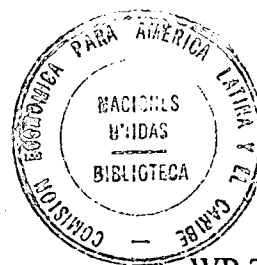


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Non-Tariff Measures in Hemispheric FTA Negotiations

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GATT Secretariat

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NON-TARIFF MEASURES IN HEMISPHERIC FTA NEGOTIATIONS

I. Introduction

1. The notion of a hemispheric free trade agreement (FTA) in the Americas, unthinkable even five years ago, has become a practical possibility largely because of the extent of economic reform that has taken place in the developing countries of the region. It has also become a political possibility because of the process of democratization in the region. Following experience from negotiations in the Canada-U.S. FTA and in NAFTA, the center piece of negotiations will be the negotiations on non-tariff measures. What exactly is entailed and how will the issues be resolved?

2. It is assumed that the ultimate objective is to establish a full FTA, with essentially duty free unrestricted movement of goods originating within the area. It is possible that there may be certain exceptions and there will be a grace period for the changes. Nevertheless, it seems unlikely that either the U.S. or Canada would participate in anything short of substantial free trade, and this is also necessary to meet the requirements of Article XXIV of the GATT. The notion of a hemispheric FTA as some kind of expanded ALADI with all its complex sectoral deals, compensation arrangements, etc., does not seem very likely or desirable. Even MERCOSUR, which was notified to GATT under Part IV, concerning Trade and Development, will be subject to something like the same level of scrutiny in the GATT as if it were an agreement among industrial countries under Article XXIV. Thus, the much less forgiving attitude that has been evident in recent accessions to GATT is all the more likely to be evident in the case of an arrangement involving the United States and Canada, particularly when there is concern among some GATT members that the trend to regionalism is regarded as a challenge to the GATT system itself.

3. Many NTMs have been eliminated in countries of the region, and this will greatly facilitate the negotiations. The success in their elimination, without provoking major import surges, will provide a useful demonstration effect to countries which still make use of such measures. Nevertheless, remaining NTMs, as applied by the U.S. and Canada as well as the developing countries of the region, will still constitute the major problem area for the negotiations. Apart from eliminating prohibitions, quotas, licensing systems, administered prices, etc., both for imports and exports, NTM negotiations will also focus on agreed codes of behavior covering the use of standards, customs valuation, anti-dumping, etc. (This is apart from areas such as intellectual property, services, etc. which are not the subject of this paper, although inevitably mentioned from time to time).

4. A full FTA also means that extensive and prolonged use of NTMs for balance of payments (BOP) reasons will most likely be ruled out, so there are also likely implications for exchange rates, freedom of conversion of currencies, interest rates and fiscal policies. Such issues may be taken up as part of the consultative machinery which will most likely be established to monitor progress and resolve differences.¹ This takes on special importance in a hemispheric FTA because of the different stages of development and of economic liberalization, even among the developing countries of the region.

5. It is argued that, if the use of NTMs within the FTA is essentially ruled out, the need to quantify their effects is substantially reduced. This is because an FTA is not the same as GATT

¹Recognition of the need to co-ordinate macro-economic policy in the context of MERCOSUR shows that the participants are highly conscious of the fact success depends to a considerable extent on the achievement of greater macro-economic stability.

negotiations or a customs union. In multilateral negotiations, the objective is typically to achieve a fixed percentage or level of reduction on existing protection whatever it happens to be among different partners.² In a customs union, a common external barrier has to be established that, according to GATT, should not be higher than the average prevailing prior to the customs union. Nevertheless, there may be a need to ensure fixed, equal reductions in the tariff equivalent of NTMs being eliminated to provide a certain level of market access in the adjustment period or to achieve a desired degree of adjustment at a measured pace.

6. The plan of the paper is as follows. First, Section II briefly defines what is meant by non-tariff measures and provide a categorization of such measures. Second, Section III discusses the effects of NTMs and how the effects can be measured. (Some technical details are provided in Annex I). One of the conclusions of this section is that, while many sophisticated techniques will be used for the analysis of an FTA, the measurement of the "price wedge" between domestic and world prices may have the most practical implications for the negotiations. It is less useful for commodities, in particular, where export subsidies distort world prices, but useful work has been done on quantifying the effects of such subsidies. In Section IV, there is a discussion of NTMs currently in use in the hemisphere, based on a brief review of trade régimes, provided in Annex II. This section shows that there have been important changes in the manner and product coverage of protection in the Western hemisphere in recent years, and that there are distinct differences in the types of NTMs used by the developed and developing countries of the region. This will help identify areas for negotiation, as well as likely sensitivities. In Section V we examine the way in which NTMs were handled in the NAFTA negotiations, which may provide guidance on the treatment of NTMs in negotiations on a hemispheric FTA. An important distinction is between "rules" negotiations, establishing procedures for the continued use of NTMs, such as anti-dumping, etc., and negotiations about the product coverage, timetables and procedures for the elimination of NTMs. Annex III complements this information with information on how NTMs have been handled in previous GATT negotiations. Section VI draws from the experience in previous negotiations and specifically lays out methodologies for phasing out NTMs not to be covered by rules. Finally, Section VII, building on the material of the earlier sections, discusses the likely scope of negotiations on non-tariff measures in the context of a hemispheric FTA, including rules, specific products, dispute settlement and a framework for ongoing consultations.

²Of course, GATT negotiations may also involve an attempt to eliminate an NTM, e.g., the attempt to phase out export subsidies in agriculture. However, the broad thrust of the agriculture negotiations in the Uruguay Round is to achieve a 30 per cent reduction in import barriers, whether they be converted to tariffs or the NTMs are progressively relaxed. Until the Kennedy Round invented the across-the-board approach, in the tariff negotiations the aim has been to achieve bilateral reciprocity in cuts between pairs of countries that were then extended to other GATT contracting parties by virtue of the m.f.n. principle.

II. What do we mean by NTMs?

7. It may be useful to focus the subsequent discussion to look briefly at what we mean by NTMs. This will assist in understanding what instruments are being used and why they are being used.

8. This paper refers exclusively to NTMs (non-tariff measures), which are also defined to include export restraints and production and export subsidies, or measures with similar effect. This is the term most widely used in GATT and UNCTAD, although economists generally prefer the terms "barriers" and "distortions".³ In the paper, the term NTM is used in the sense in which Baldwin (1970) defines "non-tariff distortion" as "any measure (public or private) that causes internationally trade goods and services, or resources devoted to the production of these goods and services, to be allocated in such a way as to reduce potential real world income". Of course, the introduction of the concept of potential real world income means that very often it is difficult to be sure what is a distortion without undertaking complex, even impossible, calculations. In the context of an FTA the principal area of concern are those NTMs which affect trade flows, whether between members of the FTA or non-members.

9. There is a large variety of non-tariff barriers. UNCTAD (1985) has established a classification of over 100 trade measures - including tariffs with a discretionary or variable component.

10. Following Laird and Vossenaar (1991) NTMs may be broadly classified according to intent. They identify five such categories:

(i) **Measures to control the volume of imports.** Prohibitions and quantitative restrictions (QRs) on imports as well as export restraint agreements (ERAs). Licenses are often used to administer QRs. ERAs consist of voluntary export restraints (VERs) (covering, inter alia, measures employed for the administration of bilateral agreements under the Multi-Fibre Arrangement) and Orderly Marketing Agreements (OMAs).

(ii) **Measures to control the price of imported goods.** These include the use of reference or trigger price mechanisms, variable levies, anti-dumping duties, countervailing measures, etc. Tariff-type measures such as tariff quotas and seasonal tariffs also are usually intended to increase import prices under given circumstances. Voluntary export price restraints fall under this broad category of intent.

(iii) **Monitoring measures include price and volume investigations and surveillance.** Such practices are often associated with charges by domestic interests of unfair trading practices by exporters, e.g., dumping and subsidization. Licenses are sometimes used as a monitoring instrument. Monitoring measures may be a prelude to other actions.

³The reason why the Geneva agencies have adopted the term "measures" is to avoid some of the measurement and judgmental problems associated with the terms "distortions" and "barriers". As UNCTAD has explained it, "measures" encompasses all trade policy instruments, even though their restrictiveness or effects, if any, may vary between countries applying the measures or at different points of time in a specific country, e.g. if the world price of a product rises above the domestic support price then a variable levy would not be applied although the mechanism remains in force. A quota may be greater than import demand, implying no restrictiveness.

(iv) **Subsidies on domestic production (encouraging the replacement of imports in the domestic market) and export subsidies.** Subsidies may be directly applied to output or value added, or they may be indirectly applied, i.e. paid to material or other inputs to the production process. They may arise from payments or the non-collection of taxes that would otherwise be due.

(v) **Technical barriers imposed at the frontier are used to apply various standards for health and safety reasons to imported products to ensure that imported products conform to the same standards as those required by law for domestically produced goods.**

11. Typically, the objectives or motives for using NTMs range from the long-term desire to promote certain social and economic objectives to shorter term purposes such as balance of payments (BOP) support or action to protect a specific sector from import surges or from dumping. With respect to price or volume control measures or subsidies which have been used in the past for industrial development reasons, such motives may well be evoked in the course of the FTA negotiations in order to seek exceptions, e.g., just as Mexico has successfully made petroleum an exception in the NAFTA talks. How far this kind of motive will be accepted by trading partners in the FTA will be a matter for negotiation. It is unlikely that there will be any objection to permanent controls on trade in arms, drugs, pornography, etc. However, some cases, such as support for sectors by means of hidden subsidies through government procurement and technology development (e.g. aircraft) may well attract closer scrutiny.

12. It is important to realize that GATT does not ban the use of NTMs. Laird and Vossenaar (1991) argue that - after the Preamble and first three articles of the GATT which deal with the overall objectives of the GATT, most favored nation (m.f.n.) treatment, tariff reductions, and national treatment - one enters the realm of exceptions and sets of rules which deal at least as much with how and when protection may be imposed, especially by means of non-tariff measures, as with liberalization. The Tokyo Round Codes are a further extension of this idea, embodying higher levels of rights and obligations for code members.

III. Quantifying the effects of NTMs

13. This section takes up two separate questions: First, what are the effects of NTMs? Second, how do we measure these effects? There is an extensive literature in the field.⁴ Here, we focus on some of the key effects, with a view to identifying some of the political economic factors surrounding the use of NTMs, and then we go on to examine the measurement question only in relation to these effects. A more technical discussion is included in Annex I. The purpose of this section is to provide a basis for later discussions on the phasing down or elimination of NTMs in the context of FTA negotiations.

(A) Effects of NTMs

14. NTMs have many different effects. These include price and quantity effects on trade and

⁴See, for example, Baldwin (1970) for one of the earlier and most useful broad treatments of the subject, Bhagwati (1988) for a critique of some of the more recent developments, Laird and Yeats (1990) for a survey of recent studies of the effects of NTMs, and other studies cited in the reference list. This still remains the tip of the iceberg.

production, as well as employment, and welfare effects. These occur both in the country applying NTMs as well as in other countries, directly and indirectly affected by them. In the analysis which follows we concentrate on the price, production, trade, consumption, revenue and redistribution effects

15. We look briefly at the main groups of NTMs being used in the hemisphere (see later) by means of simple diagrams: quotas, VERs, government procurement, subsidies, export taxes, reference prices, customs valuation procedures, standards, etc.

16. Taking an import tariff as a point of reference, if a tariff is introduced, the main effects are that the consumer pays the tax to the government whose revenues increase correspondingly, while domestic producers can produce more and capture a larger share of the domestic market, while charging a higher price. Domestic consumption and imports both decline. In other words, we can identify effects on production, consumption, imports, and government revenues, as well as the redistribution effect (the transfer of income associated with the increase in the price paid by domestic consumers and received by domestic producers).

17. It is possible to design an import quota or a VER in such a way that domestic production, consumption and imports are identical to those under a tariff. However, the "revenue" or "quota rent", generated by sales at the higher price that made possible under a quota, goes to domestic importers or to foreign suppliers, depending on to whom the quota is allocated. In the case of a VER the revenue goes to foreign suppliers. With import and export quotas, the government of the importing and exporting country, respectively, may use auctions to capture the rents which would otherwise be passed on to the private sector.

18. If a government chooses to introduce a subsidy to domestic producers of importables, this could also be done in such a way as to cause the same increase in domestic production as under the tariff. The important difference is that domestic consumption and prices to consumers would remain unchanged while imports would decline by a lesser amount than under the tariff. The consumer of the products is better off than under the tariff, but the cost to the government would need to be met from general taxation.

19. A number of price increasing NTMs operate analytically exactly like a tariff by pushing up the supply price of the importable faced by the domestic consumer. They include anti-dumping duties⁵ and countervailing measures, which typically increase prices by a fixed percentage, while standards, marketing and labelling requirements, additional import charges, voluntary export price restraints, etc., may cause fixed unit or percentage price increases. Variable levies, minimum prices, reference prices, etc., operate to push up the world price as perceived by importers to a predetermined, fixed or periodically revised level. Even if free world prices are declining, this fixed import price level is maintained. This means that the protective effects have increased, but this increase in protection is not immediately apparent to consumers as prices and quantities remain fixed as before. The benefits of falling world prices are simply not passed on to the consumer. On the other hand, if world prices increase above the prevailing reference price, then the actual world and domestic prices allocate trade and production.

⁵Anti-dumping duties are treated as NTMs for a number of reasons. Although they can be expressed in percentage terms (like some other NTMs), they are not scheduled tariffs. There are complex, often discretionary, procedures for their administration which overwhelmingly favor domestic producers and which have been shown to have an adverse effect on imports - see later. There is also the question as to what extent true or predatory dumping exists, as distinct from normal, commercial variations in price fixing behaviour.

20. Government procurement practices may vary, but, in general, they apply a fixed notional percentage increase to the price of importable goods before deciding on whether the imported goods are cheaper than the domestic goods.⁶ This means the Government will pay a higher price for domestically produced goods and purchase more of them than in the absence of this practice. However, the private sector will continue to buy at the world price. Thus, there are segregated markets with price discrimination between them.⁷ This is also true if there is a tariff as well as a domestic preference, although this can be offset if government agencies and state-owned enterprises are exempt from payment of duty. In the aggregate, there is an implicit tariff which is lower than the notional rate of preference to the extent that the private sector is also a purchaser in the market for the importable good. This implicit tariff is what would be taken into account in estimating the effects of removal of government procurement preferences. In the aggregate, it increase production and decreases consumption. Consumers (government agencies, etc.) pay more, but the transfer is directly from the government to the producer because of the higher price. This has to be financed from taxation.

21. Turning from importables to exports, the principal instruments in use⁸ are export subsidies measures having similar effect, such as subsidized credit, etc. The effects of an export subsidy are to reduce the export price and increase exports, while increasing domestic prices and reducing supplies to the domestic market.

22. As shall be noted later, a number of developing countries also use export taxes and export restrictions. These have the opposite effects of export subsidies. Export prices are increased, causing exports to fall, while domestic prices fall and domestic consumption increases. These taxes can be used to exploit a monopoly position on world markets, which effectively gets the foreigner to pay the tax. This is the equivalent of the so-called optimal tariff on imports. They are sometimes used in the region to increase the availability of low-priced supplies to domestic processing industries, e.g., restraints on the export of hides and skins, or oil seeds. However, they have also been used at times to drive down food prices on domestic markets as a welfare measure (e.g., in Argentina).

- Some complications

23. It should be noted that analyzing NTMs is not quite the same as analyzing tariffs (Bhagwati, 1965). For example, a domestic monopolist will behave as a perfect competitor under a non-prohibitive tariff, albeit at a higher price. However, a quota allows the domestic firm to act as a monopolist within the limits of the quota. It can also be shown that a quota which restricts imports by the same amount as a tariff will raise the domestic price by more than the tariff.

24. Another difficulty is to distinguish the effects of tariffs from those of NTMs. A tariff and an NTM affecting the same product may or may not be additive. Typically, price NTMs work very

⁶The preference may be "absolute" so that domestic suppliers will charge as much as domestic competition or the market will bear.

⁷Domestic producers supplying the government and the private market will allocate their output to each market in such a way that their marginal revenue is equalized in each market.

⁸This refers mainly to the United States and Canada in the hemisphere. Developing countries have largely dropped export subsidies under tighter fiscal management policies, and have turned to tax rebates, duty drawbacks, etc. to offset the anti-export bias of import protection. This is also to avoid the effects of anti-dumping duties and countervailing measures.

much like an additional tariff and can simply be added to the tariff to obtain and total price effect from trade intervention. However, if both a tariff and a quota are applied to the same product, the size of the price effect depends on whether the tariff or the quota is the binding constraint. Thus, if a quota is very large, then only the tariff will matter. (An implication is that a quota can be expanded gradually until the tariff becomes the binding constraint, at which point the quota can be eliminated without any effects).

