Chapter 3

ASEAN

I. General

PROTECTION OF INTELLECTUAL PROPERTY

Asian countries increasingly have enacted adequate laws, regulations and systems and established institutions to protect intellectual property rights. Since the establishment of the WTO, Asian countries have been amending their national intellectual property legislation to conform to the TRIPS Agreement. Japan appreciated the efforts of some Asian countries to conform to the TRIPS Agreement prior to the end of the transitional period in 2000. As the reviews of the implementation of TRIPS obligations by developing countries are concluded by the TRIPS Council, Japan will monitor both the legal frameworks and their administration to ensure proper conformity with the obligations of the agreement. When inconsistent circumstances exist, including failure to adhere to the Agreement, Japan will consider the use of WTO dispute settlement procedures.

Issues related to Counterfeit, Pirated and other Infringing Products

(1) Availability of Enforcement

The greatest intellectual property rights-related problem in Asian countries, and one that besets virtually every country, involves the huge number of infringement cases as a result of rampant production and distribution of counterfeit trademark goods, design imitation goods and pirated copyright goods (*see* Figure 3-1). This problem is exacerbated by the ineffective enforcement of rights and, thereby, the failure to eliminate infringements.

The introduction of substantive legal provisions and the establishment of a regulatory system by itself will not guarantee the sufficient protection of intellectual property rights. For rights to be sufficiently protected, the granting and registration of rights must be handled efficiently by the relevant authorities and agencies. Moreover, effective and expeditious remedies against infringement of intellectual property rights must be available to prevent and deter infringements. Adequate remedies include judicial remedies (injunctions for infringement, compensation for damages, orders to destroy infringing products, provisional measures to seize infringing products and secure evidence), border measures by customs authorities, and the availability of criminal enforcement and sanctions.

In the TRIPS Agreement, Articles 41 through 61 provide for enforcement procedures. Specifically, Article 41 requires Members to ensure that enforcement procedures are available to permit effective and expeditious action against infringement of intellectual property rights. A lack of effective and expeditious enforcement measures constitutes a violation of obligations under the Agreement. Japan must monitor legislation of Members, especially developing country Members whose transition period expired at the end of 2000, to ensure effective and expeditious enforcement procedures. When inconsistent legal frameworks and administrations are identified, Japan will consider resolution through the WTO dispute settlement mechanism.

Some Asian countries recognize the need to strengthen their enforcement mechanism against counterfeit and pirated goods, and their authorities are actively cracking down on these products. Japan praises these efforts and looks forward to additional strengthening of enforcement mechanisms by Asian countries in the future.

Figure 3-1

Number of IPR Infringements of Japanese Products in Asian Countries

	Number of Companies damaged by the manufacture of counterfeits		Number of Companies damaged by the distribution of counterfeits	
	2003	2004	2003	2004
ASIAN AREA	597	526	574	486
China	335	347	260	277
(Hong Kong)				
Chinese Taipei	147	134	145	131
Korea	126	122	127	112
Thailand	29	51	60	71
Indonesia	23	32	47	54
Singapore	19	25	42	40
Malaysia	30	33	54	58
Other	56	63	119	101

* Note: Asian country statistics do not match Asian area statistics because multiple responses were permitted.

** Valid responses: 2,341 (in 2003), 2,452 (in 2004)

Source: FY 2005 Survey Report on Losses caused by Counterfeiting, by the Japan Patent Office

(2) Actions Concerning Counterfeit and Pirated Goods

With respect to counterfeit and pirated goods in Asian countries, we urge that enforcement procedures be brought into conformity with international standards. Mere adjustments to the substantive legal and other systems of countries is not enough to solve the issue.

Foremost, many Asian countries need to secure the necessary personnel to operate an effective intellectual property protection regime; efforts must be made to train personnel in the field of intellectual property inside and outside of the government in order to increase awareness of the relevant problems. For registration, granting and law enforcement agencies to operate efficiently and effectively, it is necessary to develop computerized systems. To assist in achieving these goals, Japan and other developed countries should help developing countries make the necessary institutional improvements and provide technical assistance through expanded training programmes. In order to improve the efficiency of border measures, care should be taken to provide better support for the training of customs officials and by addressing situations when counterfeits are imported and distributed.

Although the basic principle is for the rights holder himself to implement enforcement through the local legal framework, there is, at the same time, a limit to the effect an individual rights holder can have. Industry, rights holders, and governments must therefore work more closely together to guarantee stronger enforcement by administrative authorities. These parties should also seek to promote, through educational and public relations programs, a better understanding of the importance of intellectual property among the people of the country concerned as well as a greater awareness of the significance of protecting it.

To this end, Japan has greatly enhanced technical assistance to Asian countries and will continue to promote technical cooperation in the future. In addition, the manufacture and distribution of counterfeit products is spread across several countries, so consideration should be given to measures that will promote the exchange of information on intellectual property rights infringement among relevant countries. Japan has taken a leading approach in international efforts to strengthen the intellectual property measures that prevent counterfeited goods and promoting cooperation in the field of international property rights, including "Model Guidelines for Effective Public Awareness Campaigns on IPR" and "Model Guideline to Secure Supply Chains" that were proposed by Japan, the US, and South Korea and approved at the APEC Ministerial Meeting in November 2006. Also, Japan has officially signed the EPA with the Philippines in September 2006, which includes protection of intellectual properties and enforcement.

II. Member Countries

1. THAILAND

TARIFFS

1) High Tariff Products

<Outline of the measure>

Thailand has reduced applied tariff rates as part of its effort to adjust tariff structures and to strengthen the competitiveness of its manufacturing sector. In September 2003, the Thai Government implemented a Cabinet Decision to reduce tariffs on 1391 items, including rubber products, textiles, iron and steel, general machinery and electric equipment. In general, tariffs have been reduced to 10% for finished products, 5% for semi-processed products, and 1% for raw materials. The tariff rate for CKD (complete knock down) parts was reduced from 33% to 30%.

However, applied tariff rates for the items excluded from the above decision remain high (average applied tariff rates for non-agricultural products are 9.5%), especially for transport equipment (average 31.3%) and clothing (average 29.8%). In addition to automobiles (maximum 80%), washing machines and refrigerators (maximum 30%), copper products (maximum 20%) and polyethylene (maximum 12.5%), there are other high-level tariff items not produced in Thailand (such as stainless steel for automobiles which has a 30% tariff). The average bound tariff rates for non-agricultural products is 24.2%, and in terms of predictability, it is preferable to reduce as much as possible the gap between applied tariff rates and bound tariff rates. The binding coverage is relatively lower: 24.7% for transport equipment and 72.6% as a whole for non-agricultural products. Unbound items include automobile parts (applied tariff rate of 42%), bicycles (applied tariff rate of 10%), toys (applied tariff rate of 80 %), and furniture (applied tariff rate of 80%).

