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Determinants and Effectiveness of “Aggressively Unilateral” U.S. Trade Actions

Kimberly Ann Elliott and J. David Richardson

“Aggressively unilateral” is what America’s trading partners call actions under Section 301 of the Trade Act of 1974. The provisions themselves are more than twenty years old; the epithet is of more recent vintage. A helpful analog for those not familiar with the provisions is to labor relations; initiatives under Section 301 are similar to grievance proceedings under a collective-bargaining agreement.¹ Certain aspects are similar to litigation.² There have been roughly one hundred formal 301 proceedings since 1974, at least thirty others that were discouraged or withdrawn at an early stage, and an unknown number that were considered, rumored, or fantasized!

Our main interest is in the determinants of various types of resolution and irresolution of 301 actions, from the perspective of negotiators and their constituents. Our main contributions are to apply familiar statistical methods to detect and size up these determinants and then to report the robustness of the results. These statistical approaches extend and complement the exhaustive historical and case-study evaluations of Bayard and Elliott (1994).³ We also update that study, adding fifteen cases to the seventy-two considered there.

One important conclusion of our work is that the Bayard-Elliott findings are

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1. On the economics of grievance, see Lewin and Peterson (1988).

2. For a recent example of the economics of litigation, see Hughes and Snyder (1995).

3. See also similar evaluations of Section 301 by Low (1993), Ryan (1995), and Sykes (1992). Hudec (1990) is a broader treatment.

still relevant for the updated and expanded sample of cases. Our statistical approach illuminates and confirms their evaluations but does not change them qualitatively.

Our most important conclusions, *ceteris paribus*, are the following: (1) Successful resolution of 301 cases is associated with high dependence on the United States and “low reciprocity” toward it. *High dependence* is measured by a target country’s share of GNP that is exports to the United States. *Reciprocity* is measured by the U.S. merchandise trade balance with the target country. (2) Section 301 cases about practices that make unfair distinctions at the border for merchandise are far more successful than those about nonborder practices and services trade.

By contrast, we also note the following:

- There is little difference in the distribution of outcomes between cases involving taxes (other than tariffs) and subsidies and those involving less transparent regulatory and nontax practices or between cases involving traditional trade concerns and those involving less well-established “new issues” (services trade and intellectual property protection).
- There is little difference in resolution rates, or in the correlates of successful resolution, between agricultural and nonagricultural cases.
- There is weak evidence, however, of lower resolution rates among “bullied” trading partners, those singled out for a disproportionate share of Section 301 actions over a three-year interval.
- There is no evidence that “big” cases are resolved successfully more often or that the correlates of “success” rates differ between big cases and smaller ones.
- There is no evidence that explicit, public threats, including the publications of retaliation “hit lists,” enhance the successful resolution of 301 negotiations.
- There is weak evidence, however, of higher resolution rates among cases that the U.S. trade representative’s office was able to bring on its own initiative (rather than a petitioner’s) after 1985.
- There is little evidence that Section 301 actions have become more (or less) successful over their full twenty-year history, despite legislative and administrative refinements that were aimed at making them more effective. Success rates were, however, markedly lower in the early 1980s and markedly higher in the mid-1980s, in roughly offsetting ways. This pattern has several observationally equivalent interpretations.

We do not try to estimate the economic consequences of 301 actions or their welfare effects, either for the United States or for the world trading regime. To do so would require a significant commitment to new data construction. In-

stead, we focus on measures of negotiating success or failure and on what variables influence them.

Our measures of negotiating success or failure are founded on petitions and public statements, which list the various issues leading to grievance, and on follow-up reports from the U.S. trade representative's office that evaluate adherence with respect to these various issues. In our approach, we distinguish four classes of resolution and irresolution of Section 301 cases on the basis of counting issues covered by agreements and ex post implementation. We also take a quantitative approach to those 301 cases where it is reasonable; in these cases, we try to explain the amount of trade recaptured.

At the margins of our qualitative classes, of course, judgment is required. Such judgments are necessarily in the eye of the beholder. We actually employ a mix of subjective judgment and expert opinion in evaluating cases on the margins of our objective categories; thus, our dependent variable is more accurately a consensus variable than a subjective one.⁴

Moreover, our approach can be applied easily by anyone with a different set of marginal judgments about types of success and failure, and their results can be compared to ours.⁵ Finally, explaining perceived success and failure is an important task. These are the perceptions that shape *political* support for Section 301 as well as opposition to it and recommendations to revise it. In that spirit, our measurement of success is objective and politically sensitive, not merely subjective.

In light of our conclusions, we close the paper with a discussion of the degrees of success to be expected for alternative options to Section 301 for U.S. trade grievances.

8.1 Background

In broad terms, Section 301 authorizes the president of the United States, or the U.S. trade representative (USTR), to take action against "unreasonable, unjustifiable, or discriminatory" practices of foreign trading partners that impinge on U.S. commerce. Such actions begin with consultations, often involve formal negotiations, and can be enforced by sanctions. There have been a number of legislative and administrative changes in Section 301 over the years.

4. We took seriously the judgments of the parties involved in Section 301 cases, solicited through extensive interviews conducted by Bayard and Elliott (1994). Consequently, to the best of our ability, we are explaining the success and failure of 301 actions in the eyes of those with the largest political stake, whether as supporters or critics. Our judgments at the margins are not fundamentally different from those made in using surveys to code categories such as "in" or "out of" the labor force, "head of household" or not, etc.

5. To illustrate the value of that, suppose that both we and they find that explicit, public threats do not enhance 301 success. Then that conclusion is made more robust to the natural accusation that it was due to the vagaries of subjective classification. We, in fact, examine the sensitivity of our results to several of the most controversial single-case evaluations.

