

GENERAL AGREEMENT ON

RESTRICTED

ADP/W/248

19 October 1989

TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

Original: English

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

Reproduced herewith are responses provided by the EEC to questions raised by Singapore in document ADP/W/215 on Council Regulation (EEC) No. 2423/88 of 11 July 1988 (ADP/1/Add.1/Rev.1).

1. Article 2.3(a) - Treatment of discounts and rebates

1. The meaning of "directly linked" in Article 2.3(a) of the revised regulation has been given in reply to a question by the United States of America on these provisions.
2. While there is an obvious need to ensure that the normal value is not distorted, this does not mean that the provisions of the revised regulation can be applied in an arbitrary manner. The EC would be prepared to give a considered reply to the comments made on this point if Singapore can produce a shred of evidence in support of the supposition on which they are based.

11. Article 2.3(b) - Determination of normal value when there are no sales on the domestic market or when such sales do not permit a proper comparison

Although there may be particular reasons why sales made in the ordinary course of trade do not permit a proper comparison, the main reason is when they are made in insufficient quantities on the domestic market of the exporting country. The threshold applied by the EC for this purpose is that the volume of such sales in the domestic market should be at least 5% of the volume of exports to the EC before they can be regarded as being made in sufficient quantities to permit a proper comparison.

III. Article 2.3(b)(ii) - Constructed value

Point A It will be seen, 'inter alia' from the 1961 report of the GATT Group of Experts, that the clear intention of the GATT is that the purpose of constructing the normal value is to establish an equivalent of the domestic price in the exporting country. While the EC takes note of the extensive views expressed by Singapore on this issue, it recalls that the purpose of the consideration of its revised regulation by the Committee, in accordance with Article 16:8(b) of the Code, is to ensure that it is in conformity with the GATT rules as they exist, rather than as a particular Party to the Code would wish them to be.

Point B Detailed explanations on the methods used to establish a reasonable amount for selling, general and administrative expenses and profit have been given in reply to questions by Hong Kong, Korea and the United States of America. Bearing these in mind, the replies to the points to questions by Singapore are:

- (i) A profit rate based on the profitable sales of a producer or exporter is regarded as being reasonable since it is based on the producer or exporter's own performance on the domestic market and is an objective criterion.
- (ii) Although each firm's selling, general and administrative expenses and profit are used when a profit has been made, or the expenses have been incurred, when this is not possible then the expenses and profits of other firms in the same line of business are considered to form a reasonable basis on which to estimate the firm's expenses and profit.
- (iii) As explained in reply to a question by the United States, "producers or exporters in the same business sector are those who produce the narrowest range of products, including the like product under investigation, for which the data is available. Rather than interpreting the Code to its limits, this approach provides an objective criterion which is more restrictive than that permitted by the Code.
- (iv) Obviously, there is a need to provide for a situation when the normal value cannot be constructed on the basis of the usual methods laid down in Article 2.3(b)(ii). In the same way that there is a need to provide for a situation in which the export price cannot be constructed on the basis of the usual methods laid down in Article 2.8(b) of the regulation. This does not mean that the phrase "any other reasonable basis" is a catch-all to provide for any kind of arbitrary interpretation. On the contrary, this approach can only be adopted as a last resort. If it were decided to establish either the constructed normal value or the constructed export price on "any other reasonable basis", then both the decision to do so and the method used would be based on objective criteria.

- (v) No preference is laid down in Article VI of the GATT or Article 2:4 of the Code as between the use of the export price to a third country or the constructed value when there are no sales in the ordinary course of trade in the domestic market of the exporting country.

IV. Article 2.4 - Sales below cost of production

The justification for considering sales at a loss as not being made in the ordinary course of trade and the issue of cyclical pricing have been given in reply to point 1.3 of the questions by Hong Kong. The length of the period used for assessing whether sales are not at prices which permit recovery does not necessarily make it easier to establish whether or not the condition is present, providing, of course, that the period is an extended period of time. A period of one year normally applied for this purpose is considered to be a sufficiently extended period.

V. Article 2.8(a) - Treatment of discounts and rebates

1. As mentioned in reply to a question by the United States of America, there is no difference whatsoever between the term "directly related" in Article 2.8(a) and "directly linked" used in Article 2.3(a).

2. & 3.

The reasons for different approaches in the treatment of discounts and rebates when establishing the normal value, on the one hand, and the export price, on the other, have been explained in reply to point 1 of the questions by Korea. Bearing in mind that the exporter can be expected to claim adjustments only in respect of discounts affecting the normal value, that the Commission will therefore have to establish the discounts affecting the export price, and that when an interested party claims that discounts affecting the export price have been granted he will have to produce sufficient evidence, any differences in the stringency of the conditions for the deduction of discounts from the normal value and export price are more apparent than real.

VI. Article 2.8(b) - Constructed export price

The costs referred to in the last sentence of the first paragraph of Article 2.8(a) are those incurred between importation and resale. The sentence makes plain that account will be taken of these costs, irrespective of whether they have been incurred by the related importer in the Community or by a party which is associated, or has a compensatory arrangement with the related importer or exporter, irrespective of the location of the premises of that party.

VII. Articles 2.8(b), 2.8(a) and 2.10 - Adjustments when comparing the normal value with the export price

The question of the comparison of the normal value and the export price has been addressed extensively in replies to questions by Hong Kong, the Republic of Korea, Japan and the United States of America. Article 2.8(b) of the revised regulation makes provision for the construction of the export price, not its comparability with the normal

value. Adjustments to take account of differences affecting price comparison are provided for in Articles 2.9 and 2.10 of the revised regulation and no asymmetry is involved when making the adjustments.

VIII. Article 2.13 - Averaging and sampling techniques

Explanations on these provisions have been given in reply to a question posed by Hong Kong and Japan. The purpose of an investigation is to assess the degree of dumping by a particular supplier rather than his overall pricing behaviour.

IX. Article 13.11 - Additional anti-dumping duty

The provisions of Article 13.11 of the revised regulation have been explained in detail in reply to questions by Hong Kong, the Republic of Korea, Japan and the United States of America.

1. The matter investigated under Article 13.11(b) is simply whether the exporter has borne the cost of the duty in whole or in part. Whether or not he has done so does not depend on changes in the normal value or the elasticity of supply and demand.
2. The amount of the additional duty would be equivalent to the cost of the duty borne by the exporter.
3. The EC agrees that initial measures should only be imposed following an investigation initiated and conducted in accordance with the provisions of Articles 5 and 6 of the Code. But in this instance, the investigation would be carried out in a situation in which measures had been imposed and would be concerned only with establishing whether or not the exporter had negated the effect of the duty by bearing the cost himself.
4. The consistency of Article 13.11 with the Code has been explained in reply to 2(11) of the questions posed by Japan. The evidence produced by a party directly concerned would lead only to an investigation of the matter, not to the mandatory imposition of an additional anti-dumping duty. The intent of the provision is not to harass importers or exporters and suggestions to the contrary can easily be refuted by the fact that, although the revised regulation has been in force for more than a year, no investigation has been made under Article 13.11 and none is in prospect at the present time.