Chapter 2

ASEAN

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(1) General

PROTECTION OF INTELLECTUAL PROPERTY

Since the establishment of the WTO, Asian countries have been developing their national intellectual property legislation to conform to the TRIPS Agreement in order to protect intellectual property rights. Japan appreciated the efforts of some Asian countries to conform to the TRIPS Agreement prior to the end of the transitional period[1] in 2000. As a result, these countries have increasingly established institutions and enacted adequate laws, regulations and systems. 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 described below to ensure proper conformity with the obligations of the agreement.

Figure I-2-1 Major Systemic/Operational Issues of Protection of Intellectual Property in ASEAN countries

Indonesia	Failure to execute suspension of intellectual property rights infringing goods at the customs
Malaysia	Long trial period
Philippines	Long trial period
Thailand	Long examination period for the registration of industrial property rights
Viet Nam	Difficulty in applying criminal penalties, lack of ability to suppress repeat offenses due to the low level of fine of administrative penalties

Issues related to Counterfeit, Pirated and other Infringing Products

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 for many products including motorcycles and components (see Figure I-2-2). 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

[1] See 1. 2) "Legal Framework" of Chapter 13 "Protection of Intellectual Property", Part II.

criminal enforcement and sanctions.

In the TRIPS Agreement, Articles 41 through 61 provide for enforcement procedures. Specifically, Article 41 requires Members to ensure that domestic legal systems are available to permit effective and expeditious action against infringement of intellectual property rights. A lack of effective and expeditious enforcement measures can constitute a violation of obligations under the Agreement. Japan must monitor the current status of legislation of Members that has become subject to the TRIPS Agreement's obligations since January 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 I-2-2
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/provision of counterfeits	
	2012	2013	2012	2013
China (+Hong Kong)	608	604	508	499
Chinese Taipei	142	112	164	151
Republic of Korea	146	121	166	150
Thailand	43	39	84	88
Indonesia	31	29	78	82
Singapore	15	15	55	55
Malaysia	32	21	72	75
Viet Nam	27	24	54	68

* Valid responses: 4,323 (in 2012), 4,314 (in 2013)

Source: FY 2014 Survey Report on Losses caused by Counterfeiting, by the Japan Patent Office

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. However, mere adjustment 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 programs. 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.

In February 2012, the first ASEAN Commissioner of Patents Meeting was held in Tokyo. Japan agreed to cooperate with the reinforcement of protecting intellectual property in ASEAN and the "Tokyo IP Statement" was adopted. In July 2012, an MOU of cooperation was signed between the Japan Patent Office and the Intellectual Property Offices of the ASEAN countries, and cooperation programs are formulated every year to promote cooperation based on the MOU. In addition, as part of bilateral efforts between the Japan Patent Office and the Intellectual Property Offices of the ASEAN countries, an MOU of cooperation on intellectual property rights was signed with Viet Nam in February 2012 (revised in October 2014), with Singapore in July 2012 (revised in August 2014), with Myanmar in February 2013 (revised in August 2014), with the Philippines and Indonesia in August 2014, with Cambodia in November 2014, and with Malaysia in January 2015, respectively, and cooperation programs are formulated every year to promote cooperation based on the MOU. Further cooperating with the Intellectual Property Offices of ASEAN countries in efforts for the development of human resources to operate intellectual property rights protection systems and promotion/education regarding intellectual property using these cooperation programs is considered effective. 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 to promote cooperation in the field of international property rights, including the Intellectual Property Rights Experts Group (IPEG) in June 2007 where Japan's proposal to establish

the inaugural joint session of experts in customs and intellectual property was agreed upon and held in February 2008 with participation from ASEAN and other countries. Japan has been holding authenticity assessment seminars three time a year with lectures on methods for distinguishing between genuine goods and counterfeits for officers of enforcement agencies of the local governments in the respective ASEAN countries. The EPAs that Japan has concluded with Brunei, Thailand, Indonesia, the Philippines, Malaysia and Viet Nam include provisions on the proper protection and enforcement of intellectual property rights.

(2) Member Countries

1. THAILAND

Tariffs

Tariff Structure

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

Thailand has reduced applied tariff rates as part of its effort to adjust tariff structures 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 (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 rate for non-agricultural products in 2011was 8.0%), especially for clothing (average 30.3%) and transport equipment (average 20.3%). There are high tariff items such as automobiles (maximum 80%), washing machines and refrigerators (maximum 30%) etc. In contrast, the simple average bound tariff rate for non-agricultural products is 25.4%. The binding coverage is relatively low: 25.2% for transport equipment and 71.3% as a whole for non-agricultural products. Unbound items include automobile parts (applied tariff rate of 30%) and bicycles (applied tariff rate of 30%).

