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Import Competition and the Trade Act of 1974: A Case Study of Section 201 and its Interpretation by the International Trade Commission

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Import Competition and the Trade Act of 1974: 
A Case Study of Section 201 and its Interpretation 
by the International Trade Commission

WALTER ADAMS* & JOEL B. DIRLAM**

INTRODUCTION

Business firms in both concentrated and unconcentrated industries are 
engaged in a perpetual struggle to validate their market territory, to repel 
invaders, to maintain their franchise to customers—in short, to protect 
themselves from the erosive effects of competition. Their strategy may 
include private action such as collusion, merger, price discrimination or a 
variety of exclusive agreements to fence in their actual or potential rivals; 
but market-place tactics, even by powerful firms with genuine economies of 
scale, are not always adequate to obtain the desired results and often 
conflict with antitrust prohibitions. When this is the case powerful 
interests can petition the government to erect artifical barriers to entry, in 
order to achieve by public action that which the antitrust laws were 
designed to prevent. A prime example is the cumbersome control 
machinery, administered by independent regulatory commissions in ever 
wider areas of interstate commerce, which has repeatedly been shown to 
raise costs, inhibit innovation and preserve incumbents—in short, to 
protect insiders from competition rather than the public from exploit-
ation.1 Another, equally egregious example is the artificial restraint on 
international trade, whether by tariffs, quotas or similiar arrangements, 
which have the effect of curtailing or eliminating foreign competition in 
the American market.

These public restraints on competition have recently assumed par-
ticular significance for two reasons: First, the political pressures on 
government to attenuate competition are no longer confined to business 
interests, but are now supported even by the more progressive public-
spirited trade unions.2 Forces which were once thought to be counter-

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1W. ADAMS & H. GRAY, MONOPOLY IN AMERICA ch. III (1955); Adams, The Role of 
Competition in the Regulated Industries, 58 Am. Econ. Rev. 527, 527-43 (1958); Adams, The 

2Organized labor supported the Burke-Hartke bill that provided for mandatory quotas. 
Tariff and Trade Proposals: Hearings before House Ways & Means Comm., 91st Cong., 2d 
Sess. 1001-15 (1970) (statement of A.J. Biemiller, Director, Department of Legislation, AFL-
vailing are now coalescing; auto workers, steel workers and communications workers now march shoulder to shoulder with their bosses against a common enemy—competition in their industries. Second, artificial government restraints compound the difficulty of dealing with the most intransient and intractable economic problem of our time, not only in the United States but the entire industrialized non-Communist world— inflation-in-the-midst-of-recession.\(^3\) Macro-economic measures alone are pitifully deficient in coping with recessions, except at an exorbitant and politically intolerable price in the form of inflation.\(^4\) Such anti-recession measures must, therefore, be supplemented with an “incomes policy” in an effort to contain inflationary pressures. Short of mandatory wage and price controls, competition must play a central role in any anti-inflation program, whether or not it involves “voluntary” controls or wage-price guidelines. This means that in the short run, and absent any long run efforts at comprehensive restructuring of the oligopoly segment of the economy, the government must promote the most free international trade possible.\(^5\) It must recognize, as Gottfried Haberler once said, that “free international trade is perhaps the most effective antitrust policy.”\(^6\)

The Trade Act of 1974\(^7\) and its interpretation by the International Trade Commission can directly affect the viability and vitality of import competition. Subsequent analysis will be confined primarily to the “escape clause”\(^8\) provision of the Act, because this provision appears to...
have far reaching potential for limiting imports, and because it is the most susceptible of misuse in stifling fair competition. A series of tables graphically summarizing the major cases discussed is provided at the conclusion of the article.

In 1973 the Nixon Administration introduced a bill providing for comprehensive changes in existing foreign trade statutes in an effort to forestall mandatory quotas on imports. The Administration bill was also designed to convey the necessary power to the President to enable him to enter into a new round of trade agreement negotiations that would include nontariff barriers; it expanded and strengthened countermeasures against dumping and other forms of unfair international competition from subsidies to exports; and it charged the President with responsibility for taking extraordinary measures when the United States balance of payments stability seemed to be seriously threatened.

As it finally passed Congress, after being held up for months on various peripheral issues, the Trade Act of 1974 had unusual potential for both good and ill. Most important, the "escape clause" section of the Trade Expansion Act of 1962, under which American industries, individual...
firms and workers had been dismally unsuccessful in obtaining relief, was rewritten to lower the standards for import responsibility for injury. In addition, adjustment assistance for workers could be provided by the Secretary of Labor, and the Secretary of Commerce could make loans to injured businesses without Tariff Commission review. Also, the Anti-dumping Act of 1921 was amended to permit the introduction of cost data when home market prices are not representative. Finally, the provisions of the law relating to unfair trade practices by importers were expanded.


16Now the International Trade Commission.


18There were other changes in the Anti-dumping Act which deserve at least passing mention. 28 U.S.C. § 2631(b) (1970) (as amended), provides, for example, that if the Secretary of Treasury concludes there may be substantial doubt as to whether there is import injury, the case is forwarded to the International Trade Commission for an indication, within thirty days, as to whether there is a reasonable indication of possible injury. (A wise and seasoned bureaucrat would, of course, generally return the case to the Secretary with the opinion that there is no reasonable indication that an industry is not being injured). Also of significance is the fact that within thirty days of a negative dumping finding by the Secretary, the American manufacturer, producer or wholesaler of the goods in question may appeal the decision to the Customs Court. Id.

19Although 19 U.S.C. § 1337 (1970) in its original form was far from clear, because it did not indicate whether the unfair methods of competition at issue were those employed in the United States or had their origin in the exporting country, the amendment adds to the confusion. The Commission is directed to exclude offending articles, but this decision can be nullified "after considering the effect of such exclusion upon the public health and welfare [and] competitive conditions in the United States ...." 19 U.S.C. § 1337(d) (Supp. V 1975). Both the television industry and manufacturers of welded stainless steel pipe have seized on this section to try to exclude Japanese imports, alleging subsidization and conspiracy to undersell. See Petition before the ITC, Welded Stainless Steel Pipe (Oct. 26, 1976); Investigation No. 337-TA-23, Certain Television Receiving Sets (March 1976).

The television investigation was suspended pending the Commission's resolution of an import injury case under section 201. See Television Receivers, U.S.I.T.C. Pub. No. 808 (March 1977) [hereinafter cited as Television Receivers]. Likewise suspended was a preliminary investigation of unfair methods of competition in the importation of television sets. The White House and the State, Treasury and Justice Departments all opposed the TV manufacturers' petition as did the FTC, arguing that if there was dumping, the complaint should have filed under the Anti-dumping Act. The Commission had found injury to U.S. industry from dumping by Japanese television manufacturers. T.C. Pub. No. 367 (1971). Since 1973, imports subject to the dumping finding have not been appraised, and no dumping duties have been levied. See Television Receivers, supra, at § n.1. On January 17, 1977, Senator Edward Kennedy sent to Assistant Attorney General Donald Baker a letter enclosing portions of a 1970 written agreement among Japanese television manufacturers providing for fines if export sales were made at less than specified prices. Senator Kennedy asked, among other questions, why the Antitrust Division had opposed the ITC's efforts to investigate "prima facie evidence of per se and other violations of sections 1 and 2 of the Sherman Act and Section 337 of the Tariff Act."

Mr. Baker replied, on February 16, that the issues raised by the 337 petition had already been considered in a Treasury dumping proceeding or were cognizable in a countervailing duty proceeding. "An ITC 337 proceeding would be largely duplicative .... and might amount to anti-competitive harassment of Japanese firms." There was no evidence of an
ELIGIBILITY FOR RELIEF FROM IMPORT COMPETITION

This article examines International Trade Commission (ITC) reports on import injury issued in response both to petitions by unions and by business firms and to requests for investigations, Congressional or Presidential, and the ultimate disposal of ITC recommendations by the President. The review will appraise the statutory definition of industry and the economic tests of injury and their application by the Commission, and will evaluate the recommendations for relief, if any, proposed by the Commission and adopted by the President.

Under the 1974 Trade Act, the Commission must make three sequential economic decisions before reaching a recommendation.20 As a prerequisite to any inquiry into industry injury, the Commission must find that imports of this industry's products have increased.21 Such a determination may not appear at first blush to pose an economic problem, but the time period within which the existence of an increase is to be measured must be selected by the Commission.22 Economic considerations may lead to the rejection of a period within which imports have increased and the substitution of another where they have remained stable. The ITC must then determine whether the American industry in question has been seriously injured.23 And, finally, it must assess the responsibility of imports in causing the injury.24 As an alternative the Commission may conclude that although the increased imports have not injured a domestic industry, they constitute a threat of serious injury.25

The statutory guidelines for the Commission in determining these three crucial elements are set forth in qualitative terms.26 The domestic industry must produce articles like or directly competitive with the imported articles.27 The injury must be serious, and in measuring it the

export agreement after 1973, and moreover, the agreement had set a minimum price which was required to be as high as the Japanese domestic price. In Mr. Baker's view, it would be unwise to allow major 337 investigations when the complainant is unable to advance even a prima facie case fulfilling the requirements of the anti-dumping, countervailing duty or antitrust laws. He pointed out that a major portion of Japanese penetration of the American market had been accounted for by Sony and Panasonic, which were not named as defendants in the 337 proceeding and "which sell their sets at higher prices than those charged for competing American sets." TRADE REGULATION REPORTS No. 274, at 15-16 (March 29, 1977).

There was also strong opposition by the President to the ITC's taking the welded steel tubing case, but the Commission nevertheless is proceeding in both cases. Petition before the ITC, American Metal Market 1 (Oct. 27, 1976). Decisions under § 337 to date have turned largely on questions of patent infringement or franchising.

22Directions and rates of change in import volume will of course be affected by the date of origin and the terminal date.
24Id.
25Id.
26Nowhere does the law use percentages or other quantitative measures.
Commission is to take into account relevant factors including "the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit and significant unemployment or underemployment within an industry." 28 A threat of serious injury should be determined after evaluating a decline in sales, higher and growing inventory and a downward trend in profits, production, wages or employment. 29 These economic indicators listed in the statute are not, however, intended to be exclusive, and the Commission may examine others that it believes to be relevant. 30

Finally, before making a finding that a domestic industry deserves relief, the Commission must conclude that imports are an important cause of injury, and not less than any other cause. This definition of substantial cause was introduced to replace the criterion used by the Commission in applying the escape clause of the Trade Expansion Act of 1962, whereby the increased imports as a "major cause" had to be more important than any other cause of injury. 31 The requirement that the increase in imports be caused by a trade agreement concession was stricken from the statute.

Although there are passages in the House and Senate reports on the Trade Act of 1974 that throw light on the meaning of these key sections of the law, 32 their illumination is dim and fitful. Both Senate and House Committees keyed their discussion of "serious injury" to a few specific examples. 33 The most that one can deduce from the committee reports is the obvious conclusion that Congress did not intend to denote as a "substantial injury" a temporary reversal of fortune. One finds no effort to provide guidelines for what might be a "significant" idle capacity or level of unemployment or a "reasonable" level of profit. Nor did Congress provide any indication of how a trend should be calculated or over what time period, although the Senate report suggests that the date of the Kennedy Round (1968) might serve as a point of departure. 34

The investigative experience of the Commission under the Trade Expansion Act of 1962 presumably is to be used in applying the import injury provisions of the revised law; but key passages of earlier escape clause findings in Tariff Commission decisions have unfortunately been extremely terse at best. 35 In perhaps the only passage to expand on the

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30 The Commission is directed to take into account all economic factors which it considers relevant. Relevant factors are not limited to those listed. 19 U.S.C. § 2251(b)(2) (Supp. V 1975).
31 See Adjustment Assistance, supra note 14, at 334-38; Hardship, supra note 14, at 798-812.
33 HOUSE REPORT, supra note 32, at 47; SENATE REPORT, supra note 32, at 211-12.
34 SENATE REPORT, supra note 32, at 120.
35 See, e.g., BRASS WIND MUSICAL INSTRUMENTS & PARTS THEREOF, T. C. PUB. No. 539, at 4-8 (1973) (Views of Chairman Bedell, Vice Chairman Parker and Commissioner Moore in support of an affirmative declaration); UMBRELLAS & PARTS THEREOF, T. C. PUB. No. 534, at 4-
IMPORT COMPETITION

language of the statute relating to injury determination, the House Ways and Means Committee remarked that the tests were intended only to be suggestive, as the Commission's judgment would be determinative in the last resort:

The Committee did not intend that an industry automatically would satisfy the eligibility criteria for import relief by showing that all, or some of the enumerated factors, were present at the time of its petition to the Tariff Commission. That is a judgment to be made by the Tariff Commission on the basis of all factors it considers relevant.6

In determining responsibility for import injury under the Trade Act of 1974, therefore, major conceptual problems remained to be resolved by Trade Commission practice. In identifying an industry, what reliance would be placed respectively on supply and demand substitutabilities? Would both be marshalled before delimiting the industry? Would the concept of cross-elasticity of demand be employed? Would an imported article be held to compete with a product at an earlier stage of fabrication? How would the Commission deal with differences in style between foreign and domestic products? Would a product be considered directly competitive with an import if it were superior or inferior technologically?

A second cluster of problems relates to measurement of injury. Is an industry injured if some firms are prosperous and others are not? If members of the industry produce several products, only one of which is directly competitive with imports, and show losses only on this one product while earning a reasonable overall return, is the industry injured? When an industry normally realizes exceptionally high profits in periods of prosperity, and very low earnings, or substantial losses in recession—in other words, if the industry has a pattern of greater variability than the average manufacturing firm—can a downswing be taken as evidence of serious injury? Suppose that most firms in an industry fail to take advantage of technical advances, thereby foregoing cost reductions. Can they be injured or register injury because of their own sloth or negligence?

Some of these questions can perhaps be resolved by reference to the stated purpose of the original “escape clause” continued in the Trade Act of 1974.7 Public policy is to provide short term relief from import competition to domestic producers so that they can regroup their forces to meet unrestricted import competition in the future.8


34House Report, supra note 32, at 47.


38 19 U.S.C. § 2251 (a) (1) (Supp. V 1975). Import relief is to be accorded “to facilitate the orderly adjustment to new competitive conditions . . . .” 19 U.S.C. § 2253 (i) (I) (Supp. V 1975) directs the Commission to “keep under review developments with respect to . . . the progress and specific efforts made by the firms in the industry concerned to adjust to import competition.
With regard to the specific statutory tests of seriousness or intensity, such as idling of production facilities, profit levels and unemployment, the measurement problems are familiar to those economists who have tried to develop standards of performance for industrial behavior. In the case of the Trade Act of 1974, however, the purpose of the analysis is to determine whether, because an industry fails to equal or achieve some norm, it can therefore be found to be "injured." Here a basic difficulty, arising from the economist's reliance on competition as a driving force and as a norm for optimal behavior, must be confronted: How can the presence or absence of injury be separated from the cause of the injury? Suppose that an industry, disregarding for the moment the problems of its definition, fails to innovate, ignores the demands of fashion or adopts a cartelized price structure. Would economic analysis then characterize the consequences as injury if profits were low, capacity under-utilized or unemployment higher than the manufacturing average? In such a case, the term "self-inflicted injury" might be used, although it brings in the element of cause.

For purposes of analysis, the difficulty will be provisionally resolved by separating injury from its cause. The Commission decisions will be reviewed on the assumption that it is admissible to conclude, on the sole evidence of criteria such as changes in or levels of profit, that an industry has been injured. For the moment, attention will be focused upon the Commission's logic, consistency and conformity to norms of economic analysis in determining the presence or absence of injury.

The final group of problems, and by all odds the most complex, is rooted in the identification and ranking of causes for injury shown. Of course, economics has limitations in demonstrating cause and effect other than by the exercise of pure logic. No one supposes that the use of quantitative methods alone can suffice to prove that variation in one type of economic activity has been caused by changes in another even if movement of the two variables seems to be closely associated. Ranking of causes of injury, using econometric methods, might be carried out by comparing the importance of coefficients related to each of several variables. In a simpler analysis, one might compare percentage changes

... when relief has been granted. Id. The Senate Finance Committee explicitly stated that the "escape clause" should provide "temporary relief for an industry . . . so that the industry will have sufficient time to adjust to the freer international competition." SENATE REPORT, supra note 32, at 119. Moreover, the clause "is not intended to protect industries which fail to help themselves become more competitive through reasonable research and investment efforts, steps to improve productivity and other measures that competitive industries must continually undertake." Id. at 122.

