

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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REPLIES BY THE EUROPEAN COMMUNITIES TO ADDITIONAL QUESTIONS BY JAPAN ON THE EC ANTI-DUMPING LEGISLATION

Reproduced herewith are responses by the EC to additional questions raised by Japan in document ADP/W/252 on Council Regulation (EEC) No. 2423/88 of 11 July 1988 (ADP/1/Add.1/Rev.1).

1. Article 13:11

If it has been shown that an anti-dumping duty has been borne by the exporter, the dumping margin has increased accordingly. Under these circumstances, the application of an additional duty is in perfect consistency with the GATT.

It is clear that, if the exporter submits a substantiated request to re-examining the original findings of dumping or introduces a refund request as provided for in Article 16 of Council Regulation (EEC) No. 2423/88, the Commission will take such requests into account and deal with them in accordance with the provisions of Council Regulation (EEC) No. 2423/88. This regulation provides for sufficient guarantees so that no duty will be applied exceeding the actual dumping margin.

A possible retroactive imposition of anti-dumping duties will be subject to the conditions laid down in Article 13(4)(a) of Council Regulation (EEC) No. 2423/88 and Article 11 of the GATT Anti-Dumping Code.

2. Review and refund

The treatment of anti-dumping duties as cost incurred between importation and resale follows the rules established in Article 2(8) of Council Regulation (EEC) No. 2423/88 which is in full conformity with Article 2(6) of the GATT Anti-Dumping Code. These provisions provide that allowances should be made for all costs, including duties and taxes, incurred between importation and resale.

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As far as Article 13(11) of Council Regulation (EEC) No. 2423/88 is concerned, the question of allowances for duties paid has not yet arisen in practice. Therefore, the EC is not in a position to provide additional information.

3. Articles 2(9)(a) and 2(10)

- (i) Concerning the question whether or not indirect costs affect price comparability, the EC considers that, in a properly competitive market, prices are generally determined by market forces which are outside the control of any individual seller. In fact, prices are not just the reflection of all costs, incurred by the seller, but of their acceptance by the market. The decisive question, therefore, is whether the buyer is prepared to pay a higher price for the goods and services offered by the seller. This is clearly the case of cost factors such as differences in physical characteristics, credit terms, warranty, technical assistance, after sales services, etc. It cannot be assumed, however, that a buyer would be ready to bear the cost related e.g. to advertizing or the seller's distribution system. These are indirect costs which have no influence on the buyer's disposition to accept a certain price level and, therefore, do not affect price comparability.
- (ii) Regarding the level of trade, the EC legislation, in full conformity with Article 2(6) of the GATT Anti-Dumping Code, requires comparison between normal value and export price at the same level of trade (cf. Article 2, paragraph 9(iii) of EC Regulation 2423/88). As a reading of numerous Community decisions in the area of anti-dumping shows, this principle is constantly applied in the EC practice.