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OPENING THE TARIFF TOOLKIT: THE DEMAND FOR U.S. ADMINISTRATIVE TRADE REMEDIES

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After decades of moves towards trade liberalization, trade restrictions are back in vogue. The United States is raising tariffs, escalating tensions with trading partners, and has paralyzed the World Trade Organization's dispute-settlement system. The continuation of adversarial actions seems assured, with both political parties indicating interest in defending against imports, ongoing calls to "decouple" from China, and President Trump's penchant for unilateralism.

Against this backdrop of rising trade tensions and weakening international legal constraints, I examine the demand for defensive trade measures and the domestic administrative processes that result in them. I advance a bottom-up perspective that trains attention on the actors that mobilize these processes to enforce "administrative trade remedies," which I define broadly to include any domestic law that aims to defend domestic industries against imports and is administered by an administrative agency, e.g., antidumping duties or Section 232 national security trade actions. Rather than focus on Congress or the President, this view appreciates the role of firms, workers, and lawyers in mobilizing administrative agencies to enforce, and thereby make, trade law.

I draw on over forty interviews with those involved in administrative trade-remedy processes and original datasets of agency investigations to describe how those who seek and benefit from tariffs choose among a toolkit of remedies. Although tools with greater presidential involvement in the

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decisionmaking process are receiving increased attention, I find that private actors remain actively engaged in the enforcement of administrative trade remedies. And they continue to prefer the antidumping and countervailing duty process because of its relative insulation from politics (especially the President) and resulting predictability and durability.

A bottom-up view of administrative trade remedies in the United States contributes first to our understanding of trade lawmaking and policy. In addition to highlighting the relevance of private actors and agency processes, the premium that relevant actors place on a process's perceived distance from politics and predictability helps explain the continuing popularity of such a scheme, as well as the value of consistent agency practice during a time of high political polarization and volatility. This approach can also travel to other countries, where the use of defensive measures is similarly on the rise, or to other areas of U.S. trade law. Second, I contribute to scholarship that seeks to "normalize" trade law. The mixed public-private nature of the trade-remedies enforcement scheme and interviewees' discussions of the pros and cons of administrative procedures illustrate the benefits of bringing research on "ordinary" areas of domestic law to bear on trade law, and vice versa.

INTRODUCTION

After nearly a century of consistent, albeit bumpy, moves towards trade liberalization, trade restrictions are staging a worldwide comeback tour.[1] The United States, a key architect of the current system, stands at the forefront of this shift. It has engaged in a trade war with the People's Republic of China,[2] upending a relationship that previously emphasized the benefits of engagement.[3] It has raised tariffs on various products, even those from longstanding allies.[4] And it has paralyzed the dispute-settlement system at the World Trade Organization (WTO) by continuing to block appointments to the Appellate Body.[5] Reasonable criticisms of the uneven effects of trade come from both sides of the aisle, and the beginning of President Trump's second term has only added fuel to the fire, with the administration once again drawing on supposedly dormant tools to ratchet up tensions with adversaries and allies.[6]

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[1] The Editors, *The High Cost of Global Economic Fragmentation*, IMF BLOG (Aug. 28, 2023), https://www.imf.org/en/Blogs/Articles/2023/08/28/the-high-cost-of-global-economic-fragmentation [https://perma.cc/4FJL-FVJ8].

[2] Ana Swanson, *Trump's Trade War with China Is Officially Underway*, N.Y. TIMES (July 5, 2018), https://www.nytimes.com/2018/07/05/business/china-us-trade-war-trump-tariffs.html [https://perma.cc/8JB4-P5VV]; Jim Tankersley, *How Biden's Trade War with China Differs from Trump's*, N.Y. TIMES (May 14, 2024), https://www.nytimes.com/2024/05/14/us/politics/biden-trump-china-trade.html [https://perma.cc/F3K6-6M2N]; David Pierson & Joy Dong, *China Is Considering Trade Talks with U.S., but It Has Conditions*, N.Y. TIMES (May 2, 2025), https://www.nytimes.com/2025/05/02/world/asia/china-us-tariffs-talks.html [https://perma.cc/8Z4R-8KZC].

[3] *See* Mark Jia, *American Law in the New Global Conflict*, 99 N.Y.U. L. REV. 636, 649 (2024) (identifying the sense of disillusionment around seemingly failed predictions about mutual economic benefit and eventual Chinese liberalization from engagement with China).

[4] *See* Swanson, *supra* note 2 (noting tariffs imposed on products from Canada, Mexico, the E.U., and Japan); Ana Swanson, Alan Rappeport & Tony Romm, *Highlights: Trump Imposes Vast Global Tariffs*, N.Y. TIMES (May 24, 2025), https://www.nytimes.com/live/2025/04/02/business/trump-tariffs-liberation-day [https://perma.cc/V8U4-PPH9] (noting tariffs imposed on the E.U., Japan, and South Korea).

[5] Bryce Baschuk, *Biden Picks Up Where Trump Left Off in Hard-Line Stances at WTO*, BLOOMBERG LAW (Feb. 22, 2021, at 11:55 ET), https://www.bloomberg.com/news/articles/2021-02-22/biden-picks-up-where-trump-left-off-in-hard-line-stances-at-wto [https://perma.cc/9VD7-RS3K]. Although there had been hope that the dispute-settlement system would come back online, discussions continue. *See Members Updated on Progress in Dispute Settlement Reform Talks in Run-Up to MC13*, WORLD TRADE ORG. (Jan. 26, 2024), https://www.wto.org/english/news_e/news24_e/dsb_26jan24_e.htm [https://perma.cc/PUG5-NBYC] (reporting informal discussions on reforming appeal mechanisms); *Members Welcome Appointment of Facilitator for WTO Dispute Settlement Reform Talks*, WORLD TRADE ORG. (Apr. 26, 2024), https://www.wto.org/english/news_e/news24_e/dsb_26apr24_e.htm [https://perma.cc/MEJ4-SLCJ] (reporting the start of formal discussions on dispute resolution reform). And many countries have in the meantime joined a trade arbitration alternative. Olivia Le Poidevin, *UK Joins WTO Trade Arbitration Alternative*, REUTERS (June 25, 2025, at 3:22 PDT), https://www.reuters.com/world/uk/uk-joins-wto-trade-arbitration-alternative-2025-06-25 [https://perma.cc/S3CJ-X2QM].

[6] *See* Talya Minsberg, *A Timeline of Trump's On-Again, Off-Again Tariffs*, N.Y. TIMES (Apr. 29, 2025), https://www.nytimes.com/2025/03/13/business/economy/trump-tariff-timeline.html

Criticisms of the United States' trade relationships are loudest with respect to China, with ongoing efforts to "decouple" or "derisk" by cutting China out of global supply chains, limiting inbound or outbound Chinese investment, and restricting imports from or exports to China.[7] Even given the general volatility of President Trump's new tariff regime, his negotiations with China have been especially contentious.[8] Since the late 1970s, China's domestic economic reforms and integration into the global economy have resulted in massive outputs of manufactured goods and increased consumption of raw materials and commodities, disrupting world markets.[9] In the United States, China's share of imports grew gradually and then soared after China's accession to the WTO in December 2001, which outpaced similar shocks from Japanese and Mexican imports in the 1980s and 1990s.[10] The U.S. trade deficit in goods with China skyrocketed.[11] Legal scholar Mark Wu has described the WTO's struggle to respond to the unique challenges posed by the economic structure of what he labels "China, Inc."[12] And at least

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[https://perma.cc/LW6Q-AVEH] (recounting a timeline of recent tariffs against China, Mexico, Canada, and other countries); Madeleine Ngo, *What to Know About the Emergency Law Trump Used to Impose Tariffs*, N.Y. TIMES (Aug. 29, 2025), https://www.nytimes.com/2025/02/02/us/politics/trump-tariffs-ieepa.html [https://perma.cc/4YTN-XJY5] (noting that the International Emergency Economic Powers Act had never previously been used to impose tariffs); *see also* Kathleen Claussen & Timothy Meyer, *The Foreign Commerce Power*, 114 CALIF. L. REV. (forthcoming 2026) (manuscript at 42–44), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5403782 [https://perma.cc/U8UQ-A42P] (describing the tariff-related actions taken by President Trump since retaking office).

[7] Jia, *supra* note 3, at 652–53; Peter S. Goodman, *The Rise and Fall of the World's Most Successful Joint Venture*, N.Y. TIMES (Nov. 14, 2023), https://www.nytimes.com/2023/11/14/business/us-china-economy-trade.html [https://perma.cc/8J8V-LCJP]; Greg Ip, *A China-U.S. Decoupling? You Ain't Seen Nothing Yet*, WALL ST. J. (Feb. 7, 2024, at 12:10 ET), https://www.wsj.com/economy/trade/a-china-u-s-decoupling-you-aint-seen-nothing-yet-12c0828e [https://perma.cc/AXR9-3YUX]; Damien Cave, *How 'Decoupling' From China Became 'De-risking'*, N.Y. TIMES (May 22, 2023), https://www.nytimes.com/2023/05/20/world/decoupling-china-de-risking.html [https://perma.cc/FPB6-35B8].

[8] *See* Daisuke Wakabayashi & Keith Bradsher, *Trump and Xi, Hoping to Ease Trade War, Agree to 1-Year Truce*, N.Y. TIMES (Oct. 30, 2025), https://www.nytimes.com/2025/10/30/business/us-trump-china-xi-trade.html [https://perma.cc/F6LK-Z8N3] (discussing a U.S.-China truce after a lengthy trade conflict).

[9] *See* DOUGLAS A. IRWIN, CLASHING OVER COMMERCE 638 (2017) (noting that in just 34 years, China's share of world exports rose from negligible to twelve percent due to reforms).

[10] *See id.* at 639–42 (attributing the surge in imports to Chinese economic growth and conferral of permanent Most Favored Nation status).

[11] *See* Ana Swanson, *U.S.-China Trade Deficit Hits Record, Fueling Trade Fight*, N.Y. TIMES (Feb. 6, 2018), https://www.nytimes.com/2018/02/06/us/politics/us-china-trade-deficit.html [https://perma.cc/2XAX-XDJ2] (noting an unprecedently high trade deficit with China in 2017); *see also* David H. Autor, David Dorn & Gordon H. Hanson, *The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade*, 8 ANN. REV. ECON. 205, 214–15 (2016) (describing the increase in the United States' current account deficit and potential decline in manufacturing sectors as a result of increased Chinese exports).

[12] Mark Wu, *The "China, Inc." Challenge to Global Trade Governance*, 57 HARV. INT'L L.J. 261, 284–85, 287–94 (2016) (describing the Chinese economy's "unique combination" and "complex web of overlapping networks and relationships—some formal and others informal—between the state,

one set of economists has tied this "China shock" to an immediate and longer-term geographically concentrated loss of millions of manufacturing jobs, lower wages, and decreased labor force participation rates in the United States.[13] Although China's manufacturing growth rate has naturally tapered over time,[14] China continues to dominate production in areas such as automobiles, electric car batteries, and solar panels, consistent with its stated aspirations to lead the way in high-tech manufacturing.[15] And China's control over much of the world's supply of critical minerals further cements its role in global supply chains.[16]

One popular strategy for managing the challenges posed by China, and for the rising number of trade barriers more generally, has been tariffs. President Trump boasted in 2018 that he is a "Tariff Man," a title he has again embraced during his second term.[17] Indeed, the President has taken concrete steps toward his promise of a "system of universal baseline tariffs on most imported goods" where that tariffs could once again be a primary source of federal revenues.[18] President Trump's brashness aside, even President Biden

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Party, SOEs, private enterprises, financial institutions, investment vehicles, trade associations, and so on" and the difficulties of managing this with existing WTO frameworks).

[13] *See* Autor, Dorn & Hanson, *The China Shock*, *supra* note 11, at 224, 228–29, 234; David H. Autor, David Dorn & Gordon H. Hanson, *The China Syndrome: Local Labor Market Effects of Import Competition in the United States*, 103 AM. ECON. REV. 2121, 2125 (2013); David H. Autor, David Dorn, Gordon H. Hanson & Jae Song, *Trade Adjustment: Worker-Level Evidence*, 129 Q.J. ECON. 1799, 1802, 1804 (2014); *see also* David Singh Grewal, *A World-Historical Gamble: The Failure of Neoliberal Globalization*, 6 AM. AFFS. (2022), https://americanaffairsjournal.org/2022/11/a [https://perma.cc/S2NL-ZUBA] (noting the contribution of Chinese manufacturing and the resulting decline of American manufacturing to democratic backsliding); Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1798–1800 (2021) (describing the role of trade liberalization in increasing geographical inequality).

[14] *See* David Autor, David Dorn & Gordon H. Hanson, *On the Persistence of the China Shock* 6 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29401, 2021); Lori Ann LaRocco, *China, 'Factory of the World,' Is Losing More of Its Manufacturing and Export Dominance, Latest Data Shows*, CNBC (Oct. 25, 2022, at 3:19 PM EDT), https://www.cnbc.com/2022/10/20/china-factory-of-the-world-is-losing-its-manufacturing-dominance.html [https://perma.cc/MUC9-M7CJ] (noting the loss of Chinese manufacturing and export market share).

[15] Keith Bradsher, *How China Rose to Lead the World in Cars and Solar Panels*, N.Y. TIMES (May 14, 2024), https://www.nytimes.com/2024/05/14/business/china-exports-manufacturing.html [https://perma.cc/49TX-7KLP]**;** Patricia Cohen, Keith Bradsher & Kim Tankersley, *How China Pulled So Far Ahead on Industrial Policy*, N.Y. TIMES (May 27, 2024), https://www.nytimes.com/2024/05/27/business/economy/china-us-tariffs.html [https://perma.cc/7YLH-9UYB]; *see* Jia, *supra* note 3, at 652, 660 (identifying various Chinese efforts to promote high-tech manufacturing industries).

[16] *See* Tae-Yoon Kim, Shobhan Dhir, Amrita Dasgupta & Alessio Scanziani, *With New Export Controls on Critical Minerals, Supply Concentration Risks Become Reality*, IEA (Oct. 23, 2025), https://www.iea.org/commentaries/with-new-export-controls-on-critical-minerals-supply-concentration-risks-become-reality [https://perma.cc/5UG4-76BZ] (describing China's dominance of the global rare-earth minerals supply).

[17] Anne O. Krueger, *Tariff Man Doubles Down*, PROJECT SYNDICATE (Mar. 24, 2025), https://www.project-syndicate.org/commentary/trump-tariff-agenda-means-trouble-for-american-and-global-economies-by-anne-o-krueger-2025-03 [https://perma.cc/53X6-NQKY].

[18] *Agenda47: President Trump's New Trade Plan to Protect American Workers*, TRUMP/VANCE

kept much of the first Trump Administration's tariffs in place while further raising duties on Chinese imports, leading one prominent think tank expert to also label Biden a "Tariff Man."[19] Critics from across the ideological spectrum label these measures "protectionist," arguing that they hinder economic growth, favor parochial interests, and serve as a regressive tax on U.S. consumers for products that might not even be produced domestically.[20] Proponents argue that such measures are necessary to support struggling domestic industries, help the United States lead in key areas like semiconductors or green technology, reduce reliance on foreign-made goods by bolstering domestic supply chains, and offset challenges posed by China's economic model and overcapacity.[21]

This backdrop raises two questions: Which actors seek measures to defend against imports, and what domestic processes lead to the imposition of such measures? As observers scramble to make sense of a landscape transforming in real time, much ink has understandably been spilled on President Trump and his top officials. A number of scholars have understood these moves through a separation-of-powers approach that appreciates the

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2025 (Feb. 27, 2023), https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-new-trade-plan-to-protect-american-workers [https://perma.cc/UR44-PEMV]; *see* Danielle Kurtzleben, *Trump's Tariff Revenue Has Skyrocketed. But How Big Is It, Really?*, NPR (Aug. 11, 2025, at 5:00 ET), https://www.npr.org/2025/08/11/g-s1-81934 [https://perma.cc/35LB-SADY] (reporting a sharp increase in federal tariff revenue due to Trump's tariff increases).

[19] William Alan Reinsch, *The Return of Tariff Man—But Not the One You Were Expecting*, CTR. FOR STRATEGIC & INT'L STUD. (May 20, 2024), https://www.csis.org/analysis/return-tariff-man-not-one-you-were-expecting [https://perma.cc/4F44-Q36N].

[20] *See, e.g.*, Eduardo Porter & Guilbert Gates, *How Trump's Protectionism Could Backfire*, N.Y. TIMES (Mar. 20, 2018), https://www.nytimes.com/interactive/2018/03/20/business/how-trumps-protectionism-backfires.html [https://perma.cc/A6AD-W45Y] (describing the negative effects of tariffs on import-consuming manufacturing industries) ; Michael D. Tanner, *The Folly of Protectionist Tariffs*, CATO INST. (May 15, 2019), https://www.cato.org/commentary/folly-protectionist-tariffs [https://perma.cc/AF6Z-ZZDS] (criticizing tariffs for reducing economic growth and regressive effects); *see also* ED GRESSER, TRADE POLICY, EQUITY, AND THE WORKING POOR at 2 (2022), https://www.progressivepolicy.org/wp-content/uploads/2022/04/Trade-Policy-Equity-and-the-Working-Poor-ITC-Report_FINAL.pdf [https://perma.cc/5TE6-6SZG] (criticizing U.S. MFN tariffs as regressive).

[21] *See* Robert E. Lighthizer, *How to Make Trade Work for Workers*, FOREIGN AFFS. (June 9, 2020), https://www.foreignaffairs.com/articles/united-states/2020-06-09/how-make-trade-work-workers [https://perma.cc/MM66-LULA] (arguing trade restrictions are necessary to protect American manufacturing jobs and strengthen domestic supply chains for critical goods); Lael Brainard, Advisor, Nat'l Econ. Council, Remarks on Responding to the Challenges of China's Industrial Overcapacity at the Center for American Progress (May 16, 2024), https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2024/05/16/remarks [https://perma.cc/VPK8-5KTR] (defending Biden tariffs on China as necessary to defend domestic industries against Chinese overcapacity and unfair trade practices); Edward Alden, *The Man Who Would Help Trump Upend the Global Economy*, COUNCIL ON FOREIGN RELS. (May 28, 2024, at 11:34 ET), https://www.cfr.org/article/man-who-would-help-trump-upend-global-economy [https://perma.cc/55PY-3YC6] (comparing Biden and Lighthizer's proposed approaches to combating trade from China and strengthening key U.S. industries); Cohen, Bradsher & Tankersley, *supra* note 15 (describing Biden tariffs against China as an effort to defend U.S. green technology sectors from Chinese oversupply).

shift in formal trade lawmaking authority from Congress to the President over time.[22] Whereas past executives had largely wielded this delegated power to enter trade-liberalizing agreements,[23] more recent administrations have exercised this power to restrict imports and raise tariffs.[24] These commentators have focused on the seemingly executive-driven nature of tariffs and have thus looked for ways to check the exercise of presidential power, whether by empowering Congress[25] or revitalizing international institutions like the WTO.[26]

As Kathleen Claussen emphasizes, however, a formalist focus on delegations from Congress to the President is "just the tip of the iceberg."[27] For Claussen, the "trade topography" is much more complex, involving various administrative agencies with their own processes and practices.[28] By disaggregating the "executive" and treating trade lawmaking as a form of agency administration, Claussen also highlights the relevance of domestic administrative-law doctrines to trade law.[29]

This Article takes seriously this view of trade as administration, and also seeks to foreground the numerous nonstate actors who engage that trade administrative state. Methodologically, I contribute a bottom-up perspective of the administrative processes that result in defensive trade measures, like tariffs.[30] Tariff regimes often result from the enforcement of "administrative

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[22] *See* Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 CALIF. L. REV. 583, 590–626 (2019); Kathleen Claussen, *Trade's Security Exceptionalism*, 72 STAN. L. REV. 1097, 1109–31 (2020) [hereinafter Claussen, *Security Exceptionalism*]; Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PA. L. REV. 1955, 1960–64 (2024).

[23] *See* Cory Adkins & David Singh Grewal, *Two Views of International Trade in the Constitutional Order*, 94 TEX. L. REV. 1495, 1508–11 (2016) (describing presidential use of trade powers and fast track provisions to further trade liberalization goals); Meyer & Sitaraman, *supra* note 22, at 612–25 (recounting the trade liberalization efforts of successive presidential administrations); Claussen, *Security Exceptionalism*, *supra* note 22, at 1110, 1112–15 (tying delegations of trade authority to the President to trade liberalization efforts).

[24] *See* Claussen, *Security Exceptionalism*, *supra* note 22, at 1118–25 (noting executive actions by Nixon and subsequent presidents to reduce trade).

[25] *See* Kathleen Claussen, *Trade Administration*, 107 VA. L. REV. 845, 848 n.4 (2021) [hereinafter Claussen, *Trade Administration*] (citing commentaries arguing for better balance between the President and Congress); Claussen & Meyer, *supra* note 22, at 1978–83 (proposing statutes which empower Congress concerning tariffs and trade agreements).

[26] *See* Ian Allen, *It's Time for the United States to End Its Bipartisan Attack on the WTO*, JUST SEC. (Mar. 4, 2024), https://www.justsecurity.org/93024/ [https://perma.cc/4HXX-SK2A] (arguing for the restoration of the WTO Appellate Body); Alan Wm. Wolff, *The WTO at 30: The Return of Higher Tariffs*, PETERSON INST. INT'L ECON. (Apr. 10, 2025), https://www.piie.com/commentary/speeches-papers/2025/wto-30-return-higher-tariffs [https://perma.cc/ST7M-LSU9] (discussing potential WTO role and reforms considering unilateral trade actions by the United States).

[27] Claussen, *Trade Administration*, *supra* note 25, at 847–48.

[28] *Id.* at 847–53.

[29] *See id.* at 906–08 (arguing that trade administration should be subjected to regulatory oversight and normalization).

[30] *See* Neil Komesar & Wendy Wagner, *The Administrative Process from the Bottom Up: Reflections on the Role, if Any, for Judicial Review*, 69 ADMIN. L. REV. 891, 897–99 (2017) (describing this approach and its benefits); *see also* Melissa J. Durkee, *The Business of Treaties*, 63 UCLA L. REV.

trade remedies," which I define broadly to include any domestic law (1) aimed at restricting imports that are causing injury to domestic industries, usually via tariffs, and (2) administered by an administrative agency. A bottom-up approach trains attention on "the participants that drive [that] system."[31] Although administrative trade remedies *can* be mobilized by the President and his administration, historically, they have been more often driven by private actors, including firms, workers, and their lawyers.

Take, for example, the various import duties on solar panels, a product once seen as critical to reaching U.S. climate-change goals but whose production is dominated by Chinese manufacturers.[32] Since late 2012, this tariff regime has continually expanded to cover a wider range of imports from a broad set of countries.[33] A bottom-up view reveals how these tariffs were primarily imposed after multiple agency investigations initiated by petitions from domestic producers seeking to enforce various U.S. trade laws.[34]

From this vantage point, tariffs are not simply the result of presidential

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264, 266–67 (2016) (emphasizing the importance of understanding "the mechanisms, extent, and effects of business participation" in treatymaking but noting international-law scholarship's preoccupation with states and state officials).

[31] Komesar & Wagner, *supra* note 30, at 897.

[32] *See* Bradsher, *supra* note 15; Cohen, Bradsher & Tankersley, *supra* note 15.

[33] *See* Diane Cardwell & Keith Bradsher, *U.S. Will Place Tariffs on Chinese Solar Panels*, N.Y. TIMES (Oct. 10, 2012), https://www.nytimes.com/2012/10/11/business/global/us-sets-tariffs-on-chinese-solar-panels.html [https://perma.cc/H9FS-STKB] (reporting tariffs on Chinese solar panels following industry-triggered trade case); Diane Cardwell, *U.S. Imposes Steep Tariffs on Chinese Solar Panels*, N.Y. TIMES (Dec. 16, 2014), https://www.nytimes.com/2014/12/17/business/energy-environment/-us-imposes-steep-tariffs-on-chinese-solar-panels.html [https://perma.cc/77EV-SL8D] (reporting the expansion of solar panel tariffs to cover additional Chinese solar panels and Taiwan); David J. Lynch, *Trump Imposes Tariffs on Solar Panels and Washing Machines in First Major Trade Action of 2018*, WASH. POST (Jan. 22, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/01/22/trump-imposes-tariffs-on-solar-panels-and-washing-machines-in-first-major-trade-action [https://perma.cc/6RKW-TH62] (reporting tariffs on solar panels and washing machines due to industry complaints); Matthew R. Nicely, Daniel M. Witkowski, Julia K. Eppard, Sarah Sprinkle & Sydney Stringer, *Update: Policies at Cross-Purposes: U.S. Trade Policy Creates Cloudy Picture for Rapid Deployment of Solar Energy*, AKIN BLOGS (June 29, 2022), https://www.akingump.com/en/insights/blogs/speaking-sustainability/update-policies-at-cross-purposes-us-trade-policy-creates-cloudy-picture-for-rapid-deployment-of-solar-energy [https://perma.cc/P4P7-TPRM] (describing the still expanding tariff environment for solar cells and modules); Eric McDaniel, *The U.S. Imports Most of Its Solar Panels. A New Ruling May Make That More Expensive*, NPR (Aug. 18, 2023, at 12:01 ET), https://www.npr.org/2023/08/18/1194303196/solar-panel-imports-china [https://perma.cc/MTF5-T32E] (describing the imposition of additional import duties against Southeast Asian solar panel manufacturers); Ana Swanson & Alan Rappeport, *U.S. Adds Tariffs to Shield Struggling Solar Industry*, N.Y. TIMES (June 6, 2024), https://www.nytimes.com/2024/06/06/business/economy/tariffs-solar-industry-china.html [https://perma.cc/GBN3-3NU8] (reporting tariffs against solar panels manufactured by Chinese companies in Southeast Asia); *Commerce Initiates Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam*, INT'L TRADE ADMIN. (last visited Jan. 3, 2026), https://www.trade.gov/commerce-initiates-antidumping-and-countervailing-duty-investigations-crystalline-silicon [https://perma.cc/Q4YX-2QFP] (attempted further expansion).

