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The Antidumping Negotiations: Proposals, Positions and Antidumping Profiles*

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Negotiations over the rules governing the use of antidumping (AD) duties are occurring in both the World Trade Organization and the Free Trade Area of the Americas. Unfortunately, the goal of the negotiations is unclear, as some governments want to restrict the use of antidumping while others seek to maintain the ability of national governments to use antidumping measures. We hypothesize that members who desire to preserve the use of antidumping are active in initiating suits. To explore this hypothesis, we examine the positions taken by major actors in the negotiations, and their antidumping profiles. An antidumping profile includes data on a member's AD actions, including investigations and measures the member initiates, as well as investigations and measures against the member's exports.

Keywords: antidumping; FTAA negotiations; WTO negotiations

Countries are currently negotiating rules governing the use of antidumping (AD) duties in both the World Trade Organization and the Free Trade Area of the Americas (FTAA). In both forums, the resources used by members to prepare and advance proposals, as well their public announcements, indicate that negotiations over AD are important to them. The attention devoted to this issue may spring from the striking global increase in the use of antidumping measures since the conclusion of the Uruguay Round. Many WTO members have not yet adopted AD law, and if they do so the global use of AD measures is likely to increase even more. WTO members differ markedly in their use of antidumping measures. These differences may be attributed to differences in political ideologies, costs of initiating a case against alleged dumping, the availability of institutional support to help complainants, national methodologies for determining dumping margins and injury, and the ability of the investigating authorities to initiate and conduct investigations. Proposals advanced in the negotiations are likely to reflect these differences, as some members desire to maintain the ability of national governments to use antidumping measures, while others want to reform antidumping law to make it more difficult to impose protectionist measures.

Many previous studies have evaluated the lack of an economic rationale for antidumping duties, and this paper will not address that well-worn ground. Our purpose is to discuss what kind of reform might emerge from the protracted negotiations on antidumping in the WTO and the FTAA. We also evaluate if proposals advanced by member countries are congruent with their use of antidumping. We hypothesize that members advocating for rules to preserve the use of antidumping measures by national governments are active in initiating suits. The position taken by these members is likely to reflect the sentiment that they benefit from maintaining antidumping measures in their current form, even though they are also subject to the imposition of duties by importers of their products. This paper will summarize the proposals presented in both forums to change the rules currently governing antidumping practices. The antidumping profiles of major players in the negotiations will be presented. An antidumping profile consists of a member's AD actions taken against other WTO and FTAA members, including initiations, determinations, and the implementation of duties, as well as investigations and measures brought against the member's exports. We will then assess if the anticipated relationship between the position taken in the negotiations and the member's AD profile is evident.

The Uruguay Round Antidumping Agreement

The Uruguay Round Agreement on the Implementation of Article VI of the GATT 1994 (to be referred to as the Antidumping Agreement) contains more comprehensive rules governing the use of antidumping than its predecessor agreement. (Details on antidumping investigations are given in the technical annex.) The goal of increased consistency in the practices of national authorities was approached by including more detailed provisions covering a wider range of aspects of antidumping law. The agreement gives special treatment to developing countries, so that industrial countries are instructed to consider constructive remedies before the application of antidumping duties on imports from developing countries.

Similar to other Uruguay Round agreements, the Antidumping Agreement provides rules to increase the information available to members and to provide a forum for the early discussion and resolution of disputes. A Committee on Antidumping Practices was instituted, and one of its functions is to review the consistency of national practices with the Antidumping Agreement. Requirements that countries notify the committee of both antidumping actions and changes to their antidumping law were enacted to increase the information available to interested parties. Finally, the committee is to provide an arena for the discussion and informal resolution of disagreements between members. When informal discussion does not resolve an issue, members who believe that the antidumping actions of other members have violated WTO standards may use the Dispute Settlement Understanding (DSU) to press a complaint. The DSU is the mechanism by which WTO members resolve trade disputes between themselves with respect to compliance with their commitments to open their markets. The DSU is a rule-based system for resolving disputes, with strict timelines to ensure that members comply with their commitments and bring any measures inconsistent with their commitments into compliance. Ultimately, the effectiveness of the Antidumping Agreement depends on the effectiveness of the DSU.

In several cases free trade areas have negotiated rules for trade remedy law that differ significantly from the WTO approach. One motivation given for the establishment of free trade areas is that in agreements between two or relatively few members it may be possible to remove more obstacles to economic integration than is possible in the WTO, with its large and diverse membership**.** As an example, in their bilateral free trade agreement, Chile and Canada eliminated the use of antidumping actions against each other (but not countervailing duty actions).

