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U.S. International Arm-Twisting

The Implications of Section 301 for U.S. Agriculture

by Mylène Kherallah and John Beghin

U.S. trade law Section 301 enables the United States to extract unilateral concessions from its trading partners by threatening trade retaliation if the targeted countries fail to open their markets to American exports. The recent agreement between Korea and the United States to improve market access for U.S. pork and beef products was obtained using Section 301 procedure and is a typical example of what is called "aggressive unilateralism." Threatened by U.S. trade sanctions, Korea agreed to drop most of its shelf-life and temperature requirements on imported meat products. Use of retaliatory threats such as Section 301 is not likely to subside in the near future, especially if the United States trade deficit continues to rise and the World Trade Organization (WTO) does not lead to significant foreign market openings for the United States. The failure to dismantle domestic agricultural assistance in the Uruguay Round raises a similar concern. The new trade strategy of the United States focuses on a "results-oriented" approach in which progress in trade can be "numerically quantified" such as in the recent negotiations on Japanese imports of American-made cars and car parts.

Based on our analysis of eighty-three Section 301 cases which arose between 1975 and 1992, we explain the reasons for the concessionary or tough trade stances of the United States and foreign countries, and then derive implications of Section 301 practices for agriculture.

Section 301: legislative procedure and brief history

Section 301 procedure usually starts when a specific U.S. industry, firm, or association files a petition with the U.S. Trade Representative (USTR) alleging that a foreign industry or country is discriminating against its exports. The USTR then initiates an investigation and holds public hearings. Recently, however, the USTR has self-initiated investigations of practices of foreign industries or countries that restrict U.S. exports. If the investigations indicate that the practices impose an undue burden on U.S. commerce, then the USTR holds bilateral or WTO negotiations with the targeted foreign industry or country. If negotiations succeed, an agreement or compromise is reached, ending the petition. If negotiations fail, the USTR has the authority (since 1988), "subject to the specific direction, if any, of the President," to retaliate against the offending country by raising U.S. tariffs.

Although Section 301 of the 1974 Trade Act gave the president power to combat foreign trade practices, retaliatory measures were seldom taken. Furthermore, the General Agreement on Tariffs and Trade (GATT) often proved unable to quickly resolve trade dispute matters. These shortcomings, along with the growing U.S. trade deficit, especially with Asian countries, prompted Congress to work on a new trade bill to respond more aggressively to discriminatory policies toward the United States, and to leave the executive branch with less flexibility in conducting foreign trade policy. Amendments to the 301 legislation are now part of Sections 301 to 310 in the Omnibus Trade and Competitiveness Act of 1988, and include the Super 301 and Special 301 provisions. The most aggressive piece of the legislation, Super 301, requires that the USTR regularly provide a list of offending countries and their unreasonable trade practices. The USTR must set deadlines for the elimination of these practices and pre-

scriptions for retaliatory measures if the countries fail to comply. The Special 301 provision deals with intellectual property rights.

Retaliatory trade threats, such as those which may result from 301 action, worry politicians and industry representatives because they may increase trade frictions, especially if other nations follow the U.S. example and enact similar legislation. For example, France's resistance to lower oilseed subsidies, as demanded by the USTR, induced the threat of trade war between the United States and the European Union (EU). The USTR negotiated with the EU under the GATT following a 1987 industry complaint under Section 301. The dispute stalled the Uruguay round for almost a year and involved U.S. punitive threats of 200 percent import tariffs on EU food products. Finally, in 1992 agreement was reached—mainly because France could not veto the EU's decision to accept a 21 percent reduction in the volume of domestically subsidized grains. Unilateralism such as Section 301 poses another danger. If effective, it could be perceived as a shortcut and substitute for "global" institutions such as the WTO, and could undermine them and their free trade mandate.

U.S. toughness

The most important and robust results from our analysis show why the U.S. takes tough, nonnegotiable stands, or makes more conciliatory, negotiated responses in the wake of 301 demands.

- *Export dependence.* The greater the export dependence of the United States on the targeted country's market, the less likely it will take a strong bargaining position because a potential trade war risks too much.
- *Height of trade barrier.* If the foreign trade barrier is low, the United States will not likely back down from its demands because it feels it can extract more concessions from lightly protected foreign industries.
- *Industry type.* The United States tends to stand firm on its demand for agricultural and manufacturing cases compared to services, other industries, and intellectual property rights cases.
- *Industry size.* We find no correlation between the size of employment in the industry involved and the toughness of U.S. trade negotiations.
- *Politics.* Political action committees (PACs), credibility, and the political party of the administration all affect the toughness of U.S. 301 actions, although not always in the way commonly expected. For example, the value of PAC contributions by the concerned U.S. industries has a negative effect on the likelihood that U.S. policy makers will take a tough trade stance. Greater lobbying efforts appear to pressure the USTR to be more flexible and to try harder to reach an agreement rather than stand firm and risk a trade war. Making more credible public threats with a specific timetable for action enhances the commitment of the United States. Legislative instruments, such as Super 301 and Special 301, increase the reputation of the United States as a tough trade partner. Super 301 has not yet been used for raw agricultural markets, but in 1989 it was successfully used against Japanese import restrictions on forest products. Finally, Republican administrations are more likely than Democratic ones to back down and try to reach a compromise solution. Although the frequency of 301 cases has been approximately the same under Democratic and Republican administrations (roughly five cases per year), Democrats exhibit a tougher stance in trade negotiations. The recent successful demand on the Korean meat industry by the Clinton administration provides a good example.

