

CHAPTER 5

TARIFFS

A. OVERVIEW OF RULES

1. BACKGROUND OF RULES

Tariffs are the most common kind of barrier to trade; indeed, one purpose of the WTO is to enable members to negotiate mutual tariff reductions. Before we consider the legal framework that disciplines tariffs, we must understand the definition of tariffs, their functions and their component elements (rates, classification, and valuation).

1) DEFINITION OF “TARIFF”

Strictly defined, a tariff is a tax imposed on imported or exported goods.¹ In general parlance, however, it has come to mean “import duties” charged at the time goods are imported.²

2) FUNCTIONS OF TARIFFS

Tariffs have three primary functions: (1) to serve as a source of revenue; (2) to protect domestic industries; and (3) to remedy trade distortions (as a sanction).

The revenue function simply means that the income from tariffs provides governments with a source of tax revenue. In the past, the revenue function was indeed a major reason for applying tariffs, but economic development and the creation of systematic domestic tax codes have reduced its importance in developed members. For example, Japan generates about 1.07 trillion yen in tariff revenue per year, which represents approximately 2.0 percent of total tax revenue (based on Fiscal Year 2015). In some developing members, however, revenue generation may still be an important function of tariffs.

Tariffs are also a policy tool used to protect domestic industries by changing the competitive conditions, placing otherwise competitive imports at a commercial disadvantage. In fact, a cursory examination of the tariff rates employed by different members suggests that they reflect, to a considerable extent, the state of competitiveness of domestic industries. In some cases, “tariff quotas” are used to strike a balance between market access and protecting the domestic industry. Tariff quotas work by assigning low or no duties (in-quota duties) to imports up to a certain volume and then higher rates (out-of-quota duties) are applied to imports that exceed the initial volume.

Although the WTO generally bans the use of quantitative restrictions as a means of protecting

¹ With regard to the scope of general MFN treatment, GATT Article I prescribes that MFN treatment includes “customs duties and charges of any kind imposed on or in connection with importation or exportation ...” It thus deals with not only tariffs on importation but also those on exportation.

² In Article 3 of Japan’s Customs Tariff Law, a tariff is defined as follows -- “Customs duty shall be imposed on imported goods on the basis of the value or quantity thereof taken as the basis for custom valuation,”; the Law explicitly limits tariffs to importation.

domestic industries, it permits the use of tariffs for this purpose.³ The reason for this is due to an understanding that tariffs are more favorable methods to protect domestic industries than quantitative restrictions. (See “3. Economic Aspects and Significance” below.)

Tariffs as sanctions may be used to remedy trade distortions resulting from practices of companies or members found to injure the domestic industry. For example, the Antidumping Agreement allows members to use “antidumping duties” to remedy proven cases of injurious dumping; similarly, the Subsidies Agreement allows members to impose countervailing duties when an exporting member provides its manufacturers with subsidies that, while not specifically banned, nonetheless injure the domestic industry of an importing member. (See Chapters 6 and 7 for further discussion.)

3) TARIFF RATES

Obviously, one of the most important components of a tariff measure is the rate of the tariff. As noted in the tariff function discussion, above, additional tariffs can reduce the welfare of the world economy as a whole. Since 1947, the GATT has been the standard bearer in an on-going process of reducing tariff levels. During tariff negotiations (known as “rounds”, including the “Uruguay Round”, which finished in 1994), members set ceilings on their tariff rates for individual products and/or sectors. This is known as the “bound rate” and refers to the highest allowable rate a member may impose on imports of a specific product; the rate that is actually applied is referred to as the “applied rate.” The GATT has been successful in encouraging mutual reduction of these rates.

The Uruguay Round resulted in a final average bound rate for industrial goods (weighted average by trade volume) of 1.5 percent for Japan, 3.5 percent for the United States, 3.6 percent for the EU, and 4.8 percent for Canada. Japanese tariff rates are therefore comparatively low. In addition, since the conclusion of the Uruguay Round, there have been further efforts to reduce tariffs in specific sectors *i.e.*, Information Technology Agreement (ITA) and Duty-Free Treatment for Specified Pharmaceuticals. Figure 4-1, below, provides a detailed comparison of average bound rates under the Uruguay Round for major trading partners.

On the other hand, there are some items in the agricultural sector, for example, the tariffs of which are maintained so high that they are called “tariff peaks”; examples include peanuts in the United States, bananas in the EU, butter in Canada and manioc in Republic of Korea.

Figure II-5-1 Changes of Average Bound Tariff Rates (Non-agricultural Products)

		Japan	US	EU	Republic of Korea	Australia	Indonesia	Thailand	Canada	Malaysia	Philippines	India
Average Bound Tariff Rate (%)	Pre UR	3.8	5.4	5.7	18.0	20.0	20.4	37.3	9.0	10.2	23.9	72.2
	Post UR	1.5	3.5	3.6	8.3	12.2	36.9	28.0	4.8	9.1	24.6	32.4
Binding ratio (%)	Pre UR	98	99	100	24	36	30	12	100	2	9	12
	Post UR	100	100	100	89	96	92	70	100	79	66	68

³ GATT Article XI prescribes that “No prohibitions or restrictions other than duties, taxes or other charges ... shall be instituted or maintained by any Member”. Article XI, therefore, clearly bans quantitative restrictions while leaving the door open for tariffs.

Notes:

1. Japanese figures are based on Ministry of Economy, Trade and Industry calculations (excluding petroleum and forestry and fishery products). Average bound tariff rates for industrial sectors including forestry and fishery products are 1.7 percent.
2. GATT Secretariat calculations (excluding petroleum) are used for other members.
3. Average bound tariff rates are based on a trade-weighted average. The average bound tariff rate is calculated as the sum over each tariff line of import value multiplied by the bound rate, divided by the total import value of bound tariff lines multiplied by 100.
4. Scope of bindings rates is the trade-weighted average. Binding ratio equals total import value of bound tariff line divided by total import value.
5. "Pre UR" and "Post UR" refer to tariffs before and after implementation of Uruguay Round commitments.

Figure II-5-2 Tariff rates of major Members

Names of countries and regions	Simple average bound rate (%)		Simple average applied rate (%)		Binding ratio (%)	
	Non-agricultural products	All products	Non-agricultural products	All products	Non-agricultural products	All products
Hong Kong	0.0	0.0	0.0	0.0	37.7	45.9
Japan	2.5	4.6	2.5	4.2	99.6	99.7
USA	3.3	3.5	3.2	3.5	100.0	100.0
EU	3.9	5.0	4.2	5.3	100.0	100.0
Chinese, Taipei	4.7	6.4	4.8	6.5	100.0	100.0
Canada	5.3	6.7	2.2	4.2	99.7	99.7
Singapore	6.5	9.7	0.0	0.2	65.0	69.6
Russia	7.1	7.6	7.9	8.4	100	100
China	9.2	10.0	8.6	9.6	100.0	100.0
Republic of Korea	10.2	16.6	6.8	13.3	93.8	94.6
Viet Nam	10.4	11.5	8.4	9.5	100	100
New Zealand	10.9	10.3	2.2	2.0	100	100
Australia	11.0	9.9	3.0	2.7	96.6	97.0
Malaysia	14.9	22.2	5.5	6.1	81.9	84.3
South Africa	15.7	19.0	7.4	7.6	95.5	96.1
Philippines	23.4	25.7	5.7	6.3	61.9	66.9
Chile	25.0	25.1	6.0	6.0	100.0	100.0
Thailand	25.5	27.8	8.3	11.6	71.3	75.0
Brazil	30.8	31.4	14.1	13.5	100.0	100.0
Argentine	31.7	31.8	14.2	13.6	100.0	100.0
India	34.5	48.5	10.2	13.5	70.5	74.4

Names of countries and regions	Simple average bound rate (%)		Simple average applied rate (%)		Binding ratio (%)	
	Non-agricultural products	All products	Non-agricultural products	All products	Non-agricultural products	All products
Mexico	34.8	36.1	5.9	7.5	100.0	100.0
Indonesia	35.6	37.1	6.7	6.9	95.8	96.3
Jamaica	42.5	49.6	6.7	8.5	100.0	100.0
Kenya	57.0	95.1	11.5	12.8	2.0	14.8
Lesotho	60.1	78.3	7.4	7.6	100.0	100.0

