
Where Have All the Antidumping Cases Gone? The Impact of Trade Laws, Trade Agreements, and Recessions on the Decision to File

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1. Introduction

The outbreak of the financial crisis in 2008, together with recognition that the economy had been in recession since the fourth quarter of 2007, set off alarms among free-traders. Hearing that the downturn is the most widespread and deepest since the Great Depression of the 1930s, many feared that - as surely as night follows day - we could soon expect the dark specter of protectionism. Domestic firms would demand protection from foreign competition, they speculated, and we could see policymakers repeating the same mistakes that deepened the depression and ultimately contributed to the outbreak of the Second World War. But have those fears proven to be prescient or premature?

While there is indeed evidence that many countries have adopted a variety of policy measures that discriminate against foreign providers of goods and services,¹ it is important to put the latest developments in perspective. By comparing the most recent actions with those taken in past periods, including recessions as well as recoveries, we can get a better sense of whether the current crisis has brought an increase in protectionism at either the demand side (i.e., the efforts that firms, unions, and industry associations make to restrict foreign competition) or the supply side (i.e., the willingness of civil servants and elected officials to grant these requests). The antidumping (AD) law offers an especially useful metric for such an exercise, as the cases that are brought under this trade-remedy statute come in packages that are discrete, comparable, and quantifiable.

The paper highlights one important area where the single biggest player in the trading system has thus far shown no inclination to increase its protection above pre-crisis levels. It is true that the United States continues to employ the AD law as a means of imposing penalty duties on imports that are alleged to be dumped (i.e., sold at less than fair value in the U.S. market), and that the use of this law arguably violates the "standstill" pledge that the United States and nineteen of its partners first made at the Group of Twenty (G-20) summit in November, 2008 and have since reiterated and extended.² Petitioners in the United States initiated ten new AD cases,

1 See the measures reported by the Global Trade Alert project at www.globaltradealert.org (hereinafter cited as the "GTA website").

2 In this November 15, 2008 document the leaders pledged that "within the next 12 months" they would "refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports."

some of which are being conducted in parallel with countervailing duty (i.e., anti-subsidy) cases involving the same products, since the G-20 pledge.³ It is nevertheless remarkable that the rate at which investigations have been initiated under this law has not risen since the onset of the recession or the outbreak of the financial crisis. Quite to the contrary, the pace in recent years has remained well below the historic average. In the nearly thirty years that elapsed between a major revamping of the AD law (1979) and the start of the current recession, petitioners submitted an average of 10.2 petitions per quarter. In the first seven quarters of this recession (i.e., 2007-IV through 2009-II), however, the rate fell to 4.6. That decline is even sharper if we compare the current rate with previous economic downturns: Firms filed an average of 13.8 petitions per quarter during the four recessions that took place between 1981 and 2001.

What accounts for the fact that the number of AD petitions filed thus far in this recession⁴ is less than half what we see in normal times, and only one-third as many as in past recessions? The descriptive statistics that follow offer strong evidence to support the contention that this decline is the result of rational calculations on the part of actual or potential petitioners. The decision to file an AD petition is a gamble in which the petitioners are prepared to wager substantial sums of money (in the form of legal and accounting fees) in the hope of winning an even greater payoff (in the form of restrictions on foreign access to the U.S. market). The evidence shows that these gamblers are more willing to place such a bet when their odds improve, and are more reluctant when the odds turn against them. Those odds tend to favor petitioners whenever recessions break out, and they rise even more when Congress loads the dice by rewriting the AD law. The odds decline, however, when new trade agreements or dispute-settlement cases tilt the table in favor of respondents.

The low number of petitions filed in the past few years is not severely out of line with what we might ordinarily expect. The data reviewed below show that AD activity responds significantly to events that change the odds: it rose with enactment of new trade laws in 1979 and 1984, was tamped down by approval of the Uruguay Round agreements in 1994, then revived after Congress enacted a law in 2000 (the

3 For details on these cases see the following items on the GTA website: <http://www.globaltradealert.org/measure/united-states-preliminary-antidumping-duty-commodity-matches-originating-india>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-investigation-woven-electric-blankets-imported-china>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duties-investigation-magnesia-carbon-br>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duty-investigation-narrow-woven-ribbons>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duty-investigation-wire-decking-importe>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duty-investigation-steel-grating-import>, <http://www.globaltradealert.org/measure/united-states-america-countervailing-duty-investigation-ni-resist-piston-inserts-imported-ar>, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duty-investigation-oil-country-tubular->, <http://www.globaltradealert.org/measure/united-states-america-antidumping-and-countervailing-duty-investigation-prestressed-concrete>, <http://www.globaltradealert.org/measure/united-states-america-trade-remedy-petitions-against-polyethylene-retail-carrier-bags-indone>.

