Antidumping:
Prospects for Discipline from the Doha Negotiations

by

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Maintaining an economically sensible trade policy is often a matter of managing pressures for exceptions – for protection for a particular industry. Good policy becomes a matter of managing interventions so as to strengthen the politics of openness and liberalization – of avoiding rather than of imposing such restrictions in the future. In the 1990s, antidumping measures emerged as the instrument of choice to accomplish this, despite the fact that they satisfy neither of these criteria. Its economics is ordinary protection; it considers the impact on the domestic interests that will benefit while excluding the domestic interests that will bear the costs. Its unfair trade rhetoric undercuts rather than supports a policy of openness. As to what would be better, the key issue in a domestic policy decision should be the impact on the domestic economy. Antidumping reform depends less on the good will of WTO delegates toward the "public interest" than on those business interests that are currently treated by trade law as bastards insisting that they be given the same standing as the law now recognizes for protection seekers.

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Summary

Maintaining an economically sensible trade policy is often a matter of managing pressures for exceptions – for protection for a particular industry. In the early years of the General Agreement on Tariffs and Trade (GATT) the most used mechanism for making such adjustments was renegotiation, supplemented by emergency actions under GATT Article XIX. By the early 1980s these instruments had given way to negotiated or "voluntary" export restraints (VERs), in the 1990s antidumping emerged as the instrument of choice. This evolution shifted the focal point for the decision from international negotiations to a domestic administrative process. It also shifted the source of discipline from reciprocity to rules – the specification in domestic regulations and in the WTO agreement on antidumping as to when action could be taken.

These shifts have brought with them a burgeoning of usage – almost 2,500 antidumping cases by WTO members since the Uruguay Round agreements went into effect (1995-2003). This is a ten-fold increase in the number (per year) of increases of protection beyond limits bound at the WTO.

Proposals on antidumping submitted at the Doha Negotiations reflect thinking within the box. Members who would like to see fewer antidumping measures propose to tweak the existing structure of rules in one direction, other Members prefer clarifications that would allow them to hold the line. This struggle over technicalities, we contend, will have no impact on the quality or the quantity of import restrictions applied. There are sufficient technicalities that any national authority of a mind to reach an affirmative determination can make a case. A mathematician would say that the system is overdetermined; e.g., we have 15 equations to solve for two unknowns. Any two equations are sufficient for a solution, choosing the "right" equations provides considerable flexibility in what appears to be a technical system. Adding a few technicalities here, trimming a few there, will have no impact.

The Uruguay Round Agreement on Safeguards did eliminate the use of VERs. It provides a mechanism that avoids accusations of unfair trade and imposes stricter limits on protectionist measures than does the antidumping agreement. The instrument however is hardly ever used, 142 safeguard vs. 2,416 antidumping cases. The antidumping agreement provides less

restraint on protectionist measures that can be imposed, its coverage – what falls within the legal specification of when protection can be imposed – is as broad as that of the safeguard agreement. The instruments are fungible, the worse policy instrument drives out the better.

Several proposals suggest that the "public interest" be taken into account. The "public interest" however is treated as something ethereal, other-worldly, a socialist will-of-the-wisp that the government must represent. The relevant concept of interest, we suggest, is the sum of all the private interests affected. Only if there are "externalities" – and such are infrequently present when import protection is sought – is there an unidentified remainder that requires public representation.

Moreover, this bad economics presumes that the "public interest" would be defended by limiting the restriction to no more than is necessary to eliminate the impact of import competition on the protection seeker. Defending the "public interest" thus means to treat other private interests, user interests, as bastard children. They are served after the "legitimate" protection seeker has everything he wants.

As to how international rules might shape domestic processes through which governments take decisions to impose protection, one might hope that they would guide a country to identify those interventions that add more to the national economic interest than they take away. There will be cases however in which other domestic considerations make it impossible to avoid an economically unsound trade intervention. In those instances, good policy becomes a matter of managing interventions so as to strengthen the politics of openness and liberalization – of avoiding rather than of imposing such restrictions in the future.

Antidumping satisfies neither of these criteria. Its economics is ordinary protection, it considers the impact on the domestic interests that will benefit, it excludes the domestic interests that will bear the costs. Its unfair trade rhetoric undercuts rather than supports a policy of openness.

As to what would be better, the key issue in a domestic policy decision should be the impact on the domestic economy. Who in the domestic economy would benefit from the proposed import restriction, and who would lose? By how much? Such a policy mechanism would both (a) help the government to separate trade interventions that would serve the national

economic interest from those that would not, and (b) even in those instances in which the decision is to restrict imports, support the politics of openness and liberalization.

The technicalities are simple: recognize domestic users/consumers as "interested parties;" require that the investigation determine the impact on them of the proposed restriction in parallel with its determination of "injury" from trade to the protection seeker. The impact of the restriction on users/consumers would be measured in the same dimensions as injury – jobs lost because of higher costs, lower profits – the standard metric of impact. In short, treat all affected domestic interests as equals. Until this is done, buyers will be left to bring forward their interests in such unofficial ways as threatening to boycott any domestic producer who supports an antidumping petition.

Reform depends less on the good will of WTO delegates toward the "public interest" than on those business interests currently treated by trade law as bastards insisting that they be given the same standing as the law now recognizes for protection seekers.

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The General Agreement on Tariffs and Trade (GATT) is an agreement and the World Trade Organization (WTO) an organization intended to promote the expansion of international trade. Even so, the GATT/WTO includes many provisions that explicitly acknowledge the sovereign rights that member countries retain to impose new trade restrictions or to replace old ones.

A number of these are "exceptions" to the general intention of providing an open trading system, e.g., import restrictions that relate to national security. Others however are part of the management of the trading system. These are usually described as "GATT/WTO rules" rather than as exceptions. The structure of the rules is to acknowledge Members' rights to impose such restrictions, and at the same time to specify limits or disciplines on their use. Antidumping, safeguards and countervailing duties are examples. (The nature of each will be explained below.)

Since the Uruguay Round these instruments, particularly antidumping, have been increasingly used, by developing economies even more than by developed. (We document this below.) Expressions of concern to modify the rules so as to restrain this use have brought forward equally intense defenses. The relevant part of the Doha Ministerial Declaration – the agreement that initiated the current round of WTO negotiations – is paragraph 28, titled "WTO Rules." It includes the following:

> *[Members] agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 [antidumping] and on Subsidies and Countervailing Measures, while preserving*

the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives,

The paragraph says that some Members want to change things – improve disciplines – other Members want to keep things the same – preserve the effectiveness of the instruments. Delegates on each side will insist that they are the true defenders of the basic concepts and principles.

Our focus here is on the basic concepts and principles. In our analysis we accept the reality that governments musts have tools with which they can manage pressures for protection, e.g., an escape valve. Our conclusion goes beyond the familiar conclusion that these instruments do not make economic sense. They do not make managerial sense, either. In this paper we will draw on GATT's history and on elementary economics to identify possible political and economic rationales for such instruments. We review usage, particularly since the Uruguay Round Agreements came into effect in 1995, then evaluate proposals for reform that have been tabled in the ongoing Doha negotiations.

1. GATT Origins of Escape Valves

Any government that maintains a liberal trade policy will be subject to occasional pressures for exceptional treatment, e.g., temporary protection for a particular industry. Thus part of the politics of safeguarding a generally liberal trade policy is to have in place a mechanism to manage such pressures – to help the government to isolate and to contain a special interest pressure that might otherwise undermine a broad liberalization effort.

Renegotiation

As reciprocal negotiation was the initial GATT mode for removing trade restrictions, it is no surprise that renegotiation was the most prominent provision for re-imposing them. The 1947 agreement gave each country an automatic right to renegotiate any of its reductions after three years (Article XXVIII), and under "sympathetic consideration" procedures, reductions could be renegotiated more quickly. Even quicker adjustment was possible under Article XIX. In instances of particularly troublesome increases of imports, a country could introduce a new restriction then afterwards renegotiate a compensating agreement with its trading partners.[1] The

[1] The early GATT rounds were collections of bilateral negotiations, but tariff cuts had to be made on a most favored

idea of compensation was the same here as with a renegotiation, to provide on some other product a reduction that suppliers considered equally valuable.

In the 1950's the GATT was amended to add more elaborate renegotiation provisions. Though the details were complex, the renegotiation process, in outline, was straightforward.

1. A country for which import of some product had become particularly troublesome would advise the GATT and the principal exporters of that product that it wanted to renegotiate its previous tariff reduction.
2. If, after a certain number of days, negotiation had not reached agreement, the country could go ahead and increase the tariff.
3. If the initiating country did so – and at the same time did not provide compensation that exporters considered satisfactory – then the principal exporters were free to retaliate.
4. All of these actions were subject to the most favored nations principle; the tariff reductions or increases had to apply to imports from all countries.[2]

Emergency actions

Article XIX, titled "Emergency Actions on Imports of Particular Products," but often referred to as the escape clause or the safeguard clause, provided a country with an import problem quicker access to essentially the same process. Under Article XIX:

1. If imports cause or threaten serious injury[3] to domestic producers, the country could take emergency action to restrict those imports.

2. If subsequent consultation with exporters did not lead to satisfactory compensation, then the exporters could retaliate.

