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# Antidumping and Safeguard Mechanisms: The Brazilian Experience, 1988-2003

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**Abstract**

The main focus of the paper is put on the evaluation of the antidumping (AD) regime from 1988 through 2003. During these years, the Brazilian economy had to cope with several periods of macroeconomic instability, and overvaluation of the domestic currency, particularly during 1990/1992 and 1994/1998. As a result, from 1992 through 1998, import volumes increased significantly. Although during these years, the demand for AD protection was growing, the number of investigations concluded with an affirmative determination was only 52%. The paper explains that the institutional framework in charge of administering the antidumping regime was subject to several reforms. Along this process, the Ministry of Development, Industry and Trade saw its role strengthened. This Ministry has a more protectionist bias than the Ministry of Finance that during the initial years of the liberalization program, which played a prominent role in decisions regarding AD investigations and measures. The paper concludes that in comparison to other countries that are important users of the AD mechanism, the Brazilian experience reveals two interesting features: (1) a relatively small rate of final positive determinations, and (2) a tradition of applying antidumping duties in amounts that on average have been quite lower than the full dumping margins.

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**Antidumping and Safeguard Mechanisms: The Brazilian Experience, 1988-2003**[1]

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## 1. Introduction

In the late 1980s, the import-substitution industrialization process together with recurrent exchange rate crises led Brazil to implement an import policy whereby only those goods without a like product or those necessary to satisfy an unexpected spike in demand were allowed in. This policy consisted of high customs tariffs, discretionary controls (such as a list of forbidden items and an annual maximum limit for foreign purchases by enterprise), and special tax schemes whereby a substantial portion of imported goods was subject to tariff rebates or outright exemption.

From 1988 onwards, an import policy was adopted with the goal of fostering a more efficient allocation of resources through foreign competition. To minimize any potential political pressure, Brazil introduced in 1987, prior to the implementation of this new policy, a law that put into force agreements on antidumping, subsidies and countervailing duties, thus developing a new protection mechanism for domestic industries.

Therefore, jointly with a gradual import liberalization process, Brazil started to implement trade defense instruments for providing temporary relief to certain sectors when impacted by foreign competition. An efficient and judicious management of these mechanisms was essential not only to

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support any activity affected by unfair trade practices, but also to ensure the continuity of the trade liberalization program. In sum, the government was faced with the challenge of implementing a system to protect its national interests that might also be compatible with the political support needed to enhance the openness of the Brazilian economy (Finger, 1998).

The enforcement of antidumping mechanisms is subject to the rules set in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 of the World Trade Organization (WTO). The rules require proof of the dumping practice, determination of injury on the production of domestic like products, and establishment of a causal relationship between the dumped imports and the injury to the domestic industry.

The use of safeguard measures, as specified in Article XIX of the GATT (Emergency Action on Imports of Particular Goods), involves stricter requirements to prove injury (serious injury) as well as a commitment of the domestic industry to improve its competitiveness.

Notwithstanding the technical and objective language of the WTO Agreements, any assessment regarding the previously-mentioned requirements opens up the path for a high degree of subjectivity, turning the antidumping and safeguard mechanisms into such a strong protection instrument that it may even contradict trade liberalization.

The purpose of this paper is to assess the Brazilian experience with the use of antidumping and safeguard mechanisms in a context of trade liberalization and macroeconomic stability programs. This paper is made up of an introduction and three sections. Section 2 reviews the main changes introduced into the import policy of Brazil between 1988 and 2003, divided into four different stages. Section 3 presents a description of the legal system and of the institutional and administrative agencies concerned with the enforcement of antidumping and safeguard mechanisms in Brazil from 1987 until 2003. It also describes the evolution of the claims filed during this period and evaluates their main results vis-à-vis the import liberalization target. Section 4 summarizes, in the light of the Brazilian experience, the main conclusions and policy recommendations.

## 2. The Import Policy in Brazil in the 1987-2003 Period

### 2.1 An Overview

In 1987, after decades of import-substitution policies and recurrent exchange rate crises that had affected the Brazilian economy, the import policy in Brazil presented the following basic characteristics (Kume, Piani and Souza, 2003):

a) a tariff structure based, with few exceptions, on the rates established in 1957,[4] at the initial phase of the Brazilian import-substitution process;

b) generalized water in the tariff or tariff redundancy;

c) several additional taxes, such as: the tax on financial operations (IOF, in Portuguese), the port improvement tax (TMP) and the freight surcharge for renovation of the merchant maritime fleet (AFRMM);

d) a wide use of non-tariff barriers, such as a list of products with suspended import licenses, specific authorizations required prior to the entry of certain products (for the steel and IT industries) and annual import quotas allocated to each importing business, and

e) 42 special tax regimes favoring the rebate or exemption of import duties.

Hence, the reformulation of the import policy involved firstly a tariff restructuring process so as to bridge the gap between domestic and foreign prices, thus eliminating water in the tariff. Secondly, it was necessary to eliminate special tax regimes, with the exception of those intended to favor previously selected activities. After that stage, non-tariff barriers would become useless, to the point that they could be removed without any significant impact on domestic production and currency outlays. Finally, during the last stage, once there was a clear understanding of the resulting protection structure, tariffs could be once again gradually reduced in order to foster greater production efficiency.

In general, the changes introduced in the import policy between 1988 and 1993 followed that pattern. Next, the main characteristics of Brazil's import policy will be broken down into four periods.

**a) The 1988-89 Period**

In this first stage, two tariff reforms were introduced, in June 1988 and September 1989, respectively, with the purpose of eliminating water in the nominal tariff and eliminating the special tax regimes (with the exception of those related to international agreements, export activities – drawback – regional development projects and the Manaus free trade zone) as well as other taxes such as the IOF (tax on financial operations), the TMP (port improvement tax) and the AFRMM (freight surcharge for renovation of the merchant maritime fleet).

Due to the pressure of certain groups whose privileges would be undermined, the government decided in June 1988 to implement a less comprehensive reform: it lowered tariffs to a lesser degree than originally planned, kept a high degree of tariff redundancy, dismantled both the IOF and the TMP and removed special import regimes only partially.

Non-tariff barriers, at the time under the purview of the CACEX (the foreign trade department of Banco do Brasil) and probably a more efficient tool to restrict imports were not modified.

In short, this reform did not eradicate most special taxes, but it did succeed in introducing some rationality in the tariff structure, though without significantly modifying the degree of protection of domestic industries (Kume, 1988).

**b) The 1990-93 Period**

In March 1990, after the new government was inaugurated, new measures were adopted which dramatically changed Brazilian foreign trade policy. The exchange rate became flexible and imports were liberalized by eliminating the list of products with revoked import licenses as well as the

[4] Surcharges established since mid 1974, during the first oil crisis, were removed in late 1984, after numerous extensions.

special import duty regimes — with the exception of drawback, the free trade area of Manaus (intended to benefit it goods) and goods imported under international agreements. In July 1990, company quotas in force were suspended. With the removal of the major administrative controls, customs tariffs became the leading instrument to adequately protect domestic industries.

A few months later, a tariff reform was announced; it entailed a four-year tariff phase-out for all products, at the end of which a modal tariff of 20%, with a 0 to 40% tariff range, would be attained. As for the industrial activity, the effective tariff rate was set at approximately 20%, to be applied as of January 1994.

Indeed, the two last stages of the tariff phase-out schedule were actually moved ahead by six months.

**c) The 1994-1998 Period**

After the launching of the Real Plan in July 1994, the trade liberalization process was reinforced due to the need to impose greater discipline on domestic prices of importable goods. In the same spirit, a lowering of import duty rates was announced as a result of the application of the Mercosur common external tariff.

Changes introduced in 1994 can then be summarized as follows (Kume, 1998):

a) the lowering of tariff rates to 0% or 2%, especially for inputs and some consumer goods with a relatively important impact on the price index;

b) the early adoption of the Mercosur common external tariff in September 1994,[5] previously scheduled for January 1995. In general, whenever a tariff was expected to increase because it was lower than the agreed tariff for the Mercosur, the lower rate was maintained.

