
TRADE REMEDY LAWS AND NAFTA AGRICULTURAL TRADE

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INTRODUCTION

In 2001, the World Trade Organization (WTO) initiated a new round of global trade talks with a high profile ministerial conference in Doha, Qatar. At the conference, the Ministerial Declaration was signed, establishing the negotiating agenda on agriculture, trade remedy laws, and other trade issues. Around the world the meetings were viewed as successful, especially from the perspective of developing countries. One reason for the positive response by developing nations was the agreement by U.S. negotiators to include trade remedy laws on the negotiating agenda. Although U.S. trade remedy laws have been found to be in full compliance with WTO laws, many U.S. trading partners (especially the developing nations) view trade remedy laws in the U.S. and other developed nations as hidden protection because they are viewed as being biased toward anti-dumping (AD) and countervailing (CV) findings.

In the United States, Congress was not pleased with the Doha outcome, as many in Congress are inclined to keep U.S. trade remedy laws off the WTO negotiating table. In fact, just prior to the Doha meetings, the U.S. House of Representatives voted 410 to 4 on a resolution instructing

the U.S. Trade Representative, Robert Zoellick, to keep U.S. trade remedy laws from being included in the Declaration. Mr. Zoellick declined to comply, and the laws were placed in the Declaration. The subsequent congressional reaction (in the form of a threat to deny the Administration Trade Promotion Authority, formerly known as the “fast-track” authority) indicates that trade remedy laws will be a contentious issue in the new round of trade negotiations.

The trade remedy laws applied by the United States that are at the center of the controversy are anti-dumping (AD) and countervailing duty (CV) laws, and include to some extent, import relief (safeguard) laws. The purpose of this paper is to discuss the use of this set of three trade remedy laws with respect to agriculture in North America. Their use and historical application in agriculture are analyzed with the intent of clarifying why these laws are so controversial.

U.S. TRADE REMEDY LAWS

U.S. trade remedy laws and their principal features are outlined in Table 1. The stated purpose of trade remedy laws is to offset “unfair” trade that injures domestic producers as a result of either foreign sales that are “dumped” into the United States at less than fair value (LTFV)¹ or that are influenced by foreign government subsidies (Table 1).² Import relief laws, commonly known as “safeguards,” are intended to provide a period of relief and adjustment for an industry that is being seriously injured by increased competition from imports (Table 1).

The AD statute comes under Section 731 of the *U.S. Tariff Act* of 1930, as amended. A related statute is Section 701, which applies to subsi-

¹ Sales at LTFV are considered “dumped” when the goods are sold in the United States at either below the exporting country’s cost of production, or below the price of comparable goods sold in the exporter’s home market or its other export markets.

² A “subsidy” is defined as a financial contribution made by a government or any public body, or any form of price support which confers a benefit and results in lower prices for exports.

dized exports from foreign suppliers. Under Section 701, if a foreign subsidy is found to injure U.S. producers, then a CV import tariff is applied. In addition, Section 201 of the *Tariff Act*, provides for temporary restrictions on imports -- such as high tariffs or import quotas -- which are deemed to be causing injury to a domestic industry (Table 1).

The trade remedy laws are collectively known as “administered” protection. The U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) jointly administer AD and CVD law (Sections 731 and 701). The DOC first determines whether a commodity is being dumped or subsidized and then the ITC decides whether or not the U.S. industry has been injured as a result of the trade action. DOC procedure is much less transparent than ITC procedure, and normally the DOC rules in favor of the U.S. industry. The safeguard law (Section 201) is jointly administered by the ITC and by the President, in that the ITC determines whether injury has resulted to the domestic industry and then issues a recommendation to the President for no relief or for a specific method of relief. The President then decides whether or not to heed the recommendation of the ITC or to choose an alternative method or no method for relief.

Many other countries such as Canada and Mexico have trade remedy laws that are very similar to those in the United States including AD, CVD and safeguard provisions. Traditionally, the United States, the European Union (EU), Australia and Canada have filed the most AD and CV cases against foreign suppliers but more recently, developing countries (such as Mexico, Brazil, Argentina, India, Turkey and South Africa) have filed a growing number of cases. In fact, in the past few years, developing countries have filed about 50 percent of the total number of AD and CV cases world wide.

