

Chapter 4

THE EUROPEAN UNION

TARIFFS

1) High tariff Products

<Outline of the measure>

The simple average of bound tariff rates for non-agricultural products is 3.9%. However, high tariff rates, 22% on trucks and 10% on passenger cars, remain. Moreover, tariff rates for electric appliances (maximum 14%) and textiles (maximum 12%) are higher than those of other developed countries, rendering imported products at an extremely severe competitive disadvantage in comparison with domestically-made products.

<Problems under international rules>

Higher tariff rates themselves do not conflict with the WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to the lowest possible rate and to eliminate tariff peaks.

<Recent developments>

Negotiations on enhancement of market access for non-agricultural products in the DDA are ongoing and include negotiations on reducing and eliminating tariff rates.

2) The tariff classification issue

A. Information Technology Agreement

The Information Technology Agreement (ITA), the Ministerial Declaration on Trade in Information Technology Products, was agreed to by Japan, the U.S., the EU and other countries in 1996 for the purpose of removing tariffs on information technology

equipment, parts and other products. It requires ITA signatories to bind and eliminate customs duties within the meaning of GATT Article II, with respect to items covered by ITA. Following the Declaration, signatories have individually incorporated items covered by ITA into their respective Concession Schedules. In other words, if they actually levy customs duties on these items, they would be in violation of concessions under GATT Article II.

Although the EU eliminated the customs duties on products covered by the ITA, including computers, computer-related equipment, and semiconductors, it still imposes high tariffs on electrical equipment that is not covered by the ITA, such as television sets and video players. Due to progress in the technological convergence of these products, the problem has emerged whereby products that should be treated as products covered by ITA are now subject to customs duties due to arbitrary changes of tariff classifications. Since the EU, which is one of the ITA signatories, has made the concession of treating products covered by the ITA as duty-free, imposing duties on these products would constitute a violation of GATT Article II.

ITA ensures free trade for IT products and thus has contributed to further technological advancements in the IT field. Technological advancement is rapid and because of its characteristic, it is customary for IT products to be multifunctional or sophisticated. Consequently, if ITA signatories impose customs duties on products covered by ITA due to additional and/or sophisticated functions, the list of products covered by ITA is likely to shrink. For this reason, when the ITA was concluded, signatories put the following sentence into the ITA, “(e)ach party’s trade regime should evolve in a manner that enhances market access opportunities for information technology products” (refer to the first paragraph of the ITA declaration), and, “(p)articipants shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products” (declaration Annex paragraph 3); so it is clear that signatories clearly recognized the need for evolving IT trade in the direction of enhancing technical developments of IT products.

However, the problem actually occurring in the EU is that certain IT products that have incorporated multiple functions through technological innovation have tariffs imposed because they are classified as non-ITA products under the EC’s customs law, thereby incurring an adverse effect on the intentions of the ITA.

In December 2006, Trade Minister Amari wrote to EU Trade Commissioner Mandelson requesting resolution. In January 2007, there were meetings between Minister Amari and Commissioner Mandelson and between the Trade Vice-Minister and the External Trade Director General to discuss resolution of this problem. High-level

discussions between Japan and the EU are still continuing, and the government of Japan should continue to raise the issues toward seeking a resolution during the ITA committee and bilateral negotiations.

Following are outlines for individual issues:

(a) Digital Multifunction Machines

<Outline of the measure>

Digital multifunction machines are information technology equipment that combine the functions of a printer, copying machine, scanner, facsimile and others, which are used with computers and networks and are considered to be connected to computers with major functions for computer output. While Japan and the US classify digital multifunction machines under the same HS code 8471.60 as conventional printers, covered by the ITA and with a tariff rate of 0%, the EU had classified these machines under HS 9009.12 (analog copiers), not being covered by the ITA, and imposed 6% duties.

Since there was no international consensus on how to classify digital multifunction machines, discussions were held during the HS committee of the World Customs Organization (WCO) (details are discussed later). As a result, an independent code was newly set up in HS2007 for digital multifunction machines, HS code 8443.31, and implemented in January 2007.

