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ARTICLE XXIV

Submission by Japan

The following submission has been received from the delegation of Japan, with the request that it be circulated to members of the Negotiating Group.

INTRODUCTION

While regional arrangements such as customs unions and free-trade areas constitute a major derogation from the most-favoured-nation treatment, which is one of the basic principles of the General Agreement, they have been established in an increasing number and have grown in their size and scope since the establishment of the GATT, surpassing all expectations on the size and scope held at the time of the drafting of the General Agreement. Today, the regional arrangements have covered a significant proportion of world trade. In other words, a large part of world trade today is not being transacted upon the principle of most-favoured-nation treatment.

A procedure for an entry into force of such regional arrangements is basically stipulated in Article XXIV:7, whereby the CONTRACTING PARTIES examine the matter and make recommendations as they deem appropriate. However, not one single recommendation has been made based on this Article, which brings it into debate as to whether the GATT mechanism for regional arrangements is functioning adequately and properly.

Against this background, Japan would like to submit the following thought for further discussion on the improvement of Article XXIV.

1. POINTS AT ISSUE

Japan considers that the following points need to be considered in reviewing Article XXIV.

- To minimise the adverse effects which might result from the formation or enlargement of the regional arrangements vis-à-vis non-members, as well as to preserve their rights under the General Agreement since these arrangements constitute a unilateral derogation from the GATT fundamental principle of most-favoured-nation treatment, and thereby aiming to have regional arrangements truly contribute to expanding world trade.

- To increase involvement of the GATT (in the form of strengthened review mechanism, etc.) throughout the process of the formation or enlargement of the regional arrangements and their operation thereafter.
- To clarify the interpretation of the existing provisions of the General Agreement concerning regional arrangements.
- (Although not necessarily within the mandate of the present Negotiating Group,) to deal with possible problems which would be caused by regional arrangements, should GATT disciplines be extended to the new areas.

Japan recognizes that a special consideration may be needed for developing countries in the context of the improvement of procedures for the formation or enlargement of regional arrangements. Also, it is not the intention of Japan, in presenting this submission, to undo the existing regional arrangements.

2. CONCRETE POINTS FOR IMPROVEMENT OF ARTICLE XXIV

(1)(a) Although regional arrangements constitute a derogation from the basic principle of most-favoured-nation treatment, they are acknowledged in the GATT, because, in our view, they are expected to contribute on the whole to an expansion of world trade and to eventually extend their benefits to contracting parties outside the arrangement.

From this perspective, it is desirable for contracting parties to agree on establishing the principles for regional arrangements that they should:

- (i) avoid any adverse effects on the non-member contracting parties to the greatest degree possible, and
- (ii) contribute on the whole to the increased liberalization of world trade and to creating further trade.

(Note)

The adverse effects to the non-member contracting parties include, inter alia,

(a) serious injury of the domestic industry of non-member contracting parties,

(b) nullification or impairment of the benefits accruing directly or indirectly to non-member contracting parties under the General Agreement, or

(c) serious prejudice to the interests of non-member contracting parties.

(1)(b) Clarification of the interpretation of GATT Article XXIV:5 and 6.

(i) Article XXIV:6 provides for exceptional cases where it becomes necessary to raise bound tariff rates when fixing the common tariff schedules for entities such as newly-formed customs unions. Interpretations which allow a member of the customs union to seek "compensation" in cases where the tariff rate of a certain item is brought down as a result of the establishment of the customs union, and which allow the customs union to unilaterally withdraw its concessions in cases where non-member contracting parties do not offer such "compensation" must be clearly condemned as having no ground in the GATT, since it is tantamount to permitting an existence of the rule that would place adverse effects on the non-member contracting parties as a result of a unilateral formation of the customs union.

(ii) With respect to practices of unilaterally withdrawing concessions (or their entire tariff schedules) upon the formation or enlargement of a customs union, there should be a reaffirmation by contracting parties that the notion of such a unilateral withdrawal of tariff concessions (or the entire GATT tariff schedules) of the members, without having carried out necessary negotiations on compensation based on Article XXVIII has no basis in the GATT: this notion ignores the fact that Article XXIV:6, makes a direct reference to the procedures of Article XXVIII.

