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Antidumping in the Americas

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Contents

Abstract	5
1. Introduction	7
2. The profile of antidumping measures in the Western Hemisphere	9
3. An economist's view of dumping and antidumping	13
4. Antidumping and what to do about it	17
5. Antidumping as import relief	21
6. Antidumping, regional trade agreements and the FTAA	25
7. Toward an FTAA Safeguard Regime	29
References	31
Serie Comercio Internacional: Issues published	33

Content of Tables

Table 1	Antidumping measures affecting FTAA countries, 1987–2000.....	11
Table 2	Exports to the Western Hemisphere in 1997, selected countries and industries.....	12

Abstract

One of the most sensitive issues confronting countries in a trade negotiation is how to treat economic sectors unable to face import competition. The discussions on this topic have given rise to a vast literature seeking to identify first-best policy practices to assist the process of adjustment of specific economic sectors to import competition. At the present time, addressing this issue is a particularly delicate question in the current negotiations to create the Free Trade Area of the Americas (FTAA), given the disparities in size, levels of development, and macroeconomic stability of the countries involved in this process. Developed countries, and a growing number of developing ones, have increasingly relied on antidumping laws to provide import relief to particular economic sectors. As practiced today, however, antidumping also entails heavy costs, for the foreign firms targeted by this policy, certainly, but also for consumers in the country applying antidumping legislation.

The objective of this paper is to place the debate on antidumping in a wide-ranging context, so as to suggest possible approaches for the treatment of antidumping in the negotiations to create an FTAA. It begins by providing evidence on the importance of antidumping within the Western Hemisphere. This is followed by an analytical discussion of antidumping and by a review of the treatment of antidumping in different regional integration arrangements. The last section of the paper draws the implications of the analysis for the FTAA negotiations and suggests a possible avenue for the design of a cost-efficient import relief mechanism in the FTAA. Specifically, the paper argues that the proper focus of discussions on antidumping should be a broad framework that takes into account the costs and benefits of all import relief measures, including safeguards.

1. Introduction

One of the most sensitive issues confronting countries in a trade negotiation is how to treat economic sectors unable to face import competition. The effect of imports, particularly recently increasing imports, on the conditions of competition in the domestic market has been the subject of much scholarly attention since 1817, the year when, in his *Principles of Political Economy and Taxation*, David Ricardo analyzed the “distress which proceeds from a revulsion of trade” (p. 265). Discussions since then have given rise to a vast literature seeking to identify first-best policy practices to assist the process of adjustment of specific economic sectors to import competition. Intended to provide a temporary opportunity for domestic industries to improve their competitiveness, such policies frequently remained in place well after their objective had been achieved, in part because the sectors targeted by those policies employed large volumes of people and involved “strategic” resources. Thus, in a second-best world, first-best adjustment policies often generated significant amounts of friction between trading partners.

How to treat economic sectors unable to face import competition is a particularly delicate question in the current negotiations to create the Free Trade Area of the Americas (FTAA), given the disparities in size, levels of development, and macroeconomic stability of the countries involved in this process. Developed countries, and a growing number of developing ones, have increasingly relied on antidumping laws to provide import relief to particular economic sectors. Part of the (political) appeal of antidumping lies in the way it shifts the focus of attention from the shortcomings of the domestic industry to the “unfair”

trade practices of foreign firms. As practiced today, however, antidumping also entails heavy costs, for the foreign firms targeted by this policy, certainly, but also for consumers in the country applying antidumping legislation. The objective of this paper is to place the debate on antidumping in a broader context, so as to suggest possible approaches for the treatment of antidumping in the negotiations to create an FTAA. Specifically, the paper argues that the proper focus of discussions on antidumping should be a broad framework that takes into account the costs and benefits of all import relief measures, including safeguards. This perspective, in turn, calls for a comparative analysis of various means of institutionalizing import relief.

This article consists of seven sections. Based on data on antidumping investigations among countries in the Americas, section 2 underscores the relevance of antidumping for negotiations to create an FTAA. Section 3 provides an analytical discussion of antidumping, including an overview of the contributions that economics has made to our understanding of dumping and antidumping policies, and of their effect. Section 4 assesses different policy options advanced by commentators to reform antidumping, focusing on proposals to replace antidumping with competition policies. On the basis of the finding that antidumping, as currently applied in a vast majority of countries, is aimed at addressing the market disruptions that result from import competition, section 5 places antidumping in the broader context of import relief measures, and calls for a comparative analysis of different institutional alternatives to contingent protection, including safeguards. Section 6 briefly reviews the treatment of antidumping in different regional integration arrangements with a view to identifying relevant cost-benefit parameters that can be applied to future comparative analyses of contingent protection mechanisms. The last section of the paper draws the implications of the analysis for the FTAA negotiations and suggests a possible avenue for the design of a cost-efficient import relief mechanism in the FTAA.

2. The profile of antidumping measures in the Western Hemisphere

Prior to the early 1990s, very few commentators would have considered the topic of antidumping in the Western Hemisphere to be particularly relevant. Besides Canada and the United States, very few countries in the Hemisphere actually had antidumping laws. Antidumping was mostly an issue for developed countries. Between 1980 and 1988, Australia, Canada, the European Union, and the United States accounted for practically all initiated antidumping actions in the world. A majority of these actions (58 percent) were targeted at western industrialized countries; the countries of Eastern Europe were the targets in 15 percent of the cases, the newly industrialized countries in 18 percent, and developing countries in only 9 percent (Trebilcock and Howse 1999).

