UNITED STATES TARIFF COMMISSION

BARBERS' CHAIRS
EMIL J. PAIDAR COMPANY

Report to the President on Investigation No. TEA-F-7 Under Section 301(c)(1) of the Trade Expansion Act of 1962

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C O N T E N T S

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Note.--The whole of the Commission's report to the President, including the statistical appendix, may not be made public since it contains certain information that would result in the disclosure of the operations of individual concerns. This published report is the same as the report to the President, except that the above-mentioned information has been omitted. Such omissions are indicated by asterisks.

REPORT TO THE PRESIDENT

U.S. Tariff Commission
January 22, 1968

To the President:

In accordance with section 301(f)(1) of the Trade Expansion Act of 1962 (76 Stat. 885), the U.S. Tariff Commission herein reports the results of an investigation made under section 301(c)(1) of that act, in response to a firm's petition for the determination of eligibility to apply for adjustment assistance. The investigation was instituted by the Commission on November 29, 1967, upon petition by Emil J. Paidar Company of Chicago, Illinois, a producer of barber chairs and parts. 1/ The Paidar Company was one of the petitioners in an investigation instituted by the Commission on July 29, 1967 under Section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether barbers' chairs with mechanical, elevating, rotating, or reclining movements and parts thereof, provided for in item 727.02 of the Tariff Schedules of the United States are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause serious injury to the domestic industry producing like or directly competitive products. (See the Tariff Commission report to the President on Investigation No. TEA-I-11.)

1/ The Koken Companies, Inc., of St. Louis, Mo., another producer of barber chairs and parts, also petitioned for the determination of eligibility to apply for adjustment assistance. (See Tariff Commission report to the President No. TEA-F-8.)

The purpose of the Commission's investigation, to which this report relates, was to determine whether barbers' chairs and parts thereof, provided for in item 727.02 of the Tariff Schedules of the United States, like or directly competitive with articles produced by the Emil J. Paidar Co. are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to said company. Public notice of the investigation was given in the Federal Register of December 6, 1967 (32 F.R. 17500).

Pursuant to section 403 of the Trade Expansion Act of 1962, the investigation to which this report relates was consolidated with the investigation of the barber chair industry. 1/ Public hearings in the industry investigation were held beginning on November 7, 1967 (32 F.R. 12979), at which all interested parties were afforded opportunity to be present, to produce evidence, and to be heard. A transcript of the hearing and formal briefs submitted by interested parties in connection with these investigations are attached to the report submitted in connection with Investigation No. TEA-I-11. 2/ No public hearing was requested in connection with the investigation to which this report relates, and none was held.

In addition to the information obtained at the hearing, the Commission obtained data from its files, from other agencies of the U.S.

1/ The Commission has prepared a complete report for each of three concurrent investigations dealing with barber chairs [the industry petition (Investigation No. TEA-I-11) and the two firm petitions (Investigation Nos. TEA-F-7 and 8)] for the convenience of readers, despite the duplication involved.

2/ Transcript and briefs were attached to the original report sent to the President.

Government, from briefs submitted by interested parties, and through field visits, interviews, and correspondence by members of the Commission's staff with officials of the Emil J. Paidar Co., other producers of barbers' chairs and parts, dealers, and with importers.

Finding of the Commission

On the basis of its investigation, the Commission finds (Commissioners Thunberg and Clubb dissenting) that barbers' chairs and parts thereof, provided for in item 727.02 of the Tariff Schedules of the United States, are not, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the Emil J. Paidar Company.

Considerations Supporting the Commission's Finding

Statement by Chairman Metzger, Vice Chairman Sutton, and Commissioner Culliton

Neither the facts assembled by the Commission during the course of its inquiry, nor the data supplied by the party at interest in this case, support the conclusion that, as a result in major part of concessions granted under trade agreements, barber chairs and parts thereof are being imported into the United States in such increased quantities as to cause or threaten to cause, serious injury to the petitioning firm--Emil J. Paidar Company.

Although the Commission finds that barber chairs "are being imported into the United States in . . . increased quantities," it does not find that such increase has occurred "as a result in major part of concessions granted under trade agreement." 1/ Since the increased

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1/ In its report on the bill, which became the Trade Expansion Act of 1962, the Senate Finance Committee explained that this language, for which it was responsible, meant that the Commission needs to find that "tariff concessions have been the major cause of increased imports." We find no such causal relationship.

quantities of imports are not attributable to the cause stipulated in the law, there is no need for the Commission to look into the existence, or the likelihood, of serious injury, or the causes thereof. 1/

The increase in the U.S. annual imports of barber chairs that has occurred was induced by a variety of interrelated causes apart from either the duty rate or duty concessions. These causes include the dynamic rise of Japan's industrial potential; the correlative success of a Japanese producer in expanding its production of barber chairs in excess of domestic requirements; the development of an effective and energetic sales organization by the major U.S. distributor of imported barber chairs and the failure on the part of domestic manufacturers to develop such organization; the progressive attention given by the U.S. distributor of the imported product to supplying chairs having a design and a style that would promote sales and the delayed response in this regard on the part of the domestic producers; and the reduction after 1955 in ocean freight rates on barber chairs.

The development of an effective industry in Japan for the production and exportation of industrial commodities in recent years is not unique to its barber chair industry. Since World War II, Japan has been phenomenally successful in developing its industrial enterprises. In less than two decades industrial production in Japan has expanded some

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1/ Section 301(c)(1) of the Trade Expansion Act of 1962 requires that the Tariff Commission shall determine whether, "as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by the firm is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm."

sixfold. Meanwhile, the major Japanese producer of barber chairs achieved a capacity to produce chairs in excess of the domestic demand. The expanding volume of production in Japan afforded substantial economies of scale.

The Japanese distributor also launched an extensive and aggressive marketing campaign, utilizing a strong sales organization employing experienced sales representatives, who adapted to the needs of the trade. These efforts were supplemented by carefully planned market surveys, sales promotional activities, and advertising campaigns, all of which enhanced the competitive position of the imported chairs. Much of the recent success of the importer, moreover, is attributable to his innovations of style and design, thereby offering chairs embodying convenience, style, and attractiveness at comparatively low prices.

The substantial reductions that have been effected in the ocean freight rates applicable to barber chairs also contributed to the increased imports. Since 1958 such rates have been about 25 percent lower than those effective in 1956. * * *

The several factors enumerated above operated in combination with the conditions of competition in the domestic market. The domestic industry comprises very few firms; the aggressive sales and merchandising campaigns of the importers are in marked contrast to traditional methods employed by the domestic producers.

The Commission recognizes that the several reductions in the rate of duty on barber chairs during the two decades between 1948 and 1968 created a climate more favorable to the importation of such chairs. Historically, however, no clear relationship can be discerned between the changes in duty rates initiated by concessions and changes in imports of barber chairs. Neither the first and substantial reduction in duty in 1948 (from 27.5 percent ad valorem to 15 percent) nor the subsequent smaller reduction in 1951 (to 13.75 percent ad valorem) were followed by an early entry of foreign-made barber chairs into the United States. The largest reduction in the duty on barber chairs that had been instituted by a trade-agreement concession occurred in 1948, when the rate was reduced from 27.5 to 15 percent ad valorem. This reduction in duty failed to induce increased imports; indeed, it failed even to induce any imports. Imports of barber chairs were singularly unresponsive to this significant alteration in the rate of duty; years elapsed before such imports entered in significant commercial quantities. Another reduction in the duty occurred in 1951--again there followed a prolonged period during which imports of barber chairs were unresponsive to the alteration of the duty.

Not until some 5 years after the second reduction in the duty did imports begin to enter in significant quantity. Even if allowance were made for ample lead-time (subsequent to a reduction in the duty), to permit the foreign manufacturer to design and produce chairs to the requirements of the U.S. market, the time-lag between duty reductions and the

onset of imports was so long as to preclude a finding of a meaningful cause and effect relationship between the two. Indeed, the major Japanese producer of barbers' chairs required no such lead-time; he surveyed the U.S. market for the first time in 1955 and began exporting in 1956. When imports did begin to enter after 1956, the recurring annual increases in such imports were not traceable to recurring alterations in the rate of duty. For nearly a decade following June 30, 1958, the rate of duty on barber chairs was a constant factor in the trade--11.5 percent ad valorem. Nevertheless, imports of barber chairs increased consistently at an average rate approaching 14 percent annually. Again, the level of imports was singularly insensitive to the rate at which they are dutiable.

In 1956, when imports began to enter in substantial quantities, the spread between the prices of imported barber chairs and those of comparable domestic chairs was far greater than the aggregate of the duty reductions made between 1948 and 1956. Currently, imported barber chairs are being sold at the distributor level at some * * * less than domestically produced chairs of comparable quality and construction. Only about a * * * of the above price differential would be removed if the U.S. duty on barber chairs were restored to the pre-concession rate. Not only was the spread between the U.S. prices of imported barber chairs and the prices of comparable domestic chairs consistently large during the past decade, but it also increased between 1962 and 1967. During these years U.S. producers raised their prices more frequently and by larger

increments than did the major importer.

The Commission, therefore, cannot find that barber chairs and parts thereof are being imported into the United States in increased quantities as a result in major part of concessions granted under trade agreements.

Supplementary statement of Chairman Metzger

I agree fully with the foregoing Considerations Supporting the Commission's Finding. What follows is supplementary.

In enacting the Trade Expansion Act of 1962, the Congress made extensive and important changes over prior law relating to the criteria for relief of domestic industries, firms, and workers from injury caused or threatened by increased imports resulting from trade agreement concessions, as well as in the nature of such relief.

These changes, fully considered and deliberated by Congressional Committees long well-informed upon the details of the trade agreements legislation, 1/ affected the causal connection between trade agreement concessions and the increase in imports which was alleged to have caused serious injury; the kind of increase in imports required; the causal connection between the increased imports and the alleged serious injury; the specification of factors to be examined in determining whether serious injury had been caused or threatened; the definition of the "domestic industry producing like or directly competitive articles;" the procedures subsequent to a Tariff Commission recommendation that tariff relief be granted; the duration of such relief; and the kind of relief (tariff, adjustment assistance) which could be accorded.

