108,0	61	9,7	10,3	100,3			110,0
100d	Sugar	7		1,17.0			117,0	7			106,0			106,0	7			125,0			125,0
100e	Other agriculture	443	10,1	10,5			20,6	417	9,6	25,0	2,2	1	5,6	11,8	538	8,9	179,7	11,2	4	5,3	20,0
200	Mining	110	0,5	65,0	3	24,0	2,9	132	0,8	1,4	71,3	14	9,4	3,5	137	0,2	8,0	71,3	10	7,1	2,3
311-12	Food products	483	15,5	15,0	5	15,8	30,6	618	15,4	42,0	15,0			30,4	1.586	19,5	236,4	5,0			24,5
313	Beverages	52	17,5	5,0			22,5	52	17,5		5,0			22,5	180	8,6	64,0				8,6
314	Tobacco	7	66,6				66,6	7	66,6	117,0				66,6	9	47,3	81,9				47,3
321	Textiles	1.081	9,9	11,0	23	22,0	21,4	1,087	9,8	25,0	9,0	200	23,3	26,2	1.059	8,5	13,0	8,0	141	18,9	22,1
322	Apparel	219	12,3	19,0			31,3	216	12,4	14,0	19,0			31,4	225	11,6	13,0	19,0			30,6
323	Leather and leather products	102	4,7	5,0			9,7	105	4,8	12,0				4,8	102	3,2	9,7		9	27,9	5,7
324	Footwear	68	10,9	5,0	3	6,7	16,2	53	8,4	20,0		2	0,0	8,4	58	7,4	17,0		5	17,5	8,9
331	Wood products	124	5,3		6	16,1	6,1	131	4,8	10,0				4,8	181	2,6	10,0		3	6,8	2,7
332	Furniture and fixture	27	6,0				6,0	35	5,7	7,0				5,7	38	1,8	5,6				1,8
341	Paper and paper products	196	7,6		3	4,6	7,7	198	7,6	12,5		2	0,0	7,6	200	3,8	7,5				3,8
342	Printing and publishing	43	6,1		3	0,0	6,1	42	6,2	12,0		3	12,3	7,1	41	3,0	8,0		1	18,6	3,5
351	Industrial chemicals	881	7,1		68	16,5	8,4	959	7,4	20,0		49	25,0	8,7	1.153	5,3	41,7		32	24,5	6,0
352	Other chemicals	361	6,2		1	46,9	6,3	392	6,4	17,6		10	17,4	6,8	423	3,4	22,0		3	19,0	3,5
353	Petroleum refineries	40	4,6				4,6	46	4,3	7,1				4,3	62	2,1	6,5				2,1
354	Petroleum and coal products	13	2,6				2,6	18	1,4	9,0				1,4	17	0,4	6,0		1	30,0	2,2
355	Rubber products	80	5,9				5,9	88	7,8	20,0				7,8	105	5,5	17,0				5,5
356	Plastic products, nec	139	8,9				8,9	34	7,7	5,6				7,7	35	5,9	6,5		3	0,0	5,9
361	Pottery, china, etc.	24	8,4		1	17,5	9,1	24	8,4	13,5				8,4	25	5,9	12,0				5,9
362	Glass and products	131	8,3		8	17,5	9,4	146	7,0	12,5				7,0	137	4,8	11,0		2	0,0	4,8
369	Nonmetallic products	121	4,5		7	27,7	6,1	124	4,5	10,0		6	2,6	4,6	132	2,4	7,0		1	0,0	2,4
371	Iron and steel	469	4,8	15,0	64	15,7	21,9	542	5,3	10,0	7,0	63	21,3	14,8	521	2,7	7,0	4,0	51	24,0	9,0
372	Nonferrous metals	262	4,6		6	8,1	4,8	258	4,5	10,0		4	25,3	4,9	255	2,9	10,0		6	15,3	3,3
381	Metal products	524	5,8	n.a.	6	14,0	6,0	339	5,5	17,0		9	32,8	6,4	354	3,0	8,5		17	31,0	4,5
382	Machinery	924	4,1	n.a.	28	21,8	4,8	930			n.a.				1.017			n.a.			
3825	Office and computing equipment			n.a.				58	4,6	12,0	n.a.	10	20,7	8,2	76	0,8	3,0	n.a.	1	13,5	1,0
382x	Other machinery			n.a.				872	4,2	12,0	n.a.	9	7,7	4,3	941	1,8	9,7	n.a.	3	0,0	1,80
383	Electrical machinery	501	5,8		30	20,3	7,0	534							679						
3832	Radio , TV and communication			n.a.				225	7,3	15,0	n.a.	40	24,6	11,7	321	3,6	14,0	n.a.	45	37,7	8,90
383x	Other electrical machinery			n.a.				309	4,9	8,5	n.a.	10	23,1	5,6	358	2,6	6,9	n.a.		19,5	2,70
384	Transport equipment	342	6,1		2	15,0	6,2	323							354						
3841	Shipbuilding			n.a.				57	3,0	10,0	n.a.			3,0	63	1,6	6,2	n.a.			1,60
3842	Railroad equipment			n.a.				35	4,7	7,5	n.a.			4,7	40	1,8	3,7	n.a.			1,80
3843	Motor vehicles			n.a.				149	8,5	22,0	6,1			14,6	164	6,3	22,0	4,0			10,30
3844	Motorcycles and bicycles			n.a.				31	8,7	17,0		1	28,4	9,6	34	6,1	15,0		6	24,5	10,40
3845	Aircraft			n.a.				45	2,9	15,0	n.a.			2,9	47	1,7	7,7	n.a.			1,70
3849	Other transport equipment							6	4,6	4,9				4,6	6	1,5	2,7				1,50
385	Professional goods	352	8,3	n.a.	9	16,0	8,7	362	5,6	16,1	n.a.	4	0,0	5,6	381	2,2	6,7	n.a.	1	0,0	2,20
390	Other industries	263	5,5	2,0	3	18,1	7,7	303	5,8	20,0		3	27,1	6,1	308	3,1	17,0		2	31,5	3,30
Block A: All sectors																					
Total number of tariff lines		8.516			279			8.675					440		10.427				350		
Average level of trade barries																					
	Simple average		7,4			17,5	13,8		7,4				21,8	13,7		7,0				22,4	11,70
	Babor weighted average		8,1				17,1		7,9					14,4		6,4					12,80
	Value-added weighted average		8,2				15,3		8,5					15,1		6,6					12,30
Block B: Industrial goods (ISIC 314 to ISIC 390)																					
Total number of tariff lines		7.294			271			7.296					425		7.871				336		
Average level of trade barries																					
	Simple average		6,8				10,8		6,7					11,0		4,3					7,70
	Babor weighted average		6,8				9,7		6,7					10,0		4,3					7,10
	Value-added weighted average		7,2				9,5		7,5					10,1		4,7					6,80
Block C: Agriculture																					
100	Whole agriculture[d]	577					38,3	577						32,0	653						31,70

n.a. = Ad valorem tariff equivalents of these NTBs are not available
ISIC = International Standard Industrial Classification
MFN = most favored nation
nec = not elsewhere classified
OECD = Organization of Economic Cooperation and Development

a. Many specific tariffs in agriculture (ISIC 100a to 100e) are not taken into account.
b. For agriculture, defined as global rate of protection minus MFN tariff and antidumping barriers.
c.Ad valorem estimates of antidumping measures terminating cases.
d. For agriculture (sectors 100a-100d), based on three-year averages of OECD "CSE-based tariffs"(see text).

Source: Messerlin, Patrick A. (2001). Measuring the Costs of Protection in Europe - European Commercial Policy in the 2000s Washington DC: Institute for International Economics. P:22-23

3.3.2. Costs of Trade Protection for the EU

Messerlin (2001) examines 22 highly protected sectors (5 in agriculture, 14 in manufacture and 3 in services) of the EU economy and uses partial equilibrium to calculate the level of protection in these 22 sectors and the costs of protection for the EU consumers.[212] Most of these highly protected products are intermediate goods in which developing countries have a comparative advantage and it is interesting that the products are similar to those protected sectors of other industrialized countries.[213]

These highly protected 22 sectors are as follows: a) industrial goods: Cement, Fertilizers, Low-density polyethylene, Polyvinyl Chloride, Hardboard, Newsprint, Chemical Fibers, Videocassette recorders, Integrated circuits, Photocopiers, Steel, Passenger Cars, Textiles and Clothing; b) Agricultural products: Cereals, Meat, Dairy Products, Sugar and Bananas; c) Services: Films (France), Air Transport and Telecoms.[214] These sectors have been protected at the community level since 1960s or 1970s and the rate of overall protection in 15 sectors out of the above mentioned 22 sectors are more than 30 percent.[215]

These goods and services are both intermediate and final goods (but most are intermediate goods) and so they are used by both EU households as final goods and by EU firms as an input for production, consequently EU consumers (households and firms or producers) bear the burden of high protection.

Moreover Messerlin (2001) nullifies the widespread notion used to justify protection; that trade protection and resistance to liberalization would save jobs and thus is in the interest of the community.[216] But on the contrary, as demonstrated by

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[212] Messerlin, (2001), Measuring the Costs of Protection in Europe, p: 39. See Chapter 3 of this work for a detailed analysis of costs of protection in the EU.
[213] Ibid, p: 39
[214] Ibid, p: 42-48. Messerlin notes that some other manufacturing sectors could be added to these protected sectors such as: fishing, beverages, coal, nonferrous metals, footwear and leather products, glass, machine tools, pharmaceuticals, shipbuilding and aerospace. However he did not include them due to lack of sufficient data. See p: 42.
[215] Ibid, p: 45.
[216] See Messerlin, (2001), Measuring the Costs of Protection in Europe, p: 53 and 56 for the issue of "Protection and Jobs" and also p: 41.

Messerlin (2001), trade protection in the EU could only save a negligible percentage of total jobs in the protected industries.[217]

> "…contrary to a belief widespread in Europe, protection is a costly instrument for 'saving' jobs. Only a few jobs – roughly 3 percent of the total number of jobs existing in the 22 sectors involved – are estimated to have been possibly saved by the high protection granted to these sectors. The combination of high costs of protection for the EC consumers and few jobs saved leads to an astronomical average annual cost per job saved: roughly €220,000, or 10 times the European average wage of the sectors in question. If saving jobs is the issue at stake, it must – and can – be addressed by more efficient policies than trade protection." [218] (Messerlin, 2001, p: 41)

In this sense trade protection is used as a means to redistribute income when aimed at saving jobs.[219] But as will be discussed in the following chapter, trade restrictions and protection are not the best policy to address the problems in the labour markets.[220] In order to create new jobs for the adversely affected workers from trade liberalization several labour market adjustment policies can be developed, which are less costly and less distortive in nature.

Even if trade protection is granted in the name of income transfers, it is clear from the above figures on jobs saved through trade protection and the losses suffered by the consumers that the real beneficiaries of these transfers are not consumers or workers but the "vested interests".[221] In this respect, the trade protection instruments used by the EU deserve special emphasis, since the form instruments makes some better off and designates the beneficiaries from protection. As mentioned above, the EU has preferred antidumping measures, that can pave the way to undertakings, and quantitative restrictions for import protection and before the Uruguay Round has been an active user of voluntary export restraints. Messerlin (2001) stresses the importance of the trade protection instruments as follows:

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[217] Ibid, p: 56.
[218] Ibid, p: 41.
[219] Ibid, p: 41.
[220] See Chapter 4 of this study – Safeguards and the Problem of Industry Adjustment – the section on "Market Failures". Also see the part on "Government Adjustment Assistance Policies".
[221] Messerlin, (2001), p: 41.

> "…the instruments of import protection used by the EC have the crucial – and very undesirable – feature of granting large rents to vested interests. In fact, estimated rents are *larger* than tariff revenues collected by the EC authorities. For the 22 products and services examined in detail, rents represent 30 percent (if one minimizes the likelihood of the existence of such rents) to 40 percent (if one makes more plausible guesses about existing rents) of the total costs of protection to the EC consumers – relative to 24 and 13 percent, respectively, for tariff revenues."[222] (Messerlin, 2001, p: 41)

In addition to the argument of saving jobs, the opponents of liberalization claim that protection increases domestic prices only 1 or 2 percent and that this minor increase would not have an important effect on the consumers and that for the sake of the "interests of the community" consumers could bear this small cost.[223] This second argument is used to support the first one, i.e. 'saving jobs'. But, small increases in prices can have huge costs of protection as mentioned below.[224]

> "In 1990, the estimated costs of protection for European consumers in the 22 sectors and in the rest of the EC goods-producing sector amounted to Euros 92-93 billion – depending upon the model used, taking into account the NTBs imposed in the EC sector producing the rest of the goods."[225] (Messerlin, 2001, p: 50)

These are only some brief costs of trade protection in the EU, results of Messerlin are striking in the sense that he made a detailed analysis of protection in the EC and the costs of this to the EC consumers and the possible effects of liberalization in the highly protected sectors.[226]

3.4. Safeguard Measures in the Trade Policy of the EU

In the previous part of this chapter an overview of the EU's external trade policy and its basic features are portrayed and the import relief measures which are employed

[222] Messerlin, (2001), Measuring the CUosts of Protection in Europe, p: 41.
[223] Messerlin, (2001), p: 53.
[224] Ibid, p: 53.
[225] Messerlin, (2001), Measuring the Costs of Protection in Europe, p: 50.
[226] For a detailed analysis see the whole work of Messerlin (2001), Measuring the Costs of rotection in Europe.

to pursue the objectives of its trade policy are analysed. This analysis shows that safeguards are not a preferred form of trade protection instrument for the EU. It is evident from the statistics on the EU's use of antidumping, countervailing and safeguard measures that the EU applies antidumping duties far more than the safeguard measures. In this part, the analysis of safeguard measures in the EU's external trade policy will be detailed. First of all the legislative framework for the EU's safeguard applications are explained, then EU's historical and recent applications of safeguard measures are detailed with an emphasis on products targeted and finally the reasons why safeguards are not preferred by the EU are mentioned.

3.4.1. The Legal Basis for the EU's Safeguard Applications

The legal basis for safeguard actions of the EU against WTO members is the Council Regulation (EC) No. 3582/94.[227] The safeguard applications against non-WTO members have a different legal basis and they are subject to the provisions of the Regulation No. 519/94.[228] This regulation concerning the safeguard applications against non-WTO members was amended with a new regulation in order to harmonize the EU's safeguard provisions for imports coming from the People's Republic of China by taking account of the transitional provisions in China's Protocol of Accession to the WTO.[229] The Textile-Specific Safeguard Clause (TSSC) under China's Protocol of Accession is an available instrument for the EU to be used against imports of Chinese textiles subject to the conditions stipulated in the TSSC.

It is interesting that the EC Regulation No.519/94 -covering the safeguard applications of the EU against non-WTO members- also establishes "free importation"

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[227] WTO, (2004), Trade Policy Review: European Communities, p: 54. See EC Official Journal L349/53, 31 December 1994, as last amended by Regulation (EC) No. 2472/2000, OJ L286, 11 November 2000. Also see the website of the European Commission Directorate General for Trade for trade policy instruments available at http://europa.eu.int/comm/trade/issues/respectrules/tpi_en.htm

[228] WTO, (2004), Trade Policy Review: European Communities, p: 55 and website of the European Commission DG Trade.

