Committee on Anti-Dumping Practices

Draft Minutes of the Meeting
held on 23-25 February 1977

Subjects discussed:

A. Discussion of the amended inventory (COM.AD/W/63)

B. Imposition of a provisional anti-dumping duty, by the European Communities, on ball bearings, tapered roller bearings and parts thereof originating in Japan.

C. Investigation by the United States International Trade Commission under Section 337 of the Tariff Act of 1930 and the Trade Act of 1975

D. Countries non-adherents to the Anti-Dumping Code

A. Discussions of the amended inventory (COM.AD/W/63)

1. As agreed at its last meeting in October 1976, the Committee on Anti-Dumping Practices reconvened on 23 February 1977 to pursue its work on the amended inventory of problems and issues arising under the Anti-Dumping Code and its application by the parties to the Code (L/1408, paragraph 18). As instructed by the Committee the secretariat had prepared an amended version of the systematic inventory which included written contributions submitted by members of the Committee since the October 1976 meeting. This document was circulated in COM.AD/W/63.

2. The Committee agreed that the secretariat should draft a new version of the amended inventory on the basis of the contributions made by the members of the Committee at its February 1977 meeting. The members of the Committee were invited to submit any further comments or suggestions they may have on the inventory not later than on 30 April 1977. These communications will be issued as addenda to the analytical inventory.

1 The analytical inventory has been issued in COM.AD/W/68 on 8 March 1977.
3. The Committee decided to hold a special meeting in the month of June, in order to continue discussions on the new version of the amended inventory, focusing on the progress achieved under the Code and the areas of continued difficulties as perceived by the members. The Committee will also consider to what purpose the inventory and the Committee's consultations might best further the objectives of the Code. In this regard, the Committee may wish to examine the need or desirability of further clarifications of the Code on topics of primary concern to the members, including those problems ambiguously or not adequately covered by the literal text of the Code.

B. Imposition of a provisional anti-dumping duty by the European Communities on ball bearings, tapered roller bearings, and parts thereof originating in Japan

4. By introducing the subject, the representative of Japan outlined briefly the case by stating that the Commission of the European Communities (EC) had initiated its investigations on 13 November 1976 upon a request on 15 October 1976 on behalf of the ball bearing industries in France, the Federal Republic of Germany and the United Kingdom. A hearing was held on 18–19 January 1977 and a decision was made on 4 February 1977 to introduce a provisional measure, which was promulgated on the following day. The provisional measure was effective as from 5 February for three months and covered all ball bearings, tapered roller bearings and their parts originating in Japan. It took the form of a provisional anti-dumping duty of 20 per cent, with the exception of a 10 per cent rate applicable only to two specified suppliers.

5. He first pointed out that the procedural process had been much too short for the EC Commission to take a valid decision on the provisional measure. Accordingly, his delegation questioned whether such a short period of examination could provide the EC Commission with sufficient evidence to justify the conclusion drawn by it in respect of the provisional measure. Furthermore, he doubted whether the investigation had been conducted in accordance with Article 6(a) of the Code, taking into account that the time for submission of additional evidence by the Japanese suppliers had been limited to a period of one week after they had been notified, and since they had been given only a short period of time to prepare the defence of their interests in the hearing.

6. The next point raised by the representative of Japan concerned the discrepancy between the export coverage of the investigated suppliers and that of the suppliers subject to the provisional anti-dumping duty. By referring to Article 6(b) of the Code, he stressed that no anti-dumping duty should in principle be levied unless justified on the ground of individual positive findings; the investigation conducted by the EC Commission had been limited to 4 suppliers while the provisional anti-dumping covered all the Japanese suppliers of the products concerned.
7. As to the exception to the general rule provided for by Article 8(b) of the Code, i.e. that the authorities might name the supplying country concerned, he asked whether it had really been impracticable to name all the suppliers individually.

8. As regards the discrepancy between the coverage of investigated products and the products subject to the provisional anti-dumping duty, he stressed that the provisional measure in question covered all categories of bearings, whereas the investigation so far conducted had been limited to sixteen categories of bearings. Therefore, it was not reasonable for the EC Commission to submit all types of bearings to the provisional measure, keeping in mind the limited investigation of which the findings were not at all representative.

9. Finally, by referring to Article 10(c) of the Code and in the light of the information provided by the EC Commission, he raised the point of the difficulty in identifying the reasons for the decision regarding imposition of provisional measures and the criteria applied. In order to put the Japanese Government as well as the Japanese suppliers in a position to respond in an effective manner in the future development of the issue, he requested the EC Commission to provide as soon as possible the Japanese side with the above-mentioned information, i.e., among other things, positive findings in quantitative as well as qualitative terms which could prove the existence of the alleged dumping margin and injury.