<Problems under international rules>

Higher tariff rates themselves do not, *per se*, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to their lowest possible rate, while eliminating the tariff peaks and gaps described above.

Low bound tariff rates are not a problem under WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates, it is desirable that unbound products be bound from the point of view of increasing predictability.

<Recent developments>

Negotiations over market access for non-agricultural products in the DDA are ongoing and include negotiations on reducing and eliminating tariff rates.

Since the Japan-Thailand Economic Partnership Agreement was agreed upon in September 2005, tariffs have been removed on exports from Japan for automobile parts (parts for manufacturing) and steel products, and market access for Japan has improved.

ANTI-DUMPING MEASURES

Anti-dumping measures against Hot-rolled Steel from Japan

<Outline of the measure>

In March 2002, five Thai steel-makers requested AD investigations into imports of hot-rolled steel from 14 countries, including Japan. In May 2003, the Thai Government imposed a 36.25% AD duty on Japanese hot-rolled steel.

The hot-rolled steel exported from Japan is cold-rolled in Thailand and supplied to auto and consumer electronics manufacturers. Japan produces a high-quality product that is difficult for Thai steel makers to produce. However, the Thai makers have asserted that they can produce this steel and, after the final decision, the Thai government initiated a trial period to determine if Thai-made steel can be used for the relevant applications. To date, users have not been supplied with sufficient volumes of qualified hot-rolled steel in the trial period.

<Problems under international rules>

The like products produced in Thailand are inferior in quality to the hot-rolled steel exported by Japanese companies. If two different kinds of products that are not competing with each other are considered like products, an objective examination on the scope, existence of dumping and injury is impossible. For these reasons, the investigations are inconsistent with Articles 2, 3 and 4 of the AD Agreement.

On May 26, 2003, the Thai authority issued its final determination. However, the determination did not meet the data disclosure requirements of, and therefore was inconsistent with, Articles 12.2 and 12.2.2 of the AD Agreement. For example, the Japanese companies submitted evidence supporting a claim that their steel did not compete with the Thai “like products” because of differences in quality, and therefore they could not have caused injury to the domestic industry. The Thai authority rejected their claims and evidence without offering any explanation or supporting evidence.

The authority also failed to disclose the essential facts to support its findings. For example, no positive evidence was cited detailing the 15 economic factors and indices for finding injury set forth in Article 3.4 of the AD Agreement. Consequently, interested parties were unable to effectively comment on the findings. As such, the investigation is inconsistent with Article 6.1 of the AD Agreement.

<Recent developments>

As a result of the annual reviews conducted in September 2005 and September 2006, the dumping margins against some of the Japanese companies have been substantially lowered from the initial level of 36.25%. However, the annual reviews were inappropriate in that, like the original investigations, the authority evaluated different products that do not compete with each other as like products. In addition, there has been no improvement on the rest of the above-mentioned problems. Japan should keep a watch over the Thai government's handling of the AD measure.

TRADE IN SERVICES

Foreign Investment Restrictions, etc

<Outline of the measure>

In Thailand, the Board of Investment (BOI) restricted foreign firms (those in which foreigners had stakes in excess of 50 percent) from entering almost all service industries, including the engineering and retail industries. BOI permits foreign firms to participate in only six business categories: trade mediators, wholesale and retail services, hotel businesses and construction where the projects are over a certain scale.

The system allows other restricted businesses, excluding nine categories -- such as mass media and land transactions -- to participate if they acquire permits, but permits are not always granted.

Furthermore, in response to instances of indirect investment made possible by interposing a Thai-owned company for a foreign-owned company, the Commerce Department is moving toward strict application of investment regulations to foreign-owned companies and of the sectors for which foreign equity investment is restricted. The bill to amend the Foreign Business Law will define a foreign company as one which holds majority voting rights even if the equity investment ratio is less than 50%, and penalties will be strictly applied where the regulation is contravened. The Commerce Department is moving in the direction of regulating foreign equity participation in such service industries as accounting, law, construction, and advertising.

Since the amended law imposes tough regulations on foreign capital, attention should be focused on foreign-owned companies already operating in Thailand.

Major restrictions on foreign investment are as follows:

- Financial Services

In the insurance industry, the caps on foreign investment and foreign directors are 25 percent. For the development of the financing industry in 5 to 10 years, the central bank published the Finance Master Plan in January 2004, and a review of the licensing system will be implemented. However, no new action has been taken in this direction at present.

- Telecommunication Services

The Telecommunications Business Law that changed the limitation of foreign equity ratios from 49% to 25% was put into effect in 2001. The law was revised in January 2006 in accordance with planned liberalization in the telecommunications sector in 2006 as committed in the GATS, and foreign equity ratios were eased to less than 50%. Foreign investment has been progressing, as equities of Shin Corporation—owned by the Taksin family—were sold to Singapore on the business day after the deregulation was implemented. However, with this purchase, controlling rights were effectively held by a foreign-owned operator through its voting rights percentage. With the change of administrations, the Thai Government regarded this move as a bypass of foreign investment regulations, marking the start of an amendment of the above Foreign Business Law.

- Distribution Services

With the revision of the Foreign Business Law in 1999, foreign investment was allowed in cases of retail services whose minimum capital is 100 million baht and over, and where the minimum capital of each store is 20 million baht and over; and in cases of wholesale services whose minimum capital is 100 million baht and over. In cases that do not meet these conditions, foreign equity ratios are limited to less than 50% as is the case for other services.

In addition, “food and drink sales services” are also under restriction. Foreign investment in retail services dealing with food such as supermarkets is restricted to less than 50%.

- Advertising Services

Thailand has also limited foreign investment to less than 50 percent in advertising services.

<Problems under international rules>

Although the WTO Agreement has no general rules on investment, the GATS disciplines service trade activities through investment. The various restrictions on foreign investment described above do not violate the WTO Agreement so long as they do not contradict GATS commitments. However, it is desirable that further liberalization efforts be made in the spirit of the WTO and the GATS.