The GATT asked the country taking emergency action to consult with exporting countries before, but allowed the action to come first in "critical circumstances." In practice, the action has come first most of the time.[4]

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nations basis (i.e., applicable to imports from all GATT members). A renegotiation was not with the entire GATT membership, but only with the country with whom that reduction was initially negotiated, plus any other countries enumerated by the GATT as "principal suppliers."

[2] Renegotiation procedures are basically the same now -- under the Uruguay Round Agreements -- as they were then.

[3] The Uruguay Round agreement on safeguards (but not the initial GATT) requires a formal investigation and determination of injury. It allows however a provisional safeguard measure to be taken before the investigation is completed.

History shows that during GATT's first decade and a half, countries opening their economies to international competition through the GATT negotiations did avail themselves of pressure valve actions (Chart 1). These actions were in large part renegotiations under Article XXVIII, supplemented by emergency actions (restrict first, then negotiate compensation) under the procedures of Article XIX. Over time, the mix shifted toward a larger proportion of emergency actions.

By 1963, fifteen years after the GATT first came into effect, every one of the 29 GATT member countries who had bound tariff reductions under the GATT had undertaken at least one renegotiation — in total, 110 renegotiations, or almost four per country.

In use, Article XIX emergency actions and Article XXVIII renegotiations complemented each together. Nine of the 15 pre-1962 Article XIX actions that were large enough that the exporter insisted on compensation (or threatened retaliation) were eventually resolved as Article XXVIII renegotiations. Article XXVIII renegotiations, in turn, were often folded into regular tariff negotiations. From 147 through 1961, five negotiating rounds were completed; hence such negotiations were almost continuously under way.

Negotiated Export Restraints

By the 1960s formal use of Article XIX and of the renegotiations process began to wane. Actions taken under the escape clause tended to involve negligible amounts of world trade in relatively minor product categories.[5] Big problems such as textile and apparel imports were handled another way, through the negotiation of "voluntary" export restraint agreements, VERs. The various textile agreements beginning in 1962, provided GATT sanction to VERs on textiles and apparel. The same method, negotiated export restraints, or VERs, were used by the developed economies to control troublesome imports into several other important sectors, e.g., steel in the US, autos in the EU.

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[4] GATT 1994, p. 486. The Uruguay Round Safeguards Agreement modified the emergency action procedure in several ways. Among these,

- no compensation is required nor retaliation allowed in the first three years a restriction is in place.
- no restriction (including extension) may be for more than eight years, (ten years by a developing country).
- all measures of more than 1 year must be progressively liberalized.

[5] 1980 statistics show that actions taken under Article XIX covered imports valued at $1.6 billion while total world trade was at the same time valued at $2000 billion. Sampson (1987), p. 145.

Except for those specially sanctioned by the textile arrangements, VERs were clearly GATT-illegal.[6] However, while VERs violated GATT legalisms they accorded well with its ethic of reciprocity:

- They were at least in form, negotiations to allow imposition of restrictions. Negotiation was also important to prevent a chain reaction of one country following another to restrict its imports as had occurred in the 1930s.
- The quid pro quo might be outside the ambit of GATT's coverage; e.g., foreign aid or some political consideration.
- The domestic politics was less troublesome. In the exporting economy the compensation – higher prices – came to the companies whose sales were restricted, not to another sector. In the importing economy, forcing users to pay higher prices is easier politics than reducing import restrictions that protect other industries.
- In many instances the troublesome increase of imports came from countries that had not been the "principal suppliers" with whom the initial concession had been negotiated. These new exporters were displacing not only domestic production in importing countries, but the exports of the traditional suppliers as well. A VER with the new, troublesome, supplier could thus be viewed as defense of the rights of the principal suppliers who had paid for the initial concession.
- The reality of power politics was another factor. Even though one of GATT's objectives was to neutralize the influence of economic power on the determination of trade policy, VERs were frequently used by large countries to control imports from smaller countries.

As the renegotiation - emergency action mechanism was replaced over time by the use of VERs, VERs also gave way to another mechanism -- antidumping. There were several reasons behind this evolution:

- the growing realization in developed economies that a VER was a costly form of protection,[7]
- the long term legal pressure of the GATT rules,
- the availability of an attractive, GATT-legal, alternative.

[6] GATT 1994, p.494.

[7] For example, Hufbauer and Elliott found that of the welfare loss placed on the US economy from all forms of protection in place in the early 1990s, over 83 percent of that loss came from VERs.

The Uruguay Round agreement on safeguards explicitly bans further use of VERs and, along with the agreement on textiles and clothing, requires the elimination of all such measures now in place.

Antidumping

Antidumping was a minor instrument when GATT was negotiated, and provision for antidumping regulations was included with little controversy. In 1958, when the contracting parties finally canvassed themselves about the use of antidumping, the resulting tally showed only 37 antidumping decrees in force across all GATT member countries, 21 of these in South Africa. (GATT 1958, p. 14) By the 1990s antidumping had become the developed economies' major safeguard instrument, since the WTO Agreements went into effect in 1995 it has gained increasing popularity among developing economies. The scale of use of antidumping is a magnitude larger than the scale of use of renegotiations and emergency actions have ever been. (Chart 2). Furthermore, use of antidumping has significantly outpaced the expansion of world trade. Over the period 1990-2003 world trade increased by 80 percent, antidumping measures in place increased by 160 percent.

Once antidumping proved itself to be applicable to any case of troublesome imports, its other attractions for protection seeking industries and for governments inclined to provide protection were apparent.[8]

- Particular exporters could be picked out. GATT/WTO does not require multilateral application.
- The action is unilateral. GATT/WTO rules require no compensation or renegotiation.
- In national practice, the injury test for antidumping action tends to be softer than the injury test for action under Article XIX.
- The rhetoric of foreign unfairness provides a vehicle for building a political case for protection.
- Antidumping and VERs have proved to be effective complements; i.e., the threat of formal action under the antidumping law provides leverage to force an exporter to accept a VER.[9]

[8] The process by which the scope of antidumping was expanded is examined in Finger (1993) ch. 2.
[9] Over 1980-1988, 348 of 774 United States antidumping cases were superseded by VERs (Finger and Murray, 1993). July 1980 through June 1989, of 384 antidumping actions taken by the European Community, 184 were price undertakings. (Stegmann, 1992).

- The investigation process itself tends to curb imports. This is because exporters bear significant legal and administrative costs, importers face the uncertainty of having to pay backdated antidumping duties, once an investigation is completed.
- There is no rule against double jeopardy. If one petition against an exporter fails, minor respecification generates a new valid petition.

Lessons from this history

Trade remedies are fungible. While the rhetoric of protection suggests that each GATT/WTO rule isolates particular circumstances, in fact the various rules have proved to be quite fungible. The choice of which GATT/WTO provision will provide legal cover for a trade restriction is a matter of domestic administrative and political convenience, not of the circumstances in which the restriction is applied. Members of the trade bar treat this point as a given. Daniel R. Tarullo reports, "[A]ntidumping law has emerged as the legal tool of choice for import-sensitive industries."[10] Gary N. Horlick and Eleanor Shea advise, "Exporters to the United States are confronted by a thicket of not entirely coordinated US trade laws, administered by a maze of administrative agencies. From the perspective of a US industry seeking protection, however, those laws simply represent different ways of reaching the same goal – improvement of the competitive position of the complainant against other companies."[11]

Even so, the WTO negotiations continue to take up antidumping as if it were a specialized instrument.

A second lesson is that the source of discipline over use of such escape clause instruments has shifted, from reciprocity to legal obligation. A renegotiation is based on the same give-take as a negotiation. An antidumping action is an exercise of a reserved right to impose a restriction, the limit on use of this right is the detail of the agreement that acknowledges the right.

2. Rationales for GATT/WTO Rules

The objective, we postulate, is to advance the national economic interest, which we take to be the sum of the private interests affected. This is simple economics. Only if there are

[10] Tarullo, p. 373. Emphasis added.
[11] Horlick and Shea, p. 206

"externalities" – costs or benefits to private domestic parties not captured in the transaction price – will the formula be incorrect. As we will explain, such "externalities" are infrequently encountered in situations in which import protection is sought.

Economic science generally finds that an import restriction will reduce the national economic interest of the country that imposes it. The protected domestic interests will be better off, but the costs to other domestic interests will be larger. Because certain interests have more influence in politics than they have value in economics, the domestic political process will sometimes choose import protection even when it does not serve the national economic interest. Hence the usefulness of introducing international obligations into the making of national trade policy. Reciprocal negotiations or international rules in such instances can help to offset the deficit between the economic correctness and the political correctness of national openness to international trade.

We identify the following possible rationales for rules that allow import restrictions.

Good import restrictions rather than bad.

One justification for such rules might be that they guide Members toward good policies – policies that advance the national economic interest of the Members that apply them. GATT/WTO rules might identify import restrictions that make economic sense. While "ordinary protection" is bad economics, these rules might identify the exceptional cases; those conditions in which an import restriction helps domestic producers more than it costs domestic users/consumers of the product.

Import restrictions as an incentive against bad policy in exporting countries.

The allowed[12] import restrictions might provide an incentive against bad policies or practices in the exporting country, policies that reduce the national economic interest there. Jan Tumlir, once Chief Economist in the GATT Secretariat, often argued that without the stringent United States law that almost automatically imposed countervailing duties, European governments after WWII would have resorted to extensive subsidization and thereby set back the recovery of European industry.