Although the above mentioned developments in the WCO brought discussions on tariff classifications to a close, the problem, as to whether or not newly established codes should be treated as duty-free under ITA, has not been settled. The EU has further divided this code according to copying speed, whereby machines with copying speeds of 12 pages/minute (12 ppm) or less are classified as CN8443.31.10 and not subject to any customs duties, but machines other than these are classified as CN8443.31.91 and are subject to a 6% duties.

<Problems under international rules>

Since the EU committed in its concession schedule that products covered by the ITA, including printers (CN8471.60.40) and facsimiles (CN8517.21.00), were not subject to any customs duties, the imposition of customs duties on these products constitutes a violation of GATT Article II. Since multi-function printers are, ultimately, technically developed printers/facsimile machines, they should be treated as duty-free items covered by ITA as are printers and facsimile machines.

Reflecting on the expected objectives of the ITA, if products covered by the ITA become multifunctional and more advanced products are treated as not being covered by the ITA, then progress in IT technology is impeded rather than promoted, benefits to

consumers are destroyed and there is a negative impact on the development of industries and society.

<Recent developments>

The discussion on this issue has been ongoing since Brazil brought the matter before the WCO. In May 2001, a majority voted in favor of classifying the machines under HS code 8471 (computer peripheral devices), but opposing countries exercised reservations and the debate continued. There was a second vote in November 2002, which resulted in a majority voting in favor of classifying the machines under HS code 9009 (analog copy machines), but the opposing countries again exercised reservations and the debate continued. Under a third vote in November 2003, the results were tied. As a result of Japan's efforts, a customs code for digital multifunction machines was newly set up in HS2007; implemented January 1, 2007. As mentioned above, the EU, with the amendment to HS2007, imposes a 6% tariff on multifunction machines (including facsimile machines) that have the capability of copying more than 12 sheets per minute under classification CN84433191.

(b) Flat Panel Display Tariff Classification

<Outline of the measure>

In 2004, the EU changed its tariff classification of flat panel display (FPD) monitors equipped with digital visual interface (DVI), which is one of the standard computer interfaces developed for the purpose of transmitting digital signals, from computers to displays. In the past, these devices were classified as input/output units for computers, which were covered by ITA (CN8471.60.80: 0%). After the EC changed its classification, however, they were classified as video monitors not covered by ITA (CN8528.21.90:14%), because of their capability to receive video signals by means of a DVI. They are now subject to high tariffs.

<Problems under international rules>

In its concession schedule, the EU committed to treating FPDs, which are covered by the ITA, as duty-free items. Therefore, if the above-mentioned DVI-equipped FPD monitors are included in FPDs, the EC's imposition of duties on these monitors would constitute a violation of GATT Article II. Due to their technological and structural characteristics, these DVI-equipped FPD monitors are devices used "solely or principally" for automatic data processing systems and should be classified as computer input/output units (CN8471.60.80) in accordance with the chapter note 5(B)(a) for HS Chapter 84, and be treated as duty-free items.

The imposition of high tariffs through an arbitrary change of tariff classification

by the EU, taking a major position in the world economy, not only runs counter to the EU's essential stance that market access should be actively improved, but also impairs predictability for businesses and thus impairs their activities.

<Recent developments>

In March 2005, the EU announced a new tariff rule: among FPD monitors classified as video monitors, those with a 19-inch or smaller screen at the aspect ratio of 4 to 3 or 5 to 4 would be entitled to duty-free treatment through the end of 2006. Although only temporary, this new rule afforded tariff exemption to almost all computer monitors imported to the EU. During the Japan-EU Regulatory Reform Dialogue held in 2005, Japan requested that the EU provide detailed information on the exemption and review the tariff classification so that FPD monitors classified as video monitors would be permanently classified as computer output devices and eligible for a 0% tariff rate. Although these products are currently treated as duty-free items due to the extension of provisional tariff treatment, they are subject to tariffs from January 2009.

