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IMPACT OF ANTI-DUMPING AND COUNTERVAILING DUTY ACTIONS

Background note by the UNCTAD secretariat

Executive Summary

Anti-dumping and countervailing duty actions are legitimate measures permitted under the GATT/WTO rules, and are now the most frequently used trade remedies. Over the past decade, 2,500 anti-dumping actions and almost 300 countervailing duty actions have been initiated and notified to the GATT/WTO. The strengthening of the multilateral disciplines on safeguards — including the prohibition and elimination of voluntary export restraints and the commitments to phase out the Multi-Fibre Arrangement (MFA) quotas under the Agreement on Textiles and Clothing (ATC) — appears to have provoked an increasing resort to anti-dumping measures. Certain countries and product sectors, such as steel and textiles, have been targeted more than others.

At the same time, there has been an increasing resort to anti-dumping measures by non-traditional users — particularly developing countries — many of which have introduced anti-dumping and countervailing legislation since the entry into force of the WTO Agreements.

Developing countries continue to be the main targets of anti-dumping measures. This has the effect of creating instability and uncertainty for their exports, which has resulted in reductions in trade volumes and market shares for their goods.

The increased resort to anti-dumping measures and the rising number of disputes related to these measures, have prompted many countries, including several developing countries, to call for improvements in the application of these measures. This note identifies some major issues and areas of concern that have arisen in the ongoing debate on anti-dumping and countervailing measures which could be addressed by experts in the light of their concrete experiences.

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INTRODUCTION

1. The Bangkok Plan of Action (TD/386), in paragraph 132, provides that UNCTAD's work in the area of market access should relate first to analysis and, where appropriate — on the basis of the analysis — contribute to consensus-building, including on the impact of anti-dumping and countervailing actions. At the consultations of the President of the TDB with the Bureau, coordinators and interested delegations on 31 March 2000, it was decided to convene an Expert Meeting on the "Impact of Anti-Dumping and Countervailing Actions". This meeting will provide the opportunity for expert analysis of the major issues deriving from the application of anti-dumping (AD) and countervailing duties (CVD) measures, which in turn would contribute to consensus-building as to possible actions in this regard. This background note highlights some of the main areas of concern in the ongoing debate on the application of AD and CVD actions that the experts may wish to address based on their concrete experiences.

2. Leading economists have pointed out that the criteria used to justify anti-dumping actions make no economic sense, as they do not offer a basis for Governments to identify those interventions that would provide greater benefits than costs to the domestic economy.[1] However, as no country is proposing at this time that anti-dumping systems be abolished, the overall issue concerning the economic logic of anti-dumping duties would seem to be beyond the scope of the discussion at the expert meeting.

3. Anti-dumping duties (conceived in Canada at the beginning of the nineteenth century) were originally intended to deal with a situation where production was seen as an activity which essentially took place within national frontiers. However, the increasing globalization of production — whereby components and service inputs and assembly operations involved in the production of a traded product take place in different countries/locations — has changed the strategic role of anti-dumping actions. In the context of globalization, anti-dumping actions can represent strategic interventions to protect the interests of national firms, regardless of their production locations, or in competition among national firms, where they can be used to undermine the position of competitors by cutting off lower cost inputs. This has given rise to the use of "anti-circumvention" measures, to linkages with competition policy and to the use of rules of origin, which are discussed below.

1. OVERVIEW OF CURRENT TRENDS IN THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES

A. Anti-dumping measures

4. Since the launching of the Uruguay Round, and particularly since the entry into force of the WTO Agreements, the most noticeable change in the area of anti-dumping is the number and variety of countries using AD measures. Prior to the Uruguay Round, the primary users of anti-dumping measures were developed countries, which are considered to have comparatively open and liberal markets, such as Australia, Canada, the European Union (EU) and the United States.[2]

5. Over the past decade (i.e.1990-1999), 2,483 anti-dumping cases were initiated and notified (see chart E). Of these nearly 50 per cent were initiated by the EU, Australia, the United States and Canada (see table I). In addition, non-traditional users, among them many developing countries, increasingly resorted to such measures. They accounted for 965 cases or 39 per cent of the total number of cases of anti-dumping initiated during this period. Their increasing use of such measures is due to increasing pressure on their Governments to adopt anti-dumping legislation to protect domestic industries against injury from imports following their significant reduction and elimination of tariffs and non-tariff measures during and after the Uruguay Round.

6. During the period, 1990-1994, of the 1,254 anti-dumping measures initiated, developed countries accounted for 867 cases (or 69 per cent)[3] and developing countries, including economies in transition, for 387 cases (or 31 per cent). During the first five years of operation of the WTO Agreements (i.e. 1995-1999), there were 1,229 anti-dumping initiations of which 651 (or 53 per cent) were initiated by developed countries and 578 (or 47 per cent) by developing countries, including economies in transition. As shown in charts A and B, the number of anti-dumping actions initiated by developing countries thus increased by 16 per cent in the second five-year period.

7. However, developing countries have continued to be the main targets of anti-dumping measures (see charts C and D). During the period, 1990-1994, 469 (or 37.4 per cent) of 1,254 cases were targeted at imports from developed countries compared with 785 cases (or 62.6 per cent) targeted at imports from developing countries and economies in transition. During the first five-years of operation of the WTO Agreements, 411 (33.4 per cent) of 1,229 cases were targeted at developed countries' imports and 818 (or 66.6 per cent) were applied against imports from developing countries and economies in transition.

8. During the period, 1990-1994, 97 per cent of the 1,254 cases were initiated by15 major users as follows: Australia (260), the United States (259), the European Union (183), Mexico (139), Canada (99), Brazil (67), Argentina (60), New Zealand (30), Turkey (28), Poland (24), the Republic of Korea (19), South Africa (16), India (15), Colombia (14) and Austria (9). During the first five years of operation of the WTO Agreements (i.e. 1995-1999) 20 major users accounted for 96.7 per cent of the 1,229 cases. These were: the European Union (189), India (140), the United States (132), South Africa (129), Australia (100), Argentina (96), Brazil (68), Canada (56), the Republic of Korea (41), Mexico (37), Indonesia (33), Venezuela (26), New Zealand (24), Peru (22), Egypt (21), Israel (21), Malaysia (16), Colombia (14), the Philippines (12) and Turkey (11). While the major users (such as Australia, the United States, Mexico and Canada) resorted less frequently to anti-dumping measures during 1995-1999, many non-traditional users increased their resort to these measures, including India, South Africa, Argentina, the Republic of Korea and Indonesia (see table I).

9. During the period, 1990-1994, the major targeted suppliers were China (149), the United States (105), the Republic of Korea (73), Brazil (65), Japan (63), Taiwan Province of China (52), Germany (49) and Thailand (37). During the first five years of operation of the WTO Agreements (1995-1999), the major victims of anti-dumping measures were China (159), the Republic of

Korea (98), the United States (79), Taiwan Province of China (60), Japan (58), Germany (50), India (48), Indonesia (47) and the Russian Federation (47). Over the past decade, China has been the most targeted party for anti-dumping actions, facing 12.4 per cent of the total notified cases over the past decade (see table II).

10. The United States has also become one of the major targets of anti-dumping actions by its trading partners, including many non-traditional users, accounting for 7.4 per cent of the total cases. According to the Import Administration of the United States Department of Commerce, as of 30 June 1998, United States products were subject to 163 foreign anti-dumping and countervailing duty measures initiated by 20 trading partners, including China and Taiwan Province of China.[4] Other major targets are the Republic of Korea (accounting for almost 7 per cent of the total cases), Japan (5 per cent), Taiwan Province of China (4.5 per cent), Brazil (4.3 per cent), Germany (4 per cent) and India (3.4 per cent).

11. Another interesting trend, as noted by a recent report,[5] is the increase in anti-dumping investigations by third countries against the EU as a whole, even in cases where the complaint contains allegations of dumping by companies in one or two EU member States only. The report noted that in the past, third countries used to impose anti-dumping measures on imports originating from one or several EU member States but not on the EU as a whole. In fact, the EU would become the largest target of anti-dumping actions if all the measures initiated against the individual EU member States over the past decade were added up (which would be around 380 cases or 15.5 per cent of total initiated cases).[6] In addition, there has been a rise in anti-dumping actions initiated by developing countries against other developing countries. Some of these have been the subject of WTO dispute settlement cases.[7]

12. As of 31 December 1999, there were 1,080 definitive anti-dumping duty measures (including undertakings) in force, as notified (see table III). More than 30 per cent (315 measures) of these were maintained by the United States, almost 18 percent (190) by the EU, 8 per cent (86) by South Africa, nearly 7.5 per cent (80) by Mexico, more than 7 per cent (79) by Canada and nearly 6 per cent (64) by India. These measures have mainly affected China (18.3 per cent), the EU (14.4 per cent and in most cases its individual Member States), Japan (7.6 per cent), Taiwan Province of China (5.5 per cent), the United States (more than 5 per cent), the Republic of Korea (5 per cent), Brazil (4 per cent) and India (more than 3 per cent).

