

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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NEGOTIATING GROUP ON AGRICULTURE

Submission by Japan

I. Introduction

1. At the April meeting of the Trade Negotiations Committee, it was agreed that the long-term objective of the agricultural negotiations was to "establish a fair and market-oriented agricultural trading system", and that a reform process should be initiated through the "negotiation of commitments on support and protection" and through the "establishment of the new GATT rules and disciplines".

Participants were invited to advance detailed proposals by December 1989. Japan presented the basic outline of its position at the September meeting of the Negotiating Group on Agriculture. This Submission puts into more concrete terms what was put forward in our statement (MTN.GNG/NG5/W/104) made at the September meeting, and also presents Japan's position on matters which were not touched upon in the Statement.

2. In conducting the negotiations in line with the long-term objective agreed to at the April TNC meeting, Japan believes it important that:

First, all measures affecting trade in agriculture are to be the subject of negotiations aimed at "establishing new GATT rules and disciplines", i.e. the rules negotiation; and

Second, negotiations on the commitments regarding support and protection are to be pursued together with "the rules negotiations".

The agreement reached at the April meeting of the TNC states that we should aim for "substantial progressive reductions in agricultural support and protection", and Japan intends to continue to participate actively in the negotiations, in accordance with this agreement. In this process, full consideration should be given to the special nature of agriculture which is constrained by land and climatic conditions, and to the multifarious rôles played by agriculture, such as food security. It is also necessary to recognize that it is difficult to eliminate support and protection in agriculture, and this should be taken into account.

Credit should be accorded to measures implemented by participants after the Punta Del Este Declaration in reducing their agricultural support and protection.

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3. As was agreed to at the April TNC meeting, participants recognize that factors other than trade policy are taken into account in the conduct of their respective agricultural policies. In countries heavily reliant on importation of agricultural products, non-trade concerns, inter alia, concerns for food security, are strong. Japan considers the inclusion of this element in the April TNC agreement to be significant, as it reflects the interests of food importing countries. Such concerns should be taken into consideration in both the rules negotiation and negotiations on commitments regarding support and protection.

Among the non-trade concerns, Japan's position on food security was given in its Statement at the September meeting. In this Submission, proposals are made in line with our Statement on the treatment of measures necessary from the point of view of food security concerns in the GATT rules and disciplines and on the related issues.

It is expected that each country will make known its position on non-trade concerns, and, based on a common recognition of their importance, treatment of those concerns in the GATT rules and disciplines will be made clear.

4. The Punta Del Este Declaration refers to "minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements". At the April meeting of the TNC, agreement was reached on "harmonization of national regulations as a long-term goal" and on a "work programme".

On the basis of recent developments in the discussions, this Submission presents Japan's views on sanitary and phytosanitary measures.

5. Appropriate considerations should be given to realizing special and differential treatment of developing countries as an indispensable element of the negotiations for achieving the long-term objective.

II. GATT rules and disciplines

A. Non-trade concerns

1. Basic concepts

(1) Non-trade concerns on agriculture may consist of social and other concerns, such as food security, preservation of land and environment, over-all employment, and maintenance of local communities, which are not purely economic. These concerns could vary from country to country, depending on their political, economic, social, cultural and other conditions. It goes without saying, however, that in order to maintain coherence with the general thrust of the agricultural negotiations, this concept of non-trade concerns should not be left unqualified.

(2) The following points were made in Japan's Statement in September

"Among the non-trade concerns, Japan, as a net food importer, heavily dependent on imports for its supply of foodstuffs, has special and significant interest in food security, in securing a stable supply of basic foodstuffs indispensable to its people's alimentation."

"Reliance on stockpiling, stable importation, or maintenance of potential production capability without engaging in actual production would hardly be a policy choice of fundamental measures in mid- to long-term to secure food security of the basic foodstuffs. Therefore, it is necessary to maintain the required domestic production level of such foodstuffs. In countries whose food dependency on foreign supply is high, national consensus seeking to attach the highest priority to the maintenance of such domestic production level, from the viewpoint of food security, should be fully respected."

