

Committee on Anti-Dumping Practices

Original: English

REQUEST FOR CONCILIATION UNDER ARTICLE 15:3 OF THE AGREEMENT

Communication from Japan

The following communication has been received from the Permanent Mission of Japan.

On 22 June 1987, the European Community (EC) adopted the new regulation (EEC No. 1761/87) which stipulates that for the purpose of preventing what the EC considers "circumvention" of anti-dumping (AD) duties on finished products, AD duties may also be applied under certain conditions to the products assembled or produced in the Community using imported parts or materials (ADP/1/Add.1/Suppl.5).

The EC for the first time applied this new regulation on 1 September 1987 to electronic typewriters and electronic scales produced by Japanese-related companies in the Community, and to excavators on 23 October 1987, photocopiers on 17 February 1988 and ball bearings on 8 June 1988. The final determinations in respect of the first three products came out on 18 April 1988 and, as a result, what the EC called AD duties were levied on two products; electronic typewriters with 21.82-56.14 ECU/unit and electronic scales 65.63 ECU/unit. Afterward, the EC Commission and some companies reached undertakings to suspend or to terminate imposing AD duties. It should be noted that the undertakings required the mandatory use of more than 40 per cent of parts of EC origin.

From the preparatory stage of the regulation, Japan has conducted bilateral consultations with the EC Commission and has expressed its concerns over the problems the regulation has in terms of the GATT and the Anti-Dumping Code. Japan also undertook multilateral process: examination of the new EC regulation and its application by the Committee on Anti-Dumping Practices in October 1987 (ADP/M/20) and May 1988 (ADP/M/22) as well as its special session which Japan requested to be held (ADP/36, ADP/M/21). A written questionnaire was submitted to the Committee by Japan asking for clarifications on several points (ADP/W/162). Although it was circulated on 26 October 1987, the replies from the EC came out in May 1988 (ADP/W/174) and were not satisfactory. Japanese counterarguments appear in ADP/M/22, paragraphs 16-19, 21, 28, and ADP/W/183.

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On 27 July 1988, Japan proceeded to request bilateral consultations under Article 15:2 of the Anti-Dumping Code with a view to reaching a satisfactory solution to the matter (L/6381). In the consultation which was held in Brussels on 16 September 1988, the EC Commission clarified the nature of the duties imposed according to the regulation as AD duties, neither ordinary customs tariffs nor internal taxes. Japan pointed out that, in order to levy AD duties, the levying party must carry out investigations on whether dumping and injury both exist, but the EC does not meet this requirement. The EC's argument was that additional AD investigations on dumping and injury are not necessary since the determinations on them have already been made in the investigations on imported finished products, and that the question of whether the "circumvention" of the AD duties occurs is the issue. Mutually agreeable solution has not been reached between Japan and the EC in the consultation.

Japan considers, as is spelled out in L/6381, that the regulation and its application contravene the EC's obligations under the relevant provisions of the Anti-Dumping Code, and constitute a prima facie case of nullification and impairment of the benefits accruing to Japan under the Anti-Dumping Code. Efforts through bilateral consultations did not lead to a mutually agreeable solution. Therefore, Japan requests the Committee on Anti-Dumping Practices to examine the matter for conciliation under Article 15:3 of the Anti-Dumping Code.