

MEASURES AFFECTING THE WORLD MARKET
FOR COPPER ORES AND CONCENTRATES

Note by the Director-General

At the meeting of the CONTRACTING PARTIES on 2 December 1987, the Chairman informed the CONTRACTING PARTIES that the EEC and Japan had jointly requested a conciliation by the Director-General under paragraph 8 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) in their dispute concerning certain pricing and trading practices for copper in Japan (SR. 43/4).

Following this request I nominated Mr. Gardner Patterson as my Personal Representative for good offices. In establishing factual information, Mr. Patterson was assisted by Mr. Martin Thompson from Rio Tinto Zinc who had been contracted as an independent expert on the copper market in accordance with the understanding between the EEC and Japan.

On 16 December 1988 Mr. G. Patterson submitted to me the following report which I have communicated to the two parties concerned in pursuance of the request for conciliation addressed to me and which I herewith present for information to the CONTRACTING PARTIES.

GOOD OFFICES REPORT BY THE PERSONAL REPRESENTATIVE
OF THE DIRECTOR-GENERAL ON THE DISPUTE BETWEEN THE
EUROPEAN COMMUNITIES AND JAPAN CONCERNING CERTAIN PRICING
AND TRADING PRACTICES FOR COPPER IN JAPAN

I

1. This dispute began in the 1960s. The EC has maintained that their copper smelting and refining industry has suffered from serious difficulties in obtaining adequate supplies of copper concentrates on acceptable terms. These difficulties were seen as stemming from market distortions resulting from the Japanese smelters often offering higher prices for concentrates than what the EC smelters believe "normal market conditions" justify, thus enabling them to obtain inequitably large shares of concentrates. The EC smelters and refiners have alleged that the high internal price of refined copper in Japan, which made it possible for Japanese smelters to offer such high prices for concentrates, is a result of "questionable practices", including high Japanese tariffs on imports of refined copper, concealed import restrictions, possibly hidden subsidies, and a price cartel operated by the Japanese producers. The Japanese authorities have insisted that the Japanese import duties are consistent

with their GATT obligations, that there are no hidden restrictions on imports, that there is no producers' cartel in Japan, and that the purchasing terms for copper concentrate are a purely commercial matter and so are completely outside the purview of the GATT.

2. This dispute first came before the GATT Council in 1982 and has been revisited, with inconclusive results, several times since. In December 1987, in accordance with paragraph 8 of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, the parties requested the Director-General, or an individual nominated by him in consultation with the parties, to mediate in this dispute. As a first step the Director-General was asked to establish the factual situation. To this end an independent expert, Mr. Martin Thompson, was retained by the parties. His study was completed in October 1988, and was submitted to and commented on by the parties. It has been of great help in preparing this report. The parties presented their positions in joint meetings on 12 July 1988 and 15 December 1988.

3. The parties requested the Director-General, on the basis of this fact-finding exercise, to offer an advisory opinion with a view to resolving the dispute.

II

4. From the evidence submitted I reach the following conclusions:

One. Japan has not violated any of its GATT obligations. Nor was any evidence presented of the existence of a producers' cartel in Japan. Although certain kinds of government assistance (research funds, aid for stockpiling, unemployment aids etc.) have been extended in both Japan and the EEC, these do not appear to be of the sorts or amounts that have had any significant impact on the competitive position of the industry in either Japan or the EEC.

Two. The EEC industry in the past has suffered considerably from the capacity of the Japanese smelters to undercut their smelting terms. In particular, the EEC industry has been hurt by Japan's ability and willingness at times to pay a higher price for concentrates than the EEC industry found possible and so to take a larger share of them. As a consequence, the EEC industry was not able to expand its production in line with consumption.

* See L/5286, 29 January 1982; L/5627, 2 March 1984; CIM/176, 10 April 1984; C/W/439, 11 May 1984; L/5654, 14 May 1984; CIM/178, 13 June 1984; CIM/179, 2 July 1984; C/M/183, 10 December 1984; MDF/5, 18 January 1985; L/5992, 12 May 1986; C/M/198, 12 June 1986; C/M/201, 7 August 1986; L/6167, 17 May 1987; C/M/213, 7 October 1987; SR/434, 2 December 1987. In addition, several informal consultations were held during this period.

The EEC producers have apparently not been kept seriously short of concentrates for their existing capacity. Moreover, a number of recent market developments in both Japan and the EEC, and in certain mining countries, are operating to ease the past adverse effects on the EEC of Japanese activities.

Three. A major element, this time in the sphere of government action and responsibility, in creating the situation giving rise to this dispute and which still continues is the Japanese tariff on cathodes and wire bar. (The form in which the bulk of unfabricated refined copper is traded.) This tariff is legal under the GATT. It has been cut in past GATT "rounds". And it is currently applied at a rate below the bound rate. Nevertheless, it remains the highest of any of the major developed countries, in many of which, including the EEC (excluding Spain until 1992) this tariff is zero. The Japanese tariff is the major reason the domestic sales price for refined copper is higher in Japan than it is in the EEC. And it is this difference which contributes significantly to the ability of Japanese smelters to undercut EC smelters in the copper concentrate market by offering higher prices for concentrates - the heart of this dispute.

III

5. In the light of these conclusions and my belief in the good faith of both parties, and bearing in mind the agreement reached in the context of the Uruguay Round that substantive tariff negotiations are scheduled to begin no later than 1 July 1989, it is my advisory opinion that this dispute should be resolved once and for all by the EC and Japan forthwith entering into reciprocal and mutually advantageous negotiations with a view to substantially reducing or eliminating the Japanese tariff on cathode and wire bar. It would be understood that these measures would be part of the liberalization effort undertaken in the Uruguay Round and that they would therefore be extended on an m.f.n. basis.