(3) Japan considers that the need for food security considerations is a permanent one, and that the GATT rules and disciplines should be clearly provided for so that the necessary border adjustment measures can be introduced.

2. Concrete proposals

(1) Points to be included in GATT rules and disciplines

The following points should be included in the GATT rules and disciplines:

- (i) Border adjustment measures taken for food security considerations.

Contracting parties may, notwithstanding the provision of GATT Article XI, take border adjustment measures necessary to maintain its required domestic production level in basic foodstuffs for food security considerations.

- (ii) Definition of "basic foodstuffs"

Basic foodstuffs for which contracting parties may apply the above measures, are those agricultural products which meet all of the following conditions:

- (a) the product is a major source of nutrition to the nationals of the contracting party concerned, and constitutes an important part of their daily calorie intake;
- (b) necessary domestic measures are taken or are in place on the product in the contracting party concerned to secure its stable and sufficient production in normal

circumstances, and to promote domestic production and supply on a priority basis in times of food shortage.

(iii) Conditions for applying the border adjustment measures

In applying the border adjustment measures to the basic foodstuffs which meet the conditions set out in (ii) above, the contracting party concerned must observe all of the following conditions:

- (a) the contracting party concerned must indicate clearly the level of domestic production that needs to be maintained for the basic foodstuffs concerned;
- (b) expressed support by the supreme body of the State of the contracting party concerned must exist for taking the measures;
- (c) it must be clearly indicated in the policy of the government of the contracting party concerned that the basic foodstuffs concerned will be disciplined in accordance with the following:
 - (1) measures are appropriately being implemented to enforce planned production and to improve productivity with regard to basic foodstuffs;
 - (2) excepting cases of bona fide aid, the basic foodstuffs concerned shall not be exported for the purpose of disposing of the surplus production.

(iv) Discussions with other countries concerned

- (a) The contracting party applying the border adjustment measures shall notify the contracting parties of the items of the basic foodstuffs for which the measures are taken; notification shall also be made when changes in the measures take place.
- (b) The contracting party applying these measures shall, upon request, discuss the measures with other contracting parties concerned.

(2) Relationship between the application of the border adjustment measures and commitments made in negotiations with contracting parties.

This application of the border adjustment measures on the basic foodstuffs shall not affect the commitments under the GATT made on the basis of the negotiations with other contracting parties concerning the same basic foodstuffs.

B. Matters other than non-trade concerns

1. Measures concerning imports

(1) Quantitative import restrictions exceptionally permitted under waivers, and other GATT schemes should be placed under new GATT rules and disciplines on quantitative import restrictions since they are similar in their actual effect on trade to those quantitative restrictions which do not have such legal basis under the GATT.

The GATT disciplines on variable levies and minimum import prices should be clearly stipulated, as they may have trade-restrictive effects.

(2) Review of GATT Article XI:2(c)(i)

- (a) The principle concerning general elimination of quantitative import restrictions (GATT Article XI:1) should be maintained, but due to the inherent unpredictability of production and harvest levels in agriculture and fisheries, GATT Article XI:2(c)(i) should also be maintained, since in facing an excess in the supply of agricultural or fishery products, it would be necessary to restrict imports along with restrictions in domestic supplies.

However, there are some elements in the conditions laid out in Article XI:2(c)(i) which cannot adequately be applied to the reality or recent agricultural trade and transactions, and to the diversified government measures of contracting parties. There are also cases where different panels gave different interpretations for similar cases. Japan, therefore, believes it necessary to review and clarify the conditions of GATT Article XI:2(c)(i), in order to strengthen the provision and to ensure more effective application of the provision.

- (b) The following points are considered especially relevant for improvement from this point of view. As they involve technical matters, it would be appropriate to establish a working party to examine the issue.

(i) "governmental measures"

It should be made clear that this condition is fulfilled when the government takes effective measures, even if they are not necessarily measures based on legislation.

(ii) "production restriction"

It should be made clear that effective restriction of production activities such as restriction of cultivated area, or operation of price support system which have the effect of restricting the quantity of domestic products, also fulfil this condition.

