Can the US Dump Antidumping?: Evidence from Past "Reforms"

Abstract: Antidumping reform is critical to a successful completion of the Doha Round of multilateral trade negotiations and US willingness to engage in such reform is key to this effort. This paper assesses prospects for such reform by analyzing US implementation of Uruguay Round antidumping reform commitments. The results strongly suggest that the US has lived up to only the letter but not the spirit of past reform, thereby making important changes in US antidumping procedures highly unlikely in the Doha Round.

June 2004

Michael O. Moore
Professor of Economics
Department of Economics and Elliott School of International Affairs
The George Washington University
Washington, DC 20052

Contact information
voice: +202-994-6157
fax: +202-994-6147
e-mail: mom@gwu.edu

Acknowledgment: I would like to thank Bruce Blonigen for use of data available at his website (http://darkwing.uoregon.edu/~bruceb/adpage.html), which provided the basis for much of the earlier data analyzed in this paper.

I. Introduction

Fundamental reform of multilateral antidumping rules has been the goal of those who see these procedures as inherently biased against foreign firms and a major source of unjustified trade restrictions. The United States has been a very reluctant participant in these reform efforts. Bipartisan congressional opposition has been key to this reticence. For example, the Journal of Commerce (December 22 1993) noted that: "[u]nder pressure from [House of Representative Speaker] Gephardt and other congressional leaders, the Clinton Administration made preserving the US antidumping law its top priority in the last days of the negotiations" of the Uruguay Round. In the end, only minor changes in antidumping were agreed to in the "Uruguay Round" (UR) of trade negotiations completed in 1994.

More recently, there have been renewed calls for reforms as part of the World Trade Organization (WTO) negotiations launched in Doha, Qatar in November 2001 (the "Doha Round") Round. Congressional opposition to basic changes has been evident once again. One notable indication of this opposition occurred even before the Doha Round was inaugurated: sixty-two US senators, including the majority and minority leader, signed a letter to President George Bush that noted signatories "strong opposition to any international trade agreement that would weaken U.S. trade laws," including specifically antidumping laws. While US senators were unable to prevent antidumping reform from becoming part of the Doha negotiating agenda, their opposition likely was a key part of the timid antidumping reform agenda announced in the Ministerial Declaration adopted in November 2001.

One might ask fairly therefore how far US negotiators will be able to go in agreeing to important AD reform, even if it were a lynchpin for a successful completion of the Doha Round. Moreover, even if the US agreed to such reform, would the *implementation* of

changes result in any real difference in the effect of antidumping rules on international trade flows?

This paper will focus on these issues by examining U.S. implementation of past antidumping reform commitments. I will examine in particular two Uruguay Round reforms: 1) new restrictions on the use of domestic petitioners' allegations in determining antidumping duties (so-called "best-information-available" (BIA) procedures); and, 2) new "sunset" review procedures designed to remove antidumping duties five years after their imposition if certain criteria are met.

The data examined below make clear that the US has not implemented these reforms in a way consistent with real restrictions on the domestic use of antidumping. Use of BIA, which can result in doubling antidumping duties, continues almost unabated in the post-UR period. Sunset reviews by responsible US agencies have resulted in very few revocations of antidumping orders----in essence, if a domestic industry wants the antidumping order extended, there is a very high probability that this will take place. This tendency for sunset reviews is even more pronounced for more recent data so that the problem is getting worse and not better.

These results shows that the US implementation of Uruguay Round reforms has been timid at best. Past behavior, along with congressional reluctance to even modest changes in the antidumping system, suggests that even if international negotiators are able to agree upon major reforms, serious questions will remain about whether the US will vigorously implement those reforms.

II. US Antidumping System

A short review of the US antidumping system is critical to understanding past reforms. I break this up into parts: procedures for investigating original allegations of "dumped" imports and, secondly, how antidumping duties can be removed once in place.

II. a. Original Investigations

US industries, consistent with WTO obligations, may petition government agencies to impose temporary duties on products that are being sold at "less than fair value" and cause "material injury" to the domestic industry producing a like product. An antidumping order on foreign firms' exports is imposed only if agencies rule affirmatively there is dumping and material injury.

In the US, the Department of Commerce (DOC) determines whether foreign firms are "dumping," i.e., pricing below the foreign firm home market price, below total average production cost, or, if a "non-market-economy" such as China is involved, below the imputed costs based on prices in a third country surrogate. The resulting comparison between "normal value and the US export price of individual foreign firms is the "dumping margin"; if antidumping duties are finally implemented, this calculated dumping margin is the basis for duties collected on the foreign firms' exports. Thus, antidumping duties are imposed on individual foreign firms.[1]

The DOC needs information on costs and sales provided by each foreign firm in order to make these assessments. If foreign firms do not provide adequate information to DOC or the DOC determines that respondents are being uncooperative, administrators may use information from other sources to conduct the investigation. The WTO agreement, and the

---

[1]Foreign firms not investigated individually are subject to an "all others rate," which is a weighted average of dumping margins for producers in the particular country under investigation.

GATT before it, allows administrators to use domestic petitioners' allegations (so-called "adverse" BIA) if the authorities determine that the foreign firms are deliberately uncooperative. Such third-party information is known as "best-information-available" or BIA. It is important to note that the decision to use BIA is a combination of DOC discretion and decisions by foreign firms about providing needed information.

The DOC also may conduct annual administrative reviews to determine the pricing behavior of foreign firms subject to an antidumping order during the previous year. The final duties that the foreign firms finally pay are based on these review. If these dumping margins are lower than the original bonds, the DOC returns the difference; if higher, then the foreign firms are assessed even higher duties. Multilateral rules also require that domestic authorities determine that imports found to be dumped also cause, or threaten to cause, "material injury" to the petitioning domestic industry. In the US, this function is undertaken by the International Trade Commission (ITC), a quasi-judicial independent agency. The ITC assess the economic conditions of the domestic industry making a product similar to the dumped imports as well as the link between any injury and the dumped imports. In the pre-WTO system, the ITC played no role in the administration of the antidumping orders after their initial imposition since only the DOC was involved in the retrospective assessment of dumping margins.

