Replies by the EEC to Questions Put by Brazil on the EEC Commission Notice Concerning the Reimbursement of Anti-Dumping Duties

Reproduced herewith are replies received from the delegation of the EEC to questions put by Brazil in document ADP/W/152 on the EEC Commission notice concerning the reimbursement of anti-dumping duties.

Ad.1

As the question notes, the Notice does indeed specify in point II.2(b) that for the calculation of the actual dumping margin, with a view to deciding on the merits of an application for reimbursement of anti-dumping duties, "calculations will be based as far as possible on the same method applied during the original investigation ..." The reservation concerning a possible divergence from the original method arises from the fact that possible changes in circumstances occurring after the conclusion of the original investigation may make it inappropriate to apply the same methods for the determination of the dumping margin. For example, the market situation may have changed in such a way that weighted averages should not be applied; or else an importer, which during the original investigation was independent, may in the meantime have become an associated importer, which would mean that the rules of the Notice concerning associated importers should be applied. This would also hold in the opposite case where a previously associated importer became independent.

Ad.2

Where an associated importer has resold the goods to a first independent buyer without having paid the corresponding anti-dumping duties, a refund may be granted to the enterprise that paid the duties if it can show that the dumping has disappeared. To that end, and assuming that all other factors remain unchanged, the export price is calculated, in accordance with the provisions of Articles 2.5 and 6 of the Anti-Dumping

---

1Document ADP/1/Add.1/Suppl.4, pp. 3-5.
Code, on the basis of the resale price to the first independent buyer. If this price has not been increased in accordance with point II.2(c) of the Notice no reimbursement may be granted to the enterprise that paid the duty because in that case it is not established that the dumping margin has been reduced or eliminated. This is quite consistent with Article 8.3 of the Anti-Dumping Code which refers to the method provided for in Article 2 of that Code.