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# Does Administrative Protection Protect?

## A Reexamination of the U.S. Title VII and Escape Clause Statutes

Wendy L. Hansen and Thomas J. Prusa

**F**aced with the rising pressure of increasing foreign competition, many U.S. industries turned to Washington during the 1980s with demands for import relief. Often they argued that they needed protection to offset unfair trade practices or simply to gain time to adjust to the new international trading environment. Industries demanded that Congress do something about the supposed negative impact of imports on U.S. industries and the economy as a whole. But obligations stemming from the General Agreement on Tariffs and Trade (GATT) significantly limited Congress's ability to legislate targeted, sector-specific protection in the form of tariffs or quotas. Consequently, U.S. industries turned to the so-called administrative protection of the trade remedy laws and filed an unprecedented number of trade complaints.

There are two general classes of trade laws under which U.S. industries can apply for import relief: "unfair trade" laws, with antidumping and countervailing duty laws being the primary examples, and "escape clause" or "safeguard" protection

under section 201 of the Tariff Act of 1930. While both types of laws provide relief to injured U.S. industries, in recent years industries have resorted almost exclusively to the unfair trade laws. From 1980 to 1988 U.S. industries seeking protection from foreign competition filed over 700 petitions under the antidumping and countervailing duty laws but only nineteen escape clause petitions. By way of comparison, from 1963 to 1979, domestic industries filed 532 unfair trade petitions and 75 escape clause petitions.

Why is protection sought much more frequently under the unfair trade laws, and why has the escape clause declined in importance? Part of the explanation may lie in the fact that the laws have different purposes. "Unfair" trade laws are designed to correct for the injurious effects of foreign dumping and government subsidization of exports. The escape clause, on the other hand, is designed to allow industries to seek trade relief merely on the basis of injury from foreign competition. One might thus conclude that U.S. industries battled more foreign dumping and government subsidization in the 1980s than in previous years. That is not the entire story, however.

The preference for invoking unfair trade laws is also the result of how Congress has amended the trade laws over the past fifteen years. Each

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revision contained in the past three major trade bills has increasingly facilitated U.S. industries' use of the unfair trade laws. In fact, the rules governing antidumping and countervailing duty procedures are now so biased in favor of U.S. industries that it is often questionable whether any "unfair" trade act was actually committed—a fact that has led many observers to believe it is more accurate to refer to antidumping and countervailing duty laws as "Title VII" laws (for the section in which they appear in the trade statutes) rather than "unfair" trade laws. From our perspective, the changing filing patterns is due in large part to the fact that Title VII actions are substituting for safeguard actions. Because Title VII actions are now so much more likely to result in protection, an industry will choose to file a Title VII petition although the facts of the case may make it more appropriate (according to GATT standards) to file an escape clause petition.

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The dramatic rise of administrative protection over the past decade and explosion of unfair trade cases call out for some evaluation of the effects of such import relief. What are the costs of administrative protection? How much have domestic industries really benefitted from that protection? Since trade protection comes at a high cost to U.S. consumers, it is well worth examining what that protection buys in terms of saved jobs and revived industries. We shall show that administrative protection does not protect very effectively: industries continue to perform very poorly even after receiving protection. Accordingly, it is difficult to justify the significant burdens that such protection imposes on the rest of society.