It also presents problems from the viewpoint of balance of rights and obligations under the GATT, since it grossly undermines the stability of concessions, and also places members of customs unions in highly advantageous positions.

(iii) In calculating the "general incidence of the duties" of Article XXIV:5(a), it should be established that, as the drafting history indicates, a simple arithmetic average of the tariffs of all members should not be allowed, but that a flexible approach should be taken whereby the amount of trade is taken into account on a product-by-product and a country-by-country basis.

(1)(c) Other means of protecting the interests of other countries

While it is a fact that regional arrangements are inherently discriminatory, contracting parties should establish the understanding that the fact that the GATT allows the existence of regional arrangements does not automatically imply that the GATT allows serious injury to be caused to non-member contracting parties by the formation or enlargement of regional arrangements.

A new mechanism is also needed whereby a contracting party outside a regional arrangement suffering serious injury due to the loss of market access to members of the arrangement may have its injury redressed.

Contracting parties should establish a mechanism within the context of Article XXIV to deal with serious injury caused to a domestic industry of a non-member contracting party by the formation or enlargement of regional arrangements, upon request from such a non-member contracting party. Compensation for such injury and/or a liberalization of market access of the item concerned on an mfn basis should be able to be considered in such a mechanism.

(2) Strengthening a mechanism to gather information in the GATT.

Contracting parties should establish a mechanism to invite each member contracting party to regional arrangements to regularly submit data, including various economic indicators such as income levels and employment rates. This mechanism may be of assistance in confirming as to whether the regional arrangement has served, or is serving, to create overall expansion of trade and fuller use of the resources, as well as in securing transparency on what effect, if any, it has on the non-member contracting parties outside the regional arrangement. Detailed scope of the actual economic indicators to be submitted is expected to be discussed in future negotiations.

(3) Clarification of the interpretation of interim agreements, etc.

(a) Under the GATT, any interim agreement leading to the formation of a customs union or of a free-trade area must include a plan and schedule for such formation within a reasonable length of time (Article XXIV:5(c)). In order to further clarify the meaning of "a reasonable length of time" a standard, e.g. ten years, should be established.

(b) Annual reviews should be conducted until an interim agreement is completed as a regional arrangement "within a reasonable length of time".

(4) Issues relating to regional arrangements to be dealt with in other Negotiating Groups

(a) Non-Tariff Measures

(i) Rules of origin

With regard to the regional arrangements, trade-distorting effects may arise especially from the way the rules of origin are implemented. It is therefore highly important to establish predictable, transparent, and objective rules of origin. As criteria for rules of origin do not exist within the General Agreement, the NTM Negotiating Group is at present trying to construct a framework on the rules of origin. It should be confirmed that upon the establishment of such a framework, it also be applied to the regional arrangements.

(ii) Others

Non-tariff measures within the regional arrangements other than the rules of origin, such as technical regulations and standards, also have a possibility of having trade-distorting effects on the trade between the non-member and member countries. It should be therefore confirmed that, where relevant international disciplines on such measures exist, they be effectively applied to the member countries of the regional arrangements (Article XXIV does not serve as a legal basis for allowing preferential treatment for the countries within the regional arrangements) and that necessary measures for that purpose be also taken.

- (b) Re-examination of the framework of regional arrangements, should the GATT disciplines be extended to the new areas

Of course, this issue, in large part, depends on what legal form and substance will result from the on-going negotiations in the new areas. Should the GATT be expanded to the new areas, the framework of Article XXIV, in our view, would not be applied automatically to these areas. Also, in our view, benefits which might derive from the formation of the "regional arrangements" in the new areas should be widely disseminated among countries outside the "regional arrangements". The matter should, in any case, be fully examined in the discussions on legal forms, in the process of the Uruguay Round negotiations in the new areas.