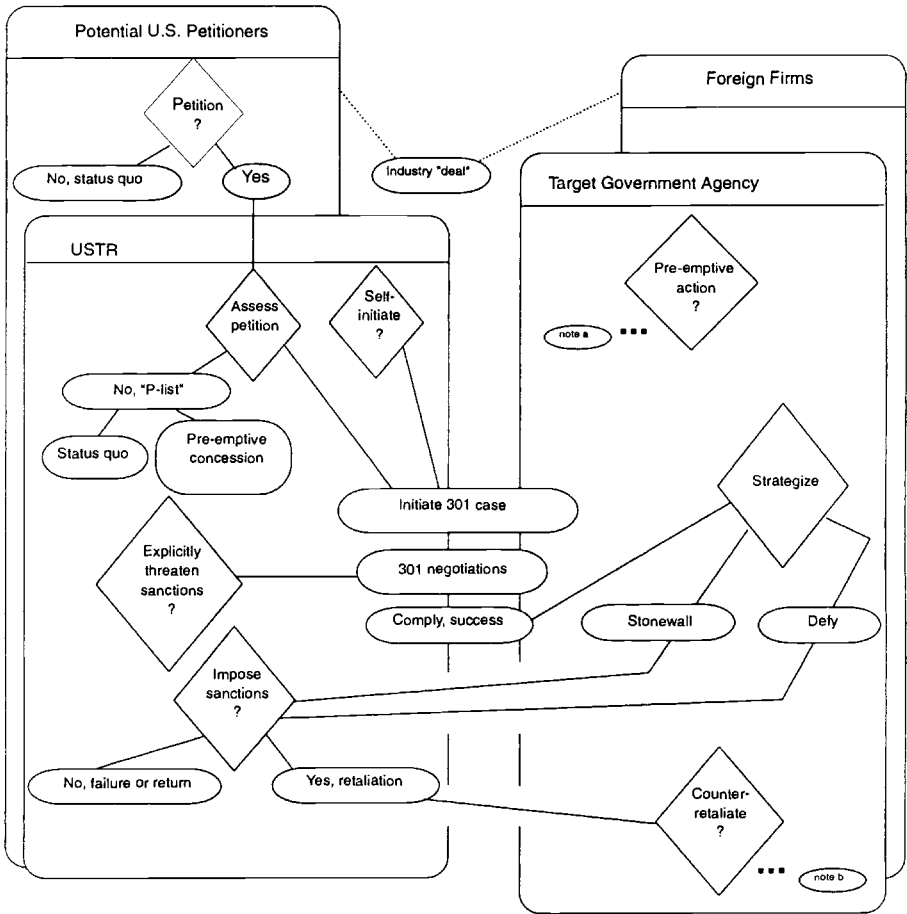


Fig. 8.1 The structure and sequence of Section 301 actions

Note: Diamonds = decisions; Ovals = outcomes.

*Such action can involve informal consultation between U.S. negotiators and target-country negotiators even before a decision on the petition is made. Three options are available to the target country. Preemptive concessions can encourage the petitioner to withdraw the petition or the USTR to reject it (some so-called p-list cases). Either stonewalling or defiance in the informal consultation could lead the USTR to accept the petition and to initiate a 301 case.

^bIn the event of U.S. retaliation, the target country once again can comply, defy, or stonewall. In the latter cases, it may also counterretaliate (the EC has counterretaliated in two cases, the linked disputes over pasta and citrus in 1985–86 and the enlargement dispute following the accession of Spain and Portugal in 1986 [although both the retaliation and the counterretaliation in the latter case were symbolic, nonbinding quotas], and Canada in one, the beer war in 1992–93), at which point the USTR is faced with a decision to escalate its retaliation (although this has never occurred in practice), reopen negotiations, or simply stand on the standoff.

Some of these changes expanded its definition of U.S. commerce to non-trade-related services, investment, and intellectual property. Others made its deadlines and procedures less—or more—discretionary (e.g., in 1984, the U.S. trade representative was explicitly authorized to initiate 301 cases even without a petition from a private-sector plaintiff). And still others created “Special” 301 procedures for violations of intellectual property rights and “Super” 301 provisions for egregiously unfair practices by chronically unfair trading partners (trade partners with an attitude or maybe an addiction). Understanding how a Section 301 case proceeds can be facilitated by examining figure 8.1, a stylization to which we return below for purposes of econometric specification.

Section 301 proceedings have been extremely controversial among our trading partners, especially since procedural changes made during the 1980s promoted their more aggressive use and removed elements of presidential discretion. Some supporters, echoing Hudec (1990) (and ignoring his nuances), have seen 301 as a weapon of constructive vigilantism, and others have been quietly happy to enjoy its fruits.⁶ Critics have declared the fruit rotten, reacting with outrage at what they see to be a bullying tool of “aggressive unilateralism.” These critics supported the new World Trade Organization (WTO) dispute settlement mechanisms as a discipline on U.S. recourse to the 301 procedures.

Among Americans, Section 301 is popular, appealing to our commitment to equal opportunity and fair play—for ourselves, of course, in this case. Support for 301 remains strong, as a contingent arsenal, at least until WTO substitutes prove themselves effective and fair, and certainly for issues and countries not covered by WTO rules.

Especially among supporters, there is an important unspoken assumption. It is that 301 procedures generally work. That is, negotiating goals are usually realized and in predictable ways. Even some critics make the same assumption, arguing that 301 actions really do force target countries to reduce entry barriers or cease restrictive practices. Yet, in the eighty-seven cases we analyze, almost half (forty-two) end in degrees of failure by our measures.⁷ Furthermore, the correlates of success and failure are not always what commentators have expected. In the popular view, by contrast, the presumption of success is often indiscriminating, as if occasional failure were just a matter of animal spirits, one of those things.

Our methods in this paper allow us to be more discriminating than this, both about the chances of success and about what conditions enhance them.

6. Most 301-inspired concessions are made available to *all* a target country's trading partners, not just to the United States.

7. This is not an unexpected outcome according to the theory of litigation (see Lewin and Peterson 1988). “Plaintiff” and “defendant” will often tend to agree that the odds of either winning are roughly fifty-fifty. If the perceived odds of the plaintiff winning are less than that, then the plaintiff will tend not to bring the case; if they are greater, then the defendant will settle “out of court” before the case is brought. Differences in perception, harassment, or demonstration motives cause variation around this fifty-fifty presumption but do not shift it systematically. We are indebted to Kenneth Koford for drawing our attention to this parallel literature.

8.2 The Bayard-Elliott Approach and Ours

Bayard and Elliott (1994) is a comprehensive evaluation of seventy-two Section 301 cases, with in-depth case studies of nine of them. Relying principally on historical assessments and tabular and cross-tabular displays, Bayard and Elliott drew the following conclusions:

- Section 301 was a reasonably effective tool of U.S. trade policy in the mid- and late 1980s.
- Super 301 (created in the Omnibus Trade and Competitiveness Act of 1988), aimed at egregiously unfair partners and practices, was no more effective than “regular” 301 in this period.
- Section 301 did not trigger major trade wars, nor did agreements under 301 typically result in trade diversion.
- But neither did 301 produce large gains for U.S. exporters in most cases.

Bayard and Elliott (1994, 86–90) also experimented briefly with some of the statistical methods that we use in this paper, in particular, the binomial probit approaches. We extend and reconsider this part of the Bayard-Elliott work. Specifically, we

- adopt binomial probit and tobit and multinomial logit approaches to reevaluate their assessments while also extending and updating their data set from seventy-two Section 301 cases (observations) to eighty-seven (the cases that we add are summarized in table 8.1 and discussed in greater detail in the appendix);⁸
- revisit several of their hypotheses (e.g., that legislative changes to make Section 301 more effective during the 1980s actually had this effect);
- expand their measure of success to a four-part gradation and add to (and subtract from) their catalog of success-failure determinants;
- identify, isolate, and discuss the most anomalous Section 301 cases, which are observations with large and chronic residuals in our approach;
- examine the specification and residuals for evidence that the “size” of a case makes a difference (e.g., because of heteroskedasticity); and
- more precisely define the marginal efficacy of discretionary determinants (e.g., whether explicit, public threats enhance negotiating success) and when the marginal effects of various determinants are interdependent (e.g., whether threats “work better” with European target countries than with others).

8. Summaries like those in the appendix for the seventy-two cases in Bayard and Elliott (1994) are available from the authors.

