Chapter 1

ISSUES ON TRADE IN GOODS

The economic partnership agreements that have been entered into previously by Japan are unique in nature for their comprehensiveness. The provisions on trade in goods alone provide, in addition to commitments by the parties thereto to eliminate tariffs, rules of origin to determine the nationality of goods, disciplines on antidumping measures, standards and conformity assessment, bilateral safeguard measures as the safety valve for liberalization by FTAs, etc.

<Tariffs>

FTAs/EPAs ordinarily provide the commitment of each to trade liberalization in goods in the form of either an immediate elimination of the tariffs on the goods of the counterparty country upon the entry into force thereof, or a straight-line reduction of the present tariff rate over a certain number of years. Currently, industrial products are often manufactured by cross-border supply chains. Attention, therefore, is required to ensure compliance with the reduction of tariffs in other nations' FTAs/EPAs, in addition to compliance with commitments to reduce tariffs in the FTAs/EPAs entered into by Japan.

The elimination of tariffs in FTAs/EPAs is regulated by Article XXIV of GATT, which effectively states that tariffs concerning substantially all the trade within the relevant region must be eliminated within a reasonable length of time. Details of this requirement are contained in Part II, Chapter 15 of this Report.

1. Methods of Eliminating Tariffs

Methods of eliminating tariffs are, *inter alia*, (i) the immediate elimination thereof upon the entry into force of the agreement; (ii) a gradual and straight-line reduction or elimination thereof; and (iii) other various types of reduction thereof, such as (a) a substantial reduction thereof in the initial year, followed by gradual reduction or elimination thereof (for example, tariffs in respect of automobiles of Thai origin in the Australia-Thailand agreement), or (b) an initial grace period of several years during which tariffs are maintained, followed by the elimination thereof.

In some agreements, the applicable tariff elimination formula and periods are automatically determined by the current tariff rates (see for example, the Australia-New Zealand Closer Economic Relations Trade Agreement ("ANZCERTA"), wherein the tariff is to be eliminated in five years if the current tariff rate exceeds 5%, and eliminated immediately if the current tariff rate is 5% or less; and the China-ASEAN agreement, wherein five methods of eliminating tariffs, depending on the current tariff rate are provided.). In many other agreements, the applicable tariff elimination formula and periods are not automatically determined by the current tariff rates, but are determined based on the political sensitivity of each item subject to tariff on a case by case basis (for example, NAFTA, in principle, provides categories of tariff elimination periods consisting of immediate elimination, and four (4), nine (9) and fourteen (14) years; determines the applicable category for each item subject to tariff; and individually provides methods of eliminating tariffs for exceptional items subject to tariff).

In addition, methods unique to regional trade agreements between developing countries include the early harvest of certain provisions which involve partial tariff elimination in advance. In the China-ASEAN agreement, early harvest (an advance tariff reduction measure) has been in effect since January 2004 in connection with specific agricultural products, and a tariff elimination/reduction schedule for non-agricultural products was entered into in November 2004, and has been in effect since July 2005.

2. Exceptional Items in Tariff Elimination

Exceptions to tariff elimination can be generally classified as follows:

(i) Items subject to tariff for which no commitments to eliminate tariffs are made under the relevant agreement, or for which commitments not to eliminate tariffs are made under the relevant agreement (and for which there is no standstill (herein, "Standstill", which means terms of FTAs/EPAs which often provide for a prohibition against any increase or new introduction of tariffs. (In the case of the U.S.-Jordan FTA; however, there is no explicit provision on the prohibition against any increase of tariffs, and only a prohibition against the introduction of new tariffs.)) Such items are referred to as "exempted" items.

(ii) Items subject to tariff for which commitments not to eliminate tariffs (where Standstill exists), or to maintain current tariffs, are made.

Note: Those items mentioned in (i) and (ii) above are "exempted" items.

(iii) Items subject to tariff which are not subject to the elimination of tariffs at the time of entry into force of the relevant agreement, but for which an explicit commitment is made to future renegotiation (items subject to renegotiation).

(iv) Items subject to tariff for which tariffs will not be eliminated, but will instead be reduced or, in respect of which, tariff quotas (zero-rate tariff quotas or reduced rate tariff quotas) will be introduced. For some items, a combination of these measures is used.

3. Tariff Elimination Period

(1) For Regional Trade Agreements Amongst Developed Countries and Between Developed and Developing Countries

In some agreements, such as in the Singapore-New Zealand FTA, tariffs for all items are immediately eliminated upon the entry into force thereof. The shortest period for tariff elimination is set at the immediate elimination thereof (as is the case in many such agreements), the longest period for tariff elimination is ten (10) years (the permitted upper limitation under Article XXIV of GATT), and additional medium-term elimination periods are set at, for example, three (3), five (5) or seven (7) years.

(2) For Regional Trade Agreements Between Developing Countries

As an example of regional trade agreements between developing countries, the tariff elimination period of MERCOSUR is set at three (3) years, in principle (four (4) years for sensitive items). The China-ASEAN agreement sets the period at four (4) years (if the tariff rate is under 10%) or five (5) years (if the tariff rate is 10% or higher), in principle (seven (7) years for sensitive items with respect to China and the original 6 members of ASEAN); and ten (10) years, in principle and thirteen (13) years for sensitive items in the case of CLMV (Cambodia, Laos, Myanmar, and Vietnam). Under CLMV, up to approximately 4.8% of the number of items of each country are permitted as tariff elimination items exceeding ten (10) years. While the specific number of years for

tariff elimination is different for the original 6 members of ASEAN than it is for the CLMV, AFTA sets the range of tariff rates at basically between 0 - 5%, and intends to effectuate tariff elimination commitments, the core of the AFTA, in approximately 10 years.

4. Related Provisions

(1) Export Processing Zones

The tax exemption system in export processing zones, for which FTAs/EPAs often explicitly provide, are frequently mistaken to be "in breach of the WTO Agreement on Subsidies as such systems fall under export subsidies". However, such systems are considered to conform to WTO requirements from an *e contrario* interpretation of Footnote 1 of Article 1.1(a)(1)(ii), illustration (i) of Annex I, and part I of Annex III of the SCM Agreement.

(2) Export Duties

Paragraph 1 of Article XI of GATT explicitly excludes duties, taxes and other charges. It is thus considered that export duties are not subject to the disciplines under the WTO Agreement. However, as export duties have a trade distortion effect, EPAs which have been entered into by Japan have introduced strict restraints, exceeding those of the WTO Agreement. Specifically, the Japan-Singapore EPA (Article 16) and Japan-Mexico EPA (Article 6) provide for the elimination of export duties. In addition, the Japan-Philippines EPA (Article 20) effectively provides that both countries will use their best efforts to eliminate export duties.

