

# Chapter 5

## Republic of Korea

### Tariffs

#### Tariff Structure

\* 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 Measures>

While the current simple average bound tariff rate for non-agricultural products is 9.8%, there are some high bound tariff products, including clothing (maximum 35%) and electric appliances (maximum 20%). Also, the bound tariff rate for non-agricultural products is 94.1% as a whole. Unbound tariff items include motor vehicles for the transport of goods (maximum applied tariff rate of 10%) and chemicals (maximum applied tariff rate of 8%).

#### <Concerns>

High tariff rates themselves do not, per se, conflict with 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 efficiency, it is desirable to reduce tariff rates to the lowest possible rate.

#### <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 was completed as of 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 Republic of Korea, elimination of tariffs started in December 2016. For example, high tariff items for which tariffs are to be eliminated by the Republic of Korea include polishing pads (30%), wireless operation controllers (20%), microphones (16%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

### Anti-Dumping Measures

#### (1) AD Measure on Japanese-Made Valves for Pneumatic Transmissions (DS504)

#### <Outline of the Measures>

In February 2014, upon request of the domestic industry, the government of the Republic of Korea initiated an anti-dumping (AD) investigation into the importation of valves for pneumatic transmissions from Japan. In January 2015, the Republic of Korea government made a final determination to impose AD duties on these products on the basis of dumping, injury to the domestic industry and a causal relationship between them, and started to levy the duties in August of the same year.

### **<Problems under International Rules>**

The Republic of Korea has not provided a persuasive explanation regarding the effect of imported goods on the price of domestically-made products (Article 3.1, 3.2 of the AD Agreement) in this case. Therefore, it is considered that there are defects in confirmation of injury to the domestic industry by dumping and a causal relationship (Article 3.1, 3.2, 3.4 and 3.5 of the AD Agreement) and investigation procedures of disclosing essential facts (Article 6.9 of the AD Agreement), etc. In conclusion, the Republic of Korea's AD measure appears to be in violation of the AD Agreement.

### **<Recent Developments>**

Japan has requested that the Republic of Korea government eliminate the AD measure, which was inconsistent with the AD Agreement, but bilateral dialog did not reach a solution. Thus, in March 2016, Japan requested bilateral consultations on the AD measure based on the WTO Agreements (a panel was established in July of the same year).

The panel report, circulated in April 2018, approved the core claims made by Japan, such as the claims that the Republic of Korea's measures failed to confirm the price comparability between Japanese imports and Republic of Korea's domestic product value, and that there was no appropriate finding of the effects on domestic products (in violation of AD Agreement Article 3.1 and Article 3.5), and recommended that the Republic of Korea correct these measures.

However, since some of the claims made by Japan were not approved, and some others were determined to be outside the terms of reference of the panel, which Japan appealed to the WTO Appellate Body in May of the same year.

The Appellate Body report circulated in September 2019 found that the Republic of Korea did not provide appropriate explanations that the imports of Japanese products at issue depressed or suppressed the prices of domestic valves (violation of Articles 3.1 and 3.2 of the AD Agreement) and inadequately treated confidential information (violation of Articles 6.5 and 6.5.1 of the AD Agreement). Moreover, regarding the panel's decision that avoided ruling on the Republic of Korea's inconsistency with the Agreement on several other issues, the Appellate Body admitted Japan's appeal and revoked the panel's decision. It thus recommended the Republic of Korea to correct the measures. In response to this, in October 2019, the Republic of Korea expressed its intention to comply with the recommendations and agreed with Japan that it will bring its measures into conformity by May 30, 2020.

Japan will continue to demand the Republic of Korea to promptly and faithfully correct its measures in accordance with the recommendations of the report so as to prevent unfair tariff burdens on Japanese companies from continuing.

## **(2) Sunset Review of Japanese Stainless Steel Bars (DS553)**

### **<Outline of the Measures>**

In June 2016, the Republic of Korea government initiated a sunset review on stainless steel bars from Japan. Based on the review, in June 2017, the Republic of Korea government decided to extend the taxation measure for three more years.

