THE EFFECTS OF SECTION 201 SAFEGUARDS ON U.S. INDUSTRIES

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This Note presents evidence on the effectiveness of temporary trade barriers, known as safeguards, implemented under section 201 of the U.S. Trade Act of 1974. Despite significant debate regarding the political and legal challenges posed by section 201, little research exists to determine how domestic industries—the intended beneficiaries of safeguards—perform after safeguards terminate. This study examines the performance of three domestic industries that recently received safeguard protection. The Note finds that none of the three industries were restored to sustained competitiveness. The Note then introduces policy recommendations for reforming section 201 to enhance its effectiveness.

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INTRODUCTION

Over the past sixty years, the United States and many other countries have negotiated significant reductions in barriers to trade. These reductions have helped spur the rise of international trade that has fundamentally re-shaped the modern world. While providing an engine for global economic growth and development, the liberalized trade regime has also increased international competition to unprecedented levels.


2. See Jackson et al., supra note 1, at 4-14; Roman Wacziarg & Karen Horn Welch, Trade Liberalization and Growth: New Evidence, 22 World Bank Econ. Rev. 187 (2008).
The U.S. Congress passed section 201 of the U.S. Trade Act of 1974\textsuperscript{3} to mitigate the economic upheaval associated with the increased competition caused by liberalized trade and globalization.\textsuperscript{4} Section 201 authorizes the President of the United States to instate temporary trade barriers, known as safeguards, to protect domestic industries that have been injured or threatened by increased imports. The stated goal of a section 201 safeguard is to facilitate efforts of the domestic industry to “make a positive adjustment to import competition.”\textsuperscript{5} The statute defines a “positive adjustment” as either (1) becoming “able to compete successfully with imports after actions taken under . . . this title terminate,” or (2) “experiencing an orderly transfer of resources to other productive pursuits.”\textsuperscript{6} In practice, the U.S. government generally implements safeguards with the goal of helping domestic industries become competitive with imports.\textsuperscript{7} Four of the last six U.S. presidents implemented safeguards at least once to protect and restore injured or threatened domestic industries.\textsuperscript{8}

Safeguards are permitted under the Global Agreement on Tariffs and Trade (GATT).\textsuperscript{9} However, safeguards operate in tension with the general purpose of the international trade system. The trade system is

\textsuperscript{4} See generally GREGORY W. BOWMAN ET AL., TRADE REMEDIES IN NORTH AMERICA (2010).
\textsuperscript{6} Id. § 2251(b) (1)(A).
structured around mutual obligations between countries to maintain
agreed-upon levels of concessions for imports.10 Safeguards explicitly
allow countries to “escape” their obligations. Indeed, the portion of the
GATT authorizing safeguards became known as the “escape clause.”11

International lawyers and political scientists have engaged in consid-
erable debate over the political and legal ramifications of safeguards.12
However, the debate has not been informed by empirical data demonstr-
ating whether safeguards are effective at achieving their primary
function: to facilitate the efforts of the domestic industry to become
“able to compete successfully with imports after [safeguard actions]
terminate.”13 Some existing empirical studies conduct purely legal
analysis.14 Others address domestic industry performance, but only
cover the period in which safeguards were in effect.15 Similarly, the
U.S. International Trade Commission (USITC or the Commission)
conducts reviews of industry performance, but only while safeguards
are in effect and immediately after safeguards terminate.16 The agency
does not conduct follow-up evaluations in the following years to
determine whether industries achieved sustained competitiveness.

This Note investigates the performance of three of the most recent

10. See JACKSON ET AL., supra note 1, at 382-83; Understanding the WTO: Principles of the Trading

11. See, e.g., Kyle Bagwell & Robert W. Staiger, Enforcement, Private Political Pressure and the
GATT/WTO Escape Clause, 34 J. LEGAL STUD. 471 (2005); Alan Sykes, Protectionism as a “Safeguard”: A
[hereinafter Sykes, Protectionism as a “Safeguard”].

12. See, e.g., Chad P. Bown & Rachel McCulloch, Trade Adjustment in the WTO System: Are More
Safeguards the Answer? (Brookings Inst., Working Paper No. 7, 2007); Daniel B. Pickard & Tina
Potuto Kimble, Can U.S. Safeguard Actions Survive WTO Review?: Section 201 Investigations in


Settlement as Evidenced in the U.S.-Lamb Meat Decision, 12 REV. INT’L POL. ECON. 776 (2005); Henrik
Horn & Petros C. Mavroidis, United States—Safeguard Measures on Imports of Fresh, Chilled or Frozen
Lamb Meat from New Zealand and Australia: What Should be Required of a Safeguard Investigation?, in

15. See, e.g., THE WTO, SAFEGUARDS, AND TEMPORARY PROTECTION FROM IMPORTS (Chad P. Bown
ed., 2006); Hiro Lee & Dominique van der Mensbrugghe, Quantitative Assessments of U.S. Safeguards
on Steel Products (ResearchInst. for Econ. & Bus. Admin. at Kobe Univ., Discussion Paper No. 160,
2004); Benjamin H. Liebman & Kara M. Reynolds, Innovation Through Protection: Does Safeguard
Protection Increase Investment in Research and Development? (Am. Univ. Dept. of Econ., Working Paper
No. 2009-18, 2009).

16. 19 U.S.C. § 2254(d) (3) (2006) requires the USITC to submit evaluations within 180 days
after the termination of safeguards.
U.S. industries to receive safeguard protection—lamb meat, wheat gluten, and line pipe—in the years after safeguards terminated. The results of this Study show that none of the three industries achieved sustained competitiveness after safeguards terminated. Instead, all three industries continued to decline against most major indicators of performance in the years after safeguards terminated.

Based on these results, this Note concludes with proposed reforms to section 201 that would facilitate the effective deployment of safeguards as a tool in U.S. trade policy. First, Congress should reform the Trade Act of 1974 to require that safeguards be applied only when import surges result from temporary and unforeseen developments, such as price shocks or natural disasters. This proposed reform would enhance the effectiveness of safeguards in two ways. The “temporary” requirement would ensure that safeguards are deployed only in circumstances in which they are likely to be effective. The data show that safeguards can be effective at temporarily slowing imports. However, the data suggest that safeguards are less effective at facilitating sufficient changes in the domestic industry to alter structural market conditions. Safeguards have a temporary impact, and should be used to combat import surges that result from temporary factors.

The “unforeseen developments” requirement would bring U.S. safeguards law into closer alignment with World Trade Organization (WTO) law. The WTO has ruled against every U.S. safeguard implemented since its founding in 1994.17 Unlike U.S. law, the WTO requires that safeguards be implemented only in response to “unforeseen developments.” Inconsistencies between U.S. and WTO law not only create legal and political challenges, they also limit the effectiveness of U.S. safeguards. WTO decisions carry sufficient weight to prompt the United States to weaken or cut short safeguard protections, limiting their impact.18 Achieving alignment between U.S. and WTO

17. See Pickard & Kimble, supra note 12, at 44.
law would enhance the effectiveness of U.S. safeguards.

Second, Congress should require the USITC to conduct reviews of industry performance three to five years after safeguards terminate. Section 204 of the Trade Act of 1974 currently requires the USITC to submit a final “evaluation of effectiveness” of safeguards to Congress and the President within 180 days after safeguards terminate. These evaluations, while useful, reveal only how the protected industry performed during the period of safeguard protection. The purpose of a safeguard is to facilitate sustained competitiveness against imports. A complete evaluation of effectiveness, therefore, should take into account at least the first three to five years of industry performance after safeguards terminate.

The data presented in this Note do not provide a definitive answer regarding the value or futility of safeguards as a matter of policy. Instead, the data add a new dimension to existing scholarship and inform the ongoing debate among political scientists, economists, and international lawyers as to whether, when, and how to effectively implement safeguards.

Criticism of safeguards comes from a variety of perspectives. Advocates of free trade tend to view safeguards as inefficient, counter-productive protectionism. They argue that safeguards, implemented generally through tariffs or quotas on imports, simply pass the costs of global competition on to consumers who face higher prices for protected goods in the marketplace. Safeguards can also impose a direct cost on other industries. WTO law permits countries to raise compensatory trade barriers against imports from the country implementing safeguards in order to offset potential trade imbalances.

Some economists predict that safeguards will not lead domestic industries to make positive adjustments and regain competitiveness. They argue that “by allowing the industry to continue production in a protected environment, such a policy ends up having an anti-adjustment bias—it does nothing either to induce the industry to shrink or to transform itself to meet the reality of a new and more

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20. Id. § 2254(d)(3).
22. See, e.g., Bowman et al., supra note 4, at 355 (discussing lobbying by domestic copper consumers against safeguards for U.S. copper producers out of fear that safeguards would increased the cost of copper).
23. See Safeguards Agreement, supra note 9, arts. 4, 7(3)-(6), 8.
From a political perspective, safeguards can strain international diplomatic relations. Trade partners protest safeguards, as safeguards raise barriers against their exports. For example, in 1999, following President Clinton’s announcement of safeguards against imported lamb meat from Australia and New Zealand, Australian Prime Minister John Howard announced that he was “appalled at the decision.” He characterized it as a “protectionist decision which sends precisely the wrong signal in the lead-up to global trade talks.” Australian lamb producers complained that they had “invested enormous amounts of time, energy and capital into developing the U.S. lamb market,” and were “furious over this decision.”

From a legal perspective, difficulties arise due to inconsistencies between U.S. safeguards law and WTO law. The U.S. Congress intended for section 201 to bring U.S. trade law into compliance with international obligations established in 1947 in the GATT. However, for a variety of reasons discussed below, U.S. safeguard measures have consistently been found to violate international trade law.

Support for safeguards, in general, also comes from a variety of perspectives. Some economists argue that safeguards provide a productive temporary period of protection in which injured or threatened domestic industries can invest time and resources to make changes and re-gain competitive footing. The U.S. government made this argument in support of the lamb meat safeguards. While Australian Prime Minister John Howard condemned the safeguards, the White House announced that “[t]he package of import relief and domestic assistance has been carefully crafted to help our lamb industry achieve sustained competitiveness, while respecting our international trade obligations.”

Some political scientists argue that safeguards are productive more
for their political value than their direct economic benefit. They argue that safeguards provide an outlet valve to relieve the pressure governments face from industries that stand to face heightened competition as a result of liberalized trade policies.33 From this perspective, safeguards have an indirect economic benefit because they facilitate further trade liberalization by reducing domestic political opposition.34

This Note is intended to move this debate forward by providing data on how industries have actually performed after receiving safeguard protection. The Note has the following limitations. It gathers performance data following the termination of safeguards, but it does not determine the cause of post-safeguard performance. Second, it does not analyze the relative cost of safeguards versus other forms of assistance to distressed industries. Third, it does not balance the benefits of restoring a particular industry against the costs of safeguards.

Nevertheless, given that the primary stated rationale for safeguards is to facilitate the restoration of injured or threatened industries to sustained competitiveness, the failure to restore those industries should raise serious questions as to the effectiveness of current safeguards law as a tool in U.S. trade policy.

This Note is divided into the following parts. Part I reviews the key international trade laws governing safeguards: GATT Article XIX, the WTO Agreement on Safeguards, and the WTO Dispute Settlement Body. Part II provides an overview of U.S. safeguards law and cases. Part III begins with a brief description of the methodology used in the study, and then proceeds to in-depth case studies of three of the most recent industries in the United States that have received protection through safeguards: lamb meat, line pipe, and wheat gluten. Part IV draws from the results of the case studies to propose legal reforms to make U.S. safeguards more effective and accountable.

I. SAFEGUARDS IN INTERNATIONAL TRADE LAW

A. Origins of International Safeguards Law: GATT Article XIX

Safeguards were initially codified in international trade law in Article XIX of the 1947 GATT.35 Article XIX, titled “Emergency Action on Imports of Particular Products,” reads, in part:

34. Sykes, The Safeguards Mess, supra note 21, at 1-2.
35. GATT, supra note 9, art. XIX.
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.  

Article XIX consists of five short paragraphs. It provides a framework for the imposition of safeguards, but leaves out several critical guidelines. It does not establish procedures for investigating safeguard measures, nor does it specifically define terms such as “serious injury” or causation, leaving countries to speculate on the levels of injury and causation that would justify safeguards under the GATT.

