THE SHORT, UNHAPPY LIFE OF THE BYRD AMENDMENT

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In 2000, Congress enacted the Continued Dumping and Subsidy Offset Act (CDSOA), which it then repealed five years later.1 Dubbed the “Byrd Amendment” after its champion, Senator Robert Byrd of West Virginia, the legislation was designed to “restore the conditions of fair trade” and aid U.S. companies facing foreign competition by diverting tariff revenue from the U.S. Treasury into their bank accounts.2 This obscure piece of international trade legislation garnered negative domestic and global attention,3 and despite its seemingly noble goal, the law proved unable to survive an onslaught of criticism from the media,4 domestic think tanks,5 the executive branch,6 and the

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2. Id.


United States’ trading partners.\textsuperscript{7}

This Recent Development analyzes the repeal of the Byrd Amendment and concludes that Congress was correct to remove the legislation from the statute books. Part I provides a brief overview of U.S. antidumping and countervailing duty law. Part II discusses the controversy surrounding the Byrd Amendment, including the law’s provisions, the circumstances of its enactment, and global reaction to it. Part III describes how Congress came to repeal the Byrd Amendment and summarizes the terms of that repeal. Finally, Part IV argues that Congress was correct to repeal the Byrd Amendment, because (1) the amendment has negatively impacted the U.S. economy, and (2) the amendment’s repeal improved the United States’ ability to maintain and expand the global trading system in a manner beneficial to its interests.

I. OVERVIEW OF ANTIDUMPING AND COUNTERVAILING DUTY LAWS

U.S. antidumping and countervailing duty (AD/CVD) law affords protection from import competition to domestic industries\textsuperscript{8} by penalizing certain pricing and subsidy practices of foreign producers and governments.\textsuperscript{9} The duties force foreign producers to either increase their selling price in the U.S. market to incorporate the AD/CVD tariff, or withdraw from the market entirely to avoid payment, thus reducing import competition faced by U.S. industry. Antidumping law provides for the imposition of duties on imports that are “dumped”—sold at too low a price\textsuperscript{10}—into the U.S. market.\textsuperscript{11} It does so in order to

\textsuperscript{7} Barbosa Letter, supra note 3; McKenna Address, supra note 3. See also Request for Consultations by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Korea and Thailand, United States—Continued Dumping and Subsidy Offset Act of 2000, WT/DS217/1 (Jan. 9, 2001) [hereinafter Request for Consultations].


\textsuperscript{10} See infra notes 22–24 and accompanying text.

prevent foreign companies from engaging in “price discrimination,”
the practice of charging lower prices in the United States than in their
own domestic market.12  Price discrimination is a tactic frequently
used by businesses to attract new customers, expand market share, or
liquidate excess inventory.13  Proponents of antidumping laws, how-
ever, regard such price discrimination as “unfair trade,”14 even though
domestic firms also engage in similar practices within the U.S. econ-
omy,15 while opponents view these laws as “a form of disguised pro-
tectionism.”16  The other component of AD/CVD law, countervailing
duty law, imposes tariffs on imports whose production has been subsi-
dized by a foreign government.17  Although these foreign subsidies
often benefit the U.S. economy by providing consumers with lower-
priced products,18 “many people support countervailing-duty laws be-
cause they view subsidized imports as unfair competition for domestic
producers and their employees.”19  Countervailing duty measures are
therefore kept in place to “offset any unfair competitive advantage that
foreign manufacturers . . . might enjoy over U.S. producers” as a result
of such subsidies.20

The Tariff Act of 193021 governs the imposition of both anti-
dumping and countervailing duties.  Antidumping duties are imposed
upon an import when two conditions are met.22  First, the U.S. Depart-
ment of Commerce (DOC) must find that “a class or kind of foreign
merchandise is being, or is likely to be, sold in the United States at
less than its fair value.”23  An import is being sold at “less than fair
value” when its U.S. price is lower than either the price of the same
good in the exporter’s home market or the good’s cost of production.24
Second, the U.S. International Trade Commission (ITC) must find that

