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Remarks by N. David Palmeter

In the main, Mr. Easton and Mr. Perry, in their comment on my article, do not seem to address or defend the major arguments by the Commission in support of its position. They do raise some novel points not put forth by the Commission.

1. Messrs Easton and Perry assert that the 1921 Antidumping Act and the duty-free provisions of the countervailing duty law contained no "standards whatsoever." This seems a cavalier dismissal of some 25 years of Commission precedent that, in traditional common law fashion, built, case-by-case, a body of law that subsequently received explicit congressional approval.

2. Much reliance is placed on a 1955 case concerning *Cast Iron Soil Pipe from the United Kingdom*. This is difficult to understand inasmuch as the case in no way deals with the issue of the relevance of margin amounts to the question of injury. To the contrary, the case dealt with the issue of whether a regional industry (i.e., one located in California) could be considered an industry in the United States for purposes of the Antidumping Act. Messrs Easton and Perry point out that the decision was subject to quite a bit of ridicule, and a reading of its suggests that this is not surprising. However, since it has nothing to do with the issue, the discussion seems misplaced.

3. Messrs Easton and Perry seem to imply that the former General Counsel of the Commission, Russell N. Shewmaker, shares their views. This is misleading. Mr. Schewmaker's nearly half century of distinguished government service encompassed fourteen years as a General Counsel to the Commission, including the period during which much of the agency's precedent was established. Mr. Shewmaker's statement, cited by Messrs Easton and Perry, certainly does not support the proposition that he is in agreement with the present Commission position. To the contrary, in that statement Mr. Shewmaker distinguishes the earlier Commission practice of examining the entire Treasury file (containing all of the specific margin information), from the Commission's later reliance on a simple weighted average without regard to the elements that made up that average:

> The obvious benefits derived by the Commission from its utilization of the Treasury file in each case came to an end in the wake of an ill-advised, devastating reorganization of the Commission's professional staff in the 1970's. The Commission's action caused a rash of resignations and transfers of com-

petent, knowledgeable professionals, one of the immediate consequences of which was the loss of pricing expertise at the top staff level. Investigators confronted by the presence of the Treasury file were not instructed as to its use. Treasury files, therefore, were locked in file drawers for the duration of the Commission's investigation, after which they were returned to Treasury.[1]

4. While not addressing the implications of the argument for antidumping investigations, Mr. Easton and Mr. Perry argue that there is something special about countervailing duty cases that make the relevance of the subsidy amount a particularly inapt consideration for the Commission. They claim that receipt of a subsidy may not be translated into a price effect in the U.S. market. But "[c]ountervailing duties are intended to offset government unfair practices that have their effect on the prices charged by private exporters." A subsidy may indeed permit an exporter to lower its price, or to increase its revenues without having to increase its price. In the event that there is no such measurable impact, then presumably Commission investigation of the matter would result in a determination that the issue was not relevant to the determination in that particular case—a result that in fact obtained most of the time in the past. The argument, of course, is not that the amount of the subsidy—or less than fair value margin—is always determinative. The argument is only that it *may* be.

5. Whatever the pros and cons of resort to legislative history for interpretation of a particular statute, it seems highly unusual to dismiss that legislative history simply as the work of the "committee staffs" and not the product of the committees themselves.

6. Mr. Easton and Mr. Perry argue that our "politicians are not foreign trade specialists or technocrats familiar with the provisions of GATT; they are more comfortable with generalizations. Yet they have managed to create an import relief and duty assessment system of such complex detail they cannot possibly understand it."

No one in a democratic society—at least no one who has ever voted to "throw the rascals out"—has been totally without the sentiment that politicians did not know what they were doing. But to put this forward as a legal basis for disregarding what those politicians—in their elected capacities—have enacted into law, is somewhat astounding.

One may be convinced that the particular politicians who enacted the 1979 laws did not know what they were doing. But

1. *Options to Improve the Trade Remedy Laws: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 98th Cong., 1st Sess. 1199, at 17 (1983) (statement by Russell N. Shewmaker).

under our system, it was their prerogative to call the shots. If one disagrees, the remedy lies elsewhere than in doing for them what they should have done were they as wise as we.

7. Finally, Messrs Easton and Perry note that the purpose of these provisions of law is not to remedy the injury domestic producers may suffer from imports in general, but merely to tax the amount of the dumping or to neutralize any benefit conferred by a subsidy. This is exactly the point. The Commission is not to look at general injury from the imports, but only at the injury caused by the practices with which these specific statutes are concerned. If the injury cannot be remedied by the special duty, then clearly the injury is not caused by the practice the special duty is intended to offset; it is caused by something else.

This distinction between general injury and injury caused by subsidized or dumped imports is crucial—and can be made only if the Commission considers subsidy amounts or less than fair value margins. It is a distinction legitimized by Commission precedent, by explicit legislative approval, and by international agreement.