



OVERSEAS PROTECTIONIST POLICY

Starting with the subprime crisis, the world economy has been plunged into a “once in a hundred years” economic crisis. With the United States as the epicenter, the U.S., Europe, Japan, and China are creating demand for goods and services through large-scale government spending in order to cover the sudden shrinkage in demand.

A company whose orders have been reduced will cut its expenditures over such reduction and begin asking for new orders outside the company. The same thing is starting to happen at the national level. It is logical to expect that nations will be tempted to try to ensure that domestic demand created by government spending stays in the country by reducing imports and increasing exports.

Historically, prior to the creation of the current market economy and free-trade system, trade was exclusively a matter for the state. For this reason, it was natural that the state would endeavor to restrict imports and increase exports if there was an economic slowdown. The change in such position with trade liberalization is recent history. At the time of the

Great Depression, nearly 100 years ago, each country sought to restore its export competitiveness by devaluating its currency and restricting imports. Each country also sought to increase revenue for national finances by raising import tariffs and securing demand domestically through government spending. People who are familiar with this history worry about the renewed spread of protectionism throughout the world as a consequence of this economic crisis and pessimistically predict that history will repeat itself.

However, we have learned many things from the past, in particular that protectionism is not a viable option, having led to the economic pressures that fueled the Second World War. Thus, after the war, the Bretton Woods system, which is centered on free trade, was formed. Through challenges and experience, the World Trade Organization (“WTO”) was formed as the successor to the General Agreement on Tariffs and Trade (“GATT”), the International Monetary Fund (“IMF”) accomplished great changes with each currency crisis, and the major economic powers built coordinating systems in the form of the G8 and the G20. In relation to trade, mechanisms for preventing

protectionism through various agreements have been effective not only against tariffs and quantitative restrictions but also against other protectionist measures, such as anti-dumping and countervailing tariffs.

A June 2009 report published by the Japanese Ministry of Economy, Trade and Industry on compliance by major trading partners with trade agreements (including the WTO, Free Trade, and Economic Partnership Agreements and bilateral investment treaties) pointed out the institution of protectionist measures and trade barriers by several governments. The overall protectionism picture, however, is not quite as bleak as some would portray. Despite the blatant tariff-increasing measures taken by Russia (which does not belong to the WTO), WTO members, with the exception of India and several other countries, are upholding the Uruguay Round agreements and are taking moderate measures at the national level.

That said, companies and private industry often have a different perspective. Many cases have arisen of companies or industries requesting protectionist measures from governments to address their particular commercial difficulties. Consequently, the forms of protectionist policies are diversifying. Foreign or international companies that wish to oppose such policies are finding that they must be prepared to respond to a diversity of protectionist stances.

Though the WTO intends to make new agreements in some areas, new issues such as “standards revision” have recently emerged. This is the practice of effectively restricting imports through mandatory standards, such as those reportedly being used for steel products in India, instead of the voluntary standards that have been acceptable to date. There is also the issue of “change of tariff category,” changing the product’s tariff category in order to raise the tariff, a method that is being examined with regard to cellular telephones in the EU. There are also the more traditional protectionist measures of “antidumping” and “countervailing tariffs.” Antidumping was a protectionist strategy adopted by U.S. companies, mainly in the areas of steel and semiconductors, in the 1970s and 1980s, but today, it is the antidumping suits against the products of developing countries—particularly the chemical products of China—that stand out. Agricultural subsidies have also become a major negotiation item for the Doha Round.

A slightly more elaborate method of inhibiting trade procedurally consists of restricting the number of customs offices that issue import licenses. Cases such as the *Poitiers* case, brought against Japanese electronic appliances (mainly VTR) by France in the 1980s, illustrate this practice. Since the end of 2008, Indonesia has been dealing with similar issues.

In the intellectual-property realm, another protectionist strategy that is being taken is the restraining of competitors’ “unfair” imports through infringement claims. Many countries have also adopted the strategy of questioning the “safety” of various products (e.g., food and consumer goods) in order to restrain their importation through quarantines.

