

Developing a Trade Policy Based on Rules: The Japanese Experience

(The first of six parts)

by Sakamoto Yoshihiro

The second Ministerial Conference of the World Trade Organization (WTO) was held in Geneva in May to assess the contributions that have been made by the multilateral trading system for the past half a century and to reaffirm the importance of the system.

It was also confirmed that a comprehensive new round, including investment in addition to service and agricultural fields earlier agreed upon for negotiation, will be placed on the negotiating table from the year 2000.

I had been involved in the international task of bringing the new round of tariff cut negotiations to a successful conclusion from the late 1980s through the mid-1990s as Japan's Vice-Minister for International Affairs. It is my earnest desire that, by introducing this past series of negotiations on automobiles, semi-conductors, intellectual property rights and film, my report will be of some help in fostering understanding on the importance of the rule-based trading policy and in furthering studies on the future course of the WTO system.

The Importance of a Trade Policy Based on Rules

To begin, let us take a look at the present state of the international economic situation. In the years since the end of the cold war in the early 1990s, we have seen a vast acceleration of the move toward "market globalization" and the

evolution of a dynamic world economy characterized by far-reaching corporate activities, moving at amazing speed. Businesses have been aggressively engaged in establishing production and distribution systems without regard to borders. This has involved a dramatic expansion of trade and direct investment all over the world. The "geography" of global industry has changed dramatically. It is especially noteworthy to witness the emergence of the Southeast Asian countries. While an analysis of their current economic troubles is beyond the scope of my presentation today, let me briefly state my belief that the stagnation we have seen since last

summer is only a temporary phenomenon—representing the difficult, but surmountable challenge which will help them to undertake the essential restructuring of their economies and ultimately provide a foundation for resumed growth. Significant growth has also been seen in other emerging economies throughout the world—including countries in Central and South America, the Middle-East and Eastern and Central Europe, as well as South Asia.

The accelerated globalization of the world economy has brought immeasurable benefits to countries that have enjoyed the fruits of this



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The Chairman of the 2nd WTO Ministerial Conference, Swiss Federal Councillor Pascal Couchepin, makes his speech at the ceremony of the 50th anniversary of the multilateral trading system held in Geneva this May

economic growth. On the other hand, it cannot be denied that globalization has promoted the development of protectionist trade policies and measures within these countries. The forces of globalization have also highlighted the differences that exist between different trade practices and policies. This has made trade frictions—and their ultimate resolution—a far more complex and difficult process than in the past.

Since the latter half of the 1980s, we have seen many trade disputes between the United States and other countries. Over the last decade, Japan has been involved in an on-going series of trade disputes with the United States. These have involved a broad range of issues including: semiconductors, the automotive sector, intellectual property rights and film.

My personal observation is that many of these trade disputes have been unnecessarily exacerbated and complicated by the tendency of the United States to unilaterally criticize the policies and measures of the other party as “unfair”—with no internationally accepted definition of the phrase. In the United States, it is legally mandated that when—using their own subjective criteria—the United States Government determines that trade policies and measures within countries with which it has economic relations are “unfair” under Section 301 of the Trade Act of 1974—unilateral sanction measures are allowed, unless improvements and remedies are made by the other party. During the first half of the 1980s, to help increase the competitiveness of



Ministers from over 120 nations gather in Marrakesh, April 1994, and make a final agreement under which the WTO was established

U.S. industry, the criteria used to determine the need for sanction measures under Section 301 has been expanded. This is due to their having adopted a results-oriented approach which dictates that if trade statistics indicate there is a disadvantage in trade relations between a country and the United States, it is judged that this imbalance has been caused by “unfair” trade measures. This American-style concept of “fair trade” has often caused trade frictions to needlessly develop into serious political problems—which then require the involvement of the U.S. Congress—and exert extremely adverse influences that weaken the bilateral relationship between the United States and the country in question.

In my view, the potential consequences of escalating trade frictions between the United States and other countries need to be recognized—not only by Japan, or

other countries that are involved in their own bilateral disputes, but among all nations, even if they have no direct involvement. If a trade dispute should develop into a political problem, as we witnessed during the Japan-U.S. automobile dispute in 1995, the initiation of the sanction measures promised by the United States—and the inevitable retaliatory actions—could have far-reaching and severe consequences. The resulting damage could have extended far beyond our two countries, and would likely have assumed global proportions. The shock would have been strong enough to shake the foundation of what was then a newly-born organization—the WTO—seriously weakening the ability of this newly-constructed multilateral institution to effectively deal with these types of problems in the future.

Therefore, I would like to ask, “How can we resolve trade problems calmly and constructively, and prevent

them from escalating into unnecessary political problems?" This is an issue that I have been pondering for a long time.

Every country has different ideas about what constitutes "fair" trade practices. Criticizing a trading partner as "unfair" based on a

"results-oriented approach"—using unique, self-defined, subjective criteria—only serves to complicate the resolution of increasingly complex and diverse international economic problems. Internationally accepted rules and an equitable adjudication process are essential.

In the field of multilateral negotiations, efforts are customarily made to establish rules-making procedures and dispute settlement mechanisms by developing a consensus based upon ideas and proposals submitted by each country. This process may sometimes encounter difficulties, but it is important to judge the validity of trade policies and measures taken by a certain country so that it will be possible to resolve any differences through a common set of international rules. This, I think, is an effective prescription—not only for building a consensus among countries, but also for preventing trade disputes from taking on unnecessary political ramifications.

