

WTO Measures Affecting Market Access

The last round of multilateral trade negotiations, the Uruguay Round of 1986-94, resulted in the formation of the World Trade Organization (WTO) and the adoption of the Agreement on Agriculture (AoA), which subjects agricultural trade to stronger international disciplines. Though agricultural tariffs were bound to maximum applicable levels and reductions negotiated, agricultural tariffs remain a major distorting feature of international trade, and their global average is ten times the level of industrial tariffs (Gibson et al., 2001). Tariff rates are highly uneven across both countries and products, with many countries having bound a large proportion of their agricultural tariffs at low or duty-free levels while maintaining tariff peaks (megatariffs), often in excess of 100 percent, on import-sensitive products.

In addition to tariffs, WTO members have numerous other instruments at their disposal to regulate the flow of imports. Most notable are technical measures, including sanitary and phytosanitary (SPS) restrictions. Many of these measures restrict agricultural trade to protect a country from the introduction of diseases and pests that can threaten the health of plants, animals, and humans. Member countries can also limit imports for limited periods through a number of trade remedy measures, such as antidumping duties and countervailing duties, which allow WTO members to protect domestic industries from “unfair” foreign competition. Another trade remedy measure allowed under the WTO Agreement on Safeguards enables members to impose safeguards (by increasing a tariff or imposing a quantitative restriction) if they determine that a surge in imports causes or threatens to cause serious injury to a domestic industry. A related instrument created for agricultural trade under the Special Safeguards provision of the AoA permits members to impose additional duties on certain imports in times of sudden import surges or price drops. Tariffs, SPS restrictions, and contingency protective measures have varying impacts on market access for high-value foods.

Tariff Protection on High-Value Food Trade

In the Uruguay Round AoA, countries agreed to convert their agricultural nontariff barriers to tariffs, a process known as tariffication. Developed countries agreed to reduce agricultural tariffs, including those resulting from tariffication, from their base-period rates by a total of 36 percent, on a simple-average basis, with a minimum cut of 15 percent for each tariff.² This tariff-cutting formula allowed countries considerable latitude in determining the depth of cuts applied to individual products. Since the subset of tariffs most critical to a country’s agricultural sector is generally small, it was possible for countries to meet their overall tariff-cutting commitment while limiting the impact on tariffs on imports of politically sensitive commodities.

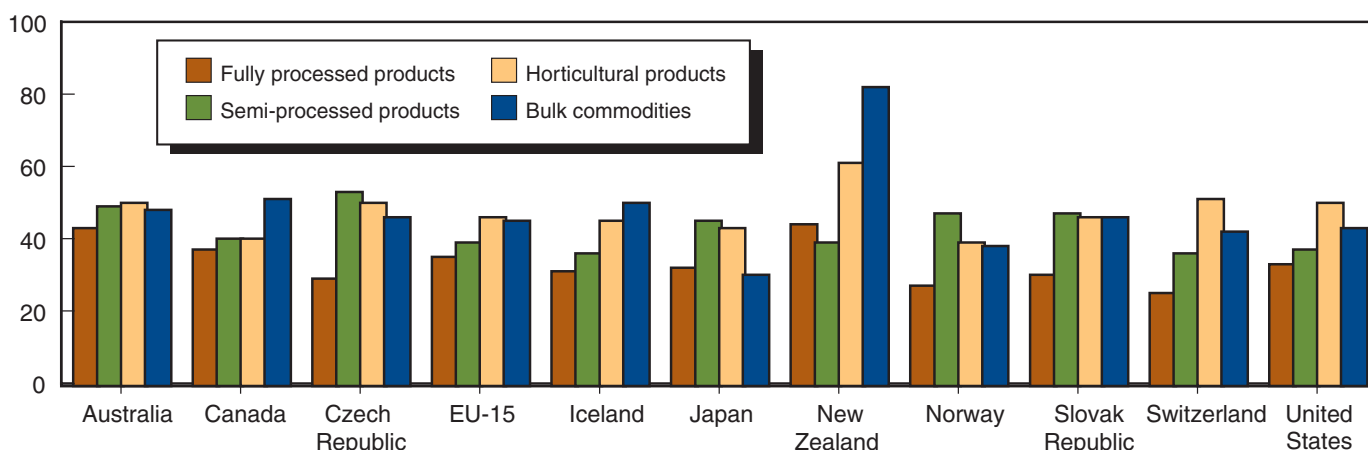
Without exception, member countries of the Organisation for Economic Cooperation and Development tended to cut tariffs on fully processed products by smaller amounts than on semi-processed or bulk commodities (fig. 1). For example, in Switzerland, the average tariff cut on imports of fully processed products was 25 percentage points less than the average cut on semi-processed products, while in New Zealand, the average cut on fully

² For tariffs that were already bound, the base was the current bound rate; for existing but unbound tariffs, the base was the 1986 tariff rate; and for over-quota duties that resulted from tariffication, the base was the level of protection provided by the nontariff barriers during 1986-88. In-quota duties were not subject to reduction.

