

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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## UNITED STATES POLICY WITH RESPECT TO VOLUNTARY UNDERTAKINGS<sup>1</sup>

### Comments by the Japanese Delegation

On 26 May 1970, the Treasury Department of the United States Government announced the guidelines concerning the price undertakings involved in the anti-dumping measures. Since then, the Japanese Government has taken every opportunity to state its views that the United States practices with respect to the price undertaking system is not consistent with the spirit of Article 7 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as "Code"). In the light of the discussions in the GATT Anti-Dumping Committee held September 1972, the Japanese Government wishes to transmit the following views on the United States comments (COM.AD/14, Annex I) regarding the United States policy for price undertakings.

1. One of the basic objectives of the Code is clearly stated in its preamble which reads "anti-dumping practices should not constitute an unjustifiable impediment to international trade". This is the guiding spirit on which every Article of the Code is based, and we believe it is obvious that this spirit should be respected when interpreting and implementing the Articles of the Code.
2. The following are the specific comments by the Japanese delegation as to United States comments No. 3 (Consistency of United States Policy with Code):
  - (a) (i) Article 7(a) of the Code gives two examples of cases where "the authorities consider this practicable". However, the United States a priori limit the application of this provision only to cases where dumping margins are minimal in terms of volume of sales involved. Such a limitation seems to narrow the scope of application of the said provision.
  - (ii) When the price undertakings are accepted, one of the two grounds on which anti-dumping measures can be taken, that is to say, "margin of dumping" disappears (the other ground, that is to say, "injury" might also cease to exist in most cases after the price undertakings have been fulfilled). In this case the effect can be comparable to the cases where anti-dumping measures are taken.

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<sup>1</sup>COM.AD/14, Annex I

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- (iii) Where anti-dumping investigations are carried on, while exporters have already raised the export price voluntarily, even when the price undertakings offered by exporters have not been accepted, it is unlikely that injury can eventually be proved.
- (iv) Even when dumping findings are made based upon information covering the period before the price undertakings offered by exporters, if the export prices are raised sufficiently enough to offset the dumping margins, dumping margins to be collected at the stage where dumping duties are actually imposed cease to exist, and there does not seem to be a great difference compared to the cases where dumping investigations are terminated after the price undertakings are offered.
- (v) The burdens to be borne are great for investigated companies.

All taken together, and also taking into account that "anti-dumping practices should not constitute an unjustifiable impediment to international trade" as stated above in paragraph 1 of our comments, it is appropriate to conclude that the authorities should accept, to the maximum extent possible, the price undertakings offered by exporters.

- (b) The reason why the United States comments refer, in connexion with the price undertakings, to Article 7(b) of the Code does not seem clear to us.

The provisions in Article 7(b), in our opinion, do not limit or restrict the acceptance of the price undertakings. They only stipulate that the investigation of injury shall be completed even after the price undertakings were accepted so long as exporters so desire or the authorities concerned so decide.

- (2) It is stated in the comments of the United States, that the Code is not formulated to encourage dumping (United States comments No. 5 - spirit of the Code with respect to dumping) and that the practice of price discrimination does not constitute fair and open competition (last paragraph but one of United States comments No. 7).

As regards these comments, we should keep in mind that the United States also state that the dumping practice which does not cause injury should not be condemned (paragraph 4 of United States comments No. 6) and that the Code itself clearly stipulates that anti-dumping measures can be taken only in cases when there exist both dumping margins and injury.

3. Lastly, considering the above-mentioned points and the spirit of the Code itself, it is our opinion that the price undertakings should be accepted as far as possible, and accordingly, the anti-dumping measures now pending should be terminated in such cases as "the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable", so that the authorities consider the price undertakings are practicable.