

NONDISCRIMINATION AND THE WTO AGREEMENT ON SAFEGUARDS*

**Chad P. Bown and Rachel McCulloch
Brandeis University**

October 2003

Abstract

Most-favored-nation treatment, i.e., nondiscrimination among trading partners, is a fundamental principle of the GATT/WTO system. The WTO Agreement on Safeguards has thus been seen as encouraging use of a preferred form of contingent protection relative to antidumping and other inherently discriminatory measures. In practice, however, safeguard protection may also incorporate discriminatory elements. This paper focuses on three ways that policies conforming to the Agreement on Safeguards may nonetheless discriminate explicitly or implicitly among trading partners. First, the form of the safeguard policy matters: quantitative restrictions discriminate among foreign suppliers by preserving historical market shares more than a safeguard implemented as a tariff. Second, safeguard measures discriminate against faster-growing exporters and new entrants in import markets. Third, formal exemptions for partners in preferential trade agreements and for small developing-country suppliers allow these countries to gain market share at the expense of non-exempted exporters. We provide evidence of these discriminatory effects in actual cases of safeguard protection.

*This paper is a revised version of one prepared for the Dartmouth-Tuck Forum on International Trade and Business conference on "Managing Global Trade: The WTO, Trade Remedies and Dispute Settlement," Washington, DC, May 16-17, 2003. We thank Richard Blackhurst, Meredith Crowley, Richard Cunningham, Jorge Miranda, and an anonymous referee for helpful comments on an earlier version. All remaining errors are our own. Bown acknowledges financial support from a Mazer Award and Perlmutter Fellowship at Brandeis University.