Foreign country toughness

How will foreign countries meet our 301 demands? With defiance, or with conciliation?

- *Export dependence.* High dependency on U.S. markets does not seem to make foreign countries conciliatory to 301 demands. For example, Canada has stood firm against 301 cases involving soft-wood lumber in 1986 and beer in 1990.
- *Height of trade barrier.* High tariff rates in the foreign country increase the likelihood that the country will stand firm against 301 demands. Heavily protected industries pressure their governments to maintain the existing trade barriers against competing imports.
- *Industry size.* Smaller-size targeted industries increase the probability that the foreign country will not yield to U.S. threats. Smaller industries, such as the agricultural sector of developed countries, tend to be more protected than larger ones because the political costs of protection are smaller. Therefore, when 301 actions target small industries, the foreign country often resists U.S. demands. In addition, larger industries have more to lose from a trade war and therefore pressure their trade representatives to be more flexible and accept an agreement to prevent a breakdown in negotiations and consequent retaliation.
- *Type of trade barrier.* Relative to quantitative restrictions, administrative and price control measures more likely lead to tougher stances by foreign negotiators. Quantitative restrictions are more transparent than price control or administrative measures because they mainly represent clearly set quotas. The price control and administrative

About Our Analysis

The study classifies the outcome of Section 301 cases into four categories: (1) *trade war,* where both countries stand firm to their initial position and the United States imposes retaliatory tariffs on the targeted country; (2) *compromise* solution, where both countries back down a little to reach an agreement; (3) *full compliance* of the foreign country to U.S. demands, where the United States stands firm to its demand and the foreign country backs down; and (4) *status quo* position, where the United States backs down from its threat but the foreign country stands firm to its initial trade barrier. The probability of trade war under Section 301 equals the probability that both countries stand firm to their demands. Using the probit technique, we estimate the likelihood that each country will stand firm based on selected economic and political variables.

The data used for the probit analysis include Section 301 cases (including Super and Special 301) filed with the USTR from 1975 to 1992. During this period, ninety-two cases were filed under Section 301 and its amendments. Nine cases are excluded in the analysis for diverse reasons. Of the eighty-three approved cases, six are filed under Super 301, four are filed under Special 301, and the president or the USTR initiated thirteen other cases. Forty-two cases involve agriculture-related industries (both raw and processed). The most targeted areas are the EU, followed by Japan, South Korea, Canada, and Brazil. All but one of the cases involving the EU targeted their agricultural sector policies. Table 1 shows the breakdown of these cases into targeted countries and industries, as well as the outcome of the negotiations. Notice that both countries backed down in 31 percent of the cases, while countries retaliated, at least for a short period of time, in 20 percent of the cases. The United States was most successful in cases involving Korea and Taiwan, while the EU and Canada proved tougher bargainers. Despite the bad press, Japan seems to have had a concessionary attitude over the years. Agricultural cases led to trade war or frictions in six cases involving the EU, Canada, and Argentina.

Table 1. Frequency of Section 301 cases by countries, sectors targeted, and outcomes

		Sectors Targeted				Outcomes				Foreign Country Full or Partial Market Opening	
	No. of Cases (a)	Agric. (b)	Mnfg.	Serve.	IPR	Trade War	Full Compli-ance	Status Quo	Compro-mise	No. of Successful Cases	No. of Successful Ag. Cases
EU	21	20	1	0	0	2	4	7	8	11	11
Japan	12	5	6	0	0	3	5	0	4	9	5
S. Korea	8	3	2	2	1	0	3	1	4	7	3
Canada	7	5	1	1	0	4	0	1	2	2	2
Brazil	5	1	4*	0	0	1	2	1	1	3	0
Argentina	5	2	1	1	0	1	1	2	1	2	0
Taiwan	4	2	1*	0	1	0	3	0	1	4	2
India	4	1	0	2	1	0	0	3	1	1	1
Thailand	3	1	1	0	1	0	0	1	2	1	1
China	3	0	2*	0	1	0	2	0	1	3	0
Other	11	2	7	1	0	6	2	2	1	3	1
Total	83	42	26	7	5	17	22	18	26	46	26
Percentage	100.0	50.6	31.3	8.4	6.0	20.5	26.5	21.7	31.3	55.4	61.9**

Notes: (a) twenty-three cases are self-initiated, six of which are Super 301 and four of which are Special 301; thirty-nine cases are negotiated under the GATT. (b) Includes raw and processed agricultural products.