Figure 1

Uruguay Round resulted generally in lower tariff cuts on processed products

Percent



Source: AMAD, 2003.

processed items was 38 percentage points below that on bulk commodities (see box on average weighted tariffs). Only 3 of the 11 countries reduced the simple average tariff on fully processed products by the required 36-percent average cut.

Tariff escalation, where duties imposed by an importing country increase with the level of processing, greatly affects countries producing and exporting raw materials since it impedes their efforts to develop processing industries for export, thereby affecting global trade in high-value foods. By encouraging imports of relatively unprocessed agricultural commodities at the expense of more processed products, importers can protect domestic processing industries and capture value added locally. Developing countries seeking to export processed foods have been vocal in supporting efforts to decrease tariff escalation in the current round of multilateral negotiations, the Doha Development Agenda.

In the current negotiations, a WTO proposal to discipline opportunities for discretionary decisions on tariff reductions by governments recommended that “where the tariff on a processed product is higher than the tariff for the products in its primary form, the rate of tariff reduction for the processed product shall be equivalent to that for the product in its primary form multiplied, at minimum, by a factor of [1.3] percent” (WTO, 2003a).³ But, the eventual framework adopted by the WTO General Council on August 1, 2004, was much less specific, proposing only that tariff escalation “be addressed through a formula to be agreed” (WTO, 2004a).

Three post-Uruguay Round studies by Cernat et al. (2002); the U.S. International Trade Commission (2001); and Lindland (1997) attempted to measure the extent of tariff escalation by identifying various processing chains and examining whether tariffs increase as products undergo increased processing. All three studies concluded that tariff escalation was a significant problem in agricultural trade, particularly for vegetable oils, beef, eggs, cereal products, and tobacco products. In some sectors, such as dairy products and sugar products, while tariff escalation itself was not widespread,

³ Bracket indicates that the figure was a proposal by the Chairman of the WTO Committee on Agriculture that would be subject to negotiation by WTO members.

Average Weighted Tariffs Vary Based on their Calculation Methods

The tariffs used in most economic analyses are typically averages of most-favored-nation (MFN) tariff lines. Different calculation methods used can yield different averages and, in turn, can have significant effects on the research results. The most popular approach is to calculate simple, unweighted averages of the tariffs levied within each commodity category for each country. This places equal weights on products regardless of their role in international trade. In addition, a simple average tariff applied to each trading partner means that all exporters face the same level of protection regardless of what they actually export.

To account for the relative importance of trade, a tariff and trade-weighted method is preferable. When comparing tariffs between trading partners, this puts the greatest emphasis on those tariffs in the importing country that are of the greatest importance to the exporting

partner. For example, the United States exports over \$18 billion of oilseeds (with 16 tariff lines), over 90 percent of which consists of soybeans. Unlike a simple average, which would assign equal weights to all 16 tariff lines, a trade-weighted measure assigns soybean tariffs a weight of over 90 percent in estimating the average tariff faced by U.S. oilseeds exporters.

Table B-1 demonstrates how the weighted and unweighted tariff means faced by U.S. exports can differ within an aggregate commodity category—in this case, pork and poultry meat. Poland's simple average tariff across the 30 products in this category is 54 percent, while the trade-weighted tariff is 67 percent. The difference between the two averages is even greater for India, with a simple average for pork and poultry at 43 percent and a weighted average of 72 percent.

Table B-1—U.S. poultry and pork exports (2000) and tariffs faced in selected countries

	HS 6-digit	U.S. exports	Tariffs faced by exports		
			Poland	India	World ¹
		\$ million	Percent		
Chicken cuts & offal, except livers, frozen	020714	1,283.2	86	110	44
Swine cuts, fresh/chilled, nes	020319	461.1	54	39	31
Swine cuts, frozen, nes	020329	270.4	41	39	32
Chicken cuts & offal, except livers, fresh/chilled	020713	198.2	78	110	44
Turkey cuts & offal, except livers, frozen	020727	128.8	72	39	50
Swine hams, shoulders & cuts bone in, fresh/chilled	020312	127.7	43	39	37
Swine carcasses and half carcasses, fresh/chilled	020311	111.4	36	39	33
Hams, shoulders and cuts, of swine, bone in, frozen	020322	108.2	38	39	36
Swine edible offal, frozen except liver	020649	80.5	126	39	36
Poultry, domestic, whole, fresh/chilled	020711	58.3	76	39	65
Turkey cuts & offal, except livers, fresh/chilled	020726	58.0	73	39	65
Bellies (streaky) of swine, salted/dried/smoked	021012	32.8	42	39	55
Chicken (Gallus Domesticus), whole, frozen	020712	31.4	76	35	39
Other meat, edible offal and flours/meals thereof, salted/dried/smoked	021090	21.9	22	39	62
Swine meat, salted/dried/smoked, not ham	021019	18.7	28	39	44
Meat and edible offal nes, fresh/chilled	020890	16.7	20	39	29
Hams and shoulders, swine, salted/dried/smoked	021011	14.5	22	39	44
Turkeys, domestic, whole, frozen	020725	14.3	76	39	37
Swine carcasses and half carcasses, frozen	020321	8.8	37	39	31
Pig and poultry fat, unrendered	020900	8.7	64	39	26
Swine edible offal, fresh/chilled	020630	5.8	11	39	37
Duck, goose, guinea fowl cuts, offal, frozen	020736	4.4	69	39	39
Swine livers, frozen	020641	4.3	154	39	29
Sheep, goat, ass, mule, hinnie edible offal, frozen	020690	4.1	17	39	32
Ducks, geese, and guinea fowls, frozen	020733	3.7	67	39	34
Turkeys, domestic, whole, fresh/chilled	020724	3.0	76	39	66
Sheep, goat, ass, mule, hinnie offal, fresh/chilled	020680	2.4	17	39	31
Fatty livers (geese, ducks), fresh/chilled	020734	0.1	76	37	25
Frog legs, fresh, chilled or frozen	020820	0.1	20	39	28
Rabbit or hare meat, offal, fresh/chilled	020810	0.1	49	39	28
Simple average			54	43	38
Weighted average			67	72	40