[229] WTO, (2004), Trade Policy Review: European Communities, p: 55. Regulation (EC) No. 427/2003, OJ L 65, 8.3.2003, p: 1. Also, see the website of European Commission DG Trade.

as a general rule for the EC Common Import Regime.[230] The European Commission Directorate General for Trade mentions in its website that "free importation" is the general rule for the goods entering the EU (under EC Regulation No.519/94) but at the same time points out three exceptions to this general rule as safeguards which are [231]: 1) safeguard measures that are applied in case of a surge in imports that causes or threatens to cause serious injury to community industries, 2) Quotas on imports of certain products (such as textiles, footwear, ceramics, tableware, etc. from certain third countries) and 3) Surveillance regime. So, the EU considers quotas on imports of above products from certain third countries and surveillance regime as a form of safeguard.[232]

Council Regulation 3285/94 mentions that a safeguard measure can be imposed if a significant increase in imports is causing or threatening to cause serious injury to the Community industry in question. The regulation stipulates the definition of serious injury or threat of serious injury: consultation procedure that is undertaken at the request of a member state or by the Commission; the investigation procedure (how the investigation is opened, data collection from exporters and other interested parties and the time limits for the investigation); the instruments (i.e. tariff, quota or a tariff rate quota) that are available to be used as safeguards and etc.[233] If the investigation is terminated with the imposition of a measure in the form of a quota then the historical import trends, exporters and volumes are taken into account and the imposed quota should not be lower than the average quantity of imports during the preceding three years.[234] In terms of the level and the allocation of the quotas, the regulation is in conformity with the Agreement on Safeguards. Also, the EC regulation on safeguards provides some measures that could be used to reduce "double protection" caused by the combined effect of a safeguard measure with an antidumping or a countervailing measure; such as amending, suspending, repealing and allowing exemptions for antidumping and countervailing measures that are in force.[235]

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[230] Patrick A. Messerlin. Measuring the Costs of Protection In Europe: European Commercial Policy in the 2000s.Washington DC: Institute for International Economics. P: 363. (2001)
[231] See http://europa.eu.int/comm/trade/issues/respectrules/tpi_en.htm select Safeguards.
[232] Messerlin, (2001), Measuring the Costs of Protection in Europe, p: 363
[233] WTO, 2004, Trade Policy Review: European Communities, p: 54-55.
[234] Ibid, p: 55.
[235] Ibid, p: 55.

3.4.2. Safeguard Actions of the EU

The EU has not used the safeguards instrument very frequently. As shown in the Table 2.5 in the previous chapter, between 1947 and 1994 the EU imposed 26 safeguard measures under Article XIX of the GATT. After the Uruguay Round until 2002, the EU did not take any safeguard actions under the WTO Agreement on Safeguards. But in 2002, following the US safeguard action on certain steel products the EU initiated safeguard investigation for 21 steel products.[236] The EU's safeguard investigation and action on steel products are shown in the below Table 3.6.

The EU imposed provisional safeguard measures on 15 steel products. The steel safeguard investigation resulted in definitive measures for 7 steel products, but these measures were terminated in December 2003 after the withdrawal of the US safeguard measures that were imposed on the same products;[237] since the EU had imposed these measures in retaliation to US steel safeguard in order to prevent deflection of trade from US market into its own. So, until the end of 2002 the EU has only taken safeguard action against steel products, from 1994 up to 2002 no safeguard action under the Agreement on Safeguards was taken against any other products. Since the safeguard actions target imports from all sources, then the EU's safeguard action against steel products would also affect Turkey despite the Customs Union between the two parties. Consequently Turkey and the EU undertook consultations under Article 12.3 and 12.4 of the Agreement on Safeguards on 27 September 2002; and on 3 March 2003 the parties made a joint notification and Turkey stated that it had reserved its rights under the Article 8 of the Agreement on Safeguards concerning the pursuit of remedies.[238]

The below Table 3.6 shows EU's safeguard investigations initiated, provisional and definitive measures imposed, investigations pending and reviews initiated during the period 1 January – 31 December 2002.

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[236] European Commission-Directorate General for Trade, (2002), "Anti-dumping, Anti-subsidy, Safeguard Statistics Covering the Year 2002", Interim Report 2002/4, Online Document, Brussels, (December), Retrieved: November 20, 2004 on the WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/docs/repadas03_en.pdf, p: 90-91. Also see WTO, (2004), Trade Policy Review: European Communities, p: 55.
[237] WTO, (2004), Trade Policy Review: European Communities, p: 55.
[238] WTO, (2003), Trade Policy Review: Turkey, p: 50.

Table 3.6 – The EU's Safeguard Investigations and Measures Imposed During the Period 1 January – 31 December 2002

Initiated		
Product	**Country of origin**	**OJ Reference**
Steel products (21 types)	Erga omnes	C 77 28.03.2002 p. 39

Imposition of provisional measures			
Product	**Country of origin**	**Regulation/ Decision No**	**OJ Reference**
Steel products (15 types)	Erga omnes	Commission Reg. (EC) No 560/2002 27.03.2002	L 85 28.03.2002 p. 1

Imposition of definitive measures			
Product	**Country of origin**	**Regulation/ Decision No**	**OJ Reference**
Steel products (7 types)	Erga omnes	Commission Reg. (EC) No 1694/2002 27.09.2002	L 261 28.09.2002 p. 1

Investigation terminated			
Product	**Country of origin**	**Regulation/ Decision No**	**OJ Reference**
Steel products (11 types)	Erga omnes	Commission Reg. (EC) No 1695/2002 27.09.2002	L 261 28.09.2002 p. 124

(Table 3.6 is continued in the next page)

Table 3.6 (continued) – The EU's Safeguard Investigations and Measures Imposed During the Period 1 January – 31 December 2002

Investigation pending			
Product	**Country of origin**	**Regulation/ Decision No**	**OJ Reference**
Steel products (3 types)	Erga omnes	Commission Reg. (EC) No 1694/2002 27.09.2002	L 261 28.09.2002 p. 1

Reviews initiated			
Product	**Country of origin**		**OJ Reference**
Steel products : - flat-rolled products of iron or non-alloy steel - tube and pipe fittings, of iron or steel	Bulgaria South Africa Yugoslavia (F.R.) India Thailand Taiwan P.R. China Czech Rep. Malaysia Korea (Rep. of) Russia Slovakia	Examination of double protection	C 308 11.12.2002 p. 36

Source: European Commission-Directorate General for Trade, (2002), "Anti-dumping, Anti-subsidy, Safeguard Statistics Covering the Year 2002", Interim Report 2002/4, Online Document, Brussels, (December), Retrieved: November 20, 2004 on the WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/docs/repadas03_en.pdf, p: 90-91.

During 2002, as shown in Table 3.7 below, the EU subjected the following products to registration; "Farmed Salmon" from Norway and "malleable cast iron tube or pipe fittings" from Brazil. So, the EU started to monitor the imports of the mentioned products and they were under the surveillance regime.

Table 3.7 – The EU's Imports Subjected to Registration and Extension of Registration During the Period 1 January – 31 December 2002

Product	Country of origin	Regulation N°	OJ Reference
Salmon (AD/AS)	Norway	Commission Reg. No 452/2002 13.03.2002	L 72 14.03.2002 p. 7
Malleable cast iron tube or pipe fittings	Brazil	Commission Reg. No 1693/2002 25.09.2002	L 258 26.09.2002 p. 27

EXTENSION OF PERIOD OF REGISTRATION

Product	Country of origin	Regulation N°	OJ Reference
Salmon (AD/AS)	Norway	Commission Reg. No 1008/2002 12.06.2002	L 153 13.06.2002 p. 9

Source: European Commission-Directorate General for Trade, (2002), "Anti-dumping, Anti-subsidy, Safeguard Statistics Covering the Year 2002", Interim Report 2002/4, Online Document, Brussels, (December), Retrieved: November 20, 2004 on the WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/docs/repadas03_en.pdf , p: 89.

The recent safeguard applications of the EU are as follows: In 2003, the EU initiated a safeguard investigation on prepared or preserved citrus fruits (mandarins) from China and imposed provisional measures on November 2003.[239] On 6 March 2004, a safeguard investigation was initiated on Farmed Salmon from Norway.[240] The imports of farmed salmon from Norway were subjected to registration in 2002 (the EU was monitoring the situation) as expressed above. On 14 August 2004 the EU imposed provisional safeguard measures against imports of farmed salmon due to the urgency of the situation in the domestic industry.[241] On 4 February 2005, the EU applied a definitive safeguard measure against imports of farmed salmon, whether or not filleted,

[239] WTO, 2004, Trade Policy Review: European Communities, p: 55. Also, see the Official Journal of the EU L65 of 8 March 2003. Note that the EU terminated the safeguard investigation initiated on the same products under the Protocol on the Accession of People's Republic of China to the WTO.

[240] WTO, 2004, Trade Policy Review, p: 55. See also Official Journal of the European Union dated 06.03.2003 (2004/C 58/04) "Notice of initiation of a safeguard investigation under Council Regulations (EC) Nos 3285/94 and 519/94 concerning imports of farmed salmon" online information at the website of the EU, WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/safeguard/wn.htm

[241] Commission Regulation (EC) No 1447/2004 of 13 August 2004 imposing provisional safeguard measures against imports of farmed salmon, Official Journal of the European Union L 267 of 14 August 2004 available online WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/safeguard/wn.htm

fresh, chilled or frozen with the Commission Regulation (EC) 206/2005.[242] Norway brought the issue to the Dispute Settlement Mechanism of the WTO and complained that the safeguard action of the EU is not consistent with the Agreement on Safeguards.[243] The dispute settlement process is continuing at the moment and the outcome is not clear yet.

Most recently the organization of EU Textiles Producers, EURATEX, appealed to the European Commission and requested the imposition of Safeguards in the form of quantitative restrictions against certain textiles and clothing products from the People's Republic of China under the safeguard provisions of the China's Accession Protocol to the WTO. Right after the elimination of remaining quotas on textile and clothing products under the ATC (Agreement on Textiles and Clothing) on 1st January 2005, the Chinese textiles and clothing exports to the EU increased dramatically. Despite the demand of EURATEX, the European Commission has been hesitant to apply any trade restriction but is monitoring the situation.[244]

It should be noted that the EU imposes measures under the Special Safeguard (SSG)[245] provisions of the WTO Agreement on Agriculture to some agricultural products and uses this instrument more than the measures allowed under the Agreement on Safeguards; and EU has been one of the leading users of this special agricultural safeguard mechanism. The below Table 3.8 shows the use of the Special Safeguard

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[242] WTO Dispute Settlement, (2005), Disputes by Subject, European Communities - Definitive Safeguard Measure on Salmon - Request for Consultations by Norway, WTO Doc. No. G/L/733, G/SG/D33/1, WT/DS328/1 dated 3 March 2005, online information available at WTO website, on WWW URL: http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#bkmk103. See also, "Commission Regulation (EC) No 206/2005 of 4 February 2005 imposing definitive safeguard measures against imports of farmed salmon" available online on WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/safeguard/wn.htm

[243] Ibid. EC-Farmed Salmon Safeguard Case at the DSU "European Communities - Definitive Safeguard Measure on Salmon - Request for Consultations by Norway", WTO Doc. No. G/L/733, G/SG/D33/1, WT/DS328/1 dated 3 March 2005, online information available at WTO website, on WWW URL: http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#bkmk103

[244] "Commissioner Mandelson's Statement to the Trade Committee of the European Parliament on China and Textiles" Brussels, 15 March 2005 available online on the WWW URL: http://europa.eu.int/comm/trade/issues/sectoral/industry/textile/pr/50305_en.htm

[245] Special Safeguard (SSG) provisions of the Agreement on Agriculture allow WTO members to impose an additional tariff on tarrified agricultural products, which were reserved for such a SSG action by the imposing country in its tariff schedule, if certain conditions are met. So, SSG can be applied in the form of an increase in tariffs (cannot be a quota or a tariff quota). For more information see online information http://www.wto.org/english/tratop_e/agric_e/ag_intro02_access_e.htm#special_safeguard

Mechanism of the WTO Agreement on Agriculture between 1995-2001, by countries and by product groups. Part A demonstrates price-based[246] safeguard actions and Part B on the next page shows the volume-based[247] safeguard actions.

[246] Price-based SSG is applied on a per shipment basis. In order to apply a price-based SSG the price of the imported good must be below a specified reference price. The price-based special safeguard can only be imposed on the shipment concerned and must be in the form of an additional tariff (i.e. an increase in the tariff level of the product concerned).

[247] Volume-based special safeguard (SSG) provision can be invoked in case of a certain surge in imports of the agricultural product concerned. (so, volume-based SSG depends on the increase in the import quantity) When the volume based SSG is imposed the increased tariff can only apply until the end of the year.

Table 3.8 – The Use of the Special Agricultural Safeguards Mechanism, 1995-2001

Part A – Price-based special safeguards by country and product category (Number of tariff lines)

	CE	OI	SG	DA	ME	EG	BV	FV	TO	FI	CO	OA	ALL
1995													
EC			10		1	1							12
Japan	1			2									3
Korea	1	2											3
United States	1	1	2	13			1				6		24
Total	**3**	**3**	**12**	**15**	**1**	**1**	**1**				**6**		**42**
1996													
EC			10		4								14
Japan								1					1
Korea	3	2											5
Poland												2	2
United States	4		7	24				2		1	11		49
Total	**7**	**2**	**17**	**24**	**4**			**3**		**1**	**11**	**2**	**71**
1997													
EC				10	4								14
Korea	1	2						2					5
Poland			1									2	3
United States	3	1	11	34				2			23		74
Total	**4**	**3**	**12**	**44**	**4**			**4**			**23**	**2**	**96**
1998													
EC			9		3								12
Japan	1										1		2
Korea	2	1						2					5
Poland	1											4	5
United States	5		11	35			1	2			20		74
Total	**9**	**1**	**20**	**35**	**3**		**1**	**4**			**21**	**4**	**98**
1999													
Costa Rica	3							1					4
EC			9		4								13
Hungary			7										7
Japan	4			1				2			1		8
Poland	4		2		96							4	106
Switzerland					7								7
United States	2		3	25	2		1	2					35
Total	**13**		**21**	**26**	**109**		**1**	**5**			**1**	**4**	**180**
2000													
Japan	1			2				1					4
Poland	2							1			1	3	7
Total	**3**			**2**				**2**			**1**	**3**	**11**
2001													
Poland								3					3
Total								**3**					**3**

Cut-off date 11 February 2002.

Code	Product category	Code	Product category
CE	Cereals	**FV**	Fruit and vegetables
OI	Oil seeds, fats and oils and products	**TO**	Tobacco
SG	Sugar and confectionery	**FI**	Agricultural fibres
DA	Dairy products	**CO**	Coffee, tea, mate, cocoa and preparations
ME	Animals and products thereof Spices and other food preparations		
EG	Eggs	**OA**	Other agricultural products
BV	Beverages and spirit		

(Table 3.8 is continued)

Table 3.8 (continued)

Part B – Volume-based special safeguards by countries and product categories (Number of Tariff lines)

	CE	OI	SG	DA	ME	EG	BV	FV	TO	FI	CO	OA	ALL
1995													
Japan										5			5
Total										**5**			**5**
1996													
EC								47					47
Japan	1			14	41					5			61
Total	**1**			**14**	**41**			**47**		**5**			**108**
1997													
EC								46					46
Japan	1			4									5
Korea	2												2
Poland								1					1
Slovak Republic											1		1
Total	**3**			**4**				**47**			**1**		**55**
1998													
EC								27					27
Japan	1			2									2
Korea	1											1	2
Poland					1								1
United States					6								6
Total	**2**			**2**	**6**			**27**				**1**	**38**
1999													
EC								27					27
Japan	1			2									3
Poland												1	1
Total	**1**			**2**				**27**				**1**	**31**
2000													
Japan	1			3									4
Poland				1								2	3
Total	**1**			**4**								**2**	**7**
2001													
Czech Republic					4							1	5
Japan	2			3									5
Poland	1												1
Total	**3**			**3**	**4**							**1**	**11**

Cut-off date 11 February 2002.

Code	Product category	Code	Product category
CE	Cereals	**FV**	Fruit and vegetables
OI	Oil seeds, fats and oils and products	**TO**	Tobacco
SG	Sugar and confectionery	**FI**	Agricultural fibres
DA	Dairy products	**CO**	Coffee, tea, mate, cocoa and preparations
ME	Animals and products thereof Spices and other food preparations		
EG	Eggs	**OA**	Other agricultural products
BV	Beverages and spirit		

Source: Bacchetta, Marc & Jansen, Marion. (2003). Adjusting to Trade Liberalization. WTO Special Studies 7. Geneva: WTO Publications. (April) p: 53 and 54.

