



Establishing National Bodies in Botswana, Lesotho, Namibia and Swaziland (BLNS): The Experience of South Africa, Mexico, Brazil and India and Lessons for the BLNS Countries

**Submitted by:
The Services Group**

**Submitted to:
Regional Center for Southern Africa,
U.S. Agency for International Development**

March 2006

USAID Contract No.690-M-00-04-00309-00 (GS 10F-0277P)

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I. INTRODUCTION

The new 2002 Southern African Customs Union agreement indicates that each of the five member states (Botswana, Lesotho, Namibia, Swaziland, and South Africa) will establish a national trade management body.¹ Article 14 of the Agreement requires each member state to set up a National Body or institution that would: 1) receive and investigate requests for and recommend changes in tariff policies, 2) research and determine the effect of tariff changes on member states, and 3) receive assistance from the SACU Secretariat in establishing “common procedures and technical capacity to ensure effective, efficient, and transparent functioning of National Bodies.” The National Bodies must also operate independently from other domestic institutions.

South Africa has already complied with the new accord’s emphasis on establishing a national body to monitor and regulate trade. The country did so by passing the International Trade Administration Act in 2002, which laid the groundwork for the establishment of the International Trade Administration Commission (ITAC). ITAC acts as an autonomous body that is governed only by the Constitution and any Trade Policy Statements or notices issued by the Minister. In other words, ITAC’s stated function is to remain free of any prejudices when making tariff recommendations.

As the other four smaller SACU member states prepare to set up a national trade management body, it is necessary for each member state to address the question of how to do so. South Africa’s ITAC serves as a useful example, because its independent structure follows the SACU Agreement. At the same time, one can also refer to models from other countries and regions that have trade monitoring institutions. Cross-regional cases following distinct models provide insight into how the BLNS countries can set up their own National Bodies.

Three broad issues must be addressed when establishing a National Body. Firstly, the location of the institution in relation to other government institutions. Secondly, the function (i.e. objectives, interaction with other institutions, and negotiation) of the institution. Thirdly, the BLNS countries would benefit from a discussion on the process such as the time it takes between the initial submission of an application to issuing a final decision, how the decisions are implemented, the required details in the application, and the dissemination of information. In other words, it is what those seeking some form of protection for their industries have to do in order to obtain higher duties or the introduction of safeguard measures and anti-dumping duties. . Ultimately, it is necessary to consider the desired results in terms of the number of cases brought, investigations carried out, and the costs of the measures being implemented.

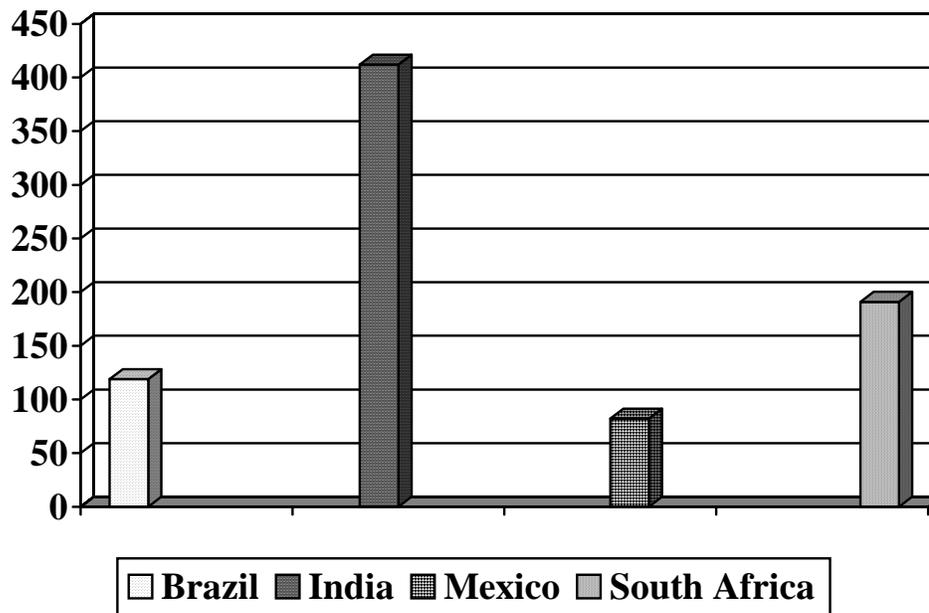
In order to set down recommendations that could be applicable to the BLNS countries, the paper includes a comparative analysis between South Africa, Mexico, Brazil, and India. Although, the paper draws examples of institutions from larger sized countries in terms of their economies, they still fit into a viable comparative analysis. South Africa adopted the autonomous model for its trade policy

¹ For the purposes of this paper, trade policy management refers to tariff and non-tariff barriers and trade remedies (i.e. anti-dumping investigations, safeguard measures, and countervailing duties).

management institution, which is independent of government influence. Mexico, Brazil and India all manage trade policy through an individual department within a government trade ministry.

Regardless of the differences between the institution in South Africa and those of the other three countries, we find that the results between South Africa, India, and Brazil are similar. South Africa, India, and Brazil all have initiated more investigations over ten year period than Mexico and rank among the top ten initiators of anti-dumping cases over a ten-year period. India ranks number 1; South Africa, 4; and Brazil, 8. Even more notable is the fact that India has the same type of institution as Brazil and Mexico yet, far surpasses South Africa, which has a different institutional set-up from the other cases, in terms of the number of anti-dumping cases that it has initiated over the last decade. (Figure 1)

Figure 1
Anti-dumping Initiations - Brazil, India, Mexico, and South Africa
(January 1, 1995 – June 30, 2005)



Source: World Trade Organization

In order to provide a more accurate analysis behind the motivation for these initiations in order to determine how the institutions work and whether or not their actions satisfy the original purpose, the paper draws upon analytical literature that discusses the institutions in the context of their political environment and political pressure from the private sector and other societal groups.

A number of models have existed throughout the history to monitor trade as the world became globalized, contracted during the post-war period, and shifted towards

globalism once again and at a fast, powerful pace.² Many developing countries have established a single authority to deal with both dumping and injury (Aggarwal 64). The focus here is on two approaches: 1) combine industry and foreign trade policy under one ministry, as in the cases of Brazil, Mexico, and India,³ and 2) to establish an independent body that is autonomous from government influence, as in the case of South Africa.

The paper is divided into four sections. The first section looks at South Africa's ITAC. The second section includes a comparative analysis of the experience in Mexico, Brazil, and India. Third, the paper discusses the current situation in the BLNS countries and offers recommendations as to how these countries can establish an institution that monitors the policies put forth in trade agreements. Finally, the paper summarizes the findings and recommendations.

II. SOUTH AFRICA AND THE INTERNATIONAL TRADE ADMINISTRATION COMMISSION

This section discusses the experience of trade policy management institutions in South Africa through examining ITAC. It notes the benefits and challenges of ITAC's structure.

SOUTH AFRICA – Managing Trade

Background

South Africa's International Trade Administration Commission replaced the Board of Tariffs and Trade (BTT) in 2003 as part of efforts by South Africa to deal with the challenges of managing trade in a more liberalized economy. The BTT was established in 1986 superseding the earlier Board of Trade and Industries. During this period South Africa pursued inward looking industrial development and developed a highly complex system of protection. Under the terms of the 1969 SACU Agreement South Africa managed the external trade policy for all the customs union members.

ITAC came into operation on June 1, 2003 and was formally launched by July 15, 2003. In contrast to the BTT, ITAC's objectives are more outwardly focused economically. The objective behind the establishment of ITAC is to foster economic growth and development in order to raise incomes and promote investment in South Africa and within SACU.

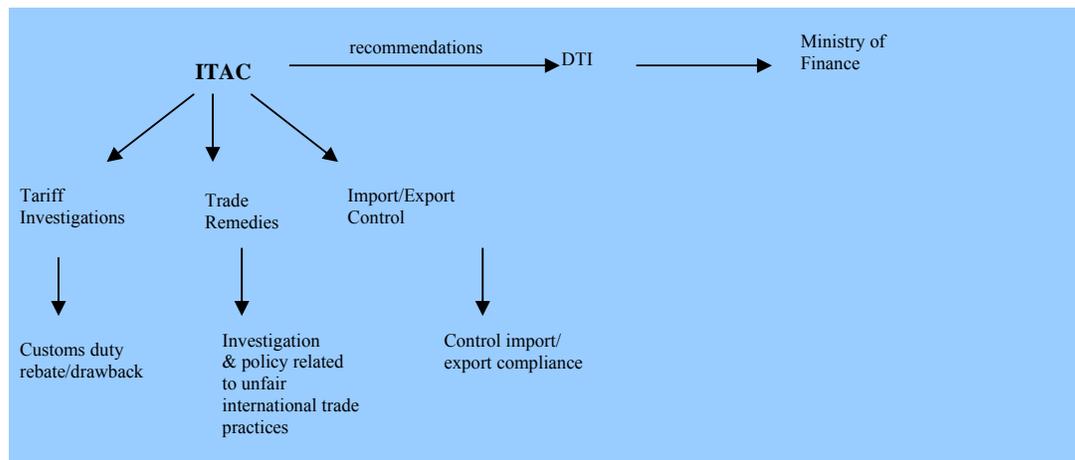
² Other approaches have included the combination of foreign and trade policy into one ministry to manage trade, leaving the authority to manage trade with the executive and legislative branch, combine foreign trade and economic policy into one ministry.

