Anti-dumping's Happy Birthday?

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1. INTRODUCTION

THE year 2004 marked the centennial of anti-dumping (AD) policy, and the continued widespread and increasing use of AD measures suggests that even while countries negotiate ever more free trade agreements, they increasingly use AD measures to protect specific industries. The purpose of this paper is to highlight and discuss recent developments in the worldwide use of AD policy as a possible strategic counterpoint to trade liberalisation.

First, while expanding membership in the World Trade Organisation (WTO) may reduce overall barriers to trade worldwide, accession also establishes a nation's right to institutionalise AD statutes, which appears to have contributed to an unprecedented number of nations managing more AD petitions and instituting more AD measures than ever before. These measures – and even the threat of measures – cause tremendous levels of trade distortion in the form of diminished imports.

Second, the perennially dominant user of AD policy, the US, is not only using the policy instrument at its most aggressive rate in years, but has also instituted a related policy, the so-called Byrd Amendment, that aims to deliver a substantial share of the generated tax revenues back to the domestic producers. The consequences of this new policy for free trade and competition are not well understood, but it has clearly had an impact on the strategic behaviour of firms and industry associations.

Finally, empirical analyses continue to demonstrate consistently that politics play a significant role in driving AD policy outcomes even though the fundamental economic variables that should frame policymaking decisions are straightforward and reasonably well articulated in the WTO agreement. Recognising, perhaps, that politics may play as large a role as economics in determining policy outcomes, negotiators in the current round of international trade talks have raised a considerable number of talking points for discussion in terms of the use of AD and its possible reform. However, with so many other topics on the agenda, many of which have high public visibility worldwide, it is far from clear what can be achieved in terms of genuine policy reform.

This paper seeks to address the apparent spread of AD policy as a protectionist tool and the possibility of its growing strategic use by governments worldwide. First, we review briefly the original intended purpose of AD policy, and where and how it sits on the agenda of current international trade negotiations. Second, we discuss the escalating use of AD policy, particularly in the developing world. Next, we review the state of affairs of AD policy with the world's largest user, the US, and, in particular, introduce and discuss the latest important development, the implementation of the 'Continued Dumping and Subsidy Offset Act of 2000'. Finally, we conclude with some general concerns about the use of AD policy.

2. WHAT IS ANTI-DUMPING POLICY?

Policies that seek to manage dumping have existed, formally at least, for a century; Canada first instituted such policies in 1904, and the US followed with the US Antidumping Act of 1921. In its simplest form, anti-dumping policy is designed to be a remedy against so-called unfair trading practices. Ostensibly, it is intended to stop the act of 'dumping' goods into another nation's market through 'predatory' pricing, where dumping is selling goods at 'less than fair value' (LTFV). The most recent definition of LTFV is goods sold at less than the cost of production or below the price in the firm's or industry's domestic market. The main challenge of the proper implementation of this policy lies in the nature of international rules and guidelines. Though WTO guidelines are relatively clear, they tend to be general in nature, and nations can readily interpret the rules in manners that remain more or less consistent with the letter of the law but do not necessarily uphold its intended economic purpose. Empirical studies consistently demonstrate that nations have a strong tendency to interpret the WTO agreement and guidelines and their own corresponding national AD legislation in ways that appear to favour certain domestic constituents, while ignoring many of the basic economic facts of a case.

Following the significant efforts in the last major round of world trade talks (the Uruguay Round) to reform AD in several substantive ways, the latest Doha Round has also developed an impressive issue agenda. As Prusa (2001) observes, the Uruguay Round AD policy promulgation was successful in introducing *de minimus* requirements and sunset reviews, which aid smaller producers, but was arguably a partial failure because of its support for cumulation and price undertakings. According to a document released by the Chair of the 'Negotiating Group on Rules', there are no less than 83 general points (there are multiple facets to most of each of the 83 points) about AD under discussion (WTO, 2003). The discussion includes a continued and vigorous re-consideration of some Uruguay Round issues including cumulation and price undertakings. Not surprisingly, the

Negotiation Group on Rules is also examining a considerable number of other major and minor issues. Pivotal areas include injury determination (Articles 3.2 and 3.4), injury margin calculations and causation. Some other areas that negotiators have not scrutinised extensively to date are also finally on the negotiating table including currency conversion, review processes of various types, initiation procedures including *ex officio*, and 'like product' definitions. These issues without doubt are the proverbial tip of the iceberg.

