States, where exporters may have the realistic alternative of complying by reducing home market prices, may for that reason be lower than for a small country such as Canada, where the market is of relatively less importance to the foreign exporter.

Another U.S. trade expert, Professor Stanley Metzger, at one time Chairman of the U.S. Tariff Commission, also noted the contradiction between competition policy and anti-dumping policy in a study published in 1974 as part of the review of U.S. trade policy then going forward. He noted that: "The Anti-dumping Act imposes a duty on the importer of foreign merchandise . . . if an industry in the United States is thereby being injured. In both cases (anti-dumping and anti-trust) Congress intended to eliminate the use of price cutting tactics that impair the position of domestic sellers. The Anti-dumping Act applies, however, without regard for the competitive structure of the industry being affected by price discrimination. . . . The Anti-dumping Act . . . has been administered without regard to the anti-competitive impact of the duties imposed on lower priced imports at the behest of domestic monopolists, oligopolists, or cartels."[25]

Metzger had, in fact, taken much the same position as early as 1965, and subsequently re-stated and amplified his view that there was a major contradiction between an anti-trust approach to dumping and a "tariff approach" in his article on the Tokyo Round amendments to the Anti-dumping Code.[26] In that article he stated ". . . whatever the verdict may be as to the rest of the MTN's results — the amended Anti-dumping Code and its implementation must be judged a major backward step toward the very protectionism that the MTN was designed to prevent." And, going on to discuss the "injury test" in the Anti-dumping Code, he summed up by saying: "A test based on anti-competitive effect would not ask whether dumped imports resulted in loss of sales, lowered prices, and reduced profits to domestic competitors, but whether the imports constituted a threat to the continuation of viable competition in the relevant market. It would assume that whenever possible the domestic firms would, by increasing productive efficiency, meet lower prices while refraining from domestic price-fixing practices, rather than avoid price competition by invoking anti-dumping remedies to exclude the imports."

Quite a number of other U.S. experts, focussing on the U.S. anti-dumping provisions and the U.S. anti-trust provisions, particularly the Robinson-Patman Act, have examined critically in some detail, the considerable difference, possibly a growing difference, between the two sets of provisions as they are administered.[27] The invention of the trigger price system for steel created interest in the extent to which import relief arrangements derived from the anti-dumping provisions could have anti-competitive effects.[28]

Anti-dumping as Anti-trust

One important article is that by Barbara Epstein, who in 1973, before the Tokyo Round moved to the negotiating stage, argued that, given the unwillingness of the U.S. administration to launch anti-trust actions in U.S. courts against anti-competitive actions in foreign countries which enable foreign firms to compete on a discriminatory basis, the anti-dumping provisions should be best thought of as an extension of anti-trust. The key to her argument is