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# The Standard of Injury in the Resolution of Antidumping Disputes

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EDWARD J. KRAULAND

When a private party files a dumping complaint, the Antidumping Act of 1921<sup>1</sup> provides a two-step procedure for examining an alleged infraction by a foreign exporter. First, the Department of the Treasury must determine if imports are being marketed within the United States at less than fair value (hereinafter LTFV). If Treasury makes an affirmative determination, the International Trade Commission (ITC) must then determine if a United States industry is being injured, is likely to be injured, or is prevented from being established by reason of the LTFV sales. If any of these forms of injury is found, an antidumping duty equal to the margin of dumping (as determined by Treasury) is levied on the imported LTFV goods.

Because of the lack of statutory guidance in defining or interpreting the terms "industry" or "injury," the ITC has had to define them on a case-by-case basis. The decisions have varied with changes in the makeup of the ITC and with the American political and economic climate, as well as with intangible variables unique to particular cases. As a result, the body of law that has emerged does not fit easily into a system of decisions. Academicians and practitioners alike have expressed a desire for a coherent body of law upon which they can rely with certainty. Yet they approach the quest for a concrete, reliable standard of injury for antidumping disputes with ambivalence: at best, the quest will produce only guidelines for the interested parties; at worst, the quest might confirm the suspicion that no consistent standard exists. While the following analysis of the injury standard does not purport to outline a cohesive set of doctrines applied by the ITC in those cases, it does seek to identify and evaluate some of the factors that the Commission finds important in making its case-by-case determinations.

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THE DETERMINATION OF INJURY

Before the ITC can determine whether there has been injury, the Commission must define the scope of the affected industry. Former Commissioner Clubb candidly stated that, "The scope of the term 'industry' is flexible and depends heavily upon why the inquiry is being made."<sup>2</sup>

"Industry" typically has been interpreted as being national rather than local in scope.<sup>3</sup> The strong policy justification for this interpretation is that a narrower, more local definition of "industry" would permit a few marginal companies to use the Act for protectionist purposes at the cost of a more beneficial, liberal trade policy.<sup>4</sup>

Within this national concept of industry, the Commission has used two separate tests for defining the scope of the particular industry affected—competing products and geographic boundaries. Apparently, the Commission may look at either, in its discretion. In explaining the competing product test, the Commission has held that a domestic product competes with the imported product if it is either identical with,<sup>5</sup> or substantially comparable to, the latter.<sup>6</sup> However, it has been noted that "the Commission has not scrutinized carefully the cross-elasticity of demand between domestic products"<sup>7</sup> in determining the relevant industrial market.

As for the geographical boundary test, the Commission has defined industry so as to account for the national output of the article being examined.<sup>8</sup> Thus, the industry could be either a single firm that happens to be the exclusive producer of a product,<sup>9</sup> or a group of firms across the country which account for almost all domestic production.<sup>10</sup> At the same time, the Commission has been reluctant to expand the scope of the market beyond the borders of the United States. In *Potassium Chloride from Canada, France, and West Germany*,<sup>11</sup> the Commission expressly rejected respondent's contention that the relevant industry encompassed all of North America, and not the United States alone. It appears that if a transnational market definition were employed, several LTFV imports which would normally be found injurious would be exempt from antidumping duties on the basis that the entire industry technically was multinational in scope, thereby dissipating the injury.<sup>12</sup>

Although it has rejected attempts to define the relevant industry as transnational in scope, the Commission has been willing to define a regional market. In its 1955 *Cast Iron Soil Pipe from the United Kingdom* decision, the Commission made its first steps in this direction, defining the relevant industrial market as the state of California.<sup>13</sup> If an article is heavy, of low value, and cannot be economically transported out of a limited geographic area, and particularly if the affected producers have historically served only a limited territory,<sup>14</sup>

the Commission is likely to narrow the definition of industry to that same geographic area.<sup>15</sup> With such evidence before it, the ITC is more willing to “segmentize” the industry so as to afford protection to those firms whose marketing power is constrained by physical and economic considerations.<sup>16</sup>

The Commission has gradually and consistently expanded its use of the regional industry theory.<sup>17</sup> In the 1964 case of *Chromic Acid from Australia*,<sup>18</sup> the Commission focused on the West Coast market for chromic acid and found injury to the domestic industry where “there is rapid penetration of a major market area with a substantial capture of a major ‘share’ of that market.”<sup>19</sup> In 1970, the Commission further expanded the regional market concept by stating that “an injury to a part of the national industry is an injury to the whole industry.”<sup>20</sup> In the 1973 *Steel Wire Rope from Japan* case,<sup>21</sup> the Commission narrowly focused on a regional market, in part by segmenting the industry and examining the small region created thereby. The Commission found that LTFV sales into the Pacific Northwest, Pacific Southwest, and south central regions of the United States were of sufficient magnitude to cause injury to the entire United States industry. And in the 1978 *Portland Hydraulic Cement from Canada*<sup>22</sup> decision, Commissioners Bedell, Ablondi, Alberger and Moore stated that the regional market approach is applicable “where (1) domestic producers of an article are located regionally and serve a particular regional market predominantly or exclusively, and (2) the LTFV imports are concentrated primarily in the regional market.” According to this determination, the LTFV sales were directed toward the Northeast United States, and therefore the relevant market was limited to that region. However, Commissioner Alberger qualified his general endorsement of the test with the statement that general economic conditions (in this case, shortages of cement in other parts of the country) may dictate that the regional market approach not be used.

The Commission has also stated that elements of injury in more than one industry can be aggregated for purposes of finding a significant injury warranting imposition of an antidumping duty. In *Lock-In Amplifiers and Parts Thereof from the United Kingdom*, the ITC focused on the Act’s language, and concluded that:

The use of the indefinite article “an”, rather than the definite article “the” allows the Commission to examine the impact of LTFV sales on more than one industry, if it deems such course of action is appropriate.<sup>23</sup>

The practical effect of this innovative technique has yet to be determined. The decision may be limited to cases involving competitive

product-lines where sufficient data concerning the relative degrees of injury to each related industry is not available.<sup>24</sup>

Like the term “industry,” “injury” is not defined in the Act. Therefore, the injury standard has evolved and changed throughout the history of the Act’s administration and implementation. It has been noted that the Act’s legislative history indicates that Congress did not intend that a business be near extinction before injury could be found. In fact, in 1951 the House Ways and Means Committee rejected a legislative proposal which would have required a finding of material injury in order to impose an antidumping duty.<sup>25</sup>

