Chapter - 10

IMPORT SURGE AND TRADE REMEDY MEASURES

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Virtually all trade agreements contain a safeguard provision. Broadly defined, the term "safeguard protection" refers to the provision permitting governments to withdraw their normal obligations, under specified circumstances, in order to safeguard certain overriding interests. It is like a safety valve. The WTO framework also recognizes difficulties and negative effects arising from both fair and unfair trade practices of trading partners, and provides for response measures known as trade remedy measures. Three such measures are accessible to all WTO Members and applicable to all commodities while one is specific to agricultural products under the AoA and not accessible to all countries. The former are: anti dumping, countervailing and emergency safeguards, and the latter is Special Safeguard of the AoA. These agreements lay down specific rules for determining the occurrence of the problem and detailed rules and conditions for triggering response measures.

Import surges and negative effects on domestic industries due to fair and unfair trade practices of trading partners are real life phenomena. In the WTO, many disputes are about these issues. In Nepal itself, local newspapers frequently report the occurrence of import surges and their negative effects. At an interaction programme organized by the AEC in the course of this study, many farm and trade associations stated that import surges are increasingly becoming a problem for them. A number of commodities including apples, other fruits, vegetables, poultry, poultry feeds and eggs, and cereals were mentioned where surges have been frequent.

In view of the above the objective of this chapter is to first explain the WTO safeguard measures and then to examine the phenomenon of import surges in Nepal. The next Section introduces the WTO safeguard measures and related definitions and concepts, including safeguards in Nepal-India Trade Treaty. The subsequent section presents an analysis of import surges for Nepal, in concrete terms using five Nepalese products. The chapter concludes with some suggestions.

TRADE REMEDY MEASURES IN THE WTO AGREEMENTS AND IN NEPAL-INDIA TRADE TREATY

An Overview of the WTO Trade Remedy Measures

Anti-dumping, countervailing and emergency safeguards are the three main WTO trade remedy measures with general applicability. In addition, the AoA has its own safeguard, called Special Safeguard (SSG), applicable to agricultural products only and accessible to some countries only[50]. These four trade remedy measures

[50] There are many references on safeguard measures. The best source is the Uruguay Round Legal Text where these Agreements are found (available at the WTO web site). An introductory analysis in the context of agricultural trade is Sharma (2000) in FAO Resource Manual:available at www.fao.org/trade. FAO (2000) reports several recent cases of import surges in developing countries, while FAO (2002) discusses some analytical and negotiating issues on safeguards for developing countries.

are introduced here. Table 1 summarizes the key provisions of these measures[51]. The safeguard clause in the Nepal-India Trade Treaty is covered separately.

Table 1: **Trade remedy measures in the Uruguay Round Agreement**

Remedy	Target of remedy	Criteria for remedy implementation	Access to:	Relevant provisions/agreements
Antidumping duties	Imported products are "dumped" by *private* firms of exporting countries	Evidence of dumping (exported at below "normal value") Proof that dumped imports caused or threaten to cause serious injury to importing country's domestic industry	All WTO Members (also Nepal)	Article VI of GATT 1994 and Uruguay Round Agreement on Implementation of Article VI of GATT 1994 (i.e. the above Article).
Countervailing duties (CVDs)	Imported products that benefit from subsidies (production or export) given by *governments* of exporting countries	Evidence of government subsidy on exported products Proof that subsidized exports caused or threaten to cause serious injury to importing country's domestic industry	All WTO Members (also Nepal)	Articles VI and XVI of GATT 1994 and Uruguay Round Agreement on Subsidies and Countervailing Measures
Emergency safeguards	Surge of imports	Proof that surge of imports caused or threaten to cause serious injury to importing country's domestic industry	All WTO Members (also Nepal)	Article XIX of GATT 1994 and Uruguay Round Agreement on Safeguards
Special safeguard (SSG) of the AoA	Agricultural products whose imports surge or whose import prices are depressed	SSGs triggered when current import volume or current import price deviate from established levels for a base period Limited to products for which a Member has reserved the right to trigger the SSG	Only about 40 WTO Members have access (Nepal has no access to SSG)	Article 5 of the Agreement on Agriculture

Source: Compiled by authors from the Uruguay Round Legal Text and various other references.

Anti-dumping provision

Dumping is defined in general terms as the sale by a *private* firm of an exported product in a foreign market at a price below that at which the same product is usually sold in the home market. Dumping also occurs if the export price of the product is not "normal", i.e. below the cost of production. The basic GATT provision dealing with anti-dumping, or AD, is Article VI of GATT 1994 – *anti-dumping and countervailing duties*. The *Agreement on Implementation of Article VI of GATT 1994*, commonly known as the AD Agreement, provides further elaboration of the basic principles set forth in Article VI and provides details on the investigation, determination and application of the AD duties.

To apply an AD duty, three conditions have to be met: i) a determination that dumping has occurred (including an estimate of the dumping margin, i.e. the difference in prices); ii) that a domestic industry is suffering from, or threatened with, material injury; and iii) that the dumping is the cause of the injury. Thus, an "injury test" is essential, i.e. the proof that dumped imports caused material injury to local industry or posed such a threat. Other important rules are that the AD duty must not ex-

[51] See Boxes 1 and 2 for the definitions of import surge and injury, and an industry in these agreements.

ceed the margin of dumping, and that the duty would have to be imposed on a non-discriminatory basis on imports from all sources. Members with AD legislation are required to maintain independent "judicial, arbitral or administrative tribunals" to permit prompt review of administrative actions concerning final AD determination and to maintain the AD duties.[52]

Countervailing duties

The thinking about countervailing duties is similar to that of AD – while AD is aimed at "unfair" action by an exporting private firm, countervailing action is aimed at "unfair" practices resulting from government subsidies (both domestic and export subsidies). Otherwise, most of the procedural requirements are fairly similar. The UR Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") expands, as in the case of the AD Agreement, the provisions of two Articles of GATT 1994 dealing with this issue: Article XVI – Subsidies (the source of the problem); and Article VI – anti-dumping and countervailing duties (the remedy). The SCM Agreement contains detailed provisions and many definitions (e.g. what constitutes a subsidy), the types of subsidies from the standpoint of countervailing (CV) actions (non-actionable, prohibited and actionable subsidies) and detailed investigative procedures and rules. Article VI of GATT defines subsidy as *inter alia* a financial contribution to a private firm by a government and government revenue foregone or not collected (e.g. fiscal incentive).

Thus, a countervailing measure may only be applied after an investigation by that Member and a determination that the criteria set forth in the SCM Agreement are satisfied. The substantive criteria require that a Member shall not impose a countervailing measure unless it determines that: the imports are subsidized; that there is an injury to the domestic industry in question; and a causal link has been established between the import and injury, similar to that in the AD case. In-depth procedural requirements regulate the conduct of countervailing investigations and the imposition and maintenance of countervailing measures.

