

CHAPTER 9

RUSSIAN FEDERATION

A. NATIONAL TREATMENT

1. INTRODUCTION OF RECYCLING FEE ON MOTOR VEHICLES

<Outline of the Measure>

While the Russian government reduced the import duty on automobiles on its accession to the WTO (August 22, 2012), in September 2012, it amended the “Federal Law on production and consumption waste” and introduced a transport vehicle “recycling fee”. The objective, they said, is to protect the environment by adequately handling waste disposal of transport vehicles.

Importers and Russian domestic manufacturers of vehicles (not only common vehicles but also electric vehicles, off-road dump trucks, and special purpose vehicles) are required to pay a transport vehicle recycling fee. The amount of the fee is calculated based on a coefficient determined on the basis of the basic tariff rate, type of vehicle, displacement, and the year of manufacture. According to this, used cars (vehicles that have exceeded three years since production) will have a higher coefficient than new cars.

Manufacturers will be exempt from the fee if they take on the obligation to safely dispose waste and (i) establish a collection point for vehicle disposal, (ii) ensure transfer from the collection point to the waste disposal site, (iii) employ personnel with waste disposal license, and (iv) publicize information related to the collection point for vehicle disposal at their own cost. However, requirements for exemption include corporations registered within Russia, and manufacturers that use frames, chassis, cabins, etc. produced within the customs union of Kazakhstan and Belarus for some vehicles types. Cars exported from members of the custom union (Kazakhstan and Belarus) are also exempted.

The Russian government adopted a revised Law concerning recycling fees in October 2013 and put it into effect in January 1, 2014. Under the revised Law, (1) the fee exemption system for Russian domestic producers, (2) the fee exemption system for vehicles imported from the customs union, and (3) the local content requirements for fee exemption were abolished, and discriminatory factors in favor of domestic products were basically corrected. However, the difference between the tariff rates on imported used cars and those on Russian domestic cars increased, and the situation that additional recycling fees are not imposed on Russian used cars if recycling fees were imposed on those cars when they were new cars was not corrected.

<Problems under International Rules>

The measure may violate the national treatment obligations of Article III: 2 of GATT, which stipulates non-discrimination between domestic and imported goods with respect to taxes and other charges such as fees, because only domestically-made vehicles can be exempted from the fee; imported cars are precluded from exemption. Also, exemptions for manufacturers who use frames, chassis, cabins, etc. produced within the customs union of Kazakhstan and Belarus for some vehicle types amounts to preferential treatment that may violate the MFN treatment obligation under Article I: 1 of GATT, because it inhibits the purchase of import goods from countries other than Kazakhstan and Belarus. These issues were basically corrected by the revised Law as described above.

On the other hand, the high rate imposed on used cars can be a de facto discrimination against countries that exclusively export cars raising suspicions of violations of MFN and national treatment obligations.

<Recent Developments>

Japan has been consistently expressing its concerns, including statements of the Japanese Minister of Economy, Trade and Industry given to the Russian Minister of Economic Development in June 2012 and that of the Japanese Minister of Economy, Trade and Industry to the Russian First Deputy Prime Minister at the APEC summit-level meeting in September of the same year. In addition, Japan, together with the United States and the EU, expressed their concerns at the WTO Council for Trade in Goods in November 2012. Furthermore, in parallel with the above-mentioned efforts, Japan continues to collect information and to make requests through the embassy, etc. In response to these, the Russian government expressed its intention to improve the system at the WTO Council for Trade in Goods meeting held in March 2013. In order to make the recycling fee system consistent with the WTO Agreements, the Russian government published a bill to revise the system in April 2013, but announced in June of the same year extension of the deliberation on the bill until fall. In response to this, the EU and Japan, respectively, requested WTO consultations in July of the same year. The EU held consultations with the Russian Federation in July and Japan in August (Japan and the EU attended the other's consultations as a third-country participant). The EU requested the establishment of a panel in October 2013, and the panel was established in November of the same year (Japan attended as a third-country participant).

As a result of these efforts, the Russian government accelerated deliberations on the revised Law. The revised Law went into effect on January 1, 2014, after being signed by the President on October 21, 2013, and detailed administrative regulations being decided. Japan needs to continue paying attention to enforcement/administrative status of the revised Law and relevant implementation regulations and to continue requesting administration consistent with the WTO Agreements as required.

2. THE COPYRIGHT LEVY FRAMEWORK FOR PRIVATE AUDIO/AUDIOVISUAL RECORDINGS

<Outline of the Measure>

In October 2010, Russia introduced a copyright levy framework for private audio/audiovisual recordings for the private replication royalty of copyrighted works. The levy on products related to private audio/audiovisual recordings is collected through contracts of the Russian Union of Right-Holders (RUR) with the manufacturers or importers and is then distributed to the copyright holders.

