Domestic Competition over Trade Barriers in the US International Trade Commission

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As governments lower traditional tariffs, they may use non-tariff barriers, such as antidumping (AD) and countervailing duty (CVD) laws, to protect domestic industries. Research on the US International Trade Commission (ITC), an independent agency responsible for adjudicating AD/CVD claims, finds mixed evidence of political influence in these cases. However, this research focuses predominately on the political influence of the petitioning industry. Applying theories of bureaucratic oversight, I posit that the ITC must be receptive both to petitioners and to firms that oppose trade barriers. Using an original data set compiled from ITC records of witness testimony in these cases, I demonstrate that domestic opposition to an AD/CVD petition has a significant effect on ITC decisions. Moreover, members of Congress actively intervene on both sides of AD/CVD petitions and have some influence on ITC decisions. These results suggest that AD/CVD politics in the United States is better understood as a contest between competing domestic interests than a captured bureaucracy providing rents to protectionist interests.

Countries cooperate through the GATT/WTO and other trade agreements to reduce tariffs, but these governments reserve the right to invoke more specific protectionist policies in limited circumstances. In particular, governments can assess additional duties against imports found to be underpriced due to unfair trade practices such as dumping or illegal subsidies. For proponents of these antidumping and countervailing duty (AD/CVD) laws, unfair trade practices are analogous to anti-competitive pricing in the domestic context. By selling goods at less than fair value, foreign companies could drive out domestic producers and establish monopolistic control of the market. By claiming that foreign prices are “unfair,” protectionists are able to raise barriers where tariffs are otherwise prohibited (Baldwin 1985; Bolttuck and Litan 1991; Finger 1993). These trade barriers can have a significant impact. By one estimate, AD/CVD procedures cost the United States up to $4 billion in welfare costs in a single year (Gallaway, Blonigen, and Flynn 1999). AD/CVD cases are also a major source of international disputes in the WTO. As Finger (1993) puts it, antidumping is “where the action is.”

Considerable uncertainty remains about the politics surrounding AD/CVD decisions. While a large literature investigates the domestic politics of trade policy, most research has focused on tariffs (Grossman and Helpman 1994; Lohmann and O’Halloran 1994; McGillivray 2004; Milner and Kubota 2005). As the use of non-tariff barriers has become more prevalent, researchers have extended the assumptions and theories of the tariff research to explain AD/CVD policy (Baldwin 1985; Finger 1990, 1993; Bolttuck and Litan 1991; Blonigen and Prusa 2001). Yet there are important institutional differences between tariff policy and AD/CVD policy. Tariffs are legislated by Congress or delegated to the President, while AD/CVD policy is delegated to bureaucratic agencies and determined through administrative procedures. Therefore, any theory of AD/CVD policy must take into account the principle-agency problem created by this delegation.

This paper contributes to the existing literature on trade protection in two ways. First, I incorporate theoretical insights from the literature on bureaucratic oversight to develop specific hypotheses about the influence of firms and Congress in AD/CVD cases. I argue that the U.S. International Trade Commission (ITC) retains significant discretion to balance domestic interests on both sides of the AD/CVD petition. Second, I collect an original data set based on records of witness testimony in ITC cases from 1997 to 2010. Using this data, I find evidence supporting a more nuanced understanding of AD/CVD politics. Consistent with conventional theories, the ITC is responsive to pressure from domestic firms and members of the Congressional oversight committees. However, this political pressure is evident on both sides of the petition. While AD/CVD laws are biased toward industries seeking protection, the ITC is highly responsive to pressure from firms and members of Congress on both sides of the case.

Existing Literature on ITC Decision Making

Antidumping and countervailing duty (AD/CVD) laws permit firms representing a domestic industry to petition for relief from unfairly priced foreign imports. The petition initiates a government investigation carried out jointly by two government agencies: the International Trade Administration (ITA) within the Department of Commerce, and the ITC, an independent agency. The ITA is responsible for determining whether a foreign company dumped goods in the US market or received illegal government subsidies. The ITC is responsible for determining whether the petitioning industry has
suffered harm as a result of the alleged dumping or subsidies (Nivola 1993). In this paper, I focus on the final determinations of the ITC.

A sizable literature has examined political influence on ITC decisions, but the results have been mixed (Finger, Keith Hall, and Nelson 1982; Hansen 1990; Moore 1992; Devault 1993, 2002; Hansen and Prusa 1997). The research relies on two interrelated theories to explain the political influences on ITC decision making. First, the industry capture theory posits that Congress delegated protection for domestic industries to the bureaucracy in order to lock in future benefits for important constituent industries. Firms then use the rules to apply political pressure directly on the ITC to ensure favorable outcomes. A second theory of political influence on the ITC comes from the congressional dominance theory (Weingast and Moran 1983). Here, members of Congress increase their prospects for re-election by using their oversight powers to influence agency decisions in favor of constituents.

