jurisdictions. At the international level, the two principal GATT "injury" provisions, Articles VI & XIX, might well be articulated in more detail. Leaving aside the question of "injury to whom?" and leaving aside the question, for the purpose of this discussion, of whether it is a "diversion of business" concept or a broader concept of "injury to competition", the issue should be addressed of more clearly identifying the various degrees of injury at issue. It is consistent with the GATT as now written to hold that there is an implicit and meaningful progression in the "injury" provisions. It is consistent with the GATT to accept that price differentiation, subsidization, and competition from new sources is so pervasive in international trade that action to limit these manifestations should be taken only as a last resort.

At one extreme there is that degree of impact which is "negligible", which does not warrant any intervention, which is not actionable. It is for consideration whether such a level could be defined across-the-board, for all products, or whether as a practical matter it must differ for different products; the only point to be made here is that, if it is accepted that anti-dumping and countervailing duty actions, and Article XIX actions, impose substantial burdens on the national economy, that they can have anti-competitive effects, and that therefore these provisions should be used rarely and carefully, it would be useful to define "negligible" at a level higher than "de minimis".

To take a recent anti-dumping case: the Canadian competition authorities argued in regard to the dumping of refined sugar from the U.S., that when dumped imports were equal to 2.2% of domestic production, in one period, and 2.9% for another period, such a level of import was "insignificant" and could cause only de minimis injury, not "material" injury.[3] This line of argument was, unfortunately, not supported by reference to determinations in other Canadian anti-dumping cases, or by reference to determinations in the U.S. or the EEC. In its "statement of reasons" the Tribunal stated that U.S. imports "represented five percent of the market" and implied that this was "substantial".[4] To quote this particular case is only to make clear that it will be difficult to get agreement, in general terms, as to a particular level of imports in relation to the total domestic market, or in relation to domestic production, below which level imports would be considered as negligible. However, it is clear that merely by establishing a higher threshold or thresholds for the initiation of investigation of complaint, the scope of the anti-dumping and countervailing duty systems would be reduced.

Further along in the progression is that degree of adverse impact which is "material". Nothing in the GATT wording or in the history of drafting suggests that "material" begins where "negligible" ends, although such a logical approach commends itself to protectionists. We do not propose to review the extensive debate or detailed history of the issue in the U.S., where, for a time the Tariff Commission took the view that all injury which was not de minimis was actionable, a view which was later abandoned. However, it is important that, in the absence of any GATT (or Code) provision defining "material", Congress has legislated a definition:

> In general, the term "material injury" means harm which is not inconsequential, immaterial or unimportant.[5]