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Why is There So Much Interest in Trade Remedy Laws?

by Colin A. Carter

As traditional forms of agricultural trade protection are reduced through the WTO, there may be a growing number of trade remedy cases filed by U.S. agriculture. This could invite retaliation from U.S. trading partners because they view U.S. trade remedy laws as hidden protection.

The World Trade Organization (WTO) recently kicked off a new round of global trade talks with a high profile ministerial conference in Doha, Qatar. At the conference, the Ministerial Declaration (Declaration) was signed, establishing the negotiating agenda on agriculture, trade remedy laws, and other trade issues. Around the world the meetings were viewed as rather successful, especially from the perspective of developing countries. One reason for the positive response by developing nations was the agreement by U.S. negotiators to include trade remedy laws on the negotiating agenda. Although U.S. trade remedy laws have been found to be in full compliance with WTO laws, many U.S. trading partners (especially the developing nations) view U.S. trade remedy laws as hidden protection because they are regarded as being biased towards findings in favor of U.S. industries.

In the United States, Congress was not pleased with the Doha outcome, as many in Congress are inclined to keep U.S. trade remedy laws off the WTO negotiating table. In fact, just prior to the Doha meetings, the U.S. House of Representatives voted 410-4 on a resolution instructing the U.S. Trade Representative, Robert Zoellick, to keep U.S. trade remedy laws from being included in the Declaration. Mr. Zoellick declined to comply, placing the laws in the Doha Declaration, and the subsequent congressional reaction (i.e., the threat to deny the Administration Trade Promotion Authority, formerly known as "fast-track" authority) indicates that trade remedy laws will be a contentious issue in the new round of WTO trade negotiations.

The trade remedy laws applied by the United States which are at the center of the controversy are antidumping (AD) and countervailing duty (CVD) laws, and to some extent, import relief (safeguard) laws. The purpose of this article is to explain these trade remedy laws, particularly with respect to agriculture. In addition, their use and historical application to agriculture are briefly described with the intent to clarify why these laws are so controversial.

U.S. trade remedy laws and their principal features are outlined in Table 1. The stated purpose of trade remedy laws is to offset "unfair" trade that injures domestic producers as a result of either foreign sales that are "dumped" into the U.S. at less than fair value (LTFV) or influenced by foreign government subsidies.

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by Colin Carter, James Chalfant, Rachel Goodhue and Tian Xia

Import relief laws, commonly known as "safeguards" are intended to provide a period of relief and adjustment for an industry that is being seriously injured by increased competition from imports.

For example, in October 2001 the U.S. government made a preliminary ruling that Canadian growers were dumping greenhouse tomatoes into the U.S. at prices below the Canadian cost of production. As a result of this finding, Canadian sales into the U.S. were assessed an average tariff of 32%. A few weeks later, the legal tables were turned as the Canadian government initiated an anti-dumping investigation against the U.S. fresh tomato industry. The Canadian counter-claim may not have been a coincidence. Rather, it could be a tit-for-tat reaction to the steep U.S. duties that were imposed upon Canadian greenhouse tomato sales to the United States. The Canadian investigation will no doubt impact the California tomato industry, because Canada is an important market for California tomatoes. Economists have found that the initial filing of a case often disrupts imports, irrespective of the final legal determination.

The AD statute comes under Section 731 of the U.S. Tariff Act of 1930 (Tariff Act), as amended. A related statute is Section 701, which applies to subsidized exports from foreign suppliers. Under Section 701, if a foreign subsidy is found to injure U.S. producers, then a CVD import tariff is applied. In addition, there is Section 201 of the Tariff Act, which provides for temporary restrictions on imports—such as high tariffs or import quotas—which are deemed to be causing injury to a domestic industry (Table 1).

The trade remedy laws are collectively known as "administered" protection. The U.S. Department of Commerce (DOC) and the U.S. International

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Table 1. Selected U.S. Trade Remedy Laws

