The Anti-dumping Negotiations: Proposals, Positions and Anti-dumping Profiles

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Abstract

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

Keywords: anti-dumping; WTO negotiations, FTAA negotiations

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Countries are currently negotiating rules governing the use of anti-dumping (AD) duties in both the World Trade Organization (WTO) 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 anti-dumping measures to provide protection to domestic industries. Many WTO members have not yet adopted AD law and if they do so the global use of AD is likely to increase even more. WTO members differ markedly in their use of anti-dumping measures. These differences may be attributed to differences in political ideologies, costs of pursuing the initiation of a case against alleged dumping, availability of institutional support to help complainants, methodologies for determining dumping margins and injury, and 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 strengthen the ability of national governments to use anti-dumping measures, while others want to reform anti-dumping law to make it more difficult to impose protectionist measures.

We hypothesize that members advocating for rules to preserve or strengthen the use of anti-dumping 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 anti-dumping 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 anti-dumping practices. The anti-dumping profile of major players in the negotiations will be presented. This profile consists of a member's AD actions taken against other WTO and FTAA members, including initiations, determinations, and the implementation of duties. We will then assess if the anticipated relationship between the position taken in the negotiations and the member's AD profiles is evident.

The Uruguay Round Anti-dumping Agreement

The Uruguay Round Agreement on the Implementation of Article VI of the GATT 1994 (to be referred to as the Anti-dumping Agreement) is more comprehensive than previous agreements. (Details on anti-dumping investigations are given in appendix 1.) 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 anti-dumping law. The Agreement gives special treatment to developing countries, so that industrial countries are instructed to consider constructive remedies before the application of anti-dumping duties on imports from developing countries.

Similar to other Uruguay Round Agreements, the Anti-dumping 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 Anti-dumping Practices was instituted and one function is to review the consistency of national practices with the Anti-dumping Agreement. Requirements that countries notify the committee of both anti-dumping actions and of changes to their anti-dumping 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 the issue, members who believe that the anti-dumping 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 to open their markets and bring any measures inconsistent with their commitments into compliance. Ultimately, the effectiveness of the Anti-dumping 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 anti-dumping 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 use of anti-dumping duties is 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 reports that initiations of anti-dumping 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% of all investigations, with India taking over the number one spot from the United States as the most prolific user of anti-dumping laws. The increase in developing country initiations is particularly striking as many developing countries have only recently adopted national trade remedy law.

Figure 1 shows how the overall number of active users of these laws has grown since the early 1980s. However, four countries that were users in 1980–84 and 1990–94 have become members of the EU and now come under the EU's anti-dumping policy and no longer initiate cases on their own. There are currently 42 active users of anti-dumping laws among the 104 countries that have notified the WTO of having these laws on their books. There are currently 29 additional potential users of anti–dumping laws that have notified the WTO that they do not have national anti-dumping legislation.

Another impetus for consideration of anti-dumping rules in current WTO negotiations is developing country dissatisfaction with the implementation of the WTO Anti-dumping 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 anti-dumping duties by industrial countries has undermined their potential benefits from trade liberalization (WTO 2001b; Lima-Campos

and Vita). One might posit that as developing countries increase their exports of products that have traditionally been most subject to anti-dumping investigations they would become more vulnerable to anti-dumping measures. The view that anti-dumping is a North-South issue, however, is not supported by either the use of anti-dumping actions nor, as we shall demonstrate, by the positions taken within the WTO. Since 1995, developing country importers have themselves conducted almost 60% of the investigations initiated against developing countries' exports.

WTO rules govern the use of anti-dumping duties by national authorities, however, variation exists in countries' willingness to use anti-dumping 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 in 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 anti-dumping. Some industrial countries are concerned that developing countries that have recently adopted anti-dumping law lack appropriate institutions and procedures (Miranda). However, many criticisms have also been levied over the procedures routinely used by the national authorities in industrial countries (Clarida; Finger 1993; Horlick 2003a; Wainio, Young, and Meilke). The relationship between a country's level of economic development, its history of anti-dumping law, and its conformity to WTO accepted procedures is unclear.

