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Canada's Anti-dumping and Safeguard Policies: Overt and Subtle Forms of Discrimination

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1. INTRODUCTION

CANADA is generally regarded as one of the more open members of the World Trade Organisation (WTO). Indeed, the first paragraph of a recent WTO Trade Policy Review of Canada states glowingly that its 'trade regime is amongst the world's most transparent and liberal' (WTO, 2003). Nevertheless, even within an open regime, Canadian policymakers frequently face protectionist pressure from domestic industries that challenges not only their ability to keep Canada 'open', but also Canada's adherence to core WTO principles such as non-discrimination. Some of the difficulties stem from policymakers continually being presented with opportunities to take advantage of WTO-permitted exceptions to non-discrimination through application of trade remedies such as anti-dumping and safeguards. In this paper I exploit the transparency of Canada's trade policy decision-making in order to illustrate some of the recent challenges to non-discrimination that its trade policymakers have faced in practice.

As a founding contracting party to the General Agreement on Tariffs and Trade (GATT) in 1948 and member of the WTO in 1995, Canada helped establish the current rules-based international trading system with the two foundational principles of reciprocity and non-discrimination. Reciprocity has guided GATT/WTO negotiations on trade liberalisation. Country A promises to increase market access for goods x from country B, and country B reciprocates by promising to increase market access for exports of good y from A. Non-discrimination, as

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embodied by the GATT/WTO's most-favoured-nation (MFN) clause, mandates that countries A and B then extend the same terms of market access (i.e. equal tariff treatment) to imports deriving from all other WTO members. The result has been a gradual lowering of the MFN tariff rates facing what are now 150 WTO members. But after the completion of eight negotiating rounds over the last 60 years, obvious and acute difficulties associated with the reciprocal negotiations framework affect the progress of the current Doha Round as negotiators attempt to push the system forward.[1] While such difficulties generate media headlines when negotiations fail to produce results in Seattle or Cancún, nevertheless, less obvious departures from the second important GATT/WTO principle, non-discrimination, may pose an even larger threat to the system by eroding market-access gains and conditions of liberal trade achieved through past multilateral liberalisation.

Like many countries in the GATT/WTO system, Canada has actively negotiated discriminatory trade agreements (DTAs) in parallel to its participation in multilateral liberalisation efforts.[2] Canada negotiated formation of the Canadian-US Free Trade Area (CUSFTA) in the late 1980s and subsequently expanded the scope of the agreement to include Mexico as part of the North American Free Trade Area (NAFTA) in the early 1990s. Canada has also negotiated bilateral DTAs with Costa Rica, Chile and Israel, and Canadian negotiations are currently under way with trading partners as diverse as the Dominican Republic, Korea, Singapore, the Central American Four countries (CA4 – El Salvador, Guatemala, Honduras and Nicaragua), the Andean Community countries (Bolivia, Colombia, Ecuador and Peru), the Free Trade Area of the Americas (FTAA) countries, and the countries of the European Free Trade Association (EFTA).[3]

Some of the economic problems associated with explicitly discriminatory trade policies are by now familiar even to non-economists. In particular, Bhagwati's (1991) famous question of whether DTAs would be 'building blocks' or 'stumbling blocks' to future multilateral trade liberalisation has led to a flood of economic research on the topic. A number of other concerns related to

[1] These include the difficulties associated with the near exhaustion of goods market access trade-offs between the traditional power-brokers in the GATT/WTO system such as the EU and the US. The result is that negotiations must now proceed between countries with asymmetric power relationships (developed vs. developing) over difficult issues such as market access across politically-sensitive sectors (agriculture) as well as disciplines (goods trade vs. non-goods trade issues such as services, intellectual property, investment, competition, etc.).

[2] DTAs have also been referred to as free trade agreements (FTAs), before it was realised that they did not lead to free trade; regional trade agreements (RTAs) before it was realised that they were not necessarily limited to geographical relationships, before more recently being called preferential trade agreements (PTAs). I prefer the more accurate term of discriminatory trade agreements to highlight their focus on imposing implicitly higher and discriminatory trade barriers against non-member countries.

[3] ITC (2007) provides the list of Canada's existing DTAs and those under negotiation.

discriminatory trade policy have evolved alongside the 'building block' versus 'stumbling block' debate. A first question, initially identified by Viner (1950), was whether the formation of a DTA would be welfare-enhancing even from the member countries' own narrow perspective. Viner's concern was about 'trade diversion' – whether the DTA might lead to the sourcing of imports from inefficient (relative to DTA non-members) suppliers producing and exporting goods and services only because of the preferential treatment provided by the DTA. Second, from an outsider's perspective, the imposition of discriminatory trade policies may also distort global trade flows away from their natural patterns. Such trade policies can 'deflect' exports into third markets and 'depress' imports in others,[4] and a world riddled by DTAs fails to exploit the welfare gains associated with countries producing according to global comparative advantage. Furthermore, the formation of DTAs may affect the negotiating incentives of particular countries in ways that make multilateral trade liberalisation and the lowering of MFN tariffs through WTO negotiations even more difficult.[5]

Finally, the formation of DTAs may change political-economy dynamics within a country and may even *increase* the pressure to raise relatively unconstrained non-tariff barriers against non-DTA members. While an increase in non-tariff forms of protection may take place in ways that are not necessarily in direct violation of any WTO provisions, such activity would certainly be inconsistent with the *spirit* of a member's WTO obligations, as one of the conditions for a DTA to be WTO-consistent is that the members do not to *raise* trade barriers against non-members. In particular, Article XXIV:4 of the 1947 GATT states (emphasis added),

> The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and *not to raise barriers to the trade of other contracting parties with such territories*.

