

DRAFT PRESS RELEASE

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ARTICLE XXXV DISCUSSION

Will delegations kindly send their corrections to the
Information Officer, Conference Office A-660, before
4 PM on Wednesday, 16 November 1955.

Discussions subsequent to the Invoking of Article XXXV
to Japan by 14 Contracting Parties

Earlier in this Session the Japanese Representative made a statement concerning the situation which had arisen due to the invoking of Article XXXV against Japan by fourteen countries (GATT/247). At the conclusion of the subsequent debate (GATT/249) it was agreed that the problem could be informally explored between the Japanese and other individual delegations.

Mr. Toru Haguiwara, Japan, said that although Japan now had the right to discriminate against the countries which had invoked Article XXXV, it was not easy to do so within the framework of GATT's commercial policy. Besides, Japan had no wish to apply a discriminatory policy towards any country. In present circumstances Japan enjoyed the benefits of GATT vis-à-vis only 20 contracting parties. He felt that Japan had the right to demand a remedy for this situation. He also referred to the embarrassing situation that could arise in connection with voting procedures, if in certain circumstances the fourteen countries abstained from voting.

Turning to the question of economic structure (which had been raised by the French representative in the earlier debate) Mr. Toru Haguiwara said that it was difficult for Japan to understand why certain contracting parties observe GATT rules towards other contracting parties which have economic structures of various types, but cannot accept these rules when applied to the contracting party which has just acceded, because of the difference of economic structure. The Japanese Government could never accept arrangements of a discriminatory character solely against Japan. The Japanese Government and the Japanese people, he said, think that non-discriminatory treatment by the rest of the free world is the sine qua non for collaboration with it. The Japanese people would not easily understand the assurances he had received from certain delegations that they had invoked Article XXXV without any intention of political unfriendliness.

Mr. Haguiwara said that the Japanese Government wished to find a formula which would provide an additional safeguard to contracting parties in exceptional difficult circumstances arising from too strong competition. He appreciated,

however, the desire of the Contracting Parties not to weaken the GATT and its main principles. At the same time such a formula, if adopted, would be to the disadvantage to the twenty countries applying the GATT to Japan. It would not be easy to find a solution that neither discriminated against Japan, nor was unfair for countries applying the GATT to Japan, nor weakened the Agreement. It was in order to try to break this vicious circle that he had undertaken conversations with various delegations in the past two weeks. He had found that, although the circumstances which caused the 14 countries to invoke Article XXXV were not identical, for the most part they arose from fear in certain industrial sectors of too massive imports of Japanese products. Japan, he said, had no desire to create crises for her clients. They desired that their exports should develop in harmony with the interests of importing countries. They wished, as exporters, to assume the responsibility - and they possessed the means - to ensure an orderly expansion of their markets. In his view, the difficulties which countries importing Japanese products feared were of a marginal character and the resort to Article XXXV - that is the complete exclusion of Japan from GATT treatment - was far too serious a measure for remedying the problem they faced. Nevertheless, he was glad to note that all the countries concerned wished to terminate the present embarrassing situation as soon as possible.

Mr. Haguiwara said he realised that the problem could not be solved today or tomorrow; it was a complex problem and of vital importance for GATT principles. But if there must be an intervening period it must be as short as possible. He regretted that after two weeks of exploration he could not present a concrete proposal; nevertheless he had profited from the useful suggestions made by various delegations and he asked to be allowed to continue these contacts and exchanges of views.

Mr. H. Klein, Federal Republic of Germany, said that his Government had not invoked Article XXXV. Although German industry and the Federal Government had some apprehensions with respect to Japanese competition, the Government held the view that the cooperation of a large and important country such as Japan was of great value to GATT. Nevertheless that fact that fourteen countries had invoked Article XXXV had caused apprehension to the Federal Government and to German economic circles. This was a matter which affected the Contracting

Parties as a whole. In particular there exists now a collective problem for all countries which have not invoked Article XXXV, he said, in that - in his view - there is a danger that the equilibrium of rights and obligations among the contracting parties is considerably impaired.