[34] *See* sources cited *supra* note 33.

fiat or top-down prerogatives. Rather, nonstate actors select from a toolkit of remedies. This view also prioritizes "institutional features such as the costs of information and access to participants and the distribution of the benefits of participation," which opens the door to participation-based models familiar to studies of lobbying.[35] As discussed below, this bottom-up perspective is the conventional starting point for most interest-group models of trade policymaking in social science.[36]

Adopting this approach, I first describe and open the trade-remedy toolkit to compare five of the primary tools that underlay the United States' tariff regimes: (1) antidumping duties; (2) countervailing duties; (3) safeguards; (4) retaliatory trade actions (also known as Section 301); and (5) national security trade actions (also known as Section 232).[37] In comparing these tools, I rely not only on published materials but also on semi-structured interviews with those directly involved in trade-remedy processes. I conducted forty-five interviews with trade lawyers, industry representatives, administrative agency employees, congressional staffers, and think tank experts.[38] Interviews probed the pros and cons of different remedies, considerations that make a case worth bringing, the role of industry and lawyers, the factors that lead to the imposition of remedies, and changes in the desirability of remedies over time.[39] I draw on various sources of publicly

[35] Komesar & Wagner, *supra* note 30, at 897.

[36] *See infra* Part I.

[37] *See infra* Part II. As described below, I focus on these five because they were the most identified remedies during interviews conducted in early 2024. Since President Trump retook office in January 2025, he had also relied on the International Emergency Economic Powers Act (IEEPA) to impose tariffs. *See* Ngo, *supra* note 6 (describing IEEPA and summarizing the legislation's use over time). I discuss IEEPA in more detail in Part II, but I otherwise refrain to include it in the so-called toolkit because it was not discussed by my interviewees and the Supreme Court invalidated the President's IEEPA tariffs in February 2026. *See* Ann E. Marimow, *Justices Strike Down Trump's Tariffs*, N.Y. TIMES (Feb. 20, 2026), https://www.nytimes.com/2025/02/20/us/politics/supreme-court-trump-tariffs.html [https://perma.cc/APF4-ARZM] (discussing the Supreme Court ruling).

[38] More information on the interviewees is in the Appendix. Interviewees included a range of relevant actors in trade-remedy investigations and trade policymaking, making them well-equipped to discuss the demand for such tools. Over half are lawyers with extensive experience litigating trade-remedy cases, though most interviewees have had experiences in multiple relevant roles. For instance, one of the industry representatives is also a former commissioner of the International Trade Commission (ITC), and many of the lawyers have experience in government and vice versa.

To cite and identify interviewees, I assign each a unique three-part code. The first part indicates the relevant occupation, the second the year of the interview, and the third an ordinal position. So, the first lawyer interviewed in 2024 is "LAW-2024-001," the second in 2024 "LAW-2024-002," and so on. As additional examples, the first think-tank researcher interviewed in 2023 is "RES-2023-001" and the first industry representative interviewed in 2024 "INDUS-2024-001."

[39] These interviews were primarily conducted in spring 2024, after U.C. Berkeley's Institutional Review Board approved the study design. The interviews ranged from twenty minutes to over two hours in length, with a modal length of one hour. Thirty-one interviews were conducted in person in Washington, D.C. over four weeks of fieldwork, and the remaining were conducted over Zoom or phone. Four of the interviews were "follow-up" interviews, meaning that the number of unique interviewees is forty-one.

In determining whom to speak with, I purposefully selected a variety of actors with intimate

available data to understand the range of petitioners engaged in the oft-used antidumping and countervailing duty (AD/CVD) process and to describe the continuing popularity of that tool. In addition to largely government-published data on tariff rates and investigation initiations, I constructed two original datasets. The first is a dataset of final U.S. International Trade Commission (ITC) injury determinations in AD/CVD investigations initiated between the beginning of calendar year 2002 and the end of 2023.[40] That dataset consists of 823 completed investigations. Collected data includes information on the challenged import, the importing country, the petition filing date, petitioner and petitioner type, legal counsel, and investigation outcome. The second is a dataset of all petitioners who have initiated one of the aforementioned administrative trade remedy investigations between 2002 and 2023.

I marshal this evidence to first document how administrative trade remedies are governed by different legal frameworks, initiated and driven by different actors, and nominally meant to address different problems. Some, like AD/CVD or Section 301, are aimed at "unfair" trade practices, while others, like safeguards or Section 232, have a more explicit security rationale.[41] Whereas Section 301 or Section 232 investigations are often (though not exclusively) self-initiated by the President and top officials, AD/CVD and safeguard investigations are almost always initiated via petitions by domestic firms or workers. The tools also trigger administrative processes that engage different parts of the "trade administrative state,"[42] with varying levels of presidential involvement in the decisionmaking process.

Equipped with an understanding of the formal distinctions among various tools, I then compare when and why they are mobilized. Despite the growing attention on more executive-driven tools, I find that private actors continue to play a key role in demanding administrative trade remedies and explain why the private cause-of-action-esque AD/CVD process has been their preferred tool. Indeed, AD/CVD investigations are initiated more often than other remedies, by a wider variety of industries, and against a wide range of

knowledge of the domestic trade-remedy process: lawyers and their industry clients, administrative agency employees, officials within the executive branch, and congressional staffers. In addition to purposefully sampling from these groups based on knowledge and contacts, I began with a five percent probability sample of observations from my dataset of ITC determinations and contacted a petitioner and a respondent lawyer involved in sampled investigations. Because those engaged in trade law and policy are a small and well-connected group, I also interviewed contacts recommended to me as having relevant experience.

[40] I begin with 2002 because China joined the WTO in December 2021.

[41] *Cf.* Claussen, *Security Exceptionalism*, *supra* note 22, at 1117, 1123 (noting how Section 232 and Section 201 have "hard security" components, while Section 301 has a "soft security" component).

[42] *See* Claussen, *Trade Administration*, *supra* note 25, at 854–68 (discussing the historical development of the trade administrative state since the founding).

imports.[43] Although AD/CVD investigations are expensive, time-consuming, and narrowly focused on specific products from specific countries, they are still the go-to trade remedy for domestic industry because their relative insulation from politics makes them more predictable and durable compared with other tools.[44] The AD/CVD process is also notably sticky. Updates to the underlying legislation occur slowly, and efforts to directly inject the interests of politicians or political appointees into the process—whether by increasing government self-initiation of cases or interfering with outcomes in specific cases—have proven challenging.[45]

Recognizing the ongoing relevance of private actors and understanding the reasons they prefer AD/CVDs yields several lessons.[46] First, for trade law and politics, this Article highlights the benefits of a bottom-up perspective that reveals the diversity of legal tools available and recognizes that trade law, of which trade remedies are only one part, is ultimately made by those who use it. Although the President is an important decisionmaker and efforts to monitor presidential power are well-founded, he is not the only agent demanding tariffs. Discussions about defensive trade measures and their causes should not be divorced from the actions and views of the firms, workers, and organized interests that seek to benefit from them. For those tracking the ever-changing direction of trade law and policy, better understanding the availability and use of different tools over time might serve as a barometer for whether we have entered a new paradigm and what we might try to preserve or discard of the old system. This might prove especially useful given the uncertainty of the present moment, one characterized by on-again, off-again tariffs and litigation over the legality of certain tariff actions.[47]

A careful comparison of the different tools also points to the impact that the design of legal schemes has on relevant decisionmakers, highlighting the value placed on perceived insulation from politics and predictable process. It helps explain why the use of a traditional tool like AD/CVDs has persisted despite the growing attention paid to executive-driven tools that might otherwise substitute for the slower and more targeted AD/CVD process. Whereas the design of non-AD/CVD tools makes their continued relevance dependent on the interests of politicians and their appointees, the popularity of AD/CVDs will likely continue, especially given their familiarity to

[43] *See infra* Section III.A.
[44] *See infra* Section III.B.
[45] *See infra* Sections III.B.1, IV.B.1.
[46] *See infra* Part IV.
[47] *See* Minsberg, *supra* note 6 (providing a month-by-month overview of tariffs imposed by President Trump since January 2025); Ngo, *supra* note 6 (describing litigation over Trump's IEEPA tariffs); Marimow, *supra* note 37 (discussing the Supreme Court ruling invaliding Trump's IEEPA tariffs).

lawyers and petitioners. If the goal then is a greater check on presidential power or a desire for more consistent administration of trade laws regardless of changes in political leadership, Congress should consider making other trade remedies more AD/CVD-like by decreasing presidential discretion in the decisionmaking process or giving agencies with more distance from the President, like the ITC, a greater role in investigations.

Nor are the benefits of a bottom-up view limited to U.S. trade law. In addition to uncovering different public-private dynamics, comparisons with countries that have more state-driven processes can help test the suggested relevance of political insulation and predictability. China's trade-remedy system, for example, has a reputation for being more "political" than the United States'. Although preliminary, my ongoing comparative research suggests that more political intervention introduces higher volatility into the annual number of trade-remedy investigations but has not historically meant more investigations or, by extension, more tariffs.[48]

Second, although trade is often treated as a *sui generis* area of U.S. law, I highlight similarities to other areas, contributing to efforts to "normalize" trade law.[49] Congress has established a trade-remedies system that allows for enforcement by private actors, administrative agencies, and administration officials—a scheme that should be familiar to civil procedure and administrative law scholars.[50] Although my interviewees echoed the usual

[48] Indeed, data published by the Ministry of Commerce on its China Trade Remedies Information website indicates that China initiated a total of three AD/CVD investigations between 2021 and 2023, including none in 2021. 中华人民共和国商务部 [Ministry of Commerce People's Republic of China], 中国贸易救济信息网 [China Trade Remedies Information], https://cacs.mofcom.gov.cn/index.shtml [https://perma.cc/JUC6-TPQQ] (last visited Feb. 12, 2026). That said, the number of initiated AD/CVD investigations did increase in 2024. And China might increasingly wield new domestic laws to erect barriers to trade, making a comparative perspective and approach even more valuable. *See infra* Section IV.A.

[49] *See* Meyer & Sitaraman, *supra* note 22, at 626–27 (connecting trade law to other areas of law); Claussen, *Trade Administration*, *supra* note 25, at 905–08 (discussing trade through the lens of administrative law); Kathleen Claussen, *Trade's Mini-Deals*, 62 VA. J. INT'L L. 315, 367–69 (2022) (same); *see also* Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 HARV. L. REV. 1897, 1900–01 (2015) (defining normalization as the opposite of exceptionalism and arguing that "foreign affairs are less distinct from domestic affairs than exceptionalists believe").

[50] *See, e.g.*, Filippo Lancieri, *Rethinking the Key Role of Private Antitrust Enforcement*, 114 GEO. L.J. (forthcoming 2026) (manuscript at 60), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4767723 [https://perma.cc/J6G3-T2W3] ("[H]ybrid regimes that mix public and private enforcement are a pervasive feature of the U.S. regulatory state."); J. Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law*, 53 WM. & MARY L. REV. 1137, 1145–60 (2012) (describing the distinctively American ex ante approach to regulation, which relies on private litigators); Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of* Buckhannon *for the Private Attorney General*, 54 UCLA L. REV. 1087, 1088–92 (2007) (noting that Congress instituted fee-shifting statutes because "civil rights enforcement 'depend[s] heavily upon private enforcement'"); SEAN FARHANG, THE LITIGATION STATE 3–18 (2010) (describing the role of private enforcement, and some of the policy reasons that Congress has relied heavily on that mechanism); BRIAN T. FITZPATRICK, THE CONSERVATIVE CASE FOR CLASS ACTIONS 33–47 (2019) (defending private enforcement based on

pros and cons that extant scholarship attaches to private enforcement, my findings are more consistent with arguments that private enforcement benefits overall enforcement with respect to both quantity and consistency. Interviewees emphasized time and again the relative insulation of the AD/CVD process, which makes it less vulnerable to politics not only in individual investigations but also in policy shifts across administrations. This is especially relevant in a rapidly changing area like international trade. The evidence also illustrates how even pro-enforcement officials usually must rely on the private sector to initiate, provide data for, and litigate a case. Nor is it clear that the AD/CVD process, when compared to other trade remedies, is less representative of broader interests given that the political capital required to persuade the White House to impose remedies following non-AD/CVD investigations also poses a barrier to access those tools.

Furthermore, discussions about why most interviewees continue to prefer AD/CVDs reflect broader debates within administrative law about the value of proceduralism.[51] Although users of domestic trade-remedy laws recognize that AD/CVD investigations are relatively slow and expensive because of the more proceduralized process, they would still choose AD/CVDs because that same proceduralism is ostensibly linked to insulation from politics, durability, and legitimacy. Proceduralism not only makes the AD/CVD process more desirable to many actors who seek defensive measures but has also made direct involvement by political appointees who want to influence the process more difficult, even during the first Trump Administration.[52] Whether that is desirable likely depends on the faith placed in lawyers, courts, and the status quo relative to political actors who might desire change and flexibility. Although insulation from elected officials and their appointees is appealing during this time of high political polarization and volatility, such views may shift if the move away from trade liberalization becomes more broadly entrenched. It perhaps also depends on whether President Trump has indeed surrounded himself with unquestioning loyalists and succeeds in his efforts to eliminate much of the federal workforce.[53] For now, however, I

conservative arguments for privatization); Michael Sant'Ambrogio, *Private Enforcement in Administrative Courts*, 72 VAND. L. REV. 425, 429–34 (2019) (discussing hybrid public-private enforcement schemes in agency adjudication).

[51] *See, e.g.*, Nicholas Bagley, *The Procedure Fetish*, 118 MICH. L. REV. 345, 351 (2019) (defining proceduralism as "the full panoply of formal legal obstacles that an agency must negotiate in order to complete a particular action"); Adrian Vermeule, *Our Schmittian Administrative Law*, 122 HARV. L. REV. 1095, 1144 (2009) (discussing "a standard debate in the theory of administrative law about the ossification of agency policymaking" centered around hard look review); Aaron L. Nielson, *Sticky Regulations*, 85 U. CHI. L. REV. 85, 133–43 (2018) (describing advantages and disadvantages to long-term rulemaking in the context of debates about the ossification of agency rules); Thomas W. Merrill, *Capture Theory and the Courts: 1967–1983*, 72 CHI.-KENT L. REV. 1039, 1059–67 (1997) (discussing debates about agency capture in the 1960s–1980s).

[52] *See infra* notes 228–230 and accompanying text.

[53] *See* Russell Muirhead & Nancy L. Rosenbaum, *Ungoverning America*, FOREIGN AFFS. (Sept. 5,

tend to side with interviewees who view the proceduralism of the AD/CVD remedy as a helpful steadying force.

The Article proceeds in four Parts. Part I further situates my research among public law and social science scholarship on trade lawmaking and enforcement. Part II provides a guide to the domestic law governing five tools in the administrative trade-remedies toolkit. Part III draws on qualitative and quantitative data to compare the tools introduced in Part II. Section III.A focuses on the relative demand for these tools over time, and Section III.B explains why AD/CVD continues to be so popular from the perspective of those who mobilize them. Part IV expands on lessons and implications for trade law here and abroad, as well as for other areas of U.S. law.

I. TRADE LAWMAKING AND ENFORCEMENT

Public law scholarship on trade has sought to understand *who* makes trade law and policy and *what* such law and policy entails. One strand of scholarship focuses on the separation of powers between the elected branches, tracking a historical shift in formal authority from Congress to the President (that is, the who) and a parallel substantive shift from raising to lowering import restrictions (that is, the what).[54] Such accounts begin with the U.S. Constitution, which grants Congress the power to "regulate Commerce with foreign Nations," to "lay and collect Taxes, Duties, Imposts and Excises," and to "make all Laws which shall be necessary and proper for carrying into Execution" such powers.[55] For much of the eighteenth and nineteenth centuries, Congress exercised these powers to set tariffs in the service of raising revenue or defending domestic industries.[56] Congress began delegating the ability to adjust tariffs to the President, however, in the late-nineteenth century.[57] These early delegations culminated in the Reciprocal Trade Agreements Act of 1934 (RTAA), which allowed the President to enter into trade agreements and reduce import restrictions with limited congressional review.[58]

2025), https://www.foreignaffairs.com/united-states/ungoverning-america [https://perma.cc/P9B7-3UHG] (discussing the second Trump administration's efforts to dismantle the state apparatus and repurpose administrative functions to serve the President).

[54] *See, e.g.*, Meyer & Sitaraman, *supra* note 22, at 590–625 (describing the shift in trade lawmaking authority from Congress to the President as trade became a foreign affairs issue rather than a domestic economic issue); Adkins & Grewal, *supra* note 23, at 1508–11 (describing the "set of procedural changes that gave more power to the Executive Branch in regulating foreign economic relations"); Claussen, *Security Exceptionalism*, *supra* note 22, at 1111–15 (discussing the delegation of congressional trade powers to the executive branch from the 1880s to the 1980s).

[55] U.S. CONST. art. I, § 8.

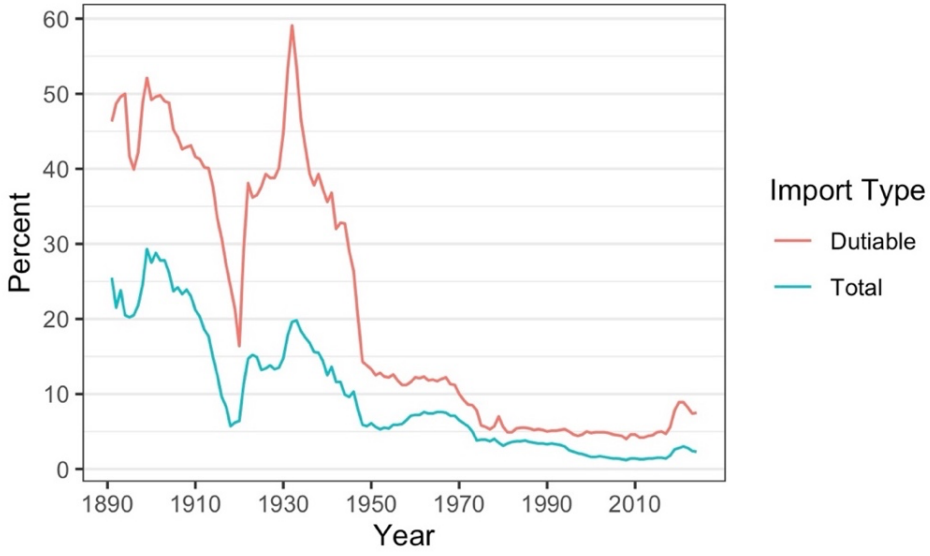
[56] Meyer & Sitaraman, *supra* note 22, at 592–93.

[57] *Id.* at 596–97.

[58] *Id.* at 599–601; Claussen, *Security Exceptionalism*, *supra* note 22, at 1112 ("The RTAA allowed the President to enter into trade agreements and to proclaim lower duties on foreign goods entering the

For many legal academics, the RTAA marks a key turning point. Since then, the President has wielded this and subsequent grants of authority to enter into trade agreements that have significantly lowered restrictions on imports.[59] As illustrated in Figure 1, while the average tariff rate on dutiable imports reached nearly sixty percent in the 1930s, it had fallen to and stabilized around five percent by the mid-1970s.

Figure 1: Average Tariff Rate on United States Imports, 1894–2024[60]



The thrust of the twentieth century was thus towards increased presidential power, more trade agreements, and a dramatic reduction in barriers to trade—what Timothy Meyer and Ganesh Sitaraman call a paradigm shift from trade as domestic economics to trade as foreign affairs.[61] Contemporary trade-law scholarship has followed suit, focusing primarily on trade agreements and international institutions rather than on domestic law

United States without congressional review."); Adkins & Grewal, *supra* note 23, at 1499–1500, 1508–09 (describing the consequences of the RTAA for executive branch power to negotiate trade agreements).

[59] *See* Claussen, *Security Exceptionalism*, *supra* note 22, at 1112–15 (arguing that the RTAA and subsequent legislation fundamentally changed the President's power with regard to trade policy); Meyer & Sitaraman, *supra* note 22, at 612–26 (describing an era of trade liberalization starting in the 1980s); Timothy Meyer, *Misaligned Lawmaking*, 73 VAND. L. REV. 151, 166– 71 (2020) (explaining the role of the Trade Expansion Act of 1962 in expanding presidential authority to cut tariffs); Claussen & Meyer, *supra* note 22, at 1964–66 (describing the shift to free trade agreements following the passage of the RTAA).

[60] These numbers are drawn from data compiled by the ITC's Office of Analysis and Research Services within the ITC. *See U.S. Imports for Consumption, Duties Collected, and Ratio of Duties to Value, 1891-2024*, U.S. INT'L TRADE COMM'N (Feb. 2025), https://www.usitc.gov/documents/dataweb/ave_table_1891_2024.pdf [https://perma.cc/D7DL-L7HL].

[61] Meyer & Sitaraman, *supra* note 22, at 586–87.

and actors.[62] And the subset of trade-law scholarship that has honed in on U.S. domestic actors has usually described their effect on the *international* aspects of trade law, or vice versa.[63]

This typical focus on the elected branches, trade liberalization, and international trade is not wrong, but incomplete. In response to President Trump's efforts to raise tariffs as well as the lack of a functioning WTO dispute-settlement system, Kathleen Claussen has called for increased attention to trade law's domestic dimensions, which includes the use of defensive trade measures to protect domestic industries and unhook from an integrated global economy. Indeed, Claussen has emphasized that the President has been delegated the power to not only reduce tariffs but also to raise them.[64] At the same time, Claussen has stressed that the President is not necessarily the main actor involved in trade lawmaking; rather, there is a sprawling set of administrative agencies involved in monitoring, rulemaking, adjudicating, and enforcing U.S. trade laws, which together constitute a "trade administrative state."[65]

This Article builds upon this call to study domestic trade law, the imposition of tariffs, and the variety of actors involved in trade lawmaking. It does so by examining the domestic legal tools available to actors interested in defending industries against imports—that is, administrative trade remedies—and by bringing original empirical evidence to bear on the use of such tools. Unpacking these strategies behind tariffs also points to the importance of better understanding the actors who seek them. In addition to the elected branches or even the administrative state, private actors have always played a prominent role in demanding defensive remedies and

[62] *See, e.g.*, Claussen, *Security Exceptionalism*, *supra* note 22, at 1101–02 & n.8, 1109 & n.30 (explaining that legal academics have focused on international institutions and agreements, and proposing possible explanations for that emphasis). In addition to the work catalogued above, other exceptions to trade-law scholarship's international focus include Jide O. Nzelibe, *The Illusion of the Free-Trade Constitution*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 32–43, 46–47 (2016) (arguing that the RTAA resulted from changing interest-group dynamics) and F. Scott Kieff, *Pragmatism, Perspectives, and Trade: AD/CVD, Patents, and Antitrust as Mostly Private Law*, 30 HARV. J.L. & TECH. 97, 97–100 (2017) (describing private-law attributes of three areas of domestic trade law).

[63] *See, e.g.*, Jide Nzelibe, *Strategic Globalization: International Law as an Extension of Domestic Political Conflict*, 105 NW. U. L. REV. 635, 637–38 (2011) (arguing that political parties will embrace international legal commitments to overcome domestic obstacles to policy and electoral objectives); Timothy Meyer, *The Political Economy of WTO Exceptions*, 99 WASH. U. L. REV. 1299, 1303–05, 1307–09 (2022) (introducing the Channeling Paradigm to explain how WTO exceptions to trade liberalization can influence industries seeking protection to ally with groups pursuing public policy goals like environmental protection or public health); Alan O. Sykes, *Protectionism as a "Safeguard": A Positive Analysis of the GATT "Escape Clause" with Normative Speculations*, 58 U. CHI. L. REV. 255, 281–82 (1991) (explaining the existence of safeguards through public choice theory); Anu Bradford, *When the WTO Works, and How It Fails*, 51 VA. J. INT'L L. 1, 4 (2010) (noting that international agreements are more likely to occur when the interests of powerful states are aligned and concentrated and interest groups within those states are supportive).

[64] Claussen, *Security Exceptionalism*, *supra* note 22, at 1115–25.

[65] Claussen, *Trade Administration*, *supra* note 25, at 869–70.

mobilizing the relevant administrative processes.

Although domestic trade lawmaking and its private dimensions have received less interest from legal scholars, they often serve as the starting point for other disciplines. Historians have highlighted how different interest groups fought over the tariff schedule and trade legislation throughout the eighteenth, nineteenth, and early-twentieth centuries.[66] Formal modelers have assumed that domestic interest groups try to influence elected officials to pass protectionist trade policies via lobbying or votes.[67] "Firm-centered" political science research also starts with the idea that trade liberalization results in intra-industry reallocation as some firms grow and others shrink or die, a process that generates firm-specific views of free trade and subsequent organizing efforts.[68] Whereas earlier models had predicted protectionist policy outcomes, recent models have predicted more liberal outcomes as large multinational companies gain power and coordinate more effectively relative to import-competing industries.[69] But in terms of who makes trade policy, this research consistently emphasized a "leading role of interest groups . . . and a highly constrained White House."[70]

Related to this firm-centered approach, a subset of social science research has even studied how private firms mobilize legal institutions and thereby enforce trade law. For example, some research highlights the role that private firms play in initiating WTO disputes[71] or their engagement with Section 301

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[66] *See generally* IRWIN, *supra* note 9 (providing a detailed treatment of these historical dynamics).

[67] *See, e.g.*, Wolfgang Mayer, *Endogenous Tariff Formation*, 74 AM. ECON. REV. 970, 970–72 (1984) (studying the relationship between tariff rates and voting patterns); STEPHEN P. MAGEE, WILLIAM A. BROCK & LESLIE YOUNG, BLACK HOLE TARIFFS AND ENDOGENOUS POLICY THEORY: POLITICAL ECONOMY IN GENERAL EQUILIBRIUM 1–5 (1989) (previewing findings about the impact of lobbies and political parties on tariffs and trade restrictions); Gene M. Grossman & Elhanan Helpman, *Protection for Sale*, 84 AM. ECON. REV. 833, 833–35 (1994) (examining the relationship between tariffs and lobbying).

