

official languages, all equally authentic. The French text of Article VI uses "préjudice important" for "material injury"; the French text of Article XIX uses "préjudice grave" for "serious injury".

The United Kingdom see "serious injury" in the following terms:

4. Since the term 'serious injury' has never been defined by the parties to the GATT no precise information can be given about the degree of injury which would necessarily justify emergency safeguard action. Each case is considered on its merits and the attached list simply indicates, on the basis of GATT practice and Community discussion of it what the relevant factors are likely to be. It must be emphasized that there has been relatively little recourse to this provision of the GATT and there is accordingly no substantial body of case history upon which to base definitive or comprehensive criteria.⁶

Like 'serious injury' the term 'material injury' has not been defined, either in Article VI, or in the Anti-dumping Code, or in the Subsidies/Countervail Agreement. Given the lack of substantive discussion of the issue in either one of the two Committees of Signatories, or an effective challenge in the Contracting Parties to some finding of material injury by a contracting party, the definition of this term has been left to national legislation and national practice.

Material Injury

The Tokyo Round negotiators, including the present writer, were aware that the word "material" would create controversy in the United States Congress. It was concluded that it would be useful to draft some language which would stand in the place of "material" and which could be incorporated in United States legislation and in the legislation of the other key trading countries. Article 6 (paras. 2 and 3) of the Subsidies/Countervail Agreement (the relevant paragraphs in the Anti-dumping Agreement are Article 3, paras. 2 and 3) provides that:

2. With regard to volume of subsidized imports the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing signatory. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative