[Threat of Injury]

International Antidumping Code:

3 (e) A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause material injury must be clearly foreseen and imminent.[1]

[1] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

Antidumping Act, 1921, As Amended:

Section 201 (a) gives the Tariff Commission the responsibility for determining whether an industry "is being or is likely to be injured."

S. 1726 (90th Congress):

Likelihood of Injury

THE NEED — The Tariff Commission has recently ruled that "likelihood of injury" can be found only on a showing of clear and imminent injury. This rigid standard, borrowed from an irrelevant concept defined under wholly different words used in the old Escape Clause, is almost impossible to satisfy. In keeping with the rule in other laws designed to curb unfair competition, the Commission should be able to cope with future dumping on a showing of reasonable likelihood of injury.

PROPOSAL — Likelihood of injury shall be found when:

The Commission finds a reasonable likelihood that an injury described in the tests above will occur by reason of dumping. Section: 1 [201 (c)].

Comments:

Neither the Act nor its legislative history gives any explicit indication as to the meaning of "likelihood of injury." None of the domestic antitrust laws has been interpreted so narrowly as the Commission's "clear and imminent" requirement. It is generally accepted that the effective implementation of unfair trade laws requires the judging body to make some estimates from evidence of records plus common business experience, and a probability of injurious effects even though this probability could not be demonstrated to a certainty.