

GENERAL AGREEMENT ON TARIFFS AND TRADE

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APPLICATION OF ARTICLE XXXV TO JAPAN

Origins of Article XXXV and Factual Account of its Application in the Case of Japan

Report by the Executive Secretary

In the original text of the General Agreement drawn up in Geneva in 1947, Article XXXIII required unanimous agreement on the accession of a non-contracting party to the General Agreement. Accordingly, there was in the original text no provision corresponding to Article XXXV since the unanimity requirement in Article XXXIII enabled any single contracting party to veto the accession of any non-contracting party.

At the first session of the CONTRACTING PARTIES in Havana in 1948, as a result of a recommendation from the Havana conference, the text of Article XXXIII was modified so as to permit accession upon terms to be agreed by two-thirds of the contracting parties. It was then pointed out that as a result of this amendment it would be possible for two-thirds of the contracting parties to oblige a contracting party to enter into a trade agreement with another country without its consent. It was to meet this difficulty that Article XXXV was introduced into the General Agreement.

Upon the accession of Japan, Article XXXV was invoked by fourteen contracting parties:*

Australia	India
Austria	Luxemburg
Belgium	Kingdom of the Netherlands
Brazil	New Zealand
Cuba	Rhodesia and Nyasaland
France	Union of South Africa
Haiti	United Kingdom

* Of these, Brazil and India subsequently renounced their invocation of the Article. On the other hand, Ghana, Malaya and Nigeria, when they became contracting parties pursuant to the provisions of Article XXVI:5(c), had recourse to the provisions of Article XXXV which had been invoked on behalf of their territories by the United Kingdom; more recently Malaya renounced its recourse to the Article. Cambodia, under its arrangement of special relationship with the CONTRACTING PARTIES, and Tunisia, upon its provisional accession, also invoked Article XXXV, but indicated that in practice their trade with Japan would be conducted in accordance with the General Agreement.

In all cases, this was done by a simple notification to the CONTRACTING PARTIES through the Executive Secretary, and the notifications were not accompanied by any statement of reasons for the invocation of Article XXXV. However, some of the contracting parties concerned issued public statements explaining their action, and others furnished explanations subsequently when the question of the application of Article XXXV to Japan was discussed from time to time by the CONTRACTING PARTIES at the request of Japan. It is common to most of these explanations that what the invoking countries sought to guard against was injury to domestic industries because of the exceptionally acute competition which they feared from Japan. Thus the Australian Prime Minister, on 15 August 1955, stated "Bearing in mind the uncertainties which still exist regarding the strength of Japanese trading competition and the possible effects of such competition on Australian industries and employment, the Government considers that Australia cannot at this stage apply the GATT to Japan without special safeguards. The Government is not satisfied that the safeguards now allowed under the Agreement would be adequate and therefore the Government is unable to accept the application of the GATT between Australia and Japan."

The Netherlands Government referred to certain special aspects of Japanese competition which had prevented the Government from finding adequate safeguards to justify the full application of the General Agreement to Japan.

In a statement of policy issued in April 1955 the United Kingdom Government stated ".....The Government are, however, unwilling to tie their hands in advance in these matters by accepting the unconditional obligations of the General Agreement towards Japan, and it has not been possible to devise any acceptable basis to limit these obligations by bilateral arrangement. International trade is going through a period of adjustment and the Government feel that before they can accept the obligations of the General Agreement towards Japan, and thus limit their full freedom of action to deal should the necessity arise with disruptive or unfair competition, they must see how the pattern of trade will develop."

The most systematic and detailed explanation was that offered by the delegate for France at the tenth session of the CONTRACTING PARTIES: ".....It was with regret that the French Government had had to invoke Article XXXV, as after careful study it had been found that the General Agreement did not afford France sufficient safeguards. Despite the efforts of the Japanese Government to comply with the rules of world trade, prices of Japanese exports remained in general below the world average. The standard of living in Japan, although higher than in many Asian countries, was considerably below that achieved in the industrial countries of Europe, whereas Japan's technical knowledge tended to approach that which existed in industrialized countries. The Agreement had rules which could only be observed by countries of comparable economic structure, and according to Japan the guarantees foreseen in the Agreement would react to the disadvantage of the industrial countries of Europe which had to observe standards of social welfare that Japan was not yet in a position to apply.

"In its note the Japanese delegation had asked the contracting parties frankly to state their difficulties. The first main difficulty with which the French Government was faced was the general problem of industrializing France's under-developed overseas territories. Those that were under-populated required that efforts first be made toward a renovation of their agriculture. When these territories were over-populated it was necessary to industrialize as rapidly as possible, and in this connection the plan adopted by the Indian Government was of particular interest. The infant industries had to be aided and protected. The second main difficulty was the structural crisis in the textile industry, in all European countries as well as in France, to which the creation of textile industries in the under-developed countries had contributed. These two problems, taken together with the low wage structure in Japan's industry, represented a serious threat...."

The less-developed countries which have invoked Article XXXV have laid particular stress on their special problems of diversifying their economies and the establishment of new industries which need to be protected from acute external competition. (See, for example, statements made by Cambodia: SR.15/15, page 126; SR.16/10, page 144. Ghana: GATT/404 thirteenth session; SR.13/11, page 78; SR.14/7, page 95; SR.15/15, page 125; Spec(59)247, page 4; SR.16/10, page 144; SR.17/10, page 140. Haiti: SR.10/12, page 130; SR.13/11, page 76.) Some of these countries, for instance Ghana and Nigeria, also referred to the lack of balance in their trade with Japan.

The foregoing is intended merely to recall such explanations as have been given regarding the action of countries invoking Article XXXV, and is not an attempt to describe the arrangements made by the countries concerned to regulate their trading relationships with Japan. These will be described in another document which is being prepared for the Working Party by the secretariat.