Bout over Trade Issues—What Have We Learned from the U.S.–Japan Auto Negotiations?

By Miyoshi Masaya

In place of the customary pre-conference nervousness, Japanese and American business leaders who met in Tucson, Arizona in July 1995 exhibited a relaxed demeanor. No wonder, as the automotive sector talks that had dragged on for the previous two years had been wrapped up just 10 days earlier, directly before the deadline for implementation of sanctions against Japan. The negotiations were described as having ended in a draw.

Without delving into the details, there would have been serious consequences for U.S. and Japanese industries if the talks had broken down. It was no surprise that the conference was permeated by a sense of reassurance, similar to the relief one feels after danger has been averted.

While the car and car parts negotiations were a priority issue within the framework talks, they were only one segment of the talks. Why, in spite of this, did they attract such attention, singled out with the phrase "U.S.–Japan car talks?" It was for no other reason than that, in addition to the extreme importance of the car and car parts industries to both countries, their bilateral trade discussions encapsulated new factors: the dispute over whether Article 301 conformed to World Trade Organization rules, an insufficient U.S. grasp of the way Japan had changed as it promoted deregulation, and the private sector's expanding role in U.S.–Japan trade issues.

The role of private companies

The sector-by-sector approach is a characteristic that sets the framework talks apart from the ongoing Structural Impediment Initiative talks. Leaving aside systemic issues such as restrictions on market entry, sectoral issues include, for example, U.S. products that simply do not seem to sell in Japan and U.S. companies' dissatisfaction with that. The success or failure of U.S. companies' business ordinarily depends on the choices made by Japanese companies and consumers, so market mechanisms could be noted as the deciding factor. From the outset the Japanese government's firm refusal to accept numerical targets was due to the conviction that this would overstep governmental authority and restrict companies' and consumers' degree of independence. Moreover, if Japanese and U.S. private sectors enter into cooperative business relationships the majority of these problems ought to be resolved. The flip side of the coin is that the private sector's role in U.S.–Japan trade issues has become increasingly important.

Cooperative relations between Japanese and U.S. companies

A December 1993 survey of member firms conducted by the Japan Federation of Economic Organizations (Keidanren) revealed the existence of highly cooperative relationships between Japanese and U.S. companies, particularly in the automotive industry. Conventional wisdom has placed special emphasis on conflicts in the U.S.-Japan relationship, but the reality is different.

In a similar vein, Keidanren asked a U.S. opinion pollster to conduct a survey of leading U.S. companies during the first half of 1995. According to that survey, while nearly 90% of the respondents believed that the Japanese market was extremely difficult to penetrate, more than 40% indicated a belief that relationships with customers were the key to successful business in Japan. Further, regarding the reasons for the difficulty in penetrating the Japanese market, 33% cited business practices based on long–term relationships and 22% noted that Japanese companies were highly competitive. It is quite interesting to note that long term, stable relationships were cited by 44% of all respondents as the most satisfying aspect of business in Japan, making it the top choice. These survey data demonstrate that U.S. companies themselves recognize that building the trust of Japanese companies and consumers is important to market entry in Japan.

As noted above, there are many highly cooperative U.S.–Japan industrial relationships, disproving notions about conflict between them. This is due in part to increased globalization, making it difficult to demarcate where Japanese or U.S. corporate operations cross international borders. And, the more interdependency between Japanese and U.S. firms increases, the more they will possess common interests, and sanctions directed at Japan will have repercussions for companies in both nations. This was also the basis for the achievement of mutual recognition at the afore-mentioned business conference that attempts must be made to resolve trade issues at the private sector level before they become politicized. Private sector discussions will undoubtedly become more important in resolving bilateral trade issues.

Problems with U.S. perceptions of Japan

Although there has been a great uproar in Japan over deregulation and wide-ranging debate over the need for companies themselves to accept individual responsibility, it appears that even now a strong perception lingers in the U.S. that Japan is a country in which everything is executed through public and private sector collusion. To have the U.S. understand that Japan is changing, Japan must steadily carry out deregulation and at the same time make an effort to promote recognition that changes are occurring. Each sector should step up PR efforts directed at the U.S. Keidanren is also increasing dialogue with U.S. business circles and at the same time placing a priority on information directed at the U.S.

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The U.S.–Japan Negotiations on Automobiles and Auto Parts:

The View of European Industry

By A.N.R. Millington • ACEA Tokyo Office

No one likes to see friends quarreling. The European automakers therefore viewed with mounting concern the growing acrimony between Japan and the United States in the automobile negotiations. But that concern was tinged with a sense of frustration and anxiety. As the principal supplier of imported cars to Japan, the European automobile industry, no less than its U.S. counterpart, has a keen interest in the opening of the Japanese automobile market.