B. Countervailing measures

13. Countervailing measures have been used to a lesser extent (see chart K). Over the past decade, 285 cases of countervailing duty were initiated and notified. Of these, 210 (or 74 per cent) were initiated by developed countries and 75 (26 per cent) by developing countries, including economies in transition.

14. For the period, 1990-1994, 185 cases of countervailing duty were initiated — 125 (or 68 per cent) by developed countries and 60 (or 32 per cent) by developing countries (see chart G).

The major users of countervailing duty measures were the United States (77), Australia (41), Brazil (24), Mexico (17) and Chile (14). The main targeted parties were Brazil (16), the EU (12), South Africa (10), Italy (8), Venezuela (8), China (7), Malaysia (7) and the United States (7) (see chart H). There has been a decline in the initiation of investigations of countervailing duty since the entry into force of the WTO Agreements. During the first five years of operation of the WTO, there were about 100 notified cases, most of which were initiated by the EU (33) and the United States (33) (see chart I). The main targeted parties were India (16), Italy (10), the Republic of Korea (9), EU (7), Indonesia (6), Thailand (6), Taiwan Province of China (6) and South Africa (5) (see chart J).

2. THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES AND ITS IMPACT ON MEMBER STATES, IN PARTICULAR, DEVELOPING COUNTRIES

15. Anti-dumping and countervailing measures are legitimate trade remedies permitted under the GATT/WTO rules. However, as they can be invoked relatively easily and selectively compared to other trade measures, anti-dumping measures are now the most frequently used trade remedies. The application of anti-dumping measures has become a mechanism under which Governments can cede to strong sectoral protectionist pressures without deviating from the overall direction of their trade policy. According to a controversial 1996 OECD study, 95 per cent of anti-dumping cases are actually designed to safeguard domestic industry from increased imports, and 5 per cent are related to anti-competitive practices.[8]

A. Key sectors affected by anti-dumping and countervailing duty measures

16. Anti-dumping and countervailing measures initiated over the past decade cover a large number of tariff lines. As shown in chart F, sectors that have been most affected by anti-dumping cases are: metals and articles thereof (accounting for 727 initiations, or almost 30 per cent of the total cases); chemicals (404 initiations or16 per cent); plastics (282 initiations or 11 per cent); machinery and electrical equipment (254 initiations or 10 per cent); textiles and clothing (197 initiations or almost 8 per cent); pulp (111 initiations or 4.5 per cent); and stone, plaster and cement (91 initiations or almost 4 per cent). Chart L shows the products most targeted by countervailing measures. These are base metals (118), prepared foodstuffs (44), live animals and animal products (26), textiles (21), vegetable products (15), plastics (13) and chemical products (11). Since the strengthening of the multilateral disciplines on safeguards — including the prohibition and elimination of voluntary export restraints (VERs), and the phasing out of MFA quotas under the ATC — there has been clear evidence of an increased resort to anti-dumping and countervailing measures in particular sectors, notably steel products and textiles.

17. A recent report by Barringer and Pierce (2000)[9] pointed out that the United States steel industry over the past three decades has gone through the following different periods of protection: “voluntary restraint agreements (VRAs) from 1969 to 1974; a Trigger Price Mechanism (TMP) from 1978 to 1982; a decade of new VRAs from 1982 to 1992, and finally the most recent era of twin sets of massive anti-dumping and countervailing duty (AD/CVD) litigation

(1992-93 and 1998-99)." According to the report, after the second set of VRAs expired in March 1992, the United States steel industry filed AD/CVD petitions against virtually all flat-rolled steel products from 21 countries in June 1992, affecting US$3.5 billion in annual foreign sourcing by United States consumers. While the investigations proceeded as expected at the United States Commerce Department, the United States International Trade Commission ultimately rejected approximately half of the petitions for lack of injury. Anti-dumping and countervailing duties were imposed on the remainder. The report points out that, as of 1 August 1999, of 286 United States anti-dumping orders, 110 (or 37 per cent) were steel-related.

18. While the imposition of high AD/CVD duties on steel products cost United States consumers billions of dollars,[10] the export interests of the countries affected by these measure were also significant. According to United States trade data,[11] Argentine exports of *carbon steel wire rod* to the United States declined by 96 per cent following the issuance of the order with export volumes dropping from 68,335 net tons in 1983 to 2,756 net tons in 1997 (the year after the imposition of the duty). Exports of the same product originating from Mexico also dropped by 94 per cent — from 2,882 tons in the year preceding the imposition of the duty to 112 tons the year after. There is evidence that imports have sharply declined or ceased in numerous other cases such as *steel wire rope* from Japan and from the Republic of Korea, and *roller chain, other than bicycle,* from Japan.

Why has the steel sector become a prime target of anti-dumping and countervailing actions? Has this had a significant effect on trade?

19. According to available information,[12] during the first five years of operation of the WTO Agreements, nearly 20 per cent of the anti-dumping measures initiated by the EU were related to textiles. This made the EU the most frequent user of anti-dumping measures against textiles. These measures were primarily aimed at imports from developing countries. Since many imports of textiles from developing countries had already been subject to quota restrictions, they experienced what has been described as a "double jeopardy" situation.

20. A review by the International Textiles and Clothing Bureau (ITCB, 1999/2000) of EU anti-dumping measures in this sector reveals that: (i) the ratio between initiation of anti-dumping investigations and final measures for textiles is around one third, the lowest among the key sectors investigated; (ii) the products targeted have been mainly fibres, yarns and fabrics (i.e. products in the upstream segment of the textile chain); and (iii) the number of measures in the textiles sector surpassed those in other sectors with the exception of steel products.[13] The review also indicates cases of repeated recourse to AD action against several products from a number of developing countries whose exports of these products had already been under restraint. For example, in the case of imports of grey cotton fabrics originating from China, Egypt, India, Indonesia, Turkey and Pakistan, and of imports of bed linen from Egypt, India and Pakistan, the EU repeatedly initiated several investigations from 1994 to 1997. These so-called "back to back" investigations have caused concern to textile exporting countries. According to analyses by the ITCB,[14] the trade volume of the six targeted countries in total imports of cotton fabrics by the EU

fell from 121,891 tons in 1994 to 88,306 tons in 1997. Their market share declined from 59 per cent in 1993 to 53 per cent in 1996, and again to 41 per cent in 1997. The annual growth rate of their exports to the EU market dropped sharply from 4 per cent in a prior period (1988-1994) to minus 10 per cent in the period of investigation. Eventually, the case was dropped with no anti-dumping duties imposed.

Will the phasing out of MFA quotas under the ATC lead to an increase in anti-dumping actions in this sector as has been expected by some leading economists?

B. The major problems faced by developing countries in defending their exports allegedly being dumped or subsidized

21. As indicated in section 1, 66.6 per cent of the total anti-dumping actions initiated during the first five years of operation of the WTO Agreements were targeted at developing countries. This has created instability and uncertainty in the markets for many developing countries, affecting both production and employment. The adverse impact of these measures on developing countries may be much greater than the actual trade involved as the initiation of anti-dumping and countervailing actions can have an immediate impact on trade flows and prompt importers to seek alternative sources of supply. Even if final duties are not imposed, as demonstrated in the grey cotton fabrics case described above, the initiation of investigations entails a huge burden for respondents, in particular, those in developing countries. In some cases, it would seem that petitioners initiate actions or threaten such initiation only to "harass" importers, as they are often aware that the outcome of the investigations are likely to be negative and that they are not required to pay the legal fees of successful defendants. (Of course, if the cases are successful, the exporters do not have to pay the legal fees of the domestic industry either). Consequently, suppliers often raise prices or withhold supplies to avoid being drawn into such action.

22. Anti-dumping and countervailing investigations are also frequently used by established suppliers to dissuade new entrants that are particularly vulnerable as they usually need to offer their products at lower prices. A typical case in this regard was that of *General Motors of Canada Ltd. and Ford Motor Co. of Canada Ltd. v. Hyundai*.[15] Another example is the salmon case between the United States and Chile.[16]

23. Small and medium-sized exporting firms in developing countries have difficulty defending their interests because of the complexities of the system and the costs of cooperation in investigation proceedings.[17] And generally their Governments can provide them with only limited, if any, assistance for defending their cases. As a result, the percentage of cases resulting in measures is usually higher for imports from developing countries than for those from developed countries.[18]

24. WTO rules governing anti-dumping and countervailing actions involve obligations with respect to investigatory procedures, administrative and judicial practices, review procedures of the importing countries and eventual recourse to the WTO dispute settlement mechanisms. Efforts to establish greater precision and predictability in the rules with a view to facilitating trade have

led to increasing complexity of the WTO rules. In general, the greater degree of complexity in AD/CVD procedures weighs disproportionately against developing countries and their small firms as they have relatively less developed administrations, incomplete knowledge of laws, regulations and administrative practices of the importing countries and less expertise in dealing with allegations of dumping and subsidization. This creates particular problems for them in effectively defending their rights and interests in the complex proceedings. As a result, some exporters from developing countries simply prefer to withdraw from markets.

