

CHAPTER 6

CHINESE TAIPEI

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>

Binding coverage was 100% when Chinese Taipei joined the WTO, and the current simple average final bound tariff rate on all products is 6.3%. It is 4.7% on non-agricultural products, but high tariffs exist on certain industrial products, such as motor vehicles for the transport of goods (maximum 25%), motorcars and small motor vehicles (maximum 17.5%), special purpose motor vehicles (maximum 30%), etc.

At the time of accession to the WTO, Chinese Taipei's tariff rate quota system (*See Part II, Chapter 4, 1, Functions of Tariffs*) applied to motor vehicles, but this system was removed in 2011.

<Concerns>

High tariff rates do not, *per se*, violate the WTO Agreements unless they exceed the bound tariff rates. In light of the spirit of the WTO Agreements of promoting free trade and enhancing economic efficiency, however, it is desirable to reduce tariff rates as much as possible.

<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. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were 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. TRADE IN SERVICES

REGULATIONS IN THE TELECOMMUNICATIONS SECTOR

<Outline of the Measure>

In the broadband market in Chinese Taipei, the FTTB (Fiber to the Building) market has been growing rapidly, and its market share has reached over 50%, while ADLS (Asymmetric Digital Subscriber Line) is in decline. Many ISPs (Internet Service Providers) including Japanese ISPs have been operating in the rapidly growing FTTB market in Chinese Taipei. Chunghwa Telecom, which used to be a state-run ISP, is now providing services almost exclusively under the brand name 'HiNet' and it has more than 90% of

the FTTB market share. There has been unfair competition regarding Internet connection. For example, Chunghwa Telecom, which owns essential infrastructure, may be conducting discriminatory business operations against other ISPs, and HiNet by charging high connection fees (private peering fees) to other ISPs for direct connection to its network. In addition, Chunghwa Telecom exclusively provides the last mile, thereby creating a structural situation in which it is difficult to decrease fees for services to users because connection to the last mile involves charges for use of relay transmission lines owned by Chunghwa Telecom.

Since the 28th Japan-Chinese Taipei Economic and Trade Conference (2003), Japan has been requesting that Chinese Taipei pursue proper competitive policies in the telecommunications sector. As a result, it is gradually lowering its peering fees and the price of relay transmission lines for ISPs. In order to ensure fair competition in the entire industry, however, it is desirable to make the environment more reasonable and liberal.

<Problems under International Rules>

Due to its dominant share in the Internet connection market, HiNet may fall into the category of “major service providers” defined in the “Reference Paper on the Regulatory Framework for Basic Telecommunications Services” to the GATS. If the authorities of Chinese Taipei do not correct HiNet’s anticompetitive acts -- such as discriminatory peering fees against ISPs other than its own 'HiNet' brand -- they might be violating regulations such as the Reference Paper 2.2(a), which provides that conditions, standards and fees with regard to connection to major service providers shall be non-discriminatory and that quality be no less favorable than that for the same services provided by major service providers themselves, their subsidiaries, or joint-venture-partner service providers. In addition, HiNet may fall into the category of “major service providers” also in the lease line market, and, if so, the unreasonable rate system of lease lines might be incompatible with the Reference Paper.

<Recent Developments>

At the 40th Japan-Chinese Taipei Economic and Trade Conference, held in November 2015, Japan requested, in “Proposals for Competition Promotion Policy for Broadband Development in Chinese Taipei”, that Chinese Taipei provide a more reasonable competitive environment for ISPs, provide a more reasonable price for private peering, improve the connection quality of the Taiwan Internet Exchange (TWIX), and make the price of relay transmission lines more reasonable and liberal.

C.PROTECTION OF INTELLECTUAL PROPERTY

Chinese Taipei has repeatedly improved systems for intellectual property rights (IPR) protection through revision of laws. Recently, establishment of an intellectual property court, which would have jurisdiction over general intellectual property cases to resolve disputes in order to properly safeguard rights, was achieved in July 2008. The responsibilities of Internet service providers to promote copyright protection were made clear through the revision of the Copyright Law in May 2009. In addition, the revised Trademark Law (July 2012) and Patent Law (June 2013), which reflect proposals from Japanese entities, were enforced.

The WTO Agreements are not expressly violated by these revisions to the law, but matters requiring improvements still exist from the point of view of promoting trade liberalization in the IPR sector. Japan therefore expects further improvements in the legal system and its administration.

LIGHTENED AND NON-CRIMINAL PENALTIES ON INFRINGEMENT

*** This particular 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>

Although Chinese Taipei's Patent Law was amended in 1994, 1997 and 2001 with the intent of conforming it to the provisions of the TRIPS Agreement, criminal penalties for infringement of intellectual property rights have been gradually reduced during that time. In addition, the October 2001 amendment excluded patent infringement from the scope of penalties, and the January 2003 amendment excluded utility models and industrial designs from the scope of penalties. This situation has not improved even after the enforcement of the revised Patent Law in June 2013 (however, the revised Patent Law enforced in June 2013 re-introduced punitive damages, which had been introduced by the previous Patent Law).

<Concerns>

Restraining infringing acts through criminal penalties is an internationally-accepted system (including by Japan), and its abolition could significantly reduce the deterrent effect that punishment has on infringement. Although re-introduction of punitive damages, which would lead to increases deterrence of infringements, is considered effective, decriminalization also excluded police and other government officials from criminally investigating and initiating cases against infringement, and made civil relief measures the sole recourse for the rights holders. This reduces the effectiveness of these relief measures. This measure can therefore be considered inappropriate in light of the TRIPS Agreement, which aims to promote effective and sufficient IPR protection. It is desired that criminal penalties for infringement of patents, utility models and industrial designs be reinstated.