4 It is assumed throughout this paper that the recession that began in the fourth quarter of 2007 is still underway, but it is possible that a determination will be made at some point in the future that the recession actually ended prior to the time of this writing. If that is the case then some of the calculations that follow will need to be adjusted.

Byrd Amendment) that greatly incentivized new petitions. That activity declined once more when, following a 2002 ruling against the Byrd Amendment by the Dispute Settlement Body of the World Trade Organization (WTO), Congress repealed the law in 2006. We have been living in the post-Byrd Amendment period since the second quarter of 2006, and the demise of that law has had a greater impact on AD filings than either the recession or the financial crisis. Viewed in this context of changing laws and shifting odds, the current rate of petitioning is just about at, or perhaps a tad below, where we might ordinarily expect it to be.

This note concludes with observations on the implications of these trends for U.S. trade policy. At present there are competing and related initiatives that would alter the terms of the AD law: negotiations in Geneva could lead to further disciplines on the use of this instrument, while legislation now pending in Congress could tighten the laws further. The real intent of the pending bills may be to underline the fact that legislators are opposed to trade-remedy reforms, and could vote against any deals coming out of the Doha Round of WTO negotiations that undermine the AD law. If Geneva acts on the signals now being sent from Washington, the net result may be little change in the status quo. If so, we might expect to see approximately the same magnitude of AD cases in the foreseeable future as we have experienced in the recent past.

2. Background on the Antidumping Law and its Use

"Dumping" is an unfair trade practice by which goods are sold at less than fair value (LTFV),⁵ which (with certain variations) can be defined as sales in the import market at prices that are below the cost of production, below the price at which the good is sold in the exporting country, or below the price in third-country markets. There are three different decision-makers under U.S. AD law: the process begins when a firm or group of firms files a petition,⁶ after which the International Trade Administration (ITA) of the Department of Commerce is responsible for determining whether and to what extent the product is indeed sold at LTFV, and the U.S. International Trade Commission (USITC) rules whether the imports cause or threaten to cause material injury to the U.S. industry. Both the ITA and the USITC investigations are conducted in a two-stage process, with preliminary and final determinations in each agency.⁷ rovided that the ITA finds a final dumping level that is above a *de minimis* level, and the USITC reaches a final affirmative injury determination, a dumping duty will be imposed on imports of the merchandise in question. That duty will be equal to the dumping margin found by the ITA, and will typically be set at specific levels for individual companies in the exporting countries.

5 LTFV is the terminology used in U.S. law, but less than normal value is the terminology used in Article VI of the General Agreement on Tariffs and Trade and the World Trade Organization's Agreement on the Implementation of GATT Article VI.

6 The law also allows for the "self-initiation" of cases by the Department of Commerce, but this authority is very rarely exercised.

7 The actual sequence is (1) the USITC's preliminary injury determination, (2) the ITA's preliminary dumping determination, (3) the ITA's final dumping determination, and (4) the USITC's final injury determination. A case will end if there are negative determinations reached in stages (1), (3), or (4).

Although the original intent of the AD law was to combat an unfair trade practice, and hence to ensure a "level playing field" in which domestic firms were protected from the predatory practices of their foreign competitors, it has evolved into a significant and discriminatory instrument of protection. Pursuing an AD case can cost hundreds of thousands or, perhaps more typically, millions of dollars for both the petitioner and the respondent. That fact means that a rational firm will file a petition only if it calculates that its probable gains (in the form of a more closed market) exceed the more or less known expenses, but also allows that firm to force on its rivals a substantial increase in the cost of doing business in the U.S. market. Sometimes even the threat of bringing a case can serve to discourage the competitor from contesting the market, out of concern over the costs and uncertainties that a case would bring. And as is discussed in the next section, the terms of the AD law changed in the 1970s and 1980s in ways that favored petitioners more than respondents.

The data in Figures 7.1 and 7.2⁸ summarize the main trends in the filing of petitions from the enactment of the Trade Agreements Act of 1979 (which made sweeping revisions in the law) through the first half of 2009. Figure 1 shows the rising and falling patterns for both the total number of petitions and the number of distinct products covered by these petitions. The first number is higher than the latter because it is a common (but not universal) practice for a petitioner to file multiple petitions covering two or more suppliers of the same product. Multiple petitions are incentivized by the general practice of "cumulation" in the USITC's injury tests, whereby the imports from all sources that are subject to investigation will be combined when the commission determines whether these imports are a cause of material injury. To illustrate the distinction, in April, 2002 there were fourteen petitions filed against imports of oil country tubular goods (a steel product), and four petitions filed against imports of urea ammonium nitrate solution. Those various filings can be counted either as eighteen petitions or as two products. Over the course of the past thirty years there have been an average of 2.2 petitions filed (i.e., countries covered) per product.