Mr. Klein said that the Federal Government would be particularly appreciative if a solution could be found to take account of the interests of all contracting parties and, if possible, make provision also for future cases of this kind. He said that the publicity arising from the application of Article XXXV to Japan by fourteen countries had aggravated the apprehension and resistance in German industrial circles regarding acceptance of the revised GATT and of the Agreement to establish the Organization for Trade Cooperation. He thought it might be possible to examine the conditions on which each of the fourteen countries would be prepared to renounce their decision to invoke Article XXXV and the assurances Japan could give in this connection. It would be necessary for both sides to try to make concessions. The treatment of this case, he added, would be a test case as to whether the Contracting Parties could solve such problems in an amicable way.

Mr. John Leddy, United States, said he wished to emphasize the point that the 20 countries (including the United States) which had not invoked Article XXXV against Japan had a direct concern with the problem under discussion. He feared that the situation would lead to criticism of GATT as a defective instrument. Although he did not see the outline of a solution at present, the fourteen contracting parties must continue to press for a solution. The difficulty would be to devise a general formula wide enough to enable countries to revoke their application of Article XXXV and narrow enough to protect the integrity of the GATT.

Mr. H.E. Kastoft, Denmark, said that his Government had not invoked Article XXXV. Concerning a possible solution of the problem his Government would be opposed to any attempt to establish interpretations of the provisions of the GATT to suit the case of one or a few contracting parties; the provisions of the Agreement must remain equally applicable to all member countries. His delegation fully understood the difficulties of the Japanese Government and sympathized with their efforts to find a solution. The consequence of the invoking of Article XXXV by fourteen countries was that Japan now only had GATT

relations with 20 countries. The Danish Government had always regarded GATT as an integrity within which the participating countries should have equal rights and obligations - an integrity which had already been somewhat compromised by means of waivers. The partial participation now offered to Japan was a further infringement.

Mr. A.B. Hockin, Canada, said that his Government had never minimized the seriousness of the problem under discussion, and that although they had not invoked Article XXXV against Japan they felt the matter to be of direct concern to them as a contracting party. He regarded the matter as of direct concern to each contracting party because it was a threat to the unity of the Contracting Parties as a whole. He considered it was necessary to find a solution that would not impair the existing rules and every effort must be made to continue the consultations in order to find a solution as rapidly as possible.

M. M. Fombrun, Haiti, said that his Government, which had invoked Article XXXV, had considered the matter very carefully and had given assurances that their trade relations with Japan would be put on a normal basis as soon as possible. The problems that Haiti faced were different from those of most other countries invoking Article XXXV. In 1953 the Haitian Government had explained to a visiting Japanese mission that Haiti was beginning to establish a textile industry dependent on native-grown cotton. Previously Haiti had imported a substantial amount of Japanese textiles. Haiti was therefore obliged to protect her infant industry and needed some measures of protection against Japanese imports. This was a marginal case in which Article XXXV had been invoked for economic development reasons.

Mr. P.A. Forthomme, Belgium, agreed with the delegate of Denmark that the maintenance of the integrity of GATT was of prime importance. Although the contracting parties were all equals around the table, nevertheless some applied restrictions under certain Articles, others had obtained waivers and so forth. There was no harm in recognizing that not all contracting parties enjoy the same facilities. Nevertheless all accepted the idea that their action should conform to GATT jurisprudence including the case law built up

in the past ten years. It was therefore essential that any solution to the present problem should be inspired by general principles, that it should be limited to meet the needs of this particular case and that it should be acceptable to all contracting parties.