There is an upward trend globally in the filing of trade remedy cases (Stevenson, 2002). According to the literature, the growing number of trade disputes is due to liberalization of traditional trade barriers, unsatisfactory safeguard provisions, increasingly weak AD standards, and retaliation. However, many academic economists generally view AD and

CV laws as little more than disguised protectionism used to protect domestic industries from foreign competition (Stiglitz,1997).

USE OF TRADE REMEDY LAWS IN NAFTA'S AGRICULTURE

The main reason that developing countries have criticized the use of AD and CV laws in developed countries is their growing frustration with the protectionist use of these laws by developed countries. In addition, there is a perception that these laws have been amended over time to make it easier for domestic industries to receive protection. For instance, the Uruguay Round of GATT negotiations endorsed the "cumulation process," whereby imports of all like- products are aggregated across the exporting countries for injury determination.

The use of trade remedy laws often conflicts with free trade agreements. For example, Brazil refused to fully engage itself in discussions on the Free Trade Area of the Americas (FTAA) because of the continued application of U.S. AD duties on products such as orange juice. In 2001, the filing of AD cases on Brazil's exports of raspberries and spring table grapes to the United States troubled Chile. It was no surprise that the U.S. grape and raspberry industries filed their cases while the negotiations for the FTA with Chile were in full swing. More recently, U.S. honey producers also received AD protection from competition from Argentina and China as well as CV protection from Argentina, which came at an inopportune time for Argentine producers in light of the economic crisis in that country at the time.

Over the January 1984 to June 2001 period, 761 AD and CV cases were filed in the United States (Young, Wainio and Meilke, 2003), of which approximately 71 (9.3 percent)³ were agricultural cases. This number means that agriculture has a disproportionate share of cases, because agriculture's

³ There are a number of different ways to count trade remedy cases with the result that summary statistics will vary. For instance, while the United States assigns a case number for each of the countries targeted in any investigation, Canada assigns a case number to each product involved in any investigation, regardless of the number of countries mentioned in the case.

share of the value of U.S. total imports is only about four percent.⁴ U.S. import relief law was used less often; only 30 such total cases were filed from 1980 to 2000. However, U.S. agriculture filed 8 of these 30 cases, and thus accounted for a rather large share.

During the 1984 to 2001 period, Canada filed 22 agricultural AD and CV cases out of a total of 334 cases in Canada, or 6.6 percent.⁵ Mexico filed 23 agricultural AD and CV cases (10.5 percent) out of a total of 219 cases. So all three NAFTA countries are extensive users of trade remedy law in agricultural trade.

The outcomes of both U.S. and Canadian AD and CV agricultural cases since 1980 are reported in Tables 2 and 3.⁶ U.S. trade remedy laws and their principal features are outlined in Table 1. The stated purpose of trade remedy laws is to offset “unfair” trade that injures domestic producers as a result of either foreign sales that are “dumped” into the United States at less than fair value (LTFV)¹ or that are influenced by foreign government subsidies (Table 1).² Import relief laws, commonly known as “safeguards”, are intended to provide a period of relief and adjustment for an industry that is being seriously injured by increased competition from imports (Table 1).

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⁴ Worldwide, AD cases involving agriculture account for about 4 percent of all cases filed by all countries (Stevenson, 2002).

⁵ These figures for Canada and Mexico were obtained from Young, Wainio and Meilke (2003).

⁶ We did not have a complete data set for Mexico at the time of writing this paper.

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In Tables 2 and 3 we report that 33 of the 69 total U.S. agricultural cases, and 27 of the 31 Canadian cases resulted in an affirmative ruling in favor of the domestic industry. Consequently, the “success” rate of Canadian agricultural cases was 87 percent over the 1984 to 2001 period, compared to 48 percent in the United States. This difference is striking and there are a number of alternative explanations for the higher success rate in Canada. Perhaps the Canadian Customs and Revenue Agency is better at stopping “non-starter” cases than is the U.S. DOC. Alternatively, the Canadian International Trade Tribunal (CITT) may be more sympathetic to domestic producers than the ITC, making it somewhat easier for domestic industries in Canada to win their cases.