The data in Figure 7.2 highlight one important point: The U.S. steel industry has long been the principal user of the AD law, being responsible for just under half (48.5 percent) of all petitions filed from 1979 through August, 2009. It is one of the ironies of AD law that the very first statute to deal with dumping was a Canadian law enacted in 1904, the principal target of which was the U.S. steel industry.⁹ Since then, the Canadian-inspired U.S. law has been used frequently to harass steel producers in Canada, as well as in Europe, Asia, and Latin America. The U.S. steel industry has also proven adept at using the AD option in a strategic manner, sometimes flooding the Department of Commerce with more petitions than it can handle. This approach, which it took during a few episodes in the 1980s, was aimed at pressuring Washington into negotiating "voluntary export restraints" (VERs) with foreign governments. Both the Reagan administration (in 1984) and the first Bush administration (in 1989) caved in to these pressures and agreed to negotiate VERs - more properly called quota agreements - with most major steel-exporting countries.

8 Except where otherwise noted, the source for all of the data discussed in this paper on the number of petitions, both in the figures and the text, is Chad P. Bown, "Global Antidumping Database" [Version 5.0, July 2009], available at www.brandeis.edu/~cbown/global_ad/, as supplemented by data on the most recent petitions filed at the U.S. International Trade Commission's <http://info.usitc.gov/sec/dockets.nsf>.

9 See Alan V. Deardorff and Robert M. Stern, "A Centennial of Anti-dumping Legislation and Implementation: Introduction and Overview" *The World Economy* Vol. 28 No. 5 (2005).

3. Explaining the Decline in U.S. Petitions

At first glance, the data illustrated in Figures 7.1 and 7.2 seem to suggest an almost random occurrence of AD cases. Whether one looks at petitions or products, or focuses on steel or non-steel cases, the numbers seem to rise and fall sharply. But is the distribution truly random? Or are there any patterns we can discern when examining the numbers more closely?

Figure 7.1 Antidumping Petitions Filed in the United States, 1980-2009

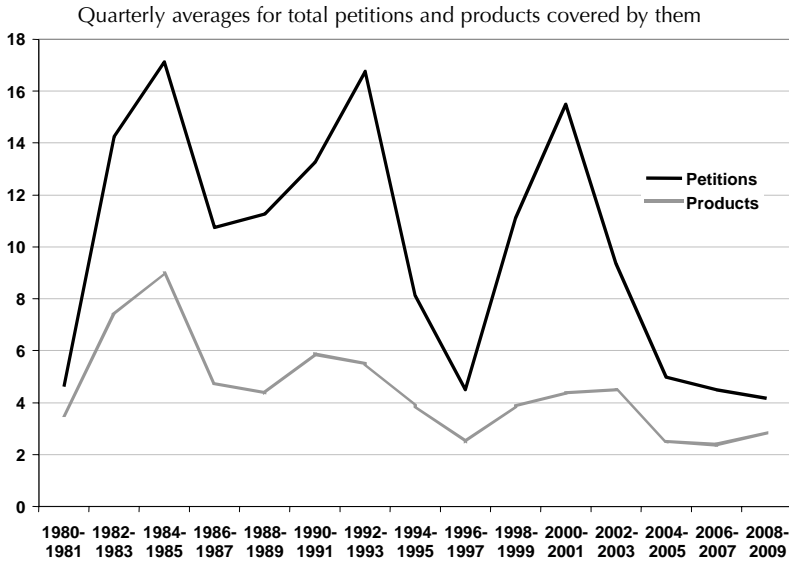


Figure 7.2 Steel and Non-Steel Antidumping Petitions Filed in the United States, 1980-2009

