

jury in Cast Iron Soil Pipe From Poland, the two Commissioners finding injury under the Act applied standards which clearly would not satisfy the Code. Commissioner Clubb applied a test of causality that required merely that price fluctuations were "at least in part" due to dumping. He concluded that a finding of injury is required when there is anything more than "immaterial" injury. Commissioner Sutton concluded that any injury in excess of *de minimis* requires an affirmative determination.

The onerous burden of the "demonstrably principal cause" test is amply verified by recent experience with the adjustment assistance provisions of the Trade Expansion Act of 1962. Under these provisions adjustment assistance relief is available to domestic industries or workers where increased imports from tariff concessions are shown to be the "major cause" of injury to an industry. No industry or labor group has been able to sustain this difficult burden, and all petitions filed under this provision since 1962 have been unsuccessful. It is for this reason that the Administration has proposed that the Trade Expansion Act be amended to require a showing only that increased imports are "a substantial cause" of injury. In his trade message on May 28, 1968, to the Congress, President Johnson described the "major cause" test as "too rigid, too technical, and too complicated." In his statement on July 11, 1967, to the Subcommittee on Foreign Economic Policy of the Joint Economic Committee of Congress, Ambassador William Roth described the difficulties of the "major cause" test as follows:

"Unfortunately, however, the adjustment assistance provisions have not had the expected beneficial effect, because in practice the present test of eligibility to apply for the assistance has proved too strict. In fact, in no case brought under the act have any firms or workers been able to prove eligibility.

"The present test of eligibility requires (1) that tariff concessions be shown to be *the major cause* of increased imports and (2) that such increased imports be shown to be *the major cause* of injury to the petitioner.

"In the complex environment of our modern economy, a great variety of factors affect the productive capacity and competitiveness of American producers, making it virtually impossible to single out increased imports as *the major cause* of injury. In fact, it has usually been impossible to prove that tariff concessions were *the major cause* of increased imports."

Despite the Administration's clearly articulated position that a "major cause" test is far too difficult for domestic industry to meet under the Trade Expansion Act, the same Administration would require domestic industries under the Antidumping Code to carry an equally onerous burden. There is language in the Antidumping Code that suggests that the "principal cause" is that which outweighs the combined importance of other causes. Although one might debate the semantic distinctions between principal and major, it is clear that the principal cause test under the Code is no less strict than the major cause test that has been employed under the Trade Expansion Act. Surely, in the words of Ambassador Roth quoted above, it is virtually impossible in the "complex environment of our modern economy" to show "demonstrably" that dumped imports are the "principal cause" of injury.

It is difficult for the Cement Industry to understand why the Administration is convinced that liberalization of the adjustment assistance provisions is needed while at the same time it advocates a severe restriction of this nation's law prohibiting dumping. After all, the adjustment assistance provisions are a form of protection of industry from legitimate competition, not an unfair trade practice like dumping. One can only surmise that in the bargaining in Geneva the U.S. negotiators—in order to obtain concessions from other countries which are of doubtful value—were willing to bargain away any real substance that the Antidumping Act contains.

The Antidumping Code also would weaken severely the industry provisions of the Antidumping Act. The next section will describe how this revision of the Act will preclude any relief to the Cement Industry. The Code defines the term "domestic industry" so as to encompass all producers of a particular product which is "like" the dumped product under consideration. Only in very "exceptional circumstances" is the Tariff Commission permitted under the Code to consider a regional market as the area affected. Furthermore, as the Tariff Commission concluded in its Report, a regional industry can be considered only where producers in the region sell "all or almost all" of their product in the limited market area, and there is a finding of injury to "all or almost all" of such producers. In contrast, the Antidumping Act does not restrict the Tariff Commission in its determination of what constitutes "an industry in the U.S." Under the Act,