The empirical evidence for the industry capture theory is decidedly mixed. Looking to the influence of petitioning industries, several studies find that larger industries are more likely to win protection (Finger et al. 1982; Hansen 1990; Devault 1993, 2002), but others find a significant negative effect (Moore 1992) or no effect at all (Hansen and Prusa 1997). Similarly, Devault (2002) finds that more concentrated industries are more likely to prevail before the ITC, but other studies find no significant effect for industry concentration (Finger et al. 1982; Hansen 1990; Moore 1992; Hansen and Prusa 1997).

Empirical support is mixed for the congressional dominance theory, as well. Researchers often use a count of the number of legislators who have the petitioning industry located in their district, “industry representation,” as a means to assess the influence of Congress on AD/CVD decisions. Examining the Senate Finance Committee’s Subcommittee on Trade, Moore (1992) finds a positive effect for industry representation, but Devault (1995) finds a negative relationship. Neither study finds a significant effect for the equivalent subcommittee in the House, while Hansen (1990) finds a significant positive relationship only for Democrats and a significant negative relationship for Republicans. Devault (2002) examines the Trade Subcommittees on the Appropriations Committees in both chambers and finds no significant effects. Hansen (1990) finds a significant positive effect only for Democrats on the House Ways and Means Committee, while Hansen and Prusa (1997) find a positive effect for members of the Ways and Means Committee and a negative effect for members of the Senate Finance Committee.

These mixed results are troubling. Given the level of activity in this research area and the shared theoretical assumptions of the authors, one would expect to find greater consensus. Perhaps, as Goldstein and Lenway (1989) argue, Congress has created in the ITC a truly independent agency. In the following sections, I posit an explanation that lies somewhere between these two poles. While the institutional structure of the AD/CVD bureaucracy does benefit petitioning industries, it is not sufficient to lock in protectionist policies. Instead, the AD/CVD bureaucracy invites competition between various domestic interest groups, and ITC decisions reflect the balance between domestic interests on both sides of the case.

Re-examining Theories of ITC Oversight

Both tariffs and AD/CVD cases involve political decisions over trade policy. Consequently, one would expect to find that domestic industries have similar incentives to influence these policy decisions and similar preferences over their outcomes. Yet the evidence for political influence on AD/CVD decisions is mixed, while the evidence for political influence on tariff policy is much more consistent (Baldwin 1985; Milner 1988; Grossman and Helpman 1994; Lohmann and O’Halloran 1994; Gordon and Hafer 2007). I posit that a key reason for this difference is in the institutional rules governing these decisions. Congress retains significant direct control over tariff policy, but AD/CVD decisions have been delegated to bureaucratic agencies, and this creates a principle agency problem for Congress (Weingast 1984; Miller 2005). Even if the incentives and preferences of domestic industries are identical in both policy areas, the principle agency problem can make it more difficult for domestic industries to influence ITC decisions.

The ITC is an independent agency composed of six commissioners appointed by the President and confirmed by the Senate for overlapping 9-year terms. By statute, no more than three commissioners are of a single political party. The House Ways and Means Committee and the Senate Finance Committee exercise oversight over both the ITC and the ITC. In addition, a special Article III court, the US Court of International Trade (USCIT), has exclusive jurisdiction to review decisions of the ITA and ITC (Nivola 1993). Procedurally, the ITC operates as a quasi-judicial agency. A professional staff performs preliminary investigations and solicits input from domestic firms. The ITC also conducts formal hearings at which both sides present their cases, usually supplemented by witnesses who have expert knowledge of the product or market in question. Following the hearing, the ITC conducts a formal vote, with only three of six votes required for an affirmative ruling (Nivola 1993).

Despite the purported independence of the ITC, Congress may use its oversight powers to influence AD/CVD outcomes. Ex ante controls, or deck-stacking, are procedural and structural rules made at the time of delegation that constrain the agencies’ discretion in the future. These rules help Congress overcome informational disadvantages and ensure agencies respond to the needs of important constituents (McCubbins, Noll, and Weingast 1987, 1989). Implicit in the ITC literature’s industry capture theory is the assumption that Congress instilled in the AD/CVD bureaucracy sufficient ex-ante control to ensure continued ITC responsiveness to industries seeking protection. Where ex-ante controls are insufficient to lock in a policy preference, the threat of ex-post controls, such as budget cuts or transfer of authority to another agency, can provide incentives for agency compliance with Congressional preferences (Weingast and Moran 1983; Calvert, McCubbins, and Weingast 1989). The Congressional dominance theory of the ITC is built on the assumption that members of the oversight committees use these ex-post controls to influence ITC decisions on behalf of petitioning constituents.

