

1. Overview of the multilateral trading system

General Agreement on Tariffs and Trade (GATT)

- Precursor to the WTO
- Multilateral treaty signed by 23 countries in 1947 formed along with Bretton Woods institutions (World Bank & IMF)
- Set of rules for conduct of international trade in goods and mechanisms for trade liberalization
- Dealt with tariffs on goods covering 80% of world trade
- Forum for contracting parties to negotiate and liberalize trade multilaterally
- Forum to discuss and solve trade problems, settle trade disputes based on GATT rules

Main features of the GATT

- MFN (Most Favoured Nation) principle
- National Treatment principle
- Transparency
- Tariff bindings
- Reciprocity
- Multilateral surveillance of member country trade policies
- Dispute settlement procedures
- Periodic rounds of multilateral trade negotiations

World Trade Organization (WTO)

- Established on January 1, 1995 to succeed the GATT
- Permanent inter-governmental body governing and regulating international trade in goods and services
- Provides framework for implementation, administration, and operation of multilateral trade agreements
- Incorporates the GATT rules and results of the Uruguay Round
- Currently 148 members

- Unlike GATT, WTO is a body, not an agreement
- Single undertaking encompassing all agreements
- WTO agreements are permanent and binding on members
- Dispute settlement mechanism is faster and binding
- Required to meet once in two years-Ministerial Conference
- Discussion of issues, negotiations, decisions based on consensus

2. Multilateral trade negotiations

Year	Round	Participants	Results	Tariff cut (%)
1947	Geneva	23	Tariffs	
1949	Annecy	13	Tariffs	
1951	Torquay	38	Tariffs	63
1956	Geneva	26	Tariffs	
1960-61	Dillon	26	Tariffs	20
1964-67	Kennedy	62	Tariffs; antidumping	50
1973-79	Tokyo	99	Tariffs;nontariff measures; framework	33
1986-93	Uruguay	125	Tariffs; nontariff measures;agriculture; textiles and clothing; services; IPRs, functioning of GATT system	40

Outcome of the GATT negotiations

- Very low levels of industrial tariffs in developed countries (DCs)
 - Average MFN tariffs about 5% by 1980s in DCs
 - Applied rates even lower
- Developing countries also lowered tariffs, though more gradually
- Greater transparency and predictability in trade policies due to tariff bindings and commitments

But several major shortcomings under GATT system

- High tariffs remained on sensitive products and sectors (textiles and clothing, leather, footwear)
- Tariff escalation on higher value products
- Important sectors remained outside GATT system
 - agriculture (resisted by EU)
 - textiles and clothing (under MultiFibre Agreement-MFA)
- Increased use of nontariff measures and nontransparent forms of protection with shift away from tariff based protection
- Increased antidumping undertakings

3. The Uruguay Round of negotiations

- Most significant round due to its wide mandate
- Furthered process of tariff reductions, removal of nontariff measures, and tariff bindings
- Introduced agriculture and textiles and clothing into multilateral negotiating agenda
- Incorporated new areas- services, intellectual property rights (IPRs), investment- into the multilateral trading system
- Strengthened GATT rules and institutional framework for negotiations and dispute settlement
- Established the WTO to replace the GATT

- Significant gains expected from Uruguay Round Agreement
 - Estimated gain of \$212-274bn in real world income
 - Industrial country gains of \$139-185 bn
 - Developing country gains of \$36-78bn
- Most gains from liberalization of agriculture and textiles trade, mainly to developed country consumers and efficient developing country producers
- Gains due to increased market access and export opportunities

Outcome of the Uruguay Round

Industrial products

- Account for over 75% of global trade
- Significant tariff reductions undertaken
 - 40 percent reduction by industrial countries by 2000, 6.8% to 3.6%
 - tariffs eliminated in some sectors
 - share of duty free imports rose from 20 to 44 percent
 - reduced tariff escalation
- Increased tariff bindings
 - Developed countries from 94 to 99 percent
 - Developing countries from 21 to 73 percent
 - 61% of imports covered by bound tariffs, up from 14%

Reductions by selected countries:

- Australia - 20.1% to 12.2%
 - Canada- 10.5% to 7.1%
 - Japan - 3.9% to 1.7%
 - EU- 5.7% to 3.6%
 - US - 5.4% to 3.5%
 - Brazil - 40.7% to 27%
 - India - 71.4% to 32.4%
 - Korea- 18% to 8.3%
 - Thailand - 35.8% to 28.1%
 - Mexico- 46.1% to 33.7%
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- Most Developed Countries bound close to 100 % of tariff lines

 - Average MFN bound rates for the Quad (Canada, EU, Japan, US) under 5 %, 7% overall for developed countries

 - Average MFN bound rate of around 26% for developing and transition economies

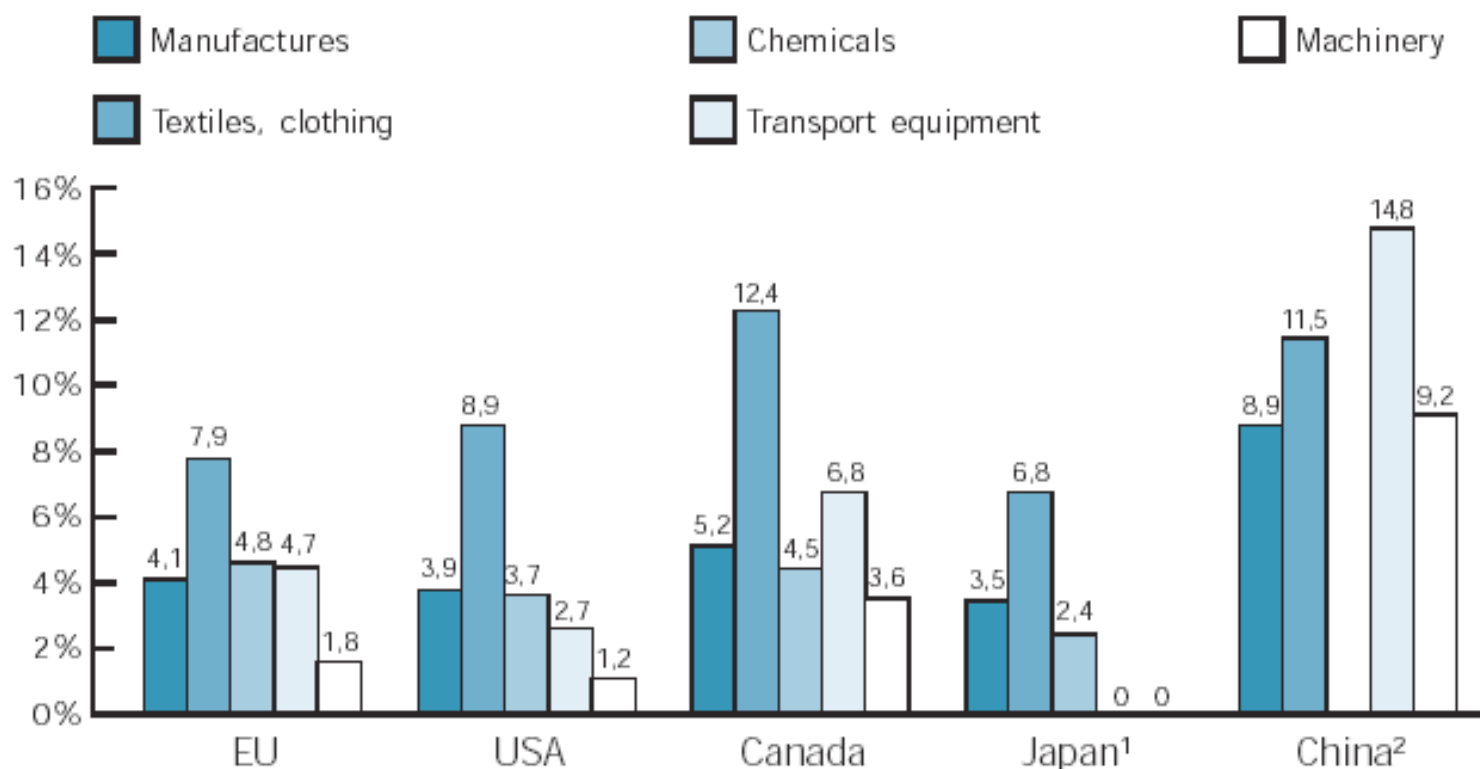
Import Markets	Share of Bound Lines (%)	Average Bound Rate (%)	Average Applied Rate	
			Level (%)	Year
Canada	99.6	5.2	4.4	2000
United States	100.0	3.9	4.1	2000
Argentina	100.0	31.0	13.4	2000
Chile	100.0	25.0	9.0	2000
Mexico	100.0	34.8	15.6	2000
EU	100.0	4.1	4.5	2000
Hungary	95.4	7.4	7.4	2001
Australia	95.9	14.2	4.7	2001
Japan	99.2	3.5	3.9	2000
Korea, Rep of	90.4	11.7	7.5	2000
Philippines	58.6	26.1	6.7	2001

- Significant reduction in nontariff barriers on imports of industrial products from developing countries by developed countries
- NTB coverage ratios in OECD countries for selected developing countries
 - India - 40.9% to 7.1%
 - Thailand-21.4% to 2.9%
 - Brazil - 12.9% to 4.5%
 - Egypt - 66.5% to 1.2%
- Major success in lowering tariff and nontariff barriers on industrial products and increasing commitment to open trade regimes

- But:
- Tariffs still remain high in more protected sectors (textiles, leather)
 - T&C: 9% in Quad countries, 12% for all developed countries, 29% in developing and transition countries
 - Leather, rubber, footwear and leather products: 9% in Quad countries, 10% for all developed countries, 27% for developing countries
 - Above average bound rates in fish and fish products
- Tariff peaks on some products (textiles, footwear, agriculture)
- Tariff escalation reduced but continues
- Bound rates much above applied rates for developing countries
 - Latin America: Average bound rates 3 times higher than applied rates
 - S.E. Asia: 2.5 times higher
- Although QRs eliminated, other forms of nontariff protection still possible and growing (antidumping, standards, technical barriers)
- Possibility of safeguard measures

Industrial tariffs

Simple average bound tariffs



Source:WTO; Special Studies 6; Market Access: Unfinished Business and EG-Commission