³ Many developing countries appear to adopt this particular model. Even among the BLNS countries, Botswana, Lesotho, and Namibia have done so. Swaziland, on the other hand, has combined foreign affairs and trade under one ministry.

Structure

South Africa adopted the autonomous approach to monitoring trade. The International Trade Administration Commission (ITAC), which is governed by the International Trade Administration Act, is an independent body that is subject to the South African Constitution and rule of law with the desire of maintaining impartiality (Chapter 3 Part A). Also, the 2004 revised customs tariff policy framework shapes ITAC (Fig. 2).

Figure 2
International Trade Administration Commission - Structure and Function



Source: International Trade Administration Commission

The president appoints the members of ITAC. Those members include the full-time Chief Commissioner and a full-time Deputy Chief Commissioner. The Chief Commissioner can only serve up to ten years. The Chief Commissioner has the authority to appoint any member of the commission to serve as the investigating officer. In addition, the president can nominate between two and ten individuals to serve as additional members to ITAC for a period of five years. Currently there are six part time Commissioners.

The fact that a number of the commissioners work part time for ITAC does not negatively impact the function of the institution, according to an ITAC official. "It works very well...and we sell it as a model". Having commissioners work part time in ITAC allows for them to stay in the field and remain in-touch with the actual concerns and needs of South African industries.

Furthermore, even with the autonomous structure of the institution, ITAC faces pressure from the government. This structure has the intention of eliminating such an outcome (Winters 1995; Csaba 1995). However, in the case of ITAC, the government has pushed ITAC to follow the same path of "protectionism in Turkey and the US" in response to the influx of Chinese apparel imports with the elimination of global textile and apparel quotas (Brown and Mde 2005). Government reportedly asked ITAC to impose a quota on Chinese imports for a three-year period. Potential

government influence remains an issue even with the establishment of an autonomous institution to manage trade policy.

Functions

The responsibility for making recommendations regarding tariff and non-tariff barriers and carrying out anti-dumping investigations lies with ITAC. The function of ITAC is to “monitor, review, report to the Minister on and, when appropriate, advise the Minister in respect of, any matter referred to it by the Minister that affects or might affect trade and industry” (Chapter 3 Part B 18A). The specific responsibilities assigned to ITAC include: 1) tariff investigation, 2) trade remedies, and 3) import and export control. The independent nature of the institution allows for ITAC to focus on monitoring and promoting fair trade practices.

ITAC illustrates the need for an independent institution to maintain close cooperation with government agencies when managing South Africa’s trade. The Department of Trade and Industry (DTI), which receives recommendations from ITAC based upon its findings, still sets the overall trade objectives within which ITAC functions. The DTI retains the responsibility for issuing a notice to the Government Gazette on import regulation and tariff rates upon receiving recommendations from ITAC. The Ministry of Finance actually implements the final decision by placing customs duties on imported goods. Then the South African Revenue Service (SARS) amends the appropriate Schedule to the Customs and Excise Act (1964) and collects the taxes on those relevant imports.

In addition, ITAC participates indirectly in trade negotiations. ITAC offers technical assistance to the DTI negotiators. For example, during WTO negotiations and the SACU-US Free Trade Area negotiations, ITAC provides information and advises the DTI trade negotiators (Loxton 2003). ITAC also provided technical assistance during the European Free Trade Area and Mercosur negotiations. Even the indirect contact during trade negotiations gives ITAC access and an understanding of negotiations, which becomes useful when pursuing the best policies for domestic industry.

Nevertheless, some scholars have pointed out the challenges that even ITAC faces in terms of negotiating capacity. The DTI’s International Trade and Economic Development Division, which carries out trade negotiations, remains deficient in terms of trade negotiation experience relative to its negotiating partners and in terms of staff (Draper 96). Resource constraints also make it difficult for South Africa to carry much leverage in non-regional trade negotiations (Draper 101). Inadequate resources within the DTI can have an impact on ITAC, because the DTI funds ITAC. Concerns about the DTI’s negotiating capacity illustrate the need to focus on building government capacity to also effectively carry out the requisites for trade policy management. Without strong institutional capacity at the government level for negotiations, independent institutions could face even more of a challenge of satisfying objectives during international (i.e. non-regional) negotiations.

ITAC invests in human capital in order to effectively carry out the functions outlined in the International Trade Administration Act. The organization follows the Workplace Skills Plan, which is a government educational plan emphasizing the

continuous development and improvement of all ITAC staff. The training ranges from management to inter-personal skills to specialized technical skills.

But the training of staff presents a challenge of its own. While the human resource pool may become richer, so does the need to focus on how to retain those persons in which time and money was invested over a period of time.

Process

ITAC replaced the BTT in order to create a smoother, efficient process. "A common complaint in the past had been that the ... BTT had become too staid and set in its ways, often taking too long to answer queries, grant duty rebates or change tariffs to meet the changing needs of industry and commerce," stated ITAC Chief Commissioner Nomonde Maimela (Loxton 2003). ITAC operates with the intention of offering quicker responses to the requesting parties.

But several South African government officials and industry representatives have expressed concern about ITAC's ability to create a quicker application process. Alec Erwin, who was South Africa's Trade and Industry Minister at the time,⁴ expressed skepticism about ITAC's ability to function quicker than the BTT (Loxton 2002, 2003). Also, in May 2005, President of Clothing Trade Council of South Africa (CloTrade) and Chairman of the Export Council for the Clothing Industry Jack Kipling wrote, "The application forms are complex and virtually identical to anti-dumping applications. Anyone who has been involved with such an application will know it is an extremely slow process that can take between six and nine months to effect."

All investigations and reviews handled by ITAC must be completed within 18 months after initiation. Upon the completion of an investigation ITAC makes recommendations to the SACU tariff body. The Chief Commissioner has the authority to appoint any member of the commission to serve as the investigating officer. Any person who has been affected by the decision of the Commission can also apply to a High Court for a review of the final decision. The Supreme Court of Appeal or the Constitutional Court carries out final appeals.

On the other hand, the long application process may be necessary to ensure the proper function of the trade management instrument. "Our trading regime is very open. We don't use remedies to have a protectionist regime," stated an official from ITAC. Therefore, the industries, when seeking safeguards at the global level, have to prove serious injury, according to the same ITAC official. Applications seeking in-depth information and a thorough investigation may be necessary for ITAC to demonstrate serious injury to a particular industry.

Results

Earlier ITAC statistics appear to indicate that the institution adheres to its commitment to liberalize trade through reduced tariffs and a limited number of rebates and drawbacks. "The far lower number of applications for an increase in tariffs reflects the growing responsiveness of the domestic industry to government's

⁴ Alec Erwin is currently the Minister of Public Enterprises.

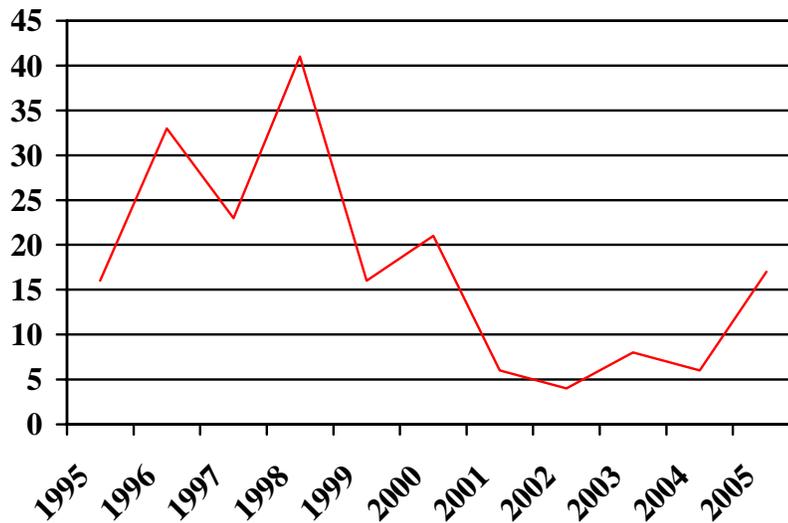
overall trade policy direction of reducing duties,” according to ITAC. ITAC received 9 applications for tariff increases in 2004/2005 compared to 19 for tariff reductions in the previous fiscal year. Furthermore, out of 25 rebate applications that were received, only 7 were accepted while 18 were rejected. ITAC cites the fact that 18 applications were rejected as evidence of their adherence to the policy that preference should be given to reducing duties rather than creating rebate provisions that tend to complicate the tariff structure. The number of anti-dumping petitions filed by South Africa dropped, according to WTO reports. In 2004, South Africa filed 6 cases compared to 33 in 1996. ITAC, as it works now, follows a WTO compliant process prior to recommending anti-dumping and countervailing measures