(iii) "like product"

In order to render effective the production limitation on agricultural products, it may become necessary in some cases to restrict importation of processed agricultural products at the same time. It should therefore be made clear that products which are "practically identical" in international trade may be regarded as "like" products.

(iv) "perishability" (from "Notes and Supplementary Provisions" to the General Agreement)

Where certain processed products are easily reversible to fresh products, imports of such processed products would nullify the effectiveness of production restriction on fresh products. In this case, the condition of "perishability" should be replaced by the condition of "reversability" in order to secure the effectiveness of the production restriction of fresh products.

2. Measures on export restriction

As for Article XI:2(a) which permits export ban or restriction at the time of critical food shortages in exporting countries, it is necessary to review the provision, including the need for clearer definition of the term "critical shortage".

3. Export subsidy

In "establishing a fair and market-oriented agricultural trading system" which is the object of the current round of negotiations, it is necessary first of all to rectify the subsidized export competition which constitutes the major source of distortion of international trade in agriculture. Accordingly, such export subsidies should be progressively reduced, and eventually eliminated. In this light, GATT Article XVI:B and the Agreement on Subsidies and Countervailing Measures should be amended to that effect.

4. Domestic support policies

(1) The domestic support policy for agriculture is implemented in each contracting party for the sound development of its national agriculture under the respective economic and social conditions. These national policies also help attain policy objectives on non-trade concerns in agriculture, such as preservation of land and environmental conservation, and sustenance of regional community. Therefore, domestic support for agriculture should be clearly distinguished from export subsidies which are inherently trade-distorting in character.

(2) The agricultural policy in each contracting party is thus implemented in response to a number of requirements. Japan considers it inappropriate to question the continuation of the said policy solely because of the possibility of trade-distorting effects, without due regard to the positive rôles played by the policy. Therefore, domestic support policies with no

trade-distorting effects or those for which such effects are negligible should be allowed. Domestic support policies should also be allowed in cases where they play an essential rôle in meeting multiple needs of agricultural policy, such as land preservation and environmental conservation, and sustenance of regional community.

(3) In its Statement made in September, Japan indicated that the scope of domestic subsidies to be placed under new GATT disciplines should be clearly defined through these negotiations. As for domestic support policies, including domestic subsidies, other than those permitted, they are included in the support and protection whose level is subject to reduction using AMS. However, in view of the variety of rôles played by agriculture, it would be difficult to do away with agricultural support.

(4) In drawing up new GATT disciplines on domestic support, the existence of a large number of technical elements call for the formation of a new working party under the Negotiating Group on Agriculture, or the expansion of the mandate of the existing AMS Technical Group to cover the relevant issues. The working party or the Technical Group should examine how and by what standard the distinction should be made between permissible policies and policies which should be subject to certain disciplines. It should also examine how to implement the reduction of support and protection using AMS.

Paragraph III:4 of Japan's Statement in September on government subsidies other than export subsidies (Annex 1) forms a part of this Submission.

III. Aggregate Measurement of Support (AMS)

Paragraph IV of Japan's Statement in September on AMS (Annex 2) forms a part of this Submission.

IV. Sanitary and phytosanitary measures

1. Basic concept

Sanitary and phytosanitary measures should be implemented within the scope of measures necessary to protect human, animal or plant life or health in accordance with GATT Article XX(b). Allowance should be made for differences in sanitary conditions, geographical conditions, and dietary customs, according to which measures may vary from country to country. On the other hand, contracting parties should not apply these measures in a manner which would constitute a disguised restriction on international trade. It is also necessary to minimize the adverse effect of the measures on agricultural trade.

Based on the above, Japan considers it necessary to achieve greater harmonization of sanitary and phytosanitary measures based on sound scientific evidence, secure transparency through improvement of notification procedures, and improve consultation and dispute settlement procedures. In this process, close contact with international scientific organizations such as International Office of Epizootics, International

Plant Protection Convention, FAO/WHO Codex Alimentarius Commission is essential. Since the sanitary and phytosanitary field is related to the Agreement on Technical Barriers to Trade (TBT) discussed in the Negotiating Group on MTN Agreements and Arrangements, examinations in this field should take full account of the work being done in the MTN Negotiating Group.

