"Simmons then selected the retail accounts to which it wished to offer a volume rebate plan and determined the purchase volume brackets, as it saw fit, for each participating account. This resulted in an individually-tailored discount plan for each dealer. Following written acceptance of the plan by each participating dealer, each Division of the company notified the Head Office of Simmons of the contract by forwarding to it a copy of the agreement or a copy of a bracket summary report showing the names and brackets for each participating dealer in that Division.

"The structure of the plan led to multiple instances of discriminatory rebates being granted by Simmons. The structural features of the plan which contributed to the discrimination are:

(a) The initial starting volume bracket varied widely between competitors.

(b) The range of the volume brackets was inconsistent between competing dealers such that the incremental purchases required to reach a higher rebate bracket varied between dealers.

(c) For other than the first rebate level, a different percentage rebate was applicable to each of the separate categories of Bedding, Upholstered Goods and Case Goods.

(d) Although generally consistent between competing dealers, the percentages applicable to a category at any given rebate level occasionally varied between competitors.

"Consequently, a number of competing dealers who did a substantial amount of business with Simmons could not qualify for any rebate under the plan, while competing dealers with smaller dollar purchases from it did receive rebates."

OUTSIDE THE COURTS

THRONE SPEECH PROMISES COMBINES ACT REFORMS

"Proposals will be placed before you to improve the market environment by changes in competition laws and the regulatory framework of the financial services industry", the Governor General stated in the Speech from the Throne on November 8. Finance Minister Michael Wilson's paper "A

New Direction For Canada", which he tabled in the House of Commons on November 8, stated:

> "A major element of uncertainty in Canada's business climate could be removed by bringing to an early and successful end the protracted debate over the shape of Canada's future competition policies. There now seems to be a measure of concensus on the changes to the Combines Investigation Act. The early reflection, in legislation, of a new competition policy framework would contribute significantly to the business environment."

The Paper emphasizes the government's commitment to prior consultation on the various policy areas discussed in the Paper. It states:

> "The Prime Minister and members of the government will be meeting with their provincial colleagues over the fall and winter to discuss the directions set out in the Economic Statement and this paper. Concurrently, a broad range of consultations will be undertaken by the Minister of Finance and other ministers to discuss specific elements of the agenda....
>
> "...In addition to the formal Parliamentary process, all ministers will consult actively on an ongoing basis in their areas of specific responsibilities and with all segments of the population that might be affected by specific measures under consideration...
>
> "...The consultative process will be flexible yet thorough. It will not be used as an excuse to postpone making decisions."

Coincidentally, the Canadian Bar Association submission to the Royal Commission on the Economic Union and Development Prospects For Canada (MacDonald Commission) reported on the review it is conducting of the proposed combines act amendments which were introduced as Bill C-29 by the former government on April 2, 1984. A special committee consisting of John C. Clarry, Q.C., Julian Chipman, Keith E. Eaton, Q.C., John L. Howard, Q.C., Colin Irving and Bruce C. Macdonald was convened to examine the Bill. Due to time constraints, the report of the Committee had not yet been approved by the Association. However, in its submission to the MacDonald Commission, the Association commented on the Committee's report as follows:

> "On a more general note, the committee saw legislation to amend the Combines Investigation Act as a high priority for the Government of Canada. The committee held this view for a number of reasons:
>
> (a) The Canadian Charter of Rights and Freedoms has given rise to a need to reexamine many of the enforcement procedures

of the present legislation. The provisions of the present legislation should be reviewed by the Department of Justice to ensure that they are consistent with the letter and the intent of the Charter provisions, and the necessary amendments should be brought forward to ensure compliance.

(b) Because of the vague standards, stringent requirements of proof and inappropriate sanctions in the existing merger and monopoly provisions, these sections of the present legislation probably do not implement government policy effectively. Furthermore, the existing standards and enforcement procedures do not effectively preserve and facilitate dynamic markets and the efficient use of Canadian resources.

(c) Changes that have occurred since 1952 in the institutions and procedures for appraisal and adjudication under the Act, together with the proposal in Bill C-29 to place virtually all substantive adjudication responsibilities in the hands of the courts, give rise to a need to reconsider the desirability and usefulness of the continued existence of the Restrictive Trade Practices Commission.

(d) The existing Act limits the ability of Canadian industry to enter into export agreements and specialization agreements that would help improve the efficiency and international competitiveness of Canadian industry, and does not express government policy in this regard as expressed in Bill C-29.