However, in the last year, South Africa once again increased the number of anti-dumping investigations as notified to the WTO. During the first half of the year, South Africa initiated 17 investigations compared to only 6 in 2004. The number for the first half of 2005 illustrate that South Africa even surpassed the levels ten years prior (Figure 3). “The increasing trend in anti-dumping probes in South Africa was contrary to a declining global trend,” states Business Day reporter Carli Lourens. According to Lourens, the increase shows that the government started raising protective banners to shield local manufacturing against unfair imports. South African manufacturers mainly sought protection from the United States, China, Brazil, Taiwan, Indonesia, India, and Malaysia in the areas of mirrors, sunflower seed oil, stainless steel pipes and plastics.

South Africa also ranked number four in terms of countervailing initiations between 1995 and 2004. South Africa’s 11 countervailing initiations during this period follow behind the United States, the European Community, and Canada (WTO). Thus, countervailing initiations have also been utilized to protect domestic industry in South Africa.

The concerns about requests for ITAC to impose tariffs on wheat reveal the impact that tariff barriers may have on the consumer rather than just the producer. The consumer bears many of the costs associated with unnecessary import restrictions such as expensive imports and the loss of jobs, sales, profits, and productivity (Finger 2002). Local wheat producers have asked that ITAC impose a 34.39 (35 %) percent tariff on wheat in May 2005 (Mochiko 2005; Njobeni 2005). But Premier Foods Chief Executive Ian Visser in a 2005 interview with *Business Report* maintained that, “This is immoral. It asks the consumer to provide insurance against adverse price in wheat and the rand. It is not [tariff] protection but subsidies provided by the consumer” (Mochiko 2005). In other words, consumers would pay for tariff increases on wheat through higher priced bread. It is necessary to always consider the welfare impact on the consumer when reviewing requests from producers for increase tariff protection.

Figure 3
Anti-dumping Initiations South Africa (Jan. 1, 1995 – June 30, 2005)



Source: World Trade Organization

Outside of the affect on domestic producers and consumers, ITAC's decisions also impact its trade relationship with other countries. According to the latest USTR report on South Africa's trade impediments, many U.S. companies listed the complex, uncertain tariffs imposed on their products as a deterrent to trading with the country. The antidumping measures and "excessive regulation" also served as obstacles to attracting U.S. investment (*South Africa* 427-8).

III. COMPARATIVE CASE STUDIES – Mexico, Brazil, and India

The comparative cases that will be highlighted here are: Mexico, Brazil, and India. These three countries adopted similar trade policy management models. All of these countries have combined industry and foreign trade into one ministry. Furthermore, a single authority solely focused on trade defense exists within that ministry. The authority for managing trade in Mexico lies with the Secretariat of Economy (SE), a government body, and its internal International Commerce Practice Body. The executive body implements the recommendations put forth by the SE. In Brazil, the Department of Trade Defense within the Secretariat of Foreign Trade in the Ministry of Development, Industry, and Foreign Trade monitors trade. Lastly, India's Directorate General of Anti-dumping and Allied Duties within the Ministry of Commerce and Industry carries out the function of managing trade policy. Implementation also lies with the Ministry of Finance in India. While all three have similar institutional approaches, the results of the institutions vary in terms of their ability to utilize anti-dumping and safeguard measures and act independently of protectionist pressures.

MEXICO – Managing Trade

Background

Mexico experienced a severe economic crisis during the early 1980s as the decline in world oil prices exposed the costs of its inward looking import industrialization policies. Prior to the crisis, Mexico relied on its ability to produce and sell petroleum in order to maintain a closed market economy. After the global economic crisis, Mexico had to shift away from ISI policies towards a more liberal approach to the market. But as Mexico began to open its market, it began to institute trade defense measures, which were monitored by the Secretariat of Economy and Industry (SECOFI).

Later crises threatened the ability to get congress to approve the necessary steps in the liberalization. The crises that Mexico faced at the time of its effort to open its market economy and become involved in the North American Free Trade Agreement with the United States and Canada included currency overvaluation and a recession. In response, the government applied a number of trade measures aimed at reassuring domestic producers that they will still have some form of protection in the face of increased competition from foreign manufacturers due to agreements (e.g. elimination of import licenses) under the General Agreement on Tariffs and Trade (GATT) (Gonzales and de la Torre 2, 5).

A series of institutional reforms came about in order to satisfy the goals of trade liberalization while also strengthening the trade protection institutions and mechanisms.⁵ The Undersecretary of Foreign Trade and Investment Dr. Pedro Noyola Garagori (1990-1994) are responsible for pushing for the necessary institutional reforms (Gonzales and de la Torre 5). As a result, the International Trade Practice General Bureau (DGPCI) was created in 1991 to make use of anti-dumping measures only when justified. The DGPCI also had to ensure that antidumping instruments did not hinder Mexico's move towards liberalized trade. The International Commerce Practice Body (UPCI) replaced the DGPCI in 1993 as Mexico was still involved in the NAFTA negotiations.

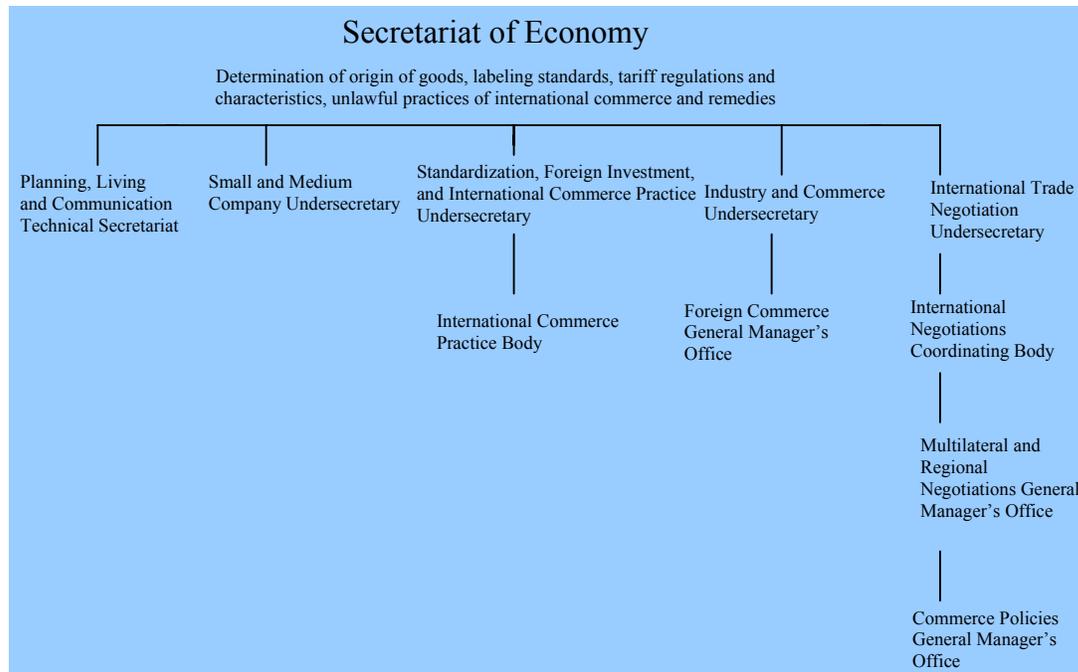
SECOFI was transformed into the Secretariat of Economy (SE) in 2000, essentially this rolled in the UPCI, which focuses on trade remedy. Trade remedy under SECOFI was weak, because anti-dumping proceedings were initiated across various departments that included numerous other activities (Gonzalez and de la Torre 21). SECOFI is not exclusively focused on trade remedies.

⁵ It is important to note that legal reforms also took place at this time. Since the focus of the paper is on institutions, the institutional reforms will be discussed in detail. But, anti-dumping measures go as far back as 1986. In January 1986, eight months before Mexico actually joined GATT, the first anti-dumping legislation was enacted (Law Regulating Article 131 of the Political Constitution of the United Mexican States on Matters of Foreign Trade). In November 1986, regulations against unfair trade practices went into effect. And, in 1987, the first request for anti-dumping proceeding was filed regarding the import of caustic soda from the United States and the issue of exchange control. This was case was handled by the General Trade Bureau under SECOFI. (Please see Gonzales and de la Torre (9-11, 20-1) for more on these cases and the early agencies).