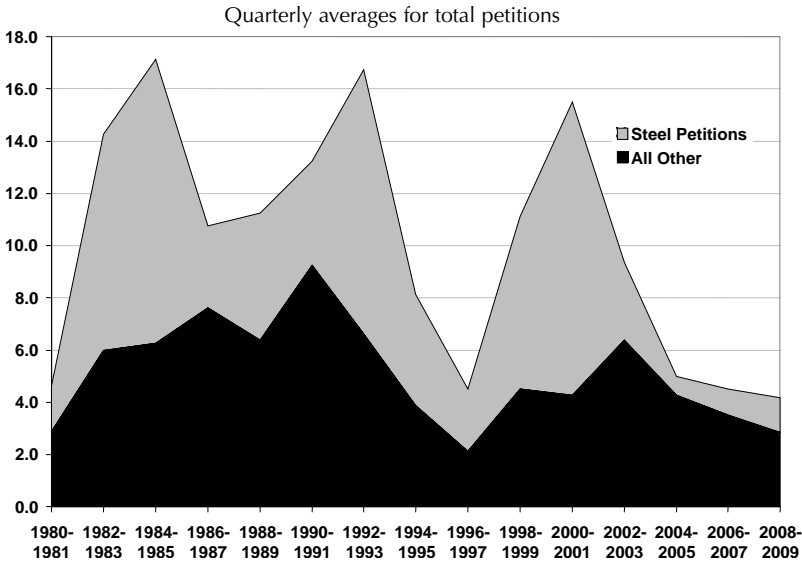


Table 7.1 Periods in U.S. antidumping practice, 1979-2009

Period	Significance	Recovery phases	Recessionary phases
Prior to Trade & Tariff Act of 1984	The amendments made by the Trade Agreements Act of 1979 favored petitioners, but still further incentives came with enactment of the 1984 law	1979-III to 1979-IV, 1980-IV to 1981-II, 1983-I to 1984-III	1980-I to 1980-III, 1981-III to 1982-IV
Trade & Tariff Act of 1984	The law made several amendments to the AD statute that were more favorable to petitioners than to respondents	1984-IV to 1990-II, 1991-I to 1994-IV	1990-III to 1990-IV
Post-Uruguay Round	The Uruguay Round agreements outlawed voluntary export restraints (making AD cases less attractive to the steel industry) and made it easier for the governments of respondents to bring challenges in the WTO's dispute-settlement system	1995-I to 2000-III	[No recession during this period]
Byrd Amendment	The law incentivized petitions by directing that the revenue collected under AD orders be distributed to the petitioners	2000-IV, 2002-1 to 2006-I	2001-I to 2001-IV
Post-Byrd Amendment	The repeal of the Byrd Amendment eliminated one of the incentives to file	2006-II to 2007-III	2007-IV to 2009-II

The seemingly chaotic data in Figures 7.1 and 7.2 make more sense if we switch from a simple calendar to a periodization that takes into account two phenomena that are important to petitioners. First, it is reasonable to assume that petitioners will feel more confident about making a major investment of their limited resources (time, legal and accounting fees, and political capital) whenever the AD law has been altered in their favor, and conversely will be more reluctant to do so whenever the law has moved in the opposite direction. More specifically, they will feel a greater incentive to file after Congress has enacted new laws that favor petitioners, as was the case in 1979 (where our baseline begins), 1984, and 2000. Contrariwise, their incentives will diminish whenever, as a consequence of trade negotiations or dispute-settlement cases, Congress makes the AD law less user-friendly. That happened first with the approval of the Uruguay Round Agreements Act of 1994 (which increased the likelihood that AD orders and rules would be challenged in the WTO's dispute-settlement system) and the repeal of the Byrd Amendment in 2006 (which resulted from just such a challenge).

Second, we may further assume that AD petitions will be more attractive to firms when the economy is in recession. There are two reasons for this. One is that we should expect *ceteris paribus* that there will be more firms in distress during a recession, and hence more potential petitioners looking for relief. Another is that it may be easier for a firm to demonstrate its distress when the economy hits hard times, and thus pass the "injury test" applied by the USITC.

Table 7.1 lays out five major periods, as well as nine phases within these periods, based on these changes in law and economic fortunes. The periods range from the one prior to enactment of the Trade and Tariff Act of 1984 to the post-Byrd Amendment period, with four of the five periods being further divided into their recessionary and recovery phases. These phases are based on series of quarters, with a quarter considered to be recessionary if the U.S. economy was in recession for any month during that quarter. The only one that cannot be so divided is the post-Uruguay Round (and pre-Byrd Amendment) period, nearly six successive years in

which the economy was never in recession.

Before examining the AD activity in each of these periods and phases it is useful to describe in somewhat greater detail the changes that have taken place in U.S. law over the past thirty years. The principal U.S. AD statute is in fact a part of the infamous Hawley-Smoot Tariff Act of 1930, which has been extensively amended in numerous laws enacted since the Great Depression. AD cases became an especially prominent part of the U.S. trade regime after enactment of the Trade Agreements Act of 1979.¹⁰ Although the main purpose of the 1979 law was to approve the terms of the agreements reached in the Tokyo Round of GATT negotiations, the legislation also amended the AD law in ways that significantly aided petitioners. The law (together with its associated regulations and executive orders) set stricter deadlines for the conduct of cases, reset some of the rules, and transferred authority for the conduct of antidumping investigations from the Treasury Department to the Department of Commerce, an agency that was presumed to be more inclined to favor the interests of petitioners in the manufacturing community. Some wit in the trade community dubbed this law the Trade Lawyers Full Employment Act of 1979, and the numbers tend to bear out that title: While there were some 1018 AD cases initiated during the period of 1921 to 1978 (i.e., an average of 17.9 per year),¹¹ the rate more than doubled with the 1220 petitions filed during 1979 to mid-2009 (i.e., an average of 40.0 per year).

