

During the Kennedy Round an International Antidumping Agreement (hereinafter referred to as "the Code") was negotiated which describes the conditions under which the signatory countries, including the United States, agreed that dumping duties will be permitted. The Code was signed on June 30, 1967, and later that year Senate Concurrent Resolution 38 was introduced, stating that it is the sense of Congress that the provisions of the Code are inconsistent with the Act; that the President should submit the Code to the Senate for advice and consent in accordance with the treaty provisions of the Constitution; and that the provisions of the Code should become effective in the United States only at the time specified in enabling legislation. In due course the Resolution was referred to the Finance Committee and the Committee asked the Tariff Commission to report on it.

On March 8, 1968, the Commission filed its report which contained three separate statements. The report of the majority, made up of Vice Chairman Sutton, Commissioner Culliton, and myself, indicated that there are, in our judgment, important differences between the Code and the Act. Moreover, the majority stated that in any event the Code could not alter domestic law. In this connection the report states that

"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. As matters presently stand, we believe that the jurisdiction and authority of the Commission to act with respect to dumping of imported articles is derived wholly from the Antidumping Act and 19 U.S.C. 1337."

I filed additional comments setting out the legal basis for the majority's position on this issue, the effect of which was that without legislative implementation of the Code the Commission was powerless to either apply the Code itself domestically, or to torture the construction of the Act so that it would be consistent with the Code.

In a minority statement Chairman Metzger and Commissioner Thunberg stated in effect that, while there are differences in language between the Act and the Code, these differences do not appear obviously or patently to call for differing results in future cases coming before the Commission. The minority also differed with the majority on the question of what effect should be given by the Tariff Commission to the Code in the absence of any action by Congress. The minority Commissioners took the position that the Commission had a responsibility to construe the Act in accordance with the Code. To do this it should " . . . apply the principles of American law to the task of interpretation of the Act as it affects the facts of the investigation, including those principles relating to interpreting the Act so as to avoid inconsistency between it and the international obligations of the United States."

The minority further noted that if it was impossible to avoid an inconsistency between the Act and the Code, then the Act should prevail.

Subsequently, these hearings were scheduled, and I was requested to appear and give testimony on the question of whether the Code is sufficiently consistent with the provisions of the Act that it can be implemented by the United States without enabling legislation. I will attempt to comply with this request by identifying for the Committee some of those differences between the Act and the Code which are mentioned in the majority report to the Committee on Senate Concurrent Resolution 38. These are differences which the majority felt were important, and which in my judgment could affect the outcome of cases before the Commission.

Before identifying differences between the Act and the Code, however, I think it is only prudent to remind you that I do not speak for the Commission in this matter, nor do I speak for the majority. The Commission's report on Senate Concurrent Resolution 38, including both majority and minority views, is the official position of the Commission. I appear here as an individual Commissioner, and what I will give you is my own interpretation of portions of the report and what I believe to be the substance of the majority view.

With that in mind, let me begin by noting that the Act and the Code are entirely different documents. Not only is the terminology different, but also concepts expressed in one or two words in the Act, are sometimes the subject of lengthy and often limiting definitions in the Code. Accordingly, if one were attempting to determine what the differences are he would have to say that in a