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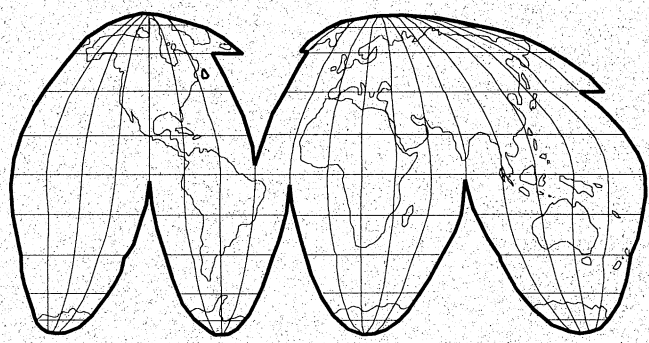
Understanding Technical Barriers to Agricultural Trade

Proceedings of a Conference of the International Agricultural Trade Research Consortium



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US International Trade Commission Decisions Affecting Agricultural Products*

Cathy L. Jabara

The United States International Trade Commission [USITC or Commission] is an independent, nonpartisan, quasi-judicial federal agency established by Congress with a wide range of trade-related mandates. One of its most important roles is to make certain determinations and findings with respect to unfair trade practices. The Commission's most active responsibility its to make determinations as to whether United States [US] industries are materially injured by reason of imports that benefit from pricing at less than fair value [LTFV] (antidumping [AD] investigations) or from subsidization (countervailing duty [CVD] investigations). Under US AD and CVD investigation procedures, the Commission only makes the determination of injury whereas the US Department of Commerce [Commerce] is charged with determining whether the dumping or subsidization exists and, if so, the margin of dumping or amount of the subsidy. Other important functions for the Commission have included making recommendations to the President regarding relief for industries seriously injured by increasing imports; and advising the President whether agricultural imports interfere with price-support programs of the US Department of Agriculture [USDA] (Section 22 investigations). This paper describes the role of the Commission in making determinations and findings under various US trade laws and it also analyzes the outcomes of the some of the cases involving agricultural products that have come before the Commission in recent years.

The procedures in which the Commission is involved have been subject to criticism. For instance, some researchers have argued that the methods used by Commerce for determining countervailing duties and AD margins result in higher, rather than lower, margins and thus favor domestic industries (Boltuck and Litan 1991). The fact that an evenly divided vote by the Commission constitutes an affirmative determination in AD and CVD investigations is often cited to support the view that certain Commission procedures are protectionist in nature. Whether or not such laws are protectionist is not the subject of this paper. On the other hand, the views of most domestic industries who have appeared before the Commission can be represented by the US pasta manufacturers who filed both AD and CVD cases in May 1995. According to the National Pasta Association, these cases were filed to "achieve some relief from the adverse effects of competing with imported pasta allegedly subsidized by the governments of Italy and Turkey and sold in the United States at less than fair value" and the Association stated that it is "hopeful that increased duties resulting from the [Commerce and Commission] trade actions will . . . create the long-sought "level playing field" for sales in the US market" (Milling and Banking News 1995).

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*The views expressed in this paper are those of the author. They are not necessarily the views of the US International Trade Commission or any of the Commissioners.

Antidumping and Countervailing Duty Decisions

Administration

Under title VII of the Tariff Act of 1930,[1] US industries may petition the US government for relief from imports that are sold in the US at LTFV (or dumped) or which benefit from subsidies provided through foreign government programs. The petition must include a description of the imported merchandise to be investigated, it must name each country in which the allegedly dumped or subsidized merchandise originates or from which the merchandise is exported, identify each known exporter, foreign producer, and importer of the merchandise, and it must contain information reasonably available to the petitioner supporting its allegations of dumping or subsidization. Petitions are filed simultaneously with Commerce and the Commission. The Commission determines whether the dumped or subsidized imports materially injure or threaten to materially injure the US industry.[2] If the Commission finds injury, or threat of injury, duties are assessed and collected. It not, then no duties are assessed and the case is dropped.[3]

