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Trade Remedies: A Primer

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Trade Remedies: A Primer

Summary

The United States and many of its trading partners use laws known as trade remedies to mitigate the adverse impact of various trade practices on domestic industries and workers.

U.S. antidumping (AD) laws (19 U.S.C. § 1673 *et seq.*) authorize the imposition of duties if (1) the International Trade Administration (ITA) of the Department of Commerce determines that foreign merchandise is being, or likely to be sold in the United States at less than fair value, and (2) the U.S. International Trade Commission (ITC) determines that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, due to imports of that merchandise. A similar statute (19 U.S.C. § 1671 *et seq.*) authorizes the imposition of countervailing duties (CVD) if the ITA finds that the government of a country or any public entity has provided a subsidy on the manufacture, production, or export of the merchandise, and the ITC determines injury. U.S. safeguard laws (19 U.S.C. § 2251 *et seq.*) authorize the President to provide import relief from injurious surges of imports resulting from fairly competitive trade from all countries. Other safeguard laws authorize relief for import surges from communist countries (19 U.S.C. § 2436) and from China (19 U.S.C. § 2451). In each case, the ITC conducts an investigation, forwards recommendations to the President, and the President may act on the recommendation, modify it, or do nothing.

In the 110th Congress, several bills seek to amend trade remedy laws. First, H.R. 708 (English, introduced January 29, 2007) and S. 364 (Rockefeller, introduced January 29, 2007) seek, in slightly different ways, to strengthen U.S. antidumping, countervailing, and safeguard statutes. Second, H.R. 1127 (Knollenberg, introduced February 16, 2007) seeks to give manufacturers that use of goods subject to AD or CVD proceedings standing as interested parties in those proceedings. Third, several bills, including H.R. 782 (Ryan/Hunter, introduced January 31, 2007), its companion bill S. 796 (Bunning, Stabenow, introduced March 7, 2007), S. 974 (Collins, introduced March 22, 2007), and H.R. 1229 (Davis/English, introduced February 28, 2007), seek to amend the trade remedy laws, in part, to address issues regarding the applicability of these laws to China or other nonmarket economy countries. Fourth, S. 122 (Baucus, introduced January 4, 2007) seeks to expand Trade Adjustment Assistance to apply to workers adversely affected by trade that results in the imposition of AD, CVD, or safeguard measures.

This report explains, first, U.S. antidumping and countervailing duty statutes and investigations. Second, it describes safeguard statutes and investigative procedures. Third, it briefly presents trade-remedy related legislation in the 109th Congress. The appendix provides a chart outlining U.S. trade remedy statutes, major actors, and the effects of these laws. This report will be updated as events warrant.

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Introduction

The United States and many of its trading partners use trade remedy laws to lessen the adverse impact of various trade practices on domestic industries, producers, and workers. These laws are deemed consistent with U.S. international obligations provided they conform to the trade remedy provisions agreed to as part of the Uruguay Round of multilateral trade negotiations (1986-1994) and other trade agreements to which the U.S. is a party.

Overview

The three most frequently applied U.S. trade remedy laws are antidumping, countervailing duty, and safeguards. Enforcement of these laws is primarily carried out through the administrative investigations and actions of two U.S. government agencies: the International Trade Administration (ITA) of the Department of Commerce, and the International Trade Commission (ITC).

Antidumping (AD) laws provide relief to domestic industries that have been, or are threatened with, the adverse impact of imports sold in the U.S. market at prices that are shown to be less than fair market value. The relief provided is an additional import duty placed on the dumped imports.

Countervailing duty (CVD) laws are designed to give a similar kind of relief to domestic industries that have been, or are threatened with, the adverse impact of imported goods that have been subsidized by a foreign government or public entity, and can therefore be sold at lower prices than similar goods produced in the United States. The relief provided is an additional import duty placed on the subsidized imports.

Safeguard (also referred to as escape clause) laws give domestic industries relief from import surges of goods that are fairly traded. The most frequently applied safeguard law, Section 201 of the Trade Act of 1974, is designed to give domestic industry the opportunity to adjust to the new competition and remain competitive. The relief provided is generally an additional temporary import duty, a temporary import quota, or a combination of both. Safeguard laws also require presidential action in order for relief to be put into effect.

This report outlines the statutory authority, investigative procedures, and statistical outcomes for (1) U.S. AD and CVD actions and (2) U.S. safeguard actions. Other trade remedy laws not discussed in this report include Section 337 of the Tariff Act of 1930, as amended, which treats as unlawful imports sold through unfair competition or products infringing U.S. intellectual property rights. Sections 301-

310 of the Trade Act of 1974, as amended, give the U.S. Trade Representative authority to enforce U.S. rights under international trade agreements and act against unfair foreign trade practices that burden U.S. trade. Trade Adjustment Assistance (TAA) programs provide readjustment assistance for firms and workers who have suffered due to increased imports as a result of trade agreements. A brief description of these trade remedy laws appears in an appendix to this report.

Congressional Interest

Trade remedies have been the focus of much domestic and international debate in recent years. On the domestic front, the preservation of U.S. authority to "enforce rigorously its trade laws" was a major negotiating objective included in presidential Trade Promotion Authority (TPA) in the 107th Congress (P.L.107-210) and is likely to be part of any future grant of TPA.

At the outset of the WTO Doha Round of multilateral trade negotiations, other WTO member nations were concerned about the intensive worldwide use of trade remedies since the enactment of the Uruguay Round Agreements in 1995. Developing nations, such as India and South Africa, had begun using trade remedy actions more frequently, whereas they were tools used almost exclusively by developed nations in the past. This international concern led several countries to press for negotiations on changes to the WTO Antidumping (formally known as the Agreement on Implementation of Article VI) and Subsidies (Agreement on Subsidies and Countervailing Measures), despite the efforts of U.S. trade negotiators and some in Congress to keep them off the table. In recent years, the number of AD and CVD cases worldwide has been declining, but modifications to these WTO agreements are still expected to be a key focus of debate should Doha Round talks resume.

Some congressional observers were also concerned when WTO dispute settlement and Appellate Body panels made determinations against two U.S. trade remedy provisions, the Antidumping Act of 1916 and the Continued Dumping and Subsidy Offset Act (CDSOA) — finding that these measures violated U.S. obligations under the WTO.[1] The Antidumping Act of 1916 was repealed in the Miscellaneous Trade and Technical Corrections Act of 2004 (Section 2006 of P.L. 108-429, December 3, 2004). Despite considerable congressional resistance to repealing the CDSOA, a section proposing its repeal was included in the House version of the FY2006 budget reconciliation bill (H.R. 4241, introduced November 7, 2005). This measure was subsequently included in the version of the budget reconciliation bill that passed the House and Senate (with a provision that will allow disbursements under the act to continue for all goods entering until October 1, 2007), and was signed by the President on February 8, 2006 (P.L.109-171). An administrative practice used in AD and CVD investigations known as "zeroing" was also challenged in a WTO dispute, and on January 9, 2007, the Appellate Body also

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[1] 19 U.S.C. 1675c, P.L. 106-387, Title X. Also known as the Byrd Amendment, the act requires that duties collected pursuant to antidumping or countervailing duty orders be distributed annually to "affected domestic producers" for certain qualifying expenditures. See CRS Report RL33045, *The Continued Dumping and Subsidy Offset ("Byrd Amendment")*, by Jeanne J. Grimmett and Vivian C. Jones.

determined against the United States in a dispute on zeroing. Compliance in this dispute could be accomplished without legislative action, and the Commerce Department began implementing new administrative procedures in mid-April 2007.[2] These WTO determinations, which some consider to adversely affect U.S. interests, have caused some in Congress to call for greater congressional scrutiny of WTO dispute settlement and Appellate Body decisions involving the United States.

Action in 110th Congress. In the 110th Congress, these and other emerging factors have led to renewed interest in trade remedies. U.S. manufacturing job losses that many believe are due to increased imports and offshore outsourcing have caused some in Congress to call for strengthening trade remedy laws and other statutes that provide relief for workers. In addition, the trade deficit, especially the rapidly growing deficit with China, have led to increased congressional interest in implementing a variety of trade remedy options — including amending trade laws to apply countervailing action to nonmarket economy countries such as China. Third, some believe that adverse rulings on U.S. trade remedy actions by World Trade Organization (WTO) dispute settlement panels, along with some adverse U.S. court decisions, have led to a weakening of U.S. trade remedy laws.

Legislation. Several bills introduced in the 110th Congress seek to address these issues, including the following:

- S. 364, Strengthening America's Trade Laws Act (Rockefeller, introduced January 23, 2007) seeks, first, to strengthen the U.S. response to WTO dispute settlement panels and decisions. Second, it expands the authority of the International Trade Commission and the Commerce Department to impose countervailing action on nonmarket economy countries. Third, if the ITC makes recommendations to implement a China-specific safeguard, it would require the President to implement the agency's recommendations. With regard to WTO dispute settlement action, it would permit U.S. citizens in support of the U.S. position on WTO dispute settlement cases to participate in WTO dispute consultations, panel and appellate body proceedings. S. 364 would also establish a Congressional Advisory Commission on the operation of the WTO dispute settlement system and require congressional approval before any agency modifies its regulations or practices following an adverse WTO decision.

- S. 910 (Collins, introduced March 22, 2007) and H.R. 1229 (Davis/English, introduced February 28, 2007) seek to apply countervailing duty laws to nonmarket economy countries, such as China. These bills would also provide that nonmarket economy status could only be revoked if determined by the administering authority and approved by a joint resolution of Congress. An ITC study of China's use of government intervention to promote investment, employment, and exports would also be mandated.

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[2] Ibid.

- S. 122 (Baucus, introduced January 4, 2007) and H.R. 910 (English, introduced February 8, 2007) seek to expand Trade Adjustment Assistance, in part, by extending program eligibility to workers adversely affected by unfair trade that results in imposition of antidumping, countervailing duty, or safeguard duties.

- H.R. 708 (English, Trade Law Reform Act of 2007). With regard to antidumping laws, the bill seeks to amend current trade remedy laws to revise factors that the International Trade Commission must consider in making material injury determinations in countervailing and antidumping duty proceedings. It would also repeal a one-year monitoring program for cases involving persistent dumping and require the initiation of an expedited antidumping duty in such cases. In nonmarket economy proceedings, H.R. 708 would amend certain factors used to value freight for inputs in nonmarket economy dumping calculations. It would also apply countervailing provisions to nonmarket economy countries and require a joint resolution of Congress in addition to the administering authority's determination for NME status to be revoked. With regard to safeguard laws, the bill changes the standard from "substantial cause of serious injury" to "cause or threatens to cause serious injury" for determining if imports of a targeted product should be subject to safeguard action. It urges the U.S. Trade Representative (USTR) to reject any trade agreement proposal that would weaken U.S. trade remedy laws and requires that the President certify that each proposal would not make obtaining relief under U.S. trade laws more difficult, uncertain, or costly. It would permit U.S. citizens in support of the U.S. position on WTO dispute settlement cases to participate in WTO dispute consultations, and panel and appellate body proceedings and establish a Congressional Advisory Commission on the operation of the WTO dispute settlement system.

- H.R. 782 (Ryan/Hunter, Fair Currency Act of 2007, introduced January 31, 2007) and its companion bill S. 796 (Bunning/Stabenow), with regard to trade remedy legislation, seek to provide a methodology for application of countervailing action to nonmarket economy countries. These bills would also identify "exchange-rate misalignment" as a countervailable subsidy, and the undervaluation of China's currency as actionable under the China-specific safeguard laws.

