Chapter

8

Commercial Policy: History and Practice

Topics to Be Covered

History of U.S. Commercial Policy
The Uruguay Round and the Creation of the WTO
The Doha Round
The Conduct of U.S. Commercial Policy

Key Words

Lógrolling взаимные уступки
Unconditional most favored nation status
Dumping
хищнический / грабительский Prédatory dumping
International price discrimination
Dumping margin (запас)
ущерб Ínjury test
Countervailing duty компенсационные пошлины (Import tax: prevent dumping of countries export subsidies)
Upstream subsidy на доводку
Section 301
Escape clause оговорка / статья
Trade adjustment assistance (TAA)
Safeguards protection защитных гарантий

We have now studied the various tools of commercial policy as well as some of the arguments made by advocates of trade policy for the imposition of these tools. In this chapter we expand upon this discussion by focusing on recent trade policy initiatives of the United States, the European Union, and Japan. We also discuss in some detail the role of international organizations and agreements, such as the World Trade Organization (WTO), in setting the rules of commercial policy.

There has been a marked trend since the end of World War II for the general levels of trade barriers to fall in the Western industrialized economies. This movement, which has been spurred to a considerable extent by the United States, arose out of a worldwide desire at the end of the war not to repeat the pattern of trade wars and depression witnessed in the years that preceded the war. As a result, international trade has expanded rapidly, and lengthy recessions have been avoided.

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With the expansion of trade, however, commercial disputes have also arisen. These disputes have typically centered on trade in specific commodities and, in some cases, have led to the imposition of new barriers to replace those that had been removed. In turn, trade disputes have prompted lawmakers in different countries to modify their trade laws or the administration of these laws to handle changing circumstances. Thus, of particular importance in this chapter will be a discussion of the nature and evolution of U.S. trade laws, including examples of the application of these laws to specific trade problems.

HISTORY OF U.S. COMMERCIAL POLICY

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The Constitution of the United States grants to Congress the authority "to regulate commerce with foreign nations." This authority includes the right to impose import tariffs, but it denies Congress the right to institute export tariffs.* Over the nation's history, Congress has exercised its constitutional obligation in this area by passing a series of tariff bills. Some of these bills provided special levels of protection to certain industries. Others were aimed at adjusting either up or down the general level of protection conferred to the nation as a whole.

Tariff bills came at infrequent and irregular intervals during the first 150 years of U.S. history. The last, and probably most famous, of these bills was the Tariff Act of 1930, the Smoot–Hawley Tariff. (See our discussion of this tariff in Chapter 6.) After the passage of this bill and the subsequent collapse of international trade, Congress began to shift its emphasis away from setting general levels of protection toward ensuring that specific industries would be able to obtain relief from certain types of foreign competition. Thus, since 1930, most bills related to commercial policy (known since 1930 as trade bills) have delegated tariff-setting authority to the president, authorizing the chief executive to negotiate lower foreign tariff levels in exchange for lower U.S. tariff levels. In addition, these bills have increasingly sought to address such issues as the response of the U.S. government to "unfair foreign trade practices" both in the U.S. market and overseas.

Figure 8.1 illustrates the cyclical movements in U.S. tariffs since the founding of the country. In the earliest days of the country, tariffs were relatively low and were aimed at collecting revenue for the federal government.[†] The first tariff act, passed in 1789, imposed a 5 percent import duty on most goods. Higher tariffs were imposed on luxury goods, with the highest rate equal to 15 percent applied to carriages. During this period, from 1791 to 1807, trade grew rapidly, rising in nominal terms by over 400 percent.

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War between England and France helped fuel this growth in trade, as the United States sold agricultural products and other raw materials to both countries. In 1808, this trend was reversed. Both England and France sought to limit the trade of the other by instituting naval blockades of each other's harbors. Ships of neutral countries (such as the United States) were boarded, goods were destroyed, and sailors were taken hostage. The U.S. government reacted by imposing a ban on commerce with England. Eventually this dispute led to the War of 1812. To help fund the war, the U.S. government doubled tariffs. But because of the war, U.S. trade plummeted to its lowest level since 1790, and, despite the higher tariff rates, tariff revenues fell. After the close of the war in 1814, tariffs were raised in 1816 to an average of about 20 percent, again with the goal of securing revenue to pay off the war debts of the government.

The War of 1812 had profound effects on U.S. tariff policy. Because the war caused a suspension of trade with Europe, U.S. manufacturers of industrial products began to expand their production. These manufacturers were located largely in the northern and central parts of

* The prohibition of export tariffs was written into the Constitution at the insistence of Southern delegates to the Constitutional Convention who feared that without it, the federal government would rely on taxes on exports of cotton as a chief source of government revenue.

[†] The United States did not institute an income tax until 1913, when the Sixteenth Amendment to the Constitution was ratified.

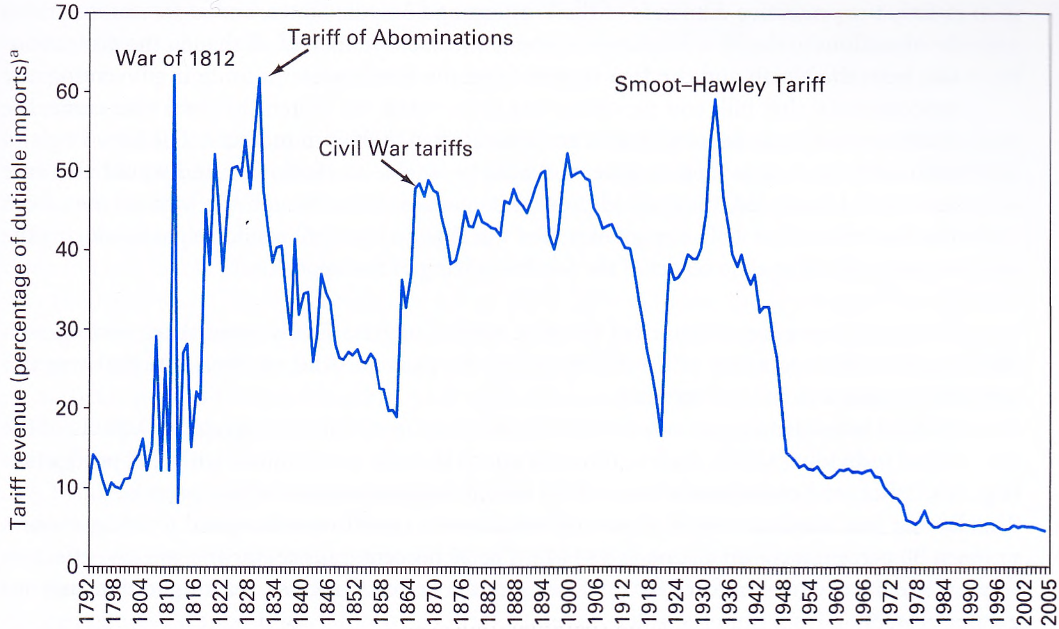

FIGURE 8.1 U.S. Tariffs, 1792–2005 *Source:* U. S. Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970*, and U. S. International Trade Commission Web site, http://www.ustic.gov/

Note: [a] Data before 1821, tariff revenue as a percentage of total imports.

the country. At the end of the war, members of Congress from these regions began to press for continued and higher tariffs on industrial products to protect the "infant industries" of their districts. Compounding this effect was the fact that after the war there was a worldwide depression. This depression led to a fall in agricultural prices and weakened traditional export sectors of the country (the South and the Midwest). With the fall in agricultural prices came additional pressure on Congress from agricultural states of the Midwest to protect the home market with tariffs. Only members of Congress from the South, who feared the loss of foreign markets for cotton exports, opposed higher tariffs. Congress responded in 1824 and again in 1828 with new tariff laws. The latter, known as the *Tariff of Abominations,* raised the average tariff to almost 60 percent.

How the Tariff of Abominations came to be passed is one of the more interesting stories in the history of international trade politics. At the time the bill was written, John Quincy Adams was president and Andrew Jackson was his leading political opponent. Most of the support for Adams came from New England, where tariffs on manufactured goods were popular but tariffs on raw materials were not.* Followers of Jackson controlled the Congress. Some of these members were from the South and wanted lower tariffs. Others were from the North, where tariffs were popular. Jackson's supporters in Congress devised a plan for a new tariff bill that they thought would achieve two goals. First, it would embarrass and weaken Adams and his supporters. Second, it would give both the Northern and the Southern supporters of Jackson something they could vote for (or against) to maximize their own political support. Frank Taussig, in his brilliant *Tariff History of the United States,* describes the plan as follows:

> A high tariff bill was to be laid before the House. It was to contain not only a high general range of duties, but duties especially high on those raw materials on which New England wanted duties to be low [e.g., imported wool to be used in woolen factories]. It was to

* Recall the concept of tariff escalation discussed in Chapter 6.

> satisfy the protective demands of the Western and Middle States, and at the same time to be obnoxious to the New England members. The Jackson men of all shades, the protectionists from the North and the free-traders from the South, were to unite in preventing any amendments; that bill, and no other, was to be voted on. When the final vote came, the Southern men were to turn around and vote against their own measure. The New England men, and the Adams men in general, would be unable to swallow it, and would also vote against it. Combined, they would prevent its passage, even though the Jackson men from the North voted for it. The result expected was that no tariff bill would be passed during the session, which was the object of the Southern wing of the opposition.*

Despite the seeming brilliance of the plan, when Congress finally voted there were enough New England votes in favor of the bill to ensure its passage. And so, the tariff that was not supposed to pass was enacted into law.

Almost immediately, pressures arose to reduce some of the most egregious aspects of the law. Several individual tariffs, such as those on goods that did not compete with U.S. production (e.g., tea, coffee, and cocoa), were lowered. In 1833, Congress passed the Compromise Tariff Act. This law set into motion a series of annual reductions in tariff rates designed to bring about a uniform 20 percent tariff on all goods by 1842. The 20 percent uniform tariff came into effect on July 1, 1842. It remained in force for only two months before Congress, reacting to demands for greater protection from imports, voted increased tariffs on a variety of products.

