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ELIMINATING THE PROTECTIONIST FREE RIDE: THE NEED FOR COST REDISTRIBUTION IN ANTIDUMPING CASES

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Abstract: U.S. antidumping laws exist so that domestic markets can protect themselves against foreign goods sold in the United States at less than fair market value. In an antidumping case, after the initial petition is filed, all costs of investigation and determination fall on the U.S. government. Those companies and markets alleged of dumping, however, must pay for their own defense, diverting money from industry development to defense of their actions. A majority of the antidumping cases filed result in a de minimis or zero antidumping margin, but the costs of achieving such a result weigh heavily on the accused market. This Note explores the application and results of U.S. antidumping laws on U.S. and foreign companies and the distribution of costs in their application. Using the Salmon Case from Chile as an example, it argues that in order to eliminate frivolous and protectionist antidumping actions, the petitioners should bear the costs of investigation and discovery instead of the government.

Introduction

Will Rogers once observed that “if the other fellow sells cheaper than you, it is called ‘dumping.’ Course, if you sell cheaper than him, that’s ‘mass production.’”1 Dumping is a form of international price discrimination2 that occurs when internationally traded goods are sold at less than fair market value (LTFV).3 If a good is dumped into a

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country’s market it can harm that market by driving domestic competitors out of business. Antidumping (AD) laws, which have been referred to as domestic industry’s “Weapon of Choice for Protection,” allow for a legal response by the domestic government and industry to protect their businesses. At the same time, the laws allow for many protectionist actions.

In the United States, antidumping cases are jointly heard by the Department of Commerce (DOC) and the International Trade Commission (ITC). The majority of AD cases are initiated by petitions from “interested parties” and are subsequently investigated, decided, and paid for by the DOC and ITC. The petitioner’s only costs are the expenses incurred in the preparation of the petition and any additional information they choose to provide, whereas the accused companies must pay for all their defense costs, including translation of all documents to and from English.

In the eyes of domestic companies, AD laws effectively protect and guard against lower priced foreign competitors. But for foreign companies, especially those in developing industries and economies, such laws can create huge financial and legal burdens once a case against them is initiated. An example of the extreme social and economic effects an AD case can have on a developing economy are the accusations the Coalition for Fair Atlantic Salmon Trade (FAST) presented against the Association of Chilean Salmon and Trout Producers (Association) (the Salmon Case).

This Note explores the impact of U.S. antidumping cases on foreign markets and companies. Part I describes the current U.S. AD law as well as the companies and industries involved in the Salmon Case.

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5 Id.
7 See id.
8 See WAYS AND MEANS, supra note 2, at 101, 102.
9 19 U.S.C. § 1673a(b)(1) (1999); 19 C.F.R. § 207.10(a) (2003). In order for the case not to be terminated, the interested party must be representative of the industry as a whole. 19 U.S.C. § 1673a(c)(4).
10 See McGee, supra note 6, at 547.
11 See id. at 496, 536.
12 See McGee & Yoon, supra note 3, at 260. Whether those competitors actually are dumping or not is a separate consideration. See id.
13 See McGee, supra note 6, at 497–98.
Part II examines how an AD case is decided, using the Salmon Case as an example, and compares the results of the Salmon Case to other dumping cases. Part III argues that in order to avoid negative and potentially protectionist effects caused by AD cases, petitioners, as opposed to the government, should be responsible for the costs incurred during the investigation and evaluation of their claims. Holding petitioners accountable for the costs of their cases will deter companies from filing petitions intended to merely use AD laws as a means of reducing foreign competition.

I. BACKGROUND

A. History of U.S. Antidumping Laws

Antidumping laws emerged in the United States after World War I, with present day laws based on the Antidumping Act of 1921. Since their inception, AD laws have gone through a series of amendments; the most recent of which were adopted by Congress as part of the United States’ participation in the World Trade Organization (WTO). The most significant amendment from the WTO Uruguay Round Agreements is a sunset provision which requires that, after five years, the AD tariff level must be terminated unless the evaluating authority determines that there would likely be a continuation or recurrence of dumping. Today, the result of a negative AD determination is the assessment of a dumping margin (a company specific tariff placed on the type goods found to be sold under LTFV in the United States) against the foreign exporter. In light of the strict tariff agreements under the WTO, AD tariffs are one of the last and “most viable [bases] for imposing or preserving protective duties”.

