

CHAPTER 5

REPUBLIC OF KOREA

A. TARIFFS

HIGH TARIFF PRODUCTS

***This case was included in light of the following concerns despite it being a trade or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the Measure>

The current simple average bound tariff rate for non-agricultural products is 10.2%. However, high tariffs were maintained on other items, including clothing at a maximum of 35%. The binding ratio for electrical equipment is 74.0%, while the binding ratio for industrial goods as a whole is 93.8%. Unbound tariff items include motor vehicles for the transport of goods (applied tariff rate of 10%), generators (applied tariff rate of 8%), and chemicals (applied tariff rate of 8%).

<Concerns>

Higher tariff rates do not, *per se*, conflict with WTO Agreements. However, in light of the spirit of the WTO Agreements of promoting free trade and enhancing economic efficiency, it is desirable to reduce tariffs to the lowest possible rate.

<Recent Developments>

Negotiations regarding market access for non-agricultural products are ongoing in the Doha Round negotiations; they include negotiations on reducing and eliminating tariff rates. The aforementioned liberalization efforts by Republic of Korea are helpful, but further liberalization is expected, since Republic of Korea is an OECD member and, as a developed country, should be a leader in promoting free trade. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 subject items is planned to start in July 2016 (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in 5. of Chapter 5, Part II for details).

B. ANTI-DUMPING

AD MEASURE ON JAPANESE-MADE VALVES FOR PNEUMATIC TRANSMISSIONS

<Outline of the Measure>

In February 2014, upon request of the domestic industry, the government of the Republic of Korea initiated an anti-dumping (AD) investigation into the importation of valves for pneumatic transmissions from Japan. In January 2015, the Korean government made a final determination to impose AD duties on

these products on the basis of dumping, injury to the domestic industry and a causal relationship between them, and started to levy the duties in August of the same year.

<Problems under International Rules>

In this case, the Republic of Korea has failed to provide persuasive explanations concerning the effects of dumped imports on domestic prices (Articles 3.1 and 3.2 of the AD Agreement). Furthermore, there are defects in the Republic of Korea's determination of injury to the domestic industry caused by dumped imports and causal relationship (Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement). There are also procedural flaws in the investigation such as the failure to disclose essential facts (Article 6.9 of the AD Agreement). In conclusion, the Republic of Korea's AD measures appear to be in violation of the AD Agreement.

<Recent Developments>

At the WTO AD Committee meetings in April and October 2014, the Japanese government asserted that the Korean investigating authority should carefully reconsider issues relating to injury, causal relationship, and other requirements because non-competing products were included among the products subject to the investigation. Japan also strongly requested that an appropriate decision be made giving due consideration to the opinions of companies subject to the investigation. At a public hearing held by the Korean investigating authority in October 2014 with regard to the AD measure, the Japanese government made comments to the same effect. Nevertheless, the Korean government determined that there was injury and its causal relationship to dumping and started to levy AD duties in August 2015. Subsequently, in pursuit of the abolition of the AD measure, which is inconsistent with the AD Agreement, Japan strived to resolve the dispute through bilateral dialogue with the Korean government. However, a resolution was not achieved. Consequently, in March 2016, Japan requested bilateral consultations concerning the AD measure based on the WTO Agreements.

C.STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

1. ACT CONCERNING REGISTRATION, EVALUATION, ETC. OF CHEMICAL SUBSTANCES

<Outline of the Measure>

The government of the Republic of Korea adopted the "Act concerning Registration, Evaluation, etc. of Chemical Substances" in May 2013 (TBT notification date: September 2013, effective date: January 2015) with the aim of collecting information on chemical substances and then utilizing it to help protect human health and the environment. In addition, their government then published the "(Draft) Order regarding Enforcement of the Act concerning Registration, Evaluation, etc. of Chemical Substances" and the "(Draft) Ordinance regarding Enforcement of the Act concerning Registration, Evaluation, etc. of Chemical Substances" in February 2014 (TBT notification date: February 2014, effective date: January 2015).

This system also obligates all the producers and importers of chemical substances in the Republic of Korea to register with the Korean government information regarding the use and hazardous properties of chemical substances. However, for existing chemical substances the aforementioned registration is only necessary when one or more tons of specific substances are produced/imported annually. Conversely, from January 1, 2020, new chemical substances must be registered and four types of hazardous property information submitted even for small amounts of more than 100 kg but less than one ton annually.

