

Chapter 4

EU

| | |
|--|-----|
| TARIFFS | 102 |
| (1) High Tariff Products | 102 |
| (2) Tariff Classification Issue on the Treatment of Products Covered by the Information Technology Agreement | 103 |
| Safeguards | 105 |
| Standards and Conformity Assessment | 106 |
| (1) EU Directives on the Restriction of the Use of Certain Hazardous Substances in the Electrical and Electronic Equipment (RoHS Directive) | 106 |
| (2) EU Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Related Products (ErP) | 106 |
| (3) Regulations on Chemicals (REACH) | 107 |
| (4) Regulations on Biocidal Products | 108 |
| Trade in Services | 108 |
| Audio-visual Service | 108 |
| Government Procurement | 109 |
| Proposed New Regulation on Public Procurement (Proposal on International Procurement Instruments) | 109 |
| Regional Integration | 110 |
| Increasing Binding Tariff Rates | 110 |

TARIFFS

(1) High Tariff Products

* 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>

The current bound tariff rate and simple average of bound tariff rates for non-agricultural products is 100% and 3.9%, respectively. However, application of high tariff rates remains on several products, such as motor trucks (maximum 22%), footwear (maximum 17%), ceramics (maximum 12%), glass products (maximum 11%) and passenger cars (maximum 10%). Moreover, as of 2016, the applied tariff rates for electric appliances (maximum 14% [televisions, cameras, radio receivers, etc.], simple average 2.8%) and textiles (maximum 12%, simple average 6.8%) are higher than those of other developed countries, rendering imported products at a severe competitive disadvantage in comparison with domestically-made products.

<Concerns>

High tariff rates themselves do not conflict with the WTO Agreements unless they exceed the bound rates. However, in light of the spirit of the WTO Agreements of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to the lowest possible rate and to eliminate tariff peaks (see “Tariff Rates” in 1. of Chapter 5, Part II).

<Recent Developments>

With the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items is planned to be completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for the EU, elimination of tariffs started in July 2016. For example, high tariff items for which tariffs are to be eliminated by the EU include digital video cameras (14%), car audio devices (14%), television receivers (14%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Furthermore, negotiations aimed at concluding the Japan-EU EPA for improving market access from Japan started in April 2013 and concluded it in December 2017. When Japan-EU EPA came into force on February 1, 2019, tariffs on all non-agricultural products on the EU side, including high tariff products, are eliminated.

With regards to the U.K.’s decision to leave the EU (Brexit), the outline of the “Withdrawal Agreement” and “Political Declaration on the Future Relationship” was approved by the British Cabinet on 14th November, 2018, and approved by the European Council on the 25th. However, it has not yet been approved by the British Parliament as of February, 2019. When “transition period” as defined in the “Withdrawal Agreement” is provided, the Japan-EU EPA will be applicable to the UK during the transition period from the date of withdrawal up to December 31, 2020. On the other hand, when transition period is not provided, the Japan-EU EPA will not be applicable to the UK from the date of withdrawal. In other words, for the Japanese products imported into the UK, the tariff rates based on the Japan-EU EPA are not applied, but the UK’s most-favoured-nation (MFN) tariff rates are applied. With regard to the WTO, since there are no Schedules of Concessions and Commitment of the country at present, the U.K. will need to submit them to the WTO when it withdraws from the EU. Future moves, including whether or not an equivalent to or better market access than the current one is secured, will attract attention. (For specific issues, please see page 133 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-)

(2) Tariff Classification Issue on the Treatment of Products Covered by the Information Technology Agreement

The Information Technology Agreement (ITA), the Ministerial Declaration on Trade in Information Technology Products (see Chapter 5 (2) of Part II Information Technology Agreement (ITA) Expansion Negotiation for its outline), was agreed to by Japan, the U.S., the EU and other 26 countries and areas in 1996 for the purpose of eliminating tariffs on information technology equipment, parts and other products. It requires the ITA signatories to bind and eliminate customs duties within the meaning of GATT Article II, with respect to products covered by the ITA (as of the end of February 2018, 82 members, including 28 EU member countries, join the Agreement). Following the Declaration, signatories have individually incorporated items covered by the ITA into their respective Concession Schedules. In other words, if they actually levy customs duties on products, they would be in violation of concessions under GATT Article II.