A turning point in the picture of antidumping in the Western Hemisphere came in 1993, with the emergence of six “new” major users of antidumping: Argentina, Brazil, India, Korea, Mexico, and South Africa. Having ranged between 12 and 21 percent during the five previous years, the share of these countries in the total number of antidumping investigations jumped to 54 percent in 1993 (Miranda, Torres, and Ruiz 1998).

A more disaggregated analysis of the data on antidumping confirms the relevance of the subject for countries in the Western Hemisphere and more specifically, for the current negotiations of the

Free Trade Area of the Americas (FTAA). Table 1 shows the distribution of antidumping investigations affecting countries of the Western Hemisphere between 1987 and the first semester of 2000.¹ The United States and Brazil, the leading targets of these investigations in the region, were involved in around 63 percent of the cases initiated against FTAA countries. In a second tier, Argentina, Canada, Mexico, and Venezuela were involved in about 30 percent of the investigations; in a third tier, 12 countries received the remaining share of 7 percent. It also should be noted that 16 FTAA countries were not affected by antidumping measures during the period in question and that the distribution by users of antidumping has a similar profile: Argentina, Brazil, Canada, Mexico, and the United States were responsible for 93 percent of total investigations initiated in the FTAA area, while 10 countries—Chile, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama, Peru, Trinidad and Tobago, and Venezuela—accounted for the remaining 7 percent. The other 19 FTAA countries have never used antidumping.

1 The figures were selected from the comprehensive study by Miranda, Torres, and Ruiz (1998), and from additional information provided by the WTO Secretariat.

Table 1
ANTIDUMPING MEASURES AFFECTING FTAA COUNTRIES, 1987–2000

Initiating country	Argentina	Brazil	Canada	Chile	Colombia	Costa Rica	Ecuador	Guatemala	Mexico	Nicaragua	Panama	Peru	Tabago	Trinidad & Tobago	U.S.A.	Venezuela	FTAA	RoW	Total
Argentina		2	2	1					1			1			14	1	22	7	29
Bolivia												1					1	0	1
Brazil	38		13	2					19			2			30		104	36	140
Canada		1							4			1			42		48	10	58
Chile	3	3							1			3			5	1	16	0	16
Colombia	2								3		1	1			4		11	3	14
C. Rica										1				1			2	0	2
Ecuador															4		4	0	4
Guatemala						1											1	0	1
Honduras										1							1	0	1
Mexico	3	4	3		2	2	1	1			1	2			34	1	54	14	68
Nicaragua						1											1	0	1
Paraguay	2																2	0	2
Peru									1							1	2	0	2
T&T					1										2		3	1	4
U.S.A.	10	26	65	1	8	1			68							3	182	78	260
Uruguay	1	2															3	0	3
Venezuela	2	2	1	1		1			6					3	12		28	4	32
FTAA	61	40	84	5	11	6	1	1	103	2	2	11		4	147	7	485	153	638
RoW	104	100	218	7	24	0	0	0	130	0	0	16		3	635	22	1259	1572	2831
Total	165	140	302	12	35	6	1	1	233	2	2	27	7	782	29	1744	1725	3469	

Source: Miranda, Torres and Ruiz (1998), and data provided by the WTO Secretariat

Table 1 also highlights the intensity of antidumping actions among countries of the Hemisphere: 485 of the 638 cases affecting these economies between 1987 and the first semester of 2000 originated in the region. Yet, the main users of antidumping in the Hemisphere normally direct their actions against the rest of the world. For instance, only 147 of the 782 cases opened by the United States during the period in question targeted countries of the Americas. Argentina, Brazil, Canada, and Mexico followed a similar pattern. The rest of the world did not reciprocate with the same strength, as only 153 actions were launched against the Western Hemisphere from the rest of the world, compared with 1259 actions brought by countries in the Western Hemisphere against the rest of the world.

Since 1987, about 80 percent of cases initiated by, and targeted at countries of the Western Hemisphere were concentrated in six industries: base metals (mostly steel products), capital goods (machinery and electrical equipment), chemicals, plastics, pulp and paper, and textiles.² Because the investigations always focus on very specific products, the amounts of trade directly affected also tend to be very small, even among the leading users of antidumping measures: less than 1 percent of total imports in the case of the European Union, and 0.5 percent in the case of the United States.³ From the point of view of the exporting industries, however, the investigations create uncertain market conditions for the whole industry and therefore constitute an obstacle to economic integration. As table 2 illustrates, for some countries such as Brazil, Mexico, and the United States, more than 50 percent of their exports to other countries in the Western Hemisphere are hampered by this kind of instability.

Table 2
EXPORTS TO THE WESTERN HEMISPHERE IN 1997,
SELECTED COUNTRIES AND INDUSTRIES
US\$ Billions

Industry	Country	Argentina	Brazil	Canada	Mexico	U.S.A.	Venezuela	Total
		Chemicals	0.9	1.8	6.9	2.8	19.0	0.5
Plastics	0.4	1.3	7.1	2.6	16.5	0.3	28.2	
Pulp and Paper	0.3	0.8	12.2	1.0	9.5	0.1	23.9	
Textiles	0.6	1.0	2.8	7.4	13.3	—	25.1	
Base Metals	0.8	3.2	13.2	5.6	17.4	1.4	41.6	
Machinery & Elec. Eq.	1.0	4.9	24.6	39.5	100.5	0.1	170.6	
Total	4.0	13.0	66.8	58.9	176.2	2.4	321.3	
(as % of total exp. To Western Hemisphere)	(27)	(53.5)	(39.5)	(57.8)	(62.2)	(12.7)	(52.5)	

Sources: IDB Database (<http://www.iadb.org>), WTO (<http://www.wto.org>) and Industry Canada (<http://strategis.gc.ca>).