With such a vast agenda in AD alone, it is difficult to imagine that the Negotiating Group on Rules, let alone the entire WTO, will be able to resolve much in this substantive area. In fact, the Cancún meeting of ministers in 2003 stalled on some of the other pressing issues facing the trading world. Furthermore, many of the nations with genuine negotiating power in international trade talks – the US, the European Union (EU) and the larger developing nations – happen to be the nations that are among the most active users of AD policy and may be less inclined to embrace change.

3. INTERNATIONAL TRENDS IN ANTI-DUMPING POLICY

The use of AD statutes is escalating throughout the world. Prusa (2001) notes such a trend using data through 1997, and with newer data we demonstrate clearly that the trend has continued, and quite vigorously, through 2003. Figure 1 highlights the recent worldwide increases in both AD initiations and measures. It is also important to underscore the marked increase in both initiations and measures in the developing world. As late as 1984, no developing or middle-income nations were using AD statutes, and initial use of AD by developing countries began only as a trickle. In the 1980s, only a small handful of developing countries even had AD statutes. In contrast, by the end of the 1990s, over 40 developing

FIGURE 1
Worldwide Anti-dumping Petitions and Measures, 1995–2001

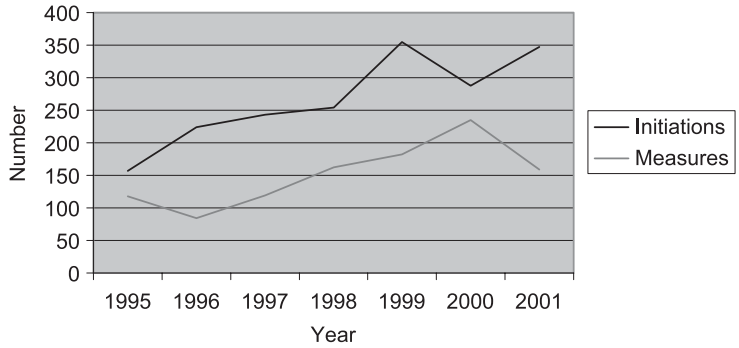

TABLE 1
Principal National Origin of Anti-dumping Petitions, 1995–2002*

Country	*No. of Case Initiations*	*No. of Measures Imposed*	*Per Cent Affirmative*	*Per Cent of Worldwide Imports*
USA	279 (14.1%)	185 (15.9%)	66.3	16.8
India	273 (13.8%)	177 (15.2%)	64.8	0.6
European Community	255 (12.9%)	160 (13.8%)	62.7	36.4
Argentina	176 (8.9%)	113 (9.7%)	64.2	0.4
South Africa	157 (7.9%)	100 (8.6%)	63.7	0.4
Australia	142 (7.2%)	36 (3.1%)	25.4	1.1
Canada	106 (5.4%)	67 (5.8%)	63.2	3.5
Brazil	98 (5.0%)	51 (4.4%)	52.0	1.0
Mexico	56 (2.8%)	52 (4.5%)	92.9	2.2
Korea	48 (2.4%)	29 (2.5%)	60.4	2.1
Top Ten Total	1,590 (80.3%)	970 (83.5%)		64.5
World Total	1,979	1,161		

Note:
* To 30 June, 2002.

Source: World Trade Organisation (2003).

countries had enacted new AD legislation, and had created agencies, or at least ad hoc committees, to administer the statutes. This is likely at least in part due to expanding WTO membership. Many of these nations also had measures in place. Moreover, 'new users' now account for over half of all AD cases, and India, Argentina and South Africa have supplanted Canada, Australia and New Zealand in the list of top five users. More importantly, Prusa (2001) demonstrates that these cases have a real effect on trade flows: in cases that are rejected, settled or end in formal measures, imports fall. In other words, simply filing an AD case has a measurable effect on trade.