Table 8.1 Observations Added to Bayard and Elliott Data Sample (Section 301 cases and petitions)

Case No.	Target	Period of Case ^a	Type of Product	Actual Value of U.S. Exports to the Target ^b	GATT Panel Established?	GATT Panel Ruled?	Negotiating Objective Achieved?	Degree of Trade Liberalization Resulting from 301 ^c
<i>Formal investigations</i>								
38	Taiwan	10/25/82–12/19/83	Manufactured (footwear)	Negligible	N.A.	N.A.	No basis for allegations of unfair trade barriers found in investigation, but president directed USTR to pursue Taiwanese offers to lower tariffs and provide marketing assistance to U.S. exporters	Very modest
83	European Community	11/28/90–10/93	Agriculture related (meatpacking)	Approx. \$30 million (based on data in USTR files)	No ^d	No	Partially; two sides agreed to use “equivalency” principle in applying meatpacking plant standards to imported meat and meat products	Modest
88 ^e	China	10/10/91–10/92	General market access (QRs, licensing, technical barriers, and lack of transparency in import regulations)	Approx. \$2 billion, based on USTR retaliation threat	N.A.	N.A.	Partially; although problems in implementation have occurred, China has largely met deadlines for removing specific nontariff barriers	Probably modest thus far, but potentially significant if fully implemented

(continued)

Table 8.1 (continued)

Case No.	Target	Period of Case ^a	Type of Product	Actual Value of U.S. Exports to the Target ^b	GATT Panel Established?	GATT Panel Ruled?	Negotiating Objective Achieved?	Degree of Trade Liberalization Resulting from 301 ^c
89 ^e	Taiwan	4/29/92–6/5/92	IP (copyright)	\$370 million (USTR estimate)	N.A.	N.A.	Partially, although passage and adequate enforcement of necessary legislation took another 18 months	Probably modest, although it also depends on the level of offsetting investment in Chinese pirate plants
91 ^e	Brazil	5/28/93–2/25/94	IP	\$800 million (industry estimate of losses)	N.A.	N.A.	Nominally, since Brazilian congress has yet to pass either the patent or the copyright bills by the promised deadlines (15 June 1994 and 1 January 1995, respectively)	None to date
93 ^e	Japan	10/1/94–6/28/95	Manufactured (auto parts)	\$7.5 billion (based on planned retaliation)	No ^f	No	Nominally, given modest results and likelihood of recurrence	Small at best
98	Canada	12/23/94–6/22/95	Service (country music cable TV station)	\$130 million (based on planned retaliation)	N.A.	N.A.	Partially, since U.S. firm had to sign joint venture agreement to get back into market, but with two Canadian firms with potentially triple the customer base	Modest

Negotiations resulting from petitions not formally investigated

SROK	Korea, "non-Super 301" negotiation	1989	Goods, services, and FDI	Not calculable	N.A.	N.A.	Nominally because agreements not enforced	Little or none
SROC	Taiwan "non-Super 301" negotiation	1989	Goods, services, IP	Not calculable	N.A.	N.A.	Nominally because promises not fulfilled	Modest at best
P-7	Korea	9/10/85– 10/25/85	Manufactured/service (entry and distribution of films and videos)	Approx. \$10 million	No	No	Nominally, because case recurred (see P-28)	Little or none
P-11 & 16	Japan	4/11/86– 5/29/86; 1/16/87– 3/2/87	Service (legal services)	Unknown	N.A.	N.A.	Partially, foreign lawyers allowed to practice but with extensive restrictions	Modest
P-18	Chile	2/22/88– 4/7/88	IP	Approx. \$15 million (industry estimate of losses)	N.A.	N.A.	Largely, Chile adopted improved patent law with only slight delays from promised deadlines; Chile remains on the lowest level Special 301 watch list, but there have been no recorded complaints about enforcement, only demands for additional protection, e.g., for pipeline products	Modest

(continued)

Table 8.1 (continued)

Case No.	Target	Period of Case ^a	Type of Product	Actual Value of U.S. Exports to the Target ^b	GATT Panel Established?	GATT Panel Ruled?	Negotiating Objective Achieved?	Degree of Trade Liberalization Resulting from 301 ^c
P-23	Korea	9/15/88– 10/28/88	Manufactured (films)	Approx. \$10 million (industry estimate of losses)	N.A.	N.A.	Partially, since complaints after this point focus primarily on piracy, not access and distribution	Modest
P-26	Japan	3/5/90– 4/18/90	Manufactured (amorphous metal transformer cores)	Small	N.A.	N.A.	Partially, since Japanese utilities purchased transformers as promised for field testing and Allied Signal has not complained publicly about implementation	Small at best
P-28	Taiwan	12/3/90– 1/11/91	Manufactured (distilled spirits)	Small	N.A.	N.A.	Partially, since Taiwan lifted ban on imported distilled spirits, although high taxes and other restrictions remain	Small at best

Note: N.A. = not applicable; QR = quantitative restriction; IP = intellectual property; FDI = foreign direct investment.

^aThe first date is when the petition was filed; the end date is either when the petition was withdrawn or a formal case was terminated, suspended, or otherwise concluded.

^bUnless otherwise indicated, the figures represent the value of U.S. exports to the target country after the case was concluded. The trade gain (in successful cases) or loss (in failures) would typically be a much lower figure, and, in cases involving homogeneous products, the *net* gain or loss might be close to zero. The overstatement of actual loss is even greater in the cases involving export subsidies that affect third markets; in those cases, the smaller of U.S. or target-country exports to the world are provided, even though it is likely that U.S. exports compete with subsidized exports from other countries in only some of its markets. The export figures provided are intended to give only a general idea—an order of magnitude—of the potential stakes involved and of the importance of trade in the sector to the U.S. economy; in other words, these data are meant only to distinguish “big” cases from “small” ones.

^cNegative if retaliation imposed with no other resolution; none if there was no resolution or if other measures substituted for targeted practice or policy; modest if practice modified but not eliminated; significant if practice eliminated or if there is a credible commitment to phase it out.

^dAfter the European Community twice blocked U.S. demands at GATT council meetings, a decision was finally made to establish a dispute settlement panel in an earlier iteration of this case (301-60). An agreement was reached between U.S. and European negotiators before the panel could be appointed. This case was filed when that agreement failed to hold.

^eCase self-initiated.

^fThe USTR did notify the World Trade Organization that it was considering filing a complaint charging that Japanese practices “nullified and impaired” expected U.S. benefits under the agreement.

8.3 Econometric Specification and Conceptual Issues

Figure 8.1 above describes Section 301 procedures and actors visually. There are as many as four important groups of actors: private U.S. petitioners, the office of the U.S. trade representative, its foreign counterpart, and private foreign “offenders.” There are also, of course, other government agencies that are sometimes involved and occasionally private agents that compete with a petitioner’s business.⁹

There are also several possible procedures for “resolving” a case. The most common that we can observe is the sequence of formal petition, consultations and negotiations, and outcome (either agreement, sanctions without agreement, or standoff). USTR records and news accounts also allow us to observe a limited number of “preemptive settlements,” in which a trading partner makes concessions adequate to lead to a cessation of formal 301 procedures (we added eight such cases to Bayard and Elliott’s sample). We cannot, however, observe two kinds of would-be cases. One is deterrent cases, cases whose potential credibility is so strong that trading-partner actors change actions privately to avoid even the beginnings of a 301 petition. The second is wishful-thinking cases, cases not brought because one or another determinant/correlate of outcomes makes success very unlikely.¹⁰ The inability to observe these types of cases creates classic selection bias in our procedures. But it is hard to know their net bias. Unobserved would-be cases include both virtual successes and virtual failures. It is also hard to use standard corrections for selection bias since we had no information at all on “unbrought” cases.

