substance contained in the Code [see Appendix A] reveals that approximately only 25 will fall in this permissive category while 35 will fall in the mandatory category. Two major areas of the Tariff Commission's concern would become almost completely mandatory if the Code were to apply. Article 3, for example, which sets out detailed standards for measuring injury and the threat of injury is completely mandatory. In Article 4 (a) the term "domestic industry" is required to be defined on a nationwide basis except where, under very limited conditions, the regional market can be isolated and a narrow competitive product concept is superimposed on both the national and regional industry concepts.

There is an incredibility factor in this "permissive" argument which raises these questions:

> Is the Congress to stand by and see the U.S. Antidumping Act emasculated on the basis of the excuse that approximately 25 out of 60 of the substantive provisions of the Code are couched in terms not mandatory, but permissive? Would our negotiators have us and our trading partners believe that it was really the U.S. intent all along not to implement the approximately 42 percent of the International Code whose provisions were couched in the permissive?

This is difficult to believe insofar as signatories to the Code pledge in Article 14 to conform their "laws, regulations and administrative procedures with the provisions of the Antidumping Code."

(c) <u>The "Treasury Regulations Can Provide Conformity" Argument</u>

It has also been asserted that a change in Treasury Regulations will be sufficient to effect any necessary changes to conform with the U.S. antidumping approach to the new Code. However, a number of mandatory provisions would apply to both the Treasury's dumping and the Tariff Commission's injury determinations. For example, the definition of "like product" in Article 2 (b) is central to the Commission's competitive product market concept contained in 3 (d) as well as the Treasury's determination of dumping in Article 2 (d). Clearly, a change in the Treasury Regulations could not accomplish the mandatory application of the like product concept in 2 (b) to the Tariff Commission's determination of the competitive product market in 3 (d)--if the Tariff Commission does not choose to do so itself.

Similarly, in Article 6, containing 10 evidentiary provisions of which 6 are mandatory, four would apply equally to the Tariff Commission as well as to the Treasury Department. These would include the right to present evidence [6 (a)], and to examine evidence [6 (b)], to the treatment of confidential information [6 (c)], and the right to confrontation and rebuttal [6 (g)].