

sectoral trade agreements. As a mirror image of this proposal, Canada, the United States, and Mexico may want to discuss "lists" of sectors for which they will agree not to levy AD or CV duties, barring an extraordinary change in market conditions. Finally, the existing dispute-settlement mechanism could become even more useful than at present, and the level of trade tension lessened, if the three countries agreed to instruct their trade administrative bodies to consider NAFTA dispute-settlement panel decisions as precedent when hearing cases similar to those already reviewed by a panel.

#### Notes

1. What I call "disputed trade" is the same as the "subject trade" discussed by Jorge Miranda in Chapter 5.

2. This manner of accounting for the number of disputes imparts some upward bias to the perceived length of trade actions because, inevitably, actions in effect for only part of a year will count the same as actions in effect for the whole year. On the other hand, counting only actions initiated during a year impart a downward bias to the data because the impact of many actions lasts beyond a calendar year. Although such biases are unavoidable when presenting the data in an annual format, as is done here, more precise monthly data are available from the author upon request.

3. Another upward bias must be noted, also with respect to the value of trade affected by disputes calculated here. The numbers shown here as "trade affected" reflect the value of trade listed under the Harmonized System's subheading (six-digit category), in which the product investigated and/or slapped with a duty is classified, and not trade at the level of the eight-digit tariff classification. In some cases, this may mean that the value of trade affected shown here may include items not directly slapped with AD or CV duties even though they are very similar products. However, given the historical growth trend in trade between Canada and the United States over the period studied, using the value of trade at the beginning of an investigation as a measure of the value of trade affected throughout the period an investigation/duty is in effect probably understates the amount of trade affected by a duty.

4. U.S. International Trade Commission, *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, Investigation No. 332-344 (Washington, D.C.: International Trade Commission, 1992).

5. U.S. Congressional Budget Office, *How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy* (Washington D.C.: Congress of the United States, September 1994).

6. *Ibid.*, p. 60.

## 7. An Overview of the Impact of U.S. Unfair Trade Laws

by Thomas J. Prusa

### INTRODUCTION

In recent years, the debate about U.S. trade policy has focused primarily on the issue of fairness. On one side of the debate are those who argue that the United States needs to adopt policies that "level the playing field" for domestic firms. From this perspective, vigorous enforcement of the unfair trade laws is needed to combat foreign practices that violate the rules of international trading and cause injury to U.S. firms. On the other side of the debate are those who believe that of current trade practices, America's aggressive use of its "unfair" trade statutes is the one that is truly unfair. From this view, the obliquely defined (and broadly interpreted) fair trade provisions are a gaping loophole in the General Agreement on Tariffs and Trade (GATT) governance, with discretionary protection being granted to politically important industries as often as to truly injured sectors.

Regardless of which (if either) view is correct, countries that want to trade with the United States need to be aware of how the unfair trade laws are used and have been used by the United States.<sup>1</sup> In particular, given their geographic location and the volume of their trade destined for the United States, firms located in Canada and Mexico must understand how the United States implements the unfair trade laws, which countries are subject to investigations (i.e., the filing patterns), and what the effects of such trade restraints are. Moreover, if the trade liberalization promised in the North American Free Trade Agreement (NAFTA) further increases the interdependence among these three countries, Canadian and Mexican industries may be particularly vulnerable to allegations of unfair trade.

This chapter provides an overview of the U.S. use of antidumping (AD) and countervailing duty (CVD) laws during the period from 1980 to 1994. This review not only addresses the growing importance of these laws but also highlights their use against Canada and Mexico in comparison with other similar countries. Several general insights will emerge from the analysis.

First, AD and CVD laws are frequently used. Despite the attention often paid to other trade actions, such as the recent Section 301 dispute over the Japanese auto market, AD and CVD laws are America's two most important trade statutes. A review of the filing patterns makes it clear that these two laws are the primary weapons in the U.S. trade arsenal. Consider that since 1980, U.S. firms have filed more complaints under the antidumping statute than all of the other major trade statutes put together: over 700 AD petitions have been filed against more than 50 countries. CVD law is a distant second, with approximately 400 cases filed since 1980. By contrast, during the past 15 years there have been only 25 escape clause actions and just a handful of Section 301 investigations.

From everyday goods (spun acrylic yarn, bicycle tires, sweaters) to heavy industry (carbon steel products, minivans), to agriculture (fresh-cut roses, red raspberries, potatoes, tart cherry juice, orange juice), to high technology (semiconductors and DRAMs, cellular mobile telephones, flat-panel displays), the unfair trade laws have truly been applied to all areas of trade. In addition, AD and CVD cases have been filed against a wide range of countries. From cases against developed countries (Japan, Germany) and developing countries (Argentina, Trinidad and Tobago, Bangladesh, South Korea); to those filed near (Canada, Mexico) and far (Australia, New Zealand, Turkey); against friends (United Kingdom, France) and against foes (China, Russia); countries from all parts of the world have been the subject of AD and CVD investigations.

