

Antidumping Reform in the Doha Round: A Pessimistic Appraisal

Abstract: Trade reformers have attempted to revamp antidumping (AD) procedures for many years, most recently in the Uruguay Round. Antidumping once again is on the multilateral trade reform agenda in the Doha Round. Evidence presented in this paper suggests that substantial, and perhaps even modest, AD reform is unlikely to occur. The principal reasons are two-fold. First, the growing list of countries that use antidumping extensively has created new groups that will resist reform. Secondly, traditional AD users, especially the U.S., have shown strong resistance to further reform and have implemented past reform in a minimalist fashion. Even if substantial changes are forthcoming (e.g., introduction of a “lesser duty rule”), experience with antidumping reform from the Uruguay Round, most notably in the United States, means that the economic impact of reform could be limited.

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Introduction

This paper will assess the prospects of antidumping reform in the Doha Round of multilateral trade talks. The analysis below suggests that only modest changes are likely to arise. The primary reasons are two-fold. On the one hand, the use of antidumping has spread dramatically in recent years to a host of new countries. This proliferation will create a host of new constituencies that will be resistant to accept major changes in the treatment of antidumping in the World Trade Organization (WTO) system, both in the immediate term in the Doha Round as well as in the longer term. Secondly, traditional supporters of antidumping, most importantly in the United States Congress, are unlikely to accept anything more than marginal adjustments in trade remedy disciplines in the Doha Round unless the *demandeurs* for antidumping reform can exert sufficient pressure in other areas important countries supporting the current trade remedy regime. Finally, experience with antidumping reform arising out of the Uruguay Round makes it unlikely that any resulting alteration in the rules in the Doha Round will have important economic effects on antidumping outcomes. The conclusion at which one must arrive is that the WTO system is not likely to fundamentally alter antidumping in this or any foreseeable negotiating round.

Antidumping policy has been one of the most controversial aspects of the postwar multilateral trading system. It remains one of the few, but the most frequently used, forms by which countries can impose new trade restrictions. New disciplines were imposed in the Antidumping Agreement (ADA, 1994) during the Uruguay Round of trade negotiations but its use was not significantly curtailed.

Under this procedure WTO signatories can place discriminatory duties on imports sold at less than “normal” value and that cause economic disruption to a domestic industry. Defenders of the procedure argue that it is needed to protect against “unfair” trade practices

abroad. Others point to antidumping as a safety-value; politicians may find that a national consensus for broad trade liberalization is possible only if the multilateral system allows for limited protection to some industries in distress.

Many proponents of a liberal trade regime question the economic rationale behind antidumping duties. Moreover, many observers point to allegedly arbitrary administration of this trade remedy and argue that the level of protection, and the uncertainty associated with it, exceeds any benefits that arise out of the current antidumping system as allowed by the General Agreement on Tariffs and Trade (GATT). Certainly the level of antidumping duties can be very high and can far exceed the average most-favored nation tariff; the average dumping duty imposed in the United States was 49 percent for the 1995 to 2002 period compared to an average most-favored-nation tariff rate of around 3 percent (Moore and Fox, 2005).

These competing views of antidumping have clashed in successive rounds of multilateral trade negotiations and the Doha Round is no exception to this pattern. In the run-up to the Doha WTO Ministerial in November 2001, some nations insisted on including antidumping reform in the Doha Development Agenda even as important users of the measure tried to limit the scope of reform. In the end, negotiation partners agreed to language that laid out the basic framework for negotiations, to wit:

[W]e agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants.¹

¹ Doha Declaration (2002)

The language of the Ministerial Declaration provides the framework for the “Rules Negotiations” surrounding antidumping reform in the Doha Round.² The “mandate” articulated by Ministers in this paragraph suggests that fundamental changes are unlikely, given the language about preservation of existing antidumping concepts. Only a broad coalition of nations pushing for change would be likely to overcome this limited agenda. As will be made clear below, such an effective coalition is unlikely to arise. Instead, the reforms are likely to involve modest procedural adjustments, with only a slight chance that more far-reaching changes might be adopted. The most plausible “major” changes would be the introduction of a mandatory “lesser duty” rule and/or further modifications of the sunset review process.

The balance of the paper is organized as follows. Section 1 briefly outlines the role of antidumping in the WTO system and lays out some basic facts surrounding its use over the last two decades. Section 2 contains a discussion of possible major and minor changes that have been proposed for antidumping. Section 3 discusses the principal impediments to antidumping reform.

I. Antidumping and the Multilateral System

The political importance of antidumping within the multilateral trading system is evident. In particular, antidumping duties are an internationally-recognized exception to three core WTO principles: 1) bound tariff commitments; 2) most-favored-nation (MFN) status; and 3) national treatment.

In particular, signatories to the GATT have the right to impose duties beyond bound tariff rates negotiated in multilateral negotiations if domestic authorities determine that

² The “Rules” process also involves countervailing duty, fisheries subsidies, and preferential trade agreement

dumped imports have caused material injury to a domestic industry producing a like product.³ These duties can vary across countries and also across individual firms within a country and thus represent an exception to MFN status. The GATT defines dumping as import pricing below home market sales or below the exporter firm's production cost. Thus, pricing behavior perfectly acceptable for domestic firms (such as price discrimination across domestic markets and pricing below average total cost) are unacceptable if a foreign firm pursues exactly the same pricing strategies. In other words, antidumping duties are allowed in spite of GATT national treatment principles.

The general arguments for the inclusion of antidumping (AD) in the multilateral trade regime can be broken up into two distinct areas. Advocates argue that dumping (as defined within the GATT) is a distortionary trade practice which must be combated through discriminatory duties that bring foreign prices up to their "normal" value. Most importantly, dumping is seen by some as a "predatory" practice by which foreign producers try to drive out domestic competitors so that they can claim higher market share and monopoly profits. Mastel (1998) contends for example that dumping most often reflects either a monopolized home market which allows a firm to essentially "cross-subsidize" the losses incurred abroad or it is the product of a non-market economy where standard assumptions about prices reflecting costs do not apply. Thus, he argues that antidumping duties help "right the wrong" of incorrect signals arising out of market imperfections. As another author puts, "antidumping is the response of free markets to unfairness" (Stein, 1997).

Others argue that antidumping is a useful "safety value" for protectionist pressures in economies which have committed themselves to an open trading system. Destler (1996) for example notes that the existence of AD laws in the U.S. allows elected officials to withstand

negotiations. These issues are beyond the scope of this paper.

broad calls for protection from their constituencies. The existence of the bureaucratic and rules-driven AD process helps preclude even worse direct intervention by vote-seeking politicians. Those supporting this view also point to the relatively small volume of trade directly affected by antidumping restrictions; if limited antidumping is the price of broad liberalization across many sectors, then its presence may be welfare-improving. More recently, authors in Finger and Noguees (2005) have provided evidence from detailed case studies that trade liberalization in some Latin American countries was enhanced because antidumping procedures were in place to absorb some of the political pressure surrounding broad tariff reductions.