During 2001 and 2002, the EU took price-based special safeguard actions against 17 products and volume-based special safeguard actions against 22 products.[248] Price-based safeguard actions were imposed against certain poultry and meat products, cane or beet sugar, and cane or other molasses; volume-based measures were imposed against certain fruits and vegetables including tomatoes, cucumbers, courgettes, oranges, clementines, apples, pears, and plums.[249]

The ten new Member States of the EU will apply the safeguard measures of the EU that are in force at the time of their accession and in order to comply with the EU rules and practices they will remove all their existing safeguard measures.[250] The Accession Treaties of the new members also provide them the opportunity to take safeguard actions against other members of the Union for a period of three years if their domestic industries are faced with difficulties in competition due to accession; and similarly, the old members of the EU 15 can impose trade restrictions against the new members.[251]

It is evident from the figures and statistics about the safeguard actions of the EU that safeguards are not a preferred form of import relief for the EU. As discussed above, the EU used antidumping measures or other quantitative restrictions to stop imports. The infrequent use of safeguards by the EU has several reasons. First of all, the safeguard instrument obliges the safeguard-imposing countries to offer compensation in return for a safeguard application, but under the WTO Agreement on Safeguards in the first three years of a safeguard measure there is no such requirement. Second, the issue of "selectivity" is important in explaining the infrequent use of safeguards by the EU. As mentioned in the first chapter, as a general rule the safeguards should be applied on an MFN basis, which means that the countries should not discriminate between sources when imposing a safeguard measure. But the EU and developed countries in general demanded selective application of safeguard measures. In the international trade negotiations before the Uruguay Round, the EU has demanded selectivity in the

[248] WTO, (2004), Trade Policy Review: European Communities, p: 55.
[249] Ibid, p: 55 and 56
[250] Ibid, p: 56
[251] Ibid, p: 56.

application of safeguards.[252] In the Tokyo Round of multilateral trade negotiations, the EU (then EC) tried to amend the safeguards mechanism and introduce selectivity but failed to achieve this.[253] Nonetheless, it should be noted that some degree of selectivity is allowed by certain provisions of the WTO Agreement on Safeguards – as explained above in the second chapter – but subject to some rules and conditions.[254] Third, availability of other trade remedies such as antidumping measures and VERs, which do not require the offer of compensation, shaped the policy preferences of the EU and consequently the unfair trade remedies and grey-area measures became to be widely used by the EU as a substitute for safeguard measures.

3.5. The Impact of EU's Trade Policy on Turkey

Turkey's trade policy has been substantially affected by the changes introduced with the Customs Union between Turkey and the EU. The trade policy of the EU has shaped the Turkish trade policy and practices. Turkey has adapted its policies, rules and practices to those of the EU. Consequently, the trade policy instruments employed by Turkey are similar to those of the EU. For instance, similar to the EU, Turkey uses antidumping measures for import relief, and the use of safeguard measures are very rare as compared to antidumping measures. Turkey also prefers quantitative restrictions. After the Customs Union Turkey became one of the frequent users of antidumping measures. Due to the impact of the EU's trade policy on Turkey and on Turkey's choice of trade policy instruments in the final part of the chapter these are explained briefly.

The Ankara (Association) Agreement of 1963 between Turkey and the then European Economic Community entered into force on 1 December 1964 and formed the legal basis of the association between the parties. Ankara Agreement envisaged a customs union to be established between Turkey and the EEC in 12 years, and the final phase of the Customs Union was completed with the Decision No.1/95 of the EC-

[252] Hindley, Brian (1992), "Trade Policy of the European Community" in Patrick Minford (ed.) The Cost of Europe. Manchester: Manchester University Press. p: 89-90.
[253] Ibid, p: 90
[254] See chapter 2 of this study, part 2.4.1.2 "Non-discrimination and Selectivity".

Turkey Association Council and entered into force on 1 January 1996, later than anticipated.

The Customs Union between Turkey and the EU covers the industrial goods and processed agricultural products. But this customs union also provides preferential treatment to some agricultural products with the Decision 1/98 of the EC-Turkey Association Council dated 25 February 1998, 57 items at the Harmonized System (HS) six-digit level are covered.[255] Turkey's trade policy has been transformed substantially with the adoption of EU rules and practices under the Customs Union.

3.5.1. Turkey's Trade Policy After the Customs Union

The Customs Union between Turkey and the EU was established on the 1st January 1996. Turkey adopted the relevant parts of the EU's *acquis communitaire* as required by the Customs Union Decision and harmonized its trade policy to that of the EU. The Customs Union decision required Turkey to eliminate all customs duties and charges having equivalent effect in its trade with the EU concerning the goods covered under the Customs Union; to adapt its trade practices and rules to that of the EU such as Common External Tariff (CET) against third countries, and to adopt similar legislation in issues of EU's Common Commercial Policy; i.e. common rules on imports and exports, trade defence instruments, the EU's preferential trade agreements and Generalized System of Preferences (GSP), etc. It should be stressed that this Customs Union goes beyond a conventional customs union model and includes harmonization of not only external tariffs and trade policies but also the EU competition policy, rules on state aids, public procurement and protection of intellectual, industrial and commercial property rights, etc.

The external trade policy of Turkey has been affected extensively with the amendments undertaken to comply with the EU rules on the areas mentioned above that

[255] WTO Secretariat, (2004), Trade Policy Review: European Communities, p: 29, deep note: 67. For detailed information see Decision 1/98 of the EC-Turkey Association Council dated 25 February 1998 (98/223/EC)

were required by the Customs Union Decision. As a general assessment, after the Customs Union with the EU, Turkey's trade policy became much more transparent and less complex.[256] This has a positive impact on the third countries since the complexities in the import regime of Turkey have been removed.

> "…With its far-reaching and comprehensive scope, the customs union has given renewed impetus to the liberalization process in the industrial sector. To implement the CUD [Customs Union Decision], Turkey enacted a wide range of trade and related legislation, aimed at bringing its practices into line with those of the EU. In this respect, the adoption of measures approximating the EU "*acquis communitaire*" will also provide improved and more secure trading conditions for third countries…"[257] (Hartler & Laird, 1999, p: 12)

Nevertheless, since Turkey adopted the quantitative restrictions of the EU, such as the quantitative restrictions on textile and clothing products, Turkey's import regime became more protectionist in some respects.[258] As it is known before 1980, Turkey followed an import-substitution economic policy and after 1980, started to liberalize her trade policy and import regime. In 1980s Turkey eliminated the quantitative restrictions for all countries and so Turkey's trade policy was much liberal than that of the EU in terms of quantitative restrictions, before the Customs Union. [259]

But the Customs Union Decision required the adoption of EU rules and trade practices including the quantitative restrictions of the EU.[260] The changes introduced to meet the requirements of the Customs Union made Turkey's trade policy more protected than before in some areas, especially for some third countries due to the quantitative restrictions adopted from the EU.[261]

> "However, …, there are a number of areas where the application of EU measures in line with the CUD has led to the application of additional external measures by Turkey, such as restraints on imports of textiles

[256] Ibid, p: 276.
[257] Hartler & Laird, (1999), The EU Model and Turkey – A Case for Thanksgiving?, p: 12.
[258] Ege Aylin, (1999), Avrupa Birliği'nin Ortak Ticaret Politikası ve Türkiye, p: 274.
[259] Ibid, p: 273- 274.
[260] Ibid, p: 274.
[261] Hartler & Laird, (1999), The EU Model and Turkey – A Case for Thanksgiving?, p: 12

> and clothing, but this is more to protect the EU rather than the Turkish Market…"[262] (Hartler & Laird, 1999, p: 12)

So, as a result of the adoption of certain EU rules and trading practices under the customs union, Turkey increased the level of protection for some imports coming from certain third countries that were also WTO members and in a way violated its obligations under the WTO that required a country entering into a regional trade arrangement not to increase protection for the rest of WTO members. Turkey's imposition of quantitative restrictions raised criticisms from some WTO members. One notable case deserves attention in this respect; India appealed to the Dispute Settlement mechanism of the WTO on 2nd February 1999 and requested the establishment of a panel concerning Turkey's "Restrictions on Textile and Clothing Products" on grounds that while entering into a Customs Union or a free trade area, the WTO member should not violate her obligations under the GATT or other WTO Agreements.[263] The Dispute Settlement Body established the Panel and on 31 May 1999 the Panel ejected Turkey's defence and concluded as follows in its report:

> "We conclude that the measures adopted by Turkey on 19 categories of textile and clothing products are inconsistent with the provisions of Articles XI and XIII of GATT and consequently with those of Article 2.4 of the ATC. We reject Turkey's defense that the introduction of any such otherwise GATT/WTO incompatible import restrictions is permitted by Article XXIV of GATT." [264] (WTO, 1999, WT/DS34/R, p: 151, para. 10.1)

> "The Panel *recommends* that the Dispute Settlement Body request Turkey to bring its measures into conformity with its obligations under the WTO Agreement."[265] (WTO, 1999, WT/DS34/R, p: 151, para.10.3)

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[262] Ibid, p: 12.

[263] Ege, Aylin, (1998), Avrupa Birliği'nin Ortak Ticaret Politikası ve Türkiye, p: 274-275. See also, WTO website, Dispute Settlement, Disputes listed by country, "Turkey-Restrictions on Imports of Textile and Clothing Products, Request for the Establishment of a Panel by India" Dated: 2 February 1999, WTO Doc. No: WT/DS34/2, Retrieved: March 15, 2005 on the WWW URL: http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm

[264] WTO, (1999), "Report of the Panel Turkey-Restrictions on Imports of Textile and Clothing Products", WTO Doc. No: WT/DS34/R dated 31 May 1999, Retrieved: 15 March, 2005 on the WTO website WWW URL: http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm, p: 151, para. 10.1.

[265] WTO, (1999), "Report of the Panel Turkey-Restrictions on Imports of Textile and Clothing Products", WTO Doc. No: WT/DS34/R dated 31 May 1999, Retrieved: 15 March, 2005 online information available on the WTO website WWW URL: http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm, p: 151, para. 10.3.

So, the improvements brought by the Customs Union decision, did not result in increased liberalisation for all aspects of Turkey's trade policy and practices. Turkey, in a way, learned the modern trade defence instruments, such as antidumping measures and quantitative restrictions from the EU and started to use them to pursue the objectives of her trade policy.

It is striking that the Customs Union between Turkey and the EU, allows the parties to impose antidumping measures against each other, on the contrary to the European Economic Area (EEA). The EU uses this instrument against Turkey far more than Turkey does. But, Turkey also imposes antidumping duties against the EU members.[266] However both sides do not refer to safeguards stipulated in CUD or the Additional Protocol.

3.5.2. Trade Defence Actions of the EU and Turkey Against Each Other

The Customs Union between Turkey and the EU allows the parties to use trade defence instruments such as antidumping measures and safeguards against each other. But as a result of the customs union that involves the harmonization of competition policy and other policies, increased integration of the markets are attained and so price discrimination occurs only rarely.[267] Consequently, parties should not employ trade defence instruments against each other due to this high degree of integration and the provision enabling the use of anti-dumping measures under the Customs Union should be removed.[268]

As mentioned in a report by the European Commission Directorate General for Trade, "Turkey has not been an active user of trade defence instruments against the

[266] See below for the trade defence actions of Turkey and the EU against each other.
[267] European Commission DG Trade, "Overview of third country trade defence actions (anti-dumping, countervailing and safeguard cases) against the Community", Report for the 133 Committee, Ref. 199/03, (9 April 2003).
[268] Cansevdi, Hürrem (Ed.). Avrupa Birliği'nin Gümrük Birliği, Malların Serbest Dolaşımı, Ortak Dış Ticaret Politikaları ve Türkiye'nin Uyumu. İstanbul: İktisadi Kalkınma Vakfı. P: 116. (2002).

Community"[269]. But an examination of the trade defence actions of the EU shows that the EU uses antidumping actions against Turkey more than Turkey does against the EU.

Turkey has rarely used trade defence instruments against the EU. The only recent case is an antidumping measure applied against imports of polyvinyl chloride (PVC) from Belgium, Finland, Germany, Greece, Italy and the Netherlands.[270] On 2 of December 2001 Turkey initiated an antidumping investigation concerning polyvinyl chloride (PVC) imports from mentioned EU members and the targeted imports accounted EUR- 97 million.[271] During the investigation Turkey did not apply any provisional measures. From the beginning, EU Commission followed the case. Turkish authorities announced their definitive findings on 12 September 2002, they have declared high dumping margins and initially Turkish authorities were intended to impose duties ranging from 15% to 30%.[272] It is surprising that the European Commission criticised Turkey's methodology of calculating the dumping and injury determination in the face of widespread criticisms about the Commission's miscalculations of dumping and injury in antidumping investigations. Nonetheless, the European Commission succeeded in its efforts to diminish the level of duties. Turkey imposed definitive antidumping measures on 6 February 2003 with lower levels than initially planned; co-operating companies were charged with an average antidumping duty of 4.5 - 5% and non-cooperating exporters were charged with 9-9.5%.[273]

As regards safeguard measures and countervailing duties, Turkey has not taken any such measures against the EU.

The EU's Antidumping Actions against Turkey as of 31 December 2002 are listed in the below Table 3.9.

[269] European Commission DG Trade, (2003) Overview of Third Country Defence Actions…, p: 30
[270] Ibid, p: 30
[271] Ibid, p: 30.
[272] Ibid, p: 30.
[273] Ibid, p: 30.

Table 3.9 – Definitive Antidumping Measures of the EU against Turkey, in Force on 31 December 2002.

Origin	Product	Measure	Regulation N°	Publication
Turkey	Steel ropes and cables	Duties	Council Reg. (EC) No 1601/2001 02.08.2001 as last amended by Council Reg. (EC) No 2288/2002 19.12.2002	L 211 04.08.2001 p. 1 L 348 21.12.2002 p. 52
		Undertakings	Commission Reg. (EC) No 230/2001 02.02.2001 as last amended by Commission Reg. (EC) No 2303/2002 09.12.2002	L 34 03.02.2001 p. 4 L 348 21.12.2002 p. 80
	Welded tubes and pipes, of iron or non-alloy steel	Duties	Council Reg. (EC) No 1697/2002 23.09.2002	L 259 27.09.2002 p. 8

Source: European Commission-Directorate General for Trade, (2002), "Anti-dumping, Anti-subsidy, Safeguard Statistics Covering the Year 2002", Interim Report 2002/4, Online Document, Brussels, (December), Retrieved: November 20, 2004 on the WWW URL: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/docs/repadas03_en.pdf, p: 63

Note: This table is extracted from Annex O - Definitive Antidumping Measures in Force on 31 December 2002 (B .Ranked by country) of the above source.

IV. SAFEGUARDS & THE PROBLEM OF INDUSTRY ADJUSTMENT

4.1. Trade Liberalization and Adjustment[274]

Trade liberalization brings about a change in the competitive environment for the domestic industries that are faced with international competition. The shifts in comparative advantage and the challenge of structural change via trade liberalization require the domestic industries to adjust to the international competition.

As mentioned in the first chapter of this study one of the strongest rationales to include a safeguards mechanism in a trade liberalizing agreement is the argument of "economic adjustment". Safeguards provide a breathing period for domestic industries to adjust to the changes in the competition conditions caused by the increase in imports. The drafters of the WTO agreements recognized the need of adjustment. The WTO Agreement on Safeguards expresses the importance of structural adjustment by making an explicit reference to this objective in its preamble and in its Article 5.1 stipulates that the safeguard measures shall only be applied to the extent necessary to prevent or remedy serious injury and to "facilitate adjustment".[275]

Domestic industries should adjust to changing conditions rather than being protected by some sort of import relief measures because these trade remedies can only provide temporary shelter and they cannot change the fact that the industry in its current form is incapable of competing with the more efficient sources. Trade protection only delays the real solution for that industry, since trade is not the main cause of the inability of the industry to compete. As the "theory of optimal interventions" suggests

[274] In the WTO jargon, the term "structural adjustment" is used to mention the adjustment of domestic industries. In the context of this study "industry adjustment" term is preferred but is used interchangeably with "structural adjustment". In the economics literature adjustment is sometimes used to refer to re-structuring and this study recognizes this usage but also accepts that re-structuring (or transformation) is generally a broader term.