² Miranda, Torres, and Ruiz (1998) and data provided by the WTO Secretariat.

³ Hindley and Messerlin (1996).

3. An economist's view of dumping and antidumping

There is today, perhaps surprisingly, a considerable degree of convergence in the views held by economists on the issues surrounding dumping and antidumping policies. This is due in part to the fact that dumping has formed part of economists' research agenda since the early part of last century, when dumping was discussed in the broader context of "unfair" trade practices. This section provides a brief overview of the contributions that economics has made to our understanding of dumping and antidumping policies, and of their effects.

a) Dumping

Economists have traditionally defined dumping as selling export goods at a price lower than that at which similar goods are sold in the domestic market of the export firm. According to this definition of dumping, which traces its roots back to the work of Jacob Viner, a firm can sell goods at a higher price in the domestic market than abroad because it has more market power in the national market, while it faces competition from a higher number of companies when it sells abroad. In other words, the fact that the firm faces a more elastic demand abroad leads it to charge a lower price for exports than domestically.⁴ Viner's definition of dumping has been extended to

⁴ See Sykes (1998) for a critical review of Viner's justifications for having an antidumping policy.

include the practice of selling export goods below the cost of production (Ethier 1998). A company facing a decrease in demand, for instance, may sporadically export at a price below average cost that allows it to cover the variable cost of production. Another example would be that of a firm that regularly prices export goods below the cost of production because selling abroad enables it to reach a large scale of production and therefore, to benefit from economies of scale.

Willig (1998) sets forth the definition of several categories of dumping. Market expansion dumping is when a firm exports at a price lower than the one it charges in the domestic market by cutting the markup, given that it faces a higher price elasticity of demand in markets abroad. This is the standard type of dumping based on price discrimination. Another type of dumping, cyclical dumping, occurs when firms, facing a downturn in demand, sell at a price that is below the so-called “full cost” but that allows the firm to recover marginal variable costs. Here, price discrimination may or may not occur, as firms might sell at the same low price in both the domestic and export markets. State-trading dumping arises when state-owned firms in countries with a non-convertible currency export goods in order to have access to hard currency. The comparison of home and export prices is not relevant in this case, due to the lack of convertibility. A high degree of protection in the domestic market might be another driving force of dumping. Companies operating in a large protected market and able to benefit from substantial economies of scale (whether static or dynamic) will face lower costs than their foreign competitors and, on this basis, may incur in strategic dumping. The final category of dumping, predatory-price dumping, takes place when a firm sells exports at a price that is low enough to induce competitors to exit the market in the importing country; subsequently, the export company charges a higher price to recoup the losses it underwent with the goal of driving out competitors.

In most cases, then, economists tend to consider dumping—if it is proven that it is in effect occurring—as a perfectly rational, sensible and legitimate profit-maximizing action.⁵ Moreover, there appears to exist a general consensus among economists that in most cases, dumping does not decrease global welfare; in some cases, it might even increase it through an improvement of consumer welfare. Specifically, of the categories of dumping identified above, only predatory pricing dumping and most instances of strategic dumping raise overall welfare concerns. Yet, these two forms of dumping pertain largely to the theoretical realm, as most antidumping cases in the real world do not involve dumping as defined by these two categories. In contrast, non-monopolizing dumping, which comprises the other categories discussed above, will allow an overall increase in welfare in the importing country, as the benefit to buyers is greater than the loss experienced by producers as a consequence of dumping, if the industry is perfectly competitive. The outcome is not so robust and is indeterminate in terms of welfare when industries are not perfectly competitive.

b) Antidumping

One of the focal points of the economic research dealing with antidumping—as it is effectively applied—has been the attempt to estimate the impact of this policy instrument in specific factual contexts. As a result, a very large number of empirical studies on the economic effects of antidumping policies exist, a few of which are covered below.

Dutz (1998) attempts to estimate the economic impact of antidumping cases in Canada from 1980 to 1991. He finds that antidumping cases led to a decrease in import competition faced by domestic firms as a consequence of the increase in prices resulting from this trade remedy. He

⁵ In fact, price discrimination between markets is often compared to a business practice that is commonly carried out by firms when they sell cheaper airfare tickets to students and retirees than to business people, given that the former have a more price-elastic demand.

estimates that less than 0.6 percent of manufacturing shipments were covered by antidumping duties in 1990, but that this does not include the costs of a decrease in competition for the domestic industries, nor the ripple effect on downstream industries, as users of the products subject to antidumping duties face a decrease in the availability of low-cost inputs. He indicates that the effect of antidumping measures on consumers may be higher if there is a strong ripple effect, which he believes is the case for Canada since most of the antidumping measures—during the period he examined—concerned primary inputs.

The review of the antidumping cases initiated by the European Community (EC) from 1980 to 1997 (Bourgeois and Messerlin 1998) demonstrates that the industries most frequently involved are those that have a low MFN (most-favored-nation) tariff, so that there is an inverse relationship between the frequency of antidumping cases and the tariffs faced by the industries. At the same time, most cases are concentrated in a few industries such as industrial chemicals and steel. Messerlin's (1989) estimate of the impact of the EC's use of antidumping during the early 1980s shows that there was a decrease in imports of 40 percent three years after the antidumping cases had been initiated and that the average *ad valorem* tariffs were three times the average of the MFN tariffs for these industries after the Tokyo round.