II. b. Removing Antidumping Orders

Under the GATT system in place prior to the establishment of the World Trade Organization in 1995, US antidumping orders were removed only if the DOC ruled in three consecutive administrative reviews that no dumping had occurred. Unfortunately for foreign firms, DOC procedures made filling this criteria extremely difficult, not least because a dumping margin of only 0.5 percent was enough to keep a foreign firm subject to an antidumping order.

Multilateral negotiators agreed at the conclusion of the Uruguay Round that WTO members would institute a "sunset review" process. Members agreed that AD duties would be automatically revoked after five years unless domestic administering agencies determined that revocation would lead to renewed dumping and material injury.

Under the US sunset review process established under the Uruguay Round Agreements Act (URAA 1994), a dumping order is automatically revoked after five years, unless the domestic industry "contests" the revocation. In these contested cases, the same agencies involved in original antidumping investigations are responsible for sunset reviews. The DOC determines the likelihood that revocation of the order would result in a recurrence or continuation of dumping as well as the likely dumping margin. The ITC determines whether revocation would likely result in a recurrence of material injury to the domestic industry.

The domestic agencies must determine whether they will conduct a 'full" or "expedited" sunset review. This decision is completely dependent on whether foreign respondents decide to participate in the investigation. If the foreign firm does not provide information to the DOC, then the agency will "expedite" the case; in essence the DOC will automatically assume that dumping will recur or continue. If the foreign firm does not participate in the ITC process, the ITC will conduct an expedited review as well. This means that the ITC makes its decision about material injury solely based on input from the domestic industry. Foreign firms' decisions not to participate in either part of the process is a reflection of their assessment that any expected gains outweigh the more certain legal costs associate with providing information to the ITC or DOC.

III. Uruguay Round Antidumping Reforms

One way to assess the prospects the future of antidumping reforms is to consider how the United States has implemented important Uruguay Round commitments. I will investigate these efforts by assessing two important changes in the way the US administered antidumping law.

The first important reform concerned the use in initial investigations of "best-information-available" (BIA) data. Under the pre-reform system, administering authorities were allowed to use information provided by domestic petitioners about dumping margins if a foreign respondent did not ***fully*** comply with requests for information or provide the information in exactly the prescribed computer format. Furthermore, GATT procedures did not specifically preclude authorities from throwing out all information provided by foreign respondents unless *all* information was provided in full, in ***exactly*** the form requested.

US implementation of BIA procedures drew significant criticism in the pre-WTO period. Foreign respondents complained that the DOC would totally disregard partially completed questionnaires and use domestic petitioners' allegations instead. Another DOC practice required foreign firms to provide all information in English, in computer-readable format, using US accounting principles and do so within tight time schedules. Failure to meet any of these criteria could lead to total reliance on BIA.

BIA reform agreed to in the Uruguay Round directly addressed some of these complaints. For example, Annex II of the Antidumping Agreement (ADA) stipulated that administering authorities were required to use all verifiable information provided by foreign firms in a timely manner, even if other information was incomplete. Thus, use of "partial"

BIA became an important part of the United States' WTO commitments.[2] For non-provided or verifiable data, authorities were directed to check independent rather than rely exclusively on information provided by domestic petitioners. But negotiators did recognize the right to use domestic competitors allegations. Specifically,

> if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.[3]

However, administrators were expected to use domestic allegations "with special circumspection."[4]

In short, the international community clearly adopted language that was designed to limit the use of BIA in antidumping investigations. Administrators were expected to: 1) use all verifiable information provided by foreign respondents; 2) avoid unnecessary and arbitrary requirements that would make foreign compliance difficult; and 3) use BIA in a careful manner, especially when utilizing domestic allegations.

The second major reform was that the ADA imposed a "sunset review" of all antidumping orders. As noted above, the pre-WTO GATT did not impose a strict time limit on the life of an antidumping order. However, most major users of antidumping procedures (including Canada, the European Community, and Australia) had some sort of sunset review process in place whereby duties would be dropped after a set number of years unless it could be shown that dumping and injury would recur. The US, the single most frequent user of AD

---

[2] Paragraph 3 of Annex II of the ADA (1994).

[3]Paragraph 1 of Annex II of ADA (1994)

[4] Paragraph 7 of Annex II of the ADA (1994).

duties, did not have a sunset provision. US antidumping orders, consequently, could persist for many years; in 1994, the US had 31 antidumping orders in place since the 1970s.[5]

International negotiators agreed that all WTO members would institute a sunset review. In particular,

> any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition.... unless the authorities determine....that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.[6]

This commitment meant that the US was required to revoke antidumping orders after five years unless there was an investigation of both "unfair pricing" and possible economic damage to the domestic industry. Certainly the inclusion of such a commitment reflects the international community's sense that the normal course of events would mean that antidumping orders would be revoked after five years; orders would only be extended if specific criteria were met.

IV. Implementation of BIA Reform

A number of analysts have stressed the importance of the use of best-information-available in US antidumping procedures. Murray (1991) as well as Baldwin and Moore (1991) focus on the use of BIA to systematically increase antidumping duties. The consequences for final antidumping duties were significant: Baldwin and Moore estimate that cases involving BIA had dumping margins 38 percentage point higher than those that relied only on respondents' data for the 1980 to 1990 period.

Blonigen (2003) shows that the increased use of BIA has been an important contributor to higher dumping margins imposed by the US from 1980 through 2000. In

---

[5] Moore (1999).

[6] Article 11.3 of the ADA (1994)

particular, he finds in one econometric model that use of BIA increased antidumping margins by about 63 percentage points. In other words, firms deemed uncooperative faced almost certainly prohibitive antidumping duties. Moore (2004) develops a theoretical model that explores when and if a foreign firm will cooperate and thereby avoid BIA margins; this decision will depend in large part on the relative probabilities of winning a petition under cooperation and non-cooperation as well as the legal costs of cooperating.

In this section, I focus on the patterns of BIA use rather than its specific contribution to increased duty as in Baldwin and Moore (1991) and Blonigen (2003). Moreover, I examine the evidence about whether DOC administration of BIA procedures after 1994 when new WTO rules supposedly constrained the use of BIA techniques. If the DOC has changed its procedures as envisaged by trade negotiators, one would expect that BIA's use would be less frequent and average margins lower. Otherwise, one might have doubts about whether the Uruguay Round reforms have had their intended consequences.