[12] The GATT/WTO is an expression of the limits members have accepted on their sovereign right to regulate their own trade, not of the "permission" a superior authority has extended. We use the word "allows" in this sense.

An escape valve, an instrument to control domestic pressures for protection.

The allowed restrictions might be a management tool, an escape valve for the government to accommodate and at the same time isolate powerful interests that might otherwise set back an entire liberalization program. They allow one step back to protect two steps forward, help to defend a general program of liberalization. Governments that attempt to move toward liberal trade policies will come under pressure from one industry or another for exceptional treatment. This is a political reality; there should therefore be policy mechanisms to manage such pressures. The good of such mechanisms is the extent to which they help to even out the politics of protection – to bring forward the case for unrestrained trade even as they allow temporary restraints.

A related justification is that safeguards are an uncalibrated compromise with protectionist interests. They are the promise that liberalization would be drawn back where it significantly disrupted domestic production, the hope that the possibility of one step backward would buy two steps forward.

Less import restrictions rather than more.

The simplest rationale for such WTO rules is that they introduce administrative complexities that might discourage some protection-seekers, or provide "due process" that will placate protection seekers who are turned down. There is no qualitative dimension here, simply "less" import restrictions rather than "more." As import restrictions are usually bad economics, fewer of them will usually be good economics.

3. The Instruments versus the Rationales

The popular rhetoric of antidumping is that it is an extension of anti-trust policy. It disciplines against predatory pricing by exporters that would in time drive local producers out of business, leaving the exporters with monopoly power. Buyers would benefit from the initial low prices but over the long run they would lose more from the high prices the exporters would ultimately charge. By this rationale, antidumping would identify good import restrictions, ones that would provide a net addition to the national economic interest.

Antidumping and anti-trust

In fact, antidumping has never functioned as an anti-trust instrument. The US Congress did enact in 1916 an antidumping law that paralleled anti-trust law, but protection seekers were not satisfied. Their complaints – the conditions that they insisted justified relief – did not meet the conditions anti-trust law lays down. This failure to supply protection soon brought pressure in the United States for a "Canadian-style" antidumping law that provided an administrative rather than a legal remedy.[13]

An anecdote popular in Washington suggests the difference between the two. An anti-trust lawyer asked a trade lawyer who represented an industry seeking antidumping protection why the industry did not seek protection under the anti-trust laws. Those laws offer recovery of triple damages, as well as protection from future damage. The antidumping law offers only the latter.

The trade lawyer's reply, "If you accuse someone of an antitrust violation you have to prove it."

The evidence that very few antidumping cases would have met the criteria for anti-trust action is now familiar. A central part of this evidence is a review of antidumping applications by the US, the EU, Canada and Australia in the 1980s. The review found that few if any antidumping cases would have met the more rigorous standards of anti-trust law.[14]

A growing body of information indicates that antidumping law is more about extending anti-competitive behavior at home than about resisting such behavior from abroad. Messerlin (1990) presented evidence that the European chemicals industry in the 1980s used the antidumping law to support an European cartel. Hindley and Messerlin (1996) carried this analysis farther and found that in several industries use of antidumping against competitors had become a normal part of business strategy. Kelly and Morkre (2002, 8-9) review additional evidence that firms use antidumping to create or support collusive arrangements. They cite several cases, including one involving US and the EU ferrosilicone producers who used the antidumping law to protect an established cartel from competition from the outside.

[13] Barcelo (1991) and Finger (1993) review the history of antidumping law.
[14] Robert Willig directed the work. Results are reported in Willig (1998). Kelly and Morkre (2002, 5-11) review this and other evidence.

In sum, antidumping is more about protecting unfair business practices at home than it is about isolating unfair business practices abroad.

The new rhetoric of antidumping

The evidence that antidumping is not an instrument of anti-trust enforcement is so accepted that protection seekers who use this instrument have adopted a new rhetoric. They now defend antidumping as protection from:

- Sanctuary pricing; protection against foreign producers whose home market is a highly protected cash cow and can afford to set lower prices in export markets;
- Pricing below cost; protection against producers whose government support allows them to price below cost.

Several points can be made in reply to this new rationale. First, these are not conditions in which an import restriction would advance the national economic interest. This is thus a new rhetoric for the old case, ordinary protection. Petitioners are still asking more from the rest of the economy than they will deliver to it.

The sanctuary pricing argument for antidumping is also a presumption of rights that the GATT/WTO agreements do not provide. A high tariff, in the GATT/WTO system, is something to be negotiated down. It is not something that provides other Members a unilateral right to raise their protection to the same level. "Tariff peaks," operationally the same thing as "sanctuary pricing" are part of the agenda for the market access negotiations.

Another criticism is that an antidumping investigation does not even factually establish that export price is below home market price or below cost. The surge of antidumping usage from the 1980s brought forward a wave of legal and economic analysis of antidumping methodology that identified many procedural quirks that create a fiction of dumping.[15] For example, in determining home market price, sales at prices judged to be below cost are excluded from evidence, even if exports are sold at the same price. Furthermore, cost estimates are often much higher than those that common sense accounting practices would generate.[16]

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[15] In structure, an antidumping law prescribes the conditions under which antidumping action may be taken, the law is not proscribed by any conceptual definition of "dumping." "Dumping" is whatever you can get the government to act against under the antidumping law.

[16] Boltuck and Litan (1991) provide many examples from 1980s experience. Lindsey (1999), Lindsey and Ikenson (2002) have done extensive analysis of US cases from the 1990s.

Antidumping is ordinary protection. Viewed from the perspective of the actions that antidumping seeks to discipline, it prohibits normal business practice – when this prohibition serves the interests of companies with sufficient political influence to call on the government for this advantage. Antidumping is unfair competition, not a defense against it.

Antidumping provides a vehicle for managing pressures for protection, but it promotes a rhetoric of foreign unfairness that overstates the benefits from protection and does nothing to call attention to the costs. As we explain below, there are better policy management tools.

National Welfare and the "Fairness" of Foreign Prices

Part of the rhetoric of antidumping and countervailing duty protection is that because foreign prices do not represent the true economic cost of production, these imports should be restrained. Attractive as this argument is, it is incorrect. Except in the instance discussed above, where low prices are an instrument of predation, the national economic interest of the importing country will be compromised by such restraints. Gains from trade for Country A derive from differences of relative costs in Country A from relative prices in world markets. In GATT/WTO discussions this is an unfamiliar point, in development economics it is a familiar one. A lesson critical for countries who used trade as a vehicle for development was that observable world prices, not almost-impossible-to-calculate "shadow prices"[17] are the relevant measure of alternatives. "For the individual country, world prices are the pivot on which all scarcities turn." (Bell 1987, 824) Among developing economies, the "traders" moved ahead, the "planners" who attempted to project what costs really were or would be in the future (the shadow prices) lagged behind.

Countervailing measures as discipline against trade subsidies

The Uruguay Round Agreement on Subsidies and Countervailing Measures provides broad proscriptions against trade subsidies. Generally, these proscriptions make economic sense. The proscribed trade subsidies generally cost some parts of the economy more than they benefit the sectors that receive them, unilaterally eliminating them makes economic sense. Like import restrictions, such subsidies exist because some interests have more influence in politics than they have value in economics. Again, bringing in international rules can help to undo the imbalance.

[17] In GATT-speak, the parallel idea is "normal value."

WTO requirements on notification of subsidies and the normal dispute settlement process for dealing with prohibited measures provide one means for disciplining the use of trade subsidies. The subsidies, countervailing measures agreement also specifies when and how a Member can apply a countervailing measure to imports that have received a subsidy. The two parts of the agreement are consistent; subsidies that may be countervailed are prohibited.

Within the GATT/WTO system a valid rationale for countervailing measures is that they complement the discipline the dispute settlement process provides. They provide additional disincentive for exporting countries to apply trade subsidies. To the extent that the threat has impact – less trade subsidies and less countervailing measures are the result – their benefit for exporting countries is greater and their cost to importing countries is smaller.

Countervailing measures and antidumping do not belong in the same analytical category

Countervailing measures and antidumping have served different functions in the GATT/WTO system. Provisions for countervailing measures are part of the support mechanism the system provides to help governments to avoid trade subsidies. Trade subsidies are bad economics, to the extent that the threat of countervailing measures helps to discipline their use, the threat is a good thing. Moreover, countervailing measures are infrequently used: 168 cases since the Uruguay Round as compared with almost 2500 antidumping cases. There may be instances in which such measures are misused, but used as they are intended the result is good economics. Antidumping, except in the rare case of predation, is bad economics.

Safeguards

During the Uruguay Round negotiators refined and elaborated the provisions of GATT Article XIX "Emergency Measures" in the WTO "Agreement on Safeguards."[18] The objective of the negotiations was to eliminate use of gray area measures such as VERs and to make actions under Article XIX a more attractive alternative. Antidumping is rhetorically about unfair and injurious imports (includes investigations of dumping and of injury) whereas safeguards provide

[18] We follow the WTO convention in using the word "safeguards" to refer to actions that draw their legal cover from GATT Article XIX and the WTO Agreement on Safeguards. Given that the instruments we review in this paper are fungible, the legal distinctions overstate the functional distinctions. It might be useful to distinguish between "safeguards" (with a small "s") and "Safeguards" (with a capital "S").

protection against fair but injurious imports (only an injury test). Safeguard measures have a shorter time limit than antidumping measures (four years versus five) and more rigorous conditions for extension. Moreover, a safeguard measure must be progressively liberalized over its period of application. The Agreement urges compensation, but disallows exporting countries' retaliation for the first three years a measure is applied. Safeguard actions are nominally nondiscriminatory – apply to imports from all sources – however the Agreement allows developing economies to be exempted, also members of a preferential trade agreement. In their 2002-2003 safeguard actions on imports of steel, the US and the EU each exempted imports from almost 150 countries.

