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## TARIFFS AND TRADE

Committee on  
Anti-Dumping Practices

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

#### Addendum

Reference Paper for the establishment of a panel under Article 15:5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

The purpose of this paper is to provide the Parties with the Japanese view on this case. Japan reserves the right to elaborate on the issues covered in this reference paper.

#### Background

1. 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 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.

2. 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.

3. 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.

4. 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). And definitive anti-dumping duties imposed were: 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.

5. Japan objected to several aspects of the Community's action, and consultations were held under Article 15:2 of the Code in July 1991, October 1991, December 1991, and April 1992. These failed to achieve a mutually agreed solution. In accordance with Article 15:3 Japan referred the matter to the Committee for conciliation, and a meeting was held for this purpose on 9 July 1992. No mutually satisfactory solution having

been reached after examination by the Committee, or in the period since then, Japan concludes that the conciliation has been unsuccessful and thus requests the establishment of a panel under Article 15:5 at the earliest opportunity.

#### Japan's claim

6. In the course of the proceedings on audio cassettes the Community failed in several respects to comply with the requirements of the Code. As a result it has imposed anti-dumping duties on audio cassettes from Japan which are completely unjustifiable. Some of the Community's failures concern the application of the Community's regulation in a manner inconsistent with the Code; others concern the relevant provisions of the Community's regulation itself, which are inconsistent with the Code and which were applied in this case.

7. 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 originating in Japan were being dumped, that the Community industry was suffering material injury, and that the imports from Japan were, through the effects of dumping, causing this injury.

8. The result of these failures is that the benefits accruing to Japan under the Code have been nullified or impaired.

Therefore, the COUNCIL REGULATION (EEC) No. 1251/91 should be revoked, the duties already paid should be reimbursed, and the Community should bring its relevant provisions of the COUNCIL REGULATION (EEC) No. 2423/88 and its application into conformity with the Code.

#### I. CALCULATION OF THE DUMPING MARGIN

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

##### A. Asymmetrical comparison of export price and normal value

10. When making a comparison between export price and normal value in the situation where the exporter and importer are associated the Community applies a rule which artificially creates or exaggerates dumping margins. This occurs because "the normal value" and "the export price" which have been calculated on different bases are compared without appropriate adjustments.

11. 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 importers, 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 is one corresponding to direct selling costs.

Thus, an amount for profit and indirect expenses is deducted from the export price, but no such deduction is made from the normal value. No adjustment is made for this asymmetry when the prices are compared.

12. For audio cassettes (as for many other products exported from Japan), commercial pressures require manufacturers to maintain selling and support operations close to their customers. They achieve this by establishing importing and selling subsidiaries within the Community.

The scale of these operations is substantial, and the distorted effect which is creating artificial dumping margins or exaggerating them, because of the Community's rule of asymmetrical comparison, is correspondingly large.

This distorted effect is aggravated by the Community's broad view of "indirect expenses". In particular in this case, advertising is regarded as "indirect expenses" by the Community even though that is directly related to the selling of the specific products, so advertising expenses in Japan are not deducted from the normal value, whereas those incurred in the Community are deducted from the export price.

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

- (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"

Furthermore, in this case the Community's rule cannot be reconciled with the rule in Article 8:3 which states "the amount of the anti-dumping duty must not exceed the margin of dumping".

#### B. Wrong method of averaging

14. Most anti-dumping investigations have to examine a considerable number of individual export sales, and the Community compares individual export prices to an average normal value. It often happens that prices vary, so that for some sales the export prices are actually above, rather than below, the average normal value. In these cases, where there is so-called "negative dumping", the Community artificially lowers the export price to the level of the average normal value, thereby "zeroing" the dumping margin for those particular sales. It then takes an average of these individual margins to determine the overall dumping margin, even though no finding is made that the price of the individual sale in the Community is below the individual sale in the home market.

15. Once again, the effect of this rule is to create or exaggerate dumping margins.

16. 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 "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".

Furthermore, in this case the Community's rule cannot be reconciled with the rule in Article 8:3 of the Code which states "the amount of the anti-dumping duty must not exceed the margin of dumping".

C. Other defects

17. The Community made a number of errors in determining the costs and profits of the Japanese exporters when constructing their normal values. In these respects also the Community's actions were inconsistent with Article 2, and in particular paragraph 4.

II. CAUSATION OF INJURY

18. 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.

19. In particular the Community, without any justification, cumulated the exports of Japan with those of Korea, and made no independent assessment of whether dumping imports from Japan were causing any injury to the Community industry. This conflicts with Article 3 of the Code, and in particular paragraph 4.

20. 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 provides three criteria. On two of these three 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<br>million<br>unit | %            | 1988<br>million<br>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> |

(Source: COMMISSION REGULATION (EEC) No. 3262/90 of 5 November 1990)

21. The requirements in the Code with respect to the price factor is also expressed in three ways: existence of 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.

22. 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, as already described in regard to dumping margins (paragraph 14).
- (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 owned producers 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.

23. The Community made no coherent attempt to establish price suppression or depression. The only explanation it offered in COMMISSION REGULATION (EEC) No. 3262/90 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 the Community industry was not the price of the Japanese cassettes.

24. 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. For example, 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) the Community industry would have been no better off if the prices of Japanese exporters had been raised. Furthermore, the fact that, although sold at prices much above those of the Community industry, these cassettes 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

25. The Community recognized that the market for audio cassettes fell into two distinct segments (one characterized by high quality, the other by low price), 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 a much worse position.

26. 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.

27. Consequently, the Community's injury determination was not in accordance with Article 3 of the Code.