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UNITED STATES - SUSPENSION OF CUSTOMS LIQUIDATION REGARDING
CERTAIN JAPANESE CONSUMER ELECTRONIC PRODUCTS

Statement by the Representative of Japan

On behalf of the Government of Japan I should like to address myself to an 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. The issue is, in an immediate sense, the suspension of customs liquidation procedure on the importation of Japanese televisions and other consumer electronic products by the United States customs authorities. I refer to the note L/4500 that my delegation submitted for circulation, in which Japan's view on this issue is summarized. Now, behind this suspension is the United States Customs Court ruling that ordered countervailing duties ranging from 5 per cent to 20 per cent of f.o.b. value, to be levied on certain consumer electronic products by reason of their exemption from Japanese Commodity Taxes upon their exports from Japan. In Japan's view, the Japanese practice of exempting exported products from domestic consumption taxes is in full accord with the provisions of the GATT. It is also Japan's view that the Customs Court ruling and the subsequent action by the United States authority is in clear contravention of the provisions of the GATT and consequently impairs Japan's rights under the GATT. Should the ruling of the Court, which is being appealed by the United States authorities, be finally upheld, it is bound to affect seriously a large volume of imports into the United States from many contracting parties who remit or exempt indirect sales taxes on exports in accordance with GATT rules. Even before that, there is clear danger of proliferation of cases of this type in the United States with serious trade implications. It is for this reason that I request the Council to establish a working party without delay to consider this question and report expeditiously to the Council.

I would like to outline the so-called Zenith case first, then discuss its trade implications, and finally its legal aspects. Let me begin by the outline of the case. The case began in 1972 when the United States Treasury Department started a countervailing duty investigation prompted by the petition contending that countervailing duties be imposed on certain Japanese consumer electronic products in accordance with section 303 of the United States Tariff Act of 1930. On 7 January 1976 the Secretary of the Treasury made his final determination on the question that no bounty or grant was paid or bestowed on those products from Japan. Thereupon, Zenith Radio Corporation instituted an action for a review of this determination by the United States Customs Court contending that the forgiveness of the commodity tax on the exportation of those products was clearly a bounty or grant under the Tariff Act. The United States Government, in response, contended that the historical and legislative background of the countervailing duty statute demonstrated that the countervailing duty provision was intended to cover only the excessive remission of taxes directly related to the imported product and that for over seventy-five years the Treasury Department construed the provision as applying only to such excessive remissions. On 12 April 1977 the Customs Court ruled that the exemption, under the Commodity Tax Law of Japan, of television receivers and other 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 Tariff Act, and directed the Secretary of the Treasury to order the customs officers throughout the United States to assess countervailing duties equal to the net amounts of bounty or grant. Subsequent to this Court ruling, 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 Duty".

These are the facts of the case as we know them. What then are the trade implications? We are, of course, aware of the fact that the United States Government has appealed the case to a higher court and that the suspension of customs liquidation and the bonding procedure was put into effect pending the final outcome of the judiciary. However, the court ruling and the subsequent administrative action is already causing serious effects to the trade of Japanese consumer electronic products. The total volume of the relevant consumer electronic products exported from Japan to the United States in 1976 mainly television receivers, radio receivers, record or tape players, and their combinations, amounted to US\$1.89 billion comprising one of the biggest groups of export products from Japan

to the United States. Countervailing duty on these products, if it is ruled to be imposed in the final decision of the judiciary, is not only an imposition of unjustifiable burden on the Japanese exporters, but in the meantime the court ruling and the suspension of customs liquidation itself is already creating uncertainty to business transaction and causing additional burdens to the traders through the need to post bonds. I wish to emphasize here that the Japanese traders who are acting in full accord with the GATT, are being subject to such burdens which, under the provisions of the GATT, they should not be required to bear.

Mr. Chairman, if you permit me to digress somewhat, I should like to emphasize that the Japanese electronic products, especially television receivers, have been subject to numerous harassments in the United States. Japanese television receivers have been subjected to what I might describe as multiple jeopardies of anti-dumping duty action, Escape Clause action under section 201 of the United States Trade Act, investigation under section 337 of the United States Tariff Act, investigation by the International Trade Commission under section 603 of the Trade Act, Anti-Trust Act litigation, and this countervailing duty action. Due to these often duplicating procedures, detailed information and data some of which the companies concerned may regard as highly confidential, were required to be presented, not once, but many times. The Japanese companies must invest heavily in man-hour at great cost to themselves as well as to employ expensive legal experts in the United States. This can be serious harassment as well as highly unsettling to trade and transactions. Although I said this is a digression from the immediate subject of the Working Party and we do not intend to pursue this in the proposed Working Party, we allude to this issue because we believe this is a major trade issue. 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 - and there are already some indications in this direction - 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.

Let me now turn to the legal aspect of the question. The United States action pursuant to the Customs Court ruling, is, in Japan's view, in clear violation of the letters of the provisions of the General Agreement. Article VI, paragraph 4 and the note to Article XVI of the Agreement provide that the exemption of an exported product from domestic consumption duties or taxes or the remission of such duties or taxes shall not be deemed to be a subsidy. From these provisions of the GATT it is crystal clear that the exemption of exported consumer electronic products from Japanese commodity taxes is in strict accord with the rules of the GATT. It is our understanding that the United States Government itself has acted for almost thirty years since the inception of the GATT in accordance with this established rule of the GATT. It is also our understanding that the United States exempts exported products from State and local sales and excise taxes.

This is the background and the reason why the Japanese delegation has asked to include this question in the agenda for today's meeting of the Council. In view of the serious implications of this question my delegation would seek a clear-cut statement of view by the CONTRACTING PARTIES on this matter and request that the Council establish a working party without delay to consider this question. I would also propose that its terms of reference may be as follows: to consider the decision by the United States Customs Court in Zenith Radio Corporation versus the United States and the subsequent United States action in the light of the provisions of paragraph 4 of Article VI of the General Agreement and the note to Article XVI, and to report expeditiously to the Council. It is our understanding that such consideration in the proposed working party would also include the examination of the consistency or otherwise of the United States action with the provisions of the GATT. We also urge that the working party should conclude its work expeditiously and report to the Council. This is all that this delegation requests at this stage, but in the meantime I wish to state that my delegation reserves its rights fully under the provisions of the GATT.