Yet the Commission quickly seized upon the material injury standard embodied in Article VI of the GATT in administering the Act.<sup>26</sup> The Commission also established early that LTFV sales were not considered presumptive of injury, but were condemned only when they had an anticompetitive effect on a United States industry.<sup>27</sup>

This posture apparently changed in 1967 when the Commission announced a new *de minimis* standard for injury determinations: “The word ‘injury’ in the Antidumping Act has been construed by the Commission as meaning ‘material injury.’ Any injury which is more than *de minimis* is material injury.”<sup>28</sup> The Commission went on to say that injury should be found whenever the “competition is direct, and the price is unfair.”<sup>29</sup>

In *Animal Glue and Inedible Gelatin from Yugoslavia, Sweden, the Netherlands, and West Germany*, Commissioner Parker quoted language from the Senate Report on the 1974 Trade Reform Act:

The term “injury,” which is unqualified by adjectives such as “material” or “serious,” has been consistently interpreted by the Commission as being that degree of injury which the law will recognize and take into account. . . . Injury must be a harm which is more than frivolous, inconsequential, insignificant or immaterial.<sup>30</sup>

It is not at all clear that the *de minimis* standard marks a radical departure from previous decisions under the “material injury” test. In a unanimous decision, *Metal Punching Machines from Japan*, the Commission did not find injury, noting:

Market disruption, as cited by the Commission in conjunction with its determinations under the Antidumping Act, is a wide-embracing term applied to circumstances of *extreme* market behavior. Such behavior could consist of *abnormal* price declines, market uncertainty including the departure of firms from the market place, and *unusually rapid* market penetration.<sup>31</sup>

The Commission has ruled that LTFV imports from several countries can be considered cumulatively. In *Potassium Chloride from Canada, France, and West Germany*, the Commission found injury:

[A]n industry can be as much injured by small amounts of LTFV imports from many different sources as it can be by the same total amount from one source. Accordingly, for purposes of making the injury determination, the source of the imports is not important. It is their combined effect on the domestic industry which controls.<sup>32</sup>

Commissioner Moore relied on this language in finding injury in *Primary Lead Metal from Canada*.<sup>33</sup> In *Animal Glue and Inedible Gelatin from Yugoslavia, Sweden, the Netherlands, and West Germany*,<sup>34</sup> the Commission articulated several factors which may compel a cumulative injury determination. The majority of the Commission decided to cumulate the various imports since they were “generally comparable in quality and price and were generally distributed throughout the United States.” Moreover, in this particular case, the United States importers received shipments of the LTFV material from various countries before reselling it to United States customers.

Several factors lead the Commission to a finding of injury. In any particular case where injury is found, several of these indicia of harm may be present.

#### *Predatory Intent*

Predatory intent has often been cited by the Commission as one factor which may lead to a finding of injury when it is combined with some other evidence of competitive harm.<sup>35</sup> Predatory intent may be inferred where an exporter has either both the capacity and inducement to sell at LTFV or a persistent tendency to operate at full capacity and to export excess production at LTFV.<sup>36</sup> Furthermore, cases involving a second alleged instance of dumping by the same foreign producer may lead to a finding of predatory intent.<sup>37</sup> Conversely, the Commission has stated that a demonstrated willingness to revise prices and cooperate with Treasury authorities to avoid future LTFV sales works to rebut allegations of predatory intent.<sup>38</sup>

#### *Price Depression or Suppression*

Price depression occurs when LTFV importers undersell domestic producers, forcing those domestic producers to lower their prices to meet the competition. Price suppression occurs where the LTFV sales

prevent domestic producers from increasing their prices in accordance with rising costs or other factors which would justify price increases.<sup>39</sup> One indication often used by the Commission to find price suppression (or depression) is evidence of raw material price increases without appropriate or corresponding finished price increases.<sup>40</sup> A price level reduction of a few percentage points can suffice to establish injury to a United States industry.<sup>41</sup>

On the other hand, evidence of a relative increase in the price of a competitive good, when compared to a general price index (such as the Consumer Price Index or a particular wholesale price index formulated by a government agency), will tend to negate the charge of price suppression or depression.<sup>42</sup> Furthermore, if United States domestic prices are below LTFV import prices to begin with, the Commission may refuse to find a sufficient causal relationship between LTFV sales and changes in domestic prices.<sup>43</sup>

#### *Market Penetration or Lost Sales*

In cases where some market penetration or lost sales are attributable to LTFV sales, the Commission is likely to find injury to a domestic industry.<sup>44</sup> The threshold of market penetration or lost sales needed to trigger an injury determination cannot be generally defined. In some instances, the Commission will find that a seemingly miniscule degree of market penetration will suffice for an injury determination; at other times, a considerable showing of market penetration will not warrant a finding of injury.<sup>45</sup>

For example, in *Steel Bars, Reinforcing Bars and Shapes from Australia*,<sup>46</sup> the Commission found injury to the industry when market penetration was measured at 5.5 percent. More recently, however, in *Portable Electric Typewriters from Japan*, the Commission found that the United States industry was not being injured despite the fact that LTFV sales had captured a large share of the domestic market.

It is acknowledged that imports of portable electric typewriters from Japan, sold at LTFV, obtained a significant share of the U.S. market for portable typewriters during the period of the Treasury investigation. . . . However, import penetration alone is not an adequate basis for determining injury.<sup>47</sup>

The Commission took particular note of the fact that all the other tests for injury indicated a healthy growth in the complainant's business—prices were up and production and shipments had increased despite the market intrusion. Therefore, a significant degree of market penetration, without some other form of injury, may not compel

the Commission to make an injury determination for purposes of imposing an antidumping duty.

It should be noted that a small degree of market penetration by LTFV sales may be the basis for a finding of no injury for two reasons. If loss of sales is the only injury sustained, that injury may be perceived as *de minimis*. But more importantly a small degree of market penetration may indicate a lack of causation. If the complainant argues that there were other injuries resulting from the loss of sales (*e.g.* price suppression), the ITC may simply refuse to believe that such a small degree of market penetration could cause those other harms. In *Butadiene Acrylonitrile Rubber from Japan*, the Commission found the degree of market penetration to be approximately 1 percent. The decision noted that, "In light of such a low import penetration, it is difficult . . . to tie LTFV imports to any injury which may be occurring in the industry in question."<sup>48</sup>

Recently the Commission has expressed its findings of no significant market penetration in somewhat different terms—the volume of LTFV imports has been examined in light of the entire import volume from all foreign territories. As early as 1963, the Commission considered injury to be related to the "ratio of aggregate imports from LTFV countries to imports from all countries."<sup>49</sup> This concept was invoked again in *Steel Wire Strand for Prestressed Concrete from India*,<sup>50</sup> where the Commission noted that the market penetration of Indian imports, relative to imports from other countries, was very small. This marks a slight departure from the former practice of narrowly focusing on the amount of importation from a specific country and its significance in the United States domestic consumptive market alone. It represents a subtle move toward a more liberal approach to antidumping actions and a more cautious attitude in injury determinations.

