

GENERAL AGREEMENT ON TARIFFS AND TRADE

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TARIFF NEGOTIATIONS WITH THE EUROPEAN ECONOMIC COMMUNITY AND THE APPLICATION OF ARTICLE XXXV

Observations submitted by the Japanese Delegation

The following memorandum has been submitted by the Japanese delegation to the sixteenth session of the CONTRACTING PARTIES with the request that it be submitted to the Tariff Negotiations Committee which was established at that session:

"Japan wishes to participate in the tariff negotiations to be held from September 1960 on Article XXIV:6 for a common external tariff of the EEC. Japan will also take part in the new round of tariff negotiations from January 1961, in which Japan certainly wishes to enter into negotiations with the Community.

"The Japanese delegation earnestly hopes that the invocation of Article XXXV by France and Benelux will be terminated by then. Otherwise certain questions might arise which the Japanese delegation feels it is incumbent on the CONTRACTING PARTIES to solve, in order clearly to define the scope, methods and legal implications of such negotiations as might be entered into between Japan and the Community.

"Problems which in the opinion of the Japanese delegation might arise, are tentatively set forth in the attached paper. In the view of the Japanese delegation, unless Article XXXV is withdrawn by France and Benelux in the near future, these points will have to be clarified prior to the beginning of tariff negotiations in September 1960.

"1. Can a Contracting Party enter into Tariff Negotiations without revoking Article XXXV?

The argument is sometimes advanced that a contracting party which has not entered into negotiations with another country at the time of negotiations for the admission of the latter to GATT and which has invoked Article XXXV, may enter into negotiations with that country in a subsequent round of tariff negotiations without revoking the said Article or without being deemed to have done so.

This argument seems to be unfounded. The concessions resulting from negotiations between two contracting parties invoking Article XXIV are meaningless unless the General Agreement or at least Article II and other related articles are made applicable between the two contracting parties. And as 'partial' invocation or revocation of Article XXIV is excluded, it should be upheld that two contracting parties entering into tariff negotiations at any time must, in advance, revoke Article XXIV or be deemed to have done so ipso facto as they entered into negotiations.

"2. Whether entering into Tariff Negotiations with a Customs Union should be construed as entering into Negotiations with all Constituents of the Union?

The representative of the EEC has made it clear during the deliberations of GATT, that tariff negotiations with non-Member countries would be conducted by EEC itself, rather than by the individual Member countries of EEC. If Japan enters into tariff negotiations with EEC, it might well be construed that Japan has done so with all constituents of the EEC. If that is so it must then be assumed that Article XXIV is no longer invoked against Japan by any constituent of the EEC, and this will make the matter simple.

"3. However, if it is not to be interpreted in this way, a more complicated legal interpretation would be required. Whatever the legal argument might be, it would give rise to an artificial situation where the negotiations between the EEC and Japan be deemed as being carried out in relation to the 'Common Tariff' as applied only to Germany and Italy. France and Benelux, by refusing to apply the GATT (in particular Articles I and II), do not give any legal assurance that they will apply to Japan the bound rate of common external tariff which they negotiated with other contracting parties.

"4. Negotiations under Article XXIV:6

To further implement the hypothetical nature of the points raised in paragraph 3 above with regard to the negotiations under Article XXIV:6, the following situation might be envisaged:

Germany and Italy have to negotiate with Japan under Article XXIV:6 in order to increase some rates of duty previously negotiated with Japan. But the latter part of Article XXIV:6 could not be applied in full in their negotiations with Japan.

Should negotiations with Japan be carried out in relation to the Common Tariff as applied only to Germany and Italy, the Common Tariff as readjusted by the negotiations would not be applied to Japanese products imported to France and Benelux. (In this case, it would be entirely up to the Community to decide how to deal with Japanese products imported into France and Benelux via Germany or Italy.) Even if the readjusted Common Tariff were made de facto applicable to Japanese products imported to France or Benelux, and even if such a tariff should bring about reductions of duty from the present French or Benelux tariff, Japan should not be asked to take 'due account' of such de facto benefits in her negotiations

with Germany or Italy. Such de facto tariff benefits not only lack any guarantees (Article II, etc.) in France or Benelux, but they may become completely meaningless without guarantees of non-discriminatory quantitative restrictions.

This practically means that negotiations with EEC under Article XXIV:6 should be dealt with by Japan as individual negotiations with Germany and Italy or as negotiations with a Germano-Italian Customs Union. Japan would only be bound to consider the Common Tariff in the light of general incidence of the duties which were previously applicable in Germany and Italy. If the Common Tariff were to bring about tariff increase in Germany, Japan would be asked to take 'due account' of the compensation already afforded by reductions brought about in corresponding duty of Italy only, and not of France and Benelux, and if that is so the Community would be required to prepare special sets of statistical data such as those related to general incidence of duties of Germany and Italy.

"5. Tariff Negotiations of 1961

Similarly, with regard to the new round of tariff negotiations in 1961, the following situations might arise from the assumption mentioned in paragraph 3 above.

Germany and Italy are of course free not to enter into negotiations with Japan. But if they do so, Japan would be glad to negotiate with them in relation to the Common Tariff as applied to Germany and Italy. Japan should, however, neither be asked to take into account the benefits she might de facto obtain (or might not obtain) by the reduction in the Common Tariff as applied to Japanese products imported into France or Benelux nor asked to grant concessions in her tariff for any specifically French or Benelux products."