<Concerns>

High 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 efficiency, it is desirable to reduce tariffs to their lowest possible rate, while eliminating the tariff peaks (see “Tariff Rates” in 1. of Chapter 5,

Part II) described above.

Low binding ratio and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower 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 and the bound tariff rates be lowered 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. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations have been taking place since May 2012 outside the Doha Round negotiations (see (2) "Information Technology Agreement (ITA) Expansion Negotiation" in 5. of Chapter 5, Part II for details).

Since the Japan-Thailand Economic Partnership Agreement came into effect in November 2007, tariffs have been removed on imports from Japan for automobile parts (parts for manufacturing) and steel products, and thus market access has improved.

ANTI-DUMPING MEASURES

Anti-dumping measures against Hot-rolled Steel Sheet from Japan

<Outline of the measure>

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

The hot-rolled steel sheet exported from Japan is cold-rolled in Thailand and supplied to auto and consumer electronics manufacturers, etc.; it is a high-quality product that is difficult for Thai steel makers to produce. However, since they applied for the initiation of the investigation, the Thai steel makers have consistently presented that they can produce this steel sheet.

<Problems under international rules>

The so-called "like products" produced in Thailand are significantly different in quality from the hot-rolled steel sheet exported by Japanese companies. If two different kinds of products that are not competing with each other are assessed as like products, it is impossible to determine appropriately the existence of dumping, the scope of the domestic industry, the existence of injury to the domestic industry, and a causal relationship to the injury to the domestic industry. Therefore, the result of the investigation may be inconsistent with Articles 2, 3 and 4 of the AD Agreement.

In addition, in the *ex officio* changed circumstance review (review of the margin of dumping) initiated in 2009, the following problems were identified.

(1) Japan was given only one day to make comments after the Japanese Embassy received the notice of disclosure of essential facts.

(2) In relation to the notice of disclosure of essential facts, six Japanese companies were known by the Thai authority. However, the notice was given to only two Japanese companies, which cooperated in the investigations; no notice was given to the remaining four companies.

(3) The Thai authority sent a notice of holding a public hearing to specific Japanese companies only 48 hours before the public hearing was held, although a flight from Japan to Thailand takes more than six hours.

It is questionable whether the Thai authority gave interested parties opportunities to present their views as required by Article 6.2 of the AD Agreement, and whether it gave notice of disclosure of essential facts under Article 6.9 of the AD Agreement in an appropriate manner.

<Recent developments>

Japan sent a letter from the Japanese Embassy in Bangkok regarding the problems of the ex officio changed circumstance review (review of the margin of dumping) initiated in 2009 concerning Articles 6.2 and 6.9 of the AD Agreement as described above, and also asked Thailand questions about the aforementioned points at the meeting of the WTO Anti-Dumping Committee held in the fall of 2010. The Thai Government responded as followed:

1) Notification of the disclosure of essential facts was provided appropriately. The interested parties were able to make comments regarding this issue.
2) Notification of the disclosure of essential facts was also sent to the Japanese Embassy. The remaining four companies were notified through the Japanese Embassy.
3) The procedures were in accordance with the AD Agreement. Sufficient time was given to the interested parties.

Japan needs to continue to monitor closely the Thai Government's administration of the AD measure. Meanwhile, sunset reviews on this case were initiated in May 2014.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

Technical Regulations for Steel Products

<Outline of the measure>

With regard to the technical regulations for steel products introduced in 1993, the Thai Industrial Standards Institute (TISI) changed the procedures and standards concerning the Thai Industrial Standards (TIS) conformity assessment and conformity-maintenance examination (acquisition of import licenses) on hot-rolled steel sheets and cold-rolled steel sheets in January 2009. The new regulations strengthened audit procedures for steel plants, which is a precondition to permission to import. Steel plants are required to undergo an audit once a year, where only documentary examinations

were necessary in the past.

The Thai Industrial Standards Institute (TISI) is also considering technical regulations of Electrolytic Zinc-coated sheet steel (EG) and Zinc coated steel (GI, GA).