¹Simple world average. The Harmonized System (HS) provides a nomenclature for classifying internationally trade goods. The definitions of HS commodity groupings up to the 6-digit level are established by the World Customs Organization.

Source: AMAD, 2003.

tariffs on processed goods were bound at very high levels as additional protection on protected primary products.

Among major importers, average tariffs on fully processed products exceed tariffs on bulk commodities and semi-processed products for most countries, with wedges ranging from 1 percentage point for the United States to over 40 percentage points for Turkey (fig. 2).^{4, 5} For all countries, the average tariff was 34 percent on fully processed goods and 23 percent on bulk commodities, suggesting that a general bias may exist toward the import of bulk commodities in relatively unprocessed form.

As shown in the figure, tariff escalation is not confined to developed countries. The average tariffs in figure 2, however, are based on bound tariffs, the maximum rates set by many developing countries, instead of on applied tariffs, which are considerably lower than the bound tariff ceilings. However, the gaps between tariffs on imports of bulk commodities and imports of processed products can be even larger for applied rates than for bound rates (table 1). The perception that developing countries are protecting their processing industries via tariff escalation tends to be supported by both bound or applied tariffs across processing stages.

While the information in figure 2 implies the existence of broad differences in tariff patterns across categories, a more disaggregated analysis is needed to conclude that tariff escalation exists within product sectors. Table 2 presents tariff averages and import values for some raw commodities and their processed and semi-processed products in five developed countries. While the table shows no general pattern applicable to all countries and commodities, evidence of tariff escalation (a positive tariff wedge between stages) is noted in over 60 percent of the cases presented. Cocoa and coffee tend to face lower tariffs than their semi-processed or processed products.

The tariffs on cocoa beans and cocoa products illustrate the impact of tariff escalation on global trade. With the exception of Australia, which has an ad valorem tariff equivalent of 1 percent, the other four countries have no tariff

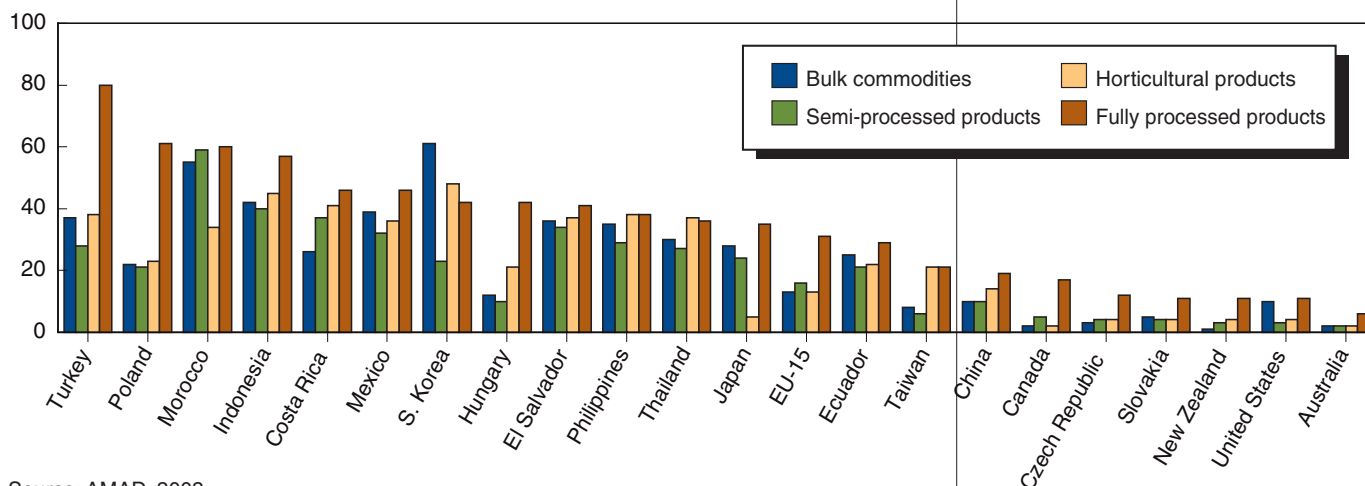
⁴ Under a tariff-rate quota, imports allowed under the quota are assessed a “low or minimal” in-quota tariff, and imports in excess of the quota are assessed a higher over-quota tariff. For these products, the mean of the in-quota and over-quota rates is used in this analysis. Note that extremely high over-quota rates, well in excess of 100 percent, exist in certain cases. The tariff averages in these cases are biased upward and the level of tariff escalation between these commodities and processed goods is reduced.