[68] *See* In Song Kim & Iain Osgood, *Firms in Trade and Trade Politics*, 22 ANN. REV. POL. SCI. 399, 401–10 (2019) (describing the firm-centered approach and its implications for understanding trade politics).

[69] *See id.* at 408–09; Rigao Liu, Jiakun Jack Zhang & Samantha A. Vortherms, *In the Middle: American Multinationals in China and Trade War Politics*, 24 BUS. & POL. 348, 350–51 (2022) (describing the significant role that large corporations, and particularly large exporters, play in shaping trade policy); Timm Betz, *Trading Interests: Domestic Institutions, International Negotiations, and the Politics of Trade*, 79 J. POL. 1237, 1238–41 (2017) (describing how reciprocal trade agreements can lead to lobbying for tariff reductions through their effects on exporting firms, which can mute the defensive bias of narrow-interest institutions).

[70] Liu, Zhang & Vortherms, *supra* note 69, at 350. This work contrasts with political science research that places greater emphasis on the effect of international politics and institutions. *See* Helen V. Milner, *The Political Economy of International Trade*, 2 ANN. REV. POL. SCI. 91, 104–11 (1999) (summarizing this literature and suggesting that "it is harder to argue" that international factors played a major role in the global shift towards trade liberalizing policies).

[71] *See, e.g.*, CHAD P. BOWN, SELF-ENFORCING TRADE: DEVELOPING COUNTRIES AND WTO DISPUTE SETTLEMENT 99–137 (2009); Ryan Brutger, *Litigation for Sale: Private Firms and WTO Dispute Escalation*, 118 AM. POL. SCI. REV. 1204, 1204 (2024); GREGORY C. SHAFFER, DEFENDING INTERESTS: PUBLIC-PRIVATE PARTNERSHIPS IN WTO LITIGATION 3–5 (2003) ; Gregory C. Shaffer, *How Business*

retaliatory trade investigations.[72] In studies of antidumping cases, applied economists have examined the demand for such duties by domestic industries and how some industries tend to mobilize the remedy more than others.[73] Because this research usually focuses on only one part of the trade-law regime, it does not explore whether and why private actors select one set of legal tools over others. Moreover, social scientists are still developing explanations for the recent rise in defensive trade policies and have perhaps understated the power of the President.[74] Nevertheless, the longstanding interest in the role of interest groups and legal mobilization still holds important lessons for legal scholarship.

I take seriously social science's emphasis on private interests and legal mobilization as well as legal scholars' interest in law, the structure of legal processes and institutions, and growing presidential power. With that in mind, I suggest that we examine the relationship between state and nonstate actors as mediated by law and legal institutions, proceeding from the observation that the law on the books provides a toolkit of options that are then mobilized by relevant actors. That endeavor is best served by a bottom-up approach that identifies the mix of participants and traces the decisionmaking process of key actors. This enables not only a clearer recognition of the different laws and actors at play, but also helps to compare the dynamics underlying the use of defensive trade measures. Understanding these dynamics also has implications for how they should be structured. Part II begins to take up this task by introducing the toolkit of administrative trade remedies.

II. A TOOLKIT OF ADMINISTRATIVE TRADE REMEDIES

When asked about the remedies available to a domestic industry seeking to defend against imports, my conversations with interviewees largely

Shapes Law: A Socio-Legal Framework, 42 CONN. L. REV. 147, 175 & n.130 (2009); Timm Betz, *Domestic Institutions, Trade Disputes, and the Monitoring and Enforcement of International Law*, 44 INT'L INTERACTIONS 631, 631–34 (2018).

[72] *See* CHRISTINA L. DAVIS, WHY ADJUDICATE? ENFORCING TRADE DEALS IN THE WTO 102–84 (2012) (discussing the history of Section 301 and examples of disputes initiated by petitioners); Jiakun Jack Zhang, *US-China Trade War: Interest Group Politics*, *in* RESEARCH HANDBOOK ON TRADE WARS 252, 263–65 (Ka Zeng & Wei Liang, eds., 2022) (discussing U.S. multinational company responses to the 2018 Section 301 actions against China).

[73] *See, e.g.*, Randall Morck, Jungsywan Sepanski & Bernard Yeung, *Habitual and Occasional Lobbyers in the U.S. Steel Industry: An EM Algorithm Pooling Approach*, 39 ECON. INQUIRY 365, 365–68 (2001); Bruce A. Blonigen, *Working the System: Firm Learning and the Antidumping Process*, 22 EUR. J. POL. ECON. 715, 719–23 (2006); Bruce A. Blonigen & Thomas J. Prusa, *Dumping and Antidumping Duties* 28–32, 37–40 (Nat'l Bureau of Econ. Rsch., Working Paper No. 21573, 2015).

[74] *See* Liu, Zhang & Vortherms, *supra* note 69, at 350–52 (discussing how President Trump's actions in the U.S.-China Trade War unsettled expectations about the role of multinational companies in championing free trade and the supposed constraints on the President by Congress or interest groups).

centered around an available legal "toolkit." One lawyer described it more specifically as a "plumber's toolbox": Plumbers have a tray on top of their box with their most-used tools, but every now and then, they will open the box to reveal large, rusty, and blunt tools.[75] This imagery underscores the differences among trade remedies and the need to select among them.

Part II introduces five of these tools: antidumping duties,[76] countervailing duties,[77] safeguards,[78] Section 232 national security trade actions,[79] and Section 301 retaliatory trade actions.[80] The first three sit atop the plumber's toolbox and are sometimes referred to as "traditional" trade remedies.[81] Here, "traditional" refers to these tools' historical prevalence and the fact that the WTO has specific agreements governing their use.[82] In recent years, however, interest in non-traditional domestic tools has grown, such as Section 232 of the Trade Expansion Act of 1962[83]—which permits restrictions on imports that threaten to impair U.S. national security—or Section 301 of the Trade Act of 1974[84]—which permits retaliatory actions to combat "unreasonable" or "discriminatory" acts, policies, and practices.

Although these do not comprise the universe of laws available to defend against imports, they warrant special attention given their ongoing use, their tendency to result in tariffs, and because interviewees commonly discussed them during our conversations.[85] I take each in turn, identifying the purpose of each remedy, the legal frameworks governing their use, the actors who

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[75] LAW-2024-013 (encouraging me to think about the trade tools as a plumber's toolbox).

[76] Tariff Act of 1930 §§ 731–739 , 19 U.S.C. §§ 1673–1673h (2018).

[77] Tariff Act of 1930, §§ 701–709, 19 U.S.C. §§ 1671–1671h (2018).

[78] *See* Trade Act of 1974 § 201, 19 U.S.C. § 2251 (2018); *see also id.* § 421, 19 U.S.C. § 2451 (2012 & Supp. IV 2017) (China-specific safeguard, expired 2013).

[79] Trade Expansion Act of 1962 § 232, 19 U.S.C. § 1862 (2018).

[80] *See* Trade Act of 1974 § 301, 19 U.S.C. § 2411 (2018).

[81] *See* CHRISTOPHER A. CASEY, CONG. RSCH. SERV., R46296, TRADE REMEDIES: ANTIDUMPING (2020), https://crsreports.congress.gov/product/pdf/R/R46296 [https://perma.cc/4XYQ-JEU2] (noting that antidumping laws, countervailing duties, and safeguards are "traditionally classified as 'trade remedies'").

[82] *See* Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, 1868 U.N.T.S. 201 [hereinafter Antidumping Agreement]; Agreement on Subsidies and Countervailing Measures, 1869 U.N.T.S. 14 [hereinafter SCM Agreement]; Agreement on Safeguards, 1869 U.N.T.S. 154 [hereinafter Safeguards Agreement].

[83] 19 U.S.C. § 1862 (2018).

[84] 19 U.S.C. § 2411–2420 (2018).

[85] Some interviewees also mentioned Section 337 of the Tariff Act of 1930, which allows for the exclusion of imports resulting from unfair methods of competition, such as patent infringement, misappropriation of trade secrets, or false advertising. *See* RES-2023-001 (describing Section 337 as "an area that has grown a lot"); AGEN-2024-001 ("[The ITC] does the so-called 337 . . . . There are all sorts of trade litigations that happen in that docket. But they're radically different from the so-called trade remedy docket, antidumping and countervailing duty."); CONG-2024-001 ("337 comes up in the context of Apple wanting someone to write a letter to the administration to stop an exclusion order . . . ."); LAW-2024-007 (saying that industries might "use 337"); INDUS-2024-004 ("There's one other I'd put in your bucket . . . section 337."). Because it was not commonly raised and often results in exclusion of a product rather than tariffs, I do not discuss this remedy.

mobilize and administer them, and the steps of their investigatory processes. I also introduce them in order of the President's level of involvement in initiating investigations or imposing a remedy (from less involvement to more). Table 1 summarizes some of the key differences, which are discussed more fully below. This discussion tees up Part III, which compares the tools' relative use over time and explores how those seeking to mobilize trade law decide which tool to use.

Table 1: A Trade Remedies Toolkit

Trade Remedy	Key Domestic Statute(s)	Relevant WTO Agreement	Nonstate Initiating Entity	Investigating Agencies	Usual Max Days to Remedy Determination	Direct Presidential Involvement
Antidumping Duties	Title VII of the Tariff Act of 1930 (19 U.S.C. § 1673 *et seq.*)	Agreement on Implementation of Article VI of the GATT	Individual firm, trade or business association, union	Commerce (dumping); ITC (injury)	280	No
Countervailing Duties	Title VII of the Tariff Act of 1930 (19 U.S.C. § 1671 *et seq.*)	Agreement on Subsidies and Countervailing Measures	Individual firm, trade or business association, union	Commerce (subsidy); ITC (injury)	205	No
Safeguards	Section 201 of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*)	Agreement on Safeguards	Individual firm, trade or business association, union	ITC	240	Yes
National Security Actions	Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862 *et seq.*)	N/A	Individual firm, trade or business association, union, or group of workers	Commerce	360	Yes
Retaliatory Trade Actions	Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411 *et seq.*)	N/A	Any interested person	USTR	365	Yes

Although U.S. tariffs have primarily been imposed following the conclusion of the administrative investigations described above, it is necessary to acknowledge that many initial actions by the second Trump Administration had sidestepped these schemes. For example, the announced tariffs on China, Mexico, and Canada in early February 2025 were legally grounded in the International Emergency Economic Powers Act (IEEPA).[86] Many, though not all, of the so-called "Liberation Day" tariffs announced in April 2025 were also imposed under IEEPA.[87] IEEPA grants the President broad discretion to address supposed national emergencies but had never previously been used to impose tariffs.[88] Nor did any of these IEEPA actions

[86] 50 U.S.C. §§ 1701-1707 (2018); *see also supra* note 6 and accompanying text.
[87] *See* Ngo, *supra* note 6.
[88] *See* CHRISTOPHER A. CASEY, CONG. RSCH. SERV., IN11129, THE INTERNATIONAL EMERGENCY

come after comprehensive agency investigations. Indeed, the aforementioned February tariff actions took place even before the confirmations of Commerce Secretary Howard Lutnick or U.S. Trade Representative Jamieson Greer, further highlighting the non-administrative nature of these moves.

Despite the seeming trend towards IEEPA tariffs in 2025,[89] the Supreme Court in early 2026 held that "IEEPA does not authorize the President to impose tariffs."[90] In addition to underscoring the volatility of that supposed tariff tool, the President and his administration are turning to plan B, which will likely require returning to the statutory provisions discussed at length here.[91] In any event, given the historical and ongoing use of *administrative* trade remedies, such remedies remain worthy of continued study.

A. *Antidumping and Countervailing Duties (AD/CVDs)*

Antidumping duties are imposed on products that (1) are being sold at less than fair value, that is, dumped, and which thereby (2) materially injure or threaten to materially injure a domestic industry.[92] Countervailing duties are imposed on products that (1) receive actionable subsidies through foreign government programs and thus (2) materially injure or threaten to materially injure a domestic industry.[93] Although these duties are targeted at different unfair trade practices, I discuss them together as "AD/CVDs" for the remainder of the Article because they have substantially similar procedures, petitioners frequently seek them simultaneously, and many of my interviewees spoke in these terms.

AD/CVD investigations are governed by Title VII of the Tariff Act of 1930, though the WTO has respective agreements on their use.[94] Unlike other tools, the administration of AD/CVD investigations is formally divided between the Department of Commerce, an executive agency, and the U.S.

ECONOMIC POWERS ACT (IEEPA), THE NATIONAL EMERGENCIES ACT (NEA), AND TARIFFS: HISTORICAL BACKGROUND AND KEY ISSUES, 1 (Apr. 7, 2025), https://crsreports.congress.gov/product/pdf/IN/IN11129/8 [https://perma.cc/PS4Q-4MXV].

[89] Brad W. Setser, *How Court Rulings Could Affect Trump's Aggressive Trade Policies*, COUNCIL ON FOREIGN RELS. (Aug. 31, 2025), https://www.cfr.org/expert-brief/how-court-rulings-could-affect-trumps-aggressive-trade-policies [https://perma.cc/67D8-5H37] (noting that "the bulk of the tariffs" by the second Trump administration were imposed pursuant to IEEPA).

[90] Learning Resources, Inc. v. Trump, No. 24-1287, slip op. at 20 (Feb. 20, 2026).

[91] *See* William Alan Reinsch, *Finding Plan B*, CTR. FOR STRATEGIC & INT'L STUD. (Sept. 15, 2025), https://www.csis.org/analysis/finding-plan-b [https://perma.cc/GH6J-ACB4] (discussing the Administration's efforts in "developing its plan B in the event the justices decide against the administration"); Lawrence J. Liu, *No More IEEPA Tariffs? The Legal Bases of an Alternative Regime*, 110 MINN. L. REV. HEADNOTES (forthcoming 2026) (describing in detail the likely authorities that would underlie a non-IEEPA tariff regime).

[92] 19 U.S.C. § 1673 (2018).

[93] 19 U.S.C. § 1671 (2018).

[94] Antidumping Agreement, *supra* note 82; SCM Agreement, *supra* note 82.

International Trade Commission (ITC), an independent agency. Commerce determines whether a product is being dumped or subsidized, and the ITC determines whether dumping or subsidization has injured a domestic industry.[95]

AD/CVD investigations are almost always initiated following petitions brought on behalf of a domestic industry against specific products from certain countries.[96] As a rule of thumb, a petition is filed "on behalf of the industry" if (1) domestic producers or workers who support the petition account for at least twenty-five percent of the total production of the domestic like product and (2) if, of those who produce the domestic like product and express a position on the petition, supporters of the petition produce more than fifty percent of the product.[97] Although Commerce can self-initiate AD/CVD investigations, and different presidential administrations have indicated a desire to increase such top-down enforcement,[98] Commerce has only done so once in the last twenty years.[99] And even in that instance, Commerce relied on a petition that was drafted by the industry and their lawyers.[100]

After a petition is filed, Commerce initiates an investigation if the necessary elements for imposing duties are properly alleged and supported by reasonably available information, and the ITC preliminarily determines

[95] *See* Jay Charles Campbell, *The Trade Litigant's Gauntlet: The Hanging Judge and the Teflon Tribunal*, 31 NW. J. INT'L L. & BUS. 1, 4, 37 (2011).

[96] *See* 19 U.S.C. §§ 1673a, 1671a (2018).

[97] *Id.* §§ 1673a(c)(4), 1671a(c)(4).

[98] AGEN-2024-004 (discussing efforts under Reagan to increase self-initiation of AD/CVD investigations but emphasizing that the practice nonetheless remained rare); LAW-2024-024 (describing the Biden administration as less aggressive than the Trump administration in enforcing defensive trade measures). For stated efforts at increasing top-down enforcement during the first Trump administration, see *Nominations of Jeffery I. Kessler, Elizabeth Ann Copeland, Patrick J. Urda, Amy Karpel, and Randolph J. Stayin*: *Hearing Before the S. Comm. on Fin.*, 115th Cong. 55 (2018) (statement of Jeffrey I. Kessler) ("If confirmed, I will also seriously consider self-initiating antidumping and countervailing duty investigations. Last November, the Department of Commerce self-initiated for the first time in more than a quarter century. Continuing this practice has the potential to further strengthen enforcement of trade remedy laws."); Doug Palmer & Megan Cassella, *Ross: Commerce Will 'Self-Initiate' Anti-Dumping Cases*, POLITICO PRO (Jan. 18, 2017), https://subscriber.politicopro.com/article/2017/01/ross-says-commerce-will-self-initiate-anti-dumping-cases-082398 [https://perma.cc/6VZX-MV4L].

[99] Meyer & Sitaraman, *supra* note 22, at 648.

[100] LAW-2024-008 (explaining that the only time Commerce self-initiated under the Trump Administration, they were given the case by a law firm); AGEN-2024-003 (agreeing that industry lawyers had "teed up" the case that Commerce later self-initiated); RES-2024-003* (agreeing that everything was "put together" for Commerce's self-initiation); LAW-2024-017* (describing the law firm involved in the case that Commerce self-initiated); *see also* LAW-2024-016 (agreeing that even when Commerce self-initiates, that data comes from "the domestics anyway"); LAW-2024-023* (recognizing that the industry and its lawyers "do all the work" when Commerce self-initiates); LAW-2024-025 ("In any case, when Commerce self-initiates, it relies on petitions that the private sector prepares normally.").

whether there is a reasonable indication of material injury.[101] Assuming affirmative determinations by both agencies, Commerce issues a preliminary dumping or subsidization determination, at which point duties begin to be assessed. The agencies then continue their investigations, culminating in respective final determinations. Typically, final antidumping determinations are issued within 280 days of the filing of the petition, and final countervailing duty determinations within 205 days.[102] If both are affirmative, Commerce will issue an AD/CVD order within a week of the ITC's final determination.[103] If appealed, AD/CVD determinations go to the Court of International Trade, a specialty Article III court with limited jurisdiction whose decisions are subject to review by another specialty court, the Court of Appeals for the Federal Circuit.[104] Affirmative agency determinations and subsequent implementations are reviewed for substantial evidence, whereas negative determinations are reviewed for arbitrariness, capriciousness, or abuse of discretion.[105]

Once an AD/CVD order is in place, an interested party may request an annual administrative review by Commerce to determine whether the extent of dumping or subsidization has changed and to adjust the duty rate accordingly.[106] AD/CVD orders are also subject to a sunset review every five years, during which Commerce determines whether dumping would likely continue if an order were revoked and the ITC determines if injury would likely continue.[107] If Commerce or an interested party believes that an AD/CVD order is being circumvented, they can seek to add the circumventing product(s) into the existing order.[108] Unlike an original AD/CVD investigation, the statute and regulations governing circumvention provide less details about the process, leaving the investigation primarily in the hands of Commerce and reducing the role of the ITC to merely notification and consultation in limited circumstances.[109]

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[101] *See* 19 U.S.C. §§ 1673b(a), 1671b(a) (2018).

[102] *Statutory Time Frame for Antidumping Duty Investigations*, INT'L TRADE ADMIN., https://www.trade.gov/statutory-time-frame-AD/CVD-investigations?anchor=content-node-t7-field-lp-region-2-1 [https://perma.cc/LNE2-H7AN] (last visited Dec. 31, 2025); *Statutory Time Frame for Countervailing Duty Investigations* INT'L TRADE ADMIN., https://www.trade.gov/statutory-time-frame-AD/CVD-investigations?anchor=content-node-t7-field-lp-region-2-2 [https://perma.cc/WA7D-D4ZC] (last visited Dec. 31, 2025).

[103] 19 U.S.C. §§ 1671e(a) (2018); 1673e(a) (2018).

[104] *See id.* § 1516a.

[105] *See id.*

[106] *See* 19 C.F.R. § 351.213 (2023); *see* James M. DeVault, *U.S. Antidumping Administrative Reviews*, 10 INTL. TRADE J. 247, 249 (1996).

[107] 19 U.S.C. § 1675(c) (2018); 19 C.F.R. § 351.218 (2023).

[108] 19 C.F.R. §§ 351.226(b), (c) (2023).

[109] *See* 19 U.S.C. § 1677j (2018); 19 C.F.R. § 351.226(f)(8) (2023).

B. *Safeguard Measures*

Safeguards are imposed on products that are being imported in such increased quantities that they are a "substantial cause" of "serious" injury, or the threat thereof, to a domestic industry.[110] Their imposition is governed by Section 201 of the Trade Act of 1974, though Article XIX of the General Agreement on Tariffs and Trade (GATT) and the WTO's Agreement on Safeguards also have rules governing their use.[111] Under domestic law, safeguard investigations are administered by the ITC, which makes an injury determination and recommends a remedy to the President.[112] Section 201 does not require a finding of an unfair trade practice, though the "serious injury" and "substantial cause" thresholds are generally accepted to be higher than the "material injury" and "by reason of" causation thresholds for AD/CVDs.[113] In contrast to AD/CVD determinations, and critical to those selecting among different tools, the law tasks the President with deciding whether to follow the ITC's recommendation and impose a remedy.[114]

Like AD/CVD investigations, safeguard investigations are usually initiated upon petition by a representative industry entity.[115] However, Section 201 safeguards are not directed at specific countries, only particular products. And safeguard investigations can also be initiated by the President, the U.S. Trade Representative (USTR), the House Ways and Means Committee, the Senate Finance Committee, or the ITC.[116] After the ITC makes its injury determination, it transmits a report to the President detailing its findings and recommendation, usually within 180 days of the filing of the petition.[117] The President then has discretion to "take all appropriate and feasible action within his power" to "facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs."[118] The statute instructs the President to consider various factors, including the ITC's recommendation

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[110] 19 U.S.C. § 2251 (2018).

[111] *See* Safeguards Agreement, *supra* note 82; General Agreement on Tariffs and Trade, Art. 19, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, 258–62.

[112] *See* 19 U.S.C. § 2252 (2018).

[113] *Compare id.* §§ 1671(a)(2), 1673(2) (setting forth "material injury" and "by reason of" standards), *with id.* § 2251 (setting forth "serious injury" and "substantial cause" standards). *See also* Joshua E. Kurland, *Dusting-Off Section 201: Re-Examining A Previously Dormant Trade Remedy*, 49 GEO. J. INT'L L. 609, 613 (2018) ("Section 201's broader scope is tempered by the notion, incorporated into the statute, that Section 201 safeguards are intended as a temporary remedy for 'serious injury,' leading to heightened injury and causation requirements compared to the 'material injury' required to obtain antidumping and countervailing duty relief.").

[114] 19 U.S.C. § 2251(a) (2018).

[115] *See id.* § 2252(a)(1).

[116] *Id.* § 2252(b)(1)(A).

[117] *See id.* §§ 2252(b)(2)(A), (f)(1).

[118] *Id.* § 2253(a)(1)(A).

and report, efforts by the domestic industry, the probable effectiveness of safeguard actions, economic benefits and costs, the national economic interest, the potential for retaliation, and national security.[119] The President also has discretion in the process to reduce, modify, or terminate a safeguard action largely at their discretion.[120] Although the President has wide latitude in determining what relief to impose, that remedy must usually expire within four years and cannot exceed a maximum of eight.[121] The President's determination is typically expected within sixty days or receiving the ITC's report.[122] Additionally, if the President's determination differs from the recommendation of the ITC, Congress can disapprove of the President's decision via joint resolution.[123] Unlike the AD/CVD laws, the statute governing safeguards does not provide explicit standards for judicial review. However, colorable challenges may be brought under the Court of International Trade's residual jurisdiction.[124]

Because Section 201 safeguards are enforced against all imports regardless of country, they are also referred to as global safeguards. In other provisions, Congress has sometimes enacted country-specific safeguards. For example, the Trade Act of 1974 also included Section 406, which authorizes safeguards against imports from "Communist" countries.[125] And in anticipation of China's ascension to the WTO, Congress later added Section 421 to the Act, which outlined a separate procedure for imposing China-specific safeguards.[126] Although the statutory timeline and precise procedural mechanisms differ slightly from those of global safeguards, country-specific safeguards also involve an injury investigation by the ITC and a final remedy determination by the President, a determination that is again highly

[119] *Id.* § 2253(a)(2).

[120] *See id.* § 2254(b)(1).

[121] *Id.* § 2253(e)(1).

[122] *See id.* § 2253(a)(4)(A).

[123] *Id.* § 2253(c). It is unclear and seemingly untested whether this statutory provision would run afoul of the Court's decision in *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983), which held that legislative vetoes violate the Constitution's presentment and bicameralism requirements. So although this provision remains in the statute, it would likely be unenforceable. *See* Thomas M. Franck & Clifford A. Bob, *The Return of Humpty-Dumpty: Foreign Relations Law after the* Chadha *Case*, 79 AM. J. INT'L L. 912, 926 (1985) (noting that 19 U.S.C. § 2253(c) "both on its face and in practice, probably violated the rule in the *Chadha* case").

[124] *See* 28 U.S.C. § 1581(i) (conferring jurisdiction over civil actions against the United States that arise from laws governing "revenue from imports" as well as "tariffs, duties, fees, or other taxes on the importation of merchandise" for non-revenue reasons).

[125] 19 U.S.C. § 2436 (2018); *see Understanding Other USITC Statutory Responsibilities*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/statutory_resp.htm [https://perma.cc/PQ6N-47N8] (last visited Dec. 31, 2025).

[126] 19 U.S.C. § 2451 (2012 & Supp. IV 2017). Although that provision expired in 2013, there have been recent calls to renew that tool. *See, e.g.*, H. SELECT COMM. ON THE STRATEGIC COMPETITION BETWEEN THE U.S. AND THE CHINESE COMMUNIST PARTY, 118TH CONG., RESET, PREVENT, BUILD: A STRATEGY TO WIN AMERICA'S ECONOMIC COMPETITION WITH THE CHINESE COMMUNIST PARTY 14 (Comm. Print 2023).

discretionary.

