Reproduced herewith are responses by the EEC to questions raised by Korea in document ADP/W/222 on Council Regulation (EEC) No. 2423/88 of 11 July 1988 (ADP/1/Add.1/Rev.1).

1. Article 2.3(a) – Rebates and discounts

- No precise period of time is laid down for "prior periods" in the expression "consistent practice in prior periods" though the possibility is not excluded of doing so in the future, in the light of experience gained in applying the provision. Deferred discounts are normally paid at the end of a financial year. Obviously, they must have been in operation during a financial year ending prior to or during the investigation period before they are actually granted. There is also a need to ensure that they are not introduced unilaterally in order to distort the normal value during the period of investigation and then subsequently withdrawn.

- For non-deferred discounts directly related to the sales under consideration, all the exporter has to do is to supply evidence that they were granted and the amount of the discount would then be deducted automatically when establishing the normal value. In the case of deferred discounts, the exporter is also required to produce evidence either that the discounts were based on consistent practice in prior periods, or of an undertaking to comply with the conditions required to qualify for them. If such evidence is supplied then the deferred discount will also be deducted automatically when establishing the normal value.

- The difference in the wording of Article 2.3(a) and Article 2.8(a) on discounts and rebates is a reflection of the principle that the party claiming the adjustment must prove that its claim is justified. Experience shows that, whereas exporters claim discounts and rebates affecting the normal value with alacrity, they tend for obvious reasons to be extremely reluctant to claim them when they affect the export price. Moreover, there is no danger of discounts and rebates being claimed on exports in order to distort the dumping calculations. In these circumstances, it is the Commission's task to establish whether the discounts and rebates have been granted on exports and...
this task is likely to be more difficult than dealing with claims affecting the normal value. If in exceptional circumstances, however, an interested party such as a Community producer were to claim that discounts or rebates were being granted on the exports, and this information was used in the investigation, he would have to provide evidence to justify his claim.

2. Article 2.3(b) - Constructed value

- Both Article VI of the GATT and the Code provide for the choice of either the highest comparable export price to a third country or the constructed value when establishing the normal value in the absence of domestic sales in the ordinary course of trade, or when such sales do not permit a proper comparison. The EC therefore reserves its right to choose either method.

- Where practicable, specific company costs and profits are established when there are several domestic producers of the like product. This enables individual dumping margins to be assessed for each company, or a finding of no dumping, as well as individual rates of anti-dumping duty where appropriate.

- Article 2.4 of the Code provides only that, as a general rule, the profit rate applied should not exceed the profit normally realised on sales in the domestic market of products of the same general category. When a specific exporter or producer makes a profit on domestic sales then his costs and the profit on these sales would be applied. Where the exporter does not sell on the domestic market, or does not make a profit on such sales, the possibility of using the average selling general and administrative expenses and profits of all exporters or producers is not excluded by the provisions of Article 2.3(b). When the exporter or producer does incur costs and makes profits on his sales, then these costs and rates of profit would be applied since it is more reasonable to base the calculations on the conditions which actually exist. This is one of the reasons why the provision on the profit rate in the last sentence of Article 2.4 of the Code is a general rule, not an invariable requirement.

3. Article 2.8(b) - Constructed export price

- The provision regarding the construction of the export price when the exported goods are not resold to an independent buyer, or not resold in the condition imported, is included in the regulation for the sake of completeness. Since the EC has little experience in the establishment of the export price in these conditions, it would serve no useful purpose to speculate in advance on the methods which would be used. Much would depend on the particular situation, but if the need ever arose then the method would be based on objective criteria and details of the method would be published, as well as the reasons why it was used.
- Advertising costs are not directly related to a particular sale and no adjustment is made, on either side, in respect of these costs when comparing the normal value and the export price in order to take account of factors affecting comparability.

