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UNITED STATES - IMPOSITION OF IMPORT DUTIES ON
AUTOMOBILES FROM JAPAN
UNDER SECTIONS 301 AND 304 OF THE TRADE ACT OF 1974

Communication from Japan

The following communication dated 13 June 1995 from the Permanent Mission of Japan in Geneva to the WTO Secretariat is circulated at the request of the Permanent Mission of Japan.

The Article XXII:1 consultations requested by Japan (WT/DS6/1) were held on 12 June 1995 in the WTO. During the consultations, the delegation of Japan presented the attached paper to the delegation of the United States.

Japan's Questions to the United States
for the Consultations Pursuant to
Article XXII:1 of GATT 1994 and Article 4 of DSU

I. On the Proposed Tariff Increase

1. (1) Does the USG not have any intention to withdraw the determination made on May 10 and the announcement made on May 16?
- (2) How does the USG reconcile the eventual imposition of these measures with United States obligations under Article I of GATT 1994? Does any of the authorized exceptions to Article I of GATT 1994 apply to the proposed measures?
- (3) What are the criteria by which the 13 models of Japanese luxury cars were selected to be subjected to 100 per cent tariff?
2. How does the USG reconcile the eventual imposition of these measures with United States obligations under Article II of GATT 1994? Does any of the authorized exceptions to Article II of GATT 1994 apply to the proposed measures?

II. On the Withholding of Liquidation Combined with the Announcement of the 100 Per Cent Duties

1. (1) What does "withholding" of liquidation mean? What statutory or regulatory provisions of the U.S. laws and regulations provide the legal basis for this action and its application only to the 13 models of Japanese luxury cars?
- (2) Is this measure regarded as the actions to be taken in the context of Section 305 of the Trade Act of 1974, as amended?
- (3) Are there other examples of such retroactive implementation in the context of actions under Section 301?
2. (1) How does the USG reconcile this measure with United States obligations under Article I of GATT 1994? Does any of the exceptions to Article I of the GATT 1994 apply to this measure?
- (2) Does this measure, targeted only at the listed Japanese luxury cars, restrict imports as stipulated in Article XI of the GATT 1994? If not, why? Does the USG intend to invoke any exceptions under Article XI:2 to justify this measure?
- (3) Does this measure, targeted only at the listed Japanese luxury cars, restrict imports as stipulated in Article XIII of the GATT 1994? If not, why?

III. On the Recourse to Unilateral Measures

1. With regard to the determination made on May 10, 1995:

- (1) Are the "Reasons for Determination" in the Federal Register notice dated May 18, 1995 (60 FR 26745) ascribed to an alleged "complex system"? Are the elements of such system mentioned there exhaustive? If not, please explain in detail all elements which constitute such system.
 - (2) What are the specific reasons for the determination with regard to investigation on "critical parts", "alteration regulations" and the "certification system" for the garages and mechanics, which were mentioned in the Federal Register notice dated October 13, 1994 (59 FR 52034)?
 - (3) Does the lack of mention of "critical parts" in the May 18, 1995 notice published in the Federal Register mean that the critical parts issue is not longer pending in the Section 301 proceedings? Why was this item not mentioned in the Federal Register notice?
 - (4) The letter from Ambassador Kantor to the WTO Director General Ruggiero (WT/INF/1, 17 May 1995) noted that "In the auto parts aftermarket, excessive and complex regulations channel most repairs to garages tied closely to Japanese parts manufactures, which results in market discrimination".
 - How do the facts and circumstances on which this statement is based differ from those on which the 301 determination is based?
 - Do "excessive and complex regulations" include the items mentioned in (2) above?
 - (5) What is the specific reason for determining the acts, policies and practices of Japan to (a) "be unreasonable", (b) "be discriminatory", and (c) "burden or restrict U.S. commerce" respectively?
 - (6) Is the determination made on May 10 the one within the scope of Article 23.2(a) of DSU? If not, why?
2. Does the ongoing Section 301 proceeding cover acts, policies and practices of Japan in the auto parts aftermarket? If so, what particular acts, policies and practices of Japan in that field does the Section 301 proceeding cover?
- (1) Is the said Section 301 proceeding limited to governmental regulations regarding "critical parts", "alteration regulations" and the "certification system" for garages and mechanics, which were mentioned in the October 13, 1994 notice published in the Federal Register?
 - (2) If the answer to the question in (1) above is yes, what specific acts, policies and practices in these three areas does the USG consider to be unreasonable and discriminatory and burden or restrict US commerce and how do they restrict or deny US auto parts supplier access to the market in Japan? Do they fall outside the scope of the WTO Agreement? Are they not covered by the WTO Agreement?
 - (3) If the answer to the question in (1) above is no, what other specific acts, policies and practices of Japan are at issue?