¹ The Japanese tariffs on machinery and transport equipment are 0 percent

² There is no information concerning Chinas tariff on chemicals

Post-Uruguay Round issues in industrial products

- Continued reduction/elimination of tariff and NTBs on comprehensive basis, esp. products of export interest to developing countries
- EU position:
 - Reduce all tariffs by compressing into flatter range, eliminate tariff peaks
 - Reductions on bound not applied rates
 - All duties below specific floor to be eliminated
 - Reduce Tariff Escalation
 - Different timetable for developing and developed countries
- US position:
 - Eliminate all tariffs on industrial goods by 2015 in two steps
 - First step:
 - Cut tariffs by specified formula
 - Harmonise tariffs to less than 8% by 2010
 - Eliminate all tariffs at or below 5 % and in 7 selected sectors by 2010
 - Second step:
 - Equal annual cuts in remaining tariffs between 2010 and 2015
 - Identify and eliminate NTBs
 - Bind 100% of tariff lines

Concerns for India

- Formula for tariff reductions and base for reductions
 - Prefers linear tariff reduction to keep higher tariffs in certain sectors
 - Prefers reductions on bound not applied rates
 - Wants credit for autonomous liberalization
- Wants to extend domestic protection to sensitive domestic sectors
 - small scale and infant industries
- Threat to domestic industry from zero duties in 7 identified sectors
 - Textiles and clothing, gems and jewellery, marine products, electronic and electrical goods, motor vehicle parts and components, leather and footwear
- Prefers voluntary sectoral tariff elimination than by mandate
- Wants scope for unbound tariff lines to take care of sensitive products
- Under pressure from developed countries to undertake non-linear cuts, bring down higher tariffs faster, apply tariff reductions on applied not bound rates
- Trying to balance dual interest of market access and protection to domestic industry in industrial product negotiations

Agreement on Agriculture

- Developing countries and major agricultural goods exporting countries keen on increasing market access in agriculture
- Highly distorted and restricted sector
 - tariff and nontariff barriers, production & export subsidies, P supports
 - EU's Common Agricultural Policy, dumping surplus on world markets
- 3 pillars of agriculture agreement:
 - (i) Increase market access
 - Tariffy nontariff measures and reduce and bind protection levels
 - 36% reduction for developed countries
 - 24% reduction for developing countries
 - 100% binding of agricultural commodity tariff lines
 - No commitments for LDCs

- (ii) Reduce domestic support to agriculture by specified amounts
 - Reduce aggregate measure of support (AMS) by 20% for developed countries, 13.3% for developing countries
 - No commitments for LDCs
 - AMS not to exceed 10% of value of output for selected base period

- (iii) Reduce export subsidies by value and volume by specified amounts
 - Longer transition period, less reduction for developing countries
 - No reductions for LDCs

- Undertaking to help LDCs and food importing countries so far benefiting from subsidized exports

Commitments made in agriculture

	Developed countries 6 years: 1995-2000	Developing Countries 10 years: 1995-2000
Tariffs		
Average cut for all agri. Products	-36 %	-24 %
Minimum cut per product	-15 %	-10 %
Domestic Support		
Cuts in total AMS support for the sector	-20 %	-13 %
Exports		
Value of subsidies (outlays)	-36 %	-24 %
Subsidised quantities	-21 %	-14 %

Uruguay Round Commitments in agriculture

- Tariffs reduced on 79% of tariff lines for developed countries, 74% for developing countries
- 100% binding of agricultural tariff lines, but at high levels
- Substantial commitments made on subsidy and domestic support reductions
- But certain subsidies permitted (green box), some classified as potentially trade distorting (amber), others prohibited (red box)

- India bound most agri tariff lines but at very high rates
- Committed to remove most QRs by 2004
- No AMS reduction commitment

Implications of the agreement on agriculture

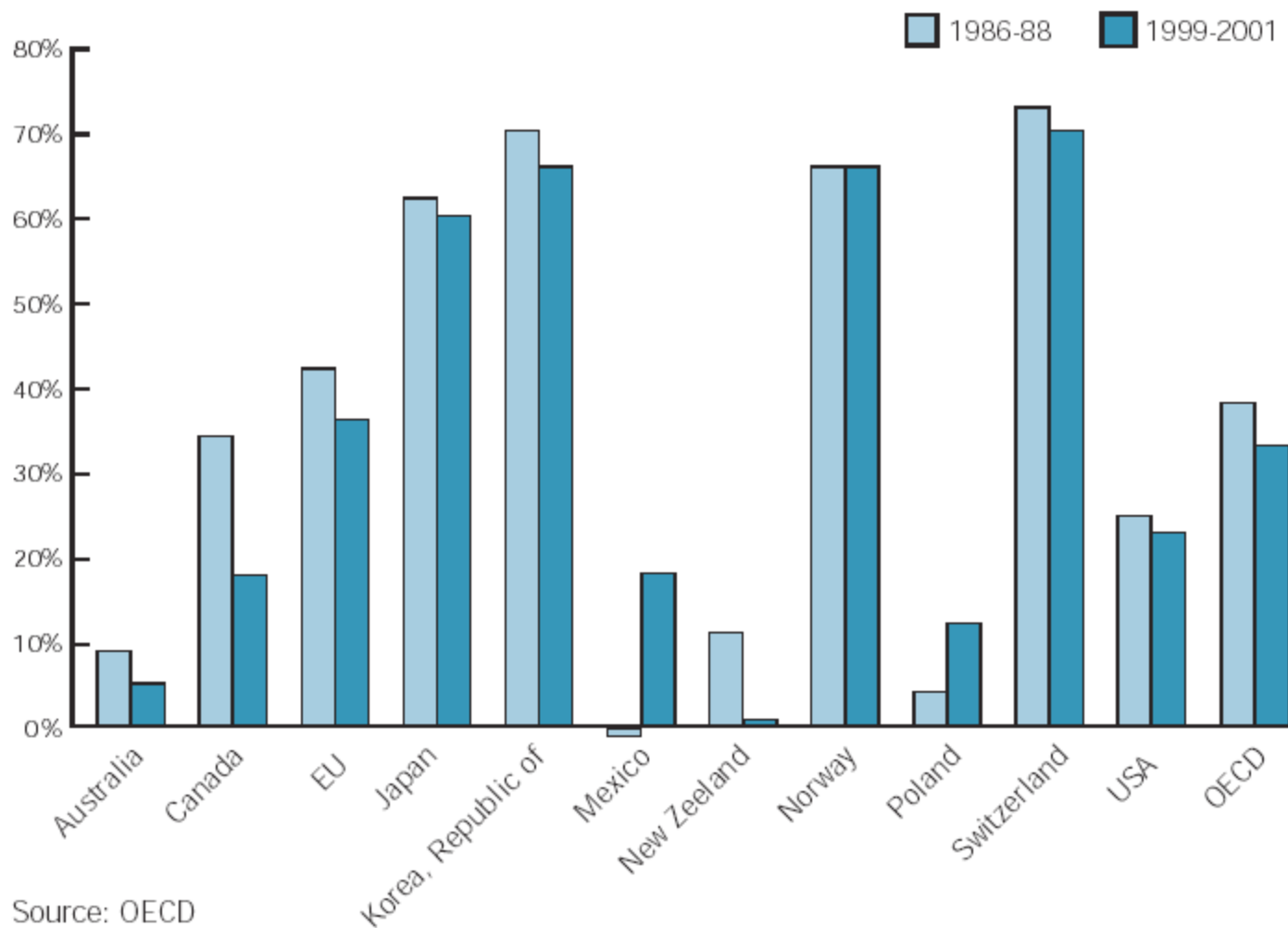
- Increase market access for efficient agricultural exporting countries
 - Developed countries like Australia, New Zealand, Canada to gain
 - Developing countries like Brazil, Argentina to gain
- Reduced export subsidies to add \$270bn in additional exports
- Reduced subsidies to increase world prices of various agricultural commodities on average by 10%
 - Net food importing LDCs to be adversely affected
- Consumers (esp. EU) to benefit from lower trade barriers
- Inefficient producers to face increased competition, loss of employment and earnings, need to reorient production

- India expected to gain from increased market access and higher prices
- But increased import competition due to tariff reductions and removal of QRs

Post Uruguay Round issues in agriculture

- Developed countries failed to implement UR commitments on domestic support
 - Shifting of subsidies to green box, use of environmental reasons for subsidies
 - Export credit based subsidies in US
 - Overall subsidies to agriculture remain at over \$300 bn/year
 - Still high tariffs
- Modalities under discussion
 - Linear or non-linear tariff cuts
 - On bound or applied rates
 - Special safeguard measures on subsidized exports
 - Use of NTBs
 - Subsidy boxes for domestic support, their scope and possible elimination
 - Reduction or complete elimination of export subsidies

Agricultural Support in certain OECD-countries 1986-2001



- India's concerns on export and import sides
- Exports
 - Losses to Indian farmers due to subsidies in developed countries
 - Wants reduction in export subsidies in products of export interest (butter, fruits, wheat, rice, vegetables, bovine meat, cotton)
 - Concerned about growing use of NTBs (sanitary standards)
- Imports
 - Wants tariff reductions to take into account food security, rural livelihood, and developmental concerns
 - Provision for special and sensitive products where higher tariffs permitted
 - Facing pressure to reduce higher tariffs faster, but wants linear reductions
 - Problems of low productivity, insufficient investment in supporting infrastructure, not internationally competitive in many products, farmers could lose out to import competition

Agreement on Textiles and Clothing

- Trade in textiles and clothing governed by the MFA since 1974
 - MFA: bilaterally negotiated voluntary export restraint
- Textile trade subject to high tariff protection
 - Tariffs of over 15% concentrated in items of export interest to developing countries
 - Over 50% tariffs for 60 tariff lines in Canada, 71 in EU, 14 in Japan, 8 in US
- Decision in Uruguay Round to eliminate the MFA between 1995-2005 with gradual phase out of quotas, but back loaded
 - Mostly integrated low value add items which faced underused quotas
 - 80% of clothing imports, \$61 bn still under quotas end 2004 in US
- Tariff reduction commitments
 - India committed to reduce import duties on 17 textile products from 85% to 40% over 10 years

Implications of the textile and clothing agreement

- Increase market access for efficient developing country exporters of textile and clothing products (India, China, Egypt, Pakistan)
 - Increase in textile exports by 82% to OECD markets
 - Increase in clothing exports by 93% to OECD markets
 - South Asia to gain \$2 bn/year
 - China biggest beneficiary (50% of world market)
- Countries with vertically integrated supply chains more likely to benefit
- Role of big retail companies to grow in textile trade
- Losers:
 - Developing and developed country producers sheltered by MFA or created by quota diversion under MFA (Nepal, Mauritius, Sri Lanka)
 - Mexico, South America, Africa, Middle East
- Welfare gains to consumers in developed countries due to lower prices, higher import volumes (US \$10bn)