C. *National Security Trade Actions (Section 232)*

Section 232 of the Trade Expansion Act of 1962 allows for the adjustment of imports of products that are found to be a threat to national security.[127] Unlike AD/CVD and safeguard investigations, there is no WTO agreement directly addressing domestic laws like Section 232.[128] U.S. law tasks the Secretary of Commerce with investigating the national security effects of the relevant products, in consultation with the Secretary of Defense and other appropriate officers.[129] After the investigation is complete, the President decides whether to take action.[130]

National security investigations can be initiated by the Secretary of Commerce "[u]pon request of the head of any department or agency, upon application of an interested party, or upon his own motion."[131] Once initiated, Commerce notifies the Secretary of Defense and then prepares and submits a report on its investigatory findings to the President, usually within 270 days.[132] If Commerce makes an affirmative determination, the President has ninety days to determine what, if any, actions ought to be taken.[133] Similar to safeguards, the President plays a key role here, with discretion as to both "the nature and duration of the action."[134] After making this determination, the President must submit to Congress a statement of reasons behind his decision.[135] Congress cannot block the President's action, however, unless it concerns imports of petroleum or petroleum products.[136] Also similar to safeguards, any colorable legal challenges of Section 232 decisions are heard by the Court of International Trade pursuant to its residual jurisdiction.[137]

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[127] Trade Expansion Act of 1962 § 232, 19 U.S.C. § 1862 (2018).

[128] The closest is Article XXI of the GATT, *see supra* note 111, which merely provides: "Nothing in this Agreement shall be construed . . . (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests" as regards fissionable materials, arms trafficking, and times of war. *Id.*

[129] 19 U.S.C. § 1862(b) (2018).

[130] *Id.* § 1862(c)(1).

[131] *Id.* § 1862(b)(1)(A).

[132] *Id.* § 1862(b)(1)(B), (b)(3)(A).

[133] *Id.* § 1862(c)(1).

[134] *Id.* § 1862(c)(1)(A)(ii).

[135] *Id.* § 1862(c)(2).

[136] *Id.* § 1862(f). Since the end of the first Trump Administration, there have been proposals to amend the law to further expand the "disapproval resolution" procedure to include non-petroleum products. *See* Scott Lincicome & Inu Manak, *Protectionism or National Security? The Use and Abuse of Section 232*, CATO INST. (Mar. 9, 2021), https://www.cato.org/policy-analysis/protectionism-or-national-security-use-abuse-section-232 [https://perma.cc/7KPS-8XW2] (discussing how such proposals would likely not improve the landscape because of congressional disagreement). The current and any proposed expansion of this provision, however, would likely not pass muster under *Chadha*. *See supra* note 123 and accompanying text.

[137] *See* 28 U.S.C. § 1581(i) (2018) (conferring jurisdiction over civil actions against the United

D. *Retaliatory Trade Actions (Section 301)*

Section 301 of the Trade Act of 1974 permits trade actions against foreign acts, policies, or practices that violate U.S. trade agreements or that are unjustifiable and burden U.S. commerce.[138] The United States Trade Representative (USTR) conducts retaliatory trade investigations.[139] The USTR is housed in the Executive Office of the President and is viewed as "the President's principal trade advisor and trade 'spokesman.'"[140] Within the USTR, investigations are conducted by a Section 301 Committee, a staff-level body of the interagency Trade Policy Staff Committee.[141]

Retaliatory trade investigations can be self-initiated by the USTR or initiated by petitions filed by "[a]ny interested person."[142] Although Section 301 investigations were once historically driven by private petitioners, the USTR has been the primary initiator since the establishment of the WTO in 1995. As of 2020, although forty percent of *all* historical Section 301 investigations had been initiated by the USTR, in the period since 1995 that number was 74 percent.[143]

If a petition is filed and the USTR decides to initiate an investigation, the USTR must then request consultations with the targeted government.[144] At the conclusion of its ordinarily year-long investigation, the USTR issues a determination on what retaliatory action, if any, to take.[145] Actions include imposing duties or other import restrictions, withdrawing or suspending trade agreement concessions, or entering into a binding agreement with the foreign

States that arise from laws governing trade actions including tariffs, duties, fees, embargoes or other taxes or quantitative restrictions on imports).

[138] Trade Act of 1974 § 301, 19 U.S.C. § 2411(a)(1) (2018). "[U]njustifiable" actions are those that are in violation of or inconsistent with international legal rights, such as denying the right of establishment to U.S. enterprises. *Id.* § 2411(d)(4). "[U]nreasonable" actions might not necessarily violate or be inconsistent with international legal rights but are otherwise unfair and inequitable, such as the denial of market opportunities. *Id.* § 2411(d)(3). The Act also permits action against "discriminatory" acts, which involves the denial of national or most-favored-nation treatment to U.S. goods. *Id.* § 2411(d)(5).

[139] *Id.* § 2411(a)(1), (b)(2).

[140] *See* Claussen, *Trade Administration*, *supra* note 25, at 876–81 (describing the rise of the USTR as a "Trade Super-Agency").

[141] ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974 (May 13, 2024) [hereinafter SCHWARZENBERG, IF11346], https://crsreports.congress.gov/product/pdf/IF/IF11346 [https://perma.cc/7EDU-7RZ9].

[142] 19 U.S.C. § 2412(a), (b) (2018).

[143] ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., R46604, SECTION 301 OF THE TRADE ACT OF 1974: ORIGIN, EVOLUTION, AND USE 8 (2020) [hereinafter SCHWARZENBERG, R46604], https://crsreports.congress.gov/product/pdf/R/R46604 [https://perma.cc/8BJQ-HBZA].

[144] 19 U.S.C. § 2413(a)(1) (2018).

[145] 19 U.S.C. § 2414(a) (2018). Investigations involving trade agreements can have longer or shorter timelines to determination. *See id.* § 2414(a)(2) (specifying determination timelines that range from 30 days after dispute settlement to 18 months after investigation initiation).

government to address the challenged conduct.[146] Although Section 301 empowers the USTR to take action, it also specifies that any determination is "subject to the specific direction . . . of the President."[147] Decisions by the USTR to modify or terminate any actions are again "subject to the specific direction, if any, of the President," and require consultation with relevant interested parties, such as "the petitioner, if any, and . . . representatives of the domestic industry concerned."[148] These actions typically expire in four years but can be extended by the USTR upon request by the industry benefitting from the actions.[149] Like the other discussed non-AD/CVD measures, legal challenges of Section 301 determinations are heard by the Court of International Trade under 28 U.S.C. § 1581(i).[150]

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In addition to describing the legal frameworks behind much of the pre-IEEPA U.S. tariff regime, the above discussion highlights the diversity of tools in the trade-remedy toolkit, especially with respect to the legal processes and actors involved in seeking and administering these processes. Choosing to pursue one tool over another should thus be viewed as a strategic decision made by specific agents. With that perspective in mind, Part III compares when and why certain tools are mobilized.

III. COMPARING THE DEMAND FOR DEFENSIVE TRADE TOOLS

Whereas Part II introduced the domestic law and legal processes underlying five tools in the administrative trade-remedies toolkit, Part III focuses on when, by whom, and why those tools are deployed. In addition to drawing on previously compiled data, I rely on original quantitative and qualitative data. This includes a dataset of all petitioners who filed an administrative trade-remedy petition between 2002 and 2023, a dataset of final ITC injury determinations in AD/CVD investigations during that time frame, and forty-five semi-structured interviews with trade lawyers, industry representatives, administrative agency employees, congressional staffers, and think tank experts in Washington, D.C. and over Zoom or phone.[151]

Section III.A examines patterns in administrative trade remedy investigation filings over time. Although executive-driven trade remedies have increased in popularity, traditional trade remedies like AD/CVDs have always comprised the bulk of initiated investigations. This section also

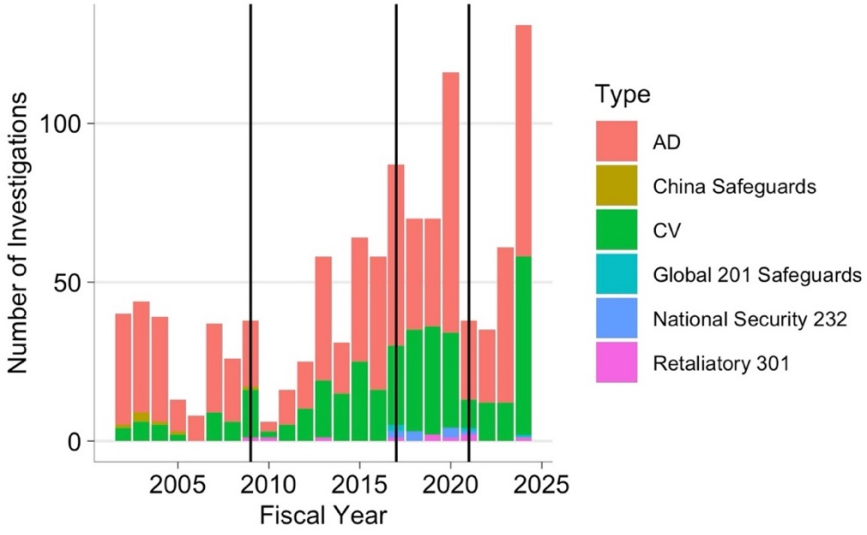
[146] *Id.* § 2411(c).
[147] *Id.* § 2411(a)(1), b(2).
[148] *Id.* § 2417(a).
[149] *Id.* § 2417(c).
[150] *See supra* note 137.
[151] See *supra* notes 38–39 and accompanying text.

underscores the diversity of agents involved in seeking these tools, as well as the products and countries being investigated. Recognizing the strategic nature of the choice to deploy certain remedies, Section III.B draws on interview data to explore why some are selected over others. Taken together, Part III explains how and why, from the perspective of those involved in mobilizing these tools, AD/CVD has long been "option one" for domestic firms and workers.[152]

A. *Investigations Over Time*

This section begins by looking at the number of investigations initiated over the last twenty-plus years. Figure 2 depicts the number of investigations initiated annually by investigation type since government fiscal year (FY) 2002 until FY 2024.[153] Vertical lines indicate a change in presidential administration. Table 2 presents the relative percentage of each investigation type per year.

Figure 2: Annual Number of Investigations Initiated (FY 2002–2024)



[152] LAW-2024-006; *see also infra* Section III.B (discussing reasoning that underlies the viewpoint that AD/CVD is the preferred defensive trade tool).

[153] The government fiscal year begins on October 1 and ends on September 30 of the following calendar year. *The Federal Budget Process*, USAGOV (Sept. 18, 2025), https://www.usa.gov/federal-budget-process [https://perma.cc/S9F4-WG2Q]. It is identified by the calendar year in which it ends. The numbers for FY 2002 thus capture data from some of the months preceding China's entry into the WTO. Although I discuss some investigations that took place in FY 2025, *infra* Parts III, IV, I select FY 2024 as my end date given the availability of official government publications, that many FY 2025 investigations are ongoing, and because my interviews primarily occurred in spring 2024. Additionally, despite the seemingly dramatic shifts in trade law and policy since the beginning of the second Trump Administration, it is unclear whether and how those trends continue.

Table 2: Percentage of Initiated Investigations by Type (FY 2002–2024)

Fiscal Year	AD/CVD	Safeguards	Section 301	Section 232
2002	97.5	2.5	0	0
2003	93.2	6.8	0	0
2004	97.4	2.6	0	0
2005	92.3	7.7	0	0
2006	100	0	0	0
2007	100	0	0	0
2008	100	0	0	0
2009	94.7	2.6	2.6	0
2010	83.3	0	16.7	0
2011	100	0	0	0
2012	100	0	0	0
2013	98.3	0	1.7	0
2014	100	0	0	0
2015	100	0	0	0
2016	100	0	0	0
2017	94.3	2.3	1.1	2.3
2018	95.7	0	0	4.3
2019	97.1	0	2.9	0
2020	96.6	0	0.9	2.6
2021	89.5	2.6	5.3	2.6
2022	100	0	0	0
2023	100	0	0	0
2024	98.5	0.8	0.8	0
Average	97.15	1.02	0.92	0.92

Although the collected data indicate an across-the-board increase in demand for trade remedies since the first Trump Administration, it also illustrates the continually high demand for AD/CVD, in particular. Between government FY 2002 and 2024, 1081 total AD/CVD investigations were initiated, including 733 antidumping and 348 countervailing duty investigations.[154] The median number of AD/CVD investigations initiated per year was 38, the minimum number five, in 2010, and the maximum number 129, in 2024.[155] The initiation of AD/CVD investigations trended upwards during Obama's second term and remained high throughout the first Trump Administration.[156] That consistent uptick is notable given the Trump

[154] This number is based on the number of petitions received by the ITC and is drawn from their Annual Reports, which were published through FY 2020, and the interactive dashboards that accompany their annual The Year in Trade reports. *See Annual Reports Archive*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/annual_reports_archive [https://perma.cc/FN49-PJN8] (last visited Jan. 5, 2026) (displaying source of annual reports used to derive data); U.S. INTERNATIONAL TRADE COMMISSION PUBLICATIONS LIBRARY (ADVANCED SEARCH), "The Year in Trade", https://www.usitc.gov/commission_publications_library/advanced?keyword_operator=and&keyword=&number=&title=The+Year+in+Trade [https://perma.cc/KCT3-45BD] (last visited Jan. 5, 2026) (navigating to source of reports containing data used in study).

[155] *See supra* Table 2.

[156] *See* Jennifer E. McCadney, *In Rare Move, Trump's Commerce Secretary Self-Initiates Chinese*

Administration's supposed departure from previous trade-policy norms and its interest in non-AD/CVD tools. Although there was a decrease in filings in FY 2021, interviewees differed in their views of whether this stemmed from an increased reliance on non-AD/CVD tools,[157] the effects of the pandemic and the usual countercyclical patterns in this practice area,[158] or some combination of factors.[159] Moreover, in conversations with trade-remedy lawyers, they predicted a surge in 2024 petitions,[160] with some telling me that they had petitions in the works[161] and many, though not all, predicting future growth in the number of cases.[162] At least for FY 2024, that prediction proved

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Aluminum Trade Remedy Cases, KELLEY DRYE: TRADE & MFG. MONITOR (Nov. 30, 2017), https://www.kelleydrye.com/viewpoints/blogs/trade-and-manufacturing-monitor/in-rare-move-trumps-commerce-secretary-self-initiates-chinese-aluminum-trade-remedy-cases [https://perma.cc/J5TL-289P] (noting that "[u]se of U.S. AD/CVD laws have increased by 65 percent under the Trump Administration").

[157] *See* RES-2024-001 (attributing the "dip" to constituencies being "already served by the trade war tariffs"); LAW-2024-001 (mentioning the "25% Section 301 tariff" as a potential contributor to decreased investigations against China in 2021 and 2022); LAW-2024-005 (attributing the trend of fewer AD/CVD cases in the last six or seven years to "a much greater reliance by the U.S. government on tools other than AD/CVD"); LAW-2024-018 (noting that Section 232 and Section 301 actions "probably have impacted the number of trade cases that have been filed"). *But see* LAW-2024-002 (noting that increasing use of non-AD/CVD tools is unlikely to affect the number of AD/CVD investigations given the relative durability of the latter); LAW-2024-003 (noting that increased use of Section 232 and Section 301 "hasn't stopped the filing of [AD/CVD] cases"); LAW-2024-008 (stating that they have not seen a reduction in AD/CVD cases despite Section 232 and Setion 301 tariffs); LAW-2024-013 (noting that any recent drop in AD/CVD filings is not necessarily because of other trade tools).

[158] *See* LAW-2024-006 (noting that AD/CVD filings are "more cyclical" and that COVID caused "a very rapid decline" in imports and thus decreased petitions).

[159] *See* LAW-2024-007 (describing the volume of cases as "very episodic" with an ebb and flow like "sin waves," but also noting the effect of Section 301 tariffs on the filing of steel-related AD/CVD petitions); LAW-2024-008 (attributing increased filings to China's actions after 2009 rather than U.S. politics); LAW-2024-010 (highlighting multiple factors that likely contributed to decreased filings, including the increasing use of other trade tools and the pro-enforcement emphasis of the first Trump Administration, but also COVID and supply-chain shortages).

[160] LAW-2024-006 ("2023 was starting to trend up again. . . . [M]y sense is [2024] could be a pretty busy year."); LAW-2024-010 ("I would expect we will see more cases in 2024 for no other reason than that we're in an inflationary economy."); LAW-2024-011 ("I feel like there has been something of a surge of these cases.").

[161] LAW-2024-016 ("I've got a couple of petitioners who are whispering in my ear now. So, that will make me busier in AD/CVD for a while."); LAW-2024-022 (sharing that they are currently filing petitions).

[162] *See, e.g.*, LAW-2024-002 ("I don't think the trade bar has any fear that its work is going to diminish."); LAW-2024-008 (describing how "we haven't really seen a reduction" in AD/CVD cases and "we still see surges in specific areas"); LAW-2024-012 (noting that the AD/CVD practice was expanding rapidly); LAW-2024-015 ("I think you're going to see a ton of AD/CVD stuff coming down the pike over the next several years."); LAW-2024-018 ("I think [trade remedies] will continue because I think domestic industries do require [and] want protection."); LAW-2024-019 ("[T]he dominant vehicle will remain antidumping and countervailing duties."); LAW-2024-020 ("[A]t least for the next couple of years, I do see more and more cases coming."); LAW-2024-023* ("I think there is still a ton of interest in AD/CVD . . . . I don't see it diminishing in importance anytime soon."); LAW-2024-024 (sharing that the AC/CVD area is "busy right now"); LAW-2024-025 (expressing belief that AD/CVD work "will remain robust in the future."). *But see* LAW-2024-001 (stating that "dumping is very

prescient, with the number of AD/CVD filings reaching a new high.[163] When discussing the continuing vitality of this practice area, some even chuckled upon remembering previous eras when others had incorrectly predicted its demise.[164] According to one petitioner-side lawyer:

> [T]he reason I'm smiling is I remember when I graduated from law school . . . there's always been people kind of wringing their hands and saying, you know, oh, this is a dying area of the law and you'll be lucky to work an entire career in this field, and dah, dah, dah. And, I guess I've always kind of taken the longer view that this is a remedy that is durable and that companies will continue to invest in pursuing these types of remedies. And sure enough, it's continued to be very busy for twenty, twenty-five years that I've been doing this type of work.[165]

In contrast, between FY 2002 and FY 2024, there were significantly fewer safeguard, national security, or retaliatory trade investigations. Only four new Section 201 global safeguard investigations were initiated, seven Section 421 China-specific safeguard investigations,[166] nine Section 232 national security investigations, and ten Section 301 retaliatory trade investigations.[167] Unsurprisingly, all the national security investigations and most of the retaliatory trade investigations were initiated after 2017.

Although the return of Section 232 and Section 301 investigations to the radar screen is worthy of continued tracking, especially given the surge in Section 232 investigations in the opening months of the second Trump Administration,[168] they have nonetheless been much less prevalent than AD/CVD investigations. This continuing interest in AD/CVD investigations is also notable given that tools like Section 232, Section 301, and formerly

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cyclical" and that trade remedies has not been the "big part of growth in the trade area"); LAW-2024-004 ("I think [AD/CVD is] going to stay static."); LAW-2024-005 (expressing hesitation that the future of AD/CVD will follow historic cyclical trend because "other tools have overshadowed to some extent the AD/CVD measures"); LAW-2024-016 ("I don't see [AD/CVD] as a growth industry.").

[163] *See supra* Figure 2.

[164] LAW-2024-002 (joking about being told many years ago that a case would be "the last big case . . . in antidumping and countervailing duty law"); LAW-2024-003 (chuckling while discussing prior predictions that the AD/CVD practice area would end); LAW-2024-008 (laughing, while sharing that in 2005 people warned that "AD/CVD is going to be gone" in a few years); LAW-2024-018 ("I talked to a friend of mine who's 15 years older than I am, and he said thirty years ago, . . . how could this possibly continue? He's [now] got a villa on an island in Italy."); LAW-2024-024 ("[I]f I had a dime for every time somebody asked me whether they thought the AD/CVD world was going away, I'd be pretty rich by now [laugh].").

[165] LAW-2024-006.

[166] Investigations are heavily concentrated in the first few years of this then-new provision. Six were initiated during the first half of the Bush administration, and only one was filed during the Obama administration before the provision's expiration in 2013. *See supra* Figure 2.

[167] *See supra* Figure 2.

[168] *See Section 232 Investigations: The Effects of Imports on the National Security*, BUREAU INDUS. & SEC., https://www.bis.gov/about-bis/bis-leadership-and-offices/SIES/section-232-investigations [https://perma.cc/MAM4-P8Z3] (last visited Dec. 21, 2025).

IEEPA have the potential to affect a much higher value of imports.[169] For example, the Section 301 tariffs on Chinese imports imposed over the course of the first Trump Administration targeted goods with an annual value of $550 billion.[170] The tariff increase announced by President Biden in May 2024 was predicted to affect an additional $18 billion worth of imports.[171] The 2018 national security tariffs were imposed on steel and aluminum imports worth $25 billion.[172] And President Trump's announced April 1 "Liberation Day" tariffs were estimated to affect about $1.3 trillion of imports.[173] In contrast, in FY 2022, all active AD/CVD orders resulted in duties on "only" $37.4 billion worth of imports, though that number has risen steadily over the years.[174] Nevertheless, petitioners continue to pour attention, energy, and money into mobilizing the AD/CVD tool.

AD/CVD investigations are also initiated by a wider assortment of actors

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[169] Consistent annual data on the economic impact of different remedies is not readily available. Although U.S. government and media publications have sometimes reported the value of imports affected or duties collected, the data is patchy (that is, not available every year) and not necessarily comparable (for example, estimates versus actual numbers or data covering different time periods).

For instance, U.S. Customs and Border Protection once reported the total value of imports affected by AD/CVDs in their Trade and Travel Fiscal Year Report, but that report seemingly ended after FY 2022. *See, e.g.*, U.S. CUSTOMS & BORDER PROT., CBP TRADE AND TRAVEL REPORT: FISCAL YEAR 2022 at 11, https://www.cbp.gov/sites/default/files/assets/documents/2023-Jun/fy-2022-cbp-trade-and-travel-report.pdf [https://perma.cc/8A27-JB8P]. The Trade Fact Sheet published beginning in FY 2023 does not indicate the value of imports affected by AD/CVDs, only deposits collected. *See FY 2023 CBP Trade Sheet*, U.S. CUSTOMS & BORDER PROT. (June 2024), https://www.cbp.gov/sites/default/files/2024-06/cbp_fy_2023_trade_fact_sheet_06.2024.pdf [https://perma.cc/BVT2-64S4]. Moreover, although those fact sheets do report the amount of duties assessed on non-AD/CVD remedies, that number differs from numbers reported elsewhere by CBP. *Compare FY 2023 CBP Trade Sheet*, *supra*, *with Trade Statistics*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/newsroom/stats/trade [https://perma.cc/5Q9G-MANL] (last visited Dec. 22, 2025).

[170] *See* Economic Impact of Section 232 and 301 Tariffs on U.S. Industries, Inv. No. 332-591, USITC Pub. 5405, at 20 (May 2023). Not all these tariffs ultimately went into effect, however. *Id*.

[171] *FACT SHEET: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices*, BIDEN WHITE HOUSE (May 14, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/05/14/f [https://perma.cc/ND58-L5MX].

[172] Alex Durante, *How the Section 232 Tariffs on Steel and Aluminum Harmed the Economy*, TAX FOUND. (May 23, 2024), https://taxfoundation.org/research/all/federal/section-232-tariffs-steel-aluminum-2 [https://perma.cc/B5W9-JYVE].

[173] Erica York & Alex Durante, *Trump Tariffs: The Economic Impact of the Trump Trade War*, TAX FOUND. (Apr. 11, 2025), https://taxfoundation.org/research/all/federal/trump-tariffs-trade [https://perma.cc/6DV8-35AV] (providing this estimate as of the date of publication). Note that, given the extreme volatility of the current administration's tariff policy, these estimates have been changed repeatedly, including on this specific website.

[174] Nathaniel Maandig Rickard, *In Era of Unprecedented Imports into the United States, Use of AD/CVD Laws Continues to Grow*, PICARD KENTZ & ROWE: NEWS & INSIGHTS (June 9, 2023), https://pkrllp.com/news-insights/in [https://perma.cc/9VVP-8EAT]. For specific products, it is also possible for AD/CVDs to have larger economic effects than tariffs imposed under other authorities. *See* Chad P. Bown, *The US–China Trade War and Phase One Agreement*, 43 J. POL'Y MODELING 805, 825 (2021) (noting that October 2019 antidumping duties on wooden cabinets and vanities from China exceeded the duties previously imposed on those products under Section 301).

against a broad range of products. My dataset of 789 AD/CVD petitioners between 2002 and 2023 contains 528 unique petitioners. That demand is also clearly driven by domestic firms and workers. Even the two investigations self-initiated by the Department of Commerce since 2002 came only after the domestic industry had drafted a petition and agreed to litigate the case.[175]

The demand for AD/CVD is, however, more concentrated among certain industries. Of the 528 petitioners in my dataset, fourteen are unions and 217 are trade associations or coalitions of individual companies. About 43 percent of petitioners were repeat petitioners, meaning they had previously initiated at least one AD/CVD investigation at the time of filing. The most active petitioner in my dataset was the United Steelworkers[176] and approximately 55 percent of petitioners are connected to the steel and chemical industries, which have a reputation for being longtime active users of the AD/CVD laws.[177] Although recognizing that there is something paradigmatic about those two industries, a number of interviewees nonetheless noted how many petitions are filed against imports unrelated to these industries.[178] These cases

[175] Common Alloy Aluminum Sheet from China, Inv. Nos. 701-TA-591, 731-TA-1399, USITC Pub. 4861 (Jan. 2019) (Final). *See* McCadney, *supra* note 156. *See also supra* note 100 and accompanying text.

