

Table 1: Most Frequent Petitioners*

Industry	Total Number of Petitions
Blast Furnaces and Steel Mills	323
Misc. Fabricated Wire Products	23
Ornamental Nursery Products	21
Ball and Roller Bearings	18
Fabricated Metal Products	17
Valves and Pipe Fittings	16
Industrial Inorganic Chemicals	14
Copper Rolling and Drawing	13
Moter Vehicle Parts and Accessories	13
Hydraulic Cement	12
Potash, Soda, and Borate Minerals	10
House Furnishings	10
Wet Corn Milling	9
Fabricated Textile Products	9
Medicinals and Botanicals	9

*By four-digit S.I.C. classification.

tariffs and quotas. Not surprisingly, some industries have been much more aggressive than others in that endeavor. Table 1 lists the industries most frequently using the trade laws from 1980 to 1988. The iron- and steel-related industries have been the preeminent users of both Title VII and escape clause laws, followed by producers of agricultural products, chemicals, and machinery.

In contrast to the nondiscriminatory scope of escape clause cases, Title VII cases target a specific country's firms or government as unfair traders. From 1980 to 1988 U.S. industries filed fifty-one dumping cases against Japan, twenty-six against West Germany, twenty-five against Taiwan, and twenty-three against Brazil. With regard to the practice of government subsidies, Brazil was the most widely cited country with thirty complaints, followed by Mexico (twenty-seven), Spain (twenty-four), and France (nineteen).

Although well over 100 different manufacturing industries have used the laws, the top fifteen petitioning industries listed in Table 1 account for almost 70 percent of the cases filed. Interestingly, those top industries share certain characteristics that may account for their using the laws. First, they are large industries as measured by value of output and number of employees: the average petitioning industry has almost four times the sales and three times the employees as the average manufacturing industry. As has been widely recognized, an industry's size may be related to its ability to lobby effectively for trade protection: larger industries have greater resources and can

Table 2: Key Features of Trade Laws

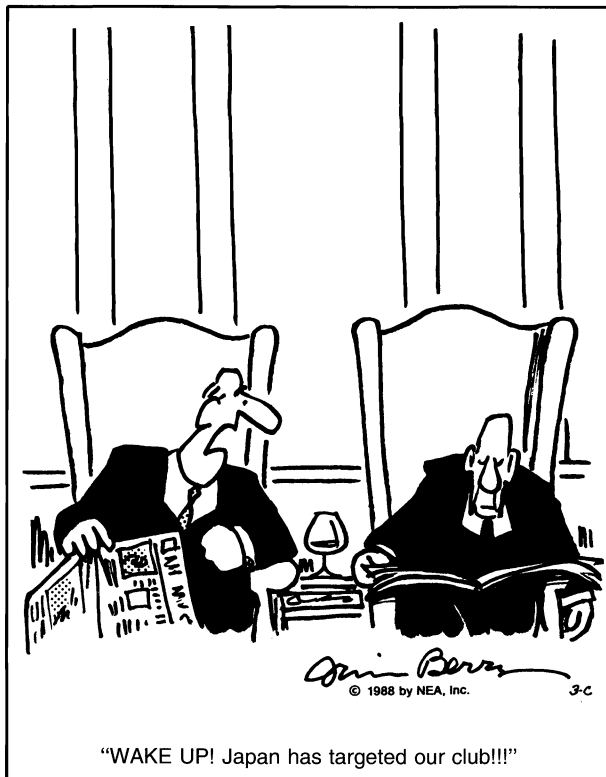
Feature	Comment
Injury Criterion	Escape clause's "serious injury" standard more difficult to satisfy than the "material injury" standard required under Title VII.
Presidential Discretion	Reduces desirability of escape clause. During 1980s the president rejected 30 percent of the cases that the ITC recommended for protection.
Scope of Protection	Nondiscriminatory escape clause offers stronger protection. Discriminatory Title VII leads to the filing of multiple petitions.
Length of Protection	Favors Title VII actions.
"Unfair Practices" Test	Should favor escape clause but in practice a nonfactor due to biased Commerce Department procedures.

exert greater political pressure on the relevant administrative agencies. Second, industries filing petitions face much greater import competition than the average industry: foreign producers' share of the domestic U.S. market is about 30 percent, as compared with the national average of about 13 percent.