1/ References herein to the 1962 Act and to Committee Reports thereon will also supply page numbers of appropriate documents in "Legislative History of H.R. 11970, 87th Congress, Trade Expansion Act of 1962, Public Law 87-794" (G.P.O. 1967), which will be cited as "Legislative History, p.___."

Several of these deliberate changes are here relevant.

1. Causation in "Escape Clause", or "Tariff Relief for Industry" Cases

On the necessary degree of causation between trade agreement concessions and increased imports (the basis of the Commission's decision in the instant case), and between such increased imports and the alleged serious injury, the changes were very marked.

Under the "escape clause" legislation prior to the 1962 Act, there was no necessity to find a causal connection between the concessions and increased imports. Earlier law had required that the customs treatment reflecting the concession "in whole or in part" cause increased imports and the Commission had long presumed that such treatment was at least in part the cause of an increase in imports. The Congress was fully aware of this position, it having been specifically noted with approval in the Report of the House Ways and Means Committee on the bill which became the Trade Agreements Extension Act of 1958. 2/

So far as the causal connection between the increased imports and alleged serious injury was concerned, prior law required a finding that increased imports "have contributed substantially" towards causing or threatening serious injury. 3/

In the 1962 Act, however, both of these causation requirements were stiffened. The bill which became that Act emerged from the House

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2/ H.R. Rep. No. 1761, 85th Cong., 2d Sess. 9 (1958).
3/ Ch. 141, Sec. 7, 65 Stat. 74 (1951), as amended, 19 U.S.C. Sec. 1364(b) (1958).

Ways and Means Committee and the House of Representatives requiring the Tariff Commission to determine whether, "as a result of concessions granted under trade agreements, an article is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing an article which is like or directly competitive with the imported article." 4/ The Senate Finance Committee was concerned that this provision--having dropped the language of prior law, "in whole or in part" and "have contributed substantially"--might be interpreted to mean that concessions must be found to be the "sole" cause of increased imports and increased imports must be found to be the "sole" cause of injury. 5/ To avoid this complete turnabout in the first causation requirement, and an extreme change in the second, the Senate Committee inserted the phrase "in major part" in the first requirement--so that it read, "as a result in major part of concessions"--and it added a new subparagraph to make clear that the Commission must find that such increased imports have been "the major factor" in causing or threatening to cause injury. 6/ These changes were accepted and became part of the 1962 Act.

The Senate Committee, in its Report, paraphrased and explained in more colloquial language what it meant by adding this language: the Tariff Commission "need find only that the tariff concessions have been

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4/ H.R. 11970, Union Calendar No. 764, 87th Cong., 2d Sess., June 12, 1962, Sec. 301(b)(1), p. 27; Legislative History, p. 1003.

5/ Sen. Rep. No. 2059, 87th Cong., 2d Sess. 5 (1962); Legislative History, p. 1603.

6/ H.R. 11970, 87th Cong., 2d Sess., Sept. 19, 1962, Sec. 301(b)(1), p. 36; Sec. 301(b)(3), p. 36; Legislative History, p. 1872.

the major cause of increased imports and that such imports have been the major cause of the injury." 7/ (Underscoring added)

The inquiry in the "escape clause" or industry petition cases under Section 301(b)(1) of the Act on these causation questions is thus clear: were the tariff concessions "the major cause" of increased imports, and were such increased imports "the major cause" of the injury? If the answer is affirmative on both counts, those criteria for relief are met. If not, the case falls. Other causation criteria which might have been or which might be conceived of, whether exceeding or falling short of "the major cause" cirteria, whatever their merits or demerits in assisting to achieve results desired by their proponents, were not the Congressionally-adopted standards. "In whole or in part" and "contributed substantially", the earlier weaker constructions, were specifically rejected by the Congress; "but for" or other even weaker constructions obviously are inconsistent with the Congressional choice. 8/

7/ Sen. Rep. No. 2059, 87th Cong., 2d Sess. 5 (1962); Legislative History, p. 1603.

8/ See the Eyeglass Frames case, TEA-I-10, TC Publication 219, October 1967, additional statement at p. 16, for a "but for" construction.

Forty-four years ago, Professor Francis A. Bohlen of the University of Pennsylvania Law School, well-known authority on the law of torts, had this to say about the "but for" test in the common law of torts, absent legislative action of any kind: "...the wrong must not only be a causa sine qua non or necessary antecedent of the harm, but in order that the wrong may be the legally proximate cause of the violation of the right, the causal connection must be so close that the person guilty of the wrong should be regarded as responsible for the violation of the right, which in fact results from it. The principles, if any, which determine how close a causal connection

Absent constitutional overtones not here present, it "is not the function of the courts to upset the balances among interests deliberately arrived at by the legislature". 9/ Nor have administrative agencies charged with applying the law as enacted by the Congress been vouchsafed such authority.

In applying "the major cause" criteria, the Commission is expected to examine all the relevant facts and circumstances, excluding none,

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must be to render the wrongdoer liable for the violation of the right, which in fact results therefrom, are confused and conflicting. They appear to be a compromise between two conflicting ideas of the function of tort actions, the one that it is to punish the wrongdoer, the other that it is to do distributive justice by shifting the loss already caused by the defendant's wrong from the plaintiff to the defendant...Even the same court may at different times lean to the one point of view or to the other, and to this extent its decisions must necessarily be conflicting. As a general rule, however, such principles--if one may dignify them by such a name--as are applied are a more or less instinctive compromise, between the logical implications of the two points of view." Edgerton, Legal Cause, 72. U. Pa. L.R. 211, 343, 349 (1924). Then Professor, now Senior Judge, Edgerton, in accord with Bohlen, put it generally thus: "...it neither is nor should be possible to extract from the cases rules which cover the subject /legal cause/ and are definite enough to solve cases; that the solution of cases depends upon a balancing of considerations which tend to show that it is, or is not, reasonable or just to treat the act as the cause of the harm--that is, upon a balancing of conflicting interests, individual and social; that these considerations are indefinite in number and value, and incommensurable; that legal cause is justly attachable cause." (p. 211)

Both Bohlen and Edgerton were talking of courts acting under common law--without intervening specific legislative "balancing of conflicting interests." Where a legislature has done this balancing, as in the instant statute by deliberately adopting the higher standard of "the major cause", courts and administrative agencies of course must apply the legislatively-adopted standard.

9/ District of Columbia National Bank v. District of Columbia, 348 F. 2d 808, 810 (1965), 121 App. D.C. 196, 198.

in order to arrive at its overall judgment whether these high degrees of causation are met--that between the concession and increased imports and that between such increased imports and alleged injury. The statute, indeed, requires that the Commission "shall take into account all economic factors which it considers relevant" in making "its determination under Section 301(b)(1), the "escape clause" or "tariff relief for industry" provision, and under Section 301(c)(1), the firm adjustment assistance eligibility provision. No hierarchies or exclusions of relevant facts and circumstances were established in the 1962 legislation, nor had prior law done so.

The Congress was concerned, in the words of the House Ways and Means Committee, that "the granting of tariff adjustment in particular cases necessarily had an impact on our total foreign economic policy." For such action "necessitates the granting of tariff compensation to our trading partners on other products in order to counterbalance whatever United States tariffs are raised," 10/ or involves the retaliation of others through withdrawal of concessions which had been accorded to the United States. Nor was this serious concern of the Congress with the effects of tariff relief a new development. Ten years ago, the House Ways and Means Committee had expressed its view that, "Escapes from international obligations authorized by the Congress in return for reciprocal obligations should not be lightly permitted." The Committee then added that, "since there are important effects of escape-clause

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10/ H. Rep. No. 1818, 87th Cong., 2d Sess. 13 (1962); Legislative History, p. 1077.

actions on our trading partners and the American public", the "President must continue to have discretion in escape clause cases because their effects on foreign relations and other aspects of the national interest may outweigh the benefit to a particular industry." 11/ These expressions by the House Ways and Means Committee make it plain that a thorough appraisal of all the surrounding facts and circumstances relevant to a judgment whether concessions were the major cause of increased imports and increased imports were the major cause of alleged injury, was deemed necessary, not an isolation of some factors for consideration together with an artificial exclusion of others. Indeed, they underline the deliberation with which the Congress adopted the high degrees of causation which it required to be found before escape clause action would lie, and the seriousness with which these causation criteria must be considered and applied by the agency established to administer them.

There have been and continue to be considerations, views, ideas, and proposals inconsistent with those adopted by the Congress in the 1962 Act in these respects. They continue to be, as they have been, within the discretion of the Congress to adopt or reject. But whether they fall to one side or another of the adopted Congressional policies and standards, they are not within the discretion of any other body to adopt and apply, under our system of representative democracy.

As the Considerations Supporting the Commission's Finding make abundantly clear, the facts and circumstances disclosed in the instant

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11/ H. Rep. No. 1761, 85th Cong., 2d Sess. 11 (1958).

investigation do not support a finding that the concessions were the major cause of increased imports. 12/

2. Causation in Adjustment Assistance to Firms Cases

In addition to the changes in the "escape clause" (now called "tariff relief") aspects of the law effected in the 1962 Act, there was adopted therein, as an innovation, "adjustment assistance" to firms and workers. So far as firms were concerned, the assistance, where qualified for, consisted of longer-term, lower-interest loans than were commercially available; technical assistance in the form of managerial advice, market analyses, research on and development of new or existing techniques and products, and any other technical advice that would help promote adjustment to import competition; and additional tax-loss "carry-back" and "carry-over" provisions.

Workers adjustment assistance, not involved in these cases, consisted, where qualified for, of readjustment allowances--a weekly cash allowance intended to supplement unemployment compensation (up to fifty-two weeks of unemployment); training (with transportation and subsistence allowances) for vocational readjustment; and relocation allowances for workers unable to obtain suitable local employment, to cover the cost of moving the family to an area where a job is available. 13/

12/ The facts also would not support a finding that such increased imports were the major cause of the alleged injury.