- H.R. 1127 (Knollenberg, American Manufacturing Competitiveness Act, introduced February 16, 2007) seeks to amend existing AD and CVD laws so that downstream manufacturers may be considered "interested parties" and may participate fully as such in trade remedy proceedings. The bill would also instruct the International Trade Commission, when considering injury, to "weigh harm to United States industrial users as a whole" by taking into account the economic impact of an AD/CVD duty order on downstream

industries to ensure that it is not more injurious to industries than the dumping alleged to be occurring.

AD and CVD Laws and Investigations

U.S. Statutes and Eligibility Criteria

Statutory authority for AD investigations and remedial actions is found in Subtitle B of Title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, and subsequently amended. The law permits the imposition of antidumping duties if (1) the Department of Commerce[3] determines that the foreign subject merchandise is being, or likely to be, sold in the United States at less than fair value, and (2) the U.S. International Trade Commission (ITC) determines that an industry in the United States is materially injured or threatened with material injury,[4] or that the establishment of an industry is materially retarded, by reason of imports of that merchandise.[5]

Statutory authority for CVD investigations is found in Subtitle A of Title VII of the Tariff Act of 1930,[6] as added by the Trade Agreements Act of 1979 and as subsequently amended. The statute provides that countervailing duties will be imposed, first, when Commerce determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of the subject merchandise that is imported or sold (or likely to be sold) for importation into the United States. Second, in the case of a country that is party to the WTO Subsidies Agreement, that has assumed similar obligations with respect to the United States, or that has entered into certain other agreements with the United States, the ITC must determine that a domestic industry is materially injured or threatened with material injury, or that the establishment of a domestic industry is materially retarded, by reason of imports of that merchandise.[7]

Petition and Eligibility. AD and CVD investigations are conducted on the basis of a petition filed simultaneously with the ITC and the ITA on behalf of a domestic industry, or by the ITA on its own initiative.[8] Industry representatives may include domestic manufacturers, producers, or wholesalers of a product like the investigated imports, unions, other groups of workers, trade associations or other

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[3] The International Trade Administration (ITA) of the Department of Commerce conducts AD and CVD investigations.

[4] "Material injury" is defined in 19 U.S.C. 1677(1) as "harm which is not inconsequential, immaterial, or unimportant."

[5] U.S. International Trade Commission (U.S. ITC). *Summary of Statutory Provisions Related to Import Relief*. Publication 3125, August 1998, p. 2. [http://www.usitc.gov/].

[6] 19 U.S.C. *1671 et seq.*

[7] U.S. ITC Publication 3125, p. 1.

[8] CVD: 19 U.S.C. 1671a(a); AD: 19 U.S.C. 1673a(a).

associations of manufacturers, producers or wholesalers. Petitioners may allege (1) a subsidy (CVD petition), (2) sales at less than fair value (AD petition), or (3) that both conditions exist.[9]

If a proceeding is initiated by petition, the ITA must determine within 20 days (1) whether the petition accurately alleges the existence of dumping or subsidies, (2) whether there is enough information in the petition to support the investigation, and (3) whether the petition has been filed by or on behalf of an industry.[10] If the ITA's determination at this stage is negative, the petition is dismissed and the proceedings end.[11]

U.S. International Obligations

Disciplines regulating the use of antidumping laws appear in Article VI of the General Agreements on Tariffs and Trade (GATT) and in the Antidumping Agreement adopted in the Uruguay Round (1986-1994) of trade negotiations. The Uruguay Round Antidumping Agreement outlines requirements regarding procedures to be used in antidumping investigations and the implementation and duration of AD measures.

Article XVI of the GATT and the Subsidies Agreement negotiated during the Uruguay Round regulate the use of subsidies and countervailing measures. The Subsidies Agreement defines the term "subsidy" as a financial contribution by a government or public body within the territory of a WTO member, which confers a benefit. Three categories of subsidies are identified: (1) prohibited subsidies, (2) actionable subsidies, and (3) non-actionable subsidies. Also, to be covered by the Subsidies Agreement, subsidies need to be specific to an industry, except that prohibited subsidies (i.e., export subsidies and import substitution subsidies) are considered *per se* specific.[12] The Subsidies Agreement also provides transitional rules for developed countries and Members in transition to a market economy, as well as special and differential treatment rules for developing countries.

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[9] CVD: 19 U.S.C. 1671a(b)(1); AD: 19 U.S.C. 1673a(b)(1). Both citations refer to a definition of "interested party" found in subparagraphs (C),(D),(E),(F), or (G) of 19 U.S.C. 1677(9).

[10] As a general rule, the ITA determines that a petition has been filed on behalf of an industry if (1) the domestic producers or workers supporting the petition account for at least 25 percent of the production of the domestic like product, or (2) the domestic producers or workers who support the petition account for more than 50 percent of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition (CVD:19 U.S.C. 1671a (c)(4)(A); AD: 19 U.S.C. 1673a(c)(4)(A)). The statute allows for an extension of the 20-day time period if Commerce determines that the petition does not establish sufficient industry support and must poll or survey the industry in order to determine adequate support for the petition.

[11] CVD: 19 U.S.C. 1671a(c)(3); AD 19 U.S.C.1673a(c)(3).

[12] The non-actionable subsidies category was applied provisionally for five years ending December 31, 1999 and was not extended.

Other trade agreements that the United States has adopted also include specific AD and CVD articles. For example, article 1902 of the North American Free Trade Agreement (NAFTA) states that each party to the agreement reserves the right to apply its antidumping and countervailing duty laws to any other party. The right of parties to change or modify these laws is also retained, provided the amending statute specifically states that the amendment applies to the other NAFTA parties; the other parties are notified; and the changes are either consistent with the GATT and WTO agreements, or the object and purpose of the NAFTA and its AD and CVD chapter. Articles 1903 and 1904 allow a review of statutory amendments and a review of final AD and CVD determinations by a binational panel. The Agreement also puts a consultation and dispute settlement system in place so that other parties to the agreement may challenge statutory changes. In addition, final determinations in AD and CVD cases may be subject to binational panel review instead of judicial review.

AD and CVD Investigations

Although antidumping and countervailing duty laws address fundamentally different forms of unfair trade behavior, the remedies provided (a duty reflecting the "dumping margin" or amount of subsidy), the investigation processes, and the economic effects of the actions are similar. In some cases, AD and CVD investigations are also conducted simultaneously on a targeted product. Therefore, for purposes of this report, the investigation of AD and CVD petitions will be addressed together.

Prior to the imposition of an AD or CVD order, the ITA and ITC conduct a detailed investigative process. Some political economists opposing this type of import relief have pointed out that the administrative nature of the AD and CVD investigative processes makes it easier to institute protectionist measures. They maintain that since the statutes delegate to the administrative agencies the authority to investigate and to impose the duties, the decisions (and possible negative political fallout) are removed from the President and Congress.[13] In addition, since a certain amount of prior knowledge is necessary in order to follow the procedure, the process is engineered so that it does not lend itself to close public or media scrutiny.[14] Some analysts have also criticized the administrative agencies (particularly the ITA) for conducting investigations that are biased in favor of domestic industries.[15]

Supporters of trade remedies point out that current AD and CVD procedures have been worked out through painful and difficult multilateral trade negotiations, and that this is one of the reasons that the investigative procedure is so detailed. Furthermore, supporters maintain that the process is detailed because investigations must be transparent and provide a voice for all parties concerned.[16]

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[13] Finger, J.M.; Hall, H. Keith; Nelson, Douglas R. "The Political Economy of Administered Protection," *American Economic Review*, 72:3 (June 1982), p. 452.

[14] Ibid.

[15] Ibid.

[16] Mastel, Greg. *Antidumping Laws and the U.S. Economy*, New York: Economic Strategy (continued...)

Preliminary Determinations. As soon as a petition is filed, the ITC begins to investigate whether there is a reasonable indication of injury. If the ITC's preliminary determination is negative, or the ITC determines those imports of the subject merchandise are negligible, the proceedings end. The ITC must make its preliminary determination within 45 days after a petition is filed or an investigation is begun by the ITA on its own initiative.[17]

If the ITC's preliminary determination is affirmative, the ITA begins its preliminary investigation to determine whether the alleged unfair practice exists. In CVD cases, the ITA has 65 days to make a preliminary determination, or 130 days at the petitioner's request or if the case is extraordinarily complicated.[18] In AD cases, the ITA must make its determination within 140 days, or within 190 days at the petitioner's request or if the case is extraordinarily complicated.[19] If the ITA determines in the affirmative, it also estimates a subsidy margin or a weighted-average dumping margin for each exporter or producer individually investigated, and an "all-others rate" for all other exporters.[20]

If the ITA finds that there is a reasonable indication of dumping or subsidies, it orders the U.S. Customs and Border Protection (Customs) to delay the final computation of all duties on imports of the targeted merchandise (suspension of liquidation) until the case is resolved and to require the posting of cash deposits, bonds, or other appropriate securities to cover the duties (plus the estimated dumping or subsidy margin) for each subsequent entry into the U.S. market. If the ITA's determination is negative, both the ITA and the ITC continue the investigation.

Final Determinations. In CVD investigations, the ITA makes its final determination within 75 days after the date of its preliminary determination. In AD cases, ITA's final determination must be made within 75 days after the preliminary determination, or within 135 days at the request of exporters (if the preliminary determination was affirmative) or at the request of the petitioner (if the preliminary determination was negative).[21] Before issuing a final determination, the ITA must hold a hearing upon request of any party to the proceeding.

If the ITA's final determination is negative, the proceedings end, and any suspension of liquidation is terminated, bonds and other securities are released, and deposits are refunded. If the ITA's final determination is affirmative, it orders the suspension of liquidation if it has not already done so.

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[16] (...continued)
Institute, 1998, p. 103.

[17] CVD: 19 U.S.C. 1671b(b)(2); AD: 19 U.S.C.1673b(b)(2). If ITA has extended its deadline, the ITC must make its preliminary determination within 25 days after the ITA informs the ITC of the initiation of the investigation.

[18] 19 U.S.C. 1671b(b) and (c).

[19] 19 U.S.C. 1673b(b) and (c).

[20] CVD: 19 U.S.C. 1671b(d); AD 19 U.S.C. 1673b(d).

[21] CVD: 19 U.S.C. 1671d; AD: 19 U.S.C. 1673d.

If the ITA's preliminary determination is affirmative, the ITC must make its final determination (a) within 120 days of the ITA's preliminary affirmative determination or (b) within 45 days of an affirmative final determination by the ITA, whichever is later. If the ITA's preliminary determination was negative, the ITC's determination must be made within 75 days of the ITA's affirmative final determination.

If the final determination of the ITC is affirmative, the ITA issues a countervailing or antidumping duty order within seven days of notification of the ITC's decision. The duty imposed is equal to the net subsidy or dumping margin calculated by the ITA. If the final determination of the ITC is negative, no AD or CVD duties are imposed, any suspension of liquidation is terminated, bonds or other security are released, and deposits are refunded.

Critical Circumstances. If a petitioner alleges that critical circumstances exist in an AD or CVD case, an extra step in the investigation is required. In CVD cases, the ITA must promptly determine whether there is a reasonable basis to expect that the alleged subsidy is inconsistent with the WTO Subsidies Agreement and that massive imports of the subject merchandise have occurred over a relatively short period. In AD cases, the ITA determines (1) if there is a reasonable basis to suspect either that there is a history of dumping and there is material injury by reason of dumped imports in the United States or elsewhere, or if the importer knew or should have known that the exporter was selling the merchandise at less than fair value and knew that there was likely to be material injury by reason of such sales; and (2) whether massive imports of the merchandise have occurred over a relatively short period. If the ITA makes an affirmative critical circumstances finding, it extends the suspension of liquidation of any unliquidated entries of merchandise into the United States retroactively to 90 days before the suspension of liquidation was first ordered.

