ESSAY, HISTORICAL CONSEQUENCES OF THE TRADE RELATIONSHIP BETWEEN JAPAN AND THE UNITED STATES

Tad Sano*

I. INTRODUCTION

The task given to me is to explain the historical consequences of the trade relationship between Japan and the United States, in particular how it changed after the establishment of the World Trade Organization (WTO) following the Uruguay Round. Let me start with the chronology of Japan-U.S. trade disputes.

II. CHRONOLOGY OF JAPAN-U.S. TRADE DISPUTES

A. Protection of American Domestic Industries From the 1950s Through the Mid-1980s

Looking back on the past experiences of Japan-U.S. trade disputes, the first significant incident to mention is the Japan-U.S. textile negotiation, which began in the 1950s. The negotiation, in which the return of Okinawa was also brought up for bargaining, resulted in a voluntary export restriction (VER) in the textile sector. In 1968 a VER was also agreed to for the steel sector.

There was serious discussion within the Ministry of International Trade and Industry (MITI) as to whether VERs are consistent with General Agreement on Trade and Tariffs (GATT) rules. Finally, MITI came to the conclusion that they were consistent with the rules, taking advantage of two concepts, "market disruption" and "orderly marketing." That is, when there is a market disruption, a government may resort to orderly marketing, applying government orders in accordance with the Foreign Trade Control Act. However, the textile industry was outraged by the VERs imposed, insisting that the industry was a victim of the bargaining for Okinawa, which is eloquent testament to the fact that the restriction was in fact not voluntary. Nonetheless, the trade balance between Japan and the U.S. marked a surplus for Japan for the first time in 1965 which has continued steadily for several years since 1968.

Following the oil crisis in the early 1970s, the trade balance temporarily went into the red again. However, several VERs were renewed and, in the textile sector, a multilateral agreement, the MFA [WHAT DOES IT STAND FOR?],

---

* Director-General for International Trade Policy, Japanese Ministry of International Trade and Industry. This essay was originally given as a speech at the Joint Research on Japan-U.S. Economic Relations After the Uruguay Round Workshop.

was concluded in 1973, even though the allegations by the industry against MITI regarding the VERs had not ceased.

In 1977 protectionist pressure in the U.S. heightened again, in particular in the field of steel. The Carter Administration seemed to be rather reluctant to set import restrictions, but not as skillful as Republicans, to invite Japan to take voluntary action. Responding to this Administration's attitude, the U.S. steel industry took actions to alarm the Administration by bringing massive antidumping lawsuits, as well as antitrust lawsuits. The Treasury Department, which had a small administrative capacity but was required by the U.S. Antidumping Act to conduct examination within a prescribed timeframe, found it impossible to comply with the Act. Finally, the U.S. government introduced a so-called trigger price mechanism, a preemptive mechanism that allowed self-initiation of antidumping investigations when prices undercut the indicated price, the so-called trigger price. At the same time, the U.S. Trade Representatitve (USTR) sought some kind of unilateral mechanism in the steel sector, bearing in mind the MFA, and explored the possibility of an MSA [WHAT IS IT?]. However, this was not realized, and instead the Steel Committee was established in the Organization for Economic Cooperation and Development with a view to exchanging information.

B. Access to the Japanese Market from the Mid-1980s through the Mid-1990s

After the two oil crises, the trade structure between Japan and the U.S. finally returned to the state it had been in before the crises. A strong dollar in the mid-1980s brought about a greater trade surplus for Japan, which resulted in greater protectionist pressure. However, the Reagan Administration, which put itself forward as an advocate of free trade policies, was not inclined to take blatantly protectionist measures.

Finally, in 1985 the Reagan Administration adopted the "New Trade Policy," which focused on rectifying foreign nations' unfair trade practices instead of protecting the American domestic market. In the same year, thanks to the Plaza Agreement, in which leading governments agreed to intervene in world capital markets, the value of the U.S. dollar started decreasing, which was in accordance with the change in trade policies.

The semiconductor talks in the 1980s reflected this policy change. The dispute first focused on Japan's exports to the U.S., as symbolized by the U.S. government's self-initiated antidumping investigation. However, it eventually shifted focus to issues related to the Japanese market, and the bilateral agreement concluded in 1986 required Japan to both introduce price monitoring for its exports and improve market access for foreign products. This Japan-U.S. arrangement was later alleged by the European Community (EC) to be a breach of GATT rules, and Japan finally failed to defend it. After the ensuing

renegotiation, the second Japan-U.S. arrangement, which took effect in 1991, eliminated government monitoring in the prevention of dumping, and instead required semiconductor exporters in Japan to collect and maintain cost and price data themselves.

