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**Non-Market Strategies, Corporate Political Activity and Organizational Social Capital:
The US Anti-Dumping and Countervailing Duty Process**

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**Non-Market Strategies, Corporate Political Activity and Organizational
Social Capital: The US Anti-Dumping and Countervailing Duty Process**

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Non-Market Strategies, Corporate Political Activity and Organizational Social Capital: The US Anti-Dumping and Countervailing Duty Process

ABSTRACT

Corporate political activity (CPA) can be an important element in any firm's effort to gain competitive advantage. This has been particularly true in the area of international trade, where domestic producers seek to bar or disadvantage foreign competitors in the home market through the imposition of trade protection. In the United States the imposition of anti-dumping duties (AD) or countervailing duties (CVD) is among the most popular policy demand made by firms, and as such is a focus of corporate political activity. This paper seeks to understand how and why some firms make more effective use of this process. It does so by drawing on social capital (SC) theory to illuminate the qualitative aspects of effective corporate political activity. Resilient trust between firms and their attorneys is revealed as a prominent aspect of effective CPA. The paper also adds to the literature by including foreign as well as US firms in the sample.

Non-Market Strategies, Corporate Political Activity and Organizational Social Capital: The US Anti-Dumping and Countervailing Duty Process

INTRODUCTION

Non-market strategies are receiving increasing interest amongst strategic management scholars as a mean of improving firm performance. In chairing the 2007 Annual International Conference of the Strategic Management Society, Ring (2007) comments that:

“Non-market strategies can be employed to create and/or maintain a firm’s source(s) of competitive advantage or to erode or destroy the sources of competitive advantages of its competitors” (1).

In pursuing non-market strategies, firms may engage –directly or indirectly – in activity with one or more of a number of institutions such as the World Trade Organization (WTO), domestic and international courts, legislative and regulatory bodies, as well as the media. Of the literatures that speak to non-market strategies, corporate political activity (CPA) is one such area in which firms overtly attempt to influence the political process, both at the domestic and international level, to achieve policy-based advantages. To date, the CPA literature has focused to a great extent on firms’ use of material resources or ‘structural attributes’, such as money, firm size and the membership of business associations, to achieve policy goals. Nonetheless, there has been no consensus on what characteristics describe effective CPA. This paper aims to examine the effectiveness of firms’ CPA, using the US anti-dumping and countervailing duty (AD/CVD) process as an investigatory lens.

Anti-dumping and countervailing duties are trade remedy measures governed by WTO agreements to prevent material injury to signatories’ domestic industries caused by unfair trade practices. Anti-dumping cases address the actions of foreign firms whilst countervailing duty cases seek to

remedy the actions of foreign governments, which result in goods being sold at dumped prices (low or below cost) in the US market. The international trade policy process and US AD/CVD process, in particular, was selected because of the significant amount of CPA that takes place, especially in the US. Here, the US Department of Commerce (DOC) and International Trade Commission (ITC) are the institutions charged with formally investigating claims. During this process, the effectiveness of firms' CPA is of central concern because the losses and gains associated with trade liberalization are concentrated on individual firms, despite the benefits of freer trade being diffuse across the economy. To this end, firms have an incentive to lobby the DOC and ITC to successfully pursue trade remedy claims, which can be worth millions of dollars. In 2004, for example, 34 cases worth \$4.9 billion were filed (USITC, 2005: 8).

In examining CPA within the US AD/CVD process as a non-market strategy, this paper aims to make some theoretical and practical additions to the extant literature, as well as identifying a number of key lacunas. Indeed, by focusing on structural attributes the CPA literature has ignored the important qualitative aspects of effective CPA. Here, we define effective CPA as contingent upon the practitioner's or respondent's desired outcome. Ideally, the outcome for a responding firm is for no duty to be imposed. Alternately, where a duty is imposed, the most favourable outcome for a foreign producer is to have the DOC calculate a duty margin that still makes it worth exporting to the US and is significantly lower than the duty margins calculated for the other foreign producers of the subject goods. Nonetheless, an agreeable outcome does not necessarily mean the winning of a case, but could be a reduction in remedial measures or even a media victory by heightening the public visibility of a domestic industry's plight.

In this vein, our core theoretical contribution rests in applying social capital (SC) theory to CPA to show the contribution that 'relationships' have on effective CPA. Social capital, which refers to "the ability of actors to secure benefits by virtue of membership in social networks" (Portes, 1998: 6), helps

to explain how human capital is leveraged (Coleman, 1988), defined here as the knowledge, skills and experience of individuals (Swart et al., 2006). It is important because where deployed effectively, social capital has clear rent generating and appropriation effects (Leana and Van Buren, 1999; Nahapiet and Ghoshal, 1998).

This paper highlights the criticality of individual relationships between petitioners, respondents and their attorneys on effective CPA. In so doing, we adopt the individual level definition of social capital, which highlights the contribution of SC to rent generation and appropriation more effectively than aggregate definitions (Portes, 1998; Leana and Van Buren, 1999; Blyler and Coff, 2003). To determine the relationship between and impact of SC on effective CPA, we distinguish between different dimensions and configurations of SC.

First, we pay attention to the different dimensions of SC. In line with Nahapiet and Ghoshal (1998) and later studies (Swart et al., 2006), we focus its structural (Granovetter, 1973, 1985; Coleman, 1988, 1990; Burt, 1992, 1997; Fukuyama, 1995), relational (Leana and Van Buren, 1999; Van Deth, 2003) and cognitive (Nahapiet and Ghoshal, 1998) dimensions. Next, we position our study within the SC literature according to its three key variations: levels of analysis, its normative implications and the primacy of benefits (Leana and Van Buren, 1999). Finally, by examining the relationships that exist between petitioners, respondents and trade attorneys within the US AD/CVD process, using Nahapiet and Ghoshal's dimensions of SC, we suggest how different configurations of SC lead to potentially effective and ineffective CPA.