IV. a. Descriptive Statistics on BIA

Table 1 contains summary statistics for DOC use of BIA in antidumping decisions from 1990 through 2002, that is, five years of pre-Uruguay Round decisions as well as eight years post-Uruguay Round.[7] This time period covers two years of data for both Bush administrations as well as the entire Clinton administration. The sample period includes two recessions as well as a long period of strong domestic economic growth.

Only cases that went to final decisions at the ITC are included in the table.[8] The

[7] The table only includes dumping margins reported for individual foreign firms, i.e., "all others rates" are not included in the sample.

[8] Blonigen's (2003) data includes all reported DOC margins between 1980 and 2000 and includes those for cases terminated at earlier stages of the antidumping process.

calculated dumping margins were either imposed in final antidumping duty orders (547 cases) or were used as temporary duties until the ITC reached a final negative decision (287 cases). This means that all calculated margins were in place for at least some period thereby affecting international trade flows. The average margin calculated by the DOC in the 834 individual foreign firm dumping margin decisions was 51 percent. The DOC dumping margins in Table 1 are also separated into pre- and post-Uruguay Round (UR) samples. As noted above, one might expect that the Uruguay Round reforms would be reflected in a reduction in the average dumping margins calculated by the DOC.[9] The overall dumping margins did fall slightly from 52 percent in the 1990-1994 period to 50 percent in the 1995-2002 period. The hypothesis that average margin in the post-UR period were lower than the per-UR period has a marginal significance of 3.2 percent in a one-tailed test. Thus, there is little evidence that overall dumping margins have declined systematically after the introduction of UR reforms.

US reforms have not led to decreased use of BIA, *ceteris paribus*. We see that the use of BIA actually increased slightly—the DOC used BIA in 143 of 333 cases (43 percent of cases) during the pre-UR period compared to 224 of 501 cases (45 percent of cases) in the post-UR period. The average BIA margin did fall from 80 percent in the earlier period compared to 74 percent in the latter period. However, we can reject the hypothesis that the post-UR BIA margins are less than the pre-reform BIA margins. It is also important to note that even if one could accept the hypothesis that margins were lower in the post-reform era, there may be little economic difference between margins of 80 percent and 74 percent since both are likely prohibitive duties.

---

[9] This expectation presumes that foreign behavior remains unchanged. Antidumping law supporters might argue that a rise in margins over time simply would reflect more "unfair" trade practices.

One Uruguay Round reform that could be very important for calculated margins was the potential for increased use of "partial" BIA if foreign firms provided at least some useful information. The expectation is that a reformed system would lead to a reduction in the use of adverse and an increase in the use of partial BIA, holding foreign behavior constant.

Table 2 depicts the use of adverse and partial BIA in the two periods. We see that partial BIA was used more frequently in the post-reform period: partial BIA was used in only 25 out of 143 BIA cases (17 percent) from 1990 to 1994 with an average dumping margin of 30 percent compared to 61 of 224 BIA cases (27 percent) from 1995 to 2002, but with an average margin of 50 percent. Thus, while the frequency of partial BIA use increased over the periods, as one might expect if the US is dutifully fulfilling its UR commitments, the average calculated margin with partial BIA rose in a statistically significant degree over the two periods.[10]

The DOC's use of adverse BIA shows the opposite pattern; its use increases over time but the average margin falls. In particular, 76 percent of all cases using BIA used "adverse inferences" in the 1990-1994 period compared to 79 percent in the 1995-2002 period. However, the average margin fell from 93 to 84 percent but this is a statistically insignificant difference at a 10 percent level and probably unimportant in economic terms.

Table 3 includes a breakdown BIA use against selected US trading partners. Perhaps the most striking pattern concerns Japanese firms. In the pre-WTO period, 68 percent of cases (22 out of 32) involving Japanese firms were subject to BIA procedures compared to 85 percent (52 out of 61) in the post-"reform" period. Evidently, either the DOC was more likely to deem Japanese firms uncooperative in the post-UR time frame or Japanese firms

---

[10] The formal hypothesis that the pre-UR average partial BIA margins are higher than in the post-UR period has a marginal significance level of 91 percent.

themselves determined that there was little net benefit to participating in the DOC stage of an antidumping investigation. One clue to the latter is that in the earlier period, the average BIA margin in the earlier period was 68 percent for Japanese firms compared to 31 percent for non-BIA margins. If a firm is shut out of the US market with a 31 percent margin, there may be little benefit from cooperating; in other words, the practical difference between 31 and 68 percent duties may be non-existent.

Chinese firms faced BIA margins in 32 percent of pre-UR and 22 percent of post-UR cases, respectively. Average BIA margins declined substantially from the earlier to later period (i.e., from 168 percent to 100 percent). However, it is important to note that Chinese cases almost always involve "non-market-economy" calculations where Chinese physical inputs are assigned shadow prices from other economies (normally India) to calculate the margins. As Blonigen (2003) notes, such techniques result in very high antidumping margins so that the threat of BIA use for Chinese firms may be less onerous than for other market economy firms.

Cases involving EU firms were also more likely to be subject to BIA in the second period (37 percent of cases compared to 56 percent, respectively). However, the BIA margins for EU firms declined slightly from 55 to 50 percent, a difference not statistically significant at standards levels.

IV. b. Probit Analysis of BIA Use

I turn now to a reduced form econometric analysis about BIA use. In the probit model below, the dependent variable takes on a value of 1 if the DOC uses BIA for the individual firm and a 0 otherwise.

The simplest version of the model includes only two explanatory variables. The first is a dummy variable ("Pre-WTO dummy") that is equal to one for cases in the 1990-1994

period and a zero otherwise. One would expect a positive coefficient on this dummy if BIA margins were less likely to be imposed in the post-reform period. Thus, if the consequences of changed DOC procedures is to make it less likely to impose BIA margins, as negotiators in the Uruguay Round had in mind, then the reforms would be performing as expected.

I also include a dummy variable ("Experience") that indicates whether the particular firm has been involved with another antidumping case prior to disposition of the case in question. This variable is potentially important since the DOC does not make the decision to use BIA in a vacuum; the foreign firm can decide on its own not to cooperate. If the coefficient on this variable is positive then it suggests that foreign firms may be learning from past experience that expending resources in the DOC part of the antidumping process is pointless and that they should not cooperate. A negative coefficient could suggest that the firms learn from earlier experience that it is worthwhile to cooperate in the DOC phase of the antidumping process in order to avoid BIA duties.

