Secondly, the Code, though negotiated during the Kennedy Round negotiations, was agreed to independent of any Kennedy Round Tariff concessions. To alter our commitment to this code would in no way alter our commitment to the tariff reductions, nor would it lose for us any reciprocal reductions from other nations.

THE ADMINISTRATION LACKED AUTHORITY TO ENTER AGREEMENT

Let me return to my main point: Members of the Administration—especially the Office of the Special Representative for Trade Negotiations—ignored the prerogatives of Congress from beginning to end in this manner: in negotiating the agreement, in signing the agreement, and now in implementing the agreement.

The failure of the Administration to recognize and respect the areas of policy determinations which are the province of Congress, can hardly be viewed as a mere oversight, attributable to inadequate familiarity with the well-established doctrine of the separation of powers. Almost two years ago the Senate overwhelmingly adopted Senate Concurrent Resolution 100, advising the Executive Branch generally and warning the Office of the Special Representative specifically against including in the Kennedy Round negotiations matters outside the scope of the Trade Expansion Act of 1962. Dumping was one of the matters which was specified. As summed up by the Senate Finance Committee in its report on Senate Concurrent Resolution 100:

"This problem (dumping) concerns unfair trade practices in a domestic economy and it is difficult for us to understand why Congress should be bypassed at the crucial policymaking stages, and permitted to participate only after policy has been frozen in an international trade agreement."

Notwithstanding this clear warning by the Senate, the Office of the Special Representative persisted in negotiating the Antidumping Code which conflicts directly with, and, if the Code becomes effective would amend the Antidumping Act of 1921 in many substantive respects. In point of fact the Code would emasculate the Antidumping Act of 1921 and for all practical purposes strike the Act from the statute books.

THE INTERNATIONAL CODE CONFLICTS WITH DOMESTIC LAW

While the Code would subject the Antidumping Act to a multitude of amendments, I limit myself here to an examination of three fundamental amendments of the Act.

First, Article 3 of the Code specifies that a determination of injury may be made only if it is found that "dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry * * * ." Section 201(a) of the Antidumping Act vests the Tariff Commission with authority to determine whether "an industry in the United States is being or is likely to be injured * * * by reason of the importation of (dumped) merchandise." The Act does not restrict the Tariff Commission to affirmative findings of injury or likelihood of injury only when satisfied that dumped imports are "demonstrably the principal cause of material injury."

Thus, it is clear that the Tariff Commission's authority to make injury determinations, as conferred upon it by Section 201 of the Antidumping Act, would be materially altered and circumscribed by Article 3 of the Antidumping Code.

Secondly, Article 4 of the Code defines the term "domestic industry" to include *all* of a country's producers of a product which is "like" the dumped imported product under consideration. Only in "exceptional circumstances" may a regional competitive market sell "all or almost all of their products in such market." Further, an additional restriction on the Tariff Commission's authority to find injury is imposed, since "all or almost all of the total production" in the regional market must be injured.

Section 201 of the Antidumping Act does not restrict the Tariff Commission in its determination of what constitutes "an industry in the United States." In a considerable number of cases, the Commission has concluded that regional markets and regional industries may be found without regard to whether the producers supplying a limited competitive market "sell all or almost all their products" in such market, and without regard to whether "all or almost all: of the producers are injured.

Thus, it is clear that Article 4 of the Code is providing substantial limitations in its definition of industry and in adding a further restriction on the authority