APPLICATION OF ARTICLE XXXV TO JAPAN BY CERTAIN CONTRACTING PARTIES: DISCUSSION IN PLENARY SESSION

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Application of Article XXXV to Japan by certain contracting parties:
Discussion in Plenary Session

In September 1955 Japan acceded to the General Agreement and at that time a number of contracting parties invoked Article XXXV, thereby refraining from undertaking GATT obligations towards Japan. At the end of the Tenth Session the chairman recommended that consultations, which had already been initiated, should be continued between Japan and the governments concerned. At the Eleventh Session the Contracting Parties reaffirmed the recommendation that consultations should continue and instructed the Intersessional Committee to keep the matter under review and to report to the Twelfth Session.

Since the Eleventh Session, the Government of Brazil reported, on 22 August, 1957 that it had withdrawn its reservation under Article XXXV.

The fifteen countries which at present invoke Article XXXV are Australia, Austria, Belgium, Cuba, France, Ghana, Haiti, India, Luxemburg, Malaya, Netherlands, New Zealand, Federation of Rhodesia and Nyasaland, Union of South Africa and the United Kingdom.

Mr. Katsuzo Okumura, Japan, said that this was the third time that the problem of the invocation of Article XXXV against Japan had been placed on the agenda of a GATT Session. His Government deeply regretted that no solution of this problem had been reached so far. He noted some progress in the past year. First, Brazil had withdrawn the invocation of Article XXXV with the coming into effect of its new tariff. Secondly, when a trade agreement was signed between Australia and Japan in July the Australian Government expressed its wish to enter into discussions with the Japanese Government within three years to explore the possibility of applying GATT between the two countries. However, it was a source of great disappointment to the Japanese people that there remained a number of countries which show no sign of revoking the application of Article XXXV. The Japanese Government, he said, had endeavoured to solve the problem in a bilateral manner with some of the invoking countries but all in vain. At this Session they were confronted with a new situation, namely the accession of Ghana and Malaya to the GATT; this was accompanied by their succession to the legal status of their mother country which had invoked Article XXXV against Japan. He hoped that these two
countries would reconsider the matter as soon as practicable in the light of the friendly relations that obtained between them and Japan.

Referring to certain apprehensions entertained by some countries regarding imports of Japanese products, Mr. Okumura said that his Government was convinced that these misgivings were groundless or exaggerated. He was sure that any problem that might arise could find a satisfactory solution within the scope of the GATT. In the experience of the past three years, he said, no insoluble problem had arisen between Japan and the countries with which she enjoyed GATT relations. The Japanese Government believed, he said, that in order to promote Japanese exports which are essential for the maintenance and expansion of her national economy, Japan should not be denied the right to participate in economic competition under fair and equitable conditions all over the world. He earnestly wished that Governments concerned would take fully into account the points he had raised and would consider withdrawal of the invocation of Article XXXV against Japan as soon as possible.

Mr. Okumura pointed out that this problem was closely associated with the European Economic Community. It is assumed he said that the Community will eventually apply a single common tariff to the contracting parties including Japan and that the Community as an entity is expected to enter into tariff negotiations with the contracting parties during the transitional period. It was presumed, therefore, that the circumstances in which four of the member countries of the Common Market are invoking Article XXXV against Japan (Belgium, Luxemburg, France, Netherlands) would be brought to an end in connexion with the expected tariff negotiations. In conclusion Mr. Okumura said that in the past GATT had no other problem which could not be settled amicably with the understanding and cooperation of contracting parties. It would therefore be regrettable if they were to see an exception to this honorable tradition of the GATT by failing to solve this particular question of Article XXXV. He requested that the matter should be placed on the agenda of the 13th Session and that in the meantime every possible effort to solve it should be sought, both multilaterally and bilaterally.

Dr. W.A. Westerman, Australia, referred to the recent trade agreement with Japan and said he hoped that it would be possible during the next three years
to bring about a full GATT trading relationship with Japan. He said that already the minimum tariff was being applied to a considerable number of Japanese goods.