Trade Remedy Law and the Negotiations

Negotiations on trade remedy law have been prompted by several factors, among them a concern that the increasing initiation of suits and use of antidumping duties are eroding the potential gains from the Uruguay Round Agreement. The negotiating mandate contained in paragraph 28 of the WTO Ministerial Declaration explicitly refers to "the increasing application of these instruments by Members" (WTO, 2001a). Miranda (2003) reports that initiations of antidumping investigations numbered 120 in 1987. Investigations trended upward after 1987, peaking at 366 in 2001. They declined to 311 in 2002 and 210 in 2003.[1] Over the 1987–2003 period, the United States initiated the most investigations (668), followed by the European Community (530) and Australia (482). India, in fourth place with 394 investigations, was the leader among developing countries. Since 1995, developing countries have accounted for 60 percent of all investigations, with India taking over the number one spot from the United States as the most prolific user of antidumping laws. The increase in developing-country initiations is particularly striking; many developing countries have only recently adopted national trade remedy law.

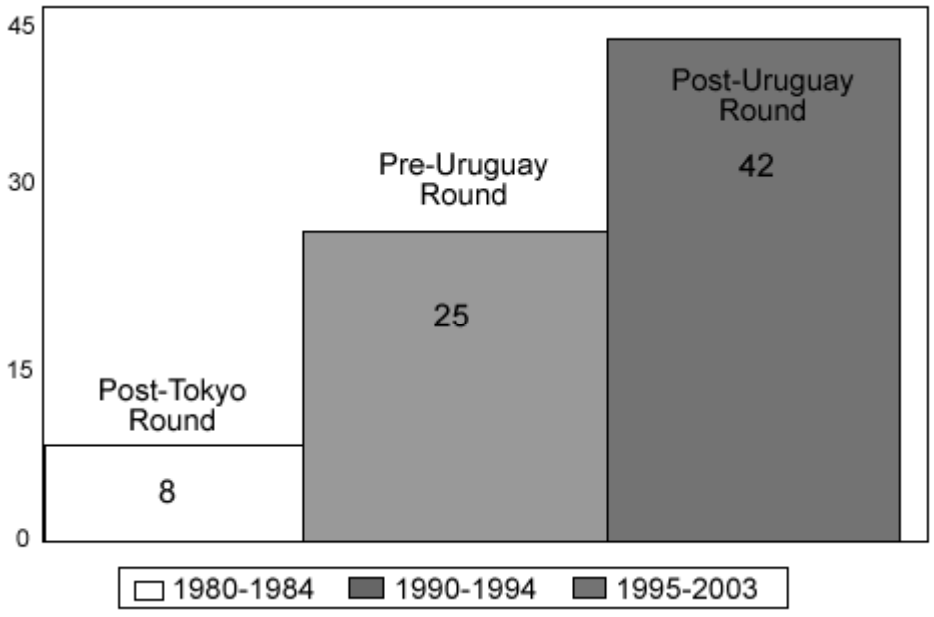

Figure 1 Countries actively using antidumping law since early 1980s

Figure 1 shows that the overall number of active users of these laws has grown from 8 in the early 1980s to 42 in the post–Uruguay Round period. Four of the countries that were users in 1980–84 and 1990–94 have become members of the EU

and now come under the EU's antidumping policy and no longer initiate cases on their own. Five of the 42 recent users (the Czech Republic, Latvia, Lithuania, Poland, and Slovenia) have also recently joined the EU. Not counting individual EU member countries, of the 133 WTO members as of October 2004, 76 had notified the WTO of having these laws on their books (WTO, 2004f). Twenty-eight additional potential users of antidumping laws had notified the WTO that they do not have national antidumping legislation. The remaining 29 members had not provided the WTO with any notification.

Another impetus for consideration of antidumping rules in current WTO negotiations is developing-country dissatisfaction with the implementation of the WTO Antidumping Agreement. Some developing countries argue that they have not received the special consideration mandated by the agreement. Additionally, many developing countries claim that the liberal use of antidumping duties by industrial countries has undermined the potential for developing countries to benefit from trade liberalization (WTO, 2001b; Lima-Campos and Vita, 2004). One might posit that as developing countries increase their exports of products that have traditionally been most subject to antidumping investigations they would become more vulnerable to antidumping measures. The view that antidumping is a North-South issue, however, is not supported by examination of the use of antidumping actions nor, as we shall demonstrate, the positions taken within the WTO. Since 1995, developing-country importers have themselves conducted almost 60 percent of the investigations initiated against developing countries' exports.

