

# Chapter 5

# 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>

As of 2019, the simple average bound tariff rate for non-agricultural products is 9.8%, and there are some high bound tariff products, including textiles (maximum 51.7%), clothing (maximum 35%) and electric appliances (maximum 20%). The binding coverage on non-agricultural products is 94.1% as of 2019. Unbound tariff items include motor trucks (maximum applied tariff rate of 10%) and pharmaceuticals (maximum applied tariff rate of 8%).

#### <Concerns>

As long as the high tariffs itself does not exceed the bound rate, there is no problem in terms of the WTO Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible.

#### <Recent Developments>

With the aim of expanding the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were launched in May 2012, and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016. 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 include polishing pads (30%), wireless operation controllers (20%), microphones (16%), etc. Tariffs on all subject items including above will be eliminated gradually and will have been completely eliminated by 2023.

In terms of the impact of the COVID-19, on April 14, 2020, in accordance with Article 71 of the Customs Law, the Republic of Korea announced the temporary elimination of import tariffs on surgical and hygiene masks and melt-blown (nonwoven) filters (HS6307.90.90, 5603.12.10, 5603.12.90, and 5603.92.00) during the period from March 18, 2020 to June 30, 2020 in order to deal with the COVID-19.

## 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 (Articles 3.1, 3.2 of the AD Agreement) in this case. Therefore, there are

defects in confirmation of injury to the domestic industry by dumping and a causal relationship (Articles 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 is in violation of the AD Agreement.

#### **<Recent Developments>**

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) and recommended the Republic of Korea to correct the measures. In October of the same year, 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.

As of May 2020, the Republic of Korea stated that it would continue the measure, claiming that it had corrected all violations of the agreement. However, in August of the same year, the Republic of Korea eliminated the AD measure on the grounds that the initially planned period of the measure had expired.

It is regrettable that the Republic of Korea did not eliminate the measures by May 30, 2020, the end of the implementation period. However, it is commendable that in the end, through the use of the WTO dispute settlement procedures, Japan achieved the complete elimination of the AD measure in question.

## **(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 domestic products and those imported from India, which is another subject country of the investigation are used for general purposes. Japanese imports are not in a competitive relationship that would cause serious injury to Korean products, and there

is a large volume of low-priced imports from China and other countries in the domestic market. Therefore, the finding that there is a possibility of recurrence of damage to the Korean domestic industry due to the removal of the AD tax on Japanese imports has a defect and is in violation of Article 11.3 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.

The panel report issued in November 2020 stated that there is a defect in the finding that the removal of the AD tax on Japanese imports may result in recurrence of injury to the domestic industry in the Republic of Korea, as it did not properly take into account the fact that Japanese imports are considerably more expensive than domestic products and that there is a large volume of low-priced imports from China and other countries, and found a violation of Article 11.3 of the AD Agreement. In addition, the report states that the above finding by the Republic of Korea lacks reasonable grounds and has a defect also in terms of the failure to indicate the necessary parameters or to use the data submitted by the Japanese producers themselves when determining the production capacity of the Japanese producers as a precondition for the finding that the Japanese producers have excess capacity for export. Therefore, the report found a violation of Article 11.3 of the AD Agreement. The report also found other violations of the agreement with regard to the treatment of confidential information (Article 6.5 of the AD Agreement) and the treatment of secondary information (Article 6.8 of the AD Agreement), and in conclusion recommended that the Republic of Korea rectify this measure.

In January 2021, the Republic of Korea appealed to the WTO Appellate Body.

Japan has strongly urged the Republic of Korea to accept the panel's report and to eliminate the measures identified as violating the WTO Agreement sincerely and

promptly. Japan will continue to strongly urge the Republic of Korea to discontinue its unfair taxation on Japanese companies.

## Standards and Conformity Assessment Systems

### 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 and 5.6 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 among others, (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), and (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 prohibited under 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 director-general-level talk between the Maritime Bureau of Japan's Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of Trade, Industry and Energy of the Republic of Korea in October 2018, Japan requested to withdraw the measures without delay. However, the measures still remain.

In response to this, in November 2018 and January 2020, Japan made requests for consultations, regarding Korea's excessive public support for its shipbuilding industry inconsistent with the WTO Agreement, and is in consultations with Korea.

At the 131st OECD Council Working Party on Shipbuilding in November 2020, Japan requested Korea to explain its public aid and to ensure transparency

of its measures. Japan will continue to request Korea to bring its public supports to its shipbuilding industry to be WTO-consistent.

