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Making "Enemies:" Industry-State  
Subterfuge and the Social Construction of  
US Non-Market Economy Antidumping  
and Countervailing Duty Policy, 1960-1988

By

John Bassney

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Faculty Advisor: Dr. Elisabeth Clemens  
Preceptor: Claire Watson

**Making “Enemies:” Industry-State Subterfuge and the Social Construction of US Non-Market Economy Antidumping and Countervailing Duty Policy, 1960-1988**

*The few scholars who have directly studied the history of US “non-market economy” (NME) antidumping and countervailing duty policy explain its development as either an ideological relic of the Cold War or as a case of business politics. Statistical, historical, legal, and interview data indicate that the development of NME policy was not a result of Cold War ideology or business politics, but instead part of a larger political project by an incumbent US steel industry to receive relief from imports. Steel initially advocated for import quotas, but a semi-autonomous US state refused out of fear of foreign retaliation. The steel industry and the state used the discursive strategy of subterfuge to balance these competing interests.*

John Bassney  
Faculty Advisor: Dr. Elisabeth Clemens  
Preceptor: Claire Watson  
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As economic historians and sociologists have long argued, markets are not natural but are politically constructed (Bourdieu 2000; Bourdieu and Wacquant 1992; Carruthers and Halliday 1998; Dobbin 1994; Fligstein 1996; 2001; Fligstein and Dauter 2007; Granovetter 1985; Polanyi 1944). Consequently, the expansion of markets also requires a political reconstruction that confronts substantial challenges and illuminates the politics of markets. These dynamics are essential to understanding the international free trade regime of the middle to late 20<sup>th</sup> century, especially the tensions between globalized and localized industries headquartered within nation-states. How do states simultaneously enable the expansion of global markets while also responding to demands for protection by powerful domestic industries?

One way is through the construction of specific regulations which benefit incumbent groups in an antagonistic institutional environment but may be incompatible with a broader national policy (Bartley 2007; Fligstein 2001; Martin 2010). Policy “crafting” (Martin 2010) can enable specific kinds of incoherence and contradiction to disappear and therefore endure. The construction and reconstruction of “unfair trade practices,” as well as the institutions to regulate those practices, illuminate how regulations that are seemingly incompatible with a broad policy such as “free trade” can emerge and endure in ways that provide benefits to specific domestic parties despite being at odds with the nation-state’s larger international policy commitments.

This paper investigates the US government’s response to two specific “unfair trade practices:” dumping and foreign government subsidization from 1960-1988, with a particular emphasis on the history of defining “non-market economies” (NMEs, often dubbed “enemies”) in dumping and subsidy disputes. What is sociologically significant about this case is that it illustrates the power of a collectively united, domestic industry to repurpose existing concepts,

and the power of a state to grant this industry a means of protection which could officially appear as promoting “free trade” by combatting “unfair” trade.

The idea of “dumping” was as static as the way in which it was litigated: not at all. While the *economic* meaning of “dumping” has remained the same for nearly 100 years, the US *legal* definition changed significantly in 1974. Economically, dumping means selling a good in the export market for less than it is sold in the home market (Viner 1923; Krugman 1988; Barone 2021). This was the US legal definition from 1921 to 1974. After 1974, the legal definition of dumping changed to the practice of selling goods below “fair market value,” meaning “normal” cost of production (Trade Act of 1974; Trade Agreements Act of 1979; Trade and Tariff Act of 1984; Omnibus Trade and Competitiveness Act of 1988). This change in definition made it easier to both prove the existence of dumping or subsidization and start *antidumping* (AD) or countervailing duty (CVD) proceedings in administrative court to combat the respective “unfair” trade practices through import taxes (see Table 1). Just like “fair value” and thus “dumping” in 1974, the meaning of the term “non-market economy,” underwent a significant change in 1988. Before 1988, NMEs were referred to as “state-controlled economies” and the law specifically tied them to communism (Trade Act of 1974; Trade Agreements Act of 1979; Trade and Tariff Act of 1984). However, by 1988, not only had “state-controlled economies” become “non-market economies,” but also the connection to communism disappeared from the law (Omnibus Trade and Competitiveness Act of 1988).

It may appear that the change in definition from “state-controlled economy” to “non-market economy” was in response to economic reforms in formerly communist countries which resulted in greater marketization, albeit without complete abandonment of socialist principles (Kornai 1992; Nove 1980, 1992). If that was the case, how could *market-socialist* economies

also be *non-market* economies? Accordingly, when, and why did the US try to regulate its AD practices and statutes before the collapse of the Soviet Union?<sup>1</sup> Why, during a time of increased trade liberalization and market-socialist reforms, did the US employ and formally codify this restrictive trade tool? Why did “state-controlled economies” become “non-market economies?”

Figure 3 illustrates that the major developments of US NME policy<sup>2</sup> occurred during the same period that socialist countries engaged in market reforms. As shown in Figure 3,<sup>3</sup> from the period of 1944-1960, there was little AD/CVD policy development. However, after a sustained burst of steel imports starting in the late 1960s (see figure 7), a sustained burst of AD/CVD policy developments ensued. As I show statistically, legally, and historically below, from 1960-1988, the US steel industry was in a dire situation resulting from severe import competition. I argue that the US steel industry used the administrative apparatus of the state to obtain relief from imports, and that the development of NME AD/CVD policy is part of a larger political project by the US steel industry which wanted a semi-autonomous US state to provide tariffs and quotas. The US state sought to balance these calls for protection with a commitment to globalization. Despite the political power of the US steel industry given its heavy concentration in the swing states of Ohio, Pennsylvania, and Michigan (AISI Steel Statistical Yearbooks, 1960-1999) steel did not obtain relief in the form it consistently requested. This is due in part to a

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<sup>1</sup> Even after the collapse of the USSR, the policy was, and still is, used to restrict imports from NMEs. Currently all NMEs, except for Vietnam and China, are former Soviet republics. See Table 2.

<sup>2</sup> By “policy” I mean administrative actions performed in the absence of preexisting legislation, such as rulemaking, legislation itself, and official government discourse. By “policy developments,” I mean a process of formal rationalization of legal authority (Weber 1978, p. 215). As a specific bureaucratic practice created *in the absence of a law* becomes formally codified, and as a bureaucratic authority is granted the authority to administer the law which codifies the created practice, the policy becomes more formally rational and gains power. “The purest type of exercise of legal authority is that which employs a bureaucratic administrative staff” (Weber 1978, p. 220).

<sup>3</sup> Figure 3 is not an exhaustive list of all market reforms in all socialist countries. Instead, it is limited only to the socialist countries which were subject to AD or CVD case initiations from 1960-1991, as well as Yugoslavia. Yugoslavia also engaged in significant economic liberalization (Nove 1980, p.p. 304-308; Kornai 1992, p. 497), but was never treated as an NME (AD/CVD Statistics—Enforcement and Compliance). This is puzzling because it reveals that NME policy was not always synonymous with socialist containment.

semi-autonomous US state which feared that granting relief via tariffs and quotas would lead to foreign retaliation and undermine its external commitment to free trade. In these circumstances, a semi-autonomous US state shifted the institutional venue for relief from the realm of tariffs to non-tariff measures like dumping and countervailing duties and the literal venue for relief from one agency (Department of the Treasury) to another (Department of Commerce).

The politics of defining NME were deeply linked with the issue of subsidization. From 1960 until 1984 the issue of NME subsidization was ignored (ITA AD/CVD Statistics; Horlick & Schuman 1984, p. 828). In 1984, the Department of Commerce ruled that it was impossible for NMEs to provide countervailable subsidies in two cases involving steel products.<sup>4</sup> Importantly, and at the time these decisions were made, the law which Commerce was administering still referred to NMEs as “state-controlled economies.” In these circumstances, Commerce’s logic was that if the entire economy of the country in question was state controlled, i.e., subsidized in *entirety*, then how could the country provide subsidization to a *particular* industry? According to Commerce, since subsidies were distortions to the free market, and state-controlled economies did not operate on the principle of the free market, the concept therefore did not apply. Commerce reaffirmed this position by refusing to investigate allegations of subsidization of potash from Eastern Europe later that year.<sup>5</sup> As elaborated below, these decisions significantly informed the politics surrounding the definition of the concept of NME. Like the politics of defining “dumping,” I argue that “state-controlled economies” became “nonmarket economies” in large part because an incumbent US steel industry sought to make NME subsidies

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<sup>4</sup> *Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination*. 49 Fed. Reg. 19,370 (May 7, 1984); *Carbon Steel Wire Rod from Poland Final Negative Countervailing Duty Determination*. 49 Fed. Reg. 19,474 (June 7, 1984).

<sup>5</sup> *Potassium Chloride from the German Democratic Republic: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition*. 49 Fed. Reg. 23,428 (June 6, 1984). *Potassium Chloride from the Soviet Union: Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition*. 49 Fed. Reg. 23,428 (June 6, 1984).

countervailable, and to be able to theoretically apply the NME calculation methodology, which consistently resulted in higher duties, to *all* countries, communist or not.

Two perspectives inform this argument. The first emphasizes the role of ideology in the formation of trade policy. Numerous studies have shown that from the birth of the policy, the NME dumping calculation method led to more findings of dumping and higher duties (Horne 2006; Zhang 2018). This is explained as the result of US bureaucrats' anti-communist ideology (Horne 2006; Zhang 2018). I argue that this approach is neither necessary nor sufficient to explain why "state-controlled economies" became "non-market economies," and that another approach ought to be considered.

The second approach contains arguments about how businesses are prone to capture regulatory agencies when regulations run counter to business interests (Prechel 2000; Stigler 1971). I argue that this perspective is necessary, but ultimately insufficient in explaining the development of NME policy. The problem with the business politics argument is that steel's political influence did not translate into a comprehensive industrial policy. As I show below, steel did not receive the direct form of relief (tariffs and quotas) it continually advocated for, nor did steel's displaced workers receive any significant government support. If steel fully captured the state, the state would have subjected import quotas to steel's foreign challengers. This did not happen because a semi-autonomous state instead unilaterally granted steel a new agency charged with regulating dumping and CV duties which led to increased findings of dumping and increased duties for market economies (MEs) and NMEs alike. Instead of a comprehensive industrial policy, steel was allowed to litigate its qualms over "unfair trade practices" in the administrative apparatus of the state where protection could go unrecognized by the state's foreign allies.

Given the insufficiency of the ideology and capture explanations, I introduce the concept of *industry-state subterfuge*. *Industry-state subterfuge* is a deceptive meaning making strategy employed by states and domestic industry in conditions whereby the goals of the powerful domestic industry run counter to those of the nation-state. Industry lobbies the state to embed principles which ultimately accord to its capital accumulating<sup>6</sup> interests in policies which simultaneously permit state plausible deniability. The state approves regulations which are ultimately incompatible with its broader policy commitments by shifting them to venues where they are (at least temporarily) able to go unrecognized for what they truly are. The concept extends sociological conversations emphasizing the temporal role of conceptual meaning making in shaping policy (Dobbin 1994; Carruthers and Babb 2013). Furthermore, this concept is not inconsistent with analyses on the role of law and economic institutions which “function to ameliorate, regulate, or otherwise attenuate the dynamics and consequences of markets” (Babb, Halliday, and Carruthers 2001, pp. 94-119; Carruthers & Halliday 1998) or the idea of market contestation occurring between incumbents and challengers in “strategic action fields” outside of the market itself (Fligstein and McAdam 2012, p. 8; Bartley 2017).

As I show through a historical examination of the case of NME AD/CVD policy from 1960-1988, the *industrial subterfuge*, or (following Pierson (1994) and Martin (2010)) *policy* “crafting” or “obfuscation” lay in the political-institutional embedding of protectionist principles in the language of free and fair trade by one republican politician caught between a party commitment to free trade and the political realities of representing the steel state of Pennsylvania: H. John Heinz III. The *state subterfuge* lay in the executive branch shifting of

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<sup>6</sup> Following Prechel (1990, p. 652 fn 4) I use the term capital accumulation instead of profit. This is because capital accumulation can account for industry goals besides just profit maximization, such as the increases in a firm’s stock of capital, corporate valuation, and growth. For capital accumulation see Marx (1990, pp. 752-757).



AD/CVD regulation to a new bureaucratic agency where the regulation largely went unrecognized as a form of protectionism by foreign allies. From 1960 until at least 1988, even though AD/CVD litigation became the primary means of import relief for the US steel industry, the US state could nevertheless duplicitously claim it was impartially adjudicating international agreements on “unfair” trade practices to its allies.

*Industry-state subterfuge* explains how a state can maintain a formal commitment to a set of principles or policy objectives, while simultaneously appeasing (if only partially) a powerful domestic industry whose interests run counter to those principles or objectives. Powerful industries and their representatives within the state deceive other members of the state, while the state writ-large deceives its allies. Under the theoretical perspective developed here, NME AD/CVD policy can be understood in terms beyond just an ideological tool, the masking of protectionism, corporate capture, or state-autonomy. Instead, the concept can apply to both an industry which must balance its capital accumulating interests within a state environment outwardly committed to globalization, and a state which must balance a commitment to globalization with pressure from powerful domestic players. The case presented in this paper helps us understand the politics of administration that are elaborated when states must promote international free trade regimes and respond to demands for protection from powerful industries because it breaks down why specific actors (in this case the US steel industry) might want to make concepts like “state-controlled economy” more ambiguous like “non-market economy” and why states might resist the more visible and direct attempts by powerful industries which disturb the international orders they promote.

There are three main interventions in this paper. As discussed, the first is to both apply and extend the insights of political and economic sociology to a case (NME policy) which has

problematically been analyzed exclusively through an ideological perspective (Horne 2006; Zhang 2018). The second intervention is to provide additional depth to the work done by scholars who have specifically analyzed the crucial role of the US steel industry in the development of international trade policy in the late 20<sup>th</sup> century (Chorev 2007; Goldstein 1993; Irwin 2017; Prechel 1990; Stein 1998). The empirical findings presented herein suggest that steel was sensitive to alleged foreign dumping and was thus prone to lobby for relief through the US AD/CVD laws. This largely echoes existing findings (Chorev 2007; Goldstein 1993; Irwin 2017; Prechel 1990; Stein 1998). However, the analysis of the development of NME policy *as articulated through* the AD/CVD laws provides additional historical depth to these scholarly works. None of the scholars cited immediately beforehand discussed NME policy in their analyses of the steel industry's relationship to the US AD/CVD laws. Given that nearly 40 percent of all AD/CVD cases today are NME cases (USITC 2022) such a historical and theoretical analysis is necessary. In such circumstances, this paper enriches existing scholarship which has dubbed the AD/CVD laws as “administered protection” (Baldwin 1998; Irwin 2017) and “conditional protectionism” or “selective” protectionism” (Chorev 2007; see also Goldstein 1993; Prechel 1990; Stein 1998) by employing the concept of *industry-state subterfuge*. It also provides historical context to modern accounts of the contemporary articulation of NME policy in the context of the WTO (Hopewell 2016, p. 136). Finally, this paper contributes to findings of sociologists who analyze neoliberal institutions (Campbell & Pedersen 2001; Kentikelenis and Babb 2019). As I show below, the politics of defining concepts such as “fair value” and “market economy” were crucial to the development of AD/CVD policy for both MEs and NMEs alike.

In what follows I trace how the concept of NME was historically socially constructed, and ultimately argue that “enemies” emerged from the discursive tactics employed in a political

conflict between a powerful incumbent industry and a semi-autonomous US state. I first provide a brief legal history of NME policy and explain how it is currently articulated within AD/CVD policy. Following that background, I assess proposed explanations for its emergence and development. I then describe my methodology and discuss my historical findings through the lens of *industry-state subterfuge*.

