Congress Dumps the International Antidumping Code

Eugenia S. Pintos
Patricia J. Murphy

Follow this and additional works at: https://scholarship.law.edu/lawreview

Recommended Citation
Available at: https://scholarship.law.edu/lawreview/vol18/iss2/3

This Comments is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.
The International Antidumping Code, a product of the Summer 1967 Kennedy Round talks, may become a dead letter if the traditional rivalry between Congress and the Executive for control of United States foreign trade continues. Until the conflict is resolved, the status of the Code is uncertain.

On June 30, 1967, most of the major trading nations announced agreement on an international code dealing with the dumping of goods—one of the most significant non-tariff issues discussed during the Kennedy Round of the General Agreement on Tariffs and Trade (GATT). The Code was intended to eliminate the unfair trade practice of price cutting by exporters in sales to one country. Dumping, a major problem of international trade, has long been recognized as a cause of distrust and hostility and is a potential cause of great harm to the domestic industry of the importing country.

Article VI of GATT condemns dumping and sets forth general criteria governing assessment of antidumping duties by an importing country. In 1967, the United States became a party to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. The first twelve articles of this agreement constitute the International Antidumping Code. Each party accepting the Code undertook to conform its domestic laws to the provisions of the Code. The United States accepted the agreement without reservation. Thus, "the United States is obliged internationally to abide by the Code beginning July 1, 1968 . . . ." Since the United States is the leading nation in world trade, its participation is vital to the Code's successful imple-
mentation. However, full United States participation may not occur. The principal stumbling block is an alleged usurpation by the Executive of Congress' powers under the Constitution.

United States Antidumping Laws

The term "dumping" is a word of art. Dumping occurs when there is both price discrimination in sales to a particular country and resultant injury to a domestic industry of that country. Antidumping laws are designed to protect industries of an importing country from unfair pricing practices.\(^6\)

Under the Antidumping Act of 1921\(^7\) (hereinafter the Act) duties are imposed when "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value . . . ."\(^8\) It is further required that "an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States."\(^9\) There are two steps in proceedings under the Act: a finding that goods are being sold at less than fair value,\(^10\) and a finding that these sales are injuring a domestic industry.\(^11\)

Fair value determined under the Act by the Treasury Department is defined as: (a) home country selling price, (b) selling price in a third country, or (c) a constructed price, \textit{i.e.,} the sum of costs of production and the costs of sale.\(^12\) Upon an affirmative finding that goods are being sold at less than fair value, the case is sent to the Tariff Commission, which investigates for injury.\(^13\) While injury is not defined in the Act, the Tariff Commission has held that it is anything more than de minimis harm.\(^14\)

Related to the question of injury is the ambit of the term "industry." Although the Act does not specifically so provide, the Tariff Commission has found that this term can include a well defined submarket, that is, a geographical area in which nearly all goods sold of the kind involved are produced by a small number of manufacturers.\(^15\) Generally, this situation arises


\(^9\) \textit{Ibid.}


\(^11\) \textit{Id.} at § 160(a).

\(^12\) \textit{Id.} at §§ 164, 165.

\(^13\) \textit{Id.} at § 160(a).


\(^15\) Cast Iron Soil Pipe From Poland, \textit{supra} note 14.
with goods which are very expensive to transport, thus limiting small producers to selling only to nearby consumers. The Commission has held in such cases that only the producers in the specific market need be injured to support imposition of antidumping duties. Finally, the Act provides for the imposition of antidumping duties equal to the dumping margin, i.e., the difference between fair value and the price for which the goods are sold by the exporting country.

The International Antidumping Code

Following the protectionist years of the depression, steps were taken to reduce national barriers to world trade. Originally bilateral, the principal efforts since 1947 have been multilateral. Following World War Two there was widespread fear that shortages of foreign exchange and low industrial output would produce a tariff war among the trading nations. This, in 1948, led to the first meeting of the GATT. Since then there have been five meetings of the GATT, each resulting in some reductions of tariffs by member countries.

