

*Trade and Competition Policy:
Anti-Dumping versus Anti-Trust*

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Abstract

This chapter surveys the use of anti-dumping (AD) and anti-trust (AT) policies in encouraging and maintaining competition in the international marketplace. The recent surge in the use of AD is documented and the debate on AD versus AT is analyzed, with a particular focus on the experiences of various Regional Trade Agreements. Some of the possible solutions to the debate are evaluated, taking as granted the political constraint that AD cannot be abandoned without an alternative policy being put in its place.

1. INTRODUCTION

Our interest is in the policies used by countries to discipline the behaviour of imperfectly competitive firms in the international marketplace. In particular, we wish to examine the competition policy options available to national governments as their economies become more integrated with the world trading system. We are especially interested in the different opportunities that regional trade agreements (RTAs) offer relative to those under the multilateral trading regime of the World Trade Organization (WTO).

The international dimension is crucial. In a world of self-sufficient countries, firms would be producing goods entirely for domestic consumption. If firms behave competitively and there are no externalities, it has been long acknowledged that the free market is efficient. Were any firm (or group of firms) perceived to be exercising an inappropriate degree of market power, however, a government could use its arsenal of competitive policies to address this anti-competitive behaviour. We shall label these as “anti-trust” (AT) policies.

As trade barriers are lowered, firms will be exposed to foreign competition, leading to penetration of domestic markets by imports from abroad and opportunities for domestic firms to sell in new export markets. Traditional trade theory predicts that such trade will yield aggregate gains for all participating nations, though there can be long-term implications for industrial structure and income distribution. However, if firms behave competitively, global efficiency is achieved through a complete elimination of trade barriers (i.e., free trade) and without the need for any government intervention into product markets.

Difficulties arise when firms can and do exercise market power. In such instances, government intervention can be justified. The problem is that the instruments that are available to a government to discipline a domestic firm are not accessible in the case of a foreign-based enterprise. The exporting country could, of course, also use AT policies to force its firms to behave more competitively in foreign markets, but it frequently is not in the

interests of the nation to do so (Levinsohn, 1996).¹ In the absence of AT instruments, the government must find alternatives. A resurrection of trade barriers is a possibility. Another is the use of “anti-dumping” (AD) policies, which allow governments to impose duties whenever goods are sold in export markets at less than their “fair value”. These policies, in essence, prevent firms from price discriminating between markets.

Given the international dimension, the advantage of AD over AT is that it does not require any supranational powers. The disadvantage of AD policies is that they do not fully address the problem of inappropriate use of market power and, indeed, often induce more distortions in the market than they resolve and are often captured by special interests. As it is generally believed that the negative aspects outweigh the positive ones, a major part of this chapter is an investigation of the motives behind AD.

If the debate on AD versus AT hinges on the issue of supranational powers and coordination of local provisions, the recent wave of globalization can offer a solution. Depending on the degree of integration of the participating countries, supranational authority might be possible. Indeed with an RTA, AT may be rehabilitated. Therefore, another component of this chapter is the investigation of whether AT should replace AD under an RTA (and why it frequently has not), with an emphasis on the interplay between economics and legal provisions.

In summary, this chapter is focused on the most appropriate and feasible means of encouraging and maintaining competition in the international marketplace, using AD and AT instruments. However, it is not intended to be a survey of dumping, nor a survey of AD, as the long literature would take us too far afield and we would unnecessarily replicate recent contributions (Blonigen and Prusa, forthcoming; Niels, 2000). In the same way, it is not a

¹ Many AT laws provide exceptions of some sort for export cartels. For example, in United States actions in violation of AT are permitted if firms are engaged exclusively in export activities.

survey of AT. In the next section, we focus on the issues surrounding the implementation and use of AD. Section 3 considers the justifications for the protection of competition and how AD and AT, especially, address it. The multinational dimension is analyzed in Section 4 and some conclusions are drawn in the final Section.

2. ANTI-DUMPING

A discussion of AD would not be of value, at least from a practical point of view, unless the phenomenon were quantitatively relevant. There are various ways to assess the (mis)use of this largely protectionist tool. In the following, we present some data on the adoption of AD laws and their use. Even though usually ignored, the time pattern of worldwide implementations of AD laws is interesting in itself, and particularly in relation to the trade liberalization experience of many countries. More generally, we will argue that the surge in the use of AD can be linked to the parallel processes of trade liberalization and legal developments in the General Agreement on Tariffs and Trade (GATT) and WTO dispositions.

2.1 Some Numbers

Figure 1 shows the worldwide implementation of AD laws over time. The history of AD starts at the beginning of the twentieth century, with Canada being the first country to adopt an AD legislation in 1904, followed by Australia in 1906 and several other nations in the years up to 1920. Finger (1993) explains this first wave of AD legislation referring to a general hostility toward Germany, which, towards the end of World War I, had a huge production surplus ready to be dumped,² and the general climate of trust-busting in the

² Viner (1923) suggests that this mistaken belief may have been caused by “the wartime plague of mendacious propaganda.”

political debate.³ Following this initial burst of AD legislation, Viner (1923) provides the first comprehensive analysis of this protectionist tool and of its economic rationale as a remedy for discriminatory pricing and cartel behavior.

The subsequent 30 years were surprisingly quiet. Beginning in the 1950s, however, AD starts to acquire a worldwide status, with more and more countries adopting AD laws at an increasing pace, only interrupted in the 1970s, that reaches a total of 94 countries having an AD law by the end of 2001.⁴ In the meantime, the rationale for AD as a remedy for predatory behavior (as suggested by Viner) has changed dramatically. This is reflected in a recent communication from the United States (US) to the WTO (1998): “The antidumping rules are not intended as a remedy for predatory pricing or any other private anti-competitive practices with which competition laws are concerned.”

The number of countries with AD laws only gives a partial picture. Figure 2 places these numbers in a geographical context and it shows that, in the last decade, most of the activity in introducing AD legislation has been in developing countries. Much of this is catch-up, as most of the industrialized world already had AD laws prior to 1990. The least change has taken place in central Africa, where few countries have any AD laws. These countries are also amongst the least industrialized with low trade volumes. Thus their need for AD policies is not great, nor would any such policies have much impact on world trade. Despite this, the increased adoption of AD laws worldwide means that more than 90% of worldwide imports in 2000 were potentially subject to AD actions!⁵

Despite the fact that the economic literature has shown that AD laws can have pervasive effects even when duties are not imposed,⁶ numbers relating to the application of

³ In the US, the first AT law (the Sherman Antitrust Act) was enacted in 1890. Australia refers to AD in the Federation papers of 1901, with provisions being enacted in 1906 to address predatory dumping.