The Agreement on Safeguards was a success in that it did eliminate VERs. Its modifications to increase its usage did not succeed, as we document below, it has been infrequently used, less than 150 safeguards versus almost 2500 antidumping cases since the Uruguay Round agreements are in effect.

Vis-à-vis the criteria we established above, a safeguard investigation does not identify instances in which an import restriction would add more to the national economic interest than it takes away. "Injury" is, in economics, more or less the same as comparative disadvantage, it comes closer to identifying what a country should import than what it should not.

As a pressure valve, safeguards have advantages over antidumping. They do not incorporate into policy mechanisms the inflammatory rhetoric of foreign unfairness, the provisions in the agreement for progressive liberalization of measures and for the monitoring of adjustment by the industry are limits on the extent of application of restrictions, degree of injury – serious vs. not serious – might be a basis for convincing some industries to accept a negative decision.

The virtues of the Agreement on Safeguards are rendered impotent however by the fungibility of antidumping. The legal definition of dumping is so far removed from its intuitive or economic definition that virtually any international transaction involves dumping, in the legal sense. A variant on of Gresham's Law applies: bad policy instruments drive out good.

4. A Sensible Safeguard Mechanism

In practice, maintaining an economically sensible trade policy is often a matter of avoiding interventions that have greater costs than benefits – or when the realities of domestic politics are taken into account – a matter of minimizing the number or the effect of such interventions.

There will be cases in which other domestic considerations make it impossible to avoid an economically unsound trade intervention. In those instances, good policy becomes a matter of:

- making restrictions transparent;
- avoiding their becoming precedent for further restrictions; and,
- managing them so as to strengthen the politics of avoiding rather than of imposing such restrictions in the future.

The key issue in a domestic policy decision should be the impact on the local economy. Who in the local economy would benefit from the proposed import restriction, and who would lose? By how much? It is therefore critical that the policy process by which the government decides to intervene or not to intervene gives voice to those interests that benefit from open trade and would bear the costs of the proposed intervention.

Such a policy mechanism would both (a) help the government to separate trade interventions that would serve the national economic interest from those that would not, and (b) even in those instances in which the decision is to restrict imports, support the politics of openness and liberalization.

Antidumping fails to satisfy either criteria. As economics, it looks at only half of the economic impact on the domestic economy. It gives standing to import competing domestic interests, but not to domestic users, be they user enterprises or consumers. As politics, it undercuts rather than supports a policy of openness; by giving voice to only the negative impact of trade on domestic interests and by inviting such interests to blame their problems on the "unfairness" of foreigners.

Safeguards as presently constituted likewise satisfy neither criterion. It does not give standing to users, it does nothing to support the politics of openness. Relative to antidumping, it does avoid the anti-openness politics of labeling imports as unfair.

5. Reform Proposals[19]

The subsidies, countervailing measures negotiations have more or less the same terms of reference as the antidumping negotiations. Fisheries subsidies will be on the table, environmental interests and economic analysis both suggest removal of such subsidies.

The tendency in negotiations to defend one's own policies without regard to their economic impact is particularly dangerous here. To point out that the agriculture agreement, for example, allows developed economies to maintain larger subsidies than developing economies is a mercantilist debating point; it is not sound policy advice for developing economies.

Antidumping is the larger problem – worse economics and thirteen times more used than countervailing measures. We provide next a brief look at proposals offered to reform antidumping.

Thinking within the box

Table 9 provides a summary tabulation of reform proposals that have been submitted. In large part (the first two pages of the table) the proposals apply to technicalities that antidumping investigators have used to reach affirmative determinations when a common sense approach would not have. The first line in the table, for example, refers to the practice of inflating the "normal value" against which export prices are compared by throwing out instances of home market sales – but not of export sales – where the price was "below cost." Other proposals are about the details of calculating "cost" in such examinations. A group of countries who describe themselves as "Friends of Antidumping" (Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Norway, Singapore, South Korea, Switzerland, Taiwan, Thailand, and Turkey) have submitted several proposals intended to reduce the possibility for an affirmative determination. To provide another example of the nature of the proposals, one of them proposes to outlaw the practice of "zeroing." To determining if dumping has taken place and to measure the "dumping margin," antidumping investigators often have data for a number of export sales, some at high prices, some at low. Transactions with low export prices – those that show that dumping has occurred – are taken into account, but transactions with high export prices that

[19] We look only at antidumping proposals. Because countervailing measures and antidumping serve different economic functions a separate examination would be necessary to evaluate proposals for countervailing measures. "Preserving the principles and the effectiveness of the instruments," for example, is more worthy of consideration

would show the opposite of dumping – that is, higher export than home market prices – are discarded or "zeroed out."

The preponderance of the proposals, those in part 1 of Table 9, reflect thinking within the box. Members who would like to see fewer antidumping measures propose to tweak the existing structure of rules in one direction, other Members prefer to hold the line. This struggle over technicalities, we contend, will have no impact on the quality of import restrictions that receive legal sanction under the antidumping agreement, little impact on the quantity.

The relevant concept from negotiating history is water in the tariff. When GATT, began tariffs were more than high enough to protect domestic suppliers – the first few rounds of negotiations had little trade impact. Though negotiations have moved tariffs from high to low, they have moved antidumping rules from simple to complex. There are today sufficient technicalities that any national authority of a mind to reach an affirmative determination can make a case. At the same time, any WTO panel will be able to find a technicality on which to discredit the national determination. In the meantime, the petitioning industry has enjoyed three years of protection.

A mathematician would say that the system is overdetermined; e.g., we have 15 equations to solve for two unknowns. Any two equations are sufficient for a solution, choosing the "right" equations provides considerable flexibility in what appears to be a technical system. Adding a few technicalities here, trimming a few there, will have no impact. The escalating cost of maneuvering within the technicalities does have the effect of disciplining use by pricing out smaller industries.

Competition policy

Shifting from antidumping to competition policy is good advice for an individual country. Competition policy's standards do a better job of identifying circumstances in which a governmental intervention in the market will serve the national economic interest. Of course, antidumping and competition policy overlap not at all, hence to shift to competition policy is to repeal of antidumping.

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for countervailing measures than for antidumping.

Shifting to competition policy could be bad advice for the WTO. Winters (2002) argues convincingly that a WTO agreement on competition policy would require developing economies to adopt developed economy practices and standards. If a developed and a developing economy were acting together against a cartel, Winters reasons, the developed economy government would not want its case undermined by laxity on the part of the developing economy. Such a competition authority would be expensive, the money might have a higher development impact elsewhere.[20]

The national economic interest

As we explain above, the key issue in a decision to impose an import restriction should be the impact on the domestic economy. Who in the domestic economy would benefit from the proposed import restriction and who would lose? By how much?

The impact on the restriction on users/consumers should be measured in the same dimensions as the "injury test" – the impact that import competition has on the protection seeker. Jobs lost because of higher costs, lower profits – the standard metric of "injury" applies. The technicalities are simple: recognize domestic users/consumers as "interested parties;" impose obligations to determine the impact on them that would be parallel to those already there for the "injury" investigation. Treat all affected domestic interests as equals. The nonsense of not doing so we explain in the box titled "The flawed economics of basing decisions on an injury investigation."

Several proposals (toward the bottom of Table 9) suggest that the "public interest" as well as the protection-seeker's interests be taken into account. The "public interest" is however treated as something ethereal, other-worldly, a socialist will-of-the-wisp that the government must represent. The relevant concept of interest, we suggest, is the sum of all the private interests affected. Only if there are "externalities" – and such are infrequently present when import protection is sought – is there an unidentified remainder that requires public representation.

Moreover, this bad economics presumes that the "public interest" would be defended by limiting the restriction to no more than is necessary to eliminate the impact of import competition on the protection seeker. Defending the "public interest" thus means to treat other

[20] Finger and Schuler (2000) raise similar questions about the WTO agreements in the "new areas."

private interests, user interests, as bastard children. They are served after the "legitimate" protection seeker has everything he wants.

Reform depends less on the good will of WTO delegates toward the "public interest" than on those business interests currently treated by trade law as bastards insisting that they be given the same standing as the law now recognizes for protection seekers. You bastards have to stand up for yourselves.

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Tables and Charts

TABLE 1: Antidumping Initiations by Country Groups, 1995 – 2003

Initiated Against → By ↓	**Industrial Economies (a)**	**Developing Economies (b)**	**China, P.R. (c)**	**Transition Economies (d)**	**All Economies**
Numbers of Antidumping Initiations					
Industrial Economies (a)	226	574	129	132	932
Developing Economies (b)	453	827	225	173	1,453
Transition Economies (d)	4	7	2	20	31
All Economies	**683**	**1,408**	**356**	**325**	**2,416**
Percentages of Antidumping Initiations					
Industrial Economies (a)	24%	62%	14%	14%	100%
Developing Economies (b)	31%	57%	15%	12%	100%
Transition Economies (d)	13%	23%	6%	65%	100%
All Economies	**28%**	**58%**	**15%**	**13%**	**100%**

Source: WTO Antidumping Committee.

