

COMMISSION DECISION

of 29 November 1974

relating to proceedings under Article 85 of the Treaty establishing the EEC
(IV/27.095 — Franco-Japanese ballbearings agreement)

(Only the French text is authentic)

(74/634/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof;

Having regard to Council Regulation No 17 ⁽¹⁾ of 6 February 1962, and in particular Articles 1 and 3 thereof;

Having regard to the Decision taken by the Commission on 14 November 1973 to commence proceedings on its own initiative pursuant to Article 3 of Regulation No 17 against the French and Japanese undertakings which were parties to an agreement concluded in 1972 to increase the price in France of ballbearings imported from Japan;

Having undertaken investigations pursuant to Article 14 of Regulation No 17 and having heard the parties concerned, as required by Article 19 (1) of that Regulation and by Regulation No 99/63/EEC ⁽²⁾ of 25 July 1963;

Having regard to the Opinion of the Advisory Committee on Restrictive Practices and Monopolies of 27 September 1974, obtained under Article 10 of Regulation No 17.

I. The facts

1. The investigations undertaken by the Commission in France disclosed the following facts:

- (a) On 16 February 1972 a meeting was held between the Japanese ballbearing manufacturers and their French counterparts at the offices of the *Chambre syndicale nationale de la mécanique de haute précision* (hereinafter referred to as the '*Chambre syndicale*') in Paris. This meeting was held at the request of the Japanese manufacturers and followed a meeting held in April 1966 when they had discussed their sales policy with

their French competitors. On the French side, this meeting was attended by representatives of both the *Chambre syndicale* and bearing manufacturers, including the following: SKF, *Compagnie d'applications mécaniques SA* (hereinafter referred to as '*SKF*') and SNR, *Société nouvelle de roulements* (hereinafter referred to as '*SNR*'). On the Japanese side there were representatives of the *Japan Bearing Industrial Association* (hereinafter referred to as the '*Japan Association*') and of the four major Japanese ballbearing manufacturers: *Nippon Seiko Kaisha* (hereinafter referred to as '*NSK*'), *NTN Toyo Bearing Co. Ltd* (hereinafter referred to as '*NTN*'), *Koyo Seiko Co. Ltd* (hereinafter referred to as '*Koyo*') and *Nachi Fujikoshi Ltd* (hereinafter referred to as '*Fujikoshi*').

The following extracts are taken from the minutes ⁽³⁾ of this meeting drawn up by the *Chambre syndicale*:

.....

'Mr B. (the spokesman for the French delegation) asked Mr I. (the spokesman for the Japanese delegation) what the Japanese bearing manufacturers could do to reduce imports into France from Japan, to increase prices and to control these imports and prices.

Drawing attention to the fact that some imports came in via Germany, Belgium and the Netherlands, he pointed out that the statistics on the import of bearings into France were available to the Japanese delegation.

.....

The French bearing manufacturers wished to know whether the Japanese manufacturers had decided to increase their prices in the light of the proposed increase due in France in the following April.

.....

⁽³⁾ The minutes referred to, obtained from the French manufacturers during the investigations, were drawn up by the French and apparently were not sent to the Japanese. Nevertheless, the minutes which the Japanese handed over to the Commission during the proceedings do confirm the sense of the extracts quoted.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

Mr I., having consulted the members of his delegation, stated that the four companies represented agreed to make an official declaration of common prices. He could not specify either the increase planned nor the date from which it would apply, before first studying the matter.

.....

Mr. I., having consulted the members of the Japanese delegation, acknowledged that the difference between French and Japanese prices was of the order of 15 % and that, with the planned 5 % to 6 % increase in French prices, it would reach 20 % by April of the following year. The Japanese manufacturers proposed to reduce the difference to 5 % to 8 %.

Mr B. again referred to the question of a written agreement.

Mr I. replied that on his return he would have discussions about this on which he would then communicate by letter.

Mr B. reminded the Japanese that the French bearing manufacturers were asking for:

1. a 15 % increase for the time being,
2. a maximum price difference of 5 % in the future, the prices of Japanese bearings being quoted in francs,
3. the organization of an effective system for controlling imports of Japanese bearings into France,
4. another Franco-Japanese meeting in six months or a year to confirm that the agreement had been applied.

The CSNMHP (Chambre syndicale) would write a letter to Mr I. to confirm what had been stated during the meeting'.

- (b) In a letter dated 3 March 1972 to the Japan Association, written in French, the Chambre syndicale reminded the Japanese manufacturers of 'the two main concerns felt

by the French manufacturers towards the export policy of the Japanese bearing manufacturers'.

