Antidumping, Countervailing Duties and Trade Remedies: "Let's Make A Deal"??— Views from a Domestic Practitioner

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I. Background

During the Uruguay Round, various agreements were negotiated in the Rules area. One, the Agreement on Safeguards, was a first agreement expanding on the rights and obligations Members had under article XIX of the General Agreement on Tariffs and Trade (GATT) of 1994. Two others were refinements of prior Codes dealing with rights and obligations under articles VI and XVI of GATT 1994. The Agreement on Implementation of article VI of GATT 1994 (Antidumping Agreement) represented the third attempt by the multilateral trading system to work through the rights and obligations of nations under article VI of GATT 1994 (and its predecessor GATT 1947) which, *inter alia*, condemns injurious dumping. Similarly, the Agreement on Subsidies and Countervailing Measures (SCM Agreement) was the second cut at defining what, if any, limitations exist on nations' rights to provide subsidies under article XVI of GATT 1994 (and its predecessor GATT 1947) or how countervailing duty investigations should proceed under article VI of GATT 1994. The Antidumping and SCM Agreements are quite detailed on a host of issues, both substantive (e.g., definition of dumping and actionable subsidies) and procedural (e.g., time for questionnaire responses, content of notices), and should go a long way to ensuring greater uniformity in administration by Member nations. While the Agreements required a number of changes to preexisting U.S. law, the Agreements incorporated much of U.S. law and practice into their terms.

At the same time the new Antidumping and SCM Agreements became effective many nations undertook significant tariff liberalization. This was particularly true for many important developing countries which historically had either high tariff bindings or no tariff bindings at all on many products. As nations broadened their tariff liberalization and

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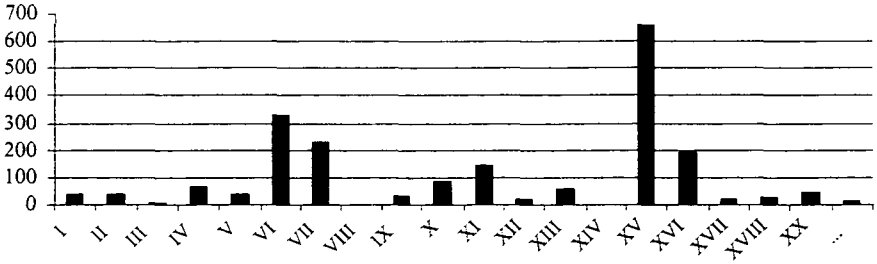
reduced various non-tariff barriers, not surprisingly, more nations found the need to utilize World Trade Organization (WTO)-authorized trade remedies to address import problems.

For example, the WTO reported that during the 1995–2001 period its Members (which for the reporting period did not include China nor various countries in the former Soviet Union who have become active users—for example, the Russian Federation and Ukraine)[1] had initiated some 1,845 antidumping investigations, 143 countervailing duty investigations, and 65 safeguard measures covering a significant number of product sectors:

Antidumping, Countervail, Safeguards Investigations: Number of Initiations by Sector (1995–2001)[2]



For instance, safeguard measures, while the smallest in number, often include broad product ranges.

Developing countries reported having initiated 55.7 percent of antidumping cases, 18.2 percent of countervailing duty cases, and 67.7 percent of safeguard actions—53.4 percent of all initiations.[3] While the historic major users—the European Union, United States, Canada, and Australia—all continued as major developed country users, many developing countries became active users including India, Argentina, South Africa, Brazil, Mexico (which had been a very active user even before the WTO following accession to the GATT), South Korea, Indonesia, Turkey, Egypt, Venezuela, Colombia, and Peru.[4] Even an historic opponent to antidumping and safeguard measures like Japan found itself initiating several antidumping actions and three safeguard actions in recent years.[5] As the author has argued elsewhere, increased use of WTO-sanctioned rules by WTO Members is a good devel-

1. For a discussion of China's antidumping, subsidy, and safeguards regulations, see TERENCE P. STEWART ET AL., ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION: BASELINE OF COMMITMENTS, INITIAL IMPLEMENTATION, AND IMPLICATIONS FOR U.S.-PRC TRADE RELATIONS AND U.S. SECURITY INTERESTS, A REPORT AND SELECTED ANNEXES PREPARED FOR THE U.S.-CHINA SECURITY REVIEW COMMISSION BY THE LAW OFFICES OF STEWART AND STEWART, Attachment 9 (Transnational Publishers, 2002).

2. WTO, *Report (2001) of the Committee on Safeguards to the Council for Trade in Goods*, G/L/494, Annex 2 (Oct. 31, 2001), *at* http://docsonline.wto.org/DDFDocuments/t/G/L/494.doc; WTO, *Report (2000) of the Committee on Safeguards*, G/L/409, Annex 2 (Nov. 23, 2000), *at* http://docsonline.wto.org/DDFDocuments/t/G/L/409.doc; WTO, *Anti-dumping*, *at* http://www.wto.org/english/tratop_e/adp_e/adp_e.htm (last visited Mar. 8, 2003); WTO, *Initiations: by sector from 01/01/95 to 30/06/02*, *at* http://www.wto.org/english/tratop_e/scm_e/scm_stattab4_e.htm (last visited Mar. 8, 2003).