The Commission is most likely to be the agency whose determination ends an AD or CVD investigation. A recent National Journal article notes that the Commission's votes are less predictable than those of Commerce, which tend to find dumping or subsidization in about 95 percent of cases filed (Wildavsky 1995). Commission data indicate that from 1980 through 1993, 682 AD and 358 CVD cases were filed in the US with 39.4 percent of the AD

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[1]US AD and CVD laws are set forth, for the most part, in title VII of the Tariff Act of 1930. These laws were enacted into US law by the Trade Agreements Act [Act] of 1979, which added title VII to the Tariff Act of 1930. Subsequent amendments to the 1979 Act were made by the 1984, 1988, and 1990 Acts. The US AD law was amended further in December 1994 by the Uruguay Round Agreements Act [URAA] to implement the changes required by the Uruguay Round Agreements [URA] to the URA Antidumping Agreement (USITC).

[2]If the Commission determines that imports of the subject product are negligible, then the investigation is terminated. Negligible imports, with a few exceptions, are defined as imports from the country subject to investigation that account for less than 3 percent of the volume of all such merchandise imported into the US in the most recent 12-month period preceding the filing of the petition, or 7 percent for the aggregate of all countries subject to the petition. For countervailing duty investigations, the negligibility threshold for certain developing countries is 4 percent for individual countries and 9 percent for the aggregate volume of imports.

[3]AD and CVD investigations consist of preliminary and final investigations which require affirmative determinations by Commerce and the Commission at each stage. If both Commerce and the Commission make affirmative determinations in the preliminary investigations, Commerce instructs the US Customs Service to order the suspension of liquidation of subject imports withdrawn from warehouses for consumption. Importers are required to post a cash deposit, a bond, or other security for each entry of subject merchandise equal to the estimated amount of the antidumping margin or countervailable subsidy.

and 21.2 percent of the CVD cases resulting in affirmative final determinations and remedies (USITC 1995, pp. 3-1).

In making its determination of injury, the Commission examines (1) whether or not there is, in fact, injury to the domestic industry, and (2) whether or not the dumping or subsidization has caused such injury. The Commission considers such factors as the volume of subject imports, the effect of such imports on prices of the domestic like-product, and the impact of such imports on domestic producers of the like-product. In evaluating the effect of imports of subject merchandise on domestic producers of like products, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the US.[4] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investments, ability to raise capital, research and development and, for AD investigations, the magnitude of the margin of dumping. To determine if there is a threat of injury, the Commission must determine whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued" (USITC 1995, pp. 2-6).

Commerce may suspend an AD investigation if exporters that account for substantially all imports of the subject merchandise agree to cease exports after the investigation is suspended or to revise their prices to eliminate completely any amount by which the normal value of the subject merchandise exceeds the US price, or to eliminate completely the injurious effect of the imports. Similarly, Commerce may suspend a CVD investigation if the government involved in the investigation or the exporters who account for substantially all imports of the subject merchandise agree to eliminate the subsidy, or to offset the amount of the net subsidy, or to cease exports, or to eliminate the injurious effect of imports.

Commerce may revoke an AD order if it concludes that all or some of the producers and exporters covered by the order have sold the subject merchandise at not less than foreign market value for a period of at least three consecutive years. Similarly a CVD order may be terminated if the government of the affected country has abolished all countervailable programs for a period of at least three years. An important outcome of the URAA was to amend the AD and CVD laws to require that Commerce and the Commission concluded "sunset review" no later than five years after issuance of an order. The purpose of this review is to determine whether revocation of the order would likely lead to a continuation or recurrence of dumping or countervailable subsidies and injury (USITC 1995, pp. 2-14).