The Kennedy Round, the most recent of the GATT meetings, resulted in an agreement to reduce tariff rates on the average about one third. Some trade experts believe that the Kennedy Round may represent the last effective incentive to world trade which is possible by tariff reduction. Further advances, it is felt, must come from the elimination of non-tariff barriers such as border taxes, import licensing requirements, quotas, and countervailing duties. Precise standards for fair international trade practices and a workable system of enforcement have long been recognized as a prerequisite for total free trade. The International Antidumping Code represents a first step in that direction.

The International Antidumping Code (hereinafter the Code) implements and clarifies Article 6 of GATT. The Code does not apply as domestic law in the countries which have excepted it—it is a statement of the bounds permissible under GATT for the imposition of antidumping duties. Each signatory is left to implement the Code as it feels implementation is necessary. The Code consists of twelve articles which generally fall into five categories: the determination of dumping; the determination of injury; investigative and administrative provisions; measurement of anti-

16. Ibid.
19. See J. Viner, supra note 3.
23. Code arts. 5, 6, 7.
dumping duties and provisional measures;\textsuperscript{24} antidumping action on behalf of a third country.\textsuperscript{25}

Generally, antidumping duties greater than the dumping margin are forbidden.\textsuperscript{26} A determination may be made only when dumping is the principal cause of material injury or threat of material injury.\textsuperscript{27} Dumping must be the "principal cause of material retardation of the establishment of such an industry"\textsuperscript{28} if like goods are not manufactured in the importing country. When used in the Code, injury means material injury.\textsuperscript{29} Valuation of injury is based on an examination of all factors affecting an industry in question.\textsuperscript{30} The effect of dumping is to be evaluated in relation to domestic production of the same goods or their nearest equivalent.\textsuperscript{31} In exceptional circumstances the domestic industry may be confined to a particular geographic area,\textsuperscript{32} as under the Tariff Commission’s interpretation\textsuperscript{33} of the United States Antidumping Act.

Evidence of dumping and injury resulting therefrom must be produced before an investigation is initiated;\textsuperscript{34} both factors “shall be considered simultaneously in the decision whether or not to initiate an investigation . . . .”\textsuperscript{35} A dumping proceeding may be terminated without imposition of antidumping duties upon the voluntary undertaking by the exporter to revise his prices so that the dumping is eliminated, or to cease exporting to the area.\textsuperscript{36} Such an undertaking lapses automatically if there is a finding of no injury.\textsuperscript{37}

The Code requires each signatory to bring its laws into conformity with it;\textsuperscript{38} each party must inform the other contracting parties of changes in its domestic laws or procedures,\textsuperscript{39} and must file an annual report of cases in which antidumping duties have been assessed.\textsuperscript{40} A Committee on Antidumping Practices was established to consult on problems concerning administration of antidumping systems.\textsuperscript{41}

\textsuperscript{24} Code arts. 8, 9, 10, 11.
\textsuperscript{25} Code art. 12.
\textsuperscript{26} Code art. 8(c).
\textsuperscript{27} Code art. 3(a).
\textsuperscript{28} Ibid.
\textsuperscript{29} Code art. 3 n.1.
\textsuperscript{30} Code art. 3(b).
\textsuperscript{31} Code art. 3(d).
\textsuperscript{32} Code art. 4(a)(ii).
\textsuperscript{33} Cast Iron Soil Pipe From Poland, supra note 14.
\textsuperscript{34} Code art. 5(a).
\textsuperscript{35} Code art. 5(b).
\textsuperscript{36} Code art. 7(a).
\textsuperscript{37} Code art. 7(b).
\textsuperscript{38} Code art. 14.
\textsuperscript{39} Code art. 15.
\textsuperscript{40} Code art. 16.
\textsuperscript{41} Code art. 17.
Opposition to the International Antidumping Code began even before it was formally signed by the United States. Throughout the dispute in Congress and between Congress and the Executive there appear two major arguments: that the language of the Code and that of the Act require different results in dumping cases, and that therefore the President had no authority to bind the United States to the Code.