Second, not only are AD and CVD laws used frequently, but also these investigations often significantly restrain trade. Between 1980 and 1994, about 40 percent of AD petitions (and about one-third of CVD petitions) resulted in duties being levied against foreign competitors; another 20-25 percent of AD/CVD petitions resulted in settlement agreements involving voluntary export restraints (VERs) or negotiated price increases. Overall, almost 60 percent of AD/CVD petitions resulted in trade restraints (either duties or settlements). AD duties have averaged 30 percent ad valorem and have ranged upwards of 200 percent ad valorem. The size of CV duties is strikingly similar. CV duties have averaged 15 percent ad valorem and have ranged upwards of 300 percent ad valorem.<sup>2</sup> Given that the average U.S. import tariff is less than 4 percent, it is obvious that an AD or CVD case can substantially restrain trade—and in some cases even eliminate the named country from the import market. Although the restrictive effect of

settlement agreements falls outside official estimates of the effect of AD law, recent estimates indicate that settled cases have nearly the same restraining effect on trade as when duties are levied.<sup>3</sup>

In addition to and in conjunction with these general observations, there are a number of insights regarding the use of AD and CVD laws against Canada and Mexico. First, there is little evidence that Canada and Mexico have been the subject of an unusually large share of filings. Canada's share of the overall U.S. import market is three times its share of either AD or CVD cases; Mexico's share of the overall U.S. import market is about 50 percent greater than its share of unfair trade cases. This suggests that on average, Canada and Mexico are subject to fewer investigations than would be predicted by their trade volumes. Second, cases against Canada and Mexico have been less successful than cases filed against other countries. For instance, cases against Canada are 15-20 percent less likely to result in restrictive outcomes than those against comparable countries such as Japan and West European countries. Similarly, cases (especially AD cases) against Mexico are less likely to result in protection than those against comparable countries such as Brazil or the other Latin/South American countries.

This chapter begins with a discussion of filing patterns, with particular emphasis on Mexico and Canada. Current filing patterns are put in a longer-run historical context in which it can be seen that the current popularity of unfair trade practices is not new and can be traced to the mid to late 1970s. In the section on AD/CVD outcomes, evidence is presented that neither Mexico nor Canada has been subjected to an unusually large number of AD or CVD investigations. There follows a discussion of the trade-restraining effects of AD/CV duties. The chapter concludes with a few general comments on the U.S. use of AD and CVD laws.

## THE RISE OF UNFAIR TRADE LAWS

### Historical Perspective

Under U.S. trade laws there are two main channels through which domestic industries can seek relief. The escape clause is used when imports are deemed to harm the domestic economy or competing industries. Unfair trade policies are designed to offset the effects of unfair trade distortions created by foreign firms or their governments in their attempt to promote exports. AD and

CVD laws are the two most widely used unfair trade laws and are used to counter the alleged practices of dumping and government subsidization, respectively. The escape clause, in contrast, was specifically designed to protect industries that are injured because of trade liberalization (i.e., injury due to fair trade).

The marked increase in the use of unfair trade laws, especially AD laws, during the past 30 years is one of the dramatic changes in U.S. trade policy. Figure 1 shows the average number of AD and CVD petitions filed per year for a number of subperiods from 1958 to 1994. The subperiods correspond to major trade bills containing amendments to the trade statutes. For comparison, the figure also shows the average number of escape clause petitions filed during the same subperiods.

Two interesting points emerge. First, AD and CVD laws have always been more popular trade weapons than the escape clause. This is due in part to the fact that escape clause protection is comprehensive whereas AD and CVD protection is country spe-

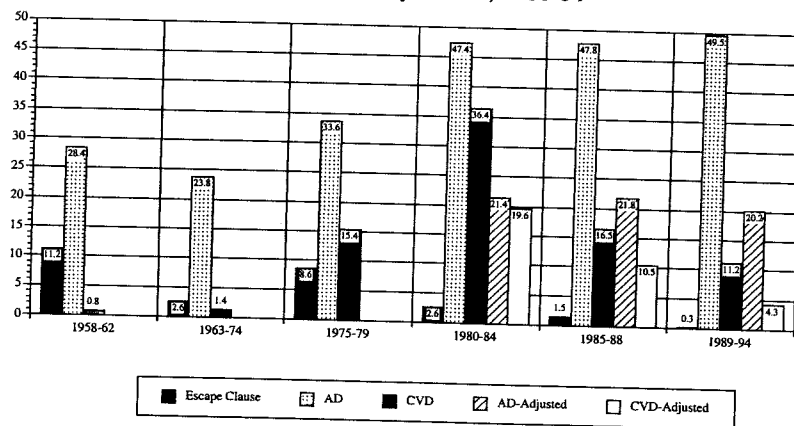
cific. Protection provided under the escape clause restricts imports from all source countries. In contrast, AD and CVD protection restricts imports only from the country (or countries) named in the petition. Imports from countries not named in the petition are not subject to investigation and are not subject to duties. To combat the limited protection offered by AD and CVD law, industries often file AD/CVD petitions against multiple countries. In recent years, over half of AD and CVD petitions were part of multiple-country filings. This multiple-country strategy effectively makes AD/CVD protection comprehensive but increases the number of petitions filed. To control for the practice of filing multiple petitions, I have also calculated an adjusted number of AD/CVD filings. To create this adjusted measure, a multiple-petition filing (say, against five countries) is counted as a single petition (instead of five).<sup>4</sup> Even using the adjusted measure of AD/CVD activity, the AD and CVD laws are still used 10-20 times more often than the escape clause.

Second, since 1975 the popularity of AD and CVD actions has surged. During the 1980s and early 1990s, AD law was used almost twice as often as in the 1960s and early 1970s. CVD activity has also increased dramatically since 1975. Interestingly, from 1958 to 1974 the use of AD and CVD laws was quite stable, with an average of 25-30 AD petitions (and one CVD petition) filed each year. It might thus be concluded that U.S. industries battled more foreign dumping and government subsidization in the late 1970s and 1980s than in previous years.

