

The Economic Effects of the Current AD/CVD Laws and Procedures

Statistics indicate that almost all antidumping cases filed by U.S. firms result in findings of dumping, and the vast majority of countervailing-duty cases result in findings of subsidies. In the United States and other major trading countries, domestic firms have found it fairly easy to get protection under the AD/CVD laws. In fact, protection has become so easy that the safeguard laws (such as the Section 201 escape clause), which are designed to provide temporary emergency protection, have largely fallen into disuse. The AD/CVD laws have effectively replaced them and become de facto safeguard laws without the restrictions the General Agreement on Tariffs and Trade places on de jure safeguard laws.

The view that the AD/CVD laws should serve as a general source of protection for uncompetitive industries appears to influence the behavior of several parts of the U.S. government. Evidence suggests that the Department of Commerce and the International Trade Commission more often rule in favor of protection in cases where U.S. firms are uncompetitive than in cases where they are not. Furthermore, recent changes in the laws have made it more difficult for foreign firms to circumvent AD/CVD orders. Such circumvention diminishes the effectiveness of the laws as safeguards.

How much of an impediment to trade do the AD/CVD laws pose? The extent is difficult to assess precisely. Right now, there is no good overall measure. Initial inspection of some obvious measures indicates that the laws are a small and insignificant component of

U.S. trade protection. Closer inspection, however, reveals that the laws have a much larger effect than would appear at first glance.

Protection Against Unfair Imports, or Protection of Uncompetitive Industries from All Imports?

Several statistical studies have examined the effects of the AD/CVD laws and procedures. The results of these studies indicate that the AD/CVD system serves as a general source of protection for domestic industries from both fair and unfair imports.

The Commerce Department Seldom Fails to Find Dumping or Subsidies

Though not conclusive, available evidence strongly suggests that the Commerce Department's procedures are severely biased in favor of findings of dumping and subsidies. One major piece of evidence in support of this conclusion is that the Commerce Department seldom fails to find dumping or subsidies in AD/CVD cases.

Cases much more often fail the final International Trade Commission injury test than fail the final Commerce Department dumping or subsidy test. As the numbers in Table 3 indicate, DOC found no dumping in only 11 percent of its final determinations from 1980 through 1984 (9 out of 79 cases), 8 percent of its final determinations from 1985 through 1988 (11 out of 134 cases), and 3 percent of its final determinations from 1989 through 1992 (4 out of 126 cases). For the entire 1980-1992 period, it found dumping in only 7 percent of cases (24 out of 339 cases).

Substantially greater percentages of ITC injury determinations were estimated to be negative. Of prelimi-

nary determinations of injury from 1980 through 1992, 27 percent were negative (123 out of 462 determinations), and 34 percent of final determinations were negative (108 out of 315 determinations).

The numbers for countervailing-duty cases are only slightly less striking (see Table 4). DOC found no subsidies in only 9 percent of its final subsidy determinations from 1980 through 1984 (8 out of 93 cases), 18 percent of its final determinations from 1985 through 1988 (9 out of 50 cases), and 32 percent of its final determinations from 1989 through 1992 (6 out of 19 cases). For the entire 1980-1992 period, it found subsidies in only 14 percent of cases (23 out of 162 cases)

Table 3.
Frequencies of Affirmative and Negative Determinations by DOC and ITC in Antidumping Cases

	1980-1984	1985-1988	1989-1992	Total, 1980-1992
Number of Decisions				
Preliminary ITC Injury Determinations Decided Affirmatively ^a	79	134	126	339
Preliminary ITC Injury Determinations Decided Negatively	46	28	49	123
Final DOC Dumping Determinations Decided Affirmatively ^a	70	123	122	315
Final DOC Dumping Determinations Decided Negatively	9	11	4	24
Final ITC Injury Determinations Decided Affirmatively	47	88	72	207
Final ITC Injury Determinations Decided Negatively	23	35	50	108
Percentage of Decisions^b				
Preliminary ITC Injury Determinations Decided Affirmatively	63	83	72	73
Preliminary ITC Injury Determinations Decided Negatively	37	17	28	27
Final DOC Dumping Determinations Decided Affirmatively	89	92	97	93
Final DOC Dumping Determinations Decided Negatively	11	8	3	7
Final ITC Injury Determinations Decided Affirmatively	67	72	59	66
Final ITC Injury Determinations Decided Negatively	33	28	41	34

SOURCE: Congressional Budget Office based on data compiled by Morris E. Morkre and Kenneth H. Kelly of the Federal Trade Commission, Bureau of Economics.

NOTE: DOC = Department of Commerce; ITC = International Trade Commission.