[275] WTO, 1995, The Results of the Uruguay Round of …, p: 315 and 317

any form of trade protection could only be the second-best policy option or worse than that, because trade protection does not address the real causes of the inefficiency problem in that industry.[276] Temporary trade protection may be justified on grounds of adjustment assistance, which is the objective of the safeguard mechanism of the WTO. Trade protection is very costly for an economy, as demonstrated with the figures presented in the work of Trebilcock & Howse (1995) below:

> "…the cost to US consumers of protection of the specialty steel industry was $1 million per year for each job preserved when the annual compensation was less than $60,000 for those jobs. United States consumers of automobiles paid $160,000 per year for each job saved through protection when annual compensation in this industry was less than one quarter of this figure. In Canada, the statistics are similar …"[277] (Trebilcock & Howse, 1995, p: 169)

Trade liberalization brings about net gains for the economy in the medium to long term; but it may also embody temporary adjustment costs (or transition costs that are sometimes referred to as "social costs") in the short-run due to the losses suffered by some sectors or parts of the society.[278] While the whole economy benefits from the gains of trade liberalization some sectors may suffer losses in the transition period and they need to adjust to the changing competitive environment.[279] So, as a result of trade liberalization, there is a pressure for structural adjustment to international competition and this process may be costly especially for some inefficient sectors or producers, such as declining industries, infant industries, mainly labour-intensive industries that are unable to cope with imports from low-wage countries and in general import-competing industries. In some sectors, workers may lose their jobs, factories may be closed-up and consequently labour and capital may be displaced and output would be foregone. The pressure of structural change and adjustment has led some opponents of trade liberalization to question the necessity of opening an economy to international competition in the presence of such adjustment costs. But empirical evidence and

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[276] Greenaway, David. (1983). International Trade Policy: From Tariffs to the New Protectionism. Macmillan. P: 52-59.
[277] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 169.
[278] Bacchetta, Marc & Marion, Jansen, (2003), Adjusting to Trade Liberalization - The Role of Policy, Institutions and WTO Disciplines, WTO Special Studies No.7, Geneva: WTO Publications, p: 5
[279] Ibid, p: 5

studies show that adjustment costs are smaller than the gains from trade liberalization.[280]

In fact, "adjustment" as an economic term is a very broad concept.[281] But it is generally linked with trade liberalization and inability of domestic industries to cope with import competition, especially imports from low-wage countries.[282] But in reality adjustment is a reaction to the changes in demand and supply patterns caused by the developments in either international or domestic economy.[283] The pressure of structural change can be caused by many different factors and developments in the supply or demand side of an economy and trade liberalization is only one of these factors. For instance, on the supply side technological innovations, emergence of more efficient producers or discovery of more suitable inputs and improvements in factors of production would create a pressure of adjustment. On the demand side the preferences of consumers may change or the changes in the per capita income would affect the consumption decisions. These and many other factors cause structural change and adjustment, so the adjustment costs are not always entirely attributable to trade liberalization. For instance, Bacchetta & Jansen(2003) claim that pressures for structural adjustment caused by technological change are bigger than those caused by trade.[284]

Nonetheless, as mentioned above, the public has been biased in relating the problem of structural adjustment to trade liberalization and import competition by neglecting the other sources of pressure for structural change mentioned above. [285]

In the normal course of business, companies adjust to the above mentioned changes simultaneously as these developments take place and it is the duty of managers to find solutions to adapt their individual firms or factories to these changes.[286] But some problematic industries or industries in crises have been incapable of making these

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[280] Ibid, p: 6
[281] Banks, Gary & Tumlir, Jan, (1986), Economic Policy and the Adjustment Problem, Thames Essay No. 45, Trade Policy Research Centre, London: Gower. P: 2
[282] Ibid, p: 1 and Bacchetta & Jansen, Adjusting to Trade Liberalization, p: 9
[283] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p:2
[284] Bacchetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 9.
[285] Banks & Tumlir, (1986), Economic Policy and the Problem of Adjustment , p: 1
[286] Ibid, p: 2.

adjustments individually, due to inherent problems of the industry or imperfections in the markets, and they require assistance from their governments.[287] Especially in times of sudden import surges and when the companies of the industry in question has lacked the foresight to develop strategies to cope with the changes, the governments are expected to assist the losers of trade liberalization through adjustment assistance policies and programmes or by providing import relief via trade remedies – and sometimes both – during these transition periods.

Whether through government assisted adjustment programmes or private incentives of individual companies, adjustments are required in the labour and capital markets of a national economy. As mentioned above adjustment is not a narrow concept and it is not limited to the structural changes to adapt to the new competitive environment introduced as a result of trade liberalization. Domestic forces can also cause a change in the competition conditions thus requiring adjustment. However, since the subject of this study is the safeguard mechanism of the WTO which is aimed at facilitating the adjustment of domestic industries to import competition, here the adjustment issue will be limited to trade-related adjustments in transition periods after trade liberalization or in times of sudden import surges.

In the first part, the provisions of the WTO Agreement on Safeguards on structural adjustment will be examined, with a brief reference to other WTO agreements that contain mechanisms to smooth transition periods, followed by a comparison of safeguards and contingent trade remedies and the relation between application of these measures and adjustment. Then the adjustments in labour and capital markets will be analysed together with adjustment costs. In the third part public adjustment assistance policies will be explained, as well as the rationales for government intervention in the adjustment process and possible problems and costs associated with government assistance policies will be explained briefly.

[287] Ibid, p: 3 and Bacchetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 6.

4.2. WTO Mechanisms to Facilitate Adjustment

As mentioned above, the multilateral trading system includes mechanisms to facilitate trade related adjustments in order to help the states in their transition periods. The safeguard mechanism of the WTO, is the main instrument designed to ease the adjustment process for the WTO member states during times o increased imports and the adjustment aspect of safeguards will be detailed below.

Besides from the provisions of the Agreement on Safeguards, the multilateral trading system under the auspices of the WTO presents other mechanisms to facilitate adjustment such as transition or implementation periods and the use of certain subsidies to help domestic industries.

The provisions of WTO agreements include transition periods and implementation periods available to the members in order to give them some time to make liberalizations gradually, to change their domestic regulations and legislation and to establish new institutions where necessary.[288] These are mainly aimed at helping members right after the liberalizations took place and they are targeted to anticipated adjustment problems.[289] Furthermore, under the WTO Agreement on Subsidies and Countervailing Measures, certain subsidies are permitted for member states in order to assist the domestic industries to overcome trade-related adjustment problems.[290] Unlike transition periods, subsidies and safeguard measures are mainly aimed at providing assistance and necessary policy tools to member states in times of unforeseen developments.[291]

Bacchetta and Jansen (2003) mention that implementation periods and announcing trade liberalization in advance would ease adjustment of import-competing industries before the liberalization takes place. But it must be noted that it is not always

[288] Bacchetta & Jansen, (2003), p: 43. For a detailed analysis of transition periods under WTO see p: 44-48 of the study.
[289] Ibid, p: 43.
[290] Ibid, p: 43. For a detailed analysis of WTO provisions on subsidies and trade related adjustment see p: 58-60.
[291] Ibid, p: 43

so. For instance, in the Uruguay Round the removal of textiles and clothing quotas were scheduled and it was announced that the remaining quotas will be removed on 1st January, 2005. With the accession of People's Republic of China to the WTO, it was evident that after the removal of textiles quotas, cheap textiles from China and partially from India would dominate world's textiles trade due to cheap labour employed in production. But since then the Turkish and European textiles producers, industry associations and the governments did only a few things to overcome this problem and did not take the precautionary steps to be prepared for this import competition.

4.2.1. WTO Agreement on Safeguards and Adjustment

It is clear that the WTO Agreement on Safeguards is aimed at facilitating adjustment of domestic industries to international competition, which is explicitly mentioned in the preamble of the agreement as follows:

> "Recognizing the importance of *structural adjustment* and the need to enhance rather than limit competition in international markets"[292] (WTO, 1995, p: 315)

Imposition of temporary safeguard measures in the form of increased tariffs, quotas or tariff rate quotas are allowed with the purpose of easing the transition period for members and this objective is further mentioned in several articles (see below) of the agreement. So, it is evident that the intention of the drafters of the WTO agreements, in permitting the imposition of temporary trade restrictions, is not to limit trade liberalization. Safeguards (under the WTO and the GATT 1947 systems) are permitted to facilitate the integration of domestic industries - faced with severe import competition - to international economy.

> Article 5: 1 (*Application of Safeguard Measures*)
>
> "A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to *facilitate adjustment*"[293] (WTO, 1995, p: 317)

[292] WTO (1995), "The Results of the Uruguay Round…", p: 315

Article 7 (*Duration and Review of Safeguard Measures*) concerns with the duration and extension of safeguard measures. The paragraph 2 of this provision requires the national competent authorities to demonstrate evidence that the industry protected by a safeguard measure is adjusting as a pre-condition to extend the measure. Paragraphs 1, 2 and 4 refer to the goal of facilitating adjustment as follows:

> "A Member shall apply safeguard measures only for such period of time *as may be necessary to prevent or remedy serious injury* and *to facilitate adjustment*"[294] [Article 7.1] (WTO, 1995, p: 318) [*emphasis added*]

> "The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing member… and that there is *evidence that the industry is adjusting,* …"[295] [Article 7.2] (WTO, 1995, p: 318-319) [*emphasis added*]

> "*In order to facilitate adjustment* in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall *progressively liberalize* it at regular intervals during the period of application. …"[296] [Article 7.4] (WTO, 1995, p: 319) [*emphasis added*]

Article 12:2 (*Notification and Consultation*) also mentions the obligation of the competent authorities to exhibit the evidence that the industry is adjusting:

> "… In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. …"[297] (WTO, 1995, p: 322)

It is striking that the Agreement on Safeguards did not explicitly require the competent authorities to submit adjustment plans when imposing a safeguard measure, when the safeguard investigation is terminated with the imposition of a measure. In the *Korea-Dairy Products* safeguard case, whether an adjustment plan is required by Article 5.1 was debated.[298] The Panel in this safeguard case concluded that there was no

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[293] Ibid, p: 317
[294] Ibid, p: 318
[295] Ibid, p: 318-319
[296] Ibid, p: 319
[297] ibid, p: 323. Article 12 Notification and Consultation
[298] Lee, (2002b), Safeguard Measures…, p: 658.

such requirement but at the same time stressed that an adjustment plan would demonstrate that competent authorities have taken the measure to prevent or remedy serious injury and to facilitate adjustment.[299] Lee (2002) reflects the *Korea – Dairy Products* Panel decision concerning the issue of an adjustment plan as follows:

> "[*adjustment plan*]…strong evidence that the authorities considered whether the measure was commensurate with the objectives of preventing or remedy serious injury and facilitating adjustment"[300] (Lee, 2002b, p: 658)

So, when imposing a safeguard measure an adjustment plan could be presented to demonstrate how the protected industry will be adjusting, since the primary objective of the safeguard measure is to prevent or remedy serious injury and to facilitate adjustment. The inquiry report of the Competent Authorities could explain how the industry would be adjusting with the imposition of the safeguard measure in question. A good example to such an inquiry report can be the report of the Australian Productivity Commission prepared following its investigation for a safeguard action against imports of pig and pig meat, which is detailed in the following part.[301] Although not required by the Agreement on Safeguards, the regulations of some WTO members, such as Thailand, require the companies and domestic industries to submit an adjustment plan when they demand a safeguard measure.[302]

Furthermore, the gradual liberalization of imposed safeguard measures- duration of which exceeds one year- as stipulated by the agreement aims at easing the integration of the domestic market to world markets and so enabling adjustment. Because, otherwise the safeguard-protected industry would be isolated from the changes in the world market prices and when the safeguard measure is lifted suddenly it would be exposed to a shock. Gradual liberalization of the measure helps the industry to face international competition slowly and gives it the chance to adjust.

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[299] Lee, (2002b), Safeguard Measures…, p: 658.
[300] Ibid, p: 658. Lee reflects the Panel decision in Korea-Dairy Products WT/DS98/R, para.7.108.
[301] See the part 4.2.3 of this study in the following pages for detailed information about the investigation report of the Australian Productivity Commission. This report is also listed among the Resources about Safeguards in the website of the WTO.
[302] Bachetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 51-52. See deep note 136 on page 52.

4.2.2. Safeguard Measures and Unfair Trade Remedies

As mentioned in the previous chapters of this study, members of the GATT/ WTO (including the EU and Turkey) have applied contingent protection instruments or unfair trade remedies, i.e. antidumping and countervailing duties, far more than safeguard measures.[303]

There are important differences between safeguards and antidumping measures or countervailing measures, especially in terms of the requirements to impose such measures and the procedures in their application, but the unfair trade remedies became to be used as a substitute for the main safeguard instrument as discussed earlier.[304] The differences between these measures entail important results especially in relation to the adjustment issue.

The main difference is the fact that antidumping measures are designed to be used in case of a dumped import (and countervailing duties are aimed at remedying a subsidized import), so to fight against unfair trade practices of exporters. In order to apply an antidumping measure there must be "unfairness" in the actions of the exporters. Whereas, safeguard measures are applied regardless of unfairness, as discussed at length in the previous chapters, they are designed to provide a breathing period for domestic industries to make necessary adjustments.

When confronted with the problem of increased import competition domestic industries may petition for trade protection either in the form of safeguards or antidumping measures or countervailing duties, since all of the measures are available policy instruments.[305] Sometimes, industries may demand antidumping measures in order to escape import competition for adjustment purposes.[306]

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[303] This could be seen in the tables demonstrating the use of these measures given in the previous chapters of this study.
[304] See the previous chapters of this study and also Bachetta and Jansen, (2003), p: 56.
[305] Bacchetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 55-56
[306] Ibid, p: 56

But the substitution of safeguard measures with antidumping or countervailing measures has some implications for the issue of adjustment. In case of an unfair trade remedy, domestic industries are protected under the shelter of "unfairness". Since these measures are designed to remedy unfair trading practices of exporters, their rules and procedures of application are different from those of safeguards. For instance, in case of an extension of an existing measure, Agreement on Safeguards require the demonstration of evidence that the industry is adjusting but there is no such requirement under the Agreement on Antidumping.[307] Also the basic rationale behind the safeguards mechanism of the WTO is the facilitation of adjustment as stipulated in the above provisions of the WTO Agreement on Safeguards but in the case of antidumping measures the intention is to remedy an unfair trade practice and prevent the negative effects of a dumped import on the price structure and competition conditions in the domestic market.

Moreover, extensive use of antidumping measures for import relief implies that domestic industries or governments are merely seeking protection and they delay necessary adjustments. By applying unfair trade remedies they are hiding behind the veil of "unfair" concept and do not intend to adjust or transform their companies or industries to become efficient enough to compete with imports without protection. In case of an unfair trade remedy, it seems as if the industry in question is efficient and the cause of the inability to compete with imports is an "illicit trade practice", so this justifies protection. But when applying safeguard measures governments, in a way, accept that domestic industry in question is incapable of competing with imports due to an efficiency problem.

4.2.3. Safeguard Actions and Adjustment: A sample case

The Safeguard Action of Australia on Swine Meat (Pig and Pig meat) and the relating inquiry report by the Australian Productivity Commission (which is the competent authority responsible for undertaking safeguard investigations) titled "Pig

[307] Ibid, p: 56

and Pigmeat Industries: Safeguard Action Against Imports" deserve attention as a good example for the relation between safeguard actions and adjustment.[308] The inquiry report can serve as a model for other countries that take a safeguard action in the sense that it properly addresses the WTO rules on the application of safeguards; it covers all aspects of the issue and analyses the effects of a possible safeguard application on the industry in question; on consumers and users of the products covered by the safeguard action, on unemployment/ employment, on the trade relations of Australia with its trading partners and the possible implications for Australia's position in international trade negotiations and most importantly refers to the objective of "facilitating adjustment" and investigates whether the application of a safeguard measure would promote the adjustment of the pig and pig meat industries to international competition.

The Productivity Commission of Australia conducted the investigation according to the requirements of the WTO. The inquiry report identified directly competing products in the domestic market and their producers, investigated whether imports have increased, determined whether the domestic industry is facing serious injury or is under threat of serious injury and analysed the causal link between the injury and the increase in imports and most importantly identified the measures that would remedy injury and facilitate adjustment.

It should be stressed that the Productivity Commission had an objective view in evaluating the above criteria for the application of a safeguard measure and indeed concluded that tariffs would not be the best instrument to promote adjustment and to encourage exports, even if the results of the investigation report can justify the application of a safeguard measure with respect to WTO requirements for taking a safeguard action.[309] It is evident from the inquiry report that the underlying intention of the investigation was to evaluate whether a safeguard action is appropriate to remedy injury suffered by the industry and to facilitate the adjustment of that industry; not to find a justification to restrict trade.

