



SAFEGUARDS AND FREE TRADE

-- SPEAKING NOTES --

Presentation to Government Officials' Workshop

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Good afternoon. It is an honor to be included as a presenter in today's workshop for government officials. I hope it's okay to present in English.

As Hugo mentioned, I have done a great deal of work on trade remedy cases at the national level, on government-to-government disputes arising out of the imposition of trade remedy measures, and on negotiations aimed at revising the multilateral disciplines (during the Uruguay Round and currently the Doha Round). With that experience has come, I hope, a bit of perspective. The DR is by contrast a newcomer to this area. But don't worry, that's good news. You can benefit from the experience that has been accumulated, hopefully avoiding some of the mistakes others have made.

I was asked to do two things this afternoon – first to discuss the political economy of the safeguards phenomenon, and second to talk about adjustment plans as the key link between emergency import relief and more durable solutions. On both points, the punch line is a positive one: there's something in this for you all as government officials. Properly understood, safeguard proceedings are an opportunity and not just a pain in the neck.

I. Political Economy of Safeguards

Efficient breach: Every party to every contract, including a government, will consider breaching when it is efficient to do so. GATT Art. XIX, like the “escape clause” in older trade treaties, recognizes this reality. Provisions in the GATS, on retracting and replacing troublesome scheduled commitments (see Internet Gambling!), are analogous.

Safety valve: Funnels requests-to-protect into an administrative system which can award temporary, targeted relief and keep these problems out of the hands of legislators who wield blunter tools.

Easing liberalization: The safeguard remedy's existence makes new trade-liberalizing deals easier to approve because less scary to potentially affected domestic producers. This is particularly important with respect to “unfair” trade, but also with respect to harmful surges of fairly traded goods. Maintaining the right, and making a credible political commitment, to vigorously enforce trade remedy laws bolsters the confidence of this key group of stakeholders and enlarges the political space for new deals.

Public choice: Requests for safeguard relief necessitate decisions – both technical and policy decisions -- by government officials who have their own interests and constituencies. Concentrated producer interests often prevail over dispersed consumer interests.

Discretion: I'll return shortly to the various ways in which the safeguard tool affords government officials lots of discretion to deal with a case's (or industry's) difficult details. In political economy terms, discretion can be a plus for government officials, but also a burden. This is why the USG has sought to "legalize" its trade remedy system as much as possible, providing for discretionary/political review only where necessary in light of the fact that flows of fairly traded goods are being put at risk (*i.e.*, only in safeguard cases and not in AD/CVD cases). From this perspective, the concentration of initial cases under the "safeguard" heading here in the DR is odd. It is odd that petitioners would all choose to use a remedy where proving the basic elements of their case (injury, causation) entitles them to nothing more than a political decision. And it is odd that the government would have devised a system inviting this pattern of usage and necessitating discretionary review in every case.

II. Adjustment Plans

The basic idea here is orderly adjustment to an unexpected, but presumptively permanent, situation of severe import pressure. The adjustment plan is a critical element. ***In a situation where problems are caused by fairly traded goods, it is domestic industry and not foreign suppliers who need to change.*** Import relief simply buys time for this. The adjustment plan is the blueprint and is typically a heavily-negotiated document.

A well-crafted adjustment plan creates a foundation for partnership between government and domestic industry. The restructuring commitments undertaken by domestic producers in the adjustment plan, together with the formal findings issued by the government on import-related injury, create political space for the government to take actions favorable to domestic industry. These actions need not be limited, especially over time, to imposing import relief. In practice safeguard measures often serve as a prelude to the conferral – once import relief is lifted -- of other benefits like subsidies or regulatory relief.

U.S. practice on adjustment plans reflects a certain amount of reticence. Submitters are reluctant to predict the future in any detail, and government officials do not require them to be as detailed as might be desirable. Moreover, adjustment plans need to have background assumptions, and typically they assume a longer period of more complete import relief than is realistic. Still, incomplete use of this tool is far better than no use at all.

And here we come back to discretion. Beyond the discretion they must exercise in negotiating and then enforcing adjustment plans, government officials have vast discretion in designing the import relief aspect of safeguard remedies:

- type of relief (tariff vs. other)
- severity of relief (amount of tariffs, size of quotas)
- duration of relief (noting that it must become less restrictive over time)
- product coverage overall
- product breakouts for fine-tuning.

It is useful to compare this very flexible situation with that of AD/CVD cases, where it is assumed that the remedy will be a duty equal to the calculated margin of dumping or subsidization.

I mentioned earlier that discretion can be a burden. It can also be a plus -- so long as the people exercising it are really smart, honest, hard-working, etc. One problem is that with great power comes great responsibility, and sometimes very little restful sleep!

III. Conclusion

As government officials, you probably don't want all trade remedy petitions to be safeguard petitions. And in those circumstances where there is no other appropriate remedy to invoke, and a safeguard case does come your way, you want to be able to navigate efficiently and use the safeguard remedy's many unique features to help accomplish needed changes within import-sensitive sectors.

All of this is possible. None of it is easy. You have much to look forward to, and many sources of support you can call on.

I look forward to your questions.