

Chapter 5

REPUBLIC OF KOREA

TARIFFS

High Tariff Products

<Outline of the measure>

The simple average bound tariff rate for non-agricultural products as a result of the Uruguay Round is 10.2%. However, the clothing sector maintained, on average, higher tariffs (*e.g.*, 28.3% with a maximum 35%). In addition, high tariffs were maintained on other items, including optical apparatus (maximum 35%), copper products (maximum 13-16%) and aluminum products (maximum 13-16 %). The binding ratio for electrical equipment is 74.3%, while the binding ratio for industrial goods as a whole is 93.9%. Unbound tariff items include motor vehicles for the transport of goods (applied tariff rate of 10%), generators (applied tariff rate of 8%), and chemicals (applied tariff rate of 8%).

Since its accession to Information Technology Agreement (ITA) in July 1997, the Republic of Korea eliminated tariffs on information technology products by 2004. Korea also agreed to reduce tariffs on automobiles (maximum 80%) to a flat rate of 8% in February 1999.

<Problems under international rules>

Higher tariff rates do not, *per se*, conflict with WTO Agreements. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to the lowest possible rate.

<Recent developments>

Market access negotiations in the DDA for non-agricultural products are ongoing and include negotiations on reducing and eliminating tariff rates. The aforementioned liberalization efforts by Korea are helpful, but further liberalization is expected, since Korea is an OECD member and, as a developed country, should be a leader in

promoting free trade.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

Mandatory Conformity Assessment System for Lithium-Ion Batteries

<Outline of the measure>

On April 23, 2009, the South Korean government announced that it would introduce new safety regulations for lithium-ion batteries on July 1. It has become obligatory to conduct product testing/inspection when selling lithium-ion batteries in South Korea or importing them into South Korea. However, other countries expressed concerns because only a few institutions in South Korea were allowed to conduct the testing/inspection and because a sufficient preparatory period was not secured. (Thereafter, on June 23, 2009, the South Korean government extended administrative dispositions by setting a transitional period up to the end of December, and has been making improvements to the system, for example, by making it possible to use test data reports issued by overseas testing/inspection institutions approved by the South Korean government without conducting additional testing when South Korea imports lithium-ion batteries from other countries.)

<Problems under international rules>

South Korea submitted a notification regarding this system to the WTO TBT Committee in October 2008, and the objective of the system itself, securing product safety, is understandable. On the other hand, since testing/inspection institutions were initially limited to certain institutions, there was the possibility that the system could be an unnecessary obstacle to international trade that was inconsistent with Article 5.1.2 of the TBT Agreement from the standpoint of foreign companies.

<Recent developments>

For Japan, then-Minister of Economy, Trade and Industry Nikai expressed concerns in June 2009. Immediately, the South Korean government extended administrative dispositions by setting a transitional period, and made an announcement that test data reports issued by overseas testing/inspection institutions approved by the South Korean government can be used. After that, Minister of Economy, Trade and Industry Nikai and Minister for Trade Kim had a talk regarding this case, making use of the opportunity at the OECD Ministerial Council Meeting. In addition, Japan expressed concerns with other countries at a WTO/ TBT Committee meeting. As a result of continuous consultations with the South Korean government, it has become possible to export lithium-ion batteries based on testing within Japan. Thus, the problem has been solved.

PROTECTION OF INTELLECTUAL PROPERTY

Issues related to Counterfeit, Pirated and other Infringing Products

Korea enacted changes to improve its intellectual property rights (IPR) legal system prior to 1999, in advance of the time limit set under the TRIPS Agreement. Japan welcomes Korea's commitment to put this system in place, including undergoing an implementation review under the TRIPS Council.

However, a survey of Japanese companies (FY 2008 Survey Report on Losses caused by Counterfeiting, Japan Patent Office, March 2009) revealed that, among the companies replying that they had suffered injury from counterfeits, 27.5% reported that they had incurred losses due to products manufactured, transported, sold or consumed in South Korea; in addition, a review by country of origin of bans by Japanese Customs on imports suspected of infringing on intellectual property rights shows that South Korea accounts for 12.4% (approximately a 27.4% decrease year-on-year) of all such bans. It can hardly be said that the enforcement is free from problems.

In this regard, based on the Agreement between the Government of Japan and the Government of the Republic of Korea Regarding Mutual Assistance in Customs Matters, which both governments signed in December 2004 and became effective on the date of signing, the Japanese government is promoting cooperation with the South Korean government on combating counterfeiting at the border. Incidentally, the South Korean government has made some institutional improvements, including setting more severe criminal punishment and revising the presumptive provision on the amount of damages. In particular, South Korea revised its Unfair Competition Prevention and Trade Secret Protection Act by introducing regulation on copying of form, which is an effective system to deal with counterfeit products. These efforts by South Korea, which surpass the obligations under the TRIPS Agreement, are highly commendable. In addition, in 2009, South Korea revised the Unfair Competition Prevention and Trade Secret Protection Act, the Design Protection Act, the Copyright Act and so on.

In 2008, the punitive provisions in the Unfair Competition Prevention and Trade Secret Protection Act and in the Industrial Technology Outflow Prevention and Protection Act were strengthened, the enforcement provisions of the Customs Law were strengthened, the two-way punitive provisions of the Patent Law, the Utility Model Act, the Design Protection Act and the Trademark Act were clarified, and reforms were carried out in various laws governing the protection of intellectual property rights.

However, from the point of view of properly protecting intellectual property and ensuring compliance with the principles of the TRIPS Agreement, Japan still needs to monitor Korea's administration of its IPR legal system, while at the same time working to provide more information concerning specific issues raised by industry and rights holders. (*See General of Part I Chapter 3 on ASEAN.*)