⁴ The 15 countries of the EU are counted individually. The total reported in Figure 1 is less than 94 because of missing data on implementation for some countries.

⁵ Intra-EU imports are not included since AD actions are not allowed among member countries.

⁶ See Blonigen and Prusa (forthcoming) for a discussion.

AD are natural counterparts to the data on the adoption of AD laws. Figure 3 illustrates an upward trend in the number of petitions filed since the beginning of the 1980s.⁷ Moreover, the ups and downs seem to correlate with business cycle fluctuation; a hypothesis confirmed by Knetter and Prusa (2000) for Australia, Canada, the European Union (EU), and the US. This same graph also shows that the growing number of countries adopting an AD law is consistent with larger and larger shares of petitions being filed by non-traditional users (i.e., countries other than Australia, Canada, EU, New Zealand, and US).

Simply looking at filing statistics can be misleading, since the number of petitions must be related to the total volume of imports for each country. In other words, five petitions in 5 years by Trinidad-Tobago may be relatively more important than 136 investigations by the US in the same period, given the total value of imports for these countries. Finger et al. (2001) carry out an analysis of this issue, constructing an index of initiations (impositions) relative to imports (exports) over the period 1995-1999.⁸ Tables 1 and 2 summarize some of their results. In relative terms, developing countries are the most intense users of AD, while the US and the EU (and industrial economies in general) are among the least intense users, contrary to the usual presumption of blame. A similar picture obtains when looking at the imposition of AD duties, with transition economies being the most targeted countries.

Reviewing these numbers can only lead to the conclusion that the importance of AD has greatly increased over time. However, the players have changed. Developing countries are now using this protectionist tool as much, if not more, than the traditional countries. Why is this the case? Has the occurrence of dumping increased? In the following, we suggest some possible answers.

⁷ All data presented in the following are derived from GATT/WTO documents. Known mistakes in these sources (Zanardi, 2002) do not change the general picture of the phenomenon.

⁸ Imports and exports are measured in \$US for all countries.

2.2 Some Possible Explanations

Short of being a complete answer, Figures 1 and 4 illustrate a strong correlation between trade liberalization and AD. Membership in the GATT/WTO is accompanied by implementation of AD laws. Even if an AD law is not a necessary condition for accession to the WTO, in recent years the two aspects have been closely related. In this case, it is likely that the solid line in Figure 1 will be upward sloping in the near future, as more than 20 countries without such a law are negotiating access to the WTO. Similarly, the IMF and the World Bank have, in the past, included the enactment or drafting of AD legislation as a condition for the release of loans.⁹

Figure 4 suggests a process of substitution of definitive AD measures in place of tariffs as non-traditional countries move along the trade liberalization path. Even though correlation does not imply causation, there is a generalized presumption that

...antidumping laws administered in strict conformity with the Antidumping Agreement actually assist governments in their efforts to continue trade-liberalizing measures by providing relief to domestic industries injured by foreign firms that engage in unfair trade practices, even as international trade liberalizes. From this perspective, the antidumping rules are a critical factor in obtaining and sustaining necessary public support for the shared multilateral goal of trade liberalization.

Communication of the US to the WTO (1998)

In the very same document, the US goes even further in stating that AD is “necessary to the maintenance of the multilateral trading system.”

⁹ The World Bank offered technical and legal advice to many countries (Krishna, 1997) even if economists within the World Bank voiced their opposition (Finger, 1992). The IMF approved a credit for Pakistan in 2000 subject to the enactment of a new AD law.

But the hypothesis of AD as a pressure valve is not fully able to explain the scenario outlined by Figures 1 and 4. In fact, many countries had AD laws on their books for many years but did not use them until recently. Bureaucratic limitations certainly makes a reasonable explanation for some countries, but a retaliatory motive is another worrying possibility. Indeed, some countries have gone as far as including a reference to the latter possibility in their law. For example, article 56 of the new Chinese law that entered into force on January 1, 2002 states that “Where a country (region) discriminatorily imposes anti-dumping measure on the exports from the People's Republic of China, China may, on the basis of the actual situations, take corresponding measures against that country (region).”¹⁰ A formal test of this motive is provided by Prusa and Skeath (2001), who find some support for a retaliation motive for both traditional and new users of AD, while excluding an increase in unfair practice as an explanation of the increased use of AD.

Another possible explanation is that the increased use of AD by developing countries is related to a change in the composition of traded goods. Obviously, this is associated with their increasing role in world trade arising from their pursuit of trade liberalization. Still, this hypothesis does not explain why non-traditional users apply the AD law as heavily, as reported in Table 1.

If AD as either a pressure valve or means of retaliation goes a great length in explaining the surge of initiations, the time pattern of implementation of AD laws in Figure 1 also suggests a legal element to complement these explanations. Once the GATT entered into force, the first wave of implementations took place in the late 1950s, coinciding with the decision of the contracting parties to the GATT to have a “systematic study” of AD legislation (GATT, 1958). The first Antidumping Code was negotiated during the Kennedy Round and entered into force in 1967, with five countries then implementing an AD law in

¹⁰ The very same article was present in the original law implemented in 1997. Russia’s AD law contains a

1968 and a couple more following shortly thereafter.¹¹ The Tokyo Round Code dates to 1980 and again Figure 1 shows an increase in implementations in the 1980s after a period of inaction. The Uruguay Round Antidumping Code entered into force on January 1, 1995 and represented a major leap forward. Apart from the new rules that it includes,¹² this code is an integral part of the WTO Agreement and, as such, it applies to all members whereas previous codes had to be signed by each GATT member.¹³ This requirement can explain the steep slope in Figure 1 in the second half of the 1990s. It may be that the WTO requirements standardize AD laws thereby limiting the protectionist bias in some countries' legal dispositions. Nonetheless, we think that the temptation to (mis)use an AD law is strong once a country implements it.

Whether the link runs from the legal requirements to the implementation and use of AD laws, or vice versa, can not be said with the data available. However, it is reasonable to conclude that legal aspects, trade liberalization, and retaliatory motives are part of the same (vicious) circle that surrounds the use of AD.