13/ See Ch. 2 and 3, Trade Expansion Act of 1962; Legislative History, pp. 17-30.

The reasons for the adoption of these new forms of federal financial assistance to firms and workers in the 1962 Act, and the limitations upon their availability, are revealed in the law and its history.

Briefly, proposed in 1954 by David J. McDonald, President of the United Steelworkers of America, adjustment assistance was adopted in the 1962 Act because, in the words of the House Ways and Means Committee, tariff adjustment, apart from its "impact on our total foreign economic policy", may be "inappropriate to protect United States firms and workers." Tariff relief "cannot be specifically adapted to the individual requirements of those in an industry affected by imports." Under the law prior to 1962, "no relief whatsoever is available to firms and workers injured by imports unless their injury is shared by" the industry. The furnishing of such assistance was deemed to be "fully consistent with our traditional practice of protecting American commerce and labor from serious injury resulting from imports." 14/

While new forms of relief were thus provided, they were closely tied to the criteria established for "escape clause" or "tariff relief", and not merely added as new general federal benefits unrelated to imports. This Congressional limitation upon eligibility to receive the kinds of assistance to be made available was expressed in several ways. First, the same causation language in the section of the bill reported by the House Ways and Means Committee and passed by the House relating

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14/ H. Rep. No. 1818, 87th Cong., 2d Sess. 13 (1962); Legislative History, p. 1077.

to "tariff relief" was applied equally in those sections relating to adjustment assistance to firms and workers; 15/ the Senate Committee, in changing this statutory language (adding "in major part", and "the major factor"), also did so identically for both tariff relief and for adjustment assistance to firms and workers. 16/ Secondly, the House Ways and Means Committee specifically stated, in its Report on the Bill, that it believed that it was "important that adjustment assistance in all instances be given only where it has been concluded that the conditions requiring assistance were caused by increased imports resulting from tariff concessions made under trade agreements." 17/

The parallelism thus disclosed led the Tariff Commission to conclude, not long after the enactment of the 1962 Act, in the Cotton Sheeting Workers case, 18/ that the "statute allows no room for any different interpretation or application" of the causation criteria for adjustment assistance as compared with tariff relief.

The case for identity of treatment on causation, as between "tariff relief" industry petitions and "adjustment assistance" firm petitions, is clearly not weak. Congress of course can and does limit and qualify its bestowal of benefits in almost every area in which it legislates, and has tended to limit and qualify more stringently at

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15/ H.R. 11970, 87th Cong., 2d Sess., June 29, 1962, Sec. 301(b)(1), Sec. 301(c)(1), Sec. 301(c)(2), pp. 27-29; Legislative History, pp. 1455-7.

16/ H.R. 11970, 87th Cong., 2d Sess., Sept. 14, 1962, Calendar No. 2025. Sec. 301(b)(1) and (3), Sec. 301(c)(1), (2) and (3), pp. 34-36; Legislative History, pp. 1542-4.

17/ H. Rep. No. 1818, 87th Cong., 2d Sess. 23 (1962); Legislative History, p. 1087.

18/ Tariff Commission Publ. 100, TEA-W-4, July 19, 1963.

the time it adopts a new and sometimes experimental program. At that time, the expense of the program is apt to be more conjectural, and the decision to adopt it is more likely to have been contentious. These factors were present when the Congress adopted the adjustment assistance provisions of the 1962 Act. They tend to support those who hold that the identity of the causation language of the statute itself in the "tariff relief" and "adjustment assistance" eligibility provisions, requires identity of treatment.

Nor is their case necessarily weakened by the fact that there have been no petitions between 1962 and the present time deemed to have qualified for relief under the stringent standards laid down by the Congress. Since 1951 only two multilateral tariff negotiations had occurred--in 1955 accompanying Japanese accession to GATT, and the Dillon Round in 1960-61. Both had been quite "thin" in tariff reduction results--only a small portion of the 15 percent and 20 percent tariff-reduction authorities granted, respectively, by the 1955 and 1958 Trade Agreements Extension Acts, had in fact been utilized. Since the Congress was well aware of this fact, the proponents of the argument for identity of treatment of the causation criteria could argue that Congress, in all likelihood, was not legislating with a primary concern for "old" cases--cases of firms and workers claiming to be injured in consequence of tariff reductions which had been substantially effectuated at least eleven years earlier. Rather, they could contend, the Congress was primarily concerned with the possible future impact of tariff bargaining

involving the newly-granted (in the 1962 Act) 50 percent tariff reduction authority, which was not consummated in a trade agreement until June 1967.

Nonetheless, I am not persuaded that identity of treatment of the causation criteria in tariff relief and adjustment assistance cases was intended by the Congress. The House Ways and Means Committee, in its Report accompanying the bill in 1962, after setting forth the causal criteria for tariff relief in industry cases, stated with regard to adjustment assistance to firms: "In investigations of particular firms, the test is substantially the same, but the inquiry is directed to the firm in question." 19/ (Underscoring added)

If the House Ways and Means Committee believed that the test was exactly the same--if it believed that "the statute allows no room for any different interpretation or application"--why did it go out of its way to use the term, "substantially the same"? It is very unlikely that the Committee did so inadvertently. Apart from the fact that it deals continually in highly technical and exact tax and tariff language, and is in consequence highly sensitive to the shadings of meaning of language, the Committee in the same 1962 Act had deliberately dropped the language, "had contributed substantially", from the second causation criterion of the tariff relief, or "escape clause", section (Sec. 301(b)(1)). Its use of the term "substantially the same" in its formal Report on the bill at the very time it was dealing with the same word in the same bill in another context negatives any idea that its use was

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19/ H. Rep. No. 1818, 87th Cong., 2d Sess. 23 (1962); Legislative History, p. 1087.

inadvertent. Moreover, the fact that adjustment assistance does not involve foreign affairs complications, which the Committee had noted was a motivating factor in its stiffening of the requirements for "escape-clause" relief, affords additional support for the view that the Report's language moderating to some degree the causation criteria in adjustment assistance cases was a deliberate expression of Congressional intention. The Senate Finance Committee, of course, had the House Report before it, but it said nothing to indicate disagreement with what the House Report had stated in this regard.

"Substantially the same" standards for causation in adjustment assistance cases as those specified in the statute for tariff relief for industry cases are of course no model of clarity. Like all such language, it must be read in the legislative context of which it forms a part, and applied so as to effectuate the legislative purposes, including the limitations and qualifications contained therein. In that context it means, in my view, that "the major cause" causation criteria should be applied in adjustment assistance cases so as to find eligibility in a close or borderline case which might fall a little short were it a "tariff-relief for industry" case. Any effort to be more precise in all likelihood would founder, because it would go beyond any Congressionally-expressed standard in the context of a legislative background which permits very limited leeway.

To those who would complain that this Congressional "substantially the same" standard does not go far enough in "taking care of" adjustment assistance cases, the answer would be twofold: first, perhaps so,

but it is a speculative matter, particularly since whatever impact the Kennedy Round tariff concessions will have will be visible only in the future; second, how far the country should travel in the future in the direction of liberalization of the causation criteria in adjustment assistance cases is a legislative policy question for the Congress to decide upon, amending existing law accordingly if it decides upon change, and establishing standards which administrative agencies would then apply. 20/ Until then, an administrative agency must apply the existing law, not the law as it might be or might have been.

Neither the Paidar nor the Koken companies qualify under the statute for adjustment assistance. As the Considerations Supporting the Commission's Finding make clear, neither present close or borderline cases on the first causation criterion. 21/

20/ In the Automotive Products Trade Act of 1965, P.L. 89-283, the Congress established eligibility requirements for adjustment assistance for firms and workers affected adversely by operations under the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada signed on January 16, 1965 which were considerably less rigorous than those set forth in the Trade Expansion Act of 1962. That Agreement, however, required major American automobile manufacturers to increase markedly the production of vehicles by their Canadian subsidiaries, and it was believed by many persons that this would necessarily result in a substantial shift in production (which has occurred). While the relaxation of causation criteria in that Act indicates that the Congress might be disposed to liberalize those in the Trade Expansion Act of 1962, the special circumstances involved therein might mean that it would not be used as a model in any revision which may be made in the causation criteria of the 1962 Act if and when the Congress considers the question of such revision.

21/ Nor do they on the second causation criterion were that to have been reached.

Dissenting Opinions of Commissioners
Thunberg and Clubb

Statement by Commissioner Thunberg

In my view the evidence is conclusive that concession-generated increasing imports have been the major factor in causing serious injury to the Paidar Company. Barber chairs are produced in the United States by two firms, Emil J. Paidar Company and the Koken Companies. While Paidar produces virtually all of the components used in its chairs, Koken contracts for the manufacture of most metal parts. The Paidar Company, having higher fixed and overhead costs than does Koken, thus is more vulnerable to declining sales volume. The Koken operation, which is more nearly an assembling process alone, would similarly benefit less than Paidar from an expansion of sales volume.

An industry comprised of only two producers has certain unique characteristics which industries embracing a large number of producers do not possess. In an industry composed of only two producers of comparable size, each member is aware, without any collusive action, that his policy decisions concerning sales--changes in the selling price of his commodity, the style and quality of his commodity, or the conditions under which it is sold--will have a strong impact on the sales of his competitor. If the two competitors are of approximately equal resources, each would be aware that if he attempted to increase his sales by lowering his price considerably, his competitor would be forced to follow suit with the possibility that neither one would gain significantly; indeed, each might be considerably worse off at the lower price depending on the nature of consumer demand for the product. The conditions of duopoly, in other words, imply consideration on the

part of each producer of his competitor's reaction to any move initiated by himself. Duopoly, therefore, tends to generate an attitude of "live and let live," a policy practiced by each producer of maintaining the status quo, of no revolutionary innovations in price or quality and over the long run a certain amount of lethargy. Duopoly is likely to imply selling prices and product styling on the part of both competitors which are identical or very close.

