

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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REQUEST FOR CONSULTATIONS UNDER ARTICLE 15:2 OF THE ANTI-DUMPING CODE

Communication from Japan

On behalf of the Government of Japan, I wish to request consultations with the European Community under Article 15:2 of the Anti-Dumping Code concerning Articles 16 and 2(8)(b) of EEC Council Regulation 2176/84; Articles 16 and 2(8)(b) of EEC Council Regulation 2423/88, and Notice 86/C 266/02 of 15 October 1986 concerning the refund of anti-dumping duty, as applied and interpreted in, for example, the Commission Decisions (88/327/EEC, 88/328/EEC and 88/329/EEC) of 22 April 1988.

Refunds have been requested on many occasions in respect of anti-dumping duties levied on imports from Japan and other countries. The EC Commission has for a number of years taken the position that, when deciding whether the related affiliate of an exporter is eligible for a refund of anti-dumping duty levied on imports by that affiliate from that exporter, the anti-dumping duty paid by such an affiliated imported is a "cost" which is to be deducted when calculating the so-called constructed Export Price at which the product is sold in the Community.

A number of Japanese companies elected not to seek refunds because of the Commission's policy, which was publicly announced in 1986.

The practice of treating anti-dumping duty as a cost in refund procedures has been challenged in judicial proceedings, commenced in 1988, in which the European subsidiaries of a Japanese group, Minebea, challenged the denial to them of a full refund. The judgement of the European Court of Justice of 10 March 1992, has confirmed that the practice of the EC is valid under Community law.

Now that confirmation of the position within the Community's internal legal order has been obtained, it is clear that Japanese companies whose products are subjected to EC anti-dumping duties will, if such products are sold in the Community by related importers, be ineligible for a refund even where, properly viewed, dumping has been eliminated.

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The Government of Japan considers that the practices of the EC with respect to the treatment of anti-dumping duty as a cost and, as confirmed by the recent judgement, contravene the EEC'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.

The Government of Japan requests that the consultations be held on an agreeable date to both sides, preferably in the week starting 27 April 1992 in Geneva with a view to reaching a satisfactory solution of this matter which should include withdrawal of the EEC's decisions and refund of the anti-dumping duties which were levied on the 1985 and 1986 imports, but not yet refunded to the Minebea group.