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The Antidumping Act: Proposals for Change

NOEL HEMMENDINGER

THE LONG VIEW

The Antidumping Act¹ is in great trouble. Most of its troubles flow from a basic misconception about the role of an antidumping proceeding. A dumping case is sometimes looked on as analogous to private party litigation in which domestic producers seek to vindicate "rights" being injured by foreign exporters. In another view, it is sometimes regarded as analogous to a criminal proceeding in which the United States condemns and punishes certain methods of foreign price competition as "unfair." In my view, it is preferable to look at an antidumping proceeding as a method of resolving a conflict in the execution of the economic foreign policy of the United States.

It is not feasible to attempt to characterize most methods of price competition as "fair" or "unfair," depending on the price charged in the home market. While egregious sales below home market prices are readily apparent, in many cases it is not known to anyone, including the foreign producer itself, whether sales are at less than fair value (hereinafter LTFV) under the American law until an exhaustive investigation has taken place. Even then, the decision is frequently arbitrary and capricious, because it depends so much upon the skill and pertinacity with which the data are presented on both sides and with which they are evaluated by the Customs Service and the Treasury Department.

The Antidumping Act tends to discourage a large segment of normal, rational business behavior. Discrimination in pricing among different markets is a norm of business practice; a major entrepreneur who does not enjoy monopoly power in all its markets cannot avoid it. Low pricing violates the laws governing unfair competition

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only if it is predatory—designed to drive competitors out of business with a view to, and the capability of, monopolizing the market.² Not all unfair prices, as defined in antidumping laws, constitute unfair competition. Predatory intent cannot be inferred from pricing below the prices in the home market, but only from prices at less than marginal variable cost.

The difference between fair and unfair is also irrelevant to the welfare of the importing country. Again excepting predatory dumping, the effect on the economy of the importing country is the same whether the home market of the imported product is above or below the import price. When objection is taken to the effects of imports in our market, we should consider what those effects have been, and whether they are good or bad; only secondarily, if at all, should we consider the circumstances abroad that generated the imports.

The view that an antidumping case is an act of economic policy suggests that it may often not be in the country's best interests to proceed with the investigation. Simply beginning an antidumping investigation may have such a deterrent impact on importers that imports vital to the United States economy are dried up. Treasury already recognizes that the prosecution of an antidumping investigation may be undesirable. In 1976 the Secretary discontinued the massive automobile cases on unprecedented grounds; basically, he felt that it did not serve the United States' best interests to proceed.³ Similarly, Treasury devised the Trigger Price Mechanism (hereinafter TPM) to avoid having to carry through a multiplicity of investigations of steel imports.⁴ Not only are the formal investigations complex and time-consuming, more importantly, rigorous enforcement of the Act would have virtually stopped steel imports, to the detriment of the United States economy.

To understand the deterrent effect of a dumping complaint it is necessary to understand the uncertainties and risks faced by the importer. The uncertainty may last for thirteen months (sixteen months, if Treasury extends the investigation in a complex case).⁵ After a determination of LTFV sales has been made, appraisal is withheld on the imports in question and the importer must post bond equal to the entire value of the imported goods.⁶ This can quickly become very expensive, and can very quickly shut off imports. But even before the final LTFV determination, the mere filing of a dumping complaint inhibits imports.

There may be cases in which importers have continued an injurious dumping trade up until the last moment before suspension of appraisal, and even increased shipments to beat a deadline. However, a more common consequence is that exporters try only to complete outstanding contracts and immediately become cautious in making new contracts. They do not want to be tagged as dumpers,

and they want to create the best possible image to encourage either discontinuance by Treasury or a no-injury finding by the ITC. Another common response by the dumper is to raise prices to a level safe from charges of dumping. Either way, simply beginning a dumping investigation has a chilling effect on competitive sales. This chilling effect has on occasion been strong enough to actually risk harm to the United States economy, and to require in the national interest that steps be taken to discourage or discontinue dumping investigations.

For these reasons, proceedings under the Act should not be regarded as simple law enforcement, but rather as involving a complex exercise in administrative discretion. To treat them as law enforcement is part of a broad trend in the United States toward dealing with almost every problem through legal proceedings in which there are rights, remedies, hearings, discovery, appeals, and all the other paraphernalia of the modern legal process. The antidumping proceeding has become a form of litigation, and the more it acquires the paraphernalia of litigation, the more it becomes unsuitable to the problem. In this respect, it is not entirely different from the attempt to regulate other types of trade through massive suits under the anti-trust laws.

