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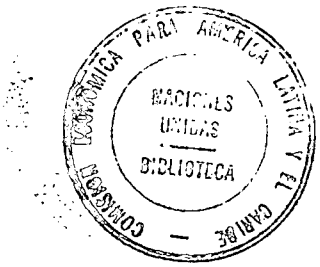

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Safeguards in the Western Hemispheric Free Trade Area

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CONTENTS

I. Introduction

The term "safeguards" generically refers to temporary government actions enlisted to protect an importing country's economy or its industries from import surges and other unforeseen factors. Typically, a range of import restrictions are invoked without regard to "fairness" or "dumping" arguments. Rather the sanctions are justified by various legal and political concepts which have been built into national and international trade rules for decades. In fact, one such precedent, the "escape clause," actually descends directly from the US-Mexican Trade Agreement of another era. Other forms of safeguards range from the legalities of various GATT articles -- especially article XIX -- to the "gray areas" of voluntary export restraints and the panoply of orderly marketing agreements such as the somewhat less than temporary Multi-Fiber Arrangement (MFA). More recently -- especially in the North American Free Trade Agreement (NAFTA) negotiations -- some unplowed ground such as "safeguards" from the impact of differential environmental standards has been discovered.

The concept of safeguards generally continues to be a slippery issue in negotiations for freer trade at both the regional level -- as with the NAFTA -- and multi-lateral level -- as with the Uruguay Round -- with deep divisions both between and within developed and developing countries. Partly the divisions reflect the vagueness of the GATT articles regarding safeguards. But, more to the point, the whole notion of just when and how nations are to tailor

exceptions to GATT articles or to regional trading block rules quickly confronts national sovereignty questions and raises internal policy debates which cannot easily be disciplined by external rules. It is certainly not clear whether contracting parties to freer trade arrangements will ever agree on the form of exceptions to the rules without the guarantee of "exceptions to the exceptions" and so on. It is in this context that many commentators over the years reiterate how the safeguards issue goes right to the heart of any successful freer trade agreement.

In the framework of a regional trading agreement like the Western Hemispheric Free Trade Area (WHFTA), all of the problems which have frustrated safeguards negotiating committees in the past multi-lateral GATT Rounds remain and some new ones arise. This paper aims to confront the issue of safeguards within the context of the countries of the Western Hemisphere and to identify where the issue is likely to assist or to hinder the process of moving toward a WHFTA. The essential theme is to expose potential conflict in existing policies or positions with respect to safeguards and to highlight the prospects for conflict resolution. Here we are able to draw upon some of the current and past experience of the Western Hemispheric nations in forging various regional trading blocks as well as positions in the Uruguay Round and in past GATT Rounds.

The next section sets the stage with a brief general review of the current thinking about the political and economic rationale for safeguards. An issue that quickly arises is the extent to which

the WHFTA nations even agree on what is the purpose of safeguards. Section III then turns to the desirability of keeping safeguards within the GATT framework and so to the divisions that have surrounded safeguards within the Uruguay Round, such as over selectivity, degressivity, surveillance, and the legitimization of "gray area" measures. This section also discusses safeguards in the NAFTA and in the Canada - U.S. Free Trade Agreement (CUSFTA) documents. Again the various positions of the WHFTA nations are the focus. Finally, Section IV considers briefly safeguards more broadly defined -- environmental issues, labor conditions, trade adjustment assistance, and so on -- and searches for conflict and consensus. This last section also offers a summary and some conclusions.

II. The Economic and Political Rationale for Safeguards with Some WHFTA Country Positions

Before the WHFTA nations can negotiate a safeguards position, there needs to be some agreement on just what it is that safeguards are supposed to accomplish in the first place. Typically policy makers and social scientists justify safeguard responses to market disruptions -- including for balance of payments reasons -- on grounds of both efficiency and equity. (See, for example, Corden, 1974; Deardorff, 1987; or Mayer, 1991; and the references therein.) The efficiency defense, in turn, may include both economic efficiency owing to adjustment costs and to political efficiency

owing to assisting negotiators in agreeing to a politically palatable free trade agreement (Perez-Lopez, 1991).

Briefly, the arguments go like this. International trade and the movement to freer trade as through a WHFTA presents a challenge. On the one hand, the opportunity to trade along lines of international comparative advantage offers a source of growth and prosperity. The relatively more efficient industries of each nation can expand while the relatively less efficient industries contract. Real national income of every country rises as nations trade for that which they produce comparatively least efficiently. On the other hand, however, there will typically be some adjustment in the industrial composition induced by a WHFTA during the transition, or after the agreement simply due to change in the international economy. But this adjustment is not costless. Some vocal opposition to trade liberalization and more generally to changing comparative advantage might therefore well be expected to arise, especially when very large and sudden adjustment is necessary. This raises the possibility that slowing any required adjustment due either to the initial agreement, or to unanticipated import surges or balance payments difficulties after the agreement is justified on economic or political grounds.

While thinking is changing, there certainly is no consensus here among WHFTA countries as to whether the justification for safeguard protection is more political or more economic. This undoubtedly reflects some real differences between the economies involved. For one thing, there is a history of more substantial

state ownership among some of the Latin American and Carribean (LAC) countries so that potentially market signals might be quite distorted internally compared with, say, the U.S. or Canada. This might well strengthen the economic argument for safeguards in some countries. The same might be said of labor unionization in at least Argentina and perhaps Brazil.

At the same time, however, Latin American governments' attitudes toward state ownership are themselves changing. In the steel industry, for example, it was the Latin American governments that first embraced privatization fully as part of market reform. And various safeguards were explicitly put into place in order to ease the transition (USITC, 1992).

In any case, the WHFTA countries do at least agree that society might prefer to avoid any sudden large trade-related dislocations. (For a discussion of the theoretical issues see, for example, Corden, 1974; Cassing and Hillman, 1981; Deardorff, 1987; Mayer, 1992.) And, policy-makers may in fact find it impossible to enter into FTA rules without the guarantee of being able to relax those rules under certain conditions (Sykes, 1990). (See also Cassing, 1980; Swan, 1991.) So safeguards are bound to be an integral part of any WHFTA package. We next turn to the concrete issues involved including first some background to the GATT legalities of safeguards, especially as they relate to regional free trade agreements.

III. Negotiating a WHFTA in a GATT-Compatible Framework: The Treatment of Safeguards

Since World War II many GATT contracting parties have concluded regional trade agreements and typically the negotiations -- certainly those involving the United States, Canada, and Mexico -- have been in accord with GATT rules. While it could be that the current resistance by MERCUSOR to the United States request for a review under Article XXIV of GATT may itself raise a contentious issue and call into question the role of GATT in any proposed WHFTA (GATT, 1992), this seems most unlikely. In any case, this section proceeds on the assumption that the WHFTA will aim at essential GATT compatibility. This has been the case with both the CUSFTA and the NAFTA.

While one of the pillars of the GATT is the most-favored-nation (MFN) principle of non-discrimination found in Article I, a major exception to the principle resides in Article XXIV which governs the creation and operation of regional trade arrangements. If the WHFTA is to be compatible with the GATT, then issues arise as to what forms of safeguards are permissible and the extent to which GATT-acceptable language is in fact acceptable to the WHFTA nations. Of particular concern here are some traditional divisions between some of the WHFTA nations over the use, or misuse, of GATT safeguards.

