GENERAL AGREEMENT ON

TARIFFS AND TRADE

REPLIES BY THE EEC TO QUESTIONS BY AUSTRALIA
ON THE EEC ANTI-DUMPING LEGISLATION

Reproduced herewith are responses by the EEC to questions raised by Australia in document ADP/W/234 on Council Regulation (EEC) No. 2423/88 of 11 July 1988 (ADP/1/Add.1/Rev.1).

Article 4.3 - Injury

1. The EC considers that a threat of injury occurs when a particular situation is likely to develop into actual injury. In assessing the likelihood, care would be taken to follow the provisions of Article 3:6 of the Code and of the Committee's recommendation of 31 October 1985 on this subject. In particular, it is considered that a determination of threat of injury should be based on facts rather than conjecture and that the change of circumstances leading to injury should be imminent and clearly foreseeable. Although certain factors which may be taken into account when making the assessment are given in Article 4.3 of the revised regulation, these are by no means exclusive. Account could be taken of orders placed, or of goods in transit, or in bonded warehouses. The overriding criteria, however, are whether there is a prospect of the product being imported in such substantial quantities as to cause material injury and whether the prospect is imminent.

2. Article 5.6 - Complaint

Only the Commission is empowered to initiate an investigation under the revised regulation. In the absence of a complaint made by or on behalf of a Community industry, provision is made in Article 5.6 of the regulation for Member States to provide sufficient evidence of dumping and injury to the Commission. The Commission may then open an investigation in accordance with the special circumstances outlined in the last sentence of Article 5:1 of the Code. As yet, however, the Commission has never opened an investigation on its own initiative and none has been requested by a Member State.
3. **Article 7.5 - Hearings**

The Commission is obliged to hear interested parties if they have made a written request, referred to in Article 7.6 of the regulation, within the period prescribed. The period is that stipulated for the time limit for response to questionnaires, i.e., 30 days in the first instance though, in accordance with the Committee's recommendation of 15 November 1983, consideration is given to requests for extension of the time limit upon cause being shown.

It should be stressed, however, that irrespective of any obligation laid down in Article 7.6 of the regulation the Commission may, and frequently does, hear interested parties even when no formal request has been made within the time limit prescribed, providing of course, that the hearings are not used as a means of significantly impeding the progress of the investigation. By helping to clarify the points at issue, the hearings enable the interested parties to defend their interests to the full. This is considered to be one of the advantages of the absence of strict statutory time limits for the completion of different stages of the investigation, the only limit applied being that imposed by Article 7.9(a) of the regulation, which is in conformity with Article 6:5 of the Code.

4. **Article 14.2 and 14.3 - Reviews**

No reviews are initiated by the Member States and, as the last measures taken under an Act of Accession were repealed in 1985 and none is in prospect, the last sentence of Article 14.3 of the regulation is to all intents and purposes very much a dead letter. If such a review were to be held in the future, however, it would be carried out with the re-opening of the investigation. This would ensure that exporters would have the same procedural guarantees afforded by Article 7 of the regulation, that they would have in the initial investigation.