### **Background: A brief History of NME Policy**

In 1960, bureaucrats at the Department of the Treasury created a methodology to calculate dumping duties for centrally planned, “state-controlled economies.” This distinguished them from market economies (MEs). This methodology was adopted in *Bicycles from Czechoslovakia* (1960), a case which marked the first time that an NME was found to have dumped, i.e., made sales in the US at less than “fair” value. (Horlick and Shuman 1984; Lantz 1995).<sup>7</sup> In this case, the investigating authorities faced issues rooted in accounting as much as ideology which had been debated for decades: how can cost of production be calculated in a planned economy that does not operate according to the principles of supply and demand (Hayek 1937; Hayek 1940; Lange et al. 1964; Mises 2011; Polanyi 1922 in Bockman et al. 2016)? The bureaucrats’ answer was simple: it cannot be calculated. Instead, cost figures from a “surrogate” ME country must be used to calculate a dumping margin. This “surrogate country” approach produced arbitrary and unreliable results because all an administering authority needed to do was find any “surrogate” ME which could yield desired results (*Bicycles from Czechoslovakia*, 1960).

The “surrogate country” approach was first federally codified in 1974 (Trade Act, 1974). Another method, the “factors of production” approach, was created in 1975 which also led to arbitrary dumping margins (*Electric Golf Carts from Poland*, 1975) and two more laws were

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<sup>7</sup> Prior to 1960, there were dumping cases initiated against NMEs, but never a finding of dumping (e.g., *East German Potash*, 1954).

passed incorporating the two volatile calculation methods (Trade Agreements Act of 1979; Trade and Tariff Act of 1984). Prior to 1988 socialist countries were referred to as either “state-controlled economies” or “state-controlled entities.” Finally, in 1988, “state-controlled economies,” became “non-market economies” which is what they are called today, and how they are generally referred to in the past by scholars and professionals (Omnibus Trade and Competitiveness Act of 1988). A list of the countries both historically and currently designated as NMEs is provided in Table 2.

### **How NME Policy is Articulated Within General AD/CVD Policy**

#### ***ME AD/CVD Procedures***

Antidumping (AD) and Countervailing Duties (CVD) are measures taken to provide relief to domestic producers of a good whose foreign equivalent is suspected of being sold at “less than fair value” (AD) or subsidized by a foreign government (CVD) (Casey 2022). General AD/CVD law emerged in 1921 with the passage of the Antidumping Act. Since 1930, with the passage of the Smoot-Hawley Tariff Act, federal agencies have handled ME AD/CVD policy in this general way.

Relief to domestic producers is provided in the form of a duty (tax) on imports of the foreign like-product in the amount which offsets the difference in the price of the good sold in the US market and the price of the good sold in the foreign market (USITC, n.d.). In CVD cases, the import duty is equivalent to the amount of foreign government subsidization. Two agencies are responsible for conducting investigations into alleged dumping and subsidization: the US International Trade Commission (USITC) and the International Trade Administration (ITA) of the Department of Commerce (DOC). The USITC investigates and determines if a particular US industry has suffered material injury. The DOC determines whether dumping or subsidization

exist and by how much (Casey 2022). For AD cases, the “how much” is the dumping margin, i.e., the degree to which the fair market value of the good *in the US* exceeds the price at which it was *sold in the US* (USITC, n.d.). The dumping margin becomes the amount of the duty. For example, if the DOC finds a dumping margin of 10% for good X, then US Customs and Border Patrol will collect a 10% duty on the entered value of good X into the US (USITC, n.d.).

Procedurally, investigations occur in set time periods, which may be extended based on the discretion of the investigating authorities. An AD/CVD dispute starts when a domestic industry files a petition to both the USITC and DOC. In essence, the petition is a complaint which contains the rationale for why imports from specific countries are being sold at unfairly low prices. If members of a US industry file a petition, they do so because they want the US government to increase the price of the foreign good through a duty, thus increasing the competitiveness of *their* product. Staff at the DOC analyze the petition, and if the petition includes enough information about the allegedly dumped or subsidized imports, and if there is enough domestic industry support, the DOC will “initiate” the case (Casey 2022). A visualization of the process for AD/CVD proceedings is provided in figure 1. This procedural timeline has generally remained the same for market economies since 1930.

### ***NME AD/CVD Procedures***

The standard ME method for calculating AD duties described above does not work for NMEs because NMEs do not allocate economic resources according to the market principles of supply and demand. This makes it impossible to determine “fair market value” using the same approach and procedure for MEs. From the passage of the Antidumping Act of 1921 until the adoption of Customs Regulation section 153.5 in 1973, the determination of dumping duties for NMEs was made almost exclusively through administrative discretion due to the silence of

existing law (Horlick & Schuman 1984, p. 808; Lantz 1995; Smith 2013). In the 1960 case *Bicycles from Czechoslovakia*, the Treasury Department developed the “surrogate country” approach for applying AD duties to NMEs (*Bicycles from Czechoslovakia*, 1960). This approach substituted prices and costs necessary for the calculation of a dumping margin from a “surrogate” market economy (Smith 2013; Horlick & Schuman 1984; Lantz 1995). For example, in the *Bicycles* case, the Treasury Department determined that the home-market price or export price of bicycles from the “surrogate” ME country would be used as the basis of the dumping calculation for Czechoslovakia (the NME). This was the method used in a series of cases in the early 1960s involving NMEs (*Bicycles from Czechoslovakia*, 1960; *Jalousie-Louvre-Sized-Sheet Glass from Czechoslovakia*, 1962; *Portland Cement from Poland*, 1963). However, this method proved unreliable primarily because of cases where there was no available surrogate ME country or similar product (Lantz 1995, p. 1003; Smith 2013, p. 2).

In 1975, the Treasury Department responded to the issues from the “surrogate country approach,” and devised a new calculation methodology called the “factors of production approach” (*Electric Golf Carts from Poland*, 1975; Smith 2013, p. 2; Lantz 1995, p. 1003; Horlick and Schuman 1984). This required that the amount of each factor input of the product, i.e., water electricity, freight, overhead etc., be taken from a market economy country considered to be at a similar level of economic development (*Electric Golf Carts from Poland*, 1975; Lantz 1995 pp. 1003-1004; Horlick and Schuman 1984). In 1988, the Omnibus Trade and Competitiveness Act formally defined what constitutes a “non-market economy” as the following which is still in effect today:

The term “nonmarket economy country” means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise (Omnibus Trade and Competitiveness Act of 1988).

The factors to be considered in the determination of a country's market status include the following:

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management, (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, (iv) the extent of government ownership or control of the means of production, (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and (vi) such other factors as the administering authority considers appropriate (Omnibus Trade and Competitiveness Act of 1988).

The law gives the DOC significant discretionary power in determining whether a country is an NME. It stipulates the following:

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority. (ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time (Omnibus Trade and Competitiveness Act, 1988).

The law also stipulates that any determination of a country's status as an NME status is not subject to review by a judge:

Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under part II of this subtitle (Omnibus Trade and Competitiveness Act of 1988).

Finally, the law also stipulates that the factors of production approach is the preferred method for calculating dumping duties for NMEs (Omnibus Trade and Competitiveness Act of 1988). Next, I assess two explanations for the emergence of NME policy.

## **Literature Review**

In this paper I analyze two explanations for the emergence and development of NME AD/CVD policy: 1. Ideology and 2. Business politics and regulatory capture. Anticomunist ideology is thought to inform NME AD/CVD policy (Horne 2006; Zhang 2018). By contrast, the

business politics and regulatory capture thesis suggests that NME AD/CVD policy developed mainly because it served the interests of a powerful industrial group who captured the agency charged with adjudicating its international trade disputes. Most explanations for the development of *general* AD/CVD policy rightly point to the US steel industry as an essential player and feature this business politics line of argument (Finger 1993; Prechel 1990, 2000; Scheuerman 1986; Barnett and Schorsh 1983; Howell 1988; Deardorff and Stern 1998). Given that NME policy is an articulation of AD/CVD policy, its development can also be explained in these terms. For a visual comparison of these two approaches see table 3.<sup>8</sup>

I argue that the ideology thesis is neither a necessary nor sufficient explanation because it cannot explain the uneven distribution of NME policy application across economic sectors. If ideology truly informed the development of NME policy, we would expect NMEs to be specifically targeted across all sectors. The statistical portion of this paper shows this was not the case and supports a sector-specific finding that both ME and NME AD/CVD policy disproportionately benefitted one industry: steel. This provides partial support for the business politics and capture oriented theorists who argue that the steel industry manipulated the AD/CVD laws for its material benefit. I argue that while this capture thesis is necessary, it must be enhanced by an understanding of the discursive tactic of *industry-state subterfuge* which emphasizes the autonomous power of the state to shift institutional venues of dispute, the inherently political process of market construction, and the role of specific actors who intentionally embed ambiguous meanings in institutions which govern markets.

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<sup>8</sup> The visualization in table 3 excludes the lawyers who analyze NME policy from legal-historical angle and the scholars who focus on the role of the NME label in the context of WTO disputes. This is because these groups do not attempt to explain why the policy was socially constructed. For the lawyers see Horlick and Schuman 1984; Denton (1987); Barton and Fisher (1989); Lantz (1995); Gopinath (2002). For the WTO and China accession scholars see Ostry (1997); Panitchpakdi and Clifford, 2002; Cheng and Ching (2003); Gallagher, Low, and Stoler (2005); Godement (2016); Hopewell (2016); Zeng and Liang (2010).



### ***Explanation 1: Ideology and Internalized Beliefs about the Cold War***

There is a large literature which suggests that human action is determined by individual beliefs (Barner-Barry 1990; Converse 2006; Clausen and Van Horn 1977; Kasper and Streit 1998). Converse (2006), rejecting the term “ideology” instead employs the term “belief system” defined as “a configuration of ideas and attitudes in which the elements are bound together by some form of constraint or functional interdependence” (p. 3). Barner-Barry (1990) defines a belief as “an understanding about ourselves or the environment we regard as fact” (p. 205). Beliefs or ideologies are social endeavors to rationalize behaviors of individuals and groups (Kasper and Streit 1998). Specifically, these scholars suggest that values are “deeply ingrained” in the “human psyche” (Kasper and Streit 1998, p. 75). Beliefs are sticky, in that they are unresponsive to reason and evidence (Gerber and Green 1991). These accounts are ultimately rooted in a theoretical conception of social life as ordered by the “aggregation of individual and organizational behavior” (Clemens and Cook 1998, p. 442). According to these ideological or belief centered approaches, action is not *structured by* institutions, but rather by individual, instrumental calculation informed by *beliefs within* institutions. Institutions feature as mere “constraints” on “opportunistic temptations” (Converse 2006, p. 3; Kasper and Streit 1998, p. 3).

Viewing Cold War history through this lens is seductive. Anticommunist ideology in the United States from 1960-1988 was obviously extremely powerful, so we may expect that powerful individuals or groups with sticky anticommunist beliefs determined all sorts of policies, including trade policy. Especially considering that NMEs are so frequently referred to as “enemies” by bureaucrats today, and especially given the folk wisdom about the animosity between the Soviets and Americans from 1960-1988, it is easy to see how anticommunist ideology might have structured the origins and continuation of NME policy.

When the history of NMEs in AD/CVD disputes is mentioned outside the context of its legal history or China's WTO accession, it is typically framed in these ideological terms. Horne (2006) and Zhang (2018) are two of the few scholars to historically investigate the origins of NME policy and frame the case of NME policy in terms of individualized beliefs developed by the scholars cited above (Horne 2006, pp. 21-28; Zhang 2018, pp. 24-28). Horne (2006) views beliefs as "held by specialized agents in a given issue area" (p. 20). The agents in the account are the individual bureaucrats applying the policy in the domain of international trade (p. 20). Horne (2006) argues that "Western Trade Agencies perceived and operationalized these generalized Cold War beliefs into specific trade laws and practices" such as NME policy (p. 28). In the process, Horne (2006) explicitly channels the line of scholars who view action as determined by individualized actors as opposed to institutional structuration (pp. 21-28). Institutions feature only insofar as they provide constraints on the behaviors of individual bureaucrats which function to reinforce these beliefs, hence "institutionalized beliefs about the Cold War" (Horne 2006, p. 21).

Although the focus of Zhang's (2018) analysis is on the post-Cold War period, it is still framed in explicitly ideological terms (pp. 24-28). Zhang (2018) focuses specifically on the transition from planned to market socialism. He notes that, "During the Cold War, the policy guideline of ME countries towards planned-economy countries was anti-communism, which was embodied in the policy of containment led by the U.S." (p. 27). As socialist countries engaged in market reforms during the 1980s, and after the collapse of the Soviet Union, "the conflict between liberalism and socialism, though weakened, [did] not vanish" (p. 27). Like Horne (2006), NME policy developed due to the ideological conflict between capitalism and communism.

Ultimately, the ideological account is problematic for two reasons. First, it fails to account for the sector specific concentration of AD/CVD cases. As I show below, this data tells an industry-dominant story: steel. Second, it overlooks the discursive tactics employed by an autonomous US state to simultaneously protect a powerful steel industry and accord to its outward principles of anti-protectionism agreed to in the General Agreement on Tariffs and Trade (GATT). If those in power had the “sticky” belief that “communism was bad, and capitalism was good” (Horne 2006, p. 21) why would the push for changing the meaning of NME involve the explicit removal of the communist connection over a decade before the collapse of the Soviet Union?<sup>9</sup> Put another way, if the push for this policy can be explained by anti-communist ideology on behalf of US actors, why was the connection to communism entirely removed from the law? And why would the policy develop as communist states became *less* communist (see figure 3)? The second explanation employed in histories of general AD/CVD policy provides a slightly more persuasive line of reasoning but remains insufficient.

### ***Explanation 2: Business Politics and Regulatory Capture***

Most arguments about the history of AD/CVD policy applied generally feature a form of interest or constituent group politics concerning the US steel industry (Finger 1993; Prechel 1990, 2000; Scheuerman 1986; Barnett and Schorsh 1983; Howell 1988; Deardorff and Stern 1998). This explanation is theoretically committed to a conception of the state as an arena in which politics are largely viewed as a struggle between societal groups (Prechel 2000; Kolko 1969). In this account, interest group politics, especially those of firms, organized groups, i.e., “men of power” define the limitations and formulation of strategical political action (Kolko

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<sup>9</sup> Senator H. John Heinz III (R-PA) proposed legislation for eliminating the legal connection to communism in the NME definition as early as 1979 (S.1966, 1979).

1969, p. xii). Business groups stabilize markets “directly through market control or indirectly through political behavior” (Prechel 2000, p. 2).

Furthermore, regulatory actions by the state are subject to capture by the very entities whose negative externalities the state is supposed to regulate (Stigler 1971, p. 3). “Acquired” regulation is “designed and operated primarily for the benefit” of industry (Stigler 1971, p. 3). Kolko (1977) makes a similar claim about the regulatory reforms of the progressive era, i.e., that “the regulation itself was invariably controlled by leaders of the regulated industry and directed toward a goal they deemed acceptable or desirable” (Kolko 1977, p. 3). Again, in these circumstances, the state is not conceived of as an autonomous entity with its own goals and interests, but rather an arena for conflict. Politics are conceived as instruments of industry (Scheuerman 1986, p. 99), and “business control over politics” is the significant phenomenon (Kolko 1977, p. 3).