⁵ These countries were chosen because they are major importers of agricultural products and they tended to show a difference in mean tariffs across the four categories. Many developing countries bound their entire tariff schedule at a uniform tariff level, therefore there would be no difference in the means across categories.

Figure 2

Fully processed items have the highest tariff levels

Percent



Source: AMAD, 2003.

Table 1—Comparison of tariff escalation for bound versus applied tariffs¹

Processing level	Bound mean	Applied mean	Difference
	<i>Percent</i>		
Fully processed products	53	21	32
Horticultural products	47	17	30
Semi-processed products	45	11	34
Primary products	45	11	34

¹ Based on a subset of developing countries where a meaningful comparison of bound and applied rates was possible, including Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Honduras, India, Indonesia, Jamaica, Mexico, Morocco, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, South Africa, Thailand, Trinidad and Tobago, Turkey, Uruguay, and Venezuela.

Source: AMAD, 2003.

Table 2—Tariff escalation and trade (2000-02 total export value) - selected countries and agricultural processing chains

Processing chain	Average tariffs					Global exports	Developing country exports	
	Australia	Canada	EU	Japan	U.S.		Value	Market share
	Percent						Million \$	Million \$
Cocoa:								
Cocoa beans	1	0	0	0	0	8,380	8,084	96
Cocoa paste	0	0	10	8	0	838	440	52
Cocoa butter	0	0	8	0	0	4,397	1,887	43
Cocoa powder	9	6	27	19	16	620	156	25
Chocolate & products	17	57	18	21	15	4,355	361	8
Coffee:								
Not roasted	1	0	4	0	0	14,213	13,592	96
Roasted	0	0	8	12	0	1,843	164	9
Mixtures & extracts	1	1	12	39	10	2,638	1,084	41
Grains:								
Grains	1	11	42	133	2	9,356	2,360	25
Grain products	4	11	41	93	8	2,857	399	14
Vegetable oils:								
Oilseeds	1	0	0	66	16	2,527	883	35
Vegetable oil ¹	4	6	10	7	4	31,018	12,649	41
Beef, pork, and poultry:								
Meat: fresh or frozen	0	54	40	41	7	12,240	1,817	15
Meat preparations	7	50	37	91	3	1,712	532	31
Sugar:								
Sugar	12	5	61	198	24	13,840	9,292	67
Sugar confectionery	11	9	20	16	11	4,625	1,255	27
Tobacco:								
Unmanufactured tobacco	10	10	38	9	60	7,461	3,963	53
Tobacco products	16	4	14	0	46	6,467	898	14

¹ Excludes tropical oils (palm, palm kernel, and coconut).

Source: AMAD (2003) and United Nations COMTRADE.

on cocoa beans. However, ad valorem tariff equivalents tend to increase along the processing chain, with tariffs on chocolates and other cocoa products ranging between 15 and 57 percent. The effect is to decrease the cocoa bean producer's share of world exports as the stage of processing increases. In 1998-2000, the trade shares of cocoa-producing countries ranged from a high of 96 percent for cocoa beans to a low of only 8 percent for chocolate.

Tariffs in some processing chains, however, do not increase and may even decrease from primary to processed product. In many of these cases (EU and Japanese grains, EU and Canadian meats, and U.S. tobacco), the domestic processing industry is protected by relatively high nominal tariffs, so there is little need to increase effective protection via tariff escalation. In other cases (Japanese vegetables and vegetable oils, EU sugar and meats, and U.S. vegetable oils), the higher tariffs on primary products are misleading, as the average tariff on the primary product is inflated by the existence of tariff-rate quotas (TRQ) with extremely high over-quota tariff rates and low or zero tariffs within the quota (see footnote 4).

WTO Sanitary and Phytosanitary Measures

The Uruguay Round's Agreement on the Application of Sanitary and Phytosanitary measures (SPS Agreement) built on the existing disciplines contained in the General Agreement on Trade and Tariffs (GATT) and the Standards Code of 1979 to prohibit the illegitimate use of sanitary measures to restrict trade. The GATT and the Standards Code allowed imports to be subject to stringent standards providing that domestic products were subject to the same rules. The SPS Agreement recognizes the right of member countries to adopt the necessary SPS measures to protect human, animal, or plant life or health, subject to conducting a risk assessment and providing that these are not disguised measures to restrict trade (WTO, 1996).