Critics of antidumping question the economic rationale behind the procedures by pointing out that price discrimination and selling below production cost are normal business practices in many situations.⁴ Analysts have also pointed out the complex antidumping process can lead to bureaucratic discretion which in turn can lead to higher dumping margins and more restricted trade (Blonigen, 2006).⁵ Vandenbussche and Zanardi (2005) report preliminary evidence that antidumping has depressed trade by about 6 percent (or \$14.5 billion) among new users of antidumping, most of whom are in the developing world.⁶ Blonigen and Bown (2003) also investigate the effects of retaliation among countries that use antidumping against each other.

Prior to 1985, antidumping measures were primarily used in four jurisdictions: the United States, Australia, Canada, the European Union (E.U.).⁷ All had relatively low GATT-bound MFN tariff rates and, with some notable exceptions (e.g., textiles, steel, and automobiles for the U.S. and the E.U.), generally did not use quantitative restraints and only

³ See Article VI of the GATT.

⁴ See Finger and Artis (1993) for a discussion of some of the problems associated with antidumping.

⁵ Prusa and Blonigen (2003) provide a wide ranging survey of research on antidumping.

⁶ See Mankiw and Swagel (2005) for a clear articulation of standard economic critiques of antidumping.

rarely formal import licenses. These developed countries also possess a significant number of lawyers with extensive legal systems, both of which are very important in the antidumping system. The reason is simple----administering antidumping procedures in a GATT-consistent fashion requires elaborate legal and administrative procedures, both of which are typically the province of those with legal training.

Many countries in the developing world had trade regimes which were mirror images of those of the US/Australia/EU/Canada. Import substitution programs with their attendant reliance on import licenses and high tariffs and strict quotas characterized their import strategies. Use of antidumping procedures was therefore essentially non-existent. Indeed, hardly any of these countries even had antidumping legislation on the books.

Figure 1 displays the trend in world wide antidumping investigations from 1980 to 2002.⁸ We see that there is general upward trend over the entire period. During the 1980s, the average number of investigations equaled 127 per year for all countries that had antidumping procedures in place. There was a sharp increase in 1982, which was a year of severe economic stress in many countries across the world. In the 1990s and early years of the new millennium, the average number of annual cases rose to 288. This suggests a structural shift upwards in the use of this trade remedy. In large measure, the primary change was that a host of new countries began to use antidumping in the mid-1980s and afterward.

Table 1 delineates the use of antidumping over this period based on the World Bank's definition of High Income and Middle/Low-Income countries. There are 5039 total cases for the 1980-2002 period. For the entire period, High Income countries initiated 60 percent of total antidumping cases. However, this percentage has changed remarkably over time, falling

⁷ Throughout this paper, I will refer to the "European Union" even when discussing the "European Community" period.

⁸ Figures and tables on initiations of antidumping investigations are based on information collected by the author and Maurizio Zanardi.

from 79 percent in the pre-WTO period to 39 percent in the subsequent period. Clearly, there has been a dramatic increase in the Low- and Middle-Income countries' use of antidumping. It is important to note that these figures are unweighted and do not reflect the value of trade involved in individual cases.

It is useful to consider how developing countries have been involved as “targets” in antidumping cases, especially given the commitment of WTO member countries to a “development round” of trade negotiations. Table 1 shows that Low- and Middle-Income countries exports were accused of dumping in 57 percent (2855 out of 5039) of all cases in the data set. This number is especially striking given these countries' relatively small share of total world trade. Perhaps even more notable is that Low- and Middle-Income countries target other countries in this same category even more frequently (60 percent) than do High Income nations (54 percent). Thus, antidumping rules, supposedly designed to target predatory pricing behavior and unfair trade, result in disproportionate use by poor countries against other poor countries.

II. Possible Antidumping Reforms

There are many possible avenues by which antidumping could be changed within the multilateral system. In this section, I consider two broad types. On the one hand, antidumping provisions could be fundamentally changed from its current form. This is unlikely in any event in the Doha Round but may be a longer term option. On the other, there could be minor procedural changes that might eliminate some of the current system's most frequently criticized attributes.⁹

II.A. Thinking “Outside the Box”

The most extreme reform would be the elimination of the antidumping regime altogether. This has been suggested by a number of critics, especially some academic economists. Two versions are frequently articulated. The first would be to remove antidumping as an option but without offering a specific alternative in its stead. This alternative appeals to those who see no redeeming features in the current antidumping system and who argue that it is merely thinly-disguised protectionism that imposes more economic costs than benefits. These critics also see little, if any, merit in the justifications often used in favor of the antidumping process. One example of this position is articulated in Mankiw and Swagel (2005), who argue “[o]utright repeal of U.S. antidumping laws would certainly be the best policy for the United States’ well-being.” The authors would presumably argue that unilateral elimination of antidumping would be in all countries’ interests.¹⁰

A more moderate version of this option would eliminate antidumping while simultaneously reforming the WTO safeguard mechanism so that those who seek protection from imports would have easier access to temporary relief against imports. Domestic industries therefore would be forced to forego protection against “unfair” imports but could still have access to a WTO-consistent means of restricting imports. Some reform or clarification of the safeguard process would be necessary given the experience of such measures in the WTO dispute settlement process where dispute settlement panels have found routinely that various countries’ imposition of safeguards are inconsistent with WTO obligations. Bhagwati (1988) has also suggested that there be bilateral or multilateral adjudication of antidumping; this would leave antidumping intact but would make its “capture” by domestic rent-seekers far more difficult.

⁹ Finger and Zlate (2005) also discuss the outlook for antidumping reform in the Doha agenda and deal with a number of issues addressed here. They list a broad set of modifications proposed by participants.

¹⁰ Mankiw and Swagel nonetheless recognize the political impracticability of this suggestion.

A second fundamental reform would be to replace antidumping with competition policy.⁷ Such a change would address the concerns of proponents of the current antidumping system who claim that the underlying motivation for antidumping is not “ordinary” protection but instead is intended to neutralize the harm to the domestic industry from foreign competitors operating behind a closed monopolized market or who price to force their domestic competitors out of business. (See U.S. (2002a) for a further elaboration of “sanctuary market” arguments from the U.S. government’s perspective.)

Those favoring competition policy over antidumping argue that if foreign monopolistic practices are the problem, then a more efficient approach is to attack the underlying distortion.

A competition policy option could take a number of separate forms. Governments with existing laws against domestic predation could be required to accept petitions from foreign firms that allege that domestic firms are engaged in anticompetitive practices abroad. Another possibility would be to allow the government of the importing country to assess the anti-competitive practices of the foreign firms, but within its own competition policy framework. A more far-reaching proposal would have WTO signatories complete a multilateral competition policy framework.

Despite the attraction of these proposals, they all have serious drawbacks. From a practical standpoint, all would involve a stronger international consensus on fundamental issues of domestic economic structure. The first two proposals would either force domestic governments to act against domestic firms at the behest of foreign economic interests or insert domestic investigatory agencies into the economic environment of a sovereign foreign nation. Both approaches would be problematic. The third approach would require that WTO

⁷ Lipstein (1997) has suggested that US AD procedures be reformed so that they more closely parallel U.S. antitrust

members agree on such issues as the role of cartels in national development strategies and the importance of consumer interests in economic policy decisions.