Other versions of the model control for differences in the use of BIA based on characteristics of the respondents. Explanatory variables include dummies for the various industry categories (chemicals, manufactures, steel, steel products, electronics, and basic commodities with the food/agriculture as the excluded category). I also control for the country involved in the specific case; dummy variables are Canadian, Mexican, non-Mexican Latin American countries, European Union countries, Japan, Korea, Taiwan, China, "Other Asian" countries, and USSR/former-USSR countries. Excluded countries are Australia, Austria, Czechoslovakia, Egypt, Finland, Hungary, Israel, New Zealand, Norway, Poland, Romania, South Africa, Sweden, Trinidad, and Turkey.

Table 4, column (1) includes the estimates for the entire sample period with BIA decisions on 834 individual foreign firms but without controlling for involved industries or

countries. The coefficient on the pre-WTO dummy is negative, which is consistent with post-UR cases being more, rather than less, likely to be subject to BIA but the coefficient estimate cannot be accepted as being significantly different from zero. There is some indication that previous experience with the antidumping process makes firms less likely to cooperate in later cases: the coefficient on "Experience" is positive and significant at a 1 percent level. However, the overall fit of the equation is low.

Column (2) of Table 4 contains estimates when subject industry and country dummies are included in the estimation. The "Pre-WTO dummy" once again is negative but just marginally significant at a 10 percent level, providing weak evidence that reforms have not systematically reduced the chances of the use of BIA. On the other hand, the dummy controlling for previous antidumping experience loses its significance once industry and country effects are included.

The results indicate that there are important differences among the different industry categories.[11] Only the electronics and commodity categories are not statistically different than the base category of food/agriculture. Of the remaining statistically significant industry category dummies, steel and steel products industry (e.g., pipe and ball bearings) have the largest estimated coefficients. What is particularly notable about these is that two industries have a long history of antidumping actions; despite foreign firms' experience with the process, they are still very likely to face BIA margins. This could mean that the DOC makes it difficult for these firms to be found "cooperative" or, alternatively, that the foreign firms themselves decide that there are few benefits of participating in the DOC process.

Controlling for the country involved in the cases provides less explanatory power.

---

[11]The formal hypothesis that the industry dummies are jointly zero yields a Chi-squared statistic of 39.4, indicating a rejection of the hypothesis at a 1 percent level.

The two exceptions are Japan and Taiwan, both with positive coefficients that are significantly different from zero at a 1 percent and 5 percent level, respectively. However, the estimated coefficient for Japan is over twice as large as for Taiwan. Like the results for steel and steel-products dummies, the higher probability of BIA use involving Japanese firms is striking given their long-standing experience with the US antidumping process.

The results in columns (3) and (4) of Table 4 separate the sample into pre- and post-UR datasets. In both samples, previous experience does not seem to help explain the use of BIA once industry and country effects are taken into account. However, there are other important differences across the subsamples.

In the 1990-1994 period, industry categories continue to play an important role. All included dummies are positive and significantly different from zero, suggesting a systematically different approach to these cases compared to the base agricultural/food category. Once again, steel and steel products have the largest estimated coefficients.

The country dummy estimates for the pre-UR period show broadly the same pattern as the whole sample. However, the dummy for Japan has a marginal significance level of 15 percent and therefore insignificant at standard levels. Korea, on the other hand, seems to have been systematically less likely to face BIA duties in the pre-UR period.

The post-UR period has different patterns. Most notably, the industry dummies lose much of their explanatory power.[12] Only the steel and steel products dummies can be accepted as being significantly different from zero at the 10 percent level. Moreover, the magnitudes of the estimated coefficients are much smaller than in the entire sample or the pre-UR period. It is difficult to know whether these results suggest the effects of any reform

---

[12] The formal hypothesis that the industry dummies are jointly zero has a marginal significance level of 28 percent with a Chi-squared statistic of 7.49.

efforts.

The results in column (4), Table 4 suggest that country dummies continue to help explain the outcomes. Canada seems to be systematically less likely to be subject to BIA duties while Japan is once again more likely. The dummy for "Other Asia" (which includes countries like India, Bangladesh, and Thailand) also seems to be more likely to face BIA duties. Indeed, the estimated coefficient for this group of countries is far larger than even Japan. One should also note that the coefficient on China is insignificant in all versions of the model.

We also see little indication that previous experience has any explanatory power, once we control for country and industry group. There are, however, indications of some "learning" by foreign firms. For example, the dummy for Japanese firms is positive but insignificant in the pre-UR period but three times as large and significant at a 1 percent level in the post-UR sample. This might indicate that Japanese firms have become less willing to spend resources in the post-"reform" period to avoid the onerous BIA margins. A similar pattern is observed in "Other Asian" countries. In contrast, Canadian firms are systematically less likely to face BIA margins in the post-UR period than in the first period. For whatever reason, the DOC has deemed these Canadian firms sufficiently cooperative to avoid BIA duties.

In sum, analysis provides few indications that BIA reform has led to reduced average dumping margins. There is some evidence that use of "partial" BIA has increased as expected under DOC-announced changes but the resulting margins have not in fact decreased. Moreover, there is some evidence that some foreign firms may be cooperating less with the DOC, perhaps not because they have something to hide but rather because they might see few benefits from attempting to confront domestic dumping allegations at the

DOC. In short, there is little reason to believe that reforms enacted as a consequence of Uruguay Round commitments have had discernible effects on BIA use in the US.

V. Implementation of Sunset Review Reform

The literature on US sunset reviews is small given that the policy was inaugurated only at the conclusion of the Uruguay Round in 1994. Liebman (2004) and Ginsburg (2004) focus on the determinates of ITC sunset review material injury decisions. Moore (2002) analyzes the determinates of decisions of domestic industries to contest AD order revocation as well as the DOC's and ITC's roles in the administration of sunset reviews.

The data below focuses instead on patterns of sunset review outcomes rather than on determinates for individual agent decisions. In addition, the data set contains more recent decisions than the studies above.