Under US AD and CVD laws, an aggrieved interested party may seek judicial review by the US Court of International Trade of any factual findings or legal conclusions that are the basis for final determinations by the Commission or Commerce or negative preliminary determinations. In case of determinations involving subject merchandise from Canada or from Mexico, an interested party may forego judicial review for a binational panel review pursuant to the US-Canadian Free Trade Agreement [CFTA] and the North American Free Trade

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[4]The data collected by the Commission for its determination is largely supplied by producers, purchasers, and importers of the subject product through questionnaires.

Agreement [NAFTA]. If the panel remands a determination, those agencies must take action "not inconsistent with the decision of the panel."

Additional procedures to settle disputes that arise from AD and CVD cases are contained in Article 1.2 of the Dispute Settlement Understanding of the World Trade Organization [WTO]. Article 1.2 contains dispute settlement provisions designed to resolve conflicts between signatory countries over alleged violations of the URA, including the AD and Subsidies Agreements 1994.[5] While the Subsidies Agreement 1994 does not include a provision similar to the Declaration on Dispute Settlement Pursuant to Antidumping Agreement 1994, it would appear to apply the special antidumping standards to countervailable subsidy actions (USITC 1995, p. 2-15). According to this, "the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion the evaluation shall not be overturned." The dispute process involves: 1] mandatory consultations between the parties to the dispute, 2] voluntary conciliation mediated by the Dispute Settlement Board [DSB], 3] proceedings before a DSB panel, and 4] issuance by the administering DSB of appropriate findings, rulings, or recommendations.

One important feature of US AD and CVD procedures is that industries filing petitions must absorb the legal and administrative costs associated with their cases. The USITC estimates, for instance, that the costs associated with such cases range from $250,000 for a simple case to $1 million for a more complicated case (USITC 1995, p. 4-3). The cost-sharing with the US government to support US trade remedy laws ensures that absolutely frivolous cases are not brought forward by domestic industries.[6] On the other hand, such costs often are prohibitive for small industries, and may explain, in part, the small number of cases that have involved agricultural industries.

Effects of Antidumping and Countervailing Duty Agreements

The USITC recently completed a study looking at the economic effects of AD and CVD. The data in that report indicate that a relatively small amount of total US imports are affected each year by new AD/CVD case filings -- .04 percent of US imports were affected by AD cases in 1993 and less than .005 percent by CVD cases (USITC 1995, p. 3-2). Between 1989-1993, the number of AD/CVD cases filed ranged from less than twenty-five in 1989 to almost 100 in 1992. The number of CVD cases ranged from less than five in 1987 to over forty in 1992. Southeast Asian countries comprised four of the top five countries for which

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[5]See USITC for a description of changes to US antidumping and countervailing duty laws made to conform to the URA.

[6]In his paper, Wolak argues that some industries have filed marginal AD cases in order to win a preliminary affirmative decision (which is based on best available evidence and usually easier to achieve). In this case, a petitioning industry must still weigh the potential benefits of case filing against the costs it will incur from filing the case.

AD or CVD petitions were initiated during 1980-93, with Japan the country most often subjected to AD petitions (79 cases), while Brazil topped the list for CVD cases. Aside from Brazil, CVD cases subject to injury determinations have been filed primarily against European steel producers.

The USITC study showed a number of likely effects from AD and CVD orders, including evidence of trade diversion. Specifically, the study showed that during 1989-93 imports of products subject to affirmative AD orders dropped 31.9 percent while non-subject imports of the same products rose by 24 percent (USITC 1995, p. 3-14). A study by the National Bureau of Economic Research [NBER] similarly found trade diversion to be an important outcome of AD actions. However, the USITC study also showed that AD and CVD orders tend to have the desired effect of raising the prices of unfairly traded imports.

The USITC study included two case studies which examined the effects of AD orders and CVD remedies on two agricultural products: frozen concentrated orange juice [FCOJ] from Brazil[7] and lamb meat from New Zealand [NZ].[8] An AD duty of 1.96 percent[9] was assessed on FCOJ from Brazil in April 1987 whereas a CVD was assessed on lamb meat from NZ in June 1985.[10] These two studies used regression analysis and binary variables to estimate the effects of the AD order and CVD remedy on US imports, production, and consumption of the two commodities.