These concerns were, first, over the prices which the Japanese manufacturers charged their importers in France, and second, over the increase in Japanese bearings exported to France. The Chambre syndicale requested the Japan Association to reply on these two points by 15 March after finding out from the Japanese manufacturers 'what effective measures had been taken by the Japanese manufacturers to remedy this situation of unduly low prices' and 'what actual decisions had been taken to put an end to such an increase in their exports'.

On 10 March 1972 a letter was sent on behalf of the Japan Association to the Chambre syndicale, written in English, which contained the following passages:

'On our return to Japan, we had conferences and discussions in order to find complete means to comply with the spirit of the meeting. The following are the measures that we, the four major Japanese bearing manufacturers participating in the meeting, have decided:

1. At the meeting we stated that we will adjust the price structure and sales terms of Japanese bearings to parallel and follow those of the French manufacturers and, in accordance with this, we will perform the sales in your market and also we will try our utmost to reduce the difference between the pricing of bearings manufactured locally and ours to 5 % to 8 % in the future. As a first step, we will take all necessary measures to bring the price structure eventually to within a 10 % maximum difference from the pricing of bearings manufactured locally.
2. The prices invoiced from Japan will be raised 10 % to 12 % in dollars commencing from 1 April 1972.
3. Long period fixed sales prices will not be established, and if pricing by French manufacturers will be raised, Japanese will also follow it. Each major manufacturer will print a price list reflecting the above policy.

4. In regard to the raising of the sales price of Japanese bearings, each manufacturer will publicize this locally during March or April.
5. Referring to French statistics of the import to France, we will give special consideration to restrain from making any undue increase of the export of Japanese bearings to the French market.

.....

8. The top executives of four major manufacturers will visit your country again in the early part of June and report concrete measures taken on the abovementioned points and wish to further discuss ways and means to establish mutual prosperity between the industries of our two countries.'

.....

The Vice-Chairman of the Chambre syndicale replied as follows in a letter dated 27 April 1972:

'I should like to thank you most warmly for your letter of 10 March 1972 in which you indicate the decisions taken by the major Japanese bearing manufacturers following our meeting on 16 February. My colleagues and I have carefully studied the wording of your letter and we have reached the following conclusions:

1. We note your decision to bring the price structure and conditions of sale of your bearings into line with those of the French manufacturers in order to close the gap between these prices on the French market.
2. We observe that in the light of the changes in the par values of currencies, the 10 % to 12 % dollar increase on 1 April 1972 in fact represents only a slight increase in France of 3 % at most. This can only be considered a first stage, which must very rapidly be followed by further increases for the objective mentioned in the first paragraph of your letter to be attained.
3. This increase on 1 April 1972 results in yen prices for Japanese bearings which will still be appreciably lower than those applying before the change in exchange

rates in December 1971. A second stage, to be completed very shortly, ought to raise the prices of Japanese bearings to their pre-fluctuation level. We see this stage as indispensable in closing the gap with the prices of French bearings.

4. We record the Japanese manufacturers' decision to publish price lists in France reflecting the new pricing policy, and we would consider it important that these lists should have notes attached informing customers of estimated changes for the year ahead.
5. We note your decision to take effective measures to correct the undue increase in the export of your bearings to the French market. The Chambre syndicale nationale de la mécanique de haute précision will send you French import statistics at regular intervals.

.....

To avoid any misunderstanding, it is to be hoped that the Japanese manufacturers will send our Chambre syndicale the price lists they publish whenever the selling prices of their bearings are readjusted in France.

We shall be very pleased to receive the representatives of the four major Japanese bearing manufacturers. We hope that during our meeting we shall be able to confirm that the measures they have taken have proved effective. We also wish to continue discussions to work out future measures to ensure that the development of the bearings industry in our two countries is satisfactory'

- (c) The meeting proposed in the abovementioned letters of 10 March and 27 April was held in Paris on 13 June 1972. During this meeting, at the request of the Chambre syndicale representative, the Japan Association representative indicated that the following concrete measures had been taken by the Japanese manufacturers:

- '1. As from 1 April 1972 the dollar prices have been increased by 12 % on all bearings for export to France. This results in an actual 5 % to 7 % increase in French market prices. The effects of this measure will not be felt before July.

