

# GENERAL AGREEMENT ON

RESTRICTED

ADP/79

4 June 1992

## TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

Original: English

### ANTI-DUMPING PROCEEDINGS IN THE EUROPEAN COMMUNITY ON AUDIO TAPES AND CASSETTES ORIGINATING IN JAPAN

#### Request for Conciliation under Article 15:3 of the Agreement

The following communication, dated 22 May 1992, has been received from the Permanent Mission of Japan.

#### Background

1. Audio cassettes are manufactured from large diameter rolls of uncut tape ("jumbos"). Slices are split from these rolls to the final width of the tape ("pancakes"); and the tape from these slices is wound onto the cassettes. Japanese companies are responsible for a large part of world production of audio cassettes. In the last decade many of these companies have established substantial production facilities overseas, so that, for example, by 1988 a high proportion of their sales in the European Community was being supplied from facilities within the Community.
2. In November 1988 the EEC Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federation (CEFIC) on behalf of producers of audio tapes on reels (jumbos and pancakes) and in cassettes alleging dumping of these products originating in Japan, the Republic of Korea and Hong Kong and material injury resulting therefrom. As a result, the Commission initiated anti-dumping proceedings in January 1989. Included within the scope of the investigation were all three of the products which arise in the course of manufacturing audio cassettes.
3. The investigation of dumping was based on sales, etc., in the year 1988, and that of injury on data from the years 1985 through 1988.
4. In December 1988, some weeks before the initiation of these proceedings, in a decision concerning cassettes and reels of video tape (for which the same production process is used), the Commission recognized that cassettes and pancakes were separate products requiring individual consideration. Seven months later, in July 1989, the Commission informed the complainants that following the decision on video tapes it was difficult to accept any longer the assertion that audio cassettes, pancakes

and jumbos should be treated as one like product. The complainant was warned that since no directly related evidence for the alleged dumping and injury of imports of audio pancakes and jumbos was submitted in the complaint, these products would be excluded from the investigation unless appropriate information and evidence was provided. Apparently no further evidence was forthcoming. The exporting companies and the Government of Japan made repeated requests for this investigation to be terminated, but this did not occur until January 1992 following the withdrawal of the complaint and after the consultations with Japan had commenced.

5. In November 1990 the Community imposed provisional anti-dumping duties on imports of audio cassettes originating in Japan, the Republic of Korea, and Hong Kong.

6. Definitive anti-dumping duties were imposed in May 1991 on audio cassettes originating in Japan and the Republic of Korea. The dumping margins calculated for Japanese exporters were: Fuji 64.2 per cent; TDK 48.2 per cent; Maxell 47 per cent; Denon Columbia 44.5 per cent (Sony did not participate in the investigation of the dumping margin). Duties were set at "a level adequate to remove the injury", which the Community calculated to be for Fuji 15.2 per cent; Denon Columbia 18.7 per cent; Maxell 21.8 per cent; Sony 23.4 per cent; and TDK and all others 25.5 per cent.

7. Japan objected to several aspects of the Community action, and consultations were held under Article 15:2 of the Code in July 1991, October 1991, December 1991, and most recently in April 1992. However, these have failed to achieve a mutually agreed solution. In accordance with Article 15:3 of the Code Japan is now referring the matter to the Committee for conciliation.

#### Japan's claim

8. In the course of the proceedings on audio tapes and cassettes the Community failed in several respects to comply with the requirements of the Anti-Dumping Code. As a result it has imposed anti-dumping duties on audio cassettes from Japan which are either completely unjustifiable, or, at least, are at levels which cannot be justified. Some of the Community's failures concern matters specific to this investigation; others reflect rules previously adopted by the Community's anti-dumping authorities, and against which Japan and other signatories have frequently protested.

9. The failures relate to each of the three essential findings which the Code requires to be made before duties may be imposed: that the audio cassettes imported from Japan were being dumped, that the Community's producers of audio cassettes were suffering material injury, and that the imports from Japan were, through the effects of dumping, causing this injury. As regards audio tapes, Japan's complaint is that the Community initiated and continued the investigation without sufficient justification.

