that it did. Unlike the United Nations, where the powers and scope of the General Assembly and the Security Council are quite strictly defined, the League Assembly in scope had a jurisdiction co-extensive with that of the League Council.[33] The Resolution quoted above does indicate, though, that the Assembly at least had doubts that it would not be infringing on certain special responsibilities of the Council. The Resolution may therefore be viewed as equivalent to an amendment in League practice. An amendment to the Covenant would, of course, not be necessary due to the co-extensive jurisdiction of Council and Assembly.

Such an assumption of authority is not without precedent in the League's history. For example, under the original arrangement of 1920, members of the League Supervisory Commission were appointed by the League Council. In 1928, Car Hambro, at that time the Norwegian delegate to the Assembly's Fourth Committee, succeeded in carrying a motion transferring the right of appointment to the Assembly, and this was subsequently confirmed by the necessary unanimous vote in the plenary meeting. Nor was this an inconsequential example of amendment to League practice since the constitutional position of the Supervisory Commission was the key to control of League finances.[34]

On the basis of this consideration of the admittedly complex legal issues involved, it is submitted that despite certain irregularities, the League in general, and the Assembly in particular, did possess the legal competence to take the measures that it took.

33. Articles 3 (3) and 4 (4) of the League Covenant.

34. Zimmern, *The League of Nations and the Rule of Law 1918 - 1935* at 475 (2nd ed. rev., 1935).

Dumping on the Steel Industry

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The past year has witnessed a remarkable campaign by the American steel industry for relief from foreign import competition. That the industry should campaign for protection is hardly remarkable. Concern about steel imports has been heard ever since the United States became a net importer of steel in 1959, and the industry's current recession, during which sixty thousand steelworkers have been laid off and six million tons of productive capacity have been written off, makes the clamor quite understandable. But the industry's

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rationale for protection is remarkable indeed. Supporting free trade for the first time, it asks only for relief from so-called dumping, or the sale of exports for less than the domestic price in the exporting country.[1]

Current steel industry problems stem from a worldwide glut of steel caused by lingering effects of the world recession of 1974 and 1975, but are aggravated by an erosion of the industry's competitive position over the last two decades. Expansion carried out during the boom years of the early nineteen-seventies turned into worldwide excess capacity when the general economic slowdown affected steel demand in 1975. Since then only the United States has returned to its full growth potential, and imported steel approached record market shares in 1977 as foreign steelmakers found a ready market for surplus production.[2]

The American steel industry contends that in this period of slack demand, foreign producers, particularly the Japanese, have used unfair means to increase exports, on which they rely for maintaining profitable levels of production. According to the American argument, the Japanese steel industry must have a high rate of capacity utilization to break even. Heavy reliance on debt financing and a policy of near permanent full employment are said to impose fixed costs that the industry cannot cover at low operating rates. The American industry claims that the Japanese have increased foreign sales by pricing exports below the Japanese domestic price and sometimes below the full cost of production. In other words, the Japanese are accused of dumping steel on the American market.[3]

Dumping is widely considered to be unfair because the low prices do not represent a "real" competitive advantage. It was prohibited by the Antidumping Act of 1921.[4] The steel industry complained, not without

1. Bethlehm Steel Corporation, "Foreign Steel . . . Unfair Competition?" (Public Affairs Folder 3248, 776); Howard W. Pifer, Paul W. Marshall, and John P. Merrill, *Economics of International Steel Trade: Policy Implications for the United States*. Prepared for the American Iron and Steel Institute (Newton, MA.; Putnam, Hayes, & Bartlett, May, 1977). Technically dumping is price discrimination between markets, but here we are concerned only with discrimination between the domestic market and the American market in which the latter price is lower.

2. Recent studies of the steel industry include Federal Trade Commission, *The United States Steel Industry and Its International Rivals: Trends and Factors Determining International Competitiveness* (Washington: US Government Printing Office, November, 1977); Council on Wage and Price Stability, *Prices and Costs in the United States Steel Industry* (Washington: US Government Printing Office, October, 1977).

3. See note 1 above for the industry's position; see Federal Trade Commission, ibid., pp. 242-247 for criticism of the argument.