An allegation of injurious market penetration may be rebutted by showing that increased LTFV exports are taking sales away from other foreign exporters rather than from American producers. In *Standard Household Incandescent Lamps from Hungary*,<sup>51</sup> the Commission noted that the market share of Hungary's exports increased from 16 percent to 59 percent in three years; however, ". . . this increase in market share displaced other imports, not domestic producers."<sup>52</sup> The Commission recognized that the United States producers' share of the domestic market increased by 6 percent during the same period.<sup>53</sup> On the other hand, where apparent domestic consumption increases, yet sales by domestic producers decrease, the Commission has shown a tendency to find injury, taking such evidence as a type of *prima facie* proof of market penetration and injury.<sup>54</sup>



United States producers commonly complain that LTFV imports result in the under-utilization of domestic productive facilities, wasteful idle capacity, and an eventual increase in unemployment. While the Commission has taken note of these economic ills, particularly in times of persistently high employment, it has focused its attention on the requirement that the imports actually cause the domestic industry's problems.<sup>55</sup> In *Sorbates from Japan*,<sup>56</sup> the complainant could not demonstrate that its lagging capacity utilization was less than it had expected when it began operations. In *Knitting Machines for Ladies Seamless Hosiery from Italy*,<sup>57</sup> the Commission refused to make an affirmative determination of injury since the alleged harm resulted from the complainant's own marketing failures. Similarly, the Commission has cited increased productivity as the cause of decreased employment in the complainant's industry, even during a period of LTFV sales.<sup>58</sup>

Typically, the Commission will look to increasing inventories as evidence of idle capacity and injury to a domestic industry.<sup>59</sup> However, the complainant must clearly demonstrate that such inventory increases were not part of a purposeful marketing program.<sup>60</sup>

#### *Decrease in Net Operating Profits and the LTFV Margin*

The Commission has been sensitive in recent decisions to the comparative profitability of the complainant firm during the period of LTFV sales and other sales periods.<sup>61</sup> Moreover, in instances where the margin of dumping is pronounced, the Commission will rely heavily upon the net profitability figures if there is evidence of some other type of injury.<sup>62</sup>

How these factors interrelate presents a complex calculus which may be beyond empirical proof. Proof of lost sales or harmful price depression attributable to LTFV imports can be quite compelling to the ITC. Significant market penetration combined with an adverse impact on domestic price level can often lead to an injury determination. Similarly, a small degree of market penetration with evidence of predatory intent may lead to a finding of injury.<sup>63</sup> On the other hand, if the industry as a whole is operating near full capacity and enjoying increased profits, the fact that a few scattered firms have lost sales to import competition may not, without more, be sufficient to demonstrate injury.<sup>64</sup>

It appears that causation is becoming a more important factor in the Commission's injury determinations. Earlier decisions did not closely examine the necessary causal link between LTFV sales and injuries, but recent ITC decisions indicate an increasing concern

with causation and the necessity for a clear link. Discussions of causation are not uniform; several Commissioners have interpreted the causation requirement very loosely, while others have demanded a substantial causal link between LTFV sales and the alleged harm.

In *Melamine in Crystal Form from Japan*, Commissioner Parker summarized what appears to be the current causation standard:

the law does not contemplate that injury from less-than-fair-value imports be weighted against other factors which may be contributing to injury to an industry. The words "by reason of" express a causation link but do not mean that dumped imports must be a (or the) principal cause, a (or the) major cause, or a (or the) substantial cause of injury caused by all factors contributing to overall injury to an industry.

In short, the Committee does not view injury caused by unfair competition, such as dumping, to require as strong a causation link to imports as would be required for determining the existence of injury under fair trade conditions.<sup>65</sup>

On the other hand, United States importers and foreign exporters have been able to impress upon some members of the Commission the importance of a stricter causation requirement. Commissioners Ablondi, Alberger, and Minchew have consistently refused to find injury where the causation link was tenuous, even if the link met the looser standard of other commissioners.<sup>66</sup> And in instances of limited injury to a single United States firm, the causation requirement may be more strictly interpreted. In *Welt Work Shoes from Romania*, the Commission accepted evidence that one firm had suffered losses during the LTFV period, but stated that the "loss, in our opinion, is not attributable *solely* to welt work shoe imports from Romania."<sup>67</sup> This is one of the few instances where the Commission apparently required that the LTFV sales be *the* cause of the injury, rather than the usual requirement that LTFV sales be *a* cause of injury.

One of the more frequently cited factors which has led the Commission to findings of no injury has been the generally poor economic health of the industry or nation as a whole. (This is somewhat coincident with the use of falling United States consumption to rebut an allegation of injury from LTFV sales.) In *Iron and Sponge Iron Powders from Canada*,<sup>68</sup> the Commission took notice of the depressed state of the United States economy in 1970-72 as a possible explanation for the economic harm to domestic producers. A year later, in a unanimous negative decision, the Commission again noted that the economic recession of 1974-75 and a decrease in federal funding for research led to a decrease in amplifier production.<sup>69</sup>

At the same time, the depressed state of the United States economy may not, in itself, provide a defense to dumping charges. In fact, a defense based on allegations of economic recession as the cause of the alleged injury can often act as a two-edged sword, and work to the disadvantage of a foreign producer or United States importer charged with dumping articles at LTFV. For example, in *Acrylic Sheet from Japan*, the Commission determined that the

increase in LTFV imports *clearly* exacerbated the injury that the U.S. industry was *already* experiencing as a result of the economic recession. . . . It is recognized that in 1975 the domestic acrylic sheet industry was suffering from the economic recession. Therefore, the presence of LTFV imports and offers of large quantities of LTFV imports served to *aggravate* the injury caused by the recession. LTFV imports have an even greater impact under these conditions.<sup>70</sup>

