

injury" in Article VI and the two Article VI agreements (the Anti-dumping Code and the Subsidies/Countervail Code)² and "market disruption", as used in the Multi-Fibre Arrangement (MFA). There are other GATT impact concepts, such as "adverse effects", "serious prejudice", "damage", "unnecessary damage", but they do not relate importantly to this study.³

The formulations in regard to the impact of imports differ in respect to the entity which is exposed to "injury". Article XIX refers to serious injury "to domestic producers". This is not necessarily the same as "industry" as used in Article VI. (The term "industry" is interpreted in the Anti-dumping Agreement and in the Subsidies/Countervail Agreement.) Article XVI speaks of serious prejudice "to the interests of any other contracting party". This is not the same, obviously, as injury "to domestic producers" or to a domestic "industry". The Subsidies/Countervail Agreement also invokes adverse effects "to the interests of other Signatories", a phrase which derives from Article XVI of the GATT.

Article XVIII, an article which deals with "Governmental Assistance to Economic Development, speaks of "unnecessary damage to the commercial or economic interests of any other contracting party" and of "damage to the trade of any contracting party". The MFA speaks of "disruptive effects in individual markets and on individual lines of production", a phraseology intended to imply that the degree of impact is something more than envisaged in Article XIX.

Serious Injury

The standard reference,⁴ by Professor John Jackson, sets out the history of Article XIX, the GATT "escape clause" or safeguards clause, in some detail. In brief, there appears to be no guidance in the drafting history as to how serious is "serious" injury, as compared with the "material" injury, invoked in Article VI. Article XIX was based on the "escape clause" of the United States trade agreement with Mexico of 1943; later United States legislation, beginning with the Trade Agreements Extension Act of 1951, refers to "serious" injury. While there are many references in U.S. legislative history which make clear that "material injury", occasioned by "unfair" trade practices is something less than the "serious injury" of the escape clause (and that the causation standard, as we shall see below, is less onerous) there is no legislated definition of serious injury. The U.S. Trade Act of 1974, which contains the current United States escape clause, indicates what is involved. "The Commission shall take into account all economic factors which it considers relevant, including (but not limited to) the significant idling of production facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or under-employment within the industry". This would appear to shift the problem from defining serious to defining significant.

One expert in United States trade law has observed that "'serious injury' (requires a) considerably higher test than the 'material injury' standard under anti-dumping and countervailing duties statutes. The injury must be of grave or important proportions and an important, crippling, or mortal injury."⁵ The adjectives "crippling" and "mortal" suggest that the injury must be greater than "material". But 'grave' and 'important' do not give much guidance. Moreover, in interpreting the GATT one must consider the versions in the various