<Rules of Origin>

1. Summary of the Rules

(1) Background of the Rules

The rules of origin are rules under domestic laws and regulations or FTAs which are used to assess the "nationality" of internationally traded goods, and can be generally classified into those applicable to preferential sectors and those applicable to non-preferential sectors. Those applicable to non-preferential sectors are subject to the WTO Agreement on Rules of Origin, and are currently under an ongoing coordinating initiative. (see Part II, Chapter 9 of this Report on Rules of Origin for details).

The FTA/EPA rules of origin, from among the many rules which apply to preferential sectors, purport to assess the originating goods of FTA/EPA contracting parties, and to prevent a preferential tax rate under the relevant FTA/EPA from being applied to goods which are substantially produced in a non-contracting country and then imported to a contracting party through the other contracting party (prevention of circumvention import).

(2) Overview of Legal Disciplines

The rules of origin under FTAs are, in general, comprised of (i) rules of origin and (ii) origin certification procedures.

1) Rules of Origin

The rules of origin are generally comprised of (a) rules of origin criteria to determine the origin of goods, (b) 'provisions adding leniency' to support and provide leniency in the application of

the rules of origin assessment process, and (c) provisions to prevent circumvention import from a non-contracting country.

(a) Rules of origin Criteria

The commonly adopted criteria to determine the origin of goods are as follows:

(i) Wholly Obtained Criterion

The goods must be "wholly-obtained" within the contracting party country. This criterion applies mainly to agricultural products and minerals (for example, the cow that was born and raised in the relevant country, the iron ore that was extracted from a mine in the relevant country, etc.).

(ii) Substantial Transformation Criterion

This criterion applies to production/processed goods, and requires that the content of production/processed goods be substantially produced/processed within the contracting party country to the extent sufficient to grant originating status to such goods which use imported raw materials (non-originating goods) from a non-contracting country. Substantial transformation criterion is usually described in the following contexts:

a) CTC Rule: Change in Tariff Classification Rule

Under this rule, if the tariff classification of non-originating raw material and the tariff classification of the goods produced from such non-originating raw material differ upon production and processing within contracting parties' countries, the goods will be deemed to have undergone substantial transformation and will be granted originating status. The required degree of transformation is determined by the number of digits of the changed tariff classifications. A change in the first two digits (chapter) of the tariff classification number is referred to as CC (Change in Chapters), a change in the first four digits (heading) of the tariff classification number is referred to as CTH (Change in Tariff Headings), and a change in the first six digits (sub-heading) of the tariff classification number is referred to as CTSH (Change in Tariff Sub-Headings). The earlier the pre-transformation raw material is involved in the production process of such goods, the more the rule will require the implementation of substantial production and processing within the contracting parties' countries, and thus the more difficult it will be to obtain originating status. Generally, CTSH is the rule under which it is the easiest to obtain originating status.

b) RVC Rule: Regional Value Content Rule

Under this rule, the value added by the process of implementing the procurement, production, processing, etc. of goods within the contracting parties' countries is converted into an amount, and if such amount exceeds a certain reference threshold amount, substantial transformation will be deemed to have taken place and originating status will be granted to the goods. Under this rule, the higher the threshold, the more difficult it is to obtain originating status. This rule is considered less burdensome to regional procurement management and plant location planning than the CTC rule. However, the RVC rule poses some issues, such as significant burdens on the relevant industry, collection and organization of detailed accounting data when evidencing the originating nature of goods, and obligations to disclose cost information to customers procuring such goods.

c) SP Rule: Specific Process Rule

Under this rule, substantial transformation is deemed to have occurred if certain production and processing activities were implemented within the contracting parties' countries, thereby granting originating status to the goods. This rule uses as the criterion for originating status processes that cannot be applied by changes in the tariff classifications. Examples of adoption of this rule can be seen in some textile products, agricultural products, semiconductors, machines such as copying machines, etc.

FTAs/EPAs usually stipulate the details for determining originating goods status as a result of substantial production/processing further to the three criteria described above. In addition, using these criteria, specific rules are generally prescribed for each item separately as "product-specific rules."

(b) Provisions Adding Leniency

Various types of leniency provisions are set forth in order to facilitate the satisfaction of the originating status threshold. Major leniency provisions include the following:

(i) Cumulation

If parts and raw materials originating in the FTA counterparty's country are imported by the relevant country and used in the production of other goods, such parts and raw materials are deemed to be of the relevant country's own origin. This has the effect of increasing exports of the exporting country's own products and in turn, promoting intra-regional trade and division of labor among the contracting parties' countries.

(ii) Rollup

In calculating the qualifying value-added amount of goods, if the primary material has acquired originating status, the non-originating portion of such primary material may also be rolled up and counted toward (i.e. "cumulated into") the originating material.

(iii) Tracing

In calculating the qualifying value-added amount of the goods, if the primary material is nonoriginating material, the originating portion of such primary material may be counted toward (i.e. "cumulated into") the originating material.

(iv) De Minimis

If the relevant goods are subject to the CTC rule, and such goods were produced using non-originating raw material but did not result in a change of tariff classification sufficient to meet the applicable rules of origin and could thus not acquire originating status, originating status would nonetheless be granted if the percentage of such non-originating material constituting a portion of the goods is not more than a certain percentage of the price or weight of the goods. In other words, *de minimis* non-originating material may be disregarded under this rule.

(c) Provisions on Prevention of Circumventive Import from a Non-contracting Country

(i) Provision on Minor Processing in Respect of which Originating Status is Not Granted

This is a safety net provision effectively stating that goods will not be considered originating goods if such goods seemingly satisfy the applicable product-specific rules, but in fact were not substantially produced or processed within the contracting country.

(ii) Consignment Conditions

This provision states that goods will not lose their originating status as a result of minor processing thereof (such as trans-shipment, or preservation of the goods), even if the vessel carrying the goods stops at the port of a non-contracting country for, *inter alia*, logistical and transportation reasons.

2) Origin Certification Procedure

The procedures for certification and issuance of the certificate of origin can be generally categorized to three types: governmental certification (including third-party certification issued and certified by third party organizations such as chambers of commerce), self certification, and authorized importer system.

(a) Governmental Certification (Third Party Certification):

This approach is adopted by Japanese EPAs. Under this approach, either the government or a third party organization issues a certificate of origin pursuant to an application by the exporter.

<Merits>
- Because it is certified by a public third party organization, it is possible to secure the authenticity of the certificate of origin through more strict procedures.
- The issuance cost for the certificate of origin will be borne by both the exporter and the public third party organization.
- A considerable issuance period will be required according to the procedural burdens.

<Demerits>
- Exporter bears costs for certificate of origin and application procedure.
- Third party organization bears costs for certification system management and issuance procedure.

(b) Self Certification:

This approach is adopted by NAFTA.