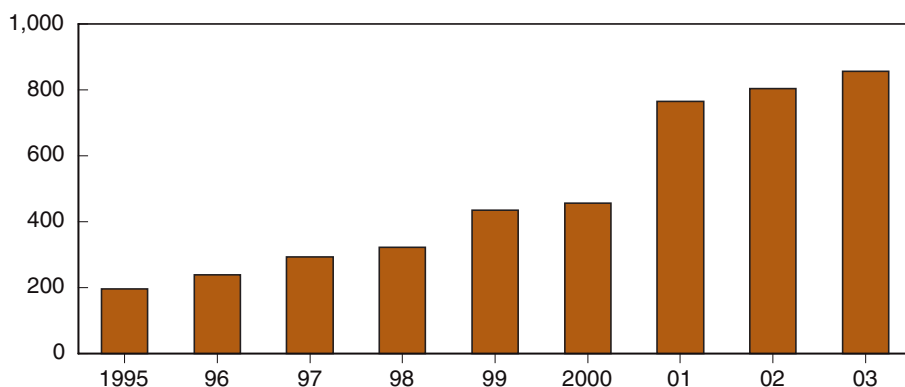
Measures implemented by WTO member countries are to be based on scientific principles and not maintained without sufficient scientific evidence (*science requirement*). WTO members are also to base their SPS measures on international standards, where they exist (*harmonization requirement*). Members can adopt more stringent regulations if there is a scientific justification or as a consequence of risk assessment carried out in accordance with Article 5 of the SPS Agreement. Importing countries are required to accept SPS measures of the exporting countries as equivalent to their own, if the exporting country can demonstrate that its health measures achieve the same level of protection as for the importing country (*equivalency requirement*).

The SPS Agreement also requires that WTO members notify the WTO and trading partners of changes in their SPS measures according to the procedure outlined under Annex B (*transparency requirement*). These notifications may contain information on the imposition or removal of a procedure or requirement that may act as barriers to trade. The imposition of SPS measures by WTO member countries has trended upwards from 196 in 1995 to 765 in 2001 (fig. 3). The growth in notifications partly reflects an increase in the number of members submitting notifications, from 19 in 1995 to a high of 54 in 2001. In all, 84 members have submitted a total of 4,362 notifications during the period.

Figure 3

SPS notifications to the WTO have increased

Number of notifications



Source: USDA, FAS, SPS Notification Database. Members Notifications to WTO, and Member notifications accessed at www.wto.org/english/tratop_e/sps_e/sps_e.htm

It is difficult to evaluate the extent to which these measures restrict the trade of agricultural high-value products because a large proportion of the notifications target broad categories of goods, such as “animals, plants, and their products,” “agricultural commodities,” or “all foodstuffs.” Many measures targeting broad categories of goods may establish maximum tolerances or residue limits for chemical inputs used in plant and animal production. Other examples of SPS measures targeting broad product groupings are those stipulating rules and regulations for the transport and handling of all genetically modified organisms (GMO) and of food and feed products produced from GMOs. While economists have found it difficult to evaluate the impact these measures have on trade, the common belief is that it can be significant (Josling et al., 2004).

Table 3 separates those measures that target specific products from those that target an aggregate product grouping. The overwhelming proportion of the measures targeting specific imports is aimed at live animals and their products. Some of these restrict the use of certain veterinary drugs, while others define requirements on slaughterhouses or on transport and storage methods. The bulk, however, are notified as emergency measures targeted against imports from countries that have experienced outbreaks of diseases like bovine spongiform encephalopathy (BSE), foot-and-mouth disease, or avian influenza. These emergency notifications can target either a specific item, such as “fresh or chilled meat,” or a range of products, such as “bovine animals, their products, and by-products,” which could include semi-processed items, such as live animals, hides and skins, and tallow as well as fully processed items, such as cuts of meat and processed meat products. From 1995 to 2003, live animals, meat and products, and other animal products accounted for 63 percent of all product-specific notifications. With the addition of fish and seafood, dairy products, and eggs, the animal sector accounted for 74 percent of all notifications during this period.

The next most frequently targeted products were fruits and vegetables, which accounted for 12 percent of product-specific SPS notifications. A large number of these notifications announce tolerances or maximum

**Table 3—Classification of SPS notifications by product,
January 1995 - December 2003¹**

Product category	Number of notifications	Share of total notifications
		<i>Percent</i>
Live animals	716	22
Meat and products	787	24
Other animal products	556	17
Dairy products	113	3
Eggs	121	4
Fish and seafood	122	4
Animal feeds/additives	137	4
Cereals	127	4
Oilseeds	18	1
Other bulk commodities	53	2
Cereal products	15	0
Oilseed products	32	1
Fruits and vegetables	403	12
Horticultural products	33	1
Sugar and sweeteners	13	0
Beverages	50	2
Total product-specific SPS notifications to the WTO	3,296	100
Other processed food products	251	12
Functional foods	25	1
Measures targeting various products	435	21
Food additives	162	8
Inputs	771	37
Forestry products	68	3
Reproduction/propagation materials	362	17
Total nonproduct-specific SPS notifications to the WTO	2,074	100

¹The classification excludes notifications that do not target products. The same notification may address more than one product.

Source: USDA, FAS, SPS Notification Database. Member notifications accessed at www.wto.org/english/tratop_e/sps_e/sps_e.htm

residue limits on pesticides, insecticides, and herbicides. Bulk agricultural commodities, such as cereals and oilseeds, account for only a small share of the total number of notifications filed with the WTO (7 percent), largely restrictions on imports produced with gene technology.