WTO rules govern the use of antidumping duties by national authorities; however, variation exists in countries' willingness to use antidumping duties and in their procedures and rules. This divergence in domestic institutions and rules means that the national authorities in some countries are able to protect their domestic industries to a greater degree than are other countries. Both the FTAA and the WTO negotiations are characterized by tension between national governments who desire to maintain their current ability to protect their domestic industries, and national governments who wish to curtail the growing use of antidumping measures. Some industrial countries are concerned that developing countries that have recently adopted antidumping law lack appropriate institutions and procedures (Miranda, 2003). However, many criticisms have also been levied over the procedures routinely used by the national authorities in industrial countries (Clarida, 1966; Finger, 1993; Horlick, 2003a; Wainio, Young, and Meilke, 2003). The relationship between a country's level of economic development, its history of antidumping law, and its conformity to WTO accepted procedures is unclear.

Disagreement over the use of antidumping law is an important component of trade disputes. A WTO member may press a complaint against another member that they believe has violated WTO antidumping rules. Since 1995, 321 cases have been initiated under the Dispute Settlement Understanding. Of these, at least 111 cases were concerned with antidumping, countervailing duties, or safeguards, and 59 cases with antidumping measures alone.[2]

The WTO negotiations, occurring within the WTO Rules Negotiating Group, are focused on clarifying and modifying the rules governing antidumping investigations and determinations and the administration of antidumping duties. The carefully crafted mandate given to this group in the Doha Declaration reflects the dichotomy between countries whose firms have been targeted by AD laws and want the negotiations to be "aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures," and the users of these laws, who are interested in "preserving the basic concepts, principles and effectiveness of these Agreements." In the initial phase of the negotiations, the participants were asked to "indicate provisions, including disciplines on trade distorting practices that they seek to clarify and improve in the subsequent phase" (WTO, 2001a, paragraph 28). There is no deadline for the Rules Negotiating Group prior to the conclusion of negotiations initially slated for January 2005.

The FTAA negotiations are focused on many of the same issues addressed in the WTO; however, these negotiations must first decide to what degree FTAA rules should differ from those of the WTO. In the FTAA negotiations, the negotiating group on Subsidies, Antidumping and Countervailing Duties was given the mandate to "achieve a common understanding with a view to improving, where possible, the rules and procedures regarding the operation and application of trade remedy laws in order to not create unjustified barriers to trade in the Hemisphere" (FTAA, 1998). Several proposals in the draft chapter give special treatment to small economies, in contrast with WTO special and differential treatment for developing economies.

Analysis of the FTAA negotiations and member negotiating positions has been hampered by the lack of publicly available position statements. In sharp contrast to the WTO, proposals are not systematically available on a central internet site. Only a few countries have made their negotiating positions available on the web; these include the United States, Canada, and Peru. Concerns expressed over the lack of transparency of the FTAA negotiations have resulted in greater consultations with business, but the lack of information available on country and bloc positions has not been addressed.

In both venues, negotiations on antidumping differ from those on other trade instruments, such as tariffs or export subsidies, in several dimensions. First, there is no agreement on the overall goal of the negotiations. Most WTO members profess support for reducing export subsidies and tariffs, and this goal is clearly stated in the mandate guiding the negotiations. In contrast, negotiations on antidumping are characterized by disagreement over the goal. Furthermore, negotiations on export subsidies and tariffs began with proposals containing numerical formulas and targets for negotiation. In the negotiations on antidumping, members attempt to achieve their goals by refinements to complex and detailed rules. While the goal behind introduction of a particular provision may be clear, it is difficult to ascertain the potential impact of a change to complex rules.

Country and Bloc Negotiating Positions within the WTO

In the WTO negotiations on antidumping law, 33 countries have submitted papers on the provisions they desire to have introduced, clarified, or changed (WTO, 2003b). The effectiveness of WTO disciplines on antidumping hinges on the language used to detail a multitude of provisions guiding the initiation, investigation, imposition, and termination of antidumping duties. Essentially, the negotiations are on details.

Members Favouring Overall Maintenance of Antidumping

The United States was opposed to the inclusion of antidumping in the current round of negotiations. The Clinton administration was prepared to forego the launch of the round at Seattle, if required, to keep antidumping off the agenda (Horlick, 2003b). Once it was clear that trade remedy laws would be part of the negotiating agenda, the Bush administration developed an aggressive strategy on antidumping that recognized U.S. agricultural producers, as well as other industries, were subject to an increasing number of suits by foreign governments. The United States is clearly the main defender of trade remedy laws as legitimate tools for addressing unfair trade practices that cause injury. The United States advocates not only strengthening the rules but also addressing the underlying causes of unfair trade practices, i.e., the trade-distorting practices that give rise to antidumping duties.