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[308] Productivity Commission, Australia. (2001). Pig and Pigmeat Industries: Safeguard Action Against Imports. Inquiry Report. Canberra: AusInfo. International Trade Series from Economics Working Paper Archive at Washington University. St. Louis: Washington University. Retrieved: May 10, 2004 on the World Wide Web URL: http://econwpa.wustl.edu:8089/eps/it/papers/0107/0107003.pdf

[309] Productivity Commission, (2001), Pig and Pigmeat Industries …, p: XXVI and XXXI.

First of all, the Productivity Commission of Australia considered all aspects of the situation in its domestic pig farming and pig meat processing industries in detail, identified the problems of the industry and objectively evaluated whether safeguard measures are necessary to prevent or remedy serious injury and to facilitate adjustment. They have made a clear reference to the WTO substantive requirements for the application of a safeguard measure and considered whether any action against imports of pig and pig meat would be in conformity with the WTO rules. All throughout the report there is a clear reference to the objective of "facilitating adjustment".

In the investigation the Productivity Commission examined whether the WTO conditions (substantive requirements) were met to take a safeguard action against imports and tried to identify the most suitable measure to remedy serious injury and facilitate adjustment of the industry in question.

The inquiry report of the Australian Productivity Commission analysed what kind of safeguard measures would remedy serious injury caused by imports and facilitate adjustment. As mentioned in the first chapter, the safeguard measures allowed under the WTO Agreement on Safeguards are tariffs, quotas or tariff quotas. The industry representatives (the Pork Council of Australia) demanded a tariff quota from the government; they wanted a quota of 4000 tons to be imposed for four years, but the Commission did not agree with this level of a quota since that would lower the quantity of imports to the level during 1995-1996 and would reverse the liberalization process. And the Commission concluded that a quota was not suitable for the pig and pig meat industry, since the industry should be in close contact with the world market and international prices. Commission also considered the administrative costs of quota allocation and the possibility of creating distortions with a quota in the pig meat processing industry and the inequalities that could arise in the allocation of quotas.

The Productivity Commission preferred an *ad valorem* tariff of 10 percent that would be phased out in two years; after the first year initial 10 percent tariff would decrease to 5 percent and at the end of two years to zero. In this way the serious injury suffered by the industry would be remedied and the adjustment of the industry to

international competition would be provided through progressive liberalization of the imposed measure.

Nevertheless, the Productivity Commission underlined that even an *ad valorem* tariff may not be the best instrument to remedy serious injury and to facilitate adjustment. The Productivity Commission expressed the measures that would help the restructuring of the industry and promote export orientation. In their words;

> "…the Commission is of the view that remedying injury and facilitating adjustment is better targeted by a combination of direct assistance to those forced to leave the industry and appropriate short-term assistance to facilitate an expansion in export capacity, a reduction in the impediments to exporting, and market development."[310] (Productivity Commission, 2001, p: XXVI)

In the case of the EU, however, an examination of recent safeguard applications of the EU as presented in the Official Journal of the European Union demonstrates that there is no reference to the issue of facilitating adjustment in the safeguard applications, contrary to the inquiry report of the Australia Productivity Commission mentioned above.

4.3. Government Adjustment Assistance Policies

The question of how to adjust domestic industries to international competition has been a central issue on the agenda of especially developed countries since 1960s.[311] To assist domestic industries, governments have not only used trade restrictions, they have also designed certain proactive adjustment assistance policies to address and smooth the transition phase of domestic industries. The success of public policies is questionable, as past studies demonstrate not all of them proved to be completely effective.[312] Furthermore some scholars questioned the government intervention to the

[310] Productivity Commission, Australia (2001), Pig and Pigmeat Industries..., p: XXVI.
[311] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 11. For more information on the history of government adjustment assistance policies see p: 10-23 of the mentioned work.
[312] See Trebilcock & Howse, (1995), The Regulation of International Trade, p: 177-183 and Banks& Tumlir, Economic Policy and the Adjustment Problem, p: 11-20.

adjustment process and argued that the policies designed to alleviate adjustment costs also posses certain "social costs".[313]

As mentioned above, trade liberalization is a form of structural change and when the domestic industries are faced with severe import competition, companies either undertake adjustments individually or demand government assistance to the adjustment process. Governments have different policy measures at their disposal to address these demands. The government adjustment assistance may take several forms but they may be categorized under two general headings: first, trade restrictions (i.e. tariffs or quantitative restrictions or the like) to protect the domestic industry from the surge in imports and to give them the *time* to make adjustments; second, subsidization through adjustment policies and programmes that are designed and implemented by the government - or together with the private sector - to facilitate the process and share the burden of adjustment costs with those severely affected by trade liberalization. Sometimes a combination of the two (trade restrictions and subsidization) can be used.

Although governments have several policy options to follow for assisting domestic industries, only one of these options could be the most suitable and first best policy, which addresses the real cause of the problem in that industry.[314] According to the "theory of optimal interventions", in the presence of distortions in the domestic markets the most suitable policy response is to remove the original distortion and to solve the problem at its source, since all other policies would create "by-product distortions".[315] So, trade restriction is not always the best policy for adjustment purposes, similarly industrial subsidies or credits to shrinking industries are not always the ideal policy tool. For example, the real problem may be in the labour market due to highly immobile displaced workers whose skills are specific to an industry that has collapsed and cannot find a new job in rising sectors. So, the best policy should be to retrain the workers to help them gain new skills. In order to find the best solution for the

[313] Ibid, p: 45. See chapter 4 of the work. Possible problems with government adjustment assistance are explained below in the final part of this study.
[314] Corden, Max W. (1974). Trade Policy and Economic Welfare. Oxford: Clarendon Press. Chapter 2, The Theory of Domestic Divergences, p: 9 - 33. See page 28-29 for Hierarchy of Policies. The concept of "market failures" and the "theory of optimal interventions" are detailed below under 4.3.1.1.
[315] Greenaway, David. (1983). International Trade Policy: From Tariffs to the New Protectionism. Macmillan. See p: 52-59.

problem, first of all the governments should identify the real problem in that industry and when doing so should also take into account the market failures –if any – that impede the private adjustments to take place. Once the real cause of the inefficiency and inability to compete in that industry is identified then the best policy is to remove that problem.[316] The others could only be second-best, third-best and so on.

The arguments supporting government intervention in the adjustment process are mentioned below and special emphasis is given to the market failures or domestic distortions and the "theory of optimal interventions". Then domestic adjustment assistance policies are explained with reference to adjustment costs faced by both workers and businesses.

4.3.1. Rationales in Support of Government Assistance to Adjustment

Government adjustment assistance, either in the form of trade restrictions or subsidies, has several motives that are explained below. One of them deserves more attention since this presents the strongest case for government intervention in the adjustment process.

4.3.1.1. Market Failures

Domestic markets sometimes may not function properly due to the existence of distortions in the product or factor markets. In the presence of market failures (or distortions in domestic markets) there is a reason for government intervention to remove and correct the distortion in order to make a good resource allocation and to help the market to reach the *pareto optimum*.[317]

> "These imperfections may be present in product or factor markets. In the case of the former, monopoly supply or external economies could prevent the free market from reaching an optimum. In the case of the

[316] Corden, (1974), p: 28-29.
[317] Greenaway, David. (1983). International Trade Policy: From Tariffs to the New Protectionism. Macmillan. P: 53.

> latter, factor price rigidity or factor immobility might be a constraint. It is widely accepted that in such circumstances, an *a priori* case for intervention exists to correct the distortion and permit the market to perform its allocative function more efficiently."[318] (Greenaway, 1983, p: 53)

So governments may need to intervene in the adjustment process due to market failures and, if they apply trade protection, they can restrict trade by imposing safeguard measures in the form of tariffs or quotas. However, tariffs or quotas, in general trade restrictions are not the most suitable instruments or policy options to remove the problem in the domestic markets. As explained by Corden (1974) and Greenaway (1983) in detail, the form of the intervention is also important to achieve the most efficient, welfare increasing and less distortive outcome that does not produce any by-product distortions.[319] Governments have several policy options at their disposal, trade restrictions are one of these but the first best policy is to remove the original distortion at its source.[320] So the first best policy depends on the original distortion and trade restrictions are not always the best policy to solve the problem in the market. Any policy other than the first best will have a side effect and cause a by-product distortion.

When we look at the domestic product markets, the distortions could be production or consumption externalities, monopoly supply, etc.[321] For instance in case of an infant industry with under-investment where the entrepreneurs are unwilling to invest due to an externality; suppose that this infant-industry is faced with import competition, the government may apply a safeguard measure and increase tariffs but tariff is not the first best instrument to deal with the problem in that industry and the intervention to solve the problem would create other problems. If the government increases tariffs then the price of the imports will increase in the domestic market and the consumers will prefer domestic products so there would be a consumption distortion, which is a by-product distortion.

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[318] Ibid, p: 53.
[319] For a detailed analysis see Greenaway, (1983), p: 52 – 64 and Corden, (1974), Trade Policy and Economic Welfare, Chapter 2.
[320] Greenaway, (1983), International Trade Policy..., p: 55.
[321] Greenaway, (1983), p: 53.

It must be stressed that tariff intervention can only be the second best, third best or a worse policy option, and a subsidy should be preferred than a tariff in order to reach a welfare increasing outcome according to the theory of optimal interventions.[322] The only case where tariffs would be the first best policy instrument is the "optimum tariff" case where the country imposing the tariff is powerful enough in that market to affect its terms-of-trade, i.e. its export prices.[323] Though, this argument is questionable since it underestimates the possibility of a retaliatory action from the country's trade partner(s).[324]

Despite the by-product distortions caused by trade restrictions and the existence of better and sound policies in terms of resource allocation and increasing welfare, trade restrictions are widely used by countries. There are several reasons for this, first of all governments are concerned with "income distribution" and they use tariffs to compensate loses of particular groups of the society as a result of trade liberalization; or to maintain the income of certain groups and to avoid sudden changes.[325] Another reason for trade restrictions, especially tariffs, to be used is that tariff is a source of revenue whereas subsidy is financed from the treasury. Also while financing subsidies the form of the tax is also important, collection of the taxes may be too costly especially in a less developed economy. [326]

4.3.1.2. Adjustment Costs

Domestic import-competing industries and their workers may face severe competition as a result of trade liberalization during the transition phase. While the entire economy benefits from the efficiency gains of trade liberalization a small part of the society, i.e. the producers in the import-competing industry and workers, have to bear some adjustment costs such as decrease in output, decline or loss of income, etc. In

[322] Greenaway, (1983), p: 58-59.
[323] Ibid, p: 58.
[324] Ibid, p: 59.
[325] Ibid, p: 62. See also Corden (1974), Trade Policy and Economic Welfare, Chp.2.
[326] Greenaway, (1983), p: 62.

the presence of severe adjustment costs governments may intervene in the adjustment process to share the burden and to redistribute income.[327]

The main adjustment costs faced by workers could be listed as loss of job and income or decline in earnings, inability to find a new job due to lack of relevant skills to work in another sector, necessity to change location to search for new jobs and etc. At the extreme edge the example of one-factory or one-company towns could be given; the inhabitants of the town are dependent on this company; they are either its workers or its suppliers and the shop owners that sell products and services to those that earn their income from this company. In this case, if the company is not efficient and is closed-up, because it could not cope with imports from efficient sources, then the entire town will suffer loses and most would need to move to find a new job. The transition costs suffered by the businesses are decline in output and income, loss of profit, difficulties in finding credits to fund structural changes and at the extreme edge the obligation to stop operations and to exit the industry.

4.3.1.3. Equity Considerations

Governments sometimes intervene in the adjustment process and provide adjustment assistance on grounds of equity considerations. This ethical approach is closely linked with the rationale of "adjustment costs".[328] Trade liberalization brings welfare gains to the whole economy but some parts of the society suffer losses and gains are enjoyed by a large part of the society and so the ethical approach suggests that the latter would compensate the losers of free trade through income transfers.[329] This rationale is at the heart of the EU social policy since it aims at easing the transition costs suffered during the process of regional integration. The European Social Fund, Structural Funds and Cohesion Funds were developed to help those adversely affected from European integration and aims at easing this process and providing convergence.

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[327] Bacchetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 6. See also Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 24 - 31.
[328] Banks & Tumlir, (1986), p: 31.
[329] Ibid, p: 32.

4.3.1.4. Political and Social Considerations

Another non-economic motive for government action to ease adjustment process of companies and workers could be to secure the political support of those affected by trade liberalization in the next elections.[330] Since adjustment costs are felt by a certain part of the society, the government may want to comfort them in order not to lose their support since these people would hold the government responsible for the decision to liberalize trade and for the changes in economic policy. The governments may also be under pressure from strong well-organized groups of producers in long established industries that lobby the government for protection. As a result, the government may act with political purposes rather than economic considerations, such as increasing welfare, and intervenes in the adjustment process even if it is not justifiable on economic grounds. For instance, in the EU large organised industry associations lobby the government to receive trade protection such as EURATEX, the European Apparel and Textile Organization, which has appealed the European Commission and wanted imposition of safeguards in the form of quotas against textiles imports from China. Also workers' unions can be effective in achieving protection or adjustment assistance from the government.

4.3.2. Adjustment Assistance Policies

As mentioned above, governments have been concerned with the adjustment problems and designed policies to address problems of domestic industries since 1960s and early 1970s.[331] Even some predecessor policies can be found in 1950s in the then European Economic Community under the Treaty of Paris for the coal and steel industries and the European Social Fund, under the Treaty of Rome, that assisted workers through retraining, income support and resettlement subsidies to ease adjustment.[332]

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[330] Bachetta & Jansen, (2003), Adjusting to Trade Liberalization, p: 19
[331] Trebilcock & Howse, p: 177 and Banks & Tumlir, p: 11
[332] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 11.

Some governments have designed separate policies to deal with the adjustment problems solely in the industries that are negatively affected by trade liberalization, which could be referred to as Trade Adjustment Policies.[333] The "Trade Adjustment Assistance Programme" of the US is a good example to such policies designed to facilitate trade-induced adjustments.[334] This program targets all sectors and regions that are adversely affected by the increase in imports and is composed of two sub-programs; "Trade Adjustment Assistance to displaced workers" and "Trade Adjustment Assistance to firms and industries".[335] The program designed for workers assists those workers that are displaced or whose work hours and thus wages are decreased as a result of import competition; so the program assists the workers temporarily to share the burden of adjustment costs and does not aim at bearing permanent income loses, though a wage insurance program was proposed to compensate at least some portion of the permanent income loss of workers for some years after they lost their jobs.[336] The US assistance program for companies provides technical assistance to manufacturers and helps them to develop strategies to undertake structural change, so this program contributes the adjustment process of companies in the form of guidance.[337]

> "The worker assistance program is by far more important than the firms assistance program. In 1997, the former expended US$ 280 million for assistance to workers while expenditures on the firms program amounted to US$ 8.5 million. Corresponding figures for 1991 were US$ 115.7 million for workers and around US$ 10 million for firms. NAFTA-Related Assistance to workers in 1997 amounted to US$ 49 million."[338] (Bacchetta & Jansen, 2001, p: 21)

Also, some governments developed sector specific adjustment programmes targeting problems experienced solely in that industry and assisting the companies and workers to undertake structural adjustment, such as the following policies of major industrialized countries during 1960s; the United Kingdom's Cotton Industry Scheme, Japan's Textile Structural Adjustment Law and Canada's assistance to her automotive

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[333] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 11 and Trebilcock & Howse, (1995), p: 177.
[334] Bacchetta & Jansen, (2001), Adjusting to Trade Liberalization, p: 21 (see the box on this page).
[335] Ibid, p: 21.
[336] Ibid, p: 21.
[337] Ibid, p: 21.
[338] Bacchetta & Jansen, (2001), Adjusting to Trade Liberalization, p: 21 (see the box on this page)

industry subject to demonstration of injury resulting from trade liberalization under the Canadian-American Automotive Agreement of 1965.[339] Some government policies have addressed the problems faced by the companies when trying to exit the market and governments designed special programmes to ease the exit of these firms.

Some brief examples of adjustment assistance policies in developing countries are mentioned in the Appendix 5 at the back of this study.

