

GENERAL AGREEMENT ON TARIFFS AND TRADE

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WORKING PARTY ON UNITED STATES/ZENITH CASE

Statement Made by the Representative of Japan at the Meeting of the Working Party on 2 June 1977

1. On behalf of the delegation of Japan, first, I should like to express our appreciation to you and the parties concerned with this Working Party for organizing this first meeting of the Working Party so efficiently and expeditiously in response to our request. We also welcome this opportunity to present Japan's view on this important issue affecting not only the trade between Japan and the United States but potentially world trade in general, the basic foundation of the GATT and conceivably the present Multilateral Trade Negotiations as well. In this presentation of Japan's view I would like to be as businesslike as possible in the good tradition of GATT in order to bring out the conclusion of the Working Party as expeditiously as possible. Therefore, I would like to limit as far as possible duplications with the two former Japanese presentations contained in documents L/4500 and C/W/288, and as to detailed figures I would like to refer to the attachments to this statement that this delegation has prepared for today's meeting.
2. The basic fact in question in the United States Zenith case is the exemption of certain consumer electronic products destined for exports from Japanese commodity taxes or remission of such taxes upon exportation authorized under Articles 19, 21 and other relevant provisions of the Japanese Commodity Tax Law (31 March 1962, Law No. 48) as amended. The consumer electronic products in question include television receivers, coloured television picture tubes, radio receivers, radio and tape players and their combinations and are listed in the attached list together with past trade figures, Japanese Commodity Tax rates and their estimated amounts exempted and the effective United States tariff rates on those products. The Japanese Commodity Tax is an indirect consumption tax currently being levied upon such consumer products as jewellery, automobiles, electric appliances, music instruments, cameras, and watches as well as the consumer electronic products in question. The tax rates for consumer electronic products range from 5 per cent to 20 per cent of manufacturer's selling prices and they are levied on the products when they are shipped out from manufacturers. At this stage the Commodity Tax is exempted when a product is destined for exports. Or, if the tax is already levied on a product, the tax is refunded when the product is exported.

3. In Japan's view, the above-mentioned Japanese practice of exempting exported products from such domestic consumption taxes is in full accord with the provisions of GATT. Paragraph 4 of Article VI provides that:

No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

The note to Article XVI further provides that:

The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Therefore, as the first point, the Japanese delegation requests that the Working Party address itself to Japan's view in this regard and find that such Japanese practices are in full accord with the provisions of the GATT, its established interpretation as well as established practice of the GATT.

4. Now, in our understanding, the United States Customs Court in New York, acting upon the motion by Zenith Radio Corporation, ruled that the exemption, under the Commodity Tax Law of Japan, of consumer electronic products from commodity tax or refund of such tax constituted the payment or bestowal of a net bounty or grant within the meaning of Section 303 of the United States Tariff Act of 1930 as amended, and directed the Secretary of the Treasury to assess countervailing duties equal to the net amounts of bounty or grant. Subsequently, the Treasury Department directed the customs offices to suspend appraisement and liquidation of the Japanese consumer electronic products and introduced a bonding procedure with regard to entries and warehouse withdrawals for these products requiring, in a typical case, single entry bonds equal to the amount of "estimated countervailing duties". Although we are aware of the fact that the United States Government has appealed the case to a higher court, in Japan's view, should the Customs Court decision become final and if countervailing duties were to be imposed on Japanese consumer electronic products by reason of exemption of those products from Japanese commodity taxes or remission of such taxes this would constitute a clear violation of the afore-mentioned provisions of the GATT. Therefore, as the second point, this delegation requests the Working Party to find that should the Customs Court decision be finalized and countervailing duties were imposed it would be in contravention of the provisions of the GATT including Article VI, paragraph 4 and the note to Article XVI, and constitute a prima facie case of impairment or nullification of Japan's rights under the GATT.

