

Commerce Department Antidumping Sunset Reviews: A Major Disappointment

Abstract:

The US agreed at the end of the Uruguay Round to reform its antidumping procedures by instituting a “sunset review.” Under this commitment, the US agreed to terminate antidumping duties unless administrators found that dumping and material injury would likely recur if the order were revoked. This paper makes clear that the Department of Commerce’s sunset review decisions on dumping demonstrate a mechanistic approach that calls into question whether the US has lived up to the spirit of its commitments under the Uruguay Round reforms.

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Section 1: Introduction

Controversies about antidumping have been one of the most contentious aspects of trade policy over the last twenty years. Traditional users such as the US, the European Union, and Australia have been aggressive both in the number of cases brought under this WTO- and GATT-consistent provision as well as in their resistance to fundamental reform. The Uruguay Round did see some minor reform in procedures but only after fierce attempts of the US to maintain the status quo.

There has been sufficient time under this reformed system to take stock of how well these reforms have been implemented. This article will provide some initial assessment of whether the US, the world's main defender of the antidumping system, has lived up to both the letter and spirit of antidumping reform. It will do so by assessing US application of the "sunset review" process, one of the key areas of reform to which the US committed itself under the Uruguay Round. The results of this analysis are important, not only to identify how antidumping laws are implemented in the US in particular but also to provide insight into whether we can expect that countries will live up to commitments negotiated within the WTO system. If the US does not adhere to WTO norms, can we expect that others countries will do the same, especially those new to the rules-based international trading system.. Finally, US application of antidumping reforms is especially important given the rapid expansion in the world-wide use of antidumping as documented by Miranda, et al. (1998) and Prusa (2001).

Before the Uruguay Round, US antidumping orders had no set date when they were terminated. Prior to 1995, US antidumping orders generally were revoked only if the Department of Commerce (DOC), the US agency responsible for assessing dumping margins, determined in

administrative reviews that three consecutive years of non-dumping prices at commercial levels of imports had occurred. Thus, even if the economic condition of the US industry had improved dramatically so that there was no continued injury as a result of foreign dumped imports, duties could remain in place as long as any (non *de minimis*) positive dumping margin had been found. Many critics, both foreign and domestic, found these procedures deeply troubling, especially given what many observers believed was a very biased method of calculating dumping margins.¹

These “permanent” antidumping duties were a major irritant for many US trading partners, many of which argued that once foreign firms were caught up in the net of antidumping orders, it was very difficult to remove these trade restraints. Indeed, as the Uruguay Round came to a close in 1994, 32 antidumping orders originally introduced *before* 1980 were still in place.² While the US resisted substantial antidumping reform, the Clinton Administration finally did agree to institute a “sunset review” process under which orders would be terminated after five years unless an investigation determined that dumping and material injury were likely to recur if the order were revoked. The DOC would investigate the likelihood of dumping while the US International Trade Commission (ITC) would evaluate whether revocation of the orders were likely to result in renewed material injury.

An earlier article by this author (Moore,1999) argued that the US commitment to real antidumping reforms through the sunset review process is highly suspect. In particular, the enabling

¹ See Murray (1991) and Baldwin and Moore (1991) for a critical assessment. Stewart (1991) has a decidedly more positive view about Department of Commerce practices.

²Moore (1999).

“legislation and the accompanying regulations show a systematic bias at the DOC stage of deliberation in favor of the domestic petitioners. This bias will make sunset ‘reform’ problematic at best and toothless at worst.”³

This article will revisit the assessments of the earlier article by examining recent DOC sunset review decisions. In particular, we will evaluate the DOC’s procedures in sunset reviews for “transition orders,” i.e., those orders in place at the establishment of the WTO in January 1995.

We will demonstrate below that the DOC’s process has been extraordinarily mechanistic. While the DOC’s decisions conform to the specific legislative instructions and are consistent with its own published regulations, the DOC system as implemented is dysfunctional-----as long as a domestic industry expressed any interest in the continuation of the order, the DOC *always* ruled that dumping was likely to recur or continue. For those cases in which the DOC undertook a review, only 2 of the 315 cases were decided in a way favorable to individual foreign respondents. In short, we will show that the Department of Commerce’s sunset review decisions calls into question whether the US has lived up to its commitments under the Uruguay Round reforms.

This analysis is one of the first to investigate sunset review process. While there is a long history of analysis of US antidumping investigations and procedures,⁴ the recent inauguration of the sunset reviews means that little literature exists on this subject. Stewart and Dwyer (1998) examine sunset review issues from a legal standpoint. Dohlman (1998) focuses on the ITC’s sunset review decision process. Liebman (2001) conducts an empirical study of ITC commissioner voting patterns in sunset review cases. This study will be the first systematic analysis of DOC sunset reviews in practice.

³ Moore (1999, p. 2).

⁴ See for example Devault (1993), Prusa and Hansen (1997), Moore(1992) and Blonigen and Prusa (2001)

This balance of this article is organized in the following way. A brief description of the US process and specific hypotheses about the DOC procedures is included in section 2. Section 3 contains summary statistics and analysis of sunset review outcomes for *order*-level cases. Section 4 considers these same outcomes from the foreign *firm*-level. Evaluation of the hypotheses of section 2 and concluding remarks can be found in the last section.

II. Sunset Reviews: Procedures and Associated Hypotheses

The Antidumping Agreement (ADA) concluded under the Uruguay Round of GATT trade negotiations required that:

“any definitive antidumping 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 a continuation or recurrence of dumping and injury.”⁵

These commitments were embodied in US law Uruguay Round Agreements Act (URAA).

The language of the ADA clearly implies that the presumptive outcome should be that the antidumping order will be repealed after five years. *Only if* administering authorities could show that dumping and material injury were likely to recur or continue would the order not be revoked. The authorities cannot simply assume that unfair pricing and injury would occur upon termination of the order-----a serious investigation must be undertaken.