Prusa (1999) estimates the effect of antidumping for the United States. His findings are that antidumping investigations have a substantial effect on imports, whether or not antidumping duties are applied. The decrease of the value of imports for the countries targeted by antidumping investigations is in the 50 to 70 percent range. For those cases that are turned down, there is a decrease of imports of 15 to 20 percent. Prusa also mentions the high level of protection that results from the application of antidumping duties, particularly when compared to the currently low levels of average tariffs: the level of the median antidumping duty was 16 percent, when the industries thus protected faced MFN tariffs of 4 percent in average. There were antidumping duties of over 50 percent (20 percent of the cases) and of over 100 percent (10 percent of the cases).

The welfare costs for the United States resulting from the application of antidumping and countervailing laws are assessed in the framework of a computable general equilibrium model by Gallaway, Blonigen and Flynn (1999). They estimate that the net economic welfare cost in 1993 was around \$4 billion, turning it into the most important import restraint program in the United States at that time, along with the Multi-Fibre Arrangement. They also point out that the welfare cost is increased by the incentive that foreign firms have to raise their prices in the U.S. market so as to face lower antidumping duties.

Messerlin and Reed's (1995) comparison of the average margins of dumping and the *ad valorem* tariffs for the United States and the European Community during the 1980s showed that the levels of protection provided by the antidumping duties were two to three times that of the GATT tariffs at that time and that, furthermore, they had significant high peaks. They also cite a 1995 study in which the U.S. International Trade Commission estimates that removing antidumping actions would allow the United States a welfare gain of US\$1.6 billion. Each job preserved thanks to antidumping implied a yearly cost of US\$49,000 dollars.

What are the implications of these studies regarding the impact of antidumping practices for the other countries using this trade remedy? It is true that the estimates of the impact of antidumping actions presented above cover only a limited number of studies and a relatively small number of countries, even if some of them are among the nations that most frequently use this trade remedy. One of the main reasons for the bias in these studies is that the information on antidumping cases in those countries is readily accessible and presented in such a way that allowed the undertaking of these studies. It can most probably be safely assumed that the impact of antidumping cases initiated by other nations is, for the most part, quite similar to the evidence presented above, after the corresponding adjustment is made for the frequency with which each

individual country is initiating antidumping investigations. Therefore, the impact of the growing number of antidumping actions is probably quite significant.⁶

This conclusion can be strengthened once one takes into account that many antidumping cases are settled in the course of an investigation, so that an evaluation of the impact underestimates the definitive effect of the use of this trade remedy. Indeed, the impact of antidumping goes beyond the number of antidumping measures. This is principally due to the uncertainty that is fostered by the use of this trade remedy and to the fact that exporters are prompted to modify their behavior when they are under investigation, even if the cases are not yet decided (Tharakan 1999).

Ultimately, the “real” impact of antidumping on world trade is hard to estimate precisely because of the number of cases that are settled before or in the course of an investigation, of the uncertainty involved, and of the threat this instrument poses for exporters (Finger 1993). An estimate of the scope of imports covered by the European Community antidumping actions during the 1980s puts it higher than the imports of agricultural goods (Messerlin 1991). This has led some to conclude that the “EC antidumping policy is a problem for world trade of a scope comparable to EC agricultural policy” (Finger 1993, p 51).

⁶ Naidin (1998) conducts a detailed study of the trade effects of Brazil’s antidumping legislation. Like a majority of countries around the world, Brazil’s use of antidumping measures increased as the country deepened its trade liberalization program in the 1990s. Of the 107 investigations initiated by Brazil between 1988 and 1997, 39 resulted in the application of antidumping duties. Compared to the United States, where almost the entirety of antidumping investigations involve the application of provisional duties, in Brazil only 46 percent of the cases resulting in the application of antidumping duties involved provisional measures. The impact of Brazil’s antidumping legislation and procedures on imports is similar to that of other countries, however, and the impact is greater the larger the number of countries covered by an antidumping investigation.

4. Antidumping and what to do about it

In the light of the costs associated with the application of antidumping measures, economists have advanced several proposals for reforming this policy instrument. Such proposals range all the way from simply eliminating antidumping laws (Niels and ten Kate, 1997) to “fixing” them with a view to changing their focus to take into account the effects of antidumping duties not only on domestic producers of like or competing products, but also on the national economic interest of the restricting country (Finger 1993). One proposal in particular has acquired greater relevance in recent discussions regarding the treatment of antidumping, namely the elimination of antidumping laws and their replacement with competition law. This proposal has several variants, which go from incorporating cost and benefits assessments and public interest clauses like those used in competition policy cases to antidumping laws, to simply replacing antidumping laws by the enforcement of competition law.

Proposals in the direction of replacing antidumping with competition laws are commonly based on the assumption that antidumping represents a policy instrument aimed at targeting the anticompetitive practices of exporters.⁷ Even those comment-

⁷ Guash and Rajapatirana (1998), for example, present their argument as follows: “Further fine-tuning and refining of antidumping policy is not the answer to prevent the slippage into protection with the use of this instrument. The antidote is competition policy. The current efforts should be directed toward the implementation of comprehensive competition policies and credible enforcement agencies. They should also be aimed toward the phasing out of most of the trade policy instruments, such as antidumping, countervailing duties and safeguards and their replacement by a broader application of competition policies and of extraterritorial jurisdiction. Competition policies, when broadly used, can effectively substitute for most trade instruments”(p 22).

ators that do not go as far as suggesting the complete elimination of antidumping laws and their replacement with antitrust seem to base their reasoning on the rationale advanced by original proponents of antidumping laws both in Canada and in the United States, namely that antidumping is necessary to protect the competitive process and the consumer against the accumulation of monopoly power by large enterprises and business combinations. Because the “unfair” trade practices of foreign firms are usually standard business practices similar to those carried out by companies in the domestic market, it is crucial to the proponents of antidumping reform that there be some form of “test” incorporated into antidumping investigations that would show the existence of predation. Successful predation would require, among other conditions, that the market power of the firm incurring in this anticompetitive behavior be great enough to allow it to recover the initial losses once it has forced rival companies to exit the industry.