5. Although the United States administration appealed the case to a higher court and the suspension of customs liquidation procedure was put into effect pending the final outcome of the judiciary, the court ruling that ordered countervailing duties to be imposed and the subsequent administrative action in anticipation of the imposition of countervailing duties are, in Japan's view violative of the GATT. And they are already causing serious effects to the trade of Japanese consumer electronic products. The United States action is causing uncertainty to the trade of approximately US\$1.69 billion in 1976 trade figures, in pricing and uncertainty in future business transactions. The amount of bonds required are equivalent to the commodity tax is estimated to be in the range of US\$200 to 300 million according to 1976 trade pattern. And the premium cost for bonding insurance of 1 to 0.1 per cent of the actual bonds is estimated to cost in the range of US\$200 thousand to US\$3 million. We understand that in obtaining bonds insurance importers are often required to submit guarantees in the form of bank guarantee or fixed bank deposits, all at their cost. At the time of drafting this statement, we have been advised that the United States authorities have subsequently introduced L/C procedures in lieu of bonding requirements. We have not been able to fully assess this development. However, I wish to emphasize here that Japanese traders are being subject to such uncertainty in business transaction and such additional requirements, which, under the provisions of the GATT, they should not be required to suffer from. Therefore, as the third point the Japanese delegation requests the Working Party to state that the United States Customs Court decision and the subsequent United States action is not only violative of the GATT but is already causing a serious trade impact upon Japanese exports to the United States.

6. Finally, this delegation would like to reiterate the serious implication of the United States court decision and the subsequent action to world trade in general. As this delegation has stated in the Council of Representatives (C/W/288), the potential impact of the United States action is not limited to Japanese exports of electronic products to the United States but it could go much further through possible proliferation of similar actions in the United States to many other products imported from a large number of contracting parties, as many contracting parties to the GATT presently exempt exported products from internal consumption taxes or refund such taxes. In Japan's view such United States action is not only bound to cause serious repercussion to world trade in general but also raises serious implications as regards the GATT system itself. Therefore, as the fourth point this delegation would like to request the Working Party to address this issue and express its serious concern on the implication of the United States action to world trade in general.

7. These are the four points that this delegation request the Working Party to address itself. They are; first, that the Japanese practices are in full accord with the provisions of the GATT; second, that, should the Customs Court decision

be finalized and countervailing duties were to be imposed, it would be in contravention of the provisions of the GATT and would constitute a prima facie case of impairment or nullification of Japan's rights; third, that the United States Customs Court decision and the subsequent United States action is already causing a serious trade impact upon Japanese exports to the United States and is violative of the GATT; and fourth, that the Working Party expresses its serious concern on the implication of the United States action to world trade in general.

8. Before I conclude my statement I should like to say that it is the wish of the Japanese delegation that this Working Party expeditiously give consideration to the four points that I have just raised and report to the Council and that this delegation would like to recall its statement at the Council that on this issue it reserves its rights fully under the provisions of the GATT.

Japanese Consumer Electronic Products Subject to
United States Countervailing Duty Action

Products	TSUSA No.	Effective US tariff rate	1976 exports to US Billions of yen	Japanese Commodity Tax rate ^{1/}	Estimated amounts of Commodity Tax exempted (1976) Billions of yen
1. Television receivers	685.20	5%	183.3	15-20%	27.5-36.7
2. Parts of television receivers:	685.20	5%	4.2	15-20%	0.64-0.85
colour television picture tubes, resistors, transformers (deflection components), and tuners for receivers with integrated circuits					
- (picture tubes)	687.50	15%			
3. Radio receivers			127.0	10-15%	12.7-19.1
- solid state	685.23	10.4%			
- other than solid state	685.25.40	6%			
4. Radio-phonograph combinations	685.30	6.5%	9.9	15%	1.5
5. Radio-television-phonograph combinations	685.42	7.5%	n.a. ^{2/}		
6. Radio/taperecorder combinations	685.50	7.5%	72.0	10-15%	7.2-10.8
7. Tape players	678.50	5%	12.6	15%	1.9
8. Record players and phonographs complete with amplifiers and speakers	685.32	5.5%	13.5	15%	2.0
9. Tape recorders	685.40	5.5%	78.6	10-15%	7.9-11.8
Total			501.2 ^{3/}		61.3-84.6 ^{3/}

^{1/} Due to the differences between the TSUSA classification and the Japanese Commodity Tax Law classification tax rates do not exactly correspond to the TSUSA classifications shown.

^{2/} This classification cannot be separated in Japanese classification.

^{3/} The total does not correspond to the sum of the figures listed due to rounding.