Table 2: Outcome of U.S. Agricultural AD/CV Cases filed 1980 to 2000.

	<i>AD</i>	<i>CV</i>	<i>Total</i>
Affirmative	23	10	33
Negative	8	9	17
Suspended or Terminated	12	7	19
Total agricultural AD/CV cases filed	43	26	69

Source: Compiled from U.S. International Trade Commission, "Case Statistics," Memorandum, Public Version, November 8, 2001.

Table 3: Outcome of Canadian Agricultural AD/CV Cases Filed 1980 to 2000.

	<i>AD</i>	<i>CV</i>	<i>Total</i>
Affirmative	18	9	27
Negative	3	0	3
Suspended or Terminated	—	1	1
Unknown ruling prior to 1988			4
Total agricultural AD/CV cases filed	21	10	31

Source: Compiled from Canadian International Trade Tribunal, www.citt.gc.ca.

The previous literature has found that the initial filing of an AD or CV case often disrupts trade, irrespective of the final legal determination. Research has determined that imports typically fall about 20 percent even if no tariff is imposed (Prusa, 1992; Staiger and Wolak, 1994). This result is interesting but it was not separately measured for agricultural trade.

AD and CV laws are typically targeted at specific countries. Non-named third countries may benefit from the use of AD and CV law through a phenomenon known as *trade diversion*. Trade diversion occurs when a trade remedy action diverts trade away from a more efficient supplier targeted by the AD or CV action, toward a less efficient supplier that is not named in the trade action. Prusa (1997) studied all U.S. AD actions between 1980 and 1988 and found that trade diversion was a significant by-product of AD cases. He arrived at the surprising result that, due to trade diversion, both Canada and Mexico gained (on net) from U.S. AD duties. Over the time period covered in his study, Prusa estimated that both Canada and Mexico enjoyed a net gain of over \$21 billion as a result of U.S. duties being levied on other third countries. Does this finding also apply to agricultural trade within NAFTA?

Table 4: Percentage Change in Value of Imports from Targeted Countries versus Rest of World: U.S. Affirmative and Negative Agricultural AD and CV Cases (1980- 2000).

	<i>t-2</i>	<i>t-1</i>	<i>t</i>	<i>t+1</i>	<i>t+2</i>
Affirmative:					
Targeted countries	21.97%	22.83%	-3.41%	8.19%	17.62%
Rest of World	2.78%	14.93%	0.94%	17.75%	4.11%
Negative:					
Targeted countries	21.78%	10.43%	5.49%	5.82%	-2.00%
Rest of World	8.68%	-0.53%	-1.43%	18.45%	7.95%

Source: Estimated from the US Department of Commerce and Foreign Agricultural Service trade data.

To begin to understand the impact of U.S. cases on both targeted and non-targeted countries, Table 4 provides summary statistics based on the 69 U.S. agricultural AD and CV cases filed from 1980 to 2000. The column in Table 4 labelled *t* represents the year that any particular investigation was filed. The other columns labelled *t-1*, *t+1*, and so on, represent years immediately before and after the filing. For each year that a case is initiated, a (weighted) average change in the annual value of imports of the named commodity or product is calculated. The weights are the target commodity's share of the value of U.S. imports of all targeted agricultural commodities with the same (affirmative or negative) ruling in that year. To arrive at a single percentage change as reported in Table 4, a simple average of the percentage changes for each ruling year is calculated.

Table 4 indicates that for those 33 cases with an affirmative outcome (i.e. in favour of the U.S. domestic industry), targeted imports decreased 3.4 percent in value, on average, during the year of investigation (year *t*) and increased 8 percent the following year (year *t+1*). We also found that targeted imports grew rapidly in the two years prior to the launching of the investigation (at about 22 percent).