From the mid-1980s through the 1990s, the Japanese yen continued to rise against the U.S. dollar. Due to the strong yen, the Japan-U.S. trade relationship focused on market access and structural issues, as exemplified by the MOSS [WHAT IS THIS???] Talks and the Structural Impediments Initiative (SII), with Japan also suffering from revisionist arguments. In addition to the MOSS and the SII, the U.S. introduced so-called Super 301.

C. Conclusion of the Uruguay Round (1994)

Within the framework of multilateral trade negotiations, the Uruguay Round started in 1986. The scope of so-called trade issues was enlarged, covering not only trade in goods and border measures, but also services, legal infrastructure, intellectual property rights, and so on.

The Uruguay Round negotiations left trade negotiators under the illusion that all trade issues, including bilateral and specific issues, had been solved during the negotiations. However, the Uruguay Round, successfully concluded in 1994, stood in the midst of criticism by the U.S. and other countries in 1990, such that the dispute settlement mechanism was unpredictable and insufficiently precise. While some parties had over-expectations, others were too pessimistic, and some were disappointed that the trade-in-services negotiations had not made much remarkable progress. Thus, what was sought in 1994 was a small package, not a large, ambitious package. Nonetheless, the outcome included not only tariff reductions and the expansion of coverage to include, for example, services and intellectual property rights, but also a fundamental improvement of the legal framework for dispute settlement.

D. Auto Dispute (1995)

The Clinton Administration, begun in 1993, seemed to us not internationally- but domestically-oriented. Even its election campaign strongly suggested this: both by the slogan "Put America First," and criticisms of the Bush Administration for its supposed lack of understanding of domestic issues and too much emphasis on international matters. In 1993 the Administration started the Framework Talks in place of the MOSS and the SII. However, although this is my personal observation, it seemed that Japan and the U.S. spoke completely different languages. The U.S. did not understand what Japan was saying, and Japan did not understand the Clinton Administration's way of thinking, since Japanese officials had been overly accustomed to the ways of the

Republicans with their sweet words. The Clinton Administration emphasized exports instead of imports, and instead of adopting global strategies, adopted a strategic trade policy that included numerical targets and imposed managed trade, which Japan criticized.

In 1995 the Japan-U.S. auto dispute arose in the context of the Framework Talks, in which the auto issue was nominated as a priority issue, and the U.S. insisted on setting a numerical target for Japan's import of auto parts, as well as the performance of auto sales themselves. Japan responded with a "rule-based" approach, which means that a government can take measures within its reach, but has no way to force private business to do whatever it wants. It seemed to us that the Clinton Administration was under the illusion that the Japanese Administration had the power to force private companies to do whatever we wanted. However, we believe this was a problem which was beyond government reach. At the same time, such usage of "administrative power" was completely contradictory to the regulatory reform or deregulation which the U.S. was encouraging Japan to undertake.

Evidently, the U.S. was greatly frustrated by its impression that Japan was different from other countries, that the Japanese market was difficult to crack even with a highly appreciated yen. The U.S. Administration's naiveté led straight to collision. The U.S. finally announced that it would impose an additional one hundred percent tariff on Japanese autos pursuant to § 301, and the Japanese government responded by taking this issue to the WTO, alleging some grounds which could have led to rejection of § 301 itself.

I recall, however, that both Japan and the U.S., as well as the EC, were not bold enough to take the collision beyond that to reach a final conclusion at the WTO. At the same time, Mr. Ruggiero, Director General of the WTO, was also much concerned that the infant WTO dispute settlement mechanism would be trampled by giant WTO members. Everybody expected that both sides would pursue a solution without taking the matters to the end, and bilateral talks between Japan and the U.S. continued in parallel with the collision process. At the final moment, we found that the American side had the misconception that Japanese auto companies would invade the U.S. market, or would push American auto companies into a trade war. Bearing this in mind, Japanese auto companies made public their strategy as global enterprises in a borderless economy, which greatly contributed to addressing U.S. concerns about Japan's aggressiveness or noncooperative attitude. Japan and the U.S. finally agreed to a ceasefire.

Of course, the USTR tried to show that it had succeeded in obtaining some concessions from Japan. However, although my view might be somewhat biased, the U.S. has never since raised numerical target proposals taking advantage of Super 301 after the conclusion of the auto dispute, which seems to imply that the U.S. itself recognizes its vulnerability in this kind of negotiation.

E. Kodak-Fuji Dispute (1996-)

Just after the auto case, the Kodak-Fuji case was highlighted. There was a certain similarity or continuity in the U.S. argument in that the U.S. was requesting access to the Japanese market rather than preventing Japan's exports to the U.S. market. However, the difference was that, in this case, a government was requiring a specific action of another government, responding to an individual company's request pursuant to the U.S. trade act.

