

RTAs and Contingent Protection:
Are Anti-Dumping Measures (ADMs) Really an Issue?

by

Dean Spinanger
(dspinanger@ifw.uni-kiel.de)
Institute of World Economics
24100 Kiel, Germany

**WTO Regional Seminar on Regionalism and the Multilateral Trading
System, Geneva/Switzerland, 26 April 2002**

Contents

I.	INTRODUCTION AND BACKGROUND	1
II.	ANTI-DUMPING AND OTHER CONTINGENT PROTECTION MEASURES	2
III.	ADMS AND RTAS – WHAT’S GOING ON?	11
IV.	SUMMARY AND CONCLUSIONS.....	16
	BIBLIOGRAPHY	19

List of Text Tables

Table 1:	UNCTAD Classification System for Non-Tariff Measures (used in the TRAINS DataBase)	5
Table 2:	Typology of Non-Tariff Barriers by Deardorff and Stern.....	6
Table 3:	Trying to Keep Markets Closed: Some Elastic Examples	7
Table 4:	Overview of Relevant Issues re. Anti-Dumping Legislation	8
Table 5 :	Summary Comparison of PTAs.....	13
Table 6:	Anti-Dumping Measures Initiated by RTAs ^a , against Members ^b /Other Economies ^c and against RTAs by Members ^b /Other Economies ^c : % of Total Initiations	14
Table 7:	Anti-Dumping Measures in Selected RTA's ^a : Number and Intensity: 1989– 2001	15

RTAs and Contingent Protection:

Are Anti-Dumping Measures (ADMs) Really an Issue?

I. Introduction and Background

When the curtain was finally allowed to fall on the WTO Ministerial Meeting in Doha last November, there were not just a few observers who were somewhat surprised. After all, the agenda for the next round of multilateral trade negotiations (MTNs) contained some elements, which would not necessarily have been on a normal, or probably not even on a risk-loving punter's betting chit. This applies in particular to the inclusion of ADMs on the agenda, even if such were referred to only under the non-descript heading of "WTO Rules." Indeed, such definitely became the case when the 142 WTO contracting parties agreed on the 14th of November, 2001, Ministerial meeting in Doha upon a comprehensive agenda for the next round of multilateral trade negotiations.¹

The agenda is to include (as stated in paragraphs 28-29 of the Ministerial Declaration) an examination of WTO rules defining the scope and use of contingent protection measures (i.e. in particular anti-dumping measures – ADMs), as well as those dealing with trade and competition policies (as noted in paragraphs 23-25 of the same document).

It is the purpose of this paper to examine the role of contingent protection measures in the context of RTAs. In this paper – given the relatively short time

¹ While "officially" the new round is supposed to be called the "Doha Round" it would nonetheless definitely seem fitting to call it the "Harbinson Round", in light of the accomplishments of the appointed head of the WTO's General Council, Stuart Harbinson, Hong Kong's WTO ambassador in Geneva. He drew the consequences of the failure in Seattle and produced an agenda that did not contain all those empty spaces with parenthesis, brackets, braces and whatever else might be used as substitutes for agreeing on an agenda framework. It was thus a document that been passed by the 284 eyes of the heads of the contracting parties. While there may not have been agreement as to what should be included under the specific topics or what was or was not implied, there was at least the feeling that the bones of contention would somehow be dealt with and clarified during the Ministerial. And the results show that such was the case, despite the usual negotiating poker in the final hours.

constraints – the focus will be on anti-dumping measures. The next section will deal with an overview of all those measures which fall into the category of contingent protection. This is followed in section three by an analysis of all major RTAs and the degree to which their members have initiated ADMs against themselves or against non-member countries or rather have been targeted by members or non-member countries. All this is then put in a better perspective by examining the intensity of ADMs within and outside RTAs. The paper concludes by drawing conclusions from the above results, particularly in light of the fact that it seems that ADMs in the year ending June 30th, 2002, could well exhibit the greatest number of ADMs ever initiated.