The US sunset review process is designed, at least superficially, to conduct such serious investigations. Under the URAA, the process parallels the setup of the original investigations. The Congress has given the DOC the task to determine whether the revocation of the order will lead to

⁵ Article 11.3 of the ADA (1995).

dumping by a foreign firm. If the DOC rules affirmatively that dumping is likely, then it reports a “likely” dumping margin to the ITC. The ITC commissioners then assess whether the revocation of the order and the consequent renewed or continued dumping will lead to renewed material injury to a domestic industry producing a "like product." If both rule affirmatively, the antidumping order is renewed, subject to possible annual administrative reviews or, if appropriate, another five-year sunset review.

Sunset reviews are conducted on an “order” basis. That is, while the DOC may examine individual foreign firm’s pricing behavior, the DOC or ITC revokes or continues the antidumping duties for all firms subject to the order from a particular country exporting the specific product to the US. Thus, while Chinese firms X and Y may have separate dumping margins for their widget exports to the US, the ITC and DOC will either continue or revoke the order for both or neither of the two Chinese firms subject to an antidumping order.

We turn now to the specific decisions by the DOC and the hypotheses to be evaluated in the data.

Stage 1: Likelihood of Recurrence of Continuation of Dumping

As noted above, the DOC must determine whether revocation of the order will result in renewed or continued dumping by the foreign firms. Before beginning this process, the DOC must establish that a domestic firm with standing is interested in contesting the revocation. If no domestic firm files a “notice of intent” to participate in the sunset review, the order will be revoked automatically. If domestic interested parties do satisfy the DOC that there is sufficient domestic interest in continuation, then the DOC begins the sunset review process. We will call the latter cases “contested” cases.

As noted in Moore (1999), adopted DOC regulations that make it very unlikely that a foreign firm would be successful in winning a contested case. In particular, the DOC's position has been that it will "normally" determine that dumping is likely to continue or recur if any of the following have occurred:⁶

- (a) dumping has continued at any level above the *de minimis* level during the order, as calculated in an administrative review;
- (b) imports under an order have ceased; or
- (c) dumping margins are zero after the issuance of the order and import market share has declined "significantly."

These criteria imply that the DOC will revoke a contested order only if dumping has been eliminated completely and import market share has increased or stayed more or less the same. Since the elimination of "dumping" normally means raising the price charged in the US, then this means that the DOC will revoke the cases only if foreign has increased its market share by charging a higher price, which economic theory assures us is a very unlikely combination.

One might argue that the DOC's position is very reasonable----if administrative reviews using current foreign pricing behavior show that selling below normal value has occurred, then a logical conclusion would be to expect that such pricing behavior will continue. However, the reasonableness of this approach depends completely on whether or not one believes that the DOC's methodology for calculating dumping margins in administrative reviews is both extremely accurate and unbiased. In particular, the US position has been that the *de minimis* rates for administrative reviews is 0.5%, and not the 2% as agreed upon for original investigations under the ADA. This means that dumping has "occurred" if one can identify "unfair" pricing equal to \$5 on a \$1000 item. One must have

⁶ Federal Register 1998, p.18872.

extraordinary faith in the precision of DOC methods to believe that these are accurate calculations. It does not stretch credulity to suspect that decisions of even well-meaning administrators could generate such a small dumping margins in many plausible scenarios when no predatory pricing strategy was taking place, especially given the complexity of antidumping investigations. This low *de minimis* standard is even more problematic if one believe that there is any agency bias against foreign respondents.

The legislative history does allow the DOC to use its discretion to consider other factors with "good cause" when assessing the likelihood of dumping. The executive branch interpretation of the US's Uruguay Round commitments, the so-called Statement of Administrative Action (SAA, 1994) suggests that factors such as exchange rates, inventory, capacity, history of sales below costs, and changes in technology could all be used by DOC when rendering its decision about the likelihood of renewed or continued dumping.⁷ Moore (1999) has suggested, however, that DOC regulations virtually guarantee that these other factors would be considered only in the most unusual of circumstances.

Foreign firms certainly might reasonably expect little chance of winning at this stage of the sunset review process. US officials have clearly anticipated this possibility---- if foreign firms do not respond to DOC information requests at this stage, then the DOC is authorized to simply assume that dumping is likely to recur. This type of cases is called an "expedited review." If foreign firms do respond adequately, then the DOC will conduct a "full review." Given the analysis of the procedures above, one would expect that most foreign firms would forgo the legal costs of a DOC investigation, so that most cases will be expedited reviews. We also expect that given DOC's likely

⁷SAA (p. 890.)

approach, one would expect that full reviews nonetheless are highly unlikely to result in a decision favorable to foreign respondents.

Stage 2: “Likely” Dumping Margin Reported to the ITC

If the DOC does rule affirmatively in stage 1 of the sunset process, it must also determine the dumping margin likely to prevail in the event that the margin is revoked. This likely margin is then forwarded to the ITC for potential use in the deliberation about the recurrence of material injury.

US implementation of this second part of the DOC’s task is decidedly problematic. In particular, legislative and executive branch instructions indicate that the DOC should “normally” report the dumping margin from the initial antidumping investigation, regardless of how many years ago this took place. From an economic standpoint, this is a highly questionable practice since it assumes that all economic conditions of the industry are exactly the same as when the order was initially imposed. A true reform of the antidumping process instead would try to understand the current economic environment in order to predict foreign firm behavior. Simply assuming that foreign firms will make pricing decisions in exactly the same way, years after the order has been in place, is naive to say the least. The DOC’s procedure is even more important in transition orders (i.e., those in place prior to 1995), many of which have been in place for nearly twenty years. During this time, extensive technological innovation and economic reform in many countries has taken place. These changes have led to dramatic changes in market conditions worldwide; one might certainly expect that foreign firms’ pricing behavior might have changed over this period.

The SAA, once again, does allow that margins calculated in administrative review could be reported to the ITC with “good cause.” For example, the DOC can report a likely margin in excess

of the original investigation margin. One such instance is in the case of “duty absorption” by the exporting firm. Under US law, foreign firms can be penalized if they pay the antidumping duty rather than pass the increased costs onto US consumers. If foreign firms have been found to absorb the duties, then the reported margin to the ITC can be adjusted upwards by doubling the original margin. Another instance for a higher reported margin would be if there were both higher dumping margins calculated in administrative reviews and imports from those firms had increased.

