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978-0-521-57012-1 - Economic Dimensions in International Law: Comparative and Empirical Perspectives □ □

Edited by Jagdeep S. Bhandari and Alan O. Sykes

Excerpt

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Introduction: Economics and international law

RONALD A. CASS*

I. Introduction: Combinations and calculations

In books designed for beginning algebra students – and, *no*, this is not an algebra text with the wrong cover – questions of the following sort commonly are posed: If John can mow the lawn in forty-five minutes and Mary can mow the lawn in thirty minutes, how long will it take John and Mary to mow the lawn together? My first instinct when I encountered such problems was *not* to figure out what fraction of the lawn each mowed in a minute so that I could add their contributions and then work out the length of time needed for the team to complete its work. Instead, I was inclined to ask whether John and Mary each had a lawnmower, whether they got along well or tended to compete with one another, and, if they were competitive, whether it was a good-natured competition (where each tried to be better than the other) or a nastier version (where they would sabotage one another's efforts).

Although that instinct was not always applauded by my teacher, it poses useful questions. There are times when two people possess complementary skills and can be induced to use them to greater advantage than a mere sum of their individual attainments would suggest. And there are instances in which individuals are better left on their own, when either would do better than the two in combination. It is helpful to know which result a given combination will produce.

The same is true for new combinations in other arenas. The application of economics to international law – which *is* the subject of this book – poses the same sorts of questions I asked about John and Mary (except for the question about how many lawnmowers they owned). Do the economic methodologies deployed here make analysis of international law clearer? Do they yield valuable insights? Or is there merely increased friction as authors endeavor to apply methodologies designed for other ends?

* Dean and Melville Madison Bigelow Professor of Law, Boston University School of Law. I am grateful to Jack Beermann, Robert Bone, David Dana, Keith Hylton, Michael Knoll, David Lyons, Oliver Moreteau, William W. Park, Glen Robinson, and Kenneth Shepsle for helpful comments and to John Viar, Marlene Alderman, and Jon Fernald for cheerful and capable research assistance.

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II. New kid on the block: International law-and-economics scholarship

At the outset, it is noteworthy that this volume is the first to bring together a large collection of chapters utilizing economic analysis to assess the basis for agreements in international law, the interpretation of international agreements, and the effects of international law. It is noteworthy in part because it should be surprising to most readers. After all, for many years – indeed, back to the inception of modern economics – international relations have been staple subjects for economic analysis. Adam Smith's writings on international trade and national wealth and David Ricardo's exposition of comparative advantage in international economic relations are obvious examples.¹ Their work formed the background for writings by other famous economists.² And in recent years, economic journals and texts have been homes to a wealth of notions about the interplay of international economic activity and national trade and monetary policy.³

By and large, however, these writings have been about the welfare effects of particular practices – of tariffs or other restrictions on imports, for example – but not so much about the *law*. Economists have debated the conditions under which tariffs can improve national welfare.⁴ They

¹ Adam Smith, *The Wealth of Nations* (Edwin Cannan, ed., New York: Modern Library, 1937; originally published 1776); David Ricardo, *On the Principles of Political Economy and Taxation* (London: John Murray, 3d ed., 1821).

² E.g., Alfred Marshall, *The Pure Theory of Foreign Trade; The Pure Theory of Domestic Values* (London: London School of Economics, 1930; reprint of 1879 private publication); Alfred Marshall, *Principles of Economics* 363–412 (London: Macmillan, 8th ed., 1920); Bertil Ohlin, *Interregional and International Trade* (Cambridge: Harvard University Press, 1933); Gottfried von Haberler, *The Theory of International Trade with Its Application to Commercial Policy* (London: Wm. Hodge, 1936); Jacob Viner, *Studies in the Theory of International Trade* (New York: Harper & Bros., 1937); Paul A. Samuelson, "The Gains from International Trade Once Again," 72 *Econ. J.* 820 (1962) reprinted in *International Trade: Selected Readings* 131 (Jagdish N. Bhagwati, ed., Cambridge: MIT Press, 2d ed., 1987; Jagdish N. Bhagwati & T. N. Srinivasan, *Lectures on International Trade* (Cambridge: MIT Press, 1983).

