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TARIFFS AND TRADE

Committee on Anti-Dumping Practices

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LEGISLATION OF THE EEC¹

Questions Posed by the United States

Article 2.B.3(a)

(Adjustments to normal value for discounts and rebates directly linked to the sales under consideration)

1. What is the meaning of the term "directly linked," particularly insofar as the term "exclusively" has been deleted? If a company grants discounts or rebates to a customer based on its overall sales to that customer, would the EEC allow a properly supported claim based on an allocation of the rebate or discount between the product under investigation and other products sold, or would it deny such a claim on grounds that the rebate/discount was not "directly linked" to the sales under consideration?
2. The provision allowing for such discounts and rebates to be taken into account appears to apply only with respect to establishing normal value on the basis of sales made in the exporter's home market. Is it intended that no similar allowance would be possible when normal value is based on sales to third countries? If so, what would be the basis for drawing such a distinction?

Article 2.B.3(b)(ii)

(Calculation of selling, general and administrative expenses and profit when constructed value is used to determine normal value)

In calculating a constructed value for a given producer or exporter, this provision allows for the eventuality that the selling, general and administrative expenses and profit of other producers or exporters of the like product in the foreign market may be used to approximate the expenses and profit of the producer/exporter when such actual data is unavailable, unreliable or unsuitable for use. Could the EEC explain how this provision would be applied in a case where, for example, there are two foreign EEC firms which export the merchandise under investigation to the EEC. One of these firms owns the patent on the merchandise and, through licensing, permits the other firm to market the merchandise on the condition that it be

¹ ADP/1/Add.1/Rev.1

sold only in export markets. Thus, the first firm sells in both the home and EC markets, whereas the second sells only in the EC. As a result, the first firm enjoys an unusually high "monopoly profit" on its home market sales.

1. In this example, would the EEC consider it appropriate to assign this level of profit to the second firm, as the new language in Article 2.B.3(b)(ii) would seem to require?
2. Similarly, if all home market sales were found to be made at prices below the cost of production and constructed values had to be used, what would be the rationale for using one firm's selling expenses in calculating the selling expenses for another firm? In such a case, would it not be more reasonable to use the selling, general and administrative expenses incurred by each firm on its sales to the EEC?
3. Lastly, with respect to the final provision in this new paragraph, can the EEC shed any light on how broadly or narrowly it intends to interpret the phrase "producers or exporter in the same business sector"?

Article 2.B.3(c)

(Establishing normal value in cases where the exporter in the country of origin neither produces nor sells the like product in the country of origin)

1. In implementing this regulation, does the EEC intend to consider whether the exporter's supplier has knowledge of the ultimate destination of the merchandise being supplied to the exporter?
2. If the exporter's supplier has such knowledge, would the Commission nevertheless assign a separate dumping rate to the exporter based on its supplier's costs or prices, even if it is acknowledged that these are elements over which the exporter normally could not exercise any control?
3. If the exporter is to be treated separately, would it not be more reasonable to establish normal value on the basis of the exporter's sales to third countries, assuming that such data were available?

Article 2.C.8(a)

(Determination of export price)

1. Is there a substantive difference between the term "directly related" discounts and rebates used in this section, and the reference to "directly linked" discounts and rebates in Article 2.B.3(a)?

Article 2.C.8(b)

(Determination of export price when there is no export price or when for various reasons such price is considered unreliable)

1. Could the EEC provide an example or some clearer indication of what situations the phrase "...costs...normally borne by the importer but paid by any party either in or outside the Community..." (emphasis added) is intended to encompass?

Articles 2.C.8 and 2.D

(Relationship between adjustments made to export price and adjustments made for purposes of the price-to-price comparison)

1. Article 2.C.8(b) specifies that "allowance shall be made for all costs incurred between importation and resale..." (emphasis added). In contrast, Article 2.D.10 specifies certain adjustments which shall be made, where warranted, to take account of differences affecting price comparability. In practice, will this mean that every cost incurred by a related importer will be deducted from the export price, whereas only those adjustments specifically described in Article 2.D.10 may be made to normal value when the prices are compared?
2. Article 2.D.9(a) states that "[f]or the purpose of ensuring a fair comparison, due allowance...shall be made...for differences in...", inter alia, "selling expenses resulting from sales made at different levels of trade, or in different quantities...". However, Article 2.D does not indicate whether the EEC will attempt to make comparisons of similar quantities at the same level of trade. Neither does Article 2.D.10 provide specific rules for making adjustments for quantity or level of trade differences between the two markets. Does the absence of specific rules for these two elements mean that similarities or differences in quantity and level of trade will not be taken into account? Would allowances also not be made for advertising, warehousing and bad debts, since these elements are not specified? If this is the case, how does both this and the situation described in question 1 comport with the objective of making a fair comparison of prices?

Article 13.11

(Circumstances under which an additional antidumping duty may be imposed if the initial duty is absorbed by the exporter)

1. Article 13.11(b) states that "[w]here it is found that the antidumping duty has been borne by the exporter, in whole or in part,...an additional antidumping duty shall...be imposed" (emphasis added). Will the amount of the additional duty

imposed reflect only the amount borne by the exporter, or in some circumstances could it be the full amount of the initial duty even if such duty was not borne in full by the exporter?

Article 13.11(c) suggests that, when prices do not increase by the full amount of the antidumping duty, this shall be considered as evidence that the duty has been borne by the exporter unless it is shown that the lack of price increase reflects a reduction in the importer's costs and/or profits. In such cases, would the transfer price between the manufacturer and its related importer be used to establish the importer's profit? Would not a reduction in the manufacturer's costs also provide a legitimate explanation for prices not reflecting the full amount of the antidumping duty? In any case, under normal supply conditions, what would be the economic reasoning to expect prices to increase by the full amount of the antidumping duty?