

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

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EEC - INITIATION OF ANTI-DUMPING INVESTIGATION
ON IMPORTS OF 3.5" MAGNETIC DISCS FROM HONG KONG

Communication from Hong Kong

The following communication, dated 19 April 1993, has been received from the Office of the Hong Kong Economic and Trade Office.

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1. At the last Committee meeting in October last year, Hong Kong expressed concern about the initiation of anti-dumping proceeding by the European Community in respect of imports of 3.5" magnetic discs originating from Hong Kong. It felt that insufficient evidence of dumping, injury and causal link between the two had been put forward to justify allegations against Hong Kong. There were also doubts as to whether the complainants represent a major proportion of the domestic industry.
 2. Since then, Hong Kong submitted a representation to the European Commission on 4 February 1993 setting out why the proceeding should not have been initiated and urged that it be terminated. The European Commission responded on 30 March 1993. However, it did not explain its position in the light of issues raised in the representation or provide clarifications sought. Hong Kong will be pursuing the matter further with the European Commission.
 3. In the meantime, it is considered pertinent, and without prejudice to other issues raised in the representation, to draw to the Committee's attention a fundamental principle raised by the case based on information currently available to Hong Kong.
 4. In the complaint, the complainants did not produce any concrete evidence of dumping by Hong Kong companies. The alleged dumping margin in respect of the alleged dumped products from Hong Kong was based on constructing the normal value of Hong Kong products on the basis of the cost of production of parts and components, labour/certification costs and manufacturing overheads in the People's Republic of China (PRC) and Japan, and adding 13 per cent selling, general and administrative expenses and 10 per cent profit.

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5. In Hong Kong's view, putting aside the question of whether the SGA and profit level used are reasonable, the use of third country production data as the basis for constructing the normal value of Hong Kong products with or without adjustment is inconsistent with Article 2:4 of the Code which stipulates that the export price shall be compared with "the cost of production in the country of origin plus a reasonable amount for selling and any other cost and for profits". If the costs of parts and components used are production costs of such parts and components in a third country and not arm's length sales or export prices of such parts and components, the inconsistency would be compounded by the fact that in principle such costs are not costs of production to downstream producers.

6. Not only is such methodology impermissible under the Code, the use of third country production data is also inappropriate because of the different economic and industry structures in the different places. The complainants claim to have remedied this problem by adjusting the figures to reflect Hong Kong costs. Adjustments however are of little value when the base which is being adjusted is in itself unrealistic. In this case, the complainants based their evidence of dumping on a highly selective use of the available data. However, one could, using the same data but varying the selection, work out dumping margins between -30 per cent (i.e. no dumping and over pricing) to 30 per cent and -10 per cent to 86 per cent in respect of 2MB and 1MB discs respectively. In short, such a methodology lends itself to manipulation to achieve the result desired. The scope for abuse is evident.

7. From the above, it is obvious that allegations of dumping justified with normal value determined on the basis of third country production data should not be considered to be "sufficient evidence of dumping within the meaning of Article VI of the GATT as interpreted by the Code" for the purpose of initiation under Article 5:1 of the Code.

8. Although Hong Kong companies are the victims this time round, it is noted that accepting the use of third country production data as the basis for constructing the normal value in this case is not an isolated occurrence. In fact, Hong Kong understands that third country production data without adjustment are accepted as the basis for constructing the normal value by the Commission for the purpose of initiation of investigation in another similar case. The issue should be of concern to all contracting parties as companies of all countries could just as easily be subject to anti-dumping investigation on the basis of manipulation of third country production data which may have no relevance to them. This leads to unnecessary proliferation of anti-dumping actions and the harassment and trade stifling effect of such actions could not be underestimated.