Source: World Tariff Profiles 2015

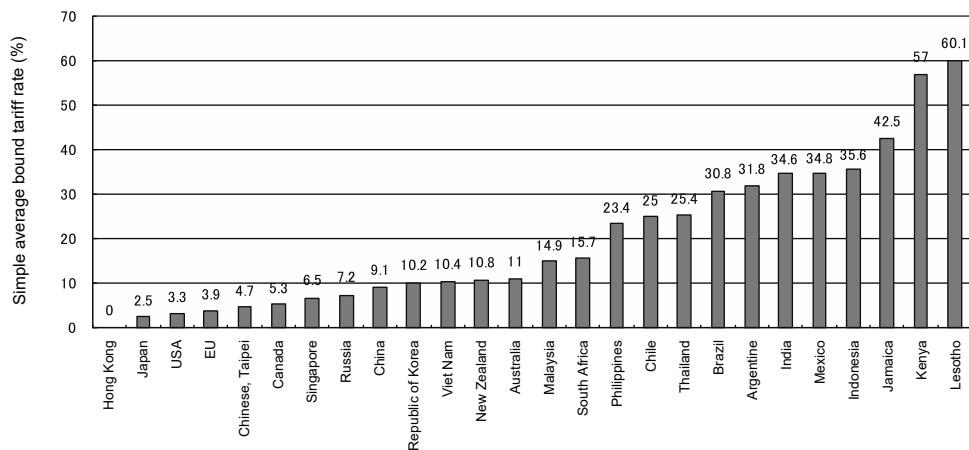
Note: 1. Figures are defined at the tariff line level.

2. Non-agricultural products are products other than those subject to the Agreement on Agriculture and include forest and fishery products.

3. The simple average applied rate of some countries exceeds the simple average bound rate because the number of items used to calculate the simple average applied rate and the simple average bound rate are different. The figures do not necessarily indicate that the countries actually apply tariffs that exceed the bound rates.

4. The bound rate 100.0 is 100% when rounded off to the first decimal place, and therefore 100 means that there are no unbound items.

Figure II-5- 3 Simple average bound tariff rate of non-agricultural products



Prepared by the Ministry of Economy, Trade and Industry based on the data of World Tariff Profiles 2015

4) TARIFF CLASSIFICATION

Like tariff rates, tariff classification represents a basic component of the tariff system. The tariff schedule, which is the standard of each member’s tariff system, consists of the tariff classification numbers assigned to each product and the tariff rates applicable to each of those products. The fair administration of this process is critical for proper application of tariff rates. For example, by intentionally classifying a certain product under a classification number with a higher tariff rate, tariff reduction negotiations become practically ineffective. Therefore, tariff classification is

extremely significant for administering tariffs.

The GATT contains no rules regarding tariff classification. In the past, members maintained their own systems. As trade expanded, however, members recognized the need for a more uniform classification system, which resulted in the “Harmonized Commodity Description and Coding System” or “HS” system under the auspices of the Customs Co-operation Council (CCC; now known as the “World Customs Organization” or “WCO”). The HS was implemented on January 1, 1988, by the international HS Convention. As of July 2015, 180 members and regions around the world, including Japan, the United States, and the EU are Contracting Parties to the Convention. Members of the HS Convention must harmonize the lists of items included in their tariff and statistical tables with the list of items found in the annex to the Convention (6 digits). The tariff schedules and the export/import statistical tables attached to Japan’s Customs Tariff Law and Temporary Tariff Measures Law conform to the Harmonized System.

Although the HS nomenclature is created to reflect the current state of international trade, technological advances continue to bring out new products and change the nature of international trade. The Harmonized System has been revised five times since 1988 (in 1992, 1996, 2002, 2007 and 2012) to accommodate these changes. In June 2009, parties to the General Meeting of the WCO agreed to add and modify some headings and sub-headings concerning environmental protections, etc. as part of the 2012 HS nomenclature revision. (The new HS nomenclature was approved by the WCO Council in June 2009 and took effect in January 2012.)

5) CUSTOMS VALUATION

The final component of tariffs is the valuation of goods for tariff purposes. If members assign arbitrary values for tariff purposes, they render tariff rates meaningless. GATT Article VII and the “Agreement on Implementation of Article VII” (Customs Valuation Agreement) define international rules for valuation.⁴

2. LEGAL FRAMEWORK

The WTO bans, in principle, all quantitative restrictions, but allows the imposition of tariffs. It then attempts to reduce the barrier posed by tariffs through tariff negotiations among Members, whereby they agree to bind themselves to maximum rates inscribed in their tariff schedules (“bound rates”) for individual items (generally following the tariff classification nomenclature) and negotiate their progressive reduction.

1) GATT DISCIPLINES

GATT Article II obligates members to apply tariff rates that are no higher than their bound rates. GATT Article XXVIII specifies that when Members wish to raise their bound rates or to withdraw tariff concessions, they must negotiate and reach agreements with the Members with whom they had initially negotiated. In addition, they must enter into consultations with major supplying members that have a substantial interest in any change in the bound rate.

⁴ The Customs Valuation Agreement states that, “the primary basis for customs value under this Agreement is ‘transaction value’ as defined in Article 1...together with Article 8...adjustments.” This is an explicit affirmation that the price actually paid is to be used as the basis for customs valuation. Article 2 of the Agreement provides for the transaction prices of similar goods to be used in exceptional cases. In addition, Article 7 of the Agreement bans certain determinations of customs value (*e.g.*, the selling prices in the member of importation of goods produced in such member and minimum customs values).

2) DISCIPLINES ON TARIFF CLASSIFICATION

Article 3.1 of the International Convention on the HS stipulates that the signatories “shall not modify the scope of the sections, chapters, headings, or subheadings of the Harmonized System.” This language ensures uniform administration of the HS. However, the HS Committee regularly reviews classifications in order to keep pace with technological development. The principle is that revisions of classification should not affect tariff bindings. If the classification of a good changes in such a way as to raise its bound rate, members must enter into negotiations under the terms of GATT Article XXVIII.

3) THE IMPORTANCE OF “BINDING”

It should be obvious from the discussion so far that WTO rules do not preclude Members from setting high bound rates or not binding some items. The WTO rules therefore allow Members to raise their applied tariff rates up to the level of their bound rates and to raise tariff rates at will for unbound items. However, even if the rules allow such measures, sudden raises in tariffs will undoubtedly and inevitably cause adverse effects on trade.

Moreover, non-binding tariff rates are also contrary to the spirit of the WTO, which is based on the idea of using “binding” to reduce tariffs. Thus, the importance of binding cannot be overemphasized. As a result of the Uruguay Round, binding coverage (total number of bound tariff products/total number of products, %) of Japan, the United States, the EU, and Canada is now about 100 percent. The percentage of other members and regions is somewhat lower, and in some cases substantially lower. For example: the Republic of Korea at 93.8 percent, Indonesia at 95.8 percent, Thailand at 71.3 percent, Malaysia at 81.9 percent, Singapore at 65.0 percent, and Hong Kong, China at 37.7 percent (Source: World Tariff Profiles 2015, WTO Secretariat).

When making concessions, Members should coordinate bound tariff rates and applied tariff rates wherever possible in order to improve predictability. The general practice among developing members, however, is to maintain a large disparity between bound and applied tariff rates. This practice allows a member to raise tariff rates at will up to the level of the bound rates. In terms of predictability, this poses a problem. The practice of binding tariff rates at such higher levels over the applied tariff rates must be corrected. Developed members seldom engage in this practice.

3. ECONOMIC ASPECTS AND SIGNIFICANCE

This section analyses some of the basic economic issues associated with tariffs. Specifically, it examines why tariffs are preferable to quantitative restrictions and why it is desirable that they be reduced. This section then considers the importance of international tariff-reduction negotiations under the WTO.