MFN is one of the most important pillars of liberalization in the multilateral trade regime and is a basic principle of the WTO Agreements. MFN exemption is a deviation from this most important principle and it is desirable that it be removed. The GATS stipulates that MFN exemptions are temporary and ought not exceed ten years.

<Recent developments>

Japan is monitoring amendments to laws that would tighten foreign investment regulations and is requesting their relaxation, through bilateral dialogues, WTO service negotiations and EPA negotiations.

2. INDONESIA

QUANTITATIVE RESTRICTIONS

1) Quantitative Import Restrictions

<Outline of the measure>

Indonesia imposed a temporary import prohibition on rice, salt and other items to protect its domestic industries. In addition, an import licensing system and inspections before loading was implemented to control smuggling.

<Problems under international rules>

Since these measures may violate Article XI of the GATT (general elimination of quantitative restrictions), it is necessary for Japan to request that the Indonesian Government to rectify the situation in light of the consistency with the WTO Agreement.

<Recent developments>

The Indonesian Government bans imports of rice for three months covering the harvest season to be designated by the Minister of Agriculture and periods before and after that, and the Minister of Commerce may decide to shorten or extend the import ban period depending on domestic demand. In December 2006, the Indonesian Government announced plans to import of 500,000 tons of rice as rice production was expected to decline due to a delay in the start of the rainy season, driving up rice prices in the country.

Imports of salt had previously been allowed only for designated importers, but the order of the Minister of Commerce on September 30, 2005 opened up the import market for salt manufacturers and importers as well for unprocessed, condensed and water-soluble extractable salt and other salt except for table-grade salt.

The Indonesian Government began restriction on imports of second-hand capital goods in 2003 to protect domestic manufacturers. After a review of the measure at the end of 2005, it decided to keep the restriction in place through the end of 2007. Second-hand capital goods permitted to be imported include working machines and equipment, nuclear reactors, steam boilers, engines, recording audio and video equipment, automobiles, aircraft and copy machines. Other items may also be imported with the approval of the Minister of Commerce on condition of export and investment expansion, including the relocation of manufacturing plants. As for second-hand automobiles, the Indonesian Government is currently considering separate regulations to designate models that can be imported.

To protect domestic industries against imports of low priced products that may have been smuggled or otherwise illegally imported on or after 2002, an import licensing system including pre-shipment inspections was introduced. In March 2002, the Special Importer Identification Number System (NPIK) was introduced to control the import of eight items, including rice, wheat, textile products, footwear, electrical apparatus, toys, soybeans and sugar. Subsequently, import licensing and pre-shipment inspections were introduced with respect to steel in November 2002. For textiles, only textile manufacturers were permitted to act as importers in 2002, and a pre-shipment inspection process was introduced in 2003. Due to sudden price increases in, and mounting demand for, deregulation by the industries, including Japanese companies in Indonesia, import licensing and pre-shipment inspections were repealed in February 2004. Also, imports of textiles and textile products, which had previously been limited to manufacturers, were relaxed to include companies designated by the Minister of Commerce in 2005.

2) Export Restrictions on Logs and Lumber Products

<Outline of the measure>

In January 1998, the Government of Indonesia, under an IMF agreement, announced that it would switch from applying a specific duty on the export of logs and lumber products (calculated according to volume) to applying an *ad valorem* (calculated according to price) duty. Indonesia reduced the export duty to 30 percent in April 1998, to 20 percent by the end of December 1998, and to 15 percent by the end of December 1999. It also set export regulations, including export quotas for logs and lumber products. Furthermore, the Indonesian Government, citing the need to take measures against illegal logging, banned exports of logs and wood chips in October 2001, banned exports of rough wood products (including crossties) in October 2004, and also banned exports of woods with a low degree of processing such as those with small cross-section areas of 4,000 square millimeters or larger in March 2006.

<Problems under international rules>

Measures such as the export ban and export quotas are highly likely to violate GATT Article XI. Japan should continue to request that these measures be brought into conformity with the WTO Agreement.

<Recent developments>

Since the export control measures over logs may be a measure to protect the domestic industry under the pretext of forestry resource protection, Japan has continued to address this issue at the negotiation group for market access of non-agricultural products in the DDA negotiations and at bilateral meetings, including, negotiations under the Japan-Indonesia Economic Partnership Agreement (EPA) in 2006.

TARIFFS

1)High Tariff Products

<Outline of the measure>

Japan applauds Indonesia for improving its binding coverage on non-agricultural products to 96.1% as a result of the Uruguay Round. However, the bound tariff rates are high, 40% or 30% for most items, with an average bound tariff rate of 35.6%. The average applied tariff rate for non-agricultural products is low at 6.8%, but some products have relatively higher tariff levels, such as textile and textile products (average 10.5%), transport equipment (average 12.2%), and electric appliances (average 6.0%).

In accordance with the tariff adjustment plan prepared for each sector in 2004, the government decided to lower tariff rates in phases between January 1, 2005 and 2010, with respect to 1,962 items in six categories, *i.e.*, agricultural products, fishery products, iron and steel, crockery and pharmaceutical products. In December 2005, under the adjustment plan, the government developed a tariff reduction plan targeting farm equipment, finished vehicles (automobiles and motorcycles), audio and visual equipment, plastic products, alcoholic beverages, and ethanol.

As a result, the tariff rate for 1.5-3.0 liter gasoline-fueled cars and 2.5 liter diesel-fueled cars will be lowered from 60% to 40% by 2010. The tariff rate for audio and visual equipment and electric appliances will be lowered from 15% to 10%.

Japan will continue to pay attention to the implementation of these tariff reduction plans.

<Problems under international rules>

Higher tariff rates themselves do not, *per se*, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to their lowest possible rate, while eliminating the tariff peaks described above.

<Recent developments>

Negotiations over market access for non-agricultural products in the Doha Development Agenda are ongoing and include negotiations on reducing and eliminating tariff rates.

In addition, the Japan-Indonesia Economic Partnership Agreement was broadly agreed upon in November 2006. When the Agreement enters into effect, the tariffs for almost all automobiles and their parts, for electrical and electronic products and their parts, and for some steel products will be removed in stages, and Japan's market access will be improved.

2) Imposing a Tariff on Digital Cameras

<Outline of the measure>

In 2003, Indonesia imposed 5% duties on imported digital cameras; which are covered under the ITA. Subsequently, when it implemented the ASEAN Harmonized Tariff Nomenclature in January 2004, Indonesia changed the classification from digital cameras to digital cameras with video functions, a product not covered under the ITA and subject to 15% duties. Exports of digital cameras are a major concern for the Japanese industry.

