The paper reviews the role of economic analysis and how the law and economics interact in agricultural antidumping, countervail, safeguard, subsidy, and serious prejudice cases. The paper reviews where economic analysis enters or does not enter and how some legal concepts may differ from the logic applied by most economists. Measurement of the degree of subsidy, the amount of dumping, and the effects of subsidies are considered. In addition, the paper considers issues related to measurement of losses to the affected home-country industry from imports, again with reference to how agriculture may differ from traditional cases applied to manufacturing products.

Finally, the paper considers how the spread of the use of trade remedy procedures may affect the economic implications for reform, again with particular reference to agriculture.

The use of antidumping, countervailing duties and safeguards are protection measures that are again issues for negotiation in the current World Trade Organization trade negotiations. In addition, disputes related to domestic agricultural subsidies are gathering attention as the Uruguay Round Peace Clause expires. This paper considers the application of economics in five high profile agricultural cases. These cases include an AD action initiated in 1994 against fresh garlic exports from China to the US; an AD and CVD case initiated in 1999 against live cattle exports from Canada to the US; AD cases filed in 2001 to restrict tomato exports from Canada to the United States and from the United States to Canada; a safeguard action initiated in 1999 by the United States against exports of lamb meat from New Zealand; and finally a WTO subsidy case filed by the United States and later joined by New Zealand against the Canadian dairy export scheme that was implemented after the 1994 GATT agreement.

Domestic subsidies for agriculture remain high in many countries, which may make countervail, subsidy and serious prejudice cases more common. At the same time, given fluctuation of farm prices, limited short-term control over farm output, and with many farms supplying most agricultural markets, the economic logic of dumping and antidumping is even more troublesome when applied to agricultural commodities.

Upon analyzing the four specific AD cases studies listed above, the authors conclude that there is a lack of economic reasoning associated with findings of dumping. As with the Canadian cattle industry, it is hard to claim anything other than perfect competition in tomatoes on both sides of the border. Furthermore, one would have to strain to develop a plausible economic model under which it was in the interest of the Canadian industry to dump into the United States at the same time the U.S. industry found it profitable to dump into the Canadian market. Of course, this reasoning was not the basis for the negative injury finding. Indeed even that finding was not based on the sort of evidence that economists would first turn to. For example, econometric evidence on the cross elasticity of demand between greenhouse and field tomatoes was not used by the USITC.

There is no compelling argument that dumping in the potentially welfare reducing sense of predatory pricing actually exists with any frequency. These observations are even stronger for agricultural products because of the competitive nature of the markets, the large degree of price variability and lack of control over output among other reasons. Thus when economists argue for simply scrapping the whole edifice and artifice of antidumping, this receives considerable support among agricultural economists.

There are many proposals for improving the transparency and consistency of calculating dumping margins. One proposal is to replace antidumping with safeguard actions so that the intellectually questionable practice of finding positive dumping margins can be eliminated and if serious injury were found the higher duties would be explicitly temporary. Dealing with countervail is less obvious for most economists. The same basic welfare arguments apply. Nations typically gain welfare by accepting subsidized exports into their home market. Nonetheless it is well established that industries will not be expected to compete with products that benefit from government subsidies. Furthermore, application of CVD may encourage governments to reduce or eliminate trade distorting agricultural subsidies, which has been a goal of the WTO. Of course, encouraging more open and unsubsidized trade by adding trade barriers is a dangerous game. A more consistent approach would be to facilitate nullification, serious prejudice and similar cases that encourage agricultural policy reform by directly attacking subsidies rather than closing markets in response to the subsidies. Indeed, an additional idea would be to eliminate CVD and replace it with easier application of nullification and impairment and serious prejudice.