

## *Chapter 7*

# CHINESE TAIPEI

### TARIFFS

#### *High tariff Products*

**\* 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 measure>

Binding coverage was 100% when Chinese Taipei joined the WTO, and the current simple average final bound tariff rate on all products is 6.3%. It is 4.7% on non-agricultural products, but high tariffs exist on certain industrial products, such as motor vehicles for the transport of goods (maximum 25%), motorcars and small motor vehicles (maximum 17.5%), special purpose motor vehicles (maximum 30%), etc.

At the time of accession to the WTO, Chinese Taipei's tariff rate quota system (*See Part II, Chapter 4, 1, Functions of Tariffs*) applied to motor vehicles, but this system was removed in 2011.

#### <Concerns>

High tariff rates do not, *per se*, violate the WTO Agreements unless they exceed the bound tariff rates. In light of the spirit of the WTO Agreements of promoting free trade and enhancing economic efficiency, however, it is desirable to reduce tariff rates as much as possible.

#### <Recent developments>

Negotiations regarding market access for non-agricultural products are ongoing in the Doha Round negotiations; they include negotiations on reducing and eliminating tariff rates. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations have been taking place since May 2012 outside the Doha Round negotiations (see 2. (2) "Information Technology Agreement (ITA) Expansion Negotiation" in 5. of Chapter 5, Part II for details).

### TRADE IN SERVICES

#### *Regulations in the Telecommunications sector*

#### <Outline of the measure>

In the broadband market in Chinese Taipei, the FTTB (Fiber to the Building)

market has been growing rapidly, and its market share has reached over 50%, while ADLS (Asymmetric Digital Subscriber Line) is in decline. Many ISPs (Internet Service Providers) including Japanese ISPs have been operating in the market in Chinese Taipei. Chunghwa Telecom, which used to be a state-run ISP, is now providing services almost exclusively under the brand name 'HiNet' and it has more than 90% of the FTTB market share. There has been unfair competition regarding Internet connection. For example, Chunghwa Telecom, which owns essential infrastructure, may be conducting discriminatory business operations against other ISPs, and HiNet charges high connection fees (peering fees) to other ISPs for direct connection to its network. In addition, Chunghwa Telecom exclusively provides the last mile, thereby creating a structural situation where it is difficult to decrease fees for services to users.

Since the 28th Japan-Chinese Taipei Economic and Trade Conference (2003), Japan has been requesting that Chinese Taipei pursue proper competitive policies in the telecommunications sector. As a result, it is gradually lowering its peering fees. In order to ensure fair competition in the entire industry, however, it is desirable that peering fees be eliminated.

#### **<Problems under international rules>**

Due to its dominant share in the Internet connection market, HiNet may fall into the category of "major service providers" defined in the "Reference Paper on the Regulatory Framework for Basic Telecommunications Services" to the GATS. If the authorities of Chinese Taipei do not correct HiNet's anticompetitive acts -- such as discriminatory peering fees against ISPs other than its own 'HiNet' brand -- they might be violating regulations such as the Reference Paper 2.2(a), which provides that conditions, standards and fees with regard to connection to major service providers shall be non-discriminatory and that quality be no less favorable than that for the same services provided by major service providers themselves, their subsidiaries, or joint-venture-partner service providers. In addition, HiNet may fall into the category of "major service providers" also in the lease line market, and, if so, the unreasonable rate system of lease lines might be incompatible with the Reference Paper.

#### **<Recent developments>**

HiNet's fees for private peering services, for which Japan has been continuously making requests at meetings of the Japan-Chinese Taipei Economic and Trade Conference, were revised in April 2012. They were reduced to roughly 30% of the rate existing in July 2011. In addition, at the 38th Japan-Chinese Taipei Economic and Trade Conference, held in December 2013, Japan requested, in "Proposals for Competition Promotion Policy for Broadband Development in Chinese Taipei", that Chinese Taipei promote competition in the industry, provide adequate price for the last mile that Chunghwa owns and improve the peering environment further.

## PROTECTION OF INTELLECTUAL PROPERTY

Chinese Taipei has repeatedly improved systems for intellectual property rights (IPR) protection through revision of laws. Recently, establishment of an intellectual property court, which would have jurisdiction over general intellectual property cases to resolve disputes in order to properly safeguard rights, was achieved in July 2008. The responsibilities of Internet service providers to promote copyright protection were made clear through the revision of the Copyright Law in May 2009. In 2011, the Amendments of Trademark Law (May 2011) and Patent Law (November 2011), which reflect proposals from Japanese entities, were approved. The WTO Agreements are not expressly violated by these revisions to the law, but matters requiring improvements still exist from the point of view of promoting trade liberalization in the IPR sector. Japan therefore expects further improvements in the legal system and its administration.

### *Non- and lightened criminal penalties on infringement*

**\* 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 measure>

Although Chinese Taipei's Patent Law was amended in 1994, 1997 and 2001 with the intent of conforming it to the provisions of the TRIPS Agreement, criminal penalties for infringement of intellectual property rights have been gradually reduced during that time. In addition, the October 2001 amendment excluded patent infringement from the scope of penalties, and the January 2003 amendment excluded utility models and industrial designs from the scope of penalties. This situation has not improved even after the Patent Law Amendments in November 2011.

#### <Concerns>

Restraining infringing acts through criminal penalties is an internationally-accepted system (including by Japan), and its abolition could significantly reduce the deterrent effect that punishment has on infringement. Decriminalization also excluded police and other government officials from criminally investigating and initiating cases against infringement, and made civil relief measures the sole recourse. This reduces the effectiveness of these relief measures. This measure can therefore be considered inappropriate in light of the TRIPS Agreement, which aims to promote effective and sufficient IPR protection. It is desired that penalties for rights infringement be reinstated, public prosecution not require the accusation of the rights holder, and criminal penalties be strengthened.