The U.S. agenda seeks to discipline procedural aspects of trade remedy law by improving "transparency, predictability, and adherence to rule-of-law" to prevent U.S. firms from suffering from suits that are not administered in a manner consistent with WTO rules (WTO, 2003b). For example, the United States has proposed more detailed rules on the source and use of exchange rates used in the calculation of dumping (WTO, 2004a). The United States has also advanced a detailed set of

procedures to ensure access to non-confidential information (WTO, 2004b). Additionally, in keeping with its desire to ensure that duties are effective in protecting the domestic market, the United States supports provisions to prevent circumvention of antidumping duties by routing exports through third countries, and more stringent guidelines for new shipper reviews (WTO, 2004c). Since antidumping duties are levied against individual firms, reviews are done of new shippers to determine whether they are dumping. The United States seeks a way to more easily determine whether the new shipper is legitimate or merely a front used by a company that was already found to have been dumping.

If a dispute on the application of antidumping law reaches the WTO Dispute Settlement Body (DSB), the current WTO agreement states that the panel must find the national authorities to be in conformity with the agreement if its actions are based on an allowable interpretation of the rules. The United States wants further consideration of this provision to ensure that it is properly applied (WTO, 2003b), likely a concern due to past and potential challenges to its domestic practices through the WTO.

The other main defender of antidumping laws is Egypt, which views the increased number of antidumping suits by developing countries as legitimate and a reflection of an increased capacity in developing countries to defend their producers against industrial-country practices. Egypt supports the U.S. concern over circumvention. Finally, Egypt argues that further elaboration of WTO antidumping law is unlikely to prevent abuse, and that additional complexity is a burden to developing countries (WTO, 2003b; WTO, 2003c) and may prevent national authorities from exercising judgment when appropriate.

Members Favouring Increased Disciplines on Antidumping

The "Friends of Antidumping Negotiations" is a coalition that has submitted numerous and detailed proposals to the WTO negotiations (ICTSD, 2003; WTO, 2003b) seeking to curtail the use of antidumping law. This coalition includes Brazil, Chile, China, Columbia, Costa Rica, Hong Kong, Israel, Japan, Korea, Norway, Mexico, Singapore, Switzerland, Thailand, Turkey, and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu. This group may have had its genesis in a coalition of countries brought together to oppose U.S. legislation (the Byrd Amendment) that gives antidumping duties collected to the U.S. firms that petitioned to initiate an investigation.

Friends seeks an explicit prohibition of the practice of zeroing. Currently, this practice means that positive dumping margins are included in calculations, but "negative" dumping margins – when the export price is higher than normal value – are

not. Using a sample of U.S. cases, Lindsey and Ikenson (2002) estimated that eliminating this practice would reduce dumping margins by nearly 87 percent. In a case brought against the European Union by India involving bed linens, the WTO ruled in 2001 against the use of zeroing, stating that it violated WTO rules by not taking into account all comparable export transactions. The WTO made a similar ruling in a 2004 case against the United States involving softwood lumber. While these rulings support the position taken by Friends to eliminate zeroing, it will be up to the negotiators to determine whether it should be completely disallowed within the Antidumping Agreement. Some countries have suggested that, in order to clarify and improve the Antidumping Agreement, some key aspects of the interpretation of recent panels should be incorporated into the agreement (WTO, 2004e). Currently there is no procedure for incorporating panel results into WTO agreements. Changes to agreements are made as a result of multilateral negotiations requiring agreement by consensus.

Friends also seeks elaboration of rules governing constructed costs. Clarida (1996) states that in the United States, 30 percent of the dumping cases were evaluated during 1979–86 on the basis of constructed value, and dumping was found in 89 percent of those cases. Clarida further argues that the use of constructed costs has become standard in dumping investigations even though it is supposed to be used as a last resort.

Proposals submitted by Friends request elaboration of the rules governing a wide range of definitions and practices in investigations with the intent of standardizing practices and preventing abuse by national authorities. In this vein, their proposals include requests for further rules on the definition of sufficient quantities of the sale of like products; clarification of issues with affiliated suppliers (WTO, 2004d); when authorities must accept cost data from producers' accounting books; further refinements to the definition of the scope of the product under investigation; and many more.

Many proposals, from Friends and other members, have requested detailed rules on how to establish a causal relationship between dumping and injury. Currently, in order to impose antidumping duties, the national authorities must first determine that dumping has occurred and then must show that the domestic industry has suffered injury, including material injury or its threat, or the material retardation of the domestic injury. The WTO gives guidance on factors to be considered, including the volume and price impact of dumped imports and, consequently, the impact on prices in the domestic industry. However, no guidance is given on how to weigh relevant factors or on how causality between relevant factors and injury is to be determined.