In the particular case of CV actions in agriculture, Article 13 of the AoA contains a "peace clause", which states that permissible domestic subsidies (in the "green box" category) cannot be subject to countervailing duties during the implementation period, and that other ("amber box") domestic support and export subsidies are subject to CV action only if a determination of injury or threat thereof is established as per the SCM agreement.

Emergency safeguard

The basic GATT provision dealing with emergency safeguards is Article XIX – *emergency action on imports of particular products*. In view of many problems experienced with this Article, the UR Agreement on Safeguards ("SG Agreement") was negotiated "to re-establish multilateral control over safeguards and eliminate measures that escape such control". The SG Agreement sets forth detailed rules for the application of safeguard measures pursuant to Article XIX. The conditions

[52] Unlike in the case of countervailing duty actions (noted below), the "peace clause" (Article 13) of the AoA does not exempt agricultural products from AD actions during its implementation period.

leading to the application of the safeguard measures are defined similarly as in AD and CV agreements, e.g. surged imports and injury, but there are also important differences (see Boxes 1 and 2 for definitions). The guiding principles of the SG Agreement are that: i) such measures must be temporary; ii) that they may be imposed only when imports are found to cause or threaten serious injury to a competing domestic industry; iii) that they (generally) be applied on a non-selective (i.e. most-favoured-nation) basis; iv) that they be progressively liberalized while in effect; and v) that the Member imposing them must pay compensation to the Members whose trade is affected.

Box 1

The concepts of *import surge* and *injury* in the WTO trade remedy Agreements

Agreements on WTO trade remedy measures: All three Agreements (i.e. anti-dumping, countervailing and emergency safeguard) define an import surge similarly and in a general way. The best example is found in Article 2 of the Agreement on Safeguards where import surge is defined as follows: "When a product is imported into a country in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products". Thus, a surge is associated with some form of "unusualness", i.e. a significant break from some established trend. This definition is similar to those found in English dictionaries where a surge is typically defined as a sudden or impetuous onset, or a rapid increase in, for example, price, import etc, and over a short period. The two key words are *rapid increase* and *over a short period*.

All three trade remedy measures require an *injury test*, i.e. the proof that imports caused or threatened material injury to an established industry in the importing country. An injury is defined in a general manner based on a number of indicators, including significant price undercutting, actual or potential declines in output, sales, market share, profits, productivity, return on investments, capacity utilization and so on. The Agreements stress on the importance of "an evaluation of all relevant economic factors and indices having a bearing on the state of the industry".

Agreement on Agriculture: The AoA does not mention the word import surge in its Article 5, Special Safeguard (SSG), but the phenomenon addressed is similar. Moreover, and unlike above, there is a specific quantitative definition whereby the phenomenon (surge) is said to occur when current import volume exceeds an established base period values (explained in the text earlier). A similar threshold is established for import price.

Another distinguishing feature is that there is no need for an injury or negative effect to occur; the SSG is triggered when current import volume or current import price deviate from established levels for a base period.

These Agreements, thus, make a clear distinction between a *surge* and *injury* or negative effects, something that has often been a source of confusion to many. To repeat, these are two different things. A surge is a statistical concept – it occurs when imports rise unusually – but it does not necessarily and always lead to an injury. For example, a crop failure often leads to an import surge in order to offset the shortfall in production, but is unlikely to have any negative effect. But where a surge occurs when domestic production is normal, it is likely that there is negative effects or material injury to an established industry in the importing country (see next sub-section for the definition of an industry in these agreements).

Other differences between the emergency safeguard and the AD and CV measures include the following. First, the emergency safeguard is not conditioned upon an "unfair" practice, i.e. there need not be dumping or subsidies. Rather, it is predicated on the argument that the suffering industry needs protection to adjust itself to the external shocks, e.g. import surges. Second, safeguard actions can be taken very rapidly, if critical circumstances are deemed to exist (provisional AD and

CV duties can only be imposed after a preliminary investigation that provides an opportunity for all interested parties to comment and present evidence). A third distinguishing feature is that quantitative import controls can be used, whereas only additional duties are permitted in the case of the AD and CV measures.

Box 2

The concept of a *domestic industry* in the WTO trade remedy Agreements

Agreements on WTO trade remedy measures: All three Agreements define a domestic *industry* almost identically. Thus, a domestic industry is interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products. Two exceptions noted in this definition are:[1]

- When producers are related to exporters or importers or are themselves importers of the allegedly dumped or subsidized product, the term "domestic industry" may be interpreted as referring to the rest of the producers; and
- In exceptional circumstances, the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

Aside from these exceptions, it is clear that an industry is defined similarly as in economics textbooks, i.e. by distinguishing an industry from firms. Thus, for example, there could be several "firms" or factories producing sugar in a country but there is only one industry - the sugar industry. This also implies that for establishing injury from dumping or subsidized exports, it is not enough to show negative effects on one or more firms, or some firms located in some part of the country, but to the sugar industry as a whole. The point made in the second bullet above is of some relevance for Nepal in view of the very likely spatial segmentation of markets. As an example, one could consider two poultry industries in Nepal, the first applying to the far west regions of the country and the other for the central and eastern regions including major urban areas that are more closely connected.

Agreement on Agriculture: The AoA does not require an injury test and so there is no need for defining a domestic industry.

1/ See Article 4 of the Anti-dumping Agreement for the full text

An important feature of emergency safeguards is that, unlike with the AD and CV actions, compensation is required. The SG Agreement has laid down specific rules on "compensation" or "offsetting action". In line with the GATT tradition, these call for the member imposing the measure to consult with those members that have a "principal supplying interest" in the product, and try to maintain "a substantially equivalent level of concessions". Members may agree on any adequate means of trade compensation, but failing an agreement the exporting member affected can suspend equivalent concessions or other obligations on 30 days' notice (i.e. it can retaliate), provided the WTO Council for Trade in Goods does not disapprove.

For a majority of the developing countries, this requirement for compensation may severely limit the scope for using the safeguards. Given the often small volume of their trade and its higher degree of concentration, they would not have much to offer in terms of trade concessions elsewhere.

Other WTO provisions that also provide safeguard

The following provisions that allow a Member to modify or suspend normal WTO obligations could also be called trade remedy measures.

Balance of payments exception (GATT 1994 Article XII)**:** Imports can be restricted when country's external financial position deteriorates substantially. But conditions to trigger this safeguard have been tightened considerably, and moreover restrictions have to be placed on all or most imports, not on a selective basis as with general safeguards.

Infant industries (GATT 1994 Articles XVIII:a and XVIII:c): This permits government assistance for economic development, allows import restrictions to protect infant industries, but the provision has hardly been used, and restrictions apply.

General waivers**:** Subject to formal approval by the WTO Council, a member may be exempted from a WTO obligation (Article XXV and WTO Agreement). However, the chance of obtaining the approval for the purpose of a safeguard is considered to be very limited.