That is why Japan has been promoting the development of internationally acceptable trade policies—based on rules—since the beginning of the 1990's. Our objective has been to develop rules and institutional mechanisms that can be used to resolve trade frictions and disputes well before they escalate into political problems.

We define rule-based trade policies as efforts that seek to judge the fairness of trade policies or measures on the basis of

Fields Negotiated in Major Rounds

(Fields in which agreements, etc., were formulated)

	Kennedy Round ('64-'67)	Tokyo Round ('73-'79)	Uruguay Round ('86-'94)
Customs	*	*	*
Customs assessment	*	*	*
Anti-dumping	*	*	*
TBT (Standard)		*	*
Licensing		*	*
Subsidies and countervailing measures		*	*
Agriculture	*	*	*
Origin of product principle			*
Pre-shipment inspection			*
Safeguards			*
TRIM			*
Textile products, etc.			*
GATT articles		*	*
Dispute settlement		*	*
Trading policy review			*
Service trade			*
TRIPS			*
Government procurement		*	*◆
Civil aircraft		*	*◆
International dairy products		*	*◆
International beef		*	*◆

◆ Negotiations were started in parallel with the Uruguay Round

internationally agreed-upon rules and principles, such as those incorporated under the WTO Agreement. If remedies are sought by a trading partner, our position is that problems should be settled within the dispute settlement mechanism agreed upon under the WTO framework—without resorting to unilateral threats or political pressure. Of course, if contradictions are found between national and commonly accepted international rules, for example, in the trade policies and measures that have been adopted by Japan, we believe it is necessary to voluntarily correct any inconsistency, regardless of whether these corrections are demanded by another trading partner. In my opinion, the development of this type of “rule-based” trade policy exemplifies a framework under which trade frictions can be resolved calmly, constructively and consistently—drawing upon objective, transparent criteria that are accepted and understood by all nations.

The “results-oriented” approach—as represented by U.S. trade policies under Section 301 of the Trade Act—can be compared to a satirical play in which a prosecuting attorney investigates what are alleged to be rules infringements—after which he then plays the role of judge and jury to decide who is right or wrong about the alleged infringements. This type of trade policy is lacking in due process and easily allows the dangerous precedent of converting trade disputes into what is often termed “managed trade” by government directive through the introduction of numerical targets.

As a result of the difficult Uruguay Round negotiations, which lasted over seven years, the WTO was founded in January 1995. Trade rules have been significantly strengthened and expanded from those stipulated under the former GATT system. Member countries are obligated to abide by the WTO Agreement (the Marrakech Agreement under which the WTO was established). Under the newly-founded WTO system, international

trade rules have become more rationalized and solidified and dispute settlement mechanisms have been improved and strengthened (Chart). The scope of the Agreement has been expanded from 13 to 21 areas of trade. Even in the existing areas, the rules have become significantly more precise. This will enhance the swiftness and effectiveness of the WTO's operations. One point worth noting is the WTO's prohibition against unilateral sanctions—even though they are admitted under Section 301 of the Trade Act. Between the foundation of the WTO in 1995 through January 12, 1998, 117 cases have been raised in accordance with the WTO's dispute settlement proceedings (as of January 12, 1998). This is close to the total number of dispute cases filed under Article 23 of the GATT—which numbered 156 in the 47 years from the start of the GATT in 1947 to 1994—representing the confidence that member countries place in the dispute settlement proceedings of the WTO. It is also worth noting that the United States—which employed unilateral sanction measures 11 times under Section 301 between 1985 to 1992—has not initiated a single Section 301 sanction in the three years since the WTO was established in 1995.

Looking at trade friction between Japan and the United States—our 1995 automobile dispute was entrusted to the WTO for settlement following an appeal by Japan. This issue was then settled during WTO consultations under the watchful eye of international society. Ultimately, it was settled in a coherent manner according to internationally-accepted rules—thereby avoiding the potential danger that would have resulted had it developed into a trade war. The Semiconductor Arrangement negotiations of 1986 originated as a result of dumping claims raised by the United States in the 1980s, and were transferred from a bilateral to a multilateral framework in 1996. This dispute was also settled according to international rules, as administered by the WTO. The

recent WTO Panel report on the Japan-U.S. film issue is also fresh in our memories. In this instance, the WTO Panel investigated and analyzed the alleged claims from the standpoint of whether they could be judged under the WTO Agreement—rather than from the standpoint of market results. It then made its decisions accordingly. In my judgment they made the right decision, in that it complies with the rules-based approach our country has been consistently advocating for almost a decade.

Confidence in a multilateral, free trade doctrine, administered under the WTO system, should never be damaged by unilateral threats based on market results. Rule-based trade policies must be upheld through international consensus, to insure that trade disputes will be fairly judged within objective multilateral arenas, such as the WTO.

Referring to my personal career, until my recent retirement I worked for the Japanese Ministry of International Trade and Industry (MITI) for 34 years. During my tenure I have been involved in numerous major Japan-U.S. trade conflicts, including those relating to semiconductors, automobiles and film. Additionally, I have had the opportunity to participate in the Uruguay Round negotiations that led to the creation of the WTO—though only for a short time at the initial stage. I would now like to refer to my own experiences, in order to highlight five specific cases that have helped the Japanese government to develop its commitment to rule-based trade policies.

MITI

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