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Trade and Competition: Frictions after the Uruguay Round

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TRADE AND COMPETITION: FRICTIONS AFTER THE URUGUAY ROUND

by
International Trade and Investment Division

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TRADE AND COMPETITION: FRICTIONS AFTER THE URUGUAY ROUND

With the gradual dismantling of tariffs and the growing integration of markets across countries, non-tariff and non-border barriers to international trade, investment and competition have become more visible, a greater source of trade tensions and costly with regard to the foregone global benefits of increased efficiency. In many OECD and non-OECD economies, market regulations were not designed with a view to their international ramifications, and domestic policies in the domain of trade, competition and investment, with few exceptions, take little account of international repercussions of non-border obstacles to the functioning of markets. Against this background, this paper examines the main issues underlying the current discussion of trade, investment and competition policy interactions, and the scope for further international co-operation.

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Le démantèlement graduel des tarifs et l'intégration croissante des marchés entre les différents pays, ont rendu beaucoup plus visibles les barrières non douanières et non tarifaires au commerce international, aux investissements et à la concurrence, constituant une source plus importante de tensions commerciales coûteuses comparées au bénéfice global attendu d'une efficacité accrue. Dans beaucoup de pays tant membres que non membres de l'OCDE, les réglementations des marchés ont été élaborées sans considération de leurs ramifications internationales, et, à quelques exceptions près, les politiques nationales dans les domaines des échanges, de la concurrence et de l'investissement n'ont que très peu tenu compte des répercussions internationales des obstacles non douaniers au fonctionnement des marchés. Face à cette situation, ce document examine les principales questions sous jacentes aux discussions actuelles sur les interactions entre les échanges, les investissements et la politique de la concurrence, ainsi que les champs possibles d'élargissement de la coopération internationale.

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International Trade and Investment Division[1]

I. Background and Summary

1. Trade and competition policies share the ultimate objective of achieving efficient allocation of resources -- one between and one within countries. However, because of differences in scope and methods there is sometimes tension between the two. The promotion by trade policies of market access and "fair" trade can be at odds with the competition policy aim for efficiency in cases either where managed trade is used to gain market access or where remedies are applied to protect domestic producers against "unfair" trade. Frictions can also arise because competition laws and market regulations are designed primarily with domestic consequences in mind.

2. For some time, work has been going on at the OECD to identify the specific causes of such tensions and ways to reduce them. Drawing on this work, this paper reviews some of the main elements of the problem, looking at interactions and frictions between trade and competition policies and, in particular, the problems of market access in selected non-OECD countries.

3. An overall conclusion is that, notwithstanding the considerable achievements in the area to date, much scope remains for improving policies, both domestic and international, to strengthen the world trading system and enhance competition. Specific reforms could involve:

- -- strengthening domestic competition laws and enlarging their scope; improving conditions for competition and market access, both domestically and internationally, in currently-regulated markets (notably in service sectors);
- -- strengthening international agreements to prevent abuse of countervailing trade measures;
- -- increasing the scope of international competition arrangements and fostering the convergence of competition principles and mutual recognition of standards in regulated sectors.

Over time, increased anti-trust co-operation at the international level may also serve as a basis for developing multilateral rules and agreements on competition policy matters. Such agreements may also be

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1. Principal contributors to this paper include Thomas Egebo, Pete Richardson, Marcos Bonturi, Nathalie Girouard, Alessandro Goglio and Bernard Wacquez. It draws on the work of a wide range of colleagues in the Economics Department, the Trade Directorate and the Directorate for Financial, Fiscal and Enterprise Affairs. Special thanks go to Jørgen Elmeskov, Marie-Pierre Faudemay, Crawford Falconer, Mike Feiner, Toshi Kato, Gunther Keil, Joe Phillips, Anne Richards, Sally Van Siclen and Nick Vanston for comments and guidance on earlier versions and to Lise Perreault and Lyn Louichaoui for technical support.

inspired by the high standards of the national treatment, MFN and transparency clauses of the Multilateral Agreement on Investment (the MAI), currently being negotiated at the OECD, which promises to improve conditions for access and legal security of foreign direct investment in OECD countries[2].

4. These issues are not confined to OECD countries. In many non-OECD economies, the obstacles to market access -- to both trade and foreign direct investment -- are often greater than in OECD countries, whilst international forums and instruments to tackle them are fewer. Hence, concerns about policies in these economies and their implications for growth and employment in the OECD are becoming even more pronounced. This makes it imperative to involve these economies in the process of regulatory reform and the agenda for international agreements on trade, competition and other regulatory matters. This may require a strengthening of outreach and peer review activities, ensuring also that further trade liberalisation in the OECD countries is non-discriminatory *vis-à-vis* the non-OECD.

II. Interactions and frictions between trade policies and competition policies

5. International tensions arising from non-border barriers to trade and border barriers to competition have become more important in recent years because: the relative incidence of such barriers has increased given the progress made in reducing traditional border barriers, most recently in the Uruguay Round (UR) (Tables 1 and 2); and obstacles to foreign enterprises and foreign investment take more importance as national economies become increasingly integrated[3]. To date, relatively little has been done to tackle these barriers in an international policy context. Competition policies *per se* are largely governed by domestic laws and institutions and lack multilateral procedures regarding enforcement and dispute settlement. Apart from a few exceptions, international co-operation in competition policies has little legal backing and is confined to recommendations and bilateral agreements for exchange of information[4]. Moreover, the UR did not include a mandate for work on trade and competition.

6. The UR did extend and enhance the scope of rules in a number of important areas: government procurement, subsidies, intellectual property rights, technical regulations and standards, trade in services and discriminatory trade-related investment measures. But there is sufficient vagueness in the agreements concerning subsidies and technical standards to permit abuse[5], and the agreement on investment fell short of a full set of multilateral investment rules, leaving out certain requirements on investors, such as technology transfer, and the issue of investment protection. Other omitted areas include ones with strong

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2. For detailed background on the MAI, see OECD (1996) and Witherell (1995 and 1996).

3. Noteworthy here is the rapid growth in investment income flows and other services (Table 3), the sharp rise in foreign direct investment (Table 4), as well as a change in composition towards services (Table 5).

4. Multilateral competition agreements include the European Union (EU), the North Atlantic Free Trade Agreement (NAFTA) and the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). Of these, the EU is the only example of a supranational competition authority (see European Commission, 1995 and Graeme, 1995). Both UNCTAD and the OECD have previously addressed trade and competition in the context of attempts to develop rules for the conduct of multinational enterprises. These rules, mainly voluntary, are embodied in the OECD 1976 Guidelines for Multilateral Enterprises and the 1980 UNCTAD restrictive business practices code. Bilateral agreements also exist for exchange of information between competition authorities in a number of countries.

5. As evidenced by recent trade frictions related to technical standards, applied for health, safety or environmental reasons, which include cases involving chicken, tuna, beef, fresh fruit and timber products.

links to domestic regulation -- financial services, maritime transport, telecommunications and trade in steel, civil aircraft and other sectors. Moreover, achievements made in eliminating quantitative trade restrictions and in prohibiting grey-area measures, such as voluntary export restraints, could result in such practices going "underground" in the form of quasi-formal industry-to-industry agreements.