Numerous proposals have been put forward along these lines. Messerlin and Tharakan (1999) suggest a “two-tier approach” to antidumping investigations, which would involve a first phase aimed at confirming that the accused company has sufficient market power to be able to later on recoup its losses. Only in those cases where a positive finding is made, would the antidumping investigation move to its subsequent phase. Similarly, the government of Mexico, in a communication to the World Trade Organization (WTO 1999), proposed the use of some criteria usually employed by competition policy authorities in antidumping investigations as a way to decrease the chances that the current antidumping procedures have of reducing consumer welfare and economic efficiency. Finally, Hoekman and Mavroidis (1996) recommend that authorities envisaging the initiation of an antidumping investigation first consult with the competition authorities of the exporting country. Such consultations would aim to establish whether the export firm has substantial market power in the domestic market allowing it to incur in dumping when exporting.⁸

Historical evidence presented by Sykes (1998) sheds light on the validity of the common assumption that, because antidumping is supposed to deal with “unfair” trade practices, it should be replaced by competition policy or should incorporate principles from the latter policy domain. According to Sykes’ analysis, it seems that, from the very beginning, proposals to introduce antidumping legislation in Canada were cast as efforts to prevent predatory pricing from abroad, even though there exists ample evidence that the essential goal of the legislation was to protect Canadian manufacturers from import competition. Specifically, Sykes points out that the antitrust rhetoric in which proposals for introducing antidumping laws in Canada were cloaked were not congruent with the proposed remedy. For one, the scope of the proposed antidumping laws reached far beyond the practices of the traditional targets of antitrust law (“trusts or combines” and firms with actual monopoly power or the potential to acquire it), as it implicitly targeted “any sale below ‘fair market value’” (Sykes 1998, p. 16). In addition, the provision to cap antidumping duties at 15 percent introduced in a subsequent amendment to the original law also seems to lack a strong grounding in competition principles.

The origin of antidumping law in the United States followed a somewhat different course, as the initial link between the original antidumping legislation and competition principles was more solid. In fact, the U.S. Antidumping Act of 1916 was introduced as a complement to the Clayton Act of 1914, which proscribed price discrimination within the United States, but did not address price discrimination on the part of firms located abroad and exporting to the United States. Not surprisingly, by 1919, no criminal prosecutions or successful civil cases had emerged under the Antidumping Act of 1916. This led supporters of Canadian-style legislation in the U.S. Congress to ask the Tariff Commission—the forerunner of the U.S. International Trade Commission—to

⁸ See Tharakan, Vermulst and Tharakan (1998) for an application of the different options set forth by Hoekman and Mavroidis (1996) to an antidumping case in the European Union, which dealt with personal fax machines.

investigate the issue of dumping. Despite the Commission's recognition that dumping was "natural" and not in general predatory, supporters of new antidumping legislation in the House of Representatives heavily relied on antimonopoly language to garner support for their initiative. Repeatedly, supporters in the House stressed that the purpose of the new bill was the same as that of the Antidumping Act of 1916, namely to "prevent unfair methods of competition and monopoly within the United States."⁹ The fact that the proposed legislation was modeled after Canadian antidumping law and was therefore much broader than the 1916 Act did not prevent the bill's supporters from arguing that the new legislation's objective was to protect competition, as the Antidumping Act of 1916 had not been effective in preventing foreign producers from "destroy[ing] competition and control[ing] prices."¹⁰ While the proposed bill did not become law in 1919, a bill containing antidumping legislation and broadly modeled after the 1919 proposal was passed three years later.¹¹

Both the Canadian and U.S. experiences support the argument that antidumping has more to do with import relief than competition. If this is the case, then the proper focus of discussions on antidumping is not whether antidumping should be replaced with competition policy or "fixed" through the incorporation of competition principles, but rather whether antidumping is a cost-efficient import relief mechanism. The next section places the subject of antidumping in the broader context of import relief measures by reviewing further evidence in support of a safety-valve-view of antidumping.

⁹ House of Representatives 479 (1919), as quoted in Sykes (1998, p.22).

¹⁰ *Ibid.*

¹¹ The new law differed from the 1919 proposal in that it contained an injury test. See Sykes (1998, p.24).

5. Antidumping as import relief

The historical evidence presented above seems to be consistent with recent analyses of the links between antidumping and predatory behavior, links that have been shown to be weak at best. One important reason is that the application of antidumping measures is based on technicalities that make little, if any, sense to those not directly involved with the enforcement of this instrument (Finger 1993). A review of antidumping investigations in the United States from 1995 to 1998 conducted by Lindsey (2000) found that the procedure commonly followed to establish whether dumping is in fact occurring bears little connection to the actual existence of price discrimination of sales below cost.¹²

Thus, both historical and empirical evidence seem to support the conclusion that the use of antidumping is not aimed at stemming dumping, but rather, at addressing the market disruptions that result from an import surge. Indeed, the view of antidumping as a safety valve appears to solve the apparent contradiction between the shift in a large number of countries towards competition-enhancing policies and the increasing number of antidumping investigations targeting “unfair” or “anti-competitive” practices in both developed and developing countries. In a policy environment characterized by low or decreasing tariff and non-tariff barriers to trade antidumping

¹² Not only is antidumping unrelated to the objective of enhancing competition, but there are also cases in which it has provided incentives for firms to incur in anticompetitive behavior. The adoption of practices promoting price coordination among Brazilian firms of frozen concentrated orange juice constitutes an example (Primo Braga and Davi Silber, 1998).

offers a conduit for compensating industries concerned about an increase in competition from abroad (Smith 1999, Tharakan 1995, Boltuck and Litan 1991).

