The difficulty arises principally in regard to United States legislation and practice, if only because the U.S. system is fairly transparent; however, we should not assume there is not the same issue in other more opaque systems. "Injury" (to an industry) as a concept may be used to mean some particular, identifiable and measurable adverse consequence to an industry (or to "producers") from some outside event. The word is used, in this sense, in a phrase such as — "He injured a pedestrian", or "He did him an injury" — "The automobile veered onto the pavement and injured two shoppers". In this sort of every-day use, the general health of the injured party is not at issue; all that is at issue is the injury caused by some exterior event. This is the word "injury" being used in the "separable" sense. However, in United States trade law and in legislative history the word "injury" may stand for the ill-health or lack of well-being of an industry or of producers caused cumulatively by a variety of factors. The United States escape clause uses "injury" in this sense.

The difficulty caused by two concepts of "injury" became obvious in the negotiations of the Anti-dumping Code during the Kennedy Round in 1966-67. That agreement stated that "a determination of injury shall be made only when the authorities are satisfied that the dumped imports are demonstratively the principal cause of material injury . . . the authorities shall weigh, on the one hand, the effect of the dumping, and on the other hand, all other factors taken together which may be adversely affecting the industry. This drafting was primarily intended (by the EEC of Six, and the U.K.) to restrict the United States in its use of anti-dumping duties. On one interpretation, it involved the use of the word injury in the "overall" sense. U.S. negotiators did not anticipate the serious difficulties this drafting would create in the Congress, particularly in the Senate Finance Committee. The issue was summarized by Senator Russel Long, then Chairman of the Senate Finance Committee:

> The Tariff Commission concluded that the Code's criteria for injury are susceptible to two meanings. One interpretation is that if the importation of dumped goods considered alone does not cause material injury, there can nevertheless be a determination of material injury if the aggregate of the effect of all injurious factors results in material injury, and dumping is the principal causal factor. The second interpretation, and the one which the Tariff Commission majority believed that the negotiators intended, is that dumping duties are sanctioned only in those cases in which the dumped goods are themselves the cause of material injury, and such injury is greater than the injury traceable to all other causal factors.[9]

The first interpretation offered by the Tariff Commission would have made the Code less liberal, more restrictive, than Article VI. If Article VI means that anti-dumping duties are to be used only when the dumping is itself the cause of injury which is material, which this writer believes is the correct reading, and the only correct reading of Article VI, then, under the first interpretation of the Code by the Tariff Commission, anti-dumping duties might be sanctioned when Article VI standards, such as they are, were not met. On the second interpretation, Article VI standards might be met but, because factors other than dumping were having an causing injurious which were in total, greater than the impact of dumping, the Code would not sanction the use of anti-dumping duties. This latter would be an odd result: the less healthy an industry, the more other factors are also "injuring" the industry, the less likely that it