

wisdom for us to close up some of our industries and turn the energies of our people to other branches. But surely none of us imagine that when their high tariff trusts and combines send goods into Canada at sacrifice prices they do it for any benevolent purpose. They are not worrying about the good of the people of Canada. They send the goods here with the hope and the expectation that they will crush out the native Canadian industries.²

Fielding did not however, introduce any requirement that there be evidence of predation, of intent to destroy a Canadian industry, into the Canadian legislation of 1904, nor was such a requirement provided in the amendments of 1906. However, subsequent U.S. legislation did address directly the issue of predation and the intent of dumping.

The U.S. Anti-dumping Act of 1916 (which is still in force) contains (in Section 801) the proviso that dumping (as defined in that Section) is "unlawful", "Provided that such act or acts be done with the intent of destroying or injuring an industry in the United States or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States."³ The anti-dumping provisions of 1916 replaced, in a sense, the provisions of the Tariff Act of 1894 which made unlawful a conspiracy or combination to restrain trade; this earlier provision required, first, that there be a conspiracy, and second, that the conspiracy be formed within the territory of the U.S. and involve at least one U.S. citizen. This second proviso was, of course, an expression of the territorial principle of jurisdiction. As a remedy for dumping, the 1894 act was judged to be ineffective.⁴ The 1916 legislation also includes a provision (Section 802) for a penalty duty on imports which are the subject of an agreement for "full line forcing".

The issue of predation, and of intent, implicit in the concept of predatory behavior, and explicit in the 1916 statute, was the key issue in the subsequent examination of anti-dumping legislation in Congress. The key document is the report of the Tariff Commission to the Ways and Means Committee of the House.⁵ The Commission held hearings, sent an investigator to Canada, solicited information and advice from the business community, and addressed the issue of predation and intent. The Commission observed:

In conducting private industry the prevailing motive is profit. Ordinarily, therefore, it must be extremely difficult to establish, as an essential element in the offense, a separate and destructive purpose. . . . In dumping, the intent to injure, destroy, or prevent the establishment of an industry, or to restrain or monopolize trade or commerce in the United States, is not necessarily present . . . motives other than those enumerated may, and, at times, do exist.⁶

The Commission went on to deal with the various criticisms of the 1916 Act and noted that

. . . such importation must be made with intent to injure, destroy, or prevent the establishment of an industry in this country, or to monopolize trade and commerce in the imported articles. Evidently,