V. a. Descriptive Statistics on Sunset Review Reform

Table 5 displays the outcomes of sunset reviews in the United States conducted from 1998 through 2002. There are three separate sub-samples. The first, denoted "Transition Cases," are for antidumping orders that were in place on 1 January 1995 and consequently not originally subject to any sunset review process. The second group, denoted as "Non-transition Cases" are those antidumping orders originally imposed after 1 January 1995 and therefore subject to Uruguay Round rules from their inception. The third set, denoted "Recent Cases," are antidumping orders that were originally imposed after 1 January 1990 but before June 30, 1997. This last set therefore does not include many of the much older transition cases, some of which date back to the 1970s and 1980s.

There were a total of 306 antidumping orders in the data set subject to a sunset review. There was no domestic interest in contesting revocation of the antidumping orders in 75 of those cases (25 percent); these antidumping duties were therefore immediately revoked.

Among the transition orders, the number of orders with no domestic interest in continuation was 24 percent. As noted in the previous paragraph, many of these cases had been in place since the 1970s and 1980s so that it is perhaps no surprise that some of these domestic industries were not interested in continuing the duties. Among the non-transition cases, 8 out of 44 (or 26 percent) were revoked because of a lack of domestic interest. However, column (4) of Table 5 shows that there was no domestic interest in continuation in 16 out of 118 (or 14 percent) cases imposed after 1990. Thus, while there is little difference between the treatment of transition and non-transition antidumping orders, one does see that a broader sample of more recent cases suggests that most domestic industries contest the revocation of antidumping orders.

The most important issue is whether those cases under review by US authorities are generally terminated as envisioned by Uruguay Round negotiators. The data in Table 5 show that 172 of 231 contested antidumping orders (or 74 percent) were continued for the sample as a whole. None of these cases were terminated by the Department of Commerce; all revoked "contested" orders were done so by the International Trade Commission. This raises serious questions about whether the DOC's procedures are consistent with the spirit of Uruguay Round reforms.

Among transition orders, we see that 142 out of 199 contested orders (71 percent) were continued. Thirty out of 32 non-transition orders (94 percent) have been renewed for another five year period whereas 90 out of 102 contest orders (90 percent) in the post-1990 cases were not revoked. These results, especially when one discounts the revocation of the much older orders among the transition cases, raises grave doubts about whether the US is living up to the spirt of its commitments to terminate antidumping orders after five years.

One can also see evidence about foreign firms' evaluation about the sunset review

process. As described above, foreign firms can choose not to participate in the DOC or ITC deliberations. If foreign firms decline to become involved, the case will be "expedited"; if the firms choose to participate, the order is subject to a "full" review. Thus, foreign decisions will provide "revealed preferences" about whether they believe that any potential economic gains from the process will outweigh the legal costs of providing information to the relevant agencies.

Table 5 shows that 89 percent (207 out of 231) of transition orders were expedited at the DOC stage, 94 percent among both non-transition (30 of 32) and 83 percent of post-1990 (85 out of 102) cases. These decisions by foreign firms have a strong basis. As Moore (2002 and 2003) points out, the DOC process was almost entirely mechanical for transition orders; foreign firms and their legal representatives have clearly incorporated these trends and recognize that there are almost no benefits from participating in a full DOC sunset review.

There seems to be more faith in the efficacy of involvement in the ITC sunset review process. For transition orders, 30 percent (60 out of 142) of ITC reviewed cases were expedited; in the non-transition cases, this number had dropped to 25 percent (8 of 32), compared to 25 percent (25 of 102) for the post-1990 cases as a whole. Thus, foreign firms seem to believe that the legal and consulting costs of a full ITC review are worthwhile, especially in comparison to cooperating with the DOC's sunset review process. Unfortunately, recent outcomes may shake this faith. In particular, out of the 57 revoked transition order cases, 51 cases were full ITC reviews; another 94 full ITC reviews were continued. Therefore, almost one third (51 out of 145) full ITC transition reviews resulted in a revocation. However, in non-transition reviews, only 2 out of 24 full reviews resulted in a revocation, suggesting that the odds have became tougher to win at the ITC. Further evidence of this is that all 8 order expedited at the ITC among the post-UR cases were

continued. This suggests that foreign firms have given up on the process because they feel it is not worth the expense.

Table 6 summarizes the experience of Chinese and Japanese firms involved in US antidumping sunset reviews. These two countries are of particular interest because they are the most frequent targets of US antidumping duties.

One sees that Chinese respondents seem to have achieved less success than their Japanese counterparts in the sunset review process. Overall, sunset reviews have resulted in only 2 revocations out of 36 contested Chinese antidumping orders for the entire data set. In contrast, US authorities have revoked nearly one-third of all contested Japanese AD orders (10 out of 31 cases). This pattern is most pronounced among transition cases where 10 of 28 Japanese orders were terminated compared to only 1 of 28 Chinese cases. However, it is important to note that these Japanese cases were relatively old: all 10 of the revoked Japanese transition cases were originally in place before 1990 and in one case prior to 1974. In more recent years, both with non-transition and with orders imposed after 1990, ones sees in Columns (3) and (4) of Table 6 that one contested case involving China and no contested cases involving Japan were revoked.

The patterns of Japanese and Chinese firms devoting resources to seek revocation of the contested orders is somewhat surprising given the near certainty with which the orders are continued. Only 2 of 8 Chinese cases were expedited at the ITC for the post-1990 sample compared to 10 of 21 Japanese cases. Apparently these firms believe that retaining counsel still may increase the chances of winning revocation. It will be interesting to see over time whether these firms give up on fighting antidumping continuation as the probabilities of revocation seem more and more slim.

V. b. Probit analysis of sunset orders.

I turn now to a simple reduced form probit analysis of transition and post-transition sunset orders. Only those cases for which there was a domestic interest for continuation are included in the sample. The dependent variable takes on a 1 if the order is continued and a 0 if the order is revoked.

Three types of explanatory variables are included.[13]

The first set includes "DOC-expedited" (which takes a value of 1 if the case is expedited at the DOC and 0 otherwise), "ITC-expedited" (which takes a value of 1 if the case is expedited at the ITC and 0 otherwise), "Time-trend" (which ranks orders the cases by the month in which the sunset case was initiated), and "Transition" (which takes a value of 1 if the case is a transition order and a 0 otherwise) .