Mr. H. de Besche, Sweden, said that his Government had always considered that Japan as an important trading nation, should occupy her proper place in GATT; his Government had therefore supported Japan's accession and had not invoked Article XXXV. The present problem, in his view, did not only involve the 14 countries plus Japan; it was a general problem on which the Contracting Parties as a whole could not take a disinterested view. He hoped a formula could be found to enable the 14 countries to withdraw the application of Article XXXV and so treat Japan on an equal footing, and he supported the prolongation of bilateral talks between Japan and the countries concerned.

Mr. E.L. Phillips, United Kingdom, referred to his statement at the earlier discussion (GATT/249) and to the statement of policy issued by his Government in April 1955. He reaffirmed the position taken by his delegation and undertook to report to his Government the views expressed at this meeting.

Mr. Paul Koht, Norway, said that his delegation concurred with the views expressed by the delegate of Sweden.

Shri T. Swaminathan, India, said that his Government was anxious to eliminate the application of Article XXXV to Japan as soon as possible, and he strongly supported the Japanese request for the continuance of private discussions.

M. T. Notarangeli, Italy, said that the situation caused great concern to Italy, which had not invoked Article XXXV. He hoped a solution would be found as soon as possible and he therefore supported any possibility of continuing the examination of the problem at the next meeting of the Intersessional Committee, if not earlier.

M. André Philip, France, said that although he was not yet in a position to add anything to his statement at the earlier debate he wished to stress how greatly he appreciated the tact and restraint which the Japanese representatives had shown in dealing with the matter.

M. Garcia Oldini, Chile, said that although each contracting party had the sovereign right to resort to Article XXXV it was necessary to consider the consequences for other contracting parties. Contracting parties with varying degrees of economic development had different reasons for invoking Article XXXV - psychological, commercial, social and political reasons. With this as a starting point it might be possible to envisage various types of solution for different types of economy. Mr. Oldini warned, however, against the thesis - as expressed in the earlier debate by the French delegate - that a distinction should be made between levels of wages in various countries; it would be impossible to have special rules for low wage countries with highly developed industries. He suggested that the problem could be explored in an informal group, openly and frankly, with a view to examining the different reasons for invoking Article XXXV and the possibility of finding various types of solution.

Mr. H.C. Lyon, Dominican Republic, said that he was in favour of Japan's request to continue conversations.

Sir Claude Corea, Ceylon, said he was impressed by the dignity and moderation of the Japanese statement. He felt that each of the fourteen countries had good reasons for invoking Article XXXV and he supported the Japanese delegation's request for further consultations.

Dr. H. Standenat, Austria, said that the various speakers had shown the need to find a practical solution to this problem. It was essential to break the vicious circle and he supported the Chilean proposal to establish a small informal group.

Mr. Aziz Ahmad, Pakistan, said he hoped the bilateral talks between Japan and certain delegations would be effective. He felt it was premature to establish a working group and that the best interest would be served if the Contracting Parties went on record as agreeing that this was not a Japanese problem but a GATT problem. The matter must be kept under review and perhaps the Intersessional Committee could call for a report from the Japanese Government.

Baron C.A. Bentinck, Kingdom of the Netherlands, said that his delegation was prepared to continue bilateral talks in order to find an acceptable solution.

Mr. Vargas Gomez, Cuba, said that his Government was not in a position at this stage to engage in consultations with Japan. He shared the general anxiety to find a solution to the problem but Cuba could not accept any solution that might weaken the principles of GATT.

The Chairman, Mr. Dana Wilgress, summarizing the discussion, said it was clear that more time was needed to find a solution to this difficult problem and that the governments concerned were not yet in a position to submit concrete proposals. He emphasized the importance of the problem and said that the interests of GATT were at stake. It was generally recognized that the widespread invoking of Article XXXV created a situation of direct concern to the Contracting Parties as a whole, and therefore they should go on record as expressing their deep concern at the present situation and should urge all contracting parties to find a solution. Consultations between certain delegations and Japan should continue and the Contracting Parties should keep the matter under continuous review; the Intersessional Committee should be charged with reviewing the problem and if necessary it should be put on the agenda of the Eleventh Session.