It is easy to see the necessity of this line of argumentation in the context of AD/CVD policy. As shown in figures 3 and 7, the major AD/CVD policy developments, which benefitted the steel industry, occurred precisely during the period of the steel import crisis. As I show below, that is no coincidence. Most scholars who have written specifically about steel’s role in the development of trade policy make arguments rooted in this perspective. Scheuerman (1986) argues that “US steel firms, both individually and collectively through their trade association, the American Iron and Steel Institute, increasingly used their political clout to influence policymakers in Washington” (p. 100). Barnett and Schorsh (1983) make a similar claim, i.e., that the reason the US steel industry was able to effectively appeal the state for relief was its political power (pp. 238-240). The political power of the US steel industry from 1960-1988 is undeniable and well documented (Scheuerman 1986; Stein 1998; Barnett and Schorsh 1983;

Prechel 1990; Chorev 2007). Accordingly, the development of NME AD/CVD policy could be seen as a case of business politics and regulatory capture.

Yet, this account is complicated by the fact steel's political power did not translate directly into the policy it consistently requested: tariffs and quotas. As I discuss below, it may appear that there is evidence to partially support the idea that steel "captured" the state. It is true that after the agency switched from the Department of the Treasury to a more sympathetic agency in the Department of Commerce, and after steel and metal industry CEOs were placed at the helm of the Department of Commerce, the number of findings of dumping and duties exploded (Arnold and US Congressional Budget Office 1994, pp. 50-58; Chorev 2007, p. 123; Irwin 2017, p. 588; Krueger 1998). However, the AD/CVD route was never the intended route of relief for the steel industry, but was one encouraged by the state. Consequently, this approach is insufficient because it cannot fully explain why, if steel captured the state, it did not receive import relief in the form it wanted, and why even after the moment of potential "capture" it continued to lobby for tariffs and quotas. Given these theoretical inadequacies, a third perspective is necessary.

### ***Bridging the Gap: Industry-State Subterfuge***

As indicated above, the main theoretical contribution of this paper is to develop a theory of how states can promote an international agenda while simultaneously appeasing powerful domestic industries whose interests run counter to that agenda. The concept of *industry-state subterfuge*, a discursive tactic used by states and industry integrates elements from existing sociological theories of the state and markets. I argue that this approach provides a better explanation to why the US state changed its AD/CVD laws and why the concept of NME emerged than either the ideology thesis or the business politics and capture thesis.

Since *industry-state subterfuge* is a discursive tactic in meaning making,<sup>10</sup> it must be *used* by a social agent that can employ it. Accordingly, first, the concept views states as at least semi-autonomous to the demands of industry (Skocpol 1980, 1985). States must be able to at least partially resist the calls of an industry whose interests diverge from the state's international commitments. Following Skocpol (1985, p. 9), states are conceived here as organizations which "may formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes, or society." *Industry-state subterfuge* incorporates Prechel's (1990, p. 651) conception of an autonomous "organizational state environment." According to Prechel (1990, p. 651) states have "separate large 'supra units' (i.e., executive, judicial, legislative) and disparate subunits (e.g., treasury, commerce)" and are affected by political coalitions in [their] environment[s]." Building on this, *industry-state subterfuge* links the autonomy of the state with its ability to unilaterally shift "institutional venues" in its organizational environment which "may be monopolistic or shared, that is, a single issue may simultaneously be subject to the jurisdiction of several institutions, or it may be within the domain only of one set of institutions" (Baumgartner and Jones 1993, p. 31). Venues can also be understood as literal places of transnational legal dispute (Bell 2003, pp. 14-21). Given this, the "shopping" (Bell 2003) for a venue of dispute is often a political project. Since the US executive has the unilateral power to create and move agencies which serve as literal venues, the concept of venue "shopping" (Bell 2003) is linked with an autonomous US state.

In the case of this paper, the US state shifted the venue in two senses. First it shifted the institutional venue for protection out from tariffs and into AD/CVD policy. Second, it shifted the literal venue from the Department of Treasury to the Department of Commerce in 1979. The fact

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<sup>10</sup> For meaning making see Carruthers and Babb (2013).

that the US state continually denied the import quotas steel requested out of fear of foreign retaliation, and the fact that the US state unilaterally shifted the agency responsible for calculating dumping duties from one of its “supra units” (Prechel 1990, p. 651) to another supports the conceptualization of the state as at least semi-autonomous.<sup>11</sup>

Next, the concept of *industry-state subterfuge* incorporates elements from existing sociological theories of the market which view the negotiations of the terms of exchange as an inherently political process which often occurs outside of the boundaries of the market itself (Bartley 2007; Fligstein 2001; Fligstein and McAdam 2012). Market contestation can occur in “strategic action fields” which are “constructed mesolevel social orders” or socio-spatial environments (Fligstein and McAdam 2012, p. 9). “Incumbent” (Fligstein 1996; 2001) social actors (which can be industry groups) wield significant power within a field, whereas “challengers” wield little influence within the field (Fligstein and McAdam 2012, p 13). “Socially skilled” actors (such as politicians) may frame “lines of action” (Fligstein and McAdam 2012) in manners which can serve the benefit of incumbent groups. For AD/CVD policy applied to NMEs, the “social skill” (Fligstein and McAdam 2012, p. 8) of one Pennsylvania Senator H. John Heinz III, was crucial.

As I will show, the “social skill” (Fligstein and McAdam 2012, p. 8) of Heinz lay in his ability to simultaneously embed the language of “free trade” into legislation that was ultimately protectionist. This was an explicit discursive strategy in reconstructing the meaning of “the market” by defining its negative “non-market” in the law. Such a strategy allowed for NME subsidies to be theoretically countervailable. In short, it was *industry-state subterfuge*. But Heinz did not get exactly what he wanted, just like the steel industry did not get exactly what it wanted,

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<sup>11</sup> For degrees of state autonomy see Carruthers (1994, p. 21); Hooks (1990, p. 43).

because a “supra unit” (Prechel 1990) of the state (the executive) had to balance these calls with the promotion of a liberalized economic international order. As I will show with the case of AD/CVD in general and with NME policy, there were policy lines which steel consistently wanted to cross, but a semi-autonomous US state would not permit. In these circumstances, a semi-autonomous state devised a duplicitous solution: shift the venue for protection to administrative courts where it could be plausibly denied as such, and simultaneously place administrators sympathetic to the steel industry at their command. Just like the steel industry through Heinz, executives from Johnson to Reagan also employed *industry-state subterfuge*.

In summary, I argue that the two most frequently employed theories for explaining the development of AD/CVD policy as applied to NMEs (ideology) and AD/CVD policy in general (business politics) ultimately fail to sufficiently explain how regulations which are incompatible with the state’s broad policy of free trade can materialize and persist in ways that provide benefits to a specific industry whose interests run counter to those of the state itself. At a theory level, the ideology thesis places emphasis on individualized beliefs, at the cost of institutional structuration. At a practical level, it cannot explain why, if anticommunist beliefs were so essential to the development of NME policy, that a specific industry lobbied so much to remove the connection to communism for over a decade before communism’s alleged collapse. At a theoretical level, the regulatory capture thesis overemphasizes the role of firms, at the expense of the role of an autonomous state. At a practical level, it cannot explain why, if steel captured the state, it did not get the regulation it wanted. Given these deficiencies, I develop the theoretical concept of *industry-state subterfuge*, a discursive strategy employed in conditions where a state’s international commitments must be balanced with demands from a powerful domestic industry.

## **Roadmap**



In what follows, I provide a summary of my methodology. I then provide a statistical analysis of all AD/CVD case initiations from 1960-1988. I find that the US steel industry accounted for a significant plurality of all AD/CVD case initiations from 1960-1991, and that case initiations were positively correlated with increased imports, especially in the iron and steel sector. I then use historical data in the following section to illustrate that this unusually large plurality in all case initiations was the result of a larger political project by the US steel industry. Due to a global overcapacity crisis in steel, high labor costs, and a refusal to update essential production technologies, the US steel industry was particularly vulnerable to imports. This import crisis was complicated by the fact that the US state engaged in rounds of multilateral trade negotiations which signaled a commitment to “free-trade” through the elimination of tariffs and import quotas.

I argue that the development of NME policy was not, as it is commonly claimed to be, due to Cold War ideological differences or the result of business politics. Rather, NME policy is part of a larger story of the dilemma between a semi-autonomous US state outwardly committed to the principle of *anti*-protectionism, and a powerful incumbent steel industry committed to a *direct* form of protectionism. AD/CVD policy in general developed because of the *subterfuge* of a state which autonomously shifted the venue of protection from one institutional realm to another (tariffs to AD/CV duties), and one literal venue to another (Treasury to Commerce) to the benefit of a specific industry: steel. AD/CVD laws could simultaneously function as a form of protectionism for steel and appear as the simple adjudicating of “unfair trade practices” to the US state’s allies. The politics of market exchange, in addition to the politics of *the meaning of the market itself*, occurred outside of the domain of the market and within the walls of a semi-autonomous US state.

## Method

The method adopted in this paper is threefold. First, I manually code the US AD/CVD statistics by industry, and test to see if there is an industry-specific correlation between import values and case initiations. If ideology is a sufficient explanation for the development of NME policy, we would expect a relatively equal distribution of AD/CVD cases by sector. This is not the case, and the data show a disproportionate number of cases initiated in a specific sector: iron and steel. However, this data by itself is insufficient in explaining the development of NME policy. So, secondly, I trace the history of AD/CVD policy in general and as applied to NMEs from 1960-1988 with primary data and show how NME policy developed through discursive *subterfuge* between a powerful steel industry and a semi-autonomous state. Third, I supplement archival data with five informant interviews which average 1.4 hours in length. Non-identifying biographical informant information is provided in Table 4. When asked about the development of AD/CVD policy in general and NME policy in particular, the unanimous response was that the US iron and steel industry played a key role (*Interviews*, 01/20/2022; 02/02/2022; 02/08/2022; 02/21/2022; 02/22/2022).

### AD/CVD Sector-Specific Statistics

A graph of the total value of US imports and the number of AD/CVD cases initiated from 1960-1991 is provided in figure 2. Macro theories of international trade and protectionism posit that generally, as imports increase, so do protective measures (Finger 1981; Sykes 1999; Vandebussche 1996). Both AD and CV duties are protective measures, so based on this theory, one would expect them to rise with rising import values. However, figure 2 shows that there was no direct relationship between import value and AD/CVD initiations from 1960-1991.

Accordingly, when taken in the aggregate, there is no apparent relationship between raw import value and case initiations (see figure 1). However, since AD/CVD cases are initiated based on a previous fiscal year's number of sector specific imports, it is necessary to represent imports in terms of sector specific, annual differences in value. It is also necessary to break down case initiations by sector. As figure 4 shows, when import values are operationalized in terms of sector specific annual increases, we can see a linear pattern emerge with sector specific case initiations. Visually, the pattern in figure 4 is clear: case initiations follow annual differences in import values. A Pearson correlation test confirms that the relationship is statistically significant at all conventional levels (see table 5).

As tables 6 and 7 show, the iron, steel, and metal sectors have a sizable plurality on all case initiations from 1960-1991. A visual representation of this data is also provided in figures 5 and 6. This holds true for both ME and NME cases alike. For both ME and NME cases, the amount of iron and steel case initiations represented approximately a third of all initiations for the period. The number of iron and steel case initiations for both MEs and NMEs was greater than any other sector for the period. For example, the number of ME iron and steel initiations was 55% greater than the next largest ME sector (food and agriculture), and the number of NME iron and steel initiations was 27% greater than the next largest NME sector (other metals). This suggests that the situation for steel was not primarily about competition with formerly state-socialist economies, but with foreign competition more generally.

This data, in conjunction with informant interviews and historical data, is consistent with a larger pattern: the iron and steel industry had a vested interest in creating and manipulating the AD/CVD laws, and the US state had a vested interest in encouraging steel to use them, because the AD/CVD laws were permissible "non-tariff measures" agreed to in the GATT. This way, a

semi-autonomous state could simultaneously administer protection to steel and abide by its free-trade principles to its allies. Accordingly, the ideology thesis is neither a necessary nor sufficient explanation. In what follows, I show why steel became vulnerable to imports and why its main avenue for relief became the AD/CVD laws.

### **Steel's Import Sensitivity and *Industry-State Subterfuge* in the General AD/CVD Laws**

NME policy is inextricably linked with US AD/CVD law, which is inextricably linked with import sensitive US industries, especially steel. An analysis of the US AD/CVD laws from 1960 to 1988 reveals that US AD/CVD laws were changed and were ultimately strengthened because the US steel industry needed a stronger mechanism by which to manage import surges and the resulting increase in competition. The political strategy initially adopted by the US steel industry was to lobby for direct forms of protection against competitively priced imports in the form of quotas, higher tariff rates, and import restrictions. Steel wanted a comprehensive industrial policy, which Congress and the Executive simply would not provide. Congress and the President did not agree to the direct forms of relief advocated on behalf of the steel industry because of the potential for undermining relations with foreign states. Accordingly, and as I show below, as the strategy for direct and internationally negotiated mechanisms of relief proved unsatisfactory for steel, it constructed and repurposed sociolegal mechanisms (AD/CVD laws) in its favor. Put simply, steel lobbied Congress to rewrite the AD/CVD laws for its benefit.

Importantly, steel used the discursive strategy of *industry-state subterfuge* to intentionally imbed ambiguity into the laws which allowed for administrators sympathetic to their cause to interpret vague meanings in its favor. In the process, the venue for protectionist demands shifted from Congress and the Executive and then to the bureaucracy: first the Department of the Treasury, then the Department of Commerce. With that shift came administered relief. What that

administered relief represented was a US state engaging in a similar discursive dance: effectively the AD/CVD route became administered protectionism, but since it was permissible via the GATT, the semi-autonomous state could still appear to be promoting free-trade principles to its allies. Both a semi-autonomous US state and a powerful US steel industry engaged in *industry-state subterfuge* to pursue their divergent goals. In what follows, I show why steel was vulnerable to imports, and then show how the political conflict which ensued thereafter ultimately resulted in steel being granted an entire administrative agency responsible for adjudicating AD/CVD disputes by a semi-autonomous US state which had to outwardly appear anti-protectionist to its allies.

### ***Steel's High Labor Costs and Innovation Reluctance Lead to Import Sensitivity***

Between 1945 and 1959, the US global market share for steel was enormous. This is because the devastation of WWII left little room for competition as nations in East Asia and Western Europe rebuilt from the destruction of the war. By contrast, the US was industrially intact, and could sell its manufactured goods with virtually no threat of import substitution. That began to change in 1959.

The US steel industry suffered a significant amount of import competition starting in 1959. Lower priced steel started to become widely available and came from countries with smaller production costs. This meant foreign firms could sell steel at a lower price than that of US firms and still make a profit. This is largely due to a massive steelworker strike over wages left plants closed for 116 days (Harris 1983; Bureau of Labor Statistics 1960). As a result of the strike, US steel firms did not have the productive capacity to meet foreign and domestic demand, which resulted in a surge of steel imports into the US. In 1958, imports relative to apparent consumption were 2.9 percent. In 1959, that number more than doubled to 6.1 percent (see figure

7). As figure 7 shows, steel imports as a share of domestic consumption increased more than threefold, from 5 percent in 1960 to 18 percent in 1991. As Figures 8 shows, total raw steel imports increased roughly fivefold from 1960 to 1991. In addition, periodic contract negotiations steadily increased steel worker wages (labor costs for steel firms) from 1960 to 1974 (see tables 7 and 8). In these circumstances, US steel management learned that labor stability had to be “purchased with generous wage concessions in order to keep factories running and prevent consumers from buying foreign steel” (Irwin 2017, p. 546).

Steel was vulnerable to import substitution because steel was a major input for products made in the construction and automotive industries (Harris 1983; Irwin 2017, p. 536). As an input, steel was generally less complex than capital goods. Since product differentiation varied comparatively less in steel and metals than more complex products, like for example, airplanes and semiconductors, this meant that US steel consumers substituted lower priced steel when it became available.