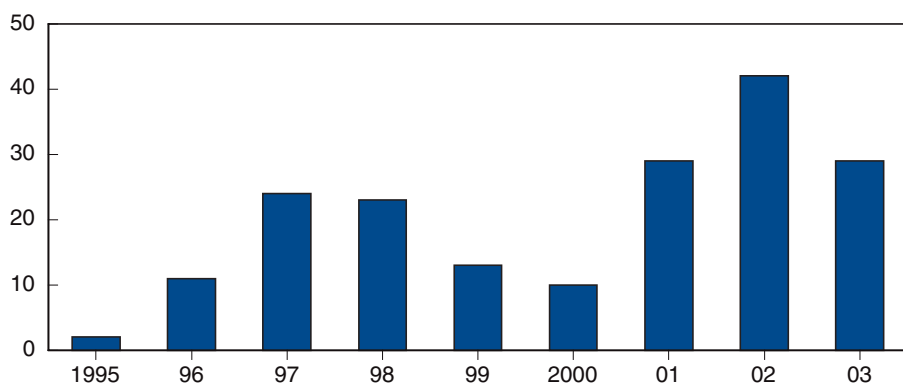
Although notification statistics provide some indications of SPS actions on high-value foods, they do not distinguish between legitimate measures designed to protect human, animal, or plant health and those that may be disguised efforts to restrict trade. While the harmonization component of the SPS Agreement urges countries to conform to standards, guidelines, and recommendations set by international agencies, it also allows them to apply more stringent measures provided that these standards are based on risk assessments.⁶ Article 5.7 of the SPS Agreement provides additional leeway to WTO members by stating that “where relevant scientific evidence is insufficient,” a member may provisionally adopt an SPS measure based on “available pertinent information.” This potential loophole has raised concerns that as traditional trade barriers are removed through trade agreements, countries may resort to using SPS measures to protect domestic markets. In fact, from 1995 to 2003,

⁶ These agencies are the Codex Alimentarius Commission (Codex), the International Office of Epizootics (IOE), and the International Plant Protection Convention (IPPC).

Figure 4

SPS trade concerns raised by WTO members

Number of cases



Source: WTO, 2003a.

WTO members raised 183 specific concerns related to SPS measures (fig. 4). The number of new concerns raised in the last 3 years of the period far exceeds those raised in the 6 years following the conclusion of the Uruguay Round, which parallels the upward trend in SPS notifications.

Many of the complaints center on the measures in question being unnecessarily trade restrictive. Requirements are often cited as being stricter than international recommendations, while lacking sufficient scientific grounds and risk analysis to justify a higher level of protection. In some cases, WTO members complain that imports are being restricted based on health concerns, even though international health organizations have concluded that these imports pose negligible health risks. Other concerns include the lack of transparency about measures and claims that imports are being held to higher standards than domestic products.

In terms of product coverage, specific trade concerns address measures that affect imports of fully processed products (50 percent), semi-processed products (37 percent), horticultural products (11 percent), and primary products (2 percent). Forty countries expressed concerns to the WTO and 48 countries were cited in the complaints. The most frequently targeted country was the EU, which received 18 percent of all complaints, followed by the United States and Australia, with 9 percent each. The most frequent complainant was the United States, which accounted for 18 percent of the total, followed by the EU with 14 percent. Developing countries raised about 30 percent of all trade-related concerns about SPS measures.

WTO Trade Remedy Measures

Over the last century, governments of industrialized nations devised three basic trade remedies as defense measures to protect domestic industries: antidumping duties (AD), countervailing duties (CVD), and safeguards (see box on trade remedy laws). The first two measures are meant to offset “unfair trade” created by foreign firms dumping goods in the international market (AD measures) or by foreign governments subsidizing exports (CVD measures). Before a country can impose either AD or CVD measures, it must

also show that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry. The third trade remedy measure, safeguards, is specifically designed to protect industries that are injured because of trade liberalization. Countries imposing safeguards are not required to show proof of unfair trade practices (dumping or subsidization), although the need to show “serious injury” in a safeguard investigation is more demanding than the material injury standard under AD/CVD law.

