

Developing a Trade Policy Based on Rules: The Japanese Experience (4)

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Discrimination Based on Capital Affiliation: Second Semiconductor Dispute

The fourth issue I would like to discuss is the second semiconductor dispute which arose over the U.S. government's interest in extending the Japan-U.S. Semiconductor Arrangement. In this case the issues of most-favored-nation treatment, capital affiliation and national treatment assumed great importance.

The second Japan-U.S. Semiconductor Arrangement was an agreement that had been extended in August 1991 after the first semiconductor dispute, which I have mentioned earlier. This agreement stipulated that the Japanese Government would recognize — and consider feasible — an expectation by the U.S. semiconductor industry that it could expect the share of “foreign-made” semiconductors in the Japanese market to reach a level of 20%.

Japan made repeated assertions that this 20% share expectation was not a

“commitment,” but rather a description of intent of efforts that could be used to improve access opportunities in the Japanese market. Unfortunately, the U.S. side reiterated their interpretation that this number constituted a “commitment,” repeating their threatening assertions that they would exercise sanctions under Section 301 of the Trade Act if this alleged commitment was not fulfilled.

During the negotiations held before the arrangement expired on July 31, 1996, which took place at the request of the U.S. — even though the dumping problem had already been settled, Japan repeatedly insisted that trade policies that attempted to introduce numerical targets were inconsistent with the spirit of the GATT/WTO. Furthermore, they were beyond the responsibility of government and more appropriately dealt with by the private sector. The U.S. Government sought an extension and renewal of the 1991 Arrangement — without any major alteration.

In addition to our objection to a numerical target, there were other problems as well. The semiconductor industry had changed radically since the Semiconductor Arrangement was negotiated in the 1980s. Irreversible structural changes had occurred as a result of the accelerated pace of economic globalization. This could be seen in the major decline of the Japanese market's relative weight — from

40% in 1986 to 30% in 1994 — in the world semiconductor market. Another important trend has been the move by many Japanese manufacturers to shift their production facilities to other Asian countries.

In view of these developments, the Semiconductor Arrangement, which attempts to distinguish the origin of semiconductors by nationality from the standpoint of capital affiliation, no longer offered a meaningful paradigm. Defining semiconductors manufactured by Japanese manufacturers, including those products manufactured outside Japan, as “Japanese-made,” while considering semiconductors manufactured by foreign manufacturers, including those products manufactured in Japan, as “foreign-made,” was no longer a relevant solution. Even more critically, it had begun to exert an adverse influence on the future development of the industry.

Extending the agreement would have also caused serious problems considering the non-discriminatory principles incorporated within the GATT/WTO rules concerning most-favored-nation and national treatment. This was especially troubling if market access-related measures were to continue for the sake of foreign-made semiconductors alone — despite the changed circumstances within the industry, which I have noted earlier.

Specifically, Article 1 of the GATT provides that the most advantageous treatment granted to products of any country shall be granted equally to products of the same kind that come from all other member countries. In the present environment — where offshore semiconductor production by Japanese manufacturers has grown dramatically — and



Photo: AP/WIDEWORLD

The former Minister of International Trade and Industry, the late Tsukahara Shumpei, before semiconductor negotiations in July, 1996 in Vancouver, Canada.

Summary of Agreement between Industries and Joint Statement between Governments Related to the Second Semiconductor Negotiations

(1) Agreement between industries

[Establishment of the World Semiconductor Council (WSC)]

Objectives:

- Enhancement of mutual understanding, response to market access issues, promotion of industrial cooperation, enlargement of international cooperation

Contents:

- Users/manufacturers' cooperation
 - Previous users/manufacturers' cooperation that has existed in the Japanese market continues to exist (for 3 years)
 - Implementation of the same kind of cooperation in all the major markets of the world
- Cooperation among manufacturers
 - Standardization, environment and safety, intellectual property rights, liberalization of trade and investment
- Analysis and reporting related to semiconductor market and trade flow
 - Quarterly reporting to government by analyzing market and trade flow using customs clearance statistics, existing industry statistics and other related data
 - Aims at joint reporting but solo reporting allowed

Membership qualifications:

- Industries in the countries that have revoked semiconductor tariffs or promised earlier revocation or discontinued

Duration:

- To review the activities of the Congress 3 years after its foundation
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the opportunities for exporting from these plants under Japanese ownership back into Japan have expanded significantly, a large discrepancy began to emerge between "foreign-made semiconductors" and "Japanese-made semiconductors". If the provisions to give privileged market access to "foreign-made semiconductors" survived, imports from offshore semiconductor plants under Japanese ownership would have suffered disadvantageous treatment.