THE ROLE OF SOCIAL CAPITAL IN CORPORATE POLITICAL ACTIVITY

Despite the criticality of SC to effective CPA, the role of SC in the CPA literature remains understudied. Here, we argue that the dimensions of SC – structural, relational and cognitive – generate SC configurations that help to explain the effectiveness of firms' CPA. In structuring our argument, we first

discuss the CPA literature and its key lacuna, the study of relationships. Before introducing SC theory, we present the US AD/CVD process within which we test our propositions, detailed later. Due to the broadness of SC theory, we start by defining SC and state where our paper is situated within the literature. This enables us to discuss the three dimensions of SC that we use as an organizing framework to examine how different SC configuration might influence effective CPA.

What Is Corporate Political Activity?

Corporate Political Activity (CPA) refers to the involvement firms in the political process, with the aim of securing particular policy preferences. CPA has been the subject of considerable academic interest, particularly by American-based scholars. Vogel notes that the place of business in the political process – and the attendant scholarly interest – has changed dramatically in the postwar period. Though scholars disagree over the precise extent of corporate influence over the policy process, Vogel notes that in the United States overt political activity by firms was essentially unheard of until the 1970s (1996:148). This changed when amended campaign financing legislation paved the way for the creation of Political Action Committees (PACs). PACs were a way that politicians seeking re-election could raise money in excess of limits on party-specific expenditures. Parties may suffer under federally-mandated funding rules, but PACs were private expressions of policy preferences and were not so constrained. The 1980s saw dramatically increased CPA by firms, including new activity at the international level. For example, American and European firms were key players in the development of international regulations for intellectual property at the WTO (Sell 2003). Lobbying scandals in the United States, most notably the arrest of Jack Abramoff in 2006, have also raised the profile of corporate involvement in the policy process among the wider public. As the US economy becomes more integrated into the world economy, CPA extends further: foreign firms seeking to influence US public policy. Indeed, restrictions on political activity by

foreign MNEs were relaxed during the Clinton Administration and several foreign firms have taken advantage of this opportunity.

Though the practice of CPA has been subject to study, there is no consensus on what characteristics describe effective CPA. Much of the CPA literature concentrates on what might be called 'structural attributes' of firms involved in the policy process. Structural attributes concern the material resources that a firm can bring to the process – particularly money - as well as background conditions such as firm size and membership of business associations. The emphasis on easily observable phenomena such as contributions to political action committees (PACs) does aid our understanding of how firms involve themselves in the process, but also has significant weaknesses. Generally, the CPA literature makes what is observable important, rather than seeking ways to make what is important observable. Firms file contributions with Federal agencies, and their annual reports provide data on firm size and can be used to infer which public policy issues engage top management. These are all important, but it is perhaps more salient that they are easily obtainable sources of data.

Broadly, the literature can be understood to be engaged with three topics: the tactics used by firms in pursuit of policy ends; the effect that industry structure has on the tendency to lobby; and the attractiveness of the market for CPA. In terms of tactics, Brasher and Lowery (2006) articulate the specific flaws that follow from a reliance on structural factors for explaining lobbying activity. 'Following the money' by examining when and how firms seek to influence the political process is a common way to explore CPA. However, it leads scholars to focus too narrowly on one form of CPA, support for political campaigns, and in so doing ignores the diverse nature of corporate activity in support of commercial preferences. De Figueiredo notes that while, 'the vast majority of papers written about interest groups' political influence focuses on the role of money in politics' that actual amount of money spent on PACs is small (2002: 1). While the US Congress controls a budget of over \$2 trillion, the amount spent by firms in support of PACs in the 1999-

2000 election cycle was a relatively paltry \$200 million (ibid). The British defence contractor, BAE Systems, gave some \$650,000 to various congressional campaigns in 2005, though its US-based subsidiaries have over \$40 billion worth of DoD contracts (Kirchgaessnerin, 2006). Though one explanation may be that US politicians are easily swayed by donors, a deeper and ultimately more compelling explanation is that firms have other mechanisms for presenting their policy preferences. It also reflects the fact that in a complex polity like the United States, legislators seeking re-election are only part of the government apparatus. Regulatory agencies, whose members are not usually directly elected, are key players in many developed states. Lobbying regulators cannot be easily done through the electoral process, so other means and other instruments must be employed.

The over-emphasis on PACs as a way to understand CPA has led other work to explore how firms combine tactics. Schuler, Rehbein and Kramer (2002) develop an approach that tries to understand why firms might use multiple tactics in pursuit of policy goals. Drawing on a wide literature and empirical work, they look to combine several perspectives to develop a better understanding of corporate political behaviour. They focus renewed attention to the important role that information plays in the process. Firms achieve access by having information that legislators and regulators need to develop and enact policies. Moreover, the means by which this information passes can be important. The firm-legislator relationship, rather like buyer-supplier, can be enhanced over time through reputational effects and trust (Schuler, Rehbein and Kramer, 2002: 661).

In terms of industry structure, other work looks at the structural characteristics of industries to understand the nature and effectiveness of CPA. The more dependent an industry is on government contracts or regulatory frameworks, the more firms in the sector have an incentive to lobby. In respect of industry structure, Mancur Olson's work on interest group dynamics was employed to understand how firms act collectively to influence the political process. As a result, it has long been suggested that the more concentrated the industry, the

more likely it is to organize effectively for political action. This is because the relatively fewer number of producers in a concentrated sector makes developing a common position easier. It is also easier to enforce agreements among a small set of players, so not only can concentrated industries develop political preferences, they can more easily enforce compliance among members than other sectors and so avoid free-riding. This logic of collective action is seen, for example, in the European chemicals industry, where a small set of firms has a long history of successfully gaining trade protection for its members (Lawton and McGuire, 2005). Hart (2003), however, draws attention to deficiencies in the Olsonian hypothesis. He observes that in some concentrated sectors, cartel-like behaviour did not arise because smaller firms in the sector lobbied against the large firms. Some dominant firms, like Intel, lobbied for public policies that had a benefit well beyond their corporate interest, contrary to the expectations of the Olsonian model (Hart, 2003: 282). In this latter case, however, it can be difficult to gauge how genuine apparent corporate altruism really is, since any large firm will gain considerably from a positive policy outcome and so may tolerate free-riding by smaller firms (Schuler, 1996).