2.3 Anti-Dumping and Regional Trade Agreements

The economic literature that discusses trade liberalization always acknowledges the importance of regional trade agreements (RTAs). Preferential trading has flourished recently, with around 80% of the existing RTAs having come into force after 1989. What is the relationship, if any, between AD and RTAs, and what is the role of AT? There is no simple answer to these questions because no clear pattern can be detected; though some general conclusions can be drawn.¹⁴

similar provision.

¹¹ The European Community implemented its common AD law in 1968.

¹² See Schott (1994) for a detailed summary.

¹³ For example, the US never signed the Kennedy Round Code.

¹⁴ See Hoekman (1998) for an extensive survey on AD and AT in RTAs.

At one extreme of the spectrum, the EU has substituted AD with AT for intra-union trade and applies common (supranational) AD procedures with regard to third countries.¹⁵ There is no harmonization of national AT regimes but a supranational commission deals with union-wide competition matters. The EU represents a very deep form of integration with free movement of goods, labor, capital, and coordinated monetary and fiscal policies. In this regard, the elimination of AD can be interpreted as a necessary step in order to reach a common market, more than the consequence of a supranational AT discipline.

The experience of the EU is particularly instructive when considering the various forms of agreements that the EU has signed with third countries. In fact, while AD has been abolished within the European Economic Area (EEA)¹⁶ without any reference to AT, the EU retains the right to initiate AD investigations for imports from countries in the Agreements with Eastern European and Mediterranean Countries. Even if the EEA is a free-trade area (i.e., the simplest form of a RTA in which there are zero tariffs on bilateral trade flows but no common trade policy), the stated objective of creating a single market entails elimination of AD. By the same token, it does not come as a surprise that AD was not eliminated in the other cited agreements.

The goal of a common market seems to be the driving force when dealing with AD in RTAs, while AT does not appear to be a critical factor in the process. This interpretation of the European experience is confirmed by the Canada-Chile Agreement where AD was eliminated without any replacement with AT. The relationship between Australia and New Zealand (ANZCERTA) is less clear cut since both countries changed their AT law to allow firms to be tried in both jurisdictions. The official documents states that "...the maintenance of anti-dumping provisions ... ceases to be appropriate as the Member States move towards

¹⁵ The Treaty of Rome (1958) constituting the European Community provided for the elimination of AD after a transition period.

¹⁶ The EEA is EU with Liechtenstein, Iceland, and Norway.

the achievement of full trade in goods between them and a more integrated market.”¹⁷

In the Americas, the firm support of the US for AD made it impossible to accomplish much on the issue in the negotiations that led to NAFTA. The only concession has been the establishment of binational panels to ensure the correct application of the laws. Analogously, there has been no attempt at any harmonization of AT. In Mercosur, a double AD regime applies depending on the source of imports. National agencies are supposed to coordinate their actions for intra-region AD investigations. In contrast, a common legal framework, but without a supranational authority, applies for AD actions against third countries. Intra-region AD laws are to be completely eliminated and replaced by a common competition policy once the transition period is over and the as-yet unratified Protocol of Fortaleza is implemented. But this latter development seems far from becoming reality since Paraguay and Uruguay still do not have AT laws.

In prospective terms, the Free Trade Area of the Americas (FTAA) and the Asia-Pacific Economic Cooperation (APEC) forum have working groups on AD but in neither case is the discussion made in conjunction with AT.

In conclusion, AD concerns in RTAs are not necessarily related to AT, even though some sort of coordination on competition policies is of help. The experiences surveyed also show that the particular trade arrangement (i.e., free-trade area versus custom union) is not the determining factor. The intention of creating a single market seems to be the critical element that triggers the phasing out of AD.

¹⁷ Preamble to the Protocol on Acceleration of Free Trade in Goods (1988).

3. JUSTIFICATION FOR COMPETITION POLICIES

Our concern is with the ways countries can use to control the inappropriate exercise of market power by firms. Both AD and AT are instruments of competition policy and their use is justified on this basis. Specifically, they target price discrimination (i.e., charging different prices across markets and/or consumers), which is the result of segmented markets in an international setting. As such, AT and AD could be thought as complementing each other where AT applies to domestic markets and AD pertains to the domestic sphere of foreign firms. However, the ultimate objectives are quite different with AT aimed at protecting consumers' interests and AD designed to safeguard firms' businesses. Still, the two sets of policy *ideally* are meant to complement each other, as they act upon the same market distortion.¹⁸

The real-world experiences of the interface between AT and AD are far from showing strong complementarity, if any complementarity at all. Between the two, AD policies have moved farthest from this ideal scenario. Other economic and, particularly, political motives have shaped AD practices so that they are nowadays rather different from the idea of "fairness" that motivated them in the first place. In this process, any link between AT and AD has been lost and the two policies are now total strangers. In the following, a more detailed analysis of the justifications of AD and AT will form the basis for the discussion of the possible solution(s) to the AD versus AT debate.

3.1 Anti-dumping Policy

Dumping is not, in itself, a cause for concern in international markets. It can, indeed, be a necessary component of pro-competitive trade. As trade barriers are lowered, firms have an increasing incentive to sell into foreign markets. This makes markets more competitive as domestic producers no longer have the market to themselves. Consequently, domestic prices

¹⁸ Price discrimination is only one among many of the illegal practices covered by AT.

are forced down to the benefit of consumers. It is very likely, however, that the foreign goods are being “dumped,” in the sense that producers earn less on each good exported than if it were sold on their domestic market. For example, if there still are trade costs, these have to be absorbed by the exporting firm. Otherwise, exports would be more expensive than domestically produced goods that don’t face the same trade costs. Thus, rather than being exceptional, anti-competitive behavior, dumping is a quite typical response to trade barriers and is generally pro-competitive, benefiting consumers. AD aids and abets domestic firms in exercising their market power, in that it either forces up the prices of imports or, in the extreme, drives the foreign firms out of the market entirely.