<Merits>
- This system relies on the exporter's compliance with the relevant rules.
- The issuance cost for the certificate of origin will be borne only by the exporter. The exporter will not need to pay any application procedure cost, and because costs can be reduced through the ability, effort and efficiency of the exporter, this approach, from a cost perspective, is appealing to large enterprises.

<Demerits>
- Exporter bears costs of the certification system management, issuance procedure, and certificate of origin.
- This approach generally presents a high hurdle for small and medium-sized enterprises.

(c) Authorized Exporter:

This approach is adopted by the EU. Under this approach, the government or third party organization accredits an exporter as an authorized exporter, and such authorized exporter may receive a certificate of origin by self certification and/or a simpler application.

<Merits>
- By making available a simpler procedure only to exporters with high compliance abilities, it is possible to secure a certain level of authenticity with respect to the origination of goods, and to thus reduce the procedural costs of the exporter.
- The cost for each export remains low.

<Demerits>
- Exporter bears costs for the certificate of origin and application procedure (authorizing party will reduce or minimize costs), and the issuance procedure (if authorizing party is given the authority to self certify).
- Third party organization bears costs of authorization, certification system management, and issuance procedure (reduced if authorizing party is given the authority to self-certify).

(3) FTA/EPA Rules of Origin in Japan and Globally

1) FTA/EPA Rules of Origin in Japan

The rules of origin under the four (4) EPAs Japan has entered into basically have similar requirements, but slightly differ.

(i) Japan-Singapore EPA

The first EPA which Japan entered into, the Japan-Singapore EPA, was signed in January 2002, entered into force in November of the same year, and has the minimum requisite provisions, following the rules of origin adopted under Japan's generalized system of preferences (GSP). However, the EPAs subsequently entered into by Japan discussed in (ii), (iii) and (iv) below, cover a wide range of matters (for example, including provisions on inspection, under which the relevant authority of the importing country may request information and verification visits to the exporting country). As such additions make the rules of origin easier to apply, and because Singapore so suggested, negotiations were initiated to review the Japan-Singapore EPA in April 2006, and the EPA was amended in order harmonize it, to a certain extent, with the other more user-friendly EPAs entered into by Japan. Such amended agreement is scheduled to enter into force within 2007. The product-specific rules of origin therein, in principle, permit for options between the CTC rule and the RVC rule, as permitted in the Japan-Malaysia EPA. The issuance of the certificate of origin is done by third party certification by the relevant party's chamber of commerce.

(ii) Japan-Mexico EPA

This EPA was signed in September 2004 and entered into force in March 2005. This EPA, substantively follows NAFTA, and has relatively detailed provisions compared to other Japanese EPAs. The change in tariff classification rule is the focus of the product-specific rules of origin memorialized in such agreement. The certificate of origin is issued through third party certification by the relevant party's chamber of commerce.

(iii) Japan-Malaysia EPA

This EPA was signed in December 2005 and entered into force in July 2006. This EPA was drafted based on Japan's experience with the Japan-Singapore EPA and Japan-Mexico EPA, and adopts the newest rules of origin model for Japan. The Japan-Malaysia EPA generally incorporates the basic requirements (most of the items listed under (2)1) and (2)2) above) along with the rules of origin and certification procedures. The product-specific rules of origin are basically structured to permit the parties to individually choose between either the RVC rule or the CTC rule (This option rule is called "Co-equal"). The certificate of origin is issued through third party certification by the relevant party's chamber of commerce.

(iv) Japan-Philippines EPA

This EPA is essentially the same as the Japan-Malaysia EPA. Minor differences exist in the section setting forth the product-specific rules of origin.

b) FTA Rules of Origin Globally

Globally, FTA rules of origin can generally be grouped into the following three categories: the U.S. Type (adopted by the U.S.), the European Type (adopted by the EC), and the Asian Type (adopted by countries in the Asia region).

(i) U.S. Type

This approach is based on the CTC rule and incorporates the RVC rule with respect to key items. In connection with the value added computation method, this U.S. Type approach requires a more precise calculation for originating status by adopting the "cost method" and the "originating material accumulation method." Self certification is adopted as the certification method. (Please refer to the column below for further details on NAFTA rules of origin.)

(ii) European Type

This approach is based on the SP rule and the RVC rule of the EEA agreement (regional economic agreement amongst European Economic Area, EU member countries, Iceland, Liechtenstein and Norway). The authorized exporter approach is adopted as the certification method.

(iii) Asian Type

This approach is based on the RVC rule of AFTA (ASEAN Free Trade Area (i.e. the FTA among the ten member countries of ASEAN)). Most countries adopt governmental certification (third party organization certification) as the certification method, but some countries use both the authorized exporter system and the self certification system, depending on the FTA.

Column ♦ Rules of Origin of NAFTA

The rules of origin under NAFTA, which was signed in 1992 and entered into force in 1994, are distinctive because NAFTA introduced extremely detailed rules regarding the criteria for originating goods, etc., while generously providing measures to alleviate industry costs in respect of certification. This approach became a model for the rules of origin in subsequently executed FTAs (particularly in the Americas).

- Summary

In principle, the rules of origin of NAFTA adopt either CTC (as in the USA-Canada FTA), or adopt RVC alternatively with either CTC or independently for certain items (for example, automobiles, and consumer electronics). The formula for the calculation under RVC is determined by either of the following two methods: the "transaction value method," in respect of which calculations are made based on the transaction value of the goods; and the "net cost method," in respect of which detailed calculations are based on material cost, personnel cost, etc. In addition, under the provisions in respect of accessories, shipping containers and packaging; handling of trans-shipment in a third country; and treatment of indirect material, application costs for enterprises are alleviated and convenience is enhanced by simplifying the calculations and determinations related thereto; and under certain conditions, permitting stopover in non-contracting countries for customs reasons, etc. Further, the self certification system is adopted (under the self-responsibility principle) for the purpose of minimizing the industry's origin certification costs.

- Product-Specific Rules

1. Textiles

In order for textile products to be recognized as being of NAFTA origin, all processes, starting from the production of yarn, must be conducted in the NAFTA region, except with respect to those items described in <Chart 1-1>. However, apart from the foregoing, NAFTA permits the application of a less strict rule of origin by establishing a certain threshold amount for qualified products for each year (which is in effect a "tariff quota" approach employing the rules of origin).

＜Chart 1-1＞ Rules of Origin of Textile Products under NAFTA

Production of Yarn	Production of Textiles	NAFTA Originating status of Apparel Product
Within the region	Within the region	Yes
Outside the region	Within the region	No
	Outside the region	No

2. Automobiles

With respect to automobiles, in addition to the change in the heading (first four digits) of the tariff classification, achievement of a certain intra-regional value content ratio is required to grant originating status. The intra-regional value content ratio to be achieved was 50% when NAFTA first entered into force, and was gradually raised, in total requiring 62.5% as the intra-regional value content ratio (net cost method).