Trade policies and competition

7. A number of trade-policy instruments can impede competition[6], sometimes at a substantial cost in terms of economic efficiency and welfare[7]. The reasons given for using these instruments include raising revenues, reducing the social costs of structural adjustment, protecting public safety and health, defending national security interests, long-term development planning, and protecting certain industries or interest groups from foreign competition.

8. Some instruments (e.g. countervailing duties) are designed to counter perceived unfair practices applied by trading partners, such as dumping or subsidisation. To the extent that unfair practices are reduced, efficiency is enhanced -- but countervailing duties and anti-dumping measures can be abused for protectionist purposes. Before the UR, wide scope for abuse of anti-dumping measures existed with investigations conducted by domestic authorities, often under relatively vague multilateral guidelines. The most common abuses were in the calculation of dumping margins, through the use of asymmetrical or unfair price comparisons and use of arbitrary exchange rates and minimum profit rates. The UR tightened the rules by: clarifying investigation procedures and methods for calculating margins; providing a better distinction between actionable and non-actionable subsidies[8]; and including disciplines for the extension and refund of duties and the creation of a sunset clause. Despite this tightening, anti-dumping procedures can still serve as a protectionist tool. Often, investigations can be initiated with relatively little evidence and, with considerable time and expense required for a company to defend itself against dumping allegations, many choose not to[9]. In some cases, cumbersome requests for information relevant to investigations seem designed to discourage firms from attempting to provide it. Where no verifiable information is available from the exporting firm, investigators are free to use the "best information available", which opens the possibility of abuse.

9. According to GATT, between July 1985 and June 1994, there were 450 anti-dumping investigations by the United States, 428 by Australia, 240 by the EU, 203 by Canada, and 270 by all the other countries together, with duties being levied in 70 to 80 per cent of cases for the United States and the EU[10]. Currently, a very significant number of anti-dumping cases remain outstanding (Figure 1) and

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6. These include tariffs and a number of non-tariff barriers such as export restraint arrangements (like VERs), orderly marketing arrangements, export "forecasts", basic-price systems, industry-to-industry arrangements, discriminatory import systems and prior import surveillance.

7. Extensive reviews of this point are given by Baldwin (1970), Bhagwati (1971), Corden (1974) and Sodersten and Vind (1968).

8. In the years preceding the conclusion of the UR, the United States had been the largest user of countervailing actions (42 actions initiated in the July 1993 to June 94 period, mostly concerning steel products), followed by Australia (12 actions initiated).

9. See Nagaoka (1995).

10. See MITI (1995).

it is notable that the correlation between the number of cases initiated and real GDP growth has become more negative since the mid-1980s (Figure 2)[11].

10. Assessing the welfare effects of anti-dumping measures must take account of the fact that dumping may at times be a legitimate market strategy and may not necessarily lead to the monopolisation of a market, the hindering of competition or a decrease in efficiency. These distinctions are seldom made by anti-dumping investigations. Indeed, a recent study of more than 1 000 dumping cases filed since 1980 by the United States, Canada, Australia and the EU finds that less than 10 per cent of cases leading to anti-dumping measures (roughly two-thirds of those initiated) involved potential monopolising dumping (Table 6)[12]. Similar studies of the trade coverage of VERs suggest that efficiency-based anti-trust concerns are not given much consideration in their formulation and implementation. In fact, efficiency-based criteria would condemn most, if not all, such export restraints.

Competition policies and trade distortions

11. There are a number of ways in which competition policies may allow anti-competitive business practices that restrict trade and thus international competition, sometimes because of the domestic focus of such policies, sometimes because of limited coverage and sometimes because of lax enforcement.

12. Concerning coverage, competition policies control only practices over which jurisdiction can be enforced and which affect the domestic economy. They do not address practices of domestic enterprises which have effects only in other countries, they cannot easily tackle restraints affecting the domestic economy which occur abroad and jurisdictions may clash over the behaviour of multinational firms. Moreover, there is considerable uncertainty about the proper competition-policy means to achieve overall efficiency. Over the years, anti-trust practices have shifted away from intervention towards "rules of reason" based policies. It is now considered appropriate, in some circumstances, to allow many forms of collaboration, other than price collusion, output allocation and market sharing, because they reduce transaction costs, strengthen competition and improve efficiency[13].

13. This section reviews some of the principle ways in which competition policies may restrict trade, and also reviews the related implications of restrictive government regulations and practices, including entry regulations, operational regulations, subsidies and procurement policies. In service sectors such regulations are the most important barrier to international competition.

14. Neglect of international spill-overs by competition laws is particularly striking in the case of **export and import cartels**. Some export cartels improve competition by enabling smaller exporting firms to achieve economies of scale in distribution and information gathering or to countervail buying power of foreign cartels. Likewise, import cartels can enable smaller firms to share costs or enjoy economies of scale from discounts and rebates. But such cartels also produce anti-competitive impacts if they control a significant portion of the market[14].

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11. Interdependence in GDP growth in individual countries and regions makes it difficult to distinguish whether such a correlation indicates counter-cyclical occurrence of dumping as opposed to counter-cyclical use of anti-dumping instruments.

12. See Willig (1996).

13. See OECD (1994*a*) and Fox (1995) for further discussion and references.

14. See OECD, 1993.

15. Pure export cartels, directed exclusively at foreign markets, enjoy considerable freedom from the application of competition laws and cartels directed both at domestic and export markets may receive exemptions. In Japan, Germany, the United Kingdom, France, the Netherlands and the EU they fall outside the scope of anti-trust law, although the first three jurisdictions require authorisation or registration. The United States and Canada also exempt such cartels, but in the former, firms may obtain greater certainty about the application of the law by registering agreements and in the latter agreements may be prohibited if they harm exports. Cartels formed by foreign suppliers are most often subject to the importing country's competition law, but applications against them face procedural and practical obstacles which limit effective enforcement, such as inability to obtain evidence outside the enforcing jurisdiction.

16. Import cartels are also covered by the competition laws of the importing country, but are often authorised if importers are faced with dominating foreign suppliers, and if competition on domestic markets is not held to be substantially restrained. Dissatisfaction with the degree of import-country enforcement of competition laws has apparently motivated increased resort to application of the exporting country's laws to activities which restrict access to foreign markets[15]. However, such intentions may also be hindered by procedural and practical obstacles.

17. International effects of competition policies depend in part on the relative **strength of national competition** regimes[16]; but institutional differences (Table 7) and complex interactions between these and other regulations, make it difficult to assess the relative positions of individual countries. Nonetheless, it would appear that in virtually all countries a number of barriers to competition are left unaddressed. **Exemptions** for government enterprises and regulated private businesses from anti-trust legislation and liability, present to some extent in all OECD countries, may help to preserve anti-competitive structures and practices that discriminate against potential entrants, including foreign companies. Exemptions are generally found in sectors that are subject to other government regulations. Those least covered by competition laws appear to be agriculture, fishing and forestry, energy and utilities, transportation, and postal services (Table 8). Common exemptions also include defence, communications, financial and insurance services, and media and publishing, and in some countries distribution and certain manufacturing sectors. The extent of exemptions varies across countries, but this may merely reflect the fact that some countries rely less on legislative exemptions and more on the less transparent instrument of administrative enforcement. In a study of eleven jurisdictions (the United States, Japan, Germany, France, the United Kingdom, Canada, the European Union, Hungary, Mexico, Portugal and Sweden) exemptions were found to be most prevalent in Japan, but also relatively frequent in the United States, Germany and the United Kingdom[17].