Are there any circumstances wherein the DOC would report likely margins **below** the dumping margins from the original investigations? The DOC has identified only one such instance. Lower margins can be forwarded to the ITC if the administrative review margins decline and imports rise or are steady.⁸ Unfortunately, we saw above that this should be a rare combination—imports should fall if foreign prices increase. Even more troubling, we have seen above that under DOC regulations, such cases should be revoked at Stage 1. The possibility that the DOC would report lower margins to the ITC than in the original investigations seems, in short, extremely unlikely.

The DOC’s interpretations of the statute suggest that there may be considerable bias in its administration of this part of the law. In particular, we postulate that the DOC could use this opportunity systematically to report margins equal to the administrative review whenever they are higher than the original margins and will rarely, if ever, report the administrative review margin when they are lower than the original margin.

The likely tendency to ignore information favorable to foreign firms which has been assembled in administrative reviews is particularly troubling for cases subject to adverse “best-information-available”(BIA) margins. The DOC must obtain information from foreign firms in order to calculate dumping margins. US law allows the DOC to use dumping margin allegations

⁸Federal Register, p 18,873

contained in domestic firms' petitions, if foreign firms do not cooperate in an investigation. The reasoning behind this provision, of course, is that foreign firms may need incentives to provide needed information. While this is allowed under the WTO (and the GATT before it), the use of BIA has been controversial, in large part because some have argued that specific practices by the DOC have not allowed foreign firms to adequately respond and thus became subject to BIA margins. Supporters of BIA's use have often argued that such cases would be solved in administrative reviews----foreign firms would then have an opportunity to "correct" the record. One might expect that the DOC would use more recent administrative review margins when foreign firms were originally subject to BIA but which had subsequently cooperated. Unfortunately, there is little reason to believe that the DOC will make such adjustments.

We can summarize the expectations surrounding the outcomes of the DOC's sunset review investigations in the following specific hypotheses:

Likelihood of continued or recurring dumping (Stage 1 DOC decisions)

Hypothesis 1: Contested cases (i.e., where domestic firms request the continuance of an order) will rarely result in a revocation by the DOC.

Hypothesis 2: (a) Contested cases will rarely be subject to full reviews by DOC.
(b) Furthermore, orders under full review will fare no better in the DOC investigations than expedited reviews.

Likely margin to prevail (Stage 2 DOC decision)

Hypothesis 3: The "likely" dumping margin reported by the DOC to the ITC will almost always be the dumping margin from the original investigation.

Hypothesis 4: When the DOC does not report the original margin, it will almost always be higher than the initial dumping investigation.

Hypothesis 5: DOC bias means that it will frequently report administrative review margins instead of the original margin, whenever the former exceeds the latter.

III. Descriptive Statistics and Evaluation of Hypotheses

III. a. DOC Evaluation of Likelihood of Dumping: Order-level statistics

We turn first to analyzing DOC decisions at the “order” level. As noted above, antidumping duties in the US system are administered at the *country* level for a *specific* product found to be dumped. Consequently, the DOC’s evaluation of the likelihood of dumping after the revocation of antidumping duties should be analyzed at the order level.

In Table 1, we see a breakdown of all “transition” antidumping orders subject to the sunset review process.⁹ The data set includes dumping investigations conducted by the US Department of the Treasury prior to the Trade Act of 1980 (28 orders) and those calculated thereafter by the Department of Commerce (223 orders). Consequently, these pre-1980 orders were subject to significantly different procedures and laws in the original dumping investigations.

Table 1 breaks down the totals by outcome. Column 2 show that 55 orders were revoked by the DOC because there was insufficient domestic firm interest to continue the antidumping order. Column 3 shows that there were 196 contested orders (i.e., subject to a sunset review after an expression of domestic interest). Columns 4 and 5 shows the total orders revoked by the DOC and ITC, respectively. Column 5 shows the number of orders subject to an expedited review by the DOC.

Table 1 provides decisive evidence in favor of Hypothesis 1 above. The ITC did revoke 55 orders after determining that material injury was unlikely after revocation of the order. But the DOC revoked literally *no* contested orders on the basis of deciding that dumping was unlikely to recur or continue. While we had expected that the DOC would only “rarely” revoke an order, we were surprised that the foreign respondents did not win a single case.

⁹The data set is based on the Federal Register notice of 29 May 1998, pp. 29372. Note that suspension agreements, i.e., those originally settled by minimum import prices rather than antidumping duties, are not included in the sample.

We do see that older orders were more likely to be revoked because of a lack of domestic interest. In particular, we find that 16 of those original 28 pre-1980 cases (i.e., 57%) were revoked because they were uncontested compared to only 39 of the 223 post-1980 cases (i.e., only 17%). These outcomes indicate that the sunset review process was successful in removing some of the truly outmoded orders, especially those for which there were no domestic constituency for the continued existence of the antidumping duties.

However, we find that the difference between pre- and post-1980 cases is decidedly less pronounced in the final disposition of the cases. Specifically, 62% (8 of 13) of the pre-1980 orders subject to a sunset review by DOC and ITC were continued compared to 71% of post-1980 cases (i.e., 132 out of 184) and is consistent with the view that older contested orders subject to a review do not seem to be more likely to be revoked than newer contested orders.¹⁰ This outcome raises serious questions about whether antidumping duties really accomplish what they seek to do; if orders in place for over twenty years cannot discourage unfair pricing, one wonders whether the antidumping process can be effective.

Table 2 breaks out the transition orders based on the industry category and the disposition of the cases. Antidumping observers will not be surprised to find that steel and steel-related sectors feature prominently in the sample. Nearly 46% of the 251 orders in the sample are in basic steel products or processed steel products like ball bearings and pipe. We also see that basic commodities are well-represented with 33 orders.

¹⁰ Formally, the hypothesis that the two means are equal yields a t-statistic of 0.74. The difference in means is therefore insignificant at standard confidence levels.