Whether or not the ITA's initial critical circumstances determination is affirmative, if its final determination on subsidies or dumping is affirmative, the ITA includes with its overall final determination an additional determination on critical circumstances. If the final determination on critical circumstances is affirmative, retroactive duties, if not yet ordered, are ordered on unliquidated entries at this time.[22]

The ITC also makes a critical circumstances injury finding along with its final determination. If both the ITC and the ITA make affirmative critical circumstances determinations, any AD or CVD duty order applies to the goods for which the retroactive suspension of liquidation was ordered. If the final critical circumstances determination of either agency is negative, any retroactive suspension of liquidation is terminated.[23]

Termination of Investigation and Suspension Agreements. The ITA may terminate or suspend antidumping or countervailing duty proceedings at any point in favor of an alternative agreement with the foreign government (in the case of subsidies) or the exporters (in the case of dumping).

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[22] CVD: 19 U.S.C. 1671e; AD: 19 U.S.C. 1673e.

[23] U.S. International Trade Commission, Publication 3125, p.5.

The ITA or the ITC may terminate an investigation if the petitioner withdraws the petition, or the ITA may terminate an investigation it initiated.[24] If the ITA decides to terminate an investigation in favor of accepting an agreement with the foreign government (CVD) or exporter (AD) to limit the volume of imports, the ITA must be satisfied that the agreement is in the public interest. Public interest factors include (1) a finding that the imposition of duties would have a greater adverse impact on U.S. consumers than an alternative agreement; (2) an assessment of the relative economic impact on U.S. international economic interests; and (3) a consideration of the relative impact of such an agreement on the domestic industry producing like merchandise.[25]

The ITA may suspend an investigation if (1) the government of the country alleged to be providing the subsidy, or the exporters accounting for substantially all of the subject merchandise agree to eliminate the subsidy or dumping margin, to offset the net subsidy completely, or to cease exports of the subject merchandise into the United States within six months of the suspension of the investigation; (2) if there are extraordinary circumstances[26] and the government or exporters agree to take action that will completely eliminate the injurious effect of the subject imports (including a quantitative restriction agreement with a foreign government); or (3) the agreement concerns alleged sales at less than fair value from a non-market economy country and that country agrees to restrict exports of its merchandise into the United States.[27] Before suspending an investigation, the ITA must be satisfied that the suspension is in the public interest and that the agreement can be effectively monitored by the United States.[28]

WTO Negotiations. Article 18 of the WTO Subsidies Agreement authorizes the termination and suspension of investigations through the use of voluntary "undertakings." These undertakings may involve (1) the government of the exporting Member agreeing to eliminate or limit the subsidy, or take some other action concerning its effects; or (2) the exporter agreeing to revise its prices to eliminate the injurious effects of the subsidy. A similar measure (Article 8) in the Antidumping Agreement allows the use of "price undertakings," or voluntary, mutually agreed upon, price increases on the part of the importer to eliminate the injurious effects of the imports. Price increases may not be higher than the duty necessary to eliminate the dumping margin, and if a lower increase would be adequate to remove the injury, a lesser increase is recommended.

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[24] CVD: 19 U.S.C. 1671c(a)(1); AD: 19 U.S.C. 1671(a)(1). According to 19 U.S.C. 1671c(a)(3) and 19 U.S.C.1673c(a)(3), the ITC may not terminate an investigation until a preliminary determination is made by the ITA.

[25] CVD: 19 U.S.C. 1671c ; AD: 19 U.S.C. 1673c.

[26] "Extraordinary circumstances" are described in 19 U.S.C. 1671c(c)(4)(A) and 19 U.S.C. 1673c(2)(A) as circumstances in which "(i) the suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and (ii) the investigation is complex."

[27] CVD: 19 U.S.C. 1671c(b)(c); AD: 19 U.S.C. 1673c(b)(c).

[28] CVD: 19 U.S.C. 1671c(d); AD: 19 U.S.C. 1673c(d).

Many WTO members are critical of the rapidly expanding use of antidumping and subsidies measures in general and, in particular, the perceived U.S. use of inflated dumping and subsidies margins. As a result, these countries have recommended that Doha Round negotiations on the Antidumping and Subsidies Agreements strengthen the undertaking provisions and require increased use of these voluntary measures in AD and CVD actions.[29]

Administrative and Sunset Reviews. Each year, during the anniversary month of the publication of an AD or CVD duty order, any interested party may request in writing an administrative review of the order. The ITA may also self-initiate a review. If none of the interested parties request a review, and if there is no objection, the review may be deferred for an additional year. During the review process, the ITA recalculates the amount of the net subsidy or dumping margin and may adjust the amount of AD or CVD duties on the subject merchandise. Suspension agreements are also monitored for compliance and reviewed in a similar fashion. The ITA must make a preliminary determination in CVD administrative reviews within 120 (or 180 days if the 120 day deadline is not practicable), and a final determination within 245 days (which may be extended up to 365 days). Preliminary determinations in AD reviews must be made in 90-150 days, and final determinations in 180-300 days.[30]

Administrative reviews are also mandated under certain circumstances by the WTO Antidumping and Subsidies Agreements. Article 11.2 of the Antidumping Agreement and Article 21.2 of the Subsidies Agreement require authorities to periodically review the need for continued imposition of duties, where warranted. Authorities must also conduct examinations at the request of interested parties to examine whether the continued imposition of the duties are necessary to offset the dumping or subsidies, and whether the injury would be likely to continue or recur if the duty were removed, or varied, or both.

Changed Circumstances Review. An interested party may also request a "changed circumstances" review at any time. In this case, the ITA must determine within 45 days whether or not to conduct the review. If the ITA decides that there is good cause to conduct the review, the results must be issued within 270 days of initiation, or within 45 days of initiation if all interested parties agree to the outcome of the review.[31]

"New Shipper" Reviews. If the ITA receives a request from an exporter or producer of merchandise subject to AD or CVD orders who (1) did not export the subject merchandise during the initial period of investigation and (2) was not affiliated with any producer or exporter who did, it must conduct a review to

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[29] World Trade Organization. Doha Ministerial Declaration 2001 (WT/MIN/(01)/DEC/1), November 20, 2001, Article 28. See also CRS Report RL32810, *WTO: Antidumping Issues in the Doha Development Agenda*, by Vivian C. Jones.

[30] 19 U.S.C. 1675 and 19 C.F.R. 351.213.

[31] 19 U.S.C. 1675(b).

establish an individual AD or CV duty rate for that exporter or producer.[32] A preliminary determination in a new shipper review may take up to 180 days (or up to 300 days if "extraordinarily complicated"). Final determinations of the duty rate may take from 90 to150 days, depending on complexity.[33]

While the new shipper review is being conducted, the ITA is required to direct the Customs Service to allow (at the option of the importer) the posting of a bond or security in lieu of a cash deposit for each shipment of merchandise entering the United States until the review is completed and the AD or CV duty rate is established. Some U.S. producers have complained that Customs had difficulty collecting the actual amount of AD/CV duties owed on subject merchandise, and have cited the new shipper bonding privilege as a "loophole" that importers exploit in order to circumvent the duties. For example, Louisiana crawfish producers estimated, and Customs confirmed, that between 2002 and 2004, Customs collected only $25.5 million of about $195.5 million in AD duties owed on crawfish. An estimated 80 percent of the duties owed were assessed on targeted merchandise from the Peoples' Republic of China.[34]

Language seeking to suspend new shipper bonding privilege was inserted, along with other trade provisions, into H.R. 3, the Pension Protection Act of 2006 (Boehner). As enacted, the provision suspended the new shipper bonding privilege from April 1, 2006, to June 30, 2009 (sec. 1632 of P.L.109-280).

Sunset Reviews. Before passage of the Uruguay Round Agreements Act (P.L. 103-465, URAA), AD and CVD orders had no set termination date, and generally were revoked only if the ITA determined through three consecutive annual administrative reviews that no dumping or subsidies had occurred. Currently, sunset reviews must be conducted on each AD or CVD order no later than once every five years.[35] The ITA determines whether dumping or subsidies would be likely to continue or resume if an order were to be revoked or a suspension agreement terminated, and the ITC conducts a similar review to determine whether injury to the domestic industry would be likely to continue or resume. If both determinations are affirmative, the duty or suspension agreement remains in place. If either determination is negative, the order is revoked, or the suspension agreement is terminated.[36] Sunset reviews are required in the WTO Antidumping (Article 11.3) and Subsidies (Article 21.3) Agreements.

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[32] 19 U.S.C. 1673d(c)(B). In investigations of non-market economy countries, an individual rate is established only if the exporter or producer is able to provide sufficient evidence that government controls over the decision-making process on export-related investment, pricing, and output do not exist.

[33] 19 U.S.C. 1675(a)(2)(B).

[34] "Louisiana Delegation Queries Customs Regarding Missing Duties on Crawfish." *International Trade Reporter*, April 14, 2005.

[35] 19 U.S.C. 1675(c).

[36] 19 C.F.R. 351.218.

Outcome of AD and CVD Investigations

Table 1 lists the possible outcomes of AD/CVD investigations. From 2000-2006, there were 241 antidumping cases initiated.[37] Four investigations (1.7%) were withdrawn by the ITA prior to an ITC preliminary determination (the first stage in the process). Forty-eight investigations were determined in the negative by the ITC, and terminated at that point (about 20%). Six investigations were terminated by the ITA (2.5%), and the ITA made negative final determinations in 11 cases (4.6%, since ITA preliminary determinations result in a continuation of the investigation they are not listed here). The ITC made negative final determinations in 55 investigations (about 23%), and 8 investigations were pending at the end of 2006. One hundred and nine AD orders were issued during the period (45.2%). Therefore, the "success rate" of U.S. industries seeking relief through the AD process was 45.2%.

During the same time period (see **Table 1**), administrative authorities conducted 41 CVD investigations. In the preliminary stage, the ITC made 4 (about 10%) negative determinations, and 37 affirmative determinations (meaning that the investigations continued further). Five cases (12.2%) were determined in the negative by the ITA. The ITC made 7 negative final determinations (17%). Two investigations (4.8%) were pending. CVD orders were issued in 22 cases (53.7%), but one (2.4%) was revoked at a later date.[38] The "success rate" for U.S. industries seeking relief through CVD action was 53.7%.

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[37] CRS calculations based on trade remedy statistics U.S. International Trade Administration, CY2000-2006. [http://ia.ita.doc.gov].

[38] Ibid.