Structure

Mexico's trade policy management is run at the government level through the SE.⁶ Specific responsibility for trade policy management within the SE lies with the UPCI. This entity is among other foci within the SE including international trade negotiations. In other words, the agency focusing on trade policy management is not a separate entity that is independent of the government as encouraged by the 2002 SACU Agreement. The Organigram of the Secretariat of Economy is shown below.

Figure. 4
Secretariat of Economy (excludes non-trade related functions & administrative offices)



Source: Secretariat of Economy

The UPCI started with a large staff pool focused on the area of trade remedy mechanisms. Unlike the DGPCI, which started off with 18 staff members, the UPCI began with a staff of 120 qualified professionals (Gonzalez and de la Torre 22). In addition, the operational and support positions were minimized and the field management areas had been greatly enlarged. The UPCI "became the administrative unit with the largest qualified staff, outperforming any other department of the Secretariat in terms of both personnel and budget allocation" (Gonzalez and de la Torre 22). The larger sized, qualified staff makes it possible for the UPCI to carry out its role in conformity with the GATT and WTO. The resources

⁶ The SE was formerly known as the Secretariat of Commerce and Industrial Development (SECOFI). Thus, it is referred to as SECOFI in the 1993 Mexican Foreign Trade Law.

expended on establishing anti-dumping and safeguards may be interpreted as indicating the importance that government attached to using contingent protection to protect Mexican industry while external MFN and preferential tariffs were reduced.

Functions

The SE handles safeguards, dumping measures, rules of origin, and other forms of trade remedies as laid out in the 1993 Mexican Foreign Trade Law.⁷ The SE performs these functions by receiving applications claiming injury to an industry, carrying out investigations and making recommendations to the Mexican executive branch. In addition to trade remedies, the SE determines the official norms that the customs authorities have to follow as soon as products enter the Mexican market. All of the decisions of the SE are published in the Federation Official Daily (Foreign Trade Law: Chapt 2 Art 23-4; Chapt 2 Sect. 3 Art. 26).

The UPCI determines dumping margins, injury and potential injury to an industry, and examines antidumping and countervailing duty rates. The UPCI also acts as a technical advisory unit, provides assistance in drafting amendments to the Foreign Trade Act, support SECOFI's determinations before dispute settlement bodies, and provide legal and technical assistance to Mexican exporters who are facing an investigation in a foreign country for unfair practices or safeguard measures.

The executive branch and several Auxiliary Commissions also play a significant role in trade policy management. Upon the recommendation of the SE, the executive branch implements the reduction/increase of tariffs or restricts imports and exports when necessary. The changes in tariff rates are published in the Federal Official Daily. The executive branch also receives the authority to alter tariff rates on exports and imports from the Mexican Constitution.

The Executive will be enabled by the Congress of the Union to increase, reduce, or remove tariffs of exports and imports, made by the Congress, and to create others, as well as to restrict and prohibit imports, exports, and the transit of products, articles, and goods when it is considered urgent, to the end of regulating exterior commerce, the economy of the country, the stability of national production or to attain any other objective for the good of the country (Art. 131).

The Auxiliary Commissions serves as a consultative body for agencies and entities of the Mexican Federal Government. It does so by presenting an opinion on foreign trade matters and conducting public hearings pertaining to foreign trade matters (Table 1).

⁷ The law can be accessed at: <http://www.economia.gob.mx/pics/p/p1376/L33.pdf>. Note: Mexican Congress approved a revised Foreign Trade Law in December 2002. The new law allows for more flexibility and authorities to apply anti-dumping measures much more quickly. The ministry can also function without the request of the affected party.

Table 1
Functions – Executive, SE, Auxiliary Commissions

Executive	SE/UPCI	Auxiliary Commissions
<ul style="list-style-type: none"> • Set tariff rates • Increase/reduce tariffs • Restrict imports/exports • Conduct international trade negotiations • Coordinate the promotion of foreign trade 	<ul style="list-style-type: none"> • Recommend tariff changes to the executive branch • Safeguard investigations • Research and modify regulation measures • Set rules of origin • Resolve trade disputes international trade • Advise Mexican exporters subject to foreign investigations 	<ul style="list-style-type: none"> • Submit opinion on trade measures • Review trade regulation measures

Some have maintained that a national trade body that consists of both industry and trade will result in the appearance of “anti-trade compromises” (Winters 32).

Process

The process begins with a national manufacturer submitting a formal request provided that the manufacturers’ items account for more than 25 percent of national production. The SE announces the start of the investigation and requests evidence of injury from the manufacturer(s) in the Federation Official Daily within 30 workdays. The requesting party will have another 30 workdays to present the necessary documents and arguments for trade remedy. The SE will make a preliminary resolution. If the manufacturers desire a different result, they are allowed another 30 workdays to make a stronger case. Upon the second presentation of evidence, the SE submits a final resolution thus, closing the investigation.

The investigation phase requires the ability to research, gather data, and conduct sound analysis. For example, investigators must present price references of the articles under investigation, which can be obtained through price lists, marketing studies, and import statistics among other sources. When analyzing harm to the national industry due to imported goods, investigators have to look at: the similarity of products, international market analysis, domestic market analysis, effects on prices, effects on the national production, and other harmful factors.

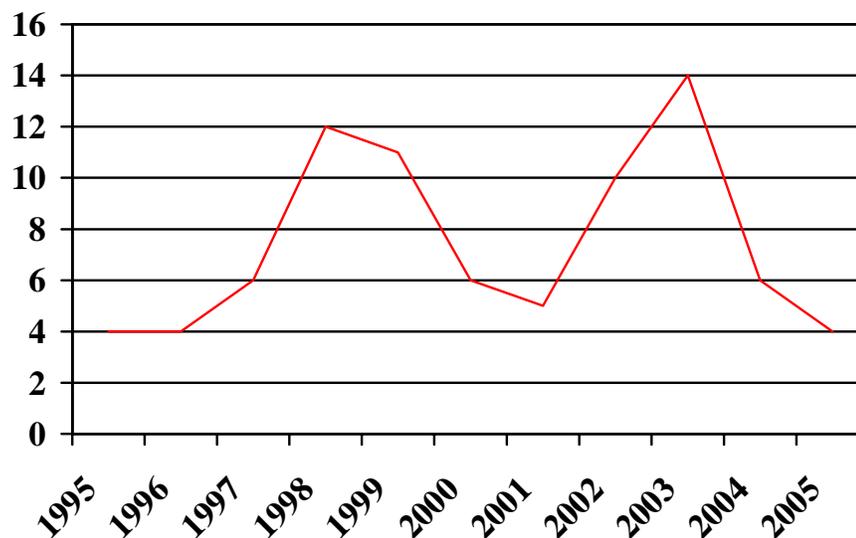
Results

Whereas Mexico has initiated a number of anti-dumping investigations before the WTO, one in-depth study on Mexico’s institutions and trade remedy mechanisms illustrates that the number of measures dropped once the instruments proved

adequate in protecting industries when necessary (Gonzalez and de la Torre 2005). In other words, protectionist interests did not carry dominant clout in the government decisions on trade remedy. This is due to the fact that; 1) while the government ensured industry protection in extraordinary circumstances, the government also expected the private sector to act in order to become more competitive in the international market and 2) government officials acknowledged the negative impact that the abuse of trade remedy instruments may have on capital and intermediate goods (Gonzalez and de la Torre 2005).

Data from the WTO reveals Mexico's commitment to use anti-dumping, safeguard and countervailing measures sparingly. For example, the WTO reported only 4 anti-dumping initiations in 1995 and 6 in 2004. The most anti-dumping initiations by Mexico were in 2003 at 14. Between 1995 and 2004, Mexico reportedly made 78 anti-dumping initiations (Figure 5).

Figure 5
Antidumping Initiations Mexico – Jan. 1, 1995 – June 30, 2005



Source: World Trade Organization

In addition, Mexico only had one safeguard initiation between 1995 and the first half of 2005. Finally, the WTO only reported that Mexico had two countervailing initiations between 1995 and the first half of 2005.

