

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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EEC - INITIATION OF ANTI-DUMPING INVESTIGATION OF
IMPORTS OF 3.5" MAGNETIC DISKS FROM HONG KONG AND KOREA

Communication from EEC

The following communication, dated 12 May 1993, has been received from the Permanent Mission of the European Communities with a request that it be circulated to the members of the Committee.

I refer to written and oral submissions of the representative of Hong Kong during the last meeting of the Committee on Anti-Dumping Practices with regard to the Community Anti-Dumping proceeding on Imports of Certain Magnetic Disks Originating in Hong Kong and Korea.

You will recall that Hong Kong expressed in particular its concern about the fact that the complainant did not produce any 'concrete evidence of dumping by Hong Kong companies'.

It should be pointed out, however, that what is required by Article 5:1 of the Anti-Dumping Code to initiate an investigation is 'sufficient evidence of (a) dumping; (b) injury within the meaning of the General Agreement as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury'. The Community Institutions' understanding of this provision is that the term "sufficient evidence" refers to prima facie substantiation of the allegations in the complaint, the veracity of which remaining to be confirmed or invalidated by the investigation.

Contrary to the assertions of Hong Kong, the standard of "sufficient evidence" required to open a proceeding is necessarily very different from the standard required of the authorities of importing countries by the provisions of Article 2 of the Anti-Dumping Code to permit the legitimate imposition of anti-dumping measures. Indeed, Article 2 sets out the framework within which the methodology in the calculation of dumping margins is to be applied, given the availability to the investigating authorities of the required information supplied by the exporting companies. Article 5 is by contrast silent on this issue.

Furthermore, it should also be noted that while Article 2 sets out the information on the basis of which a comparison of export price and normal

value should normally be made, Article 6:8 provides for findings being "made on the basis of the facts available" in cases of non-co-operation on the part of interested parties. It is, in the Community's view, not excluded that, in such circumstances, the most reasonable facts available may indeed be of the nature or type of those which formed in the case in question the basis for the opening of the proceeding.

In addition, your attention is drawn to what is considered to be a misunderstanding in the Hong Kong submission, of the wording of Article 5:1 of the Code. It is apparent from the syntax that 'within the meaning of the General Agreement as interpreted by the Code' only refers to injury and not to dumping. Consequently, Article 5 does not restrict the investigating authority in the nature of the prima facie evidence which is required except that it must be "sufficient". This makes obvious sense in that the evidence required for a dumping determination necessitates the collection of data of a confidential nature relating to prices, costs, profits of individual producers which cannot be available to the complainant when submitting its complaint.

Finally, it should be emphasized that, as in every case, should full co-operation from the exporters concerned be obtained, the conclusions will be based on information supplied by these companies and verified by the investigating authority, i.e. the European Commission.