3. *See* TERENCE P. STEWART ET AL., RULES IN A RULES-BASED WTO: KEY TO GROWTH; THE CHALLENGES AHEAD 23 (2002).

4. *See id.* at 22.

5. *See, e.g.*, WTO, Committee on Antidumping Practices, *Semi-Annual Report Under Article 16.4 of the Agreement: Japan*, G/ADP/N/92/JPN (Aug. 23, 2002), *at* http://docsonline.wto.org/DDFDocuments/t/G/ADP/

opment for the trading system, not a negative.[6] Indeed, maintaining strong trade laws is important for the continued support for further liberalization not only in developed countries like the United States, but also for WTO developing country Members to justify to their citizens the trade liberalization undertaken as part of WTO accession or continued participation in the multilateral system.

Use of the agreements by Members has been the subject of frequent challenges within the WTO, with the United States being the most frequent subject of WTO disputes in the Rules area during the last seven and two-thirds years:

WTO Disputes Involving Rules Agreements and Other Trade Remedies
(Ranked by date of panel report)

No.	Case Name	WT/DS	Panel Report	AB Report	Major Agreement(s) Cited
1	*Brazil—Coconut*	22	10/17/96	2/21/97	SCM Agreement
2	*Guatemala—Cement I*	60	6/19/98	11/2/98	AD Agreement
3	*Indonesia—Auto Industry*	54/55/59/64	7//2/98		SCM Agreement
4	*US—DRAMS*	99	**1/29/99**		Antidumping Agreement
5	*Brazil—Aircraft*	46	4/14/99	8/2/99	SCM Agreement
6	*Canada—Aircraft*	70	4/14/99	8/2/99	SCM Agreement
7	*Canada—Milk and Dairy*	103/113	5/17/99	10/13/99	SCM Agreement
8	*Australia—Leather*	126	5/25/99		SCM Agreement
9	*Korea—Dairy*	98	6/21/99	12/14/99	Safeguards Agreement
10	*Argentina—Footwear*	121	6/25/99	12/14/99	Safeguards Agreement
11	*US—FSC*	108	**10/8/99**	**2/24/00**	SCM Agreement
12	*US—Section 301*	152	12/22/99		Other Trade Remedies
13	*US—Carbon Steel*	138	**12/23/99**	**5/10/00**	SCM Agreement
14	*Mexico—HFCS*	132	1/28/00		Antidumping Agreement
15	*Canada—Auto Measures*	139/142	2/11/00	5/31/00	SCM Agreement
16	*US—AD Act (EC)*	136	**3/31/00**	**8/28/00**	Antidumping Agreement
17	*US—AD Act (Japan)*	162	**5/29/00**	**8/28/00**	Antidumping Agreement
18	*US—Import Measures*	165	**7/17/00**	12/11/00	Other Trade Remedies
19	*US—Wheat Gluten*	166	**7/31/00**	**12/22/00**	Safeguards Agreement
20	*Thailand—H-Beams*	122	9/28/00	3/12/01	Antidumping Agreement
21	*Guatemala—Cement II*	156	10/24/00		Antidumping Agreement
22	*EC—Bed Linen*	141	10/30/00	3/1/01	Antidumping Agreement
23	*US—Lamb Meat*	177/178	**12/21/00**	**5/1/01**	Safeguards Agreement
24	*US—Stainless Steel*	179	**12/22/00**		Antidumping Agreement
25	*US—Hot-Rolled Steel*	184	**2/28/01**	**7/24//01**	Antidumping Agreement
26	*US—Export Restraints*	194	6/29/01		SCM Agreement
27	*Argentina—Tiles*	189	9/28/01		Antidumping Agreement
28	*US—Line Pipe*	202	**10/29/01**	**2/15/02**	Safeguards Agreement
29	*Canada—Aircraft II*	222	1/28/02		SCM Agreement
30	*Chile—Price Band System*	207	**5/3/02**		Safeguards Agreement
31	*US—Corrosion-Resistant Steel*	213	**7/3/02**		SCM Agreement
32	*US—Section 129(c)(1)*	221	7/15/02		Antidumping Agreement/ SCM Agreement
33	*US—Steel Plate*	206	**7/29/02**		SCM Agreement
34	*US—CVD Measures*	212	**7/31/02**		SCM Agreement

Key: AB = Appellate Body; bolding = decisions recommending that U.S. bring measures into conformity

N92JPN.doc; WTO, Committee on Safeguards, *Agreement on Safeguards on Initiation of an Investigation and the Reasons for it: Japan*, G/SG/N/6/JPN/1 (Jan. 5, 2001), *at* http://docsonline.wto.org/DDFDocuments/t/G/SG/N6JPN1.doc.

6. *See* STEWART ET AL., *supra* note 3.