The SE has proven effective in obtaining improved market access for the textile and apparel industries that were concerned about the negative impact that they expected to follow the January 1, 2005 elimination of quotas on global textile and apparel trade. The National Chamber of Textile Industry (CANAINTEX) President Rosendo Vallés Costas mentioned in an interview with Mexican national newspaper *La Jornada* that the efforts of the SE have produced positive results for the industry. Many textile and apparel manufacturers expressed concern about being displaced by Chinese exports to the U.S. despite the benefits gained under the North American

Free Trade Agreement (NAFTA) (Posada Garcia 2004). One measure that the SE adopted in order to manage competition from China was the institution of the cumulation initiative, which allowed for the cumulation of Mexican textiles with that of Central America, the Caribbean region, and the Andean Pact countries. This helped the Mexican textile manufacturers gain access to other markets within the region and expand their export base. This is even more significant with the recently signed Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), which helps Mexican textile producers as they send those items that are of limited supply to Central America that, in turn, uses the material for garments that are then exported to the United States under preferential access (Luz González 2005).

In other cases, where the SE has recommended a more open market the industry lobby groups have been very critical. For example, in Aug. 2005, the SE allowed Mexico to import U.S. registered vehicles known as *chocolates* to enter the country provided that they are between 10 and 15 years old. Numerous *chocolates* had been introduced illegally to Mexico throughout the 1990s. Sector representatives were opposed to the decision on the basis and asserted that it would impact on employment, reduce competitiveness, and allow for the entry of contraband.

BRAZIL – Managing Trade

Background

By the early 1990s, Brazil instituted a number of trade reforms that resulted in a period of economic growth. The new economic model for Brazil included a deep cut in tariff rates from over 20 percent down to about 13 percent (WTO 1996, 2). Brazil also reformed its laws and drastically reduced the number of state owned enterprises as part of a broader move to a more open economy. .

Brazil set up new institutional mechanisms to monitor trade. The Department of Foreign Trade (CACEX) watched as its heavy influence over foreign trade policy dwindled in a more liberal economy. CACEX's main goal was to protect domestic industry from foreign competition through the control of imports. Under the restructuring during President Fernando Collor de Mello's administration, CACEX later became known as the Trade Exchange Technical Coordination (CTIC) but maintained the same functions (Kume and Guida 107). The diminished role of CACEX demonstrated Brazil's move to open its economy.

Brazil's shift towards a more liberal economy also includes measures aimed at assisting domestic industries to survive in the global market. As a result, several institutions were set up to carry out this function. In October 1993, President Itamar Franco established the Ministry of Industry, Trade, and Tourism (MICT).⁸ The Foreign Trade Secretariat (SECEX), which remains responsible for carrying out investigations and recommending the use of specific measures for those industries threatened by foreign competition, functioned under MICT. In 1995, President Fernando Henrique Cardoso created the Department of Commercial Defense

⁸ This ministry no longer exists. Currently, SECEX functions under the Ministry of Development, Industry, and Commerce (MDIC).

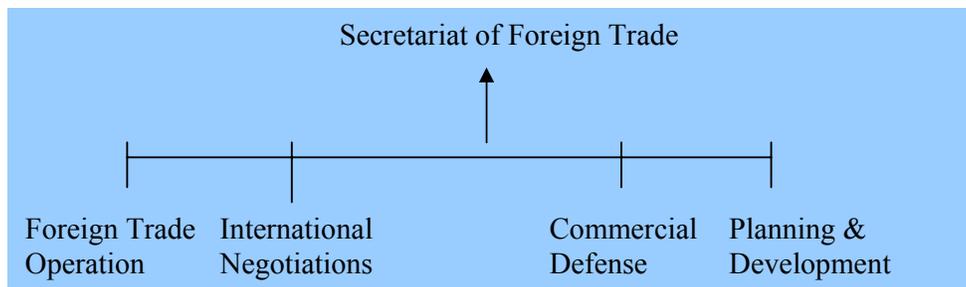
(DECOM), along with other departments,⁹ to implement antidumping proceedings under SECEX.

The institutional mechanisms for trade defense resulted in the increased use of trade remedy measures (i.e. anti-dumping, countervailing and safeguard measures) by the mid-1990s. Although institutional reforms revealed Brazil's move away from a closed market economy, the acts carried out by the Ministry of Finance and the MICT showed a different ideology. SECEX approved decisions by the Tariff Technical Department (DTT) and submitted its consent to the Ministry of Finance for final consideration and approval. But the Ministry of Finance used tariff policy as a way of stabilizing domestic prices (Kume and Guida 108). In addition, the MICT maintained a protectionist stance and thus, would seek ways to offer higher levels of protection to domestic manufacturers (Kume and Guida 108). The collaboration between the Ministry of Finance, MICT and its internal organizations (i.e. SECEX and DECOM) on trade defense created room for those seeking to protect import substituting industries from external competition to reintroduce high levels of protection.

Structure

Brazil's trade policy management model includes an institution within an overall government agency with the primary function of managing trade. SECEX is situated within the Ministry of Development, Industry, and Foreign Trade. The Minister of Development, Industry, and Foreign Trade, five other ministers, and the President of the Central Bank head up SECEX. The Department of Commercial Defense (DECOM), which is within SECEX, focuses on carrying out investigations regarding the need for countervailing duties, anti-dumping measures, and safeguard measures (Figure 6).

Figure 6
Secretariat of Foreign Trade (SECEX)



Source: Ministry of Development, Industry, and Foreign Trade

Following the establishment of DECOM the number of trade defense initiations increased to such an extent that it placed a strain on its limited resources. In 1995, there were 5 antidumping initiations notified to the WTO the following year the number of antidumping initiations increased to 18. The limited number of staff and

⁹ The other departments include: Foreign Trade Department (DECEX), Department of International Negotiations (DEINTER), and the Department of Foreign Trade Policy (DEPOC).

financial resources to handle the increasing number of requests makes it difficult for SECEX to carry out its duties to the fullest extent. As a result, DECOM cannot always visit the exporting firms to determine domestic and export prices and must rely on the data presented by the firms and price information that is available in particular journals (Kume and Guida 110, 127).

Functions

Based on information provided by the Ministry of Development, Industry and Foreign Trade, SECEX's functions include implementing the commercial defense mechanism. While SECEX implements the policies, one of its departments – DECOM – receives requests from Brazilian exporters seeking anti-dumping or safeguard measures and those whose products are being investigated in foreign markets. DECOM carries out an investigation to determine real evidence of injury to a particular industry. Overall, trade policy management lies with a department and an official body within the trade ministry.

An efficient customs authority is necessary for SECEX to carry out its objectives. But U.S. exporters have expressed concern about the obstacles that Brazilian customs authorities pose to trade with and investment from the United States.

Under Brazilian customs regulations, a “grayline” process exists for enhanced scrutiny of suspected fraudulent imports. This process is opaque and burdens some categories of U.S. exports (*Brazil 20*).

In addition, U.S. exporters have complained about the inability to find out which products require import licenses before they export to the country (*Brazil 20*) and Brazil has been encouraged to increase the transparency of its customs regulations.

SECEX exemplifies the importance of maintaining up-to-date computerized systems in order to keep accurate data. In 1997, SECEX implemented the Foreign Trade Integrated System (SISCOMEX) in order to track imports of those products that require import licenses. Domestic importers have access to the system, whereas foreign exporters do not (*Brazil 20*). Also, Brazilian tax authorities can access SISCOMEX for the import operation of Brazilian companies. Investing in SISCOMEX significantly reduced the amount of paperwork required to import into Brazil, according to the private sector consulting firm Candex do Brasil LLC.

DECOM has played an advisory role in international negotiations and has helped in coordinating the Brazilian position on the issue of trade regulation. DECOM carried out these functions in negotiations with its Mercosur partners (Argentina, Paraguay, and Uruguay), the Free Trade Area of the Americas (FTAA), and during WTO negotiations. Direct participation in foreign trade negotiations comes from another department within SECEX – Department of International Negotiations (DEINT). According to the WTO, Brazil has actively pursued the need to identify those areas in the Agreements on Anti-dumping and Subsidies and Countervailing Measures that need to be clarified and enhanced. Experience in trade negotiations becomes important as countries seek to protect domestic industries from what they perceive as unfair trade practices.

Process

In 2003, the commercial defense mechanism was reformed with the aim of increasing efficiency, simplicity and transparency. Exporters seeking anti-dumping or safeguard measures fill out a form, which is also available electronically, to request an inquiry from DECOM. According to information provided by the MDIC, this hastens the time it takes to open up an inquiry. Also, the forms do not require extensive information and evidence at the outset in order to satisfy the goal of having simpler requirements. Once DECOM decides if the cases are worth pursuing, it will ask for evidence from the requesting party. The reforms sought to reduce the time to consider the application to less than 120 days, which was the usual maximum time. The 2003 reforms also aimed to reduce the time of the investigation to less than the original 10-month period. The process of improving the trade policy management institution has involved simplifying applications and trying to push for faster response and investigation times.