Although the EU eliminated customs duties on products covered by the ITA, including computers, computer-related equipment, and semiconductors, it still imposes high tariffs on electric equipment that is not covered by the ITA, such as television sets and video players, due to progress in the technological convergence of these products, the problem has emerged whereby products that should be treated as products covered by the ITA are now subject to customs duties due to arbitrary changes of tariff classifications. Since the EU, which is one of the ITA signatories, has made the concession of treating products covered by the ITA as duty-free, imposing duties on these products would constitute a violation of GATT Article II. (Some of those problems, such as the one described below, are in the process of being resolved.)

The ITA ensures free trade for IT products and thus has contributed to further technological advancements in the IT field. Technological development is rapid and because of its characteristic, it is customary for IT products to be multifunctional or sophisticated. Consequently, if the ITA signatories impose customs duties on products covered by the ITA due to additional and/or sophisticated functions, the list of products covered by the ITA is likely to shrink. For this reason, the ITA includes stipulations with regard to the need to adapt to the advancement of technology. Thus, it made the following statement: “each party’s trade regime should evolve in a manner that enhances market access opportunities for information technology products” (refer to the first paragraph of the ITA Declaration), and, “participants shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products” (Declaration Annex paragraph 3). In fact, as a result of conclusion of the ITA expansion negotiation in December 2015, the tariff classification issue on some of the products will be resolved in the future. (See Part II, Chapter 5, 5 (2) Information Technology Agreement (ITA) Expansion Negotiation for details.)

In December 2006, the Minister of Economy, Trade and Industry of Japan wrote to the EU Trade Commissioner requesting resolution of this issue. In January 2007, there were meetings between the Minister of Economy, Trade and Industry of Japan and the EU Trade Commissioner and between the Trade Vice-Minister and the External Trade Director General to discuss resolution of this problem. Japan and the EU subsequently continued high-level consultations but the EU did not endeavour to resolve the issues.

Given the obvious likelihood that moves by the EU to place tariffs on the ITA products would have repercussions for other products covered under the ITA and for other member countries and given strong demands from the affected industries, the decision was made to resort to the WTO’s dispute settlement procedures. On May 28, 2008 a request for WTO consultations on 3 items, digital multi-function machines, flat panel displays, and set top boxes was submitted jointly with the US (Taiwan submitted a similar request for WTO consultations on June 12). When bilateral consultations with the EU in July 2008 failed to produce satisfactory results, a request was made jointly with the US and Taiwan on August 18 for the establishment of a Panel; the Panel was established on September 23. Thereafter, two Panel meetings were held in 2009, and a Panel report accepting the claims of the countries that jointly filed the case was adopted on September 21, 2010. In December of the same year,

Japan, the US and Taiwan agreed with the EU to implement the Panel's recommendations within the implementation period (by June 30, 2011) based on the determinations made in the Panel report. The EU announced a measure to implement the amendment of tariff regulations in the Official Journal of the EU issued on June 25, 2011, and implemented the amendment on July 1, 2011. In the journal issued on February 9, 2012, it also announced new regulations concerning classification standards for multifunction devices, for set-top boxes, in the journal issued on February 21, 2012. In the journal issued on October 5, 2013, it announced new regulations concerning classification standards for flat panel displays.

Below is an overview of the problems in individual cases.

(1) WTO Panel Discussions on Target Products

(a) Digital Multifunction Machines

<Outline of the Measure>

Digital multifunction devices (Multifunction Digital Machines (MFM)) are information technology devices that combine the functions of a printer, copying machine, scanner, facsimile and other devices which are peripheral devices used with computers and networks. Its major function is outputting by being connected with computers.

The HS (Harmonized System) codes, which are utilized in the ITA for tariff classifications, are 8471.60 for input/output devices for computers, 8517.21 for facsimiles and 9009.12 for analog photocopiers. However, there was no international consensus as to which of those categories these digital devices were classified under. Therefore, this issue was discussed at the meeting of the HS Committee under the WCO (World Customs Organization). However, as the HS Committee is not formally related to the ITA, this issue was treated as a part of the problems of tariff classification. In 1998, Brazil, which is not a participant in the ITA, brought up this issue, suggesting that multifunction digital photocopiers should be classified under heading 9009.12. This initiated a vote, which was held in May 2001 at the meeting of the HS Committee of the WCO. As a result, it was concluded that heading 9009 should not include multifunction digital devices. However, the countries opposing this view exercised their rights to reserve decision, and the discussion continued. In November 2002, the second vote was held. This time, the majority voted for inclusion of digital devices under the heading, but again, the opposition exercised their right to reserve decision. At the third vote in November 2003, Japan persuaded the opposition and the result was a tied vote. Subsequently, in the HS nomenclature 2007 edition, which was published on January 1, 2007, a new separate heading (HS8443.31) was established for multifunction digital devices that are peripherals for computers or networks (MFM). Thus, the discussion under the WCO ended.