Article XXIV allows both customs unions and free trade areas. The logic of the drafters was at least in part a recognition that regional trade agreements might serve as stepping stones to freer world trade. At the same time there was concern that nations may use the article to discriminate among trading partners with respect to only a few products, so-called "preference arrangements." Therefore, Article XXIV clearly requires that restrictions be eliminated on "substantially all the trade" between the countries, that while gradual elimination of barriers is allowed there must be a schedule for completion of reductions "within a reasonable length of time," and that barriers against non-members not be raised beyond pre-agreement levels.

Despite the concern over preference arrangements, the GATT drafters provided for six exceptions to the requirements of Article XXIV. These are Article XI dealing with quotas to protect agricultural supports, articles XII, XIII, XIV, and XV dealing with restrictions for balance-of-payments purposes, and article XX which allows restrictions for purposes of health, safety, and law enforcement. Strikingly, the traditional "escape clause" -- article XIX -- is not mentioned. Nonetheless, we will discuss the role of article XIX in a WHFTA and focus especially on some of the sharp disagreements that this article has engendered. Also, we just note in passing that in the GATT there are also articles XXVIII and XXV which deal with means for permanently withdrawing a tariff binding and sanctioning voted waivers. While these last two forms of safeguards may have a role to play in WHFTA countries, there is not any current controversy surrounding these articles.

TRADE RESTRICTIONS TO DEAL WITH IMPORT SURGES

While economists may debate over the degree of efficiency provided by safeguards aimed to ameliorate temporarily import surges, such safeguards do provide the political crutch or insurance for sovereign states to enter into otherwise binding agreements. Certainly the necessity of such political insurance is almost a consensus position among the WHFTA countries. The issue then is whether there is any agreement in interpretation of the GATT rules governing safeguards for particular industries.

While the GATT embraces safeguards through the articles mentioned above, the relevant article at the industry level is Article XIX which has been and still is the focus of much debate in GATT Rounds. (Again, we will follow current legal thinking and recent practice in interpreting Article XIX as sanctioned by GATT for free trade areas.) Article XIX provides governments an escape from GATT obligations by allowing trade barriers to safeguard producers seriously injured by trade liberalization. It also contains provision for foreign compensation for or retaliation against subsequent losses incurred abroad. Not surprisingly, Article XIX does not address non-discrimination as embodied in Article I and so this becomes a sharp issue for any FTA.

Without going into abundant detail, this GATT "escape clause" is activated as follows:

1. It must be shown that imports of a product are increasing either absolutely or relatively and that the increase must be caused by unforeseen developments and GATT obligations.

2. It must be shown also that domestic producers of competitive products are seriously injured or threatened with serious injury, and that this injury or threat is caused by the increased imports.

3. If (1) and (2) above are shown, then an importing country is entitled to suspend "such" GATT obligations in respect of such product for such time as necessary to pre-empt or remedy the injury.

4. The importing country must consult with contracting parties having a substantial interest as exporters. If agreement is not reached, exporting contracting parties have the right to suspend "substantially equivalent concessions."

5. Various procedures are defined under GATT or national laws. (See especially Jackson, 1989).

As discussed above, there is a certain logic to all of this. But in the GATT, what you see is rarely what you get. Article XIX is not always interpreted in a way consistent with the intent of the text. Apparently, international trade lawyers find the language of Article XIX "extraordinarily oblique" and instead find explanation in the historical development of the language (Sampson, 1988; Jackson, 1969, 1989).

In brief, some early interpretations greatly weakened the stringency conditions for resorting to Article XIX. Thus, injury was delinked from trade liberalization, the importing country was

ceded much of the power to determine injury to the exclusion of exporters, and it was determined that injury from imports could be serious even with no increase in imports (Sampson, 1988; Jackson, 1989). As if not weakened enough by such interpretations, agricultural trade lies largely outside the control of Article XIX. In addition, many of the invocations of the article have been in cases that "patently fell far short of the requirements of the article" (GATT, 1979). Table 1 recounts formal use of Article XIX among the WHFTA countries. Clearly the U.S. and Canada account for most of the formal actions over the years and would join the EC as the leading filers overall.

By the end of the Tokyo Round, there was widespread dissatisfaction with the evolution of Article XIX. A safeguards special group was formed but little consensus was achieved. Developing countries expected exemptions from safeguard measures of developed countries, and developed countries could not agree on the legitimacy of unilateral action by importers or country selectivity in the application of measures. Little was settled and a committee was established to work beyond the Tokyo Round to develop a system with "greater uniformity and certainty" (GATT, 1980). The Punta del Este Declaration considered a safeguards agreement "of particular importance to strengthening the GATT system" and called for an "objective criteria for action" (GATT, 1986). While debate has been intense at times, a consensus has yet to form, and the task seems particularly formidable even at this late hour in the Uruguay Round.

Nonetheless, the language of the CUSFTA and of the NAFTA simultaneously retains the GATT framework for global actions and, not withstanding the discussion of what is allowed by Article XXIV, makes provision for bilateral emergency actions as well. Thus all of the key divisions regarding safeguards are retained because of the GATT treatment for global actions and amplified because of the bilateral (trilateral) actions allowed and due to some selective treatment of FTA members even with regard to global actions. Below we group the general issues that might divide WHFTA countries along the lines of GATT multi-lateral treatment generally, treatment of WHFTA nations during and after a transition period, and treatment of non-members. We first make special reference to the Uruguay Round negotiations and then to the CUSFTA and the NAFTA accords.

Potential Conflict with Regard to GATT Treatment Generally: Safeguards Issues in the Uruguay Round

Among GATT members generally -- including the WHFTA nations -- the more obvious divisions involve those developed countries most likely to invoke safeguards and those developing countries and the NICs most likely to be adversely affected by safeguards. For both groups, a key concern is balance in moving toward objective criteria for action and adjustment. If the criteria are too lenient, the transparency and certainty sought may come at the cost of easy access to protection. Indeed, if remedies are extended to legitimize the so-called "gray-area measures" or do not impose

credible degressive provisions for adjustment, one must ask what is left of the GATT. Afterall, international trade provides an opportunity for mutual gain through adjustment and change, not through the arrest or blockage of required adjustment.

At the other extreme, if the safeguard criteria are too stringent, then industries will simply by-pass the rules and seek amelioration through the domestic political process with an appeal to national sovereignty beyond the GATT. This circumvention is what happens now. By one estimate, the share of American imports subject to restraint (especially "voluntary" ones) rose in the 1980s from an eighth to a quarter (The Economist, 1990). Worldwide actions are reported in Table II. Alternatively, again as is happening now, recourse will be made to "unfair trade" practices and "dumping." This latter point emphasizes that it is never enough to view one code or agreement in isolation.

Viewed as a question of balance, the Uruguay Round stumbling blocks provide a guide to at least some of the potential WHFTA divisions. There are essentially three questions which must be resolved.

1. Should GATT discipline be tightened and Article XIX merely modified slightly in order to:
    a. Restrict the import-restraining tools such as VERs,
    b. Enforce degressivity, and
    c. Increase surveillance?

Or,

2. Should Article XIX be revised to reflect current reality, which would entail either or both of:

   a. Bringing VERs and other gray-area measures into the GATT,

   b. Legitimizing country selective restraint measures?