(e) It is time to bring to an end the general feeling of uncertainty regarding competition policy which has resulted from the last fifteen years of public dialogue. A series of attempts have been made to reform combines law, but only one has been passed into law - Bill C-2, in 1976. That Bill represented "phase one" of the amendments to competition legislation. Seven years have passed since that time, and yet there has been no further legislative action.

"As set out above, the committee report is now under consideration by the CBA. Its Legislation and Law Reform Committee endorses the policy of the report but does not accept conferring exclusive jurisdiction on the Federal Court. It is also concerned with the submissions that jurisdiction over specialization agreements be vested in Cabinet and that the Restrictive Trade Practices Commission's jurisdictions to authorize evidence upon affidavit and oral examinations be conferred on the courts. These and other concerns will be considered by the CBA."

CTC PONDERS EFFECTS OF U.S. RAIL DEREGULATION

The Canadian Transport Commission held public hearings in October on the effects in Canada of the Staggers Act of 1980 which has largely deregulated the United States railways. Canadian National and Canadian Pacific, many shippers and the Director of Investigation and Research under the Combines Investigation Act advocated Canadian regulatory changes of one kind or another in order to enable the Canadian lines to compete effectively with their U.S. counterparts.

Nearly a quarter of the tonnage handled by Canadian railways involves transborder shipments, and the Canadian railways complain that the regulatory environment under which they operate has placed them at a disadvantage in competing with the unregulated U.S. lines. Tonnage of purely domestic rail shipments was about the same in 1983 as in 1979. However, U.S.-destined shipments fell by four percent while overhead shipments (tonnage moving from one U.S. point to another U.S. point by way of Canada) declined by about 40 percent.

With deregulation, the U.S. lines are subject to the antitrust laws and can no longer agree on rates. They may and frequently do offer secret rebates to shippers, thereby undercutting the CTC-approved and published rates offered by the Canadian railways. The U.S. lines are also free to cancel routes or impose surcharges for the use of their lines on international shipments. This enables them to offer better rates on their long hauls than are available to shippers using only portions of their lines as "bridges" to connect with competing lines. The net effect has been to encourage shippers on international routes to make more use of U.S. lines and less of Canadian lines.

In contrast, the Canadian railways can legally agree on rates as long as they act in accordance with regulatory requirements which include public filing of rates. They cannot offer secret rebates to meet competition nor engage in retaliatory route cancellations or surcharges. In addition, there is concern that the Canadian railways might be subject to attack under the U.S. antitrust laws for agreements touching rates on transborder shipments. The railways have suggested solutions to these problems along the following lines:

- Amend the Railway Act to remove CTC jurisdiction over "bridge" movements through Canada from one U.S. point to another

- Permit the railways to negotiate confidential contracts with shippers for international traffic, to be filed with the CTC and accessible to other Canadian carriers

- While permitting the railways to continue to agree on rates on

transborder shipments, the government should reaffirm its concern about the extraterritorial reach of U.S. antitrust laws

- Permit the railways to cancel routes and to place surcharges on international traffic.

A witness on behalf of the Director of Investigation and Research under the Combines Investigation Act expressed support for the proposal by the railways that CTC jurisdiction over "bridge" movements through Canada be removed. He also agreed that confidential contracts should be permitted but took the position that such contracts should not be disclosed to others not parties to the contracts. He suggested, however, that summaries of such contracts might be filed with the CTC, which could then compile them into general statistical reports without disclosing details of individual contracts. He opposed the stand of the railways that they should continue to be permitted to agree on rates on transborder movements, stating:

> "Throughout this hearing the railways have expressed deep desire to be put on the same footing as U.S. roads for international traffic; to have the same competitive tools. They are concerned of being short-hauled by U.S. carriers. We endorse the request to be put in a competitive position with the U.S. railways who do not engage in collective rate making. We do not understand how the retention of collective rate making, even in the railways' suggested form of shared information on contracts on transborder movements, will better achieve equal footing without at the same time prejudicing the interests of Canadian shippers."