1) THE EFFECT OF TARIFFS

The most basic effect of an import tariff is to raise domestic prices in the country imposing the tariff. In “small countries” (defined for our purposes as members that do not have an influence on world prices), the domestic prices will rise in equivalent to the amount of the tariff. In “large countries” (those that have an impact on world prices), the price increase is somewhat less than the amount of the tariff because the tariff will reduce demand, which reduces world prices.

The rise in domestic prices of the imported goods expands domestic production while at the same time, decreasing demand. Tariffs benefit competing domestic producers, but harm consumers.

Obviously, the importing Member also generates tax revenues from the tariff.

Tariffs have different benefits and costs to different groups within an economy; the relative sizes of these benefits and costs create changes in the economic welfare of the importing Member as a whole. For “small members” with no influence on world prices, the imposition of a tariff necessarily reduces economic welfare, while for “large members” a tariff can improve economic welfare because world prices are depressed, improving the terms of trade. If tariffs are sufficiently low, the improvement in terms of trade will always be greater than the costs of the tariff; there exists in theory an “optimal tariff” that will maximize economic welfare. However, an improvement in one Member’s terms of trade corresponds to a deterioration in the terms of trade of other Members and, therefore, a reduction in the economic welfare of trading partners. This may cause frustration among the trading partners.

When goods are produced using imported raw materials, the tariff rate on the finished goods by itself does not generally constitute the level of protection that the finished goods enjoy. Tariffs on the raw materials must also be considered in terms of overall trade. If the tariff on the raw materials is lower than the tariff on the finished product, the level of protection afforded the finished product is higher than the tariff rate on the finished product would suggest (protection rates that take account of tariffs on raw materials are called “effective protection rates”). It should be underscored, therefore, that even low tariff rates can provide full-fledged protection for domestic industries.

2) THE EFFECT OF QUANTITATIVE RESTRICTIONS (SEE CHAPTER 3 “QUANTITATIVE RESTRICTIONS”, PART II)

Quantitative restrictions take many forms, the most common being import quotas. Theoretically, the effect of quantitative restrictions is the same as that of import tariffs, *i.e.*, a reduction of the amount of goods imported and higher domestic prices for those goods (the “equivalence theorem”).

Quotas differ from tariffs because the importing Member’s government gains no revenue from quotas while the importers to whom the licenses are allocated obtain excessive profits (“rents”). (However, the importing Member government could obtain the same revenues as from tariffs if licenses were sold to importers by auction.)

It is generally understood that the “equivalence theorem” does not hold when the domestic market is not under perfect competition (*e.g.*, in the case of a monopoly), when the market is growing, or when there are changes in the price of the merchandise. In these cases, quantitative restrictions will usually have a more restrictive effect on the market than will tariffs.

3) WHY TARIFFS ARE PREFERABLE TO QUANTITATIVE RESTRICTIONS

As we have noted, the WTO Agreement generally bans all quantitative restrictions, but permits tariffs to be used to protect domestic industries. There are several reasons for this. Quantitative restrictions tend to lack transparency in their application (for example, decisions on license awards and their quantities may be arbitrary) compared to tariffs. Similarly, quantitative restrictions impose flat restrictions on imports regardless of changes in world prices and foreign-exchange rates. There is also no guarantee that import quota allocation will be fair. Finally, where tariffs are used, exporters can export by improving their efficiency.

4) JUSTIFICATIONS FOR TARIFF REDUCTIONS

The WTO Agreement permits tariffs as a means of industrial protection (unlike quantitative

restrictions, which are generally banned), but also seeks to gradually reduce those tariffs through negotiations among members.

Reducing tariffs mitigates the “loss of efficiency” generated by the distortions to the price system that the tariff causes (the “dead weight loss”). Reducing the degree of market protection also expands the market, allowing producers and exporting members to enjoy economies of scale, bringing benefits to the economy as a whole.

There are also arguments against reducing tariffs. Tariffs have certain benefits because they improve the terms of trade for “large countries” (the “optimal tariffs” argument). Similarly, when there are domestic market failures, tariffs might be seen as a means of increasing welfare.

However, these arguments are not necessarily convincing. Any increase in welfare through an “optimal tariff” is achieved at the expense of trading partners and reduces worldwide economic welfare relative to potential results in a free trade context. Even the economic welfare of the Member imposing the tariff is uncertain because retaliatory measures imposed by trading partners may ultimately result in reduced economic welfare. Thus, domestic market failures would be better addressed directly of domestic measures than through border measures such as tariffs.

5) INCOME REDISTRIBUTION AND THE IMPORTANCE OF INTERNATIONAL NEGOTIATIONS

From an economic standpoint, it would seem reasonable to conclude that tariff reductions are basically beneficial because they increase economic efficiency and are therefore indisputably desirable. It is rare, however, for Members to eliminate their tariffs completely. In practice, Members often impose tariffs not to increase overall welfare, but to redistribute income. This is a reflection of political will, as influenced by the lobbying activities of interest groups and others.

When tariffs are imposed for politically motivated reasons, it is difficult to achieve voluntary reductions merely because they will increase the economic welfare of the society as a whole. This domestic political reality is what makes international negotiations to reduce tariffs — the basic strategy of the WTO — so important. When international negotiations are conditional upon mutual benefits, governments are more likely to consent to tariff reductions and trade liberalization.

4. PREFERENTIAL TREATMENT FOR LDCS

During the Lyon Summit of June 1996, the Director-General of the WTO advocated a tariff waiver program for least-developed members (LDCs). Subsequent Summits have also advanced declarations calling for studies on ways to improve LDCs' access to markets.

With these backgrounds, an initiative to provide duty-free and quota-free treatment to essentially all products from LDCs was proposed during the third WTO Ministerial Conference in December 1999 in Seattle. Unfortunately, an agreement could not be reached at that time.

In February 2000, the Director-General of the WTO again proposed this initiative as a confidence-building measure for developing members in preparation for the launch of the new round of negotiations. At a United Nations Conference on Trade and Development (UNCTAD) meeting in February 2000, then Japanese Prime Minister Keizo Obuchi declared his intention to promote the LDCs initiative and encourage the participation of other major members. By the end of March of that year, Japan, the EU, the United States and Canada reached an agreement that developed Members would provide least-developed Members with enhanced market access by according and implementing duty-free and quota-free treatment consistent with domestic

requirements and international agreements for all essentially products originating in LDCs.

After this agreement, the initiative was formally announced by Director-General Moore at the WTO General Council in May 2000. At that time, Chile, the Czech Republic, Hungary, Iceland, the Republic of Korea, New Zealand, Norway, Slovenia and Switzerland expressed their intention to join.

The Chairman's statement in June 2000 APEC Ministerial Meeting also urged the participation of more APEC member economies in this LDC initiative. It was since then confirmed that Hong Kong, Australia and Singapore would join.

In May 2001, the Brussels Declaration issued by the Third United Nations Conference on LDCs noted that UN members "aim at improving preferential market access for LDCs by working towards the objective of duty-free and quota-free market access for all LDCs' products in the markets of developed members," and a Programme of Action for LDCs was also adopted. The same course was reaffirmed in the G8 Communiqué issued by the Genoa Summit in July of the same year and in the 2001 Doha WTO Ministerial Declaration. The Brussels Declaration was also reaffirmed in: (i) the G8 Africa Action Plan adopted at the Kananaskis Summit held in Canada at the end of June 2002; (ii) the Plan of Implementation adopted at the WSSD (World Summit on the Sustainable Development) in South Africa at the end of August 2002; (iii) the Cooperative G8 Action on Trade committed at the Evian Summit in France in June 2003; and (iv) the G8 Official Document on Trade committed at the Gleneagles Summit in UK in July 2005.

In Japan, the Council on Customs, Tariff Foreign Exchange and Other Transactions submitted a recommendation in December 2002 on the revision of customs duties for Fiscal Year 2003. For the GSP scheme (Generalized System of Preferences), in particular, Japan, recognizing the discussions in the UN LDC Conference and in various summits, has substantially expanded duty-free treatment of agricultural products for LDCs (adding 198 agricultural items to the duty-free and quota-free list).

In December 2005 the Council on Customs, Tariff and Foreign Exchange and Other Transactions submitted a recommendation that East Timor, Djibouti, and Comoros be added to Japan's LDC preference system after Fiscal Year 2006.