The combination of multiple actors and multiple procedures also makes econometric specification troublesome. No single agent’s behavior (or group of agents’ behavior) is present in every case. Nor is the sequence of environments leading to resolution or irresolution common to each observed case: sometimes it is threat followed by response; sometimes it is petition, “cooperative” negotiation, and then outcome; sometimes negotiations are punctuated by clear “non-cooperative” breakdown.

Nevertheless, the same sorts of problems confront descriptive and historical analysis of Section 301 actions, so “loose” specification by itself is not sufficient to abjure our statistical approach. But it does make us more than usually cautious about our results.

In our qualitative approach, we provide a four-part consensus assessment of the degree of negotiating resolution in each Section 301 case, using USTR records, media accounts, and expert interviews, as outlined above. We distin-

9. Polaroid, e.g., lobbied for involvement in Kodak’s Section 301 case.

10. For example, Bayard’s and Elliott’s variables include a measure of a target country’s reputation for swift, strong *counterretaliation* against U.S. sanctions. The threat of counterretaliation could easily cause cases against *those* target countries not to be brought at all, rather than leading to failure among cases that *are* brought, as they assume in their probit analysis, where they find its influence insignificantly different from zero.

guish cases that ended in the following outcomes: no agreement at all; an agreement on paper that was never implemented or later reversed; an agreement on some, but not all, of the issues under petition; and substantial agreement on all issues. We call these categories *clear failure*, *marginal failure*, *partial success*, and *clear success*, respectively. We updated and extended the Bayard-Elliott (1994) sample to eighty-seven cases, adding fifteen cases described in the appendix and table 8.1 above, where it is also possible to see how these assessments are formed. For our eighty-seven cases, the sample size in each of the four groups above is, respectively, twelve, thirty, thirty-four, and eleven.

Determining the correlates of qualitative groupings like ours is one of the principal uses of binomial and multinomial probit, logit, and related approaches. We pursued a binomial probit approach¹¹ to a success-failure aggregation of the four outcomes from Section 301 cases and a multinomial logit approach to the four-way grouping.¹² For the binomial approach, we treated cases in the first two groups as "failures" and cases in the second two groups as "successes." The binomial probit approach is essentially to fit a nonlinear regression¹³ that generates an estimated "probability" of success ($y = 1$) or failure ($y = 0$) from a set of independent variables. The multinomial logit approach is essentially a nonlinear regression that generates estimated "probabilities" that an observation falls into one particular group relative to another, from a set of independent variables correlated with the classification mechanism. When the classification mechanism creates an ordinal ranking of outcome groups, as ours does, an "ordered" multinomial approach also gives boundary points for the estimated probabilities.

We also experimented with a quantitative tobit approach to outcomes of 301 negotiations defined as the amount of trade recaptured. In considering the independent determinants of Section 301 outcomes, we started with the same guidance as Bayard and Elliott (1994, 79–85), based on McMillan (1990). McMillan suggests variables having to do with benefits and costs of compliance or defiance in the target country, and, given those, the net benefit of resolution in the particular case to the United States, plus *perceptions* of the same benefits and costs, perceptions that are shaped largely by negotiating tactics.

To anticipate our results, we find some evidence for the first through a variable measuring a target country's dependence on the U.S. market and hence

11. Binomial logit approaches tend to produce very similar results to binomial probit approaches for samples like ours with balanced extremes, not heavily unbalanced toward either failure groups or success. See, e.g., the discussion in Greene (1993, 638).

12. Baldwin and Steagall (1994), Mutti and Yeung (in press), and Hansen and Prusa (1995) are recent binomial probit approaches to U.S. political-economic decision making as regards trade remedies. In their cases, unlike ours, there is a single dominant U.S. agency whose behavior is being explained. Appendix C of Destler, Odell, and Elliott (1987) is a multinomial logit approach to political activism against border protectionism.

13. The functional form is a cumulative normal probability density function (PDF) in the case of probits and cumulative logistic PDF in the case of logits.

vulnerability to U.S. trade sanctions. But we find no evidence that the U.S. “stakes” in a case, as measured here, mattered to its successful resolution, either qualitatively or quantitatively, and only weak or little evidence that tactics like threats and accentuated pressures made a difference. In fact, our base specification includes two strong correlates that seemed less important to us *ex ante* than those above: (1) a rough measure of the level of overall “reciprocity,” specifically, the aggregate merchandise trade balance of the United States with the target country; and (2) whether the case concerned the “usual suspects,” specifically, unfair border practices that blocked merchandise access (in which case it was far more likely to be successful), or some other, newer issue (e.g., practices toward services trade or intellectual property protection), or more narrowly “domestic” practice (e.g., regulatory access barriers).

8.4 Qualitative Results

Our multinomial approaches showed that it was almost impossible to distinguish between clear and marginal failures using the independent variables that we had available. By contrast, cases that partially or largely succeeded could be distinguished both from each other and from the failures on the basis of similar variables (correlates). Therefore, we start below with our results on determinants of (binomial) “success” and “failure,” then show how the same variables help forecast clear versus partial successes. The following section describes our attempts to measure and explain Section 301 success quantitatively.

Our results showed a fairly consistent pattern across alternative specifications and robustness checks. Some variables that we expected to be strong determinants of Section 301 outcomes seemed not to be; others that we thought to be less important turned out to be quite strong and omnipresent. We start with results from our so-called base specification, with its most promising variations. We then describe the “dogs that didn’t bark”—the patterns that did not emerge. Finally, we summarize several robustness checks and our analysis of “chronic” residuals—the cases that our base-specification correlates always get wrong. Tables 8.2 and 8.3 define and statistically describe the variables involved in variations on our base specification.

8.4.1 Success or Failure? Results from the Probit Approach

Table 8.4 summarizes results from our base specification. Three determinants seemed to predict success and failure well regardless of what else we added: the target’s exports to the United States as a share of its GNP (TXDEP2), the U.S. merchandise trade balance with the target (TBAL),¹⁴ and a dummy variable taking on the value one when the case involved a border

14. The large numerical size of the TBAL variable does not distort the results, as reported in our discussion below of residuals and heteroskedasticity.

