

# CHAPTER 12

## BRAZIL

### A. NATIONAL TREATMENT

#### *BRAZIL'S MEASURES CONCERNING DISCRIMINATORY TAXATION AND CHARGES FOR AUTOMOBILES, ETC.*

##### <Outline of the Measure>

In September 2011, the Brazilian government announced that 30% would be added to the existing IPI (Imposto sobre Produtos Industrializados) tax on domestic and imported automobiles, in order to protect the domestic industry. This system went into force in December 2011.

Automobiles that are manufactured in Brazil, Mercosur and Mexico, and those that meet certain requirements, can be exempt from this additional tax. In order to qualify for the exemption, those manufacturers must meet the following requirements and become certified enterprises:

- 1) to purchase 65% or more of supplies sourced from within Mercosur
- 2) to conduct more than 6 out of 11 production processes, such as assembly and press, in Brazil
- 3) to invest 0.5% of gross sales (gross income after tax deduction of the entire company) into research and development (R&D)

This system was set as a tentative measure, to expire in December 2012, but in October 2012, the Brazilian government announced a new automobile policy (the Inovar-Auto Policy) to replace the system. The new system maintains the increase of IPI on automobiles by 30% for five years from 2013 to 2017 and reduces IPI by up to 30% under certain conditions. In order to participate in the Inovar-Auto Policy, companies need to be accredited by satisfying requirements including : (1) achieving the prescribed fuel efficiency standards by 2017 (fuel efficiency of new cars in 2017 would be reduced by 12% compared to that in 2012), and participating in the vehicle labelling program; (2) investing a certain amount in domestic research and development, innovation, or engineering etc.; and (3) carrying out certain manufacturing processes such as assembly and pressing in Brazil (replacing “more than 6 out of 11 production processes” in (2) above with “8 out of 12 production processes by 2013 and 10 by 2017”). Accredited companies are granted IPI credits that can be used for IPI reduction according to the amount of purchases of domestic parts and tools and other expenditures in Brazil (details of conditions and tax incentives differ depending on the status of corporate activities ((1) domestic manufacturer, (2) import and sales corporate, (3) corporate with investment plans)). Also, a 30% IPI reduction is applied to imports of automobiles from Mercosur and Mexico by accredited companies.

Not only in the field of automobiles, but also in other fields including information and communications, Brazil has introduced measures for drastic reductions or exemptions from indirect taxes on products based on such requirements as carrying out the production process called “basic production process” (PPB) (manufacturing of certain parts and assembly of final products) in Brazil. As a result, there are differences in the effective tax rates applied to imported products and domestic products.

**<Problems under International Rules>**

This measure recognizes drastic reductions or exemptions from indirect taxes only on products manufactured in Brazil and certain other countries, and provides an incentive for companies manufacturing automobiles, etc. in Brazil to preferentially use domestic parts over imported parts in order to benefit from tax reductions or exemptions. It treats imported parts unfavourably. Moreover, the Inovar-Auto Policy automatically applies a tax reduction only to automobiles manufactured in Mercosur or Mexico. Therefore, it causes discriminatory treatment not only between domestically manufactured vehicles and imported vehicles manufactured outside Mercosur or Mexico, but also between imported vehicles manufactured outside Mercosur or Mexico and those manufactured within Mercosur and Mexico.

This may be a violation of GATT Article I (general most-favoured nation treatment) Article III (national treatment on internal taxation and regulations), TRIMs Article 2 (national treatment and quantitative restrictions) and WTO Agreement on Subsidies Article 3.1 (b).