In terms of the political market, supply-side considerations are also important to understanding CPA. Bonardi, Hillman and Keim (2005) conceptualised the policy-making process as a marketplace, where it might be expected that firms would increase their lobbying when they regarded the political market as particularly attractive. In other words, firms are sensitive to the opportunities presented during a policy debate and are more inclined to enter the process only when they rate highly their chances of success. Tripathi's (2000) work on PAC activity among US defence contractors is suggestive of this. He argues that what best explains lobbying activity among these firms is not firm size, nor even simple dependence on contracts. Rather, firms of all sizes and competitive positions increase their PAC contributions when the defence budget increases. They reduce – and target – their corporate political activities when the budget contracts or its growth slows. In short, the 'size of the pie' is itself a sufficient motivation for CPA

(Tripathi, 2000:54). Legislative requirements or political conditions may also make for a more attractive political market. In the area of trade policy, the US requires a formal consultative process between government officials and firms. This has dramatically increased the scope for CPA in this area. Though the US is unusual in the degree of institutionalisation, many other governments have adopted similar consultative mechanisms. The EU, for example, actively seeks firm input into the prosecution of trade disputes at the WTO – rather than waiting for firms to lobby for protection – leading one scholar to describe the relationship as a ‘public-private partnership’ (Shaffer, 2003).

Ultimately, CPA seeks to confer some form of policy-based advantages for firms. With this in mind, the central question must be: How do firms effectively engage in CPA? Though much of the CPA work is sophisticated in its understanding of structure and tactics, it is not always clear that the research gains insight into whether a given corporate effort is effective, or why one firm might succeed where another fails. Qualitative aspects of the CPA phenomena exist do exist. Hillman, Zardkoohi and Bierman (1999) consider the particular advantages that might accrue to firms employing former government employees. These people can lend legitimacy to lobbying requests through their personal reputation with officials, as well as providing specialist knowledge. Brook’s (2005) analysis of the steel industry adopts a descriptive case study approach whilst Schuler, Rehbein and Kramer (2002) consider how relationships and trust might affect outcomes. However, taken as a whole, the CPA literature seems to describe a process where the key drivers are structural, and there is little scope for qualitative aspects of relationships. Yet surely few other realms of business activity are more about human relations than CPA. Understanding the qualitative nature of the process is thus imperative. This softer side of CPA has been understudied because of the lack of robust methods for collecting and analysing data. This paper offers an approach that addresses these defects by drawing on the SC literature, and in so doing allows us insight into an understudied but important aspect of business-government relations.

The US Anti-Dumping and Countervailing Duty Process

The ITC defines dumping as having taken place when “a foreign producer sells a product in the United States at a price that is below that producer's sales price in its home market, or at a price that is lower than its cost of production” (USITC, 2005). “Subsidizing occurs when a foreign government provides financial assistance to benefit the production, manufacture, or exportation of a good” (USITC, 2005). The US AD and CVD institutions have received significant attention in the academic literature (Finger, Hall, and Nelson, 1982, Mah, 2000, Moore, 1992). A key question that has been posed in this literature is the degree to which political influence or statutory criteria determine the outcomes of cases (Anderson, 1993, DeVault, 2002, Moore, 1992). Indeed, political influence is exercised on behalf of the petitioning industry and these studies seek to identify measures of industry political influence and regress them against case outcomes. Hansen and Prusa (1997), for example, argue that the ITC is vulnerable to political pressure, but that traditional measures of industry political power such as industry size and concentration are not good predictors of case outcomes. Instead Congressional “oversight representation and campaign contributions are the more relevant determinants of political influence” (Hansen and Prusa, 1997: 243). In a step towards looking inside the firm for answers to successful prosecutions of US AD cases, Blonigen (2006) asks what influence experience has on the success rate of petitioners. Prior experience is found to be linked to increased filings and more successful cases, but also with a fall in average duty margins secured (Blonigen, 2006). This work suggests that experience of the process of prosecuting AD cases may lower filing costs and so encourage firms to file weaker petitions. However, the possibility that relationships between participants in AD and CVD cases may be able to influence the effectiveness of companies in petitioning and responding industries remains unstudied.

In setting out the AD/CVD process, both AD and CVD cases progress through three broad phases: (1) pre-petitioning, (2) investigation and (3)

review. To date the majority of studies have focused on the original investigation phase of a case at the DOC and ITC. However, the findings of Lindeque (2007 - forthcoming) show that if one is to fully understand the experience of petitioning and responding companies in the prosecution of AD and CVD cases in the US, then it is important to also consider the pre-petitioning and review stages of a case. There are also three perspectives of the prosecution of these cases in the US, an agency perspective, the petitioning industry's perspective and the respondents' perspective. The process of prosecuting an AD or CVD case in the US is represented in Figure 1.

Figure 1 about here

During each of the three phases an antidumping or countervailing duty case goes through, the two agencies, petitioners and respondents will be called upon to undertake a variety of tasks and the demands placed on each of these interests will vary during the course of an investigation. Petitioning and responding companies will draw on different relationships to meet the changing requirements of the administrative process. Blonigen's (2006) finding that experience affects the effectiveness of industries' prosecution of AD cases is echoed in the findings of this paper. Interviewees clearly identified experience as having an impact on the ability of participants to prosecute a US trade remedy case (interview 16, interview 41, interview 46).