(c) Digital Cameras

<Outline of the measure>

Based on the ITA, all Member countries, including the EU, agreed to eliminate tariffs on digital still image video cameras (digital cameras), a certain type of "still image video cameras and other video recorders" (HS8525.40 (HS1996)); the tariff has been zero in the EU since 2000. However, the EU was studying the added video function of digital cameras and is considering taking them out of the ITA's scope and thereby imposing tariffs by changing the classification from digital camera (CN85258030: tariff rate 0%) to video camera recorder ([1] the type that cannot record external input, CN85258091: tariff rate 4.9%; or [2] the type that can record external input (CN85258099: tariff rate 12.5%).

WCO has jurisdiction to harmonize tariff classifications up to the HS6 digit, while classifications beyond the HS6 digit are entrusted to each country. There is no dispute over digital cameras with video functions falling under HS8525.40 (HS1996). Therefore, this case does not fit into the category of discussions held at WCO.

<Problems under international rules>

In its concession schedule, the EU has clearly committed to treating digital cameras as products covered by the ITA and not subject to tariffs. Changing the tariff rate solely for the reason of the addition of ancillary functions is highly likely a violation of the EU's concession schedule based on ITA and may constitute a violation of GATT Article II. At present, digital cameras that are expanding in the market have, except for some, video functions as a subsidiary function. If digital cameras with video functions are subject to customs duties, then it is possible that virtually all digital cameras

distributed in the market will not be covered by the ITA.

<Recent developments>

In July 2007, the EU Nomenclature Committee adopted an EC regulation and an explanatory note for the purpose of distinguishing video cameras (4.9%) from digital cameras (0%). According to these guidelines, the standard for distinguishing between video cameras and digital cameras would place video cameras in the category of machines that record (i) at 800x600 pixels or higher, (ii) for 30 continuous minutes or more, and (iii) at a speed of at least 23 frames per second. As a result, almost all products previously treated as duty-free, such as digital cameras, continue to be classified as digital cameras.

Because a problem arose involving the obscure process, through which this standard was enacted, it would be highly desirable to improve transparency when enacting similar standards in the future.

(d) Ink Cartridges

<Outline of the measure>

In February 2002 and October 2006, the European Court of First Instance handed down a decision ruling it appropriate to classify ink cartridges without printer heads as ink (CN3215.90.80: 6.5%), not parts or accessories of computer output units (CN8473.30.90: 0%). As a result, customs of EU member countries now classify ink cartridges without printer heads as ink and levy a 6.5% duties.

<Problems under international rules>

In its concession schedule, the EU has committed to duty-free treatment of CN8473.30.90, covered by ITA. Therefore, if ink cartridges fall under the classification CN8473.30.90, then imposing a tariff on ink cartridges constitutes a violation of GATT Article II. Ink cartridges are not simply devices that store ink; rather, they perform several key functions of printers, such as supplying ink to printer heads and transmitting data to computers, and thus are undeniably a component of printers. Therefore, they should be classified as CN8473.30.90 covered by ITA, and treated as duty-free.

Imposing duties on ink cartridges with these characteristics under the classification of ink would hinder the distribution not only of ink cartridges but also of printers themselves, and could have an adverse impact on industry and society.

<Recent developments>

In October 2007, the WCO Secretariat submitted a paper concerning a possible new tariff line, that would unify the classifications of ink cartridges, toner cartridges, cartridges for thermal transfer printing, and others to the HS Review Sub-Committee, which is responsible for a HS2012 revision. Depending on the details of the new classification, ink cartridges could be regarded as products other than those covered by the ITA, and thus due consideration should be given.

B. Digital video camera (camcorder) classification

<Outline of the measure>

The EU's tariff classification distinguishes between (a) video cameras with the ability to record not only signals from embedded camera units but also signals received from outside equipment (such as television); and (b) those cameras without this ability; different tariff rates of 14% and 4.9% respectively apply. In its Explanatory Note of July 2001, the EU ruled that a 14% tariff rate also would apply to cameras in which the recording of pictures from exterior equipment (DV-in) could be activated by software after customs clearance, even though such recording function is not available at the time of customs clearance. Consequently, video cameras with DV-in control software that were subject to a 4.9% tariff rate were classified as cameras subject to a 14% tariff rate. Some EU members collect unpaid tariffs for some imported products which had been cleared through customs at the 4.9% tariff rate over the past 3 years, claiming that the import declarations were in error.