In this context, the experts may wish to provide concrete examples of: (i) the difficulties and challenges that developing country Governments and firms, especially their SMEs, are facing in responding to allegations of dumping and subsidization; and (ii) concrete examples of how the initiation of anti-dumping actions have led to the withdrawal from markets or to the pre-emptive raising of prices.

25. Countries that are in the process of transition to a market economy, particularly those that have made significant progress in their economic reforms, are still considered as "non-market economies" by their major trading partners. These trading partners continue to use discriminatory criteria (i.e. using surrogate values from comparable market-economy countries) to value the factors of production in the "non-market economies". As these surrogate values are frequently arbitrary,[19] they often result in high — sometimes extremely high — dumping margins for the "non-market economy" exporters.[20] While the methodologies used for "non-market economies" are legitimate under the GATT/WTO rules,[21] it can be argued that such methodologies should no longer apply because they are limited to countries which have a "complete or substantially complete" monopoly of their trade and where "all domestic prices are fixed by the state," a situation which is now rare. As many "non-market economies" are also developing countries, their disadvantaged situation is also noteworthy.[22]

Can examples be given where the application of a "non-market economy" provision has resulted in exceptionally high AD duties, or more frequent resort to AD actions? Can administering authorities explain how they attempt to ensure fairness in calculating the surrogate values?

C. The major challenges faced by developing countries in using AD/CVD measures to protect their domestic industries from injury imports

26. With the significant reduction of tariffs and elimination of non-tariff measures by developing countries, their Governments are under increasing pressure to use anti-dumping and countervailing duty actions to protect their domestic industries against injury from imports.[23] Since the entry into force of the WTO Agreements, many developing countries have adopted anti-dumping legislation.[24] In addition, a number of countries that are currently in the process of acceding to the WTO have also adopted relevant national legislation or are preparing to do so.[25]

27. Many developing countries are facing difficulties in applying anti-dumping and countervailing actions. Such imposition requires substantial financial and human resources and expertise to carry out the detailed investigations in order to comply with the relevant provisions of the WTO agreements. If they do not comply, they risk being brought before the WTO dispute settlement mechanisms, where they have difficulties in defending their interests.

Can concrete examples be provided to indicate the difficulties faced by developing country administrations in applying anti-dumping and countervailing duties, and in respecting the procedural and substantive provisions of the relevant WTO Agreements? Can developing countries elaborate on the problems they have faced in WTO dispute settlement proceedings?

3. IMPLEMENTATION OF THE WTO AGREEMENTS ON ANTI-DUMPING AND COUNTERVAILING MEASURES

28. The Uruguay Round negotiations on anti-dumping resulted in the third multilateral agreement on this subject (on the implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994)) which introduced a greater degree of predictability in the application of anti-dumping measures. The main thrust of the resulting WTO Agreement on Anti-Dumping (AAD) was to harmonize practices among the major users at the time. However, it did not result in limiting the scope of application of anti-dumping actions.

29. Compared to the Tokyo Round Subsidies Code, the Uruguay Round Agreement on Subsidies and Countervailing Measures (ASCM) provided more explicit definitions of subsidies[26] and stronger, clearer disciplines over subsidies, but also on the use of countervailing duties. This may explain the observed decline in the initiation of countervailing investigations since the entry into force of the WTO Agreements. On the other hand, it is possible that resort to subsidies may have also decreased. In any case, anti-dumping actions are perceived as "easier" and more "politically correct" as they do not call into question the exporting countries' government policies. Since research and development (R&D), regional assistance and environmental subsidies are no longer non-actionable, the application of countervailing duty actions is expected to increase.

A. Disputes relating to the application of AD/CVD measures

30. Since the entry into force of the WTO Agreement on 1 January 2000, 24 disputes related to the AAD had been referred to the WTO dispute settlement procedures (as of 22 June 2000), accounting for 12 per cent of the total disputes before WTO. The petitioners for these anti-dumping disputes were mainly, Mexico (6), the EU (4), the Republic of Korea (3), India (3), Costa Rica (2), the United States (2) and Japan (2); and the respondents were mostly the United States (8), the EU (2), Guatemala (2), Mexico (2), Argentina (2), Ecuador (2) and Trinidad and Tobago (2). The main products involved included steel products, cements and pasta.

31. With respect to the application of countervailing duty measures, six disputes[27] have been referred to the WTO dispute settlement proceedings. The petitioners were the Philippines, Sri

Lanka, the EU (2), Canada and Chile; and the respondents were Brazil (2), the United States (3) and Argentina. The main products involved were agricultural products.

B. Work at the WTO Committee on Anti-Dumping Practices

32. Pursuant to Article 16 of the Agreement on Anti-Dumping, the Committee on Anti-Dumping Practices (ADP) was established to monitor implementation of the Agreement by WTO members and as a forum to "afford Members the opportunity of consulting on any matters relating to the operation of the Agreement and the furtherance of its objectives."

33. Since the entry into force of the WTO Agreement, the Committee has conducted a series of reviews on national legislation and their consistency with the Agreement based on notifications submitted by WTO members. During these reviews a number of issues, both procedural and substantive, were raised with respect to the implementation of the Agreement.

C. Discussions at the Ad Hoc Group on Implementation

34. In order to further clarify and prepare recommendations on the issues raised by the Committee on Anti-Dumping Practices with respect to the implementation of the Agreement, an Ad Hoc Group on Implementation was established. At its recent meeting, the group decided to set the following topics aside from active consideration: treatment of confidential information, sampling methods, special circumstances, notification by exporting members, hearings, disclosure of essential facts, public notices and duty assessment. As decided by the Committee on Anti-Dumping, the group will take up the following new topics: price comparisons, *de minimis* import volume, cumulation, questionnaires and requests for information, opportunities for industrial users and consumer organizations to provide information and new shipper review. The group will discuss these new topics with the intention to develop agreed understandings or recommendations on implementation for consideration by the Committee on Anti-Dumping.[28] It has been widely suggested that the group should be undertaking a more ambitious work programme and producing more and faster results in the form of formal recommendations on implementation of the Agreement on Anti-Dumping.[29]

D. Discussions at the Informal Group on Anti-Circumvention Measures

35. The Marrakech Ministerial Meeting which concluded the Uruguay Round decided to refer the question of anti-circumvention measures to the WTO Committee on Anti-Dumping Practices for resolution. In April 1997, the Committee on Anti-Dumping established an Informal Group on Anti-Circumvention to continue the discussions and to make recommendations concerning these issues for consideration. In October 1997, the Informal Group started to discuss the first topic in the agreed framework, namely, "What constitutes circumvention?" However, after more than two years of discussions the group has not made any substantial progress.[30]

36. Anti-circumvention measures are directed essentially at two phenomena: (a) when an

exporter subject to anti-dumping duties assembles the product in question in a third country and continues to export to the market in question from that country (third country circumvention); or (b) when the parts and components are exported to the market in question and assembled there (importing country circumvention).[31] Anti-circumvention measures are examples of "globalization" provoking a trade policy response. In the absence of multilaterally agreed rules on circumvention, a number of WTO members have unilaterally adopted anti-circumvention legislation. These include the EU, the United States, as well as some developing countries such as Argentina, Colombia and Mexico. It has been suggested that the problem of circumvention can be dealt with as an issue under the rules of origin or classification. Some experts and trade policy practitioners believe that the problem of "third country circumvention" is due to the absence of codified and detailed multilateral non-preferential rules of origin.[32] As a result of this, ad hoc and discretionary practices in defining origin have sometimes been used by the national investigating authorities of the importing countries. The WTO Agreement on Rules of Origin clearly stipulates that the eventually harmonized rules of origin shall be used in all WTO instruments of commercial policy. However, it remains to be seen if the final results of the harmonization of rules of origin will be suitable for use in anti-circumvention cases.

37. Some experts and trade policy practitioners are of the view that a reasonable multilaterally agreed upon anti-circumvention provision is preferable to the current jungle. While suggesting that the Dunkel draft of the Uruguay Round provides a reasonable starting point for continued negotiations, it is also emphasized that precise definitions on key terms would be essential.[33]

E. The WTO Working Group on Interaction between Trade and Competition Policy

38. The first WTO Ministerial Conference held in Singapore in December 1996 decided to establish a working group to study issues relating to the "interaction between trade and competition policy." In addressing the relationship between competition policy and anti-dumping measures, it expressed the view that anti-dumping rules aimed at protecting competitors from allegedly unfair trade, whereas competition rules sought to protect competition. It also found that anti-dumping measures were often used by firms as a strategic tool to restrain or eliminate competition in the market as even the threat of anti-dumping action could have restrictive effects on competition and induce exporters unilaterally to reduce their exports, raise their prices, or change their production location.[34]

39. Regarding the anti-competitive effects of anti-dumping and countervailing measures, some expressed the view that the Working Group should consider ways and means to ensure consistency between trade policy and competition policies, and that there was need to carry this out through discussions on the existing anti-dumping measures.[35] However, others opposed the review of anti-dumping measures and suggested the Group should focus on competition policy instead and leave trade measures alone.[36]

40. Certain regional agreements, such as the European Economic Area (EEA)[37] and the Australia/New Zealand Close Economic Relation Trade Agreement,[38] have succeeded in replacing the anti-dumping regimes with competition policy. Anti-dumping has also been eliminated in the

Canada-Chile Free Trade Agreement (FTA).