This paper explores some of Canada's recent trade policy experiences from the perspective of this last issue, i.e. examining the challenges that face Canadian trade policymakers as they are confronted with opportunities to raise discriminatory trade barriers against non-DTA members. Specifically, I examine Canada's use of import-restricting 'trade remedies' such as anti-dumping and safeguards

[4] Bown and Crowley (2007) present evidence that the imposition of discriminatory anti-dumping measures against Japanese exports cause Japanese exports that might have been originally destined for the US market to be deflected to third markets. They also present evidence that US imposition of anti-dumping measures on third-market exporters may cause Japanese exports to third markets to become depressed, as some of the third market production is retained domestically, thus crowding out imports.

[5] Limão (2006) presents evidence that the US formation of DTAs has led to less multilateral liberalisation under the Uruguay Round of negotiations.

that policymakers frequently implement to shield domestic producers from the competitive effects of injurious imports. An analysis of the discriminatory nature of these particular trade policy instruments is useful for at least two reasons. First, like DTAs, anti-dumping and safeguards are also permissible under the WTO, and WTO restrictions on their use are fairly lax. Second, governments have substantial discretion with how these policies are used. Together, these elements imply that the policies could be implemented on a relatively discriminatory or a relatively non-discriminatory basis. In the next three sections I examine trade policy decisions and recommendations made by the Canadian International Trade Tribunal (CITT), i.e. the Canadian government agency that handles the country's trade remedy investigations.[6] In particular, I illustrate a number of quite simple ways in which Canadian policymakers have used, or could use, WTO-sanctioned trade remedies – anti-dumping, global safeguards and a China-specific safeguard – to reinforce the trade-policy discrimination already in existence because of Canada's DTAs.

2. CANADA'S USE OF ANTI-DUMPING

Economists criticise anti-dumping as standard import protection that in practice has little to do with economically worrisome predatory behaviour on the part of exporters. Nevertheless, its use has proliferated across the WTO membership to developed and developing countries alike. While Canada's use of anti-dumping is certainly not as well-studied as that of the United States or even the European Union, Canada ranks as one of the most active 'historical users' of the policy instrument. It trailed only the United States, Australia and the EU in the number of anti-dumping investigations undertaken between 1981 and 2001, having contributed to over 10 per cent of all investigations undertaken globally during the period (Zanardi, 2004). Even with the surge in anti-dumping use during the WTO period by developing countries such as Argentina, India and South Africa, data from the *Global Anti-dumping Database* (Bown, 2006) indicates that Canada still ranked as the seventh most active user during the 1995–2004 period, having implemented five per cent of all anti-dumping measures imposed by WTO members.

When it comes to the question of any discrimination inherent in Canada's trade policy, however, the *composition* of foreign countries affected by its use of anti-dumping is even more interesting than the total number of anti-dumping investigations or measures imposed. Table 1 summarises the data underlying Canadian anti-dumping investigations against its most frequently targeted trading partners over three different sub-periods: Panel A, the pre-CUSFTA period of

[6] For a discussion of the role of the CITT in the anti-dumping, global safeguard and China-specific safeguard processes in Canada, see CITT (2007a).

TABLE 1
Canadian Anti-dumping (AD) Against Its Most Frequently Investigated Trading Partners

Panel A: 1985–1988 (pre-CUSFTA)

Country	*AD Investigations (Per cent share of total AD investigations)*	*Investigations Resulting in AD Measure (Per cent share of total AD measures)*	*Per Cent Share of Canada's Total Import Market in 1987 (Rank)*
Total	98	61	100.0
United States	22 (22.4)	10 (16.4)	68.4 (1)
Non-United States	76 (77.6)	51 (83.6)	31.6
Japan	11 (11.2)	7 (11.5)	6.5 (2)
Korea	9 (9.2)	5 (8.2)	1.7 (6)
Germany	8 (8.2)	7 (11.5)	3.0 (4)
Taiwan	6 (6.1)	4 (6.6)	1.7 (5)
United Kingdom	5 (5.1)	4 (6.6)	3.7 (3)
Brazil	4 (4.1)	3 (4.9)	0.6 (14)
France	3 (3.1)	2 (3.3)	1.3 (8)
Sweden	3 (3.1)	2 (3.3)	0.8 (11)
Poland	3 (3.1)	2 (3.3)	0.1 (49)
Other	24 (24.5)	15 (24.6)	12.2

Panel B: 1989–1993

Country	*AD Investigations (Per cent share of total AD investigations)*	*Investigations Resulting in AD Measure (Per cent share of total AD measures)*	*Per Cent Share of Canada's Total Import Market in 1992 (Rank)*
Total	108	73	100.0
United States	25 (23.1)	16 (21.9)	66.6 (1)
Non-United States	83 (76.9)	57 (78.1)	33.4
Germany	7 (6.5)	4 (5.5)	2.4 (4)
United Kingdom	6 (5.6)	4 (5.5)	2.8 (3)
Brazil	5 (4.6)	5 (6.8)	0.5 (15)
Taiwan	5 (4.6)	4 (5.5)	1.7 (7)
Romania	4 (3.7)	4 (5.5)	0.0 (68)
Italy	4 (3.7)	3 (4.1)	1.2 (10)
Czech Republic	4 (3.7)	3 (4.1)	0.0 (53)
France	4 (3.7)	2 (2.7)	1.9 (6)
India	3 (2.8)	2 (2.7)	0.2 (30)
Other	41 (38.0)	26 (35.6)	22.7