An example is the still unresolved debate about the effect of monetary policy, i.e., the quantity of money, on the price level.

For instance, the demonstrated percentage variation in production levels of an identified domestic industry could be related to the percentage changes in imports, and to other types of economic activity that conceivably might affect production levels in the industry. This could be done via a multiple regression analysis that would take account of the simultaneous or lagged influence of several variables. Any such analysis would necessitate the proper specification of the equation or equations to be used. In investigations completed in
in imports and domestic output on the assumption that where both are measured in the same units, the importance of imports could be indicated by the relative percentage changes.

Nevertheless, doubts exist regarding the propriety of relying completely on these mathematical techniques. It is arguable that a domestic industry might somehow be weakened by a long rise in the absolute level of imports, although the theory of a cumulative impact would require careful and detailed analyses of credit-worthiness, attraction of management and consumer acceptance to become credible. Isolating long term effects would be especially challenging where a recession and low profit rates or employment declines were simultaneous. In interpreting the escape clause under the Trade Expansion Act of 1962, the Tariff Commission held in 1969 that serious injury could be attributed to imports when, “but for” the imports, a plant might have been able to stay in business.41 Since the Trade Act of 1974 was designed to moderate the causal requirements of the 1962 Trade Expansion Act,42 the revised statute and its application will be examined to determine whether a “but for” criterion is now justified.

INDUSTRY DEFINITIONS AND ADJUSTMENT ASSISTANCE

The standards for allowing adjustment assistance for firms and workers under the Trade Act of 1974 are less stringent than for providing import relief of other types, such as increases in duties or import restrictions of other kinds, or if the President chooses, arrangement of an orderly marketing agreement.43 To be sure, the Commission may recommend adjustment assistance as a remedy on the basis of its import injury investigation, and the President may adopt adjustment assistance whether or not it is recommended by the Commission. When assistance is recom-
mended after an investigation by the Commission, imports must be found to be a "substantial" cause of serious injury—a much more restrictive requirement than that imports have contributed "importantly" to a "decline in sales of production" and that a significant number or proportion of workers have become totally or partially separated from their jobs.  

It is possible to view the Commission's criteria for findings of injury under the Trade Expansion Act of 1962 as identical, whether it was considering industry, firm or worker applications for relief, because the statute used the same phrasology for all.

In actuality, however, the standards necessarily differed depending upon whether the issue was the effect of imports upon a firm or upon a group of workers rather than an industry. In the case of individual firm or worker petitions, the Tariff Commission reviewed the competitive posture of the individual firms to determine whether they had installed up-to-date equipment, were operated efficiently, used modern and aggressive marketing tactics, etc., in order to determine whether the increased imports had been the major cause of the decline in sales and employment. Focusing on the experience of a single plant or subdivision thereof could in some cases make it easier to qualify for relief than if an entire industry's performance were to be appraised. On the other hand, if imports injured only one out of ten firms in the industry, the Tariff Commission would not have held that imports were a major cause of serious injury; but the application of workers in that particular firm might have been approved. The Commissioners' statements and their analysis, therefore, were at once more narrowly focused and more detailed when reviewing the workers' petitions for adjustment assistance under the Trade Expansion Act of 1962 than when the Commission investigated an industry. In all cases there had to be a finding that the increased imports resulted in major part because of a tariff concession, but the other criteria cannot depend on the same economic approach in evaluating industry injury as in an appraisal of a single firm or plant.

Industry Definition Under the 1974 Trade Act

Prior to consideration of whether serious injury has occurred, the ITC must define the industry. In so doing, it can draw on its experience in

45See Hardship, supra note 14, at 806-13, 816-21, 817 n.171.
46"[A]djustment assistance to firms and workers may be granted in many cases in which there may be no basis for escape clause relief for the industry to which these firms and workers belong." Hardship, supra note 14, at 823.
47For example, the Commission made no findings in the Brass Wind Instruments case, being equally divided as to whether there has been serious injury to the industry. Yet in an investigation of the effect of imports on one firm's workers, imports were found to cause unemployment of a significant number of workers. See Brass Wind Musical Instruments, T.C. Pub. No. 480 (April 1972). The reasons for the difference in findings were succinctly stated by Commission members Leonard and Young:
carrying out fact-finding under the earlier escape clause legislation and in applying the Anti-Dumping Act of 1921.48

An investigation under the escape clause may be launched by an entity which is "representative of an industry." The Commission has never questioned the bona fides of petitioners to represent an industry. The proceeding may be compared with that under the Trade Expansion Act of 1962, wherein injury to an industry, to a firm or to workers could be relieved.50

In arriving at their industry definitions, the Commissioners have had to reconcile discrepancies, at the outset of each proceeding, between the product definitions in the tariff schedules and the customary definitions of products adopted by domestic industries. The TSUS definitions are sometimes broader, sometimes narrower than the corresponding domestic items.52

[A]n affirmative determination for workers is not conditioned upon a finding of serious injury or threat of injury to their firm. We take a similar position with regard to an industry. An affirmative determination for workers rests in part on unemployment or underemployment of workers, a finding of serious injury or threat of injury to an industry rests on more than just unemployment or underemployment of certain workers of that industry. Thus, a finding of serious injury . . . to the industry is not a condition precedent to granting relief to the workers.

BRASS WIND MUSICAL INSTRUMENTS AND PARTS THEREOF, T.C. PUB. No. 539, at 11 (Jan. 1973). The opinion also quoted the Eyeglass Frames case: "Under the 1962 Act, the workers who are thus employed may be eligible for trade adjustment assistance, in spite of the fact that the industry of which they are a part and the firm for which they work, have suffered no injury at all." Id. (statement of Thunberg and Clubb). See also BUTTWELD PIPE, supra note 41, at 11 n.7; Adjustment Assistance, supra note 14, at 326-28.

To the same effect was an earlier decision where a majority of the Commission rejected a brief of the American Institute of Imported Steel, pointing out that

[T]here is a vast difference between the simple "unemployment or underemployment" test which is required in a workers' case and the "serious injury" test required in an industry petition . . . [M]any workers and some firms within an industry may become eligible for adjustment assistance, without the entire industry's suffering serious injury.

BUTTWELD PIPE, supra note 41, at 11 n.7.


49Investigations may also be initiated upon request of the President, the Special Representative for Trade Negotiations, the House Ways and Means Committee, the Senate Finance Committee or upon the Commission's own motion. To date in 1977, three reports have been issued as a result of such requests, including inquiries into footwear by the Senate, mushrooms by the President, and plant hangers by the ITC.


For instance, stainless steel sheet width, according to the Tariff Schedules, is anything larger than twelve inches. See 19 U.S.C. § 1202 Schedule 6, Pt. 2, Subpt. B, headnote 3(g) (1970). "Sheets are flat rolled products, whether or not corrugated or crimped, in coils or cut to length, under 0.1875 inches in thickness and over 12 inches in width," whereas according to American Iron and Steel Institute's industry definition, sheet steel is twenty-four inches or wider. See UNITED STATES STEEL, THE MAKING, SHAPING AND TREATING OF STEEL 912 (9th ed. 1965). Sometimes a product is hidden among others; the precise quantity of tool steel imports cannot be determined because some forms are included in broad non-carbon steel classifica-
That the definition of industry in reviewing the existence of injury can be determinative was particularly well illustrated in the report on stainless and alloy steel. Commissioner Ablondi accepted the petitioners' characterization of the industry as being composed of all manufacturers of specialty steel because of the ease with which facilities could be shifted from the production of stainless bar and rod to alloy tool steel bar and rod. Moreover, he quoted the petitioners' brief to the effect that the specialty steel industry is "a cohesive, indivisible unit largely because of the interchangeability of the means of production." Commissioner Ablondi pointed out that the same melting, blooming, pressing and hot rolling facilities were used to produce stainless and alloy tool steel so that "two-thirds of the cost of producing such articles is incurred in production processes common to each article." Most of the domestic firms, according to Ablondi, produced a combination of alloy and stainless products, "often in the same facilities." On the basis of his single industry definition, therefore, Ablondi found no injury from imports.

Although sheet and strip, bar and rod, and plate and alloy tool steel were "often produced in the same plant complex," nevertheless, Commissioners Moore and Bedell held that there were four industries. Chairman Leonard, on the other hand, supported his finding of the existence of four groups, or industries, by the fact that each "is generally produced in separate facilities." Finally, Commissioner Minchew lumped together all flat-rolled products, and all stainless bar and rod, while distinguishing alloy tool steel, on the grounds that stainless steel producers generally had two manufacturing divisions, one for flat-rolled products and one for bar and rod, if they produced these two groups of products. It is

53 See Specialty Steel, supra note 52.
54 Specialty Steel, supra note 52, at 50 (citing Petitioners' Brief, p. 7).
55 Id. at 7.
56 Id. at 7.
57 Id. at 8.
58 Id. at 17.
59 Id. at 36-37.
impossible to reconcile the reasons given in the commissioners' views in support of the findings that different industries exist.\(^6\)

The Trade Act of 1974 provides broad guidelines to relate an imported product to a domestic industry, but not much more.\(^6\) The Commission may exclude from a domestic industry that part of the production which is imported, but it is not required to do so. The Commission may, when a domestic producer makes more than one article, include only those which are like or directly competitive with imports. And a geographic area may be carved out of the United States when the production there is a substantial part of American production, sales are concentrated there, and imports likewise.\(^6\)

In typical decisions under the Trade Expansion Act of 1962 the Commission seemed to give weight to both production flexibility and to demand in its industry definitions.\(^6\) The provisions of the Trade Expansion Act of 1962 that referred to import of an article and to injury of a domestic industry producing an article like or directly competitive with the imported article have not been amended in the Trade Act of 1974 in any way that would call for the International Trade Commission, as successor to the Traffic Commission, to alter its approach.\(^6\)

In any event, a review of the findings on industry definition under the 1974 Act should be useful, if only to see how the Commission has

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\(^6\)In the Specialty Steel case, it is noteworthy that the "Information Obtained in the Investigation," while it contained language that supported Minchew's division between flat-rolled products and bars and rods, accepted testimony by the specialty steel group vice president of Colt Industries minimizing the expenditures necessary to switch from stainless to alloy tool steel bar and rod. Id. at 12. According to the "Information," the flat-rolled facilities of Allegheny-Ludlum and Crucible are geographically and functionally separate from their rod and bar mills, but aside from this brief reference nothing appears in the Specialty Steel report to show whether or not Carpenter, Armco or Cyclops produce both types of rolled products in the same establishment.

\(^6\) See 19 U.S.C. § 2251 (b) (3) (A), (B) and (C) (Supp. V 1975).


\(^6\) In analyzing footwear, for instance, it found that a "clear breakdown" could be made among shoes depending on (1) type of construction, (2) sex and age of users and (3) use. Accordingly, it listed five industries, each composed of plants or portions of plants "which in general produce the product indicated." These industries were men's dress/casuals, women's dress/casuals, athletic, work and slipper industries. NONRUBBER FOOTWEAR, T.C. PUB. No. 359, at 3 (Jan. 1971) [hereinafter cited as NONRUBBER FOOTWEAR]. And in its report on Flat Glass and Tempered Glass, all members of the Commission were in agreement in distinguishing among various types of flat glass—sheet, plate, float, rolled and polished ware. Plate and float were, however, interchangeable in use and not directly competitive with window and thin sheet glass. Hence, sheet glass was found to be a distinct article and an "industry." FLAT GLASS & TEMPERED GLASS, T.C. PUB. No. 459, at 6-7 (Jan. 1972) (Views of Chairman Bedell and Commissioners Sutton & Moore).

\(^6\) In defining "directly competitive with" a domestic article, the Trade Act of 1974 introduced one modification. An imported article is directly competitive with a domestic product at an earlier or a later processing stage if the imported product has the same effect as would the import of articles at the same stage of processing as the domestic product. An unprocessed article is to be regarded as at an earlier stage of processing. See 19 U.S.C. § 2481 (5) (Supp. V 1975). Imports of frozen, prepared and chilled shrimp were held to be directly competitive with the shrimp fishing, as distinguished from shrimp processing, industry. SHRIMP, U.S.I.T.C. PUB. No. 773, at 2 (May 1976) [hereinafter cited as SHRIMP].
attempted to resolve the problems listed earlier. When the Commission and its staff have had the benefit of numerous previous escape clause proceedings and investigations at the President's request, it is unlikely that the industry would be differently defined. Nevertheless, to the extent that industry definitions were structured to correspond to tariff reductions resulting from trade agreements in previous escape clause proceedings, the revisions of the Trade Act of 1974 should provide broader scope to the Commission in applying economic analysis to the problem. The Commission has been forthright in holding that it can carve out of a domestic industry producing like or directly competitive articles, two or more industries capable of being injured.

When some firms import part of their requirements, own facilities overseas or have components out of the country for assembly, delimitation

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"It is important to alert the reader to the fact that the Report to the President is brief. It consists of the Commission's "Determinations, Findings and Recommendations" where affirmative, or the "Determination" when negative, in two or three pages, with only a few sentences devoted to the conclusions of the Commission as a body that a domestic industry has or has not been seriously injured by imports. In their "views" the commissioners jointly or separately arrive at a particular industry definition, find serious injury or lack of it, and assess the responsibility of imports for injury if any is found. These views are, unfortunately, usually written without specific reference to testimony at the public hearings on petitions, to the briefs of the parties or even to the much lengthier "Information Obtained in the Investigation," prepared by the ITC staff, which accompanies the Report to the President. See, e.g., MUSHROOMS, U.S.I.T.C. Pub. No. 798 (Jan. 1977) [hereinafter cited as MUSHROOMS]. The Commission's determinations, findings and recommendations including the proposed tariff-rate quota proposal, took up slightly more than a page. The Information filled eighty-nine pages. Twenty-eight pages sufficed for five separate "Commissioners' views."

More important, as an obstacle to generalization with regard to Commission policy, each Commissioner is free to write his own views which, even though arriving at the same finding with regard to the import responsible for injury as his brethren, may differ on industry definition.

"For example, in the Industrial Fasteners report, Chairman Leonard concluded that there were two groups of producers constituting two distinct industries, one making nuts, bolts and large screws, the other producing small screws. BOLTS, NUTS & SCREWS OF IRON & STEEL, U.S.I.T.C. Pub. No. 747, at 7 (Nov. 1975) [hereinafter cited as INDUSTRIAL FASTENERS]. Commissioner Moore, however, found there was only one industry. Id. at 18. Two commissioners agreed with Leonard that there were two industries, but in the case of the "large" screw industry found substantial injury from imports but no injury or threat of injury to the "small" screw industry. Id. at 34 (Views of Vice Chairman Minchew & Commissioner Bedell). Since the commissioners rarely footnote their views, it is almost impossible to trace divergent facts or interpretations to their sources."

In the footwear investigation, where the Commission was unanimous in concluding that there had been serious injury to the domestic industry because of the import of nonrubber footwear, there was diversity in the commissioners' industry definitions. Minchew found that there was a single industry made up of producers of both rubber and nonrubber footwear. FOOTWEAR, U.S.I.T.C. Pub. No. 748, at 10 (Feb. 1976) (Minchew and Parker) [hereinafter cited as FOOTWEAR 1976]. Parker, who except for the industry definition wrote a joint statement with Commissioner Minchew, regarded the industry which was injured as consisting of facilities producing shoes marketed in competition with nonrubber footwear imports, but nonetheless, for purposes of injury analysis, treated the industry as composed of all footwear manufacturers. Id. at 10. Chairman Leonard believed that because consumers purchase footwear for one purpose—"to cover and protect their feet"—domestic facilities engaged in production of all types and styles of footwear should be viewed as part of one industry. Id. at 29-30. Commissioner Moore, however, found that there were five industries in conformity with the Commission's most recent report to the President under the Trade Expansion Act of
import competition

of a domestic industry proves elusive. The world leader in slide fasteners, the Japanese firm YKK, exports parts to America where it has several assembly plants. Many domestic producers also assemble imported parts. Should the industry then be defined as those domestic producers manufacturing zippers exclusively from domestically fabricated parts or the manufacturers of zippers with more than fifty percent by value of domestic parts? Should the domestic industry be considered to be the manufacture of zippers and/or parts? 

In the Stainless Steel Table Flatware case, the second largest domestic producer, Insilco, had acquired a facility in Taiwan from which it imported economy-grade flatware, and Oneida, the largest producer, imported from Korea and Japan. Taking into account these facts, which were not mentioned in any commissioner’s statement, might have led to a definition of the domestic industry that would have minimized the possibility of injury from imports. They help to explain Commissioner Ablondi’s comment that “certain major import interests” told the ITC that failure to take affirmative action would “result in serious detriment to the domestic industry.”