³ E.g., Avinash Dixit & Victor Norman, *Theory of International Trade* (Cambridge: Cambridge University Press, 1980); *Imperfect Competition and International Trade* (Gene M. Grossman, ed., Cambridge: MIT Press, 1992); Elhanan Helpman & Paul R. Krugman, *Market Structure and Foreign Trade: Increasing Returns, Imperfect Competition, and the International Economy* (Cambridge: MIT Press, 1985); Paul R. Krugman, *Rethinking International Trade* (Cambridge: MIT Press, 1990); *Strategic Trade Policy and the New International Economics* (Paul R. Krugman, ed., Cambridge: MIT Press, 1986).

⁴ E.g., James A. Brander & Barbara J. Spencer, "International R&D Rivalry and Industrial Strategy," 50 *Rev. Econ. Stud.* 707 (1983); James A. Brander & Barbara J. Spencer, "Tariff Protection and Imperfect Competition," in *Monopolistic Competition and International Trade* 194–206 (Henryk Kierzkowski, ed., Oxford: Clarendon Press, 1984); Paul R. Krugman, "Import Protection As Export Promotion," in *Monopolistic Competition and International Trade*, *supra* at 180–93.

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have argued about the role that economies of scale or of scope might play in shaping welfare-enhancing national policies.⁵ They have inquired how international monetary flows change under various circumstances.⁶ But the economic analysis rarely has delved into the origins of legal rules, the interpretation of legal doctrine, or the consequences of particular legal regimes. Although there are exceptions to this pattern (largely by authors contributing to this volume),⁷ those have not been a large portion of writings about international economic activity or about international law.

The relative paucity of economic analysis of international law issues is especially striking when compared with the proliferation of law-and-economics writings in other legal fields. Antitrust law, which requires inquiries cognate to those of international trade law, has been explored in great detail through economic analysis for several academic generations.⁸ The dominant modes of discourse in antitrust and international

⁵ E.g., Elhanan Helpman & Paul R. Krugman, *Trade Policy and Market Structure* (Cambridge: MIT Press, 1989); Harry Flam & Elhanan Helpman, "Industrial Policy under Monopolistic Competition," 22 *J. Int'l Econ.* 79 (1987); Krugman, *supra* note 4; Michihiro Oyama, "Firms, Entry, and Hysteresis in the Heckscher-Ohlin-Samuelson Model of Production and Trade," in *Theory, Policy, and Dynamics in International Trade* 107 (Wilfred J. Ethier, Elhanan Helpman, & J. Peter Neary, eds., Cambridge: Cambridge University Press, 1993).

⁶ See, e.g., Stephen Marris, *Deficits and the Dollar: The World Economy at Risk* (Washington, D.C.: Institute for International Economics, 1987); *The International Monetary System* (Peter B. Kenen, Francesco Papadia, & Fabrizio Saccomanni, eds., Cambridge: Cambridge University Press, 1994).

⁷ There is a growing set of writings about international trade issues that focuses economic analysis on legal issues. For examples, see *Down in the Dumps: Administration of the Unfair Trade Laws* 253 (Richard E. Boltuck & Robert Litan, eds., Washington, D.C.: Brookings Institution, 1991); Michael Trebilcock, Robert Chandler, & Marsha Howse, *Trade and Transitions: A Comparative Analysis of Adjustment Policies* (London: Routledge, 1990); Richard Diamond, "Economic Foundations of Countervailing Duty Law," 29 *Va. J. Int'l L.* 767 (1989); J. Michael Finger, H. Keith Hall, & Douglas R. Nelson, "The Political Economy of Administered Protection," 72 *Am. Econ. Rev.* 452 (1982); Charles J. Goetz, Lloyd Granet, & Warren F. Schwartz, "The Meaning of 'Subsidy' and 'Injury' in the Countervailing Duty Law," 6 *Int'l Rev. L. & Econ.* 17 (1986); Eugene Grossman, "Imports As a Cause of Injury: The Case of the U.S. Steel Industry," 20 *J. Int'l Econ.* 201 (1986); Kenneth Kelly, "The Analysis of Causality in Escape Clause Cases," 37 *J. Indust. Econ.* 187 (1988); Michael Knoll, "Legal and Economic Framework for the Analysis of Injury by the International Trade Commission," 23 *J. World Trade* 95 (1989); Alan O. Sykes, "Countervailing Duty Law: An Economic Perspective," 89 *Colum. L. Rev.* 199 (1989); Symposium, "Countervailing Duty Law," 21 *L. & Pol'y Int'l Bus.* 503–769 (1990). See also *Fair Trade and Harmonization: Prerequisites for Free Trade?* (Jagdish N. Bhagwati & Robert E. Hudec, eds., Cambridge: MIT Press 1996).