25. Most NTMs are discriminatory, having differential effects as between foreign trading partners. Examples of these are the MFA, VERs, quotas, minimum prices, anti-dumping and countervailing duty actions, etc. This means that there may be a considerable variations in the effects of NTMs on different overseas suppliers. To identify these effects, it is necessary to look beyond the effects in the importing market alone (the main focus of many NTM studies).

26. In respect of the MFA, computations are also complicated by the fact that not all MFA quotas are filled. For example, Erzan and Holmes (1990) show that in the period 1986-88 the utilization rates of quotas for Latin American and Caribbean countries in the U.S. market was as follows: Brazil - 60 per cent, Colombia - 25.4 per cent, Costa Rica - 57.9 per cent, Dominican Republic - 50.2 per cent, El Salvador - 79.1 per cent, Guatemala - 20.7 per cent, Haiti - 84.2 per cent, Jamaica - 55.9 per cent, Mexico - 55.3 per cent, Panama - 32.0 per cent, Peru - 19.0 per cent, Trinidad and Tobago - 0.7 per cent, and Uruguay - 77.9 per cent. These numbers would tend to suggest that the tariff, rather than the MFA, is the binding constraint on Latin American exports to the U.S. They also suggest that the MFA has not been very successful in diverting trade from the more tightly controlled Asian countries to Latin America.⁹ While there are no doubt important differences in different MFA categories, these figures suggest that the MFA has not had a major restraining influence on Latin America, and it should be possible to negotiate improved access under the FTA.

27. Beyond the impact of NTMs on products directly affected, there is, as indicated earlier, now clear evidence from a number of studies (Messerlin (1988), Dinopoulos and Kreinin (1988)) that the "chilling" or harassment effect of VERs and anti-dumping duties goes far beyond the products and countries immediately affected. Thus, Dinopoulos and Kreinin show that European automobile exporters adjusted the prices for the U.S. market in the wake of the introduction of the Japanese automobile VER, i.e., they genuinely, voluntarily restrained trade to capture the higher rent available in the U.S. market. Messerlin shows the dramatic reduction of imports under anti-dumping investigations, with further reductions in the event of positive findings.

28. Finally, exchange rates matter - since they operate like a tariff cum export subsidy - and real exchange rates matter more. In many cases fluctuations in exchange rates have by far exceeded tariff levels (and, hence, constitute one of the main arguments used by countries in the region concerned about potentially disruptive effects of trade flows responding to the changed import price levels). Real exchange rates, of course, take account of relative price movements between pairs of countries as well as the nominal rates. Their relationship with trade flows is endogenous and complex, because they are also partly determined by financial flows that may at times be strongly linked to interest rate differentials. In some countries the linkage between RERs and trade is very strong (Argentina, Brazil, Chile, etc.), while in other cases the linkage is more tenuous (e.g., the United States). As a footnote, in two countries with uniform tariffs of different levels and market-set exchange rates, the level of access for imports is to all intents and purposes the same, the differences being linked to the relative importance of non-tradeables.

⁹Erzan, Goto and Holmes (1989).

- Effects on resource allocation, exports

29. In addition to the effects of import restrictions on market access, it is also possible to analyze the effects of NTMs in terms of what has been the World Bank's main concern in trade policy lending over the years, namely, the effects on domestic resource allocation. In essence, protection for one sector is a tax on all other sectors, and the net effect of this is to introduce inefficiencies which reduce overall economic welfare. This is one of the reasons for focusing on calculations of effective rates of protection (see later) and of the domestic resource costs of NTMs. However, while resource allocation is a key factor in deciding on unilateral liberalization, it is not an important consideration in FTA negotiations.

30. Considerable emphasis has also been given, particularly when it comes to persuading governments of the benefits of trade liberalization, to the much more easily understood effects of import orientation in general on exports. Here the evidence is now overwhelming that a country's own import barriers constitute a significant tax on its own exports. (Clements and Sjaastad, 1984). This is obviously one of the driving concerns behind the recent adoption of outward-oriented strategies by various countries in Latin America, led by Chile and Mexico, and the consequent, significant improvements in their export performance. No doubt they were at least partly influenced by the East Asian success stories.¹⁰

- Other effects

31. A comprehensive approach looks at all the effects of all trade barriers, tariffs and NTMs, throughout an economy in a consistent framework, looking at the complex interactions between sectors. This broader approach would lead to estimates of the economy-wide effects of trade intervention, including on employment. For this, a general equilibrium model is needed to trace out the various indirect price, output and employment effects (see, for example, de Melo and Tarr (1988), de Melo and Messerlin (1988), Whalley (1985), and now many others).

32. When trade liberalization is taking place across the board, as in the case of an FTA, such a comprehensive approach is desirable. However, measurement is more complex than with other methods and a number of assumptions have to be introduced. Often, information on NTMs is obtained from partial equilibrium studies for use in simulation models, while very few economists have used CGE models to estimate the effects of NTMs. Nevertheless, CGE models can now be readily acquired to run on the very powerful PCs now available, and there is a geometrically expanding literature in this area.

(B) Measuring NTMs

33. There are different methodologies for computing the various effect of NTMs. We look briefly at a comprehensive approach using, e.g., partial equilibrium or general equilibrium models. However, following Deardorff and Stern (1985) and Baldwin (1989), we then concentrate on three

¹⁰There are, however, important differences: in recent years, Latin American countries have adopted a more neutral outward oriented strategy, whereas, at least initially, East Asian countries adopted export promotion strategies, coupled with import-substitution. East Asian countries used export subsidies, whereas in Latin America the emphasis has been on getting rid of obstacles to exports. Also, a number of East Asian countries did some industrial targeting, although these are not all success stories.

measures of price effects: tariff equivalents, subsidy equivalent and effective protection. Although a lot of work has been done on the inventory approach to NTMs,¹¹ which allows estimates of the extent of trade covered by NTMs or their frequency of application in specific sectors or against individual countries or groups of countries, this is not particularly useful in the context of negotiations.

34. Taking a comprehensive approach to quantifying the effects of NTMs may lead to empirical measurement, sometimes on a single industry partial equilibrium basis, looking at one country or the world, e.g., recent studies on the effects of protection in motor vehicles, textiles and clothing, iron and steel, various agricultural products, etc.¹² Such analysis may also lead to more sophisticated general equilibrium models of a single country or the world, focusing on several sectors in detail or dealing with large product aggregates. See Deardorff and Stern (1986), Whalley (1985), etc. There has also been extensive use of such modelling techniques in the context of NAFTA.¹³ However, most modelling also requires information on various price elasticities¹⁴ as well as making certain assumptions about the behaviour of governments.¹⁵

35. However, less comprehensive approaches also cast light on some of the key effects of NTMs and what might be expected if they were removed. In some respects, these might be more practical for use by trade negotiators.

(i) Tariff equivalents

36. In the context of FTA negotiations, the main focus would be on the price effect or "price wedge" associated with each NTM - often called the "tariff equivalent" of the NTM. This is the difference between the free world price of a product and the domestic price which is protected by an NTM.

37. If world prices are genuinely free - not influenced by widespread use of subsidies - then they can be obtained from customs invoices or from commodity markets. These can then be compared directly with the domestic ex-factory or wholesale prices of identical products. This technique is used frequently by World Bank economists, and has also been used in published studies by Roningen and Yeats (1976), Baldwin (1975) and Bhagwati and Srinivasan (1975). Roningen and Yeats obtained access to the raw data stored by **Business International**, which publishes comparative information on the cost of living in major cities of the world. However, for many governments this work is much easier than for academic economists. Governments have access to customs invoices and routinely

¹¹See various UNCTAD studies in the reference list, as well as Laird and Yeats (1990).

¹²See, for example, Hufbauer and Schott (1992) and USITC (1991a) for surveys, and Erzan and Yeats (1992).

¹³See, again, USITC (1992a).

¹⁴See Stern (1976) for a survey. However, one approach is to take sensible values or "guesstimates" and carry out sensitivity analysis with respect to key elasticities (and other assumptions).

¹⁵The Software for Market Analysis and Restrictions on Trade (SMART) was developed to provide information on market conditions and to allow developing countries to make simulations of the direct trade effects of various scenarios in the Uruguay Round. The design of the system and training provided to developing countries by UNCTAD and the World Bank were supported by UNDP. SMART uses a simple partial equilibrium model, and allows users to vary the parameters as well as the scenarios. It could have similar application in the context of an FTA.

compile information on prices overseas for use in verifying customs declarations. In some cases, they use the services of pre-shipment inspection agencies such as SGS or Veritas, which have widespread international networks collecting such information. Thus, provided no breach of confidentiality is involved, this information can usually also be obtained for third country markets even when there are no direct imports into the market applying the NTM. However, it would then be necessary to compute the cost of delivery to that market - information which can be derived from shipping companies or invoices for similar goods.

38. This is straightforward when imports and domestically produced goods are perfect substitutes. However, calculations are often complex for manufactured goods because of the great range and heterogeneity of products. Obviously, the idea is to match items as closely as possible, but it is possible using econometric techniques to normalize differences in the characteristics and qualities of differentiated products. In this respect, a considerable amount of work has been based on the use of hedonic price indices, a technique developed by Griliches (1970).¹⁶

39. The price wedge can sometimes be obtained directly if an auctioning system is used for allocation of import quotas, as has been done at times in Australia (Takacs, 1988)¹⁷ or for the allocation of export quotas, as is done in Hong Kong (Hamilton, 1986).

40. Even if we can calculate the price wedge between domestic and "world" prices associated with an NTM in one market, this does not necessarily give us the basis for computing how any one trading partner will be affected by the removal of certain NTMs. This is because of the discriminatory effects of a number of the NTMs, as noted earlier. Thus, exporting countries, attempting to assess what they will gain from the elimination of other countries' NTMs, need to take bilateral price differentials into account (not to mention the substitutability between their own and competitors' exports in the importing market).

41. Another factor to take into account is the variability of prices, particularly commodity prices, in international markets. With variable levies and reference prices the domestic price of the import remains fixed even when there are fluctuations in world prices. Thus, in markets using such devices the price wedge itself is constantly varying for a number of products.

42. For a number of products, particularly commodities, governmental intervention is so widespread that the "world price" cannot be observed from transaction values. In these circumstances, there is little alternative to developing a model to attempt to isolate "free world prices" from prices influenced by production and export subsidies, as well as import barriers such as variable levies, quotas, etc. One of the problems is estimating the supply response to changes in world prices by countries which are currently food importers. Fortunately, much work has been done in the area of commodities, as we shall see in the following section.

(ii) Subsidy equivalents

43. The concept of the Producer Subsidy Equivalent (PSE) has come to be used extensively in

¹⁶In the 1970s this technique was regularly used by the Australian Industries Assistance Commission to calculate price differences between foreign and domestically produced manufactures such as domestic appliance, automobiles, etc.

¹⁷One of the first experiments in quota auctioning in Australia - for automobiles in the mid-1970s - was brought quickly to a conclusion as the Government became embarrassed at the size of the quota rents.

recent years, following extensive work by OECD.¹⁸ It is a concise way of measuring the transfers as a result of government policies to producers. It can be measured: (i) by tracing the direct and indirect government expenditures to producers; or (ii) by imputing the effects of policies by calculating the difference between actual domestic prices and what they would have been in the absence of trade interventions. Its advantage over nominal protection, such as is given by the price wedge discussed above, is that it captures both the transfers from government expenditures as well as the transfers from price distortions.

44. PSEs can be expressed in different ways. The total PSE is simply the value of transfers to producers:

$$\text{Total PSE (PSE)} = Q(P_d - P_w \cdot X) + D + I$$

where:

- Q - quantity produced
- P_d - the producer price in domestic currency units
- P_w - world price in world currency units
- X - exchange conversion factor
- D - direct government payments, net of any levies on production
- I - indirect transfers through policies such as input subsidies, marketing assistance or exchange rate distortions.

45. The unit PSE is the total PSE per tonne or unit of production:

$$\text{Unit PSE (PSEu)} = \text{PSE}/Q$$

46. The percentage PSE is the total PSE expressed as a percentage of the total value of production, valued at domestic prices, and adjusted for direct payments and levies:

$$\text{Percentage PSE} = \frac{\text{PSE}}{Q \cdot P_d + D} \cdot 100$$

47. Another way of expressing the PSE is the nominal assistance coefficient (NAC). The NAC for production is the ratio of the border price plus the unit PSE to the border price. In essence, it is the price wedge on the production side created by the agricultural policies in use.

$$\text{NAC} = \frac{P_w \cdot X + \text{PSEu}}{P_w \cdot X}$$

48. It should be noted that changes in the world prices, exchange rates or domestic production can change the PSE even when Government policies remain unchanged. Also, since indirect transfers appear only in the numerator, the PSE can be altered by shifting transfers from indirect programs to price support programs or direct payments. A negative PSE implies that the producer is being taxed as a result of the combination of policies operating in the sector, while a positive PSE implies the producer is being supported or assisted by the intervention.

¹⁸See OECD (1987) and the country studies published in the same year.

49. Table 1 shows the percentage PSEs computed by Webb, Lopez and Penn (1990) for countries within the hemisphere. The only areas of negative PSE are the grains sector in Argentina, and the oilseeds sector in Argentina, Brazil and the U.S.. The variations in the numbers suggest that an FTA would require substantial adjustments in agriculture.

Table 1 : PSEs by country and commodity

Commodity	Argentina	Brazil	Canada	Chile	Colombia	Mexico	USA
GRAINS							
- Barley			55				72
- Corn	-23	5	37	20		75	46
- Oats			21	3			11
- Rice							49
- Rye			48				
- Sorghum	-42					59	43
- Wheat	6	59	51	44		20	63
OILSEEDS							
- Rapeseed			39				
- Soybeans	-10	-9	22		63	52	8
- Other			43	49		28	
LIVESTOCK							
- Beef & Veal	4	1	10				10
- Chicken or poultry		2	22				26
- Milk	27		67				58
- Mutton & lamb	3						
- Pork			9				7
MISCELLANEOUS							
- Beverages					-35		
- Cotton						60	
- Sugar	16		54	50	21		60
- Other				-7		-16	
Weighted average	-10	16	39	29	-20	56	33
Ratio of PSE commodities value to total agricultural production	0.26	0.62	0.92	0.37	0.24	0.33	0.69

Source: Webb, Lopez and Penn (1990)

50. However, it is important to note these numbers can vary considerably from year to year for the reasons given. Also, the estimates only take account of exchange rate adjustments in the case of the developing countries where they often dominate the calculations and can cause the PSE to swing wildly over time. There may also be quality differences which reduce the comparability of the data.

51. A related concept, the consumer subsidy equivalent (CSE), is the value of transfers, resulting from government intervention, from domestic consumers to producers and to taxpayers (e.g., through tariff revenue paid on competing imports). It measures the net implicit tax imposed on consumers by agricultural support measures and any consumer subsidies. A negative CSE implies consumers are being taxed by the policies operating in the sector. A NAC for consumption measures the extent to which consumers are paying more than they would in the absence of government intervention.

52. Estimates of percentage CSEs for countries in the region by Webb, Lopez and Penn are shown in Table 2.

Table 2 : CSEs by country and commodity

Commodity	Canada	Colombia	Mexico	USA
GRAINS				
- Barley	-28			-52
- Corn	-2		-59	
- Oats	-22			
- Rice				-2
- Sorghum			-40	
- Wheat	-31		-1	-23
OILSEEDS				
- Rapeseed				
- Soybeans		-27	-42	
LIVESTOCK PRODUCTS				
- Beef & Veal	-1			-1
- Butter	-86			-39
- Cheese	-22			-16
- Chicken or poultry	-5			-9
- Milk	-36			
- Mutton & lamb				-29
- Pork	0			
MISCELLANEOUS				
- Cotton				
- Sugar	-4	-16		-43
- Other			-89	
Weighted average	-13	-18	-35	-12

Source: Webb, Lopez and Penn (1990)

53. The Trade Distortion Equivalent (TDE) is a measure which was proposed by the Government of Canada in the Uruguay Round for use in the agricultural negotiations. It focuses more on the trade distorting effects of policies, rather than the income effects. It attempts to take account of the fact that production subsidies are sometimes tied to cutbacks in production. Canada suggested that the TDE be used either simply as a monitoring measure or as a means to express countries' aggregate target commitments to the reduction of trade-distorting supports plus the monitoring function.

54. Trade Restrictiveness Index (TRI), being developed by Anderson and Neary (1991), is defined as the "uniform tariff equivalent of the consumption and production distortions". It is a combination of the "consistent PSE" and "consistent CSE", which are defined as the uniform subsidy rates that are equivalent in trade restrictiveness to the actual differentiated subsidy or tax structure. One application is by Anderson and Bannister (1992) in respect of Mexican agriculture. General equilibrium applications are discussed in Anderson, Neary and Safadi (1992).