1962, although Moore did not refer to the earlier definition. Id. at 48. Commissioner Bedell agreed with Commissioner Parker that the industry should be defined as the production of nonrubber footwear, id. at 59, and Commissioner Ablondi was of the same opinion. Id. at 74.


Although tables were compiled on various bases in the accompanying Information, five commissioners concluded in their statements that the domestic industry should consist of the facilities devoted to the production of zippers and parts. Commissioner Minchew expressly included YKK’s U.S. facilities in the domestic industry. Id. at 24.

Analysis of the slide fastener market is rendered difficult by Japanese dominance of both imports and, apparently, the domestic industry as well, which sharply limited the presentation of information by the ITC. The views of the commissioners are peppered with asterisks that make it almost impossible to determine even the level of imports and of domestic production. The statements of Moore, Parker and Ablondi omitted the number of units of slide fasteners imported in 1970 and 1974, and Commissioners Leonard and Bedell omitted these data for 1970 and 1972, as well as the percentage by which imports dropped from 1972 to 1973 and 1973 to 1974. These omissions can be filled in from Table 1 of the Information; presumably it was felt that disclosure would reveal the volume of business of YKK. The exact percentage of YKK’s imports to total imports was omitted from Minchew’s statement. Id. at 25. Some of these omissions are pointless, since the Department of Commerce provides import data by country. YKK was presumably the sole Japanese exporter, and Japan accounted for at least eighty percent of U.S. imports by quantity of slide fasteners and parts. Id. at 64 (Table 2). Even more mysterious was the omission of data on domestic shipments. Although there were sixty-eight manufacturers of fasteners, including assemblers and parts manufacturers, and 104 establishments, the volume of shipments was published only for domestically produced merchandise, less units in which imported parts accounted for the chief value. Id. at 27. It is difficult to see what competitive secret would have been revealed by releasing figures on total shipments. The Commission’s policy of concealing information on domestic industries leaves many reports so denuded of data that it is well-nigh impossible to put the findings in perspective. In Footwear, U.S.I.T.C. Pub. No. 799 (Feb. 1977) [hereinafter cited as Footwear 1977]. Appendix C’s heading is replaced by asterisks so that we are not even permitted to know the subject matter of pages D-1 — D-17, which are completely blank.


69Stainless Flatware, supra note 68, at 45. Insilco had acquired an importer, Stanley
As a result of a petition filed by the National Shrimp Congress, the Trade Commission conducted an investigation into the effect of the import of fresh, chilled, frozen, prepared or preserved shrimp on two industries: shrimp boat owners and shrimp processors. Shrimp processors, whose representatives opposed the petition, can or otherwise process imported shrimp. Under the Trade Act, however, an imported article can be "directly competitive" with a domestic article at an earlier or a later stage of processing if the import has an economic effect on producers of the domestic article "comparable to the effect of importation of articles in the same stage of processing as the domestic article." Hence, the shrimp fishing industry could be regarded as directly competitive with the import of frozen or canned shrimp if the effect of such imports were comparable to the import of freshly-caught shrimp. The imported articles consisted of both fresh and processed shrimp, lumped together in item 114.45 of the Tariff Schedules. Since according to Chairman Leonard and Commissioner Ablondi, "most of the shrimp which are imported into the United States enter in a processed form (mostly frozen), the domestic shrimp-fishing industry" could be said to be producing an article directly competitive with the imported processed shrimp.

**Industry Boundaries and Product Definitions**

The petitions leading to investigation under the Trade Act of 1974 have been filed by firms, by trade associations, or committees of domestic producers in which labor unions have sometimes joined. In defining the industry which might be injured, however, the Commission is not bound to accept the petitioner's concept. Nevertheless, the Act, as it has been

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Roberts, to strengthen its competitive position in middle-priced and higher-priced flatware, but was forced to divest by the Justice Department in 1973. *Id.* at A-27.


Their fellow commissioners did not bother to ask whether frozen shrimp were directly competitive with fresh shrimp but proceeded directly to the question of whether imports had injured the shrimp fishing industry (Minchew, Moore & Parker). *Id.* at 7-10 (Views of Vice Chairman Minchew), 15-17 (Views of Commissioners Moore & Parker). Much the same issue was presented in *ASPARAGUS*, U.S.I.T.C. PUB. No. 755 (Jan. 1976) [hereinafter cited as *ASPARAGUS*]. Although fresh, canned and frozen asparagus was imported and all commissioners agreed that processing asparagus constituted a different industry from freezing or growing asparagus, both the affirmative and negative commissioners referred to total asparagus imports, not differentiating between processed and fresh. *Id.* at 17. Those commissioners who found that the domestic growers were injured argued that canned and frozen asparagus displaced domestic fresh asparagus from the processing market. *Id.* at 26 (Views of Commissioners Moore & Bedell).

The investigation resulting in the *Specialty Steel* report was instituted on receipt of a petition filed by the Tool and Stainless Steel Industry Committee for Import Relief; the United Steel Industry Committee for Import Relief; and the United Steelworkers of America. *See Specialty Steel, supra* note 52, at 1.

The Commission may ignore imports by a domestic producer, other products manufactured by a producer that are not subject to import competition, and production in geographic areas not subject to import competition. 19 U.S.C. § 2251(b)(3) (Supp. V 1975).
interpreted by the Commission, appears to provide the complaining domestic firms with a ready-made procedure for establishing an ad hoc industry where this will be to their advantage. The petitions generally allege that certain articles imported under designated tariff schedules are causing injury to the industry. Following the scope for its findings, the Commission attempts to determine which firms produce articles like or directly competitive with those named in the petitions; which producers and importers are selected to receive questionnaires is generally determined by reference to the imported products which have allegedly injured an industry. Obviously, this aspect of the investigations does not always lead to bizarre or deformed industry definitions. In certain cases, however, the issue can be of strategic importance and has not always been decided logically.

In the first report to be handed down under the Trade Act of 1974, the consequences of identifying an industry by reference to the imported product were apparent. The petition was filed by one firm, Columbia Plywood, a wholly owned subsidiary of the Columbia Corporation of Portland, Oregon. The petitioner was not a manufacturer of birch

But it is not required to do so. The House Ways and Means Committee, in reporting out the bill that contained the same language as the Trade Act as passed, stated that the Commission should look at the performance of an establishment as a whole if several product lines were produced. "The Commission would not be expected to find import injury . . . if serious injury did not exist with respect to its operations as a whole." House Report, supra note 32, at 16. "The extent to which the products of a multi-product establishment can be separately considered is necessarily affected by the accounting procedures that prevail in a given case and the practicability of distinguishing or separating the operations of each product line." Id. at 45-46. The Senate Committee on Finance, however, reached the conclusion that the Commission "could choose to treat . . . only that portion or subdivision of the producer which produces the like or directly competitive article." Senate Report, supra note 32, at 122. Since the House had been more precise in its review of the problem, and the Senate's language could be interpreted to refer to firms, the Commission has certainly been free to conduct its investigation in terms of establishments. At the very least, it should, when asking for cost and profit information on product lines, have discussed in its reports, or in the staff informations, the accounting principles used in reaching profits estimates. In the Asparagus report, it was admitted that growers did not keep separate reports on their asparagus operations. See Asparagus, supra note 72, at 13. In the Specialty Steel case, mills produced other steel products in addition to alloy and stainless. In securing financial data from the producers of stainless and alloy tool steel, the staff noted that "for some expense items the amount applicable to stainless steel and tool steel produced in your establishment(s) cannot be ascertained directly from your records." The respondents could allocate, but "allocation of manufacturing expenses on the basis of sales is not acceptable." Allocation methods were to be explained. U.S.I.T.C., Questionnaire for Producers of Stainless Steel and Tool Steel 23 (1975). In the report to the President, the Information presented profits both on an over-all basis for establishments, and by product line for the articles in question. Specialty Steel, supra note 52, Tables 44-45. There was no discussion of accounting methods.


The items listed in ITC questionnaires include prices, costs and estimated profit and loss, capacity, etc. The Commission relies on interviews and questionnaires along with other material for information not found in census publications or trade journals.

It is not clear, for instance, why the Commission decided to create a separate industry of birch plywood doorskins. See Birch Plywood Doorskins, U.S.I.T.C. Pub. No. 743, at 19-21 (Oct. 1975) [hereinafter cited as Birch Plywood].
doorskins at the time of the proceeding. Its division, Allen Quimby Veneer Co., had stopped producing birch doorskins in 1974. Except for Commissioner Minchew, the Commission did not explore the economic limits of the domestic industry. Minchew conceded that it “might be arguable that hardboard doorskins may be ‘directly competitive’ with birch doorskins” but stated that their nature was different, “particularly regarding appearance.”

In the Specialty Steel case, acceptance of the industry as defined by the petitioners—specialty steel—could lead to different conclusions about injury from those that result from subdividing the firms into industries equivalent to different products. And in footwear, the importers strongly urged that a large proportion of imports consisted of styles or types that were not available in the United States. Hence, it was argued, the determination of which shoes were “like or directly competitive” should have required rather careful analysis. The commissioners gave short shrift to this argument, apparently on the grounds of production substitutability.

The process of defining an industry, accordingly, often impales the Trade Commission on a dilemma. The excuse for the application of the escape clause lies in the possibility that tariff reductions may injure American industries, firms or workers. Article XIX of the General Agreement on Trade and Tariffs (GATT) provides that if, as a result of unforeseen developments, including tariff concessions, a product is imported in such increased quantities as to cause or threaten serious injury to domestic producers the concessions may be modified or withdrawn. The GATT provision refers to producers, which could mean individual firms and workers. In taking account of the essentials of the GATT provision in the Trade Expansion Act of 1962, and then the Trade Act of 1974, Congress has never made it clear whether, to obtain relief, the firms, as

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78 Birch Plywood, supra note 77.

79 See text accompanying notes 54-58 supra. If the industry comprised stainless steel products and alloy tool steel, there was no evidence of increased imports and, hence, no basis for import relief.


81 Footwear 1976, supra note 66, at 10 (view of Minchew), 30 (view of Leonard).


83 Id.
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enterprises, must be injured as enterprises or whether they need only be injured in that part of their activities relating to the imported articles. The latter standard makes it much easier for a domestic firm to show that imports of one article are causing injury, even though this item may account for less than one tenth of one percent of its revenues.84

Nevertheless; the GATT Article XIX, tariff schedules, and trade agreements focus on and are expressed in terms of products or groups of products.85 Were the Commission to invariably employ a broad industry definition or even to rely exclusively on the standard industrial classification definitions used by the Census of Manufacturers, it is possible that some cases of injury would be overlooked.86

There are some practical approaches that seem inherently reasonable in the light of problems that everywhere face an economist or policymaker in trying to measure a relevant market. A market or an industry should be defined only in terms tied to the purpose of analysis. In an antitrust case the relevant market is that within which a particular business practice may substantially affect the vigor of competition. In an import injury case the industry or market should, of course, be related to imported products, but it need not be identical with them.

A reasonable compromise might be first to determine which domestic products are like or directly competitive with the imports named in the petition, and then to proceed to determine the industry which produces these products. But in the determination of the industry boundaries, the Commission should not restrict itself exclusively to production activities that are exclusively associated with items identical to import articles. If one percent of a plant's domestic output consists of the product subject to import competition, or if one plant out of dozens producing similar but not identical articles is "injured," the Commission should test the injury by reference to a wider industry definition than that suggested by the petitioners.

It would be enlightening if the Commission had spelled out, in those investigations where the issue was important, how it reconciled its industry definition with that of the Census.87 Is there an asparagus industry, or is

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86 Both tariff schedules and the Census Standard Industrial Classifications may "have long ceased to have any meaningful relation to commercial reality." Economic Brief, supra note 80, at 2.
87 In the specialty steel industry, for instance, or even stainless steel wire, the Census establishments often ship more products than are included in the industry definitions adopted by the Trade Commission. Total net sales of stainless steel and alloy steel as percentages of overall establishment net sales ranged from sixty-six to seventy-two percent. See SPECIALTY STEEL, supra note 52, at 68. Many of the producers of round stainless wire did not provide data to the Trade Commission; they produced other types of wire on the same equipment used for producing stainless steel wire, and they were unable to segregate costs and profits. See ROUND STAINLESS STEEL WIRE, U.S.I.T.C. Pub. No. 779, at 42 (June 1976). Actually, of the fifty or sixty wire drawers in the United States, there were only four which confined their activities
the industry market gardening or raising root crops? As some of the
commissioner's have indicated, the possibilities of substituting one pro-
duct for another with the producers' existing facilities should be carefully
considered. Yet the data provided in the reports have rarely been sufficient
to resolve the question.

MEASURING THE DEGREE OF INJURY

As in reaching its definition of an industry, the Trade Commission
should be able to rely on many years of experience in the determination of
the existence of a serious injury in its investigations under the Trade
In neither of these statutes had the key language been changed, probably
because, as noted earlier, it had been taken directly from the General
Agreement on Tariffs and Trade. In retaining the phraseology of the
Trade Expansion Act of 1962, Congress, as Chairman Leonard and
Commissioner Moore pointed out, was aware of past Commission interpre-
tations of "serious injury" and that findings of injury had "rested heavily
on findings of plant closings, declining employment, and rapidly deteriora-
ting, low, or nonexistent profits, or losses." Previous Commission
findings had not equated injury with "weakness or vulnerability of a
petitioning firm." Where, however, an industry injury was shown, the
conventional indicia had to be supported by impact on all or most of the
firms.

Commissioners Moore and Clubb had emphasized that "[s]erious
injury for purposes of the Trade Expansion Act is an important, crippling
or mortal injury; one having permanent or lasting consequences." Yet the
report embodying this quotation illustrates the truly fuzzy nature of the
injury concept. A majority of the sitting commissioners found in the
affirmative that the piano industry was not being seriously injured, there

solely to producing stainless steel round wire. Round Stainless Steel Wire Investigation, No.
TA-201-12, at 388 (March 28, 1976) (statement of J. Dirlam). See also statement of J. Dirlam,
before the United States International Trade Commission, Investigation No. TA-201-12.
Appendix A (March 28, 1976).