F. Discussions within the context of the ongoing process of "implementation"

41. Among the steps to rebuild the confidence of the international community following the breakdown of the WTO Seattle Ministerial Conference, a programme for addressing implementation issues and concerns was adopted at the meeting of the WTO General Council on 3 May 2000. Under the programme, the Special Session of the WTO General Council held the first round of discussions from 23 June to 3 July 2000 to consider proposals on implementation, especially those reflected in the compilation of proposals in WTO document Job(99)4797/Rev.3 of 18 November 1999 and in paragraphs 21 and 22 of the draft Ministerial Text of 19 October 1999 (WTO document: Job(99)5868/Rev.1). It was also decided that the Special Session of the WTO General Council would hold the second round of discussions on 18-19 October 2000. Anti-dumping and countervailing duties were the subjects of many of these proposals.

42. Some of the proposals made to improve the AAD relate to aspects which may need adjustments and/or refinements to take into account differences in production and accounting methods. Others relating to implementation aspects concern difficulties which may arise, not as a violation of the obligations contained in the AAD, but rather from national practices making full use of the flexibility resulting from imprecise and ambiguous provisions in the AAD. The following issues have been suggested as crucial to the improvement of the anti-dumping and countervailing duty regimes:

(i) The "5 per cent representative test rule"

43. In determining the margin of dumping, the normal value based on sales in the domestic market is preferred to the other alternatives (which entail complicated calculations and may lead to high normal values). Before the entry into force of the WTO Agreement, the importing countries used different bases to calculate the threshold for assessing whether sales in domestic markets were sufficient for determining normal value. Footnote 2 of Article 2.2 of the AAD sets a predictable and transparent "5 per cent representative test rule". Under this rule, insufficient domestic sales may be deemed to be those representing less than 5 per cent of the sales exported to the market in question. However, a lower ratio should be acceptable if it is nonetheless of a sufficient magnitude to provide for a proper comparison. The idea behind the rule is that small transaction volumes may entail prices reflecting circumstances that are not representative of a normal market situation.

44. However, as pointed out by some experts, [39]the problem here is that there is a lack of clarity in the AAD as to how the "5 per cent rule" should be applied; the rule, as currently set out, perhaps too easily results in usable sales being rejected. While some WTO members apply the "5 per cent rule" on a global basis (i.e. all domestic sales are measured against all export sales of the product concerned and if the "5 per cent rule" is passed, all domestic sales are used), others apply it differently.[40] Nearly always, the types of goods exported are different from those sold on the

domestic market. In such a situation, at a global level, the "5 per cent rule" will be passed. But, for each type of good exported, there may be a relatively small quantity of exactly the same type of good sold domestically and resort can then be had to constructed normal values. In order to minimize such ambiguities and to maximize the use of actual prices, some improvements are clearly needed in the AAD.

What is your national experience in making use of this provision? What impact has this provision had on the determination of normal value? Could the application of this rule lead to unreasonable results? Do you have any suggestion on how to amend or better administer and implement the AAD in this respect?

(ii) Sales below cost of production

45. For cyclical products, such as synthetic textiles (which rely heavily on petrochemicals), steel and semi-conductors, a certain amount of sales below cost of production may occur, especially where the cycle is at the bottom — a problem peculiar to the business cycle. With respect to other products, such as consumer electronics and office automation equipment, the product cycle is more important because products constantly change. Once new models are introduced at premium prices, old models are then often sold at basement prices.

46. Article VI of the GATT and previous anti-dumping codes did not address the issue of sales below cost. However, an informal agreement between the major users, at that time, of anti-dumping measures was reached in 1978. This informal agreement was basically taken over in AAD Article 2.2.1 (as indicated in its footnote 5) sales below cost of production – 20 per cent threshold. The provisions of the AAD on sales below cost are a step forward because they provide detailed rules and therefore limit the amount of discretion that can be exercised by authorities. However, the rules are still very restrictive and permit unreasonable findings of dumping. Thus, there is a need to increase the substantial quantity test from the present 20 per cent threshold to a higher percentage. Some experts have suggested that the threshold should be raised to 40 per cent.[41]

Under what circumstances do sales-below-cost reflect commercial considerations rather than an intention to dump? If the suggested threshold reflects the realities of business cycles, do you wish to consider it and take into account the experiences gained during the operation of the Agreement? Do you have alternative ideas or justifications for a threshold?

(iii) Minimum volume of profitable sales

47. It is generally considered acceptable to ignore domestic sales below cost in cases where the average selling price is below the average cost during the investigation period. However, in most cases, the situation is more complicated and the average sales price will be above average cost, yet substantial sales below cost may occur. Two questions then arise. Should normal value be based on all domestic sales, including those made at a loss? Secondly, under what

circumstances should sales prices be ignored altogether? The first question has been discussed above. However, there is no guidance on the minimum volume of profitable sales to be used for normal value (the alternative being constructed normal value). Some countries have an explicit volume prescribed in their legislation (there must be a minimum of 30 per cent of domestic sales made at a profit in order for the profitable prices to be used).[42] Some have an informal guideline minimum of 10 per cent of domestic sales, while others have no minimum requirements. It is suggested that there should be a consistent approach on this issue between WTO members, as these different approaches can produce radically different dumping margins from the same data set.

Can these different approaches produce radically different dumping margins from the same data set? If so, what thresholds do you suggest for establishing a consistent approach to this issue?

(iv) Need for clarification of imprecise expressions

48. In the determination of domestic prices, Article 2.2 of the AAD refers to the expressions of "ordinary course of trade" and "particular market situation". As these expressions are vague and imprecise, they can be interpreted in different ways. For example, the term "ordinary course of trade" can be explained as "ordinary course of trade by reason of prices" (e.g. where prices are below cost), or as "ordinary course of trade by domestic prices to related customers" (i.e. transfer prices).

49. Another ambiguity in Article 2.2 of the AAD concerns the use of other companies' prices in addition to cost of production or export prices to a third country.

50. It has been suggested that clarifications to this Article are required with a view to reducing the degree of uncertainty facing exporters and curbing the discretion of the anti-dumping authorities.

What imprecision in the AAD can provide excessive flexibility to administering authorities in determining dumping, and injury and in calculating dumping margins?

(v) The problem of the reasonable profit margin in constructed normal values

51. Article 2.2 of the AAD provides that a constructed normal value must include a reasonable amount for profits. Article 2.2.2 provides two concrete examples of manners in which profit margins may be calculated. In the case of H-beams,[43] for example, WTO panels have held that these methods are, by definition, reasonable. Yet, it is a fact that the resulting profit margin may be very high — more than 36 per cent as in the H-beams case. Thus, it is suggested that there is a need for revision of the AAD provisions in this regard.

Have you had experience with cases where the reasonable profit margin calculated in

accordance with Article 2.2.2 was unusually high with respect to the product concerned?

(vi) Comparison between export price and normal value

52. Article 2.4 of the AAD requires that the comparison between export price and normal value should be done on a weighted average-to-weighted average basis, or on a transaction-to-transaction basis, subject, however, to three major exceptions. In practice, this rule has been viewed as rather vague, as a result of which it can be applied with discretion by the national investigating authorities. Second, some jurisdictions take the position that the provision applies only to original investigations and not to annual reviews. Third, some jurisdictions take the position that inter-model zeroing is still allowed. Therefore, it is suggested that the exceptions should be abolished and it should further be clarified that weighted average-to-weighted average or transaction-to-transaction comparisons should be made both in original and in review investigations, and not only intra-model, but also inter-model.

Which method do you apply? Have you encountered instances where use of one method rather than another had a significant impact on the result of the case? Have you encountered other problems than those signaled here?

(vii) Method of calculations and adjustments in the determination of normal value

53. In developing countries, in particular, it may often be impossible to distinguish in a warehouse the amount of domestic inputs and imported inputs utilized in the production of a finished product. This may be an excuse for authorities to reject duty drawback claims, resulting in excessive normal values and high dumping margins.

54. Normally export credit terms are netted back to the ex factory prices. However, practice indicates that, unless the credit terms are laid down in a contract or letter of credit, they have to be disregarded. Such formal arrangements are normally concluded in export transactions when dealing with foreign clients and are consequently deducted from the export value calculations. However, the same situation in the domestic market may vary given the actual business relations in the home market where, in some cases, credit terms are not supported by a formal contract or a letter of credit. This may lead to disregarding the credit terms in the determination of normal value while accounting for it in the determination of the export price. This asymmetry may lead to a dumping finding that has much more to do with the way business is conducted than the concept of unfair competition.

Have you encountered problems with duty drawback, credit terms, level of trade or other adjustment issues? Could you give examples? Should there be special and differential evidentiary treatment for developing countries?

