

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

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**REPLIES BY THE EEC TO QUESTIONS AND COMMENTS BY THE UNITED STATES¹
ON THE REVISED EEC ANTI-DUMPING REGULATION²**

Article 2.B.3(a)

1. The term "directly linked" when applied to adjustments for discounts and rebates has the same connotation as the term "directly related" in the USA legislation. The intention is to ensure that only those discounts which are linked to the sales in the period of investigation are taken into account when establishing the normal value, and that discounts granted on sales occurring outside this period are not artificially allocated to the sales occurring within the period. It is confirmed, moreover, that the deletion of the term "exclusively" would enable a properly supported claim based on an appropriate allocation of multi-product discounts to be considered.
2. It is also confirmed that the provisions of Article 2.B.3(a) relating to discounts and rebates would apply by analogy if the normal value were to be based on the comparable price of the product when exported to a third country.

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

The intention of Article 2.B.3(b)(ii) is to ensure, as far as possible, that selling, general and administrative expenses and profit are based on factual data relating to conditions in the country of origin, rather than on conjecture or the application of statutory minima.

1. It would not be useful at this stage to hypothesise on the level of profit which would be allocated to a particular firm. In the example cited, for example, much would depend on the product involved and the rate of profit enjoyed by the first firm. In addition, oligopoly profits can also be unusually high. In these circumstances, the intention would be to arrive at a reasonable conclusion which was soundly based, but consideration would naturally be given, at least initially, to the application of the profit made on the sales on the home market.

¹See document ADP/W/191

²See document ADP/1/Add.1/Rev.1

2. Since sales at a loss do not make the selling, general and administrative expenses unreliable, the approach adopted would be to apply the selling expenses actually incurred by each firm and to add a profit rate based on the rate for the same business sector in the country of origin. It would certainly not be considered to be more reasonable to use the selling, general and administrative expenses incurred by each firm on its sales to the EC. In the first place, the aim in establishing a constructed value is to obtain a surrogate for the home market sales price and there is no necessary connection between the expenses incurred on sales to different markets. In the second place, there would be no grounds for believing that the sales to the EC had not been made at a loss.
3. The use of the phrase "producers or exporters in the same business sector" is intended to convey the fact that when this criterion has to be applied, the profit rate will be based on the narrowest range of products including the like product under investigation for which the data is available. The intention is to use an objective criterion and EC experience is that the phrase "products of the same general category" can, at times, prove to be rather vague.

Article 2.B.3(c)

1. If the exporter's supplier had knowledge that goods were destined for export and sold the merchandise on that basis then, in accordance with Article 2.B(a) of the regulation, the supplier would be the exporter concerned and the firm having no domestic sales or production would merely be carrying out the functions of a dealer or an agent of the supplier.
2. It follows that if the exporter's supplier knew that the goods were destined for export then, in general, no specific margin of dumping would be assessed for the dealer or agent, though the costs of the latter could be taken into account when establishing the supplier's export price.
3. Although the establishment of the normal value on the basis of exporter's sales to third countries is not excluded when he does not produce the product or sell it on the home market, EC experience tends to suggest that when products are dumped on one market they also tend to be dumped on other markets, though not invariably so.

Article 2.B.4

1. When considering the full recovery of costs, a distinction has to be made between the period over which certain costs are amortised and the period over which the investigation is made to decide whether sales have been made at a loss. For costs which are amortised, Article 2.B.4 only requires a reasonable allocation of these to the investigation period and for this purpose the normal practice is to follow the producer's own accounting practices. As regards the period during which it is established whether sales have been made at a loss, the EC uses the entire investigation period, normally twelve months.

Article 2.C.8(a)

It is confirmed that there is no difference whatsoever between the term "directly related" used in this section with regard to discounts and rebates and the term "directly linked" used in Article 2.B.3(a).

Article 2.C.8(b)

The costs under these provisions include those made by a separate but related party in relation to the sales made in the EC by the related importer. The party may be located in the EC or outside it, usually in a neighbouring country.

Article 2.C.8 and 2.D

1. Care has to be taken to distinguish between the establishment of the domestic and export price and the subsequent allowance to be made for differences affecting price comparability when comparing these prices. Different rules are prescribed within the GATT for these different purposes.

In the case of a related importer the export price would be constructed in accordance with the provisions of Article 2.C.8(b) of the new regulation. These are in accord with Article 2:5 of the Code, as amplified by the last sentence of Article 2:6, the clear intention of the Code being to deal with the possibility of what was termed hidden dumping in the first Supplementary Provision to Article VI of the General Agreement in Annex I of the General Agreement, by basing the export price on the higher price obtained at a further stage in the selling process and deducting the costs and profit involved in that further stage. The aim is to nullify the effect of the relationship between the exporter and importer by placing the related importer on a par with an independent importer.

It is only when the domestic price and export price have been established that allowance is made for the differences affecting price comparability. At this stage the same criteria are applied when making allowance in each case for the differences affecting price comparability, whether the factors to be taken into consideration are in respect of sales to the domestic market or for export, or whether the exporter's sales agency in either case is an integral part of the exporter's firm or is related to that firm.

2. Articles 2.B.3(a) and 2.C.8(a) provide for account to be taken of discounts which are granted 'inter alia' for such factors as differences in quantities or differences in the level of trade and Articles 2.d.9 and 10 provide for allowance to be made for differences in selling expenses for these factors. Notwithstanding these provision, however, the EC would be prepared to establish the "comparable" price in Article 2.B.3(a) for sales in the domestic market, on the basis of a restricted number of sales if it were clearly demonstrated that only such sales were comparable to the sales

for export in respect of such factors as the level of trade. If the comparable price were to be based on a restricted number of sales, then care would naturally be taken to avoid making double provision for the factors by making further adjustments under Articles 2.9 and 2.10.

No allowance would be made for advertising and bad debts since these are factors which are not considered to affect the price which a buyer would be prepared to pay for the product. Post sales warehousing, however, would be taken into account since this would be a factor which could affect the price the buyer would be prepared to pay.

Article 13.11

1. As implied by the wording of Article 13(11)(a) of the new regulation, the intention is to apply an additional duty equivalent only to the amount of the cost of the duty borne by the exporter. The additional duty would therefore be less than the amount of the original duty if the exporter only bears part of the cost of the original duty.
2. For the reasons outlined in the first Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement and Articles 2:5 and 2:6 of the Code, it would not be the intention to base the profit of a related importer on the transfer price of his related supplier. Again, although it is agreed that a reduction in the manufacturer's costs could explain a reduction in the export price, the point at issue in an Article 13(11) investigation would be whether the exporter had borne the cost of the duty not whether the manufacturers costs had been reduced. Moreover, changes in the manufacturers costs would only affect the normal value when this was constructed in accordance with the provisions of Article 2:4 of the Code. If this were to be the case then a request for an Article 14 review would be justified. Finally, in a free market, such as that which exists in the EC, the exporter may be expected to behave in an economically rational manner by not selling on at a loss. He may, of course, accept a lower rate of profit but this is one of the factors which would be taken into account in an Article 13(11) investigation.