88ASPARAGUS, supra note 72, at 13.
91See note 8 supra.
92See INDUSTRIAL FASTENERS, supra note 66, at 9 (views of Commissioner Moore).
93See note 8 supra.
94See INDUSTRIAL FASTENERS, supra note 66, at 9 (views of Chairman Leonard), 19 (views
of Commissioner Moore).
95Id.
96See NATIONAL TILE & MFG. CO., T.C. PUB. No. 145, at 7 (Dec. 1964) (Views of
Chairman Dorfman & Commissioner Sutton).
97For example, the umbrella frame industry was injured, according to a 1970 report,
because production was down, facilities were idled, profit levels low and employment had
declined. The number of firms had dropped from five in 1956 to two in 1966. UMBRELLAS &
METAL PARTS THEREOF, T.C. PUB. No. 334, at 10 (Aug. 1970) (dissent of Commissioner
Leonard). All commissioners found that the domestic industry had been injured. Only
Leonard attributed increased imports to a trade agreement concession.
98PIANOS & PARTS THEREOF, T.C. PUB. No. 309, at 6 (Dec. 1969) [hereinafter cited as
PIANOS], cited in INDUSTRIAL FASTENERS, supra note 66, at 19 (views of Commissioner Moore).
was only a threat of serious injury.\textsuperscript{97} How can one measure threat? The
evidence relied upon by the majority of the Commission cited declining
domestic consumption and rapidly increasing imports, a decline in profits
and the closing of five small plants since 1962.\textsuperscript{98} Yet, as the dissenting
Commissioners showed, the threatened injury faced by the piano industry
merely reflected "alternative recreational and cultural opportunities and
decreasing interest in the piano as such."\textsuperscript{99} Actually there was little to show
injury, stagnation would be a more appropriate characterization.\textsuperscript{100}

One can trace the transmutations of the Commission's criteria for
measuring the seriousness of injury for a single industry through its reports
on nonrubber footwear. In 1969 the Commission found that large domestic
footwear manufacturing firms accounted for fifteen percent of the total
quantity of nonrubber footwear imported in 1967.\textsuperscript{101} Productivity had
increased due to new styles and materials which had greatly altered the
product mix, and to technological improvements.\textsuperscript{102} Larger companies
were more profitable than smaller ones, but only the twelve largest
companies released comparable financial data, and they had sources of
revenue other than footwear manufacture.\textsuperscript{103} The Commission concluded
that some of the smaller producers probably could continue to operate at
low levels of profits, but they would be vulnerable to competition from
sales by their larger domestic competitors and by other types of footwear.\textsuperscript{104}

Two years later the President again requested a Tariff Commission
investigation.\textsuperscript{105} Commissioners Clubb and Moore found that there had
been constant movement of marginal firms, predominately small pro-
ducers, into and out of the industry during the decade of the 1960's.\textsuperscript{106}
Nevertheless, the drop in the output and profits in 1969 and 1970,
combined with the fact that smaller producers suffered most, led to the

\textsuperscript{97}See PIANOS, supra note 96, at 7.
\textsuperscript{98}See id. at 7.
\textsuperscript{99}See id. at 19.
\textsuperscript{100}See id. at 19.
\textsuperscript{101}NONRUBBER FOOTWEAR, supra note 63, at 20-22.
\textsuperscript{102}See id. at 57.
\textsuperscript{103}See NONRUBBER FOOTWEAR, T.C. PUB. No. 276, at 60 (Jan. 1969).
\textsuperscript{104}Id. at 64-65. In a brief report on an investigation conducted on its own motion a few
months later, the Commission reviewed competition at the retail level on the basis of
interviews with major retailers and questionnaire returns from producers and importers. It
concluded that nonrubber footwear is a highly differentiated product, that changing
merchandising patterns including discount houses and nonfood items in supermarkets
adversely affect small producers. Manufacturers of quality products maintained their
\textsuperscript{105}This request followed a Presidential Task Force report which found no specific
evidence that would enable it to single out the effect of imports, but the Task Force suggested
that with the Commission's powers of subpoena and access to confidential business data, it
might conclusively determine whether the imports were a cause of serious injury to the
industry producing men's and women's leather footwear. REPORT OF THE PRESIDENTIAL TASK
\textsuperscript{106}471 plants had been closed and 358 opened. See NONRUBBER FOOTWEAR, supra note 63,
at 20 (views of Commissioners Clubb and Moore).
conclusion that there was a threat of serious injury. Commissioner Leonard observed:

The industry is composed of a very large number of small producers who lack adequate financial resources and are otherwise ill equipped to adjust to the rapid proliferation of new styles and material, increased imports from low-wage countries, changing technology, new marketing techniques and a cost-price squeeze of impressive proportions. . . . Even if footwear supplies from abroad is ignored, the problems of the industry are monumental.

No relief having been obtained under the Trade Expansion Act, the footwear industry filed a petition for import relief under the Trade Act of 1974. Commissioner Minchew, joined by Commissioner Parker, again held that there was serious injury, relying on a decline in the number of firms from 1967 to 1974, a drop of forty-nine percent in profits for firms producing nonrubber footwear, a fall in production in every year since 1968, a variable profit and loss experience with a significant number of firms operating at a loss, and a rise in percentage of the insured unemployed in the "leather and leather products industry." On the other hand, no separate unemployment data were available for the nonrubber footwear industry. Chairman Leonard commented that the government has a tendency to study a topic almost to death and hoped that the Commission's unanimous finding of injury in the footwear case would result in "maybe, just maybe" action that would take the place of further study.

A further example may be drawn from inquiries into stainless steel and alloy tool steel, where a majority of the Commission also found that there had been serious injury to certain industries limited according to standards discussed earlier, capacity utilization, unemployment and profits. No where in this report nor any other under the Trade Act of 1974, is there a table showing return on equity or investment, nor any recognition that such a ratio might be pertinent to a finding of injury.
During the recession of late 1974-1975, the speciality steel industry could hardly have avoided suffering from lower capacity utilization, employment and profits. Yet Chairman Leonard's only reference to a decline in employment was based on the 1975 levels. If a finding of serious injury must be based on the presence, as Commissioner Moore had so carefully explained in his Industrial Fasteners decision, of a crippling or mortal injury with long term consequences, it is difficult to understand how any of the two-year comparisons used in the Speciality Steel report could even hint at such a grievous plight for the industry. Going further, one may question whether the data were not biased to show injury. For most of 1974, domestic customers, on allocations for all stainless steel products, were double and triple ordering in a desperate effort to corral scarce industry might have been operating at a loss in 1974. The smaller the firm, the lower the comparative percentages of profits to sales. Employment had fallen from 196,000 in 1971, to 177,600 in 1974, and dropped further in 1975. Id. at 36 (views of Commissioner Leonard). Similar data were used by Commissioner Moore. Commissioner Moore's statement was enlivened by a chart of production, broken down to be consistent with his determination that there were five different footwear industries, each of which showed a decline in production from 1968 to 1974. Id. at 49. Net operating profits for all domestic producers of nonrubber footwear were $189 million in 1974, versus $186 million in 1975. Id. at 51. Commissioner Bedell made similar findings. She compared the ratio of net operating profit to net sales after taxes for all domestic manufacturers with the ratio for the footwear industry; 2.6 percent for footwear in 1978 compared with 4.7 percent for all manufacturing. Of course, she was obliged to rely on the data from the same 125 large firms that had made financial disclosures to the Commission. Id. at 61.

Commissioners Bedell and Moore found low levels of capacity utilization (57 percent for plates, sheet and strip, and 69 percent for stainless bar and rod, and for alloy tool steel) for the part of the year 1975 as well as all of 1974 and 1975. SPECIALTY STEEL, supra note 52, at 11. It has proved impossible to check the data in this opinion. According to responses to the ITC questionnaire (itself subject to question because of its definition of capacity) in 1974, steel plates, sheet and strip capacity operated at 75.7 percent, rods at 85.2 percent, bars at 86.9 percent and tool steel, in all forms, 89.1 percent of capacity. Id. at Table B-16. Commissioner Leonard restricted himself to finding that sheet and strip capacity utilization was at or below 50 percent for "most of the time period 1970-1974," but was higher in 1974 at 76 percent. Id. at 24. Minchew did not discuss capacity utilization for flat rolled products or plate and sheet and strip separately. Id. at 35. Unemployment was covered by Commissioners Moore and Bedell in a single sentence comparing the predepression year of 1975 with 1970. Id. at 11. Leonard found that employment in the stainless sheet and strip industry was 57 percent lower in 1975 than in 1974, and below the 1970 figures. Id. at 25. Yet, a table compiled from responses to the ITC questionnaire to producers showed employment in sheet and strip rising in every year from 7,762 in 1970 to 11,700 in 1974 (Jan.-Sept.), and in plate from 1,555 (after drops in 1971 and 1972) to 2,378 in 1973 and 2,377 in 1974 (Jan.-Sept.). Id. at A-49. Man-hours for tool steel workers increased steadily from 1971 through 1974. Id. at A-51. All commissioners finding injury ignored this fact. Cf. SPECIALTY STEEL, supra note 52, at A-48-51. As for profits, Commissioners Moore and Bedell found that throughout the period, profits were four percent or less of sales, and that producers had sustained losses in sheet and strip, bar and rod, and alloy tool steel. Id. at 11. Chairman Leonard found that net operating profits were less than five percent of sales for sheet and strip in 1970 and 1972, and less than three percent in 1971. Since this was a capital intensive industry, he concluded it must be in dire straits. Id. at B-45 (Table 45).

See SPECIALTY STEEL, supra note 52, at 25.
See INDUSTRIAL FASTENERS, supra note 65, at 19.
See SPECIALTY STEEL, supra note 52, at 10.
Id. at A-56.
The Commission took note of this condition in the Industrial Fasteners\textsuperscript{120} and the Gloves reports\textsuperscript{121} Yet the specialty steel firms reported capacity utilization in 1974 of only seventy-five percent in stainless sheet, strip and plate.\textsuperscript{122}

There is nothing to indicate that the Commission explored the foundation for the profit data more thoroughly than it did the capacity submissions of the industry. Long experience in public utility regulation should encourage caution in the acceptance of profit conclusions which must be based upon a series of accounting assumptions about depreciation, assignment of overhead and other highly judgmental decisions. In these circumstances, the behavior of the firms would seem to be more significant than their self-serving assertions of low profit rates. No companies had exited from the specialty steel industry since 1968.\textsuperscript{123} Although the Information stated that “[c]apital expenditures in recent years have been limited”\textsuperscript{124} the Commission made no comparison of trends or proportions in the industry’s expenditures\textsuperscript{125} with those of other industries to determine whether they were unusually low. Annual expenditures hovered around $51-57 million in 1971-1972, dropped to $3 million in 1973, rose to $81 million in 1974, and were budgeted at the same figure for 1975, and at $114 million for 1976.\textsuperscript{126} As a result of these expenditures, according to the producers, productivity had increased by thirty-four percent between the years 1971 and 1974, so that it is surely not correct, or at least it is a gross oversimplification, to conclude as did Chairman Leonard that “needed replacement of capital and expansion of facilities to produce for increased demand and to achieve economies is made difficult if not impossible.”\textsuperscript{128}

The Central Analytical Problem of Injury Determination

Judgment of the analytical techniques used by the Commission to determine the seriousness of injury is handicapped by the withholding of information on the grounds of confidentiality of material. Nevertheless, it is apparent that the limited availability of trained staff economists, the shortness of time, statutory constraints, the indifference of the com-

\textsuperscript{119}See Industrial Fasteners, supra note 66, at 58.
\textsuperscript{120}Id.
\textsuperscript{121}Gloves, U.S.I.T.C. Pub. No. 760, at 62 (March 1976) [hereinafter cited as Gloves].
\textsuperscript{122}Specialty Steel, supra note 52, at B-16.
\textsuperscript{123}See, e.g., American Iron and Steel Institute, Directory of Iron and Steel Works (1967); Petition of the Tool and Stainless Steel Industry Committee to the International Trade Commission (July 16, 1975).
\textsuperscript{124}Specialty Steel, supra note 52, at 13.
\textsuperscript{125}The industry obviously being the companies, not the various product lines.
\textsuperscript{126}Specialty Steel, supra note 52, at B-48 (Table 46).
\textsuperscript{127}Id. at 14 (prepared statement of Richard Simmons).
\textsuperscript{128}Cf. id. at A-13-14: “[I]n recent years . . . large gains have been made in productivity through stepped-up cost-reduction programs, through efforts to improve yields, by reducing energy costs wherever possible, by replacing old equipment, and by improving melting and finishing equipment.”
missioners to inconsistencies in their positions in any given report, or among reports, or a combination of all these elements, has led to unsatisfactory results. Determinations of injury have frequently been made on what appears to be a superficial basis.129

An allied deficiency is the Commission’s failure to lay a solid foundation for determination of the extent of injury in a context of competitive market economics. Admittedly, the task of defining injury in such a way as to satisfy the theory of competitive behavior while also observing statutory standards poses a difficult problem for the Commission. The theory of competition has not recently been directed toward analysis of the way in which competitive behavior of firms and the interactions produced by such behavior result in changes in the variables normally given first priority by securities analysts, trade unions, or management in evaluations of business strength. Perhaps this derives from the disinterest of most economic theorists130 in the details of cost and price behavior and in short term reactions and in the range of phenomena that can be so easily swept under the textbook rug by labelling them lags or inelasticities. With the advent of more refined, rigorous and abstract microeconomic theory, such homely concepts as “sick industry” and “cutthroat competition” have been left to the intellectual sansculottes; and the analysis of responses of one rival to another is left to elaborate hypotheses based on the theory of games or decisionmaking under conditions of uncertainty.131 Most of the industries that have petitioned for import relief have been oligopolies, although some, like slide fasteners, honey or footwear, appear to be workably competitive.132 In either event, there is no readily available analytical apparatus that will indicate the likely sequence of steps or behavior pattern taken as a reaction to greater intensity of competition, whether in the form of lower prices, quality improvement or more attractive styling, except for attempts to moderate the force of the competition.

Conventional economics would regard the response of firms to competitors as part of the competitive process, varying more or less with the

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129 The Information listed in the Iron Blue Pigment report showed four companies had ceased to produce the iron blue pigment, but there was no discussion whatever in the Information of the circumstances of their exit from the industry. Iron Blue Pigment, supra note 84, at A-14. Yet three had submitted written explanations. Id. at A-37.


132 The plant hanger industry, for example, which seems to satisfy most tests of perfect competition, was investigated at the Commission’s own initiative. There were only twenty-two firms making textile plant hangers, but every house plant lover is a potential manufacturer of a macrame plant hanger; he or she is simply less likely to construct a hanging planter.
structure of the industry. If that competition forces some firms to shrink their activities, reduce sales, cut investment or even exit, the industry, or at least society, would not be injured but benefited. The very statutory criteria for the Commission to take into consideration would not be regarded as injury—certainly not the erasure of oligopolistic exploitation of customers. Hence, if the Commission were to adopt standards close to those of conventional micro-economics in reaching its findings about industry injury, it might find itself restricted to conditions of unfair competition for affirmative holdings of injury. There is no sign that the Commission has attempted to distinguish between fair and unfair competition in examining injury claims. There is a conflict between Congressional intent and economic principle. The problem was discussed earlier in a review of the dumping problem\textsuperscript{135}—unfair competition can injure an industry or a firm in an economic sense because it can lead to a misallocation of resources judged by conventional tests.\textsuperscript{134} On the other hand, competition which does not rely on discriminatory prices by a firm with market power or which does not employ other practices of a predatory nature will not injure the firms who may find that they have lost customers. Even if the industry disappears, it would not appear to have been injured as far as economic analysis is concerned.

Nevertheless, a compromise position can perhaps be staked out. By stimulating greater efficiency, innovativeness and aggressiveness, competition may enable firms to survive in the long run. Serious injury to an industry might be defined as responses to competition that are of such intensity that the firms cannot recover, try as they may. Disappearance of an industry rather than its reconstitution would be a serious injury. The various criteria listed by the statute are the incentives that stimulate or force the firms to mend their ways. That Congress could have had this reasonable definition in mind is shown by the passage from the Senate Finance Committee quoted earlier,\textsuperscript{135} that ties relief specifically to a limited time period within which the industry is supposed to ready itself to meet the "new conditions of competition."\textsuperscript{136} The Commission is directed to investigate and report on the "efforts made by firms and workers in the industry to compete more effectively with imports."\textsuperscript{137} This admonition, as far as we can discover, has been observed in only the most perfunctory fashion, although it is of key importance in appraising the seriousness of injury.\textsuperscript{138} It is significant also in evaluating the cause of the injury.

\textsuperscript{133}See Adams & Dirlam, Dumping, Antitrust Policy, and Economic Power, Bus. Topics, Spring, 1966 (Michigan State University).
\textsuperscript{134}Id. at 20-29.
\textsuperscript{135}See note 33 supra & text accompanying.
\textsuperscript{136}The Trade Act limits import relief to five years, and to the extent feasible, provides that relief shall be phased down after three years. See 19 U.S.C. § 2253(h)(1)-(2) (Supp. V 1975).
\textsuperscript{138}A self-inflicted injury cannot be permanent and is rarely mortal.
Causal Relations Between Imports and Injury

Separating the injury definition from the cause of injury is not easy, because as we have just seen, the injury can be regarded as an incentive to the industry to improve its performance. If imports are associated with more aggressive competition by domestic firms they may not, in some circumstances, be regarded as the sole cause of injury to the domestic industry. For instance, Commissioners Thunberg and Newsom, in their Views on the piano industry, remarked:

The increased importance of imported pianos in apparent consumption in recent years has provided part of the stimulation for a rationalization of the domestic industry. New modern facilities have been constructed in lower-cost locations; labor-saving equipment has been introduced in various parts of the production process; shifts to lower-cost sources of supply abroad are being implemented.

In the Slide Fastener Information, we learn that increased imports had caused the domestic industry to "increase discounts from standard price lists, to develop new producers, and to improve production-line efficiencies." None of the Commissioners, even those who found that imports had not been a substantial cause of serious injury, alluded in their views to these beneficial effects of imports.

Apart from the possibility that imports may seem to contribute to the health rather than weakness of a domestic industry, the charge to the Commission poses one of the most difficult problems of economics, that of tracing and assessing causal relationships. One need only refer to the great debate over inflation to see how little has been accomplished at the aggregative level to disentangle the variables. Yet the Commission, like its predecessors, must not only report to the President on whether imports have caused injury, but on the extent to which the phenomena representing injury are attributable to imports. With each successive revision of the escape clause, the degree of responsibility that calls forth remedial action has been altered. Initially, in interpreting the Trade Expansion Act of 1962, the Commission took the view that in finding imports to be a "major cause" of injury, effects of imports had to be more important than all other causes combined. In 1969, however, "major cause" was held to be a residual; this was the Tariff Commission's "but for" interpretation. If imports were the final straw that broke the camel's back, they would constitute a "major cause."