U.S. trade remedies have been the subject of over half of all of the trade remedy cases resulting in a report. Out of the seventeen cases challenging U.S. trade remedies, the United States has been asked to modify its measures in thirteen cases.

WTO disputes of all types have an extraordinary success rate within the Dispute Settlement Understanding (DSU) with nearly 90 percent of challenges being sustained, at least in part. This is true in the Rules area as well.[7] While legislation implementation and practices vary among governments, no system permits overall greater participation and due process rights than the U.S. system does. Moreover, since much of what is in the agreements flows from U.S. law and practice, it is surprising that so many challenges have been filed against U.S. law and practices. The reason for the lack of challenges to decisions by other countries is not clear. It could be the result of the lack of transparency in the system, because the challenges are focused on certain contentious issues that were not specifically addressed during the Uruguay Round (e.g., whether subsidies to an entity survive the sale of the entity's assets in an arm's length transaction) in which the United States has been involved, or still other reasons. To many U.S. domestic users and, I believe, the agencies involved, the challenges and resulting decisions are viewed as having created WTO obligations not agreed to by the United States during the Uruguay Round.

II. Launch of the Doha Development Agenda Round

Last November when the fourth WTO Ministerial was held in Doha, Qatar, a work program was agreed upon to move forward the built-in agenda from Uruguay Round agreements and various other matters of interest to the Members. Many U.S. trade remedy users concerned about the intentions of those seeking the reopening of the Antidumping and SCM Agreements, urged the Administration not to support the reopening of these agreements as part of the work program. More than sixty Senators expressed similar concerns to the Administration prior to Doha.[8]

Nonetheless, as part of the process to achieve a successful launch to negotiations, the United States agreed to the inclusion of two paragraphs dealing with Rules in the Ministerial Declaration coming out of Doha. There was also one paragraph, potentially relevant to Rules, dealing with the DSU:

> WTO RULES
>
> 28. In the light of experience and of the increasing application of these instruments by Members, *we agree to negotiations aimed at clarifying and improving disciplines* under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while *preserving the basic concepts, principles and effectiveness of these* Agreements and their instruments and objectives, and *taking into account the needs* of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. In the context of these negoti-

7. *See* TERENCE P. STEWART & AMY S. DWYER, HANDBOOK ON WTO TRADE REMEDY DISPUTES: THE FIRST SIX YEARS (1995–2000) 391–93 (2001). Indeed, out of the thirty-two cases involving the Antidumping, SCM, or Safeguards Agreements, panels or the Appellate Body have found violations in twenty-eight cases or 87.5 percent of the time. *See supra* Attachment.

8. *See U.S. Seeks To Put Hold On Antidumping, Subsidy Negotiations In WTO*, Vol. 19, No. 40, INSIDE U.S. TRADE 1, Oct. 5, 2001.

ations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

29. We also agree to negotiations aimed at *clarifying and improving* disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.

DISPUTE SETTLEMENT UNDERSTANDING

30. We agree to negotiations on *improvements and clarifications* of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.[9]

In addition, paragraph 12 of the Declaration calls for addressing various "implementation" issues raised by developing countries. There are a total of thirty-three such issues raised in connection with the Antidumping and SCM Agreements.[10]

The language in paragraph 28 was included at the United States' insistence that any negotiations preserve the effectiveness of the Antidumping and SCM Agreements in dealing with unfair trade practices.[11] Thus, U.S. trade negotiators have committed to consider only those proposed changes to the Antidumping and SCM Agreements that:

1. clarify and improve disciplines;
2. preserve the Agreements' basic concepts, principles, and effectiveness and their instruments and objectives; and
3. take into account the needs of developing and least-developed participants.

III. Trade Promotion Authority

On August 6, 2002, President Bush signed into law the Bipartisan Trade Promotion Authority Act of 2002[12] as part of the Trade Act of 2002. The Bipartisan Trade Promotion Authority Act gives the President fast-track authority for trade agreements negotiated during the Doha Round. Among the principal U.S. trade negotiating objectives, Congress identified (1) preservation of U.S. ability to enforce rigorously its trade remedy laws, and (2) avoidance of agreements that lessen the effectiveness of those laws:

> The principal negotiating objectives of the United States with respect to trade remedy laws are—
>
> (A) *to preserve* the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, *and avoid* agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural

9. WTO, Ministerial Declaration, WT/MIN(01)/DEC/1, at 6 (Nov. 20, 2001), *at* http://docsonline.wto.org/DDFDocuments/t/WT/min01/DEC1.doc (emphasis added) [hereinafter Ministerial Declaration].

10. *See* TERENCE P. STEWART, AFTER DOHA: THE CHANGING ATTITUDE & IDEAS OF THE NEW WTO ROUND 14–16 (2002).

11. *See U.S. Wrestles With Scope, Direction for Talks on Trade Rules*, INSIDE U.S. TRADE, Nov. 13, 2001, Special Report, at 10.

12. Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. § 3801 (2002).

producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) *to address and remedy* market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.[13]

As noted, Congress specifically directed the President to address the causes of dumping and subsidization.