Table 8.2 Variable Definitions

A. Dependent variables	
SUCCESS	0 if there is no agreement; 1 if an initially "successful" outcome is later reversed or an agreement inadequately implemented; 2 if there is partial achievement of negotiating goals; 3 if negotiating goals are largely achieved. Used in multinomial logits.
OPENING	0 if SUCCESS = 0 or 1; 1 if SUCCESS = 2 or 3. Used in binomial probits.
B. Independent variables	
TXDEP2	Target country's exports to the United States as a percentage of GNP.
TBAL	U.S. trade balance with the target country.
BORDER	1 if there is a border measure affecting goods (import and export quotas and tariffs), 0 otherwise.
INITIATE	1 if the case is initiated by USTR, 0 otherwise.
BULLY	Number of cases started against the particular target country in question as a proportion of all cases started during years t , $t - 1$, and $t - 2$. (The number of cases in 1973 [pre-301] and 1974 was set = 0.)

barrier to U.S. merchandise exports (BORDER). We interpret these, respectively, as measures of target vulnerability to U.S. sanctions, crude reciprocity in trade relations,¹⁵ and the simplicity, familiarity, and/or legitimacy of the issue. As the coefficients suggest, 301 successes are more likely the greater is target vulnerability, the less reciprocal its trade posture appears to be, and the more the case concerns simple, familiar border barriers to traded merchandise, where the perceived legitimacy of U.S. complaints is greater. Column 4 records estimated partial derivatives of the probability of success with respect to each determinant,¹⁶ at (approximately) sample means of the variables. The entry for TXDEP2 (1.951), for example, suggests that 301 cases are roughly 13.5

15. Although there is little economic reason to consider the trade balance a measure of reciprocity, politicians and negotiators often do. Nothing that we tried as a more satisfactory economic measure was at all correlated with 301 outcomes. For an approach to all unilateral U.S. trade actions between 1990 and 1994, not just Section 301 actions, that also finds a significant role for the bilateral trade balance as an explanatory variable for U.S. attention to trade disputes, see Noland (1995).

16. Since the probit function is nonlinear, estimated coefficients cannot be interpreted as partial derivatives.

Table 8.3 Summary Statistics

	All Cases		"Successful" Cases		"Failed" Cases	
	Mean	SD	Mean	SD	Mean	SD
OPENING	.517		1.000		.000	
TXDEP2	.065	.069	.082	.080	.047	.051
TBAL	-10,009.652	17,476.801	-15,474.556	18,517.581	-4,154.398	14,310.341
BORDER	.310		.444		.167	
INITIATE	.264		.333		.190	
BULLY	.173	.218	.132	.188	.205	.250

Table 8.4 Binomial Probit for Success-Failure: Base Specification

Independent Variables	Coefficient	SE	t-Statistic	Partial Derivatives ^a
Constant	-.891	.254	-3.504	-.354
TXDEP2	4.907	2.324	2.111	1.951
TBAL	-.000031	.000009	-3.268	-.000012
BORDER	1.119	.346	3.237	.445
Percentage of cases correctly predicted			72.41	
Maximum likelihood estimates:				
Log likelihood			-47.16	
Restricted log likelihood (slopes = 0)			-60.25	

^aPartial derivatives of the probability of success with respect to each determinate at (approximately) sample means of the variables. For sample means, see table 8.2.

percent more likely to succeed against a target country with one standard deviation (0.069 from table 8.2) more vulnerability than the mean target ($0.069 \times 1.951 = 0.135$). The column 4 entry for BORDER is notable. The probability of success for a 301 case involving a border barrier to merchandise trade is roughly 44 percent larger than for other kinds of barriers, a quite large differential.

Table 8.5 unpacks the base specification in a cross-tabular format to reveal two negative conclusions, about interactions and tactics.¹⁷ The first is that there is no significant evidence of multiplicative (interaction) effects between the three base determinants. This can be seen in the left-hand panel of the table. Target vulnerability works roughly in the same way to enhance success whether the trade (im)balance is "high," "medium," or "low."¹⁸ And trade imbalance works the same whether target vulnerability is high, medium, or low.

17. These are results from regressions that are not summarized in the tables. We had thought perhaps that success ratios would be especially high in cases where there was both heavy vulnerability and little reciprocity—more than the sum of their effects might have suggested. We had also thought that explicit, public threats enhanced USTR credibility. Neither could be shown.

18. In this context, a "high" trade balance signals a large deficit for the United States.

Table 8.5 Cross-Tabular Analysis of Success-Failure, Base Specification, with Detail^a

U.S. Bilateral Trade Balance	Target Dependence							
	All Observations				Only Observations with Explicit Threat ^b			
	High	Medium	Low	Total	High	Medium	Low	Total
High:								
B	0	3/3	2/2	5/5	0	2/2	2/2	4/4
NB	0	7/8	1/2	8/10	0	5/6	1/2	6/8
Medium:								
B	6/7	3/4	2/2	11/13	1/1	1/2	1/1	3/4
NB	9/14	2/8	1/7	12/29	5/8	1/4	1/5	7/17
Low:								
B	0	0	4/9	4/9	0	0	1/2	1/2
NB	0	1/3	4/18	5/21	0	0/1	2/7	2/8
Total:								
B	6/7	6/7	8/13	20/27	1/1	3/4	4/5	8/10
NB	9/14	10/19	6/27	25/60	5/8	6/11	4/14	15/33

Note: B = border measure; NB = nonborder trade barrier. For target dependence (target-country exports to the United States as a percentage of the target-country GNP), high = greater than 10 percent, medium = 3–10 percent, and low = less than 3 percent. For the U.S. bilateral trade balance (in dollars), high = greater than –20 billion, medium = from –1 to –19 billion, and low = less than –1 billion.

^aEach cell shows the number of successes as a proportion of the total number of cases in that category.

^bIncludes only cases “self-initiated” by the USTR plus those in which the USTR or the president issued a formal determination of unfairness with a deadline for taking action or published a hit list of potential retaliation targets.

The likely success of border cases appears in almost every cell. The second conclusion is that cases in which the USTR shows special tactical resolve, such as making explicit, public threats, including “hit lists” of goods to be sanctioned if the target is uncooperative, are no more successful than any other cases. This can be seen in the right-hand panel of the table, which isolates only the thirty-three cases for which this was true. Their covariation through the cells of the table is merely a scaled-down version of that in the left-hand panel for all the cases. In fact, we were never able to find significant evidence that tactical public threats of any kind made any difference, even when they seemed quite credible; they may merely have stiffened target resistance.

Table 8.6 records results for several variations on the base specification. The first adds a dummy variable for those cases that the USTR “self-initiates” without petition. These have a higher chance of success—roughly 24 percent, according to the partial derivative—but the coefficient is significant at only a 10 percent level. The second variation adds a “bullying” variable instead. This variable measures the frequency over a three-year interval that a given target country was hit with 301 cases relative to other target countries. There is weak evidence of diminishing returns from concentrated cases against any single target country, but the coefficient is significant only at the 27 percent level. A 10 percent increase in a target’s share of cases during any three-year interval reduces the chances of success by roughly 4 percent, according to the partial derivative, an effect that does not seem especially large. The third variation adds both the self-initiate dummy and the “bullying” variable. Results for the first are little affected, but the “bullying” variable declines still further in size and significance.

Table 8.7 lists the “chronic residuals” for the binomial probits, cases that are mispredicted across virtually all variations.¹⁹ Some of these mispredictions seem innocuous, albeit “chronic”—specifically, those with predicted [Prob $y = 1$] close to 0.50; they were all “close calls” for the regression. Others seems more serious. There is little temporal pattern, in particular, no tendency for more recent cases to fail more often, say, because of completion of the Uruguay Round (but the Japanese automobile case, case 93, may be a single-residual harbinger, according to some commentators). There is no discernible pattern with respect to any measure of the size or importance of a case or a trading partner.