By the time tariff reductions entered into force in September 1994, the upward trend of imports was already evident: in fact, it had started in the beginning of 1993. In addition, the increase in

[5] The Mercosur common external tariff introduced rates slightly lower than those in force in the Brazilian tariff structure.

foreign capital inflows induced by the launching of the Real Plan provoked a substantial exchange rate appreciation. Therefore, if on the one side, tariffs were considered an important factor to ensure price stability — basically in the early stages of the stabilization program — on the other, the unbalanced external trade accounts led domestic industries to face a quite intense pressure from foreign competition, leaving them not enough adjustment time after the 1991/1993 liberalization period.

In fact, the widening of trade deficits in the last two months of 1994 — an unprecedented event since January 1987 — together with the capital outflows resulting from the Mexican crisis in late 1994, raised concerns regarding the risk of continuously financing high current account deficits. Furthermore, the substantial tariff reduction applied specially on cars and electronic goods simultaneously with a strong appreciation of the exchange rate increased the industrial sector's exposure to foreign competition, thus generating protectionist pressures, which had been dormant since the beginning of trade liberalization in the late 1980s.

During the first half of 1995, the government decided — with a view to satisfying the demands for a higher level of protection and favoring a more balanced trade — to increase the tariff rates for cars,[6] motorcycles, bicycles, tractors, electronic goods, fabrics and sport shoes, which were the main items accountable for spikes in import growth. At the same time, to prevent abusive domestic price increases, the tariff rates on a series of inputs were lowered.

Due to the loss of autonomy in tariff policy management resulting from the membership in the Mercosur bloc, the government had to include most of those products in the National List of Exemptions for the Mercosur. Furthermore, Mercosur Member countries were allowed to draw up a new list of products with rates fixed at higher or lower levels than those of the common external tariff for a one-year term.

With the exception of the above-mentioned cases, the Mercosur common external tariff blocked the introduction of other changes in the tariff structure. Nevertheless, the Brazilian government

[6] The government also applied quotas to car imports, which were later removed due to their condemnation by the WTO. After this, a series of incentives for the automotive sector were implemented.

resorted once again to administrative measures to restrict imports, namely: cash payment requirements (deposits made at the Central Bank) for imports financed in less than a year, compliance with phyto-sanitary requirements, the need for a license to import a long list of products and the implementation of safeguards for the import of textiles and toys.

Finally, in November 1997, the government introduced a temporary tariff increase of 3%, capital goods excepted. This measure was to be reversed later through a phase-out schedule of 0.5% per year.

**d) The 1999-2003 Period**

In January 1999, after a strong speculative attack against the Brazilian currency and after a quick attempt to implement a controlled currency devaluation, the government decided to adopt a floating exchange rate system, which led to an actual devaluation of 43.6% in that year. The previously fixed exchange rate which had tethered inflation was successfully replaced by inflation targets, thus avoiding inflationary spikes. The adoption of this new exchange rate regime made it once again feasible to adopt a more stable import policy, though with some sectoral problems of competitiveness which were solved through trade defense instruments.

In early 1999, the first 0.5% rebate scheduled to gradually compensate for the 3% rate increase in late 1997 was applied. The remaining 2.5% were eliminated in 2001 and 2003.

**2.2 Evolution of Imports**

Figure 1 shows the evolution from 1987 to 2003 of the Brazilian total import volumes and other major indicators such as the real exchange rate, the real GDP and the average nominal tariff rate. In the 1987-1998 period, a strong expansion is clearly observed in the import volumes, though annual growth rates varied significantly in sub-periods.

Between 1987 and 1992, the average annual variation was 5.4% due to the initial impacts of trade liberalization, which were dampened, however, by two currency devaluations (in 1991 and 1992, respectively) and by a stagnated economic activity.

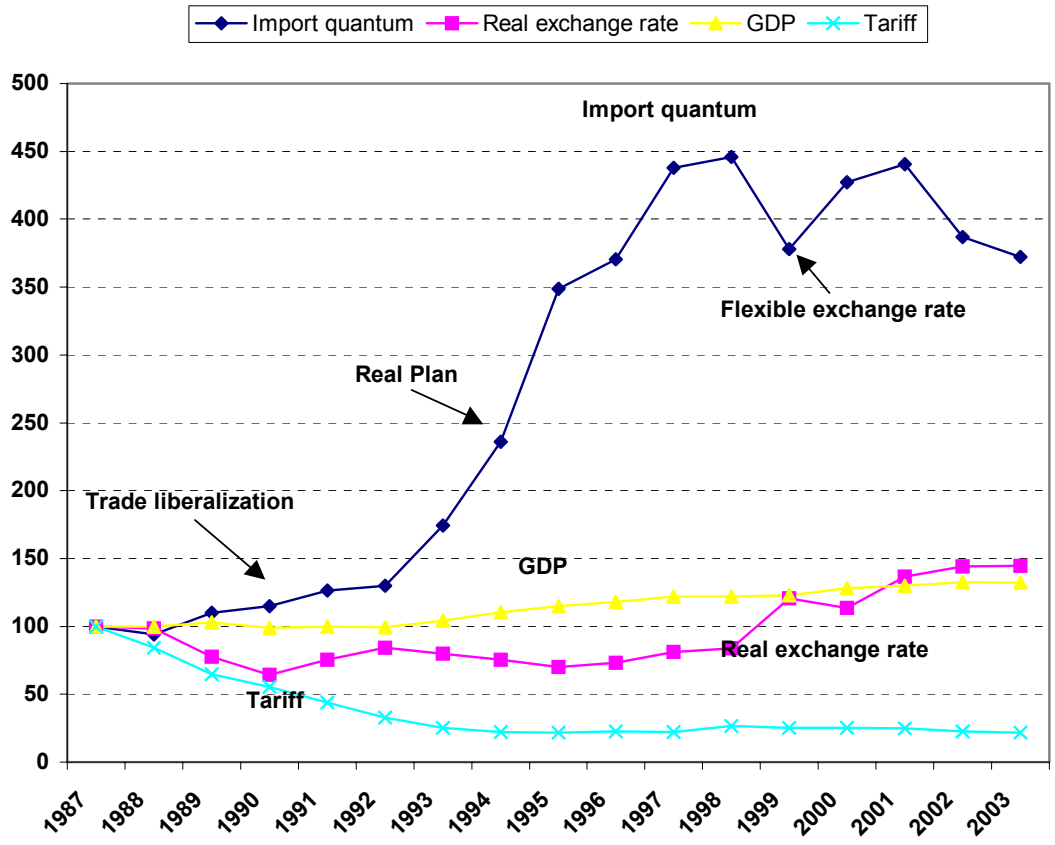
In 1993-1995, the annual growth rate reached 21.8% as a result of additional rebates in import tariffs, exchange rate appreciation and GDP expansion, these last two events having occurred as a result of the implementation of the Real Plan.

During the 1996-1999 sub-period, the control on imports together with the decline in economic activity reduced the annual variation rate of foreign purchases to 8.5%.

Finally, after changes were introduced in the exchange rate regime, imports showed a downward trend with a negative annual variation of 3.5%.

Figure 1

Indexes of Import Volumes, Real Exchange Rate, Real GDP, and Nominal Tariff for the 1987-2003 Period (base year: 1987 = 100)

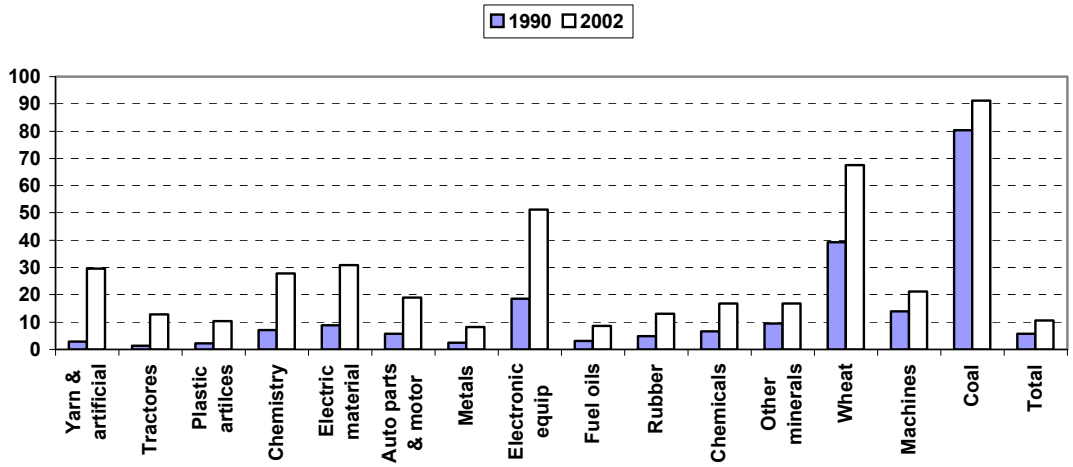



Source: Import volume from FUNCEX; real exchange rate and GDP, from IPEA-DATA, and nominal tariff, from Kume, Piani and Souza (2003). Author's calculations.