So, has Congress locked in protection for petitioning industries in the AD/CVD process? The literature catalogs a long list of procedural and structural oddities embedded in the AD/CVD laws that benefit petitioning industries. Agencies must issue their decisions according to strict deadlines that favor the well-prepared petitioning
industry. A complex bureaucratic procedure ensures multiple opportunities for constituents to notify Congress of agency behavior and for Congress to intervene in the process (Finger 1993). Congress has asserted itself in the appointment process as well, installing a number of former committee staffers as commissioners on the ITC (Devault 1993). Finally, Congress transferred authority for the domestic portion of AD/CVD investigations from the Department of Treasury to the ITC in 1954 and transferred the remaining authority for the foreign leg of investigations to the Department of Commerce in 1979. These transfers of authority ensured that the investigations would be carried out by agencies with a natural constituency in domestic industry (Baldwin 1985; Finger 1993).

On the other hand, the institutional structure fails to meet many of the theoretical requirements to lock in a protectionist policy. Effective deck-stacking requires a cohesive enacting coalition, specific direction to agencies, a structure designed to protect against future coalitions, and reliable enforcement of the agreement by the courts (Hill and Brazier 1991). But, the ex-ante controls over AD/CVD procedure were not the product of a unified protectionist coalition. Instead, they were a compromise tacked on to more significant trade legislation that both ratified the Tokyo Round of GATT negotiations and extended authority to the executive branch to negotiate the Uruguay Round that would create the WTO (Arnold 1994; Hansen and Park 1995). In addition, AD/CVD law remains extremely vague, referencing “unfair trade practice” and imports less than “fair value,” but stopping short of defining those terms with any specificity and leaving wide legal discretion over the standards applied in each case (Finger et al. 1982; Jackson 1984; Kennedy 1986; Boluck and Litan 1991; Finger 1993; Lawrence 1994; Hansen and Prusa 1996). Finally, the Customs Court Act of 1980 created a special US Court of International Trade that specifically provides standing for foreign companies and other domestic industries to challenge ITC decisions and even allows the Court to hold hearings in foreign countries to ensure that foreign companies have the opportunity to respond (Hansen, Johnson, and Unah 1995; Unah 1997). So, while many elements of the AD/CVD laws provide an advantage to the petitioner, the overall structure appears insufficient to lock in a protectionist bias without additional oversight.

Where ex-ante controls are insufficient to lock in a policy preference, then Congress must rely on constituent monitoring and ex-post controls. When constituents are enfranchised to influence and monitor agency behavior, the arrangement is vulnerable to shifts in preferences among the intended beneficiaries of the policy (Ball 1998; Yackee and Yackee 2006). The threat of ex-post penalties is further dependent on the preferences of the current coalition in Congress (Weingast and Moran 1983; Calvert et al. 1989). And the principals’ threat to use ex-post controls becomes less credible, as preferences among the principals diverge (Hammond and Knott 1996; Shipan 2004).

Thus, influence through monitoring and the threat of ex-post controls would require a cohesive protectionist coalition on the House Ways and Means Committee and the Senate Finance Committee, which oversee the ITC. But these are two of the committees that Congress scholars consistently classify as “prestige committees” (Fenno 1973). Unlike, for example, the agriculture oversight committees, these prestige committees deal with policy issues of great importance to all members of Congress. Party leadership carefully controls membership on these committees, ensuring that committee preferences reflect those of the floor (Maltzman 1998). They are not expected to indulge the parochial constituency interests of individual members over the broader interests of the majority party or the floor (Deering and Smith 1997). Consequently, these committees are unlikely to demonstrate the cohesive protectionist preferences necessary to bias agency decisions on a consistent basis.

A Revised Theory of ITC Oversight

I propose a revised theory of political influence on the ITC. The ex-ante and ex-post controls are insufficient to lock in protection for petitioning industries in AD/CVD cases. In fact, the rules provide numerous avenues for direct participation by domestic firms that oppose protection. Moreover, members of the oversight committees are likely to reflect these divergent preferences, with some members supporting protection and some opposing it. Therefore it is necessary to broaden our models of ITC decision making to accommodate political pressure on both sides of a case.

First, industry level data is not precise enough to capture the trade preferences of domestic firms, because firms within the same industry may not share the same preferences on trade policy. A large literature on intra-industry trade also shows that firms within a single industry often specialize in specific segments of the market, creating different preferences over trade policy (Helpman and Krugman 1985; Learner and Levinsohn 1995). Divergent preferences may increase with exposure to the pressures of globalization (Milner 1988; Hansen and Mitchell 2000; Mayda and Rodrik 2001). Similar coalition- al drift has been a significant factor in changing bureaucratic behavior in other policy areas (Balla 1998; Yackee and Yackee 2006). All of this suggests that the industry-level measures used in previous research are unreliable, and industries will find it increasingly difficult to maintain a coalition in favor of protection.