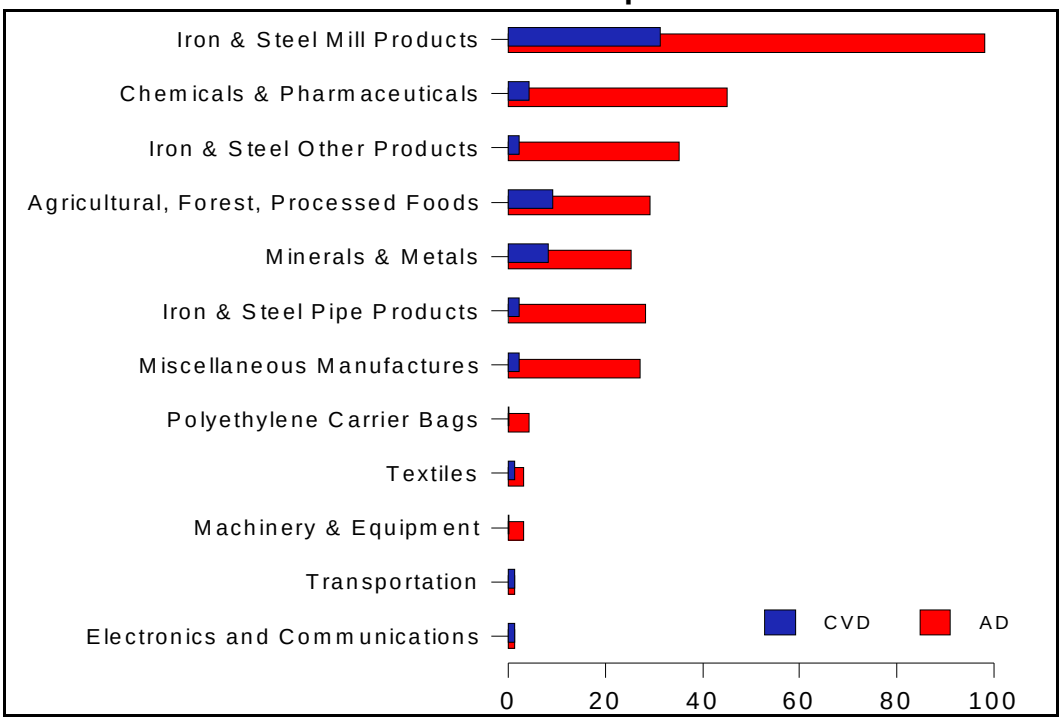
Table 1. Outcome of AD and CVD Investigations Initiated in Calendar Years 2000-2006

Antidumping Investigations	**Total = 241**	
Petition Withdrawn	4	1.7%
ITC Negative Preliminary Determination	48	19.9%
ITA Terminated	6	2.5%
ITA Negative Final Determination	11	4.6%
ITC Negative Final Determination	55	22.8%
Pending Investigations (2006 investigations not yet resolved)	8	3.3%
AD Order Issued	109	45.2%
Countervailing Duty Investigations	**Total = 41**	
Petition Withdrawn	0	0%
ITC Negative Preliminary Determination	4	9.8%
ITA Terminated	0	0%
ITA Negative Final Determination	5	12.2%
ITC Negative Final Determination	7	17.1%
Pending Investigations (2006 investigations not yet resolved)	2	4.9%
CVD Orders Issued	22	53.7%
Order Revoked at later date	1	2.4%

Source: ITA Statistics, CY2000-2006; Import Administration home page [http://ia.ita.doc.gov].

AD and CVD Duty Orders by Product Group. **Figure 1** illustrates the make up of AD and CVD orders in effect as of October 23, 2006, by product group. The largest group of these orders are applied to imports of products associated with the steel industry, including mill products (carbon steel wire rod, hot-rolled carbon steel flat products, etc.), iron and steel pipe products (such as welded large diameter line pipe, and oil country tubular goods), and other products of iron and steel (stainless and carbon steel butt-weld pipe fittings, ball bearings, barbed wire and barbless wire strand, etc.). The next largest group of duty orders applies to chemicals and pharmaceuticals — the vast majority of which are chemicals used in manufacturing processes. The third largest group consists of agricultural and forest products including softwood lumber, honey, pasta, sugar, preserved mushrooms, shrimp, crawfish tail meat, and pistachios. Compared to the number of AD and CVD orders in these categories, there are relatively few orders in effect on finished goods reflected in the miscellaneous manufactures, transportation, textiles, and electronics categories (includes metal chairs and tables, stainless steel cookware, petroleum wax candles, and paper clips).

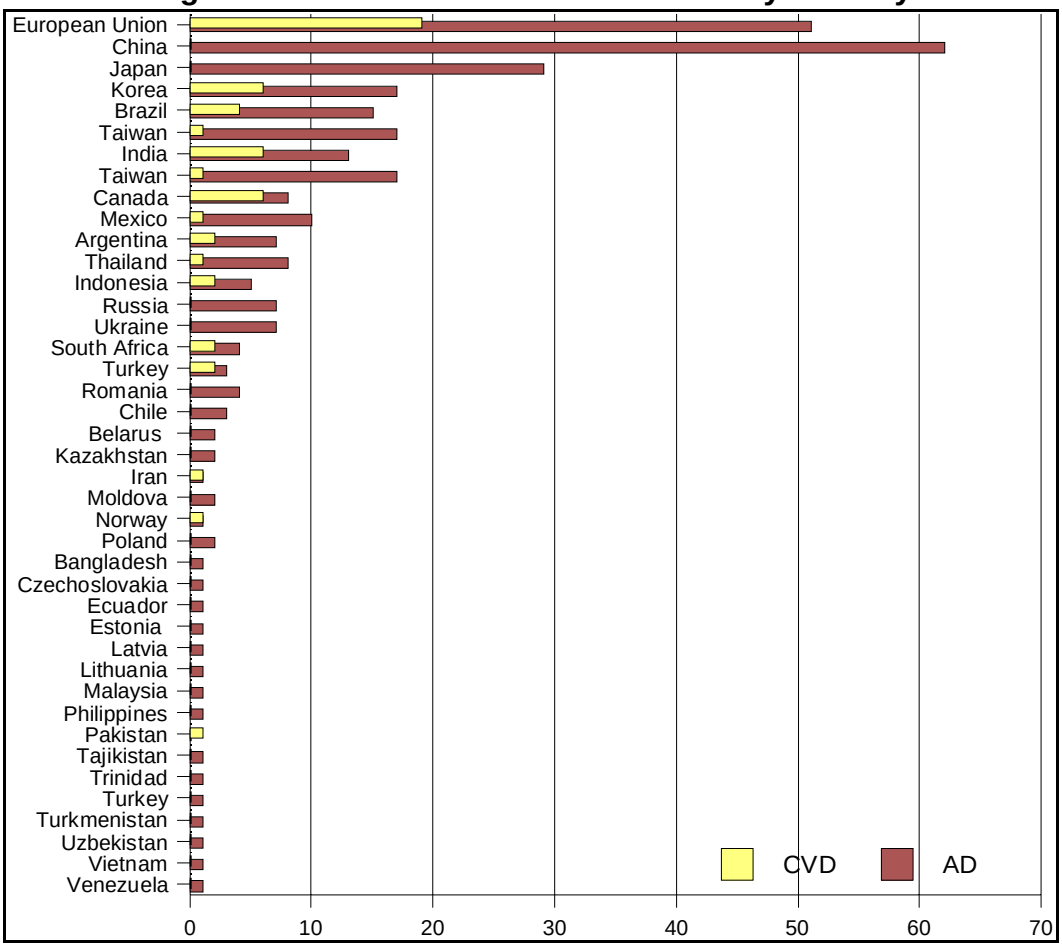
Figure 1. AD and CVD Orders in Place by Product Group



Source: ITC.

Orders by Country. **Figure 2** shows AD and CVD duty orders in effect as of October 23, 2006, by product country of origin. Products from China lead this group with 61 AD orders, followed by the European Union with forty-six AD orders and 11 CVD orders, Japan (twenty-three AD orders), and South Korea (sixteen AD orders, six CVD orders). The actual numbers of orders by country and product group changes frequently due to administrative and sunset review processes.

Figure 2. AD and CVD Orders In Place by Country



Source: ITC.

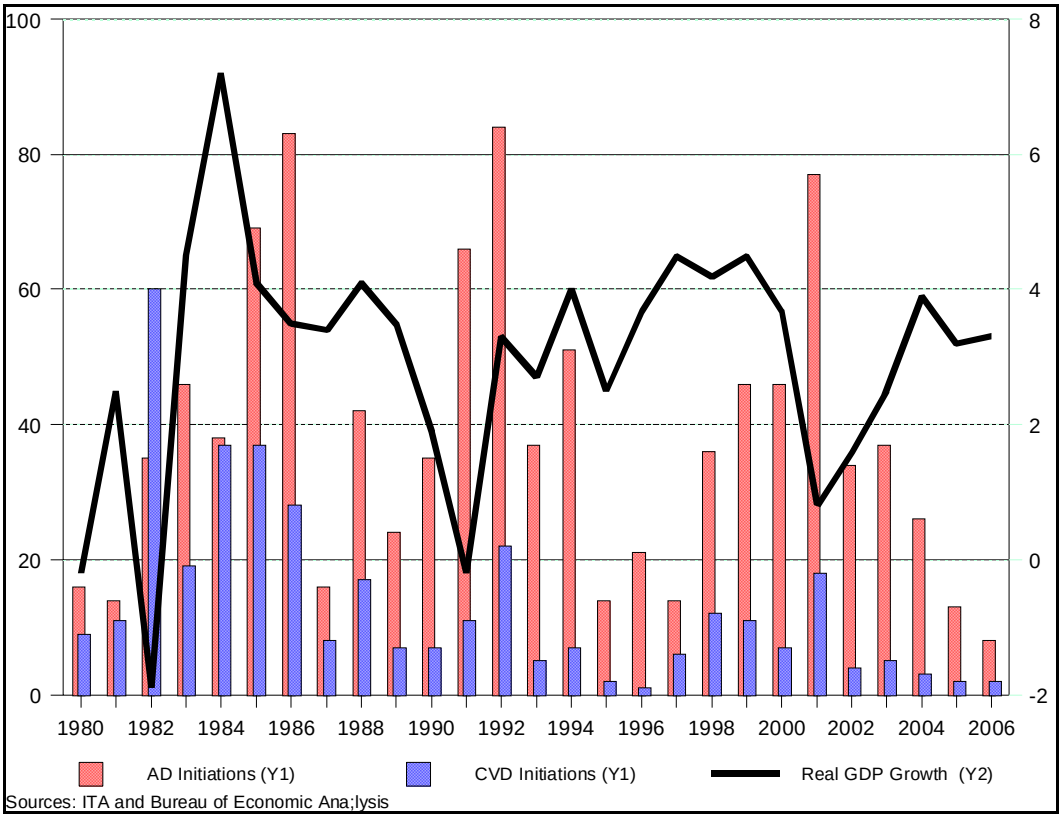
Number of Initiations. **Figure 3** illustrates AD and CVD initiations from 1980-2006. Initiations peaked in 1982 (60 CVD, 35 AD), 1986 (83 AD, 28 CVD), again in 1992 (84 AD, 22 CVD), and again in 2001 (77 AD, 18 CVD). Some observers have pointed out a decline in trade remedy initiations in recent years, and have mentioned several reasons for the trend.

One reason for the downward trend may be that some U.S. domestic manufacturers now import some portion of their product lines from overseas, reducing their interest in bringing trade remedy cases. For example, a 2004 AD investigation on wooden bedroom furniture from China created a deep and vocal controversy in the U.S. furniture industry because some larger U.S. companies had decided to import certain furniture lines from China while continuing domestic production of more high-end items. Many furniture retailers reportedly became furious with furniture industry petitioners because they feared that the higher prices caused by possible AD duties would depress sales and result in the layoffs of retail employees. Furniture makers and unions supporting the investigation countered that far more manufacturing jobs were being lost than would have been lost on the retail

side.[39] The debate was so heated that the ITA took the unusual step of polling the industry to determine whether there was sufficient industry support for the petition, which resulted in a finding that only slightly more than half of the industry approved.[40] AD duties ranging from 2.3 to 198.08 percent were ultimately imposed on the targeted merchandise.[41]

In addition, some observers have also mentioned that more foreign manufacturers are operating plants in the United States. For example, the largest steel manufacturer in the United States, for example, is now Mittal Steel USA, the subsidiary of a global firm based in Luxembourg. Since these multinational firms often import goods from foreign subsidiaries to fill out U.S. product lines, they also may be less inclined to favor trade remedy actions.