Notes:

a) Include Australia, Canada, 15 European Union members, Iceland, Japan, New Zealand, Norway, Switzerland and USA.

b) Includes all other economies excluding industrial economies and transition economies. China, P.R. is included in the totals for developing economies.

c) Excludes Hong Kong, Macao, and the Chinese Taipei.

d) Includes 27 transition economies, as defined by the World Bank's World Development Report 1996 (Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Macedonia (FYR), Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Yugoslavia).

TABLE 2: Antidumping Initiations: Absolute Numbers and Initiations per US Dollar of Imports, by Countries, 1995 – 2003

Initiated against → By ↓	**All Economies**	
	No. of Anti-Dumping Initiations	**Initiations per US Dollar of Imports Index (USA = 100)**
South Africa	166	2,647
Argentina	180	2,595
India	379	2,355
Peru	48	1,834
Trinidad and Tobago	12	1,349
New Zealand	***42***	***917***
Egypt	38	742
Australia	***163***	***719***
Venezuela	31	675
Latvia	7	654
Brazil	109	585
Uruguay	6	578
Colombia	23	550
Indonesia	54	506
Turkey	61	405
Nicaragua	2	381
Lithuania	7	373
Costa Rica	6	294
Jamaica	3	293
Israel	26	259
Chile	14	243
Canada	***122***	***170***
Philippines	17	157
Thailand	31	156
Mexico	73	155
Panama	2	141
Korea, Rep. of	59	131
Malaysia	28	116
China, P.R.	72	109
Paraguay	1	103
United States	***329***	***100***
European Community (15)	***274***	***97***
Poland	12	81
Ecuador	1	64
Guatemala	1	60
Pakistan	2	56
Bulgaria	1	51
Slovenia	1	30
Czech Republic	3	27
Chinese Taipei	8	22
Japan	***2***	***2***
All Above Economies	**2,416**	**198**

Source: WTO Antidumping Committee, IMF Direction of Trade Statistics Database

TABLE 3: Comparison of the Intensity of Antidumping Initiations across Country Groups, 1995 – 2003 (a)

Initiated against → By ↓	**Industrial**	**Developing**	**China, P.R.**	**Transition**	**World**
Industrial Economies	48	140	169	230	100
Developing Economies	53	147	455	500	100
Transition Economies (b)	19	225	266	303	100
All Above Economies	**53**	**141**	**224**	**248**	**100**

Notes:

a) Number of antidumping against the country group per dollar of imports from the group, scaled to figure for initiations against/ imports from all economies; e.g., industrial economies, per dollar of imports, had 1.69 times more antidumping initiations against China P.R. than against all countries.

b) See Table 1 for the list of countries.

TABLE 4: Countervailing Measure Initiations by Country Groups, 1995 – 2003

Initiated against → By ↓	**Industrial Economies (a)**	**Developing Economies (b)**	**Transition Economies (c)**	**All Economies**
Numbers of Countervailing Measures Initiations				
Industrial Economies (a)	39	91	2	132
Developing Economies (b)	16	17	2	35
Transition Economies (c)	0	0	1	1
All Economies	**55**	**108**	**5**	**168**
Percentages of Countervailing Measures Initiations				
Industrial Economies (a)	30%	69%	2%	100%
Developing Economies (b)	46%	49%	6%	100%
Transition Economies (c)	-	-	100%	100%
All Economies	**33%**	**64%**	**3%**	**100%**

Sources: WTO Committee on Subsidies and Countervailing Measures.

Notes:

a) Include Australia, Canada, 15 European Union members, Iceland, Japan, New Zeeland, Norway, Switzerland and USA.

b) Include all other economies excluding industrial economies and transition economies.

c) Include 27 transition economies, as defined by the World Bank's World Development Report 1996 (Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Macedonia (FYR), Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Yugoslavia).

d) There were no cases against China, P.R.

TABLE 5: Countervailing Initiations: Absolute Numbers and Initiations per US Dollar of Imports, by Countries, 1995 – 2003

Initiated against → By ↓	**All Economies**	
	No. of Countervailing Measure Initiations	**Initiations per US Dollar of Imports Index (All listed economies = 100)**
South Africa	11	855
New Zealand	***6***	***639***
Peru	3	559
Latvia	1	455
Egypt	4	381
Chile	4	338
Argentina	4	281
Costa Rica	1	239
Venezuela	2	212
Australia	***6***	***129***
United States	***66***	***98***
Israel	2	97
Canada	12	82
European Community (15)	***42***	***73***
Brazil	2	52
Mexico	2	21
All Above Economies	**168**	**100**

Sources: WTO Committee on Subsidies and Countervailing Measures, IMF Direction of Trade Statistics Database.

TABLE 6: Comparison of the Intensity of Countervailing Measure Initiations across Country Groups, 1995 – 2003 (a)

Initiated against → By ↓	**Industrial**	**Developing**	**Transition**	**World**
Industrial Economies	58	164	22	100
Developing Economies	64	180	398	100
Transition Economies (b)	0	0	252	100
All Above Economies	**61**	**161**	**48**	**100**

Sources: WTO Committee on Subsidies and Countervailing Measures, IMF Direction of Trade Statistics Database.

Notes:

a) Number of countervailing initiations against the country group per dollar of imports from the group, scaled to figure for initiations against /imports from all economies; e.g., industrial economies, per dollar of imports, had 1.64 times more countervailing initiations against developing economies than against all countries.

b) See Table 1 for the list of countries.

TABLE 7: Safeguard Initiations by Country Groups, 1995 – 2003

Initiated By →	**Industrial Economies (a)**	**Developing Economies (b)**	**Transition Economies (c)**	**All Economies**
Number of Safeguard Initiations	21	88	33	142
Percentage of Safeguard Initiations	15%	62%	23%	100%

Sources: WTO Committee on Safeguards (Annual Reports 1995 – 2003).

Notes:

a) Include Australia, Canada, 15 European Union members, Iceland, Japan, New Zeeland, Norway, Switzerland and USA.

b) Include all other economies excluding industrial economies and transition economies.

c) Include 27 transition economies, as defined by the World Bank's World Development Report 1996 (Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Macedonia (FYR), Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Yugoslavia).

TABLE 8: Safeguard Initiations: Absolute Numbers and Initiations per US Dollar of Imports, by Countries, 1995 – 2003

Initiated By ↓	**No. of Safeguard Initiations**	**Initiations per US Dollar of Imports Index (All listed economies = 100)**
Jordan	9	4,821
El Salvador	5	3,416
Moldova	1	2,516
Ecuador	5	2,485
Chile	18	2,418
Bulgaria	6	2,349
Latvia	3	2,170
Venezuela	6	1,012
India	18	866
Egypt	5	756
Czech Republic	10	691
Estonia	1	509
Slovak Republic	3	500
Argentina	4	447
Morocco	2	436
Costa Rica	1	380
Philippines	5	358
Poland	5	260
Hungary	3	255
Slovenia	1	235
Colombia	1	185
Korea, Rep. of	5	86
Brazil	2	83
Australia	***2***	***68***
United States	***13***	***31***
Japan	***3***	***22***
Mexico	1	16
China, P.R.	1	12
Canada	***1***	***11***
European Community (15)	***2***	***6***
All Above Economies	**142**	**100**

Sources: WTO Committee on Safeguards (Annual Reports 1995 – 2003), IMF Direction of Trade Statistics Database.

Table 9: Summary of WTO Members' Submissions on Antidumping to the Doha Negotiating Group on Rules

Part 1. SPECIFIC PROPOSALS		
ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO Doc. No. and Date)
Determination of Dumping (Article 2)	Specify when sales of a like product in the market of the exporting country may be considered as not being in the *ordinary course of trade* by reason of ***price***, and thus excluded from the normal value calculation.	**FOA** (TN/RL/W/150, 04/16/04), **Canada** (TN/RL/W/1, 01/28/03)
	Modify the ***profitability test***, by exploring conditions under which sales made at a loss in the domestic market would not be excluded for purposes of determining normal values (the measures would be of particular importance in industries with pricing sensitive to supply and demand, or cyclical industries)	**Canada** (TN/RL/W/1, 01/28/03)
	What information to use for the *constructed value*?	**FOA** (TN/RL/W/150, 04/16/04), **FOA** (TN/RL/W/10, 06/28/02)
	Clarify the circumstances in which the authorities may reject or adjust cost data as maintained in the producers' own cost accounting records.	**FOA** (TN/RL/W/10, 06/28/02), **Canada** (TN/RL/W/1, 01/28/03)
	Amend Article 2.2.2 to provide that the three methods (i-iii) to consider administrative, selling and general costs, as well as profits, are in hierarchical order.	**India** (TN/RL/W/26, 10/17/02)
	Under the current guidelines for *constructed export price (CEP)* method, different practices are applied to different WTO members, which leads to abusive asymmetry deduction of costs and profits from CEP and normal value. Therefore, provide explicit rules for CEP.	**FOA** (TN/RL/W/10, 06/28/02)
	Price comparisons must reflect market realities, and particularly so in cyclical markets (e.g. perishable products cannot be put in inventory, and therefore must be sold at any price)	**FOA** (TN/RL/W/6, 04/26/02)
	Affiliated parties: Clarify definitions	**FOA** TN/RL/W/146
	Data requested from exporters: clarify what the investigator may request, when information exporters have requested may be set aside in favor of facts available.	**FOA** (TN/RL/W/150, 04/16/04)