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Between 1842 and the beginning of the Civil War in 1861, Congress passed two more tariff bills. Both of these bills instituted tariff reductions aimed largely at lowering the large surplus in the federal budget. In 1861, 1862, and again in 1864, Congress increased tariffs, ostensibly for the purpose of raising government revenue to help finance the war effort of the North. As they had after the War of 1812, however, tariffs remained high after the end of the Civil War. Tariffs would not fall until 1913, when, supported by Southern Democrats, the Wilson administration sponsored legislation that cut tariffs significantly. Tariffs fell to levels not seen for 60 years.

Unlike previous experiences with wars, tariffs remained low during World War I.† Shortly after the war, however, the U.S. economy fell into recession, the Republicans returned to the White House, and tariffs were raised once again. The law that raised these tariffs was the Fordney–McCumber Tariff of 1922. This act restored tariffs to their prewar levels and, by closing off American markets to foreign producers, helped to ensure that the war-torn countries of Europe would have a more difficult time rebuilding their economies.

The last general tariff bill Congress was to write came in 1930. This was, of course, the famous Smoot–Hawley Tariff. In Chapter 6 we described some of the features of the Smoot–Hawley Tariff and the response to the tariff by America's major trading partners. It is worth noting again how the bill came to be written. It began as a measure aimed at imposing tariffs on a limited set of agricultural products. To win passage of the law, its backers sought support for it from fellow members of Congress. The price of this support was to include in the law higher tariffs on goods produced in the congressional districts of these new supporters. This process of voting in favor of one proposal to earn return support for another is known as **logrolling**. The Smoot–Hawley Tariff is a classic example of the logrolling process. More and more members of Congress signaled their

Logrolling
The trading of votes by legislators to secure approval on issues of interest (e.g., tariffs) to each one.

* This passage is taken from Frank Taussig, *The Tariff History of the United States* (New York: G. P. Putnam's Sons, 1888), 88–89. This book is a fascinating and highly readable account of the economics and politics of protectionism in the United States in the nineteenth century. Taussig lived a long and productive life, and in subsequent editions of his book he analyzed tariffs as recent as the Smoot–Hawley Tariff.

† By 1913, the United States had enacted an income tax. Thus, there was less need to rely on tariffs to finance the war effort than there had been in previous wars.

willingness to support the bill, demanding in return higher tariffs for products produced in their district. The result was the highest set of tariffs since the Tariff of Abominations.* These were soon followed by the imposition of retaliatory tariffs overseas and a consequent fall in the volume of international trade.

The tariffs of 1828 and 1930 help to illustrate the problems inherent in a country where commercial policy is formulated by the legislative branch of government. When Franklin Roosevelt became president in 1933, his secretary of state, Cordell Hull, persuaded Congress to cede to the president the authority to negotiate with trading partners to achieve mutual reductions in tariff levels. The mechanism that allowed the president to engage in these negotiations was the Reciprocal Trade Agreements Act of 1934. This act gave the president the authority to negotiate the reduction of any U.S. tariff by up to 50 percent without recourse to Congress. Congress granted tariff-negotiating authority to the president for only three years. The authority was renewed in three subsequent trade bills enacted between 1937 and 1943. By 1945, the United States had negotiated 32 agreements with 27 different countries, reducing tariff rates on average by 44 percent.

The basic principle underlying the bilateral tariff negotiations entered into by the United States was that of **unconditional most favored nation status**. Under this rule, any special tariff cuts agreed to by the United States in bilateral negotiations (e.g., with Canada) would apply to the products of all other trading partners whom the U.S. government had designated with most favored nation (MFN) status.† I (назначать)

Unconditional most favored nation status
The principle of nondiscrimination in international trade.

After the end of World War II, several new international organizations and agreements were instituted. One of these was the General Agreement on Tariffs and Trade (GATT). The GATT served two main purposes in the international community. First, it set the rules of conduct of international commerce and served as an arena for hearings to resolve international commercial disputes. There were four key principles to the GATT rules: (1) Trade barriers should be lowered in general and quotas should be eliminated in particular; (2) trade barriers should be applied on a nondiscriminatory (most favored nation) basis; (3) once made, tariff concessions could not be rescinded without compensation to affected trade partners, nor could new barriers be erected to replace tariffs that had been lowered; and (4) trade disputes should be settled by consultation. The GATT trade rules form the basis for current rules of international trade. They are described further in Global Insights 8.1.

The second main purpose of the GATT was to provide a forum for a series of multilateral talks aimed at lowering levels of protection around the world. Between 1947 and 1993, eight rounds of these talks were completed, each of which led to reductions in tariff levels around the world. A ninth round, known as the Doha Round, began in 2001 and, scheduled to end in 2005, continues today. One of the outcomes of the Uruguay Round (8) was the creation of the World Trade Organization (WTO), which replaced the GATT. Table 8.1 presents details on the results of the various rounds.

The first two sets of negotiations to have a substantial effect on world trade barriers were the Kennedy Round talks, held between 1964 and 1967, and the Tokyo Round talks, held between 1974 and 1979. Both sets of talks led to substantial reductions in tariff levels of industrialized countries. The second round also produced some initial agreements on the reduction of certain nontariff barriers to trade. In both cases, the negotiations were preceded by the passage of legislation in the United States enabling the president to send delegates to

* For an analysis of the role logrolling played in the formation of the Smoot–Hawley Tariff, see Douglas Irwin and Randall Kroszner, "Logrolling and Economic Interests in the Passage of the Smoot–Hawley Tariff," *Carnegie-Rochester Series on Public Policy* (December 1996).

† See Chapter 6 for additional discussion on the concept of MFN status.

Global Insights 8.1

The GATT Agreement

The Preamble of the General Agreement proposes to raise living standards by reducing trade barriers and, in particular, by eliminating discriminatory trade practices. Part I states the basic principle of nondiscrimination and legally binds members to comply with their tariff concessions (уступка). Part II calls for the elimination of nontariff barriers, subject to several qualifications. Part III contains procedural rules, most importantly condoning the formation of freetrade areas. Part IV, added in 1965, addresses the special needs of developing countries.

Part I

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Article I provides that a tariff on an imported product should be applied equally to all members. This affirmation of nondiscrimination is called most favored nation (MFN) treatment.

Binding tariff schedules

Article II legally binds members to their tariff concessions. It states that tariffs should not be increased above the rates in each country's tariff schedule.

Part II

National treatment

Article III prohibits members from circumventing tariff concessions by employing nontariff policies to offset the effect of a tariff reduction. National treatment requires that internal taxes apply equally to domestic and imported products and that regulations treat imported goods "no less favorably" than similar domestic goods.

Customs regulations

Articles V and VII through X curb customs procedures that impede imports. Such activities include rules of transit (Article V), customs valuation (Article VII), customs fees and formalities (Article VIII), and marks of origin (Article IX).

Article X states that all laws and regulations regarding trade should be formulated and applied in a transparent manner, which requires public disclosure and the uniform and impartial administration of trade laws.

Antidumping and countervailing duties

Article VI defines dumping, states that both dumping and injury to domestic producers must be proved to merit an antidumping duty remedy, and specifies that antidumping duties should not exceed the dumping margin. It provides similar rules for the countervailing duty remedy to offset foreign government subsidies.

Quantitative restrictions

Article XI calls for the general elimination of quantitative restrictions (QRs) to trade, subject to several qualifications. Most importantly, QRs can be used to safeguard the balance of payments (Article XII) and to provide temporary escape clause relief for domestic industries (Article XIX). Developing countries can also use QRs to further developmental goals (Article XVIII and Part IV). Article XIII states that QRs, when employed, must be applied on a nondiscriminatory basis, with some exceptions listed in Article XIV. Article XV regulates the use of currency controls to evade QR restrictions, and coordinates GATT and IMF interests during balance-of-payments emergencies.

Subsidies

Article XVI discourages the use of subsidies in general, and calls for the elimination of export subsidies for nonprimary products in particular. Export subsidies for primary products should not cause a country to achieve more than an equitable share of world export trade in that product.

State-owned enterprises

Article XVII asserts that state-owned enterprises should choose among potential buyers and sellers according to normal business considerations, especially in terms of prices, quality, and procurement.

Government assistance in developing countries

Article XVIII affords developing countries exemptions to most of the requirements of the General Agreement, subject to rigorous criteria. Because of its strict standards, these exemptions have rarely been employed. Instead, developing countries have justified their use of such policies as nontariff barriers and export subsidies as safeguards for balance-of-payments problems.

Escape clause and other exceptions

Articles XIX through XXI provide additional exceptions to the general rules. Article XIX, the escape clause, allows countries to protect, through withdrawal of concessions or other measures, domestic producers from injury resulting from increases in imports. Articles XX and XXI identify other essentially noneconomic justifications for trade restrictions, such as for national security protection.

Consultation and dispute settlement

Articles XXII and XXIII lay out the dispute settlement process of GATT. Consultation between countries is emphasized, but panels of experts can also be asked to review cases on a nonbinding basis.

Part III

Procedural issues

Procedural and other administrative matters are taken up in Articles XXIV through XXXV. Most notably, Article XXIV addresses how free-trade areas are to be established; Article XXVIII sets rules for modifying tariff schedules, including a call for periodic tariff negotiations; and Article XXXIII establishes criteria for accession of new members.

Part IV

Trade and development—treatment of developing countries

Article XXXVI acknowledges the special problems confronted by developing countries, and states that developed countries should not expect reciprocity from developing countries. Article XXXVII contains a statement of the intent of developed countries to encourage developing-country exports by unilaterally lowering trade barriers, and Article XXXVIII includes encouragement to stabilize and improve market conditions for primary products.

Source: U.S. Congress, Congressional Budget Office, *The GATT Negotiations and U.S. Trade Policy* (Washington, D.C.: Government Printing Office, June 1987), 18–19.

the talks with specific authority to bargain for lower trade barriers.* The legislation allowing the United States to participate in what would become known as the Kennedy Round was the Trade Expansion Act of 1962. The Trade Reform Act of 1974 authorized U.S. participation in the Tokyo Round talks.† Authority for U.S. representatives to participate in the Uruguay Round talks was first granted in 1979, renewed in the Omnibus Trade Act of 1988, and extended into 1993 by Congress in 1991. Due to intense political squabbling over labor and environmental issues, trade negotiating authority for the Doha Round was delayed by the Congress until after the start of the round. It was finally granted in the Trade Bill of 2002, passed in August 2002. This law provided negotiating authority until 2007. Authority has not elapsed, although the talks continue on an irregular schedule and the United States still participates.