- a. Calculated as an approximate lower bound by adding the affirmative and negative final determinations of the next stage of the determination process.
- b. Percentages are calculated based on the numbers of affirmative and negative decisions. Where the number of affirmative determinations is an approximate lower bound, the calculated percentage is also an approximate lower bound, and the calculated percentage of negative determinations is an approximate upper bound.

Table 4.
Frequencies of Affirmative and Negative Determinations
by DOC and ITC in Countervailing-Duty Cases

	1980-1984	1985-1988	1989-1992	Total, 1980-1992
Number of Decisions				
Preliminary ITC Injury Determinations Decided Affirmatively ^a	93	50	19	162
Preliminary ITC Injury Determinations Decided Negatively	54	10	8	72
Final DOC Subsidy Determinations Decided Affirmatively ^a	85	41	13	139
Final DOC Subsidy Determinations Decided Negatively	8	9	6	23
Final ITC Injury Determinations Decided Affirmatively	27	25	8	60
Final ITC Injury Determinations Decided Negatively	58	16	5	79
Percentage of Decisions^b				
Preliminary ITC Injury Determinations Decided Affirmatively	63	83	70	69
Preliminary ITC Injury Determinations Decided Negatively	37	17	30	31
Final DOC Subsidy Determinations Decided Affirmatively	91	82	68	86
Final DOC Subsidy Determinations Decided Negatively	9	18	32	14
Final ITC Injury Determinations Decided Affirmatively	32	61	62	43
Final ITC Injury Determinations Decided Negatively	68	39	38	57

SOURCE: Congressional Budget Office based on data compiled by Morris E. Morkre and Kenneth H. Kelly of the Federal Trade Commission, Bureau of Economics.

NOTE: DOC = Department of Commerce; ITC = International Trade Commission.

- a. Calculated as an approximate lower bound by adding the affirmative and negative final determinations of the next stage of the determination process.
- b. Percentages are calculated based on the numbers of affirmative and negative decisions. Where the number of affirmative determinations is an approximate lower bound, the calculated percentage is also an approximate lower bound, and the calculated percentage of negative determinations is an approximate upper bound.

As for ITC determinations, 31 percent of preliminary determinations from 1980 through 1992 were negative (72 out of 234 determinations), and 57 percent of final determinations were negative (79 out of 139 determinations).

A study of AD/CVD cases obtained similar results using a slightly different method.¹ That study found that 23 percent of the preliminary ITC injury determinations from 1980 through 1988 were negative (129 out of 573 determinations), 11 percent of final DOC dumping and subsidy determinations were negative (60

out of 544), and 37 percent of the final ITC injury determinations were negative (113 out of 303). Those numbers are reasonably close to the ones in Tables 3 and 4.

Together, these data indicate that the requirements for obtaining relief under the AD/CVD laws have become effectively similar to those for obtaining relief under the escape clause. Legally, the AD/CVD laws require demonstration of dumping or subsidy and demonstration of injury, whereas escape-clause cases require only demonstration of injury (although with a higher standard for injury). Proving dumping or subsidies is not much of a hurdle, however, since DOC's procedures find dumping or subsidies in the vast majority of cases. The main hurdle in AD/CVD cases is the same as in

1. J. Michael Finger and Tracy Murray, "Antidumping and Countervailing Duty Enforcement in the United States," in J. Michael Finger, ed., *Antidumping: How It Works and Who Gets Hurt* (Ann Arbor, Mich.: University of Michigan Press, 1993), pp. 241-254.

escape-clause cases: proving injury. Over four times as many cases fail the ITC injury test as fail the DOC dumping and subsidy test.

Defenders of DOC procedures have argued that other reasons besides biased procedures could explain why so few cases fail determinations of dumping or subsidy by DOC and so many more fail determinations of injury by the ITC. One reason given is that the preliminary ITC determination of injury comes first and eliminates weak cases before they reach DOC's final determination of dumping or subsidy. That sequence might raise the percentage of affirmative DOC final dumping and subsidy determinations somewhat.

Even if one assumes, however, that most cases with low dumping margins are screened out in the preliminary injury test (which is unlikely), that argument cannot completely explain the statistics. The preliminary ITC injury test and the final DOC dumping and subsidy tests should similarly screen out weak cases before they reach the ITC's final determination of injury. Yet the percentage of final ITC injury determinations that are negative is substantially greater than the percentage of final DOC determinations of dumping and subsidy (especially in dumping cases) that are negative.

A second reason that is given is self-selection: domestic industries do not file cases when there is no dumping or subsidization of imports. According to this argument, domestic industries would see no point in incurring the substantial costs of filing a case if lack of dumping or subsidies meant that antidumping or countervailing duties were unlikely to be imposed. Although this argument cannot be dismissed completely, several problems with it make it unconvincing.