2. Harmonization

Contracting parties shall harmonize their sanitary and phytosanitary measures on the basis of guidelines (including guidelines for laying down standards) or standards examined and drawn up by the international scientific organizations on the basis of sound scientific evidence.

In cases where differences in sanitary conditions, geographical conditions, or dietary customs need to be considered, it would be more appropriate to effectuate harmonization by guidelines rather than standards.

What could be harmonized would include principles on sanitary and phytosanitary measures, and methods of proof and inspection. As to the "principle of equivalency" of sanitary and phytosanitary measures, clarification of the definition of the "principle of equivalency" is necessary for future specialist examination, and it would be appropriate to fully examine the technical possibilities of this principle. The international scientific organizations should play a major rôle in this process.

In the field of food hygiene, there are cases where even if the existing standards and effects are realized, problems arise in the safety of the foodstuffs or in the deterioration of its quality, due to secondary effects of certain measures. Therefore, in setting up the principle of equivalency, due attention should be paid to these aspects.

3. Strengthening of GATT rules and disciplines

(1) Consistency with the provision of GATT Article XX(b)

- (a) When a contracting party lays down a sanitary or phytosanitary measure along the guidelines or standards examined and drawn up by the above-mentioned international scientific organizations based on sound scientific evidence, the said measure is deemed to be in conformity with GATT Article XX(b).
- (b) In cases where no guidelines or standard exists, and a contracting party lays down a sanitary or phytosanitary measure, it is assumed that the measure is in conformity with GATT Article XX(b). However, in this case, other contracting parties may resort to procedures referred to in (3) below.
- (c) When a contracting party lays down a sanitary or phytosanitary measure not based on the above guidelines or standards, but makes it clear that the said measure is based on sound scientific

evidence, it is assumed that the measure is in conformity with GATT Article XX (b). However, in this case, other contracting parties may resort to procedures referred to in (3) below.

(2) Notification system

In the field of animal and plant health, the establishment of a system of notification to the GATT secretariat of measures likely to significantly effect the trade of other contracting parties, and the establishment of inquiry points would be useful from the viewpoint of improving transparency. However, in cases where the international scientific organizations already have or are capable of establishing a similar notification system, it is appropriate to consider making use of such systems, with due respect to the opinion of the international scientific organizations concerned.

In the field of food hygiene, the system of prior notification to the GATT secretariat of prospective measures likely to severely affect trade of other contracting parties, the consultations based on comments from other countries, and the system of inquiry points are all running smoothly. It is appropriate to further our work on this basis.

(3) Consultation and dispute settlement

Disputes arising in the field of animal and plant health should first be resolved bilaterally. If bilateral resolution is not achieved, and an effective dispute settlement procedure is to be found in the international scientific organizations, it is desirable that a settlement be reached in these organizations.

However, in the event of a solution not being reached through these methods, it may be useful to consider whether or not to establish within the GATT a procedure similar to that of the dispute settlement procedure in the Agreement on TBT. In this case, the CONTRACTING PARTIES shall request the international scientific organizations to participate, from the technical viewpoint, in the study of formation of the relevant procedures, and in the actual settlement of disputes. In any event, the rights of contracting parties in dispute settlement procedures under the General Agreement are not prejudiced. On the other hand, in the field of food hygiene, the dispute settlement system under the Agreement on TBT is currently functioning. These procedures may be reviewed as necessary.

4. Technical assistance

As to technical assistance requested by developing countries, it is appropriate for the contracting parties to respond as far as possible, in terms of improving the technical level in sanitary and phytosanitary matters.

V. Special and differential treatment of developing countries

As indicated in the Punta Del Este Declaration, special and differential treatment of developing countries is considered as one of the

essential elements in the Uruguay Round. In view of the fact that, in the developing countries, government plans for promoting agriculture and developing rural communities form an integral part of overall government development plans, the need for special and differential treatment of developing countries should be acknowledged.

Keeping in mind the variety in the stage of economic and social development among the developing countries, Japan is aware that there are severe difficulties for developing countries in attaining the long-term objective of the Uruguay Round.