10. These failures constitute prima facie nullification or impairment of benefits accruing to Japan under the Code. Japan therefore requests the Community to revoke the order imposing duties on audio cassettes, and refund any duties which have already been paid.

(CASSETTES)

I. CALCULATION OF THE DUMPING MARGIN

11. The rules which the Community applied in calculating dumping margins in the audio cassettes investigation are incompatible with the Code in two important respects.

A. Asymmetrical comparison of export price and normal value

12. In making a comparison between export price and normal value the Community compared prices which had been calculated on different bases without making an appropriate adjustment, with the result that dumping margins were artificially created or exaggerated.

13. For audio cassettes and many other products exported from Japan, manufacturers need to maintain selling and support operations close to their customers, and for this reason they establish importing and selling subsidiaries within the Community. Since these are "associated importers" the Community calculates the export price by deducting from the arm's-length sales price a sum corresponding to the indirect selling costs, and profit, of the associated importer, as well as all direct selling costs wherever incurred. On the other hand, in deriving the normal value, the only deduction made from the domestic sales price (or the constructed value calculated by the Community) is one corresponding to direct selling costs.

14. Consequently, the export price reflects deductions for some profit and for indirect selling expenses whereas no corresponding deductions have been made from the normal value. Nevertheless, in comparing the two prices for the purpose of calculating the dumping margin, the relevant Community rule forbids any allowance to adjust for this asymmetry.

15. This asymmetrical rule infringes the obligations of the Code, in particular:

- (a) the obligation in Article 2:1 to determine the dumping margin on the basis of "comparable" prices; and
- (b) the obligation in Article 2:6 to "effect a fair comparison between the export price and the domestic price in the exporting country".

The Community's methodology cannot also be reconciled with the rule in Article 8:3 of the Code that "the amount of the anti-dumping duty must not exceed the margin of dumping".

B. Distortion of the dumping margin (Wrong method of averaging)

16. In calculating the dumping margin the Community makes adjustment so that all export sales made at a price above the relevant average normal value ("negative dumping") are treated as though they had been made at the average normal value; i.e. the dumping margins on those sales are treated as though they were zero rather than negative.

17. This rule is inherently arbitrary and unfair. In particular, whenever prices vary, an exporter who rigorously maintains equal domestic and export prices will nevertheless be found to be dumping. The reason is that the normal value used is an average figure (typically of one month's or one year's sales), whereas the export price is the actual price of each individual sale. When prices vary, some export prices are above the level of the normal value, and are "zeroed" in the calculation. On the other hand, those export prices which fall below the normal value are registered as such. Consequently the average export price used in the calculation is below the average normal value, and a dumping margin is either created or artificially exaggerated.

18. The rule is incompatible with the Code, in particular as regards:

- (a) the obligation in Article 2:1 to calculate the dumping margin on the basis of actual, and not artificial export prices;
- (b) the obligation in Article 2:1 to determine the dumping margin on the basis of "comparable" prices; and
- (c) the obligation in Article 2:6 to "effect a fair comparison between the export price and the domestic price in the exporting country."

19. Even on the Community's interpretation of the data which was disputed by the exporters on the amount of prices and costs it is evident that the application of these two rules mentioned in A and B above significantly affected the outcome of the audio cassettes investigation.

II. CAUSATION OF INJURY

20. In its decision on audio cassettes the Community has failed to establish that dumping by Japanese exporters was the cause of any injury suffered by the Community industry, and is therefore in breach of Article 3 of the Code.

21. In particular the Community, without any justification, cumulated the exports of Japan with those of Korea, and made no independent assessment of whether dumped imports from Japan were causing any injury to the Community industry, or any injury which was material.

22. Article 3:2 of the Code provides two factors relevant to the issue of causation: volume and price. A significant volume increase is required, for which the Code supplies three criteria. On two of these criteria ("relative to production or consumption in the importing country") imports from Japan declined in the relevant period, and on the remaining criterion (absolute level of imports) they registered a small increase. Japan maintains that in these circumstances the requirement of "significant increase" was not satisfied.