In contrast to the escape clause, anti-dumping and countervailing duty protection is generally discriminatory in the sense that the duty is applied specifically against imports coming from particular countries singled out as unfair traders.

Why Are the Unfair Trade Laws So Popular?

To a large extent, differences in procedures for seeking and being granted protection under the escape clause and Title VII laws can explain the disparities in their usage. In Table 2 we list some of the key features that distinguish the laws. As the table makes clear, the differences between the laws make Title VII actions more desirable to industries seeking protection. For instance, the criteria used by the International Trade Commission (ITC) for determining injury, as specified by



both GATT and U.S. law, differ significantly for safeguard versus unfair trade actions. Under section 201, the law requires that imports cause or threaten to cause “serious injury” and that they be a “substantial cause” (meaning a cause that is “important and not less important than any other cause”) of that injury. In contrast, under the unfair

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trade laws, once dumping or subsidization has been established, the ITC need only find “material injury” (defined by Congress as “harm which is not inconsequential, immaterial, or unimportant”) or the threat thereof to provide relief to the domestic industry.

The unfair trade laws are also popular because the president has no formal role in their application. In escape clause cases the ITC investigates and decides the merits of the petitions, but the president has final decisionmaking authority over whether to grant protection under that law. In contrast, the president has no formal role under Title VII; for those petitions the ITC determines whether there is injury to the industry, and the Department of Commerce determines whether there are unfair practices occurring in trade. Both agencies must rule in favor of the petitioner for protection to be granted.

The fact that the president has the power to disapprove or alter the ITC’s suggested remedy makes escape clause petitions more uncertain and thus discourages industries from filing those petitions. Under section 201, the president may consider the “national economic interest” in his decision whether to grant relief; accordingly, he has very broad discretionary authority over the outcome of escape clause petitions. Furthermore, GATT rules allow affected countries to retaliate against protective relief imposed under a safeguard action. That is, affected countries can levy a tariff or quota on an equal dollar value of U.S. exports. This built-in allowance for retaliation further complicates the president’s decision.

Moreover, escape clause cases are less desirable than Title VII cases because escape clause protection is meant to provide only temporary relief from injury resulting from trade. Thus, until recently protection was limited to five years (the 1988 Trade Act extended escape clause protection to eight years). Protection under Title VII, by contrast, is reviewed annually and may continue indefinitely if the unfair practices are determined to continue to exist. As a practical matter, duty orders imposed under Title VII are often difficult to revoke; it is not uncommon for them to remain in place for a decade or more. The limited nature of escape clause protection may further deter industries from seeking relief under that law.

There is, however, one key feature that would seem to deter industries from frivolously filing Title VII actions: the Commerce Department must determine that foreign firms or governments have engaged in an unfair trade practice before dumping or subsidy duties can be levied. In theory at least, such a requirement should increase the probability that the petition will be rejected and thus make pursuing a Title VII remedy less attractive. As has been widely recognized, however, the

rules governing how Commerce determines “unfair trade” are slanted in favor of domestic industries, making the determination quite easy to satisfy. For instance, from 1980 to 1988 Commerce rejected only 6 percent of antidumping cases, while the ITC’s rejection rate was 31 percent.

There are numerous examples of Commerce Department procedures that are biased against foreign industries. For example, duty margins are often calculated by using the “best information available,” which usually means relying on information provided by the domestic complainant. In antidumping cases, the Commerce Department’s method of comparing average home market prices to individual transactions in the U.S. market leads to positive dumping margins even when the prices are the same in both markets. It is noteworthy that Congress transferred jurisdiction over unfair trade determinations from the Treasury Department to Commerce in 1980 largely because Congress disapproved of Treasury’s handling of cases and wanted the job done by a body that would work as an advocate for domestic industries.