The lack of well-defined guidelines and processes led many countries to resort to so-called “grey-area measures” as alternatives to safeguards. Grey-area measures generally consisted of export restraint agreements between trade partners to implement trade barriers outside of GATT rules. These side agreements were widely criticized. Some argued that grey-area measures threatened to undermine the global rules-based system of trade that the GATT was intended to promote. Critics also argued that developed countries often pressured developing countries to accept so-called “voluntary” export restraint agreements that contained substantially unequal terms.

Concerns about the proliferation of grey-area measures and the deficiencies of Article XIX led GATT member countries to work in successive trade negotiating rounds to establish a more clear and complete agreement governing safeguards. These efforts culminated

36. Id. art. XIX(1)(a). Article XIX goes on to establish requirements for notice and consultation, and to permit countries to impose compensatory trade barriers in response to safeguards.
37. Id. art. XIX. See also Lee, supra note 30, at 17, 28.
41. Id.
42. Id.
in 1994 at the Uruguay Round of trade negotiations with the signing of the Agreement on Safeguards.\textsuperscript{43}

\textbf{B. Modern Developments: Agreement on Safeguards and the WTO}

The Agreement on Safeguards consists of fourteen articles that—unlike Article XIX of the GATT—provide detailed definitions for key terms such as “serious injury” and prohibit grey-area measures.\textsuperscript{44}

The Uruguay Round also resulted in the establishment of the WTO itself, which was charged with overseeing the implementation of trade agreements, including the Agreement on Safeguards, and facilitating further trade liberalization.\textsuperscript{45} The WTO was tasked with implementing a Dispute Settlement Understanding (DSU), which gave force to the Agreement on Safeguards and helped to eliminate grey-area measures and bring import relief back within the bounds of the global trading system.\textsuperscript{46}

Under the DSU, countries that feel that their trading partners are violating WTO agreements can bring complaints to three-person panels that conduct investigations and submit opinions to the Dispute Settlement Body (DSB).\textsuperscript{47} The DSB is made up of representatives from every country in the WTO, and generally adopts panel reports, absent a consensus vote in opposition.\textsuperscript{48}

Either country in a dispute can appeal the result of the panel report to the Appellate Body, a standing committee of seven people, of which three are assigned to a given case.\textsuperscript{49} Appellate Body reports are also submitted to the DSB and adopted absent a consensus opposition vote.\textsuperscript{50} The DSU establishes timelines for each step in the dispute settlement process, with a total maximum time allowance of twelve

\textsuperscript{43} Safeguards Agreement, supra note 9. A goal of the Agreement on Safeguards, established in the preamble, was to “re-establish multilateral control over safeguards and eliminate measures that escape such control.” \textit{Id. pmbl.}

\textsuperscript{44} \textit{Id.} arts. 4(1)(a), 4(2)(a), 7, 11(b).


\textsuperscript{47} \textit{Id.} arts. 4, 6, 7, 8, 11, 12.

\textsuperscript{48} \textit{Id.} art. 16.

\textsuperscript{49} \textit{Id.} art. 17.

\textsuperscript{50} \textit{Id.}
months, or fifteen months including an appeal.\textsuperscript{51} Reports from the Panel and the Appellate Body over the past eighteen years have further developed and refined the definitions and standards contained in the Agreement on Safeguards. For example, in one landmark opinion, arising out of a dispute between Argentina and the European Community (EC) over Argentina’s safeguards against imported footwear from the EC, the panel established a three-pronged test for determining whether a country has met the requirement in the Agreement on Safeguards of establishing a causal link between increased imports and the affected domestic injury.\textsuperscript{52} Under the test, countries should look at (1) whether increased imports correlated with decreased domestic production; (2) whether the conditions of competition between imports and domestic products suggest that imports caused the injury; and (3) whether the extent of injury alleged was caused in any part by factors other than imports.\textsuperscript{53}

The Appellate Body has also addressed inconsistencies between the Agreement on Safeguards and the original GATT Article XIX. In Korea—Definitive Safeguard Measures on Imports of Certain Dairy Products, the Appellate Body addressed the fact that Article XIX required that increased imports be a “result of unforeseen developments,” while the Agreement on Safeguards did not.\textsuperscript{54} The Appellate Body ruled that the provision still applied, holding that “any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the Agreement on Safeguards and Article XIX of the GATT 1994.”\textsuperscript{55}

Following the establishment of the WTO and the signing of the Agreement on Safeguards, countries began to apply safeguards with increasing frequency. Between 1950 and 1994, global safeguards initiated averaged 3.4 per year.\textsuperscript{56} From 1995 to 2010, the global average increased to 13.5 per year.\textsuperscript{57} Of the 216 safeguards initiated from 1995


\textsuperscript{52} Panel Report, Argentina—Safeguard Measures on Imports of Footwear, ¶ 8.229, WT/DS121/R (June 25, 1999).

\textsuperscript{53} Id.


\textsuperscript{55} Id.

\textsuperscript{56} Jones, supr note 33, at 86.

to 2010, 101 were implemented. Of those that were implemented, twenty-one were disputed in the WTO. Every disputed safeguard measure that has gone to the Appellate Body has been ruled to violate WTO law.

II. SAFEGUARDS IN U.S. TRADE LAW

A. Origins of U.S. Safeguards Law

The U.S. Congress first discussed the importance of including safeguards in trade agreements in order to protect domestic industries in 1934. In 1942, the United States included an escape clause in its bilateral trade agreement with Mexico. The United States played a leading role in negotiating the inclusion of the Article XIX “escape clause” in the GATT, initially submitting the language that became Article XIX during earlier, ultimately unsuccessful, negotiations seeking to establish an International Trade Organization (ITO). On February 25, 1947, President Harry Truman signed an Executive Order requiring that every U.S. trade agreement made under existing U.S. trade laws include a safeguard mechanism. In 1951, the Trade Agreements Extension Act officially incorporated safeguards into U.S. trade law for the first time.

The Trade Agreements Extension Act of 1951 set relatively low standards for establishing sufficient injury and causation to justify safeguards. Congress raised both standards in the Trade Expansion Act of 1962. However, in the 1970s, as global trade increased, demand

58. Dispute Settlement: The Disputes—Disputes By Agreement, World Trade Org., http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm (last visited Dec. 27, 2012) (showing that the forty-three cases citing the Agreement on Safeguards were brought against twenty-three separate safeguards). In some cases, multiple complainants brought separate cases against the same safeguard. For example, U.S. steel safeguards generated nine separate complaints, including complaints by Japan, South Korea, China, Switzerland, Norway, New Zealand, Brazil, Argentina, the EC, and Chinese Taipei.


64. Bowman et al., supra note 4, at 353.

65. Id.

66. Id.
from domestic industries for safeguards began to rise, and “sentiment in favour of more permissive safeguard standards grew.”  

In response, Congress relaxed the standards for establishing the case for safeguard protection in the Trade Act of 1974. The Act softened the causation requirement from “major factor in causing” injury to “substantial cause” of injury. It also removed the requirement that the domestic injury be linked to trade concessions as opposed to simply trade, and broadened the relief options available to the President.

B. Modern Developments: Section 201 of the Trade Act of 1974

Sections 201 through 204 of the Trade Act of 1974 provide the primary law for U.S. safeguards to this day. Section 201 establishes the requirements for and goals of safeguards. It authorizes the President to implement safeguards when the USITC determines that imports are “in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.”

To determine whether the increase in imports caused the threat or injury to the domestic industry, the act instructs the USITC to consider factors such as an “increase in imports (either actual or relative to domestic production),” a “decline in the proportion of the domestic market supplied by domestic producers, and declining demand.”

To decide whether there has been a serious injury to the domestic industry, the act instructs the USITC to consider “all relevant factors,” and specifies factors such as “significant idling” at facilities, inability to generate a “reasonable level of profit,” and “significant unemployment or underemployment.” To establish whether a threat of serious injury exists, the act instructs the USITC to consider several factors, such as

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67. Id. at 354.
70. BOWMAN ET AL., supra note 4, at 354.
72. Id. § 2251.
73. Id. §§ 2251(b)(1)(A)-(B) (defining “substantial cause” as “a cause which is important and not less than any other cause”).
74. Id. § 2251(c)(1)(C); id. § 2251(c)(2)(A).
75. Id. § 2251(c)(1)(A).
declining sales, market share, profits, employment, productivity, and access to capital.  

Section 201 further requires that the President only implement safeguards if he believes they will “facilitate efforts by the domestic industry, make a positive adjustment to import competition, and provide greater economic and social benefits than costs.”

Under section 202, an industry representative, the President of the United States, the U.S. Trade Representative (USTR), the House Ways and Means Committee, or the Senate Finance Committee can submit a petition to the USITC to initiate a safeguards investigation. Upon receiving a petition, the USITC generally has 120 days to complete its investigation and issue a recommendation to the President.

The USITC consists of six commissioners, who are generally experts in international trade nominated by the President and confirmed by the United States Senate. The commission is bipartisan—no more than three commissioners may be from the same political party. Commissioners are generally appointed to nine-year terms.

When the USITC recommends safeguards, it typically recommends tariffs, quotas, or tariff-rate quotas, sometimes in combination with direct financial assistance to the domestic industry. The President has the authority to reject or accept, in part or in full, the USITC recommendation. Section 203 establishes several factors for the President to consider when weighing safeguard measures, including the “probable effectiveness” of safeguards, and the social and economic costs and

76. Id. § 2251(c)(1)(B).
77. Id. § 2251(a). The paragraph reads:
If the [USITC] . . . determines under [19 U.S.C. § 2252(b)] that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.
78. Id. § 2252.
79. Id.
80. Id. § 1330(a) (2006).
81. Id.
82. Id. § 1330(b) (2006).
83. Id. § 2252(c)(2).
benefits. The President can impose safeguards for up to four years, and can extend them once for a maximum duration of eight years, if he determines that “action continues to be necessary” and “the domestic industry is making a positive adjustment to import competition.”

C. Conflicts Between U.S. Safeguards Law and the WTO

Much of the scholarship on U.S. safeguards law addresses the areas in which it conflicts with GATT Article XIX and the WTO Agreement on Safeguards. The WTO’s DSB has ruled that every single safeguard measure implemented by the United States since 1994 has violated, at least partially, WTO law. There are several important “textual and interpretive” differences between sections 201-204 of the U.S. Trade Act of 1974 and U.S. international obligations in the WTO that have led to adverse rulings in the WTO, and to subsequent calls for reform.

As discussed above, the WTO Appellate Body ruled that the Article XIX requirement that increased imports be the result of “unforeseen developments” still applies despite the omission of that clause in the Agreement on Safeguards. U.S. law does not include any reference to “unforeseen developments.” Multiple USITC recommendations have failed to address that requirement, and as a result, the DSB has found the resulting safeguards to be in violation of WTO law.

Further, the WTO Appellate Body has ruled that injury assessments must include discussions of all injury factors specified in Article 4.2(a) of the Agreement on Safeguards. Several factors listed in that Article, such as increase in imports, market share, sales trends, production, and productivity, are not included in section 202(c)(1)(A) of the Trade Act of 1974, and thus are not always considered in USITC...
The USITC’s failure to address productivity in its recommendation of steel safeguards led, in part, to an adverse ruling in the DSB.

Critics of the DSB suggest that its stringent standards of review in safeguards cases threaten to undermine the value of the Agreement on Safeguards and the viability of safeguards as an option for countries facing surging imports.

D. U.S. Safeguards in Practice

Since the WTO Appellate Body ruled against U.S. steel safeguards in 2003, the USITC has not received a single petition to initiate a safeguards investigation under section 201. However, from 1975 through 2001, the USITC conducted seventy-three investigations under section 201 of the Trade Act of 1974. It recommended safeguards in thirty-four of those cases (forty-seven percent). Of those, the President initiated safeguards nineteen times, as shown below in Table 1. Safeguards were imposed in the form of tariffs in eight cases; quotas in two cases; and a combination of tariffs, quotas, and tariff-rate quotas in nine cases. Six of the safeguards were initiated after the passage of the WTO Agreement on Safeguards.

The case studies that follow will investigate the performance of three of the most recent industries receiving safeguards protection: circular welded carbon quality line pipe, lamb meat, and wheat gluten.

