It is almost painful for me to take the floor again on this matter — as you well know the question of Article XXXV has been on the agenda of sessions of the CONTRACTING PARTIES since 1955, or rather since 1953. The Japanese Government expressed on those occasions its serious concern on the situation which has been brought about by very wide-spread resort to Article XXXV.

The Japanese delegation, again on this occasion, reiterate their grave concern on this issue and strongly desire that the CONTRACTING PARTIES recognize the importance of this question and make every effort to find an early solution, because the recent development of the situation seems to call for immediate action by the CONTRACTING PARTIES. Allow me to indulge in arithmetic: when Japan was admitted into the community of the General Agreement, fourteen countries invoked Article XXXV against Japan. Two countries, namely Brazil and India, later disinvoked Article XXXV as a result of consultation and of the good understanding of these two countries. The number of countries which invoked Article XXXV was reduced to twelve, but soon Ghana and the Federation of Malaya acceded to the General Agreement resorting to Article XXXV against Japan, thus it numbered again fourteen. Early this year the Federation of Malaya disinvoked Article XXXV and reduced the number to thirteen. Nigeria having acceded to GATT under Article XXVI, thus inheriting British invocation of Article XXXV, must now be counted as the fourteenth.

Two countries, namely Tunisia and Cambodia, which have acceded provisionally, have invoked Article XXXV against Japan. We earnestly hope that when they are admitted definitively they will feel no need of doing so again.

Furthermore, there is some indication that some of the countries now seeking accession under Article XXXIII might invoke Article XXXV against Japan. In addition to that, newly independent countries in Africa and elsewhere acceding to GATT under Article XXVI will be likely to inherit the invocation of this Article by the United Kingdom, France or Benelux. I am afraid that the number of countries invoking Article XXXV might increase to twenty-five or thirty.
We earnestly desire that the CONTRACTING PARTIES should squarely recognize the serious situation which has developed so far and which might develop in the imminent future.

At the sixteenth session, I suggested that the CONTRACTING PARTIES might wish to review the operation of this Article in accordance with the provision of paragraph 2. This paragraph reads as follows:

"The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendation."

I am instructed by my Government to make a formal request in the sense of paragraph 2 just mentioned. I hope the CONTRACTING PARTIES will, at the request of my Government, proceed to the review in due course. It is up to the CONTRACTING PARTIES to decide what should be reviewed and how. In the opinion of my delegation the CONTRACTING PARTIES might wish to review several aspects of the operation of the Article.

In the first place, they may wish to review whether or not, and if so to what extent, the administration of the General Agreement is hampered by such a widespread resort to Article XXXV, which certainly was not foreseen when the General Agreement was drafted. I specially refer to joint action as foreseen in Article XXV - what would be the voting procedure if Japan asked for a waiver? - or any other joint action such as joint consultation. The CONTRACTING PARTIES might also wish to review to what extent the widespread application of Article XXXV is hampering the attainment of the basic aims of the General Agreement. Almost everywhere discriminatory measures are applied against trade with Japan whether under the cover of Article XXXV or under other pretexts. But was Article XXXV inserted into the General Agreement for such purposes? Such a situation is not only preventing Japan's economy from being further integrated into the world economy, but is it not creating difficulties for world trade itself, preventing its further expansion by liberalization and multilateralization?

I would like to refer also to the tariff negotiations. Because of resorting to Article XXXV, Japan has been prevented from entering into tariff negotiations with many countries, and I am afraid she might be in the same position again in the forthcoming very important tariff negotiations. The result is that tariff positions for specific Japanese items in the tariffs of countries invoking Article XXXV remain unnegotiated and the Japanese tariff for items for which the United Kingdom, France or the Benelux countries are principal suppliers, will remain un negotiated. This not only creates an odd imbalance in the tariff itself, but is hampering the general aim of GATT to attack barriers to trade. I believe these aspects must also be reviewed.

Last but not least, one of the points which in our opinion should be reviewed by the CONTRACTING PARTIES is the cause of such a widespread application of Article XXXV against Japan. It is generally believed that Article XXXV was resorted to because of the possibility, or rather the apprehension of a situation called market disruption. This may be true for certain highly
industrialized countries like the United Kingdom, France or Benelux. Yet, there again, I suspect that the question is less real than psychological or political, if I may say so. Let us devise a means to cope with the so-called market disruption, then I am confident such device will be very seldom resorted to. Anyway, I will concur in the view that the review of the operation of Article XXXV against Japan could usefully be carried out if it is done conjointly, or at least simultaneously, with the work of the Working Party on the Avoidance of Market Disruption.

But I suspect that apprehension of market disruption is not the only cause of such a widespread resort to Article XXXV. Many countries newly acceding to GATT seem to feel that they are acting contrary to the established customs of GATT if they have not resorted to that Article against Japan. Or, countries acceding to GATT under Article XXVI, merely inherit Article XXXV because of the action taken by the governments which previously administered their territories and they might think it wise to keep for the time being the invocation of Article XXXV. These countries are not resorting to Article XXXV because of a need or desire to discriminate against Japan – in fact they are not doing so. Most of these countries can protect their developing industries under Article XVIII, and they need not take discriminatory measures against imports from Japan.

In the course of our talks with some of these countries, with a view to having this Article disinvoked, certain questions have been raised by them which either have no bearing whatsoever on trade or are not entirely in accordance with the principles of the General Agreement. We should like, in the course of the proposed review, to have the advice of the CONTRACTING PARTIES as to how Japan could best deal with such situations.

As has been assured repeatedly on other occasions, the Japanese Government intends to comply with the provisions of GATT by proceeding with the liberalization of her imports, and doing away with any discriminatory measures still existing. But, in doing so, my Government is faced with a terrible dilemma: whether we should liberalize our imports to all sources, including countries invoking Article XXXV which are taking discriminatory measures against imports from Japan, or should we liberalize our trade to all countries except those invoking Article XXXV, thus discriminating against them, if I may say so, in order to obtain from such countries the removal of discriminatory measures against Japan and eventually disinvocation of Article XXXV? The question is not so simple, for it is not technically easy to liberalize trade and yet maintain or increase discrimination for some against which discrimination is perfectly legal since the provisions of the General Agreement are not applicable between Japan and the countries invoking Article XXXV. We should be very happy if we could have the advice of the CONTRACTING PARTIES, if they would be willing to study the matter in the course of the proposed review of the operation of Article XXXV.

To conclude, the CONTRACTING PARTIES might wish to proceed with the review under Article XXXV: 2 from the following viewpoints:

1. Prejudice to the administration of the General Agreement;

2. Prejudice to the accomplishment of basic aims of the General Agreement;
3. Cause or reason for invocation of the Article by different countries;

4. Possibility of obtaining good offices in negotiation with certain countries with a view to having this Article disinvoked; and

5. Impact of Article XXXV on Japan's own programme of trade liberalization.

I have tried to indicate, or rather to express our hope as to what the review foreseen under Article XXXV:2 should aim at. I do not intend to prejudice the way in which the CONTRACTING PARTIES may wish to accomplish the review provided for in that paragraph; they may wish to discuss the matter at the present session or at the eighteenth session, or establish a working party, or request the Council to study the procedure. It is up to the CONTRACTING PARTIES to discuss and decide on the aim and the procedure of the proposed review.