12. CBO REPORT, supra note 11, at 2.
13. Id. at 3.
14. ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW 244 (2002).
15. CBO REPORT, supra note 11, at 2–3 (“Price discrimination . . . by domestic
firms . . . is common.”).
16. LOWENFELD, supra note 14, at 244 (2002).
17. CBO REPORT, supra note 11, at 2; H. COMM. OVERVIEW, supra note 11, at 96.
18. WORLD TRADE ORG., WORLD TRADE REPORT 2006: EXPLORING THE LINKS BE-
english/res_e/books_e/anrep_e/world_trade_report06_e.pdf (“Producers of compet-
ing products will have to compete against the subsidised exporters at the lower price,
whereas consumers of the cheaper imports will benefit.”).
19. CBO REPORT, supra note 11, at 2.
20. H. COMM. OVERVIEW, supra note 11, at 96.
22. H. COMM. OVERVIEW, supra note 11, at 104.
that “an industry in the United States” is either “materially injured” or “threatened with material injury,” or that “the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise.”

In assessing whether “material injury” has occurred, the ITC examines a variety of factors, including the amount of the good being imported into the U.S. market and the effect these imports have on employment and wages in the competing U.S. industry. The imposition of countervailing duties under the Tariff Act requires that two similar conditions be met. First, the DOC must determine that a foreign government is subsidizing the manufacture, production, or export of a good “imported, or sold (or likely to be sold) for importation, into the United States.” Second, in most cases, the ITC must also find the U.S. industry has suffered “material injury” as a result of these subsidies.

The DOC conducts administrative investigations leading to the imposition of AD/CVD duties on foreign imports when petitioned by U.S. producers of a product similar to the imported good, unions in the affected industry, and other interested parties. The DOC can also initiate such investigations itself. Petitions for the imposition of duties require (1) the support of at least 25% of the entire domestic industry, and (2) the support of at least 50% of that portion of the domestic industry expressing interest either in support for or in opposition against the petition. If the DOC finds that the imported good is subsidized or is being dumped into the U.S. market, and the ITC

28. The ITC must find “material injury” if the imports are from: (1) World Trade Organization (WTO) member countries, (2) countries that have undertaken obligations equivalent to those in the WTO Agreement on Subsidies and Countervailing Measures, (3) countries that have a treaty with the United States requiring most favored nation treatment with respect to articles imported into the United States. For imports from countries which do not fall under one of the three categories above, the ITC need not find “material injury” for countervailing duties to be imposed. H. Comm. Overview, supra note 11, at 96.
30. 19 U.S.C. § 1671a(b); 19 U.S.C. § 1673(a). Interested parties include: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing; or (5) in cases involving processed agricultural products, a coalition or trade association representative of processors, or processors and growers. 19 U.S.C. § 1677(9).
31. 19 U.S.C. § 1671a(a); 19 U.S.C. § 1673a(a).
finds “material injury” to the U.S. industry as a result of the import competition, U.S. Customs and Border Protection (Customs) will begin collecting duties from the foreign producer of the imported good at issue. In antidumping cases, the duty collected is equal to the percentage by which the import price is below the home-market price or cost of production. In countervailing duty cases, tariff rates are set equal to the rate of the foreign government’s subsidy.

II.

THE EARLY YEARS OF THE BYRD AMENDMENT

The Byrd Amendment, which was enacted as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (Agriculture Appropriations Act), changed longstanding practice in AD/CVD law. Before its enactment, the proceeds from all of these tariffs were paid into the U.S. Department of the Treasury’s (Treasury) general revenue fund. Under the Byrd Amendment, however, the proceeds from these duties are diverted into the bank accounts of the U.S. companies for whose protection the duties are imposed. As explained below, this change in the allocation of funds immediately faced vigorous opposition in the domestic and global arena.
A. The Workings of the Byrd Amendment

The Byrd Amendment mandated that AD/CVD duties be distributed annually to “affected domestic producers” on the basis of “qualifying expenditures” incurred by these producers.41 The definition of “affected domestic producers” included “any manufacturer, producer, farmer, rancher, or worker representative” that (1) petitioned the ITC or supported a petition for relief to the ITC that resulted in an AD/CVD duty order and (2) remains in operation.42 In contrast, companies, businesses, or persons that (1) opposed the filing of a petition, (2) ceased production of a product covered by the AD/CVD order, or (3) were acquired by a company that opposed a petition were not eligible to receive distributions of AD/CVD duties.43 The term “qualifying expenditures” referred to certain expenses incurred by the domestic firm after the issuance of the AD/CVD order,44 including monies spent on manufacturing facilities, equipment, research and development, personnel training, pension and health care benefits for employees, acquisition of technology, environmental equipment, raw materials, and working capital needed to maintain production.45