<Antidumping and Countervailing Duty>

(1) Background of the Rules

In recent years, upon entering into FTAs, non-application of trade remedy measures (including antidumping (AD) measures permitted under the WTO Agreement) within the relevant region and additional disciplines in excess of those under AD agreements are often incorporated in the FTAs. The reason for the incorporation of such provisions into FTAs since the 1990s is the intention to prevent the enhancement of market access among the FTA contracting parties' countries from being frustrated by abuse of trade remedy measures, and to further enhance regional and bilateral free trade by disabling AD measures and replacing them with the competition policy articulated in the FTA contracting parties' countries.

(2) Relationship with WTO Agreement

The non-application of AD measures in FTAs/EPAs necessarily presupposes the full integration of the domestic markets of the contracting parties regarding trade in goods, and the establishment of free trade (such as the complete elimination of tariffs), and therefore, is consistent with the purpose of the WTO. Meanwhile, stricter disciplines than provided by the WTO for procedural and substantive aspects of the regulations in respect of AD measures (WTO-plus disciplines), but disciplines which fall short of the non-application of AD measures, overlap with proposals made in the process of negotiating WTO AD rules (which are aimed at stricter disciplines).

Therefore, it is possible to view such measures as a furtherance of disciplines for AD agreements implemented through bilateral FTAs/EPAs, and which are stricter than under the WTO Agreement. However, there is also concern that special treatment in respect of AD measures under rules stricter than those of the WTO, in imposing AD investigation and measures in relation only to FTA/EPA parties' countries may be, depending on the content, in conflict with the principle of the most-favored nation treatment under GATT.

(3) Overview of Legal Disciplines

Since the 1990s, while the regulation of AD measures in FTAs have been diversified and often amended, they can be grouped into the following three major categories (the provisions on countervailing duty measures follow the same grouping):

1) Reaffirmation of Rights and Obligations under the WTO and AD Agreements

In addition to provisions explicitly confirming rights and obligations under the WTO and AD Agreements in FTAs/EPAs, there exist agreements which substantively allow the application of AD regulations under the WTO Agreement within the relevant region as a result of effectively providing that the exercise of rights under GATT will not be prevented in the general provisions of the relevant FTA/EPA. The Japan-Singapore EPA (and many other FTAs/EPAs) falls under this category.

2) Stricter Disciplines than the WTO or AD Agreements

The FTAs executed by Singapore introduce stricter disciplines than the WTO Agreement on AD measures. For example, the Singapore-New Zealand FTA has incorporated stricter disciplines than exist in the WTO Agreement in that it (i) raises the *de minimis* margin of the export price below which AD duties cannot be imposed from 2% to 5% (Article 9, paragraph 1(a)); (ii) applies such stricter "de minimis" rule to review cases as well as new investigation cases (Article 9, paragraph 1(b)); (iii) increases the volume of dumped imports which are regarded as negligible from 3% to 5%, and immediately terminates investigation if the import amount falls short of 5% (Article 9, paragraph 1(c)); (iv) provides that the time frame for determining the volume of dumped imports which can be regarded as negligible (mentioned in (iii) above) shall normally be at least 12 months (Article 9, paragraph 1(d)); and (v) reduces the period of imposition of the AD duties from five (5) years to three (3) years (Article 9, paragraph 1(e)).

In addition to such stricter substantive disciplines, some FTAs provide stricter procedural disciplines than exist in the WTO Agreement, as well. For example, some FTAs provide that the investigative authority which received a relevant petition shall "promptly" notify the counterparty and provide the counterparty government with an opportunity for prior consultation before applying the relevant AD measures, consider prioritizing acceptance of price undertaking over the imposition of AD duties, etc.

3) Provisions on Non-Application of AD Measures Between Contracting Parties' Countries

In 1990, ANZCERTA ceased the application of AD measures in bilateral trade relations and simultaneously amended and reorganized domestic competition laws to abolish AD measures in respect of the counterparty, thereby making AD measures mutually inapplicable. Since 2003, the Canada-Chile FTA (Articles M-01, 03) also abolished the use of AD measures against intra-regional trade, and introduced certain competition policy provisions to address dumping exportation. However, such FTAs which provide non-application of AD measures are the exception. Most FTAs confirm the rights and obligations between the contracting parties' countries under the WTO Agreement, and allow for the imposition of AD measures as well as countervailing duty measures as "measures" against occurrence or expansion of dumping caused by expansion of market access, or against injury to domestic industry due to illegal subsidies.

Special provisions regarding AD measures or non-application of AD measures were considered in the process of executing FTAs (i.e. EPAs) that Japan has previously entered into. In the report by a study group on the Japan-Singapore EPA (September 2000), an option was proposed which permitted a mutual exemption from applying in respect of AD measures, subject to the creation of a cooperative mechanism in competition policy. At the same time the possibility of stricter disciplines than those under the current WTO AD Agreement was considered, such as an increase of the *de minimis* threshold or the import volume which can be regarded as negligible, or the shortening the tariff imposition period. However, certain issues were pointed out (such as the lack of a comprehensive competition law in Singapore at that time, remaining concern about the non-application of AD measures from the perspective of the need to protect domestic industries, and the possible adverse effects on the WTO's Doha Round negotiations caused by the low level of disciplining AD rules in EPAs), and as a result, the Japan-Singapore EPA confirmed the rights and obligations in respect of AD measures under the WTO Agreement (Article 14, paragraph 5(b)). Other EPAs that Japan has entered into also confirm the right to make AD measures consistent with the WTO Agreement.

Although not included in the agreement, upon the signing of the Japan-Singapore EPA (January 2002), joint declarations at the ministerial level were issued expressing concern regarding the abuse of AD measures, urging restraint in imposing AD measures, and confirming cooperation in more strictly disciplining AD measures than in the WTO Agreement (paragraph 2). The joint declaration upon the signing of the Japan-Mexico EPA (September 2004) also confirmed the importance of cooperating with more strictly discipline AD measures in the process of WTO negotiations (paragraph 12). The Japan-Mexico EPA (Article 11(b)) and Japan-Malaysia EPA (Article 16 (b)(ii)) explicitly provide that AD duties will not be included in customs duty (which is the subject of a reduction or elimination of tariffs).