TABLE 1 *Continued*

Panel C: 1994–2004

Country	*AD Investigations (Per cent share of total AD investigations)*	*Investigations Resulting in AD Measure (Per cent share of total AD measures)*	*Per Cent Share of Canada's Total Import Market in 1999 (Rank)*
Total	138	89	100.0
United States	16 (11.6)	10 (11.2)	68.2 (1)
Non-United States	122 (88.4)	79 (88.8)	31.8
China	19 (13.8)	12 (13.5)	2.8 (5)
Taiwan	8 (5.8)	4 (4.5)	1.5 (8)
Korea	7 (5.1)	5 (5.6)	1.2 (9)
India	5 (3.6)	3 (3.4)	0.3 (24)
South Africa	5 (3.6)	3 (3.4)	0.2 (30)
France	4 (2.9)	4 (4.5)	1.7 (7)
Russia	4 (2.9)	3 (3.4)	0.2 (32)
Indonesia	4 (2.9)	2 (2.2)	0.3 (26)
Brazil	4 (2.9)	2 (2.2)	0.4 (15)
Other	62 (44.9)	41 (46.1)	23.2

Note:
Canadian anti-dumping data compiled by the author from individual CITT reports and made publicly available in Bown (2006), import data from Feenstra et al. (2005).

1985–1988; Panel B, the initial CUSFTA period of 1989–1993; and Panel C, the NAFTA period of 1994–2004.[7]

The first item to note in the table is that while Canadian imports from all sources may have grown over this time period, US exports to Canada as a share of Canada's total imports have remained very stable across the three sub-samples: 68.4 per cent in 1987, 66.6 per cent in 1992 and 68.2 per cent in 1999. Since the use of anti-dumping against exporters from a particular country is contingent on Canadian firms being injured by imports from that country, a natural expectation is that countries that export more to Canada should be more frequent targets of Canadian anti-dumping activity, *ceteris paribus*.

Nevertheless, Table 1, Panel A, indicates that even before the CUSFTA, in comparison with the admittedly crude measure of import market shares, the United States does not appear to have faced its 'fair share' of Canadian anti-dumping actions. For example, over the 1985–1988 period, while US exports to Canada were roughly 68 per cent of Canada's total imports, US firms were the subject of only 22.4 per cent of Canadian anti-dumping investigations, and only 16.4 per cent

[7] The data used in this section has been compiled by the author from the Canadian International Trade Tribunal (CITT) and is publicly available as Bown (2006). While certainly the 'NAFTA period' is still ongoing, the complete data is only collected through 2004.

of the cases that resulted in the imposition of anti-dumping measures.[8] Interestingly, in the period directly after the CUSFTA was implemented, while US export share in the aggregate dipped slightly to 66.6 per cent of Canadian imports by 1992, US exporters still faced 23.1 per cent of anti-dumping investigations, but now a slightly higher share of all anti-dumping measures imposed, at 21.9 per cent.[9] Nevertheless, one cannot reasonably attribute a particularly low rate of anti-dumping actions against the United States after the formation of CUSFTA/NAFTA as being caused by formation of the DTAs, as the US rate was low before their formation as well.

Despite the consistently low rate of Canadian anti-dumping activity against the United States relative to other exporting countries over the years of the sample, Panel C of Table 1 indicates a potentially sharp decrease in activity against the United States relative to the earlier periods. Specifically, whereas US exports continue to maintain their relative dominance of the Canadian import market with a 68 per cent share by 1999, for the 1994–2004 period as a whole, the United States has become a less frequent target, relative to other exporters to Canada. Over these 10 years, US exporters were the target of only 11.6 per cent of Canadian anti-dumping investigations, which is roughly half as much as the 22.8 per cent share of all Canadian investigations that targeted US firms in the pre-1994 period.

While this is certainly not evidence that the formation of CUSFTA/NAFTA caused Canada to increase anti-dumping activity against non-DTA member countries relative to the US, the pattern in the data does raise some concerns. One possibility is that, with the formation of the DTAs and the increased trade and integration of the US and Canadian economies, political-economic forces conspired to increase the pressure on member country policymakers to impose additional trade barriers against non-member countries. This data certainly raises the question of whether the formation of such a DTA caused Canadian policymakers to use anti-dumping measures to shield not only Canadian producers from import competition, but also the US exporters that have to compete with other foreign suppliers in the Canadian market as well.

3. CANADA'S GLOBAL SAFEGUARD POLICY

A second example of a WTO-consistent trade remedy that can result not only in a discriminatory outcome, but also one that raises discriminatory barriers

[8] There are many potential explanations for this underlying phenomenon. For example, it could be because US exports to Canada are in less-politically sensitive sectors, or US exports are in industries where it might be procedurally difficult to find evidence of dumping.

[9] Some of the increase in anti-dumping measures imposed against the US may be associated with a wave of retaliatory anti-dumping actions by Canada in 1992–1993 following the US imposition of anti-dumping duties on steel imports from a number of countries, including Canada.