III. Case Studies

A. Case Study Methodology

The case studies below present several metrics of performance for...
the lamb meat, wheat gluten, and line pipe\(^{98}\) industries over fifteen to twenty-year periods. Relying on statistics from the USITC, other federal agencies, and private studies, the case studies present data beginning roughly five years before the imposition of safeguards and continuing through five to ten years after the termination of safeguards.\(^{99}\)

\[\text{Table 1. US Safeguards Initiated}\] \(^{96}\)

<table>
<thead>
<tr>
<th>Term of Protection</th>
<th>Protection</th>
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<tbody>
<tr>
<td>Stainless steel and alloy tool steel</td>
<td>6/14/1976 to 2/13/1980</td>
</tr>
<tr>
<td>Footwear</td>
<td>7/28/1977 to 6/30/1981</td>
</tr>
<tr>
<td>Television receivers</td>
<td>7/1/1977 to 6/30/1982</td>
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<tr>
<td>Clothespins</td>
<td>2/18/1979 to 2/22/1984</td>
</tr>
<tr>
<td>Bolts, nuts, and screws of iron or steel</td>
<td>12/26/1978 to 1/5/1982</td>
</tr>
<tr>
<td>Non-electric cookware</td>
<td>1/17/1980 to 1/16/1984</td>
</tr>
<tr>
<td>Mushrooms</td>
<td>11/1/1980 to 10/31/1983</td>
</tr>
<tr>
<td>Heavyweight motorcycles</td>
<td>4/1/1983 to 10/9/1987</td>
</tr>
<tr>
<td>Stainless steel and alloy tool steel</td>
<td>7/19/1983 to 9/1/1989</td>
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<tr>
<td>Carbon and certain alloy steel products</td>
<td>10/1/1984 to 9/31/1989</td>
</tr>
<tr>
<td>Wood shingles and shakes</td>
<td>7/6/1986 to 6/1/1991</td>
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</tbody>
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**Agreement on Safeguards Signed in 1994**

<table>
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<th>Term of Protection</th>
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<tr>
<td>Wheat gluten</td>
<td>5/30/1998 to 6/1/2001</td>
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<tr>
<td>Lamb meat</td>
<td>7/7/1999 to 11/15/2001</td>
</tr>
<tr>
<td>Certain steel wire rod</td>
<td>3/1/2000 to 3/1/2003</td>
</tr>
<tr>
<td>Steel</td>
<td>3/20/2002 to 12/5/2003</td>
</tr>
</tbody>
</table>

96. Data from Liebman & Reynolds, *supra* note 15.

97. OMAs, or Orderly Market Arrangements, were a type of grey-area measure used prior to the Agreement on Safeguards. OMA refers to “bilateral measures in which an exporting country agrees to restrict its exports of a good to one trading partner, often under threat of sanctions from the importing country.” Joanna Bonnariva et al., *Export Controls: An Overview of their Use, Economic Effects, and Treatment in the Global Trading System* 2 (U.S. Int'l Trade Comm’n, Working Paper No. ID-23, 2009).


99. The USITC generally reviews performance trends over a three- to five-year period to inform its recommendations.
The case studies investigate the same metrics of industry performance that the USITC uses to recommend and evaluate safeguards.100 The USITC does not review the exact same metrics in each case. As a result, the case studies contain slight variations as well.

Section 202 does not establish, and the USITC does not use, any statistical thresholds for determining the amount that a certain metric must change in order to constitute, for example, “injury” or “causation.” The USITC studies these factors to evaluate trends in industry performance and imports, which it uses to make its recommendations. Likewise, the objective of the case studies is to show general trends in industry performance in the years following safeguards.

The particular case studies chosen represent half of the safeguard measures initiated in the United States since the enactment of the WTO Agreement on Safeguards. Among the safeguards initiated after the WTO, the three industries reviewed were selected based on the availability of data on post-safeguard industry-wide performance. As shown in Table 1, two of the most recent safeguards targeted steel and steel wire rod. Steel products have been the subject of six separate safeguard measures overall, and several other import restraints under other provisions of U.S. trade law. The particular definition of the steel product receiving protection often varies. Thus, while data on the steel industry are available, data on industry performance with respect to the specific steel products receiving protection are less readily available.

B. Case Study #1: Lamb Meat

1. Background

By 1999, the U.S. lamb industry had been in decline for over fifty years. After peaking in 1942 with an inventory of 56.2 million head of lamb, by 1990 total domestic inventory had dropped to 12.1 million head.101 Until the early 1990s, domestic consumption generally declined with production, as imports remained low.102 However, in the 1990s, domestic production continued to decline while demand re-

100. These metrics are established in section 202 of the Trade Act of 1974, 19 U.S.C. § 2252 (2006), and are summarized supra Part II.B.
mained stable.\textsuperscript{103} Surging imports made up the difference. Companies in Australia and New Zealand took advantage of new preservation technologies that allowed them to export fresh and chilled lamb meat to the U.S. market at cheaper prices than U.S. companies.\textsuperscript{104} In response, in October 1998, U.S. lamb industry representatives petitioned the USITC to initiate a safeguards investigation.\textsuperscript{105} The USITC conducted an investigation and concluded in April 1999 that “lamb meat is being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry,”\textsuperscript{106} and recommended that the President implement safeguards.

2. USITC Investigation

Pursuant to section 202 of the Trade Act of 1974, the USITC investigated (1) whether imports had increased, either in absolute quantity or relative to domestic production, (2) whether the U.S. industry was seriously injured or threatened with serious injury, and (3) whether the increase in imports was a substantial cause of the injury or threat.\textsuperscript{107} The USITC relied primarily on data from the U.S. Department of Agriculture (USDA), and questionnaires from a group of fifty-seven firms and individual representatives.\textsuperscript{108}

First, the USITC found that imports had increased, both in absolute quantity and relative to domestic production. In absolute terms, imports of lamb meat increased from forty-one million pounds in 1993 to 60.4 million pounds in 1997.\textsuperscript{109} In relative terms, the ratio of imports to domestic production increased from 12.5% in 1993 to 24.1% in 1997, and 30.5% in the first nine months of 1998.\textsuperscript{110}

Second, the USITC found that the domestic industry was threatened with serious injury. The USITC found that domestic production had decreased from 326.7 million pounds in 1993 to 250.8 million pounds

\begin{thebibliography}{11}
\bibitem{103} Id.
\bibitem{104} Id. at 212.
\bibitem{105} Lamb Meat Recommendation, supra note 7, at I-5. The petitioners were American Sheep Industry Association, Inc.; Harper Livestock Co.; National Lamb Feeders Association; Winters Ranch Partnership, Godby Sheep Co.; Talbott Sheep Co.; Iowa Lamb Corp.; Ranchers' Lamb of Texas, Inc.; and Chicago Lamb and Veal Co. Id. at I-3, I-5.
\bibitem{106} Id. at I-5.
\bibitem{107} See id. at I-5.
\bibitem{108} Id. at I-15.
\bibitem{109} Id. at I-13.
\bibitem{110} Id.
\end{thebibliography}
in 1997.\textsuperscript{111} The market share of domestic producers had decreased from 88.8\% in 1993 to 80.3\% in 1997.\textsuperscript{112} The number of lamb-growing establishments had decreased from 93,280 in 1993 to 74,710 in 1997.\textsuperscript{113} Prices for various lamb meat products had declined as well, with several products decreasing in price by more than twenty percent from 1997 to 1998.\textsuperscript{114} Finally, the USITC noted that questionnaire responses indicated that firms were declining in capacity utilization and were experiencing difficulty generating capital to modernize their operations.\textsuperscript{115}

Third, the USITC determined that the increase in imports was a “cause no less than any other” of the threat to the domestic industry. The USITC considered potential other causes, such as Congress’s vote in 1993 to phase out the National Wool Act of 1954,\textsuperscript{116} which had provided support payments to growers.\textsuperscript{117} The USITC found that the industry had already begun recovering from the loss of those payments by 1996 and that negative effects on the industry of the termination of payments from the National Wool Act would likely “recede further with each passing month.”\textsuperscript{118}

The USITC also briefly considered arguments that alternative factors, such as competition from other meat products, increased input costs, concentration of packers in a small number of firms, and poor marketing, were more important causes of the threat of serious injury than increased imports.\textsuperscript{119} However, the USITC found that Australian and New Zealand firms projected that their exports to the U.S. would increase by twenty-one percent from 1998 to 1999, with the majority of the increase in fresh and chilled lamb meat.\textsuperscript{120} The USITC predicted that the continued surge in imports would further reduce prices, sales, and market share of the domestic industry and was thus a cause not less than any other of the threat to the domestic industry.\textsuperscript{121}

Following these findings, the USITC recommended that the Presi-
dent implement a tariff-rate quota on imported lamb meat and provide
direct financial assistance to domestic producers.122 The combination
of measures, it argued, would “allow domestic lamb producers to
compete effectively with imports by implementing changes to lower
costs” and “expand demand through marketing programs” while main-
taining “a steady supply of lamb meat to domestic consumers without
the prospect of being overwhelmed by imports during the period of
relief.”123

3. Safeguards

President Clinton accepted the general terms of the USITC recom-
mendation and issued a proclamation on July 7, 1999 levying a height-
ened tariff-rate quota on imports of lamb meat over a three-year
period.124 The proclamation set a two-tiered tariff structure, differenti-
ating rates on imports below and above 31,851 tons in the first year,
32,708 tons in the second year, and 33,565 tons in the third year.125
Imports below those amounts were assessed a tariff of nine percent in
the first year, six percent in the second year, and three percent in the
third year.126 Imports above those amounts were assessed a tariff of forty percent in the first year, thirty-two percent in the second year and
twenty-four percent in the third year.127

To supplement the tariff-rate quota, President Clinton also in-
structed his Administration to develop a package of direct adjustment
assistance to support the domestic lamb meat industry.128 On Janu-
ary 13, 2000, the USDA announced a $100 million assistance package to
be distributed over a three-year period to assist domestic sheep and

122. Id. at I-26 to -27. The USITC recommended exempting Canada and Mexico, having
found pursuant to section 311(a) of the NAFTA Implementation Act, 19 U.S.C. § 3371 (2006),
that imports from those countries did not account for a “substantial share of total imports” and
did not “contribute importantly to the serious injury, or threat thereof, caused by imports.” Lamb
Meat Recommendation, supra note 7, at I-24. The USITC also recommended exempting imports
from Israel and from beneficiary countries under the Caribbean Basin Economic Recovery Act,
Meat Recommendation, supra note 7, at I-31 n.170; id. at I-39 n.185 (citing 19 U.S.C. § 2703(e)(2)
(2006); id. § 3203(d)(2) (2006); id. § 2112 (2006)).
123. Lamb Meat Recommendation, supra note 7, at I-32.
125. FOREIGN AGRIC. SERV., supra note 101.
126. Id.
127. Id.
Reg. 37,393 (July 12, 1999).
lamb farmers with marketing and investment in new processes and technologies.  

Australia and New Zealand immediately complained to the WTO that the safeguards violated international trade law. Three years later, on May 1, 2001, the WTO Appellate Body issued its final ruling that the lamb meat safeguard violated four aspects of WTO law. First, the USITC failed to consider whether the increase in imports was an “unforeseen development.” Second, the USITC erred in including lamb growers and feeders in its definition of the domestic lamb meat industry. Third, the USITC provided inadequate analysis of domestic lamb meat prices in making its determination that the domestic industry was threatened with serious injury. Fourth, the USITC failed in its causation analysis to adequately separate and consider the multiple factors contributing to the threat to the domestic industry. On November 14, 2001, roughly six months after the negative ruling by the WTO Appellate Body, President George W. Bush issued a proclamation terminating the safeguards.