Even more importantly, all of the radical changes described in this section are irrelevant to the current negotiations. As noted above, the participants at the Doha Ministerial agreed only to negotiations that preserve the “basic concepts, principles and effectiveness” of the current antidumping system. Fundamental reform is completely and totally off the table for this WTO round. In addition, the spread of antidumping use to other countries, which is detailed later, makes such radical changes all unlikely in future rounds as well.

II.B. Thinking Firmly, Completely, and Totally Within the Box

The realities of the Doha process require that reformers have modest goals. As noted above, the Ministerial Declaration envisions only “clarifying and improving disciplines,” which is hardly a clarion call for major changes.

Broadly speaking, the most active participants for antidumping reform is the self-named “Friends of Antidumping” that includes Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Mexico, Norway, Singapore, Korea, Switzerland, Thailand, and Turkey. The United States has been the most active of the traditional antidumping users in the negotiating process. Canada and Australia have also offered a number of papers and concrete suggestions. The European Union on the other hand has had relatively little input into the process and has contributed relatively few submissions.

One way to organize the discussion is to consider the priorities of the principal *demandeurs* for reform, i.e., the Friends of Antidumping. Their priorities, articulated in Friends (2005), fall into the following categories: a) investigation procedures; b) the

antidumping duty level; c) duration of the antidumping order; and d) implementation of WTO rulings on antidumping disputes. The ultimate limits of changes in the antidumping system are clear given the limited nature of reforms proposed by the Friends group; these modifications are all at the margin and do not represent fundamental alteration of the system.

The proposals concerning investigation procedures include calls for increased transparency and improved due process. Exporting firms certainly can face difficulties if the rules for antidumping investigations are unclear. Foreign companies accused of dumping must provide various types of information about production costs and sales data. How these data are used by the investigating authorities, how business confidential information is protected, and how the levels of costs associated with investigations can be lowered, are all extremely important to responding firms.

One specific proposal to reduce investigation costs would be to standardize questionnaires used in collecting information from foreign firms. A practical consequence of a diminution of these costs is that foreign firms would be less likely to face “facts available” procedures under which domestic authorities may use petitioners’ allegations if foreign firms are found to be uncooperative in providing data. The consequences of non-cooperation are non-trivial: Moore and Fox (2005) report that average U.S. “facts available” antidumping for the 1995-2002 period was 87 percent compared to 31 percent for cooperative foreign firms. If some firms do not provide data to domestic investigators because of compliance costs, standardizing forms might induce more cooperation and lower antidumping margins.

Increasing transparency, reducing investigative costs, and other administrative adjustments in principle are relatively uncontroversial. Calls for transparency are also echoed in U.S. submissions to the Rules Negotiations. Other proposals by the Friends group would be far more problematic for countries resisting change.

Requiring a “public interest” test in antidumping procedures is one such controversial issue. This proposal, which for example might require member governments to consider the impact of an antidumping duty on final and industrial consumers of the imported product, has been discussed in previous multilateral rounds and is frequently mentioned in criticisms of antidumping by economists. The Antidumping Agreement (ADA, 1994) negotiated during the Uruguay Round allows for a public interest clause and a number of important AD users have incorporated such a provision in their antidumping process (e.g., the E.U. and Canada). However, some countries, most notably the U.S., preclude any consideration of the consumer effect of the higher duties. These countries likely would be reluctant to approve such a major change.

The Friends group has also put forward a proposal to include a mandatory “lesser duty” rule when imposing antidumping tariffs. Many countries that use antidumping have already adopted this concept, most notably the European Union. Under this procedure, the antidumping duty imposed is the lesser of the dumping margin and the “injury” margin, i.e., the level of duty that would eliminate the injury faced by the domestic industry. A submission by the Friends (Friends, 2003) suggests that the injury margin be chosen from among the following options: 1) the margin of foreign underselling of domestic firms; 2) the difference between unit production cost and the CIF landed price of the dumped imports; or 3) the difference between the CIF landed prices of dumped and non-dumped imports. India, the most important new user of antidumping in recent years, has floated a similar proposal in India (2005)

Proponents of a mandatory lesser duty provision interpret the antidumping system as one that eliminates damage to the workers and firms caused by dumping; it would follow that imposing duties in excess of this would impose burdens on foreigners in excess of what the

domestic industry needs to “right the wrong.” Moreover, its use would make less important any “abuses” when calculating dumping margins.

The U.S., the most vocal opponent to this change, argues in U.S. that antidumping duties are intended to eliminate dumping, not the economic consequences of dumping. The U.S. has argued forcefully against this change and holds that calculating “injury margins” would create significant new administrative burdens because of the complexity of the calculations.

The Friends of Antidumping have also called for changes in international trading rules that would prevent AD measures from becoming “permanent.” This proposal is a reference to dissatisfaction with the results of a reform inaugurated in the Uruguay Round, under which domestic authorities are required to review antidumping orders five years after their original imposition. The ADA stipulated that antidumping orders would be terminated after five years unless authorities determine that “continued imposition of the duty is necessary to offset dumping” and “injury would be likely to continue or recur if the duty were removed.” Some countries, notably the Friends, have argued that current rules surrounding disciplines for these “sunset reviews” are “unclear” and must be clarified. This diplomatic language obscures the broad frustration with how this process has worked in some countries. (See below for a discussion about sunset reviews in the United States).

Finally, the Friends have called for broad clarification of the antidumping rules. This frustration reflects concerns about the frequency of dispute settlement cases involving dumping allegations. The uncertainty about specific rules arises in part of ambiguities that were built into the Antidumping Agreement:

Where [a dispute settlement] panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities'

measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.¹¹

Contracting members have had major disputes about how this should be interpreted. Some have suggested that this provision provides wide discretion to domestic authorities and furthermore if domestic rules are not specifically prohibited by the agreement, then they should be allowed. Others have argued for a more narrow reading of the implied discretion. These disagreements have led to a number of contentious dispute settlement cases. The Friends are therefore calling for more narrowly defined acceptable rules while others continue, including the U.S., wish to retain more discretion.

III. Impediments to Antidumping Reform

III.A. An Emerging Constituency for Antidumping

It should be clear from the discussion above that there are important supporters of antidumping within the WTO system, most notably among the traditional major users of antidumping. Unfortunately for those seeking far-reaching antidumping reform, the spread of the “unfair” trade remedy rule use far beyond the traditional users and into a diverse group of new practitioners has created new groups that will function as impediments to change.

Figure 2 shows how initiations of antidumping investigations have changed over the last two decades. Traditional users are defined as the U.S., E.U., Australia, and Canada. The balance of the countries using antidumping procedures since 1980 is included in the “new users” category.¹²

The figure makes clear that traditional users dominated antidumping use through the early 1990s. New users were almost entirely absent until the mid-1980s when Mexico began

¹¹ ADA (1994, Article 17.7.