Disagreement over the use of anti-dumping law is an important component of trade disputes. WTO members may press a complaint against another member that they

believe has violated WTO anti-dumping rules. Since 1995, 302 cases have advanced through the Dispute Settlement Understanding (WTO 2003a). Of these, at least 72 cases were concerned with anti-dumping, countervailing duties or safeguards, and 42 cases with anti-dumping measures alone.[2]

The WTO negotiations, occurring within the WTO Rules Negotiating Group, are focused on clarifying and modifying the rules governing anti-dumping investigations and determinations and the administration of anti-dumping 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 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, Anti-dumping and Countervailing Duties was given the mandate to "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). 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, including the United States, Canada, and Peru. Concerns expressed over the 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 anti-dumping 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 anti-dumping 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 anti-dumping, 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 anti-dumping law, 33 countries have submitted papers on the provisions that they desire to have introduced, clarified, or changed (WTO 2003b). The effectiveness of WTO disciplines on anti-dumping hinge on the language used to detail a multitude of provisions guiding the initiation, investigation, imposition and termination of anti-dumping duties. Essentially, the negotiations are on details.

Members Favoring Overall Maintenance of Anti-dumping

The United States was opposed to the inclusion of anti-dumping in the current round of negotiations. The Clinton administration was prepared to forego the launch of the round at Seattle, if required, to keep anti-dumping off the agenda (Horlick 2003b, p. 405). Once it was clear that trade remedy laws would be part of the negotiating agenda, the Bush administration developed an aggressive strategy on anti-dumping 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 U.S. advocates strengthening the rules but also addressing the underlying causes of unfair trade practices, i.e., the trade-distorting practices that give rise to anti-dumping 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). Additionally, in keeping with its desire to ensure that anti-

dumping laws are maintained, the United States supports provisions to prevent circumvention of anti-dumping duties by routing exports through third countries.

Currently, if a dispute on the application of anti-dumping 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 has been 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 anti-dumping laws is Egypt, which views the increased number of anti-dumping suits by developing countries as legitimate and as 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 anti-dumping law is unlikely to prevent abuse, and that additional complexity is a burden to developing countries (WTO 2003b).

Members Favoring Increased Disciplines on Anti-dumping

The “Friends of Anti-dumping” is a coalition that has submitted numerous and detailed proposals to the WTO negotiations (ICTSD; WTO 2003b). Ironically named, “Friends” actually seeks to curtail the use of anti-dumping 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 anti-dumping duties collected to the U.S. firms that petitioned to have an investigation initiated.

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 are not. Using a sample of U.S. cases, Lindsey and Ikenson estimated that an elimination of zeroing would reduce dumping margins by nearly 87%. Friends also seeks elaboration of rules governing constructed costs. Clarida (p. 135) states that in the United States, 30% of the dumping cases were evaluated during 1979–86 on the basis of constructed value, and of those, dumping was found in 89% of the 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 the investigation with the goal of both 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; when authorities must accept cost data from producers accounting books; 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 anti-dumping 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 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).

A proposal submitted by the European Union and Japan expresses concern over the escalating cost of responding to anti-dumping suits. They propose to develop a standard format for anti-dumping 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 cost (WTO 2003b). The EU has also advanced proposals to further discipline the use of AD measures including a mandatory lesser duty rule and a public interest test.

India has submitted several proposals on anti-dumping provisions (WTO 2003b). India argues that developing countries have not received the treatment specified in the Uruguay Round Anti-dumping 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% and increasing the negligible import level from 3 to 5%. 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 anti-dumping 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 use of profits in the determination of dumping.