Under the Byrd Amendment, Customs distributed all AD/CVD duties received during the previous fiscal year, as well as interest earned on the duties, within sixty days of the close of that fiscal year.46 The monies were divided between the eligible producers based upon the amount of qualifying expenditures they claimed to have incurred.47 If the amount collected under an order was inadequate to fully satisfy all the “qualifying expenditures” claims, as was often the case, each claimant received a percentage of the total amount collected equal to its portion of the total “qualifying expenditures” claimed by all eligible companies.48 This pro rata system of dividing the spoils created an incentive for companies to claim as much as possible in “qualified expenditures” to make their share of Byrd monies as large as possible. As a result, company claims under the Byrd Amendment

41. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act § 1003 repealed by Deficit Reduction Act § 7601.
42. Id.
43. Id.
44. Id.
45. Id.
46. H. COMM. OVERVIEW, supra note 11, at 119.
47. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act § 1003 repealed by Deficit Reduction Act § 7601.
48. GAO REPORT, supra note 38, at 16.
approached $2 trillion in fiscal year 2004.\footnote{Id. at 15–16.} By comparison, actual Byrd Amendment disbursements in 2004 were a mere $284 million.\footnote{Repeal the “Byrd Amendment”, CONSUMING INDUS. TRADE ACTION COAL., http://www.citac.info/about/issues/byrd_amendment/winners2004.php.}

B. The Byrd Amendment’s Troubling Emergence

According to their statements, the proponents of the Byrd Amendment intended it to “encourage those [foreign companies and governments] engaging in the continued unfair trade practices to trade fairly” by diverting AD/CVD “monies finally assessed [from the Treasury] to the injured industry.”\footnote{146 CONG. REC. H9681, H9708 (2000).} The manner in which the legislation was adopted, however, suggests that they were more concerned with enacting a provision “favored by special interests” than with making sound international trade policy.\footnote{Seth Grossman, Tricameral Legislating: Statutory Interpretation in an Era of Conference Committee Ascendancy, 9 N.Y.U. J. LEGIS. & PUB. POL’Y 251, 281 (2006) (highlighting the increased use of conference committees in the enactment of legislation and making note of the fact “that the increasing tendency to legislate through omnibus measures frequently results in members of Congress being forced to accept legislation that contains controversial provisions favored by special interests.”).} No committee with relevant expertise or jurisdiction over international trade issues ever reviewed the contents of the Byrd Amendment or considered its consequences before enactment.\footnote{According to Representative Kolbe, the Byrd Amendment “was not considered by a[ ] committee in either the House or Senate.”.} Instead, Senator Byrd inserted the amendment into the Agricultural Appropriations Act during conference committee negotiations.\footnote{Id.; Repeal the “Byrd Amendment”, CONSUMING INDUS. TRADE ACTION COAL., http://www.citac.info/about/issues/byrd_amendment/winners2004.php.} Because such negotiations are done in secret, and because once a bill leaves conference committee it must be voted up or down in its entirety without amendment, provisions inserted into conference committee reports are notoriously known for being aimed at aiding special interests.\footnote{See Grossman, supra note 52, at 272–81.}

As soon as the conference committee finished its work, criticism of these closed-door tactics and the amendment’s policy consequences emerged.\footnote{146 CONG. REC. H9681, H9699 (2000); 146 CONG. REC. S10,669, S10,672–73 (2000).} During debates on the Agricultural Appropriations Act, Senator John McCain called the Byrd Amendment “an almost one-half billion dollar giveaway to U.S. corporations that had not been considered previously by the Senate,” and, predicting that the provision
would be found to violate the U.S.'s World Trade Organization (WTO) obligations, called for further consideration before passing the amendment into law. President Clinton, although he signed the law as a whole, also recognized that the Byrd Amendment did nothing more than “provide select U.S. industries with a subsidy above and beyond the protection level needed” and called on Congress to “override this provision, or amend it to be acceptable, before they adjourn.”

