U.S.–Japan Auto Dispute and the DSU

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The new Dispute Settlement Understanding (DSU) of the WTO played a significant role in the settlement of the trade dispute between the United States and Japan on automobiles and automobile parts in the May–June period of 1995. The DSU and the Dispute Settlement Body (DSB) which administers the understanding were used effectively by both the U.S. and Japan in two ways. The tight time frames in the DSU for consultations and establishment of panels, which are part of the greater predictability and automaticity of the WTO Dispute Settlement procedures, were used by both Japan and the U.S. to increase the pressure to reach a bilateral agreement. The DSU procedures were also used by both sides to publicize their respective positions and to build multilateral pressure for a settlement.

The basic facts relevant to the way the issue was played out within the DSU were as follows. On 10 May, the U.S. foreshadowed the possibility of filing a WTO complaint against Japan by the end of June, contesting policies and practices in the automobile sector that barred effective market access. This was followed on 16 May with a Section 301 announcement, foreshadowing the imposition of additional duties on imports of certain Japanese motor vehicle imports into the U.S. for final determination by 28 June, but with withholding of customs liquidation on imports from 20 May. On 17 May, Japan countered with a request for Article XXII consultations with the United States, alleging infringement of the basic MFN rule of the WTO and Uruguay Round tariff lines consequent not only on the final 301 determination to take effect from 28 June, but also on the withholding of customs liquidation of imports from 20 May.

These actions by both the U.S. and Japan set the scene from the middle of May for an intensive public debate in Geneva of the issues with both the Untied States and Japan seeking multilateral support for their respective positions and the validity of their legal WTO claims against each other. The issues dominated the meeting of the Dispute Settlement Body which took place on 31 May and also the WTO Goods Council meeting which took place two days earlier on 29 May. In the period up to these meetings, Japan waged a very active campaign to have the time frames for consultations, which are a necessary preliminary step to the establishment of a dispute settlement panel, rigorously respected. Japan also fought hard to have this issue considered a "case of urgency" under DSU rules, which provides possibility for moving to the "panel" stage of the dispute settlement resolution procedures within a very short time frame.

The rules of the DSU which mandate consultations taking place within 30 days of notification, enabled Japan to secure an initial round of Article XXII consultations with the U.S. in Geneva on 12 June, well within the 30–day period. This was followed by a second round on 22 June, also in Geneva. Through these consultations and a detailed presentation of its position at the prior meetings of the Goods Council and the DSB meetings at the end of May, Japan created the clear expectation in Geneva of its intention to continue to the panel stage of the WTO dispute settlement procedures if bilateral negotiations with the U.S. failed. Because of lack of specificity in the relevant DSU provision (Article 4:8), however, Japan did not succeed in having its complaint against the U.S. considered a "case of urgency".

The extensive debate on the substance of both Japan's Article XXII action against the U.S. and the United States' own foreshadowed GATT complaint against Japanese import practices at the DSB meeting on 31 May, drew a large number of significant WTO players into publicly expressing their views. The European Union, Canada, Brazil, Hong Kong, Australia, Turkey, Switzerland, Norway, Indonesia (on behalf of ASEAN), South Korea, Argentina and Pakistan entered the debate to stress the significance of the dispute in trade and political terms and the importance of resolving the dispute, in a way consistent with the trade expanding and non-discriminatory rules and philosophy of the WTO. In addition to the public debate which took place in Geneva around the May meetings of the DSB and the Goods Council, interest was also created in third countries "joining in" the Article XXII consultations between Japan and the U.S. as provided for in Article 4:11 of the DSU. In the event, the U.S. accepted only the request of Australia to join in the consultations.

In addition to the clear commitment of both sides to pursuing their WTO rights, the policy debates in the Goods Council in the DSB in May and the Article XXII consultations between Japan and U.S. in Geneva during June, provided an important element of multilateral pressure on the bilateral negotiations which were taking place in Washington and later in Geneva throughout that period. In the event the final settlement was reached in negotiations between USTR Kantor and the then MITI Minister Hashimoto on 28 June. At the subsequent meetings of the WTO Council for Trade in Goods on 3 July, the General Council on 11 July and the DSB on 19 July, details of the bilateral settlement were provided by both sides. In the latter meeting, Japan also announced that it would no longer pursue the dispute settlement procedures initiated in the request for consultations with U.S. on 17 May. The U.S. similarly indicated that it would not be pursuing the separate complaint against Japanese import practices foreshadowed on 10 May.

While the bilateral negotiations between the U.S. and Japan over the May–June period were instrumental in the settlement of the automobile and automobile parts dispute, WTO dispute settlement procedures were also used to good effect by both sides and played an important part in achieving a satisfactory outcome. It was a positive signal of confidence in the new WTO rules that both the U.S. and Japan launched multilateral action in Geneva while pursuing bilateral negotiations. The determination of Japan to bring its own complaint to the panel stage was also a demonstration of confidence in the system. Notwithstanding the fact that this issue arose only a matter of months following the entry into effect of the new WTO rules, the system and its institutions handled this important dispute in a competent manner. Had the matter gone further, I am sure that the system would have continued to handle the matter with competence to the benefit of an open world trading system and the effectiveness of the DSU itself.

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