In the United States, the evaluating authorities of AD cases are the DOC and ITC. Between 1990 and 2000, the DOC and ITC heard over 440 antidumping cases, terminating the investigation in 238 cases for lack of information or finding no material injury or dump-

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15 See Ways and Means, supra note 2, at 101.
16 See id. at 102.
17 19 U.S.C. §§ 1675(c), 1657a (1999); 19 C.F.R. § 207.60 (2003); Ways and Means, supra note 2, at 112.
18 19 U.S.C. § 1673d(c) (1999); 19 C.F.R. § 351.211–212.
19 Cost, supra note 4, at 53.
20 See Ways and Means, supra note 2, at 101, 102.
In other words, over half of the AD cases brought between 1990 and 2000 were against companies who were not harming U.S. industries and were selling goods at a fair market value.\textsuperscript{22}

B. Chilean Economy—Salmon’s Role

Traditionally, Chile has been known for its exportation of copper.\textsuperscript{23} Today, copper still plays a large role in the Chilean economy, but the country’s position on the world market has diversified.\textsuperscript{24} Part of this diversification is the growth of its fishing sector, including the export of fresh and chilled Atlantic Salmon.\textsuperscript{25} This growth was supported by the 1976 creation of the Office of the Sub-secretary of Fishing, part of the Chilean Ministry of Economics and Energy.\textsuperscript{26} The Sub-secretary is responsible for proposing and supporting legislation which pertains to the growth of fishing in Chile, as well as other industry support.\textsuperscript{27}

Since 1990, the fishing industry has accounted for between 10\% and 13\% of Chilean exports, and that percentage continues to grow.\textsuperscript{28} In 2002, the United States was the destination for 26.5\% of Chile’s fish exports, second only to Japan.\textsuperscript{29} The main fishing product exported to the United States from Chile is fresh and chilled Atlantic Salmon.\textsuperscript{30} These exports accounted for 17.1\% (or approximately $492


\textsuperscript{22} See id.


\textsuperscript{25} See generally id.; see also Chile-info.com, Product Channels, Seafood, at http://206.49.217.77/servlet/NavigationServlet?page=product_channel&id_product_channel=57A470900000000100ADD4FB7C645424 (last visited Nov. 16, 2004).

\textsuperscript{26} See Subsecretaría de Pesca, Quienes Somos, at www.subpesca.cl/quiennes.htm.

\textsuperscript{27} See id.

\textsuperscript{28} See Office of the Sub-secretary of Fishing of Chile, Chilean Fishing Sector 2002 Summary § 2, available at www.subpesca.cl/sector_r_en.htm [hereinafter Sub-secretary of Fishing Summary].

\textsuperscript{29} Id. § 4.1.

\textsuperscript{30} See id. § 4.2.
of the total value of exported fish in 2002, and 91.3% of total fresh and chilled Atlantic Salmon exported from Chile.\(^{32}\)

Many of the largest salmon exporters in Chile have business relationships with foreign investors, including U.S. corporations.\(^{33}\) The largest exporters are diverse companies that export over $100 million of fish products a year,\(^{34}\) while smaller corporations have less than $1 million of total exports per year.\(^{35}\) The named defendants in the Salmon Case were identified by the DOC as the five producers/exporters with the greatest export volume between the United States and Chile, accounting for slightly less than 50% of the total exports of Chilean fresh and chilled Atlantic Salmon.\(^{36}\)

C. U.S. Salmon Industry

The U.S. fishing industry accounts for 4% of total worldwide fishing, but only accounts for 0.5–0.6% of total U.S. GDP.\(^{37}\) Whereas fishing is the third largest export from Chile, it is not anywhere near the top of the U.S. export list.\(^{38}\) In 2002 the United States exported over $3.1 billion worth of edible fish, $468 million of which was salmon.\(^{39}\) All but approximately $24 million of those exports came from the


\(^{32}\) Sub-secretary of Fishing Summary, supra note 28, § 4.2.


New England or the Pacific regions of the United States. Additionally, less than 5% of the salmon exports from those regions were of fresh-chilled Atlantic Salmon.

The Plaintiffs in the Salmon Case were located either in Maine, New Hampshire, or Washington, and as such were found to be representative of the New England and Pacific regions. The petitioners were found to be representative of 70% of total production of fresh Atlantic Salmon produced and sold domestically, thus having to compete with Chilean exports.

II. Discussion: The U.S. AD Case Process and the Salmon Case Example

A. U.S. Dumping Case Process

To begin an antidumping duty investigation, identical petitions must be simultaneously filed with the DOC and the ITC. The petition must include allegations and supporting documentation that the named imported goods are (or are likely to be) sold at LTFV in the United States and that an industry in the United States is either materially injured, threatened with material injury, or the establishment of an industry is materially retarded.