However, this is not the entire story. Another part of the explanation certainly lies in the way the laws have been amended over the past 15 years. These changes resulted from complaints from many domestic constituencies that the AD and CVD laws were too difficult to use and the protection afforded by the statutes was too weak. Cases could linger in administrative limbo for years, and even when protection was granted, duties might never be collected. Congress has significantly amended the trade laws in four of the last five major trade bills, each revision further facilitating the use of the unfair trade laws. Among the revisions, the less than fair value (LTFV) determination was transferred from the Treasury Department to the Department of Commerce (DOC) (easing the burden of showing LTFV sales and improving duty collection); the use of the "best information available" was approved for the AD and CVD investigations (improving the chance of showing LTFV sales); and the time limits for AD and CVD cases were shortened

FIGURE 1

Number of AD and CVD Cases Filed per Year, 1958-94



Note: The terms "AD-adjusted" and "CVD-adjusted" mean that an AD or CVD petition naming multiple countries is counted as one case. For example, the official International Trade Commission (ITC) accounting method would count a petition against five countries as five cases. Only CVD petitions against countries agreeing to the GATT Subsidies Code are included in this figure.

(making protection more timely). After the Trade Act of 1974, use of CVD law jumped, and after the Trade Act of 1979 the number of cases filed under both laws ballooned. Within a few years of the 1979 amendments, AD and CVD activity surged. On average, during the 15-year period from 1980 to 1994 almost 50 AD petitions and 20 CVD petitions were filed each year.<sup>5</sup>

The rise of AD and CVD activity is especially remarkable in relation to the substantial progress made in liberalizing trade during the postwar era. For instance, from 1958 to 1988, the average U.S. tariff rate fell from 20 percent to under 5 percent.<sup>6</sup> One view is that it is precisely because tariffs have been reduced so dramatically that requests for AD/CVD protection have increased. One problem with this interpretation, of course, is that it does not explain why tariff reductions should lead to a dramatic increase in unfair trade actions rather than in fair trade complaints (i.e., escape clause actions). This is especially surprising given that there is no need to prove the existence of any unfair trade act (i.e., no need to prove dumping or subsidization) to receive escape clause protection. However, as shown in Figure 1, escape clause complaints have become quite rare in recent years.

In other work I have argued that there are several key reasons that AD law has become the dominant avenue through which industries seek protection.<sup>7</sup> First, the "material injury" standard under AD/CVD law is less demanding than the escape clause's "serious injury" standard, and domestic industries perceive the standards to be sufficiently different to risk the challenge of proving dumping or subsidization. In fact, a review of International Trade Commission (ITC) decisions shows that about half of both escape clause and AD/CVD petitions are rejected by the ITC, but it is likely that the serious injury standard induces only industries with strong evidence of injury to file escape clause petitions.

Second, under AD/CVD law, once the ITC has made its final injury decision, duties must be imposed. By contrast, under the escape clause, after the ITC has found injury, duties can be levied only after receiving presidential approval. It is widely believed that this presidential discretion discourages firms from filing under the escape clause.

Third, the various amendments to AD/CVD laws make the DOC's "unfair practice" determination quite easy to satisfy, in effect eliminating the key additional requirement of AD/CVD law. A review of DOC decisions reveals that about 95 percent of

AD/CVD cases receive affirmative unfair practice determinations, suggesting that the "added burden" of proving dumping or subsidization is not much of a burden at all. According to many experts,<sup>8</sup> questionable DOC procedures—such as best information available, the method of averaging, and the liberal use of third-country surrogates—encourage firms to file unfair trade complaints even if there is little evidence of unfair trade. The DOC's extremely favorable rules for determining dumping margins, in conjunction with the weaker material injury standard, make AD/CVD laws attractive.

Fourth, the cumulation provision contained in the Trade Act of 1984 encourages firms to file AD/CVD petitions against multiple countries, which, as discussed above, effectively makes AD/CVD protection comprehensive. Simply stated, cumulation alters the rules by which the ITC makes its injury decision; instead of factoring in the volume of dumped (or subsidized) imports from the named country, cumulation mandates that the ITC factor in the volume of dumped or subsidized imports from all named countries. Filing a petition against a country with only 2 percent of the import market might not be worthwhile (because its small volume of imports is unlikely to cause injury). But with cumulation, combining the petition against the country with 2 percent of the import market with the petition against another country that has 20 percent of the import market is an attractive strategy, because injury against each country is calculated using the fact that the total volume of imports under investigation is 22 percent. In other work I present evidence that petitions filed using the cumulation amendment are 20-30 percent more likely to receive an affirmative injury determination than identical petitions that do not invoke cumulation.<sup>9</sup> Cumulation creates an incentive for domestic complainants to file against many countries.

