could secure a remedy against dumping. The second interpretation would thus have made the Code more liberal than Article VI, that is, it would have limited the rights of importing countries under the GATT to take restrictive action.[10]

EEC Practice

The practice under EEC legislation is stated by authoritative observers to be consistent with the concept of "separatibility" and the concept that the separate injury caused by dumping (or subsidization) must be found, by itself, to be material. Joseph Cunane (a senior official of the EEC Commission anti-dumping unit) and Clive Stanbrook, a U.K. lawyer practicing before the Commission, address this issue in their standard work: "The new standard of causality . . . simply requires the total injury caused should be divided up into the portion caused by dumping or subsidization and that caused by other factors. If the portion of the the total injury caused by dumping or subsidization is, taken by itself, material then protective measures may be taken.[11] (Emphasis added.) Under the EEC "escape clause" it is also clear that the EEC uses a "separable" concept of injury, for example, in tableware and pottery use, the EEC determined that "the injury caused by cheap imports . . . cannot in isolation, be regarded as material injury".[12]

Canadian Practice

The Canadian position, under the 1968 Anti-dumping Act and the Special Import Measures Act, is the same as the present EEC position. The 1968 legislation departed from the "principal cause" language of the Kennedy Round Code; the position was made clear by the principal draftsmen of the Canadian legislation before the House of Commons Committee on Finance, Trade, and Economic Affairs in their hearings on the draft legislation, and subsequently in a published exposition.[13] A failure to recognize that injury should be treated as a "separate" concept led one American observer to complain that Canada was not adhering to the Kennedy Round Code, and to argue that the Tokyo Round deletion of "principal cause" was a serious weakening of the Code provisions — that it would allow more restrictive action to be taken. This line of criticism overlooks the fact that under the U.S. interpretation, the degree of injury caused solely by dumping or subsidization might, in itself, be less than material, yet be found to be actionable because the dumping or subsidization was the "principal cause" of "overall injury" found to be material.[14]

This examination of the "injury" concept has, of necessity, been drawn largely from material concerning the U.S. system. This is for two reasons. The first is that the injury concept, both in regard to GATT Article VI measures and in regard to escape clause or safeguard action (Article XIX), as it appears in the GATT, is largely due to the impact on the international regime of the pre-existing or proposed U.S. legislative schemes; the second reason is that, given the predominant position of the United States in world trade, it is likely that the legislative usage and conceptual approach of U.S. trade law innovators will continue to dominate GATT drafting, as it did most recently in the working out of the various Tokyo Round agreements. The examination has been in some detail because it is only by understanding the injury concept that one can make a useful comparison with analogous concepts in competition law.