Other laws that favored petitioners include the Trade and Tariff Act of 1984¹² and the Byrd Amendment.¹³ The 1984 law aided petitioners by making several amendments affecting the operation of the AD law. As for the Byrd Amendment, also known as the Continued Dumping and Subsidy Offset Act of 2000, this law provided that any funds collected under AD orders would be distributed to the U.S. companies that filed the complaints. In effect, it transformed the trade-remedy laws from a system based on fines to one that offered payment for damages to the injured parties.

The law has also been disciplined by the rules of the multilateral trading system. AD laws were permitted under the rules of the General Agreement on Tariffs and Trade (GATT), which was in effect from 1947, and now by the successor World Trade Organization (WTO), which has been in place since 1995. Both the GATT and WTO rules set broad parameters on AD laws, but individual countries may decide whether they will have such laws and, if so, countries are free (within limits) to decide how they will be structured and executed. The conclusion of the Uruguay Round of GATT negotiations (1986-1994), followed by approval of the Uruguay Round Agreements Act of 1994,¹⁴ increased the likelihood that AD cases in the United States would be challenged. By comparison with the old GATT system, under which countries had

10 Public Law 96-39, signed into law by President Carter on July 26, 1979.

11 As listed by the U.S. Department of Commerce at <http://ia.ita.doc.gov/stats/pre80ad.txt>.

12 Public Law 98-573, signed into law by President Reagan on October 30, 1984. For further details on the AD provisions of this law see Stephen Lande and Craig VanGrasstek, *The Trade and Tariff Act of 1984: Trade Policy in the Reagan Administration* (Lexington, Massachusetts: Lexington Books, 1986).

Note also that the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418), which President Reagan signed into law on August 23, 1988, made less consequential changes in the trade-remedy laws. Its principal focus was instead on the "reciprocity" laws (i.e., statutes that threatened retaliation against countries that were found to violate U.S. trade rights).

13 The Byrd Amendment was section 319 of Public Law 101-121, signed into law by President Clinton on October 28, 2000.

14 Public Law 103-465, signed into law by President Clinton on December 8, 1994.

many opportunities to block dispute-settlement panels, the new Dispute Settlement Understanding had real teeth. This could suppress AD activity both by adding a new layer of adjudication (thus making outcomes more expensive and less certain) and by reaching decisions against specific U.S. laws. That was most notably the case for the Byrd Amendment. The WTO dispute-settlement panel ruled against this provision in September, 2002, but Congress did not repeal the amendment until February, 2006 (and even then the Byrd Amendment remained in effect October 1, 2007). That panel ruling, as well as another one in April, 2004 against the U.S. practice of "zeroing," nevertheless demonstrated that congressional tinkering with the AD law was subject to review by the WTO.

How have these changes in law and the economy been reflected in AD activity? Figures 7.3 and 7.4 provide strong evidence in support of the contention that prospective petitioners do respond to changes in the law, and somewhat weaker evidence that their petitions peak during recessionary phases. As can be seen in Figure 7.3, the rate of petitioning rose significantly after the two events that either revised the odds in favor of petitioners (i.e., enactment of the 1984 law) or created a new incentive to file (i.e., enactment of the Byrd Amendment), and that the rate fell just as significantly after the two events that made the AD option less attractive (i.e., adoption of the Uruguay Round agreements and repeal of the Byrd Amendment). Moreover, for three of the four periods in which there were distinct economic phases we see higher rates of filing during the recessionary phases as compared with the recovery phases. The only period in which the rate of petitioning did not rise significantly in the recessionary phase is the current, post-Byrd Amendment period.

The results are generally similar in Figure 7.4, which is based not on the total number of petitions but on the number of products covered by them. Sliced this way, the data show no significant difference between the AD activity in the recessionary and recovery phases of the first two periods, nor does the level of activity increase much with enactment of the 1984 law. Another difference is that by this metric we do see, as expected, a relative increase in AD activity during the recessionary *versus* the recovery phases of the post-Byrd Amendment period. That difference is, however, rather slight.

Taken as a whole, the data show strong evidence that prospective petitioners responded as we would predict to each of the shifts in AD law (although the evidence is weaker for one of those shifts than it is for the others). These findings are consistent with those of Lee and Mah, who found in a 2003 study *inter alia* that the launch of the WTO system and the establishment of the Dispute Settlement Mechanism decreased the probability of affirmative injury decisions in AD investigations.¹⁵ The evidence presented here is somewhat weaker on the question of whether AD activity rises in a recession, but does tend to support the association.