(viii) De minimis margins

55. Article 5.8 of the AAD provides that anti-dumping duties shall not be imposed, if the dumping margin is less than 2 per cent, expressed as a percentage of the export price. However, some countries so far have applied this standard only to newly initiated cases not in review and to refund cases. This has been upheld by the WTO panel on DRAMS (Dynamic Random Access Memory Semiconductors).[44] It has been proposed that this margin be raised to 5 per cent.

Would an increase in the threshold provide meaningful benefits to developing countries in practice?

(ix) Standing (or the threshold for determining whether a "major proportion" of the industry supports an anti-dumping complaint)

56. Recourse to an anti-dumping action always starts with a complaint received from the domestic producers of goods that compete with the imported goods. In order to make the complaint by the domestic industry stand up to injury analysis, it must be made by or on behalf of the domestic industry and must be supported by producers whose collective output of the goods represents 25 per cent or more of total domestic production, and more than 50 per cent (volume-wise) of the producers must support the complaint.

57. This threshold for determining whether a "major proportion" of the industry supports an anti-dumping complaint is not clearly defined. It could include a situation where less than 50 per cent of production is considered to be the domestic industry. Using the 25 per cent complainants' standing test, for example, is literally consistent with the WTO. However, using 25 per cent as the basis to determine a "major proportion" potentially allows the injury analysis to be done on the basis of a minority of the industry. There are cases where it is clear that the complainants are the least efficient producers in the market and such a low threshold allows decisions on injury to be made on the basis of an unrepresentative sample of the industry. As a result, the various WTO members have used different criteria in defining the "major proportion".

58. Furthermore, it should be noted that the lower criteria used in practice are also due to the interpretation of the term "related". According to Article 4.1(i) of the AAD, producers that are "related to the exporters and importers" are excluded from the calculation, thus leaving the effective thresholds below the 50 per cent and 25 per cent stated in Article 5.4 of the AAD. As the process of globalization advances, more firms will be involved in both domestic and foreign production of the same product and thus, there will be a tendency for these thresholds to be further eroded over time. In this regard, a matter of particular concern is the footnote to Article 1.2 of the WTO Agreement on Rules of Origin which explicitly excludes from its scope of application the definition of domestic industry in anti-dumping proceedings as this may allow the investigating authorities to continue to use arbitrary standards for determining whether a domestic producer is really "domestic".

59. Lastly, because of confidentiality, it is often impossible to verify authorities' statements that the 25 per cent and the 50 per cent tests have been met. Yet WTO panels have held that

exporters have the burden of proof on this point, if they wish to challenge it.

Have you encountered examples of producers who account for a relatively low proportion of domestic production successfully initiating anti-dumping actions? Have you seen cases where you had doubts as to whether the tests had been met, but could not get access to the relevant information?

(x) De minimis injury (or negligible import volumes)

60. The *de minimis* injury standard is set in Article 5.8 at less than 3 per cent of imports into the market in question. Some WTO members (e.g. the EU) have introduced a standard in relation to market share (i.e. *de minimis* imports are those with less than 1 per cent of market share). The problem with such a provision is that total consumption (which is required to calculate market share) is often only an estimate. To this extent the 3 per cent test is more reliable and likely to be more consistent. However, the greater reliability of the 3 per cent test does not alter the fact that this is still a rather small proportion of total imports, and in fact, can often be a very small figure in terms of the overall market for the product concerned. As a result it is often difficult to see how such a proportion of imports could be construed as causing injury. It has been proposed that this be increased to 5 percent.

Would such an increase in the de minimis share of imports avoid the application of anti-dumping duties?

(xi) Article 3 of the AAD

61. With regard to the determination of injury, the inadequate application of Article 3 of the AAD in concrete cases has become a matter of concern rather than the provision itself. In particular, more transparency should be provided in the calculation of injury margins. Furthermore, although both the injury and dumping margin must be calculated, the anti-dumping duty should reflect the lower of these two margins.

Can you cite some examples or share your experience as to how Article 3 of the AAD has been applied in concrete cases?

(xii) Lesser duty rule

62. A key provision of Article VI of the GATT (1994), reiterated in Article 9, is that anti-dumping duty shall not exceed the margin of dumping established. Indeed the text says that it is desirable that a lesser duty be imposed if that would be sufficient to remove the injury being caused (often called the lesser duty rule). However, this latter point is not a compulsory requirement, and not all members follow it. This is a matter for national legislation but, even apart from grounds of equity, it is in the broader national interest to follow a lesser duty rule instead of giving the domestic industry concerned what would constitute additional protection, albeit not

inconsistent with the member's WTO obligations. It has been proposed that the lesser duty rule be made mandatory.

Can you provide examples of where the lesser duty rule has not been applied? Does the lesser duty rule in your experience meaningfully minimize the level of duties imposed?

(xiii) Duration (or Sunset Review)

63. Anti-dumping and countervailing actions are supposed to be temporary measures. In reality, many measures have remained in place for a long time and some even for decades. For example, among the measures in force at 31 December 1999 as notified by the United States to the WTO, a number of cases have been maintained for almost three decades.[45] Despite some improvements as a result of the sunset reviews, it is clear that there is a need for further improvements with a view to preventing these measures from becoming long-term trade obstacles. The major problem is the difficulty faced by the exporters concerned to establish that dumping and injury are not likely to continue or recur as Article 11.3 of the AAD allows national authorities to administer their sunset reviews in a narrow manner. In order to improve the situation, some practitioners have suggested that the "standing" threshold should also be clearly specified in this regard and must be met before any decision on whether or not an anti-dumping measure should be continued. Clear standards and procedures should be established for determining whether injury is likely to continue or reoccur.[46]

What are your views and experiences in this regard?

(xiv) Special and differential treatment for developing countries

64. Although Article 15 of the AAD recognizes that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures, such provision is only a best-endeavour clause. Consequently, members have rarely, if at all, explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries.

Based on your experience, what ways and means do you suggest for providing meaningful benefits to developing countries?

65. Finally, a question that concerns all the issues raised in this last section concerning implementation needs to be addressed.

Do you wish to share your country's experiences and national practices in relation to the specific points raised above, and suggest ways and means to address the specific concerns which may have arisen during the implementation of the AAD?

Chart A

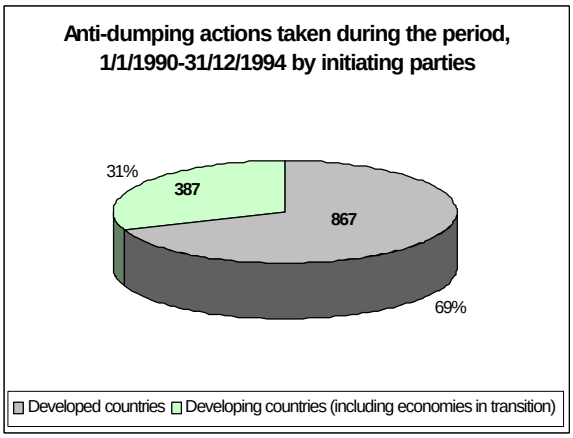


Chart B

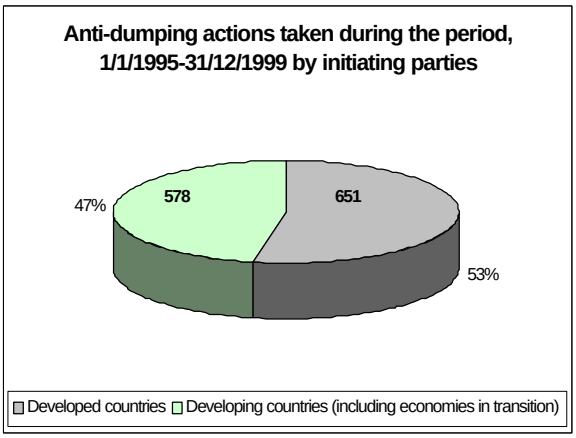


Chart C

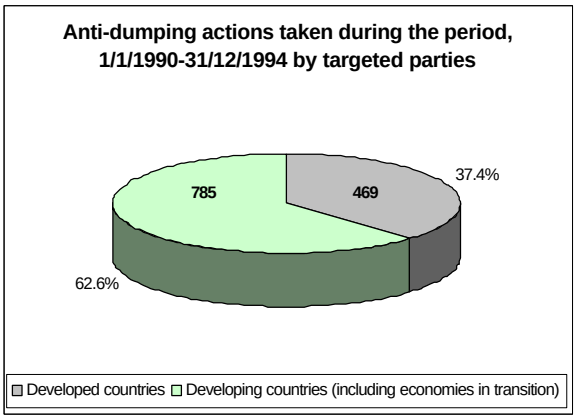
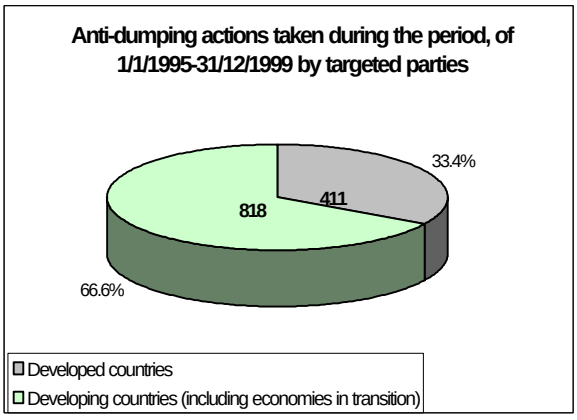