The descriptive statistics presented in Table 1 suggest some interesting patterns. In particular, nations such as India, Argentina and South Africa account for a disproportionate percentage of AD cases worldwide. For nations that are not typically described as 'open', it is perhaps not surprising. However, considering the volume and variety of their imports, it suggests that these countries are unusually aggressive users of AD statutes. Note also the fourth column in the

table that provides an annual percentage of total initiations that end in formal measures. While most nations' scores lie somewhere around 60–65 per cent, Mexico rules in favour of protection in over 90 per cent of its cases. Moreover, these percentages do not reflect the many price undertakings that firms and industries agree to with the initiating nation. As Prusa (1992) demonstrates, price undertakings are in many ways similar to a decision that ends in the provision of protection because they have the same effects of distorting (i.e. hindering the flow of) imports. It is likely that incorporating price undertakings into the 'measures' column would increase substantially the overall 'rate of protection'.[1]

In contrast, even controlling for price undertakings, Australia applies AD duties in only about a quarter of cases, suggesting that it is possible to maintain lower rates. While it is not entirely implausible that for some reason most cases in Mexico are genuine instances of dumping, it is nevertheless a pretty notable rate of applying AD measures. Considering that J. Michael Finger (1993) of the World Bank insists that the vast majority of cases are not dumping at all, but rather a thinly veiled excuse to protect, it is worth noting these rates of applying protection through AD measures (see also Hindley and Messerlin, 1996).

The overall descriptive statistics of the cases are also striking. The 'top ten' AD users are responsible for over 80 per cent of the worldwide initiations despite the fact that dozens of other nations have formal AD legislation and large volumes of imports. While it is important to consider that it is almost always firms or industries that are the 'initiators' in these countries, and the numbers may not reflect the overall propensity of the nations actually to apply AD duties, these nations do indeed account for an even greater percentage – 83.5 per cent – of applied measures. The latter statistic strongly suggests that these nations have a conspicuous propensity to utilise AD measures to provide relief from imports.

In Table 2, we present the descriptive statistics of the targets of AD actions. Overwhelmingly, East Asia is a disproportionate target of AD initiations and measures. Despite the fact that goods exported from China, Korea and Taiwan account for only 8.5 per cent of total world exports, firms and industries from these nations account for over one-quarter of all AD petitions and measures. It is less surprising that the US and Japan are major targets because together they account for nearly one-fifth of all of the exports in the world. Notably missing from the target list, however, is the European Union – another major world exporter.

Scholarship on AD policy, much of it focused on the US, and to a lesser extent on the EU, favours a pluralist explanation wherein interest groups compete for preferential treatment in the area of trade policy – i.e. AD duties on imports – and the government decides which groups should receive it. For example, in recent

[1] Unfortunately, measuring the number of price undertakings is problematic because many nations do not report such actions consistently to the WTO.

TABLE 2
Principal Anti-dumping Targets, 1995–2002

Country	*No. of Initiations (Per cent of world total)*	*No. of Measures Imposed (Per cent of world total)*	*Per Cent of Worldwide Exports*
China	278 (14.0%)	196 (16.9%)	3.6
Korea	145 (7.3%)	74 (6.4%)	2.5
USA	105 (5.3%)	62 (5.3%)	12.4
Taiwan	100 (5.1%)	63 (5.4%)	2.4
Indonesia	83 (4.2%)	37 (3.2%)	0.9
Japan	82 (4.1%)	61 (5.3%)	7.5
India	77 (3.9%)	42 (3.6%)	0.7
Thailand	74 (3.7%)	44 (3.8%)	1.1
Russia	68 (3.4%)	54 (4.7%)	1.5
Brazil	67 (3.4%)	47 (4.0%)	0.9
Top Ten Total	1,012 (51.1)	680 (58.6%)	33.5
World Total	1,979	1,161	

Note:
* To 30 June, 2002.

