

ment is indistinguishable from an effort, for example, of the Executive to change through such an agreement the standards of the Sherman Antitrust Act. Similarly, the Executive could just as well sign an international criminal code purporting to cover crimes committed by importers. It is unquestionable that such actions would be considered by Congress and the States as clearly interfering with their legislative prerogatives.

If Congress fails to act to prevent the Executive Branch from revising both the standards and procedure of a statute passed nearly fifty years ago to protect American industry from an unfair trade practice, then there should be little to deter the Executive in the future from negotiating revisions of other trade legislation, such as the countervailing duty statute, or even legislation outside the trade field.

The Cement Industry Committee respectfully submits that it is in Congress' own interest to express its sense that the International Antidumping Code should not become effective unless and until it has been specifically approved by the Congress. It is our position that in the first instance the issue of the Code is one of the balance of power and Congress' constitutional mandate in the area of domestic unfair trade legislation.

*V. As concluded by the Tariff Commission, there is serious and inevitable conflict between the International Antidumping Code and the Antidumping Act of 1921*

The Cement Industry Committee takes the position that the proposed provisions of the International Antidumping Code would amend and conflict with the Antidumping Act of 1921. A majority of the Tariff Commission in its recent Report submitted to the Senate Finance Committee confirmed that the Code is in serious and inevitable conflict with the Act. This conclusion was reached in a 3-2 decision in which two dissenting Commissioners took the position that conflicts between the Code and the Act should be determined only on a case-by-case basis.

The Tariff Commission majority found in almost every instance that the Code is in conflict with or in some manner alters the Act. This statement will concentrate on the three basic areas of conflict between the Code and the Act found by the Commission.

*A. Injury Standards*

The Tariff Commission Report emphasizes that the injury provisions of the Code require a showing "that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry", whereas the Act requires only that the Commission determine "whether an industry in the United States is being, or is likely to be injured". The Commission majority emphasizes that the Act does not require a determination that dumped imports cause an adverse effect to a greater degree than any other factor adversely affecting an industry before there can be a finding of injury, as is required by the Code.

*B. Industry Standards*

Similarly, the Commission majority concludes that the industry concept of the Code differs substantially from that of the Act. The Code permits consideration of a regional industry only where the producers within such a market "sell all or almost all of their production" in that market, and there is injury to "all or almost all" of the producers in the regional market. The Commission majority concludes that this concept is "so narrowly defined" that four out of five prior injury determinations of the Commission under the U.S. Act would have been reversed under the Code, and that the Code's permissible circumstances for regional industry consideration "rarely exist".

*C. Treasury Versus Tariff Commission Functions*

The Commission majority also concludes that the Code conflicts with the division of functions between the Treasury Department and the Tariff Commission under the Antidumping Act. The majority states that the Code's requirements of simultaneous consideration of dumping and injury creates "an anomalous result", and that effective simultaneity under the Act is "not procedurally feasible or logical". Furthermore, the Code's requirement that a dumping complaint must be rejected (by Treasury) if there is not sufficient evidence of injury is in conflict with the U.S. Act, which vests sole authority in the Commission to make