

Investigation Act. However, under the Anti-dumping Code, under U.S. and Canadian law, dumping is considered as actionable only at the industry level. Industry was defined, during the Kennedy Round negotiation, fairly carefully: the outcome was described by one participant in the negotiations in the following terms:

"Article 4 is concerned with the definition of "industry" . . .

First, there is the question of what share or proportion of the producers (of the "like" products) shall be considered to be an industry. Paragraph (a) states that it shall be those "whose collective output . . . constitutes a major proportion of the total". The modifying word "major" was one of the matters settled towards the end of the Geneva negotiations. Some delegations (e.g., Britain) would have preferred a stronger word; others (e.g., Canada) would have preferred a weaker one, because their representatives thought such a weaker word might enable anti-dumping action to be taken in circumstances that perhaps exist only in their countries.

Let us suppose, for example, that three-quarters of the production in Canada of, say, men's shoes is from three large U.S.-controlled firms selling established brands of shoes heavily advertised by their parent firms in U.S. consumer magazines circulating in Canada. Suppose the other quarter of total production of men's shoes — assumed for the purposes of this discussion to be identical in quality, style, and range of sizes — is made by, say, fifteen small Canadian-controlled firms producing unbranded or private-brand merchandise. Suppose, then, that there is dumping of unbranded men's shoes. It might well be that the larger firms selling branded, internationally advertised lines would be virtually unaffected and that the whole weight of the dumping would fall on the smaller Canadian-controlled firms.

The possibility of this sort of situation developing led the Canadians to oppose the use of any modifying phrase that would have required that injury had to be looked at in terms of, say, more than half the industry in volume of production.

The reaction of U.S. officials to this sort of argument was to assert that what would be at issue in such a case would be two products — branded, advertised shoes are not "like" shoes that are physically identical but not branded or advertised.

. . . the conclusion of the discussion in Geneva about "major proportion" was that this appears to mean a substantial proportion and, in practice, but not invariably or necessarily, more than half the production of the goods in question."³¹

In all anti-dumping cases (except regional market cases)³² one of the questions which has to be considered is: what is the extent, in geographical terms, of the dumping alleged to be taking place; and then, what is the impact on the industry (defined as explained above).