Furthermore, from 1960 to 1980, US steel labor costs were higher relative to other manufacturing industries within the US and relative to steel labor costs in foreign countries. Table 8 shows that the average wage of a steel production worker in the US from 1960 to 1991 was 39 percent greater than the wage of the average manufacturing worker. Furthermore, as shown in Table 9, foreign steel production wages were lower than US wages. For example, in 1984, the hourly wage of a US steel worker was nearly twice as high as that of a German or Japanese steel worker (see table 9).

In the 30 years following WWII, the steel industry could transfer these comparatively high labor costs to consumers which were primarily concentrated in the construction and automotive industries. However, high labor costs, combined with cheap imports of steel resulting

from foreign excess capacity made it difficult for steel firms to transfer increasing costs to consumers, who now had more options from which to buy steel. Since losing market share meant losing profits and less potential for capital accumulation, and losing profits and accumulation potential meant layoffs, both labor and management were united in calls for protection from imports. As Irwin (2017) puts it, “Management wanted to prevent foreign competition from undermining profitability, while workers wanted to preserve their high wages and current employment levels. As a result, the industry demanded protection from imports” (p. 537).

In addition to high labor costs, in the US from 1960 to 1988 steel was particularly susceptible to competitively priced imports because foreign firms were more efficient at producing steel, i.e., foreign firms (particularly Japan and West Germany) could produce steel more cheaply (Herrigel 2010). Because of this, foreign firms did not have to charge as high of a final price as US producers to profit. The reason foreign steel manufacturers could produce more cheaply is due in large part to two factors: 1. Smaller relative labor costs, and 2. A greater capacity to innovate in steel production technology (Herrigel 2010, p. 91). From approximately 1944 to 1974, US Steel producers had significant control over the global steel market and could set prices, adhere to union demands, and pass these costs along to their customers without fear of competition (Irwin 2017, p. 536). Once foreign producers ramped up production, that situation changed dramatically. Accordingly, steel did not have a pressing incentive to invest in new steel production technologies until it was too late. Foreign firms, forced to rebuild steel factories which were destroyed in WWII, had a greater opportunity to invest in new steel production technologies (Chorev 2007; Goldstein 1993; Herrigel 2010; Irwin 2017).

By about 1965, Japan, West Germany, and most of the post-WWII steelmaking world manufactured steel using electric arc furnaces (EAF), which were more cost efficient, than the

open-hearth (OH) furnaces and basic oxygen processes (BOP) which were the dominant and relatively less cost-efficient modes of steel production in the US (Herigel 2010, pp. 91-92; *Interviews* 02/02/2022; 02/21/2022; 02/22/2022). Figure 9 breaks down the percentage of raw steel produced in the US by furnace type. As illustrated, in 1960, 90% of all US raw steel was produced with open hearth and basic oxygen furnaces. By 1970, that percentage decreased to 85%; by 1980, to 72%; and by 1991, 62% (see figure 9). Despite this decrease, most of the steel in the US from 1960-1991 was produced using means which were less cost efficient (BOP and OH), leaving US steel producers vulnerable to import substitution.<sup>12</sup>

US steel producers understood that their domestic hegemony and access to foreign markets was unsustainable, but this did not propel them to invest in new technologies necessary for competition until the mid 1980s (Irwin 2017). Furthermore, evidence suggests that even if the US steel industry did have the means to innovate, it would not have likely solved its cost problems (US Congressional Budget Office, 1986, 1987; Old and National Academy of Engineering 1985; Krueger 1980). Again, too little too late.<sup>13</sup> Finally, the process of industrial readjustment in the US more generally reallocated labor and capital away from older industries such as steel and textiles toward newer industries such as telecommunications and computing (Irwin 2017, p. 559; Old and National Academy of Engineering 1985). These conditions prompted political calls for import protection and a more comprehensive industrial policy in the

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<sup>12</sup> This was not true for all steelmakers in the US. The technological crisis described above is really in reference to integrated US steel producers. Integrated steel producers make their own steel inputs such as iron ore, whereas mini mill producers recycle inputs to make steel products. Mini mill US producers, particularly Nucor Corporation, remained consistently profitable despite the import surge (Rodengen 1997, p. 88). As the founder and CEO of Nucor Corporation put it in 1975: “If we have excess capacity when our competitors are constrained, and if we can maintain our lower costs, we will be unstoppable” (Rodengen 1997, p. 67).

<sup>13</sup> Ultimately labor suffered the most. Between 1960 and 1991, US Steel Corporation, the largest integrated steel manufacturer in the country at the time, laid off over 200,000 workers. (See Table 10). Evidence indicates that in industries where employment fell, it was not actually caused by imports, but rather changes in demand and productivity (Grossman 1987; Irwin 2017 p. 560; Krueger 1980).



form of environmental deregulation, government investment in steel infrastructure and capital, and unemployment assistance to displaced workers (US Congressional Budget Office, 1986, 1987; Old and National Academy of Engineering 1985).

In sum, because the steel industry was particularly vulnerable to import substitution, and because imports as a share of domestic consumption rose significantly through the 1960s, 1970s, and 1980s (see figures 7 and 8) resulting primarily from overcapacity in the global steel industry which “kept world production higher and world prices lower than would otherwise have been the case” (Irwin 2017, p. 563; on overcapacity see also Herrigel 2010), steel lobbied the US government intensely for protection against imports (Irwin 2017, pp. 559-564; Chorev 2007, pp. 119-127; Herrigel 2010, pp. 95-99). In what follows, I show how “new, if partial, forms of political ordering” (Clemens 2016, p. 4) were constructed via *industry-state subterfuge*. I analyze concepts such as “dumping,” “fairness,” and “market economy.” This conceptual (re)construction embedded benefit into laws which a semi-autonomous US state encouraged steel to use. A semi-autonomous US state engaged in *subterfuge* because these laws, ultimately written by and for the benefit of steel, could be understood simply as a means to combat “unfair” trade practices like dumping and subsidization. In the process, the US state shifted the institutional venue for protection out from tariffs and into non-tariff measures like AD and CV duties, and the literal venue for this administered protection from one agency (Treasury) to a new, more sympathetic agency (Commerce).

### ***From Direct Action to AD/CVD Litigation, 1960-1979***

As Figures 7 and 8 show, not only did steel imports increase steadily from 1960-1974, but imports as a percentage of apparent consumption exploded after 1965 and continued to increase after 1974. Accordingly, by 1970, it was clear to the US steel industry that imports were

continuing to rise and that they were causing disruptions. Steel's representatives on both sides of the aisle sought to change that in Congress. Between 1960 and 1991, Pennsylvania, Ohio, Indiana, Illinois, and Michigan accounted for 70 percent of all steel production in the United States (AISI Steel Statistical Yearbooks, 1960-1999). Proposed protectionist measures therefore came from representatives of those states.

In 1967, Senator Vance Hartke (D-IN) introduced legislation which sought to limit steel imports to below 10 percent of the US market (Irwin 2017, p. 537). Johnson flat out denied the legislative proposal, and to prevent legislated import caps, his administration negotiated voluntary restraint agreements (VRAs) with Japan and Germany to cap their exports to the US. The resulting VRAs held German and Japanese steel exports to 5.8 million tons each, down from 7.5 million tons for Japan, and 7.3 million tons for the European Economic Community (EEC) (Irwin 2017, p. 537). The VRAs were in effect from 1969 to 1971 and were renewed for another three years until 1974 (Irwin 2017, p. 537). Although the agreements capped import quantities, German and Japanese manufacturers used their advanced technologies to shift production to higher priced steel products. Consequently, this neutralized the intended effects of the agreements since the monetary value of the products in the US remained similar to pre-VRA levels (Irwin 2017, pp. 537-39; Chorev 2007, pp. 97-103). Accordingly, since direct forms of relief were flat out rejected and negotiated forms of relief proved inadequate, an alternative strategy emerged: AD/CVD litigation.

Until the 1970s, the AD/CVD laws were "little enforced" (Chorev 2007, p. 97). By 1971, Nixon appointed a new Treasury Secretary, John Connally, who "applied the antidumping law with increased frequency and formulated regulations that effectively worked to the benefit of domestic producers" (Chorev 2007, p. 97). As a result, the number of positive findings of

dumping increased (Chorev 2007, p. 123). As shown in figure 10, the number of AD/CVD case initiations increased nearly fivefold from the 1960s to the 1970s. Between 1955 and 1967, no relief was granted to US industries allegedly threatened by foreign subsidization, whereas from 1967 to 1971, Treasury found eleven instances of subsidized imports which necessitated countervailing duties (Chorev 2007, p. 98). While some senators were concerned about how the increased use of the AD/CVD laws might lead to foreign retaliation, others saw the AD/CVD avenue as an opportunity for institutional rearrangement, i.e., shifting the venue of protectionism from the congressional and executive arenas to administrative channels (Bell 2003; Chorev 2007, p. 98). In a letter to the National Retail Merchants, Nixon said as much: “We are also strictly enforcing our laws concerning unfair competitive practices like dumping. We have taken these steps precisely because we want to avoid the dangers of legislated restriction” (Chorev 2007, p. 98). Shifting protectionist demands from Congress to the arena of a quasi-judicial bureaucracy allowed for the continuation of what had been by 1970 almost three decades of executively promoted economic liberalization.

By 1974, the Trade Act had codified the provisions of the ongoing GATT Tokyo Round negotiations. This was a win for the growing anti-protectionist movement, which had by now encouraged import sensitive industries to litigate their problems via AD/CVD channels within the Treasury Department. Part of the 1974 law included provisions which strengthened the AD/CVD laws by imposing stricter deadlines on the Treasury Department (Trade Act of 1974). In addition, the Trade Act of 1974 also significantly increased the Executive’s power in the determination of international trade policy (Trade Act of 1974). Finally, the Trade Act of 1974 redefined the legal meaning of dumping itself (Trade Act of 1974). From 1921 to 1974 the meaning of dumping had meant the sale of foreign products below their home-market price,

whereas by 1974 the legal meaning of dumping had changed to the sale of a foreign good below its cost of production (Prechel 1990, p. 657; Scheuerman 1986; Trade Act of 1974). This is important because this new definition was an easier threshold to prove the existence of dumping, which served to benefit US domestic industry (Prechel 1990). However, from 1974 to 1979, despite the increased restraints placed on Treasury, additional negotiated forms of relief provided to the US steel industry by the executive (Prechel 1990, p. 657), and the redefinition of the very concept the industry was encouraged to litigate (see “dumping” in Trade Act of 1974), it was not enough for steel. Steel wanted more.

Between 1974 and 1979 Treasury again refused to initiate cases and positively affirm the existence of dumping in a manner which adequately satisfied the protectionist demands of steel, which continued to be battered by low priced imports stemming from global overcapacity (see Figures 7 and 8; *Interviews*, 02/02/2022; 02/08/2022; 02/21/2022; 02/22/2022). From 1974 to 1979 steel advocated for tariffs and quotas (*Interviews* 02/02/2022; 02/08/2022; 02/21/2022; 02/22/2022). However, as mentioned, because the Trade Act of 1974 granted significant executive power in determining trade policy to the US President, Presidents on both sides of the aisle rarely agreed to provide these direct forms of relief (*Interviews*, 02/02/2022; 02/08/2022; 02/21/2022; 02/22/2022). The fact that the Executive branch, and especially the Treasury Department consistently denied steel’s requests supports the ultimate autonomy of the state. The fact that the state embedded protectionist principles into a law which could simultaneously signal the codification of anti-protectionist principles supports the concept of *industry-state subterfuge*.

After the 1974 Trade Act, both Ford and Carter feared that if they granted the steel industry the quotas and direct import restrictions it consistently requested, foreign countries would retaliate (Chorev 2007, p. 116; Irwin 2017, p. 560; *Interviews* 02/02/2022; 02/08/2022;

02/21/2022; 02/22/2022). So, to prevent a trade war, Ford and Carter did not grant steel the direct relief it sought. Instead, in 1977, the Carter administration proposed a “trigger price mechanism” (TPM) as a response to the continuing import surge (see figures 7 and 8; US Congress 1978, p. 962). The TPM meant that the government would accelerate an AD investigation if imports arrived at prices below a specified “trigger.” That “trigger price” was based on Japanese production costs and profits (Irwin 2017, p. 536; US Congress 1978, p. 962). The same scenario from 1970-1974 played out again from 1975-1979: direct calls for relief from the steel industry, followed by Congressional and Executive refusal, followed by negotiated restraint agreements which were seen as unsatisfactory by the US steel industry,<sup>14</sup> followed by increased AD/CVD petitions.<sup>15</sup>

The semi-autonomous state’s initial attempts at negotiated relief failed to satisfy the powerful domestic steel industry as well as other import sensitive industries. So, the semi-autonomous state used a discursive tactic in duplicity. It enacted a law which could simultaneously provide relief to steel and technically abide by its international commitment of anti-protectionism. In 1979, the existing AD/CVD laws were fundamentally overhauled, to the specific benefit of the steel industry (*Interview* 02/08/2022). Accordingly, the AD/CVD laws in general became the primary “choice” for industrial import relief (Chorev 2007, p. 122; Horlick and Oliver 1989, p. 5). The reason the 1979 Trade Agreements Act represented a case of *industry-state subterfuge* is that the law appeared in the international context as the simple domestic codification of the ongoing GATT Tokyo Round negotiations. In that sense, any embedded protectionism would be less visible than an import quota or direct tariff, because

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<sup>14</sup> Bethlehem Steel and US Steel Corporation complained that Carter’s “trigger” prices were too low in various addresses to policymakers at a Washington conference (AISI and George Washington University 1979).

<sup>15</sup> As shown in Figure 10, the number of AD/CVD case initiations increased dramatically from the 1960s through the 1980s.

duties would have to be adjudicated in an administrative court. Instead of the US state applying a tariff, steel could just sue the countries for their alleged dumping or subsidies. In what follows, I elaborate on the *industry-state subterfuge* of the 1979 Trade Agreements Act, and the institutional venue shifting on behalf of a semi-autonomous US state to a realm more beneficial to the domestically powerful, but relatively weakening, US steel industry.

### ***Industry-State Subterfuge in the 1979 Trade Agreements Act and Venue Shift from Treasury to Commerce, 1979-1988***

The Trade Agreements Act of 1979 was enacted on July 26, 1979. Like its 1974 predecessor, its main purpose was to codify into US law the remaining portions of the GATT Tokyo Round negotiations which had concluded by April 1979 (GATT 1979; US Congress 1979).<sup>16</sup> The Act represented a “fundamental overhaul” of the existing AD/CVD regulations (*Interview 02/08/2022*). The Trade Agreements Act of 1979 further decreased the time limits for the administration to prosecute dumping and subsidization from the 1974 law (*Interview 02/08/2022*; Trade Agreements Act of 1979). One of the most significant changes was to the level of Executive power in trade policy. The law subjected the actions of the newly established International Trade Commission to judicial review (Prechel 1990; Trade Agreements Act of 1979; *Interview 02/08/2022*). This “provided the steel industry with a more effective legal basis to force the Executive Branch to act on AD and CVD litigation and thereby reduced its autonomy over enforcement of protectionist legislation” (Prechel 1990, p. 659). Even after the passage of the law, steel pressured Carter, and Carter responded.

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<sup>16</sup> Specifically, it marked the second time that the concepts of dumping and countervailing duties were defined in GATT negotiations. The first being the Kennedy round negotiations. However, the AD/CVD agreements of the Kennedy round were never ratified by the US Congress (GATT 1968; GATT 1986, Article VI). Accordingly, the 1979 Act marked the first time that the internationally agreed-upon concepts of AD/CVD measures were recognized in US law (GATT 1986, Article VI; Trade Agreements Act of 1979).