In fact, one of the surprising negative conclusions is that the hypothesis of homoskedasticity of the residuals could not be rejected in any case we tried (we tested for it with respect to both the trade balance and a measure of the alleged size of the trade under dispute). That is, the various regressions suggest that both “big” and “small” cases are governed by the same correlates, with little need for scaling of observations to take account of “size.” Indeed, this result seemed so surprising that we pursued it further, using a tobit approach

19. Including some not summarized explicitly in the text.

Table 8.6 Binomial Probit for Success-Failure: Alternative Specifications

Independent Variables	With "Self-Initiate" Dummy				With "Bullying" Measure				With "Self-Initiate" Dummy and "Bullying" Measure			
	Coeff.	SE	t-Statistic	Partial Derivatives ^a	Coeff.	SE	t-Statistic	Partial Derivatives ^a	Coeff.	SE	t-Statistic	Partial Derivatives ^a
Constant	-1.076	.282	-3.813	-.428	-.634	.340	-1.863	-.252	-.853	.374	-2.284	-.340
TXDEP2	5.333	2.397	2.225	2.121	4.240	2.373	1.786	1.686	4.744	2.456	1.932	1.887
TBAL	-.000026	.000010	-2.780	-.000011	-.000030	.000009	-3.139	-.000012	-.000026	.000010	-2.718	-.000010
BORDER	1.228	.354	3.465	.488	1.186	.358	3.313	.472	1.279	.366	3.50	.509
INITIATE	.605	.364	1.662	.241					.559	.367	1.522	.223
BULLY					-1.056	.951	-1.110	-.420	-.860	.967	-.890	-.342
Percentage of cases correctly predicted		73.56					72.41				73.56	
Maximum likelihood estimates:												
Log likelihood			-45.75				-46.53				-45.35	
Restricted log likelihood (slopes = 0)			-60.25				-60.25				-60.25	

^aPartial derivatives of the probability of success with respect to each determinate at (approximately) sample means of the variables. For sample means, see table 8.2.

Table 8.7 Binomial Probit for Success-Failure: Chronic Outliers

Case No.	Year Case Resolved	Target Country	Issue	Type of Barrier	Base Specification	Residuals (Prob[y = 1]) from Base Specification with:		
						INITIATE	BULLY	INITIATE and BULLY
Observed failures/predicted successes:								
24	1982	Argentina	Export ban on hides	Border	.624	.598	.653	.626
34	1982	Canada	Investment incentives for machinery	Nonborder	.609	.544	.623	.559
41	1985	Portugal	Restrictions on oilseed imports	Border	.638	.614	.724	.689
48	1991	Japan	Semiconductor market access	Nonborder	.711	.585	.725	.608
72	1990	Thailand	Ban on cigarette imports	Border	.731	.712	.803	.776
80	1992	Canada	Provincial restrictions on beer	Nonborder	.671	.612	.699	.640
93	1995	Japan	Market access for autos and parts etc.	Nonborder	.890	.919	.875	.907
P-7	1985	Korea	Market access for foreign films	Border	.844	.835	.842	.834
SROC	1989	Taiwan	Super 301 negotiations	Nonborder	.611	.545	.648	.581
Observed successes/predicted failures:								
3	1980	EC	Variable levies on egg products	Border	.401	.401	.266	.290
25	1987	EC	Pasta export subsidies	Nonborder	.459	.356	.365	.292
40	1985	Brazil	Export subsidies for soybeans	Nonborder	.270	.212	.304	.241
44	1989	Argentina	Restrictions on air courier services	Nonborder	.217	.169	.251	.196
49	1989	Brazil	Informatics policy	Nonborder	.242	.387	.267	.400
53	1988	Argentina	Export subsidies for soybeans	Nonborder	.207	.160	.258	.199
71	1989	EC	Subsidies for canned fruit	Nonborder	.203	.345	.213	.343
83	1992	EC	Meatpacking standards	Nonborder	.148	.116	.170	.134
P-18	1988	Chile	Patent protection	Nonborder	.294	.242	.350	.288

to the subsample of observations for which we had a reliable measure of the trade lost from the allegedly unfair practice abroad.²⁰ This approach is described below in section 8.5.

We also experimented with the sensitivity of our results to success-failure reclassification of some of the more controversial cases (since the margins of the basic classifications *are* judgmental). The estimated coefficients were quite robust to changing the verdict on both the semiconductor case (48) and the automobile case (93), although, of course, that took care of those two residuals.

Other surprising conclusions from the binomial probits involved expected patterns that did not emerge. In addition to those discussed above, we could find no evidence that the probability of success was influenced by the amount of trade or other business “at stake” in the case. (Although target-country resistance may be high in such cases because the same value is “at risk” in their eyes, properly controlling for the target’s benefits and costs of compliance should have left this variable reflecting the U.S. stakes only). We could find no evidence that the probability of success was influenced by whether the case was transparent, involving reasonably clear taxes and subsidies or more opaque barriers, or whether the case involved the complex “new issues” of services and intellectual property or more familiar traditional barriers. We could also find no evidence that the probability of success was influenced by the difference between agricultural or nonagricultural cases or by time in general. As for the latter, recent cases that were not in Bayard’s and Elliott’s data but that have been added to ours did not change their conclusions using their specifications.

One time-related conclusion, however, can be taken either negatively or positively. Time dummies that isolate the early 1980s from the period from 1985 to 1988 show markedly higher success rates in the latter period and markedly lower success rates in the former, *ceteris paribus*.²¹ Bayard and Elliott relate the higher mid-1980s success to legislative and administrative changes aimed at signaling a new “get-tough” stance. The effects of the two dummies are almost exactly offsetting, however, so that an alternative explanation is the change in trade policy personnel and style between the first and the second Reagan administrations without any necessarily lasting consequence.

8.4.2 Shadings of Success and Failure: Results from the Multinomial Logit Approach

We also experimented with explaining the richer four-way breakdown of the cases into clear and partial successes and failures.

Table 8.8 summarizes the results of two variations of unordered multinomial

20. Many cases had no measure at all of the trade under dispute, usually when they involved a large number of disparate practices affecting many different American exports. Case 88 against multiple Chinese access restrictions is one example.