18. Exemptions allowing **specific business arrangements and practices** have also been cited as hindering international market access[18]. These include horizontal arrangements (group boycotts, discriminatory product standards and pricing, collective exclusive dealings), vertical restraints (exclusive dealings and territories) and single firm behaviour (predatory pricing, price discrimination and fidelity rebates). It is broadly agreed that horizontal arrangements are undesirable, and competition rules are generally firm with them. Even so, specific arrangements are often exempt from anti-trust rules, e.g. joint R&D undertakings, "public interest" cartels, specialisation agreements or crises cartels, and may therefore discriminate against foreign competitors. Vertical restraints and single firm behaviour can have ambiguous effects. For instance, exclusive dealing agreements may enhance efficiency and strengthen competition even if they reduce market access. Likewise, aggressive pricing may indicate active competition rather than

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15. Matsushita (1996) reviews a number of such cases.

16. See, in particular, OECD (1994*a*).

17. See Hawk (1996).

18. See, among many others, Goldfarb (1995), Kaell *et al.* (1995) and Ostry (1995).

predatory behaviour and would not be a threat to competition if markets are contestable. Japanese competition law, for example, has at times been criticised for being too permissive of exclusive purchase arrangements rendering access to distribution systems very difficult, but the Japanese competition authorities have been unable to identify agreements that prevent new entrants from finding alternative trading partners.

19. **Merger control** is in general used to prevent abuse of dominance. However, it may also be used to screen foreign investments on purely non-competition grounds; although it would appear that the use of such screening may have diminished considerably in recent years. Considerable differences nonetheless remain in merger laws across countries (Table 9).

20. Much of the market access debate focuses on **enforcement**. For instance, perceived lack of enforcement of competition law was a central issue in the United States/Japan Structural Impediments Initiative (SII) launched in 1989, and in the recent complaint by Eastman Kodak under Section 301 of the United States Trade Act. However, relatively few indicators on the actual enforcements of competition laws are available[19]. Two crude indicators are i) the staffing level of enforcement agencies, relative to the size of the economy (Table 7), which suggest little scope for enforcement in Italy and Switzerland (until 1990) and relatively high enforcement capacities in the United States and the Nordic countries; and ii) the level of fines imposed for breaches of competition laws, which range from practically no sanctions in the Nordic countries to heavy financial penalties in the United States and Germany and (more recently) Japan.

21. **Regulations** may discriminate against foreign and foreign-owned producers, by implicitly favouring incumbents and preventing new entrants. For instance, regulations of network-based services (utilities, tele- and postal communication, railways and air-transport) in many OECD countries extend monopoly rights beyond the network to activities where competition would be possible and public procurement practices are often discriminatory. Domestic incumbents are also in many cases protected by concessions and cumbersome licensing procedures (notably in professional services, health care, transportation and communication), zoning laws and regulations of large-scale stores (making it difficult to gain access to distribution systems), price-regulations (such as freight and passenger rates in transport and fees in professional services); and standards and technical regulations that new entrants, in particular foreigners, find it difficult to meet (in particular the plethora of standards and regulations in construction). Furthermore, in some service sectors, government regulations and practices discriminate more openly against foreign producers. These include notably restrictions on: foreign direct investment (which make it difficult to establish distribution outlets); access to networks; and the granting of licences and ownership to foreigners. Common examples are non-market allocation of landing and take-off slots in international air-transportation, restrictions that prevent electricity consumers from choosing foreign power suppliers and widespread discrimination against foreign ownership and access to networks in telecommunication services. Common discriminatory practices also include non-recognition of partner countries' technical standards, procurement practices which favour domestic suppliers and discriminatory R&D funding.

III. Problems of market access in selected non-OECD economies

22. Non-OECD countries are being increasingly integrated into the global economy with both trade (Figure 3) and foreign direct investment (Figure 4) growing rapidly. Nonetheless, in many of them, the barriers to entry and the degree of regulation, though declining, tend to be higher than in the OECD area.

23. Since the mid-1980s, most dynamic non-OECD economies have simplified their tariff structures, reduced or bound most tariff lines (Table 1), often in the context of wide ranging economic reforms. Also, they have reduced the coverage of non-tariff trade barriers, including quantitative restrictions and

19. Fox (1996) discusses how criteria for assessing degrees of actual enforcement of competition laws might be further developed.

prohibitions, and, notably in Central and South America, reduced or eliminated export taxes. The implementation of quantitative restrictions via import licensing and/or import clearance systems, is still common in Central and South America and East Asia, and some countries maintain lists of prohibited manufactured imports. Furthermore, as in many OECD countries, the reduction of traditional trade impediments has coincided with pressures to resort to alternative measures to protect affected import-competing domestic producers. These include the re-activation of anti-dumping and/or countervailing duty statutes in many non-OECD countries[20]; regulations intended to protect health and safety used in trade of food and agricultural goods; and programmes aimed specifically at promoting exports. With regard to services, virtually all emerging economies in East Asia and Central and South America maintain discriminatory restrictions on the insurance sector, banking services, professional services and telecommunications and many maintain restrictions in wholesale and retail distribution.

24. In spite of strong growth in FDI, numerous restrictions remain in force in virtually all dynamic East Asian and Central and South American economies (Hong Kong being a notable exception). These take the form of traditional local-content requirements in investment and other trade-related investment measures. In most cases these instruments are used in combination with a number of incentive mechanisms (subsidies as well as tax concessions) intended to channel foreign investors to a few selected sectors (Table 10).

25. While support for the adoption of pro-competitive practices has strengthened, by a revival of regional free trade agreements in Central and South America (MERCOSUR, Andean Pact, etc.) and East Asia (AFTA), the overall picture is still mixed with regard to competition law. Many developing countries have competition policies or are promulgating them (Table 11). In the early 1960s, many Central and South American countries enacted competition laws and these have either been revised recently (in Brazil, Chile and Colombia) or are under revision (in Argentina). In some Asian economies competition laws were implemented in the 1970s, whereas others (Indonesia, Malaysia and Singapore) have no laws or regulations specific to competition[21].

20. See Khemani (1996), Finger (1993) and Low and Subramanian (1993).

21. See Green (1996).

Table 1. **Industrial products, imports and reductions in bound tariff rates**
Millions of U.S. dollars and percentages

Participant	Imports from MFN origins 1988	Trade-weighted tariff averages[a]	
		Pre-Uruguay	Post-Uruguay
United States	297 291	5.4	3.5
Japan	132 907	3.9	1.7
Canada	28 429	9.0	4.8
Australia	25 152	20.1	12.2
Austria	5 768	10.5	7.1
Finland	4 237	5.5	3.8
Iceland	334	18.2	11.5
New Zealand	4 996	23.8	11.9
Norway	6 192	3.6	2.0
South Africa	14 286	24.6	17.3
Sweden	10 324	4.6	3.1
Switzerland	10 227	2.2	1.5
E.C.	196 801	5.7	3.6
Developed economies	736 944	6.3	3.9

a) This table refers to trade-weighted bound MFN tariff rates in percentage terms. These are often higher than actually levied tariffs. Moreover, the UR converted some NTB's to tariff equivalents, thereby raising, in some cases, the apparent levels of average bound tariff rates.