With regard to cancellation of routes and imposition of surcharges on joint international routes, the Director's position was to the effect that the best approach to this problem would be the promotion of easier entry into Canadian railroading for both Canadian and foreign interests. Over the objections of railway spokesmen, the Director introduced evidence about the development of independently owned short rail lines in the U.S. since deregulation. He took the position that these have kept some "bridge" lines from being abandoned and have been of benefit to shippers. The spokesman for the Director stated:

> "We believe that promoting easier entry through the granting of running rights, expanding interswitching zones and easing access to new carrier entrants, including transborder entry by U.S. rail carriers will not only provide more efficient international routings but at the same time deter the closing of our transborder gateways.
>
> "Interestingly enough, other parties have also called for similar changes. The Atlantic Provinces Transport Commission and the Halifax-Dartmouth Port Development Commission see the granting of running rights to a competing railway as a way to

provide the Atlantic Ports with competitive rail services which in turn would increase competitiveness of the port for export and import traffic.

"Related to a policy of easier entry is the role that short-line railroads could perform in Canada. Mr. McCaffery and Mr. Rich have detailed on behalf of the Director, the operation, the potential and the benefits for both shippers and major railways of short lines. Mr. Provost, witness for C.N., admitted that if independent short-line operation "is a better tool to do the work, and that this would be advantageous to us, we would certainly look at it" (page 1370 of the transcript, volume 9).

"We submit, Mr. Chairman, that a policy promoting easier entry into Canadian railroading would be beneficial to the shippers as it would given them more efficient routings and at the same time deter railways from unilaterally closing the transborder gateway. It would also be beneficial to the railways, as it would provide them with a wider access to U.S. markets, where short-line could serve as collectors and distributors of traffic in areas presently controlled by the U.S. larger rail systems."

At earlier hearings before the CTC in July, the Director opposed a CN-CP joint proposal to acquire the Canada Southern Railway which links Buffalo and Detroit via Canada on the ground that it would reduce competition. However, in a decision which was announced on December 14, the CTC recommended that the CN-CP proposal be approved by Cabinet. Other parties interested in acquiring Canada Southern are appealing the decision.

Canadian shippers were well represented at the hearing on the effects of U.S. rail deregulation. The Canadian Manufacturers Association expressed concern that the present regulatory regime was placing its members at a disadvantage in the U.S. The Bureau of Competition Policy commissioned an in-depth telephone interview survey of the views of senior transportation officials of firms using railway transportation services. Three hundred out of 375 randomly selected large and small shippers, consignees, truckers, freight forwarders and steamship lines participated. Some of the findings of the survey, which was conducted by E.M. Ludwick & Associates Inc., were:

- There is a concensus among rail users surveyed for a significant limitation on the ability of the railways to set prices collectively; strongest support is in favour of limiting collective action to joint rates

- Increased intramodal rail competition is viewed as beneficial

- Canadian rail users generally see the results of U.S. rail deregulation as being of benefit notably in the area of rate

levels and carrier responsiveness to individual shippers' needs, and would expect similar positive effects in a deregulated Canadian rail environment.

- Firms accounting for the majority of gross sales revenues reported in the survey consider that they should have the right to negotiate exclusive and confidential terms in rate contracts
- If a deregulated or competitive rate-making environment was introduced in Canada, railways should still be responsible for publishing rates, rate appeals, common carrier obligations, interswitching, and captive shipper rate prescriptions.

The Council of Forest Industries of British Columbia at the hearings opposed secret rebates, fearing they would hurt small forest companies.

COMBINES HEAD URGES RETENTION OF COMPULSORY DRUG PATENT LICENSING

Mr. L.A.W. Hunter, Director of Investigation and Research under the Combines Investigation Act, appeared before the Commission of Inquiry on the Pharmaceutical Industry (Eastman Commissiion) on October 17. He urged the Commission to recommend retention of the 1969 amendment to the Patent Act under which ss. 41(4) provides for compulsory licensing of patented prescription drugs. He also made the following suggestions:

- The present royalty rate of four percent which is paid by licensees is not fixed by law, and "requests to increase the rate should be reviewed in the light of the profitability and need for continuing innovation in this important industry."
- The length of time taken to obtain approval of new drugs may act as a disincentive to investment. The Director stated:

  "I have some sympathy with the position taken by the Pharmaceutical Manufacturers Association of Canada on this issue, that the regulatory process can be speeded up. At the same time, changes may be needed to ensure that regulatory requirements do not act as a barrier to entry for generic companies. There are some indications that regulatory requirements may impose unnecessary duplication of clinical tests by generic manufacturers."

- The Combines Investigation Act may need strengthening to deal with abuses of industrial property rights.

- Changes may be needed in provincial drug substitution programs and formulary systems to prevent exclusion of qualified generics and excessive retail markups.