C. The Globe Responds

Only a few months after the passage of the Byrd Amendment, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States before the WTO regarding the legislation. The requests alleged that the provisions of the Byrd Amendment violated U.S. obligations under WTO agreements on AD/CVD law. ‘Though these agreements permit member states to enact measures designed to counter the dumping or subsidization of imported products, they also specify the means through which states can thwart such unfair trade practices. The WTO panel hearing the complaints found that the Byrd Amendment amounted to a measure against dumping and subsidization not permitted under WTO AD/CVD rules and recommended that the amendment

57. 146 CONG. REC. S10,669, S10,672 (2000). Senator McCain also stated that “we should consider the effect of [the Byrd Amendment] very carefully. Instead, we will not consider it at all. No member, except those among the negotiators, will have any say about the effects of this policy.” Id.
59. Request for Consultations, supra note 7. They were also joined by Mexico and Canada in June of 2001. Request for Consultations by Canada and Mexico, United States—Continued Dumping and Subsidy Offset Act of 2000, WT/DS234/1 (June 1, 2001).
60. See Request for Consultations, supra note 7.
be repealed.\textsuperscript{62} The United States appealed, but the WTO Appellate Body upheld most of the panel’s decision,\textsuperscript{63} and the United States was granted eleven months to bring the Byrd Amendment into conformity with WTO obligations or risk retaliation by member nations.\textsuperscript{64} When the United States failed to do so, the WTO authorized retaliation from eight complaining WTO members,\textsuperscript{65} giving them the right to impose additional import duties having a total trade value of up to 72\% of total Byrd Amendment disbursements.\textsuperscript{66} The authorization gave these members the option to impose up to $134 million in retaliatory tariffs on U.S. exports in 2005.\textsuperscript{67}

III. \textbf{THE REPEAL OF THE BYRD AMENDMENT}

The WTO Appellate Body’s ruling kindled efforts to reform or repeal the Byrd Amendment. Senator Olympia Snowe proposed curbing the WTO deficiency by stopping the payment of AD/CVD revenues to corporations and using the funds “to assist communities negatively impacted by trade.”\textsuperscript{68} Representative Jim Ramstad took her proposal one step further, introducing legislation that would have repealed the Byrd Amendment and returned AD/CVD duties to the U.S. Treasury.\textsuperscript{69} The Bush Administration also called for the law’s repeal in its budget proposal for the fiscal year 2004, labeling it a “corporate subsid[y]” that provided a “benefit to industries that already gain protection from the increased import prices provided by

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\textsuperscript{62} Panel Report, United States—Continued Dumping and Subsidy Offset Act of 2000, ¶¶ 8.1–8.6, WT/DS217/R, WT/DS234/R (Sept. 16, 2002) (finding “that the CDSOA is inconsistent with AD Articles 5.4, 18.1 and 18.4, SCM Articles 11.4, 32.1 and 32.5, Articles VI:2 and VI:3 of the GATT 1994, and Article XVI:4 of the WTO Agreement.”).
\textsuperscript{65} Only eight nations—Brazil, Chile, EC, India, Japan, Korea, Canada, and Mexico—requested that the WTO Dispute Settlement Body (DSB) authorize them to enact retaliatory measures. Australia, Indonesia, and Thailand gave the United States further time to comply with the ruling. CRS Report, supra note 61, at 12–13.
\textsuperscript{66} GAO Report, supra note 38, at 42.
\textsuperscript{67} Id.
\textsuperscript{68} Trade Readjustment and Development Enhancement for America’s Communities Act of 2003, S. 1299, 108th Cong. § 2 (2003).
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countervailing duties.” Though the Bush Administration repeated its request for the law’s repeal in its budget proposals for fiscal years 2005 and 2006, it did little else to pressure Congress to address the issue.

Many legislators, however, were initially un receptive to these arguments. Soon after the Administration’s budget proposal was made public, seventy senators sent the President a letter arguing that the Byrd Amendment was “critical” to maintaining high employment and the “competitiveness of American industry.” The senators also maintained that “the WTO . . . acted beyond the scope of its mandate by finding violations where none exist[,]” and that, rather than reform or repeal the amendment, the United States should press its trading partners to recognize the “right of WTO Members to distribute monies collected from antidumping and countervailing duties.”