On May 9, 1967, Senator Vance Hartke (D.-Ind.) introduced S.1726, a bill to amend the Antidumping Act of 1921. The bill provided "ground rules for antidumping investigations and administrative proceedings." Hartke stated that the bill "provides the Congress the opportunity to put the Executive on notice that the pendulum of power has swung too far in one direction and will begin to move back where the Founding Fathers intended it to be." He also stated, "[n]egotiations are presently being conducted—or have already been concluded—in Geneva on an international antidumping code. This satellite agreement to the Kennedy talks would necessarily encompass substantive changes in provisions of the 1921 act." Senator Hartke then added, "the decision on whether an agreement needs legislation to effect it, or approval to make it legal, remains in the Congress and not within the executive."

On August 2, 1967, on the floor of the Senate, Senator Hartke repeated his charge that the Code conflicted with the Act, and asserted that the Code must therefore be submitted to the Senate for approval as a treaty. Changing domestic law by Executive Agreement, Hartke contended, was beyond the power of the President. He singled out three articles of the Code as in direct conflict with the Act: Article 3, which requires that a determination of injury be made only if dumped imports are demonstrably the principal cause; Article 4, which defines domestic industry as including well defined submarkets for purposes of determining injury and Article 5, which requires simultaneous consideration of both injury and sales at less than fair value in preliminary decisions as to whether an investigation is called for.

In the face of these alleged inconsistencies, Hartke continued, the Executive exceeded the negotiating powers granted under the Trade Expansion Act of 1962, which was the basic grant of authority to negotiate the tariff cuts of the Kennedy Round. Hartke disputed the contention that the Executive had any authority other than delegation by Congress empowering it to bind the United States.
States to the Code.\textsuperscript{49} This same objection had been voiced in Senate Concurrent Resolution 100,\textsuperscript{50} which declared the President had no authority to agree to change an act of Congress without that body's consent. This resolution was passed only by the Senate.

Senators Scott (R.-Pa.) and Hartke then proceeded, on August 2, 1967, to introduce Senate Concurrent Resolution 38, which advises the President that Congress believes the Code to conflict with domestic legislation, and therefore it should not be implemented without the advise and consent of the Senate.\textsuperscript{51} The resolution was sent to the Senate Finance Committee on August 3, 1967, and was then referred by that Committee to the Tariff Commission and several other agencies for comment. No action was subsequently taken on the Resolution, but in March the Tariff Commission reported to the Committee that the Code and Act conflicted.

On August 23, 1967, Senator Javits (R.-N.Y.) replied to Hartke's objections on the Senate floor.\textsuperscript{52} The main objective of the antidumping negotiations, he stated, was "to prevent the proliferation of highly restrictive antidumping laws and procedures in the industrialized nations of the world."\textsuperscript{53} In Javits' view the Code would measurably lessen future protective barriers against United States exports and against international trade in general.\textsuperscript{54} Concerning the requirement of the Code that the dumped imports be demonstrably the principal cause of material injury or threat of material injury, Javits asserted that the Act should also be construed in terms of material injury.\textsuperscript{55}

Senator Javits found the Code's submarket notion, Article 4(a), as reasonable and consonant with that used by the Tariff Commission in escape clause cases.\textsuperscript{56} Under Article 4(a) regional markets can be viewed as separate industries in exceptional circumstances. Hartke's claim was that this article contains an exceptional and restrictive definition of a segmented industry; Javits agreed that the United States Antidumping Act lacked such terminology but viewed the article as neither an inconsistent interpretation of the United States Antidumping Act nor an unreasonable restriction on the Tariff Commission's discretion.\textsuperscript{57}