The Eastman Commission was created last April after federal proposals to "rebalance" s. 41(4) were shelved because of protests by consumer groups and some provincial governments that drug costs would be increased.

The international drug producers have opposed compulsory licensing from its inception, contending that it is unfair in allowing producers of generics to profit from research by others during the normal life span of patents and that it adversely affects research in Canada. In addition, according to the Wall Street Journal of November 13:

> "Brand name companies in the U.S. and Europe are increasingly worried that other countries may copy the Canadian practice. They are also concerned about the sharply growing exports of Canadian copies of their products to developing countries that don't have patent laws."

Announcements of two Montreal drug plant closures in 1982-3 with the loss of about 450 jobs added to the pressures for change. Ayerst, McKenna and Harrison Inc. moved its basic Canadian drug research facilities to the U.S., and Hoffman-LaRoche closed its Montreal Plant. Others opposing compulsory licensing include several provincial governments, some federal departments and agencies, a number of scientific and medical associations, and the United States government.

The combines Director took the position at the hearings that compulsory licensing along with provincial laws facilitating substitution of generic for brand name drugs has brought substantial savings to consumers and tax payers and has aided the development of a generic drug industry in Canada, all without any undue adverse effects. He presented data to the effect that, both before and after the 1969 amendment, research and development expenditures by drug companies averaged about four percent of value of shipments and that their profits as a percentage of equity were higher than the average for all manufacturing. he stated:

> "The apparent lack of any harmful impact of compulsory licensing is understandable in view of the structure of the drug industry in Canada. In particular, 90% of sales of pharmaceuticals in Canada are accounted for by multinational drug companies. These companies undertake original R&D based on expected returns in the global market, of which Canada represents less than 2%. Accordingly, the extent of patent protection in Canada has very little impact on R&D incentives. Increased patent protection would raise the financial return to the marketing of drugs in Canada, without necessarily resulting in increased R&D."

The Director also enlarged about his suggestion that the Combines Investigation Act might need strengthening to deal with abuses of intellectual property rights. He recalled the conviction of Hoffman-LaRoche in 1980 for predatory pricing (R. v. Hoffman-LaRoche (1980) 14 C.R.(3d) 289). In addition, he expressed concern that there may have been instances of other anti-competitive practices including pre-emptive flooding of the market with low priced products immediately prior to the expected entrance of a new competitor, and threatened boycotts of firms that require generic product use in their employe drug benefit programs. He stated:

> "These activities may undermine the objectives of government policy under section 41(4) of the Patent Act by limiting the scope for generic competition. There is also concern that cross-licensing of patent rights can serve as a basis for restrictive market sharing and other collusive activities...
>
> "...I would ask the Commission to consider the adequacy of the existing law and the extent to which these anti-competitive practices have tended to undermine the policy objectives of section 41(4) of the Patent Act. The Commission may also consider whether there is a need for new provisions, in the Patent Act or Combines Investigation Act, to prevent or punish such abuses. It has sometimes been suggested that there is a need for new statutory provisions to deal with abuse of intellectual property rights. To the extent consistent with relevant international conventions, this might involve designation of specific anti-competitive practices that would trigger removal or reduction of a firm's patent protection. Presumably, these practices would include predatory pricing and threatened boycotts.

OSC PONDERS CAPITAL NEEDS AND ENTRY BARRIERS IN SECURITIES INDUSTRY: EASES CONTROLS ON NON-VOTING SHARES

The Ontario Securities Commission opened a series of hearings on November 19 which may lead to recommendations for legislative changes affecting the structure of the securities industry. The questions at issue include what sources will be available to meet the industry's increasing needs for capital and the extent to which non-resident and other non-industry participation in the industry should be permitted. The Director of Investigation and Research under the Combines Investigation Act is among those who advocate freedom of entry in the interests of competition and efficiency. The Commission is expected to report its findings by the end of January.

The hearings follow a proposal by Gordon Capital Corp. and the foreign-owned Bruxelles Lambert Group to form and jointly own a new firm which would be unregistered and would deal mainly with institutional investors. The proposal was rejected by the Toronto Stock Exchange and was appealed to the OSC.

At present, a non-resident cannot acquire more than a ten-percent interest in an Ontario securities firm, and total non-resident interest in such a firm is limited to 25 percent. Also, Canadian non-industry investors including other kinds of financial institutions cannot own more than a ten-percent interest in a securities dealer. Only registered underwriters can become primary distributors of securities on the public market; however, exemptions are granted for private placements in excess of $97,000.00, and about half the securities issued by corporations are private placements.

