in regard to domestic price discrimination is selling, for example, below variable cost, then that should be the standard applied in determining the margin of dumping in constructed value cases; actionable dumping would thus be selling below variable cost — not, as it is now, selling below full cost plus an allowance for profits. Without arguing the merit of either standard, it is clear that domestic legislation would seem less contradictory and more coherent if it used one measure of discrimination instead of two.

Of course, the case for a different measure in regard to dumping than in regard to domestic price discrimination law is the Epstein argument: that anti-dumping provisions are an attempt to shield domestic producers from the impact of restrictive practices in other jurisdictions. On that basis, it would reasonable to conclude that seeking uniformity in the measurement of price discrimination would be less important than would be the broadening of the basis of inquiry to include the state of competition in the domestic industry, the impact on the structure of competition of the imports at issue, and the conditions of competition in the exporting industry. On balance, that seems to be the most important sense in which competition policy objectives can legitimately be brought to bear in the operation of the anti-dumping system. This conclusion is supported by review of the submissions of the U.S. Justice Department to the U.S. International Trade Commission on anti-dumping cases and of the Canadian competition authorities to the Canadian Anti-dumping Tribunal (e.g. Sugar); almost invariably the burden of these submissions is that the impact on competition in the importing country should be given more weight than the anti-dumping authorities feel they have the authority to do.

A final word on procedures, nationally and internationally. If we share the view that there is a specific consumer interest; and, more important, a broad public interest, in detailed public scrutiny of proposed protective measures,[30] then the trend to increased publication of statements of facts and of the rationale regarding all findings and determinations should be encouraged. In this context, the United States sets an example which others could emulate; even the Canadians, who have adopted some U.S. practices, do not publish reasoned statements of proposed actions as comprehensive as those published in the U.S.

Surveillance in the GATT

At the international level, it is to be hoped that the two Committees of Signatories set up under the two GATT Article VI codes can become effective as surveillance bodies. At present, their meetings consist largely of the presentation of poorly documented complaints, of facile and predictable defenses, and of exchanges of gossip. Not very much in the eighteen-year history of the GATT Anti-dumping Practices Committee would encourage one to think that a great deal will be achieved in that body with regard to "injury". Possibly if the competition policy considerations are included in the terms of reference of inquiry into dumping and subsidization, more particularly if the conditions of competition in the exporting country become a focus of meaningful inquiry, there will be an incentive to make these committees into more energetic watchdogs. There is, of course, a real weakness in the system, which it will be difficult to correct: that is, that small countries, which may wish to mount an attack on some action by the EEC or the U.S. which rely heavily on the use of contingency protection devices, find it more difficult than the larger countries