

2004 Trade Policy Review – The United States

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1. INTRODUCTION

THE World Trade Organisation's (WTO) Trade Policy Review plays a fundamentally important role in the auditing and surveillance of national trade policies. In simplest terms a Trade Policy Review (TPR) gives WTO members an opportunity to monitor and comment on each Member's trade policies. Each TPR contains two parts: a policy statement prepared by the government under review, and a detailed report prepared independently by the WTO Secretariat. These two reports, together with the proceedings of the Trade Policy Review Body, are published after the review meeting.

Reviews are conducted on a regular, periodic basis. The largest traders like the United States, the European Union, Japan and Canada are examined every two years. The next 16 countries in terms of their share of world trade are reviewed every four years. The smaller traders and least-developed countries are reviewed every six years (or sometimes longer).

There are several objectives to the TPR. First, Member countries believe that regular monitoring increases the transparency and understanding of trade policies and practices. In turn the transparency and clarity resulting from the TPR will encourage Members to adhere to the negotiated rules and fulfil their commitments. (Whether this belief is borne out is something I will discuss below.) Second, the TPR provides Member countries with a unique opportunity to discuss and comment on other Members' trade policies. It is not that Member countries are talking trade policy that make the TPR special – one can hardly walk down the hall at the WTO without engaging in some type of policy discussion. Rather, what makes the TPR distinctive is that the policy discussion is neither directly related to a specific negotiation nor part of a specific policy dispute. In a sense, the TPR can be thought of shining a bright light on a country's trade policies and rules with the belief being that the bright light improves the quality of public and inter-governmental debate on the issues. Third, the TPR process enables a multilateral assessment of the effects of each Member's policies on the world trading system.

The TPR plays an especially important role for smaller countries. Large traders like the United States and the European Union (or OECD members more generally) hardly need the WTO to monitor what other countries are doing. Large countries have devoted considerable legal and economic resources to keeping tabs on other Members. Developing countries, on the other hand, have not made such investments and hence are likely the greatest beneficiaries of the system. In a sense, the TPR essentially solves a public good problem – WTO members would like to monitor other Members' policies but apparently few believe the private gain exceeds the private costs. WTO Members correctly realised, however, that substantial benefits accrue to the overall trading system that are not internalised by individual members.

In early 2004 the WTO concluded its seventh TPR of the United States. In many respects the United States is the 900-pound gorilla in the WTO. By virtue of its economic size the United States' macroeconomic and trade policies have a profound influence on the world trading system. Its size, its historical role in the founding and development of the GATT/WTO, and its ongoing leadership in widening the scope of the WTO also mean that US policies carry greater weight than the typical country. While the old maxim 'when the US sneezes the rest of the world catches a cold' still holds, perhaps as significant is the fact that US policies often serve as the template for those adopted by other Members. As a role model US policies and actions (whether good or bad) are often adopted by other Members. Thus, shining a bright light on US trade policies tells us more than just what the US has done, it is a strong indicator of what to expect from other Members.

This review was conducted during 2002–03, an extraordinary period for the United States. In a 12-month period the United States (i) went into a recession for the first time in more than a decade, (ii) experienced the terrorist attacks on 11 September, 2001, (iii) passed a farm Bill which increased government farm outlays by about 80 per cent, (iv) experienced a sharp fall in stock prices, (v) endured numerous corporate scandals, and (vi) initiated and (mostly) enacted the largest safeguard action in history.

Considering the magnitude of these events, the US argues that its economic performance is remarkable given the lacklustre performance of many of its trading partners. Feeble growth in foreign demand is also a main justification for US dumping and safeguard protection. The open US market is an easy dumping ground for foreign producers. The US's bulging trade deficit is partly due to the fact that the economic growth of its major trading partners is below trend. Despite the strains created by the trade deficit, the US maintains that it has largely resisted protectionist pressures and is fully committed to the multilateral trading system of the WTO.

The WTO Secretariat's report acknowledges the robustness of the US economy and the vital role the US plays in the ultimate success of the WTO. Nevertheless,

the TPR paints a less sanguine picture of US macroeconomic and trade policies. The discussion and analysis in the TPR are both highly complementary and also highly critical of the US. This criticism of the US is especially blunt at the end of the report – the final 50 pages contain a long list of frank opinions of the US's actions by Members.