Figure 2 identifies the products, which, between 1990 and 2002, underwent a variation above the general average for import rates, measured in terms of the ratio of import to domestic production values. This group encompasses the major enterprises which had demanded trade defense measures — among others, manufacturers of artificial yarn and fabrics whose share of imports in domestic production rose from 2.9% in 1990 to 29.6% in 2002; pharmaceutical and cosmetic products, from 7.1% to 27.9%; chemical products, from 6.7% to 16.7%; rubber, from 4.9% to 13.1%; plastic products, from 2.2% to 10.4% and metals from 2.5% to 8.2%. Other sectors, such as electronics, motorcars and vehicles and auto parts were given additional protection through an increase in tariffs.

Figure 2

The Ratio of Import to Domestic Production values for Certain Products: 1990 to 2002 (%)




Source: Brazil's national accounts, IBGE, several years. Author's calculations.

### 3. The Brazilian Antidumping and Safeguard System

#### 3.1 Legal, Institutional and Operational Aspects

Until 1988, Brazil had two instruments to fight dumping which enabled the fiscal value of imported goods to be changed in order to estimate import duties. One of them, known as the minimum

customs tariff, was established by the Tariff Act of 1957 and could be applied whenever the foreign price was difficult to estimate, or when there were signs of dumping; the second one, known as the benchmark price, was introduced in 1970 and was applied whenever price differences were detected among goods imported from several countries to the detriment of domestic production.

Although somewhat similar to the GATT Antidumping Agreement, the administrative procedures adopted to implement those measures were not consistent with the GATT rules. Therefore, upon the enactment of the Customs Valuation Agreement in 1986, the Brazilian government committed itself to the phasing out of such mechanisms, to be concluded in July 1988 (Naidin, 1998).

In January 1987, Brazil passed a national legislation ratifying the Agreement on Implementation of Article VI of the GATT (Antidumping Agreement) and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Subsidies and Countervailing Duties). The implementation of both agreements as well as the power to set antidumping and countervailing duties were entrusted to the Customs Policy Commission (CPA, in Portuguese), under the purview of the Ministry of Finance (MF).

The CPA, an agency chaired by an executive secretary appointed by the Minister of Finance, was in charge of conducting investigations and preparing technical reports to be submitted to a group made up of six representatives of economic-related ministries, seven officials of other governmental agencies and three representatives of the private sector.

Thus, the CPA was commissioned with the task of laying down the rules governing administrative proceedings for the measures provided for in the above-mentioned agreements; this was achieved through a legal instrument which, to all practical ends, served as a complete schedule to initiate, conduct and report findings involving antidumping or subsidies.[7]

However, in this period in which the Brazilian economy was highly protected against foreign competition, the most important agency for implementing foreign trade policy was the CACEX,

[7] From the very beginning, the agency responsible for conducting dumping and subsidy investigations in Brazil was the same body responsible for determining injury to domestic industries.

under Banco do Brasil,[8] in charge of the issuance of export and import documents — a crucial factor indeed in all foreign trade transactions— and the financing of exports. Through these administrative mechanisms, the CACEX had imports under its total control until the late 1980s.

In 1990, at the beginning of Collor's administration, an administrative reform gave birth to the Ministry of Economy, Finance and Planning, thus merging three former ministries, those of Finance, of Planning, and of Industry and Trade. This new Ministry included an Executive Secretariat, ranked as a Vice-Ministry, and four secretariats, among which was the National Economic Secretariat with jurisdiction over the Foreign Trade Department (DECEX). In turn, the DECEX supervised the Tariff Technical Coordination (CTT, the former CPA) and the Trade Exchange Technical Coordination (CTIC, the former CACEX), which retained the same attributions as before. This restructuring was viewed as an essential condition to carry out a more liberal trade policy, which implied reducing the role of the CTIC and strengthening the role of the CTT.

In October 1993, President Itamar Franco created the Ministry of Industry, Trade and Tourism (MICT) under which the Foreign Trade Secretariat (SECEX)[9] operated in close association with the former coordinating agencies, now raised to the rank of departments: the Tariff Technical Department (DTT) and the Technical Department of Commercial Exchange (DTIC). Since any issue related to changes in import duties was within the scope of the Ministry of Finance, as set forth in the Federal Constitution, all technical decisions made by the DTT and approved by the SECEX had to be submitted to the consideration and approval of the Ministry of Finance. The lack of a coordinated trade policy was thus made more profound, since the Ministry of Finance was more concerned with using tariff policy as a tool for stabilizing domestic prices while the MICT was focused on maintaining a higher level of protection to domestic manufacturers.

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[8] Even though Banco do Brasil operated under the purview of the Ministry of Finance, the director of the CACEX was appointed by the President of the Republic.

[9] The DECEX, then renamed SECEX, reported directly to the MICT.

In 1995, Fernando Henrique Cardoso's administration created the Brazilian Chamber of Foreign Trade (CAMEX), made up of six ministries' representatives[10]. The MICT and the SECEX were left unchanged, while the three previous departments were restructured into four: the Foreign Trade Department (DECEX), which in practice undertook the activities of the former DTIC; the Department of International Negotiations (DEINTER), engaged in the negotiations with the Mercosur and the WTO — among others —- and in any change introduced in import duty rates; the Department of Commercial Defense (DECOM), concerned with implementing antidumping proceedings and, lastly, the Department of Foreign Trade Policy (DEPOC).

The creation of a special department in charge of commercial defense issues is to be underscored, since it reflects how significant these instruments came to be for Brazilian trade policy. The officials appointed for this new department were former DTT and DTIC members.

These new changes did not "solve" problems arising from conflicting powers. The Ministry of Finance had to subscribe any legal action related to changes[11] in "ex" tariffs[12] (exceptions to the tariff nomenclature). However, the decisions on trade defense (technically analyzed by the DECOM, under the MICT) had to be made by the Ministers of Industry, Trade and Tourism, but also by the Minister of Finance.

In order to confer credibility to the DECOM and to the DEINTER, a Consultative Committee on Trade Defense (CCDC, in Portuguese) was created, made up of representatives of governmental agencies such as the Ministries of Finance, Budget and Planning, Foreign Affairs, Agriculture, and the Executive Secretariat of the Chamber of Foreign Trade. The CCDC, chaired by the Secretary for Foreign Trade, was empowered to review dumping and subsidy-related investigations and, when particularly summoned for it, safeguard-related investigations as well.

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[10] The Chamber was expected to act as a center for working out the foreign trade policy guidelines and as a forum for resolving the main disputes among the supporters of free-trade measures and those who backed more protectionist ideas.

[11] In 1995, once the common external tariff came into force, tariff changes came to be decided by the Common Market Group of the Mercosur and implemented in Brazil through a presidential decree.

In March 1995, Brazil implemented the Antidumping Agreement of the Uruguay Round. As expected, this legislation was in line with the WTO Agreement. To mitigate the private sector's dissatisfaction with the delays in the analysis of the claims already submitted and to give more credibility to the trade defense instruments, maximum terms were set for the decision-making process: 20 days to determine whether the request for a procedure included all the relevant information; 30 days to decide to initiate the investigation and 360 days to reach a final determination (this term could be extended, exceptionally, to 540 days).

Another law strongly supported by domestic industries was also enacted:[13] the retroactive imposition of final antidumping duties on dumped imported goods when such goods had reached consumers within 90 days prior to the application of preliminary antidumping measures, provided the corrective effect of antidumping duties might be otherwise seriously impaired.[14]

In contrast, in order to minimize the protectionist bias in the managing of antidumping laws, the government explicitly included two issues, which were not provided for in the WTO Antidumping Agreement. The first issue — regarding the determination of injury — was a recommendation to exclude the trade liberalization impact on domestic prices, so long as such effects were caused by reasons other than dumped imports.