Sources of EC consumption: 1985 and 1988

Supplied by	1985		1988	
	million unit	%	million unit	%
Japan	142.0	41.9	154.0	35.1
Korea (found to be dumped)	7.0	2.1	51.0	11.6
Korea (not found to be dumped)	51.0	15.0	50.0	11.4
Hong Kong	4.9	1.4	7.0	1.6
EC-owned producers in EC	94.0	27.7	86.0	19.6
Japanese-owned producers in EC	39.6	11.7	81.5	18.6
Other	0.5	0.1	9.5	2.2
<b>Total</b>	<b>339.0</b>	<b>100.0</b>	<b>439.0</b>	<b>100.0</b>

23. The price factor is also expressed in three ways: price undercutting, price depression and price suppression. As regards undercutting, the Community's positive finding is defective because its methodology is not in accordance with the Code, and because in any case the reported undercutting is not significant.

24. The methodology used by the Community to calculate an undercutting margin from the prices selected for comparison contained arbitrary and prejudicial elements. In particular:

- (a) The Community carries out "zeroing" of overcutting margins as already described in regard to dumping margins.
- (b) The comparison was apparently not made with the price of the "like product of the importing country" as required by Article 3:2 of the Code, but with the product of one domestic producer.
- (c) Even on the data supplied by the Community it appears that, at most, of the three significant Japanese exporters only one was undercutting, and that its exports accounted for a small percentage of Japanese exports to the one Community member State where undercutting was detected. On the other hand, the prices of the two largest Japanese exporters were above those of Community producers in all the member States by factors of

between 10 and 40 per cent. In these circumstances no reasonable person could conclude that the situation was one of "significant price undercutting" with respect to the entire Community market.

25. The Community made no coherent attempt to establish price suppression or depression. The only explanation it offered was that "... in the other member States ... where they already held a predominant market share, the Japanese exporters resold their dumped imports at prices which forced the Community industry to undersell in an attempt to retain its market share." This argument merely suggests that the problem facing Community producers was not the price of the Japanese cassettes.

26. Finally, the Community has failed to establish, as required by Article 3:4 of the Code, that the dumped imports are, "through the effects of dumping" causing injury. The evidence made available to the investigation showed that, because of the substantial production of Japanese audio cassettes outside of Japan (and especially that within the Community) Community producers would have been no better off if the prices of Japanese exporters had been raised to the normal value. Furthermore, the fact that Japanese audio cassettes at prices much above those of Community producers continued to gain market share demonstrates that any loss of sales which occurred was not the result of the prices at which exports from Japan were sold.

### III. INJURY

27. The Community recognized that the market for audio cassettes fell into two distinct segments, and that Japanese exporters competed in only one of these. Furthermore, evidence which emerged during the investigation showed that only one of the two producers which comprised the Community industry competed with Japanese exporters in this segment. Nevertheless, in considering the issue of injury the Community averaged the position of the producer which competed with Japanese exporters with that of another producer which did not compete with the imports from Japan and seemed to be in much worse position.

28. In terms of loss of sales the Community was able to find evidence of injury in only one member State, comprising 29 per cent of the Community market.

29. Consequently, the Community's conclusion on injury was not in accordance with Article 3 of the Code.

30. Furthermore, by making a finding of injury when the sole detectable injury was to a single member State, the Community has misapplied the Code which provides a unique remedy for situations of regional injury (Article 4:1(ii)), the conditions for which are not satisfied by the circumstances of the audio cassettes case.

(TAPES)

31. By commencing and maintaining proceedings in respect of "pancakes" and "jumbos" which constituted a different product to audio cassettes the Community failed to satisfy the requirements of the Code, in particular:

- (a) Article 5:1 that there be "sufficient evidence" of dumping, injury, and causation before proceedings are commenced; and
- (b) Article 5:3 that the investigation should be "terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case."