When President Clinton initiated the safeguard measure on July 7, 1999, he stated his belief that it would help the declining lamb meat industry “achieve sustained competitiveness, while respecting our international obligations.” The WTO ruled that the safeguards violated America’s international obligations. The question remains whether the safeguards helped the lamb industry achieve sustained competitiveness. The data below demonstrate that it did not. Instead, the domestic

131. Lamb Meat AB Report, supra note 89, ¶ 197.
132. Id. As discussed earlier, the Appellate Body had previously ruled that the “unforeseen development” requirement in GATT Article XIX still applied. Korea Dairy AB Report, supra note 54, ¶ 77.
133. Lamb Meat Panel Report, supra note 130, ¶¶ 77-96. The Appellate Body held that the Agreement on Safeguards limits the term “domestic industry” to the “producers . . . of the like or directly competitive product.” Id. ¶ 91.
134. Id. ¶ 150-61.
135. Id. ¶ 162-88.
industry continued to decline on major indicators of performance during and after the safeguards.

4. Industry Performance

The U.S. lamb meat industry continued to decline, both in absolute production and relative to imports, in the years during and after the safeguards. The decline in absolute production continued at roughly the same pace as before the safeguards, while the decline relative to imports slowed compared to the five years preceding the safeguards.\textsuperscript{138} Two indicators of performance did improve following the safeguards: price of lamb meat and the number of lamb growing establishments.\textsuperscript{139} However, the data show—as the WTO Appellate Body noted—that the price decrease that the USITC identified was unique to 1998.\textsuperscript{140} Price had otherwise already been gradually increasing, with fluctuations, for over thirty years.\textsuperscript{141} Further, the increase in lamb growing establishments did not occur until 2007, six years after the safeguards terminated, and was not accompanied by a growth in production, inventory, or any other meaningful figure.\textsuperscript{142}

Table 2, below, presents summarized data on five metrics of industry performance (domestic production, imports, domestic industry’s U.S. market share, price, and number of producers, or “establishments.”)\textsuperscript{143}

i. Domestic Production

Domestic production declined before, during, and after the safeguards. The decline in production has persisted every year despite a

\textsuperscript{138} See Table 2 infra.

\textsuperscript{139} See Table 2 infra.

\textsuperscript{140} Lamb Meat AB Report, supra note 89, ¶¶ 153-154.

\textsuperscript{141} See infra Chart 5.

\textsuperscript{142} See infra Table 2.

5.7% increase in domestic demand for lamb meat in the past decade.145 The USITC ruled in 1998 that the lamb meat industry was threatened with serious injury in part based on its finding that domestic production decreased by twenty-three percent over four years, from 1993 to 1997.146 As shown below in Chart 1, domestic production continued to decline at significant rates in the years during and after the safeguards.

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Production</th>
<th>Imports</th>
<th>Domestic Industry Market Share</th>
<th>Price</th>
<th>Establishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>329 million lbs.</td>
<td>41 million lbs.</td>
<td>89%</td>
<td>$66/lb.</td>
<td>93,280</td>
</tr>
<tr>
<td>1994</td>
<td>-7%</td>
<td>-5%</td>
<td>+0%</td>
<td>+6%</td>
<td>-</td>
</tr>
<tr>
<td>1995</td>
<td>-7%</td>
<td>+10%</td>
<td>-2%</td>
<td>+9%</td>
<td>-</td>
</tr>
<tr>
<td>1996</td>
<td>-6%</td>
<td>+19%</td>
<td>-3%</td>
<td>+12%</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>-3%</td>
<td>+18%</td>
<td>-4%</td>
<td>+3%</td>
<td>-20%</td>
</tr>
<tr>
<td>1998</td>
<td>-4%</td>
<td>+30%</td>
<td>-4%</td>
<td>-16%</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td>-2%</td>
<td>+6%</td>
<td>-2%</td>
<td>+3%</td>
<td>-</td>
</tr>
<tr>
<td>2000</td>
<td>-6%</td>
<td>+14%</td>
<td>-3%</td>
<td>+4%</td>
<td>-</td>
</tr>
<tr>
<td>2001</td>
<td>-3%</td>
<td>+14%</td>
<td>-4%</td>
<td>-9%</td>
<td>-8%</td>
</tr>
<tr>
<td>2002</td>
<td>-2%</td>
<td>+8%</td>
<td>-2%</td>
<td>0%</td>
<td>-1%</td>
</tr>
<tr>
<td>2003</td>
<td>-8%</td>
<td>+15%</td>
<td>-5%</td>
<td>+28%</td>
<td>-1%</td>
</tr>
<tr>
<td>2004</td>
<td>-3%</td>
<td>+6%</td>
<td>-2%</td>
<td>+5%</td>
<td>0%</td>
</tr>
<tr>
<td>2005</td>
<td>-4%</td>
<td>+0.6%</td>
<td>-2%</td>
<td>+1%</td>
<td>+1%</td>
</tr>
<tr>
<td>2006</td>
<td>-1%</td>
<td>+2%</td>
<td>-0%</td>
<td>-19%</td>
<td>+1%</td>
</tr>
<tr>
<td>2007</td>
<td>-1%</td>
<td>+8%</td>
<td>-3%</td>
<td>+7%</td>
<td>+20%</td>
</tr>
<tr>
<td>2008</td>
<td>-5%</td>
<td>-13%</td>
<td>+3%</td>
<td>+1%</td>
<td>-1%</td>
</tr>
<tr>
<td>2009</td>
<td>-2%</td>
<td>-0.7%</td>
<td>-1%</td>
<td>+6%</td>
<td>-1%</td>
</tr>
<tr>
<td>2010</td>
<td>-4%</td>
<td>-2%</td>
<td>+0%</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>


145. NAT’L RESEARCH COUNCIL, supra note 102, at 203.

146. Lamb Meat Recommendation, supra note 7, at I-14, I-16.
In the second year after the termination of safeguards (2003) production decreased by eight percent—more than in any year before the safeguards. From 2001 to 2010, production decreased by twenty-six percent, to less than 164 million pounds. The USDA projected that domestic production would decrease by another seven percent from 2010 to 2011, which would equal the largest annual percentage decline that occurred in the period preceding the safeguards.

ii. Imports

Imports of lamb meat, conversely, continued to increase during safeguards and in the six years after safeguards terminated. The USITC ruled that imports had been a cause no less than any other of the threats to the domestic industry in part because of its finding that imports increased by forty-six percent from 1993 to 1997. Imports continued to increase after safeguards terminated.

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148. Id.
149. See Lamb Meat Recommendation, supra note 7, at 1-15.
increased significantly in 1998, the last year preceding safeguards. During and after safeguards, imports continued to increase, though at a slightly slower rate. Beginning in 2008, imports began to decline. However, as of 2011, the declines are insufficient to offset the significant growth in lamb imports that occurred during safeguard protection and the growth that persisted in the first five years after safeguards, as shown below in Chart 2.

**Chart 2. Lamb Meat Imports**

![Chart 2](image)

iii. *Domestic Industry Market Share*

The domestic industry lost market share to imports every year from 1994 to 2007, as shown in Chart 3, below. The USITC found that the market share held by domestic producers had decreased from 88.8% in

1993 to 80.3% in 1997. The trend continued during safeguards, as domestic producers lost eleven percent against imports. In the first four years after safeguards, the domestic industry lost another nine percent of the domestic market to imports. Since 2007, however, the eleven percent decrease in domestic production has been nearly matched by an eight percent decrease in imports, leaving the domestic industry market share between fifty-three and fifty-six percent.

Table 2 reflects no percentage change in market share for 2005. See supra Table 2. The change was less than 0.05%.

151. See Lamb Meat Recommendation, supra note 7, at I-16.
152. See Lamb Meat Production, supra note 143; Lamb Meat Imports, supra note 143.
153. Id.
154. Id.
iv. Price

The price of lamb meat decreased slightly during safeguards, but significantly increased after safeguards, as shown in Chart 4, below.\textsuperscript{155} The USITC found that “financial performance across all industry segments has worsened due largely to falling prices.”\textsuperscript{156} But, while it had analyzed other metrics from 1993 to 1997, for price the USITC only considered 1998, when price decreased by twenty percent from the previous year for several lamb meat products.\textsuperscript{157}

As noted earlier, the WTO Appellate Body found that the USITC’s analysis of the decline in lamb meat price was flawed.\textsuperscript{158} From 1993 to 1997, price had actually increased every year, rising by thirty-three percent over the four years.\textsuperscript{159} After the major drop in 1998, prices continued to increase, offset by periodic fluctuations both during and after safeguards.\textsuperscript{160}

Further, the trend of increasing prices with fluctuations extends back even to 1970, as depicted in Chart 5.

v. Number of U.S. Establishments

The number of U.S. lamb-growing establishments continued to decline during safeguards, remained relatively stable for four years after safeguards, and then increased by twenty percent in 2007.\textsuperscript{161} The USITC found that the number of U.S. lamb-growing establishments had decreased by twenty percent from 1993 to 1997, from 93,280 to 74,710.\textsuperscript{162} During safeguards, the decline continued, dropping to 68,600 establishments in 2001.\textsuperscript{163} However, by 2009, the number of establishments had increased to 82,000.\textsuperscript{164} The increase was concentrated in 2007, when the number increased from 69,180 to 83,130.\textsuperscript{165}

\textsuperscript{155} Lamb Meat Prices, \textit{supra} note 143.
\textsuperscript{156} Lamb Meat Recommendation, \textit{supra} note 7, at I-18.
\textsuperscript{157} Id.
\textsuperscript{158} Lamb Meat AB Report, \textit{supra} note 89, ¶¶ 150-61.
\textsuperscript{159} Lamb Meat Prices, \textit{supra} note 143.
\textsuperscript{160} Id.
\textsuperscript{162} Lamb Meat Recommendation, \textit{supra} note 7, at I-15 n.64, I-16.
\textsuperscript{163} Nat’l. Agric. Statistic Serv., U.S. Dep’t of Agric., 2010 NASS Agriculture Report, VII-22 tbl. 7-37.
\textsuperscript{164} Id.
\textsuperscript{165} Id.

With the substantial increase in lamb-growing establishments in 2007, this metric of industry performance is the only one of the five considered that appears to have reversed its decline in the years after safeguards.

**Chart 6. Domestic Lamb-Growing Establishments**

![Chart showing domestic lamb-growing establishments over time](https://example.com/chart6)

vi. **Conclusion**

The data presented above show that the domestic lamb meat industry continued to decline in absolute production and in market share, both during and after safeguards. Two indicators of performance improved after safeguards: price and the number of lamb-growing establishments. However, price had generally been slowly increasing in the years before safeguards, with periodic fluctuations. The price trends after safeguards represent not a turnaround but a continuation of pre-safeguard trends. Finally, the number of lamb-growing establishments did in fact stop its decline, remaining steady for the first four years after safeguards and then increasing twenty percent in 2007. However, the increase in the number of establishments did not coincide with an increase in domestic production. Thus, while total employment figures are not available, absent a decline in productivity, total
employment hours in the industry would have continued to decline in 2007. The increase in the number of domestic establishments alone does not constitute a restoration to sustained competitiveness.

When the safeguards were announced, Australian Prime Minister John Howard predicted that they would “provide no help to U.S. producers of lamb and [would] only lead to higher prices for [U.S.] consumers.” The data presented do not provide a definitive response to this prediction. U.S. producers continued to decline in absolute production and market share, but the pace of decline slowed. Price did increase, but it had generally been increasing already.

However, the continued decline in domestic production and market share do cast serious doubt on the White House prediction that safeguards would help domestic lamb producers “achieve sustained competitiveness.” While U.S. producers may have fared even worse without the safeguards, the data on the domestic industry over the past eight years do not demonstrate an industry restored to sustained competitiveness.