Modification of Schedules and tariff renegotiations**:** This provision permits a member to withdraw or revise an obligation (e.g. raising the bound tariffs) through negotiations, for some time or permanently, but these almost invariably require compensation to affected Members, and so is of little use for a small country.

Special Safeguard Provision of the Agreement on Agriculture

Article 5 of the AoA established conditions to invoke temporary duty increases, above the bound rates, on specified (pre-identified) agricultural products. In order to invoke this special safeguard (SSG), three conditions have to be met: i) the product in question must have been subjected to the tariffication process[53]; ii) the product must be designated in the country Schedule as a product for which the SSG may be invoked; and iii) the criteria for either a price-based trigger or a quantity-based trigger must be met. The SSG was the creation of the AoA to address concerns that removing non-tariff measures might result in either a flood of imports that would hurt domestic production or depress domestic prices because duties bound through the tariffication process alone might not be sufficient. The right to make use of the SSG provision has been reserved by 36 WTO Members, and for a limited number of products in each case. As a majority of the developing countries did not tariffy, offering "ceiling bindings"[54] instead, very few of them have access to this provision. As Nepal became a WTO member through the accession process, access to SSG had to be negotiated. Nepal did not obtain it.[55]

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53 In other words, this provision cannot be invoked for products for which protection already took the form of tariff only, nor for products for which "ceiling bindings" were offered.

54 Ceiling bindings were arbitrarily determined bound rates that developing countries could offer rather than determine bound rates through the tariffication process. For example, Bangladesh "offered" to bind all agricultural tariffs at 200% and Sri Lanka at 50%.

55 Of the 20 new WTO members that accessed through the accession process, including Nepal, only three have access to the SSG, and for a limited number of products. They are China Taipei, Panama and Bulgaria (se Brink 2003). See WTO (2003) for Nepal's accession commitments.

Price-based SSG: The basic idea is that additional duties (over the bound rate) are allowed when import prices fall below an established trigger level. The reference price for calculating the price trigger was defined in general terms as the average c.i.f. price during the 1986-88 base period, expressed in domestic currency. Countries using the SSG provision have notified these trigger prices to the WTO. The formula for determining the additional duty is somewhat complex – this depends upon the degree to which the import price falls below the trigger level. In a way, this works like a variable levy – the greater the decline in the import price below the trigger level, the higher is the duty – but it does not completely offset the fall in the import price. This means that domestic prices are not entirely insulated from the effects of falling world market prices.

Volume-based SSG: The basic idea, as above, is that additional duties (over the bound rate) are allowed when there is a surge in imports relative to an established trigger level of imports. The trigger level is derived using a formula based on: i) the actual level of imports averaged over the preceding three years; ii) the share of imports in domestic consumption; and iii) the absolute volume change in consumption over the most recent year for which the data are available. In this formula, the trigger level is higher (but with lower probability of the SSG being triggered): i) the greater the three-year average level of imports; ii) the lower the share of imports in domestic consumption; and iii) the faster the growth in domestic consumption.

Some additional conditions for the SSG are: i) the maximum additional duty permitted can not exceed 30% of the normal level of duty in effect during the year in which the SSG is invoked; ii) the additional duty may not be levied beyond the end of the year in which it has been imposed; iii) the additional duty can not be applied to imports taking place within Tariff Rate Quotas.

Trade Remedy Measure in Nepal-India Trade Agreement

Since 1993 a new clause on *import surge* was introduced in the Nepal-India Trade Treaty, following an agreement to reduce the value addition requirement (from 70% to 50%) for Nepalese manufactured goods destined for export to India without any duty.[56] The remedy agreed was joint consultations in the event of a surge. While renewing the treaty in 1996, the value addition requirement was abolished, and a new Protocol was added that permitted the contracting parties to maintain or introduce some restrictions on trade as necessary, notably for non-trade reasons such as protecting public morale, human, animal and plant life, national treasures, gold and silver trade, and any other safeguard that is mutually agreed upon. These were similar to some common exceptions found in the WTO Agreements, and were not the types of trade safeguards discussed above.

Following the 1996 treaty, the export of the Nepalese manufactured goods picked up fast and India started to raise the issue of surge and the need for consultations in various bilateral meetings. This eventually led to the addition of a surge

[56] For further details see Chapter 11 on Nepal-India trade treaty by Nepal in this volume.

clause in the 2002 revision of the 1996 treaty (Protocol to Article IX). This surge clause is similar to those found in the WTO Agreements.

The phenomenon of an import surge is expressed in the Protocol to Article IX as follows: "In the event of imports under the Treaty, in such a manner or in such quantities as to cause or threaten to cause injury to the domestic industry or a significant segment of it relating to the article, the importing country may request for consultations with a view to taking appropriate measures. If the consultations in the Joint Committee fail to resolve the issue within a period of sixty days from the date of such request, then the requesting Government shall be free to take appropriate remedial measures. The India-Nepal Inter-Governmental Committee (IGC) will review such measures".

The Protocol also defines *injury* as a significant damage to the domestic producers of like or similar products resulting from a substantial increase of imports under the treaty in situations that cause substantial losses in terms of earnings, production or employment unsustainable in the short term. It is also said that the examination of the impact on the domestic industry concerned shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of domestic industry of that product. The Protocol defines *threat of injury* as a situation in which a substantial increase of imports under the treaty is of a nature so as to cause injury to the domestic producers, and that such injury, although not yet existing, is clearly imminent. Determination of threat of injury shall be based on facts, not on mere allegation, conjecture, or remote hypothetical possibility.

In the context of assessing any injury, it is also important to note the definition of an industry in the 2002 Protocol, where the wording a *significant segment* (of the industry) is also accepted, in addition to the industry as a whole. In the WTO Agreements, the corresponding wording is *major proportion* of the total domestic production. Although both terms are subjective, they have similar meaning according to English dictionaries.