TABLE 2
Canada's Global-safeguard Inquiries under the WTO

	Product under Inquiry	*Date of Inquiry*	*Outcome*
1.	Certain Steel Goods (GC-2001-001)	21 March, 2002	CITT recommended tariff rate quota, no measure imposed
2.	Bicycles and Finished Painted Bicycle Frames (GC-2004-001 and GC-2004-002)	22 November, 2004 and 3 March, 2005	CITT recommended 30 per cent import surtax with country and product exclusions, no measure imposed
3.	Unmanufactured Bright Virginia Flue-cured Tobacco (GC-2005-001)	17 October, 2005	CITT commenced an inquiry, but terminated it after the petitioner withdrew support for the complaint

Note:
Data compiled by the author from reports posted at CITT's website, as of 15 February, 2007.

against non-DTA members, is application of a country's 'safeguard' policy. In principle, when compared to action taken under the anti-dumping statute, safeguard import restrictions differ both in the evidence required for their use and the form of their application. First, use of a safeguard requires no evidence of any statutorily 'unfair' (i.e. like 'dumping') activity being undertaken by foreign exporters, but it does require evidence of the domestic industry passing a higher 'injury' threshold than is necessary for anti-dumping. On the other hand, a global safeguard trade policy is statutorily described as being applied on an MFN basis, i.e. through the non-discriminatory application of a trade restriction of an incoming product regardless of the source of the imports. Anti-dumping measures, in contrast, are country-specific (more precisely, exporting firm-specific) and inherently discriminatory. Nevertheless, I will show here that even the non-discriminatory safeguard trade policy can have important discriminatory elements in effect, depending on how trade policymakers apply it in practice.

Like most WTO members, Canada has not been a frequent historical user of safeguard provisions, instead implementing administered protection in the form of anti-dumping. As Table 2 indicates, as of the end of 2006, Canada had only launched three distinct global safeguard investigations since the commencement of the WTO period in 1995.[10] While two of the three inquiries found evidence of imports caused by injury and resulted in the CITT making an explicit recommendation in favour of implementing safeguard protection, the Canadian government

[10] Technically, *Bicycles* (GC-2004-001) and *Finished Painted Bicycle Frames* (GC-2004-002) were initiated as two separate inquiries, though they were consolidated and the CITT presented a single final report and remedy recommendation.

decided against imposing definitive import-restricting measures in each of the three cases.

Nevertheless, given the transparency of the safeguard investigation process in Canada, it is still an instructive exercise to study how the safeguard protection would have been implemented in these cases if based on CITT's recommendations. As a policy matter, such information is also useful given that any potential tightening of the rules of the anti-dumping provisions resulting from WTO negotiations could shift pressure for administered trade policy onto alternative and substitutable policy instruments, such as safeguards.[11] Furthermore, while Canada may not have utilised its global safeguard provisions frequently thus far, two of the recent investigations and remedy recommendations illustrate precisely how this supposedly non-discriminatory policy instrument can be structured to have quite a discriminatory impact in practice.

a. Implementing a Global Safeguard as a Quota – The Certain Steel Goods *Case*

The 2001–2002 *Certain Steel Goods* (GC-2001-001) Canadian safeguard investigation and remedy recommendation provides a first interesting case study to illustrate the implicitly discriminatory elements of even a supposed non-discriminatory trade policy. While the Canadian government ultimately did not choose to implement any trade restrictions in the *Certain Steel Goods* case, I will examine the trade remedy recommendation made by the Canadian International Trade Tribunal after its investigation (CITT, 2002). I describe the implications of its trade policy recommendation as if it had been imposed, in order to shed light on one way through which discriminatory treatment can arise.

In *Certain Steel Goods* the CITT recommended that the Canadian government impose trade restrictions in the form of a tariff-rate quota (TRQ), which is a particular type of a quantitative restriction on imports. When the trade barrier takes the form of quantitative restriction, the policymaker must not only decide on the size of the import quota, but the policymaker also must have a decision rule for how to allocate shares of permissible imports when there are multiple exporting countries, which was the case here. In *Certain Steel Goods*, the CITT recommended that the US exporters receive a well-defined share of the quota for each of the four products that were recommended to be hit with the safeguard:

[11] An alternative motivation is that an industry that fails to receive protection under one policy instrument may seek it under another. An example is the domestic 'Outdoor Barbecue' industry in Canada which, after failing to receive protection under both Canada's anti-dumping law (insufficient dumping margin determination) and its countervailing duty law (insufficient amount of subsidy determination) in November 2004, sought protection by initiating an inquiry in May 2005 under Canada's China-safeguard policy discussed below.

TABLE 3
Canada's Import Market Shares for Angles, Shapes and Sections under the 2002 CIIT Steel Safeguard Investigation

Country	*Actual Market Shares (Per cent)*						*Safeguard-recommended Shares under the Proposed TRQ (Per cent), based on 1997, 1998 and 2001 Average†*
	1996	*1997*	*1998*	*1999*	*2000*	*2001*	
United States	86.3	83.1	67.2	65.8	48.7	61.0	72.0
Korea	0.0	0.0	1.2	4.1	13.5	9.4	3.9
Turkey	0.1	0.5	5.9	7.2	5.5	7.8	5.1
Japan	0.0	0.0	5.2	2.8	13.9	0.6	2.0
United Kingdom	3.0	5.3	5.9	4.4	3.0	2.1	4.4
Other	10.6	11.1	14.6	15.8	15.6	19.1	12.5

Note:
Data compiled by the author from Table 43 of CITT (2002, p. 162). †Calculated from Table 43 data as (Σ country exports to Canada in 1996, 1997 and 2001)/(Σ Canada total imports in 1996, 1997 and 2001), formula as described in CITT (2002, p. 257).

'discrete plate' (64 per cent), 'cold rolled sheet and coil' (64 per cent), 'angles, shapes and sections' (72 per cent) and 'standard pipe' (73 per cent).

