"that international price discrimination occurs mainly when there are restraints on trade in the exporting country, restraints which would be unlawful if practiced by American firms."[29] This is, of course, much the same as the reasoning advanced by Sir William Fielding in introducing the Canadian anti-dumping law in 1904 and advanced by Viner in 1923.[30] She went on to criticize the failure by the U.S. Tariff Commission to address injury which can be attributed directly to price discrimination, rather that merely to price competition.

Another element in recent U.S. thinking, which it is important to keep in mind in order not to lose a sense of proportion, is the view that the anti-dumping provisions and the countervailing duty provisions represent a disproportionate investment of administrative and managerial resources, given that they do not solve important trade problems. Peter Ehrenhaft, who has had experience both as a lawyer and as an administrator of anti-dumping and countervail, stated the following summary judgements (in a detailed review of Professor Lowenfeld's Public Controls on International Trade): . . . it goes a long way toward proving the theory that import relief laws have been important only in the steel sector. Other industries have invoked them, but much less frequently. What trade statistics exist strongly imply that the entirety of U.S. efforts to 'enforce' anti-dumping and countervailing duties affect but the smallest fraction of products entering the United States. The laws may have a prophylactic effect, however, by encouraging foreign producers to price goods shipped here at "fair value" and dissuading foreign governments from providing 'bounties and grants'. . . that is a proposition difficult to prove or disprove."[31]

If we summarize these U.S. views, we can say that, amongst practioners there has long been a well articulated view that anti-dumping and anti-trust laws should be better integrated, that anti-dumping law, as drafted, is directed at protecting producers from acts of foreign exporters, not at protecting competition or promoting efficiency. Epstein's view is, it seems, a minority view, of those who have expressed views, but that does not make her argument less interesting or relevant.

Supplemental Considerations

The debate between U.S. lawyers about the interface between trade policy and competition policy has been largely about anti-dumping; the legal literature on safeguard actions, and on countervail, for which there are no parallels in domestic law, is largely concerned with explaining how the system works.[32] There is, however, a growing literature, in the main written by economists, on the impact on the U.S. and the costs to U.S. consumers of negotiated export restraints, notably on textiles and textile products, and on autos. We shall be noting these arguments when we consider the issue of costs and benefits.

When we look at comments by non-American writers, we see that almost invariably they draw heavily on the voluminous U.S. literature. We noted above that at least four non-U.S. observers had discussed the conflict between anti-dumping policy and competititon policy: Dale, Grey, Slayton, Stegemann. Dale's discussion is the most comprehensive.[33] He includes in his examination the problem of "reverse dumping", that is, the form of price discrimination in