The following communication, dated 15 September 1994, has been received from the Permanent Mission of Romania.

Question 1  DUTY AS A COST

When constructing the export price, Article 2.8(b) of the Romanian rules of anti-dumping explicitly allows for the deduction of anti-dumping duties as a cost. If this rule is applied to a refund or a review, it will create false dumping margins and there will be no refund or reduction of such dumping margins, even though the exporter has raised its export price to the level of the normal value. This is in violation of Article 8:3 of the Anti-Dumping Code.

How can Romania justify this rule under the Anti-Dumping Code?

Answer

When analysing the resale price, with a view to comparing it with the normal value, in conducting an investigation under a request for review or for refunds of the anti-dumping duty, the anti-dumping duty is already levied. Hence, it normally appears that this anti-dumping duty is to be deducted from the resale price.

The introduction of the anti-dumping duty implies an increase of the resale price with the amount of this duty. When the first independent buyer does not accept this price, it is possible for the related importer to reduce the selling price in such a manner that this price becomes an acceptable price for the first independent buyer. In order to calculate this price and to analyse if it is or it is not a new dumping price, it is normal for the anti-dumping duty to be deducted.

In this context, we consider Article 2.8(b) (Joint Order No. 128/24 August 1992 of the Minister of Trade and Tourism and the Minister of Economy and Finance) is in full conformity with the provisions of Article 8:3 of the Anti-Dumping Code.

1ADP/W/359.
**Question 2  "ASYMMETRICAL COMPARISON"**

According to Article 2 of the Romanian rules of anti-dumping, the export price may be calculated by deducting all (direct and indirect) expenses and profits of an importer from its sales price of the imported product to a third party in the importing country, if the exporter and the importer are related. However, the normal value is calculated by deducting only direct expenses from the sales price of the like product to a third party in the exporting country. If such is the case, this method will artificially create or increase the dumping margin without providing for the appropriate adjustments for fair comparison.

- How can Romania satisfy the requirement of fair comparison in the Anti-Dumping Code in the case of a constructed export price?

**Answer**

Article 2.3 (b)(ii) of Romanian legislation (Joint Order No. 128/24 August 1992) stipulates that, in determining the normal value, a reasonable amount for selling expenses (which includes advertising and salesmen's salary costs) shall be taken into consideration.

Article 2.9 (a)(iii) of Romanian legislation (Joint Order No. 128/24 August 1992) stipulates that, in determining the export price, all the costs between import and resale, including selling costs (which incorporate advertising and salesmen's costs) shall be taken into consideration.

We consider that the provision of Article 2.3 (b)(ii) is also in conformity with Article VI, paragraph 1(b)(ii) of GATT which stipulates: "the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit".

This issue of whether or not to include the advertising and salesmen's salary costs in selling costs, in which respects the practice varies from country to country, was frequently discussed in GATT. According to the elements included in the Analytical Index (1989 version) for Article VI of GATT, the Second Report adopted on 27 May 1960 (BISD Supplement No. 9/1961) on Anti-Dumping and Countervailing Duties, para. 13, stipulates: "The Group noted...that to the cost of production, when this criterion was being used for the determination of normal value, there was to be 'a reasonable addition for selling cost and profit'. The effect of this was to construct what might be regarded as a national ex-factory sales price on the domestic market of the exporting country in circumstances where there was no such actual price or not one that could be used for the determination of normal value. As in the case of 'production costs', the practices of various countries differed on the items to be included under the heading of 'selling costs'. Typical examples were such items as advertising costs and sales commission. The Group agreed, however, that whatever the particular method used for determining both production and sales costs the aim should always to be to arrive at a normal value which was genuinely comparable with the export price. Only thus could it be properly determined whether or not merchandise was being sold at less than its normal value, in the meaning of Article VI".

Furthermore, we underline that, up to the present, no anti-dumping investigation has been initiated in Romania and the Commission established for examining anti-dumping cases was not in a position to comment on the method of comparison between export price and normal value for a particular case.

We consider that the provisions of Article 2 (Joint Order No. 128/24 August 1992) cannot be interpreted as involving different methods for determining the export price and normal value, and through this not to be in conformity with the provisions of Article 2:6 of the Anti-Dumping Code.