During the pre-petition phase the agencies and respondents will typically not be very active. The petitioning industry is very active during this phase as it builds its case. The demands placed on the interests during the original investigation of a case also vary. A case will move between the DOC and ITC and this also determines the demands on the petitioners and

respondents. While the case is at the DOC the responding firms will be very busy, as the DOC is charged with identifying dumping or subsidisation and this requires responding firms and governments to provide very large amounts of data to the DOC and requires a significant resource commitment from respondents to take part. At the ITC the process focuses on the petitioning industry and the burden of providing information falls on the petitioning firms, US importers and respondents. This change in focus of the investigation between the agencies provides the opportunity for firms to make strategic choices about resource allocation when prosecuting a case.

Studies of antidumping and countervailing duty cases in the US typically focus on the formal investigation that takes place at the DOC and ITC. While there are some differences in the specifics of how each of these two types of trade remedy is investigated, the process is largely identical. Primary differences are for example the different statutory timetable for each of the cases and the type of activity which has to be proved to have taken place by the DOC. The two types of case however follow the same investigatory stages. A case is initiated by a domestic US industry filing a petition alleging dumping by or subsidisation of a foreign industry or a case can be self initiated by the DOC. The DOC makes an initial determination of whether there is enough information in the petition to substantiate the claims in the petition and the ITC then makes a preliminary determination of injury to the domestic US industry. If either of these two determinations are negative, then the case is terminated. Next the DOC makes a preliminary determination of dumping or subsidization, This is the only stage in the investigation where a negative determination does not terminate the case. Commerce then makes a final determination and if it is affirmative, the case continues to the ITC. If the final ITC determination of material injury to the US industry is affirmative, the DOC issues instructions for duties to be put in place on the subject merchandise. An investigation can last between 280 and 420 days depending on its complexity.

The review stage of an antidumping and countervailing duty case provides an opportunity for respondents and petitioners to get the duty margin imposed in the original investigation reassessed and requires firms in both industries to prepare for potential annual reviews of the duty margin, through administrative reviews. A number of other types of reviews also take place during this phase allowing firms not party to the original investigation to get a duty rate established for them, or for scope reviews of products, determining whether a specific good should be subject to an antidumping or countervailing duty margin, for example.

What Is Social Capital?

We define SC as “the sum of the actual and potential resources embedded within, available through, and derived from the network of relationships possessed by an individual or social unit” (Nahapiet and Ghoshal, 1998: 243). Referring to “the ability of actors to secure benefits by virtue of membership in social networks” (Portes, 1998: 6), it has received much interested in the management literature due to its role in generating (Leana and Van Buren, 1999; Nahapiet and Ghoshal, 1998) and appropriating (Blyler and Coff, 2003) rents. However, as Leana and Van Buren (1999) suggest, SC has many faces. Therefore, in accurately applying SC theory to a phenomenon or new area of the literature, it is paramount to take into consideration differences in its treatment. Such variation includes (1) levels of analysis, (2) its normative implications and (3) the primacy of benefits (Leana and Van Buren, 1999). These conceptual differences within SC theory are discussed in order to indicate where our paper is situated within the SC literature, as well as provide an organizing framework to apply SC theory to effective CPA.

Multiple levels of analysis have been employed to describe SC, viewed as an attribute of individuals (Portes and Sensenbrenner, 1993; Belliveau, O’Reilly and Wage, 1996), individual networks (Burt, 1992), intra-firm interactions (Baker, 1990), communities (Putnam, 1993) and nations or geographical regions (Fukuyama, 1995), reflecting a micro to macro investigatory lens (Leana and Van Buren, 1999). This paper, in assessing the

relationships between petitioners, respondents and their attorneys within the ADVCD process, adopts a more micro lens of analysis, focusing on individual relationships.

In terms of the normative implications of SC, the debate has focused on the 'weak tie' (Granovetter, 1973, 1985) / 'brokerage' or 'structural holes' (Burt, 1992, 1997) versus 'strong tie' (Fukuyama, 1995) / 'closure' (Coleman, 1988, 1990) perspectives of social network theory. These schools of thought reflect the frequency of interaction and morphology of relationships (Nahapiet and Ghoshal, 1998). Despite some recent synthesis in the literature (Burt, 2005), conflict between the relative benefits of these perspectives remains. The brokerage school promotes the opportunities afforded by weak ties / network heterogeneity that enable individuals to engage in strategically positioned brokerage and boundary spanning activities across social units (Granovetter, 1973, 1985; Burt, 1992). Alternately, the closure school highlights the value in strong ties / network homogeneity resulting in more frequent, bounded and cohesive interactions between individuals within social units (Coleman, 1988, 1990; Fukuyama, 1995). In this paper, the nature of relationships between individual trade attorneys and petitioners and respondents within the ADVCD process varies considerably, such that both the brokerage and closure perspectives are relevant units of analysis.

Finally, the primacy of benefits refers to the 'private' (Lin et al., 1981; Belliveau et al., 1996; Burt, 1997) and 'public' (Coleman, 1990; Fukuyama, 1995) models of SC. These perspectives indicate (1) where benefits accrue from social relationships, whether at the individual (private) or group / societal (public) level and (2) the focus of value appropriation, whether the primary payoff rests with the individual first and social unit thereafter (private) or social unit first, with the individual receiving indirect benefit (public). In the AD/CVD process, our analysis suggests that the focus of value generation and appropriation is at the firm level, derived from the actions of petitioners and respondents, with individual attorneys (networks of attorneys) attaining secondary benefits.