In September 1979, Carter established the Steel Tripartite Advisory Committee (STAC). The purpose, Carter stated, was to “advise me and my administration on problems within the US Steel industry” (Carter 1980). On December 7, 1979, Carter signed an executive order which shifted the administration responsible for investigating and calculating alleged dumping and subsidization from the Department of the Treasury to the Department of Commerce (Exec. Order No. 12175; Reorganization Plan No. 3 of 1979). This shift in responsibility was an enormous win for the US steel industry and could be seen as the moment of state capture. This is because after the venue shifted, Commerce nearly always ruled that dumping had occurred (Arnold and US Congressional Budget Office 1994, pp. 50-58). Importantly, leaders of the Commerce Department would be politically appointed.<sup>17</sup>

Having shifted more power from the president to the administration, and from one agency to an entirely new one, and with another surge of imports in March 1980, the US steel industry filed AD petitions against 75 percent of all imported steel (Prechel 1990, p. 659; Walter 1983, p. 492). In response, and to prevent a foreign policy nightmare, Carter suspended the existing TPM, and negotiated a new TPM 12 percent higher than the previous one. By 1981, the newly negotiated solutions (VRAs and new TPM) were still unsatisfactory measures for a US steel industry beleaguered by imports and laying off workers by the thousands (see Table 10). With a Republican in office outwardly committed to free trade, the steel industry’s calls for import quotas continued to fall on deaf ears. In familiar circumstances, steel turned to its repertoire: intensified calls for import quotas and direct relief. In response, Reagan encouraged steel to litigate its issues through AD/CVD channels and established a new advisory committee (Auerbach 1983).

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<sup>17</sup> The careerists who had occupied posts in Treasury shifted over (*Interviews*, 02/02/2022; 02/08/2022; 02/22/2022).

Reagan also appointed two Secretaries of Commerce sympathetic to the steel industry. Malcolm Baldrige, a former brass industry mogul, served as Secretary of Commerce from 1981-1987, the second longest of any Commerce Secretary. C. William Verity, a former CEO of Armco Steel served as Commerce director from October 1987 to January 1989. Throughout the 1980s, both Baldrige and Verity appointed Commerce officials sympathetic to the concerns of the steel and metals industries who consistently increased affirmative determinations of dumping, and increased duties (Arnold and US Congressional Budget Office 1994, pp. 50-58).

Accordingly, with stronger AD/CVD laws in place, and with former metals and steel industry moguls sympathetic to domestic industry running the Department Commerce, along with an empowered AD/CVD procedure, steel received relief, and the President was able to avoid the political consequences of retaliatory measures. The US state could deceive its allies about what were ultimately protectionist measures through the discursive strategy of *industry-state subterfuge*. Between 1980 and 1992, Commerce nearly always ruled that dumping or subsidization occurred. Dumping was found in 93 percent and subsidization was found in 91 percent of all cases initiated between 1981 and 1992 (Arnold and US Congressional Budget Office 1994, p. 50). With increased findings of dumping came increased import taxes. Between 1980-1984, the average AD duty was 26 percent (Arnold and US Congressional Budget Office 1994, Table 3, p. 50). Between 1985-1989, the average AD duty increased to 41 percent (Arnold and US Congressional Budget Office 1994, Table 3, p. 58). Furthermore, by 1992, the “average antidumping duty in effect [was] 46 percent in non-steel cases and 27 percent in steel cases” (Arnold and US Congressional Budget Office 1994, p. 58; Irwin 2017, p. 588).

However, just because steel obtained increased forms of relief through AD/CVD proceedings did not mean its hunger for protection was satiated or that it fully captured the state.



As Chorev (2007) notes, “the 1979 [Trade Agreements] Act was the first in a long list of bills aimed to turn the trade remedy laws into useful protectionist tools” (p. 126). Of these bills, the two major pieces of legislation which passed in both the House and Senate were the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988. Each of these laws further limited Presidential discretion in the realm of trade policy (Chorev 2007, pp. 126-128). Importantly, and as for the proposed and codified changes in the AD/CVD language, “effective lobbying by domestic firms led to the introduction of ‘minor alterations of highly technical and little-understood provisions that had great potential for changing international commerce’” (*National Journal*, 4/18/1987, in Chorev 2007, p. 128). The change from “state-controlled economy” to “non-market economy” was precisely one of those provisions.

As the history illustrates, the NME provision, like the AD/CVD laws to which it was attached, developed not due to “internalized beliefs about the Cold War” (Horne 2006) or simply because steel “captured” the state. Above I showed how “dumping” cannot be thought of as a static concept because its meaning was constructed by incumbent agents with duplicitous intents in mind. Steel used the discourse of “free and fair trade” to transform the meaning of dumping in 1974. At the same time, a semi-autonomous US state encouraged steel to pursue its import problems in this context to not spark an international conflict. In 1979, the US state shifted the institutional venue for the interpretation of this reconstructed concept of “dumping” to a venue more sympathetic to steel’s interests specifically because it could claim impartiality to its allies on behalf of administrators who were specifically appointed by the state to be sympathetic to steel’s concerns.

Next, I go a level deeper and illustrate how the concept of “market economy” was likewise volatile and subject to social construction by *industry-state subterfuge*. Steel, as it did

with “dumping,” transformed a policy originally intended to deal with the problem of socialist accounting into a policy which could theoretically be applied to *any* country, socialist or not. The principal institutional architect of NME policy in the Congressional realm was Senator H. John Heinz III, Republican from Pennsylvania. In what follows, I show how and why Heinz and his Congressional and industrial allies transformed NME policy from an administrative rule into federal law and how the NME story mirrors that of the AD/CVD story in terms of *industry-state subterfuge*.

### ***Industry-State Subterfuge in the Social Construction of Non-Market Economies***

To review, NME policy started as an administrative solution to an accounting problem both targeted and designed for “state-controlled economies,” who primarily used a Stalinist economic model (*Bicycles from Czechoslovakia*, 1960; *Jalousie-Louvre-Sized-Sheet Glass from Czechoslovakia*, 1962). In 1973, the administrative practice created in these cases was first codified as part of the customs then in the 1974 Trade Act with identical language (19 C.F.R. § 153.5(b), 1973; Trade Act of 1974). In 1975, another major case involving an NME prompted administrators to refine the calculation methodology further (*Electric Golf Carts from Poland*, 1975). What is important to remember about the NME dumping calculation methodology developed in these two cases is that it granted a significantly greater degree of administrative discretion in determining the actual duty applied to a country, compared with the ME method. What this meant was that administrators could essentially shop for margins (*Interview* 02/22/2022). However, the results based on these methods were wildly unpredictable because the methods depended on data obtained from an ME firm which was willing to participate in the proceedings by providing its business information (costs, profits, etc.). Lawyers for all parties

(domestic and foreign) had to request this information directly from businesses (*Interview* 02/22/2022).

As I showed above, already by 1974, and especially from 1974 to 1988, not only did the number of positive determinations of dumping increase substantially, but also the actual duties applied to the country found to have dumped (Arnold and US Congressional Budget Office 1994, at Table 3, pp. 50, 58). The statistics provided above show this to be an industry-specific story, primarily that of steel and metals for both MEs and NMEs alike (see figures 5 and 6). However, from 1978 until 1988, the calculation methodology in the law was explicitly applied to “state-controlled economies” (Trade Act of 1974; Trade Agreements Act of 1979; Trade and Tariff Act of 1984; Omnibus Trade and Competitiveness Act of 1988). As I show below, steel, through the state, sought to transform the meaning and applicability of this policy for three reasons: (1) to make the calculation methodology even more beneficial than it already was to domestic industry; (2) to cast a wider net by removing communism from the definition of NME; and (3) to make the CVD law, which had not been applied to NMEs from 1960-1988, applicable to NMEs. Steel’s man was Pennsylvania Republican H. John Heinz III. As I show below, like steel’s failed attempts to fully capture a semi-autonomous state to receive relief in the form of tariffs and import quotas, Heinz’s specific use of *subterfuge* to revise the AD laws as applied to NMEs ultimately failed to achieve everything Heinz wanted. In what follows, I provide some context for Heinz, and show why he, like the US state more generally, had to balance the needs of a powerful but “threatened” domestic industry with an international commitment to free trade. I show how he accomplished this through the discursive strategy of *industry-state subterfuge*.

#### ***H. John Heinz III and Steel***

John Heinz (R-PA), heir to the Heinz Ketchup fortune, was the principal legal architect of the change from “state-controlled economy” to “non-market economy.” Heinz served as US Representative from Pennsylvania from 1971-1977, and US Senator from Pennsylvania from 1978-1991. Representing Pennsylvania meant representing steel. Heinz Field, where the Pittsburgh Steelers play, is named after the corporation to which John Heinz owed his fortune.<sup>18</sup> Between 1971, the year Heinz became a congressman, and 1991, the year of Heinz’s untimely death in a helicopter crash, Pennsylvania alone accounted for nearly a fifth of all raw steel production in the United States (AISI Steel Statistical Yearbooks, 1971-1991). If representing Pennsylvania meant representing steel, then representing steel meant opposing steel imports. As one Pennsylvania paper put it after Heinz visited an Allentown steel plant: “Whatever their personal politics, the hard-hatted steel workers and business-suited corporate executives who turned out to meet U.S. Sen. John Heinz yesterday agreed with him on one key issue - steel import limits must continue” (*The Morning Call*, 1988).

### ***Heinz’s Political Balancing Act***

However, Heinz was a Republican, and Republicans from 1971-1991 overwhelmingly supported the principle of free trade, whereas Democrats largely supported protectionism (Chorev 2007; Irwin 2017). In these circumstances, as a Republican from *the* steel state, Heinz had to outwardly support the principles of free trade, yet balance this against a constituency overwhelmingly in favor of protection from imports. Heinz accomplished this by embedding the language of “fairness” in ultimately protectionist principles. For example, in his 1981 remarks to the National Foreign Trade Council, an organization staunchly in favor of liberal trade, Heinz walked such a tightrope. Heinz called for new legislation to combat the “growing problem of

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<sup>18</sup> To further emphasize the importance of steel, note that the Pittsburgh Steelers’ logo is identical to that of the American Iron and Steel Institute.

world protectionism” which for him, the 1979 Trade Agreements Act proved insufficient to address:

Such legislation could, and to my mind should, include a better means of dealing with unfair trade practices by nonmarket economies, a program of trade incentives for the developing countries that does not discriminate against the poorest, a domestic adjustment program that is comprehensive and effective once injury has been found, a better governmental structure to give trade the emphasis it deserves in government policy making, and broad new authority to act against performance requirements and other limitations on the free market (Heinz 1980, p. 5).

Heinz is referring here to the need to strengthen the US AD/CVD laws, especially regarding NMEs. However, he framed these remarks in a manner that could appeal to free-trade oriented policy makers who were starting to become increasingly dominant in Washington. Through this discursive strategy, Heinz could mask his desire to protect steel in language which would garner bi-partisan support from protectionist democrats and free-trade republicans.

As I show below, Heinz accomplished the masking of protectionist principles in free-trade language through his work on the AD/CVD laws. First, he defined the meaning of “material injury” and then he both created and defined the concept of “non-market economy.” In what immediately follows, I use the example of the linguistic changes to the “material injury” requirement in the AD/CVD laws to show how and why Heinz and his colleagues politicked the meaning of “dumping” in a manner which benefited their constituent base: steel. I then show how and why Heinz accomplished the same discursive tactic with the creation of the definition of “non-market economy.”

### ***Heinz, Steel, and the Politics of Defining “Material Injury”***

GATT Article VI (1947) included a requirement that for non-tariff measures such as AD and CV duties to go into effect, dumping or subsidization must cause or threaten to cause

“material injury” (GATT Article VI). By 1974 the term “material injury” had made its way into US law, which changed the meaning of “dumping” to sales below cost of production which was more beneficial to domestic industries. However, both GATT Article VI and existing US laws were silent on what constituted “material injury” (GATT Article VI; Trade Act of 1974).

As Senator, Heinz was vital in the linguistic developments of the AD/CVD laws to lower the threshold of “material injury.” Weakening the threshold of “material injury” made it even easier for the newly established ITC to positively determine the existence of dumping. Heinz himself sponsored two pieces of legislation which attempted to make it easier to prove “injury,” which would therefore lead to more positive findings of dumping and countervailable subsidies (S.533, 1979; S. 538, 1979). Initially opposed to the inclusion of “material injury” at all, and unable to remove the term entirely from US law, Heinz and other steel supporters ultimately wrote a definition of “material injury” as the following: “harm which is not inconsequential, immaterial, or unimportant.” This definition of “material injury” was submitted by the Senate Finance Committee, of which Heinz was a member, and the definition made it into the 1979 Trade Agreements Act (Trade Agreements Act of 1979).

This linguistic difference is important because it lowered the bar of what constituted “material injury” to anything which is “not inconsequential” to be determined by the administering agent. A more robust definition of “material injury” would be less ambiguous, and therefore less open to administrative discretion. This vague definition gave more room for sympathetic administrators to rule in favor of steel. As shown above, by 1981, the administration responsible for investigating the existence of, and calculating the duty to punish, dumping and subsidization was sympathetic to the industries seeking relief (primarily steel and metals).

Accordingly, this was a win for the steel industry because the bar for an injury determination, which was necessary for a finding of dumping or subsidization, was lowered.

Heinz understood that deliberately building in ambiguity into legal concepts gave significant power to the agency responsible for interpreting those definitions. Given this, Heinz's direct involvement in the development of the AD/CVD laws was not limited solely to changing the definition of "material injury." Heinz also sought to transform "state-controlled economy" into "non-market economy," to extend its applicability beyond just socialist countries. As I show in the section which immediately follows, Heinz took on the project of socially constructing the term "non-market economy," which was to the benefit of his constituent base: steel. However, before a discussion of the politics of defining NME, it is necessary to understand the role of the NME calculation methodology and the role of the CVD laws in informing the debate around the creation of NMEs.

### ***Heinz, Steel, and the Attempts to Change the NME Calculation Method***

As mentioned, the Czech bicycles case established the "surrogate country" (SC) method, and the Polish golf cart case established the "factors of production" (FOP) method. The SC method used the selling price of a product made in a "surrogate" ME country as the basis for what a bicycle "should cost" in an NME (as in *Bicycles from Czechoslovakia*, 1960). By contrast, the FOP method took the amount of labor hours, kilowatts of electricity, quantity of raw materials, etc., i.e., the "factors of production" used to make the product in the NME country and "priced" them as if the same product had been produced in an ME, deemed to be at a similar level of economic development, e.g., Spain. (Horlick and Schuman 1984, 812). From 1960 to 1975, the agency handling the NME calculation issue was the Department of the Treasury, which was relatively indifferent to the demands of steel. Given this, the switch in calculation method

from SC to FOP was informed more by *industry-state subterfuge* in the politics of redefining “dumping” in general than it was in the change in methodology.<sup>19</sup> However, after 1975, and especially after Treasury was swapped for Commerce in 1979, Heinz’s use of the discursive tactic of *industry-state subterfuge* in constructing NMEs was informed by these calculation methods.

Heinz and the steel industry were opposed to the FOP method because it allowed exporters more leniency in submitting the “surrogate factor values” which officials could use as a basis of margin calculations. In short, in theory, the method was not necessarily a guarantee for high margins, even if numerous studies show it practically was and still is (Hopewell 2016; Horne 2006; Zeng and Liang 2010; Zhang 2018). Both domestic producer and NME exporter alike complained that the SC and FOP methods produced unpredictable margins. Steel complained when the margins were too low (Remedy for Artificial Pricing for Articles Produced by Nonmarket Economy Countries, pp. 145-148; Nonmarket Economy Proposed Imports Legislation, 1984, p. 54). NMEs complained when the margins were too high (Bello et al. 1992, p. 681).