The only sound economic justification most economists would agree upon in defending the need of an AD law is the occurrence of *predatory* dumping. This is an extreme form of price discrimination with dominant firms lowering the price (i.e., “dumping” on foreign markets) to such a degree as to drive competitors from the market. The disappearance of domestic firms and the resulting monopolized market imply a net loss for the importing country’s welfare, which makes AD provisions legitimate.¹⁹ This justification is the motive that originally prompted the implementation of AD laws in the early years of the twentieth century. However, this concern seems vanishing. The literature shows that very few of the AD petitions filed in the 1980s were brought against instances of possible predatory dumping (Messerlin, 1996; Shy, 1998).²⁰

Nowadays AD seems to have little concern with either predation or dumping. Some authors refer to AD as merely another form of protection entirely unconnected to any observed dumping behavior. Indeed, the criteria for proving dumping and consequent injury

¹⁹ Consumers and producers both lose in the long run as higher prices will be charged by foreign producers to recuperate their short-run losses.

²⁰ Recently, AD advocates have abandoned predatory dumping as their main justification and have invoked unfair arguments based on price discrimination and below-cost sales (Mastel, 1998). In turn, these claims have been proved unrelated to the actual AD practices (Lindsey, 1999).

allow firms around the world to seek (and obtain) protection from the AD procedures. Industries at large have been granted protection through the numerous petitions they have filed in some countries.²¹ In this way, AD duties have become a substitute for tariff protection as trade liberalization has progressed (as shown in Figure 4) or have been pursued on pure protectionist grounds by some of the traditional users of AD (for example EU and US). AD protection benefits domestic producers and the direct impact on consumers is analogous to the effect of import taxes, in raising the prices for both imported goods and domestically produced import-competing products. The net effect on national welfare is negative.²²

More worrying are the indirect effects of AD, as they are more difficult to quantify and may arise once an AD law is implemented even if it is not used. The long literature on this aspect as well as on the strategic behavior induced by the mere existence of the law (Blonigen and Prusa, forthcoming) points out that the adverse effects may be exacerbated or diminished depending on the exact market conditions. AD may facilitate collusion between home and foreign firms.²³ It could also be pro-competitive when collusion pre-exists the introduction of the law (Hartigan, 2000) or the law is simultaneously introduced in more than a country (Anderson et al., 1995). AD provisions may also induce foreign direct investment to avoid duties. Such “anti-dumping jumping” presents ambiguous welfare implications as domestic producers lose because of increased competition but consumers pay lower prices (Haaland and Wooton, 1998). As we have already mentioned, retaliation is another possible, and indeed likely, effect of AD.²⁴ However, it may be argued that retaliation will disappear in the long run if a “cold war” equilibrium is reached, where every country is equipped with an AD

²¹ Prominent examples include the steel industry, as well as the textile and chemical sectors.

²² Gallaway et al. (1999) estimate that the collective net cost of AD and countervailing duty orders (a less frequently used law which offsets export subsidies) was around \$4 billion in 1993 for the US. This amount is larger than the cost of any US trade restraint policy with the exception of the Multi-Fibre Arrangement.

²³ See, among others, Staiger and Wolak (1992), Messerlin (1995) and Zanardi (2000).

²⁴ All these indirect effects would be present even if AD were aimed at predatory dumping only, though most likely in milder forms since firms would see that the law applies in a restricted number of cases.

law but does not use it because of the credible threat of its trade partners responding in the same fashion. Judging from the data discussed in the previous section, it seems that we are still quite far from such an outcome, assuming this is indeed the eventual equilibrium.

If dumping is supposed to be a technical concept and the imposition of AD duties a bureaucratic process according to the WTO AD Agreement, nothing is further from reality. Political justifications as well as political influences in the administration of AD are crucial in explaining the resistance of some countries, and the US in particular, to change the WTO AD Agreement.

The typical political justification is that AD is a safety valve for trade liberalization which, it is argued, would not be otherwise accomplished because of the objections of the sectors disadvantaged in the move to freer trade. If this is the position of most industrialized countries, developing countries and Japan present an opposite view.

Japan shares the view of many developing-country Members [to the WTO] which have expressed concerns about the abuse of anti-dumping measures and insisted on removing ambiguity and excessive discretion inherent in the Anti-Dumping Agreement. These characteristics have dangerously made it an instrument of protection rather than an instrument to counteract unfair dumping. Japan is concerned that this situation poses a threat to the multilateral trading system. Therefore, Japan supports clarifying and strengthening disciplines in the Anti-Dumping Agreement.²⁵

Communication of Japan to the WTO (1999)

Clearly the political consensus is not general. The US sees AD as necessary to sustain the multilateral trading system, while Japan thinks of it as a threat. This demonstrates how

²⁵ This statement was received with vehement opposition from the US and guarded support from the EU.

various interests can twist the same WTO Agreement and depart from its principles in its implementation and use. A new round of multilateral trade negotiations is currently under way after its launch in Doha, Qatar. The US has agreed to the inclusion of AD in the agenda with the objective of “clarifying and improving” its rules “while preserving the basic concepts, principles and effectiveness” (WTO, 2001). Still, the resistance of US to any substantial change is revealed in a resolution approved by the US Congress just few days before the WTO Ministerial Conference in Doha stating that

...it is the sense of Congress that the President, at the WTO round of negotiations..., should (1) preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping and countervailing duty laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and (2) ensure that United States exports are not subject to the abusive use of trade laws, including antidumping and countervailing duty laws, by other countries.

US House (November 7, 2001)

Interestingly, this statement seems to show double standards with respect to the active use of AD and of being a target of it. In other words, the US recognizes the possibility of a misuse of AD when it comes to American exports but it fails to admit any wrongdoing in its use of AD. In citing the constituency that AD protects (i.e., workers, agricultural producers, and firms), the resolution repeats the political justification of the law.

A reader looking for complementarity between AD and AT will notice that consumers' protection is not mentioned in the above quote. Indeed, from the very beginning AD has

always been concerned with “unfair” business practices and their relevance for domestic firms, leaving aside considerations for consumers and national welfare. Some countries do include a national welfare clause in their law (the EU is a primary example). This does not seem to significantly change the way the law is administered. Such clauses are unlikely to resolve the conflict between AD and AT or reduce the misuse of AD, unless they are formulated in such a way as to become binding on the AD authorities.

The same list of interests in need of protection also explains the relevance of AD in the domestic political arena. Various contributions in the literature illustrate the channels of political influence over the application of AD (Finger et al., 1982; Moore, 1992; Hansen and Prusa, 1997). The mechanics of any channel basically rely on an “exchange” between interests groups (i.e., lobbies) and politicians where favorable AD outcomes are the “price” paid for obtaining political support. This political economy aspect is probably the most important factor in causing the misuse of AD. At the same time, it is likely to be the most difficult to eliminate.