The Bipartisan Trade Promotion Authority Act of 2002 also identifies adherence to the standard of review as one of the U.S. negotiating objectives with respect to dispute settlement and enforcement of trade agreements:

> The principle negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—
> * * *
> (C) to seek adherence by panels convened under the Dispute Settlement Understanding and by the Appellate Body to the standard of review applicable under the Uruguay Round Agreement involved in the dispute, including greater deference, where appropriate, to the fact-finding and technical expertise of national investigating authorities.[14]

In its Conference Report, Congress expressed concern with the recent pattern of negative panel and Appellate Body decisions in Rules cases:

> [T]he Conferees believe that . . . support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore, *the recent pattern of decisions by dispute settlement panels and the WTO Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing and safeguard measures by WTO members has raised concerns*, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.[15]

Those concerns were repeated in the "Findings" section of the enacted bill.[16] Indeed, on May 14, 2002, many members of the Senate voted in favor of the Dayton-Craig Trade Remedy Law Amendment, which would have prevented fast-track consideration of parts of any trade agreement changing U.S. trade remedy laws.[17] While the enacted bill does not include the Dayton-Craig limitations on the President's negotiating authority, it does require the President to report to Congress on (1) the range of proposals that could require

13. *Id.* § 3802(b)(14) (emphasis added). The language used in the Conference Report to describe the President's mission was even more emphatic:

> The Conferees recognize the importance of preserving the ability of the United States to enforce rigorously its trade remedy laws, including the antidumping, countervailing duty and safeguard laws. Because *this issue is significant* to many Members of Congress in both the House and Senate, the Conferees have made this priority a principal negotiating objective. Negotiators must also avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, as well as domestic and international safeguard provisions.

H.R. REP. No. 107–624, at 156 (2002) (emphasis added).

14. 19 U.S.C. § 3802(b)(12)(C).

15. H.R. REP. No. 107–624, at 150 (2002) (emphasis added).

16. 19 U.S.C. § 3801(b)(3).

17. S. AMDT. 3408, 108th Cong. (2002).

amendments to title VII of the Tariff Act of 1930 (antidumping/countervailing duty provisions) or chapter 1 of title II of the Trade Act of 1974 (safeguards), and (2) how those proposals relate to U.S. trade negotiating objectives on trade remedies.[18]

Thus, Congress gave the President express guidance on U.S. negotiating objectives in the Doha Round with respect to trade remedy agreements. Specifically, Congress authorized the Administration to negotiate agreements that:

1. preserve the ability of the United States to enforce rigorously its trade laws;
2. avoid lessening the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions;
3. address and remedy market distortions that lead to dumping and subsidization; and
4. seek adherence by panels and by the Appellate Body to the standard of review (such as in Article 17.6 of the Antidumping Agreement) including greater deference, where appropriate, to the fact-finding and technical expertise of national investigating authorities.[19]

IV. Questions Posed

(a) Should the United States be prepared to discuss "improvements" to WTO antidumping and countervailing duty disciplines in the Doha Round?

With the Doha process going forward, the United States can proceed down a number of paths. It could simply review proposals put forward by other nations and evaluate them against the Declaration's language on "negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives."[20] Few, if any, of the proposals put forward to date will likely meet the standard articulated, particularly "preserving effectiveness." This approach has the advantage of leaving the agreement largely unmodified at the end of the process.

A second approach would have the United States take a more proactive position, seeking to obtain clarification of existing terms and provisions to restore the rights the United States understood existed under the Antidumping and SCM Agreements that have been drawn into question by WTO panel and Appellate Body decisions, and pursuing conclusion to issues such as circumvention that have not been resolved despite the longstanding mandate to do so.[21] As the United States is just getting to the phase of having to examine implementation of various losses before the DSU, such an approach has the advantage of returning the agreements to the status quo ante—that is, what the United States understood its rights and obligations to have been in the first instance but which may be upset by WTO panel and Appellate Body decisions while obtaining clarification on matters historically important to the United States (such as anti-circumvention).

A third permutation would be to clarify the agreements to more closely parallel U.S. law, regulations, and practice. This would maintain the effectiveness of the agreements and

18. 19 U.S.C. § 3804(d)(3).

19. *See id.*

20. Ministerial Declaration, *supra* note 9, at 6.

21. In the Decision on Anti-Circumvention, WTO Members referred the issue of anti-circumvention to the Committee on Anti-Dumping Practices. *See Decision on Anti-Circumvention*, *reprinted in* THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 397 (2000). While the Committee established an Informal Group on Anti-Circumvention, no draft text has been forthcoming.

provide clarification on issues where there is no specific language in the agreement. This would also have the advantage of bringing foreign laws and regulations into conformity with U.S. laws and regulations on issues like transparency and due process.

A fourth permutation would be to add to the prior agenda review of trading partner laws, regulations, and practices and seek clarifications in the agreements either to add practices that make the agreements more effective or to clarify that such practices are not envisioned where the practices are viewed by the Administration as incompatible with U.S. law and practice.