II. Anti-Dumping and Other Contingent Protection Measures

There can be no question that countries liberalizing their trade regimes and providing improved market access as a result of multilateral trade negotiations (or even WTO accession negotiations) seem to feel the need to have some sort of fallback (i.e. contingent) protection on the books. After all, the political economy of trade policies in many countries is often shaped by the viewpoint that there are always numerous experienced companies out there in the world just waiting to expand into newly opening markets. Hence, the necessity to prepare and legislate the required laws and ordinances – albeit in line with WTO guidelines – is given utmost priority.

However, by falling into such a mindset the entire basic philosophy behind liberalizing trade and improving market access – namely to increase the welfare of the individual countries – is being negated. Thus it seems to be quite legitimate to ask the following question: why should the initial steps taken by countries lowering trade barriers to improve their degree of integration into the world economy be immediately accompanied by moves to ensure that the integration process is countered? In the context of RTAs this would also mean that relatively stricter criteria are applied to goods coming from non-member countries.

With the acceptance of the Uruguay Round agreement on anti-dumping rules in 1994 (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade) there was at least some initial hope that the massive surge in anti-dumping measures (ADMs) in the early 90s could not only be halted, but even scaled back. After all, ADMs had almost doubled from a total of 384 in the period 1988-91 to 730 in the years 1991-94. And, indeed, developments seemed to be promising in the initial years following the Uruguay Round agreement, as from 1994-97 ADMs dropped by almost one third to 508. However, the hoped-for easing off of ADM initiations failed to be of permanent nature so that in the last three-year period through 6/01 they jumped by almost 2/3rds. to 825, making it the highest three-year level ever.

Without going into detail, what might be the overriding factors which can be considered as shaping this increase²?

- ? Is it perhaps that the Uruguay Round conceivably led to tariff rate reductions to the extent that in ever more economies authorities were pressured by domestic producers to revert to contingent protection, namely to initiate non-tariff barriers in the form of ADMs?
- ? Or maybe it is just the simple fact that, ever more developing economies have been putting AD legislation on the books conforming to WTO criteria. In doing so is it possible that the mere existence of such legislation led to an increased demand for its application?
- ? Could it also conceivably be that the globalization of markets has induced much greater competition and thus caused authorities to intervene ever more on behalf of domestic companies?
- ? Or are there ever more global companies out there which truly attempt to "dump" in order to eliminate competition in other markets? In other

² For more background on this see Messerlin (2000), Blonigen and Prusa(2001), James (2000) and Vermulst and Bortalba (2001)

words, is dumping in the true predatory sense, as perceived by the founding members of GATT in 1947, actually on the increase?

While antidumping measures represent a most divisive instrument its demise may unfortunately be long in coming, because “governments are concerned about the potential for their partners to engage in beggar-thy-neighbor industrial policies. They may consider antidumping a useful defensive instrument in this connection because it can be used as a substitute for ...counterveiling duties....which might be more difficult to pursue. If so, it must be recognized that antidumping is a particularly ineffective and costly instrument. Indeed, a case can be made that this is another reason to eliminate it in the PTA context as this will help focus attention on the real source of problems (industrial policies; government intervention), rather than on the symptoms (allegations of “unfair dumping” (Hoekman, 1998, p. 35). Obviously as tariffs continue to come down, it becomes increasingly important for economies/RTAs/PTAs to tackle other impediments to trade.

The following two tables (drawn from the PECC study on "Non-tariff measures in goods and services trade" (May, 2000)), exhibit possible approaches to classifying non-tariff barriers in a formalized manner, and it would surely be worthwhile to examine a some key RTAs in such a manner. A more mundane approach was applied by the ATMI in classifying actual barriers to entry in particular markets. Although the collection of barriers was carried out in a subjective manner, and it is difficult to determine whether the barriers are just of temporary nature or longer lasting, they do straightforwardly get to the heart of the manner. Finally, Table 4 lays open the individual problems encountered in just dealing with anti-dumping issues. It clearly reveals the potential depth involved in each and every NTB/contingent protection measure.