And, in any case,

3. Should adjustment assistance be explicit when safeguards are applied?

Simply from the standpoint of the WHFTA countries, let alone the EC and other GATT members, there is little agreement on the answers to these questions facing GATT members just now. While the WHFTA countries at least might agree on some version of points (1b) and (1c), the other points are potentially contentious. (For discussion see Wolff, 1983; Hoekman, 1989.) We now turn to some of these divisions.

Selectivity

In the Uruguay Round, the EC has tabled a proposal which calls for country selective application of safeguard measures. This is certainly at odds with the LAC country positions. The U.S. position on country selectivity is officially still ambiguous. Part of the confusion at least is that it is hard to be against country selectivity and yet in favor of gray area measures such as VERs.

In search of some consensus, WHFTA countries might agree that a potential trap in any freer trade negotiations is to lose sight of what safeguards should theoretically do in the first place. Here the key is to define "harm" economically so that the national interest will be represented. Good safeguard provisions should work in the direction of adjustment for trade as discussed in Section II above. Any agreement thus needs to enfranchise and mobilize the proponents of change, including those within the importing countries, as well as address the losses of the industries affected. Roughly, this former group, comprises of consumers and potential exporters.

From this perspective, country selectivity is surely difficult to justify. The Multi-Fibre Arrangement (MFA) proves only too well how such restraints tend to multiply while the most efficient exporters are successively punished. Selectivity tends to weaken the proponents of change (especially among the developing countries) in its "divide and conquer" approach. Non-discrimination at least shifts the burden of adjustment back to where it should be, in the importing country.

Gray Area Measures

Gray area measures such as VERs, OMAs, and so on are almost inherently discriminatory and so would be at odds with the positions of any countries which favored non-selective application of safeguards. However, there is some support for recognizing negotiated restraints as a legitimate safeguard. And some authors

contend that dealing with gray area measures and bringing them into the GATT for some discipline is essential for a successful round (Patterson, 1988). For better or worse, this potential legitimization of gray area measures in the current Uruguay Round has introduced some new ideas that might be pursued in the WHFTA as they have been in this GATT round by some other negotiating groups. For example, the International Textiles and Clothing Bureau (ITCB) members, the EC, and ASEAN have tabled three proposals for phasing out the MFA by recognizing it as a sort of safeguard and then applying the degressivity requirements of the GATT for safeguards. The ITCB proposal calls for a shift of the MFA into the GATT while increasing quotas by a formula percentage until the constraints are no longer binding. At the same time, this proposal trades GATT temporary recognition of the MFA for the acceptance of transparent safeguard measures for importing countries that are affected. The ASEAN proposal closely follows the ITCB draft while the EC proposal calls for substantially more safeguards as well as bringing the MFA into the GATT. Also, the EC proposal calls for legitimizing negotiated bilateral agreements as safeguards (GATT, 1990).

The issue then becomes what is the price in terms of safeguard allowances which must be paid. In the GATT, what could emerge is an agreement to legitimize more gray area measures so long as they are clearly transitional. Well defined adjustment would be essential. With respect to the MFA, if not other marketing arrangements and VERS, both the U.S. and Canada have hinted at stands to move the MFA to a global quota system with an eventual phase-out of the system altogether.

Almost every developing country -- including the LAC countries -- mistrusts the use of gray area measures as temporary safeguards. The MFA illustrates the costs of gray area measures that fall on developing countries. While exporting countries do receive substantial rents from the controls (Trela and Whalley, 1988; Hamilton, de Melo, and Winters, 1992; Cassing and Hu, 1992), administering the system has itself proved expensive and potentially serves to discourage the most efficient producers who cannot always get licenses. Many such safeguards cause headaches and cost valuable resources for developing countries whether in defending themselves abroad from actions or in trying to administer domestically a complex system of restraints imposed upon them by developed countries reluctant to adjust to shifting comparative advantage (Cassing and Parker, 1990).

Duration and Degressivity

Safeguards are supposed to be temporary and eventually disappear. In the words of the GATT, parties are to apply safeguards only "to the extent and for such time as may be necessary to prevent or remedy such injury." In practice the interpretation here differs across countries. In the U.S., safeguards are to be phased out over a five year period with the possibility of a three year extension. Canada in the past has also provided for the gradual diminution of safeguard measures. At the same time, however, many countries including the U.S. and Canada have over the years embraced the French concept of "organized free

trade" which focusses on "market penetration" and seems to legitimize gray area measures which in fact may never be repealed.

More generally, Sampson (1988) has pointed out that duration and degressivity can be tricky. In practice, maximum durations tend to become minimums, and degressivity has led to higher initial protection than might otherwise have been sanctioned.

Surveillance

The surveillance issue is really one of trying to reach agreement as to what constitutes "harm" and "cause" in the first place. Currently each nation assesses "harm" to an industry or to the overall economy in a way proscribed by individual country trade laws. For example, in the U.S. the "escape clause" resides in Section 201 of the Trade Act of 1974 as amended by the Omnibus Trade and Competitiveness Act of 1988. In order to gain temporary relief for an industry it must be shown that imports are a "substantial cause" of injury to a domestic industry. The injury determination is made by the U. S. International Trade Commission (ITC) which in turn becomes an obvious pressure point in a 201 case. (See especially Swan, 1989, and Maruyama, 1989, for a discussion of the evolution and interpretation of Section 201.) And, it is ultimately left to national law or politics to determine what has transpired in a declining industry. Needless to say, there have been numerous controversial interpretations of the economic data.

Compensation

One of the reasons frequently cited for the failure of nations to use safeguards and instead resort to more dubious remedies is the compensation clause of Article XIX.3. This has led New Zealand to propose the elimination of compensation in return for more discipline with respect to duration and permissible responses. Whatever the ultimate agreement, there does seem to be some consensus among policy-makers and scholars that the compensation clause has seriously undercut legitimate applications of safeguards. (See, for example, Tan, 1990; Schott, 1989; and, various papers in Baldwin and Richardson, 1991.)

Required Adjustment Assistance

While some contracting parties have proposed explicit adjustment assistance when safeguards are applied, the issue is not foremost in the Uruguay Round. Nonetheless, nearly everyone agrees that safeguards need to encourage not discourage adjustment and some have argued that adjustment assistance is an obvious approach. However, so far this is largely viewed as an internal issue to be resolved severally by the contracting parties. Much the same could surely be said for the WHFTA negotiations as well. (For a discussion of the merits of a more pro-active adjustment policy, see Lawrence and Litan, 1986; Richardson, 1982.)

Potential Conflict with Regard to Treatment of WHFTA Members: Safeguards Issues in the CUSFTA, the NAFTA, and Beyond

The formation of a regional trading block raises a number of issues beyond those already being addressed in the GATT regarding safeguards. Here we will assume that the WHFTA -- as with the CUSFTA and the NAFTA -- is going to be roughly GATT consistent but that WHFTA countries may want to continue with their various interpretations of what the GATT allows.

Also we will suppose that the WHFTA will incorporate some version of Article XIX, the above discussion of its legality in a free trade agreement notwithstanding. The U.S., Canada, and Mexico have in the CUSFTA and the NAFTA (as initialled December 17, 1992) made their position with regard to safeguards in a FTA clear. This position is divided into bilateral actions -- or members in this case -- and global actions. Also there are transition emergency actions and continuing emergency actions. The transition period to free trade is five to ten years or sometimes sooner. We categorize the issues as above.