<Problems under international rules>

The elimination of tariffs on information technology products was agreed to at the 1996 WTO Ministerial Meeting in Singapore. At that time, "digital still image video cameras" were included in the ITA products list and classified under the relevant HS Code of that time. Based on this, ITA participants, including Indonesia, agreed to bind and eliminate tariffs on cameras which record still images in digital form.

Commitments to eliminate tariffs should be kept regardless of classification changes. Imposing tariffs on digital cameras may violate GATT Article II.

<Recent developments>

Japan worked toward resolution by raising this issue at the WTO/ITA Committee meetings, and by taking other opportunities including contacts for bilateral negotiations. Industry submitted a request that this issue should be subjected to procedures under DSB.

In July 2006, at the bilateral consultations at the senior officials level, Japan requested that Indonesia remove tariffs in accordance with WTO Agreements and Indonesia’s obligations under the ITA. Indonesia promised to gradually reduce tariffs from the current 15% to 10% in January 2007, then to 5% in January 2008, and to 0% in January 2009 based on most-favoured nation treatment. It was further confirmed at the Ministerial level in October 2006.

Both countries reported at the ITA committee meeting in October 2006 that digital cameras with moving image recording capability are covered by the ITA and that tariffs would be reduced in stages through 2008, so this issue was resolved.

TRADE IN SERVICES

<u>Foreign Investment Restrictions, etc</u>

<Outline of the measure>

Presidential ordinance No. 96, dated July 20, 2000, and No. 118, dated August 16, amended Indonesia’s negative list of restricted sectors to remove large-scale retail (malls, supermarkets, department stores and shopping centres), large-scale distribution (logistics, wholesaling and exports), market study services, and non-port storage services. In addition, entry into medical services, a sector previously barred to foreign capital, is now open, although restricted to a foreign stake of less than 95 percent. Air transportation and telecommunications (including multimedia industries) are also open. While these series of deregulation measures are welcomed, the bus and taxi industry, private television and radio broadcasts, and the film making industry (technical services, film exports and imports, film distribution, etc.) are still regulated.

The draft of a new investment law was presented to the national assembly in March 2006. Enactment of this law has been anticipated since the Megawati administration, which adopted policies aimed at rebuilding the national economy by promoting the introduction of foreign capital. The draft of the new law contained the following elements:

(1) it is the first uniform bill concerning investment which integrates the existing Foreign Investment Law (Law No. 1 of 1967, the "former law" hereinafter), the Domestic Investment Law (Law No. 6 of 1968), and the Amended Foreign Investment Law (Law No. 11 of 1970);

(2) it allows investment of a wide-range of assets, as in portfolio investment;

(3) it eliminates the distinction between domestic capital and foreign capital;

(4) it covers the oil, natural gas, finance and insurance sectors, which were not included in the existing law;

(5) it provides incentives in terms of public finance and permits and licenses to investments that contribute strongly to the national economy (a high priority);

(6) it eliminates the business permit and license system administered by the Investment Coordinating Board (BKPM) and states that investment promotion and investment policies will be examined;

(7) it newly establishes "integrated services" for the purpose of supporting fiscal convenience, service convenience, and acquisition of investment-related information; and

(8) it has authority concerning investment permits and licenses and provides for implementation of "integrated services" by organizations and institutions to which this authority is delegated by the central and regional governments.

However, the new bill has some problems:

(1) treatment of foreign-owned companies is not transparent since no provisions are evident in the new law concerning the effective period of business activity (30 years) allowed under permanent business licenses (ITU), (established under the former law and issued by PKPM), or concerning the period of transfer of capital to local companies and individuals in cases of a 100% foreign capital investment;

(2) the division of authority between the central and regional governments is not clear;

(3) there are no detailed provisions concerning preferred fiscal treatment measures and convenience (*i.e.*, incentives);

(4) there are no explicit provisions concerning the shift from a license system to a registration system as has been debated up to now, or concerning the simplification of investment procedures; and

(5) the institutions to implement "integrated services" are not made explicit. These issues have been deliberated in the national assembly for some time. Investors look for the swift establishment of the new investment law and an associated negative list.

Major restrictions on foreign investment are as follows.

- Telecommunication Services

Indonesia amended its Telecommunication Law on September 8, 2000, eliminating the protected state monopoly under the former law (Law No. 3 of 1989). In August 2003, the domestic carrier Telecom was permitted to engage in international telecommunication, which had been monopolized by Indosat. This change from a monopoly to duopoly is very welcome. In March 2003, 42 percent of Indosat shares held by the government were sold to Singapore Technology Telemedia (STT) and Indosat became a foreign private company. This may serve as a trigger for substantial entry of private firms. In May 2004, Indosat was permitted to engage in the long-distance telephone business; the industry had been monopolized by Telecom. Indosat started to install new long-distance networks and agreed on interconnection with Telecom.

- Distribution Services

The law on foreign investment in Indonesia has barred entry of any foreign firm into the distribution sector. In an agreement with the IMF on January 15, 1998 (government ordinance No. 15 and 16, dated January 21, 1998), Indonesia agreed to permit retail dealers (100 percent foreign-owned and joint ventures) established by foreign manufacturing firms to sell their own products or those of other firms to end users and export and import traders to sell goods as retailers as of March 31, 1998. Additionally, the government, in Presidential Order No. 99 of 2 July 1998, permitted foreign capital to enter the wholesale, retail and distribution industries in all fields, under the condition that they have partnerships with small local businesses.

- Audio-Visual Services and Advertising Services

Indonesia bars foreign film and video tape distributors from its markets. All importation and distribution must be done by 100-percent Indonesian-capital companies. US films, for example, can only be imported and distributed within Indonesia through specific organizations. These regulations have injured the film industries of many countries. Advertising was not included in the industries released from foreign investment restrictions by Presidential Order No. 118 dated August 2000. It apparently remains closed to foreign investment including in the form of joint ventures. However, the Indonesian Advertising Agencies Association (P3I) claims that roughly 15 percent of its approximately 200 member companies have some form of relationship with foreign companies, whether it be capital ties, business ties or cooperative alliances. These companies account for approximately 50 percent of the Indonesian advertising market. Foreign advertising firms appear to be doing business in Indonesia by way of “roundabout export” investing in other related industries; direct investment remains blocked. With regard to private-sector television and radio broadcasting, the new broadcast law (Law No. 32 of 2002 and government ordinance No. 50 of 2005) superseding the 1997 law, which prohibited the acquisition of foreign capital support, does not allow foreign equity participation at the time of establishment. However, it does allow participation of foreign capital up to a maximum of 20% for capital increases and expansion (initial investments are limited to those made wholly by Indonesians or by Indonesian corporations wholly owned by Indonesians).

