



Safeguards and Free Trade

Presentation to Private Sector
Workshop

Santo Domingo, 18 June 2009

What I Will Cover

- Safeguard remedy's trade policy context
- Provisional safeguard measures

Safeguard Remedy's Function

- Temporary respite
- Efficient breach -- "escape clause"
- Political/psychological function -- safety valve, confidence-builder
- Framework for government-industry partnership to solve a structural problem
 - When **fairly traded** goods are causing a problem, it is domestic industry and not foreign suppliers who need to change. Safeguard buys time for this. Adjustment plan is the blueprint.

Discretionary Decisions

- **Whether to award relief**
 - Burden of making discretionary decisions
 - Pattern of initial cases in the DR
- **Design of relief**
 - form (tariffs, quantitative, etc)
 - size of relief
 - duration of relief
 - product coverage overall
 - product breakouts

Provisional Measures

- Placeholder –preserve status quo while final determination is processed.
- Requires a preliminary affirmative determination on all key elements
 - Product coverage & categories
 - Increasing imports
 - Unforeseen circumstances
 - Serious injury
 - Causation

Causation – US Law

- US statute – more strict than necessary
 - “contribute importantly”
 - no less than any other cause
- US practice
 - No detailed weighing
 - Look for coincidence
 - Then look for causation
 - Anecdotal evidence

Causation – WTO Jurisprudence

- Focus on non-attribution
- “Separate & distinguish”
- Rulings focus on authority’s *explanation*
- General rule: WTO decisions always negative