What led Congress initially to cede some of its trade policy authority to the president? Clearly, as we have noted in our discussion of the Smoot–Hawley Tariff, the trade policy formation process had broken down. Any discussion in the halls of Congress to institute even minor changes in tariff law would lead to an army of lobbyists seeking additional changes in tariffs. Tariffs were escalating, and with them came retaliatory tariffs imposed against U.S. goods by U.S. trading partners.

* Technically, as the person responsible for conducting foreign policy, the president can always negotiate to lower tariffs or other forms of protection. Whatever is agreed to in these negotiations must be approved by Congress. Thus, it is seldom the case that the president would initiate (or that foreign countries would participate in) negotiations without prior authority from Congress.

† As Table 8.1 shows, GATT conferences did not have names until the Dillon Round, held in 1961. Douglas Dillon was the secretary of the U.S. Treasury at the time of these talks and the leader of the U.S. delegation. The next round of talks was named for President Kennedy because he was president when the Trade Expansion Act was passed and in tribute to his memory. When President Nixon succeeded in obtaining passage of the Trade Reform Act of 1974, he hoped to have a round named after him, but the Watergate affair intervened. Instead, the round was dubbed the Tokyo Round, not because the negotiations took place in Tokyo—they were held in Geneva—but because Tokyo was where trade ministers met in 1974 and agreed to launch a new round of talks. The practice has been repeated with the naming of the Uruguay Round, since Punta del Este (in Uruguay) was where trade ministers met in 1986, and again with the Doha (Qatar) Round, following a 2001 meeting there of trade ministers.

TABLE 8.1 U.S. Tariff Reductions Under the GATT and WTO

	Subjects Covered	Countries Involved	Average Cut in All Duties	Remaining Duties as % of 1930
First Round, Geneva, 1947	Tariffs	23	21.1	52.7
Second Round, Annecy, 1949	Tariffs	13	1.9	51.7
Third Round, Torquay, 1950–1951	Tariffs	38	3	50.1
Fourth Round, Geneva, 1955–1956	Tariffs	26	3.5	48.9
Dillon Round, Geneva, 1961–1962	Tariffs	26	2.4	47.7
Kennedy Round, Geneva, 1964–1967	Tariffs & Antidumping Measures	62	36	30.5
Tokyo Round, Geneva, 1974–1979	Tariffs & NTBs	102	29.6	21.2
8 Uruguay Round, Geneva, 1986–1993	Tariffs, NTBs, Services, Intellectual Property, Dispute Settlement, Agriculture, WTO, etc	123	33	n.a.
9 Doha Round, Geneva, 2001–	Economic Development, WTO Rules, Tariffs, NTB, Services, Agriculture, etc.	153	n.a.	n.a.

Sources: WTO, http://www.wto.org/English/thewto_e/whatis_e/tif_e/fact4_e.htm and Real Phillipe Lavergne, *The Political Economy of U.S. Tariffs* (Toronto: Academic Press Canada, 1983), Table A2.1.

To its credit, Congress realized that the solution to its problems was to transfer some of its authority to the executive branch of the government. The action of Congress was entirely in its own self-interest. That is, by delegating tariff-setting authority to the president, members of Congress were giving "priority to protecting themselves: from the direct, one-sided pressure from producer interests that had led them to make bad trade law."* In the process, the interests of American exporters would receive greater attention because the focus of U.S. trade policy would be on opening foreign markets rather than closing domestic markets.

However, Congress did not remain content in its decision to delegate its authority to the president. With each successive trade bill after the 1934 Reciprocal Trade Agreements Act, additional restrictions were placed on the authority of the president. Features were added to bills that allowed, for instance, domestic firms to seek a repeal of tariff cuts, thereby abrogating concessions made to foreign trading partners. In some instances, concessions made to foreign governments hinged on both trade-related concessions *and* non-trade- related political actions, such as cooperation in drug control or enforcement of human rights protection. In general, as trade expanded because of the success of the multilateral trade liberalization talks, Congress instituted new forms of (usually product-specific) protection by mandating procedures for and restrictions on the behavior of the executive branch. As Robert Baldwin notes,

> A rough idea of the increase over the years in the degree of specificity in the authority granted the president can be obtained by noting that the Trade Agreements Act of 1934 was 2 pages long, the 1958 extension 8 pages long, the Trade Expansion Act of 1962, 32 pages, the Trade Act of 1974, 99 pages, the Trade Agreements Act of 1979, 173 pages, and the Trade and Tariff Act of 1984, 102 pages.†

* I. M. Destler, *American Trade Politics: System Under Stress* (Washington, D.C.: Institute for International Economics, 1986), 12.

† Robert Baldwin, *The Political Economy of U.S. Import Policy* (Cambridge, Mass.: MIT Press, 1985), 38.

THE URUGUAY ROUND AND THE CREATION OF THE WTO

The Uruguay Round was launched at a meeting of trade ministers in Punta del Este, Uruguay, in October 1986.* The formal negotiating process, involving representatives from more than 100 countries, began in late 1986 and was expected to last for four or five years. Instead the talks soon became deadlocked over a number of thorny issues; they dragged on until a last-minute agreement was struck in December 1993, hours before a U.S.-imposed deadline was due to expire. What made the Uruguay Round so contentious was that unlike earlier rounds, which had focused on reducing tariffs, these negotiations were concentrated on reducing nontariff barriers, expanding protection of intellectual property rights, liberalizing trade in services and agriculture, and improving the functioning of the GATT system. Most of these objectives had been ignored in previous rounds for fear that disagreements over these issues would undermine the negotiations, and that was almost the case with the Uruguay Round.

Over the final three years of the talks the biggest stumbling block to an agreement involved liberalization of trade in agricultural products. As written, GATT rules had always applied to trade in agriculture. However, member countries—including the United States, Japan, Korea, and the EU—were able to obtain waivers on these rules. As a consequence, many countries continued to use high tariffs or quotas to protect agriculture, even as protection levels on most manufactured goods came down.

By all accounts the most egregious protectionist policies have been applied by the EU. To protect local farmers, the EU operates a system of target prices for various farm products combined with import barriers and export subsidies. This system is known as the Common Agricultural Policy (CAP). The combination of EU import barriers and export subsidies of its surplus agricultural products severely affects world prices.† During the negotiations, the CAP came under heavy criticism from the United States and especially a group of agricultural exporting countries known as the Cairns Group. The United States sought a significant reduction in subsidized exports and greater access for U.S. products in EU markets. However, the EU, led by France on this issue, refused to make any major concessions. Finally, in December 1993, the EU and the United States reached a compromise agreement on agriculture, allowing the Uruguay Round to be completed. During these talks other countries also announced liberalization of their agriculture policies. Both Korea and Japan announced the end to long-standing policies of embargoes on imports of rice.

The Uruguay Round also achieved some limited success in liberalizing international trade in services. Production and trade in services, including banking, construction, insurance, data processing, and audiovisual entertainment, have grown rapidly in the past few decades. The WTO estimates that cross-border trade in services totaled $3.6 trillion in 2010, about ten times 1980 levels, and about one-third the size of world merchandise trade. The GATT had never set down formal rules of behavior for trade in this area; many countries continue to restrict various types of services trade. This is especially true in developing countries. In March 1992, agreement appeared to be close on rules governing trade in several service sectors, including telecommunications and financial services. However, in the final draft of the Uruguay Round agreement only modest progress was made in extending GATT rules to these or any other service sectors. The agreement calls for countries to write regulations and licensing procedures that treat service companies from other nations the same as domestic companies. But member countries have made only modest commitments to change their rules to reflect these principles. Moreover, some issues, such as a dispute between the United States and the EU over European restrictions and taxes on American television and movies, were left completely unresolved.

*For an excellent discussion of the major achievements of the Uruguay Round, see Will Martin and L. Alan Winters, *The Uruguay Round: Widening and Deepening the World Trading System* (Washington, D.C.: World Bank, 1995).

†Almost 20 years after the end of the Uruguay Round, the CAP remains in place. In 2010, roughly half of the total EU budget went to supporting this program.

Even though many compromises were made that have slowed trade liberalization, the Uruguay Round agreement has had and continues to have a major impact on the evolving international trade environment. On January 1, 1995, the agreement took effect with a series of tariff cuts made by signatory countries; since then tariff levels have come down another 33 percent. By the beginning of 2005, industrial countries had phased out all quotas on textiles and apparel, although both the United States and the EU negotiated temporary restraints on textile and apparel products from China. Those agreements have now expired.

Perhaps the most substantive achievement of the Uruguay Round was the creation of a new international institution, the WTO. The WTO replaced the GATT as the international organization responsible for enforcing existing international trade agreements and serving as a host for new talks to liberalize trade. As of early 2012, 157 countries had become members of the WTO; these countries account for more than 98 percent of world trade. Another 26 countries are in the process of applying for membership. The basic rules of the WTO are the principles laid out in the GATT agreement as well as those established in the Uruguay Round. Countries must accept all of the results of the Uruguay Round, without exception, to become WTO members. The WTO is responsible for setting new rules for goods and services trade, international investment, and protection of intellectual property rights. It also operates a strengthened disputes settlement procedure.

The old GATT was often criticized because it lacked an enforcement mechanism. When disputes between countries arose, the members were urged to consult. Should consultations fail, a panel of third-country representatives could be formed to hear the case and issue a ruling. However, the panel rulings were nonbinding on parties. If a country won a GATT case, it could appeal to GATT for permission to retaliate against the offending country. However, the offending country could veto retaliation.

The WTO dispute settlement procedures make more automatic the adoption of the findings of panels charged with settling trade disputes and of an appellate body designed to hear appeals of panel decisions. It provides for cross-retaliation (i.e., withdrawal of benefits in one sector for violations of rules in another). One goal of a stronger dispute settlements mechanism is to limit unilateral determinations that trade rules have been violated by affirming that members shall not themselves make determinations that a violation has occurred.