C. Case Study #2: Wheat Gluten

1. Background

Wheat gluten is a sticky substance consisting of roughly seventy-five percent protein that is primarily used as an ingredient in the baking industry and in pet food. It is also sold as an alternative to meat, and it is generally marketed for that purpose under the name “seitan.” Wheat gluten is extracted from wheat during the wet-milling process that transforms wheat into flour. In the baking industry, wheat gluten is added to dough to provide the necessary protein to allow the dough to remain intact as it is mixed and kneaded. Wheat gluten is used in higher quantities for high protein bread items like bagels and

166. Temple-Raston et al., supra note 25 (internal quotation marks omitted).
169. The term “seitan” originated in Japan, which used the term to describe wheat gluten used as a substitute for meat. WILLIAM SHURTLEFF & AKIKO AOYAGI, HISTORY OF SOYBEANS AND SOYFOODS IN THE MIDDLE EAST (1909-2007) 157 (2008).
170. Holcomb, supra note 168, at F-559.
171. Id.
multi-grain breads, and refrigerated and frozen dough products that require stronger and more flexible dough.\footnote{172}{Id.} Until the 1980s, domestic wheat producers produced nearly all of the wheat gluten consumed in the United States.\footnote{173}{Brian Balzer & Kyle Stiegert, The European Union-United States Wheat Gluten Policy Dispute 2, J. OF FOOD DISTRIB. RESEARCH, July 1999.} However, in the 1980s and 1990s, imports of wheat gluten increased steadily.\footnote{174}{Id. at 1.} Imports came mostly from the European Union, which increased its share of the U.S. market from almost zero in 1985 to nearly fifty percent in 1996.\footnote{175}{Michael Boland et al., AGRI. MKTG. POLICY CTR., Global and U.S. Wheat Gluten Industries: Structure, Competition, and Trade 3 (2005).} At the same time, U.S. demand for wheat gluten increased, in part due to growing preferences for “healthy” grain-based products like bagels, and in part due to the lower prices offered by the imported wheat gluten.\footnote{176}{See Holcomb, supra note 168.} However, the domestic industry, consisting almost entirely of four firms, struggled to compete effectively with imports to supply the growing U.S. market for wheat gluten.\footnote{177}{See Wheat Gluten Recommendation, supra note 7, at I-5. The four domestic companies were Midwest Grain Products, Manildra Milling Corp., Archer Daniels Midland, and Heartland Wheat Growers. Id.} In response, on September 19, 1997, the Wheat Gluten Industry Council, comprised of two of the four U.S. producers, petitioned the USITC to initiate a safeguard investigation.\footnote{178}{Id. at I-10.}

The USITC conducted an investigation based on statistics from the U.S. Department of Commerce (Commerce), and surveys of domestic and international firms. The USITC concluded that imports had increased,\footnote{179}{Id. at I-12 to -14.} that the domestic industry was seriously injured,\footnote{180}{Id. at I-16 to -18.} and that the increased imports were a substantial cause of that serious injury.\footnote{181}{Id. at I-20, I-27. Pursuant to NAFTA, 19 U.S.C. ch. 21 (2006), the USITC made a negative finding with respect to imports from Canada and Mexico and recommended that imports from both countries be excluded from the quota. Wheat Gluten Recommendation, supra note 7, at I-5 (citing 19 U.S.C. § 3371(a)); id. at I-18 to -19. The USITC’s proposed safeguard also excluded imports from developing countries with minimal imports to the United States, Israel, and beneficiary countries under the Caribbean Basin Economic Recovery Act, 19 U.S.C. ch. 15 (2006),} Based on these findings, the Commission recommended that the President impose a four-year quota on wheat gluten.\footnote{182}{Id. at I-20, I-27.}
2. USITC Investigation

The USITC set out to determine, pursuant to section 202 and as it had in the *Lamb Meat* case, (1) whether imports had increased, either in absolute quantity or relative to domestic production, (2) whether the U.S. industry was seriously injured or threatened with serious injury, and (3) whether the increase in imports was a substantial cause of the injury or threat.\textsuperscript{183}

First, the Commission found that imports had increased both in absolute quantity and relative to domestic production. Imports increased by nearly forty percent from 1993 to 1997, from 128 million pounds to 177 million pounds.\textsuperscript{184} Over the same period, imports increased their share of the U.S. market from fifty percent in 1993 to fifty-nine percent in 1997.\textsuperscript{185}

Second, the Commission found that the domestic industry had been seriously injured. In *Lamb Meat*, the USITC had found that the domestic industry was only experiencing the threat of serious injury under section 202(c)(1)(B).\textsuperscript{186} In *Wheat Gluten*, to find actual serious injury, the USITC relied on the factors in section 202(c)(1)(A): the “significant idling of productive facilities,” “the inability of a significant number of firms” to make reasonable profit, and “significant unemployment or underemployment within the domestic industry.”\textsuperscript{187}

The USITC found that capacity utilization (the ratio of production to capacity) had fallen from 78.3\% in 1993 to 44.5\% in 1997.\textsuperscript{188} Three of the four domestic industries submitted financial data showing that their wheat gluten facilities operated at a loss in 1996 and 1997.\textsuperscript{189} While domestic production is not a specified factor for making a “serious injury” determination, the Commission noted that production had declined by five percent over the same period.\textsuperscript{190} Finally, the

\textsuperscript{183} See *Wheat Gluten* recommendation, \textit{supra} note 7, at I-5.
\textsuperscript{184} \textit{Id.}
\textsuperscript{185} \textit{Id.} USITC statistics count years as ending on June 30. \textit{Id.} at I-5 n.2, I-22 n.107.
\textsuperscript{186} *Lamb Meat* Recommendation, \textit{supra} note 7, at I-14. \textit{See also} 19 U.S.C. § 2252(c)(1)(A) (2006); \textit{id.} § 2252(c)(6).
\textsuperscript{187} *Wheat Gluten* Recommendation, \textit{supra} note 7, at I-10 (quoting 19 U.S.C. § 2252(c)(1)(B) (2006)).
\textsuperscript{188} \textit{Id.} at I-12.
\textsuperscript{189} \textit{Id.} at I-13.
\textsuperscript{190} \textit{Id.}

USITC found that although total employment and work hours increased from 1993 to 1997, that increase reflected industry plans to increase capacity, which had not materialized. Instead, one company had laid off managers and administrators, and the number of hours worked per worker declined in 1996 and 1997.

Third, the USITC found that the increased imports were a substantial cause of the injury to the domestic industry. It found that demand increased during the mid-1990s, but was met by growing imports, while domestic production decreased. The USITC considered and rejected an argument put forward by EU producers that a weak U.S. market for wheat starch, which is produced alongside wheat gluten, accounted for the decreased performance of the U.S. industry. The Commission also rejected the European producers’ argument that U.S. wheat producers were choosing to import wheat gluten rather than produce it. The USITC found that U.S. producers’ imports remained steady in the mid-1990s, and thus did not account for the surge in imports over that period.

Finally, the Commission concluded that domestic demand was likely to continue increasing, and that the domestic industry had submitted adjustment plans to develop modified wheat gluten products for use as meat substitutes and biodegradable food service and film coating products. Based on these conclusions, the USITC recommended that the President impose a four-year quota on imports, at 126 million pounds in the first year with six percent increases in each subsequent year. The USITC further recommended that the President allocate specific sub-quotas within the total quota amount to the EU, Australia, and other non-excluded countries, “taking into account the disproportional growth and impact of imports of wheat gluten from the European Union.”

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191. Id.
192. Id. at I-13 to -14.
193. Id. at I-16.
194. Id. at I-16 to -17.
195. Id.
196. Id. at I-24 to -25.
197. Id. at I-27 to -28.
198. Id. at I-20. See also supra text accompanying note 182.
3. Safeguards

On May 30, 1998, President Clinton issued a proclamation instituting a three-year quota. The quota was set at roughly 126 million pounds in the first year, with six percent annual increases, and specific sub-quotas as follows:

June 1, 1998-May 31, 1999:
Australia ........................................ 62.4 million pounds
European Union ................................. 54 million pounds
Other countries ................................. 10.3 million pounds

June 1, 1999-May 31, 2000:
Australia ........................................ 66.2 million pounds
European Union ................................. 57.3 million pounds
Other countries ................................. 11 million pounds

June 1, 2000-May 31, 2001:
Australia ........................................ 70.1 million pounds
European Union ................................. 60.7 million pounds
Other countries ................................. 11.6 million pounds

However, the quota was not effectively implemented. In the first year, improper identification of wheat gluten imports allowed the EU to surpass its allotment by 11.9 million pounds in just six months. In response, President Clinton issued a second proclamation on May 28, 1999, reducing the EU’s second year quota by 11.9 million pounds, down to 45.4 million pounds. Imports from the EU reached that amount in just one month. To address such front-loading in the following year, President Clinton issued a third proclamation on May 26, 2000, re-allocating the quota on a quarterly basis.

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201. Id. at II-4.
The USITC also found evidence that EU companies were circumventing the quota by shipping wheat gluten to the United States through Poland, which was exempt from the quota as a developing country.\textsuperscript{205} From 1994 to 1997, Poland did not import any wheat gluten into the United States. During the first year of the quota, Poland imported roughly five million pounds.\textsuperscript{206} President Clinton’s May 2000 proclamation addressed this issue as well, extending the quota to imports from Poland.\textsuperscript{207}

In addition to its implementation challenges, the United States also faced a legal challenge to the safeguard in the WTO. On June 4, 1999, the European Community requested a panel, pursuant to the WTO Dispute Settlement Understanding, to consider its claim that the safeguard was inconsistent with WTO obligations.\textsuperscript{208}

On December 22, 2000, the WTO Appellate Body issued its final ruling, finding the safeguard inconsistent with four aspects of WTO law. First, the USITC’s causation analysis failed to explain how imports were a greater cause of declining domestic capacity utilization than the significant increases in capacity in the mid-1990s.\textsuperscript{209} Second, the USITC included Canadian imports in its analysis, but then excluded Canadian imports from the safeguard.\textsuperscript{210} Third, the United States failed to immediately notify the WTO Committee on Safeguards of its investigation and conclusions.\textsuperscript{211} Finally, the United States failed to provide an adequate opportunity for consultations, and therefore also failed to “endeavour to maintain” a balance of trade concessions, before imposing the safeguard.\textsuperscript{212}

\textsuperscript{205} Wheat Gluten Mid-Point Review, supra note 200, at A-3.
\textsuperscript{206} Id. at vi.
\textsuperscript{207} Proclamation No. 7314, 65 Fed. Reg. 34899.
\textsuperscript{208} Request for the Establishment of a Panel by the European Communities, United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, WT/DS166/3 (June 4, 1999).
\textsuperscript{209} Appellate Body Report, United States—Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities, WT/DS166/AB/R, ¶¶ 60-92 (Dec. 8, 2000) [hereinafter Wheat Gluten AB Report]. Article 4.2(b) of the Agreement on Safeguards requires examination of other factors potentially causing injury. Safeguards Agreement, supra note, art. 4(2)(b) (“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.”)
\textsuperscript{210} Wheat Gluten AB Report, supra note 109, at ¶¶ 93-100.
\textsuperscript{211} Id. at ¶¶ 101-130.
\textsuperscript{212} Id. ¶¶ 108-116, 143.
In April 2001, the USITC recommended that the President extend the safeguard for an additional two years. However, President George W. Bush declined to extend the safeguard beyond June 1, 2001, citing concerns about trade retaliation following the adverse WTO ruling. Instead, the Bush Administration allocated forty million dollars over two years in direct assistance to the wheat gluten industry to support marketing, product development, and capital expenditures to “complete its transition to competitiveness.”

4. Industry Performance

Domestic industry performance improved during safeguards. While data on domestic production after safeguards terminated is limited, available evidence suggests that the domestic industry remained unable to compete effectively with imports after safeguards and continued to decline in absolute and relative production and capacity utilization.

i. Imports

Imports doubled in the five years after safeguards terminated. As noted in Part III.C.3., above, the quota on imports was not effectively implemented in its first year, and imports continued to increase in 1999 to a high of 214 million pounds. As the quota tightened, imports decreased in 2000 to 201 million pounds, and again in 2001 to 171 million pounds.