In this article, I will not make any attempt to summarise all the rhetoric, tables, figures and trends included in this very comprehensive TPR. For the most part, most of the facts are widely known and are not subject to any real dispute. The US is unanimously acknowledged as having an open and transparent system. Despite the many external and internal challenges the WTO report notes that the US economy has remained amongst the world's most competitive, and has continued to support global growth by keeping its import market largely open. The TPR also emphasises that recent US macroeconomic policy has been directed, increasingly successfully, towards recovering and sustaining growth, with benefits to the global economy, including through trade transmission. The report also recognises the high level of and the continuing impressive growth in US labour productivity.

Instead, I have chosen to focus on the key policy issues that are the primary sources of tension between the US and other WTO Members: (1) US agricultural policy, (2) US contingent protection, (3) US steel safeguard action, and (4) the proliferation of regional and bilateral trade agreements. Each of the issues were relevant for the immediate 2002–03 self-study, and each are likely to have continuing implications for how the US relates to other Members.

2. KEY ISSUES

a. Issue No. 1: Agricultural Policy

The United States is among the world's largest agricultural producers and exporters. Because of its size, both as a market and as an exporter, its agricultural policies greatly influence world trade and prices. The 1996 US farm bill introduced direct and decoupled payments and moved away from the long-established price support mechanisms. Under the 1996 bill, a schedule of declining fixed payments was put in place.

In a marked U-turn, the 2002 farm bill increased loan rates for some crops and introduced a counter-cyclical payments programme for crops; both policies have production-enhancing impacts. The bill authorises increases in support for farm programme crops (wheat, feed grains, rice and cotton) when world market prices decline. These counter-cyclical payments would be additional to continued underlying support through fixed payments. This is a hugely costly bill with government expenditure authorisations totalling more than \$170 billion over ten years.

Estimates are that the 2002 payments increase total farm payments over the 1996 basis by about 80 per cent.

Not surprisingly, the US agricultural policy discussion focuses on other aspects of the bill. First, the US argues that the support package was designed to be decoupled from production, does not subsidise exports, and is considered (by the US) 'minimally market distorting'. Second, the US emphasises that the 2002 farm bill was the first US farm bill to explicitly recognise that spending had to be contained within international WTO obligations. Despite the mandate, there appears to be a significant probability that farm spending will go above WTO limits.

The divergent views on US agriculture policy reflect serious disagreement between the US and other Members. Reviewing the TPR one finds that Member countries devote dozens of pages to questions and comments on the farm bill. By contrast, the US devotes less than one page of its discussion of all agriculture policy.

There are at least three serious problems with the US's position. First, the legislation goes against the spirit of reducing farm subsidies and runs counter to the US's long-standing calls for reductions in farm support. An 80 per cent increase in farm subsidies is hardly what Members expected from a country that claims the mantle of WTO leadership and regularly demands other Members reduce their subsidy payments.

Second, the bill puts the US in the awkward position of having to defend another questionable trade policy.¹ Despite the US's insistence that the farm bill is WTO consistent, the position is tenuous at best. Certainly if a Member were to bring the policy before the DSB the US farm bill would be an extremely tough policy to defend. The US bill essentially provides price insurance to farmers. If prices are high, small payments are made; if prices fall, larger payments are given. It is hard to imagine a panel determining that such price insurance does not distort domestic production. Moreover, given the demand elasticity for agricultural products, price effects of even modest increases in production will be significant. Moreover, given that the US exports approximately 40 per cent of its corn, wheat, rice and soybean production, one would expect farmers in other countries to be affected. It should be stressed, however, that given Japan's and the EU's own agricultural entanglements it is unclear what Member(s) would challenge the US's farm policy. Poor developing countries are the most grievously affected parties but these countries rarely initiate WTO disputes; hence, the fact that many other Members also have questionable agricultural policies may spare the US farm bill from further WTO scrutiny.