The barber chair industry in the United States, having been in existence for half a century under conditions of or close to duopoly, displays all of these characteristics. The selling price of the product, barber chairs, the styling and conditions of sale have changed very little over time until recently. Each competitor has worked out a modus vivendi which until recently has earned for him a comfortable profit. Neither has experimented widely by way of price adjustments or of quality changes to determine the nature of demand for the product. Since each earned a comfortable profit with the status quo, neither was concerned with whether a significant decline in selling price or change in product styling would increase sales considerably. Since the duopoly had existed for a long time, each came to assume that the industry would continue with no adventurous or otherwise troublesome competitors and that the sales of his product would grow with the rising population and urbanization.

The entry into the market of imports from Japan entailed fairly dramatic changes for the duopolists. The evidence indicates that the Japanese imports, when Japanese chairs were first being introduced, were

priced at a level considerably below those of the domestic producers. Aided by reduced freight costs, the Japanese chairs were priced so far below those of the domestic producers that they competed largely with used barber chairs rather than with new chairs. Rapidly expanding sales of Japanese imports reflect the fact that demand in the lower-price range in which the imports were selling was highly elastic. The evidence further suggests that when the Japanese had become established in the market they offered a wider range of styles and sizes at prices which became somewhat closer to those of the domestic producers. Despite declining price differentials, sales of Japanese chairs continued to grow because of imaginative styling and selling techniques.

The consequent decline of sales for the domestic industry has had a differential impact on the two domestic producers. Koken, who had not altered techniques, has not suffered losses. Paidar, who had automated in anticipation of constantly growing sales, is suffering losses. In addition the former, performing primarily an assembly operation, has had smaller fixed costs than the latter whose operation has entailed a machine shop for producing its own metal components. The increasing burden of fixed costs per unit of declining sales accounts for the difference in the financial performance of the two producers.

Although the long-term growth factors clearly account for some of the increasing sales of imported barber chairs in the United States, they in no way account for all of the increase. Since 1959 U.S. imports of barber chairs have grown at an average of nearly 14 percent annually. Personal disposable income in the United States has grown at an average

of 6 percent. Total U.S. consumption of barber chairs increased at an average rate of * * * percent, the number of barber shops at an average rate of 2.0 percent from 1959-66, the number of barbers at 4.9 percent. The expansion of imports thus requires more explanation than that of long-term growth alone.

In the present case trade-agreement negotiations have resulted in a decrease in the rate of duty on barber chairs from 27.5 percent to 11.5 percent.[1/] The role of such a duty reduction in causing an expansion of imports depends on the reaction it generates on the part of the foreign exporter. If in his view the duty reduction permits him to increase export sales and production and by so doing to increase his net revenue, the tariff concession can be said to have caused increased imports. The relevant question than becomes: Are conditions of demand in the U.S. market and of production in Japan and the United States such as to motivate an expansion of Japanese output and exports, given a duty reduction of 16 percentage points?

Evidence developed in the present investigation suggests that conditions of competition in the U.S. barber chair industry are such that the demand for the product of any one seller is highly responsive to price changes. [2/] Prices for comparable models of domestically produced chairs have typically been very close; those for comparable models of

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1/ In the Eyeglass Frames decision (TEA-I-10) Commissioner Clubb and I observed that Congressional intent can best be implemented by asking whether, absent the aggregate of concessions granted since 1934, imports would now be substantially below their actual levels.

2/ The reduction of an ad valorem duty levied on a commodity for which the domestic demand function (within the relevant price ranges) is not irregular would by itself make demand as viewed by the exporter more elastic than before. For the same volume of exports, he would be able to derive a higher average revenue per unit. Thus, a duty reduction in itself tends to increase the relative responsiveness of quantity to price changes at a given level of sales.

imported chairs appear to have been * * * to * * * percent lower. There has been, moreover, no observable attempt in the past by the domestic producers to match the pricing policy of the importers. Importers' sales consequently benefited from nearly the full increment to the market that would have occurred even if all barber chairs had been reduced in price (in large part this increment represented a substitution of new chairs for used chairs by buyers), as well as from a diversion of some sales that would otherwise have taken place at the higher prices of domestic producers.

The fact that domestic producers did not attempt to copy the pricing policy of the Japanese exporter gave a favorable price differential to imports. To what degree can the duty reduction be said to account for this differential? Over the period 1962-66 the average duty per imported barber chair amounted to * * *; if the actual rate of duty had been 27-1/2 percent rather than the 11-1/2 percent that prevailed, the average duty per chair would have amounted to * * *. The relevant duty differential, therefore, resulting from trade-agreement concessions amounts to an average of * * * per imported chair, or to *** to *** percent of the <u>difference</u> between the average unit values of the importers' sales and those of the domestic producers for the same period. The duty reduction thus has accounted for a significant part of the difference in price between the imported and domestic product.

The conclusion is inescapable that a major part of the increase in imports of barber chairs was made possible by the duty reduction. The evidence creates a strong presumption that the demand for new barber

chairs in the United States is highly responsive to price changes. Without the duty reduction the number of chairs which the exporter could have sold at the same average revenue per unit to himself would have been significantly smaller.

An expansion of output for the export market was attractive to the Japanese producer at these average unit revenue levels in part because of his size. It is noteworthy that the capacity of the Japanese competitor is about four times that of either domestic producer. His larger capacity suggests that the increment to his total unit costs involved in expanding output for the U.S. market would be considerably less than the additional variable costs alone.

Statement by Commissioner Clubb

I dissent both from the result reached by the majority in the Paidar case and from the reasoning used by it in all three cases. In my view the position of the majority, which is concededly consistent with earlier majority opinions of the Commission, if adhered to in future cases, will make it virtually impossible for any petitioner to qualify for tariff or trade adjustment relief under the Trade Expansion Act. I believe this position to be both unwise and unnecessary: unwise, because it frustrates the clear intention of Congress; unnecessary, because the words of the statute do not require it.

The facts in this case are not in dispute, and need only be summarized here since they are reported in detail in the factual section of the Commission report. The domestic barber chair manufacturing industry is made up substantially * * * of two firms, Koken and Paidar, which have been in the business for many years. Under the Tariff Act of 1930, the domestic barber chair industry enjoyed the protection of a 27-1/2% rate of duty, which over the years has been eroded by successive trade agreements to the present level of 10%.

After World War II a vigorous new barber chair industry grew up in Japan. Through energetic design, sales and advertising campaigns, this industry built up the barber chair market in Japan until it is larger than that of the United States, despite the smaller population of Japan.

Imports of barber chairs into the United States, which were practically nil in 1956, increased dramatically thereafter until in 1966

they supplied almost *** the U. S. market. United States consumption has expanded somewhat during this period, but to a large extent the importers' sales have been increased at the expense of the domestic producers. As a result of these lost sales, Koken's profits have declined, and Paidar has begun incurring increasingly ominous losses.

Koken and Paidar have now petitioned the Commission for (1) a determination that the domestic barber chair industry is eligible to apply for adjustment assistance, or, failing that, for a determination that (2) Koken individually and/or (3) Paidar individually is eligible. In order to make an affirmative finding in any of the three cases, we must find that the trade agreement concessions have been the major cause of increased imports, that the petitioner has been seriously injured, and that the increased imports were the major cause of the serious injury. 1/

1/ This is a paraphrase of the statute which requires that in order to justify an affirmative finding the increased imports must result "in major part" from trade agreement concessions. The Finance Committee report on the statute indicates, however, that this language was intended to mean that the concessions must be "the major cause" of the increased imports. S. Rep. 2059, 87th Cong., 2d Sess., 5 (1962). Similarly, the statute requires that the increased imports must be "the major factor" in producing serious injury in order to support an affirmative finding. Here, too, the Senate Finance Committee Report (S. Rep. 2059, 87th Cong., 2d Sess., 5 (1962)) reads "the major factor" as "the major cause", and for the sake of simplicity that language is used in the text.

The statute reads in pertinent part as follows:

> . . . [T]he Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing an article which is like or directly competitive with the imported article. 19 U.S.C. § 1901 (b)(1) (1964).

I. Points of Disagreement with the Majority Position

The majority has determined that the increased imports were not caused in major part by concessions, and has therefore denied relief in all three cases. I believe that, in denying relief in these cases, the majority has adopted a fundamentally erroneous view of the statute; first, because it adopts an unnecessarily restrictive and rigid definition of the statutory term "major", second (and more importantly), because it treats as causes of increased imports factors which are not causes in a legal sense, and third, because it takes an unwarranted and restrictive view of the effect of trade agreement concessions.

A. The Definition of "Major"

Turning first to the majority's interpretation of the term "major", it should be noted that the statutory requirement that the increasing imports must be caused "in major part" by trade agreement concessions has been implicitly interpreted by the majority to mean that the concessions must be the cause which is "larger than all others combined." It must be conceded that "major" can mean (1) "larger than all others combined", or (2) "largest single cause", 2/ but it can also mean (3) "notable or conspicuous", 3/ "material", or "substantial." 4/

2/ The definition of the term "major" was the issue upon which the Tariff Commission divided in National Tile and Mfr. Co., TEA-F-5, Dec., 1964. In the National Tile case, Commissioner Culliton observed that under the "larger than all other causes combined" interpretation, adopted by Commissioners Dorfman and Sutton, it would be possible to have a case where the concessions exerted an influence of 49% and fifty-one other causes each exerted an influence of 1%. In such a case, in spite of the fact that the concessions were by far the most important factor, they would be outweighed by the combined effect of the other 51%. Similarly, Commissioner Culliton observed

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Which of these three interpretations of "major" is chosen for a statute depends upon which one will yield the practical, predictable results intended by Congress when it enacted the legislation. 5/ The "largest single cause" interpretation yields results which are neither practical nor predictable, because it requires the Commission to make determinations which in a realistic sense are simply not possible. Even assuming that we are able to determine which elements or "causes" influenced the increase in imports, a problem about which I shall have more to say later, assigning a precise relative value to each one is not possible. Thus, in the recent Eyeglass Frames case 6/ Commissioner Thunberg and I observed that

> . . . [A]ny increase in imports is caused by a multitude of factors. The relative importance of each is almost impossible to ascertain, and can become especially blurred when long periods of time are involved (and Congress clearly realized they would be) during which dramatic changes in technology, tastes, and income distribution have occurred. If the Commission were to attempt to rank each cause of increased imports in every case, it is doubtful that it could ever find that any one of them was the most important.