The second issue referred to exceptional circumstances, such as the inclusion of the "national interest" clause[15], whereby even if dumping and injury were determined, the relevant authorities

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[12] “Ex” tariffs were created in 1990 in Brazil so that capital goods and raw materials that were not locally produced could be imported at 0% tariff rate and were kept in force with the common external tariff.

[13] The Brazilian private sector has always supported the US antidumping system on account of its celerity in the initiation of proceedings, the possibility of applying duties retroactively, and of imposing duties equivalent to the dumping margin.

[14] For example, when injury results from a growing volume of goods imported at dumping prices during a relatively short period of time. The retroactive duty was never applied.

[15] For example, if the application of the antidumping duty would harm the politics of stabilization of prices, the measure would not be applied.

may decide to either interrupt the application of a specified duty or apply a (presumably lower) rate different from the recommended one.

Brazil introduced its first decree regarding safeguard measures in May 1995 and entrusted the MICT and the MF with the decision-making process. As expected, the decree followed WTO's rules in the field. Later on, in July 1998, Brazil implemented Mercosur regulations on safeguard measures to be applied to imports from third countries. Finally, in October 2001, the President of Brazil entrusted CAMEX with the power to establish antidumping and countervailing duties and adopt safeguard measures. CAMEX, presided over by the Minister of Development, Industry and Commerce (MDIC, in Portuguese), was made up of five more ministries, whose mission was to discuss trade defense measures and reach a decision by the majority of its members.[16]

From the institutional point of view, this new restructuring substantially weakened the role played by the Ministry of Finance in the decision-making process regarding the antidumping and safeguard system since its voting power was reduced to one out of six votes.

This weakening of the Ministry of Finance in favor of the more protectionist-oriented Ministry of Industry, Trade and Tourism apparently had no significant consequences on the implementation of the antidumping, subsidy and safeguard measures but it certainly was a gateway to greater pressures by the often opposing interests of some policy-makers, on the one hand, and certain local productive sectors, on the other. Likewise, the governmental agencies created to replace the CPA were, or seemed to be, increasingly weaker until the current DECOM was created.

Indeed, with the creation of the DECOM in 1995, Brazil had a governmental agency exclusively devoted to conducting antidumping, subsidy and safeguard procedures as well as international negotiations on such issues. Notwithstanding, the enduring shortage of human and financial resources seemed to have been partially compensated.[17]

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[16] In order to facilitate the decision-making process, CAMEX created a technical committee made up of a representative of each member ministry in order to reach decisions on the report submitted by SECEX.

[17] DECOM is not allocated a separate appropriation.

This is evidenced by the data in Table 1, showing the number of antidumping investigations — grouped by sets of products —[18] and the number of on-the-spot verifications conducted to determine injury (domestic firms) and dumping (foreign producers). It should be noted that in almost all actions regarding determination of injury, domestic producers were visited. However, with regards to determination of dumping, the number of on-the-spot verifications conducted on the exporting firms' premises to verify domestic and export prices is still limited. Therefore, for dumping determination purposes, the DECOM still acts based on the data supplied by businesses and on the price information available in specialized journals.

Table 1

Number and Percentage of Investigations with on-the-spot Verifications for Injury and Dumping Determinations

| Year | Nº of investigations | Injury | (%) | Dumping | (%) |
|---|---|---|---|---|---|
| 1996 | 7 | 2 | 28,6 | 1 | 14,3 |
| 1997 | 10 | 7 | 70,0 | 0 | 0,0 |
| 1998 | 10 | 9 | 90,0 | 3 | 30,0 |
| 1999 | 5 | 3 | 60,0 | 0 | 0,0 |
| 2000 | 7 | 6 | 85,7 | 1 | 14,3 |
| 2001 | 8 | 7 | 87,5 | 1 | 12,5 |
| 2002 | 11 | 10 | 90,9 | 2 | 18,2 |

Source: DECOM/SECEX/MDIC Report, 2003. Author's calculations.

[18] An "investigation" here means an action involving one product and all the countries concerned, because when conducting on-the-spot investigations for the purpose of determining injury, the country of origin of the imported good is irrelevant.

### 3.2 Brazilian Experience with Antidumping and Safeguard Measures

#### 3.2.1 An Overview

According to the notifications submitted to the WTO Committee on Antidumping Practices of the WTO, Brazil[19] was ranked eighth among the countries which had resorted the most to antidumping measures between 1995 and 2002, following India, the United States, the European Union, Argentina, South Africa, Australia and Canada (Table 2). Brazil, together with India, Argentina, South Africa, China, South Korea and Turkey, is one of the countries that began seriously adopting antidumping measures in the 90s. The case of India is worth mentioning, since it largely outperformed other countries with a longer tradition in the use of such legal instruments.

Table 2

Number of Antidumping Cases Initiated between 1995-2002 – Main Countries

| Country/Bloc | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | Total |
|---|---|---|---|---|---|---|---|---|---|
| India | 6 | 21 | 13 | 27 | 65 | 41 | 79 | 80 | 332 |
| USA | 14 | 22 | 15 | 36 | 47 | 47 | 76 | 35 | 292 |
| EU | 33 | 25 | 41 | 22 | 65 | 32 | 29 | 20 | 267 |
| Argentina | 27 | 22 | 14 | 8 | 24 | 45 | 26 | 14 | 180 |
| South Africa | 16 | 33 | 23 | 41 | 16 | 21 | 6 | 4 | 160 |
| Australia | 5 | 17 | 42 | 13 | 24 | 15 | 23 | 16 | 155 |
| Canada | 11 | 5 | 14 | 8 | 18 | 21 | 25 | 5 | 107 |
| Brazil | 5 | 18 | 11 | 18 | 16 | 11 | 17 | 9 | 105 |
| Mexico | 4 | 4 | 6 | 12 | 11 | 7 | 5 | 10 | 59 |
| China | na | na | na | na | 0 | 6 | 14 | 30 | 50 |
| South Korea | 4 | 13 | 15 | 3 | 6 | 2 | 4 | 9 | 56 |
| Turkey | 0 | 0 | 4 | 1 | 8 | 7 | 15 | 17 | 52 |
| Subtotal | 125 | 180 | 198 | 189 | 300 | 255 | 319 | 249 | 1.815 |
| Total | 157 | 224 | 243 | 256 | 356 | 294 | 366 | 309 | 2.205 |

Source: WTO, AD Initiations by Reporting Member, 2003. Author's calculations

Na = not available

China is the main target in antidumping cases (with 232 actions against it), followed by South Korea (92), Taiwan (75), the USA (69), Japan (68), Russia (66), Thailand (58), Brazil (54), and

[19] For comparison purposes, the number of investigations quoted is that reported by Brazil to the WTO Antidumping Committee.

India (48). Brazil's position in the ranking is influenced by measures adopted by Argentina, its main partner in the Mercosur. If measures adopted by Argentina (26) and Uruguay (1) were to be excluded, then Brazil would be ranked 14th among the exporting countries most affected by antidumping measures.

The productive sectors most affected by antidumping measures between 1995 and 2002 are: metals (31.6% of the total), chemical products (18.6%), and plastics (12.2%). The same trend holds true in Brazil, where the chemical industry, followed by the metal and plastic sectors, accounts for 73.4% of all the measures adopted in that period.

Lastly, according to Zanardi (2003), who evaluated more comprehensively the use of antidumping measures — based on data from the semi-annual notifications submitted by WTO Member countries and on a specific survey for non-Member countries between 1981 and 2001 — considering all the antidumping investigations initiated by the European Union, the United States, Canada and Australia, the proportion of final affirmative determinations were, respectively, 73.7%, 59.3%, 58.4% and 41%. In the countries that started resorting to this instrument in the 1990s (such as India, South Korea, Mexico and Turkey), affirmative determinations amount to 71.9%, 65.1%, 65% and 52.5%, respectively. In Brazil, almost half of the proceedings (49.6%) end up with a final affirmative determination.

Brazil is ranked 15th in safeguard measures notified in the same period —having resorted to them only twice (toys and coconut) — lagging behind the United States (12), Czechoslovakia (10), Jordan (9), Chile (8), and Venezuela (6). Safeguard actions have increased substantially since 1998, when they rose from 11 to 34 in 2002 (Table 3). However, the number of cases involving this instrument is still much lower than those involving antidumping measures.