For non-targeted countries in affirmative cases, the value of imports in year *t-1*, *t* and *t+1*, increased by 15 percent, 0.9 percent and 17.7 percent, respectively. This finding is consistent with the presence of trade diversion. If the outcome of the case were negative, targeted imports increased by 5 percent during the year of investigation, suggesting that trade

flows are disrupted even when the ruling is negative. The value of imports from non-targeted countries actually decreased by 1.4 percent during the year of investigation.

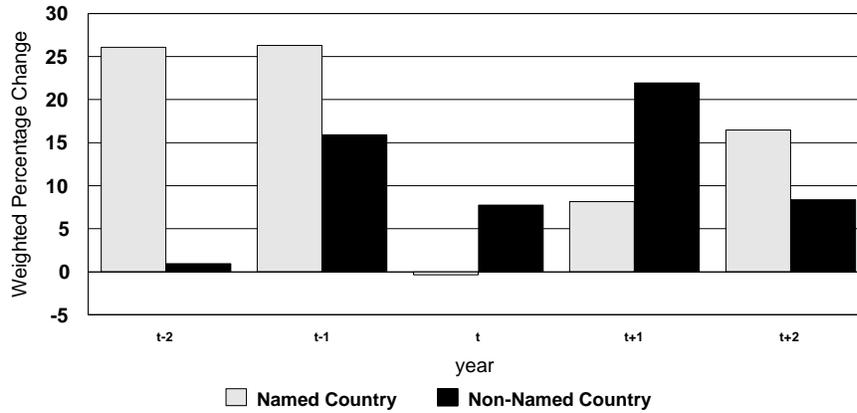
Figures 1 and 2 present the information from Table 4 in a different form. Figures 1 and 2 display percentage changes in targeted imports for affirmative and negative cases, respectively. The graphs demonstrate that trade cases with affirmative rulings were initiated after a period of high import growth⁷ by both the targeted country as well as the non-targeted countries. Import growth by countries not named in the investigation increased by 15 percent in the period prior to the case, indicating the existence of significant opportunity in the growing market. The year the case is initiated, import growth by the targeted country (or countries) is a negative 3.4 percent while the rest of the world takes advantage of the gap in the market left by the targeted country and continues to export to the United States (0.9 percent)⁸ in year t and 18 percent in year $t-1$.

For cases whose rulings were negative, there is distinct growth in imports in the period prior to the case being launched. As shown in Figure 2, the average annual growth in import value from targeted countries increases 22 percent two years prior to the case and a further 10 percent the year immediately before the case is initiated. Over the same period, the rate of growth of U.S. imports from non-targeted countries is lower, with 8.6 percent growth two years before the case is initiated and a decrease of 0.5 percent the year before the investigation. The year the case is launched, imports by the named countries continue to increase but at a reduced rate of 5.5 percent. Perhaps this trend is not surprising given the negative rulings that ensued; exporting countries may have felt confident that they were not engaging in unfair trade practices and therefore continued selling

⁷ Between 1980 and 2000, U.S. annual agricultural import value grew on average 4.3 percent (estimated from data provided by Agricultural Outlook, USDA-ERS, 1986, 1990, 1995 and 1998).

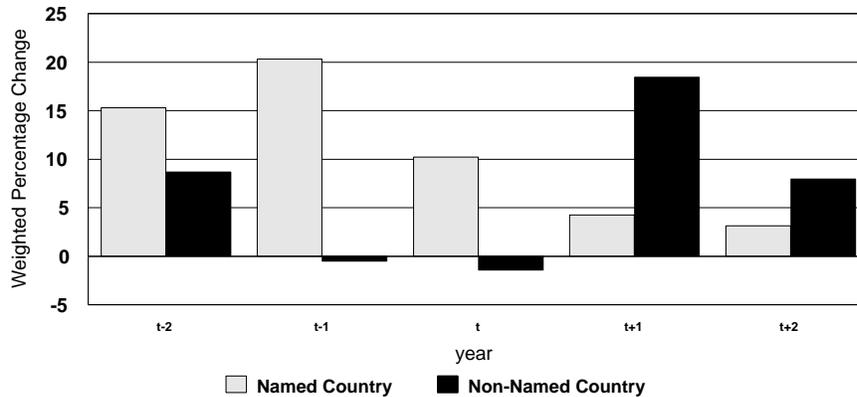
⁸ These findings are preliminary because the reported percentage changes do not control for other factors such as the magnitude of the duty, the number of countries named in the case or import growth without dumping duties. Future regression analysis will take these issues into consideration in the same manner as in Prusa (1997).