There is considerable variation in the percentage of orders with no domestic interest in continuing the duties. While nearly 40% of electronics product and 52% of manufacturing product orders were revoked because of a lack of any domestic interest, only about 12% of basic steel, 10% of processed steel, and 10% of chemical sector orders were terminated as a consequence of insufficient petitioner interest.¹¹ This result is consistent with broad descriptions of industries which lobby for preservation of the antidumping system. The steel sector in particular is well known as a major defender of the antidumping duties as a means to curb imports; they clearly have stood ready to expend legal resources to continue the orders in the sunset review process.

We find relatively little variation among most industry categories in terms of continued orders as a percentage of reviewed cases. The basic steel, manufactured goods, chemicals and commodities sectors all experienced about an 80% “success” rate in terms of continued orders. However, processed steel products, with the largest number of contested orders, had a continuation rate of only 59%, which is statistically different from the success rate for the other industries.¹²

Table 3 breaks out this same order-level data based on the targeted countries. East Asia represented about 45% of all transition orders (113 out of 251). Not surprisingly, over one-third of those orders were directed at Japan, a traditional target of antidumping petitions in the US. However, over 10% involved Chinese exports which reflects the fact that China has increasingly become a target of antidumping both in the US and abroad. The growing importance of China in US antidumping orders can be seen in the average initiation date for the original orders; those involving Japan started on average in April 1985 while the average date for China orders was June 1989.

¹¹ The formal test of the hypothesis that the percentage of cases with no domestic interest is equal between sample 1 (steel, processed steel and chemicals) and sample 2 (all other industries) yields a t-statistic of 5.37 indicating rejection of the hypothesis at a 1% significance level.

¹² The t-statistic for this comparison is 2.32 which is statistically important difference at a 1% significance level.

Brazil also has become an important target, as reflected in the 12 transition orders, and with an average initial order date of August 1989. The data for Brazil is particularly striking given that Canada has only 13 orders in the sample, despite the much greater volume of US trade with Canada compared with Brazil.

Table 3 also provides some evidence about how aggressively domestic firms have been in pursuing continuation of orders for specific countries. Overall, about 22% of all transition orders were revoked because of a lack of domestic interest. However, only 7% (2 out of 29) orders involving China were revoked because of no domestic response compared with about 35% for Japanese orders. This is further evidence that US firms are increasingly turning their interest towards China.

Brazil and China also have fared especially poorly in the outcomes of contested cases. Orders against Brazilian and Chinese exports were continued in all but one contested case for both countries. We certainly cannot tell from this information alone whether this is a result of Chinese and Brazilian practices or whether the US process is biased against them. Nonetheless, the percentage of continued orders for these two countries (91% for Brazil and 96% for China) stands in stark contrast with the overall percentage of 71% (140 continued orders out of 195 contested cases). Japan on the other hand fared much better; only 62% (18 cases out of the 29) of contested cases were continued for this long-time target of antidumping duties.

The combination of domestic interest and successful continuation of orders creates a clear pattern. The overall number of continued cases as a percentage of original orders in place equals 56% (i.e., 140 out of 251 orders). However, orders against Chinese firms were continued in 89% of cases (27 out of 29). The comparable Brazilian figure is 83% (i.e., 10 out of 12 cases). These results

would suggest that Brazilian and Chinese firms might complain the most about the sunset review process; far from resulting generally in lapsed orders, these countries' firms seem to continue to face restrictions.¹³ In sharp contrast, only 5 of 13 possible transition orders involving Canadian firms were continued. Japanese firms' experience is somewhere in the middle---18 of 45 total original orders (or 40%) remained in place. One also sees that orders involving countries emerging from socialist central planning (other than China) seem to fare no better nor worse than market economy firms. Central and eastern European countries (including the Baltic states) had a continuation rate of 50% (5 of 10 orders), which is not far from the entire sample average of 56%. Nonetheless, this suggests that little consideration has been made concerning the remarkably different economic situations involving these countries' firms. This is particularly striking given that only 2 of these 10 orders were initially imposed after the fall of the Berlin wall in 1989: Cut-to-Length Carbon Steel Plate from Romania (DOC case # A-485-803), and Poland (DOC case # A-455-802), both of which were subject to final antidumping duties on 18 August 1993.

Hypothesis 2 above had two predictions. The first was that foreign firms would be unlikely to participate in the DOC's decision about the likelihood of continued or renewed dumping, given the low expected return from cooperating in the sunset review dumping investigation. The second was that foreign firms were likely to fare no better with a full review than with an expedited process.

We find support for the former but not the latter. Of the 195 orders for which there was a domestic interest in continuance, 173 of the cases were expedited; the balance were "full reviews." Thus, foreign firms determined that the costs of participating in the DOC's dumping likelihood determination exceeded any potential benefits in roughly 90% of the contested orders. The statistics

¹³ The formal test that the continuation rate for sample 1 (China and Brazil) is statistically different from that of all other countries yields a t-statistic of 4.69, which is strong evidence that these two countries have fared more poorly than others.

in Table 3 show that this pattern of non-participation is broadly similar across many geographical regions. However, only 60% of both Canadian and Mexican cases were conducted under an expedited review process. This is superficial evidence that NAFTA partners believe that they are more likely to benefit from participating in the sunset review process from the very beginning. Table 2 also shows that foreign firms in most industry groups decided not to participate in this part of the process. However, we see that of the 19 full reviews for the entire sample, 7 occurred in the basic steel industry alone. The willingness of foreign basic steel firms to fight the renewal of antidumping duties at all stages of the sunset review process reflects once again how contentious trade relations in the steel industry remain.

However, there is less evidence that the DOC's process is so slanted in favor of the domestic petitioners that requesting a full review brings no gains to foreign firm. We see that 10 of the 22 full reviews were finally revoked by the ITC while only 46 of the 173 expedited reviews were terminated. While other factors must be controlled for, this is at least some evidence that participating in the process helped foreign firms.¹⁴

We can summarize our findings about the DOC's first stage decision about the likelihood of dumping as follows. As long as a domestic firm expresses any interest in the continuance of an antidumping order, the DOC appears to mechanically approve the request. Furthermore, foreign respondents seem to have reacted to the DOC's regulations by simply ignoring this part of the sunset review process. Nonetheless, there may be at least some benefit of foreign firm's participating as suggested by the higher rates of revocations among the full sunset review cases.