Selectivity

The CUSFTA and the NAFTA treatment of safeguards raises many of the thorny issues confronting the WHFTA. (See Appendix 1 and Appendix 2 for the actual wording of the respective agreements.) First, the CUSFTA allows for bilateral safeguard remedies during the transition when as a result of the reduction or elimination of a duty there is serious injury to a domestic industry of one member

caused by imports of the other. Presumably such emergency action can only be enacted as a result of net trade creation and not mere trade diversion.

The NAFTA largely retains the CUSFTA wording for the U.S. and Canada, but rewrites the articles more stringently for cases involving all three countries. For example, during the transition period of the NAFTA, safeguards can be activated against an imported good to "prevent the injury" as well as to merely "remedy" it. Also, textile and apparel goods are dealt with separately as a special case. (See the discussion of "gray areas" below.)

In the WHFTA, such transitional safeguards are less straight forward. Would the remedies be applied selectively only to the WHFTA members deemed to be the cause of the serious injury? Or, would the remedies be applied to all WHFTA members? This is particularly an issue because the existence of trading arrangements already in place -- MERCUSOR, CARICOM, ALADI, Andean Pact, and CBI -- means that tariffs are not applied uniformly across WHFTA countries and so general reductions are likely to create trade from some members, those facing higher barriers now, and leave trade essentially unchanged from other members, those with preferential access to some members markets already. Non-selectivity would therefore harm some WHFTA members relative to their current positions. Yet, in the GATT Round, the position of most LAC countries has generally been one against selectivity on the grounds that selectivity facilitates the divide and conquer strategy of some developed country industries.

In the CUSFTA, the parties retain their Article XIX rights but are to exclude the other member if global action is taken and imports from the other member are only "in the range of five percent to ten percent or less." In the WHFTA, such wording might preclude effective safeguard action if, for example, 80% of imports for a WHFTA member come from 16 WHFTA countries, each with 5% of the import market. Also, appeal to global actions may end up falling disproportionately on a few members of the WHFTA.

The NAFTA recognizes this problem and addresses it with some new wording. In particular, a Party is not considered to contribute a "substantial share" to the imports if it is "not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period." Also, the wording of the NAFTA allows for the possibility that in exceptional circumstances the imports from two Parties may be considered collectively in determining contribution to serious injury.

The LAIA permits two or more members to negotiate separately on tariff regimes. However, the negotiations are supposed to be designed to be incorporated into the LAIA multilateral system and so even though there are these so-called "partial scope" agreements, the spirit at least is non-selective.

The Andean Group allows for safeguards in a number of ways including "tariff snap-back," a clause that allows a signatory to withdraw concessions under specific circumstances. This is not unlike the provisions of the CUSFTA and the NAFTA and should

provide some room for consensus. The issue with regard to selectivity seems to come down on the side of non-selectivity.

The MERCOSUR is largely non-selective with respect to members but has adopted some bilateral working groups to deal with special problems during a transition period. The CACM is in somewhat of the same position following a rocky period in 1970 when Honduras demanded special relief measures owing to the war with El Salvador. Honduras in fact withdrew from the group in December 1970 and often insists on signing bilateral agreements. CARICOM is still following up on the January 1992 discussion with Central American leaders following the July 1991 proposal to create a single market.

Gray Area Measures

If the WHFTA remains compatible with the GATT, then the issue of allowing VERs and so on as safeguards is in the hands of the Uruguay Round negotiators or beyond. In fact, there is some disagreement in the positions of the WHFTA members here. For example, Chile prohibits by law government involvement in voluntary export restraints, although private business is free to conduct business as it will in this regard (GATT, 1991). Yet some of the WHFTA nations have actively and openly embraced market sharing as part of various regional integration attempts. For example, the Argentine-Brazil Economic Integration Pact (ABEIP) of July 1986 explicitly adopted a protocol that called for triggered safeguard measures geared to import surges and bilateral deficits. While this and subsequent regional agreements are an advance over LAFTA -

- which effectively ended with the LAIA of 1980 -- there is still a preoccupation with bilateral imbalances even at the industry level. While this probably reflects the earlier belief that economies of scale were the raison d'etre for regional trading blocks, there nonetheless remains some commitment to "orderly markets" and the ABEIP has seen more than its share of orderly marketing arrangements in the name of safeguards -- e.g. the steel protocol, the food exemptions, and the automotive industry exemptions (Manzetti, 1990). (More generally, see also Bawa, 1980: Llerena, 1988.)

The U.S. position in the GATT, CUSFTA, and NAFTA has generally opposed safeguard application of GATT-illegal gray area measures, not to say that the U.S. always takes its own advice. U.S. trade law in fact is conservative in the sense that it has the same roots as the GATT "escape clause." Remedies largely reside only in duties, and tariff-rate quotas, although orderly marketing agreements also are sanctioned.

In the NAFTA accords, textile and apparel goods are treated differently from other imports for reasons of safeguards and are explicitly exempted from the rules of Chapter 8 of the NAFTA. This, of course, reflects the U.S. and Canada involvement in the Multi-Fiber Arrangement and concerns over Mexico's potential in this area. Nonetheless, it is a sort of legitimization of the gray-area world of voluntary export restraints.

Duration and Degressivity

The CUSFTA and the NAFTA as initialled allow for a maximum duration of three years for safeguards applied bilaterally during the transition period. Global actions are governed by current law, again three years duration for the U.S. Degressivity is not explicitly called for in the CUSFTA, although it is in the NAFTA during the allowed one year extension of safeguard relief.

The main issue that arises here is whether or not the WHFTA countries can agree on a maximum allowable duration for safeguards and on a timetable for phasing them out. This issue arises with respect both to the transition period and beyond.

Another important issue that arises in the WHFTA here is related to the selectivity issue above. In the Uruguay Round as in previous GATT rounds, several of the WHFTA countries have argued for exceptional treatment on the grounds of being less developed countries, as is allowed by the GATT. But this raises the possibility of differential treatment regarding both the duration and degressivity of safeguards. There are two possibilities: Different countries may be allowed exemptions from the safeguards of other countries, or a given country may be allowed a longer duration for safeguards than another country.

Closely related to the degressivity issue is the question of tariff bindings. For example, Colombia reduced tariffs substantially in 1990 and 1991, but the new duties are not bound in the GATT and this raises the possibility that any tariffs raised as "safeguards" could be quite high initially in order to thwart degressivity for a time.

Surveillance

Once again the issue here is really just what constitutes harm since WHFTA member countries need to be able to monitor the use of safeguards in various situations. The CUSFTA is only explicit in the sense that it adopts the language of the GATT and current U.S. and Canadian trade law. Thus the language speaks of "substantial cause of serious injury" and actions justified "to the extent necessary to remedy the injury." The NAFTA replaces this language slightly, but substantively, to include "remedy or prevent the injury." This reflects the U.S. wording in trade law and derives from concern with inventories as a source of potential import surges. Also of concern might be the preoccupation of many LAC countries in previous regional trade agreements with "harm" incurred through balance of payments problems not generally attributable to the misfortunes of a particular industry. In the ABEIP, for example, bilateral deficits were used as a measure of harm and deficits in excess of 10% were enough to justify some actions. And Brazil unilaterally applied "stabilization policy tariffs" in 1986-87 while Uruguay delayed joining the ABEIP due to a cumulative trade deficit with both Argentina and Brazil.