⁸ E.g., Ward Bowman, *Patent and Antitrust Law: A Legal and Economic Appraisal* (Chicago: University of Chicago Press, 1973); Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York: Basic Books, 1978); Richard A. Posner, *Antitrust Law: An Economic Perspective* (Cambridge, Mass.: Little Brown, 1976); Phillip Areeda & Donald F. Turner, "Predatory Pricing and Related Practices under Section 2 of the Sherman Act," 88 *Harv. L. Rev.* 697 (1975).

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trade law – even on issues that are nearly identical – remain far apart.⁹ It is instructive that the listings for international law topics in the *Bibliography of Law and Economics* cover less than 2 of the roughly 550 pages listing law-and-economics publications by subject.¹⁰ By way of comparison, the listings under “Antitrust” take up 45 pages.¹¹

Does this pattern suggest that, for some reason, the issues in international law have not been sufficiently important or sufficiently amenable to economic analysis to attract attention? Or is there another explanation for this state of affairs, perhaps something less predictable, like chance selection of initial fields of inquiry by the “first movers” in law-and-economics whose efforts prompt “follow-on” scholars?¹²

This foreword does not develop a theory of legal scholarship or of law-and-economics scholarship that might allow rigorous inquiry into the way subjects for scholarly work are chosen. It does, however, take seriously the two hypotheses in the first question – that international law is not important, and that economic methodologies are not suited to analysis of international law issues. These hypotheses are *not* examined in order to determine why there has been so little economic analysis of law. Rather, attention is directed to the *prospective* question: is this a combination of subject matter and methodologies that scholars should be attempting? Put differently, is the subject important enough, and do economic methodologies shed enough new light on it, that law-and-economics scholars should devote attention to this field?

III. International law

The first part of that question, the importance of international law issues, surely would spark debate. Lawyers in other fields often question the importance of international law.

The question noninternational lawyers ask is not whether the underlying *facts* of international commercial and other international relations

⁹ See, e.g., Ronald A. Cass, “Price Discrimination and Predation Analysis in Antitrust and International Trade: A Comment,” 61 *U. Cin. L. Rev.* 877 (1993); Kenneth G. Elzinga, “Antitrust Policy and Trade Policy: An Economist’s Perspective,” 56 *Antitrust L. J.* 439 (1987); Kenneth Kelly, “Empirical Analysis for Antitrust and International Trade Law,” 61 *U. Cin. L. Rev.* 889 (1993).

¹⁰ *Bibliography of Law and Economics* 457–58 (Boudewijn Bouckaert & Gerrit de Geest, eds., Dordrecht: Kluwer, 1992).

¹¹ *Id.*, at 377–421.

¹² For an inquiry into the role of the chance in another setting, see Ronald A. Cass, “Review, Enforcement, and Powers under the Communications Act of 1934: Choice and Chance in Institutional Design,” in *The Communications Act of 1934: An Annotated Documentary and Legislative History* (Max Paglin, ed., New York: Oxford University Press, 1989).

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are important. That is not in dispute. Rather, the question is what role *legal rules* really play, and what significance the lawyer's traditional skills have, in this arena. The implicit assertion of those who doubt the importance of international law is that when parties are not within the same borders, subject to the same application of government force, there is a different quality to the controversies that arise, such that law – the ordering of relations according to authority backed by the threat of force – has less import.¹³ There is enough substance to that assertion, and it is widely enough endorsed, that it might explain the relative paucity of economic analysis of international law to date.

Whatever the right answer to this question was in the past, however, international law plainly is growing in importance. In part, this growth comes as an extension of international business, which has expanded considerably – or, perhaps more accurately, international business and international law have grown in tandem, with each development contributing to and prompted by the other. In part, the improved fortunes of international lawyers reflect the position of international law as a substitute for armed force (at least in public and quasi-public international law).

The growth in international business follows primarily from declines in the real costs of transportation and communication and from changes in the technologies of production.¹⁴ The result has been an extraordinary increase in world trade and finance flows. From 1950 to 1975, world trade grew by an average of 8 percent per year, although it slowed over the next decade before rising again.¹⁵ Even during times of slower increases in trade, it has been the engine of growth for many economies, including the most developed economies. In the United States, for example, two-way trade grew ninefold in real terms over the past thirty years.¹⁶ In 1994, U.S. two-way merchandise trade was \$1.2 trillion, and total trade (including services and income accounts) was \$1.8 trillion.¹⁷ World

¹³ See, e.g., David Fromkin, *The Independence of Nations* (New York: Praeger, 1981); David W. Leebron, "A Game Theoretic Approach to the Regulation of Foreign Direct Investment and the Multinational Corporation," 60 *Cincinnati L. Rev.* 305 (1991).