¹⁴ The formal test that the revocation rates are equal between expedited and full sunset reviews yields a test statistic of 1.79. This implies a (two-tailed) marginal significance level of 7% which is weak evidence in favor of the revocation rates being different across the subsamples.

III. a. DOC Reports of Likely Dumping Margins: Firm-level statistics

In this section, we turn to the margins reported by the DOC to the ITC. As noted above, these reported margins in sunset reviews are made at the individual firm level rather than at the order level. Table 4 contains some summary statistics on these reported sunset margins. Note that only antidumping cases initiated *after* 1 January 1980 are included; cases before that were administered by the Department of the Treasury and therefore would not be appropriate for analyzing DOC behavior in this context.

We see that there were 395 separate individual firm margins (for the 223 total post-1980 orders) were in place as of January 1, 1995. The average original margin for the entire sample of foreign firms was 45%. Among the individual industry sectors, average firm dumping margins ranged from a low of 23% for the 6 textile firms subject to orders, to 64% for the 33 basic commodity firms. Basic steel and processed steel products, the sectors with the largest numbers of individual firm margins, had original duties equal to an average of 42% and 50%, respectively.

There were 79 foreign firms in the sample which ultimately faced no domestic interest in continuing an order. Interestingly, firms involved in cases for which there was *no* domestic interest in continuing the orders were subject to some of the highest original dumping margins: basic steel (84%) and commodities (80%). This may reflect that foreign firms with such high margins had permanently left the US market, leaving domestic firms unconcerned about possible foreign reentry into the market.

For the entire sample of contested cases, continued orders had higher average original margins (48%) than revoked orders (39%), suggesting that foreign firms found to be dumping the most were

perhaps more likely to remain subject to antidumping orders after the sunset review process.¹⁵ A similar pattern occurs at the industry level in the processed steel (56% vs. 39%), commodities (63% vs. 35%), and textiles/apparel (27% vs. 3%) sectors. However, this pattern is not uniformly true. Most notably, revoked orders in the manufactured goods sector were substantially higher (61%) than for the continued cases (37%).

We turn now to the specific margins for individual foreign firms reported by the DOC in contested orders. In Table 5, we compare the margin reported to the ITC in contested cases compared to the margin in the original investigation.

As noted above, Hypothesis 3 suggested that there would be extremely few cases in which the “sunset review margin,” i.e., the one reported to the ITC, would not equal the margin in the original investigation. The criteria not to do so (i.e., lower margins and higher imports) suggested that this would only rarely take place. In the event, we see that of the 315 individual margins reported to the ITC, 297 (or 94%) were exactly the same as in the original investigation.

The DOC reported a sunset review margin that exceeded the original investigation margin in 14 cases. For these cases, the average margin of the original investigation was 29% while the average sunset review margin was 89%. Why did the DOC report margins so much higher than in the original investigation? Generally, these were foreign firms accused of “absorbing” antidumping duties, that is, paying the duties themselves rather than passing them on to the US customer. In two of the instances, the DOC had found an increase in margins in administrative reviews accompanied by increasing imports.¹⁶ As noted above, the DOC announced in its proposed regulations that both of

¹⁵ The hypothesis that the original margins in continued and revoked orders are equal has a t-statistic of 1.67 which has a marginal significance level of 10%.

¹⁶ See DOC decisions for Toyota Motor Company in Forklift Trucks from Japan (DOC Case # A-588-703), Shanghai Chemicals Import & Export Corp. in Sodium Thiosulphate from China (DOC Case # A-570-805) and China National Native Produce and Animal By Products Import and Export Corporation in Paint Brushes from

these (absorption and higher margins plus increased imports) would be among those instances which would call for reported margins higher than in the original investigations.

The DOC reported a margin to the ITC below that of the original investigation for only 2 firms of the 296 individual cases or only 0.6% of the sample.¹⁷ In both of these cases, a lower margin was reported, not because of any new information about the firms, but instead because each of the firms had been purchased by another firm so that the DOC simply reported the purchasing firm's original margin.

While the SAA and legislative history suggests that the DOC should "normally" report the dumping margin from the original investigation and does allow for other margins to be reported with "good cause," we see that the DOC reports the original margin in an almost completely mechanistic fashion. DOC actual practice, therefore, provides overwhelming support for Hypothesis 3 above. In addition, we find strong evidence in support of Hypothesis 4, which posited that when the DOC did not report an original margin, it was likely to exceed the original margin.

We have argued above that one of the most important difficulties with the DOC's approach is that potentially useful information in the administrative reviews is being ignored by reporting the original margin. Even though margins developed in administrative reviews are based on more recent behavior by foreign firms, the US Congress, executive branch¹⁸ and DOC all assert that these more recently-determined margin are not reliable; they all argue that the original margin normally should be used, regardless of how old, since this is the duty calculated without the discipline of the order in

China (DOC Case # A-570-501).

¹⁷Companhia Siderurgica Paulista in Cut-to-length Carbon Steel Plate from Brazil (DOC Case # A-351-817 and Sammi Metal Products Company in Welded Stainless Steel Pipe from South Korea (DOC Case # A 580-810).

¹⁸ See House Report (1994), SAA (1994) and Senate Report (1994).

place. This is certainly problematic in the transition orders given that the average initiation date of contested orders in the sample is May 1987.

In order to assess whether there may have been any important information ignored by the DOC, we analyze how the reported sunset review margins differ from administrative reviews. In Table 6, we report statistics only for those 189 instances when there has been at least one administrative review (AR) for the relevant foreign firm subject to an order. The administrative review used in this table is the one most recently established, i.e., based on the most recent behavior of the foreign firm, albeit with an antidumping order already in place.