3.
 - (1) Does the USG argue that the US can enforce Section 301 unilaterally for non "WTO covered items"? "What is the exact meaning of "WTO covered items"?"
 - (2) Are the acts, policies and practices of Japan covered by the Section 301 proceeding not "WTO covered items" in the eye of the USG?
 - (3) What does USG seek in the auto parts aftermarket by the Section 301 proceedings? Is the USG not seeking "the redress of a violation of obligations or other nullification of impairment of benefits under the WTO Agreement or an impediment to the attainment of any objective of the agreements" by the said proceedings?
 - (4) Are the acts, policies and practices of Japan covered by the Section 301 proceedings not relevant to benefits accruing to the US under the WTO Agreement?
4. If the acts, policies and practices of Japan covered by the Section 301 proceedings are not covered by the WTO, is it the USG position that a Member may justify taking WTO inconsistent measures on the basis of such non-WTO covered acts, policies and practices? If so, could the USG refer to the specific exception to Articles I and II of the GATT 1994 which authorize such actions?
5. What is the USG estimate of the damage by the acts, policies and practices of the GOJ? What is the basis for the amount of 5.9 billion dollars? Does the amount sum up all damages caused by an alleged "complex system" or the items mentioned in 1.(2) above?
6.
 - (1) The letter from USTR Kantor to the WTO Director General Ruggiero (WT/INF/1, 17 May, 1995) noted that the Japanese regulations "go far beyond what is necessary" to protect "the need for any country to establish regulations pertaining to safety and the environment". And, the letter quoted the exact language of the TBT Agreement Articles 2.2 and 5.1.2, that is, "creating unnecessary obstacles to international trade". Do these references reflect the letter and the structure of the TBT Agreement?
 - (2) When the USG intends to invoke the WTO dispute settlement procedures, what specific measures with respect to the market for automobiles and automotive parts, including "aftermarket" in Japan, will be at issue under that proceeding? What specific measures is the USG going to claim to be in violation of Japan's obligations under the GATT 1994 and the TBT Agreement? Please identify the articles of the GATT 1994 and the TBT Agreement which those measures are alleged to be inconsistent with?
 - (3) What is the criteria applied by the USG to distinguish acts, policies and practices of Japan which "are outside the ambit of the WTO Agreements" from those that will be subject to the filing by the USG under the WTO dispute settlement procedures? Particularly in the area of auto parts?

IV. Nullification and Impairment as a Result of Non-Violation

1. Does the USG believe that the GOJ could have expected reasonably the withholding of liquidation combined with the announcement of 100 per cent duties at the time the tariff concession on automobiles was negotiated? If not, why?
2. Does the USG believe that the said withholding of liquidation has resulted in upsetting the competitive relationship between Japanese luxury automobiles listed in the announcement made on May 16 and luxury automobiles from other countries? If not, why not?

V. Case of Urgency

1. Does the USG believe this case does not constitute a case of urgency? If so, why?
2. Are measures announced or implemented by the USG specifically intended to influence the trade flow of listed products? If yes, does the accumulative nature of the effect not justify GOJ's claim to treat this case as an urgency case?
3. For the effective function of the dispute settlement procedures of the WTO, is it not required to process quickly those cases which involve unrecoverable and accumulative damage and whose legal aspects are straightforward?

Facts to be confirmed

GOJ understands determination and measures taken by USG as follows. If they are correct, please confirm. If they are incorrect, please provide corrections.

1. Determination made by USTR on May 10, 1995 and published in the Federal Register on May 18, 1995 is a determination under Section 301 (b) (1) and 304 (a) (1) A (ii) of the Trade Act of 1974, as amended.
2. "Final determination to be made on June 28" which was mentioned in Ambassador Kantor's announcement on May 16, 1995 is a determination under Section 304 (a) (1) B of the Trade Act of 1974, as amended.
3. The proposed 100 per cent tariffs will be imposed on June 28.
4. The proposed 100 per cent tariffs will be imposed only against the Japanese luxury cars on the May 16 list.
5. The tariff rate currently applied to the 13 models of Japanese luxury cars is 2.5 per cent. This rate is bound rate of duty set forth in the Schedule of Concessions of the United States.
6. The purpose of withholding the liquidation of 13 models of Japanese luxury cars is to make the imposition of 100 per cent tariffs on the above-mentioned Japanese cars into effect retroactively as of May 20, 1995.
7. No vehicles of other countries' origin which is imported to the U.S. are treated similarly with regard to withholding the liquidation.
8. This is the first case which invoked withholding liquidation in the context of the proposed Action under Section 301.

Request for Materials

1. Please provide a copy of the relevant materials pertaining to the "withholding of liquidation", in particular:
 - basic customs laws and regulations

- laws and regulations which authorize the USTR to ask Customs Services to withhold the liquidation
 - specific administrative orders in this case, including relevant communications by Customs headquarters to district and port directors
2. Please provide all the cases, if any, which invoked withholding liquidations in the context of proposed actions under Section 301.