The interplay of economics and politics and the increasing role of the latter explain the evolution of AD from a tool originally conceived as an extension of AT for foreign firms misbehavior to a standard protectionist instrument. AT is not necessarily administered free of bias, however, as we will describe next, its underpinnings are more economic in nature and the clearly stated objective of consumers protection poses a limit to political influences.

3.2 Anti-trust Policy

Competition policy (which we shall continue to refer to as “AT”) shares a common target with AD, the prevention of predatory behavior. One firm undercutting the prices of a rival is not, of course, unequivocal evidence of predation. The price difference may simply be the result of differences in productive efficiency. In such circumstances, the competition is healthy and in the overall interests of the economy, despite the negative impact on the less

efficient firm. The task of the AT authority is to distinguish between (what may be) intense price competition and true predation, as only the latter warrants intervention.

AT is more focused on encouraging competition than on preventing it. As trade barriers come down and markets become increasingly integrated, the costs of entry into foreign markets diminishes. These pro-competitive developments may not be in the interests of firms, who previously enjoyed greater market power in their domestic markets. As we have established, AD often works to reinstate some of this lost power. AT policies, instead, are designed to ensure that firms do not undercut the benefits of market integration by collusive behavior. The interests of consumers (and overall economic efficiency) are paramount with AT, while they are largely ignored by AD.

In determining whether AT measures are justified, a series of economic tests have been developed to evaluate when firms have dominant positions (depending on their market shares) and strict criteria of proof in each case. This is in sharp contrast to the practice of AD. There is a vacuum with regard to meaningful economic criteria and subjective decisions by commissioners (in the EU even more than in US) are important, leaving the door open to interest groups to influence the outcome of the investigations.

Were governments intent on promoting efficiency and competition, AT policies would clearly be the superior instrument, as AD can do nothing to eliminate collusion between firms and actually goes a great length in facilitating such practices. The deficiency of AT is the inability of governments to apply it to other than domestic firms, or at least production taking place in the within domestic borders.

3.3 Summary

If AD and AT have a common target (i.e., anti-competitive behavior), the discussion so far makes clear that AD is serving other purposes as well. From a purely economic point of view, the distortions induced by AD decrease a country's welfare. However, redistribution of

income and rent and their associated benefits make AD a very convenient tool for both interest groups and policy makers (and politicians).

AT appears to be the more effective instrument in dealing with anti-competitive behavior on the part of firms. Indeed, except in the instance of predatory behaviour, there seems to be no economic justification for AD policies. Eliminating AD would consequently, and independent of any other actions, yield benefits to the world economy.²⁶ Thus it is argued by Niels and ten Kate (1997) that there is no need to replace AD with any alternative policy such as AT. In defense of AD, its elimination could make countries targets of predatory behavior. This might not be a big concern, however, as such a strategy seems very difficult to pursue at an international level.

A two-tier approach has been proposed by some authors. In such a framework, an AD case would be first judged using AT criteria and, only if it passes them, would it be allowed to proceed as an AD case. Thus AD actions would only be justified if there were a concern about abuse of market power, reducing the competitiveness of the market. Linking AD to AT in this way would allow AT to play a central role in shaping AD. This would help return AD to the perspective of the early 19th century when it was first introduced.

In the debate over competition policies and trade policies that has taken place in the WTO, the relationship between AD and AT is never tackled (and this remains true for the Doha Ministerial document). Academics (economists and lawyers) address the issue but this analysis does not seem to reach policy makers. However, some small positive signs are present. For example, Lithuania introduced its AD law in 1998 and it placed its authority in the same agency also responsible for consumer protection. Further, in a communication to the WTO in 1999, Mexico “give(s) some practical examples of the way in which certain basic

²⁶ The US implementation of the Tokyo Round additionally makes it easier to claim cost dumping. Making domestic sales at prices below cost, for example to unload inventories of seasonal items or apparel out of style or liquidation, are however not prohibited under AT law.

concepts of competition policies could be used to improve the anti-dumping rules.” (WT/WGTCP/W/136, 15 July 1999). It appears that some developing countries have learnt the lesson about the abuse of AD and they are willing to “fix” the problem instead of only retaliating.²⁷ It might be expected that any initiative to “solve” the problem of AD should come from one of the large global organizations (such as, WTO, World Bank, OECD). However, there is concern that these bodies have been captured by the US influence and are therefore silent on these issues.

4. MULTI-DIMENSIONAL ECONOMIC INTEGRATION

Both trade liberalization and competition policy can be pursued multilaterally or bilaterally. Table 3 attempts to provide a characterization of the policy combinations available to countries. In a world with high trade barriers, there is little trade as foreign firms are put at a serious disadvantage relative to local producers. Any competition problems will arise from domestic firms exercising their market power, and so domestic AT policies will provide the correct remedy.

As trade barriers begin to crumble as a result of multilateral trade negotiations, imports take an increasing share of domestic markets. As we have seen, and for the reasons elaborated, under the multilateral approach trade liberalization and competition policy (AD) appear to be substitutes. Figure 4 shows clearly that AD legislation/application increases as tariffs diminish.

The alternative path towards economic integration takes a more regional approach. The degree to which a regional trade agreement will also yield common competition policies will depend upon the degree of integration that the member countries wish to have. The lowest level of integration that is consistent with WTO obligations is the free-trade agreement. This

²⁷ Or it may simply be an illusion.

simply obliges countries to set zero tariffs on their imports from other member nations. No aspect of national trade policy is placed in the hands of a regional or supranational agency and so there is no reduction in national sovereignty. Nations could (and we have given instances where some have) parallel the trade concession with an elimination of AD between members in the regional agreement. While this may do nothing to deal with disciplining the behavior of large firms, it would have the benefit of removing a protectionist policy, as Niels and ten Kate (1997) argue.

Steps towards deeper trade integration can also be matched on the competition front. Countries that establish a customs union must jointly agree on common external tariffs. AD policy could be put on the same footing, with a regional policy replacing the individual policies of member countries with regard to imports from the rest of the world. It is not clear whether such regional coordination would be welfare improving. On the one hand, firms from outside countries would have to face one, consistent set of AD policies for sales into the region. On the other hand, the region may, through coordinating its actions, be able to wield AD more effectively as a protectionist device.