(iii) Effective protection

55. Tariff equivalent and subsidy equivalents do not give a comprehensive view of the trade and production effects of the protective structure of a country. For example, an ad valorem tariff of, say, 20 per cent on automobiles does not give an idea of the extent to which protection generates changes in the value added in automotive assembly. For this it is necessary to look at the combined effect of tariffs (and any other restrictions) on automobiles as well as such protection on the materials and parts used in the production process - steel, rubber, plastics, glass, etc., as well as engines, gearboxes, brake assemblies, electrical components, etc. The combined effect of protection on inputs and outputs can be summed up in the concept of the effective rate of protection (ERP, normally referring to tariffs only) or the effective rate of assistance, (ERA, intended to include NTMs).

56. The concept of the ERP was developed by Balassa (1965) and Corden (1966) to measure the increase in value added in an industry under protection relative to what value added would be under free trade. In other words effective rates measure assistance to value added in an industry. Mathematically, the effective rate can be expressed in different ways, of which one such expression is:

$$g = \frac{df - x \cdot dm}{1 - x}$$

where:

- g - effective rate of protection
- df - duty (or total protection) on finished good
- dm - duty (or total protection) on inputs
- x - free trade materials/output ratio.

57. As can be seen from the formula, the exact level of effective protection or assistance depends on the rate of protection on the finished goods, the average rate of protection on the inputs of materials and parts, and the extent of value added in the industry (the material/output ratio or the technical coefficient). Protection is defined to cover all forms of government intervention, including tariff, protection against imports and subsidies, etc.

58. If protection on the finished good is equal to the average protection on the inputs, then the effective rate will be the same as that level of protection. However, if protection is higher on the finished good than on the inputs, then the effective rate will be higher than the protection of the finished good, and value added will also be higher than when the rates were identical. On the other hand if protection is lower on the finished good than on the inputs, then the effective rate will be lower than that on the finished goods, and, correspondingly, value added will also be lower.

59. Effective rates can also be negative, but the main point of reference is the average effective rate (the free trade value added weighted effective rates applicable to all sectors). If the effective rate for a sector is lower than average it means that sector is implicitly being taxed to support sectors with higher than average effective rates, and vice versa. This is because highly protected sectors (in terms of effective rates) are able to bid up wages, land and other inputs which affects the costs of other sectors. This does not necessarily mean higher profits for the protected sector, since typically higher protection becomes factored into costs such as land and buildings or lost through economic inefficiency (X-inefficiency).

60. It should be noted that the level of the effective rate is highly sensitive to the materials/output ratio, increasing asymptotically to infinity as this ratio increases, i.e., as value added in the industry

declines.

61. Effective rates have become a standard tool of analysis since the late 1960s, being used by governments to assess the implications of sectoral levels of protection for the efficiency of resource allocation within their own countries. The measure has become a standard analytical tool of the World Bank in most studies associated with trade or structural adjustment lending. The World Bank has also developed standard specialized software, SINTIA-ER and SINTIA-IO, for personal computers for the purpose of making effective rate calculations). The concept is currently under examination at OECD with the view to its introduction as a routine tool of analysis of OECD countries' economies.

62. However, like many statistical tools, it suffers from a number of shortcomings. It is a partial equilibrium rather than a general equilibrium measure. It assumes that there is no change in technology in shifting between actual and world prices. It assumes that there is perfect substitutability between domestic and foreign goods, whereas most modern trade models assume imperfect substitutability - the so-called "Armington assumption".

63. There are also measurement problems, such as those we have been discussing, on how to measure NTMs - because this is a summary measure in which price wedges are used, not an alternative technique. In the end, effective rates do not solve the question of measurement of NTMs, but they take more factors into account in assessing their effects.

64. The difference between the percentage PSE and the ERP/ERA relates to the forms of intervention and the value base or denominator in the computations. First, since PSE estimation has been focused on agriculture, they do not include the taxation or subsidy effect of intervention in relation to intermediate inputs produced in other sectors of the economy, whereas effective rates of assistance (ignoring the tariff only type of computation) take all forms of intervention into account. Second, PSEs relate assistance to the gross value of output (i.e., under existing intervention), whereas effective rates are based on free trade levels of value added (or the free trade input-output ratio as shown in the formula). Thus, the effective rate is a more comprehensive summary measure.

IV. NTMs in use in the hemisphere

65. Before looking at the scope of negotiations aimed at establishing a hemispheric FTA, it is useful to survey protection in the region, to take stock of what might need to be negotiated. In this regard, there have been major changes in the manner and product coverage of protection in the Western hemisphere in recent years. In the U.S. and Canada tariff patterns are largely unchanged, but there has been an increasing tendency towards the use of administered protection (anti-dumping duties, VRS, etc.). In developing countries, tariff levels and patterns have changed - radically in some cases - while there has been a widespread swing towards the complete eradication of quantitative restrictions and licensing systems. However, this has also led to an increase in the use of anti-dumping activities in those countries, whether through the use of anti-dumping duties or other measures to combat what are seen as the "unfair trading practices" of trading partners. A brief review of the current trade régimes of selected countries in the region, including Canada and the U.S., is presented in Annex II, and a summary of this information is presented in Table 3 for a further sub-set of those countries where the information is relatively complete.

Table 3: Summary of trade régimes of selected countries in Western Hemisphere

Country	Tariffs		Non-tariff Measures												Production				
	Average (Per cent)	Comments	Imports						Exports						Subs.	Subs.			
			QRs	Permit/ Licence	VER	AD/CV	Ref. Prices	Supp. Charges	Govt. Proc.	Subs.	Taxes	QR, VER, MFA, etc.							
Argentina	12.2	5%, 13%, 22% Few exceptions				X	X							X					
Bolivia	10.0	Uniform, exc.	X				X									X			
Canada	8.7	5% on capital goods Max. 25% Dispersed Peaks to 25%	X	X	X											X			X
Chile	11.0	Uniform	X				X												X
Colombia	11.0	0-20% in 5 categories	X	X	X		X			X						X			X
Mexico	12.5	Dispersed Max. 20%	X	X			X												X
USA	7.0	Dispersed Peaks to 1700%	X			X	X									X			X
Uruguay	20.0	Dispersed Max. 24%						X					X						X
Venezuela	19.0	Dispersed Max. 40%	X															X	X

Sources: See Annex II.

Notes: See Annex II for details.

Tariffs are unweighted.

QRs include local content plans.

Countries with less complete data are also covered in Annex II.

66. Just a few years ago, Finger and Laird (1987) noted that both developed and developing countries tend to have relatively high tariffs and relatively abundant NTMs on the types of products on which developing countries' exports are concentrated. Within the industrial sector, studies (e.g., various UNCTAD studies mentioned in the reference list, Laird and Yeats, 1989, etc.) show relatively extensive application of NTMs by industrial countries to traditional ("low-tech") industrial sectors (textiles and clothing, footwear, electrical machinery, basic iron and steel products) - key export sectors of developing countries. In other words, there was discrimination by both developed and developing countries which went against developing country exports, disproportionately reducing developing country trade.

67. Today there has been little change in respect of tariffs in the U.S. and Canada. Both the U.S. and Canada have very high tariff peaks while their tariff averages are low, 7 per cent and 8.7 per cent average m.f.n. rates, respectively. The tariff peaks, which are substantial especially in the case of the U.S., affect textiles and clothing, footwear, beverages, foodstuffs, etc., of export interest to the developing countries.

68. However, developing country tariffs have been changed in a major way. Bolivia and Chile have adopted very moderate uniform tariffs - 10 per cent in Bolivia, 11 per cent in Chile - and, therefore, have effective rates of the same level. Most developing countries in the region have adopted a tiered structure - escalating rates - but with moderate overall averages - 12 per cent in Argentina, 11 per cent in Colombia, 14 per cent in Brazil (by 1994), 20 per cent in Uruguay, etc. In general, there has been a tendency to avoid zero minimum rates, and maximum rates are set in the range of 30-40 per cent, although there are exceptions. Where tariffs are structured in this way, foodstuffs and basic commodities tend to attract the lower rates, intermediate products such as producer goods receive the mid-range rates, while finished goods, such as automobiles, etc. benefit from the higher rates - and, of course, from effective rates which are even higher than the nominal rates.¹⁹

69. Thus, tariff discrimination against developing countries exports is now more concentrated in the industrial countries, while tariff discrimination by developing countries has disappeared in some cases but in the majority of cases is now directed towards industrial country exports. Developing countries have also learned to make greater use of duty drawback schemes, etc., to reduce the anti-export bias of their remaining tariff protection. Thus, some of their more highly protected industries, such as automobiles may also be important export industries, e.g., Brazil and Mexico.

70. In the past, there were also important differences in the ways in which developed and developing countries used NTMs. In respect of the developed countries little has changed. The U.S. and Canada, as well as other developed countries, use the whole gamut of NTM types, as classified above: volume control measures (e.g., in textiles and clothing, steel, footwear, and agriculture, etc.); price control measures (in agriculture, steel, automobiles, televisions, etc.); monitoring measures (in a wide range of manufactures); subsidies on production and exports (mainly in agriculture); and technical barriers (mostly in agriculture) tend to be relatively strict, sometimes going beyond internationally agreed norms. However, their NTMs tend to affect specific import categories and to remain in place for a long period of time. They are intended to provide protection from import competition for specific domestic sectors (or to protect exports in overseas markets against subsidized competition). These sectors are often those suffering a loss of comparative advantage to developing countries (reinforcing the tariff pattern), but in terms of trade coverage they have fallen more heavily on Japan and the European Communities (EC). The measures used are frequently discriminatory -

¹⁹Kume and Piani (1991) show, for example, that Brazilian tariffs on automobiles will move to an average of 34.2 per cent in 1994, while the effective rates will be 62.5 per cent.

affecting only selected countries.

71. In recent years, the U.S., in particular, has given increasing emphasis to the use of anti-dumping measures and voluntary export restraints. While the coverage of VERs has been reduced in 1992 through the elimination of VERs on steel, these the same products are now the subject of extensive petitions for anti-dumping investigations, which had already more than doubled between 1989-90 and 1990-91. On the basis of previous experience, it is highly likely that there will be a positive finding and anti-dumping duties will be imposed, unless new VERs are negotiated. The U.S. has also seen fit to resort to unilateral actions under Section 301 of the Trade Act of 1988 to attack measures used by other countries that it perceives to be against its trade interests.

72. Laird (1989) shows that VERs now affect more of the industrialized countries' imports than any other NTM and that they are used principally by the U.S. The share of imports specifically covered by VERs (excluding those under the MFA) almost doubled between 1981 and 1986 from 6.9 to 11.3 per cent. Since 1986 there has been a further expansion in the use of VERs, notably in the footwear sector. The exporting countries most affected by VERs other than MFA are other industrialized countries, rather than developing countries (15.5 per cent as against 2.1 per cent) while the target of the MFA is almost exclusively the developing countries (with 9.7 per cent of trade covered). Today in the U.S., VERs affect automobiles, semi-conductors, machine tools as well as almost 60 per cent of textile and clothing imports.

73. Curiously, Canada, which was also one of the major users of anti-dumping actions, has seen a decline in the use of this measure since it introduced a sunset clause in the mid-1980s (GATT, 1992).

74. In the past, developing country NTMs were much broader in product coverage, ostensibly applied to managing foreign exchange shortages or under some kind of general "infant economy" argument for promoting industrial development. However, in the allocation of foreign exchange or import licenses, developing countries have also favored tended to favor import-competing manufacturing industry. Despite this objective, in some cases the policy mix was so complex as to be at least partly self-defeating. In many Latin American countries with comparative advantage in agriculture, this sector has borne the brunt of such policies, and has been subject to implicit and explicit taxes, including through the use of multiple exchange rates.

75. As developing countries of the region have liberalized their trade régimes, there has been wholesale abandonment of quantitative restrictions and licensing systems.²⁰ Exchange allocation has generally been liberalized, exchange rates have been unified and, even where parallel markets still exist, premiums over the official rate are small or have disappeared completely. In general, they have moved away from volume control measures towards greater use of price control and monitoring measures. They mostly did not use direct subsidies in the past, but there often subsidy elements for investments, in the rebate of taxes or through export finance schemes. Now that most developing countries are trying to eliminate or substantially reduce the deficits in central government or consolidated public accounts, they can no longer afford these schemes. In consequence, they generally have been eliminated or suspended. The emphasis is on the precise rebate of domestic taxes (partly to avoid countervailing action), temporary admission schemes, etc., as well as improving infrastructural facilities.

76. The main exception to the abandonment of quantitative restrictions on imports is in the

²⁰The liberalization of quantitative restrictions means that NTM preferences under various ALADI arrangements, e.g., production-sharing arrangements - have become of much less significance than in the past.

automobile sector. Sometimes remaining quotas on automobile imports are used to reinforce the performance requirements of investment laws. Thus, a number of developing countries in the region continue to protect their automotive assemblers through a combination of quotas, local content and export performance (including trade balancing) requirements. The importation of used cars is banned in a number of countries for the same reason. This means that, in a number of countries in the region, automobiles are often four times the domestic price prevailing in the U.S. market. Although most companies are subsidiaries of European or U.S. manufacturers, they seem to favor these rules, as they protect their local investments.²¹ Such protection also gives them a hidden form of protection against Japanese companies in the Latin American market. However, there appears to be some consolidation going on in the context of MERCOSUR as a precursor to a more open market in the Cono Sur.

77. Prohibitions or export taxes are used by some developing countries in the region to protect processing industries. For example, Argentina continues to ban the export of raw hides and skins, and still taxes exports of some vegetable oil seeds. Other countries have similar policies. While these practices mean that these items are available to domestic processors at lower than world prices, they are not considered to be a subsidy under GATT. Nevertheless, they have provoked protests among processors in industrial countries, including the U.S. and the European Communities.

78. Among the price control and monitoring measures affecting imports, the use of anti-dumping procedures has become much more common among the developing countries of the region. This has been done partly at the suggestion of the World Bank, but the countries of the region have also clearly followed the example set by the U.S. Anti-dumping is a "respectable", GATT-legal way of coping with import surges in a country specific way, avoiding the sterner test and m.f.n. requirements of Article XIX safeguard actions. (Avoidance of exchange rate devaluation may be preferred to counter domestic inflation). However, there are signs that some of GATT's contracting parties are aware that they have created a Frankenstein's monster, with the substantial removal of NTMs and tariff reductions in developing countries being replaced by these GATT-legal mechanisms against the "unfair" trading practices of other countries. It will become a priority in the negotiations to attempt to rein in the use of these measures, as was the objective of Canada in its bilateral negotiations with the U.S. (with mixed success). Some developing countries in the region, e.g., Argentina, Brazil and Chile, have sunset clauses in their anti-dumping legislation, limiting the duration of anti-dumping duties.

79. Another way which some developing countries in the region still use to cope with swings in prices - often due to exchange rate changes rather than dumping properly defined - is to apply duties to prices other than the transaction price of the goods. This is done partly through reference price systems or minimum price systems, but also through the use or abuse of customs valuation procedures, e.g. through constructed values. Pre-shipment inspection agencies often provide the relevant information for such calculations.

80. Many charges, ad valorem or specific, are applied to imports. These include consular charges, port charges (often unrelated to port costs), stamp taxes (which sometimes do little more than cover the cost of the person charged with sticking stamps physically to the back of checks), statistical taxes (which do not always produce statistics, at least in a timely fashion), freight taxes (levied on the freight cost of imports). Not all of these taxes are genuine fees, related to the provision of a service, but are simply a relic from the past which happen to produce revenue from trade. However,

²¹Some of the "investments" appear to be of plant required to produce models that have been scrapped in the developed country markets. This sometimes gives the impression when returning to the region of going backwards 20 years through a time capsule.

the recent increase from 3 to 10 per cent of Argentina's statistical tax on imports shows that such taxes can still be important, since, unlike tariffs, they are generally not bound under GATT or under bilateral trade agreements. In some cases, the application to imports of the equivalent of the domestic value added tax is not uniform, as required by GATT Article III. In a number of cases, the ad valorem incidence of these charges exceeds the ad valorem incidence of the tariff itself.

81. In general, technical barriers to trade - health and safety regulations - have rarely been a problem in the developing countries, although some have complained about the stringency of U.S. measures and the costs of meeting U.S. standards. However, there are signs that a number of countries are tightening up on the use of these measures. There have been some suggestions that these are now being used for protective purposes, but there is also the legitimate concern that sub-standard or out-of-date articles are being sold in developing countries of the region when they are no longer permitted to be sold in the home market of the industrialized countries.

82. Government procurement practices are a matter of concern in both developed and developing countries of the region. In the developing countries, the problem is the huge size of the public sector in national production. In some of the smaller countries of the region, public enterprises account for more than half of national production. This is a relic of the past when statism was all-pervasive in the region. To some extent, this will become less of an issue as privatization of state-owned enterprises proceeds. However, privatization faces strong opposition in a number of countries, and, in others, there have been few takers in the most recent period - a sign of depressed economic conditions in the industrialized world.