While surveillance poses many thorny issues, it may also provide the format for the most needed discussion concerning safeguards. In particular, there is a need to take an economy-wide perspective when assessing "harm." A useful institution would be one which mandates a report of the effects of safeguards on all segments of the domestic, WHFTA, and world economies. And at least

certainly domestic consumers should be represented in any assessment of "harm."

In the NAFTA, the investigating authorities are the Canadian International Trade Tribunal, the Secretaria de Comercio y Fomento Industrial, and the U.S. International Trade Commission. Thus, given current legal interpretations and past performance, there is probably a continued under-representation of consumer interests. The specific wording of what constitutes harm may be found in the Appendices of this paper.

Compensation

The issue of compensation relates mainly to global safeguard actions rather than to actions among WHFTA countries as part of any transition to freer trade. Here the NAFTA as with the CUSFTA adopts the language of the GATT referring to "substantially equivalent" concessions as the price of taking safeguard actions. The question that confronts the WHFTA nations is whether or not they want to be treated as a block when non-members owe compensation and whether or not the WHFTA nations want to compensate members differently than non-members.

During the transition the NAFTA and the CUSFTA do not provide for compensation since emergency actions take the form of moving back to earlier MFN rates. However, the WHFTA nations could debate the possibility of compensation during the transition to freer trade in which case the question would arise as to what form the compensation should take and whether some WHFTA nations should be

exempted on development or other grounds. Another tack would be to reduce compensation owing to safeguards and instead extract compensation from countries that resort to safeguards in a way which violates stricter conditions for their use. Brazil at least has been vocal in the Uruguay Round on the issue of compensation and has hinted at a resurrection of some variation of the Brazil-Uruguay formula of the 1960s which would penalize violators of the safeguards code by requiring financial compensation (Abreu and Fritsch, 1989).

Required Adjustment Assistance

Among the WHFTA countries, the U.S. has the most extensive adjustment assistance programs, while most WHFTA nations have some version -- sometimes a bit ad hoc -- of unemployment insurance. Notwithstanding the arguments for and against mandated adjustment assistance in the WHFTA, the issue is probably a non-starter in initial negotiations given the complications of harmonizing the conditions under which adjustment assistance is required. No WHFTA nation has made this issue a priority in the Uruguay Round and it did not appear in the final CUSFTA and the initialled NAFTA documents. However, the new Clinton administration has alluded to supplemental pacts aimed to cushion labor market adjustment as a condition for NAFTA and so the issue may yet arise (New York Times, February 22, 1993).

Potential Conflict with Respect to Non-Members

The main issue with respect to non-members is how they might react to any WHFTA safeguards policy or, for that matter, to the whole notion of a WHFTA. If the WHFTA stays essentially within a GATT compatible framework, then there is at least a reduced potential for conflict. Nonetheless, while not the focus of this paper, the whole notion of trading blocks is liable to create a "them versus us" mindset which would complicate future moves toward worldwide trade liberalization. Certainly the NAFTA has engendered some consternation and concern in East and Southeast Asia.

OTHER GATT SAFEGUARDS

Among the safeguards provisions sanctioned by the GATT beyond Article XIX, there are provisions for agriculture and for balance of payments troubles. Brazil, for example, has in the past justified nontariff import measures on balance of payments grounds as in Article XVIIIb. Many WHFTA countries, including the U.S. and Canada variously appeal to the exceptions for agriculture in the GATT to justify "safeguards" for the agricultural sector and beyond.

There is potentially room for some sharp disagreement on some of these safeguards. The essential problem is that the GATT itself has some features that inherently divide developed and developing countries. This has led to divisions in the multilateral rounds and will surely lead to divisions in the WHFTA negotiation. The genesis of these divisions resides in the earlier GATT rounds.

Basically, developing countries had little incentive to participate since developing countries were exempted from reciprocity, major agricultural products of export interest were excluded from the negotiations, "special and differential" treatment was accorded through the GSP, and GATT sanctioned infant industry and balance of payments protection in Article XVIIIc and XVIIIb.

Probably the main issue here is that if the WHFTA is going to be GATT compatible, then the WHFTA countries except for the U.S. and Canada are guaranteed many safeguard remedies in the name of development and structural imbalance in the economy. And as recently as Punta del Este, Brazil led a coalition of developing countries aimed to maintain dual track treatment. Thus, a sharp conflict could arise if it is felt that some nations can make concessions for freer trade and then simply fall back on Article XVIIIb or XVIIIc to withdraw concessions.

At the same time many of the LAC agricultural producers have expressed disappointment with the GATT treatment of trade in agriculture. In particular it is felt that the developed countries use the GATT exceptions to the usual trading rules simply to preclude the agricultural exports of the less developed countries.

The solution seems to be that some of the WHFTA countries will need to bind their tariff schedules more securely and agree to more stringent limitations on the use of balance of payments escape clauses contained in Article XVIIIb. Some commentators have suggested that reducing the scope of actions to be taken under a balance of payments escape clause would make bargaining more likely

and improve policy making in developing countries (Fritsch, 1989). In the same spirit the U.S. and Canada may be forced to re-examine their positions on effective exclusion of major agricultural products from the GATT.

Agricultural Related Safeguards

Since its inception in 1947, the GATT has relegated agricultural matters to a back burner as the U.S. and the EC have obtained implicit recognition of their respective domestic policies. This would include "safeguard" treatment afforded agriculture through various exemptions such as Article XI which permits import restrictions to enforce standards or domestic agricultural support policies. In the NAFTA, no trilateral agreement on agriculture was possible. Rather, Canada signed a separate bilateral accord with Mexico while the CUSFTA accord governs trade in agriculture between the U.S. and Canada. Thus, for example, Canada retains its "snap-back" provisions for reinstating tariffs in order to correct market distortions in agriculture. Also, Canada retains its protection for dairy, poultry, and egg sectors (USITC, 1992).

For WHFTA nations like Argentina that are efficient food producers these exceptions are perplexing. Several WHFTA nations would quickly agree with Argentina -- e.g., Brazil, Colombia, and Uruguay (Cairnes Group members), as well as Mexico (Cirio and Otero, 1989). Nonetheless, given the precedent of moving from the CUSFTA to the NAFTA, we can expect that the U.S. and Canada will be

reluctant to embrace significant domestic reforms. Much here will undoubtedly depend on how the agriculture agreement in the Uruguay Round is finally resolved.

Balance of Payments and Infant Industry Related Safeguards

Several of the WHFTA countries frequently appeal to safeguard protection justified by balance of payments reasons. Brazil, for example, which represents 60% of South America's GDP and 36% of its foreign trade, has in the past used import controls to deal with payments problems. Such controls have included, for instance, the Financial Operations Tax (IOF) being applied to import-related exchange rates -- effectively a 15% surcharge on imports (United Nations, 1985). And most recently, Argentina has announced a series of measures to raise taxes on imports in order to deal with some of the consequences of tying the peso closely to the U.S. dollar as part of Economy Minister Domingo Cavallo's anti-inflation plan (Nash, 1992).