By 1980, even though steel had effectively lobbied the US president to change the venue for the adjudication of AD/CVD disputes, even though steel had received a sympathetic former metal industry CEO to run Commerce, and even though both the SC and FOP methods still resulted in both increased findings of dumping and increased margins (Horne 2006; Zhang

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<sup>19</sup> The only reason that the NME calculation method changed at all from SC to FOP was because the United States was the only other country with large scale manufacturers of electric golf carts, after the original Canadian surrogate producer went out of business. So, to avoid relying on US prices for the construction of “fair value,” Treasury measured the physical inputs to produce golf carts in Poland and valued them with comparable prices from Spain giving birth to the new method (Horlick and Schuman 1984, 811).



2018), steel wanted more. As one interviewee, who was one of the primary authors of the 1979 Trade Agreements Act, put it:

They [each iteration of the Heinz Bill] were all Steel bills. The '79 [Heinz] bill was very much part of the politics of the Trade Agreements Act of '79 and it was, basically what it was, was the steel industry as such was much more influential in those days politically than it is today, and they were very much involved in the design of the negotiations in Geneva during the Tokyo Round and then in the design of the antidumping and countervailing duty amendments in the Trade Agreements Act of '79, which was this fundamental overhaul I told you about. And what the Heinz Bill was promoting is stuff they [steel] didn't get. They wanted more than what they were given... And he [Heinz] never had the votes. They [steel] were reaching too far (*Interview*, 02/08/2022).

What Heinz primarily wanted was a redefinition of the term “state-controlled economy” to “non-market economy.” Heinz wanted this because removing “state-control” from the law served multiple purposes. First, it could make *non*-socialist, heavily subsidized developing countries such as Brazil and Korea, theoretically subject to the arbitrary NME calculation method. In addition, after Commerce ruled that NME subsidization was a non-issue because of the “state-control” language (*Carbon Steel Wire Rod from Czechoslovakia*, 1984; *Carbon Steel Wire Rod from Poland*, 1984) removing such language from the law could make NME subsidization theoretically countervailable.

Heinz also wanted to replace the existing calculation methodology, which was already beneficial to import sensitive industries, but viewed as inconsistent, with a more predictable and consistently domestically beneficial method. Each iteration of the Heinz Bill sought to impose an “artificial price” benchmark set at “the weighted average import price of the market economy country accounting for the largest volume of imports to the United States of the merchandise subject to investigation” (Bello et al. 1992, p. 682; S.1966, 1979; S.958, 1982; S.1351, 1984; S.1868, 1986; S.307, 1987). The proposal was “fiercely opposed by representatives of NMEs” on the basis that they would be unfairly penalized and would thus be forced to price their goods at

“unreasonably high levels” despite having lower input costs than US manufacturers (Bello et al. 1992, p. 682). The change would have made the price at which Chinese or Hungarian exporters sold their goods subject to comparison to Japanese and European markets, which had significantly greater costs. Put simply, this would have resulted in massive dumping margins for NMEs.

Steel wanted the change in the NME calculation methodology because it would have forced NME exporters to either raise their price above the “artificial” benchmark or be immediately found to have dumped and slapped with an enormous margin without being able to take their (slim) chances with the volatile FOP game. This would have instantly made US goods more price competitive than NME goods. Unsurprisingly, NME producers were vehemently opposed to this (Bello et al. 1992, p. 681; Comprehensive Trade Legislation 1987, pp. 612-613) whereas steel was vehemently in favor of the change (Remedy for Artificial Pricing for Articles Produced by Nonmarket Economy Countries, pp. 145-148; Nonmarket Economy Proposed Imports Legislation, 1984, p. 54).

John Heinz on numerous occasions called both the SC and FOP approaches “conceptually flawed” (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries 1982, p. 4). According to Heinz, the methods were flawed in their

two basic assumptions that a simple and accurate basis exists for determining when economies are at comparable stages of development and that comparable overall levels of development—assuming such can be determined—mean comparable levels within a particular industry (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries 1982, p. 4).

Steel likewise opposed the existing methodologies in favor of Heinz’s proposed “artificial price” method. Again, studies have indicated that despite steel’s calls for reform, the SC and FOP methods were nevertheless disproportionately beneficial to domestic industry

during the 1980s, when this debate was going on (Horne 2006; Zeng and Liang 2010; Zhang 2018). However, Heinz and steel understood that the SC and FOP methods were not *guaranteed* to lead to high margins in the way that the “artificial price” method essentially would have. Just as domestic industry could shop for data which would yield high margins under the SC and FOP methods, so could counsel for the foreign manufacturer for data which would yield low margins. Since this method was unpredictable, steel sought to change the rules in its favor.

However, the full Heinz amendment never passed. Steel went too far with its calls for the “artificial price” method. Nevertheless, Heinz’s new definition of “non-market economy” did make it into law in 1988 (Omnibus Trade and Competitiveness Act of 1988). This was a major success for Heinz and steel because the ambiguity of the definition of the new concept (1) casted a wider net for potential applicability of the unpredictable but domestically beneficial calculation method and (2) opened the door to making NMEs subject to CV duties.

### ***Heinz, Steel, and the Politics of Defining “Non-Market Economies”***

If the meaning of “material injury” could be created to transform the meaning of “dumping,” what was stopping Congress from establishing and codifying the meaning of “market economy” by defining its negative? From 1979 to 1988 John Heinz sponsored and introduced five “non-market economy” bills, one per Congressional session until the definition of “nonmarket economy” was finally codified in the 1988 Omnibus Trade and Competitiveness Act, of which Heinz was a cosponsor (S.1966, 1979; S.958, 1982; S.1351, 1984; S.1868, 1986; S.307, 1987; Omnibus Trade and Competitiveness Act of 1988). Out of five issues related to NME dumping, the principal issue discussed in Senate finance committee hearings on Heinz’s various proposals was “(1) How to define nonmarket economy countries” (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries, 1982, pp. 2, 37, 108, 126;

Nonmarket Economy Imports Legislation, 1984). By codifying what is a “nonmarket economy” Congress also indirectly defined what is a “market economy.” If the entire globe is split into *only* two kinds of economies (market and nonmarket), and if one positively defines what is a non-market, anything which is *not* a non-market *must* be a market.

An analysis of Senate Finance Committee hearings on this precise issue reveals that import dependent industries typically opposed Heinz’s proposed elimination of “state-controlled economy” and positive definition of NME, whereas domestic, import sensitive industries like steel supported the changes. In a statement to the Senate Finance Committee during debate on the second iteration of the Heinz Bill in 1982 (S. 958), Sholom D. Comay, a representative for “a company that does a great deal of importing from what might be defined as nonmarket economies,” explicitly stated, “I am concerned with the vagueness of the definition of nonmarket economy” (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries, 1982, pp. 131-32). Contrast this with a statement by Charles O. Verrill Jr., a representative for the lobbying firm Patton, Boggs, and Blow, and counsel for the domestic petitioner in a case involving brake axles from Hungary:

I applaud the decision to eliminate the § 406 test of applicability (i.e., ‘dominated or controlled by communism’) and to modify the rather stilted language in § 773 (c) of the Antidumping Act into a more substantive definition of nonmarket economy...In my opinion, the issue of whether a country is a market economy or not should be decided at the outset of an investigation and under expedited procedures” (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries, 1982, p. 108).

By 1988, Verrill got the “expedited procedures” he advocated for. As shown above, the administrator has complete discretion in determining which countries are NMEs at the outset of investigations, and this determination is not subject to administrative review (Omnibus Trade and Competitiveness Act of 1988).

As discussed in the section above, both labor and management in the steel sector were united in calls for import restrictions. Stephen Koplan, a representative for the AFL-CIO, an affiliate of the United Steel Workers (USW), also supported Heinz's proposed definition. Koplan stated that "The present law definition of nonmarket economies [i.e., state-controlled] is clearly not adequate" (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries 1982, p. 146). Koplan wanted the definition to "reflect the fact that nonmarket economies are not only Communist countries but also include government planned, heavily subsidized economies" (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries, 1982, p. 146). Koplan's statement also specifically stated that "nonmarket trade" had "serious effects" on "specific industries" including "steel items" (Remedy for Artificial Pricing of Articles Produced by Nonmarket Economy Countries 1982, p. 148). In a 1984 hearing on the definition of non-market economy, Heinz stated nearly the same thing:

S. 1351... is an effort to recognize: First, that an NME does not necessarily have to be a Communist Country—in other words that the definition should be economic rather than political; and second, that there should be an unfair practices track for NME's just as there is for market economies (Congressional Record-Senate 1984, p. 25,745)

In addition to Heinz himself and representatives of behalf of steel labor, representatives for the steel industry expressed blunt support for Heinz's NME bill. In a 1984 Senate finance committee hearing on the issue of NME imports legislation, John Mangan, general attorney for US Steel Corporation explicitly stated that "the most promising proposal that has been aired to date [regarding NME dumping] is clearly S. 1351" (Nonmarket Economy Imports Legislation 1984, p. 54). Mangan went on to summarize the steel industry's views on NME dumping as the following:

The problem of non-market economy (NME) imports is an issue of growing importance to the steel industry. Domestic steel producers have had mixed experiences using current trade laws to deal with NME unfair trade. The AISI sees many problems with existing

AD law, and we now have the additional problem of the Commerce Department having just ruled that CVD law does not apply to NMEs. We believe that artificial pricing can be made to work effectively for domestic industries, the Commerce Department and the NMEs. *Senator Heinz deserves the thanks of all of us for creating a concept that offers the possibility for a significant improvement in the way we deal with unfair trade practices by NMEs* (emphasis added, Nonmarket Economy Imports Legislation 1984, p. 5).

What this shows is that steel (industry) and Heinz (state) were united on the development of this policy, i.e., the transformation from a policy primarily designed to deal with socialist accounting into a policy which was intended to discriminate against countries with more robust industrial policies than the US. In that sense, the concept of NME could theoretically shift from socialist dumping to industrial subsidization through *industry-state subterfuge*.

The congressional evidence clearly supports the fact that steel sought to change the AD/CVD laws with respect to NMEs in such a way to (1) increase the likelihood of high dumping margins by comparing NME prices to an “artificial” ME price, (2) define the concept of NME to remove its policy synonymity with socialist dumping; and (3) make NMEs subject to CV duties in addition to AD duties. By 1988, steel had only fully accomplished (2). This finding mirrors that of the steel industry’s failed attempts at direct forms of import relief. This is because a semi-autonomous US state, committed to “free-trade” was ultimately unwilling to grant steel the relief it wanted in the form of changing the NME calculation methodology out of fear of foreign retaliation. Steel went too far. However, the reason that “state-controlled economy” became “non-market economy” is due in large part to the lobbying efforts of the steel industry and the discursive and institutional innovation of John Heinz. This represented *industry-state subterfuge*. In the absence of any existing US industrial policy, especially for steel, Heinz and steel lobbyists were able to cultivate a form of industrial policy in a different venue where it went largely unrecognized.

What is important about this discursive and institutional innovation is that it blatantly shows that ideology did not motivate the development of this policy. Heinz and steel representatives explicitly said as much. Rather the policy developed from discursive *subterfuge*. The *industry-state subterfuge* of defining what is a “non-market” and therefore a market had the secondary effect of pushing the politics of marketization out from the oval office and Congressional venues, and into the administrative venue by granting that administration institutional discretion.

## **Conclusion**

The evidence presented in this paper aims to shift the perspective of analyzing NME policy away from unnecessary ideological discussions of anticommunism. Instead, I attempt to frame the story of NME policy as a case of *industry-state subterfuge*, where a semi-autonomous US state had to push the issue of protectionism into a venue where it went unrecognized as such by its allies, and where individual members of the state who represented industry had to perform the same discursive dance within the boundaries of the state itself.

I have sought to historically contextualize a set of trade policies which are of monumental importance to global trade today, and to show that a specific policy which is now almost unilaterally used against China developed because an incumbent steel industry wanted to make it even easier than it already was in the 1980s to obtain relief through AD/CVD measures, and because a semi-autonomous state had to both protect steel in some form but appear committed to globalization. China was not the original target, because the origins of NME policy date back to before China had even begun to engage in market reforms. Steel sought to change the terms of what constituted a market as a means of combatting foreign subsidization, and to have an already volatile calculation methodology be potentially applicable to all states at the discretion of

politically appointed administrators sympathetic to industry concerns. The state could turn a blind eye because the administrators which the state autonomously put in place made findings which benefited steel. However, the recognizability of AD/CVD policy is unstable. Just as the US is specifically targeting China with a methodology which has been criticized by the World Trade Organization, so now is China considering using it against the US (Yu 2021). NME policy has come full circle.

This case illustrates what may be a common practice in the art of “policy crafting” (Martin 2010) and the “political construction of market institutions” (Bartley 2007) in *industry-state subterfuge*. There are other such cases where this theory is also applicable. Often the state walks the line between industry needs and state-diplomatic goals. Industry and the state were in simultaneous cooperation and tension over how to balance trade and protection and eased this tension through *industry-state subterfuge*.

This analysis leaves remaining questions to be answered. One is the relationship of steel to other manufacturing industries. Was steel the exception to the rule of globalization? When and why have other forms of invisible protectionism emerged, especially after the Washington consensus, and have these forms of protectionism involved the use of similar discursive strategies like *industry-state subterfuge*? Through such analyses we can better understand how states and organized groups respond to economic crises, and how the meaning of allegedly static concepts like “the market” can be radically transformed in response to crises.



**Making “Enemies:” Industry-State Subterfuge and the Social Construction of US  
Non-Market Economy Antidumping and Countervailing Duty Policy, 1960-1988**

*Appendix 1: Tables*

John Bassney  
Faculty Advisor: Dr. Elisabeth Clemens  
Preceptor: Claire Watson  
June 1, 2022

**Table 1: Changes in Dumping Definition**

|              | Definition  | Easier to Prove Existence of Dumping? |
|--------------|---|---------------------------------------|
| 1921-1974    | Sales at higher price in home market than export market | No                                    |
| 1974-Present | Sales below cost of production                          | Yes                                   |

**Table 2: List of Historical and Current NMEs<sup>1</sup>**

| Historical NMEs <sup>2</sup> | Current NMEs <sup>3</sup> |
|------------------------------|---------------------------|
| China                        | Armenia                   |
| Czechoslovakia               | Azerbaijan                |
| East Germany                 | Belarus                   |
| Hungary                      | China                     |
| Poland                       | Georgia                   |
| Romania                      | Kyrgyzstan                |
| USSR                         | Moldova                   |
| Armenia                      | Tajikistan                |
| Azerbaijan                   | Turkmenistan              |
| Belarus                      | Uzbekistan                |
| Estonia                      | Vietnam                   |
| Georgia                      |                           |
| Kazakhstan                   |                           |
| Latvia                       |                           |
| Lithuania                    |                           |
| Moldova                      |                           |
| Russia                       |                           |
| Tajikistan                   |                           |
| Turkmenistan                 |                           |
| Ukraine                      |                           |
| Uzbekistan                   |                           |
| Vietnam <sup>4</sup>         |                           |

<sup>1</sup> Note that Cuba, North Korea, and Yugoslavia are all socialist countries but were not treated as NMEs. All cases initiated against Cuba were before the socialist revolution of 1959. Zero initiations were filed against North Korea. Yugoslavia was never treated as an NME despite being an openly socialist country. This is puzzling because it means NME status was not *always* synonymous with socialism as is commonly assumed (Horne 2006; Zhang 2018).