This support for the amendment in the Senate resulted from strong opposition to repeal from the U.S. steel industry—which has historically been the largest beneficiary of AD/CVD laws—and from concerns about the economic health of the nation’s manufacturing base. Stating that “[t]o repeal or abandon this trade law would be a travesty,” Senator Byrd urged his fellow legislators to oppose repeal “to save American manufacturing and . . . agricultural producers from wave after wave of unfairly dumped foreign imports.” Similarly, Republican Senator Mike DeWine argued that the disbursement of Byrd monies had


72. Telephone Interview with Stephanie H. Lester, Professional Staffer, Ways & Means Comm., in Washington, D.C. (Aug. 21, 2006) (according to Lester, the House staffer leading the effort to repeal the Byrd Amendment, the Bush Administration did very little to pressure Congress into repealing the legislation).


74. Id.

75. CBO REPORT, supra note 11, at 3. The U.S. steel industry is therefore the industry most likely to benefit from the Byrd Amendment. Several steel industry groups filed statements with the House Committee on Ways and Means expressing their opposition to the Byrd Amendment’s repeal. Jack W. Shilling, Specialty Steel Industry of North America, Statement before the House Committee on Ways and Means (Sept. 2, 2005); American Iron and Steel Institute, Statement before the House Committee on Ways and Means (Sept. 2, 2005).

76. 151 CONG. REC. S13,630 (2005).
helped shore up the financial fortunes of businesses and employees across the country.\textsuperscript{77}

Congress did not seriously begin to consider repeal until the WTO compliance deadline had passed and it faced political pressure\textsuperscript{78} from several U.S. industries,\textsuperscript{79} think tanks,\textsuperscript{80} editorial pages,\textsuperscript{81} and independent government agencies.\textsuperscript{82} Even after these developments, however, the legislative record suggests that a majority of both representatives and senators still opposed any change in the law.\textsuperscript{83}

Efforts to repeal the Byrd Amendment finally came to fruition with the passage of the Deficit Reduction Act of 2005 (DRA) on February 8, 2006.\textsuperscript{84} As part of this broad drive to reduce the federal deficit, each congressional committee was made responsible for decreasing spending on programs under its control.\textsuperscript{85} Representative Bill Thomas, chairman of the House committee with jurisdiction over international trade issues, championed reducing the deficit through an immediate repeal of the Byrd Amendment and a concurrent return of

\textsuperscript{77} Id.
\textsuperscript{78} By September 26, 2005, Chairman Bill Thomas of the House Ways and Means Committee was criticizing the Byrd Amendment, saying it “provided windfall subsidies to a handful of large corporations while other U.S. companies are paying the price.” Ways and Means Passes Byrd Repeal; Senate Status Uncertain, INSIDE U.S. TRADE, Oct. 28, 2005, available at http://www.insidetrade.com/secure/dsply_nl_txt.asp?f=wto2002.ask&dh=31364250.
\textsuperscript{80} See generally supra note 5; Ikenson, supra note 5.
\textsuperscript{82} See generally GAO REPORT, supra note 38; see also CBO REPORT, supra note 11.
\textsuperscript{85} Lester Interview, supra note 72.
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AD/CVD duties to the U.S. Treasury. 86 Though the House adopted Representative Thomas’s position, the Senate did not. 87 After much debate on reconciling the bills, Representative Thomas was able to broker a compromise in conference committee: 88 the Byrd Amendment would be repealed immediately, but all AD/CVD “duties on entries of goods made and filed before October 1, 2007,” would be distributed as if there had been no repeal. 89 Once out of committee, the DRA passed by extremely slim margins in both houses of Congress. 90

IV. Congress Was Correct To Repeal The Byrd Amendment

The Byrd Amendment’s modification of U.S. AD/CVD law has had a variety of negative consequences for the United States. In addition to the drawdown of over a billion dollars from the federal coffers, the legislation has harmed the domestic economy and damaged the United States’ international interests. As a result, Congress’s repeal of the provision was a step in the right direction, although an immediate and total repeal would have been preferable to the compromise agreement reached.