[176] Other prominent repeat petitioners include U.S. Steel Corporation, Nan Ya Plastics Corporation, AK Steel, ArcelorMittal, and Nucor. Although I identify and briefly describe these repeat petitioners here, I leave a fuller, more comprehensive treatment of the dynamics surrounding repeat players—including repeat lawyers and law firms—to my ongoing work(s) in progress.

[177] *See, e.g.*, LAW-2024-002 (claiming that steel, metals, and chemicals are core industries "that have used, and I believe will continue to use the dumping and countervailing duty laws aggressively"); LAW-2024-005 (claiming the steel industry is part of a group of industries "turning to AD/CVD remedies" to maintain "market share" and also stating "[y]ou see cases brought on chemical products quite a bit"); LAW-2024-006 ("[T]he steel industry has been a user of the unfair trade laws for many, many, many, many years."); LAW-2024-009 (noting that the "steel industry has been heavily involved in the development of these [AD/CVD] laws" and that steel clients tend to be well-versed in AD/CVD law since "[t]hey've done it so many times"); INDUS-2024-004 ("Industries like steel have turned to the trade remedy laws for decades and decades because it's an ongoing issue."); LAW-2024-011 (calling the steel industry the "poster child" for use of AD/CVDs laws); LAW-2024-012 (naming steel and chemicals as "powerful" industries that have arguably "captured" the AD/CVD process); LAW-2024-016 (identifying "high fixed cost industries" like "steel, chemicals" as repeat players in the AD/CVD process); LAW-2024-018 (agreeing that the steel industry is a paradigmatic user of AD/CVDs and identifying chemicals as another industry with high AD/CVD activity); *see also* Morck, Sepanski & Yeung, *supra* note 73, at 366; Blonigen, *supra* note 73, at 719–20; Blonigen & Prusa, *supra* note 73, at 20.

[178] LAW-2024-023* ("[A]ll different kinds of goods rely on enforcement of the AD/CVD laws besides just steel."); RES-2023-001 (emphasizing the active role of the steel industry but also mentioning cases against socks, tuxedos, canned mushrooms, and Polish golf carts); RES-2024-001 (mentioning timber, paper products, tomatoes, and sugar); LAW-2024-002 (describing steel and chemicals as "core cases" but acknowledging increasing numbers of novel cases against imports like wine bottles or paper bags); LAW-2024-003 ("One of the things that surprised me even, just even in the last five years, are new cases against products that have never been subject to a trade case before."); LAW-2024-005 (mentioning semiconductors and solar panels); LAW-2024-006 (mentioning aluminum, copper, brass, and agricultural products); LAW-2024-008 (mentioning green technology goods like solar panels); AGEN-2024-002 (mentioning tires and describing solar panel producers as a newer "repeat player"); LAW-2024-012 (noting prevalence of wood); CONG-2024-002 (suggesting it

might not receive as much public attention but nonetheless reflect the general appeal of the AD/CVD tool.[179] For example, since 2002, petitions have been filed against imports of paper,[180] tires,[181] solar panels,[182] mattresses,[183] and agricultural goods.[184]

From FY 2002 through FY 2024, safeguard investigations have targeted only eleven imports: pedestal actuators, wire hangers, brake drums and rotors, iron waterworks fittings, innerspring mattress units, non-alloy steel pipe, tires, washers, solar cells, frozen blueberries, and fine denier polyester staple fiber.[185] Of those, ten were initiated by domestic-industry petitions.

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is unfair to characterize the AD/CVD laws as a "steel bill" given use of the law by industries like glass and petrochemicals); LAW-2024-014 (noting prevalence of tires and paper in discussion about repeat petitioners).

[179] *See* LAW-2024-017* ("I would say there's many, many, many, many other industries that use this law. And because they don't have the resources and the political connections and the reach that the steel industry does, they kind of come in, use the law, get the relief, and then go about their business."); RES-2024-003* ("[T]here's a lot of non-steel cases. . . . [T]he steel ones get in the news a lot.").

[180] *See, e.g.*, Certain Lined Paper Sch. Supplies from China, India & Indon., Inv. Nos. 701-TA-442-443, 731-TA-1095-1097, USITC Pub. 3884 (Sept. 2006) (Final); Coated Free Sheet Paper from China, Indon. & Kor., Inv. Nos. 701-TA-444-446, 731-TA-1107-1109, USITC Pub. 3965 (Dec. 2007) (Final); Certain Lightweight Thermal Paper from China & Ger., Inv. Nos. 701-TA-451, 731-TA-1126-1128, USITC Pub. 4043 (Final) (Nov. 2008); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China & Indon., Inv. Nos. 701-TA-470-471, 731-TA-1169-1170, USITC Pub. 4192 (Nov. 2010) (Final); Uncoated Paper from Austl., Braz., China, Indon. & Port., Inv. Nos. 701-TA-528-529, 731-TA-1264-1268, USITC Pub. 4592 (Feb. 2016) (Final); Uncoated Groundwood Paper from Can., Inv. Nos. 701-TA-584, 731-TA-1382, USITC Pub. 4822 (Sept. 2018) (Final); Paper File Folders from China, India & Viet., Inv. Nos. 701-TA-683, 731-TA-1594-1596, USITC Pub. 5472 (Nov. 2023) (Final).

[181] *See, e.g.*, Certain Off-the-Road Tires from China, Inv. Nos. 701-TA-448, 731-TA-1117, USITC Pub. 4031 (Aug. 2008) (Final); Passenger Vehicle and Light Truck Tires from Kor., Taiwan, Thai. & Viet., Inv. Nos. 701-TA-647, 731-TA-1517-1520, USITC Pub. 5212 (July 2021) (Final).

[182] *See, e.g.*, Crystalline Silicon Photovoltaic Cells and Modules from China, Inv. Nos. 701-TA-481, 731-TA-1190, USITC Pub. 4360 (Nov. 2012) (Final); Certain Crystalline Silicon Photovoltaic Prods. from China & Taiwan, Inv. Nos. 701-TA-511, 731-TA-1246-1247, USITC Pub. 4519 (Feb. 2015) (Final).

[183] *See, e.g.*, Uncovered Innerspring Units from S. Afr. & Viet., Inv. No. 731-TA-1141-1142, USITC Pub. 4051 (Dec. 2008) (Final); Mattresses from Cambodia, China, Indon., Malay., Serb., Thai., Turk. & Viet., Inv. Nos. 701-TA-645, 731-TA-1495-1501, USITC Pub. 5191 (May 2021) (Final); Mattresses from Bosn. & Herz., Bulg., Burma, India, Indon., It., Kos., Mex., Phil., Pol., Slovn. & Taiwan, Inv. Nos. 731-TA-1629-1631, 1633, 1636-1638, 1640, USITC Pub. 5520 (June 2024) (Final).

[184] *See, e.g.*, Certain Frozen Fish Fillets from Viet., Inv. No. 731-TA-1012, USITC Pub. 3617 (Aug. 2003) (Final); Durum and Hard Red Spring Wheat from Can., Inv. Nos. 701-TA-430A, 430B, 731-TA-1019A, 1019B, USITC Pub. 3639 (Oct. 2003) (Final); Frozen Warmwater Shrimp from China, Ecuador, India, Malay. & Viet., Inv. Nos. 701-TA-491-493, 495, 497, USITC Pub. 4429 (Oct. 2013) (Final); Lemon Juice from Braz. & S. Afr., Inv. No. 731-TA-1578-1579, USITC Pub. 5403 (Feb. 2023) (Final); Dried Tart Cherries from Turk., Inv. Nos. 701-TA-622, 731-TA-1448, USITC Pub. 5014 (Jan. 2020) (Final); Certain Pres. Mushrooms from Fr., Inv. No. 731-TA-1587, USITC Pub. 5393 (Jan. 2023) (Final).

[185] *See* VIVIAN C. JONES, CONG. RSCH. SERV., RL32371, TRADE REMEDIES: A PRIMER 28 (2012), https://crsreports.congress.gov/product/pdf/RL/RL32371 [https://perma.cc/H8X9-2Z8V] (pedestal actuators, wire hangers, break drums and rotors, iron waterworks fittings, innerspring mattress units, non-alloy steel pipe, tires); *Section 201 Investigations*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-201-investigations [https://perma.cc/22R5-UT5W]

Only the investigation of frozen blueberries was initiated by a government entity, an investigation that the ITC terminated after finding no serious injury to the domestic industry.[186]

Of the ten Section 301 cases between FY 2002 and FY 2024, all but two were self-initiated by the USTR,[187] and five of the nine Section 232 investigations over that time frame were initiated by the Secretary of Commerce.[188] This trend has seemingly continued in FY 2025. Of the three Section 301 cases initiated during that fiscal year, all were initiated by the USTR.[189] And of those, the investigation initiated by the second Trump Administration during FY 2025 began following "the specific direction of the President."[190] President Trump's executive branch also initiated all twelve of the ongoing Section 232 investigations that began in FY 2025.[191]

This does not mean, however, that domestic industries have played no role in demanding these more executive-driven remedies. In addition to the four petition-initiated Section 232 investigations that began during the first Trump Administration,[192] another was initiated by Commerce following

(washers, solar cells); Fresh, Chilled, or Frozen Blueberries, Inv. No. TA-201-77, USITC Pub. 5164 (Mar. 2021) (Final); Fine Denier Polyester Staple Fiber, Inv. No. TA-201-78, USITC Pub. 5536 (Aug. 2024) (Final).

[186] *See* USITC Pub. 5164, *supra* note 185.

[187] The two exceptions were a 2010 case brought by the United Steelworkers union regarding acts, policies, and practices of China affecting trade and investment in green technologies, and a 2024 case brought by the United Steelworkers and four other unions against Chinese shipbuilding practices. *United States Launches Section 301 Investigation into China's Policies Affecting Trade and Investment in Green Technologies*, OFF. U.S. TRADE REPRESENTATIVE (Oct. 15, 2010), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2010/october/united-states-launches-section-301-investigation-c [https://perma.cc/W2TZ-WEH5]; Petition for Relief Under Section 301 of the Trade Act of 1974, As Amended, China's Policies in the Maritime, Logistics, and Shipbuilding Sector (Off. of the U.S. Trade Representative Mar. 12, 2024), https://ustr.gov/sites/default/files/Section%20301%20Petition%20-%20Maritime%20Logisitics%20and%20Shipbuilding%20Sector.pdf [https://perma.cc/XZQ4-UWXK].

[188] The five Commerce-initiated Section 232 investigations were brought against imports of steel, aluminum, automobiles and automobile parts, transformers and transformer components, and NdFeB permanent magnets. *See Section 232 Investigations*, *supra* note 168.

[189] Initiation of Section 301 Investigation, Hearing, and Request for Public Comments: Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights, and Rule of Law, 89 Fed. Reg. 101088 (Dec. 13, 2024); Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance, 89 Fed. Reg. 106725 (Dec. 30, 2024); Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments, 90 Fed. Reg. 34069 (July 18, 2025).

[190] Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments, 90 Fed. Reg. at 34069.

[191] *See Section 232 Investigations*, *supra* note 168.

[192] A 2018 investigation into uranium was initiated by a petition from Energy Fuel Resources and

"inquiries and requests from" multiple congresspeople and domestic producers.[193] And Facing Fentanyl, a coalition of affected families and advocacy organizations, filed a Section 301 petition against Chinese practices in October 2024 that it withdrew prior to initiation.[194]

Despite the relatively small number of Section 301 investigations, they have nonetheless targeted or resulted in remedies that affected various imports, including not only metal and chemical products but also aircraft[195] and timber,[196] along with practices like digital services taxes[197] or forced technology transfer.[198] The imports at issue in initiated Section 232 investigations through FY 2024 were by contrast more narrow, focusing only on: aluminum, steel, automobiles and automobile parts, uranium, titanium sponge, laminations for stacked cores, vanadium, NdFeB permanent magnets, and mobile cranes.[199]

UR-Energy USA, a 2018 investigation into titanium sponge was initiated by a petition from Titanium Metals Corporation, a 2019 investigation of vanadium was initiated following a petition by AMG Vanadium and U.S. Vanadium, and a 2020 investigation of mobile cranes was initiated following a petition by Manitowoc Company. *See* Publication of a Report on the Effect of Imports of Uranium on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended, 86 Fed. Reg. 41540, 41548 (Aug. 2, 2021); Publication of a Report on the Effect of Imports of Titanium Sponge on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended, 86 Fed. Reg. 59115, 59121 (Oct. 26, 2021); Publication of a Report on the Effect of Imports of Vanadium on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended, 86 Fed. Reg. 64748, 64754 (Nov. 18, 2021); Notice of Termination National Security Investigation of Imports of Mobile Cranes, 85 Fed. Reg. 82436, 82436 (Dec. 18, 2020).

[193] Publication of a Report on the Effect of Imports of Transformers and Transformer Components on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended, 86 Fed. Reg. 64606, 64606 (Nov. 18, 2021).

[194] Petition for Relief Under Section 301 of the Trade Act of 1974, As Amended, The People's Republic of China's Acts, Policies, and Practices Supporting Illicit Fentanyl Trade (Off. of the U.S. Trade Representative Oct. 17, 2024), https://ustr.gov/sites/default/files/Fentanyl%20Petition%20Final%20Version.pdf [https://perma.cc/L4TQ-QBZE]; *Statement from Ambassador Katherine Tai on Section 301 Petition Relating to Fentanyl and Precursor Chemicals*, OFF. U.S. TRADE REPRESENTATIVE (Dec. 2, 2024), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/december/statement-ambassador-katherine-tai-section-301-petition-relating-fentanyl-and-precursor-chemicals [https://perma.cc/BZ49-5T49].

[195] *Section 301-Large Civil Aircraft*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-large-civil-aircraft [https://perma.cc/ZZY7-CDM9] (last visited Jan. 11, 2026).

[196] *Section 301-Vietnam Timber*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-vietnam-timber [https://perma.cc/L2SV-QS5M] (last visited Jan. 11, 2026).

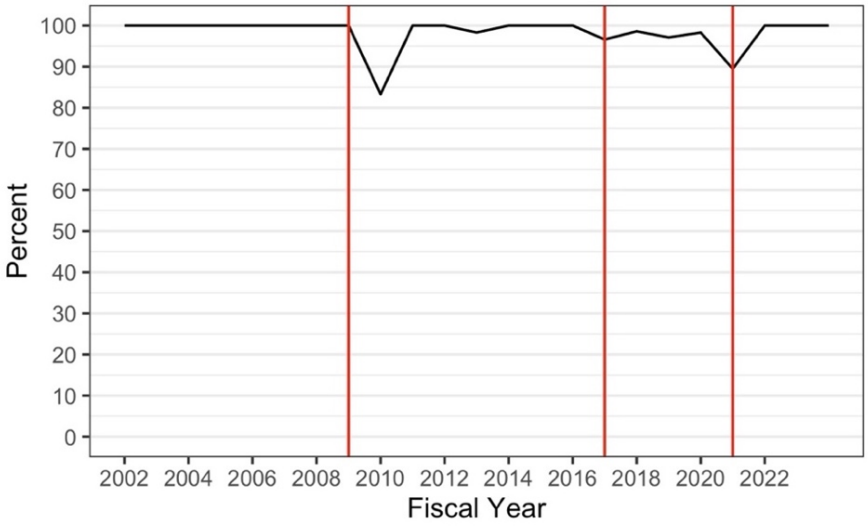
[197] *Section 301-Digital Services Taxes*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes [https://perma.cc/9QG9-6ZL9] (last visited Jan. 11, 2026).

[198] *Section 301-China Technology Transfer*, OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china [https://perma.cc/4JJU-SBVT] (last visited Jan. 11, 2026).

[199] For a list of completed Section 232 investigations, see *Section 232 Investigations*, *supra* note 168.

Figure 3 depicts the percentage of investigations initiated following private petitions between FY 2002 and 2024, with the vertical lines indicating a change in presidential administration, further underscoring the active role of nonstate players in demanding administrative trade remedies relative to other actors.

Figure 3: Percentage of Investigations Initiated by Private Actors (FY 2002–2024)



Moreover, AD/CVD cases have targeted imports from a wide range of trading partners. My ITC final-injury determination dataset includes completed investigations against 64 different countries. The five most-investigated countries were China (263), India (78), South Korea (56), Turkey (34), and Vietnam (33). Asian countries are also frequent targets in other trade-remedy investigations. Between FY 2002 and FY 2024, ten of eleven global and China-specific safeguard investigations concerned a surge in imports from Asia, five of ten Section 301 investigations were directed at Asian products or practices, and all nine initiated Section 232 investigations discussed current or future concerns about production in Asian countries.

Although China is not the exclusive focus of U.S. trade-remedy investigations, Chinese products and practices have unsurprisingly been the most common targets since China joined the WTO. Among AD/CVD investigations that reached a final injury determination by the ITC and were initiated between 2002 and 2023, almost a third (263) concerned Chinese imports; no other country has been investigated even one hundred times. Between FY 2002 and FY 2024, four of ten Section 301 investigations concerned China. Although Section 201 safeguard investigations are not country-specific, three of the four initiated between FY 2002 and FY 2024

involved products commonly manufactured in China.[200] And, by definition, all seven investigations initiated under Section 421 concerned Chinese imports. Similarly, six of the Section 232 investigations initiated during that time period discussed China's relative dominance in manufacturing the relevant products, and all identified China as a current or potential threat.[201]

Equipped with an understanding of what these tools are, their relative use, and the actors and products involved, Section III.B. asks why AD/CVD continues to be the preferred tool for domestic industries.

B. *The Continuing Popularity of AD/CVD*

When asked about the pros and cons of different tools, interviewees frequently discussed differences in (1) political insulation, (2) durability, (3) scope and effectiveness, and (4) costs as to time and money. On balance, the weighing of these factors led many interviewees to describe AD/CVD as "still the most effective,"[202] "reliable,"[203] and "option one"[204] tool in the administrative trade-remedies toolkit.[205] Below, I draw on my interviews to unpack why this is the case from the perspective of those who mobilize these tools, supplemented by quantitative data where appropriate.

1. Political Insulation

The sharpest contrast interviewees drew between AD/CVD and other trade remedies concerned the former's relatively high level of insulation from

[200] *See* Large Residential Washers, Inv. No. TA-201-076, USITC Pub. 4745 (Dec. 2017) (Final); Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products), Inv. No. TA-201-75, USITC Pub. 4739 (Nov. 2017) (Final); Fine Denier Polyester Staple Fiber, Inv. No. TA-201-78, USITC Pub. 5536 (Aug. 2024) (Final).

[201] Section 232 investigation reports can be found at *Section 232 Investigations*, *supra* note 168.

[202] LAW-2024-005.

[203] INDUS-2024-002.

[204] LAW-2024-006.

[205] *See also* LAW-2024-007 (calling AD/CVDs "the easiest to access" and the "most reliable remedy"); LAW-2024-008 ("[G]enerally we say AD/CVD if you're able to invest the resources . . . .); LAW-2024-009 (describing AD/CVDs as the "preferred remedy" and "still the most effective process for domestic producers to use"); INDUS-2024-002 ("[I]n the hierarchy, we have always put AD/CVD at the top as the most valuable because of their non-political nature and because of the durability."); INDUS-2024-004 ("[K]nowing the various remedies, historically, honestly, AD/CVD was going to be your first choice because it has less political influence."); LAW-2024-014 (describing AD/CVD as the "most used" remedy); LAW-2024-016 (noting that he "very, very rarely" recommends clients pursue non-AD/CVD remedies); LAW-2024-017* ("I think most of our clients would prefer to bring an AD/CVD case if they can."); LAW-2024-019 (agreeing that AD/CVDs are "easily" the remedy of choice and that "it's not even a close call"); LAW-2024-022 (noting that as a lawyer advising private clients, "[f]or the most part, AD/CVD is the only realistic option you can give people"); LAW-2024-023* (describing AD/CVDs as "definitely our go-to, usually our first recommendation"); LAW-2024-024 (describing AD/CVDs as "very powerful" because "it's the one tool manufacturers have that they can unilaterally use").

politics. But what does political insulation mean?[206] One highly experienced petitioner-side lawyer who called AD/CVD "option one" summarized it well:

> [W]hen you're pursuing an AD/CVD case, you're basically litigating on very extensive, detailed factual records before Commerce and the ITC. And that's not to say that political considerations don't enter into those cases, but I'd say it's much harder for politics to influence a case at the Commerce Department or the ITC than it is for some of the other types of remedies. I mean, because, you know, you've got an extensive record. You're subject to judicial review, you've got well-established kinds of practices before each agency. And you know, I think the, the flex in the joints and the ability to kind of, um, paper over things is harder in an AD/CVD case. In contrast, in 232, 301, 201 you've got the statute contemplating the President putting a remedy in place. And there's a lot of discretion in terms of what the President does. . . . [T]here's no set process or procedure for how a president comes up with a remedy in those . . . types of actions.[207]

This quotation highlights several characteristics of political insulation. One is the level of direct involvement by the President in the decisionmaking process. For many, the preference for AD/CVDs is driven by the President's relative lack of influence under the statute.[208] In an AD/CVD investigation,

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[206] It is worth noting that interviewees' discussion of politics focused on the role of politics in affecting investigation outcomes. Of course, the relevant statutes are products of politics, and I talked with some interviewees about efforts to amend or revise the AD/CVD statute. *See, e.g.*, LAW-2024-001 ("A lot of amendments . . . are put forward by the steel industry" to "reverse the outcomes in whatever cases they've lost."); AGEN-2024-001 ("[The AD/CVD statute] has been amended a few times to keep making the bar lower [to find injury]."); LAW-2024-009 (noting the steel industry's involvement "in the development of [AD/CVD] laws" and "even in this new series of amendments that are being chucked around right now"); CONG-2024-002 (discussing the Leveling the Playing Field Act); LAW-2024-022 (same); LAW-2024-017* ("Getting legislation through the Congress to amend the dumping and countervailing duty laws is always tricky."); LAW-2024-018 ("I haven't seen anything come through that would even moderate AD/CVD law in forever."); LAW-2024-023* ("[As a trade lawyer] you would be remiss if you were not trying to get policy changes for your client."). Although most noted the difficulty of amending the statute, one successful example was when Congress revised the countervailing duty statute to allow for cases against nonmarket economies after lobbying by the petitioners' bar in response to GPX Int'l Tire Corp. v. United States, 666 F.3d 732 (Fed. Cir. 2011). *See* LAW-2024-017* (describing how "everybody completely freaked out" after *GPX* and "immediately went to the Hill, said you need to fix this, this decision is a disaster. And we were able to get legislation through the Congress."); Guangdong Wireless Housewares & Hardware Co. v. United States, 745 F.3d 1194, 1197–98 (Fed. Cir. 2014) (summarizing the change in statute and the effect on doctrine).

[207] LAW-2024-006.

[208] *See* LAW-2024-008 (describing "the presidential discretion at the end of the safeguard process" as something that "obviously" weighs against the use of safeguards versus AD/CVDs); INDUS-2024-002 (noting that the "Secretary of Commerce has only limited ability to influence what goes on" in AD/CVD investigations); LAW-2024-010 ("The advantage of [AD/CVD] is that . . . they're not political in the sense of the President doesn't get to decide yes or no."); LAW-2024-017* ("With AD/CVD, there's a bit more certainty for the industry bringing it relative to a 201 or 232, where you don't know what the President and the White House are going to do."); LAW-2024-024 ("[In a] 201 case, you have the presidential discretion. You can win, . . . and the president at the end of the day can say no."). Other interviewees also noted or discussed the lack of presidential involvement in

once the agencies determine that there is an unfair trade practice causing or threatening to cause material injury to a domestic industry, duties are automatically imposed. And the relevant agencies make affirmative determinations in the majority of cases. In investigations initiated between 2002 and 2023, I find that about 69 percent of investigations resulted in a final affirmative determination.[209]

In contrast, with tools like safeguards, national security trade actions, or retaliatory trade actions, after an agency makes an affirmative determination, those seeking tariffs must then persuade the White House that a remedy is appropriate. In safeguard investigations, even if the ITC finds injury and recommends action, the President can ignore it. And Presidents have been willing to do just that. Between 1975 and the end of FY 2024, the ITC found injury and recommended a remedy in 43 Section 201 investigations but the President ultimately declined to grant relief fourteen times, roughly a third of the time.[210] In Section 421 China-safeguard investigations, the ITC found requisite injury five times, and the President imposed remedies just once, in a case against Chinese tire imports filed during the Obama Administration.[211] The other four times, President Bush declined to impose remedies after determining relief was not in the national economic interest.[212]

The same is true of Section 232 national security and Section 301 retaliatory trade investigations. Between 1963 and the end of FY 2024, although Commerce had determined that a potential national security threat existed in sixteen Section 232 investigations, the President decided not to act

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AD/CVD investigations, including RES-2023-001; LAW-2024-002; LAW-2024-003; LAW-2024-004; LAW-2024-007; LAW-2024-009; LAW-2024-014; INDUS-2024-004; AGEN-2024-003.

[209] In my final injury dataset, 654 investigations resulted in an affirmative ITC determination, and my petitioners dataset includes 954 initiated AD/CVD investigations between calendar year 2002 and 2023. Sometimes, the final injury determination is "mixed," meaning that the ITC determined there was a requisite injury or threat of injury from some of the products under investigation, but not all. *See, e.g.*, Large Diameter Welded Pipe from Can., Greece, Kor. & Turk., Inv. Nos. 701-TA-595-596, 731-TA-1401, 1403, 1405-1406, USITC Pub. 4883 (Apr. 2019) (Final) (finding a mixed result). For purposes of this calculation, I include mixed outcomes as affirmative determinations. Additionally, in the two instances in which the ITC divided a petition into "A" and "B" investigations by product, I count "A" and "B" as two separate investigations for purposes of this calculation. So, Inv. Nos. 731-TA-1070A-1070B and 731-TA-1019A-1019B, 701-TA-430A-430B are counted as two and four investigations, respectively.