As regards the reconstruction of an export price, in accordance with Article 2.6 of the Code, all costs between importation and resale are taken into account. In this connection, the provision that "these costs shall include those normally borne by an importer but paid by any party ..." refers to the costs incurred between importation and resale borne by any party related to the importer or exporter, or having a compensatory arrangement with them, irrespective of the location of the premises of that party.

4. Article 2.10 - Adjustments

- The differences in physical characteristics for which adjustments are made are those affecting price comparability. The provisions of Article 2.10(a) of the new regulation enable the price difference to be established on market data where available. It is realised, however, that often this data will not be available and that in certain instances the adjustment would have to be based on the cost of producing the difference in physical characteristics. It has to be recognised, however, that there is no necessary correlation between the value of the difference and the cost of producing it. On occasions, the additional price which the buyer may wish to pay for the difference in physical characteristics may far exceed its cost. In other instances, the costs incurred may result in the provision of characteristics which make little or no difference to the price which the buyer is prepared to pay for the product.

- The adjustments which may be made in respect of differences affecting price comparability are those enumerated in Article 2.10 of the new regulation. For quantities, in addition to differences in the direct selling expenses involved in selling in different quantities, differences affecting price comparability are taken into account when deducting the amount of discounts and rebates for each market. Differences in the cost of producing different quantities are not necessarily reflected in differences in price. In any event, EC experience is that the quantities sold are taken from a common output which is produced by the same process and subject to the same unit cost, irrespective of the market for which the product is destined.

- As stated in Article 2.10(c)(v) of the new regulation, deductions from the normal value and export price are made only in respect of the salaries paid to "personnel wholly engaged in direct selling activities". This excludes deductions in respect of part of the salaries of personnel who are not so engaged.

- The provisions of Article 2.10(e) apply only to the adjustments enumerated in Article 2.10 of the regulation, i.e. to adjustments to take account of price comparability after the normal value and export price have been established. Article 2.8(b) provides for the construction of the export price, not for its comparison. The provisions of Article 2.10(e) would not therefore be applied when establishing the export price or the normal value but only when the two are compared.
- The provisions of Article 2.10(e) have been explained in reply to a question posed by Japan on the revised regulation. In particular, it is confirmed that account would be taken of the effect of an accumulation of insignificant adjustments, this possibility being provided for by the use of the term "ordinarily" at the start of the second sentence of Article 2.10(e).

6. Article 7.7(b) - False or misleading information

Misleading information is information which, while not necessarily being inaccurate in itself, has the effect of leading to wrong conclusions, often because the information supplied is only partial. An example could be when details of only certain transactions in the domestic market were given, the high priced sales being ignored. False information, on the other hand, is information which is inaccurate. An example could be when the prices of export sales were declared to be higher than the price actually paid or payable.

6. Article 13.10 - Duty on assembled products

The EC’s views on Article 13.10 of its revised regulation have been set out in detail in its submissions to the GATT Panel now considering these provisions. It would not be appropriate to discuss the provisions in the Committee in advance of the Panel’s findings.

7. Article 13.11 - Imposition of additional duty

- Detailed explanations on the provisions of Article 13.11 have already been provided in response to questions by Japan and the United States of America on these provisions.

- The term "any party directly concerned" in Article 13.11(b) of the revised regulation is used in the same sense as the term "directly interested parties" in the second sentence of Article 6:7 of the Code.

- An investigation under Article 13.11(b) would only be carried out if the party directly concerned submitted sufficient evidence that an exporter had borne the cost of the anti-dumping duty, in whole or in part. Before starting an examination, the Commission would follow normal practice by consulting the Member States within the Advisory Committee, referred to in Article 6 of the regulation, on the sufficiency of the information provided.

- The investigation would only be concerned with establishing the extent to which the exporter had borne the cost of the duty. There is no need to delve into economic theory for this purpose.

- Explanations on the treatment of changes in the normal value or export price have been provided in response to questions 2(I) and (II) of the questions by Japan on the revised regulation.

- The consistency of the provisions of Article 13.11 with the Code has also been explained in reply to question 2(II) of the questions by Japan on the revised regulation.