The DOC has created a twenty page form which identifies all the information that must be included to be a complete application. Petitioners are not required to provide any further information after the initial petition is filed, although they have the option to file additional briefs during the investigation process.

During the investigation of an antidumping petition, the DOC first determines if the good in question is being, or is likely to be, sold

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40 See id.
41 See id.
42 See Fresh Atlantic Salmon from Chile, 62 Fed. Reg. 37027, 37029 (Dep’t. of Commerce July 10, 1997) (initiation).
43 See id. at 37028.
44 19 U.S.C. § 1673a(b) (1–2) (1999); 19 C.F.R. § 207.10.
46 See ITADC PETITION, supra note 45; USITC HANDBOOK, supra note 21, at I-3 to -16.
47 See 19 U.S.C. § 1673a (b); see also 19 U.S.C. § 1673a(c) (4) (E).
in the United States at LTFV.\textsuperscript{48} Additionally, the DOC has the burden of determining whether or not the petitioners are representative of an entire industry.\textsuperscript{49} Second, the ITC must determine that an industry in the United States is materially injured, is threatened with material injury, or that the establishment of an industry could be materially retarded.\textsuperscript{50} If the DOC determines that LTFV sales exist, and the ITC determines that a material injury exists, an antidumping duty is imposed on the goods in the amount by which the normal value (as determined by the DOC) exceeds the export price (i.e., U.S. price).\textsuperscript{51}

During the process of the entire AD case, the DOC issues three determinations\textsuperscript{52} and the ITC issues two\textsuperscript{53}; if at any point the ITC or DOC's determinations contradict the petitioner’s claims, the investigation is terminated.\textsuperscript{54}

The investigations of petitioners’ claims by the DOC and ITC include the use of questionnaires to the parties, site visits, and other data accumulation.\textsuperscript{55} All of the costs of information gathering are paid by the U.S. government, while all of the costs of responding to requests for information and documents are borne by the respondents.\textsuperscript{56} There may also be hearings before the DOC and/or ITC where testimony and arguments can be presented (at the cost of those wishing to be present).\textsuperscript{57} If a country does not completely comply with the DOC and/or ITC’s requests for information, then decisions issued will be based on the “best information available” to the DOC and ITC at the time.\textsuperscript{58} Normally the “best information available” is the information from the initial petition and therefore is information biased against the defendant country.\textsuperscript{59} More drastically, if a country refuses to comply with the requests, the DOC interprets that refusal as a confession of guilt and

\textsuperscript{48} 19 U.S.C. § 1637b(a) (1999); Ways and Means, \textit{supra} note 2, at 102.
\textsuperscript{49} 19 U.S.C. § 1637a(c) (4) (1999); 19 C.F.R. § 351.203 (2003).
\textsuperscript{50} 19 U.S.C. § 1637b(a); 19 C.F.R. § 351.205 (2003); Ways and Means, \textit{supra} note 2, at 102.
\textsuperscript{52} A sufficiency of petition, preliminary determination, and final determination. See Ways and Means, \textit{supra} note 2, at 105–09.
\textsuperscript{53} A preliminary determination and a final determination. See \textit{id}.
\textsuperscript{54} 19 U.S.C. §§ 1673a(c) (3), 1673b(a); 19 C.F.R. § 351.207(d) (2003).
\textsuperscript{55} See USITC Handbook, \textit{supra} note 21, II-5 to -24.
\textsuperscript{56} See \textit{id}.
\textsuperscript{57} See \textit{id}.
\textsuperscript{58} See \textit{id.}; McGee, \textit{supra} note 6, at 499.
\textsuperscript{59} See McGee, \textit{supra} note 6, at 499.
imposes the highest possible dumping margins.\textsuperscript{60} Dumping margins, also referred to as AD duties, “equal the amount by which the normal value of a good (i.e., the price in the foreign market) exceeds the export price (i.e., U.S. price) for the merchandise.”\textsuperscript{61}

If an affirmative determination of dumping is found, company specific tariffs are assessed against the defendant companies in the amount of the dumping margin.\textsuperscript{62} If the case is against an entire industry, but the case is determined upon representative companies, then an “all others” rate is created for the remainder of the companies from that industry in the defendant country.\textsuperscript{63} Two years after the initial application of tariffs, any party to the original case (domestic or international) can request an administrative review of the tariff amounts for any companies in the defendant industry.\textsuperscript{64} This request initiates a \textit{de novo} evaluation of the dumping margin, and if it is found to be different for the time period in question, it is then adjusted accordingly.\textsuperscript{65}