[210] *See* LIANA WONG, CONG. RSCH. SERV., IF10786, SAFEGUARDS: SECTION 201 OF THE TRADE ACT OF 1974 2 (2021), https://crsreports.congress.gov/product/pdf/IF/IF10786 [https://perma.cc/47P2-J3FB] (finding that of the 75 global safeguard investigations between 1975 and 2018, 33 resulted in negative ITC determinations and declined to grant relief in fourteen cases); U.S. INT'L TRADE COMM'N, *supra* note 185 (post-2018 investigation that resulted in a negative ITC determination); *A Proclamation to Facilitate Positive Adjustment to Competition from Imports of Fine Denier Polyester Staple Fiber*, BIDEN WHITE HOUSE (Nov. 8, 2024), https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2024/11/08/a-proclamation-to [https://perma.cc/C6D5-RWXQ] (post-2018 investigation that resulted in an affirmative ITC determination and action by the President).

[211] *See* Edmund L. Andrews, *U.S. Adds Tariffs on Chinese Tires*, N.Y. TIMES (Sept. 11, 2009), https://www.nytimes.com/2009/09/12/business/global/12tires.html [https://perma.cc/BTY7-J7HQ].

[212] *See* JONES, *supra* note 185, at 28–29.

in four of them, including twice during the first Trump Administration.[213] And in the ten Section 301 investigations since China jointed the WTO through FY 2024, the USTR has declined to take retaliatory action four times—thrice because the governments reached a satisfactory resolution and once because of the political situation in the country at issue.[214]

Even in non-AD/CVD cases where the administration decides to impose a remedy, the President has flexibility in determining the remedy's type and scope. For example, one lawyer who closely followed the Section 201 investigation of Chinese solar-cell imports described his disappointment with the final remedy, noting that "even when the [ITC] finds substantial injury it still goes to the USTR and the President can massage it and do whatever, and Trump massaged it in a way that screwed the domestic solar industry, in my opinion."[215] And in 2019, although Commerce determined that titanium sponge imports posed a national security threat under Section 232 and President Trump concurred in the finding, he instructed officials to negotiate with Japan rather than to restrict imports.[216]

The AD/CVD process is also more politically insulated because the agencies cannot consider whether duties are in the general or national economic interest.[217] Thus, although users or consumers of imports do testify

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[213] *See* RACHEL F. FEFER, CONG. RSCH. SERV., IF10667, SECTION 232 OF THE TRADE EXPANSION ACT OF 1962 (2022) https://crsreports.congress.gov/product/pdf/IF/IF10667 [https://perma.cc/2VAF-32XE]; Timothy J. Keeler, *Biden Administration Concludes Section 232 Investigation Into Imports of NDFEB Magnets but Does Not Impose Tariffs,* MAYER BROWN (Sept. 29, 2022), https://www.mayerbrown.com/es/insights/publications/2022/09/biden-administration-concludes-section-232-investigation-into-imports-of-ndfeb-magnets-but-does-not-impose-tariffs [https://perma.cc/ZQC3-YVMM].

[214] *See* SCHWARZENBERG, R46604, *supra* note 143, app. A; *Section 301 Investigations*, OFF. U.S. TRADE REP., https://ustr.gov/issue-areas/enforcement/section-301-investigations [https://perma.cc/26UE-V4FB]. Between the WTO's founding in 1995 and the end of 2020, of the 35 total Section 301 investigations, the USTR declined to take retaliatory actions 28 times. *See id*.

[215] LAW-2024-004. Another lawyer called the solar safeguard remedy a "complete disaster." LAW-2024-008.

[216] *See Memorandum on the Effect of Titanium Sponge Imports on the National Security*, TRUMP WHITE HOUSE (Feb. 27, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-effect-titanium-sponge-imports-national-security [https://perma.cc/MK7B-RTT7]. Similarly, in a Section 232 investigation into uranium imports, President Trump did not concur with Commerce's findings but nonetheless established a working group. *See Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group*, AM. PRESIDENCY PROJECT (July 12, 2019), https://www.presidency.ucsb.edu/documents/memorandum-the-effect-uranium-imports-the-national-security-and-establishment-the-united [https://perma.cc/K6XF-884X].

[217] *Compare* Tariff Act of 1930, § 701, 19 U.S.C. §§ 1671d, 1673d (2018) (containing no discussion of such interests in final determinations in AD/CVD investigations), *with id.* § 2253(a)(2) (explicitly instructing the President to consider, *inter alia*, "the economic interest of the United States" in Section 201 investigations *and id.* § 1862(c)–(d) (granting the President discretion to take actions he "deems necessary" and instructing the President to recognize "the close relation of the economic welfare of the Nation to our national security" in Section 232 investigations) *and id.* § 2411 (granting the administration the discretion to "take all . . . appropriate and feasible action" in Section 301 investigations).

at AD/CVD investigation hearings,[218] they are not interested parties and the agencies are not supposed to weight the effect of tariffs on such entities. Decisionmakers *are* allowed to account for such factors in non-AD/CVD investigations, however. As discussed, President Bush declined to impose duties on Chinese imports under Section 421 four times because of his administration's assessment of the national economic interest.[219] This consideration of broader interests, in combination with the discretion left to the President to impose a remedy, gives non-AD/CVD investigations an atmosphere of "lobbying."[220]

These persuasion campaigns are challenging and their outcomes harder to predict. As one lawyer involved in a Section 421 case put it,

> [W]e satisfied the [ITC] and the Commission recommended a remedy. And then the U.S. Trade Representative, as in normal safeguard cases, really has the final word on what they're going to recommend to the President. And, quite frankly, we were given the bum's rush by the USTR. The U.S. interest, I always call them complicit importers, who didn't want to see any remedy against the Chinese, set up meetings with USTR. We tried to do that but we were told it wasn't necessary. . . . [B]ut, once the importing community . . . scheduled meetings, I think the light went on in somebody's mind at the USTR. . . . You better give the U.S. industry a chance to participate. This is going to look terrible. Well, we got a chance to participate but we really got the bum's rush. . . . It was very antagonistic. And then they held what, what, farcically they called, a hearing, which was just absolute nonsense. And then they made a decision, "we're not going to do anything." . . . [T]he USTR was pretty much doing what the Bush administration was bidding.[221]

Similarly, a lawyer who has helped clients determine whether to file Section 201 cases shared that his "advice is do not look at a 201 for anything that has to do with the environment" because of the then-Biden Administration's emphasis on combatting climate change.[222] And another lawyer explained that he tends to be more cautious before filing Section 232 or Section 301 petitions because he does not want to "cram it down" politicians' throats.[223]

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[218] *See* Jeremey Caddel, *Domestic Competition over Trade Barriers in the US International Trade Commission*, 58 INT'L STUD. Q. 260, 266–67 (2014) (discussing the impact that domestic opposition to a petition has on ITC final-injury determinations).

[219] *See* JONES, *supra* note 185, at 28–29.

[220] *See* LAW-2024-010 ("In a 201, . . . if you get [the ITC] to make a recommendation, you have to go to the White House. And so do all the end users who buy your product, and now everyone's going to lobby."); LAW-2024-018 ("And you're really in the realm of almost pure policy. Argument, obviously. Economics. Persuasion and policy. . . . You're on the Hill more, . . . trying to find your allies . . . making sure that they're making their views known to the right agencies, and to the President.").

[221] LAW-2024-002.

[222] LAW-2024-004. *But see* Brainard, *supra* note 21 (discussing new tariffs imposed on products like solar cells and electric vehicles sunder Section 301).

[223] LAW-2024-007.

Thus, although we might predict that industry petitions for non-AD/CVD tools will increase over time given their flexibility and current salience,[224] interviewees largely insisted that use of these tools would primarily depend on the political interests of the President, dynamics that are beyond the control of the petitioning industry.[225]

This relates to a final aspect of political insulation, which is the process's level of bureaucratization or legalization. In addition to extensive rules of practice and relatively detailed statutory frameworks, the AD/CVD process has norms that have developed over hundreds of investigations over many decades. Lawyers and other consistent users of the AD/CVD laws know what makes a strong case, argue in terms of how the law applies to a set of facts, and feel that that application is relatively predictable. One lawyer who is now one of the leaders of a large industry association put it this way:

> [W]hat I view as one of the key things about the AD/CVD system in the U.S. is that it is not political. It's not. I mean, there, there are, people [who] try to make political pressure, but it is fundamentally a legal system. And it, there are lots of checks in there to ensure that it is done based on the administrative record, legal determinations. And so . . . the Secretary of Commerce . . . has only limited ability to influence what goes on. And that makes it, for a domestic industry, much more reliable in a sense . . . .[226]

Some interviewees also referenced the professionalism of the staff who work on AD/CVD cases at Commerce and the ITC.[227] This feeling among

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[224] *See* LAW-2024-004 ("Now there's other [non-AD/CVD] tools out there . . . . [I]f there's Trump two, I'm sure we'll see further stuff along those lines."); LAW-2024-008 ("Section 301 is [not] off the table . . . . [W]hen Trump came in, there was more of a willingness to consider 201s and the thought [was] that the risk of a negative remedy determination was lower with him in the White House."); RES-2024-003* ("[W]ith 232, the bar of what is the threat to national security has gotten a lot lower thanks to Trump."); LAW-2024-023* ("[Y]ou can be a lot more creative with 301 because the language is so sparse"). Indeed, prior to 1995, the filing of Section 301 petitions by domestic industries was a more frequent occurrence. *See* DAVIS, *supra* note 72, at 115–16 (noting the declining number of Section 301 cases filed by industries after 1995).

[225] *See infra* Section III.B.2. LAW-2024-022 was especially passionate about this point, suggesting that even if industries can petition for non-AD/CVD relief, the amount of presidential involvement in those tools effectively means that "the President has . . . this toolbox, but nobody else does." When describing Section 201, for instance, LAW-2024-022 stated, "I would almost never advise a client to use 201 because . . . you are utterly dependent on the White House."

[226] INDUS-2024-002.

[227] *See* LAW-2024-003 (agreeing that staff at Commerce and the ITC are "very on top of it"); LAW-2024-002 (concurring with LAW-2024-003 in the same conversation); AGEN-2024-001 ("[T]he staff and the commissioners were . . . people who seemed to have a lot of knowledge and experience . . . . I really was impressed . . . ."); LAW-2024-004 ("[L]isten, these guys are professionals. And I have utmost respect, not for everybody at Department of Commerce, but 99% of people . . . . [T]hese Commissioners, they're professional. The Commission staff, these are smart people, smarter than me, and they're professional staff. And . . . they want to make decisions based on facts."); LAW-2024-010 ("[T]here's a group of people in Commerce who've been there a long time . . . . So what happened when the Trump Administration left? The people inside the building who were sort of the keepers of the flame tried to right the ship."). At least one respondent's lawyer was disappointed by the quality of

practitioners continued even during the first Trump Administration. According to two practitioners I spoke with simultaneously:

> LAW-2024-002: Although in the early days of the Trump administration, we saw quite frankly, blatant and I'd consider illegal efforts on the part of certain White House personalities, including one who's about to go to jail, Peter Navarro, to try to influence decisions by the Commerce Department on dumping, countervailing cases. Navarro's problem was, (a) he didn't understand the laws and the procedures, (b) he had no fidelity to the laws or procedures, and (c) he actually thought that Wilbur Ross was the one who made the dumping decisions.
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> LAW-2024-003: Well, and (d) the working level people at Commerce follow their procedures, which is whenever they're contacted by an outside party, they put something on, they do a memo, they put it on the record.[228]

Indeed, Commerce's Office of Enforcement and Compliance—the division tasked with administering the AD/CVD laws and ensuring compliance with trade agreements negotiated on behalf of U.S. industries—has hundreds of employees, many of whom are career bureaucrats who serve as analysts, economists, or accountants. According to one such civil servant who served for over seventeen years across five presidential administrations, because the majority of cases "have already kind of been laid out with some form of precedent," there is "very little . . . impact from political appointees" in "day-to-day decisionmaking."[229] And even the first Trump Administration, which tried to prioritize the self-initiation of AD/CVD cases and hoped that this could serve as a "useful political policy tool," was quickly stymied by the realities of the "Tariff Act, . . . regulations, . . . judicial review, . . . precedent," and "the information that you need to bring a case."[230]

Part of this perhaps also relates to the institutional design of the relevant administrative agencies. One former ITC Commissioner, for instance, appreciated that his agency has an even number of decisionmakers, that the six seats are divided equally among the two parties, and that there are staggered nine-year terms, which he called "a structure that coerced collaboration" and results in an agency with a "strong immune system" against political capture.[231] At Commerce, interviewees with experience working on AD/CVD investigations emphasized the staff's role in making

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the staff at Commerce, however, criticizing the "younger analysts" for asking "a bunch of irrelevant questions." LAW-2024-012.

[228] LAW-2024-002; LAW-2024-003.

[229] AGEN-2024-003.

[230] AGEN-2024-003; *see also* AGEN-2024-005* (acknowledging that, from an administration's perspective, AD/CVD investigations are difficult, expensive, and time-consuming) (follow-up discussion with AGEN-2024-003).

[231] AGEN-2024-001.

determinations, noting how individual AD/CVD cases rarely rise to the Under-Secretary's attention, let alone the Secretary herself.[232] And although the Assistant Secretary for Enforcement and Compliance is a political appointee who does sign off on AD/CVD outcomes, he must manage the sometimes competing interests of "four internal stakeholder groups": operations, those who gather the information and generate decisions; legal, those who handle any appeals; policy, those who care about advancing the administration's trade-enforcement agenda; and accounting, those who analyze business structures and cost-accounting systems.[233] Should a party disagree with an agency's determination, they can also appeal to two specialized federal courts, the Court of International Trade and then the Court of Appeals for the Federal Circuit, which review whether affirmative agency determinations are consistent with law or supported by substantial evidence, or whether negative determinations are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.[234]

Non-AD/CVD cases, on the other hand, have less of these bureaucratized or legal characteristics. Part of this relates to the fact that there have been much fewer investigations under other trade laws, leading to less institutional knowledge, experience, and administrative precedent. Moreover, because those laws leave the President and his administration with extensive discretion or involve national security considerations, many of those determinations are unreviewable unless litigants make the challenging claim that a statute is unconstitutional or misconstrued, the President has exceeded his (vague but nonetheless intelligible) statutory authority, or the administration engaged in significant procedural violations.[235]

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[232] *See* LAW-2024-005 ("I've not been involved in a case where I was personally aware that the Secretary him or herself said, okay, yeah this should be the dumping margin [laugh]."); LAW-2024-006 ("[D]uring my time at the Commerce Department, it was exceedingly rare for the Secretary [of Commerce] to have any kind of decisional role in an AD/CVD case."); AGEN-2024-003 ("So the day-to-day decisionmaking, there is very little, I think, influence or impact from political appointees."); AGEN-2024-004 (noting how the Secretary or Under-Secretary at Commerce is unlikely to affect specific cases given the limited discretion available under the law); LAW-2024-025 (describing the need to balance among different stakeholders within Commerce even though the Assistant Secretary is the formal "decisionmaker in every [AD/CVD] case").

[233] *See* LAW-2024-025 (identifying the four internal stakeholder groups).

[234] 19 U.S.C. § 1516a (2018).

[235] *See Maple Leaf Fish Co. v. United States*, 762 F.2d 86, 89 (Fed. Cir. 1985) ("In international trade controversies of this highly discretionary kind . . . this court and its predecessors have often reiterated the very limited role of reviewing courts. . . . [T]here has to be a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority."); Claussen, *Security Exceptionalism*, *supra* note 22, at 1129 ("[A] President could use a statute like section 301 opportunistically or imprudently . . . . [A]lthough section 232 requires an investigation . . . the President can disregard the recommendation of the agency and impose tariffs anyway. Further, in this configuration, the President's decision is subject to very limited judicial review."); Kevin. M. Stack, *The Reviewability of the President's Statutory Powers*, 62 VAND. L. REV. 1171, 1197–98 (2009) (noting that in *Motion Systems Corp. v. Bush*, 437 F.3d 1356 (Fed. Cir. 2006), "the Federal Circuit . . . preclude[d] judicial inquiry into the President's [Section 421] action"); Claussen & Meyer, *supra* note

Of course, this is not to say that the AD/CVD decisionmaking process is fully insulated. As previously alluded to, Peter Navarro once infamously sent a memo to the Secretary of Commerce urging him to adjust duties upwards during an administrative review of an AD/CVD order.[236] Attempted interference is not usually so explicit, but interviews reflect that it would be naïve to think that elected officials have no effects on Commerce, an executive agency with many political appointees.[237] Even the ostensibly independent ITC consists of commissioners who are nominated by the President and confirmed by the Senate, and many have previously worked as congressional staffers.[238] Moreover, although the law on the books does not specify consideration of the effects of duties on downstream users or

22, at 1958 (describing federal-court acquiescence to arguments that the President has independent constitutional authority over national security and foreign affairs that bear on the regulation of foreign commerce, such that the "President (almost) always wins"); Kurland, *supra* note 113, at 638 (noting in the context of Section 201 investigations that "[s]ubstantive aspects of the ITC's and the President's actions are essentially unreviewable").

[236] *See* Megan Cassella, *White House Preps Formal NAFTA Notice*, POLITICO (Mar. 23, 2017), https://www.politico.com/tipsheets/morning-trade/2017/03/white-house-preps-formal-nafta-notice-219389 [https://perma.cc/QQ54-4Q6N].

[237] *See* LAW-2024-004 ("[T]here are a few cases where maybe politics come into play a little bit like where the Secretary of Commerce knows what the President's thought[] process [is]."); LAW-2024-010 ("But the political influence was there because the Secretary of Commerce was Wilbur Ross. He owned a steel company. His clients used the dumping law and the countervailing duty law."); LAW-2024-012 ("I think Commerce is a much more political agency than the ITC."); LAW-2024-016 ("Well, the ITC I would say is less politically sensitive than the Commerce Department."); LAW-2024-018 ("I've never served at either [Comemrce or the ITC], but I certainly have heard some stories, particularly coming out of the last administration where there were some fairly political decisions made on margins. Very. And you don't hear that coming out of the ITC."); INDUS-2024-004 ("Do I think politics influences the Commerce Department a little bit more? Maybe? Maybe, maybe. But I think it is a very fact driven process . . . ."); LAW-2024-024 ("[T]he Commerce Department, when Trump was in office, [was] much more enforcement minded. . . . [T]hat's backed off a bit with Biden at the helm. . . .").

[238] *See, e.g.*, LAW-2024-008 (noting there are fewer negative ITC injury determinations than before but mentioning that there might be "a small potential" for a negative vote from a Commissioner who is "more traditional Republican coming from Senate Finance pre-Trump"); LAW-2024-009 ("The people I know who have served on that Commission are outstanding . . . . [S]ome of them have come from the trade policy area, some of them come from the Hill. Some have come from legal practice. A couple have come out of just, you know, politics."); INDUS-2024-002 ("[A] very high percentage of ITC commissioners are former congressional staffers."); LAW-2024-010 (describing how "back in the day what always happened is the Chairman of Ways and Means, the Committee of Jurisdiction, and the Chairman of Finance, and the ranking minority member of Ways and Means and the ranking minority of Finance all took turns" recommending ITC Commissioners); CONSULT-2024-001 ("I don't think the process is totally insulated in the sense that every one of the Commissioners had to go through congressional confirmation and approval."); AGEN-2024-002 (sharing that while working at Commerce he "was also campaigning to get onto the ITC as a Commissioner" with the relevant senators); LAW-2024-012 ("[I]t's not that [ITC Commissioners are] naïve to politics. They wouldn't have been appointed but they don't, you know, day-to-day it's not going to affect them."); LAW-2024-016 ("[T]he Commissioners tend to [come from] staff of the Senate Finance Committee and the House Ways and Means Committee. So they have, they come in with a certain, you know, point of view. But it's certainly not party driven."); LAW-2024-024 (noting how one of the ITC Commissioners appointed to a Republican seat is "maybe a little more free trade given his background on the Hill").

consumers, that does not mean that their testimony has no effect on decisionmakers.[239] As one petitioner-side lawyer put it, an appearance by consumers at an ITC hearing "kind of gives me indigestion" and during their testimony, he has the urge to call out "Stop! Don't listen to this!"[240] All that said, in comparison to non-AD/CVD tools, where politics are front and center in the decisionmaking process, AD/CVD cases bear much less resemblance to "naked politics."[241]

2. Predictable Durability

Interviewees also preferred AD/CVD to other trade remedies because of their expected durability. Although AD/CVD orders are subject to annual administrative reviews and sunset reviews every five years, orders tend to stay on the books much longer. Indeed, many foreign respondents do not even appear at review hearings to contest the continuation or reinstatement of AD/CVD orders.[242] Petitioners' lawyers thus feel comfortable telling clients that they should expect to have an AD/CVD order in place for at least ten years, and that many have been in place for decades.[243] As one lawyer cheekily put it, "If I get you a dumping case, we can have orders until our grandkids are gone!"[244] Quantitative data also supports this informed intuition. According to data compiled by the Department of Commerce, there were 783 AD/CVD orders in place as of October 31, 2025; 149 were more than twenty years old and 282 over a decade old.[245]

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[239] *See* Caddel, *supra* note 218, at 266–67 (finding that the likelihood of an affirmative ITC injury determination decreases when doemstic firms testify in opposition to a petition).

[240] LAW-2024-006.

[241] LAW-2024-010.

[242] *See, e.g.*, LAW-2024-002 ("Many sunset reviews are just not contested [by foreign producers]."); LAW-2024-004 ("[F]oreign respondents do not deal with, they don't address, they don't go to sunset reviews."); LAW-2024-008 ("It's rare to see a sunset [review] contested and it's rare to see an order revoked unless . . . the foreign industry really disappeared."); LAW-2024-017* (describing an AD/CVD order that has been in place for thirty years and was contested by the foreign producer only once); INDUS-2024-005 (expressing surprise that foreign respondents "barely participated" in a sunset review).

[243] *See* LAW-2024-002 ("[W]e've got orders in place that we filed from the 1970s."); LAW-2024-003 (affirming that the first sunset review is almost always a continuation unless "something changed dramatically in the five years, which doesn't normally happen"); LAW-2024-004 (explaining that AD/CVD orders "can last for decades"); LAW-2024-009 ("[W]e've got orders at 20, 25 years old . . . ."); LAW-2024-010 (noting that AD/CVD orders "don't just last five years."); LAW-2024-011 ("[Y]ears ago, used to just tell clients it's about a 25% chance you can get orders revoked under sunset reviews. I bet it's lower than that now."); RES-2024-003* ("I think some duty orders have been in effect for fifty years."); LAW-2024-017* (explaining that his default is to recommend an AD/CVD case in part because any resulting order would last "for at least fifteen years, if not longer"); LAW-2024-020 ("AD and CVD cases are forever. They never go away. . . . I have cases from 1982."); *see also* AGEN-2024-003 (noting durability of AD/CVD orders); LAW-2024-012 (respondent's lawyer noting expected durability); CONSULT-2024-001 (discussing relative durability of AD/CVD remedy).

[244] LAW-2024-004.

[245] *AD/CVD Proceedings: Orders/Suspension Agreements*, INT'L TRADE ADMIN.,

Contrast this with Section 201 safeguards, which usually expire in four years and must expire within eight.[246] AD/CVDs also differ from Section 232 national security and Section 301 retaliatory trade actions, whose durations depend more heavily on the interests of the President. Practitioners thus emphasized how such remedies can "disappear with the stroke of [the executive's] pen."[247] For example, over the course of the first Trump and Biden administrations, both replaced Section 232 tariffs on steel and aluminum from various countries with tariff-rate quotas after the negotiation of bilateral agreements.[248] President Trump's on-again, off-again and ultimately legally invalid IEEPA tariffs also reflect this high potential for volatility.[249]

Of course, the executive can also giveth. In April 2024, for instance, President Biden instructed the USTR to triple the rate of Section 301 tariffs applied to Chinese steel and aluminum products.[250] And in May 2024, he instructed his trade representative to increase tariffs on other Chinese imports, including semiconductors, electric vehicles, batteries, and critical

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https://www.trade.gov/data-visualization/AD/CVD-proceedings [https://perma.cc/2VTA-WYKU] (last visited Jan. 4, 2026).

[246] 19 U.S.C. § 2253(e)(1) (2018).

[247] LAW-2024-006; *see also* LAW-2024-008 (discussing historical aversion to pursuing Section 201 investigations in part because "at any time the administration could change its mind and say, no, we're going to get rid of this"); INDUS-2024-002 (noting that "what you don't have [with AD/CVDs] is the discretionary changes that can happen overnight, which happens with things like 201 and certainly happens with 232"); LAW-2024-010 (discussing negotiation of agreements that reduced impact of Section 232 tariffs on steel and aluminum); LAW-2024-011 (discussing time-limited nature of Section 201 remedies and how Section 232 or Section 301 remedies can theoretically "be removed at any time"); LAW-2024-022 (noting that the Biden Administration "weakened the 232s" through negotiations and shift from tariffs to tariff-rate quotas); LAW-2024-023* ("301 and 232 are kind of our last options that we would look at because there's so much discretion involved and such uncertainty about what, if any, remedies could be imposed and how long they would last."); LAW-2024-024 (noting that Section 201 remedies "do not last that long," and that because Section 232 and Section 301 remedies are "very political," they "can change depending on the administration").

[248] *See* Ana Swanson & Katie Rogers, *U.S. Agrees to Roll Back European Steel and Aluminum Tariffs*, N.Y. TIMES (Nov. 3, 2021), https://www.nytimes.com/2021/10/30/business/economy/biden-steel-tariffs-europe.html [https://perma.cc/4MN3-2B2S] (announcing deal to change tariffs on European steel and aluminum to a tariff-rate quota during the first Trump administration); Jorge Valero & Joe Deaux, *EU and US Pause Steel Tariff War Until After Elections*, BLOOMBERG (Dec. 18, 2023), https://www.bloomberg.com/news/articles/2023-12-19/eu-and-us-pause-steel-tariff-war-until-after-elections [https://perma.cc/9P49-WPRM] (extending E.U./U.S. truce); David Lawder, *U.S., Japan Reach Deal to Cut Tariffs on Japanese Steel, Fight Excess Output*, REUTERS (Feb. 7, 2022, 10:01 PM EST), https://www.reuters.com/world/asia-pacific/japan-us-announce-deal-restrict-trump-era-steel-tariffs-bloomberg-2022-02-07 [https://perma.cc/RP6A-L8UW] (removing Trump-era tariffs on Japanese steel).