Table 1: UNCTAD Classification System for Non-Tariff Measures (used in the TRAINS DataBase)

1. Price control measures	<ul style="list-style-type: none"> ?? administrative pricing ?? voluntary export price restraint ?? variable charges ?? antidumping measures ?? countervailing measures
2. Finance control measures	<ul style="list-style-type: none"> ?? advance payment requirements ?? multiple exchange rates ?? restrictive official foreign exchange allocation ?? regulations concerning terms of payment for imports ?? transfer delays
3. Automatic licensing measures	<ul style="list-style-type: none"> ?? automatic licence ?? import monitoring ?? surrender requirement
4. Quantity control measures	<ul style="list-style-type: none"> ?? non-automatic licensing ?? quotas ?? import prohibitions ?? export restraint arrangements ?? enterprise-specific restrictions
5. Monopolistic measures	<ul style="list-style-type: none"> ?? single channel for imports ?? compulsory national services
6. Technical measures	<ul style="list-style-type: none"> ?? technical regulations ?? pre-shipment formalities ?? special customs formalities ?? obligation to return used products
7. Miscellaneous measures for sensitive product categories	<ul style="list-style-type: none"> ?? marketable permits ?? public procurement ?? voluntary instruments ?? product liability ?? subsidies

Source: PECC (2000) based on UNCTAD.

Table 2: Typology of Non-Tariff Barriers by Deardorff and Stern

Quantitative Restrictions and similar Specific Limitations on Imports or Exports	<ul style="list-style-type: none"> ?? Import quotas ?? Export limitations ?? Licensing ?? Voluntary export restraints ?? Exchange and other financial controls ?? Prohibitions ?? Domestic content and mixing requirements ?? Discriminatory bilateral agreements ?? Countertrade
Non-tariff Charges and related Policies affecting Imports	<ul style="list-style-type: none"> ?? Variable levies ?? Advance deposit requirement ?? Antidumping duties ?? Countervailing duties ?? Border tax adjustments
Government Participation in Trade; Restrictive Practices; General Policy	<ul style="list-style-type: none"> ?? Subsidies and other aids ?? Government procurement policies ?? State trading, government monopolies, and exclusive franchise ?? Government industrial policy and regional development measures ?? Government financed research and development; technology policies ?? National systems of taxation and social insurance ?? Macroeconomic policies ?? Competition policies ?? Foreign investment policies ?? Foreign corruption policies ?? Immigration policies
Customs procedures and administrative practices	<ul style="list-style-type: none"> ?? Customs valuation procedures ?? Customs classification procedures ?? Customs clearance procedures
Technical Barriers to Trade	<ul style="list-style-type: none"> ?? Health and sanitary regulations and quality standards ?? Safety and industrial standards and regulations ?? Packaging and labeling regulations, including trademarks ?? Advertising and media regulations

Source: From PECC (2000); Deardorff and Stern (1997), *Measurement of Non-Tariff Barriers*, Paris: OECD.

Table 3: Trying to Keep Markets Closed: Some Elastic Examples

	E G Y	P R C	A R G	B R A	I D A	P A K	I D O	B G L	R O K	C O L	T H A	R U S	U K R	V N M	R O M	R S A	M O R	J A P	M A L	M A R	S R I	A U S	C H L	R O C	U R U	P H I	
1. Allowing/tolerating corruption	x	x	x	x	x	x	x			x	x	x	x	x	x	x	x			x						x	x
2. Intellectual property rights (designs, etc.) infringement	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x									x	x	
3. Subsidizing domestic industry	x	x	x	x	x	x	x	x		x	x					x			x	x	x		x	x			
4. Not binding tariffs	x	x	x	x	x	x	x	x	x	x	x				x	x	x						x				
5. Lower tariffs but imposing (specific) duties	x	x	x		x			x			x	x	x	x	x	x	x				x		x				
6. Keeping tariffs prohibitively high	x	x	x	x	x	x	x	x			x		x	x	x		x						x				
7. Valuating imports by ad hoc means	x	x		x	x	x	x	x	x	x	x					x			x								
8. Creating difficult, expensive customs procedures	x	x	x	x	x	x	x	x	x			x	x														
9. Lowering tariffs but adding new taxes	x		x	x	x	x	x		x					x			x					x					
10. Changing customs rules without notification		x	x	x		x		x		x	x	x									x						
11. Changing applied rates frequently	x	x	x	x				x				x	x	x	x												
12. Avoiding applying VAT to domestic goods		x	x		x	x	x						x														
13. Restricting imports for unusual reasons	x				x	x		x			x			x													
14. Imposition of arcane technical/quality standards	x	x							x			x	x						x								
15. Difficult marking rules	x		x		x				x			x															
16. Forming domestic cartels		x					x		x										x	x							
17. Faking "automatic" licensing systems	x			x							x																
18. Preinspection of imports for high fees		x	x								x																
19. Adherence to strange rules of origin	x		x								x																
20. Keeping distribution system hard to breach	x	x																	x								
21. Making LCs unacceptable, demanding cash				x					x																		
22. Buy-domestic policies by government		x																									
? (? = 7.3)	16	16	14	12	12	11	10	10	9	9	9	8	8	7	6	6	5	3	3	3	3	2	2	2	2	2	1
ARG = Argentina; AUS = Australia; BGL = Bangladesh; BRA = Brazil; CHL = Chile; COL = Colombia; EGY = Egypt; IDA = India; IDO = Indonesia; JAP = Japan; MAL = Malaysia; MAR = Mauritius; MOR = Morocco; PAK = Pakistan; PHI = Philippines; PRC = China; ROC = Taiwan; ROK = South Korea; ROM = Romania; RSA = Rep. South Africa; RUS = Russia; SRI = Sri Lanka; THA = Thailand; UKR = Ukraine; URU = Uruguay; VNM = Vietnam.																											

