In the period January 1, 1955, to November 1, 1963, Treasury acted on 282 dumping complaints. In six cases, dumping duties were assessed. Of the other 276, sixty-two were terminated because the supplier voluntarily adjusted his prices; in 187, absence of price discrimination was found; and 27 cases, there was absence of injury. Thus, there were results favorable to complainants in 68 cases out of 282—or about one-fourth—although the price adjustments did not all result from the dumping complaints. However, appraisement was withheld in many more than a quarter of the cases, with considerable injury to the imports.

In fact, the great threat to the import trade from the Antidumping Act comes not so much from findings of injury and the consequent imposition of dumping duties since these actions have actually been infrequent, as from the withholding of appraisement when Treasury finds a suspicion of dumping. Withholding of appraisement means simply that the importers cannot know for an indefinite period what duties will be assessed and have great difficulty in completing their sales and entering into new contracts without undue risks. There are times when it simply puts a stop to all business. The evil is compounded by the fact that under the law the dumping duty, when assessed, is retroactive to entries 120 days prior to the date of the complaint. In actual fact, the Treasury Department has in recent years usually required more than a faint suspicion of dumping before withholding appraisement. Nevertheless, the record shows that in the great majority of cases where appraisement is withheld, in the end there is no assessment of dumping duties. The withholding of appraisement is itself a severe sanction that should be imposed only where the evidence strongly indicates sales at less than the home market price *and* that, under the principles and precedents laid down by the Tariff Commission, injury to an American industry is resulting.

Legislation is pending in the Congress, at the instance of United States steel, cement, and other industries, that would put a highly protectionist stamp on the Antidumping Act. Presented in the guise of plausible measures to improve procedures and close loopholes, the proposed amendments would give the United States industry access to the confidential data of the foreign supplier and give it virtually unlimited opportunities for harassment and delay, through withholding of appraisements and court proceedings. Fortunately, the Federal executive agencies are opposed to the bills and hearings, if held, will disclose the bias of the proposed changes.

If changes are to be made in the Antidumping Act, they should be in the other direction. For instance, the retroactive provision, found in the laws of only one other country, applying dumping duties to entries within one hundred twenty days before the complaint should be abolished; and the President should be given the right to veto or modify dumping findings in the United States national interest. Other desirable steps can probably be effected by the Treasury Department and the Tariff Commission through changes in regulations or practice: permit the exporter to reimburse the importer for the dumping duty; permit inclusion of deductions for selling and advertising costs in determining home market expenses; define the United States industry affected as nationwide, at least so long as dumping duties are nationwide.

NOTES

The U.S. law is the Antidumping Act of 1921 as amended, 19 U.S.C.A. §§ 160–173 (1960). The GATT provision is Article VI, which recognizes that imports at "less than the normal value" are to be condemned if they cause or threaten "material injury" or materially retard the establishment of a domestic industry and which defines normal value in terms of the home market price.

The fullest statement of actual practice under the Antidumping Act is in *Background Material for Remarks To Be Made at Georgetown University Law Center Forum, November 8, 1963, on the Antidumping Act,* by James Pomeroy Hendrick, Deputy Assistant Secretary of the Treasury. See also Masson and English, Supra, at 44; legislative history of the 1921 Act and 1954 and 1958 amendments; Viner, *Dumping: A Problem in International Trade* (1923); Ehrenhaft, *Protection Against International Price Discrimination,* 58 COLUM. L. REV. 44 (1958); Kohn, *The Antidumping Act,* 60 MICH. L. REV. 407 (1962); Hendrick, *The Future of the Antidumping Act,* address before the National Council of American Importers, May 22, 1963.

The case of *Titanium Dioxide from France* is T. C. Publication 109, September 24, 1963. The California soil pipe decision was *Cast Iron Soil Pipe from the United Kingdom,* October 26, 1955; see T.D. 53934.

The pending amendments referred to are contained in the Humphrey-Scott bill (S. 1318), Walter bill (H.R. 5692), and similar bills, sponsored at this writing by twenty-seven Senators and forty-eight Congressmen. A number of these bills, H.R. 6033, 6116, 6214, and 6517, would grant relief not only if an industry was injured but also if "the sales of a product of a member of such industry" were injured. The Humphrey-Walter bills would not affect the definitions of "injury" and "industry", but S. 2241 (Senators Allott and Dominick) would provide a conclusive presumption of injury if the imports complained of