Country and Bloc Negotiating Positions within the FTAA

The United States has argued that the FTAA should not adopt anti-dumping 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). This is essentially the same position taken by the United States during the NAFTA negotiations, and reflects a continuing concern that establishing a different regime under FTAs resulting in a body of law different from that applied to countries outside the free trade area could lead to constitutional problems (Carman). The United States position within the FTAA is to limit negotiations on anti-dumping to procedural matters (USTR). 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 anti-dumping might differ from WTO rules (SICA-IBFD Project). Mercosur desires that the FTAA gradually phase out the use of anti-dumping practices until totally eliminated within the free trade area (Latin American Council). 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 anti-dumping in general (Barbosa) and specifically its dissatisfaction with U.S. anti-dumping 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).

All three draft FTAA chapters contain a bracketed provision eliminating the use of anti-dumping 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 anti-dumping measures in the FTAA, however, opposition is evident in both the U.S. and Canadian positions.

The Anti-dumping Profile of Major Players in the Negotiations

As already mentioned, there has been a significant increase in the number of countries using anti-dumping 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% increase in cases over the previous 9-year period during which there were 1,746 investigations by 25 importers against 90 exporters. The growth is more striking when countries' anti-dumping actions are considered in terms of measures imposed. Thirty-eighty countries reported imposing 1,511 new anti-dumping 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% during the post-Uruguay Round period. The chances that an investigation would result in a measure (an anti-dumping duty or undertaking) increased from 45% between 1986 and 1994 to 63% between 1995 and 2003.

Table 1 summarizes anti-dumping activity by and against those countries that actively used anti-dumping 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 the 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 10 countries accounted for more than three-quarters of the cumulative total of investigations and almost 80% 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 favor of reforming anti-dumping 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 10. China, the 10th most active user of AD laws, is also the favorite target of other countries. As the only country in the top 10 that faced more investigations of its exports than it initiated against others, China clearly has a strong incentive for tighter disciplines on use of anti-dumping duties. Brazil would also seem to have a stronger incentive for greater disciplines on anti-dumping than the other countries in the top 10. Although Brazil initiated 50% 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%. In contrast, there was a 75% 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 anti-dumping law than targets of these laws by other countries.

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 anti-dumping suits. For both, the greatest proportion of suits they faced were initiated by the United States, where the costs of defending oneself in an anti-dumping 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 anti-dumping duty imposed against their exports in developing countries. In investigations initiated by developing countries against developing countries, measures were imposed in 67% of all cases (553), while only 56% (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 anti-dumping 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. Individual country members of the EU cannot initiate

an anti-dumping suit as an individual country, but must use processes at the EU level. Many countries, however, bring their cases against both the EU as a whole or against individual EU member states.) Some of the countries in table 2 have anti-dumping 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 anti-dumping. As a group, exports from these countries faced 252 investigations of alleged dumping and 200 anti-dumping measures. When facing an investigation, the odds were 4 to 1 that they would lose the case and face measures. This compares with overall "success ratios" of 62% against developing countries' exports (59% if China is excluded) and only 56% against the exports of industrial countries.

Anti-dumping Action By and Against the United States

Before the Uruguay Round went into effect, the United States was the heaviest user of anti-dumping laws by virtually any indicator (U.S. CBO). It ranked first in investigations, in measures imposed, and in measures maintained. On December 31, 1994, the United States maintained 281 active anti-dumping measures versus 79 measures maintained by other countries against U.S. exports – a ratio of 3.6 U.S. measures against its trading partners for each one imposed by them against the United States. After the agreement went into effect at the beginning of 1995, the United States became a less frequent user of anti-dumping laws. The average number of U.S. investigations per year dropped from 49.2 in the 10 years before the Uruguay Round to 36.6 since. The average annual number

of new U.S. measures also fell, but by a slighter amount, from 24 to 22 measures per year. U.S. exports were the target of 135 anti-dumping investigations, 73 of which resulted in the imposition of measures. 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.