What guides the policymaker in deciding how much of the import quota to allocate to each different export source in the application of a safeguard? That is, how did the CITT come up with the recommendation that the United States would receive 72 per cent of the 'angles, shapes and sections' quota, while all other exporters to Canada would receive only 28 per cent? While the WTO generally discourages the use of quantitative restrictions in favour of tariffs, when a country nevertheless chooses to implement a TRQ, WTO rules suggest that market-share allocations during the safeguard period be based on the average market shares in a previous representative period, which is usually the three years prior to the investigation.[12]

To investigate the discriminatory implication of such a market-share allocation rule, Table 3 focuses on 'angles, shapes and sections' imports, which was one specific class of steel products recommended to receive import protection in the *Certain Steel Goods* case. For these products, the CITT recommended that the

[12] See the discussions of Bown and McCulloch (2003 and 2004), which also provide a more general empirical analysis illustrating the point made below, that the formulation of the safeguard trade policy as a quantitative restriction based on historical market shares can lead to implicit discrimination against recent entrants (or otherwise recent fast-growing suppliers) and in favour of historical suppliers.

2002 safeguarded market shares be based on the historical market shares from imports during years 1997, 1998 and 2001 – i.e. excluding 1999 and 2000.[13]

A direct consequence of determining market shares based on historical averages is that new entrants into the market are penalised, while a country whose market share has been declining, perhaps because of a loss in competitiveness or comparative advantage, is rewarded. The situation facing US exports of 'angles, shapes and sections', illustrated in Table 3, directly reflects this phenomenon. Had the 2002 TRQ steel safeguard recommendation gone into effect, the United States would have been rewarded with a 72 per cent share of the Canadian import market under the safeguard, even though its export share had been trending downward and was only 61 per cent by 2001. On the other hand, exporting countries whose market share had been increasing prior to the safeguard would have seen their import market share cut sharply as a result of the safeguard.[14] In this case, had the safeguard proposal been implemented, Korea would have seen its market share fall from 9.4 per cent in 2001 to 3.9 per cent under the safeguard, while Turkey would have seen its market share fall from 7.8 per cent in 2001 to 5.1 per cent under the safeguard.

Note that any discrimination in 'rewarding' the United States with a higher import market share would not necessarily have taken place under one particular counterfactual – i.e. had any proposed safeguard been implemented as an *ad valorem* tariff rather than a quantitative restriction. Under an *ad valorem* tariff, market forces determine which countries would supply Canada's safeguard-limited market, not a policymaker's formula.[15]

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[13] The explicit formula as described in CITT (2002, p. 257) is ($\sum$ country exports to Canada in 1996, 1997 and 2001)/($\sum$ Canada total imports in 1996, 1997 and 2001).

[14] Exporting countries could be increasing their market share for any number of reasons, including a shift in comparative advantage (caused by, say, technological advances or productivity improvements) or exchange-rate fluctuations. The underlying reason for such changes is statutorily inconsequential to both the use and the form of any safeguard measure imposed.

[15] There were a number of other potentially discriminatory elements of the safeguard recommendation. First, the CITT also set in motion a procedure for specific product exclusions (Chapter XIV of CITT, 2002, pp. 264–66). If this had followed the US model for product exclusions in its 2002 steel safeguard, presumably foreign exporters and domestic consumers would have been able to petition the Canadian government to have a particular product exempted from the list of goods facing a trade restriction. In this case, the actual trade policy imposed could have been even more discriminatory, as product-specific exclusions would allow the Canadian government not only to provide implicit preferential access to particular countries, but even more narrowly, to provide implicit preferential access to particular foreign firms or even particular products of those firms. See Bown (2004) for a discussion of the implication of specific product exclusions in the 2002 application of the US steel safeguard. Second, the CITT recommended that Mexico, Israel and Chile (Canada's other DTA partners) be excluded from the safeguard trade restrictions altogether. The CITT also recommended, as is required by the WTO Agreement on Safeguards, that developing countries with only *de minimus* shares of the market also be excluded from the safeguard. I discuss the discriminatory impact of this sort of exclusion in more detail in the next section. Bown and McCulloch (2003 and 2004) empirically examine the implication of developing country and DTA-member country exclusions in other actual safeguard applications.

b. Implementing a Global Safeguard with Country Exclusions – The Bicycles *Case*

The 2004–2005 Canadian safeguard inquiries into imports of *Bicycles* and *Finished Painted Bicycle Frames* (GS-2004-001 and GS-2004-002) present a second example in which policymakers can introduce discriminatory elements into a safeguard application. Despite the CITT finding evidence of injury to the domestic industry caused by imports, the Canadian government ultimately chose not to implement any trade restrictions in *Bicycles*. Nevertheless, I examine the likely impact of the trade remedy recommendation made by the CITT after its investigation (CITT, 2005a) as if the proposal had been implemented.

In the case of *Bicycles*, the CITT's trade remedy recommendation was for the Canadian government to apply an additional MFN *ad valorem* surtax of 30 per cent on imports of bicycles subject to the investigation. This surtax would then have been reduced to 25 per cent after the first year and to 20 per cent after the second year. These import surtaxes would have been applied on top of the 13 per cent MFN tariff that Canada applied to bicycle imports under its normal schedule.[16]

Nevertheless, while the basic trade restriction was to be implemented as an MFN surtax, the CITT also recommended a number of exporting countries be exempted from the policy.[17] In particular, imports from DTA partners (US, Mexico, Israel and Chile) were exempted from the tariff, as were imports from developing countries that were *de minimus* suppliers. This second category of exemptions for *de minimus* supplier developing countries is justified under WTO rules[18] and is internally consistent with the WTO's attitude toward policies such as the Generalised System of Preferences (GSP). On the other hand, the WTO-legality of exempting DTA partners from application of a safeguard is still questioned, as the issue has been the subject of litigation in WTO dispute settlements on a number of occasions.

