

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/W/201

11 September 1990

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Agriculture

JAPAN'S POSITION ON THE GATT RULES AND DISCIPLINES

I. Border Adjustment Measures Necessary for Basic Foodstuffs

Japan proposes the following addition to GATT Articles in order to establish rules for basic foodstuffs.

Article XXI bis

Food Security Exceptions

1. Nothing in this agreement shall be construed to prevent contracting parties from taking border adjustment measures necessary to maintain their required domestic production level in basic foodstuffs for food security considerations.
2. Basic foodstuffs for which contracting parties may apply the measures described in paragraph 1 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.
3. In applying the border adjustment measures described in paragraph 1 to the agricultural products which meet the conditions set out in paragraph 2, 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 described in paragraph 1;

- (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:
 - (i) measures are appropriately being implemented to enforce planned production and to improve productivity with regard to the basic foodstuffs concerned;
 - (ii) excepting cases of bona fide aid, the basic foodstuffs concerned shall not be exported for the purpose of disposing of the surplus production.

4. The contracting party applying the measures described in paragraph 1 shall notify the contracting parties of the items of the basic foodstuffs described in paragraph 2 and the content of the measures taken; notification shall also be made when changes in the measures take place.

The contracting party applying these measures shall, upon request, discuss the measures with other contracting parties concerned.

II. Review and Clarification of the Conditions for Application of Article XI:2(c)(i)

1. Article XI:2(c)(i) is provided for in order to ensure effectiveness of government measures restricting domestic production, in light of special characteristics of agriculture that production is affected greatly by natural conditions and that farmers are generally large in number with small-scaled operations and difficult to be organized. In other words, the rôle of the Article is to stipulate the means by which each country can appropriately deal with inevitable agricultural over-production which would otherwise occur owing to the special characteristics of agriculture as stated above.

We fear that without effective operations of the Article, export subsidies would be used as a means to dispose of the surplus, which would harm immensely international agricultural trade. In order to establish a fair agricultural trading system which is one of the objectives of the Uruguay Round, the Article should be made operationally effective.

2. With regard to the applicability of the Article, the following problems could be pointed out:

- (a) certain conditions and requirements no longer match present agricultural trading practices and technological innovations;
- (b) there are inconsistencies among Panel Reports on the interpretation of the conditions and requirements for the use of Article XI:2(c)(i). Also a certain Panel raised doubts as to the appropriateness of some of these conditions and requirements.

3. In light of the above, we would like to propose to include the following in the Code which will be agreed upon in the Negotiating Group on Agriculture, in order to clarify Article XI:2(c)(i) and make it operationally effective in line with current practices of agricultural trade.

The products to which Article XI:2(c)(i) applies include the following processed products which are practically identical in international trade with the fresh products from which they are produced:

- (a) processed products reversible to the fresh products which are under domestic production control;
- (b) processed products which consist mainly of the following products:
 - (i) products obtained through extraction of the main ingredient from, or by separation or condensation of, the fresh product which is under domestic production control;
 - (ii) products with the same ingredient composition as the products described in (i).

4. For the purpose of reaching an agreement on this issue, we propose to set up a drafting group among interested parties and conduct intensive discussions.

III. Clarification on Interpretation and Application of Article XX(g)

A. Fishery products

1. Fisheries activities are conducted under the framework of resource conservation policy since fisheries are depending upon reproduction of exhaustible natural resources.

2. Article XX(g) of the GATT provides that measures necessary to conserve the exhaustible natural resources like fisheries resources should be exempted from the general rules of the GATT, subject to certain conditions.

3. Japan has been making its best efforts to ensure the rational management of fisheries resources based on appropriate disciplines by joining international fisheries management organizations.

However, concerns are recently noted for the fact that disorderly fishing activities by nations which are not members of these international fisheries management organizations have diminished the effectiveness of the conservation measures adopted by these organizations. This would deny the very raison d'être of such organizations.

Japan considers that importing these fishery products from and providing market with such non-member nations would eventually nullify the effectiveness of conservation measures adopted by such international fisheries management organizations.

Therefore, we consider that it will become necessary under certain circumstances to restrict, pursuant to Article XX(g), the importation of such fishery products in an appropriate way in order to conserve fisheries resources which are exhaustible natural resources as defined in this Article.

4. Another concern we have is that, in an attempt to force other countries to adopt conservation measures for a certain fishery resource, some countries intend, as economic sanctions, to expand the scope of import restriction to the products for which conservation measures are not taken under the international organization relating to that particular fishery resource.

In this case, those nations might justify such import restriction measures on the basis of Article XX(g), taking advantage of ambiguity of interpretation on and application of this Article. Such an arbitrary use of Article XX(g) will lead to an abuse of import restrictions.

5. To cope with such situations, Japan considers that it is necessary to agree on the criteria for application of Article XX(g) to prevent future trade conflicts.

6. Japan proposes that the Code which will be agreed upon in this Negotiating Group provide for the following criteria for import measures to be taken for fishery products pursuant to Article XX(g):

- (a) fishery products which may be subject to the restriction or prohibition on importation should meet the following requirements:
 - (i) such fishery products are those which have been produced from a species or stock subject to conservation measures taken under an international fishery agreement or an intergovernmental arrangement;
 - (ii) restriction or prohibition on importation of the fishery products described in (i) is necessary to ensure the effectiveness of the conservation measures taken for that species or stock under an international fishery agreement or an intergovernmental arrangement described in (i);
- (b) fishery regulatory measures must be taken based on the international fishery agreement or the intergovernmental arrangement described in (a)(i) in the nation intending to impose import restrictions or prohibition on the fishery products described in (a) for the fishing activities of its nationals for the species or stock from which the fishery products concerned are produced;

- (c) the international fishery agreement or intergovernmental arrangement described in (a)(i) should appropriately provide an opportunity for interested nations to accede to.

B. Forestry products

Currently, certain countries, though limited in number, are implementing export prohibition or restriction measures on logs, based on their allegation that the main purpose of these measures is the conservation of natural resources.

In many cases, however, they regulate the export of logs only, not the export of processed forestry products. It is assumed that, unless processed forestry products were also subject to export restrictions, export restrictions of logs only would not be effective to the conservation of forestry resources.

Japan does not consider that these measures can be justified under Article XX(g).

Accordingly, Japan proposes that the Code which will be agreed upon in this Negotiating Group clarify the requirements for the use of Article XX(g) so that these measures may not be taken.