Even with the "but for" or "last straw" approach, it was still possible for commissioners to reach diametrically opposed conclusions about the importance of imports. In most reports the Commission failed
to find that imports had been a major factor in injury of domestic firms. According to Fulda, writing in 1972:

[T]he Commission has done a creditable job in determining whether increased imports have or have not been the major cause of serious injury or threat of such injury. . . . In numerous denials the Commission has convincingly explained that the injury or unemployment was due to inability to compete with domestic rivals, corporate reorganization, recession, inflation, and other causes.\(^4\)

Hence, in revising the injury standard in the Trade Act of 1974,\(^4\) Congress assumed that to require the Commission to find that imports were a substantial cause, rather than a major cause, would make it easier for petitioners to obtain relief.

In none of the cases decided under the Trade Expansion Act of 1962 had the Commission attempted a quantitative approach to measuring the relative importance of the causal factors that could have resulted in injury. Perhaps detailed inquiry was unnecessary when, by qualitative appraisal, the Commission could conclude that imports, although important, were not the major cause of injury. In any event, the Congressional history of the Trade Act of 1974 gives some indication of the type of inquiry the Commission should make to determine substantiality. The House committee stressed the necessity for the Commission's application of two tests: one of importance, the other of weight compared with other causes.\(^4\)

Imports cannot be equally important as all other causes, if there are a number of causes, because then none would be important. The Senate committee expressly granted license to the Commission to use its intuition: “The Committee recognizes that ‘weighing’ causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission.”\(^4\)

Under the Trade Act of 1974, therefore, the Commission has been charged with conducting a more detailed and precise inquiry into cause of injury than under the Trade Expansion Act of 1962. If there is more than one cause of injury, then imports must be more important than at least one other cause to constitute a substantial cause.\(^1\)

Oligopolistic price setting, recession, poor management, change in consumers' tastes, if all present simultaneoulsy must, or at least should be threatening domestic producers of sheet glass, even though “sheet faces market pressure from float glass in part of its market.” Flat Glass & Tempered Glass, T.C. Pub. No. 459, at 15 (Jan. 1972). Commissioners Parker and Young found that regardless of imports there had been a major shift to float glass, which had almost completely displaced sheet in the automotive market, and that it would make inroads in other markets.

\(^{14}\text{Hardship, supra note 14, at 26-27.}\)


\(^{14}\text{House Report, supra note 32, at 46.}\)

\(^{14}\text{S. Rep. No. 93-1298, 93d Cong., 2d Sess. 120-21 (1974).}\)

\(^{14}\text{See 19 U.S.C. § 2251(b)(4) (Supp. V 1975). "[S]ubstantial cause means a cause which is important and not less than any other cause." Id.}\)
evaluated in order to rank imports properly. Under the Trade Expansion Act of 1962 it was necessary only to determine whether imports resulting from trade agreement concessions were the major factor, that is, more important than all other factors. If they were, such a finding would dispose of the matter without bothering either to compare imports with each of the other influences, or to determine whether they were sufficiently numerous to render each unimportant.\textsuperscript{149}

In determining whether imports are a substantial cause, the Commission has generally respected faithfully the Senate committee's admonition to abjure mathematical precision. In the Gloves report, however, the Commission relied on a regression analysis of demand to dismiss a threat of serious injury.\textsuperscript{150} In the Flatware case, the Commission staff apparently carried out a correlation analysis, not presented in detail, that showed no relation between profits and imports, but this was not mentioned in any of the commissioners' views. In the Industrial Fasteners report, the Information found demand "correlated" with industrial production of durable goods, again without mentioning details of the study supporting the statement.\textsuperscript{151}

When the commissioners attempt to weigh the relative effect of imports, as against other causes of injury, by qualitative methods, inconsistencies appear from report to report. In the Slide Fasteners case, for instance, Commissioners Leonard and Bedell took account of the effect of changes in style and of the recession on the profitability of the zipper industry. Since the "decline in apparent consumption was more rapid than the decline in imports, there were marginal increases in the ratio of imports to consump-

\begin{enumerate}
\item See discussion in the text accompanying notes 141-148 supra.
\item With imports as a dependent variable and domestic prices, the industrial production index, and shipments to inventories ratio as a measure of capacity as independent variables, imports were shown to respond to higher prices and to rises in the industrial production index. See Gloves, supra note 121, at 12-13. "The 'centerpiece' of these regressions is the significant and pervasive influence of the overall pace of industrial activity on the demand for imports of all types of gloves . . . except for the rubber and plastic types." Id. at A-64. The latter exercised the most important influence. If imports tended to increase when the economy expanded, then it could be concluded that there was no threat of serious injury.
\item See Industrial Fasteners, supra note 66, at A-57. The ITC staff estimated the price elasticity of demand for imported honey and also computed a large number (82) of simple correlation analyses between such variables as number of bee colonies, pesticide applications, hay acreage and pounds per colony. There was no attempt, however, to duplicate the Industrial Fastener multiple regression approach and isolate the determinants of honey imports. Honey, U.S.I.T.C. Pub. No. 781, at A-137-40 (June 1976) [hereinafter cited as Honey]. No reference to the studies appear in the Commissioners' views.

When the domestic market for mushrooms was devastated by the discovery of botulism, the Commission was faced with the problem of weighing the relative influence of imports of canned mushrooms, the public's fear of possible contamination and a shortage of fresh mushrooms available to canners. The Staff apparently attempted no regression analysis, confining its analysis of causation to a simple review of consumption trends and relative prices of canned and imported mushrooms. See Mushrooms, U.S.I.T.C. Pub. No. 761, at A-62-87 (March 1976). The descriptive approach was followed in the second mushroom case. See Mushrooms, supra note 65, at A-63, A-89.
\end{enumerate}
But in the Specialty Steel case, Chairman Leonard compared a drastic drop in consumption of sheet and strip (317,000 tons) with a small increase in imports (11,000) to draw the conclusion that imports were a substantial cause of injury to the stainless sheet and strip industry.

The Footwear case illustrates the pitfalls of analyzing cause without resort to rigorous quantitative procedures. The recession and changes in styles were listed as causes of injury to the domestic industry, accounting in part for a decline in consumption. Imports were nevertheless held to be a substantial cause.

Large shoe manufacturing firms had apparently withstood the import attack; perhaps the small firms were merely inefficient. No financial data were available for the small firms; their proprietors may have been taking large salaries in lieu of dividends. According to the retailers, the American manufacturers were simply unable to supply the shoes that were in greatest demand, and Chairman Leonard in effect conceded this point by saying that while United States domestic manufacturers were capable of producing currently popular styles, they could not do so economically. Whether the domestic industry could have attracted customers for these styles at significantly higher prices was not explored, although one Commissioner was sure that price was the primary consideration in inducing the retailers to feature foreign rather than domestic models.

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152Slide Fasteners, supra note 66.
153Actually, Leonard stated that the market "decreased by almost one-half, while imports increased by more than 10,000 tons." See Specialty Steel, supra note 52, at 26. Cf. id. Table 3, Appendix B, at 4.
154Footwear 1976, supra note 66; see also Footwear 1977, supra note 67.
155See Footwear 1976, supra note 65, at 18-19 (views of Minchew & Parker), 56 (views of Moore). The report reviewed various considerations which might show the influence of imports on the domestic industry, but did not attempt to clarify relative importance of each by use of refined statistical procedures. See id. at A-139-59 (Information). In the second investigation of the shoe industry conducted under the Trade Act of 1974, the Commissioners adhered to the same position as that which they had adopted in the first, and the staff did no more than review import penetration ratios and broad price classes in discussing the substantiality of imports as a cause of injury. See Footwear 1977, supra note 67, at 7-54 (views of Commissioners), A-90-105 (Information).
156Report of the Presidential Task Force on Nonrubber Footwear 23-25 (1970) (Table 16); see note 105 supra. Commissioner Ablondi has emphasized that large firms are able to cope with imports, and in fact, may be responsible in part for the difficulties of the smaller shoe manufacturers. "The largest producers will continue to compete successfully against imports while the rest of the industry deteriorates under the pressure of competition both from imports and from dominant firms." Footwear 1977, supra note 67, at 41-45. The analysis of the domestic market in the Information is not sufficiently detailed to determine whether or not the small firms suffer from competition by the large ones, although its data show that the industry is "heavily concentrated," and that there has been "an evident increase in the concentration of retail outlets for footwear owned by the major firms." Footwear 1976, supra note 66, at A-63-64. For the 1977 report, the Commission merely updated the leading features of its 1976 report.
157Footwear 1976, supra note 66, at 42.
158Id. at 68.
In attributing domestic injury to imports, the commissioners have sometimes stressed lower prices of imports. In weighing the role of price, its influence cannot be easily separated from import penetration, which itself is a prerequisite to any finding that import relief is needed. If imports are not easily distinguishable as more desirable than the domestic product for stylistic or other reasons, or if there is no excess of demand over current domestic supply at prevailing prices, there must be a differential or discount of import below domestic price to compensate for the annoyance, hazard, delay, additional capital commitment and other costs of depending upon a supplier in another country. To some extent these advantages can be overcome by foreigners establishing their own distribution centers in the United States, as Swedish and Belgian specialty and carbon steel producers have done. Nevertheless, it would be unusual if imports did not sell for less than similar domestic products at the wholesale level to industrial customers. In petitioning for relief, the domestic industry frequently, if not always, calls attention to the low price of imports as though the lower price were in itself a demonstration of serious injury. Metzger's comment on domestic producers, particularly those organized as oligopolies, seems at least partly justified; they "generally have an idea of the maximum price cut they would be prepared to make"—that is, the fraction of the value added they are prepared to forego.

In evaluating the relative importance of a recession and of imports in reducing sales, cutting profits or employment, or raising inventories, the Commission confronts a set of dynamic variables where the separation of causes is difficult. A simple approach would compare the decline in shipments or consumption with the change in imports, from a period of prosperity or peak activity to the recession or depression. If the decline is in excess of the increase in imports, or if imports have also fallen, then it might be concluded that imports have been less important than a change in

159Those commissioners who found injury in the Industrial Fasteners report alluded to lower import price, Industrial Fasteners, supra note 66, at 3, and Moore and Bedell referred to "price pressure" of imports of stainless steel in 1970-1973, and in late 1974-1975. Specialty Steel, supra note 52, at 12. Prices were said to be the connecting link between imports of iron blue pigments and injury. Iron Blue Pigments, supra note 84, at 7. In Honey, supra note 151, the majority, because of a high lagged correlation between import prices and domestic prices, concluded that the former would continue to exercise a depressing influence. Id. at 11-12. The minority found domestic prices for the last available month higher than for any of the preceding seven months. Id. at 24. Responses to the ITC questionnaire are at variance with the Department of Agriculture price series. See id. at A-104, 112 (Table 31). On the other hand, in the Mushroom report, Commissioner Moore called attention to the fact that import prices for a No. 10 can of mushrooms, an important item in the institutional market, were higher than domestic prices. Mushrooms, U.S.I.T.C. Pub. No. 761, at 45 (March 1976).

160Testimony of Richard Simmons: "[F]oreign producers cut their prices in the period of 1969 through 1972, in order to capture the market, and then sold at a premium when the demand was high during 1973 and 1974, and then, drastically reduced their quotations as soon as the market declined in 1975." Investigation No. TA-201-5, Hearings on Stainless Steel and Alloy Tool Steel and Silicon Steel 68 (Oct. 1975).

161Adjustment Assistance, supra note 14, at 177.
business conditions in causing the injury. Yet it is easy to conceive of a case where domestic shipments might decline sufficiently to leave imports, even though unchanged or decreased, preempting a larger share of the market. An extreme example might leave imports with 100 percent of the market, though unchanged in volume.

The Commission has attempted to cope with this ambiguity by relying upon penetration ratios.\(^1\) If the share of the domestic market held by imports rises, then this can be taken as evidence of injury, even though the absolute level of imports remains the same or falls. To resolve the problem logically, however, it is desirable to avoid the "but for" or marginal approach. True, if imports were eliminated, the domestic producers might find themselves with 100 percent of the business at the trough of a depression. Yet the overwhelming share of their loss of business, and consequent decline in employment, would be attributable to a change in business conditions, not the imports. This would be true even if imports had held a large share of the market prior to the reversal in economic activity.

A similar approach could be employed in assessing the relative impact of a change in taste which seems to have diminished the demand for asparagus,\(^6\) or the decline in consumer interest in large cigars which shrank the market for Connecticut and Florida shade tobacco.\(^6\) The reluctance of consumers to purchase canned mushrooms following the botulism toxin scare of 1973 provides another example of a decrease in consumption that might account for a rise in the penetration ratio of imports.\(^1\)

When commissioners have taken the point of view that these long or short term trends can intensify vulnerability to imports, they have not carefully explained how the ranking, or substantiality, of the cause may be altered. For instance, in the *Birch Doorskin* report, Commissioner Minchew found that Quimby, the major domestic producer, was more sensitive to imports because the product's sales moved with variations in the level of

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\(^1\) To be sure, the statute directs the Commission to take into account "with respect to substantial cause," an increase in either relative or actual imports and a decline in the proportion of the domestic market supplied by domestic producers. 19 U.S.C. § 2251(b)(2)(C) (Supp. V 1975). But nowhere does either the statute or legislative history suggest that these indicia by themselves are determinative of substantiality; rather they should be prerequisites for moving to a more profound analysis of the role of imports in causing such injury as may have occurred.

\(^6\) See *Asparagus*, supra note 72, at A-110.

\(^6\) The marked decline in U.S. consumers' taste for large cigars was a more important cause of injury to the domestic industry than imports. *See Wrapper Tobacco*, U.S.I.T.C. Pub. No. 746, at 12, 14 (Nov. 1975). The piano industry was also affected by changes in consumption habits reflecting urbanization, mobility, television, ownership, etc., leading to declining per capita consumption. *See Pianos*, supra note 96, at 13.

\(^1\) See *Mushrooms*, supra note 65, at 35, 42 (views of Minchew & Moore). *But see id.* at 14 (views of Leonard).
And in the *Specialty Steel* report, Chairman Leonard found that the cyclical nature of the industry made imports even more important as a cause of injury.\(^\text{167}\) If this observation can be generalized, it suggests that an industry which goes through cycles which are generally more extreme than the economy as a whole, such as capital goods or durable goods industries, will be more likely to be injured by imports. But the proposition is still left obscure. Does it really mean more than that, with a given level of imports, the percentage of penetration will be higher in a recession if the industry is subject to wide cyclical swings? Moreover, in the *Stainless Steel Wire* case, just the contrary conclusion was reached on the basis of the exceptional cyclical variation of the domestic shipments.\(^\text{168}\)

To rely on changes in import penetration ratios to show substantiability of cause as an industry moves from prosperity to recession would require the Commission to recommend relief measures that would necessarily vary from recession to prosperity; quotas or tariff increases imposed because of the 1974-1975 recession would have to be eliminated as soon as the economy revived. Moreover, there would still be no demonstration that, as a separate cause, imports had been more important than the normal cyclical downturn. The point is especially important for industries such as specialty steel and stainless wire, as well as industrial fasteners.\(^\text{169}\)

Conclusions on Causal Relations

In being expressly charged with finding whether or not an economic variable does or does not have influence on another variable, and, in addition, being required to measure with a fair degree of precision, the magnitude of effect of that variable, the Commission is exceptional among American judicial administrative and fact finding bodies. Juries and courts, to be sure, are faced with making decisions about causality, responsibility and damages in tort cases, but they can rely on numerous precedents in reaching their conclusions. Moreover they are concerned with the past. Regulatory commissions must arrive at estimates of a fair return which is sufficient to attract the necessary capital to a public utility, but not so high as to overcompensate stockholders. To be sure they forecast, and are required to make rather simple estimates of causality, by arriving at a revenue figure that will produce the fair return. Their decisions also are in

\(^{166}\)Birch Plywood, *supra* note 77, at 29.

\(^{167}\)Specialty Steel, *supra* note 52, at 26.


\(^{169}\)Here, as elsewhere, the Commission (like its predecessor, the United States Tariff Commission) has failed to develop a consistent, well-grounded core of policies. This may be attributable to the fact that, except for determinations under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 (1970), its decisions are deemed to constitute merely findings transmitted to the President rather than "orders," license grants or license denials, and hence are immune from judicial review and are outside the scope of the Administrative Procedures Act.
the mainstream of a long line of inquiries of more or less similar character with the basic elements of the estimate always the same: existing revenue, net earnings and known prices of securities and capital structure. Failure to make an accurate prediction of change in revenue necessary to produce the desired rate of return can always be remedied. And it is the regulated company that charges and receives the price. The International Trade Commission, obviously, faces many more industrial problems, and it must take into account micro and macro-economic variables whose significance differs for each industry. What is more, the Commission must forecast the future of industries which are not legal monopolies.