### Recent Filing Patterns

Tables 1 and 2 present a more detailed breakdown of AD and CVD filings for the period 1980-94. Given that over 50 countries were the subjects of AD investigations and over 30 were the subjects of CVD investigations, the tables report country breakdowns for only four countries (Canada, Mexico, Japan, and Brazil) and aggregate the remaining filings into broadly defined regions: Western Europe; the Southeast Asian newly industrialized countries, or NICs (Taiwan, Hong Kong, Singapore, South Korea);

**TABLE 1**  
**AD Filings, by Year, 1980-94**

Country or Group of Countries	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	Total
Canada	3	1	2	2	3	4	3	2	4	1	0	4	6	1	0	36
Mexico	0	0	0	1	1	2	2	0	0	2	1	2	6	2	2	21
Japan	7	3	3	7	4	5	9	7	9	3	6	3	7	4	3	80
Western Europe	23	4	44	17	16	10	17	4	8	5	13	5	34	5	11	216
NICs	2	3	4	9	5	16	10	1	10	6	5	9	15	3	3	101
Brazil	0	0	2	3	6	3	7	0	2	1	2	2	7	4	2	41
Other Latin/South America	0	1	3	2	7	5	8	1	1	1	3	3	5	4	5	49
Nonmarket economies	2	3	4	5	16	11	7	0	2	2	7	12	11	9	14	105
Others	1	0	3	0	15	7	8	0	6	2	6	7	8	4	9	76
All countries	38	15	65	46	73	63	71	15	42	23	43	47	99	36	49	725

Source: Author's compilation from ITC case reports.

**TABLE 2**  
**CVD Filings, by Year, 1980-94**

Country or Group of Countries <sup>a</sup>	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	Total
Canada	1	1	4	0	1	3	2	0	2	3	0	2	1	0	0	20
Mexico	1	1	8	7	7	2	0	0	0	0	0	0	2	1	0	29
Japan	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Western Europe	27	2	87	2	5	11	3	2	0	0	0	0	23	1	4	167
NICs	2	0	7	2	3	5	4	1	3	0	0	0	6	0	0	33
Brazil	4	0	14	5	3	3	3	0	1	0	1	1	4	1	0	40
Other Latin/South America	3	0	5	1	6	8	5	1	1	1	0	0	0	0	0	31
Others	11	3	13	3	15	14	9	3	4	1	4	5	6	1	2	94
All countries	52	7	138	20	40	46	26	7	11	5	5	8	42	4	6	417

Source: Author's compilation from ITC case reports.

other Latin and South American countries; nonmarket economies; and "all others." Cases against West European countries and Brazil were separated to serve as benchmarks for cases against Canada and Mexico, respectively.

When comparing Canada and Mexico to other benchmark countries, one must consider certain factors that may partially explain differential treatment. The historically strong relationship and trade ties between Canada/Europe and the United States may lead to more favorable treatment for their industries, whereas Latin/South American countries (and Mexico) might be subject to the biases and suspicions that damage their chances. Petitions against Japan might be treated differently in ITC decisionmaking because of the overwhelming negative attention that Japan received in trade-related matters during the 1980s. Given its situation, it might be expected that petitions against Japan would be more likely to receive a positive ITC ruling. Similarly, the rapid export-oriented growth of the NICs might hurt them in ITC proceedings. Finally, cases filed against nonmarket economies may tend to be more successful, both because of cold war suspicions and because of the heavy reliance on "constructed value" measures of home-market performance when nonmarket economies are involved.

At this point, it is important to note that the Tokyo Round agreement separated the GATT Subsidies Code from the general agreement. This allowed GATT members to ratify the general agreement, but reject the Subsidies Code. This is an important consideration because under U.S. law the full benefits of the Code apply only to countries that themselves have accepted the subsidies agreement. In practice, this means that an injury test is not required for CVD cases filed against countries that have not agreed to the Subsidies Code. This is especially relevant for this study because, of the 29 CVD cases against Mexico, 25 were filed prior to Mexico's accepting the agreement. Overall, between 1980 and 1994 about 100 CVD cases were filed against nonsignatory countries. Although Figure 1 did not include CVD cases against nonsignatory countries, the data presented in Table 2 (and throughout the rest of the chapter) do.

Over 100 different U.S. industries filed 725 AD and more than 400 CVD petitions during the 1980-94 period. Japan, with 80 cases, is the country whose imports are most frequently the subject of AD investigations; China, with 53 cases, is the next most frequently cited. Canada has been the subject of 36 AD investigations,

and Mexico has been the subject of 21. In contrast, Brazil has been the subject of 41 AD investigations.

Brazil, with 40 cases, is the country whose imports are most frequently the subject of CVD investigations. Mexico has been the subject of 29 CVD investigations. Canada has been the subject of 20 CVD investigations.

The top 15 petitioning industries listed in Table 3 account for almost 70 percent of the cases filed. Interestingly, these top industries share certain characteristics, which may account for their use of the laws. First, they are large industries, as measured by value of output and number of employees: the average petitioning industry has almost four times the sales and three times the employment as the average manufacturing industry. As has been widely recognized, an industry's size may be related to its ability to lobby effectively for trade protection: larger industries have greater resources and can exert greater political pressure on the ITC. Second, industries filing petitions face much greater import competition than the average industry: foreign producers' share of the domestic U.S. market is about 30 percent, compared with the national average of about 13 percent.

Have Canada and Mexico been subjected to an unusually large number of either AD or CVD cases? One benchmark is to compare the incidence of AD/CVD petitions with the share of U.S. merchandise imports held by each country or region. If AD/CVD petitions were filed in proportion to import market share, one would expect the two measures to be roughly equivalent. Table 4 presents filing data and import market shares for Canada and Mexico, along with the other countries and regions for comparison. Canada has been the subject of 5 percent of all U.S. AD cases; Mexico has been the subject of 2.9 percent. In comparison, Canada accounts for 18.1 percent of U.S. merchandise imports and Mexico, 6 percent. Thus, both countries find themselves the subject of far fewer AD investigations than their import shares would predict. Canada has been the subject of about 6 percent of all U.S. CVD cases and Mexico, 7 percent. According to this measure, Canada has been the subject of far fewer CVD investigations than its import share would predict, and Mexico has been the subject of about what would be predicted by its import share.

