

ment 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 subsection (a) and (b) of Section 201 of the Antidumping Act.

The refusal of the Office of the Special Representative 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. Last summer the Senate overwhelmingly adopted Senate Concurrent Resolution 100, advising the Executive Branch generally and warning the Office specifically against including in the Kennedy Round negotiations matters outside the scope of the Trade Expansion Act of 1962. Dumping was