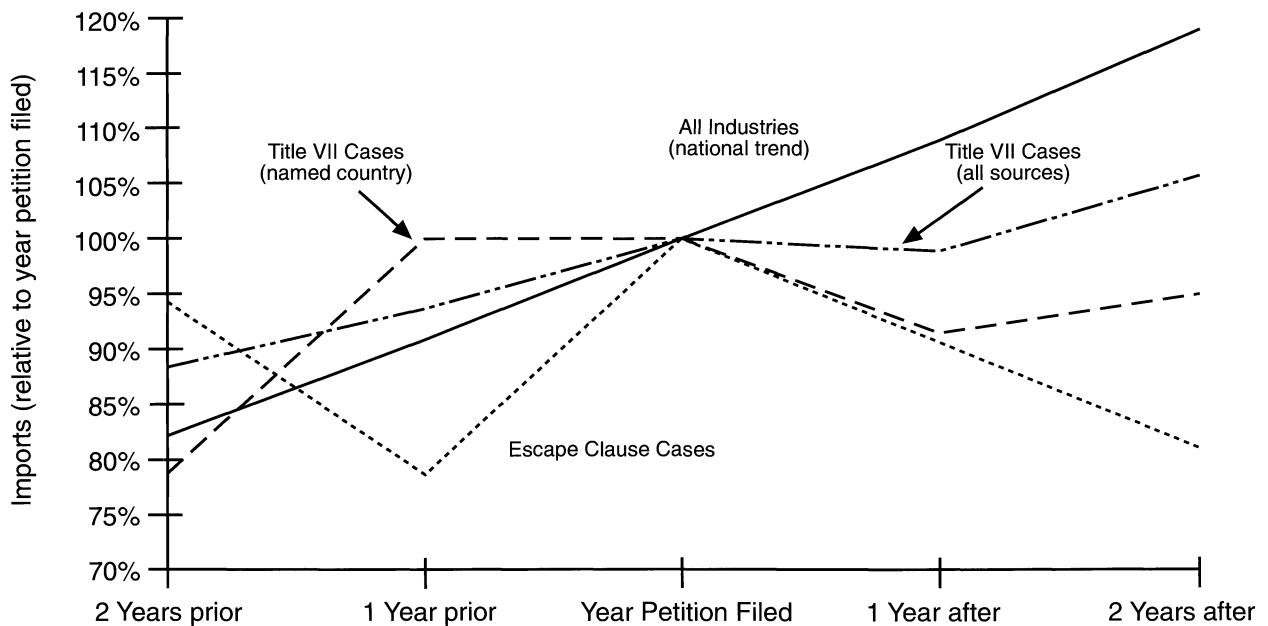
### **An Overview of the Trade Laws**

In many nations, including the United States, domestic industries injured by import competition have a number of legal and political channels

through which they can seek relief. We can broadly classify those channels into two policy mechanisms: safeguard policies and policies used to correct "unfair" trade distortions. Safeguard policies are any government actions taken in response to import levels that are deemed to "harm" or injure the importing country's economy or domestic competing industries. Of interest to our study is the particular policy tool known as the escape clause, which is built into both U.S. law and international rules of the GATT. It is important to note that import-restraining actions regarded as safeguard actions are justified for economic adjustment and political reasons and do not require that trade be unfair in any way. GATT founders felt a safeguard provision was valuable since nations would be more likely to agree to trade concessions if there were a way to temporarily "escape" from their obligations, regardless of whether the injuring imports were fairly or unfairly traded. "Nondiscrimination" is a crucial characteristic of trade relief under the escape clause; since escape clause actions are aimed at providing "temporary" relief from injury resulting from trade, rather than relief from any particular unfair behavior, escape clause protection is applied to imports from all countries.

Whereas the escape clause is concerned primarily with injury to domestic competing industries regardless of the cause of that injury, the second type of GATT-sanctioned policy tool is designed to offset the effects of unfair trade distortions that foreign firms or governments create in their attempt to promote exports. Antidumping and countervailing duty laws are two specific examples of that type of policy tool; they are used to counter the practices of dumping and government subsidization, respectively. In contrast to the escape clause, antidumping 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. Because the procedures and provisions of antidumping and countervailing duty laws are quite similar, we shall refer to actions filed under either law as "Title VII" actions.

A key feature shared by Title VII and escape clause actions is that the import-competing domestic industry usually initiates the petition for trade relief. Industries thus have a more direct role in their quest for protection than was possible under traditional methods of protection such as

**Figure 2: Import Trends**

More specifically, the trend under escape clause protection shows that imports in industries receiving escape clause protection fall sharply after protection is granted: they are about 10 percent lower after the first year and about 20 percent lower after the second year. Further, we find that those percentage decreases are not based on a small import trade volume. Import trade averaged well over \$1 billion in industries receiving escape clause protection. Clearly, that protection significantly affects U.S. consumers.

Import trade is also reduced in industries receiving Title VII protection, but here we need to be a bit more careful about how we evaluate the import effect. As discussed above, Title VII protection only affects imports from specific named countries (for example, color televisions from Japan, Korea, and Taiwan). Thus, Title VII protection is discriminatory. Once protection is granted, trade is often diverted from “unfair trader” countries to other countries not subject to the duty order. (For example, imports of color televisions from Japan, Korea, and Taiwan have fallen while imports from Mexico have risen.) Therefore, it is useful to measure the effect of Title VII protection on imports from duty-subject countries as well as overall import volumes.