Third, the US had not notified the WTO of any domestic agricultural support payments since 2000, a suspiciously long lag which creates even more doubts

¹ The US has been subject to more WTO disputes than any other WTO Member (p. xviii).

about the legality of US agricultural policy. One might argue that the holdup is simply due to bureaucratic delay, but one can only wonder if there is more to the delay. For the twelve months ending September 2000 the US reported that it provided over \$17 billion in agricultural support. The US's WTO farm support ceiling is only \$19 billion. Given the marked increase in support incorporated in the 2002 farm bill it would seemingly not take much for the US to run foul of the ceiling. Numerous countries commented on the fact that the US is precariously close to its support ceiling. Members have asked how the United States intends to monitor expenditures during each reporting period so that action, if necessary, could be taken within the reporting period to ensure that the United States complies with its annual commitment level. It is more than a little ironic that the US stresses the openness and transparency of its system but then fails to report even the fairly simple calculation of farm support payments.

b. Issue No. 2: Contingent Protection

Contingency measures are a key form of protection against imports into the United States. The active use of anti-dumping (AD) and countervailing duty (CVD) measures has likely made the unfair trade statutes the US's largest trade impediment (Galloway, Blonigen and Flynn, 1999). As measured by the number of AD filings, the US is the world's heaviest AD user (Prusa, 2005). The TPR reveals that US AD activity was fairly stable from 1980 to the late 1990s, but surged by 25 per cent over the last five years. For example, in 2001 the US initiated more AD investigations than in any year since 1992. By contrast, CVD activity has significantly lessened over time; in recent years the US initiates only a handful of cases annually.

The US's long-standing position is that trade remedies are an integral part of the current rules-based international trading system. The US does not believe the AD and CVD statutes need significant changes but only need 'clarification and improvement'. The TPR makes it clear that the US's position is not universally held. WTO Members raised a number of issues with the US's contingent protection procedures, many which related to specific cases. Overall, however, two recurring themes emerge: (i) AD imposes greater costs on foreign suppliers than the US publicly recognises, and (ii) the US refuses to amend their statutes even after the Dispute Settlement Body determines that particular provisions are WTO inconsistent.

(i) Costs

The language in the TPR seems to indicate that Members recognise that the true impact of AD/CVD protection is greater than generally acknowledged. This is a view held by most academics, but the TPR's bluntness is surprising. For one thing, the spectre of AD/CVD actions creates uncertainty for foreign suppliers.

Thus, even if a case is never initiated, foreign suppliers are intimidated by the prospect of an expensive, highly unpredictable legal proceeding. Additionally as the TPR notes, preliminary duties are almost always applied. This means that trade patterns are distorted before any serious evidence that an injurious, unfair action has occurred. The *investigation* distorts trade.² Member countries are concerned that the law is more unfair than the underlying unfair trade that it was designed to protect against.

(ii) Illegal rules and methods

Trading partners aggressively questioned the rules and methods used by the United States concerning AD and CVD investigations and measures. Perhaps the single biggest issue over which Members expressed dismay involves the US's refusal to change its AD and CVD statutes even after the WTO Dispute Settlement Body has found them to be in violation of the WTO agreement. The WTO rulings against the Anti-dumping Act of 1916 and the Continued Dumping and Subsidy Offset Act (often referred to as the Byrd Amendment) are two prime examples of the US's intransigence.

The Unfair Competition Act, better known as the Anti-Dumping Act of 1916, contained provisions pertaining to international price discrimination remedies. It allowed remedies far in excess of what is permissible under WTO rules, providing not only for criminal punishment for any violation, but also allowing any person harmed by a violation of the Act to sue for treble damages. The WTO rejected the 1916 Act more than three years before the TPR report, and yet as of the report's publication the US had still refused to repeal the law.

The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) is even a more blatant rejection of the US's WTO commitments. The Byrd Amendment introduced a system under which AD and CVD duties assessed are distributed to members of the affected US industry who supported the petition for investigation. Under the CDSOA, 'affected domestic producers' may receive a portion of the assessed AD or CVD duties to cover certain qualifying expenditures. The CDSOA defines 'affected domestic producer' as any manufacturer, producer, farmer, rancher or worker representative who was a petitioner or interested party in support of the petition with respect to which an anti-dumping duty order or a countervailing duty order has been entered; qualifying expenditures encompass most fixed and some variable costs. Allocations under the CDSOA are distributed on an annual basis.