While some in the industry advocate fewer restrictions, the Joint Securities Industry Committee (JSIC) which represents the stock exchanges and investment dealers as a group favours maintenance and strengthening of existing restrictions. While calling for maintenance of existing restrictions on participation of outside capital, it advocated a registration requirement for all firms in market intermediation including private placements and a tightening of the separation of functions among the various types of financial institutions.

The Director of Investigation and Research, on the other hand, advocated removal of existing restrictions on sources of capital. Pointing to the OSC' responsibility for promoting efficiency in capital markets, his submission stated:

> "...it would be prudent to assume that the efficiency of Canada's capital markets could be improved by increased competition, increased product and service innovation and lower costs. In fact the onus of proof is on those who would contend otherwise.
>
> "A major effect of the existing investment restrictions is protection of the current industry structure. Foreign securities dealers, financial institutions, and other non-registrants have the potential of bringing different products and services to the securities market. These innovations will succeed if they are preferred to existing products and services or if they reduce the cost of capital to issuers or increase the return earned by investors. These benefits, for example, may be realized by directly increasing efficiency through a reduction of transactions costs.
>
> "The JSIC submission has based its case for extending investment restrictions on faulty logic. Contrary to their assertions, the industry is not threatened with extinction if they are forced to compete directly with foreign securities dealers or

financial institutions. Open competition already exists in the exempt markets and the evidence suggests that institutions other than securities dealers have entered the exempt markets successfully, which indicates that they do provide an alternative to investors and issuers that some prefer. The flexibility of choice which is available only in the exempt markets would tend to make these markets more competitive and more efficient."

Referring to the JSIC's stand in favour of separation of functions, which was based partly on conflicts of interest grounds, he stated:

"The JSIC submission calls on simple fears about conflicts of interest as a primary rationale for restricting competition from any domestic non-registrant. A detailed examination of the activities performed by the financial and market intermediaries demonstrates that the industry is not presently separated by functions. Nonetheless banks, trust companies, insurance companies, credit unions and even non-financial corporations are caught by the JSIC's recommendations which flow from their treatment of conflicts of interest. The JSIC does not identify the conflicts which are of significance or provide any evidence to show that alternative policies which do not reduce the competitiveness and efficiency of the securities industry, cannot be relied on to protect users of the markets from conflict of interest abuses.

"Many potentially serious conflict of interest problems exist in the securities industry as it is presently structured. The JSIC submission offers no rationale for rejecting direct regulation as a viable policy response for conflict of interest concerns that may result from competition amongst financial and market intermediaries. Nevertheless, at the same time the JSIC argues that direct regulation is an adequate approach for the serious, and pervasive, conflicts of interest that exist on a daily basis within securities firms.

"Given the large number of overlapping functions contained within each of the intermediaries, maintaining institutional separation is not an effective instrument for achieving functional separation except for a very limited array of activities. There is no evidence that separation of institutions is the most practical and appropriate policy for providing protection against conflict of interest abuses, even if functional separation is an acceptable policy.

"As a result of the existence of various jurisdictions regulating the financial and market intermediaries and accepting the potential importance of the need to deal with conflict of interest in a detailed manner which identifies potential conflicts and specific mechanisms

for eliminating or controlling these problems it is recommended that these issues be jointly studied by the appropriate authorities."

On October 11, the OSC announced its decision on another matter, that of the regulation of the issuance of "restricted", or non-voting, shares. It has decided to retain regulations requiring adequate disclosure of the rights attaching to such shares and that their issuance must be approved by a majority of the company's minority shareholders. However, it has rescinded the requirement that, in a subsequent takeover bid, an identical offer must be made to the restricted (non-voting) and voting shareholder.

The OSC and others have been concerned about the increasing use of non-voting shares. Along with other securities regulatory agencies, it imposed a moratorium on the issuance of such shares in 1981 pending the outcome of hearings. The moratorium was lifted in 1982 but with the imposition of conditions on the issurance of non-voting shares. The conditions were tightened in March, 1984, at which time the OSC invited comments from various interests including the Director of Investigation and Research under the Combines Investigation Act. The Director, in his reply, pointed to the widely held presumption that financial markets use information efficiently. He expressed the view that non-voting shares, if acceptable to investors, should improve the allocative efficiency of the capital market.