The WTO dispute settlements system has been remarkably active and successful. Between January 1995 and September 2011, 427 cases have been notified to the dispute settlements process, involving more than 200 distinct matters. This total is almost four times larger than the total number of cases brought to the GATT during its 50-year history. The fact that so many cases have been brought to the WTO speaks volumes about the increased effectiveness of this system versus that in place under the GATT. The decisions that have been reached by the panels have sometimes been controversial and therefore labeled as sinister. WTO panel decisions have been portrayed by critics as decisions of a super-governmental body that forces democratic nations to overturn their own laws in favor of the wishes of multinational corporations. In fact, this is not so. WTO panels do nothing more than try to ensure that national governments do not pass laws that violate the international commercial agreements to which these governments have already agreed. The WTO cannot force member countries to open their economies to trade and investment beyond the levels that have already been chosen. Nonetheless, an effective dispute settlements mechanism means that agreements will be adhered to more closely; this has made the WTO much stronger than the GATT it replaced.

A strong WTO has been viewed by some as possibly detrimental to the world environment. This has happened because some environmental policies of member countries have been challenged as violating WTO rules. Indeed, the relationship between environmental and trade policy is of increasing interest to WTO officials. WTO rules currently place no constraints on the ability of countries to implement regulations on production or consumption activities in the domestic economy that could have adverse environmental impacts.

When the environmental problem is due to production or consumption activities in another country, WTO rules do constrain domestic regulatory actions, since they prohibit making market access dependent on changes in the domestic policies or practices of the exporting country. To do otherwise would invite many new trade restrictions as countries either attempt to impose their own domestic environmental standards on other countries or use such an attempt as a pretext for reducing competition from foreign imports.

However, the fact that WTO rules block unilateral use of trade measures as environmental policies does not mean that countries are powerless. They can negotiate multilateral agreements to take common actions. For instance, in 1987 a large number of countries signed the Montreal Protocol, which calls for a ban on trade in products that deplete the ozone layer. That protocol went into effect in 1989. Since then, several revisions to the agreement have expanded the number of banned products and provided further economic and technical assistance to developing countries participating in the agreement. There are currently 191 signatory countries to the protocol. It is believed that if the agreement is adhered to, the ozone layer will fully recover by 2050.

Another international agreement aimed at protecting the environment, the Kyoto Protocol, was created in 1992 and entered into force in 2005. Signatories to this protocol have agreed to take actions to reduce emissions of greenhouse gases in their countries to levels below those found in 1990. One element of the protocol is that actions taken by countries must be WTO consistent. That is, countries must not use trade measures to arbitrarily or unjustifiably discriminate against foreign countries. To date, 183 countries have signed the agreement. The United States is a signatory country, but has not (as of early 2012) passed legislation required to enforce the agreement.

In cases where multilateral agreements fail, countries can seek waivers from WTO rules to implement their policies. In either case, these options offer the prospect of resolving environmental problems without resorting to the excesses that could result from unilateral actions.

TRADE POLICY CASE STUDY 1

U.S. Tuna Quotas to Save Dolphins

Dolphins frequently school near stocks of yellowfin tuna in the eastern Pacific; a common way for tuna fishers to search for yellowfin stocks is to hunt for schools of dolphins, which often swim above the tuna. In the process of encircling the tuna, some dolphins are trapped in tuna nets, where they suffocate. There is no commercial market for dolphin meat, so the dead dolphins are discarded.

While the incidental catch of dolphins is an isolated problem—it occurs only in the eastern Pacific—it has long been a concern to animal rights groups, which have complained loudly to Congress. The Marine Mammal Protection Act (MMPA) was passed in 1972 to limit tuna harvests that would endanger dolphins. The act called on the government to close the eastern Pacific fishing area should tuna harvesting result in a catch of dolphins in excess of an annual quota of 20,500. The quota was first reached in October 1986, and the area was closed to the U.S. tuna fleet for the rest of the year. The MMPA also authorized import restrictions on fish from countries that use fishing practices that endanger marine mammals. Imports were permitted from those countries that followed U.S. standards, but amendments to the MMPA in 1984, 1988, and 1990 made it increasingly hard for foreign countries to meet U.S. standards with respect to yellowfin tuna. In April 1990, the U.S. District Court of Northern California imposed an embargo on imports of Mexican tuna under the provisions of the MMPA; the embargo was upheld on appeal in February 1991. Mexico immediately challenged the embargo under the GATT.

Mexico argued that the measures prohibiting imports of yellowfin tuna were quotas, which are prohibited by GATT Article XI. The United States responded that the measures were not quotas but rather internal regulations that applied to all tuna, whether imported or caught by U.S. tuna fishers. The GATT panel found in favor of Mexico in September 1991. It did so on the grounds that the U.S. policy did not treat Mexican and U.S. tuna fishers equally. While the U.S. standard allowed Mexican fishers to kill dolphins in the process of catching tuna, the number of dolphins they were permitted to kill was based on the quantity killed by U.S. fishers—a quantity that would be known only after the fact. Thus, Mexican officials would have no way of knowing, at any point in time, whether they were in conformity with U.S. standards. This unpredictability was not necessary to protect dolphins, the panel found, and could not be justified as an exception to GATT rules. In October 1991, the two countries requested that the panel report be tabled, pending negotiations over a bilateral agreement about the problem.

Shortly thereafter, 10 countries that fish for yellowfin tuna in the eastern Pacific Ocean, including the United States and Mexico, set up a voluntary international dolphin protection program known as the La Jolla Agreement. The agreement was the first to set international limits on dolphin mortality and set a goal of decreasing dolphin deaths to less than 5,000 by the year 2000. The program involved 100 percent observer coverage, captain and crew training in dolphin release techniques, and data collection on dolphin biology and by-catch.* The program was so successful that dolphin mortality went from 100,000 deaths per year in 1989 to fewer than 2,700 in 1996.

In 1995, 11 nations, including the United States and Mexico, signed the Panama Declaration. This agreement called on the United States to lift the embargoes on tuna from the eastern Pacific Ocean for those countries participating in the agreement and to change the definition of *dolphin-safe* to include tuna caught in encircling nets that resulted in zero mortality of dolphins in the process. At the time, the dolphin-safe definition meant only that no encircling nets were used to catch the tuna in the eastern Pacific Ocean. Fishermen who caught tuna with other methods—or in other areas of the world—but killed dolphins in the process were still allowed to use the dolphin-safe label.

In 1997, Congress made the Panama Declaration definition legally binding by passing the International Dolphin Conservation Program Act. It officially rescinded the import embargo on tuna caught by encircling nets and required an observer from an international oversight group to accompany every tuna boat using encircling nets. In early 2002, the Department of Commerce announced it was easing the rules on the use of the dolphin-safe label. This move was challenged in U.S. courts by environmental groups and was overturned in 2004. The federal government fought this ruling, but in 2007 a U.S. federal appeals court again ruled that waivers on the ban of tuna caught with encircling nets were consistent with the intent of the Congress. In 2008, Mexico filed a complaint with the WTO regarding this policy. In September 2011, a WTO dispute panel ruled in favor of Mexico finding that the United States could not restrict the designation "dolphin-safe" from Mexican tuna, since Mexican fishing practices were in compliance with international guidelines for dolphin safety. The United States has announced that it will appeal the ruling.

* By-catch is the capture of unmarketable or restricted commercial fishing species.

THE DOHA ROUND

The Doha Round of trade talks was launched at a meeting of trade ministers in Doha, Qatar, in November 2001. The agenda for these talks was ambitious, with many contentious issues to be resolved and more than 100 countries participating in the negotiations. The ministerial declaration that set out the goals of the talks focused on the links between economic growth and trade liberalization. More than 10 years into the negotiations, little progress has been made, and in July 2008 the talks collapsed. From time to time since that date, attempts have been made to restart serious negotiations. However, as of early 2012 no real progress has been made.

Twenty-one issues originally were identified as topics for negotiation. Some of these include:

Implementation. Developing countries are having problems in implementing current WTO agreements reached in the Uruguay Round. In some cases, these countries want to be excluded from these agreements. In others, they want a slowdown in the timetable for adopting the new trade rules.

Agriculture. The purpose here is to bring world trade in agricultural products more in line with comparative advantage through the reduction of barriers to trade, the elimination of export subsidies, and reduction in internal production support programs.

Services. The goal is to liberalize trade in commercial services.

Market access. The Doha Round calls for tariff-cutting negotiations on all nonagricultural products. The aim is "to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries." These negotiations shall take fully into account the special needs and interests of developing and least-developed countries, and recognize that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants.

Intellectual property. A focus of these talks will be to amend the existing TRIPs agreement to improve public health conditions in developing countries. To that end, agreement will be sought to promote better access to existing medicines and encourage the creation of new medicines.

Environment. Negotiations are to focus on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. The negotiations will address how WTO rules are to apply to WTO members that are parties to environmental agreements.

Least-developed countries. Many developed countries have scrapped or lowered tariffs on goods from the poorest of the world's countries. The Doha Round seeks to achieve tariff-free, quota-free market access for the goods from these countries.

The declaration that launched these talks set a deadline of January 1, 2005 for the completion of negotiations. Shortly after the start of talks significant differences arose among the trade ministers, and it became clear that the original deadline could not be met. In December 2005, trade ministers from the WTO countries convened in Hong Kong in an attempt to reinvigorate the talks. However, little of substance was achieved at this meeting other than to set a new target date of December 31, 2006, for a conclusion of the round. The key problem holding up the talks is substantial disagreement as to how to handle trade in agriculture. For internal political reasons, major industrial countries—including the United States, the EU, and Japan—continue to use production subsidies and impose significant import barriers on agricultural goods. These policies distort trade more dramatically than in any other sector of international trade. In turn, developing countries are неохотно reluctant to offer to reduce their own import barriers on industrial goods and services until the industrial countries' agricultural policies are changed.

The 2006 deadline also passed without an agreement. Since then, the director-general of the WTO, Pascal Lamy, has convened several ministerial meetings in a vain attempt to reach consensus. The most recent of these concluded in December 2011 with the announcement that no further progress had been achieved in concluding an agreement. Significant disagreements over all of the issues described earlier continue to limit any movement toward consensus. Meanwhile, the U.S. president's negotiating authority has expired, and it is likely that no attempt will be made by the administration prior to the 2012 elections to seek new authorization. Given all of this, it seems unlikely that the Doha Round will ever reach a successful conclusion.