The same reasoning is found in *Melamine in Crystal Form from Japan*,<sup>71</sup> where the Commission used the United States recession as a further justification for finding Japanese LTFV imports more injurious than in a healthy economic period. And in *Rayon Staple Fiber from Belgium*, injury was found again with the Commission emphasizing that “in a declining or stagnant market which existed in 1977, increased import penetration was gained almost entirely at the expense of the domestic industry.”<sup>72</sup>

These seemingly different results indicate that “economic recession” is not a talisman; it is not conclusive in either direction. Rather, economic recession appears to raise doubts in the minds of the Commissioners about causation. Those doubts have been overcome, and the Commission has found that the injury was caused by LTFV sales rather than by economic recession, when the LTFV import activity was most blatant—with high LTFV margins, significant market penetration, and substantial underselling of United States domestic prices. In such cases the Commission appears to almost assume predatory intent, and predatory dumping is virtually *aper se* violation of the Act. The seller’s argument that the injury was in fact caused by economic recession is therefore unavailing. When the seller’s intent was clearly nonpredatory, as when there is evidence that United States consumers solicited increased foreign imports (including some at LTFV prices) in order to assure themselves a stable source of supply, the Commission will find the economic recessionary impact a sufficient intervening cause negating an injury determination.<sup>73</sup>

Apart from this increased concern with the general economic climate of the country, the Commission has stintingly come to recognize that product differentiation or better service may result in price

differentials that provide legitimate competition to United States producers. In *Metal-Punching Machines from Japan*, the Commission unanimously determined that LTFV sales had not injured American industry. The decision noted that:

[t]he small penetration that has occurred since 1970 and the lost sales which might be associated with it could be regarded as injurious; however, the domestic sales were lost not "by reason of" (*i.e.*, the second requirement of the statute) the LTFV nature of the imports, but rather because of the superior delivery schedules offered by the importer . . . [The shortened delivery times of Japanese models] weighed heavily in the purchasers' decision to acquire the Japanese machine.<sup>74</sup>

The Commission has used consumer questionnaires to find out why customers chose to import the goods in question. In *Railway Track Maintenance Equipment from Austria*,<sup>75</sup> Commissioners Minchew and Ablondi dissented from a finding of injury, noting that United States producers preferred the Austrian imports for their durability, reliability, low maintenance costs, and performance characteristics.<sup>76</sup> Although such data is not compelling since the Commission majority has tended to interpret loosely the causation requirement, a 1978 unanimous decision of no injury emphasized that factors other than price attracted United States customers toward the LTFV articles.<sup>77</sup>

Even though there may be no present injury attributable to LTFV sales, the Commission may find that there is a "likelihood of injury." One commentator has noted the nebulous nature of this determination:

On the issue of likelihood of future injury, the standards used by the Commission are less clear, although neither imminent injury nor a reasonable likelihood appear to be required. The Commission usually evaluates the attitude of the foreign producers and their capacity and motivation to dump in the U.S. market.<sup>78</sup>

A determination of likelihood of injury appears to be proper where the exporter under investigation has the economic incentive and capacity to maintain LTFV exports, and where such continuing exports will result in a more than *de minimis* injury to a United States industry.<sup>79</sup> Almost by necessity, this determination requires some evaluation of the intent of the exporter. In *Primary Lead Metal from Australia and Canada*,<sup>80</sup> the Commission found a likelihood of injury on the basis of the substantial dumping margins which indicated the exporter's willingness to undersell United States producers.<sup>81</sup> In

*Metal Walled Swimming Pools from Japan*,<sup>82</sup> the Commission found a likelihood of injury, emphasizing, among other things, that the Japanese exporter had the capacity to continue production and exports of swimming pools with its existing facilities. Similarly, in *Steel Reinforcing Bars from Canada*,<sup>83</sup> the Commission enumerated several factors which led it to find a likelihood of injury. Among these were: continuance of imports at LTFV, wide dumping margins, existence of a confidential contractual relationship between the foreign producer and the importer, and the ease with which the foreign producer could increase his production.<sup>84</sup>

Perhaps the Commission's tendency to evaluate the subjective intent of the foreign producer in "likelihood of injury" cases is most clearly demonstrated in the *Steel Jacks from Canada* decision. There the Commission found a likelihood of injury based upon a

pattern of sales at less than fair value by the Canadian manufacturer and his *attitude* throughout the investigation. . . . The evidence shows that the program of selling below fair value was deliberately undertaken and calculated to obtain by this means a substantial share of the United States market; . . . that the LTFV sales were continued and indeed accelerated during the Treasury-Tariff Commission investigation; that opportunity to adjust prices to eliminate the margin of difference was given by the Treasury Department and was ignored; that the LTFV sales are taking an increasing share of the domestic market; and that the margin of difference was substantial.<sup>85</sup>

All of these factors led the Commission to find that LTFV sales that presented no current harm could nonetheless have caused future injury.

Evidence that the exporter does not harbor a predatory intent, or will cease his LTFV sales, can usually lead to a finding of no likelihood of injury.<sup>86</sup> If an exporter gives assurances of reduced exports or increased prices, the Commission apparently will make a negative determination of likely injury.<sup>87</sup> Such assurances of quantity ceilings can be compelling. In *Standard Household Incandescent Lamps from Hungary*,<sup>88</sup> the Commission found no likelihood of injury based on such assurances despite the fact that the Hungarian exporter planned a 240 percent increase in production and sales to capitalist countries.

Market structure factors and general economic realities can also lead the Commission to a finding of no likelihood of injury; apart from any indications of restraint on the part of the exporter. In *Acrylic Sheet from Japan*,<sup>89</sup> the Commission stated, "Structural factors in the domestic industry indicate that imports will face

difficulties in capturing a larger share of the domestic market.” Some of the factors of which the Commission took note included the large scale expansion of domestic production, vertical integration of raw material supply into the domestic industry’s productive processes, and the existence of a strong distribution network and strong product image.<sup>90</sup> The same reasoning was applied in *Butadiene Acrylonitrile Rubber from Japan*,<sup>91</sup> where the Commission refused to find a likelihood of injury due to market structural factors such as the “long established relationship” between United States producers and their major customers and vertical marketing structure of the complainant companies.

Changing world market and financial conditions may provide sufficient reason for a negative determination of likelihood of injury. In cases in 1974 and 1975, for example, the Commission mentioned the decline of the dollar against the yen as a reason to find no likelihood of injury.<sup>92</sup> Given the current weakness of the dollar relative to other currencies, it may be even more difficult for a United States complainant to demonstrate a future likelihood of injury from LTFV sales.

