

Chapter 11

Brazil

National Treatment

Brazil's Measures Concerning Discriminatory Taxation and Charges for Automobiles, etc.

<Outline of the Measure>

In September 2011, the government of Brazil announced that 30% would be added to the existing IPI (Imposto sobre Produtos Industrializados) tax on domestic and imported automobiles, in order to protect the domestic industry. (Effective as of December 2011).

However, automobiles produced in Brazil, Mercosur or Mexico, that fulfill certain conditions were exempted from additional Industrialized Products Tax. In order to receive this exemption, the producer must fulfill the following three conditions and become an "accredited company."

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

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

Not only in the field of automobiles, but also in other fields including information and communications sector (ICT sector), Brazil has introduced measures for drastic reductions or exemptions from indirect taxes on products, based on such requirements as carrying out "basic production process" (PPB) (manufacturing of certain parts and assembly of final products) in Brazil. As a result, the difference between effective tariff rates for imported products and those for domestic products has arisen.

<Problems under International Rules>

The measure recognizes drastic reductions or exemptions from indirect taxes only on products manufactured in Brazil and certain other countries, and provides an incentive for companies manufacturing automobiles, etc. in Brazil to preferentially use domestic parts over imported parts in order to benefit from tax reductions or exemptions. Also, it treats imported parts unfavourably. Moreover, under the Inovar-Auto Policy, the auto reduction tax is only approved for automobiles

produced in Mercosur or Mexico. Automobiles imported from countries other than Mercosur and Mexico are treated unfavourably in relation to not only domestically-produced automobiles but also automobiles imported from Mercosur or Mexico. This may be inconsistent with GATT Article I (most-favoured nation treatment) Article III (national treatment), TRIMs Article 2 (national treatment) and the SCM Agreement Article 3.1 (b).

<Recent Developments>

Japan has repeatedly expressed concerns on the abovementioned policies¹. However, no efforts to amend the policies have been observed, and in addition to automobiles, similar preferential taxation measures contingent upon the use of local contents were introduced in a wide range of sectors, including telecommunications network devices sector and chemicals (fertilizers) sector. The EU made a request for WTO consultations with Brazil in December 2013, and then requested the establishment of a panel in October 2014 (not only the automobile policy and the preferential taxation measures in the information and communications technology sector but also the preferential taxation measures for specific exporting companies were also set within the scope of the panel). The Panel was established in December 2014, in which Japan participated as a third party. Furthermore, Japan also made a request for WTO consultations with Brazil in July 2015, and then requested the establishment of a panel in September 2015. The Panel was established in the same month. (The EU's preceding panel proceedings and Japan's panel proceedings were consolidated).

On August 30, 2017, the Panel accepted the claims made by Japan and the EU, and found that the preferential taxation measures in the automobile sector and the information and communications technology sector are inconsistent with GATT Article I (most-favoured nation treatment) and Article III (national treatment), TRIMs Article 2 and the SCM Agreement Article 3.1 (b). In addition, the Panel accepted the claim by Japan and the EU, and found the preferential taxation measures for specific exporting companies inconsistent with the SCM Agreement Article 3.1 (a).

Brazil made an appeal and the Appellate Body Report was circulated in December 2018. Overall, the Appellate Body upheld the Panel's report, and recommended to bring the preferential tax treatment on the automobile and ICT sector into conformity with the WTO Agreement, and to withdraw without delay the prohibitive subsidies (the SCM Agreement Articles 3.1(b) and 3.2). On the other hand, the Appellate Body reversed the Panel's finding regarding certain aspects of the measures related to the ICT sector, the domestic production procedure requirements related to the Inovar-Auto Policy, and the finding regarding export subsidies. Based on the Appellate Body Report, the DSB recommended Brazil to withdraw without delay the prohibitive subsidies, and to bring the inconsistent measures into conformity with the WTO Agreement. In January 2019 Brazil expressed its intention to implement the recommendations and rulings. Japan will continue to keep an eye on the implementing process by Brazil and collect information about the implementation status.

Protection of Intellectual Property

Licensing Regulations on Patents and Know-How

No specific actions have been taken for solving problems. For more, including specific problems, please see pages 200 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

¹ For details of bilateral and multilateral consultations carried out before the request of WTO consultations, please see page 172 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-

Chapter 12

Other Matters

Although the following measures fall outside the scope of the countries/regions covered in this report, they are addressed below since they are recent measures having trade-distorting effects.

