

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

General Council Discussion on Paragraphs 9(b) and (d) of the 1998 Ministerial Declaration  
27 January and 2 February 1999

*Communication from Japan*

The following communication, dated 27 January, has been received from the Permanent Mission of Japan.

**1. Introduction**

1. Japan considers that, in order to expand the global flows of trade and investment most effectively, the next negotiations should be comprehensive, including not only those mandated in the BIA but also such areas as tariff negotiations on industrial goods and the establishment of multilateral investment rules. We should also aim at completing the next negotiations as a single undertaking and in a relatively short period, that is, within around three years. The mandated negotiations, e.g. agriculture and services, should not take precedence leaving other areas untouched.

2. On this occasion of the last of a series of four intersessional meetings at the "first stage," we would like to take this opportunity to express Japan's views on the areas of its interests in rather comprehensive terms, in a way that, while focusing our attention on the work program initiated at Singapore (i.e. paragraph 9(b)), we might also touch upon other paragraphs of the Geneva Ministerial Declaration, thereby contributing to discussions in the "second phase" which start in February.

**2. Trade and investment**

3. Today, investment has become a major tool for corporate business strategy, and as the globalization of economies proceeds, the pace of its flow has now surpassed that of trade. Evidently, investment is likely to assume an even greater role in the world economy. Foreign direct investment (FDI), in particular, will ensure stable long-term capital flows, and will enhance the transfer of technology through the admission of foreign firms with superior technology into host countries. At the same time, it will have positive effects on employment and increase demand in regional economies, thereby contributing to the economic development of both home and host countries. These advantages of FDI have proved all the more important as a result of the recent economic crisis in Asia and other various developing countries.

4. At present, there are no comprehensive multilateral rules on investment. The content of existing bilateral investment treaties varies and the areas covered are uneven. Therefore, from the viewpoint of firms who need predictability in their investment projects, it must be admitted that the current legal environment for investment is far from satisfactory. History has proved that

comprehensive and multilateral trade rules resulting from our past trade liberalization efforts under the GATT/WTO are better than compartmentalized bilateral trade agreements for promoting trade. This will most certainly also be the case in the area of investment. That is, the formulation of comprehensive multilateral investment rules which set out appropriate levels of investment protection and liberalization can be expected to contribute to economic development through an improved investment environment for the mid to long term. Let us underline in this context that Japan is of the view that future investment rules should allow Members the flexibility to pursue development policy, giving due consideration to the stage of the economic development of Members.

5. Since trade and investment are closely interlinked, Japan believes that the WTO, with its abundant experience in the field of trade, and whose decisions are made by consensus among both developed and developing countries, will provide a good forum for negotiating multilateral investment rules. That is why Japan proposes placing the formulation of multilateral investment rules on the next WTO negotiation agenda.

6. As to the work done by the Working Group on Trade and Investment, we evaluate positively its discussions as they have contributed to deepening Members' understanding of the economic effects of investment as well as the benefits of investment rule-making. We therefore would like to advocate that the Working Group should proceed further and go on to more specific discussions on possible multilateral investment rules on the basis of its past discussions.

### **3. Trade and competition**

7. Japan has actively participated in the discussions of the Working Group on the Interaction between Trade and Competition and appreciates the results it has achieved. Through the discussions in this Working Group, a wide range of Members have now come to understand that developing their laws and policy on competition and ensuring their enforcement is important for the expansion of trade and the economic development of developing countries and that certain trade measures have anti-competitive effects.

8. Japan believes that it would be useful to deepen our discussions about formulating minimum standards on competition. From this perspective, we would like to propose that the following questions should be discussed in the Working Group:

- (a) What kind of general principles can be sought in the area of the laws and policy on competition?
- (b) Among the various anti-competitive practices, what elements affect trade flows?
- (c) What jurisdiction do the enforcement authorities need and what are the rules of procedure in order to ensure the proper enforcement of the laws and policy on competition?
- (d) What kind of framework can be envisaged for international cooperation in order to curtail international anti-competitive practices?