THE CONDUCT OF U.S. COMMERCIAL POLICY

American trade law has a certain schizophrenic quality. On the one hand, in major trade legislation passed since 1934, Congress has authorized systematic reduction in American trade barriers in exchange for negotiated reductions in foreign barriers. On the other hand, Congress has provided American businesses with alternative mechanisms for seeking and obtaining relief from foreign competition. These procedures define the rules of legal commercial activity and allow for assistance, in the form of higher levels of protection, from either unfair *or* fair foreign competition. In this section we discuss in detail some of these measures.

Dumping

Dumping
Selling a product in a foreign market at a price that is below fair market value.

Dumping is defined as selling a product in a foreign country at a price that is lower than the price charged by the same firm in its home market or at a price below costs of production. Sales of this sort are defined in U.S. law to be sales at less than fair value (LTFV).

Before we discuss the legal procedures involved in dealing with dumping, let's explore a bit further the economics of dumping. Consider Figure 8.2. Suppose this graph represents the market for cotton sweaters in the United States. Let P_W represent the price of sweaters in world markets as well as the price in the domestic market of the exporting country, say, Korea. Under free trade conditions in the United States, the price of sweaters would also be P_W, and MN units would be imported. Holding everything else constant, if the Koreans were to lower the price they charged for their sweaters to, say, P_1, then they would be dumping in the U.S. market.

Suppose that the Koreans did dump their sweaters at price P_1. How would the United States be affected? Clearly, consumers would benefit, and domestic sweater producers would lose. However, the gain to consumers would exceed the loss to domestic producers, so that U.S. welfare would rise. An obvious question emerges from this analysis. If foreign dumping is good for America, why does Congress legislate against it? The answer is that in this instance at least, Congress is more interested in preserving the profits of domestic producers than it is in raising U.S. welfare. In addition, there is a fear that foreign dumping may be **predatory**.

Predatory dumping
Dumping intended to drive foreign competitors out of their market so that the market can be monopolized.

Consider what would happen if the Koreans were to charge P_2 instead of P_1. Clearly, U.S. firms would be driven from the market. This would happen because P_2 is below the minimum price necessary for any domestic production to occur (i.e., it is below the intercept of the domestic supply curve). Without competition from domestic firms, it is sometimes argued that foreign firms would stop charging such low prices and begin to behave as monopolists. Under these circumstances, dumping would be harmful. While this makes a good story, there is no documented evidence that predatory dumping has ever occurred or that it could ever occur. If foreign firms were to begin pricing in a monopolistic fashion, this would certainly entice new firms to enter or old firms to return to the market. Thus, if foreign firms want to maintain the entire U.S. market to themselves, they must keep their prices low enough to discourage entry by U.S. firms.

Under what circumstances is dumping likely to occur? One scenario involves a foreign industry that has some degree of market power both in its domestic market and in its foreign market. Because of this market power, the firm can set its own prices and does so in a fashion that maximizes its profits from selling in the two markets. Now, if the firm faces different demand curves in the two markets, and if it is not possible to resell the goods between markets, then the

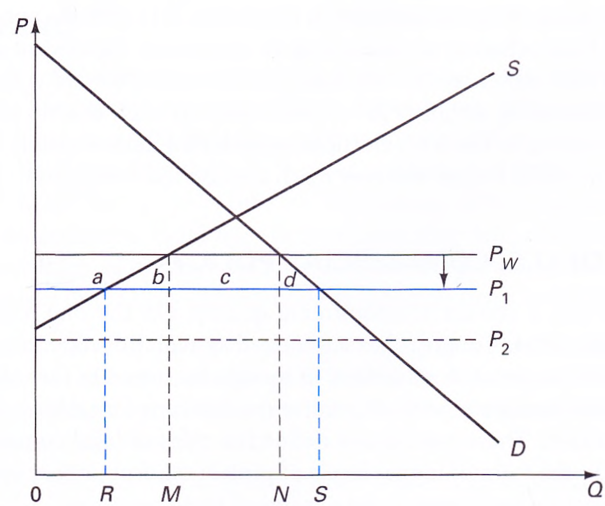

FIGURE 8.2 Dumping

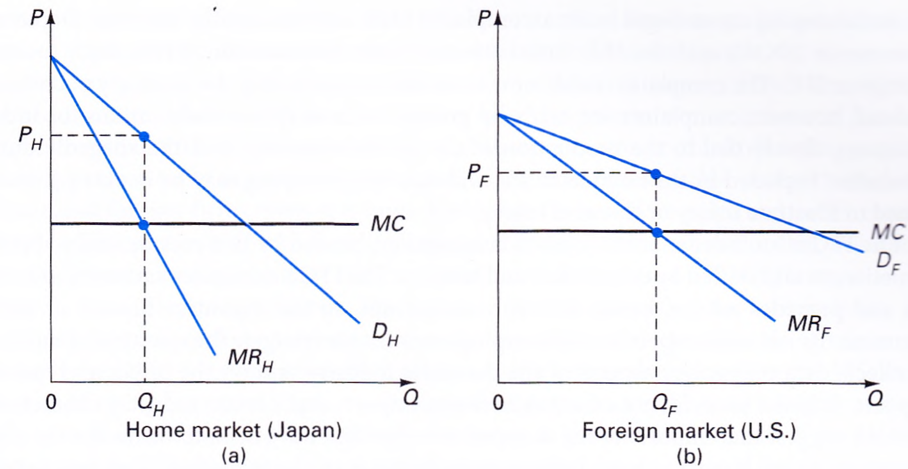

FIGURE 8.3 International Price Discrimination

firm will charge different prices in the two markets. In other words, it will practice **international price discrimination**. And if demand for its products is more inelastic in the firm's home market, it is quite likely that the price the firm will charge at home will be higher than the price it will charge overseas.

International price discrimination
Selling a product in two different countries at two different prices.

Consider Figure 8.3. There, we show the two markets faced by a Japanese semiconductor firm. In the left panel of the figure, we show the demand curve in the domestic (Japanese) market for the firm's product. In the right panel, we show the foreign (U.S.) market for this product. The domestic demand curve is shown to be steeper (less elastic), reflecting perhaps greater familiarity with this product in the home market. The U.S. demand curve is shown to be flatter, reflecting the possible existence of locally produced substitutes. Suppose now that the marginal cost of production is identical (and constant) regardless of where the product is to be sold. This is illustrated by the horizontal marginal cost (MC) line with the same height in both panels of the figure. To maximize its profits, the firm will produce at the output levels in each of the two markets where marginal revenue (MR) equals marginal cost (MC). Then, given the output levels it has chosen for the two markets, it will set a price in each market to be able to sell its output. As we have drawn it, the price it charges at home is higher than the price it charges in the United States. In other words, dumping can result from profit-maximizing behavior.

International price discrimination is one possible explanation for dumping. Dumping could also occur if a foreign firm were to receive a production or export subsidy from its government. Such a subsidy would help defray the costs of production, thereby allowing a firm to charge a price below its marginal cost. When a firm dumps in world markets under these circumstances, the taxpayers in the firm's home country, in effect, are picking up part of the tab for consumption that occurs in countries where the good is sold. As many economists have joked, under these circumstances, residents of the country where the dumping occurs should send the foreign taxpayers a thank-you note.

брать на себя

Antidumping Law

Current antidumping law provides that under certain conditions, a special tariff (in addition to any normal duty) be imposed on foreign goods sold in the United States and priced at less than fair value. The special tariff should be equal to the difference (known as the **dumping margin**) between the actual (lower) selling price and the (higher) fair market value of the product. To have the special tariff imposed, it is necessary to show that the dumping has materially injured a domestic industry or threatens to injure a domestic industry. The requirement that injury must be present or threatened is known as the **injury test**.

Dumping margin
The difference between the market price of a product and its fair market value.

Injury test
An investigation to determine whether an unfair foreign trade practice has caused or threatens to cause harm to a domestic industry.

Antidumping cases begin with a complaint filed simultaneously with the Department of Commerce (DOC) and the U.S. International Trade Commission (ITC), both located in Washington, D.C. The complaint could come from anyone, including the secretary of commerce. In general, however, complaints are made by groups, such as firms, trade unions, or industry associations, closely tied to the production of the good competing with the allegedly dumped merchandise. Included in the complaint are evidence that dumping may be occurring and data designed to illustrate injury or threat of injury.

The ITC is an independent, quasi-judicial agency, headed by five presidentially appointed commissioners and staffed by economists and lawyers. The ITC investigates various trade-related issues and provides advice, based on its investigations, to the executive branch of the U.S. government. Its job with respect to antidumping cases is to investigate the question of injury. The ITC collects data on various aspects of the domestic industry and on the prices and quantities of imports. It looks for evidence of a link between imports and certain industry characteristics that would suggest that imports of the dumped merchandise have been to blame for the state of the industry. These industry characteristics include losses in the following: sales, market share, profits, productivity, return on investment, and capacity utilization. The ITC also considers effects on employment, inventories, wages, and the ability to raise new capital. Once the data have been collected and analyzed, the five commissioners vote on the question of injury. In a dumping case, the ITC has 45 days from the initiation of a petition to determine if there is "reasonable indication" of material injury.

If the ITC makes a preliminary injury determination, the DOC investigates whether dumping has actually occurred. At the same time, the ITC launches a deeper investigation of industry circumstances in order to make a final determination on the extent of injury to the industry. The DOC has 140 days to make a preliminary assessment of the question, including a first guess as to the size of the dumping margin. If the DOC finds that there is evidence that dumping might exist, all imports of the product in question are immediately subject to an increased tariff equal to the estimated dumping margin. The DOC then begins a further investigation of whether dumping has occurred and, at the completion of the investigation, makes a final ruling. If, after further study, the DOC finds that dumping has not occurred, then the special duties that had previously been imposed are rebated. Otherwise, the process continues until the ITC makes its final ruling as to the extent of injury.

If the ITC rules in its final report that injury has not occurred, then again the case is terminated and the special duties are rebated. If both the DOC and the ITC rule in favor of the petition, a permanent tariff is put in place, equal to the dumping margin calculated by the DOC in its final investigation.