83. Both in government procurement and in respect of other measures such as taxes or control of domestic marketing, governments at the provincial and local levels exercise considerable influence over trade. This is an area which has not been fully explored, but it is an issue both in the developed and developing countries of the region. There has been a tendency in the past to ignore the operations of government below the national government level, partly because agencies at this level are not covered by GATT's Government Procurement Code, but the U.S. has successfully pursued the issue against Canada in the GATT. As barriers at the national frontier come down, these types of measures are likely to be subject to greater scrutiny.

84. Although it is not yet an issue in the hemisphere, domestic competition policies could well come under scrutiny. Latin American countries typically do not have anti-trust laws or, if they do, they are typically not applied.²² However, Argentina took drastic action to de-regulate its economy in October 1991 when it was found, inter alia, that the benefits from its trade liberalizations were not being passed on to consumers. To the extent that problems in distribution are a problem for foreign companies trying to penetrate Latin American markets, this could also become an issue. For the present, deregulation efforts seem to be more geared towards reducing institutional obstacles to exports.

V. How were NTMs handled in NAFTA?

(A) Overview

85. The NAFTA negotiations are obviously of keen interest as setting likely precedents for FTA talks. It is beyond the scope of this paper to give a full account of the 1,000 or so pages of the full

²²Some countries in the region have adopted a "model law" on restrictive business practices as proposed by UNCTAD.

text of the accord. However, it is instructive to look at the structure, coverage and main results of the negotiations.²³

86. In the context of the NAFTA negotiations, "Tariffs and non-tariff barriers" were the subject of only one of 19 negotiating groups, and were, therefore, defined more narrowly than in this paper.

87. The structure of the NAFTA negotiating groups was as follows:

- (i) Market Access
 - Tariffs and non-tariff barriers
 - Rules of origin
 - Government procurement
 - Agriculture
 - Automobiles
 - Other industrial sectors
- (ii) Trade rules
 - Safeguards
 - Subsidies; countervailing and anti-dumping
 - Standards
 - Health and safety
 - Industrial
- (iii) Services
 - Principles of services
 - Financial
 - Insurance
 - Land transportation
 - Telecommunications
 - Other services
- (iv) Investment (principles and restrictions)
- (v) Intellectual property
- (vi) Dispute settlement

88. The outcome, focusing on NTMs in the wider sense define in this paper (but excluding services, investment, competition policy, intellectual property and general dispute settlement matters), is described below under the headings of (i) rules and (ii) sectors.

(B) Rules

- Emergency action

89. Bilateral safeguards apply to import surges resulting from tariff reductions under NAFTA, while a global safeguard procedure applies to non-NAFTA countries. If increases in imports cause

²³Information on how NTMs have been treated in GATT negotiations is provided in Annex III.

or threaten serious injury to a domestic industry then a NAFTA country may suspend the duty elimination or return to the pre-NAFTA rate of duty. However, such suspension may be taken only once - the process cannot be prolonged - and may last only for three or, exceptionally, four years. If global action is to be taken under Article XIX of the GATT, NAFTA partners are to be exempt from the action unless they account for a substantial share of total imports of the good in question and contribute importantly to the serious injury or threat of injury.

- Anti-dumping/countervailing actions

90. Each country maintains and may amend its own AD/CV laws, but it appears that decisions of a review panel will be based on the relevant GATT code. Such independent, bi-national panels may be established to review AD/CV determinations by national authorities. Each panel will comprise five individuals drawn from a roster maintained by each country. It is understood that the roster may include legal experts from non-NAFTA countries. Each country will choose two members, with the fifth being chosen by mutual agreement or, in the absence of agreement, by the four designated members.

- Government procurement

91. The NAFTA agreement only extends to federal governments, their departments, agencies and enterprises, not to levels of government below federal level. For procurement by federal departments and agencies, the thresholds for non-discrimination are \$U.S. 50,000 for goods and services and \$U.S. 6.5 million for construction. For federal enterprises, the thresholds are \$U.S. 250,000 for goods and services and \$U.S. 8 million for construction. Mexico is to be given a phase-in period. Arms, etc., are excluded. There are also provisions for procedural transparency.

- Standards

92. There are special disciplines on (i) sanitary and phytosanitary standards and (ii) other standards. While international standards are to be encouraged, each country is free to adopt more stringent, "science-based" measures. There are rules for increased procedural transparency and technical cooperation, and committees to monitor the implementation of the standards rules.

(C) Sectors

- Agriculture

93. At the time the FTA goes into effect the U.S. and Mexico will immediately eliminate all NTMs to their mutual agricultural trade, replacing them with tariff quotas (known as "tariff rate quotas or TRQs in the negotiations) or ordinary tariffs. No duty is to be imposed on the quota amount, which will be based on recent average trade figures, and which will be expanded at the rate of 3 per cent a year. However, the over quota rate - set at the existing tariff equivalent of each NTM - will be progressively be reduced over a 10 or 15 year period, depending on the product. In the case of Canada-Mexico trade, all tariffs and NTMs are to be eliminated with the exception of those in the dairy, poultry, egg and sugar sectors. For other sectors, Canada will eliminate NTMs immediately, and it will phase out tariffs over 5 or 10 years depending on the product, while Mexico will convert licenses for wheat to tariffs and for corn and barley to tariff quotas, both to be phased out over 10

years. There are special safeguard provisions. The need is recognized to move to domestic support policies which are not trade distorting. Export subsidies are not banned, although that is the ultimate objective. It is recognized that they may be necessary to counter subsidized exports from non-NAFTA countries into NAFTA markets. However, there are to be consultations on the possibility of action against such imports. There are notification procedures if export subsidies are to be introduced.

- Energy and petrochemicals

94. Quantitative restrictions and minimum prices on imports and exports are supposed to be applied "in a manner consistent with the GATT". It is not completely clear what is intended, since these measures are, in principle, banned by GATT except under circumstances such as BOP difficulties or development needs (Article XVII). Controls for the conservation of exhaustible resources, supply shortfalls and price stability are apparently allowed, although these are not covered in the GATT. Import and export licensing permitted under conditions covered in the agreement. Duties and charges to imports from within NAFTA can be no more than domestic charges. Mexico apparently will be able to reserve to itself goods, activities and investments in oil, gas, basic petrochemicals, nuclear energy and electricity, but there have apparently been some concessions for foreign investment and trade in non-basic petrochemicals, as well as natural gas and power.

- Automobiles

95. Barriers and investment restrictions are to be eliminated over a 10 year period. To obtain NAFTA tariff rates, goods must meet special rules of origin (which rise to 62.5 per cent for passenger automobiles, light trucks and engines and transmissions for such vehicles and 60 per cent for other automobiles and parts), based on the net cost formula. Mexico is to reduce its trade balancing requirements and, at the end of a transition period, eliminate the requirement that only assemblers may import vehicles. During a transition period it local content plan will be reduced and then eliminated.

- Textiles and clothing

96. Tariffs are to be reduced to zero over ten years for goods which meet NAFTA rules of origin. These are special rules of origin for the sector, which are to be reviewed in 1998. Goods made in North America but not meeting the rules of origin will be subject to tariff quotas. For goods which meet the NAFTA requirements on origin, the U.S. will immediately eliminate quotas on imports from Mexico, and these will be phased out for products which do not meet the origin requirements. Tariffs and quotas may be increased for safeguard reasons, except that only tariffs may be used on goods meeting the NAFTA origin requirements.

VI. Methodologies for phasing out NTMs

97. The earlier technical discussions on the effects of NTMs together with the experience of the NAFTA (as well as GATT negotiations, as described in Annex III) now provide a basis for looking at methodologies for phasing-down or eliminating NTMs that might also be applied in the context of negotiations on a hemispheric FTA. The discussion of NTMs in use within the region also allow greater focus to the ensuing discussion.

98. First, it is important to distinguish those NTMs which are to be eliminated under an FTA from those which are to be subject to agreed disciplines or rules. It is expected that some NTMs will need to be eliminated, e.g., quotas, VERs, export subsidies, reference prices. Others will be the subject of rules between the parties, e.g., anti-dumping or countervailing investigations, domestic subsidies, standards, etc. In yet other cases there will be both rules and at least a "phase down", if not a total elimination, e.g., government procurement, and perhaps subsidies. In this section, we are concerned with measures to be phased down or to be eliminated, rather than with rules.

99. The simplest procedure for liberalization is simply to eliminate NTMs and to allow the exchange rate to re-establish BOP equilibrium in the market. This is the easiest, surest and, in the end, least, costly procedure (in terms of administrative costs). This is not unlike moving toward a uniform tariff or to free trade in that it carries with it the implication of a reallocation of resources within the domestic economy from the protected sectors to a more neutral allocation. Despite evidence about how easily countries have adjusted to major - and even very rapid - change,²⁴ most countries may be expected to seek time for the more highly protected sectors to adjust. It has been argued (Krueger, 1986) that a drawn out period gives protectionist forces more time to resist liberalization, but this is of less significance in an FTA set-up, at least for the smaller countries where there are external pressures to meet commitments. The question therefore arises how to achieve the desired liberalization, or, rather, the implementation of the FTA results.

100. It should be noted right away that an FTA does not necessarily imply the abandonment of NTMs, only their eventual elimination within the region.²⁵ Thus, for example, it is not expected that the U.S. or Canada would dispense with the MFA quotas for non-members of the FTA, just because Latin American countries will seek exemption. By the same token, local content plans for automobiles can simply be extended to cover parts produced in other members of the FTA, together with negotiated rules of origin to benefit other members of the FTA, without granting similar benefits to Japan or European automobiles.

101. For those NTMs which are to be phased out, there are several possibilities:

- (i) phase out the NTMs by relaxing the provisions, e.g. expanding quotas, reducing subsidies;
- (ii) progressively reducing the range of products affected; or
- (iii) converting NTMs to tariffs which would then be included in the scheduled tariff reductions.

102. Of course, it may be decided that different types of NTMs or the same type of NTM in different sectors require different approaches.

103. It is obvious that, if the idea is to phase out Qrs by progressively expanding quotas, it is not necessary to know the tariff equivalent of NTMs. In the case of unfilled MFA quotas, it would seem possible to simply eliminate the quota and move directly to the tariff-cutting formula without delay.

²⁴Papageorgiou, Michaely and Choksi (1991).

²⁵The European Communities have shown that external NTMs may be maintained, even differentially applied by different member states of a common market. The establishment of the single market at the start of 1993 is intended to sweep away remaining internal barriers and should, in principle, result in uniform external NTMs. As is well known, extra time for adjustment is being allowed in the automobile sector through the restraint agreement with Japan.

If there is evidence that the tariff is the binding constraint, then the same applies.

104. In the case of a quota expansion, the procedure would simply be to expand the quota by a fixed percentage each year. This would continue until quotas were no longer being filled, and then the quota system could be disbanded. Of course it is not possible to predict in advance when that might be. This could be a problem in an FTA when a fixed timetable is likely to be required for quota elimination. It is not possible to be sure trade will be liberalized ahead of schedule or, suddenly, towards the end of the adjustment period. This method of quota expansion was used by the original members of the European Communities. They first globalized the quota of individual members of the Communities and then expanded it by at least 20 per cent a year, with an increase of no less than 10 per cent for each product (Takacs, 1989). This approach has also been used in unilateral liberalizations.

105. With respect to export or import prohibitions, if these are to be scrapped, then it might be possible to establish a quota which could progressively be expanded and eliminated over a period of time.

106. It is also possible to eliminate quotas by proceeding on a product by product basis. This has been done under many World Bank structural adjustment loans, often in conjunction with other liberalization efforts such as quota expansion or conversion to tariff equivalents.

107. In the case of Brazil, which recently abandoned its licensing system, the approach was to calculate the price wedge associated with the existing system and use this to establish a new tariff schedule with an equivalent level of tariff protection.²⁶ The new tariffs are now being progressively reduced according to a predetermined and published schedule - see Kume and Piani (1991).

108. Various methods for computing the price wedge or tariff equivalent were discussed earlier. However, instead of making such calculations in advance, a quota auctioning system might be used to determine the appropriate level of tariffs or tariff quotas to replace quantitative import restrictions (Takacs, 1989).

109. Converting existing NTMs to their tariff equivalents introduces, from the start, a link with world prices, increases transparency, and increases government revenue (unless the government has been auctioning the quotas). Once the tariff equivalent is established and put in place, it is possible to achieve much greater precision in the phasing-out period by stipulating that tariff will be progressively reduced by a fixed amount or percentage each year until they are eliminated. Thus, the extent to which domestic prices can exceed import prices is known.

110. Balassa (1986) favored an expansion of quotas over a conversion to tariffs on the grounds that it may prove more difficult to remove the tariffs in the long run. However, this was written in the context of unilateral liberalization, not an FTA where there is an external commitment to meet a scheduled liberalization.

111. Tariffs might take the form of tariff quotas, in which the higher rate is progressively brought into alignment with the normal tariff (and eventually equal at zero for the FTA rate). Alternatively, the quota can be progressively expanded. As noted above, a combination of both procedures and the tariff equivalent is apparently to be used in agriculture under the NAFTA, with the above quota rate being based on the tariff equivalent of existing NTMs.

²⁶This is based on discussions with Kume, who is Chairman of the CTT, the Brazilian Tariff Commission.

112. In the case of reference prices (linked to variable levies or "adjustable charges"), the logical approach is to progressively reduce the margin between reference prices and, say, some kind of moving average of world prices for the products in question. In Uruguay's phase-out of its reference price system, however, goods were progressively eliminated from the list of affected items. It is not known to what extent the Government modified reference prices in the interim period.

113. In the case of subsidies, whether for domestic production or for exports (including transport and storage subsidies), these could simply be reduced by a fixed percentage within an agreed time period. One question that might arise in the rule-making negotiations is whether to de-link domestic subsidies from production levels, as currently being discussed in the GATT agricultural negotiations. Subsidies could then be linked to income levels, if that were a social objective. Also, the question arises as to whether export subsidies would be allowed within the FTA.

114. In the case of government procurement it might be imagined that a certain level of domestic preference would continue to be tolerated, at least up to certain agreed limits. Even if this is ruled out, the procedure for progressive elimination or progressive reduction of the margin of preference to a given level would simply be by reducing the margin of preference in equal steps according to a schedule which envisages reaching elimination or the target level within a fixed period of time.

VII. Likely scope of the negotiations

115. It must be clear from the foregoing that the non-tariff negotiations in goods will be complex, involving rules for implementation of NTMs that will remain, as well as deciding on procedures and time period for the elimination of NTMs. Sector specific negotiations will most likely be required. Although, it is sometimes suggested that trade negotiations proceed on a barrier-by-barrier basis, the treatment below concentrates only on rules and products. There are also questions, discussed below, concerning dispute settlement which specifically affect NTMs as well as to the need for a permanent or periodic consultative mechanism.

116. Although this is not the subject of this paper, it is certain that an FTA with U.S. will cover more than trade in goods. This has happened already in the U.S.-Israel FTA, in the FTA with Canada, and in the NAFTA negotiations, which also extend into the areas of services. Judging from the Canadian FTA and the NAFTA, it might be expected to cover: (i) national treatment for (some) services: insurance, banking, aviation, shipping, telecommunications, TV quotas for foreign productions, etc.; (ii) investment issues (TRIMS); (iii) intellectual property concerns (patents); and (iv) labor mobility. Almost by definition, negotiations in these sectors concern non-tariff measures.

117. With respect to the period which might be allowed for the phasing out of NTMs, this could be quite long in some cases, depending on the stage of development of the country or the extent of adjustment that might be required. For example, in the NAFTA talks, Mexico was able to negotiate a phase-out period of up to 15 years for some sensitive products. The question as to whether a country might wish to avail of an extensive period for eliminating its own trade barriers, however, has to be seen in the light of the general recognition by countries in the region that these measures are harmful to the country itself. For this reason, some countries have chosen to move very fast in eliminating their own NTMs. Nevertheless, it is to be admitted that there are sensitive areas in some countries and those countries will be looking for exemptions from the FTA or prolonged adjustment periods. In some cases, e.g., administered prices, it is possible to envisage them being phased out in the same way as other NTMs, following agreement on a rule under which they are prohibited between participants in the FTA. Similarly, margins of preference for domestically produced goods in government procurement programmes could be phased out if such practices were prohibited.

(A) Rules negotiations

118. In relation to rules, there is a possibility that the United States will insist that other countries in the region join GATT MTN codes of which they are not already members.²⁷ This was not apparently an issue in the NAFTA negotiations, probably because Mexico is a member of most GATT codes. As already indicated, there will most likely be an attempt to flesh out the operation of some of the rules already covered by these GATT codes (particularly in view of disputes that have already arisen in the context of the Canadian-U.S. FTA). However, coercion to join GATT codes or to elaborate them in a bilateral arrangement could be, at least partly, preempted by a successful conclusion to the Uruguay Round when it is intended that all the earlier MTN codes, whose membership was optional, should become part of the new Multilateral Trade Organization (MTO).