<Problems under international rules>

Because a digital video camera does not fall within the list of items included in the ITA, this does not constitute a violation of WTO agreements. Unjustified and sudden changes in tariff classifications, however, significantly undermine the predictability of business activities and obstruct fair trade.

<Recent developments>

A number of civil suits have been filed in EU member countries concerning the validity of this explanatory statement. Of particular note is a case in which the European Court of Justice (ECJ) handed down a decision, in September 2007, ruling that this explanatory note stipulating that a 14% tariff should be imposed on cameras, whose recording functions via DV-in could be decontrolled by software, was incorrect. The court ruled that the explanatory note was unfair, in line with Japan's claim. It is expected that, as a general rule, decisions in accordance with this decision will be handed down in

other suits concerning the related camcorder classification cases.

ANTI-DUMPING

Anti-dumping is an area of hidden protectionism in the European Union. The current EC legislation contains amendments to bring European practice into conformity with the Anti-Dumping Agreement. Japan considers this Agreement to be one of the major successes of the Uruguay Round negotiations. However, in the EU, dumping margins may be artificially inflated because Commission authorities have greater discretionary powers than do the authorities in the United States. The EU has not imposed AD measures against Japan since the termination of the AD measure on TV camera systems (July 2007). However, it is important to continue to monitor the operation of the AD system.

(Reference) Termination of AD measures on Japanese TV camera systems

In May 2006, the European Commission commenced an investigation of Japanese TV camera systems (Certain Camera Systems) to expand the range of products subject to anti-dumping duties. The investigation included camcorders and box cameras (broadcasting service use) that did not compete with TV cameras, which were already subject to duties, in the EU market and not manufactured or sold by EU companies. From the perspective of consumers that actually use these three products, they are completely different in terms of application and function, and it was inappropriate to treat them as subjects of the same investigation.

Investigation results indicated that, in the event that camcorders and box cameras were subject to AD duties, exports from Japan would be substantially impacted. In addition, as EU companies could not supply alternative products, there was concern that users of broadcast-related industries in the EU would face cost burdens because the AD duties would cause a tremendous economic impact.

As a result of the vigorous response of Japanese companies to the investigation, in May 2007 the European Commission concluded the investigation without judgment in order to determine the proper scope of products to investigate.

The Japanese Government utilized forums such as the Japan-EU Regulatory Reform Dialogue to point out issues related to the investigation and request that the EU's methodology be revised. Furthermore, after Minister of Economy, Trade and Industry Akira Amari sent a ministerial letter to Commissioner Mandelson communicating Japan's comments and requests, the Commissioner responded stating that the European Commission would deliberate on a proper resolution without a preliminary determination.

The investigation that began in May 2006 came to a conclusion as stated above. Moreover, the existing measures on TV camera systems that were subject to AD duties since 1994 were revised within the EU and, as of 31 July 2007, the EU determined to terminate the measures.

“Automatic” Extension of Anti-Dumping Measures to New Members of the EU

(See same Chapter “REGIONAL INTEGRATION”)

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

1) Directives on Waste Electrical and Electronic Equipment (WEEE), Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Draft Directive on Batteries and Accumulators

<Outline of the measure>

The EU Directives on Waste Electrical and Electronic Equipment (WEEE) and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS), which took effect in February 2003, restrict the use of lead, mercury and cadmium in electrical and electronic equipment. The purpose of this restriction is to prevent disposal of electrical and electronic equipment containing hazardous substances (Substance Ban); the directive provides for recovery/recycling obligations for almost all electrical and electronic devices.