The FCOJ case study indicated that estimates of the economic effects of AD orders based on the calculated AD margins may understate the effect of remedies. The econometric analysis showed that, despite the small AD margin (1.96 percent), FCOJ imports from Brazil were 75 percent lower following the AD order, although it is not clear that the employed methodology held constant the effects of increases in production that would have occurred anyway without the AD order. However, according to industry views of this investigation, the AD order had a number of effects aside from simply raising the price of the subject imports. First, according to the industry, the AD order "forced the [Brazilian exporters] to keep pricing within boundaries set by cost, rather than engage in indiscriminate fight for market share" (USITC 1995, p. 7-22). Second, the Brazilian exporters shifted their interest to other markets in Europe and Asia after the AD investigation, and, third, that the AD order put a price floor on Brazilian exports to the US market because the exporters became unwilling to sell at prices that could be construed as LTFV.

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[7]Jabara, Cathy, Alfred Dennis, and Stephen Burket, "Frozen Concentrated Orange Juice," in USITC (1995), Chapter 7.

[8]Jabara, Cathy, Rose Steller, David Ludwick, Ronald Babula, and James Stewart, "Lamb Meat," in USITC 1995, Chapter 8.

[9]Changes made under the URAA define weighted-average dumping margins of less than 2 percent as *de minimis*, and thus, must be disregard by Commerce in making its determination.

[10]No injury determination by the Commission was required in this investigation because New Zealand was not a signatory to the GATT Subsidies Code and the merchandise subject to the investigation was dutiable.

The NZ case study yielded much smaller effects from the CVD. The primary effect shown was a decline in subject imports from NZ that was compensated for by a rise in non-subject imports from Australia. Data on imports provided in the case study indicated that imports of lamb meat from NZ fell 11 percent during the CVD period (1985-1990) while those from Australia increased by 92 percent.

AD and CVD Investigations Affecting Agricultural Products, 1989-Present

AD and CVD investigations for agricultural and forest products in which the Commission has been involved since 1989, and the disposition of such cases, are shown in Table 1. The small number of cases in which Commission determinations were required indicates that AD and CVD investigations have had an almost negligible affect on overall US imports of agricultural and forest products, which amounted to about $60 billion in 1994. On the other hand the cases with final affirmative determinations, as well as cases in which no determinations were made, have had important repercussions for US trade in the subject products. Among the cases cited in Table 1 four resulted in final affirmative AD determinations, three resulted in final affirmative CVD determinations, two resulted in negative determinations, and one was suspended by Commerce.

The data in Table 1 indicate that when AD final orders have been applied, the AD margins for agricultural products have been relatively high, with final duties of up to 31.8 percent for Atlantic salmon from Norway, 55.8 percent for canned pineapple from Thailand, 98.6 percent for fresh kiwi fruit from NZ, and 376.6 percent for fresh garlic from China. Final CVD remedies, on the other hand, ranged from 2.29 to 6.51 percent. As shown in Table 2, for selected cases sharp declines in subject imports and diversion of trade to non-subject imports occurred after the application of AD and CVD remedies, as measured by the change in the value of such imports from before the Commission's determination to after the remedy was applied. Despite trade diversion, however, imports of the subject commodity from all sources declined during the same period.

Two of the investigations (pork and softwood lumber from Canada) were remanded to the Commission through the binational review procedures established under the CFTA while one investigation (Atlantic salmon from Norway) was remanded through the US Court of International Trade. The remands under the CFTA resulted in two remedies being rescinded: the remedy on softwood lumber was rescinded after Commerce determined that no countervailable subsidies applied to softwood lumber from Canada, and the remedy on pork from Canada was rescinded following a negative determination by the Commission after the second remand from the binational panel.[11]

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[11]For a history of the CVD investigation on fresh, chilled or frozen pork from Canada see the article by Ludwick. This article also describes the history of an earlier CVD investigation on live swine and fresh, chilled or frozen pork, which resulted in CVD remedies placed on live swine from Canada.