Before the WTO Ministerial Conference in Hong Kong, Japanese Prime Minister Junichiro Koizumi introduced "Japan's Development Initiative" which included duty-free and quota-free market access for essentially all products from all LDCs, as well as certain capacity building initiatives.

The Hong Kong Ministerial Declaration provides that developed Members shall provide duty-free and quota-free market access on a lasting basis for all products, or at least 97% of all items in case of difficulty, originating from least developed countries. In addition, Members reached an agreement with respect to raw cotton and other S&D (Special and Different Treatment) measures for LDCs. Accordingly, Japan believes that the WTO Hong Kong Ministerial Conference achieved success in advancing meaningful results for developing countries.

In December 2006 the Council on Customs, Tariffs and Foreign Exchange and Other Transactions issued a recommendation for the expansion of duty-free and quota-free market access treatment for LDCs, as called for by the WTO Hong Kong Ministerial Declaration for the further support of LDCs. Based on this recommendation, the ratio of LDCs' products treated as duty-free and quota-free increased to approx. 98% from approx. 86% at number of products base since April 1, 2007.

In addition, at the 9th WTO Ministerial Conference held in Bali, Indonesia, in December 2013,

developed country Members, which did not achieve the ratio of 97% of the product base, agreed to make improvements by the time of the 10th WTO Ministerial Conference meeting. The Conference also agreed on a guideline for preferential rules of origin for LDCs to make the identification of LDC products easier and improve the application of preferential treatment. In response to requests from LDCs, Japan simplified preferential rules of origin under Generalized System of Preferences for HS61 (knit apparel) from April 1, 2015. With the amendment, products classified in Chapter 61 are qualified as originating goods when the products are manufactured from fabrics.

At the 10th WTO Ministerial Conference meeting in Nairobi, Kenya, in December 2015, an agreement was reached on a ministerial decision indicating detailed directions for specific issues regarding preferential rules of origin for LDCs, based on the guideline agreed at the 9th Ministerial Council meeting (*See* Chapter 10 “Rules of Origin,” Part II).

B. STATUS OF NEGOTIATIONS

1. DOHA ROUND NON-AGRICULTURAL MARKET ACCESS (NAMA) NEGOTIATIONS

1) BACKGROUND OF THE DISCUSSION

Trade in non-agricultural products (industrial goods and forestry and fishery products) accounts for 90% of world trade. Improvement in market access of non-agricultural products is the key to revitalization of the world economy. As a result of the past several rounds of GATT and WTO negotiations, although high tariffs remain on some items, tariffs in developed countries as a whole have come to a low level. On the other hand, many developing countries have high tariffs.

In the Doha Round negotiations have been carried out since 2001 for the reduction or elimination of tariff and non-tariff barriers to further improve market access.

Regarding tariff negotiations, the two issues of flat tariff reduction and elimination of tariffs by sectors have been addressed. Flat reduction of tariffs is the method of applying reduction (formula) uniformly to all items. There was disagreement between developed and developing countries regarding the core factors in the negotiation (coefficient of the formula, flexibility applied to developing countries, inflation of items free of tariff bindings), but in the fourth revised text of the Chairman of December 2008, a consensus was reached on many factors.

On the other hand, because the tariffs in emerging nations could not be sufficiently reduced by the formula, with the aim of further reduction in tariffs, negotiations were carried out for elimination of tariffs on products in specific sectors. These negotiations were intended to identify specific industrial sectors and eliminate tariffs in excess of those achieved by way of a formula-cut approach. Currently, 14 sectors, including electronics and chemicals etc., have been proposed. Recognizing the sensitivity and export interest of each country, negotiations have sought to establish flexible conditions for each product field. Discussions have been carried out with the aim of attaining the required critical mass (a portion of the world trade) agreeing to tariff elimination in a sector, but at this time, no tariff elimination proposal by sector has been agreed upon.

In addition, simultaneously with the sectoral tariff elimination negotiations, discussions on the elimination of non-tariff barriers (NTBs) were carried out. In the fourth revised text of the Chairman of December 2008, 13 proposals related to non-tariff barriers are discussed in the Annex. “Sectoral” proposals

regarding national regulations, harmonizing conformity assessment procedures, and strengthening of transparency and "Horizontal" proposals that define the procedures to promote bilateral talks for the reduction of non-tariff barriers are included.

2) CURRENT STATUS

Flat reduction of tariff has been discussed since the start of the Doha Round negotiations in 2001, and, the results were reflected in the fourth revised text of the Chairman of December 2008. Since then, discussions mainly have dealt with sectoral elimination of tariffs and non-tariff barriers. However, no conclusion has been reached.

Because of this situation, in order to maintain confidence in the multilateral trading system of the WTO, negotiations are underway outside the framework of the Doha Round negotiations to improve market access for sectors for which there is strong demand from industry. One of them is the Information Technology Agreement (ITA) expansion negotiation.

In the following, along with the summary of the Agreement, the status of expansion negotiations will be explained.

2. INFORMATION TECHNOLOGY AGREEMENT (ITA) EXPANSION NEGOTIATION

1) BACKGROUND

At the WTO Singapore Ministerial Conference in December 1996, 29 member countries (83% of world trade share) agreed to eliminate tariffs on information technology (IT) products and the ITA (Information Technology Agreement) went into effect in 1997. Currently, 82 WTO members are participating in the ITA, though, because of the MFN principle the effect of tariff elimination will be applied to all member countries under the WTO agreement.

The ITA has contributed to the elimination of tariffs on 15 percent of the total world trade of applicable items. Initially when ITA was launched in 1996, the target trade volume was \$1.4 trillion and by 2013, it expanded about 3.7 times to \$5.3 trillion. The ITA contributes to the increase in productivity and growth of economies through IT by trade expansion of IT products. In particular, the international supply chain has developed most in the electrical and electronics sectors, the significance of its multilateral trade liberalization under the WTO is large.

ITA participating WTO members (Total: 82 members as of February 2016)				
Afghanistan	European Union*	Republic of Korea	Oman	Singapore
Albania	Georgia	Kuwait	Panama	Switzerland
Australia	Guatemala	Kyrgyz Republic	Peru	Liechtenstein
Bahrain	Honduras	Macao, China	The Philippines	Tajikistan
Canada	Hong Kong, China	Malaysia	Qatar	Thailand
China	Iceland	Mauritius	Russian Federation	Turkey
Colombia	India	Moldova	Saudi Arabia	Ukraine
Costa Rica	Indonesia	Montenegro	Seychelles	United Arab
Dominican	Israel	Morocco	Separate Customs	Emirates
Republic	Japan	New Zealand	Territory of Taiwan,	United States
Egypt	Jordan	Nicaragua	Penghu, Kinmen,	Viet Nam
El Salvador	Kazakhstan	Norway	and Matsu	

* The number of members includes the 28 EU members.

2) STATUS OF THE NEGOTIATIONS

(1) History until the launch of ITA expansion negotiations

Technological advancements are rapid and every year new IT products are being released. However, no review of ITA products has been undertaken ever since the ITA came into effect in 1997. For this reason, there has been strong demand from the industry of each country to expand the list of applicable ITA products to include new products that have been released due to technological advancements. More specifically, in March 2011, 39 hi-tech industry groups from 17 countries and regions including Japan (later in May 2011, 41 groups from 18 countries) issued a joint statement requesting expansion of the ITA.

Encouraged by the views of the industry, Japan and the US led the launch of ITA expansion negotiations in mid-2011. More specifically, major countries and regions of the ITA (including Japan, US, China, Malaysia, Republic of Korea, Taiwan but excluding the EU), which gathered at the APEC, formed a body with the intention of commencing the negotiations. At the Honolulu APEC summit in November 2011, it was agreed that "APEC economies will play a leadership role in launching negotiations to expand the product coverage and membership of the WTO Information Technology Agreement". In the wake of this, Japan and the US cooperated with major ITA countries and regions, and as a result each country and region has taken a positive stance favoring ITA expansion, and the desire to complete the negotiations have increased. On the other hand, discussions continued until the final phase of the launch of the negotiations between the EU, which strongly insisted that the tariff and non-tariff barrier negotiations should be linked to the ITA expansion negotiations, and other countries including Japan and the US which insisted on focusing on tariff negotiations in order to achieve quick results in response to the industry expectations while the Doha Round is stagnating. Japan and the US jointly lobbied each country against the EU and the EU finally agreed to delink the tariff and non-tariff barriers negotiations, which led to the launch of the negotiations.