More generally, without denying the potential benefits of freer trade, it simply may not be realistic to negotiate further WHFTA trade liberalization with heavily indebted countries of Latin America without a tied financial package with provisions for the possibility that there could be some adverse trade effects of an agreement in the short to medium run. Certainly from the "political efficiency" case for safeguards alluded to earlier, some sort of agreement with respect to temporary balance of payments related trade actions is probably a sine quo non for a WHFTA agreement. (See, for example, the discussion in Abreu and Fritsch, 1989.)

Another potentially deep division between WHFTA countries with regard to safeguards concerns the use of trade and other policies to promote industrialization. While official attitudes are changing in some LAC countries, there is not a total rush to abandon some "enlightened guidance" by government policy to nurture certain industries, legally justified in the GATT by an infant industry argument. While not the primary focus of this paper, it will be one of the tasks of the safeguards surveillance code to monitor the use of the infant industry argument -- or, for the U.S., the use of temporary "industrial policy" actions.

IV. The "New Safeguards" and Some Concluding Remarks

As increasingly disparate economies pursue free trade areas, there are bound to be some increasing tensions. One form that these tensions have taken in the NAFTA negotiations is a call for "safeguards" from lax environmental or labor standards. Similar issues will undoubtedly arise with respect to any WHFTA negotiations. As has been pointed out by Pearson (1992), such issues are really questions of domestic policy and are probably best left out of the negotiations. Properly, safeguards are not meant to be permanent and certainly are not intended to safeguard an industry from another nation's source of comparative advantage, even if that does reside in low environmental standards. To open up such essentially domestic issues would certainly be problematic for the WHFTA negotiations. Nonetheless, the issue may yet arise if the Clinton administration pursues environmental safeguards as a pre-condition for the NAFTA (New York Times, February 22, 1993).

More generally, the safeguards issue in the WHFTA is bound to be a complex one with some consensus and lots of conflict. In the GATT, CUSFTA, and NAFTA negotiations, safeguards have been a source of some divisions with some consensus on surveillance and degressivity but no general agreement on gray area measures and other issues. If there is any guidance to be had from these negotiations and from the experience of various other LAC trade negotiations, it is surely that the nations should seek general agreement first on just what it is that safeguards are meant to accomplish. For example, some criteria of adjustment, efficiency, viability, and focus may serve as a start. Importantly, there is almost universal agreement on at least one thing: Without the flexibility of safeguard exceptions, WHFTA negotiators will be severely constrained in what they can table and ultimately negotiate.

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TABLE I

ARTICLE XIX ACTIONS NOTIFIED TO GATT, 1950-88 (WHFTA Countries)

INVOKING PARTY	PRODUCT	DATE INTRODUCED
U.S.	Women's fur felt hats and hat bodies	1 Dec 50
U.S.	Hatter's fur	9 Feb 52
U.S.	Dried figs	30 Aug 52
U.S.	Alsike clover seed	1 July 54
U.S.	Bicycles	19 Aug 55
U.S.	Towelling of flax, hemp or ramie	26 July 56
U.S.	Spring clothespins	9 Nov 57
U.S.	Safety pins	29 Nov 57
Canada	Frozen peas	12 Feb 58
U.S.	Clinical thermometers	22 May 58
U.S.	Lead and Zinc	1 Oct 58
U.S.	Stainless steel flatware	1 Nov 59
U.S.	Cotton typewriter ribbon cloth	22 Sept 60
U.S.	Sheet glass (principally window glass)	17 Jun 62
U.S.	Wilton and velvet carpets	17 Jun 62
Peru	Lead Arsenate and valves	23 Feb 63
Canada	Turkeys	17 Nov 67
Canada	Potatoes	12 Sept 68
Canada	Corn	30 Oct 68
U.S.	Pianos	21 Feb 70
Canada	Motor gasoline	7 May 70
Canada	Men's and boy's woven fabric shirts	2 Jun 70
Canada	Fresh and preserved strawberries	21 May 71
Canada	Men's and boy's shirts woven or knitted	30 Nov 71
U.S.	Ceramic tableware articles	1 May 72

Canada	Fresh cherries	30 Jun 73
U.S.	Ball bearings	1 May 74
Canada	Cattle, beef, veal	12 Aug 74
Canada	Worsted spun acrylic yarns	1 Jan 76
U.S.	Specialty steel	14 Jun 76
Canada	Work gloves	1 Jul 76
Canada	Textured polyester	7 Jul 76
Canada	Double-knit fabrics	8 Oct 76
Canada	Beef and veal	18 Oct 76
Canada	A range of clothing items	29 Nov 76
U.S.	Non-rubber footwear	28 Jun 77
U.S.	Color TV receivers	1 Jul 77
Canada	Footwear	5 Dec 77
U.S.	CB radio receivers	11 Apr 78
U.S.	High carbon ferrochromium	11 Nov 78
U.S.	Industrial fasteners	26 Dec 78
U.S.	Clothespins	23 Feb 79
U.S.	Porcelain-on-steel cooking ware	1 Jan 80
U.S.	Prepared or preserved mushrooms	2 Dec 80
Canada	Non-leather footwear	24 Nov 81
Canada	Leather footwear	9 Jul 82
Canada	Yellow onions	27 Oct 82
U.S.	Motorcycles	16 Apr 83
U.S.	Specialty steel	20 Jul 83
Chile	Sugar	26 Jul 84
Chile	Wheat	
Canada	Fresh, chilled and frozen beef, and veal	1 Jan 85
Chile	Edible vegetable oils	28 Sept 85

TABLE II
VOLUNTARY EXPORT RESTRAINT ARRANGEMENTS, 1987

PRODUCT	IMPORTING COUNTRIES	EXPORTING COUNTRIES
STEEL	EUROPEAN COMMUNITY	AUSTRALIA, AUSTRIA, BRAZIL, BULGARIA CZECHOSLOVAKIA, FINLAND, HUNGARY, JAPAN SOUTH KOREA, NORWAY, POLAND, ROMANIA, SOUTH AFRICA, SWEDEN, VENEZUELA
	UNITED STATES	ARGENTINA, AUSTRALIA, AUSTRIA, BRAZIL, BULGARIA, CZECHOSLOVAKIA, EUROPEAN COMMUNITY, EAST GERMANY, FINLAND, HUNGARY, JAPAN, SOUTH KOREA, MEXICO, NORWAY, POLAND, PORTUGAL, ROMANIA, SOUTH AFRICA, SPAIN VENEZUELA, YUGOSLAVIA, TAIWAN
MACHINE TOOLS	EUROPEAN COMMUNITY	JAPAN
	UNITED STATES	WEST GERMANY, JAPAN, SWITZERLAND, TAIWAN
MOTOR VEHICLES	CANADA	JAPAN, SOUTH KOREA
	EUROPEAN COMMUNITY	JAPAN
	NORWAY	SOUTH KOREA
	UNITED STATES	JAPAN
TELEVISIONS	EUROPEAN COMMUNITY	JAPAN, SOUTH KOREA
	UNITED STATES	SOUTH KOREA
VIDEOTAPE AND CASSETTE RECORDS	EUROPEAN COMMUNITY	JAPAN, SOUTH KOREA
	UNITED STATES	SOUTH KOREA
FOOTWEAR	CANADA	SOUTH KOREA, ITALY, SPAIN, TAIWAN
		JAPAN, SOUTH KOREA
	NORWAY	SOUTH KOREA, TAIWAN
	UNITED KINGDOM	
TEXTILES AND APPAREL	AUSTRIA	SINGAPORE
	CANADA	MALDIVES, PAKISTAN, VIETNAM
		MOROCCO, TUNISIA, TURKEY
	EUROPEAN COMMUNITY	CHINA, PAKISTAN
		CHINA, SOUTH KOREA,
	FINLAND	PAKISTAN
	JAPAN	CHINA
		CHINA, COSTA RICA, EGYPT, ISRAEL,
	NORWAY	MALDIVES, MAURITIUS, PAKISTAN,
	UNITED STATES	SOUTH AFRICA
AGRICULTURAL PRODUCTS	EUROPEAN COMMUNITY	ARGENTINA, AUSTRALIA, AUSTRIA, BRAZIL, BULGARIA, CANADA,CHILE, CHINA, CZECHOSLOVAKIA, HUNGARY , ICELAND, INDONESIA, NEW ZEALAND, POLAND, ROMANIA, SOUTH AFRICA, THAILAND, URUGUAY, YUGOSLAVIA
STAINLESS STEEL FLATWARE	WEST GERMANY	SOUTH KOREA
	UNITED KINGDOM	SOUTH KOREA
LEATHER CLOTHING	NORWAY	SOUTH KOREA
LUMBER	UNITED STATES	CANADA