¹² Prusa (2001) and Miranda et al. (1998)) have documented the expansion of antidumping for earlier periods.

to use antidumping after its accession to the GATT in 1986. Nonetheless, traditional users represented almost 90 percent (1495 out of 1676) of all antidumping investigations prior to 1990. During the early 1990s, other countries such as Argentina, Brazil, South Africa and Turkey began to use antidumping more extensively.

With the conclusion of the Uruguay Round and the establishment of the WTO in 1995, new users began to use antidumping more frequently than the traditional countries. From 1995 through 2002, new users initiated antidumping cases in 63 percent (1478 out of 2340 cases) of total investigations. Moreover, while traditional users' investigation initiations have remained within a range of 70 to 170 cases per year for the entire date period (with spikes during periods of economic weakness in the early 1980s and 1990s), initiations by new users have shown a general upward trend in the post-WTO period.

The industries involved in antidumping investigations have not changed dramatically as a result of the growing use of this measure in a new set of countries. Table 2 shows a breakdown of initiations by 3-digit ISIC category. We see that steel and chemical products represent just over 50 percent of all cases (26.4 and 24.5 percent respectively). Among traditional users, almost 31 percent involve steel products. For new users, these two industries once again represent about one-half of all cases initiated by these countries but industrial chemicals play a much more important role than steel products (29.5 percent versus 20.9 percent, respectively). This means that antidumping cases among new users are focused on high fixed costs industries (steel and chemicals) that are subject to losses during negative demand shocks. Consequently, the same group of powerful industries are likely to fight fundamental reform, just as they have in the U.S. and the E.U.

It is also useful to consider which countries are targets. Table 3 shows that the E.U.¹³

¹³ The figures for the EU does not distinguish when individual countries joined the EU.

has been the most frequent target of antidumping investigations; this reflects about 45 cases per year in both the pre- and post-WTO periods for all 25 current members of the European Union. For the entire data period, the E.U.'s percentage of investigations was 20 percent while in the pre-WTO era it was almost 25 percent. The United States is the second most commonly targeted individual country in the antidumping process with over 347 cases for the entire period or 7 percent of all cases, compared to 9 percent in the pre-WTO period. The data for the pre-1995 period is particularly interesting since it undercuts one of the often-repeated arguments about what will force more fundamental reform. Some have argued that the U.S. and E.U. will accept a more restrictive AD regime only when their exporters face significant AD barriers. In fact, their exporters have long been among the important targets of antidumping petitions.

The People's Republic of China is the most frequent country accused of dumping for the entire sample. However, the rate of initiations has risen from about 15 per year for 1980 to 1994 to 43 per year after 1995, which reflects the phenomenal growth of Chinese exports in recent years as well as growing calls for restrictions. Other important targets include Japan (295 cases), Taiwan (229) and Brazil (209). India's experience is also important to highlight. India initiated only 12 cases in the pre-WTO period. In the post-WTO period, Indian use of antidumping has exploded so that it became the most frequent user of antidumping (378 cases).

In order to assess which countries might have an incentive to push for reform, it is also important to consider the net use of antidumping by the country, i.e., how often a country's exporters are targeted versus how often import-competing industries in that same

country initiate complaints.¹⁴ The U.S. is particularly notable in this regard; despite being the second most frequently targeted individual country in antidumping actions, there are almost three times as many cases when the U.S. initiates an investigation as when U.S. exporters are targets. This is certainly consistent with U.S. reticence to reform. Japan lies at the other extreme; it was the target 23 times more frequently (188 vs. 8) than as an initiator in the pre-WTO period compared with 53 times (107 vs. 2) in the post-WTO period. This experience is reflected in consistent Japanese calls for restrictions on the use of antidumping. Korea, Taiwan, Thailand, and China were also far more likely to be the target than an initiator.

These patterns are notable for the Friends of Antidumping. We see that products involving the “Friends of Antidumping” as a group have been targeted in 1329 instances, or over one-quarter of all 5039 cases in the data set. Perhaps even more importantly, the Friends group faced about 48 cases per year prior to 1995 and over 75 cases per year after the WTO was formed. This group of countries clearly has been more and more frequently involved in antidumping dispute. In contrast, the Friends as a whole have initiated only half as many cases during the same period, which is consistent with these countries seeing antidumping reform as an important goal. There are some odd patterns nonetheless. Mexico and Turkey, both active members of the Friends group are much more likely to use antidumping measures against foreign firms than face them as exporters.

This last result for Mexico and Turkey highlight some of the shortcomings of simply compiling the numbers of antidumping cases. These data tell us nothing about the value of the exports involved, whether there might be alternative markets for products shut out by antidumping actions, or what level of restrictions might be faced if the initiations resulted in import restrictions. Nonetheless, we do see broad patterns consistent with positions in the

¹⁴ One would also like to assess the value of exports involved to get a better sense of the economic consequences; these data

WTO negotiations: 1) the US position as an overwhelming net user of antidumping means that it is likely to be resistant to change; 2) Japanese, Chinese, and other East Asian countries would seem to have strong incentives to push for reform; and 3) the initiatives taken by the Friends of Antidumping to change antidumping procedures apparently reflect their own frequent experience as targets.

This dispersion of AD increases resistance to change for a number of reasons.

First, many of the new countries using antidumping have instituted major efforts at trade liberalization over the last two decades. As noted above, Finger and Noguez (2006) have found evidence that Latin American policy-makers use antidumping as political cover to lower trade restrictions across broad categories of products. India's exploding use of antidumping has also been accompanied by wide spread economic and trade liberalization. Similar sentiments are expressed in the U.S., for example in a May 2001 letter to President Bush.¹⁵ It is an empirical question how liberalization efforts were enhanced by the use of antidumping as a safety valve for protectionist pressure. But to the extent that antidumping is used in this way, and to the extent that policy-makers would like to continue liberalization, then countries may be resistant to AD reform that undercuts its use as a safety-value for wider protectionist pressures.

Second, industries in a host of new user countries can point to a WTO consistent measure that provides important and long-lasting protection. They no longer have to argue for import licenses or tariff increases granted through the political process. Instead, they can appeal to an administered protection procedure that typically works its way through a bureaucracy with only limited decision-making by political leaders. These are "advantages" long recognized by firms in the traditional users of antidumping; there is little reason to

are not currently available on a case basis.

believe that this process would be substantially different in new users of antidumping. A further benefit to import-competing industries is that antidumping is accompanied with very attractive rhetoric. The ability of a domestic industry to complain about “unfair” trade can be extremely important since it allows the firms to avoid any admission of high costs or a poor competitive position.

Third, the growth of a complicated, legalistic, and bureaucratic regime of import restrictions creates domestic constituencies for preserving the systemic aspects of antidumping. This type of trade remedy procedure by its very nature requires a significant bureaucracy to gather necessary information, evaluate arguments, and monitor on-going antidumping orders. Investigations require information to be collected on foreign sales and costs as well as the domestic impact of the imports. The civil servants associated with these procedures will have strong incentives to resist fundamental changes. The economic consequences of the growth of this administrative proponent of antidumping should not be exaggerated however. It could very well be that in some of these countries a WTO-sanctioned, rules-based system replaced an older import license and import substitution regime that was far more bureaucratic and stultifying. But the point remains that these civil servants represent a new constituency that would fight antidumping reform.

