protected in its domestic market by unreasonable high import barriers, of whatever kind.

An examination of the problems alleged to be caused by the dumping of capital goods, an issue that has received some attention in Canada, may illustrate what is at issue here.

When the Kennedy Round Anti-dumping Code was being developed, Canadian producers of certain categories of capital equipment pointed out that the markets of a number of countries where there were producers who competed with them in the Canadian market were completely closed to Canadian exports of such equipment. In those markets the principal purchasers were government-controlled utilities who applied infinite preferences for domestic producers. These same producers could then compete against Canadian producers in the Canadian market, or, rather, in those provinces where there were no equivalent domestic procurement preferences. They might do so by dumping or by receiving subsidies, frequently in the form of concessionary financing. At that time there was no prospect of a direct attack by negotiation on the restrictions on trade implemented by procurement policies, and accordingly the Kennedy Round Anti-dumping Code, and subsequently the Canadian legislation, were drafted so as to make it more feasible to deal with such dumping, alleged to be injurious, under the anti-dumping system. The main provisions to this end were to provide that dumping was the <u>sale</u> of goods for export to Canada at a dumping price, rather than the <u>import</u> of goods at a dumping price, as in the pre-existing legislation; this did <u>not mean</u> that any duty could be levied before importation, but merely that dumping could be held to occur before importation. This seemed consistent with economic logic and with GATT Article VI, which speaks of goods "introduced into the commerce of another country". It was considered by the draftsmen that a sale of a capital item which might not clear customs until three years later had nonetheless "entered into commerce" and "injury", if any, was likely to occur before importation. Thus the scheme of the 1968 Act was to define dumping in a manner more nearly reflecting commercial reality, and get around the difficulty facing capital goods producers who, previously, could seek relief only after the competitive goods had been imported. Further, the key concept of "sale" was defined to include an "agreement to sell"[20] and "credit dumping", that is dumping by means of concessionary financing, was covered by the regulations on "normal value" and export price".[21]

These provisions were relevant to several significant Canadian cases (e.g. the Turbines Case, Generators Case and the Ansaldo Case).[22] These cases were the subject of some detailed analysis in Professor Stegemann's article addressed to the burden of the dumping duty, but he did not address the sort of issue raised by Epstein,[23] in this case, the relevance of the restrictions on foreign (i.e., Canadian) competition in the domestic market of the competing exporters. The Tribunal observed that "...producers not only in Japan ... but also in most of western Europe benefit from having home markets which (with the exception of Sweden) are apparently closed to foreign competition". The particular problem which the domestic producers believe they face in the Canadian market is that a number of provincial utilities do not give preference to domestic producers comparable to preferences given to producers in western Europe and Japan; the Canadian producers therefore have sought relief from import competition by recourse to the anti-dumping provisions.