The chances that an investigation resulted in the imposition of a duty or undertaking averaged about 63% during the period. With a "success ratio" of 62%, the United States was right about the global average. This means that every time the investigating authorities in the United States pursued a case against alleged dumping, the accused party had only a 38% chance of obtaining a favorable ruling. It bears pointing out that even when a case results in a final determination of no dumping or a finding of no injury, the investigating country may have imposed a preliminary duty. In the case of the United States, a preliminary determination of dumping was found in almost 90% of all cases. Injury, however, is harder to prove, which is why final measures only occurred in 62% of all investigations.

Anti-dumping Actions against Agricultural Trade

During the 1995–2003 period, approximately 108 anti-dumping cases against agricultural trade were filed with the WTO resulting in 57 measures imposed (see table 3). This represents a small fraction of total cases (4.5%) and measures (3.8%) and is below the share that these goods represented in global trade (just over 5%) during the period. Only 25 of the 42 users of anti-dumping law filed cases against agricultural imports led by the

United States with 22 investigations (table 3). Among the top users of anti-dumping law against agricultural imports were the three NAFTA countries with 43 investigations in all, 40% of the global total. Of these, 19 were against each other.

Thirty-eight countries were the targets of these investigations, led by the United States, which faced 13 investigations of its agricultural exports during the period. If one considers the EU and its member states together, however, they were the targets of 21 investigations in all. Of the 13 cases against the United States, 11 were initiated by Canada (4) and Mexico (7), as they are recipients of large quantities of U.S. agricultural exports. China's exports were also a favorite target facing 8 investigations by 5 importers.

Almost two-thirds of all investigations of agricultural trade were initiated by FTAA members, over 60% of which were filed against each other. Of the 47 agricultural investigations faced by 13 FTAA exporters, all but one (a case against the United States by South Africa) were initiated by their hemispheric trading partners. Its no wonder that, with respect to agricultural trade at least, anti-dumping law is receiving attention within the FTAA negotiations.

Conclusions

The growing use of anti-dumping 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 anti-dumping 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 Anti-dumping 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 anti-dumping talks, especially those within the WTO negotiations, have probably not gotten the amount of attention they deserve. They are without doubt one of the most politically sensitive negotiating issues for the United States at the WTO. After unsuccessfully trying to keep anti-dumping off the WTO agenda, U.S. negotiators find themselves virtually alone on one side of 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 they do not view U.S. anti-dumping laws as negotiable.[6] Even though anti-dumping is on the agenda, there appears to still be a fundamental lack of agreement over the goal of the negotiations. While many countries desire to restrain national authorities' ability to use anti-dumping duties to provide protection for import-competing industries, the United States insists that the negotiations are about clarifying and strengthening 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 anti-dumping remedies (U.S. CBO). Even within the United States, studies examining the use of anti-dumping 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 Anti-dumping itself. Many of the proposals submitted by the negotiating parties within both the WTO and FTAA talks

target aspects of the anti-dumping codes that could impact the ability of the United States to investigate alleged dumping and impose anti-dumping duties.

But some observers have expressed concern over how effective more detailed provisions would be in curbing the use of anti-dumping laws. For example “Egypt considers that any proposal to substantially alter or change the substance or character of the present Anti-dumping Agreement through the use of more complex and more stringent rules regarding the investigation will not prevent a member from misusing the anti-dumping agreement if it truly wishes to do so,” a view held by some analysts as well (Clarida). The National Foreign Trade Council (Bureau of National Affairs), a United States business organization argues that a new agreement should provide core principles instead of technical details. 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, 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.

This paper has attempted to define the main issues being negotiated, to highlight some of the trends in anti-dumping in the past few years, and to explain why there is interest in reforming anti-dumping laws. Later work will estimate the trade impacts of anti-dumping actions and if the distortions caused require attention at the international level.

Endnotes

1. The 2003 total is based on notifications by Members through the 1st[t] 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 (WTO 2003a). As the title may not include the relevant phrases, this procedure could underestimate the number of trade remedy suits.
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 anti-dumping. We are not aware, however, that any of them have used anti-dumping 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.