119. The following practices are normally considered to be NTMs that fall under rules or codes of behavior that will need to be agreed in the FTA negotiations. Even if new codes of behavior are not elaborated, modification of existing practices will most likely be sought, at least in some cases, in the FTA negotiations.

- Anti-dumping/Countervailing procedures, safeguards.

120. In the Canada-U.S. FTA, Canada placed considerable emphasis on a consultative approach to resolving trade problems. One of the main reasons for this was that Canada was well aware of the extent to which the benefits it negotiated could be negated by U.S. anti-dumping actions. It also sought greater predictability in its trade with the U.S. Despite this, Canada has been subject to some AD actions which it thought it might avoid.

121. It should be noted that, despite considerable evidence on the "chilling" or harassment effect of anti-dumping investigations and the further effects of positive findings, the Office of the United States Trade Representative (USTR) typically does not accept that an anti-dumping action is an NTM. This is partly because of the anti-dumping duties levied by the U.S. are typically a supplementary ad valorem charge. However, there is also a concern that the U.S. would be in breach of GATT's the standstill and rollback commitments which, it is argued with some justification, do not prevent a country from taking anti-dumping actions consistent with GATT. The U.S. also argues that AD actions exist "only to correct the unfair trading practices of other countries". Ironically, this is the justification now given in trade ministries throughout the region where similar mechanisms are under consideration, if they have not already been implemented.

122. Although the NAFTA talks focused on dispute settlement, agreeing on some kind of improved discipline on anti-dumping would be highly desirable, because of the potential such actions pose for disrupting trade and souring the good relations and expectations which have been engendered by the Enterprise for the Americas Initiative. As noted by Finger and Murray (1990) in reference to anti-dumping in the U.S., "unfair trade cases are where the action is because they are broad enough to handle all the action".

123. Even in an FTA, protection will most likely be used from time to time on an emergency basis. If this is a matter of import surges for specific products then Article XIX of the GATT would normally be expected to apply. At present, however, this does not allow discrimination in the application of any measure - usually quantitative restrictions - to imports of the product concerned. This has given rise to the need to have bilateral discussions under FTAs or common markets to avoid

²⁷For example, in the U.S.-Israel FTA, Israel agreed to become a member of the GATT Subsidies Code.

such widespread action. In practice, this might be expected to lead to some kind of VER or OMA, as has been the case in the international trading system in general and in other FTAs. Whether the NAFTA arrangement to exempt non-NAFTA countries from global action will stand up to GATT scrutiny remains to be seen.

124. The use of reference prices (and minimum "export" prices by a number of countries in the region will most likely be an issue if they wish to join a hemispheric FTA. (This will put them under greater pressure to allow bilateral exchange rates to adjust to more fully reflect differential rates of domestic price increases).

- Voluntary export restraints

125. We have witnessed in the 1980s greater resort to managed trade through VERs to avoid emergencies (often under threat of an anti-dumping action). FTA negotiators will have to decide on whether to allow such measures and under what circumstances - an issue which has bogged down two GATT rounds of trade negotiations. Although these arrangements may be harmful to U.S. consumers, the Department of Justice exercises discretion in the application of anti-trust laws where the U.S. Government is party to the restraint being practised overseas. However, even where the U.S. Government has not requested such restraint, VERs are exempt from anti-trust action if there is foreign government compulsion, as in the case of the Japanese automobile VER (GATT, 1992).

- Customs valuation

126. Customs valuation procedures have been used in the past by a number of developing countries in the region to set customs values which are different from the transaction value. This is being done even where there is no evidence of dumping. However, the transaction value is the principal basis for valuation under the GATT Customs Valuation Code, and only if this cannot be determined are alternative (stipulated) procedures allowed. Typically, these are much stricter than procedures currently being applied. A number of countries have resisted joining the GATT Code, despite pressure from the U.S. This is evidently an issue which is likely to be pursued by the U.S. in any FTA negotiations. However, the situation can also expect to be resolved at the conclusion of the Uruguay Round when the new MTO rules will apply to all members.

127. Many countries in the region use the Brussels definition of value which is based on the c.i.f. value, rather than the f.o.b. value used by the U.S. and Canada. This is optional under the GATT Code.

- Internal taxes

128. It seems inevitable that partners in the FTA would insist on GATT-type, non-discriminatory treatment of internal taxes, and this will require movement from some developing countries in the region. It is only surprising that these have not already been brought up in some dispute settlement case. GATT permits the application of internal charges to imports, however, such charges should not be applied to imported or domestic products so as to afford protection to domestic production (Article III.1). This implies that internal charges on imported products shall not be in excess of charges applied to domestic products (Article III.2). Fees charged to cover the costs of entry procedures are permitted under the GATT (Article II.2(c)), but fees shall not represent an indirect protection to domestic producers or a taxation of imports or exports for fiscal purposes (Article VIII.1(a)).

- Government procurement

129. It seems likely that preferences for locally produced goods (or services) through government procurement practices would be affected by an FTA. Non-members may expect to be urged to join the GATT Government Procurement Code (unless overtaken by developments in the Uruguay Round). However, it is highly desirable that limitations on government procurement practices be extended to levels below that of national governments and their agencies and enterprises. This has implications for the U.S. (in particular "Buy America" provisions), Canada and most of the developing countries, although it does not appear to have been taken up in the NAFTA talks. At present some developing countries grant no domestic preferences on government procurement, but some most will need to exercise much greater discipline than in the past on their numerous state-owned enterprises.

- State trading and including operations of state-owned enterprises.

130. The operations of state-trading corporations and state-owned enterprises could well be of importance in a number of developing countries, as well as Canada. State-trading is particularly important in agriculture, e.g., marketing boards. In most developing countries of the region the elimination of these operations or opening them to competition from the private sector has been carried out or is in the process. Privatization of state-owned enterprises is well advanced in some countries, but still faces problems in a number of cases, including where these enterprises account for an important, even dominant, share of domestic production.

- NTMs operating at below national level

131. As noted in the case of Canada, the operations of government below the national level have frequently caused frictions with the U.S. It is to be expected that similar scrutiny will be applied to developing country members of any FTA, particularly now that national governments in the region have removed the main external barriers to imports. If this is not specifically picked up in rule-making negotiations it might well become a source of friction to be resolved by a consultative procedure.

- Competition policy

132. Competition policy is not typically a matter which might be expected to be taken up in the FTA talks, although this is a key area in the U.S.-Japan SII talks as the U.S. considers Japan's distribution system makes it hard for American firms to enter their markets. Some of the operations of Canada's Provincial Governments might also be considered to fall into this category. As was apparent in the case of Argentina, where the Menem Government took important steps in October 1991 to deregulate the internal market, there are no doubt cases in Latin America where such practices could be a problem. Even if they are not taken up in the rules-oriented negotiations, they could well be picked up at a later stage as impeding the expected gains from the FTA.

- Subsidies

133. *By and large developing countries in the region have taken steps in recent years to eliminate direct subsidies, if only for no other reason than that they can not afford them. Rebates of domestic taxes and of import duties are now fairly carefully defined to be precisely the amount first paid, rather*

than averaging schemes with potential cross-subsidization components. There may be some hidden subsidies operating through export finance schemes at less than market rates in some cases but again generally there has been a tendency to charge interest on export-related loans at LIBOR plus one per cent or some such similar formula.

134. The major problem of subsidization lies with the U.S. and Canada, mainly in the area of agriculture. While there are undoubtedly relatively innocuous income support schemes, there are also explicit export subsidies which have harmed developing country exporters in Latin America by driving them out of markets and lowering the prices they receive. However, the U.S. is also considered to cross-subsidize a number of industries, in particular aircraft construction, through highly priced defence contracts. Moreover, it is understood that individual states have provided subsidies to help hold down setting-up costs for firms moving into their areas, and possible in other ways.

135. In general, the GATT Subsidies Code, while "recognizing that [domestic] subsidies are used by governments to promote objectives of social and economic policy", prohibits the use of export subsidies in the case of industrial products. They are allowed for primary products provided they do not result in the exporter having "more than an equitable share of world export trade" in the product.²⁸ Developing countries have the right to use subsidies and export subsidies on all products provided they do not cause "serious prejudice" to the trade or production of another signatory. However, it is important to note that this does not mean that allowed subsidies cannot be countervailed.²⁹

136. For the benefit of clarity - unless events are overtaken by new rules on subsidies at the end of the Uruguay Round (and this is one of the major sticking points) - it may be desirable for developing countries in the region to seek some undertakings by the U.S. and Canada on the use of export subsidies in the area of agriculture. For example, there might also be an agreement between developing countries to countervail U.S. and Canadian exports to the region if they are harmful to the exports of another developing country member of the FTA, even where they do not harm the direct importer. It may also be desirable to spell out which measures are to be permitted, which may be subject to scrutiny and which have to be banned (in essence the traffic light approach which has been discussed in the GATT - see Annex III).

137. Among the policies which might possibly be allowed are income support policies which are de-linked from the level of production, or subsidies for industrial³⁰ and regional development, including structural adjustment policies. In the latter case, some governments may wish to use such policies to provide adjustment assistance during liberalization. However, as remarked earlier, few developing countries in the region currently have the resources to pursue such policies, and it might simply be easier to prohibit such policies, with a permitted phase-out period for those which currently exist.

²⁸GATT Subsidies Code.

²⁹There is also an escape clause in Article 19:9 which states that the "Agreement shall not apply as between any two signatories if either of the signatories, at the time either accepts or accedes to this Agreement, does not consent to such application". Under this clause, the US has refused to allow the use of export subsidies by a number of developing countries.

³⁰This would include R&D support, whether as direct assistance or through indirect cross-subsidization as in defence contracting.

- Export restraints (taxes, prohibitions)

138. As noted, export restrictions are still applied by some developing countries on raw hides and skins, while there are export taxes on oil seeds. These are of concern to processors in the industrial countries, and it would be surprising if there were no attempt to obtain a commitment to have these eliminated. Although these do not constitute a subsidy to processors in the exporting country under GATT, there is no question that they reduce prices to domestic processors below world levels and, hence, have a similar effect.

- Technical standards (including sanitary and phytosanitary regulations).

139. Technical barriers to trade for health and safety reasons are likely to become the subject of a special code of behavior, with stricter standards and enforcement procedures than under the relevant GATT code. It is well known that, in the past, health and safety reasons have been used as a pretext for other industrial policy objectives, and it is certain that these will be probed in the talks.

(B) Sectoral discussions

140. The main sectors which appear likely to be covered by separate negotiations are agriculture, hydrocarbons and mining, steel, automobiles and textiles and clothing. As noted earlier, services not covered in the present study.

141. An important point to note in dealing with any one product is that it may be affected by more than one trade barrier. This is one reason for using a sector-by-sector approach, so that all measures in a sector can be dealt with at the same time. Apart from normal, non-zero ad valorem tariff rates, many products can be affected by NTMs which have tariff components, for example, tariff quotas (raise or lower rates relative to the m.f.n. rate), variable levies, anti-dumping duties and countervailing measures. There can also be supplementary charges, which need not correspond to some kind of charge for services related to trade. There can also be a stacking of NTMs: some products affected by licenses and/or quotas as well as technical standards or special inspection procedures, etc.

- Agriculture

142. The extent of the agreement between Mexico and the U.S. in the context of the NAFTA negotiations - despite considerable intervention by both Governments - suggest that there is the prospect of the elimination of tariff and non-tariff measures within a hemispheric FTA, although persistent use of export subsidies by the U.S. and Canada to grain importing countries in the region could be of concern to Argentina and some other exporters. The exceptions made in the case of dairy, poultry, eggs and sugar in trade between Mexico and Canada suggests that there would also need to be exceptions in a hemispheric FTA, if only for Canada. Sugar exports by large Latin American and Caribbean producers could be a problem area. PSEs for agriculture in the region given earlier and other work suggest that there has been a mixture of tax and support policies for agriculture in the region, and it would need a detailed study to look at the complementarities and areas of competition to identify the key problem areas. Hufbauer and Schott (1992) argue that there is greater complementarity in Mexican-U.S. trade, than with Canada, and this may explain the outcome. Special safeguards would no doubt be implemented, as in the case of NAFTA.

- Hydrocarbons, mining

143. The main issues in this sector appear to be more related to investment than to trade barriers as such, and are often complicated by the explicit mention of the sector in national constitutions. There appears to have been some relaxation of regulations governing exploration, in an effort to discover new sources, but controls remain on exploitation, production and distribution in many countries of the region. These controls operate as effective trade barriers. Mexico's provisions to control production, trade and prices would seem to go further than the provisions of other Latin American countries, and it seems to have been able to substantially exclude the major part of its petrochemicals sector from the scope of the NAFTA agreement.³¹ In the region in general the possibilities for joint ventures are expanding under revised investment codes. Increasing concern over environmental issues has led to the tightening of regulations governing exploitation in both the hydrocarbons and minerals sectors.

- Steel

144. In the U.S., this sector has been protected by VERs for a number of years. As noted earlier, with the abandonment of VERs this year, U.S. producers have issued a large number of petitions for import relief under the anti-dumping laws. Given the high success rate of such actions in the past, the hopes for genuine liberalization in the sector are closely tied to the possibility for obtaining improvements in U.S. procedures, and Department of Commerce methods in particular. This was not specifically discussed in the NAFTA talks, but could be more sensitive in a hemispheric arrangement.

- Automobiles

145. The main issues, as in the case of Mexico in the NAFTA negotiations, are import restrictions linked to local content plans and export performance (trade balancing) requirements. These have been used extensively by a number of developing countries in the region, although in several cases they have already been phased out or are in the process of being phased out. Used car imports remain banned in a number of countries. There are also likely to be special rules of origin perhaps along the lines agreed in the NAFTA negotiations. Under NAFTA, Mexican vehicles are to be considered under the domestic fleet under the U.S. fleet content provision relating to fuel economy. Other Latin American exporters of automobiles, such as Brazil, might expect to obtain similar treatment.

- Textiles and clothing

146. It might be expected that Latin American and Caribbean countries seeking to join a hemispheric FTA would expect exemption from the provisions of the MFA. This is not a one-way street: Hufbauer and Schott (1992) draw attention to the fact that the U.S. had a small surplus in its textile and clothing trade with Mexico. The U.S. value added tariff provisions HS items 9802.00.80 (formerly, TSUS items 806 and 807) presumably did much to stimulate the two-way trade, as did reductions in Mexican barriers and significant liberalization of U.S. MFA quotas for Mexico (especially for garments made with U.S. textiles) in recent years. However, as far as other countries in the region are concerned, as noted earlier, very few are seriously constrained by the MFA, being much less competitive than Asian countries (and Mexico). Caribbean countries have had special quotas above their MFA quotas, but despite this - and low labor costs - they have not been competitive in the U.S. market, and are said to be concerned about the increase access for Mexico

³¹The envisaged redefinition of a number of basic petrochemicals, reserved to the State under Article 27 of the Constitution, as secondary petrochemicals opens up the scope for foreign direct investment in the sector.

under NAFTA. They may be expected to have even greater concern about a hemispheric FTA. Special rules of origin would most likely be established in the sector to favor regional production of materials. The elimination of the MFA is envisaged in the GATT negotiations, so that any early elimination in the context of an FTA might be conceived as giving countries in the region an opportunity to improve their competitiveness in the sector. Given that tariffs (and demand and substitution elasticities) are also high in the sector, trade liberalization could still have significant trade creation and diversion effects³² and it is likely that special safeguards will be sought along the lines of those in the NAFTA.

(C) Dispute Settlement

147. The negotiations in the Canada-U.S. FTA on special procedures to discuss trade disputes was considered to be one of the key Canadian objectives to avoid or reduce the risks of U.S. resort to anti-dumping procedures as freely as has been possible under GATT rules.

148. It is unlikely that there will be a code for the use of anti-dumping duties or countervailing measures which differs from the GATT code, but it now appears likely that there will be an agreement either to consult before invoking the approach allowed by GATT, or to allow the invocation of a single approach whether under the GATT or the FTA to stop "forum-shopping".

149. Similar comments might apply to any actions which may be taken against other countries under Section 301 of the 1988 U.S. Trade Act. Developing countries might reasonably expect a commitment to follow GATT conciliation and dispute settlement procedures, instead of Section 301 procedures.

(D) Framework

150. Consideration of any permanent consultative framework or secretariat that might be required to service a hemispheric FTA is beyond the scope of this paper. However, there are certain issues concerning NTMs that will almost certainly require a forum for ongoing discussions, where the functioning of the FTA can be examined periodically or where new issues can be raised. Some indications of the kinds of issues that might be taken up in a consultative process, rather than in the initial set of rules, have already been indicated.

- Monitoring changes (including domestic transparency).