10. In an initial statement the representative of the European Economic Community pointed out that the measure imposed vis-à-vis Japanese firms was only a routine administrative measure, that the requirement of deposit of security should not cause any real problems for Japanese firms installed in the EEC, and that the product was not sufficiently important to warrant the publicity that had been given to the case. In rebuttal of the considerations presented by the Japanese representative, he noted that the first argument was that the measures had been imposed precipitately, without adequate contact with the Japanese authorities. With respect to the historical development of the EEC procedure, the speaker pointed out that initial contacts with the European industry on the case under reference had taken place in early 1976. For one year already the European industry had been making specific complaints regarding dumping practices in connexion with imports of ball bearings from Japan. The formal complaint had been made only in October 1976. In the meantime, preliminary discussions had taken place between the Commission of the Communities and the complainants, and the preliminary investigation had lasted nearly six months. The anti-dumping procedure had been initiated formally one month after presentation of the complaint, the period normally applied in other countries represented in the Committee on Anti-Dumping Practices. Japanese producers had been allowed four weeks to present in writing and in detail their position concerning the accusations that had been
made against them. The text of the complaint had been communicated in full, representing about fifty pages including annexes and tables. The four-week period was likewise that normally applied in most of the member countries of the Committee. Nevertheless, that period had been extended to six weeks in order to allow careful examination of certain documents from Japanese producers which had not been received by the end of the period initially set. After detailed examination of documents, notes and invoices in respect of hundreds of different kinds of ball bearings, the Japanese producers had been invited to justify their position with the EEC producers on 17 and 18 January 1977 at Brussels. Whereas until then the EEC had been able to reach an amicable settlement regarding most anti-dumping procedures, the Japanese producers had not offered any sign of conciliation or of the possibility of an amicable arrangement, and had denied any dumping. Concrete evidence of dumping and the critical situation of the EEC ball bearing industry had led to the decision of 3 February 1977 to impose provisional duties. The decision had entered into force the next day because of the existence of very substantial speculative stocks in customs warehouses. Consultations at ministerial level had taken place on several occasions and the Japanese authorities had taken practically no action on the EEC representations. Concluding on the first point, the speaker observed that the action taken by the EEC had been fully consistent with the provisions of the Anti-Dumping Code.

11. With reference to the second consideration that the Japanese representative had presented, concerning differences between the investigated suppliers and those subject to the provisional duty, the representative of the EEC recognized that the differentiation between small and large exporters gave rise to a real problem, but one that was of relatively limited scope. Indeed, four major Japanese exporters of ball bearings were selling in the EEC through their branches established within the Community. The other Japanese ball bearing producers were small firms with practically no exports to the EEC. That situation did not prevent a free importer within the EEC from importing occasionally through other channels. With reference to Article 8(b), the speaker pointed out that where it was impracticable to name all the suppliers of a product, the authorities could name the supplying country concerned. It was a matter, therefore, of considering first the principal exporters, and then reimbursing the anti-dumping duty where there was no dumping. The EEC was prepared to grant special treatment to small exporters, on condition that any trade diversion was prevented.

12. In reply to the third argument developed by the Japanese representative, i.e. that the preliminary investigation had covered too few types of ball bearings, the representative of the EEC pointed out that because of the very large number of ball bearings exported to the Community and the impracticability of examining all price situations, it had been necessary to select sixteen representative types and on that basis to draw conclusions in respect of the products as a whole. At the
stage of the preliminary investigation, convincing evidence of considerable dumping had been established. In the context of the definitive investigation, a broader range of products would be examined.

13. With reference to the fourth argument presented by the Japanese representative, concerning the obligation incumbent on the EEC to justify its decision in terms of Article 10(c) of the Anti-Dumping Code, the representative of the EEC pointed out that Regulation No. 261 published in the Official Journal of the European Communities on 3 February 1977 contained a detailed justification of the decision regarding ball bearings. When the definitive investigation was made, calculations of the dumping margin would be established and would then be discussed in detail with the Japanese authorities. Concerning the problem of confidential treatment of matters dealt with, he recalled that after the complaint had been presented, the Japanese producers had steadfastly refused to give any information to the EEC complainants.

14. Referring to the counter-arguments presented by the representative of the EEC, the representative of Japan underlined that the anti-dumping measure apart from its purely economic consequences also had had a considerable psychological impact on the industry affected. He stressed that the Japanese suppliers of the products concerned were not able to submit information on this complicated item in such a short time. He pointed out that small suppliers should have been excluded from the application of provisional measures. He reiterated that out of some 4,000 types of bearings only sixteen had been the subject of examination but that the imposition of the provisional anti-dumping duties covered all types of bearings. He asked about the calculation of the mark-up rate, and some other factors such as the costs of marketing, interest and advertisement. As to the transactions of affiliates of Japanese manufactures situated in the EEC, he asked about the way of comparing export price and ex-factory price.