Import surges, and the policy responses to them, have been the subject of much study. Economists generally agree that lump-sum transfers constitute the optimal policy response to provide an industry with temporary protection from an import surge. In a model developed by Deardorff (1987), for example, when the price of the imported good falls, a transfer (in the form of a subsidy or a tax) that channels income from the group that benefits from the price decrease to the group that is hurt provides the first-best policy alternative to avoid “any significant absolute reductions in real incomes of any significant section of the community” (Corden’s Conservative Social Welfare Function). This result is confirmed by more recent work that views contingent protection instruments (like antidumping) as insurance for protecting import-competing industries from import surges and analyzes their welfare implications in the overall context of a general equilibrium model in which insurance markets are assumed to be incomplete (Fischer and Prusa, 1999). Such studies generally point to increases in welfare resulting from lump sum taxes on all sectors combined with a subsidy to the industry facing the import shock.

From the perspective of economists, then, lump-sum transfers often provide the first-best solution for winners compensating losers in cases of market disruptions resulting from an increase in the share of imports. These first-best solutions, however, are rarely put in practice in the real world. This is true for winners compensating losers through lump-sum transfers within the boundaries of a domestic economy. Moreover, the difficulties for applying a first-best solution become even greater when the winner, say the successful export industry, is in one country and the losers are in another. In this case, not only are the chances for transfers by the winners aimed at compensating the losers even lower than within a single economy, but the possibility of workers moving from the declining industry to the surging export industry is further diminished by the lack of labor mobility across borders.

But even if policy-makers could overcome these obstacles, the maximization of domestic social welfare would still be an unlikely outcome associated with the use of lump-sum transfers. The reason is that economic policymaking also involves a political dimension, as has been pointed out by Dixit (1996, p. 9):

“In reality, a policy proposal is merely the beginning of a process that is political at every stage—not merely the process of legislation, but also the implementation, including the choice or formation of an administrative agency and the subsequent operation of this agency. The standard normative approach to policy analysis views this whole process as a social-welfare-maximizing black box, exactly as the neoclassical theory of production and supply viewed the firm as a profit-maximizing black box. While some useful insights follow from this, it leaves some very important gaps in our understanding and gives us some very misleading ideas about the possibilities of beneficial policy intervention.”

In the light of these considerations, it would seem that any assessment of appropriate policy responses to domestic market disruptions resulting from an increase in the share of imports will also depend on parameters related to the political decision-making process described by Dixit. This might imply that, in a specific domestic or regional context, antidumping—while being a second-best—might in fact represent the most efficient policy response to market disruption caused by import surges, if the decision is made to address this issue. Some trade negotiators, for example, rationalize the use of antidumping by arguing that it is the least costly way to ensure political

support for a comprehensive progress toward greater multilateral trade liberalization.¹³ Additionally, the rise in the use of antidumping can also be considered as the rational consequence of the incentives set up by the Uruguay Round Agreements. These Agreements have led to a restraint on the use of safeguards and to an upsurge in the use of antidumping. The intense use of antidumping as a safeguard instrument and in preference to the safeguard actions is because, among other reasons, the Uruguay Round Agreements allow the use of antidumping as a discriminatory action and establish a less stringent injury test for antidumping than for safeguards (Finger 1995). At the same time, antidumping does not involve a compensation requirement and it allows measures to be applied for a longer period (five years versus four for safeguards) (Laird 1997). Furthermore, safeguards are applied under the recognition that the domestic industry requires to undergo adjustment, while antidumping puts the blame on exporters' business practices. Messerlin and Tharakan (1999) believe that the limited use of measures under GATT Safeguards, in contrast with the surge of the use of antidumping, is explained precisely because the safeguard rules "are not a back door to protection like GATT-illegal VERs and antidumping measures."

Thus, the appropriate question is which import relief measure—lump-sum transfers, antidumping, or safeguards—constitutes the most cost-efficient policy response to market disruption caused by import surges. Answers to this question call for an assessment of political and economic costs and benefits of each instrument, thus transforming the current debate surrounding antidumping (and its relationship to competition policy) into a broader question of contingent protection mechanisms. While a full-fledged comparative institutional analysis of approaches to contingent protection mechanisms is beyond the scope of this paper, the next section briefly reviews the treatment of antidumping from the perspective of contingent protection in several regional trade agreements. This analysis could pave the way for more formal analyses of institutional alternatives to contingent protection.

¹³ "[...] antidumping laws administered in strict conformity with the Antidumping Agreement actually assist governments in their efforts to continue trade-liberalizing measures by providing relief to domestic industries injured by foreign firms that engage in unfair trade practices, even as international trade liberalizes. From this perspective, the antidumping rules are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization [...] The antidumping rules are a mechanism which WTO Members have agreed is necessary to the maintenance of the multilateral trade system [...]. The tension between the desire to expand trade and improve the system and the need to maintain a balance of interests and domestic support for the system produces a necessary set of concessions that is inherent in any process involving sovereign nations with competing interests..." WTO (1998, pp. 3-5). This argument may be valid for other governments trying to get political support for trade liberalization.