**Remedies and Relief**

After reaching an affirmative decision, the Commission must take one further step in recommending relief to the President. In its infinite wisdom, Congress has kept the membership of the Commission at six, so that from time to time it divides equally; a deadlock is also possible when only four commissioners participate in a case. In the *Asparagus* report, for example, three commissioners voted in the affirmative, three in the negative. The Tariff Act of 1930 provides that when there is equally divided Commission, the findings of either group may be considered by the President as the findings of the Commission.\(^{170}\) The Trade Act of 1974, however, states that if the Commission finds serious injury from imports, it shall transmit its recommendations to the President.\(^{171}\) With an equally divided Commission no recommendations can be made that can qualify as those of the Commission, although those of individual commissioners may be transmitted to the President for his information.

The Trade Act of 1974, however, does not insure that, even in those cases where a majority of the Commission finds there has been injury, there will be a unanimous recommendation for relief. If there is equal division between two possible measures of relief, or if, with five voting, two commissioners hold there has been no injury, and each of three constituting a majority affirmative vote recommend a different relief, then the President will have no authoritative recommendation on his desk. Commissioner Minchew has therefore taken the position that even when he has voted negatively on injury, he will vote for relief if the majority of the Commission finds imports have been a substantial cause of serious injury.\(^{172}\)

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\(^{172}\) See Additional View of Vice-Chairman Minchew with regard to recommendations of remedy in *Asparagus*, supra note 72, at 20-24. Under Pub. L. No. 94-455 § 1801, 90 Stat. 1763 (1976), the President is given formal authority to consider as the "determination of the Commission" either a negative or affirmative finding when the Commission is equally divided as to the existence of serious injury. As for remedy, if a majority can not agree, even
Import Relief: Presidential Response to ITC Recommendations

The Trade Act of 1974 provides for import relief in cases of serious injury to a domestic industry. Yet the determination of the exact terms of the relief depends on the President after he reviews the ITC’s recommendations. And the President may be overruled by Congress, should he differ from the Commission. Although Congress has not as yet attempted to impose the Commission’s original recommendation, the possibility is real. Ambiguities are latent in the statute. Could Congress pass a resolution disapproving the action of the President if he proclaims stricter control of imports than that adopted by the ITC? It appears that the legislative purpose in allowing Congress final say was to permit the Commission’s recommendations to be enforced if they are watered down in any way by the President.

Directives to the President are more explicit than those that guide the Commission’s actions with regard to import relief. In case of an affirmative finding, the President may increase or impose a duty or a tariff-rate quota, impose or modify a quota, negotiate an “orderly marketing agreement” with foreign countries or combine all of these. From the statute it is not clear whether the Commission may recommend an orderly marketing agreement. Because the Commission is not empowered to negotiate such an agreement, and hence cannot specify its terms, the statutory omission seems

though there has been an affirmative decision, then a “plurality of not less than three commissioners” shall be treated as a remedial finding. Finally, if there are two groups, each with three members, agreeing on different remedies, the President may choose either one. But in that case, or when he chooses a remedy different from either, Congress may pick its own remedy as a basis for overriding the President as long as it is supported by three commissioners. This amendment has not yet been put to the test. It may lead some commissioners to join with others in favoring a remedy in order to arrive at a statutory “remedy determination” when they would not otherwise have been willing to do so. Thus, Chairman Minchew joined with Commissioners Parker and Moore to approve increased duties on mushrooms, although he found imports were not a substantial cause of injury. See Mushrooms, supra note 65, at 3, 33.

176 A House Concurrent Resolution was introduced on January 24, 1977 to disapprove the determination of the President not to provide import relief for the honey industry. A hearing was held, at which the Administration witnesses listed the types of aid given to beekeepers, such as compensation for pesticide-caused losses, research on the importance of pollination services and the price-support program for honey. Import Relief to the Domestic Honey Industry Hearings on H. Con. Res. 80 Before the Subcomm. on Trade of the Comm. on Ways and Means, 95th Cong., 1st Sess. 6-11(1977). The Committee on Ways and Means reported unfavorably. It found that (1) imports tend to increase when domestic production is insufficient to satisfy the stable honey demand, (2) imports had slowed down since the President’s decision, (3) commercial producers operated profitably, and (4) there was no evidence of idling of capacity or declining employment. The imposition of import restraints might have an adverse effect on negotiations in Geneva. See H.R. Rep. No. 95-25, 95th Cong., 1st Sess. (1977).
intentional. Indeed, in none of the reports so far transmitted to the President has the Commission proposed an orderly marketing agreement as relief. The Act does not define an orderly marketing agreement, although Title I, dealing with negotiating authority, gives the President authority to try to establish within the GATT "an [sic] international agreements on articles (including footwear), including . . . a surveillance body to monitor all international shipments . . . ."

In spite of the failure of the escape clause to spell out the types of recommendations the Commission may adopt, it is likely that they include all those listed as being available for selection by the President. And the Commission has gone ahead to recommend, as shown in Table 4, infra, tariff rate quotas, higher duties, quotas and adjustment assistance. As pointed out above, the procedural looseness under which the Commission operates permits an affirmative finding of injury by a majority of the Commission without insuring that there will be a majority recommendation for a specific form of relief. In such circumstances, the President, without fear of Congressional override, can determine that no relief whatever is necessary. Nevertheless, in several reports, the Commission has transmitted more than one recommendation to the President.

The President's freedom to choose relief procedures or to substitute adjustment assistance for other types of relief has been reduced by the 1976

17819 U.S.C. § 2131(a)(12) (Supp. V 1975). "Orderly" marketing arrangements have been devised to deal with "market disruption" under the G.A.T.T. Neither term appears in the G.A.T.T., but as early as 1959, "market disruption" was placed on the Contracting Parties' agenda at the initiative of the United States. They subsequently agreed on a definition and established a Working Party on Evidence of Market Disruption. In 1962 the Long-Term Arrangement for Regarding International Trade in Cotton Textiles was negotiated and was renegotiated in 1974. K. DAM, supra note 8, ch. 17; General Agreement on Tariffs and Trade, ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES (1974).

179See SPECIALTY STEEL, supra note 52, at 17.

180See IRON BLUE PIGMENTS, supra note 84, at 3.

181See SPECIALTY STEEL, supra note 52, at 4-5.

182See SHRIMP, supra note 64.

183For instance in the Flatware case, three commissioners recommended a tariff-rate quota at higher rates for excess imports, one commissioner recommended continuation for a new five-year period of the tariff rate quota about to expire and two commissioners recommended adjustment assistance. See STAINLESS FLATWARE, supra note 68, at 5-6. Commissioners Minchew, Leonard and Moore recommended higher duties on television receivers, Commissioners Parker and Bedell recommended the same level of duties on color television receivers only, and Commissioner Ablondi recommended quotas on color receivers. See TELEVISION RECEIVERS, supra note 19, at 4-5. Under the 1976 amendments to the Trade Act, the recommendation by Commissioners Minchew, Leonard and Moore constitutes the recommendation of the Commission. See note 172 supra. There was a similar plurality of three recommending tariff rate quotas with an increase in duty on canned mushrooms. This recommendation will now constitute the recommendation of the Commission. See MUSHROOMS, supra note 65, at 3-4. The plurality was obtained, however, with the vote of Commissioner Minchew, who concluded that imports were not a substantial cause of injury and hence voted in the negative. The President determined that relief was not in the national interest. See Memorandum of March 19, 1977, 42 Fed. Reg. 13,801 (1977). See Table 4 infra.
amendment. In the four reports with affirmative findings since the amendment, a plurality of three commissioners has been obtained for a single recommendation. Nevertheless, the Act provides a much broader framework for Presidential appraisal of the terms of relief than that which guides the Commission. Broadly, the relief determined by the President should "facilitate the orderly adjustment to new competitive conditions by the industry in question." More specifically, the President, before deciding whether to provide import relief and in selecting which type of relief to be enacted, is required to take into account the following factors:

1. The extent to which workers are getting adjustment assistance.
2. The extent to which firms in the industry are or are not likely to receive adjustment assistance,
3. The probable effectiveness of the relief "as a means to promote adjustment,"
4. The efforts being made or to be implemented by the industry to adjust to import competition,
5. The position of the industry in the nation's economy,
6. The effect of import relief on consumers,
7. The effect of import relief on competition in the domestic markets,
8. The effect on the international economic interests of the U.S.,
9. The impact on U.S. industries and firms of possible modification of duties or other import restrictions resulting from international obligation with respect to compensation,
10. The geographic concentration of imported products marketed in the U.S.,
11. The extent to which the U.S. is the focal point for exports because of restraints on exports to third country markets, and

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18219 U.S.C. § 2253(a) (Supp. V 1975). This phrase may also be read as suggesting that if import injury is to be found by the ITC, it should derive from some recent shift in relative efficiency or pricing policy; it could not, as the specialty steel industry argued, be the result of a "cumulative" impact of imports over a long period.
183This provision is to be read in conjunction with section 3 of Article XIX of the GATT which permits retaliation by the country or countries subjected to the imposition of new restraints on their exports or compensatory action to reduce tariffs or quotas on other articles under section 2 of Article XXVIII. Presumably the exporting country would have to agree to the "reshuffling." See K. Dam, supra note 8, at 85. In 1977, Commissioner Leonard began to list dutiable imports from, and U.S. exports to, those countries which would be most affected by his relief recommendations. See, e.g., Footwear 1977, supra note 67, at 32-37; Television Receivers, supra note 19, at 32-36. He did not reach any conclusions about the feasibility or desirability of U.S. concessions, nor suggest which imports should be singled out for liberalization. Neither did he hazard a forecast of which U.S. industries would be most likely to suffer from retaliation. Presumably his data were designed to aid the President in weighing benefits to the injured industry against harm to other industries that would follow from adopting the recommendations.
12. The economic and social costs incurred by taxpayers, communities and workers if import relief were or were not provided.\(^{187}\)

The recital of these points should be sufficient to show that the President may, if he so chooses, conduct an inquiry much more profound and, at the same time, more sensitive than that of the Commission. In his inquiry he is free to call on the International Trade Commission for additional information. Presumably he may also obtain information from other sources. Interested parties do not hesitate to apply pressure to and argue their cause with the Special Trade Representative for Trade Negotiators, and even, it seems, by direct contact with the President.\(^{188}\) The considerations listed are so comprehensive there is wide latitude for justifying a refusal to grant import relief; simple inspection of these points indicates that the President has a number of escape hatches available.

In the memoranda embodying his decision, the President has usually been quite brief.\(^{189}\) Table 4, \(^{ infra}\), summarizes Presidential statements regarding the twelve cases where import relief was recommended by the Commission, and on which the President had acted through June 1, 1977. In the Specialty Steel case, the President proposed to substitute an orderly marketing agreement for the quotas recommended by the ITC. The quota remedy was "too inflexible in view of the rapid expansions and contractions of the specialty steel market. During a recession period, imports would not be sufficiently constrained to prevent a recurrence of the

\(^{187}\) See generally 19 U.S.C. § 2252(c) (Supp. V 1975). This list of "considerations" has been slightly rephrased.

\(^{188}\) "[T]he real place where the policy decision was made was after the ITC case," says Mr. deKieffer [Attorney for the petitioners].

There was no letdown on the part of the companies or the union. "We did generate a lot of support on the part of the rank and file," recalls Ray Pasnick [director of public relations for the Steelworkers]. "We sent bus loads of people down to buttonhole Congressmen." In their educational effort, the specialty people touched all bases.

"They talked to everybody in the Administration," say Mr. deKieffer. "There was a lot of work on the Hill."

The White House was among the places visited. "I.W. Abel and I met with the President," say Mr. Simmons. "All we did was present the facts. He made no commitments." It is not irrelevant that Mr. Ford's announcement was made on June 7 at Middletown, Ohio, base of Armco Steel Corp. The President was campaigning in the Ohio primaries at the time. For the specialty producers, it was probably fortunate that their fate was decided at a time of acute political sensitivity.


\(^{189}\) For instance, in determining that import relief should not be accorded the footwear industry, the President sent to Congress a one and a half page report. *Adjustment Assistance For U.S. Footwear Industry*, H.R. Doc. No. 94-458, 94th Cong., 2d Sess. (1976). This action is required under 19 U.S.C. § 2253(b)(2) (Supp. V 1975) when the President determines that in the national interest, relief should not be provided. In transmitting his report rejecting import assistance for honey, the President took the position that 19 U.S.C. § 2253(c)(1) (Supp. V 1975), which purports to give Congress the power to override his decision not to grant relief, is unconstitutional. See 41 Fed. Reg. 36,788 (1976). The President rejected the Commission's recommendation for tariff rate quotas on canned mushrooms with less than a page of explanation. * See 42 Fed. Reg. 13,801 (1977).
problems encountered last year." Yet in a period of peak demand "imports could be held below levels needed by domestic consumers . . . ." Oddly enough, in the quotas he finally imposed, the President made no provision for cyclical adjustments. In deciding to negotiate for an orderly marketing agreement, the President took note of the report of a task force, at cabinet level, chaired by the Special Representative for Trade Negotiations, although the statute does not expressly provide for such a body to advise in section 201 cases.

In rejecting all of the 1976 relief proposals of the ITC for footwear, the Commission being unable to muster up a majority for any one plan, the President listed as reasons for preferring adjustment assistance: (1) Import relief, according to the ITC report, would not be an effective remedy for smaller firms; (2) Import relief would disproportionately benefit the 21 largest firms producing 50 percent of domestic output; (3) The industry was recovering from the recession; (4) Adjustment assistance would be more consistent with an anti-inflationary program; (5) There would have to be compensatory reduction in tariffs on other U.S. imports, or the U.S. would suffer retaliation; and (6) Adjustment assistance would not distort existing trade relationships whereas import relief would.

In the 1977 sequel to the 1976 refusal to impose import restraints, the President attempted to arrive at orderly marketing arrangements with Taiwan and Korea to limit shipments of footwear to the United States. Recently, some commissioners have seemed to adopt Presidential criteria in deciding on relief measures. According to Commissioner Leonard, neither his proposed relief of an increase in duties by 200 percent nor the majority’s recommendation for tariff-rate quotas, with duties 300 percent higher for two years on imports above the quota, would have materially reduced either the level of consumption or decreased imports below 1976 levels. He estimated that the cost to the consumer of his relief proposal

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190 Message from the President of the United States Specialty Steel Import Relief Action 4 (March 16, 1976).
191 Id. at 4.
193 It was reported that the Secretary of Agriculture and the Secretary of State were opposed to the quota recommendations of the ITC. See Steel Imports Plan Hit by Task Force, Wash. Post, March 4, 1976, at 1. The Trade Expansion Act of 1962, however, does provide for an advisory committee, 19 U.S.C. § 1351 (1970).
195 See Footwear 1977, supra note 67, at 30. Chairman Leonard’s conclusion depended on a number of assumptions about trends in imports and domestic production cross-elasticity in demand between imported and domestic shoes, the forward shifting of duties to retail prices and excess capacity in domestic manufacture, none of which was supported by reference to underlying calculations or data. See Footwear 1977, supra note 67, at 24, 29 nn.1-2. It is impossible to check Leonard’s estimate. Nowhere in the Information, embracing 100 pages of text, 5 pages of charts and 63 pages of tables may be found a single reference to demand elasticity, the price
would be $340 million in the first year, compared with $1.5 billion for the quota proposed by the manufacturers and the union.\textsuperscript{197} Again, when the Commission dealt with the color television receiver industry, in supporting their recommendation of a twenty percent duty as against the present rate of five percent ad valorem, the Commission majority estimated that the retail price of color sets would rise $35.\textsuperscript{198}

In another instance, the President pointed out not only that under GATT, the United States would have to take compensatory, or suffer retaliatory action but that three economic arguments justified his refusal to approve the tariff rate increases recommended by the Commission:\textsuperscript{199} (1) Imports had declined since 1973, when they accommodated a peak domestic demand;\textsuperscript{200} (2) Prices had gone up, and import relief by tariff increases would raise them further; and (3) The two large firms producing the American pigments could easily finance any investment necessary to impose their competitive position.\textsuperscript{201}

In sum, the President seems to have used his powers to moderate severe recommendations made by the Commission for import relief. In most instances, he has opted for adjustment assistance. On the other hand, in the one instance where he has used his powers to impose quotas, the volume of imports was larger than in any other investigation except footwear. It will therefore repay examination to determine the relative severity of the quotas finally imposed in the Specialty Steel case.