<Problems under international rules>

Although the WTO Agreement has no general rules on investment, the GATS disciplines service trade activities through investment. The various restrictions on foreign investment described above do not violate the WTO Agreement so long as they do not contradict GATS commitments. However, it is desirable that efforts towards liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

Japan is monitoring amendments to laws that would tighten foreign investment regulations and is requesting their relaxation, through bilateral dialogues, WTO service negotiations and EPA negotiations.

PROTECTION OF INTELLECTUAL PROPERTY

Novelty of industrial design

<Outline of the measure and Problems under international rules >

Indonesia's Law on Industrial Design of 2000 stipulates that a design is considered new if it is not identical to any designs that were made public prior to the date of application (Article 2.2). Under the actual examination process, there were instances in which designs were registered as being new unless they were not completely identical with those made public prior to the application. This periodically posed problems for owners of protected industrial designs when trying to exercise their rights to prevent the production of goods bearing or embodying a design which is substantially a copy of the protected designs (Article 26 of the TRIPS Agreement).

<Recent developments>

Regarding the interpretation of novelty of design, Indonesia's Supreme Court ruled that a design is to be considered new "when it significantly differs from known designs" (quoting from Article 25.1 of the TRIPS Agreement). However, a motion for a retrial was filed following the ruling. It is necessary to pay close attention to retrial developments and to the examination processes of designs.

3. MALAYSIA

NATIONAL TREATMENT

Imposition of Internal Taxes on Automobiles and Import Restrictions on Automobiles based on AP system

<Outline of the measure>

In Malaysia, automobiles manufactured by certain domestic companies (presently, Proton, Produr, Inocom and Malaysian Truck and Bus (MTB)) are designated as "national cars." Automobiles manufactured in Malaysia by other companies are subject to a discriminatory excise duty. Reportedly, tax rates applied to national cars are discounted by 50 to 100 percent. (The FY2001 WTO Trade Policy Review Mechanism Report included an account of this discriminatory treatment.)

On January 1, 2004, the Malaysian Government issued a new policy regarding import tariffs and excise duty rates for completely built-up (CBU) cars and completely knocked-down (CKD) cars, including a new excise duty on cars not manufactured in Malaysia. Under the new policy, for CBU passenger cars, the Common Effective Preferential Tariff (CEPT) applied to ASEAN countries and MFN tariffs applied to non-ASEAN countries were reduced by 20% to 110% and by 0% to 100%, respectively, but new excise duties of 30% to 100% were imposed. For CKD passenger cars, the CEPT and MFN rates were reduced by 0% to 55% and by 0% to 45%, respectively (the rates increased for some products), but excise duties were raised by 0% to 60%.

The Malaysian Government announced that beginning January 1, 2005, the CEPT and MFN rates for CBU passenger cars were being reduced across the board to 20% and to 50%, respectively, but excise duty rates were being increased by an additional 10% to 150%. The CEPT and MFN rates for CKD passenger cars were reduced to 0% and by 0% to 10%, respectively, and excise duty rates were increased by an additional 10% to 150%. (In the transition period through June 30, 2005, it was possible to select 2004 tax rates.)

After that, on October 19, 2005, the new Automobile Policy, the new tariff rates and the new excise duty rates were published. The CEPT and MFN rates for CBU passenger cars were reduced to 15% and to 30%, respectively, and the excise duty rates were reduced by 10% to 50% (they were raised by 15% to 20% for vans less than 2500 cc and MPVs). Previously, tariff and excise duties on imported CBU cars were applied based on the CIF price, but by this revision, the Tax-on-Tax system (excise duties are applied based on the CIF price plus tariffs) came to be adopted. As a result, discriminatory treatment of excise duties seems to have been solved, but further monitoring is required because this measure is not clearly stipulated. It is also necessary to continue urging the Malaysian Government to administer its import license system in a way that is consistent to the WTO Agreement.

Reportedly, the Malaysian Government also maintains non-tariff barriers to give preferential treatment to bumiputra companies (companies with certain percentages of Malaysian capital). The Malaysian government grants import licenses called “AP (Approved Permit)” only to bumiputra companies and quantitative restrictions are actually applied to the imports of CBU cars by companies manufacturing automobiles in Malaysia under the import licensing system. This system, wrongly implemented, may affect the benefit of the EPA signed between Japan and Malaysia. Therefore, it is strongly desired that the system be implemented in a transparent and fair way.

<Problems under international rules>

There are many obscure points and uncertainties in the definition of national cars. However, there is a high possibility that the excise duties actually favor domestic products and the Malaysian system violates the national treatment for internal taxation under paragraph 2 of GATT Article III. If quantitative restrictions under the importing licensing system are actually implemented, they may violate the general prohibition of quantitative restrictions under Article XI of the GATT, and the preferential treatment of bumiputra companies may violate the national treatment obligation relating to other regulations of various types in respect of all laws, regulations and requirements under Article III:4 of the GATT.

<Recent developments>

Regarding the excise duty, it appears that discriminatory treatment is about to be eliminated, but since the discriminatory measures were taken without written provisions, it is necessary to continue to closely monitor the case.

Regarding the AP system, under the new automotive industry policy unveiled in March 2006, the Malaysian Government clearly stated that it would abolish the system by the end of 2010, while it said it would keep the system in place for the time being on the basis of such criteria as actual exports and domestic production of automakers concerned. Under such a situation, though a direct causal relationship is not clear, there are some steps that are perceived to run counter to trade liberalization, such as the notification by the Thai Government of the freezing of the application of preferential tariffs to automobiles manufactured in Malaysia. Japan needs to continue to request that the Malaysian Government administer its automotive industry policy in a manner that is consistent with WTO Agreement.

QUANTITATIVE RESTRICTIONS

1) Import Restrictions under the Customs Act

<Outline of the measure>

Under the terms of tariff orders and other provisions of Article 31 of the Customs Act of 1967, Malaysia restricts imports of four classes of products: (1) products subject to a total import ban (15 items, including notes, toxic chemicals and weapons); (2) products that may be imported under certain conditions (40 items, including magnetic video cassette tapes, all color copy machines and complete vehicles), supposedly for the protection of domestic industry; (3) products subject to temporary import restrictions in order to protect a domestic industry (15 items, including iron/steel products, cement and coffee); and (4) products subject to conditions as to the manner of importation and procedures requiring quality and safety certifications from competent authorities in Malaysia or the exporting country (53 items, including fertilizers and home electronic appliances).