6. Antidumping, regional trade agreements and the FTAA

Most regional agreements in the Western Hemisphere allow the use of antidumping measures among their members according to WTO rules. In the case of CARICOM, for instance, these rules have been explicitly included in the recent Protocol VIII (signed in March 2000), which amends the original Treaty of Chaguaramas on matters related to competition policy, consumer protection, dumping and subsidies. In the case of NAFTA, chapter nineteen contains a dispute settlement mechanism relating to antidumping and countervailing duty determinations. It provides for binding binational panel reviews of cases involving goods of NAFTA countries and changes to existing laws of the parties. In the case of MERCOSUR, the parties are expected eventually to eliminate antidumping but have not done so to date. On the other hand, there are four regional trade agreements, only one of which is between countries of the Western Hemisphere, in which the member countries have abolished antidumping measures among themselves: the European Union (EU), the European Economic Area (EEA), which came into force in 1994 by the treaty signed between the EU and the European Free Trade Association (EFTA), the Closer Economic Relations Agreement (CER) between Australia and New Zealand, and the 1996 Canada-Chile free trade agreement.

As discussed above, antidumping measures form part of the policy arsenal available to countries to protect certain industries from import surges. As such, antidumping measures might, in specific factual contexts, represent efficient policy alternatives with respect to other contingent protection mechanisms. That a majority of countries

in the Western Hemisphere have not proceeded to abolish these measures in the context of free trade areas or even customs unions is perhaps indicative of the perceived costs (both economic and political) associated with such an initiative. Yet, a brief review of the conditions that allowed the four regional trade agreements identified above to eliminate antidumping might yield useful insights into the principal parameters determining the costs and benefits associated with contingent protection mechanisms. These parameters must be taken into account when facing the challenge of designing contingent protection mechanisms in regional trade agreements, including the Free Trade Area of the Americas (FTAA).

Both in the European Agreements and in CER, despite their different approaches to economic integration, the abolishment of antidumping was followed by the application of common competition policies at the regional level. This has led many commentators to deduce that the most important parameter determining the costs and benefits of antidumping policies in a regional trade agreement is the extent to which members espouse a common approach to competition policy. According to this view, the presence of supranational competition authorities or harmonized competition laws among the members of a regional trade agreement facilitates the elimination of antidumping, presumably because, under such conditions, competition policies are more efficient than antidumping in dealing with “unfair” trade practices. As argued in substantial detail in this paper, however, antidumping and competition policies address different concerns, so the fact that one policy was introduced after the other had been abolished does not imply that one policy replaced the other. As Lloyd and Vautier (1999) observed in regard to the CER experience:

“The 1990 amendments represented a policy shift that was not a straightforward swap of one regulatory tool for another. Rather, it was tantamount to a redirection of trans-Tasman trade policy through greater emphasis on the competitive process and the interests of buyers, rather than on ‘fairness’ and the interests of domestic producers alone. The policy shift was intended to direct attention to those actions of powerful firms likely to harm the competition process itself. [...] Aimed at preventing abuse of market power, they were not a direct substitute for the traditional antidumping trade remedy which exposed a wider range of price discrimination. Antidumping duties and competition law remedies are each aimed at a different market problem; they have different objectives, they target a different range of business conduct, and they employ different analytical tests, tools and procedures to achieve a determination” (p. 88).

An examination by Hoekman (1998) of the preferential trade agreements (PTAs) that have eliminated the option members have of applying contingent protection measures—such as antidumping—against other members did not provide evidence of a strong explicit link between the implementation of competition policies and the suppression of antidumping either. Hoekman concludes, instead, that it was the comprehensive effort towards economic integration that explained both the elimination of antidumping and the establishment of antitrust legislation. He also points out that the PTAs under consideration did not proceed gradually to abolish the use of antidumping. Nor did they make efforts to introduce competition criteria in the application of antidumping. This leads him to ratify the lack of links between antidumping and antitrust legislation.

Thus, in seeking to identify the conditions under which regional trade agreements eliminated the use of antidumping among their members, it appears that a more relevant parameter affecting the costs and benefits of antidumping and other import relief policies is the degree of economic integration among the members of the group. Indeed, in the European agreements and CER, the elimination of antidumping appears to have been part of a deep integration process fostered by the convergence—both at the macro and microeconomic levels—of the competition conditions in the domestic markets of the member countries. The models of macroeconomic convergence varied

from the search of exchange rate stability and the harmonization of monetary and fiscal policies, as in the CER case, to the creation of a single currency, as in the EU case. At the microeconomic level, the process included the use of similar policies in all areas that affect the functioning of domestic markets, such as antitrust, subsidies and fiscal incentives, labor and capital mobility, and regulation of monopolies. Since CER has not established supranational institutions such as the European Commission and the EFTA Surveillance Authority, its integration process has been based essentially on policy harmonization and cooperation between national authorities.

One of the most important elements underlying the microeconomic convergence of the economies of EU countries is the existence of a transfer mechanism, mandated by Article 158 (ex Article 130a) of the Treaty establishing the European Community, that aims at “reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.” Specifically, the availability of the so-called “structural funds” (European Agricultural Guidance and Guarantee Fund, European Social Fund, and European Regional Development Fund), coupled to the existence of a European Investment Bank, no doubt reduced the economic and political costs associated with eliminating antidumping policies in the European Union.