As Figure 2 shows, import trade from named countries grew very rapidly before protection; afterwards, however, import trade fell significantly. Imports from all sources are likewise

reduced, but by far less than those from named countries. By either measure, though, Title VII protection imposes substantial costs on affected U.S. businesses and consumers.

### How Effective Is Protection?

The significant negative impact on imports caused by administrative protection is generally not matched by a corresponding beneficial impact on the protected U.S. industries. In other words,

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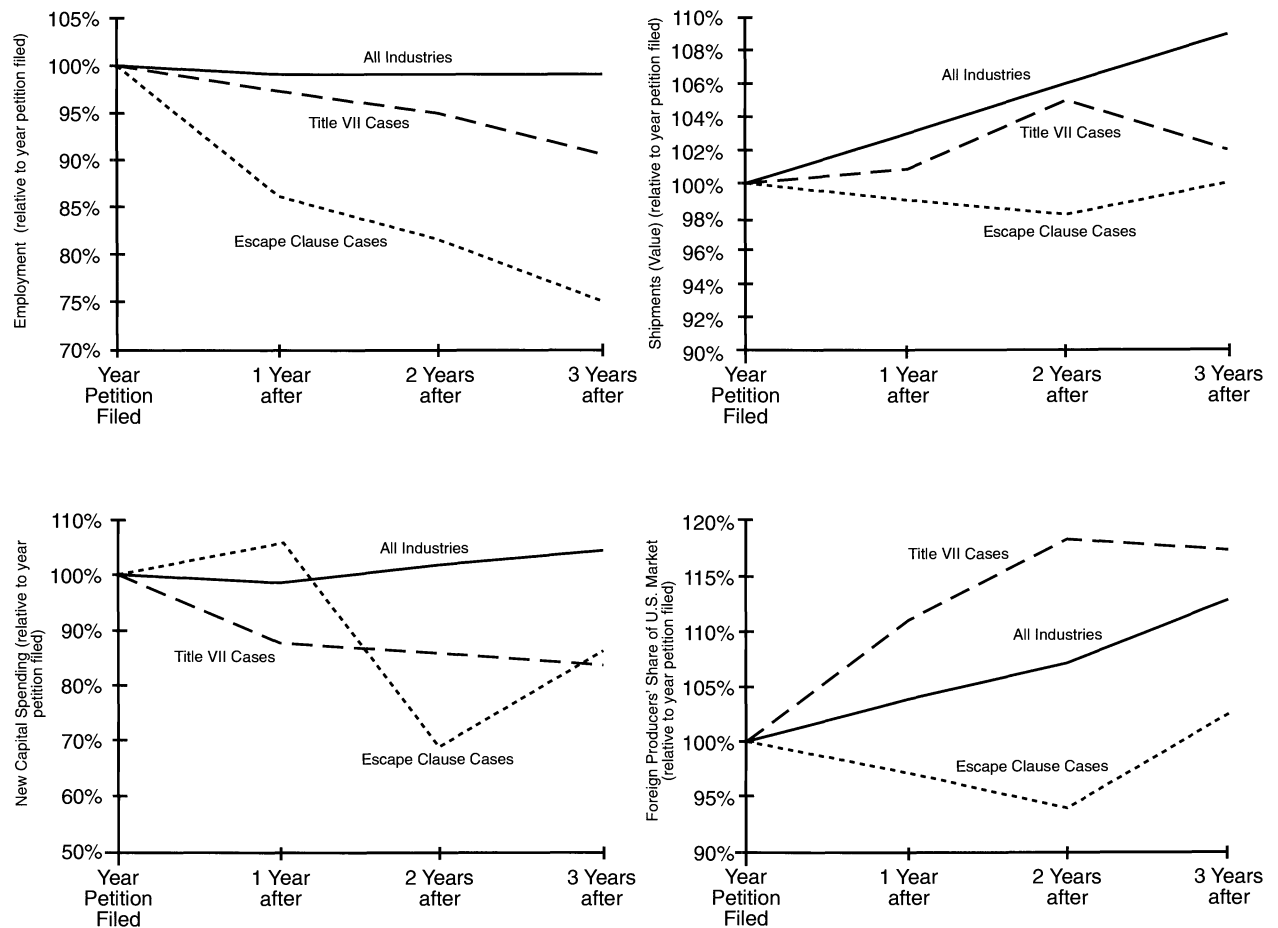
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administrative protection does not protect very well. Accordingly, it exacts large costs for very little benefit.