Implications for India

- India expected to gain from MFA elimination as faces binding quotas in US and EU in some items
 - Increase world market share from 3-4% to 15% by 2010
 - Projected textile export growth of 18%/year, to \$40 bn by 2010, 1/3rd of total exports, potential employment of 40 mn
 - Advantage due to low labour costs, vertical integration, established companies with tie-ups
 - May benefit from diversification by outsourcing companies
 - China subject to special safeguards and quotas on select categories till 2008 as per accession conditions to limit China's exports to 7.5% in select products in US market
- But domestic and external constraints to realizing expanded market opportunities post-MFA

- External challenges
 - increased competition from other developing countries, China
 - Preferential market access and special schemes offered to selected developing countries by importing nations to continue
 - Use of non tariff barriers and technical barriers to trade
 - Possible increase in Antidumping measures, countervailing duties, safeguards
 - Labour and environmental issues in textile production
 - Trade unions and protectionism

Domestic challenges

- Labour laws discourage employment creation and scale expansion
- High excise and import duties raise input costs
- Fragmented sector prevent economies of scale, raise unit costs, hurt modernization and upgrading of technology in powerloom and handloom units
- Low productivity (16% of US levels)
- High rejection rates and quality issues (3.3% , 1.8% for rest of Asia)
- Labour indiscipline (absenteeism of 13% , 5% for rest of Asia)
- Delayed shipments (19%, 9% for rest of Asia)
- Infrastructure quality and inadequacies
 - Power, water, transport, customs

Initiatives

- Setting up of Textile Infrastructure Development Scheme
- Duty rebates on inputs (but potentially countervailable)
- De-reservation of some segments in last budget

4. New areas and agreements

- Services - General Agreement on Trade in Services (GATS)
- Intellectual Property Rights- Trade Related Aspects of Intellectual Property Rights (TRIPs)
- Investment - Trade Related Investment Measures (TRIMs)
- Increased complexity of trade negotiations
- Raised new issues and concerns about undermining of national sovereignty, equity, and developmental objectives
- Raised concerns about excessive widening of WTO mandate without addressing developing country interests in traditional sectors

General Agreement on Trade in Services (GATS)

- Agreement covering international trade and investment in services
- MFN, transparency, national treatment principles
- 12 sectors and over 150 service activities under the GATS
 - telecommunications, air transport, financial, health, software, accountancy, education, construction, engineering services
- Services trade via four modes of supply
 - Mode 1- cross border supply
 - Mode 2 - consumption abroad
 - Mode 3- commercial presence
 - Mode 4 - movement of natural persons
- Countries table sectors to liberalize based on national interests and political economy considerations
- Commit on market access and national treatment for each of the four modes of supply (8 commitments for each activity)
- Make no commitments, partial, full commitments on sectoral and cross-sectoral basis

India and the GATS: interests

- Export potential in services due to labour endowment, low labour costs, high quality of skills and training
 - software, health, accountancy, engineering, architecture, legal services
- Two main modes where export potential
 - Mode 4 (on-site delivery of services via temporary cross border movement of labour)
 - Mode 1 (back-office, IT-enabled, outsourcing)
 - Some scope for Mode 3 in selected business services, in selected regions/markets
- Main mode where import interest
 - Mode 3 (foreign commercial presence and equity participation in banking, insurance, energy, telecom, distribution)

Software services

- On-site delivery 50 % of total software export earnings (mode 4)
 - Professional service exports 44 % of total software service exports
- IT-enabled services (mode 1)

Health

- Exports of skilled doctors, nurses, technicians (M.East, West Asia) (mode 4)
- Telemedicine (mode 1)

Other business services (engineers, consultants, accountants, architects, technical analysts)

- Manpower exports (M.East, Africa, S.& S.E. Asia, Indochina)
- Internet based delivery in architectural, technical, consultancy services
- Back office operations in business services like accountancy, design, publishing

India and the GATS: Concerns

- Numerous administrative and regulatory barriers to cross border movement of Indian service providers
 - Immigration-related (on entry and stay)
 - wage parity, quotas, administrative procedures, economic needs tests
 - Recognition-related
 - certification and licensing barriers, nationality, residency conditions (health, accountancy, architecture, engineering)
 - Differential treatment of domestic & foreign service providers
 - Taxes, subsidies, govt procurement policies
- Recent protectionist challenges to cross border supply (telephone and internet based delivery of services)

GATS 2000 request-offer process

- GATS 2000 negotiations commenced in January 2000
- Sectoral and horizontal requests by countries to other members
- Initial offers made by some countries

- More countries willing to commit
 - autonomous deregulation and privatization of many services
 - growing awareness about role of services in promoting efficiency and economic development
 - need for foreign capital in key services (telecom, insurance, energy)
 - growing importance of IT and IT-enabled services
 - growing importance of cross-border movement of professionals and business services

Requests to India

- From all major countries in large number of sectors
 - environmental, financial, telecom, energy, distribution, education, tourism and travel, computer and related services, etc.
- Focus on transparency in regulation, administrative procedures
- Main focus on infrastructure services (financial, telecom, distribution) to relax limitations on:
 - form of legal entity
 - foreign equity participation
 - authorization/approval requirements
 - discriminatory treatment in taxes, regulatory requirements
- Focus on select professional services (legal, accountancy, consulting) to reduce restrictions on:
 - foreign commercial presence
 - intracompany transferees and business visitors
- Asked to bind current FDI policies and precommit to further liberalization

India's requests to other countries

- Submitted requests to all major developed and developing countries in several sectors
 - tourism, computer and related, architectural, health, audiovisual, maritime services
- Main focus on mode 4 reflecting export interests in labour-intensive services
 - Separate temporary from permanent movement of labour, mode 4
 - Institute a GATS visa, distinct from usual immigration visas
 - Wider coverage of service provider categories, including independent professionals and contractual service suppliers
 - Better application of GATS recognition norms to prevent discriminatory use of recognition barriers on mode 4
 - Improve administrative, visa procedures, reduce discretionary scope
 - Exemption from social security taxes

- India submitted initial offer in January 2004, revised offer in May 2005
 - Has not made major forward looking offers
 - Several important services (energy, distribution) left out of offer
 - Limited opening up committed in some services (accountancy)
- Offer based on discussions with line ministries, relevant industry and professional associations
- Strong resistance to opening up in legal and distribution services, partly in accountancy services where competition from Western MNCs feared
- Most pro-active sectors: software, architecture, nursing, engineering where export interests

- Domestic reforms and measures required to support negotiating strategy in GATS
- Measures relating to domestic standards and qualifications
 - Improve domestic standards of training, practice, infrastructure
 - Reduce divergence of standards within country
- Establishing agreements and international cooperation
 - Mutual recognition agreements in selected sectors
 - Totalization agreements
 - Regulatory and technical issues pertaining to mode 1
 - consumer protection, data protection, liability, cross-border payment, infrastructural constraints

Overall implications of the GATS

Pros

- Help increase trade and investment in the service sector by
 - establishing multilateral rules
 - increasing predictability of member country policies
 - increasing transparency in regulations on services
- Liberalization of mode 1 to increase scope for internet-based and remote delivery of many services (IT-enabled, BPO services)
- Liberalization of mode 3 to facilitate foreign direct investment in key services (telecom, banking, insurance, energy, transport)
- Liberalization of mode 4 to facilitate temporary cross-border movement of professionals to deliver services (software, education, health, accountancy, construction)

Concerns

- Affects autonomy over domestic regulations since services trade mainly restricted by domestic not border measures
 - Mode 3 liberalization affects autonomy over FDI policy, government monopolies, public-private balance
 - Mode 4 liberalization affects autonomy over immigration and labour market legislation, could increase brain drain
- Liberalization of social services (health and education) could hurt equity and developmental objectives
- Liberalization of business services (accountancy) could affect regulatory autonomy of professional associations
- Liberalization of infrastructure services like telecom and banking could compromise universal service obligations and developmental goals, affect monopoly powers of government

Trade related aspects of intellectual property rights (TRIPs)

- Incorporated due to pressure from industrialized countries
- Lax IPR legislation in developing countries seen as affecting royalty incomes and profits of developed country firms
 - Super 301 against Brazil, China for violation of IPRs
 - Estimates indicated loss of \$60bn in 1980s from piracy, \$3-6bn in pharma and chemical industry
- Concerns about social, economic, environmental implications in developing countries

- TRIPs covers:
 - copyrights, trademarks, patents, geographic indicators, industrial designs, layout designs of integrated circuits, undisclosed information
- Requires countries to modify existing IPR legislation
 - 20 year protection for all products and processes
 - No distinction between product and process patents
 - Permits patents on life forms and plant varieties
 - LDCs to implement changes by 2005
- Exclusive Marketing Rights given during transition period until decision made on patent application, for five years after marketing approval

- EMRs conditional on patent being granted and marketing being approved in third WTO member country and filing of patent application and receipt of marketing approval in India
- mailbox provision for receiving patent applications while patent laws not yet amended
- patent holder would not have to apply separately to each country for patent rights, if patented in one country, automatically in all other member countries
- Geographic indications status to wines and spirits

Potential positive implications of TRIPs

- Allow pharmaceutical companies to recoup investments in R&D through increased royalty incomes and profits
- Increase availability, variety, quality of drugs
- Induce more R&D by developed and developing country drug manufacturers and encourage creation of new drugs
- Enable more technology transfer and FDI in research intensive sectors in developing countries
- Improved enforcement of country trademarks, geographic indications

Developing country concerns with TRIPs

Drugs and medicines

- Tighter IPR laws could raise drug prices and create monopoly conditions in drug market
- Hurt access to essential drugs by the poor
- Raise developing country costs of addressing major public health concerns (AIDS, malaria, TB)
- Hurt generic drug manufacturers in developing countries by raising cost of developing new drugs
- Curtail scope for generic exports
- Could limit access to new technologies and processes without process patents
- Will TRIPs enable quick entry of generics on expiration of patents?
- Evidence shows increased IP protection not sufficient for increasing inventive activity

Agriculture and biodiversity

- Patenting of life forms will force developing country farmers to buy agricultural inputs (seeds, fertilizers) from MNCs at higher prices
 - Raise agricultural production costs and food prices
 - affect farmers' ability to cross breed and indigenize varieties to suit local requirements
 - create dependence on MNC produced fertilizers and chemicals
 - potential environmental implications (terminator seeds and GM crops)
- Patenting of plant varieties will lead to false patent claims by MNCs
 - Agri-business and pharma companies collecting germplasms of wild plant varieties in LDCs and expropriating legally and illegally
 - Cross-breeding with other varieties, slight changes in gene sequencing to create new varieties, patenting and selling back to LDCs as unique and distinct

- US seed breeding company collected specimens of Basmati rice plants from India and Pakistan, cross-bred with some HYVs, claimed creation of new rice variety- patented in US as Basmati
- Monsanto recently patented cross breeds of Indian wheat