Mr. C.W. Adair, United States, said that the U.S. Government fully supported Japan's hopes that the countries still invoking Article XXXV would revoke the application of this Article. He was encouraged by the action taken by Brazil and Australia, and he sincerely hoped that the coming year would see further removals of the use of Article XXXV.

Mr. Osman Ali, Pakistan, said that it now seemed that bilateral discussions had not yet produced satisfactory results. He stressed his concern as to the effects on the Contracting Parties as a whole of the continuing resort to Article XXXV and expressed the hope that more progress could be made before the next Session.

Shri T. Swaminathan, India, said that India already grants Japan most-favoured-nation treatment on tariffs and in applying quotas makes no discrimination against Japan. But it was necessary to maintain resort to Article XXXV to allay the fears of industries as a result of past and current experiences. He hoped that it would be possible for India to give up resort to Article XXXV in the fairly near future.

Mr. N.R. Bertram, Rhodesia and Nyasaland, said that although his Government was not able to withdraw the application of Article XXXV bilateral discussions with Japan had recently been initiated in order to achieve more liberal treatment. These discussions were proceeding.

Mr. O.P. Machado, Brazil, said that his Government had suspended the application of Article XXXV with the intention of holding tariff negotiations with Japan. He hoped that Japan would receive fair treatment by all contracting parties and that Article XXXV would not be used except in extreme necessity.

Mr. K.L. Press, New Zealand, said that his Government had invoked Article XXXV. However, bilateral discussions had been initiated with a view to improving trade relations with Japan and these would shortly be resumed.

Mr. S.S. Reisman, Canada, said that Canada applies GATT fully to Japan. Since Japan's accession there had been an expansion of trade between the two countries. This, he said, indicated that it is possible to work out mutually
beneficial trade relations with Japan. He hoped that further progress would soon be made in revoking the use of Article XXXV and said that the matter should be put on the agenda of the next Session.

Mr. Karel Svec, Czechoslovakia, said that GATT's mission can only be achieved when all members are participating equally. His Government had supported Japan's accession and applied most-favoured-nation treatment to Japan. Trade relations between his country and Japan had now begun to develop.

Che Sujak Bin Rahiman, Malaya, said that Malaya had only recently become a contracting party and there had not been much time to examine the rights which existed before her independence. For this reason his Government had not yet been able to give detailed consideration to the application of Article XXXV. The Japanese Government had however been assured that his Government would consider this matter soon.

Mr. C.W. Jardine, United Kingdom, said that the policy of the U.K. Government was set out in the White Paper of April 1955. This document explained that Japan received most-favoured-nation treatment so far as tariffs are concerned and that quota arrangements are mutually agreed. His Government expressed the hope that Japan's trading relations would develop so as to allow the United Kingdom to withdraw the application of Article XXXV, and he regretted that it had proved necessary to invoke this Article. The United Kingdom position had not changed since the publication of the statement contained in the White Paper and his Government must abide by that policy for the present.

The delegates of Denmark, Mr. Jens Christensen, and of Sweden, Mr. T. Hagen, supported the Japanese statement.

M. Donne, France, said that the French Government was not able at the present time to modify its position regarding resort to Article XXXV. Nevertheless he wished to state that negotiations had been undertaken between Japan and France with a view to improving commercial relations between the two countries. These negotiations had recently resulted in the signature of a trade agreement. Under the terms of this agreement Japanese products were included in the lists of goods annexed to the agreement benefitting from minimum tariff rates when imported into France.
Mr. J.H.W. Hoogwater, Netherlands, said he would bring the statements made to the notice of his Government. The position of the Netherlands in this matter had not changed. But he assured the Japanese delegate that the matter was under constant study in The Hague, where, he said, a number of people were ready to defend the Japanese position.

The Chairman, Shri L.K. Jha, summarising the discussion, said that he hoped the Japanese Delegation would take note of the friendly tone of the speeches, both from countries which had and which had not invoked Article XXXV. There was general support for the matter to reappear on the agenda of the 13th Session when it was hoped that the report would indicate progress.