European automakers were frustrated that Europe was excluded from these bilateral negotiations, a matter of direct concern to European industry. Like the European Commission, members of the European Automobile Manufacturers Association (ACEA) were anxious lest the negotiations lead to an agreement which discriminated against Europe.

It is a credit to the negotiators on both sides that the final agreement largely allays those fears by upholding the principles of non-discrimination and multilateral free trade. ACEA welcomes the Japanese government's commitment to market–opening measures as agreed upon by the U.S. that will be implemented on a Most Favored Nation basis.

The European auto industry has long regarded Japan as an important strategic market. European automakers know that if they can succeed in meeting the exacting requirements of Japanese consumers this will stand them in good stead in other markets around the world. European automakers have made considerable efforts over the years to build up their presence in Japan. They have adapted their products to conform with Japanese technical requirements and to suit the tastes of the Japanese consumer. European companies have invested heavily in the infrastructure necessary to support the sale of their products—in pre-delivery inspection, parts distribution, training and design centers and in the development of dealership networks. This has not always been easy. Overcoming the obstacles of the high cost of land and the difficulty of recruiting suitable staff has required a deep pocket and stubborn perseverance. But the long–term approach adopted by European manufacturers has paid off in a gradual increase in their share of the Japanese market.

This does not mean that European manufacturers are satisfied with their position in Japan. Like the U.S., ACEA believes that sales of imported cars still represent too low a share of the Japanese market. Whereas Japanese automobiles take some 11% of the EU market, imports from Europe only accounted for 4.3% of the total Japanese market (including mini cars) in 1994.

As the Japanese government itself recognized in the package of measures announced in April 1995 to counter the rapid appreciation of the yen, an increase in automobile imports is in Japan's own interest if Japan is to avoid continuing to run a chronic trade surplus. European manufacturers accept that the formal barriers to car imports have been removed, but ACEA shares the concern expressed in the negotiations by the U.S. government about structural obstacles to car imports in the Japanese market. Like the U.S., ACEA sees limited access to the Japanese distribution system as the principal brake on the growth of imports.

There are fundamental structural differences between the distribution systems for cars in Europe and Japan. In Europe, ownership of the distribution system is widely dispersed. Some 88,000 dealers control about 110,000 sales outlets. The characteristic European dealer is a small independent company—only 4,000 European dealers are group owned. Although many dealers act exclusively for a single manufacturer, a newcomer to the European market can select his/her distributors from a large number of potential dealers. Unlike their Japanese counterparts, even European dealers who have a long-standing relationship with a domestic manufacturer may switch franchises if they are given a financial incentive to do so.

By contrast, the Japanese distribution system is dominated by dealer groups. Only 2,500 dealers control some 18,000 sales outlets. Whereas in the U.S. and Europe dealers are free from the financial control of the manufacturers, a survey carried out by the Japanese Fair Trade Commission in 1992 showed that at that time, 25% of all dealers incorporated as limited liability companies were either wholly or partially owned by a domestic manufacturer. Even where there is no equity participation, domestic manufacturers can influence their dealers through financing and the transfer of sales and other personnel.

Given the high cost of establishing new dealerships on virgin sites, foreign manufacturers seeking to enter the Japanese market have little alternative but to work through existing dealership networks. European automakers have made some headway in persuading domestic dealers to take on an import franchise. But it is an uphill task. Of the 1,493 sales outlets for European cars in Japan, only 484 are operated by dealers who belong to the sales network of a domestic manufacturer. Only 118 of the roughly 8,750 sales outlets operated by Toyota and Nissan dealers handle European cars in their showrooms.

ACEA does not believe that problems of access to the distribution system could have been resolved by setting numerical targets for the number of dealers who handle imported vehicles. The Japanese government was fully justified in insisting that setting such targets was beyond its reach. Strict enforcement of antitrust legislation is a more appropriate remedy. It was therefore encouraging that former Minister of International Trade and Industry Hashimoto Ryutaro wrote to Japanese auto dealers to remind them of the possible antitrust implications of any direct or indirect attempt by an auto manufacturer to prevent their selling a product made by a foreign competitor. Foreign automakers themselves must persuade domestic dealers that it is in their long– term interest to handle imported cars.

ACEA members are keen to develop cooperative relations with Japanese domestic dealers and to convince them of the mutual advantage of taking a franchise for European vehicles. The wide range of attractively priced European cars now available in Japan is an indication of the commitment of European manufacturers to this market. But the Japanese government also has a role to play. ACEA believes that the Japanese government should offer appropriate fiscal incentives to encourage more domestic dealers to handle imports.