Source: GATT.

Table 1 *(continued)*

Participant	Imports from MFN origins 1988	Trade-weighted tariff averages	
		Pre-Uruguay	Post-Uruguay
Developing economies			
Argentina	2 981	38.2	30.9
Brazil	11 409	40.7	27.0
Chile	1 838	34.9	24.9
Colombia	3 530	44.3	35.3
Costa Rica	840	54.9	44.1
El Salvador	557	34.5	30.6
Hong Kong	115 549	0.0	0.0
India	10 179	71.4	32.4
Indonesia	12 603	20.4	36.9
Jamaica	1 111	16.5	50.0
Korea (Republic of)	40 610	18.0	8.3
Macau	1 542	0.0	0.0
Malaysia	11 301	10.0	9.1
Mexico	10 988	46.1	33.7
Peru	1 399	34.8	29.4
Philippines	9 189	23.9	22.5
Romania	3 456	11.7	33.9
Senegal	613	13.7	13.8
Singapore	32 804	0.4	5.1
Sri Lanka	2 357	28.6	28.1
Thailand	15 212	35.8	28.1
Tunisia	2 976	28.3	40.2
Turkey	5 832	25.1	22.3
Uruguay	508	20.9	30.9
Venezuela	5 097	50.0	31.1
Zimbabwe	631	4.8	4.6
Total of developing economies	305 112	15.3	12.3
Transition economies			
Czech Republic	8 862	4.9	3.8
Hungary	9 468	9.6	6.9
Poland	7 479	16.0	9.9
Slovak Republic	8 862	4.9	3.8
Total of transition economies	34 671	8.6	6.0

a) This table refers to trade-weighted bound MFN tariff rates in percentage terms. These are often higher than actually levied tariffs. Moreover, the UR converted some NTB's to tariff equivalents, thereby raising, in some cases, the apparent levels of average bound tariff rates.

Source: GATT

Table 2. **Indicators of barriers to trade**

	Average MFN tariff rate[a]		Dispersion of MFN tariff rates[b]		Frequency ratio of NTBs[c]	
	1988	1993	1988	1993	1988	1993
United States[d]	4.7	4.9	7.7	8.6	25.5	22.9
Japan	4.0	3.5	8.8	12.7	13.1	12.1
Canada	9.2	8.9	8.8	8.4	11.1	11.0
Australia	12.2	6.9	14.3	10.1	3.4	0.7
Austria	10.9	9.5	10.1	8.7	65.8	55.6
Finland	5.3	4.9	10.1	10.3	10.6	8.4
Iceland	6.9	6.9	7.5	7.3	..	3.9
Mexico	11.0	12.9	7.0	5.2	2.0	2.0
New Zealand	13.2	7.1	15.7	10.4	14.1	0.4
Norway	4.4	4.4	6.9	6.8	26.6	23.7
Sweden	3.3	3.3	4.8	5.1	32.6	29.8
Switzerland	3.7	3.6	13.0	11.6	12.9	13.5
Turkey	47.6	12.0	35.7	5.7	0.1	0.3
European Union	7.3	7.7	6.1	6.1	26.6	23.7

a) Applied MFN tariff rates on manufactured products, weighted by production.

b) Standard deviations of applied rates.

c) The percentage of national tariff lines affected by a particular non-tariff barrier.

d) First observation is for 1989.

Source: OECD, *Indicators of Tariff and Non-tariff Barriers to Trade* (forthcoming).

Table 3. **The composition of world exports**

	$ billion			Per cent		
	1975	1985	1993	1975	1985	1993
Merchandise	840	1 856	3 629	75.5	70.9	66.2
Invisibles	272	761	1 856	24.5	29.1	33.8
Non-factor services	184	433	1 025	16.6	16.5	18.6
Travel	43	112	295	3.9	4.3	5.4
Transportation	70	149	260	6.3	5.7	4.7
Government	18	36	56	1.6	1.4	1.0
Financial and other services	53	136	414	4.8	5.2	7.5
Investment income	88	328	831	7.9	12.6	15.2
Total	1 112	2 617	5 485	100.0	100.0	100.0

Sources: OECD, IMF, IBRD.

Table 4. **World FDI[a], trade and GDP growth**
1981-1993

Indicator	$ billion 1993	Average annual growth rate 1981-85	1986-90	1991-93
FDI outflows	222	0.8	28.3	5.6
FDI outward stock	2 135	5.4	19.8	7.2
Current gross domestic product	23 276	2.1	10.6	3.3
Exports of goods and non-factor services	4 654	-0.1	14.3	3.5

a) FDI including mergers and acquisitions.
*So*urce: UNCTAD.

Table 5. **Foreign direct investment: sectoral composition for selected OECD countries**

Percentages

	1984			1987			1990			1993		
	Primary	Secondary	Tertiary	Primary	Secondary	Tertiary	Primary	Secondary	Tertiary	Primary	Secondary	Tertiary
A. Outward stock												
United States	30.1	40.6	29.3	20.7	41.9	37.4	13.6	39.5	46.9	12.6	36.4	51.1
Japan	19.1	31.1	49.8	11.7	26.4	61.8	6.8	26.7	66.5	5.4	27.7	66.9
Germany	4.1	63.8	32.2	2.4	64.0	33.5	1.7	56.1	42.2	1.2	50.6	48.2
France	..	..	..	4.0	50.0	46.1	8.3	41.0	50.7	7.3	40.3	52.4
Italy	19.1	33.6	47.4	11.7	33.8	54.5	8.2	33.6	58.2	5.6	29.9	64.5
United Kingdom	33.3	31.8	34.8	24.1	36.0	39.9	19.1	39.0	41.9	16.7	37.8	45.5
B. Inward stock												
United States	18.5	31.5	50.0	17.0	35.6	47.4	13.4	38.7	47.9	9.6	37.4	53.0
Japan	0.0	73.6	26.4	0.0	69.1	30.9	0.0	63.9	36.1	0.0	56.3	43.7
Germany	0.2	53.4	46.4	0.2	47.7	52.1	0.2	53.5	46.3	0.1	46.9	52.9
France	..	..	..	..	..	..	6.4	37.3	56.4	5.2	35.7	59.1
Italy	5.5	56.2	38.3	3.5	50.1	46.4	3.5	38.2	58.3	3.1	38.6	58.3
United Kingdom	33.9	40.8	25.3	28.7	37.2	34.1	23.0	35.9	41.1	25.7	33.6	40.8

Source: *International Direct Investment Statistics Yearbook 1995*, OECD.