If the ITC finds actual injury attributable to LTFV sales, it will not exonerate the exporter on the basis of either a “meeting competition” or “lack of predatory intent” defense.<sup>93</sup> However, there apparently are some defenses to a finding of likelihood of injury. For instance, as has already been noted, a foreign exporter can defend against a finding of likelihood of injury by giving assurances of self-restraint in future exporting practices and price setting. The exporter may defend on the ground that the likely injury would not in fact be caused by LTFV sales. And it now appears that the ITC may accept a “sales promotion” defense to a “likelihood of injury” complaint, although the Commission has recently been criticized for not allowing such a defense to a complaint of “actual injury.”<sup>94</sup> For example, in *Steel Wire Strand for Prestressed Concrete from India*,<sup>95</sup> the complainant alleged that increased imports from India had captured an increased share of the United States domestic market. The Commission examined the effect of the increased imports and found that:

- (1) United States production had fallen by 21 percent from 1974 to 1975, and by the end of 1977, had recovered so that it was only six percent below the peak production year of 1974;
- (2) a similar trend occurred in United States producers’ shipments;
- (3) the ratio of net operating profits to net sales decreased from a profit of 19 percent in 1975 to a loss of three percent in 1976 and to a further loss of seven percent in 1977;
- (4) market penetration increased from 0.1 percent in 1974 to

1.8 percent in 1976 and then dropped to 0.8 percent in 1977; and

(5) prices decreased steadily from 1975 through mid-1977.<sup>96</sup>

Despite these indications of injury, the Commission found that no injury had been suffered by a United States industry. In arriving at this decision, the Commission noted:

The principal importer was apparently testing the market with a new product . . . from a new supplier. About one-half of the domestic customers for this wire strand from India were one-time trial order purchasers, and that importer testified that he has received no new orders since mid-1977. The pricing practices thus constituted a temporary aberration in the market. . . .<sup>97</sup>

It appears that the Commission did take notice of the importer's contention that LTFV sales were part of a sales promotion program. The Commission found that "the [market] impact was clearly not of a magnitude sufficient to cause injury to the domestic industry."<sup>98</sup> Although this case can be distinguished on its facts, it is still clearly important for those defending a dumping suit. There have been cases where the Commission has found injury on the basis of smaller degrees of import penetration and less significant indicia of market disruption. It would appear that the importer's ability to demonstrate its benign intent (through evidence of a sales promotion plan) may influence the Commission toward a conclusion that the degree of market disruption does not warrant a determination of injury.

#### CONCLUSION

To be certain, it is difficult to formulate a concrete and clear standard of injury on the basis of ITC antidumping decisions. Many scholars have criticized the ITC for its failure to articulate such a standard.<sup>99</sup> However, their criticism may be too harsh for several reasons.

First, an antidumping injury determination is essentially a fact-finding investigation. The allegations, evidence, and nature of the dispute are extremely complex. The resolution of the dispute turns upon the peculiarities of the circumstances surrounding the import activity. A hard-and-fast standard of injury may preclude consideration of the finer points and lead to undesirable, even harsh, results.

Second, critics tend to look to the judicial process as a model for antidumping determinations. The apparent lack of precedent in antidumping proceedings makes these critics uncomfortable with the

present system. Yet almost all administrative proceedings suffer from the same infirmity since administrative procedure does not embrace the concept of *stare decisis*. Criticism which does not address this fundamental difference between judicial process and any administrative action is unpersuasive.

Moreover, the ITC is a creature of Congress, and to this date, Congress has endorsed the flexible approach taken by the ITC in its injury determination.<sup>100</sup> With this in mind, perhaps the true focus of scholarly criticism should be Congress' failure to take the initiative in defining more clearly the standard of injury to be employed by the ITC. However, Congress' apparent reluctance to formulate such a standard through legislative enactment may indicate a desire to maintain the flexible approach presently used. Given the fluid economic and political milieu in which antidumping proceedings occur, the continued restraint of Congress, as well as the ITC, may promote the broader economic and political welfare of the United States.

Finally, the degree of consistency that does exist in ITC decisions should not be ignored. Admittedly, there is more inconsistency than might be expected if the ITC treated its earlier decisions as precedent, and the inconsistencies reflect the lack of a concrete, clear standard of injury. Yet a discernible, albeit loose, guideline has been developed to which the importer, foreign exporter, or United States complainant can turn to evaluate the potential legal status of a particular importation. While the specific criteria and degrees of harm that can be found in past ITC decisions delineate the outer boundaries of legal importation activity, a large middle ground remains, in which an interested party cannot easily determine whether certain import activity falls within the bounds of the antidumping law. Although not a predictor, the injury guideline, when used in conjunction with a frank assessment of economic/political circumstances surrounding the proposed import and evidence of exporter behavior/intent, may allow a reasonable estimate of the legality of the import action in question.

The ITC's flexible approach has two advantages: it may be conducive to the fulfillment of United States trade objectives, which vary with the identity of the trading partner, and it enables the ITC to resolve antidumping disputes in a manner that protects United States domestic business. The articulation of a hard-and-fast rule could hinder both of these legitimate values.