Treasury's bureaucratic response has changed from an administrative proceeding virtually run out of the pocket of a Deputy Assistant Secretary and frequently discontinued upon assurances that the low pricing would cease, to an administrative proceeding with confidential and nonconfidential records, formal disclosures, hearings, and appeals. Originally, it was possible to represent an entire foreign industry for several months of a lawyer's time, with an equivalent expenditure on the complainant's side. Today, a modest antidumping proceeding involving a number of foreign companies will usually include a law firm for each company and repeated submissions representing years of lawyers' time, just for the Treasury proceedings.

Like some other forms of litigation, the antidumping proceeding is a juggernaut that cannot be turned off. It also consumes vast amounts of time for the government staffs involved.

Despite the adversary character of the modern antidumping case, it remains fundamentally an administrative investigation involving the collection and evaluation of economic data, first by the Treasury Department and second by the ITC. If the proceedings are to be manageable, it is necessary to place limits on the extent to which the evidence and the argument can be strung out, to place limits on the elaboration of rules, both substantive and procedural, and to accept with as good grace as possible the fact that whether they come quickly or at great length, the results will reflect fallible human judgments. Most importantly, it is necessary to incorporate into the administration of the law

considerations of the public interest, which the statute does not presently recognize, extending beyond the question whether a particular American industry is injured by the importations at the margins in question. When major industries are involved, it will frequently be true that the best way of dealing with the problem is a negotiation with the foreign countries most concerned. This is, in effect, what has been done in the case of steel, although the TPM has a somewhat unilateral flavor.

Because an antidumping proceeding involves the exercise of public power to promote the country's economic welfare, the appropriate investigation should be much broader than the narrow questions of LTFV sales and injury to domestic producers. As noted above, the proper line of investigation is to consider all of the effects of the imports, and whether those effects are good or bad. Such an examination would be a two-part inquiry. First, are imports indeed threatening the viability of a domestic industry. Second, if there is such injury, what measures, if any, should be taken to protect the industry, taking into account all circumstances of the trade and all elements of the national interest? By coincidence, we already have on the books a law requiring exactly that inquiry—section 201 of the 1974 Act, familiarly known as the escape clause.⁷

It is curious that recent pronouncements on foreign economic policy have characterized invocation of the escape clause as contrary to free trade principles, while companies and industries complaining of import competition have been exhorted to invoke laws that are actually more protectionist, such as the Antidumping Act, the countervailing duty law and other laws against unfair competition.⁸ This is in spite of the fact that under the escape clause the President would have the authority to weigh all the interests concerned and to use with flexibility all of the conceivable instruments of control; conversely, the only antidumping remedy is the assessment of special duties to offset the claimed unfairness, and neither the President nor the Secretary of the Treasury has any final authority to take into account other elements of the national interest.⁹

There is a reason for such apparent irrationality. If it is up to the President to decide whether imports are to be restricted, and therefore also to decide whether any particular domestic industry shall be protected, an onerous political burden is placed on the President from which he must be shielded. This shield, however, cannot be complete; if the consequences of the antidumping remedies are unacceptable, the President may still find it necessary to intervene, as he did through the TPM for the steel industry.¹⁰

The escape clause already fulfills all of the sound purposes of an antidumping act, without the overly protectionist consequences of the Antidumping Act. The United States would save itself many

headaches, both foreign and domestic, and would achieve more sensible results, if it were to repeal the Antidumping Act and look chiefly to other avenues for dealing with the problems raised by imports at prices the domestic industry finds oppressive.

THE NEAR VIEW

It is out of the question that Congress will repeal the Antidumping Act, or even revise it along lines suggested here, in the foreseeable future. It is therefore necessary to consider measures that have some chance of success in the medium and short term.

A Single Form of Proceeding

The most interesting of these is an idea that seems to have taken hold in a number of different places—the adoption of a single form of proceeding to obtain relief from imports.¹¹ Such a single proceeding would relieve the petitioners of the risk and burden of selecting one or more types of proceedings. Under present law, it can be very difficult to determine what statutory remedy should be sought. While there is no theoretical bar to seeking relief through all channels at once, this is inordinately expensive and is likely to create resistance on the part of the triers of fact and lead to justified importer complaints of harassment.