At the symposium of the 15th anniversary of the ITA held at the WTO in Geneva in May 2012, taking into account the fact that there was a strong demand from industries for the ITA expansion negotiations, a majority of the countries and regions strongly supported the joint proposal by Japan, the US and other members on ITA expansion. The ITA Committee official meeting held on the next day resulted in the commencement of substantial negotiations.

(2) History of the negotiations

From May 2012, willing members, including Japan, the US, the EU, Republic of Korea, Taiwan and Malaysia, held negotiations in Geneva once a month. They compiled and sorted items requested by each country and created a "Consolidated product list".

From the fall of 2012, China, the Philippines, Singapore etc., joined in the negotiations, where shortening of the "consolidated product list" and discussions on sensitive items of the respective countries took place. However, at the negotiation meeting in July 2013, no significant improvements were made in the broad sensitive items list of China and so the July meeting was suspended. Subsequently, as a result of continued efforts of the respective countries to urge China at a high-level by utilizing the opportunities at APEC, etc., negotiations were resumed in October 2013. At the negotiation meeting in November 2013, however, while the respective countries made compromises toward reaching an agreement, China, etc. maintained a large number

of sensitive items, and thus an agreement was not reached. At present, adjustments are being made between countries for early resumption of negotiations.

At the APEC Economic Leader's Meeting at Beijing in November 2014, the United States and China agreed on ITA products. This led to the resumption of negotiations in December, but an agreement was not reached and the negotiations carried over to 2015.

At a meeting in Geneva in July 2015, the members participating in the negotiations agreed on the expansion 201 products list (including new-type semiconductors, semiconductor manufacturing equipment, digital multifunction machines and printers, digital AV devices, and medical devices). In the same month, a declaration on the agreement on tariff elimination periods, implementation schedules, etc. as well as the 201 products was reported and published at a meeting of the WTO General Council.

From September 2015, Japan chaired the ITA expansion negotiations, dealing with tariff elimination periods for each product and other matters. At the 10th WTO Ministerial Conference meeting in Nairobi, Kenya, in December 2015, the negotiations were concluded while Japanese Economy, Trade and Industry Minister Motoo Hayashi served as chairman. As of February 2015, 53 members (including 28 countries from the EU) covering more than 90% of the world trade value for the 201 products are participating in the ITA expansion. The world trade value for the 201 products has reached approximately \$1.3 trillion per a year, accounting for about 10% of the total value of world trade. Tariff elimination for these products started from July 1, 2016, and about 90% of relevant tariffs are to be eliminated by July 2019. By January 2024, tariffs on the 201 products will have been completely eliminated for all 53 members.

3. NEGOTIATIONS ON ENVIRONMENTAL GOODS

1) BACKGROUND

The launch of negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services” and establishment of the Committee on Trade and Environment Special Session (CTESS) was included in the Doha Ministerial Declaration of 2001. At CTESS, discussions on a list of environmental goods subject to reduction/elimination of tariffs have been taking place (see Addendum-1 “Negotiation Progress on Doha Development Agenda”, Part II for details).

Subsequently, while the Doha Round negotiations were stagnating, discussions on reduction/elimination of tariffs on environmental goods took place within the framework of APEC. At the APEC Summit meeting in Honolulu in November 2011, it was agreed to reduce the applied tariff rate of environmental goods to 5% or lower by the end of 2015. At the APEC Summit meeting in Vladivostok in September 2012, it was agreed that 54 items should be subject to that reduction.

2) STATUS OF THE NEGOTIATIONS

(1) History until the launch of Environmental Goods Agreement negotiations

In response to the agreement made at APEC with regard to tariff reduction on 54 items of environmental goods, discussions on how to proceed with negotiations on liberalization of environmental goods in the WTO were initiated in Geneva in November 2012 by “Environment Friends” countries, comprised of countries promoting trade liberalization of environmental goods

(Japan, the United States, the EU, the Republic of Korea, Chinese Taipei, Singapore, Canada, Australia, New Zealand, Switzerland and Norway).

In June 2013, the United States released the “President’s Climate Action Plan”. In this Plan, the United States expressed its intention to launch negotiations at the WTO towards global free trade in environmental goods, including clean energy technologies such as solar, wind, hydro and geothermal, based on the APEC list of environmental goods, and to work towards securing participation of countries which account for 90% of global trade in environmental goods over the next year, etc.

It was then agreed at the APEC Summit meeting in Bali in October 2013 to seek opportunities to proceed with accelerated discussions at the WTO based on the APEC list of environmental goods. In January 2014, on the occasion of the unofficial WTO Ministerial Council meeting in Davos, at the initiative of the United States, 43 willing members (Japan, the US, the EU (including the 28 EU members), China, the Republic of Korea, Chinese Taipei, Hong Kong, Singapore, Canada, Australia, New Zealand, Switzerland, Liechtenstein, Norway, and Costa Rica) made a statement supporting the launch of WTO negotiations on environmental goods.

In July 2014, 43 willing members launched negotiations on environmental goods and affirmed their intention to aim at tariff elimination on a broader range of products than the 54 products agreed at APEC.

(2) Current status of the negotiations

From July 2014, the members met every one or two months in Geneva, discussing products as requested by each member. In this process, they consulted with experts from international organizations, government agencies, academic societies, industry, etc.

From April 2015, the members narrowed down the list of products discussing from the viewpoints of environmental credibility and each member’s sensitivity.

At the meeting in November 2015, the members negotiated toward reaching agreement on products list at the 10th WTO Ministerial Conference meeting in Nairobi, Kenya, in December 2015. However, the EGA negotiation failed to conclude and carried over till 2016. The next negotiation was scheduled to resume in March 2016.

Israel joined the EGA negotiations in January 2015, followed by Turkey and Iceland in May in the same year. As of February 2016, 46 members are participating in the negotiations.

Japan will cooperate with other relevant countries and make active efforts in promoting these negotiations to strengthen the competitiveness of Japanese industries, contribute to global environmental issues, and revitalize the WTO as a negotiation venue, seeking to conclude the negotiations as early as possible in 2016.

COLUMN: RECENT ISSUES CONCERNING CUSTOMS VALUATION

1) INTRODUCTION

The basis for calculating the tariff amount (assessment value) is the price (hereinafter “transaction value”) paid for the goods when sold for import to the importing country by the exporting country.

In modern international transactions, cases where a number of parties involved in multi-layered transactions, such as transactions of raw materials/parts/capital goods between groups of companies comprising a global value chain (international division of manufacturing processes in the manufacturing industry, etc.), or cases where the value of relevant services/rights embodies the value of the goods, such as electronic devices for which the license fees account for a large percentage of the price, are ever increasing. For such new and complicated transactions, determining fair transaction value is difficult. In examining transaction value in customs valuation, interpretations of the Customs Valuation Agreement and application of that Agreement by countries in individual cases are not always internationally standardized.

On the other hand, countries with high tariff revenue dependency and countries requiring domestic industry protection have an incentive to assess transaction value higher to raise the tariff amount.

However, arbitrarily assigning transaction value will make the tariff rates established within the range of the bound tariff rates meaningless, and raising the tariff amount by assessing the transaction value unreasonably high will raise the price of imported goods and thereby reduce the competitiveness in the importing country.

Under such circumstances, the need for assessing transaction value in a fair and objective manner in customs valuation with consideration given to the individual transaction conditions is becoming increasingly higher. However, for a company to reverse unreasonable customs valuation conducted by the customs administration of the importing country on its own requires proving the transaction conditions by disclosing detailed transaction elements, which may include company secrets. Considering the costs for proving and the necessity of protecting company secrets, the company may have to decide not to object and accept the tariffs indicated. This column analyses issues concerning customs valuation that are recently drawing attention based on international economic agreements, and then describes possible measures that Japanese companies can take to correct unreasonable customs valuation by the customs of importing countries.