The AD/CVD process may contribute to the further divergence in intra-industry trade preferences. In the 1960s, AD petitions resulted in the imposition of duties in only about 10% of cases (Blonigen and Prusa 2001). Following the restructuring of the bureaucracy in the 1970s, affirmative findings shot up to 54% of cases. Clearly, petitioners were taking advantage of the new rules. Still, petitioners succeeded only slightly better than 50% of the time, and this rate of success continues into my data from 1997 to 2010. So, while the changes in AD/CVD rules were a boon to petitioning industries, the revised rules by no means guarantee victory. As firms fail to win protection before the ITC, they may be forced to seek new strategies to compete in a globalized economy, or simply may go out of business, leading to reduced industry support for protection in the future.

Table 1 summarizes the descriptive evidence that industry participation in AD/CVD cases has changed over time. While the average number of cases filed (around 35–40/year) remains relatively constant, the number of different industries represented in these petitions has decreased dramatically. AD/CVD petitions in the 1980s covered about 246 different products, meaning separate petitioners accounted for 59% percent of all cases (Irwin 2004). The 482 petitions filed from 1997 to 2010 represent only 150 different petitioners, meaning separate
petitioners account for only 31% of all cases. In other words, the number of industries using the AD/CVD procedure has declined over time.

In addition, many firms actively oppose AD/CVD petitions, a phenomenon that has been overlooked in previous studies of the ITC. These firms include multinational users of the imported product, domestic subsidiaries of multinational firms, or firms within the petitioning industry itself. Witnesses from downstream firms who opposed AD/CVD duties testified in 78% of ITC hearings from 1996 to 2010. These are companies that either import and resell the products in question or use them as inputs for other domestic manufacturing. In 20% of cases, at least one of the firms charged with unfair trade practices produced a witness from their own US subsidiary. And 17% of cases included opposing witnesses from firms in the petitioning industry itself. Firms in all three categories are incorporated in the United States and employ American workers. If the AD/CVD bureaucracy is not merely captured by protectionist industries, then the ITC must consider the ramifications of its decisions for both the petitioning firms and the firms that oppose the petition. Consequently, I expect that the appearance of these opposing witnesses in a case will decrease the likelihood of a successful petition.\(^2\)

**Hypothesis 1:** The likelihood of an affirmative ITC ruling decreases when the petition is opposed by a domestic firm that is a downstream user of the imported product.

**Hypothesis 2:** The likelihood of an affirmative ITC ruling decreases when the petition is opposed by a domestic firm that is a subsidiary of a foreign multinational enterprise.

**Hypothesis 3:** The likelihood of an affirmative ITC ruling decreases when the petition is opposed by a domestic firm that is a member of the petitioning industry.

Similarly, members of the Congressional oversight committees are likely to have divergent trade preferences. As noted, the committees overseeing the ITC are prestige committees, which represent a broad range of trade preferences and are unlikely to use ex-post controls to further narrow constituent interests. However, even if the committee as a whole is unlikely to take a stand on an AD/CVD case, individual members of the committees could use active oversight to pressure the ITC. In a comprehensive study of congressional activity, Aberbach (1990) shows that legislators make extensive use of active oversight to control the bureaucracy. Congress conducts active oversight through a number of mechanisms—hearings, investigations, program evaluations, and direct contact with the agency. In particular, Aberbach notes that district concerns and constituency advocacy are important motivations for Congress to devote time to active oversight. Because active oversight is highly visible, it is likely to be of particular value to individual legislators focused on advertising, credit claiming, and position taking for re-election ( Fiorina 1989; Mayhew 2004).

The records of ITC hearings conducted from 1997 to 2010 show a high level of active oversight (Table 2). In over half of these hearings, a member of Congress applied political pressure by testifying before the ITC in support of an AD/CVD petition. Sometimes these legislators simply submitted written testimony, but in many cases they appeared before the ITC to testify in person. Petitions were supported by at least one legislator in over half (56%) of AD/CVD cases. In 39% of these cases, members of the House or Senate oversight committees actively lobbied on behalf of petitioners. Legislators also intervened to oppose petitions, although with less frequency. Case records included written or oral testimony from at least one legislator opposing the petition in 126 (26%) cases. And 59 (12%) of these were members of the oversight committees. In almost all of these cases, the representative who actively lobbies the ITC does so on behalf of a constituent industry. This is a striking example of active oversight—members of the oversight committee appear before the bureaucratic agency that they oversee in order to support a particular participant in the case.\(^3\)

Of course, it remains to be seen whether this testimony has any real effect. Legislators may testify merely to credit claim or grandstand to gain electoral support ( Fiorina 1989). Knowing this, the ITC would discount such participation as cheap talk. On the other hand, the oversight committees may use their power to encourage a system that facilitates active oversight by individual members of the committee with strong preferences about a particular case. In such a system, the ITC would need to account for the preferences of members when they take an active interest in the case, but would not respond to any latent constituency interests of the oversight committee implied solely by the presence of the industry in the member’s district.