- Patenting of traditional knowledge and medicinal plants encouraging biopiracy, bioprospecting,
 - patent claims on neem, haldi, karela, amla, castor, etc.
 - patenting of oil of nut found in South India for arthritis, extracts from pigeon pea for diabetes, obesity
 - one quarter of pharma products by US firms plant-derived but communities unpaid
 - problem of lack of documentation in traditional communities

- Problem:
 - Developed countries want all germplasm to be recognized as public resource as “common heritage of mankind” but with research and experimentation can be patented and sold back

India's role in TRIPs negotiations

- Raised concerns in India on public health, environmental, social, public versus private interest, sovereignty, MNC domination grounds
- Seen as an unbalanced agreement as resolves pharma and chemical sector issues mainly in favour of large Western MNCs
- Some studies indicate welfare costs will be imposed on India's pharma sector, when first patented products enter market
- Taken defensive posture in TRIPs negotiations and pushed for flexibility in TRIPs provisions in interest of developing countries
- India's efforts instrumental in getting Doha Declaration on Essential Medicines (November 2001) at Doha Ministerial

- Declaration notes need for flexibility to developing countries in IPR legislation to mitigate adverse effects of increased IP protection and need to guarantee access to medicines for all
- Introduced compulsory licensing provision in TRIPs for domestic production or imports of cheap generics if:
 - Unable to obtain patented product at reasonable price and to counter monopolistic pricing and anticompetitive practices by patent holder
 - Undue delays in getting patented product
 - Public health emergencies and crises (AIDS)
- Countries with right to determine what is national health emergency
- List of diseases to be discretionary

- TRIPs flexibility provisions intended to allow developing countries to invoke public interest or health exceptions to grant compulsory licenses for domestic production of relevant drugs or for import of such drugs where no indigenous production capability
- India has pushed for disclosure of country of origin for patent applications involving genetic materials or traditional knowledge and evidence of informed consent and benefit sharing
- Alternatively argued for protecting traditional knowledge through community owned IPRs and community right to decide commercialization of traditional knowledge

- Prior to Cancun Ministerial (August 2003) negotiations between US, Brazil, South Africa, India, Kenya on flexibility provisions and conditions for generics exports introduced
 - Can override patents for importing generics only for public health, not commercial/industrial objectives under compulsory licensing provision
 - Importing country must establish eligibility
 - TRIPS council to review notifications of importing and exporting countries and determine eligibility
 - Conditions on marketing, packaging, registration of generic manufacturers (Best Practices Guidelines) when using compulsory licensing provision to export, to prevent diversion to third markets
 - 23 developed countries and group of middle income developing countries not use this pact to import generics even when national emergency

Implications for India

- Strategic issues concerning TRIPs implementation in India given India's position as net user as well as current/potential net creator of knowledge?
- Might the TRIPs benefit India given its diversified industrial and technological base, well educated and skilled labour force, core research capability, conducive to increase patenting and knowledge creation under stronger patent laws
- Key issues:
 - Whether it can use TRIPs to enforce India's market access rights in other countries for exports of IP products (pharma)
 - Need to put in place policies and mechanisms to mitigate worst effects of this agreement
 - Need to seek changes in agreement in interest of development and public health concerns
 - Need to identify where its interests in new technologies lie and adapt IPR legislation and institutions accordingly
 - Need to create institutions to protect IP and resources created in India

- Legislative and institutional implications
 - Changes in patent legislation required in India to conform with TRIPs
- Patent Act of 1970 differed from TRIPs in several areas
 - Does not allow product patent for food, medicines, drugs, agro chemicals while TRIPs requires product patents
 - Possible for Indian pharma companies to reengineer using cheap, local material
 - Patent duration of less than 20 years (5 for food and drugs, 7 for medicine, 14 for others) while TRIPs requires 20 year patents
 - Enables life saving drugs to be sold at much lower prices

- Three amendments introduced (1999, 2002, 2004) to meet TRIPs requirements and incorporate flexibility provisions
 - 1st Amendment in 1999 providing for EMRs and mailbox provisions
 - 2nd Amendment in 2002 introduced compulsory licensing provision
 - 3rd Amendment in Dec 2004) to meet TRIPs requirements by Jan 1, 2005
- New Patents Act adopts TRIPs requirements with exceptions for public health provisions in Doha Declaration for compulsory licensing

- Introduced sui generis system of protection for plant varieties and life forms: Plant Breeder's Right Bill, Farmers Right Bill
 - Seeks to protect interests of farmers, plant breeders, scientists, public
 - Contains compulsory licensing provision to assure access to seeds at reasonable rates
- Biodiversity Act - allows patenting of plants
- Issue of patenting of microorganisms and biotechnology products still not resolved, currently exempted and under review in TRIPs
- Concerns remain about ethical, environmental, safety risks of new technologies and commercial use of biotechnology
- National registry established for items like Darjeeling Tea, Kohlapuri chappals, Alfonso mangos for getting GI status in WTO

Trade related investment measures (TRIMs)

- Investment measures can distort trade
 - local content requirements
 - trade balancing requirements
 - technology transfer requirements
 - export performance requirements
 - exchange restrictions
- Agreement establishes multilateral disciplines on investment practices that distort trade in goods
- Members must phase out any TRIMs which violate GATT obligation of national treatment and which result in QRs on trade
- Main prohibited TRIMs: local content requirements and export commitments
- Caveats for balance of payments and developmental reasons
- India notified all TRIMs, did not have any prohibited ones

Other agreements

Technical barriers to trade

- Standards, certification, labelling, testing requirements

Sanitary and Phytosanitary standards

- Environmental, health, public safety related barriers

Concerns

- Emerging as NTBs
- Costs imposed by such regulations
- Unclear if motivated by public interest and scientific reasons or protectionist considerations
- Large variations in SPS norms in developed countries for specific food products hurting developing country exporters
- Technology transfer and technical assistance requirements

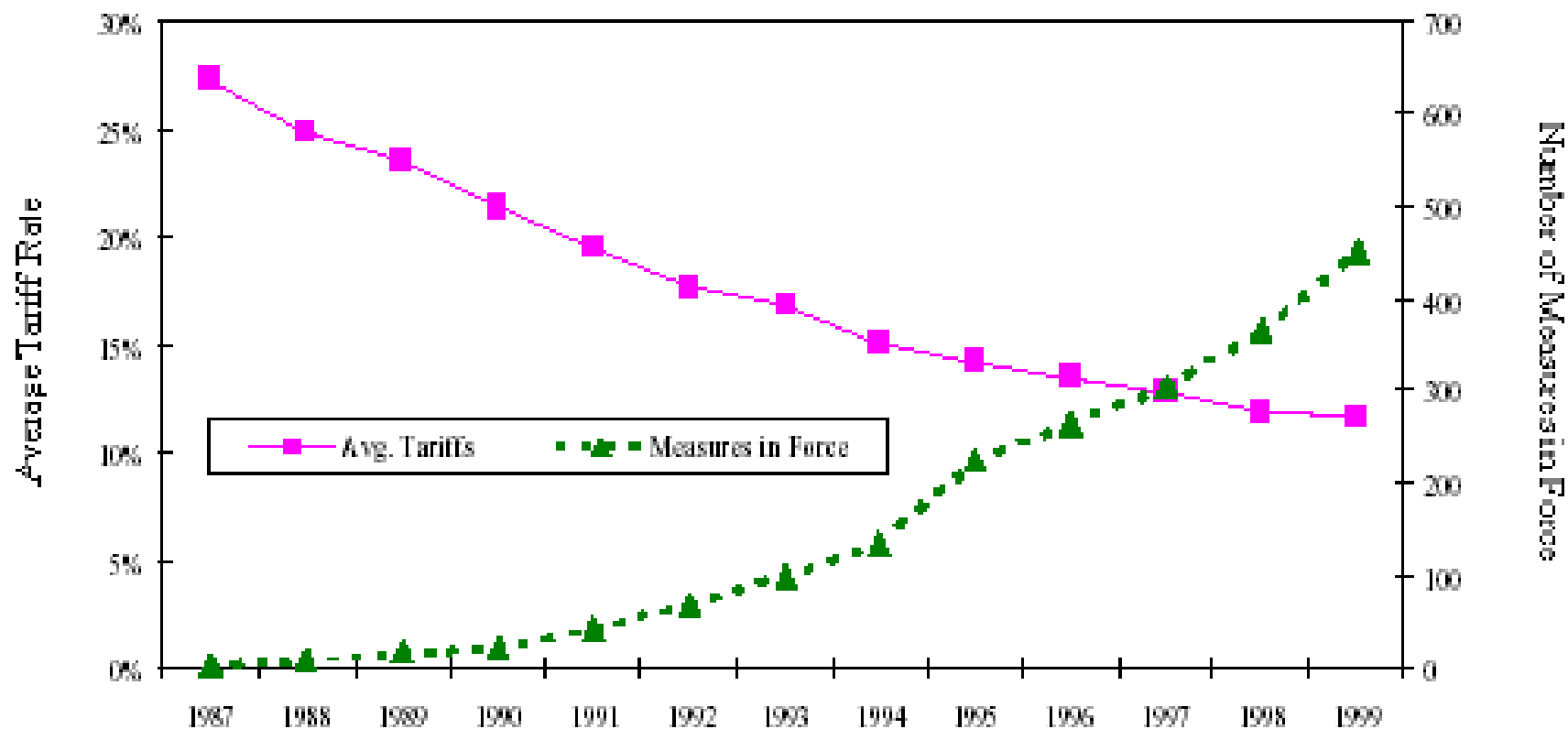
Agreements on Trade Remedies

Agreement on Anti Dumping

- Rise in use of antidumping (AD)
 - “Safety Valve” against falling tariff and non-tariff barriers
 - “Retaliation” against traditional users:
 - Lack of economic criteria and discipline in WTO AD Code
 - Increased use of AD measures relative to other trade retaliation and remedies (safeguards, VERs, countervailing duties)