151. One of the key features of NTMs is the wide variety that exist and their ability to proliferate in unforeseen ways. This means that there will be a need for vigilance in the context of an FTA to ensure that negotiated benefits are not averted by the application of some measure of which the exporter was unaware or which has been newly developed.

152. While trading partners will no doubt raise such issues if they become aware of them, countries in the region might well wish to consider the use of a domestic transparency mechanism to help to reinforce their domestic reforms and, hence, to ensure their commitments to the FTA are fulfilled. A number of the characteristics of such an agency are present in various institutions in the region, including in the U.S. (the USITC), but their operations could be improved. What is desired is a

³²See, for example, Laird (1990).

statutory authority, independent of the direction of government in the scope of its work to review macro-economic and, especially, micro-economic policies, such as trade and industrial policies. Its mission would be to ensure that such policies are being pursued in the interest of the country as a whole and not just narrow, sectoral, rent-seeking interests. Apart from the more academic side of the necessary research work, an important feature might be public hearings at which all interested parties could present their views on the economic issues being reviewed. The findings of such investigations should be immediately published to assist governments to resist pressures from narrow but powerful interest groups. This kind of effort is particularly important in respect of NTMs which are typically non-transparent and whose effects are hard to analyze.

- General Economic Collaboration

153. Closer economic integration does not stop with the establishment of an FTA. For such integration to be a success, there will also be a need for some form of co-ordination on wider aspects of economic management. For example, closer trade relations will be adversely affected if one partner tries unilaterally to use quantitative restrictions or even competitive devaluations to manage its trade payments balances.

154. In general, countries in the region are starting to place greater faith in the use of floating exchange rates or controlled floats to solve BOP problems, whereas in the past they relied on quantitative restrictions - which supported uneconomic, rent seeking industries and perpetuated the BOP problem.³³ To illustrate this commitment, in the last 18 months both Argentina and Brazil have renounced the use of BOP restrictions under Article XVIII:B of the GATT. However, a problem may arise when trading partners use different approaches to exchange rate management. For example, if one country uses the exchange rate as a nominal anchor to combat inflation while the other allows the exchange rate to float, this can cause the balance of trade to swing strongly in favor of the second country, provoking an outcry from exporters and domestic producers in the first country that the exchange rate is overvalued. This is what happened in Argentina. The Governmental response - to increase the statistical tax on imports while providing incentives for exports (in effect achieving the same as a devaluation) - has caused increased tensions within MERCOSUR, whose implementation may be delayed in consequence.

155. This situation in MERCOSUR also illustrates the need for greater convergence of economic policies. Both Argentina and Brazil have high capital inflows, attracted by high domestic interest rates, but Brazil has had greater difficulty in controlling fiscal expenditure and the growth of the money supply. Inflationary expectations are different in the two countries, so that without compensatory movement in the bilateral exchange rate, trade flows were bound to be affected. As an example from outside the region, if we look at recent developments within the European Community, we can see that (comparatively) minor movements in exchange rate and interest rate relativities can cause major fluctuations in trade and financial flows, giving rise to political tensions.

156. There is growing recognition of the need to achieve for bilateral or plurilateral co-ordination of macro-economic policies, inside the region and elsewhere. It is quite clear that achieving much greater economic stability is going to be one of the major challenges for a hemispheric FTA, and

³³Most economists accept that this type of measure, often applied under Article XVIII:B of the GATT, are self-defeating in that they tend to be applied in a manner which favors specific sectors. As such, they inhibit a market-based restructuring of the developing economy along the lines of changing comparative advantage and hence are self-perpetuating.

failure could easily spill over into trade tensions, as it already has at the sub-regional level. This is not an easy question; it is one which even the G7 leaders have not been fully able to resolve with their different perceptions about the relative importance of controlling inflation and fostering economic growth. How much more difficult this is going to be in the Americas, with such widely diverse economies and levels of development.

157. Should such macro-economic problems arise, one of the first areas where tensions will arise is in the area of trade, and NTMs will be among the first instruments to be used. This is, of course, at least a second best solution to the failure of macro-economic management, but it is one which has soured U.S.-Japan relations in recent years. Thus, consultations on economic trends and management are one of the keys to ensuring that welfare-reducing trade barriers are not re-introduced and that the full benefits of the pact are both attained and retained.

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ANNEX I - Analysis of tariffs and non-tariff measures

The standard partial equilibrium trade diagram is given in Figure 1. Domestic demand and supply are given by D_d and S_d , respectively. World supply (S_w) is assumed to be completely elastic (otherwise it would slope up to the right), and the initial domestic price is P_0 . Domestic producers supply Oq_0 and imports are q_0Q_0 .

As a point of reference, consider the effects of a tariff. If a tariff is imposed the import supply curve and prices facing domestic consumers increase to S_w' and P_1 (equal to $P_0(1+t)$), respectively. Domestic consumption and imports decline to OQ_1 and q_1Q_1 , respectively. The tariff revenue, $ABCD$, goes to the government of the importing country. This identifies the production effect, the consumption effect, the import effect, the revenue effect and the redistribution effect (the transfer of income associated with the increase in the price paid by domestic consumers and received by domestic producers). Two other effects may also be identified: first, the triangle EAD represents the increased cost of producing the extra output locally (the area between the price lines and above S_d is known as producer surplus); and, second, the triangle BFC is the loss in consumer surplus.

If an import quota, or indeed a VER is set equal to q_1Q_1 then domestic production, consumption and imports are identical to those under tariff t . However, the revenue, $ABCD$, goes to domestic importers or to foreign suppliers, depending on to whom the quota is allocated. In the case of a VER, the revenue goes to foreign suppliers. Governments may use auctions to capture quota rents, both with import and export quotas.

The government may introduce a subsidy to domestic producers of importables of a fixed price per unit, such as to cause a downward shift on the domestic producers' supply schedule, S_d' , so that it passed through A . This would produce the same increase in domestic production as under the tariff t , but domestic consumption and prices to consumers would remain unchanged while imports would decline to q_1Q_0 (instead of q_1Q_1 under the tariff). This would avoid the loss of consumer surplus. The cost to the government, q_0q_1AE , would need to be met from taxation. Export subsidies and taxes are covered below.

A number of price increasing NTMs operate analytically exactly like a tariff by pushing up the supply price of the importable faced by the domestic consumer. Some increase prices on a percentage basis, other increase fixed unit prices. Variable levies push up the world price as perceived by importers to a predetermined, fixed or periodically revised level. This level is maintained even when the free world prices are declining, i.e., S_w shifts downwards parallel to its existing position, but S_w' remains fixed. This means that the effects relative to the new world price are greater, but this increase in protection is not apparent as prices and quantities remain fixed as under S_w' .

Government procurement practices may vary, but in general they apply a fixed notional percentage increase to the price of importable goods before deciding on whether the imported goods are cheaper than the domestic goods.³⁴ This means the Government will pay a higher price for domestically produced goods and purchase more of them than in the absence of this practice. However, the private sector will continue to buy at the world price. Thus, there are segregated

³⁴The preference may be "absolute" so that domestic suppliers will charge as much as domestic competition or the market will bear.

markets with price discrimination between them.³⁵ This is also true if there is a tariff as well as a domestic preference, although this can be offset if government agencies and state-owned enterprises are exempt from payment of duty. In the aggregate, there is an implicit tariff which is lower than the notional rate of preference to the extent that the private sector is also a purchaser in the market for the importable good. This implicit tariff is what would be taken into account in estimating the effects of removal of government procurement preferences. Overall, it increases production and decreases consumption. Consumers (government agencies, etc.) pay more, but the transfer is directly from the government to the producer because of the higher price. This has to be financed from taxation.

The effect of an export subsidy are shown in Figure 2.³⁶ On the right of the diagram is the interaction of domestic supply and demand. On the left is the interaction of excess domestic supplies available for the world market and the excess demand by the rest of the world, ES and Dw , respectively. At the world and domestic price, $P_w = P_d$, domestic production is OQ , domestic consumption is OC , and the amount available for export is $CQ (=OX)$. If the exporter then introduces an export subsidy, this has the effect of lowering the excess supply from ES to ES' , driving the export price down to P_w' and exports up to OX' , while domestic prices are bid up to P_d' , causing production to rise to OQ' and consumption to drop to OC' .

Export taxes and export restrictions can be shown diagrammatically like Figure 2, but with the opposite effects.³⁷ Export prices are increased, causing exports to fall, while domestic prices fall and domestic consumption increases. These taxes can be used to exploit a monopoly position on world markets, which effectively gets the foreigner to pay the tax. This is the equivalent of the so-called optimal tariff on imports.

Price NTMs usually work like a tariff and can be added to the tariff to obtain and total price effect from trade intervention. However, the effects of a quota depend on whether the tariff or the quota is the binding constraint. For example, in Figure 3, under free trade the domestic and world prices are P_0 and imports are Q_0 . If a tariff t is imposed such that $P_1 = P_0(1+t)$, then import demand drops to Q_1 . If quota is imposed to limit imports to Q_2 , then, in the absence of any tariff, the domestic price of imports will only rise to P_2 . In the presence of tariff t , the tariff is the binding constraint so that P_1 and Q_1 prevail. If a quota is imposed to limit imports to Q_3 , then the domestic price of imports will rise to P_3 . The quota becomes the binding constraint.

³⁵Domestic producers supplying to the government and the private market will allocate their output to each market in such a way that their marginal revenue is equalized in each market.

³⁶I am grateful to Kym Anderson for this point.

³⁷See GATT (1992) on Argentina for an exposition of the effects of Argentina's export taxes on oilseeds.

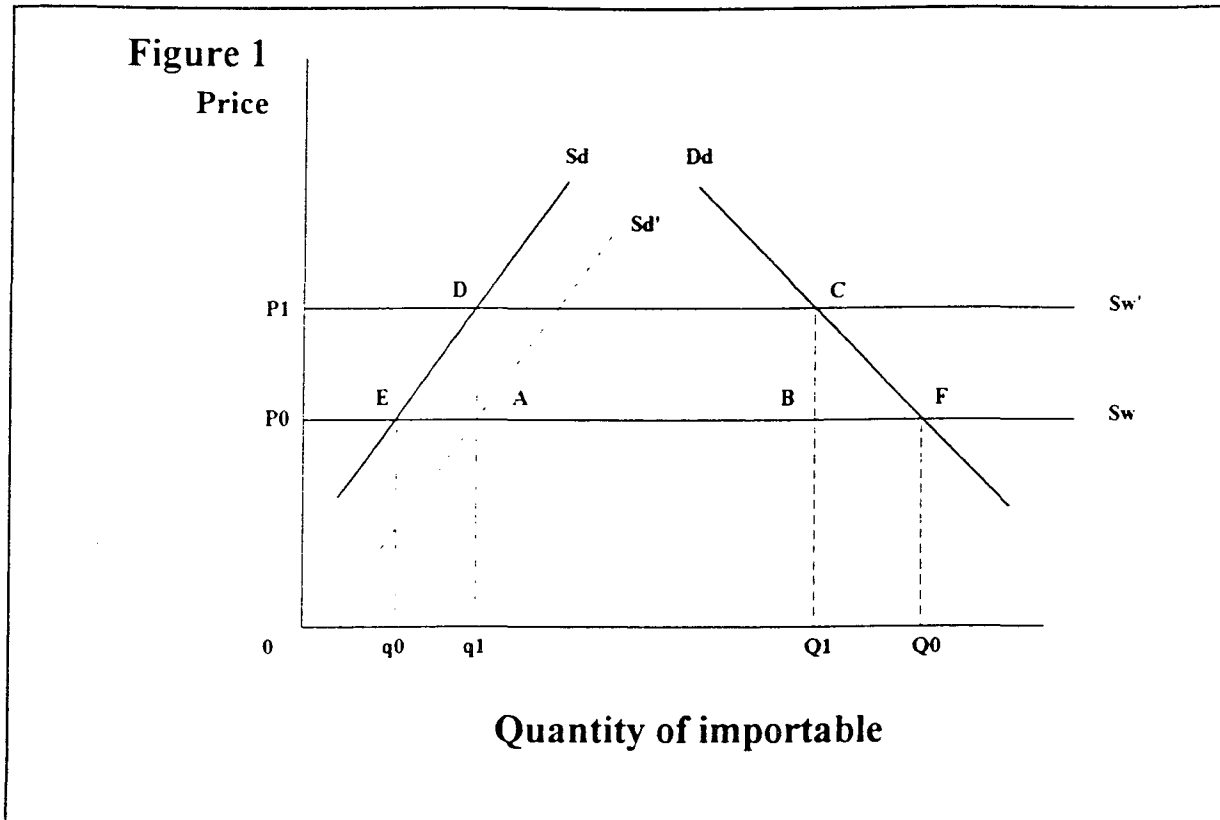


Figure 2

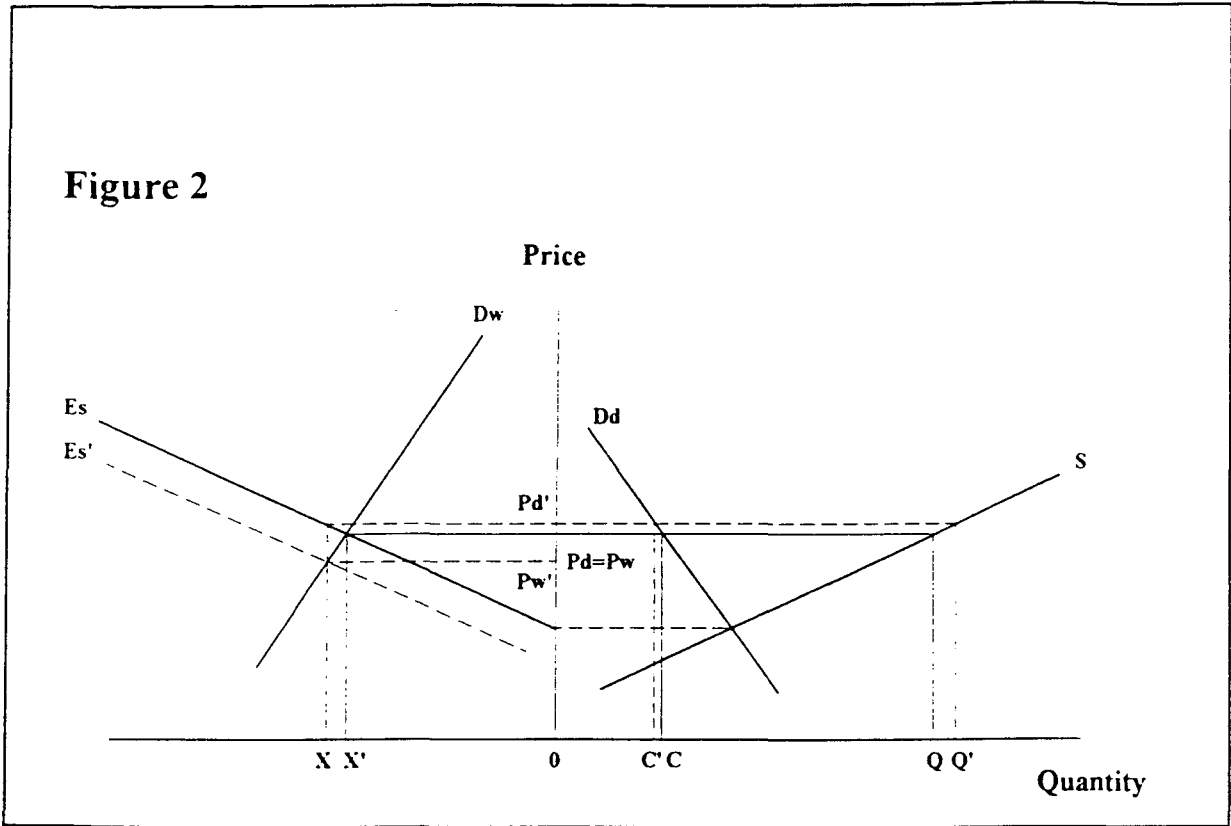
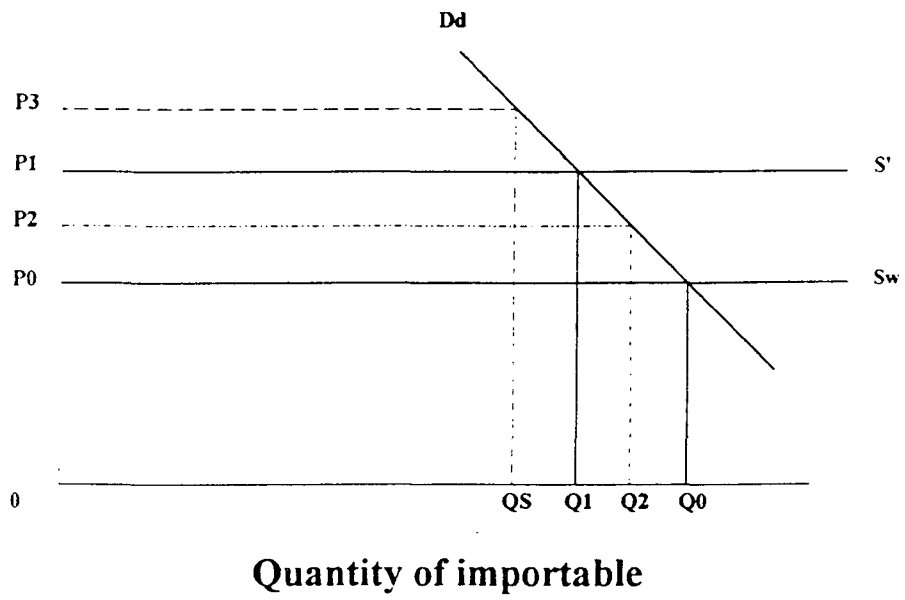


Figure 3



ANNEX II - Brief Review of Trade Régimes in the Western Hemisphere

The following is a brief description of the trade régime of most countries of the region, developed and developing, in alphabetic order. More detail is provided on the larger countries. It is not intended to be entirely comprehensive; however, it is intended to give a fairly complete picture of the kinds of measures that are being used. The focus is on current practices, so that justice is not done to the full extent of the far-reaching changes in recent years, and which are still ongoing. Readers are referred to original sources, including in the Bibliography, for more historical background.