To this practitioner, the debate should shift from whether negotiations should proceed (they will proceed) to how the Administration and Congress should evaluate the results of any negotiations. The last three options better permit the United States to maintain agreements that are effective.

(b) Does the risk of abusive foreign AD/CVD actions on U.S. exports justify a broad renegotiation of the WTO Agreement?

The answer to this question is a resounding "no." To date, the United States has pursued relatively few antidumping and countervailing duty cases against U.S. exports to the WTO DSU. With the extraordinary voting record of WTO Panels, if there is concern about "abuse" by our trading partners (concern, which, to date, is not borne out by the numbers of cases brought against the United States; the United States was [before the WTO] and is now subject to cases, usually brought by our major trading partners), the United States should demonstrate that such problems cannot be addressed through the DSU, through the Committee process, or bilateral consultations. Such a showing cannot be made on the challenges pursued to date. Indeed, the U.S. trade remedies have been continuously subject to GATT and now WTO panel scrutiny.

This being said, this author is fully supportive as a general matter of greater transparency and due process in other nations' antidumping and countervailing duty regimes. Ensuring U.S. exporters have rights abroad comparable to those enjoyed by foreign producers in U.S. proceedings makes sense and is addressed in option three in the previous section.

(c) Can the WTO address the underlying causes of antidumping, for example, high tariffs, non-tariff barriers, and lax competition laws, that contribute to international price discrimination?

The question is overly simplistic and only addresses dumping. It is true that high tariffs and various non-tariff barriers (NTBs) can contribute to international price discrimination. Tariff liberalization and addressing specific NTBs can be effective in reducing the underlying cause of dumping in certain circumstances. For economies in which economic systems have many similarities (e.g., the United States and Canada), a move to liberalized trade has reduced the incidence of trade disputes in many (but not all) sectors and overall compared to other nations. A reduced caseload is not the same as the end of the need for remedies. One can expect some reductions in trade actions as tariff barriers and NTBs are reduced or eliminated with other nations. Similarly, improved competition laws and enforcement will address the underlying cause of some forms of dumping. Distortions that exist in agriculture amongst many countries, the integration of non-market economies into the global system, structural excess capacity problems in certain sectors, and the prevalence of cross-subsidization by many companies are a few of the other areas that can result in dumping situations arising and being pursued under trade remedies.

GATT/WTO Rules Disputes Against the United States
(Ranked by date of panel report)*

No.	Case Name	Case Number	Panel Report	Major Agreement/Code Cited
1	*US—CVD Measures*	WT/DS212	7/31/2002	SCM Agreement
2	*US—Steel Plate*	WT/DS206	7/29/2002	SCM Agreement
3	*US—Section 129(c)(1)*	WT/DS221	7/15/2002	Antidumping Agreement/ SCM Agreement
4	*US—Corrosion-Resistant Steel*	WT/DS213	7/3/2002	SCM Agreement
5	*US—Line Pipe*	WT/DS202	10/29/2001	Safeguards Agreement
6	*US—Export Restraints*	WT/DS194	6/29/2001	SCM Agreement
7	*US—Hot-Rolled Steel*	WT/DS184	2/28/2001	Antidumping Agreement
8	*US—Stainless Steel*	WT/DS179	12/22/2000	Antidumping Agreement
9	*US—Lamb Meat*	WT/DS177/178	12/21/2000	Safeguards Agreement
10	*US—Wheat Gluten*	WT/DS166	7/31/2000	Safeguards Agreement
11	*US—AD Act (Japan)*	WT/DS162	5/29/2000	Antidumping Agreement
12	*US—AD Act (EC)*	WT/DS136	3/31/2000	Antidumping Agreement
13	*US—Carbon Steel*	WT/DS138	12/23/1999	SCM Agreement
14	*US—FSC*	WT/DS108	10/8/1999	SCM Agreement
15	*US—DRAMS*	WT/DS99	1/29/1999	Antidumping Agreement
16	*US—Bismuth Carbon Steel*	SCM/185	11/15/1994	Subsidies Code
17	*US—Stainless Steel Plate*	ADP/117 and Corr.1*	2/24/1994	Antidumping Code
18	*US—Softwood Lumber*	SCM/162	2/19/1993	Subsidies Code
19	*US—Salmon (CVD)*	SCM/153 BISD 41S/576	12/4/1992	Subsidies Code
20	*US—Salmon (AD)*	ADP/87 BISD 41S/229	11/30/1992	Antidumping Code
21	*US—Cement & Cement Clinker*	ADP/82	9/7/1992	Antidumping Code
22	*US—Pork*	DS7/R BISD 38S/30	9/18/1990	Subsidies Code
23	*US—Stainless Steel Hollow Products*	ADP/47	8/20/1990	Antidumping Code
24	*US—Non-Rubber Footwear*	SCM/94 BISD 42S/208	10/4/1989	Subsidies Code

*includes unadopted panel reports

President Bush, as part of his steel program announced last year, called for a multilateral effort to address the excess capacity problems facing the industry and the subsidy practices that have driven retention of inefficient capacity in many countries over time. Considering the heavy incidence of steel trade cases in many countries over the years, a resolution of one of the primary drivers of the intensity of trade actions in steel would be helpful in reducing the number of trade actions that are brought. While there has been some discussion within the OECD at the initiative of the Administration, to date there is no indication of interest or willingness to pursue the issue aggressively by Member nations either within the OECD or within the WTO. This author has argued for the last twelve years that nations should look at the structural excess capacity issue not just for steel but for any industries that find themselves in this situation.