<Problems under international rules>

Article 2.2 of the Agreement stipulates that "technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create." The Thai Industrial Standards Institute (TISI) claims that the objective of the system is to secure health and safety of consumers through improved steel quality, however, such an objective cannot be achieved through regulations of intermediate goods such as steel products, but instead should be achieved through safety regulations. Therefore this system appears to be more restrictive than necessary in light of the policy objective and may violate Article 2.2 of the TBT Agreement.

<Recent developments>

In the same manner as in 2012, at bilateral talks during the sessions of the TBT Committee in March, June, and October 2013, Japan said that introducing technical regulations for steel products, that are intermediate goods, is not necessary from the point of view of end use, and that technical regulations on Electrolytic Zinc-coated sheet (EG) and Zinc coated steel (GI, GA) should be cancelled. Japan requested that steel sheets used for automobiles and home appliance industries be excluded if the technical regulation was implemented. Concerns were expressed about the failure to secure transparency in terms of the operation of the regulation, and the simplification and reduced frequency of steel plant audits is desired.

In addition, at the TPRB meeting for Thailand in November 2011, the Japan-Thai EPA Business Environment Development Subcommittee held in September 2012, and the Japan-Thai talks on steel in March 2012, November 2013 and November 2014, Japan expressed the same concerns. As a result, a regulation was published in the official gazette in December 2014 to reduce the frequency of audit for steel plants producing hot-rolled steel sheets, etc. to once every two years. There is a continuous necessity for Japan to observe the operation of the regulation, and discussions between both countries should be held to avoid the regulation from becoming more restrictive than necessary.

TRADE IN SERVICES

Foreign Investment Restrictions, etc.

<Outline of the measure>

Pursuant to the Foreign Business Act (revised in 1999 and entered into force in March 2000), Thailand divides businesses under restrictions into 43 types of businesses in three categories, and restricts entry of foreign companies (judicial persons of which 50% or more of capital is possessed by foreigners) into these types of businesses. Almost all service businesses are subject to the restrictions, including engineering and

various retail businesses. The types of businesses in which foreign companies can enter are limited to trade in intermediary services, wholesale and retail businesses, and construction businesses over a certain size, and therefore, it is very difficult for foreign companies to run service businesses in Thailand.

Major restrictions on foreign investment are as follows:

Sector	Outline of regulations
Financial Services	
(1) Banking	The foreign investment ratio and foreign executive ratio in the banking sector are limited to 25% or less in principle. In November 2009, a Five-Year Plan for the period from 2010 to 2014 (Financial Sector Master Plan Phase II) to gradually open the market to foreign banks was approved at an economic ministers' meeting. To date the Thai Government decided to permit existing foreign banks to open two branch offices in addition to one head office. If a branch office becomes a subsidiary, it will be able to open up to 20 branch offices under certain conditions, etc.
(2) Insurance	In February 2008, draft revisions to the Non-Life Insurance Business Act and the Life Insurance Business Act entered into force. They increase the foreign investment ratio and the ratio of foreign executives in the field of insurance up to 49% on the condition of obtaining approval from the authorities under special circumstances; without approval the ratios are restricted to 25% or less.
Telecommunication Services	・ The Telecommunications Business Act 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 upper limits on the foreign investment ratios were eased to less than 50%. Foreign investment has been progressing, as equities of Shin Corporation were sold to Singapore on the business day after the deregulation was implemented. However, with this purchase, controlling rights effectively moved to a foreign-owned operator through its voting rights percentage. Therefore, the Thai Government regarded this move as a bypass of foreign investment regulations, marking the start of an amendment of the above Foreign Business Act. ・ The National Broadcasting and Telecommunications Commission (NBTC) was established in 2011 to supervise communications and broadcasting businesses in an integrated manner. In 2012, NBTC released a notification providing concrete cases that fall under "business control by foreigners". This notification requires telecommunications business operators to regularly report the situations of business control

	by foreigners.
Distribution Services	Foreign investment was allowed in cases of retail services whose minimum capital is 100 million baht or more, and where the minimum capital of each store is 20 million baht or more; and in cases of wholesale services whose minimum capital is 100 million baht or more. 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%.