One problem is that many industries have an incentive to file AD/CVD cases even when no dumping or subsidies exist. AD/CVD cases provide an effective means to harass and impose substantial costs and uncertainty on foreign competitors--costs that are much larger than the cost to the domestic industry of filing such cases. Because of these costs and the uncertainty, foreign exporters facing AD/CVD cases frequently agree to export restraints even if they are not dumping or receiving subsidies. One of the studies discussed above found that 45 percent of the cases it examined

ended in negotiated export restraints.² Some of the cases that ended in that way also received final determinations of dumping (or subsidy) and injury. Of those that did, 58 percent failed either the dumping/subsidy or the injury test, meaning that AD/CVD duties would not have been imposed.

Another problem with the argument is that a similar one could be made about the injury test. What is the point of incurring the substantial costs of filing a case if lack of injury makes it unlikely that antidumping or countervailing duties will be imposed? Hence, one would expect the rate of negative determinations of injury by the ITC to be just as low as the rate of negative determinations of dumping and subsidies. One might even argue that uninjured industries are even less likely to file a case than firms competing with imports that are not dumped or subsidized, since the lack of injury means that the industry has little to gain even if duties are imposed. That argument has some merit, but it is not conclusive since even a firm uninjured by recent increases in imports could gain from duties that remove a long-standing foreign presence from the domestic market.

A final reason that defenders of DOC procedures give for the statistics relates to the relative uncertainty on the part of a petitioning firm in predicting the outcome of a determination. According to that argument, well-defined rules govern findings of dumping and subsidies, and therefore the outcomes of such cases are easier for domestic industries to predict than determinations of injury, which are inherently subjective. Hence, firms more often err in filing cases that eventually fail the unpredictable injury test than in filing cases that eventually fail the test for dumping or subsidies.

This argument cannot be completely dismissed. Determinations of injury are indeed more subjective and difficult to predict. However, DOC determinations of dumping and subsidies are unlikely to be so easy to predict that only 7 percent of firms would err in filing a dumping case that would fail the dumping test (or only 3 percent, as happened in the 1988-1992 period).

2. Finger and Murray, "Antidumping and Countervailing Duty Enforcement in the United States."

Uncompetitive Industries Are More Likely Than Others to Receive Protection

Are uncompetitive industries more likely than others to receive protection under the AD/CVD laws? Two studies contain pertinent results. Though their findings are subject to interpretation and thus cannot be considered conclusive, one may reasonably infer from them that uncompetitive industries are indeed more likely to receive protection.³

A recent study examined ITC injury decisions for antidumping cases from 1980 through 1986.⁴ That study attempted to determine whether ITC commissioners based their decisions solely on factors indicating injury to the industry by dumped imports or whether other factors also entered into their decisions. The author made the examination by estimating an equation that related the votes of individual ITC commissioners to 17 different variables. The 17 included five variables that a commissioner might consider relevant to determining whether an industry was injured by dumped imports--change in production, change in production employment, change in profit-to-sales ratio, change in volume of dumped imports, and the dumping margin--and 12 other variables that did not relate to injury by dumped imports.

Of particular interest here, the 12 others included four variables that could be viewed as proxies for the competitiveness of the industry: changes in volume of all imports (not just dumped imports), the wage rate, whether the imports in question come from a developing country, and whether the imports come from a newly industrialized country (NIC).⁵ As to the first of

these four variables, one would expect an industry with declining competitiveness to experience increasing competition from all imports--dumped or not. Regarding the other variables, low-wage industries are generally unskilled-labor-intensive industries for which the United States has a comparative disadvantage, and NICs and developing countries in particular have a comparative advantage over the United States in such industries because of their abundant supplies of low-wage, unskilled labor.

The equation the author estimated for preliminary determinations of injury indicates that the ITC was more likely to find injury in cases where the industry had a low wage rate and the imports in question came from a developing country. Whether total imports--dumped or not--increased and whether the imports came from a NIC were not significant. The equation for final determinations of injury indicates that the ITC was more likely to find injury in cases where all imports of the good in question--dumped or not--were increasing and the imports in question came from a NIC or a developing country. The wage rate was not significant. These results support the proposition that the ITC was more likely to favor protection (find injury) for industries that were uncompetitive (or had declining competitiveness) than for other industries.

A related study examined DOC's determinations of dumping and subsidy over roughly the same time period as the study just discussed.⁶ The results provide evidence that DOC tends to find larger dumping margins in cases where the U.S. industry is uncompetitive, although the evidence is weaker than that for ITC determinations of injury.