A. The Domestic Economic Impact

Far from meeting its goal of “restor[ing] conditions of fair trade” for American producers, 91 the Byrd Amendment turned out to be little more than a wasteful drain on the federal budget and a windfall for a concentrated set of companies and industries. 92 From fiscal year 2001 to fiscal year 2004, Customs distributed over $1 billion in Byrd Amendment payments to a seemingly broad array of U.S. producers 93—770 companies, including producers of steel, cement, pasta,
candles, and pencils, as well as crawfish and pineapple processors, applied for and received Byrd Amendment funds. Despite this apparent breadth, almost half of the payments went to only five companies, and one company, the Timken Company, received approximately 20% of the duties, amounting to $205 million. Similarly, approximately two-thirds of total payments went to just three industry product groups: bearings, candles, and iron and steel mills. When Congress repealed the amendment, it returned these funds to the Treasury at a time of high public deficits and simultaneously ended a corporate-welfare program that benefited only a handful of U.S. businesses and did little to “restore the conditions of fair trade.”

Additionally, rather than benefiting from the Byrd Amendment, U.S. exporters suffered the brunt of its negative economic consequences. After the amendment was declared WTO-incompatible, several nations began retaliating against U.S. exports under WTO-mandated guidelines. On May 1, 2005, the EU imposed $28 million in retaliatory duties on U.S. products, and Canada imposed another $14 million. Mexico imposed $20.9 million in retaliatory tariffs on August 18, 2005, and Japan followed a few weeks later with $52 million in duties. Brazil, Chile, India, and Korea could also have imposed retaliatory tariffs on U.S. exports if the amendment remained in place. These increased tariffs affect a wide variety of American industries, including wine, plastic furniture, photocopying machines, ball point pens, live swine, oysters, flat rolled steel, and industrial belts. Because Congress chose to effectively delay the Byrd Amendment’s repeal until late 2007, U.S. exporters will continue to suffer from these retaliatory duties for longer than necessary.

94. Id. at 28–29.
95. Id. at 29.
96. Id. at 31.
99. Id.
100. See supra note 65 and accompanying text.
101. Id. Other exports suffering due to the tariffs included dairy, textiles and apparel, paper products, frozen corn, sports footwear, hand drills, crane lorries, eyeglass frames, prefabricated buildings, mobile homes, chewing gum, certain cigarettes, certain fish, ball bearings, machinery accessories, printing machines, and forklift trucks. Id. Since the Byrd Amendment was repealed just six months after other nations started retaliating, there has been no analysis on which industries suffered the most harm.
The Byrd Amendment has also harmed the U.S. economy by creating incentives for domestic firms to file and support more AD/CVD petitions, and it will continue to do so until the repeal becomes fully effective in October 2007. Traditionally, AD/CVD petitions benefited domestic industries simply by leading to price increases on targeted goods. The prospect of directly receiving Byrd disbursements, however, intensified the financial incentive to file and support petitions. As explained supra in Part I, 25% of the domestic industry must support the initial petition for DOC and ITC to initiate AD/CVD investigations; the Byrd Amendment’s increased incentives have made it more likely that this minimum level of domestic support would be reached. Taxpayers have to fund the government personnel increases needed to process any additional administrative investigations. Furthermore, the general transaction costs of doing business in the United States have increased, in that foreign and domestic firms must divert their resources from generating wealth to hiring lawyers and economic experts to advocate their positions before the government agencies conducting AD/CVD investigations. The amendment’s repeal removes the incentive for additional AD/CVD investigations, thus eliminating the administrative and transactions costs associated with the provision.