APPENDIX 1

CUSFTA Safeguards Wording

Chapter Eleven

Emergency Action

Article 1101: Bilateral Actions

1. Subject to paragraphs 2 and 4, and during the transition period only, if a good originating in the territory of one Party is, as a result of the reduction or elimination of a duty provided for in Chapter Four, being imported into the territory of the other Party in such increased quantities, in absolute terms, and under such conditions so that the imports of such good from the exporting Party alone constitute a substantial cause of serious injury to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to remedy the injury:

a) suspend the further reduction of any rate of duty provided for under this Agreement on such good;

b) increase the rate of duty on such good to a level not to exceed the lesser of:

i) the most-favoured-nation (MFN) rate of duty in effect at that time; or

ii) the MFN rate of duty in effect on the day immediately preceding the date of the entry into force of this Agreement; or

c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN rate of duty that was in effect on such good for the corresponding season immediately prior to the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to an action authorized by paragraph 1:

a) notification and consultation shall precede the action;

b) no action shall be maintained for a period exceeding three years or, except with the consent of the other Party, have effect beyond the expiration of the transition period;

c) no action shall be taken by either Party more than once during the transition period against any particular good of the other Party; and

d) upon the termination of the action, the rate of duty shall be the rate which would have been in effect but for the action.

3. A Party may institute a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

4. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to the other Party or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree upon compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the action taken by the importing Party under paragraph 1.

Article 1102: Global Actions

1. With respect to an emergency action taken by a Party on a global basis, the Parties shall retain their respective rights and obligations under Article XIX of the *General Agreement on Tariffs and Trade* subject to the requirement that a Party taking such action shall exclude the other Party from such global action unless imports from that Party are substantial and are contributing importantly to the serious injury or threat thereof caused by imports. For purposes of this paragraph, imports in the range of five percent to ten percent or less of total imports would normally not be considered substantial.

2. A Party taking an emergency global action, from which the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include the other Party in the global action in the event of a surge in imports of such good from the other Party that undermines the effectiveness of such action.

3. A Party shall, without delay, provide notice to the other Party of the institution of a proceeding that may result in an emergency action under paragraphs 1 or 2.

4. In no case shall a Party take an action authorized under paragraphs 1 or 2, imposing restrictions on a good:

a) without prior notice and consultation; and

b) that would have the effect of reducing imports of such good of the other Party below the trend of imports over a reasonable recent base period with allowance for growth.

5. The Party taking an action pursuant to this Article shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects to the other Party or equivalent to the value of the additional duties expected to result from the action. If the Parties are unable to agree upon compensation, the exporting Party may take action having trade effects substantially equivalent to the action taken by the importing Party under paragraph 1.

Article 1103: Arbitration

Articles 1806 (Arbitration) and 1807 (Panel Procedures) shall not apply with respect to proposed actions under this Chapter. Any dispute with respect to actual actions not resolved by consultation shall be referred to arbitration under Article 1806.

Article 1104: Definitions

For purposes of this Chapter:

contribute importantly means an important cause, but not necessarily the most important cause, of serious injury from imports;

emergency action means any emergency action taken after the entry into force of this Agreement; and

surge means a significant increase in imports over the trend for a reasonable recent base period for which data are available.

APPENDIX 2

NAFTA Safeguards Wording

October 7, 1992

Chapter Eight

Emergency Action

Article 801: Bilateral Actions

1. Subject to paragraphs 2 through 4 and Annex 801.1, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a duty provided for in this Agreement, is being imported into the territory of another Party in such increased quantities, in absolute terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party into whose territory the good is being imported may, to the minimum extent necessary to remedy or prevent the injury:

(a) suspend the further reduction of any rate of duty provided for under this Agreement on the good;

(b) increase the rate of duty on the good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, and

(ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c) in the case of a duty applied to a good on a seasonal basis, increase the rate of duty to a level not to exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding the date of entry into force of this Agreement.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

(a) a Party shall, without delay, deliver to any Party that may be affected written notice of, and a request for consultations regarding, the institution of a proceeding that could result in emergency action against a good originating in the territory of a Party;

(b) any such action shall be initiated no later than one year after the date of institution of the proceeding;

(c) no action may be maintained

(i) for a period exceeding three years, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 (Tariff Elimination) of the Party taking the action and that Party determines that the affected industry has undertaken adjustment and requires an extension of the period of relief, in which case the period of relief may be extended for one year provided that the duty applied during the initial period of relief is substantially reduced at the beginning of the extension period, or

(ii) beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;

(d) no action may be taken by a Party against any particular good originating in the territory of another Party more than once during the transition period; and

(e) on the termination of the action, the rate of duty shall be the rate that, according to the Party's Schedule to Annex 302.2 for the staged elimination of the tariff, would have been in effect one year after the initiation of the action and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action

(i) the rate of duty shall conform to the applicable rate set out in its Schedule to Annex 302.2, or

(ii) the tariff shall be eliminated in equal annual stages ending on the date set out in its Schedule to Annex 302.2 for the elimination of the tariff

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury, or threat thereof, to a domestic industry arising from the operation of this Agreement only with the consent of the Party against whose [illegible] the action would be taken.

4. The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of

concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article. The Party taking the tariff action shall apply the action only for the minimum period necessary to achieve the substantially equivalent effects.

5. This Article does not apply to emergency actions respecting goods covered by Annex 300-B (Textile and Apparel Goods).

Article 802: Global Actions

1. Each Party retains its rights and obligations under Article XIX of the GATT or any safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from the action unless:

(a) imports from a Party, considered individually, account for a substantial share of total imports; and

(b) imports from a Party, considered individually, or in exceptional circumstances imports from Parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

2. In determining whether:

(a) imports from a Party, considered individually, account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers of the good subject to the proceeding, measured in terms of import share during the most recent three-year period; and

(b) imports from a Party or Parties contribute importantly to the serious injury, or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of each Party, and the level and change in the level of imports of each Party. In this regard, imports from a Party normally shall not be deemed to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from a Party during the period

in which the injurious surge in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. A Party taking such action, from which a good from another Party or Parties is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party or Parties in the action in the event that the competent investigating authority determines that a surge in imports of such good from the other Party or Parties undermines the effectiveness of the action.