¹⁴ See, e.g., Ronald A. Cass & John Haring, *International Trade in Telecommunications Equipment: Monopoly, Competition, and Trade Strategy* (Cambridge: MIT Press & American Enterprise Institute, 1997); Michael E. Porter, *The Competitive Advantage of Nations* (New York: Free Press, 1990); Robert Reich, *The Work of Nations* (New York: Alfred Knopf, 1991).

¹⁵ *General Agreement on Tariffs and Trade, International Trade: Trends and Statistics 1994* (ISBN 92-870-1125-7) (hereinafter *GATT Trends*); Dominick Salvatore, "Protectionism and World Welfare: Introduction," in *Protectionism and World Welfare* 2–3 (Dominick Salvatore, ed., Cambridge: Cambridge University Press, 1993).

¹⁶ *Economic Report of the President* 298 (Washington, D.C.: Government Printing Office, 1995).

¹⁷ Douglas B. Weinberg, "U.S. International Transactions, First Quarter 1995," 75 *Survey Curr. Bus.* 76 (June 1995).

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trade for 1993 (excluding income accounts) amounted to nearly \$10 trillion.¹⁸

Cross-border financial stakes have increased in a similar manner. U.S. investment in foreign businesses and foreign investment in U.S. businesses (FDI) totaled approximately \$300 billion in 1980. A decade later, the figure was roughly \$800 billion.¹⁹ When the two-thirds of a trillion dollars in assets of U.S. financial affiliates of foreign banks are included, the financial investments involving the United States as one party were approaching \$2 trillion at the end of the 1980s.²⁰ By 1992, inward and outward foreign investments for the United States totaled approximately \$900 billion and had a market value of \$1.4 trillion, with assets of foreign financial institutions' U.S. affiliates pushing the total to about \$2.3 trillion.²¹ Annual FDI flows for the twenty-five nations of the Organization for Economic Cooperation and Development (OECD) reached a peak of around \$370 billion in 1990, declining to about \$250 billion in 1993.²² Despite the decline, this figure reflects continuing net additions to FDI stocks, and the annual level of added FDI following the decline is four to five times the level of a decade before.²³ If these figures seem large, consider that the U.S. Department of Commerce calculates the value of all U.S.-owned foreign assets and foreign-owned assets in the United States at approximately \$5 trillion as of 1992, more than triple the 1980 level.²⁴

As international trade and finance have increased, the law regulating international business and financial transactions has gained added significance. Further, the change in international business has affected any number of domestic legal issues. Antitrust considerations, for example, cannot sensibly be framed solely in terms of domestic competition when businesses compete in a global market. Securities fraud cannot be a matter of purely domestic concern in a world market for securities, linked electronically and operating around the clock. Private international law, international trade law (and other bodies of quasi-public international law relating to finance and commerce), and cognate areas of domestic law all have been affected by the growth of international commercial and financial dealings.

¹⁸ See *GATT Trends*, *supra* note 15, at 96–105.

¹⁹ Edward M. Graham & Paul R. Krugman, *Foreign Direct Investment in the United States* 18 (Washington, D.C.: Institute for International Economics, 3d ed., 1995).

²⁰ *Id.* at 18–28.

²¹ *Id.* at 18–28, 55.

²² Organization for Economic Cooperation and Development, *Foreign Direct Investment, Trade and Employment* 11 (Paris: OECD Publications, 1994).

²³ *Id.*

²⁴ U.S. Department of Commerce Bureau of the Census, *Statistical Abstract of the United States* 807, Table 1309 (Washington, D.C.: Government Printing Office, 114th ed., 1994) (hereinafter *Statistical Abstract*).

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More recently, the demise of the Soviet bloc of nations has raised the prominence of international law (and organizations that shape it). Legal rules hold greater sway when the prospect of resort to force diminishes. At least for the moment, the ambit of international relations governed by legal rules, rather than considerations linked more closely to military capabilities, is larger than at any time in this century. This development not only enhances the role of public international law; it also strengthens international private and quasi-public law by removing one impediment to their operation.