Of the countries with which the Special Trade Representative tried to negotiate orderly marketing arrangements on specialty steel, only Japan was cooperative.\textsuperscript{202} The President was obliged, therefore, when his time

\textsuperscript{197}Footwear 1977, supra note 67, at 29. Chairman Leonard assumes his proposed tariff would increase imported shoe prices by $.87 per pair. No supporting analysis is provided.\textsuperscript{198}See Television Receivers, supra note 183, at 22-23. Again, the conclusion depends on the marshalling of assumptions about prices and margins that cannot be checked, and are not even discussed elsewhere in the report.\textsuperscript{199}See Determination under § 202(a) of the Trade Act, Iron Blue Pigments, 41 Fed. Reg. 22,331 (1976).

\textsuperscript{200}This is an interesting point because the President here challenged the Commission’s own fact finding on its most important ground—the prerequisite for an affirmative decision that there be an increase in imports. In effect, he took as his own the views of Commissioner Ablondi, who alluded to the forty percent drop in imports since 1974. See Iron Blue Pigments, supra note 84, at 29.\textsuperscript{201}Determination under § 202(a) of the Trade Act, Iron Blue Pigments, 41 Fed. Reg. 22,331 (1976).

limit expired, to impose quotas on all other parties if he were to adopt the ITC's recommendations. The terms of the Presidential relief were less rigorous in one important respect than those of the ITC: the quotas were to be in effect for only three years. The quota volume for stainless steel strip was, however, lower for the first twelve months by about nine percent, and although the Presidential quotas rise by three percent annually, they do not reach the ITC's proposed 1976 level even in the third year. Equally significant was the restructuring of the ITC's country allocations for all products.

The presidential revisions were justified as giving Japan, as a reward for agreeing to the orderly marketing arrangement, a somewhat larger quota than would have been otherwise allowed under the ITC's remedy.

Relief as a Mirage

Confined more or less to an industry horizon in determining the degree of injury and its causes, if not by the language of section 201 at least by habitual analysis, the Commission has tended to recommend relief mea-

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203 The President is required to transmit to Congress his disposition of an affirmative finding by the Commission within sixty days of receiving the report. 19 U.S.C. § 2252(a) (Supp. V 1975). In Specialty Steel, the President consumed the full sixty days before announcing that if orderly marketing arrangements could not be successfully negotiated, he would impose quotas. See Office of Special Representative for Trade Negotiations, Press Release No. 200 (March 16, 1975). If Congress intends to override a presidential rejection of an ITC recommendation, it must act within ninety days of receiving the President's report. 19 U.S.C. 2253(c)(1) (Supp. V 1975). The Special Trade Representative announced the combination of a marketing arrangement with Japan and imposed quotas for other countries on June 11, 1976, three days short of the expiration of the Congressional ninety day option for reinstating the ITC's recommendation.

204 That is, for June 1976 through June 1977—compared with ITC's calendar year.

205 The bases for restructuring are explained in Office of Special Representative for Trade Negotiations, Press Release No. 229, Fact Sheet on Import Relief Program for Specialty Steel 2 (June 11, 1976) [hereinafter cited as Fact Sheet]. For the quotas, see Temporary Quantitative Limitation of the Importation into the United States of Certain Articles of Stainless Steel or Alloy Tool Steel, Proclamation by the President, June 11, 1976, 41 Fed. Reg. 24101 (1976).

206 The Special Trade Representative's extension of the period for calculating historical shares to five years, 1971-1975, instead of the ITs's three years, 1972-1974, brought into consideration the year 1975, when Japan's dominance in the market increased. See Specialty Steel, supra note 52, at B6 (Table 5). The European Economic Community's share was reduced; for example, the stainless sheet and strip import limits would have been 24.8 percent of 79,000 tons, or 19,500 tons, as compared to the 15,800 tons the Special Trade Representative allowed for 1976-1977. This was calculated by applying the 1972-1974 market share for each product to the global quota. See id. at 5, B7 (Table 6). The Presidential allocation for the Economic European Community as a whole was based on a sum of average imports from each country. According to the Special Trade Representative, to present the EEC with a "basket" would enable it more equitably to divide the total among its members than the ITC plan, which would have made each individual country's quota equal to 1972-1974 averages. See Fact Sheet, supra note 205. The ITC plan would have allowed the French, for instance, to export to the United States 14,773 tons of sheet and strip in 1976, more than it had ever shipped, although French tonnage had fallen twenty-five percent below its 1971 peak by 1974. The ITC proposed total quota for 1976 for stainless sheet and strip, the
sures without examining their consequences. Until recently, the recom-
mendations have been devoid of supporting economic analysis to demon-
strate either the degree of protection they may afford compared with
alternatives, or the costs that may be imposed upon consumers. Lengthy
Information sections compile (or ignore) raw data that could be useful for
economic studies, and with rare exceptions the material can not be related
to the arbitrary pronouncements that all too often characterize the views of
the commissioners.

The President, on the other hand, being specifically authorized to take
into account not only the effects of relief proposals on international trade
in other products, but the welfare costs of higher prices, has been reluctant
to erect barriers to imports. Wherever possible he has substituted
adjustment assistance for positive barriers. The Act has, of course,
provided the means whereby Congress, if sufficiently aggrieved by a
Presidential refusal to approve an ITC recommendation, can require its
adoption. While not exercised as yet, the option has served to oblige the
President, where political pressures have been strong, either to employ
quotas, or to arrive at "voluntary restraints" — i.e. orderly marketing
arrangements. Hence, the Act is well insulated from attempts to amend it or to
replace it by statutory quotas, along the lines of the Burke-Hartke bill.207

GENERAL CONCLUSIONS

It is possible to regard tariff protection as a policy area which does not
lend itself to the democratic process. By conveying great powers to the
President the Trade Act of 1974 took a risk. To date, the gamble has been
justified, as far as import relief is concerned. While seeming to make it easier
for domestic producers to check the flow of imports, the Trade Act of 1974
may disperse the protectionist thrust and to some extent dissipate its force.

When it was being considered in Congress, the Trade Act of 1974
was criticized for its complexity and for the extraordinary amount of discre-
tion it conveyed, in some instances, to the President. There were fears that
earlier versions of the legislation might make it easier to protect domestic
oligopolies and monopolies against vigorous foreign competition.208

most important product, was 79,000 tons. This amount was in excess of sheet and strip
imports in any year since 1971 and exceeded 1975 imports of sheet and strip by 17 percent. It is
impossible to determine how the ITC total quota was determined. Based on its average share of
the sheet and strip market for 1972-1974, which was 18.7 percent, the French quota for 1976
would have been 14,773 tons.

As far as the total for all specialty steel imports is concerned, the Presidential global limit
of 147,000 tons is above the ITC's by 1,000 tons in the first year, and then increases by three
percent annually to 151,500 tons for the years 1977-1978, and 155,900 tons for 1978-1979. These
totals may be compared with the 151,200 tons actually imported in 1974, and 153,700 tons in
1975. The shortfall from the actual 1975 import level will be concentrated in plate, bar and
alloy tool steel. The sheet and strip 1976-1977 quota is in excess of actual 1975 imports by
almost ten percent. "Improving market conditions" accounted for this allowance. Id. at 5.

207 See note 9 supra.
208 See Hearings on the Trade Reform Act of 1973, H.R. 19710, Before the Senate Finance
That the escape clause has been weakened by the omission of the requirement that increased imports be traceable to a trade concession is indisputable. Moreover, measures of injury appear still to be in a relatively early and superficial stage of analytical development and empirical analysis, while the Commission’s somewhat cavalier determinations, of industries weights the scales against imports. In isolating imports as a causal variable, the Commission deserves credit for moving ahead to use more quantitative techniques than were applied under the Trade Act of 1962. Nevertheless, the ITC still has far to go, not only in providing an adequate foundation for its conclusions, but in achieving consistency in its reports. The problem of causality badly needs reexamination, perhaps in an independent study unconnected with any current investigation, particularly to arrive at a modus operandi for handling the effect of the business cycle and the effects of shifts in consumer demand.

Unlike the ITC, the President has frequently taken account of the effect of proposed relief measures on consumers, or the economy. Since the Trade Act of 1974 does not forbid the Commission to consider the broader effects of proposals for relief, its investigation should be extended to include these matters, if only to aid the President in making his decisions. At the same time it would be desirable if the Special Trade Representative made public more detailed analyses of the President’s reasons for differing with the Trade Commission, or modifying its recommendations, than have hitherto been available. In a society that relies on precedent for the functioning of its administrative and judicial institutions, the suppression of thorough explanation for an executive decision saps the spirit of due process. The welfare consequences of the specialty steel, footwear, TV receiver and sugar relief should have been discussed at length. A proliferation of “voluntary” restraints adopted under the escape clause reinforces coalesced oligopoly power in our economy.

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| TA 201-2 | Bolts, Nuts & Screws | N | N | n | 1. Prices up  
2. Exports up  
3. Unemployment up | NSC |
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<td>TA 201-3</td>
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<td>N</td>
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| TA 201-4 | Asparagus | N | N | n | 1. Price increasing  
2. Land not used for asparagus is efficiently shifted to other uses. | U |
|          | Fresh | Tied | A | 1. I/P (all forms)  
1969-1974: increasing. | 1. Acreage harvested  
1969-1975 down  
2. Profits deteriorating (no data)  
3. Employment  
1963-1974 down | SC |
|          | Canned | N | N | n | 1. Profits  
1970-1974: down  
2. Employment  
1970-1974: down  
3. Efficient land use substitutability | U |
|          | Frozen | N | N | n | 1. Sales  
1970-1974: up  
2. Price increasing | U |
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<td>TA 201-5 Stainless Steel &amp; Alloy Tool Steel</td>
<td>Stainless Steel &amp; Alloy Tool Steel</td>
<td>None</td>
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<td>1. Absolute 1968-1975: no increase 2. Relative I/P 1968-1975: no increase</td>
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<td>Profits high</td>
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<td>2. Lack of funds for reinvestment</td>
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<td>TA 201-13 Round Stainless Steel Wire</td>
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<td></td>
<td>Wire</td>
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<td>1. Officials of processing associations denied injury</td>
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<td>2. Domestic inventory is lowest in five yrs.</td>
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<td>3. Prices in 1975 at all-time high.</td>
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<td></td>
<td>A</td>
<td>1. Absolute 1968-75: increasing</td>
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<td>1. Domestic production dropped 50% in 1975.</td>
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<td>2. Relative I/P 1968-75: increasing</td>
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<td>2. Low capacity utilization rate.</td>
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<td>3. Relative I/C 1968-75: increasing</td>
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<td></td>
<td>3. 8 out of 13 firms reported financial loss (1975)</td>
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<td>TA 201-14 Honey</td>
<td>Facilities for Producing &amp; Processing Honey</td>
<td>A</td>
<td>A</td>
<td>1. Absolute 1971-75: increasing</td>
<td>1. Foreign producers increasing production, some with government encouragement.</td>
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<td>2. Relative I/P 1971-75: increasing</td>
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<td>2. Purchase price for imports 74-76: down, expected to continue decreasing</td>
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<td>Growers</td>
<td>N</td>
<td>1. Absolute, 10 yr. trend down low in 1975. 2. Relative 1968-76: down</td>
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<td>1. 9 canners exited since 1960's. 2. Lower production in 1975-76 than 1974-75. 3. Profits in 1976 only 1% sales before tax. 4. Employment lower in 1975-76.</td>
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<tr>
<td></td>
<td>Color Receivers</td>
<td>A</td>
<td>A</td>
<td>(Same as for all receivers)</td>
<td>1. Losses in 1976</td>
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</table>

NOTES:  
a) See Table 2 for specific causes.  
b) Commissioner Minchew's discussion of serious injury and substantial cause focuses on the nonrubber footwear industry, although he has defined the domestic industry to include rubber and nonrubber footwear.  
c) Analysis of the industry applies also to three industries mentioned by Commissioner Moore: children's and infants' footwear, work footwear and athletic footwear.  
d) View of Parker; Leonard finds 2.4% operating profit.  

N = negative finding  
A = affirmative finding  
U = finding unnecessary  
n = no detailed finding  
SC = substantial cause  
NSC = no substantial cause  
I/P = ratio of imports to domestic production  
I/C = ratio of imports to consumption.

SOURCE: USITC Reports to the President.
### Table 2 - Key Findings in Import Relief Determinations of Substantial Cause

<table>
<thead>
<tr>
<th>Investigation</th>
<th>Industry</th>
<th>Commission Determination</th>
<th>Individual Views</th>
<th>Key Findings</th>
</tr>
</thead>
</table>
| TA 201-1      | Birch Plywood Doorskins | Negative | Negative | 1. Decrease in consumption resulting from decline in housing starts the most important cause  
Affirmative 1. Imports are as important as cyclical recession |
| TA 201-2      | Bolts, Nuts & Screws | Negative | Negative | 1. Inability of domestic industry to satisfy demand.  
2. Plants exiting inefficient  
3. Fastener industry cyclical.  
Small Screws | Negative | Negative | NSI |
| TA 201-3      | Bolts, Nuts & Large Screws | Negative | Negative | NSI  
Affirmative 1. I/C increased from 21% to 36% in past 6 yrs.  
2. Underselling by imports (no margins given) |
| TA 201-4      | Wrapper Tobacco | Negative | Negative | 1. Cigar consumption decline (5 million lbs.) more important than import increase (1.5 million lbs.)  
2. Import increase due to demand for special characteristics.  
Asparagus | Tied | Affirmative | 1. 26% increase in domestic production since 1972.  
2. 137% increase in imports.  
3. Since 1970, domestic producers lost 6.2% of the market to import of asparagus; 5.7% with respect to fresh asparagus only.  
Negative | NSI |
<table>
<thead>
<tr>
<th>Investigation</th>
<th>Industry</th>
<th>Commission Determination</th>
<th>Individual Views</th>
<th>Key Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA 201-5</td>
<td>Stainless Steel &amp; Alloy Tool Steel</td>
<td>No findings</td>
<td>Negative</td>
<td>NSI</td>
</tr>
<tr>
<td></td>
<td>Stainless Sheet &amp; Strip</td>
<td>Affirmative</td>
<td>Affirmative</td>
<td>1. I/C 1973:6%; 1975(9 months): 15.6%</td>
</tr>
<tr>
<td></td>
<td>Stainless Steel Plate</td>
<td>Affirmative</td>
<td>Affirmative</td>
<td>1. High importers' inventories</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2. Unused foreign capacity</td>
</tr>
<tr>
<td></td>
<td>Stainless Bar &amp; Rods</td>
<td>Affirmative</td>
<td>Negative</td>
<td>NSI</td>
</tr>
<tr>
<td></td>
<td>Alloy Tool Steel</td>
<td>Affirmative</td>
<td>Affirmative</td>
<td>1. Increasing I/C 1974 (9 months): 15%; 1975 (9 months):</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2. Imports increased by 3,400 for the corresponding period.</td>
</tr>
<tr>
<td>TA 201-6</td>
<td>Slide Fasteners</td>
<td>Tied</td>
<td>Affirmative</td>
<td>1. Imports increasing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2. Imports prevent domestic firms from raising prices.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Negative</td>
<td>1. Changes in style and use more important than imports.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2. Recessionary pressure more important than imports.</td>
</tr>
<tr>
<td>TA 201-7</td>
<td>Nonrubber</td>
<td>Affirmative</td>
<td>Affirmative</td>
<td>1. Labor intensiveness of the industry gives foreign producers advantages.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2. Import trend is up.</td>
</tr>
<tr>
<td>1977</td>
<td>IMPORT COMPETITION</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
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<td></td>
</tr>
</tbody>
</table>
| Rubber & Nonrubber | Affirmative | 1. Style less important than price  
2. U.S. footwear industry's technology at least equal to that of foreign producers.  
3. Retailers get higher mark-up on foreign shoes  
| TA 201-8 Stainless Table Flatware | Affirmative | 1. Decline in domestic shipments would be much less severe if not for imports.  
2. Plastic tableware did not substitute for stainless.  
3. Increasing import market share 1968: 48%  
1974: 61% |
| TA 201-9 Certain Gloves | Negative | Lack of innovative capital expenditure. |
| Gloves Rubber & Plastic Leather & Cotton | Negative | Negative  
NSI  
NSI |
| TA 201-10 Mushrooms Canning | Affirmative | 1. Increasing domestic inventories, 1972-74.  
2. Industry is labor-intensive, so imports exert high price pressures on domestic ones. |
| TA 201-11 Ferricyanide Blue Pigment | Affirmative | 1. High foreign inventories & production  
2. Imports undersell domestic mushrooms.  
4. Fresh mushrooms not available to canners at favorable prices.  
1. Imports undersell domestic production by 12% to 19% (1971-1975).  
2. Import penetration up.  
3. Costs outran price (confidential)  
4. Low profit due to import price pressure. |
<table>
<thead>
<tr>
<th>Investigation</th>
<th>Industry</th>
<th>Commission Determination</th>
<th>Individual Views</th>
<th>Key Findings</th>
</tr>
</thead>
</table>
2. Decrease in imports to Japan (30%) equals increase in imports to U.S. |
2. Domestic fishermen cannot pass on increasing costs.  
3. Drop in 1975 prices due to unloading of domestic inventories. |
| TA 201-13 Round Stainless Steel Wire | Round Stainless Steel Wire | Negative | Negative | 1. Processing forms use imported shrimp  
2. Loss in 1974 due to unwise building up of inventories. |
| | | | | 1. Recession more important than imports  
2. Decision in TA 201-5 does not predetermine this case because former includes more categories of products.  
3. Domestic stainless wire industry shows unclear sign of serious injury.  
4. Increasing imports are not expected. |
| TA 201-14 Honey | Producing, processing, Marketing Honey | Affirmative | Affirmative | 1. Given the import restrictions resulting from TA 201-5 import of wire will increase to circumvent the restrictions.  
2. Stainless wire industry is moving toward more competitive market structure. |
| | | | | 1. Domestic honey inventories high  
2. Import prices predict domestic price in following year, and depress domestic prices  
3. Ratio of imports to consumption rising. |
| | | | | 1. No evidence of downward trend in prices, production, profits, wages or employment  
2. No threat of increased supply from major exporters. |
<table>
<thead>
<tr>
<th>TA 201-15 Plant Hangers</th>
<th>Plant Hangers</th>
<th>Negative</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA 201-16 Sugar</td>
<td>Sugars, Syrups &amp; Molasses</td>
<td>Affirmative</td>
<td>Affirmative</td>
</tr>
<tr>
<td>TA 201-17 Mushrooms</td>
<td>Mushrooms</td>
<td>Affirmative</td>
<td>Affirmative</td>
</tr>
<tr>
<td>TA 201-18 Footwear (Nonrubber)</td>
<td>Footwear</td>
<td>Affirmative</td>
<td>Affirmative</td>
</tr>
<tr>
<td>TA 201-19 TV Sets</td>
<td>Television Industry</td>
<td>Affirmative</td>
<td>Affirmative</td>
</tr>
</tbody>
</table>