4. A Party shall, without delay, deliver written notice to the other Parties of the institution of a proceeding that may result in emergency action under paragraph 1 or 3.

5. No Party may impose restrictions on a good in an action under paragraph 1 or 3:

(a) without delivery of prior written notice to the Commission, and without adequate opportunity for consultation with the Party or Parties against whose good the action is proposed to be taken, as far in advance of taking the action as practicable; and

(b) that would have the effect of reducing imports of such good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth.

6. The Party taking an action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3.

Article 803: Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all emergency action proceedings.

2. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by domestic law. Negative injury

determinations shall not be subject to modification, except by such review. The competent investigating authority empowered under domestic law to conduct such proceedings should be provided with the necessary resources to enable it to fulfill its duties.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for emergency action proceedings, in accordance with the requirements set out in Annex 803.3.

4. This Article does not apply to emergency actions taken under Annex 300-B (Textile and Apparel Goods).

Article 804: Dispute Settlement in Emergency Action Matters

No Party may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel) regarding any proposed emergency action.

Article 805: Definitions

For purposes of this Chapter:

competent investigating authority means the "competent investigating authority" of a Party as defined in Annex 805;

contribute importantly means an important cause, but not necessarily the most important cause;

critical circumstances means circumstances where delay would cause damage that would be difficult to repair;

domestic industry means the producers as a whole of the like or directly competitive good operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to January 1, 1994;

good originating in the territory of a Party means an originating good, except that in determining the Party in whose territory that good originates, the relevant rules of Annex 302.2 shall apply;

serious injury means a significant overall impairment of a domestic industry;

surge means a significant increase in imports over the trend for a recent representative base period;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and

transition period means the 10-year period beginning on January 1, 1994, except where the good against which the action is taken is provided for in the items in staging category C+ of the Schedule to Annex 302.2 of the Party taking the action, in which case the transition period shall be the period of staged tariff elimination for that good.

Annex 801.1

Bilateral Actions

1. Notwithstanding Article 801, bilateral emergency actions between Canada and the United States on goods originating in the territory of either Party, other than goods covered by Annex 300-B (Textile and Apparel Goods), shall be governed in accordance with the terms of Article 1101 of the *Canada - United States Free Trade Agreement*, which is hereby incorporated into and made a part of this Agreement for such purpose.

2. For such purposes, "good originating in the territory of one Party" means "good originating in the territory of a Party" as defined in Article 805.

Annex 803.3

Administration of Emergency Action Proceedings

Institution of a Proceeding

1. An emergency action proceeding may be instituted by a petition or complaint by entities specified in domestic law. The entity filing the petition or complaint shall demonstrate that it is representative of the domestic industry producing a good like or directly competitive with the imported good.

2. A Party may institute a proceeding on its own motion or request the competent investigating authority to conduct a proceeding.

Contents of a Petition or Complaint

3. Where the basis for an investigation is a petition or complaint filed by an entity representative of a domestic industry, the petitioning entity shall, in its petition or complaint, provide the following information to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) product description - the name and description of the imported good concerned, the tariff subheading under which that good is classified, its current tariff treatment and the name and description of the like or directly competitive domestic good concerned;

(b) representativeness -

(i) the names and addresses of the entities filing the petition or complaint and the locations of the establishments in which they produce the domestic good,

(ii) the percentage of domestic production of the like or directly competitive good that such entities account for and the basis for claiming that they are representative of an industry, and

(iii) the names and locations of all other domestic establishments in which the like or directly competitive good is produced;

(c) import data - import data for each of the five most recent full years that form the basis of the claim that the good concerned is being imported in increased quantities, either in absolute terms or relative to domestic production;

(d) domestic production data - data on total domestic production of the like or directly competitive good for each of the five most recent full years;

(e) data showing injury - quantitative and objective data indicating the nature and extent of injury to the concerned industry, such as data showing changes in the level of sales, prices, production, productivity; capacity utilization, market share, profits and losses, and employment;

(f) cause of injury - an enumeration and description of the alleged causes of the injury, or threat thereof, and a summary of the basis for the assertion that increased imports, either actual or relative to domestic production, of the imported good are causing or threatening to cause serious injury, supported by pertinent data; and

(g) criteria for inclusion - quantitative and objective data indicating the share of imports accounted for by imports from the territory of each other Party and the petitioner's views on the extent to which such imports are contributing importantly to the serious injury, or threat thereof, caused by imports of that good.

4. Petitions or complaints, except to the extent that they contain confidential business information, shall promptly be made available for public inspection on being filed.

Notice Requirement

5. On instituting an emergency action proceeding, the competent investigating authority shall publish notice of the institution of the proceeding in the official journal of the Party. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the determination to be made, the time and place of the public hearing, dates of deadlines for filing briefs, statements and other documents, the place at which the petition and any other documents filed in the course of the proceeding may be inspected, and the name, address and telephone number of the office to be contacted for more information.

6. With respect to an emergency action proceeding instituted on the basis of a petition, complaint filed by an entity asserting that it is representative of the domestic industry

competent investigating authority shall not publish the notice required by paragraph 5 without first assessing carefully that the petition or complaint meets the requirements of paragraph 3, including representativeness.

Public Hearing

7. In the course of each proceeding, the competent investigating authority shall:

(a) hold a public hearing, after providing reasonable notice, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party instituting the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and

(b) provide an opportunity to all interested parties and any such association appearing at the hearing to cross-question interested parties making presentations at that hearing.

Confidential Information

8. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

Evidence of Injury and Causation

9. In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. In making its determination, the competent investigating authority may also consider other economic factors, such as changes in prices and inventories, and the ability of firms in the industry to generate capital.

10. The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a clear causal link between increased imports of the good concerned and serious injury, or threat thereof. Where 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.

Deliberation and Report

11. Except in critical circumstances and in global actions involving perishable agricultural goods, the competent investigating authority, before making an affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, hold a public hearing and provide an opportunity for all interested parties and consumer associations to prepare and submit their views.

12. The competent investigating authority shall publish promptly a report, including a summary thereof in the official journal of the Party, setting out its findings and reasoned conclusions on all pertinent issues of law and fact. The report shall describe the imported good and its tariff item number, the standard applied and the finding made. The statement of reasons shall set out the basis for the determination, including a description of:

(a) the domestic industry seriously injured or threatened with serious injury;

(b) information supporting a finding that imports are increasing, the domestic industry is seriously injured or threatened with serious injury, and increasing imports are causing or threatening serious injury; and

(c) if provided for by domestic law, any finding or recommendation regarding the appropriate remedy and the basis therefor.

13. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.

Annex 805

Country-Specific Definitions

For purposes of this Chapter:

competent investigating authority means:

(a) in the case of Canada, the Canadian International Trade Tribunal, or its successor;

(b) in the case of the Mexico, the designated authority within the Ministry of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), or its successor; and

(c) in the case of the United States, the U.S. International Trade Commission, or its successor.