Figure 3. AD/CVD Initiations and GDP Growth, 1980-2006



Another reason that trade remedy initiations have declined in recent years may be the growth rate of the U.S. economy. As **Figure 3** illustrates (see GDP Growth,

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[39] Becker, Denise. "Government Delays Ruling on Tariffs; the Furniture Industry Must Wait Until June 17 for Action, if Any, on China,"*Greensboro News and Record*, April 13, 2004.

[40] 19 U.S.C. 1673a(c)(4) requires that the ITA determine if the petition has been filed by or on behalf of the industry. For purposes of this memorandum, ITA officials Maria Dybczak and John Herman were interviewed by telephone on June 24, 2004.

[41] Department of Commerce, ITA. Wooden Bedroom Furniture from China. Fact Sheet, December, 28, 2004.

right scale), AD and CVD petitions have historically tended to increase during periods of economic recession and decrease during growth periods.

Recent U.S. AD/CVD Disputes in WTO

Antidumping Act of 1916. The earliest U.S. antidumping measure, the Antidumping Act of 1916,[42] made it unlawful to systematically import articles into the United States at prices substantially lower than the actual market value or wholesale price of the imports *with the intent* of destroying or injuring a domestic industry in the United States. The statute assigned criminal penalties and provided for a civil award of triple damages to the injured party. A WTO dispute resolution panel and the Appellate Body found that the law provided penalties not authorized by the Antidumping Agreement or the GATT, and therefore violated U.S. WTO obligations. Congress repealed the law in Section 2006 of the Miscellaneous Tariff and Technical Corrections Act of 2004 (P.L. 108-429).

Continued Dumping and Subsidy Offset Act. Section 1003 of P.L. 106-387, the "Continued Dumping and Subsidy Offset Act (CDSOA) of 2000," amended the Tariff Act of 1930 by requiring that all duties collected as a result of AD and CVD orders be redistributed to the petitioners ("affected domestic producers") that have been injured by the subject imports. The funds must be used for certain "qualifying expenditures," including employee training, research and development, manufacturing facilities, or equipment. Disbursements under the act amounted to $231 million in FY2001, $330 million in FY2002, $190 million in FY2003 (an additional $50 million is held in reserve pending the resolution of a court case), $284 million in FY2004, $226.1 million in FY2005, and $380.1 million in FY2006.[43]

The CDSOA was controversial for several reasons. Opponents believed that the measure encourages the filing of AD and CVD petitions, limited the benefits of collections under the act to petitioners (placing other domestic producers at a competitive disadvantage), and exacerbated market inefficiencies caused by AD and CVD actions. Some also found it controversial because it was inserted into the legislation during conference and received no committee or floor consideration in either House. Supporters, including many in Congress and many domestic industry representatives, believed that money distributed through the CDSOA is a relatively small amount to invest in assisting U.S. companies to remain competitive.

WTO dispute settlement panels determined that the law violated U.S. obligations under the WTO Antidumping and Subsidies Agreements. The level of retaliation was determined through arbitration, and most of the co-complainants in the case, including the European Union, India, Japan, and Korea, received formal WTO authorization to "suspend concessions" on targeted U.S. goods in late November 2004. Canada began assessing additional tariffs on U.S. exports of live

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[42] 15 U.S.C. 72.

[43] U.S. Department of Homeland Security. U.S. Customs and Border Protection. CDSOA FY2004 Annual Report. [http://www.customs.gov/xp/cgov/import/add_cvd/].

swine, cigarettes, oysters, and specialty fish in May 2005.[44] The European Union established an additional 15% tariff on imports of certain women's apparel, office supplies, crane trucks, sweet corn, and spectacle frames, also beginning on May 1, 2005.[45] Mexico began retaliating in a similar manner on August 17, 2005, and Japan on September 1, 2005.[46]According to WTO agreements, any retaliation is temporary, and may only occur if "recommendations and rulings are not implemented in a reasonable period of time.[47]

The CDSOA was repealed as of February 8, 2006 in section 7601 of P.L. 109-171, the Deficit Reduction Act of 2005. The repeal language specified, however, that "all duties on entries of goods made and filed before October 1, 2007 ... shall be distributed as if [the CDSOA] had not been repealed."[48] The European Union, Canada, Mexico, and Japan indicated that they would continue to retaliate until the disbursements cease.[49]

Zeroing. "Zeroing" is an administrative practice used in the calculation of dumping margins. In U.S. law, AD orders imposed on targeted merchandise must be equal to the dumping margin or "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise."[50] The ITA typically calculates the margin by first identifying, to the extent possible, all U.S. transactions, sale prices, and levels of trade for each model or type of targeted merchandise sold by each company in the exporting country. These model types are then aggregated into a subcategories, known as "averaging groups," which are used to calculate the "weighted average export price." The export prices for each subgroup are then compared to the corresponding agency-calculated "weighted average normal value." Finally, the results of all of these comparisons are added up to establish the overall dumping margin of the targeted product.[51]

When authorities add up the dumping margins of each of the subgroups to establish an overall dumping margin for the subject merchandise, they sometimes

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[44] Canada Department of Foreign Affairs and International Trade. "Byrd Amendment: Canada to Retaliate Against United States," United States," News Release No. 56, March 31, 2005.

[45] Commission on the European Communities. *Proposal for a Council Regulation Establishing Additional Customs Duties on Imports of Certain Products Originating in the United States of America. Brussels*, March 31, 2005.

[46] World Trade Organization. Dispute Settlement Body. *Minutes of Meeting on 31 August 2005*, September 30, 2005, WT/DSB/M/196.

[47] World Trade Organization. *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article 22:1.

[48] Section 7601(b) of P.L. 109-171.

[49] World Trade Organization. Dispute Settlement Body. *Minutes of Meeting on 17 February 2006*, March 31, 2005, WT/DSB/M/205.

[50] 19 U.S.C. 1677f-1(d)(A)(i) and (ii).

[51] See Department of Commerce, Import Administration. Antidumping Manual, Chapter 6, "Fair Value Comparisons." 1997 edition [http://ia.ita.doc.gov/admanual/index.html].

encounter negative margins in a subgroup (an indicator that the items in that subcategory not being dumped). However, rather than including the negative margin in their calculations, which could result in a lower overall dumping margin, ITA officials factor in the results of that subgroup as a zero.[52] Officials use a similar practice when re-calculating dumping margins in administrative reviews of AD orders or suspension agreements. One justification for the zeroing practice is that the dumping margin could be skewed if, when determining the weighted average dumping margin, the subgroup that has the negative dumping margin represents a substantial percentage of export sales.

The U.S. practice has been challenged in the WTO on a number of fronts. In two disputes, WTO dispute settlement and Appellate Body panels have found that the U.S. practice of zeroing is in violation of its obligations under the WTO Antidumping Agreement.[53] On February 6, 2004, the European Union formally requested the establishment of a dispute settlement panel on zeroing, citing 31 U.S. AD cases targeting products of the EU. The EU claimed that the dumping margin would have been minimal, or even negative, if U.S. officials had not used zeroing. A panel was established on March 19, 2004. In a split decision in late October 2005, the dispute settlement panel report found for the United States in its use of zeroing in the course of administrative reviews, but against U.S. practice when conducting initial investigations.[54] On April 18, 2006, the Appellate Body found that the practice of zeroing could be challenged as it relates to original investigations and upheld the panel's finding that the practice is inconsistent with Article 2.4.2 of the Antidumping Agreement.[55] In October 2006, the EU filed an additional complaint against the United States regarding zeroing.[56]

The use of zeroing was also challenged by Japan in November 2004. On September 20, 2006, a dispute settlement panel also concluded in this case that the U.S. zeroing methodology, when used in certain instances, was inconsistent with the

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[52] Ibid.

[53] World Trade Organization, Dispute Settlement Body. *United States — Laws, Regulations, and Methodology for Calculating Dumping Margins ("Zeroing").* Request for the establishment of a panel by the European Communities, WT/DS294/7, February 6, 2004. Ruling of the Panel distributed October 31, 2005. Available at [http://docsonline.wto.org/]. See also Appellate Body Report, United States — Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/AB/R (April 18, 2006).

[54] Ibid.

[55] Ibid.

[56] WTO. *Request for Consultations by the European Communities, United States — Continued Existence and Application of Zeroing Methodology*. WT/DS350/1 (October 3, 2006), and Addendum, WT/DS350/1/Add.1 (October 11, 2006).

Antidumping Agreement.[57] In January 2007, the Appellate Body made a similar determination.[58]

Since these rulings challenged a U.S. administrative practice, rather than U.S. statutes, they do not necessarily require legislative action to implement. In the first dispute, in May 2006 the United States indicated to the Dispute Settlement Body (DSB) that it intended to implement the recommendations and rulings of the panels, and on February 22, 2007, the ITA initiated proceedings under section 129 of the Uruguay Round Agreements Act (URAA). The ITA recalculated the weighted-average dumping margins in twelve of the fifteen EU cases found to violate WTO rules (three of the AD orders had been previously revoked). The final recalculated dumping margins for eleven of the cases were announced on May 1, 2007,[59] but the implementation of the finding in the twelfth case was delayed due to a clerical error in the underlying investigation.[60] The ITA also announced that it would "no longer make average-to-average comparisons in antidumping duty investigations without providing offsets for non-dumped comparisons." [61]

In the dispute brought by Japan, the United States has informed the DSB that it also intends to implement the ruling but needs a reasonable period to do so.[62]

AD/CVD Issues in the 110th Congress

Application of Countervailing Duties to Nonmarket Economy Countries. Total U.S.-China trade rose to $343 billion in 2006. China, a nonmarket economy (NME) country, is the United States' second largest trading partner, the second largest source of U.S. imports, and its fourth largest export market. The $232.6 billion (2006) U.S. trade deficit with China and the adverse impact of Chinese imports on competing U.S. industries and workers, among other things, has led some in Congress to support increased enforcement of U.S. trade remedy laws against Chinese products.[63]

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[57] World Trade Organization, Dispute Settlement Body. *United States — Measures Relating to Zeroing and Sunset Reviews.* Report of the panel. WT/DS322/R (September 20, 2006).

[58] Appellate Body Report, *United States — Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (January 9, 2007).

[59] International Trade Administration. "Final Results for Section 129 Determinations," [http://ia.ita.doc.gov/ia-highlights-and-news.html].

[60] International Trade Administration, Issues and Decision Memorandum for the Final Results of the Section 129 Determination, April 9, 2007. [http://ia.ita.doc.gov/download/zeroing/zeroing-sec-129-final-decision-memo-20070410.pdf].

[61] 72 F.R. 9306, March 1, 2007.

[62] For a more detailed review of WTO dispute panel findings in these cases, see CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.

[63] See CRS Report RL33536, *China - U.S. Trade Issues*, by Wayne M. Morrison for a more (continued...)

China is currently the chief target of U.S. antidumping action (with 61 AD duty orders outstanding and six investigations pending as of March 30, 2007). However, CVD laws have not applied to nonmarket economy (NME) countries since a 1984 determination by ITA (also statutorily responsible for making NME determinations) that there is no adequate way to measure market distortions caused by subsidies in economies that are not based on market principles.[64]

Some Members of Congress are especially concerned that the Peoples' Republic of China, currently classified by ITA as a nonmarket economy country,[65] is providing subsidies to many Chinese industries engaged in international exports. A related source of concern is that China is pegging its currency, the yuan, to the U.S. dollar at artificially low levels, which some also believe is an unfair government subsidy.[66]

Legislation. Legislation introduced in the 110th Congress to prevent further exemption of NME countries from countervailing action includes **S. 364** (Rockefeller, introduced January 23, 2007), **S. 974** (Collins, introduced March 22, 2007), **H.R. 708** (English, introduced January 29, 2007), **H.R. 782** (Ryan/Hunter, introduced January 31, 2007) and its companion bill **S. 796** (Bunning/Stabenow, introduced March 7, 2007), and **H.R. 1229** (Davis/English, introduced February 28, 2007). **H.R. 571** (Tancredo, introduced January 18, 2007), would place an additional tariff on imports from all NME countries. A more detailed discussion of the operative provisions of these bills is found in CRS Report RL33550, *Trade Remedy Legislation: Applying Countervailing Action to Nonmarket Economy Countries*.