The growth of a domestic trade bar that specializes in antidumping actions represents a fourth group that will likely resist fundamental changes. The legal profession plays a critical role in most antidumping regimes across the world. And these lawyers must build up significant human capital to be effective advocates for their clients. One should expect that these specialists---both in the respondent and petitioner camps---would be unlikely to push for broad changes. Instead, both sides have personal incentives to make the system

¹⁵ The letter stated that “U.S. trade laws provide American workers and industries the guarantee that, if the United States

complicated, even if respondents' lawyers would prefer to make any changes more conducive to avoiding antidumping orders. But they might be unlikely to push to scrap the system.

The degree to which new users have come to accept the basic structure of the current antidumping system is reflected in submissions to the Rules Negotiations. A search of the WTO website suggests that India, the most prominent new antidumping user, has submitted very few papers detailing changes. The most prominent submission involves support of the mandatory lesser duty provision which, while a significant reform, certainly does not reflect a desire to fundamentally restructure the system. South Africa has also been largely silent in the discussion. Other important new users (Brazil, Mexico, Korea, and Turkey) have been active in the Friends of Antidumping but they too have been relatively reserved in their suggestions. Even China, the most frequent single target of antidumping, has not called for what some would consider major changes. While speculative, this might reflect a desire for China to keep an antidumping option open for its own use if the situation warrants it in the future.

The implication of the discussion in this section is that new users seem to have come to accept the broad principles of antidumping. Barring unforeseen major changes in the Doha Round, these countries will become more and more comfortable with antidumping as a tool of domestic trade policy; this is unlikely to lead to rejection of antidumping in the future.

III. B. Antidumping Reform and U.S. Resistance

Perhaps the most critical hurdle to antidumping reform lies in the long-standing consistent opposition in the U.S. Congress to even minor changes in the trade remedy laws. The U.S. House of Representatives and the Senate must pass international trade agreements

pursues trade liberalization, it will also protect them against unfair foreign trade practices.” Baucus (2001)

into law through normal legislation. This means that U.S. negotiators must consider congressional concerns surround antidumping when contemplating antidumping reform. Unfortunately for antidumping reformers, the bipartisan appetite for even small scale restrictions on the use of trade remedies is very limited. This will in turn limit the scope for international negotiators. U.S. proposals instead have focused on narrow but important technical issues surrounding implementation of the current system such as increased transparency, judicial review, and circumvention as well as defensive moves aimed at *ex post* modifications that would overturn adverse WTO dispute rulings on issues such as the Byrd Amendment.

U.S. congressional support for the current WTO provisions of the antidumping system (as well as those for countervailing duties and safeguards) was articulated during the run-up to the Doha Ministerial in 2001. Most notably, 62 (out of 100) Senators, including the leaders of the Democratic and Republican Senate caucuses, signed a letter directed to President Bush in May 2001. The authors noted the trade remedy laws are “a critical element of U.S. trade policy” and that they “promote free trade by countering practices that both distort trade and are condemned by international trading rules.” The letter also notes that these laws represent the outcome of a political bargain that combines trade liberalization with protection against “unfair foreign trade practices.” The letter concludes by warning that the “United States should no longer use its trade laws as bargaining chips in trade negotiations nor agree to any provisions that weaken or undermine U.S. trade laws.”

Congressional backers of the current antidumping system were successful in including language in the legislation giving President Bush trade negotiating authority that would severely limit U.S. negotiating flexibility. In particular, the legislation states that the principal negotiating objectives of the United States with respect to trade remedy laws states

that “preserve the ability of the United States to enforce rigorously its trade laws . . . and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies” (U.S. 2002b).

Congressional signals about unwillingness to consider even small changes that might “weaken” antidumping have continued in preparation for the Hong Kong Ministerial meeting in December 2005. A November 2005 Senate resolution that included 40 bipartisan sponsors specifically called on U.S. negotiators to reject any changes involving mandating lesser duty margins, mandatory termination of antidumping cases after five years, public interest considerations, or higher *de minimis* dumping duties. In short, Senators have already expressed their deep dissatisfaction with even the moderate reforms discussed above.

U.S. negotiators clearly have very limited room to accept changes in the WTO antidumping disciplines. Significant changes probably would face a firestorm of opposition among U.S. legislators. Indeed, the U.S. paper on the “basic concepts” of antidumping (U.S., 2002a) makes clear that the U.S. negotiating position is to “maintain the strength and effectiveness” of the trade remedy laws, rather than reforms that would limit their use.

There are further reasons to believe that the economic impact of a reform compromise might be very limited unless negotiators include very precise instructions about how these reforms would be implemented by domestic authorities. This warning arises out of U.S. implementation of the new sunset review process adopted in the Uruguay Round.¹⁶

The discussion above makes clear that many countries have been concerned about the timely termination of antidumping orders. This concern arises despite the inclusion in the ADA for the first time of a mandated “sunset review” of all antidumping orders. In particular,

any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition.... unless the authorities

¹⁶ Formal analyses of the U.S. sunset reviews can be found in Liebman (2004) and Moore (2006).

determine....that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.¹⁷

Major traditional users of antidumping procedures (including Canada, the European Community, and Australia) had some sort of sunset review process in place whereby duties would be dropped after a set number of years unless it could be shown that dumping and injury would recur. The U.S., the single most frequent user of AD duties in the pre-WTO period, did not have a sunset provision. U.S. antidumping orders, consequently, could persist for many years; in 1994, the US had 31 antidumping orders in place since the 1970s.¹⁸

The Uruguay Round commitment meant that the US was required to revoke antidumping orders after five years unless there was an investigation of both dumping and possible economic damage to the domestic industry. The inclusion of such a change reflects the international community's sense that in the normal course of events antidumping orders would be revoked after five years; orders would only be extended if specific criteria were met.

Under the U.S. sunset review system, the case is terminated without a formal sunset review unless the domestic industry requests that the order be continued. In such "contested" orders, the relevant U.S. authorities determine whether dumping and material injury are likely to recur in the event of the order's termination.

Table 4 displays the outcomes of sunset reviews in the United States conducted from 1998 through November 2005. There are three separate sub-samples. Column 1 shows the outcomes for all first time sunset review cases. The second, denoted "Transition cases," are for antidumping orders that were in place on 1 January 1995 and consequently not originally subject to any sunset review process. The third set, denoted as "Non-transition cases" are those antidumping orders originally imposed after 1 January 1995 and therefore subject to

¹⁷ Article 11.3 of the ADA (1994)

Uruguay Round rules from their inception. The rows contain information about the total number of orders in the particular time frame, the number of cases for which a U.S. domestic industry expressed interest in the antidumping duties continuance (“contested orders”), and the number of the contested orders that were continued after a U.S. government investigation.