However, when safeguards terminated, imports immediately surged again, reaching 295 million pounds in 2003, and 397 million pounds in 2004. By 2011, imports had increased to 456 million pounds.
ii. Domestic Industry Performance

Data on domestic production of wheat gluten is limited. Domestic production had slightly decreased in the five years preceding safeguards, from 128 million pounds in 1993 to 122 million pounds in 1997.\footnote{Wheat Gluten Recommendation, supra note 7, at I-10, I-12.} USITC statistics show that production under safeguards increased significantly, peaking at 176 million pounds in 2000.\footnote{Wheat Gluten: Evaluation of the Effectiveness of Import Relief, Inv. No. TA-204-7, USITC Pub. 3478, at 10 tbl. 1 (Sept. 2001).} Official industry-wide statistics are unavailable after 2000. However, available evidence suggests that after the quotas were lifted, domestic performance either remained flat or declined. Industry representatives in
2007 estimated that domestic production had declined to between 100 and 150 million pounds.\textsuperscript{224} Industry representatives reported that domestic production remained low because producers were unable to compete against the continued surge of cheap imports.\textsuperscript{225} After the quota was lifted, the

\begin{center}
\textbf{Chart 8: Domestic Wheat Gluten Production}
\end{center}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart8.png}
\caption{Domestic Wheat Gluten Production}
\end{figure}

\begin{footnotesize}
\begin{itemize}
\end{itemize}
\end{footnotesize}
price of imported wheat gluten dropped by roughly half. In 2006, U.S.-produced wheat gluten sold for roughly $0.65 per pound, while imports from China sold for roughly $0.43 per pound. U.S. producers in 2007 found that imports from the European Union were sometimes sold below U.S. production costs. The largest domestic producer of wheat gluten, MGP Ingredients, based in Atchison, Kansas, reported that it was “unable to compete effectively on a price basis with imported gluten,” and as a result was only producing twenty percent of capacity in 2006-2007. The domestic industry in 2006 supplied only twenty percent of the U.S. market, down from forty percent in 1997, the year before safeguards began.

Multiple factors contributed to the continued surge in imports and corresponding decline in domestic performance. First, Europeans use wheat starch to make sweeteners, whereas Americans use corn starch. Wheat gluten is extracted from wheat starch, and increased demand for wheat starch led to an increased availability of wheat gluten. Further, U.S. industry representatives argue that EU and Chinese wheat subsidies allow imports to sell for lower prices than domestically produced wheat gluten.

5. Conclusion

Despite the limited data available on the domestic industry in the years after safeguards terminated, the rapid increase in imports and the estimates of industry leaders regarding domestic production, price, and capacity utilization strongly suggest that the domestic industry had not been restored to sustained competitiveness against imports by 2007. To the contrary, the domestic industry likely held its lowest share yet of the domestic market, and continued to face competition from far cheaper imports, some sold at prices below the domestic cost of production.

226. Hegeman, supra note 224.
227. Animal Feed Newsletter, supra note 225.
228. Tsai, supra note 224.
229. Hegeman, supra note 224.
230. Wheat Gluten Recommendation, supra note 7, at I-10; Interactive Tariff and Trade DataWeb, supra note 218.
231. Tsai, supra note 224.
232. Id.
233. Animal Feed Newsletter, supra note 225; Tsai, supra note 224.
In 2007, the wheat gluten market drew headlines when contaminated wheat gluten imported from China caused a rash of sickness and disease among domesticated cats and dogs, and prompted a recall of over 100 brands of pet food.234 In response to public outcry against imported wheat gluten, particularly from China, MGP Ingredients, Inc. (MGP), the largest U.S. producer, laid out plans to triple its production.235 MGP, like other U.S. producers, was still unable to match the

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234. Hegeman, supra note 224.
price of imports, but predicted increased demand for domestically produced gluten as a result of public fear of contaminated imports. MGP’s president cautioned, however, that increased production and profits would be “subject to sustained market demand and the company’s successful implementation of efforts to restore its gluten capacity,” which the company had decreased as a result of its inability to compete with cheaper imports.236

Data are unavailable on wheat gluten production by MGP and other U.S. firms since 2007. However, any increase that may have occurred since 2007 would likely be attributable to a shift in demand due to the contaminated Chinese wheat gluten, rather than improvements in the domestic industry facilitated by safeguards. Instead, the performance of imports and the domestic industry from 2002 to 2007 provide a clear indication that the safeguards failed to restore the industry to sustained competitiveness.

D. Case Study #3: Circular Welded Carbon Quality Line Pipe

1. Background

Circular welded carbon quality line pipe (line pipe) is used primarily in pipelines for the exploration and transportation of oil and gas.237 Line pipe is produced according to American Petroleum Institute (API) specifications to be able to withstand the heightened pressure and weight required to carry oil and gas as opposed to water, steam, or other materials.238

The domestic line pipe industry in the 1990s was comprised of about fifteen firms.239 Line pipe sales in the 1990s were dominated by a small number of large pipeline development projects, and thus imports and domestic production fluctuated significantly as a result of changes in oil and gas prices.240 However, in 1998 a dramatic increase in imports, particularly from South Korea, corresponded with a significant decrease in domestic production.241 In response, on June 30, 1999, a

236. Id.
238. Id. at I-7 to -8, I-55 (Dec. 1999).
239. Id. at I-16.
240. Id. at I-21 to -22.
group of domestic firms, along with the United Steelworkers of America and the AFL-CIO of Pittsburgh, Pa., submitted a petition for safeguards to the USITC.\textsuperscript{242}

The USITC conducted an investigation, and concluded in December 1999 that line pipe was being imported in “such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry.”\textsuperscript{243} The Commission recommended that the President impose safeguards in order to facilitate “the efforts of the domestic industry to make a positive adjustment to import competition.”\textsuperscript{244}

2. USITC Investigation

Pursuant to section 202, the USITC investigated (1) whether imports had increased, either in absolute terms or relative to domestic production, (2) whether the domestic industry was seriously injured or threatened with serious injury, and (3) whether the increase in imports was a substantial cause of the injury or threat to the domestic industry.\textsuperscript{245}

First, the USITC found that imports had increased from 1995 to 1998, both in absolute terms and relative to domestic production.\textsuperscript{246} While the report did not release specific figures, Commerce statistics show that after decreasing to 123,173 tons in 1995 and remaining relatively steady in 1996, imports increased dramatically to 220,326 tons in 1997 and again to 319,723 tons in 1998.\textsuperscript{247} The ratio of imports to domestic production grew from twenty-seven percent in 1994 to forty-eight percent in 1998.\textsuperscript{248}

Second, the USITC found that the domestic industry was seriously injured or threatened with serious injury.\textsuperscript{249} The Commission emphasized several metrics of performance that declined in one year: 1998.

\begin{footnotes}
\begin{enumerate}
\item Line Pipe Recommendation, \textit{supra} note 238, at I-7.
\item \textit{Id.} at I-10. Three commissioners found a “serious injury,” two commissioners found a “threat of serious injury,” and one made a negative determination. \textit{Id.} at I-5 to -6.
\item \textit{Id.} at I-75.
\item \textit{Id.} at I-13 to -14.
\item \textit{Id.} at I-14.
\item \textit{Id.} at I-14: \textit{Interactive Tariff and Trade DataWeb}, \textit{supra} note 218.
\item \textit{Interactive Tariff and Trade DataWeb}, \textit{supra} note 218.
\item Line Pipe Recommendation, \textit{supra} note 238, at I-5 to -6. \textit{See also supra} text accompanying note 243.
\end{enumerate}
\end{footnotes}
While domestic production had increased from 1994 to 1997, it decreased by twenty-four percent in 1998, from 881,946 tons to 669,876 tons. The industry’s capacity utilization decreased from seventy-four percent in 1997 to 58.9% in 1998. The average unit value of line pipe decreased from $516 per ton in 1995 to $504 per ton in 1998. Due to declining production and sales values, the industry experienced declining profits, with five of the fifteen domestic producers operating at a loss in 1998, and ten domestic producers operating at a loss in the first six months of 1999. The number of total hours worked in the industry declined as well, from 3.4 million hours in 1997 to 2.6 million hours in 1998.

Third, the Commission determined that the increase in imports was a substantial cause of the injury or threat to the domestic industry. It considered an argument put forward by Japanese, South Korean, and German representatives that the injury to the domestic industry was principally the result of the “decline in oil and natural gas prices and in oil and natural gas drilling and production activities that began in late 1997 and continued through early 1999.” The USITC acknowledged that the decline in gas and oil activities “contributed” to the injury, but argued that it was not a “greater contributing factor” than imports. It found that the significant increase in imports in 1998 showed that the decline in the domestic industry was not the result primarily of contraction in the market. Further, it found that the decreases in price for various types of line pipe, not only those used in oil and gas pipelines, showed that prices were being driven down by factors beyond the oil and gas markets.

The USITC recommended that the President implement a safeguard in the form of a four-year tariff-rate quota, increasing tariffs to thirty percent on imports beyond the quota, which was to be fixed at 151,124 tons in the first year, and increased by ten percent each year.

250. Id. at I-16, I-40, I-62.
251. Id. at I-77.
252. Id. at I-17.
253. Id. at I-18.
254. Id. at I-19.
255. Id. at I-20.
256. Id. at I-21.
257. Id. at I-28.
258. Id. at I-29.
259. Id. at I-75.
measures were “intended to restore domestic prices and industry profitability to reasonable levels, as the industry continues its investment efforts to modernize production facilities, add new product lines, and increase its level of capacity utilization.”

3. Safeguards

On February 18, 2000, President Clinton issued a proclamation outlining the restrictions to be applied to imported line pipe. The proclamation made multiple changes from the USITC recommendation. It established a tariff-rate quota for three years, instead of four. It set the beyond-quota tariff at nineteen percent in the first year, fifteen percent in the second year, and eleven percent in the third year. It set the quota amount at 9,000 tons per country per year.

South Korea, the primary exporter of line pipe into the United States, quickly began moving forward to contest the action in the WTO. On March 8, 2002, the WTO Appellate Body issued its conclusion that the safeguard violated several U.S. obligations under the WTO. First, the United States did not provide adequate notification to and opportunity for consultation with South Korea before the tariff-rate quota went into effect. Second, the United States failed to notify and consult with South Korea, but only on the USITC’s proposed safeguards.

260. Id. at I-85.

261. Proclamation No. 7274, 65 Fed. Reg. 9193 (Feb. 18, 2000). The safeguards were effective as of March 1, 2000. Id. at 9194.

262. Id. at 9193.


264. See Appellate Body Report, United States—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea, ¶¶ 7-10, WT/DS202/AB/R (Feb. 15, 2002) [hereinafter Korea Line Pipe AB Report]. South Korea requested consultations with the United States on June 13, 2000, pursuant to the WTO DSU, supra note 46. Korea Line Pipe AB Report, supra, ¶ 8. On September 14, 2000, having failed to resolve the dispute through consultations, South Korea requested the establishment of a WTO panel. Id. ¶ 8. The panel issued its report on October 29, 2001, concluding that the safeguard measure was inconsistent with provisions of the GATT and the Agreement on Safeguards. Id. ¶ 10. On November 6, 2001, the United States notified the DSB that it intended to appeal the Panel Report. Id. United States appealed the panel report. Id. ¶ 13.

265. Id. ¶ 263.

266. Id. ¶¶ 103, 118-19. The United States did notify and consult with South Korea, but only on the USITC’s proposed safeguards. Id. ¶¶ 86-88. The safeguards that were ultimately imposed differed substantially from those recommended by the USITC, so the Appellate Body found that the initial consultations were insufficient to satisfy the consultation requirement in Article 12.3 of the Agreement on Safeguards. Id. ¶ 119 (Safeguards Agreement, supra note 9, art. 12.3). Further,
exempt *de minimis* imports from developing countries.\(^{267}\) Third, the USITC included imports from Mexico and Canada when making its injury determination, but the tariff-rate quota exempted imports from those countries.\(^{268}\) Fourth, the USITC did not adequately explain its conclusion that imports were a substantial cause of the injury or threat to the domestic industry.\(^{269}\) And, fifth, the Appellate Body found that the tariff-rate quota exceeded the amount necessary to prevent or remedy the serious injury to the domestic industry and facilitate adjustment.\(^{270}\)

Following the ruling from the Appellate Body, and subsequent negotiations between the United States and South Korea, President George W. Bush issued a proclamation on August 28, 2002 that substantially eased the safeguard with respect to imports from South Korea.\(^{271}\) The safeguards terminated on March 1, 2003.\(^{272}\)

In 2008, line pipe industry representatives again petitioned the USITC for import relief under a similar provision of U.S. trade law that applies specifically to surging imports from China.\(^{273}\) While that case is outside the scope of this Note, the investigation did, through questionnaires submitted to industry representatives, generate results regarding the performance of the domestic industry from 2003 to 2008.\(^{274}\) The data in section 4 below are drawn primarily from the original USITC

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267. Id. ¶ 133. Article 9.1 of the Agreement on Safeguards sets *de minimis* levels as three percent of total imports, whereas the 9,000 ton per country quota established in the safeguard amounted to only 2.7% of total imports. Id. ¶ 130 (Safeguards Agreement, supra note 9, art. 9.1).