### **<Problems under International Rules>**

Article 11.3 of the AD Agreement sets out that in principle, any AD duty shall be eliminated within five years of the date of imposition of the duty or the date of the latest revision to the duty, and that AD measures may be continued as an exception only if the elimination of the AD duty would be likely to lead to continuation or recurrence of dumping and injury. In this case, many products imported from Japan are used for special purposes while those imported from India, which is another subject country of the investigation, and domestic products are used for general purposes. In the midst of a significant increase in imports of stainless steel bars from China, Taiwan and other countries in which the AD duty is not imposed, it is uncertain that non-continuation of AD measures on Japanese imports would be likely to lead continuation or recurrence of injury. Thus, the Republic of Korea's AD measure appears to be in violation of the AD Agreement.

### **<Recent Developments>**

In October 2016, April and October in 2017, at the WTO AD Committee, Japan pointed out the problems under international rules mentioned above and expressed its serious concern about the prolongation of the measure. The Japanese government expressed the same concerns at a public hearing held by the Republic of Korea's investigating authority in November 2016 with regard to the AD measure and in a written statement submitted in May 2017. Regardless, the Republic of Korea government decided to extend the tax measures for three years in June 2017. Therefore, in June 2018, Japan made a request for bilateral consultations based on the WTO agreement, and those bilateral consultations were held in August 2018. As the Republic of Korea did not indicate its intentions to abolish the measures, in September 2018, Japan requested a panel be established based on the WTO Agreement, and the panel was established in October 2018.

Japan will continue to advance WTO dispute settlement procedures so that the case will be solved appropriately in accordance with the WTO rules.

## Commitments upon Accession

### Import Restrictions on Japanese Fishery Products, etc.

#### <Outline of the Measures>

After the accident at the Fukushima Daiichi Nuclear Power Station of Tokyo Electric Power Company (TEPCO) in March 2011, the Republic of Korea gradually introduced import restrictions on Japanese fishery products, etc. Thus, the Republic of Korea strengthened its import restrictions, such as (i) prohibiting imports of all fishery products produced in the eight prefectures of Aomori, Iwate, Miyagi, Fukushima, Ibaraki, Tochigi, Gunma, and Chiba, and (ii) requiring additional inspections for food of which import is not prohibited (if the slightest amount of cesium or iodine is detected in an inspection conducted by the Korean side, additionally requiring inspection certificates concerning substances including strontium and plutonium).

#### <Concerns under International Rules>

The import restrictions imposed by the Republic of Korea are inconsistent with Articles 2.3, 5.5, and 5.6 of the SPS Agreement in that they are measures that arbitrarily or unjustifiably discriminate against Japanese fishery products, etc. and are more trade-restrictive than necessary, among other respects. In addition, they are inconsistent with Articles 4, 5.8, and 7 of the SPS Agreement because the Republic of Korea has provided insufficient information concerning the import restrictions in response to Japan's request.

#### <Recent Developments>

To date, Japan has urged the Republic of Korea to relax or abolish the import restrictions by holding bilateral talks, raising specific trade concerns at the WTO Committee on Sanitary and Phytosanitary Measures, and accepting field investigations by members of an expert committee established in the Republic of Korea. Japan requested consultations based on the WTO Agreements in May 2015, and a bilateral consultation between Japan and the Republic of Korea was held in June of the same year. However, because the Korean side did not present an outlook proposal for abolishing the import restrictions, Japan requested the establishment of a dispute settlement panel under the WTO Agreements in August 2015. After a two-and-a-half-year examination since the establishment of the panel in September 2015, the panel report was released in February 2018. In the report, the panel has recognized that the import restriction measures against fishery products produced in 8 prefectures in Japan and additional inspection request for all Japanese food violate the Articles 2.3 and 5.6 of the SPS Agreement because they arbitrarily or unjustifiably discriminate against Japanese fishery products, and are more trade-restrictive than necessary. The panel has also found that the Republic of Korea is in violation of Article 7 of the SPS Agreement because it does not release the information immediately so that member nations with a valid interest can know due to failure in publication and provision of insufficient information concerning the measures.

