in contrast, the Mexican producers of litharge, a simple manufactured product consisting of ninety-three (93) percent primary lead metal, are exporting said product without payment of tax, amounting to very nearly three-cents per pound, allowing litharge to compete unfairly with domestic production.

This action by the Mexican Government brought about the obviously desired results. Litharge imports from Mexico leaped from 750 tons in 1955 to 5,370 tons in 1956. This fantastic increase in Mexican imports has continued to the present. Over 11,000 tons of Mexican litharge was imported into the United States in 1959, over 15,000 tons in 1962, and over 24,000 tons in 1966 and again in 1967. During the period of 1960–1967, domestic litharge shipments averaged only around 102,000 tons. Thus Mexican imports of litharge amount to well over twenty (20) percent of domestic shipments. Furthermore, since Mexico exports nearly ninety (90) percent of its output, and, since the Mexican litharge industry possesses the capacity to produce approximately fifty-thousand tons of litharge, the future of the American litharge industry is very much in doubt.

The brief foregoing summary evidences that Mexican litharge can invade the United States market almost at will and with such certitude as to be able to determine the amount of the domestic market to be taken over at any given time. For the past ten years, the price of delivered Mexican litharge in the United States has been less than the cost to the domestic producers of pig lead. While the domestic litharge industry does not condemn foreign competition, it must condemn any form of unfair competition that invades, and threatens further invasion, of the United States market. The domestic litharge industry states, and not in the sense of exaggeration, that if the exportation of this material continues at its present rate of increase, the domestic industry might just as well go out of business.

AVAILABLE REMEDIES UNDER EXISTING LAW

Since importation of Mexican litharge quite clearly is having a destructive effect upon the domestic industry, we have given considerable study to means of alleviating the problem under existing laws. Two statutes appear germane to our situation: The Antidumping Act, 1921, as amended, 19 U.S.C.A. §§ 160–173 and the Countervailing Duty Section of the Tariff Act of 1930, 19 U.S.C.A. § 1303. Prosecution of a claim under either statute requires an inordinate amount of time and expense. The real drawback to these remedial provisions, however, lies in the fact that their relief is predicated upon a finding of "fault" in the importer, with the commensurate burden of proving such "fault" deposited in the American manufacturer or producer.

Under the Antidumping Act, 1921, as amended, a special dumping duty is assessed when "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value" and "an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States." Procedurely, the Act provides that the Secretary of the Treasury shall determine whether the first quoted condition exists. If the Secretary makes an affirmative determination, he informs the Tariff Commission which then acquires jurisdiction to determine whether one or more of the second quoted conditions exist. Affirmative determinations by both agencies, taken together, constitute a "finding" of dumping within the meaning of the Act. The special dumping duty to be assessed is an amount equal to the difference between the purchase price and the foreign market value.

The utility of the Antidumping Act by domestic concerns is more prevalent in the abstract than in reality. The domestic producer or manufacturer must hurdle two substantial burdens. Initially, he must establish sales at less than fair value. Secondly, he must demonstrate an injury (which is required to be material by the Commission) resulting from such importations. The mere influx of imports and their necessary pernicious effect upon American industry is meaningless, unless the domestic concern can collect the evidence necessary to establish sales at less than fair value and resulting injury, proximately caused by such sales.

The Countervailing Duty Provision of the 1930 Tariff Act requires the Secretary of the Treasury to impose a countervailing duty whenever a foreign country pays or bestows any bounty or grant upon the manufacture or production or export of any article manufactured or produced in such country, and such article or merchandise is dutiable under the provisions of the Tariff Act. The counter-