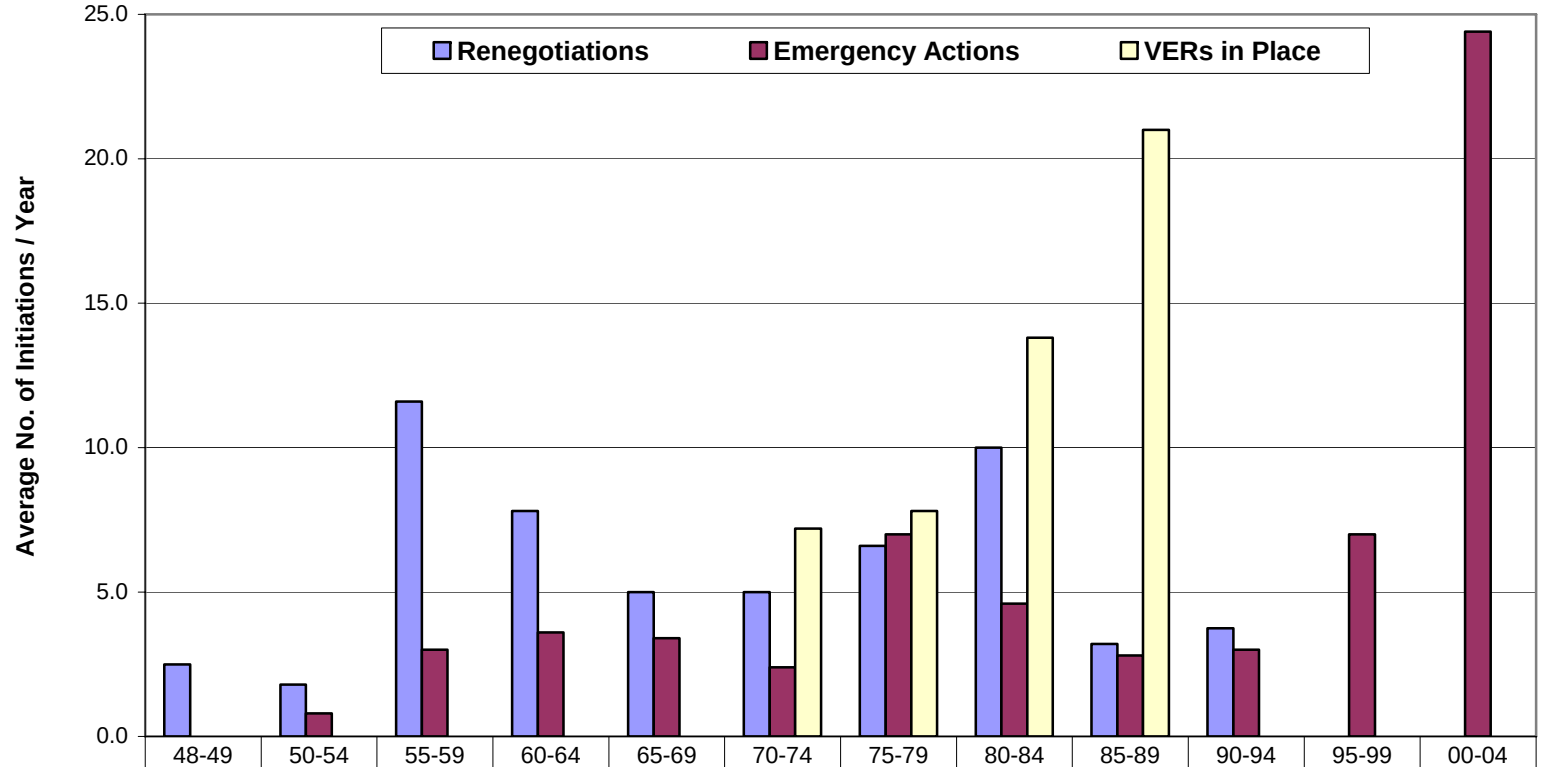
ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO Doc. No. and Date)
Determination of Injury (Article 3)	Develop the procedures and criteria utilized to analyze the ***causal relationship*** between dumping and injury and eliminate other factors	**FOA** (TN/RL/W/6, 04/26/02), **India** (TN/RL/W/26, 10/17/02)
	Clarify and improve the description of the factors to be considered to examine the impact of dumped imports on the domestic industry; distinguish injurious effects of other factors from those of dumping.	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)
	For the *cumulative injury assessment*, specify how to determine "***conditions of competition***" (e.g. when a product from more than one country, subject to simultaneous antidumping investigations, is used by distinct domestic users/industries)	**FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02)
	Additional information requirements for establishing **causal link**	**China** (TN/RL/W/66)
Definition of Domestic Industry (Article 4)	Clarify ***definition of the domestic industry*** (currently defined as (a) the domestic producers as a whole of the like products, or (b) those of them whose collective output constitutes major proportion of the total domestic production of such products)".	**FOA** (TN/RL/W/10, 06/28/02)
	Avoid arbitrarily broad definitions of the ***like product***.	**Brazil** (TN/RL/W/7, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **Canada** (TN/RL/W/1, 01/28/03)
	Define "***affiliation***", and specify under which circumstances should affiliated party transaction prices in the domestic market be considered unreliable.	**FOA** (TN/RL/W/10, 06/28/02)
Initiation and Subsequent Investigation (Article 5)	Enhance that AD petitions need support of producers accounting for at least 50 percent of domestic production of like product.	**FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)
	Do not impose and collect duties when a *de minimis* margin is determined.	**Brazil** (TN/RL/W/7, 04/26/02)
	Lift the current de minimis level of 2 percent (to unspecified level)	**FOA** (TN/RL/W/6, 04/26/02), **Canada** (TN/RL/W/1, 01/28/03)
	Lift the current level of negligible trade volume of 3 percent (to unspecified level).	**FOA** (TN/RL/W/6, 04/26/02)
Evidence (Article 6)	Examine the "accuracy" and "adequacy" of evidence before initiating the investigation.	**FOA** (TN/RL/W/10, 06/28/02)
	When sampling exporters/producers, do not ignore information that reveals zero or *de minimis* AD rates for exporters outside the sample (the "***all others rate***').	**FOA** (TN/RL/W/10, 06/28/02)
	Prohibit "zeroing".	**FOA** (TN/RL/W/6, 04/26/02), **India** (TN/RL/W/26, 10/17/02)
	Enhance provisions for protection of confidential information.	**USA** (TN/RL/W/35, 12/03/02)
	Enhance provisions that national authorities should provide timely non-confidential information to interested parties, so that they can defend themselves. Members should maintain public record of non-confidential information.	**USA** (TN/RL/W/35, 12/03/02)
Price undertakings (Article 8)	Explain what "***satisfactory voluntary undertakings***" means.	**FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02)

ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO Doc. No. and Date)
Imposition and Collection of Antidumping Duties (Article 9)	ADA currently provides for the assessment of AD duties on either a retrospective or prospective basis; different assessment methodologies have fundamentally different effects on trade. Improve the matter.	**Canada** (TN/RL/W/1, 01/28/03)
	Make the lesser duty mandatory: limit the level of the measures to what is strictly necessary for removing the injury.	**FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02), **EC** (TN/RL/W/13, 07/08/02), **India** (TN/RL/W/26, 10/17/02)
	Establish detailed methodology for calculation of injury margins (currently, their calculation is not mandatory).	**India** (TN/RL/W/26, 10/17/02)
Retroactivity (Article 10)	Introduce provisions to allow return of AD duties where a DSB decision results in the measure being withdrawn	**Canada** (TN/RL/W/1, 01/28/03)
Duration and Review (Article 11)	"Avoid the unwarranted permanence of trade restrictions under the disguise of AD duties".	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **Brazil** (TN/RL/W/7, 04/26/02), **FOA** (TN/RL/W/10, 06/28/02), **India** (TN/RL/W/26, 10/17/02), **Canada** (TN/RL/W/1, 01/28/03)
	No AD investigation shall be launched where a previous one ended with negative findings within 365 days prior to the filing.	**India** (TN/RL/W/26, 10/17/02)
	Avoid repeated dumping on the same product and country	**Canada** (TN/RL/W/1, 01/28/03)
	Sunset provisions: require a full investigation to extend	**Korea** TN/RL/W/111 05/27/03
	In situation of concurrent application of AD and Safeguard measures on the same product, the AD measure should be suspended or the duty adjusted.	**India** (TN/RL/W/26, 10/17/02)
	Review: apply requirements for an investigation to review	**FOA** TN/RL/W/83 25 April 2003
Judicial review (Article 13)	Members should provide detailed information on national legislations and regulations; each member should maintain judicial, arbitrator administrative tribunals or procedures for the purpose of prompt review of administrative actions related to final determinations and reviews.	**USA** (TN/RL/W/35, 12/03/02)
Developing economy members (Article 15)	Strengthen provisions allowing for special and differential treatment, technical assistance and capacity building, implementation issues.	**FOA** (TN/RL/W/6, 04/26/02), **FOA** (TN/RL/W/46, 01/24/02), **USA** (TN/RL/W/35, 12/03/02), **EC** (TN/RL/W/13, 07/08/02)
Consultation and Dispute Settlement (Article 17)	How can initiations be made subject to a swift DSU procedure?	**Canada** (TN/RL/W/1), **Canada** (TN/RL/W/1, 01/28/03)
	Swift Dispute Settlement mechanism	**EC** (TN/RL/W/13, 07/08/02)
	Codify recommendations and decisions of the DS Body	**Canada** (TN/RL/W/1, 01/28/03)