On April 9 of that year, the Republic of Korea claimed that there was a problem with the panel's

judgment and notified DSB of an appeal to the Appellate Body. On April 16, Japan notified DSB of its counterclaim that Japan's claims were not recognized in the panel report. After that, the Appellate Body report was circulated in April 2019. In the report, the Appellate Body concluded that the panel's consideration was insufficient and thus reversed the panel's finding that the Republic of Korea's measures were inconsistent with Articles 2, 3, 5 and 6 of the SPS Agreement. However, the dispute remains unsolved, as the Appellate Body did not make its own judgment on whether the Republic of Korea's measures violate these provisions.

The Appellate Body report has brought up an apparent issue of the WTO dispute settlement system, which is that the dispute may go unresolved. Taking this into account, in April 2019, Japan submitted to DSB a statement requesting for the discussion on the proper functioning of the WTO dispute settlement mechanism. At the regular DSB meeting held in May 2019, Japan also pointed out that "(1) as this dispute (the Republic of Korea's ban on Japanese fishery products) has extremely technical and scientific aspects, the panel thoroughly and carefully analyzed the issues by seeking the authoritative views of five independent experts, etc. The Appellate Body should have reviewed the panel's legal findings and conclusions, taking into consideration the panel's good judgments; (2) the role of the Appellate Body that WTO Members expect it to fulfill is dispute resolution. However, the Appellate Body left the dispute unresolved without judgment on the WTO-consistency of the challenged measures, failing to fulfill its function. This is a serious problem facing Member States and needs to be corrected."

## Subsidies

### Shipbuilding Subsidies

#### <Outline of the Measures>

The Republic of Korea has implemented large-scale public aid for its own shipbuilding industry since October 2015. Specific measures include (i) Financial aid to domestic shipbuilding yards (Daewoo Shipbuilding & Marine Engineering Co., Ltd) by public financial institutions, (ii) Advance payment return guarantee to support the sales of the shipbuilding yard (iii) Purchase support for maritime companies through a new shipbuilding support program (public and private funds), (iv) Subsidies for building eco-ships for replacement (aid for part of new shipbuilding costs). These measures distort the market and may retard addressing the overcapacity issue in the shipbuilding industry.

#### <Problems under International Rules>

The Republic of Korea's excessive corporate aid, guarantees contingent to ship exports, building support, etc., has resulted in repeated bids from Korean corporations at low prices, significantly depressing the ship prices in the international market. Furthermore, the lost orders/loss of competition with the drop of market prices has also significantly depressed Japan's share in the market. This sort of domestic public aid imposed by the Republic of Korea falls under the export subsidies stipulated on the WTO Subsidies Agreement and there is strong suspicion of violation of Article 3 of this agreement.

#### <Recent Developments>

Ever since the Republic of Korea decided to provide financial support to Daewoo Shipbuilding & Marine Engineering through public financial institutions in 2015, the issue has been raised on multiple occasions through opportunities such as the OECD Council Working Party on Shipbuilding. Furthermore, in a conference between the Japan Minister of Land, Infrastructure and Transport and the Republic of Korea's Minister of Trade, Industry and Energy in October 2018, Japan requested abolishment measures be taken soon, but no such action took place. As a result, bilateral consultation based on the WTO Agreement was requested in November 2018. The bilateral consultation took place in December, but with no outcomes Japan could be satisfied with. Therefore, in January 2020, Japan requested another bilateral consultation, which took place in March of the same year.

Moreover, at the Japan-China-Korea summit in May 2018 and December 2019, Japan stressed the necessity of early resolution to the excessive supply capacity issue in the shipbuilding industry.