2/ Cont'd.
that if the "largest single factor" interpretation were used, it would be possible to have similarly lopsided results. Thus, there might be ninety-eight causes, each exerting an influence of 1, and one cause exerting an influence of 2. In such a case the cause exerting an influence of 2 would be the largest single cause and would, therefore, be the "major" cause.

Commissioners Fenn and Talbot employed an interpretation similar to that which Commissioner Thunberg and I adopted in the recent Eyeglass Frames case, and which is elaborated here.

3/ Webster's Seventh New Collegiate Dictionary, 510 (1963).

4/ This is illustrated by other statutory interpretations of major:

> "'Major capital improvement . . . consists of a substantial change . . . such as would materially increase rental value . . ." Application of Rosen, 7 Misc. 2d 576, 169 N.Y.S. 2d 707, 710 (Sup. Ct. 1957). People ex rel Abrams v. S. A. Schwartz Co., 7 Misc. 2d 635, 161 N.Y.S. 2d 1008, 1016 (Sup. Ct. 1957).

Moreover, determining whether a group of factors should be lumped together as one cause which is 50% responsible for increased imports, or whether they should be split up into five separate causes, each 10% responsible, is a process which cannot be done on any but a capricious and whimsical basis. It seems unlikely that Congress would make the right to relief depend upon such metaphysical nonsense. 7/ The superficial exactitude of the process simply conceals too many necessarily arbitrary judgments. Accordingly, it seems clear that the "largest single cause" interpretation should be ruled out because it is not practical.

Similarly, the even more restrictive "larger than all other causes combined" interpretation (the one apparently adopted here by the majority) should be rejected because it yields results which are obviously in conflict with the purpose of the statute. As Commissioner Thunberg and I have noted, 8/ the overall purpose of the adjustment assistance provisions

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5/ This principle is enunciated in Sutherland's treatise:

> . . . /T/he rules of strict and liberal interpretation are expressions of public policy . . . . Thus a statute is generally given a meaning consistent with its purpose or spirit. . . . 3 J. G. Sutherland, Statutes and Statutory Construction, 126-128 (1943).

6/ Tariff Commission, Eyeglass Frames, TEA-I-10, at 5 (Oct., 1967).

7/ This idea was also expressed by Dean Green:

> /C/ausal relation is a natural phenomenon and cannot be subjected to a metaphysical test. Leon Green, Proximate Cause, 139 (1927).

8/ Eyeglass Frames, supra, note 6.

is to provide benefits for those injured as a result of trade agreement concessions granted by the United States. Under the majority's interpretation of "major", this policy will frequently be defeated. For example, if all other factors are responsible for 60% of the increased imports and the concession is responsible for 40%, under the majority view the increased imports would have resulted "in major part" from the other factors and, therefore, no relief would be available. However, it is entirely possible, even likely in most cases, that only 60% of the imports would not have caused serious injury to the petitioner, but the additional 40% of imports made possible by the duty reduction raised them to a level which wiped him out. Can it be doubted that the petitioner has been injured by the concessions? Yet under the majority view no relief is available.

The courts are unanimous in holding that mechanical interpretations of a statute, such as the "largest single cause" and "larger than all other causes combined", which are only satisfying in a syntactical sense, are to be rejected in favor of one which will fit the substance and the purpose of the enactment. Thus, Justice Holmes tells us that under certain circumstances

> /t/he general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down. U.S. v. Whitridge, 197 U. S. 135, 143 (1904).

and

> . . . I fully agree that Courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them. Olmstead v. U. S., 277 U. S. 438, 469 (1927) (dissent). 9/

9/ Justice Frankfurter agreed in the following words:

> . . . The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification.

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In my judgment the "largest single cause" and the "larger than all other causes combined" interpretations of "major part" and "major factor" should be rejected in favor of a more flexible interpretation which will implement the purpose of the statute.

The remaining possible meaning of "major factor" and "major part" is substantial factor and substantial part--one without which the event could not have occurred. 10/ The dictionary uses such

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9/ Cont'd.

> It is a wooden English doctrine of rather recent vintage (citations omitted) to which lip service has on occasion been given here, but which since the days of Marshall this Court has rejected, especially in practice. (Citations omitted.) A statute, like other living organisms, derives significance and sustenance from its environment, from which it cannot be severed without being mutilated. Especially is this true where the statute, like the one before us, is part of a legislative process having a history and a purpose. The meaning of such a statute cannot be gained by confining inquiry within its four corners. Only the historic process of which such legislation is an incomplete fragment--that to which it gave rise as well as that which gave rise to it--can yield its true meaning. . . . United States v. Monia, 317 U. S. 424, 431 (1943).

10/ 2 Restatement of Torts, comment a, at 1159-1160 (1934):

> a. Distinction between substantial cause and cause in the philosophic sense. In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent. . . . The negligence must also be a substantial factor as well as an actual factor in bringing about the plaintiff's harm. The word "substantial" is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense in which there always lurks the idea of responsibility, rather than in the so-called "philosophic sense," which includes every one of the great number of events without which any happening would not have occurred. Each of these events is a cause in the so-called "philosophic sense," yet the effect of many of them is so insignificant that no ordinary mind would think of them as causes.

synonyms as "notable" and "conspicuous", while courts have spoken in terms of "substantial" and "material", but the same thought is expressed. Thus, the Supreme Court of Oklahoma recently held that, in a statute fixing the residence of school children, the term "in major degree" means "in substantial degree." The Court expressly refused to construe the term to mean "in largest part" because

> That would be placing an absurd construction on the law, and one that could conceivably create undesirable and unnecessary difficulties in the administration of our school district system. 11/

11/ Gray v. Board of Education of Pawhuska Ind. Sch. Dist., 389 P. 2d 498 (Okla., 1964). In that case certain school children were attending school in the district in which their grandfather resided, but living with their parents in a different district. Defendant Board of Education ruled that since the children were attending school outside their district of residence, they must pay tuition. A state statute provided that "the residence of any child for school purposes . ... shall be the legal residence of the parents, . . . if such parents . . . contribute(s) in major degree to the support of such child." (Emphasis supplied.) Plaintiff grandfather established that he contributed more to the support of the children than did the parents, and asked the court for an injunction to prevent the collection of tuition. The court denied the injunction and stated

> We think that in enacting that statute, the Legislature intended that where the parents of minor children residing in the family home, have their legal care and custody, and contribute to their support in a substantial, or major, degree, the school residence of the children is the residence of the parents. The statute does not require the parents to contribute the major, or larger, part of all moneys that are expended for the benefit of the children. If it did, then wealthy persons, whether relatives or not, might establish school residences for children merely by having them as guests in their homes and lavishing more expensive "care" upon them than their parents would, or could, afford. That would be placing an absurd construction on the law, and one that could conceivably create undesirable and unnecessary difficulties in the administration of our school district system. (Emphasis supplied.) 389 P. 2d 498, 500.

In the recent Eyeglass Frames case, Commissioner Thunberg and I adopted this meaning of "major" because we felt that, unlike the other possible interpretations of the term, it would implement the purpose of the Act. In that case we said

> Considering that the general intent of the legislation is to remedy injury brought about by concessions granted under the trade agreements program, and that Congress intended that there be an important causal relationship between the concession and the injury, but did not intend that impossible requirements be imposed on either petitioners or the Commission, we feel that the overall congressional intent can best be implemented if, in interpreting the term "in major part," we ask only whether, absent the aggregate of concessions granted since 1934, imports would now be at substantially their present levels. If they would not, then the increased imports have resulted "in major part" from trade agreement concessions within the meaning of the Act.

In summary, there appear to be three permissible interpretations of the term "major." The "largest single cause" and the "larger than all others combined" interpretations should be rejected because, while they are syntactically satisfying, they are virtually impossible to apply, and yield absurd results. The more flexible interpretation, "substantial, notable, conspicuous, or material", is workable, and because it will implement the purpose of the Act should be accepted.

B. Selection of Competing Causes

But even if one accepts the majority interpretation and determines to weigh the effect of all other causes against the effect of the concessions, the result should be the same. With one exception, which does not change the outcome, the other competing causes cited by the majority are not "causes" as that term is used in legal parlance, but are given conditions. Accordingly, even by the majority's test the concessions

still should be held to be the major cause of the increased imports.

The question of what constitutes the legal cause of any injury has troubled lawyers and judges since the beginning of our legal system. Dean Roscoe Pound has suggested that any attempt to explain causation principles is an attempt to "unscrew the inscrutable." 12/ Such fundamental questions, when they cannot be avoided, should be approached with great caution. Where, as here, however, virtually every case has turned on this issue, a discussion of the basic problem appears necessary.

The statute, as apparently interpreted by the majority, requires that we determine whether concessions were a more important cause of the increased imports than all other causes combined. It is important at the outset to note that this finding is more a question of judgment than a question of fact. Of course, we are faced with a fixed set of facts in each case, but the selection of "causes" from the mass of information assembled about barber chairs, for example, is a matter of judgment, and depends heavily on why the selection is being made. 13/

12/ R. Pound, Causation, 67 Yale L. J. 1 (1957).

13/ One writer has observed that

> All deductions are drawn purposively--that is to say, they are drawn for a reason. A moment's reflection will show that this is true. A car is being driven in haste by an irresponsible youngster along a road which has recently been covered with large loose gravel. A wheel picks up a piece of rock and hurls it into the face of a pedestrian. The comments that this incident may evoke from each of several bystanders will differ. A neighbor of the youthful driver may attribute the accident to the indifference of the child's parents, who ought not allow him to drive. This, she will say, is the cause of the injury. A critical road engineer may see the cause of the accident in terms of improper road construction. A teacher of physics might be inspired to use the same incident as an illustration

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A theologian looking at the facts in this case might well conclude that there was only one Major Cause which created everything, and by comparison all other causes must be minor. An historian viewing the same set of facts might conclude that the historic ingenuity of the Japanese people was the major cause of increased imports. A military leader might suggest that the liberal policy of the United States occupation forces was the major cause. All might well be right, because each asked the question in the context of his experience and purpose.