This problem remains even when countries pursue yet deeper integration as a common market. However, the completion of the regional market calls for the introduction of a region-wide AT regime. Within a common market, supranational institutions are already in place and so the issue of sovereignty has, to some degree, been resolved. As a result, AT can be introduced at the regional level, resulting in a more effective policing of firm behavior within the regional market. Then, to the extent that AD should be linked to AT, an RTA offers better prospects than multilateral negotiations carried out at the WTO level. Even though some advocate that the WTO should be involved with competition policies, the

institution's trade focus may prevent it from being the ideal venue for discussion of the harmonization of AT regimes.²⁸

5. CONCLUSIONS

We have considered the relationship between trade liberalization and competition policy. There is strong evidence of the increasing use of AD policies in the liberal trading regime that has been achieved in the global economy. But AD is not the best approach in dealing with corporate abuse of market power. Consequently, we have sought out alternatives to AD, particularly in the context of nations increasingly being members of some form of RTA.

It seems that, at least on political grounds, AD cannot be abandoned in absence of an alternative policy, despite a compelling case for its elimination (except in the case of predation). Indeed a political economy approach seems to be the only way to explain the persistence of AD. The compromise is to find some form of alternative policy with which to replace AD. What might be considered the "best" policy on efficiency grounds, a supranational application of competition policies, is not however considered politically feasible.²⁹ Thus, whatever policy is found, it will be "second best" from an economic viewpoint.

What feasible and efficient policies might be used? A national welfare clause, amending AD rules to move the focus of concern from domestic producers to overall national wellbeing, might be promoted. However, there is not much evidence of its success in countries that already have such a clause in place. If the WTO Agreement were to impose a national welfare clause with strict criteria, there is the possibility that it would be effective in limiting the existing abuse of AD laws. Then again, it is probably more realistic to

²⁸ See Guzman (forthcoming) for the various positions in favor and against discussions of AT in the WTO.

²⁹ In this regard, OECD (2000) notes that it "does not retain options that have been discarded in joint discussions as unrealistic, such as full harmonisation of competition laws, or an international antitrust authority with supranational powers."

acknowledge that special interest groups would find loopholes in any legislation (as they already do).

Probably RTAs can offer an “intermediate” solution as they improve regional AD legislation. They push national authorities into relinquishing their powers. The experience of doing this at a regional level may encourage countries in the long-run to eliminating AD on a larger scale. Independently, RTAs that eliminate AD offer a micro model of how things should work and should be taken as exemplars of good practice. In this sense, the Treaty of Rome in 1957 was far more advanced than more recent forms of integration.

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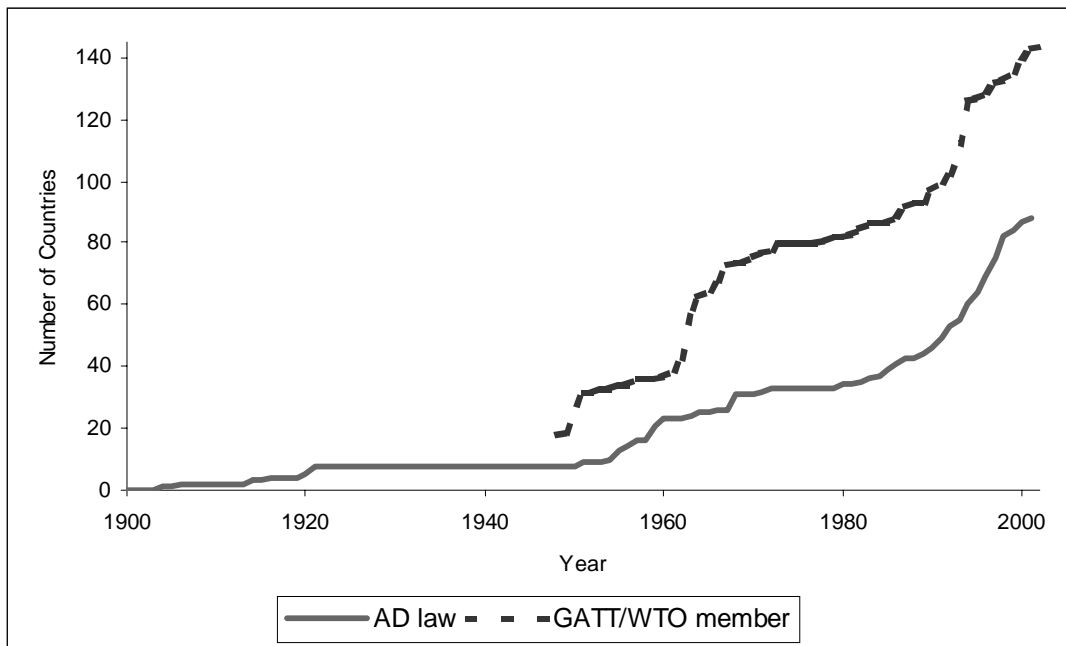
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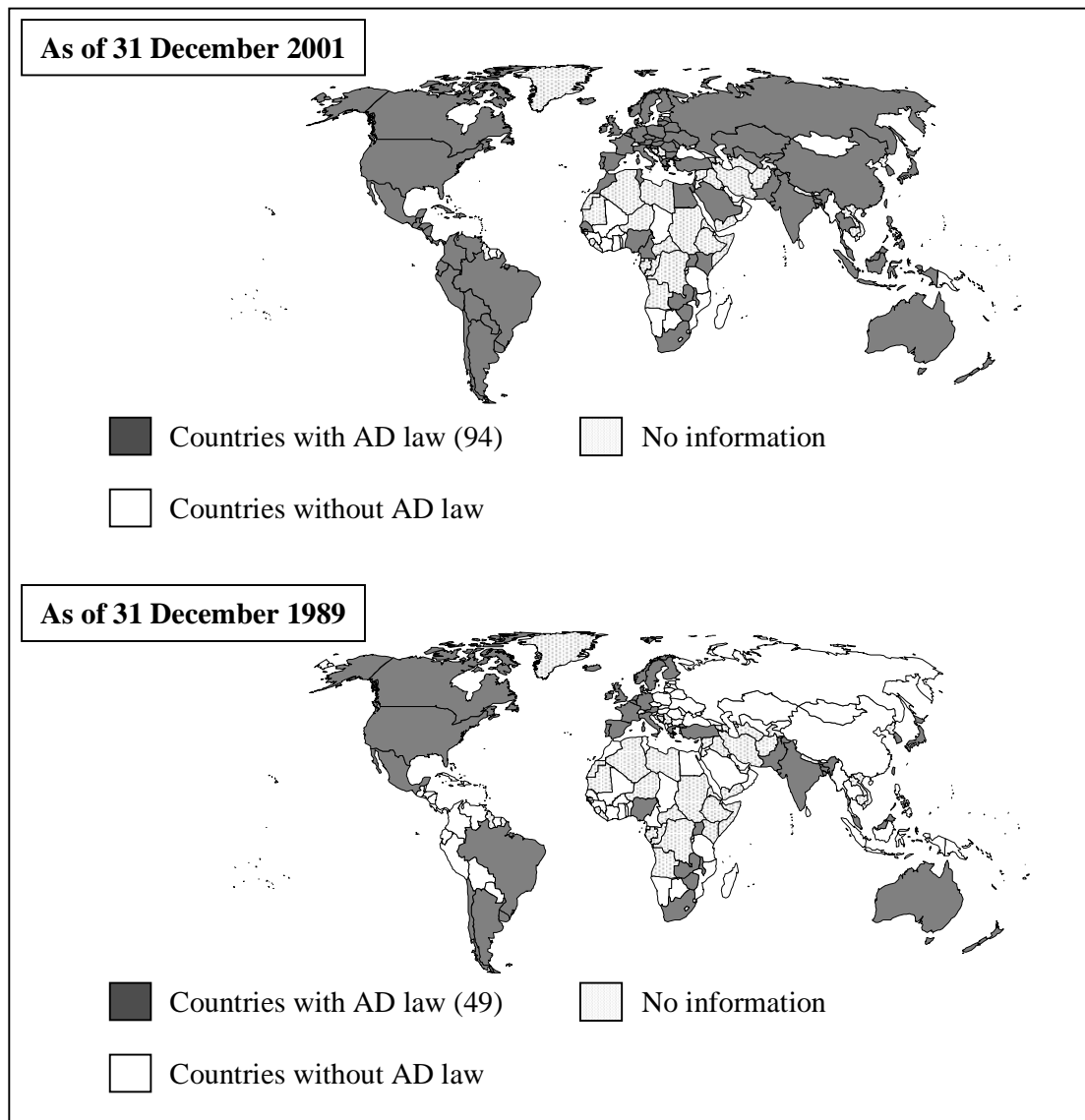
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Figure 1: Countries with AD laws and membership of GATT/WTO (as of 31 December 2001)



