

CHAPTER 10

BRAZIL

NATIONAL TREATMENT

BRAZIL'S MEASURES CONCERNING DISCRIMINATORY TAXATION AND CHARGES FOR AUTOMOBILES, ETC.

<OUTLINE OF THE MEASURES>

The Brazilian government has introduced measures for drastic reductions or exemptions from indirect taxes on products in the automobile, information and communications (ICT), and other sectors, 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 in effective tax rates between imported products and domestic products has arisen.

In September 2011, it was announced that industrial products tax (IPI) would increase by 30% from the current rate for domestically produced and imported vehicles (effective December 2011), but vehicles meeting certain requirements from Brazil, Mercosur, or Mexico were exempt from the additional industrial products tax. A new automobile policy (Inovar-Auto) announced in October 2012 keeps the 30% IPI increase on automobiles in place for five years from 2013 to 2017, while allowing automobile manufacturers to reduce IPI by up to 30% under certain conditions.

<PROBLEMS UNDER INTERNATIONAL RULES>

The above preferential taxation measures grant drastic reductions or exemptions from indirect taxes only on products manufactured in Brazil and certain other countries, and provide 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, treating imported parts unfavorably. Also, it treats imported parts unfavorably. 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 unfavorably in relation to not only domestically-produced automobiles but also automobiles imported from Mercosur or Mexico.

Therefore, the measures violate Article I of GATT (most-favored nation treatment) and Article III (national treatment), TRIMs Article 2, and the SCM Agreement Article 3.1 (b).

<RECENT DEVELOPMENTS>

Japan participated in the DS case as a third party in which the EU made a request for the establishment of a panel in advance in December 2014 regarding the measures taken by Brazil (not only the automobile policy and the preferential taxation measures for 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).¹ Furthermore, Japan made a request for WTO consultations with Brazil in July 2015, and then requested the establishment of a panel in September 2015.² The panel was established in the same month (Consolidated with the EU's panel proceedings).

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 Articles I (most-favoured nation treatment) and III (national treatment) of GATT, 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 correct and eliminate the preferential tax treatment on the automobile and ICT sectors as it is inconsistent with Article III of GATT (national treatment), 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 and agreed with Japan on correcting the WTO-inconsistent measures by December 31, 2019 (by June 21 regarding some of the measures having been found to be prohibited subsidies).

At the DSB meeting in January 2020, Brazil declared that when the Appellate Body Report was adopted, some of the preferential tax treatment on the automobile and ICT sectors had already been expired and there were only preferential taxation measures for

¹For the case in which the EU became a complainant country, see page 134 of the 2019 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

²For 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-.

ICT equipment and semiconductors (Informatics Program and PADIS). The amendment law of the above remaining two programs (Law 13,969) was enacted in December 2019 and the implementation had been completed within the period, it explained. Brazil also declared that the prohibited subsidies that were inconsistent with the WTO Agreements were eliminated or replaced by alternative measures.

However, it is questionable whether or not Brazil's new preferential taxation measures for ICT equipment and

semiconductors, which were adopted through the amendment enacted for implementation, are consistent with the WTO Agreements. Therefore, Japan will continue gathering information regarding the implementation status of Brazil and closely monitor the measures that were found to be inconsistent with the WTO agreements in order to ensure that they are promptly corrected.