9. Japan also shares the concerns of other Members about the anti-competitive effects of trade measures. In this context, we are of the view that trade measures must be reviewed from the perspective of competition even if they are considered to be in conformity with the existing WTO rules. As we have reiterated in the Working Group, a common core objective of trade laws and competition laws is to maximize economic welfare by improving the environment for the more efficient allocation of resources. However, as many Members have said in the Working Group, trade

laws and competition laws have not only complementary effects but also contradictory effects, and when we proceed with our study on the interaction between trade and competition policy, we should address not only the former but also the latter. Accordingly, the future work of the Working Group should cover both the effects of competition policy on trade and those of trade policy on competition in a balanced manner.

#### **4. Transparency in government procurement**

10. Japan evaluates positively the progress made during the last two years in the Working Group and considers it important that, building upon that achievement, we accelerate our work so that all the WTO Members will be able to agree on a legal framework to secure transparency in government procurement before the start of the next negotiations.

11. Specifically, rules in transparency in government procurement should consist of the following basic elements: (a) ensuring access to information on relevant procurement rules, opportunities and results, and (b) putting in place procedures for rectification for cases where transparency is not practiced. With an agreement which incorporates these elements, potential suppliers would be able to enjoy improved predictability when seeking to meet the requirements set by procuring entities. At the same time, taxpayers would receive better value for money. A transparency agreement would thus benefit suppliers and taxpayers, both in developing and developed countries.

12. After two years of intensive work at the Working Group, we now have a Secretariat paper which synthesizes various national practices and international instruments. A Chairman's note, which analyses various options to solve the key issues, is now also available. Thus, the first part of the mandate given at Singapore, that is, to conduct a study on transparency in government procurement practices, has substantially been achieved. Even for the second part, which requires us to develop elements for reaching an agreement, the basic preparations have already been made.

13. The most important task for us in the coming period is therefore to find common grounds among Members. In this regard, past discussions have made it clear that not all Members can accept the existing transparency clauses in the plurilateral Government Procurement Agreement (GPA). As our intention is to formulate a multilateral agreement, the legal framework should be flexible enough to accommodate a variety of Members' views. On the other hand, any possible new agreement should be sufficiently effective to produce substantive benefits. A good balance between flexibility and effectiveness must be struck. In this regard, Japan is of the view that it can be attained by focusing on core principles, such as the publication of procurement opportunities, rather than on detailed technical prescriptions.

14. Following this line of thinking, we intend to submit more concrete proposals to the Working Group, and hope that at least the broad outline of a possible agreement will emerge before the Third Ministerial. Our aim should be to reach an agreement by the end of this year. But if this objective unfortunately turns out to be unachievable, we believe work on transparency in government procurement should be included in the mandate of the next round of negotiations.

#### **5. Trade and environment**

15. Japan shares the view that trade and environment policies must play a mutually supportive role and the work of the WTO in this area should contribute to sustainable development. In order to advance our discussions on this area, we should foster common understanding among Members as well as recognize the need for the WTO to respond appropriately to the various voices of civil society.

16. With these general points in mind, we should then focus our discussions on specific issues, rather than remain in the domain of generalities. For instance, while a certain degree of consideration

is given to the environment in existing WTO agreements, do the agreements really provide an adequate base for preventing unfair, unilateral, and protectionist measures which are disguised under the name of "the environment"? Or, in what manner should we approach the relations between the rules of the MEAs and those of the WTO? With a view to addressing such specific questions, we should address the issue of trade and environment. In the course of those discussions, the WTO must also carry out close consultations with the MEAs' Secretariats and other environment-related international organizations.

17. Due consideration to environmental aspects should also be paid when dealing with market access issues. However, what effects trade liberalization may have upon the environment varies from country to country, due to the differences in their natural environment and production methods. For example, the trade liberalization of fishery and forestry products is closely related to environmental issues such as the sustainable utilization of resources and their conservation. Thus, the discussions in these sectors should not exclusively focus on market access but rather should give due consideration to the overall objectives and effects of fishery and forestry policies. Bearing this in mind, Japan would like to once again reiterate that one-sided arguments such as "market access improvement will have uniformly positive effects on the environment" are inadequate. In addition, one must remember that there are already individual agreements on market access. Japan is therefore of the view that it is inappropriate to take up market access issues within the context of trade and environment in the next round, in order to avoid the overlapping of negotiations.

