THE TRANSFORMATION OF SECTION 201— FROM PURELY IMPORT RELIEF TO INCLUDING INDUSTRY ADJUSTMENT

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ABSTRACT

A well established international rule on import relief is that when a domestic industry suffers serious injury from increased imports, it may ask its government to take measures to impose a quantitative restriction on the imports concerned for a period of time. Article XIX of the GATT and section 201 of U.S. trade law, known as the escape or safeguard clause, are the main provisions of this kind in international and domestic legislations. Since section 201 is a relief mechanism designed to deal with fair but injurious import, which is different from antidumping and countervailing duty laws used to counteract against unfair trade practices, the actions taken under safeguard clause are those of border restrictions. As increased import causes injury on a domestic industry, the most effective way of resolving injurious effect is to reduce competition from foreign products by controlling the volume of imports to the extent that can eliminate or reduce the injury. This is why actions other than border ones were not considered as a statutory safeguard measures. However, the basic theory of the safeguard provision was modified when the Congress of the U.S. passed the Omnibus Trade and Competitiveness Act of 1988. The new law shifts the focus of safeguard relief from exclusively using trade measures to applying both trade and domestic measures. When domestic measures in the form of industry adjustment become an important feature of section 201, this clause changes itself in nature from import relief into industry relief. In other words, the law is not only a border regulation, but also an internal regulation used to assist domestic industries. This transformation must have certain implications under international trade rules.