Industry Performance before Filing for Trade Relief

To evaluate the economic performance of the industries that seek administrative protection, we have examined trends in employment, output, market share, and new capital spending during the three years before the industries filed a petition for protection. Consider, for example, the state of the cellular telephone equipment industry in 1984. Employment fell by over 22 percent from 1981 to 1984. Although shipments increased by almost 12 percent during that time, the domestic industry still lost ground to foreign producers: imports’ share of the U.S. market increased by over 17 percent. Domestic producers filed an antidumping case against Japanese producers of mobile telephones and claimed that those recent trends were evidence of material injury.

Rather than focus on trends on a case-by-case basis, we show in Figure 1 the trends for the four economic criteria for all industries that filed Title VII and escape clause petitions from 1980 to 1988. To establish a benchmark and to account for overall trends in the economy, we also show those trends for all U.S. manufacturing industries. To better view the trends in the data we measure

each criterion relative to its value in the year the petition was filed. (Therefore, all the data will have a value of 100 in the year the petition was filed.)

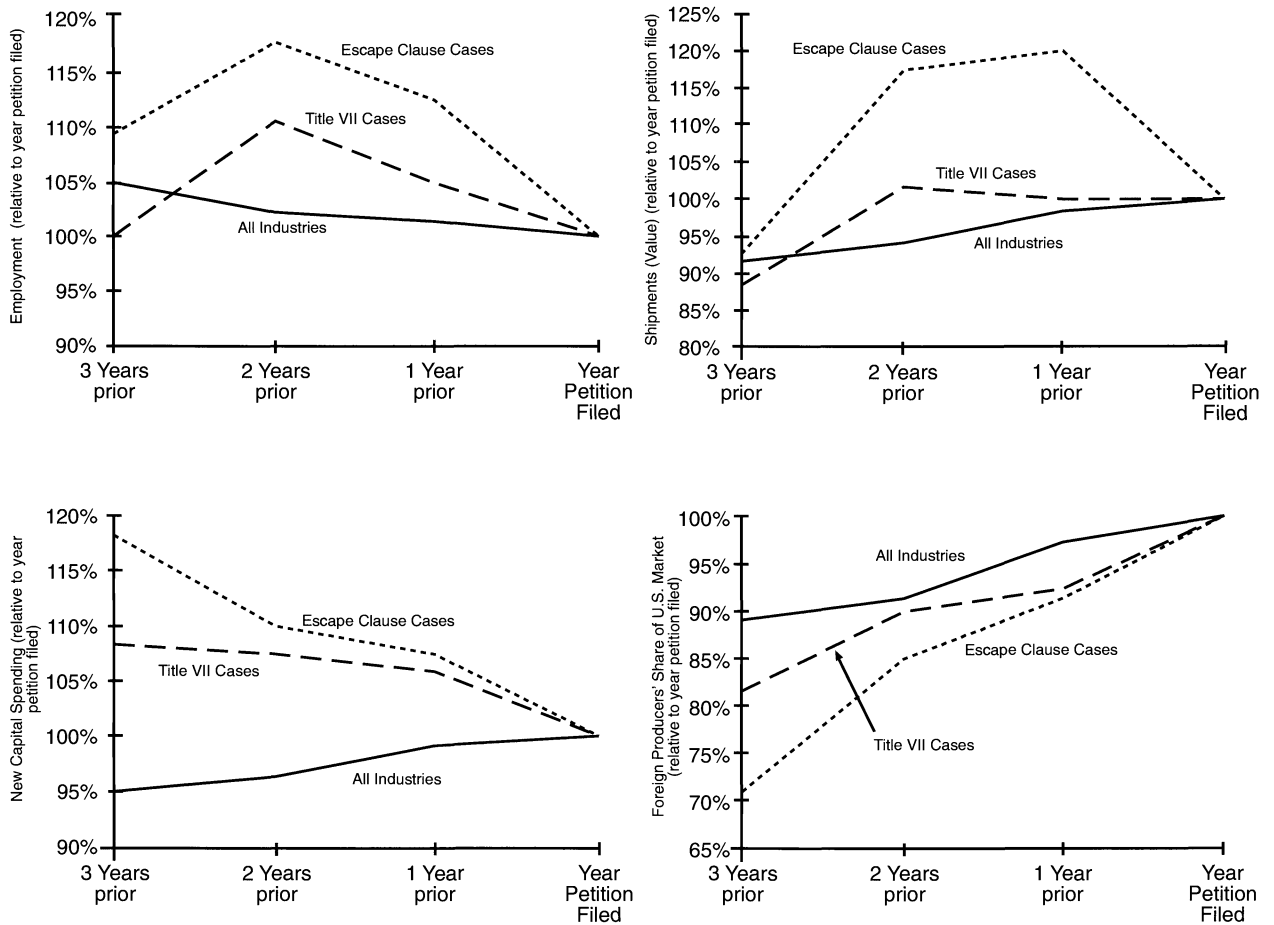
The trends for all the economic criteria are consistent with the notion that the industries suffered poor economic performance during the years immediately before filing the petition. There are a number of trends worth noting. For example, looking at the top panel, we see that on average employment in escape clause cases fell by about 10 percent over the three years before the filing of a petition. Moreover, the rate of decline in employment reached about 18 percent during the final two years. For Title VII cases the petitioning industries’ employment also falls dramatically during the final two years before filing for relief. Comparing those trends with the trends for all manufacturing industries in the same years, we find that industries filing for trade relief experienced a much more drastic employment decline than the typical manufacturing industry—a trend the petitioning industries surely used as evidence of injury.