The GATT/WTO has debated how to prove that dumping is the primary cause of injury since 1947 (Clarida, 1996).

The European Union and Japan submitted a proposal that expresses concern over the escalating cost of responding to antidumping suits. They propose to develop a standard format for antidumping rules to reduce the cost of investigations for both government and industry. They argue that excessive information requirements, inadequate procedural and unclear substantive rules add to the cost of investigations, and that standardization would reduce costs (WTO, 2003b). The EU and other parties have also proposed implementation of a lesser duty rule, which specifies that if the duty required to alleviate injury is lower than that to alleviate dumping, the lower duty should be imposed. Both Mexico and the Canada–Costa Rica Free Trade Agreement have lesser duty rules, providing precedence for this proposal. The EU has also advanced a proposal for the implementation of a public interest test before the implementation of duties. A public interest test is simply the consideration of the impact of an antidumping duty on broader interests, including affected downstream industries and consumers. The EU and several other countries currently maintain a public interest clause in their domestic antidumping legislation.

India has submitted several proposals on antidumping provisions (WTO, 2003b). India argues that developing countries have not received the treatment specified in the Uruguay Round Antidumping Agreement, and advances specific rules to remedy this. Proposals applicable only to developing countries include increasing the *de minimus* requirement for the level of dumping from 2 to 5 percent and increasing the negligible import level from 3 to 5 percent. India proposes to make the application of the lesser duty rule mandatory when duties are being considered by industrial countries against imports from developing countries. As noted in the introduction, India has become the world's most active user of antidumping law, which may explain its lack of involvement in the Friends coalition. However, like Friends, India has also advanced proposals to restrict the use of zeroing, to ensure that injury is addressed instead of dumping, and to restrict the profit margin used by national authorities in the determination of dumping.

Country and Bloc Negotiating Positions within the FTAA

The United States has argued that the FTAA should not adopt antidumping rules that differ from those of the WTO, for "There are serious practical, as well as policy, problems with establishing a different AD/CVD regime within the FTAA" (USTR, 2001), a position also taken by the United States during negotiations over NAFTA. The United States position within the FTAA is to limit negotiations on

antidumping to procedural matters (USTR, 2001). Additionally, the United States opposes differential treatment for small economies.

The Mercosur countries and Chile succeeded in ensuring that the original negotiating mandate left open the possibility that FTAA rules on antidumping might differ from WTO rules (SICA-IBFD Project, 2001). Mercosur desires that the FTAA gradually phase out the use of antidumping practices until totally eliminated within the free trade area (Latin American Council, 2001). In lieu of this, they suggest that a second best solution would be to differentiate between countries based on the size and level of development of their economy, and have proposed several provisions to achieve this.

Brazil has publicized its goal of increased disciplines on antidumping in general (Barbosa, 2001) and specifically its dissatisfaction with U.S. antidumping duties on several Brazilian products. However, the details of Brazil's specific goals for the FTAA negotiations have not been made public. Brazil believes that a regional trade agreement should facilitate more creative options than those taken in the WTO (Lima-Campos, 2003).

Each of the three draft FTAA chapters contains a bracketed provision eliminating the use of antidumping provisions once restrictions on the circulation of goods are lifted. Lack of public access to proposals and to minutes of committee discussions makes it impossible to ascertain how much support exists for eventual elimination of antidumping measures in the FTAA; however, opposition is evident in both the U.S. and Canadian positions.

The Antidumping Profile of Major Players in the Negotiations

As already mentioned, there has been a significant increase in the number of countries using antidumping law since the conclusion of the Uruguay Round. There has also been an increase in overall antidumping activity as reflected in both investigations and the imposition of new antidumping measures.[3] Between 1995 and 2003, 2,416 cases were initiated by 41 importers against 97 exporters.[4] This represented a 38 percent increase in cases over the previous nine-year period, during which there were 1,746 investigations by 25 importers against 90 exporters. The growth is more striking when countries' antidumping actions are considered in terms of measures imposed. Thirty-eight countries reported imposing 1,511 new antidumping measures against 85 exporters between 1995 and 2002. Between 1986 and 1994, only 18 countries reported imposing 783 measures against 62 exporters. The number of new measures imposed has increased by 93 percent during the post–Uruguay Round period. The chances that an investigation would result in a measure

(an antidumping duty or undertaking) increased from 45 percent between 1986 and 1994 to 63 percent between 1995 and 2003.

Table 1 summarizes antidumping activity by and against those countries that actively used antidumping laws during the 1995–2003 period. In table 1, countries are ranked in importance based on the number of investigations initiated during the period. As already noted, India emerged during this period as the heaviest user of these laws. The next most active user by both indicators was the United States, followed by the European Union. The top ten countries accounted for more than three-quarters of the cumulative total of investigations and almost 80 percent of all measures. As a group, they initiated and imposed more than twice as many cases and measures as they faced during the period.