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\(^2\) This theory is based on the logic that all three types of firms employ American workers, and these workers in turn are constituents of members of Congress. Therefore, any of these firms may be able to exert political pressure directly or through Congress to influence ITC decisions. However, opposition from a purely domestic firm may provide a credible signal that the industry as a whole is not harmed by imports, while domestic subsidiaries are likely to protect the interests of the parent multinational. I return to this idea in the discussion section.

\(^3\) A working paper by Allee and Miler (2010) provides additional insight into the phenomenon of direct testimony before the ITC by members of Congress. While they focus on the legislator’s decision to testify and not on the effect of that testimony on ITC outcomes, a number of their findings are instructive. Legislators are driven primarily by constituency concerns and not by party or ideology when they testify individually. The difference between the numbers supporting petitions and those opposing them may be due to the framing of AD/CVD cases as investigations of unfair trade practices by foreign competitors. A legislator opposing a petition is vulnerable to accusations that he or she is advocating against American workers and industry. On the other hand, a legislator publicly committed to free trade can easily support an AD/CVD petition by emphasizing the need for all countries to play by the rules of the free trade system.
in its determinations.

Hypothesis 4: The likelihood of an affirmative ITC ruling increases as the number of members on the oversight committee who actively intervene to support the petition increases.

Hypothesis 5: The likelihood of an affirmative ITC ruling decreases as the number of members on the oversight committee who actively intervene to oppose the petition increases.

Data and Methods

In order to test these hypotheses, I have compiled an original data set consisting of all final determinations by the ITC in AD/CVD cases from 1997 to 2010.4 During this time period the ITC handled 505 AD/CVD petitions. Of these cases, I removed 23 cases involving agricultural products for which industry-wide statistics (employment, concentration, etc.) are not available. In addition, 104 were terminated or settled during preliminary stages of the proceedings.5 This leaves 378 final determinations by the ITC in the data set. However, I include several control variables that capture case-specific factors the ITC is required by law to consider in its determinations.6 This data is redacted in several cases due to confidentiality concerns, so the final data set covers only the 221 final determinations of the ITC for which data on all variables were available. The ITC ruled in favor of the petitioner in 66% of these cases.

The definition of a case presents a second methodological issue. A single petitioner may file petitions against multiple respondents and may file separate AD and CVD petitions against a single respondent. As a result, the 221 cases represent only 56 unique petitioners. Counting each petition as a separate case creates the possibility that the findings will be driven by petitioners with multiple petitions against a single respondent. Moreover, my case-specific control variables differ for each named country. This makes collapsing multiple petitions into a single case problematic. I also want to maintain comparability with previous research. The ITA and the ITC count each petition as a separate case, as do as the majority of empirical studies that have examined these cases. Therefore, I maintain the conventional unit of analysis to increase comparability with previous results.7

For each case, I identify the petitioning industry using the 6-digit North American Industry Classification System (NAICS) code used by the Census Bureau for reporting economic statistics. ITC cases provide the Harmonized Tariff Schedule (HTS) code for the manufactured products involved. I match these codes with their corresponding NAICS to identify the industry. Where the HTS codes cover multiple NAICS codes, I refer to the written descriptions of the covered products to select the most appropriate NAICS code. There are 26 unique NAICS codes for the petitioner industries in my data set. The steel industry represents the largest NAICS group in the data set, with 22 (39%) of the 56 unique petitions.

The dependent variable in all models is the outcome of the ITC’s final decision, coded 1 if the petitioning industry receives protection and 0 if it does not. I include several control variables that capture factors the ITC must consider by law in each case: annual change in capacity utilization, 2-year change in domestic production, petitioners’ domestic market share, 2-year change in imports from named country, and the dumping margin assessed against each country by the Department of Commerce in early stages of the case. As noted, the ITC’s published reports often redact some or all of the case-specific data. Thus, the more control variables are included, the greater the number of cases are dropped from the data set. I have chosen these variables to include because they have been found to be significant indicators of ITC decisions in previous research (Moore 1992; Baldwin and Steagall 1993; Devault 1993). I also include a dummy variable to control for the type of case (AD = 0, CVD = 1), and two macroeconomic controls, the national unemployment rate and the size of the US trade deficit for goods.8