#### NOTES

1. Ch. 14, tit. II, 42 Stat. 11 (1921), as amended, 19 U.S.C. §§ 160-73 (1976).

2. Titanium Sponge from the U.S.S.R., AA1921-51, USTC Publ. 225 (1968).



3. Fisher, *The Antidumping Law of the United States: A Legal and Economic Analysis*, 5 L. AND POL'Y INT'L BUS. 85, 106 (1973).
4. See Coudert, *The Application of the United States Antidumping Law in the Light of a Liberal Trade Policy*, 65 COLUM. L. REV. 189, 216 (1965), noting that the Commission's finding of injury in Carbon Steel Bars and Shapes from Canada, AA1921-39, USTC Publ. 135 (1964), premised upon economic harm to only three domestic producers, generated criticism as a short-sighted loophole which allowed individual firms to file injury complaints for selfish and improper reasons. Compare the criteria of the Act with those of the escape clause, 19 U.S.C. § 1337, (1976) where the complainant must be an "economic and efficient" firm. Perhaps such language in the 1974 Trade Act, without a similar amendment to the 1921 Act, indicates a conscious decision to allow use of the Antidumping Act to protect any industry or firm, despite its inefficiency.
5. Bicycles from Czechoslovakia, 25 Fed. Reg. 9,782 (1960).
6. Nepheline Syenite from Canada, AA1921-13, USTC Publ. 1 (1960). The Commission made a negative determination of injury: it acknowledged that nepheline syenite was not produced in the United States, but that the imported product competed with domestically produced feldspar in the manufacture of glass. For a recent decision where the Commission split as to whether a product was competitive with the LTFV imported article, see Hollow or Cored Ceramic Brick and Tile from Canada, AA1921-155, USITC Publ. 785 (1976).
7. *Report of the Ad Hoc Subcommittee on Antitrust and Antidumping*, 43 ANTITRUST L.J. 653, 670 (1974). Recent ITC decisions include appendices containing a significant amount of economic data which previously was lacking from reported antidumping decisions. However, much of this data is deleted for purposes of confidentiality.
8. See, e.g., Titanium Dioxide from France, AA1921-31, USTC Publ. 109 (1963).
9. Portable Electric Typewriters from Japan, AA1921-145, USITC Publ. 732 (1975), at 4, where the Commission defined "industry" as the "U.S. facilities of SCM Corporation, the sole U.S. producer of portable electric and manual typewriters." See also Sorbates from Japan, AA1921-183, USITC Publ. 915 (1978) (Monsanto Co. sole United States producer); Steel Jacks from Canada, AA1921-49, USTC Publ. 186 (1966).
10. Standard Household Incandescent Lamps from Hungary, AA1921-Inq.-18, USITC Publ. 912 (1978), where four companies produced 95 percent of the United States household light bulbs. See also Racing Plates from Canada, AA1921-137, USTC Publ. 645 (1974) (2 domestic producers), Rayon Staple Fiber from Belgium, AA1921-186, USITC Publ. 914 (1978) (3 firms).
11. AA1921-58,-59,-60, USTC Publ. 303 (1969), at 3.

12. Note, *Recent Decisions and Unfair Competition*, 6 TEX. INT'L L. F. 361, 364 (1971).
13. AA1921-5, 20 Fed. Reg. 8,269 (1955), *aff'd sub. nom.* Ellis K. Orlovitz Co. v. United States, 200 F. Supp. 302 (Cust. Ct. 1961), *aff'd* 50 C.C.P.A. 36 (1963).
14. The "historical marketing practices" language does not appear to constitute a new and distinct means of defining a regional marketing system apart from the previously enunciated test of the nature of the product and its inherently uneconomical transportation costs. At least in economic theory, and apparently in practice as well, if the historical practice of the industry is that distribution is highly regionalized (assuming no illegal market allocation scheme), then it can only be because of uneconomical transportation costs. The two tests, therefore, go hand in hand, and it is not likely that one would be present when the conditions of the other would not also be satisfied.
15. Portland Cement from Sweden, AA1921-16, USTC Publ. 10 (1961). The constitutionality of the regional market test was challenged, and upheld, in Imbert Imports Inc. v. United States, 314 F. Supp. 784 (Cust. Ct. 1970), *aff'g* Portland Cement from the Dominican Republic, AA1921-25, USTC Publ. 122 (1963). Petitioners contested the validity of an injury finding premised on the regional industry theory, on the grounds that the Constitution, as well as the Antidumping Act of 1921, require uniform imposition of import duties throughout the country. U.S. CONST. art. I, § 8, cl. 1; 19 U.S.C. § 172 (1976). In this case, injury was found in the New York area, yet duties were assessed against imports in Puerto Rico. The trial court upheld the imposition of such duties, without addressing directly the question of whether such a levy of duties is a denial of due process or a violation of equal protection. The case was subsequently affirmed, 331 F.Supp. 1400 (Cust. Ct. 1971) and 475 F.2d 1189 (C.C.P.A. 1073). *See generally*, Subcommittee Report, *supra* note 9; Myerson, *A Review of Current Antidumping Procedures: U.S. Law and the Case of Japan*, 15 COLUM. J. TRANSNAT'L L. 167, 183-84 (1976).
16. *See* Coudert, *supra* note 4, at 213-14.
17. In its report on the 1974 Trade Act, the Senate Finance Committee endorsed the "regional industry" test, and expressed its willingness to defer to the ITC on its application. [W]here the evidence showed injury to the regional producers, the Commission has held the injury to a part of the domestic industry to be injury to the whole domestic industry. The Committee agrees with the geographic segmentation principle in antidumping cases. However, the Committee believes that each case is unique and does not wish to impose inflexible rules as to whether injury to regional producers always constitutes injury to an industry. S. REP. No. 1298, 93d Cong., 2d Sess. 180 (1974).

18. AA1921-32, USTC Publ. 121 (1964).
19. *Id.* at 4. However, the Commission was careful to state that the Australian acid was selling at a price "significantly" lower than all domestic manufacturers' wholesale prices in the United States. There was a hint of predatory pricing in the opinion as well.
20. Steel Bars, Reinforcing Bars, and Shapes from Australia, AA1921-62, USTC Publ. 314 (1970), at 4. Commissioners Thunberg and Newsom strongly dissented, arguing that if prices of the affected good were similar throughout the country, given transportation cost differentials, then the industry and relevant market should be defined nationally and not regionally.
21. AA1921-124, USTC Publ. 608 (1973) (2 to 1 vote with 3 Commissioners not participating).
22. AA1921-184, USITC Publ. 918 (1978), at 4.
23. AA1921-146, USITC Publ. 736 (1975), at 4.
24. The Commission has also aggregated LTFV imported products that are distinct from one another but are manufactured by the same firm, industrial techniques and resources, and fall into a category of functional equivalence. *See, e.g.*, Chisels, Punches, Hammers, Sledges, Vices, C-Clamps, and Battery Terminal Lifters from Japan, AA1921-149, USITC Publ. 750 (1975).
25. H. REP. 1089, 82d Cong., 1st Sess. 7 (1951), rejecting H.R. 5055, 82d Cong., 1st Sess. (1951). *See Long, United States Law and the International Antidumping Code*, 3 INT'L LAW. 464, 472-73 (1969).
26. Titanium Dioxide from France, *supra* note 8; Chromic Acid from Australia, *supra* note 18.
27. Technical Vanillin from Canada, AA1921-26, USTC Publ. 88 (1963) at 2.
28. Cast Iron Soil Pipe from Poland, AA1921-50, USTC Publ. 214 (1967) at 6.
29. *Id.*
30. AA1921-169,-170,-171,-172, USITC Publ. 840 (1977), at 9. *Compare* the GATT Antidumping Code which requires a showing of "material" injury; *see Hudec, United States Antidumping Law and the GATT Antidumping Code, post*, particularly text accompanying notes 52-55.
31. AA1921-133, USTC Publ. 640 (1974), at 7 (emphasis added). *See also* Parts of Self-Propelled Bituminous Paving Equipment from Canada, AA1921-166, USITC Publ. 824 (1977), at 10 (Minchew and Ablondi concurring: "While it is possible to conclude that some elements of injury may be present, the extreme profitability of the industry, under conditions of no competition except from one foreign producer, make it impossible for me to conclude that the industry is being injured.")
32. *Supra* note 11, at 26.
33. AA1921-134,-135, USTC Publ. 639 (1974), at 7. *See* Commissioner Ablondi's opinion for a cogent discussion of the "cumulative impact" policy of the Commission. *Id.* at 22-24.
34. *Supra* note 30, at 5. *See also*