Chart 1-2 Summaries of Provisions of FTAs and EPAs on AD and Countervailing Duties

	Provisions on AD Duties (Non-application or stricter disciplines within the region)	Provisions on Countervailing Duty
Japan-Singapore	In respect of both AD duty provisions and countervailing duty provisions, cooperation toward more strictly regulating AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreement (preamble), intra-regional applicability (Article 14, paragraph 5(b)).	
Japan-Mexico	In respect of both AD duty provisions and countervailing duty provisions, cooperation toward more strictly regulating AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreement (Article 167), intra-regional applicability (Article 11(b)).	
Japan-Malaysia	In respect of both AD duty provisions and countervailing duty provisions, reaffirmation of rights and obligations under the WTO Agreement (Article 11, paragraph 1), intra-regional applicability (Article 16 (b)(ii)).	
Japan-Philippines	In respect of both AD duty provisions and countervailing duty provisions, reaffirmation of rights and obligations under the WTO Agreement (Article 11, paragraph 1), intra-regional applicability (Article 18, paragraph 4(b)).	
NAFTA	In respect of both AD duty provisions and countervailing duty provisions, a bilateral panel may be established in connection with the final determinations of AD and countervailing duties (Chapter Nineteen).	
U.S.A.-Singapore	In respect of both AD duty provisions and countervailing duty provisions, reaffirmation of rights and obligations under the WTO Agreement (Article 1.1). Intra-regional applicability.	
U.S.A.-Chile	In respect of both AD duty provisions and countervailing duty provisions, retaining of rights and obligations under the WTO Agreement (Article 8.8). Intra-regional applicability.	
U.S.A.-Jordan	In respect of both AD duty provisions and countervailing duty provisions, reaffirmation of rights and obligations under the WTO Agreement (Article 1). Intra-regional applicability.	
U.S.A.-Israel	In respect of both AD duty provisions and countervailing duty provisions, exports from the contracting party countries to the FTA which entered into force and effect before January 1, 1987 (applicable only to the U.S.A.-Israel FTA in 1985) will not be subject to cumulation (Uruguay Round Agreements Act, Section 222 (e)).	
Canada-Chile	Intra-regionally inapplicable from the date on which the tariff of both parties is eliminated or January 1, 2003, whichever comes first(Articles M-01, 03).	Provides inapplicability of AD rules but does not provide inapplicability of countervailing duties, and is intra-regionally applicable. Also has provisions on negotiation toward elimination of countervailing duties (Article M-05).
EC-Mexico	In respect of both AD duty provisions and countervailing duty provisions, confirmation of rights and obligations arising from the WTO Agreements (Article 14). Intra-regional applicability.	
Singapore-EFTA	Intra-regionally inapplicable (Article 16).	Disciplined by GATT Article VI and the WTO SCM Agreement. Intra-regional applicability (Article 15).
Singapore-Australia	Reaffirmed commitment to the provisions of WTO Agreement on AD, stricter disciplines for investigation period, and duty	Reaffirmation of commitment to abide by the provisions of WTO SCM Agreement, and agreement to prohibit export subsidies (Article 7).

	Provisions on AD Duties (Non-application or stricter disciplines within the region)	Provisions on Countervailing Duty
	imposition rules (Article 8). Intra-regional applicability.	Intra-regional applicability.
Singapore-New Zealand	Intra-regional applicability. Greater discipline on the imposition requirements (*de minimis* margin, cumulation), investigation period, and applicable period (Article 9).	Reaffirmation of commitment to abide by the provisions of the WTO SCM Agreement, and agreement to prohibit export subsidies (Article 7). Intra-regional applicability.
Singapore-India	Intra-regional applicability. Provides notification upon initiation of investigation, exchange and use of information, and conditions for considering the WTO Committee on AD (Article 2.7).	Reaffirmation of commitment to abide by the provisions of WTO SCM Agreement (Article 2.8). Intra-regional applicability.
Singapore-Jordan	Intra-regional applicability. Stricter disciplines for imposition requirements (*de minimis* margin, cumulation), investigation period, applicable period, calculation method upon review, etc. (Article 2.8).	Governed by Article VI of GATT and the WTO SCM Agreement. Intra-regional applicability (Article 2.6).
Singapore-Korea	Maintenance of rights and obligations under the WTO Agreement on AD, stricter disciplines for principles of imposing AD duties (Article 6.2). Intra-regional applicability.	Governed by Article VI of GATT and the WTO SCM Agreement (Article 6.3). Intra-regional applicability.
Thailand-Australia	Reaffirmation commitment to the provisions of the WTO Agreement on AD, and extension of reasonable consideration to price undertakings (Article 206). Intra-regional applicability	Confirmation of compliance with the WTO SCM Agreement (Article 207). Intra-regional applicability
Thailand-New Zealand	Retaining of rights and obligations under the WTO Agreement on AD, while mindful of Article 15 (special consideration for developing country members) (Article 5.1). Intra-regional applicability.	Retaining of rights and obligations under the WTO SCM Agreement (Article 5.2). Intra-regional applicability.
Australia-New Zealand （ANZCERTA）	Abolished disciplines for AD on July 1, 1990 and introduced competition law. Intra-regionally inapplicable (protocol dated August 18, 1988).	Maintenance of the obligations under agreements on subsidies such as Article VI, etc. of GATT (Article 16). Intra-regional applicability.
P4 (Singapore, Brunei, New Zealand, Chile)	In respect of both AD duty provisions and countervailing duty provisions, maintenance of rights and obligations under the WTO AD and SCM Agreements (Article 6.2). Intra-regional applicability.	
Korea-Chile	Maintenance of rights and obligations under the WTO AD and SCM Agreements (Article 7.1). Intra-regional applicability.	

<Safeguards>

(1) Background of the Rules

1) Bilateral Safeguard Measures Under FTAs/EPAs

Most FTAs and EPAs provide bilateral safeguard measures which apply to imports of products from the counterparty country and which are covered by, *inter alia*, tariff concessions, for the reduction of tariffs thereunder. These measures allow for the temporary withdrawal of the commitment to eliminate or reduce tariffs under the relevant FTA/EPA, returning to tariffs of the most-favored nation under GATT as an emergency measure if serious injury to the domestic industry, or threat thereof, occurs due to an increase in imports resulting from the elimination or reduction of tariffs under the agreement, and provide the substantive and procedural rules therefor. Bilateral safeguard measures function as a type of safety valve, enabling the parties to make commitments for a reduction or elimination of tariffs for more items, including sensitive items, in the process of negotiation in connection with liberalizing FTAs/EPAs between them, and are an important component in the FTA/EPA negotiation process.

2) Types of Bilateral Safeguard Measures

Bilateral safeguard measures may be grouped into the following four categories based on their nature: (1) in respect of safeguards, those mostly governed by the WTO Agreement (U.S.-Australia FTA, U.S.-Singapore FTA, Japan-Singapore EPA, Japan-Mexico EPA, Korea-Singapore FTA, Chile-ASEAN FTA, etc.); (2) those mostly governed by Article XIX of GATT (AFTA, Australia-New Zealand EPA, etc.); (3) those having no general bilateral safeguard systems (Korea-Chile FTA, (although Korea-Chile FTA does contain safeguards on agriculture)) etc.; and (4) those of the European type, which allow for the imposition of safeguard measures under certain conditions (for example, allowing the imposition of safeguards when there is injury to the industry which might result in a worsened local economy, or when economic, social or environmental issues arise) (EFTA, EU - Mexico FTA, etc.). All bilateral safeguard measures under Japan's EPAs are fall under category (1). The following is a summary of the characteristics and specific examples of bilateral safeguards, with a focus on the first type.