ARG = Argentina; AUS = Australia; BGL = Bangladesh; BRA = Brazil; CHL = Chile; COL = Colombia; EGY = Egypt; IDA = India; IDO = Indonesia; JAP = Japan; MAL = Malaysia; MAR = Mauritius; MOR = Morocco; PAK = Pakistan; PHI = Philippines; PRC = China; ROC = Taiwan; ROK = South Korea; ROM = Romania; RSA = Rep. South Africa; RUS = Russia; SRI = Sri Lanka; THA = Thailand; UKR = Ukraine; URU = Uruguay; VNM = Vietnam.

Source: Adapted from ATMI (2000: 27).

Table 4: Overview of Relevant Issues re. Anti-Dumping Legislation

<p>1. Determining the Act of Dumping</p> <ul style="list-style-type: none"> a. Minimum domestic sales test; b. Exclusion of sales below cost; ordinary course of trade; c. Constructed normal value, cum selling/general/admin. expenses + reasonable profit; d. Fair comparison: symmetrical comparisons, credit costs, duty drawbacks, level of trade, cost accounting methods, zeroing. e. Non-market economy treatment; f. Constructed export price, including reasonable profit margins; g. De minimis dumping; h. Exchange rate fluctuations; i. Cyclical industries.
<p>2. Determining Injury</p> <ul style="list-style-type: none"> a. Negligible imports; b. Cumulation c. Definition of industry; d. On behalf of industry; e. Credibility of information; f. Lesser duty rule; g. Causation.
<p>3. Procedures</p> <ul style="list-style-type: none"> a. Back-to-back complaints; b. Sunset reviews; c. Questionnaires (language, details, length); d. Independent bodies for determining dumping and injury; e. Facts available/best information available; f. Price undertakings; g. Sampling.
<p>4. Other Specific Concerns</p> <ul style="list-style-type: none"> a. Investment diversion; b. Guilty by association; c. Buckshot approach; d. Cost of defense, lack of capabilities; e. Problems of SMEs; f. Post-Agreement on Textiles and Clothing (ATC) implications.

Note: Own compilation based on background literature and interviews with government officials as well as companies in numerous developing countries.

In order to assist accession countries in setting up and carrying out anti-dumping legislation conforming to WTO AD principles, the Rules Division of the WTO has been providing a model piece of AD legislation, which allows countries to adapt and extend to their own use as they see fit. It is broken down into 7 sections and 2 appendices as follows:

Part I: Definitions and Principles

Part II Determination of Dumping, Injury and Causal Link;

Part III: Initiation and Conduct of Investigations;

Part IV: Conclusion of the Investigations

Part V: Duration and Review of Anti-Dumping Duties and Price Undertakings;

Part VI: Administration and Judicial Review;

Part VII: Final Provisions;

Annex I: Procedures for On-the-Spot Investigations;

Annex II: Reliance on Information Available.

