

GENERAL AGREEMENT ON TARIFFS AND TRADE

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APPLICATION OF ARTICLE XXVIII TO NEW PRODUCTS

The following communication, dated 7 July 1983, has been received from the Permanent Mission of Japan with the request that it be circulated to contracting parties.

Position Paper

There has recently been a move on the part of certain contracting parties to raise the tariff rate on "new products" with very little actual trade volume. Specifically, the EC Commission announced its intention to enter into Article XXVIII negotiations with a view to raising its bound tariff on digital audio discs temporarily.

The preemptive raising of tariff rates by invoking Article XXVIII on new products such as digital audio discs whose trade is expected to expand in the future raises serious problems in the light of the basic objective of the GATT to expand trade. There is further the problem that, in procedural terms, the established practice cannot be applied to the negotiations on compensations for the raising of tariff rates on such new products. An appropriate forum needs to be established by the CONTRACTING PARTIES to examine these problems.

Japan therefore requests that a working party be established under the Council to examine the problems related to the application of Article XXVIII to new products and to explore some agreement thereon.

ANNEX

I. Factual explanation

1. DAD (Digital Audio Disc. Also known as Compact Disc Player) is a sound-reproducing equipment whose system is entirely different from that of conventional record players. (Laser beam is used to reproduce the digital information recorded on the disc, while the present analogue system uses needles.) It has epoch-making qualities such as the highest sound quality available today (without any noise), semi-permanent durability of the disc, and random access totally unaffected by vibrations, and is considered to be a highly promising product in the field of audio products.

2. Actual production and trade

This product is the fruit of joint development between European and Japanese industries. Its production in Japan was started in the summer of 1982. Its full-scale sale was started by the European and Japanese industries only in March 1983. (To date no official statistics are available on the actual trade volume.)

II. Japan's concerns

1. Basic issue

Trade in high technology products such as DAD is expected to expand in the future and is perceived to play a key rôle for the revitalization of the world economy.

The move to raise the tariff rates on such new products in a preemptive manner by invoking Article XXVIII is a source of serious concern in the light of our commitment declared in the GATT Ministerial Meeting last November to strengthen the efforts to resist protectionism. If such a precedent of protective measures were to be established, it could hinder the future development of high-technology products and thus impede the revitalization of the world economy, and run counter to the fundamental goal of the GATT to achieve the development of the world economy through the expansion of trade.

2. Problems relating to GATT provisions

While Article XXVIII of the GATT does not explicitly exclude invocation of the Article to cases of this kind, there are the following problems:

- (1) The determination of contracting parties with P and S status presupposes the existence of contracting parties with sizeable actual export volume over a period of time prior to the Article XXVIII negotiations (see paragraphs 4 and 7, Ad Article XXVIII, Annex I to the General Agreement). At the stage where there is no sizeable

actual import, it would be extremely difficult to determine which contracting parties have P and S status on the basis of such objective criteria as the import statistics over the preceding three years, which the notifying contracting party is required to submit under the Council decision in 1980 (C/113). (Further, given the inability to determine the P status as described above, it would not be possible to determine which contracting party has the initial negotiating right, because the contracting party with a P status is to have the initial negotiating right with respect to each item bound as the result of multilateral negotiations including the Tokyo Round (floating initial negotiating rights (INR) - see BISD 26S/202).)

- (2) At the stage where there is no sizeable actual import, there is no objective method available for calculating compensation which is necessary to maintain the general level of concessions as provided for under Article XXVIII:2.

In the light of the above, the invocation of Article XXVIII in the present case would make it possible to withdraw or raise bound tariff rates without going through the negotiations/consultations provided for under Article XXVIII and without providing for adequate compensation described in (2) above. This is highly problematic.

It would be in the interest of the CONTRACTING PARTIES as a whole, through the examination of an unprecedented problem like this, to clarify whether it would be appropriate to invoke Article XXVIII and, should it be found that Article XXVIII is applicable (Japan is of the view that it is not), what the specific method of application would be, in connection with the issue of preemptive raising of tariff rates on new products. It is with this consideration that the Government of Japan wishes to bring this matter to the attention of the CONTRACTING PARTIES.

III. Forum

The Government of Japan is of the view that, given the wide-ranging implications of the problem, it is necessary to establish a new working party under the Council with a view to examining the matter in an objective and constructive manner.