ANALYSIS OF IMPORT SURGES AND NEGATIVE EFFECTS

This section presents an analysis of the phenomenon of import surges and their effects using five agricultural products of Nepal, *viz*. rice, lentils, sugar, fruits and vegetables. Although these are important products for Nepal and some of them have been subject to import surges, the primary purpose is to illustrate an approach to the analysis and to discuss various issues. As noted in the first Section, the general trade remedy measures define import surges in a rather general way, i.e. a surge is said to occur when imports rise in an unusually significant manner. For the analyses here, import surges are defined to occur when imports deviate significantly from their trend values. Although this method is somewhat different from the approach taken in the AoA where thresholds for measuring import surges are defined for base periods, rather than from trends, the approach taken here is consistent with the definition of an import surge in the general trade remedy measures.[57]

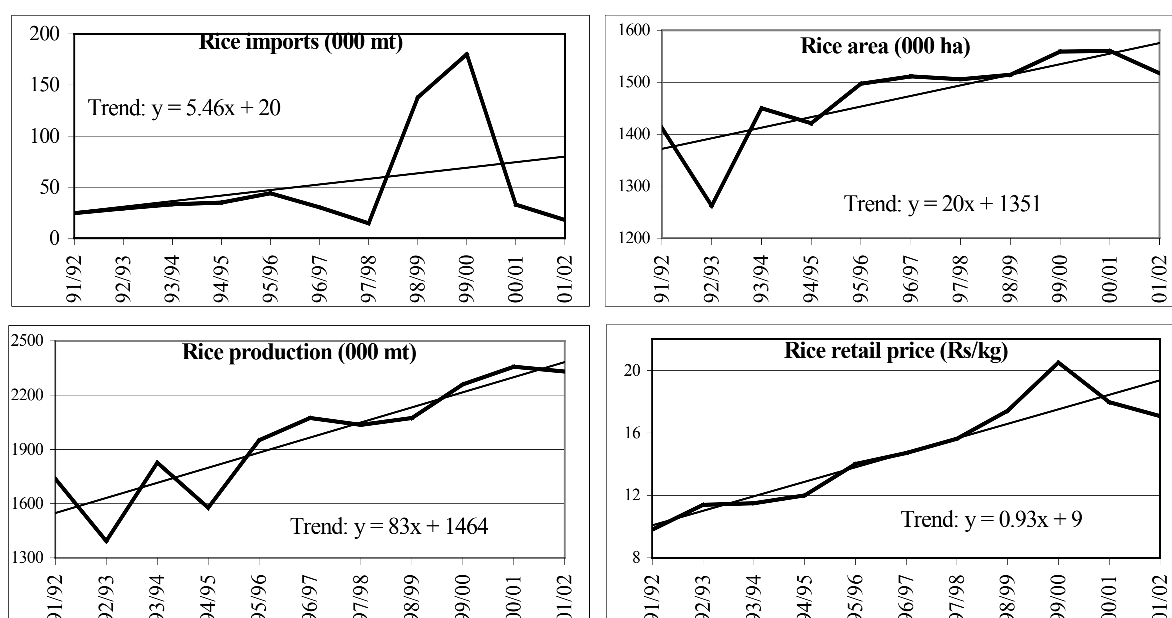
[57] One recent FAO study on import surges also identifies the phenomenon in a similar manner as in this study, i.e. based on deviations from trend (see FAO 2003). However, a more recent FAO study that

The analysis first identifies cases or years when the surge occurred, based on deviations from trend, and then examines the effects on the basis of 3-4 indicators which include crop area, production and retail prices and, in some cases, industrial production and capacity utilization also. A major limitation was the lack of statistics on import volumes from India. Since import volumes are essential for this type of analysis, these were constructed based on import values (which are available) and wholesale or retail prices in border markets.

Rice

Rice imports in Nepal have been increasing at a linear rate of 5 460 tonnes per annum during 1991/92-2001/02 (Figure 1). Imports were about 3% of domestic production, except for about 7-8% in 1998/99 and 1999/2000. Figure 1 shows that actual imports have followed their trend levels until 1995/96 when imports fell for two years and increased markedly for the next two years, declining again in 2000/01 and 2001/02. Measured against the trend line, the only cases where imports could be said to have surged are 1998/99 and 1999/00 when imports exceeded their trend values by 117% and 161% respectively.

Figure 1: **Rice – trends in imports from India, and area, production and prices in Nepal**



Source: Authors, based on official statistics. The thick line shows actual data and the thin line shows linear trend of the actual data. The estimated linear equations are shown in the graph. The number associated with the “t” variable indicates the magnitude of the annual growth rate, e.g. the first equation shows that rice imports grew by a linear rate of 5.46 thousand tonnes or 5 460 tonnes per annum.

Figure 1 also shows the evolution of rice area, production and retail prices in Nepal, the variables most likely to be impacted by import surges. Although there may be some interesting observations to be made based on correlations among those four variables, for the purpose of this study, the focus is on the surge years.

analyses the effects of import surges for Senegal and Tanzania does not use any objective criteria to identify surges (FAO 2004).

The question is: what has been the impact of the surges, if any? The data show that there were very small deviations from trends, in the range of 0-3%, in both area and production. These could be considered well within the normal range of statistical error, as larger deviations have occurred in other years. In any case, there were no abnormal changes in areas and production in the surge year as well as in subsequent years. For the entire 11 years, the correlation coefficients between imports and area and imports and production (measured as deviations from respective trends) were positive 0.002 and 0.13, respectively. Although not significant statistically, they imply some positive relationship, whereas the relationship would have to be negative for the surges to have negative effects. The relationship between imports and retail prices are also opposite, not negative. Indeed, the simple correlation between deviations of prices and imports from their respective trends during the 11 years was positive 0.62.

One reason that is sometimes given to explain higher rice prices in Nepal during 1998/99 and 1999/00 is increased cost of production following the withdrawal of fertilizer subsidies.[58] A more pertinent factor for explaining the weak link between imports and their effects could be that rice in Nepal is a somewhat differentiated product from that in India as the quality of bulk of the Nepalese rice is considered better (fine, aromatic rice) compared with bulk of the Indian rice (Hybrid coarse variety). It is also quite plausible, given the weak integration of the Nepalese markets, that the expected (negative) effects of import surges are felt locally in some parts of Nepal and not transmitted across the country and so not reflected in national average prices. This factor needs to be taken into account in the design of response measures. The concept of “industry” in WTO trade remedy measures is relevant here – we could say that “firms” (rice farms and farmers in some areas) were affected but the “industry” (national-level production) was not.[59]