As of the date of the TPR report CDSOA had resulted in disbursements totalling almost \$1 billion (i.e., about \$250 million per year). While disbursements thus far have been relatively modest the amounts sought are anything but humble: in 2001

² Staiger and Wolak (1994) find that about half of an AD/CVD's ultimate protection occurs when the preliminary duty is levied.

US companies filed 894 separate claims seeking in total \$1.2 trillion (Ikenson, 2004). In 2002 the number of claims jumped to 1,089 totalling \$1.4 trillion. Said differently, in 2001 and 2002 the companies seeking Byrd payouts have requested payouts close to 10 per cent of gross US domestic product. The requested payouts are so ludicrously large that one cannot help but be reminded of the US's accounting scandals over the past decade.

Moreover, none of these totals include any revenue collected in cases where the parties are still engaged in legal appeals. For instance, in the softwood lumber, a dispute that both NAFTA and WTO panels have rejected, reportedly more than \$4 billion in revenue has been collected but not yet distributed. If the US were to distribute the softwood lumber money, the Byrd dispute would rival the Foreign Sales Corporation dispute in size.

In a prominent case the European Union and ten other countries – Australia, Brazil, Canada, Chile, India, Indonesia, Japan, Mexico, South Korea and Thailand – sought consultations with the United States over the Byrd Amendment. Failing resolution, a WTO dispute settlement panel was appointed to adjudicate the matter. In late 2001 WTO Members challenged the CDSOA and in July 2001 requested the establishment of a Panel. A Panel Report was issued in September 2002; the United States appealed the case, and in January 2003 the Appellate Body affirmed the Panel's findings that the CDSOA was inconsistent with the WTO Agreement. The Appellate Body determined that the 'offsets' under the CDSOA were a non-permissible specific action against dumping or a subsidy and that they nullified or impaired benefits accruing to the complaining parties.³ The 'reasonable period of time' for implementation was determined by arbitration and expired in December 2003.

Despite the WTO decision, there appears to be little chance that the Byrd Amendment will be repealed in the near future, if ever. At first glance, the US's defiance is perplexing since it is widely acknowledged that it was only enacted by deft political manoeuvring by Senator Byrd. The CDSOA was never directly voted on but rather was slipped in an omnibus appropriations bill at the 11th hour without any debate. With such chicanery at the origin of the bill and with overwhelming foreign opposition, it would seem obvious that Congress would repeal the Act.

³ Interestingly, the Appellate Body ruled that CDSOA was not an incentive to file petitions since the AD Agreement does not speak to what an industry's motivation might be in filing a case. While this may be correct legally, it is certainly not economically. Under US law a case can only be initiated if at least 25 per cent of the domestic industry supports the case and at least 50 per cent of the domestic industry does not oppose the case (firms can declare 'no position' toward the case). Following the passage of the Byrd Amendment it is now common practice for 'sign-up' sheets to be posted on the Internet warning firms that unless they support the case they will be entitled to no Byrd payout. Does the payout matter? In the recent shrimp case it was estimated that the typical payout could be more than ten times the annual wages of an average shrimper.

Amazingly, the opposite has happened. Congress has drawn a line in the sand over this issue. The WTO decision regarding CDSOA has become the poster child for those in Washington who believe the WTO is biased against the US and overreaches by attempting to extend obligations to the US that were not explicitly negotiated. A former counsel to the Senate Finance Committee has suggested that the only way the issue will ever be resolved is if complainants adopt their own versions of the Byrd Amendment.

c. Issue No. 3: Steel Safeguard Action

Safeguard investigations are carried out under Sections 201–204 of the US Trade Act of 1974. Domestic industries seriously injured or threatened with serious injury by increased imports may petition the US International Trade Commission (USITC) for import relief. The USITC determines whether an article is being imported in such increased quantities that it is a substantial cause of serious injury, or threat thereof, to the US industry producing an article like or directly competitive with the imported article. If the USITC makes an affirmative determination, it recommends to the President relief that would address the serious injury or threat thereof, and facilitate the adjustment of the domestic industry to import competition. The President makes the final decision whether to provide relief and the form and amount of relief within 60 days from receipt of a USITC report. Since a safeguard measure requires Presidential action, an affirmative determination of injury is a necessary but not sufficient condition for its application. Because of the requirement that the President must make the final decision, safeguard actions have largely fallen out of favour – US industries have realised that the more easily granted anti-dumping protection can offer nearly the same protection as a safeguard protection.

