is a probability or prima facie showing based on a preponderance of the evidence available. . .".[14]

As for the question of the test of whether an industry is "efficiently and economically operated" is a useful test, one U.S. expert has commended:

> In the absence of any determination in which the Commission found the domestic industry to be inefficient or not economically operated, it is difficult to surmise which factors would be considered. . . .[15]

As for the "restraint" of trade provisions — the alternative to "injury" to the industry in Section 337, the USITC has held that this provision marches with Section 1 of the Sherman Act, that is, it makes unlawful unreasonable restraints of trade.[16] Without going into a complete exposition of the scope, and the somewhat confused history, it is useful to recall that in Steel Tubes, it was alleged that respondents" lowered prices, to "unreasonable low levels and even below respondents costs"; the administrative law judge found that "predatory intent may be inferred when a firm prices its products below its average variable cost over a long run if there is no rational explanation for such behaviour. Injury to competition was inferred from such predatory behaviour because it forced other competitors faced with such prices to either sell out at a loss themselves or maintain prices at levels that would result in lost sales."[17] This is very much like the "Areeda-Turner" test.[18]

We might conclude therefore, that, in order to introduce into the GATT injury provisions some additional factors, that is, an assessment of the state of efficiency and the level of competition in the domestic industry, and an assessment of what will be the impact on competition in the domestic industry, we could look at the language of Section 337 of the U.S. Tariff Act. However 337 standards have clearly not always been exigent and it would be necessary to avoid words like "tendency".

Competition in Exporting Countries

Another avenue or approach to reform of the contingency system would be to include within the scope of the inquiry by the administrative authorities, when they face a request for import relief, the state of competition within the industry making the exports at issue. Such an approach would be a reversion to the logic of anti-dumping systems when they were devised early in this century; it would be in accord with Epstein's article, which argued that the anti-dumping law should be considered as a sort of anti-trust law, attempting to shelter domestic industry from the effect of restrictive practices in other jurisdictions, practices which could not be reached by domestic anti-trust law.[19] There is more merit in this than competition policy enthusiasts have been prepared to admit.

Specifically, administrative bodies such as the EEC Commission, the USITC, the Canadian Import Tribunal, could be directed to take some account of the degree of competition and the existence of restrictive practices within the industry carrying out the alleged dumping (receiving the subsidy) or making the exports at issue under a XIX action, and particularly whether the industry is