Source: World Trade Organisation (2003).

studies on AD in the US, scholars have demonstrated that lobbying and political contributions condition AD policy outputs (Hansen and Prusa, 1996 and 1997; and Drope and Hansen, 2004). In contrast, only a limited number of studies place the nation-state at the centre of the analysis of AD policy, and a few studies explore the notion of an 'active' or 'proactive' state explicitly (see especially Hansen and Park, 1995). Most studies, however, at least control for variables that might easily suggest that issues of national interest play a significant role. For example, by mandate in the formal AD statutes of most nations that have passed such legislation, the agencies charged with ruling on cases of dumping are often compelled to examine issues of sector-level capacity, production, employment and flows of imports, among a number of other key indicators. Most studies find that the agency does in fact take these indicators into account, and industries and firms in 'struggling' sectors in the US are more likely to receive AD decisions in their favour.

There is still only limited empirical and theoretical research on AD policy outcomes in the developing world. A recent study finds that, like in developed countries, interest group explanations are also powerful predictors of AD protection in parts of the developing world (Drope, 2004). In particular, results suggest that in Argentina overall sector-level economic considerations matter less, and that national-level macroeconomic performance and political representation matter most in decisions by Argentina's AD agency, the *Comisión Nacional de Comercio Exterior*. In Mexico, macroeconomic performance and the participation of the powerful steel sector most condition the outputs of Mexico's AD agency.

In contrast, other developing nations, notably South Africa, appear to be using AD policy as a kind of industrial or economic development policy. One recent study on South African trade policy that combines AD decisions with other policy decisions that lead to protectionist measures finds that the Board on Tariffs and Trade (BTT) places some emphasis on employment in the petitioning sector when making a decision to provide protection (Holden and Casale, 2002). In a study that isolates only AD decisions by South Africa's BTT, Drope (2004) also finds that sector-level economic variables – changes in employment and capacity – dominate the decision-making process of the agency. The results suggest a pattern where struggling sectors that also show some signs of revival are most likely to get import relief through AD measures. Thus, the South African process of AD policy making is driven more by the overall economic performance of the industrial sectors than the particularistic needs of powerful firms or interest groups.

Finally, an interesting finding in all three of these aforementioned developing countries (Argentina, Mexico and South Africa) points to a possible proactive, rather than reactive, use of AD policy. Each of these countries has reviewed cases and imposed AD protection in industries that have zero or negligible imports. This suggests the possibility that AD policy is being used in a strategic manner for economic development (Drope, 2004).

4. ANTI-DUMPING IN THE US

From 1995 to 2001, there was a steady increase in the number of AD petitions in the US, rising from 14 to 69 per year. With the imposition of the steel industry's Escape Clause protection under Section 201 in December of 2001, the number of cases in 2002 and 2003 dropped back down to 36 per year, largely because of a dramatic decline in the number of steel petitions. In all, since 1980 there have been over 1,000 AD petitions filed by US firms or industries.

Tables 3 and 4 show a breakdown of US petitions filed between 1996 and 2003. Of the 316 cases, 190 (or 60 per cent) were steel or steel-related products, followed by rubber/chemicals/plastics with 55 cases (17.4 per cent),

TABLE 3
Geographical Representation of US Anti-dumping Cases, 1996–2003

Region or Country	*Number of Cases (N = 316)*	*Approximate Per Cent of US Imports (1996–2002)*
European Union	55 (17.4%)	18.5
China	46 (14.6%)	4.6*
Other Europe (incl. Russia)	40 (12.7%)	1.8
Japan	25 (7.9%)	12.7
South America	25 (7.9%)	5.3
Other Asia, Middle East and Oceania	22 (7.0%)	14.0
Korea	21 (6.6%)	2.9
India	16 (5.1%)	0.8
Taiwan	15 (4.7%)	3.5
South Africa	14 (4.4%)	0.3
Canada	14 (4.4%)	20.5
Indonesia	12 (3.8%)	0.8
Mexico	11 (3.5%)	11.5
Other	3 (0.9%)	

Note:
* The China import figure excludes Hong Kong. Including Hong Kong increases the share in US imports to 8.7 per cent.