<Problems under international rules>

If the above import regulation is a measure that cannot be justified under Article XX of the GATT, it would violate Article XI of the GATT (general elimination of quantitative restrictions).

<Recent developments>

Japan requested the Malaysian Government “to make procedures transparent”, because the regulations contain ambiguity with respect to the import requirements. The Government of Japan repeatedly pointed out that the import regulation may violate Article XI of the GATT (general abolition of quantitative restriction) if it restricts import volumes.

2) Export Restrictions on Logs

<Outline of the measure>

The Malaysian Government, with a view to increasing domestic timber processing in its territory, in 1985 banned exports of all logs except for small size wood. The Malay State of Sabah set an annual export quota of two million cubic meters in November 1996. Sabah also banned the export of Selangan Batu logs and sawn timber in August 2000 to ensure an adequate supply for local manufacturers. However, the export ban on some logs and sawn timber, that are certified by a Sabah Forestry Department qualified log grader, was lifted in December 2000. The State of Sarawak also has implemented export quotas to set aside a certain share of logs produced in its territory for domestic processing from 1999.

<Problems under international rules>

Measures such as the export ban and export quotas are highly likely to violate Article XI of the GATT. Japan should continue to request that these measures be brought into conformity with the WTO Agreement.

<Recent developments>

Countries may implement measures to protect a domestic industry under the pretext of forestry resource protection. With respect to the import regulations on logs, Japan posed questions at several bilateral meetings including the Japan-Malaysia Economic Partnership Agreement negotiations as well as at the market access negotiation group for non-agricultural products in the Doha Round in 2005 and 2006.

TARIFFS

Increased Tariff on Steel Plates

<**Outline of the measure>**

On March 15, 2002, Malaysia increased tariffs on 199 steel products, including hot and cold rolled sheets, from levels traditionally ranging from 0-25% to 50%.

<Problems under international rules>

Although this tariff increase does not necessarily involve a violation of WTO rules because the products represented unbound items, the tariffs were increased so sharply and rapidly that Members, including Japan, were concerned that the increases could adversely influence trade in these products. In general, drastic tariff increases significantly impair the predictability for businesses and, thus, impede their activities. In this regard, WTO Members should, wherever possible, provide concessions for these non-concession items.

<Recent developments>

The Government of Japan had repeatedly requested the Malaysian Government to remove these additional tariff increases. Under the Japan-Malaysia Economic Partnership Agreement, which entered into force in July 2006, applied tariff rates on almost all steel plates exported from Japan to Malaysia have been eliminated; therefore, the above mentioned measure no longer has any effect on the Industry in Japan.

However, the Malaysian Government continues to maintain the measure and it is desirable, in terms of promoting free trade and enhancing economic welfare, that the measure be repealed.

TRADE IN SERVICES

Foreign Investment Restrictions, etc

<Outline of the measure>

In its administration of guidelines based on Bumiputra-ization policies, the Foreign Investment Committee (FIC) issues permits for foreign capital participation in retailing, trading, printing, transportation, housing development and construction. Foreign investment in these industries had been permitted on the condition that the domestic share of capital exceed 70 percent (of which 30 percent should be bumiputra capital). However, the economic stimulus measure released on May 21, 2003, relaxed foreign investment regulations. Although regulations pertaining to individual sectors remain, as long as 30% of new investment is bumiputra capital, investment of foreign capital is allowed for the remaining portion.

On August 1, 2004, FIC simplified approval procedures. Formerly, mergers and acquisitions over 10 million RM and real estate transactions over 150 thousand RM (over 250 thousand RM in Johor, Selangor and Penang) were subject to approval by FIC. It is now possible to enter into these ventures by simply notifying FIC. Since November 1, 2006, application to FIC has not been required for residential real estate transactions less than 250 thousand RM.

Regarding foreign investment regulations applying to individual sectors, the foreign equity ratios for transportation businesses with owned trucks are limited to less than 50%. In the banking and insurance industries, however, foreign investment is in effect prohibited for sales in the domestic market in order to protect and foster the domestic industry. After the Asian Currency Crisis in 1997, the guidelines were disregarded for parts of the transport and telecommunication industries and the Malaysian Industrial Development Authority (MIDA) is reviewing service industries that are directly linked to manufacturing industries. The Ninth Malaysia Plan requires that in order to conduct an efficient distribution service industry effort must be directed toward structural change of business practices and fair transactions must be implemented. Meanwhile government promotes the establishment of a legal system and guidelines. As one measure in this direction, the government established the Fair Trade Practices Law, and, in stages, will establish a Fair Trade Practices Commission and a Fair Trade Practices Appeals Court. However, since this plan advocates an expansion of bumiputra participation in the distribution service industry, attention should be focused on an announcement after April 2007.

The Third Industrialization Master Plan (2006-2020) announced by MITI (Ministry of International Trade and Industry) in August 2006 reaffirms the establishment of a legal system and guidelines for the service industry and seeks a gradual liberalization beginning with competitive sectors. This Master Plan specified changes concerning the acquisition of manufacturing industry licenses, whereby companies that had been exempt from obtaining licenses under the existing Industry Adjustment Law (*i.e.*, companies whose stock capitalization was 2.5 million RM or less and which had 75 or fewer regular employees) would now be uniformly required to obtain manufacturing licenses.

Major foreign investment regulations are as follows.

- Financial Services

In February and March 2001, the Malaysian government announced a Master Plan, a long-term plan for capital and financial markets and has implemented it smoothly in general. The Capital Market Master Plan includes measures to increase investment in domestic securities markets such as: (i) deregulation of the equity ratio of foreign companies in securities companies; (ii) deregulation of the rules for the asset management of employee pension funds (EPF); (iii) thorough corporate governance and protection of small shareholders; and (iv) nurturing of Islamic financial markets. In April 2004, foreign currency holding ceilings for deposits were raised and forward exchange and swap transactions were deregulated.

Foreign equity ratios in both securities companies and investment banks have been limited to 49%. In March 2005, the central bank announced the “Framework for Establishment of Investment Banks.” As a result of this announcement, the restriction on foreign capital in investment banks has been raised from 30% to 49%. Under the Capital Market Master Plan, foreign financial institutions which had entered the market by 2007 will be granted licenses to establish branches, and foreign banks will be granted full banking licenses. The expansion of branches by commercial banks is also recognized. (At present, there are 13 foreign banks operating in Malaysia, of which seven have filed applications and received licenses for the establishment of four branches. Of these, five banks have established four branches which have now commenced business.)