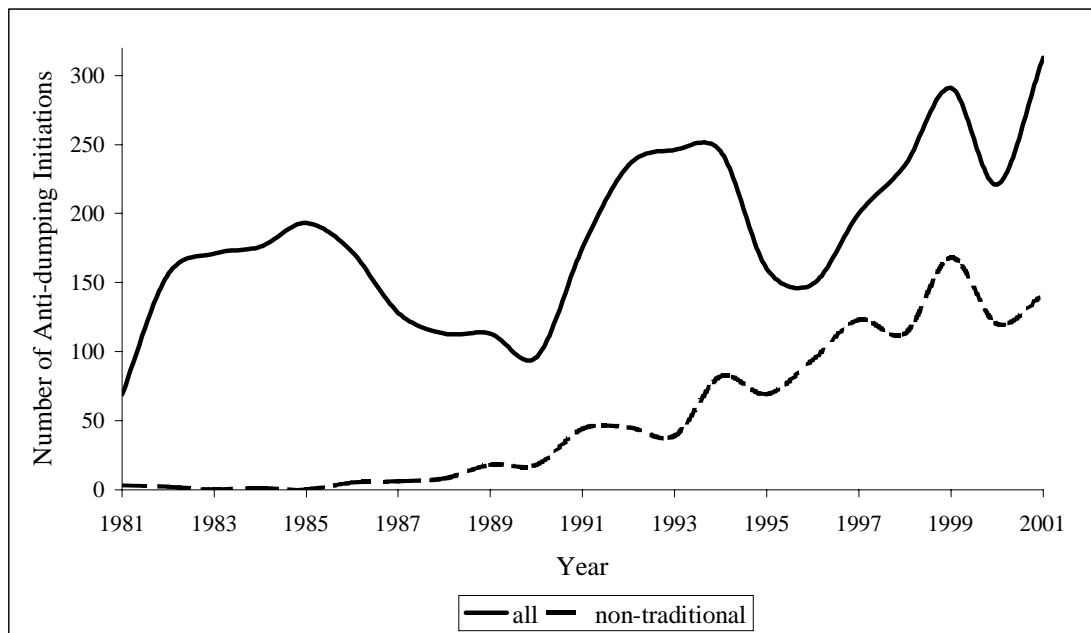
Source: Zanardi (2002) for AD laws and <http://www.wto.org> for GATT/WTO membership.

Figure 2: The geography of AD laws



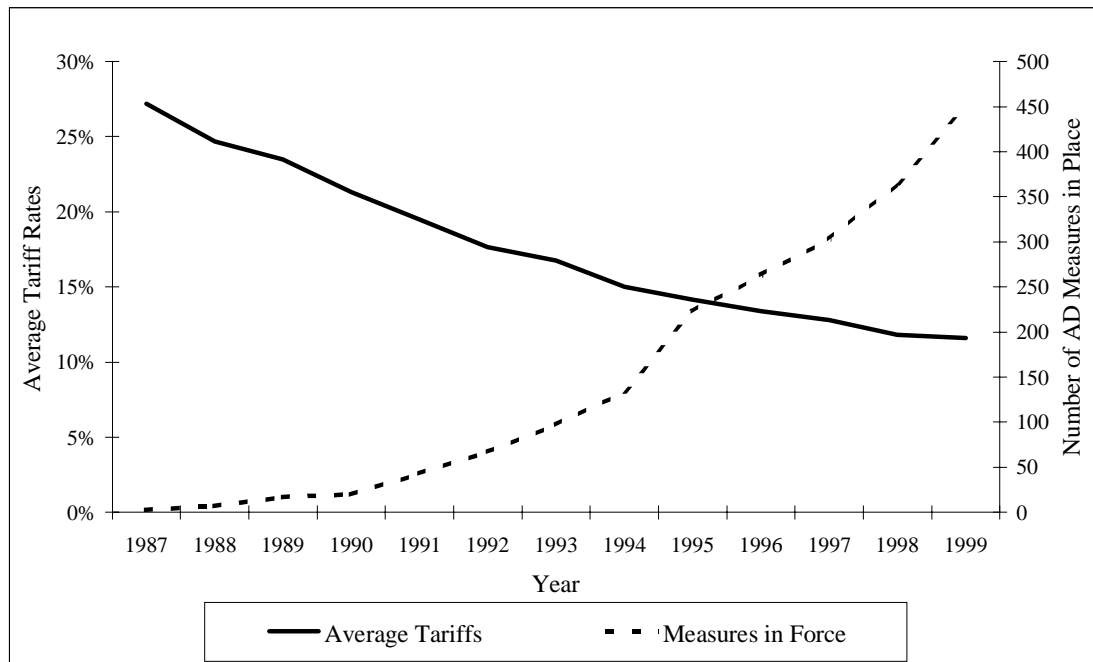
Source: Zanardi (2002).