One might expect that those countries most in favour of reforming antidumping laws would not themselves be heavy users of these laws, and only two members of the Friends group, Brazil and China, are found among the top ten. China, the tenth most active user of AD laws, is also the favorite target of other countries. As the only country in the top ten that faced more investigations of its exports than it initiated against others, China clearly has a strong incentive for tighter disciplines on use of antidumping duties. Brazil would also seem to have a stronger incentive for greater disciplines on antidumping than the other countries in the top ten. Although Brazil initiated 50 percent more cases against other countries than were initiated against it, the "success ratio" (chances that an investigation resulted in the imposition of a duty or undertaking) in Brazil was only slightly over 50 percent. In contrast, there was a 75 percent rate of imposition of duties on Brazil's exports from investigations by importers. As a result, the number of measures imposed by Brazil was almost equal to the number of measures it faced worldwide.

Six other members of the Friends group (Chile, Korea, Japan, Singapore, Taiwan, and Thailand) were in a situation similar to China's. Their exports were the target of numerous investigations (558) and measures (352), while they were much less likely to investigate (114) other exporters or impose measures against them (70). Colombia, Costa Rica, and Israel, however, were more active users of antidumping law than they were targets of these laws by other countries.

Table 1 Investigations and Measures by and against Users of AD Law, 1995–2003

Country	Investigations by (a)	Measures by (b)	Success ratio*	Investigations against (c)	Measures against (d)	Success ratio*	Investigations ratio (a)/(c)	Measures ratio (b)/(d)
India	379	273	72%	98	50	51%	3.9	5.5
United States	329	205	62%	135	73	54%	2.4	2.8
European Union	274	187	68%	52	32	62%	5.3	5.8
Argentina	180	138	77%	16	9	56%	11.3	15.3
South Africa	166	108	65%	50	34	68%	3.3	3.2
Australia	163	50	31%	17	6	35%	9.6	8.3
Canada	122	72	59%	25	12	48%	4.9	6.0
Brazil	109	58	53%	71	55	77%	1.5	1.1
Mexico	73	62	85%	33	18	55%	2.2	3.4
China, P.R.	72	37	51%	356	254	71%	0.2	0.1
Turkey	61	61	100%	34	21	62%	1.8	2.9
Korea, Rep. of	59	33	56%	182	107	59%	0.3	0.3
Indonesia	54	14	26%	99	53	54%	0.5	0.3
Peru	48	26	54%	2		0%	24.0	--
New Zealand	42	12	29%	8	3	38%	5.3	4.0
Egypt	38	29	76%	10	4	40%	3.8	7.3
Thailand	31	24	77%	91	57	63%	0.3	0.4
Venezuela	31	24	77%	18	11	61%	1.7	2.2
Malaysia	28	16	57%	48	28	58%	0.6	0.6
Israel	26	15	58%	7	4	57%	3.7	3.8
Colombia	23	11	48%	5	2	40%	4.6	5.5
Philippines	17	9	53%	6	4	67%	2.8	2.3
Chile	14	6	43%	23	13	57%	0.6	0.5
Poland	12	9	75%	25	18	72%	0.5	0.5
Trinidad & Tobago	12	6	50%	3	3	100%	4.0	2.0
Taiwan	8	2	25%	123	79	64%	0.1	0.0
Lithuania	7	7	100%	10	3	30%	0.7	2.3
Latvia	7	1	14%	7	7	100%	1.0	0.1
Costa Rica	6	1	17%	2		0%	3.0	--
Uruguay	6	1	17%	2	1	50%	3.0	1.0
Czech Republic	3	1	33%	18	13	72%	0.2	0.1
Jamaica	3	3	100%				--	--
Japan	2	3	150%	106	76	72%	0.0	0.0
Pakistan	2	2	100%	9	4	44%	0.2	0.5
Nicaragua	2	1	50%	1		0%	2.0	--
Panama	2		0%				--	--
Bulgaria	1		0%	11	9	82%	0.1	0.0
Guatemala	1	1	100%	2	1	50%	0.5	1.0
Slovenia	1		0%	2	1	50%	0.5	0.0
Ecuador	1		0%	1	2	200%	1.0	0.0
Paraguay	1	1	100%	1	2	200%	1.0	0.5
Singapore		2		33	20	61%	--	0.1
Total	2,416	1,510						

*The success ratios are imprecise estimates based on dividing measures imposed during the period by investigations. Some measures in the early years stem from cases initiated before 1995, while some cases initiated late in the period had not yet been decided at period end. This is why both Japan and Singapore have more measures than investigations.
Source: WTO (2004e)