268. Korea Line Pipe AB Report, supra note 264, ¶ 119 (Safeguards Agreement, supra note 9, art. 8.1).

269. Id. ¶ 222.

270. Id. ¶ 263(i). This requirement is set in Article 5.1 of the Agreement on Safeguards. Safeguards Agreement, supra note 9, art. 5(1) (“A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.”).


274. Id. at III-1 to V-12.
recommendation, and the 2003 and 2008 USITC reports.\textsuperscript{275}

The data present a mixed picture of industry performance in the years after safeguards. An increase in demand from 2005 to 2007 brought domestic production back to pre-injury levels.\textsuperscript{276} However, imports continued to surge after safeguards, capturing more of the domestic market within five years after safeguards than ever before.

4. Industry Performance

Domestic production recovered in terms of absolute production in the years after safeguards, but continued to decline relative to imports. Data on domestic industry performance are not available for the first two years after safeguards, 2003 and 2004.\textsuperscript{277} In 2005 and 2006, in response to an increase in demand resulting from the initiation of a few large oil and gas exploration projects, domestic production, unit value, capacity utilization and hours worked increased significantly.\textsuperscript{278} However, imports increased at an even greater pace, reducing domestic industry market share far below pre-safeguard levels.

Further, despite the spike in domestic production, industry-wide operating income declined 25.9\% from 2005 to 2007.\textsuperscript{279} In 2008, the domestic industry again petitioned the USITC for import relief, specifically targeting imports from China.\textsuperscript{280} The USITC attributed the industry’s “decline in profitability to the presence of subsidized subject imports from China and their price-suppressing effects, which were most pronounced during 2007.”\textsuperscript{281}

Table 3, below, presents summarized data on six metrics of industry performance: domestic production, imports, market share, price, capacity utilization, and hours worked.

\textsuperscript{275} Line Pipe Recommendation, \textit{supra} note 238; Line Pipe Evaluation of Effectiveness, \textit{supra} note 263; Line Pipe from China, \textit{supra} note 241.
\textsuperscript{276} Line Pipe from China, \textit{supra} note 241, at III-3.
\textsuperscript{277} 2003 is counted in this case study as the first year after safeguards, although the safeguards covered the first three months of the year, terminating on March 1, 2003.
\textsuperscript{278} Id. at 11.
\textsuperscript{279} Id. at 18.
\textsuperscript{280} Id. at 1.
\textsuperscript{281} Id. at 18.
Domestic production of line pipe declined before and during safeguards, before increasing significantly after safeguards. The USITC determination of injury to the domestic injury relied in large part on the twenty-four percent decrease in domestic production from 1997 to 1998, from 881,946 tons to 669,876 tons. Production continued to decline while the tariff-rate quota was in effect, reaching a low of 409,292 tons in 2002. After safeguards terminated, production increased, reaching 769,607 tons in 2007. The trend in domestic production is depicted in the chart below.

### Table 3

**Performance of Line Pipe Industry—Percentage Change Per Year**

<table>
<thead>
<tr>
<th>Year</th>
<th>Production</th>
<th>Imports</th>
<th>Domestic Industry Market Share</th>
<th>Unit Value</th>
<th>Capacity Utilization</th>
<th>Total Hours Worked</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>635,815 tons</td>
<td>171,235 tons</td>
<td>79%</td>
<td>–</td>
<td>60%</td>
<td>2.6 million</td>
</tr>
<tr>
<td>1995</td>
<td>+21%</td>
<td>-28%</td>
<td>86%</td>
<td>516 $/ton</td>
<td>+12%</td>
<td>–</td>
</tr>
<tr>
<td>1996</td>
<td>-9%</td>
<td>-0%</td>
<td>85%</td>
<td>-6%</td>
<td>-12%</td>
<td>–</td>
</tr>
<tr>
<td>1997</td>
<td>+27%</td>
<td>+79%</td>
<td>80%</td>
<td>+4%</td>
<td>+14%</td>
<td>+31%</td>
</tr>
<tr>
<td>1998</td>
<td>-24%</td>
<td>+45%</td>
<td>68%</td>
<td>+0%</td>
<td>-15%</td>
<td>-24%</td>
</tr>
<tr>
<td>1999</td>
<td>–</td>
<td>-17%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2000</td>
<td>-11%</td>
<td>-38%</td>
<td>78%</td>
<td>-2%</td>
<td>-3%</td>
<td>-4%</td>
</tr>
<tr>
<td>2001</td>
<td>-20%</td>
<td>-6%</td>
<td>76%</td>
<td>-3%</td>
<td>-11%</td>
<td>-44%</td>
</tr>
<tr>
<td>2002</td>
<td>-14%</td>
<td>+45%</td>
<td>65%</td>
<td>-1%</td>
<td>-9%</td>
<td>-7%</td>
</tr>
<tr>
<td>2003</td>
<td>–</td>
<td>+14%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2004</td>
<td>–</td>
<td>+32%</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>2005</td>
<td>+39%</td>
<td>+3%</td>
<td>62%</td>
<td>+106%</td>
<td>+24%</td>
<td>+15%</td>
</tr>
<tr>
<td>2006</td>
<td>+31%</td>
<td>+102%</td>
<td>51%</td>
<td>+3%</td>
<td>+19%</td>
<td>+27%</td>
</tr>
<tr>
<td>2007</td>
<td>+3%</td>
<td>-9%</td>
<td>54%</td>
<td>+4%</td>
<td>-5%</td>
<td>+11%</td>
</tr>
</tbody>
</table>

### i. Domestic Production

Domestic production of line pipe declined before and during safeguards, before increasing significantly after safeguards. The USITC determination of injury to the domestic injury relied in large part on the twenty-four percent decrease in domestic production from 1997 to 1998, from 881,946 tons to 669,876 tons. Production continued to decline while the tariff-rate quota was in effect, reaching a low of 409,292 tons in 2002. After safeguards terminated, production increased, reaching 769,607 tons in 2007. The trend in domestic production is depicted in the chart below.

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282. Data gathered from Line Pipe Recommendation, supra note 238; Line Pipe Evaluation of Effectiveness, supra note 263; Line Pipe from China, supra note 241.
283. Line Pipe Recommendation, supra note 238, at I-16.
In 2008, however the USITC found that the global economic downturn had already begun to cause a decline in the price of oil and natural gas, which were leading companies to reduce planned expenditures in oil and gas exploration for 2009.\footnote{Id. at 12.}

\textbf{ii. Imports}

Imports increased in the years before safeguards, decreased during safeguards, and then increased dramatically in the first five years after safeguards. The USITC found that imports had increased by 160\% in just two years from 1996 to 1998.\footnote{Id. at IV-4.} Imports decreased by forty-two

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart10}
\caption{Domestic Line Pipe Production}
\end{figure}
percent in the first two years of safeguards. However, in 2002, the last full year of safeguards, imports began to increase again, led primarily by South Korea, which benefited from the softening of the quota in 2002 following the adverse ruling in the WTO. Imports continued to increase significantly in the five years after safeguards, led by South Korea and China, peaking at 709,323 tons in 2006—a 121% increase from the 1998 level on which the USITC relied heavily in making its determination. The trend in imports is shown below in Chart 11.

iii. Domestic Industry Market Share

The dramatic increase in imports after safeguards more than offset...
the increase in domestic production. The USITC ruled in 1998 that the domestic injury faced serious injury or threat based in part on its finding that the market share held by the domestic industry had decreased from eighty-five percent in 1996 to sixty-eight percent in 1998.\textsuperscript{290} The domestic market share improved during the first year of safeguards, rising to seventy-eight percent in 2000, before falling to sixty-five percent in 2002.\textsuperscript{291} After safeguards terminated, the domestic industry market share continued to fall, reaching fifty-one percent in 2006 and fifty-four percent in 2007\textsuperscript{292}—amounts lower than in any other year included in the study—as shown below in Chart 12.

\textbf{Chart 12. Domestic Industry Market Share}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart12.png}
\caption{Domestic Industry Market Share}
\end{figure}

\begin{itemize}
\item \textsuperscript{290} Line Pipe Recommendation, \textit{supra} note 238, at I-16; Line Pipe from China, \textit{supra} note 241, at IV-4.
\item \textsuperscript{291} Line Pipe Evaluation of Effectiveness, \textit{supra} note 263, at II-13, tbl. II-7.
\item \textsuperscript{292} Line Pipe from China, \textit{supra} note 241, at III-6, tbl. III-4, IV-4, tbl. IV-2.
\end{itemize}
iv. **Average Unit Value**

Average unit value of line pipe increased significantly after safeguards. The USITC found that average unit value had decreased from $516 in 1995 to $504 in 1998, and then to $412.85 in the first six months of 1999.\(^{293}\) Average unit value remained relatively stable during safeguards. By 2005, average unit value dramatically increased, rising to $971.06.\(^{294}\) Average unit value continued to increase slightly in 2006 and 2007, rising to $1,000.22, and then $1,041.96.\(^{295}\) Still, despite the increase in price and production, the USITC found in 2008 that domestic companies experienced declining profits from 2005 to 2007.\(^{296}\)

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\(^{293}\) Line Pipe Recommendation, *supra* note 238, at I-17.


\(^{296}\) *Id.* at 18.
v. Capacity Utilization

Domestic capacity utilization fluctuated before, during, and after safeguards, eventually increasing along with the indicators reviewed above from 2005 to 2007. The USITC based its finding that the domestic industry was seriously injured or threatened in part on its finding that capacity utilization fell from seventy-four percent in 1997 to 58.9% in 1998.297 While safeguards were in place, capacity utilization continued to decline, reaching a low of 36.4% in 2002.298 Data is not available for 2003 and 2004. However, as with other indicators, in 2005 and 2006 capacity utilization rose significantly higher, reaching 60.2% and then 79.1%, before dropping to 74.3% in 2007.299

CHART 14. Capacity Utilization in Domestic Line Pipe Industry

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297. Line Pipe Recommendation, supra note 238, at I-17.
299. Line Pipe from China, supra note 241, at III-3.
vi. **Hours Worked**

The total number of hours worked by line pipe industry employees decreased before and during safeguards, and then increased from 2005 to 2007. The USITC found that total hours worked decreased from 3.4 million in 1997 to 2.6 million in 1998.300 During safeguards, hours worked continued to decrease significantly, bottoming at 1.3 million in 2002.301 Hours worked increased from 2005 to 2007, but remained well below pre-safeguard levels.302

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300. Line Pipe Recommendation, supra note 238, at I-19.
302. Line Pipe from China, supra note 241, at 18.
5. Conclusion

The domestic industry experienced varying degrees of recovery in terms of absolute performance in the years after the safeguard measure terminated. Domestic production and capacity utilization returned within five years to roughly pre-safeguard levels. Unit value increased well beyond pre-safeguard levels. Total hours worked recovered slightly after safeguards but remained far below even the worst pre-safeguard year of 1998. The data on domestic industry performance are characterized by significant fluctuations, perhaps as a result of the volatility in oil and gas prices and the relatively small number of firms and projects that make up the industry. Nearly every indicator of performance experienced significant positive and negative fluctuations in the periods before, during, and after safeguards.

The gains in domestic industry production, however, were more than offset by surging imports after safeguards. Imports, after falling during safeguards, increased to well beyond pre-safeguard levels. Imports more than doubled in absolute quantity from 1998 to 2007 and increased their share of the domestic market from thirty-two percent in 1998 to forty-nine percent in 2007.

The data do not therefore provide a clear indication of whether the domestic industry achieved sustained competitiveness after the safeguard terminated. The answer depends in large part on the extent to which “sustained competitiveness” refers to relative performance against imports or to maintaining and increasing levels of absolute domestic performance.

The USITC acknowledged both goals in 1998, stating its concern that the failure to institute safeguards would lead to an increased share of imports in the domestic market, decreased prices, decreased domestic production, and decreased domestic employment. The Commission worried that “many domestic line pipe mills are located in small towns and communities where the closing of a mill would have a significant impact on the local economy.”