<sup>2</sup> By “historical” I mean before the collapse of the USSR. ITA, *AD/CVD Statistics—Enforcement and Compliance*, *n.d.*, < <https://enforcement.trade.gov/stats/iastats1.html> >

<sup>3</sup> ITA, *NME Countries List*, *n.d.*, < <https://www.trade.gov/nme-countries-list> >

<sup>4</sup> There were zero AD/CVD initiations made against Vietnam from 1960 to 1991. After 1991, initiations were made against Vietnamese imports, and Vietnam was treated as an NME.

**Table 3: Explanations for the History of AD/CVD Policy Applied Generally and to NMEs**

|                            | Explanation 1:<br>Cold War Ideology | Explanation 2:<br>Business Politics |
|----------------------------|-------------------------------------|-------------------------------------|
| AD/CVD Policy<br>(General) |                                     | X                                   |
| AD/CVD Policy<br>(NMEs)    | X                                   |                                     |

**Table 4: Non identifying Informant Information**

|             | Date of Interview | Government Experience? | Experience Representing Domestic Petitioner? | Experience Representing Foreign Exporter? | Working During Period of Interest? |
|-------------|-------------------|------------------------|--|---|------------------------------------|
| Informant 1 | 01/20/2022        | Yes                    | Yes  | Yes                                       | No                                 |
| Informant 2 | 02/02/2022        | No                     | Yes  | Yes                                       | Yes                                |
| Informant 3 | 02/08/2022        | Yes                    | Yes  | Yes                                       | Yes                                |
| Informant 4 | 02/21/2022        | No                     | Yes  | Yes                                       | Yes                                |
| Informant 5 | 02/22/2022        | Yes                    | Yes  | Yes                                       | Yes                                |

**Table 5: Pearson Correlation Test for Annual Increase  
in Manufacturing Import Value and Total Initiations, 1981-1991**

|                  |            |
|------------------|------------|
| coefficient (r): | 0.76611383 |
| N:               | 11         |
| T-Statistic      | 3.57604466 |
| DF:              | 9          |
| p-value:         | 0.00596755 |

**Table 6: Market Economy Initiations by Sector**

|  | No.<br>Initiations | % Total<br>Initiations |
|--|--------------------|------------------------|
| Total Initiations                                | 1,263              |                        |
| Iron & Steel                                     | 386                | 31%                    |
| Other Metals                                     | 45                 | 4%                     |
| Chemicals  | 151                | 12%                    |
| Electronics                                      | 87                 | 7%                     |
| Textiles   | 84                 | 7%                     |
| Mechanical Engineering<br>(Includes automobiles) | 48                 | 4%                     |
| Food & Agriculture                               | 218                | 17%                    |
| Wood & Paper Products                            | 37                 | 3%                     |
| Other  | 207                | 16%                    |

Case initiations source: <<https://enforcement.trade.gov/stats/iastats1.html>>

**Table 7: Non-Market Economy Case Initiations by Sector**

| Total Initiations      | 122<br>No.<br>Initiations | % Total<br>Initiations |
|------------------------|---------------------------|------------------------|
| Iron & Steel           | 42                        | 34%                    |
| Other Metals           | 32                        | 26%                    |
| Chemicals              | 31                        | 25%                    |
| Electronics            | 0                         | 0%                     |
| Textiles               | 6                         | 5%                     |
| Mechanical Engineering | 2                         | 2%                     |
| Food & Agriculture     | 2                         | 2%                     |
| Wood & Paper Products  | 0                         | 0%                     |
| Other                  | 7                         | 6%                     |

Case initiations source: <<https://enforcement.trade.gov/stats/iastats1.html>>



**Table 8: Comparison of Average US Steel Worker Wage to Average Industrial Worker Wage, 1960-1991**

|  |       |
|--|-------|
| Average (nominal USD) hourly earnings of general manufacturing workers   | 5.87  |
| Average (inflation adjusted) hourly earnings of general manufacturing workers                                    | 20.52 |
| Average (nominal) hourly earnings of steel workers   | 7.57  |
| Average (inflation adjusted) hourly earnings of steel workers  | 28.53 |
| Average difference between inflation adjusted hourly earnings of steel workers and general manufacturing workers | 8.01  |
| Percentage difference between inflation adjusted average manufacturing wage and average steelworker wage         | 39%   |

US CPI (2015=100)

Source: US Bureau of Labor statistics. Average Hourly Earnings of Production Workers. < <https://data.bls.gov/PDQWeb/ee>>

CPI source: OECD. <<https://fred.stlouisfed.org/series/CPALTT01USA661S>>

**Table 9: Hourly Compensation Costs for Production Workers in Iron and Steel Manufacturing (US SIC 331), 1984**

| Country        | Exchange Rate          |                                       | Average Hourly Earnings in National Currency | Ratio of Additional Compensation to Hourly Earnings | Hourly Compensation |            |                |
|----------------|------------------------|---------------------------------------|--|---|---------------------|------------|----------------|
|                | National Currency Unit | National Currency Units per US Dollar |  |   | National Currency   | US Dollars | Index US = 100 |
| United States  | Dollar                 |                                       | 12.99  | 56.10   | 20.28               | 20.28      | 100.00         |
| Canada         | Dollar                 | 1.30                                  | 14.91  | 33.20   | 19.86               | 15.34      | 76.00          |
| Brazil         | Cruzeiro               | 1,848.00                              | 2,231.00                                     | 38.50   | 3,090.00            | 1.67       | 8.00           |
| Japan          | Yen                    | 237.40                                | 2,168.00                                     | 19.90   | 2,599.00            | 10.95      | 54.00          |
| Korea          | Won                    | 806.00                                | 1,478.00                                     | 13.00   | 1,760.00            | 2.07       | 10.00          |
| Austria        | Schilling              | 20.00                                 | 78.87  | 94.10   | 153.09              | 7.65       | 38.00          |
| Belgium        | Franc                  | 57.75                                 | 358.53                                       | 94.60   | 697.70              | 12.08      | 60.00          |
| France         | Franc                  | 8.74                                  | 39.16  | 103.70  | 79.77               | 9.13       | 45.00          |
| Germany        | Mark                   | 2.85                                  | 16.34  | 83.40   | 29.77               | 10.53      | 52.00          |
| Italy          | Lira                   | 1,756.00                              | 8,886.00                                     | 99.30   | 17,710.00           | 10.09      | 50.00          |
| Netherlands    | Guilder                | 3.21                                  | 19.73  | 84.10   | 36.32               | 11.32      | 56.00          |
| United Kingdom | Pound                  | 0.78                                  | 3.97   | 36.60   | 5.42                | 7.25       | 36.00          |

Source: Tarr 1988, Table 7.8 at p. 183; US Bureau of Labor Statistics 1984.

**Table 10: Number of Employees at US Steel Corporation, 1960-1991**

| Year | Employees |
|------|-----------|
| 1960 | 225,081   |
| 1961 | 199,243   |
| 1962 | 194,044   |
| 1963 | 187,721   |
| 1964 | 199,979   |
| 1965 | 208,838   |
| 1966 | 205,544   |
| 1967 | 197,643   |
| 1968 | 201,017   |
| 1969 | 204,723   |
| 1970 | 200,734   |
| 1971 | 183,940   |
| 1972 | 176,486   |
| 1973 | 184,794   |
| 1974 | 187,503   |
| 1975 | 172,976   |
| 1976 | 166,645   |
| 1977 | 165,845   |
| 1978 | 166,848   |
| 1979 | 171,654   |
| 1980 | 149,172   |
| 1981 | 141,623   |
| 1982 | 119,987   |
| 1983 | 98,722    |
| 1984 | 88,753    |
| 1985 | 79,649    |
| 1986 | 63,915    |
| 1987 | 32,865    |
| 1988 | 34,327    |
| 1989 | 27,173    |
| 1991 | 24,664    |
| 1991 | 22,234    |

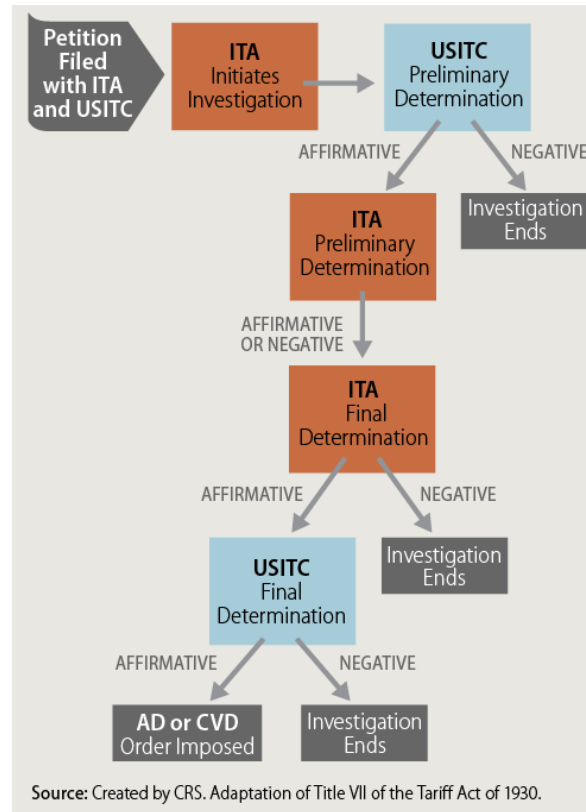
Source: Warren 2001, p. 364 at Table A9.

**Making “Enemies:” Industry-State Subterfuge and the Social Construction of US  
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*Appendix 2: Figures*

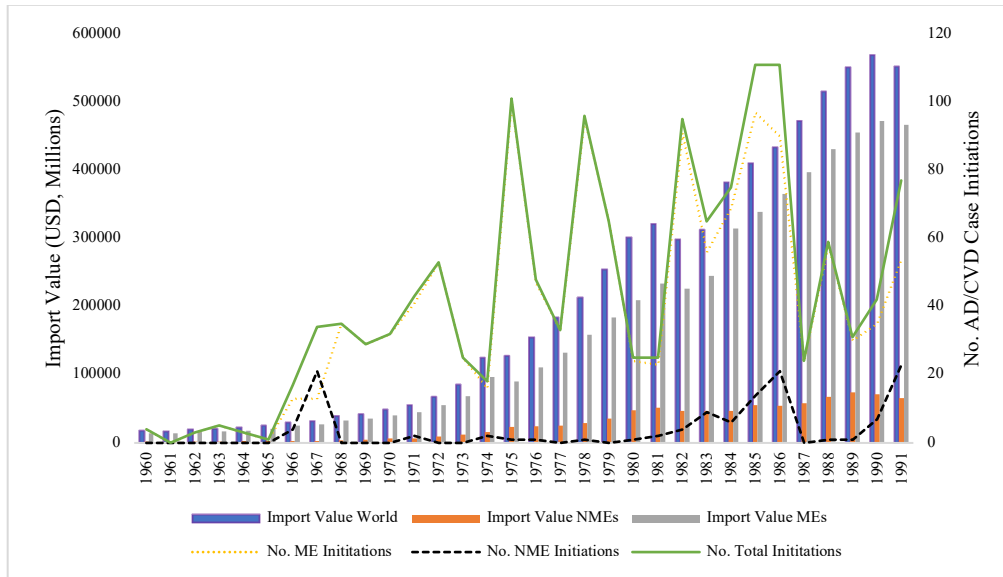
John Bassney  
Faculty Advisor: Dr. Elisabeth Clemens  
Preceptor: Claire Watson  
June 1, 2022

**Figure 1: Visualization of Process for AD/CVD Investigations**



Source: Casey 2022. Note that the ITA in this graphic is a subagency of the DOC

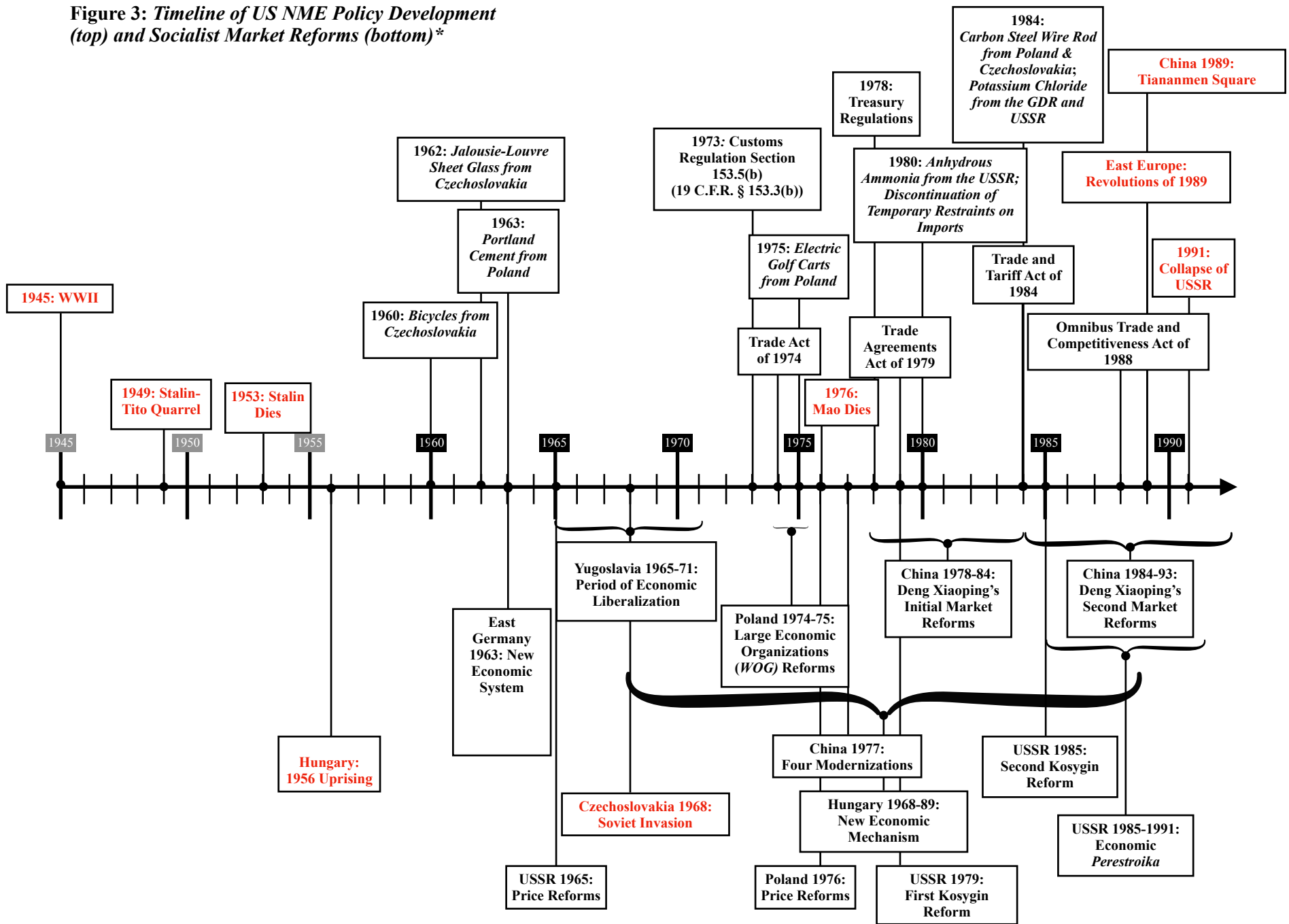
**Figure 2: AD/CVD Case Initiations v. Import Values, 1960-1991<sup>1</sup>**