Chart D



Source: WTO Rules Division database

Chart E

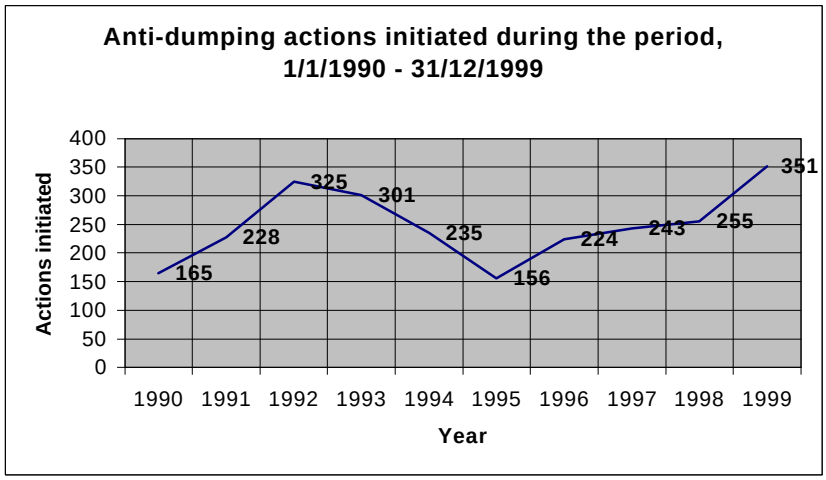
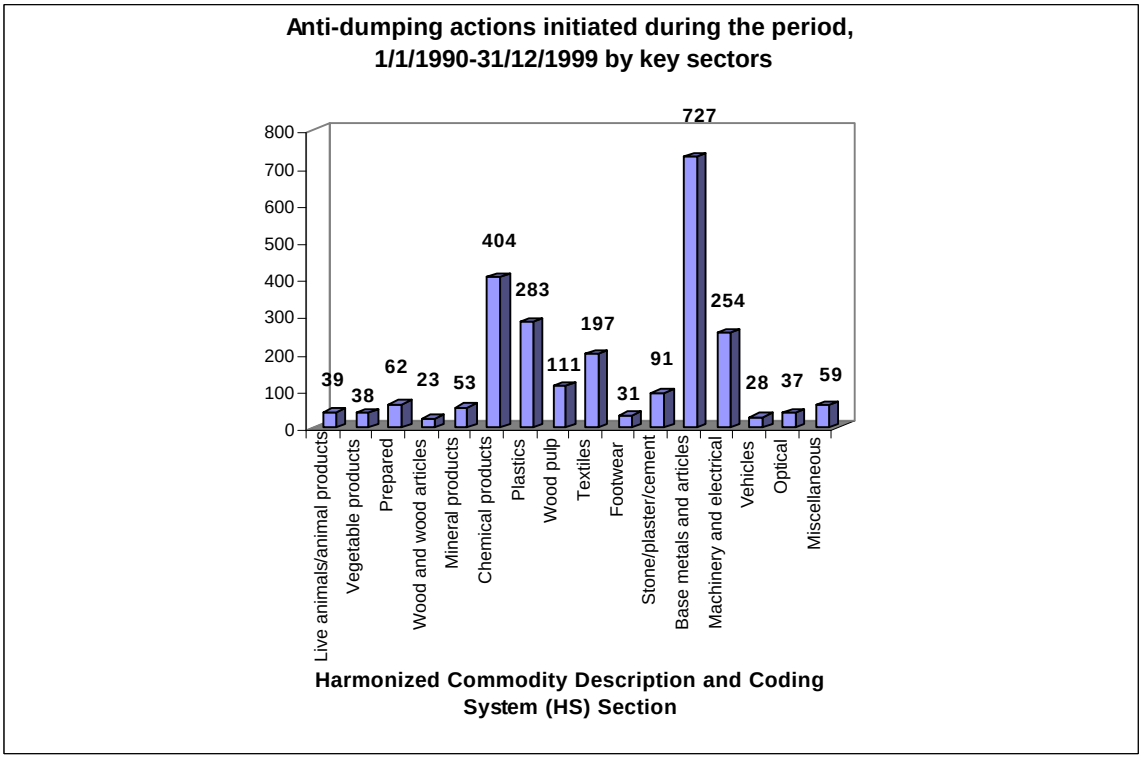