Dimensions of Social Capital

Nahapiet and Ghoshal's (1998) three dimensions of SC – structural, relational and cognitive – form our unit of analysis. The structural aspect has already been discussed in the previous section; in other words, the normative implication of SC. As a unit of analysis, we examine what types of structural relationships are present at each stage in the AD/CVD process, whether there are frequent or infrequent interactions and strong or weak ties between actors (Granovetter, 1973, 1985; Marsden and Campbell, 1984; Coleman, 1988, 1990; Burt, 1992, 1997, 2005; Fukuyama, 1995; Walker et al., 1997; Leana and Van Buren, 1999; Reagans and Zuckerman, 2001). Information is a key resource and both strong and weak ties provide individuals with greater access to this resource (Nahapiet and Ghoshal, 1998). However, where relationships exhibit weak ties or structural holes, this enables information to be shared more efficiently (Burt, 1992).

The relational nature of SC reflects the interaction of actors over time (Nahapiet and Ghoshal, 1998) and can be characterized in terms of the trust that is embedded in relationships. Leana and Van Buren (1999) frame trust along two dimensions: 'fragile' (Ring and Van de Ven, 1992; Ring, 1996) versus 'resilient' (Ring and Van de Ven, 1992) and 'dyadic' (Granovetter, 1985; versus 'generalized' (Putnam, 1993). "Fragile trust is believed to need reciprocal exchanges (give and take) for the relationship to last whereas resilient trust is developed over time and is guided more by norms of behaviour in the social unit than an actualization of equal exchanges (Swart et al., 2006: 5). Resilient trust reduces transaction costs, in particular, the likelihood for monitoring and risk of opportunism (Putnam, 1993). Trusting relationships also encourage individuals to engage in cooperative activity, potentially creating a virtuous cycle of trusting behaviour (Putnam, 1993; Fukuyama, 1995; Tyler and Kramer, 1996). Another valuable aspect of trusting relationships is the ability to facilitate the sharing of highly sensitive information unavailable to individuals who do not commands such high levels of trust (Leana and Pil, 2006). Such sharing leads to resource combination

(Nahapiet and Ghoshal, 1998). “Dyadic trust requires knowledge of and contact with another actor whilst generalized trust pertains to the social unit as a whole rather than specific actors” (Swart et al., 2006: 5).

The cognitive dimension of SC refers to those “those resources providing shared representation, interpretations, and systems of meaning among parties” (Nahapiet and Ghoshal, 1998: 244). On this basis, we examine to what extent the relationship between actors exhibits shared language, codes (Cicourel, 1973; Arrow, 1974) and narratives (Orr, 1990). The sharing of language and codes has a number of benefits: (1) it provides a conduit for information exchange and helps an individual to gain access to people and their information; (2) it provides a framework of reference that individuals use to understand their shared environment; and (3) it enhances collaborative capability. Shared narratives – myths, stories and metaphors – support knowledge creation and transfer by enabling the communication of imaginative and literal observations (Nahapiet and Ghoshal, 1998).

Figure 2 about here

Whilst this study uses Nahapiet and Ghoshal’s (1998) three dimensions of SC as our unit of analysis, we also share the authors’ view that such an analytical separation does not mean that these dimensions are not highly related. Where relationships exhibit strong ties, they improve levels of trust and trustworthiness. Furthermore, more frequent interaction between individuals enables them to develop a shared language, codes and narratives, which also facilitates more trusting relations (Tsai and Ghoshal, 1998).

SOCIAL CAPITAL, CORPORATE POLITICAL ACTIVITY AND THE ANTI-DUMPING AND COUNTERVAILING DUTY PROCESS

Methodology

The data used in this study were collected between November 2005 and July 2006 using forty-five semi-structured interviews. A total of thirty-two of the interviews were personal interviews, sixteen were telephone interviews. Twenty of the interviews were recorded using a digital recorder and then fully transcribed for analysis the remaining interviews were recorded using hand written notes, which were recorded in electronic form as soon as possible after an interview was conducted to ensure as accurate an account of the interview as possible. Interviews were conducted with thirty-eight trade attorneys and four economic consultants in Washington, DC, who had represented either petitioning and / or responding firms in industries subject to either antidumping and / or countervailing duty cases. A further two interviews were also conducted with business practitioners who had participated in an antidumping case and one with a member of staff at one of the research institutes in Washington, DC. Seven of the participants described themselves as having exclusively petitioner experience, thirteen had only respondent experience and a further eight had worked with both petitioners and respondents. With respect to agency experience, six of the participants had worked at the DOC and six had spent time at the ITC. Ten of the interviewees had mostly or only experience of AD cases, only one respondent had only CVD experience and seventeen respondents said they had experience of both AD and CVD cases.

The semi-structured interviews were used to discuss the process of prosecuting an antidumping or countervailing duty case, the decisions firms must make, the strategic intent of firms and the challenges faced by firms participating in trade remedy cases. NVivo, a programme that allows a researcher to code text and then retrieve that text (Bryman, 2004) was used to code the interview transcripts. NVivo does not interpret data, it merely takes over many of the mechanical activities associated with the coding process (Bryman, 2004). For this paper NVivo was used to identify relationships between different organizations in the process of prosecuting trade remedy cases in the US.

In analysing effective CPA within the AD/CVD process, we examine the structural, relational and cognitive dimensions of the relationships between actors involved in the process, focusing on petitioners, respondents and attorneys. We describe these relationships through each stage in the AD/CVD process: the pre-petitioning, introduction and review phase. For each stage, we describe its purpose and context within the AD/CVD process, set out the actors involved during the phase and their roles, discuss the nature of the relationships using Nahapiet and Ghoshal's dimensions and suggest potential SC configurations that could lead to effective and ineffective CPA. In so doing, we draw on interviews conducted with individuals involved in the AD/CVD process, including petitioners, respondents, attorneys and economists.