Argentina

Argentina is now one of the most open countries in the hemisphere (GATT, 1992), with an average tariff of 12 per cent, based on three rates of 5 per cent, 13 per cent and 22 per cent. (The average rate was 9.5 per cent in 1991, but the average increased in January 1992 as zero rates were increased to 5 per cent and 11 per cent rates increased to 13 per cent. However, a number of reference prices were eliminated at this time).

Argentina disinvoked the BOP provisions of GATT in January 1991. The remaining quota system - for automobile imports - was due to be eliminated in mid-1992, leaving tariffs as the only import restriction. A special régime for Tierra del Fuego contains to protect the electronics sector in particular. There is a three per cent statistical tax on imports. Argentine anti-dumping law has a two year "sunset clause", but the revision of the law is under consideration to allow fast track action for "unfair" practices.

There is still an export tax of 6 per cent on soybean oil seeds which protects the crushing industry, and a 1.5 per cent tax on all agricultural exports to support the National Institute for Agricultural technology. Export restrictions on raw hides and skins protect the local leather manufacturing industry.

The Compre Argentino Law on government procurement has been suspended.

The USTR (1992) indicates that there has been concern with Argentina's process patent protection system (also used by other countries in the hemisphere). A petition by the U.S. pharmaceutical industry under Section 301 of the Trade Act of 1988 was dropped following progress on the issue and legislation is before the Argentine Congress. However, Argentina is still on the "watch list" under "Special 301". Another problem is the absence of copyright protection for videos and sound recordings.

The austral has been pegged to the U.S. dollar since January 1991.

Bolivia

The across the board tariff of 10 per cent, except for a temporary rate of 5 per cent on some capital goods, Bolivia has the lowest average tariff in Latin America.

Wheat flour, edible oil and sugar are subject to temporary licensing requirements.

Exports other than hydrocarbons are subject to inspection fees of 1.55 per cent for non-

traditional products and 1.6 per cent for traditional products.

Individual ministries and all state-owned enterprises, which cover over 60 per cent of national production, are responsible for their own procurement. At present this is managed by several procurement firms, such as Crown Agents, but the intention is to bring all government procurement under a single "superintendencia". It is not known the degree to which preferences may be applied by the individual agencies or enterprises, and there is the possibility that contracts are specified to favor local firms.

The mining and hydrocarbons sectors remain subject to some foreign investment restrictions, although this has been simplified under recent legislation, and joint ventures are now possible.

Protection of intellectual property rights is weak (USITC, 1992b). The exchange rate is subject to a managed float.

Brazil

Despite enormous political problems, Brazil made enormous progress in liberalizing its trade régime under the Collor Administration. Average tariffs were 25 per cent in 1991 and are scheduled to be reduced to an average of 14 per cent by 1994, albeit with substantial escalation.

In view of the major reform of its import licensing system, Brazil disinvoked the BOP provision of Article of the GATT in 1991. The licensing system is now automatic. The current exception is special protection for the electronics and software industries, but this is scheduled to be eliminated before the end of 1992 and indications are that imports of computer equipment have already been considerable eased.

An incentive to increase local content exists through the export finance rules of the National Development Bank (BNDES). It is hard to determine there is any element of subsidization in export finance because real interest rates are hard to determine under hyper-inflation.

Brazilian companies of "national capital" are favored under government procurement provisions.

Brazil's patent laws provide only process protection, but changes are before Congress.

A number of efforts have been made to encourage foreign investment and the laws have recently been revised with this in mind. Foreign investment as such has always been quite open, with the main constraint operating through limitations on the repatriation of capital and profits to registered investments. Certain sectors - mining, petroleum production and refining and various services - remain closed to foreign participation. The premium on the parallel exchange rate over the official rate, which is currently mainly set by the market, is now only 5-10 per cent.

Canada

Canada's average tariffs are quite low with a simple average m.f.n. rate of 8.7 per cent (GATT, 1990), while the trade weighted average applied rate - taking account of preferences - is only 3.5 per cent (GATT, 1992). However, the averages conceal a number of tariff peaks, so that sensitive items such as textiles, clothing and footwear are dutiable at 25 per cent.

Import permits are required for certain drugs, certain textile products, certain endangered

species, natural gas, material and equipment for the production and use of atomic energy. Imports permits are required for carbon and specialty steels for monitoring purposes only. Permits for butter and milk imports are rarely issued. Margarine and used car imports are tightly controlled or prohibited, although limits on used car imports are being phased out under the FTA up to 1994. Poultry imports are also restricted by quotas, but the U.S. managed to get larger quotas under the Canadian-U.S. FTA. Import licenses for grains, except barley, have been eliminated under the Canadian-U.S. FTA, but still affect other sources. Fruit and vegetable imports are subject to some restrictions and high seasonal tariffs.

Canada has used anti-dumping measures in recent years only against footwear and paper products, but following the introduction of a sunset clause in the mid-1980s the use of such measures has declined in recent years. Twelve anti-dumping investigations were notified to GATT in 1991 (GATT, 1992). VERs apply mainly under MFA bilateral agreements affect 27 countries and cover 80 per cent of clothing and 10 per cent of textile imports. However, Korea applies unilateral restraints on footwear and travel goods. Autonomous restraints by Japan and Korea on the export of automobiles to Canada appear to have expired, following the setting-up of local assembly operations in Canada.

Export controls mainly relate to security, resource upgrading and intergovernmental arrangements.

There are over 700 programmes in Canada to provide financial assistance to agriculture and industry, of which the majority are operated by the provinces. However, the most important affects the grains industry. Despite the competitiveness of this sector, Canada uses income and revenue protection schemes to cushion domestic producers from sudden changes in world prices. Subsidies provided to transport and storage undoubtedly affect exports.

Under the Canadian U.S.-FTA, duty remissions on Canadian value added to foreign automobiles were to be terminated by 1998, no doubt because of the question of how such local content is computed under the rules of origin.

Provincial support policies include discriminatory marketing and procurement practices by provincial monopolies as well as subsidization. The criteria for granting benefits depend on the level of Provincial content and there is scope for discretion in decision-making. The Provincial Liquor Licensing Boards control retail pricing and distribution of wines and spirits and may decide what outlets other than Provincial liquor stores may sell which imported beers and wine. Obtaining national treatment was considered by the U.S. to be an important feature of NAFTA, but there have still been some problems in its application and the matter went to a GATT panel which supported the U.S. position.

Standards under U.S. and Canadian building codes are to be harmonized under the Canadian-U.S. FTA, and this will allow the import of certain grades of plywood which do not currently meet Canadian specifications.

Canada was placed on the watch list under the "special 301" provision of the 1988 U.S. Trade Act because of compulsory licensing provisions for pharmaceuticals.

Canada has certain cultural provisions limiting the foreign content of television and radio programmes. There are a number of restrictions on foreign investment in Canada, particularly in culturally sensitive sectors as well as energy, and most large investments require prior Government approval to "ensure net benefit to Canada". The Canadian-U.S. FTA prohibits the use of performance criteria, such as local content, local equity, import substitution or export performance requirements

which might otherwise be applied under the Investment Canada Act.

Chile

Chile maintains a uniform tariff of 11 per cent, with the exception of a few specific tariffs.

There is a local content and export performance scheme on motor vehicles and a variable levy (price band) system is intended to correct for distortions in international markets for wheat, wheat flour, oilseeds, edible oils and sugar caused by export subsidies and other support measures applied by trading partners. Used motor vehicle imports are controlled. Minimum customs values and tariff surtaxes have been used increasingly since 1986 to correct for international price distortions due to the unfair practices of trading partners (GATT, 1991).

While there are no explicit export subsidies there may be a subsidy component in the duty deferment for capital goods import, and the simplified drawback system.

USTR (1992) maintains that Chile's copyright law does not measure up to current Bern Convention standards.

Foreign investment may not be repatriated within three years. Chile has generally adopted a policy of periodic devaluations to maintain its export competitiveness, although it is understood that this policy has been under review in the light of capital inflow.

Colombia

The average Colombian tariff, based on five different categories of rates from zero to 20 percent, is now 11 per cent (March 1992), and the import surtax has been eliminated.

Colombia's process of "apertura" has left only a few products subject to prior import licensing, which are screened by INCOMEX, and Colombia disinvoked Article XVIII:B of the GATT in February 1992. Import surcharges have been reduced. There are trade balancing requirements in the automobile sector. The government monopoly on imports of most agricultural products has been eliminated except for wheat. However, there is a price band system on rice, sorghum, soybeans, corn, oats and derivatives. The floor in the system is based on Colombian production costs while the ceiling is a five-year moving average of international prices, adjusted every six months (USITC, 1992b). There is an import registration requirement. Surtax exemptions for ALADI, public sector imports, under the Vallejo Plan and some other purposes.

Export subsidies inconsistent with GATT are apparently being phased out.

Colombia's Decree 222, enacted in 1987, provides a preference of some 20 per cent for domestic bidders. The U.S. is concerned that major public works contracts are on a government-to-government basis, in which the U.S. Government cannot participate on behalf of U.S. firms.

The U.S. remains concerned about aspects of patents, trademark and copyright protection. Foreign investment in Colombia requires approval, and a number of conditions must be met.

Costa Rica

Costa Rica acceded to the GATT in 1990 and bound its tariff at a ceiling rate of 60 per cent to be reduced to 55 per cent within three years.

Import surcharges, surtaxes and quantitative restrictions are to be reduced within three years. There is currently an import registration requirement with the Central Bank before goods may be released from customs. With some exceptions barter imports require a barter licence. Supplementary import taxes, surcharges and selective consumption taxes. An advance deposit requirement of 30 per cent is required at the time of submission of applications for foreign exchange. Export licenses are required for a range of products, including strategic materials, sugar, various vegetables, tobacco, lumber, certain livestock and coffee.

Ecuador

There have been a number of quite recent reforms with maximum tariffs and tariff dispersion being reduced to between 5 and 35 per cent (USTR, 1992). Most import surcharges have been eliminated. There are few quantitative restrictions on industrial goods and the prior ban on imports of new automobiles has been replaced with a 40 per cent tariff. Agricultural products are subject to prior import licensing requirements and quotas. Recent Andean Pact laws on intellectual property have not removed U.S. concerns that Ecuadorian laws do not provide adequate and effective copyright protection. Recent liberalization of the investment laws leave some sectors still subject to government approval. Ecuador retains multiple exchange rates.

Guatemala

Guatemala acceded to GATT in October 1991 and bound most of its tariff at ceiling rates of 45 and 50 per cent. Import prohibitions, restrictive import licensing requirements and other quantitative restrictions will be eliminated by 1994. Remaining trade measures are to be brought into conformity with the GATT.

Honduras

Under a reform begun in 1990, the maximum tariff rates was set at 40 per cent, reduced to 35 per cent in 1991 and was scheduled to be reduced to 20 per cent in 1992. Some additional import charges were eliminated in 1990. The import permit régime will be converted to an import register (GATT, 1992b)

Jamaica

A tariff reform is under way and import licensing regulations are gradually being phased out.

Mexico

Mexico's average tariff is 12.5 per cent (1990) and the maximum rate is 20 per cent, compared with 25 per cent and 100 per cent in 1985, respectively. Trade liberalization, encompassing tariffs and NTMs, has gone beyond the Government's original schedule and targets agreed with the World Bank.

Import licensing still affects some 200 product groups, which are to be phased out under the terms of its accession to GATT in 1986. The main items of concern to the U.S. cover table grapes, poultry, dairy products, potatoes, dry beans, corn, wheat, barley and malt. These cover one third of Mexican agricultural imports from the U.S. The administration of the system is also considered to be non-transparent, sometimes working as a complete ban. It is understood that in the area of health and safety requirements technical groups in the U.S. and Mexico worked to resolve a number of issues, but sudden imposition of new standards and labelling requirements in Mexico has also been an issue.

The U.S. has argued that Mexican rules on government procurement continue to give preference to Mexican suppliers, and it appears that the U.S. is seeking application of the GATT Government Procurement Code in the FTA.

A number of sectors of the Mexican economy are reserved to domestic capital under the 1973 Law to Promote Mexican Investment and to Regulate Foreign Investment. However, in May 1989, the new Government of President Salinas made a comprehensive revision of the rules on foreign investment through the issuance of the Reglamento de Ley para promover la Inversión Mexicana y regular la Inversión Extranjera (SECOFI, 1991). These regulations repealed all previous regulation, resolutions, decrees and other provisions governing foreign investment and represented a more liberal interpretation of the Foreign Investment Law. The new regulations were intended "to eliminate unnecessary barriers, streamline government procedures, and extend the range of options to new investors" in the belief that "such investment should play a far greater rôle in complementing national efforts by bringing in new capital, technologies and efficient management techniques facilitating access to markets and generating new, more productive and better paid jobs" (Presidency of Mexico, 1992). Registration and approval procedures still exist for investments above a certain size and for certain sectors. The main restricted sectors include petroleum, petrochemicals, mining, automobile parts, and transportation. Financial services have been largely deregulated. Local content, export performance requirements, import and investment restrictions affect investment in automobile parts. The electronics sector, which has now been extensively liberalized, still has concessions which depend of the degree of local content, investment and R&D. Foreign participation in telecommunications is limited to 49 per cent. Prior to 1989 it was totally prohibited.

Nicaragua

Tariffs are now in three ranges: zero, five per cent and 10 per cent.

Paraguay

The main problems perceived in USTR (1992) are in the area of product patent protection, trademarks and copyright. The problems appear to lie more in the area of practice rather than legislation as such.

Peru

Under the reform begun in 1988, tariffs now range from a minimum of 15 per cent to a maximum of 25 per cent. Non-tariff restrictions on most products, including licenses, prior authorizations, import registrations, permits, prior approval conditions have been eliminated. Peru

disinvoked Article XVIII:B of GATT in January 1991.

Trinidad and Tobago

In 1990, a reform program was initiated, involving the removal of the negative list of imports and the import licensing system (GATT, 1992b).

United States

The U.S. has a simple average m.f.n. tariff of 7 per cent, for all products excluding petroleum. However, there are some very high tariff peaks. Among the products more heavily protected by tariffs are: tobacco (96 per cent simple average, but ranging up to over 1700 per cent for certain items), sugar and foodstuffs (averaging 8.7 per cent, but ranging up to 338 per cent), beverages (averaging 11 per cent, but ranging up to 97.7 per cent), textiles and clothing (averaging 12.5 per cent, but ranging up to 42.4 per cent), and footwear (averaging 18.6 per cent, but ranging up to 61.8 per cent). There are other cases of very high rates outside these sectors.

A number of agricultural imports into the U.S. have been restricted for many years under Section 22 of the U.S. Agricultural Adjustment Act of 1933. The authority for this is a GATT waiver dating from 1955. However, the number of items covered by the programme has been progressively reduced over the years. It still covers sugar, dairy products, cotton and peanuts. Imports of meat may be restricted or VERs may be negotiated under the Meat Import Act of 1979. This currently only affects Australia and New Zealand. The U.S. restriction on imports of yellowfin tuna not considered to be dolphin free was found by a GATT Panel, established at the request of Mexico, to be in violation of relevant GATT provisions. The customs user fee, which had been found in violation of GATT as unrelated to the services provided, was revised under the Customs and Trade Act of 1990. There have been a number of complaints about the application of U.S. health and safety standards. Argentina has been trying to get exemption for beef produced in areas free of foot and mouth disease from the import ban to which it is subject. Chile believes that a number of marketing orders have been applied in a discriminatory and essentially protectionist manner.