The second study estimated an equation relating the dumping margin found by DOC to 11 variables. The 11 included three of the four variables related to competitiveness that were tested in the first study: changes in the volume of all imports of the good in question (not just dumped imports), the wage rate, and whether the

3. "Competitiveness" is used here to mean the ability to simultaneously maintain market share and profitability.

4. Michael O. Moore, "Rules or Politics?: An Empirical Analysis of ITC Anti-Dumping Decisions," *Economic Inquiry*, vol. 30 (July 1992), pp. 449-466.

5. The remaining eight variables were (1) changes in employment for the four-digit Standard Industrial Classification (SIC) category that includes the industry in question (a broader classification than the industry itself), (2) the national unemployment rate, (3) the profit-to-sales ratio, (4) whether the imports come from Japan, (5) whether the imports come from a member country of the Organization for Economic Cooperation and Development, (6) the number of workers in the four-digit SIC category that contains the industry, (7) whether the industry contains a manufacturing plant in a state represented by a member of the

Senate trade subcommittee, and (8) whether the industry contains a manufacturing plant in a Congressional district represented by a member of the House trade subcommittee.

6. Robert E. Baldwin and Michael O. Moore, "Political Aspects of the Administration of the Trade Remedy Laws," in Richard Boltuck and Robert E. Litan, eds., *Down in the Dumps: Administration of the Unfair Trade Laws* (Washington, D.C.: Brookings Institution, 1991), pp. 253-280.

imports in question came from a developing country.⁷ The estimated equation indicated that the dumping margins determined by DOC were significantly related to two of those three variables--namely, changes in the volume of all imports and whether the imports came from a developing country.

Among the other variables in the equation was whether DOC used the best information available in its determination; the estimated equation indicated that was the most important factor influencing the size of dumping margins. Consequently, the authors reestimated the equation separately for cases in which BIA was used and for cases in which it was not used.

The three variables on competitiveness were not significant for either type of case when estimated separately this way, but for different reasons. For the non-BIA cases, the coefficients on the competitiveness variables were smaller, indicating that margins in these cases were not as strongly influenced by competitiveness of the domestic industry. For BIA cases, the coefficients were larger, indicating that the margins were more strongly affected. The variables tested as being insignificant because there were so few such cases that the error bars on the coefficient estimates were very large and consequently even large coefficients did not test as being significant.

A reasonable interpretation of the three equations taken together is that the margins determined by DOC are likely to be higher in cases where the domestic industry is uncompetitive than in other cases and that much of the influence occurs through the use of BIA. The evidence is not as strong as was the case for determinations of injury by the ITC. One possible reason is that the greater inherent subjectivity of the ITC's determinations of injury allows more room for considerations such as competitiveness to sway the votes of ITC commissioners. DOC's determinations are more rigidly determined by rules. Thus, for competitiveness to have a substantial influence, it must do so through the design

7. The other variables were (1) changes in the absolute value of the exchange rate, (2) whether "best information available" was used in the determination, (3) changes in the volume of dumped imports, (4) changes in domestic production, (5) the number of production workers in the domestic industry, (6) whether the imports came from Japan, (7) whether the industry contains a manufacturing plant in a state represented by a member of the Senate trade subcommittee, and (8) whether the industry contains a manufacturing plant in a Congressional district represented by a member of the House trade subcommittee.

of rules that do not nominally consider competitiveness but that have effects that are correlated with competitiveness.

Safeguard/Escape-Clause Laws Are Seldom Used

One of the studies discussed above points out that if the determinations by DOC of dumping and subsidies were significant hurdles in obtaining protection under the AD/CVD laws, a sizable number of escape-clause cases should have been filed by firms that could not demonstrate that the imports injuring them were dumped or subsidized.⁸ In fact, however, relatively few such cases exist (see Table 5). From 1979 through 1988, 427 antidumping cases and 371 countervailing-duty cases were charged in the United States, but only 36 safeguard/escape-clause cases.

The situation is similar in other countries. The only difference between the United States and the other major users of AD/CVD laws in the 1980s (Australia, Canada, and the European Community) was that the other users resorted almost solely to AD laws, making little use of CVD laws. In contrast, the United States made substantial use of both AD and CVD laws. The numbers provide further evidence of bias in DOC procedures. They suggest that it has become easy enough to obtain relief under the AD/CVD laws that most industries use them in place of the safeguard laws.