Since the ITA was concluded, the EU had been applying a tariff on multifunction digital devices, which it classified under heading 9009.12. However, after the HS nomenclature 2007 edition was released, the EU set the tariff rate at 6% on those MFM devices that do not have a function of a facsimile; except that MFM that are equipped with a function of photocopiers that can copy more than 12 pages per minute and can print digital photos were categorized in 8443.31.91 in the Combined nomenclature of the EU.

<Problems under International Rules>

The EU committed in its concession schedule that products covered by the ITA, including printers (CN8471.60.40), scanners and other computer peripherals (CN8471.60.90), and facsimiles (CN8517.21.00), were not subject to any customs duties.

However, applying tariffs on MFM that are computer peripherals, and MFM that function as a photocopier and a facsimile constitutes a violation of GATT Article II for the following reasons. MFM are computer peripherals, as they are connected to computers or networks and are used to receive and transmit data, which means inputting and outputting. Thus they are categorized as "input/output computer devices" (8471.60) under the ITA. MFM with facsimile function are categorized in facsimile (8571.60) under the ITA.

Multifunction devices are simply sophisticated technical combinations of printer/facsimile/scanner and other devices, that each has a dedicated function. To exclude these products from the ITA impeded

technological progress rather than promoting it. It is contrary to initial purpose of the ITA. It would cause a negative impact on the development of industries and society which is possible through technological progress. Therefore, Japan decided to utilize the WTO Dispute Settlement system concerning the tariffs that were imposed on MFM by the EU.

<Recent Developments>

The WTO panel report, which accepted the claims of the complainant countries, was adopted in September 2010. In response to this, the EU announced a measure in the Official Journal issued on June 25, 2011 to eliminate the 6% tariff which was applied on certain MFM (CH8443.31.91), to apply a 2.2% tariff on MFM (CN8443.31.20) that mainly functioned as digital copiers, and to eliminate tariffs on all other MFM (CN8443.31.80). The measure (EU No. 620/2011) was implemented on July 1, 2011.

Furthermore, in the journal issued on June 29, 2016, the measure (EU No. 620/2011) to eliminate tariffs on CN8443.31.20 and implemented on July 1, 2016.

(b) Flat Panel Display

Please see pages 147 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(c) Set Top Boxes

Please see page 148 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Miscellaneous Products

Although the following two products were not discussed in the WTO panel proceeding, they are highly likely to be treated in a manner inconsistent with GATT Article II. These products are excluded from the ITA because of their sophisticated functionality with advanced technology. They are treated contradictory to the ITA's initial intentions and negate its achievements.

(a) Semiconductor Devices

Please see pages 185 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

(b) Ink Cartridges

Please see pages 149 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Safeguards

Steel Safeguards

<Outline of the Measure>

In March 2018, the EU started a safeguard survey on imports of steel products, and on July, 19 of the same year, they launched provisional measures. The final measures were activated on February 2, 2019. Based on the averaged import amounts over the past three years (2015-2017) for 300 HSC 8-digit products (72081000-73069000) (hot rolled, cold rolled, stainless steel, etc.), the tariff rate quotas ((1) country quotas for countries with an export share of 5% or more, and (2) residual quotas for other countries collectively) have been prepared for each target item. An additional 25% tariff will be imposed when the import exhausts and exceeds the relevant tariff quota.

<Problems under International Rules>

As a background of the measures, the global steel oversupply import restrictions imposed by other

countries and Section 232 measures implemented by the US are referred to. There is a room for debate on its consistency with “unforeseen developments” (generally interpreted as circumstances that could not be foreseen at the time of the tariff negotiation and that would cause changes in the competitive relationship between domestic and imported products, such as technological innovation and changes in consumers’ preference), which is one of the prerequisites of imposing a safeguard measure (GATT Article 19.1(a)).

