CHAPTER 15

UNILATERAL MEASURES

OVERVIEW OF RULES

Imposition of measures, such as tariff increases and quantitative restrictions that have been imposed without taking appropriate procedures under the WTO Agreement are prohibited. Such measures violate several provisions of the WTO Agreement: Article I (MFN Treatment), Article II (Schedules of Concessions), Article XI (General Elimination of Quantitative Restrictions) and Article XIII (Non-Discriminatory Administration of Quantitative Restrictions).

The WTO dispute settlement procedures provides the following rules, which go beyond the previous GATT dispute settlement system by clearly prohibiting the use of unilateral measures concerning issues within the scope of the WTO rules.

(1) OBLIGATION TO USE THE WTO DISPUTE SETTLEMENT PROCEDURES

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) stipulates that when Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of the DSU (DSU Article 23.1). In addition, the DSU stipulates that Members shall not make unilateral determination and shall follow the procedures set forth in the DSU (DSU Article 23.2) with regard to (a) whether or not a violation has occurred, whether or not benefits have been nullified or impaired or whether or not the attainment of any objective of the covered agreements has been impeded; (b) the reasonable period of time for the Member concerned to implement the recommendations and rulings; or (c) the level of suspension of concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time. As such, the use of unilateral measures in contravention of the procedures set forth in the DSU is itself a violation of the WTO Agreement.

(2) EXPANDED COVERAGE OF THE AGREEMENT

As a result of the implementation of the WTO Agreement, compared with the GATT, wider coverage has been provided that includes not only goods but also trade in services and intellectual property rights. In line with this, imposition of unilateral measures has been prohibited in a broad range of fields.

In light of the two considerations above, we have categorized unilateral measures based on the combination of: (1) the causes of imposition of measures (whether it is due to the counter party violating the WTO Agreement or impairing benefits under the WTO Agreement, or the cause is nullification or impairment of benefits in areas not covered by the WTO, such as violation of human rights); and (2) the nature of the measures imposed (whether the measures violate the WTO Agreement or do not violate the WTO Agreement as in the case of, for example, tariff increases within bound rates). Figure II-15, below, shows the results of the categorization. As indicated in the chart, the measures in question, except for Field D, may violate Article 23 of the DSU and/or be
Part II: WTO Rules and Major Cases

inconsistent with the WTO Agreement.

In the case of Field D, a unilateral measure would not violate DSU Article 23 and would not itself constitute a violation of the WTO Agreement. For this reason, it is also assumed that the country imposing a unilateral measure claims that the measure is due to nullification or impairment of benefits in areas that are nominally not covered by the WTO Agreement, even though in actuality the measure is due to the counter party violating the WTO Agreement or impairing benefits under the WTO Agreement (Field A or Field B). Whether the cause of a unilateral measure is an issue covered by the WTO Agreement should be judged objectively according to the rules of the dispute settlement system.

**Figure II-15 Unilateral Measures and WTO Coverage**

<table>
<thead>
<tr>
<th>Cause of Measures</th>
<th>Unilateral Measures</th>
<th>Unilateral Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In violation of the WTO Agreement</td>
<td>Not in violation of the WTO Agreement</td>
</tr>
<tr>
<td>WTO-related disputes</td>
<td>A Violation of DSU Art. 23.1/Violation of Measure as such</td>
<td>B Violation of DSU Art. 23.1</td>
</tr>
<tr>
<td>Non-WTO-related disputes</td>
<td>C Violation of Measure as such</td>
<td>D</td>
</tr>
</tbody>
</table>

**MAJOR CASES**

(1) **The Japan-US Auto Dispute (DS6)**

(Please see pages 617-618 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-)

(2) **The Japan-US Film Dispute (DS44)**

(Please see page 618 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-)

(3) **The EU-Banana Dispute (DS27)**

(Please see pages 618-621 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-)

(4) **US - Section 301 Trade Act (DS27)**