The US initiated only one safeguard investigation since 2000 but in size, scope and resulting controversy and trade tensions that one case generated was enormous. The steel safeguard (initiated in June 2001) was the largest safeguard investigation in US history, covering more products, tariff line-items and countries than any previous case.

What made the case even more unique was the fact that it was initiated by the President. While self-initiations are possible under US law, the President has initiated a safeguard investigation only a handful of times since 1950.⁴ Another unusual aspect of the case was its scope. Typically a safeguard action involves a single, well-defined product. For instance, the four most recent safeguard cases prior to the steel safeguard case involved wheat gluten, lamb meat, steel wire rod

⁴ The move was widely interpreted as a political move. The potential political gain to the President was substantial as three key swing states, West Virginia, Ohio and Pennsylvania, are home to large steel-making facilities.

and circular welded carbon quality line pipe – all precisely specified investigations. By contrast, the steel safeguard case encompassed essentially all steel products. For perspective, the USITC organised its investigation by dividing the steel safeguard investigation into 34 separate products.

In October 2001, the USITC issued affirmative determinations of serious injury with respect to about half of the steel product categories. In March 2002, the President announced the decision to impose safeguard measures with regard to twelve steel products. The measures announced by the President consisted of tariffs ranging from 8 to 30 per cent and a tariff rate quota for steel slab. In most cases, the tariff imposed was higher than the consensus recommendation of the USITC. In an attempt to quell the domestic firestorm following the decision and in the hope of appeasing foreign governments 727 steel products (usually defined by a specific tariff line-item) affected by the measures were excluded.⁵ In March 2003 the tariff levels were adjusted downward and the tariff quota was expanded. The safeguard measures on steel products applied to all countries, except Israel and Jordan, Canada and Mexico (NAFTA partners), and most developing countries with a market share of less than three per cent for each product.

To no one's surprise, the US safeguard measures applied in March 2002 were immediately challenged at the WTO by the EU, Japan, Korea, China, Switzerland, Norway, New Zealand and Brazil; it was agreed to refer all the complaints to a single panel. The Panel Report, issued in July 2003, concluded that the safeguard measures imposed by the United States were inconsistent with the Agreement on Safeguards and GATT 1994. In particular, the United States had acted inconsistently (i) by failing to demonstrate that 'unforeseen developments' had resulted in increased imports causing serious injury to the relevant domestic producers; (ii) with respect to the facts supporting its determination of 'increased imports'; (iii) by failing to provide a reasoned and adequate explanation for most products that a 'causal link' existed between any increased imports and serious injury to the relevant domestic producers; and (iv) by failing to comply with the requirement of 'parallelism' between the imports for which the conditions for safeguard measures had been established, and the imports which were subjected to the safeguard measure. In response to the WTO decision, ongoing domestic opposition by steel consumers, and the threat of retaliatory tariffs by affected parties, the US terminated the safeguard case in November 2003.

⁵ A couple of comments are in order on the exclusion issue. First, to my knowledge the number of exclusions constitutes another record. The fact that over 700 products were ultimately excluded gives a sense of the vast scope of the action. Second, almost all of the excluded products involved very small import volume. A half a dozen exclusions accounted for approximately half of all the excluded import volume. Interestingly, these few large-volume exclusions all involved steel products that were purchased by US steel mills, not steel consumers. With the exception of products destined for use in US steel mills, no exclusions involved large volume.

There are three important lessons that can be learned from this escapade. First, when in doubt domestic politics trumps WTO commitments. Despite that the US almost surely knew its decision was inconsistent with its WTO obligations, it still enacted the safeguard measures. Why do I say that the US 'knew' its decision would be overturned by the WTO? Every US safeguard action since the completion of the Uruguay Round has been found to be inconsistent with the WTO agreement. Moreover, every reason cited by the DSB in its steel safeguard report had been cited in one (or more) prior decisions. Given this history and the direct relevance for the steel case, US policymakers could have anticipated what the WTO's decision would be.