While this model is a help, it has neither been subjected to a formal WTO legal review, nor does it eliminate the ambiguities in the Uruguay Round text. As noted by Qureshi (2000: p. 32), the model is just the first step, as an effective [and efficient] anti-dumping machinery needs to be set up. This involves highly qualified administrators, lawyers and economists and in RTAs it means setting this up across different legal systems.

In setting up the necessary administration the AD guidelines have led to a variety of structures, which can best be summarized as follows (see Blonigen, Prusa, 2000: pp.6-7)³:

³ See also the paper by Neufeld (2001) which deals with the issues for developing countries.

- ??All AD users delegate AD investigations to special bureaucratic units: the extent to which these units are isolated from political pressure and independent of Executive Authority varies across member states. However, even in those countries where the investigative agency is independent, cases often appear to hinge on political pressure.
- ??Jurisdiction of determining dumping and then determining injury is either split or unified. Whereas the USA and Canada authorize one agency each to handle the dumping determination and injury determination, the EU and Australia have but a single agency for both cases. While the split authority could theoretically be more objective since two mutually independent agencies must affirm the legislation, there is no guarantee that this will happen. On the other hand, the one-stop-shop minimizes resources and avoids conflicting judgments.
- ??Transparency varies substantially across countries, particularly in the case of new users (i.e. developing countries just having set up AD legislation and now applying it) are explanations missing in connection with calculations of dumping margins.
- ??Confidential business information is not always available to the parties. While the EU and Australia limit the access to confidential information to the investigating agencies, the US and Canada permit the respective legal counsels to access all confidential information.
- ??Price undertakings (i.e. agreements to raise prices in lieu of applied AD duties) are common in EU and Australia, but less so in US and Canada.
- ??While most countries require a preliminary injury determination before duties can be collected, often some of the above-mentioned new users are subjecting accused dumpers to such levies just days after the petition is accepted.

?Some countries, like the US and Canada, apply the full AD duty that has been calculated. Others, however, like the EU and Australia, can require that only that amount of the AD duty be applied to relieve the injury being inflicted on the said industry.

III. ADMs and RTAs – What’s Going On?

Given the well researched documents produced by the WTO it is not necessary to delve into the fine points of the individual RTAs re. ADMs or other contingent protection measures (see e.g. WT/REG/W/44, WT/REG/W/38, WT/REG/W/37, WT/REG/W/26). The study here examined 29 RTAs and APEC over the time period 1989-2001 with respect to all ADMs initiated by or against the individual countries in the RTAs.. These tables can be found in the Appendix. Table 31 summarizes the results from these tables by relating the internal and external ADMs to all ADMs, calculating thereby the degree to which RTAs directed their contingent protection activities at other members or rather third parties.

Let us examine two possible major hypotheses, which might explain the direction of ADMs within an RTA.

1. As liberalization within an RTA progresses, member countries revert to using more contingent protection against other members. This would lead to an increase in the share of internal ADMs and cause the intensity of ADMs (i.e. the value of one dumping action expressed in terms of millions of US\$) vis-à-vis RTA members to decrease.
2. As liberalization within an RTA progresses, increased efforts are made to make the best out of the mutual liberalization process. This could then lead to an increase in ADMs against non-members (external share of ADMs increases) and the intensity of ADMs decreases.

Of course the world is not quite as simple as that, as many other things can happen as well (see Table 5 for a comparison of the different PTA systems,

which could all influence the results), but these are left aside for discussion in a later paper.

There are of course numerous possibilities that have been put forward (see Hoekman (1998) and James (2000), but also the proceedings of the PECC conference on “Regional Trading Arrangements: Stocktake and Next Steps”) To the extent that these measures are all aimed at thwarting competition stemming from internationally agreed-upon liberalization steps, they will prevent economies from allocating capital and labor to their most productive uses and thus hinder economies from achieving the projected increases in their well being expected from multilateral trade negotiations. By hindering an efficient allocation of capital to the most productive sectors, such measures not only cause downstream industries to become less competitive, since they must pay higher prices for their intermediate inputs, they accordingly cause consumers to pay higher prices for goods and services. But let us not stray to far from our simple evidence here.

The initial evidence is presented in Tables 6 and 7:

?? In Table 6 the AD initiations by PTAs against themselves do not reveal a confirmation of either of the hypotheses. The most promising example is NAFTA where the share of measures against each other does seem to be steadily decreasing over the course of time.