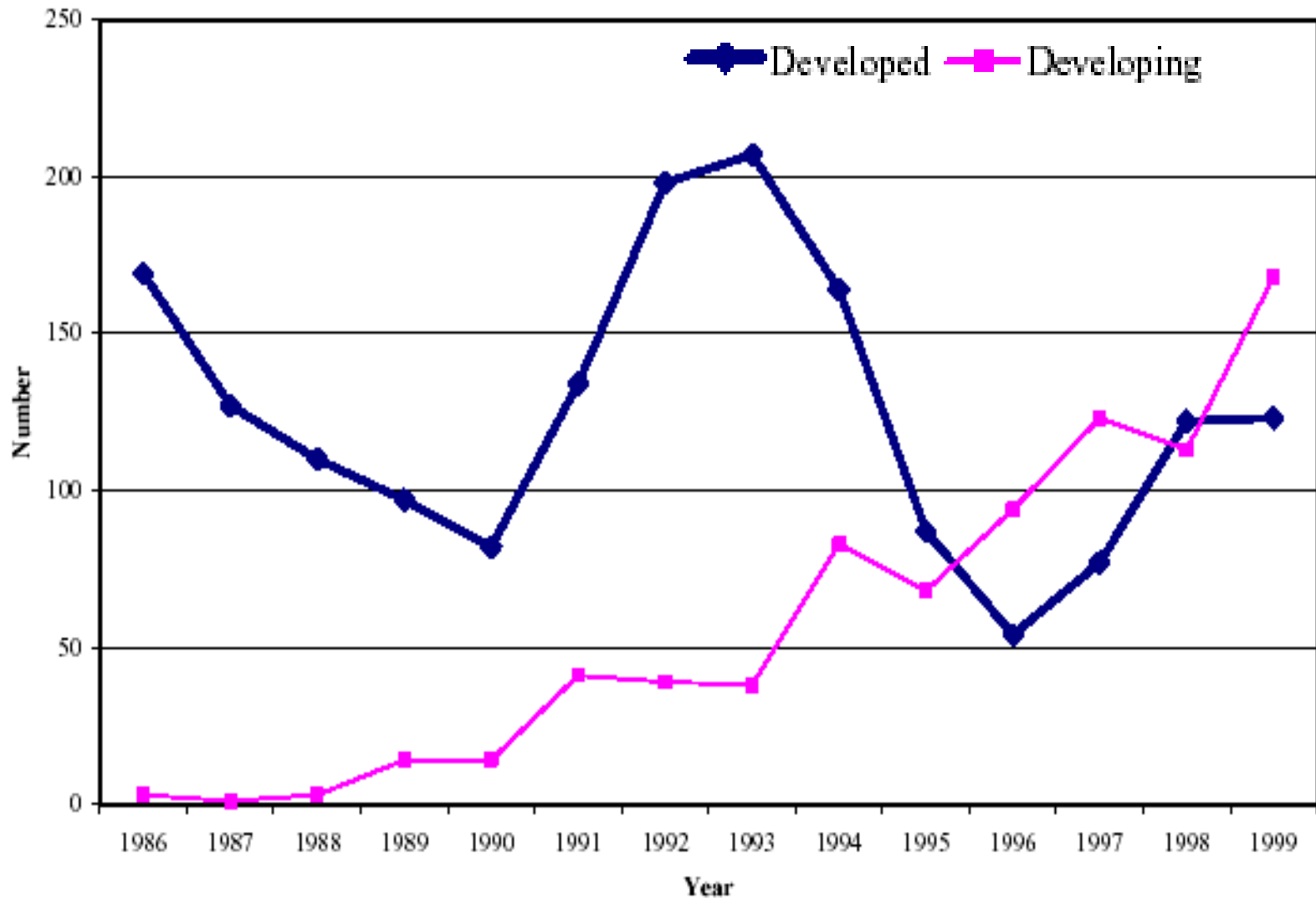
“Safety Valve”

Average Tariffs and Antidumping Measures (nontraditional users, 1987–99)

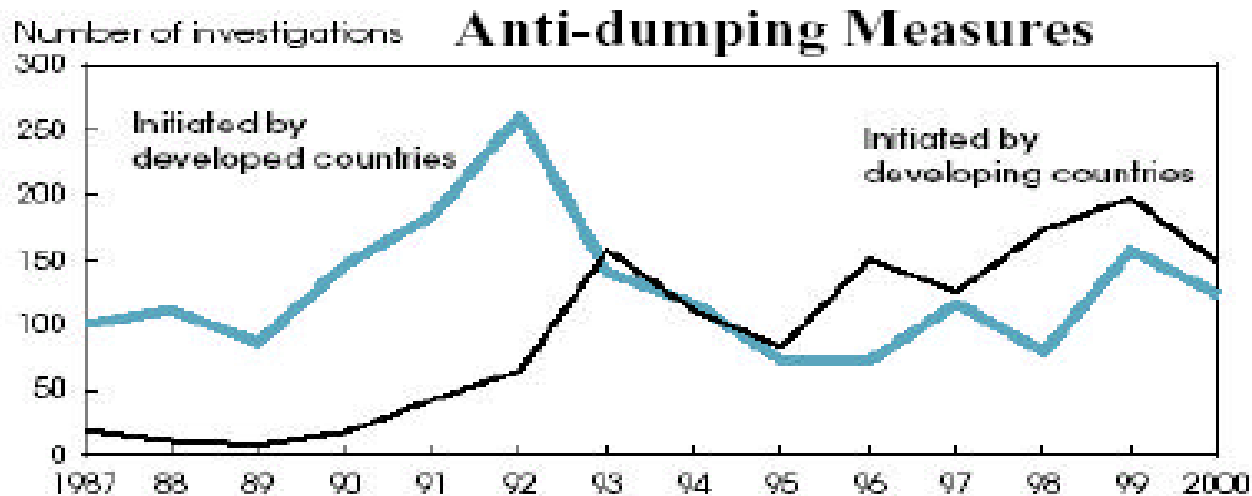
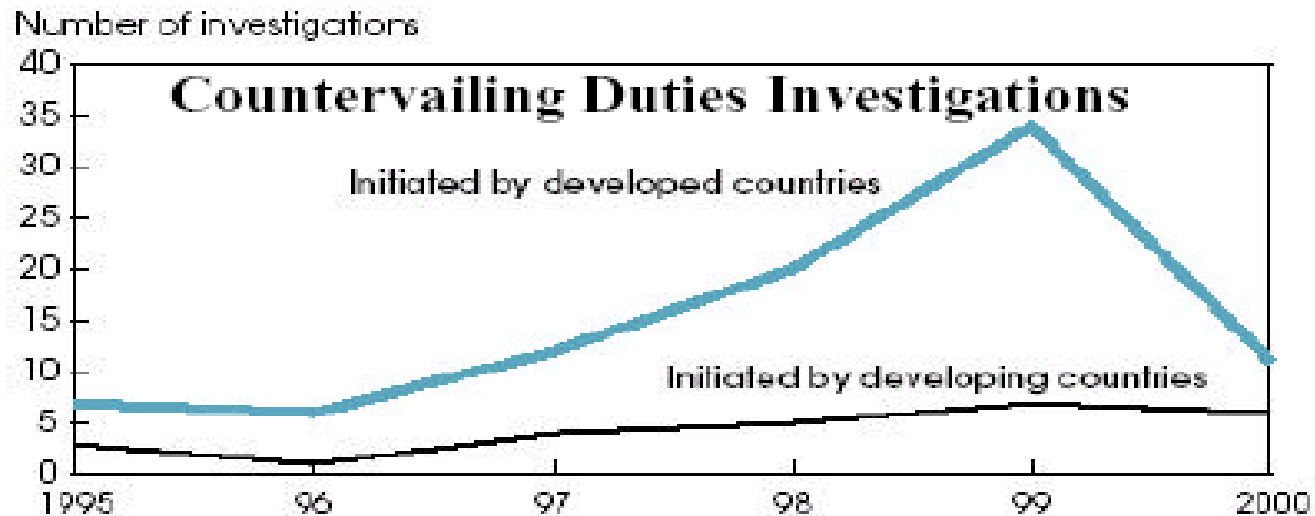


Source: Tariff data, World Bank; Antidumping data, WTO Reports in G/ADP/N series.