Large, High-Profile Cases Still Get Negotiated Outcomes with Quotas

The standard prescribed remedies in the AD/CVD laws are antidumping and countervailing duties. Nevertheless, large, high-profile cases can still be settled by quotas rather than duties, and they often are. The escape clause, which often results in quotas, is still available. Further, once instituted, AD/CVD cases can be suspended or withdrawn by the petitioning industry in conjunction with quota protection negotiated with the for-

8. Finger and Murray, "Antidumping and Countervailing Duty Enforcement in the United States."

Table 5.
Import Relief Measures Initiated, by Type and Country, 1979-1988

	Antidumping	Countervailing Duty	Escape Clause	Other	All Actions
United States	427	371	36	44	878
European Community	406	13	37	2	458
Australia ^a	478	22	1	0	501
Canada ^a	447	23	2	0	472
Developing Countries	<u>75</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>75</u>
Total	1,833	429	76	46	2,384

SOURCE: Patrick A. Messerlin, "Antidumping," in Jeffrey J. Schott, ed., *Completing the Uruguay Round: A Results Oriented Approach to the GATT Trade Negotiations* (Washington, D.C.: Institute for International Economics, September 1990), pp. 110-111.

a. Does not include cases for 1979, for which numbers were not available.

eign country or firms. This second possibility is not trivial. As mentioned previously, 348 of the 774 cases the authors of one study examined were superseded by export restraint agreements. Those cases include the large array of steel cases in the 1980s that ended with quota agreements.

Statistics indicate that the escape clause tends to be used for large, high-profile cases whereas the AD/CVD laws tend to be used for smaller, lower-profile cases. One study compared escape-clause cases with AD/CVD cases (which the authors call LFV, or less-than-fair-value, cases) for 1975 through 1979.⁹ It found that the average escape-clause case concerned \$331 million worth of imports, whereas the average AD/CVD case concerned only \$106 million worth of imports. Excluding the steel and auto cases, which they argue should have been decided under the escape-clause mechanism, the average AD/CVD case involved only \$28 million worth of imports. At the end of the study, the authors conclude:

In law, the escape clause deals with injury to U.S. producers from import competition and the LFV mechanism with the fairness of business practices used in the U.S. market by for-

eigners. But in economics we find that they both deal with the same thing--injury from imports and the associated gains from trade. The functional difference between the cases which belong on one track or the other is the size and perhaps the degree of public awareness of the interests at stake, not the nature of those interests. Antidumping and countervailing duties are, functionally, the poor (or small) man's escape clause.¹⁰

Looking only at AD/CVD cases, a similar pattern appears in the differences between cases leading to suspension or quota agreements and cases leading to antidumping or countervailing duties. Seventy-five percent of the U.S. AD/CVD cases against developing countries from 1980 to 1988 led to restrictive outcomes, whereas only 65 percent of the cases against developed countries did so.¹¹ Nevertheless, 36 percent of the cases against industrialized countries led to negotiated export restraints, whereas only 15 percent of the cases against developing countries did so. The United States has more trade with industrialized countries overall than with developing countries. Cases against the former are likely to involve more trade and have a higher profile than cases against the latter. Hence, these statistics are consistent with the thesis that quota

9. J.M. Finger, H. Keith Hall, and Douglas R. Nelson, "The Political Economy of Administered Protection," *American Economic Review*, vol. 72, no. 3 (June 1982), pp. 452-466.

10. *Ibid.*

11. Finger and Murray, "Antidumping and Countervailing Duty Enforcement in the United States."

remedies are used more often in large, high-profile cases than in other cases.

Who Benefits and Who Gets Hurt?

Obviously, laws prohibiting foreign firms (and any other firms for that matter) from engaging in predatory pricing in the United States have a net beneficial effect on the U.S. economy. At the same time, laws prohibiting foreign firms from selling below cost in the United States and from selling below the firm's home-market price have a net detrimental effect on the U.S. economy. And when the AD/CVD laws function as a more general source of protection, they also have a net detrimental effect. Looking beyond those net effects, some sectors of the economy benefit from the laws while others are hurt.

Import-Competing Firms

The statistics cited above regarding the frequency of use of the AD/CVD laws and the Section 201 escape clause clearly indicate that import-competing firms generally prefer to use the AD/CVD laws and that therefore the laws must have benefited these firms, which explains why they came to be a substitute for the escape clause. Further, because the escape clause tends to be used more in large, high-profile cases and the AD/CVD laws in other cases, one can fairly infer that import-competing firms in the latter cases benefit more than those in the former cases. By examining the advantages and disadvantages of the AD/CVD laws relative to the escape clause from the perspective of an import-competing firm, the reasons for those patterns become clear.

