

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Sub-Committee on Non-Tariff Barriers

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THE ARBITRARY OR EXCESSIVE VALUATION FOR CUSTOMS PURPOSES

Note by the Japanese Delegation

I. Description of the non-tariff barrier

1. Introduction

It has been recognized that the only reasonable basis for valuation for customs purposes is the actual value. In practice, however, various ~~arbitrary~~ or fictitious valuation methods are employed by several countries. Under these circumstances, the Japanese Government would like to draw the attention of the Sub-Committee to such valuation methods inter alia to the following systems.

2. (a) American Selling Price (ASP)

Under Section 336 of the Tariff Act of 1930, the President of the United States is authorized to establish the American Selling Price as the basis for customs valuation rather than the actual transaction value. Also the Tariff Schedule of the United States stipulates that benzenized chemicals and products shall be valued on the basis of American Selling Price. Since the American Selling Price often amounts to two or three times the export value, the ASP valuation has substantial import restrictive effects.

The ASP valuation method is now applied to rubber footwear, canned clams, wool knit gloves and mittens and coal-tar chemicals. With respect to these items, except wool knit gloves and mittens, the export interest of Japan has been more or less adversely affected by ASP valuation. In particular, the following three items have undergone serious damage.

Rubber footwear

Although the rate of duty itself is between 12.5 per cent and 20 per cent, the actual incidence under ASP valuation is estimated to amount to 50 per cent or more.

Canned clams

Because of ASP valuation, the actual incidence is about three times higher than the rate of duty (20 per cent). As a result, export from Japan has been unduly impaired.

Pearl essence

With respect to pearl essence, there is a problem somewhat different from preceding cases. While pearl essence which contains no benzenoid plasticizer is levied 9 per cent of customs duty on f.o.b. basis, pearl essence containing benzenoid plasticizer, no matter how small it may be, is charged duty of 3.5¢/lb + 25 per cent on the basis of ASP as benzenoid mixture. The incidence is prohibitively high, so that Japan's export of pearl essence containing benzenoid plasticizer to the United States has actually come to cease completely.

(b) Valuation under Section 402-a of the United States Tariff Act of 1930, as amended

Section 402-a of the United States Tariff Act establishes "the foreign value or the export value, whichever higher" as the first basis for custom valuation.

This valuation method is applied to 369 items listed in the "Final List". Under the said Section the "foreign value" is defined as follows:

"The market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States."

The key phrases, "freely offered to all purchases" and "usual wholesale quantities", are interpreted by the United States customs authorities so restrictively that it is often required to select as the basis for valuation the highest prices denominated at small quantity transactions. Thus the valuation under Section 402-a would be of a strongly import restrictive nature depending upon its administration.

Japan's interested items and recent situations thereof are as follows.

Receiving tubes

At the end of 1961 the United States Customs Authority began notifying the importers of receiving tubes from Japan of the appraised value for duty based on "foreign value" which was from 2 to 2.5 times the export prices. The United States Authority selected as "foreign value" the prices charged by the domestic wholesalers to the retailers in Japan (so-called replacement market).

It should be noted, however, that approximately 70 per cent of the total receiving tube production in Japan are sold by the manufactures to the original equipment manufactures (so-called set-makers), and another 20 per cent are exported to foreign countries including the United States, so that leaving only 10 per cent of total production to sales in the domestic replacement market. It should be further stressed that virtually all receiving tubes imported from Japan are purchased by the United States set-makers through importers, and that Japanese receiving tubes are exported at approximately the same prices offered to domestic set-makers.

Since the domestic replacement market consists of numerous small-scale transactions, considerable intermediary profit margin has to be included in the prices therein. Moreover, such prices include internal taxes as well from which exports are exempted.

The matter of valuation of receiving tubes is now before the Customs Court for legal decision. The total of the duty differential claimed by the United States Customs Authority is estimated approximately \$2.5 million.

Ball-bearing

Ball-bearing from Japan has been subject to Section 402-a valuation. The valuation price is from 20 per cent to 30 per cent above invoice price which corresponds to the price in the Japanese market.

(c) Fixed Valuation under 40-A-7-C of the Canadian Customs Act

If any product is being imported into Canada in such increased quantities and under such conditions as to cause or threaten serious injury to domestic industries, the Canadian Government is free to establish values for customs purposes at any level. In addition to the customs duty levied on the established value, the differential between established value and export price, within the limit of 50 per cent of the established value, is to be collected.

II. Reasons for raising the problems to the Sub-Committee

1. General

(i) Since the actual effect of increasing valuation tantamounts to raising the rate of duty, the arbitrary or fictitious valuation methods have a substantial import restrictive nature. If such valuation methods continue to apply after the Kennedy Round negotiations, the stability of the tariff concessions would be seriously impaired.

(ii) As long as such arbitrary and fictitious valuation methods continue to apply, transactions are constantly exposed to uncertainties or, in some cases, even to the danger of complete suspension. Because the time of reappraisal and level of the incidence are at the discretion of importing countries.

(iii) It is to be noted that while Article VII of the General Agreement belongs to Part II thereof, arbitrary or fictitious valuation is clearly in conflict with the spirits of the said Article.

2. (a) American Selling Price

The basic idea of ASP valuation is "to equalize differences in costs of production at home and abroad (Section 336 of the Tariff Act of 1930)". This is, from Japan's point of view, basically the denial of international trade, and inconsistent with the objectives of the General Agreement and those of the negotiations now to take place.

(b) American Valuation under Section 402-a

(i) It is inappropriate to relate the "foreign value" to the price of the market which is incomparable in scale and nature with the export transaction in question.

(ii) The "foreign value" includes the amount of internal taxes applicable in the exporting country, from which export products are exempted.

(c) Canadian Fixed Valuation

Although the Canadian system has not been invoked vis-à-vis Japan, it remains to be a serious potential threat to the stability of international trade.

III. Objectives of the negotiation

1. General

In view of the importance of the coming negotiations for linear tariff reduction, countries maintaining arbitrary or fictitious valuation methods are strongly urged to take appropriate undertakings so as to make the valuation methods and administration thereof compatible with the basic spirit of Article VII of the General Agreement.

2. (a) American Selling Price

The United States is urged to abolish ASP valuation method and to replace it by a method consistent with the spirits of Article VII.

(b) American Valuation under Section 402-a

The abandonment of "foreign value method" and its replacement by "export value method" are most desirable. Should such a measure be impracticable, at least the present interpretation of "foreign value" within the meaning of the said Section should be rectified so as to be in line with the basic spirits of Article VII.

(c) Canadian Fixed Valuation

The abandonment of the Canadian system would be the most appropriate solution. In case that such undertaking is not feasible, in view of the Canadian position to the effect that the Canadian system does not apply to GATT countries (L/228/Add.1,p.9), the Canadian Government is urged at least to administer the system vis-à-vis GATT countries in conformity with the basic spirits of Article VII.