In tort cases, 14/ for example, the selection of the legal cause of an injury depends heavily upon the risk to be foreseen from the defendant's action. Thus, where the law requires that a stairwell in a railroad station be lighted, it is no answer to an action by a hurried, corpulent worman who is injured falling down the unlighted stairs to say that the cause of her injuries was her corpulence or haste. The law contemplates that people in railroad stations will not all be young and healthy, and that some might be hurried. This is why the lights

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13/ Cont'd.

> of the impact of given speed upon an object of certain weight and dimensions. This, he observes, is the cause of the phenomenon. Each observer put the term "cause" to the use that interests him. Each has drawn upon his own background in varying degrees and each has brought into play different parts of his judging capacity. No single one of these attributions of the cause can be said to be more valid than any other, for each observer is using the term for his purpose. Malone, Ruminations on Cause-In-Fact, 9 Stan. L. Rev. 60, 62 (1956).

14/ Dean Leon Green has observed that

> /C/ausation is as much an element in an accident as in battery; in a breach of contract as in murder. And it is exactly the same problem wherever found and is soluble by the same process. L. Green, Proximate Cause, 132 (1927).

were required, and their absence was the legal cause of the injury. 15/ Similarly, where the law contemplates that sailors will have to work on deck during severe storms, and therefore requires that lifelines be rigged, it is no answer to an action based on the drowning of a sailor who was swept overboard to say that the cause of his death was the storm. Of course it was--in a philosophic sense--but it was because of the risk of being swept overboard that the law requires lifelines, and the absence of the lifelines, not the storm, is the legal cause of death. 16/

Turning to the statute involved here, it should be noted that Congress realized that some foreign producers were able to produce at lower costs, or had some other competitive advantage over domestic producers. It was for this reason that Congress granted them tariff protection in the first place. When Congress subsequently decided to reduce tariffs, it foresaw that some domestic producers might be injured because of the lower costs of foreign producers, and it was for this reason that tariff and trade adjustment assistance was provided. Accordingly, when a domestic interest petitions for relief under the Trade Expansion Act, it is no answer to tell them that the cause of their problem is that they have higher costs than their foreign competitors. Of course they do. And in a philosophic sense that may be a cause of their problems, but in the context of this statute it is not the legal

15/ Reynolds v. Texas & Pac. R. Co., 37 La. Ann 694 (1885).

16/ Zinnel v. United States Shipping Board Emergency Fleet Corp., 10 F. 2d 47 (2d Cir. 1925).

cause any more than the corpulence and haste of the injured woman in the railway station was the cause of her injury, or the storm was the cause of the death of the sailor. All that happened from a legal standpoint was that the risk which the law anticipated might cause injury, in fact did cause injury.

Taken in this light it can be seen that the "causes" of the increased imports listed by the majority are, for the most part, nothing more than the conditions which Congress foresaw might develop, and which impelled it to provide adjustment assistance as a remedy. These conditions have now matured into injury, but they are not "causes" of the injury for purposes of this statute. Thus, among the "causes", other than concessions, identified by the majority are (1) the larger production, and therefore economies of scale, of the foreign producer; (2) the better sales organization of the foreign producer; (3) and the better design of imported chairs. All these are simply another way of saying that the foreign producer has a competitive advantage in this field. Of course he does. That is why Congress granted tariff protection in the first place, and why it foresaw that the domestic producers might be injured if it were removed. Such things might be thought "causes" in a philosophic inquiry, but they should be quickly dismissed from consideration here.

One of the remaining causes listed by the majority is the "dynamic rise of Japan's industrial potential." This factor can be dismissed for the same reason as the other factors discussed above. But there is an additional reason for disregarding this type of atmospheric

cause, and that is that it is too remote to be considered an effective legal cause of the increased imports. Presumably, the majority means that the recovery of the Japanese economy created greater credit facilities, greater managerial skills, and a momentum which in turn gave the Japanese barber chair producers the capacity to supply barber chairs to the United States market. This problem has been with us for a long time too. As Francis Bacon said more than three hundred years ago

> It were infinite for the law to judge the causes of causes, and their impulsions one of another: therefore, it contenteth itself with the immediate cause; and judgeth of acts by that without looking to any further degree. 17/

Accordingly, this alleged "cause" should also be dismissed.

The remaining cause identified by the majority, i.e., the reduction in freight rates, could well be considered a valid legal cause for purposes of this statute. In this connection, it might be reiterated that Congress enacted the adjustment assistance sections of the Act in order to protect the domestic producers from the effects of the competitive advantages of the foreign producers, but it did not intend to protect them (in this statute at least) from the effects of changes in freight rates. When the magnitude and effect of the freight rate change is measured against the effect of the concessions, however, it is clear that the concessions were a much more important cause of the increased imports than were the changes in freight rates.

Accordingly, even if one uses the majority's interpretation of "in major part"--properly--I believe that it should still be concluded that the concessions were the major cause of the increased imports.

17/ Quoted in Pound, supra, note 12 at 9.

C. The Majority's Restrictive View of Concessions

The majority's consideration of each concession as a separate entity also merits comment, not only because it is involved here, but because it is a constantly recurring problem. It will be recalled that the statute directs the Commission to make an investigation to determine whether, "as a result in major part of concessions granted under trade agreements", imports are increasing and causing serious injury. The majority in effect interprets the quoted phrase as though it read, "as a result in major part of the most recent concessions." Thus, in this case the majority has noted each duty reduction on barber chairs, noting also that there was no immediate increase in imports following each one, and concluding therefore that the duty reductions had little or no effect on imports. This type of analysis, which can also be found in earlier majority opinions, appears to be based on the theory that after each reduction has been in effect for a short time it becomes a condition of the trade, and no one can claim injury resulting from it thereafter. Viewed in this light, of course, each concession is a small one and seems unlikely to have produced significant increases in imports.

This approach is inconsistent with the clearly expressed intent of Congress. In both the House and Senate Reports on the TEA, the committees stated

> The phrase "as a result of concessions granted under trade agreements," as applied to concessions involving reductions in duty, means the aggregate reduction which has been arrived at by means of a trade agreement or trade agreements (whether entered into under sec. 201 of this bill or under sec. 350 of the Tariff Act of 1930). H. R. Rep. No. 1818, 87th Cong., 2d Sess. 46 (1962); S. Rep. No. 2059, 87th Cong., 2d Sess. 20 (1962).

When Congress has so clearly directed that we consider the aggregate of all concessions granted since 1934, it is difficult to understand how the majority can justify looking at each separately.

D. Summary of Disagreements with the Majority Position

In summary, it appears that the majority has adopted the most restrictive possible meaning of the words of the statute and has thereby virtually insured that no petitioner can be successful. Thus, where several interpretations of the term "major" are available, the majority has chosen the most restrictive. By considering as "causes" of increased imports, those very conditions for which Congress intended to provide a remedy, it has insured that in every case there will be a great number of "competing causes" to outweigh the effects of concessions. Finally, by in effect restricting the consideration of concessions to the most recent concession, it has so minimized the effects of duty reductions that they must always appear small in relation to the other multitudinous "causes" involved. With all deference to my colleagues in the majority, therefore, I submit that there is enough flexibility in the words of the statute so that the majority is not here compelled to adopt such a restrictive interpretation and the results it produces cannot be laid at the feet of Congress. The choice of words is made by Congress, but the choice of interpretations is made by the Commission.

II. A Minority Interpretation

I believe that properly interpreted the adjustment assistance provisions of the Act can produce the results Congress obviously expected of it. The interpretation I think is in order as applied to this case is set out below.

A. In Major Part

In the recent Eyeglass Frames case Commissioner Thunberg and I adopted the "but for" test (as explained earlier) to determine whether the increased imports are the result in major part of the concessions. Applying that test in this case, it seems clear that the concessions were the major cause. Not only did the duty reductions account for * * * of the difference in the prices of the domestic and imported chairs, but also the concessions virtually guaranteed that the duty would not be raised again. The lowering of the duty made it possible for the importers to attract customers who on balance might have preferred the domestic product, or a used domestic chair (which accounted for about half the domestic dealers' business), but who were unwilling to give up the opportunity to purchase at a lower price--a lower price made possible in substantial part by the decreased duty. Moreover, the decreased duty made it possible for the importer to compete further and further from the ports. In addition, the guarantee of continuance of the low duty made it possible for the importer to make long-term plans for the U.S. market which would not otherwise have been possible. Considering all these factors, it is clear that, but for the concessions, the imports would not have reached substantially their present level, and therefore the imports were a result in major part of the concessions.

B. Major Factor

Next it is necessary to determine whether the increased imports were a major factor in producing the injury to the three petitioners,

a question the majority does not reach, having disposed of the case on the earlier question. Here, too, it is necessary to ask only whether the injury would have occurred but for the increased imports. We need not dwell long on this. The injury to the domestic interests took the form of reduced income resulting from declining sales. The reduced sales were a direct result of imports which rose from almost zero in 1955 to *** of United States consumption in 1966. Accordingly, it seems entirely clear that, but for the import competition, the domestic concerns and the industry would not be suffering injury.

C. Serious Injury

The final question to be answered is whether the injury to the industry on the one hand, and Koken and Paidar individually on the other, amounts to the serious injury required by the statute. This inquiry is much more important to the operation of the statute than might be thought, because it was by use of this test that Congress made industry-wide relief (escape clause or adjustment assistance) available only in rare cases, while at the same time making adjustment assistance to firms and workers broadly available.

In this connection, it should be observed that "serious injury" means that injury which is crippling or mortal. Not only is this the theme that runs throughout the best reasoned escape clause decisions, but also it has been applied by this Commission in other areas, 18/

18/ See Chairman Dorfman's dissenting opinion in the Self-Closing Containers case, a case arising under Section 337 of the Tariff Act of 1930, requiring the Commission to determine whether certain practices had a tendency to "substantially injure" a domestic industry. There,

(Continued on next page.)

and by the courts in general tort law. 19/ In all of these areas an injury is "serious" only when it is so substantial that it leaves the victim crippled, or raises doubts about his long range ability to survive. Since all the other requirements of the statute have been met in my judgment, it only remains to apply this test to Paidar, Koken, and, finally, to the industry, in order to determine whether a favorable determination should be made.