To such a firm, the AD/CVD laws have several advantages over the escape clause. One advantage is a lower standard of injury. With the escape clause, imports must be "a substantial cause of serious injury" before protection can be granted; with the AD/CVD laws, they need only cause "material injury," which is much easier to prove. Before the Trade Agreements Act of 1979, countervailing-duty cases had no injury requirement at all.

Consider a second advantage for firms seeking protection under the AD/CVD laws. If dumping or subsidies can be proved and material injury proved also, protection is automatic under those laws. The President has no say in the matter, and effects on foreign relations and the welfare of consumers and other domestic industries are irrelevant. Under the escape clause, protection is at the option of the President, who is charged with considering the national interest in his decision. That difference is important. Between 1975 and 1985, the ITC forwarded 33 affirmative escape-clause decisions to the President, and the President rejected 15 of them.¹² The difference probably has its greatest effect in the case of smaller industries that are less important to the economy and are therefore less likely to be able to persuade the President that their protection is worth the cost to consumers, consuming industries, and U.S. foreign relations.

Other advantages for a firm seeking protection under the AD/CVD laws are that the firm has the public relations advantage of being able to label the imports "unfair," and that the protection provided can go on as long as the imports are dumped or subsidized, whereas the protection under the escape clause is limited to eight years. The purpose of the escape clause is to provide breathing room for the firm to adjust to import competition, either by becoming more competitive or by redirecting its resources to some other line of business or both. The firm is encouraged to submit an adjustment plan to the ITC and the U.S. Trade Representative, and the President considers any such plan in his decision about protection. With the AD/CVD laws, the firm need not worry about trying to adjust.

Offsetting those advantages of the AD/CVD laws is a disadvantage: the normal prescribed remedy is an import duty rather than the quotas available under the escape clause. Quotas are a more secure form of protection than are duties. That disadvantage helps explain why large, high-profile cases are more likely than others to be decided under the escape clause rather than the AD/CVD laws, and barring the escape clause, to be settled by suspension agreements or withdrawn in conjunction with a quota agreement rather than taken to the point of imposing duties. Such cases often involve industries with sufficient importance to the economy to

12. Baldwin and Moore, "Political Aspects of the Administration of the Trade Remedy Laws," p. 255.

persuade the President that the benefits of quota protection are worth the costs.

Consumers, Consuming Firms, and Exporting Firms

Although AD/CVD laws prevent predatory pricing, consumers are hurt by such laws and by any increase in the ease of obtaining protection under them.¹³ AD/CVD laws raise prices and thereby decrease the amounts that consumers can purchase.

Consuming firms--that is, firms that purchase the imports or competing domestically produced goods for use as inputs in their production processes--are generally helped by low-priced imports and hurt by any kind of trade barriers put up against them. The higher prices resulting from trade barriers raise their costs and thereby make them uncompetitive with their own foreign competition. Thus, in general, consuming firms have been hurt by the expansion of the unfair trade laws and the implementation of the procedures to administer them.

U.S. trade restrictions do not directly affect exporting firms. Other countries, however, are following the U.S. lead in imposing antidumping duties, and some of these countries have imposed such duties on the products of U.S. firms in retaliation for the antidumping and countervailing duties the United States has imposed on their firms. Those duties hurt U.S. exporting firms, and the only way to stop them may be to negotiate limits in the GATT, which would also require the United States to limit its own AD/CVD actions.

A less visible mechanism also hurts exporting firms. By an accounting identity, the trade balance must equal the difference between saving and investment. Trade protection has little effect on saving or investment, so it cannot have much effect on the trade

balance. Therefore, if such protection reduces U.S. imports, it must also reduce U.S. exports. By way of explanation, the exchange rate appreciates, which has the effect of making U.S. exports more expensive to foreigners. To put it another way, foreigners cannot buy U.S. exports if they do not have any dollars to buy them with, and the only way they can get those dollars is by selling their exports to the United States. If the United States refuses to buy imports (puts up trade barriers), foreign countries will have no dollars to buy U.S. exports.

Thus, consumers, consuming firms, and exporting firms have been hurt by the use of AD/CVD laws and policy as a general source of protection. According to one of the basic conclusions of trade theory and research, the total benefit of trade protection to import-competing firms is usually less than the total harm it inflicts on those other groups. As the U.S. economy becomes increasingly globalized, the numbers of consuming and exporting firms are multiplying and the harm to them is therefore becoming more significant to the economy as a whole.

Foreign Countries and Firms

U.S. protection hurts foreign countries and firms that export to the United States. They would normally prefer that protection cases be decided under the escape clause rather than the AD/CVD laws. The escape clause allows the President to take foreign policy and other considerations into account, which gives the foreign country greater leeway to try to influence the decision.

