

injury determinations. Moreover, the Code prohibits the imposition of any provisional measures until there is "sufficient evidence" of injury. Under the U.S. Act, the Treasury Department must automatically issue a withholding of appraisement notice on the product in question once it has reason to suspect dumping. Since Treasury has no authority under the Act to make any determination of injury, the Commission majority concludes that compliance with the "sufficient evidence" provision of the Code would preclude use of the withholding notice required by the Act.

Notwithstanding these findings of the Tariff Commission, the new Treasury regulations will implement the Code. To accomplish this, however, Treasury proposes to ignore a specific decision of Congress. In 1954, Congress amended the Antidumping Act in order to transfer completely the injury determination to the Tariff Commission. Under Section 53.27(e) of the new regulations, a dumping complaint is required to show evidence of injury and thus Treasury will make some kind of injury determination. There is no indication of whether this injury determination will be based on the onerous standards of the Code, described above, as distinguished from the more reasonable injury standard of the U.S. Act. Whatever standard Treasury in fact adopts violates the Congressional mandate that the Tariff Commission alone should make determinations of injury.

Similarly, Sections 53.38 and 53.39 of the new regulations effectively would authorize simultaneous consideration of injury by the Tariff Commission and reconsideration of dumping and injury by Treasury, in clear defiance of the Act's requirement that the injury determination is to be made only after the dumping investigation has been concluded. Section 53.34 of the regulations would once more inject Treasury into the injury arena, by requiring that there be evidence of injury before the provisional measure of withholding of appraisement is imposed. This is designed to comply with the Code requirement that there be sufficient evidence of injury before provisional measures are imposed, and will eviscerate one of the basic protections against dumping afforded under the present statute.

After reviewing these three major areas of conflict and other serious conflicts between the Code and the Act, many of which have been reflected in the new Treasury regulations, the Tariff Commission concludes that such an alteration of domestic law cannot be accomplished without Congressional action. As already quoted above, the majority states that "The Code, no matter what are the obligations undertaken by the United States thereunder internationally, cannot, standing alone without legislative implementation, alter the provisions of the Antidumping Act". In additional comments, Commissioner Clubb states that the majority's position is that the Commission is "powerless" to apply the Code until it is implemented or approved by Congress.

H. Con. Res. 447 would express the sense of Congress that the Antidumping Code is in conflict with the Antidumping Act and therefore can be implemented only with Congressional action. This was the conclusion of the Tariff Commission—the agency directed to enforce the main provision of the Antidumping Act. If there is any need for further support for H. Con. Res. 447, it is readily available in the fact that the Code not only conflicts with the existing Act but would weaken it so severely as to effectively repeal it. This is covered by the next section.

VI. The International Antidumping Code will weaken and emasculate the Antidumping Act of 1921

If the International Antidumping Code is permitted to become effective, the Antidumping Act will inevitably be weakened. In fact, the emasculation of the Act by the Code will effectively repeal it. Domestic industries have not been able to obtain meaningful and effective relief from dumping under the Act, but under the Code it would be extremely difficult, if not impossible, to obtain any kind of relief. The specific problems the Cement Industry would encounter under the Code are covered in Section VII below.

While the Antidumping Code weakens the Act in many respects, the revision of the industry and injury standards required by the Code will have the greatest impact. It has already been explained above that the Code would require a showing that the dumped imports are "demonstrably the principal cause of material injury or of threat of material injury". This rigid burden of proof is in marked contrast to the Antidumping Act which simply requires the showing that an industry "is being or is likely to be injured." The Code's injury standards severely restrict the Tariff Commission's ability to make an affirmative finding of injury.

For example, in the Tariff Commission's recent 2-2 affirmative finding of in-