Part 2. GENERAL PROPOSALS		
ISSUES	QUESTIONS / PROPOSALS	PROPONENTS (WTO Doc. No. and Date)
Transparency and procedural fairness		**Canada** (TN/RL/W/10), **EC** (TN/RL/W/13, 07/08/02), **Australia** (TN/RL/W/44, 01/24/03), **Canada** (TN/RL/W/1, 01/28/03) New Zealand TN/RL/W/137 07/15/03
Preserve efficiency of the instrument	Avoid circumvention of antidumping measures.	**EC** (TN/RL/W/13, 07/08/02)
Clarify and simplify the agreement	Clarify and simplify provisions according to findings of various Panel and Appellate Body Reports.	**EC** (TN/RL/W/13, 07/08/02)
	Prevent abusive and excessive AD measures, avoid excessive burdens on respondents, and enhance transparency, predictability and fairness of the system.	**FOA** (TN/RL/W/28, 11/22/02)
	Make verification procedures clearer concerning information submitted by exporters to the authorities.	**USA** (TN/RL/W/35, 12/03/02)
Public interest	Take the broader public interest into account.	**Canada** (TN/RL/W/1, 04/15/02), **FOA** (TN/RL/W/6, 04/26/02), **EC** (TN/RL/W/13, 07/08/02), **Canada** (TN/RL/W/1, 01/28/03)
Reduce the costs of investigations	Screen procedural aspects with a view to identify areas where changes can bring cost reductions while maintaining the quality of investigations	**EC** (TN/RL/W/13, 07/08/02), **USA** (TN/RL/W/35, 12/03/02)
Harmonization of the Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures		**Canada** (TN/RL/W/1, 01/28/03)

Note: FOA, or "Friends of Antidumping", is a group of nations comprised of Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Norway, Singapore, South Korea, Switzerland, Taiwan, Thailand and Turkey, although not all of these nations joined in each of the submissions listed here.

CHART 1: Renegotiations (Art. XXVIII), Emergency Actions (Art. XIX), and VERs, 1948-2004

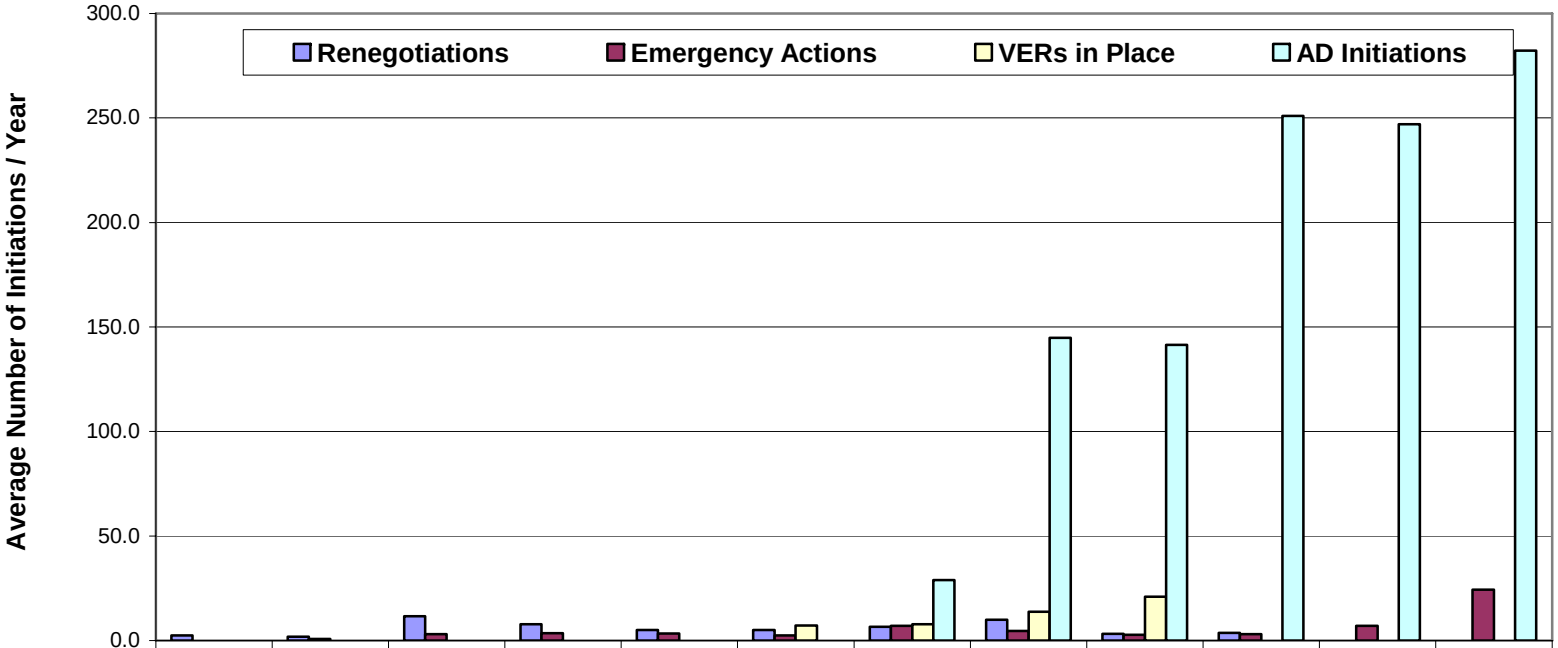


	48-49	50-54	55-59	60-64	65-69	70-74	75-79	80-84	85-89	90-94	95-99	00-04
Renegotiations	2.5	1.8	11.6	7.8	5.0	5.0	6.6	10.0	3.2	3.8		
Emergency Actions	0.0	0.8	3.0	3.6	3.4	2.4	7.0	4.6	2.8	3.0	7.0	24.4
VERs in Place						7.2	7.8	13.8	21.0			

Five-Year Annual Averages (two-year for 1948-49)

Sources: (1) *Analytical Index of the GATT* (for actions under Art. XIX and XXVIII before 1995); (2) *The WTO Committee on Safeguards, Annual Reports* (for safeguards after 1995); (3)*The International Trade Environment, GATT - Report by the Director General 1989-1990*, p. 21 (VERs for years 1970-89 do not include bilateral quantitative restrictions under the MFA; data was not available for VERs before 1970 and during 1990-94).

CHART 2: Renegotiations (Art. XXVIII), Emergency Actions (Art. XIX), Antidumping Initiations and VERs, 1948-2004

