



# 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