Table 6. **Anti-dumping cases potentially involving monopolising behaviour**

Country (period studied)	Total cases filed	Anti-dumping measures not imposed	Anti-dumping measures imposed	
			Total	Cases potentially involving monopolising dumping
United States (1979-1989)	451	169	282	35[d]
Canada (1980-1991)	155	63	92	0[c]
Australia[a] (1/9/88-31/12/91)	40	20	20	5[b]
European Union (1980-1989)	385	115	270	23[e]
TOTAL	1 031	367	664	63

a) The period studied is limited to September 1988 to end 1991, due to a substantial change in the anti-dumping regime at the beginning of that period.

b) The number of cases in which imports under simultaneous investigation originated from fewer than three countries and import penetration exceeded 15 per cent.

c) The share of all imports of a particular product from a given challenged exporting country (as a percentage of domestic consumption) averaged across all products, was only 12.4 per cent. A multiplicity of international suppliers was found for most products subject to anti-dumping petitions.

d) The number of cases where imports under investigation originated from fewer than five countries, import penetration exceeded 20 per cent and the ratio of expenditure on long-lived machines and equipment (relative to total sales) was greater than the 4-digit SIC industry average of 0.25. (The latter is a measure of entry or exit barriers.) The number of cases would be 28 if a three-country screen rather than a five-country screen had been applied.

e) Cases in which 1) import penetration was projected to be greater than 40 per cent in the first year after the decision whether to take anti-dumping measures; and 2) involving three of fewer countries; and 3) seven or fewer firms involved in the anti-dumping proceeding; and either 4a) foreign firms had substantial (6.1 per cent or more) shares of the domestic market; or 4b) domestic concentration was high.

Source: Willig (1996).

Table 7. **The basic structure of legislation and enforcement of competition policy**

Country	Name(s) of the authority	Number of staff[a] (where available)		Basic structure of legislation[b]			Enforcement system[c]	
		Number	Number per GDP (10^{-10})	Abuse of dominant position	Restrictive agreements	Merger control	Judicial	Admini-strative
				Prohibition principle				
				Yes	Yes	Yes	Yes	Yes
United States	Federal Trade Commission Anti-trust Division, Department of Justice	950 (in 1995) 650 (in 1995)	2.4	X	X	X	X	X
Japan	Fair Trade Commission	478 (in 1992)	1.8	X	X	X	X	
Germany	Federal Cartel Office, Monopoly Commission				X	X	X	
France	Competition Council			X	X	X	X	
Italy	Competition Authority	170 (in 1995)	1.6	X	X	X	X	
United Kingdom	Office of Fair Trading/MMC/DTI	420 (in 1995)	3.9			X		X
Canada	Bureau of Competition Policy	245 (in 1995)	4.2		X	X	X	
Denmark	Competition Council	107 (in 1991)	10.1					X
Netherlands	Competition Policy Department Ministry of Economic Affairs	25 (in 1995)	0.8		X	X		X
Norway	Competition Authority	100 (early 90s)	11.4			X		X
Sweden	Competition Authority	150 (early 90s)	9.8	X	X	X		X
Switzerland	Cartels Commission	7 (early 90s)	0.4			X		X

Sources: a) Hawk (1996), *OECD Country Surveys* for Denmark, Norway, Sweden, and Switzerland; Management and Coordination Agency (1993/4), *Japan Statistical Yearbook* for Japan; National authorities for Canada, Italy, the Netherlands, the United Kingdom and the United States. GDP data are nominal GDP using PPP in 1994. b) For the European Union Member countries, Table 5.17 in OECD (1994), *OECD Jobs Study*: Part II, Paris; for Canada, *Competition Policy in OECD Countries: 1992-1993*, Paris. c) For Canada, France, Germany, Japan, Sweden, the United Kingdom and the United States, Boner, R.P. and R. Krueger (1991), *The Basics of Anti-trust Policy*, The World Bank, Washington, D.C.; for Denmark, Italy and Switzerland, OECD (1995), *Competition Policy in OECD Countries 1992-93*, Paris; for the Netherlands, OECD (1994), *Economic Surveys-Netherlands*, Paris; for Norway, OECD (1995), *Economic Surveys-Norway*, Paris.

Table 8. **Exemptions from competition policy applications**

I. Sectoral exemptions	United States	Japan	Germany	France	United Kingdom	Canada	Mexico	Portugal	Sweden	European Union
Agriculture, forestry and fisheries										
-- Agriculture	CO, AG	CO, CA	AG, RPM	AG	AG				CO	AG
-- Fishery	CO, AG	CO, CA			AG	AG				
-- Forestry					AG				CO	
Manufacturing										
-- Tobacco		CO, CA								
-- Sericulture		CA								
-- Liquor		CA, RPM	SE							AG
-- Sugar		CA								
-- Books		RPM	RPM	RPM	RPM			RPM		
-- Newspaper	AG	RPM		ME	ME			RPM		
-- Cosmetics		RPM								
-- Pharmaceuticals		RPM	SE	AG	RPM					
-- Coal and steel			SE	SE	SE				SE	SE
Energy										
-- Electricity		NM	AG		SE	SE	SE			
-- Gas		NM	AG		SE	SE				
-- Oil			AG		AG					
Transportation										
-- Airline	AG		AG		AG					AG
-- Railroad	ME, AG	NM	AG		AG					AG
-- Road transport, trucking	ME, AG	CA	AG		AG					AG
-- Maritime and inland water shipping	AG	CA	AG		AG	CA			SE	AG
-- Harbour	AG	CA	CA						SE	
-- Warehouse	AG	CA								
Communication	ME				SE					
-- Audiovisual and radio broadcasting				ME						

Note: Entry in I. Sectoral exemptions indicates the type of exempted activities. The type of exemptions includes: NM (Natural monopoly); CO (Co-operatives and association); RPM (Resale price maintenance); CA (Cartels and recommendations); AG (Certain types of agreements); SE (Statutory exemptions); and ME (Merger). Entry in II. Exemptions by activity/conduct (X) shows the existence of exemptions.

Source: Hawk (1996), "Antitrust and market access".

Table 8. *(continued)*

I. Sectoral exemptions *(continued)*	**United States**	**Japan**	**Germany**	**France**	**United Kingdom**	**Canada**	**Mexico**	**Portugal**	**Sweden**	**European Union**
Wholesale and retail trade										
-- Wholesale		CA, ME								
-- Retail		CA							AG	
Finance and insurance										
-- Banking or credit institutions	ME	CO, CA	AG	AG	SE	ME,AG		ME, AG		
-- Insurance	AG	CA	AG					ME, AG		AG
-- Securities, underwriters, commodity future	ME, AG					AG				
Other private services										
-- Restaurants and hotels		CA								
-- Professional sports	AG									
-- Medical and paramedical services				SE						
II. Exemptions by activity/conduct										
Export and import agreements and cartels	X	X	X		X	X	X			X
Cartels										
-- Standards			X		X	X				
-- Crisis and depression		X	X							
-- Rationalisation		X	X		X					
-- Specialisation			X			X			X	X
-- Rebate			X							
Block exemptions of agreements										
-- Exclusive distribution									X	X
-- Exclusive purchase									X	X
-- Franchise						X			X	X
-- Patent licensing									X	X
-- Know-how licensing									X	X
R&D joint venture (consortia) agreements	X (partial)		X			X			X	X
Intellectual property rights	X	X	X			X			X	
Co-operatives and associations	X	X			X				X	
Small- and medium-sized enterprises	X (partial)	X	X		X				X	X
Intra-firm agreements	X	X	X		X	X		X	X	X
Organised labour activities	X		X		X	X	X		X	X
Public services								X		
-- Public authorities	X				X				X	
-- Public enterprises	X		X							