Personally, I have some reservations as to whether we should have taken this issue to the WTO, since the case represented not the national interest but a certain company's interest. However, the U.S. permits such allegations from companies and takes such issues to the WTO, while Kodak originally sought sanctions against Fuji under § 301. As I said earlier, in the auto case we were determined not to have any kind of compromise without a rule-based reason. In the Kodak-Fuji case, we thought the U.S. argument was completely unviable, and we did not agree to conduct bilateral negotiations under § 301 threat. The U.S. then brought the case to the legal process of the WTO. Thus, the case was eventually referred to a WTO Panel, whose final report will be issued shortly. As you may know already, the U.S. claims were totally rejected by the Panel.

III. EVALUATION OF PAST EXPERIENCES AND PROSPECTS FOR THE FUTURE

These are the historical consequences of the Japan-U.S. trade relationship, in particular from the viewpoint of GATT/WTO. Now let me just explain to you my evaluation of past experiences, which I hope would also suggest prospects for the future.

So far, we can say in general, that our "rule-based" approach of taking advantage of the WTO in solving disputes has worked quite well. However, at the same time, past experiences leave us with some questions to consider.

A. Expanding the Coverage of the WTO

First, we must consider the problem of the coverage of the WTO. Some people are concerned about the effectiveness of the WTO in solving trade disputes, especially after the Kodak-Fuji case. The U.S. side seems to attribute their loss in that case to a lack of substantive rules with regard to competition policy. Putting this insistence by the U.S. aside, we need to consider how and how far we should expand the coverage of the WTO in the future.

Personally, I doubt that the WTO should create all kinds of economic or business rules, with all countries having to abide by such rules. I believe that we

are in the midst of globalization. It will take a long time to integrate all economic or business rules into one. And how far and how fast we should implement such rules is the really substantial question. We have not yet been able to create a single government of the world. It seems to me that the WTO is not a single almighty presiding body. Thus, I am not positive about radically expanding its coverage, while there may be some need to do that to build confidence in the WTO. On the other hand, I am also greatly concerned that there is a growing tendency in the U.S. to deal with trade issues in the U.S. jurisdiction by applying extraterritorially competition laws or other domestic laws, instead of raising issues at the WTO.

B. Strengthening the WTO Dispute Settlement Mechanism

This leads to the second issue, strengthening the WTO dispute settlement mechanism. From a plaintiff's viewpoint, the WTO dispute settlement mechanism still has a critical deficiency. Since the process still generally takes more than one year and the mechanism does not provide for reparation or compensation as a remedy, a nation does not have much incentive to introduce a WTO-inconsistent measure, especially when it is not a permanent measure. However, we should really discourage such measures, as they damage business opportunities which may be unrecoverable. In this regard, it might be worthwhile to consider how we can strengthen the effectiveness of the WTO dispute settlement mechanism in preventing disputes.

C. Role of Private Parties

Third, I would like to touch upon the issue of the role of private parties. The Kodak-Fuji case reminded us of the increasing role of private companies in trade disputes. As I mentioned earlier, the case was promoted only in the interest of one specific company. The question posed is whether we should allow private parties to participate in the WTO dispute settlement mechanism directly, as is currently being discussed in the context of the MAI.

While I recognize that the U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement have already implemented this type of mechanism and that it has worked successfully, I am personally still skeptical about the possibility of realizing it in a multilateral framework. It seems to me that private parties' participation in WTO disputes might lead to an unmanageably large number of disputes, including cases in which there are conflicts between companies from one country. At the same time, since the WTO does not have any enforcement power over private parties, the judgment against private parties would seem to have no value. For the time being, while membership of the WTO is limited to countries and economies, the outcome of

WTO dispute cases should be enforced against governments. Thus, I have some hesitation about going further and including private parties in the WTO dispute settlement process, which I imagine would be limited to a small number of internationally acknowledged companies able to sustain the process.

IV. SELECTING AN APPROPRIATE APPROACH FOR DISPUTE SETTLEMENT

Finally, also in connection with the third problem, there is the question of how a government should select an appropriate approach to dispute settlement. In the Kodak-Fuji case, we put the whole matter into the hands of the WTO panel. However, there are many alternatives in solving trade disputes. For the time being, we should build up practical applications of WTO rules and procedures, but an accumulation of cases will eventually make parties hold back from taking all cases to the WTO. The WTO dispute settlement mechanism may sometimes encourage parties to go to the WTO, but may sometimes have the opposite effect, prompting them instead to solve disputes in the lobby of the WTO, with both parties considering the WTO as a last resort.

I have not drawn any conclusion yet with regard to the dispute settlement of trade issues, but bearing in mind the many other ways of solving trade disputes, including bilateral negotiations, a government must consider, in each case, which is the best and most efficient way, taking into account the prospective outcome and the likely administrative costs.