The auto agreement provides for annual consultations between the Japanese and U.S. governments to assess its implementation. The European automobile industry has an interest in satisfying itself that the agreement is indeed being implemented in a non-discriminatory manner. This can best be achieved if the EU is able to participate in some form in the assessment process. ACEA welcomes Japanese government assurances that this will be possible. JJTI

Details of the Negotiations, continued

U.S.–Japan Framework Talks: Car and Car Parts Sector

Framework talks resume

The breakdown in U.S.–Japan car and car parts talks ignited by U.S. demands for numerical targets and other requests was followed by a certain cooling off period. Then at a preliminary meeting on May 24, 1994, agreement on the resumption of the framework talks was reached after confirmation of three main points.

First, the objectives of the car and car parts sector talks would be "to attempt to significantly expand Japanese manufacturers' overseas plants' purchases of foreign car parts and imports to Japan, significantly expand sales opportunities to foreign car companies in Japan, eradicate impediments to market access in Japan, and encourage imports to Japan of foreign cars and car parts."

Next, objective standards would be qualitative and measurable. These would not be numerical targets, but would be used to ascertain progress toward the goals of the framework talks. Various objective standards exist so determinations would not be based on one alone, but rather all of them would be taken into account.

Finally, no deadlines would be set for negotiations in the three priority sectors, but talks would move forward expeditiously and discussions in non–priority sectors would also gradually resume.

It was also noteworthy that the letter of agreement also incorporated content that addressed measures related to efforts that up to then Japan had strongly insisted the U.S. make in the sector.

Talks between Hashimoto and Kantor

During the last week of September 1994, then Ministry of International Trade and Industry (MITI) Minister Hashimoto Ryutaro had a heavy schedule, visiting the U.S. twice in a week for on again, off again negotiations with U.S. Trade Representative Mickey Kantor. During the framework talks held from late October 1 to the early hours of October 2, the results of the negotiations related to priority sectors were: (1) Basic agreements reached through talks on government procurement, insurance, plate glass, and promoting and strengthening the competitiveness of U.S. exports to Japan. (2) Numerical targets would be excluded in all sectors, including cars and car parts, in line with the immutable principle that the extent of matters covered by the framework talks falling within government responsibility was limited. (3) In the car and car parts sector, the U.S. government decided to begin an investigation into restrictions on spare parts in accordance with Article 301.

While participating in the car and car parts negotiations, Japan decided to try to come to agreement on items it could.

The U.S. sought to broadly expand the scope by claiming that the numbers contained in the foreign car part purchasing plans that Japanese car manufacturers independently announced in March 1994 indicated specific amounts, but Japan requested U.S. understanding, stressing that the U.S. proposals contravened Japan–U.S. agreements not to seek numerical targets and the principle that the extent of matters covered by the framework talks that came under government responsibility was limited. The U.S. conceded that this issue was a matter for private sector management and that government should not intervene. Even so, they continued in many instances to demand numerical targets, but Japan resisted, maintaining that it would be inappropriate for government to intervene in matters of this sort.

Additionally, full cooperation regarding spare parts was obtained from the Ministry of Transport and during the negotiations Japan adopted the position that it was prepared to consider easing restrictions to the extent safety considerations allowed. However, agreement was not reached, as the U.S. demanded hasty deregulation, in disregard of Japan's modified sense of safety.

APEC summit

Minister Hashimoto held a series of discussions with Trade Representative Kantor and Commerce Secretary Ron Brown at the APEC conference in Jakarta. During the discussions with Kantor, Hashimoto announced three explicit conditions pertaining to Japan's position and it was agreed that these would be prerequisites for setting a date for resumption of the talks at the vice–ministerial level. However, partly due to time limitations, the discussions with Secretary Brown ended before sufficient understanding could be obtained.

This led to debate over the vice–ministerial level agenda and the timing for resuming the talks. Japan took the more rigid stance that the environment for resumption of discussions would be in place only if the agenda was acceptable to Japan.

The three prerequisites for resuming the talks were: (1) parts purchasing plans were to be independently devised by companies and, as they fell outside the scope of government responsibility, should naturally not be included in the framework talks, much less in intergovernmental discussions; (2) regarding dealerships, the future number of dealers would not be discussed for the same reasons as the above and discussions would proceed on the basis of Japanese proposals; and (3) the issue of spare parts was not to be discussed under Article 301, but through the framework talks.