For the DOC to calculate dumping margins, it must determine the fair market value of a product. U.S. law provides three alternatives. The preferred statistic for the calculation is the price of identical goods sold in the exporter's home market, so long as this price exceeds cost. If no such data exist, then prices in third-country markets are used (again, so long as these prices exceed production costs). If these data are unavailable or if the DOC determines that obtaining information on these prices would take too much time, then the DOC constructs a value based on the costs of production plus at least 10 percent for general expenses *and* at least 8 percent for profits.

In the past several trade bills, Congress has sought to increase the rate at which antidumping cases are filed and judgments awarded. In 1980, the responsibility for investigating the size of the dumping margin was transferred from the Treasury Department (which had handled these cases since 1921) to the DOC. It was believed that as the chief advocate for American business in the U.S. government, the DOC was likely to be more aggressive in fighting foreign dumping than the Treasury Department. In addition, in several recent bills, Congress has directed that greater use be made of constructed values rather than foreign prices in calculating fair market value. The use of constructed values clearly makes it more likely that the DOC will find that dumping exists. By requiring rigid expense and profit markups in constructed-value calculations, the law effectively brands as "unfair," and therefore prohibits, standard business practices such as lowering prices and accepting decreased profits when market conditions are poor.

Antidumping laws are one form of the many types of nontariff barriers, which are described in more detail in Chapter 7. Consider how the process works in favor of local firms. If they can convince the DOC and the ITC that there is reason to think dumping might have occurred, protection is immediately awarded. If there is considerable competition between domestic and foreign firms, then it is quite likely that there will be price and profit cutting on both sides. The presence of antidumping laws puts foreign firms on notice that this competition must be restrained or else they face, at a minimum, the expense of hiring lawyers to defend themselves in antidumping hearings. The law does provide an option for foreign firms. At any time during the process, foreigners can escape the imposition of duties by entering into an agreement with the DOC to either raise their prices or stop selling their goods in the U.S. markets. Thus, antidumping laws tend to place a floor on foreign prices and to limit foreign competition. Finally, note that antidumping laws offer no discretion to government officials. If the DOC finds dumping and the ITC finds injury, tariffs will be imposed. This is so even if the tariffs may harm more U.S. firms than they help.

American firms make considerable use of antidumping laws. Between 1980 and 2008, almost 1,200 cases were initiated. Table 8.2 provides some information on the disposition of these cases. A positive finding means that the ITC found injury. The cases that were terminated

TABLE 8.2 U.S. Antidumping Cases: 1980–2008

	Terminated	Negative	Positive	Total
1980	10	15	9	34
1981	6	5	4	15
1982	28	25	12	65
1983	8	14	12	34
1984	29	13	16	58
1985	36	20	26	82
1986	12	14	37	63
1987	4	15	17	36
1988	3	14	21	38
1989	3	9	17	29
1990	2	4	15	21
1991	6	40	19	65
1992	4	47	38	89
1993	16	9	11	36
1994	4	26	29	59
1995	3	6	9	18
1996	2	2	9	13
1997	2	7	14	23
1998	0	11	22	33
1999	6	24	20	50
2000	2	15	18	35
2001	9	43	40	92
2002	2	21	12	35
2003	10	11	14	35
2004	6	8	20	34
2005	0	4	6	10
2006	3	3	2	8
2007	1	11	25	37
2008	2	1	23	26
Totals	219	437	517	1173

Source: U.S. International Trade Commission, *Import Injury Investigations Case Statistics*, February 2010.

likely represent situations where foreign firms agreed to raise their prices. Thus, over the 29-year period in the table, only 37 percent of the antidumping cases were disposed of without duties being imposed or foreign prices increased.

Despite the fact that the WTO requires a five-year sunset review of all active dumping cases, most of the antidumping duties imposed since 1980 are still in place. Products involved in these cases include a wide variety of steel products from many countries: honey from Argentina; pencils, paper clips, and garlic from China; semiconductors from Korea; and salmon from Norway. U.S. steelmakers represent the industry that takes the greatest advantage of American antidumping laws. Roughly half of the antidumping duties imposed since 1970 have been on steel imports, and when these duties are imposed the DOC typically takes no account of potential downstream effects. For instance, because of these duties the price of steel rises, and so too do the prices of products such as manufacturing and transportation equipment that use steel in their production. According to N. Gregory Mankiw and Phillip L. Swagel, "one recent study found that each job saved by steel tariffs came at the cost of three jobs in steel-using industries."*

Of the 1,173 cases initiated between 1980 and 2008, 141 were against China, 111 against Japan, 72 against Korea, 65 against Germany, and 62 against Taiwan. On average, antidumping duties are 10–20 times higher than MFN tariffs. Tariffs this high are a remarkably effective mechanism to reduce foreign competition. In a 2001 study, Thomas Prusa argued that U.S. antidumping duties cause the value of imports to fall by 30–50 percent.

Countervailing Duty Law

Countervailing duty

A tariff designed to raise the price of an imported product to its fair market value.

As we previously noted, one possible cause of dumping is the provision of production or export subsidies by foreign governments to their firms or industries. Congress views such subsidies as an unfair trade practice regardless of whether or not dumping actually occurs. U.S. trade law provides for **countervailing duties** to offset the effects of any subsidy allocated for the production or export of a good that is subsequently imported into the United States.

Countervailing duty (CVD) cases are handled much like antidumping cases. There are two main differences. First, foreign firms that receive a subsidy need not be practicing international price discrimination for domestic firms to receive protection. Second, in some cases, no injury test is required. In these cases, if a subsidy is shown to exist, the duty is imposed—even if domestic industry has not been harmed or even threatened with harm.

Upstream subsidy

A subsidy that lowers the cost of an input for a manufacture.

Petitions are filed with the DOC and, in situations where an injury test is required, with the ITC. The DOC investigates whether a subsidy exists and, if so, its size. According to the law, subsidies are direct and/or indirect grants for the production or export of goods. They can take many forms, including direct cash payments, tax credits, or loans with artificially low interest rates. Current law also applies to **upstream subsidies**. An upstream subsidy is said to exist if a foreign manufacturer is able to purchase an input at an artificially low price because the government of that country has subsidized the use of this input.

пропорцион. кол-во

In addition to U.S. law against subsidies, the WTO administers a subsidies agreement reached as part of the Uruguay Round negotiations.† The agreement establishes three categories of subsidies: those that are *prohibited;* those that are *actionable;* and those that are *non-actionable.* In general terms, prohibited subsidies are those that are made available contingent upon export performance or upon the use of domestic over imported goods. Prohibited subsidies are subject to dispute settlement procedures that include an expedited timetable for action by the WTO dispute settlement body. If it is found that the subsidy is indeed prohibited, it must be immediately withdrawn. If this is not done within the specified time period, the complaining member is authorized to take countermeasures. With respect to actionable subsidies, the starting point is that no member

* N. Gregory Mankiw and Phillip L. Swagel, "Antidumping: The Third Rail of Trade Policy," *Foreign Affairs* (2005), p. 114.

† This agreement is known as the WTO Agreement on Subsidies and Countervailing Measures.

of the WTO should cause, through the use of subsidies, adverse effects to the interests of other members. Members affected by actionable subsidies may refer the matter to the dispute settlement body. In the event that it is determined that adverse effects exist, the subsidizing member must withdraw the subsidy or remove the adverse effects. Non-actionable subsidies could either be nonspecific subsidies or specific subsidies involving assistance to industrial research and precompetitive development activity, assistance to disadvantaged regions, or certain types of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations. Where another member believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may seek a determination and recommendation on the matter.

The agreement also contains provisions on the use of countervailing measures. Thus, it sets out disciplines on the initiation of countervailing cases, investigations by national authorities, and rules of evidence to ensure that all interested parties can present information and arguments. порядк

Disciplines on the calculation of the amount of a subsidy are outlined, as is the basis for the determination of injury to the domestic industry. The agreement requires that relevant economic factors be taken into account in assessing the state of the industry and that a causal link be established between the subsidized imports and the alleged injury. All countervailing duties have to be terminated within five years of their imposition unless the authorities determine on the basis of a review that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. повторение

Unfair Foreign Practices: Section 301

Up to this point, our discussion has centered on U.S. trade law provisions to deal with unfair foreign trade practices in U.S. markets. U.S. trade law has also provided a means to combat perceived unfair practices in foreign markets. **Section 301** of the Trade Act of 1974 provides authority to the president to enforce U.S. rights under international agreements and to respond to certain unfair trade practices in foreign markets. That is, the emphasis in these cases is on the actions of foreign governments taken in their own markets against U.S. firms. If foreign governments engage in policies or practices that burden, restrict, or discriminate against U.S. commerce, the United States may impose import restrictions against the products of that country in the event that an agreement cannot be reached to end the offensive practices.

Section 301
A provision in U.S. trade law that requires the U.S. government to negotiate the elimination of foreign unfair trade practices and to retaliate against offending countries if negotiations fail.

страны – наруши

Section 301 cases are administered by the office of the U.S. Trade Representative (USTR). USTR is an agency within the executive branch that is charged with advising the president on trade policy matters and coordinating the U.S. government in its trade negotiations. It is headed by a cabinet-level official whose title is also the U.S. Trade Representative (the USTR).*

Petitions to begin a Section 301 case are presented to USTR. They can be filed by anyone, including cases self-initiated by the U.S. government. The USTR has a short period of time (usually about six weeks) to decide whether to accept a case. If it is accepted, negotiations begin between the U.S. government and the government against which the complaint has been filed. When the dispute involves practices of another WTO member country over products or practices covered under any of the WTO agreements, consultations and negotiations take place in the WTO as part of the WTO dispute-settlement process. In other situations, the WTO is not brought into the picture. In these latter cases, if no agreement is reached in the negotiations, the statute requires action by the USTR within one year of the onset of the case. The action may be to continue the talks, to drop the case for lack of merit, or to impose retaliation by closing U.S. markets to exporters in the foreign country to persuade the country to end its practices.

Between 1975 and August 2002, 121 Section 301 cases were undertaken by the U.S. government. Roughly half of these have been resolved successfully in that the offending foreign

* To avoid confusion (we hope), we refer to the office as USTR and to the individual as *the* USTR. Ron Kirk currently serves as the USTR.

practice was eliminated or modified in some way, although less than half of these have resulted in any significant expansion in U.S. exports of the product in question. Thirteen have resulted in retaliation by the United States against foreign products, in the form of higher tariffs or stricter quotas. Many cases dragged on for years, either because the old GATT process was slow and cumbersome or because the (private) parties to the dispute had become happy with the status quo. Several cases were dropped after investigations failed to show that U.S. commerce was adversely affected by the foreign practices.