In addition, the *EU Battery Directive* that was enacted into law in September 2006 made the collection and recycling of all batteries sold within EU territories compulsory, and required that EU member countries pass implementing national laws by 26 September 2008. This directive also prohibited the sale of batteries and rechargeable batteries that contain a mercury weight ratio exceeding 0.0005%, and batteries and rechargeable batteries (excluding batteries for cordless electric tools) that contain a cadmium weight ratio exceeding 0.002%.

<Problems under international rules>

Both the WEEE and RoHS appear to be interpreted and applied differently in different member countries. Based on the degree of difference, producers are faced with an excessive procedure and cost burden because they have to address each member country differently.

The Battery Directive demands that applicable primary batteries (disposable

batteries such as alkaline and manganese dioxide batteries) and rechargeable batteries display the mark of a crossed-out trashcan. Furthermore, as the producer is required to assume the cost burden of collecting, processing, and recycling the batteries, including batteries that were sold before its enactment, the Directive could lead to excessive cost increases for producers.

It should be noted that all three of the Directives could be inconsistent with Article 2.2 of the TBT Agreement (mandatory technical regulations must not restrict trade more than necessary to achieve legitimate objectives).

<Recent developments>

Continuing efforts made in 2006, Japan submitted a request at the March and December 2007 sessions of the Japan-EU Regulatory Reform Dialogue demanding that the operation and application of a unified regulatory system be ensured for WEEE and RoHS directives in all EU member countries. The document requested that the disparity in the WEEE's product scope created by differing interpretations of the directive by different member nations be corrected and that, with regard to the RoHS, unified guidance be established for eliminating the disparity among member countries to ensure adequate conversion periods when abolishing exemptions and continuing exemptions on spare parts and methods for proving consistency with spare parts. The treatment of exemptions from the RoHS Directive is still under discussion by the Technical Adaptation Committee (TAC). The additional nine items for exemption announced in the Official Journal of the European Communities on October 14, 2006, included all the exemptions requested by concerned Japanese industries. However, on November 8, 2006, at the sixth consultation on additional exemptions, the EU proposed to retract one item that was previously exempt (lead in optical isolators). This underscores the need for close monitoring of future developments.

The European Commission is scheduled to review the WEEE and RoHS Directives and are closely monitoring the scope of application of the Directives, administration of provisions for producer responsibility, disposal requirements, and revised targets for collection, reuse, reproduction and recycling for changes.

2) Framework Directive on Eco-Design Requirements for Energy-using Products (EuP)

<Outline of the measure>

The European Commission adopted a framework directive on eco-design requirements for Energy-using Products (EuP Directive) is a “framework directive” that stipulates cross-sectional matters common to various products/devices. Implementing directives dealing with regulations of individual products/devices are being adopted one-by-one. Implementing measures for an EuP framework are expected to include either one or both of the following requirements, depending on EuPs, to control them in

terms of their environmental compatibility (eco-design requirements): (i) requirements of eco-design envisaging the environmental aspect of a product for its entire life through implementing comprehensive environmental assessment to enhance its environmental functions (requirement for comprehensive eco-design); and (ii) requirements of eco-design focusing on specific environmental aspects of a product covering its entire life cycle, such as enhancing energy efficiency when using electric equipment (requirement for specific eco-design).

“Energy-using Products” covered by the directive include all products that function by the input of energy (electricity, fossil fuels (oil and gas), renewable fuels, *etc.*) including parts which are intended to be incorporated into EuP, and which are placed on the market as individual parts for end users or the environmental performance of which can be assessed independently. Currently, transportation equipment (land, marine and air transportation equipment including automobiles) is excluded because existing and voluntary regulations offer effective controls. However, the necessity of covering the equipment under the directive will be discussed in the future.

<Problems under international rules>

Issues may arise from the perspective of Article 2.2 of the TBT Agreement (technical regulations must not restrict trade more than necessary to achieve legitimate objectives) depending on the specific regulations set by the EuP Directive on individual products and equipment, therefore it is necessary to ensure that non-EU entrepreneurs’ opinions should be duly reflected in the development of implementation measure directives.