Table 9. **Merger notification system and thresholds in OECD countries**

	System of notification		Notification thresholds	Turnover thresholds as % of GDP[b]	Risk of failure to notify[c]		
	(V)	(C)[a]	(M) Market share; (T) Turnover; (A) Asset		(F)	(D)	(I)
United States		X	(A,T) Worldwide sales or total assets of one party > $100 million; **and** worldwide sales or total assets of other parties > $10 million **and** acquiror's securities and assets after merger > $15 million, or > 15 per cent of outstanding voting securities or assets.	0.002(0.0002)	X	X	
Japan		X	(A, T or M) True mergers or acquisition of the whole or a substantial part of an ongoing business in Japan.		X	X	
Germany		X	Pre-merger: * (T) Worldwide sales of any party > DM 2 billion; or worldwide sales by each of two or more parties > DM 1 billion. Post-merger: * (T) Worldwide combined sales > DM 0.5 billion.	0.083(0.042)	X	X	
France	X		(M, T) Combined market share > 25%; **or** combined sales in France > FF 7 billion; and (T) each of two or more parties' sales in France > FF 2 billion.	0.108(0.031)		X	
Italy		X	(T) Aggregate sales in Italy > L 500 billion; **or** target company sales > L 50 billion.	0.038(0.004)	X	X	
United Kingdom	X		(M,A) Combined market share in UK > 25%; **or** acquired assets > £30 million			X	
Canada		X	(A,T) Combined assets/sales in, from or into Canada > C$400 million; target asset value or sales in/from > C$35 million.	0.060(0.005)	X	X	X
Australia	X					X	
Austria		X	Post-merger: * (M) Combined market share > 5% of domestic				
Belgium		X	(M, T) Combined market share > 20% of relevant market; **and** combined annual turnover > BF 1 billion.	0.011	X		
Greece		X	Pre-merger: * (M,T) Combined market share of horizonal mergers > 30%; **or** aggregate turnover > ECU 65 million. Post-merger: * (M,T) Combined market share > 10%; **or** aggregate turnover > ECU 10 million.	0.125(0.019)	X		
Ireland		X	(A, T) Assets of each of two or more parties > £Ir 10 million; **or** sales of each of two or more parties > £Ir 20 million.	(0.078)	X	X	
New Zealand	X		Nil		X	X	
Portugal		X	(M,T) Combined market share of enterprises in relevant markets > 30%; **or** combined turnover of enterprises > Esc 30 billion.	0.353	X		
Spain	X		(M,T) Combined market share in Spain > 25%; **or** combined sales in Spain > Ptas 20 billion.	0.004		X	
Sweden		X	(T) Aggregate turnover > Skr 4 billion.	0.296	X		
European Union		X	(T) Combined worldwide sales > ECU 5 billion; **and** sales of each of at least two parties > ECU 250 million, unless each party's EC turnover within one and the same.	0.001(0.00004)	X	X	

a) (V): Voluntary; (C) Compulsory.

b) Nominal GDP in 1990 in national currency (Numbers in parenthesis show the thresholds for each merging party). Nominal GDP in EU was calculated using PPP.

c) (F): Fine; (D): Divestiture; (1) Imprisonment.

Source: OECD (1994), *Merger Cases in the Real World: A Study of Merger Control Procedures*, Paris.

Table 10. **Impediments to FDI in selected non-OECD economies**

	Central and South America			South and East Asia							
	Argentina	Brazil	Chile	China	Indonesia	Chinese Taipei	Hong Kong	Korea	Malaysia	Singapore	Thailand
Screening/ notification	X	X	X	X	X	X		X	X		X
Restricted/closed	X	X	X	X	X	X	X	X	X	X	X
Performance requirements		X	X	X	X	X		X	X		X
Fiscal incentives	X	X		X	X	X		X	X	X	X
Taxation incentives	X	X	X	X	X	X		X	X	X	X
Priority sectors	X	X		X	X	X			X		X
Exchange controls		X		X		X		X			

Note: X indicates use of instrument.

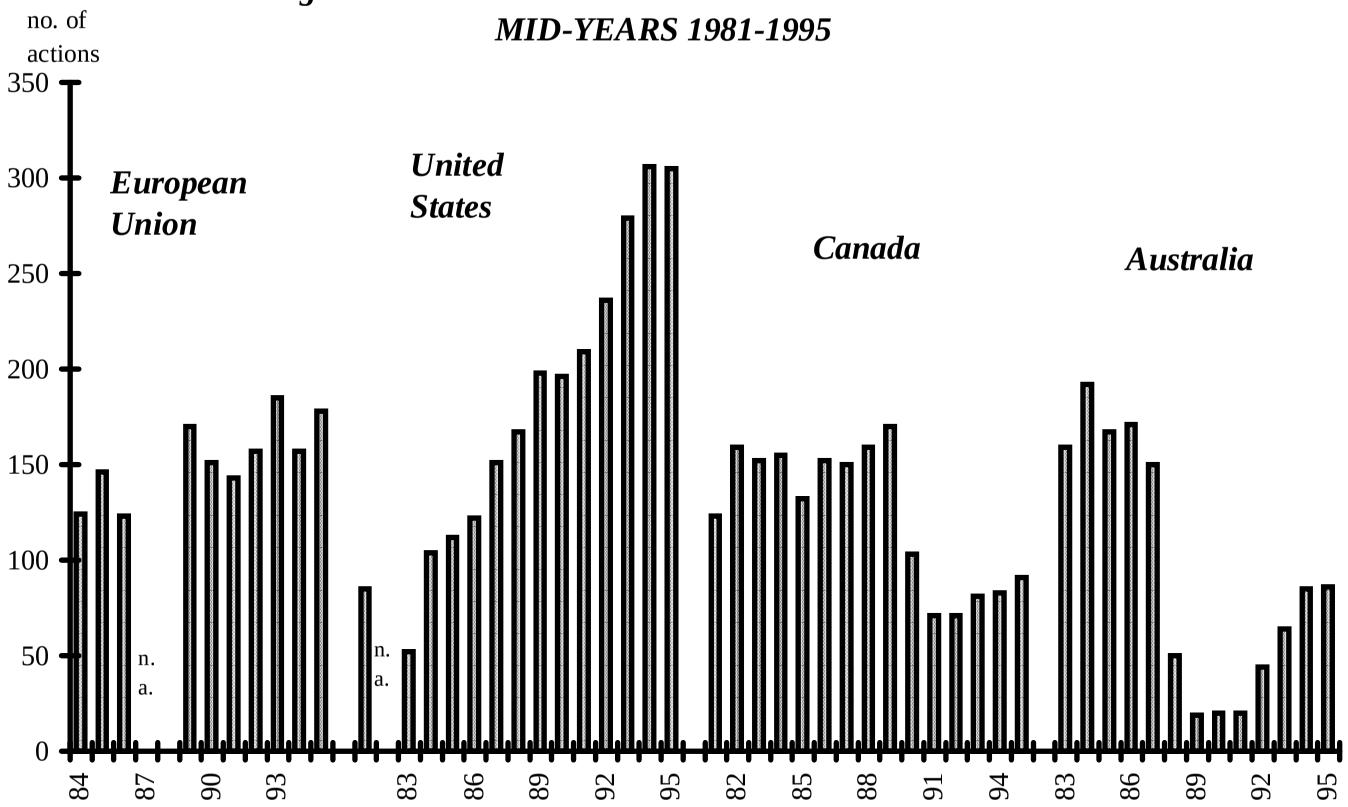
Sources: APEC (1995) and OECD.