The escape clause also offers the possibility that trade restrictions will take the form of quotas rather than duties. Trade restrictions raise the price of the good in the United States. The quantity of imports after the restriction is imposed, multiplied by the amount by which the price is raised, is a rent that goes to the U.S. government in the form of duties if the restriction is a duty, or to the foreign exporter in the form of higher prices if the restriction is a quota. Thus, it is in the interest of foreign exporters that a trade restriction take the form of a quota rather than a duty.

Finally, the GATT allows foreign countries to impose restrictions of their own against the country

13. For studies that examine the effects of trade barriers on consumers, see Gary Clyde Hufbauer and Kimberly Ann Elliott, *Measuring the Costs of Protection in the United States* (Washington, D.C.: Institute for International Economics, January 1994); U.S. International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints, Phase I: Manufacturing*, USITC Publication 2222 (October 1989); and Congressional Budget Office, *Trade Restraints and the Competitive Status of the Textile, Apparel, and Nonrubber-Footwear Industries* (December 1991), pp. 50-57.

putting up a safeguard, whereas it does not allow that with antidumping and countervailing duties. Even though such restrictions are not in the overall net economic interest of the foreign countries, foreign political leaders find them attractive for the same reason U.S. leaders find U.S. restrictions attractive--they help domestic import-competing firms.

Consider protection for the steel industry in the 1980s, which provides an excellent illustration of how both domestic industries and foreign countries prefer that U.S. protection take the form of quotas rather than duties. The U.S. industry filed a massive number of cases in order to try to force the negotiation of quotas. Some people argue that the filing was an attempt to overload the abilities of DOC to investigate the cases, but why that would force the negotiation of quotas is not clear. A more likely reason, however, is that a large number of cases would cause foreign-relations problems with a large number of important trading partners. That effect would give the Administration an incentive to negotiate quotas that were more to the liking of both the trading partners and the domestic industry.

How Much Do the AD/CVD Laws Impede Trade?

To what extent do the AD/CVD laws impede trade? The question is difficult to answer because no good overall measure exists. Initial inspection of some obvious measures could lead one to conclude that the effects of the laws are fairly trivial--and yet on closer examination, they are not. The duties imposed under the laws frequently are quite high and substantially reduce the imports in question. Further, the use of the laws is growing. Thus, the substantial attention the laws have drawn in the Uruguay Round may indeed be warranted.

In fiscal year 1992, AD orders covered only 0.61 percent of imports (\$3.2 billion out of a total of \$513.0 billion), and CVD orders covered only 0.70 percent (\$3.6 billion out of \$513.0 billion). Similarly, revenues from AD duties made up only 1.0 percent of total revenues from all import duties (\$173 million out of \$17.2 billion), and revenues from CVDs constituted only 1.1 percent (\$181 million out of \$17.2 billion). The trade-weighted average AD duty imposed was only 5.5

percent, and the trade-weighted average CVD imposed was only 5.0 percent.¹⁴ If those statistics were complete, accurate, and reliable indicators of the protective effect of the AD/CVD laws, one could safely conclude that the AD/CVD laws are a fairly insignificant component of the array of U.S. trade barriers.

In fact, however, those statistics substantially understate the laws' significance for several reasons. First, in cases where many of the duties involved are high (as is true for U.S. AD/CVD orders), trade-weighted averages of the duties are likely to understate their typical magnitude substantially. Duties reduce the quantity of imports. The higher the duty, the more the quantity is reduced. In the extreme, duties can be so high as to completely eliminate imports. With imports eliminated, the duty would get a zero weight in a trade-weighted average and thus would not be counted. Without going to that extreme, more generally the higher a duty is, the more the duty will reduce the quantity of imports, and therefore the more that duty will be undercounted in a trade-weighted average.

One study calculated a modified trade-weighted average that does not suffer from this bias.¹⁵ It took the duty rates for outstanding antidumping orders on January 1, 1992, and weighted each rate by the level of trade that existed just before its respective AD order was put into effect rather than by the level of trade on January 1, 1992. The result was an average duty rate of 46.1 percent for nonsteel-product cases and 27.5 percent for steel-product cases. Those percentages are substantially higher than the standard trade-weighted average of 5.5 percent given above.

Many antidumping and countervailing duties are indeed high (see Table 6). DOC found dumping margins greater than 50 percent in one-fifth of the dumping cases that received affirmative final determinations of injury by the ITC from 1980 through 1988 (20 out of 99 cases). The margins were greater than 25 percent in almost 40 percent of the cases (39 out of 99 cases), and were greater than 10 percent in almost two-thirds of the

14. See Department of Commerce and Department of the Treasury, *Annual Report on the Status of the Antidumping/Countervailing Duty Program* (1993).

