domestic markets, and are not in a position to contest foreign markets. Of the relatively more efficient concerns in any industry, there are often comparatively few who can offer effective competition in any given market; it is the competition of such concerns alone which needs to be eliminated if a producer is intent upon gaining monopoly control of that market."[15] Viner's view was not supported by every observer; for example, Viner himself quotes the observations of the Cambridge economist A.C. Pigou to the effect that "Destructive dumping into England from abroad does not take place."[16]

In summary: during this early period when there was increasing discussion of commercial policy, and particularly in the first part of the century, it was believed by at least some influential observers that there was a problem of predatory dumping, that that was an aspect of the existence of trusts or cartels based in tariff-protected markets, that this predation required a legislated remedy, but that to make a showing of intent to destroy a condition for securing the application of the remedy made the remedy unworkable. Removing (as in the U.S. legislation of 1921) or avoiding (as in the Canadian legislation of 1904) a requirement to show predatory intent opened the way for the invoking of the anti-dumping provisions in situations in which no evidence of predation could be shown, and for the elaboration of an international system (GATT Article VI and the Anti-dumping Code) which ignores the issues of predatory intent, except inferentially in Article II of the Code[17] addressed to the issue of "sporadic dumping".[18]

The apparent conflict between anti-dumping policy and competition policy has been one focus of attention in the discussion of the broader issue of the conflict between trade policy and competition policy. The lack of parallelism between legislation directed against the anti-competitive effects of price discrimination in domestic commerce, as that legislation has been administered in the U.S., Canada, the EEC, and legislation directed against allegedly injurious price discrimination in import trade, has been extensively commented upon. There is already a substantial literature which makes the case that the standards of injury or adverse impact are different in these two areas, that they address the issue of adverse impact with regard to different entities, that procedures under the two categories of legislation are different, that the effect on competition is ignored in anti-dumping law and practice, and, moreover that the anti-dumping system often brings about or sanctions measures (such as an exporter's agreement or exporters' agreement to raise prices) which are anti-competitive. We shall be re-examining, re-stating this issue below. In the balance of this chapter we shall briefly note the state of the debate as to the contradiction between competition policy and the anti-dumping provisions.

Anti-dumping vs. Anti-trust

A substantial number of U.S. trade policy practitioners, mostly members of the trade law bar, have noted the anti-competitive effect of anti-dumping measures, and a number of them, learned in both trade law and anti-trust law, have been critical of the anti-dumping system. Viner had noted the relationship between the Sherman Act and the anti-dumping provisions; most detailed studies of dumping and of the U.S. anti-dumping system have explored that relationship, and many have noted apparent contradictions in policy. For example, in a detailed and important survey article in 1958, Peter Ehrenhaft,