2) OUTLINE OF CUSTOMS VALUATION

(1) Customs Valuation⁵

A tariff is a tax imposed on imported or exported goods, though it generally refers to import duties. The tariff amount is calculated by multiplying the customs value, which is the basic amount, by the tariff rate.

$$\boxed{\text{Tariff Amount}} = \boxed{\text{Basic Amount (Customs Value)}} \times \boxed{\text{Tariff Rate}}$$

Customs valuation is the procedure for assessing the above customs value. The WTO Members accept the upper limit of tariff rate (bound tariff rate) for each tariff product included in its schedule of tariff concessions annexed to GATT (see GATT Article II), and then establish the tariff rate actually imposed (applied tariff rate) at a level not higher than the bound tariff rate. In customs valuation, an appropriate customs value needs to be assessed in an objective manner, and arbitrary assignment of customs value makes the tariff rates meaningless. Declaring the prices lower than the appropriate prices may be deemed tax evasion, and, conversely, the customs administration assessing the prices higher than the appropriate prices will be considered unreasonable inflation of

⁵ See “Definition of Tariff”, “Tariff Rates”, and “Customs Valuation” of “1. Overview of Rules” in Chapter 5 “Tariffs”, Part II

tariff amounts.

(2) Regulation of Customs Valuation under WTO Agreements

a) Source of Law

Under WTO agreements, customs valuation is regulated by GATT Article VII and the “Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994” (hereinafter referred to as the “Customs Valuation Agreement”). The Agreement provides for the methods of calculating customs value (Articles 1-8) and matters relating to the implementation of the Agreement (right of appeal, obligation of disclosure, etc.) by laws and regulations, etc. of the respective countries.

In addition, although Members are not legally bound by them, the Technical Committee on Customs Valuation (hereinafter referred to as the “TCCV”)⁶ of the WCO⁷ establishes practical guidelines. The guidelines were adopted by the TCCV to provide Members with information/advice on technical interpretation of the Customs Valuation Agreement, and are structured in the form of advisory opinions, commentaries, explanatory notes, case studies, or studies, etc. depending on the nature of information/advice provided.⁸

b) Principle Method of Calculating Customs Value

The basic method of calculating customs value is as follows (Article 1 of the Customs Valuation Agreement).⁹

$$\boxed{\text{Customs Value}} = \boxed{\text{Transaction value}} = \boxed{\text{Price Actually Paid}} + \boxed{\text{Adjustments under Article 8}}$$

Since the actual market price of the imported goods agreed upon between the seller and the buyer by free negotiation is considered to best represent the customs value of imported goods, the “transaction value” in specific individual import transactions of the goods of concern is used as the basis.¹⁰ Therefore, the customs administration should not reject the transaction price declared by the importer for such reasons as being lower than the market price, being lower than the price of identical goods in other transactions, or being a discount price, etc. in principle. (However, as described in III.3 below, exceptional consideration can be made for import transactions between

⁶ Based on paragraph 2, Article 18 of the Customs Valuation Agreement, the Technical Committee on Customs Valuation (TCCV) is a committee organized by the WCO to ensure uniform interpretation and application of the Customs Valuation Agreement at a technical level by WTO Members. In practice, those related to the customs administrations of the respective countries participate in technical/specialized discussions in the TCCV as representatives of Members. The TCCV also formulates guidelines on the Customs Valuation Agreement, etc. and carries out technical examinations at the request of the Panel or the parties involved with consultations or dispute settlement proceedings under the Customs Valuation Agreement (paragraphs 3 and 4, Article 9 of the Customs Valuation Agreement), etc.

⁷ The World Customs Organization, whose official name is Customs Cooperation Council (CCC), is an intergovernmental organization established in 1952 for the purpose of promoting the harmonization/unification of tariff systems of the respective countries and international cooperation to contribute to the development of international trade. Its primary missions include technical examination for the uniform interpretation and application of the WTO Customs Valuation Agreement.

⁸ See the Compendium published by the WCO for the latest TCCV guidelines.

⁹ If the transaction value cannot be calculated using this method, alternative calculation methods based on the transaction value of identical or similar goods, etc. are applied in the order provided for in the Customs Valuation Agreement (Articles 2-7).

¹⁰ Sheri Rosenow and Brian J. Oshea, A Handbook on the WTO Customs Valuation Agreement, p. 22 (2010, World Trade Organization)

related parties).¹¹

The “price actually paid” (the price actually paid or payable) used as a basis of transaction value refers to the price the buyer pays to the seller or for the seller, regardless of the payment being direct or indirect, for the imported goods in import transactions. An example of indirect payment would be the settlement of a debt owed by the seller.¹² The price actually paid includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.¹³

In addition, certain adjustment factors are added to the price actually paid to be included in the transaction value under Article 8 of the Customs Valuation Agreement (“Adjustments under Article 8” above). Depending on the transaction structure, the payment/cost incurred by the buyer to obtain imported goods may not be deemed as the price of the imported goods and therefore not considered the price actually paid because, for instance, it is not listed as the price of imported goods on the bill of lading. It is unreasonable to avoid inclusion in the transaction value by changing the transaction structure by parties involved in the transaction. Article 8 of the Customs Valuation Agreement therefore requires that when such payment/cost is not included in the price actually paid, addition of such payment/cost to the price actually paid, to the extent it is not included, to be included in the transaction value as an adjustment factor.¹⁴

The factors to be adjusted are listed in (a)-(d) of paragraph 1, Article 8 of the Customs Valuation Agreement, including commissions and brokerage, except buying commissions ((a)(i) of that paragraph); royalties and license fees (hereinafter “royalties, etc.”) related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods ((c) of the paragraph); and the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller ((d) of the paragraph), etc.

3) TYPES OF TRANSACTIONS WHERE CUSTOMS VALUATION MAY BECOME AN ISSUE

This section lists some situations where customs valuation may become an issue and adds a brief legal analysis. In actual cases, discussions need to be made according to the specific individual transaction conditions.

(1) Case where transaction value is unreasonably rejected

There are two possible cases: (1) where the customs administration uses customs values listed in its internal documents as minimum customs values, and rejects the transaction values declared by the parties of import transactions if the transaction values are less than the minimum customs values; and (2) where the importers lower the transaction values to accommodate fluctuations in foreign exchange rates, and the customs administration rejects the transaction values as dumping without giving specific explanations.

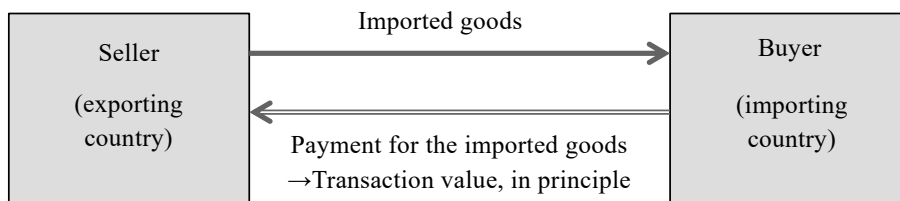
¹¹ See pp. 27-28 of the previous footnote 6