B. The Salmon Case

In June of 1997, eight U.S. salmon farmers filed an antidumping petition with the ITC and DOC alleging “that imports of fresh Atlantic salmon from Chile [were] being, or [were] likely to be, sold in the United States at less than fair value . . . and that such imports [were] materially injuring, or threatening material injury to, a U.S. industry.”\textsuperscript{66} On the basis of the petition, the DOC found that there was the possibility of sales of salmon from Chile in the United States at LTFV.\textsuperscript{67}

After issuing affirmative initial determinations, both the ITC and DOC performed independent investigations into the salmon market in the United States and Chile in order to establish whether there was a price difference and if that difference was materially injuring the U.S.

\textsuperscript{60} \textit{Id.}
\textsuperscript{61} \textit{Ways and Means, supra} note 2, at 102–03.
\textsuperscript{63} See 19 U.S.C. §§ 1673b(b)(3), 1673d(c)(5); Fresh Atlantic Salmon from Chile, 63 Fed. Reg. 2664, 2671 (Dept. of Commerce Jan. 16, 1998) (preliminary determination). The Tariff Act directs the department to exclude all zero and \textit{de minimis} margins from the calculation of the “all others” rate. \textit{See id.} The all others rate is determined by taking the weighted average of all dumping margins for the represented companies which are not zero or under 0.5\% (\textit{de minimus}). \textit{See id.}
\textsuperscript{65} \textit{Id.}
\textsuperscript{66} Fresh Atlantic Salmon from Chile, 62 Fed. Reg. 37027, 37027 (Dep’t of Commerce July 10, 1997) (initiation).
\textsuperscript{67} \textit{Id.} at 37029.
market. The investigation included a selection of defendants by the DOC and issuance of initial and supplemental antidumping questionnaires, in English, to each named defendant. In its preliminary determination, the DOC published dumping margins based on the best (but not all) information available, and six months later, after site visits, hearings, and further investigations, in its final determination the DOC published the final dumping margins/tariff levels against the Chilean defendants. Soon after, ITC confirmed its preliminary decision that the dumping margins were materially injuring the U.S. market.

Directly following the final determination, the Association filed allegations that the DOC had made ministerial errors in its final determination. The DOC determined that errors were made and adjusted the dumping margins. The final margins for the case for the five named defendants were 0.16%, 1.36%, 2.23%, 5.44%, and 10.69%, with the “all others” rate at 4.57%

After a final determination has been issued in an AD, companies represented in the case may file a request for an Administrative Review of the original decision. Between 2000 and 2002, the U.S. Atlantic Salmon industry petitioned for Administrative Reviews for specific companies under the final dumping margins. In all but two

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69 Id. at 2664–65. The law requires that an individual dumping margin for each company be calculated by the DOC. See Id. at 2666. FAST alleged that the entire Chilean salmon industry was dumping its products in the US, in order to perform its investigation within the statutory time allowed, the DOC limited its investigation to the five producers/exporters of the greatest export volume. Id.
71 Id. at 2671.
72 Fresh Atlantic Salmon from Chile, 63 Fed. Reg. 31411, 31411 (Dep’t of Commerce June 9, 1998)(final determination). The rates were to 0.21%, 0.24%, 1.36%, 8.27%, and 10.91%, the all others rate was 5.19%. Id. at 31437.
73 Fresh Atlantic Salmon from Chile, 63 Fed. Reg. 40699, 40700 (Dep’t of Commerce July 30, 1998) (amend. final determination).
74 Id.
75 Id.
76 Id.
78 The only years eligible for Administrative Reviews after the statutory delay and before the required sunset review. See id.
79 Fresh Atlantic Salmon from Chile, 65 Fed. Reg. 48457, 48457 (Dep’t of Commerce Aug. 8, 2000) (preliminary results administrative review); Fresh Atlantic Salmon from Chile, 66 Fed. Reg. 18431, 18432 (Dep’t of Commerce Apr. 9, 2001) (preliminary results
cases, the review discovered a zero or *de minimis* dumping margin, with the two remaining margins at only 1.46% and 3.94%. All five of the original defendant companies were found to have *de minimis* margins in at least one of the Administrative reviews.