[249] *See* Minsberg, *supra* note 6 (collating a timeline of the tariffs imposed and suspended during the first months of the second Trump administration); Marimow, *supra* note 37 (discussing the invalidation of Trump's IEEPA tariffs by the Supreme Court).

[250] *FACT SHEET: Biden-Harris Administration Announces New Actions to Protect U.S. Steel and Shipbuilding Industry from China's Unfair Practices*, BIDEN WHITE HOUSE (Apr. 17, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/04/17/fact-sheet-biden-harris-administration-announces-new-actions-to-protect [https://perma.cc/ZT66-QHR5].

minerals.[251] Similarly, in the opening months of President Trump's second term, he directed the USTR to initiate a Section 301 investigation against Brazil.[252] The point, however, is that the durability of non-AD/CVD remedies depends on the interests of any given administration, which makes their longevity harder to predict for the industries supposedly being served by those remedies, as well as for the lawyers whose practices benefit from consistent expectations about their work volume. An industry association leader and former trade-remedies lawyer put it this way:

> [W]hat you don't have [with AD/CVDs] is the discretionary changes that can happen overnight, which happens with things like 201 and certainly happens with 232. . . . [W]e're going to of course try to take advantage of it, but you just can't rely on it. Frankly, I'm surprised that 232 has lasted as long as it has. The reality is, we've maintained the appearance that the 232 [on steel and aluminum imports] is still there, but the amount of imports that is really subject to 232 duties has dramatically been reduced over years. But it's done in a way that it's not all that publicly obvious.[253]

3. Underscoring the Value of Political Insulation and Predictable Durability

The perceived value of apolitical process and predictable durability is perhaps further reflected in (1) petitioners' willingness to accept the downsides of pursuing an AD/CVD case and (2) my interviewees' relative lack of emphasis on the relevant legal elements and standards. First, interviewees were soberminded about the drawbacks of the AD/CVD process compared to other remedies, focusing on the relatively limited scope of AD/CVD orders and the money and time required to effectively see an investigation across the finish line. As to scope, AD/CVD orders are imposed on specifically defined products from specific countries. Part of the art of bringing a successful case involves describing the domestic like product in a way that is broad enough to cover a wide range of imports but narrow enough that injury to the domestic industry can still be established.[254] This specificity can contribute to the "whack-a-mole" problem, whereby the offending import moves from country to country over time.[255] These shifts in production might

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[251] *See* Jim Tankersley & Alan Rappeport, *Biden Hits Chinese Electric Vehicles, Chips and Other Goods With Higher Tariffs*, N.Y. TIMES (May 14, 2024), https://www.nytimes.com/2024/05/14/us/politics/biden-china-tariffs.html [https://perma.cc/8MCX-MNMH].

[252] Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation; Hearing; and Request for Public Comments, 90 Fed. Reg. 34069 (July 18, 2025).

[253] INDUS-2024-002.

[254] LAW-2024-002; LAW-2024-008; LAW-2024-009.

[255] ALAN O. SYKES, THE LAW AND ECONOMICS OF INTERNATIONAL TRADE AGREEMENTS 346–47

then necessitate the filing of a circumvention case, which is less insulated from politics,[256] or another AD/CVD petition.

Non-AD/CVD tools can be directed at one country or product, but they often are aimed more broadly. Section 201 safeguards, by definition, are global safeguards that apply to imports from any country. And as illustrated by the Section 232 tariffs on steel and aluminum or the Section 301 actions against China, those tools can affect many countries and many products. For example, the 2017 Section 301 investigation against Chinese technology transfer, IP, and innovation practices resulted in tariffs on products ranging from televisions to medical devices to aircraft batteries.[257] And as discussed, the value of imports affected by these tools is often much larger than that affected by AD/CVD orders.[258] As such, interviewees sometimes called these remedies "big sledgehammers" that might be more effective at addressing structural trade challenges.[259]

(2023); *see also id.* at 447 (critiquing idea that existing national laws can address "unfairness" in China's exports because of the whack-a-mole problem); LAW-2024-004 (noting a lawyer may file a case against a manufacturer in one country only for the products to appear in another country six months later, which then requires another case costing "another million dollars"); LAW-2024-006 (describing a trend toward multi-country cases to avoid playing "whack a mole"); LAW-2024-023* (identifying the whack-a-mole problem and recommending "tightening the timelines" and "making it easier" to bring successive cases). For discussions of the challenges posed by circumvention of AD/CVD orders, see LAW-2024-005 (describing increase in circumvention challenges in the last five-plus years and how such cases are more vulnerable to political pressures than AD/CVDs); LAW-2024-008 (noting the amount of additional work required to identify and respond to a circumvention problem); LAW-2024-009 (describing the difficulties of defining and determining whether an import circumvented an AD/CVD order); LAW-2024-010 (same); CONSULT-2024-001 (discussing how China started to export hot-rolled steel coils to Korea to avoid AD/CVD duties); LAW-2024-012 (describing ambiguity in law meant to address circumvention problems); LAW-2024-025 (calling law around circumvention "a newer area" and "a tool of limited utility in part because there are no statutory deadlines for circumvention cases" and because the President has more influence over any potential remedy).

[256] For example, President Biden declared a moratorium on solar panel tariffs that were supposed to go into place following an affirmative circumvention decision. *See* Jeff Mason, *Exclusive: Biden to Waive Tariffs for 24 Months on Solar Panels Hit by Probe*, REUTERS (June 5, 2022, 11:55 EDT), https://www.reuters.com/world/us/exclusive-biden-use-executive-action-spark-stalled-solar-projects-amid-tariff-2022-06-06 [https://perma.cc/H2LM-JGH3]. That decision was challenged by domestic solar-panel producers in the courts, see Jennifer A. Dlouhy & Brian Eckhouse, *Biden Solar-Tariff Exemption Challenged by US Panel Makers*, BLOOMBERG (Jan. 4, 2024), https://www.bloomberg.com/news/articles/2024-01-04/biden-solar-tariff-holiday-challenged-adding-new-industry-risk [https://perma.cc/73NP-J4PZ], but is likely now moot as the moratorium expired in June 2024, see Swanson & Rappeport, *supra* note 33.

[257] *See, e.g.*, Ana Swanson, *White House Unveils Tariffs on 1,300 Chinese Products*, N.Y. TIMES (Apr. 3, 2018), https://www.nytimes.com/2018/04/03/us/politics/white-house-chinese-imports-tariffs.html [https://perma.cc/AW98-MF25].

[258] *See supra* text accompanying notes 170–174.

[259] LAW-2024-005; *see also* LAW-2024-004 (contrasting the "hammer" of the first Trump Administration with the hoped for "scalpel tool" of the Biden Administration); LAW-2024-008 (citing "global relief" provided by Section 201 remedy as one of its benefits relative to AD/CVDs); CONSULT-2024-002 (noting Trump's desire to "shake up the system" with trade actions during his first term, his "running roughshod" over that system, and potential to use IEEPA, "a Swiss army knife that you can do anything you want with," during a then-hypothetical second term); AGEN-2024-003 (suggesting that a Section 301 investigation into Chinese overcapacity would better "deal with the

Moreover, filing even one AD/CVD case is a very expensive undertaking. According to interviewees, the cost to a petitioner of an AD/CVD investigation ranges from $1 to $3 million,[260] costs that are driven upward by the number of countries involved, the complexity of the relevant product, and whether a petitioner alleges both dumping and illegal subsidization.[261] In recent years, petitions seem to be growing in size, targeting more countries and more practices.[262] As one extreme example, a July 2023 AD/CVD petition against mattress imports alleged unfair trade practices by twelve different countries.[263] Many of the same petitioners were also involved in a separate March 2020 AD/CVD petition involving mattress imports from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam.[264] Thus, one longstanding puzzle has been how to increase the use of the AD/CVD laws by small- or medium-sized enterprises, which is made even more difficult by the amount of time lawyers must spend teaching new

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overall system and the problem" than "very narrow channels" like AD/CVDs); LAW-2024-013 (analogizing Section 301 and Section 232 to the big, infrequently used, rusty, and blunt tools inside a plumber's toolbox); LAW-2024-023* (agreeing that Section 301 might better address the more structural challenges posed by Chinese manufacturing); INDUS-2024-006 (describing China-specific safeguards as seemingly ineffective at addressing the structural challenges posed by China and that Section 301 tariffs at least brought China to the negotiating table).

[260] *See, e.g.*, RES-2023-001 (remarking that a company might be "bankrupt" by the time an AD/CVD investigation is completed); LAW-2024-001 (noting that AD/CVD cases can cost "several million" dollars); LAW-2024-005 ("[O]ver time you've got millions of dollars of legal fees involved."); INDUS-2024-004 (same); CONG-2024-001 ("[O]ne thing I've heard from industries . . . [is it is] like a million dollars at least to bring a case."); LAW-2024-006 ("[L]et's say you've got a very plain vanilla single country case, you know, AD/CVD case against imports from China. I would guess that most firms around town would probably price that in the $2 million ballpark."); LAW-2024-008 ("I would say, one to two to three million."); LAW-2024-010 (describing costs between $1.2 and $3 million); CONSULT-2024-001 ("[T]he average AD/CVD probably is . . . $2 to $3 million"); LAW-2024-016 (explaining that "you could be looking at [a] $2 million endeavor" for a case against "four major countries"); LAW-2024-024 (confirming a cost ranging from $2 to $3 million dollars that varies by number of countries and complexity).

[261] *See, e.g.*, LAW-2024-002 (citing the nature of the product, domestic industry size, and the number of foreign targets); LAW-2024-009 (same); LAW-2024-004 (citing product complexity and number of countries involved); LAW-2024-008 ("[I]t depends on how complex it is, how many countries are involved, how many AV, CVD, et cetera."); LAW-2024-010 (citing countries involved and case type); LAW-2024-016 (citing number of countries involved); LAW-2024-024 (confirming that costs vary with number of countries targeted and product complexity).

[262] LAW-2024-006 (ascribing the "increasing number of large, larger cases" to the desire to "avoid the need to have to come back and . . . bring follow on cases"); LAW-2024-007 (discussing how clients now target "everyone at one time" instead of filing against only one country).

[263] *Commerce Initiates Antidumping Duty Investigations of Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan and Countervailing Duty Investigation of Mattresses from Indonesia*, INT'L TRADE ADMIN., https://www.trade.gov/initiation-ad-and-cvd-investigations-mattresses-multiple-countries [https://perma.cc/3EAA-U2SL] (last visited Jan 4, 2026).

[264] Press Release, Int'l Trade Admin., U.S. Department of Commerce Initiates Antidumping Duty and Countervailing Duty Investigations of Imports of Mattresses from Multiple Countries, (Apr. 21, 2020), https://www.trade.gov/press-release/us-department-commerce-initiates-antidumping-duty-and-countervailing-duty-4 [https://perma.cc/D4XJ-G8KE] (last visited Jan 4, 2026).

users about the nuts and bolts of the AD/CVD process.[265] Although the costs associated with non-AD/CVD remedies are more variable and interviewees were reluctant or unable to specify an estimated amount, they seem to usually cost less than an AD/CVD investigation.[266] On net, however, interviewees emphasized time and again their preference for AD/CVD over other trade remedies, a preference that helps to explain their consistent use. This finding highlights the continuing relevance of this tool and the private actors who wield it, as well as the value domestic industries place on political insulation, predictability, and durability.[267]

Throughout our conversations, interviewees tended to emphasize these benefits rather than legal standards that might also favor the choice of AD/CVDs. This is not to suggest that interviewees, especially lawyers, never discussed those standards or find them irrelevant. Indeed, a handful described the lower threshold to prove injury in an AD/CVD investigation relative to a safeguards investigation.[268] Others mentioned the lack of a national or

[265] RES-2023-001 (discussing the difficulties small businesses face in mobilizing a fact-driven and perhaps difficult to prove AD/CVD remedy); LAW-2024-001 (discussing the importance for petitioners to hire a good, experienced lawyer); LAW-2024-002 (describing relationship with clients as "more than holding hands"); LAW-2024-003 (noting that clients without experience bringing AD/CVD cases "typically . . . don't understand" how the process works); LAW-2024-004 (responding that clients are not usually well-versed in AD/CVD law and agreeing that lawyers do a lot of hand holding); LAW-2024-005 ("[F]or clients that have never been through an antidumping countervail case before, even sophisticated clients that I've worked with, they are shocked by how much they didn't know about the process."); CONG-2024-001 ("You're more likely to be driven out of business than to be able to bring a successful AD/CVD case if you're a very small company."); LAW-2024-006 (describing how "with new clients, it's not at all uncommon to have to explain to them multiple times" the details of the process); LAW-2024-008 ("Most clients have no idea."); LAW-2024-009 ("It is complicated. And you do have to take them through this process a little bit and educate them how it works."); AGEN-2024-003 ("[W]hy aren't there more kind of random cases? It's because they just don't know about it. And when they do, . . . they realize how hard of a learning curve and financial curve there is."); INDUS-2024-002 (describing investment required of petitioners to bring an AD/CVD case as "a barrier to especially smaller industries"); LAW-2024-010 (describing how lawyers prepare witnesses, write testimony, write petitions, and conduct mock hearings); CONSULT-2024-001 ("[M]ost small business people have no idea what the trade laws are. . . . And small business don't want to pay the money for a trade case."); INDUS-2024-004 (noting that AD/CVD investigations are "very resource-consuming" and "expensive in terms of legal fees" and lawyers "don't want to bring cases that they think will lose"); RES-2024-003* (explaining that a longstanding problem with AD/CVDs are that "they take too long and they're too expensive for small guys"); LAW-2024-016 ("[O]ne of my primary jobs is teacher."); LAW-2024-017* (noting difficulties for a small business with $3 to $5 million in annual revenue to bring an AD/CVD investigation without being part of a coalition); LAW-2024-019 (agreeing that the lawyer plays a big role in instructing clients about what is possible).

[266] LAW-2024-008 (noting that safeguards investigations are usually cheaper than AD/CVD because they only need to prove injury). According to a confidential document shared by one trade-remedy lawyer following our interview, LAW-2024-013, AD/CVD investigations' "Relative Cost" was marked "Highest," safeguards were marked "Medium," and Section 301 was marked "variable" (confidential document on file with author).

[267] *See supra* Section III.B.

[268] LAW-2024-009; AGEN-2024-002; LAW-2024-016; LAW-2024-022.

community interest test in determining whether to impose AD/CVD duties.[269] And still others noted that AD/CVD law seems generally tilted in favor of petitioners.[270] Even then, however, discussions of legal standards would often be connected to or quickly pivot to lengthier discussions of politics and durability.[271] Part IV turns more squarely to the lessons and implications of my empirical findings.

IV. LESSONS AND IMPLICATIONS

A. *Trade Law in the United States and Elsewhere*

In thinking about who makes trade law and policy in the United States, legal scholarship has emphasized the shift in power from Congress to the President, whereas social scientists have usually started with interest groups and private entities.[272] Although this interest in the agents of trade law is important, we should also focus on the law and legal processes that shape the choices of these relevant agents. By viewing the law as a set of tools to be mobilized, observers can better understand how the strategies and agents involved in making trade law change over time.

The domestic law of trade remedies illustrates the value of nuance in

[269] LAW-2024-001 (noting that while Section 201 involves "a national economic interest determination," "there's no such thing in dumping"); LAW-2024-004 ("[A]lmost all other countries have this thing called community interest . . . ."); LAW-2024-009 (noting the desire by the respondents' bar to have a public interest test in the AD/CVD statute); LAW-2024-010 (discussing the lack of a "public interest" test in U.S. AD/CVD investigations); INDUS-2024-004 (agreeing that the national interest test in Section 201 cases is part of what makes them more political than AD/CVDs); LAW-2024-011(describing how other countries have a community interest test in AD/CVD investigations).

[270] AGEN-2024-001 (describing the AD/CVD statute as a "deliberately set low bar"); CONG-2024-002 (recognizing that petitioners often win their AD/CVD cases and conceding that the law is somewhat tilted in their favor); LAW-2024-016 (describing AD/CVD law as "very pro domestic and it's pretty easy to prove injury"); LAW-2024-018 (agreeing with my characterization of AD/CVDs as perhaps being slanted towards petitioners).

[271] *See* LAW-2024-001 (linking the national economic interest test to the more discretionary nature of Section 201); LAW-2024-004 (suggesting that community interest tests enable politicians to "manipulate the tariffs"); LAW-2024-009 (mentioning the lower injury threshold alongside the lack of presidential involvement and following a lengthy discussion about how the AD/CVD tool is less political); INDUS-2024-004 (noting the higher legal standard in safeguards investigations immediately after describing them as "much more political" and describing the national interest test in those cases as "rather convoluted" and having a "political element"); AGEN-2024-002 (mentioning the legal standards alongside congressional testimony at AD/CVD hearings and the lack of effort by foreign respondents in contesting an AD/CVD petition); LAW-2024-016 (mentioning the injury standard alongside political decisionmaking and durability before a lengthier discussion of the latter two); LAW-2024-018 (responding to my mentioning of the seeming slant of AD/CVD law towards petitioners and the lack of national interest test with comments about how non-AD/CVD tools are "the realm of almost pure policy"); LAW-2024-022 (noting the higher injury standard in safeguards investigations before a more comprehensive discussion of the politics and presidential involvement in that and other non-AD/CVD remedies).

[272] *See supra* Part I.

answering that question. With some trade remedies, like Section 232 national security actions or Section 301 retaliatory trade actions, Congress has delegated extensive authority to the President and top administration officials. However, with others, like AD/CVDs, Congress has set up a private cause-of-action-esque system that is driven primarily by private actors and administered by agencies with relative distance from the White House.

Critically, the actors who mobilize these laws appreciate these differences.[273] Although the private parties who demand and benefit from trade remedies can acknowledge the strengths of executive-driven tools and some have begun to creatively wield them, on the whole, they continue to prefer AD/CVDs for the relative insulation from the President, resulting durability, and ability to control the process from beginning to end.[274] From the perspective of administration officials, however, they might predictably prefer tools that grant the executive more discretion and flexibility.

How the relative use of such tools changes over time in response to calls for decoupling and the increasing politicization of trade is worthy of continued attention. Indeed, a turn away from AD/CVDs in favor of less legalized tools would perhaps portend a more dramatic and permanent paradigm shift. But for now, and likely moving forward, many practitioners continue to recommend that clients pursue the AD/CVD route whenever possible, relevant industries willingly listen to their attorneys, and AD/CVD filings remain high.[275] This preference for an administrative scheme that is stable and more immune to changes across presidential administration is especially understandable given the instability of presidential politics today. If the goal then is to constrain presidential power or achieve more consistent enforcement, Congress should consider not only reclaiming delegated authority from the President but also making other tools more similar to the AD/CVD remedy by decreasing presidential discretion in the decisionmaking process, or by giving agencies with more distance from the President, like the ITC, a greater role in the processes.

My findings also illustrate the benefits of taking a bottom-up view of trade law. More generally, that approach appreciates that "the important choice of who (that is, which institution) ultimately decides" depends on "the mix of participants who engage in these institutions."[276] Within political-science and administrative-law scholarship, this emphasis on studying who participates and why is not new.[277] It is an approach that should also be

[273] *See supra* Section III.B.
[274] *See supra* Section III.B.
[275] *See supra* Part III.
[276] Komesar & Wanger, *supra* note 30, at 897.
[277] *See, e.g.*, James Q. Wilson, *The Politics of Regulation*, *in* THE POLITICS OF REGULATION 357, 367 (James Q. Wilson, ed., 1980); William T. Gormley, Jr., *Regulatory Issue Networks in a Federal System*, 18 POLITY 595, 607 (1986); Cary Coglianese, *Citizen Participation in Rulemaking: Past,*

familiar to sociolegal scholars. Recognizing that law is "deeply embedded in society rather than . . . autonomous in relation to the citizens and organizations it is designed to regulate," sociolegal scholarship views law as "a set of tools, practices, resources, or strategies" that are mobilized by relevant actors.[278] Like in studies of bargaining, relevant actors here make decisions in the "shadow" of trade-remedies law, decisions that are informed not only by formal rules but also by delay, cost, uncertainty, and the like.[279]

It is thus important to understand the relevant laws in order to identify the actors involved and to outline their decisionmaking process. Applied here, this enables recognition of a trade-remedies toolkit and a comparison of the tools' respective strengths and weaknesses from the perspective of those who use them. Trade law (and in this case, tariffs) is not simply the product of formal statutes and regulations but is produced by those who use it, an insight that should travel to other areas of trade law as well.

Who makes trade law is of course about more than identifying the relevant constellation of players and understanding their decisionmaking. Indeed, this Article tees up questions about whether such participation is concentrated among certain interests and whether such interests end up "capturing" the administrative process,[280] a topic I am more fully exploring in ongoing related research. Recognizing that private actors not only demand the imposition of tariffs but also oppose them, future studies should also examine the role of private actors in preventing their implementation or reducing their effectiveness. Moreover, this Article raises questions whether similar dynamics exist in other areas of trade law, such as export controls or the negotiation of trade agreements.[281] For present purposes, however, I emphasize the benefits of viewing trade law and politics through a bottom-up lens and encourage broader implementation of this approach.

Nor are the benefits limited to understanding trade law in the United States. Other countries have domestic trade-remedy systems, and WTO rules

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Present and Future, 55 DUKE L.J. 943, 944–49 (2006); Jason Webb Yackee & Susan Webb Yackee, *A Bias Towards Business? Assessing Interest Group Influence on the U.S. Bureaucracy*, 68 J. POL. 128, 128–30 (2006); *see also* Durkee, *supra* note 30, at 266–71 (describing the role of business entities in producing international treaties, like the Trans-Pacific Partnership, but noting that these processes are understudied in the international law literature).

[278] Lauren Edelman & Marc Galanter, *Law: The Socio-Legal Perspective*, *in* INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 604–05 (2d ed., James D. Wright, ed., 2015).

[279] *See id.* at 606; Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 968–69 (1979); *see also* Shaffer, *supra* note 71, at 153–62 (summarizing sociolegal scholarship on how business shapes law through public legal institutions).

[280] *See* Daniel Carpenter & David A. Moss, *Introduction*, *in* PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 6–14 (Daniel Carpenter & David A. Moss eds., 2014); Caelesta Braun & Madalina Busuioc, *Stakeholder Engagement as a Conduit for Regulatory Legitimacy?*, 27 J. EUR. PUB. POL. 1599, 1599–1601 (2020); Yackee & Yackee, *supra* note 277, at 137–38.

[281] For calls for applying this type of approach to the latter, see Durkee, *supra* note 30.

on antidumping duties, countervailing duties, and safeguards mean that such systems at least bear formal similarities to the United States'.[282] As in the United States, the use of defensive trade measures elsewhere is on the rise. China, for example, is an increasingly prominent user of trade remedies and at least has a reputation for retaliatory trade actions.[283] Although such actions are usually the result of AD/CVD investigations, China initiated its first "anti-discrimination investigation" in fall 2024, a tool that appears similar to a U.S. Section 301 action.[284] The European Commission is also not afraid to raise tariffs, with its anti-subsidy investigation of Chinese electric vehicles being just one prominent example.[285]

Especially in light of rising trade tensions between countries around the world and a trend towards more import restrictions, the questions of how, why, and by whom trade-remedies law is enforced in different countries deserves increased attention. Although my interviewees suggest that other systems might be more political than the United States, citing anecdotal experiences in China or Europe's "community interest test,"[286] the nature and

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[282] Blonigen & Prusa, *supra* note 73, at 1.

[283] Blonigen & Prusa, *supra* note 73, at 55; LAW-2024-001 ("[F]iling a petition under 301 or 232 would almost certainly result in Chinese retaliation. . . . Whoever is running your China operation will get called into MOFCOM and asked . . . what the F is going on?"); CONG-2024-001 (criticizing China for retaliation regardless of whether one acts in a WTO-consistent manner); LAW-2024-007 (speculating that China AD/CVD investigations are to retaliate or force the transfer of technology); LAW-2024-008 (speculating that China AD/CVD investigations are more often self-initiated); CONSULT-2024-002 (suggesting that "China always retaliates plus 10% in all areas"); LAW-2024-013 (sharing that his clients often express fear of retaliation by China); LAW-2024-014 (describing example where China initiated an antidumping investigation against U.S. chicken feet after President Obama imposed Section 421 relief); AGEN-2024-004 (suggesting that China retaliates regardless of whether an action is WTO-consistent); INDUS-2024-005 (describing China's actions against U.S. agricultural products as retaliation for U.S.-imposed steel tariffs); *see* Wayne Chang & Mark Thompson, *China Vows to Take 'All Necessary Actions' in Response to Biden's Tariffs*, CNN (May 14, 2024), https://www.cnn.com/2024/05/14/business/china-reaction-biden-tariffs/index.html [https://perma.cc/L2Z9-TU7C].

[284] *See* Weihuan Zhou & Henry Gao, *Major Economies Are Taking Aim at China's EV Industry. Here's What to Know*, WORLD ECON. FORUM (Sept. 16, 2024), https://www.weforum.org/agenda/2024/09/major-economies-are-taking-aim-at-china-s-ev-industry-here-s-what-to-know [https://perma.cc/343K-9JUX]. China has also recently ratcheted up its use of non-tariff means of disrupting trade and investment flows, such as export controls, sanctions, and national security reviews. *See* Weijia Rao, *Signaling through National Security Lawmaking*, 59 U.C. DAVIS L. REV. 797, 802 (2025).

