

to make affirmative determinations of injury, would severely curtail the present powers of the Tariff Commission under Section 201 of the Antidumping Act.

Thirdly, Article 5 of the Code provides that a dumping investigation shall be initiated only when supported by evidence of both dumped prices and of injury to the industry involved, and requires that evidence of dumping and of injury shall be "considered simultaneously." In addition, Article 10 forbids the institution of any provisional measures, which specifically include the authority to order withholding of appraisement unless there is "sufficient evidence of injury" as well as of dumping.

Section 201(a) of the Antidumping Act was amended in 1954 and transferred from Treasury to the Tariff Commission sole responsibility for injury determinations. This subsection specifies that the Commission shall make a determination of injury only *after* being advised by Treasury that a dumping price has been found by that agency. The Senate Finance Committee Report on the 1954 amendment made this crystal clear:

"This title would also transfer the injury determination under the dumping law to the Tariff Commission and provide that it be made within 3 months from the determination of the question of a dumping price by the Secretary."

Furthermore, Section 201(b) of the Act specifically requires that Treasury "shall authorize * * * the withholding of appraisement" whenever Treasury, in the course of an investigation and before a formal finding of dumping prices, "has reason to believe or suspect" that sales have been made at a dumping price. The Act specifies Treasury then "shall forthwith publish notice of that fact * * * and shall authorize * * * the withholding of appraisement reports." At that stage the Tariff Commission, not having been advised by Treasury of a determination of dumping, has no authority to institute an investigation, much less make a finding of injury or of the existence of "sufficient evidence of injury," whatever this phrase as used in the Code may mean.

Thus, it is patently clear that by requiring simultaneous investigations of dumping and of injury, and by requiring decisions on dumping and on the existence of "sufficient evidence of injury" as conditions precedent to the withholding of appraisement, Articles 5 and 10 of the Code conflict directly with the provisions of subsections (a) and (b) of Section 201 of the Antidumping Act.

U.S. TARIFF COMMISSION CONFIRMS CONFLICT BETWEEN CODE AND LAW

The United States Tariff Commission, reporting to the Senate Finance Committee on S. Con. Res. 38, concurred in the analysis I have just presented. In March of this year, the Finance Committee printed the report, and I would commend it to your attention.

That report, by the independent agency which now has prime responsibilities in administering the Antidumping Act, provides a point by point review of the inconsistencies between the Code and the U.S. law. After pointing up these crucial inconsistencies, the most important of which I have outlined above, the Commission Report concluded:

"It is well settled that the Constitution does not vest in the President plenary power to alter domestic law. 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 or of other United States statutes."

Commissioner Clubb, in his additional comments in the report, explicitly states that it is the majority opinion that in the absence of Congressional approval of the Code, the Tariff Commission is "powerless" to apply it.

In essence, the Code cannot be implemented in the United States without supporting action from Congress. To do otherwise would constitute a substantial amendment of United States law solely by the executive branch, emasculating the role of Congress in the lawmaking process.

THE CODE WOULD PROVIDE NO RELIEF FROM DUMPING

Under the present law, it is already very difficult to obtain relief from dumping. Under the Code and Treasury regulations it would become nearly impossible.

For one, the standard of "injury" is so rigid and the definition of "industry" so encompassing that almost no American industry, in the face of proven dumping, could obtain relief until it was practically on its last legs.