The descriptive statistics above suggest that there will be a positive coefficient on the first two variables, both of which indicate whether foreign firms have decided to participate in the sunset review process. The coefficient for "Time-trend" will take on a positive value if older orders are more likely to be terminated since sunset orders are adjudicated based on when the orders were originally in place.[14] The coefficient on "Transition" will help determine whether there are any systematic differences between transition and post-transition treatment of sunset cases.

The second and third sets include industry and country variables identical to those defined in the BIA section above. This will help control for any differences in treatment of industries and countries in the process.

[13] Note that economic data for the domestic and foreign industries are not included in the analysis as in Moore (2002a), Liebman (2004) and Ginsburg (2004). The empirical analysis therefore should be seen not as an exploration of the structural determinates of sunset review outcomes.

[14] Note that newer and older cases for identical products are generally grouped together so that the rank ordering is not strictly based on the age of the antidumping order.

Table 7 displays the estimation results. Column (1) contains only the first set of explanatory variables. There is little evidence that non-cooperation by the foreign firm in the DOC stage has any explanatory power for predicting final outcomes. This result is consistent with Moore (2003) who analyses only transition sunset orders and reflects the mechanical nature of the DOC's sunset review process. In contrast, non-cooperation with the ITC (as indicated by "ITC-expedited") has important explanatory power; foreign firms that choose not to participate strongly reduce their chances of a revoked cases. The coefficient on "Time-trend" is positive and significant, suggesting that it has become less likely over time for orders to be revoked. The coefficient for "Transition" is insignificant indicating that there are no systematic differences between the treatment of transition and post-transition orders.[15]

Country and industry indicators are included in the probit results of Column (2) in Table 7. The results for the first set of variables are similar to Column (1): "ITC-expedited" and "Time-trend" retain their signs and significance at a 1 and 4 percent level, respectively. The hypothesis that the dummy variable for transition cases is zero once again cannot be rejected.

The country dummies do not help explain sunset review outcomes as a group; the hypothesis that country dummy coefficients are jointly zero yields a Chi-squared statistic of 12.7 and a marginal significance level of 24 percent. The coefficient for Chinese and "other Asian" cases are positive and the only country dummies that can be accepted as significantly different from zero at a 4 percent level; the coefficient for Mexican cases has a positive coefficient with a marginal significance level of 8 percent.

Controlling for industry groups also does not add much explanatory power to the

[15] There are only 32 non-transition orders in the sample so that this coefficient cannot be estimated with precision.

probit estimates. The joint hypothesis that all coefficient for the industry dummies yields a test statistic of 9.5 with a marginal significance of 15 percent. The coefficient for the electronics industry is the only dummy that can be accepted as non-zero at a 5 percent level, which indicates that foreign electronics firms generally may be less likely than food/agriculture firms to have their antidumping orders revoked. The insignificant results for steel and steel products is somewhat surprising given these industries long-standing intense interest and use of the antidumping process as well as the BIA results above. Nonetheless, the probit analysis suggests that these two domestic industries are not systematically more likely to win a sunset review case than other US industries.

Table 6, Column (3) also includes estimates for the 102 sunset review for the post-1990 period. One sees that the only variable that can be accepted as significantly different from zero is the constant (and only at a 10 percent significance level). In contrast to the entire sample, the coefficients for "Time-trend" and "ITC-expedited" do not have important explanatory power. The result for the former suggests there is little change in the patterns of sunset review outcomes for the most recent period. The second suggests that foreign respondents gain little by participating in the ITC process. Neither of these results is surprising since almost 90 percent of the contested cases are continued in the sample; there is simply little variation in the dependent variable to explain.[16]

The descriptive statistics and probit results in this section show that the US sunset review process has not resulted generally in revocations. One sees that some of the older cases among the transition orders, a number of which had been in place for over twenty years, have been revoked. But more recent cases, especially those in place in the post-1990 period, have been continued in an almost automatic fashion. Foreign firms have already

[16] Note that the entire set of coefficients for country and industry variables could not be estimated since many had no revocations at all during this sample period.

lost faith in the DOC's part of the process, as indicated by their near universal decision to face an expedited process. Foreign respondents do seem to have more faith in the ITC in the sense that they continue to expend resources to fight continuation of the AD orders. But there are strong indications that this faith may be misplaced since an increasing percentage of cases are lost by foreign firms, regardless of whether they face an expedited or full review. In short, there is little reason to believe that the US is administering the sunset review process in a way intended by international negotiators.

VI. Conclusions

The evidence provided above makes clear that even the modest reforms agreed to in 1994 have not substantially changed US antidumping practices. The nearly dysfunctional sunset review process and the continued broad reliance on BIA methods means that the US has made only nods in the direction of real AD reform. In short, past US performance in negotiating and implementing antidumping reform gives little solace to those seeking fundamental changes in the Doha Round.

There are strong reasons to believe that these patterns will continue in the future.

Congressional resistance to antidumping reform continues unabated. As mentioned above, 62 US senators signed a letter demanding that President Bush avoid even putting antidumping on the agenda of the new WTO negotiations. The US Trade Representative Robert Zoellick was met in Doha with a broad international consensus that antidumping would have to be part of the new Round. Thus, despite the Senate's warning, trade ministers did agreed to include antidumping on the list of issues to be discussed in the next multilateral trade round. Minsters agreed specifically to pursue:

> "negotiations aimed at *clarifying and improving* [antidumping and countervailing duty] disciplines.... *while preserving the basic concepts, principles and effectiveness*

of these Agreements and their instruments and objectives"[17] [emphasis added]

This language certainly represents a timid consensus for reform. Ministers agreed only to "clarifying and improving" the disciplines; the implicit argument was that the current antidumping system was essentially sound and just needed minor adjustments. Furthermore, the commitment of "preserving the basic concepts, principles and effectiveness" of existing agreements meant that there was no mandate for fundamental changes.