Table 1. US International Trade Commission antidumping and countervailing duty decisions for agricultural products, FYs 1989-1995

Product, Country	Type of Case	Determination	Date of Finding	Margin (percent)
Honey, The People's Republic of China	AD	[1]	[1]	None
Certain pasta, Italy and Turkey	AD/CVD	Preliminary affirmative determination	July 1995	CVD: Italy-0-10.67; Turkey-14.72-21.25; AD: Italy: 6.14-6.42; Turkey: 34.04-45.84[2]
Canned pineapple, Thailand	AD	Final affirmative determination	June 1995	2.36-55.77
Fresh cut roses, Colombia and Ecuador	AD	Final negative determination	February 1995	None
Fresh garlic, The People's Republic of China	AD	Final affirmative determination	November 1994	376.6
Fresh kiwifruit, New Zealand	AD	Final affirmative determination	May 1992	98.6
Softwood lumber, Canada	CVD	Final affirmative determination[3]	June 1992	6.51[4]
Tart cherry juice concentrate, Germany and Yugoslavia	AD	Preliminary negative determination	May 1991	None
Fresh and chilled Atlantic salmon, Norway	AD/CVD	Final affirmative determination[5]	April 1991	CVD: 2.27; AD: 15.65-31.81
Fresh chilled or frozen pork, Canada	CVD	Final affirmative determination[6]	September 1989	2.9[7]

Source: USITC, Annual Reports, various years.

[1]Suspended Aug. 1995 by an agreement between Commerce and the People's Republic of China [PRC] setting limits on subject exports from the PRC. No finding or margin applied.

[2]Preliminary. Importers required to post bond or cash deposits at the deposit rate. Because the URA on Subsidies and Countervailing Measures does not allow a product to be subject to both AD and CVD duties to compensate for the same situation, the AD margin has been reduced by the duties estimated in the concurrent CVD investigation.

[3]Affirmative decision upheld on remands Oct. 1993 and Mar. 1994.

[4]Rescinded Aug. 1994 after Commerce decision that no countervailable subsidies exist.

[5]Affirmative decision upheld on remand Dec. 1992.

[6]Affirmative decision upheld on remand, Oct. 1990; negative decision on remand, Feb. 1991.

[7]Rescinded after negative Commission decision on second remand.

Table 2. Trade effects of certain US antidumping/countervailing duty cases for agricultural products

Case (commodity/country)	Change in Subject Imports[1]	Change in Non-subject imports	Change in total imports
Kiwifruit/New Zealand	Fell from $41.5 million to $6.0 million during 1991-93	Imports from Chile rose from $3.6 million to $16.4 million during 1991-93	Total imports fell from $45.6 million to $23.5 million during 1991-93
Atlantic salmon/Norway	Fell from $66.4 million to $1.7 million during 1990-92	Imports from Canada and Chile rose from $63.9 million to $129.5 million during 1990-92	Total imports fell from $150.1 million to $139.9 million during 1990-92
Fresh garlic/The People's Republic of China	Fell from $15.8 million to $31 thousand during 1993-95	Imports from Mexico rose from $11.5 million to $18.0 million during 1993-95	Total imports fell from $33.3 million to $25.4 million during 1993-95
Canned pineapple/ Thailand	Fell from $120.3 million to $63.6 million during 1993-95	Imports from Indonesia rose from $11.5 million to $19.4 million during 1993-95	Total imports fell from $243.7 million to $189.0 million during 1993-95

Source: Compiled by the staff of the USITC from data supplied by the US Department of Commerce

[1]Import data are landed, duty-paid. These data indicate the trade flow changes that occurred before and after the Commission's determinations. They do not hold constant any other factors that might have occurred during the relevant periods that would have additionally affected these trade flows.