Lentils

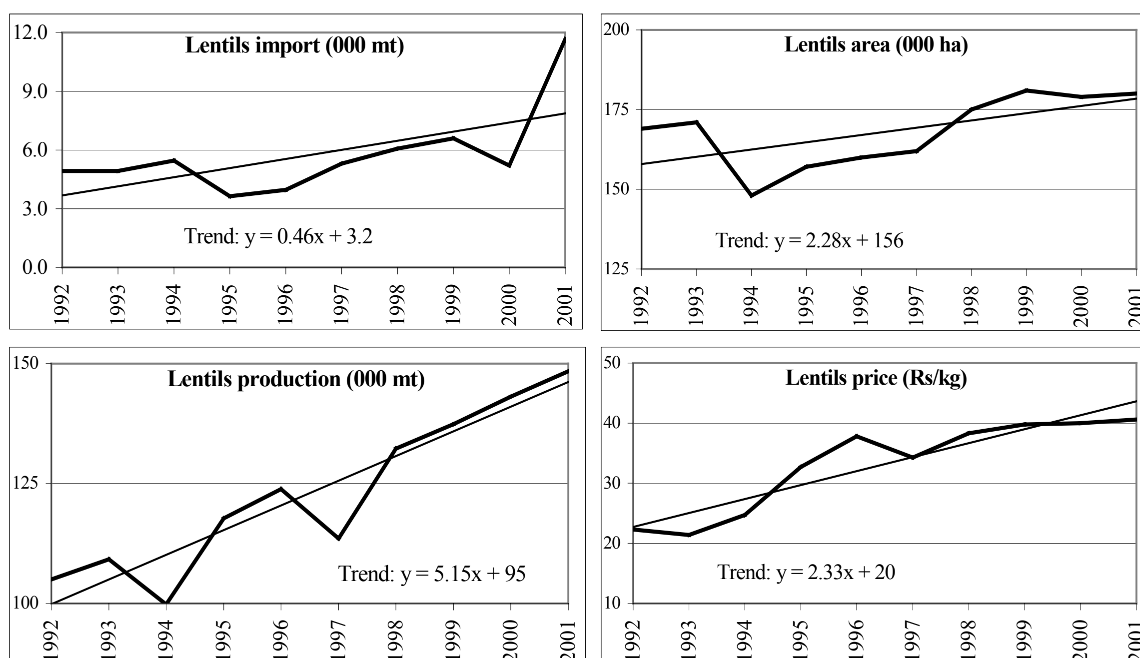
Lentil is a major export product of Nepal. Imports have fluctuated over the past 10 years but with a positive trend of about 460 tonnes per year (Figure 2). The data show that only the year 2001 could qualify as a surge year, when imports more than doubled from 5 000 to 12 000 tonnes. Regarding the effects, data were not available for 2002, but in 2001 both area and production were on trend, i.e. there was no evidence of any negative effect that year, nor on lentil prices which were flat since 1999. Although not shown in the chart, lentil export from Nepal has also been rising. For example, the total import value of lentils was nearly half a bil-

[58] Although this is not the subject of the study, factors that explain the movement of retail prices of agricultural commodities in Nepal are not only valuable for policy makers but also relevant for the assessment of the impact of imports on domestic markets. This should be in the agenda for further research.

[59] Similar analysis was also conducted for wheat but is not reported here for space reason. Very briefly, unlike with rice, imports of wheat from India have been very irregular, with imports in 1991/92 and 1999/00 resembling surges. However, there were no indications for 1992/93 any negative effects in crop area and retail price. The impact on crop area following the 1999/2000 surge was negative but very small. Although statistics are poor to conclude anything with confidence, there is a widely held view in Nepal that there were significant import surges in late 1990s related to large-scale de-stocking of wheat by the Food Corporation of India (FCI). On the other hand, this was also a period when noodles production in Nepal was growing rapidly, and so the recorded “surge” could have been due to the growth of the noodles industry.

lion rupees in 2001/02 while export earning was over a billion rupees in that year. It is possible, under certain conditions, for import surges to impact negatively on some part of the domestic industry even when the product is exported. However, it is a weak case to argue that imports had negative effects on the industry as a whole when exports are also rising. A detailed analysis would be required to trace the full impact of the import surge of a product that is also an export commodity.

Figure 2: **Lentils – trends in imports from India, and area, production and prices in Nepal**



Source: Authors, based on official statistics. See Figure 1 notes for explanations.

Sugar

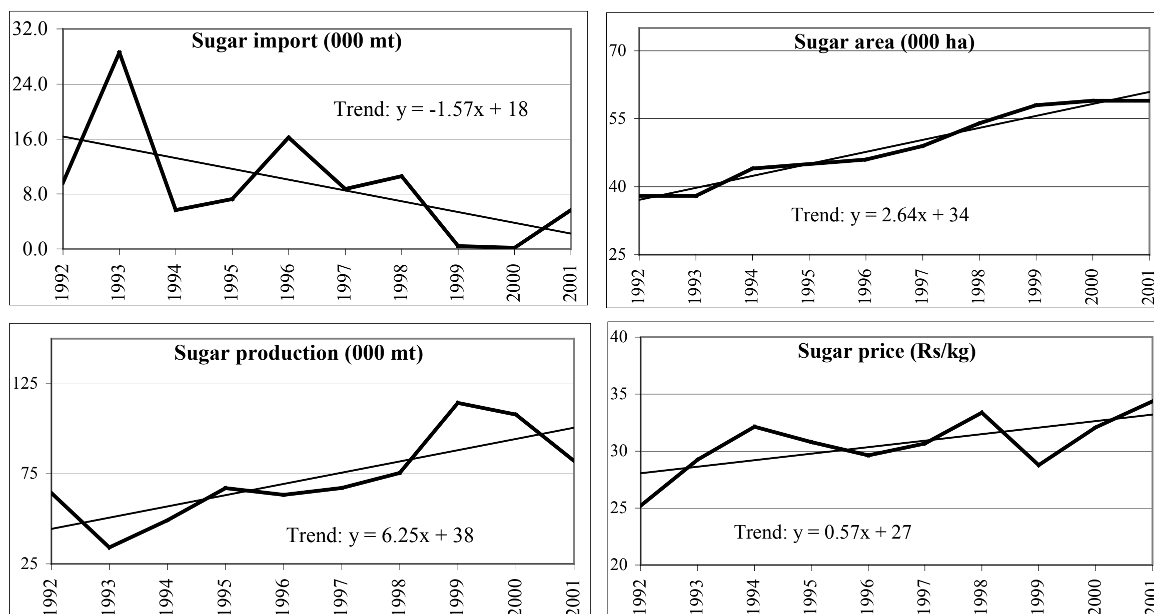
Imports of sugar from India have been irregular, estimated to be as low as 184 tonnes in 2000 and 29 000 tonnes in 1993 (Figure 3). The overall trend is negative. Based on the import data, one could call 1993, 1996 and 2001 as surge years. Compared with the volumes in the previous year, sugar imports tripled in 1993 and doubled in 1996, while in 2001 imports reached 6 000 tonnes from almost nothing in 2000.

As regards the effects, while the import in 1993 seems to be due to a shortfall in Nepal (both cane area and sugar production fell in 1993), there was no evidence of any negative effect in 1994 when cane area rose by 16%, sugar production by 44% and industry capacity utilization by 20% (not shown in the chart). Domestic sugar prices, another impact indicator, have been rising steadily throughout the period, especially in the surge years and the following year.[60] In 1996, import surged as domestic production fell by 6%, although cane area did not decline. As above, there was no evidence of any negative effect on the sugar industry in the following year. Finally, the reason for the import surge in 2001 seems to be the

[60] Since the price of sugar in Nepal is often regulated by the government, this would also not be an appropriate indicator for the present purpose.

sharp decline in domestic sugar production, by 24%. The effects of the 2001 surge should be reflected in 2002, but statistics were not available to assess the impact.

Figure 3: **Sugar – trends in imports from India, and area, production and prices in Nepal**



Source: Authors, based on official statistics. See Figure 1 notes for explanations.