TABLE 4
Representation by Industry of US Anti-dumping Cases, 1996–2003

Industry	*Number of Cases (N = 316)*
Manufactured Products from Steel (e.g. wire, pipe, nails, etc.)	100 (31.6%)
Rubber/Chemicals/Plastics	55 (17.4%)
Raw Steel (cold- and hot-rolled)	49 (15.5%)
Steel Products (e.g. plate, sheet, etc.)	41 (13.0%)
Agriculture and Processed Food	27 (8.5%)
Electronics	12 (3.8%)
Minerals	12 (3.8%)
Miscellaneous Manufactured Products	8 (2.5%)
Wood and Wood Products	3 (1.0%)
Textiles	3 (1.0%)
Machinery/Auto	2 (0.6%)
Other	3 (1.0%)

and agriculture and food products with 27 cases (8.5 per cent). While steel makes up the majority of AD cases filed in recent years, it is important to note the diversity within this sector. The products (e.g. rolled, sheet, stainless, plate, construction products, etc.), the firms that produce the steel goods, and the labour unions that represent the workers, vary considerably across cases. Notably also, some of the steel firms are very active politically in terms of the contributions

that they make to elected officials or the amount of money they spend to lobby government, while other firms are not or are only nominally active. Very active firms in the US spend well into the millions each year. While cash contributions are difficult to link firmly to specific issue areas, the Lobby Disclosure Act of 1995 compels firms to identify the specific reasons for lobbying. Consistently, firms, both steel and otherwise, divulge that seeking preferential treatment in the arena of trade policy is a principal reason for lobbying (Drope and Hansen, 2004), and most, in addition to key members of Congress and the Executive, lobby either the Department of Commerce (DOC) generally, or the International Trade Commission (ITC) more specifically.

Looking at which countries US firms target in their petitions, it is clear that China and the largely non-market economy countries of Europe have a disproportionate number of cases filed against them given their share of the US import market. For example, Chinese firms, with 46 (or 14.6 per cent) of all cases filed against them, have only 4.6 per cent of the US import market. Similarly, 12.7 per cent of the cases were filed against the non-EU countries of Europe, while they have only 1.8 per cent of the US import market. Korea, India, South Africa and Indonesia are also somewhat over-represented in terms of the number of cases against them, given their shares of the US import market.

Given the procedures used by the US International Trade Administration (ITA) to calculate dumping margins, it is not surprising that non-market economies are primary targets of AD cases. International guidelines permit nations to substitute economic information for non-market economies with information from supposedly comparable market economies (see Lindsey, 1999). Unfortunately this has led to bureaucrats presenting some interesting substitutions. In one example, US officials utilised some seemingly questionable comparisons in a case that involved crawfish imported from China (ITC case 731–752). To approximate the price of the Chinese farmed crawfish, DOC officials used the price of fish caught at sea in Indonesia, Pakistan and Sri Lanka, and in order to 'construct' transportation costs in China, the officials used trucking costs in India. Ultimately, using these third-country comparisons to make their calculations, the ITC applied tariffs from 85 to 201 per cent (Passell, 1997). Empirical evidence suggests that other nations also treat non-market economies in questionable manners (Drope, 2004).

Moreover, Lindsey (1999) argues that the non-market constructions are only one of several fundamentally problematic methodologies that the DOC employs to inform their decisions about price differentials. In particular, he cites major difficulties with the concept of using 'facts available', wherein the DOC, rather than carrying out a reasonable, independent investigation, instead primarily uses the information supplied by the complainant (see also Baldwin and Moore, 1991). Further evidence of problematic decision making lies in the ITA's decisions on the existence of dumping; in the 400 AD cases filed in the 1990s, the agency

ruled that dumping was occurring in a whopping 99 per cent of cases (Blonigen and Prusa, 2003).[2] If countries use the US as a model, they may be following similar practices.