Trends in Trade Defence Measures: Developed Vs Developing Countries

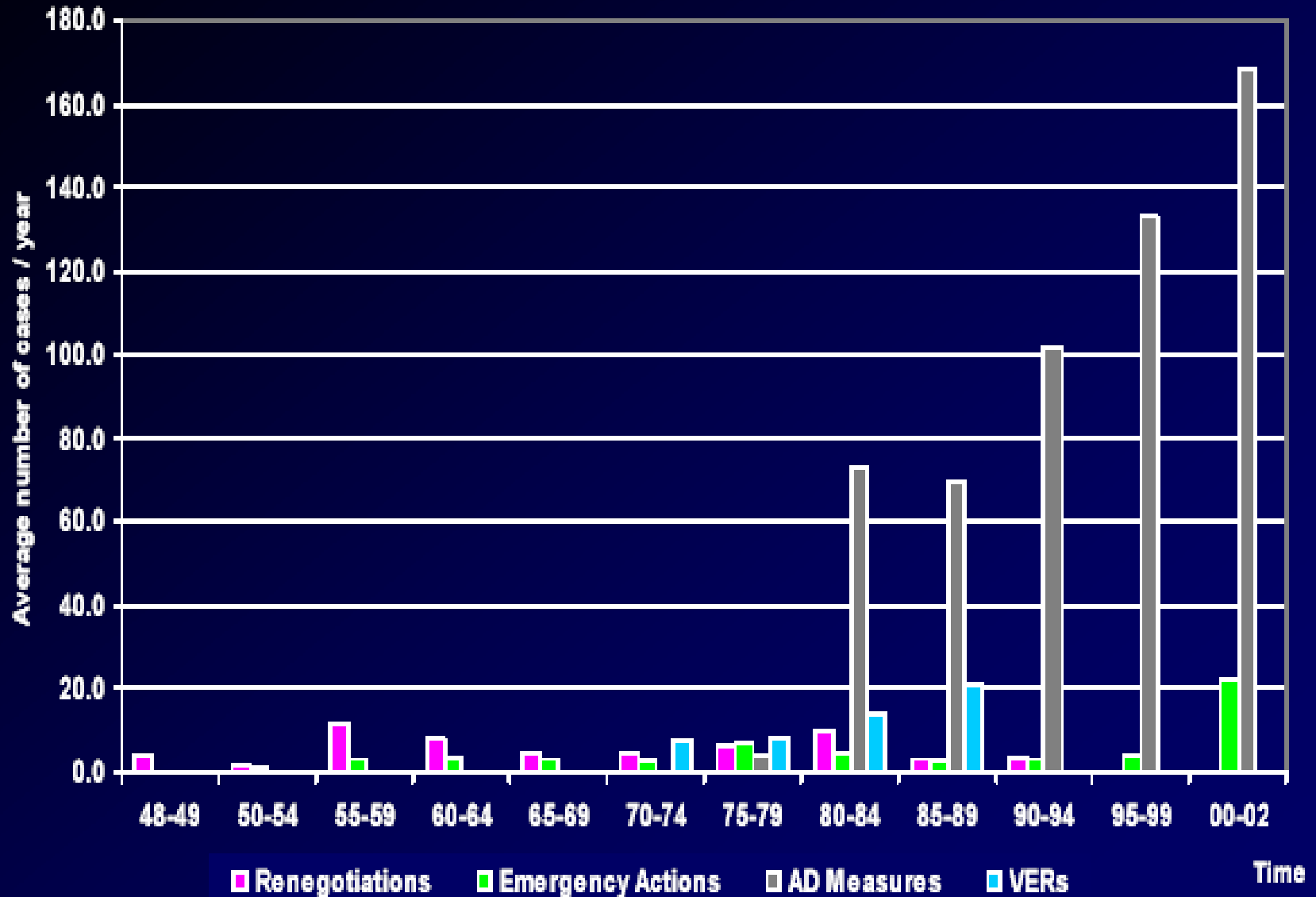


Trends in Trade Defence Measures



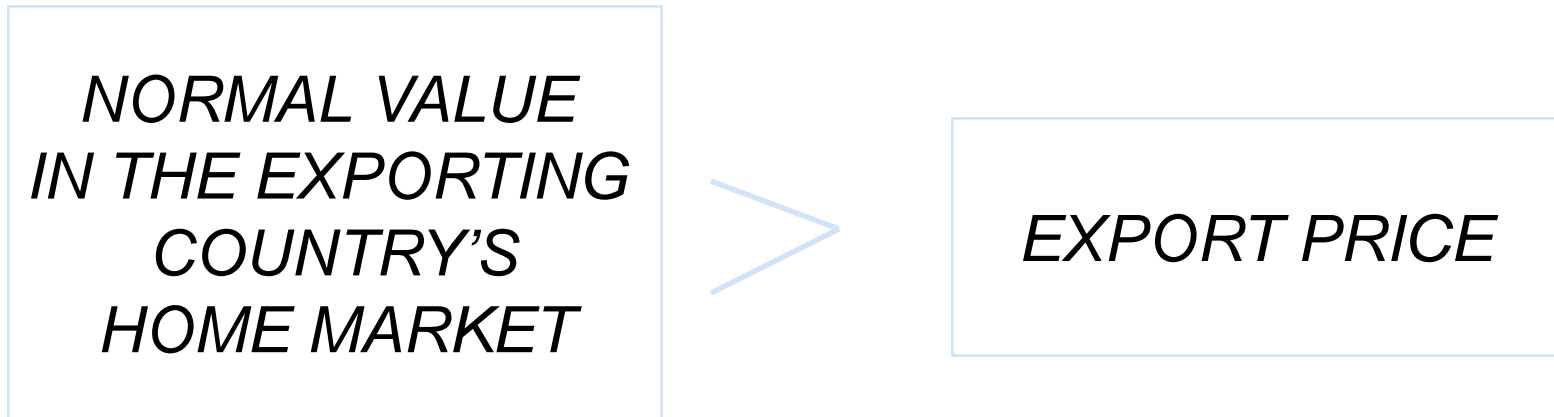
Comparative Positions of Trade Remedy Measures

Renegotiations, Emergency Actions, Antidumping Measures and VERs



- What is dumping?
- Dumping is said to have occurred when the Goods from a Member Country enter the Commerce of another Member
 - At less than its ‘Normal (Fair) Value’,
 - In the ‘Ordinary Course of Trade’
 - And Such Imports Cause
 - ‘Material Injury’,or
 - ‘Threat of Material Injury’. Or
 - ‘Retardation of Establishment’ of ‘Domestic Industry’
 - And there is a ‘Causal Link’ between the ‘Dumping’ and ‘Material Injury’

WHAT IS DUMPING ?



- Difference between Normal Value and Export Price is known as 'Margin of Dumping'
- Mere dumping *per se* is not actionable
- Injury & Causal link are required to be proved

Dumping Margin = Normal Value - Export Price

Expressed as a % against **CIF export price (duty unpaid)**

$$\frac{\text{Normal Value (-) Export Price}}{\text{CIF export price (duty unpaid)}} = \text{Dumping Margin (\%)}$$

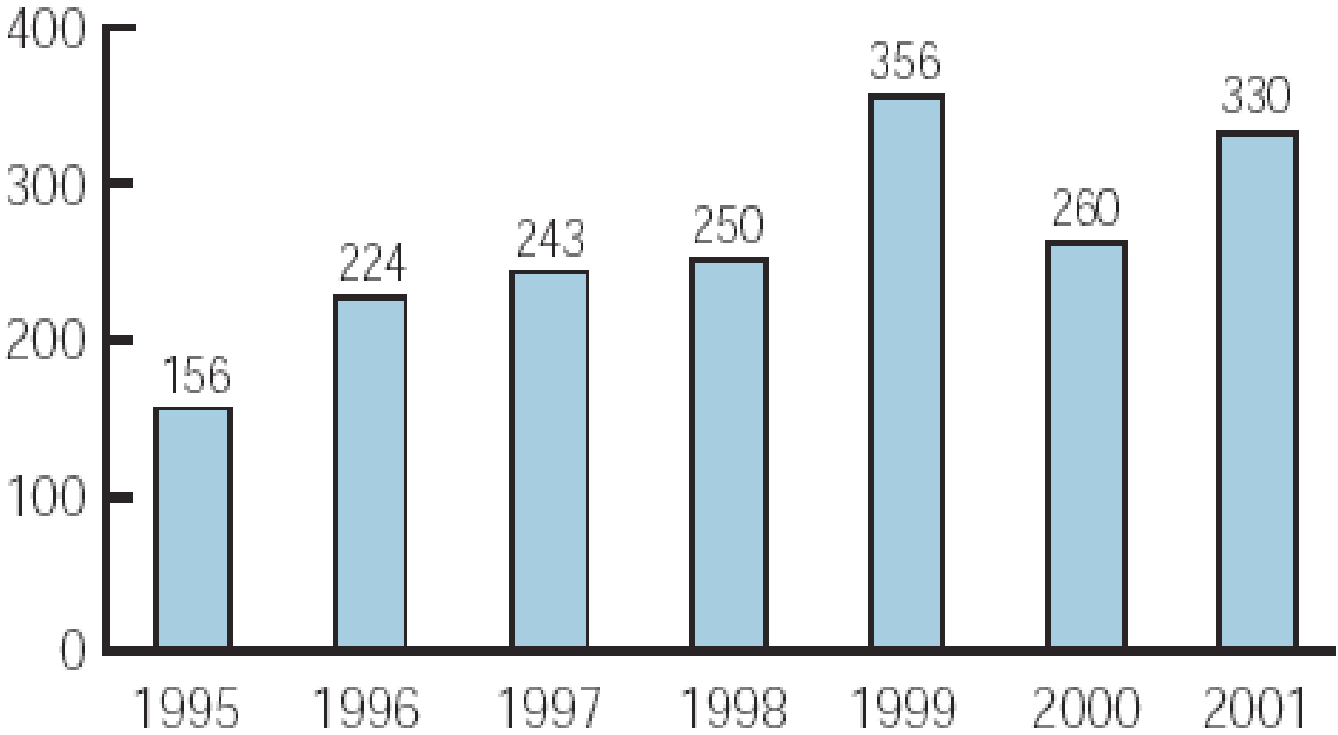
(Margin < 2% is considered *de minimis* and shall not attract duty)

- Determination of “Normal Value”:
 - Price of ‘like goods’ sold in the domestic market ‘of the exporting country or country of origin in the “ordinary course of trade’ OR
 - Constructed Normal Value determination
- “Ordinary course of trade” refers to such sales
 - which are profitable (Recovers all costs)
 - made to unrelated customers.
 - Reasonable quantity of domestic sales
- Like Goods refers to
 - Goods alike to the good under investigation in physical characteristics.
- Determination of “Export Price”:
 - Price at which goods under investigation sold to the first ‘unrelated customer’ in the foreign country
 - Construction of “Export Price”
- Adjustments for
 - ‘Level of Trade’, ‘Differences in material’ & Duties

Injury Determination:

- Positive evidence and objective analysis
- 15 economic factors
- Volume and Price effects of ‘Dumping’
 - depression and suppression of prices
- Standing of the Domestic Industry

Initiated anti-dumping investigations 1995-2001



Source: WTO

Most frequent initiators of anti-dumping investigations July 2001 - June 2002

	No. of initiatives
India	76
United States	58
Argentina	26
EU	23
Australia	16
Brazil	16
Turkey	15
Mexico	11
Peru	11

Source: WTO

Anti-dumping measures in force 30 June 2002

	No. of measures
USA	264
EU	219
India	150
South Africa	98
Canada	90
Mexico	61
Argentina	58
Australia	56
Brazil	53
Turkey	24
Venezuela	19
Korea, Republic of	19
Peru	18
China	17
Others	73
World total	1 219