After application to the ITC, the Commission would conduct a preliminary investigation. If warranted, it would request a foreign investigation conducted by Treasury. The Commission would report its findings on the effect of imports on the domestic industry to the President, and, if necessary, would make recommendations about relief, which could encompass all of the options now available under a number of existing laws. Although it would be possible to draft a statute that would preserve all of the standards and remedies of existing laws, it would make more sense to modify them into a more consistent pattern. The only substantive change that this limited proposal would effect would be to give the President the last word in all cases, including antidumping and countervailing duties cases. Congress would probably also insist on an override provision.

Settlement of Dumping Cases

The resolution of dumping cases by settlement should be encouraged at all stages of the proceeding. If a dumping dispute is seen as a problem in the economic foreign policy of the United States, then we should be receptive to resolution by negotiation with the interested foreign parties (including the foreign government, if it chooses).

Treasury went too far some years ago when it tightened the rules with respect to discontinuances.¹² A case need not proceed to a dumping finding, with the consequent administrative burdens on both the Customs Service and the firms, to discourage excessively low prices. Normally companies charged with dumping are quite willing to reconsider their prices. The moment Treasury has word that a dumping complaint is being filed, it should notify the foreign government concerned. Treasury should seek agreement on the part of the foreign industry concerned (with or without the participation of its government) that dumping will not take place. This procedure should be analogous to a consent order in judicial and Federal Trade Commission cases—without admitting any violation, the business concerned would agree that the acts complained of would not take place in the future.

Safeguards are needed to prevent a settlement procedure from becoming simply a device for private anticompetitive agreements. Complaining parties must be given a reasonable voice in any such procedure, but they should not be given a veto. The antitrust problem of private contacts is a real one, but it may not be as anticompetitive as the drying up of foreign competition that so often accompanies the mere institution of an antidumping investigation. The present attitude in these matters by the Antitrust Division of the Department of Justice appears to be that contact between the respective private parties must be sedulously avoided. This attitude is excessively cautious. What should be enforced fully is the requirement that any arrangements be fully approved by the appropriate United States government authorities.

Specific Changes in the Law and Practice

There has been much criticism in the Congress recently suggesting that the administration of the Act has been ineffective and that both the law itself and its administration need to be tightened. Far from being an ineffective instrument for protecting American producers unfairly injured by imports, the Act is too effective, and involves at least four specific forms of overkill that should be eliminated from the law.

Collection of Provisional Duties

After dumping findings have been made, the Treasury Department and Customs Service have sometimes been unable to assess the dumping duties. This was most notable in the television cases.¹³ To make collection easier and to provide a further deterrent to dumping, a proposal has been seriously advanced that provisional dumping duties be fixed and collected at a preliminary phase of the investigation, based on margins found in the LTFV phase, rather than after

final determination.¹⁴ In my opinion this proposal misses the real problems—the inherent complexity of the determination of dumping duties, insufficient personnel assigned to the task, and consequent breakdown of the administrative process. If the post-dumping finding master lists are promptly prepared, this problem will disappear. In any event, any estimated duties must in fairness take account of the latest data submitted.

Comparison of Each Export Transaction with Average Home Market Prices

Treasury regulations provide that unless there is a clear preponderance of merchandise sold at the same price in the home market, Treasury will compare prices of sales in the United States to an average price in the home market.¹⁵ If one imagines a simple model in which the average price in the home market for a given period is exactly the same as the average price for export to the United States, then one half of the sales for export must be at LTFV margins. Thus it is common that, under the administration of the United States law, dumping is found where, by any normal test, there is no dumping, and the margins found exceed the true margins. This result is not required by the statute, and it can easily be remedied by changing the regulation.

After the investigation is complete and a finding of dumping has been made, Treasury does not follow the averaging technique in assessing dumping duties, but looks for a sale in the home market with which to compare each entry into the United States. This practice should be adapted to the fair value phase of the investigation. LTFV sales should not be found if, in comparing the band of export sales with the band of home market sales, there exists a home market sale corresponding to the export sale under examination.

Difference in Circumstances of Sale

If it is established to the satisfaction of the secretary that the difference between the home market price and the export price is “wholly or partly due to . . . differences in circumstances of sale . . . then due allowance should be made therefor.”¹⁶

The regulations put an unjustified limitation on the statute’s unambiguous words by providing that “differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.”¹⁷

This small difference in language results in rejection of selling and distribution costs that are clearly different and can readily be calculated under accepted accounting principles. For example, where a company has a domestic but no overseas distribution network,

comparison to domestic costs and prices will lead to a finding of LTFV sales where there really were none.¹⁸

Section 205(b) Relating to Sales in the Home Market below Cost of Production

In the 1974 Act, the Antidumping Act was amended to add section 205(b), 19 U.S.C. § 164(b).

