

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 Import License System

<Outline of the Measures>

In November 2008, the Argentine government introduced a non-automatic 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 (DJAI) 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, 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

abolished the Advance Sworn Import Declaration (Declaración Jurada Anticipada de Importación; DJAI) and introduced a new import licensing system using the Comprehensive Import Monitoring System (Sistema Integral de Monitoreo de Importaciones; SIMI) on December 31, 2015. The system requires import license for all the imports except the temporary import, and 87.6% of the total falls under automatic import license items, and the rest falls under non-automatic import license items (fiber, footwear, automobile/electronic parts, etc.) In terms of promoting the export and simplifying the trade procedure, the automobile/electronic parts etc. were excluded from the non-automatic import license items gradually. However, in January 2020, electronic/electrical appliances, automobiles, motorcycles, and automobile parts were added to the non-automatic import license, which then took up about 15% of the total.

The system stipulates that the government agencies related to issuing the non-automatic import licensing “will judge the application within ten days” but “can extend the period if necessary.” In the past, the non-automatic import license could be acquired in about 72 hours at maximum after the application. However, after January 2020 when the target items were increased, the examination takes more time. Therefore, Japan will continue paying attention to whether the system is being operated consistently the WTO Agreement, as well as collecting information regarding the implementation status of Argentina.

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

(2) Investigation of Extension of Safeguard Measures on Hot-Rolled Steel Products in South Africa

<Outline of the Measures>

The South African government initiated a safeguard investigation into hot-rolled steel products (certain flat-rolled products of iron, non-alloy steel or other alloy steel) on March 24, 2016, and on August 11, 2017, initiated a three-year (through August 10, 2020) SG tax (12% in the first year, 10% in the second year, and 8% in the third year).

On July 24, 2020, the South African government notified the WTO of the commencement of an investigation into the extension of this measure, and on August 7 of the same year, a public announcement was made domestically regarding the decision to extend the measure for one year (not yet notified to the WTO).

On September 14 of the same year, the International Trade Administration Commission (ITAC) of South

Africa notified companies of the letter to disclose the essential facts, in which it explained that it had not decided whether to extend the measure and that a three-year extension was under consideration.

<Problems under International Rules>

It is unclear on what basis the measure has been extended from the notification of the commencement of the extension investigation in July 2020 to the present (there is no provision in the Agreement on Safeguards for a provisional extension of the measure). The measure has been extended in violation of Article 7, paragraph 2, Article 12, paragraph 1, Article 12, paragraph 2, and Article 12, paragraph 3 of the Agreement on Safeguards.

The public hearing was held on September 8 of the same year, but the Japanese government, which was an interested party, was not notified in any way, and the Japanese companies involved were notified on September 4, just before the hearing, which did not give them enough time to consider how to respond. There is a concern that this would be inconsistent with Article 3.1 of the Safeguard Agreement, which states that safeguard investigations “shall include ... appropriate means in which ... interested parties could present evidence and their views ...”.

Japanese products are not in a competitive relationship with South African domestic products in terms of price, use, etc., and it is not appropriate to include them in the scope of the measure.

<Recent Developments>

It remains unclear on what basis the taxation is being continued, as the South African government has only informed Japan that an extension investigation would be launched in August 2020. It is reported that a lawsuit has been filed in South Africa as well, seeking a reversal of the taxation. Japan submitted a government opinion to the ITAC on September 25, 2020, and also expressed its concerns at the Safeguard Committee (October 2020), and will continue to work to reduce the impact on Japanese products.

(3) GCC Definitive Safeguard Measures on Imports of Certain Steel Products

<Outline of the Measures>

On October 23, 2019, the GCC (Gulf Cooperation Council)¹ started a safeguard investigation for import of nine categories of steel products: 1. Flat hot-rolled coils and sheets, 2. Cold-rolled flat steel coils and sheets, 3. Metallic coated steel, 4. Organic coated steel, 5. Reinforced steel bars and wire rod, 6. Circular, square and rectangular sticks and rods, 7. Sections, 8. Angles and

¹ The member countries are Saudi Arabia, the United Arab Emirates, Bahrain, Oman, Qatar, and Kuwait.

shapes, and 9. Welded and seamless pipes and tubes including items for transporting water, gas and oil. On July 23, 2020, the GCC reported a determination of injury. On August 30 of the same year, the GCC notified interested parties of the extension of the investigation to April 2021 at a maximum, and on January 5, 2021, announced the addition and exclusion of the products under investigation.

<Problems under International Rules>

As a background of the safeguard investigation, the GCC referred to the global steel overcapacity problem and import restrictions imposed by other countries. 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>

Since the start of the investigation, Japan has expressed its concerns in a government opinion and at the Safeguard Committee, and will continue to urge the GCC investigation authorities to reduce the impact on Japanese products.

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

Refer to page 179 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