Bush Administration Actions. The Bush Administration has also taken some recent steps to address the issue. First, on November 27, 2006, the ITA initiated a CVD investigation against an NME country (China) for the first time since

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[63] (...continued)
comprehensive treatment of these issues.

[64] The ITA last made this determination in two 1983 investigations of steel wire rod from Czechoslovakia (49 F.R. 19370) and Poland (49 F.R. 19374). The determination was challenged by the steel industry in the U.S. Court of International Trade, which reversed the ITA's decision and held that CVD law covers non-market economies (Continental Steel Corp. v. United States, 9 C.I.T., 614 F. Supp. 548, 550; C.I.T. 1985). This decision was subsequently overturned by the U.S. Court of Appeals for the Federal Circuit (Georgetown Steel Corporation, et al. v. the United States, 801 F.2d 1308; Fed. Cir. 1986). See also CRS Report RL33550, *Trade Remedy Legislation: Applying Countervailing Action to Nonmarket Economy Countries*, by Vivian C. Jones and CRS Report RL33976, *United States' Trade Remedy Laws and Non-market Economies: A Legal Overview*, by Todd B. Tatelman.

[65] ITA is responsible for NME classification pursuant to 19 U.S.C. 1677(18)(B). The applicability of NME classification with regard to China was determined in the Preliminary Determination of Sales at Less than Fair Value, Greige Polyester Cotton Print Cloth from China (48 F.R. 9897). Any determination that a foreign country is a non-market economy country remains in effect until revoked by the ITA (19 U.S.C.1677(18)(C)(i)). Trade figures are from International Trade Commission Trade Data Web [http://dataweb.usitc.gov]. Other NME countries include Vietnam and the Ukraine.

[66] See CRS Report RL32165, *China's Currency: Economic Issues and Options for U.S. Trade Policy*, by Wayne Morrison and Marc Labonte.

1991. In the first phase of the investigation, the International Trade Commission (ITC) preliminarily determined on December 15, 2006 "that there was a reasonable indication that a U.S. domestic industry is materially injured or threatened with material injury" by reason of allegedly subsidized coated paper from China — thus referring the case back to the ITA for a preliminary determination on subsidization. On March 30, 2007, the ITA announced an affirmative preliminary determination of subsidy in the CVD investigation. Preliminary estimates of net countervailable subsidy rates were set, ranging from 10.9 to 20.35 percent.[67]

Second, on February 2, 2007, U.S. negotiators requested World Trade Organization (WTO) talks with China on subsidies, and consultations with China are ongoing as of this writing.

WTO Panel Participation and Oversight. Some in Congress believe that adverse findings (particularly on trade remedy issues) by WTO dispute settlement panels have "added to the obligations and diminished the rights of WTO members," by establishing certain obligations not expressly agreed to through multilateral negotiations. As a result, some Members have introduced legislation that seek to respond to these concerns.

S. 364 (Rockefeller) first would allow private citizens supportive of the U.S. position in a WTO dispute to participate in consultations, dispute settlement panel, or Appellate Body proceedings. Second, the bill would establish a Congressional Advisory Commission on WTO Dispute Settlement to provide advice to Congress on the operation of the WTO dispute settlement system. Third, the bill seeks to amend the Uruguay Round Agreements Act to require congressional approval before any modification of an agency regulation or practice due to an adverse WTO decision. Fourth, S. 364 would direct the United States to negotiate with the WTO to clarify its obligations under the Uruguay Round Agreement if the United States, Congress, or Commission finds that a WTO decision created obligations never agreed to by the United States.

H.R. 708 (English) in similar, but not identical, language, seeks to establish a Commission on WTO Dispute Settlement. It also would permit private U.S. persons to participate in WTO dispute settlement proceedings. In addition, H.R. 708 seeks to amend the Trade Act of 2002 to (1) urge the U.S. Trade Representative (USTR) to reject any trade agreement proposal, whether through the World Trade Organization (WTO) or with any country, that would weaken existing U.S. trade remedy laws; and (2) require the President to report on any proposals in multilateral negotiations that would require amendments to the AD, CVD, or safeguards statutes.

"Interested Party" Status for Downstream Producers. Many goods subject to trade remedy actions are manufacturing inputs (such as steel and cement) used by downstream U.S. industries (such domestic automobile and construction manufacturers). Since affirmative AD and CVD actions lead to higher prices for targeted merchandise, many industrial consumers are concerned that their products, in turn, are less competitive due to the price increases on inputs. **H.R. 1127**, the

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[67] 72 F.R. 17484.

American Manufacturing Competitiveness Act (Knollenberg, introduced February 16, 2007), seeks to amend existing AD and CVD laws so that downstream manufacturers may be considered "interested parties" and may participate fully as such in trade remedy proceedings. The bill further seeks to instruct the International Trade Commission, when considering injury, to take into account the economic impact on downstream industries and the U.S. economy as a whole.

Safeguard (Escape Clause) Measures

"Safeguard" or "escape clause" trade laws are designed to provide domestic industries with relief from injurious import surges resulting from fairly competitive trade. In order to obtain relief, the ITC must determine that a domestic industry is substantially injured by import surges. Presidential action is necessary to obtain relief under these statutes.

Although individual U.S. safeguard actions (in particular, the 2002 action on steel) have been the subject of intense debate, on the whole, many economists find safeguard measures less objectionable than AD or CVD actions. Some reasons for this include their temporary nature, the requirement that industries take steps to positively adjust to import competition, the higher injury threshold, and the requirement of Presidential action.[68]

Statutory Authority

Sections 201-204 of the Trade Act of 1974, as amended,[69] provide relief for imports from all countries. Investigations under this statute are often known as "section 201 investigations." Section 406 of the same Act, as amended,[70] provides a similar relief for market-disruptive imports from communist countries. Section 421, added to the Trade Act of 1974 in October 2000,[71] is a country-specific trade remedy that applies only to injurious imports from China. Another provision, Section 302 of the NAFTA Implementation Act,[72] provides similar relief due to injurious imports originating in Canada or Mexico.

Section 201 Eligibility Criteria

A Section 201 investigation may be initiated by the filing of a petition by any group considered to be representative of an industry, including a trade association, firm (especially if the firm is the sole domestic producer), a certified or recognized

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[68] Lawrence, Robert Z. and Litan, Robert E. *Saving Free Trade: A Pragmatic Approach*, Washington, D.C.: Brookings, 1986, p. 97.

[69] 19 U.S.C. 2251-2254.

[70] 19 U.S.C. 2436.

[71] 19 U.S.C. 2451, as added by section 103 of P.L. 106-286, Division A, Normal Trade Relations for the People's Republic of China.

[72] 19 U.S.C. 3352.

union, or group of workers.[73] An investigation may also be initiated at the request of the President, the United States Trade Representative (USTR), the House Ways and Means or Senate Finance Committees, or by the ITC itself.[74]

The ultimate goal of a section 201 action is to facilitate a domestic industry's positive adjustment to import competition. The petition for relief must also include a statement describing specific purposes for which the action is being sought (e.g., to allow time for the domestic industry to transfer its resources into other productive pursuits) and may include a plan submitted by the petitioner to facilitate the industry's positive adjustment to import competition (if a plan is not filed with the petition, it must be filed within 120 days).

Section 201 relief may apply to imports of the targeted merchandise from all countries or from any country specifically identified as a cause of the import surges.

U.S. International Obligations

Article XIX of the GATT, Emergency Action on Imports of Particular Products, authorizes contracting parties to "suspend the obligation in whole or in part or to modify the concession" in the event of "unforseen developments" caused by obligations or tariff concessions under the Agreement.[75] The WTO Safeguards Agreement provides rules for the application of Article XIX. Under the Agreement, safeguard measures are considered "emergency"actions with respect to imports of particular products. WTO provisions require that safeguard measures: (1) be time-limited; (2) be imposed only when imports are found to cause or threaten serious injury to a competing domestic industry; and (3) be applied on a non-selective (i.e., most-favored-nation) basis, and (4) be progressively liberalized while in effect. In addition, the Member imposing a safeguard is expected to maintain a substantially equivalent level of concessions between it and exporting Members affected by the safeguard. To achieve this, Members may agree on compensation; if negotiations fail, the exporting Member may, in certain circumstances, suspend concessions *vis a vis* the Member imposing the safeguard.

NAFTA Provisions. Article 8 of the NAFTA allows any party subject to the agreement to use bilateral (within the NAFTA) "emergency actions" if an import surge or a duty reduction is a substantial cause of serious injury to a domestic industry. Consultations between affected parties are required. The remedy allowed is a suspension in the further reduction of a duty, or an increase in the rate of duty at a level not to exceed (1) the most-favored-nation (MFN) applied rate of duty in effect at the time the action is taken, or (2) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of the NAFTA. In the case of seasonal products, the duty rate applied cannot exceed the MFN applied rate of duty that was in effect on the good for the corresponding season immediately preceding

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[73] 19 U.S.C. 2252(a)(1).

[74] 19 U.S.C. 2252(b)(1)(A).

[75] General Agreement on Tariffs and Trade, Article XIX.1(a) and (b).

the date of entry into force of the NAFTA. For most products, the term of a safeguard action may not last more than three years.

Each party to the NAFTA also retains the right to engage in global safeguard actions under Article XIX of the GATT, but must exclude other parties to the NAFTA unless (1) imports from a party, considered individually, account for a substantial share of the imports and (2) imports from a party, considered individually, or in extreme circumstances, collectively, contribute importantly to the injury, or threat thereof, caused by imports. Proposed emergency actions are not subject to dispute settlement proceedings under the NAFTA.

Safeguard provisions are also included in the U.S.-Jordan Free Trade Agreement (FTA), the U.S.-Singapore FTA and the U.S.-Chile FTA.

Section 201 Safeguard Investigations

ITC Role. The ITC determines whether the targeted merchandise is being imported in such increased quantities that it is a "substantial cause of serious injury, or threat of serious injury"[76] to the domestic industry producing articles "like or directly competitive with" the imported article.[77] The ITC must normally make its injury determination within 120 days, but it may take up to 30 additional days to make a determination if the investigation is extraordinarily complicated. If the ITC finds in the affirmative, it also provides the President with one or more remedy recommendations. The ITC's report must be submitted to the President within 180 days of the petition, or within 240 days if critical circumstances are alleged.[78]

Provisional Relief. If critical circumstances are alleged to exist and the petitioner requests that provisional relief be provided, the ITC must make a determination on critical circumstances within 60 days of receiving the petition. If the critical circumstances determination is affirmative, the ITC must also recommend the amount of relief necessary (preference is given to increasing or imposing a duty on imports) to prevent or remedy the injury. The ITC must immediately report its findings to the President.[79]

Within 30 days of receipt of an affirmative determination from the ITC, if the President finds that provisional relief is warranted, he may proclaim whatever provisional relief he believes necessary for a period not to exceed 200 days.[80]

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[76] "Substantial cause" is defined in 19 U.S.C. 2252(b)(1)(B) as "a cause which is important and not less than any other cause." Criteria for assessing "serious injury" are described in 19 U.S.C. 2252(c)(1)(A).

[77] 19 U.S.C. 2252(c).

[78] 19 U.S.C. 2252(f)(1).

[79] 19 U.S.C.2252(d)(1)(E) and (F).