Figure 1: Summary of Weighted Percentage Change in US Imports for AD/CV cases with Affirmative Rulings.



Source: Estimated from Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

Figure 2: Summary of Weighted Percentage Change in US Imports for AD/CVD cases with Negative Rulings.



Source: Estimated from Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

to the United States. Prusa (1997) notes that if a targeted country raises its U.S. market price by the full amount of the duty when a case is initiated, the value of imports may indeed go up. “The AD duty serves to create a price floor for the named country’s products.” What is interesting to note

is the significant jump in exports by the rest of the world in the year following the case (Figure 2), while the value of import growth by the named countries remains virtually stable (5.8 percent). The negative ruling clearly sends a signal to the rest of the world that prompts a surge in imports from the non-targeted commodities.

SELECTED EXAMPLES

As explained above, there are two interesting results in the literature. First, the mere initiation of an unfair trade investigation has an unsettling effect on targeted country exports, which Prusa (1992) and Staiger and Wolak (1994) refer to as an “investigation effect.” Second, trade remedy protection involves substantial trade diversion; so domestic producers are not the only ones who gain (Prusa 1997). Our analysis of these effects on U.S. agricultural trade (reported in Table 4, and Figures 1 and 2) is preliminary and therefore in this section we supplement those summary statistics with a discussion of a few selected cases.

In a recent AD case, in October 2001, the United States government made a preliminary ruling that Canadian growers were dumping greenhouse tomatoes into the United States at prices below the Canadian cost of production. As a result of this finding, Canadian sales into the United States were assessed an average tariff of 32 percent. A few weeks later, the legal tables turned as the Canadian government initiated an anti-dumping investigation against the U.S. fresh tomato industry (Barichello, 2003). The Canadian counterclaim may not have been a coincidence. Rather, it could have been a tit-for-tat reaction to the steep U.S. duties that were imposed on Canadian greenhouse tomato sales to the United States. By July 2002, both cases were resolved with the identical ruling of no material injury.⁹ While U.S. exports of fresh tomatoes to Canada declined 10 percent over the previous year during the period of investigation, Canadian imports of greenhouse tomatoes to the United States actually continued to increase

⁹ On April 10, 2002, the ITC ruled that imports of Canadian greenhouse tomatoes did not materially injure the domestic market and the case was closed. On July 26, 2002 the CITT pronounced the same ruling with regard to imports of U.S. fresh tomatoes.

17 percent over the previous year.¹⁰ It appears there was a weak investigation effect associated with the tomato cases.

Three specific recent examples of trade diversion arose as a result of U.S. anti-dumping cases against imports of frozen concentrated apple juice from China in 1999,¹¹ against imports of preserved mushrooms from Chile, China, India and Indonesia in 1998¹² and against imports of garlic from China in 1994.

The annual value of imports of non-frozen, concentrated apple juice from China jumped by 212 percent¹³ in 1997, from US\$8.1 million to US\$25.4 million,¹⁴ with continued but more moderate growth in 1998. This large increase displaced imports from Argentina, Brazil and Chile, which historically had been the three largest exporters of the product to the U.S. market. Not surprisingly, the large increase in the value of imports from China triggered the trade action taken by the United States in 1999, causing imports from China to decrease 20 percent in that year. Argentina, Brazil and Chile seized the opportunity provided by the anti-dumping suit and increased the value of their exports to the United States by an average of 74 percent in the same year. It should be noted that the total value of U.S. imports of non-frozen concentrated apple juice from all countries never declined over the period of investigation but actually increased 12 percent the year the case was initiated and a further 24 percent the following year. This result is consistent with Prusa (1997, p. 207) who determined that “import diversion mitigates most, if not all, of the effect of anti-dumping actions on the value of imports.”