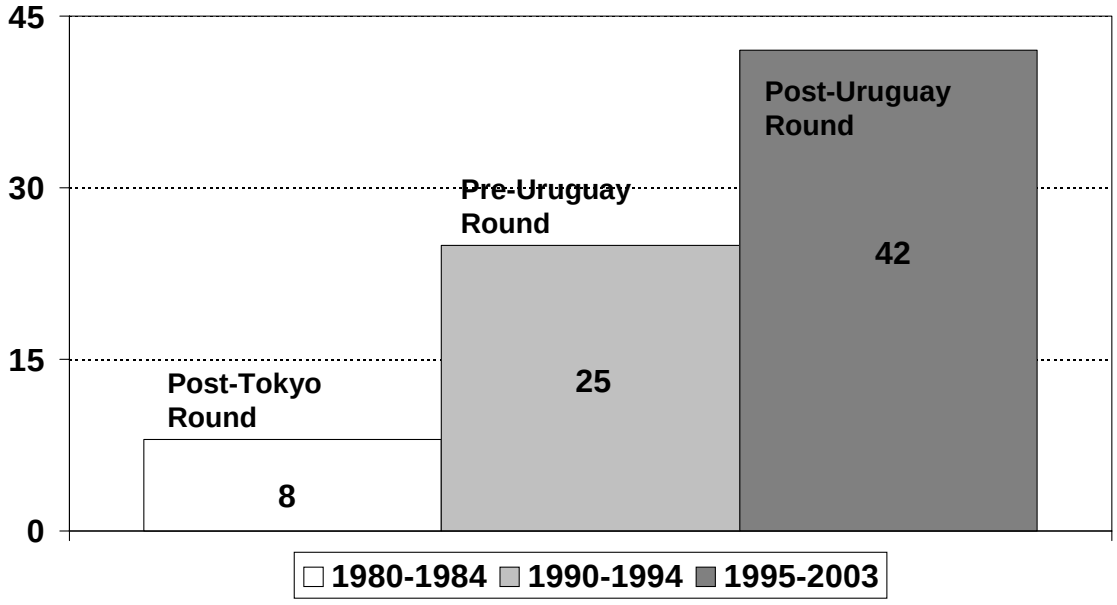

Figure 1. Countries actively using anti-dumping law since early 1980s

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 (2004)

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	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%
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 (2004)

Table 3. Anti-dumping Investigations on Agricultural Trade, 1995–2003

Exporter	U.S.A.	Canada	Mexico	Peru	Brazil	Argentina	Costa Rica	Trin. & Tob.	Panama	Uruguay	Chile	Nicaragua	Venezuela	Australia	Latvia	Indonesia	N. Zealand	India	Czech Rep.	Israel	Pakistan	S. Africa	Bulgaria	Lithuania	Slovenia	Total
U.S.A.		**4**	**7**				**1**															1				13
Chile	**3**			**2**		**1**							**1**													7
Argentina	**1**			**2**	**1**					**2**																6
Mexico	**3**			**2**					**1**																	6
Canada	**5**																									5
Brazil				**1**		**2**																				3
Colombia									**1**																	1
Costa Rica								**1**																		1
Guatemala							**1**																			1
Honduras												**1**														1
Nicaragua							**1**																			1
Uruguay					**1**																					1
Venezuela								**1**																		1
China	3	2			1													1				1				8
Italy	1	1												2						1						5
Indonesia	1													3							1					5
EU					1	1										2										4
New Zealand					1			1			1							1									4
Turkey	2																			1			1			4
Denmark	1	1																	1							3
Greece			1		1												1									3
Netherlands		1		1															1							3
Australia					1											1										2
Hungary															1										1	2
Lithuania															2											2
South Africa																	2									2
Thailand														2												2
Others (11 cntrys)	1	4												1	2	1					1			1		11
Total	21	13	8	8	7	4	3	3	2	2	1	1	1	8	5	4	3	2	2	2	2	2	1	1	1	107

Note: The shaded part of the matrix represents anti-dumping actions within the FTAA region.