There were a total of 329 antidumping orders in the data set subject to a sunset review. Out of these, 136 were revoked through the sunset review process. At first glance, this would suggest that about 40 percent of U.S. antidumping orders have been terminated as a result of these procedures. This interpretation is somewhat misleading. In particular, there was no domestic interest in contesting revocation of the antidumping orders in 76 of those cases (25 percent); even the domestic import-competing industry had no interest in maintenance of the antidumping duties in these instances. A more accurate comparison is to look at the percentage of contested orders that resulted in termination. These are cases in which the U.S. government made a decision whether or not to continue the order. In the event, 192 out of 253 total contested cases were continued; domestic industries were successful in about 76 percent of all cases.

The continuation rate for contested cases shows important differences between pre- and post-WTO antidumping orders. We see in Table 4 that the percentage of contested cases that were continued after a full sunset review equaled 91 percent (53 out of 58 cases) in the post-WTO period compared to 71 percent (139 out of 195) for transition cases. This suggests that the sunset review process if U.S. firms can win an antidumping case in the post-Uruguay Round antidumping “reform” period, they have over a 90 percent chance of receiving at least 10 years of protection under the trade remedy laws.

In short, U.S. implementation of the sunset review process highlights the importance

¹⁸ Moore (2006).

of very explicit text surrounding any “reforms” in the Doha Round. The U.S. may have lived up to the letter of the agreement as it has a procedure in place that is consistent with the sunset review commitments. An impartial observer might wonder whether a “review” process that yields such a high success rate for domestic petitioners is living up to spirit of a sunset provision for antidumping orders. It certainly suggests that any modifications of the antidumping process at Doha would likely need to lay out very carefully what the international community’s specific expectations might be in terms of implementation.

The resistance to change is further echoed in U.S. reluctance to implement adverse WTO rulings on cases involving antidumping. Most notably, the U.S. Congress has not moved to eliminate the Byrd amendment (under which the U.S. Treasury distributes antidumping duties collected to domestic antidumping petitioners) and the U.S. Department of Commerce continues to use “zeroing” (by which export prices that exceed home market prices are treated as “zero” dumping rather than “negative” dumping margins.) These procedures have strong backing the U.S. Congress and have not been changed despite the international repercussions.

The continued strong opposition to antidumping reform in the U.S. likely means that significant changes will be forthcoming only if the whole Doha Round package is sufficiently attractive to Congress so that U.S. export interests can overcome the most passionate backers of antidumping. This has happened in previous multilateral trade rounds and it can perhaps happen again. But it is certainly unlikely that major changes in trade remedies would be part of the outcome.

Conclusion

. Antidumping remains one of the most popular means of restricting imports within the

WTO system. Politicians in many countries see benefits in a procedure that provides protection to complaining import-competing industries, usually with little or no direct input on individual cases from political leaders. The system provides a means of letting off protectionist pressure but in a way that is subject to WTO rules and disciplines. Antidumping proponents, both among politicians and domestic industries facing competition from imports, have obvious reasons to limit new restrictions on its use.

Many proponents of a more liberal trading system see instead an arbitrary process that results in high duties, often with uncertain or long duration. Rhetorical appeals to “fair” trade are particularly problematic to antidumping’s critics given that identical pricing strategies by domestic firms are unchallenged by domestic authorities. These critics have called for significant change or even outright repeal of the “unfair” trade remedy laws.

This clash continues in the latest round of multilateral trade talks but with the clear advantage to those who wish to limit changes. The negotiating mandate for antidumping agreed to at Doha in November 2001 severely restricts the areas of possible change since negotiators agreed that the “basic concepts” of antidumping must remain intact and that contemplated reforms were limited to “improving and clarifying” the current system.

Major changes could only occur if an overwhelming majority of countries required antidumping reforms were the *sine qua non* of broader trade liberalization. This seems particularly unlikely given the rapid expansion of antidumping’s use in many new nations in the multilateral system. This growth virtually guarantees new domestic constituencies for the continued presence of antidumping in future years.

So what might one expect as the maximum scope of antidumping reform in the Uruguay Round? Beyond truly minor tweaks of the antidumping agreement, two possible changes might gain sufficient backing to pressure resistant WTO members.

The first would be a mandatory “lesser duty rule” which would limit applied antidumping duties to the lesser of the tariff which would eliminate injury or the calculated dumping margin, usually by eliminating price underselling by foreign firms found to be dumping. This procedure is used already in traditional antidumping users (e.g., the European Union) and has been endorsed by important new users (including most notably India). The most intriguing aspect of this change is that it would obviate the need for reforms in many other aspects of dumping margin calculations, an area of mind-numbing complication. One obvious impediment is the strong resistance by the United States. Nonetheless, opponents of this change would not be able to say this change would represent a violation of the existing basic concepts of dumping since the Uruguay Round Antidumping Agreement allowed for optional “lesser duty” procedures.

The second important change would tighten the procedures surrounding sunset reviews. One possible reform would be a definitive termination of antidumping orders without chance of continuation, perhaps after a period longer than five years as in the current agreement. A further change would allow continuation, but only a full scale injury and dumping investigation. Another might be to make more explicit the criteria used in sunset investigations to lessen the chance of a mechanistic continuation of orders. Once again, the United States might be a prime opponent of this change but might yield if the rest of the international community could rally around the reform.

The inclusion of a lesser duty rule and stricter rules about timely termination of antidumping orders could remake the procedure into something more like a targeted safeguard procedure. Domestic firms would have procedures available that would eliminate “injury” for a proscribed period of time. But even here proponents should be careful. On the one hand, the experience with U.S. sunset reviews suggests that well-meaning reforms can be

made toothless if domestic authorities implement reforms in a half-hearted way. One can certainly imagine, for example, that an agency could be very “creative” when considering the difference between the domestic and foreign price; it could be very easy to reach very high margins with judicious use of complicated individual market transactions. Such a system might encourage collusive behavior. After all, a government mandate that punishes foreign firms for underselling domestic firms is not exactly a pro-competitive outcome.

