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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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REPLIES BY THE EUROPEAN COMMUNITIES TO ADDITIONAL
QUESTIONS BY SINGAPORE ON THE EC
ANTI-DUMPING LEGISLATION

Reproduced herewith are responses by the EC to additional questions raised by Singapore in document ADP/W/255 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 in the determination of normal value

Both in cases of discounts and rebates adjustments can be made provided that it is shown that they are directly linked to the sales under consideration. More specifically, as far as the granting of deferred discounts is concerned, if such discounts relate to a period which does not fully coincide with the investigation period, the Community grants such discounts in proportion to the relevant time period. Regarding multi-product discounts, the Community's practice is to grant such discounts proportionally to the turnover of the product subject to investigation.

As a number of anti-dumping determinations by the Community show, the principle of proportionality does not create any particular difficulty or burden on exporters claiming such discounts or rebates.

2. Article 2.3(b) (ii) - Amount of selling, general and administrative expenses and profit in the calculation of normal value

Point A:

1. Article 2(4) of the GATT Anti-Dumping Code provides for several methods to determine normal value when there are no sales in the ordinary course of trade in the domestic market of the exporting country. These methods are (1) constructed normal value or (2) third country sales. Constructed normal value is defined as cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. It is clear that SG&A relates also to the country of origin, as constructed normal value is a surrogate of the domestic price. Thus, the method

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suggested by Singapore, i.e. using, as a general rule, SG&A for export sales, is not provided for in the GATT Anti-Dumping Code and therefore, the question whether such a method is fairer, is irrelevant.

2. It is incorrect to assume that the EC has adopted the method recommended by Singapore. However, it must be admitted that there can be exceptional situations where SG&A referring to domestic sales are not available. This was the case in the anti-dumping proceeding concerning cotton yarn originating in Turkey referred to by Singapore, where none of the exporters concerned had domestic sales and therefore, the SG&A and profit of other sellers on the domestic market could not be used. Constructed value was therefore established by using SG&A relating to the exporters' export sales, which was, under the given exceptional circumstances, considered a "reasonable basis" as provided for in Article 2 (3) (b) (ii), last option, of EEC Regulation 2423/88. The EC would not rule out using the same methodology in similarly exceptional situations if, as was shown in the cotton yarn case, the SG&A and profit would not be assumed to be different if sales had been made on the domestic market.

Point B:

1. With regard to the term "any other reasonable basis", it is impossible for the EC to systemize the approach which would be taken in relevant cases. In any case, the objective, when determining expenses incurred and profit realized according to that alternative, is to arrive at a normal value which can be considered the closest possible surrogate for prices charged in the domestic market.
2. The Community agrees with Singapore that the EC legislation as well as the GATT Anti-Dumping Code leave the investigating authority with the choice between constructed normal value and prices for exports to third countries. In the view of the Community, the former method very frequently provides a price which is more representative for the situation on the domestic market than sales to third countries given that the determination is based upon costs relating to the domestic market. The Community does, of course, not rule out the possibility of resorting, for a given case, to the "third country sales" method. It would, however, be difficult to define precisely under which circumstances this would be the case.
3. Article 2(4) - Criteria for determining when sales below the cost of production are not in the ordinary course of trade

The EC notes the comments by Singapore and cannot see what could be added to what has already been said.