There has been a focus on analytical studies related to the impact of imports on the domestic market. The MDIC encouraged sectoral studies that would analyze import performance and the effect that it has on a number of industries. Such evaluations would allow the government to have a clear sense of the influence that imports have on specific industries and thus, reduce the use of the commercial defense mechanism without even a threat of serious damage (MDIC). The studies would also be used to comprehend the effectiveness of the commercial defense instruments and its use of resources. The capacity to conduct research and analyses may contribute towards the use of less distorting measures to regulate trade, however, in accordance with its mandate the agency defines anti-dumping in accordance with the WTO.

According to Brazilian law (1995),¹⁰ anti-dumping duties are temporary. Provisional duties remain in force for a maximum of 120 days; anti-dumping duties, 180 days; and definitive duties, 5 years. The Secretariat of the Federal Prescription (SRF) of the Treasury Department) is responsible for collecting duties. Exporters seeking an extension of the provisional and anti-dumping duties for up to 6 months have to present a formal request to SECEX 30 days prior the application of the duties.

Results

The WTO reported in 2000 that Brazil actively used non-tariff barriers, especially anti-dumping. Forty-six anti-dumping measures had gone in effect at the time of the WTO Trade Policy Review (TPR). More than 72 anti-dumping investigations took place between 1996 and 1999. Brazil also applied a safeguard measure to assist domestic textile and clothing producers during the transitional period until the elimination of textile and apparel quotas. One could maintain the institution is functioning in that it is carrying out a number of investigations.

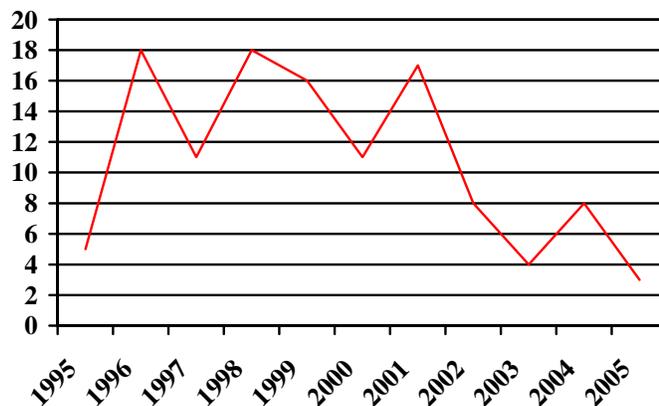
According to the WTO, between 1988 and 2002, Brazil initiated 182 investigations. Over 40 percent of those investigations, or 77 cases failed to result in the application of duties.

¹⁰ For more on the Brazilian law, please see Provisional Measure No. 926 of March 1, 1995 – Law N° 9.019/95.

Brazil has applied countervailing duties on a number of products in an effort to promote the use of inputs for Brazilian exports (*Brazil 24*). The Brazilian government would subsidize imports that were utilized for the production of goods for export and material that was imported and used in the manufacture of exported goods. A 2004 USTR reports points out that these countervailing duties satisfied U.S. law. Trade policy management can be used in order to further liberalize trade rather than serve as a protectionist barrier to trade.

Brazil's number of cases illustrates that the antidumping measures were used frequently during the mid-1990s. Brazil ranked the eighth highest country that imposed antidumping measures between January 1, 1995 and Jan.-June, 2005. It followed behind, India, the United States, the European Union, Argentina, South Africa, Australia and Canada with a total of 119 cases (WTO). Brazil's initiations before the WTO increased from 5 in 1995 to 18 in 1996. Figure 7 shows the trend over the past ten years.

Figure 7
Anti-dumping Initiations Brazil (Jan. 1, 1995 – June 30, 2005)



Source: World Trade Organization

In contrast to the use of anti-dumping measures the numbers initiations for safeguard and countervailing duty was low. Brazil initiated two safeguard measures between 1995 and 2004 (1 in 1996 and 1 in 2001). Only two countervailing duties initiations were presented before the WTO during the same period, in 2001 and 2003.

INDIA – Managing Trade Policy

Background

India's current trade management institution was established in the late 1990s following the establishment of the WTO. The formal set up of the Directorate General of Anti-dumping and Allied Duties (DGAD) was established April 1998. During the

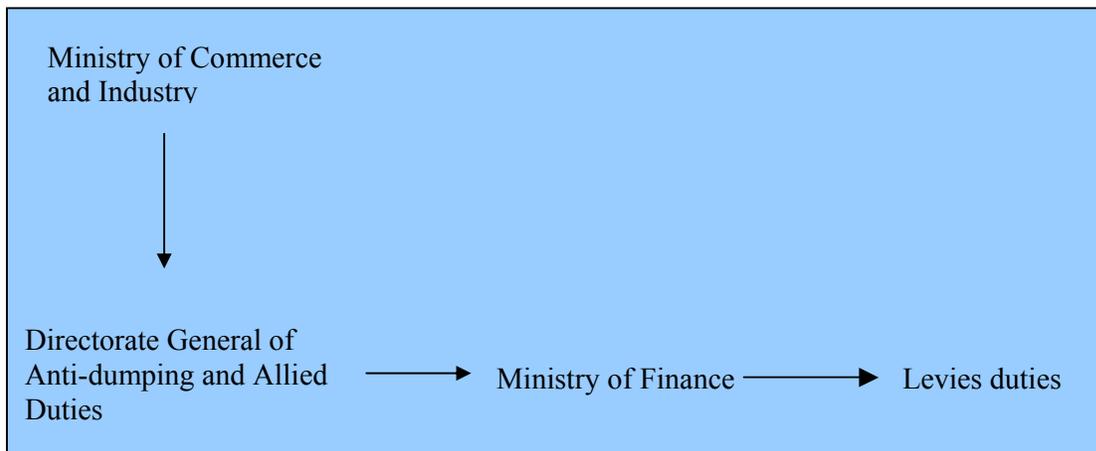
GATT years India has made use of trade remedy through legal instruments, introducing national legislation on anti-dumping 1985. and initiating the first anti-dumping case in 1992.

Structure

The responsibility for trade remedy lies with a single department with the Ministry of Commerce and Industry (MOCI) – DGAD. The DGAD conducts dumping and countervailing duties investigations and then makes recommendations to the government. The DGAD consists of a senior level joint secretary and a director. The directorate also includes four investigating officers and four costing officers. In addition, there is a section under the DGAD that is head by a section officer who deals with the monitoring and coordination of the functioning of DGAD. MOCI is able to define and set trade policy and carry out investigations because of the internal specialized department that focuses on dumping.

India’s measures for anti-dumping and subsidies are governed by the Customs Tariff Rules. Several Customs Tariff Rules became national legislation. The 1975 rule was amended in 1995 and the rule of 1985 was amended in 2003. The current legal framework complies with the WTO Agreement on Anti-dumping and Agreement on Subsidies and Countervailing Measures. India’s trade management body is shaped by a customs policy that remains WTO compliant (Figure 8).

Figure 8
Ministry of Commerce and Industry Structure



Source: Ministry of Commerce and Industry of India

Functions

The specific function of the DGAD is laid out in the nation’s Anti-dumping Rules. The DGAD must “conduct the anti-dumping and anti-subsidy/countervailing duty investigations and make recommendations to the Central Government for imposition of anti-dumping or countervailing measures where appropriate,” as stated in the

2003-2004 DGAD Annual Report (n.p.; ch. 2). The DGAD's role, as in the other cases, is to conduct investigations and make recommendations to the government.

Responsibility for implementing anti-dumping measures lies with the Ministry of Finance. Upon receiving a Notification from DGAD, the Ministry of Finance levies and collects the duties. A requesting party may appeal the decisions made before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and to the Supreme Court of India if necessary. DGAD cooperates with other ministerial and judicial bodies that play an important role in trade policy management, including appealing a final decision.

However, the USTR reported that many U.S. companies seeking to invest in India expressed their concern about India's weak judicial system. "With little or no fear of government action and with a clogged court system where cases linger for years, Indian firms face few if any disincentives to engaging in anticompetitive business practices" (*India* 273). Regardless of the institutional mechanism to promote fair trade practices among both Indian exporters and foreign importers, many Indian businesses continue to engage in unfair trade practices themselves. As a result, the Indian Parliament approved legislation in 2002 allowing for the creation of a new regulatory authority, the Competition Commission of India (CCI) that would monitor unfair practices and ensure the promotion of competition. According to the USTR, the CCI still has not gone in effect because of the ongoing dispute about the management of the new body and its relationship with the legal system (274).

The Directorate General of Foreign Trade (DGFT), the Export Promotion Councils (EPCs) and the Administrative Ministries keep track of the antidumping cases against local exporters. As the number of cases continues to increase this raises the question as to whether or not the DGAD should also be the central authority for investigations initiated against Indian exporters.