Antidumping and Countervailing Duties

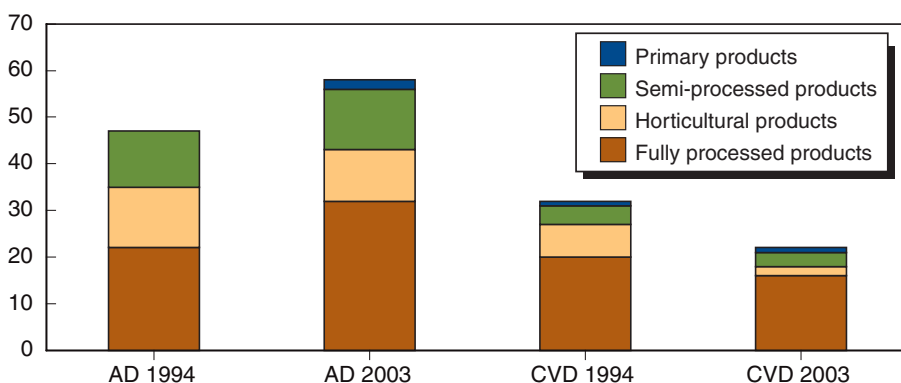
At the end of 1994, the global stock of AD/CVD measures on agricultural products amounted to 79 duties and price undertakings (where, in lieu of facing additional duties, exporting countries reach agreements with importing countries to raise the price for their exports). Eight years later, the number of active AD/CVD measures imposed on agricultural trade was essentially the same at 80, but the mix changed (fig. 5). From 1994 to 2003, the number of active CVD measures dropped sharply from 32 to 22, and the number of AD measures increased from 47 to 58. Forty-seven of the 58 AD measures were new, having been put in place since 1994, while only 11 of the 22 CVD measures were new, the others dating back to at least 1994. Antidumping investigations have always been much more widespread than subsidy investigations, but this disparity between numbers of AD and CVD measures has grown since the Uruguay Round. This is largely a function of the Due Restraint provision (commonly referred to as the “Peace Clause”) of the AoA, which exempts domestic support measures conforming to the provisions of the Agreement from CVD actions.⁷ Despite the Peace Clause, CVD investigations are still more prevalent in agricultural than in non-agricultural trade, a reflection of the level of subsidies granted to the agricultural sector. For example, in 2003, CVDs represented 28 percent of all measures in place on agricultural trade compared with 5 percent of all measures in place on nonagricultural trade.

Fully processed items accounted for the majority of measures—55 percent of the AD total in 2003, up from 47 percent in 1994; and 73 percent of the CVD total in 2003, up from 63 percent in 1994 (fig. 5). Most of these meas-

⁷ The Peace Clause expires at the end of the implementation period of the Uruguay Round Agreement, and unless extended under the Doha Round of Agreement, agricultural subsidies will not be exempt from CVD actions.

Figure 5
Unfair trade measures in place on Dec. 31, 1994 and 2003

Number of measures



Source: WTO, 2004b.

GATT 1947, Article VI (WTO, 1996), allows the use of antidumping duties (AD) to restrict entry of products of one country introduced into the commerce of another country at less than the fair or *normal value*. Normal value is defined by the WTO as the comparable price for the product, in the ordinary course of trade, when destined for domestic consumption in the exporting country. If such a price is not available, or if the price does not allow for a representative comparison, normal value may be established by using a comparable price for the product exported to a third country or computed based on the cost of production for the product, taking into account additional selling expenses and profits—the “constructed value” method. GATT Article VI also allows the imposition of countervailing duties (CVD) to offset public subsidies for the manufacture, production, or export of any merchandise. The Uruguay Round establishes disciplines for calculating subsidies and defines which subsidies are countervailable.

AD and CVD investigations involve a two-part test. The importing country must first demonstrate that dumping or subsidization exists. Before definitive duties can be imposed, however, both ADs and CVDs also require evidence that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry or retard the establishment of a domestic industry. If both requirements are satisfied, a duty can be imposed, but this may not exceed the margin of dumping (the difference between the export price and normal value) or the value of the subsidy.

Article XIX of GATT 1947 allows members to impose temporary border control measures called safeguards if a surge of imports causes or threatens to cause serious injury to a domestic industry. The WTO Agreement on Safeguards grants members imposing a safeguard a 3-year retaliation-free period if the measures taken conform to the Agreement’s provisions and if they are the result of an absolute increase in the quantity of imports from the exporting country. After 3 years, adversely affected trading partners can seek compensation through consultations or, if no agreement is reached, can retaliate by raising tariffs on imports from the country applying the safeguard. While CVD and AD actions apply only to particular exporters, safeguards are meant to apply to all suppliers, although the special and differential treatment provisions of the Safeguards Agreement exempt actions against developing countries with market shares of less than 3 percent, unless the cumulative shares of developing countries is greater than 9 percent. The Agreement also strengthened the “material injury” standards for safeguard actions, requiring a causal link to be made between “increased imports of the product concerned and serious injury or threat thereof.”

A number of common WTO criteria apply to all three measures. Domestic industries or companies may request their governments to initiate investigations into dumping, subsidization, and injury. In each case, if measures are imposed, they can be challenged by the exporter through the WTO’s dispute settlement process. All measures are subject to set time limits (a “sunset clause”). AD/CVD measures must be terminated after 5 years unless it has been determined that the dumping or subsidy still exists and removing the duty would likely lead to material injury to the domestic industry. Safeguard actions lapse after 4 years, unless the sunset review reveals that the measure is still needed and the domestic industry is adjusting, in which case the safeguard can be re-imposed for an additional 4 years.

ures were assessed on cheeses, meats (including canned ham and luncheon meats), refined sugar, and canned fruits. Some of the new measures placed on imports of processed foods and beverages since 1994 include duties on bottled olive oil, brandy, pasta, canned peaches and pineapples, concentrated apple and pineapple juice, and prepared baby foods. Measures were rarely assessed on primary products. The United States imposed CVD duties on Thai rice in 1994 and Canadian hard red spring wheat in 2003, and Mexico imposed an AD duty on U.S. rice in 2003.