The share of cases filed against a benchmark (West European countries for Canada, Brazil for Mexico) is another useful way of measuring the incidence of AD/CVD activity. West European countries have been the subject of about 60 percent more AD

**TABLE 3**  
Cases Filed by Industry (Top 15), 1980-88

	AD	CVD	Total	Restrictive Outcomes
Blast furnaces and steel mills (3312)*	151	170	323	219
Misc. fabricated wire products (3496)	13	10	23	14
Ornamental nursery products (0181)	10	11	21	15
Ball and roller bearings (3562)	18	0	18	15
Fabricated metal products (3499)	10	7	17	15
Valves and pipe fittings (3494)	12	3	16	13
Industrial inorganic chemicals (2819)	13	1	14	11
Copper rolling and drawing (3351)	11	2	13	13
Motor vehicle parts and accessories (3714)	11	2	13	8
Hydraulic cement (3241)	10	2	12	2
Potash, soda, and borate minerals (1474)	6	4	10	6
House furnishings (2392)	1	9	10	7
Wet corn milling (2046)	0	9	9	0
Fabricated textile products (2399)	5	4	9	2
Medicinals and botanicals (2833)	7	2	9	6

\* The four-digit number is the SIC industry code.

**TABLE 4**  
AD and CVD Filings and Outcomes Compared with Share of Merchandise Imports, 1980-94

Country or Group of Countries	% of 1990 U.S. Merchandise Imports that Originate in this Country or Group	AD Cases				CVD Cases			
		Total No. of Cases	Total No. of Cases as a % of all Cases	% with Duties Levied	% with Restrictive Outcomes	Total No. of Cases	Total No. of Cases as a % of all Cases	% with Duties Levied	% with Restrictive Outcomes
Canada	18.1%	36	5.0%	36.1%	47.2%	20	4.8%	35.0%	55.0%
Mexico	6.0	21	2.9	30.0	55.0	29	7.0	58.6	79.3
Japan	18.0	80	11.0	57.0	68.4	3	0.7	33.3	66.7
Western Europe	17.9	216	29.8	24.2	53.6	167	40.0	17.1	41.3
NICs	12.2	101	13.9	46.0	58.0	33	7.9	30.3	57.6
Brazil	1.7	41	5.7	47.5	62.5	40	9.6	40.0	62.5
Other Latin/South America	2.3	49	6.8	31.9	59.6	31	7.4	58.1	93.5
Nonmarket economies	3.5	105	14.5	50.0	76.5	—	—	—	—
Others	20.2	76	10.5	47.2	66.7	94	22.5	45.7	66.0
All countries	100.0	725	100.0	39.5	61.0	417	100.0	33.7	57.6

Source: Author's compilation from ITC reports: Keith B. Anderson, "Antidumping Laws in the United States," *Journal of World Trade*, Vol. 27, No. 2 (1993), pp.99-117; and IMF *Directory of Trade*.

investigations than their import market share warrants. Even more dramatic is Western Europe's share of CVD filings: over 40 percent of all CVD petitions are filed against Western Europe—more than twice as many investigations as its import share would predict. If one accepts the assumption that Western Europe is a good benchmark for Canada, these numbers suggest that Canadian firms have been the subject of remarkably few investigations.

With respect to Mexico, note that Brazil has been the subject of almost 6 percent of AD investigations (and over 12 percent of CVD investigations), but accounts for less than 2 percent of U.S. merchandise imports. In other words, Mexico's benchmark country is subject to a disproportionate share of AD and CVD cases (more than its share of trade), but Mexico is subject to a proportionate share of cases. Taken together, it seems clear that the incidence of both AD and CVD cases against Mexico is not unusually high.<sup>10</sup>

It should be noted that, although not directly comparable to either Mexico or Canada, nonmarket economies have been subject to a remarkably large share of AD investigations: nonmarket economies have been subject to 15 percent of the AD investigations but account for less than 4 percent of U.S. merchandise imports, almost 300 percent more cases than their import share would predict. This is largely due to the fact that procedures such as the use of third-country surrogates underlying the calculation of the dumping margin are quite likely to lead to affirmative decisions against nonmarket economies.<sup>11</sup>

Finally, it should be pointed out that more AD petitions were filed against Canada in 1992 than in any other single year, suggesting that the U.S.-Canada Free Trade Agreement (CUSFTA) might have spurred an increase in AD actions against Canada. However, because five of the six cases involved steel products, and during the next two years only a single AD case was filed against Canada, it appears that 1992 is the exception rather than the rule.

#### AD/CVD OUTCOMES

U.S. industries file AD and CVD petitions to receive some reduction in import competition, through either duties or negotiated settlements. Table 5 shows a breakdown of case outcomes for 1980-94. Overall, about 40 percent (274) of AD cases were rejected (primarily by the ITC), and about 40 percent (278)

**TABLE 5**  
**Summary of AD and CVD Decisions, 1980-94**

Country or Group of Countries	AD Cases			CVD Cases		
	Rejected	Duties Levied	Withdrawn/Settled/Total*	Rejected	Duties Levied	Withdrawn/Settled/Total†
Canada	19	13	4	9	7	4
Mexico	9	6	5	6	17	6
Japan	25	45	9	1	1	1
Western Europe	98	51	62	95	28	41
NICs	42	46	12	14	10	9
Brazil	15	19	6	15	16	9
Other Latin/South America	19	15	13	2	18	11
Nonmarket economies	23	49	26	—	—	—
Others	24	34	14	30	42	20
All countries	274	278	151	172	139	101

\*As of June 1995, 22 cases were still pending final decisions. Therefore country (region) totals may not sum to total number of cases filed.  
†As of June 1995, 5 cases were still pending final decisions. Therefore country (region) totals may not sum to total number of cases filed.