15. In reply, the representative of the European Economic Community cited the following examples to illustrate how the dumping margin was calculated. With respect to the Japanese market price, the Community authorities had based themselves on the price lists of Japanese producers, reduced by a substantial amount varying between 60 per cent, according to European producers, and 70 to 80 per cent according to Japanese exporters. In the context of the preliminary decision of the EEC, reasonable criteria had been applied and the indications furnished by Japanese producers had been followed very closely. With reference to the second element of calculation of the dumping margin, i.e. export prices to the EEC, the speaker pointed out that given the sales strategy of Japanese exporters and the establishment of affiliates within the EEC, the export price was a transfer price as between the parent firm and its affiliate within the EEC. Article 2(e) of the Anti-Dumping Code stipulated that the export price could be constructed on the
basis of the first price in fully competitive conditions in the EEC market, which was therefore the price at which the product was resold in the EEC market by Japanese affiliates to European firms or wholesalers. In the light of the prices practised by Japanese firms, the conclusion had been drawn that most of those firms covered only a tiny part of their costs in the EEC market. The sale price within the EEC, constructed in accordance with the provisions of Article 2(e) of the Anti-Dumping Code, had been compared to the sale price in the Japanese market and adjusted in accordance with the provisions of Article 2(f) of the Code so as to allow for the costs of transport, insurance, packaging, sale and credit. With respect to the dumping margin, the speaker underlined the difficulty of presenting detailed information since the results differed according to the type of product of the firm and the branch considered. Although the calculations were only preliminary, he wished nevertheless to give a typical example of a dumping margin chosen from among the two Japanese producers subject to a provisional duty of 10 per cent and not 20 per cent. Examination of a representative range of products had yielded the following results: in 25 per cent of the cases the dumping margin exceeded 20 per cent; in 5 per cent of cases it was between 15 and 20 per cent; in 20 per cent of cases, between 10 and 15 per cent; in 5 per cent, between 5 and 10 per cent; in 20 per cent, between 1 and 5 per cent; in 25 per cent of the cases, no margin for the moment.

16. The representative of Japan referred to the small suppliers and pointed out that there were only between 10 and 20 of such suppliers, and that it would not have been impracticable for the EEC authorities to name all these suppliers, but that the EC authorities had not been able to investigate other firms because of the time shortage. As to the reimbursement of anti-dumping duties in case of no dumping, he stressed that it was not reasonable that innocent outsiders should make a proof of the non-existence of dumped exports to get the reimbursement. As to the calculation of margins of dumping, he pointed out that the price comparisons made by the Japanese suppliers had given quite different results and he asked for further clarification through bilateral channels i.e. not only theoretical explanations but also the practical basis of calculations. Finally, he referred to the question of trade circumvention to state that the small suppliers could not alone disrupt the EEC market, and that it was thus unnecessary to impose provisional measures on them, once imports from the main suppliers were under control.

17. The representatives of Japan and the EEC agreed to continue the discussion bilaterally.

C. Investigation by the United States International Trade Commission under Section 337 of the Tariff Act of 1930 and the Trade Act of 1975

18. The representative of the European Economic Community criticized the repeated application of the provisions of Section 337 of the Tariff Act of 1930 and underlined the danger inherent in possible proliferation of such action. He expressed
concern regarding divergences existing between Section 337 of the Tariff Act and the Anti-Dumping Code in respect of concepts and procedures. Duplication of procedures might bring into question the Anti-Dumping Code as a whole. In addition, he mentioned the case of chicory which had recently been terminated, but the only reason for such termination had been the absence of co-operation on the part of the American complainants who had refused to furnish any information, whereas they had required numerous documents from the European producers in support of their claim. Such an attitude involved substantial costs for the firms concerned and disrupted trade channels.

19. The representative of Japan recalled that his Government was very concerned over the case of television receivers as mentioned in the minutes of the meeting of the Committee on Anti-Dumping Practices of October 1976 (COM.AD/41, paragraph 17).

20. The representative of the United States informed the Committee that a communication had been despatched to the International Trade Commission presenting the views that had been expressed by delegations at the October 1976 meeting.

D. Countries non-adherents to the Anti-Dumping Code

21. At its October 1976 meeting, the Committee on Anti-Dumping Practices agreed to invite countries non-adherents to the Anti-Dumping Code to discuss with the members of the Committee, in connexion with the special meeting of the Committee held on 11 February 1977, the problems that faced those countries in the anti-dumping field. The Committee also agreed to invite these countries to provide any written contribution which they might wish to make for these discussions. The Committee took note of the following communication received from Israel:

"On 4 January 1977 the Knesseth (Parliament) approved the Anti-Dumping Law 5737-1977. The law empowers the Ministers of Finance and of Commerce and Industry to issue regulations for its implementation. These regulations are being drafted in accordance with the relevant provisions of the Agreement on the Implementation of Article VI of the General Agreement. Authorized translations of the law and of the regulations will be provided to the Committee as soon as available.

"This information is being transmitted to the Committee without prejudice to Israel's position in Group "Non-Tariff Measures" of the Multilateral Trade Negotiations concerning the application of Anti-Dumping Measures."