We still need to account for the fact that the amount of AD activity during the current recession is not significantly higher than it was during the recovery phase of this post-Byrd period. There have been a few more products covered by the petitions in the recession than in the recovery (Figure 7.4), but the number of petitions seems unaffected (Figure 7.3). That anomaly is not large. We saw in the first, second, and

15 Kyung-ho Lee and Jai S. Mah, "Institutional Changes and Antidumping Decisions in the United States" *Journal of Policy Modeling* Volume 25 Issues 6-7 (September, 2003)

Figure 7.3 Antidumping petitions filed in the United States by policy period, 1979-2009

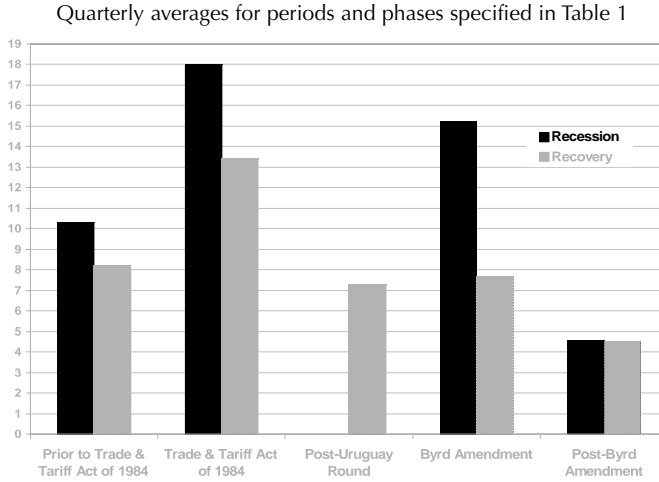
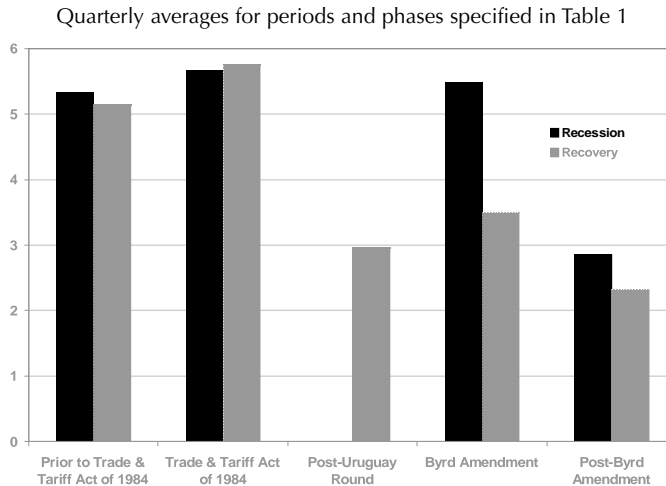


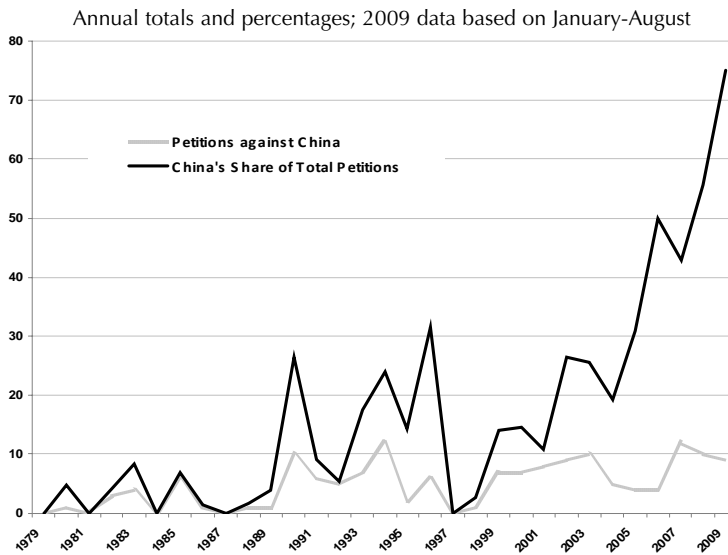
Figure 7.4 Products covered by antidumping petitions filed in the United States by policy period, 1979-2009



fourth periods shown in Figure 3 that the number of petitions filed during the recessionary phases of a period are, on average, 1.53 times larger than the number of petitions filed during the recovery phases of the same period. That would suggest that we should see about 6.8 petitions per quarter in the current recession, based on the 4.5 filed during the recovery phase. The actual number of 4.6 is thus below the expected level, but by less than one petition per month. It is nevertheless worth asking, what can explain that anomaly?

Apart from the simple point that we should not always expect any numbers on human activity to be arithmetically precise, there are two hypotheses that we might advance. One is that this is a transitory issue, as there may exist a large number of cases that will be filed soon. That might be the case if there are some prospective petitioners who are waiting for there to be sufficient evidence of the material injury suf-

Figure 7.5 Antidumping petitions filed in the United States against China, 1979-2009



ferred by their industries. It generally takes two quarters of "red ink" to convince the USITC that a domestic industry is in fact suffering injury. Considering the fact that (as of this writing) the recession has been underway for seven quarters and the financial crisis broke a year ago, however, one would expect that those petitions would have been filed by now. So while this explanation could prove to be persuasive, should a new batch of petitions show up soon, time seems to argue against it.