4.3.2.1. Workers and Adjustment: Labour Market Policies

The adjustment costs and their severity faced by the workers depend on several different factors such as the general situation of the economy, institutional setting of the economy and functioning and characteristics of markets. For instance when the economy is in a recession then the chance of the unemployed to find a new job would be lower than in an expanding economy.[340] Also the degree of suffering from unemployment can be dependent on the institutional setting of the economy and functioning of credit and labour markets.[341] In case of a developing country with a weak social security system, displaced workers may not be entitled to an unemployment benefit and thereby they would be completely deprived of a source of income and this would increase the need for a governmental intervention.[342]

The adjustment costs or social costs suffered by displaced workers can be listed as loss of income during the unemployment period, costs of searching for a new job, costs of moving if the new job is in another region and the costs associated with acquiring new skills if the worker will be employed in another sector.[343] Besides from these, long-term unemployment may cause psychological sufferings, alcoholism, dissolution of the family and physical illnesses, etc.[344]

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[339] Banks & Tumlir, (1986), p: 12.
[340] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 178.
[341] Bachetta & Jansen, (2003), p: 33-34.
[342] Ibid, p: 34. See also Trebilcock & Howse, (1995), p: 179.
[343] Bachetta & Jansen, (2003), p: 22.
[344] Trebilcock & Howse, (1995), p: 180.

Depending on the type and degree of costs suffered, the government intervention to the adjustment process of workers may take several different forms. If the displaced workers need to find a new job then the government may assist them for job search, make placement consultancy and income support.[345] If they were working in a declining industry and their skills are restricted to that industry which cannot be utilized in other rising industries then the unemployed workers need to gain new skills through retraining programmes. As mentioned above, the best policy option is to solve the inefficiency problem at its origin. So if the workers need to gain new skills, then the government should design a policy to address this need and develop programmes to train and retrain the workers to give them a chance to acquire new skills required to find jobs in the rising sectors.

So, governments may simply make income support during the unemployment period through social safety systems and other mechanisms; or they can design policies to enhance the knowledge of displaced workers and help them to find a new job and enable their replacements. Below is a comparison of labour market adjustment policies in developed countries, including the major EU members.

> "Comparative experience with labour market policies in various industrialized countries yields a very mixed record. Countries like the UK, France, Canada, the USA, and Australia have tended to favour a safety net approach, rather than proactive labour market policies. In contrast, Sweden, Japan and to a lesser extent Germany, tend to favour much more proactive labour market policies that provide generous assistance to workers for training, retraining, and relocation. The empirical evidence strongly suggests the superiority of the latter class of policies in terms of facilitating adjustment."[346] (Trebilcock & Howse, 1995, p: 181)

The relationship between trade and labour issues goes beyond trade-induced adjustments in labour markets and government adjustment assistance policies to ease this process. Pressures from imports coming from low-wage developing countries with poor labour standards brought the issue of "labour standards" to the agenda of international trade negotiations and developed countries started to demand the

[345] Trebilcock & Howse, 1995, The Regulation of International Trade, p: 178.
[346] Ibid, p: 181.

internationalization of core labour standards. Developed countries claim that they are faced with an unfair competition from developing countries with poor labour standards and they demand the implementation of core labour standards by developing countries.

4.3.2.2. Businesses and Adjustment: Industrial Subsidies

As a result of trade liberalization domestic industries may be unable to compete with imports coming from more efficient sources so they need to adjust. In this process there may be a decrease in output, market shares, earnings and the profit. At the most extreme point, some factories may be closed and companies may exit the market due to the pressure of cheap imports. The governments assist the adjustment phase of companies and industries through trade restrictions or subsidies. As expressed above the choice of policy should depend on the availability and relative costs of alternative choices and most importantly should aim at solving the problem at its source.

Governments have been concerned with the adjustment problems of their domestic industries for decades and they have not only provided trade restrictions but they have also given subsidies to help them to survive in the new competitive environment and to adjust to the new conditions.[347]

Similar to the adjustments in labour markets, the functioning of domestic markets and institutions are important for the adjustment of businesses to international competition. The credit markets have a crucial role in the adjustment process of businesses.[348] If the credit markets are not functioning well then the companies in need of finance could not find enough funds to undertake adjustment or make new investments to restructure their businesses. In case of distortion in the domestic capital markets, government can provide the required funds and give subsidy transfers in the form of soft loans.

[347] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 177.
[348] Bacchetta & Jansen, 2003, Adjusting to Trade Liberalization, p: 33

As regards the "theory of optimal interventions" mentioned above;[349] the policy should address the cause of the inefficiency problem in order to attain the *pareto optimum*. Any kind of subsidy policy should intend to facilitate and promote the adjustment of the industry and companies in question. The subsidies should not prevent or discourage the companies to undertake structural changes, because supporting an industry with industrial subsidies can be a protectionist policy as well, if they are not designed to transform the industry and solve the real problem.

As mentioned above, when domestic producers are faced with an import pressure, the governments have used not only trade restrictions but also industrial subsidies and these subsidy policies did not avoid the need for adjustment.[350]

> "Pure output related subsidies have been the least effective in this respect in that they flatly deny the need for adjustment, and while they maintain output and employment in an industry this typically can only be sustained if the subsidies are endless and often increasing." (Trebilcock & Howse, 1995, p: 177)

It must be noted that not all subsidy programmes could be successful. The EU steel industry, which was granted huge subsidies since 1960s, is a good example.[351] In 1960s European steel producers made new investments and constructed big plants with the subsidies they received from their governments but in 1970s the steel market started to experience problems and this time steel producers demanded subsidies to cope with their excess capacity problem which was a result of previous government supported huge investments.[352] The steel producers did not use these additional subsidies to undertake necessary adjustments, to adjust their capacities; instead they used these subsidies to compensate their losses.[353]

The past subsidy policies could be listed as; those designed to maintain the output level, to modernize the obsolete capital in the factories, to provide credits to

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[349] See above section on Market Failures. For the Theory of Optimal Interventions see Greenaway, (1983)
[350] Trebilcock & Howse, (1995), The Regulation of International Trade, p: 177.
[351] Messerlin, 2001, Measuring the Costs of Protection in Europe, p: 278
[352] Ibid, p: 278 - 279
[353] Messerlin, (2001), p: 279.

companies, to ease the exit of the companies of the shrinking industry and to promote export-oriented operations.

4.3.3. Problems with Government Adjustment Assistance Policies

In the literature, whether governments should assist to the adjustment process and provide subsidy transfers or trade protection to those adversely affected from trade liberalization have been a cause of concern.[354] As discussed earlier, there are different policy options to follow depending on the type of failure in the market and only by addressing the real problem they could create the best outcome. But some scholars argue that any type of government assistance to the adjustment process of industries (even the so called first best policy) may have "social costs" as well.[355] The problems and costs associated with the government intervention can be explained as follows.

4.3.3.1. Declining Industries and Persistence of Protection

Past studies and results of the government adjustment assistance programmes targeted to the so called senile or declining industries such as steel, shipbuilding, textiles, clothing, etc., showed that there is a risk of making these industries much more protected with such adjustment interventions, instead of making them competitive again.[356] Brainard and Verdier (1993) explained the persistence of protection in declining industries by analysing the interaction between industry adjustment, lobbying and the government response to such lobbying activity.[357] When producers are faced with import competition they have two alternative options to follow; they either undertake adjustment or lobby the government and demand protection, so they avoid adjustment.[358] Brainard and Verdier (1993) developed a model and showed that current

[354] See the work of Banks & Tumlir (1986), Economic Policy and the Adjustment Problem.
[355] Banks & Tumlir (1986), Economic Policy and the Adjustment Problem, p: 45.
[356] Ibid, p: 17 - 18.
[357] Brainard, S. Lael & Verdier, Thierry. (1993). The Political Economy of Declining Industries: Senescent Industry Collapse Revisited. NBER Working Paper No.4606. Cambridge. Retrieved: December 21, 2003 from the website of NBER (National Buerau of Economic Research). World Wide Web URL: http://www.nber.org/papers/w4606
[358] Ibid, p: 1.

tariffs are an increasing function of past tariffs and the greater the degree of protection was before liberalization then post-liberalization protection would be higher; and adjustment in declining industries would be lower when they can receive protection through lobbying.

> "…since current adjustment diminishes future lobbying effectiveness, and protection reduces current adjustment, current protection raises future protection. This simple lobbying feedback effect has an important dynamic resource allocation effect: declining industries contract more slowly over time and contract less than they would in the absence of protection."[359] (Brainard & Verdier, 1993, p: 2)

In any kind of policy whether subsidies or trade restrictions to help these industries to regain their competitiveness, the governments should try to avoid this risk. The aim of the assistance programme must be to transform the problem industry, not to preserve it in its current form, and should address the real cause of the inefficiency problem in that industry, in order to help it to survive in the new competitive environment without any form of assistance.

4.3.3.2. Negative Impact on Private Adjustment Incentives: Moral Hazard

Similar to the case of adjustment assistance to declining industries, in general adjustment assistance policies and the possibility of receiving assistance from the government reduces the private incentives to undertake required adjustments.[360] When faced with import competition, companies or industry representatives have two choices; they may take the necessary steps and develop strategies to transform their businesses and adapt them to changing conditions or they may demand protection and assistance (in the form of trade restrictions or subsidies) from the government, instead of dealing with the adjustments on their own.

This issue could be explained with the widely cited example of the impact of insurance on the behaviour of people; for instance when a person has insured his house

[359] Brainard & Verdier, (1993), The Political Economy of Declining Industries: Senescent Industry Collapse Revisited, p: 2.
[360] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 45-47.

against theft it is argued that that this person would be less cautious towards theft and would not lock his door or would not pay attention to precautionary activities to avoid the entry of thieves in his house such as checking whether doors and windows are closed or not, because he knows that his house is fully insured against theft. Similarly, it is argued that the possibility of government assistance to the adjustment process prevents companies from making the adjustments themselves and also the managers of these companies would be less cautious about the structural changes and they would not act in advance to take the precautionary measures. Companies would simply demand protection or adjustment assistance from the government.

Nonetheless, it must be stressed that under certain conditions government assistance may be unavoidable, such as the presence of market failures that impede the private adjustments to take place; lack of social safety nets or an institutional setting to ease the transition period; and when the severe adjustment costs are born by a small part of the society. For instance; in the case of a huge number of highly immobile displaced workers especially as a result of the collapse of a big company located in a town which is the main employer in that region, weak social security systems of developing countries, mal functioning of capital markets that can't meet the credit requirements of private companies, etc.

4.3.3.3. Rent Seeking

"Rent-seeking" is related to the above mentioned "moral hazard" problem, but it is different and should be explained separately. As mentioned above, the possibility of government assistance may have a negative impact on private adjustments; companies may seek ways of obtaining government support instead of undertaking the necessary adjustments themselves. So, the efforts of the companies and their managers are devoted to lobbying the government to receive assistance in the form of either subsidy transfers or trade restrictions and this creates another social cost called "rent seeking".[361]

[361] Banks & Tumlir, (1986), Economic Policy and the Adjustment Problem, p: 47.

> "…important way in which transfers create cost is diversion of resources (especially managerial expertise) from productive activities to lobbying government. This activity is perfectly rational for profit-seeking enterprises operating in an institutional environment which includes the possibility of government assistance. … From a firm's point of view, it makes no difference from which source its profits flow, … From society's viewpoint, however, it matters a great deal, for lobbying activity, …generates no social product. …To distinguish it from other productive forms of profit-making activity, lobbying has been called *rent seeking*, which has been described as 'behaviour in institutional settings where individual efforts to maximize value generate social waste rather than social surplus'."[362] (Banks & Tumlir, 1986, p: 47-48)

The managers of the companies instead of dealing with their field of activity would be lobbying the government to receive subsidies or protection and the valuable resources of the economy including managerial expertise would be wasted.

4.4. Turkish and the European Textiles & Clothing Industries and Safeguards

The European and Turkish textiles and clothing industries are faced with severe import competition from mainly China, and also from India and other developing countries in Asia. The removal of remaining textiles and clothing quotas, on 1 January 2005, under the ATC[363] as scheduled at the Uruguay Round heightened the import competition and increased the vulnerability of these industries which were not prepared to such trade liberalization. It should be stressed that China leads the competitive pressure in textiles and clothing trade.

The situation of European and Turkish textiles and clothing industries represents a sample case for the subject of this study: *safeguard measures and industry adjustment*. These industries are unable to compete with low-cost imports, especially those coming from China, and the industry representatives have demanded trade protection from the

[362] Ibid, p: 47 and 48.
[363] ATC: Agreement on Textiles and Clothing.

authorities on the basis of the Textiles-Specific Safeguard Clause (TSSC)[364] included in China's Protocol of Accession to the WTO. Turkey imposed safeguards on certain textiles and clothing products from China under the TSSC and a few months later the EU also imposed safeguards. But whether these safeguard measures could facilitate the adjustment of domestic textiles and clothing industries is highly debatable. Trade protection can give the industries some time but certain additional policies should be developed for the restructuring of the industries. Below the challenges and developments in Turkish and European textiles and clothing industries are briefly discussed.

4.4.1. New Challenges in the Turkish and European Textiles Industry vs. China

Especially with the elimination of remaining textiles and clothing quotas on 1 January 2005, Turkish and European textiles and clothing producers are faced with heightened import competition from China. As mentioned above, at the beginning of 2005 Turkish government applied safeguard measures in the form of quantitative restrictions on certain Chinese textiles and clothing products. Recently, the EU also imposed safeguards against some Chinese imports. At this point it must be stressed that import restrictions solely cannot help these industries and firms to adjust, since it is clear that they cannot compete with China in their current structure. Other more suitable policies should be developed to transform these industries and firms and make them competitive again. Moreover, the Textiles-Specific Safeguard Clause under the Accession Protocol of China to WTO can only be applied for one year and even if the measure can be reapplied after the expiry date of the first safeguard measure, all such measures can only be imposed until 2008.

[364] TSSC: Any WTO member can invoke this safeguard clause if it can demonstrate that Chinese textiles imports cause "market disruption" in its market, serious enough to "impede the orderly development" of their textile trade. First of all the WTO member that wants to invoke TSSC against Chinese products should request consultations with China and ask it to limit its imports to specified levels, if China does not limit its exports then the WTO member can invoke TSSC and impose quantitative restrictions on Chinese imports. These measures can be applied for only one year and may be reapplied after this period is expired. But overall the measures under the TSSC can only be applied until the end of 2008. The Textile-Specific Safeguard Clause is aimed at providing a breathing period for domestic textiles industries of WTO members to adapt to the changes in the competition conditions.

It is evident that Turkish and European textiles and clothing industries need restructuring and modernisation in order to enhance their competitiveness. The companies in these industries could not compete with China in low-cost textiles trade and consequently they need to restructure their operations, stop producing some product lines (especially low-value added basic textiles), increase their investments in research and development to develop differentiated and high-value added products, invest in their brands and create new designs (especially in Turkey much attention should be given to fashion and design), etc. Governments and industry representatives should cooperate to overcome the problems of the textiles and clothing industries.

Since the end of October 2003, the European Commission took some steps to prepare the textiles and clothing industries for the elimination of quotas on 1 January 2005.[365] In early 2004 the Commission set up a "High Level Group for Textiles and Clothing" which included all interested parties of the textiles and clothing industries, with the purpose of receiving recommendations on the actions to enhance the conditions and competitiveness of these industries, and this High Level group produced its report on 30 June 2004 titled "The Challenge of 2005 – European Textiles and Clothing in a quota free environment".[366] On 12 October 2004, the European Commission announced seven actions to help the European textiles and clothing industry, taking account of the works of High Level Group.[367] These seven actions are aimed at increasing the competitiveness of the industry and to help it adjust to the quota-free trading environment. But it seems that the European Commission is late in taking such initiative because the elimination of quotas were scheduled at the Uruguay Round in 1994.