**<Recent Developments>**

The Minister of Economy, Trade and Industry pointed out to the Brazilian Minister of Development, Commerce and Industry the possible infringement of WTO rules in May and November 2012, respectively. METI's Vice-Minister for International Affairs expressed concerns and requested cooperation including provision of information at the 6<sup>th</sup> meeting of the Japan-Brazil Joint Committee on Promoting Trade and Investment in November 2012 and the 1st and 2nd meetings in October 2013 and September 2014, respectively, of the Japan-Brazil Joint Committee on Promoting Trade, Investment and Industrial Cooperation. Also, at the meetings of the WTO Council for Trade in Goods and the TRIMs Committee held since November 2012, Japan has repeatedly expressed concerns together with the United States, EU, and Australia. However, there has been no action to improve this policy. Furthermore, there has been an effort to expand preferential taxation measures that are linked to local content requirements to a wide range of sectors, including telecommunications network devices and chemicals (fertilizers). The EU therefore requested WTO consultations with Brazil in January 2014, and requested the establishment of a panel in October of the same year (not only regarding the automobile policy but also the preferential taxation measures in the information and communications technology sector). The panel was established in December of the same year (Japan participates in the panel process as a third party). In July 2015, Japan also requested WTO consultations with Brazil, and requested the establishment of a panel in September of the same year. The panel was established in the same month (The EU's preceding panel proceedings and Japan's panel proceedings were consolidated).

Japan will take action, together with the EU, to ensure that this case will be appropriately processed according to the WTO Agreement in the dispute settlement proceedings and will continue to pay attention to Brazil's response to this measure while making necessary responses to such responses.

## **B. INTELLECTUAL PROPERTY**

### ***REGULATIONS ON PATENT, KNOW-HOW AND LICENSES***

**<Outline of the Measure>**

After receiving contract examinations by the National Institute of Industrial Property (hereafter referred to as "INPI"=Instituto Nacional da Propriedade Industrial), which is equivalent to the Patent

Office of Japan, registering at INPI is required<sup>1</sup> in order to obtain royalty-bearing technical licenses. Royalty periods based on the contracts to provide patents/know-how in general are accepted for up to five years at the discretion of INPI. With licensees' agreement, royalty periods may be extended, but for no longer than 10 years.

### <Problems under International Rules>

A number of companies who need to register in order to transfer funds overseas as payments of royalty are foreign companies. A lack of regulation allows for arbitrary royalties or terms of confidentiality agreements. Due to the existence of such a registration system mainly targeting foreign companies, and to INPI ordering the maximum amount of royalty and the terms of confidentiality agreements, unfair restrictions may be imposed on foreign entities and they may be treated unfavourably compared to Brazilian nationals. The unreasonable nature of this treatment and the disadvantage of the current operations require thorough evaluation as this may be inconsistent with TRIPS Agreement Article III (1) national treatment if the regulation is unreasonable or excessively burdensome.

### <Recent Developments>

In February 2009, since the 1<sup>st</sup> Japan-Brazil Joint Committee on the Promotion of Trade and Investment, until the 6<sup>th</sup> Committee of November 2012, Japan has been continually requesting improvements regarding royalty remittance and duration of confidentiality obligations. During this period, it was confirmed that INPI is authorized to register a Technology Transfer Contract that contains a provision that obliges the transferee in Brazil to keep confidential for a period longer than ten years, etc. Subsequently, it was decided to hold meetings under the name of the Japan-Brazil Joint Committee on Promoting Trade, Investment and Industrial Cooperation, and to include the topic of industrial cooperation. At the 1st Committee meeting held in October 2013, it was decided to eliminate the period of overseas technology transfer contracts; cover licenses for know-how on operation techniques, etc.; for the transfer pricing taxation system, clarify the criteria for calculating the tariff rates on each product, etc.; and establish places for specialized discussions regarding the respective issues. Later, Japan requested improvements also at the 2nd Committee meeting held in September 2014.

Moreover, at a meeting of the Japan-Brazil-Joint Committee for Promoting on Trade, Investments and Industrial Cooperation held in February 2016, Japan again requested that Brazil make improvements on the current operation of systems for overseas technology transfer contracts, and it was agreed that the two countries will continue to hold consultations on the matter.

It is important for Japan to continue to encourage Brazil to make improvements through such bilateral consultations, etc.

---

1 On December 1, 2015, INPI published a resolution (No. 156), which exempted from registration certain types of contracts on scientific and technical assistance services.