4 See Appendix 1 for descriptive statistics and data sources.
5 The elimination of cases in the preliminary rounds of the adjudication process raises potential concerns about selection bias. Unfortunately, it is not possible to make a direct comparison between these eliminated cases to those in my sample, because the parties to the case have not fully organized their support from domestic opponents and Congress at this stage. There are a few records of Congressional intervention or domestic witness testimony in these preliminary phases, but such activity is sporadic in the early phases. Overall, I am less concerned with selection bias, as it is expected to result in underestimation of the effect of the explanatory variables, since cases eliminated in the preliminary stages due to these factors would not show up as a negative final determination in my sample.
6 My thanks to an anonymous reviewer for this suggestion. The inclusion of case-specific variables introduces some danger of selection bias, but this concern is outweighed by the benefit of being able to distinguish political influences from the legally mandated criteria used in the cases. Furthermore, I believe that any selection bias is minimal, as I also ran the model using aggregate-level measures on the larger 378 case data set, and the results did not differ significantly from those reported in the paper. (Available from the author upon request.)
7 I also collapsed multiple petitions into a single case for each petitioner and refit the models. Using this specification reduces the dataset to a mere 56 cases, making the sample too small to find statistical significance. However, the coefficients are unchanged for all of the variables reported as significant in the paper. Consequently, I do not believe that these results are being driven by the classification of each petition as a separate case.
8 I also fit mixed effect models with varying intercepts for each named country. Ultimately, the inclusion of case-specific control variables captured all of the country specific variation, so this control was dropped.
Model 0 is a logit model using only the case-specific variables that the ITC must consider and the national economic variables that may influence the ITC’s decisions. This model provides a control against which to compare the models that incorporate political variables.

Model 1 adds variables capturing the conventional measures of political influence in ITC cases. Under the industry capture theory, larger industries should have more influence and be more likely to prevail before the ITC (Blonigen and Prusa 2001). I include the number of people employed by the industry as an approximate measure of its size (Industry Size). Existing theory also predicts that industries with fewer firms are more likely to overcome the collective action problem to exert political pressure. I use the Herfindahl-Hirschmann Index (Industry HHI), which is the sum of the squares of the market share of the 50 largest companies in the industry. A higher HHI score indicates a more concentrated industry, which should increase the likelihood that the industry can form a cohesive lobby to pressure for protection. Data for these measures is taken from the US Census Bureau’s Economic Census and is measured at the six-digit NAICS level.

The congressional dominance theory asserts that industries are more likely to prevail at the ITC as their representation on the oversight committees increases. I measure committee representation with a simple count of the number of members on the House Ways and Means Committee (House Oversight) and the Senate Finance Committee (Senate Oversight) who represent a district in which the petitioning industry employs at least 250 people. On average, petitioning industries were represented by nine members of the House Ways and Means Committee and eight members of the Senate Finance Committee. Only 18 petitions were filed by industries with no representation on either committee.

Model 2 tests my revised theory of political influence on the ITC. I use case records obtained from the ITC’s Electronic Document Information System (EDIS) to identify the witnesses who testified for and against petition in each case. I create three dummy variables to code for testimony from domestic firms that oppose a petition. Downstream Oppose is coded 1 if a witness testifies on behalf of a domestic firm that is an importer or other downstream user of the subject imports. MNE Oppose is coded 1 if a witness testifies on behalf of a domestic firm that is a subsidiary or affiliate of a multinational enterprise named in the petition. Intra-Industry Oppose is coded 1 if a witness testifies on behalf of a firm in the same industry as the petitioning firms according to the NAICS. Consistent with Hypotheses 1–3, I expect the likelihood of an affirmative ITC decision to decrease when any of these domestic opponents participate in the case.

Hypotheses 4 and 5 predict that active participation in the case by members of the oversight committees will influence the ITC’s decision. I include a dummy variable coded 1 when at least one member of the House Ways and Means Committee (House Support) or the Senate Finance Committee (Senate Support) submits written or oral testimony to the ITC in support of the petition. I include the same measure for members actively opposing the petition, House Oppose and Senate Oppose. I expect that the likelihood of an affirmative ITC decision increases when there is active support for the petition from the Senate or House and decreases when there is active opposition.

Finally, I include all of the variables in Model 3 to control for covariation between the different sets of variables in Models 1 and 2.

Results

The results of all models are reported in Table 3. Model 0 serves as the control model, including only the case-specific and economic variables that the ITC is expected to consider. Of these, the petitioners’ change in production and domestic market share are statistically significant. This makes sense, as firms that are producing more and enjoy higher market shares should find it more difficult to demonstrate that they have suffered economic harm from underpriced imports. The change in imports also is statistically significant. Petitioners are more likely to prevail against countries from which imports have increased over the 2 years leading up to the petition. These results are consistent with previous research and set the baseline for evaluating the effect of the political variables.

Model 1 tests the conventional political models of ITC decisions, including measures for the political power of the industry and its representation on the oversight committees. The inclusion of these variables does very little to improve the overall fit of the model, as there is no statistically significant improvement in the log likelihood over the control model. Likewise, the model offers no support for the conventional theories of political influence on the ITC. Only the coefficient for industry concentration is statistically significant, but it is negative, indicating that more concentrated industries are less likely to succeed before the ITC.