\textsuperscript{49. Ibid.}
\textsuperscript{50. 89th Cong., 2d Sess. (1966).}
\textsuperscript{51. S. Con. Res. 38, 90th Cong., 1st Sess. (1967), provides that it is the sense of Congress: (1) that the provisions of the Code conflict with the Act; (2) that the Code should be submitted to the Senate for approval as provided by Article II, section 2, clause 2 of the Constitution; (3) that the Code should come into effect in the United States only upon passage of implementing legislation by Congress.}
\textsuperscript{52. 113 Cong. Rec. S12106-09 (daily ed. August 23, 1967).}
\textsuperscript{53. Id. at 12106.}
\textsuperscript{54. Ibid.}
\textsuperscript{55. Supra note 52, at 12106-07.}
\textsuperscript{56. Id. at 12107.}
\textsuperscript{57. Ibid.}
Senator Javits contended that Article 5(b), requiring simultaneous consideration of sales at less than fair value and injury, referred only to slight evidence of injury as a preliminary to investigation. The key question, he felt, is the meaning of the word evidence—does it mean full proof of injury or only a “modest and preliminary indication of injury?” Javits noted that the injury is not to be investigated until the Treasury Department has determined that a dumping situation exists. He observed that the prior practice of the Treasury Department had been to request some indication of injury; under the Code the Treasury would simply return to that procedure.58

Under Article 10(a) of the Code provisional measures will be taken only after a determination of sales at less than fair value and a preliminary determination of injury. Javits defended the article as meaning that the Treasury Department can act against dumped imports on the initial evidence of injury and proceed with its determination of dumping; the question of injury would be taken up after the case is referred to the Tariff Commission.59

The important consideration, Javits asserted, was not whether the President has authority to interpret domestic law, but whether he exercises it consistently with the domestic act. He argued that the international agreement is valid and need not give way to the domestic act, which would remain paramount in case of inconsistency. Javits contended, “it is the judiciary which under our system of a separation of powers is the competent body to consider and resolve such an issue.”60 He further stated, “[i]nsofar as any private person believes that, following the entry into force of the code, the act is being improperly administered, he can certainly seek judicial relief, for . . . the act not being superseded by a treaty remains paramount if it cannot be construed consistently with the executive agreement.”61 In the final analysis, Javits asserted, “[the Code] is not a paramount law, or even a law, that is it is nothing but—if you will—a set of regulations implementing a law.”62

On September 27, 1967, Senator Hartke replied, emphasizing that prior Tariff Commission decisions are inconsistent with the Code.63 Senator Javits, however, retorted, “the question is not the consistency of the code with prior Tariff Commission decisions but with the act itself. Indeed, the Tariff Commission decisions themselves do not have that degree of consistency which would suggest a series of decisions having the force of law. Granted that the code does delimit the discretion of the Tariff Commission, my point is that

58. Ibid.
59. Ibid.
60. Supra note 52, at 12108.
61. Ibid.
62. Supra note 52, at 12109.
the standards that the code establishes are both reasonable and consistent with the act.\textsuperscript{64}

Senator Hartke contended that one of the most clear cut inconsistencies between the Antidumping Act and the Code is Article 8(e), which provides that antidumping duties will not be imposed if the exporter gives adequate assurance that he will cease dumping in the area. He stated that under domestic law, the violating dumper receives no such reprieve—that the duty is imposed automatically under the Act.\textsuperscript{65}

On March 13, 1968, the Tariff Commission reported its findings to the Senate Finance Committee.\textsuperscript{66} Three of the five commissioners found that the Act and the Code conflicted very substantially, and that several recent cases would have been decided differently had the Code been in effect.\textsuperscript{67} Commissioner Clubb, one of the majority, also pointed out that the Code could not be applied even where it did not conflict with the Act because the President had no authority to negotiate where Congress had occupied the field.\textsuperscript{68} Two commissioners disagreed with the majority, asserting that the Act and the Code were consistent.\textsuperscript{69}

The conflict between the Executive and the Legislative branches of government thus becoming crystallized, the President added further fuel to the controversy on April 3, 1968 by attempting to fill a long standing vacancy on the Tariff Commission with a proponent of the Code, Bernard Norwood, a top aide on Ambassador Roth's staff and chairman of the Trade Staff of the Office of the President's Special Representative for Trade Relations. No hearings were held on the nomination, and after a protracted period of Senate inactivity, the President withdrew Norwood's nomination on October 8, 1968.