Table 3

Number of Safeguard Cases Initiated between 1995-2002 – Main countries

| Country | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | Total |
|---|---|---|---|---|---|---|---|---|---|
| India | | | 1 | 5 | 4 | 2 | | 3 | 15 |
| USA | 1 | 2 | 1 | 1 | 2 | 5 | | | 12 |
| Czechoslovakia | | | | | 1 | 2 | 2 | 5 | 10 |
| Jordan | | | | | | 1 | | 8 | 9 |
| Chile | | | | | 1 | 3 | 2 | 2 | 8 |
| Venezuela | | | | | | 3 | | 3 | 6 |
| Bulgaria | | | | | | 1 | 2 | 2 | 5 |
| Argentina | | | 1 | 1 | | 1 | 1 | | 4 |
| South Korea | 1 | 2 | | | 1 | | | | 4 |
| Poland | | | | | | 1 | | 3 | 4 |
| Egypt | | | | 1 | 1 | 1 | | | 3 |
| Slovaquia | | | | | 1 | 1 | | 1 | 3 |
| El Salvador | | | | | | 3 | | | 3 |
| Japan | | | | | | 3 | | | 3 |
| Brazil | | 1 | | | | | 1 | | 2 |
| Subtotal | 2 | 5 | 3 | 12 | 11 | 29 | 14 | 28 | 18 |
| Total | 2 | 5 | 3 | 11 | 13 | 28 | 11 | 34 | 107 |

Source: Report of the Committee on Safeguards to the Council for Trade in Goods, several years. Author's calculations

### 3.2.2 Antidumping in Brazil

Even though Brazil implemented the Antidumping as well as the Subsidies and Countervailing Duties Agreements as of 1987, it was not necessary to resort to such measures given the high tariff and non-tariff protection that prevailed at the time. For this reason, until 1989 only one case was opened and concluded with the imposition of antidumping duties on bicycle chains imported from the former Soviet Union, Czechoslovakia, India and China.

The demand for protection through the adoption of measures against “unfair trade” increased after trade was liberalized, especially after the tariff phase-out process initiated in February 1991 and concluded ahead of schedule, in July 1993. Table 4 shows that, during the first year of the implementation of the tariff phase-out schedule, 13 investigations were initiated (counted on the basis of product-country pairs): 8 during the second year and 27 in 1993. In 1994, the number of cases dropped to 10, and to 5 in the following year, involving only one product (iron-chromium) and the countries of former Yugoslavia.[20]

Table 4

Number of Antidumping, Anti-subsidy and Safeguard Cases Initiated by Brazil: 1987-2003

| Year | Dumping | Dumping-review | Subsidies | Safeguards |
|---|---|---|---|---|
| 1987 | 0 | 0 | 0 | 0 |
| 1988 | 2 | 0 | 0 | 0 |
| 1989 | 2 | 0 | 0 | 0 |
| 1990 | 2 | 0 | 0 | 0 |
| 1991 | 13 | 0 | 2 | 0 |
| 1992 | 8 | 0 | 13 | 0 |
| 1993 | 27 | 0 | 1 | 0 |
| 1994 | 10 | 0 | 7 | 0 |
| 1995 | 5 | 0 | 0 | 0 |
| 1996 | 16 | 0 | 0 | 1 |
| 1997 | 15 | 7 | 0 | 0 |
| 1998 | 23 | 2 | 0 | 0 |
| 1999 | 27 | 3 | 0 | 1 |
| 2000 | 10 | 2 | 0 | 0 |
| 2001 | 19 | 1 | 1 | 1 |
| 2002 | 16 | 8 | 0 | 0 |
| 2003 | 20 | 12 | 0 | 0 |
| Total | 215 | 35 | 24 | 2 |

Source: DECOM, SECEX, MDIC Reports, several years. Author's calculations.

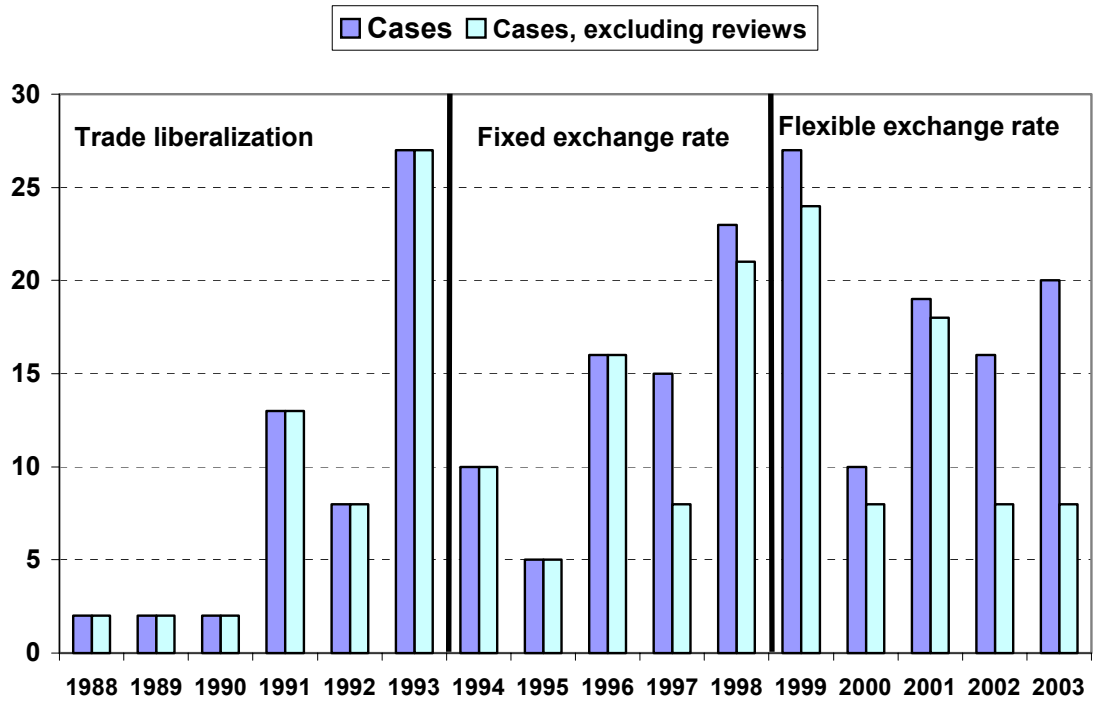
Note: The number of antidumping and anti-subsidy cases is based on a product-country pair. The European Union countries were taken individually, therefore results differ from official statistics. Safeguard measures, instead, are counted by product.

[20] The reasons for such an abrupt drop in 1995 are not clear. Perhaps the increase of the GDP explains partially as in this year, the second highest growth rate of 4,2% is recorded.

Brazil – just like other major users – resort most often to antidumping measures (215 in total) vis-à-vis 24 anti-subsidy measures and only 2 safeguard measures. Reviews of antidumping investigations started in 1997, and have involved 35 cases.

During the 1996-1999 period, 1997 excepted, the number of measures adopted shows an upward trend, giving rise to 27 cases in 1999 (Figure 3). This resulted from the currency appreciation which took place at the beginning of the Real Plan, during the second half of 1994, and which had a strong impact during the whole period.[21]

Figure 3
Number of Antidumping Cases in Brazil: 1988-2003




Source: DECOM, SECEX, MDIC Reports, several years. Author's calculations.