Consider once again the 1984 antidumping case against Japanese producers of cellular telephones. The ITC ruled in favor of the domestic industry and levied a weighted average dumping margin of 57 percent. Despite that high rate of protection,

**Figure 3: Industry Trends after Receiving Trade Relief**



the U.S. industry continued to flounder. For example, the share of U.S. sales accounted for by all foreign producers increased by more than 25 percent from 1984 to 1987. Also, employment and output fell by almost one-third during that period. Moreover, capital expenditures in the industry fell dramatically. Thus, it seems doubtful that the costs imposed on U.S. consumers were worthwhile.

In Figure 3 we consider the same four economic criteria, but once again we restrict ourselves to only those industries that received protection. The figure depicts the industries' performance during the three years following trade protection. As seen in the figure, protection is not a panacea for the industries' ills. By almost every measure, the industries granted protection continued to perform poorly.

With respect to employment, we see that industries receiving trade protection experienced a much sharper decline than the national average,

especially for escape clause cases, which experienced a 25 percent decline in employment. The protection did not preserve jobs in the industry.

The picture is not much rosier when we look at the value of shipments. While on average manufacturing industries experienced a 10 percent growth during the period, industries receiving protection showed little, if any, improvement. The porous nature of protection partially explains that result for industries receiving Title VII protection. Recall that Title VII protection applies only to imports from specified countries. Thus, a successful Title VII case often results in other foreign producers' increasing their share of the U.S. market (as in the cellular telephone case). As the figure shows, foreign producers' share of the domestic market increases faster than average for those industries receiving Title VII protection.

Note, however, that this does not help to explain the decline in output of industries that received

escape clause protection since all foreign producers faced sanctions in those cases. In fact, for escape clause cases, foreign producers' share of the domestic market actually fell after protection was granted. Thus, industries receiving escape clause protection still declined despite the powerful nondiscriminatory nature of their protection.

Industries often claim that protection will enable them to retool their factories. While that argument sounds plausible, the evidence is to the contrary. Three years after receiving protection, capital spending by affected industries was 15 percent lower than it was during the year that the petition was filed. In contrast, the average manufacturing industry increased capital spending by about 5 percent during the same period. Thus, industries receiving protection do not appear to achieve the recovery policymakers anticipated.

### Concluding Thoughts

The 1980s witnessed an explosion in the popularity of administrative protection as a means to address troublesome foreign competition. The drop in escape clause actions was more than compensated for by a dramatic expansion of Title VII protection. Yet when we consider what the granting of that protection has accomplished for U.S. industries, the picture is bleak.

Why do the laws perform so dimly? Defenders of the unfair trade laws have argued that they are not enforced vigorously enough, that the discriminatory protection they provide is too easily "circumvented" by import-shifting. Our analysis of escape clause actions counters that argument. In those cases, even where the protection granted is comprehensive, U.S. industry performance continues to deteriorate.

Surely a major factor in explaining the limited benefits of administrative protection is the type

of industries choosing to file petitions. Independent of any problems associated with foreign trade, industries using the laws are declining industries, and restraining foreign trade does not reverse their decline. Declining industries are the ones most likely to file complaints, not only because they are desperate to fend off competition, but also because they have the best chance

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of proving injury and thus prevailing. Unfortunately, those industries may be performing so poorly that mere trade restraints most often cannot reverse their downward course. It may also be the case that easing competitive pressures through imposition of protection dulls the incentives for protected domestic industries to take the steps needed to revive their fortunes.

### Selected Readings

- Baldwin, R.E. *The Political Economy of U.S. Import Policy*. Cambridge: MIT Press, 1985.
- Boltuck, R. and Litan, R.E., eds. *Down in the Dumps*. Washington, D.C.: Brookings Institution, 1991.
- Jackson, J.J. *The World Trading System*. Cambridge: MIT Press, 1989.