

(d) Simultaneous Dumping and Injury Investigations

The requirement in Article 5 (b) that evidence of both dumping and injury must be considered simultaneously in the decision of whether or not to initiate an investigation, "and thereafter", affects both the responsibilities of Treasury and the Tariff Commission in the prosecution of their respective dumping and injury finding duties. Insofar as the Treasury, under U.S. law, initiates the antidumping investigation by attempting to determine if there is a margin of dumping, it is presumed that the intent of this paragraph is to move up the start of the injury determination by the Tariff Commission to not later than the earliest date from which provisional measures may be applied. By definition in Article 10 (a) this is after a preliminary decision has been taken that there is dumping and sufficient evidence of injury. It must be concluded, therefore, that the preliminary determination of whether sufficient evidence of injury exists must be made either by the Tariff Commission or by the Treasury Department. If the Tariff Commission would make such determination, it would be a violation of the U.S. law which requires that the Tariff Commission take up the injury question after the Treasury has made a finding that there are sales at less than fair value. If the Treasury would make such determination, such action would be contrary to the 1954 amendment of the U.S. Antidumping Act which took the determination of injury to industry away from Treasury and gave it to the Tariff Commission without any reservations to the Treasury Department for preliminary injury decisions. [See comments under Article 5 (c)]. Thus, the procedure outlined either cannot be accomplished under U.S. law or a change of U.S. law is required.

(e) Many Principal Mandatory Code Provisions Will Conflict with U.S. Law

A list of some of the more obvious conflicts would include these areas:

- Principal cause of material injury [see Article 3(a)]
- National markets [see Article 4(a)]
- Simultaneous dumping and injury [see Article 5(b)]
- Discretion of authorities [see Article 8(a)]
- Basic price system [see Article 8(d)]
- Dumping cessation in regional markets [see Article 8(e)]
- Time limit on provisional measures [see Article 10(d)]

CONSIDERATIONS RE IMPLEMENTING LEGISLATION

Should the Congress consider the possibility of implementing legislation, it would seem appropriate to examine the relationship of the Code provisions to all aspects of existing U.S. law and regulations in order to understand the differences that exist and the consequences of any action which would superimpose the Code upon the existing law and regulations. Sufficient disparities exist between the Code and U.S. law to require many Congressional decisions as to which shall govern and nothing short of a massive overhaul of the U.S. Anti-dumping Law and implementing regulations would seem to be required, not to mention the effect such action would have in effectively foreclosing the chances of unilateral U.S. legislative improvements of its antidumping law in the future [see discussion under Article 1].