

COMMENT To measure a decline the Commission would compare man-hours worked or wages paid during any three of the months from six months before the initiation of the dumping investigation to the conclusion of the injury investigation, with the average monthly level of such employment during the year ending on the date the Treasury investigation began. Section: 1 [201(b)(3)].

Test 4. Other Anticompetitive Effects

THE NEED To allow the Tariff Commission the necessary flexibility to deal with factors indicative of unfair competition other than those listed above, there is a need for a "basket" clause.

PROPOSAL Injury shall be found if imports determined by Treasury to be dumped:

Have been a contributing cause of any anticompetitive effects in any competitive market area.

COMMENT Market disruption which follows dumped imports could be sufficient to justify the imposition of dumping duties. The Commission also should be expected to consider the disruptive effects of dumped imports on established patterns of trade, customer relationships and market habits which force serious adjustments in the reasonably expected results of a business venture, to name a few examples. Section: 1 [201(b)(4)].

Defenses: A Necessary Clarification

No Domestic Sales Lost-- Under Test 1 the importer has a defense if he can show by clear and convincing evidence that the domestic industry would not have supplied that share of the market taken over by dumped imports even if no dumping had occurred. Section: 1 [201(b)(1)]. Meeting Competition--Meeting competition from other nondumped imports would not alone constitute a defense. Section: 1 [201(d)]. Predatory Intent --In recent years, the Commission has introduced into its determinations the irrelevant question of whether foreign merchandise was sold with predatory intent, as though this psychological inquiry had something to do with the question of injury to domestic industry. The Bill would make it clear that the exporter's or importer's intent is irrelevant. Section: 1 [201(d)].

COMMENT:

The last sentence of Article 3 (b) is a two-edged sword. On the one hand, U.S. industry has lost injury cases because of Tariff Commission focus on one or several factors. On the other hand, U.S. adherence to such multi-factored approach would preclude any future U.S. legislation to create several automatic injury tests which have been suggested by domestic industry. Without statutory tests such as those which are proposed by S. 1726 experience has shown that there is no assurance the Commission will find injury in even such obvious situations.