Immediately after the nomination, Senator Hartke on April 4, 1968 made a speech on the Senate floor in which he highlighted the Tariff Commission's majority report, and emphasized the separation of powers issue.\textsuperscript{70} Hartke pointed to the nomination of Norwood as the latest of the Executive's attempts to blur the separation of powers controversy, and to allegedly usurp power which constitutionally belongs to the Congress.\textsuperscript{71}

Hartke also condemned the Treasury Department's proposed regulations as a violation of separation of powers. The gist of his position was that the new regulations not merely streamline existing procedure within the limits of ad-

\textsuperscript{64} Id. at 13794.
\textsuperscript{65} Ibid.
\textsuperscript{66} U.S. TARIFF COMM’N, REPORT ON S. CON. RES. 38, REGARDING THE INT’L ANTIDUMPING CODE (1968) [hereinafter cited as TARIFF COMM’N REPORT].
\textsuperscript{67} Id. at 19.
\textsuperscript{68} Id. at 37-39.
\textsuperscript{69} Id. at 49-60.
\textsuperscript{71} Id. at 3870.
ministrative discretion set by the Antidumping Act of 1921, but also transcend those limits. Senator Javits promptly disagreed with Hartke on April 10, 1968. The gist of Javits' argument was that the Code constitutes more or less a restatement of existing administrative practice under the Antidumping Act of 1921.

On June 27, 1968, the Senate Finance Committee held hearings on the Code. The hearings also included an inquiry into Senator Hartke's bill, S. 1726, to amend the United States Antidumping Act, and other measures relating to the Code, including the new regulations promulgated by the Treasury Department. On July 1, 1968 the Treasury Department promulgated new antidumping regulations designed to make the Code operative. On July 17, Senator Long (D.-La.) introduced, on behalf of himself and the Senate Finance Committee, an amendment to H.R. 17324, a House bill to extend the Renegotiation Act and the Renegotiation Board. The amendment embodied the terms of Senate Concurrent Resolution 38; its effect would have been to suspend implementation of the Treasury Regulations. On July 26, having been approved by the Senate Finance Committee, the amendment was reported to the Senate and sent back to the Committee with instructions to report the Renegotiation Act out with the amendment for vote by the Senate. On September 9, the entire package of legislation was passed by voice vote in the Senate. On September 11 it was officially approved, and the bill with amendment was sent to Conference Committee.

On October 3 the Conference Committee reported out a compromise package, Title II of which deals with the administration of the Antidumping Act of 1921. This amendment, somewhat different from that passed originally by the Senate, provides:

Nothing contained in the International Antidumping Code . . . shall be construed to restrict the discretion of the United States Tariff Commission in performing its duties and functions under the Antidumping Act, 1921, and in performing their duties and functions under such Act the Secretary of the Treasury and the Tariff Commission shall—

72. Id. at 3870-71.
(1) resolve any conflict between the International Antidumping Code and the Antidumping Act, 1921, in favor of the Act as applied by the agency administering the Act, and
(2) take into account the provisions of the International Antidumping Code only insofar as they are consistent with the Antidumping Act, 1921, as applied by the agency administering the Act. 81

Provision is also made for an annual report to Congress by the President of all actions taken by the Treasury Department and the Tariff Commission under the Antidumping Act. Such report is to "[a]nalyze with respect to each determination . . . the manner in which the Antidumping Act, 1921, has been administered to take into account the provisions of the International Antidumping Code . . . ." 82 A summary of antidumping actions taken by other signatories to the Code is also to be included. 83 On October 7, 1968, the Senate passed the compromise bill, 84 as did the House on October 10. 85