Source: WTO (2004)

References

Barbosa, R.A. “A View from Brazil.” *The Washington Quarterly* 24(2001):149–157.

Bureau of National Affairs, Inc. (BNA, Inc.). “U.S. Business Group Submits Proposal to Break Deadlock in WTO Antidumping Talks.” *International Trade Reporter*, Vol. 20, No. 13, Washington, DC, March 27, 2003. Available at http://subscript.bna.com/SAMPLES/itr.nsf/0/e0a0fbfe631cf34a85256cf5007c1187?OpenDocument.

Carman, G.W. “Resolution of Trade Disputes by Chapter 19 Panels: A Long-term Solution or Interim Procedure of Dubious Constitutionality.” *Fordham International Law Journal* 21(1997):1–11.

Clarida, R.H. “Dumping: In Theory, in Policy, and in Practice.” In J.N. Bhagwati and R.E. Hudec, eds., *Fair Trade and Harmonization: Prerequisites for Free Trade? Volume 1, Economic Analysis.* Cambridge, MA: The MIT Press, 1996, pp. 357–389.

Finger, J.M. *Antidumping - How It Works and Who Gets Hurt.* Ann Arbor, MI: University of Michigan Press, 1993, 267 pp.

———. “Safeguards: Making Sense of GATT/WTO Provisions Allowing for Import Restrictions.” In B. Hoekman, A. Mattoo, and P. English, eds., *Development, Trade and the WTO: A Handbook.* Washington, DC: The World Bank, 2002, pp. 195–205.

Free Trade Area of the Americas (FTAA). “Summit of the Americas Fourth Trade Ministerial Joint Declaration, San Jose, Costa Rica.” March 19, 1998.

GATT Secretariat. *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts.* Geneva: GATT Secretariat, 1994, 558 pp.

Horlick, G.N. “How the GATT Became Protectionist – An Analysis of the Uruguay Round Draft Final Antidumping Code.” In G. Horlick, ed., *WTO and NAFTA Rules and Dispute Resolution: Selected Essays on Antidumping, Subsidies and Other Measures.* London: Cameron May Ltd., 2003a, pp. 241–255.

———. “The Speedbump at Seattle.” In G. Horlick, ed., *WTO and NAFTA Rules and Dispute Resolution: Selected Essays on Antidumping, Subsidies and Other Measures.* London: Cameron May Ltd., 2003b, pp. 395–401.

International Centre for Trade and Sustainable Development (ICTSD). “Negotiations on WTO Rules.” *Doha Round Briefing Series: Cancun Update* Vol. 2, No. 7, August 2003. Available at http://www.ictsd.org/pubs/dohabriefings/cancun_updates/V2_07_rules.pdf.

Latin American Council. “The MERCOSUR and Chile vis-à-vis the FTAA: Implications and Opportunities.” SP/CL/XXVII.O/Di Nº 2 – 01, XXVII Ordinary Meeting of the Latin American Council, Caracas, Venezuela, October 8–10, 2001. Available at http://lanic.utexas.edu.

Leebron, D.W. “Lying Down with Procrustes: An Analysis of Harmonization Claims.” In J.N. Bhagwati and R.E. Hudec, eds., *Fair Trade and Harmonization: Prerequisites for Free Trade? Volume 1, Economic Analysis.* Cambridge, MA: The MIT Press, 1996, pp. 41–117.

Lima-Campos, A. Personal Communication, Brazilian Embassy, Washington, DC, November 12, 2003.

Lima-Campos, A., and A. Vita. “Abuse and Discretion: The Impact of Anti-dumping and Countervailing Duty Proceedings on Brazilian Exports to the United States.” Journal of World Trade 381(2004):37-68.

Lindsey, B., and D. Ikenson. “Reforming the Antidumping Agreement: A Road Map for WTO Negotiations.” Trade Policy Analysis No. 21, Cato Institute, Washington, DC, December 11, 2002.