Table 4 presents data on the import market shares of the primary suppliers of bicycles to the Canadian market over the 2000–2005 period.[19] The top panels

[16] For 2004, the WTO's Integrated Database reports Canada as applying the following tariffs for bicycles in category HS 87120000: 0 per cent NAFTA tariff for US and Mexico, 13 per cent MFN tariff, and 8.5 per cent General Preferential Tariff for developing countries.

[17] The proposal also recommended some specific products be excluded, but I will not examine the discriminatory implication of that proposal here.

[18] In particular, see Article 9.1 of the WTO Agreement on Safeguards, which requests that safeguard-imposing countries exempt developing countries that have less than a three per cent market share provided collectively the developing countries have less than a nine per cent market share.

[19] The data in this table does not exactly reflect the subject imports under investigation in the case as it is taken from six-digit HS import data available from an external source – Comtrade. Nevertheless, the pattern to the year-to-year changes in the import market shares in Table 4 is consistent with the pattern in the data reported in CITT (2005a, Appendix V). I was not able to use data on subject imports from CITT (2005a), as the report omitted import data for some of the substantial suppliers, including the United States and Taiwan.

TABLE 4
Market Shares and Recommended Country Exclusions in CITT's 2005 Safeguard Proposal for *Bicycles*

Exporting Country	*Actual Canadian Import Market Shares, Volumes (Per cent)*					
	2000	*2001*	*2002*	*2003*	*2004*	*2005*
Examples of countries excluded from the proposed 2005 safeguard						
DTA partners						
United States	14.5	9.1	3.3	1.7	1.5	1.7
Mexico	2.2	5.3	2.8	6.0	0.6	3.1
***De minimus* developing countries**						
Bangladesh	0.0	0.0	0.0	0.0	0.0	3.0
Indonesia	9.0	2.5	0.5	1.3	0.9	2.2
Examples of countries subject to the proposed 2005 safeguard						
Taiwan	19.2	12.4	11.7	17.0	15.1	9.1
China	40.8	51.6	60.1	48.6	46.5	63.7
Vietnam	1.1	2.4	4.9	12.5	27.7	11.0
Philippines	3.0	9.4	8.1	5.4	5.4	2.7
Thailand	9.1	6.4	8.2	7.2	2.1	3.2
Other	1.1	1.0	0.4	0.4	0.3	0.1

Exporting Country	*Actual Canadian Import Market Shares, Values (Per cent)*					
	2000	*2001*	*2002*	*2003*	*2004*	*2005*
Examples of countries excluded from the proposed 2005 safeguard						
DTA partners						
United States	19.8	15.2	14.7	12.3	10.9	13.4
Mexico	1.9	3.1	2.5	3.2	0.3	1.6
***De minimus* developing countries**						
Bangladesh	0.0	0.0	0.0	0.0	0.0	1.8
Indonesia	4.6	1.4	0.3	0.6	0.3	1.2
Examples of countries subject to the proposed 2005 safeguard						
Taiwan	36.6	27.6	23.7	28.0	26.4	26.0
China	30.5	38.8	43.0	38.4	36.6	44.6
Vietnam	1.0	3.0	4.3	9.7	20.6	8.2
Philippines	2.2	7.1	6.7	3.6	3.4	1.4
Thailand	2.5	2.2	3.5	3.2	1.0	1.5
Other	1.0	1.5	1.3	1.1	0.5	0.4

Notes:
Excluded and non-excluded countries taken from CITT (2005a). Import data compiled by the author from Comtrade based on HS category 871200.

illustrate import market shares based on volume data, while the bottom panels illustrate import market shares based on values data. The nine exporting countries in the table supplied 99 per cent of the Canadian import market over this period, whether measured by volumes or values. I separate the nine exporters in each panel into two categories – those that would have been excluded from the import restriction under the proposed Canadian safeguard (DTA partners or *de minimus* developing countries), and those that would have been subject to the trade restriction.

As the investigation over *Bicycles* took place in 2005, the CITT was making its decision of whether injury was caused by imports based on evidence from the 2001–2004 period. One of the arguments that CITT made for exempting the US and Mexico from the proposed 30 per cent safeguard tariff was that these countries were not among the top five suppliers of the import market during the period of investigation (CITT, 2005a, p. 29). As the table indicates, this statement is correct when market shares are measured on a *volume* basis. On the other hand, when measured on a *value* basis, the US was the third largest foreign supplier of bicycles to Canada for most of the period. Interestingly, while the US share of the Canadian import market did fall precipitously between 2000 and 2004 when measured on a volume basis, the decrease when measured on a value-basis was not nearly as dramatic.[20]

This data reveals the likelihood that, in addition to the Canadian bicycle industry, historical US exporters of bicycles were also adversely affected by increased foreign competition as they were losing a substantial share of the Canadian import market. Thus, US exporters could have benefited substantially from additional preferential access to the Canadian market that would have arisen under the CITT proposal: US exporters would have continued to receive free trade in bicycles (i.e. the 0 per cent NAFTA tariff + 0 per cent import surtax under the safeguard because of the country exclusion), whereas non-excluded foreign producers would have had to face a 13 per cent MFN tariff plus a 30 per cent import surtax under the safeguard.[21] Thus, a safeguard policy imposed as a tariff that included a US exemption would have benefited US exporters in *Bicycles* in a manner similar to the tariff rate quota market share allocation in the *Certain Steel Goods* case discussed in the last section. In both recommendations, a potentially non-discriminatory safeguard policy application would have been implemented so as to give discriminatory access to a DTA partner country. By increasing trade barriers against non-DTA members, the effect would have been to further increase the preference the country already received through the terms of the DTA.