- views of Commissioner Parker at 9–10, Commissioner Ablondi at 15.
35. See, e.g., Portland Cement from the Dominican Republic, AA1921–25, USITC Publ. 87 (1963); Coudert, *supra* note 4, at 207.
  36. See Portland Cement from the Dominican Republic, *supra* note 35. “The Commission majority found that past dumping practices by the foreign producers (implying a predatory intent), and the capacity and the incentive of the producer to continue dumping practices, were sufficient to sustain an affirmative determination of likelihood of injury.” Long, *supra* note 25, at 473. See also Rayon Staple Fiber from Belgium, *supra* note 10, at 7.
  37. Coudert, *supra* note 4, at 207.
  38. *Id.* For a rebuttal to this type of analysis, see the dissent of Commissioners Alberger and Ablondi in Rayon Staple Fiber from Belgium, *supra* note 10, at 10.
  39. Metal Punching Machines from Japan, *supra* note 31, at 5; see also Chromic Acid from Australia, *supra* note 18; Lock-In Amplifiers and Parts Thereof from the United Kingdom, *supra* note 23; Acrylic Sheet from Japan, AA1921–154, USITC Publ. 784 (1976); Pressure Sensitive Plastic Tape from Italy, AA1921–167, USITC Publ. 830 (1977); Animal Glue and Inedible Gelatin, *supra* note 30; Railway Track Maintenance Equipment from Austria, AA1921–173, USITC Publ. 844 (1977); Rayon Staple Fiber from Belgium, *supra* note 10.
  40. Acrylic Sheet from Japan, *supra* note 39; Railway Track Maintenance Equipment from Austria, *supra* note 39.
  41. Melamine in Crystal Form from Japan, AA1921–162, USITC Publ. 796 (1976) (a 6 percent decline in the industry price level; held injurious).
  42. Welt Work Shoes from Romania, AA1921–144, USITC Publ. 731 (1975); Portable Electric Typewriters from Japan, *supra* note 9.
  43. Hollow or Cored Ceramic Brick from Canada, *supra* note 6.
  44. Acrylic Sheet from Japan, *supra* note 39; Certain Automotive and Motorcycle Repair Manuals from the United Kingdom, AA1921–Inq.–19, USITC Publ. 913 (1978); Perchloroethylene from Belgium, France, and Italy, AA1921–Inq.–14, –15, –16, USITC Publ. 904 (1978); Pressure Sensitive Plastic Tape from Italy, *supra* note 39; Animal Glue and Inedible Gelatin, *supra* note 30; compare Certain Nylon Yarn and Grouped Nylon Filaments from France, AA1921–185, USITC Publ. 922 (1978). It should be noted that the relevant market is the United States consumptive market. In cases where a particular commodity (usually a chemical input or material used to synthesize the final product) is produced and consumed within a vertical industry without entering the competitive market, this productive capacity will not be included when defining the competitive market. Therefore, the degree of market penetration will be more significant. See Melamine in Crystal Form from Japan, *supra* note 41.

45. Portland Cement from the Dominican Republic, *supra* note 35; Acrylic Sheet from Japan, *supra* note 39; Chromic Acid from Australia, *supra* note 18.
46. *Supra* note 20.
47. *Supra* note 9, at 4.
48. AA1921-151, USITC Publ. 764 (1976), at 5. The Commission found no signs of injury. Yet, the language of the decision clearly indicates that even if significant signs of injury were discernible, a miniscule degree of market penetration will not satisfy the requirement that the LTFV sales caused the injury.
49. Hot-Rolled Carbon Steel Wire Rods from Belgium, AA1921-27, USTC Publ. 93 (1963), at 4.
50. AA1921-182, USITC Publ. 906 (1978). *See also* Certain Nylon Yarn and Grouped Nylon Filaments from France, *supra* note 44 (unanimous decision of no injury by four commissioners, despite significant dumping margins and market penetration).
51. *Supra* note 10.
52. *Id.* at 7.
53. *Id.*
54. Calcium Pantothenate from Japan, AA1921-131, USTC Publ. 630 (1973); Racing Plates from Canada, *supra* note 10.
55. Portland Cement from the Dominican Republic, *supra* note 35; Acrylic Sheet from Japan, *supra* note 39.
56. *Supra* note 9. *See also* Welded Stainless Steel Pipe and Tube from Japan, AA1921-180, USITC Publ. 899 (1978) (opinion of Commissioners Alberger and Minchew).
57. AA1921-160, USITC Publ. 794 (1976).
58. Standard Household Incandescent Lamps from Hungary, *supra* note 10; *see also* Lock-In Amplifiers from the United Kingdom, *supra* note 23; Commissioner Minchew's opinion in Hollow or Cored Ceramic Brick from Canada, *supra* note 6.
59. *See* Commissioner Moore's opinion in Primary Lead Metal from Canada, *supra* note 33; Standard Household Incandescent Lamps from Hungary, *supra* note 10 (*but see* dissent of Commissioners Parker and Ablondi); Rayon Staple Fiber from Belgium, *supra* note 10; Sorbates from Japan, *supra* note 9.
60. Sorbates from Japan, *supra* note 9.
61. Lock-In Amplifiers from the United Kingdom, *supra* note 23; Certain Automotive and Motorcycle Repair Manuals from the United Kingdom, *supra* note 44; Portable Electric Typewriters from Japan, *supra* note 9; Impression Fabric of Manmade Fiber from Japan, AA1921-Inq.-6, USITC Publ. 810 (1977); Pressure Sensitive Plastic Tape from Italy, *supra* note 39; Perchloroethylene from Belgium, France and Italy, *supra* note 44.
62. *See, e.g.*, Certain Automotive Repair Manuals from the United Kingdom, *supra* note 44. It should be noted that in a rather radical interpretation of this criterion, Commissioners Ablondi and Moore dissented in Portable Electric Typewriters from Japan, *supra* note 9, saying that although the complainant was operating profitably, it had lost sales which would have made it even more profitable; thus injury had been suffered under this particular standard.

