

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

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UNITED STATES/ZENITH CASE

Ruling by the United States Supreme Court

The following communication has been received from the United States Mission.

On 21 June 1978, the Supreme Court of the United States unanimously affirmed the Court of Customs and Patent Appeals decision in Zenith Radio Corporation vs. United States.¹ The Court found that Japan does not confer a "bounty or grant" within the meaning of United States countervailing duty legislation by failing to impose a commodity tax on exports, while imposing the tax on products sold in Japan.

In reaching its decision upholding the Government's position, the Court held that:

- the Secretary of the Treasury's interpretation of the United States countervailing duty law, which has been consistently maintained since the law's enactment in 1897, is entitled to great weight;
- the legislative history of the statute suggests that the term "bounty" was not intended to encompass the non-excessive remission of an indirect tax;
- the Secretary's interpretation was reasonable in light of the statutory purpose of the countervailing duty law, which was characterized as being designed to offset an unfair competitive advantage. Here the Court stated that the Secretary in an 1898 ruling reasonably viewed the remission as a reasonable measure for avoiding the double taxation of imports.
- in view of the five re-enactments of the statute without modifications of the relevant language, the incorporation of the Secretary's position in the GATT, and the "difficult, if not impossible" task of measuring the ultimate economic effect of remitting indirect taxes, the Court should not substitute its judgment for that of the Secretary.

Normal customs appraisalment and liquidation of the affected Japanese electronics products will resume shortly upon issuance of the final court order.

¹Cf. documents L/4508 and L/4543.