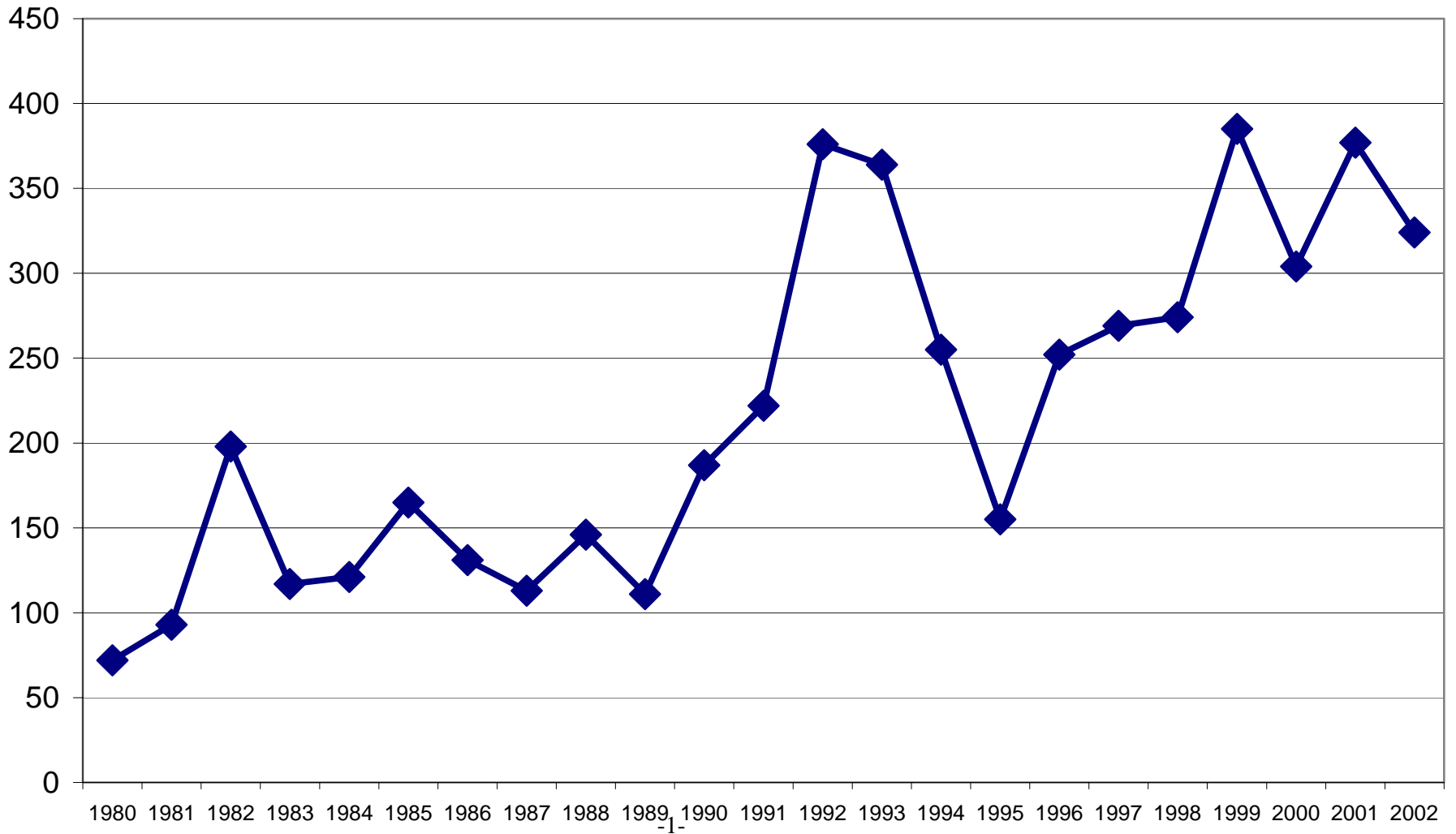
But even these two “major” reforms would leave the current antidumping system largely intact. Critics of antidumping likely must reconcile themselves to the continuation of remedies designed to protect against “unfair trade” for the foreseeable future. In isolation this might seem like a welfare reducing outcome, especially if one believes that antidumping duties are unjustified protection. But an optimist might see that the continued presence of antidumping might help secure a broader program of trade liberalization, especially if politicians seem to find such “safety valves” necessary to make hard trade policy choices. Moreover, as Moore and Suranovic (1992) have pointed out, reforming antidumping in a world of alternative methods of obtaining protection may yield worse national welfare outcomes. Protectionist pressures find ways of expressing themselves and simply limiting options within antidumping may cause industries to pursue even more distortionary methods.

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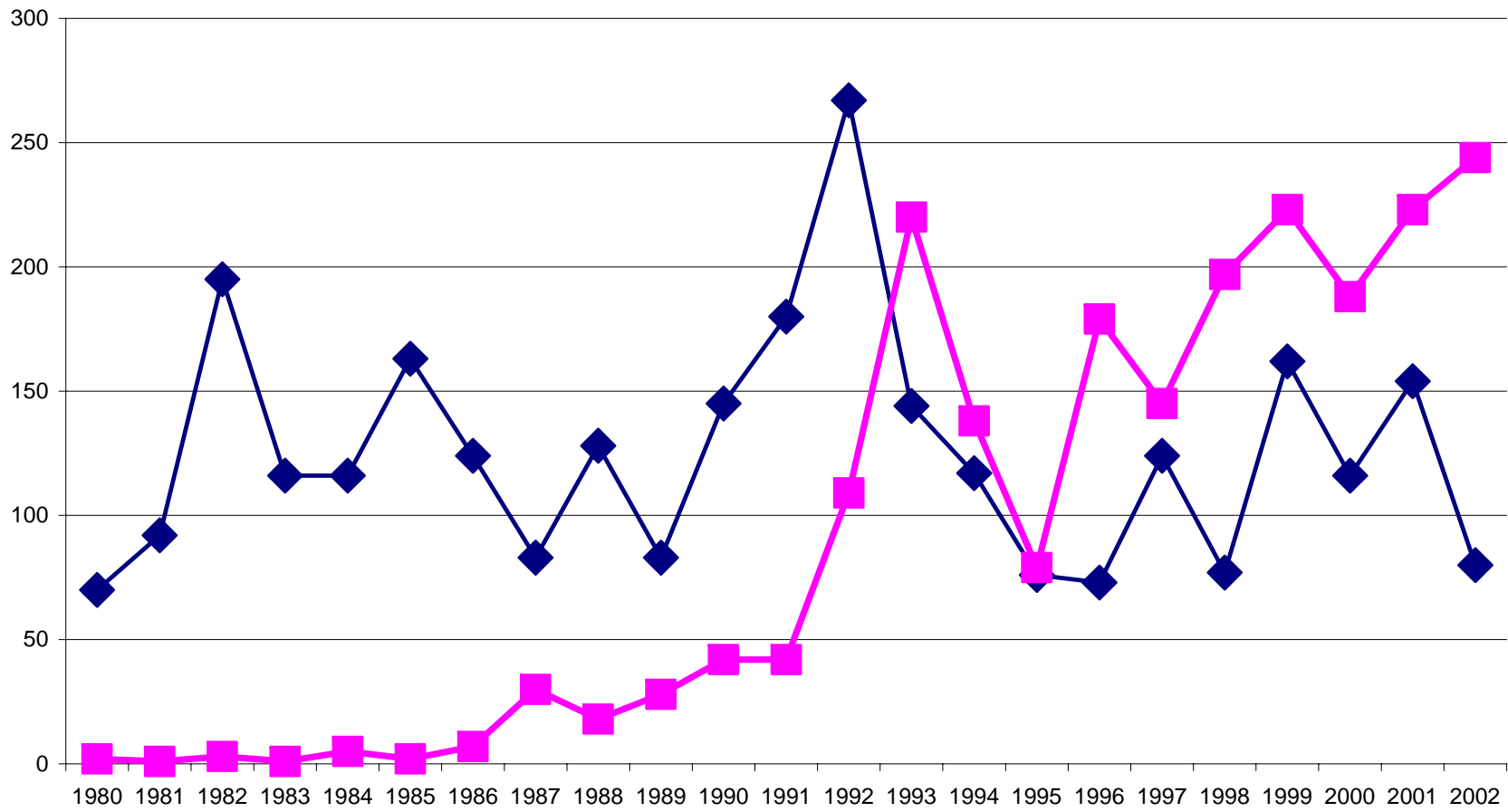
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Figure 1: Initiation of Antidumping Investigations



