

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

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EC - REFUND OF ANTI-DUMPING DUTY

**Request for Consultations under Article 15:2
of the Agreement**

Communication from Singapore

The following communication, dated 20 January 1994, has been received from the Permanent Mission of Singapore.

Pursuant to Article 15:2 of the GATT Anti-Dumping Code, the Government of Singapore hereby requests consultations with the European Community (the "EC") concerning the application of Articles 16 and 2(8)(b) of the EEC Council Regulation No. 2176/84 and successor EEC Council Regulation No. 2423/88, and Official Journal Notice 86/C 266/02 (15 October 1986), providing Guidelines on the reimbursement of definitive anti-dumping duties collected by the Community. Consultations are specifically requested with respect to the application and interpretation of these provisions in several Commission Decisions.¹ All of the cited decisions concern the applications for refunds of anti-dumping duties collected under definitive anti-dumping regulation EEC Council Regulation 2089/84 (19 July 1984) on imports of certain ball bearings produced in Singapore and exported to the EC by the Minebea Group of companies.

Recently, such anti-dumping duties were terminated pursuant to Council Regulation No. 2553/93 (13 September 1993) retroactively to 21 September 1990 thereby permitting a full refund of all anti-dumping duties collected since that date. Nevertheless, the termination of the anti-dumping duties does not affect those duties which were collected prior to 21 September 1990 and are the subject of the court cases cited above.

The issue on which consultations are requested is the Commission's partial rejection of the importers' applications for refunds of anti-dumping duties collected on import shipments to associated importers. The importers, four EC affiliates of the exporters NMB Singapore Ltd and Pelmec Industries (Pte) Ltd, paid the appropriate anti-dumping duties upon entry and then subsequently applied for refunds pursuant to Article 16.2 of Regulation 2176/84 and successor Regulation 2324/88.

¹Commission Decision (applying Regulation 2176/84) of 22 April 1988, in 88/327/EEC (United Kingdom), 88/328/EEC (Germany), and 88/329/EEC (Italy), affirmed by the European Court of Justice ("ECJ") in Case C-188/88 (10 March 1992); and Commission Decisions (applying Regulation 2423/88) of 3 June 1992 in 92/332/EEC (France), 92/333/EEC (Germany), 92/334/EEC (United Kingdom) and 92/335/EEC (Italy), appeal filed in ECJ Case C-346/92 on 22 August 1992.

The Government of Singapore understands that it was established in the aforementioned refund proceedings that the original dumping margins were eliminated either by increasing the export price or by reducing the normal value or by a combination thereof. However, the Commission rejected the refund applications to the extent that normal value and/or the export prices were not adjusted by an amount greater than that necessary to fully eliminate the dumping margin. Furthermore, the Commission determined that in the case of sales by an associated importer on a duty paid basis (which is the situation covered by the decisions referred to above), any refund of the anti-dumping duty collected was not permissible unless export prices were increased by an amount over and above that necessary to completely eliminate the dumping margin.

These decisions were based on the Commission's treatment of anti-dumping duties that were collected as "costs" in calculating the margins in the refund proceedings. The Commission apparently believes that such action is authorized under Article 2 of the GATT Anti-Dumping Code, which allows the export price to be adjusted for costs, including duties and taxes, incurred between importation and resale. The Commission has stated that the treatment of collected anti-dumping duties as a "cost" is necessary since any refund of dumping duties is presumed to be rebated to the first unrelated customer in the EC. This alternative argument and justification suggests that the presumed rebate to the first unrelated customer would lower the export price by the amount of the anti-dumping duty collected. The Commission's analysis in all of the subject decisions was made pursuant to the EC 1986 Guidelines concerning the reimbursement of anti-dumping duties (86/C266/02).

The Government of Singapore submits that the EC's practice with respect to anti-dumping duty refund proceedings contravenes the EC's obligations under the provisions of Article VI of GATT and Articles 8:3 and 2:6 of the GATT Anti-Dumping Code. Specifically the EC practice is inconsistent with its international obligations in the following respects:

The EC practice violates Article VI of GATT and Article 8:3 of the GATT Anti-Dumping Code, which prohibit the collection of anti-dumping duties in amounts exceeding the amount of the actual dumping margin. The treatment of the original anti-dumping duties collected as a final and actual "cost" erroneously reduces the export price, thus resulting in a fictitious dumping margin.

The EC practice is inconsistent with Article 8:3 of the GATT Anti-Dumping Code, which separately requires the refund of all anti-dumping duties found to be in excess of the actual dumping margins. By treating collected anti-dumping duties as a final and actual "cost", the EC improperly negates the importers' rights to obtain appropriate refund.

The EC practice interprets Article 2:6 of the GATT Anti-Dumping Code in a manner that undermines the intent and purpose of Article 8:3 of the Code. Treating anti-dumping duty collections as a final and actual "cost" in refund proceedings improperly denies refunds in cases where the original margin has been eliminated through reductions in the normal value and/or increases to the export price.

The EC treatment of anti-dumping duty collections as a final and actual "cost" is also contrary to the plain meaning of the term "cost". Therefore, the EC action is inconsistent with the terms of Article 2:6 of the GATT Anti-Dumping Code.

The EC position - that the term "duties" in Article 2:6 of the GATT Anti-Dumping Code includes anti-dumping duties - does not result in a "fair comparison" required by the Code. By treating remedial anti-dumping duty collections as an additional cost, the EC practice automatically results in a dumping margin that exceeds the actual dumping margin.

The EC treatment of anti-dumping duty collections as "duties" under Article 2:6 of the GATT Anti-Dumping Code is contrary to the plain meaning of the term "duties". Therefore, the EC action is also contrary to Article 2:6 in this regard.

The EC practice of creating an irrebuttable presumption regarding the rebate of any refund to the first unrelated customer is contrary to Article 2:6 requirements that allowances shall be made in each case "on its merits". In all cases where there is no arrangement to rebate refunds to unrelated customers, the EC practice improperly denies refunds.

The EC practice therefore constitutes a *prima facie* case of nullification and impairment of Singapore's rights under the GATT and GATT Anti-Dumping Code.

The Government of Singapore requests that consultations be held in Geneva on a mutually agreeable date to be scheduled at the earliest convenience of both delegations. Consultations will be held with a view to reaching a satisfactory resolution of this matter. The Government of Singapore considers that such a resolution could be achieved if the EC agrees to recalculate the export price by eliminating the cost deduction for anti-dumping duties collected, agreeing to issue appropriate refunds under the revised margins, and making all necessary amendments to EC law, regulation and practice to ensure compliance with the EC's obligations under the GATT and GATT Anti-Dumping Code.