Source: Author's compilation from ITC reports.

resulted in duties being levied. The remaining 20 percent (151) of cases were resolved by some type of VER or settlement agreement. Two-thirds of the settlements involved steel cases, reflecting the broad steel agreements of 1982 and 1984. With respect to CVD actions, about 40 percent of CVD cases were rejected (again, primarily by the ITC), about one-third resulted in duties, and about one-fourth were resolved by a VER or settlement.

AD petitions against Canadian and Mexican imports were less successful compared with either their respective benchmarks or the overall average. As seen in Table 4, cases against NICs (46 percent), Japan (57 percent), Brazil (47.5 percent), and nonmarket economies (50 percent) were more likely to result in duties than those against either Canada (36 percent) or Mexico (30 percent). Further, when the percentage of cases resulting in restrictive outcomes (duties and settlements) is considered, it becomes clear that Canada and Mexico have fared relatively well compared with other countries. Cases against Canada have the least chance of resulting in a restrictive outcome of all countries/regions analyzed (17 of 36, or 47 percent). Mexico has been subject to restrictions (11 of 20, or 55 percent) less often than its benchmark, Brazil (63 percent).

CVD petitions against Canada have been somewhat more successful than those filed against its benchmark, Western Europe. Specifically, about 35 percent of CVD cases against Canada have resulted in duties, whereas only 20 percent of CVD cases against West European countries have resulted in duties. In addition, almost 40 percent of CVD cases against West European countries have resulted in restrictive outcomes, compared with about 55 percent of those against Canada. CVD petitions against Mexico have been relatively successful, compared with those filed against Brazil.

As another measure of the effect of AD law, Table 6 presents the number of outstanding AD orders.<sup>12</sup> Because an AD order can be in effect from two years to indefinitely,<sup>13</sup> AD duties can have a large or small effect on a country, depending on whether the orders are long-lived. Therefore, looking only at the number of instances in which duties are levied does not capture the entire protective effect of AD law; a country might have only a few cases against it, but the AD orders can be long-lived. Several points are worth noting. First, the number of orders outstanding steadily increased during the 1980s, from 84 in 1980 to 197 in 1990. Second, the percentage of orders against Japan and West Euro-

**TABLE 6**  
**Outstanding AD Orders, 1980-90**

Country or Group of Countries	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Canada	11	9	9	9	11	13	16	16	16	15	12
Mexico	1	1	1	1	1	1	3	3	3	3	3
Japan	26	25	27	29	31	32	33	39	45	48	50
Western Europe	25	26	27	29	26	26	25	28	35	37	38
NICs	4	4	6	11	12	12	21	21	23	25	30
Brazil	1	1	1	3	3	1	6	6	6	6	7
Other South/Latin America	2	2	3	3	3	4	8	8	10	10	10
Nonmarket economies	6	7	7	11	11	10	12	18	19	18	23
Others	8	7	7	9	9	14	18	21	23	23	24
All countries	84	82	88	105	107	113	142	160	180	185	197

Source: Author's compilation from Anderson, "Antidumping Laws in the United States."

pean countries was larger than their share of U.S. merchandise imports. For instance, using the data presented in Tables 4 and 6, it can be seen that during the 1980s, Japan was subject to about 25 percent of the total orders outstanding but accounted for only about 18 percent of U.S. merchandise imports. Third, Canada and Mexico have each been subject to relatively few orders compared with either their share of U.S. merchandise trade or their benchmark countries. For instance, in 1990, Canada's imports were three times its share of AD orders and Mexico's imports were four times its share of orders. In addition, far more orders were outstanding against West European countries than against Canada. Similarly, far more orders were outstanding against Brazil than against Mexico.

### EFFECTS OF AD AND CVD MEASURES

The above discussion indicates that although Mexico and Canada have fared relatively well in terms of the number of investigations and the number of restrictive outcomes, in general, AD and CVD protection is relatively easy to obtain—about two-thirds of cases result in some form of trade restriction. What has been the impact on import trade when an AD/CVD case has been successful? To address this question, I collected import trade data for those cases that resulted in either a settlement agreement or duties being levied, and Table 7 presents my findings.<sup>14</sup> On average, import trade (from the country under investigation) in the

TABLE 7

AD/CVD Cases with Restrictive Outcomes, 1980-88

	Time Period			Normalized % t-2 and t <sub>0</sub>	Change Between t <sub>0</sub> and t <sub>2</sub>
	t-2	t <sub>0</sub>	t <sub>2</sub>		
Named country's value of imports (mean) (mill. 1982\$)	\$66.25	\$84.86	\$80.74	8.59%	-21.00%
Named country's share of import market (mean)	14.14%	15.00%	12.72%	—	—

year the case was initiated was \$85 million; in comparison, import trade two years prior to the case averaged \$66 million—implying that imports grew an average of 29 percent during the two years prior to the initiation of the investigation. Interestingly, two years after restrictions were imposed, import trade averaged \$81 million—a 5 percent fall in trade with the United States during the two years after the case. If it is assumed that imports would have continued to grow at their pre-restriction rate, these numbers imply an average restriction of over 30 percent. Clearly, AD/CVD actions can have significant effects on trade.