## **6. Trade facilitation**

18. Trade facilitation is another area of great interest to Japan and we intend to contribute to the progress of discussions in this field. The specific scope of trade facilitation includes a wide range of areas and its importance has been increasingly recognized through various activities including the WTO Trade Facilitation Symposium held last March. Thus, we would like to proceed with necessary discussions as a part of the WTO trade agenda, taking due consideration of the Members' condition as well as the views of industry. In order to advance the discussions, we will examine to which areas the WTO can make contributions, while avoiding overlapping conflicting work with the existing work being carried out in various international organizations and fora such as the WCO, APEC, and ASEM.

19. We have noted that there are requests from industry such as: (a) a simplification and rationalization of customs procedures; (b) the harmonization of rules of origin; (c) the steady implementation of the Customs Valuation Agreement by WTO Members; (d) a review of the Agreement on Preshipment Inspection; (e) the protection of intellectual property rights; (f) the simplification of sanitary and phytosanitary procedures; (g) the international harmonization of various standards including safety and environmental standards. On the other hand, import and export procedures contain socially important functions such as to control socially illicit or intellectual property rights infringing goods at the border, or to ensure the safety of the citizens. Thus, our objective is to attain speedy import and export procedures while securing these important social functions. A proper balance has to be struck in this respect. Japan intends to positively participate in the discussions in the WTO, giving due consideration to requests from industry, the opinions of both developed and developing countries, as well as to conformity with the relevant agreements.

## **7. Anti-dumping**

20. Japan considers that the issues relating to the Anti-dumping Agreement should be discussed now in view of the negotiations at the next round, not only from the viewpoint of the interaction between trade and competition policy but also from the viewpoint of preventing its abuse as a protectionist measure.

21. The anti-dumping measure stipulated in GATT Article VI is an exception to the rule of non-discrimination as well as to the rule prohibiting imposing customs duties that exceed the bound rates. Therefore, in order to maintain the multilateral trading system, an anti-dumping measure should be taken in strict conformity with the rules set forth in the Agreement. However, in reality, resort to anti-dumping measures frequently lead to their abuse as protectionist measures, since they can be imposed relatively easily compared to other trade measures, and their effects on the trade of the countries in question are enormous. One reason is a lack of strict application of the provision. Another is that the obligations of the investigating authority and the methods of recognition, for example, the method of determining the dumping margin, and identifying injury, or the mechanism of review are not stipulated clearly enough in the Agreement. These ambiguities leave room for protectionist interpretations. Inadequate anti-dumping measures, arising from these ambiguities, thus have detrimental effects on trade.

22. From these standpoints, Japan supports the points raised by various Members including developing country Members who expressed their concern about unfair anti-dumping measures and pointed out the need to exclude ambiguity and any room for arbitrary application from certain provisions of the Agreement. Japan is also of the view that due consideration should be given to developing country Members in light of Article 15 of the Agreement.

## **8. Industrial tariffs**

23. International trade could be further expanded by the reduction of industrial tariffs through negotiations on a reciprocal and mutually advantageous basis, paying due attention to the objectives of the WTO Agreement and the varying needs of individual Members. As we have mentioned in the previous intersessional meeting, this is recognized by the WTO Members under Article XXVIII *bis* of the GATT.

24. For the purpose of achieving wide ranging benefits to all Members, whether developed or developing, the next tariff negotiations should proceed in a comprehensive manner, covering a wide range of products and without specifying negotiating sectors in advance. We should aim at achieving agreements in a relatively short period. In this regard, appropriate methods for reducing tariffs should be explored, taking into account the characteristics of individual sectors and the different situations each Member faces.

25. With regard to tariffs on forestry and fishery products, consideration should be given not only to import tariffs reductions, but also to how to deal with possible concessions and reductions in export taxes and non-tariff measures such as export restrictions in exporting countries. This must be also carried out from the viewpoint of achieving a balance between importing and exporting countries' rights and obligations as well as of dealing with the global environmental issues.