Despite the evident restricted nature of the discussion and a near guarantee of no fundamental change in the U.S. antidumping procedures, many in Congress were furious with the Doha Ministerial's AD language. One manifestation of the unhappiness with inclusion of antidumping on the Doha agenda arose as US senators were considering delegation of "fast-track" authority to President Bush to negotiate trade agreements that would be immune from congressional amendments and subject to a simple up or down vote. Republican Senator Larry Craig (Republican of Idaho) and Senator Mark Dayton (Democratic of Minnesota) sponsored an amendment that would have exempted any change of the trade remedy laws from "fast-track" voting procedures.[18] Despite a 61 to 38 Senate vote in favor of the amendment, the Bush Administration's voiced strong opposition to the provision. In the end, the Dayton-Craig amendment was removed when the House and Senate reconciled their versions of the Trade Promotion Authority Bill (Public Law 107-210). Nonetheless, the widespread support for this extraordinary treatment of antidumping reflects strong congressional opposition to any but the most minor of antidumping reform in the Doha Round.

US interpretation of the Doha mandate also calls into question how far the US will

[17]WTO (2001).

[18] CRS (2003).

be able to go in accepting AD reform. The US, for example, submitted a paper to the WTO that laid out a vision of the "basic concepts" of antidumping referred to in the ministerial declaration. The paper, written by the DOC administrators, argued that the goal of the negotiations was to "maintain the strength and effectiveness of the trade remedy laws,"[19] an interpretation that hardly foresaw important new restrictions on the use of antidumping. Moreover, US proposals for the specific negotiating agenda generally involve very technical issues such as increasing transparency, safeguarding confidential information, and judicial review of antidumping procedures, rather than substantial reform of the current system.[20] The US approach of focusing on highly technical issues also increases the likelihood that national antidumping administrators (i.e., those with a vested interest in essential continuation of the current system) will be those involved in negotiating any reforms.

US reticence to change its antidumping regime may also be discerned from recently-negotiated free trade agreements (FTAs). The plethora of US FTAs have included a host of issues of importance to US interests, including expanded intellectual property protections, new approaches to labor and environment protections, and investment guarantees. However, the US has been steadfast in refusing to include any aspects of antidumping in the FTAs. For example, the Chile FTA text notes that:

> "No provisions of this Agreement...shall be construed as imposing any rights or obligations on the Parties with respect to antidumping or countervailing duty measures."[21]

This treatment means that although the US is seeking far greater economic integration with an unprecedented number of new free-trade-agreement partners, US users of the

[19] WTO (2002a)

[20] WTO (2002b)

[21] USTR (2004)

antidumping apparatus will retain unimpeded access to the “unfair” trade remedy laws.

In conclusion, this paper provides little solace to those hoping that the US will acquiesce to even limited restrictions on antidumping users during Doha Round negotiations. The US is broadly following the negotiating strategies of the Uruguay Round, i.e., only extremely modest antidumping changes likely be acceptable to US negotiators and the Congress. And if the implementation of Uruguay Round reforms involving BIA and sunset reviews are any indications about future behavior, US administrators of antidumping will take every opportunity to interpret any new commitments in a way that does little to limit US industries’ current *de facto* access to the imposition of antidumping duties. In other words, there is little to indicate that the US will “dump” antidumping in the foreseeable future or even reform the system in anything but superficial ways.

References

ADA (1994), Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, http://www.wto.org/english/docs_e/legal_e/final_e.htm, Accessed 20 May 2004.

Baldwin, Robert E. and Michael O. Moore, "Administration of the Unfair Trade Laws by the Department of Commerce: A Political Economy Analysis," in R. Boltuck and R. Litan (eds.), 'Down in the Dumps'- Administration of U.S. Trade Remedy Law, Brookings Institution, 1991.

Blonigen, Bruce (2003) "Evolving Discretionary Practices of US Antidumping Activity" NBER Working Paper 9625, April 2003.

CRS (2003) "Fast-Track Authority for Trade Agreements (Trade Promotion Authority): Background and Developments in the 107th Congress" Congressional Research Service, January 2003.

Ginsburg, Mitch (2004) "Sunset Reviews at the ITC and Foreign Participation" dissertation, American University.

Liebman, Benjamin "ITC Voting Behavior on Sunset Reviews" Review of World Economics, forthcoming 2004.

Moore, Michael O." 'Facts Available' Dumping Allegations: When Will Foreign Firms Cooperate in Antidumping Petitions?" European Journal of Political Economy, June 2004

Moore, Michael O. (2002a) "An Econometric Analysis of US Antidumping Sunset Review Decisions" mimeo, 2002.

Moore, Michael O. (2002b) "Commerce Department Antidumping Sunset Reviews: A First Assessment," Journal of World Trade, vol. 36, no. 2, pp. 675-698, August 2002.

Murray, Tracy "The Administration of the Unfair Trade Laws by the Department of Commerce" in R. Boltuck and R. Litan (eds.), 'Down in the Dumps'- Administration of U.S. Trade Remedy Law, Brookings Institution, 1991.

USTR (2004), US-Chile Free Trade Agreement, Article 8.8, paragraph 2 (http://www.ustr.gov/new/fta/Chile/final) Accessed 17 April 2004

URAA (1994), Uruguay Round Agreements Act of 1994, Public Law 103-465.

WTO (2001), Doha WTO Ministerial Declaration WT/MIN(01)/DEC/120 November 2001

WTO (2002a), " Basic Concepts and Principles of the Trade Remedy Rules" Communication by the United States of America, WTO Document TN/RL/W/27, October 2002

WTO (2002b), "Investigatory Procedures under the Antidumping and Subsidies Agreements"Communication by the United States of America, WTO Document TN/RL/W/35, December 2002.

Table 1: Use of Best-Information-Available (BIA) in Pre- and Post-WTO Periods

	Entire Data Set (1990-2002)	Pre-WTO (1990-1994)			Post-WTO (1995-2002)		
		Total	BIA	Non-BIA	Total	BIA	Non-BIA
Number (% of total [pre- or post-WTO])	834	333	143 (43%)	190 (57%)	501	224 (45%)	277 (55%)
Average dumping margin (standard deviation)	51 (61)	52 (63)	80 (78)	31 (38)	50 (60)	74 (67)	32 (44)
Number of affirmative decisions (% of total cases in the column)	547 (66%)	197 (59%)	92 (64%)	105 (55%)	350 (70%)	154 (69%)	196 (71%)

Sources: US Antidumping Database (http://darkwing.uoregon.edu/~bruceb/adpage.html) and Federal Register antidumping notices (http://ia.ita.doc.gov/frn/index.html)

Table 2: Use of "Partial" and "Adverse" BIA				
	Pre-WTO (1990-1994)		Post-WTO (1990-1994)	
	Adverse[22]	Partial	Adverse	Partial
Number (% of total)	109 (76%)	25 (24%)	177 (79%)	61 (21%)
Average dumping margin (standard deviation)	93 (83)	30 (31)	84 (67)	50 (69)

See Table 1 for data sources.