Products subject to levy are audiovisual equipment such as VCRs and televisions with recording-reproducing functions and IT related equipment such as telephones, PCs, flash memories. One percent of the sales price for domestically manufactured products and one percent of the price for imported products are imposed at customs as a levy on the private replication of copyrighted work.

However, equipment that originally do not have replication functions (DVD players, televisions, car audios, etc.) and equipment that are not used for private replication of copyrighted work (digital still cameras, home use video cameras, etc.) also are subject to levy in this framework. Moreover, targeted products differ for domestically manufactured products and imported products because domestic products are determined by a domestic industrial classification, the OKP code, whereas imported products are determined by the HS code (More targeted products for importers that comply with HS

codes).

<Problems under International Rules>

The disparity of targeted products between domestically manufactured products and imported products and the fact that more imported products are subject to levy than domestically manufactured products is disadvantageous for foreign manufactured goods; it constitutes discrimination that may be a violation to the national treatment obligation of Article III of GATT. In light of the objective of the copyright levy framework for private audio/audiovisual recordings stipulated in Article 1245 of the Civil Code of Russia, the fact that equipment are unnecessarily targeted is also a problem.

<Recent Developments>

In June 2012, the Japanese Ministry of Economy, Trade and Industry expressed concerns about the discrimination against targeted products to the Russian Minister of Economic Development. Russia claimed that the framework does not discriminate against foreign products. Japan requested detailed information. In the same month, requests for necessary improvements were sent to the Ministry of Economic Development through the Japanese Embassy in Russia. Japan will continue to put pressure on Russia for the improvement of such measures in bilateral consultations.

B. TARIFFS

VIOLATION OF BOUND TARIFF RATES ON REFRIGERATORS

<Outline of the Measure>

1. Large refrigerators with storage capacities exceeding 340 liters (L)

The WTO bound tariff rates for the Russian Federation are as follows:

At accession (Aug. 2012)	Sep. 2013	Sep. 2014	Sep. 2015	Sep. 2016	Sep/ 2017
20%	18.3%	16.7%	15%	13.6%	12%

2. Small refrigerators with storage capacities of 340L or less

The WTO bound tariff rates of the Russian Federation are as follows.

At accession (Aug. 2012)	Sep. 2013	Sep. 2014	Sep. 2015	Sep. 2016
20%	The lower of (i) 18.3% or (ii) 18%, but at least 0.198 euros/1L	The lower of (i) 16.7% or (ii) 16%, but at least 0.156 euros/1L	The lower of (i) 15% or (ii) 14%, but at least 0.114 euros/1L	12%

However, the applied tariff rates on large and small refrigerators in the Russian Federation at the time of its accession to the WTO were “20%, but at least 0.24 euros/1L”, and thus tariffs exceeding the bound tariff rates may be imposed depending on the prices and capacities of refrigerators. This resulted in overpayment by exporters (local subsidiaries of Japanese companies).

<Problems under International Rules>

Because the applied tariff rates in the Russian Federation are “20%, but at least 0.24 euros/1L”, tariffs exceeding the bound tariff rates may be imposed, depending on the prices and capacities of refrigerators. (For example, in the case of a refrigerator with a storage capacity of 400L, a tariff of 96 Euros, which

exceeds 94 Euros equivalent to the bound tariff rate of 20%, is imposed). This appears to be a violation of GATT Article II.

<Recent Developments>

The Japanese government raised the issue at the WTO Council for Trade in Goods meeting held in March 2013 and at the Meeting of the Co-chairs of the Trade and Investment Subcommittee of the Japan-Russia Intergovernmental Committee in Tokyo in April of the same year, etc., and at bilateral consultations with the Russian Federation in August between the Minister of Economy, Trade and Industry of Japan and the Russian Minister of Economic Development, the Japanese government requested early correction. As a result of the annual revision of the applied tariff rates in September 2014, at present the tariff rates on small refrigerators with storage capacities of 340L or less are set at “16%, but at least 0.156 euros/1L” and that of large refrigerators with storage capacities of more than 340L at “16.7%, but at least 0.13 euros/1L”. Through these revisions of the tariff rates, the amount of overpayment damage was significantly decreased, but violations of some of the bound tariff rates still remain. Japan will continue paying attention to this matter.

To correct the violations of the bound rates on products such as paper and vegetable oils, in addition to refrigerators, the EU requested consultations with the Russian Federation under DS procedures in November 2014, then requested establishment of a panel in February 2015. The panel was established in March of the same year. Japan, which participates in this panel procedure as a third party, will pay attention to the developments of the procedure.

C. EXPORT TAXES

TARIFF ON LOGS

*** 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>

In February 2007, the Russian government announced an increase in the export tariffs on logs as an additional measure to the new Russian Forest Code which came into effect in December 2006. Following this announcement, the tariff rate for conifer logs, exported to Japan in large quantity, were raised from 6.5% to 20% in July 2007. It was again raised to 25% in April 2008, with some indications of further increase.