A major topic currently drawing attention is the “Buy American” clause in the Stimulus Act, which restricts U.S. government procurements to American goods and services. Because the clause makes clear that it “will be applied in a manner consistent with U.S. obligations under international treaties,” it is understood that it will not violate WTO agreements; nevertheless, for companies of nations like China and Russia that are not signatories to the WTO Agreement on Government Procurement, the clause will be a major barrier to trade.

Thus, since regulations related to the sale and trading of products in the form of increased tariffs or quantitative restrictions are readily discernible by outsiders, changes in domestic regulations are being used to create new import restrictions. That is a major risk in terms of sales for companies, one that will result in requests to governments for protection by companies or industries. Consequently, as part of risk management, companies need to constantly monitor trends for regulatory changes that may affect them.

If a company finds that it may suffer or has suffered adverse consequences due to a regulatory system, it may wish to take some or all of the following measures.

It may wish to quickly provide information to, and press for action by, the Japanese government or an international agency. In many cases, because of the risk of reprisal, companies may wish to request anonymity and may avoid providing specific examples; however, doing so may hinder the development of the matter.

A company may also wish to point out the problem to the relevant government. However, courage is required to approach a government as a single company. So what should be done? There are chambers of commerce and other such organizations representing Japanese business in many commercial capitals overseas. It is important to make use of such organizations, which are voices for the interests of Japanese companies. There are many cases of Japanese companies hesitating to join local Japanese chambers of commerce; nevertheless, chambers of commerce play an important role, not only in providing information but also in reflecting views of the member companies. Chambers of commerce in the U.S. and Europe vigorously and successfully demand improvements from government by cooperating with embassies and consulates. In the case of Japanese companies, cooperation should be considered not only with chambers of commerce, but also with the Japan External Trade Organization (“JETRO”).

Relationships with local customers, relationships with trade partners, and relationships with relevant governments are important; indeed, it is desirable to build relationships not

only with local governments with which there is regular association, but also with central governments that have authority over trade measures. Alliances with U.S. and European companies sharing a common awareness of the issues and contact with international law offices may also be helpful.

In addition, when considering the possibility of seeking decisions of judicial authorities for dispute resolution, if the protectionist measures are imposed by the central government and there are relations with local private businesses and regional governments, it is important to build a system allowing the company’s views to be properly heard. It is also advisable to consider using lawyers. In such cases, it is a good idea to involve not just Japanese attorneys, but local counsel, who can best encourage local cooperation.

The above methods are considered effective for reducing the risk of protectionism affecting a company. For companies, it is necessary to monitor trends for regulatory changes, and if there are instances of protectionist measures, the company should consider communicating such unfairness externally in a comprehensive manner.

TYPICAL EXAMPLES OF THE INTRODUCTION OF PROTECTIONIST MEASURES

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| Raising Tariffs | Russia | Since November 2008, tariffs were successively raised for automobiles, certain brands of steel and steel products, agricultural machinery, and television sets (excluding liquid crystal, plasma, and Braun tube sets, etc.). For automobiles, the higher tariff was limited to nine months, beginning in January 2009. |
| Tariff Categories | EU | Since December 2008, the European Commission has been examining a change of tariff categories for parts of cellular telephones that have been ITA products. |
| Import Procedures | Indonesia | Since December 2008, there has been a restriction on ports of importation, with registration required for the importers of 529 products, including electrical/electronic products (effective until the end of 2010). Since February 2008, there has been a notice of imposing obligation for import vehicle registration and inspection prior to loading for the import of 203 steel products. |
| Industrial Standards | India | Since September 2008, 17 steel products have been subjected to mandatory standards coverage by the Bureau of Indian Standards. Subsequently, enforcement for parts has been suspended for one year or excluded. |
| Safety Standards | Russia | The Russian Ministry of Industry and Trade is planning to submit to the government a bill regulating right-hand-drive vehicles. |
| Government Procurement | U.S. | The “Buy American” clause, requiring (1) use of American-made steel products and general construction products in public works, and (2) use of American-made textile products for procurement by the United States, was included in the American Recovery and Reinvestment Act enacted in February 2009. The clause “will be applied in a manner consistent with U.S. obligations under international treaties.” |

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