India, which has become the heaviest user of these laws, has proposed changes that would limit the ability of other countries to impose measures against itself and other developing countries. The United States, the most vocal proponent of preserving and strengthening the ability of governments to use antidumping law, is the second heaviest user of such law. Prior to the Uruguay Round the United States was the heaviest user by virtually any indicator (U.S. CBO, 2001). Since 1995, the number of investigations has averaged 36.6 per year, and the average number of new measures enacted is 22 per year. In terms of active measures in place on December 31, 2003, the United States still ranked first in the world with 359 against other countries versus 50 measures against it – a ratio of over 7 U.S. measures for each foreign measure against the United States.

Among other countries that have tabled proposals within the WTO Rules Negotiating Group, recall that the EU and Japan were interested in reining in the escalating cost of responding to antidumping suits. For both, the greatest proportion of suits they faced were initiated by the United States, where the costs of defending oneself in an antidumping investigation are reported to be in the millions of dollars.

Developing countries were the subject of 826 investigations by their fellow developing countries while facing only 579 investigations initiated by industrial countries. They also were more apt to have an antidumping duty imposed against their exports to developing countries. In investigations initiated by developing countries against developing countries, measures were imposed in 67 percent of all cases (553), while only 56 percent (323) of the cases against their exports to industrial countries ended up in final measures being imposed.

Table 2 includes data for all countries that have faced antidumping actions but have not been active users of these laws. (The exceptions here are the members of the EU, found at the bottom of table 2. A member of the EU cannot initiate an antidumping suit as an individual country, but must use processes at the EU level. Many countries, however, bring their cases against either the EU as a whole or against individual EU member states.) Some of the countries in table 2 have antidumping laws on the books but have not used them, while others have notified the WTO that they have yet to codify these laws.[5] Within table 2, the countries of Central and Eastern Europe, including the republics of the Former Soviet Union, would appear to have the strongest argument for seeking restraints on antidumping. As a group, exports from these countries faced 252 investigations of alleged dumping and 200 antidumping measures. When facing an investigation, the odds were four to one that they would lose the case and face measures. This compares with overall "success

ratios" of 62 percent against developing countries' exports (59 percent if China is excluded) and only 56 percent against the exports of industrial countries.

Table 2 Investigations and Measures against All Other Countries, 1995–2003

Exporting country	Investigations	Measures	Success ratio
Russia	86	71	83%
Ukraine	51	47	92%
Kazakstan	22	18	82%
Romania	32	22	69%
Hong Kong	18	11	61%
Hungary	14	7	50%
Iran	13	4	31%
Saudi Arabia	13	4	31%
Belarus	10	9	90%
Slovak Republic	10	7	70%
Macedonia	7	4	57%
United Arab Emirates	7	3	43%
Viet Nam	6	4	67%
Switzerland	5		0%
Croatia	4	4	100%
Estonia	4	2	50%
Norway	4	1	25%
Yugoslavia	4	2	50%
Moldova	3	4	133%
Algeria	2	2	100%
Cuba	2	1	50%
Faroe Islands	2		0%
Libya	2	1	50%
Macau	2		0%
Nepal	2	2	100%
Uzbekistan	2		0%
Zimbabwe	2	1	50%
Bahrain	1		0%
Bangladesh	1	1	100%
Bosnia Herzegovina	1	1	100%
Dominican Republic	1	1	100%
Georgia	1	1	100%
Honduras	1	1	100%
Jordan	1	1	100%
Korea, PDR	1		0%
Liechtenstein	1	1	100%
Malawi	1	1	100%
Mozambique	1		0%
Nigeria	1		0%

Continued on following page

Exporting country	Investigations	Measures	Success ratio
Oman	1	1	100%
Qatar	1	1	100%
Serbia & Montenegro	1	1	100%
EU Members			
Germany	74	35	47%
Italy	42	25	60%
United Kingdom	40	21	53%
Spain	39	20	51%
France	35	24	69%
Netherlands	25	13	52%
Belgium	18	13	72%
Austria	12	6	50%
Sweden	12	6	50%
Finland	9	4	44%
Denmark	6	4	67%
Greece	6	3	50%
Portugal	6	4	67%
Ireland	4	2	50%
Luxembourg	2		0%

Source: WTO (2004e)

Conclusions

The growing use of antidumping actions to protect domestic industries has occurred during the same time as tariff reductions and trade liberalization under the Uruguay Round Agreement. There exists widespread concern that antidumping measures are both misapplied and used to protect domestic industries. With this in mind, negotiators in the WTO and FTAA talks are attempting to amend and improve certain provisions of the WTO Agreement on Antidumping to clarify the rules in an effort to assure that as trade barriers are further eliminated, market access is not circumvented by the inappropriate use of these laws.