Of course, some of this trade growth was due to changes in the aggregate economy. That is, exchange rate appreciation/depreciation, growth in the macroeconomy, etc., all might cause changes in the volume of imports. To control for these factors, along with any other factors that would lead to systematic changes in import volume, I normalized the trade volume by the change in the total volume of import trade. After adjusting for aggregate import trade growth, I calculated that the "unfair" trader's "normalized" import trade grew about 9 percent faster than the national average during the two years prior to the case, but 21 percent slower than the national average during the two years after the case. Again, this suggests about a 30 percent decrease in import trade because of restrictions. Although the magnitude of this trade effect may be surprising, this is exactly the intended consequence of filing an AD or CVD petition—to reduce import trade from a particular source.<sup>15</sup>

I also calculated the effect of the trade restriction by looking at the import market share of the country under investigation. I found that during the two years preceding the investigation, the named country's market share grew from 14.1 percent to 15 percent. However, during the two years following the restriction, the import market share fell to 12.7 percent. Clearly, AD/CVD trade restrictions (in the form of either duties or negotiated settlements) reduce trade from the country under investigation.

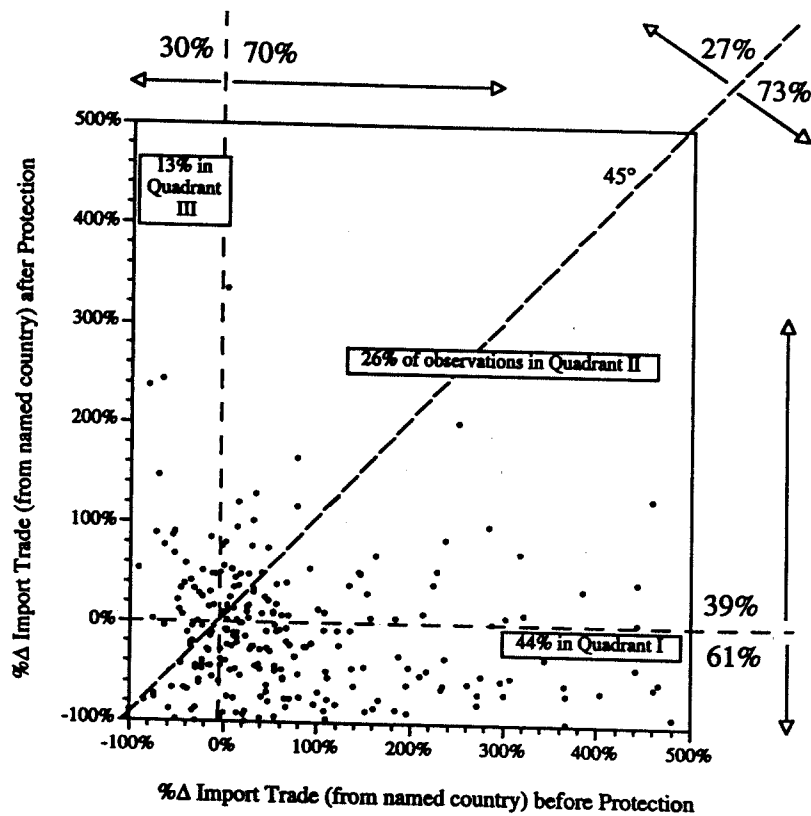
One issue the above analysis does not address, however, is the sizable variance in the effect of AD and CVD restrictions. For instance, although import trade fell on average by 5 percent during the two years after the restriction, the effect varied considerably: in the case involving dumping of fresh-cut flowers from Mexico, trade fell by 98 percent, whereas in the case involving dumping of fireplace mesh panels from Taiwan, trade actually grew by 90 percent after the restriction was imposed. Clearly,

looking at averages minimizes the significance of the large disparity across cases.

To get a closer look at this issue, Figure 2 shows the percentage change in trade before and after protection was granted for individual cases. Dashed lines are included to indicate cases where trade increased or decreased during the indicated time period. For instance, we can see that in 70 percent of the cases, import trade (from the named country) grew before the petition was filed

FIGURE 2

Percentage Change in Import Trade from Named Country, Before and After Unfair Trade Restrictions



(i.e., the cases lying to the right of the dashed vertical line); in 30 percent, trade fell during the years preceding protection. We can also see that in over 60 percent of cases, import trade fell after protection was granted (i.e., the cases lying below the dashed horizontal line); in about 40 percent, trade grew after protection. The 45-degree line represents cases where protection did not have a significant effect, i.e., where trade grew at the same rate before and after protection. Although some cases lie above and some below the diagonal, 73 percent of the cases lie below, which indicates that the growth of trade is slowed in the great majority of AD/CVD cases when restrictions are imposed.

The dashed horizontal and vertical lines divide the diagram into four regions or quadrants. Cases falling in quadrant I experienced an increase in imports *before* the AD/CVD case, but a decrease in imports *following* protection. Overall, almost half (44 percent) of AD/CVD cases fall in this quadrant. Cases falling in quadrant II experienced an increase in imports both before and after protection. Quadrant III depicts perhaps the most surprising cases. In this quadrant, cases experienced a decrease in imports before protection, but an increase after. About 13 percent of cases fall in this category. Finally, cases in quadrant IV (about 17 percent of cases) experienced a decrease in imports both before and after protection. Overall, the picture is clear that for the vast majority of cases, AD/CVD duties restrict import trade.