While studies on AD in the US tend to emphasise the influence of the petitioning industries – the firms and/or associations seeking protection, anecdotal evidence suggests that other domestic forces are beginning to mobilise to stop AD measures. In particular, firms and industries that are 'consumers' of the imported products are becoming increasingly vocal. Drope and Hansen (2004) find significant evidence that firms against the provision of AD measures and their associations are participating in formal ITC hearings and lobbying relevant members of Congress about AD cases, though it does not yet rival the resources mobilised by the groups seeking protection. In one recent, well-known example, the National Association of Home Builders, the National Lumber and Building Material Dealers Association and the American Consumers for Affordable Homes, have been speaking out and actively lobbying against the sizeable AD and countervailing (CVD) duties levied against the Canadian lumber industry, arguing that these duties increase the price of a new home, a cost that is generally passed directly to the actual home buyer (Fox, 1999). Signs of energetic and organised opposition, however, also seem to indicate even more vigorous activism on the part of the traditional lobby groups – those seeking protection. In the lumber case, wood and paper industry heavyweights, International Paper, Georgia-Pacific and Temple-Inland (among others) organised the politically powerful Coalition for Fair Lumber Imports, and have succeeded in persuading lawmakers to maintain the hefty duties. In fact, a recent empirical analysis seeking to illuminate this dynamic finds that only the political efforts of the petitioning firms and industries – the 'protectionist' side – to influence the AD policy outcomes are statistically significant (Drope and Hansen, 2004). This may change as the traditionally more powerful industrial trade lobbyists face increasing competition from firms and organisations such as the aforementioned housing associations that organise to influence trade policy.

a. The 'Byrd Amendment'

An additional critical issue in AD policy and one plausible reason for the recent increase in AD petitions and measures in the US is the introduction of the 'Continued Dumping and Subsidy Offset Act of 2000', or what is more commonly known as the Byrd Amendment. In brief, this legislation, which made its way into US law through an amendment to the 2000 agriculture appropriations

[2] In the US, AD decisions are bifurcated: the ITA rules on the existence of 'dumping' while the ITC rules on actual 'injury' to the petitioner.

bill, gives the petitioners of AD and CVD cases the right to claim the duties collected on AD and CVD cases.[3] The Bureau of Customs and Border Protection (CBP) produces an annual list of available disbursements from revenues generated by both current and expired cases where the government applied AD duties. Firms are eligible to apply for the money through a certification process, and the money is distributed to offset an impressive number and variety of types of expenditures. According to the CBP, the costs eligible for offset include: (1) manufacturing facilities; (2) equipment; (3) research and development; (4) personnel training; (5) acquisition of technology; (6) healthcare benefits for employees paid by the employer; (7) pension benefits for employees paid for by the employer; (8) environmental equipment, training or technology; (9) acquisition of raw materials and other inputs; and (10) working capital or funds needed to maintain protection (US Department of the Treasury, 2002).

The particularly striking benefit of the Act is that firms receiving protection from AD measures are now the recipients of a 'double' victory – their product is effectively more competitive with their foreign competitor's product by virtue of the duty, and they reap a direct monetary reward. The Act is also retroactive; firms involved in cases prior to 2000 are permitted to apply for the revenues generated from the applied measures. After 11 WTO members filed a formal dispute in the WTO's Dispute Settlement Body (DSB) shortly after the legislation passed in 2000, the DSB ruled that the legislation was not consistent with GATT/WTO rules. After a formal appeal by the US, the WTO's Appellate Body upheld the decision in January of 2003. Despite the unequivocal stance of the WTO dispute mechanisms, the US has refused to repeal the law, and in February of 2003, 70 Senators signed a letter to the President supporting the continuation of the Act.

The amount of money that this new law involves directly, and could potentially involve, is significant. Firms applied for compensation worth $822 billion in 2001 and $993 billion in 2002, which averages to over a billion dollars per petitioner. The US Treasury paid out far less – some $222 million in 2001 and $322 million in 2002, averaging approximately $318,000 and $370,000 per petitioner in 2001 and 2002 respectively. Steel firms have been heavily represented among the petitioners for these monies; seven firms producing steel sheet, plate, wire and rods received about $13.5 million in 2001, and two ball-bearings producers (Torrington and Timken) together received $93.8 million.[4] Other industries, however, also did quite well. Four pasta firms received over $16 million,

[3] In 1999, Senator Mike DeWine (R-OH) introduced a nearly identical piece of legislation that was not passed. Senator Robert Byrd (D-WV) took up the cause actively in 2000 when he tacked it onto the agricultural bill.

