

the Commission has concluded in many cases, and particularly in cement cases, that the industry may be appropriately defined as a regional competitive market, without requirements that producers sell virtually all of their production in the market and that virtually all of the producers are injured.

The rigid standards of the regional industry provision of the Code are thus so restrictive as essentially to preclude any consideration of a regional market where the companies involved operate in more than one market area. This has a particular impact on industries like cement, where the product is expensive to transport and the impact of imports is not likely to be felt much beyond the immediate port area. It is for this reason, as discussed in the next section, that the Tariff Commission concluded that it would have been forced to reach an opposite result in four cement dumping cases under the present Act if it had been required to apply the restrictive regional industry concept contained in the Code.

There are many other provisions of the Code which would weaken the Antidumping Act. It has already been pointed out that the withholding of appraisal provisions of the Act would be severely curtailed by the requirement that there be evidence of injury before provisional measures can be imposed. Similarly, the injection of the Treasury Department back into the injury determination further restricts the function of the Tariff Commission in antidumping proceedings.

The Cement Industry Committee submits that in addition to the usurpation of Congressional authority and the severe conflict with the Antidumping Act involved, the Code should not be permitted to become effective because it effectively repeals the Antidumping Act of 1921. It is manifest that only Congress can approve and implement an international agreement that substantially amends and revises an act of Congress.

*VII. The Cement Industry would not be able to obtain any relief from dumping under the International Antidumping Code*

As was noted at the outset, the Cement Industry has suffered serious injury in the past from the unfair trade practice of dumping. During the period 1958-1965, the Treasury Department found reason to suspect dumping in fourteen out of nineteen cases filed by the industry. A number of these cases were dismissed by Treasury on assurances of discontinuance of dumping and for other reasons, as described in Appendix B. There were four cases in which the Tariff Commission made an affirmative finding of injury and the industry obtained the maximum relief in the form of special dumping duties on cement imports from Sweden, Belgium, Portugal and the Dominican Republic. At the time of the cases, imports from these countries were entering New England, New York, New Jersey and Florida. Under the Antidumping Act these special duties continue in effect any time that cement imports are found to be dumped in this country.

In these four cases, the Tariff Commission found that the Cement Industry had been injured and relief was warranted. Yet, such a finding and such relief would have been completely barred if the Antidumping Code had been in effect. As set forth above, the Tariff Commission reached this conclusion in its recent Report to the Senate Finance Committee. Covington & Burling was counsel to the Cement Industry in each of the four cases, and has advised that in its judgment the Tariff Commission majority is correct that an opposite outcome would have resulted under the Code. In the first place, the Cement Industry under the Code would have been required to show "demonstrably" that the dumped imports were "the principal cause" of material injury. The extreme burden of proof required by this standard has already been discussed in Section VI above. It is sufficient to say here that it is doubtful that the Cement Industry would have been able to sustain this burden under the Code, although the Commission found the requisite injury under the Act in each of the four cases. For example, the Commission in the four cases found that there were economic factors other than dumping that contributed to the injury to the cement companies involved. Under these circumstances, it would have been exceedingly difficult, if not impossible, to show that the dumping demonstrably was the "principal cause" of material injury.

It is absolutely clear that, as the Tariff Commission concluded, the restrictive concept of regional industry in the Code would have prevented the Commission from finding injury to "an industry in the United States" in the four cement cases. It may be helpful to consider two of the cases as examples. In the case of