ANTI-DUMPING MEASURE ON CARBON STEEL PLATE
IMPOSED BY THE UNITED STATES

Statement Made by the Representative of Japan at the Meeting of the Anti-Dumping Committee, October 1977

1. General remarks

Let me begin with expressing a great concern over the recent surge of protectionism in the international trade sphere under the chronic stagflation of the world economy, which, in the view of this delegation, is likely to exert an adverse effect on the administration of anti-dumping systems. Looking back upon the past, there were bitter experiences in the world trade, where, in the absence of a set of international rules, there existed considerable room to allow discretionary administration of anti-dumping measures in the interest of protectionism. Efforts were continued to cope with it and were successfully crystallized toward the end of the Kennedy Round in the form of the present Anti-Dumping Code. I believe that, generally speaking, the Code has been operated in a reasonable way so far, thanks to the activities of Anti-Dumping Committee. But, on the other hand, it is fair to say that there exists some room in the letters of the Code to allow discretionary interpretation and operation, leading possibly to a loophole. Whether the Code can operate itself successfully, therefore, depends entirely upon a strong and self restrained will of each signatory government to ensure that "anti-dumping practices should not constitute an unjustified impediment to international trade", as is clearly declared in the preamble of the Code. If, on the contrary, a signatory government gives way to the mounting protectionism, Pandora's box is bound to be opened, resulting in proliferation of anti-dumping systems employed in the interest of protectionism.

To look at the recent development of trade policies, it seems that there has been an increasing symptom to imply that the above-mentioned apprehension might come true. There is no doubt that the Anti-Dumping Committee will be expected to reinforce its activities so as to ensure appropriate operation of the Code. In this sense, I believe it very timely that this meeting of the Anti-Dumping Committee coincides with the present stage of developments.
I would like to take advantage of this opportunity to have consultation under Article 17 of the Code regarding the recent imposition of provisional measure by the United States upon carbon steel plate imported from Japan, being referred to as the Gilmore case. I would add in this connexion that United States Steel Corporation filed a complaint recently on 20 September 1977 on certain steel products imported from Japan. The Japanese Government watches with great concern how the United States Government will deal with it.

2. Outline of the Gilmore case

First of all, let me outline the Gilmore case. At the end of February 1977, Gilmore Steel Corporation filed its complaint on hot rolled carbon steel plate imported from Japan for suspected dumping practices. The United States Treasury Department initiated its investigation on 30 March 1977. This resulted, on 3 October 1977, in a preliminary determination that carbon steel plate from Japan is being sold at less than fair value by 32 per cent on an average and in a provisional measure that appraisement will be suspended for six months, under the United States Anti-Dumping Act 1921. It is, however, the view of this delegation that the provisional measure is not justifiable due to absence of sufficient evidence for the determination and its dubious conformity to the Anti-Dumping Code. This delegation wishes to express its views and to pose questions in detail as follows.

3. Presentation of reasons and criteria

We have not been provided with the reasons for the decision nor the criteria applied. It is a responsibility, under Article 10(c) of the Code, for the authorities concerned to show the reasons and criteria when they decide to impose provisional measures. Availability of such information is essential to assure transparency that the decision is made in conformity with the Code and also to ensure that the exporters and other parties concerned can prepare their presentations on the basis of such information in order to defend their interests. We would, therefore, require the United States to supply us with sufficient information on the reasons for the decision and the criteria applied to meet the requirement mentioned earlier. Let me explain in further detail the points of question on which the United States is required to supply information, as well as the points of issues of which we would be doubtful in respect of conformity of the United States Anti-Dumping Law with the Anti-Dumping Code.

4. Determination of injury

(Sufficient evidence of injury)

(1) Existence of "sufficient evidence of injury" is an indispensable prerequisite to imposition of provisional measures, as is provided for in Article 10(a) of the Code, whereas it seems to me that there is no explicit provision to this effect in
the United States Anti-Dumping Law and Regulations. This will lead to a great concern that there remains considerable room for discretionary implementation of the Law and Regulations in this regard, resulting in inconformity with Article 10(a) of the Code. We would, therefore, ask for clarification by the United States as to how it deals with sufficient evidence of injury as a procedural prerequisite, in the absence of the provision to that effect.