63. Baier, *Substantive Interpretation Under the Antidumping Act and the Foreign Trade Policy of the United States*, 17 STAN. L. REV. 409, 420-421 (1965).
64. Acrylonite-Butadiene-Styrene Type of Plastic Resin from Japan, AA1921-132, USTC Publ. 638 (1974) (Japanese imports accounted for only 0.5 percent of the United States apparent consumption).
65. *Supra* note 41, at 9-10, based on S. REP. No. 1298, *supra* note 17, at 4-5; *see also* Parts of Self-Propelled Bituminous Paving Equipment from Canada, *supra* note 31; (Commissioners Moore and Bedell).
66. *See, e.g.*, Animal Glue and Other Inedible Gelatin, *supra* note 30 (Minchew, dissenting; Ablondi, concurring in part, dissenting in part); Impression Fabric of Manmade Fiber from Japan, *supra* note 61 (Minchew, dissenting); Railway Track Maintenance Equipment from Austria, *supra* note 39, at 12 (Ablondi and Minchew dissenting: "any sales which United States producers may have lost to RTME imports from Austria may not be attributable solely to the LTFV margins" [emphasis added].) *See also* Perchloroethylene from Belgium, France and Italy, *supra* note 44, at 16 (Alberger and Ablondi, dissenting: "Data compiled by the Commission do not support the contention that United States producers have been forced to lower their prices solely as a result of price reductions by importers of perchloroethylene" [emphasis added].)
67. *Supra* note 42, at 5 [emphasis added].
68. AA1921-136, USTC Publ. 642 (1974).
69. Lock-In Amplifiers from the United Kingdom, *supra* note 23. *See also* Metal Walled Swimming Pools from Japan, AA1921-165, USITC Publ. 821 (1977), at 14, where Commissioners Ablondi and Minchew dissented: "These figures make clear that the depressed state of production affairs for the domestic industry resulted not from LTFV import sales, but rather because of the prevailing domestic market patterns during the period in question." *See also* Commissioners Minchew, Ablondi, and Leonard dissenting in Melamine in Crystal Form from Japan, *supra* note 41, saying that economic recession caused the alleged harm to the United States industry, despite the 60 percent LTFV margins and 6 percent decline in United States prices.
70. *Supra* note 39, at 5-6 [emphasis added].
71. *Supra* note 41.
72. *Supra* note 10, at 5.
73. *See* Butadiene Acrylonitrile Rubber from Japan, *supra* note 48.
74. *Supra* note 31, at 6. *See also* Alpine Ski Bindings from Austria, Switzerland and West Germany AA1921-156,-157,-158, USITC Publ. 786 (1976), where the ITC did not find injury and 3 Commissioners stated that "[b]ecause of the substantial qualitative diversity in Alpine ski bindings, it is not possible to directly compare the price of bindings imported at LTFV with the price of domestically produced bindings. . . . [I]t is apparent that

- factors such as safety and performance features are more important than price in the ultimate determination as to which Alpine ski binding is purchased." *Id.* at 14.
75. *Supra* note 39.
  76. *Id.* at 12, A15.
  77. Certain Nylon Yarn and Grouped Nylon Filaments from France, *supra* note 44 (noting that the questionnaires indicated that the quality and availability of the French product, as well as the desire to develop an alternative source of supply, were more important than price differentials to United States purchasers). Compare Commissioners Moore and Bedell in Animal Glue and Other Inedible Gelatin, *supra* note 30, at 7 (customers indicated that they used the lower prices offered by LTFV importers to apply pressure on United States producers to lower their prices).
  78. Applebaum, *The Antidumping Laws—Impact on the Competitive Process*, 43 ANTI-TRUST L.J. 590, 600 (1974).
  79. Report of the Subcommittee, *supra* note 7 at 672, relying on Steel Jacks from Canada, *supra* note 9; Instant Potato Granules from Canada, AA1921-97 USTC Publ. 509 (1972).
  80. *Supra* note 41.
  81. See also Rayon Staple Fiber from Belgium, *supra* note 10, at 7, where the ITC noted that "[t]he very large LTFV margins (57.6%) applicable to Fabelta's exports to the United States strongly suggest that Fabelta is willing to make LTFV sales when it is necessary to do so in order to sell its staple."
  82. *Supra* note 69.
  83. AA1921-33, USTC Publ. 122 (1964).
  84. This decision was subsequently criticized as having been too quick to find the likelihood of injury. See Coudert, *supra* note 4, at 216.
  85. *Supra* note 9, at 4-5.
  86. Sorbates from Japan, *supra* note 9.
  87. Iron and Sponge Iron Powder from Canada, *supra* note 68; Welt Work Shoes from Rumania, *supra* note 42, Hollow or Cored Ceramic Brick from Canada, *supra* note 6.
  88. *Supra* note 10.
  89. *Supra* note 39, at 12 (dissent of Chairman Leonard and Commissioners Minchew and Ablondi).
  90. *Id.*
  91. *Supra* note 48.
  92. Acrylonitrile-Butadiene-Styrene Type of Plastic Resin from Japan, *supra* note 64, and for Portable Electric Typewriters from Japan, *supra* note 9. The ITC therefore effectively adopted the position expressed in the dissent in Primary Lead Metal from Canada, *supra* note 33.
  93. See, e.g., Elemental Sulphur from Mexico, AA1921-92, USTC Publ. 484 (1972).
  94. See Barceló, *The Antidumping Law: Repeal It or Revise It, ante*, at text accompanying note 69.
  95. *Supra* note 50.
  96. *Id.* at A9, A14, A17-18.
  97. *Id.* at 5; see also Commissioner Parker, concurring, at 9.
  98. *Id.* at 5.
  99. See Barceló, *The Antidumping Law: Repeal It or Revise It, ante*; Gibson, *Proposals for Change in the Administration of the Antidumping Act, ante*.
  100. See S. REP. No. 1298, *supra* note 17.