Causality

We have referred above to the fact that the two concepts of injury are bound up with differing concepts of causality.

There is no guidance in the GATT history as to what "cause" means in the various Articles, such as XVI, VI, XIX. It is necessary to look at national practice and at legislative intent. If "injury" is caused in the "overall" sense, then acute problems arise in defining the "causal" relationship. It can be argued, of course, and this writer has argued, that the GATT usage is simple and straightforward: the GATT causality concept is of events at issue ("imports" in XIX or VI) which, because of the prices and quantities in which they appear, are the cause of "serious" or "material" injury; it is for this reason that these Articles are silent on what is to be done about other events which may be impacting, injuriously or non-injuriously, on the industry or producers in question.

Causality language was agreed in the Tokyo Round for the Subsidies/Countervailing Agreement and for the Anti-dumping Agreement, replacing the "principal cause" language which had been used in the Kennedy Round Anti-dumping Code.[15] It is perhaps most helpful to let the two U.S. negotiators of the Tokyo Round Subsidies/Countervail Agreement state the issue. Rivers and Greenwald state:

> GATT Article VI is silent on the exact nature of the "causal link" required between a subsidy paid on exports and the "material injury" to a domestic injury. The Anti-dumping Code, however, had an express requirement that dumped imports be "demonstrably the principal cause" of "major injury" to a domestic injury. This standard was not only difficult to satisfy, but it had the perverse result of being more difficult to meet for those industries most vulnerable to unfair import competition. If, for example, an industry was unusually susceptible to the efforts of general downturn in the economy, it would be impossible, should such a downturn occur, to demonstrate that the effects of unfair import competition were the principal cause of the injury to the industry. The effects of the downturn invariably would outweigh the effects of such competition. At the same time, such an industry would be less able to bear the additional impact of the subsidized competition than another industry that was better insulated from the effects of the downturn. Both EC and Canadian negotiators agreed with the United States that the "principal cause" formulation of the Anti-dumping Code presented an impossible standard and should not be incorporated in the subsidies/countervailing measures Code.
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> The language finally agreed upon provided that: (i) it must be demonstrated that the subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement. (Emphasis added.)
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> This was a Canadian formula. It was very close to the causality test in the U.S. anti-dumping law and so gave the U.S. negotiators the ability they needed to pattern U.S. implementation of the causality test of the subsidy/countervailing measures Code on the existing