Pre-Petitioning Phase

The main actors during the pre-petitioning phase are petitioners, their clients, respondents and attorneys. For petitioners the phase is primarily concerned with two main activities, identifying the possibility of a trade remedy case and preparing the petition. The key relationships that petitioners draw on to identify the need for an AD/CVD case include those with their US purchasers and attorneys. The petitioner-purchaser relationship is often the first source for identifying loss of competitive position in the market. The relationship is also important for early documentation of imports as the source of loss in price competitiveness. The petitioner-attorney relationship serves as the source for cases when attorneys bring the potential for a case to petitioners and when an established relationship exists between an experienced petitioner and the attorney, where an active system for monitoring import competition has been established. The other role of the petitioner-attorney relationship is to aid the petitioner(s) in the preparation of their petition for an AD/CVD investigation. The preparation of a petition will require the petitioner to divulge proprietary and competitively sensitive information to the attorney, who use this to assess the initial merit of the case. To provide such information, Leana and Pil (2006) suggest that high levels of trust (resilient trust) must be established between

the individuals involved in the relationship. Respondents will often not participate in this phase, even when they are aware of a potential AD/CVD case. Where respondents do participate at this early stage, their key relationship will be with their attorney. The attorney will educate a respondent about the US AD/CVD process and the options available to their client for dealing with the prospect of a case.

Inexperienced petitioners and respondents typically begin the process of prosecuting an AD/CVD case without the benefit of the relationship with their attorney. One of the first task for respondent counsel is to “start trying to reach out to the [foreign] companies, educate them on what the process is, what role they will need to play, what the repercussions are if they don’t” (interview 44). Inexperienced petitioners typically “end up either being referred to an attorney or contacting an attorney to just get educated about the process” (interview 31). Preparing to file a petition can take from six months to a number of years (interview 35). During this time the attorney will be working with petitioners to establish the strength of their case and establish that they can produce the data to meet ITC regulations. Attorneys will work with their clients to complete many of the activities that will be asked of them by the ITC, in a shortened form. Even experienced industry actively monitoring the marketplace and in collecting information in preparation for filing a case (interview 34) are likely to take around six months to prepare a petition (interview 35).

The actual preparation of trade cases is an intense period of data collection and preparation, characterised by frequent communication between attorneys and petitioners. Over time, petitioners’ relationships with their attorneys change as US producers become more experienced users of the trade remedy laws. Indeed, as the frequency of communication increases, petitioners and attorneys build a close set of shared language, codes and norms. As Tsai and Ghoshal (1998) suggest, this is likely to increase levels of trust between petitioners and attorneys, which facilitates more cooperative activity (Putnam, 1993; Fukuyama, 1995; Tyler and Kramer, 1996). Where

attorneys only represent petitioning firms they often do so for ideological reasons and reputational effects, which adds to the parties' emotional closeness.

Typically, the attorney-petitioner structure that develops is one of strong ties. However in inexperienced firms, which usually do not have any form of permanent in-house staff or counsel for dealing with these issues, the ties will initially be weaker. Whilst information will still be shared efficiently (Burt, 1992), the more fragile trust between the inexperienced petitioner and attorney potentially impedes efficient information sharing. Alternately, with experienced petitioners who have brought a number of cases, attorneys are likely to have "long standing relationships with these industries, and I think they are probably at their side for long periods of time" (interview 47). Petitioners are also at an advantage in that it is common for one attorney to represent all the petitioning firms, making coordination simpler and reducing the cost burden for petitioners (interview 40).

Furthermore, the attorney-petitioner relationship is likely to develop trusting relations and shared language, codes and narratives earlier than the attorney-respondent relationship. Where respondents do become aware of a potential case, it can be difficult for attorneys to motivate their clients the first time they are subject to an investigation (interview 22). Even though early action on the part of respondents is argued to influence the outcome of a case in AD investigations (interview 13). A recent financial quarter may serve to strengthen the petitioners' case, so "the timing of when you file your petition can be really important because you look at the prior year [for the original investigation], prior quarters, let's say you need to get it in by a certain date in order to capture that prior quarter" (interview 47). Where a foreign producer is able to react to rumours about a potential case early enough, it is possible for a trade attorney to work with the company to adjust their sales activity (interview 21). This process, of course, requires that the foreign producer has an existing relationship with an attorney.

Investigation Phase

The main actors during this phase are the petitioners, respondents, the attorneys, economic consultants, the DOC, the ITC, and US importers and purchasers. During this phase petitioners are seeking to show that their industry has been materially injured or is threatened by material injury from imports. The key relationships for petitioners are with their attorney, economic consultants and the ITC. At this stage, petitioning firms must release business sensitive information to their counsel, and the attorney must in turn guide the firm through the complex legal process. Petitioners engage with the DOC through the petitioner-attorney relationship to monitor the DOC investigation of respondents. The petitioner-ITC relationship has both direct and indirect aspects. Petitioners engage the ITC indirectly during verification and the ITC public hearing as part of the preliminary and final ITC injury investigation. Petitioners engage the ITC indirectly through their attorneys to comment on a variety of aspects of the investigation and when completing ITC questionnaires. The petitioner-economist serves to enable the economic consultants to make the injury case at the ITC.