We see that in 102 of the relevant 189 cases, the margin reported in the sunset review exceeded the most recent administrative review margin. Among these cases, the average sunset review margin (42%) was over five times higher than the margin in the latest administrative review (8%). These results indicate that there may have been substantial change in the behavior of at least some of the foreign firms subject to an order. It is certainly possible that these falling dumping margins reflected foreign firms' decisions to raise their price under pressure from the antidumping order. It is also possible that some of the foreign firms were facing more competition at home so that they were forced to lower their home prices and thereby reduce the dumping margin. A number of other plausible scenarios might describe the fall of foreign firm's dumping margins. In any event, this certainly suggests that the DOC might be expected to look more closely at foreign firm economic situation rather than simply reporting the original margins to the ITC.

Another important reason for an administrative review margin to be lower than in the original investigation is that the foreign firm might have been originally subject to BIA margins and subsequently had provided information about its situation to the DOC. We see in Table 6 that of

those cases where the administrative review was lower than the sunset review margin, BIA was used in some 30% of the cases. In other words, the DOC frequently had newer margins based on the foreign firms' own costs but nonetheless reported margins to the ITC usually provided by the domestic petitioner in its original allegations.

While the DOC might ignore some instances when the reported margin is above the administrative review margin, we also see that there are numerous instances when the reverse is true. In particular, Table 6 shows that the DOC reported margins below the latest administrative review for 48 foreign firms in the sample. We see that in such instances, the average administrative review was 46% while the reported margin was only 24%.

The results for those cases with administrative reviews suggest that we can reject Hypothesis 5 that the DOC would take an opportunity to report the latest administrative review whenever it was higher than the original margin. Instead, the DOC simply has implemented a very rigid system----report the original margin, almost no matter what other information they might have obtained from administrative reviews.

III. b. Contested Cases and the Use of BIA

As noted above, potential abuse of BIA was one of the most frequent complaints about the US antidumping system. In addition, Moore (1999) focused on its potential role in the administration of sunset reviews. Consequently, we split the firm-level data for contested orders into BIA (Table 7) and non-BIA (Table 8) samples.

One notes immediately the impact of foreign firms non-cooperation in original investigations—average original margins were 65% for the 131 firms subject to BIA compared to only 34% for the 183 non-BIA. We see evidence that non-compliance in the original investigation

is correlated with continued orders in sunset reviews; 27% of non-BIA (49 of 183) cases were revoked compared to only 16% for BIA (20 of 131) cases.¹⁹ The reported sunset review margins of BIA cases also show consistently higher margins than non-BIA case. This is, of course, not surprising since we have seen that the reported margin is usually the original margin. Nonetheless, we see that the average sunset review margin for non-BIA cases is actually a bit higher (37%) compared to the original margin (33%). BIA orders on the other hand are almost the same in the sunset and original investigations. This means that the DOC was more likely to increase the margin reported for firms that had cooperated. The reason is that duty absorption was an issue for a subset of the non-BIA cases.

We are especially interested to see if margins calculated in administrative reviews in the BIA cases tended to be lower than the original margins to any significant degree. The DOC conducted administrative reviews for 60 firms in contested BIA orders. The reported sunset review margin for 30 of those firms exceeded the latest administrative review (row 1 of Table 7)---the average administrative review margin was 10% compared to the reported sunset review margin of 54%. This suggests that the congressional, presidential and DOC decision to ignore more recent pricing behavior of firms has had a significant impact on the reported margin. However, this reported margin may not have had an important effect on the ultimate disposition of the cases however---24% of the BIA cases where the sunset review margin exceeded the administrative review were revoked compared to only 16% for all firms faced with BIA margins.

There are also a number of BIA cases where the sunset review margin was less than the administrative review margin (row 3 of Table 7). Of those 10 cases, the average administrative

¹⁹ The formal test that the continuation rates are the same yields a t-statistics of 2.52. The hypothesis is rejected at a 1% significance level.

review was 53% while the reported margin was only 34%. Only two of the firms of this type had revoked orders. As in the whole sample, we find less evidence that the DOC is biased on any particular case; instead, it just administers the sunset review process in a mechanical fashion by passing along the original investigation's margin.

Comparing Table 7 to Table 8, we see that the percentage of revoked cases is lower across the board for non-BIA compared to BIA cases. For cases where the sunset review margin exceeded the administrative review margin, revoked cases represented 30% for non-BIA (21 of 71) vs. 24% for BIA (7 of 30).²⁰ When the sunset review margin equals the administrative review margin, 10% of BIA cases were revoked compared to 28% for non-BIA.²¹ Similarly, when the sunset review margin was less than the administrative review margin, 36% of non-BIA cases were terminated compared to only 20% of BIA cases.²² While this evidence may suggest that cases originally subject to BIA are more likely in a systematic manner to be continued, it is not conclusive since we would need to control for other variables important to the ITC decision. Among non-BIA cases in row 1 of Table 8 (i.e., when administrative review is less than the sunset review margin), the average administrative review margin determined by the DOC was only 7% compared to 34% in the original investigation. This suggests once again that foreign firms are changing their pricing behavior under an AD order but this information is ignored by the DOC when implementing the sunset review process. However, we also see that such information is ignored when it might favor the domestic petitioners. In particular, row 3 of Table 8 shows that in non-BIA cases (like in BIA cases) the DOC

²⁰ This difference between the BIA and non-BIA samples is, however, not statistically significant since it yields a t-statistic of only 0.51.

²¹This test for this difference yields a t-statistic of 1.65, which is marginally significant at a 5% confidence level.

²²This is statistically insignificant difference with a t-statistic of only 1.0.

will generally ignore higher margins calculated in administrative reviews; instead, the DOC continues to report mechanically the margins from the original investigations.