4. 19 *United States Code Annotated* §§ 160-172; for analysis see "The Antidumping Act-Tariff or Antitrust Law?" 74 *Yale Law Journal* 707 (1965); James Pomeroy Hendrick, "The United States Antidumping Act," 58 *American Journal of International Law* 914 (1964); Thomas Silbiger, "Trade Act of 1974: New Remedies Against Unfair Trade Practices in International Trade," 5 *Denver Journal of International Law and Policy* 77 (1976).

justification, that the act was too cumbersome to be effective and demanded alternative steps. A government task force, headed by Anthony Solomon of the Department of the Treasury, rejected blatantly protectionist policies such as temporary tariffs or quotas and proposed instead a simplified antidumping procedure. The so-called Solomon plan, announced in December, established a trigger price system for initiating investigation of possible dumping. The trigger prices would be based on an evaluation of production costs in Japan, presumably the lowest in the world. Any imported steel offered for sale below the trigger price would be suspected of failing to cover costs, and an antidumping investigation would begin automatically. By eliminating the need for a formal complaint and expediting the subsequent investigations, the plan was to provide swift application of antidumping duties if they are needed.[5]

Despite this positive government reaction, it is not clear that dumping is as harmful as the steel industry claims.[6] Milton Friedman, an outspoken opponent of protectionism, declared in a recent speech that, "as a nation, we're stupid to have antidumping laws. They mean that if someone wants to give us a gift we should refuse it." He argues that the "injury" caused by dumping is not different from the "injury" caused by imports without dumping. As elementary international trade theory teaches, the gain in economic welfare from buying inexpensive imports is unambiguously greater than the loss suffered by an import competing industry. It does not matter to the importing country whether the imports are priced below the foreign price. Consumers gain in any case. Viewed in this light, restricting dumping makes no more sense than restricting any imports. Instead of protecting domestic industry from dumping, the appropriate policy is to provide adjustment assistance to help transfer factors of production from the import competing industry into an exporting industry.

Although dumping itself helps rather than hurts the importing country, in two cases, restriction of dumping is justified because it is accompanied by circumstances that counteract its benefits.[7] The use of dumping as predatory competition may permit a foreign producer to drive domestic firms out of business and acquire a monopoly. In this case, imports are only temporarily cheap. After the foreigner has established a monopoly, prices would be higher

5. *Report to the President: A Comprehensive Program for the Steel Industry*, by Anthony M. Solomon (US Department of the Treasury, December 6, 1977).

6. Theoretical works on dumping are Jacob Viner, *Dumping: A Problem in International Trade* (Chicago: University of Chicago Press, 1923); William A. Wares, *The Theory of Dumping and American Commercial Policy* (Lexington, Ma.; Lexington Books, 1977), which refines and updates the theory; it is also discussed in Robert E. Baldwin, *Nontariff Distortions of International Trade* (Washington: The Brookings Institution, 1970); James E. Meade, *The Theory of International Economic Policy*, vol. 2: *Trade and Welfare* (London: Oxford University Press, 1955).

7. Wares, *ibid.*, pp. 87—89.

than if local competition still existed. Predatory dumping, though providing a short-run welfare gain, leads to a net loss of welfare in the long run. No one has alleged, however, that the Japanese are trying to ruin their American competitors to acquire a monopoly. Such a threat is not in fact credible, for imported steel comprises less than eighteen percent of the US market and Japanese steel accounts for about one half of that total. The issue of predatory dumping is thus irrelevant to the steel industry's situation.

Economic theory also approves of preventing cyclical dumping. If foreign producers reduce prices to dispose of surpluses in times of slack demand and raise prices after the trough of the business cycle has passed, the dumping may cause a temporary market disruption in the importing country. Since perfect factor mobility is a fiction in the real world, responding to cyclical dumping would require regular expenditures for adjustment assistance. These costs are likely to exceed the benefits of low consumer prices if a continued supply of cheap imports cannot be assured beyond the short run. Cyclical dumping is precisely the accusation made by the steel industry. Since the current recession is cyclical and the unemployment in steel producing regions represents a market disruption, some kind of antidumping policy does seem logical.

It might however be too hasty to conclude that the current policy is necessarily correct. The Solomon plan contains provisions that may be interpreted more strictly than can be justified on economic grounds, making it a disguised form of protection instead of a legitimate policy instrument for the current situation.

While trigger prices are intended to represent the fair price of the most efficient producer, they may be set too high, penalizing import prices at the foreign price yet below the trigger price. In this case, the system is indistinguishable from conventional means of protection such as tariffs or quotas, which are not justifiable.[8]

A tendency toward protectionism can be found in previous antidumping investigations and might continue under the Solomon plan. Antidumping regulations require proof that dumping has caused injury before duties are imposed, but guidelines for the investigation of injury are misleading. The International Trade Commission is instructed to focus on injury to the industry itself, rather than on the broader issues of monopolization or disruption of the market, as economic theory considers appropriate. Moreover, the criteria for determining the extent of an injury are not specified. The Commission has adopted a *de minimis* standard for this purpose: if the injury is not insignificant, duties are imposed. This standard is stricter than the injury criteria used in domestic antitrust cases involving predatory pricing as well as the "substantial injury" requirement of tariff regulations. In addition, American

8. Federal Trade Commission, *ibid.*, pp. 559—565.