Chart F



Source: WTO Rules Division database

Chart G

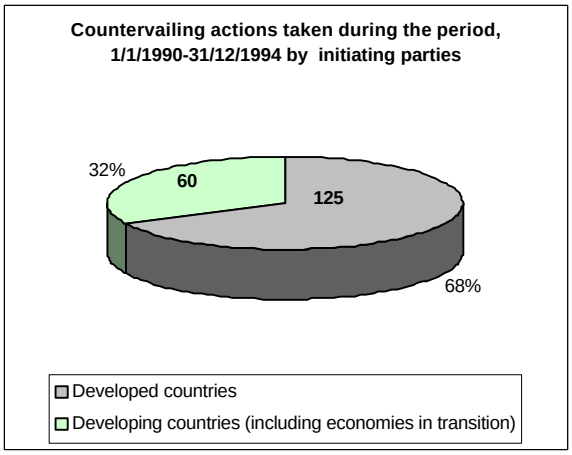


Chart H

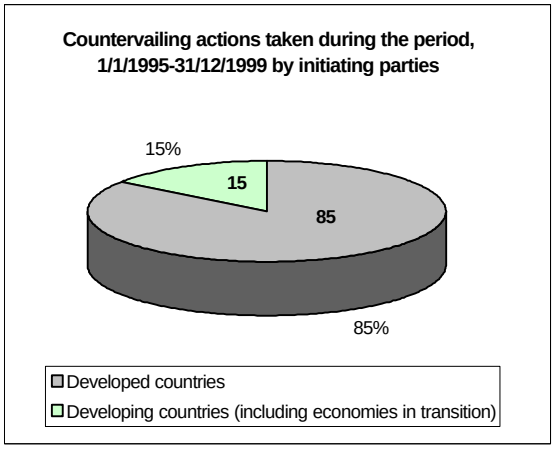


Chart I

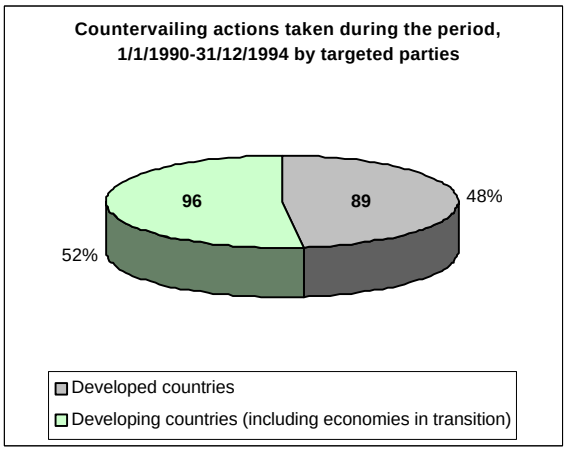


Chart J

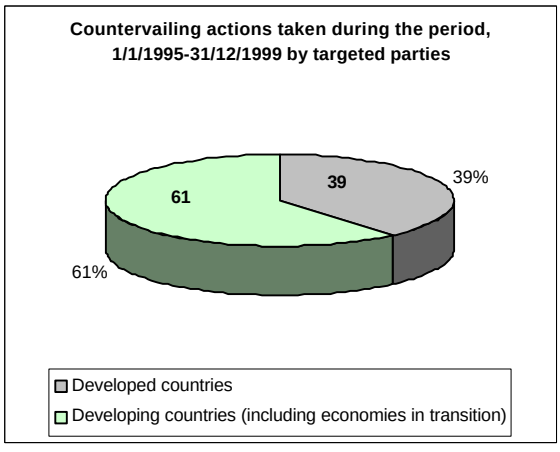


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Chart K

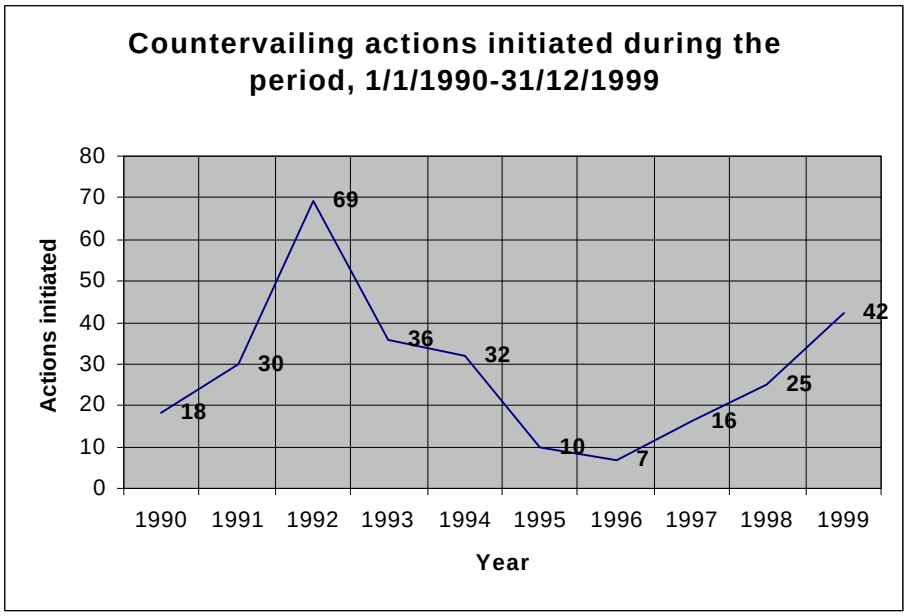
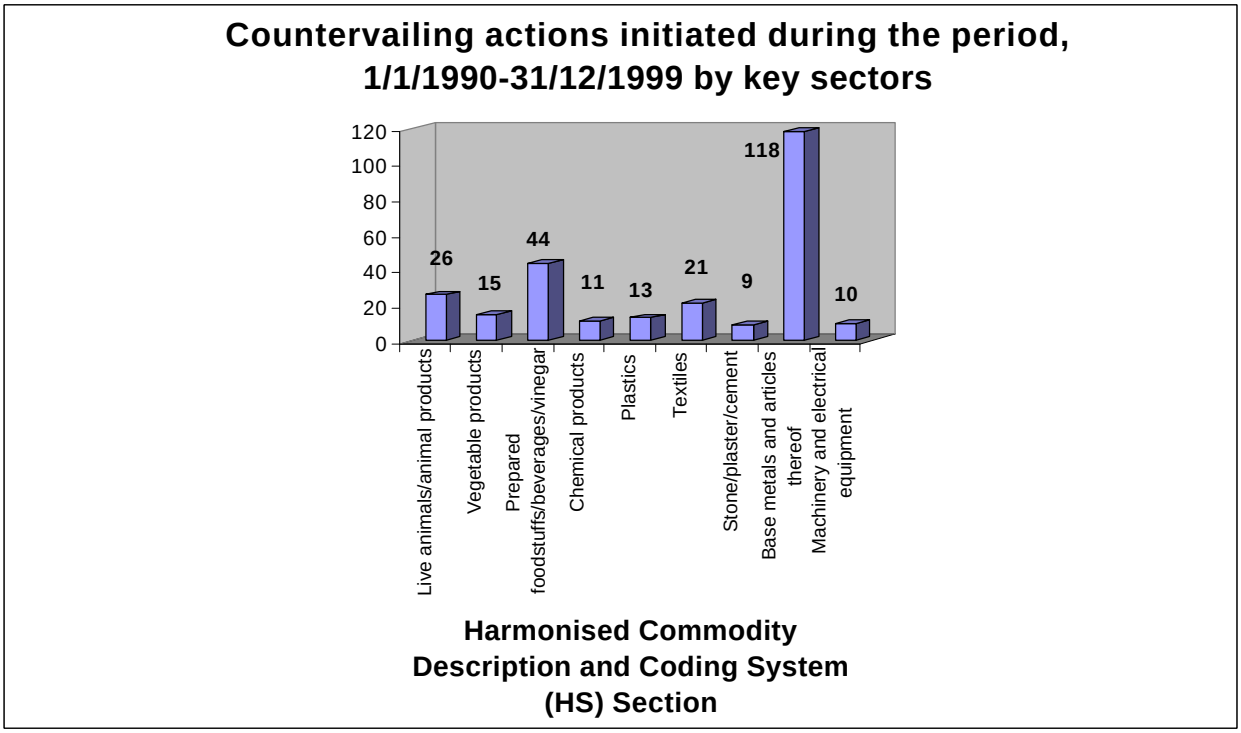


Chart L



Source: WTO Rules Division database

Table-I

MAJOR USERS OF ANTI-DUMPING MEASURES

1990 -1994		1995- 1999		1990 - 1999	
Users	Number of Anti-Dumping Measures initiated	Users	Number of Anti-Dumping Measures initiated	Users	Number of Anti-Dumping Measures initiated
Australia	260	EU	189	EU	372
United States	219	India	140	Australia	360
EU	183	United States	132	United States	351
Mexico	139	South Africa	129	Mexico	176
Canada	99	Australia	100	Argentina	156
Brazil	67	Argentina	96	Canada	155
Argentina	60	Brazil	68	India	155
New Zealand	30	Canada	56	South Africa	145
Turkey	28	Rep. of Korea	41	Brazil	135
Poland	24	Mexico	37	Rep. of Korea	60
Rep. of Korea	19	Indonesia	33	New Zealand	54
South Africa	16	Venezeula	26	Turkey	39
India	15	New Zealand	24		
Colombia	14	Peru	22		
Austria	9	Egypt	21		
		Israel	21		
		Malaysia	16		
		Philippines	12		
		Turkey	11		
		Colombia	10		
Other	72	Other	45	Other	325
Total	1 254	Total	1229	Total	2 483

Source: WTO Rules Division database.

Table II

Parties Affected by Anti-Dumping Measures

1990-1994		1995-1999		Total	
Affected parties	**Number of Anti-dumping measures**	**Affected parties**	**Number of anti-dumping measures**	**Affected parties**	**Number of anti-dumping measures**
China	149	China	159	China	308
United States	105	Rep. of Korea	98	United States	184
Rep. of Korea	73	United States	79	Rep. of Korea	171
Brazil	65	Taiwan, Province of China	60	Japan	121
Japan	63	Japan	58	Taiwan Province of China	112
Taiwan Province of China	52	Germany	50	Brazil	107
Germany	49	India	48	Germany	99
Thailand	37	Indonesia	47	India	85
India	35	Russian Fed.	47		
France	35	Brazil	42		
United Kingdom	32	Thailand	41		
Italy	27	France	26		
Russian Fed.	27	Spain	24		
Indonesia	23	Italy	23		
Malaysia	22	United Kingdom	23		

Source: WTO Rules Division database.

Table-III

Definitive Anti-Dumping Duty Measures in Force***
(As of 31 December 1999)

Measures Maintained by parties			**Affected parties**		
	Number of Measures	**Percentage of total**		**Number of Measures**	**Percentage of total**
United States☆	315	29.2	China	198	18.3
EU	189	17.5	EU✪	167	15.4
South Africa	86	8	Japan	82	7.6
Mexico	80	7.4	Taiwan Province of China	59	5.5
Canada	79	7.3	United States	56	5.2
India	64	6	Rep. of Korea	52	5
Argentina	45	4	Brazil	43	4
Australia	44	4	India	33	3.1
Brazil	38	3.5	Russian Fed.	33	3.1
Turkey	36	3.3	Thailand	29	2.7
Rep. of Korea	26	2.4	Romania	20	2
Other	78	7.4	Other	308	28
Total	1 080	100	Total	1 080	100

Source: WTO documents G/ADP/N/59 series.

*** Including undertaking
☆ Measures in force as of 30 June 1999
✪ Including measures affecting its individual member-States

Reference

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WTO documents G/ADP series.

Endnotes

[1] For example, Finger J M. GATT Experience with Safeguards: Making Economic and Political Sense of Possibilities that the GATT Allows to Restrict Import, 1997.
[2] See GATT BISD, Thirty-third Supplement, 1987: 210-212,
[3] The term, "developed countries" or "developed market economy countries" as employed by the Statistical Division of the United Nations includes Australia, Austria, Belgium, Canada, Denmark, Faeroe Islands, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands New Zealand, Norway, Portugal, Spain, Sweden, South Africa, Switzerland, the United Kingdom and the United States.
[4] Website, http://www.ia ita. Doc.gov/foradcvd/tables.htm.
[5] Third country commercial defense investigations concerning EC exports (September 99).
[6] As this could entail higher costs for EU industry (cost of cooperation with investigating authorities, imposition of residual duties on all EU exports instead of those originating in one EU Member State only) and could increase the risk of imposition of measures (total EU exports could serve as a basis for injury assessment), investigated imports would be more often above the *de minimis* threshold.
[7] See, for example, *Venezuela – Anti-Dumping Investigation in Respect of Imports of Certain Oil Country Tubular Goods* (OCTG), complaint by Mexico (WT/DS23); *Guatemala – Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico*, complaint by Mexico (WT/DS60); *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel: H-Beams from Poland*, complaint by Poland (WT/DS122/1); *Guatemala – Definitive Anti-Dumping Measures regarding Grey Portland Cement from Mexico*, complaint by Mexico (WT/DS156); *Ecuador – Provisional Anti-Dumping Measure on Cement from Mexico, complaint by Mexico* (DS182/1); *Trinidad and Tobago – Certain Meaures Affecting Imports of Pasta from Costa Rica*, complaint by Costa Rica (DS185/1); *Trinidad and Tobago – Provisional Anti-Dumping Meaures on Macaroni and Spaghetti from Costa Rica*, complaint by Costa Rica (DS187/+); and *Ecuador – Definitive Anti-Dumping Measures on Cement from Mexico, complaint by Mexico* (DS191/1).
[8] OECD Economic Department. Trade and Competitions: Frictions after the Uruguay Round (note by the secretariat), OECD, Paris, 1996.
[9] Barringer W H and Pierce K J. Paying the Price for Big Steel, $100 million in Trade Restraints and Corporate welfare, 30 Years of the Integrated Steel Companies' Capture of U.S. Trade Policy, 2000: 51-110.
[10] For example, during the period 1 October 1998, through 30 September 1999, imports of $13 million were made from corrosion-resistant steel sheets from Japan and of 1.9 million of cut-to-length steel plate from the United Kingdom. Both were subject to anti-dumping duty orders. Anti-dumping duty deposits of $3.5 million and $2 million respectively, were required from United States importers on these imports. The total amounts deposited for all imports subject to AD/CVD orders (steel and non-steel) during this period were $391 million (anti-dumping duty deposits) and $16.9 million (countervailing duty deposits). United States Department of the Treasury, Customs Service, *AD/CVD Annual Report Fiscal Year 1999*. See id. p. 81 footnote 92.