There is one further striking aspect to Tables 7 and 8. In particular, a large percentage of foreign firms decide not to request an administrative review during the life of the order, even when it seems that they might have a strong incentive to do so. This is particularly surprising in BIA cases. As shown in row 4 of Table 7, the foreign firm never asks for a review in 71 of 131 cases, despite the fact that their average BIA margin equals 67%. Why might this be? It could be that the extremely high BIA margins priced the firms out of the US market permanently so that they had no interest in the US market. If they did initiate an administrative review, they would have to pay the associated legal costs. This might not be worth the effort—we see in row 5 of Table 7 that the average margin for BIA cases in which an administrative review was conducted was 44%.²³ This is indeed a reduction compared to 67% but it is still probably too high to be able to operate in the US market. In other words, there might be only costs and little potential gains. In a similar fashion, 55 non-BIA cases were never subject to an administrative review. This too might be a rational decision by foreign firms. The average administrative review margin for non-BIA firms requesting a review was 26% compared to the 34% in the original investigations. This is a lower margin but may not justify the legal costs associated with the review.²⁴

III. c. Individual Country Sunset Review Experience at the Firm Level

Table 9 contains information about how individual Chinese, Japanese, Taiwanese and Brazilian firms fared in the sunset review process. The results are consistent with the deep skepticism

²³ Of course, these margins are calculated for completely different firms and have no direct relationship to the potential administrative review margins for firms which did not request a review. Nonetheless, firms might consider the experiences of other firms when deciding whether to initiate an administrative review.

²⁴ Moore (2001) investigates when foreign firms might be rational accepting BIA margins in original investigations. Similar tradeoffs are found to be important in those decisions.

often expressed by trade officials in these countries about the US antidumping process. We see that firms in China, Japan, and Brazil received very high average high dumping margins in the initial investigations regardless of whether they cooperated or not. Taiwanese firms had slightly better experiences.

For China, the average initial margins for BIA and non-BIA cases was 96% and 64%, respectively. The latter “cooperative” margin is actually equivalent to the average *BIA* margin for all countries (see Table 7, column 2). This no doubt reflects the fact that 31 of the 32 non-BIA Chinese were calculated using non-market-economy procedures. Under this process, Chinese costs are “estimated” by using surrogate countries such as India. These results would certainly suggest that Chinese firms face onerous burdens in the antidumping process whether they cooperate or not. The average sunset review margins are also very high for Chinese firms: 103% for BIA cases and 75% for non-BIA. Only one case was revoked for Chinese products

Brazilian firms also had very little success in winning sunset review cases. No cases were revoked for investigations involving BIA margins----10 BIA cases, with an average original margin of 51%, were all continued. Only 1 case of the 8 non-BIA Brazilian cases were terminated. While the termination rate was above the Chinese, it is still much lower than the overall sample.

Japanese firms fared much better, at least those firms which initially had cooperated. Only 3 of the 20 Japanese firms subject to BIA (with original margins and sunset margins equal to 60%) had their antidumping orders revoked. About 45% (13 of 29 cases) of Japanese firms who initially did cooperate saw the order terminated in the sunset review process. This percentage is more or less in line with the overall termination rates.

Taiwanese firms, like the Japanese, were also decidedly more successful in the sunset review process than the Chinese and Brazilians. While few of the Taiwanese BIA cases were terminated (only 4 of 24 cases), they at least fared well on the reported sunset margin: 41% for the original investigation vs. 21% for the sunset reviews. Taiwanese firms which originally had cooperated were successful in having the orders revoked in 43%, about the average for the whole sample.

These outcomes suggest that Brazilian and Chinese firms are likely to complain loudly about the sunset review process. While WTO disputes are filed based on the specifics of individual cases, one can certainly imagine that Chinese and Brazilian trade officials could point to these statistics when arguing that the US antidumping system has hardly been reformed as promised in the Uruguay Round.

IV. Conclusion

The Uruguay Round reached a successful conclusion when member nations agreed to various reforms in return for increased access to foreign markets. One of the most important US compromises was the introduction of a sunset review process for antidumping orders. This concession required the US trade agencies to undertake serious investigations whether the revocation of an order would lead to further dumping and renewed material injury. While the US dutifully incorporated specific procedures for sunset reviews into law, observers have had some concerns about whether the sunset review process as adopted by the relevant US agencies lives up to the spirit of Uruguay Round commitments.

This article has provided significant support for those who fear that the Department of Commerce's sunset review approach, while narrowly consistent with US law and congressional instructions, is seriously flawed. In particular, the Department of Commerce did not revoke a single

antidumping transition order based on a determination that dumping is unlikely to recur or continue. Furthermore, the duty reported as the likely dumping margin in the event of a revocation has been the margin calculated in the original investigation in 94% of the transition orders. Despite its legal ability to report lower margins than the original margins, the Department of Commerce did so for only 2 firms in the 314 decisions it rendered.

One can argue that the Department's procedures are biased in favor of domestic petitioners. There is, however, little evidence that Commerce uses arbitrary methods to increase the margin reported to the International Trade Commission. The Commerce Department instead simply uses a perfunctory approach----it always rules that dumping is likely to recur and (almost) always reports the original investigation's margin as the likely dumping margin in the event of revocation. This unsophisticated approach certainly calls into question whether the margins reported by the Department of Commerce contain any useful information whatsoever for use by the International Trade Commission in its material injury decisions.

The descriptive statistics provided in this paper suggest the need for further study. We see have some evidence, for example, of potential different treatment of firms from China, those subject to initial BIA margins, and certain industrial sectors. The cross-tabs reported here can only hint at the underlying decision-making processes at the DOC and ITC. It would be useful therefore to analysis the sunset review outcome for all transition orders using more formal techniques, most notably through probit analysis.²⁵

The results of this study cast doubt onto whether the US implementation of sunset reviews has lived up to the spirit of US commitments in the Uruguay Round. The US system seems to have

²⁵Currently, the only comparable existing study is Liebman's (2001) study of ITC commissioner votes on sunset review material injury decisions. That study, however, does not consider any cases for which there is no domestic interest nor does it control for individual foreign firm pricing behavior.

converged to the following general pattern: 1) in the first five years of an order, no injury determination is necessary; the existence of dumping margins greater than 0.5% is enough to keep foreign firms ensnared in the system; and 2) in five-year sunset reviews, an affirmative dumping determination by the Department of Commerce is essentially guaranteed; orders are only revoked if the ITC determines that material injury is unlikely to occur upon revocation of the order. In other words, while the US system does require both a serious dumping and material injury investigation at the beginning of an order, afterwards, US agencies in reality only determine either dumping or material injury but not both at the same time. Consequently, it is not clear to this author that the US is actually living up to the spirit of its commitments under the WTO's Antidumping Agreement.