¹⁰ The percentage change in imports was calculated over the duration of the trade investigations. For Canada, the investigation lasted from October '01 to June '02 and was compared to the same period a year earlier. For the United States, the investigation lasted from March '01 to April '02.

¹¹ Case number 731-841.

¹² Case numbers 731-776, -777, -778, -779

¹³ For the following specific, commodity examples, the percentage changes are all unweighted.

¹⁴ Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics the CITT pronounced the same ruling with regard to imports of U.S. fresh tomatoes.

A similar pattern of trade was experienced in the U.S. AD case targeted at imports of preserved mushrooms from Chile, China, India and Indonesia in 1998. Despite an average decrease in import value of 26 percent in 1996, the 10 percent increase in 1997 prompted the United States to take action against the four countries in 1998, causing the average value of imports from the four countries to decrease nearly 18 percent. This decline provided an opening in the U.S. market that was seized by two other large exporters of preserved mushrooms, Taiwan and Mexico, which increased their sales of preserved mushrooms to the U.S. by 38 percent. Two smaller exporters, Spain and Canada, also increased the value of their exports of preserved mushrooms about 125 percent. The following year imports by the four, targeted countries continued to decrease by 19 percent while imports from Taiwan, Mexico, Spain and Canada increased by an average of 70 percent. Total U.S. imports of preserved mushrooms from all countries actually decreased the year the AD case was initiated, however the following year they jumped 62 percent, again supporting Prusa's finding that AD cases do little to curb imports of a given commodity due to trade diversion.

Garlic is another example of a case that gave rise to trade diversion. It was an AD case against Chinese imports of fresh garlic initiated in January 1994, and resolved that November. Two years before the case (in 1992), 60 percent of U.S. fresh garlic imports came from Mexico, with Argentina and China making up a further 26 percent. In fact, at that time China was already displacing about 40 percent of Argentina's exports to the United States. The year before the case (1993), the value of U.S. imports from China increased rapidly, by 453 percent, overtaking Mexico and suddenly making China the number one supplier to the United States. In 1994 when the case was initiated, the value of U.S. imports of garlic from China decreased from \$11.9 million to \$4.1 million, a drop of 65.5 percent. Mexico's imports took a 6 percent drop as well, while Argentina finally regained some ground, increasing the value of its exports to the United States from \$2.4 million to \$3.2 million (33 percent). China never regained its market share after the case. China's value of exports to the United States fell to \$250,000 in 1995 while Mexico's exports nearly dou-

Table 5: U.S. Imports of Wheat Gluten from the European Union, Australia and Canada, \$US.

	<i>EU</i>	<i>Australia</i>	<i>Canada</i>
1997	\$32,707 (-18%)	\$22,302 (-38%)	\$8,683 (-19%)
1998	\$50,511 (+54%)	\$31,422 (41%)	\$10,811 (25%)
1999	\$24,082 (-52%)	\$37,475 (19%)	\$19,192 (77%)
2000	\$33,377 (39%)	\$36,775 (-2%)	\$18,030 (-6%)
2001	\$26,260 (-21%)	\$23,703 (-35%)	\$16,785 (-7%)

Source: Department of Commerce, US Census Bureau, Foreign Trade Statistics. <http://www.fas.usda.gov/ustrdscripsts/USReport.exe>.

bled in value to \$20 million and Argentina's exports increased by a further 19 percent to \$3.9 million.

