Efforts to revive the suspended Doha Round of trade negotiations are taking centre stage in discussions on International Economics these days. One of the most contentious and technically difficult issues on the agenda of the negotiators in this round, is the question of anti-dumping. This research note takes stock of the progress to date and highlights some of the proposed reforms, with the aid of case examples.

Prof. Rachel Jafta

1.Background

Anti-dumping is much older than the General Agreement on Tariffs and Trade (GATT), but was an insignificant instrument at the time that the GATT came into being. In 1958 only 34 AD decrees were in force amongst all member countries, 21 of which were in South Africa (Finger & Zlate, 2005: 6). However, the successive reductions in tariff barriers during the eight rounds of trade negotiations under GATT, made AD measures an attractive means of protection, taking the number of AD measures to more than 2500 by the time the WTO was 10 years old.

2. Anti-Dumping on the Doha Round Agenda

The suspension of the current session of the Doha Round of trade negotiations is a great disappointment to many in developing and developed countries alike. This research note, however, argues that, as far as AD issues are concerned, the battle was lost in 2001 already. The agenda for the Doha round of trade negotiations includes negotiations on the "Anti-Dumping (GATT Article 6) and Subsidies agreements. The aim is to clarify and improve disciplines while preserving the basic, concepts, and principles of these agreements, and taking into account the needs of developing and least-developed participants." The inclusion of AD issues was hailed as a breakthrough for developing countries since they faced stiff opposition from the US who wants to maintain its ability to apply trade policy flexibly, while the EU reluctantly agreed to its inclusion. The outcome was a compromise, which holds negotiators to the requirement to "preserve the basic concepts, principles and effectiveness of these agreements (Doha Round Briefings, 2003:1). This implies that the system will remain intact, with proposals for change being limited to technical tweaking. In accepting such modest goals, the WTO members thus missed an opportunity to take a fresh look at the AD system, considering whether it still does what it was meant to do, i.e. in the rhetoric of trade politicians “level the playing fields.” Despite this limitation, many observers and analysts were optimistic about the outcome of the negotiations:

“AD reform is now more possible than ever before. The Doha talks will provide the best opportunity to change AD rules and impose discipline to reduce abuses.” (Lindsey, 2002).

Negotiations on anti-dumping take place under the auspices of the Negotiating group on Rules. Anti-dumping is a very technical and contentious matter and with more developing countries using AD measures, the negotiations have become more complicated. Negotiations...
started in January 2002, aiming to reach agreement by the 1st of January 2005. Whatever agreements are reached in these negotiations are subject to final agreement being reached on all other issues. It has therefore been argued that prominent users of AD measures, such as the United States would wait until the end of negotiations to trade concessions on AD for agreement on other matters (Jones, 2006:12).

In the first phase members were required to come to an agreement on the aspects of the AD agreement (1994) that they would want to change. Progress was slow and the negotiations rather technical. At the Hong Kong Ministerial meeting in 2005 members of the rules negotiating group were urged to “intensify and accelerate the negotiating process.” (Jones, 2006:12). There have been more submissions on AD to the negotiating group on rules than on any other topic. The members’ views range from the faction who would like to see the system reform (mainly the “Friends of Anti-dumping negotiations”) to those who would want the status quo to remain (mainly the United States and Egypt). In between there are some members, such as the EU and Australia, who agree with some of the proposals put forward by the demandeurs for change, but would like to preserve much of the system as is.

The proposals were varied and technical, but fall broadly into 6 categories, namely determination of dumping, determination of injury, investigating procedures, anti-dumping level, termination of anti-dumping orders, the implementation of rules on anti-dumping disputes, and the treatment of developing countries. In this short paper, we focus in more detail on three of these: determination of dumping, determination of injury and the duration of anti-dumping decrees.