?? As concerns the intensity of ADMs,(see Table 7), MERCOSUR and APEC seem to apply ADMs to non-members all the easier, hence the lower values per ADM. Are they really acting against non-members or are there structural issues.

While the above evidence is not overwhelming, it does seem to be pointing in a direction which might make it worthwhile to further pursue. In particular a sectoral breakdown could very well highlight where countries prefer to do it together, as opposed to maintain links with non-members.

Table 5 : Summary Comparison of PTAs

	EC	EEA	EA	ÊMA	NAFTA	CER	MERCOSUR	CAN-CHILE	APEC
Free labor mobility	Yes	Yes	No	No	No	Yes	No	No	No
Free capital flows	Yes	Yes	Yes	No	Yes	No	No	Yes	Largely
Free services trade	Yes	Yes	Yes	No	Significant	Significant	No	In part	Some
Competition policy rules*	Yes	Yes	Yes	No	No	Yes	No	No	No
Harmonization of national antitrust	Partly, ex post	Partly, ex post	Partly, ex ante	No	No	Significant	In part	No	No
Area-wide antitrust rules conditional on "trade effects" test	Yes	Yes	Yes	Yes	n.a.	Yes	Yes	n.a.	No
Formal cooperation agreements between antitrust authorities	n.a.	Yes	Yes	No	Yes	Yes	t.b.d.	Yes	No
Supranational enforcement of antitrust	Yes	Yes	No	No	n.a.	No	No	n.a.	No
Binding dispute settlement on antitrust	No	No	No	No	n.a.	No	t.b.d.	n.a.	No
Elimination of contingent protection	Yes	Yes	No	No	No	Yes	t.b.d.	Yes	on agenda
* Defined as significant disciplines on industrial policies (e.g., subsidies)									
n.a.: not applicable, t.b.d.: to be determined									

Source: Adapted from Hoekman (1998).

Table 6: Anti-Dumping Measures Initiated **by** RTAs^a, **against** Members^b/Other Economies^c and **against** RTAs **by** Members^b/Other Economies^c: % of Total Initiations

PTA	AD Initiations by PTAs					AD Initiations against PTAs				
	All years	89-92	92-95	95-98	98-01	All years	89-92	92-95	95-98	98-01
AFTA/ASEAN	19.4		50.0	11.8	26.9	4.7		1.3	8.7	7.1
BAFTA						100		100	100	100
BANGKOK	27.1	10.0	37.0	27.7	25.9	9.9	1.1	6.9	11.9	14.6
CACM	33.3				50.0	50.0				50.0
CAN	5.5		20.0	6.5		11.8		20.0	50.0	
CARICOM										
CEFTA	3.1				14.3	0.8				2.2
CEMAC										
CER										
CIS										
COMESA										
EAC										
EAEC										
EC	0.3	1.5				0.2	0.7			
ECO	2.7		4.3			1.2		3.0		
EEA	0.8	3.1		1.2		0.5	1.4		0.7	
EFTA										
GCC										
GSTP	29.3	37.1	23.3	27.8	31.8	29.1	15.9	18.3	41.4	36.6
LAIA	18.3	21.7	10.0	22.6	19.5	43.4	23.2	25.0	70.0	54.4
MERCOSUR	12.5	18.2	3.8	16.0	12.9	27.7	5.9	6.3	55.2	45.7
MSG										
NAFTA	15.0	21.2	14.4	15.5	9.2	49.8	66.2	61.5	26.7	38.9
OCT										
PTN	15.8	20.0	11.7	11.9	22.6	15.6	12.5	16.7	14.6	17.7
SAPTA	0.6				1.0	0.9				2.6
SPARTECA										
TRIPARTITE	0.6				0.9	0.9				2.5
UEMOA/WAEMU										
APEC	55.7	55.3	50.9	58.6	59.8	58.0	83.8	51.8	49.4	46.1

Source: Own calculations based of WTO AD notifications.