Source: Moore and Zanardi (2005)

Figure 2
Antidumping Initiations: New and Traditional Users



Moore and Zanardi (2005)

◆ Traditional Users ■ New Users

Table 1: Antidumping Investigations: Target and Initiating Country Groups

| | 1980-2002 | | | 1980-1994 | | | 1995-2002 | | |
|------------------------|-------------|------------------|------------------------|-------------|------------------|------------------------|-------------|------------------|------------------------|
| | Total | Target countries | | Total | Target countries | | Total | Target countries | |
| Initiating country | | High income | Middle- and low-income | | High income | Middle- and low-income | | High income | Middle- and low-income |
| High income | 3033 | 1381 | 1652 | 2106 | 1054 | 1052 | 927 | 327 | 600 |
| Middle- and low-income | 2006 | 803 | 1203 | 572 | 240 | 332 | 1434 | 563 | 871 |
| Total | 5039 | 2184 | 2855 | 2678 | 1294 | 1384 | 2361 | 890 | 1471 |

Source: Moore and Zanardi (2005)

Table 2 AD Initiations (1980-2002): Industry breakdown

| ISIC code | | Cases initiated | Percentage of total cases | Traditional Users | Percentage of traditional user country cases | Non-traditional Users | Percentage of non-traditional country cases |
|-----------|---------------------------------------|-----------------|---------------------------|-------------------|--|-----------------------|---|
| 371 | Iron and steel | 1333 | 26.45% | 885 | 30.56% | 448 | 20.91% |
| 351 | Industrial chemicals | 1236 | 24.53% | 603 | 20.82% | 633 | 29.54% |
| 321 | Textiles | 283 | 5.62% | 173 | 5.97% | 110 | 5.13% |
| 383 | Electrical machinery | 272 | 5.40% | 164 | 5.66% | 108 | 5.04% |
| 382 | Machinery except electrical | 264 | 5.24% | 189 | 6.53% | 75 | 3.50% |
| 381 | Fabricated metal products | 185 | 3.67% | 89 | 3.07% | 96 | 4.48% |
| 341 | Paper and products | 180 | 3.57% | 72 | 2.49% | 108 | 5.04% |
| 311 | Food Products | 153 | 3.04% | 84 | 2.90% | 69 | 3.22% |
| 390 | Other manufactured products | 119 | 2.36% | 77 | 2.66% | 42 | 1.96% |
| 362 | Glass and glass products | 102 | 2.02% | 61 | 2.11% | 41 | 1.91% |
| 369 | Other non-metallic mineral products | 102 | 2.02% | 54 | 1.86% | 48 | 2.24% |
| 372 | Non-ferrous metals | 99 | 1.96% | 61 | 2.11% | 38 | 1.77% |
| 385 | Professional and scientific equipment | 94 | 1.87% | 39 | 1.35% | 55 | 2.57% |
| 352 | Other chemicals | 91 | 1.81% | 32 | 1.10% | 59 | 2.75% |
| 355 | Rubber products | 77 | 1.53% | 19 | 0.66% | 58 | 2.71% |
| 384 | Transport equipment | 71 | 1.41% | 51 | 1.76% | 20 | 0.93% |
| 111 | Agriculture and livestock production | 51 | 1.01% | 41 | 1.42% | 10 | 0.47% |
| 324 | Footwear | 50 | 0.99% | 33 | 1.14% | 17 | 0.79% |
| 356 | Plastic Products | 44 | 0.87% | 24 | 0.83% | 20 | 0.93% |
| 322 | Apparel except footwear | 41 | 0.81% | 8 | 0.28% | 33 | 1.54% |
| | Others | 192 | 3.81% | 137 | 4.73% | 247 | 2.57% |

Table 3 Individual Country Antidumping Data (1980-2002)

| Country | Target | | | Initiator | | |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| | 1980-2002 | 1980-1994 | 1995-2002 | 1980-2002 | 1980-1994 | 1995-2002 |
| US | 347 | 228 | 119 | 1056 | 767 | 289 |
| EU | 1014 | 651 | 363 | 808 | 545 | 263 |
| India | 130 | 43 | 87 | 390 | 12 | 378 |
| Mexico* | 70 | 43 | 27 | 284 | 209 | 75 |
| Brazil* | 209 | 135 | 74 | 164 | 65 | 99 |
| Turkey* | 62 | 32 | 30 | 120 | 74 | 46 |
| Korea* | 337 | 158 | 179 | 86 | 28 | 58 |
| Taiwan | 229 | 115 | 114 | 75 | 43 | 32 |
| China | 575 | 231 | 344 | 62 | 0 | 62 |
| Hong Kong* | 56 | 36 | 20 | 0 | 0 | 0 |
| Indonesia | 124 | 30 | 94 | 55 | 0 | 55 |
| Thailand* | 132 | 50 | 82 | 34 | 3 | 31 |
| Colombia* | 53 | 12 | 41 | 19 | 12 | 7 |
| Japan* | 295 | 188 | 107 | 10 | 8 | 2 |
| Subtotal | 3633 | 1952 | 1574 | 3163 | 1766 | 1397 |
| Other | 1406 | 726 | 787 | 1876 | 912 | 964 |
| Total | 5039 | 2678 | 2361 | 5039 | 2678 | 2361 |
| "Friends of Antidumping" | 1329 | 727 | 602 | 723 | 392 | 331 |

*Member of the "Friends of Antidumping" group

Table 4: U.S. Implementation of Sunset Review

| | Column 1 | Column 2 | Column 3 |
|---|-------------------------|-------------------------------|-----------------------------------|
| | All Sunset Review Cases | Transition cases ¹ | Non-transition cases ² |
| Number of Orders Subject to Sunset Reviews | 329 | 255 | 74 |
| Number of Cases with Domestic Interest in Continuation (“Contested orders”) | 253 | 195 | 58 |
| Contested Orders Continued After Sunset Review | 192 | 139 | 53 |
| Total Number of Revoked Orders | 136 | 115 | 21 |
| Total Number of Revoked Orders by ITC | 61 | 56 | 5 |

Sources: Moore (2006), US Antidumping Database (<http://darkwing.uoregon.edu/~bruceb/adpage.html>), ITC sunset review website (<http://info.usitc.gov/oinv/sunset.nsf>) and DOC sunset review website (<http://ia.ita.doc.gov/sunset/>)

¹ Antidumping orders in place pre-January 1, 1995

² Antidumping orders in place post-January 1, 1995