2. This increase has been announced in the French press.
3. The Japanese manufacturers are placing their price lists at the disposal of the French delegation (a copy of each price list was handed over to the French delegation during the meeting)'.
(Minutes, page 3)

(d) On 26 July 1972, the French manufacturers again met the Japanese manufacturers in Paris. The discussion mainly concerned the conditions for the application of the price lists in France which one of the French manufacturers' representatives considered to be 'a sales policy instrument' (Minutes, page 2). The French manufacturers made it clear to their Japanese colleagues that two criteria were used in granting discounts: the customer's size and the nature of his production. The Japanese manufacturers observed that they used the same criteria. Nevertheless, the French manufacturers, who considered that the discounts granted by importers of Japanese products were unduly high, requested the Japanese manufacturers not to be content merely with raising their list prices, but also to control the discounts granted by their importers.

2. (a) The relevant market is the French market in ballbearings of standard type, excluding other categories of bearing, such as needle bearings, roller bearings, or special-type bearings for which there is no substitute because of their technical characteristics; this is the main market in which there was competition from Japanese bearings during the relevant period in 1972.

- (b) in 1971 and 1972 the structure of the market was as follows:

Total domestic consumption corresponding to total sales of FF 416 200 000 in 1971 and FF 426 600 000 in 1972 was accounted for by French production as to 52.1 % in 1971 and as to 58.7 % in 1972.

Imports from Japan amounted to 25.8 % in 1971 (FF 51 500 000) and 23 % in 1972 (FF 40 700 000) of total imports of bearings into France or 12.3 % and 9.6 % respectively of domestic consumption.

Imports from the five other Member States of the EEC amounted to 39.6 % of total imports for each of these two years or 18.7 % in 1971 and 16.2 % in 1972 of domestic consumption.

Exports from France to the other Member States amounted to FF 38 600 000 in 1971 and to FF 37 300 000 in 1972 representing 28.8 % and 30 % respectively of the total French exports or 11.7 % and 10.2 % respectively of French consumption.

- (c) The position of SKF and SNR on this market at this time was as follows:

SKF, a subsidiary more than 80 % owned by the Swedish group SKF (Aktiebolaget Svenska Kullagerfabriken) was the largest manufacturer of ballbearings in France. The share of its production in France was estimated at almost 60 % and the share of its sales fluctuated from 35 % to 40 % of the French market.

SNR, a wholly owned subsidiary of the Renault motor-manufacturing group, had a share of almost 25 % of the national production and approximately 10 % of the French market.

- (d) These two manufacturers are members of the division of the Chambre syndicale for 'bearings of all kinds, including needle bearings, ballbearings and roller bearings'. The aims of the Chambre syndicale, as set out in Article 3 of its statutes, are in particular:

1. to establish a group of industrialists able to offer their customers an absolute guarantee of high-precision engineering production;
2. to represent them in dealings with public authorities, all official or private organizations, chambers of commerce and other industrial or commercial groups . . .'

- (e) NSK, NTN, Koyo and Fujikoshi consider themselves 'the four major Japanese manufacturers' and are the most important members of the Japan Association.

- (f) Between the beginning of 1972 and the end of 1973, in respect of items accounting for the major part of Japanese bearings sold in France (ballbearings in categories 6000 to 6300 or, more precisely, 6000, 6004, 6200, 6205, 6210, 6305 and 6309) the rates of increase in prices

imposed by the Japanese manufacturers concerned were as follows:

One manufacturer raised his prices to his French distributors twice (in April and October of 1972), the increases over this period rising from 7% to 25%; another manufacturer also increased his prices to his French distributors on two occasions (during the periods May to December 1972 and January to October 1973) from 3.3% to 8.2% in all; yet another manufacturer, in January 1973, increased his prices to buyers from 2.4% to 15%. One manufacturer, however, who had already raised his prices in December 1971 by an average of 14% did not impose further increases during this period.

II. Applicability of Article 85 (1)

1. Article 85 (1) prohibits as incompatible with the common market all agreements between undertakings, decision by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

In order to determine whether these provisions apply in this case it is necessary to consider the facts recorded at I.1 above in a more general context as measures taken in Japan, at either government or private level, with a view to controlling exports of Japanese products to the EEC either by restricting them or by regulating them as regards price, quality or in any other respect.

Four types of measures can be distinguished and should be differently assessed:

- (a) measures taken in pursuance of trade agreements between the Community and Japan.

These are acts of external commercial policy, which as such are outside the scope of Article 85 of the EEC Treaty.

- (b) measures imposed on Japanese undertakings by the Japanese authorities. These measures are also outside the scope of Article 85.

However, in both cases, Article 85 could be applicable to any agreements or concerted practices additional to such measures.

- (c) measures resulting from agreements or concerted practices between undertakings which are merely authorized by the Japanese authorities under Japanese law.