Table 7: Anti-Dumping Measures in Selected RTA's^a: Number and Intensity: 1989–2001

Years	Exports				Imports			
	Number of measures		Trade weighted ^b		Number of measures		Trade weighted ^b	
	Internal ^c	External ^d	Internal ^c	External ^d	Internal ^c	External ^d	Internal ^c	External ^d
AFTA/ASEAN								
All years	12	50	59007	26324	12	241	50700	10943
89-91	0	0	–	–	0	34	14031	11862
92-94	1	1	333035	520981	1	74	9533	7959
95-97	4	30	60305	26065	4	42	50459	21696
98-00	7	19	34263	45849	7	91	24553	8062
BANGKOK								
All years	59	159	3668	19321	59	536	4118	5449
89-91	1	9	9687	48022	1	94	5929	4872
92-94	10	17	3631	35205	10	134	4646	4559
95-97	18	47	4236	19714	18	133	4596	6707
98-00	30	89	3139	12962	30	175	3594	5486
MERCOSUR								
All years	36	252	4108	2498	36	94	4343	69969
89-91	2	9	6460	13802	2	32	4074	2559
92-94	2	51	14651	2730	2	30	14983	4217
95-97	16	84	3253	2107	16	13	3382	17013
98-00	16	108	3349	1751	16	19	3640	11868
APEC								
All years	810	643	10785	12035	810	587	20661	14036
89-91	223	180	11034	7333	223	43	11548	33577
92-94	218	210	15662	7982	218	135	16240	12974
95-97	156	110	30836	20426	156	160	31960	15135
98-00	213	143	25073	17450	213	249	26450	10532
^a For a description of the RTAs see appendix tables. – ^b Trade weighted represents the amount of exports/imports per ADM applied in millions of US\$. – ^c Internal refers to all those ADMs initiated within a RTA. – ^d External refers to all those ADMs against or by non-member countries.								

Source: Own calculations based on WTO AD notifications and IMF Direction of Trade Statistics (CD-ROM).

IV. Summary and Conclusions

Although the evidence presented above does not strongly reveal a preference for members of RTAs to initiate more measures against non-members, it definitely needs more underpinning. Perhaps the question also ought to be asked if there isn't a different approach would makes it easier to deal with the underlying AD issues. Would something headed in the direction of competition laws help?

Table 8: Anti-Dumping and Competition Laws: A Rough Comparison

		Anti-Dumping	Competition
Objectives:	Basic	?? Protects competitors (domestic).	?? Protects competition.
	Actual	?? Protects <u>domestic</u> competitors from foreign competitors.	?? Generally no distinction between domestic and foreign competition.
Initiation		?? Actions can only be initiated by executive branch and the relevant industry.	?? <u>In addition</u> , private litigants can initiate proceedings.
Administration		?? Partly/mostly by the executive branch/commerce or foreign trade ministry appeals through courts	?? Subject to full supervision by courts.
Standards		<u>Injury</u>	<u>Injury</u>
		?? Requires only showing that unfair practice " <u>contributed</u> " to material injury <u>above the so-called minimum injury level</u> (i.e. de minimus).	?? Requires <u>direct causation</u> and showing of unreasonable restraint of trade or substantial lessening of competition.
		Pricing	Pricing
		?? No requirements on intent.	?? Requires showing of predatory intent with respect to pricing aimed at competitors.
		?? Does not require showing of selling below-cost.	?? Requires showing of below - cost pricing <u>and</u> capability of recoupment.

The simplicity of the comparison between anti-dumping and competition laws in Table 5 of course glosses over the difficulties involved in an area that is viewed by some as a possible future fief of the WTO. As the organization itself noted in its 1997 review of trade and competition policy (WTO: 1997e, p. 33) the key issue can be summarized as follows: "will the positive spillovers from competition laws drawn up and applied basically for national purposes adequately address the problems for trading partners from trade restrictive or distortive enterprise practices?"

While the complexity of the issue is not a topic for this paper, what can be noted is that the primary role of the WTO itself is to avoid trade disputes, not to encourage them (Eglin: 2001, p. 14). Given this brief and keeping the "T in WTO", it would seem like a viable path for a country to fit WTO conform anti-dumping laws into domestic competition policy laws. This would help weed out most of the most evident misuses of AD laws. As the EU's chief negotiator in the Uruguay Round noted: dumping "is unfair by nature....If a period of selling at a loss forms part of an export strategy aimed at wiping out the competition in the target market" countermeasures are allowed (Palmer: 1996, p. 68).

