

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Replies of the EUROPEAN COMMUNITY¹ to Questions from HONG KONG²

The following communication, dated 16 April 1997, has been received from the Permanent Delegation of the European Commission.

Q.1. Prices of other exporters

Reply

The EC does not resort to the use of export price to third countries when establishing normal value because our essential purpose is to find a value which represents a normal selling price for the product in question on the *exporter's domestic market*. When dumping is found to be actionable, for instance, it may be precisely because the exporter is exploiting an advantage conferred as a result of the structure of the domestic market. By definition, a third country market may not reflect that structure. In any event, Article 2.2 of the WTO Anti-Dumping Agreement does not imply any hierarchy among the permitted alternative methods for establishing normal value in the absence of sufficient domestic sales.

The "other sellers and producers" under Article 2.1 are necessarily under the same investigation. If there are no such "other sellers or producers" in the exporting/originating country, the normal value will be established as laid down in the WTO AD Agreement, i.e. by constructing from cost of production, SG&A and profit.

The circumstances envisaged in the EC's former Article 2.3(c) are now covered by Article 2.1 (second sentence). As under previous legislation, when an exporter in the exporting country neither produces nor sells the like product, we establish normal value on the basis of prices or costs of other sellers or producers. The new legislation implies no difference in the details of our practice.

¹G/ADP/N/1/EEC/2 & Corr.1 + Suppl.1, G/SCM/N/1/EEC/1.

²G/ADP/Q1/EEC/1-G/SCM/Q1/EEC/1.

Q.2. The 5% rule

Reply

The Community has not used, in its practice, the possibility of recurring to prices of sales not reaching the 5% threshold. No practice exists therefore on selecting factors which would determine the representativity of the prices referred to in the question.

Q.3. Start-up operations

Reply

The EC is of the view that a genuinely new product cannot be manufactured from unchanged production facilities.

The "period of cost recovery" is normally 12 months as this duration is chosen to match the investigation period. The actual start-up phase must necessarily be shorter as it falls by definition within this period.

Q.4. SGA and profit in constructed value

Reply

The EC has not used the facility provided for in Article 2.6(b) or (c) for production and sales cost calculations. The WTO Anti-Dumping Agreement and EC anti-dumping legislation contain precise rules for the acceptance or otherwise of loss-making sales as being in the ordinary course of trade; these should presumably be applied in the same way whether the product investigated is the like product, or from the same general category.

Q.5. Constructed export price

Reply

In order to select an appropriate profit for use when constructing export price, information is gathered primarily from unrelated importers. In the past a commonly used figure by the Community has been 5% gross profit.

Q.6. Allowances

Reply

If an exporter can demonstrate the effect of a level of trade difference on price comparability, then a level of trade adjustment will be made.

The impact of the EC's recent revision of Article 2.10 will be explained separately.

Q.7. Examination of the state of the industry

Reply

Consideration of the fact that "an industry is still in the process of recovering from the effects of past dumping" would not on its own lead to a determination of injury.

Q.8. Standing

Reply

The EC will only use the findings resulting from consultations when these meet the requirements of the WTO Anti-Dumping Agreement; that is, when consultations demonstrate that a sufficient/insufficient degree of support is expressed by domestic producers. If consultations do not demonstrate that requirements for standing have been met, the EC will proceed with other methods.

Q.9. New exporter reviews

Reply

Newcomers making themselves known as exporters of a product which is subject to anti-dumping measures, the level of which was established by means of sampling, will be liable to the rate of duty applicable to cooperating producers not included in the sample. They are not subjected to the residual duty, but to the duty calculated as the average for the sample originally selected. All cooperating firms outside the original sample (newcomer or otherwise) are thereby given equal treatment.