¹² Note to Article 1 in Annex I of the Customs Valuation Agreement

¹³ Paragraph 7, Annex III of the Customs Valuation Agreement

¹⁴ See p. 41 of the previous footnote 6

<Figure 1: Principle of calculating transaction value>

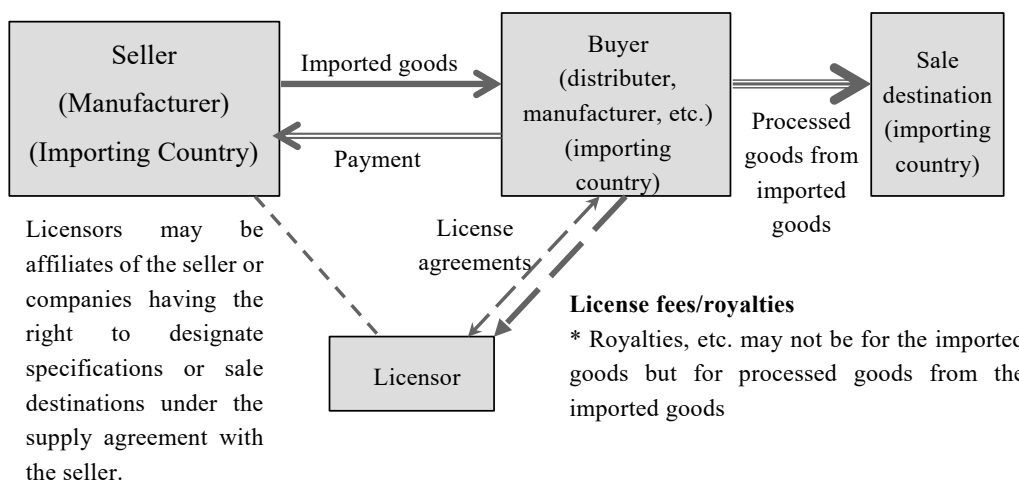


(1) The methods of calculating the customs value generally need to consider individual conditions of import transactions and apply the calculation methods provided for in the Customs Valuation Agreement in the order provided for in that Agreement (Article 1-3, 5, and 6 of the Customs Valuation Agreement), but the methods used in the above cases may not comply with the methods provided for in the Agreement. In addition, (2) the use of minimum customs values in determining the customs value is prohibited (Article 7(f) of the Agreement) and (3) that buyers have the right to an explanation as to how the customs values are determined (Article 16 of the Agreement) need to be considered; and (4) the TCCV’s guidelines on the use of an assessment database¹⁵ may also be useful. Furthermore, (5) if customs clearance is denied unless the transaction value declared is changed, it may be inconsistent with the GATT Article XI:1 “general elimination of import restrictions”

(2) Handling of Royalties, etc.

Whether or not to include the royalties, etc. paid by the third party (licensor) other than the buyer or the royalties, etc. paid not for imported goods but for processed goods using the imported goods as raw materials to the transaction value can be an issue.

<Figure 2: Case where handling of royalties, etc. can be an issue>



Royalties, etc. that are (1) “related to” the imported goods and (2) paid as a “condition” of import

¹⁵ Guidelines on the development and use of a national valuation database as a risk assessment tool (2004): Providing that the assessment database of the customs administration should be used as a risk assessment tool for examining truthfulness/accuracy of the declared values and not be used for establishing minimum customs values.

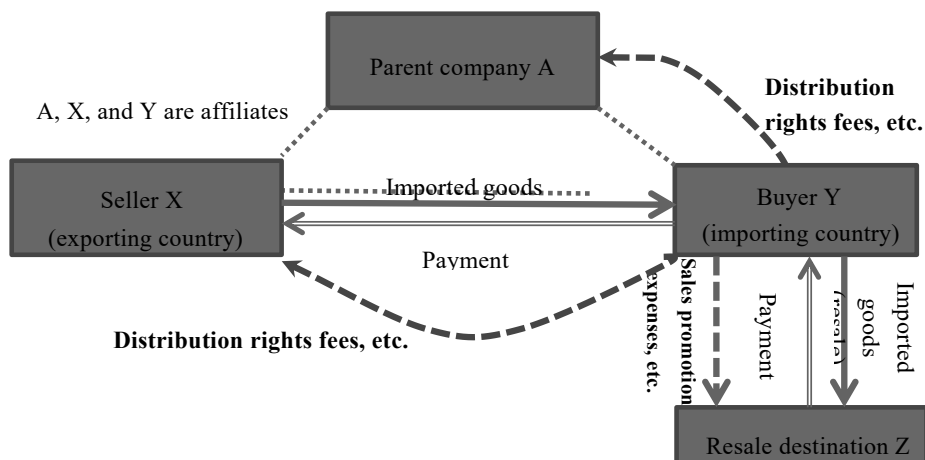
transaction may be added to the price actually paid as adjustments under Article 8 ((c) of paragraph, Article 8 of the Customs Valuation Agreement). Therefore, in the above cases, (1) the relationship between the imported goods and the royalties, etc. and (2) the “conditional nature” of the royalties, etc. in the import transaction needs to be discussed.

Interpretation of (c) of paragraph 1, Article 8 of the Customs Valuation Agreement has often been discussed at the TCCV, and a number of guidelines, including Advisory Opinions 4.1-4.15 and Commentary 25.1, etc., have been adopted. These guidelines provide that, in determining (1) the relationship with the imported goods and (2) the conditional nature of the import transaction, various factors need to be considered in a comprehensive manner according to the individual transaction conditions. In addition, examples of factors to be considered listed in these guidelines include whether or not patents/trademarks/industrial designs of concern are incorporated in or are necessary for manufacturing the imported goods, the existence of relationship between the import transaction agreement and the license agreement, whether or not the non-payment of the license fees is provided as a condition for terminating the import transaction agreement, whether the third party licensor is an affiliate of the seller or not, and the level of processing made to the imported goods, etc.¹⁶

(3) Handling of Various Other Related Costs (Distribution Rights Fees, Sales Promotion Expenses, etc.)

Distribution rights fees and sales promotion expenses, etc. are not included, in principle, in the value of imported goods, and are not added to the transaction value of the imported goods. However, whether or not these costs should be added up to the transaction value of the imported goods may be subject to debate, particularly in cases of transactions between affiliates where the payment of these costs (some are paid to the third party other than the seller) is required as a part of the transaction scheme of the entire group and non-payment actually causes an interruption of import transaction, etc.

<Figure 3: Case where handling of various costs can be an issue>



The costs not deemed to have been paid for the imported goods in import transaction are not included in the “price actually paid” and therefore are not included in transaction value, in principle. For example, a payment made for the services provided the seller after the goods are imported (transportation, installation, assembling, etc.) is not included in the price actually paid because the

¹⁶ The TCCV Commentary 25.1 (Third Party Royalties and License Fees – General Commentary), etc.

payment was not made for the imported goods but for services that can be distinguished from the import transaction.¹⁷ Also, the costs of activities that the buyer conducts for its own benefit (costs for sales/distribution in the importing country, etc.) are not included in the price actually paid because they are not deemed to be indirect payment even if they can also benefit the seller.¹⁸ The above-mentioned costs such as distribution rights fees, etc. are basically not considered the payment for the imported goods in the import transaction and are not included in the price actually paid.

However, because (1) payments made “as a condition” for import transaction are to be included in the price actually paid¹⁹, and (2) the value of technologies, ideas, crafts, designs, and plans that are required for the production of the imported goods and are provided by the buyer free of charge or at discount prices ((b)(iv) of paragraph 1, Article 8 of the Customs Valuation Agreement), the royalties, etc. that are “related to” the imported goods and paid “as a condition” of the import transaction ((c) of the paragraph)²⁰, and the value of the proceeds of subsequent resale of the imported goods that accrues directly or indirectly to the seller ((d) of the paragraph) are listed as adjustments under Article 8. Whether or not the above-mentioned various costs fall under these cases and therefore should be included in the transaction value can be an issue.

In addition, in the case of transactions between related parties (transactions between specially-related parties)²¹ where the transaction price is influenced by the relationship between the parties (the transaction price is set lower than the market price), the declared transaction price may be rejected as an exceptional case ((d) of paragraph 1 and paragraph 2, Article 1 of the Customs Valuation Agreement)²²; but the above-mentioned various costs may be claimed as reflecting/suggesting the fact that the transaction price is set lower due to the relationship between the parties.²³

However, specific applicable clauses/legal analysis/conclusions significantly differ depending on the specific individual transactions and the nature/conditions of the costs.

(4) RESPONDING MEASURES

(1) Bilateral Consultations/Negotiations

¹⁷ However, a payment made for the services that are distinguished from the actual price paid are excluded (paragraph 3, Note to Article 1 in Annex I of the Customs Valuation Agreement).

¹⁸ Paragraph 2, Note to Article 1 in Annex I of the Customs Valuation Agreement

¹⁹ Paragraph 7, Annex III of the Customs Valuation Agreement

²⁰ Note to Article 8 in Annex I of the Customs Valuation Agreement with respect to paragraph 1(c), Article 8 provides that the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid and that payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid if such payments are not a condition of the importation of the imported goods.