(1) Argentina's Non-automatic Import License System

<Outline of the Measure>

In November 2008, the Argentine government introduced an import license system for approximately 400 items, including metal products (elevators, etc.), that would require applications to be submitted along with information on the importers/exporters, the prices and quantities of the goods to be imported, etc. The number of subject items was increased to approximately 600 in February 2011.

Additionally, the Argentine government implemented trade balancing requirements (for example, requiring one-dollar of export or domestic investment as a condition for the same amount of import) and domestic production requirements aimed at restraining imports.

In February 2012, the prior import declaration system (DIAI) was introduced. It requires those intending to import to register designated items with the Federal Administration of Public Revenue (AFIP) and obtain its approval prior to initiating import procedures.

On January 2013, the non-automatic import license was abolished; however, the other measures (the prior import declaration requirements and the trade balancing requirements) continue to remain valid.

<Problems under International Rules>

The trade balancing requirements violate GATT Article XI, which prohibits export restrictions in principle, because the issuance of licenses requires meeting trade-balancing requirements for exports of Argentine products, etc. In addition, the trade balancing requirements are orally-rendered guidance not based on specific laws or regulations and therefore also violate GATT Article X, which requires trade regulations to be published.

The prior import declaration system involves arbitrary discretions by Argentine authorities and thus violates GATT Article XI. It also violates the transparency principles of GATT Article X and Articles 1, 3, and 5 of the WTO Agreement on Import Licensing Procedures, etc.

<Recent Developments>

Since 2009, Vice-Minister for International Affairs of Ministry of Economy, Trade and Industry, the Japanese Embassy in Argentina, and Japanese industries have repeatedly requested the Argentine government to make improvements in the measure. In the WTO, Japan has expressed concerns together with the United States, EU and other countries at the WTO Import Licensing Committee, the TRIMs Committee, and the WTO Council for Trade in Goods since 2009. In particular, 14 Members including Japan, the United States and EU jointly expressed their concerns in March 2012 at the WTO Council for Trade in Goods. However, since no improvement had yet been seen, the EU requested bilateral consultations with Argentina based on the WTO Agreements in May of the same year. In August 2012, Japan requested bilateral consultations along with the United States and Mexico, taking into account the request for improvement by the industries (Japan Foreign Trade Council, Japan Machinery Center for Trade and Investment and JEITA, the Tokyo Chamber of Commerce and Industry, and the Japan Chamber of Commerce and Industry), and the consultations were carried out in Geneva in September of the same year. However, Japan could not obtain a satisfactory resolution. Therefore, in December of the same year, Japan jointly with the United States and the EU requested

the establishment of a panel. The panel was established in January 2013, and a panel report, which upheld the claims of Japan, the United States and the EU that export restrictions by Argentina do not comply with GATT Article XI: 1 (general elimination of quantitative restrictions), was released in August 2014. Argentina appealed against the panel's decision in September 2014, but in January 2015, the Appellate Body released a report which supported the panel report and recommended Argentina to bring the measure into conformity with the WTO Agreements. However, the panel and the Appellate Body did not make a determination regarding the transparency principles of GATT Article X and Articles 1, 3, and 5 of the WTO Agreement on Import Licensing Procedures, etc.

While the time limit for Argentina to comply with the recommendation was the end of December 2015, Argentina announced on December 31, 2015, that it had abolished the Advance Sworn Import Declaration (*Declaración Jurada Anticipada de Importación*; DJAI), but announced the introduction of a new import licensing system called the Comprehensive Import Monitoring System (*Sistema Integral de Monitoreo de Importaciones*; SIMI) in place of the DJAI. SIMI is a system comprising of automatic licensing system (18,000 items) and non-automatic licensing system (nearly 1,400 items). Since it stipulates that "the application will be judged within ten days" for non-automatic license but "the period can be extended if necessary," the difference from DJAI is unclear. In addition, there are doubts about whether or not its contents are consistent with the WTO Agreements. Therefore, Japan will continue paying attention to immediate correction of measures which were acknowledged as being inconsistent with the WTO agreements, as well as collecting information regarding the implementation status.

