

of the foreign manufacturer is not only nearly impossible to establish as an evidentiary matter but is irrelevant to the economic impact of his conduct. Accordingly, it should not be an issue in any dumping case as the Tariff Commission has sometimes treated it under the present statute.

Another weakness in current anti-dumping procedures is the tolerance which the Tariff Commission has shown toward the efforts of foreign manufacturers who dump their products in the United States to defend their anti-competitive conduct. For example, a foreign manufacturer should not be permitted to justify dumping on the ground that he is meeting the price of other imports. Under the proposed amendments he could not excuse dumping except by showing that in the absence of such dumping sales by the domestic industry would not have increased.

One problem that has frequently stymied the efforts of domestic manufacturers to secure relief against dumping is their inability to prove actual foreign market prices. The proposed new anti-dumping law would ease this burden by providing that, in the absence of contrary proof, published or list prices would be deemed to be the prices at which foreign market sales were actually made. The bill would also exclude from the determination of the foreign selling prices of allegedly dumped products any prices that were not freely arrived at in the open market, including sales with quantity discounts not freely available to all purchasers, transactions between related parties and exclusive dealing transactions.

2. *The "International Anti-dumping Code."*—In closing these brief comments on the need for a more effective anti-dumping law we should like to add our voice to those already raised in protest against the Executive Department's negotiation at Geneva of a so-called "International Anti-dumping Code" and the Treasury Department's promulgation of amended Antidumping Regulations in purported pursuance of the Code. That Code, which purports to be in implementation of article VI of the General Agreement on Tariffs and Trade, and the new regulations not only would amend our present anti-dumping law in precisely the wrong direction, by making it more difficult to get dumping relief, but are, in our view, in flagrant contravention of existing law. As this Committee knows, this was the conclusion reached by the Tariff Commission in its March, 1968 Report on the Code to the Senate Finance Committee.

The importance of being able to secure relief against dumping to protect particular geographic markets from injurious and unfair foreign competition has already been noted. The International Anti-dumping Code and the new regulations appear to eliminate altogether the possibility of such relief. The Tariff Commission in its Report to the Senate Finance Committee concluded that four out of five prior affirmative injury determinations would have necessarily come out the opposite way under the Code due to its restrictive concept of regional markets.

The new Code would also require that before relief could be obtained it would have to be shown that dumped imports were "*demonstrably the principal cause of material injury or threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry.*" This requirement would put an almost impossible burden on any industry seeking relief and would seem to disqualify altogether an industry faced with significant economic problems in addition to unfair competition from abroad.

Moreover, the Code would require simultaneous investigations of dumping and injury. The Antidumping Act, on the other hand, states specifically that the injury determination shall be undertaken only after the Treasury Department has concluded its dumping investigation, and that this injury determination shall be made solely by the Tariff Commission. Under the new Treasury regulations, however, a preliminary injury determination would be made by Treasury.

We urge that Congress take action against an unwarranted and probably unconstitutional intrusion on Congress' legislative jurisdiction and affirmatively repudiate the International Anti-dumping Code and the new Treasury Regulations. We also urge that Congress, in addition to whatever other remedial steps it believes appropriate (including the possible enactment of import quotas), strengthen our existing anti-dumping statute by amending it along the lines of H.R. 1075 and companion measures.