In 2000, once again in a flexible exchange rate context, the number of antidumping measures dropped substantially; if the cases under review are excluded, this downward trend is even more

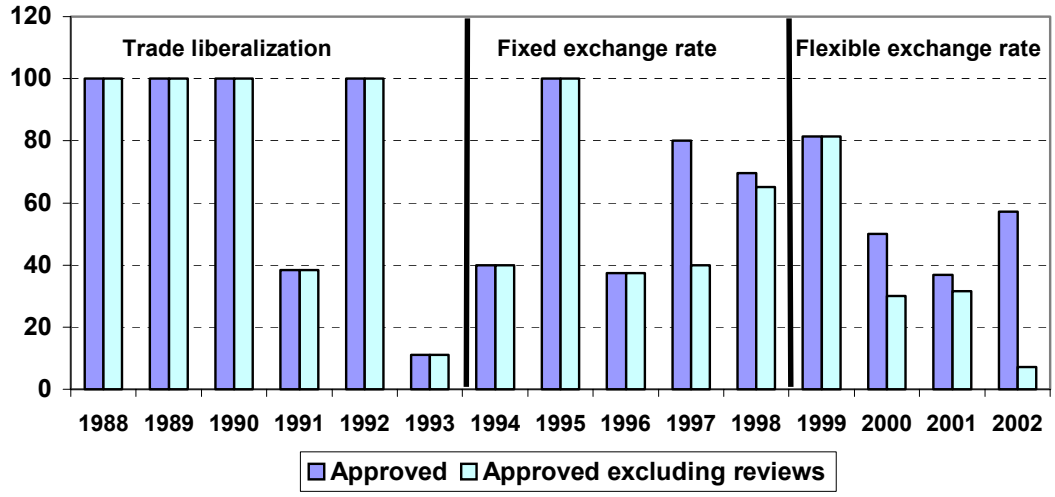
[21] In spite of the changes introduced in the exchange rate system in January 1999, it is possible that claims already submitted, based on data of previous periods, did not consider the devaluation as permanent.

noticeable.[22] All applications for review requesting the renewal of antidumping duties in force had every chance of being accepted.

As regards the cases with final positive determinations (i.e. measures were approved), Figure 4 shows that during the period under study, only in five years[23] – 1988, 1989, 1990, 1992 and 1995 – all cases were concluded with affirmative determinations. In general terms, a greater acceptance is observed in the 1993-1999 period (save for 1995), whereas fewer approvals occurred in the following years, precisely when a flexible exchange rate system was in place again. Given the differences among the measures adopted, it is impossible to assert whether the government tried to counteract the effects of currency appreciation on certain sectors by resorting to antidumping duties.

Figure 4

Share of Approved Antidumping Cases – Brazil: 1988-2002




Source: DECOM, SECEX, MDIC Reports, several years. Author's calculations.

Note: Accepted cases were those concluded with a final positive determination of dumping and injury.

[22] A more rigorous assessment would require the conduction of econometric tests such as those by Leidy (1997), Knetter and Prusa (2000), Francois and Niels (2003), and Irwin (2004).

[23] The fact that all the requests submitted in the first three years – 1988, 1989 and 1990 – were accepted does not bear the same significance as in 1992 and 1995, as in the first three years of the antidumping implementation in Brazil, there were few requests for investigations.

Table 5 shows the distribution of antidumping actions and their final determinations per group of products, divided according to categories of use. It should be noted that of 193 cases, 107 resulted in an affirmative determination (52.8%), 102 of which were settled through antidumping duties and 5 through price undertakings, while the other 86 were rejected (44.6%).

Table 5

Share of Antidumping Cases per Group of Products, according to Categories of Use and Final Determination: Brazil, 1988-2002

| Category of use | Cases | % of total cases | Accepted | (%) | Price undertaking | (%) | Rejected | (%) |
|---|---|---|---|---|---|---|---|---|
| 1. Consumer durables | 6 | 3.1 | 5 | 83.3 | 0 | 0.0 | 1 | 16.7 |
| 2. Soft goods | 23 | 11.9 | 18 | 78.3 | 2 | 8.7 | 3 | 13.0 |
| 2.1 Food | 20 | 10.4 | 16 | 80.0 | 2 | 10.0 | 2 | 10.0 |
| 2.2 Other | 3 | 1.6 | 2 | 66.7 | 0 | 0.0 | 1 | 33.3 |
| 3. Raw materials | 154 | 79.8 | 71 | 46.1 | 3 | 1.9 | 80 | 51.9 |
| 3.1 Food | 5 | 2.6 | 0 | 0.0 | 0 | 0.0 | 5 | 100.0 |
| 3.2 Rubber | 10 | 5.2 | 7 | 70.0 | 0 | 0.0 | 3 | 30.0 |
| 3.3 Pharmaceuticals | 12 | 6.2 | 4 | 33.3 | 2 | 16.7 | 6 | 50.0 |
| 3.4 Metals | 44 | 22.8 | 22 | 50.0 | 0 | 0.0 | 22 | 50.0 |
| 3.5 Plastics | 19 | 9.8 | 8 | 42.1 | 0 | 0.0 | 11 | 57.9 |
| 3.6 Non-metal Minerals | 6 | 3.1 | 4 | 66.7 | 0 | 0.0 | 2 | 33.3 |
| 3.7 Paper | 1 | 0.5 | 0 | 0.0 | 1 | 100.0 | 0 | 0.0 |
| 3.8 Chemicals | 45 | 23.3 | 20 | 44.4 | 0 | 0.0 | 25 | 55.6 |
| 3.9 Textiles | 12 | 6.2 | 6 | 50.0 | 0 | 0.0 | 6 | 50.0 |
| 4. Spares & components | 10 | 5.2 | 8 | 80.0 | 0 | 0.0 | 2 | 20.0 |
| Total | 193 | 100.0 | 102 | 52.8 | 5 | 2.6 | 86 | 44.6 |

Source: DECOM, SECEX, MDIC Reports, several years. Customs, Compendium of Laws on Foreign Trade. Author's calculations.

Raw materials, especially chemicals, metals and plastics, stand out among the others in the list, accounting for 55.9% of the total number of antidumping investigations opened in Brazil between 1987 and 2002. Chemicals and plastics can be described as products subject to structural or long-term dumping, based on international price discrimination, and they form part of a policy intended to maximize profits for the benefit of a group of enterprises in order to increase the capacity utilization of their manufacturing plants. In large producing countries, such as the United States and some European countries, the production scale is very large and their domestic sales cannot absorb total production volumes. Domestic sales are ruled by contracts[24] in which prices can be higher than marginal costs; in foreign markets, prices and marginal costs are equalized.

In the sector of base metals and articles thereof, steel and metal products such as iron-chromium stand out. It is also common practice to sell abroad at prices lower than those charged in the domestic market protected by tariffs.

There is a prevalence of cases with affirmative determinations involving consumer goods — both durable and non-durable —, their degree of acceptance amounting to 83.3% and 78.3%, respectively.[25] Thus, even though the actions related to steel, chemical and plastic products are more numerous, the percentage of those reaching affirmative final determinations is lower than the average.

As regards the countries most affected by the antidumping investigations initiated by Brazil, the United States comes in first place (29 cases), followed by China (25) and India (11) (Table 6). Unlike the situation in Argentina, only five cases involved Mercosur countries: Argentina (3) and Uruguay (2). Nevertheless, even though the United States is the country most frequently involved in antidumping investigations, affirmative final determinations were made in only 34.5% of the

[24] Sales based on contracts guarantee ongoing supply, even in times of shortage. On the contrary, domestic buyers are ready to pay a higher price than the one in the international market when supply is insufficient to satisfy their demand.

[25] For durable consumer goods, China is the only exporting country involved in all investigations. For non-durables, of 18 actions accepted, 10 refer to milk imported from the European Union countries, where it is subsidized, thus lowering its export price. In the rest of the cases, China is the only exporting country involved.

actions, a percentage much lower than the general average of 52.8% and lower than the average for China and India (80% and 63.6% respectively).