Source: WTO – preliminary figures

Top 10 Antidumping Users, Total Measures in Place, 1995–2000

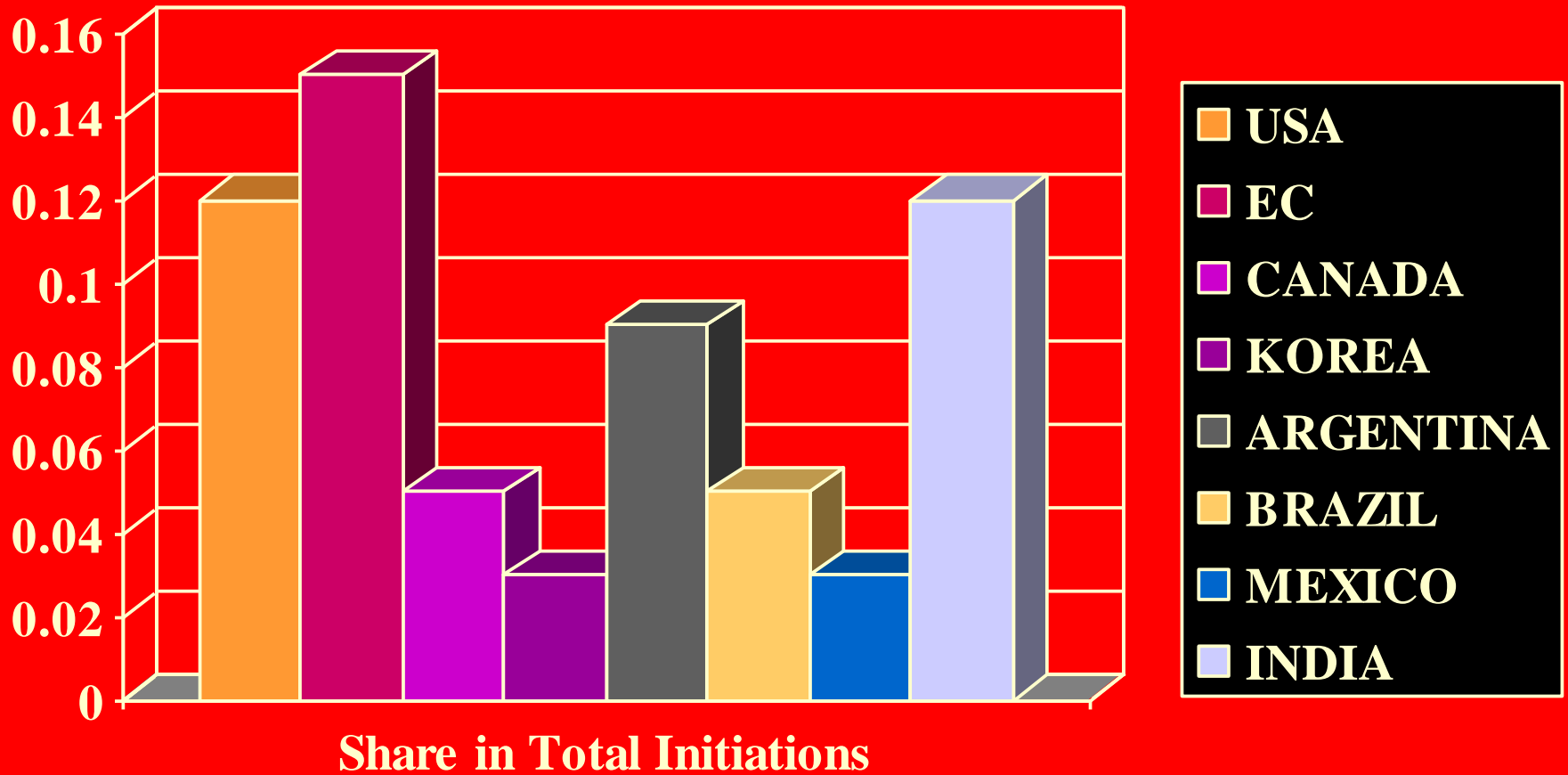
Country	1995	1996	1997	1998	1999	2000	Average
United States	309	313	321	327	342	323	323
EU	138	137	138	139	150	154	143
Canada	95	96	93	77	79	87	88
Mexico	92	90	82	83	77	77	84
South Africa	17	31	47	58	94	105	59
Australia	84	64	42	44	41	45	53
India	13	15	20	44	62	98	42
Argentina	19	31	35	37	42	43	35
Turkey	37	37	35	34	35	13	32
Brazil	20	26	24	31	37	41	30
All others	50	59	84	102	122	117	89
Total	874	899	921	976	1081	1103	976
Traditional	651	636	618	611	631	622	628
Nontraditional	223	263	303	365	450	481	348

Traditional Vs Non-traditional Users

AD Actions, Reporting Countries

Reporting country	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
<i>Traditional users</i>												
United States	15	40	24	34	63	83	32	48	14	22	16	391
Australia	22	16	21	47	68	71	59	15	5	17	42	383
European Community	28	27	18	48	29	42	21	43	33	25	41	355
Canada	31	15	13	15	11	46	25	2	11	5	14	188
New Zealand	0	9	1	1	9	14	0	6	10	4	5	59
TOTAL	96	107	77	145	180	256	137	114	73	73	118	1376
<i>New users</i>												
Mexico	18	11	7	11	9	26	70	22	4	4	6	188
Argentina	0	0	0	0	1	14	27	17	27	22	15	123
Brazil	0	1	1	2	7	9	34	9	5	18	11	97
South Africa	0	0	0	0	0	0	0	16	16	33	23	88
Others	6	5	11	7	31	21	31	50	31	71	60	324
TOTAL	24	17	19	20	48	70	162	114	83	148	115	820
<i>Overall Total</i>	120	124	96	165	228	326	299	228	156	221	233	2196
% by Traditional Users	80.0%	86.3%	80.2%	87.9%	78.9%	78.5%	45.8%	50.0%	46.8%	33.0%	50.6%	62.7%
% by OECD Countries	95.8%	95.2%	96.9%	98.8%	84.6%	89.6%	72.2%	61.8%	51.9%	40.7%	59.7%	74.7%

Share of Select Countries in World Antidumping Action



INITIATION OF CASES

Country-wise Data

(as on 14.3.2003)

Name of the Country	No. of cases initiated
China	66
Taiwan	25
EU	24
Korea	24
Japan	18
USA	18
Singapore	18
Russia	14
Others (aggregating 39 countries)	131

Note: The number of cases appear more as the DGAD counts cases by the number of products investigated and not by the number of countries involved which may be more than one in a particular case.

COUNTRY-WISE ANTI-DUMPING **CASES AGAINST INDIA**

Name of the Country	No. of cases initiated
EU	27
USA	14
South Africa	12
Canada	5
Indonesia	5
Brazil	4
Turkey	3
China	2
Australia	2
Thailand	2
Others	7
Total	83

Examples of Antidumping cases

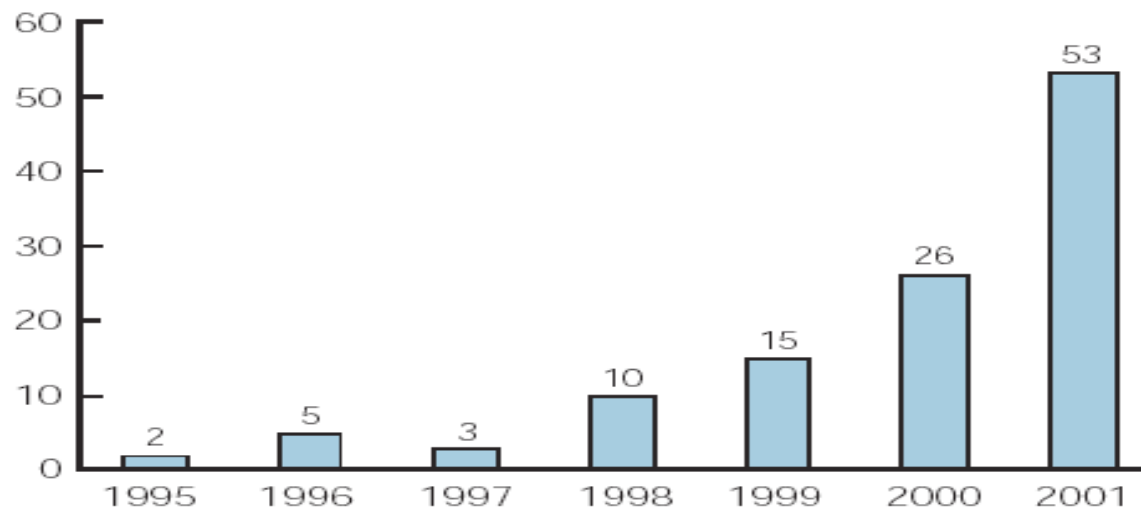
- US shrimp case
 - Southern Shrimp Alliance and Louisiana Shrimp Alliance filed petition in 2004 on 75% of frozen and canned shrimp imports into US on grounds of dumping, sought duty between 82-110%
 - Target countries -India, China, Thailand, Vietnam, Brazil, Ecuador
 - Duties imposed against exporters
 - 3.65% to 27.49% on Indian shrimp
 - 7.67% to 112.81% on Chinese shrimps, 12.11%-92.13% on Vietnamese shrimps, 6-9% on Brazilian shrimp, 5.5-10.3 % on Thai shrimp
- Opposed by American Seafood Distributors association representing grocers, restaurants, processors, distributors
- Seafood Exporters Association of India felt duties unwarranted, India genuinely cheaper supplier as shrimps farmed not sourced from sea
- Total impact due to legal costs (\$1.5mn) plus ADDs and CVDs huge to Indian seafood export industry

- US imposed ADDs on steel imports from large number of countries
 - Raised tariffs upto 40% and quota restrictions for 4 year period
 - USITC found serious injury/threat of serious injury to US steel industry, loss of over \$1 billion in 2001 due to lower steel prices, caused closure of 25 steel companies
 - Total of 123 AD and 31 antisubsidy measures on steel in 1990s
- China, Japan, Korea, New Zealand, EU opposed US tariff and quota restrictions
- Slump in steel prices due to dumping/result of overcapacity in global steel industry?

Safeguard measures

- Taken against even fair trade: Surge in Imports
- Compensation to trade partners
- Irrespective of source / exporter
- Non-Discriminatory
- Does not Derogate MFN
- Tariff &/Or Non-Tariff
- Serious Injury

Initiated cases 1995 - 2001



Source: Global Trade Protection Report 2002

- Difference between AD /CVD measures versus safeguards
- AD/CVD:
 - Addresses unfair trade practices
 - Allows no Compensation
 - Is Source & exporter specific
 - Is Discriminatory
 - Derogates MFN
 - Allows for Tariff Only
 - Requires evidence of material injury

6. Institutional issues

Dispute Settlement Undertaking (DSU)

- Only rule making body over such wide range of issues
- Since 1995 over 300 cases filed on 212 different subjects
- Dispute arises when a country adopts trade policy measure/action which violates WTO agreements/own commitments under WTO
- DSU system more structured and timebound
- Dispute Settlement Body central to process

- Several stages to dispute process
 - Consultation among concerned countries to settle differences mutually
 - If first stage fails, Dispute Settlement Body appoints panel to consider case
 - Next stages consist of hearings, rebuttals, expert consultations, interim report, review, final report
 - If final report accepted becomes ruling
 - Rulings automatically adopted unless consensus to reject
 - Appeals can be made to Appellate Body which can uphold, modify, reverse panel findings
 - Non-compliance cases require compensation or retaliation in sector/other sectors
 - Cases must be decided within 15-17 months including appeals
- Dispute Settlement Body accepts/rejects panel findings/results of appeal, monitors implementation of rulings and recommendations, has power to authorize retaliation when country does not comply with ruling
- Usually cases solved at early stages of arbitration, often by mutual consultations

Examples of disputes

- US-EU beef-hormone case
 - US and Canada imposed sanctions on EU exports of various products to counter EU's ban on imports of hormone treated beef
 - Earlier ruling against EU ban by WTO panel as insufficient evidence on health risk due to growth hormones
- US-EU banana case
 - 1997 ruling against EU for giving preferential access to bananas from former colonies in Caribbean
- EU-India bed linen case
 - Appellate body ruled against India
 - India appealed ruling on technical grounds
 - EU found to be violating trade rules in calculating dumping margin, asked to suspend ADD