IV. Positive economics: Microeconomic analysis

The second part of the question, whether there should be more attention to economic analysis of international law, is more intriguing. It directly raises the questions posed in the John-Mary-lawnmowing analogy, asking what such analysis has to contribute to this particular field.

The chapters collected here present a good framework for answering these questions. They tackle a variety of issues in international law using many different tools of economic analysis, often merged with the tools of interpretation used in addressing the broad run of legal issues. Contributors have employed positive microeconomic analysis,²⁵ normative economic analysis,²⁶ game theory,²⁷ and public choice theory.²⁸ What do those analytical constructs contribute to our understanding of international law?

Positive microeconomic analysis is the approach that is assessed most easily. Positive economics analyzes and predicts occurrences, but does not expressly evaluate them. Several strands within positive economics offer different methods of performing those tasks. The principal group-

²⁵ E.g., Richard D. Boltuck, "Innovations in Support of the Unitary Test in U.S. Unfair Trade Cases," ch. 4; Francis H. Buckley, "The Market for Migrants," ch. 11; both in this volume.

²⁶ E.g., Alan V. Deardorff, "International Conflict and Coordination in Environmental Policies," ch. 6; Robert Howse & Michael J. Trebilcock, "The Free Trade-Fair Trade Debate: Trade, Labor and the Environment," ch. 5; Alan C. Swan, "The Hartford Insurance Company Case: Antitrust in the Global Economy – Welfare Effects and Sovereignty," ch. 15; all in this volume.

²⁷ E.g., Ronald A. Brand, "Recognition of Foreign Judgments As a Trade Law Issue: The Economics of Private International Law," ch. 16; Robert D. Cooter, "Market Modernization of Law: Economic Development through Decentralized Law," ch. 7; Duncan Snidal, "A Survey of Economic Approaches to International Institutions," ch. 13; all in this volume.

²⁸ E.g., Warren F. Schwartz & Alan O. Sykes, "The Economics of the Most Favored Nation Clause," ch. 1; Paul B. Stephan III, "Toward a Positive Theory of Privatization: Lessons from Soviet-Type Economics," ch. 8; Alan O. Sykes, "The Economics of 'Injury' in Antidumping and Countervailing Duty Cases," ch. 2; all in this volume.

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ings under positive economics are microeconomic analysis, macroeconomic analysis, game theory, and public choice theory (which has both positive and normative aspects). Although macroeconomic analysis is employed peripherally in the chapter by Jonathan Macey and Enrico Colombatto,²⁹ the positive economics used for issues of international law generally is drawn from the other groupings.

Effects analysis in ITC decision making

The senior partner of positive economics is microeconomic analysis. The chapter by Richard Boltuck is a good example of this analysis and stands virtually alone among the chapters in this volume in its exclusive use of this methodology.³⁰ The chapter's subject provides one of the better vehicles for applying microeconomic analysis to international law. The United States International Trade Commission (ITC) is charged with analyzing economic effects on certain U.S. industries of practices that may affect prices and volumes of imports.³¹ As Boltuck explains, positive economics provides tools designed for just that analytical task.

To understand the contribution of the tools Boltuck describes, we must think about alternative approaches to the effects inquiry assigned to the ITC. It may be easier, however, to start with the more general case of effects analysis.

There are several common approaches to analyzing effects. Often these approaches are referred to as *causation* inquiries, as current states are more readily observed than the causes of those states – we know that we have a dead body on our hands and must determine the cause of death more frequently than the opposite, that we know we have a killer on our hands and must determine who or what is being killed.

One common approach to assessing causation is to apply common sense to sort through testimony about what was observed. Think of the garden-variety traffic accident. If we have reliable evidence that the red sports car was going through the intersection at a speed well in excess of sixty miles per hour after the light had turned red, our common experience provides a basis for inferring what caused the traffic accident. Tes-

²⁹ Enrico Colombatto & Jonathan Macey, "New Stories on Exchange Rate Policies in Transition," ch. 9 in this volume.

³⁰ Boltuck, *supra* note 25.

³¹ Although I believe this is a neutral and accurate statement of the relevant directive to the ITC, almost any statement of the ITC's charter in these "unfair trade" cases will be debated, as commentators take different views of the nature of the ITC's statutory mandate. These differences are exposed in the papers by Alan Sykes (*supra* note 28) and by Ronald A. Cass & Michael S. Knoll ("The Economics of 'Injury' in Antidumping and Countervailing Duty Cases: A Reply to Professor Sykes," ch. 3, this volume).

