

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

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### PANEL REPORT ON JAPAN'S RESTRICTIONS ON IMPORTS OF CERTAIN AGRICULTURAL PRODUCTS

#### Statement by the representative of Japan

The following statement made at the Council meeting of 2 February 1988 by the representative of Japan is being circulated at the request of that delegation.

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1. Japan believes that this Panel report poses some serious problems as was explained in detail in my statement at the December 1987 Session of the CONTRACTING PARTIES and in the supplementary document which was made available afterwards. First, the Panel's interpretation and application of GATT provisions with respect to some agricultural items are highly questionable, as is its interpretation of the provisions relating to state trading. In addition, no appropriate consideration has been given to the "pertinent elements" which are specifically referred to in the terms of reference of the Panel.

Furthermore, although the twelve agricultural items were considered by a single panel, its judgement on GATT conformity was reached on an item-by-item basis. Accordingly, it would be appropriate for the Council to consider the report on an item-by-item basis.

Having these considerations in mind, Japan stated at the CONTRACTING PARTIES' Session that it could not accept the parts of the Panel report concerning (a) the interpretation and application of the GATT provisions with respect to certain dairy products and starch, and (b) the interpretation of the provisions relating to state trading. However, with regard to the remaining part of the report, in spite of its shortcomings, Japan expressed readiness to accept the adoption and stated that it would take appropriate measures on the basis of the recommendation in the report even though this would entail domestic difficulties.

2. To our regret, Japan's position was not accepted by the CONTRACTING PARTIES. Not a few contracting parties expressed opposition to Japan's position from the viewpoint that the Panel report must be examined for adoption in its entirety and that it would not be appropriate to establish a precedent of a partial adoption.

Japan then asked the CONTRACTING PARTIES to revert to this matter at this Council meeting, as we needed time to reconsider our position.

3. Since then, the Government of Japan has deliberated carefully on its position, taking fully into account the discussions at the Session. Let me now state Japan's position on this matter.

We find it regrettable that we are obliged to point out that the Panel report poses many problems which cannot be overlooked. We will elaborate on them later, but let me first state that Japan, as a contracting party of the GATT, fully recognizes the importance of assuring the effective functioning of the dispute settlement procedures.

The basic structure of dispute settlement in GATT is to bring about a satisfactory resolution of disputes between the parties concerned. It encourages the disputants to reconcile differences among themselves, while preserving the eventual rôle of the CONTRACTING PARTIES to seek a settlement involving all contracting parties including disputants. In this sense, the dispute settlement process in GATT, including that of the panel procedure, is conciliatory rather than adjudicatory in nature. The panel report is presented to the CONTRACTING PARTIES as part of the process of dispute settlement, and Japan recognizes the special importance of expeditious adoption of the report in its entirety, for the purpose of ensuring the effective functioning of the dispute settlement procedures.

Therefore, bearing the above in mind, if it is the wish of all the contracting parties present here to seek the adoption of the Panel report in its entirety at this Council meeting, Japan is not opposed to its adoption, provided that the Council takes note of and puts on record this statement in its entirety.

Let me proceed with emphasizing the following three points:

(1) Regarding the items other than certain dairy products\* and starch, the Government of Japan will endeavour to implement appropriate measures on the basis of the recommendation in the Panel report as soon as possible, although we are constrained by the existence of difficult domestic situations. The Government of Japan will take this step in spite of obvious shortcomings of the report, such as the Panel's having adopted an interpretation clearly opposed to precedents without cogent reasoning. One such example is the interpretation on "perishability" of tomato juice and fruit products.

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\* Certain dairy products: 04.02, ex17.02 and ex21.07

These items are of crucial importance to some regional economies in Japan, and we must give full heed to the domestic effect which will be brought about by the measures to be taken on the basis of the Panel's recommendation. We will, therefore, need a reasonable period of time to overcome domestic difficulties and to effect the necessary institutional reforms which will be implemented after the necessary internal coordination.

(2) Regarding certain dairy products and starch, Japan still considers highly questionable the logic of the Panel report on those items, relating to the requirements for permitting import restrictive measures. Hence our objection to its conclusion.

That is to say, the Government of Japan does not agree with the interpretation of Article XI.2(c)(i) adopted by the Panel with respect to those items, and reserves its position as to the use in future of the Panel's interpretation.

I would also like to express our position that in view of the domestic situation, it will be extremely difficult to implement measures in accordance with the Panel's conclusion based on such an interpretation.

(3) The Panel's interpretation of the provisions relating to state trading totally ignores their drafting history, and cannot be considered as appropriate.

