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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 by 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.

CONSULTATIONS PURSUANT
TO ARTICLE XXII:1 OF GATT 1994 AND ARTICLE 4
OF THE DSU CONCERNING UNITED STATES IMPOSITION
OF IMPORT DUTIES ON AUTOMOBILES FROM JAPAN
UNDER SECTIONS 301 AND 304 OF THE TRADE ACT OF 1974

A. Introduction

(1) the Government of Japan (the "GOJ") requested the Government of the United States of America (the "USG") to enter into consultations pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") with respect to the affirmative determination against Japan under Sections 301 and 304 of the Trade Act of 1974, as amended, made on May 10, 1995 and the announcement made on May 16, 1995.

(2) The purpose of this paper is to further clarify the legal basis of the "Request for Consultations by Japan".

(3) The GOJ emphasizes its desire to seek a settlement of this dispute, which can be achieved by the USG withdrawing the affirmative determination made on May 10 and the announcement made on May 16, inter alia, not proceeding to the imposition of 100 per cent duties and terminating immediately the withholding of liquidation of entries of the listed Japanese products.

B. Violation of Article I of GATT 1994

The withholding of liquidation of entries of the listed Japanese products announced on May 16, 1995, which has been implemented since May 20, 1995, combined with the announcement of the proposed imposition of 100 per cent duties which can retroactively go into effect as of May 20, is discriminatory and therefore violates Article I of GATT 1994.

The imposition of 100 per cent duties or any other discriminatory duty on the listed Japanese products by the USG, if implemented, will also violate Article I of GATT 1994.

C. Violation of Article II of GATT 1994

The imposition of 100 per cent duties or any other duty in excess of those set forth and provided for in the Schedule of concessions of the United States of America (in case of automobiles, 2.5 per cent) on the listed Japanese products by the USG, if implemented, will violate the obligation of the USG under Article II of GATT 1994.

D. Violations of Articles XI and XIII of GATT 1994

Since the said withholding of liquidation, combined with the announcement of the proposed imposition of 100 per cent duties which can retroactively go into effect as of May 20, restricts importation of the listed Japanese products into the territory of the United States, it is in violation of Article XI of GATT 1994. It is discriminatory and thus also violates Article XIII of GATT 1994, because this restriction applies only to the listed Japanese products.

E. Violation of Article 23 of the DSU

The affirmative determination made on May 10, the said withholding of liquidation and the announcement made on May 16 of the proposed imposition of 100 per cent duties, both individually and collectively, violate Article 23 of the DSU.

The imposition of 100 per cent duties or any other increase in duties on the listed Japanese products, if implemented, will also violate Article 23 of the DSU.

F. Nullification and Impairment in the Sense of Article XXIII:1(b) of GATT 1994

The said withholding of liquidation, combined with the announcement of the proposed imposition of 100 per cent duties which can retroactively go into effect as of May 20, has resulted in upsetting the competitive relationship in the luxury car markets, could not have been reasonably anticipated by the GOJ at the time of negotiation of the tariff concession on the products concerned, and therefore nullifies and impairs the benefit accruing to Japan under Article II of GATT 1994 in the sense of Article XXIII:1(b) of GATT 1994.

G. Need for Treatment as a Case of Urgency

The GOJ believes that this case represents a "case of urgency" referred to in Articles 4 and 12 of the DSU.

(1) These consultations, followed, if necessary, by panel procedures, must move forward as expeditiously as possible before the situation worsens with the actual imposition of 100 per cent duties.

(2) The said withholding of liquidation, combined with the announcement of the proposed imposition of 100 per cent duties which can retroactively go into effect as of May 20, has already caused significant damage not only to the Japanese automobile industry but also to the US dealers handling the listed Japanese luxury cars. Unless urgently addressed, the damage, because of its accumulative nature, would become irreparable.

(3) Since the USG's recourse to the unilateral measures constitutes such a clear-cut violation of the WTO Agreement, it must be redressed immediately.