

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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UNITED STATES - PROVISIONAL ANTI-DUMPING MEASURES AGAINST  
IMPORTS OF CERTAIN HOT-ROLLED CARBON STEEL FLAT PRODUCTS,  
CERTAIN COLD-ROLLED CARBON STEEL FLAT PRODUCTS AND CERTAIN  
CORROSION-RESISTANT CARBON STEEL FLAT PRODUCTS

Request for Consultations with the United States  
under Article 15:2 of the Agreement

Communication from Japan

The following communication dated, 9 June 1993, has been received from the Permanent Mission of Japan.

In accordance with Article 15:2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-Dumping Code), the Government of Japan requests consultations with the United States concerning provisional anti-dumping measures against imports of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products.

Through these consultations, the Government of Japan is seeking clarification regarding the compatibility of the US measures with respect to relevant provisions of the Anti-Dumping Code. In particular, the Government of Japan would, at this stage, wish to take up the following issues:

1. Use of "Best Information Available" (BIA)

Article 6:8 of the Anti-Dumping Code provides: "In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, may be made on the basis of the facts available."

In this respect, the Government of Japan would like to have further information as to how, in the cases where BIA has been employed, the US authorities have dealt with, in particular, the following issues:

(a) Item 6 of the "Recommendation Concerning Best Information Available in Terms of Article 6:8" adopted by the Committee on Anti-Dumping Practices on 8 May 1984 provides: "If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation."

In this regard, the Government of Japan would like to clarify whether the Japanese exporters concerned were informed beforehand that they refused access to or did not provide necessary information and that BIA would be employed, and whether the opportunity for submitting additional information was given.

(b) Item 5 of the above-mentioned Recommendation provides: "Even though the information provided may not be ideal in all respects this factor, in itself, should not justify the investigating authorities from disregarding it since the interested party may have acted to the best of its ability."

In the cases where BIA was used, the Government of Japan has the view that the additional information requested by the US authorities was difficult for the responding parties to make available, and that the proportion of this additional information to the total already submitted by the exporter concerned was minimal.

In this regard, the Government of Japan has doubts about whether the application of BIA was justified just because this information was not supplied. In particular, it is unclear that the information was either necessary to the determination or that its absence would have in any way altered or distorted the result.

## 2. Injury

Article 3:1 of the Anti-Dumping Code stipulates that a determination of injury shall be based on positive evidence and involve an objective examination. In addition, Article 3:4 stipulates that the injuries caused by other factors must not be attributed to the dumped imports.

In this regard, the Government of Japan stresses that the volume of imports from Japan of certain hot-rolled carbon steel products, certain cold-rolled carbon steel products and certain corrosion-resistant carbon steel products, which are subject to investigation, has substantially decreased, in absolute terms and relative to both production and consumption in the United States. With regard to the effect of imports from Japan on prices, it is our understanding that the prices of competing imported products from Japan were higher than the US domestic prices during the period investigated. Based on these facts the Government of Japan concludes that imports from Japan have not caused injury within the meaning of Article 3 of the Code.

The Government of Japan would like to have an explanation as to how the US authorities have taken these facts into account during their preliminary examination of the volume of imports, the price effects of the

allegedly dumped imports, the consequent impact on US producers and the causal link between the imports and alleged injury.

In particular, our enquiry relates to the following:

- (a) whether there has been a significant increase in the volume of the allegedly dumped imports from Japan either in absolute terms or relative to production or consumption in the United States;
- (b) whether there is sufficient evidence to demonstrate that there has been a significant price undercutting by the allegedly dumped imports from Japan, the effect of such imports has depressed prices to a significant degree, or has prevented price increases, which otherwise would have occurred, to a significant degree;
- (c) whether there is sufficient evidence to demonstrate that the US industry has suffered material injury;
- (d) whether there is sufficient evidence to demonstrate that the dumped imports, through the effect of dumping, are causing injury and that injuries caused by other factors have not been attributed to the dumped imports;
- (e) whether and to what extent the alleged injury due to the increased competition between domestic mills, in particular low-priced producers, has been recognized and eliminated as a cause of injury associated with imports; and
- (f) why the US authorities, without any justification, cumulated the imports from Japan with imports from other countries.

### 3. Retroactive application of duties

The Government of Japan would like to request information with regard to the reasoning underlying the retroactive application of provisional duties in these cases. In particular,

- (a) how it was determined that there was a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practised dumping and that such dumping would cause injury;
- (b) how it was determined that the injury was caused by sporadic dumping (massive dumped imports of a product in a relatively short period); and
- (c) why in the case of Japan, the critical circumstances findings were made on a country-wide basis without examining company-specific margins and volume data.

4. The voluntary restraint agreements (VRAs)

The US authorities' preliminary determinations on injury acknowledged that the imports under investigation from Japan were subject to VRAs from October 1984 to March 1992. The Government of Japan would like to know whether any account has been taken of these VRAs during the course of these proceedings, particularly the fact that the data used in this investigation was applicable to the period when the VRAs were in force.

The Government of Japan reserves its rights to raise any other aspect of this case at a later stage.