The seven actions can be summarized as follows[368]: 1) *Increasing research and innovation*: in order to develop high value added and high-tech textiles and clothing products the European Commission thinks of establishing a European Technology Platform. 2) To increase the skills of the workers and help them to adapt to the

[365] Website of the European Commission Directorate-General for Trade, Sectoral Issues, Textile Sector, "Textiles: Commission takes seven actions to help EU textiles industry ahead of 1 January 2005" Retrieved: 15.02.2005 on the WWW URL: http://europa.eu.int/comm/trade/issues/sectoral/industry/textile/pr121004_en.htm
[366] Ibid
[367] http://europa.eu.int/comm/trade/issues/sectoral/industry/textile/pr121004_en.htm
[368] Ibid.

structural changes via *lifelong education and vocational training* by using the Leonardo da Vinci programme and the European Social Fund. 3) To help the restructuring, modernisation of the industry and overcome socio-economic results of trade liberalization the Commission proposed a reserve fund within *Structural Funds;* 4) *Fight against counterfeiting and piracy* by providing information on Intellectual property rights to the companies; 5) *Increased Market Access:* Opening third country markets to European companies under WTO Doha Development Agenda negotiations and also increasing the access of developing countries to EU market; 6) To complete the agreements with *Euro-Mediterranean partners*; 7) *Strengthen co-operation with China* to ease the transition.

4.4.2. A Sample Case for Private Adjustment in Turkish Textiles & Clothing Industry: Strategy of TEN Underwear against China

Turkish textiles and clothing industry is faced with severe competition from mainly Chinese textile and clothing products, as a result of the elimination of all remaining quotas on textiles and clothing on 1 January 2005 as scheduled in the Uruguay Round. Ten years ago it was evident that China, India and other low-wage countries in Asia that have the comparative advantage in textile and clothing products would be a threat for Turkey, but the government or associations of textiles producers or other industry organizations did nearly nothing to find a solution to this problem. Some companies find ways to compete with cheap Chinese products in the domestic market and also export markets.

Below is a sample case for private adjustment in the Turkish Textiles and Clothing industry. This example is demonstrative of the importance of managerial aptitude and foresight in tackling structural change via development of new strategies and shows that individual adjustments of companies could be successful when designed and managed carefully. The strategy developed by Ten Underwear gave successful results such as 60% market share in the Turkish market among other brands in their

sector and 35% growth rate for the last two years.[369] Nonetheless, a better assessment of their strategy could be made after seeing their performance in the following years.

Foreseeing the widely cited "China threat" to the Turkish textiles industry, TEN Underwear developed a new strategy four years ago and since then undertook a restructuring programme to change its operations as a defence against cheap lingerie and underwear from China.

Before the restructuring programme the main sales & distribution channels of the company were export customers and wholesalers or distributors in the domestic market.[370] Since the company had to secure higher profits to undertake adjustment and to compete with Chinese products they stopped working with domestic and foreign resellers, changed their distribution channels and sales operations.[371]

The company started retail operations and opened up "retail shops" under its brand name TEN and reached the consumers through direct sales from its regional offices and retail shops. TEN also, stopped its export operations and decided to reach the foreign consumers directly through its retail shops in foreign markets as well. Furthermore, the company invested in its brands and developed new brands and products that include a complete range of underwear products, lingerie, pyjamas and socks for the whole family.

Up to now, the company opened 12 retail shops in the domestic market and its objective is to increase this number to 80 shops at the end of 2005.[372] At the beginning of April they are starting to sell their products in Moscow-Russia via Boyner Department Store and in a few months they will open their own retail shops in Moscow

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[369] Radikal (*Turkish Daily Newspaper*), (March 27, 2005), "Çin Stratejisi Ten'e yaradı", Retrieved: March 30, 2005 on the WWW URL: http://www.radikal.com.tr/haber.php?haberno=147753. The information from the press was confirmed via a telephone conversation with the Marketing Manager of TEN Underwear Company.
[370] Radikal (*Turkish Daily Newspaper*), (March 27, 2005), "Çin Stratejisi Ten'e yaradı", Retrieved: March 30, 2005 on the WWW URL: http://www.radikal.com.tr/haber.php?haberno=147753
[371] Ibid.
[372] Ibid

and they planned to have 5 shops in Moscow till the end of 2005.[373] Their shop in Baku-Azerbaijan will be opened soon. Following the opening of shops in Moscow the company aims at entering the Romanian, Ukrainian markets in the following years and then the Spanish, Italian and German markets.

According to the information in the press, the restructuring programme proved to be successful; as a result of this new strategy TEN acquired a share of 60% in the Turkish market among underwear brands.[374] Furthermore, the company secured a growth rate of 35% for the last two years and they aim at 50% growth by the end of 2005.[375] They have also entered the swimwear market recently and think that this will enable them to achieve the targeted growth.

[373] Ibid
[374] Ibid.
[375] Ibid.

V. CONCLUSIONS

In this study the safeguard measures allowed under the GATT Article XIX and the WTO Agreement on Safeguards are analysed in detail, with special emphasis on the relationship between these measures and industry adjustment (structural adjustment). The rules and procedures that govern the application of safeguard measures, the relationship between these measures and other trade remedies, implementation of agreement on safeguards and the rationales in support of including safeguard measures in multilateral trade agreements are explained in the second chapter. In the third chapter the place of safeguards in the trade policy of the EU is analysed. Finally, the last chapter presents the relationship between safeguards and the issue of industry adjustment and it explains the governmental adjustment assistance policies designed to ease the transition process.

Trade liberalization and the resulting increases in imports create a challenge for domestic industries. Foreseeing this problem, the drafters of the GATT and later the WTO Agreement developed safeguard measures (Article XIX in the GATT and the Agreement on Safeguards in the WTO) to ease the transition and adjustment process of domestic industries and to overcome the problems which they may face at times of significant increases in imports. Nonetheless, as expressed in several parts of the study, the countries have not preferred to use safeguard measures to overcome their transition and/or adjustment problems. Instead of using the safeguard instrument that is specifically designed for this purpose they substituted antidumping measures (and VERs before the Uruguay Round) for safeguards. There are certain reasons for this substitution. First of all WTO members are simply hiding behind the veil of "unfairness" concept and they do not intend to make necessary adjustments in the protected domestic industry because of its political and social costs in the short-run, they simply want to protect their domestic industries by limiting imports. Second, the rules governing the application of safeguards are strict as compared to those of

antidumping because safeguards are used against fairly traded imports; for instance the obligation to offer compensation in return for the safeguard action after the initial three years of the measure, the fear of a retaliatory action from the affected countries, the limited duration allowed for a safeguard measure to be in place and the requirement to demonstrate evidence that the protected industry is adjusting in order to extend an existing safeguard measure beyond the initial duration of four years. Third, compared to a safeguard measure it has been much easier for domestic industries to obtain an antidumping measure from the government as demonstrated by some studies in the US.

The use of unfair trade remedies, such as antidumping, instead of safeguards has some important implications and results. The unfair concept enables the countries and industries to justify the trade-limiting action and they do not try to undertake the adjustment of domestic industries to international competition. The characteristics and rules of safeguards and unfair trade remedies are different from each other. For instance, while the former are mainly applied on an MFN-basis the latter are applied selectively and target only one producer and one product and so they are discriminatory in nature. Consequently, employing antidumping measures to protect domestic industries (not for the purpose of preventing unfair trading practices) has implications for the process of adjustment. The protected industry would not be in a position to transform itself because the antidumping measure implies that the problem is an unfair import and that there is no efficiency problem in the concerned industry. Also, the country will not be obliged to demonstrate adjustment when they intend to extend the existing antidumping measure (unlike a safeguard measure).

Furthermore, there are problems in the implementation of the WTO safeguard rules by the countries. Most of the safeguard applications of WTO-members are not consistent with the WTO rules and substantive requirements that govern the application of safeguards. This argument is true - at least- for the safeguard measures that were brought to the review of the WTO Dispute Settlement Body and thus all these safeguard cases were found to be WTO-inconsistent. As mentioned in the second chapter, the studies examining the implementation of WTO safeguard rules by the member countries showed that WTO-members make false interpretations of the rules and that the

competent authorities of WTO-members are taking arbitrary decisions in safeguard investigations.

As expressed above, the number of safeguard investigations and actions are smaller than those of antidumping actions; nevertheless the magnitude of a safeguard action would be bigger than an antidumping measure. The infrequent use of safeguard measures does not mean that their overall effect on trade flows in terms of value and volume is negligible, because unlike an antidumping measure, a safeguard measure targets all sources of imports and sometimes more than one product is covered by a single safeguard action and these are not always directly competitive products. Consequently, the volume of trade affected with the application of a safeguard measure becomes significant. For this reason the issue of safeguards and their effect on trade flows should not be neglected in the scholarly works and must be dealt with in detail.

The analysis of the EU's trade policy instruments revealed that the EU also does not prefer safeguards and that the EU mainly employs much more protectionist and discriminatory instruments such as antidumping measures and other quantitative import restricts, and VERs in the past. The infrequent use of safeguards by the EU implies that the trade restrictions are used simply to respond to protection demands of domestic industries and are not aimed at facilitating adjustment.

Turkey's trade practices and preferences of policy instruments are similar to those of the EU. It is argued that Turkey has learned modern trade defence techniques from the EU with the Customs Union. In the recent years Turkey has become one of the leading users of antidumping measures (according to the country statistics of the WTO about the number of antidumping measures in force and the number of new antidumping investigations initiated each year). Since the beginning of 2005 with the removal of textiles quotas Turkey started to use safeguard measures against China to slow down the imports of Chinese textiles and clothing products. This demonstrates the increasing importance of safeguard measures as a trade policy instrument for Turkey and supports the relevance of the subject for an in-depth study.

The major aim of this study is to stress the economic adjustment rationale of the WTO safeguards mechanism and to explain the relationship between safeguard measures and structural adjustment of domestic industries to international competition. As presented in the preamble and other articles of the Agreement on Safeguards, the underlying intention of allowing safeguard measures under the auspices of the WTO is to remedy serious injury and to facilitate structural adjustment by providing a breathing time to domestic industries. The Uruguay Round reforms improved the safeguards mechanism in this respect but not everything is finished yet. The current system has some discrepancies that need to be addressed. In terms of encouraging adjustment of industries, a defect of the WTO safeguard mechanism is that the Agreement on Safeguards does not require the submission of a proper "adjustment plan" by the WTO members when imposing a safeguard measure. This is a "constitutional defect"[376] which needs to be recovered. Since the underlying intention of allowing safeguard measures is to remedy serious injury and to facilitate adjustment of domestic industries, an adjustment plan would be strong evidence that the authorities are taking the safeguard action to facilitate adjustment. Nonetheless, the Agreement on Safeguards may refer to structural adjustment simply as short-term responses to the increases in imports and not as a complete restructuring and transformation of the protected industry which mean an efficient allocation of available resources to make the concerned industries competitive.[377] This may be the reason why the agreement does not require the submission of an adjustment plan. But as an economic term "adjustment" is a special concept and it is also relevant to the broader terms of "restructuring" and "transformation" of industries, because at the extreme edge of the adjustment process some firms exit the market due to their inability to cope with import competition and in such a case the adjustment process leads to the efficient re-allocation of resources.

Moreover, in many cases any kind of trade restriction could only be the second best policy to help domestic industries to adjust. When formulating policies to assist domestic industries to cope with international competition, the governments should try

[376] I would like to thank Dr. M. Sait Akman who has brought this concept to my attention.
[377] I am grateful to Prof. Dr. Nazım Engin for his valuable comments concerning the terms of "adjustment" and "restructuring" and I would like to thank him for warning me about the differences in their meanings.

to find the efficiency problem in that industry -that prevents competitiveness- and should try to solve the problem at its source, not by simply restricting imports (i.e. in case of a domestic distortion the government should apply a domestic policy –not a trade policy– suitably designed and targeted to offsetting that distortion).

Further studies on the subject should make an empirical analysis to investigate the effectiveness of the current safeguards mechanism of the WTO in terms of facilitating adjustment of domestic industries to international competition. In order to assess the effectiveness of the safeguards mechanism; the formal safeguard cases must be examined to analyse whether the application of a safeguard measure enabled or facilitated the adjustment of the [safeguard] protected industry. Whether the Agreement promotes adjustment or not is an important subject to be explored in further studies.

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APPENDICES

APPENDIX-1: Article XIX of the GATT (Full Text)

Article XIX

Emergency Action on Imports of Particular Products

1. (*a*) 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.

(*b*) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in subparagraph (*a*) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (*a*) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (*b*) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations

under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(*b*) Notwithstanding the provisions of subparagraph (*a*) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

APPENDIX-2: Summary of the Agreement on Safeguards

Box A-2: Summary of the WTO Agreement on Safeguards

· Safeguard measures may only be applied where a product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive products. Measures cannot discriminate between countries (except where a preferential agreement is in place) unless, where a quota is imposed, it can be shown that increased imports from one country are disproportionately high;

· Measures may only be applied after a full investigation by a competent authority. Reasonable public notice must be given with the opportunity for all interested parties to attend public hearings or be given other appropriate means of presenting evidence and views. Interested parties must be given an opportunity to respond to the representations of other parties, in particular, as to whether or not they consider application of a safeguard measure would be in the public interest;

· "serious injury", "threat of serious injury", "industry" and factors which must be evaluated in the investigation to determine whether serious injury has been caused or threatened, are spelt out;

· it must be demonstrated that increased imports have caused serious injury. Moreover, if factors other than imports are causing injury simultaneously, such injury must not be attributed to imports;

· safeguard measures, if applied, must only remedy or prevent the serious injury attributable to imports and facilitate adjustment. Measures must be liberalized progressively. Measures can include tariffs and quantitative restrictions;

· safeguard measures are limited to four years, but may be extended to eight years [*ten years by a developing country*] if it can be shown that continuation of measures is required to prevent serious injury, and provided there is evidence the industry is adjusting;

· if measures are applied for more than three years, they must be reviewed mid-term and, if appropriate, withdrawn or liberalized more rapidly;

· the country applying the measures must "endeavour" to maintain a substantially equivalent level of concessions and other obligations ¼ between it and the exporting Members which would be affected by such a measure ¼ Members may agree on any means of trade compensation for the adverse effects of the measures on their trade." If an agreement on this matter is not reached, the exporting country can unilaterally suspend application of substantially equivalent concessions (in other words, respond in kind). However, this right can only be exercised by the exporting nation if a safeguard measure has been in place three years, or if safeguard measures are imposed against imports which have increased relative to domestic production but which have not increased in absolute terms; and

· safeguard measures cannot be applied against imports from a developing country unless its share of imports of the product exceeds 3 per cent of total imports, or unless imports from developing countries in aggregate account for more than 9 per cent of all imports.

Source: Productivity Commission, Australia.(2001). Pig and Pigmeat Industries: Safeguard Action Against Imports. Inquiry Report. Canberra: AusInfo. International Trade Series from Economics Working Paper Archive at Washington University, St. Louis: Washington University. Retrieved: May 10, 2004 on the WWW URL: http://econwpa.wustl.edu:8089/eps/it/papers/0107/0107003.pdf, p: 11 (*adopted*)

APPENDIX-3: WTO Agreement on Safeguards (Full Text)

AGREEMENT ON SAFEGUARDS

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:

Article 1

General Provision

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2

Conditions

1. A Member[378] may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being

[378] A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

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.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 3

Investigation

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based

on facts and not merely on allegation, conjecture or remote possibility; and

(c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. 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.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a

substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6

Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[379]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement not later than eight years after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

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[379] A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[380],[381] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member[382], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

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[380] An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

[381] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

[382] The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

Article 12

Notification and Consultation

1. A Member shall immediately notify the Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall

notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13

Surveillance

1. A Committee on Safeguards is hereby established, under the authority of the Council for Trade in Goods, which shall be open to the participation of any Member indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;

(d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

ANNEX

EXCEPTION REFERRED TO IN PARAGRAPH 2 OF ARTICLE 11

Members concerned	Product	Termination
EC/Japan	Passenger cars, off road vehicles, light commercial vehicles, light trucks (up to 5 tonnes), and the same vehicles in wholly knocked-down form (CKD sets).	31 December 1999

APPENDIX-4 : Price and Welfare Effects of a VER

BOX A-4.1: Price Effects of a VER: Large Country Case (*adopted*)

Suppose the US, an exporting country in free trade, imposes a binding voluntary export restraint (VER) on wheat exports to Mexico. The VER will restrict the flow of wheat across the border. Since the US is a large exporter, the supply of wheat to the Mexican market will fall and if the price remained the same it would cause excess demand for wheat in the market. The excess demand will induce an increase in the price of wheat. Since wheat is homogeneous and the market is perfectly competitive the price of all wheat sold in Mexico, both Mexican wheat and US imports will rise in price. The higher price will, in turn, reduce demand and increase domestic supply causing a reduction in Mexico's import demand.