1. Imports for 1976 decreased compared with 1975.
2. Domestic industry sustained tremendous growth since beginnings in 1972.

1. Imports at lower prices than domestic sugar
2. World sugar production will increase
3. Market for sugar is reduced by other sweeteners but imports no less.

1. Imports up 80% from 1970-71 to 1974-75.
2. Imports up 14% between 1974-75 and 1975-77.
3. Imports sold at lower prices.

1. Delivery of fresh mushrooms to fresh market
   More important than imports in causing injury.

1. Import percentage of domestic market continues to rise
2. When imports declined in 1974, consumption declined sharply.
3. Imports undersell domestic product.

1. Imports more important than dominance by Zenith and RCA.
2. Imports more important than decline in spending, and in 1976, increased phenomenally.\(^c\)
3. Imports sell at lower price.

NOTES:  
\(a\) Parker found the growers were not injured; Leonard and Moore, that both growers and canners were injured; Ablondi did not specify which.
\(b\) Minchew did not reach the industry definitions.
\(c\) Ablondi found that pending proceedings to check imports caused flood of imports in 1976.

NSI = No serious injury or threat of serious injury.
NII = No increase in imports.
SOURCE: USITC Reports to the President.
<table>
<thead>
<tr>
<th>Investigation</th>
<th>Date</th>
<th>Industry</th>
<th>Sellers</th>
<th>Concentration Ratio</th>
<th>Value of Sales or Shipments</th>
<th>Value of Import</th>
</tr>
</thead>
<tbody>
<tr>
<td>201-1 Birch Plywood Doorskins</td>
<td>10/20/1975</td>
<td>Plywood Doorskins</td>
<td>12 Plants</td>
<td>12 - 100</td>
<td>NA</td>
<td>$42,424 (1974)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Birch Doorskins</td>
<td>7 firms</td>
<td>7 - 100</td>
<td>NA</td>
<td>$12,981 (1974)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bolts</td>
<td>4 - 31</td>
<td>$422.7 (1974)</td>
<td>90.0 (1974)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8 - 40</td>
<td>mine roof</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nuts</td>
<td>4 - 42</td>
<td>$393.5 (1974)</td>
<td>$185.6 (1974)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8 - 61</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Large Screws</td>
<td>4 - 40</td>
<td>$591.6 (1974)</td>
<td>$112.5 (1974)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8 - 60</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Small Screws</td>
<td>4 - 37</td>
<td>$471.9 (1974)</td>
<td>$65.6 (1974)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>8 - 54</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>201-4 Asparagus</td>
<td>1/12/1976</td>
<td>Fresh</td>
<td>2400 Growers</td>
<td></td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Canned</td>
<td>27 Firms</td>
<td>NA</td>
<td>NA</td>
<td>$1975 Jan.-Oct. $3.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Frozen</td>
<td>8 Firms</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Code</td>
<td>Date</td>
<td>Description</td>
<td>Quantity</td>
<td>Unit Range</td>
<td>Total 1974</td>
<td>Unit 1974</td>
</tr>
<tr>
<td>-------</td>
<td>------------</td>
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<td>------------</td>
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<td>-----------</td>
</tr>
<tr>
<td>201-5</td>
<td>1/16/1976</td>
<td>Stainless Steel &amp; Alloy Tool Steel</td>
<td>20</td>
<td>20 - 100</td>
<td>$2,065.2</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stainless</td>
<td>15</td>
<td>15 - 100</td>
<td>$1,880.8</td>
<td>$156.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alloy Tool</td>
<td>11</td>
<td>11 - 100</td>
<td>$246.8</td>
<td>$28.5</td>
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<tr>
<td></td>
<td></td>
<td>Stainless Plate</td>
<td>NA</td>
<td>NA</td>
<td>$246.8</td>
<td>$16.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stainless Sheet &amp; 2 strip</td>
<td>NA</td>
<td>NA</td>
<td>$1,142.0</td>
<td>$74.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stainless Rod</td>
<td>NA</td>
<td>NA</td>
<td>$45.0</td>
<td>$25.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stainless Bar</td>
<td>NA</td>
<td>NA</td>
<td>$388.6</td>
<td>$39.2</td>
</tr>
<tr>
<td>201-6</td>
<td>2/20/1976</td>
<td>Slide Fasteners &amp; Parts Therof</td>
<td>68</td>
<td>1 - 40</td>
<td>1975</td>
<td>1975</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$181.7</td>
<td>$6.1</td>
</tr>
<tr>
<td>201-7</td>
<td>2/20/1976</td>
<td>Nonrubber</td>
<td>409</td>
<td>4 - 28</td>
<td>$3,173.2</td>
<td>$980.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8 - 36</td>
<td></td>
<td>$844</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(Jan.-Sept. 1975)</td>
</tr>
<tr>
<td>201-8</td>
<td>5/8/1976</td>
<td>Stainless Steel Table Flatware</td>
<td>15</td>
<td>2-more than</td>
<td>$74.1</td>
<td>$52.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>19</td>
<td>60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>201-9</td>
<td>5/8/1976</td>
<td>Certain Gloves</td>
<td>150</td>
<td>4 - 55</td>
<td>$283.0</td>
<td>$53.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8 - less than 50</td>
<td></td>
<td>$42.3</td>
</tr>
<tr>
<td>Investigation</td>
<td>Date</td>
<td>Industry</td>
<td>Sellers</td>
<td>Concentration Ratios</td>
<td>Value of Sales or Shipments</td>
<td>Value of Import (in millions)</td>
</tr>
<tr>
<td>---------------</td>
<td>------------</td>
<td>---------------</td>
<td>--------------------</td>
<td>----------------------</td>
<td>-----------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>201-10</td>
<td>8/17/76</td>
<td>Fresh Mushrooms 500 Growers</td>
<td>NA</td>
<td>$68.6 (1974)</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Frozen Mushrooms 25 Processors</td>
<td>NA</td>
<td>$48.825</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Freeze-dried Mushrooms 2 Processors</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>201-14</td>
<td>5/1/1976</td>
<td>Processed Shrimp 275-300 Processors</td>
<td>NA</td>
<td>$946 (1975)</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>201-15</td>
<td>12/22/1976</td>
<td>Round Stainless Steel Wire</td>
<td>50 Firms 9 - 60 (1975)</td>
<td>$985.5 (1975)</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>201-16</td>
<td>8/7/1976</td>
<td>Honey Producers 1500 Producers in 80 Processors</td>
<td>1 - 50</td>
<td>$99.4 (1975)</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cane Sugar (Ref.) 15</td>
<td>18 - 100</td>
<td>$4.2 (for 11) NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Best Sugar 15</td>
<td>13 - 100</td>
<td>$16.178 (1975)</td>
<td>$18.6</td>
<td>NA</td>
</tr>
<tr>
<td></td>
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</tr>
</tbody>
</table>

**SOURCE:** USITC Reports to the President

**NOTES:**

aa) The first number indicates the number of firms included, the second number indicates the percent of the market held by those firms.

a) Latest available Calendar Year


c) Commission Staff estimate of "open market" sales.

d) Plant Hangers, p. A-4; according to p. 6, there are only 16 firms operating.

f) Nowhere in the Report is shown either value of shipments of raw sugar or refined sugar. The only Table to show sales includes only 8 cane refiners and 10 sugar beet processors. Sugar, p. A-87.
<table>
<thead>
<tr>
<th>Investigation</th>
<th>Current Tariff or Other Restrictions</th>
<th>Recommendations&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Presidential Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Asparagus</td>
<td>17.5% <em>ad valorem</em></td>
<td>Moore, Bedell and Ablondi: Quota, 7000,000 lbs. for 3 yrs. Feb. 1 - April 30; rising thereafter</td>
<td>Adopt negative finding</td>
</tr>
<tr>
<td>2. Industrial Fasteners</td>
<td>Bolts, 0.2&lt;sup&gt;c&lt;/sup&gt;/lb.</td>
<td>Moore, Parker and Ablondi: Adjustment Assistance</td>
<td>Adjustment Assistance</td>
</tr>
<tr>
<td></td>
<td>Nuts, 0.1&lt;sup&gt;d&lt;/sup&gt;/lb.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Large Screws, 9.59.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Small screws, wood, 12.5% machine, 0.5&lt;sup&gt;e&lt;/sup&gt;/lb.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Flatware</td>
<td>Tariff Rate Quota of 48,600,000, expires 9/30/76. Knives &amp; forks, under 25&lt;sup&gt;f&lt;/sup&gt;; 1&lt;sup&gt;f&lt;/sup&gt; + 12.5%. Over 25&lt;sup&gt;f&lt;/sup&gt;; 1&lt;sup&gt;f&lt;/sup&gt; + 17.5% Spoons, under 25&lt;sup&gt;f&lt;/sup&gt;; 17% Above quota rates, knives and forks, 2&lt;sup&gt;f&lt;/sup&gt; + 45% <em>ad valorem</em>; spoons 40% <em>ad valorem</em>.</td>
<td>Moore, Bedell and Parker: a. Tariff rate quota of 51,516,000 b. Rate above quota, knives and forks under 25&lt;sup&gt;f&lt;/sup&gt;; 55% spoons under 25&lt;sup&gt;f&lt;/sup&gt;; 55% Leonard &amp; Minchew: Adjustment Assistance</td>
<td>Adjustment Assistance</td>
</tr>
<tr>
<td>4. Mushrooms</td>
<td>3.2&lt;sup&gt;f&lt;/sup&gt;/lb. + 10% <em>ad valorem</em></td>
<td>Leonard, Minchew, Ablondi; Adjustment Assistance Parker: Tariff Rate Quota: rates above quota 55% <em>ad valorem</em>, 1st 5 yrs.</td>
<td>Adjustment Assistance</td>
</tr>
<tr>
<td>5. Specialty Steel</td>
<td>Bars 10.5% + 4%&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Leonard, Moore, Bedell, Parker &amp; Minchew: Quotas, starting with total lower than 1975 imports; thenceforth based on percentage of</td>
<td>Starting quota approx. same as ITC, rising by 35% annually. Product quotas based on 1971-1975, average share; country allocations on same basis. Japan accepted orderly marketing agreement.</td>
</tr>
<tr>
<td></td>
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<tr>
<td>---</td>
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<td></td>
</tr>
<tr>
<td>6. Footwear (1)</td>
<td>Tariff depending on value of shoe and other factors; average 10% on non-rubber footwear</td>
<td>Leonard, Moore, Bedell: Tariff increase, high in 1976 declining each successive year, rates vary according to value of shoe. Minchew and Parker: Tariff rate quota; quotas based on 1974 imports. Rates above quotas at 40% for all non-rubber footwear 1st yr., declining thereafter. Abondini: Adjustment Assistance</td>
<td></td>
</tr>
<tr>
<td>7. Shrimp</td>
<td>Duty-free</td>
<td>Adjustment Assistance</td>
<td></td>
</tr>
<tr>
<td>8. Iron Blue Pigments</td>
<td>2.7¢/lb.</td>
<td>No relief. Leonard, Minchew &amp; Moore, Bedell, Parker: Raise duty: 2.7¢/lb. + 18%, 15%, 12%, 9%, 6% ad valorem 1st-5th years</td>
<td></td>
</tr>
<tr>
<td>9. Mushrooms</td>
<td>3.2¢/lb. + 10% ad valorem</td>
<td>Minchew, Parker &amp; Moore: Tariff rate quota: above quota, 3.5¢/lb. + 35% ad valorem, 1st 3 yrs. 25% 4th yr. 15%, 5th yr. Leonard and Abondini: Adjustment Assistance</td>
<td></td>
</tr>
</tbody>
</table>

No relief. Korea and Taiwan promised to restrict imports voluntarily.
<table>
<thead>
<tr>
<th>Investigation</th>
<th>Current Tariff or Other Restrictions</th>
<th>Recommendations&lt;sup&gt;3&lt;/sup&gt;</th>
<th>Presidential Action</th>
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</thead>
<tbody>
<tr>
<td>10. Footwear (2)</td>
<td><em>Ad valorem</em>, rates depending on type, materials and price. Average 10% on non-rubber footwear.</td>
<td>Minchew, Parker, Moore, &amp; Bedell: Tariff rate quota, applied to all non-rubber footwear except disposable zories, and athletic shoes valued over $8/pr. Above quota rate 40%, <em>ad valorem</em>. 1st 3 yrs. 30% in 4th yr., 20% in 5th yr. Leonard: No quota, Tariff 30%, 1st 2 yrs., decreasing thereafter. Abondi: Adjustment Assistance</td>
<td>Voluntary restraints proposed to principal exporting countries, Taiwan and South Korea.</td>
</tr>
<tr>
<td>11. Sugar</td>
<td>8.75¢/lb. Raw sugar 96 deg. 7,000,000 ton quota (inoperative)</td>
<td>Parker, Moore, Bedell: 4.25¢ over ton quota to 1981, allocated by President. Leonard &amp; Abondi: 4,400,000 ton quota through 1979 to be allocated by auction. Minchew: 4,400,000 ton quota, allocated by 1972-1976 average counting share.</td>
<td>Relief denied; subsidies to be paid to U.S. firms.</td>
</tr>
<tr>
<td>12. TV Receivers</td>
<td>5% <em>ad valorem</em></td>
<td>Minchew, Leonard &amp; Moore: Duty 20%, 20%, 15%, 15%, 10% on all TV sets, 1st - 5th yrs.</td>
<td>Orderly marketing agreement by Japan restricting exports to U.S. by 1.75 million sets annually for three years.</td>
</tr>
</tbody>
</table>
Parker & Bedell:
  Same rates on color TV sets.
Ablondi:
  Quota 1,272,000 on color TV Sets. 5% / yr.

SOURCE: USITC Reports and STR Press Releases.

  a) When the Commission has tied or voted affirmatively.