This remarkably weak US appetite for aggressively implementing a reform agenda has implications far beyond the DOC decisions in sunset review cases. The more that leading nations like the US half-heartedly implement the rules of the WTO system, the more likely that other countries looking to the US for leadership in trade issues will be hesitant themselves to make tough decisions on politically-sensitive trade issues. In short, the US is setting a very bad example for other countries administering the rules-based WTO system.

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Table 1 US Sunset Review Transition Orders (pre- and post 1980): Overall Statistics							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Total	Cases with no domestic interest	Contested orders	Contested order average initiation date	Contested orders revoked by DOC	Contested orders revoked by ITC	Expedited contested orders
Pre-1980 orders	28	16	12	Apr. 76	0	4	10
Post-1980 orders	223	39	184	Jan. 89	0	52	166
All orders	251	55	196	Apr. 88	0	56	176

Table 2 US Sunset Review Transition Orders (pre- and post 1980): Industry Statistics						
	(1)	(2)	(3)	(4)	(5)	(6)
	Total	Cases with no domestic interest	Contested orders	Contested orders revoked by DOC	Contested orders revoked by ITC	Expedited contested orders
Basic steel	41	5	36	0	8	29
Processed-steel	74	7	67	0	27	65
Manufactured goods	38	15	23	0	4	20
Chemicals	29	3	26	0	5	25
Electronics	17	9	5	0	2	5
Agriculture	14	8	6	0		6
Textiles and Apparel	5	0	5	0	1	5
Commodities	33	8	25	0	5	20

Table 3
US Sunset Review Transition Orders (pre- and post 1980):
Country/Region Statistics

	(1)	(2)	(3)	(4)	(5)
	Total	Cases with no domestic interest	Contested orders	Contested orders revoked by ITC	Expedited contested orders
All orders	251	55	195	55	176
East Asia	113	23	90	23	84
Japan	45	16	29	11	27
China	29	2	27	1	25
Europe					
EU members	59	12	47	17	43
Central/East European	10	1	9	4	8
Former Soviet Union (excl. Baltic States)	15	5	10	2	7
NAFTA					
Canada	13	3	10	5	6
Mexico	6	1	5	1	3
Latin America	20	4	16	4	15
Brazil	12	1	11	1	10
Others	14	6	8	0	8

Table 4
Post-1980 US Sunset Review (individual firm cases)
Industry Statistics

		Total	No domestic interest	Continued orders	Revoked orders
All cases	Firms	395	79	244	71
	Average original margin	45%	41%	48%	39%
Basic steel	Firms	58	4	44	10
	Average original margin	42%	84%	38%	41%
Processed steel products	Firms	123	2	84	37
	Average original margin	50%	6%	56%	39%
Manufactured goods	Firms	55	4	46	5
	Average original margin	38%	21%	37%	61%
Chemicals	Firms	44	5	32	7
	Average original margin	53%	48%	54%	52%
Electronics	Firms	36	28	1	7
	Average original margin	37%	43%	7%	13%
Agriculture	Firms	40	29	10	1
	Average original margin	36%	28%	37%	NA*
Textiles	Firms	6	–	5	1
	Average original margin	23%		27%	3%
Commodities	Firms	33	7	22	3
	Average original margin	64%	80%	63%	35%

Table 5			
Post-1980 US Sunset Review (individual firm cases):			
Sunset vs. original investigation margin			
	(1)	(2)	(3)
	Number of cases	Average margin	
		Original investigation	Sunset review
Sunset review = original margin	297 (69 revoked)	47%	47%
Sunset review > original margin	14 (2 revoked)	29%	89%
Sunset review < original margin	2 (0 revoked)	58%	22%
Total	315 (71 revoked)	46%	49%

Table 6					
Post-1980 US Sunset Review (individual firm cases):					
Sunset vs. administrative review margin					
	(1)	(2)	(2)	(3)	(4)
	Number of cases	BIA used in original investigation	Average margin		
			Original investigation	Sunset review	Administrative review
Sunset review = administrative review	39 (8 revoked)	20	63%	75%	75%
Sunset review > administrative review	102 (28 revoked)	30	40%	42%	8%
Sunset review < administrative review	48 (16 revoked)	10	24%	24%	47%
Total	189 (52 revoked)	60			

Table 7				
Post-1980 US Sunset Review (individual firm cases):				
BIA used in original investigation				
	(1)	(2)	(3)	(4)
	Number of cases	Average margin		
		Original investigation	Sunset review	Administrative Review
Sunset review > administrative review	30 (7 revoked)	55%	52%	10%
Sunset review = administrative review	20 (2 revoked)	84%	90%	90%
Sunset review < administrative review	10 (2 revoked)	34%	53%	34%
No administrative review	71 (9 revoked)	67%	67%	–
Total	131 (20 revoked)	65%	65%	44%

Table 8				
Post-1980 US Sunset Review (individual firm cases):				
BIA <i>not</i> used in original investigation				
	(1)	(2)	(3)	(4)
	Number of cases	Average margin		
		Original investigation	Sunset review	Administrative Review
Sunset review > administrative review	71 (21 revoked)	34%	37%	7%
Sunset review = administrative review	18 (5 revoked)	40%	59%	59%
Sunset review < administrative review	39 (14 revoked)	23%	23%	46%
No administrative review	55 (9 revoked)	38%	40%	–
Total	183 (49 revoked)	34%	37%	26%

Table 8
Post-1980 US Sunset Review (individual firm cases):
Selected countries

	BIA cases				non-BIA cases			
	Contested orders	ITC revoked orders	Average Original margin	Average sunset review margin	Contested orders	ITC revoked orders	Average Original margin	Average sunset review margin
China	20	0	96%	103%	32	1	64%	75%
Brazil	10	0	51%	44%	29	13	41%	41%
Japan	20	3	60%	60%	29	13	44%	45%
Taiwan	24	4	41%	21%	16	7	12%	12%