<Recent developments>

Continuing efforts made in 2006, Japan submitted a request at the March and December 2007 sessions of the Japan-EU Regulatory Reform Dialogue regarding issues such as revising the work schedule, ensuring transparency when drafting implementation provisions and consistency standards, and ensuring that consistency standards, testing methods for applicable products, and product uses are all consistent with international standards and existing frameworks.

3) Registration, Evaluation and Authorization of Chemicals (REACH)

<Outline of the measure>

In February 2001, the European Commission published a “Strategy for a future Chemicals Policy” that intensified its risk assessment and control of chemical substances. In May 2003, the EC announced a draft regulation on Registration,

Evaluation and Authorization of Chemicals (REACH). Subsequently, the draft was amended in response to comments submitted from interested parties around the world via an Internet consultation. The final draft of the European Commission was adopted on October 29, 2003. Subsequently, after deliberation by the European Parliament and the Council of the EU, the draft was adopted by the Council of the EU (Environment Council) on December 18, 2006. REACH will enter into force on June 1, 2007. (The actual commencement of operations for REACH is planned for 1 June 2008.) Working towards the actual launch, the European Commission is pushing ahead with consideration of launching REACH Implementation Projects for the development of related IT systems, development of various guidance documents and preparation for the establishment of the European Chemicals Agency.

Major features of REACH are as follows:

- (i) Existing and new chemical substances will be regulated under the same framework. Existing chemical substances that are already being supplied to the market must be registered in the same manner as new chemical substances (applies to entities that manufacture or import an annual total of one ton or more chemical substances within Europe). As for chemicals manufactured or imported in quantities of more than ten tons per year, a Chemical Safety Report (CSR) must also be completed.
- (ii) The responsibility for risk assessment of existing chemical substances, which have been implemented by governments, is imposed on industries.
- (iii) Under certain conditions, molded items (articles) that intentionally contain dischargeable substances must be registered and molded items (articles) that contain highly suspicious substances must be reported.
- (iv) Regarding certain chemical substances that have extremely high degrees of danger of carcinogenicity *etc.*, a new system is introduced under which provision of these chemical substances to the market is authorized on the basis of individual uses. (Provision of such chemical substances to the market is prohibited unless industries can prove that the risk is minimal.)

<Problems under international rules>

In the event that operational regulations treat companies outside the EU at a disadvantage compared with EU companies, they may be inconsistent with the TBT Agreement Article 2.1 (national treatment). Also, in the event that regulations impose an excessive burden on businesses, they may be inconsistent with TBT Agreement Article 2.2 (technical regulations must not restrict trade more than necessary to achieve legitimate objectives).

<Recent developments>

Since the European Commission (EC) notified to the WTO a proposal for the REACH regulations on 21 January 2004, Japan has submitted comments to the EC regarding WTO-related items of concern regarding the regulations. Japan has also made use of all opportunities, including the WTO/TBT Committee, Japan-EU Regulatory Reform Dialogue, and Japan-EU Industrial Policy and Industrial Cooperation Dialogue, to continue pressing the EC, Council of the European Union, the governments of EU member countries, members of the European Parliament, and other bodies to amend the proposal so as to avoid an excessive burden of test results when registering the same substances and clarifying requirements and standards for reporting substances within molded products.

As a result, in the proposal that was finally adopted by the Council of the European Union ([Environment Council](#)) in December 2006, there were some improvements to the draft proposal regarding the concerns expressed by Japan, including the idea of one registration for each chemical substance and clarification of the chemical substances required to be notified (listing).

Japan participated in the WTO/TBT Committee (March and November 2007), Japan-EU Regulatory Reform Dialogue (March and December 2007), and the Japan-EU High Level Meeting on the Environment to communicate its concerns to the EU regarding the delay in creating a document that explains the REACH regulations. Additional issues that Japan addressed were: 1) including non-member countries such as Japan when creating the guidance document so that companies in non-member countries are not put at a disadvantage; 2) working to establish a support system for sufficiently securing “only representatives” to use when registering companies from non-member countries; and 3) considering a realistic timeframe for providers of molded products to carry out their duty of providing information to consumers. The industrial arena made efforts to be heard by partnering with other APEC economies in making various requests of the European Commission, including those concerns expressed by Japan.

