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UNITED STATES POLICY WITH RESPECT TO VOLUNTARY UNDERTAKINGS

Response of the United States Delegation to Comments by the Japanese Delegation

The United States welcomes this opportunity to respond to the thoughtful comments of the Japanese delegation concerning the price undertakings policy adopted by the United States Treasury Department in anti-dumping proceedings. A useful exchange on well-delineated issues is in the best spirit of the Committee on Anti-Dumping Practices.

It remains the position of the United States that United States price undertakings policy is not inconsistent with either the letter or the spirit of Article VI of the General Agreement on Tariffs and Trade or the Agreement on Implementation of GATT Article VI (hereinafter referred to as the "Code"). In support of that position the United States wishes to raise the following points regarding the Japanese comments (COM. AD/29).

1. While the United States agrees, of course, with the preamble to the Code that "anti-dumping practices should not constitute an unjustifiable impediment to international trade", it is also true that effective measures are necessary to deter the injurious dumping condemned in GATT Article VI, the foundation of the Code. Consideration of the implementing agreement of Article VI cannot be separated from the very Article it seeks to implement. To this end, the language of the Code is broad enough to permit each country to administer its respective law in the manner which it deems most appropriate while it is at the same time precise enough to ensure that the same basic standards are followed by all signatories.

2. In reply to the specific comments presented by the Japanese delegation the United States wishes to point out that:

(a) (i) Article 7(a) of the Code reads, in pertinent part that:

Anti-dumping proceedings may be terminated without imposition of anti-dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices ... if the authorities concerned consider this practicable, e.g. if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable (underscoring supplied).

The key element of this Article is the optional nature of the acceptance of price undertakings to terminate anti-dumping proceedings by the administrators of the law. Within this framework of discretion the United States has chosen to establish guidelines as to the circumstances under which it will accept price undertakings. By adopting this approach the United States has attempted to provide for certainty in the manner in which its law is administered, a guiding principle found in the letter and spirit of the Code. The examples contained in Article 7(a) referred to by the Japanese delegation should be considered as illustrative of the practicability of accepting price undertakings and should not be construed as defining the circumstances under which they should be accepted.

(ii) and (iii) While the revision of prices to eliminate dumping by the exporter during the formal anti-dumping proceedings may occur through voluntary price undertakings, the United States has witnessed price revisions in many cases soon after the imposition of provisional measures (withholding of customs appraisement). As there is little distinction between these two cases with regard to the time when prices are revised, similarly little distinction can be made a priori as to the impact the dumping had on domestic industry. The United States believes that termination of proceedings merely on the basis of any price revisions leads to the encouragement of injurious dumping by foreign exporters in order to gain entry to the United States market (COM.AD/14 Annex I, Section 5). Since, as an administrative matter, injury investigations must rely primarily on information developed while the dumping was taking place, the assumption cannot be made that after last-minute price revisions no injury will be found by the investigative agency. The injury question properly can be answered only by the completion of proceedings in cases where the dumping has been determined to be more than minimal in relation to the volume of exports involved.

(iv) When an exporter is found to have been practising injurious dumping in the United States, in the usual case the exporter will raise his prices to eliminate the dumping margin. The United States always has recognized that the intent of the United States law as well as the Code is not to collect additional duties, but to eliminate the injurious dumping or, better still, to prevent it in the first place. In the administration of its law, the United States accords different treatment to those exporters who have had significant margins as opposed to those with minimal margins. While the proceedings with respect to the latter may be discontinued, in the former case the United States believes that the question of whether injurious dumping had occurred must be resolved. If a negative injury were made, then the exporter involved would not be forced to increase his prices by a dumping duty nor would he have to revise his prices substantially under a voluntary price undertakings procedure. On the other hand, if injury is determined then, under the requirements of United States law, if

dumping had continued after provisional measures had been taken, special dumping duties must be imposed. If, as the Japanese delegation has noted, the exporter has already revised his prices, no dumping duties will be imposed since the United States calculates the dumping margin, i.e. the duty, on an entry-by-entry basis (COM.AD/14 Annex I, Section 6).

(v) Once injurious dumping has been found, under the entry-by-entry assessment method, detailed information must be supplied on a current basis by the exporter. While this may present a burden to the exporter, the United States believes that such current information reflecting price revisions is to the advantage of the exporter, ensuring that dumping duties would be assessed on each entry only to the extent of the dumping. Generally, if this information reveals no dumping for a period of two years following the final decision to impose anti-dumping duties, the United States Treasury Department will consider a request for revocation of the anti-dumping action.

When, on the other hand, price undertakings are accepted, in order to ensure that the exporters involved adhere to their voluntary price revisions a rigorous monitoring system is necessary. Without such a system the administration of the law would be a mockery. Accordingly, a significant burden must be borne by the exporters whenever dumping is found to exist.

The purpose of the administration of the United States law is to encourage exporters to consider their pricing practices vis-à-vis the anti-dumping law before they sell in the United States market (COM.AD/14 Annex I, Section 6). To this end the more detailed reporting requirements for assessment purposes and the risk of actual imposition of dumping duties which an exporter is likely to encounter if found to be practising injurious price discrimination may encourage him to take account of the law before entering the market.

(b) The United States delegation referred to Article 7(b) to illustrate the flexible nature of the entire price undertakings article. As discussed before, Article 7(a) gives the authorities concerned the option to terminate anti-dumping proceedings, if practicable, upon receipt of price undertakings. Article 7(b) provides for the continuation of an injury investigation even though price undertakings have been accepted. Thus, the entire Article, while providing some specific standards for the administration of anti-dumping laws, recognizes that anti-dumping practices of different countries need not be uniform with regard to the acceptance and treatment of price undertakings. The United States delegation reaffirms that the United States policy in the price undertakings area is entirely consistent with the letter and the spirit of the Code.