

## Client Alert

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## Japan: First antitrust parallel imports case resolved under commitment procedures

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### Introduction

Wilson Sporting Goods Co. ("**Wilson**"), and its subsidiary and sole authorised distributor in Japan, Amer Sports Japan, Inc. ("**Amer**"), had been under investigation since 2020 on suspicion of interfering with parallel importers' transactions, which is prohibited as unfair trade practices under Japanese antitrust law (i.e. the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, or the "**AMA**"). The Japan Fair Trade Commission ("**JFTC**") closed the investigation after issuing the notice of Commitment Procedures and approving the commitment plans submitted by Wilson and Amer.<sup>1</sup> In cases resolved under the Commitment Procedures, the JFTC does not rule on whether the alleged conduct is an infringement of the AMA and accordingly, no sanctions were imposed on Wilson and Amer.

According to the JFTC's guidelines on distribution and trade practices under the AMA,<sup>2</sup> parallel imports promote price competition in a market and accordingly, if conducted to maintain prices, its obstruction would be considered problematic under the AMA. The last enforcement action involving parallel imports was taken in 1998, and this is the first case resolved under the Commitment Procedures where not only a domestic sales subsidiary but also its US parent company were required to submit commitment plans.

### Case summary

#### (1) Suspected conduct

Amer had obtained Wilson tennis rackets for advanced players from Japanese parallel importers, who imported the tennis rackets from Wilson's overseas authorised retailers and sold them in Japan at prices below Amer's retail pricing. Upon Amer's request, using the serial number information from hologram stickers on the products, Wilson warned overseas authorised distributors not to sell the tennis rackets to Japanese parallel importers. The JFTC found that this conduct might be considered prohibited interference with a competitor's transactions under the AMA, as it prevented the Japanese parallel importers from importing from overseas authorized distributors.

#### (2) Outline of the commitment plans approved by the JFTC

The plans submitted by Wilson and Amer respectively and approved by the JFTC included commitments to:

<sup>1</sup> See the JFTC press release of March 25, 2022 (<https://www.jftc.go.jp/en/pressreleases/yearly-2022/March/220325.html>).

<sup>2</sup> "Guidelines Concerning Distribution System and Business Practices under the Antimonopoly Act", the JFTC, revised on 16 June 2017 ([https://www.jftc.go.jp/en/legislation\\_gls/210122.pdf](https://www.jftc.go.jp/en/legislation_gls/210122.pdf)).



- (a) pass a resolution of the board of directors regarding confirmation of cessation of the suspected conduct and other related matters;
- (b) notify parallel importers of measures taken in accordance with the above (a);
- (c) ensure all employees and relevant group companies are informed about measures taken in accordance with the above (a);
- (d) not perform similar conducts for the next three years;
- (e) develop a compliance program and conduct regular training for executives, officers and employees and regular internal audits; and
- (f) report to the JFTC upon implementation of the measures required under the commitment plans.

Wilson also agreed not to enforce any policy, with respect to the sale of the products in Japan, prohibiting overseas authorized distributors from selling the tennis rackets to Japanese parallel importers at their request (i.e., not to impose restriction of passive sales to Japanese parallel importers on overseas distributors).

## Practical implications

Since coming into force at the end of 2018, the Commitment Procedures have been used proactively and this is the 10th case resolved under the procedures. They have enabled the JFTC to handle cases and to resolve perceived competition concerns more flexibly and promptly. This approach has expanded the JFTC's enforcement capabilities and future trends should be monitored closely. Businesses under investigation will need to consider carefully how to engage with the JFTC's investigation with the potential use of the Commitment Procedures in mind.

In addition, the JFTC may have had difficulties in the past conducting investigations and taking enforcement action against a foreign company. In the near future, the JFTC may more proactively investigate foreign companies, as the Commitment Procedures enable the JFTC to address competition concerns with the cooperation of a suspected overseas company. Foreign manufacturers or brand owners should carefully assess any restrictions on distributors that may affect the sale of their products and services in Japan from the Japanese antitrust perspective.