Some experienced U.S. trade lawyers suggest that the current downturn has been so severe that many firms that might otherwise resort to these laws have been forced to economize. This speculation is based on the fact that in many corporations a directive came down to the legal departments when the financial crisis broke out in late 2008: do not undertake any new initiatives that will cost money. Potential AD filings may thus have been jettisoned at the same time as corporate travel budgets were reduced and year-end bonuses got slashed. By this account, the current economic downturn is not only quantitatively worse than all other recessions in living memory, but is qualitatively different both in its character (i.e., a bona fide crisis) and in its consequences.

One further trend is worth highlighting: The share of AD filings brought against China has risen sharply in recent years. As can be seen in Figure 7.5, that rise has been especially sharp in this decade, with China's share of total AD petitions increasing from 14.6 percent in 2000 to 75.0 percent in the first eight months of 2009. This trend can be seen as a corollary to the observations made above, as there are solid reasons why - apart from the sheer volume of the competition from this giant - China is such an attractive target under the AD laws. Because China is subject to the special methodology employed in the case of non-market economies, in which price comparisons are made not against the exporting country but instead against a market-ori-

16 Like China, Vietnam is treated as a non-market economy in U.S. AD investigations. The first AD petition filed against imports from Vietnam came in 2002, and three more were filed between that time and August, 2009.

ented "surrogate" country (typically India), it is much easier for petitioners to show high rates of dumping. So while AD activity against China may have been dampened somewhat by that country's accession to the WTO in 2001 (thus allowing China to challenge U.S. AD actions in the Dispute Settlement Body), as well as the end of the Byrd Amendment, it remains more attractive for petitioners to bring cases against China than any other country (apart from Vietnam).¹⁶ That at least will be the case until China is determined by the ITA to be a market economy, which (under the terms of China's WTO-accession agreement) must be done no later than 2016. It is reasonable to anticipate that the level of AD activity will decline even more after that decision takes effect, and China is treated by the same rules as other trading partners.

4. Implications for Future U.S. Law and Policy

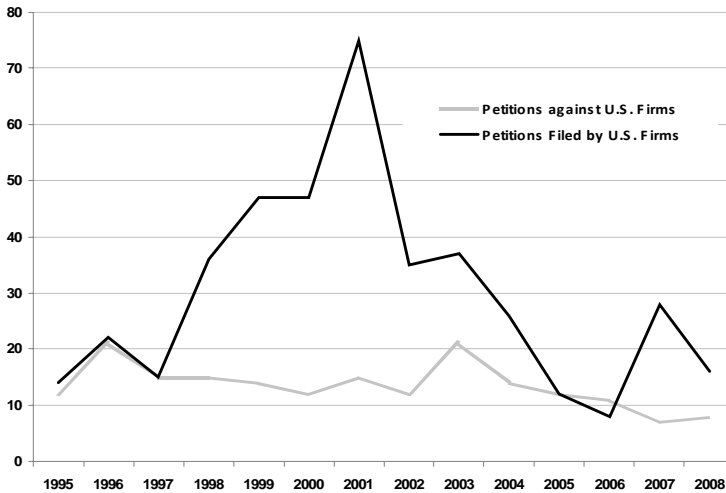
What might we conclude about the effects of the current economic crisis on the demand for import protection in the United States? The data suggest that recessions may have less of an impact on the decision to file AD petitions than do changes in the underlying law. Sometimes economic conditions and legal changes come together, as was the case when the Byrd Amendment and the recession of 2001 were coeval; in that instance the twin influences produced a sharp spike in filings. But unless we accept the argument that this recession is different not just in degree but in kind, and has gone so deep as to freeze the activities of the legal affairs departments of prospective petitioners, it would appear that the economic times we are in may be less significant than the legal times (i.e., the post-Byrd Amendment period).

And what can we say about the likely levels of AD activity in the future? These observations imply that we can expect to see a revival in activity if there are new changes in the law that favor petitioners, and a further suppression of activity if new WTO agreements or disputes tilt against the prospective petitioners. This naturally leads to the question, *has the time come for the United States to revise its long-standing opposition to reform of the trade-remedy laws?*

The arguments in favor of that position grow when one considers, as is shown in Figure 7.6, that we have now reached a point where the United States is in some years more a target than a user of AD law. One of the more notable trends since the end of the Uruguay Round has been a shift in the global patterns of AD activity. That round imposed stricter discipline on the ability of developing countries to impose restrictions on imports for balance-of-payments reasons, but many of these countries fell back on AD laws as the instrument of choice for dealing with import competition. Whereas it used to be the case that the AD law was used almost exclusively by the industrialized countries, and often against imports from developing countries, the laws have increasingly come to be used by the developing countries against both industrialized and developing countries.