(2) Overview of Legal Disciplines

1) Characteristics of Bilateral Safeguard Measures

(a) Restrictions on Tariff Increase Rate

The WTO Agreement on Safeguards permits quantitative restrictions, in addition to tariff measures, to be imposed on goods (Article 5, paragraph 1). In contrast, bilateral safeguard measures under FTAs/EPAs are often provided only as customs duty measures. In addition, whereas the WTO Agreement on Safeguards does not have any special provisions on the permissible extent to which tariffs may be increased, bilateral safeguard measures often provide for suspension of tariff reduction under the FTAs/EPAs or increase of the tariff rate up to the then most-favored-nation rate in respect of import duties (by lowering the tax rate of either the then most-favored-nation rate of import duties as of the time of the bilateral safeguard measure or as of the day before the agreement entered into force). The rationale for this is that bilateral safeguard measures are merely safety valves against trade liberalization under bilateral FTAs/EPAs, and may be permitted only to the extent of the liberalization (or tariff reduction) required thereunder.

(b) Regulations of Imposition Requirements and Measures

In light of the aim of FTAs/EPAs to establish free trade zones through the elimination of tariff and non-tariff measures, disciplines for bilateral safeguard measures under FTAs/EPAs are often stricter than they are in the WTO Agreement on Safeguards. Examples include provisions restricting events triggering the imposition of safeguard measures to an absolute increase in import, provisions restricting the application of bilateral safeguard measures to a certain transition period, provisions setting the maximum limit of the imposition period to a period shorter than under the WTO Agreement on Safeguards, and provisions prohibiting imposition of provisional measures. In addition, although Japan has not executed any agreement of this nature, some FTAs (for example, Singapore-India FTA) introduce a *de minimis* standard which prohibits the application of safeguard measures.

(i) Cases Involving Restriction of Triggering Events and Measures

The Japan-Singapore EPA, for example, does not allow for the imposition of provisional measures, and restricts the triggering events for the imposition of safeguard measures in respect of an absolute increase in import. Furthermore, such agreement imposes strict requirements for imposing bilateral safeguard measures, such as limiting the applicable period to a transition period (ten (10) years after the agreement enters into force) and prohibiting the re-imposition of safeguard measures on goods in respect of which such measures were already imposed. An example of a *de minimis* requirement can be found in the Singapore-India FTA, which provides that if the import of goods subject to investigation is 2% or less of the market share in respect of domestic sales or 3% or less of the aggregate imports from all countries (during the 12 month period before the application for investigation), bilateral safeguard measures may not be taken.

(ii) Cases Involving Elimination of Bilateral Safeguard Measures

There exist FTAs which restrict the application of bilateral safeguard measures to a transition period, and actually eliminate bilateral safeguard measures after the transition period terminates. For example, ANZCERTA provides that the transition period shall be the period during which tariffs, quantitative restrictions, tariff quotas, export incentives and price stabilization measures, and subsidies which hinder the development of trade opportunities exist. The transition period for ANZCERTA subsequently terminated with the complete liberalization of trade in July 1990, and the bilateral safeguard measures were abolished.

Figure 1-3 shows FTAs/EPAs categorized by requirements (such as triggering events (absolute or relative increase of import)), applicable period (provisional or perpetual), imposition period, no re-imposition period, compensation, and rebalancing.

2) Relationship Between WTO Agreement and EPA Bilateral Safeguard Measures

As previously mentioned, the bilateral safeguard measures permitted under the EPAs executed by Japan are aimed at suspension of tariff reduction thereunder or at an increase of the tariff rate up to the present most-favored-nation rate of tariff . These measures are considered, in principle, not to give rise to any issue of consistency with the WTO Agreement (although it is potentially arguable that these measures fall under more restrictive regulations of commerce under paragraph 8 of GATT Article XXIV, which measures must be substantially eliminated).

Chart 1-3 Comparison between Safeguard Systems under Existing FTAs/EPAs and Safeguard Systems under the WTO Agreement

	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effected: Not yet effected	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effected: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effected: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effected: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effected: 1994.1.1	SG Agreement (General SG)
Subject Countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	All WTO member countries
Imposition Requirements	If absolute or relative increase in import as a result of reduction or elimination of tariffs provided by such agreement constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 22, paragraph 1)	If absolute or relative increase in import as a result of reduction or elimination of tariffs provided by such agreement constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 23, paragraph 1)	If absolute increase in import as a result of reduction or elimination of tariffs provided by such agreement constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 53, paragraph 1)	If absolute increase in import as a result of reduction or elimination of tariffs provided by such agreement constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 18, paragraph 1)	If absolute increase in import as a result of reduction or elimination of tariffs provided by such agreement constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 801, paragraph 1)	As a result of (i) unforeseen developments or (ii) the effect of obligations incurred by a contracting party under the Agreement (including tariff concessions) (Article XIX of the GATT), (i) absolute or (ii) relative increase in import, which causes or threatens to cause serious injury to the domestic industry (Article 2, paragraph 1)
Applicable Period	Review if necessary after 10 years from date of entry into force of the Agreement (Article 22, paragraph 12)	Review if necessary after 10 years from date of entry into force of the Agreement (Article 23, paragraph 11)	Review if necessary after 10 years from date of entry into force of the Agreement (Article 53, paragraph 13)	Limited to transition period (10 years from the date of entry into force of the Agreement) (Article 18, paragraph 1)	Limited to transition period (in principle, 10 years from the date of entry into force of the Agreement, maximum of 15 years depending on the item) (applicable after the transition period with consent of the other Party) (Article 801, subparagraphs 1,2 (c)(ii))	Perpetual system

	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effected: Not yet effected	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effected: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effected: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effected: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effected: 1994.1.1	SG Agreement (General SG)
Contents of Imposition	Suspension of gradual reduction of any rate of customs duty (Article 22, subparagraph 1(a)) Increase of the rate of customs to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 22, subparagraph 1 (b)) Until the last day of the 7th year, may increase the rate of customs duty to the level of most-favored-nation applied rate of customs duty in effect upon imposition of the measure (Article 22, paragraph 10)	Suspension of gradual reduction of any rate of customs duty (Article 23, subparagraph 1(a)) Increase of the rate of customs to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 23, subparagraph 1 (b))	Suspension of gradual reduction of any rate of customs duty (Article 53, subparagraph 2(a)) Increase of the rate of customs to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 53, subparagraph 2(b))	Suspension of gradual reduction of any rate of customs duty (Article 18, subparagraph 1(a)) Increase of the rate of customs to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 18, subparagraph 1(b))	Suspension of gradual reduction of any rate of customs duty (Article 801, subparagraph 1(a)) Increase of the rate of customs to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 801, subparagraph 1(b))	May increase rate of customs or take import quantitative restriction measures (Article 5, paragraph 1)