Such an authorization, while required for the measures to be lawful in Japan, would not necessarily mean that Article 85 could not apply, since it would in no way alter the fact that the undertakings concerned were free to refrain from entering into an agreement or engaging in concerted practices.

- (d) measures resulting solely from agreements, concerted practices, or decisions by associations of undertakings, entered into or engaged in either unilaterally by Japanese undertakings or in concert with the appropriate European undertakings.

These measures of a private nature may also come within the provisions of Article 85. The Commission has expressly drawn the attention of undertakings to this point, by an Opinion ⁽¹⁾ published in the Official Journal in October 1972.

The facts set out above do constitute measures taken in pursuance of trade agreements between the Community and Japan; nor are the measures in question imposed on Japanese undertakings by the Japanese authorities nor even, to the Commission's knowledge, authorized by those authorities; these are bilateral measures of a private nature, which have not been the subject of any government intervention from either the French or the Japanese side.

These measures may, therefore, come within the terms of Article 85 of the EEC Treaty.

2. The facts set out at 1 can be summarized as follows:

At the meeting on 16 February 1972 between the major French and Japanese ballbearing

⁽¹⁾ Opinion relating to imports of Japanese products in the Community falling under the Treaty of Rome, OJ No C 111, 21. 10. 1972, p. 13.

manufacturers (SKF and SNR; NSK, NTN, Koyo and Fujikoshi) and their respective trade associations, the French manufacturers requested their Japanese competitors to enter into a written agreement to increase the prices of Japanese ballbearings imported into France in order to make them conform with the level of the prices of bearings manufactured in France by keeping the difference in these prices to within 5 %. The Japanese manufacturers agreed in principle to this request for an increase but could not then and there give an exact figure nor the date from which it would become effective.

In their letter dated 3 March 1972 to the Japan Association, the *Chambre syndicale* repeated the requests they had made at this meeting.

In a letter dated 10 March 1972 to the *Chambre syndicale*, the Japan Association confirmed that the Japanese manufacturers were agreed in principle to an increase as requested and that they proposed to reduce the difference in prices between French and Japanese bearings to 10 % immediately, and to between 5 % to 8 % thereafter.

In his reply of 27 April 1972, the Vice-President of the *Chambre syndicale*, on behalf of his French colleagues, took note of the various proposals of the Japanese manufacturers. He made it clear, however, that he did not consider the proposed increase in prices to be anything more than a first step which should be quickly supported by further measures.

It is clear, therefore, that these French and Japanese manufacturers had, through the mediation of their respective trade associations, entered into an agreement in principle for the purpose of increasing the prices of Japanese ballbearings imported into France in order to bring these prices into line with the prices of French manufactured bearings.

Contrary to the arguments put forward by the parties in their reply to the statement of objections and at the hearing, for Article 85 (1) of the EEC Treaty to apply it is not essential that this agreement should take the form of a contract having all the elements required by civil law: it is sufficient that one of the parties voluntarily undertakes to limit its freedom of action with regard to the other.

This is indeed so in the case in point since, first in the abovementioned letter of 10 March 1972, the Japan Association informed the *Chambre syndicale* of the commitments entered into by the Japanese manufacturers to raise the price of their bearing exports to France and, secondly, in the abovementioned letter of 27 April 1972, the *Chambre syndicale* noted these commitments on behalf of the French manufacturers.

The parties disputed the contention that this exchange of letters was really an agreement to raise prices.

First, the Japan Association and the Japanese manufacturers concerned claim that the increases mentioned in the letter of 10 March resulted from decisions taken unilaterally in order to adjust to the par values of currencies and to the economic situation in Japan, and that they were unrelated to the requests made by their French competitors.

Secondly, the *Chambre syndicale* emphasizes that although the letter of 27 April does mention the Japanese decisions to increase prices, it also expresses disagreement as to the rates, the dates on which they will apply, the stages and the practical arrangements for these increases, so that this letter could not be seen as an acceptance of the Japanese offer.

These explanations are unconvincing since, in the light of the preceding negotiations, this exchange of letters forms a consistent and explicit whole and is evidence of a common understanding by the parties that the prices of Japanese bearings would be increased, even in the absence of a detailed agreement as to how the agreed price increase was to be effected. It is clear that there was at least agreement in principle on an increase.

The agreement at issue was concluded following negotiations in which the manufacturing undertakings concerned and their respective trade associations took part, and resulted in an exchange of letters between these trade associations acting on behalf of their members; it is therefore, an agreement between undertakings within the meaning of Article 85 of the EEC Treaty.