Whenever the Secretary has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, he shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the Secretary determines that sales made at less than cost of production (1) have been made over an extended period of time and in substantial quantities, and (2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value the Secretary shall determine that no foreign market value exists and employ the constructed value of the merchandise in question.¹⁹

The corresponding regulations track the statute, but add the following sentence: "The cost of production ordinarily will be computed on the basis of the actual costs of materials, labor and general expenses, excluding profit, or, if necessary, on the basis of the best evidence available."²⁰ In addition, Treasury has ruled that "an extended period of time" refers to a complete business cycle for the industry in question.²¹

Section 205(b) raises two questions. Is the underlying premise that sales below cost are *ipso facto* below fair value sound? Is the legislative technique by which the unfairness is countered sound?

The situation attacked by this section—where the producer sustains sales in both home and export markets at prices that do not cover full cost—has not been regarded as dumping in the classic definition.²² Section 205(b) is not only inconsistent with United States international obligations based on the classic definition; it is also undesirable in its own right, as removing from the scope of international negotiation an area that is particularly suited for resolution by international agreement.

Technically, section 205(b) is inconsistent with United States obligations as set forth in the GATT and in the International Dumping Code. Article VI of the GATT provides that the comparison shall be made with "the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, in the absence of such domestic price, . . ." by third country sales or cost of production.²³

Article VI is unambiguous; if there are domestic sales, they must be used. The Antidumping Code expression "if such sales do not permit a proper comparison"²⁴ was intended to legitimize the practice of disregarding home market sales if they were too few to constitute a comparable market; the phrase cannot be stretched to justify disregarding a large number of domestic sales, made in the usual course of trade, on the ground that they are below average costs. So drastic a change cannot be read into a general expression of this sort. Nor can it reasonably be argued that below-cost sales are *ipso facto* not in the usual course of trade.

Aside from its inconsistency with United States international obligations, the practice of treating sustained sales below full cost as *ipso facto* below fair value is an undesirable extension of dumping principles. The situation can arise only in the exceptional circumstance, such as afflicted the world steel industry in 1975 and 1976, in which basic industries operate below capacity due to insufficient world demand, had no way to operate profitably under conditions of free competition until demand improved, and for reasons of national policy could not be allowed to go out of business. Such a situation calls for government-sponsored international regulation, which is what happened in the steel sector. The United States adopted the TPM and the EC adopted the Davignon Plan,²⁵ amid extensive international consultations.

The TPM is, in theory, founded on Treasury's right to institute proceedings under the Act.²⁶ But the mechanism is so free an adaptation of the United States law that it cannot be said to demonstrate the validity of section 205(b). For instance, the TPM is based upon the cost as calculated, with major judgmental variations, of the supposedly most efficient producing country, Japan. It is a very broad application of the Act to apply those costs to all sources exporting to the United States, and the judgmental variations permit Treasury to vary the trigger prices in response to various objectives, such as allowing enough imports to serve the needs of the United States market and dampening undue inflationary price effects.

It would have been simpler to provide in section 205(b) that exports to the United States at prices below full cost were *ipso facto* below fair value without regard to whether or not they were below home market or third country prices. Probably most of the legislators

thought they were so providing. The actual drafting technique was to provide that below-cost home market (or third country) sales are to be disregarded, leaving constructed value or cost of production as the basis of comparison, if remaining home market (third country) sales are insufficient as a basis.

Constructed value is not always applied, because there are often enough sales above cost in the home market to be a basis of comparison. This aggravates the unfair comparison of each export sale with average home market sales discussed above. Section 205(b) requires Treasury to disregard certain prices that are below cost in arriving at the average home market price. The result is to introduce a double bias. Each export to the United States is compared with a group of sales necessarily above average in the home market.

This particular legislative technique was probably meant to help reconcile section 205(b) with the GATT and the Antidumping Code, discussed above. Had it frankly stated that below cost export sales were below fair value, it would clearly have been inconsistent with those international agreements.

For the reasons indicated, section 205(b) should be eliminated from the Act, and problems of widespread overcapacity in basic industries should be dealt with through international negotiations. In the absence of legislative modification, two changes in Treasury Department practice are recommended.