Table 11. **Enactment of competition law in selected non-OECD economies**

Countries	Years
1) Africa	
Cote d'Ivoire	1993
Kenya	1988
South Africa	1979
Ghana, Morocco, Senegal, Zambia & Zimbabwe	(Legislative initiatives)
2) Asia	
Chinese Taipei	--
India	1969
South Korea	1980
Pakistan	1970
Philippines	(Legislative initiatives)
Sri Lanka	1987
Thailand	1979
3) Latin America/Caribbean	
Argentina	1919, 1946, 1980 (revisions underway)
Brazil	1962, 1994
Chile	1962, 1994
Colombia	1959, 1992
Ecuador	(Legislative initiatives)
Jamaica	1993
Mexico	1993
Venezuela	1991
4) Central and Eastern European countries	
Belarus	1992
Czech and Slovak Republics	1991
Poland	1990
Russia	1991
Other CEE-FSU countries	1990-93

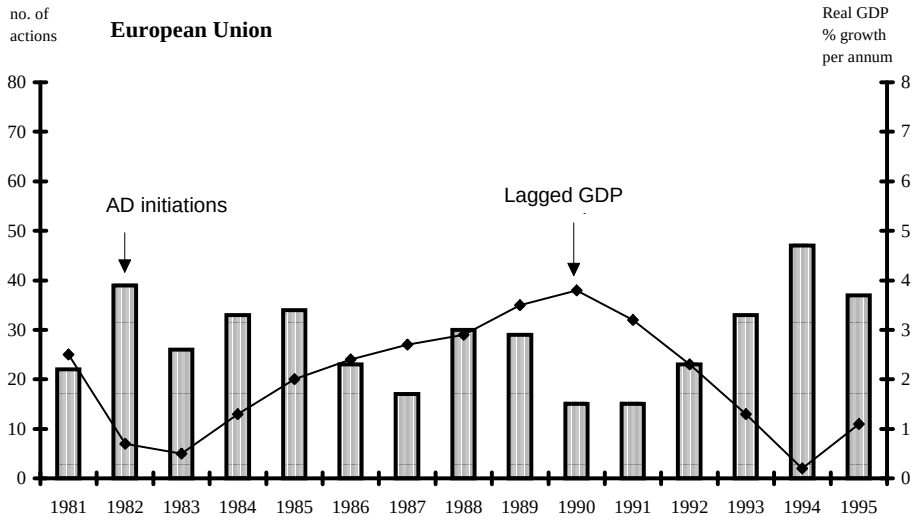
Source: Khemani (1996).

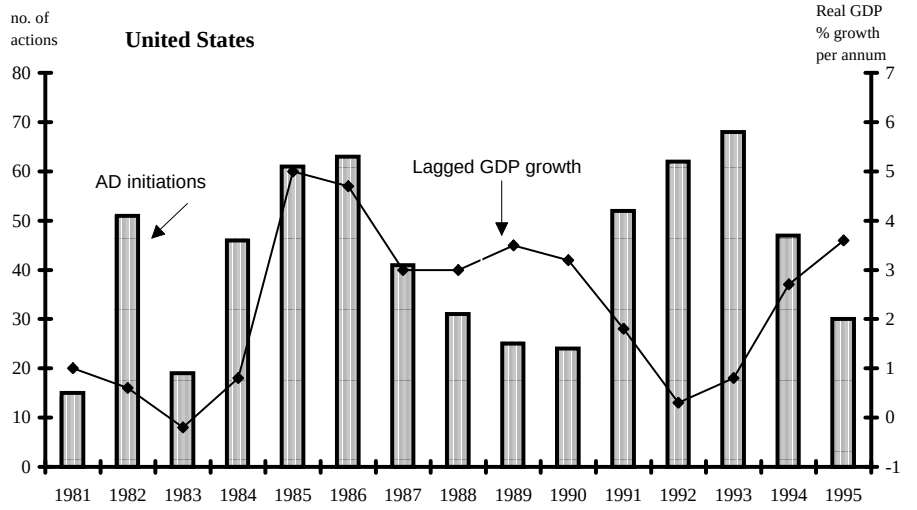
Figure 1. ANTI-DUMPING ACTIONS OUTSTANDING
MID-YEARS 1981-1995



Source: WTO and GATT Annual Reports up to 1995

Figure 2 . ANTI-DUMPING CASE INITIATIONS AND THE CYCLE (1)

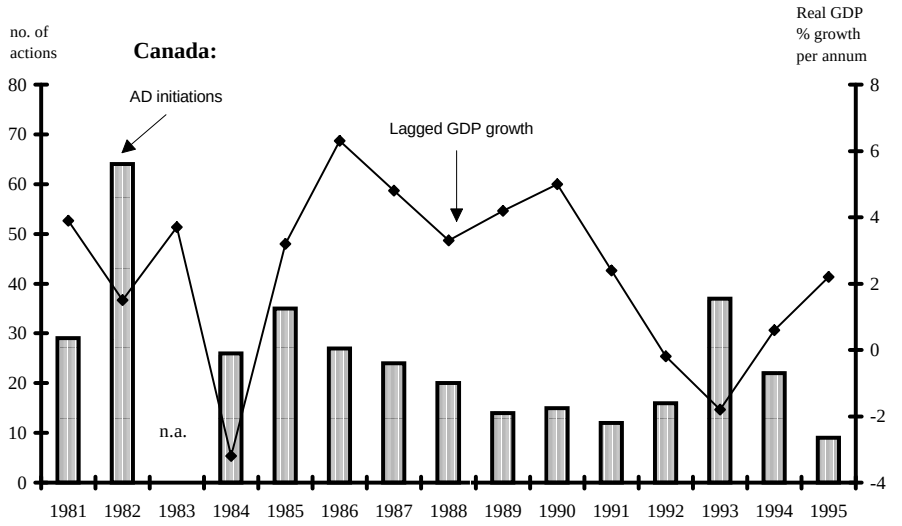


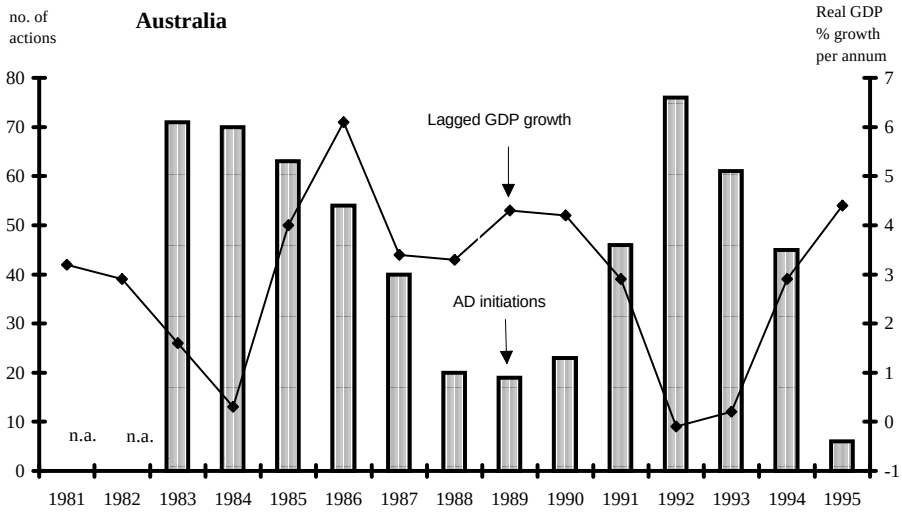


1) Anti -Dumping case initiation measured from mid-year to mid-year Real GDP growth rates lagged by one year.