When the decision in the Salmon Case came up for its sunset review in 2003, the domestic interested parties who originally filed the dumping petition “expressed no interest in the continuation” of tariffs against the Chilean companies, and as a result all remaining tariffs were eliminated. In essence, the 1998 AD petition was no longer providing any protection to the U.S. fishing industry because the DOC had for the past three years consistently found zero or *de minimis* dumping margins for Chilean exporters.

**C. How the Salmon Case Compares to Other AD Cases**

When compared with most AD cases, dumping margins at all points in the Salmon Case seem insignificant. In 1990, FAST filed a petition with the DOC and ITC accusing Norway of dumping fresh and chilled Atlantic Salmon in the United States. In that case, final dumping margins were determined to be between 18.39% and 31.81% with an “all others” rate of 23.80% (over five times that of the Salmon Case).

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80 Fresh Atlantic Salmon from Chile, 65 Fed. Reg. 78472, 78473 (Dep’t of Commerce Dec. 15, 2000) (final results administrative review); Fresh Atlantic Salmon from Chile, 66 Fed. Reg. 42505, 42505 (Dep’t of Commerce Aug. 13, 2001) (final results administrative review); Fresh Atlantic Salmon from Chile, 68 Fed. Reg. 6878, 6879 (Dep’t of Commerce Feb. 11, 2003) (final results administrative review).

81 See id.


83 See Fresh Atlantic Salmon from Chile, 65 Fed. Reg. 78472, 78473 (Dep’t of Commerce Dec. 15, 2000) (final administrative review); Fresh Atlantic Salmon from Chile, 66 Fed. Reg. 4205, 4205 (Dep’t. of Commerce Aug. 13, 2001) (final results administrative review); Fresh Atlantic Salmon from Chile, 68 Fed. Reg. 6878, 6879 (Dep’t of Commerce Feb. 11, 2003) (final results administrative review).


In a comparable case, decided in August of 2003, tariff rates of 36.84% to 63.88% were imposed on frozen fish fillets from Vietnam. These margins are large, but they are nowhere near the top levels of AD margins/tariff levels set by the DOC. For example, in May of 2003, dumping margins of 249.39% to 329.33% were imposed against saccharin from the People’s Republic of China.

It should also be noted that all DOC and ITC determinations are based on valuation of products in U.S. Dollars. As a result of the price conversion from, for example, pesos to dollars, any shifts in exchange rates can cause a company to be liable for dumping. This is due to the system of floating exchange rates which allows for exchange rates to vary on a daily basis. Consequently, through no fault of its own, a foreign exporter can be found to have dumped if exchange rates shift in the wrong direction; this is especially true for companies based in countries whose currency suffers frequent devaluation.

III. Analysis: Shifting Costs Would Drastically Decrease Protectionism

U.S. AD law enables U.S. industries to legally protect themselves against foreign competition. The actual process allows for the ultimate decision maker, a representative of the government of the petitioner, to burden defendants with enormous discovery requests, prescribe the time the defendants have to fulfill the request, and require the defendants to submit responses in English, normally their non-native language. As a result, most defendants immediately must seek expensive U.S. counsel to handle their defense (the Salmon Case cost...
Chilean exporters over $12 million in legal fees\(^96\)), while the petitioner is allowed to rely on the DOC and ITC to cover any costs of proceeding with the investigation.\(^97\) In essence, the AD laws replace the United State’s traditional adversarial system of justice with one that is inquisitorial.\(^98\)

AD laws protect domestic producers at the expense of citizens in both the United States and the accused country because competition decreases.\(^99\) Domestically, prices are necessarily higher for products protected by AD tariffs.\(^100\) Even more dramatic are the costs to the U.S. economy as a whole.\(^101\) A 1995 ITC report concluded that the cost to the U.S. economy of antidumping measures was significantly higher than the benefit to the protected industry.\(^102\)

Similarly, in the accused country, exports decrease and companies are required to spend time and resources on defending themselves against the charges, instead of focusing on research, development, or company expansion, which ultimately harms the economy.\(^103\) Additionally, there are social costs that accompany restrictions on trade, for example loss of jobs, slower industry growth, and negative feelings and opinions toward the United States.\(^104\) In Chile, the Salmon Case was called “a thorn in Chile’s side” which had “the makings of another bitter grudge for Chile against its top trade partner.”\(^105\)

Conversely, the only financial costs faced by the petitioners in an AD case, as stated previously, are those associated with preparing and filing the petition.\(^106\) Moreover, if AD tariffs are imposed, the petitioning industry can receive huge financial and market benefits even though the U.S. economy as a whole may suffer.\(^107\) A simple cost-benefit analysis reveals that there is little to lose and a great deal to gain.