While there are ways to attack some of the underlying causes of dumping (and while governments could accept further limits on their ability to spend money), the question also implies that there are too many cases being pursued internationally. This is not factually supportable. In most countries, the percentage of trade covered by cases at any particular time is small. Indeed, for major users like the United States, the European Union, and Canada, coverage has historically been between 0.5 percent and 2.0 percent of imports.[22]

22. *See* Terence P. Stewart et al., *Opportunities in the WTO for Increased Liberalization of Goods: Making Sure the Rules Work for All and that Special Needs are Addressed*, 24 FORDHAM INT'L L.J. 652, 677 (2000).

V. Let's Make a Deal?—Unlikely

Not surprisingly, countries that have major problems with liberalization in certain sectors (e.g., Japan, Korea, the European Union in agriculture, India on industrial and agricultural products) have been amongst those pursuing an agenda in the Rules area that goes far beyond the text of paragraph 28 of the Doha Declaration. Rules have historically been of importance to the United States and, in fact, are of significant importance to industries in many of the countries seeking major reopening of the texts as well. Thus, the attack on the Rules that is being pursued in the Doha Round appears largely strategic, to force the United States to accept a smaller package of trade liberalization in agriculture or to postpone the time for conclusion of the overall negotiations.

Since the proposals put forward to date by nations on the Antidumping and SCM Agreements go far beyond the mandate of paragraph 28,[23] the likelihood of there being a deal in this area, satisfactory to the various parties, seems remote at best. This Administration, like those that have preceded it, has committed to maintaining strong trade laws so trade can be fair as well as free. History has shown that the existence of strong trade remedies has been critical to maintain domestic support for trade liberalization. This is true not only in the United States but in many other countries as well. The United States has a lot of work before it to ensure strong trade laws remain available for domestic industries. Failure in this area will undermine the ability to move an aggressive agenda in other areas.

23. For example, India proposes to raise the *de minimis* level for dumping margins to 5 percent in investigations and reviews of developing country imports. WTO, Negotiating Group on Rules, *Proposals on Implementation Related Issues and Concerns: Agreement on Subsidies and Countervailing Measures/Anti-Dumping Agreement, Submission by India*, TN/RL/W/4 (Apr. 25, 2002), *at* http://docsonline.wto.org/DDFDocuments/t/tn/rl/W4.doc. Yet, India offers no basis for establishing a *de minimis* level that would exceed 100 percent of corporate profitability. *See* Terence P. Stewart, *Administration of the Antidumping Law: A Different Perspective*, *in* DOWN IN THE DUMPS: ADMINISTRATION OF THE UNFAIR TRADE LAWS 288, 317–18 (Richard Boltuck & Robert E. Litan eds., 1991). *See also* WTO, Negotiating Group on Rules, *Antidumping: Illustrative Major Issues, Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong; China; Israel; Japan; Korea; Mexico; Norway; Singapore; Switzerland; Thailand and Turkey*, TN/RL/W/6 (Apr. 26, 2002), *at* http://docsonline.wto.org/DDFDocuments/t/tn/rl/W6.doc; WTO, Negotiating Group on Rules, *Second Contribution to Discussion of the Negotiating Group on Rules on Anti-Dumping Measures, Paper by Brazil; Chile; Colombia; Costa Rica; Hong Kong; China; Israel; Japan; Korea; Norway; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Singapore; Switzerland; and Thailand*, TN/RL/W/10 (June 28, 2002), *at* http://docsonline.wto.org/DDFDocuments/t/tn/rl/W10.doc; WTO, Negotiating Group on Rules, *Submission from the European Communities Concerning the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement)*, TN/RL/W/13 (July 8, 2002), *at* http://docsonline.wto.org/DDFDocuments/t/tn/rl/W13.doc; D. Pruzin, *International Trade WTO Antidumping Reform Advocates Publish Priorities for New Negotiations*, DAILY REP. FOR EXECUTIVES, May 2, 2002, at A1 (Japan and South Korea take lead at Ministerial Conference to initiate WTO negotiations on rules).