Furthermore, products subject to SIMI non-automatic licensing have gradually been reduced from 2017 to 2018 (with 809 products as of January 2019), and more reductions are expected going forward.

(For details of the point regarding quantitative restrictions, please see Part II Chapter III, Major Case (4).)

(2) Customs Valuation Measure and Additional Tariff Measure Taken by Turkey on Imported Rubber Tires.

<Outline of the Measure>

In May 2016, the Turkish government set the customs valuation unit for two items of rubber tires at 5 dollars/kg, and implemented the measure to establish procedures and regulations for import surveillance measures on products that do not exceed the customs valuation unit of 5 dollars/kg.

Furthermore, in September 2016, the Turkish government introduced an additional tariff measure to raise the applied tariff rate on such products up to the bound rate.

<Problems under International Rules>

Based on the measures, the Turkish government imposes tariff after correcting the customs valuation value of products whose actual transaction value is lower than 5 dollars/kg to customs valuation unit stipulated in the measures (5 dollars/kg). Therefore, the measures may be in violation of GATT Article VII, which stipulates that customs price should be based on actual price, and Section 1 of Article I, Section II (f)(g) of Article VII, of the Agreement on the Implementation of GATT Article VII (Customs Valuation Agreement).

In combination with the additional tariff measure introduced in September, the applied tariff rate has exceeded the bound tariff rate, and it may violate GATT Article II, which stipulates the exemption of tariff exceeding bound tariff rates.

<Recent Developments>

Since the introduction of the measures, Japan has requested the Turkish government to provide detailed explanation and expressed its concern about the case. As a result, in April 2017, the Turkish government announced the decrease of customs valuation unit to 3 dollars/kg from 5 dollars/kg. With this, the effects of customs valuation measures on Japanese enterprises have been improved. However, the applied tariff rate has remained at up to the bound tariff rate, so Japan will continue paying attention to future actions, and will request the Turkish government for correction of additional tariff measures if necessary.

(3) Turkey's Definitive Safeguard Measures on Imports of Certain Steel Products

<Outline of the Measure>

The Turkish government started an investigation on safeguards for steel imports on April 27, 2018. It triggered provisional measures on 17th October 2018 (for 200 days) to impose an additional 25% tariff on five steel products (flat products, long products, railway material, tubes and pipes and hollow profiles, stainless steel), when the import of each product exceeds the averaged import amount of the relevant product for the past three years (2015 to 2017).

<Problems under International Rules>

As a background of the measures, Turkey referred to the global steel oversupply, import restrictions imposed by other countries and Section 232 measures implemented by the US. 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 tariff concession negotiations and that would cause changes in competitive relationship between domestic and imported products, such as technological innovation and changes in consumers' preference), which is one of the prerequisites for imposing a safeguard measure (GATT Article 19.1(a)).

<Recent Developments>

After starting the investigation, Japan expressed its concerns in its government opinion, at the safeguard committee and at the public hearing. Japan will continue to reach out to Turkish government to mitigate possible impact of the measures on Japanese products.

(4) EAEU Definitive Safeguard Measures on Imports of Certain Steel Products

<Outline of the Measure>

The EAEU (Eurasian Economic Union) started a safeguard investigation for import of three types of steel (hot-rolled steel products, cold-rolled steel products, coated steel products) on August 7, 2018.

<Problems under International Rules>

As a background of the safeguard investigation, EAEU referred to the global steel oversupply, import restrictions imposed by other countries and Section 232 measures implemented by the US. There is a room for debate on its inconsistency with "unforeseen developments" (generally interpreted as circumstances that could not be foreseen at the time of tariff concession negotiations, and that would cause changes in competitive relationship between domestic and imported products, such as technological innovation and changes in consumers' preference), which is one of the prerequisites for imposing a safeguard measure (GATT Article 19.1(a)).

<Recent Developments>

After starting the investigation, Japan expressed its concerns in its government opinion and at the safeguard committee. Japan will continue to reach out to the EAEU investigation authority to mitigate possible impact of the measures on Japanese products.

(5) GATT Article II Violations Regarding Taxation of Flat Panel Displays

Please see page 208 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