Trends in employment, output, market share, and new capital spending are consistent with the notion that the industries filing Title VII and escape clause petitions from 1980 to 1988 suffered poor economic performance during the years immediately before filing the petition.

The next panel in the figure displays trends in the value of shipments (output). While on average all industries experienced moderate *increases* in shipments during the period, industries using the trade laws experienced an initial rise followed by a rather sharp decline immediately before filing the petition. Once again, the pattern is consistent with the industries’ claims of injury.

The other panels display trends that are consistent with the above findings. In particular, foreign producers’ share of the U.S. domestic market grew much more rapidly in those industries that file trade complaints. For example, industries that file escape clause petitions experienced almost a 30 percent increase in the market share held by imports. In contrast, on average all manufacturing industries experienced only a 10 percent increase

Figure 1: Industry Trends before Filing for Trade Relief



during the same time period. Also striking is the rapid decline in new capital spending by petitioning industries, especially relative to the increasing trend displayed by all manufacturing industries.

While those trends demonstrate that industries filing either Title VII or escape clause petitions are performing worse than the average industry (trends consistent with the notion of injury), it is also clear that industries filing escape clause petitions demonstrate an even greater decline. That is consistent with the more stringent injury standard required under the escape clause. It is also consistent with our belief that many industries file Title VII actions because they know they will be unable to prove "serious injury."

The Effect of Protection on Import Trade

Once an industry has decided to file a petition, the ITC must decide whether the injury standard has been satisfied. If injury is shown (and, for Title

VII cases, Commerce confirms the existence of an "unfair" act), the U.S. Customs Service is instructed to levy a duty or quota against foreign imports. That trade restraint imposes a cost on U.S. businesses and consumers: it raises the price and reduces the supply of imported merchandise.

In Figure 2 we show the import trends for industries receiving Title VII and escape clause protection—the five escape clause cases that received presidential approval and the 467 Title VII cases that were settled or had duties levied. Once again, we measure each criterion relative to its value in the year the petition was filed. We see that imports grew at a steady rate for all industries. Using that as the benchmark, we can evaluate the effect of protection. Both escape clause and Title VII protection significantly decrease imports relative to the national trend: import growth in import categories receiving protection is 20 to 30 percent less than the national average during the two years following the imposition of protection.