

to attract and include the foreign product alongside with the domestically produced item. The domestic industry may not have been able to expand rapidly enough to fill all needs, and consumers' tastes may have been influenced in favor of the import. And foreign producers may well have improved their competitive position in the American market prior to the lowering of trade barriers, for price is only one dimension of competition.

The Tariff Commission, as a result of its escape clause decisions² and other investigations, has in effect built up a set of precedents which can provide guidelines in deciding new cases of injury inflicted or threatened.

The major problem in making determinations in the past has centered on the question of whether a domestic industry "producing like or directly competitive products" was being, or was about to be, seriously injured. In the 1951 Trade Agreement Extension Act, serious injury could be found, when, among other things, there was "* * * a decline in the proportion of the domestic market supplied by domestic producers." Prior to the passage of the 1955 Trade Agreement Extension Act, a minority of the Tariff Commission had tended to assign heavy weight to this criterion, particularly in cases where a decline in the share of domestic producers in the home market was accompanied by other unfavorable developments in the domestic industry. This so-called share doctrine was made explicitly part of the law in the 1955 act.³

In general, trend of production and level of profits have served as the key criteria for determining serious injury. But a low, consolidated net-profits-to-sales ratio for all firms in the industry, compared to that of similar industries, or of manufacturing as a whole, has been deemed, however strangely, more significant than a low ratio of profits to capital or a declining trend of profits. Yet a wide diversity in the profit experience of individual firms has been regarded by the Commission as evidence that the industry as a whole was not being seriously injured by imports. Increased imports have been considered as the cause of serious injury only when they have contributed "significantly" to a further deterioration of the industry's position.⁴

The question of whether, in examining profits, production, etc., the domestic industry should be defined as including all the operations of the constituent firms, or only those operations relating directly to the production of the article under investigation, has also given rise to difficulty. Prior to the 1955 act, the Commission generally tended to find injury in terms of the industry's overall operations. No injury was found, if owing to profits earned in the production of other goods, the industry continued to be profitable despite a decline in the production of the product under investigation and an increase in imports of that product.

² Sec. 7 of the Trade Agreements Extension Act of 1951, as amended. See the most recent version, act of August 20, 1958, 72 Stat. 673.

³ Increased imports, whether actual or relative, are now to be considered as the cause of threat of injury if they have contributed substantially toward causing or threatening injury to an industry or segment thereof. Thus, if an industry has not succeeded in maintaining its proportional share of the domestic market—regardless of whether that market has been shrinking or expanding—the industry may still cite this relative loss as evidence of injury.

⁴ The 1955 act substituted the word "substantially" for "significantly." An earlier version of the act had called for industry only to prove that it was being "materially" injured.