Sources: International Monetary Fund. Direction of Trade Statistics. Retrieved February 17, 2022, from [data.imf.org](https://data.imf.org); International Trade Administration. *AD/CVD Statistics—Enforcement and Compliance*. (n.d.). Retrieved February 17, 2022, from <https://enforcement.trade.gov/stats/iastats1.html>

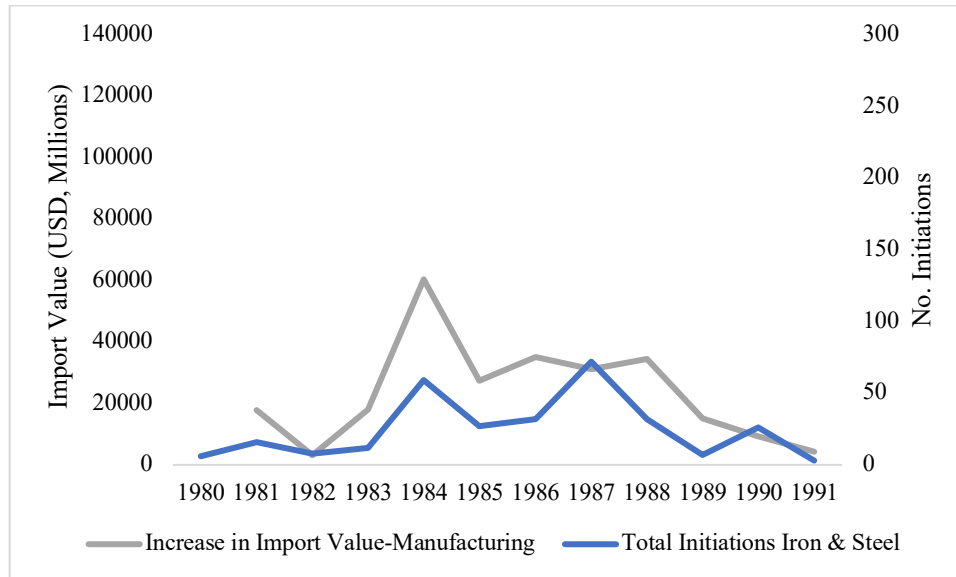
<sup>1</sup> Importantly, all cases missing an initiation date in the AD/CVD Statistics raw dataset downloaded from <https://enforcement.trade.gov/stats/iastats1.html>, i.e., marked “/” have been omitted from this analysis. The number of cases initiated is not necessarily a measure of government support for the industry-filed AD/CVD petitions. Petitions represent a synthesis of both industry desire to receive relief in the form of duties for foreign like-goods and government willingness to use their resources to *investigate* the alleged dumping. In this sense, the number of petitions is better understood as an industry’s *perceived* injury. The DOC AD/CVD statistics are limited in that they do not include the number of AD/CVD petitions filed. As such, cases initiated can be understood as a proxy for petitions filed since there must be a petition for an initiation. Furthermore, specifically valuable imports (e.g., capital goods) could also be skewing the upward trend in import value from 1960-1991.

**Figure 3: Timeline of US NME Policy Development (top) and Socialist Market Reforms (bottom)\***



\*Political events are in red. Years before the start point of this paper are in grayscale.

**Figure 4: Annual Increase in Manufacturing Import Value vs Total Initiation Iron & Steel, 1981-1991<sup>2</sup>**



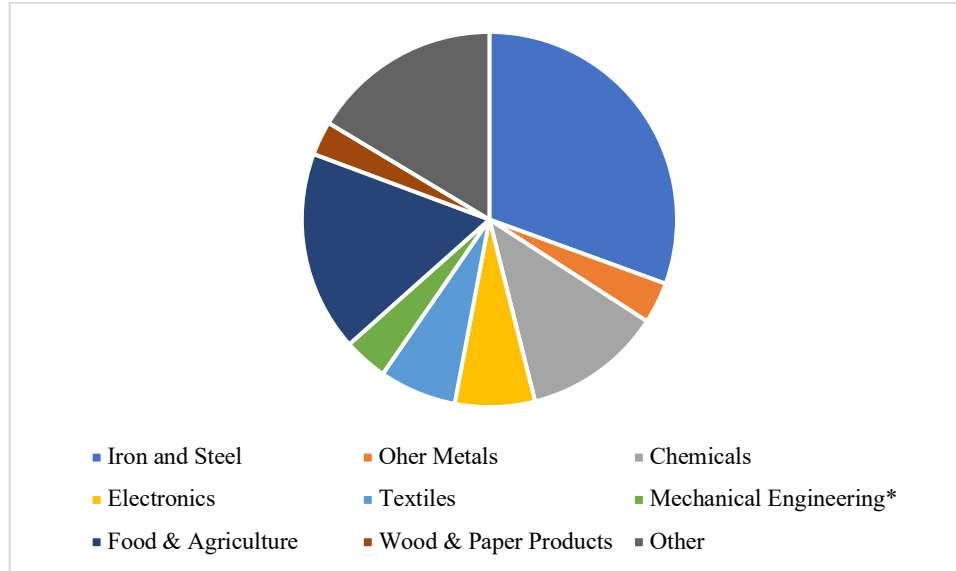
Import values source: <https://stats.wto.org/>

Case initiations source: <https://enforcement.trade.gov/stats/iastats1.html>

<sup>2</sup> Due to limited data availability, the above analysis in Figure 4 and in Table 5 can only be performed from 1981-1991. WTO Statistics do not break down manufacturing data by iron and steel so it is possible that the observed correlation could be driven by another variable within the WTO manufacturing category.

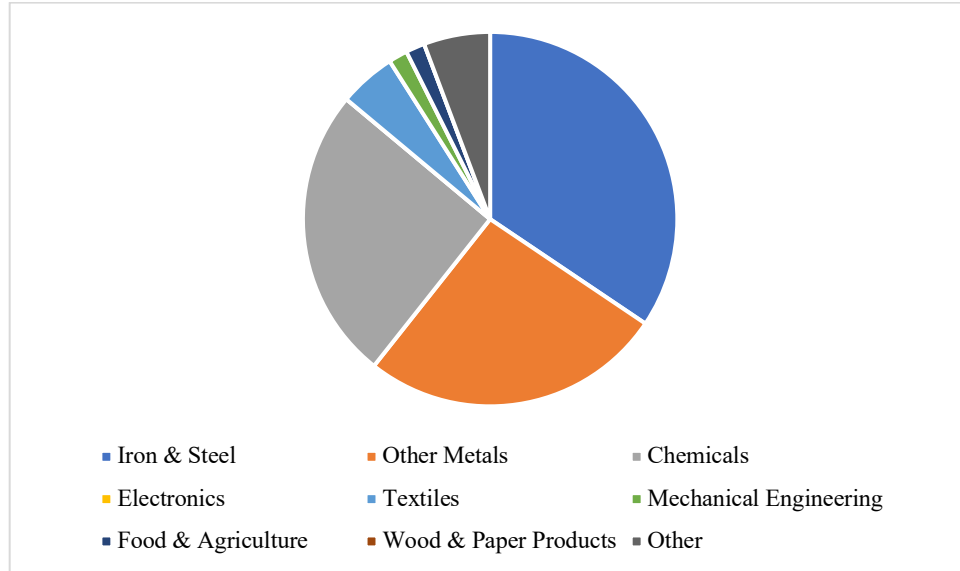


**Figure 5: Market Economy Initiations by Sector, 1960-1991**



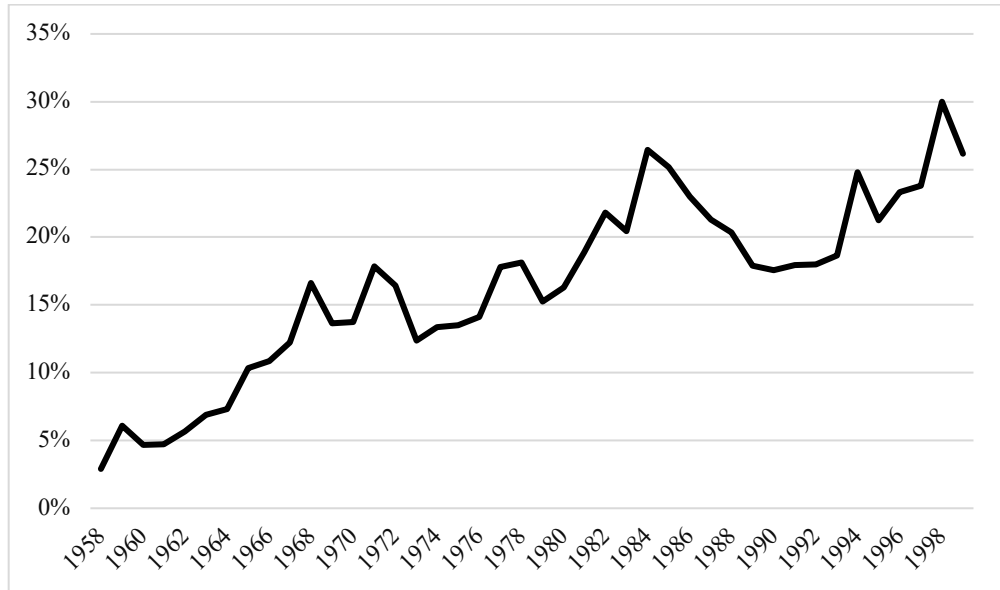
Case initiations source: Enforcement and Compliance, "AD/CVD Statistics," <<https://enforcement.trade.gov/stats/iastats1.html>>

**Figure 6: Non-Market Economy Initiations by Sector, 1960-1991**



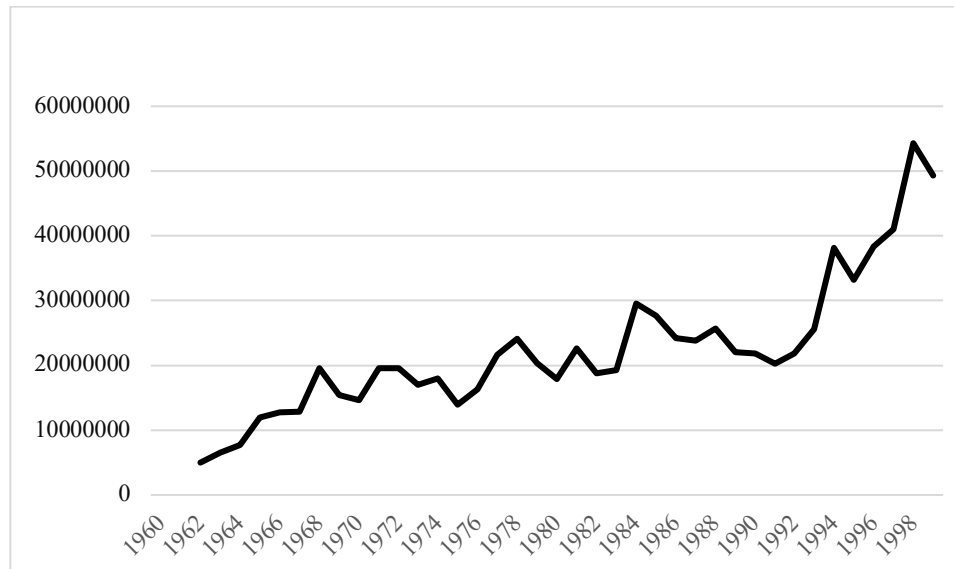
Case initiations source: Enforcement and Compliance, "AD/CVD Statistics," <https://enforcement.trade.gov/stats/iastats1.html>

**Figure 7: Steel Imports as a Share of Domestic Consumption, 1958-1998**



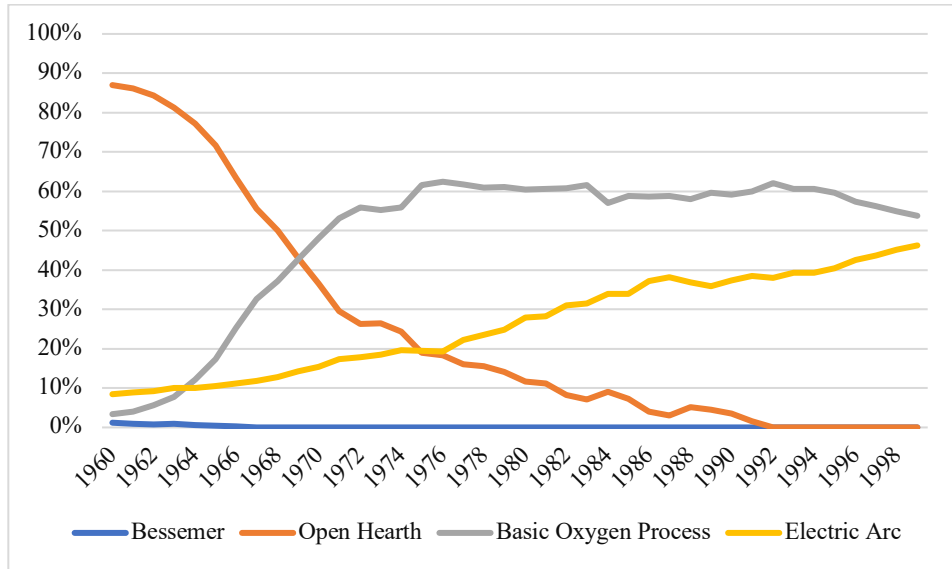
Source: American Iron and Steel Institute, *Steel Statistical Yearbooks 1960-1999*.

**Figure 8: Total US Iron and Steel Imports (net tons), 1958-1998**



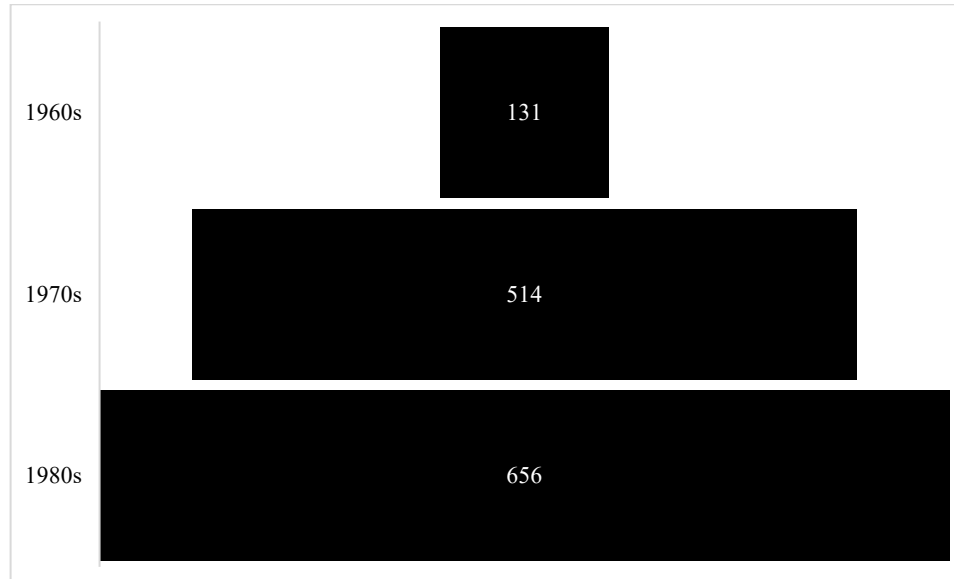
Source: American Iron and Steel Institute, *Steel Statistical Yearbooks 1960-1999*.

**Figure 9: Percent of Total US Raw Steel Production by Furnace Type, 1960-1999**



Source: American Iron and Steel Institute, *Steel Statistical Yearbook 1960-1999*.

**Figure 10: Total AD/CVD Case Initiations by Decade 1960-1990**



*Source:* Enforcement and Compliance, “AD/CVD Statistics,” <<https://enforcement.trade.gov/stats/iastats1.html>>

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