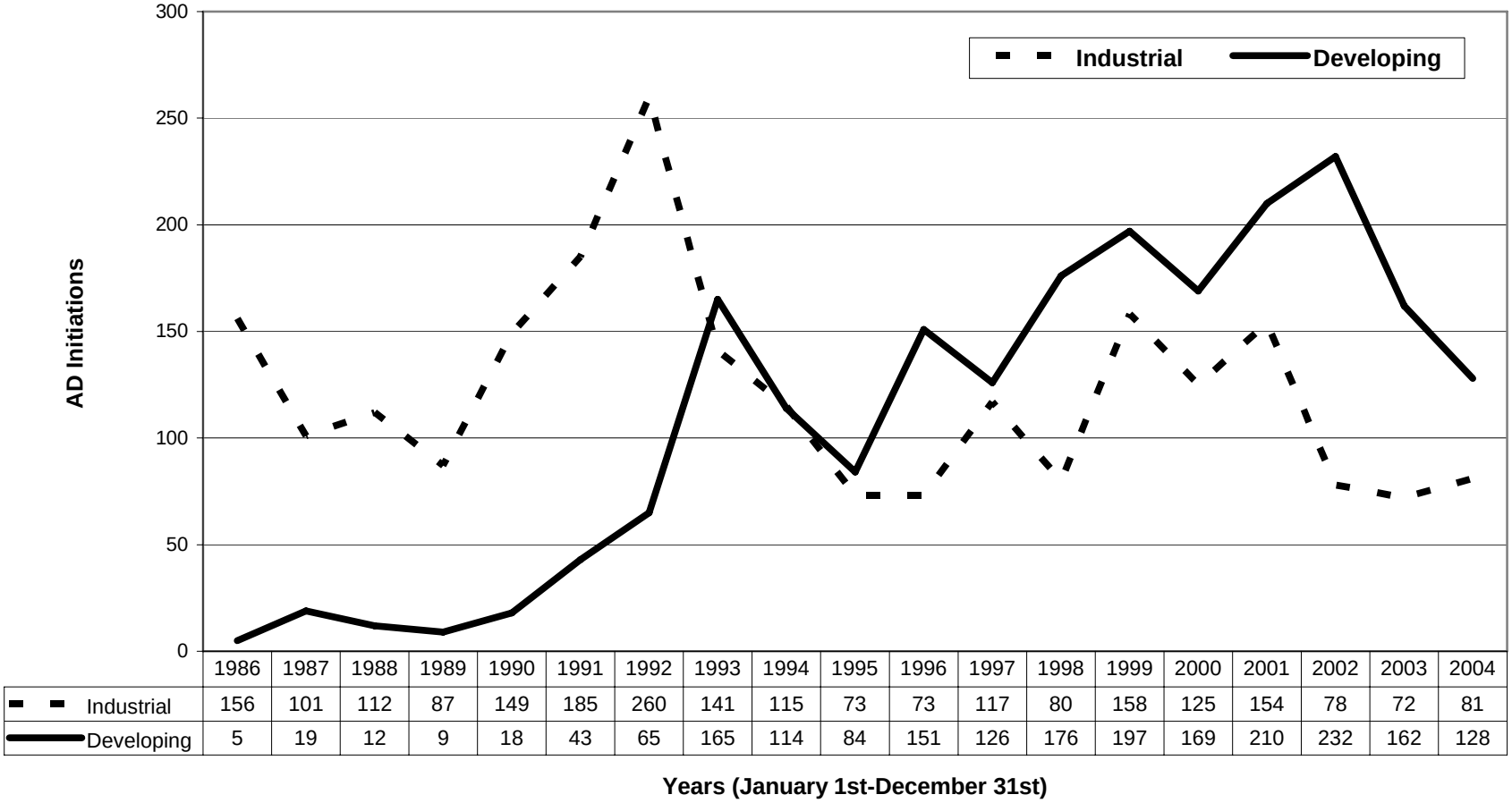


	48-49	50-54	55-59	60-64	65-69	70-74	75-79	80-84	85-89	90-94	95-99	00-04
Renegotiations	2.5	1.8	11.6	7.8	5.0	5.0	6.6	10.0	3.2	3.8		
Emergency Actions	0.0	0.8	3.0	3.6	3.4	2.4	7.0	4.6	2.8	3.0	7.0	24.4
VERs in Place						7.2	7.8	13.8	21.0			
AD Initiations							29.0	144.8	141.4	251.0	247.0	282.2

Five-Year Annual Averages (two-year for 1948-49)

Sources: (1) *Analytical Index of the GATT* (for actions under Art. XIX and XXVIII before 1995); (2) *The WTO Committee on Safeguards, Annual Reports* (for safeguards after 1995); (3)*The International Trade Environment, GATT - Report by the Director General 1989-1990*, p. 21 (VERs for years 1970-89 do not include bilateral quantitative restrictions under the MFA; data was not available for VERs before 1970 and during 1990-94); (4) *The WTO Antidumping Committee Statistics* (for antidumping initiations after 1978).

CHART 3: Antidumping Initiations by Industrial and Developing Economies (Importers), 1986 - 2004

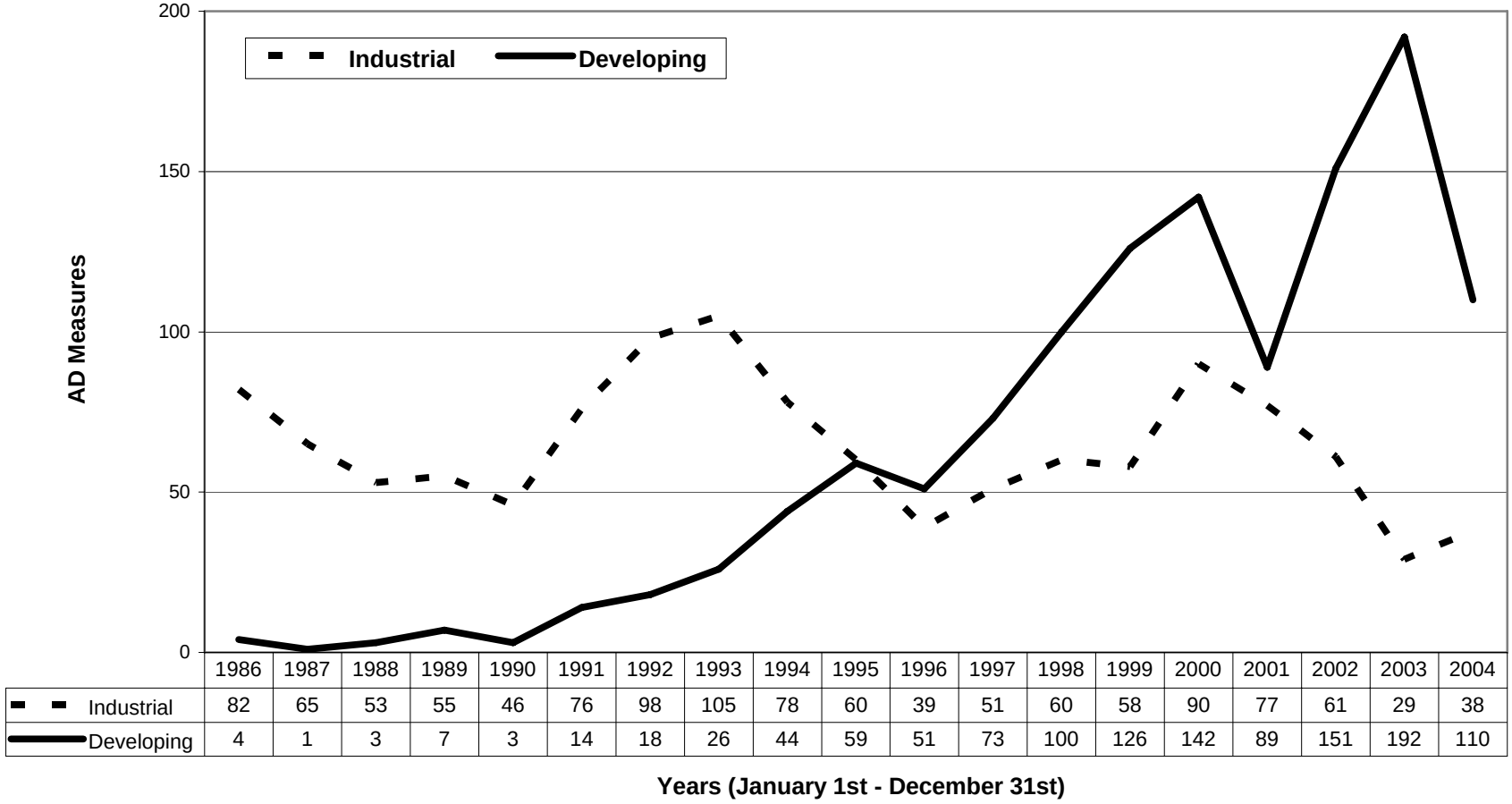


	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Industrial	156	101	112	87	149	185	260	141	115	73	73	117	80	158	125	154	78	72	81
Developing	5	19	12	9	18	43	65	165	114	84	151	126	176	197	169	210	232	162	128

Source: *The WTO Antidumping Committee, Statistics*

Note: Industrial economies include Australia, Canada, 15 European Union members, Iceland, Japan, New Zeeland, Norway, Switzerland and USA. Developing countries include all the rest.

CHART 4: Antidumping measures by Industrial and Developing Economies (Importers), 1986 – 2004



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Industrial	82	65	53	55	46	76	98	105	78	60	39	51	60	58	90	77	61	29	38
Developing	4	1	3	7	3	14	18	26	44	59	51	73	100	126	142	89	151	192	110

Source: *The WTO Antidumping Committee, Statistics*

Note: Industrial economies include Australia, Canada, 15 European Union members, Iceland, Japan, New Zeeland, Norway, Switzerland and USA. Developing countries include all the rest

Box: The flawed economics of basing decisions on an injury investigation

Economists demonstrated more than two centuries ago that import restrictions often subtract more from the national economic interest of the country that imposes them than they add to it. There is nothing in such economics to suggest that import competition will be beneficial to all domestic interests, i.e., not be troublesome to some domestic interests. On the contrary, there are net gains from trade because the benefits to some domestic interests exceed the cost of import competition to others.

An injury investigation acknowledges only half of the familiar economics of international trade. It gives standing to the costs of trade, but it leaves out the gains. It enfranchises the domestic interests that bear the burden of import competition and would therefore benefit from an import restriction. However, it disenfranchises the domestic interests that would bear the costs of the import restriction — or, on the reverse side, the gains from not imposing it.

As analogy, one might imagine the domestic interests that would benefit from the restriction playing right to left on the soccer pitch depicted above, while those that would bear the costs play left to right. The investigatory process allows goals only by import-competing interests. In the score that determines the outcome, the interests of users of imports and others that would bear the costs of the import restriction simply are not counted.

A safeguard petition is a request for an action by a government. Correctly deciding when to take or not to take action begins by asking the right question. The right question is, *Who in the domestic economy will benefit from the proposed action and who will lose—and by how much?*

Safeguard investigations should not focus solely on the effect of the proposed restriction on domestic producers of like or competing goods; but rather, should focus on the national economic interest of the restricting country. *National economic interest*, in this context, is the sum of benefits to all nationals who benefit minus the costs to all nationals who lose. Injury, as it is defined in safeguards and antidumping laws, takes into account only one of the two sides that make up the national economic interest. An economically sensible process would allow both sides — those that will benefit from a trade restriction and those that will bear the costs — to score.

Source: J. Michael Finger, "Safeguards: Making Sense of GATT/WTO Provisions Allowing for Import Restrictions." Ch. 22, pp. 195-205 in B. Hoekman, A. Mattoo and P English, eds., Development, Trade and the WTO: A Handbook. World Bank, 2002. Available at http://www1.worldbank.org/wbiep/trade/