Second, until amended it appears that the US safeguard provision is inconsistent with the WTO safeguard agreement. The dilemma is that the USITC bases its decisions on US law, not the WTO agreement. The safeguard agreement is not part of the Doha agenda; therefore, the burden for resolving the inconsistencies between the US statute and the WTO statute lies with the US Congress. Unfortunately, if Congress's intransigence over the Byrd Amendment is an indication, there is very little prospect that the US will amend its safeguard provisions. It appears that, in the long run, the WTO Members will have to negotiate directly with the US if there is a desire to have the US comply with the WTO.

Third, the time it takes for the WTO DSB to reach a final decision regarding the consistency of a safeguard action largely neutralises the effectiveness of the review. The time required for the DSB to make its decision (and for the affected country to exhaust all of its appeals) means that countries can enact measures for a period of two to three years before Members can retaliate. In the previous safeguard cases that were found inconsistent by the DSB, the US did not end the measures until more than 30 months had passed. The fact that the steel safeguard measures were ended after only 18 months was due to the sustained outcry by domestic steel users as much as it was due to the threat of retaliation; again, this suggests that domestic politics trumps WTO rules.⁶ Given that the WTO allows automatic compensation if a safeguard action remains in place for more than 36 months, safeguard cases have a practical life of only three years even without the DSB decision. Given the time required for the DSB to sanction retaliation, the WTO dispute process only slightly shortens the period of protection.

d. Issue No. 4: Regional Trade Agreements

More than any other country the United States has aggressively pursued a series of regional and bilateral initiatives to promote free trade. Over the review

⁶ If it had chosen to do so, the US could have appealed against the WTO decision and delayed foreign retaliation by another 6 to 12 months.

period the US concluded bilateral agreements with Singapore and Chile, and a regional agreement with the Central American countries of Guatemala, Honduras, El Salvador and Nicaragua (known as the Central American Free Trade Area or CAFTA).⁷ The US was also in the final stages of negotiations of bilateral agreements with Australia and Morocco and had announced its intent to negotiate six more FTAs: the US-Southern Africa Free Trade Agreement, and agreements with Thailand, Panama, Colombia, Peru and Bahrain.

The number and variety of regional and bilateral negotiations occurring simultaneously left numerous Members perplexed. If the US successfully negotiates so many FTAs, won't the end result be similar to what could have been achieved in a multilateral forum? Was the US pursuing regional and bilateral agreements at the expense of the multilateral approach favoured by the WTO. Were regional agreements diverting attention away from successfully completing the Doha Round?

The US's position reflects five principles. First, the US presumes these regional and bilateral agreements could act to accelerate and deepen multilateral liberalisation. Second, the US believes that the regional agreements create a climate for 'competitive liberalisation' and encourage countries to come to the negotiating table. Third, the US sees regional and bilateral agreements as a way to lock-in broader reform agendas among the participants. Fourth, the US emphasises that all negotiations are done in accordance with WTO rules on such agreements. Finally, the US states repeatedly that the Doha Round remains a priority in US liberalisation efforts.

It is clear that the current US embrace of regional and bilateral agreements reflects an important shift in its thinking. The Clinton administration's philosophy was that all lateral agreements, whether be multi-, uni-, tri-, plurilateral were beneficial. The current US position goes further. The current US view is that regional and bilateral agreements act as an incubator and catalyst for multilateral liberalisation. In other words, the countries with whom the US is negotiating need the regional agreement in order to prepare themselves for multilateral liberalisation. To support this view the US reminds Member countries that between 1934 and 1945, the United States entered into 32 reciprocal trade agreements, many of which had clauses that foreshadowed those currently in the GATT.

