

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/Q1/EEC/15**

**G/SCM/Q1/EEC/15**

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(98-1502)

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

Original: English

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

### Replies of the EUROPEAN COMMUNITY to Follow-up Questions from JAPAN<sup>1</sup>

The following communication, dated 9 April 1998, has been received from the Permanent Delegation of the European Commission.

**Q1. When products (not for export) are sold through a sales subsidiary only to the domestic independent buyers (e.g. retailers) in the domestic market, and when exported products are sold through a sales subsidiary in the EC to independent buyers in the EC market, both subsidiaries should be treated as being at the same level of trade. In this case, does the Commission consider that sales price from the sales subsidiary to the independent buyers in the domestic market represent a different level of trade from export price at the ex-factory level?**

#### Reply

If sales prices from a single sales subsidiary of the manufacturer to independent retailers on the domestic market are compared with ex-factory export prices paid by a distributing sales subsidiary in the Community, they would be considered to represent different levels of trade. This is because the prices referred to on the domestic side represent prices to end retailers, while those on the export side represent prices to an intermediate distributor.

**Q2. If yes, should not an adjustment be made so that normal value is established at a level equivalent to that of the export price (i.e. deducting costs incurred on the domestic subsidiary) under the provisions of Article 2.10(d) of the EC Anti-Dumping Regulation?**

#### Reply

Normal value should always be established at a level equivalent to that of the export price; exporters are therefore invited to submit and demonstrate any claim for an adjustment in this respect from the outset of every investigation. Article 2.10(d) of the EC Anti-Dumping Regulation would be applied in the above example in order that the normal value be made representative of sales prices to a distributor, since the export price will have been established at this level.

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<sup>1</sup>G/ADP/Q1/EEC/12-G/SCM/Q1/EEC/12.

**Q3. If no, what is the rationale of treating the domestic manufacturer and the domestic subsidiary at the same level?**

Reply

The only rationale for treating the domestic manufacturer and the domestic subsidiary at the same level could be if both entities were selling the product concerned to an identical subsequent level in the distribution chain. The number of hands passed through is not in itself an indicator of changing levels of trade.

**Q4. According to Article 2.10(d)(i), "it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by ... (underline added)". Suppose there exists the difference of level of trade, what is the criteria on determining whether the difference of level of trade has affected price comparability?**

Reply

Demonstrable differences in levels of trade on an exporter's domestic market should have a direct effect on price comparability. The prices charged by a manufacturer to wholesale distributors, for example, could only be identical to the onward prices charged by those distributors to retailers if the distributors were operating entirely at a loss. Or put another way, if the Commission is presented with a set of uniform prices, some of which are nominally those charged to retailers and the others to distributors, a level of trade adjustment would be superfluous since the selection of either group of sales for the dumping margin calculation would give the same result. In such a case, price comparability would be deemed unaffected by the supposed difference. Normally, therefore, the criterion for determining whether price comparability is affected by a difference in level of trade is simply that the prices charged reflect the different functions performed by each level.

**Q5. What does an exporter have to show to satisfy the criteria described above?**

Reply

In order for the Commission to make an adjustment for level of trade, it asks exporters to provide information on prices paid or payable by its domestic customers, and to specify the level(s) of trade at which it considers these customers to operate. The Commission has a number of options in order to identify domestic sales at the right level. It may directly use price information provided by the exporter concerned, or price information from another exporter should this be more appropriate. Thus if any one of the exporters investigated can provide details of sales on its own market at a level equivalent to that used for establishing export prices, the Commission may use this evidence to calculate an adjustment factor in order to bring all domestic sales to the appropriate level. Nevertheless, it may be that none of the exporters can provide evidence of prices for transactions at the appropriate level, since an accurate equivalent to the export price level does not exist on that market. In such cases, the Commission may still grant a reasonable adjustment, in line with the provisions of sub-paragraph (ii) of Article 2.10(d).

**Q6. According to Article 2.4 of the WTO Anti-Dumping Agreement, "Due allowance shall be made ..., for differences which affect price comparability, including differences in ..., level of trade, ..., and any other differences which are also demonstrated to affect price comparability (underline added)". This provision indicates that the difference in level of trade affects price**

**comparability. Does the Commission impose the burden of proof on exporters that the difference in level of trade affects price comparability?**

Reply

Article 2.4 of the WTO Anti-Dumping Agreement states that allowance shall be made "in each case, on its merits, for differences which affect price comparability". The list of examples of possible such differences, including level of trade, is non-exhaustive, but is clearly subject to the assumption that price comparability is shown to be affected - "... and any other differences which are also demonstrated to affect price comparability" [emphasis added]. As stated in the previous answer the Commission actively seeks the requisite information from exporters, and provides for situations where quantitative evidence on which to base a level of trade adjustment is unavailable.

**Q7. If so, how does the Commission justify it under the provision, "The authorities ... shall not impose an unreasonable burden of proof on those parties" in Article 2.4 of the WTO Anti-Dumping Agreement?**

Reply

A burden of proof and cooperation must rest with the exporter under investigation - the stipulation in Article 2.4 of the WTO Anti-Dumping Agreement underlines the fact that this burden should not be unreasonable.

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