Figure 3: Antidumping initiations from 1980, distinguishing non-traditional users.



Note: "non-traditional" refers to all countries except Australia, Canada, EU, New Zealand and US.
Source: WTO reports on AD activity.

Figure 4: Average tariffs and definitive AD measures for non-traditional users



Note: “non-traditional” refers to all countries except Australia, Canada, EU, New Zealand and US.
Source: Lindsey and Ikenson (2001).

Table 1: Antidumping initiations, 1995-1999

| Initiating Country | Initiations | Initiations per \$US Imports |
|---------------------------|--------------------|---|
| Argentina | 89 | 2125 |
| South Africa | 89 | 2014 |
| Peru | 21 | 1634 |
| India | 83 | 1382 |
| New Zealand | 28 | 1292 |
| Trinidad & Tobago | 5 | 1257 |
| Venezuela | 22 | 1174 |
| Nicaragua | 2 | 988 |
| Australia | 89 | 941 |
| Colombia | 15 | 659 |
| Brazil | 56 | 596 |
| Panama | 2 | 431 |
| Israel | 19 | 418 |
| Chile | 10 | 376 |
| Indonesia | 20 | 330 |
| Mexico | 46 | 290 |
| Egypt | 6 | 278 |
| Turkey | 14 | 204 |
| Korea | 37 | 185 |
| Canada | 50 | 172 |
| Guatemala | 1 | 168 |
| Costa Rica | 1 | 144 |
| Ecuador | 1 | 140 |
| European Union | 160 | 130 |
| Philippines | 6 | 113 |
| United States | 136 | 100 |
| Malaysia | 11 | 97 |
| Slovenia | 1 | 66 |
| Poland | 4 | 65 |
| Czech Republic | 2 | 45 |
| Singapore | 2 | 10 |
| Thailand | 1 | 10 |

Source: Finger et al. (2001).

Table 2: Targets of Antidumping initiations, 1995-1999

| Targeted Country | Initiations | Initiations per \$US Exports | Targeted Country | Initiations | Initiations per \$US Exports |
|--------------------|-------------|------------------------------|------------------|-------------|------------------------------|
| Armenia | 1 | 6454 | (continued) | | |
| Georgia | 1 | 3723 | Slovak Republic | 5 | 488 |
| Kyrgyzstan | 1 | 3559 | Thailand | 30 | 485 |
| Tajikistan | 1 | 3003 | Turkey | 13 | 478 |
| Azerbaijan | 1 | 2970 | Hungary | 9 | 475 |
| Yugoslavia | 5 | 2913 | Macau, China | 1 | 451 |
| Kazakhstan | 11 | 2465 | Poland | 12 | 427 |
| Macedonia | 3 | 2203 | Pakistan | 4 | 417 |
| Ukraine | 25 | 1995 | Bahrain | 1 | 404 |
| Bosnia-Herzegovina | 1 | 1790 | Taiwan | 47 | 368 |
| Latvia | 3 | 1731 | Hong Kong, China | 11 | 363 |
| Egypt | 6 | 1531 | Uruguay | 1 | 361 |
| Bulgaria | 6 | 1226 | Argentina | 8 | 298 |
| Uzbekistan | 3 | 1213 | Colombia | 3 | 252 |
| Belarus | 6 | 1195 | Czech Republic | 6 | 229 |
| Cuba | 2 | 1188 | Venezuela | 5 | 220 |
| Romania | 10 | 1099 | Vietnam | 2 | 212 |
| Lithuania | 4 | 1054 | Slovenia | 2 | 211 |
| India | 38 | 1028 | Malaysia | 16 | 190 |
| Honduras | 1 | 1026 | Mexico | 20 | 179 |
| Paraguay | 1 | 873 | Peru | 1 | 173 |
| Zimbabwe | 2 | 847 | Israel | 4 | 169 |
| Moldova | 1 | 811 | Iran | 3 | 151 |
| Bolivia | 1 | 797 | New Zealand | 2 | 137 |
| South Africa | 20 | 770 | European Union | 179 | 101 |
| Brazil | 41 | 750 | United States | 66 | 100 |
| Trinidad & Tobago | 2 | 746 | Japan | 44 | 95 |
| China | 137 | 739 | Philippines | 2 | 78 |
| Estonia | 2 | 713 | Saudi Arabia | 4 | 63 |
| Indonesia | 36 | 658 | Algeria | 1 | 61 |
| Croatia | 3 | 598 | Australia | 3 | 53 |
| Korea | 75 | 537 | Singapore | 6 | 46 |
| Turkmenistan | 1 | 535 | Canada | 10 | 44 |
| Russian Federation | 41 | 531 | Switzerland | 3 | 34 |
| Chile | 9 | 528 | Norway | 1 | 20 |
| Costa Rica | 2 | 489 | Liechtenstein | 1 | not available |

Source: Finger et al. (2001).

Table 3: Stages of Bilateral Integration

| Trade | Competition Policy |
|---|---------------------------------------|
| Self Sufficiency (autarky) | Autonomous Competition (AT) Policy |
| Unilateral Tariffs | Unilateral AD Actions |
| RTA (free bilateral trade) | Bilateral Removal of AD |
| Customs Union (common external tariff) | Common External AD Policy |
| Common Market | Common AT Policy |