

[Simultaneous Dumping and Injury Investigations]

International Antidumping Code:

5 (b) Upon initiation of an investigation and thereafter, the evidence of both dumping and injury should be considered simultaneously. In any event the evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter, during the course of the investigation, starting on a date not later than the earliest date on which provisional measures may be applied, except in the cases provided for in Article 10 (d) in which the authorities accept the request of the exporter and the importer.

Antidumping Act, 1921, As Amended:

Antidumping Act, 1921. The Code provision requiring the simultaneous consideration of dumping and injury with regard to the basic question of whether or not to initiate an investigation is patently contrary to the specific intent of Congress as expressed in the legislative history of the 1954 amendment of the U.S. Antidumping Act of 1921.

U.S. Treasury Regulations:

Section 14.8 (a) states, "Whenever the Secretary makes a determination of sales at less than fair value he will so advise the United States Tariff Commission."

S. 1726 (90th Congress):

Section 1 [201(a)] of S. 1726 was modified slightly compared to S. 2045, the Antidumping Act Amendment offered in the 89th Congress to make it clear that the Tariff Commission's injury determination shall be made within three months "after notification from the Secretary" of the Treasury of sales at less than fair value.

Comments:

Article 5 (b) would require simultaneous consideration of the evidence of dumping and injury. The U.S. Congress in 1954 specifically removed the injury determination from the Treasury Department, giving it to the U.S. Tariff Commission, and requiring the Tariff Commission to conclude its injury determination within 90 days after receipt of a finding of a dumping margin by the U.S. Treasury Department.

The Code does not make it clear whether Treasury again would make both a preliminary dumping and injury determination for which there is no basis in U.S. law, especially after the 1954 amendment, or require the U.S. Tariff Commission