

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM JAPAN

The attached communication, dated 9 September 1987, has been received from the delegation of Japan with the request that it be circulated to members of the Group.

Proposal of Japan
on the GATT Article XXIV and XXVIII

Japan hereby submits, in accordance with the negotiating plan, a proposal on the GATT Article XXIV and XXVIII with a view to contributing to the promotion of the negotiations.

The proposal is a preliminary one, without any prejudice to Japan's future position in negotiations.

I. Article XXIV

1. Relations with contracting parties not parties to regional agreements

Regional agreements (customs unions or free-trade areas) are by nature discriminatory to contracting parties not parties to such agreements. Since regional agreements between major trading countries such as EEC and US-Canada Free Trade Zone now being negotiated have a great impact on other contracting parties, the objectives of regional agreements under Article XXIV should include not only the existing passive conditions "not to raise barriers to the trade of other countries with such territories" (Article XXIV: 4), but more positive conditions as well to improve the market access and to promote trade with other countries. Appropriate possible methods for that purpose, which among others should include the obligation on the part of constituent countries to grant other

countries a part of the concessions maintained by the agreements on the MFN basis, need to be worked out.

2. Entry into force of the regional agreements
(Article XXIV: 7, 10)

There have been regrettable cases where regional agreements have come into effect as "faits accomplis", without sufficient consultations with the Contracting Parties or before the conclusion of the consultations. To improve the situation, it is essential to make the entry into force of regional agreements conditional upon explicit approval of the Contracting Parties (for example, approval with simple majority or two-thirds majority of the votes).

3. Strengthening the consultation procedures to examine regional agreements (Article XXIV: 7)

Consultation procedures should be strengthened to check GATT legality of the already maintained regional agreements. At the same time, more detailed information from the parties to the agreements should be obligated for this purpose.

Regional agreements often tend to be lasting infinitely as incomplete "interim agreements". To avoid this, standard period for interim agreement (for example, 10 years) should be established.

4. Associate Agreements

Associate agreements have had the same effect of expanding regional agreements. Present consultations examining agreements under GATT are by and

large insufficient. It should be examined to impose certain conditions on the establishment of associate agreements and to strengthen consultation procedures, also in line with the foregoing proposals on regional agreements.

5. Definition of "the general incidence of the duties"
(Article XXIV: 5(a), 6)

The concept of "the general incidence" should be given the clear-cut definition.

Article XXIV: 6 stipulates compensatory adjustment for disadvantage of other contracting parties, in case that a contracting party proposes to "increase" any rate of duty inconsistent with the provisions of Article II, in fulfilling the requirements of sub-paragraph 5(a).

Article XXIV: 6 does not envisage in any way "reverse compensatory compensation" for a customs union, in case that general incidence of tariff level would be reduced at the formation of the union. The interpretation of the meaning and the objective of Article XXIV: 6 should be reaffirmed and clarified along this line.

II. Article XXVIII

In reference to new products which are to be traded in the near future or have just begun to be traded, it is important to assure the sound development of such an industry and trade in the world. It is for this reason that we need to address the various issues concerning the pre-emptive raising of tariff in the context of Article XXVIII, given the originally envisaged function of the tariff.

When a contracting party intends to raise bound rates of duty, it normally invokes the Article XXVIII. Judging from the contents of the guidelines entitled "procedures for negotiations under the Article XXVIII" adopted on 10 November 1980 as well as long-standing 10%-cut-off rules, the Article XXVIII negotiation presupposes some record of trade; the determination of the contracting parties with principal supply interest or substantial interest and the negotiation for compensation have been by and large based on this past record of trade. In the case of a new product, however, difficulties arise in the determination of the duly interested contracting parties and in the calculation of the compensation at a time of invoking the Article XXVIII, since recorded past trade is either nil or marginal.

This situation was not necessarily foreseen when the GATT was founded. We, therefore, propose to examine the

possible new international rules, which may take the form of dealing with the following points:

(1) Is it appropriate that invocation of the article XXVIII is automatically allowed even in cases where there is no past trade record, or if any, marginal? Or is it appropriate to make the invocations subject to certain conditions? Or is it appropriate to refrain from invoking the Article XXVIII in such cases?

(2) The following points need to be elaborated in case of allowing invocaition of the Article XXVIII.

(a) Whether or not the status of I (except floating I) could be granted to new products, when I already exists under the tariff lines where the new product is to be classified. If necessary, could the status for P (including floating I) and S be tentatively recognized in the COUNCIL by invoking the Article XXVIII: 4 (special circumstances) by taking account of such factors as production estimates, production facilities, and amount of investment etc.?

(b) In calculating the compensation, could the following points be taken into account?

- (i) export estimate in the very near future
- (ii) export records and the ratio of growth of the substitutable products, if they exist.

(c) In calculating the compensation, how is an idea that negotiations for compensation are not limited to the

point of invoking the Article XXVIII, but can be conducted after, say, three years when the sufficient import figures are evidenced, together with the review of the status of P (including Floating I) and S.?