The Code and the Act Compared

There are two points at which the International Antidumping Code and the Antidumping Act of 1921 are most seriously in conflict: determination of injury, and procedure in application. Article 3 of the Code sets down the following criteria for a determination of injury:

A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on the one hand, the effect of dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. 86

Under the Antidumping Act of 1921, the Tariff Commission, after an affirmative finding of sales at less than fair value by the Treasury Department, shall determine "whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States." 87

There are three major points in injury determinations under the Code: principal cause, material injury, and the weighing of all other factors affecting

81. Id. at 1-2.
82. Id. at 2.
83. Ibid.
86. CODE art. 3(a).
the industry. The Code requirement that dumping is the "principal" cause of injury would seem to differ from the Act. While it is possible that the Code usage could be read to mean the same as "material" injury, which the Tariff Commission has held is required under the Act of 1921,88 more likely it is the view of a majority of the Commission that: "[i]t would seem . . . that the negotiators intended that dumping duties be sanctioned only in those cases where the 'dumped' goods are individually the cause of material injury and that such injury is greater than the injury caused by all other causal factors."89

The representatives of the Executive branch disagreed with the Tariff Commission's reading of the Code: "The term 'the principal cause' . . . does not require that dumped imports be that cause which is greater than all other causes combined of material injury. It therefore allows injury determinations consistent with the requirements of the Act."90

This requirement of the Code provoked considerable discussion in a hearing on the Code held by the Senate Finance Committee. Senators Hartke and Long strongly felt that the Code and the Act were in conflict on this point, while the administration spokesmen disagreed with them.91 An administration witness declared, "principal cause does not mean the cause greater than all other causes combined, but rather the cause greater than any other cause."92

He stated further, "[a]ll I am saying is that this is our interpretation. I do not deny that the provision you cited could lead one to the other conclusion. All I am saying is that it is our interpretation. We stand by it and think on this basis it is consistent with the act."93 Senator Long took exception to this view:

What you say on page 63 suggests that picture of a pure woman standing there blindfolded with a scale in her hands and on one side of the scale there is what can be said for dumping and on the other side what can be said for all other causes of injury. If the scale is heavier on this side than it is on the other, then this is the side on which justice must go. That concept would indicate that you put all the other causes on the one side and you put this cause on this side, the dumping, and if all the other causes outweigh the dumping, that you would say that is not the principal cause of the injury.94

Even if "principal" under the Code means "the cause greater than any other cause," this would still be inconsistent with the Act as it is applied by the

89. TARIFF COMM'N REPORT, at 12.
90. Hearings, at 286.
91. Hearings, at 25-6, 30, 41-2.
92. Id. at 41.
93. Id. at 30.
94. Ibid.
Tariff Commission, which stated: "The Act does not require a determination that dumped imports are adversely affecting an industry to a degree greater than any one or combination of other factors adversely affecting an industry . . . . The Commission in making its determinations with respect to injury under the Act has not weighed the injury caused by such imports against other injuries that an industry might be suffering." On balance, it would seem that the Code's requirement that dumping be the "principal" cause of injury differs from the applicable standards of the Act.

Whether the Code's requirement of "material" injury differs from the Act is largely a question of semantics. The Tariff Commission majority stated that the Act similarly had been applied to require "material" injury which they defined as "any injury more than de minimis." It is reasonable to expect that the minimum injury necessary to constitute material injury will become apparent, if not explicitly defined. The requirement in the Code that all factors affecting an industry be considered along with the dumping, however, seems to depart substantially from the Tariff Commission's practice under the Act.

Taken as a whole, these Code requirements depart importantly from the provisions of the Act as they have been applied. The kind of relatively flexible proceedings which have characterized the application of the Act would be a thing of the past if the Code applied, and the Commission's discretion would be rigorously limited under the Code. Such a result seems peculiarly out of place in the case of an act which is intended to prevent unfair trade practices of considerable importance and which appear in myriad forms.