[80] 19 U.S.C. 2252(d).

Perishable Products. Provisional relief may also be requested if the targeted merchandise is a perishable agricultural or citrus product. In these cases, the industry representative files a request with the USTR (in advance of a section 201 petition) for monitoring of imports of the product. The USTR determines (within 21 days) (1) if the imported product is a perishable agricultural or citrus product and (2) if there is a reasonable indication that the product is being imported in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or threat of serious injury, to the domestic industry. If these determinations are affirmative, the USTR requests the ITC to monitor and investigate the imports for a limited time period, not to exceed two years.[81]

In order to receive provisional relief, the perishable product must be the subject of ITC monitoring for at least 90 days prior to initiation of the investigation, and the petitioner must request provisional relief. The ITC has 21 days to make an injury determination, and immediately reports its findings and remedy recommendations to the President. If the ITC makes an affirmative determination the President has seven days to proclaim whatever provisional relief he considers necessary to prevent or remedy the serious injury. If the ITC's determination is negative, no relief is given and the proceeding is terminated.[82]

Presidential Action. Within 60 days of receipt of an affirmative ITC determination and report, the President is instructed to "take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." On this basis, the President may (1) implement the ITC's recommendations, (2) modify the ITC provisions or provide another form of remedy, or (3) take no action due to U.S. economic or national security interests.[83]

Import relief may be granted for an initial period of up to four years and extended one or more times.[84] The total period of relief, however, may not exceed eight years. If the President decides not to provide relief, or to provide relief other than that recommended by the ITC, his decision may be overridden by a congressional joint resolution (adopted within 90 days), in which case the ITC's recommendations would be implemented.[85]

Midterm Review. The ITC is required to monitor section 201 actions as long as they stay in effect, especially with respect to the efforts and progress of the domestic industry and workers to adjust positively to import competition.[86] If the initial period of the action exceeds three years, the ITC is also required to submit a

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[81] 19 U.S.C. 2252(d)(1)(B) and (C).

[82] 19 U.S.C. 2252(d)(1)(A).

[83] 19 U.S.C. 2253.

[84] 19 U.S.C. 2253(e)(1)(A) and (B).

[85] 19 U.S.C. 2253(c).

[86] 19 U.S.C. 2254(a)(1).

midterm review to the President and Congress. The ITC holds a hearing in which any interested parties may participate, and upon request, advises the President of the probable economic impact of any reduction, modification or termination of the action.[87]

After the President receives the ITC review and seeks the advice of the Secretary of Commerce and the Secretary of Labor, he may modify, reduce, or terminate the action if he determines that changed circumstances warrant such actions either because: (1) the domestic industry has not made adequate efforts to adjust positively to import competition, or (2) the effectiveness of the action has been impaired by changed economic circumstances. He may also terminate, modify, or reduce the action if the majority of industry representatives petition the President to do so on the basis of positive adjustment to import competition.[88]

The President may also extend an action. Between six and nine months before the safeguard action is scheduled to terminate, at the request of the President or if an industry petition is filed, the ITC must investigate to determine whether an extension of the action is necessary and if the domestic industry is making positive adjustment to import competition. Within 60 days of the termination date, the ITC must transmit the results of the investigation and its determination, unless the President specifies a different date.[89]

Section 201 Outcomes. In the seventy-three section 201 safeguard investigations conducted from 1975 to date, the ITC has recommended some form of relief 47% of the time. The President has provided import relief in 26 instances (35.6%).

Figure 3 illustrates the outcome of section 201 cases from FY1975 to the present. In the cases in which the President granted relief, the most common form has been tariff increases, followed by adjustment assistance, tariff rate quotas, or some combination thereof.

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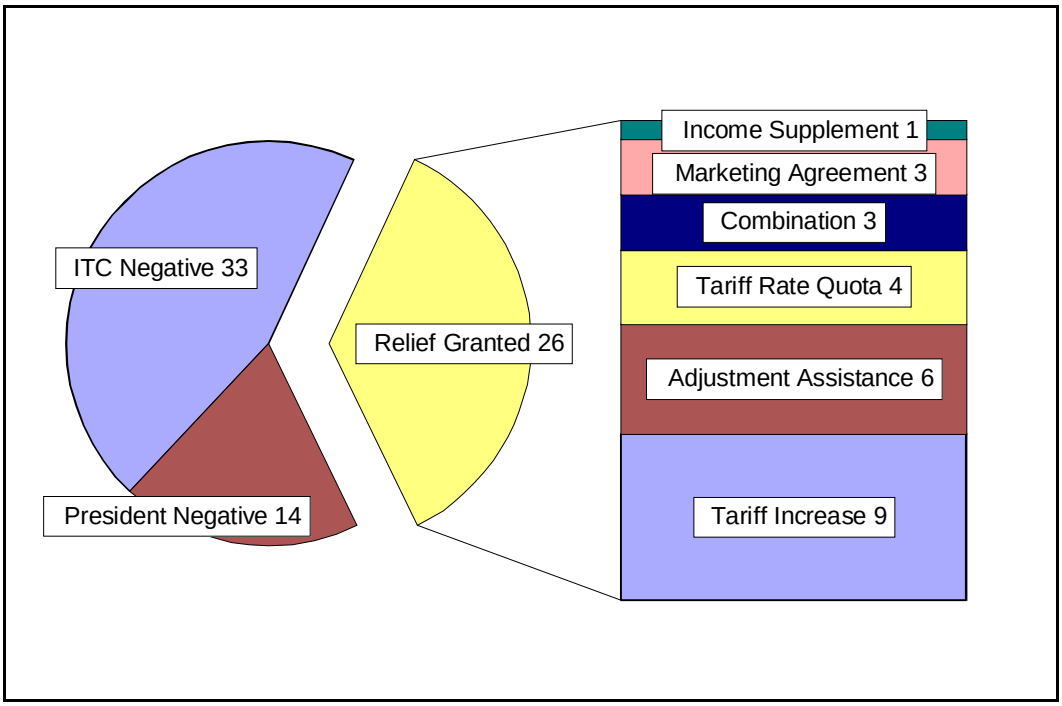
[87] 19 U.S.C. 2254(a)(2) and (3).

[88] 19 U.S.C. 2254(b).

[89] 19 U.S.C. 2254(c).

Figure 4. Outcome of Section 201 Safeguard Cases, 1975-Present



Source: ITC.

Figure 5. Safeguard (Section 201) Petitions and Outcome by Product Group

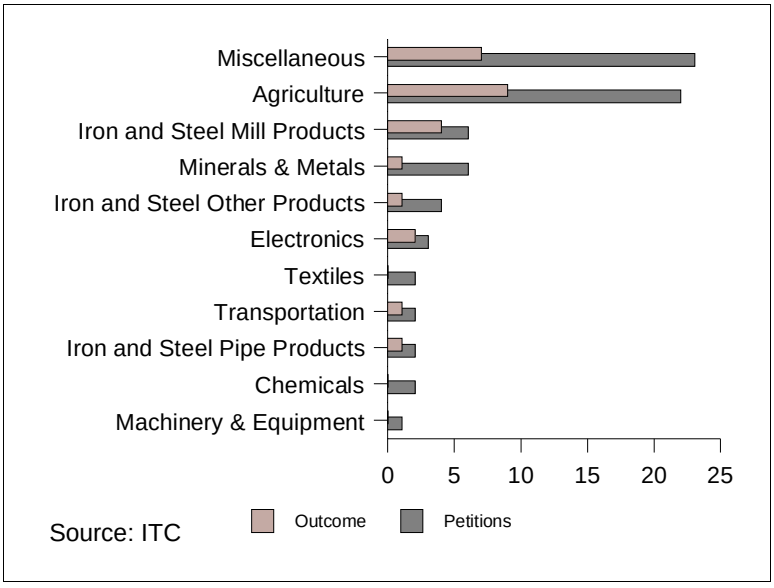


Figure 4 shows section 201 safeguard petitions and their outcome by product group. The largest number of petitions has been filed in the category of miscellaneous manufactures, such as footwear, stainless steel flatware, fishing tackle, fishing rods, and clothespins. Agricultural products are the second largest category, including

asparagus, mushrooms, shrimp, honey, roses, and cut flowers. It appears, generally, that a greater percentage of domestic producers of end-use consumer goods have filed and obtained relief through safeguard petitions as opposed to AD or CVD orders.

2002 Steel Safeguard Action

On June 5, 2001, President Bush responded to steel companies, union representatives, and many in Congress by requesting that the ITC begin a broad section 201 investigation on steel import surges. The request, covering more than 500 steel mill products, was forwarded to the ITC by then-USTR Robert Zoellick on June 22. The ITC staff grouped this large number of products into 33 product categories under four broad groupings. For each of these 33 categories, the ITC investigated whether or not imports of the subject merchandise were a substantial cause of serious injury to the domestic steel industry.

On September 17, 2001, the ITC began a series of hearings on the issue of injury to the domestic steel industry, and on October 22, 2001, made an affirmative determination in 16 of the 33 product categories. Products in the remaining 17 categories were dismissed from further consideration. The ITC continued the remedy phase of the investigation for the 16 categories, and held hearings in November 2001. On December 19, 2001, the ITC submitted its findings and remedy recommendations to the President.[90] On March 5, 2002, President Bush announced trade safeguard remedies for all products that the ITC had found substantial injury, except for two steel specialty categories.[91]

The President's implementation of safeguard measures on steel was controversial both domestically and internationally. A number of U.S. trading partners challenged the decision through the WTO, and on July 11, 2003, the dispute settlement panel found that the safeguard measures were inconsistent with U.S. WTO obligations. An Appellate Body determination confirmed the main points of the panel decision on November 10, 2003. After the WTO panel rulings, the European Union announced that it would retaliate by establishing substantial tariff penalties against $2 billion in imports from the United States beginning in December 2003.

The President terminated section 201 safeguard measures on steel in December 8, 2003.[92] The USTR stated that the termination was the result of a midterm review of the progress of the steel industry to cope with the increased competition and changed economic circumstances. The United States faced retaliation from the European Union equivalent to $2.2 billion in increased tariffs on U.S. exports due to WTO dispute settlement and Appellate Body findings. In the proclamation, the

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[90] All public documents regarding the ITC steel investigation are available on the ITC website, [http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2003/204_steel/finalphase.htm].

[91] To Facilitate Positive Adjustment to Competition from Certain Steel Products, Proclamation 7529, March 5, 2002 (67 F.R. 10593).

[92] Proclamation 7741, 68 F.R. 68481.

President continued the licensing and monitoring of imports of certain steel products and delegated the function to the Secretary of Commerce.

Section 406 Relief

Section 406 of the Trade Act of 1974,[93] as amended, was established to provide a remedy against market disruption caused by imports from Communist countries. This statute applies to any Communist country, whether or not it has received non-discriminatory (normal trade relations) treatment. This provision was enacted out of concern that trade remedy laws already in place were insufficient to deal with a rapid influx of imports that can result from a Communist government's control of its industry pricing levels and distribution processes. Section 406 investigations follow a similar format to section 201 proceedings, however, (1) the standard of injury (market disruption as opposed to "substantial cause of serious injury" or threat thereof) is lower; and (2) domestic industries are not required to plan for or demonstrate positive adjustment to import competition. Import relief may apply only to imports from the subject Communist country or countries. If the President decides to grant relief, he may do so for up to five years, with a possible additional three-year extension.

"Surge Protection" from Chinese Imports

A country-specific safeguard on imports from China is found in section 421 of the Trade Act of 1974.[94] This provision, enacted in section 103 of Public Law 106-286, superseded section 406 with respect to goods from China after the President extended permanent nondiscriminatory (normal trade relations) treatment to China following its accession to the WTO.[95] The legislation implemented an anti-surge mechanism established under the U.S.-China Bilateral Trade Agreement, concluded on November 15, 1999. This transitional safeguard measure is scheduled to terminate 12 years after China's WTO accession.