London talks

Based on the ministerial conferences in Jakarta vice ministers met for discussions on ways to resume the talks on

December 27, 1994. This resulted in decisions to: (1) reopen dialogue in all three sectors—deregulation of the spare parts market, dealerships and purchases of OE parts; (2) not to include numerical targets or matters outside of governmental responsibility in the discussions (neither the future number of dealerships nor voluntary parts purchasing plans would be included in negotiations); (3) there would be no need to specify a future number for dealerships and talks regarding OE parts would concern the formation of amicable relations in the industry; and (4) negotiations regarding deregulation of the spare parts industry would not be conducted under Article 301 and as such the U.S. would be represented by the Department of Commerce, not USTR, while in some instances Japan might be co–represented by the Ministry of Transport along with MITI.

Future parts purchasing plans were clearly meant to be left out of the negotiations, but the U.S. adopted the position that it would talk directly with Japanese companies. The response to this U.S. tack was that if the U.S. government's approach toward Japanese companies or their overseas affiliates was discriminatory (targeted solely at Japanese firms) or coercive it would be clearly opposed.

In this fashion the talks that had once broken down over the U.S. decision to begin proceedings against Japan under Article 301 were finally reopened.

Talks reopen after London accord

There were high expectations that substantial progress would be achieved if discussions proceeded on the basis of preconditions agreed upon for the reopening during vice–ministerial level talks in London. During the vice–ministerial conference held in Washington at the end of January 1995, however, while recognizing on the one hand that voluntary plans were outside the scope of government responsibility and would not be included in the talks, the U.S. reverted to the contradictory stance that revisions of and additions to voluntary plans would be indispensable to an agreement on car and car parts discussions and the talks again deadlocked.

In a letter dated March 19, 1995, to former MITI Minister Hashimoto, Representative Kantor clearly described the U.S. position, saying, "You must understand that the announcement of new voluntary plans is essential to the success of the car and car parts sector talks."

Quadrilateral trade ministers' talks

Intermittent negotiations were conducted as trade ministers from Japan, the U.S., Canada and the EU met in Vancouver and Whistler, Canada for five days from May 1, 1995 (cabinet level discussions were held on May 3 and 5). Hashimoto outlined the overall state of the talks in a May 5 press conference briefing, as described below:

1. Although it had supposedly been agreed that revisions of and additions to voluntary plans would be left out of the framework talks, the U.S. insisted up to the end that it would be an important negotiating item and that there would be no overall accord if agreement was not reached on this issue, which made an accord difficult.

2. Japan had made the utmost efforts regarding items described as "within the scope of governmental responsibility"—issues related to deregulation and competitive dealership strategies—so there would have been every possibility of an agreement if the U.S. had not insisted upon revisions of and additions to voluntary plans.

3. If the U.S. announced a list of candidates against which unilateral measures would be implemented, Japan intended to shift its response so that it was within the context of a multilateral framework.

List of unilateral trade sanctions announced

Kantor held a press conference on May 10, 1995, stating that he intended to announce a list of candidates for unilateral trade sanctions soon and at the same time noting that the closed nature of Japan's car and car parts markets violated the WTO, announced the intention of filing a complaint with the organization around 45 days later.

On May 17, 1995, Representative Kantor held another press conference to announce that since Japan's actions, practices and policies related to the spare parts market were unfair and limited U.S. trade profits, the unilateral measure of assessing 100% tariffs on imports of 13 Japanese luxury car models would be adopted in accordance with Article 301. Kantor further announced that, although the final decision would be made on June 28, customs authorities would be notified that the models would be added to the list as of 12:01 a.m., May 20, and directed that customs calculations for the cars on the list be stopped, stressing that the post–increase tariff rates would be made retroactive on May 20. He also indicated that 1994 imports of relevant luxury models had been valued at $5.9 billion.

WTO complaint

The announcement of a list of candidates against which unilateral measures would be taken by the U.S. was in itself a blatant violation of WTO rules that would have a negative impact not only on Japanese car makers, but American consumers and workers as well as the world trading system. Because of the potentially unfavorable impact on U.S.–bound luxury car exports after May 20, the government of Japan determined that it would be an infringement of the profits allotted Japan under WTO conventions. On May 17, 1995, the day after the U.S. government's announcement of the list of candidates for unilateral measures, Japan proposed to the U.S. that discussions be held in accordance with GATT Article 22 and commenced dispute resolution procedures through the WTO.

Continued U.S. demands for two numerical targets blocked a settlement in spite of nearly two years of bilateral negotiations and the attempt to coerce achievement of numerical targets under the aegis of unilateral sanctions was nothing less than government intervention in the activities of private sector

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