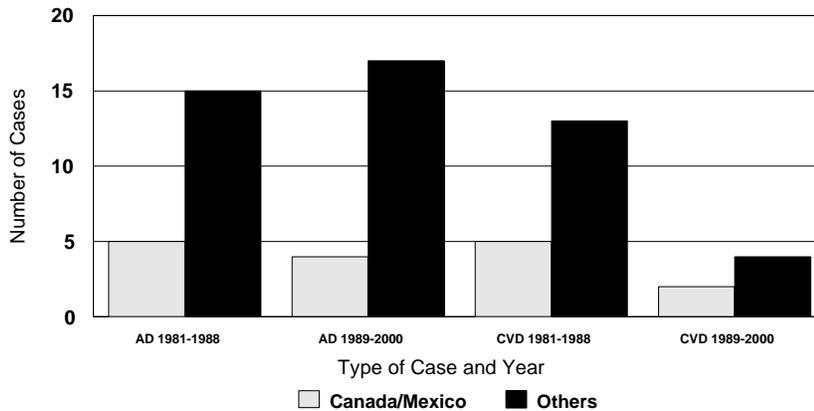
As an example of a safeguard action, the United States brought a wheat gluten case against Australia and the EU in 1997. In June 1998 a safeguard measure was imposed in the form of an import quota that was maintained for three years. Canada and Mexico (among other countries) were excluded from the quota. Only the Canadian exclusion was relevant since none of the other countries were actually exporting wheat gluten to the United States. The reason given for Canada's exclusion (according to the ITC) was that Canadian exports of wheat gluten were stable or even decreasing over the period under consideration (1993-97) and therefore did not cause injury to the U.S. industry. In contrast, over the same period, EU exports of wheat gluten to the United States increased by 38 percent.

Table 5 shows the value of wheat gluten imports from the EU and Canada to the United States from 1998 (the year the quota was imposed) until 2001. The percentage change from the previous year is reported in brackets to the right of the dollar value.

NAFTA'S CHAPTER 19

There has been little research on the impact of NAFTA on the use of AD and CV laws. One hypothesis is that as traditional trade barriers (such as tariffs and quotas) are lowered within NAFTA, the use of AD and CV cases has risen. An alternative hypothesis is that NAFTA's Chapter 19

Figure 3: U.S. AD/CVD Cases in Agriculture -- Pre and Post NAFTA Chapter 19.



Source: US International Trade Commission.

has contributed to greater discipline of the use of AD and CV, and served to lower the number of cases within NAFTA. Chapter 19 established a binational panel review of final AD and CV determinations involving goods of NAFTA. Each panel acts as an appellate body, but must apply the domestic law of the country in which the original decision was made.

Jones (2000) studied U.S. and Canadian Chapter 19 panel decisions over the 1989 to 1998 period. He examined 62 panel reviews, 33 of which challenged U.S. AD or CV decisions, and 29 that challenged Canadian trade remedy decisions. Jones found some (weak) evidence that Chapter 19 might have actually changed incentives in the United States and discouraged the filing of AD and CV cases against Canada. His results showed that Chapter 19 panels have tended to criticize U.S. decisions more than Canadian decisions and nine panels (from 1989 to 1998) significantly altered unfair trade case outcomes. Jones therefore argued that Chapter 19 might have reduced the likelihood of an affirmative finding of injurious unfair trade.

In Figure 3 we show AD and CV agricultural cases in the United States brought against NAFTA partners and against other countries. We divide the data into pre- and post-Chapter 19. The share of the number of U.S. AD cases directed at either Canada or Mexico was 33 percent from 1981 to 1988 and decreased to 23 percent from 1989 to 2000, suggesting a NAFTA effect. For CV cases, there was a slight increase in the share directed at NAFTA partners, increasing from 61 percent before Chapter 19, to 67 percent after Chapter 19.

CONCLUSION

Over the past two decades, NAFTA members have been large users of AD and CV trade law in agricultural trade. A large number of the cases have involved targeting other NAFTA countries. As traditional forms of agricultural trade protection are reduced through WTO and other trade agreements like NAFTA, there will most likely be a growing number of trade remedy cases filed by the United States, Canada and Mexico. These actions will not only obstruct agricultural trade but will also encourage retaliation and increased protectionism in other countries.

We analyzed trade patterns before and after AD and CV agricultural cases brought by U.S. industries over the 1980 to 2000 period. We found evidence that is supportive of the existence of trade diversion for those cases that were affirmative. For negative rulings, our results are consistent with the presence of an investigation effect. This is all the more reason to keep trade remedy laws on the negotiating table.

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