21. See Bayard and Elliott (1994, 86–90), whose configuration of time dummies can be reinterpreted as in the text.

Table 8.8 Unordered Multinomial Logit for Clear and Marginal Shades of Success and Failure (clear failure = omitted category)

Independent Variables	Base Specification			With "Self-Initiate" Dummy		
	Coeff.	SE	t-Statistic	Coeff.	SE	t-Statistic
Marginal failure:						
Constant	.753	.494	1.525	.958	.556	1.724
TXDEP2	-.246	7.423	-.033	-.902	7.550	-.119
TBAL	-.000051	.000040	-1.270	-.000057	.000042	-1.360
BORDER	.311	.957	.325	.193	.971	.199
INITIATE				-.803	.877	-.915
Marginal success:						
Constant	-.506	.587	-.863	-.548	.664	-.826
TXDEP2	8.035	7.188	1.118	7.909	7.267	1.088
TBAL	-.000092	.000041	-2.243	-.000092	.000043	-2.148
BORDER	1.820	.954	1.907	1.856	.978	1.899
INITIATE				.177	.889	.199
Clear success:						
Constant	-2.150	.898	-2.393	-3.215	1.253	-2.565
TXDEP2	3.784	8.521	.444	5.548	8.612	.644
TBAL	-.000106	.000043	-2.445000	-.000104	.000045	-2.291
BORDER	3.001	1.122	2.674	3.731	1.287	2.900
INITIATE				1.641	1.197	1.370
Percentage of cases						
correctly predicted:						
Clear failures		8.33			8.33	
Marginal failures		73.33			70.00	
Marginal successes		73.53			67.65	
Clear successes		9.09			18.18	
Maximum likelihood estimates:						
Log likelihood		-94.31			-91.17	
Restricted log likelihood (slopes = 0)		-110.41			-110.41	

logits with clear failures as the omitted category. The coefficients should be read relative to clear failure; thus, the first four coefficients in table 8.8 record the determinants of the probability of a case being a marginal failure instead of a clear failure. These coefficients are largely insignificant, indicating that the determinants do not allow us to distinguish between clear and marginal failures. But the next four coefficients record the determinants of the probability of a case being a marginal success instead of a clear failure, the last four a clear success instead of a clear failure. Trade dependence (vulnerability) loses its significance here, but the trade balance (reciprocity) and the border dummy are quite significant, and self-initiation is marginally significant.²² Their coef-

22. In variations with BULLY, its coefficients were never even marginally significant.

ficients are larger in the case of clear successes than in the case of marginal successes, implying that they also contribute in the familiar way to *degrees* of success as well as its likelihood.²³ Nevertheless, the multinomial logit runs clearly underpredict the extremes of the actual distribution, both clear successes and clear failures.

8.5 Quantitative Results

We also experimented with a quantitative counterpart to our multinomial logit approach. For the thirty-six (of eighty-seven) cases in which we could reasonably measure the trade at stake in the dispute,²⁴ we estimated the amount of trade "reclaimed" by the Section 301 procedure.²⁵ That amount was zero in cases of clear failures and all the trade under dispute in cases of clear successes. We then ran tobit specifications on base and alternative specifications similar to those in the qualitative results above. Results were in general quite mixed. They were very similar to the qualitative multinomial logits when the trade reclaimed was expressed as a percentage of the historical level of trade in similar goods *and* when three very large percentage outliers (for cases 57, 64, and 65) were omitted. In all other tobit runs, overall explanatory power was very low.

8.6 Policy Considerations

Bayard and Elliott (1994) concluded that Section 301 was unlikely to be as effective in the future as it had been in the previous decade. The sources of disputes are becoming less tractable, and its use will be constrained by the new World Trade Organization, which embodies an alternative, multilateral grievance mechanism that was shaped to match U.S. preferences. That conclusion is buttressed both by results reported here and by recent events. This study finds that the apparent upward trend in post-1985 Section 301 effectiveness largely disappears if the Reagan administration peaks and valleys are controlled for. And a *National Journal* postmortem on the U.S.-Japan automobile dispute concluded, "One clear lesson is that section 301 . . . is no longer a fearsome weapon" (Stokes 1995, 2098). The article also quoted an aide to the Democratic House leadership as saying that "Section 301 has been doomed to a quiet death." That may be too strong, but the recent spat over automobiles

23. We also tried ordered multinomial logits corresponding to table 8.8. The general pattern of results is very similar, although the coefficient on the self-initiate dummy grew in significance.

24. See n. 20 above.

25. Procedures and details are available from the authors.

and automobile parts (one of our “chronic residuals”) and the dispute with the European Union (EU) over its banana regime highlight another difficulty not seriously considered by Bayard and Elliott or, indeed, by Mickey Kantor: the paucity of feasible WTO-legal sanctions that can be used as negotiating leverage in cases not covered by WTO rules.²⁶

Recent cases provide other indicators of the future. One possibility is that Section 301 will be supplemented and then supplanted by the WTO’s new alternative grievance mechanism.²⁷ The recent dispute (301-95) over Korean shelf-life standards for sausages and other meat, for example, suggests that even the threat of asking for formal WTO intervention can provide significant leverage. In that case, Korean and American negotiators reached an acceptable compromise within days of a deadline that U.S. negotiators had set for requesting establishment of a WTO dispute settlement panel.²⁸

But, conversely, Bayard and Elliott (1994) predicted that U.S. threats would become weaker if a dispute involved issues covered by the WTO, yet the United States failed to follow WTO dispute settlement procedures or threatened to retaliate by withdrawing WTO-covered concessions (e.g., bound tariffs). Although U.S. negotiators considered filing a “nonviolation nullification and impairment” complaint in the WTO during the recent dispute over Japanese practices in the automobile sector (301-93), the core of that case involved competition policy issues not covered by WTO rules. U.S. negotiators apparently were unwilling to impose blatantly illegal sanctions against Japan—raising bound tariffs to prohibitive levels on imported Japanese luxury automobiles—and, when Japanese negotiators called their bluff, they blinked.

Bayard and Elliott correspondingly predicted that the effectiveness of U.S. threats would be unchanged if disputes involved issues not covered by the WTO or nonmembers *and* the United States did not withdraw WTO-covered concessions. But it has apparently been more difficult than supposed to identify WTO-legal sanctions that might make effective threats in areas where WTO rules do not apply. In testimony before the Senate commerce committee

26. In the language of game theory, this is described as a contraction of the “threat set”—the set of outcomes that can be unilaterally assured and implies diminished effectiveness of these “grievance bilaterals.”

27. As of late 1995, eight Section 301 investigations had been launched since the research for *Reciprocity and Retaliation* (Bayard and Elliott 1994) was completed. Five of those cases involve nonborder issues where successful outcomes have been both less frequent and less predictable in the past: one each involving intellectual property issues (China, 301-92), services (Canadian cable television, 301-98), and technical regulatory barriers (Korean health regulations for meat, 301-95) and two alleging anticompetitive practices in Japan (automobiles and parts, 301-93, and photographic film and paper, 301-99). The other three investigations, targeting the European Union, Colombia, and Costa Rica, all involve implementation of the EU’s import preference scheme for bananas from former colonial areas.

28. The desire of the Korean negotiators to put the acrimonious dispute behind them before President Kim Young Sam’s state visit to Washington at the end of July apparently provided additional leverage (see *Inside U.S. Trade*, 14 July 1995; and *Journal of Commerce*, 21 July 1995, 10A).

in June 1994, USTR Kantor listed several areas that might yield WTO-legal sanctions. But the list is not very long, and in many cases it is not relevant to important trading partners:

- taking action in the maritime sector under the authority of the Federal Maritime Commission;
- denying telecommunications and/or banking licenses;
- placing conditions on foreign aid;
- putting limits on science and technology cooperation agreements; and
- denying certain visas (*International Trade Reporter*, 22 June 1994, 979).