## **9. TBT**

26. We consider that the discussions about certain points of the TBT Agreement should be further deepened. For instance, we need to discuss several important elements of the TBT Agreement (e.g., international standards, guidelines and international standardizing bodies) with a view to establishing the procedures for formulating international standards and rules in cooperation with international standardizing bodies. In addition, in order to realize one-step-testing and to facilitate mutual recognition, Japan considers that it is also important to review the provisions of the TBT Agreement if necessary.

## **10. SPS**

27. Japan is very interested in the issues relating to the SPS Agreement and will continue to participate actively in discussions in this area.

## **11. Regional Integration**

28. The recent trend towards regional integration has raised our concern over the probable inconsistency of some provisions of regional trade agreements with the WTO rules. Japan has repeatedly expressed this concern in the Committee on Regional Trade Agreements(CRTA). The relation between the regional trade agreements and the WTO rules has been discussed as a systemic issue in the CRTA, but progress is slow. Although some improvements were brought in, delays in the examination of regional trade agreements have become frequent and the CRTA has been unable to come to a definitive decision on any of the examinations.

29. Japan believes it necessary to examine the matter of regionalism in a much stricter manner in order to ensure the supremacy of the multilateral trading system. Specifically, the following points need to be examined:

- (a) Clarifying the interpretation of the WTO rules, such as Article XXIV of the GATT,
- (b) strengthening the current rules where necessary to cope with situations unforeseen at the time of the formulation of Article XXIV of the GATT,
- (c) reviewing the procedures for examining regional trade agreements in order to secure their consistency with WTO rules.

## **12. Agriculture**

30. As there are a wide range of issues concerning agriculture and this area is closely related to some of the other WTO agreements, Japan believes that the negotiations in agriculture should be a part of a comprehensive package in terms of procedure and the time frame.

31. With regard to the Checklist of issues pertaining to the BIA, in particular to agriculture, Japan is of the view that, first in examining the framework of the future negotiations, a careful review of the experience gained through the implementation of the UR Agreements is necessary. Second, due attention must be paid to factors such as non-trade concerns. With respect to the substantive issues referred to in the Checklist on the BIA, Japan would like to make the following points:

- (a) Market access

The levels of tariffs have been established through a series of tariff negotiations reflecting particular domestic situations and non-trade concerns. Due consideration should be paid to the fact that differences in the tariff levels of products have reflected such circumstances.

Regarding the Special Safeguard, the fact that it was introduced as a package with tariffication during the UR negotiations should be recalled. The current Agricultural Agreement acknowledges that the Special Safeguard can be maintained as long as the reform process continues.

(b) Domestic support

A necessary review of the scope of domestic subsidies which are subject to reduction should be carried out, taking into account the experience gained through the implementation of the Agreement as well as non-trade concerns and with a view to helping each Member to transform its policy measures towards the Green-Box.

(c) Export subsidies

As there is grave concern about the trade-distorting effects of export subsidies, we need to establish appropriate rules in this area.

(d) Export restrictions

We need to strengthen discipline concerning export taxes and export restrictions, in order to ensure a stable food supply into importing countries both in terms of quantity and prices, as well as to redress the balance of rights and obligations between exporting and importing countries.

(e) Net food-importing countries

The importance of food security to the net food-importing countries should be fully recognized. It must be also recognized that in order to ensure a stable food supply, including its quantitative and price aspects in these countries, it is necessary to combine appropriately policy measures such as domestic production, stable imports and stockpiles.

(f) Special and differential treatment

The reform process which is leading towards more liberalized agricultural trade may have negative effects on the food supply in least-developed and net food-importing developing countries. Therefore, we should examine those effects closely, and should utilize the knowledge of relevant international organizations such as FAO and UNCTAD.

### **13. TRIPS**

32. Protecting intellectual property rights is now recognized as a precondition for the healthy development of free trade and national economies. In this regard, it is extremely important that such rights are adequately protected so that a predictable environment for trade and investments can be developed and maintained. Japan believes that the existing provisions of the TRIPs Agreement should be implemented properly and in time by Members including developing country Members. Furthermore, Japan would like to stress that an appropriate review on the Agreement should be conducted as part of the next round of negotiations.

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