The investigation on honey from the Peoples Republic of China [PRC] illustrates the role that AD/CVD cases often play in US trade policy. Honey from the PRC was the subject of a previous investigation under section 406 of the Trade Act of 1974 in which the Commission determined that the subject imports were causing market disruption in the US.[12] This type of investigation requires the President to provide any relief and in this case, the President decided not to act on the Commission's recommendations and findings. The honey producers then filed an AD petition in October 1994. Following a preliminary affirmative decision by

[12]This investigation was requested by the President in return for certain Congressional support for passage of NAFTA.

the Commission, the honey producers worked with Commerce to formulate a suspension agreement with the government of the PRC under which the PRC agreed to restrict the volume of direct or indirect exports to the US of honey products from all PRC producers and exporters.[13]

Other Investigations

From 1989 to 1995 the Commission was involved in a number of trade-related investigations in addition to AD and CVD cases. These investigations largely involved determinations and advice provided to the President under section 22 of the Agricultural Adjustment Act [AAA] (Table 3). Under section 22 of the AAA, the Commission investigates, at the direction of the President, whether imports materially interfere with programs of the USDA. Additionally, the Commission examines whether changes in the quotas established under section 22 would interfere with USDA programs.

Other investigations conducted by the Commission during 1989-95 included one under section 406 of the Trade Act of 1974 in which the Commission determines whether imports from a Communist country are causing market disruption in the US (honey from the PRC). Another investigation noted in Table 3 was conducted under sections 202 (b) and 202(d) of the Trade Act of 1974. The Commission determined whether imports of fresh or chilled tomatoes were being imported into the US in such increased quantities as to be a substantial cause of serious injury or threat to the domestic industry. The petitioner also sought provisional relief under the perishable product provision section 202 (d).

The investigations noted in Table 3 differ from the AD and CVD investigations in that relief is not automatic following an affirmative determination of the Commission. In the case of section 22 investigations, the Commission by law is required to conduct a study in order for the President to take action, but the President may disregard the advice and findings of the Commission. Moreover, each Commissioner may recommend a different remedy, depending upon his or her finding. Among the four section 22 investigations conducted during 1989-95, the investigation on certain dairy products resulted in a unanimous Commission finding that certain quotas should be modified and in the President taking such action; the investigation on peanut butter and peanut paste was suspended; and the investigation on peanuts resulted in a 3-1 Commission finding to increase temporarily the peanut quota. Although in the latter case the President took action to increase the peanut quota, the amount of the increase (100 million pounds) was much lower than that recommended by the Commission (300 million pounds) and the decision was taken so late in the marketing year that the temporary increase had little effect. The section 22 investiga-

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[13]The honey producers agreed to the suspension agreement because honey from the PRC is used for blending with domestic honey in certain instances. There was a fear among some producers that AD duties, which were estimated at 127.52 percent to 157.16 percent by Commerce in the preliminary phase, would prohibit all imports from China from entering the US.

Table 3. US International Trade Commission cases and determinations affecting agricultural products under selected US laws, FYs 1989-1995

Product/Country	Type of Case	Findings/Advice	Date of Finding
Fresh winter tomatoes	Determination of whether increased quantities of imports are a cause of injury or threat of injury under Sections 202(b) and (d) of the Trade Act of 1974	Negative determination	April 1995
Wheat, wheat flour and semolina	Determination of whether imports are interfering with the US support program for wheat under Section 22 of the Agricultural Adjustment Act	3 Commissioners found no interference; 2 found interference with the US wheat program; 1 Commissioner found interference with the wheat payment program	July 1994[1]
Peanut butter and peanut paste	Determination of whether imports are interfering with the US support program for peanuts under Section 22 of the Agricultural Adjustment Act	Suspended in June 1994	[2]
Honey from China	Market Disruption under section 406 of the Trade Act of 1974	Affirmative determination of market disruption due to imports[3]	January 1994
Certain dairy products	Determination of whether certain modifications in US dairy quotas would interfere with the dairy support program under Section 22 of the Agricultural Adjustment Act	Unanimous finding that certain dairy product quotas should be modified	July 1993
Peanuts	Determination of whether an increase in the peanut quota would cause interference to the peanut program under Section 22 of the Agricultural Adjustment Act	2 Commissioners found that the peanut quota should be temporarily increased; 1 Commissioner found that the quota should be indefinitely suspended; 1 Commissioner found that no action should be taken on the peanut quota[4]	March 1991

Source: USITC, Annual Reports, various years.