In a statement accompanying its decision of October 11 to ease the restrictions on non-voting shares, the Commission reiterated its concern about the use of such shares but expressed the hope that the market would ultimately decide the issue. The Commission stated:

> "The Commission did agree on the view that in the long term it considers the impact of the use of restricted shares on capital markets is negative and that the efficiency of our capital markets will suffer and will therefore be less attractive to investors and issuers if restricted shares continue as an important device of corporate finance to Canadian issuers. The Commission is hopeful that the destiny of restricted shares in Canadian capital markets can be determined by market participants rather than by the regulators. This will be achieved by increased investor sensitivity to the consequences of purchasing restricted shares and by increased participation by minority shareholders in the corporate reorganizations to create these shares."

CRTC HOLDS HEARINGS ON LONG DISTANCE PHONE COMPETITION

The Canadian Radio-Television and Telecommunications Commission held hearings in October and November regarding an application by

CN/CP Telecommunications of Toronto for permission to compete with Bell Canada and British Columbia Telephone Co. in the provision of long distance telephone service for Bell subscribers in Ontario and Quebec and B.C. Tel. subscribers in British Columbia. Bell Canada and B.C. Tel. would be required to provide their respective subscribers with access to CN/CP's long distance facilities at a price to be determined by the CRTC. While CN/CP has not yet filed its proposed long distance rates, savings to subscribers averaging 10 to 20 percent on existing long distance rates are envisaged.

The application brings a number of difficult and contentious issues before the Commission and its decision will have a bearing on policy respecting the introduction of competition in other telecommunications services as well. Aside from the question of whether to allow CN/CP to compete with the present monopoly carriers, the application confronts the Commission with the issue of the extent to which competition in long distance service should be permitted to affect subscriber rates for local telephone service. Long distance rates are at present far above cost and local rates are far below cost, revenues from the former going in part to subsidize the latter. Local rates would probably need to be more than doubled if long distance rates were brought down close to cost by competition.

Bell Canada and B.C. Tel., while not expressing opposition to competition in long distance service, take the position that the problem of "rebalancing" local and long distance rates must be addressed and they caution against a hasty decision. Small business and consumer groups oppose any solution that would involve substantial increases in local rates. In comments which he submitted last May, the Director of Investigation and Research under the Combines Investigation Act expressed support for the CN/CP application and proposed free entry in general. His position on the "rebalancing" issue which has been raised was expected to be made clear during final arguments in December, 1984.

The issue was bound to arise sooner or later because of deregulation in the United States. Business interests are concerned about the competitive disadvantage imposed by higher long distance phone bills. Imperial Oil already has its own long distance voice network, and other large companies are reported to be considering such moves. Two small entrepreneurs in Vancouver have established a service whereby telephone subscribers can route their long distance calls through exchanges in the state of Washington at substantial savings. They may well be closed down by the CRTC but, according to Prof. William Stanbury of the University of British Columbia, "Canada can't stop telephone competition any more than King Canute can halt the tides".

The CRTC is not expected to issue its decision for some time, and even then a Cabinet override is possible.

COMBINES HEAD CALLS FOR END OF FOOTWEAR QUOTAS

The Director of Investigation and Research under the Combines Investigation Act mounted a strong attack on footwear import quotas in his opening statement before the Anti-Dumping Tribunal on November 26.

The Tribunal was holding hearings on the quotas which date back to 1977. Its terms of reference are unusually broad, asking it to consider the interests of consumers and others as well as those of the footwear manufacturers. Even if injury to the industry is found, the Tribunal is to recommend a plan for the phasing out of quotas over a period of not more than three years.

The Director's opening statement noted the deleterious effects of global quotas on competition in general, on small and new retailers who are at a disadvantage in seeking to obtain scarce imports, and on consumers. he concluded in part:

> "Quotas were temporarily imposed to remedy injury from fair import competition. If eight years of quotas have not allowed the industry to become competitive, three more years are unlikely to; if they have, quotas are no longer needed. In either case an extension is unwarranted.
>
> "Quotas were introduced in 1977 to give the industry time to become more competitive. Clearly, some firms have adjusted. Others have not. Removal of the quotas may result in an industry that is smaller and more concentrated than in previous years. However, as the U.S. International Trade Commission concluded 'A smaller and more concentrated industry is not necessarily a seriously injured industry.'
>
> "This manufacturing industry has had enough time. It should now be expected to deal with import competition within the protection provided by the Customs Tariff and the provisions designed to deal with unfair and injurious competition in the Special Import Measures Act."