Lately, the sugar industry has attracted a great deal of media attention, raising several issues besides import surges. One such issue is sugarcane prices that mills pay farmers. As sugar production capacity rose markedly in recent years, there were some discussions on whether or not to allow the import of sugarcane from India on a preferential tariff basis. Finally, many analysts also feel that Nepal should encourage increased sugar production in view of the lucrative export opportunities created by the 'Everything but Arms' initiative of the European Union. But the high cost of cultivation of sugarcane remains an issue to be addressed. In summary, therefore, Nepal's sugar sector deserves a thorough analysis covering all these and other issues.

Fruits

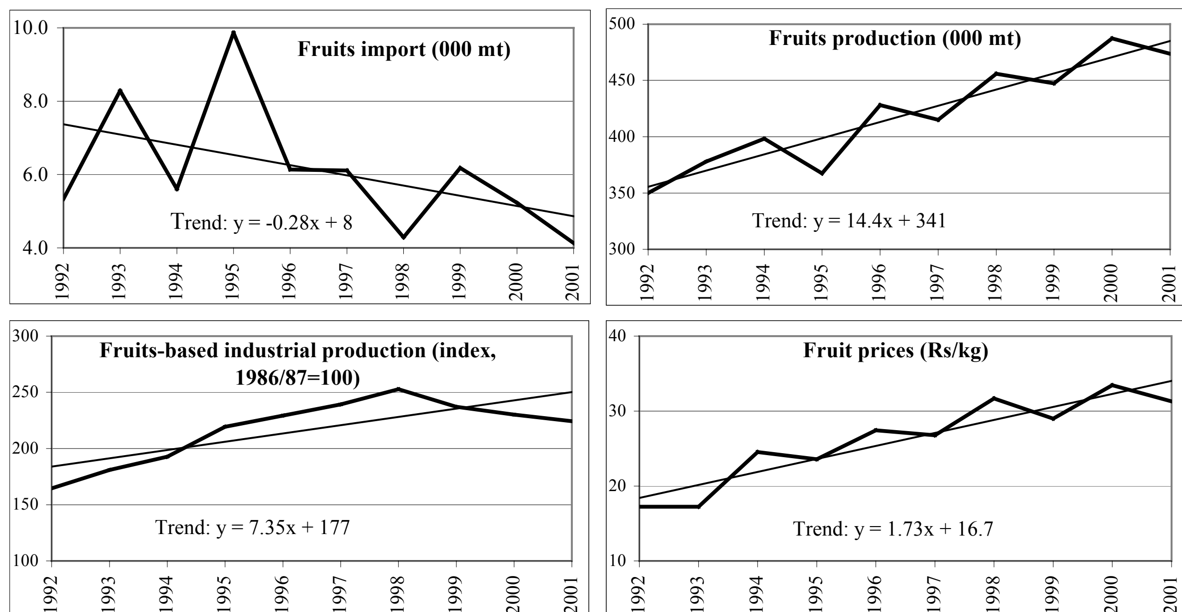
Statistics on the import of various fruits from India are relatively less reliable. Trade is bi-directional as Nepal also exports fruits in different seasons. The constructed data show relatively small imports, about 6 000 tonnes on average in the 1990s, or only 1.5% of the 420 000 tonnes production in Nepal. There were three occasions when imports rose sharply - in 1993, 1995 and 1999 (Figure 4). In 1993 and 1999, import volumes were high but from low levels in the previous year, and not from the trend levels. So only 1995 could qualify as a surge year.

In general, both fruits production and prices show steady positive trends.[61] In 1995, production was below the trend, which could have triggered the import. But

[61] Reflecting opposite trends, the simple correlation coefficients between import on the one hand and production and prices on the other are negative (-0.62 and -0.53, respectively).

domestic prices were on trend. In the following year, both production and prices in Nepal were higher and so there was no evidence of any negative effect, although this statement does not apply as strongly in the case of perennial crops like fruits. It is very difficult to analyse the impact of imports on domestic industries without a good knowledge of the market and its structure. For example, the figure shows that the output of fruits-based industries was on a steady positive trend during the 1995-98 period. So, it is possible that the imports were meant to be raw materials for the industry, a positive factor for the industry, but it is possible that the fruits production sector itself was impacted negatively.

Figure 4: **Fruits – trends in imports from India, and area, production and prices in Nepal**



Source: Authors, based on official statistics. See Figure 1 notes for explanations.

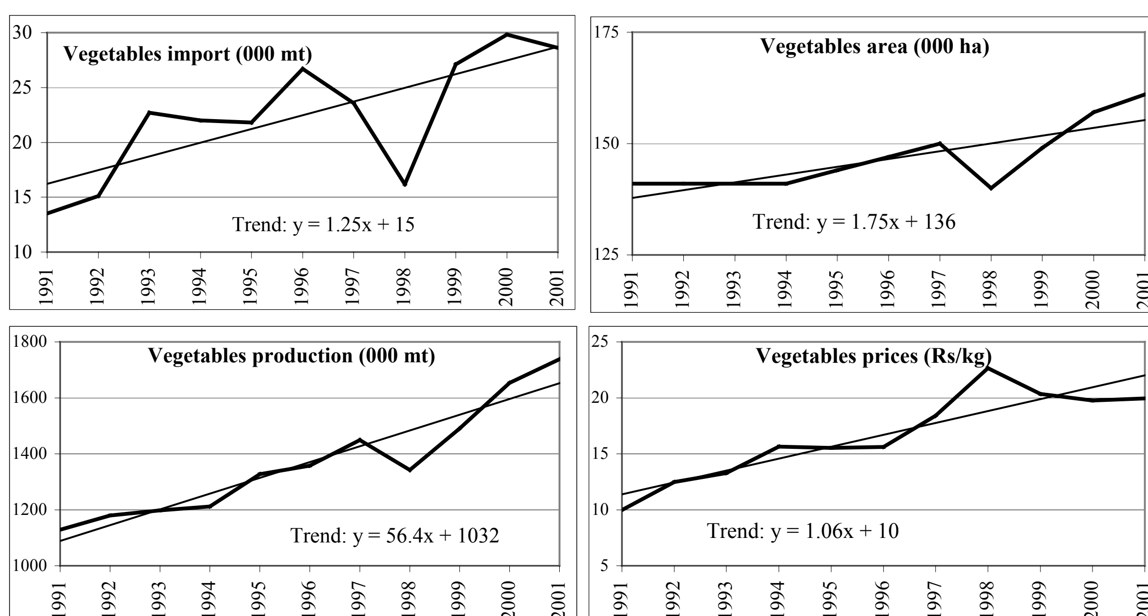
Although insightful in some respects, notably for illustrating an approach to the investigation, the analysis is crude. First, such analyses should be based on individual fruits, and not on the aggregate, which tends to cancel out surge statistics. Production and trade of fruits are also highly seasonal. So the analysis needs to be based on seasonal (e.g. monthly) data. Indeed, there have been some reports in Nepal of import surges of fresh apples from India, China and other countries. Complaints were made that these imports hurt the marketing of domestic apples in Kathmandu and other major towns. Second, extending the analysis to study the effects on industries is much more complex, and requires information on the industry structure. It is well known that imports of fruit juices have been rising in Nepal. The relevant issue here is import substitution, and not so much the surge in fruits per se, but there is a merit in undertaking a holistic analysis since a surge in fruit juices also impacts on domestic fruit production and marketing.