- Telecommunication Services

Foreign equity ratios in the telecommunications sector are limited in principle to 30%. Different kinds of licenses are granted according to the types of services and customers. Under the “individual license” provision of services for a wider variety of customers, including general cell phones, IP telephony and satellite broadcasting is allowed, but foreign equity ratios are limited to 30%. Under the “class license,” customers and services are limited, but wholly foreign-owned companies are approved, provided they are established in Malaysia.

- Distribution Services

The government of Malaysia announced that it would prohibit hypermarkets in Kulan Valley, Johol Ball and Penang (around Kuala Lumpur) for 5 years from January 2004 to prevent excessive openings and to protect local micro retail stores. However, hypermarkets that obtained permission before the announcement (before October 2003) are allowed. "Guidelines for foreign entry into distribution services" that the government published in December 2004 had problems, such as imposing new costs on companies and being unable to cope with competition from neighboring countries. They were repeatedly criticized by foreign companies and others. Therefore, the government published an amendment to the guidelines in September 2005. However, the amendment caused new problems. One of them related to the requirements for manufacturing companies to establish sales companies and would impose stricter regulations or would cause a negative influence on future competitiveness. The amendment stipulates that manufacturing companies must establish a sales company separately for selling products in Malaysia, and they are not allowed to conduct sales in Malaysia in any case, irrespective of whether they sell their own products or other companies' products. If this is put into effect, it will cause new costs to foreign companies. Another problem is the elimination of relaxation measures by FIC. As stated above, foreign investment in the services industry was to be permitted by FIC on the condition that paid-in capital is one million RM, and the bumiputra capital exceeds 30%.

However, the amendment stipulates that if conditions of foreign investment equity determined by the FIC are more favorable for investors than the amended guidelines, those favorable conditions will not be applied. Companies already operating in Malaysia have been granted permits based on the FIC's standards. If an amendment is applied, they may have less favorable conditions imposed on transferring and expanding offices.

Furthermore, the moratorium, which was granted for achieving the 30% bumiputra capital condition, is abolished in the amendment. Parts of the amendment remain unclear, such as differing definitions of foreigners' positions for the services industry and for the manufacturing industry.

Following announcement of the guidelines, some companies operating in Malaysia were allowed an initial paid-in capital of less than one million RM. Nevertheless, the announcement has had other effects, including the requirement that working visas will not be issued when visas are renewed unless the amount of paid-in capital is increased to one million RM.

<Problems under international rules>

Although the WTO Agreement has no general rules on investment, the GATS disciplines service trade activities through investment. Various restrictions on foreign investment described above do not violate the WTO Agreement so long as they do not contradict GATS commitments. However, it is desirable that efforts toward liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

In the bilateral agreement concluded in the August 2006 ASEAN Economic Ministers Meeting (AEM), concerns were raised about “the guidelines for participation by foreign-owned companies in distribution services.” Although a reply was received from the Malaysian government to the effect that it would respond to the issue, to date, there has been no talk of a review of the guidelines.

4. PHILIPPINES

MOST-FAVOURED-NATION TREATMENT

Safeguard Measures on Imports of Cement Products

<Outline of the measure>

In the Philippines, cement imports from Indonesia, Japan and Chinese Taipei increased causing damage to the domestic industry after 1998. In January 2001, the Department of Trade and Industry (DTI) initiated an investigation upon application by 12 Philippine companies to impose safeguard measures, citing the rapid increase in cement imports. DTI imposed a provisional safeguard measure on November 7, 2001, and the Philippines Tariff Commission (TC) initiated an investigation in November 21, 2001. Although the TC did not determine that “increased imports have caused serious injury to a domestic industry or are threatening to cause serious injury”, a definitive safeguard measure was imposed by the decision of DTI, on June 25, 2003. The measure pertains to non-concessional goods and, thus, is not regarded as a safeguard measure that falls under the WTO agreements *per se*. (However, the Philippine authority applied this measure pursuant to procedures established under the Agreement on Safeguards.) At a bilateral meeting, Japan expressed regret that the measure was imposed following insufficient investigation by the authority and requested that it be terminated. However, DTI has received requests from domestic industry (Manufacturers’ Corporation) for the safeguard measure to be extended. DTI commissioned the TC to conduct an investigation. The TC held public hearings on December 16, 2004.

<Problems under international rules>

Since this case involves goods for which the Philippines has not offered a concession, the issue is not whether tariff increases on these goods are consistent under the WTO Agreements. However, because the measure only applies to certain countries such as Japan, Chinese Taipei and Indonesia, and excludes other countries, like China, Republic of Korea and Vietnam, it appears to be inconsistent with “Most-Favoured Nation Treatment (MFN) Article I of the GATT).

<Recent developments>

With regard to the legality and right to impose this safeguard measure, the judgment of the Philippine judicial authorities have changed repeatedly -- the High Court supported the DTI position, whereas the regional court and Supreme Court (Petty Bench) supported the TC. However, on August 3, 2005, the Supreme Court (Grand Bench) made a judgment that the DTI could not determine the application of the measure against the verdict of the TC, and, accordingly, the safeguard measure imposed by the DTI in June 2003 was invalid and its extension could not be approved. This judgment would provide a solution to the issue of this safeguard.

There was an appeal filed by the Philippine Cement Manufacturers’ Corporation, which strongly opposes cement imports. The review request was dismissed on September 13, 2005. However, there remain problems such as failure to refund the tariffs already levied. Therefore, it is important to continue to monitor this issue.

TARIFFS

High Tariff Products

<Outline of the measure>

Even after the Uruguay Round, some high bound tariff rate items remain, including textile products (maximum 50%) and electric appliances (maximum 50%)., The simple average bound tariff rate for non-agricultural products is 23.4%. Moreover, the binding coverage for non-agricultural products remains at 61.8%. Unbound items include clocks, watches and automobiles.

The Philippines had undertaken tariff reforms since 1980 and had indicated that it would unify the applied tariff rates at 5% by 2004, except on some agricultural and fishery products. But, the Philippine Government decided in 2003 to review tariff rates and increased the rates on over 1,000 items; including automobiles (maximum 30%), some textile products (maximum 20%) and electric appliances (maximum 15%). As a result, the simple average applied tariff rate is 5.8%.