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timony from treating physicians and others can provide further information about the effects of the sports car's travels. This information, too, will be filtered through the lens of common understanding to determine the causal relationship between our red sports car's activities and the complaints laid at the driver's door.

Another common approach to assessing causation is regression analysis, which assesses correlations among large numbers of observations, assuming that the less likely it is that a correlation is due to chance the more likely it is to be the product of a causal relationship. Of course, regression analysis also requires some common sense – some correlations do not reveal a causal relationship between the event observed and the supposed causal agent, but instead between the event and some other causal agent that is linked to the agent for which data were gathered. The classic example is the global correlation of per capita milk consumption with cancer deaths. When the study was done, milk consumption was a good proxy for wealth, and in wealthier nations fewer people die of dysentery, malaria, diarrhea, malnutrition, or other common killers in poorer nations, leaving survivors who die at older ages of diseases that are less easily treated, such as cancer.³²

The ITC's effects inquiry in antidumping and countervailing duty cases is not easily conducted through either of these approaches. In these cases there is no set of observations comparable with the speeding sports car to assess in a commonsense manner. And the number of independent variables that might affect the state of the competing domestic industry (including the effects of international price discrimination or foreign subsidies) generally exceeds the number of observations available, making meaningful regression analysis impossible.³³

To improve the effects inquiry under these conditions, a group of economists and lawyers, prominently including Boltuck, has designed a computer simulation model to “reverse engineer” the typical causation problem. The model uses tools of comparative statics to examine how, under various parameters, dumping or foreign subsidization will affect the prices and volumes of imports and, consequently, the prices and sales of competing domestic firms.³⁴ Unlike regression analysis, the model does not work backward from a series of observations to eliminate causal factors; hence, the number of observations – the number of comparable

³² This story is summarized in Richard S. Russell, “Article on Teens, Church Full of Fuzzy Thinking,” *Capital Times*, Jan. 26, 1994, p. 10A.

³³ See Ronald A. Cass, *Economics in the Administration of U.S. International Trade Law*, Ontario Centre for International Business Research Programme, Working Paper No. 16 (July 1989).

³⁴ Richard Boltuck, “An Economic Analysis of Dumping,” 21 *J. World Trade* 45 (1987); Knoll, *supra* note 7.

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sales of particular goods, for example – is not a direct limitation on this analysis. But the quality of the data available affects the degree of precision possible (with a given degree of confidence) in setting the factual parameters that are inputs to the model's operation in each case. And, like regression analysis where that is an option, the model requires some common sense, both in choosing the appropriate parameters and in assessing the degree to which the model's assumptions are congruent with the facts in a given case.³⁵ The model, however, is a powerful tool for sorting through the testimony and data in a typical ITC investigation,³⁶ and Boltuck continues to improve the model's capabilities.

What makes the model most important is its ability to clarify the issues critical to ITC decision making. Specifying the inputs to a simulation model requires an understanding of the basic interactions that ITC decision making addresses. And running simulations with the model highlights the variables that are most significant to the case before the ITC – the variables whose magnitudes most affect the effects analysis. Administrative decision makers then can focus attention on the evidence respecting those variables. While the model does not *make* the decision, it does narrow the ambit of decisional possibilities.³⁷ This feature of microeconomic analysis is plainly helpful to anyone who needs to make a decision on questions like that faced by the ITC. It can be helpful to individuals making business decisions (in the international environment or in a domestic setting) and to government decision makers when economic effects influence their decisions.

Discretion, constraint, and economics

Critics of the use of positive economic analysis in ITC decision making have objected to the channeling of discretion that inevitably accompanies more determinate decision frameworks.³⁸ These critics claim that limiting administrative discretion violates the intent of legislators

³⁵ Antifriction Bearings (Other than Tapered Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, USITC Pub. 2185, Inv. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final) (May 1989) (Concurring and Dissenting Views of Vice Chairman Cass).

³⁶ Indeed, economically informed critics of the model complain in essence that it is too good at this task. See, e.g., Sykes, *supra* note 28.

³⁷ Richard Boltuck, "Assessing the Effects on the Domestic Industry of Price Dumping," in *Policy Implications of Antidumping Measures* (P. K. M. Tharakan, ed., Amsterdam: North-Holland, 1991); Cass, *supra* note 33; Knoll, *supra* note 7.

³⁸ See, e.g., *The Cass/Eckes Debate on the Future of Injury Analysis at the International Trade Commission*, Debate at the University Club, Washington, D.C. (July 17, 1990) (ABA reprint).