First, Treasury should find the home market price for a particular article in the usual way, using average or predominant price, and then apply section 205(b) only if that price is below cost of production; even then, Treasury should exclude only those sales that bring the average price to below cost.

The effects of this section can also be mitigated by a high threshold test. As a matter of statutory construction, the words "reasonable grounds to believe or suspect" in section 205(b) could be construed *in pari passu* with the expression "reason to believe or suspect" used in section 201(b) of the Antidumping Act, which relates to the preliminary LTFV determination made after six months of investigation. The latter finding is made upon a substantial evidentiary record, as Congress was well aware when it enacted section 205(b). There is a strong argument, therefore, that the Secretary should require a similarly strong evidentiary record of below-cost sales before he investigates the cost of production. Treasury's practice has been to decide to investigate the cost of production upon fairly thin allegations in the complaint. A decision at that early point is not necessary. The Secretary has authority to extend investigations to nine months, and this could be the normal course where cost of production is investigated. Only after a strong showing by complainants, thoroughly reviewed by Treasury, or after the initial stages of an investigation have disclosed good

reasons, should there be an investigation of cost of production. Treasury should also make public the charges of sales below the cost of production, and invite comments from interested parties before deciding to initiate a cost of production investigation.

CONCLUSION

This article falls far short of doing justice to a subject that acquires more and more complexity the more it is examined.²⁷ Because the litigationlike procedures of the Antidumping Act are basically unsuited to the resolution of the problems for economic foreign policy presented by dumping, it should be either repealed or significantly amended. The escape clause, section 201 of the 1974 Trade Act, is much better suited for vindicating the national interest in cases in which domestic producers suffer from foreign competition.

Since repeal is politically unlikely, a number of changes should be made in either the practice or the law itself to streamline proceedings, hasten resolution, and allow for more comprehensive consideration of the national interest than is permissible under the current law and practice.

NOTES

1. Ch. 14, tit. II, 42 Stat. 11 (1921), *as amended*, 19 U.S.C. §§ 160-73 (1976).
2. For an exposition of the position that antidumping laws should deal only with predatory dumping, see Barceló, *The Antidumping Law: Repeal It or Revise It*, *ante*.
3. New, On-the-Highway, Four-wheeled, Passenger Automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany, AA1921-Inq.-2, USITC Publ. 739 (1975); the Secretary discontinued the investigation, 41 Fed. Reg. 34,982 (1976).
4. The Trigger Price Mechanism was implemented through the following actions:

12/30/77	42 Fed. Reg. 65,214	Proposed Rulemaking
1/9/78	43 Fed. Reg. 1,464	Implementation
2/3/78	43 Fed. Reg. 4,703	Announcement of Extras
2/13/78	43 Fed. Reg. 6,065	Implementation of Special Summary Steel Invoice (SSSI)
3/2/78	43 Fed. Reg. 8,657	Revision of Extras
3/27/78	43 Fed. Reg. 12,783	Additional Prices and Extras
4/28/78	43 Fed. Reg. 18,383	Additional Prices and Extras
5/10/78	43 Fed. Reg. 20,070	Quarterly Revisions
5/31/78	43 Fed. Reg. 23,669	Adjustment of Handling Charges

7/27/78	43 Fed. Reg. 32,710, 32,713	Price Revisions and Quarterly Revisions
8/2/78	43 Fed. Reg. 33,993	Price Revisions
10/16/78	43 Fed. Reg. 47,543	Proposed Changes in the Special Summary Steel Invoice (SSSI)
10/17/78	43 Fed. Reg. 47,809	3d and 4th Quarter TPM Manual
11/22/78	43 Fed. Reg. 54,710	Quarterly Revisions

