

INTRODUCTION

SOME GENERAL OBSERVATIONS

REPRESENTATIONS THAT NO CONGRESSIONAL ACTION IS NEEDED

(a) A Code in Legal Limbo

Many pious statements have been made by members of the Office of Special Representative for Trade Negotiations that no Congressional approval of the Code would be required. They have claimed that this could all be done by mere changes of Treasury regulations. They seem to overlook the facts that:

- (1) While the President as Head of State has the power to conduct U.S. foreign policy and to conclude executive agreements which have international force and effect, the power over U.S. commerce has constitutionally and historically been in the hands of Congress and has only been parceled out piecemeal in the international trade field to the President by specific Acts of Congress in the reciprocal trade agreements program starting in 1934.
- (2) Congress did not, in the Trade Expansion Act of 1962, authorize the entry into an international agreement which would change the U.S. Antidumping Act, just as it did not authorize a change in American Selling Price.
- (3) The Senate has not approved the International Antidumping Code as if it were a treaty, nor has the Congress implemented it by legislation.

The conclusion is inescapable that the U.S. accession on June 30, 1967 to the Code is without force and effect in relation to the U.S. Antidumping Law, unless implementing legislation is approved by the Congress. In the absence thereof, there is no change in the applicability of existing U.S. law.

(b) The "Permissive" Argument

One of the arguments which is likely to be raised in defense of the assertion that the Code will not require implementing legislation is that a good portion of the Code is permissive, i.e., the word "may" is used rather than the word "shall." A rough tabulation of approximately 60 major points of