<Recent Developments>

After the initiation of the investigation, Japan expressed its concern in its government opinion, at the safeguard committee and via bilateral consultations. Japan will closely monitor the trade diversions of the subject products to Asia, etc., and the risks of “rush” exports to EU to quickly exhaust the tariff quotas, and reach out to the EU as necessary.

| |
|--|
| Standards and Conformity Assessment |
|--|

(1) EU Directives on the Restriction of the Use of Certain Hazardous Substances in the Electrical and Electronic Equipment (RoHS Directive)

Please see page 150 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

(2) EU Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Related Products (ErP)

<Outline of the Measure>

To establish a framework for designing environment-friendly products, the EU published the “Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Using Products” (EuP Directive) in 2005 and the “Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Related Products” (ErP Directive or Eco-design Directive) in October 2009.

The Directive requires that life cycle cost (a total money that has to be spent during the period from procurement, manufacturing, and distribution to disposal) and environmental impacts (e.g.: consumption of resources, emissions to air or water, noise, vibration, etc.) of products placed on the EU market must be taken into consideration (the general system requirements). Some products are also required not to exceed standard values of efficient energy consumption during use and/or in stand-by or off-mode (the specific requirements). Requirements for each product are published in the “Implementing Measures.”

<Problems under International Rules>

As described above, requirements for each product are published in the “Implementing Measures,” but the draft “Implementing Measures” notified to the TBT Committee had some problems: (1) part of requirements is inconsistent with the existing regulations and is unclear regarding the scientific basis and effects and (2) some wording are not clearly defined. If the Directive is more trade-restrictive than necessary for the purpose of fulfilling legitimate policy objectives, it may violate Article 2.2 of the TBT Agreement.

<Recent Developments>

In December 2015, the European Commission announced the Circular Economy Policy Package. It offers suggestions for a future direction in which the ErP Directive (Eco-design Directive) will include not only the existing requirement for energy efficiency, such as efficient energy consumption during use and/or in stand-by or off-mode, but also a requirement for resource efficiency as the specific

environmental consideration system requirements. In view of the above direction, the Eco-design Working Plan for 2016 to 2019 was published in November 2016, clarifying products for which implementing measures will be formulated and the addition of resource efficiency requirements.

The European Commission is proceeding with revisions to the current product-specific implementation rules, inviting public comments, and making the TBT notifications. However, there are some redundancies and inconsistencies with existing regulations (such as RoHS Directives and WEEE Directives) and there is a concern that confusion may be caused in the marketplace. Japanese companies in the electrical and electronic industries also submitted a comment requesting the EU to rectify the above concerns. In addition, the implementation regulations for electronic displays were notified to the TBT committee in October 2018. The excessive energy efficiency requirements that are difficult to achieve for the next-generation technology such as 8K TV have been proposed which are worth paying attention.

(3) Regulations on Chemicals (REACH)

<Outline of the Measure>

In Europe, the REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) Regulation (1907/2006), which is a regulation on chemical substances, was enforced on June 1, 2007.

The characteristics of this rule are as follows:

(1) It is mandatory to regulate the existing substances and new substances in the same framework, and register the existing substances which are already supplied to the market in the same way as the new substances (this is applicable to those who manufacture or import 1 ton or more quantity of chemical substances in Europe within a year. Registration deadline is May 31, 2018). In addition, a chemical safety report must be prepared by each registrant who manufacture or import 10 tons or more quantity of chemical substance in a year.

(2) The responsibility of the safety assessment of existing substances which was taken by the government so far is imposed on the industry.

(3) Based on this regulation, the EU Chemical Substances Agency (ECHA) and member countries will evaluate (examine) the registered substances. The ECHA and member countries will prioritize the target substances for evaluation based on hazards information, exposure information and usage, and publish them in CoRAP (Community Rolling Action Plan) list.

(4) When an article contains intentionally released substances under certain conditions and its quantity exceeds 1 ton in a year, the registration becomes mandatory. If substances of very high concern (SVHC) exceed 0.1% concentration, the notification becomes mandatory in case the quantity of that substance exceeds 1 ton during a year.

(5) When certain specified extremely high carcinogenic substances are listed as substances to be approved in Annex XIV, manufacturers shall introduce a system that will approve market supply and usage for each application (supply to the market is prohibited unless it is verified that the risk is properly managed in the industry and permission is granted).