### CONCLUDING COMMENTS

The evidence presented here confirms that among U.S. trade statutes, AD and CVD laws are the most frequently used. The laws have been used by more than 100 industries and against more than 50 countries. Moreover, there is little evidence that the laws will be used less often in future years. In fact, given Congress's pattern of amending the laws to make them more broadly applicable, it seems likely that the popularity of these laws will continue to grow.

That said, there is little evidence that either Canada or Mexico has been subject to a disproportionate number of AD/CVD investigations (compared with either their share of U.S. imports or with benchmark countries). Nor is there any pattern that cases against Canada or Mexico have tended to result in restrictive outcomes more often than their benchmark countries. However, this does not mean that U.S. "unfair" trade laws have not significantly injured the Canadian and Mexican industries that

have been named in AD and CVD actions. To the contrary, as depicted in Figure 2, countries named in AD/CVD investigations often find that the named industry suffers significant import losses. But the public often becomes aware of the injurious effects of AD/CVD actions only when the injured industry is politically powerful—such as the Canadian softwood lumber industry.

Interestingly, because AD and CVD protection only limits the imports from countries named in the petition, Canadian and Mexican producers may often stand to gain from U.S. protection. For instance, when Japanese semiconductor manufacturers were subject to AD protection, South Korean semiconductor producers emerged as an important source of semiconductors. The same phenomenon is likely to be true for other sectors, and because Mexico and Canada are tightly linked to the U.S. economy, their producers may be particularly well suited to serve as the diversionary supplier. There is preliminary evidence<sup>16</sup> that this is indeed the case: Japan, Canada, and Mexico are the three largest beneficiaries of the import diversion caused by AD and CV duties. Of course, the Canadian and Mexican industries gaining from AD/CV duties on other foreign competitors are not the same Canadian and Mexican industries subject to AD/CV duties, which means that AD/CVD laws will have important income distribution consequences.

All in all, however, this news is only small comfort to Canada and Mexico—especially to the Canadian and Mexican industries subject to AD/CV duties. Although Canada and Mexico have no more need to fear U.S. application of AD and CVD laws than any other U.S. trading partner, there should still be substantial concern about the aggressive U.S. use of AD and CVD laws. The goal of NAFTA was to liberalize trade. But if the AD and CVD laws continue to be expanded and applied more easily, the benefits of tariff reduction and investment deregulation will be greatly attenuated, and not only with respect to trade destined for the United States. If more countries follow the U.S. lead in broadly interpreting the notion of “unfair” trade, ever increasing amounts of world trade will be subject to AD/CVD investigations.

#### Notes

1. In the past year, two large studies of the effects of U.S. AD and CVD laws have been conducted, one totaling more than 100 pages (Morris E. Morkre and Kenneth H. Kelley, *Effects of Unfair Trade Imports on Domestic Industries: U.S. Antidumping and Countervailing Duty Cases, 1980-1988* (Washington, D.C.: Federal Trade Commis-

sion, 1994)), and the other more than 300 pages International Trade Commission (ITC), “The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements,” Publication No. 2900 (Washington, D.C.: ITC, 1995)). Both studies conclude that there is little economic evidence of injury by reason of unfairly traded imports for many cases that in fact received protection.

2. Data on duties are only for cases filed, 1980-88.
3. Thomas J. Prusa, “Why Are So Many Antidumping Petitions Withdrawn?” *Journal of International Economics*, Vol. 33, No. 1/2 (1992), pp. 1-20.
4. Unfortunately, data limitations allow this adjusted measure only for AD/CVD cases filed since 1980.
5. CVD petitions filed against countries that have not agreed to the principles defined by the GATT Subsidies Code are not included in Figure 1 because no injury determination is required.
6. Jagdish Bhagwati, *Protectionism* (Cambridge: MIT Press, 1988).
7. Wendy L. Hansen and Thomas J. Prusa, “The Road Most Taken: The Rise of Title VII Protection,” *The World Economy*, Vol. 18, No. 2 (1995), pp. 295-313.
8. See Richard Boltuck and Robert E. Litan, *Down in the Dumps* (Washington, D.C.: Brookings Institution, 1991).
9. See Wendy L. Hansen and Thomas L. Prusa, “Cumulation and ITC Decision-Making: The Sum of the Parts Is Greater than the Whole,” NBER Working Paper 5062, (forthcoming *Economic Inquiry*), 1995.
10. The same finding would result if “other Latin/South American” countries were used as Mexico’s benchmark.
11. Nonmarket economies are excluded from CVD investigations under U.S. law.
12. Data limitations prevent me from presenting a similar table for CVD cases.
13. In rare cases, AD orders may remain in effect for less than two years (for example, if the domestic industry indicates it is no longer interested in keeping the order in place), but this is extremely uncommon.
14. The import data presented in Table 7 are derived from the TSUSA codes reported in the Federal Register notices accompanying each AD/CVD order. Cases when TSUSA codes changed during the sample were dropped. All import values were converted to 1982 dollars.
15. For a more detailed discussion of the effect of AD and CVD measures, see Hansen and Prusa, “The Road Most Taken.”
16. Thomas J. Prusa, “The Trade Effects of U.S. Antidumping Actions,” mimeo, 1995.