3. Selected anti-dumping issues

3.1. Definition

From an economic perspective dumping is a form of price discrimination, such as different prices for students and pensioners at cinemas, except that in the case of ‘dumping’ the price discrimination involves exchange across borders. Economists believe that the only harmful form of price discrimination is predatory dumping aimed at removing competitors via low prices in order to raise the price as soon as competitors are eliminated. In the arena of trade policy, dumping in general is cast in a more unfavourable light, generally considered to be ‘unfair’ (usually by the domestic producers of the product in the importing country). The legal definition under the Uruguay Round agreement is slightly different from the economic one:

Dumping is defined in the Agreement on Implementation of Article VI of the GATT 1994 (The Anti-Dumping Agreement) as the introduction of a product into the commerce of another country at less than its normal value. Under Article VI of GATT 1994, and the Anti-Dumping Agreement, WTO Members can impose anti-dumping measures, if, after investigation in accordance with the Agreement, a determination is made (a) that dumping is occurring, (b) that the domestic industry producing the like product in the importing country is suffering material injury, and (c) that there is a causal link between the two. This implies, as a first step, the simple comparison of prices, assuming that the price charged in the home market is the ‘normal value’ of the product, but herein lies one of the complications and reasons for controversy.

3.2. Determination of dumping

An importing nation would typically have legislation in place that requires an administrative institution such as the International Trade Administration Commission (ITAC) in South Africa or the Department of Commerce in the US to compare prices in the “normal course of trade” or if such prices are not available, to use prices in third country markets, or alternatively construct ‘normal value’. The following two examples (chosen because it involves the US as initiator and victim of AD measures) illustrate the practical difficulty of making such comparisons.

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3By August 2003, just before the Cancun Ministerial meeting, a total of 141 proposals were received (Jones, 2006:11).

4This group is so named because prospects to include AD on the Doha Agenda were initially rather bleak and they had to employ strong advocacy to get it there. The group consists of 15 developed and developing countries, namely Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Mexico, Norway, Singapore, South Korea, Switzerland, Taiwan, Thailand and Turkey (Finger & Zlato, 2005: 16).

4Or fair market value as it is applied in the United States.

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About ECONEX

ECONEX is an economic consultancy that offers quality analysis in the fields of Competition and Trade Economics. The company was co-founded by Dr. Nicola Theron and Prof. Rachel Jafta during 2005. Both these economists have a wealth of consulting experience in the fields of Competition and Trade Economics and they also teach courses in Competition Economics and International Trade at the University of Stellenbosch. ECONEX maintains close ties with the University of Stellenbosch and also cooperates on various projects with a number of academic associates. The combined experience of our staff members places ECONEX in a position to offer the best possible advice to clients who are involved in competition or trade related legal proceedings. Our approach is to combine a thorough academic understanding of the theoretical issues with the practical requirements of our clients, in order to deliver a superior, yet accessible product.

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Example 1:

Determining cost of production of small beekeepers in Argentina

In December of 2001 the US Department of Commerce (DOC) imposed anti-dumping duties against honey imports from Argentina and China, which ranged from 32.6% to 183.8%. This decision was widely criticised on the one hand because honey farmers in developing countries are mostly subsistence farmers and on the other hand because of the methodology employed to arrive at the dumping margins that warranted the duty. The essential complaint was that Argentina’s small beekeepers never had a fair chance to defend themselves. The problem arises with the gathering of information to make price comparisons. The DOC uses sophisticated and lengthy questionnaires (in English), which in the first place, it failed to deliver to all respondents and in the second place eliminated small farmers who are not able to answer questions in English. Because of the difficulty experienced, the DOC treated the respondents as uncooperative and used the data provided by the petitioners. This data, critics argue, was so flawed that, if the DOC had made a reasonable attempt to gather cost of production data in Argentina, the dumping margins might have been lower, or even non-existent (Noguès, 2003:11).