In parallel with the tariff increase on logs, Russia lowered or eliminated the tariffs on wood products such as pulp and paper. This series of measures was implemented to develop the Russian domestic wood processing industry and to promote investments in the wood processing industry from overseas.

A large impact on the global wood market due to insufficient supply from Russia was feared from this measure, as (1) Russia was the world’s largest log exporting country at that time (holding 33% of the global log exports), (2) it may have the same effect as an export ban on logs if the final tariff rate of this measure is applied, and (3) sufficient investment for domestic wood-processing industry may not be achieved due to the tax increase in an extremely short term.

For this reason, since the introduction of this measure, countries importing Russian logs such as Japan, Sweden, Finland and the Baltic States have been expressing their concerns to Russia through various opportunities. As a result, further increase in tax rate was not implemented, with the tax rate maintained

at the higher amount of 25% or 15 euro/cubic meter).

Since Russia's accession to the WTO on August 22, 2012, export taxes imposed on Norway spruce, silver fir, and pinus sylvestris were partially changed. For instance, for exports not exceeding certain export quota levels, tax rates were reduced to 15% for pinus sylvestris and 13% for Norway spruce and silver fir; however, tax rate was increased to 80% (not to be below 55.2 euro/cubic meter) for those exceeding the export quotas.

<Concerns>

At the time the increase in export tax was announced, it was difficult to raise an issue regarding this measure based on international trade rules because Russia was not a member of the WTO and there were no clear provisions on export taxes in the WTO agreement.

After the accession of the Russian Federation to the WTO, taxes on exports not exceeding certain export quota levels were lowered, but taxes on exports exceeding the quota levels were significantly raised to rates determined by the Russian government on its own accord. This practically has the same effect as an export ban. In addition, annual export quotas are calculated and granted based on the export volumes of business operators for the past three years. Japan will therefore pay attention to whether or not fair and justified adjustments are made, and will also urge the Russian government to make improvements where necessary through multilateral and bilateral consultations, etc.

<Recent Developments>

The export taxes on Norway spruce, silver fir, and pinus sylvestris for exports not exceeding certain export quota levels were reduced upon Russia's accession to the WTO in August 2012. However, export taxes on spruce, Sakhalin fir, and larch, which have been exported to Japan in large volumes, remained at 25%.

COLUMN: RUSSIA'S ACCESSION TO THE WTO

1. BACKGROUND OF MEMBERSHIP NEGOTIATIONS

Russia's WTO membership negotiation process dates back to June 1993 when Russia requested accession to the GATT, the predecessor of WTO. An accession Working Party (WP) was established in the same year. Official WP meetings were held 30 times since the first WP was held in July 1995. Russia aimed for accession to the WTO before chairing the G-8 summit in July 2006, which failed.

Russia engaged in bilateral negotiations toward WTO accession with 61 interested member countries to obtain their approval. For major countries, agreements were achieved with the EU in May, with China in September, and with Republic of Korea in November 2004. After that, bilateral negotiations were completed with India, Taiwan, Chile, New Zealand, Canada, Switzerland and the United States. Agreement also was achieved with Georgia in November 2011, after experiencing the most difficulties of all bilateral negotiations.

The WTO Accession Working Party (WP), in which multilateral negotiations were conducted, was temporarily suspended, due to the outbreak of a military conflict between Russia and Georgia in August 2008, and Russia's declaration in June 2009 that it would form a customs union with Kazakhstan and Belarus and that the three countries would join the WTO as a customs union (the customs union itself effectuated in January 2010).

In May 2010, Russia officially announced the individual accession of the three member countries

instead of acceding as a customs union, and the examination work resumed, including the relationship with the customs union. Russia's accession was finally approved at the WTO Ministerial Conference held in December 2011. In July 2012, domestic ratification procedures for the accession protocol were completed and Russia officially became the 156th member country of the WTO on August 22, 2012.

2. OUTLINE OF MAJOR BILATERAL NEGOTIATIONS

(a) Japan-Russian Negotiations

The bilateral negotiation with Japan was largely focused on tariffs related to automobiles. Russia had been imposing 25% import duties on completed automobiles. In the accession negotiations Russia suggested increasing the tariff rate to 35% for the first year of accession, and then, reducing it to 15% in the seventh year. Japan and the EU demanded the tariff rate be reduced to 10%, but Russia, wanting to develop its domestic automobile industry, showed reluctance. The negotiation, in progress since 2004, accelerated with the substantial agreement achieved by the Japanese Minister of Economy, Trade and Industry and the Russian Minister of Economic Development at the APEC Ministers Meeting held in November 2004. It was finally agreed in February 2005 that Russia would reduce import duties on automobiles from 25% to 15% over seven years. The bilateral negotiation was substantially agreed upon at the 7th meeting of the Japan-Russia Intergovernmental Committee on Trade and Economy held in April 2005 in Tokyo by both chairs; the Japanese Foreign Minister and the Russian Minister of Energy and Industry. Later on, the agreement was adjusted at a working level and officially signed in the presence of leaders of both countries when the President of Russia came to Japan in November.