Respondents firms naturally prefer to avoid an investigation or limit the adverse effect if one arises. Prosecuting the case for respondents means rebutting claims of dumping or receiving subsidies. The key relationships for the respondents are with their attorneys, economic consultants, the DOC and ITC. The respondent-attorney relationship provides petitioners with access to the full factual record for a case, including business proprietary information, and experience of the norms and procedures at the DOC and ITC. The relationship also provides access to advice on legal methods of circumvention. The respondent-economist relationship serves to enable the economic consultants to respond to the petitioner injury case at the ITC. The structural, relational and cognitive aspects of the respondent-economist relationships is the same as the respondent-attorney one; in other words, experienced firms have stronger ties, more resilient trust and more strongly shared language, codes and narratives with attorneys. At this stage, the

respondents have indirect relationships with both the DOC and ITC through their attorneys and direct relationships with the DOC during verification and the ITC during the ITC public hearing. This relationship can be characterised as having weak ties, fragile and generalised trust and reasonably well shared language, codes and narratives. US importers and purchasers have an indirect relationship with the ITC when completing importer questionnaires.

Once a petition is filed the attorney-respondent relationship will need to be established very quickly for inexperienced respondents. The ability of respondents to get started early is critical (interview 33). As with petitioners the attorneys need to educate inexperienced respondents about the process, however they face the constraint of doing so within the time allowed by statutory deadlines. To prosecute an AD/CVD case requires respondents to give very high levels of access to their company information to their attorneys and the DOC and ITC, it is therefore very important that respondents trust their attorneys (interview 14). The DOC requests a great deal of information on respondent's sales, expenses and cost of production information, in a way firms are not necessarily familiar with (interview 48). Attorneys help respondents develop the shared language, codes and narratives for understanding the DOC requests. The information requested by the DOC needs to be provided by the firm, but the attorney ensures that it is complete and presented in the manner required by the DOC (interview 38). The quality and consistency of access for attorneys is key to how well a respondent is able to prosecute a case (interview 24). Attorneys need to learn about the firm and industry that they will be representing and they will draw on a number of members of staff for this purpose. These relationships are not always smooth and can be described as weak ties. Often there may be support for the petition among senior managers, but not lower down the levels, where the staff that will have to do the work are just not setup for the demands of the process (interview 30). The staff in responding firms who do the day to day work on a case typically do so in addition to their normal workload and they may not always understand how important the case is to the company (cite). A lack of commitment on the part of respondent staff can lead to deadlines for

submission of information being missed (interview 48). A recurrent theme in how attorneys deal with this issue is to identify a more senior manager within the responding firm that can ensure that the work is done. “So they [respondents] need to delegate their resources to defending themselves in this case, and unless you have somebody in the company fairly high up to keep their eyes on that goal, it is very easy for tasks to sort of slide through the cracks” (interview 48). Typically the senior managers are associated with an appreciation of the importance of the trade case (interview 48). The aim for attorneys is to identify the information and systems the respondent already has and determine how this can be used to provide the DOC with the information they request (interview 9). Petitioning firms are precluded from actively prosecuting the case during the DOC investigations, as the information concerned is highly confidential and only available to attorneys and other individuals granted access under information protective order (IPO). The petitioning firms do however provide a supporting role by helping attorneys understand the importance of information within the context of the industry.

US producers are relatively successful at prosecuting the ITC preliminary injury determination, with only around 10% of petitions ending at this stage (interview 24). The injury standard is argued to be so low that a petition shouldn't fail at this early stage. An important aspect of the ITC phase is that the ITC is seeking to determine whether injury has been caused to the domestic industry as a whole. The ITC uses the questionnaires, verification of petitioner submissions and a public hearing to collect the information it needs to develop the official record for making an injury determination (interview 30). When the verification of the questionnaire responses by US producers takes place, the ITC can spend several days going through a company's books and revisions are always required (interview 30). At the ITC hearings it is common to have company representatives. However, typically these are not senior managers. There is a preference for managers working at the operational level. The ITC Commissioners ask probing questions and CEOs can be too high up to be effective, so it is common to have a sales manager at the

hearing. The ITC hearing is an opportunity for a company to speak directly to the final decision maker and could be an opportunity to turn a vote. But the hearings are most useful for informing the contents of the post hearing briefs (interview 11). If the ITC makes a final affirmative determination, then the DOC issues a duty order and the subject goods of the foreign producers, which export to the US, become subject to the duty rate determined to apply to them. If the ITC makes a negative injury determination the case ends and no duties are applied.

Review Phase

The main actors during this phase are the petitioners, respondents, the attorneys, economic consultants, the DOC and the ITC. The DOC administers a number of reviews on an annual basis after an AD or CVD duty has been put in place. The DOC and ITC conducts sunset reviews of cases no later than five years after a duty order is issued by the DOC (USITC, 1996). The sunset review attempts to determine whether the revocation of an order would lead to injury occurring again or not. The main review that responding and petitioning firms are concerned with is the administrative review which needs to be conducted by the DOC on request as often as every 12 months (USITC, 1996). The petitioner-attorney relationship during the review phase is key to monitoring for possible circumvention and whether respondent pricing decisions during the previous year has been consistent with attempting to eliminate dumping or not. The respondent-attorney relationship should aim to support respondents in developing systems to manage pricing decisions to eliminate dumping in AD cases.

The US AD system has retrospective assessment of duties. Respondents will make cash deposits at the duty rate calculated in the original investigation. If after one year a respondent believes that they have adjusted their pricing to eliminate dumping activity, then they can request an administrative review to assess their actual duty margin. If the firm is no longer found to be dumping, then their cash deposits and interest will be returned. Alternatively, if respondents believe that a respondent's selling

practices should attract a higher duty margin than the firm was assigned in the original investigation, then the petitioner can request an administrative review in the hope that the respondents deposit margin will be revised upward.