²¹ See paragraph 4, Article 15 of the Customs Valuation Agreement for the definition of “specially-related parties”.

²² The customs administration shall not regard the declared transaction value as unacceptable solely for the reason that the seller and the buyer are specially-related, but must determine whether or not the special-relationship influenced the price by examining the circumstances surrounding the import transaction. If the customs administration has grounds for considering that the special-relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer demonstrates that the value closely approximates the value of identical or similar goods that meet the requirement of the provisions, the transaction value shall be accepted. (Paragraph 2, Article 1 of the Customs Valuation Agreement)

²³ In recent years, the relationship between customs valuation and transfer pricing taxation, both of which are intended for fair evaluation of the transaction price in transactions between related parties, have been discussed at various fora, including the WCO (including the TCCV), OECD, IBRD, and ICC, etc. The TCCV released a commentary (TCCV Commentary 23.1) concluding that, under the Interpretation of the Customs Valuation Agreement, the use of transfer pricing studies as investigation materials at customs should be considered on a case-by-case basis and could be one source of such information considering the difference in the objectives of these systems.

A government may make requests to the customs/taxation administrations of other countries. In addition, if an economic partnership agreement (EPA) has been concluded between two countries, the Trade in Goods Subcommittee²⁴ and/or the Business Environment Development Subcommittee may be utilized. There are not many cases of holding the meetings of the Trade in Goods Subcommittee, but the Business Environment Development Subcommittee can more easily be utilized because it can address the issues of customs valuation as a part of the business environment although requiring the consistency with the EPA is not the direct objective. Companies can also participate, and meetings are held regularly in many cases.²⁵

In addition, improving the systems, including the customs valuation system, and the expertise of officials through capacity building for developing countries should also be considered. Capacity building in customs valuation is carried out by teaching Japan's knowledge regarding the content/interpretation of the Customs Valuation Agreement and its application to concrete cases, etc. to the customs officials of other countries. It also is carried out by providing advice according to the actual situations of their countries through dispatching of Japanese customs officials and inviting the customs officials of other countries, etc. Sometimes this is done through international organizations such as the WCO, etc. It is particularly effective when the cause of the problem lies in insufficient development of the customs systems of the other countries.

(2) Multilateral Consultations/Negotiations

In the case of more cross-cutting issues, raising concrete issues concerning customs valuation between multiple countries using opportunities at the TCCV²⁶ of the WCO may be possible. The TCCV discusses between specialists of the customs administrations of the respective countries, based on proposals from Members, individual technical issues concerning the implementation of the Customs Valuation Agreement, and adopts documents (advisory opinions, commentaries, etc.) aimed at international harmonization of the implementation of the Customs Valuation Agreement. At present, meetings of the TCCV are held twice a year to discuss concrete technical issues proposed by Members in a continuous manner. If issues proposed by Japan are adopted as guidelines such as advisory opinions or commentaries, etc., they will become legally binding, and voluntary improvements by Members can then be expected. It must be noted, however, that the possibility of not being adopted is considerably high because adoption requires unanimous consent. However, even if they are not adopted, active discussions on interpretation of the Customs Valuation Agreement that should be applied to the concrete issues of customs valuation take place between multiple countries. In addition, agendas that did not get unanimous consent are recorded in a document entitled "Conspetus".

(3) Utilization of WTO Dispute Settlement Procedures

Finally, the WTO dispute settlement procedures can be used for disputes relating to the violation

²⁴ In various EPAs, chapters on trade in goods often provide for customs valuation to apply the Customs Valuation Agreement *mutatis mutandis*.

²⁵ See "Improvement on the Business Environment" in Chapter 8, Part III for the significance and actual circumstances of holding the meetings of the Business Environment Development Subcommittee.

²⁶ Other fora for multilateral negotiations include the WTO Customs Valuation Committee. This Committee was established in accordance with paragraph 1, Article 18 of the Customs Valuation Agreement to afford Members the opportunity to consult on matters relating to the operation of customs valuation that can affect the implementation of the Customs Valuation Agreement or the achievement of its objectives. The Committee conducts reviews of whether or not the domestic laws of the respective countries are operated consistently with the Customs Valuation Agreement, etc. When requesting Members for explanations of their measures suspected of being inconsistent with the Customs Valuation Agreement, etc., which do not necessarily require technical discussions on the interpretation of the Customs Valuation Agreement, the WTO Customs Valuation Committee may be utilized in place of the TCCV

of the Customs Valuation Agreement (Article 19 of the Customs Valuation Agreement). However, the WTO dispute settlement procedures are basically used for determining the consistency of existing government measures with the WTO agreements. It must be noted that whether or not individual cases of the application of measures can be determined is undecided; and even if they can, relief cannot be provided retrospectively for measures taken in the past.²⁷

However, if the operation of customs valuation rules and practices in a manner inconsistent with the Customs Valuation Agreement exist and the prevention of the application of such rules and practices is necessary in the future, the WTO dispute settlement procedures may effectively be utilized. On this point, in the two cases of violations of the Customs Valuation Agreement, customs laws providing for the methods of customs valuation were determined to be applicable in the case of indicative prices and restrictions on ports of entry by Colombia²⁸; and multiple determinations of customs valuation consistently made for a period of time in the case of customs valuation on cigarettes from the Philippines by Thailand²⁹, also was determined to be a covered measure. In addition, according to precedent, though not the cases relating to customs valuation, when the same type of acts (such as the zeroing methodology³⁰, continued use of the zeroing methodology³¹, and export regulation measures taken under administrative guidance without written applicable provisions³², etc.) are conducted a number of times (not based on the written laws/regulations), these acts are collectively determined as measures. If these measures are determined to be inconsistent with the WTO agreements, the continuance of the same type of acts is expected to be prevented.

²⁷ As of February 2015, there were 17 cases where violations of the Customs Valuation Agreement were claimed. In many cases the establishment of the minimum prices and indicative prices were in dispute; violations of other WTO agreements (AD Agreement, etc.) also have been claimed. In no instance has a panel been established (See pp. 168-169 of the previous footnote 6).

²⁸ Colombia - Indicative Prices and Restrictions on Ports of Entry (DS366): The indicative price measures (laws that obligate the use of the indicative prices) established by Colombia were determined to be inconsistent with Articles 1, 2, 3, 5, 6, and subparagraphs (b) and (f), paragraph 2, Article 7 of the Customs Valuation Agreement, and GATT Article XI:1. The case was not appealed.

²⁹ Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines (DS371): It was determined, for certain transactions between specially-related parties conducted for a certain period of time, that (i) the customs administration of Thailand rejecting the declared transaction prices without considering the conditions of transactions were determined to be inconsistent with paragraph 1 and (a) of paragraph 2, Article 1 of the Customs Valuation Agreement, and that (ii) the customs administration of Thailand not presenting the reasons for the determination of the customs value was inconsistent with Article 16 of the said Agreement (the determination of customs valuation was not appealed)

³⁰ The zeroing methodology is not provided for in any written laws/regulations, but was determined to be the rule or the norm that was generally applied and would be applied in the future (United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing) (DS294), para. 198).

³¹ The continued use of the zeroing methodology in a series of AD procedures (investigations, periodic reviews, sunset reviews, etc.), which maintained the AD duties based on certain decisions to impose AD duties, was determined to be a measure after determining that it was an "ongoing conduct" distinguished from the zeroing methodology as a rule and the individual cases of applying the zeroing methodology (United States - Continued Existence and Application of Zeroing Methodology (DS350), para. 185).

³² The measure was determined as a single measure applied in a systematic and continuous manner distinguished from a number of individual cases of application (Argentina - Measures Affecting the Importation of Goods (DS438/444/445), Appellate Body Report, para. 5.146). Other than this, the Appellate Body Report on the EC - Measures Affecting Trade in Large Civil Aircraft (DS316) case (para. 794) did not exclude the possibility that the subsidy program (not found to be a "rule" that was generally applied and would be applied in the future and was distinguished from individual cases of granting subsidies under this program) could be determined as a measure (however, the Report concluded that it was not included in the subjects for examination because it was not identified in the request for the establishment of a panel).