[20] One likely explanation is that US-based manufacturers were increasingly concentrating their exports to Canada into the high-end models of the bicycle market (e.g. Cannondale and Trek), ceding the market for low-priced models (the variety of most concern in the *Bicycles* investigation) to increased imports from developing countries such as China and Vietnam.

[21] Some non-excluded developing countries likely would have received the General Preferential Tariff of 8.5 per cent plus the 30 per cent import surtax under the safeguard.

4. CANADA'S CHINA-SAFEGUARD POLICY

A third example of a potentially WTO-consistent, but discriminatory trade remedy is the new 'China-safeguard' policy that existing WTO members were given access to as part of the terms of China's 2001 WTO accession.[22] The China safeguard has similarities and differences with both the global safeguard and the anti-dumping policy discussed in the last sections. Like the global safeguard, a domestic Canadian industry must only demonstrate evidence of injury caused by imports in order for its government to be able to impose a WTO-consistent 'China-safeguard' trade restriction, whereas the industry must also show evidence of unfair (dumped) imports to use anti-dumping. On the other hand, unlike the global safeguard, the China-safeguard policy is discriminatory by design, as it can only be applied to restrict imports from China. According to reports compiled from the WTO Committee on Safeguards, at least nine different WTO members have initiated China-specific safeguard investigations under the 'Transitional Product-specific Safeguard Mechanism' since 2002, with at least five members (Colombia, the EU, Peru, Turkey and the United States) implementing definitive trade restrictions under this policy at least once (Bown, 2007).[23]

Table 5 indicates that, as of the end of 2006, Canadian policymakers had faced three different inquiries by domestic interest groups seeking import protection from China under this new safeguard policy. None of the three cases resulted in the Canadian government applying an import restriction, each for different reasons. Nevertheless, the *Outdoor Barbecues* investigation in particular is an interesting case study because the CITT investigation found evidence of injury to the domestic industry associated with Chinese imports, and the CITT recommended the application of a trade restriction in the form of a 15 per cent import surtax on Chinese-produced barbecues for three years (CITT, 2005b). While the Canadian government declined to implement the CITT recommendation and did not impose any additional trade restrictions on China's exports of barbecues, it is instructive to examine the discriminatory implications of the *Outdoor Barbecues* case as if the trade restriction had been applied in the form proposed by the CITT.

[22] Any WTO importing country can use this 'Transitional Product-specific Safeguard Mechanism' (Section 16, WTO, 2001) against China's exports until 2014. WTO members can use a related transitional safeguard for textiles and apparel exports from China until 2008.

[23] Furthermore, relative to other trade remedies permitted in the WTO system, the evidentiary criteria for justifying use of the China safeguard are also weaker. In particular, the WTO now allows for a second WTO member to automatically (i.e. without its own injury investigation) implement a China-safeguard once a first WTO member has done so under the threat of 'trade deflection'. For a discussion, see Bown and Crowley (2005). Canada appears well-poised to take advantage of this potential opportunity for implementing a China-safeguard (CITT, 2007b), especially given that a number of other WTO members have already implemented their own restrictions under the provision.

TABLE 5
Canada's China-safeguard Inquiries

Product	*Date of Inquiry*	*Outcome*
1. Outdoor Barbecues (CS-2005-001)	30 May, 2005	CITT recommended 15 per cent import surtax recommended, no measure imposed
2. Textile and Apparel Goods (CS-2005-002)	7 July, 2005	CITT found against commencing an investigation on the grounds that UNITE HERE Canada did not have 'standing' as a domestic producer
3. Residential Furniture (CS-2005-003)	28 October, 2005	CITT found against commencing an inquiry as the complaint was not properly documented

Note:
Data compiled by the author from reports posted at CITT (2007c) as of 15 February, 2007.

As is by now familiar, a discriminatory trade restriction that only targeted Chinese producers would imply preferential access to the Canadian market for all non-Chinese producers. This would include additional preferential access to producers in DTA members such as the United States and Mexico, i.e. producers that were already receiving preferential access to the Canadian market under the NAFTA.[24] On its face, we would expect such a policy to be welcomed by DTA-based manufacturers of barbecues, especially given the implications of the data presented in Table 6. In the Canadian import market for barbecues, the general trend for the 2002–2005 period – whether measured by volume or value of barbecues – was a steady erosion of market share from DTA partners such as the US and Mexico and an increase in market share to imports from China. US exporters experienced not only an erosion in Canadian import market share, but their actual yearly export volumes *decreased* over this period, despite the Canadian barbecue import market doubling in size between 2002 and 2005.

Nevertheless, an interesting twist in *Outdoor Barbecues* involves the role played by Char-Broil, a major US manufacturer of barbecues and a substantial historical exporter to the Canadian market. Despite the implication that US barbecue producers would have received implicit preferential access to the Canadian market (relative to Chinese competitors) if the CITT's proposed China-safeguard 15 per cent import surtax were applied, Char-Broil actually sided with the Chinese

[24] For 2005, the WTO's Integrated Database reports Canada applying the following tariffs for outdoor barbecues in category HS 73211190: zero per cent NAFTA tariff for the US and Mexico, eight per cent MFN tariff, and five per cent General Preferential Tariff for developing countries.