Members' comments on this issue reflect grave doubt about the ultimate effect of these agreements. Four key criticisms were expressed. First, despite US protestations to the contrary, many countries expressed concerns that negotiating and administrative resources were being distracted and diverted away from the multilateral process. Even if one assumes that the US has the capacity to

⁷ Since the TPR was published Costa Rica and the Dominican Republic have also joined CAFTA.

engage in multiple simultaneous negotiations, it is not at all clear that its bilateral and regional partners have the capacity to do so. Members are concerned about the capacity of potential partners to participate in multiple agreements. In effect, the US's embrace of bilateral and regional agreements hinder progress toward multilateral liberalisation because other countries cannot focus on Doha.

Second, there was a fear that trade and regulatory structures based on preferential agreements could hinder trade. At one level this fear could be interpreted as a standard trade diversion argument. Countries that did not belong to the free-trade arrangement would find their competitiveness *vis-à-vis* the US market lessened. But, at another level it appears that many Members believe that the asymmetry between the United States and the separate bilateral partners might lead to agreements that might liberalise less than a multilateral agreement. For example, as part of a 'grand deal' the US might liberalise its sugar sector. But as part of CAFTA, the US sees no need to surrender its sugar protection. And, once the CAFTA deal is done, CAFTA countries might be less motivated to push for liberalised sugar trade.

Third, there is also a risk that the growing number of preferential tariff schemes could greatly complicate the US trading regime. In a few years it may be impossible to calculate average tariff rates for the US. The NAFTA agreement suggests the problem. In 2002, 54 per cent of total US imports from Canada entered under the NAFTA regime, and 45 per cent entered at MFN rates. For Mexico, the import figures were 62 per cent under the NAFTA regime and 37 per cent at MFN rates. The US suggests that trade taking place outside of the NAFTA regime largely reflects zero MFN rates. Alternatively, such trade may reflect exporters availing themselves of low MFN rates rather than zero-duty NAFTA rates, if, for example, the margin of preference offered under NAFTA is not sufficiently attractive to offset the cost of complying with rules of origin requirements. In other words, many Mexican and Canadian firms opt to pay a tax rather than fill-out the necessary paperwork. The costs associated with complying with rules of origin will only increase as the number of country-specific rules of origin increase. Moreover, the greater is the trade that enters under the MFN regime, the lower is the 'cost' to the US of signing the bilateral agreement (as the primary benefit to its partners is preferential access).

Fourth, as more and more regional and bilateral agreements are signed, Members felt it was inevitable that vested interests will develop that actively discourage multilateral liberalisation. These vested interests may appear within the US but also within its regional and bilateral partner countries. For example, once a US firm has committed resources to build a production facility in Chile, that firm has a commercial interest in having other foreign competitors, say India, to continue to face higher MFN tariffs (McLaren, 1997).

3. CONCLUDING THOUGHTS

The fervent belief of WTO Members is that transparency and clarity are cornerstones of an effective trading system. The hope is that the transparency and clarity resulting from the TPR will encourage Members to adhere to the negotiated rules and fulfil their commitments.

Much of the discussion and comments regarding US trade policy over the most recent period casts doubt on whether this view is valid. The US steel safeguard action is the most obvious example of the failure of the system. Given prior WTO decisions, there could be little doubt that the steel safeguard decision was inconsistent with the US's WTO obligations. Not only did this fact not impact US decision-makers, but even in this TPR the US continues to argue that its safeguard statute is WTO consistent and that the steel safeguard decision fully complied with WTO rules.

The US intransigence with respect to repealing the Byrd Amendment is another example. More than two years have passed since the WTO DSB definitively ruled against the US and yet there is no indication that Congress has any intention of repealing the statute. The discussion in the TPR leaves no doubt that all other Members unambiguously oppose the US and, yet again, the shining light of the TPR appears to have no impact on US policies. If the experience with the Foreign Sales Corporation is any indication, it will take the imminent threat of large trade sanctions before Congress is motivated to repeal the provision.

At the end of the day, one cannot read the TPR without having a greater sense of the complexities of modern trade policy and trade policy negotiations. In most easily measured dimensions, the United States has among the world's most liberal and transparent trading systems. However, in countless less tangible dimensions, the United States gives the impression that it loves the rhetoric of free and open trade as long as one is referring to its partners. If the US is to truly be the leading advocate for free trade, it must be willing to drop its pretence that all aspects of its rules are WTO consistent.

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