The "Buy America" Act of 1933 covers all products - some 85 per cent of all U.S. Government procurement - which do not exceed the threshold under the GATT Government Procurement Code. Some 95 per cent of contracts covered by the Code are awarded to U.S. firms. Under the FTAs with Israel and Canada, these countries were exempted from the provisions of the Act. State and local governments have authority independent of the Federal Government to procure goods and services (GATT, 1992).

The retaliatory Super 301 process, introduced under the Omnibus Trade and Competitiveness Act of 1988³⁸, expired in 1990. However, normal Section 301 procedures as well as "special 301" provisions still apply. In Latin America, Brazil and Argentina have been the primary targets of Section 301 processes, including Super 301. There were 5 such actions in 1991, down from 9 in 1989, signalling that there has been shift to a more restrained approach, but this may not allay fears of the U.S. tendency to use unilateral approaches to the solution of its trade problems. Most cases were terminated or suspended as a result of GATT Panel recommendations. Remaining cases mainly concern patents or government procurement.

³⁸This was labelled the Ominous Trade Act by Jagdish Bhagwati.

The U.S. is the world's leading user of anti-dumping measures, having initiated 62 actions in fiscal year 1990-91 alone (GATT, 1992). This is a substantial increase over the 27 cases in fiscal year 1989-90, but the numbers tend to fluctuate quite substantially. In the period 1988 to 1990, in 68 out of 71 anti-dumping investigations, the Department of Commerce determined the existence of dumping, while positive findings of injury by the USITC outweighed negative findings by a factor of 2 to 1. This has led to increasing concern about the use of such measures by the U.S. In the period July 1980 to June 1991, there were 463 investigations, of which 25 affected Brazil, 11 affected Venezuela and 10 affected Mexico.

The U.S. has bilateral MFA agreement with 40 trading partners under the MFA, and 59 per cent of total textile and clothing imports are affected. In Latin America, countries covered by bilateral arrangements for at least some products are: Argentina, Brazil, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Jamaica, Mexico, Peru and Uruguay. Clearly the product coverage and the size of the quotas vary greatly from country to country. Imports of some textiles and clothing items not covered by the MFA affect Haiti and Trinidad and Tobago). The U.S. has restrained imports of steel products from a number of countries for years under VERs (affecting, inter alia, Brazil, Mexico, Venezuela and Trinidad and Tobago). However, when these were not renewed in 1992, a series of anti-dumping investigations were initiated by the local industry. A new semiconductor agreement with Japan was signed in 1991 and is valid for 5 years. This has been of concern to manufacturers in the European Communities which fear that semi-conductors otherwise intended for the world market will depress world prices. However, it may be a boon for assemblers of computer equipment in other countries. Other products affected by U.S. VERs include machine tools (affecting Brazil in Latin America).

Japan still applies VERs on its automobile exports to the U.S. Although this had been considered genuinely voluntary in recent years, the joint U.S. Government/industry mission to Japan in early 1992 suggest that an element of compulsion has re-entered this product market. There is also an agreement for Japan to increase its purchase of U.S. auto parts. The U.S. fleet content definition which concerns fuel economy differentiates between domestic and foreign automobiles. This is intended to enable the U.S. major automobile manufacturers to continue to produce small vehicles, although it has not been fully effective (Hufbauer and Schott, 1992).

The Food and Agriculture Act of 1990 (the Farm Act) extended and enlarged the scope of existing agricultural supports as well as export assistance for five years, including the Export Credit Guarantee Program the Export Enhancement Program, the Targeted Export Assistance Programme and P.L. 480 (Food for Peace). According to GATT (1992) these programs accounted for 21 per cent of total U.S. agricultural exports in 1989. The effects of these programs, together with those of the European Communities in particular, has been to depress world prices for many products of export interest to developing countries. including in Latin America.

Decontrols of COCOM-related export restrictions were effected both in 1991 and 1992. There are export controls on unprocessed timber from State-owned lands.

Section 337 of the Tariff Act of 1930, concerning patent infringement, has not been amended, despite the fact that in 1989 a GATT Panel found certain procedural aspects in violation of GATT (GATT, 1992).

The U.S. is generally open to foreign direct investment, with some exceptions related to national security and some (current) socialist countries. There are Federal limitations on the level of foreign investment in nuclear energy, natural resources, maritime services, communications, commercial aviation and fisheries. Federal and State regulations cover investment in banking.

Uruguay

Average nominal tariffs are around 20 per cent, down from around 700 per cent in the 1960s. There has been considerable simplification and reduction of averages and the dispersion of tariff rates in Uruguay, particularly since the 1974 reform.

However, Uruguay's reference price system and minimum "export" price³⁹ system have provided considerable extra protection to domestic industry since 1982. Average protection afforded by this administered price system has been around 20 per cent but in some cases the tariff equivalent exceeded 100 per cent. However, the list of items has been progressively reduced in recent years and reference prices and minimum "export" prices are due to be eliminated in 1993 and 1994, respectively.

The local content plan for the automotive industry was dropped in July 1992. Government procurement laws currently afford a ten per cent margin to domestic suppliers - a matter of some significance in a country with a large number of state-owned enterprises and where production is dominated by the public sector.

There are a number of import charges that do not reflect the cost of the services provided. Some domestic taxes are applied at higher levels on imports.

Investment laws are liberal - one of the reasons why Uruguay has been a haven for flight capital in Latin America.

Venezuela

Venezuela has been following a major economic reform program since 1988, and the country acceded to the GATT in August 1991. Bound tariffs have been reduced to a ceiling rate of 40 per cent, but the trade-weighted average rate had already reached 10 per cent by 1991 (GATT, 1992b) or 19 per cent unweighted (USTR, 1992). (Automobile tariffs were reduced to 25 per cent and 40 per cent, respectively for cars priced below and above \$15,000, but there is an export performance requirement). The customs user fee has been reduced from 5 per cent to 1 per cent.

Quantitative restrictions, which affected over 2,000 items in 1988, covered only 200 items - mostly agricultural products - by 1991 and are scheduled to be completely eliminated by 1995. A variable levy was applied to food grains in 1991. An import prohibition applied for 6 months on food grains was replaced with a quantitative restriction. Sanitary regulations are considered to be restrictive (USITC, 1992b).

Export subsidies have been abolished for all industrial products.

The Law of Tenders allows a preference on government procurement.

Venezuela has been placed on the U.S. watch list under special 301 provisions of the 1988 Trade Act in respect of its practices in relation to intellectual property rights. In this respect, recent changes in the context of the Andean Pact appear to have done little to allay U.S. concerns. The U.S. is also concerned that copyright laws do not seem to afford adequate protection for computer software.

³⁹"Precios minimos de exportacion" refer to the price set for exports from other countries to Uruguay, i.e. Uruguay's imports. Argentina uses the same terminology.

General restrictions on foreign direct investment have been removed, but there are still screening procedures. Remaining restrictions affect professional services, banking, insurance and most operations in relation to hydrocarbons.

ANNEX III - Non-tariff Measures in GATT negotiations

Before considering the likely scope of and the treatment of NTM negotiations in the context of hemispheric FTA negotiations, it may be useful to look briefly at how NTMs were handled (or not handled) in multilateral trade negotiations.

The issue was first treated seriously in the Tokyo Round (1974 to 1978)⁴⁰ which took two separate approaches: sector-by-sector and measure-by-measure. In the sectoral negotiations, the Round concluded three agreements - on dairy products, bovine meat, and civil aircraft. The main outcome was to set up permanent bodies to exchange information and monitor trade in the sectors. Tariffs on civil aircraft were set to zero and import and export quotas and licensing were not to be applied in a manner inconsistent with the General Agreement. Many additional sectors had been identified as suitable for such an approach: grains; handicrafts; leather and leather goods; copper products; fish and fish products; wood, pulp and paper products; and ores and metals. However, it was not possible to reach agreements in these areas. For the developing countries the major problem in these sectors was that of tariff escalation. Textiles and clothing were not part of the Tokyo Round talks.

In relation to non-tariff barriers, the Tokyo Round achieved six agreements on: import licensing procedures; customs valuation; technical barriers to trade (standards); subsidies and countervailing measures; anti-dumping; and government procurement. Agreement on the revision of Article XIX on safeguards proved elusive. Most of the Tokyo Round Codes (including in the sectoral agreements) have their own provision for dispute settlement, separate from the main GATT procedures.

The Tokyo Round also negotiated four Framework Agreements, which either touch on the use of NTMs or are explicitly related to their use. The Enabling Clause (the Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries), the Declaration on Trade Measures taken for Balance of Payments Purposes, the Decision on Safeguard Action for Development Purposes, and the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance.

In the first five years of the Uruguay Round, no single group had sole responsibility for dealing with NTMs. However, the question came up in at least twelve groups falling under the Group on Negotiations on Goods, although one such group was labelled the Group on Non-tariff Measures. Textiles and Clothing were covered and had their own group. The Group on Negotiations on Services is essentially about NTMs. Finally, the role of the Surveillance Body was to monitor NTMs which were the subject of the Standstill and Rollback commitments of the Punta del Este Declaration.

While the Group on Non-tariff Measures was to some extent charged to pick up on issues not being explicitly covered in other groups, it usefully discussed the methodological question as to how to deal with NTMs. The Group invited and received proposals from most developed countries and the Groupe de la Paix (a mixed group of developed and developing countries which met from time to time in the Hotel de la Paix in Geneva - on which NTMs should be tackled under the following three approaches:

⁴⁰The Kennedy Round had led to the first Anti-Dumping Code, as an elaboration of Article VI of the GATT. The Tokyo Round Code is considered as Revision of the earlier code.

- multilateral or rule-making, which might cover pre-shipment inspection,⁴¹ rules of origin, import deposit systems, charges for services and other import taxes, signature of existing Codes, and customs and consular formalities.
- formula liberalization, which could cover licensing and price support systems, prohibitions, Qrs, tariff quotas, VERs, export subsidies and variable levies.
- requests and offers, under which countries have submitted lists of products to be tackled in this way.

At the "Mid-term Review" of the Round in Montreal in December 1989, Ministers agreed on a set of guidelines for the conduct of the negotiations on non-tariff measures, incorporating all three broad approaches mentioned above, i.e., multilateral, formula and request-offer approaches. In addition to the general guidelines, the Ministers instructed the group to look further at the categories of measures which were appropriate for each of these approaches and how to proceed in each area.

Under the Mid-term Review Agreement, the group was also to establish a framework and procedures for negotiations, taking account of the Ministerial guidelines. While this was being drafted it was never formally accepted.⁴² However, a number of countries agreed to follow the Chairman's suggestion to make available their lists of requests and offers to other participants in the Round.

Methodologies for dealing with NTMs were also covered in the Group on Agriculture in relation to the possible use of Producer Subsidy Equivalents (PSEs) as a means for monitoring progress on agreed reductions in the use of NTMs in this sector. Essentially the PSE looks only at the stimulating effects of subsidies or other NTMs on output, and ignores the effects of such measures on material or other inputs.

Within the NTM group Australia proposed the use in the negotiations of the Effective Rate of Assistance (ERA) concept. Although the Australia said the measure was intended to be used for evaluation of the results, the proposal was never seriously taken up, despite the fact that the measure is more comprehensive than the PSE which featured strongly in the agriculture negotiations. No doubt the difficulty of measurement of the level of nominal protection afforded by NTMs was part of problem, since these are still needed for ERA calculations, as noted earlier.

As is now well known, proposals on agriculture are focused on three main areas: rebalancing any decline protection for one product with increases for other while the overall protection is declining, delinking any domestic support to farmers from either production levels or types of crop, and export subsidies. While delinking seems to be agreed, largely because of the European Communities' own internal reform program, the U.S. wants guarantees on the amounts to be exported because it is fearful that the implementation of the European Communities' proposal would involve relatively little by way of production cuts as marginal and unproductive land would first be taken out of production.

The export subsidy discussions also centered on establishing three categories of subsidies:

⁴¹The concern was about the alleged arbitrary nature of the price comparisons.

⁴²The problem was related to tensions between Brazil and the U.S. on the use of Super 301.

those which are completely banned, those which are actionable (i.e., subject to countervailing measures), and those which are permitted and not actionable. The problem remains agreeing on what measures go into which category.

The main substantive issues related to the use of NTMs are briefly described below.

- **Safeguards**

There has been a long-running attempt to re-write Article XIX to increase the balance of advantages one way or another. Industrialized countries, led by the European Communities, sought the right to apply Article XIX on a selective or discriminatory basis. Developing countries wanted to keep the non-discrimination rule and introduce fixed timetables for the phasing out of safeguard actions. The inability to resolve this issue over the years has been a constant source of irritation. The failure to resolve this issue is closely related to the increased use of VERs which are, of course, applied selectively, but allow rents to be collected by the exporter - unlike Article XIX actions.

Attempts to resolve the issue are centered on possible exceptions to the m.f.n. rule, to be applied to special situations (e.g. serious injury caused by sudden increase in imports from a very limited number of suppliers). The U.S. submission to the NTM Group is interesting, in that it casts light on what might happen in FTA negotiations (and what did happen in the NAFTA talks - see later). The U.S. wanted to focus work on three options: (i) the application on safeguards on an m.f.n. basis, but with the possibility of applying grey area measures under a mechanism to be established, with appropriate notification procedures; (ii) the application on safeguards on an m.f.n. basis, but with selective safeguards on a mutually agreed basis in exceptional circumstances, with tighter disciplines for selective measures; and (iii) the application on safeguards on an m.f.n. or on a selective basis if the importing and exporting countries agree, subject to the same GATT disciplines. Key elements in the discussions were time limits on the use of safeguards, phasing out and transparency.

- **VERs.**

This is closely linked to the safeguard question. Although some maintain that these are banned under Article XIII this is not accepted by all countries. To avoid the problems faced by the GATT, an FTA should establish clear rules to bring transparency and discipline to this area.

- **Joint progress on tariffs and NTMs.**

More clearly than in other rounds, there was recognition in the Uruguay Round that what was achieved in the tariff negotiations could be easily annulled by non-tariff measures. There was pressure in a number of groups to ensure that progress would be measured across all fronts, taking tariff movements and actions on NTMs together. This is one of the reasons why it is difficult to see a conclusion of the Round without agriculture, as has sometimes been suggested.

- **Re-tariffication.**

The idea of converting existing NTMs into tariffs which would then be handled under normal rules was seriously discussed in the Round, particularly in agriculture, and this may well happen at least for the import barriers, where there are few tariff bindings to be renegotiated. Developing countries were concerned that "illegal" NTMs should not be handled in this way. Thus, accurately measuring the tariff equivalents of NTM, with an expected tendency for the importing country to try to exaggerate their importance, is one of the reasons why discussions on methodologies - ERAs, PSEs - was so important.

- Recognition for unilateral reform by developing countries.

Developing countries asked for "credit" for unilateral actions on trade liberalization - often undertaken with the support of World Bank lending programs. However, the term "credit" has a technical connotation of direct reciprocity as in tariff cutting exercises. It also implies making bindings or firm undertakings not to re-impose such measures without compensation. Developed countries were reported to be considering "appropriate recognition", although there is no great evidence of this. However, concessions on tropical products were supposed partly to be granted as "credit" for past liberalization by developing countries.

- Anti-dumping

The European Communities and the U.S. attempted to broaden the scope of the Anti-dumping Code. These efforts were seen as protectionist in view of increasing evidence of the chilling effect of investigations and anti-dumping duties on closely related trade. Attempts to impose greater discipline in this area were largely unsuccessful.

- Subsidies/countervailing measures

As discussed in Negotiating Group 10, developed countries saw the issue as one of imposing increased discipline on the use of subsidies, especially export subsidies, although clearly the discussions on agriculture were related. Developing countries, which felt they needed the right to use export subsidies to develop their trade and counter their inflexible exchange rate regimes, saw the issue as one of imposing greater discipline on the use of countervailing measures, for much the same reason as they wanted to see similar constraints imposed on the use of anti-dumping duties.

- Textiles and clothing

The issue was the elimination or phasing out of the MFA, and bringing this sector effectively back under the main GATT rules. There may need to be trade-offs on approval of use of selective safeguards, as proposed by the European Communities. There are two important questions as to whether the developing countries affected by the MFA want to see it removed: the first relates the size of the rents available to exporters affected by the MFA are high enough; and the second relates to what would happen to their market shares if the restrictions were removed. For a discussion of the issues see Cable (1987) as well as Hamilton (1990).

As is now obvious, NTMs remain the major sticking point of the Uruguay Round, particularly in the area of agriculture. If the Round is to achieve the objective of giving a stimulus to world trade it is essential that action be taken to eliminate or dampen the impact of NTMs. The growth in the use of NTMs over the years has threatened to strangle the GATT system, and the growing tendency to seek bilateral solutions is a result of frustration with the way the system has given way to managed trade within regional frameworks. The responsibility lies with governments to restore credibility to the GATT system by accepting improved disciplines on the use of NTMs and seeking market solutions to their economic problems rather than "quick fixes" from NTMs.

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