[285] European Commission Press Release IP/23/4752, Commission Launches Investigation on Subsidised Electric Cars from China (Oct. 4, 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4752 [https://perma.cc/96HF-ZMA5]; *see also EU To Impose Tariffs on Russian Grain Imports, Sources Say*, REUTERS (Mar. 19, 2024), https://www.reuters.com/markets/commodities/eu-impose-tariffs-russian-grain-imports-ft-reports-2024-03-19] [https://perma.cc/8JXT-AUQQ] (describing the E.U.'s plans to impose tariffs on grain imports from Russia and Belarus).

[286] *See supra* notes 269, 283 and accompanying text; *see also* LAW-2024-007 (describing the E.U. AD/CVD process as a "black box" and "more political" than the United States'); INDUS-2024-002 (sharing how China's Ministry of Commerce once withdrew duties to avoid potentially losing a case at the WTO and later mentioning the E.U.'s "public interest test"); LAW-2024-012 (noting that

consequences of that supposed politicization warrant more systematic study. Preliminary takeaways from my own fieldwork in Beijing, for instance, suggest that a more state-driven system can result in fewer and less predictable numbers of trade-remedy investigations than a private-petitioner driven system.

B. *Normalizing Trade Law*

As "a classic 'intermestic' issue . . . that bridges the international and domestic spheres,"[287] trade law is traditionally carved out from the rest of U.S. law. Although trade law has distinctive features, I agree with scholars who have made efforts to "normalize" trade law and underscore its domestic-law characteristics.[288] This Article builds on that work by (1) highlighting how Congress has established a trade-remedies scheme that relies on both public and private enforcement and (2) recognizing that discussions about the pros and cons of different trade remedies reflect broader debates about the value of administrative procedure. Below, I suggest that insights from these literatures are consistent with and support many of my interviewees' preference for the AD/CVD process relative to other tools. In drawing out the connections between this area of trade law and "ordinary" administrative law or civil procedure, I hope that future research will see the value of continuing to assess trade law from these perspectives.

1. Enforcement Schemes

The enforcement of domestic U.S. trade-remedies law involves a mix of public and private enforcement, a well-trodden area of research for both legal scholars and social scientists. Work at the intersection of law and political science has studied the origins of private (as opposed to public) enforcement and its use. Sean Farhang, for example, has found that the enforcement of federal laws is largely driven by private litigation rather than government prosecution because Congress has incentivized private lawsuits to avoid

European AD/CVD agencies can take national interest into account); LAW-2024-017* (mentioning the European Commission's self-initiated anti-subsidy investigation against Chinese electric vehicles). *See generally* Marc Wellhausen, *The Community Interest Test in Antidumping Proceedings of the European Union*, 16 AM. U. INT'L L. REV. 1027 (2001) (discussing Europe's community interest principle in determining whether to impose antidumping duties).

[287] Meyer & Sitaraman, *supra* note 22, at 626.

[288] *See id.* at 628-29; Claussen, *Trade Administration*, *supra* note 25, at 905–08 ("Trade has been only selectively normalized."); Claussen, *Trade's Mini-Deals*, *supra* note 49, at 367–69 (describing the value of viewing trade-executive agreements as "also belonging and contributing to administrative law"); *see also* Sitaraman & Wuerth, *supra* note 49, at 1900–01 (defining normalization as the opposite of exceptionalism and arguing that "foreign affairs are less distinct from domestic affairs than exceptionalists believe").

conflicts with the President over control of the bureaucracy.[289]

Legal scholarship shares this interest in origins while also asking whether private enforcement is normatively desirable. Proponents argue that private litigation is a crucial complement to public enforcement, which often lacks sufficient resources and attention.[290] In arenas ranging from civil rights to environmental protection, private parties bring the overwhelming majority of enforcement actions.[291] Whereas liberal supporters might focus more on the importance of enforcing the underlying substantive law or view private enforcement as a form of democratic political participation,[292] conservatives might point to its resonance with values like small government, self-help, the profit motive, or decentralization.[293] On the other hand, critics ranging from tort reformers to class-action reformers argue that relying on private actors to achieve substantive regulatory ends is inefficient and ineffective.[294] Some have tried to thread the needle by arguing in favor of "co-enforcement," whereby public and private attorneys work together and jointly litigate,[295] or "hybrid enforcement," whereby government agencies sign off on certain lawsuits before private citizens can initiate them.[296]

Although much of this research focuses on litigation in the courts, similar dynamics also exist *within* administrative agencies. Michael Sant'Ambrogio, for instance, has documented the role that private parties play in administrative enforcement. Studying more than thirty administrative courts, Sant'Ambrogio finds that private actors are actively involved in filing complaints, triggering agency investigations, demanding evidentiary hearings, and even pursuing claims without involvement by an agency enforcement arm.[297] In doing so, Sant'Ambrogio challenges the idea that agency adjudication is simply a form of public enforcement and suggests that

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[289] FARHANG, *supra* note 50, at 5–6.

[290] Glover, *supra* note 50, at 1153–60 (summarizing the benefits of private enforcement).

[291] Albiston & Nielsen, *supra* note 50, at 1089–90.

[292] *See id.*; Frances Kahn Zemans, *Legal Mobilization: The Neglected Role of the Law in the Political System*, 77 AM. POL. SCI. REV. 690, 692–96 (1983).

[293] *See* FITZPATRICK, *supra* note 50, at 31–33.

[294] *See* Glover, *supra* note 50, at 1160–75 (summarizing various criticisms of private enforcement and efforts to curtail it).

[295] Stephanie Bornstein, *Public-Private Co-Enforcement Litigation*, 104 MINN. L. REV. 811, 816 (2019).

[296] *See, e.g.*, Amanda M. Rose, *Reforming Securities Litigation Reform: Restructuring the Relationship Between Public and Private Enforcement of Rule 10B-5*, 108 COLUM. L. REV. 1301, 1354–58 (2008); Joseph A. Grundfest, *Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority*, 107 HARV. L. REV. 961, 976–1006 (1994) (arguing that the SEC's "authority to disimply Rule 10b-5 private rights of action is fully consistent with the precedent that implies those private rights in the first instance"); David Freeman Engstrom, *Agencies as Litigation Gatekeepers*, 123 YALE L.J. 616, 620 (2013); Matthew C. Stephenson, *Public Regulation of Private Enforcement: The Case for Expanding the Role of Administrative Agencies*, 91 VA. L. REV. 93, 95 (2005) (arguing that "the executive branch should have substantially more control over the existence and scope of private enforcement actions").

[297] Sant'Ambrogio, *supra* note 50, at 450–54.

the combination of public and private enforcement within agencies can offer greater political accountability and policymaking coherence while also decreasing the risk of capture by regulated industries or the political branches.[298]

Trade remedies are another area where the administrative schemes have elements of private and public enforcement. Indeed, AD/CVD and safeguard investigations are almost always initiated and litigated by domestic firms and workers. National security and retaliatory trade investigations are more frequently initiated by administration officials, but private actors can and do initiate them as well. And even if they do not initiate those actions, nonstate actors play a role throughout the investigatory process, whether through hearings, public comments, or lobbying.

In our conversations, users and administrators of trade-remedy laws echoed the pros and cons of different types of enforcement described in the literature. Accepting that there are domestic trade laws whose purpose is to defend U.S. industries against imports and adopting the view that such laws ought to be enforced, I suggest that a private-enforcement-esque tool like AD/CVDs plays an important role in the long-term, resilient enforcement of these laws.[299] Whereas the energy behind public enforcement generally fluctuates depending on an administration's priorities, the relatively privatized AD/CVD process is less likely to be affected by those shifts. Indeed, private actors frequently and consistently file AD/CVD petitions,[300] and most trade-remedy users indicated a strong preference for AD/CVDs precisely because of the relative insulation from politics.[301]

This is also an area where pro-enforcement government officials benefit from and rely heavily on the resources of the private sector. In conversations with those who have worked at agencies tasked with enforcing domestic trade laws, interviewees stressed that self-initiation of cases is difficult even under a pro-enforcement President because private actors possess necessary information.[302] And data from the past twenty years suggests that private actors initiate the vast majority of trade-remedy investigations.[303] Because U.S. industries are the ones being harmed by imports and many trade-remedy lawyers have developed a deep expertise in this area, they are also likely better situated to detect problems and initiate investigations.

Of course, the private enforcement of trade-remedies law is not unobjectionable, and the ongoing popularity of the AD/CVD system raises familiar questions whether those laws are over-enforced or whether the

[298] *See id.* at 455–80.
[299] For a similar conclusion in the antitrust context, see generally Lancieri, *supra* note 50.
[300] *See supra* Section III.A.
[301] *See supra* Section III.B.
[302] *See supra* text accompanying notes 98–100.
[303] *See supra* Figure 3.

"correct" interests are being served. Opponents of tariffs and trade-remedy laws more generally might criticize the automatic imposition of tariffs following affirmative AD/CVD determinations or prefer the flexibility offered by safeguards, Section 232, or Section 301. They might also argue that the AD/CVD system is not actually democracy-enhancing because it excludes any consideration of national or general economic interests and takes the ultimate decision out of the hands of a democratically accountable President.[304] Even those who are supportive of more measures to defend against imports might still advocate for increased public enforcement given the government's theoretical ability to identify strategic or emerging industries. For example, one such interviewee cited a 2024 AD/CVD petition against paper plates[305] to suggest that the government should play a bigger role in helping to ensure there are also investigations of products like semiconductors.[306]

As discussed, however, calls for more public enforcement are easier said than done given the information required to successfully pursue a trade-remedy case. Nor is it obvious that non-AD/CVD tools are better at representing a broader range of interests. To the extent persuading the President or top officials to impose a remedy is indeed similar to what one interviewee described as "lobbying,"[307] such a scheme likely benefits more sophisticated interest groups with the requisite political access. Although certain injured industries likely cannot afford to pursue an AD/CVD investigation and the process features a number of repeat players capable of paying for the additional time and resources required,[308] the AD/CVD process nevertheless seems to bring in a wider variety of industries than other tools.[309] And those who access the AD/CVD route benefit from more transparent, consistent, and well-established practices.

2. Administrative Procedure

The way my interviewees spoke about administrative procedures and their choice of trade-remedy tools also speaks to longstanding discussions in

[304] For a discussion of why Presidential administration is appropriately accountable to the public, see Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2331–39 (2001). For a helpful and more recent summary of these arguments, see also John M. de Figueiredo & Edward H. Stiglitz, *Democratic Rulemaking*, *in* THE OXFORD HANDBOOK OF LAW AND ECONOMICS 37, 40–42 (Francesco Parisi ed., 2017).

[305] *See* Certain Paper Plates From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations, 89 Fed. Reg. 13043 (Feb. 21, 2024); Certain Paper Plates From the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations, 89 Fed. Reg. 14046 (Feb. 21, 2024).

[306] CONG-2024-002.

[307] LAW-2024-010.

[308] *See supra* Section III.B.3.

[309] *See supra* Section III.A.

administrative law about the merits of "proceduralism." Proceduralism broadly refers to the "the full panoply of formal legal obstacles that an agency must negotiate in order to complete a particular action."[310] Efforts to monitor and control agency action have often turned to such legal obstacles. During the New Deal, for example, critics of new and increasingly powerful administrative agencies advocated for procedures to constrain how administrative adjudicators made their decisions,[311] and the Administrative Procedure Act is commonly viewed as a "fierce compromise" between proponents and opponents of a growing administrative state.[312] In the decades to follow, procedural constraints continued to expand as both sides of the political spectrum largely advocated in their favor—liberals because of their faith in the courts and worries about agency capture, and conservatives because of their fear that regulators would be too eager to enforce new statutes concerning the environment, workplace safety, and the like.[313] Proceduralism included not only strict judicial oversight, but also moves by Congress and the executive branch to further monitor and delay agency actions.[314]

In light of this overall thrust towards proceduralism, legal academics have and continue to debate its merits. Some lament the proliferation of procedure, believing that agency agility and action is normatively desirable or relatedly worrying that proceduralism hamstrings effective governance through its overemphasis on legal technicalities.[315] Others contend that procedures introduce more fairness, rationality, or stickiness to agency action, especially

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[310] Bagley, *supra* note 51, at 351.

[311] *See* Lawrence J. Liu, *Independence Through Judicialization: The Politics Surrounding Administrative Adjudicators, 1929-1949*, 13 MICH. J. ENV'T & ADMIN. L. 522, 527–30 (2024).

[312] *See* George B. Shepherd, *Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics*, 90 NW. U. L. REV. 1557, 1558–61 (1996); 5 U.S.C. §§ 554, 556–57 (2018) (formal agency adjudication); *id.* § 553 (notice-and-comment rulemaking); *id.* § 704 (judicial review of final agency actions).

[313] Bagley, *supra* note 51, at 352–53; *see also* Merrill, *supra* note 51, at 1059–67 (surveying the academic literature's loss of faith in agency expertise and the strong interest in capture theory).

[314] Bagley, *supra* note 51, at 354–55.

[315] *See* Vermeule, *supra* note 51, at 1144 (discussing the opportunity costs of hard look review); Bagley, *supra* note 51, at 346 (expressing concern that excessive procedure creates "a thicket so dense that agencies will either struggle to act or give up before they start"); Matthew T. Wansley, *Regulation of Emerging Risks*, 69 VAND. L. REV. 401, 409 (2016) (describing how the rulemaking process can be manipulated by firms seeking to avoid regulation, and how notice and comment requirements can be "crippling" in the face of emerging risks); Michael A. Livermore & Richard L. Revesz, *Regulatory Review, Capture, and Agency Inaction*, 101 GEO. L.J. 1337, 1354 (2013); *see also* Jerry L. Mashaw, *Reinventing Government and Regulatory Reform: Studies in the Neglect and Abuse of Administrative Law*, 57 U. PITT. L. REV. 405, 420 (1996) (arguing that a set of procedural proposals are "designed to stall and derail many rule-making efforts"); Thomas O. McGarity, *Some Thoughts on "Deossifying" the Rulemaking Process*, 41 DUKE L.J. 1385, 1387–96 (1992) (outlining the negative consequences of excessive procedural requirements, including reluctance to revisit or change existing rules, reluctance to experiment with flexible or temporary rules, and attempts to dodge notice-and-comment rulemaking by establishing rules in adjudications or through "nonrule rulemaking" such as using policy statements or interpretative rules).

the rulemaking process.[316] They might allay fears about the lack of separation of powers in agency decisionmaking, bolster an agency's public reputation, or mitigate the chance of capture by small groups of interests.[317]

Because trade law is not usually viewed as a domestic regulatory matter, it has been largely absent from these debates about proceduralism. Recently, however, Kathleen Claussen has called for the imposition of "administrative law disciplines" on trade lawmaking, including more judicial review, greater transparency obligations, reducing executive-branch discretion, and further empowering the ITC.[318] Along with presenting the usual arguments in favor of more proceduralism, Claussen also acknowledges the oft-stated drawbacks, noting that such disciplines might "slow[] down trade lawmaking in ineffective ways."[319]

My qualitative findings further illustrate the value of connecting trade law to these broader debates within administrative law. Methodologically, they point to the benefits of talking to the actors who actually engage with these procedures. Doing so can demonstrate the effects that the structure of an administrative process has on those who are tasked with mobilizing it and how opinions about the merits of procedure vary by actor. Lawyers I spoke to largely praised the AD/CVD process in part because of its proceduralism. They appreciated its relative transparency and predictability, as well as the availability of judicial review.[320] Additionally, many commented on the "fairness" of the domestic AD/CVD process in comparison to what they perceived to be a less fair, by which they seemingly meant less legal, process in other countries.[321] Despite recognizing that AD/CVD investigations are more expensive and slower because of these procedures, they consistently asserted that AD/CVDs remain their first-choice remedy.[322]

Not everyone I spoke with believed the benefits of procedure outweighed the costs, however. One lobbyist with extensive experiences on the Hill emphasized his desire for trade laws that could be enforced more quickly and had more "automaticity."[323] Others noted how the slow pace of the AD/CVD process means that a truly struggling industry might disappear before an order can take effect or prevent smaller industries from participating.[324] And still others felt that non-AD/CVD tools are better at dealing with structural issues or serving as a prophylactic measure,[325] perhaps in part due to their flexibility

[316] *See* Nielson, *supra* note 51, at 116–125.
[317] Bagley, *supra* note 51, at 372–91 (summarizing but not agreeing with these arguments).
[318] Claussen, *Trade Administration*, *supra* note 25, at 914–16.
[319] *Id.* at 914.
[320] *See supra* Section III.B.
[321] *See supra* note 286 and accompanying text.
[322] *See supra* note 205 and accompanying text
[323] CONSULT-2024-001.
[324] *See supra* note 265 and accompanying text; RES-2024-001.
[325] *See supra* note 259 and accompanying text; *see also* William A. Reinsch, *Squeezing the*

and the perceived speediness associated with executive action.[326]

These discussions indicate how different views about proceduralism map onto the backgrounds and occupations of those who hold them. It is unsurprising that lawyers would prefer more procedures and place a premium on legalistic values such as transparency, predictability, or strong judicial review. At least in the United States, the idea of the lawyer-statesman has long held cache,[327] and scholars have documented how lawyers have played a key role in creating legalistic checks on administrative power specifically[328] and in advancing a distinctively American emphasis on adversarial legalism generally.[329]

Whether the lawyers' preference for proceduralism is normatively desirable, however, might boil down to asking whether we prefer that agency action be driven by lawyers and judges or by politicians and their appointees. Proceduralism, if nothing else, raises the status of lawyers and judges in the administrative process. Lawyers help develop the procedures and are best equipped to navigate them, and judges review the resulting administrative determinations. Moreover, given the complexity of these legal processes, clients often depend on a small, specialized group of repeat practitioners and their recommendations. A lack of proceduralism, on the other hand, would tend to increase the importance of elected officials and others responsive to political constituencies. For the actors directly engaged in these processes, whether one supports proceduralism might then depend on where one sits.

The normative desirability for proceduralism here might also vary with

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Balloon in *Experts React: Energy and Trade Implications of Tariffs on Chinese Imports*, CTR. FOR STRATEGIC & INT'L STUD. (May 14, 2024), https://www.csis.org/analysis/experts-react-energy-and-trade-implications-tariffs-chinese-imports [https://perma.cc/37ZS-Z5L4] (describing the May 14, 2024, tariff increase on Chinese imports under Section 301 as "prophylactic").

[326] *See* Kagan, *supra* note 304, at 2339–45 (discussing the "inherent tendency toward expedition" associated with presidential control of administration).

[327] *See* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 304 (Henry Reeve trans., J. & H.G. Langley 4th ed. 1841) (1835) ("If I were asked where I place the American aristocracy, I should reply without hesitation, that it is not composed of the rich . . . but that it occupies the judicial bench and the bar.").

[328] *See, e.g.*, DANIEL R. ERNST, TOCQUEVILLE'S NIGHTMARE: THE ADMINISTRATIVE STATE EMERGES IN AMERICA, 1900–1940, at 6–7 (2014); Ronen Shamir, *Professionalism and Monopoly of Expertise: Lawyers and Administrative Law, 1933–1937*, 27 LAW & SOC'Y REV. 361, 361–63 (1993) (discussing the legal profession's response to developments in administrative law during the New Deal); Liu, *supra* note 311, at 527 (describing how "the loudest proponents of increasing adjudicator independence [between 1929 and 1949] were anti-New Dealers trying to halt the growth and reduce the scope of administrative power, who were joined by a subset of legal professionals interested in using law to check its operation").

[329] *See* Robert A. Kagan, *Do Lawyers Cause Adversarial Legalism? A Preliminary Inquiry*, 19 LAW & SOC. INQUIRY 1, 2 (1994) ("I argue that while adversarial legalism stems *primarily* from enduring features of American political culture and governmental structure, the legal profession itself does play a significant *independent* role in promoting and perpetuating adversarial legal contestation as a prominent feature of governance."). On adversarial legalism generally, see ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW (2d ed. 2019).

the politics of the moment. In general, political liberals might lament proceduralism when they lack confidence in the courts relative to the elected branches and the political process, as in the New Deal era, but celebrate it when the courts are seen as a bulwark against conservative politicians or business interests, as in the second half of the twentieth century. It might also depend on whether one believes that prevailing political views, which are arguably more volatile than those of life-tenured judges or legal practitioners, will remain sticky over time.

Returning to trade-remedies law, it makes sense that those interested in seeking the imposition of tariffs have tended to prefer a proceduralized AD/CVD process during a time when both sides of the political aisle largely supported free trade. It will be interesting to track whether and how views of proceduralism and the demand for certain trade-remedy tools shift if growing bipartisan support for tariffs becomes the norm rather than a temporary exception. In the meantime, however, I agree with interviewees who continue to value the stabilizing effects of proceduralism in the AD/CVD process. Although I am highly sympathetic to arguments in favor of a speedier, politics-driven process, the proceduralism of the AD/CVD process brings a transparency, consistency, and legitimacy that serves as a helpful steadying force during a time marked by high political volatility. I also suggest that the relevant normative question here is AD/CVDs compared to what?[330] Even accepting that the proceduralism of AD/CVDs disproportionately benefits the well-resourced, the well-resourced are equally—if not more—equipped at leveraging the political access required to wield (or contest) the tools with less administrative process or that grant more discretion to the President.

CONCLUSION

This Article begins to surface the dynamics underlying rising tariffs and economic decoupling by examining the demand for administrative trade remedies in the United States. Drawing on original qualitative and quantitative data, I adopt a bottom-up approach to present the perspective of those who mobilize domestic trade-remedy laws. I guide readers through the trade-remedies toolkit and explain how antidumping and countervailing duties continue to be the tool of choice because of their processes' relative insulation from politics, their predictability, and their durability.

This understanding and approach have implications for trade law and politics in the United States and elsewhere, a comparative endeavor that is

[330] *See* Komesar & Wagner, *supra* note 30, at 900 ("If institutions have parallel problems, cataloging the problems in only one institution is insufficient and should make us suspect that the alternative institution is suffering similar problems. Only when we chart these parallels can we compile the information relevant for realistic institutional choice.").

especially important given the rising use of defensive remedies around the world. My interest in the who and how of domestic trade-law enforcement also underscores the benefits of viewing trade law not only as a matter for international law and institutions, but also as domestic decisions about how to regulate cross-border economic affairs. Normalizing trade law makes it more comparable to other areas of domestic law and equips observers with additional insights, doctrines, and approaches for understanding it. During this time of ever-rising global trade tensions, studying how trade law is the product of domestic administrative processes and better understanding the forces that drive it are critical starting points.

APPENDIX

Interview Number	Code[331]	Interviewee Type	In-Person	Gender	Interview Date
1	RES-2023-001	Think-Tank Researcher	N	M	Dec. 2023
2	RES-2024-001	Think-Tank Researcher	N	F	Jan. 2024
3	N/A[332]	Congressional Staffer	N	F	Jan. 2024
4	LAW-2024-001	Lawyer	Y	M	Jan. 2024
5	LAW-2024-002	Lawyer	Y	M	Jan. 2024
6	LAW-2024-003	Lawyer	Y	F	Jan. 2024
7	AGEN-2024-001	Administrative Agency	Y	M	Jan. 2024
8	LAW-2024-004	Lawyer	Y	M	Jan. 2024
9	LAW-2024-005	Lawyer	Y	M	Feb. 2024
10	CONG-2024-001	Congress	Y	M	Feb. 2024
11	LAW-2024-006	Lawyer	Y	M	Feb. 2024
12	RES-2024-002	Think-Tank Researcher	N	F	Feb. 2024
13	INDUS-2024-001	Industry	Y	M	Feb. 2024
14	LAW-2024-007	Lawyer	Y	M	Feb. 2024
15	LAW-2024-008	Lawyer	Y	F	Feb. 2024
16	LAW-2024-009	Lawyer	Y	M	Feb. 2024
17	INDUS-2024-002	Industry	Y	M	Feb. 2024
18	LAW-2024-010	Lawyer	Y	M	Feb. 2024
19	CONSULT-2024-001	Private Consultant	Y	M	Feb. 2024
20	AGEN-2024-002	Administrative Agency	Y	M	Feb. 2024
21	INDUS-2024-003	Industry	N	F	Feb. 2024

[331] An asterisk indicates this was a follow-up interview.

[332] Because this interview was off-the-record, I do not assign a code or cite to this conversation in the Article.

22	CONSULT-2024-002	Private Consultant	N	M	Feb. 2024
23	INDUS-2024-004	Industry	N	F	Feb. 2024
24	AGEN-2024-003	Administrative Agency	N	M	Mar. 2024
25	LAW-2024-011	Lawyer	N	M	Mar. 2024
26	LAW-2024-012	Lawyer	Y	M	Apr. 2024
27	CONG-2024-002	Congressional Staffer	Y	M	Apr. 2024
28	LAW-2024-013	Lawyer	Y	M	Apr. 2024
29	LAW-2024-014	Lawyer	Y	M	Apr. 2024
30	LAW-2024-015	Lawyer	N	M	Apr. 2024
31	RES-2024-003*	Think-Tank Researcher	Y	M	Apr. 2024
32	LAW-2024-016	Lawyer	Y	M	Apr. 2024
33	LAW-2024-017*	Lawyer	Y	M	Apr. 2024
34	LAW-2024-018	Lawyer	Y	M	Apr. 2024
35	LAW-2024-019	Lawyer	Y	M	Apr. 2024
36	LAW-2024-020	Lawyer	Y	F	Apr. 2024
37	LAW-2024-021	Lawyer	Y	M	Apr. 2024
38	LAW-2024-022	Lawyer	Y	M	Apr. 2024
39	AGEN-2024-004	Administrative Agency	Y	M	Apr. 2024
40	LAW-2024-023*	Lawyer	Y	F	Apr. 2024
41	INDUS-2024-005	Industry	Y	M	Apr. 2024
42	LAW-2024-024	Lawyer	N	F	Apr. 2024
43	INDUS-2024-006	Industry	N	F	Apr. 2024
44	LAW-2024-025	Lawyer	N	M	May 2024
45	AGEN-2025-01*	Administrative Agency	N	M	January 2025