* Taiwan's custom duty valuation case no. 56 and cases nos. 73 and 88 targeting Brazil's and China's general import restrictions are classified under manufacturing because the majority of their imports from the U.S. are manufactured goods.

** This number represents the percentage of agricultural cases that are at least partielly successful (26) over the total number of agricultural cases (42).

trade barriers include subsidies, export targeting, and import restrictions. These less transparent trade barriers are harder to dismantle, and the United States meets more resistance from foreign countries when it comes to changing these types of trade practices. Quotas can be increased, as with the egg quota case with Canada in the 1970s for example, but more complex and indirect trade restrictions are harder to change, as is apparent from the case of Korean sanitary requirements on meat products.

- *Organized labor.* The intensity of labor organization strengthens the stand against U.S. demands. Labor unions, especially those in Europe and Japan, are politically powerful and are known to have much influence on their governments' foreign trade policy.

- *Politics.* Targeted foreign countries do not give in to U.S. demands during election years. For countries with a pluralistic and democratic political system, an election year clearly increases the political cost of backing down—the administration loses votes or congressional support. The type of government also affects the stance. Low levels of political democracy are weakly associated with concessionary attitudes. Pluralistic countries, such as Canada and the EU, have to respond to special interest groups and therefore are less likely to back down to U.S. pressure. For example, the tedious 1981–90 EU-U.S. dispute about EU subsidies to canned fruit producers illustrates the influence of pluralistic democracy on 301 outcomes. It took almost ten years and two Section 301 cases for the EU to finally reduce its subsidies on canned fruits. Conversely, countries with less competitive electoral processes have more political latitude in conducting foreign trade policy. For instance, the negotiations with Taiwan on unfair practices in distribution of wine, beer, and tobacco led Taiwan to change its practice in 1986.

Implications for U.S. agriculture

U.S. trade law Section 301 is one of an array of tools used by policy makers to protect America from "unfair" foreign trade practices and to expand its export markets abroad. However, it has only been partially successful in increasing U.S. agricultural exports (both raw and processed). Out of forty-two agricultural cases, the United States obtained its market-opening demands in only thirteen. The rest of the cases resulted in either a compromise solution, no change at all in the foreign country's trade barrier, or trade retaliation. The policy has had the worst results with the EU and Canada, leading several times to trade wars or long delays and trade frictions (see table 1). Section 301 has achieved most success with the smaller democratic Asian tigers, especially for tobacco, wine, and (red) meat products markets. However, these seemingly successful openings should not obscure more fundamental long-run considerations.

A closer look at the 301 data suggests that the changes in foreign countries' targeted trade barriers have been partial, small in magnitude, and have involved many drawn-out and costly negotiations. Furthermore, we do not know whether market opening would have occurred without 301 either through amicable bilateral or multilateral negotiations or through changes in the demand patterns of the foreign country. Therefore, using Section 301 is risky. Agriculture induced heated debates in the last round of GATT negotiations. The debate polarized around disagreements about domestic farm program subsidies, especially in the United States and the EU. To some extent, a similar pattern emerges from Section 301 agricultural cases. Most of the cases leading to friction or retaliation have been within OECD countries (the EU and Canada). The relative decline of agricultural industries in these countries increases the demands for protection and "fair-trade" rules. Hence, Section 301 increases the likelihood of new trade restrictions followed by trade war and contradicts the intent of the free-trade policy objective.

Activist trade policy such as 301 may increase the short-run bargaining power of the United States, but the costs and risks of trade and political conflicts may be too high. In addition, 301 increases the U.S. negotiating leverage only if the targeted countries remain passive. If foreign countries introduce similar types of legislation, the United States's superior bargaining position may be nullified in the long run and the United States made worse off. Section 301 is especially dangerous if it targets specific import shares. Market share quotas are not an indication of open trade. On the contrary, they suggest that the flow of goods and services will be determined by government bureaucrats and lawyers rather than by the market and free choice. Government interventions of this type create inefficiencies by diverting trade and encouraging exporters to lobby for government regulations that favor their industries. They also lock the United States into a given import share without taking into consideration the rapidly changing trade and production patterns that may render these shares either redundant or more burdensome than initially intended.

The World Trade Organization provides governments with agricultural dispute settlement procedures which diminish domestic pressures for protection and export promotion. This broader mandate and tighter enforcement mechanism may induce the United States to settle its trade disputes through the WTO instead of relying on unilateralism. ■

■ For more information

Kherallah, M. "Trade Bargaining with Incomplete Information: An Application to U.S. Trade Law Section 301." PhD dissertation, North Carolina State University, December 1994.

Kherallah, M, and J. Beghin. "U.S. Trade Treats: Rhetoric or War?" IATRC Working Paper 95-7, August 1995.

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