Japan must continue to monitor the progress of a guidance document for the REACH regulations so that it does not incorporate information that puts non-member countries at a disadvantage.

TRADE IN SERVICES

Audio-visual Service

<Outline of the measure>

For the purposes of protecting cultural value, the EU issued Directive 89.552. EEC “Television without Frontiers” (revision: 97. 36. EC) and requested member states to reserve at least half of the television air time for European programs in a feasible and appropriate way (except for news, sports/event, game, commercial and teletext programs). All member states have completed domestic legislation implementing the directive. For example, France provides that at least 60 percent of movies on television must be made in Europe and that more than 40 percent of the programs must be broadcast in French (Government ordinance No. 86-1067 issued on January 18, 1992).

<Problems under international rules>

The above measure does not violate the WTO Agreements because the EU has made no commitment in the AV sector and has registered an MFN exemption. However, the GATS should cover all services and efforts towards further liberalization are desirable.

MFN is one of the most important pillars achieving liberalization in the multilateral trade regime and is a basic principle of the WTO Agreements. MFN exemptions are a deviation from this most important principle and it is desirable that it should be removed. The GATS stipulates that MFN exemptions are temporary and ought not exceed ten years.

<Recent developments>

In November 2007 the European Commission adopted the European Parliament and European Council Directive Bill to correct the 89/552/EEC Council Directive (“Television without Frontiers Directive”) concerning coordination of part of the Members regulatory policy relating to television broadcast activities” (COM (2005) 646) (“Draft of Audiovisual Media Services Directive”); it was enacted in December. The member countries had to finish adopting the new directive into their domestic laws within 24 months. As previously mentioned, cultural preservation policies continue to be stringently carried out in the EU. Japan is requesting that the EU improve its liberalization commitments in the ongoing WTO services negotiations.

(Reference) Summary of the “Audiovisual Media Services Directive”

The definition of audio-visual media services, as stated in the Directive,

distinguishes between television broadcasts, which are a type of “linear services” in which content is ‘sent’ to viewers, and “non-linear services” such as video on-demand (VOD) in which viewers ‘take’ content from a network. Only a few shared regulations are applied to “non-linear services,” and restrictions such as quantitative limitations on advertising are only applied to television broadcasts.

Furthermore, in order to clarify the authority of member countries, the “principle of country-of-origin” is applied to service providers. However, for cases where a service provider located in member country A provides television broadcasts entirely or mainly in member country B, agreement was reached establishing a mechanism permitting member country B to take measures targeting the service provider.

Regarding product placement (a method of performing advertising by having a particular product appear in the contents of a film, television program, or the like), the “Audiovisual Media Services Directive” incorporated the general rule that product placement would be permitted during its introduction period into domestic law, but that after that it would be prohibited. However, exceptional measures with conditions attached shall apply to certain programs, such as films, sports shows and serial dramas. Product placement is banned from news and children’s and documentary programs. If product placement is to occur during a program, then the fact must be clearly indicated at the program’s beginning and end and after commercials.

The time for inserting advertising shall be limited to 12 minutes per hour (20% rule). The interval for inserting advertising shall be once every 30 minutes for films and news programs. Advertising cannot be inserted in children’s shows unless the programs exceed 30 minutes. Commercials for cigarettes and medicines which require a prescription are prohibited. Furthermore, the European Commission and member countries encourage audio-visual service providers to formulate a code of ethics in order to avoid advertising which urges children to consume foods that are high in fat, salt, and sugar content (junk food).

Regulations related to the promotion of televising European-made programs are maintained. In terms of on-demand services as well, service providers are obligated to create European-made productions and encourage access to such productions.