ATTACHMENT
WTO Disputes Involving Rules Agreements and Other Trade Remedies
(Ranked by date of panel report)

No.	Case Name	WT/DS	Panel Report	AB Report	Agreement(s) Cited	Issue(s) Raised	Violation(s) Found
1	*Brazil—Coconut*	22	10/17/96	2/21/97	SCM Agreement	GATT Article VI and SCM Agreement.	None—Panel and AB found SCM Agreement was not applicable to dispute.
2	*Guatemala—Cement I*	60	6/19/98	11/2/98	Antidumping Agreement	Antidumping Agreement Articles 2, 3, 5, and 7.1.	Panel found violation of Antidumping Agreement Articles 5.3 and 5.5. AB found dispute was not properly before the panel. Therefore, AB could not consider any substantive issues that Guatemala appealed.
3	*Indonesia—Auto Industry*	54/55/59/ 64	7//2/98		SCM Agreement	SCM Agreement Articles 3, 5(c), 6, and 28	Violation of SCM Agreement Article 5(c).
4	*United States—DRAMS*	99	**1/29/99**		Antidumping Agreement	Antidumping Agreement Articles 6 and 11.	Violation of Antidumping Agreement Article 11.2.
5	*Brazil—Aircraft*	46	4/14/99	8/2/99	SCM Agreement	SCM Agreement Articles 3, 27.4, and 27.5.	Panel and AB found violation of SCM Agreement Articles 3.1(a) and 27.4.
6	*Canada—Aircraft*	70	4/14/99	8/2/99	SCM Agreement	SCM Agreement Article 3.	Panel and AB found violation of SCM Agreement Articles 3.1(a) and 3.2.
7	*Canada—Milk and Dairy*	103/113	5/17/99	10/13/99	SCM Agreement	SCM Agreement Article 3.	No violation of SCM Agreement.
8	*Australia—Leather*	126	5/25/99		SCM Agreement	SCM Agreement Article 3.	Violation of SCM Agreement Article 3.1(a).
9	*Korea—Dairy*	98	6/21/99	12/14/99	Safeguards Agreement	Safeguards Agreement Articles 2, 4, 5, and 12.	Panel found violation of Safeguards Agreement Articles 4.2(a), 5, 12.1. AB found violation of Safeguards Agreement Articles 4.2(a) and 12.2.

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No.	Case Name	WT/DS	Panel Report	AB Report	Agreement(s) Cited	Issue(s) Raised	Violation(s) Found
10	*Argentina—Footwear*	121	6/25/99	12/14/99	Safeguards Agreement	Safeguards Agreement Articles 2, 4, 5, 6 and 12.	Panel and AB found violation of Safeguards Agreement Articles 2 and 4.
11	*United States—FSC*	108	**10/8/99**	**2/24/00**	SCM Agreement	SCM Agreement Articles 3.1(a) and 3.1(b).	Panel and AB found violation of SCM Agreement Article 3.1(a).
12	*United States—Carbon Steel*	138	**12/23/99**	**5/10/00**	SCM Agreement	SCM Agreement Articles 1.1(b), 10, 14, and 19.4.	Panel and AB found violation of SCM Agreement Article 10.
13	*Mexico—HFCS*	132	1/28/00		Antidumping Agreement	Antidumping Agreement Articles 2, 3, 4, 5, 6, 7, 9, 10 and 12.	Violation of Antidumping Agreement Articles 3.1, 3.2, 3.4, 3.7, 3.7(i), 7.4, 10.2, 10.4, 12.2, and 12.2.2.
14	*Canada—Auto Measures*	139/142	2/11/00	5/31/00	SCM Agreement	SCM Agreement Article 3.	Panel and AB found violation of SCM Agreement Article 3.1(a).
15	*United States—AD Act (EC)*	136	**3/31/00**	**8/28/00**	Antidumping Agreement	Antidumping Agreement Articles 1, 2, 3, 4, and 5.	Panel and AB found violation of Antidumping Agreement Articles 1, 4, and 5.5.
16	*United States—AD Act (Japan)*	162	**5/29/00**	**8/28/00**	Antidumping Agreement	Antidumping Agreement Articles 1, 3, 4, 5, 9, 11, 18.1, and 18.4.	Panel and AB found violation of Antidumping Agreement Articles 1, 4.1, 5.1, 5.2, 5.4, 18.1, and 18.4.
17	*United States—Wheat Gluten*	166	**7/31/00**	**12/22/00**	Safeguards Agreement	Safeguards Agreement Articles 2, 4, 5, and 12.	Panel found violation of Safeguards Agreement Articles 2.1, 4, 8.1, 12.1(a), 12.1(b), 12.1(c), and 12.3. AB found violation of Safeguards Agreement Articles 2.1, 4.2, 4.2(b), 8.1, 12.1(a), 12.1(b), and 12.3.