Example 2:

Determining cost of production of chicken (South Africa)

This case, amongst others, illustrates how tastes and preferences determine price differences. According to consumption figures, South African consumers prefer dark chicken meat, while their American counterparts prefer white meat. This provided an export market for chicken pieces that American consumers did not buy. Upon a complaint from South African poultry farmers alleging dumping, however, the Board on Tariffs and Trade, the predecessor to ITAC, had to determine ‘normal value’ for chicken. How does one determine the ‘normal value’ of white and dark chicken meat respectively, where demand side factors are so strong? The South African authorities focused on cost of production to determine dumping, ending in a dumping margin of between 200 and 357 percent (Pugel, 2007: 216). This outcome prompted American exporters to cry foul.

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This problem is aptly illustrated by the result of an attempt by the DOC to have the 48 questionnaires delivered by Federal Express: 22 respondents could not be found, of the 26 deliveries made, 6 were either no longer in the honey business or had never been in it, while a seventh received the envelope without the questionnaire in it (Noguès, 2003:11).

More Information

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Apart from the difficulties above, the US further stands accused of overestimating dumping margins by way of its practice of zeroing, where it sets negative dumping margins to zero when averaging rather than allowing negative and positive dumping margins to cancel out. This practice has been the subject of complaint at the WTO Dispute Settlement Body.

With respect to the determination of dumping, proposers of change want transparency and procedural fairness and an explicit ban on the use of zeroing (Finger & Zlate, 2005: 33).

### 3.3. Determination of injury

The determination of injury is problematic in several ways. Some proposals at the Doha Round focus on redefining and streamlining the methodology for determining injury. Some negotiators believe that the existing guidelines leave too much discretion to administrative authorities and they thus propose more objective criteria, especially in establishing a causal link between dumping and injury, so that other factors contributing to decline in an industry could also be taken into account (Jones, 2006: 17). Economists further strongly argue that all domestic interests, including consumers and producers who use imported inputs should be heard when injury is determined (Finger & Zlate, 2005:38). With respect to the duty level, some members propose that, where a duty equal to the full dumping margin is not necessary to make good the injury, a lesser duty should be imposed. They are asking for an amendment to the rules that would require a mandatory lesser duty (Jones, 2006: 17).

### 3.4. Termination of AD orders

The AD Agreement (1994) requires that an AD order not remain in place for longer than 5 years, unless a review by the domestic administrative authorities conclude that a removal of the AD order will lead to a continuation or resumption of dumping and injury. In practice, however, this sunset review process does not necessarily lead to a removal of AD orders. In the case of the US, for example, between 1998 and mid-2005, the DOC found that a removal of AD orders would result in a continuation or recurrence in every single case, while the US International Trade Commission (responsible for determining injury) came to a similar conclusion in 154 of 255 cases (76%). The US still has anti-dumping decrees in place since the mid-1970s (Jones, 2006: 6; KITA, 2006:8).

A mandatory termination of AD orders after 5 years seems to have gained support from several negotiating members, not including the US (Jones, 2006:17).

### 4. Conclusion

This research note argued that in accepting modest goals in order to get AD on the agenda for negotiations at the Doha Round, the members of the WTO had missed the opportunity to fundamentally rethink the purpose of the AD system and to replace it with a revised safeguard measure discipline better suited to provide temporary relief to interest groups negatively affected by freer trade. That being said, the focus was then on some of the key issues, such as the determination of dumping and injury, and the duration of AD orders that eluded agreement so far. Many of the large number of proposals submitted to the negotiations committee on rules are of a technical nature, that might improve the functioning of the system, but essentially it seems as if the current system will remain largely intact.

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**Sources**


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6 For a detailed study on this practice, see the WTO Dispute Settlement Body’s report WT/DS294/R, United States – Laws, regulations, and methodology for calculating dumping margins (“zeroing”), 31 October 2005.

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**Contributors:**

Wimpie Boshoff,
Academic Associate/ Editor
Stellenbosch: +27 21 808 2234
wimpie@econex.co.za

Dr. Nicola Theron,
Managing Director
Cape Town: +27 21 424 0281
nicola@econex.co.za

Prof. Rachel Jafta
Director
Stellenbosch: +27 21 808 2245
Rachel@econex.co.za