The restricted wheat supply to Mexico will shift supply back to the US market causing excess supply in the US market at the original price and a reduction in the US price. The lower price will, in turn, reduce US supply, raise US demand and cause a reduction in US export supply.

These price effects are identical in direction to the price effects of an import tax, an import quota and an export tax.

A new VER equilibrium will be reached when the following two conditions are satisfied.

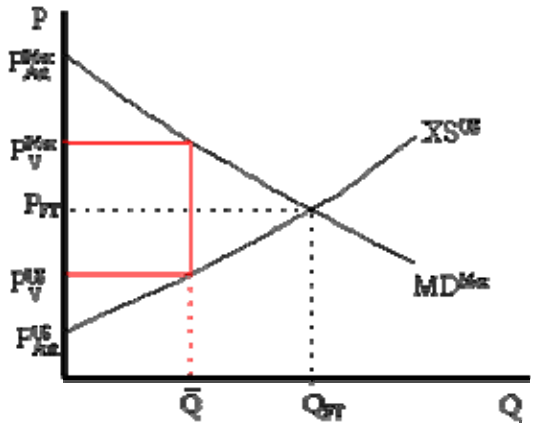
$$MD^{Mex}(P_v^{Mex}) = \bar{Q}$$

$$XS^{US}(P_v^{US}) = \bar{Q}$$

where $\bar{Q}$ is the quantity at which the VER is set, P_v^{Mex} is the price in Mexico after the VER, and P_v^{US} is the price in the US after the VER.

The first condition says that the price must change in Mexico such that import demand falls to the VER level $\bar{Q}$. In order for this to occur the price in Mexico rises. The second condition says that the price must change in the US such that export supply falls to the VER level $\bar{Q}$. In order for this to occur the price in the US falls.

(Box A-4.1 is continued below)



The VER equilibrium is depicted graphically on the adjoining graph. The Mexican price of wheat rises from P_{FT} to P_V^{Mex} which is sufficient to reduce its import demand from Q_{FT} to $\bar{Q}$. The US price of wheat falls from P_{FT} to P_V^{US} which is sufficient to reduce its export supply also from Q_{FT} to $\bar{Q}$.

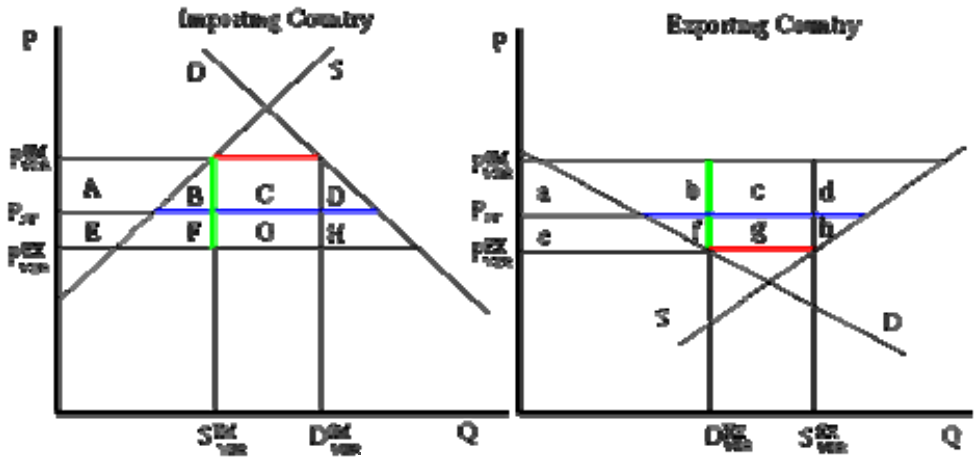
Notice that there is a unique set of prices which satisfies the equilibrium conditions for every potential VER that is set. If the VER were set lower than $\bar{Q}$, the price wedge would rise causing a further increase in the Mexican price and a further decrease in the US price.

At the extreme, if the VER were set equal to zero then the prices in each country would revert to their autarky levels. In this case the VER would *prohibit* trade. This situation is similar to an export embargo.

Source: http://internationalecon.com/v1.0/ch90/90c170.html (by Steven Suranovic ©1997-2004) Retrieved: 16 February 2005.

BOX A-4.2: Welfare Effects of a VER: Large Country Case (*adopted*)

Suppose for simplicity that there are only two trading countries, one importing and one exporting country. The supply and demand curves for the two countries are shown in the adjoining diagram. P_{FT} is the free trade equilibrium price. At that price, the excess demand by the importing country equals excess supply by the exporter.



The quantity of imports and exports is shown as the blue line segment on each country's graph. (That's the horizontal distance between the supply and demand curves at the free trade price) Suppose the large exporting country implements a binding voluntary export restraint set equal to the length of the red line segment. When a new equilibrium is reached the price in the importing country will rise to the level at which import demand is equal to the quota level. The price in the exporting country will fall until export supply is equal to the quota level.

The following Table provides a summary of the direction and magnitude of the welfare effects to producers, consumers and the governments in the importing and exporting countries. The aggregate national welfare effects and the world welfare effects are also shown. Online, or with a color print-out, positive welfare effects are shown in black, negative effects in red.

Welfare Effects of a Voluntary Export Restraint		
	Importing Country	**Exporting Country**
Consumer Surplus	- (A + B + C + D)	+ e
Producer Surplus	+ A	- (e + f + g + h)
Quota Rents	0	+ (c + g)
National Welfare	- (B + C + D)	c - (f + h)
World Welfare	- (B + D) - (f + h)	

(Box A-4.2 is continued)

VER Effects on:

Exporting Country Consumers - Consumers of the product in the exporting country experience an increase in well-being as a result of the VER. The decrease in their domestic price raises the amount of consumer surplus in the market. Refer to the Table and Figure to see how the magnitude of the change in consumer surplus is represented.

Exporting Country Producers - Producers in the exporting country experience a decrease in well-being as a result of the quota. The decrease in the price of their product in their own market decreases producer surplus in the industry. The price decline also induces a decrease in output, a decrease in employment, and a decrease in profit and/or payments to fixed costs. Refer to the Table and Figure to see how the magnitude of the change in producer surplus is represented.

Quota Rents - Who receives the quota rents depends on how the government administers the quota.

1) If the government auctions the quota rights for their full price, then the government receives the quota rents. In this case **the quota is equivalent to a specific export tax** set equal to the difference in prices ($T = p_v^{IM} - p_v^{EX}$) shown as the length of the green line segment in the diagram.

2) If the government gives away the quota rights then the quota rents accrue to whomever receives these rights. Typically they would be given to the exporting producers which would serve to offset the producer surplus losses. It is conceivable that the quota rents may exceed the surplus loss so that the export industry is better-off with the VER than without. Regardless though the benefits would remain in the domestic economy.

Refer to the Table and Figure to see how the magnitude of the quota rents is represented.

Exporting Country - The aggregate welfare effect for the country is found by summing the gains and losses to consumers, producers and the recipients of the quota rents. The net effect consists of three components: a positive terms of trade effect (c), a negative production distortion (h), and a negative consumption distortion (f). Refer to the Table and Figure to see how the magnitude of the change in national welfare is represented.

Because there are both positive and negative elements, the net national welfare effect can be either positive or negative. The interesting result, however, is that it can be ***positive***. This means that **a VER implemented by a "large" exporting country *may* raise national welfare**.

Generally speaking,

1) whenever a "large" country implements a small restriction on exports, it will raise national welfare.

2) if the VER is too restrictive, national welfare will fall

and 3) there will be a positive quota level that will maximize national welfare.

However, it is also important to note that everyone's welfare does not rise when there is an increase in national welfare. Instead there is a redistribution of income. Consumers of the product and recipients of the quota rents will benefit, but producers may lose. A national welfare increase, then, means that the sum of the gains exceeds the sum of the losses across all individuals in the economy. Economists generally argue that, in this case, compensation from winners to losers can potentially alleviate the redistribution problem.

Box A-4.2 is continued:

VER Effects on:

Importing Country Consumers - Consumers of the product in the importing country suffer a reduction in well-being as a result of the VER. The increase in the domestic price of both imported goods and the domestic substitutes reduces the amount of consumer surplus in the market. Refer to the Table and Figure to see how the magnitude of the change in consumer surplus is represented.

Importing Country Producers - Producers in the importing country experience an increase in well-being as a result of the VER. The increase in the price of their product increases producer surplus in the industry. The price increases also induces an increase in output of existing firms (and perhaps the addition of new firms), an increase in employment, and an increase in profit and/or payments to fixed costs. Refer to the Table and Figure to see how the magnitude of the change in producer surplus is represented.

Quota Rents - There are no quota rent effects in the importing country as a result of the VER

Importing Country - The aggregate welfare effect for the country is found by summing the gains and losses to consumers and producers. The net effect consists of three components: a negative terms of trade effect (C), a negative consumption distortion (D), and a negative production distortion (B). Refer to the Table and Figure to see how the magnitude of the change in national welfare is represented.

Since all three components are negative, the VER must result in a reduction in national welfare for the importing country. However, it is important to note that a redistribution of income occurs, i.e., some groups gain while others lose. This is especially important because VERs are often suggested by the importing country. This occurs because the importing country government is pressured by the import competing producers to provide protection in the form of an import tariff or quota. Government reluctance to use these policies often leads the importer to negotiate VERs with the exporting country. Although importing country national welfare is reduced, the import competing producers gain nonetheless.

VER Effects on:

World Welfare - The effect on world welfare is found by summing the national welfare effects in the importing and exporting countries. By noting that the terms of trade gain to the importer is equal to the terms of trade loss to the exporter, the world welfare effect reduces to four components: the importer's negative production distortion (B), the importer's negative consumption distortion (D), the exporter's negative consumption distortion (f), and the exporter's negative production distortion (h). Since each of these is negative, **the world welfare effect of the VER is negative**. The sum of the losses in the world exceeds the sum of the gains. In other words, we can say that **a VER results in a reduction in world production and consumption efficiency**.

Source: http://internationalecon.com/v1.0/ch90/90c190.html (by Steven Suranovic ©1997-2004) Retrieved: 16 February 2005.

APPENDIX - 5: TABLES

Table A-5.1: Summary analysis of the EC MFN tariff, 2004

		Applied 2004 rates					2002
Analysis	**No. of lines[a]**	**No. of lines used**	**Simple avg. tariff (%)**	**Range (%)**	**Std-dev (%)**	**CV**	**Imports (US$ million)**
Total	10,174	10,145	6.5	0-209.9	11.5	1.8	813,399.9
By WTO definition[b]							
Agriculture	2,091	1,962	16.5	0-209.9	21.9	1.3	55,351.8
Live animals and products thereof	332	300	26.1	0-192.2	29.4	1.1	4,475.3
Dairy products	160	108	41.7	0.2-209.9	37.7	0.9	824.4
Coffee and tea, cocoa, sugar, etc.	303	279	16.6	0-114.4	15.6	0.9	9,496.3
Cut flowers and plants	65	65	4.1	0-19.2	4.4	1.1	1,560.2
Fruit and vegetables	452	452	15.3	0-150.1	15.8	1.0	12,388.1
Grains	55	55	39.6	0-101.1	27.7	0.7	2,745.7
Oil seeds, fats, oils and their products	164	160	6.7	0-75.8	12.3	1.8	11,196.7
Beverages and spirits	274	264	12.8	0-71.3	14.6	1.1	4,697.8
Tobacco	30	30	18.3	2.2-74.9	21.2	1.2	1,232.9
Other agricultural products	256	249	4.7	0-76	9.4	2.0	6,734.5
Non-agriculture (excl. petroleum)	8,042	8,042	4.1	0-26	4.2	1.0	661,895.9
Fish and fishery products	381	381	12.6	0-26	6.4	0.5	11,983.6
Mineral products, precious stones and precious metals	518	518	2.4	0-12	2.8	1.2	59,967.2
Metals	1,043	1,043	1.8	0-10	2.3	1.3	52,589.3
Chemicals and photographic supplies	1,397	1,397	4.4	0-23.3	2.7	0.6	74,438.8
Leather, rubber, footwear and travel goods	291	291	4.7	0-17	4.6	1.0	21,817.5
Wood, pulp, paper and furniture	449	449	1.2	0-10	2.3	1.9	38,016.3
Textiles and clothing	1,329	1,329	8	0-12	3.2	0.4	67,759.9
Transport equipment	273	273	4.7	0-22	5.0	1.1	59,416.9
Non-electric machinery	1,033	1,033	1.7	0-9.7	1.4	0.8	112,710.1
Electric machinery	605	605	2.8	0-14	3.4	1.2	97,760.9
Non-agricultural articles n.e.s.	723	723	2.4	0-14	2.0	0.8	65,435.5
By ISIC sector[c]							
Agriculture and fisheries	607	603	10.0	0-150.1	16.9	1.7	31,473.2
Mining	132	132	0.2	0-8	1.0	5.0	112,339.8
Manufacturing	9,434	9,319	6.4	0-209.9	11.1	1.7	667,428.7
By stage of processing							
Raw materials	1,224	1,219	8.4	0-150.1	15.3	1.8	170,238.5
Semi-processed products	2,956	2,935	4.8	0-134.5	6.4	1.3	112,196.7
Fully-processed products	5,994	5,891	7.0	0-209.9	12.4	1.8	530,964.7

a Total number of lines is listed. Tariff rates are based on a lower frequency (number of lines) since lines with no *ad valorem* equivalents are excluded.
b 41 tariff lines are excluded from both WTO agriculture and non-agriculture definitions (essentially petroleum products).
c International Standard Industrial Classification (Rev.2). Electricity, gas and water are excluded (1 tariff line).

Note: CV = coefficient of variation.

Source: WTO. (2004). Trade Policy Review: European Communities (dated: 27 October 2004). WTO document No. WT/TPR/S/136.Retrieved from the website of the WTO, WWW URL: http://www.wto.org/english/tratop_e/tpr_e/tp238_e.htm. P: 44.

Table A-5.2 – EU's Anti-dumping actions, 1990-96 (Number of cases)

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**
Initiations	43	20	39	21	43	33	24
Measures taken	27	22	16	19	21	13	26
- definitive duties	18	19	16	19	19	13	26
- price undertakings	9	3	0	0	2	0	0
Findings of no dumping	0	1	1	1	5	0	0
Findings of no injury	13	6	4	1	1	4	0
Measures in force	**139**	**142**	**158**	**150**	**151**	**147**	**163**

Source: Auboin, Marc & Laird, Sam. (1998). EU Import Measures and Developing Countries. World Trade Organization Trade Policy Review Division Staff Working Paper TPRD-98-01, Retrieved: August 25, 2004 on the WWW URL: http://www.wto.org/english/res_e/reser_e/tp9801_e.htm, p: 26.

APPENDIX- 6: Box A.6-Adjustment assistance in Chile, Costa Rica and Mauritius

Chile

Chile's National training and Employment Service (SENCE) has implemented two programmes to support the movement of labour. One programme began in 1990 to assist displaced labour throughout the country and is managed by the municipalities. The second programme, begun in 1995, assists workers in the coal, textiles and clothing sectors. Chile also has special programmes, such as the Technical Assistance Fund (FAT) and Development Projects (PROFO) to assist small and medium-sized enterprises. These programmes are intended to assist such enterprises, in all sectors of the economy, to adopt more efficient managerial and marketing techniques, and more up-to-date technology.

Costa Rica

Credit programmes operated exclusively by State-owned banks provide loans with alleviated guarantee, documentation and procedural conditions for small manufacturing firms. These loans are directed to companies presenting proposals aimed at raising their productivity, quality and competitiveness. In 1993, loans amounting to some US$ 30 million (about 27 per cent less than requested) were approved for 54 firms, located mainly in the San José Greater Metropolitan Area. These firms were involved in the production of foodstuffs, beverages, chemicals, clothing, paper and leather articles or in the processing of wood, minerals and metals.

Mauritius

A Technology Diffusion Scheme was introduced in Mauritius in 1994. The programme, managed by a private contractor, is designed to offset the initial costs to the private sector of acquiring technology support services to improve productivity, product quality, design or manufacturing response time. Costs are to be shared equally by the Government and the private sector.

Source: Bacchetta, Marc & Jansen, Marion. (2003). Adjusting to Trade Liberalization. WTO Special Studies 7. Geneva: WTO Publications. (April). P: 22. *(the box is adopted from this source)*