According to the Protocol on the Accession of China to the WTO, import relief may be granted "only for such period of time as may be necessary to prevent or remedy the market disruption." If import relief is granted due to a *relative* increase in imports, China may retaliate by suspending equivalent trade concessions or obligations if the measure remains in effect for more than two years. If relief is granted due to an *absolute* increase in imports, China may retaliate after three years.[96]

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[93] 19 U.S.C. 2451.

[94] P.L.93-618, Section 421, as added by section 103(a)(3) of P.L. 106-286, 19 U.S.C. 2451.

[95] To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of the People's Republic of China, Proclamation 7616 of December 27, 2001, 67 F.R. 479.

[96] An *absolute* increase in imports is indicated if imports of the subject merchandise surged in one year and were very low or zero previous years. A *relative* increase means that the ratio of imports relative to domestic production has rapidly increased from one year to the next.

Although the procedure under section 421 action is similar to that under section 201, the section 421 safeguard is different in four major respects: (1) the statute provides relief for subject merchandise from China only, whereas the remedy in section 201 applies to subject imports from all countries; (2) consultations with Chinese trade authorities are required; (3) in addition to the ITC, the USTR takes part in the procedure and also submits recommendations to the President; and (4) the standard for relief is "market disruption" — a lower standard than in section 201 proceedings.

To date, there have been six completed section 421 investigations, as follows: Pedestal Actuators (ITC case number TA-421-1), Wire Hangers (TA-421-2), Brake Drums and Rotors (TA-421-3), and Ductile Iron Waterworks Fittings (TA-421-4), Uncovered Innerspring Mattress Units (TA-421-5), Circular Welded Non-Alloy Steel Pipe from China (TA-421-06). The ITC made affirmative determinations in four of these cases and negative determinations in two cases (brake drums and rotors and innerspring mattress units). The President decided not to grant relief each of the four affirmative investigations because he determined that providing such relief was not in the national economic interest of the United States.

Safeguard Legislation in the 110th Congress

H.R. 708 (English, introduced January 29, 2007), seeks to make several changes to sections 201-204 of the Trade Act of 1974 (19 U.S.C. 2251-2254). These amendments include, first, a change in the injury standard in the law from "substantial cause of serious injury" to "cause or threaten to cause" serious injury. Thus, the imports need not be equal to or greater, or more important, than any other cause of injury. Second, the bill also seeks to add to the criteria for determining serious injury by including changes in the level of sales, production, capacity utilization, profits and losses, and employment as factors that the ITC should take into account when making injury determinations. The bill also seeks to establish that when making these evaluations, the timing and volume of the imports should be assessed in order to determine whether there has been a substantial increase in imports over a short period of time.

Third, H.R. 708 seeks to amend the criteria for presidential action in safeguard cases. Instead of determining whether or not implementing a remedy will provide "greater economic and social benefits that costs,"[97] the bill seeks to require the President to ensure that providing a remedy would "not have an adverse impact on the United States clearly greater than the benefits of such action." Fourth, H.R. 708 would also instruct the President to place more weight on (1) the economic and social costs to U.S. taxpayers, communities, and workers, and (2) the impact of safeguard implementation on consumers and on domestic competition for inputs than on the impact on U.S. industries due to international obligations regarding compensation. According to the bill's supporters, these amendments were proposed to increase the likelihood that the President would implement safeguard measures.[98]

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[97] 19 U.S.C. 2253(a)(1)(A).

[98] Office of Representative Phil English, "English Calls for Real Reform of U.S. Trade (continued...)

H.R 782 (Ryan, introduced January 31, 2007) seeks to clarify that China's exchange-rate misalignment is actionable under the countervailing duty provisions, as well as product-specific safeguard measures in U.S. trade laws. This bill would apply this provision only to the China-specific safeguard, section 421 of the Trade Act of 1974 (19 U.S.C. 2451).

Conclusion

Many in Congress support trade remedy laws and actions because they can assist in mitigating the adverse effects of international trade on domestic industry, producers, and workers. Certain key industries are currently facing the adverse effects of increased import competition, which can lead to factory closures and loss of domestic manufacturing jobs. Some workers in the service sector are also feeling the effects of import competition due to increased offshore outsourcing. These factors, among others, are reasons that many in Congress support strengthening these laws and insist that the United States must preserve the ability to "rigorously enforce its trade laws" in international negotiations.

Competitive advantage and a liberalized world trading system create both winners and losers in domestic economies. Acting on legislation in a manner consistent with previously agreed upon multilateral commitments, balancing that action with the need to regulate and minimize unfair trade practices, and assisting domestic import-competing industries to become more internationally viable presents Congress with unique challenges.

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[98] (...continued)
Laws." Summary of Trade Law Reform Act of 2006, p. 6.

Appendix. Summary of U.S. Trade Remedy Laws

Statutory Authority	Purpose	Administering Agencies	Remedy
Countervailing Duty (CVD). Tariff Act of 1930, Title VII, as amended (19 U.S.C. 1671 et seq.)	To offset any unfair and injurious advantage that foreign manufacturers, producers, or exporters of a class or kind of merchandise might have over U.S. producers as a result of a foreign authority providing a financial contribution, any form of income or price support, or a payment to a funding mechanism to provide the above.	International Trade Administration (ITA) of the Department of Commerce U.S. International Trade Commission (ITC)	Countervailing duties are imposed when two conditions are met: (a) Commerce determines that the government of a country or public entity is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of the subject merchandise; and (b) the USITC determines that a U.S. industry is injured, threatened with material injury, or that the establishment of an industry is materially retarded, due to imports of that merchandise.
Antidumping (AD). Tariff Act of 1930, Title VII, as amended (19 U.S.C. 1673 et seq.)	To offset any unfair and injurious advantage that a class or kind of foreign merchandise might have over a similar U.S. product as a result of the imported product being sold in the United States at less than fair market value (less than comparable goods are sold in the home market, or in other export markets.	ITA, ITC	Antidumping duties are imposed when two conditions are met: (a) Commerce determines that the foreign subject merchandise is being, or is likely to be, sold in the United States at less than fair value; and (b) The USITC determines that a U.S. industry is materially injured, threatened with material injury, or that the establishment of an industry is materially retarded, because that merchandise is imported.

Statutory Authority	Purpose	Administering Agencies	Remedy
Sections 201-204 of the Trade Act of 1974, as amended (19 U.S.C. 2251 to 2254)	Provides for investigations as to whether an article is being imported into the United States in such increased quantities to be a substantial cause of serious injury, or the threat thereof, to a domestic industry producing an article like or directly competitive with the imported article. Gives the President authority to withdraw or modify concessions and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article.	ITC, President	Action may be taken in the form of an increase in or imposition of a duty, a tariff-rate quota, a modification or imposition of a quantitative restriction, one or more appropriate measures of trade administration assistance, or a combination of these actions.
Section 406 of the Trade Act of 1974, as amended (19 U.S.C. 2436).	Provides for remedy against market disruption caused by imports from communist countries.	ITC, President	Action may be taken in the form of increased rates of duty or quantitative restrictions that will prevent or remedy the market disruption. Temporary emergency action may also be taken.
Section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451)	Provides for remedy against market disruption caused by imports from the Peoples' Republic of China	ITC, USTR, President	Action may be taken in the form of increased rates of duty or quantitative restrictions that will prevent or remedy the market disruption. Temporary emergency action may also be taken. Consultations with China are also required to attempt to resolve the market disruption.

Statutory Authority	Purpose	Administering Agencies	Remedy
Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411 et seq.)	Provides for investigations into allegations that (1) foreign countries are denying rights or benefits under trade agreements or violating trade agreements to which the United States is a party; or (2) the act, policy, or practice of a foreign country is unjustifiable and burdens or restricts U.S. commerce. Sec. 301(a) requires mandatory action, if the USTR determines that the above conditions have occurred, unless the WTO has adopted a report, or a dispute resolution proceeding under any other trade agreement has found, that rights of the United States have not been violated, or the USTR finds *inter alia* that the country has agreed to eliminate the practice, or taking action would cause serious harm to U.S. national security. Sec. 301(b) provides for "discretionary action" if an act, policy, or practice of a foreign country is "unreasonable or discriminatory and burdens or restricts United States commerce."	USTR	Benefits of trade agreement concessions may be suspended, withdrawn, or prevented; or duties or other import restrictions may be imposed. Binding agreements with the foreign country to eliminate or phase out the action or restriction may also be entered into.

Statutory Authority	Purpose	Administering Agencies	Remedy
"Special 301." Section 182 of the Trade Act of 1974, as amended (19 U.S.C. 2242)	The USTR is required, no later than 30 days of release of the National Trade Estimates Report (NTE) to identify foreign countries that (1) deny adequate and effective protection of intellectual property, or (2) deny fair and equitable market access to U.S. persons that rely on intellectual property protection. The USTR is also required to determine which of these are priority foreign countries, that is, those with the most onerous or egregious practices.	USTR	The USTR is required to initiate Section 301 investigations with respect to priority countries or consult with the countries (unless he determines that an investigation would be detrimental to U.S. economic interests) and if possible, secure agreements for the elimination of barriers.
Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337 et seq.)	Declares unlawful unfair methods of competition and unfair acts in the importation or sale of articles. "Section 337" investigations most often involve intellectual property rights, including allegations of patent, trademark or mask work infringement. Other forms of unfair competition, such as misappropriation of trade secrets, false advertising, and violations of antitrust laws may also be asserted.	ITC	The ITC may issue an exclusion order instructing Customs to bar the products at issue from entry into the United States. The ITC may also issue a cease and desist order against named importers and other violating parties to cease certain actions. Expedited relief in the form of temporary exclusion orders and temporary cease and desist orders may also be available in certain exceptional circumstances. The ITC's exclusion orders become effective within 60 days of issuance unless disapproved by the President for policy reasons.

Statutory Authority	Purpose	Administering Agencies	Remedy
National Security Import Restrictions. Sections 232 and 233, Public Law 87-794, Trade Expansion Act of 1962 (19 U.S.C. 1862, 1864, as amended)	Applies to imports that may threaten to impair national security	Department of Commerce, Defense, President	Commerce investigates and holds public hearings. Commerce consults with the Defense Department on methodological and policy questions. Restrictions may be imposed on these imports.
Trade Adjustment Assistance for Firms. Chapter 3 of Title II of the Trade Act of 1974 (19 U.S.C. 2431 et seq.)	Provides technical assistance to eligible firms which (1) apply to Commerce for certification of eligibility and (2) propose adjustment proposal that describes the firm's recovery strategy and type of technical assistance it is seeking.	Department of Commerce	Eligible firms may apply for technical assistance to implement recovery strategy.
Trade Adjustment Assistance for Workers. Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.)	Provides trade adjustment assistance for eligible U.S. workers if (1) a group of workers or their certified or recognized union or representative files a petition with the Department of Labor's Office of Trade Adjustment Assistance for certification of eligibility, and (2) the individual worker is approved for benefits by the State agency administering benefits.	Department of Labor (Labor), State agencies	Eligible workers may receive trade readjustment allowances, training and reemployment services, and relocation and/or job search allowances.

Sources: U.S. International Trade Commission. *Summary of Statutory Provisions Related to Import Relief.* USITC Publication 3125, August 1998.
United States Code Annotated (USCA) Title 19, Customs Duties. U.S. Congress, House Committee on Ways and Means. Overview and Compilation of U.S. Trade Statutes (2005), WCMP 109-5.