When substances are listed for approval in Annex XIV, it is stipulated that they are prioritize on the basis of requirements such as characteristics of CMR, PBT or vPvB, characteristics that might have the same extent of adverse effects with those characteristics (ELOC), widely distributed usage, and the high production volume. However, when individual substances are listed in Annex XIV, there is a concern about whether the chemical substances which are not manufactured in the member countries are added for the examination on a priority basis. Besides this, Denmark and France are examining the additional regulations for 4 phthalates substances and bisphenol A respectively. This movement is considered to be inconsistent with the fundamental framework of the REACH regulations which was introduced as an integrated chemical substance management system in Europe. The Danish regulations were abolished urged by the European Commission from the perspective of regulatory harmonization in member countries. It is necessary to keep a close watch on trends related to additional regulations of the member countries.

<Problems under International Rules>

There is a mandatory obligation for uniform registration with some exceptions for chemical

substances having quantity of 1 ton or more per year. For (1) obtaining data for registration, (2) creating documents for registration, (3) registration and (4) appointing and maintaining the sole agent handling registrations and subsequent evaluation for companies outside Europe, this regulation requires a large amount of money and impose an excessive burden on industries.

For articles containing substances of very high concern exceeding 0.1% concentration, the above mentioned notification and communication obligations arise. Regarding composite molded articles, the ECHA had interpreted that the concentration calculation matrix is the entire composite molded article. However, in September 2015, the European Court of Justice published that each component article that composes a composite article is the matrix. The importers of composite molded articles manufactured outside the EU shall be responsible to calculate the concentration of SVHC in each component that construct composite molded articles. While currently, ECHA is revising the related guidance based on the decision of the European Court of Justice, it is expected that ECHA will establish regulations that will not impose an excessive burden on the industry.

Each of these operational rules can become problematic from the perspective Article 2.1 of TBT Agreement when non-EU companies bring disadvantages compared to local companies, and Article 2.2 of TBT Agreement when an excessive burden is imposed on the industries.

<Recent Developments>

In October 2016, the regulations regarding restriction of PFOA notified to WTO/TBT committee. There are concerns regarding validity of 25ppb threshold and lack of exemption for semiconductors and spare parts. The Japanese electronics industry has submitted comments, and Japan has also communicated these concerns to the EU at the bilateral meeting under the TBT Committee in June and November, 2016.

It is essential to continue to pay careful attention to the trends in European chemical substance regulations in order to improve the predictability of business activities in the Japanese companies.

(4) Regulations on Biocidal Products

Please see page 190 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Trade in Services

Audio-visual Service

* 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>

For the purposes of protecting cultural values, the EU issued Directive 89.552. EEC “Television without Frontiers” (revision: 97. 36. EC) and requested member states to reserve at least half of the television air time for European programs in a feasible and appropriate way (except for news, sports/event, game, commercial and teletext programs). All member states have completed domestic legislation implementing the directive. For example, France provides that at least 60 percent of movies on television must be made in Europe and that more than 40 percent of the programs must be broadcast in French (Government ordinance No. 86-1067 issued on January 18, 1992). Thereafter, this Directive was given new life as an “Audiovisual Media Services Directive” that went into force on December 19, 2007. In this Directive, disciplinary rules governing television advertising, video-on-demand, etc., have been newly added.

<Concerns>

The above measure does not violate the WTO Agreements because the EU has made no commitment concerning the AV sector in the WTO's services negotiations and has registered an MFN exemption. However, the GATS should cover all services and efforts towards further liberalization are desirable.

MFN is one of the most important pillars for achieving liberalization in the multilateral trade regime and is a basic principle of the WTO Agreements. MFN exemptions are a deviation from this most important principle and it is desirable that this exemption should be removed. The GATS stipulates that MFN exemptions are temporary and ought not to exceed ten years. In this regard, the EU itself made a statement, in a document published in July 2009, titled "Staff Working Document on the External Dimension of Audiovisual Policy," which encourages countries intending to accede to the WTO in the future to register an MFN exemption without making any commitment in terms of audio-visual services in order to establish a cultural cooperative relationship with the EU. This is hard to accept from the perspective of the spirit of the WTO.