The Government of Japan does not agree with the Panel's interpretation, and therefore, reserves its position as to the use in future of the Panel's interpretation of the provisions relating to state trading. Further, it is the understanding of the Government of Japan that the adoption by this Council of the Panel report in its entirety will not establish a generally applicable interpretation of the provisions relating to state trading.

4. Let me now elaborate those points in the Panel report which we find objectionable.

(1) First, the Panel's conclusion on conditions which would permit import restrictions of processed agricultural products by virtue of Article XI:2(c)(i), particularly that on "perishability", is based on a perfunctory judgement removed from the reality of trade and transaction in specific products.

For example, it is well known that dairy products such as evaporated milk, skimmed milk powder and whey powder, are products in an early stage of processing, reversible to fresh milk, and in direct competition with fresh milk. It is commonly recognized that they are perishable products as such. However, the Panel report concludes that processed milk products are not "perishable" since they are in powder or condensed form, and hence do

not compete with fresh milk. This reasoning completely ignores the reality.

Japan believes that the Panel finding, in essence, is tantamount to affirming that, as far as dairy products are concerned, no import restrictions are allowed under Article XI:2(c)(i) except on fresh milk. If such a finding is established as a precedent, it would certainly affect the legitimacy of import restrictive measures taken by some contracting parties in order to maintain the effectiveness of the domestic supply restriction. We would like to draw anew, the attention of contracting parties to this aspect of the Panel report.

The Panel report ignores the following facts in examining the "perishability" of starch.

(a) Potatoes used for starch are not marketed internationally as such, but are marketed in the form of starch, after undergoing simple processing (grinding, washing and drying) as is customarily required to prepare them for marketing in substantial volume in international trade.

(b) In order to implement production control effectively on potatoes or potato starch, the enforcement of import restriction on starch, which is the ordinary form transacted in international trade, is essential.

It should also be noted that with regard to the "perishability" of tomato juice and fruit products, the Panel's finding contradicts that of the Panel on the "EEC programme of minimum import prices, licenses and surety deposits for certain processed fruits and vegetables" (BISD 25S/68), which found that canned and barrelled tomato concentrates were perishable.

In addition, we would like to point out that the Panel does not pay adequate attention to the policy of the Japanese Government to secure the best possible access for imports by not imposing restrictions on raw material of starch and fruit products, and seems to argue that imports of raw materials must be restricted in order to make import restrictions on starch consistent with the GATT.

(2) Secondly, the Panel's interpretation of the provisions relating to state trading not only ignores the drafting history of the relevant GATT provisions but also lacks legal precision, and is inappropriate.

In the light of the drafting history of the General Agreement, it is clear that the provisions stipulating the discipline on restrictions in the field of private trade and those concerning the discipline on state-trading monopolies, were originally moulded as two distinct sets of legal frameworks under the GATT. The Panel report concludes, without adequate reasoning, that the "General Elimination of Quantitative Restrictions" provided in Article XI:1 applies to import restrictions made effective

through a state-trading monopoly on the basis of the wording of the interpretative Note and Articles XI, XII, XIII, XIV and XVIII.

It is regrettable that the Panel ignored the drafting history and made an excessively policy-oriented judgement, instead of developing a solid legal argument based on objective facts. Japan finds this extremely inappropriate.

(3) Thirdly, Japan claimed in the panel proceedings that some elements should be taken into account in its deliberation as the "pertinent elements" referred to in the Panel's terms of reference. The points Japan raised in the proceedings as "pertinent elements" are as follows:

(a) Japan has consistently endeavoured to improve market access for agricultural products, and has contributed to the growth of trade in agriculture as the largest net importer of agricultural products in the world;

(b) in the field of trade in agricultural products, many countries exercise import restrictive measures, including the United States under its waiver;

(c) considering that export subsidies are permitted for primary products and that imports are, in effect, restricted under waivers and variable levies, it is extremely inequitable to adopt an excessively strict interpretation regarding import restrictions based on Article XI:2(c)(i); and

(d) we are currently negotiating in the Uruguay Round to establish fair and more operationally effective GATT rules and disciplines for trade in agriculture, and problems such as I have just mentioned should be addressed in a comprehensive manner within such negotiations.

However, the Panel treated them as irrelevant to the examination without giving any appropriate consideration, and reached extremely inequitable conclusions.

5. My intervention might have been rather lengthy. The reason why I made a detailed statement is that we are convinced that the points contained therein are not only the concerns of Japan but also a matter of common interest for a number of other contracting parties. By the same token, if some of my words sounded somewhat critical of the Panel's work, such was not my intention at all. I can assure you that my intervention was made in a spirit of constructiveness vis-à-vis the work of the Panel and the dispute settlement mechanism of the GATT as a whole.