TABLE 6
Market Shares in CITT's 2005 China-safeguard Investigation of *Outdoor Barbecues*

Exporting Country	*2002*	*2003*	*2004*	*2005*
Actual Canadian Import Market Shares, Volumes (Per cent)				
United States	53.1	39.1	26.0	16.7
China	38.9	55.1	64.9	74.0
Mexico	1.2	0.9	0.7	0.6
Other	6.8	4.9	8.4	8.7
Actual Canadian Imports, Volumes (Units)				
United States	430,312	383,180	315,231	278,989
China	315,501	540,030	788,851	1,238,350
Mexico	9,892	8,753	8,722	10,204
Other	55,433	48,196	101,772	146,099
Total	811,138	980,159	1,214,576	1,673,642
Actual Canadian Import Market Shares, Values (Per cent)				
United States	73.8	58.9	52.7	48.9
China	15.2	34.9	41.0	44.8
Mexico	4.6	2.4	2.5	2.6
Other	6.4	3.8	3.8	3.7

Note:
Import data for barbecues compiled by the author from Comtrade based on HS category 732111.

exporters during the 2005 Canadian investigation.[25] Char-Broil's rationale was clear: it had announced in August 2004 that it intended to close all its US manufacturing facilities and move its entire manufacturing operations offshore to China by 2007 (CITT, 2005b, p. 32). Thus under the proposed China safeguard, Char-Broil's Chinese production facilities would have found their 2007 exports to Canada on the wrong end of a discriminatory import surtax.

I do not claim that the Canadian government decided against implementing the CITT's recommendation of a 15 per cent import surtax under Canada's China-safeguard policy simply because of the political-economy pressure applied by the US-based multinational corporate interests of Char-Broil. This example within *Outdoor Barbecues* merely highlights the complexity of political-economic pressures facing Canadian policymakers who confront demands for and against discriminatory application of protection – not only from domestic industries, but also the industries of DTA partner countries such as the United States.

[25] Furthermore, Char-Broil requested product exclusions and/or a company-wide exclusion in the case that the Canadian import surtax on China's exports ended up being applied.

5. CONCLUSION

The world trading system is threatened by the seemingly accepted proliferation of discriminatory trade agreements and discriminatory use of trade policy. While much attention has been drawn to the most overt of these policies, DTAs such as CUSFTA and NAFTA, other examples of discriminatory treatment are equally worrisome, perhaps because they are so subtle. These include the imposition of country-specific anti-dumping measures and the China-safeguard policy, and even the implicitly discriminatory impact of the *seemingly* non-discriminatory trade policy of a global safeguard, if it is applied in just the 'right' way.

Furthermore, there is increasing evidence that concern for the stumbling-block effects of DTAs are well-founded – i.e. that the formation of DTAs both encourage additional discriminatory behaviour reinforcing the initial pattern of discrimination and discourage non-discriminatory multilateral trade liberalisation. As non-discrimination in the form of most-favoured-nation treatment is one of the fundamental pillars of the GATT/WTO system, the proliferation of explicit and implicit discriminatory trade-policy actions threatens to reverse the gains that have been achieved through nearly 60 years of *multilateral* negotiations and cooperation.

The results for Canada in its battle to uphold non-discriminatory treatment are mixed. On one hand, Canada has allowed overt discrimination to creep into its trade policy actions through the formation of its DTAs. Furthermore, I have identified how Canadian anti-dumping policies may be implicitly extending trade preferences on imports from the United States beyond the levels already conferred under CUSFTA or NAFTA. On the other hand, there are areas in which the Canadian government has successfully withstood interest group calls for additional discrimination. By examining the cases of *Certain Steel Goods*, *Bicycles* and *Outdoor Barbecues*, I have illustrated three instances in which Canadian policymakers at the CITT *recommended* the imposition of a trade restriction – through either application of a global safeguard or a China-safeguard policy – that was structured in a manner which would have implicitly granted US exporters additional discriminatory (preferential) access to the Canadian market beyond that which they already receive through NAFTA. While in each instance the Canadian government declined to implement the proposal, continued vigilance against the imposition of even these subtle forms of discrimination is important going forward.

The problem facing a country like Canada is that providing increased preferential treatment to a DTA partner when political forces are demanding additional protection from injurious imports shifts more of the overall burden of this pressure onto non-DTA members. It raises trade barriers on non-partners to levels that are higher than would be the case if imports from all sources were equally affected on an MFN basis. Shifting the pressure onto non-members is inconsistent

with the spirit of the GATT/WTO exception permitting DTAs, which mandates that members should not raise trade barriers against outsiders.

In the end, why should Canada be concerned that DTA formation might lead to the subtle manipulation of anti-dumping and safeguard policies in ways that reinforce what is already discriminatory treatment and that generate even higher trade barriers against outsiders? Perhaps the most compelling argument is that while Canada is obviously a member of its own DTAs, Canada is a *non-member* of many more DTAs in the world trading system. And wherever Canada is a non-member of a DTA, its only line of defence against increasingly less favourable terms of access to those markets as an outsider is the most-favoured-nation requirement demanded by the WTO rules. To the extent that its own trade policy actions weaken the standing importance of the MFN principle internationally, Canada stands to suffer the consequences through the deterioration of access to all markets where it is not a DTA member country.

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