	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effected: Not yet effected	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effected: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effected: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effected: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effected: 1994.1.1	SG Agreement (General SG)
Notice upon Investigation	Shall deliver a notice to the other Party upon initiating an investigation (Article 22, subparagraph 5(a))	Shall deliver a notice to the other Party upon initiating an investigation (Article 23, subparagraph 4(a))	Shall deliver a notice to the other Party upon initiating an investigation (Article 53, paragraphs 7 and 8)	Shall deliver a notice to the other Party upon initiating an investigatory process or making a finding of injury (Article 18, subparagraph 3(a))	NA	Shall notify the Committee on Safeguards upon initiating an investigatory process, or making a finding of serious injury (Article 12, paragraph 1)
Notice/Consultation before Implementation	Prior notice to the other Party and consultation before taking or extending SG measures (Article 22, subparagraphs 5(a)(d))	Prior notice to the other Party and consultation before taking or extending SG measures (Article 23, subparagraphs 4(a)(c))	Prior notice to the other Party and consultation before taking or extending SG measures (Article 53, paragraphs 8 and 9)	Prior notice to the other Party and consultation before taking or extending SG measures (Article 18, subparagraphs 3(a)(c))	Deliver a request for consultation regarding the institution of an SG proceeding (801条2(a))	Shall notify the Committee on Safeguards and consult with Members having an interest before applying SG measures (Article 12, paragraphs 1 and 3)
Provisional Measures	Available (within 200 days) (Article 22, paragraph 4)	Available (within 200 days) (Article 23, paragraph 9)	Available (within 200 days) (Article 54)	NA	NA	Available (within 200 days) (Article 6)
Imposition Period (Maximum)	In principle, within three (3) years; exception up to a total maximum period of four (4) years (Article 22, subparagraph 5(e))	In principle, within four (4) years; exception up to a total maximum period of five (5) years (Article 23, subparagraph 4(d))	In principle, within three (3) years; exception up to a total maximum period of four (4) years (Article 53, paragraph 5)	In principle, within one (1) year; exception up to a total maximum period of three (3) years (Article 18, subparagraph 3(d))	In principle, within three (3) years (Article 801, subparagraph 2(c))	Initially within four (4) years; extension possible for additional four (4) years (within a total of eight (8) years) (Article 7, paragraphs 1 to 3)

	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effected: Not yet effected	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effected: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effected: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effected: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effected: 1994.1.1	SG Agreement (General SG)
Progressive Liberalization of Measures	If over one (1) year, progressive liberalization (Article 22, subparagraph 5(e))	If over one (1) year, progressive liberalization (Article 23, subparagraph 4(d))	If over three (3) years, must present a schedule leading to progressive elimination (Article 53, paragraph 5)	If over one (1) year, must present a schedule leading to progressive elimination (Article 18, subparagraph 3(d))	NA	Measures over one (1) year, progressive liberalization; measures over three (3) years, must review the situation not later than mid-term of the measure (Article 7, paragraph 4)
No Re-imposition Period	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 22, subparagraph 5(f))	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 23, subparagraph 4(e))	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 53, paragraph 6)	Measures may not be applied again to already imposed good (Article 18, subparagraph 3(e))	Measures may not be applied again to already imposed good (Article 801, subparagraph 2(d))	Measures may not be applied again to already imposed product for a period of time equal to duration of the previous imposition period (however, may not be applied for at least two (2) years) (Article 7, paragraph 5)
Compensation	Substantially equivalent tariff measure (Article 22, subparagraph 6(a))	Substantially equivalent tariff measure (Article 23, subparagraph 5(a))	Substantially equivalent tariff measure (Article 53, paragraph 10)	Substantially equivalent tariff measure (Article 18, paragraph 4)	Substantially equivalent trade liberalizing compensation (Article 801, paragraph 4)	Endeavour to maintain a substantially equivalent level of concessions and other obligations (Article 8, paragraph 1)

	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effected: Not yet effected	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effected: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effected: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effected: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effected: 1994.1.1	SG Agreement (General SG)
Countermeasure (Moratorium)	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition, (ii) absolute, then after 12 months from imposition (Article 22, subparagraphs 6(b)(c))	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition, (ii) absolute, then after 18 months from imposition (Article 23, subparagraphs 5(b)(c))	Substantially equivalent tariff measure possible (Article 53, paragraph 11)	Same as column immediately to the left (Article 18, paragraph 4)	Substantially equivalent tariff action possible (Article 801, paragraph 4)	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition (Article 8, paragraph 2), (ii) absolute, then after three (3) years from imposition (Article 8, paragraph 3)

<Standards and Conformity Assessment Systems>

(1) Background of the Rules

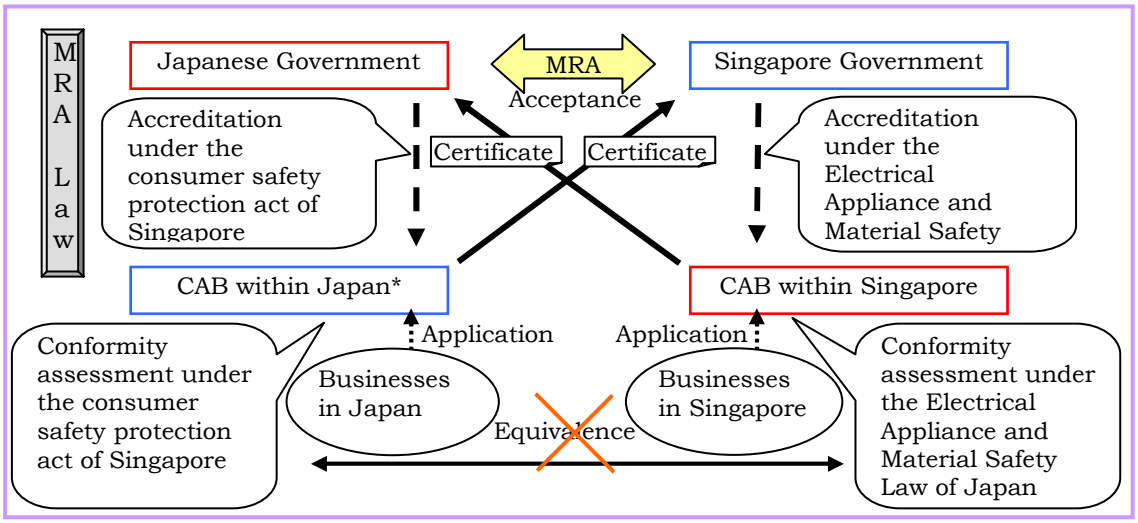
The WTO has an agreement on technical barriers to trade (the WTO/TBT Agreement), which contains provisions on, *inter alia*, the promotion of international harmonization and securing transparency in order to prevent standards and conformity assessment systems from causing unnecessary barriers to international trade (see Part II, Chapter 10 for details).