[11] See United States Census Bureau trade statistics 1999 series, as quoted in Inge Nora Neufeld's paper: Anti-dumping and countervailing procedures – use or abuse? How to overcome shortcomings of the WTO Agreements (forthcoming).
[12] WTO document G/ADP/N/ series, 1999-2000.
[13] ITCB document CR/XxiX/PAK/7 of 6 July 1999 and CR/31/GTM/5 of 17 May 2000.
[14] Idem.
[15] The case was brought by General Motors of Canada Ltd. (GM) and Ford Motor Co. of Canada Ltd. (Ford) in June 1987, arguing that the Hyundai imports seriously reduced their profit and employment levels in Canada. Finally, the Canadian Import Tribunal (CIT) rejected these complainants. For details see Canadian Customs and Excise Reports 14 CER, pp. 248-255 and 16 CER, pp. 185-220. See also Gi-Heon Kwon, Transnational Coalitions Among Societal, State and International Actors: GM, Ford and Hyundai in the Canadian Anti-Dumping Case, *The World Economy*, Vol. 18 No.6, November 1995.
[16] USITC announcement (No. 731-TA-768). It was reported that both side of the case involved Norway fishing interests and Canada fishing interests.
[17] For example, in North America, it is not unusual for exporters to incur defence costs well in excess of US$500,000 or US$ 1 million to defend their interests. At such costs, small exporting firms in developing countries are hardly able to take advantage of the procedural and substantive rights theoretically available to them.
[18] See Table IV.2 of GATT, *Trade Policy Review*, United States 1994, Volume 1, June 1994, which is based on USITC, UNSO-COMTRADE and GATT secretariat estimates. It was reproduced in UNCTAD document TD/B/WG.8/6 of 15 November 1995, p. 30.
[19] For example, if the exporter's reported cost for a particular input was equivalent to US$ 10, but that same input would cost US$ 20 in country A and US$ 10 in country B (both countries A and B having market economies), the national authorities of the concerned importing country may inflate the exporters' margin by selecting the cost of the input in country A as the surrogate value.
[20] For example, in the case of Natural Bristle Paintbrushes and Brush Heads from China, the anti-dumping duty rate imposed by the United States national authorities based on the "non-market economy" criterion was 351.92 per cent.
[21] Article 2.7 of the Anti-Dumping Agreement and the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.
[22] For example, in the case of Natural Bristle Paintbrushes and Brush Heads from China, United States imports fell from 38,000,000 units in 1984 (the year before the initiation of the AD action) to 3.2 per cent (or 1,223,000 units) of its pre-order level in 1997. United States Census Bureau trade statistics; 64 FR25011, May 10 1999.
[23] As of 31 December 1999, 31 WTO member have applied anti-dumping actions and 13 have applied countervailing actions. WTO Rules Division database.
[24] According to WTO document G/ADP/W/413 and G/SCM/W/424 of 17 April 2000, nearly 70 WTO members have national legislation on AD and CVD.
[25] Such as China, the Russian Federation and Saudi Arabia.
[26] See Article 1 of the ASCM. The ASCM defines subsidies in three categories (prohibited subsidies, actionable subsidies and non-actionable subsidies) according to specificity.

[27] *Brazil — imposition of countervailing duties on desiccated coconut from the Philippines*, complaint by the Philippines; *Brazil — imposition of countervailing duties on desiccated coconut from Sri Lanka*, complaint by Sri Lanka; *United States – imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom*, complaint by the EU; *Argentina – countervailing duties in imports of wheat gluten from the EU*, complaint by the EU; *United States – countervailing duty investigation with respect to live cattle from Canada*, complaint by Canada; *United States – countervailing duties on imports of salmon from Chile*, complaint by Chile.

[28] See WTO document G/L/340 of 1 November 1999, page 3.

[29] See WTO document G/ADP/M/15 of 14 March 2000.

[30] See WTO document G/L/340 of 1 November 1999, page 3.

[31] One case of anti-circumvention concerning a screwdriver plant was brought before a GATT panel (*EEC - Regulation on Imports of Parts and Components*), adopted on 16 May 1990. See GATT document L/6657 as well as BISD 37S/132.

[32] Vermulst E. Anti-Dumping and Anti-Subsidy Concerns for Developing Countries in the Millennium Round: Key Areas for Reform. Paper presented at UNCTAD Seoul Workshop on the "Positive Agenda" held on 8-10 June 1999, as contained in UNCTAD, *Positive Agenda and Future Trade Negotiations*, United Nations, New York and Geneva, 2000: 297-298.

[33] Idem.

[34] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 140.

[35] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 151.

[36] See WTO document WT/WGTC/2 of 8 December 1998, paragraph 152.

[37] Under the EEA Agreement, which entered into force on 1 January 1994 between the EU and most countries of the European Free Trade Area (EFTA), anti-dumping and countervailing measures are not applied between the contracting parties. As a result of the entry into force of the EEA, all EC pending anti-dumping measures involving EFTA countries were suspended as of 1 January 1994 (EC Regulation No. 5/94 of 22 December 1993, O.J. (1994) L 3/1). The proceedings against Silicon carbide from Norway was later terminated (EC O.J. (1994) L 94/32). However, with respect to Iceland and Norway the fisheries sector was excluded, as these countries could not accept the EU policy for fisheries. This exclusion permitted the Commission to initiate in August 1996 anti-dumping and countervailing duty proceedings concerning imports of salmon from Norway (see WTO document G/ADP/N/22/EEC) which led to the acceptance of a price undertaking from the Norwegian Government and from a number of Norwegian exporters in 1997).

[38] Under the Protocol agreed between Australia and New Zealand, which came into effect on 1 July 1990, pursuant to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), both countries agreed to amend their trade legislation so as to abolish anti-dumping actions between the two countries, and to suspend all anti-dumping duties then outstanding.

[39] Kempton J and Stevenson C of Rowe & Maw (London). Agreement on Implementation of Article VI of the GATT 1994: Practical Problems and Possible Solutions.London: International Trade Law Report, 2000:9.

[40] Ibid. For example, in the EU, there are two stages: first, the global rule, and then a second stage requires the "5 per cent rule" to be applied for each type or model.

[41] Vermulst, *op.cit.*

[42] See, WTO document G/ADP/N/1/MEX/1 of 18 May 1995:17.

[43] See WTO Dispute Settlement Panel Report on Thailand — *Anti-dumping Duties on Angles, Shapes and Sections of Iron for non-Alloy Steel and H-Beams from Poland*. WT/DS/22//R, 28 September 2000.

[44] See WTO Dispute Settlement Panel Report, *United States — Anti-Dumping Duty on Dynamic Random Access Memory Semiconductor (DRAMS) of one megabit or above from Korea*, WT/DS/99/R, 27 January 2000

[45] See WTO document G/ADP/N/59 USA of 18 April 2000.

[46] Vermulst E. Anti-Dumping and Anti-Subsidy Concerns for Developing Countries in the Millennium Round: Key Areas for Reform. Paper presented at the UNCTAD Seoul Workshop on the "Positive Agenda" held on 8-10 June 1999, as contained in UNCTAD Publication: *Positive Agenda and Future Trade Negotiations*. New York and Geneva: United Nations, 2000: 296; Corr CF. Trade Protection in the New Millennium: the Ascendancy of Antidumping Measures. *Northwestern Journal of International Law & Business*, Fall 1997,18(1):88-89; see also his recent paper on "WTO Anti-Dumping Agreement: A Case for its Review and Reform in the Light of Implementation Experience" presented at the Islamic Development Bank Seminar WTO DSM and AAD, Jeddah, 3-6 September 2000.