Procedure under the Code would differ from that under the Act. Under the Act, a case is first brought before the Treasury Department for a finding on sales at less than fair value. If an affirmative finding is made, the case is sent to the Tariff Commission for a determination of injury. If the Code governed, it would be necessary to make these determinations simultaneously. This, in practice, would mean that either the Treasury or the Tariff Com-

95. TARIFF COMM'N REPORT, at 11.
96. Ibid.
97. There is no legislative history for the Code. The closest approach to such clarifying material is statements by United States officials who participated in the negotiations. Even from these statements there seems to be conflict between the intended meaning of the Code and what the Tariff Commission, in cases applying the Act, has found the Act to mean. It should also be noted that, unless procedure in dumping cases is changed, the Tariff Commission is responsible for determining injury and for construing the Act and the Code in such determinations. Since a majority of the Commission has expressed its view that the two conflict, a case involving this question is likely to come to that conclusion.
98. TARIFF COMM'N REPORT, at 12.
99. The same criticism might be leveled against the effect of the Renegotiation Act since it requires the Tariff Commission and the Treasury Department to apply the Act in accord with their previous decisions.
mission would have to make both findings. Since the Treasury Department is better equipped by its authority over customs to make the field investigations on sales at less than fair value, it seems likely that the entire procedure would be undertaken by the Treasury Department.\textsuperscript{101}

\textit{Conclusion}

With the passage of the Renegotiation Act,\textsuperscript{102} and its signature by the President on October 24,\textsuperscript{103} the question of the President's power to change a domestic statute by executive agreement seems moot.\textsuperscript{104} As a matter of law, the Tariff Commission and the Treasury Department are now required to apply the Act, as they applied it in the past, in any case where the Code and Act conflict. Perhaps the only substantial issue of Presidential power remaining is whether the "occupation of the field" doctrine bars any application of the Code, even where it does not conflict with the Act. Under this doctrine, once Congress has exercised its power over a subject area, if it has such power, the President is barred from action in the same "field."\textsuperscript{105} At the very least, the Code will have no effect where it conflicts with the Act; such conflicts involve substantial points.

Although it cannot be predicted with certainty how the Treasury Department and the Tariff Commission will decide cases in which both Act and Code apply, it is reasonable to assume that the Tariff Commission will decide cases consistently with its report to the Senate Finance Committee.\textsuperscript{106} Thus, the relevant question is how far the Tariff Commission and the Treasury Department will go in finding the two in conflict. Since the Code and the Act are in substantial conflict at various important points, it would seem that the International Antidumping Code is largely a dead letter as far as any active participation by the United States is concerned.

\textsuperscript{101} It seems unlikely that a procedure of each making duplicate inquiries would be adopted.

\textsuperscript{102} Notes 84, 85 supra.


\textsuperscript{104} The mooting of the separation of powers conflict removes the objection that internal bickering should not be allowed to interfere with the effective transaction of foreign affairs.

\textsuperscript{105} This question was raised by Commissioner Clubb, TARIFF COMM'N REPORT, at 37-39.

\textsuperscript{106} Supra note 66.
The Catholic University of America

Member, National Conference of Law Reviews

Law Review

Volume XVIII  Winter 1968  Number 2

THE BOARD OF EDITORS

Donald W. Farley (New Jersey)
Editor-in-Chief

Frank T. Gaglione (New York)
Article & Book Review Editor

Alois Lubiejewski (Pennsylvania)
Research Editor

Joseph L. Graves, Jr. (Ohio)
Copy Editor

Barry Joel Miller (Massachusetts)
Casenote Editor

Robert J. Tyrrell (Pennsylvania)
Comment Editor

ASSOCIATE EDITORS

George J. Carey (District of Columbia)

Margaret A. Cotter (Maryland)

Patricia L. Cummings (New Jersey)

Robert R. Ross (New York)

Thomas E. Walker (Massachusetts)

STAFF

Herbert I. Cantor (New York)

Charles I. Cate (Virginia)

Daniel J. Vitello (Delaware)

COMPETITORS


Ralph J. Ronner, Faculty Advisor