(b) US-Russian Negotiations

In the bilateral negotiations with the United States, sanitary conditions related to importing American beef and the protection of intellectual property rights (especially, provisions on copyrights and trademarks) were discussed. USTR announced that both sides had basically reached an agreement on November 10, 2006. During the US-Russia presidential meeting at the APEC Economic Leader's Meeting held on November 15, 2006, the USTR Ambassador and the Russian Minister of Economic Development and Trade signed the agreement. As for IPR protection, a side letter was exchanged to ensure the restraint on IPR infringement, because although Russia developed legislation concerning the intellectual property rights for the consistency with the TRIPS Agreement, the United States still had concerns over IPR infringements by copies of movies and software and the enforcement regarding pirated DVD sales in Russia. The letter stated that the Russian federal government will ensure the consistency of changes made to any domestic laws and regulations adopted prior to the accession to the WTO with the provisions set out in the TRIPS Agreement. Additionally, as a result of the United States' request to Russia for effective control over IPR infringement, the Russian government expressed in the accession protocol its willingness for continuous reinforcement of the control over infringing goods.

(c) EU-Russia Negotiations

Russia, through a state-owned corporation (Gazprom), sets a significantly low price for domestically consumed natural gas in comparison to the production cost and government intervention also has been a problem. Member countries such as the EU and the United States were concerned that the unjustly low domestic price compared to the export price and international market price could result in an indirect subsidy for the downstream industries. Also, they indicated that sales of natural gas by a state-owned corporation does not comply with general commercial considerations, and the unjustly low-price export may result in imposition of anti-dumping (AD) or countervailing duties (CVD). After the summit held in March 2004, bilateral agreement was finally achieved at the EU-Russia summit held in Moscow on May 21 of the same year. Regarding the issue on the dual pricing of energy, both countries agreed to Russia's gradual increase in gas price for domestic industries.

3. MAJOR COMMITMENTS ACCOMPANYING RUSSIA'S ACCESSION

(a) Market Access for Goods

The average bound rate for all items was reduced from 10.0% in 2011 (applied tariff rate) to 7.8%. For overall industrial products (7,955 products), the bound rate was reduced to 6.8% from 10%. For major items exported from Japan, the bound rate for automobiles, which was 30 or 35% prior to accession, was reduced to 25% at the time of accession and will be further reduced to 15% in seven years post-accession. Regarding mobile phones and IT products, the bound rate will be reduced from the existing 10% to 0% in three years post-accession (Russia has participated in the Information Technology Agreement (ITA) after its WTO accession).

(b) Market Access for Services

Out of 155 service sectors in the WTO categories, commitment is made to encourage liberalization or not to strengthen the existing regulations on service markets of 116 fields. For example, 100% foreign investment will be approved in wholesale, retail and franchise for the distribution service upon accession, and the establishment of foreign insurance company branches will be approved nine years post-accession for the financial services. Also, the establishment of local subsidiaries and representative offices of foreign banks will be approved for banking and securities businesses. However, the foreign capital ratio in the Russian financial system as a whole will be limited to 50%, whereas no limits will be set for each domestic bank. In addition, in the telecommunications sector, restrictions on foreign investment (49% at the time of accession) will be eliminated four years after accession. Other than the above, Russia also made a commitment to liberalize road/marine transport services to a certain extent.

(c) Intellectual Property Rights

Russia committed to applying all the provisions of the TRIPS Agreement without a transition period and guaranteed to control and regulate operation of websites that illegally distribute copyrighted contents.

(d) Trade-related Investment Measures

Trade-related investment measures (preferential treatment on automobile) that do not comply with the WTO rules of the TRIMs Agreement will be eliminated by July 1, 2018. Russia guarantees the compliance of all other trade-related investment measures with WTO provisions from the day of accession.

(e) Export Tax

Upper limits were set for over 700 items including mineral fuel, oil, and base metals. Russia also committed to apply the export tax in accordance with the WTO Agreement such as the MFN principle.

(f) Government Procurement

Russia will become a GPA (Agreement on Government Procurement) observer upon accession and will start accession negotiations within four years (as of February 2014, accession negotiations have not commenced).

(g) Energy

Regarding the dual pricing of natural gas, the Russian natural gas producers and distributors have guaranteed management in accordance with general commercial considerations based on cost and profit.