Process

Representatives from domestic industries are eligible to submit an application to the Designated Authority in the Department of Commerce. Such producers are required to account for more than 25 percent of total domestic production of the items of concern in order to file for a petition to be taken into account by the Designated Authority. Within a year of the initial filing for an investigation, the Designated Authority should complete the investigation process. At the same time, the Central Government may grant a six-month extension. And within three months of the final recommendation, the Ministry of Finance must impose a duty on the products in question.

The procedures involved in managing trade in India have raised concerns among exporters, especially U.S. companies. One aspect of the process that has been an issue is the application of national laws and regulations. Some companies that have allegedly been affected by the inconsistent legal structure are: cable television content providers of programming subject to conditional access system rules, pesticide producers whose products have been prohibited at the state level while approved at the national level, and producers of distilled spirits who encounter variations in state level taxes even when the national government has issued a

decree to harmonize state level taxes (*India* 2005). According to USTR reports, India faces the challenge of implementing laws and regulation promoting a competitive trading environment.

The emphasis on the judicial system in terms of effecting foreign investment spills over into the trade management arena. The Customs, Excise and Global (Control) Appellate Tribunal (CEGAT) handles appeals. Furthermore, U.S. companies allege that India has “continued to apply its antidumping law over the past year,” which serves as a trade barrier instead of ensuring a competitive trading regime (*India* 274). The USTR reported in 2005 that U.S. companies continue to meet with Indian anti-dumping administrators for clarification of India’s trade remedies laws, which they have found to be quite opaque.

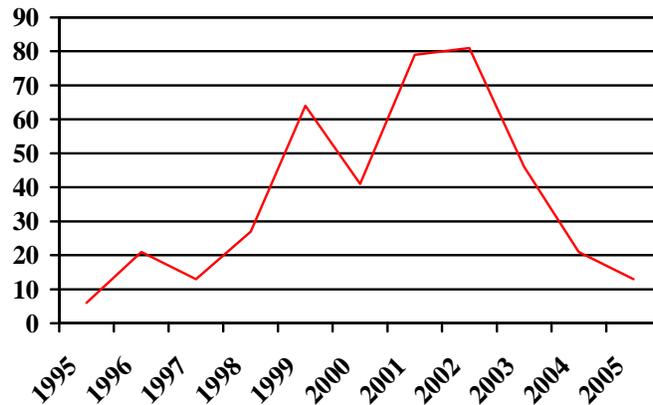
Moreover, the DGAD remains committed in its efforts to make information about its trade remedy laws transparent both domestically and internationally readily available. For example, the DGAD has held interactive seminars and workshops in order to distribute information to the various chambers of commerce and industry, academic and research institutions, manufacturers’ associations, and training institutions among others. The DGAD also places the Customs Tariff Rules, its in-depth annual reports, and statistics on the number of cases brought before the WTO on the official department website, <http://commerce.nic.in>. Researcher Aradhna Aggarwal points out that even though the DGAD provides guidelines on legal provisions on anti-dumping legislation, it lacks information on the technical and procedural aspects (64).

Results

Over the past decade India imposed the most anti-dumping measures out of 38 reporting members including Brazil, Mexico, and South Africa. It far surpassed other countries with a total of 412 initiations during this time frame. According to WTO data, India reported the most initiations in 2002 with 81 cases. During this period, India did not impose any countervailing measures. The increase in such measures during this time frame is possibly the result of the removal of quotas and the reduction of tariffs by developing countries (*Annual Report* n.p.; ch. 1).

Recently there has been a decline in the number of accepted applications; this may illustrate the government’s commitment to a more liberal trade policy. From 2002-2003, 30 applications were approved for an investigation. But during the 2003-2004 year, the DGAD collected 35 applications from domestic manufacturers and only approved 14 for the investigation process after much examination (*Annual Report* n.p.; ch. 3). The DGAD denied 8 applications because of insufficient evidence and documentation. The other 13 applications were still under review at the time of the publication of the DGAD’s 2003-2004 Annual Report (n.p.; ch. 3). Furthermore, WTO data shows a 75 percent decline in the initiation of anti-dumping cases from 2002 to 2004 (Figure 9).

Figure 9
Anti-dumping Initiations by India Jan. 1, 1995 – June 30, 2005



Source: World Trade Organization

India made minimal use of safeguard and countervailing measures. According to the WTO, India only initiated one safeguard case between 1995 and the first half of 2005. The WTO did not report countervailing initiations from India between 1995 and 2004.

IV. ESTABLISHING NATIONAL BODIES IN THE BLNS COUNTRIES

The BLNS countries divergent levels of development will impact on their capacity to set up a National Body and participate more effectively in the operation of SACU. The substantial asymmetry in size between South Africa and the BLNS presents a unique challenge in developing national level institutions to support a regional administration (Table 2).

Table 2: SACU countries' economies (2004)

Countries	Population (million)	GDP (\$ billion)	GDP growth (%)
Botswana	1.7	8.7	4.6
Lesotho	1.8	1.4	3.0
Namibia	2.0	5.5	4.2
South Africa	45.6	212.8	3.7
Swaziland	1.1	2.4	2.1
SACU total	52.2	230.8	17.6

Source: World Bank

Unlike South Africa's relatively diversified economy, the BLNS countries all have a narrow economic base with their economies being largely dependent on one or two sectors. For example, Botswana relies heavily on diamonds, which constituted 85 percent of its total exports in 2001. Lesotho has become dependent on apparel, in

Swaziland sugar production and sugar using industries account for approximately one fifth of GDP and in Namibia mining, fisheries and beef are key sectors.

The revised SACU Agreement makes efforts to create new democratic institutions that normalize trade relations between the BLNS countries and South Africa, However, for this to work effectively it will be necessary for the BLNS to augment their capacity to participate in external tariff decisions through the creation of effective National Bodies that are capable of representing their national economic interests.

This section explores the capacity of the BLNS countries to set up National Bodies. The recommendations outlined in the paper are drawn from the experiences in South Africa, Mexico, Brazil and India.

BLNS – Managing Trade

Background

The BLNS countries currently have institutions that deals with trade issues overall, not necessarily trade defense alone. For example, Botswana’s Department of International Trade within the Ministry of Trade and Industry is responsible for bilateral, regional, and international trade matters, foreign trade policy formulation, trade negotiations, and the implementation of trade agreements. Lesotho’s Ministry of Trade and Industry, Cooperatives, and Marketing handles industrial, agribusiness, and commercial development. In Namibia, the Directorate of International Trade within the Ministry of Trade and Industry promotes trade, regulates external trade, and implements trade agreements. Finally, Swaziland has a trade promotion unit within an international trade department, which is within the Ministry of Foreign Affairs and Trade that promotes international trade, formulates trade policy, and informs exporters about the trading environment.

Structure

The BLNS countries are required to set up National Bodies that are independent of government management and influence, as did South Africa. But there are numerous matters to take into consideration as these countries seek to establish a National Body (Table 3)

Table 3
Structure of National Trade Institutions - Issues and Recommendations

Issues	Recommendations
Government influence	<ul style="list-style-type: none"> • Lay out specific roles and functions of agencies involved in trade policy in a legislative act and trade regulation law • Include the interaction between government and the National Body on individual issues such as discriminatory prices, subsidies, compensatory quotas, and safeguard measures in legislative act or trade law
Retention of well-trained staff	<ul style="list-style-type: none"> • Link incentive structures to comparable institutions to reduce staff turnover • Study staff culture to understand motivation through conducting regular reviews • Allow for continuous professional growth within the institution • Trained staff help train new staff
National and Regional bodies	<ul style="list-style-type: none"> • Work with domestic researchers to assess capacity for National Body in the short term vs. the long term

Potential influence by the government can pose a challenge to an autonomous body in the BLNS countries. For example, in South Africa, the government still attempts to place pressure on ITAC in response to the end to the quotas that restricted global textile and apparel trade. The BLNS countries only have ministries that tackle its trade issues. In the case of Swaziland, its trade policy is combined with all matters related to foreign affairs. Without a strong structural capacity due to the lack of experience with setting trade policy via a domestic institution, the government in each of the BLNS countries may have more influence on the institution than planned.

It is important for each of the countries to examine its true capacity to set up an autonomous national body that can operate independently. The BLNS countries have several options to maintain the autonomous function of the National Body. Those options include clearly stating the roles and functions of the institutions and the agencies with which they interact on specific issues.

An additional challenge that should be addressed is the retention of staff once they have been trained. One way of dealing with this specific matter is to use the trained staff to assist in training programs to other staff members. This will retain the necessary skills within the organization. In addition, the institution can conduct surveys of staff satisfaction, study the staff culture in order to identify motivators and proper incentives, and allow for continuous professional growth within the institution.