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No.	Case Name	WT/DS	Panel Report	AB Report	Agreement(s) Cited	Issue(s) Raised	Violation(s) Found
18	*Thailand—H-Beams*	122	9/28/00	3/12/01	Antidumping Agreement	Antidumping Agreement Articles 2, 3, 5, and 6.	Panel and AB found violation of Antidumping Agreement Articles 3.1, 3.2, 3.4, and 3.5.
19	*Guatemala—Cement II*	156	10/24/00		Antidumping Agreement	Antidumping Agreement Articles 1, 2, 3, 5, 6, 7, 12, 18 and its Annexes I and II.	Violation of Antidumping Agreement Articles 3.1, 3.2, 3.4, 3.5, 5.3, 5.5., 5.8, 6.1.2, 6.1.3, 6.2, 6.4, 6.5, 6.5.1, 6.8, 6.9, 12.1.1, paragraph 2 of Annex I.
20	*EC—Bed Linen*	141	10/30/00	3/1/01	Antidumping Agreement	Antidumping Agreement Articles 2.2.2, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.4, 5.8, 6, 12.2.2, and 15.	Panel found violation of Antidumping Agreement Articles 2.4.2, 3.4, and 15. AB found violation of Antidumping Agreement Articles 2.2.2(ii) and 2.4.2.
21	*United States—Lamb Meat*	177/178	**12/21/00**	**5/1/01**	Safeguards Agreement	Safeguards Agreement Articles 2, 3, 4, 5, 8, 11, and 12.	Panel and AB found violation of Safeguards Agreement Articles 2.1, 4.2(b), and 4.1(c). AB also found violation of Safeguards Agreement Article 4.2(a).
22	*United States—Stainless Steel*	179	**12/22/00**		Antidumping Agreement	Antidumping Agreement Articles 2, 6, and 12.	In *Sheet and Plate* investigations, Panel found violation of Antidumping Agreement Article 2.4 chapeau and Article 2.4.2. In *Sheet* investigation Panel also found violation of Antidumping Agreement Article 2.4.1.
23	*United States—Hot-Rolled Steel*	184	**2/28/01**	**7/24//01**	Antidumping Agreement	Antidumping Agreement Articles 2, 3, 6 (including Annex II), 9 and 10.	Panel and AB found violation of Antidumping Agreement Articles 2.1, 6.8, 9.4, 18.4, and Annex II. AB also found violation of Antidumping Agreement Articles 3.1 and 3.4.

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No.	Case Name	WT/DS	Panel Report	AB Report	Agreement(s) Cited	Issue(s) Raised	Violation(s) Found
24	*United States—Export Restraints*	194	6/29/01		SCM Agreement	SCM Agreement Articles 1.1, 10 (as well as Articles 11, 17 and 19, as they relate to Article 10) 32.1, and 32.5.	None
25	*Argentina—Tiles*	189	9/28/01		Antidumping Agreement	Antidumping Agreement Articles 2.4, 6.8 in conjunction with Annex II, 6.9, and 6.10.	Violation of Antidumping Agreement Articles 2.4, 6.8 in conjunction with Annex II, 6.9, and 6.10.
26	*United States—Line Pipe*	202	**10/29/01**	**2/15/02**	Safeguards Agreement	Safeguards Agreement Articles 2, 3, 4, 5, 11 and 12.	Panel found violation of Safeguards Agreement Articles 3.1, 4.2(b), 4.2(c), 8.1, 9.1 and 12.3. AB found violation of Safeguard Agreement Articles 2, 4, 4.2(b), 5.1, 8.1, 9.1, and 12.3.
27	*Canada—Aircraft II*	222	1/28/02		SCM Agreement	SCM Agreement Article 3.	Violation of SCM Agreement Article 3.1(a)
28	*Chile—Price Band System*	207	**5/3/02**		Safeguards Agreement	Safeguards Agreement Articles 2, 3, 4, 5, 6, 12	Violation of Safeguards Agreement 2, 2.1, 3.1, 4, 4.1(a), 4.1(b), 4.2(a), 4.2(b), and 5.1.
29	*United States—Corrosion-Resistant Steel*	213	**7/3/02**		SCM Agreement	SCM Agreement Articles 10, 11.9 and 21 (notably 21.3).	Violation of SCM Agreement Articles 21.3 and 32.5.
30	*United States—Section 129(c)(1)*	221	7/15/02		Antidumping Agreement/ SCM Agreement	SCM Agreement Articles 10 and note 36, 19.2, 19.4 and note 51, 21.1, 32.1, 32.2, 32.3, and 32.5; Antidumping Agreement Articles 1, 9.3, 11.1, 18.1–4 and note 12.	None

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No.	Case Name	WT/DS	Panel Report	AB Report	Agreement(s) Cited	Issue(s) Raised	Violation(s) Found
31	*United States—Steel Plate*	206	**7/29/02**		Antidumping Agreement/ SCM Agreement	Antidumping Agreement Articles 1, 2, 3 (especially 3.3), 5 (especially 5.8), 6 (especially 6.8), 12, 15, 18.4 and Annex II; SCM Agreement Articles 10, 11 (especially 11.9), 15 (especially 15.3), 22 and 27 (especially 27.10) of the SCM Agreement.	Violation of Antidumping Agreement Article 6.8 and paragraph 3 of Annex II.
32	*United States—CVD Measures on Certain Products*	212	**7/31/02**		SCM Agreement	SCM Agreement Articles 10, 14, 19, and 21.	Violation of SCM Agreement Articles 10, 14, 19.1, 19.4, 21, 21.1, 21.2, and 21.3.

Key: AB = Appellate Body; bolding = decisions recommending that U.S. bring measures into conformity