

# WORLD TRADE ORGANIZATION

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

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

Replies to the Questions Posed by the UNITED STATES<sup>1</sup>  
Regarding the Notification of the EUROPEAN COMMUNITIES<sup>2</sup>

The following communication, dated 2 September 2003, has been received from the Permanent Delegation of the European Commission.

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**Q1. In Article 1.2 of Council Regulation (EC) No 1972/2002 ("the Regulation"), the EC provides three situations which it views as constituting a particular market situation. Among the options specified is "when prices are artificially low." Under what circumstances would the EC disregard low prices pursuant to Article 1.2 which would not have been disregarded under Article 2.2.1 of the AD Agreement (i.e. as outside the ordinary course of trade because they were below the cost of production)?**

### Reply

At the outset, the EC would like to recall that according to the first sentence of Article 2.2 of the ADA, domestic sales prices can be disregarded "when there are now no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of a particular market situation (...) such sales do not permit a proper comparison". Thus, both concepts spelled out in this provision have the same legal consequences.

Secondly, the EC does not have any practical experience yet in the application of the new EC provision referred to by the United States. Consequently, anything the EC offers as a reply at this stage will have to be tested once the EC is confronted with the complexities of a real case.

Thirdly, the EC does not exclude that, when it comes to the practical application of the notified provision, ultimately there might be (at least a partial) overlap between the ordinary course of trade concept and the particular market situation concept.

More specifically, the particular market situation concept seems to be the more appropriate *sedes materiae* when the prices of the exporting producer subject to investigation are to a considerable extent distorted because of structural reasons which significantly affect the economic sector in question or its upstream sectors. The term "structural reasons" should be understood as referring to factors which affect the play of market forces to an extent that prices and costs can no longer be

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<sup>1</sup> G/ADP/Q1/EEC/21-G/SCM/Q1/EEC/21

<sup>2</sup> G/ADP/N/1/EEC/2/Suppl.3

considered as being the result of such play. An example falling under this category could be price fixing.

**Q2. What type of " non-commercial processing arrangements " does the EC believe would give rise to a "particular market situation" pursuant to Article 1.2 of the Regulation?**

Reply

Again, the lack of practical experience in this field makes it difficult to give comprehensive guidance in this respect. In the light of this proviso, the EC would like to clarify that a simple processing arrangement which implies an arm's length remuneration of the processor would certainly not fall under this term. However, if there are indications that the remuneration is not sufficient to cover the full costs of the processing and/or if there are reasons to believe that other than purely commercial considerations might have had an impact on the terms of the agreement. It is expected that this provision will mostly be relevant for non-commercial processing arrangements concerning the product in question but it could potentially also cover such arrangements relating to upstream products.

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