B. The Harm to U.S. International Trade Interests

In addition to negatively impacting the domestic economy, the Byrd Amendment also undermined the United States’ ability to reach its international trade policy goals. The United States is the world’s largest exporter. Trade in goods and services makes up 27% of the

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103. CBO REPORT, supra note 11, at 5.
104. CRS REPORT, supra note 61, at 21.
105. 19 U.S.C. § 1671a(c)(4)(A) (2000); see also supra note 32 and accompanying text.
106. CBO REPORT, supra note 11, at 5.
107. In AD/CVD investigations, petitioners and opponents of the petition employ lawyers, economists, and lobbyists in making their case before the administrative agencies. An increase in spending for these services is a cost of doing business which, if the Byrd Amendment were not in place, could be allocated to more productive use. Id. at 7–8.
U.S. gross domestic product, and the nation’s exports account for a major portion of its economic growth (20% in 2005). The current health of the U.S. economy therefore depends upon the effective enforcement of trade agreements already entered into; when U.S. trading partners fail to live up to their obligations, the export sector of the U.S. economy suffers. Furthermore, the continued growth of the U.S. economy is in part reliant upon future reductions of foreign trade barriers; without such liberalization, American exporters cannot effectively expand in new overseas markets. As a result, the U.S. economy benefits from more open markets and from a global trading system which ensures that all nations follow their WTO commitments.

The Byrd Amendment’s repeal has buttressed the continued existence of such a global trading system. By complying with the WTO, Congress has helped guarantee that other WTO members will comply with the organization’s rules when their doing so benefits the United States. In the words of former U.S. Trade Representative Robert Zoellick, “it helps us to get others to follow the rules, if we follow the rules [ourselves].” On several occasions, when U.S. negotiators demanded that trading partners repeal or change laws that were WTO-incompatible and harmful to U.S. exporters, such requests were rebuffed on the rationale that the United States had no moral authority to demand compliance while the Byrd Amendment remained in force. The Byrd Amendment’s repeal was welcomed by the United States’ major trading partners and has removed this barrier to ensuring

109. Id. at Annex I, pt. I.
110. Id. at 2.
111. See id. at 1 (“With 95 percent of the world’s people living outside our borders and hundreds of millions of new potential consumers overseas . . . the United States must be proactive in opening foreign markets to our manufactured goods, services, and agricultural products. Expanding U.S. exports increases U.S. prosperity.”).
112. Id. at 1, 10; CRS REPORT, supra note 61, at 24.
113. CRS REPORT, supra note 61, at 24.
115. Lester Interview, supra note 72.
116. EU Trade Commissioner Peter Mandelson “welcome[d] the fact that the US Congress has chosen to bring US law into compliance with its international obligations.” He went on to state that while “this is a constructive step . . . I regret that the US has chosen to provide a transition period rather than ending these payments at once.” Press Release, European Commission, EU Welcomes Repeal of Byrd Amendment and Regrets Transition Period, (Feb. 2, 2006), available at http://trade.ec.europa.eu/doclib/docs/2006/february/tradoc_127327.pdf. Canada also welcomed the Byrd Amendment’s repeal. News Release, Foreign Affairs and International Trade Canada, Canada Welcomes Vote By U.S. House of Representatives As Key Step To-
their compliance with WTO law. Additionally, congressional refusal to comply with the WTO’s ruling would have reflected badly upon the ability of the WTO Dispute Settlement Body’s to ensure compliance;117 in contrast, the repeal enhances the WTO’s ability to enforce its rules against U.S. trading partners, which redounds to the benefit of U.S. economic interests.118

Congress’s repeal of the Byrd Amendment has also aided the United States’ position in ongoing trade negotiations. During the Doha Round of WTO negotiations, which were aimed at further reducing barriers to international trade,119 U.S. non-compliance with the WTO ruling on the Byrd Amendment was used as an excuse to rebuff U.S. negotiating proposals, especially on AD/CVD issues.120 Congressional refusal to repeal the Byrd Amendment made the demands of U.S. negotiators seem hypocritical, in that the “scofflaw,”121 while refusing to dismantle WTO-incompatible subsidies, was urging its trading partners to reduce their subsidy levels and their tariff rates. By coming into compliance with WTO rulings, Congress strengthened the ability of the United States to negotiate for further global trade liberalization within the context of WTO negotiations.122
IV. CONCLUSION

Congress’s repeal of the Byrd Amendment will reduce the current budget deficit and remove incentives for the filing of AD/CVD petitions; it has already benefited U.S. exporters and helped facilitate the implementation of U.S. international trade policy. Though an immediate repeal would have had further economic and international trade policy benefits, the delayed repeal currently is vastly preferable to the legislation’s indefinite existence.