Law	Statute	DOC Determination	USITC Determination	Purpose	Remedy
Countervailing duty (CVD)	Title VII of the Tariff Act of 1930, as amended (Section 701).	Countervailable subsidy, direct or indirect, is being provided.	Material injury; threat of material injury; *or* the establishment of an industry is materially retarded by reason of imports or by reason of sales (or likelihood of sales) of that merchandise.	To offset any unfair competitive advantage that foreign products or exporters might have over U.S. production as a result of subsidization.	Countervailing duties equal to the net amount of the countervailable subsidies are imposed upon importation of the subsidized goods into the United States.
Antidumping (AD)	Title VII of the Tariff Act of 1930, as amended (Section 731).	Foreign product is being sold (or is likely to be sold) at less than fair value (LTFV).	Material injury; threat of material injury; *or* the establishment of an industry is materially retarded by reason of imports of that merchandise.	To offset any unfair competitive advantage that foreign products or exporters might have over U.S. production as a result of sales or LTFV.	Antidumping duty equal to the amount by which the price in the foreign market exceeds the U.S. price (i.e., dumping margin) is imposed in addition to any other duty.
Import Relief (Safeguard)	Chapter 1 of Title II of the Trade Act of 1974, as amended (Sections 201-204).	Not applicable	Serious injury or threat of serious injury substantially caused by reason of imports.	To provide a period of relief and adjustment for an industry that is being seriously injured by increased competition from imports (not necessarily unfairly traded imports).	President has the authority to take action, including the administration of import relief (e.g., imposed tariffs or tariff-rate quotas), to assist a domestic industry that has been seriously injured by imports.

Source: 107th Congress, Committee on Ways and Means, U.S. House of Representatives, "Overview and Compilation of U.S. Trade Statutes, 2001 Edition," June 2001.

Table 2. Outcome of Agricultural AD/CVD Cases Filed between 1980 and 2000.

	AD	CVD	Total
Affirmative	28	13	41
Negative	18	45	63
Suspended or terminated	7	5	12
Total agricultural AD/CVD cases filed	53	63	116

Source: U.S. International Trade Commission, "Case Statistics," Memorandum, Public Version, November 8, 2001.

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Trade Commission (USITC) jointly administer AD and CVD law (Sections 701 and 731). The DOC first determines whether a commodity is being dumped or subsidized and then the USITC decides whether or not the U.S. industry has been injured as a result. The DOC procedure is much less transparent than the USITC procedure. Although it seems too amazing to be true, the DOC rules in favor of the U.S. industry in 95% of the cases. The safeguard law (Section 201) is jointly administered by the USITC and by the President in that the USITC determines whether injury has resulted to the domestic industry and then issues a recommendation to the President for no relief or for a specific method of relief. The President then decides whether or not to heed the recommendation of the USITC or to choose an alternative method or no method for relief.

Many other countries have trade remedy laws that are very similar to those in the United States. Traditionally, the United States, EU, Australia and Canada have filed the most AD and CVD cases against foreign suppliers, but more recently, developing countries (such as Mexico, Brazil, Argentina and South Africa) have filed a growing number of cases. In the past few years, developing countries have filed about 50% of the total number of AD and CVD cases worldwide. Economists generally view AD and CVD laws as nothing more than disguised protectionism that is used to protect domestic industries from foreign competition. As traditional trade barriers (such as tariffs and quotas) are lowered, the use of AD and CVD cases has risen worldwide.

The main reason that developing countries have criticized the use of AD and CVD laws in developed countries, is their growing frustration with the protectionist use of these laws. For instance, Brazil was reluctant to fully engage itself in discussions on the Free Trade Area (FTA) of the Americas because of the continued application of U.S. AD duties on products such as orange juice. This past summer, the filing of AD cases on their exports of raspberries and spring table grapes to the United States troubled Chile. It was no surprise that the U.S. grape and raspberry industries filed their cases while the negotiations for the Chile FTA were in full swing. More recently, U.S. honey producers have also received AD protection from competition from Argentina and China, as well as CVD protection from Argentina, which has certainly come at an inopportune time for Argentine producers.

During the 1980 to 2000 time period, over 1300 AD and CVD cases were filed in the U.S., of which approximately 116 (about 9%) were agricultural cases. This means that agriculture has initiated its fair share of cases, because agriculture's share of the value of U.S. total imports is only about 4%. Import relief law was used less often, as there were only 30 such total cases filed from 1980 to 2000. However, U.S. agriculture filed 8 of these 30 cases, and thus accounted for a rather large share.

During this time period, there was no noticeable trend in either overall usage or agricultural usage of AD and CVD law. The outcome of the AD and CVD agricultural cases since 1980 is reported in Table 2, where we note that 41 of the 116 total cases resulted in an affirmative ruling in favor of the U.S. domestic industry.

During the past two decades, Canada has been the largest target of U.S. AD and CVD agricultural cases. Apart from Canada, most cases have been filed against developing countries, such as China, Colombia and Mexico. As traditional forms of agricultural trade protection are reduced through the WTO, there will most likely be a growing number of trade remedy cases filed by U.S. agriculture. This will not only obstruct U.S. imports but will also encourage retaliation and increased protectionism in other countries. This is all the more reason to keep trade remedy laws on the WTO negotiating table.

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