Table 6

Number of AD Cases in Brazil with Final Determinations, Grouped by Exporting Country or Bloc

| Country/Bloc | Cases | Accepted | (%) | Price undertaking | (%) | Rejected | (%) |
|---|---|---|---|---|---|---|---|
| USA | 29 | 10 | 34.5 | 1 | 3.4 | 18 | 62.1 |
| China | 25 | 20 | 80.0 | 0 | 0.0 | 5 | 20.0 |
| India | 11 | 7 | 63.6 | 0 | 0.0 | 4 | 36.4 |
| Russia | 8 | 4 | 50.0 | 0 | 0.0 | 4 | 50.0 |
| South Africa | 6 | 4 | 66.7 | 0 | 0.0 | 2 | 33.3 |
| Germany | 6 | 4 | 66.7 | 0 | 0.0 | 2 | 33.3 |
| United Kingdom | 6 | 4 | 66.7 | 0 | 0.0 | 2 | 33.3 |
| Mexico | 5 | 4 | 80.0 | 0 | 0.0 | 1 | 20.0 |
| Ucraine | 5 | 2 | 40.0 | 0 | 0.0 | 3 | 60.0 |
| Bangladesh | 4 | 2 | 50.0 | 0 | 0.0 | 2 | 50.0 |
| Japan | 4 | 2 | 50.0 | 0 | 0.0 | 1 | 25.0 |
| South Korea | 4 | 1 | 25.0 | 0 | 0.0 | 3 | 75.0 |
| Spain | 4 | 2 | 50.0 | 0 | 0.0 | 2 | 50.0 |
| France | 5 | 3 | 60.0 | 1 | 20.0 | 1 | 20.0 |
| Argentina | 3 | 1 | 33.3 | 1 | 33.3 | 1 | 33.3 |
| Canada | 3 | 1 | 33.3 | 0 | 0.0 | 2 | 66.7 |
| Kazhakstan | 3 | 2 | 66.7 | 0 | 0.0 | 1 | 33.3 |
| Chile | 3 | 1 | 33.3 | 1 | 33.3 | 1 | 33.3 |
| Subtotal | 134 | 74 | 55.2 | 4 | 3.0 | 56 | 41.8 |
| Other | 59 | 28 | 47.5 | 1 | 1.7 | 30 | 50.8 |
| Total | 193 | 102 | 52.8 | 5 | 2.6 | 86 | 44.6 |

Source: DECOM, SECEX, MDIC Reports, several years. Author's calculations.

Note: In the actions against the European Union, only Member countries exporting to the Brazilian market were included. In the case of the former URSS, such a detailed breakdown was not possible.

It is widely recognized that the adoption of certain methods may lead to a more protectionist approach to the use of antidumping measures. In particular, the choice of the normal value is a crucial issue in the determination of a greater (or smaller) dumping margin. Table 7 lists some specific indicators. It should be pointed out that in 41.4% of accepted cases, preliminary duties

were applied, mainly on consumer goods. In general, using the constructed value method to estimate the normal value rather than using the price in the exporting country or in third countries allows for greater discretion. In fact, in 57.9% of cases, this was the method applied. Nonetheless, in many cases, the constructed value was estimated on the basis of international prices quoted in specialized publications, especially for inputs and commodities. This approach usually leads to lower prices than the domestic ones. The last column in the Table below shows that Brazil systematically applies an antidumping duty lower than the relative dumping margin, i.e. a rate hardly enough to remedy the injury, as recommended in the Antidumping Agreement; on average, the ratio between the antidumping duty and the dumping margin is of 61.3%.

Table 7

Accepted Antidumping Cases: Preliminary Duty, Normal Value Method and ADD/DM Ratio

| Category of use | Preliminary duty | (%) | Domestic price | (%) | 3rd country price | (%) | Constructed value | (%) | na (%) | ADD/DM (%) |
|---|---|---|---|---|---|---|---|---|---|---|
| **1. Durable goods** | **4** | **80.0** | **0** | **0.0** | **3** | **60.0** | **2** | **40.0** | **0.0** | **55.8** |
| **2. Soft goods** | **15** | **25.0** | **0** | **0.0** | **3** | **15.0** | **17** | **85.0** | **0.0** | **48.1** |
| **3. Raw materials** | **34** | **44.9** | **28** | **37.8** | **6** | **8.1** | **38** | **51.4** | **2.2** | **65.4** |
| 3.1 Rubber | 3 | 42.9 | 0 | 0.0 | 0 | 0.0 | 7 | 100.0 | 0.0 | 66.7 |
| 3.2 Pharmaceuticals | 1 | 18.7 | 2 | 33.1 | 2 | 33.3 | 2 | 33.3 | 0.0 | 44.4 |
| 3.3 Metals | 16 | 72.7 | 2 | 9.1 | 1 | 4.5 | 19 | 86.4 | 0.0 | 74.7 |
| 3.4 Plastics | 4 | 50.0 | 6 | 75.0 | 0 | 0.0 | 2 | 25.0 | 0.0 | 65.8 |
| 3.5 Non-metal minerals | 0 | 0.0 | 2 | 50.0 | 0 | 0.0 | 2 | 50.0 | 0.0 | 24.8 |
| 3.6 Paper | 0 | 0.0 | 1 | 100 | 0 | 0.0 | 0 | 0.0 | 0.0 | na |
| 3.7 Chemicals | 5 | 25.0 | 9 | 45.0 | 3 | 15.0 | 6 | 30.0 | 10.0 | 64.1 |
| 3.8 Textiles | 5 | 83.3 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0.0 | 64.8 |
| **4. Spares and components** | **1** | **12.5** | **1** | **12.5** | **2** | **25.0** | **5** | **32.5** | **0.0** | **85.3** |
| **Total** | **55** | **41.4** | **29** | **27.1** | **14** | **13.1** | **62** | **57.9** | **1.9** | **61.3** |

Source: Customs, Compendium of Laws on Foreign Trade. Author's calculations.

Note: 1) according to WTO rules, three methodologies can be used in order to estimate normal value: domestic price, third country price and constructed value; 2) DDA/DM measures the ratio between the antidumping duty applied and the dumping margin; and 3) na = not available.

Table 8 shows the reasons why a negative determination was made in some antidumping investigations. Likely enough, in view of the experience of other countries – the United States, for example (Finger & Murray, 1993, and Niels, 2000) – approximately 34.9% of the cases were dismissed because no injury resulting from dumping was found, whereas dumping could not be evidenced in 24.4% of all actions. Two cases were turned down as a result of direct government intervention, in order to avoid an impact on domestic prices. In the other eight cases, other measures were adopted to protect the affected industries.

Table 8

Rejected Cases, Classified by Motives

| Description | Nº of cases | (%) |
|---|---|---|
| No injury | 30 | 34.9 |
| No dumping | 21 | 24.4 |
| No causation | 9 | 10.5 |
| Government interest | 2 | 2.3 |
| Requested by petitioner | 7 | 8.1 |
| Other support measures | 8 | 9.3 |
| Other | 9 | 10.5 |
| Total | 86 | 100.0 |

Source: Customs, Compendium of Laws on Foreign Trade. Author's calculations.

To find out whether the antidumping measures adopted had been used to support the monopoly power of domestic enterprises, the cases were distributed into groups according to the number of manufacturing companies: one single firm (monopoly), two to five (oligopoly) and more than five (competition). Given the highly concentrated industrial market structure, the majority of actions involved the first two categories of firms. Despite of that, the proportion of accepted cases (82.4%) is almost equivalent to that of the rejected ones (88.4%).

Table 9

Distribution of AD cases with a Final Determination, per Number of Domestic Firms

| Determination/Nº of firms | N = 1 | (%) | 2 ≤ N ≤ 5 | (%) | N > 5 | (%) | Total |
|---|---|---|---|---|---|---|---|
| Accepted | 42 | 41.2 | 42 | 41.2 | 18 | 17.6 | 102 |
| Price Undertaking | 2 | 40.0 | 0 | 0.0 | 3 | 60.0 | 5 |
| Rejected | 49 | 57.0 | 27 | 31.4 | 10 | 11.6 | 86 |
| Total | 93 | 48.2 | 69 | 35.8 | 31 | 16.1 | 193 |

Source: Customs, Compendium of Laws on Foreign Trade. Author's calculations.

Finally, in Table 10, in order to examine whether the application of antidumping duties had undergone any change in the four sub-periods in which the import policy was analyzed, four indicators were selected, namely: the number and percentage of actions resulting in affirmative determinations, the average length of the investigation conducted (the number of days from filing date until final determination) and the antidumping duties and dumping margin ratios. The 1994-1998 period witnessed a substantial increase in the percentage of accepted cases. However, on average, the investigations were increasingly protracted, and the ratio between antidumping duties and dumping margins decreased during the three sub-periods. This reveals that establishing time frames for analyzing disputes, as prescribed in 1995 by special law, failed to accelerate the course of investigations and that a more moderate approach prevailed in the application of antidumping duties during the periods under study.

Table 10

Antidumping Cases and Selected Indicators, by Sub-periods

| Sub-period | Nº of cases | Accepted | (%) | Duration (days) | DDA/DM (%) |
|---|---|---|---|---|---|
| 1988-1989 | 4 | 4 | 100.0 | 213 | na |
| 1990-1993 | 50 | 18 | 36.0 | 292 | 83.1 |
| 1994-1998 | 69 | 43 | 62.3 | 440 | 68.1 |
| 1999-2002 | 70 | 42 | 60.0 | 480 | 47.1 |
| Total | 193 | 107 | 55.4 | 422 | 61.3 |

Source: Customs, Compendium of Laws on Foreign Trade. Author's calculations.