(Examination of all factors)

(2) In an attempt to determine injury, it is required by the Code to examine "all factors having a bearing on the state of the industry in question", such as turnover, market share, prices, etc., as enumerated in Article 3(b). We would ask the United States for presentation of evidence to show in what way this examination of all factors was conducted.

(Scope of "domestic industry")

(3) To the best of our knowledge, the complainant alleges the existence of injury only in the region of the United States West Coast. Assuming that the investigation was conducted upon this particular request, limiting its coverage to the West Coast region, it should follow that the provisional measure be limited in its imposition only to those imports to that particular region, in accordance with Article 8(e) (applying Article 4(a)(ii)) of the Code. However, the fact is that the provisional measure covers not only the West Coast region but all the territory of the United States. This would bring us to suspect that the measure has been taken in the absence of "sufficient evidence of injury" in the areal coverage. If, on the contrary, it is the case that the investigation was conducted to cover the domestic producers as a whole or a major portion of them, as is defined under Article 4(a) of the Code, we would ask the United States to present sufficient evidence to prove the existence of injury, in such a concrete manner as to show the coverage of the investigation in terms of the number of enterprises, production, level of commercial transactions, etc.

(The principal cause of injury)

(4) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of injury, as is provided for in Article 3(a) of the Code. In this regard, we would require the information to show what factors other than the allegedly dumped imports have been examined as may be adversely affecting the industry in question. We would, further, ask for the information to demonstrate that the allegedly dumped imports constitute the principal cause of injury, compared with all other factors.
5. **Determination of the dumping margin**  
(Home market price principle)

(1) The Japanese exporters submitted to the United States authorities information on their home market price in order to be helpful in examination of the alleged dumping margin. However, the information on their home market price was disregarded and, furthermore, the United States authorities have employed, in examination of alleged dumping margin, the cost of production plus addition for selling cost and profit to be compared with the export price. This will bring us to doubt if the United States disregard of home market price would be in conformity with Article 6 of the GATT, which provides that, in determination of the dumping margin, the export price shall be compared with the home market price, in so long as the latter exists.

(2) In this regard, the United States Anti-Dumping Law has a questionable provision in Article 205(b) to the effect that, whenever the home market price in question is determined to be inadequate as a basis for comparison with the export price, the authorities shall determine that no home market price exists and shall employ the constructed price. We would require the United States to provide us with the evidence which can prove that the home market price at issue is inadequate as a basis for the comparison.

(Sales at a loss)

(3) In the course of the investigation, the Japanese Government asked for clarification on what was "reasonable grounds" to believe that sales in the home market of Japan were made at prices which represented less than the cost of production. The United States replied that there was nothing else other than Japan's presentation of information that could prove the absence of sales at a loss. The United States has contended, in our interpretation, that the United States authorities would determine that sales have been made in the home market of Japan at less than cost of production, unless the Japanese exporters are willing to supply information on their cost of production. It is our view that this kind of discretionary application of Article 205(b) creates an unjustifiable impediment to international trade and that it is not in conformity with the letters and spirit of the Anti-Dumping Code.

(4) Article 205(b) stipulates that sales at less than cost of production shall be disregarded in determination of the home market price, if it is determined that such sales (i) have been made over an extended period of time and in substantial quantities, and (ii) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.
The United States would be required, in invocation of this Article, to provide us with the evidence which shows that all these conditions are fulfilled.

(Constructed price)

(5) In an attempt to determine the dumping margin, the United States has included in the calculation of "constructed value" the amount for profit equivalent to 8 per cent of the sum of general expenses and cost of production and others, in accordance with Article 206(a) of the United States Anti-Dumping Act. However in our view, this Article 206(a) allows a discretionary determination on profit for the following reason. Profit varies according to cyclical fluctuation of the economy over an extended period of time, as well as to difference in the industrial sectors in question. There can be, accordingly, certain cases in which profit goes down far below 8 per cent. Article 206(a) requires, however, that, even in such cases with actual profit far below 8 per cent, the profit shall be regarded in a fictitious manner as accruing at the level as high as 8 per cent at least in calculation of the constructed price. It is clear that this method of calculation deviates so much from reality that it is not in conformity with Article 2(d) of the Code, which stipulates that "the addition for profit shall not exceed the profit normalized on sales of products of the same general category in the domestic market of the country of origin".