REGIONAL INTEGRATION

1) Increasing binding tariff rates

<Outline of the measure>

Bulgaria and Romania joined the EU in early 2007 and as has occurred during previous rounds of enlargement of the EU, tariffs of newly acceded Member States conformed to the common external tariff of the EU, raising bound tariff rates of some items. According to Article XXVIII:1 of GATT, bound tariff rates may be raised only after negotiating and reaching an agreement with the country concerned. However, tariff rates in the newly acceded Member States were raised prior to the completion of the EU's negotiations with Japan. During the EU enlargement of ten countries in May 2004, although Japan had several occasions to press the EU to work toward completion of the negotiation by the time of enlargement, tariffs in the newly acceded Member States were raised without any negotiations at all. As a result, it took 20 months following the enlargement before the compensation was agreed and implemented, and companies exporting to the EU suffered damages arising from the imposition of tariffs that had been raised unilaterally.

<Problems under international rules>

The unilateral increase of tariffs by EU enlargement is inconsistent with Paragraph 6 of GATT Article XXIV, which provides for compensatory adjustment to increase of bound tariff rates through the procedure stipulated in Article XXVIII of GATT.

<Recent developments>

On December 21, 2006, Japan notified its intent to enter into negotiations with the EU under Article XXIV:6 of GATT regarding the accessions of Bulgaria and Romania to the EU and met twice. Japan claims that the accumulated amount of damage due to the increase of tariff rates should be considered the “amount of damage.” On the contrary, the EU argues that where the tariff rate is increased in one new member country while it is reduced in other member countries, the amount of damage should be lessened considering the benefit from the decrease. Therefore, compensation is not necessary.

Currently, negotiations regarding the accessions of Croatia and Turkey are ongoing; the former Yugoslav Republic of Macedonia has also been granted the status of a candidate country. Japan will continue to negotiate with the EU to secure consistency with Articles XXIV:6 and XXVIII of GATT.

2) “Automatic” Extension of Anti-Dumping Measures to New Members of the EU

When the member countries joined the EU in May 2005 and January 2007, the EU automatically extended the anti-dumping measures in effect in the EU to the new members (ten in 2005 and two in 2007) without any investigations. Japan believes that this action violates the Anti-Dumping Agreement. (The only AD measures against Japan in effect, however, had been terminated in July 2007.)

3) Increase in Polish Customs Duties on Automobiles

<Outline of the measure>

Poland raised its tariffs on automobiles (unbound) from 15 percent to 35 percent in January 1992, two months before the date of the enforcement of the European – Poland Agreement. Poland imposed a 35% tariff on automobiles from outside the EU without exception. By applying the above agreement to the automobiles within the EU, this tariff rate was gradually reduced to zero percent (20 percent in 1998, 15 percent in 1999, zero percent in 2002); Poland also established a zero-tariff import quota (30,000) for EU automobiles from January 1993 (expanding the quota every year).

<Problems under international rules>

Because Poland increased its tariffs just before its entry into the European regional trade agreement (RTA), Japan suspects that the increases may violate Article XXIV:5(b) of the GATT, which stipulates that the “tariff shall not be higher than the corresponding duties existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement”. One could argue that there was no violation of Article XXIV:5(b), because the tariffs had been increased already at the time the RTA went into force. But in light of the fact that the agreement had already been signed in December 1991, when the increases were made, it is more logical to view it as increases in conjunction with the agreement.

India requested and was granted the establishment of a panel on this matter in the DSB in November 1994. In September 1995, India again requested Article XXIII consultations with Poland under the WTO rules. In August 1996, the two countries notified the WTO that they had reached a mutually agreeable solution (Poland created a special quota of preferential tariff rates for countries affected which qualify for the GSP).

<Recent developments>

Japan indicated to the Polish Government that the 35 percent gap between tariffs on automobiles made in Japan and in the EU was an area of concern requiring resolution at the earliest opportunity to ensure promotion of trade, investment and other economic exchanges. There was no progress when Poland joined the EU in May 2004 -- the common EU external tariffs applied to Poland. The EU must be monitored to ensure that no unnecessary trade barriers are imposed when Croatia and Turkey join the EU.