Vegetables

Figure 5 shows that import volumes of vegetables from India have been fluctuating fairly markedly in the last ten years. Three years – 1993, 1996 and 2000 –

seem to be probable cases of import surges (on the other hand, the 69% increase in 1999 was from a very low base of 1998). However, based on the other three figures, it is very difficult to argue that these episodes of higher imports had any negative effect on area, production and prices. Moreover, imports account for very low share (about 2%) of the total supply in Nepal, and therefore any negative impact would have to be marginal, based on these aggregate data.

Figure 5: **Vegetables – trends in imports from India, and area, production and prices in Nepal**



Source: Authors, based on official statistics. See Figure 1 notes for explanations.

As said above for fruits, aggregate statistics are not suitable for this type of analysis because surges, when they occur, are often limited to 1-2 commodities at a time. Not surprisingly, there have been several reporting in local newspapers on import surges of ginger and garlic, this time from China. Claims were made that as a result of this, local farm prices were depressed in periods when prices should have increased if trade volumes were normal. It was also alleged that these imports not only affected local markets negatively, but also brought some tensions in trade relation with India as bulk of the imports were re-exported to India.

CONCLUDING REMARKS

Conclusions

An import surge is a statistical concept: There is a great deal of confusion between a surge and its effects. These are two different things. A surge is a statistical phenomenon, separate from its effects. While the AoA defines this phenomenon in an objective manner, i.e. a surge is said to occur when current imports exceed a level established for a base period, and/or when current import prices are significantly below a similarly established threshold, the general WTO trade remedy measures define the concept in a general way, i.e. a surge is said to occur when imports rise in an unusually significant manner. In the illustrations in the second Section, surges were defined as import volumes that significantly exceed trend lev-

els. As elaborated below, a surge does not necessarily and always lead to a negative effect. For example, a crop failure often leads to an import surge in the same or the following period, but these imports merely offset the shortfall in production and are unlikely to have any negative effect.

There need not be an automatic, one-to-one causal relationship between a surge and negative effects: Thus, for example, a surge in response to a crop failure is unlikely to cause negative effects. A number of factors determine the nature and the extent of negative effects. These include the size of import relative to domestic production, nature of the commodities (whether close substitutes or differentiated), market structure, spatial and temporal market integration, length of the period when the surge occurs, and so on. For example, in the case of the cereals analysed in the second Section, it was noted that while there were some cases of surge, the effects were dissimilar across the cereals. In some cases, the surge could be associated with negative effect like reduced crop area in the following season, while in others there was no such evidence. In the case of wheat, while there were some surges in the late 1990s, presumably associated with large-scale de-stocking of wheat by the Food Corporation of India, this was also a period when noodles production in Nepal was growing rapidly. Thus, it is possible that while imports hurt wheat production, the noodles industry could have benefited.

In some cases, e.g. lentils, import surges were associated with marked increases in exports (or re-exports). In fact, the re-export could have been the main reason for the surge, in which case it will be very difficult to justify negative effects. In some other cases, e.g. ginger and garlic, the domestic farming community held that import surges undermined the *growth* of domestic cultivation, i.e. without the surge, domestic area and production would have been higher. This is a difficult argument to justify because the claim is not based on actual, observed changes in areas but on a counterfactual that implied that without the surge, crop areas would have been higher. For some commodities, the argument of a negative effect seems totally irrelevant. For example, import surges may occur for spices such as cloves, betel nut, cumin seed, peppers etc. but there could not be any negative effect because Nepal does not produce these products. The conclusion is that associating negative effects with a surge is fraught with pitfalls without careful analyses of the case in question.

Lack of quantity or volume data on imports from India makes it very difficult to analyse the phenomenon: Import data in volume terms are essential for the analysis of import surges. These are not available for imports from India. As a result, the analyses in the previous Section were based on data on import volumes that were constructed from import values (largely available) and wholesale or retail prices in the Nepal-India border markets (also available). Volume data are available for imports from third countries, but with so much of imports in Nepal coming from India, lack of these data is a serious constraint for monitoring imports with a view of analysing their effects on the local industries and taking response measures. Second, by definition, a surge is a short-term phenomenon, e.g. lasting for some weeks or months, and therefore annual data may be of limited use for the purpose of responding to the problem on a timely basis. Third, in several cases, trade statistics are not available in disaggregated forms. This point was made in the analysis of

fruits and of vegetables in the second Section. Since surges often occur for individual fruits or vegetables, statistics on aggregate fruits or aggregate vegetables are of limited use. Production of and trade in these products are also highly seasonal, which means that the analysis has to be based on seasonal (e.g. monthly) data. Addressing these data problems would be the first important step towards building capacity for responding to the problem of import surges.

Linking a surge to an appropriate trade remedy measure: There is a great deal of confusion on this in Nepal among private stakeholders, analysts and government officials. As discussed in the first Section, there are at least four trade remedy measures in the WTO framework that are specific to different sources of or reasons for the surge. As an example, if the origin of a reported surge of rice into Nepal from India is sales of the government stocks by India at below the normal value (or full economic cost), the appropriate instrument is countervailing duty, and not the anti-dumping duty. Similarly, if the origin of recent surges of apples in Nepal is New Zealand, the appropriate response measure would be either emergency safeguard (because New Zealand is known not to grant export subsidies on apples) or anti-dumping duty if apples were being dumped by private traders. The main point is that stakeholders as well as government officials need to be clear about the reason or source of the surge before thinking of a response measure. This, however, is not an easy task because it requires information that is not readily available, notably the origin of the surge products in question, domestic subsidy and trade policy in the exporting country, cost of production, and so on. Lastly, it is also important to note that Nepal does not have access to the SSG of the AoA, and so can not resort to the SSG's price-based and volume-based safeguards.

