SAFEGUARD MEASURES UNDER THE WTO REGIME: AN ANALYSIS OF THE DISPUTE SETTLEMENT BODY'S RESPONSE TO THE DEBATE ON 'UNFORESEEN DEVELOPMENTS'

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ABSTRACT

As a general norm, safeguard actions or escape clause actions under international trade law should be used sparingly with a high standard of proving the requirements, since they allow fairly traded imports to be restricted. Article XIX of the General Agreement on Tariffs and Trade has five major requirements under it for invoking safeguard actions; one among them being the proof of 'unforeseen developments'. However, the subsequent Agreement on Safeguards 1994 mentions only three essential factors for safeguard actions, most significantly, missing out the requirement of unforeseen developments. This raises several significant closely interrelated questions of interpretation of international trade law, which have cropped up before the WTO Dispute Settlement Bodies (the Panels and Appellate Body of the WTO). The present paper addresses the key questions which have arisen in disputes and concludes with an analysis of the appropriateness of the current approach of the WTO Panels and Appellate Body. It is important to understand that safeguard actions are the offshoots of politico-economic realities of the liberalization of international trade, which involves compromise on some elements of State sovereignty and the inherent interests of States to protect the domestic industries. Some States attempted to dilute the rigour of unforeseen developments through interpretation during disputes, but it has to be understood that such changes in the requirements for safeguards should be left to the political process of law-making under the WTO multilateral trade negotiations and should not be changed through the dispute settlement system.

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