

# GENERAL AGREEMENT ON

RESTRICTED

ADP/W/260

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# TARIFFS AND TRADE

Special Distribution

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Committee on Anti-Dumping Practices

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ADDITIONAL QUESTIONS BY HONG KONG ON  
THE LEGISLATION OF THE EUROPEAN COMMUNITIES  
COUNCIL REGULATION 2423/88

I. Determination of Normal Value

1. No or insufficient home market sales - Article 2(3)(b)

In its reply (in ADP/W/247) to Hong Kong's previous question, the EC stated that the choice between export sales to third countries and the use of the constructed value as a basis for establishing the normal value under Article 2(3)(b) would depend on the particular market situation encountered. Could the EC enumerate the particular criteria used in making this decision or provide an example on the market situations in which the EC would use export sales to third countries as a basis?

In the last Committee meeting, the EC stated that it had been reluctant to use export prices to third countries as experience showed that if there was dumping in one market, there was usually also dumping in other markets. Could the EC confirm that before rejecting export sales to third countries, it engages in investigation in order to determine whether such sales are actually dumped?

2. Constructed value - Article 2(3)(b)(ii)

In replying to a previous question from Hong Kong, the EC referred to its reply to Korea (in ADP/W/246) which stated that "the possibility of using the average selling, general and administrative expenses and profits of all exporters or producers is not excluded by the provisions of Article 2.3(b)". Would the EC not agree that despite the clear criteria of Article 2(3)(b)(ii), there is insufficient certainty to guide an exporter because the SGA and profit applied by the EC in accordance with this provision in such circumstances will not be under his control, but will be based on information to which he has no access?

II. New Measures - Article 13(11)

In ADP/W/207, the EC recognized that anti-dumping duties are imposed on the dumped product when imported rather than on importers, as is evident from Article 8 of the Code. However, Article 13(11) implies a requirement that anti-dumping duties be borne by the importers in the EC. Could the EC explain the legal justification for this requirement? In considering the exporter's alleged absorption of the anti-dumping duties as a specific offence with important penalizing consequences for both the exporter and the importer, is the EC not acting inconsistently with the provisions of the Code?