The risk a chemical substance can pose to human health or the environment when produced/imported in small amounts of less than one ton is considered slight, and hence they are exempt from registration or only a simple registration without any hazardous property information required in many other major countries (for instance, Act on the Evaluation of Chemical Substances and Regulation of Their Manufacture, etc. in Japan, The Toxic Substance Control Act in the US, REACH in the EU, and Act No. 6969 in the Republic of the Philippines). Under this system, however, hazardous property information is required even for chemical substances produced/imported in the above-mentioned small amounts. In addition, polymers are typically stable in acidic and alkaline solutions and not readily absorbed by living organisms. They are therefore considered unlikely to negatively affect human health or the environment; however, hazardous information regarding them and according to their category based on the produced/imported volume still is required. As described above, this regulation thus imposes an unreasonable burden on business operators in light of the objectives of that policy. The hazardous information to be submitted is required to be the results of tests conducted by a Korean domestic testing institution or an overseas testing institution which has been confirmed under the Ordinance of the Ministry of Environment to satisfy the OECD's good laboratory practice (GLP) requirements.

Meanwhile, under this system, for both existing chemical substances and new chemical substances, the hazardous information required in the registration process can partly be replaced by the submission of testing protocols (the details are specified by the Ordinance of the Ministry of Environment). However, only Korean domestic testing institutions can actually develop the pertinent testing protocols; overseas testing institutions cannot.

<Problems under International Rules>

As described above, this regulation requires registration accompanying hazardous property information on new chemical substances with annual volumes of more than 100 kg but less than one ton, as well as the submission of information regarding the hazardous properties of polymers that are considered stable and not readily absorbed by living organisms. Less trade-restrictive measures that would exclude the above cases in which the risk they pose to human health and the environment is slight would be more than sufficient to achieve the objectives of that policy. This point of view gives rise to the consideration that the regulation hinders trade for no reason as it imposes an unreasonable obligation on business operators in light of the policy objectives of the system -- that is, to protect human health and the environment. It may also violate Article 2.2 of the TBT Agreement.

There is also the concern that foreign companies are being unfairly treated because part of the hazardous property information can actually only be replaced with testing protocols developed by Korean domestic testing institutions, which could be a violation of Article 2.2 of the TBT Agreement.

<Recent Developments>

Japan expressed its concern together with the United States to the Republic of Korea at a TBT Committee meeting held in October 2013. Japan has also expressed its concerns over this system at the TBT Committee meetings held since June 2014.

The "Order regarding Enforcement of the Act concerning Registration, Evaluation, etc. of Chemical Substances" and the "Ordinance regarding Enforcement of the Act concerning Registration, Evaluation, etc. of Chemical Substances" were officially promulgated in December 2014, allowing the submission of some hazardous information to be replaced by testing protocols developed by foreign operators, but in reality, no sufficient improvement has been achieved, with the practice of only allowing replacement by testing protocols developed by Korean domestic testing institutions still ongoing. In addition, no improvement was made in the requirements to submit hazardous property information on new chemical substances with annual volumes of more than 100 kg but less than one ton and polymers in acidic and alkaline solutions (which are typically stable).

Japan intends to pay close attention to future developments regarding this system and, in cooperation with other countries that have similar concerns, to request that the regulation be improved.

2. IMPORT RESTRICTIONS ON JAPANESE FISHERY PRODUCTS, ETC.

<Outline of the Measure>

After the accident at the Fukushima Daiichi Nuclear Power Station of Tokyo Electric Power Company (TEPCO) in March 2011, the Republic of Korea gradually introduced import restrictions on Japanese fishery products, etc. Thus, the Republic of Korea strengthened its import restrictions, such as (i) prohibiting imports of all fishery products produced in the eight prefectures of Aomori, Iwate, Miyagi, Fukushima, Ibaraki, Tochigi, Gunma, and Chiba, and (ii) requiring additional inspections for food of which import is not prohibited (if the slightest amount of cesium or iodine is detected in an inspection conducted by the Korean side, additionally requiring inspection certificates concerning substances including strontium and plutonium).

<Concerns under International Rules>

The import restrictions imposed by the Republic of Korea are inconsistent with Article 2, paragraph (3) and Article 5, paragraphs (5) and (6) of the Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the “SPS Agreement”) in that they are measures that arbitrarily or unjustifiably discriminate against Japanese fishery products, etc. and are more trade-restrictive than necessary, among other respects. In addition, they are inconsistent with Article 4, Article 5, paragraph (8), Article 7, and other provisions of the SPS Agreement because the Republic of Korea has provided insufficient information concerning the import restrictions in response to Japan’s request.

<Recent Developments>

To date, Japan has urged the Republic of Korea to relax or abolish the import restrictions by holding bilateral talks, raising specific trade concerns at the WTO Committee on Sanitary and Phytosanitary Measures, and accepting field investigations by members of an expert committee established in the Republic of Korea. In May 2015, Japan requested a consultation under the WTO Agreement, and held a bilateral consultation with the Republic of Korea in June of the same year. However, since the Korean side did not present outlook proposal for abolishing the import restrictions, Japan requested the establishment of a dispute settlement panel under the WTO Agreement in August 2015. The panel was established in September 2015, and the issue is currently before the panel.