[1]Tariff-rate quotas on imports of wheat were initiated under a Memorandum of Understanding between the US and Canada.

[2]No advice provided.

[3]No action was taken by the President.

[4]Presidential action taken to modify the peanut quota.

tion on wheat and wheat flour resulted in a 3-3 Commission determination and in the President taking action to impose one-year tariff rate quotas on wheat.

Despite the fact that Commission findings and advice may or may not affect the outcome of section 22 investigations, the Commission's section 22 procedures require a public hearing in which the policy change is debated in the open. The public hearing procedures may affect the outcome of US policy in different ways. For example, the domestic pasta producers were instrumental in advocating that the President request a section 22 investigation for wheat and wheat flour because the producers wanted a forum to express their views (against any quotas) and they were afraid that policy changes would other otherwise be made "behind closed doors." On the other hand, the section 22 hearing may prevent frivolous cases in that the USDA and domestic industry groups must justify changes in the section 22 quotas and analyze the results in the public arena.

The Commission's role in making section 22 determinations became more limited after the US adopted the URAA. The URAA made changes to the application of section 22 that will limit it to imports from countries that are not members of the WTO.[14] Under the URAA, a "special safeguard" authority is available to protect domestic producers and programs in the event of increased imports or price declines as measured against predetermined historical levels ("trigger price" and "volume trigger" levels). The Secretary of Agriculture will be responsible for annual determinations of these trigger levels. Surges of imports from WTO countries will thus be measured against a quantitative standard (the triggers) rather than the existing section 22 standard of material interference with a USDA program. In addition, the President retains broad authority to administer the tariff-rate quotas[15] established under the URAA to ensure that imports under these quotas do not disrupt the orderly marketing of agricultural commodities.[16]

Summary and Conclusions

Although the activities of the Commission tend to be overshadowed by Commerce and by executive agencies, such as the Office of the US Trade Representative, it nonetheless plays an important role in formulating US trade policy. The Commission's first role is to make determinations and findings related to various trade remedies, but secondly the Commission provides a forum through which the various parties affected by a potential trade action can publicly state their case. Thus, on the one hand, the Commission is involved in a number of processes through which domestic industries seek some type of relief from imports, yet at the same time the Commission represents an important conduit through which foreign industries under attack can possibly thwart US trade actions.

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[14]For a discussion of the role of section 22 under the URAA, see Reeder.

[15]Under the URAA, all products from WTO countries formerly subject to section 22 actions have been converted to tariff-rate quotas.

[16]For instance, the President could issue licenses, expand the in-quota quantity, or allocate the in-quota quantity to specific countries.

It has been suggested by Meilke and Sarker that the WTO become the primary judicial body for dealing with disputes over unfairly subsidized goods. While the procedures outlined earlier for Commission decisions regarding AD and CVD cases may not be perfect, and certainly allow for subjective determinations by individual Commissioners, it is not clear that procedures operated through the WTO would be superior. In particular, if governments become involved in instituting such cases, the administration of CVD and AD laws may become more politicized than it currently is, and some industries with legitimate grievances may not be allowed to have their cases heard. Additionally, the costs associated with such cases are currently borne by petitioning industries and the governments that maintain the administering agencies. If governments and the WTO were to bear more of these costs, this will only encourage more industries to file such cases. Third, the procedures used by the Commission for determining injury are used in both AD and CVD cases and it is not clear that shifting responsibility to the WTO for CVD injury determination alone will provide improved procedures for determining case outcomes.

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