It should be noted that these results may underestimate the effect of these variables due to selection bias from cases eliminated in preliminary rounds. If smaller or less concentrated industries are eliminated in the preliminary stages, then they will not appear as negative determinations at the final stage. At the same time, the negative coefficients may be driven by the petitioners’ decisions to file AD/CVD claims. Firms in more concentrated industries will find it easier to file a petition and petitioners may believe that their chances of success are greater when they have powerful allies on the oversight committee. These factors may encourage firms to file less meritorious petitions before the ITC. Nonetheless, the results of Model 1 provide very little support for the conventional understanding of political pressure on the ITC.
Model 2, with a log likelihood of $-96.5$, is a statistically significant improvement in model fit over Models 0 and 1. The coefficients for the participation of firms who oppose the AD/CVD petitions are all negative, indicating that this opposition decreases the likelihood that the ITC imposes a duty on the imported product. This effect is statistically significant for both domestic firms that are downstream users of the product and firms classified as MNEs. The coefficient for active opposition has a negative effect, as expected, but does not reach statistical significance. The coefficient for active support from members of the House and Senate oversight committees. Active Senate opposition has a negative effect, as expected, but does not reach statistical significance. The coefficient for active support from the Senate is also difficult for the petitioner to demonstrate that it represents the industry as a whole in order to have standing to bring a claim. An opposing domestic interest may have more to do with the legal effect of representing American workers (and constituents) whose preferences would need to be balanced against the preferences of the petitioning firms and their employees. In that case, all three types of domestic opposition should operate in much the same way. Instead what we see are three very different effects for these types of firms.

Opposition from downstream firms most closely resembles my initial hypothesis, in that downstream opposition appears to serve as a check on protectionism in the ITC. Where downstream opposition is present, the proportion of successful petitions is about on par with the overall average. However, when this check is removed, the proportion of successful petitions jumps dramatically. Absent an opposing domestic interest, the ITC appears much more willing to grant protection to petitioning industries.

On the other hand, the strong effect of intra-industry opposition may have more to do with the legal effect of the testimony than with a desire to balance domestic interests. When the petitioning industry is united, the proportion of successful petitions is only slightly greater than the overall proportion for all cases, but it drops precipitously when there is evidence of a split within the petitioning industry. Legally, the petitioning firms are required to demonstrate that they represent the industry as a whole in order to have standing to bring a claim. Active opposition from other firms in the industry is a strong signal that this requirement has not been made. It is also difficult for the petitioner to demonstrate that it has been harmed by underpriced imports when other firms in the industry are arguing the exact opposite. Testimony from firms within the petitioner’s industry may represent a credible signal to the ITC that the petitioner’s claims are without merit.

### Discussion

My results support the idea that the ITC is subject to pressure from firms opposing protection, but the effects for each category of opposing firm appear to operate differently. These differences bear further investigation. Under my original assumptions, the ITC would respond to opposition from any domestic firm simply because that firm employed American workers (and constituents) whose preferences would need to be balanced against the preferences of the petitioning firms and their employees. In that case, all three types of domestic opposition should operate in much the same way. Instead what we see are three very different effects for these types of firms.

Table 3: Effect of Political Variables on Likelihood of Affirmative International Trade Commission (ITC) Decision