### 3.2.3 Safeguards in Brazil

The new Safeguard Agreement was implemented for the first time in June 1996, when the Consultative Committee for Commercial Defense adopted a provisional safeguard measure whereby import duties on toys were increased by 50%, added to the common external tariff of 20%.

Until its modification introduced during the Uruguay Round, the use of the "Escape Clause" had been avoided by the majority of GATT members. The Article XIX of the GATT enabled the adoption of safeguard measures to provisionally protect through an emergency action any domestic industry threatened by increased quantities of an imported good. The reason why this provision was not used is to be found in the difficulties encountered in negotiating compensations for the affected countries or in the fear of retaliation. Instead, less transparent measures became recurrent, among which voluntary export restraint agreements can be mentioned. The modification introduced aimed at making the new Article XIX more practical, while introducing stricter disciplines for its application. Thus, even though it constitutes a waiver of the need to offer a compensation during the first three years that the safeguard measure is in force, it sets forth clear time frames for the application, or any extension thereof, of safeguard measures as well as the requirement to progressively liberalize the measure adopted, in regular intervals, if the period of application is longer than one year.

Given the advantages introduced by the new Agreement, Brazil took provisional safeguard measures[26] — permitted in emergency situations — after a preliminary determination whereby it was found that the increase of toy imports was causing (or threatening to cause) severe injury to the domestic industry. Such measures can be applied for a maximum period of 200 days and involve an increase in import duties that must be added to the Mercosur common external tariff.[27]

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[26] The domestic producers of toys filed a request for the adoption of safeguard measures in mid 1995. The preliminary duty was introduced one year later.

[27] Final safeguard measures can be taken by increasing import duty rates or by introducing non-selective quantitative restrictions. Under normal conditions, the maximum period of application is four years and regardless of the circumstances, the total period of application cannot exceed eight years.

It should be noted that the Brazilian toy industry had retained its high level of tariff protection during the trade liberalization program, on the grounds that there were seasonal imports between July and September every year. Thus, the tariff rates applied on toys were kept at 65% until September 1992, then lowered to 55% between October 1992 and July 1993, when they were reduced to 40% until March 1994. They were then lowered to 20%, though only for three months. Once again, the industry requested a tariff increase to 30% for the June-September period, which was accepted.

The Brazilian government officially notified the WTO, in late 1996, of its decision to extend the enforcement of safeguards for three more years. It established a phase-out schedule, by which the tariff rate should converge to the 20% level agreed among Mercosur's partners, in 2000 (Table 11).

In 1999, a new request was filed for the extension of the safeguard measure. Once accepted, additional tariffs were re-imposed for a four-year term, though at much lower rates.

In 2001, coconut producers, protected by a countervailing duty in force until August 2000, filed a petition for the adoption of a safeguard measure, a request which was accepted in mid-2002 by imposing an import quota.

Finally, toy manufacturers requested the safeguard measure to be extended for one more year, and the application was granted in late 2003. A 10% added to the common external tariff of 20% was thus imposed.

Table 11

Safeguard Measures in Brazil: 1988-2003

| Year | Case | Preliminary measure (%) | Final Determination | 1º year | 2º year | 3º year | 4º year |
|---|---|---|---|---|---|---|---|
| 1996 | Toys | 70 | tariff (%) | 63 | 49 | 35 | 20 |
| 1999 | Toys (review) | | tariff (%) | 34 | 33 | 32 | 31 |
| 2001 | Coconut | | Quota (tons) | 3.957 | 4.155 | 4.353 | 4.551 |
| 2003 | Toys (extension) | | tariff (%) | 30 | | | |

Source: 2003 DECOM/SECEX Report and Customs, Compendium of Laws on Foreign Trade. Author's calculations.

## 4. Conclusions

The purpose of this paper was to analyze the relationship between the import liberalization policy in Brazil and the antidumping and safeguard system from 1998 to 2003. For methodological reasons the time span was divided into four intervals: 1988-1989, 1990-1993, 1994-1998 and 1999-2003.

The first two years (1988-1989) correspond to the period in which the antidumping system was first implemented, in the context of an import-substitution policy based on very high tariffs and a widespread use of non-tariff barriers. These two factors made the use of antidumping measures unnecessary.

The next sub-period (1990-1993) corresponds to a new federal administration (Collor), whose goal was to dismantle the existing protectionist structure. In fact, most import-related administrative prohibitions and restrictions were removed and a tariff phase-out schedule was successfully implemented. However, due to macroeconomic instability, this was a time of low economic growth rates and currency overvaluation, the exchange rate having been adjusted twice (in late 1991 and 1992). Thus, the implementation of a competitive or free market policy — which, according to economic theory should be offset by a currency devaluation — was concomitant with a negative domestic situation, encouraging the search for protectionist measures through the use of antidumping mechanisms.

The first two years of the third sub-period (1994-1998) coincide with the launching of the Real Plan, during which the fight against inflation was subordinated to currency overvaluation, a situation that remained unchanged until the end of this stage. The economic growth in 1994-1995, together with an overvalued currency, led to growing trade deficits which were curtailed by increasing tariff rates on electronic goods and the automotive industry. Applications for investigations filed by other industries — such as the chemical and metal sectors — increased substantially until 1999 (save for 1995).

The last sub-period (1999-2003) began with a strong currency devaluation and was marked, in general, by low economic growth rates. Antidumping mechanisms start progressively losing their meaning, especially when the results of the reviewed cases are not taken into consideration.

In short, the events throughout these years reveal that the search for increased protection through antidumping measures (and vice versa) is not related exclusively to the trade liberalization process, but to a combination of such process with a currency misalignment and Brazil's economic growth cycles.

With regard to the evaluation of the institutional aspects of the system and the implementation of the Antidumping Agreement negotiated at the Uruguay Round, it should be noted that the constant changes introduced in the organizational structure of governmental agencies concerned with the implementation of antidumping measures did nothing but disrupt any attempt at organizing the system properly, as it was until 1993 when it operated under the purview of the Ministry of Finance. At this point, power was steadily shifted to the Ministry of Development, Industry and Commerce, a fact that did not help gain credibility for the agency in charge of conducting investigations and making decisions. Due to its very nature, an antidumping action affects different groups: domestic producers, importers, exporters and, quite often, governmental policy. A feature of all antidumping systems in the world is their tendency to give top priority to the demands of domestic producers to the detriment of consumers and economic welfare. Therefore, the technical finding in any action is even more biased when it is subject to the criterion of a government agency with close links to local producers and is therefore more sensitive to their demands for protection.

In addition to the series of institutional and administrative changes that put in danger a well-functioning antidumping system, this study identified another issue worthy of concern: the high percentage of review cases accepting requests for time extensions. Given the limited human and financial resources available, the agency (DECOM) engaged in investigations is very likely to accept most requests for review filed with it.

On the positive side, if the Brazilian antidumping system is compared to that of other countries such as the United States, South Korea, the European Union and India, it stands out for its lower percentage of cases with final positive determinations and for its stricter adherence to an important recommendation of the antidumping Agreement, i.e. the adoption of antidumping duties smaller than the relative dumping margins. As it has been shown, throughout the 1990s, this systematic approach led to ratios between the antidumping duties and the dumping margins quite lower than

unit, and increasingly so. Such a limited use contrasts positively with the usual practice in other countries, such as the United States, which favors the adoption of the total dumping margin.

Results show that the Brazilian government succeeded in adequately handling the protectionist pressures exerted through requests for trade defense in an environment of macroeconomic difficulties which led the Brazilian economy to a higher exposure to international competition, with the exception of certain sectors such as the toy industry.

Despite the sensible moderation exercised by Brazil in estimating antidumping duties, Finger's caveat — voiced in 1993 and 2002 — is still meaningful: there is a need for a reform in the antidumping system but this should not be sought in the details of the Agreement. Rather, such reform should entail necessarily **less** antidumping. To this end, investigations should not restrict themselves to the impact of competition of imported goods on the domestic production of a like good (a specific interest) but should focus on its effects on the national economic interest, which comprises other economic actors, such as other producers and end consumers.

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