

identical bills before this Committee, which we fully support, would accomplish this purpose.

In order to secure relief against dumping (*i.e.*, to secure the imposition of equalizing "special dumping duties"), under current law it is necessary, first, for the Treasury Department to find that in fact foreign manufacturers are dumping in this country and, second, for the Tariff Commission thereafter to find that such dumping has caused or is likely to cause injury to a domestic industry. A principal difficulty with the statute is that its standards are vague and are open to widely varying determinations by both the Treasury Department and the Tariff Commission. Too often narrow and irrelevant standards and legal concepts have been invoked to deny relief against dumped imports.

A crucial problem has to do with the definition of domestic industry. For example, a revised and modernized antidumping law should make it absolutely clear that, in determining whether dumping has caused or is likely to cause injury, the Tariff Commission need not weigh the demonstrated or anticipated effects of the dumping against the health of the *entire domestic industry*. Dumping often causes serious and sometimes fatal injury to sellers of domestic products in particular geographic areas or local markets before it becomes a dangerous competitive threat to the domestic industry considered as a whole. This is particularly true in the case of heavy products, such as chain, where transportation charges can be a significant factor in the ultimate selling price. As already noted, the inroads of Japanese chain on the domestic market are particularly concentrated on the West Coast. The domestic chain industry's ability to secure relief against such regional dumping should not be impeded by the fact that Japanese imports have so far penetrated some of the eastern markets to a lesser degree than the West Coast.

H.R. 1075 and companion bills would deal with this problem by making clear that the Tariff Commission, in determining injury, can base that determination on a realistic commercial definition of the relevant market.

Another significant inadequacy in the present law is the imprecision of the concept of injury. The proposed amendments would deal with this by supplying specific tests which the Tariff Commission would be required to apply. The first test—and one that would have particular application in the chain industry—is whether dumped imports account for 5% or more of domestic sales of the product in question, in whatever is determined to be the relevant market area. This figure derives from a series of cases under the U.S. antitrust laws where it has been held that unfair competitive practices leading to a 5% regional market foreclosure are unlawful. These cases provide direct support for a statutory 5% dumping injury test because dumping, as noted, is essentially anticompetitive and an unfair method of competition.

H.R. 1075 and companion bills would also lay down other tests for determining injury, including whether dumping has contributed to a price decline affecting 50% or more of domestic sales in the relevant market area and a decline of 5% or more in the domestic labor force directly involved.

Another important issue in dumping cases is the degree to which *preventive* relief is obtainable. Relief should be available not only where injury has in fact occurred but also where injury can be expected to occur. The proposed legislation we support would make the obtaining of such anticipatory relief a realistic possibility by providing that, once dumping is established, there need only be shown a "reasonable likelihood" of injury, not an absolute certainty.

The anti-dumping law should also provide that complaints be handled with dispatch. In this connection, under existing law dumping investigations have sometimes dragged on for as long as three years, with the dumping continuing run its destructive course, before the Treasury Department completed its preliminary finding that dumping was in fact taking place. It has been long recognized in the law that justice delayed is justice denied and this maxim is equally applicable to administrative anti-dumping procedures. Under the proposed legislation the Treasury Department would be expected normally to complete its investigation in six months.

A workable anti-dumping law should make clear, as H.R. 1075 and companion bills would do, that predatory intent need not be proved as part of the domestic industry's effort to secure relief against dumping. The motive or frame of mind