Finally, the limited capacity of the BLNS countries to institute many of the recommendations listed raises further questions: Would it be in the BLNS countries' best interest to set up a national body in the next few years? Or would it behoove them to operate via a regional tariff setting body, through which all SACU countries can equally participate and reduce the costs of managing trade. The challenges that these countries face in terms of experience, negotiating capacity, and strong institutions would still make it difficult for the BLNS countries to be active individual players within SACU. Yet, a regional body has the potential to allow the BLNS countries to develop their domestic institutional and administrative capacities and pool their resources in order to set up a strong, effective national-level institution in the long term.

Another alternative for the BLNS countries is to have one agency within their trade ministries since the SACU Agreement allows for the designation of existing institutions. A single authority as opposed to a separate agency can be just as effective as long as it is truly committed to liberal trade both in theory and in practice. Scholars have argued that the existence of one agency is preferable for developing countries, because placing one agency in charge of both dumping and injury allows for the centralization of information, more efficiency, and better use of human resources (Vermulst 1996 as quoted in Aggarwal 2002 64).

At the same time, this raises the concern of transparency. The BLNS countries would have to make sure that the process is structured in a way that is transparent. In the case of India, it was criticized for not presenting clear information about the technical and procedural aspects of its trade remedy cases while containing information about the legal aspects. The information that is presented to exporters should include legal, technical and procedural information.

Function

From the other cases discussed in this paper, one finds that an effective functioning customs authority is relevant to the function of a trade policy management institution. The BLNS countries would have to assess the present situation with customs and highlight the reforms necessary in order to carry out the functions of their institutions (Table 4).

Table 4
Function of National Trade Institutions -Issues and Recommendations

Issues	Recommendations
Customs	<ul style="list-style-type: none"> • Collaborate with statistical agencies on data collection • Develop a statistical database to keep track of imports and exports • Publish guide on import duties • Make import rates readily available to foreign exporters
Analytical, research skills	<ul style="list-style-type: none"> • Identify staff to train • Include training in the national budget • Involve the private sector in funding and conducting training sessions • Tuition reimbursement for relevant courses • Prepare a training plan
Negotiating capacity	<ul style="list-style-type: none"> • Identify national level interests and develop national trade policy • Seek training to learn from international best practice
Legal system	<ul style="list-style-type: none"> • Document and provide legal means for full implementation of trade remedy measures • Draft legislation to enhance the legal institution to provide for dispute resolutions

The ability to coordinate with customs remains crucial to the ability to ensure fair trade practices, which currently poses a challenge for the BLNS countries. For example, the Lesotho DTIS identified the need for improvement in terms of customs clearance, data collection and reporting (*Integration into the World* 42).

The facility for a national trade regulatory institution to work with customs and other data collecting agencies brings benefits. The ability to keep and collect accurate data will allow a National Body to adequately examine the impact of its decisions on industries and carry out thorough investigations.

The trade ministries in each of the BLNS countries are ill equipped to “undertake economic analysis and impact assessment of the proposed commitments particularly with regard to market access.” Thus, these countries would have to incorporate data gathering into their plan for establishing a national trade body or build the capacity for this task within the trade ministries. One recommendation would be to emphasize the training of staff in terms of data analysis.

Another important function pertaining to trade policy management is the ability to negotiate. With the entry into free trade negotiations for the first time, it will become even more important for the BLNS countries to articulate their own interests. Prior to the revised SACU agreement, South Africa mainly shaped the interests of the other SACU countries (Draper 2005; Kirk and Stern 2003). Section 8 of the revised SACU Agreement calls on all of the SACU countries to coordinate policy thus, making it necessary for the BLNS countries to enhance their ability to negotiate as equal partners with South Africa.

Furthermore, emphasizing a negotiating mechanism requires technical assistance and resources that enables the BLNS countries to understand the agreements and negotiate their positions effectively.

Finally, legal institutions are significant in terms of maintaining a regulatory framework. The consequences of a weak judicial system, as in the case of India, are the lack of implementation, unfair trade practices, and deterrence to foreign investors. The Heritage Foundation and the USTR report that Botswana’s judicial system is transparent and fair. According to the Heritage Foundation, Lesotho, Namibia, and Swaziland have less lucid legal systems. In order to promote trade while also maintaining a regulatory system, the BLNS countries should focus on making regulations transparent, ensure proper implementation of national trade laws, and maintain WTO compliancy.

Process

The cases presented earlier demonstrate the need to establish a clear-cut process that is WTO compliant. The main concerns that were expressed by domestic manufacturers and foreign exporters are listed in the table below (Table 5).

The BLNS countries are at a disadvantage by not having separate experiences with the trade management process. Nevertheless, the three issues – timing, the application process and the availability of access to trade information – provide a guide for implementation.

Whereas some producers may express frustration with the long application process (as long as 12 months), it is essential to ensure the proper use of a clearly publicized process for implementing trade regulations. The need for detailed and time consuming information, even though it may delay the process, is necessary in order to ensure the requirements are met prior to introducing contingent protection measures.

Table 5
Process of National Trade Institutions - Issues and Recommendations

Issues	Recommendations
Timing	<ul style="list-style-type: none"> • State clear timeline in regulations • List timeline for submitting requests and for receiving responses • Establish provisions for emergency measures • Allow parties to impose safeguards during a transition period if tariff reductions cause immediate, severe harm to industries • Include legal provision allowing the National Body to investigate and take measures against unfair trade practices without the request of the affected party
Application forms	<ul style="list-style-type: none"> • Forms that contain the required information should be as simple as possible • Include the administrative procedures involved • Incorporate sanctions into legislation for those manufacturers who submit applications with fraudulent information • Sanctions for those manufacturers who fail to provide necessary documents to illustrate injury to the industry
Accessibility of information	<ul style="list-style-type: none"> • Post information on the internet • Distribute hard copies to the general public during workshops and at related government agencies • Publish procedures and results of investigations in

	<p>a publicly available government report daily or weekly</p> <ul style="list-style-type: none"> • Reveal to the public as much non-sensitive information as possible and written analysis of the tools upon which policies are based
Interest group influence	<ul style="list-style-type: none"> • Raise threshold for importers seeking trade remedies • Allow information to undergo public scrutiny from all interested parties including consumer groups

The BLNS countries would need the resources to make information easily accessible. Several methods, which would require financial and human resources, are often used in order to present information. Those include: posting information on the internet, distributing materials, holding workshops and seminars, and traveling to and providing the information to the populations in different cities. The increase in transparency will open the door for accountability to the institution.

Ultimately, the institution will endure strong pressures from interests groups, especially those representing import competing sectors. Therefore, the National Body will need to implement specific practices in order to balance the effects of those seeking protection and those promoting exports. By increasing the costs of seeking trade remedy, fewer manufacturers are less likely to pursue anti-dumping measures and countervailing duties without evidence of a serious threat to their industries. Also, the impact that one group would have over another would be reduced if information is made public and all relevant stakeholders can offer input as to the costs and benefits of trade policies.

Results

Most anti-dumping legislation focuses on the producer rather than both the producer and the consumer (Finger 2002). The consumer bears many of the costs associated with unnecessary import restrictions such as expensive imports and loss of jobs, sales, profits, and productivity (Table 6).

Table 6
National Trade Institutions, Results, Issues and Recommendations

Issues	Recommendations
Consumer costs	<ul style="list-style-type: none"> • Conduct a cost-benefit analysis of protection • Draft a federal law to protect the consumer and domestic competitiveness • Emphasize a focus on the well-being of the national economy • Find a balance between competition law and trade policy so that trade policy does not limit competition • go beyond WTO compliancy by looking at the impact on the national economy

It would be useful for the National trade Body to address the impact of its recommendations on the national economy. The National Body should conduct cost-benefit analysis by measuring the winners and losers of specific trade remedy measures, especially anti-dumping. This study will include the affect on consumers of restricting imports as well as taking producer interests into account. This is the approach followed in Australia.

V. SUMMARY

The requirement of the amended SACU Agreement for all member states to establish National Bodies to recommend tariff changes to the SACU Council of Ministers requires the BLNS to establish new institutions. Currently only South Africa through ITAC has a functioning National Body. This paper provided an overview of the ITAC experience in South Africa and brief summaries of the current structures in Mexico, Brazil and India.

The recommendations for the BLNS countries may be summarized in terms of: structure, function, process and the results of experience.

Structure It is necessary to assess the capacity for each of the BLNS to establish and maintain a National Body independent of government pressures, and to develop methods building capacity and retaining knowledge among staff. **Function** The BLNS countries need to enhance the efficiency of their Customs Departments, analytical skills, and capacity to effectively engage in trade negotiations. The **Process** involved in setting up a National Body requires an assessment of the time frame, detail of the applications forms, and the accessibility of information. Finally, when looking at the **expected results** of contingent protection, the National Body should also be mandated to examine their likely impact on the national economy. This takes into account the interests of consumers as well as the interests of the producer groups requesting additional protection.

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