Since the creation of the WTO, the USTR has been able to make use of the dispute settlement system in order to achieve success with Section 301 disputes. Trade Policy Case Study 2 provides an example. This change in policy provides more evidence of the success that the WTO has achieved in helping its member countries resolve disputes without resorting to unilateral retaliatory trade measures.

TRADE POLICY CASE STUDY 2

The International Bananas Dispute

Bananas grow in countries with tropical climates. The most productive areas for banana production are the countries of Central America and certain countries in South America. Over the past several decades, banana production has been growing rapidly, almost doubling in the past two decades. Despite this vast increase in production, bananas are very expensive in the countries of the EU; they often retail for twice the price paid in stores in the United States. The reason for this is a complicated system of tariffs and quotas that the EU imposed in 1993 to control imports of bananas. The stated purpose of the EU policy was to support banana production in former European colonies located in Africa, the Caribbean, and the Pacific (hereafter ACP) by giving those countries a substantial share of the quota licenses. Without the policy, the EU argued, banana production in the ACP would be wiped out because the former colonies were and continue to be far less well suited to produce the fruit than are the Central and South American countries.

In 1996, USTR self-initiated a Section 301 investigation against EU banana-import policies. It did so because the world's three largest banana companies—Dole Food Co., Chiquita Brands International Inc., and Fresh Del Monte Produce Inc.—were based in the United States and had lost significant market share in the EU because of the quota policy. As a result of the 301 investigation, the dispute was taken to the WTO. Siding with the United States in this case was Ecuador, a major producer and exporter of bananas. In 1997, the WTO ruled in favor of the U.S. and Ecuadorean position, and later that year a WTO appellate panel also ruled against the EU. To try to head off a major trade dispute, the two sides took the case to arbitration. But, in early 1999, the WTO arbitration panel also ruled in favor of the United States and Ecuador. When the EU announced that it would not change its banana policy, the United States received permission from the WTO to impose 100 percent tariffs on certain imports from the EU. These tariffs went into place in March 1999. Under WTO auspices, Ecuador followed suit with similar tariffs.

Negotiations continued, and in 2001 the EU announced that understandings had been reached with both the United States and Ecuador. The agreement called for the EU to put in place a tariff-only regime on an MFN basis for banana imports by 2006. During the interim period, the EU would impose a modified import regime incorporating tariff-rate quotas and import licensing requirements.

In 2005, the EU made two new proposals for banana tariffs. Both were presented to the WTO arbitrator who found that both failed to provide total market access for all MFN suppliers. On January 1, 2006, the EU implemented a policy of imposing a €176 per metric ton tariff on banana imports from non-ACP countries, and a zero duty tariff-rate quota in amounts up to 775,000 metric tons for bananas from ACP countries with which the EU maintains a preferential trading relationship. Ecuador immediately challenged the new policy. In November 2006, after negotiations failed to resolve the dispute, Ecuador took the case back to the WTO. In June 2007, the United States also requested a WTO panel to consider the case. In April 2008, the WTO panel ruled in favor of Ecuador. In May 2008, the WTO ruled in favor of the United States. In both rulings, the panels found that the EU policy of having a preferential tariff-rate quota party for ACP countries violated GATT rules. The EU appealed. In the meantime, negotiations continued. At the end of 2009, an international agreement to this long-standing dispute was announced. The EU agreed to implement a declining tariff on imports of bananas from all producers, falling on an annual basis from €148 per metric ton in 2009 to €114 per metric ton in 2017.

Since 2002, the use of Section 301 has slowed considerably. Indeed, between 2002 and 2010, no new Section 301 cases were initiated. Instead, complaints were taken directly to the WTO. In October 2010, however, that pattern changed when the USTR, Ron Kirk, announced that he had accepted a case filed by the United Steel Workers (USW) against what the USW alleges are unfair trade practices undertaken by the government of China. At the heart of the complaint is a variety of policies put in place by the Chinese government in order to try to encourage and expand environmentally friendly industries within China. The USW argued in their petition that the Chinese policies, including a variety of grants and subsidies to local industries as well as export tariffs on rare earths and other products needed to produce cleaner products, deliberately excluded U.S. producers from selling green products in Chinese markets. In late December 2010, the United States requested formal consultations with China at the WTO in order to try to resolve the dispute. In early 2011, the EU and Japan both joined the dispute and also requested formal consultations. The fact the U.S. government chose to treat this dispute as a Section 301 case was designed to add weight to U.S. concerns about the international trade repercussions of the sort of national industrial policy undertaken by China. If the WTO rules in favor of the U.S. complaint, then this will clearly provide a chilling effect on similar efforts possibly undertaken by other countries. As of early 2012, the WTO dispute panel had not issued a ruling on the case.

The Escape Clause: Section 201

So far, we have considered provisions in U.S. trade law designed to offset unfair foreign trade practices. U.S. law also provides a mechanism for domestic firms to seek protection from fairly traded foreign goods. This mechanism is known as the **escape clause**. In various forms, the escape clause has been part of U.S. trade law since the early 1940s. This section of trade law provides that the president may withdraw or modify trade concessions made to foreign countries and impose restrictions on imports of any article that causes or threatens serious injury to a domestic industry producing a similar or directly competitive good.

Escape clause

A measure in U.S. trade law that allows for temporary protection against fairly traded foreign imports.

Present escape clause language stresses that the increased protection of domestic industry be of a temporary nature. Trade restrictions can be increased for an initial period of no more than 5 years and should be phased down over this interval. The use of temporary protection is for two reasons. First, it helps slow the contraction of domestic industry, thereby providing more time for resources to be smoothly transferred to other sectors of the economy. Second, by increasing domestic profits it may provide incentives to domestic firms to reinvest in their industry so as to be better able to compete with foreign producers.*

To obtain escape clause protection, a representative of an industry (i.e., firms, labor, or the industry trade association) files a petition with the ITC. The petition must state the purpose of seeking trade relief, such as facilitating the transfer of resources from the industry or adjusting the industry to better face foreign competition. Upon receipt of the petition, the ITC begins an

*For an excellent analysis of escape clause protection and whether this protection has been successful, see U.S. Congress, Congressional Budget Office, *Has Trade Protection Revitalized Domestic Industries?* (Washington, D.C.: Government Printing Office, 1986).

injury investigation. According to the law as it is now written, the ITC must investigate whether imports have caused, or threaten to cause, injury to the domestic industry. For purposes of its investigation, the ITC may define the domestic industry as only that portion producing the like article.

The ITC has six months to complete its investigation. If it finds that injury has occurred or might occur, it recommends to the president the amount and nature of import relief necessary to remedy or prevent the injury. The president must then decide whether to provide the relief. In general, relief is provided unless the president determines it is not in the national economic interest.

The escape clause has been used relatively rarely over the past few years. The ITC has considered 73 petitions since 1975. Of these, it found injury in 41 cases, and the president imposed restrictions in only 17. The most recent case in which protection was imposed involved imports of steel products. That case began in early 2002 with a finding by the ITC of serious injury to the health of the U.S. steel industry from foreign imports competition. President Bush ordered temporary tariffs and tariff rate quotas to be imposed on imported steel. The protection was lifted in early 2005.

Trade adjustment assistance (TAA)

Payments made by the government to help factors retrain or retool after they have been displaced by foreign competition.

As an alternative to higher protection, the ITC may rule that workers or firms in the industry receive **trade adjustment assistance (TAA)**. The assistance is designed to help workers who, because of competition from imports, have entered into long-term unemployment. TAA provides funds to allow workers to participate in worker training programs, to supplement their incomes while they search for new jobs, or to relocate. TAA paid to firms consists of technical assistance to establish industry-wide programs for new product development, process development, or export development.

Trade adjustment assistance was used extensively in the late 1970s as an alternative to the imposition of protection. Many autoworkers and steelworkers received TAA benefits as supplements to unemployment compensation. The enormous budget cost of the program led Congress to change the emphasis of the program from income supplements to worker retraining. Because of these changes, the use of TAA has declined dramatically in recent years.

Other Measures

Current U.S. trade law contains other measures designed to offer protection against either fair or unfair competition. There is a provision (Section 337) that restricts unfair methods of competition, such as patent or copyright infringement. Section 337 has been used extensively by U.S. firms, mainly to charge foreigners with patent infringement. If the domestic firm wins its case, the foreign product is barred from entry into the United States. In one case, certain Cabbage Patch dolls were restricted from importation because, unlike their domestic counterparts, these dolls did not have adoption papers—a copyrighted feature of dolls to be marketed in the United States.

There is also a measure (Section 406) that provides relief from market disruption by imports from nonmarket economies. Section 406 cases are much like escape clause cases, except that the test for injury is much weaker. These cases are rare, especially since the dissolution of the USSR and the transition of Eastern European countries into market economies. Indeed, most of these countries, including Russia, are now members of the WTO and have agreed to follow WTO rules and, thus, are no longer subject to this measure.

China gained admission to the WTO in 2001; at that time it was announced that the WTO members would treat China as a nonmarket economy until 2016. This means that in a variety of trade disputes, most notably involving antidumping cases, countries would be able to reject Chinese claims about production costs and use instead third-country comparison data to calculate fair market values. In anticipation of China's entry into the WTO, the United States began negotiations with China in 1999 and gained an agreement from China that would allow the United States to impose a China-specific escape clause protection in response to surges of imports. This provision was added to U.S. trade law in 2000 and is known as Section 421.* Under this section, industries may be able to obtain temporary protection from the threat of Chinese imports. In order to be eligible, the industry must file a petition with the ITC. The ITC then investigates whether or not the industry is harmed or at risk of harm from increases in imports of similar goods made in China. If it finds harm, then it proposes a remedy, typically in the form of a temporary tariff, to the president, who has final say on whether or not to implement the recommendation. As of early 2012, seven Section 421 cases have been investigated by the ITC. In five cases, the ITC has found injury or the threat thereof and recommended protection. Former president Bush refused to impose protection in the first four of these cases. Trade Policy Case Study 3 provides further detail on the only Section 421 case where protection was imposed.