Safeguards

The numbers of countries applying safeguards has increased in recent years (WTO 2000b, 2001, 2002b, and 2003b). Between 1995 and 2000, 87 countries notified the WTO that they had initiated safeguard investigations. By October 2003, this number had risen to 100, with developing countries accounting for the majority of new users.

Safeguard investigations tend to be disproportionately concentrated in a few industries, with agricultural imports accounting for about 35 percent of the 124 investigations initiated since 1995. During the same period, about 5 percent of all AD investigations and about 25 percent of all CVD investigations targeted agricultural imports. Among safeguard investigations that actually resulted in a measure being imposed, the agricultural share increases slightly to 38 percent. Of the 96 investigations that had been concluded by October 2003, 61 resulted in the imposition of a safeguard measure (higher tariff or a quantitative restriction), including 23 that targeted agricultural products.

From January 1, 1995, to October 20, 2003, bulk commodities accounted for three safeguard actions on agricultural imports—investigations by Costa Rica and El Salvador on rice imports and Chile on wheat imports (app. A). High-value foods accounted for all other actions: 7 investigations targeted fresh fruits and vegetables, and 33 actions targeted imports of processed agricultural products. Chile has led the way in actions against high-value food imports with investigations initiated against wheat flour, sugar, edible vegetable oils, liquid/powdered milk, and fructose/glucose. The United States is among the next most active users.

Special Agricultural Safeguards

In addition to the temporary protection available under the WTO Safeguards Agreement, the AoA created a Special Safeguard (SSG) for those agricultural products subject to tariffication. Tariffication also resulted in the creation of TRQs, which generally impose a relatively low in-quota tariff on imports up to a specified level (the quota), with imports above that level subject to a higher over-quota tariff. The SSG was created to alleviate the fears of some members that the removal of nontariff measures might result in a surge in imports or in a decline in domestic prices if over-quota tariffs did not provide sufficient protection. An SSG can only be invoked after the TRQ has been filled and only on those products for which application of the SSG was indicated in the WTO member's tariff schedule.

Under the SSG provision, members can temporarily roll back trade liberalization to provide a domestic industry with time to adjust to increased competition from imports. The SSG provision allowed countries to levy an additional, time-limited duty on an imported product if the import volume exceeded a pre-set (according to WTO guidelines) volume trigger, or the price of the imported product was below the set trigger level. The AoA provides general guidelines for setting trigger levels and for calculating additional duties when an SSG action is to be taken. For example, the maximum additional duty may not exceed one-third of the ordinary customs duty in effect for the commodity in question and may only be maintained until the end of the year in which it has been imposed.

The SSG provisions differed from normal safeguards in several ways. First, they were much easier to invoke since they did not require an injury test, and were triggered automatically if the volume or price limits were exceeded. However, unlike normal safeguards, they were only available for products that underwent tariffication during the Uruguay Round. This amounted to less than 20 percent of all agricultural products (as defined by the proportion of tariff-lines). A government could only apply an SSG if it reserved the right to do so in its country schedule. According to the WTO, 39 WTO members had reserved the right to invoke SSGs on a combined 6,156 agricultural products (WTO, 2002a). High-value agricultural products account for the greatest number of products for which countries had reserved the right to apply the SSG in their tariff schedules, particularly animals and animal products category, fruits and vegetables, and dairy products. Together these three categories accounted for almost one-half of potential SSGs. In practice, however, they have accounted for almost 70 percent of all notified SSGs between 1995 and 2003 (app. B).

In total, there were 1,285 SSG actions initiated by 12 countries as of October 2004. Almost two-thirds were on imports of processed foods and beverages. The United States and the EU have accounted for most of the SSG cases mostly for sugar, dairy, cocoa preparations, chocolate, and animal and horticultural products even though the United States has not yet notified its SSGs for 2003 nor has the EU for 2002 or 2003. Poland and Japan are other leading users of SSG actions. Unlike AD/CVD actions and general safeguards, few developing countries used SSGs.

Some developing countries failed to reserve the right to use SSGs on all eligible products at the conclusion of the Uruguay Round and were thus prohibited from using them to their fullest extent. At the moment, the right to use the special agricultural safeguard will lapse if there is no agreement in the current negotiations to continue the reform process initiated in the Uruguay Round. Proposals to the WTO range from continuing with the provision in its current form, to abolishing or revising it to prevent its use on more products imported from developing countries. Some developing countries have proposed that only they should be allowed to use SSGs.

Impacts on Market Access

High tariffs on some agricultural products continue to be a significant barrier to market access. For high-value foods, in particular, the protective

effect of tariffs can be magnified with tariff escalation, the practice of levying low or zero tariffs on imports of primary products and higher tariffs on imports of more processed forms of the same products. There is insufficient information to ascertain whether the increasing number of SPS notifications noted for high-value agricultural products are the result of protectionist trade policies. However, available evidence suggests that the use of contingency protection measures has been concentrated on high-value product trade.