A different safeguard rule applies to imports from India under bilateral trade agreement: As discussed at the end of the first Section, the Nepal-India Trade Treaty has its own safeguard that applies to trade falling within the bilateral trade agreement (however, the general WTO rules discussed in this paper should apply to trade with India not covered by this agreement, e.g. trade conducted on a m.f.n. basis). The treaty calls for mutual consultations in the case of an import surge. But if no agreement is reached, it leaves the country facing the surge to take "appropriate remedial measures". As these measures are not defined, unlike the case with the WTO Agreements, there is a risk of a wide range of discretionary response actions. A concrete example is the claim made by India some time back of import surges from Nepal of vegetable ghee and the alleged negative effects on the Indian ghee industry.[62] The measures taken by India included Tariff Rate Quota, canalization of imports through a State Trading Enterprise and limitations on border points for the import. India claimed that the surge caused negative effects on the ghee industry, which has been disputed in Nepal as not being consistent with the treaty. The Indian claim is based on negative effects on ghee industry located in the northeast part of India, along the Nepal border. Nepalese traders argue that this segment cannot be a "major segment" of the Indian industry as a whole, as an industry is defined in the Treaty for assessing the injury. The main point is that the safeguard clause in the Nepal-India treaty lacks clarity and gives too much discretionary space for a trading partner, compared with the rules in the WTO Agree-

[62] See also Chapter 15 on vegetable ghee by Singh in this volume.

ments. As a result, it is in the interest of trade, and of both India and Nepal, to improve on the safeguard provision by making it more objective. There are other practical difficulties for Nepal to resort to safeguards, especially in the case of trade with India (see also Adhikari 2003 for some issues of this nature). The long and porous border with India also means that a safeguard measure cannot be prohibitively high for trade as this only leads to more smuggling.

Recommendations

Establishing a trade surveillance unit within the WTO wing of the MoAC: It is the responsibility of the government to implement a trade surveillance system with a view to minimizing negative effects of import surges on the domestic industry. Many developing WTO members are developing such capabilities. Although this is a long and difficult process, Nepal should initiate this work. Given that the MoAC will be increasingly involved on agricultural trade matters, it is suggested that the Ministry takes the lead on this. The WTO wing of the MoAC, within the Agri-business Promotion and Statistics Division, would be the appropriate unit to initiate this work, also in view of the synergy with other WTO-related activities. The Ministry has several agencies to support this work, notably the units collecting and analysing production and price statistics, and that undertake market surveys. The trade surveillance unit also needs to develop a framework for collaborating closely with the private sector, notably farm, industry and trade associations that have a direct vested interest on the successful implementation of the surveillance work.

The following suggestions address and elaborate some of the building blocks of such a trade surveillance system.

***Developing a framework for regular trade surveillance*:** The key to preventing negative effects of import surges from both fair and unfair trade practices of trading partners is a trade surveillance or monitoring system of sensitive commodities in particular. Such a system has been set up by India following the elimination of quantitative restrictions on imports in 2001. Aptly called "war room", this is a mechanism for closely monitoring imports and for assessing when imports threat the viability of domestic production. Under the system, information is collected on import volumes, unit prices and other basic information on very short intervals. The monitoring covers a total of 300 sensitive items, which include poultry meat, milk powder and products, coconuts, almonds, pistachios, raisins, most fruits (oranges, apples, strawberries, lemons, kiwi fruit, pomegranates, etc.), coffee, tea, spices, wheat, maize, rice, most vegetable oils, sugar, wine, other alcoholic beverages, cotton, etc.[63] The trade surveillance system within the MoAC outlined above could learn from this Indian experience as well as from similar mechanisms in other developing countries.

***Statistics on import volumes from India*:** This is a common recommendation in several chapters of this volume, e.g. case studies on poultry and fruits. Statistics on import volumes is the key building block for monitoring import surges and analysing the phenomenon. The limitation was clear in the previous Section of this

[63] A complete list of the 300 sensitive products is available at the website of the Directorate General of Foreign Trade of India, http://dgft.delhi.nic.in/exim/2000/

chapter where for lack of these statistics, the analysis was based on data constructed from import values and border prices. Second, these data are needed on a timely basis because a surge is often a short-term phenomenon (e.g. 4-6 months). The roundabout way of claiming a surge based on the negative effects is not helpful either if the surge itself cannot be established in the first place. Statistics on trade with India will continue to suffer from a high margin of error due to unrecorded trade. There is no easy solution to this other than improving the analysis on the basis of expert judgment, periodic surveys of selected markets to estimate the extent of unrecorded trade, and market prices as indirect indicators on unrecorded trade. Many agencies in Nepal e.g. Nepal Rastra Bank, Customs Department and CBS have some common interest on collecting these data. Thus, there is a scope for pooling human and financial resources to establish a mechanism for collecting these data more efficiently. Equally important, it needs to be done in partnership with the private sector, notably various industry and trade associations. As most claims of import surges typically originate from the private sector, and any response mechanism is in its interest, the sector must be a party in the whole process.

To further this process, it is also suggested that the MoAC organizes annual brainstorming Round Tables with the private sector for the purpose of analysing the phenomenon of import surges, market disruptions and possible responses.

Defining "domestic industries": For implementing trade remedy measures, a formal definition of a "domestic industry" is essential because it is the affected industry that initiates the process by bringing the problem to the attention of the government. What constitutes a domestic industry in various trade agreements was discussed in the first Section. Thus, the industry should represent all producers of the product in question, or a significant segment or a major proportion. Providing appropriate guidelines and definitions is a government responsibility. For example, the question of who should represent an industry has to be defined properly. Typically these are farm and industry associations provided that they represent all producers. Then there is the question of defining what constitutes a significant segment or a major proportion of the production, e.g. is it 80% or 90%? To the extent possible, these concepts need to be clarified in the eventual legislation on trade remedy measures (see below). It is possible that sometimes there is more than one association representing some segments of the industry but not the industry as a whole. For the purpose of trade remedy measures, a federated parent association representative of the industry as a whole may be needed. In other cases, there may not be any association, typically for many agricultural products that are not much traded. The interest of these farmers may need to be represented by the government itself. All in all, these are important building blocks towards the effective use of trade remedy measures.

***Legislation on trade remedy measures*:** At the time of accession, Nepal stated its intention to introduce a WTO-consistent legal regime with respect to anti-dumping and countervailing measures, as part of the Legislative Action Plan submitted to the WTO (WTO document WT/ACC/NPL/10/Rev.1). As per the timetable provided, draft legislation would be prepared in December 2003 and approval expected by mid-2004. This commitment should not be seen only as an obligation,

but also an opportunity for strengthening the capability for implementing trade policies. In drafting the legislation, attention needs to be given to implementation difficulties Nepal will face as a land-locked country with long and fairly open border.

***Preparation for using Special Safeguard Mechanism (SSM)*:** Although Nepal does not have access to the SSG of the AoA, there is a good chance that Nepal would have access to the new SSM being negotiated, which should be similar to the SSG and much simpler to use than the general WTO remedy measures. The Framework Agreement (end-July 2004) for the Doha Round negotiations envisages to establish a SSM for use by developing countries subject to conditions and for products to be determined. Having accessed recently, Nepal could not participate in these negotiations but it is clear that she should take keen interest and position in favour of the SSM. Implementing the above suggestions to strengthen the institutional capability on trade remedy measures would position Nepal to make effective use of the SSM by the time the instrument becomes accessible.

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