The antidumping talks are without doubt one of the most politically sensitive negotiating issues for the United States at the WTO. After unsuccessfully trying to keep antidumping off the WTO agenda, U.S. negotiators find themselves virtually alone in the talks in Geneva. At the same time, they are faced in Washington with a Congress that cares deeply about this issue and that has indicated that U.S. antidumping laws are not negotiable.[6] Even though antidumping is on the agenda, a fundamental lack of agreement continues over the goal of the negotiations. While many countries desire to restrain national authorities' ability to use antidumping duties to provide protection for import-competing industries, the United States insists that

the negotiations are to clarify and strengthen global trade rules against unfair trade practices.

A perennial criticism leveled against the United States in international trade negotiations is aimed at its use of antidumping remedies (U.S. CBO, 2001). Even within the United States, studies examining the use of antidumping tend to be critical of the procedures used by the U.S. investigating authorities to calculate margins of dumping. Specifically, they conclude that the U.S. methodology often results in a bias toward higher margins, and therefore higher import duties, than is warranted by economic theory, and in some cases by the WTO Agreement on Antidumping itself. Many of the proposals submitted by the negotiating parties within both the WTO and FTAA talks target aspects of the antidumping codes that could affect the ability of the United States to investigate alleged dumping and impose antidumping duties.

But some observers have expressed concern over how effective more detailed provisions would be in curbing the use of antidumping laws. For example, "Egypt considers that any proposal to substantially alter or change the substance or character of the present Antidumping Agreement through the use of more complex and more stringent rules regarding the investigation will not prevent a member from misusing the antidumping agreement if it truly wishes to do so" (WTO, 2003d), a view held by some analysts as well (Clarida, 1996). The National Foreign Trade Council, a U.S. business organization, argues that a new agreement should provide core principles instead of technical details (Bureau of National Affairs, 2003). Finger (2002) argues that the agreement should avoid sanctifying procedures that compare the situation of the petitioner with pre-established criteria for relief, and that the public review should identify the totality of costs and benefits from the proposed duty. These concerns are perhaps best summarized by Leebron (1996), who argues that as long as the institutions differ it is likely that the implementation of rules will differ. He posits that increasing the uniformity in rule implementation is best achieved by moving the responsibility to supranational organizations.

Despite, or perhaps due to, the concern over antidumping expressed by government officials, academics, and industry, the WTO does not appear to be making progress in the Doha negotiations. Between 2002 and mid 2004 nearly 150 position papers were submitted to the WTO Committee on Rules for changes to the WTO Antidumping Agreement. However, no public document indicates that the committee has even reached a framework for negotiations, and recent documents indicate that parties remain far apart on the goal of the negotiations. In addition, relatively little analytical work (with the exception of Lindsey and Ikenson) has been done to assist negotiators in evaluating the consequences of various proposals, or even to rank them

in terms of importance. This stands in sharp contrast to the negotiations on tariffs, in which the academics and multilateral institutions have examined in detail the consequences of different formulas for tariff reduction. Other highly technical WTO issues, such as the Sanitary and Phytosanitary Agreement, include criteria to guide member decisions, as SPS regulations "must be based on science." Progress on antidumping in the WTO depends critically on agreement of a goal for the negotiations and criteria for the rules. Until that occurs negotiators are unlikely to progress, as the negotiations appear to be focused on creating uniformity in rule implementation, without requisite agreement on underlying goals and principles.

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Endnotes

* The views expressed here are those of the authors and do not necessarily reflect those of their institutions.

1. The 2003 total is based on notifications by members through the first quarter of 2004 and is incomplete to the extent that some members had not yet submitted notifications.
2. Calculated by the authors, by viewing the titles of the disputes compiled by the WTO, as of December 1, 2004, under the Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). As the title may not include the relevant phrases, this procedure could underestimate the number of trade remedy suits. A list of disputes is available on the WTO website at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.
3. Measures are imposed only if there are findings of dumping and material injury to domestic producers.
4. Cases against the European Union as a whole are counted as one case, even though 15 countries are affected.
5. Not all of these countries are members of the WTO, so would not have notified the WTO of remedies taken nor would they be part of the WTO database on antidumping. We are not aware, however, that any of them have used antidumping laws in the past.

6. Prior to the meeting in Doha, Qatar, Congress voted 410–4 on a resolution instructing Ambassador Zoellick to keep these laws from being subject to negotiation.

The technical annex to this paper, pages 45-46 is available as a separate document.