<Recent Developments>

As mentioned above, in November 2007, the European Commission adopted the European Parliament and European Council Directive Bill to correct the 89/552/EEC Council Directive (Television without Frontiers Directive) concerning coordination of part of the Members regulatory policy relating to television broadcast activities (COM (2005, 646)) (Draft of Audiovisual Media Services Directive); it was enacted in December. The time frame for implementation of this directive to be integrated into member states' domestic law was within 24 months (by December 19, 2009). All member countries have made notification to the European Commission of measures adopted to implement the directive in their own countries.

On March 29, 2011, the European Commission requested 16 member countries to provide information on the status of their adoption of the "Audiovisual Media Services Directive". The Commission analyzed and thoroughly examined the domestic laws that each member country adopted and determined whether elements in the directive were properly reflected in the domestic laws. In addition, from July to September, 2015, a public consultation was held for stakeholders and users in order to obtain feedback concerning the Audiovisual Media Services Directive, and the European Commission submitted a revised proposal for the directive to the European Parliament on May 25, 2016. On April 25, 2017, the revised proposal for the directive was agreed at the European Parliament's Committee on Culture and Education. After the discussion at a trilateral meeting of the European Committee, the European Parliament and the European Council, the European Parliament approved a revised proposal of this directive on October 2, 2018, and the European Council adopted a revised proposal of this directive on November 6 of the same year. Where the means used when content is viewed and listened to is changing from traditional televisions to online media, the revision aims to review regulations for audiovisual service providers from the viewpoint of protecting consumers. In particular, it is noteworthy that the proposed revision includes a quota that requires a certain amount of European works to be delivered for on-demand services as well.

Cultural preservation policies continue to be stringently carried out in the EU. Japan is requesting that the EU improve its liberalization commitments in the ongoing WTO services negotiations, etc.

Government Procurement

Proposed New Regulation on Public Procurement (Proposal on International Procurement Instruments)

<Outline of the Measure>

In March 2012, for the purpose of giving more incentives for trade partners to open up public procurement markets that are not sufficiently open, the European Committee proposed a new regulation on public procurement (COM (2012)124). In January 2016, the European Committee published an amendment to the proposed regulation (COM(2016)34). The proposed regulation provides the scheme where the European Committee will conduct a survey on a foreign procurement

market and in the case where the Committee determines that the market “adopts or maintains a restrictive or discriminatory procurement measure or practice,” the Committee will consult with the country to resolve the problem. If the consultation fails, the Committee will take price adjustment measures for procurement from the country.

<Problems under International Rules>

Under the proposed regulation, the European Committee, by its authority or upon request from a stakeholder or a member country, can conduct a survey on “a restrictive or discriminatory procurement measure or practice” taken by a foreign country. As a result of the survey, in the case where it is determined that the foreign country adopts or maintains a restrictive or discriminatory procurement measure, the European Committee must request a consultation with the country. In the case where the consultation has not reached a satisfactory result within 15 months, the European Committee must take appropriate measures, including price adjustment measures, after ending the consultation. Specifically, up to 20% of a price penalty will be imposed on bidding by a supplier from the country or on goods or services of the country.

This proposed regulation is applied only to the procurement of goods and services that are not covered by an international agreement (non-covered goods and services). In other words, this proposed regulation is applied to (1) goods and services of the third country that has not signed an international agreement with the EU, and (2) non-covered goods and services of the third country that has signed an international agreement with the EU.

Thus, under the basic scheme of this proposed regulation, procurement for which the EU commits national treatment under an international agreement is said to be not applicable to the above regulation. However, for instance, when, in the case of bidding by a supplier from a third country where a restrictive or discriminatory procurement measure or practice is identified, the total amount of goods from the country exceeds 50% of the bidding amount and a considerable quantity of Japanese goods are also included, Japanese goods may be subject to the price adjustment measures under this proposed regulation, and it cannot be denied that the regulation may violate the non-discrimination principle (Paragraph 1 of Article 4 of the WTO Agreement on Government Procurement).

<Recent Developments>

Subject to Article 207 of the EU Treaty, the amendment to the new proposed regulation is supposed to be adopted through the ordinary legislative process (co-decision procedure by the EU Council and the European Parliament). Although the European parliament has discussed the proposed regulations, its discussion has not been progressed in the EU Council. In order to break the deadlock on the discussion, the European Commission presented a revised proposal. However, the discussion has still not been progressed as of February, 2019. Going forward, Japan needs to closely follow deliberations of the proposal at the EU Council and the European Parliament.

Regional Integration

Increasing Binding Tariff Rates

Please see page 194 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.