3. The agreement in question, which is concerned with increasing the prices of Japanese ballbearings imported into France with a view to bringing these prices into line with those of

locally manufactured bearings, has as its object the restriction of competition within the common market: it is intended to neutralize the function of price competition, which is to keep prices as low as possible.

This restriction of competition forms the very object of the agreement in question, and there is therefore no need to analyse its actual effects in order to establish that Article 85 (1) of the EEC Treaty applies to it.

It is nevertheless the case, as is shown by the information given in point I.2 (f) above, that most of the Japanese manufacturers who were parties to the agreement concerned did in fact increase their list prices on the French market.

This restriction of competition is especially serious because of the volume of sales on the French ballbearing market, the share of Japanese imports in this market, and the position of the undertakings in question on their respective national markets and, for some of them, on the world market in bearings (see points I.2 (b) and (c)).

The parties disputed the significance of this restriction because it allegedly concerns only list prices, which have only a moderate influence on the fixing of the prices actually charged for ballbearings, first because of the considerable percentage discount granted sometimes and second because the prices which the largest customers (manufacturers) are charged are net prices, 'keenly' negotiated, irrespective of the list prices.

The granting of extremely large discounts does not detract from the importance of list prices since it is by reference to the latter that the discounts are determined; the manufacturers themselves consider the price lists 'a sales policy instrument' (cf. meeting on 26 July 1972, point I.1 (d) above); moreover, it would be difficult to understand why the largest French and Japanese ballbearing manufacturers concluded an agreement and met three times in 1972 if the price lists with which the agreement and the meetings were principally concerned were so lacking in importance.

4. The agreement in question may affect trade between Member States.

The practical implications of the proposed increase in prices would depend on whether they could have any effect not only on the ballbearings imported directly into France from

Japan, but also on those imports of bearings of Japanese origin which were in free circulation in other Member States. It is in this respect that it is significant that the attention of the Japanese producers, particularly at the meeting of 16 February 1972, was drawn to the fact that imports of Japanese bearings were brought in via Germany, Belgium and the Netherlands. (see point I.1 (a) above).

Furthermore, this agreement was made by leading French manufacturers with the express intention of restricting the competitive effect of the prices charged by major competitors who were regular exporters. It is clear that the effect of this serious restriction could be felt throughout the French market; there was, however, the additional possibility that there could also be an effect on trade with other Member States which would not have arisen in the absence of such an agreement. Indeed, those who were themselves concerned had emphasized the importance of the trade in ballbearings between France and the other Member States which is borne out by the figures set out at I.2 (b) above.

5. The conditions for the application of Article 85 (1) are consequently satisfied.

III. Inapplicability of Article 85 (3)

Article 85 (3) provides that Article 85 (1) may be declared inapplicable to any agreement or to any concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and which are not indispensable to the attainment of these objectives, nor afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The agreement at issue has not been notified to the Commission and it therefore falls into the category of agreement referred to in Article 4 (1) of Regulation No 17. Consequently, until it has been notified, no decision in application of Article 85 (3) may be taken.

In any case, the Commission does not see how this agreement could produce the favourable results specified in Article 85 (3) and, in particular, allow consumers any benefit.

HAS ADOPTED THIS DECISION:

Article 1

The agreement concluded in 1972 through their respective trade associations between the French undertakings SKF, Compagnie d'application mécaniques, SA, and SNR, Société nouvelle de roulements and the Japanese undertakings Nippon Seiko Kaisha, NTN Toyo Bearing Kaisha, Koyo Seiko Ltd and Fujikoshi Ltd, for the purpose of increasing the price of ballbearings of Japanese origin on the French market, and which is, in particular, manifested by the letters dated respectively 10 March 1972 from the Japan Bearing Association and 27 April 1972 from the Chambre nationale syndicale de la mécanique de haute précision, constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

This Decision is addressed to the undertakings and associations of undertakings listed below:

SKF, Compagnie d'applications mécaniques, SA,
1, avenue Newton, Clamart, France;

SNR, Société nouvelle de roulements,
1, rue des Usines, Annecy, France;

Chambre syndicale nationale de la mécanique de
haute précision,
75, rue Baujon, Paris, France;

Nippon Seiko Kaisha,
Chiyoda-Ku, Tokyo, Japan;

Koyo Seiko Co. Ltd,
Minami-Ku, Osaka, Japan;

Fujikoshi Ltd,
Toyama, Japan;

NTN Toyo Bearing Co. Ltd,
Nishi-Ku, Osaka, Japan;

The Japan Bearing Industrial Association,
Shibakoenn, Tokyo, Japan.

Done at Brussels, 29 November 1974.

For the Commission

The President

François-Xavier ORTOLI