1. Paidar

In the case of Paidar, it seems clear that the injury has been of a crippling nature, and, therefore, it is "serious" within the meaning of the statute. In this connection, it should be noted that Paidar has a substantial investment in plant and equipment, which it recently increased in a modernization effort. This gives it a very substantial overhead which requires that sales be kept at a relatively high level in order to break even. Sales have not been at the break-even point for some time, and the losses, now aggravated by the increased investment, are growing more ominous. At present it is operating at a loss, and there is no relief in sight. It seems clear that this does constitute the crippling, perhaps even mortal, injury required by the Act.

18/ Cont'd.
Chairman Dorfman, whose views were subsequently adopted by the President, said

> In this context the proper meaning to attach to the words "substantially injure" would appear to be an injury of such severity as might well jeopardize the continued existence of the industry. * * * In other words, it may be posited that the Congress contemplated that the injury requisite to set in motion the exclusionary machinery of the statute must be a crippling injury, one which has brought or threatens to bring the industry close to the brink of destruction, rather than one that amounts to little more than a competitive nuisance. Tariff Commission, Self-Closing Containers, Inv. No. 337-18, at 30 (1962).

2. Koken

The case of Koken is considerably different. Koken did not have as large a manufacturing operation as Paidar in the beginning, choosing instead to subcontract much of this portion of its operation. Moreover, unlike Paidar it did not greatly increase its investment in hopes of increasing its sales. Because it has much less plant and equipment to support, Koken has been able to absorb the relatively small decrease in its sales without incurring losses. Accordingly, it would appear at present that Koken's ability to survive is not in doubt, and it has not suffered a crippling injury. Therefore, it has not been "seriously injured" within the meaning of the statute.

3. The Industry

The question of whether the industry has been seriously injured is, in my judgment, a very close one. Composed as it is of two firms of equal size, one of which is seriously injured, and the other is not, it can be argued with considerable force that the serious injury to 50% of the industry constitutes serious injury to the industry as a whole. However, so long as a large portion of the industry is not in serious difficulty, there is no substantial doubt about the ability of the industry to survive. It may be that in the end the industry will survive in a somewhat reduced capacity, but the reductions it faces do not at present appear to be of a crippling nature.

19/ Union Mut. Ins. Co. v. Wilkinson, 80 U. S. (13 Wall.) 222, 230 (1871); Thompson v. State, 162 S.W. 2d 728, 730 (Tex. Crim. App. 1942).

Finally, it might be observed that the problems of Paidar can be remedied by an affirmative decision on its individual petition. Since there are only two firms, and the other is not in danger, an affirmative finding on the industry petition is not required to remedy the problem. Accordingly, while the case is concededly a close one, I think there has been no serious injury to the industry.

D. Conclusion.

It might be observed in conclusion that this case illustrates a point which is frequently overlooked, i.e., that by requiring the same finding of "serious injury" in both firm and industry cases, Congress made relief much more readily available to the individual firm than to the industry. This is true because it is much more difficult to show that the entire industry has been crippled, or mortally wounded, than it is to show that an individual firm has. Thus, an industry made up of many firms would not be crippled so as to be unable to compete effectively, and its continued existence would not be in question, until it had been established that considerably more than the marginal firms had been so affected. Experience suggests that very few industries would be found to have been seriously injured by this test. Even in a very healthy industry, however, a number of firms might be seriously injured by imports, and so might qualify for relief individually without triggering the right of the entire industry to industry-wide relief. Experience suggests that this frequently would be the case.

Information Obtained in the Investigation

Description and uses

Barber chairs, the subject of this investigation, are specially designed chairs that are used in barber shops and in men's hair-styling shops. A barber chair consists of a base or pedestal on which rests a seat to which a back, arms, and a foot rest are attached. To facilitate the work of the barber and to provide for the comfort of the seated patron, barber chairs incorporate mechanical devices that--when activated by hand or foot, or electric motor, 1/--raise, lower, recline, revolve, or lock the seat, back, and footrest in a desired position. The principal mechanical device in a barber chair is a hydraulic pump, which is incorporated into the base or pedestal; when activated, it raises and lowers the seat, back, and footrest as a unit.

A recent innovation in barber chairs is a modified chair for use in men's hair-styling shops--specialty shops rendering such services as the shaping, styling, tinting, and waving of men's hair. Men's hair-styling chairs are lower in height than conventional barber chairs and the hydraulic pumps used in these chairs are lighter and have shorter pistons. 2/ Although men's hair-styling chairs are lighter in construction than conventional barber chairs, they have essentially the same

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1/ Barber chairs that are powered by an electric motor are known in the trade as "motorized chairs". Their installation requires an electrical service connection in the floor where they are to be located; because of this feature their sales have been limited largely to newly established shops. Their prices, which are considerably higher than those of non-motorized chairs, have also limited their sale.

2/ Identical hydraulic pumps are often used in beauty-parlor chairs.

mechanical features as the latter. As used in the remainder of this report the term "barber chair" denotes both conventional barber chairs and men's hair-styling chairs.

Barber chairs vary in physical dimensions according to make and model. The producers, both domestic and foreign, make several models of barber chairs; differences between the various models involve both construction and styling.

The production of barber chairs involves primarily the fabrication of the various metal and upholstered components (usually on a wooden base) and the subsequent assembly of these parts into complete chairs. The manufacture of the metal frame (pedestal, seat, back, and footrest) of barber chairs entails the casting, machining, chroming, stamping (or otherwise forming) of metal parts and the subassembling and assembling of such components. The upholstered part of the back rest and seat are made by constructing wooden frames, mounting springs on the frames, padding the springs, and covering the whole piece with upholstery (usually vinyl) material. The upholstered parts are mounted on the metal frame after the frame has been assembled. Part of the footrest of most barber chairs is also upholstered. On some models, sheet metal parts are laminated with vinyl; on others, certain parts are made of plastics.

Barber chairs differ from beauty-parlor chairs in several features. Unlike the footrest of most beauty-parlor chairs, that of a barber chair may be raised and the back reclined to bring the entire chair into a reclining position. Moreover, the seat of a barber chair, when adjusted to its lowest position, is positioned higher from the floor than that of a beauty-parlor chair. The hydraulic pumps used in barber chairs are

designed to permit a longer range of elevation than those used in beauty-parlor chairs. 1/ Barber chairs are also larger and heavier than beauty-parlor chairs.

The average life of a conventional barber chair is about 20 years and very little servicing is required during its lifetime. 2/ Consequently, parts for barber chairs are not significant articles of trade. Dealers do not maintain inventories of replacement or repair parts; they must be ordered from the manufacturer or importer.

U.S. tariff treatment

The imported products covered by this investigation are barbers' chairs with mechanical elevating, rotating, or reclining movements and parts thereof, as provided for in item 727.02 of the Tariff Schedules of the United States (TSUS). The current trade-agreement rate of duty applicable to such articles is 10 percent ad valorem; this rate, which was reduced from 11.5 percent, became effective on January 1, 1968 and reflects the first stage of a concession granted during the Kennedy Round of trade negotiations. Imports of such articles from designated Communist countries are dutiable at 35 percent ad valorem.

Before the effective date of the TSUS (August 31, 1963), barber chairs and parts were dutiable as machines and parts under paragraph 372 of the Tariff Act of 1930. The rate of duty originally applicable to such articles under the Tariff Act of 1930 was 27.5 percent ad valorem. The rate has been reduced on several occasions as a result of

1/ The seat height of most barber chairs can be raised about 8 to 11 inches--of most beauty-parlor chairs about 7 to 8-1/2 inches.
2/ Many chairs continue to be used as barber chairs after they are retired by the first owner.

concessions granted under the trade agreements program. The respective rates applicable to barber chairs and parts since 1930 have been as follows:

Effective date	Rate of duty established Percent ad valorem
June 18, 1930	27.5
January 1, 1948	15.0
June 6, 1951	13.75
June 30, 1956	13.0
June 30, 1957	12.0
June 30, 1958	11.5
January 1, 1968	1/ 10.0

1/ The rate of duty applicable to barber chairs and parts will be further reduced in 4 annual stages to 5.5 percent ad valorem as a result of a concession granted in the Kennedy Round of trade negotiations. The final stage in the reduction will become effective on January 1, 1972.

U.S. consumption

As measured by the number of new chairs sold to dealers, the U.S. annual apparent consumption of barber chairs (hereinafter referred to as consumption) increased substantially in the period 1956-66. The major part of the increase occurred during 1956-59; consumption continued to increase during 1959-66, but at a slower rate. * * *

Changes in the level of sales of new barber chairs are caused by various factors including changes in the size and age composition of the male population, men's hair styles, the number and/or size of barber shops being operated, sales of used barber chairs, and by prevailing economic conditions. Available data show that the total number of barbers (including apprentices) in the United States increased from about 229,000 in 1959, to 321,000 in 1966, but declined to about 314,000 in 1967. The number of barber shops increased from about 118,000 in 1959, to about 136,000 in 1966, but declined slightly to about 135,000 in 1967.

Dealers generally do considerable business in used chairs. They frequently renovate such chairs (largely a process of replacing the upholstery and sometimes rechroming the metal parts) and sell them to shops that can not or will not buy new chairs. This trade in used chairs declined substantially during the past several years. The decline is attributable for the most part to the rising cost of renovating the chairs and a consequent increase in price which has caused such chairs to be less attractive compared with new chairs, particularly imported chairs. It is estimated that sales of used chairs were equal to about a third of the sales of new chairs by dealers in 1965-66.

Marketing methods

Barber chairs are usually sold by producers and importers to dealers (or jobbers), who in turn sell direct to the user. The contractual relationships between the dealer and the manufacturer or the importer vary considerably. In some instances dealers are given exclusive franchises in an area. This practice is much more common among domestic producers than among importers. 1/ In other instances several dealers may sell the same brand of chair in the same area, and some dealers may sell several brands. Both the producers and the principal importer organize their marketing efforts in the United States by sales districts or areas. The producers' or importers' sales staffs in each district call on dealers and frequently work with the dealer's salesmen in attempting to develop prospective sales.