[22] Note that "adverse" and "partial" BIA are not mutually exclusive.

Table 3: BIA Use and Target Countries

	Pre-WTO (1990-1994)			Post-WTO (1995-2002)		
	Japan	EU	China	Japan	EU	China
Number	32	60	66	61	59	149
Number of cases using BIA (% of all cases for country)	22 (68%)	22 (37%)	21 (32%)	52 (85%)	33 (56%)	33 (22%)
Average margin (standard deviation.)	59 (28)	55 (30)	168 (139)	89 (65)	50 (46)	100 (95)

See Table 1 for data sources.

Table 4: Probit Results for BIA Use				
	Column 1	Column 2	Column 3	Column 4
	Full Sample (1990-2002)	Full Sample (1990-2002)	Pre-WTO (1990-1994)	Post-WTO (1995-2002)
Constant	-0.25(0.06) ***	-0.92 (.21)***	-1.56(0.37)***	-0.59 (0.31)*
Pre-WTO dummy	-0.04 (0.09)	-0.17 (0.10)*		
Experience	0.39 (0.10)***	0.88 (0.11)	0.08 (0.19)	0.02 (0.15)
Chemicals		0.66 (0.11)***	1.48 (0.39)***	0.30 (0.29)
Manufactures		0.41 (0.19)**	1.13 (0.39)***	0.22 (0.25)
Steel		0.88 (0.16)***	1.85 (0.35)***	0.47 (0.22)**
Steel products		0.79 (0.19)***	1.51 (0.36)***	0.51 (0.29)*
Electronics		0.01 (0.33)	NA	-0.09 (0.38)
Commodities		0.39 (0.24)	0.79 (0.42)**	0.39 (0.34)
Canada		-0.37 (0.29)	-0.37 (0.48)	-0.82 (0.41)**
Mexico		0.30 (0.42)	0.24 (0.62)	-0.14 (0.61)
Other Latin America		0.59 (2.4)**	0.5 (0.36)	0.31 (0.36)
EU		0.11 (0.21)	-0.36 (0.35)	0.28 (0.28)
Japan		1.05 (0.23)***	0.55 (0.38)	1.22 (0.31)***
Korea		-0.39 (0.26)	-1.1 (0.47)**	-0.16 (0.33)
Taiwan		0.46 (0.22)**	0.86 (0.45)*	0.23 (0.27)
China		-0.19 (0.21)	-0.23 (0.35)	-0.41 (0.28)
Other Asia		0.78 (0.25)	0.01 (0.37)	1.99 (0.53)***
USSR		0.17 (0.32)	NA	0.21 (0.31)
Observations	834	834	325	501
Likelihood	-566.8	-491.4	-181.7	-281.0

Table 5: Sunset Review Outcomes				
	Column 1	Column 2	Column 3	Column 4
	All Sunset Review Cases	Transition cases[23]	Non-transition cases[24]	Recent cases[25]
Number of Orders Subject to Sunset Reviews	306	262	44	118
Number of Cases with Domestic Interest in Continuation ("Contested orders")	231	199	32	102
Contested Orders Continued After Sunset Review ("Continued")	172	142	30	90
DOC-expedited Contested Order Reviews ("DOC-Expedited")	207	177	30	85
ITC-expedited Contested Order Reviews ("ITC-Expedited")	62	60	8	25

Sources: US Antidumping Database (http://darkwing.uoregon.edu/~bruceb/adpage.html), ITC sunset review website (http://info.usitc.gov/oinv/sunset.nsf) and DOC sunset review webiste (http://ia.ita.doc.gov/sunset/)

[23] Antidumping orders in place pre-January 1, 1995

[24] Antidumping orders in place post-January 1, 1995

[25] Antidumping orders imposed from January 1, 1990-June 30, 1997. Five-year sunset reviews for orders originally imposed in June 1997 were initiated in June 2003.

Table 6: Sunset Review Outcomes for China and Japan					
		Column 1	Column 2	Column 3	Column 4
		All Sunset Review Cases	Transition Cases	Non-transition Cases	Recent Cases
China					
	Total	43	30	13	27
	Contested Orders	36	28	8	22
	Continued Orders	35	27	8	21
	DOC-expedited Reviews	32	24	8	18
	ITC-expedited Reviews	18	13	5	10
Japan					
	Total	52	45	7	13
	Contested Orders	31	28	3	9
	Continued	21	18	3	9
	DOC-expedited Reviews	30	27	3	8
	ITC-expedited Reviews	8	7	1	2

See Table 5 for definition of categories and data sources.

Table 7:
Probit Results for Sunset Review Outcomes
(1=continuation; 0=revocation)

	Column 1	Column 2	Column 3
	Full Sample	Full Sample	Recent Cases (1990-1997)
Constant	0.11 (0.75)	-0.07 (1.07)	2.74 (1.52) *
DOC-expedited	0.14 (0.29)	0.24 (0.33)	0.53 (0.41)
ITC-expedited	0.90 (0.25)***	0.81 (0.31) ***	0.16 (0.43)
Time-trend	0.047 (0.024)**	0.06 (0.2) **	-0.066 (0.054)
Transition	-0.37 (0.49)	-0.23 (0.56)	-1.11 (0.77)
Chemicals		-0.22 (0.75)	
Manufactures		-1.1 (0.72)	
Steel		-0.91 (0.70)	
Steel products		-0.91 (0.67)	
Electronics		-2.44 (0.99) **	
Commodities		-1.0 (0.75)	
Canada		0.25 (0.60)	
Mexico		1.36 (0.77) *	
Other Latin America		0.84 (0.53)	
EU		0.47 (0.46)	
Japan		0.66 (0.50)	
Korea		0.78 (0.59)	
Taiwan		0.70 (0.57)	
China		1.80 (0.65)***	
Other Asia		1.22 (0.59) **	
USSR		0.55 (0.63)	
Observations	231	231	102
Likelihood	-117.8	-104.4	-34.5