To the extent that some U.S. industries are just as likely to be the targets as the users of these laws, might they now be prepared to support negotiated or legislated restrictions on the use of these instruments? For reasons discussed below, the answer to that question appears to be negative. Despite the fact that AD activity has declined in practice, there is no sign yet that the United States is prepared to see reforms in principle.

Figure 7.6 Antidumping investigations initiated by and against the United States, 1995-2008



Source: Calculated from WTO data at http://www.wto.org/english/tratop_e/adp_e/ad_init_exp_country_e.xls and http://www.wto.org/english/tratop_e/adp_e/ad_init_rep_member_e.xls (accessed September 3, 2009).

Quite to the contrary, the only pending legislative proposals to deal with these laws would require that the laws be retained or even strengthened.¹⁷ And as long as congressional sentiment remains in support of the trade-remedy laws, negotiators in the executive branch will be loath to support any concessions in trade agreements. This opposition can be traced in large part to the opposition of the steel industry, which enjoys the advantages of being large, at least somewhat geographically diverse, and politically savvy. Provided that the chief users of the AD law remain adamant and vigilant, and the potential leaders of a trade-remedy reform movement remain small, scattered, and unorganized, there is little reason to expect a shift in the views of lawmakers or negotiators.

Trading partners of the United States have long sought to use trade negotiations as a means of winning either reforms in or exemptions from the trade-remedy laws, but

¹⁷ The Trade Enforcement Act (H.R.496), sponsored by Ways and Means Committee Chairman Charles Rangel (Democrat-New York) and Trade Subcommittee Chairman Sander Levin (Democrat-Michigan), covers a wide range of issues in trade policy. Title II would make several changes to U.S. trade-remedy laws, such as codifying the application of CVD laws to non-market economies such as China, while also calling upon U.S. negotiators in the WTO to promote deals that would reverse some recent Dispute Settlement Body rulings against the U.S. trade-remedy laws (e.g., on "zeroing"). See <http://www.globaltradealert.org/measure/united-states-america-trade-enforcement-act>. Similarly, the "Trade Reform, Accountability, Development and Employment (TRADE) Act" (H.R.3012) takes an even stronger position. Sponsored by Representative Michael Michaud (Democrat-Maine) and a large number of co-sponsors, the bill would mandate reviews of all international trade agreements currently in force, establish new standards and requirements for future trade agreements, require new labor standards, and impose higher congressional oversight authority for any trade agreements. The bill also mandates that all future trade agreements incorporate specific exceptions with respect to trade-remedy laws, among many other topics. See <http://www.globaltradealert.org/measure/united-states-america-trade-reform-accountability-development-and-employment-trade-act>.

thus far these efforts have been futile. That was certainly the case in the Kennedy Round of multilateral trade negotiations (1962-1967), one product of which was an Antidumping Code. The U.S. Congress did not interfere with President Johnson's implementation of the tariff reductions that were agreed to in those negotiations, but refused his request for approval of the Antidumping Code. At least two of the countries that have negotiated free trade agreements with the United States hoped that they could obtain exemptions from the trade-remedy laws through these agreements, but the U.S. negotiators firmly opposed both Canada and Chile when negotiating their respective FTAs in 1987-1988 and in 2001-2003.

The Doha Round is no exception to this general pattern of opposition. In the grant of trade promotion authority (TPA) that Congress made to President Bush in 2002 it specified that any concessions that the United States might be prepared to make on the trade-remedy laws would be subject to special notification procedures, and strongly implied that Congress would be prepared either to break the TPA's "no amendment" rule, or even to reject the agreements altogether, if the executive were to negotiate commitments that run contrary to the will of the legislature. That specific grant of authority expired in 2002, but the principle remains in place. It is generally expected that Congress will need to make a renewed grant of negotiating authority to the president before the Doha Round can enter its final stages, and there is every reason to expect that a new grant of authority ? if and when it is made ? will be at least equally insistent that the trade-remedy laws remain untouched.

This brings us back full-circle to the considerations with which this analysis began. The data reviewed here imply that the United States is not leading the way into a repeat of the historic blunders of the Great Depression: there is no evidence to suggest a sharp increase on the demand side for protection from imports, at least not in the form of AD duties. When we look on the supply side, however, and especially at the legislative branch, there are no signs of U.S. leadership in the opposite direction. Lawmakers insist that the status quo be preserved for AD and other trade-remedy laws, and have sternly warned the U.S. negotiators not to make any commitments that require substantial changes in the operation of these protective instruments. If we assume that the negotiators act on this direction, and strike no deals requiring major reforms, we may reasonably forecast that the magnitude of AD activity in the future may continue to be at approximately the same level as we have seen in the recent past. By comparison to where it was during the periods following enactment of the AD amendments in 1979, 1984, and 2000, however, that represents real progress.