1/ The major importer gave franchises to dealers some of whom previously were unable to obtain such from the U.S. producers.

In some instances, sales involving the purchase of barber chairs in larger than usual numbers, such as sales to Government institutions, military installations, and barber schools, are often made directly by the producer or importer. In such cases, the dealer that usually serves the customer or the area may receive a commission on the sale, depending upon the relationship that exists between that particular dealer and the supplying producer or importer.

The domestic producers have generally advertised only through professional barber publications. The principal importer has advertised in such journals and has also conducted large-scale mailings of brochures direct to barbers.

During the past 2 years a new, but as yet little used, method of marketing barber chairs has developed. Two importing concerns have begun selling barber chairs directly to barber shops (bypassing dealers) by means of advertising in professional barber publications. Both sell chairs f.o.b. point of shipment (usually the port of entry). Apparently, these attempts at direct selling have had small success because of reluctance on the part of barbers to buy from other than a local dealer. Although barber chairs seldom require repairs, new chairs must be uncrated and "set up" and where the purchaser is located at some distance from the importer, the lack of repair or service arrangements is generally a deterrent to sales.

U.S. imports

Virtually all imports of barber chairs and parts in recent years have come from Japan.

Imported barber chairs are similar to domestically produced chairs; all such chairs, regardless of origin, have a hydraulic pump as an essential feature, can be elevated, reclined, and revolved, and are made for the sole purpose of seating a patron while he is being served in a barber shop or hair-styling salon. Although imported barber chairs are lower in price than similar chairs of domestic origin, and differ therefrom in some physical dimensions and styling, 1/ such differences do not affect their use as barber chairs.

Two firms imported barber chairs into the United States in 1956-64; 6 did so in 1965-67. One of the 2 concerns, however, accounted for all but a small part of the imports in 1966 and for almost all of the imports in previous years beginning with 1956. This concern--Takara Company, New York, Inc.--maintains offices and facilities for assembling barber chairs in both Brooklyn, New York and Los Angeles, California.

The barber chairs imported by Takara Company, New York, Inc. are manufactured by the parent company, Takara Chukosho Company, Ltd. of Osaka, Japan. This company is the largest producer of barber chairs in Japan; recently its annual production amounted to about 36,000 barber chairs of which about 29,000 were sold in the Japanese market and the remainder was exported. 2/ Sales of barber chairs in Japan are several times larger than in the United States because Japanese barbers change the furnishings of their shops more frequently than the barbers in the United States.

1/ Chairs made by domestic manufacturers also differ in dimensions and styling from model to model.

2/ Transcript of hearings, pp. 183 and 195.

The barber chairs produced for export are larger in size than those produced for sale in Japan; also, the exported chairs are styled to suit the tastes and requirements in the respective export markets. Although exported chairs differ in size and appearance from those made for the Japanese market, they incorporate the same hydraulic mechanism--which in itself accounts for about one-fifth of the total cost of components of a barber chair--as that used in the chairs made for the Japanese market. 1/ Despite the aforementioned differences, the large overall volume of production in the Japanese plant contributes to a considerably lower production cost for the exported barber chairs than the production cost of chairs made in the United States.

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Two other firms (Americana Barber Chair Co. of Washington, D.C. and Save-way Barber and Beauty Supplies, Inc. of N. Miami Beach, Florida) were the only other significant importers in 1966; both these concerns began importing in 1965. * * * Imports by other companies have been small and/or sporadic.

1/ Transcript of hearings, p. 195.

Imports of barber chairs supplied a negligible part of total domestic consumption in 1956 but supplied a significant part in 1959. Imports were slightly larger in 1962 than in 1959. In 1966 almost twice as many barber chairs were imported into the United States as in 1962, supplying a substantial part of U.S. consumption * * *.

Imports of parts of barber chairs, small compared with imports of barber chairs, have varied considerably from year to year * * *.

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In 1966, sales of imported barber chairs in the United States were proportionately larger along the populous East and West Coasts than in the interior. * * *

Ocean freight rates

Ocean freight rates represent a significant part of the cost of importing barber chairs. Since 1958 such rates have averaged 25 percent lower than those that were in effect in 1956 * * *.

U.S. producers

Currently only three companies produce barber chairs in the United States. Two concerns account for virtually all of total domestic production. Both are single establishment concerns and both also produce related articles, such as beauty-parlor chairs and other barber shop and beauty-parlor furniture and fixtures. One of these producers, Emil J. Paidar Company (the petitioner), is located in Chicago, Illinois; the other major producer, the Koken Companies, Inc., in St. Louis, Missouri. * * *

The third producer of barber chairs--Belvedere Products, Inc. of Belvidere, Illinois--began producing barber chairs in 1965. This company is a subsidiary of Revlon, Inc., a manufacturer of cosmetics and beauty products. Beauty-parlor equipment constitute the principal products manufactured by Belvedere, including chairs, shampoo bowls, and related articles. * * *

A fourth firm--F. & F. Koenigkramer Co. of Cincinnati, Ohio--which had produced barber chairs for many years, discontinued such production in November 1966. 1/ This concern, still a leading producer of dental and ophthalmic chairs and related types of equipment, ceased producing barber chairs utilizing its full capacity on its other product lines. * * *

U.S. production, sales, and exports

Inasmuch as barber chairs are produced to order, their annual production generally approximates sales. Sales of such articles by U.S. producers were slightly larger in 1962 than in 1956, but annual sales began to decline in 1963; in 1966 they were substantially less than in 1962. * * *

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Domestic producers * * * maintain virtually no inventories of assembled barber chairs; instead, they maintain inventories of parts and subassemblies for assembly into chairs. Ordinarily, barber chairs are not assembled until orders have been received. Therefore, delivery

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1/ * * *

time, which usually requires several weeks, varies considerably, depending upon the backlog of orders on hand. * * *

U.S. exports of barber chairs have been small in comparison with both imports and domestic sales * * *. During the period 1962-66, moreover, exports declined * * *.

Pricing practices and prices

The domestic producers and principal importers issue price lists to their dealers covering the barber chairs they sell. 1/ The price lists show a list price for each model, a "trade-in allowance" for a used chair, and the dealer's cost. 2/ Although a trade-in allowance is deducted from the list price in arriving at the net price to dealers, the producers and importers actually do not accept trade-ins. Optional extras, such as special upholstery, usually are added to the price. In ordinary practice, the dealer's cost is the list price, less a trade-in allowance, less 40 percent (with an additional 10 percent discount for cash in most instances). Some models may carry as much as a 55-percent discount (including the discount for cash) to dealers. The producers and principal importers also give quantity discounts to dealers.

Prices of barber chairs, as published, do not generally include an amount to cover transportation costs; chairs are ordinarily sold f.o.b. point of shipment (usually from the producer's or importer's plant or the port of entry).

1/ Prices of barber chairs are changed infrequently and the discounts allowed generally apply to all dealers.

2/ * * *

Dealers sell to their customers (barbers) largely on a negotiated price basis. Various factors--including the number of chairs sold, used chairs traded in, competition from other dealers, other barber shop equipment included in a given transaction--have a bearing on the price charged for a barber chair by the dealer.

Prices received by U.S. producers.--The two major U.S. producers' prices for barber chairs increased moderately in the period 1963-67. * * *

Prices received by importers.--Indexes prepared from the prices 1/ * * * of imported chairs that were sold in each of the years 1962-66, indicate that prices remained stable in 1962-64 but increased by * * * percent in 1965. In 1966 they were the same as in 1965. 2/ The average unit value of total sales was about * * * percent greater in 1966 than in 1962, reflecting, in part, the increased proportion of new models sold at a higher price.

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Comparison of prices of domestic and imported barber chairs.--In the period 1962-66, the net prices received by U.S. producers for barber chairs averaged about * * * percent higher than those received by importers for similar or comparable models. Because of the many variations in their mechanical features and in style, no accurate price comparisons may be made between most models of domestically produced and imported barber chairs. * * *

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1/ Net sales price, f.o.b. U.S. point of shipment, on June 30 of each year.
2/ * * *

Operations of the Emil J. Paidar Co.

The Paidar Co., currently operating a plant in Chicago, formerly had two subsidiary companies which operated two smaller establishments--an upholstering plant at Albany, Wisconsin and a combination assembly plant and service depot at Brooklyn, N.Y. The Albany plant was closed in 1963. * * *

In 1940, the Paidar Co. purchased the trademark and patterns of the Theodore Kochs Co. of Chicago, which ceased producing barber chairs in that year. Paidar has continued to make and market chairs under the Kochs name. These chairs are produced also in Paidar's Chicago establishment. They differ in name only from other barber chairs produced by Paidar. They are marketed, however, through a separate dealer organization.

As indicated previously, Paidar also produces beauty-parlor chairs and other barber shop and beauty-parlor furniture and fixtures in its establishment where barber chairs are produced. * * *

* * * * * * *

Paidar Company's utilization of its production facilities

The Paidar Co. produces in its plant in Chicago virtually all of the components used in its barber chairs; it spent sizable sums during the past 10 years in modernizing and automating its production facilities. * * * Furthermore, extensive cost-accounting and inventory-control systems were instituted, and sizable amounts were paid to consulting and designing firms.

* * * In 1967, production was at about 50 percent of capacity. 1/

Employment by the Paidar Co.

The number of production and related workers employed annually and the man-hours worked by them on barber chairs in Paidar's establishments have declined since 1956.

* * * * * * *

In the late 1950's Paidar embarked on a long-range program to modernize its production facilities. The benefits of this modernization program are reflected in the substantially reduced number of man-hours worked in 1962 than in 1956, * * *. In 1963, Paidar started producing an increased variety of models of barber chairs (including motorized chairs) and modified models previously produced. * * * the decline in the volume of production nullified various economies inherent in longer production runs.

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1/ Transcript of hearings, p. 67.