Respondents need to get a process in place to deal with administrative reviews. Attorneys “help the company to sort of put systems in place that will make it easier to respond to a review questionnaires at the administrative review process. So I think, unless there is a lot of turnover in a company and you have the same people, then you are more likely to do better the next time around” (interview 48). But it can be difficult for attorneys to convince respondents of this, additionally the experience of participating in the investigation phase is important for prosecuting the review phase (interview 16). A problem which respondent firms face is that there can be high staff turnover with respect to dealing with these cases (interview 48) and this leads to attorneys having to retrain staff to prosecute the review phase of a case. For petitioners the review phase of a case is far less intensive than prosecuting the original investigation (interview 11). Petitioners will monitor the activity of the respondent firms and request administrative reviews when they believe they can get the duty margin increased for example. They may also have to retain counsel to prosecute new shipper reviews and scope enquires, but the substantial burden during this phase falls on responding firms.

CONCLUSION AND FUTURE RESEARCH

This paper has sought to develop a more nuanced understanding of the corporate political activity through the application of social capital theory. The structural, relational and cognitive dimensions of SC were used to illuminate important, qualitative aspects of corporate political activity. Interview materials suggest that relational aspects of social capital are most important. The ITC and DOC investigative processes are complex, can be lengthy and make considerable informational requirements on firms. As such, firms with well established, resilient trust may be better able to negotiate the process and gain a favourable outcome.

The paper is less clear about whether closed relationships are integral to success in the process, though it seems likely. Equally, the extent of shared cognitive space is equivocal. Both will require more in-depth research to establish. However, the key role of attorney's and other consultants, such as economists, is highlighted. Their reputation and skill are clearly key in the prosecution of trade cases and it is therefore likely that the most skilled among them will be in high demand. The corporate political activity literature has overlooked the important role of brokers of this sort, preferring instead to concentrate on firms themselves. This paper argues for more attention to be paid to the intermediaries in the process.

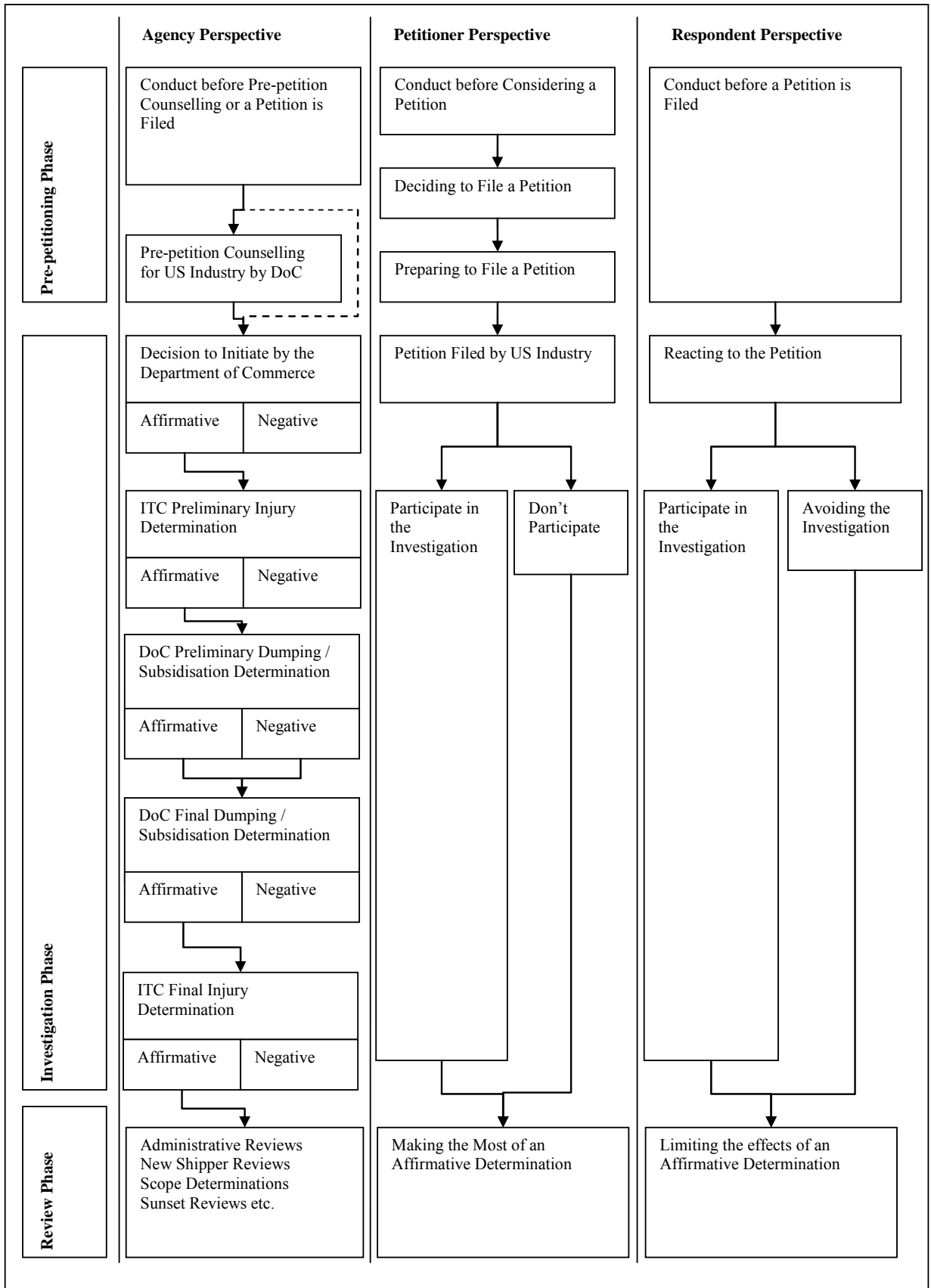


Figure 1: Revised Model of Process for Prosecuting an Unfair Trade Cases in United

Figure 2 – Dimensions of Social Capital

Dimension	Characteristics	Description
Structural	Closed or Brokerage	Frequency of interactions Strength of ties
Relational	Trust	Resilient or fragile
Cognitive	Language/Symbols	Extent of shared knowledge of language, narrative and symbols

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