The result of this analysis does not imply that groups of countries with lower levels of integration than EU, and which do not count with mechanisms to transfer resources to disadvantaged regions, will always find the use of antidumping measures to be the most efficient way of dealing with market dislocation resulting from import surges. In the context of their bilateral free trade agreement, Canada and Chile have decided to eliminate the use of antidumping measures between themselves. Compared to the EU and CER, the level of economic integration between these two countries is quite limited. During the second half of the nineties, the share of intra-regional trade in the EU was about 44 percent, while bilateral trade within CER represented 25 percent of New Zealand’s foreign trade and 6 percent of Australia’s figures. However, in the case of Canada-Chile their bilateral flows represented 1.5 percent for the latter and less than 0.1 percent for the former.

At first sight, the elimination of antidumping in the context of the Canada-Chile free trade agreement appears contradictory. After all, the comparatively lower level of integration between Canada and Chile, and the absence of any transfer mechanisms à la EU among them, appears to suggest that the costs for these two countries of following the European Union’s initiative to eliminate antidumping would be too high. However, a closer look at the Canada-Chile free trade agreement reveals that these two countries are not seeking to replicate the EU initiative entirely. Indeed, chapter F of the Canada-Chile agreement provides special rules for safeguard actions during the transition period and states that “each Party retains its rights and obligations under Article XIX of the GATT 1994 and the *Agreement on Safeguards* of the WTO Agreement except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article.”

Thus, one interesting innovation made by the Canada-Chile agreement was to begin the trade liberalization process by substituting safeguards for antidumping. Clearly, while an EU-style elimination of safety valves would have been too costly to implement for partners with a relatively low level of economic integration, both economically and politically, the initiative of Canada and Chile might imply an important shift on the negotiating agenda during the transition period, particularly in regard to those industries that are not prepared to face international competition. Instead of blaming exporters from the trading partner for the increased quantities of imported goods, and provoking unnecessary trade disputes, each government is led to address the domestic factors that may be hindering the competitiveness of the local industry.

The results of the analysis above call for additional research to identify the additional parameters that might have facilitated the replacement of antidumping with safeguards between Canada and Chile. Such research would also provide FTAA negotiators with valuable insights into the design of cost-efficient safety valves that might involve the replacement of antidumping with safeguards.

7. Toward an FTAA Safeguard Regime

Central to an assessment of the costs and benefits of contingent protection instruments is the question of how such instruments distribute the protection rents generated by their use. Previous research by Tavares (1995) has shown that an open trading system among economies that are periodically under protectionist pressures can best be maintained when the protection costs arising from the use of import relief measures are kept entirely within national borders. Measures that ensure this objective not only prevent costly trade frictions among countries, but they also provide governments with an instrument for shrinking the power of the protected industries and enforcing a reasonable expiration term for the benefits.

A safeguards regime, as currently applied at the multilateral level, offers countries the possibility to keep protection costs entirely within national borders. Specifically, Article 8.1 of the WTO Agreement on Safeguards requires countries seeking to apply a safeguard measure “to endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure [...]. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.”

The current structure of the Uruguay Round Agreements has led to a limited use of safeguard measures on the part of WTO members. Faced with two alternative contingent protection mechanisms

(safeguards and antidumping), one of which obliges users to compensate their trading partners, it is no surprise to find that WTO members have stepped up their use of antidumping and have relied on safeguards only in exceptional cases. In addition to the payment of compensation, the choice of antidumping in preference to safeguard actions has resulted from the less stringent injury test prescribed by antidumping disciplines, and from the fact that the Uruguay Round Agreements allow antidumping duties to be applied for five years rather than the four years allowed for safeguard measures (Finger 1995, Laird 1997).

The allocation of the protection costs resulting from the use of import relief mechanisms, and the ensuing effects of that cost allocation on the world trading system and the ability of governments to limit the power of protectionist forces at home, seems to offer a solid starting point for discussions surrounding the design of an efficient contingent protection mechanism for the FTAA. As mentioned above, the experience of particular integration agreements, including the free trade area between Canada and Chile (and possibly that between Chile and Mexico) with the replacement of safeguards for antidumping might provide further insights into additional parameters that might need to be taken into account when balancing the costs and benefits of different institutional alternatives to protect domestic producers from import competition.

Thus far, the reference to safeguards, and to the relationship between this policy instrument and antidumping, has been limited in the FTAA negotiating context. Many governments consider that antidumping is an effective tool to achieve the goal of helping industries adapt to new competitive environments, a goal to which governments have traditionally attached high priority. This approach might be attributable to different factors, one of them being the extent to which the institutions in charge of applying antidumping legislation can influence these countries' negotiating agendas and shape the domestic policymaking process. An eventual decision to give more prominence to safeguard measures in the context of the FTAA would involve not only changes to FTAA members' legislations on antidumping, but also complex changes in the role and functions of domestic institutions in charge of applying this policy instrument until now.

The dialogue on import relief measures in the FTAA does not necessarily need to be framed in terms of eliminating antidumping and replacing it with safeguards, however. A possible institutional approach to dealing more efficiently with protectionist pressures at home while taking into account sensibilities with respect to antidumping might consist of a provision limiting the application of antidumping duties to instances in which predatory pricing has been shown to exist, and making safeguards the primary import relief tool available to countries. Taking a step in this direction in the FTAA would pave the way for a leap forward in discussions at the multilateral level on how to preserve an open trading system while at the same time providing governments with the room necessary to assist certain industries in becoming internationally competitive.

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