<Problems under international rules>

Higher tariff rates themselves do not, *per se*, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to the lowest possible rate, while eliminating the tariff peaks described above.

Low bound tariff rates are not a problem under WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates it is desirable that unbound products be bound from the point of view of increasing predictability.

<Recent developments>

Negotiations over market access for non-agricultural products in the DDA are ongoing and include negotiations on reducing and eliminating tariff rates.

The Japan-Philippines Economic Partnership Agreement was signed in September 2006 and procedures are under way to implement it. When this agreement enters into force, it will improve Japan's access to the Philippine market, removing tariffs in stages for almost all automobiles, all automobile parts, electric and electronic products and their parts, and for some steel products.

TRADE IN SERVICES

Foreign Investment Restrictions, etc

<Outline of the measure>

The Philippines permits foreign investment in principle, but bans it in exceptional cases. The foreign investment negative list that enumerates areas in which foreign investment is prohibited is announced every two years under the Foreign Investment Act (RA 8179).

The current negative list is the 6th list and was announced in November 2004. One of the major areas in which foreign investment is prohibited is in retail industry firms whose paid-in capital is less than 2.5 million US dollars. The limits for foreign investment in radio stations, advertising firms and insurance firms are 20 percent, 30 percent and 40 percent, respectively.

Major regulations on foreign investment are as follows:

- Financial Services

There are laws that regulate foreign capital in the banking sector, such as the Foreign Banks Liberalization Act (FBLA) (passed in May 1994) and the General

Banking Law of 2000 (passed in May 2000). The FBLA sets a ceiling of 60 percent foreign ownership for foreign banks establishing operations in the Philippines, and limits the establishment of branch offices to five years from the date on which the law was passed and to no more than ten total offices. The General Banking Law also limits the total capital of foreign banks to less than 30 percent of the total capital of all banks.

Department Order No. 31-01 issued in December 2001 (which was partially amended by Department Order No. 19-08 and No. 31-01 of 2006) imposes a minimum capital requirement commensurate with the foreign equity investment ratio. According to its commitment schedule, if the Philippines imposes the above minimum capital requirement on foreign capital without doing anything regarding preferred treatment of domestic citizens, this regulation could possibly constitute a violation of its commitment concerning the Mode 3 of the insurance sector.

- Telecommunication Services

The Philippines permits only Philippine-capital companies (at least 60 percent of capital owned by Filipinos) to engage in public service businesses. Foreign capital participation in the telecommunications sector is therefore limited to less than 40 percent.

- Construction Services

The Philippines permits foreign investment except in sectors found on the negative list created under the Foreign Investment Act. Construction is not on the list, so, in theory, foreign ownership of construction companies is permitted. However, a construction permit must be obtained from the authorities under the Constructors License Law (CLL) before actual construction work can be done. The CLL, however, only grants "regular licenses," which are the same as those given to ordinary domestic companies, to companies with less than 40 percent foreign ownership (limited to up to 25% for public works projects and defense facilities projects). In contrast, companies with more than 40 percent foreign ownership must apply for a license for each individual project. Therefore, while it should be possible to establish a 100 percent foreign-owned construction firm, the reality is that none exist.

<Problems under international rules>

Although the WTO Agreement has no general rules on investment, the GATS disciplines service trade activities through investment. The various restrictions on foreign investment described above do not violate the WTO Agreements, so long as they do not contradict GATS commitments. However, it is desirable that efforts toward liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

Japan is monitoring amendments to laws that would tighten foreign investment regulations and is requesting their relaxation, through bilateral dialogues, WTO service negotiations and EPA negotiations.

5. VIETNAM

TARIFFS

Tariff rates Increase on Auto parts

<Outline of the measure>

On December 4, 2002, Vietnam abruptly announced that duties on auto parts would be increased beginning January 1, 2003. For example, the previous tariffs on passenger cars were imposed as follows: CKD1 = 40%, CKD2 = 20% and IKD = 5%. The rate was scheduled to increase to a uniform 70% by 2005. Subsequently the tariff increase proposal was modified as follows: the CKD1 category would be abolished and a 100% tariff applied on completed products; and the category CKD2 would have tariff rates increase to 25% in September 2003 and then, beginning in 2004, gradually increase to 45%. Accordingly, tariffs for CKD2 were increased to 25% in September 2003.

Note: CKD1 (Complete knock-down) are cars ready for painting and assembly at the production facility of an importing country. CKD2 are cars that need painting, assembling and welding, and IKD (incomplete knock-down) are cars that need painting, assembling, welding, and pressing in the importing country.

<Problems under international rules>

The Government of Vietnam explained that this measure was intended to help foster the country's automobile parts manufacturing industry, but the abrupt imposition of such a large increase in tariffs caused significant loss of predictability for business people, and created an obstacle to conducting business. In addition, arbitrarily introducing such measures while participating in WTO accession negotiations went against WTO philosophy to reduce tariffs and other such obstacles to trade.

<Recent developments>

Japan raised concerns about Vietnam's increases in tariff rates on auto parts, since they were announced, in bilateral negotiations relating to Vietnam's accession to the WTO in September 2004 and the development of an Action Plan Vietnam-Japan Joint Initiative to Improve Business Environment held in November 2004.

As a result, at the first meeting of the Evaluation and Facilitation Committee of the Japan-Vietnam Joint Initiative in November 2004, Japan and Vietnam agreed on the following:

1) Regarding CKDs: when Vietnam shifts from tariffs for each CKD part to a system that levies tariffs on individual auto parts, Vietnam will set appropriate tariff rates.

2) Although Vietnam will use both tariff systems (tariffs for each CKD part and tariffs on individual auto parts) during the transition period, Vietnam will implement the two tariff systems appropriately.

In addition, pertaining to WTO accession negotiations, Vietnam agreed that, immediately after joining the WTO, tariff rates would not exceed the levels of September 2003 (CKD tariff rate of 25%).

According to this agreement, Vietnam started to apply the new tariff rate for individual auto parts on January 1, 2006 in conjunction with "the system of tariff rates on Auto parts" which set the classification of overall auto parts including CKD parts.

Although tariffs for CKD2 could have been increased in 2004, they have not yet been. IKD tariffs of 5% also have not changed.

Because Vietnam joined the WTO in January 2007, it is expected that it will reduce tariffs on auto parts in accordance with the commitments it made upon joining. Japan will need to closely monitor the movement of the both CKD2 and IKD rates.