All that would have to be done would be to apply competition principles and standards regarding price discrimination; the same would apply to pricing practices. AD proceedings within the country would be fully adjudicated in the courts with judicial procedures, presumption of innocence and higher standards of evidence. Finally AD proceedings would have to include a macroeconomic welfare analysis to cover the impact on consumers as well as the industry, whereby private litigants would be given a standing in the proceedings. Whatever, the issues need to be looked and more in depth, and I consider these brief remarks to be just the beginning of such a project.

Bibliography

- Blonigen, Bruce, Thomas J. Prusa (2001). Antidumping. Mimeo for NBER conference, March, 16-17.
- Eglin, Richard (2001). Keeping the "T" in the WTO: Where to on the Trade-Plus Issues?. Annual Meeting of AEA, New Orleans.
- Finger, J.M. (ed.) (1993). *Antidumping. How It Works and Who Gets Hurt*. Ann Arbor: University of Michigan Press.
- GATT (1989–1994). *Report of the Committee on Antidumping Practices*. Geneva.
- (1993). *Trade Policy Review (TPR): The Republic of South Africa. Vol. I and II*. Geneva.
- (1994). *Trade Policy Review (TPR): Australia. Vol. I and II*. Geneva.
- (1995). *Trade Policy Review (TPR): Japan 1994. Vol. I and II*. Geneva.
- Hoekman, Bernard (1998). Free Trade and Deep Integration. Antidumping and Antitrust in Regional Agreements. The World Bank, Policy Research Working Paper 1950, Washington, D.C.
- Jackson, J. (1994). *The World Trading System. Law and Policy of International Economic Relations*. Cambridge: MIT Press.
- Lindsey, Brink (1999). The US Antidumping Law – Rhetoric versus Reality. Trade Policy Analysis No. 7, Cato Institute, Washington, D.C., April.
- Messerlin, Patrick A. (2000). Antidumping and Safeguards. In: Jefferey J. Schott (ed.), *The WTO After Seattle*, Institute for International Economics, Washington: 159–183.
- Neufeld, Inge Nora (2001). Anti-Dumping and Countervailing Procedures – Use or Abuse? Implications for Developing Countries. UNCTAD Policy Issues in International Trade and Commodities Study Series 9, New York and Geneva.
- Pacific Economic Cooperation Council (2000). *Non-tariff Measures in Goods and Services Trade*, May.
- Palmeter, David (1996). A Commentary on the WTO Anti-Dumping Code. *Journal of World Trade* 30 (4): 43–69.
- Qureshi, Asif H. (2000). Drafting Anti-Dumping Legislation. Issues and Tips. *Journal of World Trade* 34 (6): 19–32.
- Vermulst, Edwin, Marius Bordalba (2001). Anti-Dumping and Safeguards in Foreign Markets: What to do? Paper prepared for the World Bank, Beijing 10/2001.
- World Trade Organization (1998). *Inventory of Non-Tariff Provisions in Regional Trade Agreements*, WT/REG/W26, 5 May.

- WTO (World Trade Organization) (1995–2000). *Report of the Committee on Antidumping Practices*. Geneva, respective annual reports.
- (1995). *Trade Policy Review (TPR): European Union 1995. Vol. I and II*. Geneva.
- (1996a). *Trade Policy Review (TPR): Korea 1996*. Geneva.
- (1996b). *Trade Policy Review (TPR): New Zealand 1996*. Geneva.
- (1997a). *Trade Policy Review (TPR): Brazil 1996*. Geneva.
- (1997b). *Trade Policy Review (TPR): Canada 1996*. Geneva.
- (1997c). *Trade Policy Review (TPR): Colombia 1996*. Geneva.
- (1997d). *Trade Policy Review (TPR): United States 1996*. Geneva.
- (1997e). *Annual Report, Vol. I*. Geneva.
- (2000). *Synopsis of "Systemic" Issues Related to Regional Trade Agreements*, WT/REG/W/37, 2 March.
- (2000). *Further Work on Systemic Issues*, WT/REG/W38, 20 June.
- (2001). Appellate Body (WT/DS141/AB/R). *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*. Geneva.
- (2002). *Basic Information on Regional Trade Agreements. Committee on Regional Trade Agreements*, WT/REG/W/44, 7 February.