Source: OECD and GATT/WTO

Figure 2 . (continued)

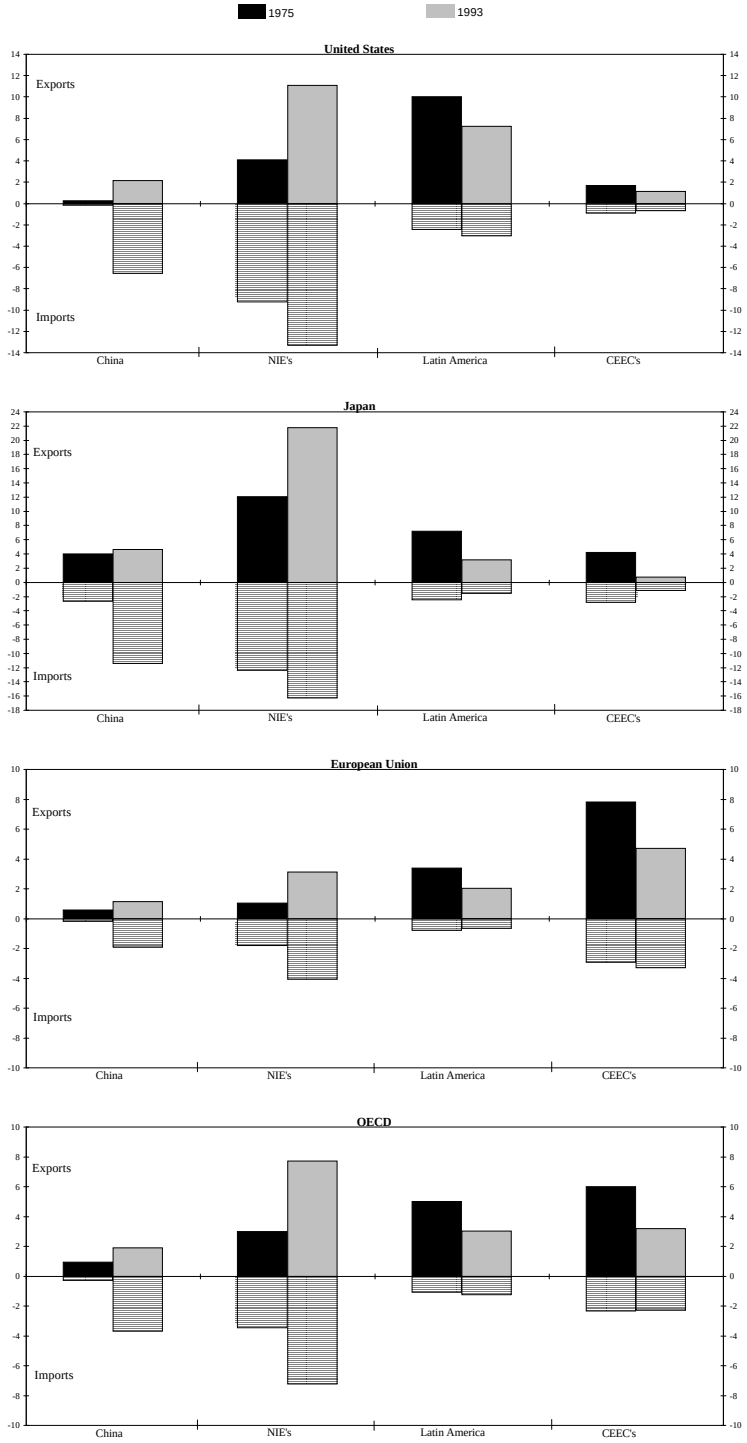




1) Anti -Dumping case initiation measured from mid-year to mid-year Real GDP growth rates lagged by one year.

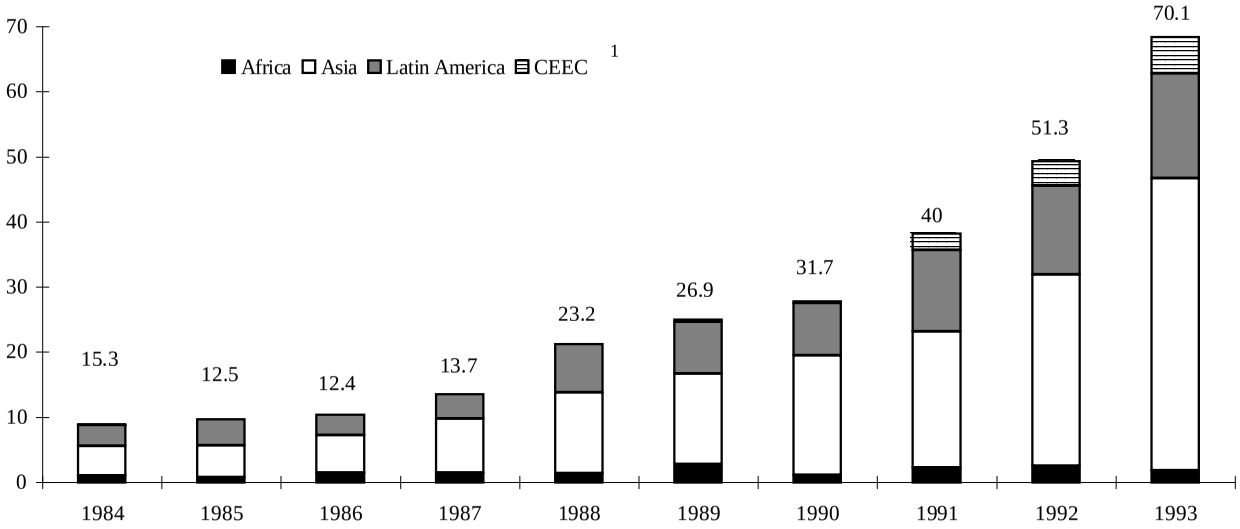
Source: OECD and GATT/WTO

Figure 3. **Share of non-OECD Countries and Regions in Manufacturing Good Exports and Imports of OECD Countries and Areas**



1) NIE's are Chinese Tapei, Hong Kong, Korea and Singapore.
2) Latin America excludes Mexico and Venezuela.
3) CEEC's are Central and Eastern European Countries plus former USSR.
Source : OECD.

Figure 4**. Direct Investment flows in Non-OECD Regions**
(in $ billion)



1) CEEC includes Albania, Bulgaria, Former Czechoslovakia, Hungary, Poland and Romania.

Source: I.M.F.

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