TRADE POLICY CASE STUDY 3

Tire Imports from China

On April 20, 2009, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union filed a petition with the ITC seeking protection from competition from imports of Chinese made tires used on certain cars and light trucks. The ITC began an investigation four days later and in June it issued a finding that Chinese made tire imports were causing market disruption. The commission then recommended that tariffs of 55 percent ad valorem be imposed for one year followed by a second year at 45 percent and a third at 35 percent.

The ITC decision was based on an analysis of the American tire market over the years 2004–2008. It found that both in quantity and value imports had increased throughout the entire period and were at their highest levels at the end of the period. The quantity of Chinese-made tire imports rose by 215.5 over the four years in question while the value rose by 294.5 percent. Not surprisingly, these imports had an impact on domestic market share; the ratio of imports to domestic production rose by 22 percentage points over the 2004–2008 period. The ITC concluded that the domestic industry was materially injured in virtually all dimensions based on the facts that:

> U.S. producers' capacity, production, shipments, number of U.S. production and related workers and hours worked, productivity, and financial performance were all at their lowest levels of the period in 2008. U.S. producers' capacity utilization, which was at its lowest in 2006, nearly equaled that level in 2008. Four plants were closed during the period examined, and in light of the current conditions, U.S. producers have announced plans to close three more plants in 2009. Only two indicators, R&D expenses and capital expenditures, appear to have increased toward the end of the period. Virtually all the industry indicators declined during the period.†

In September 2009 President Obama announced that, as a result of the ITC investigation and its recommendation, additional tariffs would be imposed on certain Chinese-made tire imports. A three year sequence of ad valorem tariffs was imposed at the end of September 2009. The rates that were implemented were lower than those proposed by the ITC. They started at 35 percent, declining to 30 percent in 2010, and finishing at 25 percent in September 2011.

China protested this action and took the case to a WTO dispute settlement panel. It argued that the United States under its GATT obligations could not discriminate solely against Chinese

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* This provision is also known as the China safeguard provision. As part of the agreement between the two countries, it is set to expire in 2013.

† U.S. International Trade Commission, *Certain Passenger Vehicle and Light Truck Tires From China*. Investigation No. TA-421-7, p. 18, July 2009, online at http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2009/421_tires/PDF/Tires%20-%20Publication%204085.pdf

made goods. The panel ruled against China pointing out that it had agreed to abide with the provision in its previous agreement with the United States.

President Obama's decision was criticized by many economists and in the press.* More than two years after the tariffs were imposed, imports of Chinese tires have fallen and prices of lower end tires have risen dramatically. This apparently has had little impact on U.S. production since imports from other countries including Mexico, Indonesia, and Thailand have replaced Chinese tires in the market.†

Comparisons with Policies in Other Countries

Most of the policies just described have counterparts in the policies of many foreign countries, especially in industrialized economies. Foreign countries make substantial use of antidumping statutes. There are also many examples of efforts to protect industries imperiled by fairly traded foreign products. This latter protection, similar to the escape clause in U.S. legislation, is known as **safeguards protection**. The sum total of all of these actions involving antidumping statutes, countervailing duties, safeguards protection, and the like makes up a substantial share of the nontariff barriers in the world today.

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Safeguards protection

A general name for measures such as the escape clause.

From 1995 through June of 2011, 3,922 cases were initiated worldwide, with more than half resulting in higher duties. With the exceptions of 1995, 2007, and 2010, more than 200 new cases were filed in various countries each year during this period. Table 8.3 presents data on the countries involved in these cases. As the table shows, a number of countries make heavy use of antidumping laws, including Australia, Canada, the European Union, and the United States. Several developing countries, including India, which has initiated the most cases, Argentina, Brazil, China, Indonesia, Mexico, South Africa, and Turkey also make heavy use of antidumping laws. The fact that countries such as these have and use antidumping laws is due at least in some cases to the United States. Over the past 20 years, the U.S. government has sent teams of experts to various countries to train local officials in the establishment and administration of this type of trade law. Over this period, the countries most commonly targeted in antidumping proceedings also include a mix of developed and developing countries. China ranks first, the European Union second, and Korea third, followed by the United States and Taiwan.

The use of countervailing duties is much less widespread. According to the WTO, 18 countries and the European Union now have laws against foreign subsidized goods. Over the period from January 1995 through June 2011, these countries initiated 262 countervailing duty cases. The United States led the way, filing 109 cases, followed by the European Union (60), Canada (25), and South Africa (13). India was targeted in these cases 50 times. China was second with 46 cases, followed by Korea (18), and Italy (13). Indonesia and the United States were each targeted 12 times.

WTO members may take safeguard actions to protect a specific domestic industry from an increase of imports of any product that is causing, or is likely to cause, serious injury to the industry. Such safeguard measures were always available under GATT. However, they were infrequently used; some governments, such as the United States and the EU, preferred to secure protection for domestic industries through VERs and other market-sharing devices in product areas as diverse as automobiles, steel, videotape recorders, and televisions.

The WTO agreement broke new ground in establishing a prohibition against VERs and in setting a sunset clause on all safeguard actions. The agreement stipulates that members shall not

* See for instance, Timothy Aeppel, "Tariff on Tires to Cost Consumers," *The Wall Street Journal*, September 15, 2009, online at http://online.wsj.com/article/SB125288420566007227.html

† For more on the recent state of the U.S. tire market see John Busse, "Get Tough on Chinese-Tire Policy Falls Flat," *The Wall Street Journal*, January 20, 2012, online at http://online.wsj.com/article/SB125288420566007227.html

TABLE 8.3 Antidumping Cases Initiated Worldwide, January 1995–June 2011

	Number of Antidumping Cases	
Country	**By**	**Against**
Argentina	288	35
Australia	219	24
Brazil	227	112
Canada	153	38
China	186	825
Chinese Taipei	24	207
Egypt	69	12
European Union[a]	431	770
India	647	153
Indonesia	89	161
Japan	6	162
Korea	111	278
Mexico	102	55
New Zealand	55	11
Peru	69	4
South Africa	213	59
Turkey	147	51
United States	452	228
Others	434	737
Total	3,305	3,305

Note: [a] Antidumping actions are taken by the EU, not by individual member states. Actions against the EU usually are against exporters in individual member countries. EU totals include all current member countries listed separately in the wto.org source table.

Source: Constructed from tables found on the WTO antidumping Web site page, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm

seek, take, or maintain any VERs, orderly marketing arrangements, or any other similar measures on the export or the import side.

In principle, safeguard measures have to be applied irrespective of the source of the imports. However, the agreement lays down the manner in which decisions on the allocation of a quota should be made, including in the exceptional circumstances where imports from certain WTO members have increased disproportionately quickly. The duration of a safeguard measure should not exceed four years, though this can be extended up to eight years, subject to a determination by competent national authorities that the measure is needed and that there is evidence the industry is adjusting. Measures imposed for more than a year must be progressively liberalized.

Summary

1. Commercial policy is the set of barriers and/or subsidies a country puts in place to affect its international trade.
2. The U.S. Constitution confers authority to the Congress for the development of commercial policy. Over much of the first 200 years of the United States, Congress exercised this authority by passing comprehensive tariff-setting bills. The last bill of this sort was the Smoot–Hawley Tariff of 1930.
3. Since 1930, in a series of trade bills, Congress has delegated authority to the president for limited periods of time to reach agreements with foreign trading partners to lower trade barriers on a mutual basis.
4. At first, the president negotiated with foreign countries on an individual basis. Since the end of World War II, however, trade liberalization negotiations have been held from time to time on a multilateral basis under the auspices of the GATT. The most

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well known and successful of these talks were the Kennedy Round in the 1960s, the Tokyo Round in the 1970s, and the Uruguay Round in the 1980s and early 1990s. Another set of negotiations, the Doha Round, which began in 2001, appears to be headed for failure.

5. Also included in these trade bills have been a variety of provisions that make it possible for industries on an individual basis to receive continued or expanded protection. These provisions include measures (e.g., antidumping provisions, countervailing duty laws, and Section 301) ostensibly aimed at unfair trade practices of foreign countries as well as provisions (e.g., the escape clause) designed to provide protection from fairly traded imports.
6. The World Trade Organization (WTO) was created in the Uruguay Round of trade talks. Headquartered in Geneva, Switzerland, the WTO sets the ground rules for international commerce and provides a forum for new talks aimed at lowering trade barriers. It also handles trade disputes between member countries and monitors trade policies within these countries. As of early 2012, the WTO had 157 member countries.

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Exercises

1. Examine Figure 8.1 carefully. In what periods were U.S. tariffs high? When were they low? How do you explain these patterns?
2. What is the WTO? What services does it perform? Explain carefully.
3. What is dumping? What are the welfare costs of dumping? Why would firms ever dump? Explain carefully.
4. Compare and contrast how the U.S. government handles antidumping and countervailing duty cases.
5. What is Section 301 of U.S. trade law? Describe how it works. Do you think it is likely to be very effective? Comment.
6. In 1988, Senator Ernest Hollings of South Carolina was quoted as saying that "going the 201 route is for suckers." By this, he appeared to mean that American firms seeking protection from foreign competition would do better by using other trade remedies. Given your knowledge of how Section 201 and alternative forms of U.S. trade laws are administered, do you agree with the senator's statement? Why or why not?
7. A former ITC commissioner, Alfred Eckes, has written, "In battling dumping, trade administrators not only help sustain political support for an open global trading system, but they also bring benefits to consumers as well as producers. I remember well how imposition of U.S. antidumping duties against Korean television makers prompted them to lower high home market prices in order to avoid the payment of U.S. dumping duties." Comment on Mr. Eckes's statement. Do you agree or disagree with its general thrust? Support your answer with examples from how U.S. policy is applied and recent world experience with such policies.
8. The late Milton Friedman often wrote that instead of imposing countervailing duties on subsidized foreign goods, the United States should write a note of thanks to foreign taxpayers. Do you agree? Why or why not? Illustrate with a simple diagram.
9. What are the benefits and costs of U.S. antidumping laws?
10. How likely is dumping to be predatory? Discuss.

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