15. Hufbauer and Elliott, *Measuring the Costs of Protection in the United States*, pp. 118-119.

Table 6.
Trade-Weighted Average Final Dumping and Subsidy Margins for AD/CVD Investigations Receiving Affirmative Final Injury Determinations by the ITC, 1980-1988

Trade-Weighted Average Dumping or Subsidy Margin per Investigation	Antidumping Investigations		Countervailing-Duty Investigations	
	Number	Cumulative Percentage	Number	Cumulative Percentage
Less than 3 Percent	11	11.1	12	30.7
3 Percent to 5 Percent	9	20.2	6	46.2
5 Percent to 10 Percent	16	36.4	5	59.0
10 Percent to 25 Percent	24	60.1	11	87.2
25 Percent to 50 Percent	19	79.8	4	97.4
50 Percent or Greater	20	100.0	1	100.0
Total	99	n.a.	39	n.a.

SOURCE: Congressional Budget Office based on data compiled by Morris E. Morkre and Kenneth H. Kelly of the Federal Trade Commission, Bureau of Economics; taken from the final-phase investigation reports of the International Trade Commission.

NOTE: AD/CVD = antidumping and countervailing duty; ITC = International Trade Commission; n.a. = not applicable.

cases (63 out of 99 cases). In countervailing-duty cases, DOC found subsidy margins greater than 25 percent in almost 13 percent of the cases receiving affirmative final determinations of injury in those years (5 out of 39 cases) and margins greater than 10 percent in 41 percent of the cases (16 out of 39 cases).

Another study examined the effect of AD/CVD orders imposed in 1981 and 1982 and found that imports of goods on which AD/CVD orders were imposed in 1980 were 56 percent lower on average in 1981 than they were in 1980.¹⁶ For AD/CVD orders imposed in 1981, it found imports were 16 percent lower in 1982 than they were in 1981.

Even given that the typical antidumping and countervailing-duty rates are much higher than the trade-weighted averages detailed at the beginning of this section, one might argue that the low percentage of imports subject to AD/CVD orders (0.61 percent subject to AD orders and 0.70 subject to CVD orders in fiscal year 1992) mean that the AD/CVD laws cannot be very significant and that, correspondingly, the low percentages of total revenues that antidumping and countervailing duties represent mean that AD/CVD laws are

insignificant in comparison with other U.S. trade barriers (tariffs in particular). Those numbers too are misleading, however, for at least three reasons.

First, like trade-weighted averages of duties, they are distorted by the effects of the duties on trade. The share of imports covered by AD/CVD orders is biased downward by the reduction in imports caused by the antidumping and countervailing duties. It is difficult, if not impossible, to tell much of anything from the share of total duty revenue that antidumping and countervailing duties make up. High AD/CVD rates would get undercounted in total revenue measures and so would high tariff rates. Whether the bias is greater for the average of the AD/CVD duties or for the average of the tariffs is impossible to tell without examining the individual duties and tariffs in more detail, which defeats the purpose of using the averages.

Second, not all of the trade restrictions that result from AD/CVD cases take the form of duties. Almost 70 percent of the cases filed from 1980 through 1988 led to restrictive outcomes, but since 45 percent were superseded by quotas or suspension agreements, less than 25 percent of cases led to antidumping or countervailing duties. In other words, the total number of cases with restrictive outcomes was almost three times the number in which antidumping or countervailing

16. T.J. Prusa, "Why Are So Many Antidumping Petitions Withdrawn?" *Journal of International Economics*, vol. 33 (August 1992), pp. 1-20.

duties were imposed. The AD/CVD laws were at least partially responsible for both the semiconductor arrangement with Japan and the steel quotas negotiated with many countries in the 1980s.

Of course, the number of suspension agreements in effect varies over time, and the massive array of steel quotas of the 1980s has expired. As of June 1, 1993, 10 suspension agreements were in effect; seven agreements were completed in fiscal year 1992.¹⁷

17. Department of Commerce and Department of the Treasury, *Annual Report on the Status of the Antidumping/Countervailing Duty Program*.

A third reason that the low percentages of imports covered by AD and CVD orders is a misleading indicator of how much the AD/CVD laws impede trade is that the existence and enforcement of the antidumping law has a deterrent effect that spreads beyond the firms actually required to pay duties. Many firms are likely to refrain from vigorous competition in order to avoid becoming ensnared in the antidumping law. That effect is magnified because even in cases where dumping or injury is not found and hence duties are not imposed, firms subject to AD/CVD investigations have to incur considerable expense defending themselves and complying with DOC requests for data.