Also, according to Article 3 of the GATT Agreement, a member country is obligated to refrain from disadvantageous treatment of imported products in comparison with domestic ones. In addition to the ever-increasing offshore production by Japanese semiconductor manufacturers, foreign semiconductor manufacturers have also been expanding their production in Japan. Ironically, under the Semiconductor Arrangement, semiconductors manufactured by foreign semiconductor

manufacturers in Japan were treated as "foreign-made semiconductors," even though in reality they were "domestic products." These products were included in the share calculation for foreign-made semiconductors, and were targeted for market access-related measures. On the other hand, semiconductors manufactured at offshore plants under Japanese ownership, despite their being "imported products" were not targeted for such market access-related measures. Therefore, these "imported products" produced by offshore Japanese-affiliated manufacturers were not treated in the same manner as "domestic products" from foreign-affiliated manufacturers in Japan. Therefore, they violated the GATT principle governing national treatment.

To discuss how to deal with the situation after the arrangement expired on July 31, 1996, energetic consultations were conducted, not only between the two governments — but between the industries of both

countries as well. As a result, in August 1996, representatives of Japanese and U.S. industry jointly agreed to create a new multilateral framework — in the form of a "World Semiconductor Council" (WSC) — which is dedicated to promoting inter-industry cooperation among major producing countries. Both governments welcomed the agreement between the industries and issued a joint statement in which the establishment of a "Global Governmental Forum" (GGF) was also proposed. The Japan-U.S. Semiconductor Arrangement did, however, expire as scheduled on July 31, 1996. The share calculation that had been used by the governments of both Japan and the United States — which had been based on capital affiliation — was abolished. The United States also revoked all the requests not to mention the controversial numerical target. (See the contents of the Arrangement)

Meaningful results achieved during

(2) Joint statement between governments

[Cooperative activities between Japan and U.S.A.]

Contents:

- To share the common perception that cooperation related to semiconductors is based on market mechanisms, WTO compatibilities and international cooperation
- To welcome the establishment of the WSC
- Governments support cooperative activities among industries and establish the mechanism (at least once a year) for consultations on the following items:
 - (1) Reporting on the data analysis from the WSC and recommendations
 - (2) Discussions on the situation of industrial cooperation and market trends
 - (3) Discussions on policies related to the semiconductor industry
- The countries whose industries took part in the WSC may be allowed to take part in the consultation mechanism

[Solicitation for the establishment of the Global Governmental Forum (GGF) (to be established by Jan., 1997)]

Contents:

- Liberalization of trade investment, regulations, taxation system and environmental safety

Membership qualifications:

- Major semiconductor producing countries
- The above activities shall terminate after 3 years unless otherwise agreed.

this second series of semiconductor consultations can be summarized as follows:

First, the controversial numerical target was removed and the share calculation and monitoring system based on capital affiliation was eliminated. It is worth noting that the discriminatory treatment based on capital affiliation was removed completely — not only in the public-sector settlement, but also in the private-sector settlement.

Second, as seen in the case of the first Japan-U.S. Semiconductor Agreement, there has been a strong tendency for Japan to settle its trade issues with the United States on a bilateral basis. It is especially noteworthy that the joint statement released at the end of the Semiconductor Arrangement referred to the development of a highly transparent and multilateral framework for international cooperation. This included the proposed "Global Governmental Forum" on a governmental level and

the "World Semiconductor Council," organized by the private sector. These forums will help the globalized semiconductor industry to more effectively cope with the various issues and problems it now confronts.

Third, the pivotal role of industry — even in the negotiation stage — should be emphasized. Governmental intervention in the market — which had formerly been mandated in the form of expected targets that had been perceived by the U.S. — has disappeared and inter-industry cooperation has come to be entrusted as a self-regulatory, autonomous solution.

We can take great comfort in the fact that the conclusion of the 1995 semiconductor consultations demonstrated the ability of the WTO system to resolve sensitive trade disputes. By sufficiently taking into consideration the harmonization of national rules and policies in accordance with the rules and spirit of the GATT/WTO, international

free trade can be expanded and sustained. The ultimate validity of such solutions, however, will depend on whether cooperative activities are conducted under industry leadership, and are carried out according to international rules. It is hoped that the current settlement will provide a model that can be used to settle other trade issues and disputes in the future. At the same time, it is necessary to attentively monitor the various activities included within the current settlement to ensure that they will be implemented in harmony with the rules and the spirit of the GATT/WTO. JTI

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