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 0</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
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<tbody>
<tr>
<td>CVD Case (+)</td>
<td>0.84 (.44)</td>
<td>0.71 (.44)</td>
<td>1.10 (.52)**</td>
<td>1.03 (.54)</td>
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<tr>
<td>Unemployment (+)</td>
<td>-0.13 (.14)</td>
<td>-0.01 (.16)</td>
<td>-0.64 (.22)**</td>
<td>-0.30 (.26)</td>
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<tr>
<td>Trade Deficit (+)</td>
<td>-0.12 (.11)</td>
<td>-0.22 (.14)</td>
<td>-0.45 (.18)*</td>
<td>-0.02 (.22)**</td>
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<tr>
<td>Capacity Utilization (−)</td>
<td>1.74 (1.31)</td>
<td>2.55 (1.39)</td>
<td>0.57 (1.79)</td>
<td>0.18 (2.29)</td>
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<tr>
<td>Change in Production (−)</td>
<td>-0.01 (0.00)*</td>
<td>-0.01 (0.01)</td>
<td>-0.01 (0.01)*</td>
<td>-0.01 (0.01)</td>
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<tr>
<td>Market Share (−)</td>
<td>-0.05 (0.01)***</td>
<td>-0.06 (0.01)***</td>
<td>-0.07 (0.02)***</td>
<td>-0.08 (0.02)***</td>
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<tr>
<td>Change in Imports (+)</td>
<td>0.00 (0.00)*</td>
<td>0.00 (0.00)*</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
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<td>Dumping Margin (+)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
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<td>Industry Size (+)</td>
<td>0.049 (0.389)</td>
<td>0.36 (0.57)</td>
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<tr>
<td>Ind. Concentration (+)</td>
<td>-0.84 (0.37)*</td>
<td>-1.14 (.45)*</td>
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<tr>
<td>Downstream Oppose (−)</td>
<td>-3.21 (0.98)**</td>
<td>-2.95 (1.01)**</td>
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<td>MNE Oppose (−)</td>
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<td>-1.33 (0.89)</td>
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<tr>
<td>Intra–Industry Oppose (−)</td>
<td>-2.28 (0.87)**</td>
<td>-2.14 (0.97)*</td>
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<td></td>
<td>-0.06 (0.07)</td>
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<td>0.08 (0.14)</td>
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<tr>
<td>Act. House Support (+)</td>
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<td>1.39 (0.57)*</td>
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<tr>
<td>Act. House Oppose (−)</td>
<td>10.51 (1072)</td>
<td>9.020 (1072)</td>
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<tr>
<td>Act. Senate Support (+)</td>
<td>2.68 (0.90)**</td>
<td>4.06 (1.31)**</td>
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<td>Act. Senate Oppose (−)</td>
<td>-1.38 (0.79)</td>
<td>-1.18 (--0.85)</td>
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<tr>
<td>Constant</td>
<td>4.07 (1.93)**</td>
<td>7.64 (4.24)</td>
<td>8.66 (2.17)***</td>
<td>10.80 (5.76)</td>
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<td>logLik ($P[&gt;\chi^2]$)</td>
<td>-123.1</td>
<td>-118.6 (0.06)</td>
<td>-96.5 (0.00)***</td>
<td>-91.1 (0.00)***</td>
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<td>Pseudo R²</td>
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Note. * $p \leq .05$ level, ** $p \leq .01$, *** $p \leq .001$. Expected direction of the effect of each variable is denoted by (+) and (−).
Finally, testimony from foreign owned subsidiaries has no significant effect, even though these firms also employ American workers. It may be that the ITC simply feels less pressure to account for the interests of these foreign owned corporations. On the other hand, this may indicate a legal effect rather than a political attempt to balance the interests of domestic interest groups. Whereas testimony from firms in the petitioning industry can credibly contradict the evidence presented by petitioners, the ITC is unlikely to find testimony from subsidiaries of the defendant firms as credible. This would explain the apparent lack of effect for participation by these subsidiary firms. Further research is needed to explore these possible explanations.

Another question for future research is whether these dynamics have changed over time. Due to a change in the industry coding system used by the Department of Commerce in 1996, most previous studies have data sets ending in 1996. Unfortunately, the ITC’s electronic case files are less complete for cases before the mid-1990s. As a result, there is a break in the continuity of data on ITC decisions. While political variables for the petitioning industry were extremely sensitive to different model specifications in the pre-1996 period, several studies did find significant correlations for some of these measures. Increasing exposure to the pressures of globalization, increasing mobilization of domestic industries that favor free trade, and/or increasing intra-industry trade may have led to less cohesive industry preferences in more recent years. Answering this question will require substantial archival research to extend the data set, but could prove valuable in explaining whether the mixed results in AD/CVD research are simply a result of model specification or evidence of a long-term trend toward greater liberalization driven by the shifting preferences of domestic industries.

Conclusion

With tariffs decreasing, AD/CVD procedures have become an important form of trade protection, but much about how these procedures are administered remains unknown. Most experts on the AD/CVD process in the United States argue that the process is biased against foreign companies and that adjudicating agencies are influenced by political factors. In this paper, I seek to explain the mixed results of past research by developing a more nuanced understanding of political pressure on the ITC. My results point to an ITC that is constrained by law to favor petitioners, yet remains responsive to opposition from other domestic interests. Moreover, the agency remains responsive to Congressional preferences, but only when members of the oversight committee actively intervene to influence outcomes.

These results are more consistent with our theoretical understanding of Congressional oversight of the bureaucracy and with evidence of increasing divergence of trade preferences within industries. Whatever the original intent, the AD/CVD system is not merely a system for doling out rents to a particular interest group, but a fairly effective means of balancing competing domestic interests, agency independence, and Congressional preferences. This points to important additional avenues of political influence on the ITC and raises new questions for future research on how the ITC balances these competing interests.

References


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11 My thanks to an anonymous reviewer for raising this point.


### Appendix:

#### Data Sources and Descriptive Statistics

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<tr>
<th>Variable</th>
<th>Source</th>
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<th>Mean</th>
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<td>Case Outcome</td>
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