From the above point of view, Japan considers it necessary to give a longer time-frame to the developing countries than to developed countries in achieving the above objectives. It is also necessary to allow for flexibility in fulfilling commitments to be made by developing countries in the reduction of support and protection.

Annex 1

Government subsidy other than export subsidy

Among those government subsidies other than export subsidies, there are those which, depending on how they are managed, could have adverse effects upon agricultural trade. With a view to reducing such adverse effects, these subsidies should be placed under the appropriate GATT disciplines such as the Agreement on Subsidies and Countervailing Measures. Subsidies to be subsumed under this category shall be defined clearly through negotiations, but those subsidies aimed at improving infrastructure of agriculture, improving agricultural structure, promoting production control of agricultural surplus products and expanding its consumption, stockpiling, promoting social welfare as one of the objectives, research and development, disaster relief, dissemination programme, and subsidies related to preservation of land and environment are to be excluded from this category.

Annex 2

VI. Aggregate measurement of support

With regard to AMS, there are still points to be further examined. Japan, therefore, reserves the right to submit its views after examining further deliberations on AMS in the Agriculture Negotiating Group.

1. Use of AMS

(1) Government policy measures providing support and protection to domestic farmers take various forms. In order to negotiate commitments on support and protection with regard to these varied measures, it would be necessary first to measure the levels of agricultural support and protection of respective countries with common criterion. In this very sense, the meaningfulness of using AMS in some way or other can be generally recognized. It should be stressed, however, that in view of the diversified rôles of agriculture, it would be difficult to eliminate agricultural support and protection.

(2) We recognize the existence of large differences in views among participating countries concerning the method of using AMS. Since AMS comprehensively covers domestic and border measures that largely affect international trade, we consider it desirable to take an approach to make commitments on AMS itself in the negotiations. In other words, commitments on the specific policies and measures should not be sought in the negotiation of commitments on support and protection, in addition to the commitments on AMS itself.

2. Scope of measures covered under AMS

Subsidies to be covered under the AMS shall be defined clearly through negotiations, but those subsidies aimed at improved infrastructure of agriculture, improving agricultural structure, promoting production control of the agricultural surplus product and expanding its consumption, stockpiling, promoting social welfare as one of the objectives, research and development, disaster relief, dissemination programme, and subsidies related to preservation of land and environment are to be excluded from AMS.

3. Product coverage

Major agricultural products having a certain volume of international trade should be covered. In view of the substitutable nature of products, it would be more appropriate to adopt a product-sector approach rather than a product-by-product approach.

4. Country coverage

As the AMS is to be used as a measuring tool in the negotiation, all participating countries should be covered. From this point of view, the

secretariat should continue its efforts to develop AMS in countries whose PSE has not been calculated.

5. Elements to be considered in the calculation of AMS and in the negotiations using the AMS

(1) Amount of import

Appropriate consideration should be given to the proportion of import to a total consumption of a product in an importing country. For example, when a share of an imported product as a portion of total consumption is considerably high, influence to international trade of support and protection to the product must be small. Therefore, the product should either be excluded from the negotiation, or some kind of formula should be developed to take account of the proportion of the imported product to the total consumption of the product in the negotiation on support and protection. We would like to further study this point.

(2) Element to be excluded

External reference price - in determining external reference price, influence on the AMS of elements beyond government control should be excluded. Those elements are: fluctuation of foreign exchange, external price fluctuations reflecting production excess or shortage. Fixing the external reference price may be one of the effective methods to overcome the problem.

Amount of domestic production - under the influence of likewise uncontrollable elements of government such as climatic change, the amount of domestic production fluctuates. Accordingly, consideration should be given to the way of determining domestic production such as taking the average of domestic production over certain years.

(3) With regard to a view that effects of the production control measure should be duly appreciated, further examination, including an examination of a specific method of evaluation, should be made.

(4) Negotiation on support and protection is generally considered to have close bearing with the negotiation on GATT rules and disciplines. Certain consideration should be given to non-trade concerns in the negotiation on support and protection which uses the AMS, according to how the said concerns will be reflected in newly-established GATT rules and disciplines.