[4] Timken purchased Torrington in 2003, but this should not affect the newly merged entity's future collection of duties as the Act provides for such contingencies.

three candle producers received over $18 million, and Zenith Electronics alone received $24 million from duties on television receivers from an AD case filed against Japan in 1971 and revoked under the sunset provision in 1998. Most of these same firms received additional monies in 2002. Not surprisingly, the vast majority of the firms receiving sizeable disbursements are politically active firms – six of the top 20 recipients are very active politically (>$1 million annually), while nine more of the top 20 recipients spent well over $100,000 each in the two years before the amendment lobbying legislators (Centre for Responsive Politics, 2004). One firm, Weirton Steel (recently purchased by International Steel Group), once boasted on its main webpage that it lobbied vigorously for the amendment (Weirton, 2003).

The nations involved in the cases that are 'paying out' are predictable. At the top of the list, cases that involve Japan paid out $219 million in 2001 and 2002. Keeping in mind that cases are retroactively eligible for these reimbursements, it is not surprising that cases that involve Japan, the most frequent target of AD measures before the late 1990s, have paid out this amount. Next on the list is China – the most recent primary target of US AD activities – at $122 million. The EU ranks a close third at $116 million. The EU along with Australia, Brazil, Canada, Chile, India, Indonesia, Japan, Korea, Mexico and Thailand continue with their aforementioned case at the WTO to challenge the legality of the Act.[5] After the US lost its appeal at the WTO Appellate, the court gave the US until 27 December, 2003, to amend the legislation. As of the winter of 2006, the US has yet to repeal or change the Act, and the EU has received permission to retaliate against US goods for the sum of $250 million (Miller and King, 2004).

Another notable feature of the Byrd Amendment is the fact that firms that did not indicate support for the original petition submitted by another firm in their industry are not eligible for any of the reimbursement money – in other words, there is no 'free-riding' on the petitions of domestic rivals. Thus, the legislation can translate into a strategic advantage for the firms that filed or supported successful AD petitions, distorting not only international markets, but domestic ones as well. The question that arises is what impact, if any, has the Byrd Amendment had on the trade policy process in the US? While the average number of petitioners per case has remained relatively constant before and after the passage of the subsidies Act, the average number of non-petitioning firms supporting the petition has increased. More specifically, the number of petitioners and supporters as a proportion of the total firms in the industry has increased markedly. The percentage increased from 68 per cent in the period from 1996 to 2000, prior to the passage of the Byrd Amendment, to 81 per cent in the post-Byrd era (ITC Reports, various years).

[5] Six additional nations – Argentina, Costa Rica, Hong Kong, China, Israel and Norway – have joined as 'third parties' supporting the complainants.

In addition, while the overall number of industry associations involved in the petitions has remained relatively constant over the years, associational membership itself may in fact be increasing. When the American Furniture Manufacturers Committee for Legal Trade was readying a petition against the imports of Chinese wooden bedroom furniture in 2003, membership in the association quickly expanded from 15 founding members to 28 companies (Christianson, 2003). Furthermore, there has been a notable increase in the number of small producer associations from two to eight.

Anecdotally, associations also appear to be using the Byrd Amendment for recruiting purposes. For example, when the shrimp industry filed six cases against foreign producers of frozen and canned shrimp, shrimp companies posted flyers prior to the filing urging fishermen to contribute to a legal fund to help support the petition, noting that they could not reap the benefits of reimbursement under the Byrd Amendment without registering as a supporter (King, 2004). Given these changes in firm behaviour, the Byrd Amendment clearly has the potential to affect domestic as well as international competition, which future research will need to address.

5. CONCLUSION

Birthdays are a reasonable time for reflection – in this case in terms of both scholarly progress and normative concerns. From its modest roots in the first two-thirds of its existence, AD policy has grown considerably; some might argue reasonably that the policy has evolved into a monster. While the original economic law is straightforward and purposeful, the embellishments of the statute and its implementation may violate the spirit of its intended purpose. Evidence suggests that both firms and governments may be using AD policy in a strategic manner to achieve their larger political and economic goals. And, more importantly, the expanding use of AD policies in the world along with modifications of its usage such as the Byrd Amendment may act as a counterpoint to trade liberalisation. Finally, it is likely that AD policy sometimes acts in tension or in concert with other trade and non-trade policies. Future research will need to explore how the use of AD policy fits into the larger policy picture.

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