Services like shipping, communications, and banking seem an attractive retaliation option because there are few or no WTO constraints in many sectors and because many tradable services remain relatively heavily regulated. This means that there will often be both administrative authority and tools available to the government to intervene. But the same things that make services attractive for retaliation make counterretaliation easier and, if desired, less transparent to any but the affected target. In the recent banana case, for example, negotiators reportedly considered, among other things, imposing a fee on entry into U.S. ports of EU-owned or -flagged ships but backed off, in part, because they—and the U.S. industry—feared counterretaliation against U.S. shippers (*Inside U.S. Trade*, 17 February 1995, 1).

There are further problems with developing countries. In the short and medium run, retaliation in service sectors is not likely to be at all effective against them because they do not yet have competitive tradable services. Other items on the Kantor list may not be of sufficient value to target countries to induce them to open their markets in important sectors. Termination, reduction, or suspension of benefits under the Generalized System of Preferences (GSP) has been used as a sanction in the past in intellectual property cases, but legislative authority for that program lapsed in mid-1995 and, even if restored by Congress, will be of diminishing value because of country graduations, product restrictions, and declining preference margins as the Uruguay Round tariff concessions are phased in.

In sum, American retaliatory threats under Section 301 may be more constrained than initially realized when the WTO was signed. Shortly before the deadline for taking action in the EU banana case, and apparently having failed to come up with other viable retaliation hit-list candidates, the Clinton administration belatedly decided to take the case to the WTO.²⁹ *The Journal of Com-*

29. The USTR had not earlier taken this case to the WTO because its jurisdiction with respect to the American complaint is somewhat murky. The private plaintiff is a U.S.-based firm, Chiquita, that ships, markets, and distributes Latin American bananas in the EU, but there is no direct trade between the United States and the EU involved. In a case brought by several adversely affected

merce (28 September 1995, 3A) reported that “the decision . . . is a tacit admission that the United States retains little leverage in imposing its will in trade matters outside of the newly powerful WTO.”

In U.S. history, vigilantism was ultimately displaced by a more effective system of justice. Bayard and Elliott (1994) consider a strategic alternative to Section 301 that they call “aggressive multilateralism” (using the WTO to settle disputes where possible) and “creative unilateralism” (negotiations with like-minded trading partners to write rules in areas not covered by the international rules). In cases covered by WTO rules, they argue, the United States can retaliate once authorized to do so, just as under Section 301, but that power will probably be rarely needed under the strengthened dispute settlement procedures. In other cases, retaliation against WTO-covered trade risks precipitating a shoot-out that nobody wins. Their discussion seems prescient in the wake of the U.S.-Japan automobile dispute. It may be an auspicious time for the self-appointed marshall to retire.

Appendix

Recent Cases and Issues in Expanding the Bayard-Elliott Database

The Bayard and Elliott (1994) database of Section 301 cases included seventy-two of the ninety-one investigations opened as of that time.³⁰ One aim of the present analysis was to update and extend the database where possible. This was done in three ways: (1) by reviewing the nineteen Section 301 cases excluded by Bayard and Elliott; (2) by adding Section 301 cases resolved since that research was completed; (3) and by adding cases from the “p-list” of Section 301 petitions filed but not formally accepted by the USTR. Our assessments of the fifteen cases added are summarized in table 8.1 above.

1. Bayard and Elliott omitted several cases where the USTR concluded that the practice cited in the complaint was not actionable, either because the practice was not unreasonable under the statute’s meaning or because it did not injure U.S. commercial interests. Following further review, one of those cases was restored to the database used here. Case 301-38 involved alleged Taiwanese subsidies for footwear exporters and restrictions on imports. In his formal

Latin American producers, an earlier GATT panel ruled in 1993 that the EU regime violated several GATT articles. The EU blocked adoption of the report, yet reached agreements with most of the major Latin American producers to lessen the injury, and asked for a WTO waiver for its African, Caribbean, and Pacific preference program (*Inside U.S. Trade*, 9 September 1994, 13).

30. For an explanation of which cases were excluded and why, see Bayard and Elliott (1994, 59, n. 3).

determination in that case, President Reagan found that Taiwan's practices were not unreasonable, but he also directed the U.S. trade representative to pursue offers from Taiwan to lower its tariffs on footwear and to provide marketing assistance to U.S. exporters, indicating that the 301 investigation induced some concessions, however modest (Bayard and Elliott 1994, 410-11).

2. Four other cases were excluded because they had not been resolved long enough for the authors to feel confident in making judgments about the outcomes. All those cases have been added to the data used here: 301-83, regarding EU standards for meatpacking facilities; 301-88, which resulted in the memorandum of understanding on access to the Chinese market; and 301-89 and 301-91, regarding protection of intellectual property rights in Taiwan and Brazil, respectively.

Two other cases resolved in the past year have also been added to the database. Although the results are still hotly debated, the recent U.S.-Japan automobile and automobile parts agreement (case 301-93) has been included because it strikes us as a marginal achievement at best, especially given the bluff and bluster surrounding the negotiations. Moreover, given the ongoing disagreement among negotiators about what exactly was agreed, the case seems almost certain to be reopened at some point, which would classify it as a marginal failure. Nevertheless, given the controversy, we tested the sensitivity of the results to variations in this judgment.

The other recent case added (301-98) is the dispute arising from Canada's decision to revoke the license of a U.S.-owned country music cable station operating there. That case was resolved through a joint venture agreement between the American cable company and the Canadian firm that replaced it. The agreement apparently was acceptable to both parties, but the terms also seem to have been influenced by the potential threat of Section 301 sanctions, making it, in our view, a partial success for U.S. negotiators.

3. Finally, we have added eight cases where the threat of a Section 301 investigation being opened appears to have provided leverage to U.S. negotiators. As of the beginning of 1995, twenty-eight Section 301 petitions had been filed but not formally accepted by the USTR between 1980 and 1990, the so-called p-list cases. Only rarely does the USTR openly reject petitions.³¹ Most often, petitions are withdrawn just before the forty-five-day deadline for acceptance or rejection by the USTR. In many of these cases, it is simply not known whether the petitioner was persuaded to withdraw its complaint to avoid the embarrassment of rejection or whether a resolution was achieved through quiet diplomacy. In six cases, however, through press reports, the USTR's annual National Trade Estimates reports, and other sources, we concluded that there

31. It did formally reject two petitions from the Rice Millers Association when it determined that multilateral negotiations under the Uruguay Round would be a more effective means of opening Japan's market.

was evidence that the USTR had used the threat of a 301 investigation as negotiating leverage and that sufficient information about the outcomes in those episodes existed to include them here. The cases are briefly summarized in table 8.1 above.

We have also added the agreements negotiated with Korea and Taiwan in 1989 under threat of Super 301 designation. In these cases, public comments were requested by the USTR as to what countries or practices should be chosen for Super 301 priority designation. Although no formal petitions were filed in this process, the number and tenor of complaints received, and press reports speculating about likely targets, convinced Korea and Taiwan to negotiate preemptively. Thus, we treat these cases as akin to the other episodes when countries named in Section 301 petitions chose to negotiate in order to avoid a formal 301 investigation.

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