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5. 19 C.F.R. § 153.32 (1977).
 6. 19 C.F.R. § 153.35 (1977); 19 C.F.R. § 153.51(b) (1977).
 7. Section 201, Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975), *codified at* 19 U.S.C. § 2251 (1976).
 8. *See Steel Strategy Backlash* N.Y. Times, Nov. 3, 1977 § D (Business) at 1.
 9. It has also been regarded as important that Title III remedies are directed at the particular country, foreign industry or even foreign company, while Title II unilateral remedies are directed against imports from particular sources. However, most-favored-nation treatment, which is not required by United States law, may well be modified as to international obligations (Article I of the GATT) by the current Multilateral Trade Negotiations and is frequently avoided by use of negotiated Orderly Marketing Agreements under section 203(a)(4) of the 1974 Trade Act.
 10. A.M. Solomon, A Comprehensive Program for the Steel Industry (Report to the President, Dec. 6, 1977).
 11. *Cf.* author's testimony, *Trade Reform Act of 1973, Hearings before the Senate Finance Committee*, 93d Cong., 2d Sess. 1941 (1974).
 12. 35 Fed. Reg. 8,275 (1970); current regulations are to be found at 19 C.F.R. § 153.33 (1977).
 13. Television Receiving Sets from Japan, AA1921-66, USTC Publ. 367 (1971). For discussion of the collection problem, *see Administration of the Antidumping Act of 1921, Assessment and Collection of Duties Under the Antidumping Act of 1921, Hearings Before the Subcommittee on Trade of the House Committee on Ways and Means*, 95th Cong., 2d Sess. 9, 14 (1978) (testimony of Robert Mundheim, General Counsel of the Treasury Department; Customs Commissioner Chasen).
 14. 43 Fed. Reg. 58,384 (1978), proposing amendments to 19 C.F.R. §§ 153.31, 153.50, 153.54 (1978).
 15. 19 C.F.R. § 153.16 (1977).
 16. 19 U.S.C § 161(b), (c) (1976).
 17. 19 C.F.R. § 153.10 (1977).
 18. *See* Gibson, *Proposals for Change in the Administration of the Antidumping Act of 1921, post.*
 19. 19 U.S.C. § 164(b) (1976), enacted as § 321(d), Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975).
 20. 19 C.F.R. § 153.5 (1977).
 21. 42 Fed. Reg. 54,489 (1977).
 22. *See* J. VINER, *DUMPING: A PROBLEM IN INTERNATIONAL TRADE* 94-101 (reprint ed. 1966).
 23. Art. VI, General Agreement on Tariffs and Trade, October 30,

- 1947, 61 Stat. (5)(6), T.I.A.S. No. 1700, 55 U.N.T.S. 194, (effective Jan. 1, 1948), as amended, T.I.A.S. No. 1890.
24. Art. 2(d), Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, June 30, 1967, 19 U.S.T. 4348, T.I.A.S. No. 6431 (effective July 1, 1968).
 25. See SPOKESMEN'S GROUP, COMMISSION OF THE EUROPEAN COMMUNITIES, INFORMATION MEMO P-33 (Apr. 1977).
 26. Davis Walker Corp. v. Blumenthal, No. 78-0421 (D.D.C. May 25, 1978), reprinted in 17 INT'L LEGAL MATERIALS 992 (1978).
 27. Since this article was prepared, amendments to the Antidumping Act have been negotiated between the executive branch and the Senate Finance Committee and House Ways and Means Committee, and are to become law as part of the Trade Agreements Act of 1979. H.R. 4537, S. 1376; see H.R. No. 96-317, 96th Cong., 1st Sess. (1979).

The bill, which completely reenacts the Antidumping Act, is designed to implement the Multilateral Trade Negotiation, in which the International Antidumping Code was amended to conform to the Subsidies Code in relevant particulars. However, the antidumping amendments are mainly designed to tighten procedures under the Act in response to congressional criticism of alleged laxity on the part of the Treasury Department.

The changes intensify the trends toward treating an antidumping proceeding as private litigation which are deplored in this article.

The amendments shorten time limits and impose limits for the first time on the period for assessing duties after a dumping finding, require deposit of estimated duties after the dumping finding, give the complainants greater opportunity to participate in the proceedings (notably by access to confidential data under protective order), revise procedures for "suspension" (previously known as "discontinuance") and provide many opportunities for appeals to the Custom Court of both interlocutory and final decisions of both the administering authority (so-called because the price-cost investigation may be transferred from Treasury Department) and the International Trade Commission.

The partial overlapping of the LTFV phase and the ITC investigation will shorten proceedings, and the suspension procedures will become applicable regardless of dumping margins, which is a desirable step toward facilitating settlement. However, the suspension proceedings are so overdrafted and hemmed in by restrictions that they are of doubtful value unless further amended. See statement of Noel Hemmendinger dated July 17, 1979, submitted to the Senate Finance Committee in connection with its July 10, 1979, hearing on S. 1376.

The new law will incorporate the test of "material injury" in lieu of just "injury," as long provided in the GATT. However, the legislative history indicates that no great change in the actual picture is expected.