When considered against both goals of absolute performance and performance relative to imports, the data do not support a clear conclusion that the industry achieved sustained competitiveness. The industry experienced significant increases in production and average

303. Line Pipe from China, supra note 241, at IV-5, tbl. IV-5.
304. Id. at III-6, tbl. III-4, IV-4, tbl. IV-2.
305. Line Pipe Recommendation, supra note 238, at I-86.
306. Id.
prices but experienced only a moderate increase in total hours worked, continued to lose market share to surging imports, and experienced declining profits. In 2008, several of the same groups that had petitioned the USITC for protection in 1998 submitted another request for import relief—specifically from imports from China.\textsuperscript{307} The USITC found in 2008 that the domestic industry was injured or threatened by Chinese imports, citing the decline in profitability of the domestic industry from 2005 to 2007 and the decline in domestic market share held by the domestic industry.\textsuperscript{308}

IV. CONCLUSIONS AND RECOMMENDATIONS

The United States applies section 201 safeguards with the intention of facilitating the restoration of injured or threatened industries to sustained competitiveness. However, none of the three industries examined in this study—lamb meat, wheat gluten, or line pipe—was definitively restored to competitiveness within five years after safeguards terminated. To the contrary, after safeguards terminated, domestic production of lamb meat and wheat gluten declined to well below pre-safeguard levels. Imports of all three products continued to surge. All three domestic industries held a smaller share of the U.S. market five years after safeguards ended than they did the year before safeguards began.

Though the domestic industries in this study failed to achieve sustained competitiveness, they did improve on some measures of performance after safeguards terminated. Line pipe production and prices significantly increased within a few years. While imports increased at an even faster pace, the increase in domestic production did coincide with a modest increase in total hours worked. Lamb meat prices recovered from a short decline and resumed their longer-term pattern of increasing with fluctuations. While imports of lamb meat continued to increase, they increased at a slower rate than in the years immediately preceding safeguards. In light of these results, this study proposes two reforms to increase the likelihood that safeguards will be implemented effectively to restore domestic industries in the future.

\textsuperscript{307} Id. at I-6; see also Line Pipe from China, supra note 241, at 3.

\textsuperscript{308} Line Pipe from China, supra note 241, at 18.
A. **Apply Safeguards Only to Offset Import Surges Caused by Temporary and Unforeseen Factors**

First, the U.S. Congress should reform the Trade Act of 1974 to require that safeguards be implemented only to support industries that have been injured or threatened by import surges resulting from inherently temporary and unforeseen factors, rather than from structural disadvantages. The case studies suggest that safeguards can help to temporarily slow import surges. Wheat gluten imports declined by three percent under safeguards, after increasing by thirty-eight percent in the two years preceding safeguards. Line pipe imports declined by forty-two percent in the first two years under safeguards, after increasing by 117% in the three years preceding safeguards. Lamb meat imports continued to increase in the three years under safeguards but at an average annual rate of eleven percent, rather than the average rate of twenty-two percent in the three years preceding safeguards.

However, as the case studies also show, safeguards were unable to facilitate sufficient structural changes to prevent imports from increasing again after safeguards terminated. In the five years after safeguards terminated, wheat gluten imports increased by 113% and line pipe imports increased by 188%. Lamb meat imports continued to increase, though at a slightly slower average annual rate of six percent.

The data suggest that safeguards can help to create a temporary decline in imports, which can be critical in preventing a domestic industry from suffering so much from a short-term import surge that it is irreparably crippled. However, when imports surge again after safeguards terminate, the domestic industry decline is only delayed, not prevented. Thus, safeguards should not be aimed primarily at facilitating adjustments in the domestic industry to overcome structural disadvantages in the market. Instead, safeguards should be aimed at directly limiting the damage from a temporary import surge by placing

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309. Temporary factors could include price shocks or other market abnormalities resulting from natural disasters, conflicts, and anomalous harvest conditions.
310. See supra Chart 8.
311. See supra Table 3. Imports increased in the final year of safeguards following the United States’ settlement with South Korea. See supra discussion accompanying note 289.
312. See supra Table 2.
313. See supra Chart 8.
314. See supra Table 2.
315. This Note does not argue that domestic industry adjustments should be removed. To the contrary, industry adjustments should still be encouraged, and perhaps required, in exchange...
a short-term cap on imports through quotas or tariffs.

The rationale for safeguards used by the U.S. government has typically been that safeguards help injured or threatened domestic industries achieve sustained competitiveness by providing them a temporary period of protection during which they can invest time and resources to make changes and regain competitive footing.316 This “breathing space” rationale relies on the assumption that industries will be able to make sufficient changes while safeguards are in effect to maintain sustained competitiveness once safeguards terminate.317

However, economists have generally been skeptical of the impact safeguards can have in facilitating sufficient capital investments by a domestic industry to offset competitive disadvantages and regain competitiveness against imports.318 If capital investments would restore competitiveness, “why do the capital markets not finance them without any need for trade protection?”319 Indeed, in the lamb meat and wheat gluten case studies, the domestic industries faced fundamental disadvantages—primarily, higher input costs resulting from competitors’ technological advances and greater economies of scale. As a result, both domestic industries had been experiencing steady declines against imports for many years. The domestic industries sought to make capital investments and strategic adjustments while safeguards were in effect but were unable to make sufficient changes to regain competitiveness.320 They continued to decline, both in absolute terms and relative to imports after safeguards terminated.

The line pipe industry, by contrast, was not in a steady long-term decline when safeguards were enacted. Instead, the line pipe industry had been experiencing significant fluctuations. The industry was dominated by a small number of significant projects and heavily dependent on international oil and gas prices.321 The industry experienced a

for the implementation of safeguards. Such adjustments, however, would not be the primary mechanism by which the industry is expected to become restored.


317. Bown & McCulloch, supra note 12, at 14 (citing Charles P. Kindleberger, International Economics 113 (R.D. Irwin, 5th ed. 1973)). Kindleberger explains the similar logic of the “infant industry” argument in international economics that small industries benefit from temporary protection while they grow to reach a scale at which they can compete with established foreign competitors.


319. Id.


321. See Line Pipe from China, supra note 241, at 11.
significant decline relative to imports in just one year (1998). The USITC relied primarily on that one-year decline to support its finding that the industry had been injured or threatened and that safeguards should be enacted. As this study showed, imports declined under safeguards, and when demand increased in the years after safeguards imports and domestic production increased together.

Limiting the application of safeguards only to those industries suffering from inherently temporary and unforeseen import surges will serve a second important benefit: bringing U.S. safeguards law closer to compliance with WTO law. As previously noted, the WTO Appellate Body has ruled that safeguards must only be implemented in response to import surges that are “a result of unforeseen developments.” U.S. law does not include an unforeseen developments requirement. As a result, the WTO has found multiple U.S. safeguards in violation of WTO law.

Adverse rulings in the WTO undermine the effectiveness of safeguards. Following the WTO ruling against the line pipe safeguard, the United States reached a settlement with South Korea, by far the largest importer of line pipe, to raise South Korea’s in-quota allotment from 9,000 tons per year to 17,500 tons per quarter. Following the WTO ruling against the wheat gluten safeguard, the Bush Administration rejected the USITC’s recommendation to extend safeguards. Despite the USITC finding that the wheat gluten industry was making a positive adjustment and would benefit from an extension of safeguards, the United States Trade Representative cited the desire to “avoid trade retaliation against the United States under WTO rules,” to support its decision to eliminate safeguards and instead provided direct financial aid to the domestic industry. Similarly, following the WTO ruling against the lamb meat safeguard, the Bush administration terminated the safeguards nearly eight months before they were scheduled to expire. The addition of an “unforeseen developments” requirement would help U.S. safeguards survive WTO review and remain in effect

322. Line Pipe Recommendation, supra note 238, at I-16.
323. Id. at I-20 (“In view of the sharp declines in 1998 and interim 1999 in virtually all domestic industry indicators . . . we find that the domestic industry is seriously injured.”).
324. See infra Table 3.
325. Korea Dairy AB Report, supra note 54; Pickard & Kimble, supra note 12, at 50-53.
326. See, e.g., Lamb Meat AB Report, supra note 89; Steel Products AB Report, supra note 89.
328. Wheat Gluten: Extension of Action, supra note 168, at 12; see also USTR Press Release, Bush Administration, supra note 18.
for a complete term.

To be sure, a “temporary factors” requirement is not identical to an “unforeseen developments” requirement. An unforeseen development may, once it occurs, become permanent. Similarly, a temporary factor may not be unforeseen. Congress should thus implement a new clause that includes both a “temporary” and an “unforeseen developments” requirement. Specifically, section 201(a) of the Trade Act of 1974, codified at 19 U.S.C. § 2251(a) should be amended to read:

If the [USITC] . . . determines under section 2252(b) of this title that, as a result of temporary and unforeseen developments, an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.330

The WTO has not issued specific guidelines on what is necessary to satisfy the “unforeseen developments” requirement.331 Absent further guidance from the WTO, Congress may consider leaving the term “unforeseen developments” undefined. Congress should, however, define “temporary” in Section 202, codified at 19 U.S.C. § 2252. Specifically, 19 U.S.C. § 2252(b)(1)(A) should be amended, and a new subsection—19 U.S.C. § 2252(b)(1)(C)—should be added:

(A) . . . [T]he Commission shall promptly make an investigation to determine whether, as a result of temporary and unforeseen developments, an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article . . . .

331. Ledet, supra note 69, at 731; Pickard & Kimble, supra note 12, at 52.
(C) For purposes of this subsection, a “temporary development” is a development whose effects are unlikely to impact the industry after the termination of actions taken under section 2254 of this title [19 U.S.C. § 2254].

These proposed reforms would potentially face opposition from beneficiaries of safeguards. Domestic firms and labor unions who are wary of competition from cheap imports, and free trade advocates who value safeguards as a tool for alleviating protectionist pressure would be expected to support a more liberal application of safeguards. However, the data presented in this study support the existing economic theory that safeguards are likely to be insufficient in facilitating industry efforts to overcome structural, long-term competitive disadvantages. The case studies also show that adverse WTO rulings directly limit the impact of U.S. safeguards. A narrowly tailored focus on temporary and unforeseen developments would strengthen U.S. safeguards by enhancing compliance with WTO law, and by ensuring that safeguards are implemented only in circumstances in which they can be effective.

B. Conduct Follow-Up Evaluations

Second, the Congress should amend section 204 of the Trade Act of 1974 to require that the USITC conduct evaluations of industry performance three to five years after the termination of safeguards. Section 204, codified as 19 U.S.C. § 2254, currently requires the USITC to submit evaluations within 180 days of the termination of safeguards. As a result, USITC evaluations report performance data for the period during which safeguards were in effect. That data, while useful, is incomplete. The purpose of safeguards is not merely to facilitate better performance while safeguards are in effect. Rather, the explicit purpose is to facilitate “positive adjustment,” defined generally as the ability to “compete successfully with imports after [safeguards] terminate.”

Congress and the USITC should not assume that industry performance trends during safeguards will continue after safeguards expire.

333. Id. § 2254(d)(3).
334. 19 U.S.C. § 2251(b)(1)(A)(i) (2006). The USITC also considered the “orderly transfer of resources” out of the industry as a positive adjustment, as provided for in 19 U.S.C. § 2251(b)(1)(A)(ii), but as discussed supra note 7, the USITC generally adopts the goal of achieving sustained competitiveness when recommending safeguards.
Safeguards provide a temporary barrier on imports. The key question is how the domestic industry performs once that barrier is removed. Indeed, as discussed above, in each of the three case studies, imports slowed or even decreased during safeguards but then increased significantly after safeguards terminated. USITC evaluations captured the declining import trends during safeguards, but were published too early to detect the increase of imports after safeguards terminated. To provide more accurate oversight and accountability for future safeguards, Congress should amend 19 U.S.C. § 2254(d) to either replace or supplement the current timeline for submitting evaluations. The law should require the USITC to submit a final evaluation of industry performance against imports three to five years after safeguards terminate.

U.S. safeguards law must be reformed if safeguards are to remain a viable and effective tool of U.S. trade policy. Safeguards impose real economic and political costs. They should only be implemented when the benefits are likely to outweigh those costs. The data presented in this study suggest that recent safeguards have not brought about their intended benefits. The reforms suggested above will help to revive the use of safeguards as an effective tool of U.S. trade policy.