(2) Overview of Legal Disciplines

The area of standards and conformity assessment involves technical aspects of the regulatory system and special characteristics of the region. Thus, the appropriate and effective means to ensure the systematic transparency and international consistency of technical criteria and the like is to share concerns on systematic issues through multilateral consultations amongst experts (such as the WTO/TBT (Technical Barriers to Trade) Committee and the APEC/SCSC (Sub-Committee on Standards and Conformance)), while falling in line with other countries in respect of harmonization of standards and conformity assessments. In order to meet the objective of the WTO/TBT Agreement, namely to prevent actual standards and conformity assessment systems from causing unnecessary barriers to international trade, Japan's existing EPAs include the following provisions on standards and conformity assessment. (This Chapter deals with measures and recognition in connection with trade in goods; please also see Chapter 3 "Movement of Natural Persons" for "mutual recognition of qualifications," which is a measure regarding the movement of natural persons.)

1) Japan-Singapore EPA

Chapter 6 of the Japan-Singapore EPA contains a section on the mutual recognition of conformity assessment. This system allows for the mutual acceptance of the results of conformity assessments conducted by a body designated by the government of the exporting country (based on the criteria and procedures of the importing country), as providing same assurance as the conformity assessment conducted within the importing country. As a result, for example, under this system, if the Japanese government grants accreditation to a body within Japan as the body responsible for assessing conformity with the domestic regulations of Singapore, the results of a conformity assessment by such body shall be accepted by Singapore. The system applies to electronic products, communication terminal equipment, and wireless devices.



* CAB stands for Conformity Assessment Body, and is a body which conducts authorizations and tests.

- MRA stands for Mutual Recognition Agreement. The MRA Law (Law for Implementation of the Mutual Recognition between Japan and the European Community and the Republic of Singapore in Relation to Conformity Assessment of Specified Equipment) was enacted in order to perform the obligations of Japan under the MRA as well as secure appropriate implementation of the MRA in Japan.

- The MRA Law must be amended each time the regulatory system of the counterparty country is amended.

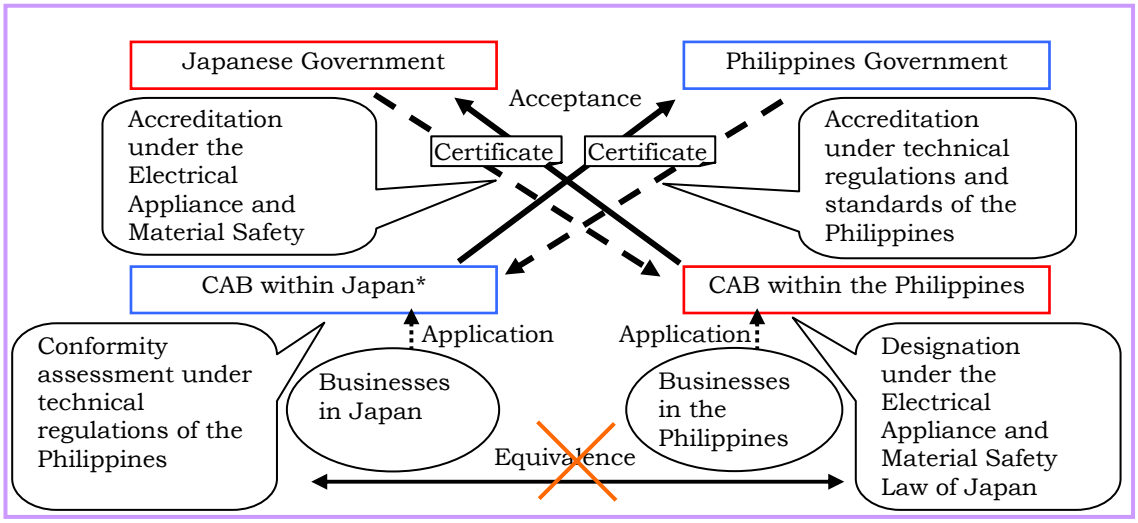
2) Japan-Mexico EPA, Japan-Malaysia EPA

Section 3 of Chapter 3 of the Japan-Mexico EPA is in respect of technical regulations, standards and conformity assessment procedures, and Chapter 5 of the Japan-Malaysia EPA is in respect of the same. These sections reaffirm the rights and obligations under the WTO/TBT Agreement, and provide for the exchange of information and cooperation in joint research and the like in relation to technical regulations, standards and conformity assessment procedures, establishment of subcommittees, and designation of enquiry points by the governments of both contracting parties' countries. In addition, they are provided as an exception to the application of dispute resolution.

3) Japan-Philippines EPA

Chapter 6 of the Japan-Philippines EPA contains a section on the mutual recognition of conformity assessments. It provides for the mutual acceptance of the direct accreditation (registration) and supervision of the Conformity Assessment Body within the exporting country by the government of the importing country. As a result for example, under this system, if the Japanese government grants accreditation to a body within the Philippines as the body responsible for assessing conformity with the regulations of Japan, the result of conformity assessment by such body shall be accepted by Japan. The system applies to electronic products.

Under the Japan-Singapore EPA, the "Singapore government" grants accreditation to a Conformity Assessment Body in Singapore under the Electrical Appliance and Material Safety Law of Japan, and the certificate issued by such body is accepted by the Japanese government. In contrast, under the Japan-Philippines EPA, it is the "Japanese government" which grants accreditation to a Conformity Assessment Body in the Philippines under the Electrical Appliance and Material Safety Law of Japan, and the certificate issued by such body is accepted by the Japanese government.



- Under the Electrical Appliance and Material Safety Law of Japan, it is possible within the legal structure to designate a CAB outside of Japan.
- The regulatory authority does not need to understand the domestic laws of the counterparty country.
- If designations are to be made outside the country, no implementing legislation (MRA Act) (MRA Law) is necessary because it is possible to address issues within the framework of regulation.
- Depending on the legal system of each country, designation outside the country does not necessarily require bilateral agreements.

It should be noted that there will be many difficulties in discussing the area of standards and conformity assessment in EPAs in connection with the various types of technical criteria, (such as safety criteria) if large technological differences with Japan exist. This is also evident from the fact that it is impossible for the Japanese government to reduce or liberalize the requirements of Japan's safety criteria to meet those of a counterparty country, because the Japanese government owes a duty to protect the lives and property of its nationals. The same concern applies to discussions with a counterparty country whose body assessing conformity to Japanese regulations materially lacks the ability to do so. Furthermore, systems for conformity assessment run by the private sector exist in addition to mutual recognition systems at the state level. Therefore, a case-by-case response is required, depending on the items to which such private systems apply.