Miranda, J. “On the Use and Abuse of Trade Remedies by Developing Countries.” Paper presented at the Dartmouth-Tuck Forum on International Trade and Business, *Managing Global Trade: The WTO—Trade Remedies and Dispute Settlement*, Washington, DC, December 16–17, 2003.

SICA-IBFD Project. “FTAA Agreement Hides Divisions on Agriculture, Trade Remedies.” Quito, Ecuador, April 2001. Available at http://www.sica.gov.ec

U.S. Congressional Budget Office (U.S. CBO). “Antidumping Action in the United States and Around the World: An Update,” Washington, DC, June 2001.

U.S. Trade Representative (USTR). “FTAA Negotiating Group on Subsides, Antidumping and Countervailing Duties: Public Summary of U.S. Position.” Washington, DC, 2001. Available at http://www.ustr.gov/regions/whemisphere/subsid.pdf.

Wainio, J., L.M. Young, and K. Meilke. “Trade Remedy Actions in NAFTA: Agriculture and Agri-Food Industries.” *World Economy* 26(2003):1041–1065.

World Trade Organization (WTO). “DOHA WTO Ministerial 2001: Ministerial Declaration.” T/MIN(01)/DEC/1, Geneva, Switzerland, November 20, 2001a.

———. “Declaration of the Group of 77 and China on the Fourth WTO Ministerial Conference at Doha, Qatar,” Geneva, Switzerland, October 22, 2001b.

———. “Update of WTO Dispute Settlement Cases.” WT/DS/OV/17, Geneva, Switzerland, November 28, 2003a.

———. “Negotiating Group on Rules: Note by the Chairman.” TN/RL/W/143, Geneva, Switzerland, August 22, 2003b.

———. Committee on Anti-dumping Database, 2004. Available at http://www.wto.org.

Appendix 1. Anti-dumping Law and Processes

Anti-dumping cases are initiated by importing countries to investigate the alleged dumping of goods by foreign firms into their domestic market. An exporting country is said to be dumping when it sells its goods abroad for a price that is either lower than it sells domestically or is below the cost of production. Usually, representatives of import-competing firms petition their national authorities for the initiation of an investigation. If filing requirements are met, the national authorities conduct an investigation to determine if the foreign firm has engaged in dumping. The national authorities must also determine that an industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded by reason of imports being sold at less than their 'normal value.' If both conditions are met (dumping and injury), the national authorities can implement anti-dumping duties on these imports. If both conditions are not met the investigation is terminated. A third possible outcome from an anti-dumping investigation is a price undertaking. Price undertakings, provided for under WTO rules, occur when the exporter reaches an agreement with the investigating authorities of the importing country to raise their export price to a level sufficiently high to eliminate injury. Duties and price undertakings have the same effect on trade, but in the case of the former the importer collects revenue from the duty while with an undertaking it goes to the exporter.

Several definitions are pivotal in the determination of dumping. First, normal value is the price charged by exporters in their home market. According to the WTO, when a firm sells a product in a foreign market at less than the price in the home market (normal value), that product is considered as being dumped (WTO 2002). In some cases the national authorities decide that prices in the exporter's home market are not suitable to use in the calculation of dumping due to inadequate sales, or because sales occurred between affiliated companies operating at less than arm's-length. In this case, the national authorities can use prices from a third country market or can construct normal value using production costs, other expenses and a specified profit margin. National authorities can also construct the export market price under certain conditions. Rules govern the comparison between normal value and prices in the export market used to establish the margin of dumping, which is the upper bound for the duty that the importers can apply. As a result of the Uruguay Round Agreement, the WTO now imposes a five-year limit to the imposition of these duties (the "Sunset Clause"), unless the investigating authorities conclude, "removal of the duty would be likely to lead to continuation or recurrence of dumping and injury" (GATT Secretariat 1994). Specified parties can request a review of duties before five years have elapsed. Numerous aspects of the investigation, imposition, implementation and review of anti-dumping duties are detailed in the WTO agreement.