> for the most part, the language of the act makes difficult, if not impossible, the conviction of offenders and, for that reason, the enforcement of its purpose.[7]

The Commission then went on to urge the introduction of administrative remedies for dumping, rather than a criminal law procedure.

> Such amendment would not be inconsistent with the enactment of definite and authoritative instructions to the Federal Trade Commission to deal with dumping as a phase of unfair competitive methods.[8]

In retrospect, it is clear that this Report of the Tariff Commission signalled the demise of the requirement that there be evidence of predation as a condition for securing a remedy against dumping in the U.S. legal system. The Act of 1921, which was the basic anti-dumping statute of the U.S. until the post-Tokyo Round Trade Agreements Act of 1979, made no reference to predatory intent.[9]

One should note, by way of background, that this discussion in the U.S. took place in light of the decision of the U.S. Supreme Court (American Banana Co. vs. United Fruit Co.) that the Sherman Act (the basic competition legislation of the U.S.) did not cover acts done in foreign countries. It was held that not only did the Sherman Act not apply to acts done in foreign countries, even if done by U.S. nationals, even if the conspiracy at issue occurred in the U.S., provided that the acts complained of were not illegal in the countries where they were committed.[10] Application of the more modern "effects" doctrine of international law would have led, possibly, to a different result. It was this lack of application of the Sherman Act which, it appears, gave rise to the need for separate and distinct legislation addressed to the issue of unfair prices, and, as Viner notes, particularly those below the cost of production.[11]

To return to the matter of how the issue of predation was viewed in what now seems to have been the formative period of modern trade law, we should note the authoritative comments of Viner. Jacob Viner was, by origin, a Canadian, who, like many other Canadian economists of the period[12] went to the United States for graduate level study. His mentor was F.W. Taussig, the leading student of U.S. commercial policy, who became the first chairman of the U.S. Tariff Commission[13] and a prolific and important writer on U.S. commercial policy. Viner argued that "for the purposes of economic analysis" the appropriate basis for classification were, first, the motives or objectives of the dumper (which, in its 1919 report the Tariff Commission had concluded was, as a matter of law, difficult to deal with) and "according to the degree of continuity of the dumping." One of Viner's categories was "To eliminate competition in the market dumped on;"[14] Viner held this to be likely to be of "short-run or intermittant" continuity. Later, examining the key economic question of whether, in fact, predatory dumping did take place, Viner observed: "There are . . . sufficient instances of trusts and combinations, many of them international in their membership or affiliation, that are within reach of world-wide quasi-monopolistic control of their industry, to make the danger of predatory competition a real one. . . ." And, at a later point: "In every manufacturing industry a substantial fraction of the world output is produced by concerns who survive only under the shelter of high tariff protection in their