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\(^96\) Grape Exporters Pleased with Dumping Decision but Say the Battle Isn’t over Yet, SANTIAGO TIMES, June 27, 2001, available at 2001 WL 5995737.

\(^97\) See id.

\(^98\) See id.

\(^99\) See McGee, supra note 6, at 491, 535–40, 559–60.

\(^100\) See id. By imposing tariffs on imported products, those tariffs are directly passed onto the consumer in the form of price increases. See id.

\(^101\) See McGee, supra note 6, at 535–40.

\(^102\) Corr, supra note 4, at 100.

\(^103\) See id. at 100–01; McGee, supra note 6, at 540.

\(^104\) See McGee, supra note 6, at 491, 535–40.


\(^106\) See McGee, supra note 6, at 536.

\(^107\) See Corr, supra note 4, at 101; McGee & Yoon, supra note 3, at 278.
for any single U.S. industry that can provide documentation which alleges dumping.\footnote{108 See Corr, supra note 4, at 54; McGee & Yoon, supra note 3, at 278.}

In much the same way that the increased costs of an AD case cause foreign exporters to limit or eliminate their exports to the United States, if petitioners in AD cases had to pay the costs of investigating and hearing the cases, the total costs for the domestic industry would increase, and the resulting number of frivolous cases would decrease.\footnote{109 See McGee & Yoon, supra note 3, at 276.} Simple economics of supply and demand support the contention that as prices for goods or services increase,\footnote{110 Although the DOC and ITC’s antidumping determination is not what one typically thinks of as a service, in this simple model it would follow the same general principles. See e.g., Basic Economic Theory: Supply, Demand and the Laffer Curve, available at http://home.rmci.net/cholton/ECON.HTM (last visited Nov. 16, 2004).} demand decreases.\footnote{111 See, e.g., id.} The same cost-benefit analysis applies here, and the resulting considerations for the use of AD laws would be drastically changed for companies facing potentially very high discovery costs.\footnote{112 Cf. McGee, supra note 6, at 535 (stating that many domestic importers may hesitate to do business with foreign suppliers for fear of AD duties).}

It logically follows that, if costs were redistributed, AD cases would only be brought by companies who are facing real cases of dumping rather than those who are merely facing increased foreign competition.\footnote{113 Cf. id.} For example, FAST may have felt it necessary to seek protection against Norwegian competitors who were selling their products at a 30% dumping level, but would probably have seriously considered whether the benefits of a determination of a tariff at less than 5%, as was true in the Salmon Case, would have outweighed the costs of the AD investigation process.\footnote{114 Cf. id.}

**CONCLUSION: SHIFTING COSTS—LITTLE TO LOSE, MUCH TO GAIN**

A change in cost distribution in AD cases would not only benefit many developing economies by eliminating most, if not all, of the protectionist AD cases brought in the United States, but it would also lead to more competition and a more efficient U.S. market.\footnote{115 See McGee & Yoon, supra note 3, at 277–78.} As the current law stands, approximately half the antidumping petitions that are filed with the DOC and ITC do not end in dumping margins.\footnote{116 See USITC Handbook, supra note 21, at E-4.}
many other cases, including the Salmon Case, the dumping margins are small and on Administrative Review are revised to be zero or *de minimis*. In the Salmon Case, the parties who originally filed the petition had no interest in continuing the resulting margins when it came up for its sunset review. In essence, they had gotten the majority of the protectionist benefits of the law while Chilean exporters faced the yearly burden of denying the accusations. By redistributing costs to petitioners, cases like the Salmon Case would become economically inefficient for companies to file, and the benefits of the lower number of cases would be felt by both countries. AD laws would only be used when there is real need for protection against foreign companies intending to sell their products below fair market value and the likelihood of harm to the United States arises.

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117 See, e.g., Fresh Atlantic Salmon from Chile, 65 Fed. Reg. 78472, 78473 (Dep’t of Commerce Dec. 15, 2000) (final results administrative review); Fresh Atlantic Salmon from Chile, 66 Fed. Reg. 4205, 4205 (Dep’t of Commerce Aug. 13, 2001) (final results administrative review); Fresh Atlantic Salmon from Chile, 68 Fed. Reg. 6878, 6879 (Dep’t of Commerce Feb. 11, 2003) (final results administrative review).