- Shrimp-turtle case
- US imposed ban on imports of certain shrimp and shrimp products as endangered certain species of sea turtles in US waters
- US requires shrimp trawlers to use “turtle excluder devices” in nets for fishing in such areas
- By US public law, exporting countries needed to comply with regulatory requirements regarding fishing environment and method of catching
- India, Malaysia, Pakistan, Thailand filed case against US
- WTO Appellate Body ruled against US
 - “countries have the right to take trade action to protect environment, but must use non-discriminatory criteria”
 - US found to be discriminating as gave financial and technical assistance to exporters from Caribbean and South America for using special devices
- Basic problem not addressed of non-sustainability of industrial shrimp fishing and damage to marine life
- Earlier tuna-dolphin case: import of tuna ensnared dolphins, US lost dispute

- US Byrd Amendment
 - US legislation allows revenues collected from Antidumping duties to be distributed to complainants and not go to government
 - WTO ruling found this legislation a violation
 - US asked to revoke legislation, did not comply
 - Other countries sought authorization from WTO to impose additional import duties on US products/suspend other obligations
 - WTO ruling allowed certain countries (Brazil, Canada, Chile, EU, Japan, Korea, Mexico) to retaliate against US via sanctions or higher tariffs on US products
- Possible retaliation against EU and US on agricultural subsidies with expiry of peace clause in 2004

7. Recent developments & future prospects

- Five WTO Ministerial Conferences since end of Uruguay Round
 - Singapore Ministerial (1996), Geneva Ministerial (1998), Seattle Ministerial (1999), Doha Ministerial (2001), Cancun Ministerial (2003)
 - Doha Development Round launched in 2001, ongoing
- Main issues discussed
 - Conclusion of several agreements
 - Market access and implementation concerns with UR agreement
 - Unfinished agenda of Uruguay Round
 - Introduction of new issues and widening of WTO mandate
 - Revise TRIPs to address access to essential medicines and public health concerns
 - Preventing misuse of Antidumping provisions

Post-UR agreements

Information Technology Agreement (ITA)

- Aimed at eliminating duties on all IT products
- Review of NTBs, elimination of tariffs on 4 product categories in 2005
 - Computers, Telecommunications equipment, Semi conductors and manufacturing equipment, Software and scientific instruments
- Over 800 products covering 217 tariff lines to be imported without customs duties from 2005
- Product base to be expanded later
- Commitments under ITA on MFN basis
- 36 participants accounting for 93% of world trade in IT products signatories to ITA

- Concerns ITA will hurt emerging hardware and electronic products sector, favour established companies as global IT products industry is hierarchic
 - 60% of \$1.3 trillion market for hardware production from top 25 companies

Implications for India

- ITA affects over 550 core manufacturers, 2,600 peripheral units in India
- Sales of PCs, mobile phones, telecom accessories, various consumer products to grow, unclear whether from domestic or imported sources
- Government to incur customs revenue losses from tariff elimination

- Indian IT products industry needs to integrate with global value chain and increase hardware production to benefit from ITA
 - Projected hardware production of \$30 bn by 2008 with \$10 bn/year in exports revised downward to \$15 bn for 2006-07

- India needs to:
 - Develop own design and research capabilities to supply companies around world (position as design hub, develop links between chip design and semiconductor industry)
 - Invest in strategic material development (ceramics, fine chemicals, high priority metals, fibre optics, nanomaterials, silicon)

- Diversify, expand, and upgrade production and target specific components (computer peripherals)
 - Build brand equity
 - Use contract manufacturing to get global outsourcing business in hardware
 - More process innovation to cut costs
- Government support needed:
 - patent filing
 - setting up of cluster parks
 - infrastructure development to attract large scale investment
 - set standards for new technologies

E-Commerce Agreement

- Agreement to maintain 0 duty on products cross border trade via internet
- Moratorium extended recently, but issues of jurisdiction, consumer protection, cross border payments under discussion

Financial Services Agreement

- Achieved under GATS to open up FDI participation in banking and insurance services in developing countries while allowing room for prudential regulations and safeguards for macro stability

Telecommunication Services Agreements

- Achieved under GATS to open up FDI participation and ensure transparency and pro-competitive regulation in telecom sector in developing countries
- Reference paper on regulatory principles in telecom sector

WTO mandate, Singapore issues

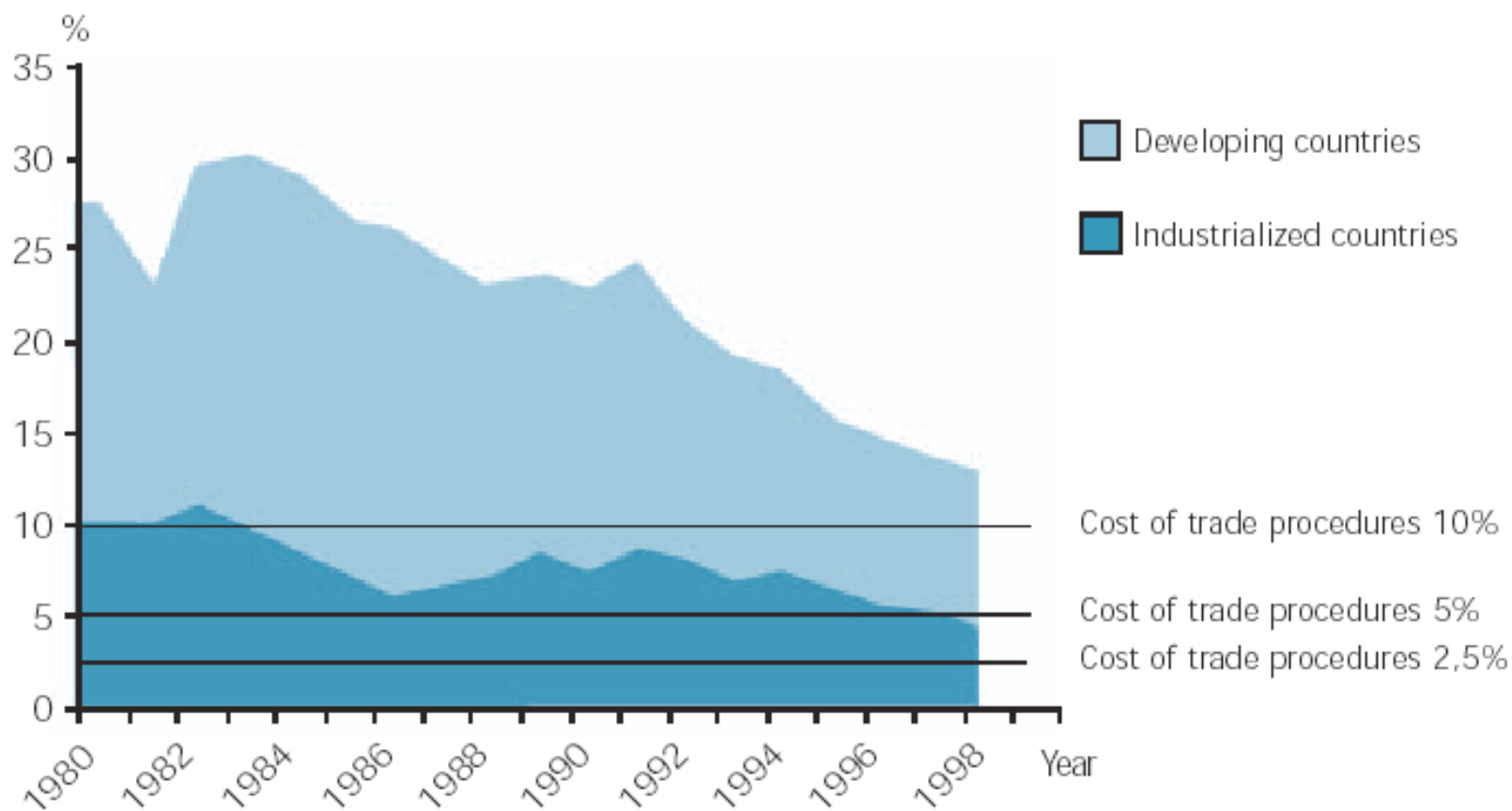
- Several new issues proposed for inclusion under WTO mandate
 - Competition policy
 - Transparency in government procurement
 - Framework on investment
 - Trade facilitation
 - Trade and Environment
 - Trade and Labour
- Developing countries have resisted wider mandate unless market access in traditional sectors improved and Uruguay Round commitments implemented
- Mandate issue resulted in failure of Seattle and Cancun Ministerials

Trade facilitation

- Simplification and harmonization of international trade procedures.
 - activities, practices and formalities involved in collecting, presenting, communicating and processing data required for trade
- Transparency
 - Publication of all border related laws, regulations, procedures and practices (Gazettes, Websites)
 - Enquiry point
 - Process for administrative and judicial review to be easily accessible.
- Simplification
 - Single window
 - Automation of customs
 - Establish, notify, reduce standard processing time for goods release

- Non-discrimination
 - Rules and procedures for trade should not discriminate between or among goods/or modes of transport, including for transit
- Consistency and predictability
 - Use existing international standards
 - Development of common data set/minimum information
- But problems of harmonization for countries at different levels of development, infrastructural and resource constraints in developing countries
- Only one of Singapore issues to be retained in Doha Development Round subject to developed countries providing technical and financial assistance for capacity building

Development of average level of tariffs contrasted to estimated costs of trade procedures



Source: The World Bank

Accession to the WTO by major players

China

- MFN status like other members
- Chinese exports to benefit from bound and predictable tariff levels and commitments on nontariff measures
- Other members to face increased competition from Chinese exports
- Trade and investment regulations in China subject to WTO obligations
- Other members to benefit from greater transparency and certainty in China's trade and investment policy and domestic regulations
- Antidumping initiations by developed and developing countries likely to increase against Chinese exports
- Could tilt negotiating power more towards developing countries
- Several other countries in accession (Russia, Saudi Arabia)

Prospects for Doha Round

- Doha Round talks collapsed at Cancun
- WTO framework agreement reached on July 31, 2004 reviving Doha Round
- Lays roadmap for modalities of negotiation in five areas
 - Agriculture
 - Nonagricultural products
 - Services
 - Trade facilitation
 - Development and trade
- Agreement is overall a positive development for India as
 - drops contentious Singapore issues
 - makes progress in agriculture
 - is sensitive to developing country concerns
- Hong Kong Ministerial in December 2005 to work out operational modalities
- New timeframe for conclusion of Doha Round is 2007/08

- Future negotiations likely to be more complex, contentious, protracted
 - Domestic and border regulations becoming increasingly difficult to distinguish with introduction of new issues
 - Domestic regulations increasingly under WTO purview
 - Wider range of interest groups being affected by the WTO
- Outcome of future talks will depend on increased market access to developed countries in traditional sectors in lieu of developing country commitments in new areas
- EU, US, Japan, and larger developing countries (China, India, South Africa, Brazil) to play a key role
- New coalitions among developing countries have emerged
- Developing countries are increasingly shaping agenda
- Failure to successfully complete this round could accelerate the move towards regionalism/bilateralism