(Exemption of most-favored-nation treatment of the Foreign Business Act in the Thailand-US Treaty of Amity and Economic Relations)

The United States and Thailand concluded a Treaty of Amity and Economic Relations in 1966. (Most sectors of the service industry are subject to the treaty, excluding fields such as communications, transport, investment management, banking, land/natural resource development, and inland transport of domestic agricultural products.) The treaty exempts American companies from the above Foreign Business Act and allows for commercial registry with the same examination criteria as Thai companies. This is privileged treatment compared to companies of other countries, which are subject to examinations based on the Foreign Business Act. Thailand included a ten-year time limit in its GATS Schedule of Specific Commitments for exemption of measures inconsistent with the MFN obligation; however, American companies continue to receive preferential treatment even after this exemption period has expired.

<Problems under international rules>

The MFN obligation is one of the most important principles to promote multilateral trade liberalization. The MFN exemption of the Foreign Business Act because of the Thailand-US Treaty of Amity and Economic Relations is an exceptional deviation from this principle; it should be abolished without delay, as it is stipulated in GATS Article II, Annex 6 of (MFN) exemptions, that in principle, such exemptions should not exceed a period of 10 years. Also, Annex 5 stipulates that such an MFN exemption expires on the specified date. That date has been exceeded in this case because Thailand specified 10 years as the exemption period in its Schedule of Specific Commitments (since it commenced on January 1, 1995, the exemption period ended on December 31, 2004). Continued maintenance of the measure after the end of the exemption period and the preferential treatment of American companies are most likely to be violations of GATS Article II:1.

Japan will take the opportunity to encourage the Thai government to bring its measures into conformance with the GATS.

<Recent developments>

In the Japan-Thailand EPA, signed in April 2007, Thailand pledged to make improvements, including the foreign capital ratio, with regard to wholesale and retail

services, repair and maintenance services, logistics and consulting, advertising services, hotel and lodging services, restaurant services, maritime transport agency services, and cargo handling services.

In recent years, Japanese service industries led by the food and drink sector have actively made inroads into the Thai market, including tourism and retailing. Japan is requesting relaxation of the foreign investment restrictions, through bilateral dialogues, WTO service negotiations and EPA follow-up meetings.

Meanwhile, 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. There had been rumors of problems with the revisions to the “Foreign Business Act” from 2006 to 2007, following which the revised bill was withdrawn after being opposed by the majority in a ruling by the Legislative Council. While there is information to the effect that even after the withdrawal of the revised bill it has continued to be amended and deliberated by the Legislative Council, at present no such developments have been observed. Japan has been paying close attention to legal revisions related to strengthening the system for foreign capital, and has communicated its concerns to the government through the Japanese Embassy in Thailand. For the future, careful scrutiny of developments with these legal revisions and the effect on Japanese companies entering the country is required.

2. INDONESIA

NATIONAL TREATMENT

Local Content Requirement on Retail Services

<Outline of the measure>

The Ministry of Trade of Indonesia issued “Regulation of the Minister of Trade No. 53 of 2012 regarding the Implementation of Franchising” in August 2012 with the aim of strengthening business partnerships between franchisers and medium and small-scale business operators and promoting the use of domestic products. This Regulation included a measure providing that “franchisers and franchisees have obligations to use local components or services for at least 80% of the raw materials, business equipment and merchandise used in the franchise” (Article 19 of the Regulation). Franchisers and franchisees violating the measure are subject to administrative penalties, including written warning and termination or revocation of franchise registration certificates, etc. (Article 33 of the Regulation).

Furthermore, in December 2013, the Ministry of Trade of Indonesia issued “Regulation of the Minister of Trade No. 70 of 2013 on Guidelines for Structuring and Development of Traditional Markets, Shopping Centers and Modern Stores” with the aim of optimizing the structuring and development of traditional markets, shopping centers and modern stores (minimarkets, supermarkets, department stores, hypermarkets, stores that sell goods in wholesale style) (effective as of June 2014). This Regulation

included a measure providing that “shopping centers and modern stores have an obligation to provide at least 80% of the total amount of and types of goods that are sold” (Article 22 of the Regulation). This Regulation was partly revised by the “Regulation of the Minister of Trade No. 56 of 2014” to clearly state that the above-mentioned obligations were not applicable to modern stores in the form of stand-alone-brands that handle global supply-chain-sourced products requiring uniform production, etc. Shopping centers and modern stores violating the measure are subject to administrative penalties, including written warning and suspension or revocation of business licenses, etc. (Article 38 of the Regulation).

<Problems under international rules>

These measures are a so-called local content requirement and unfairly treat imported products compared to domestic products. Therefore, these measures may violate GATT Article III:4 (National Treatment on Internal Taxation and Regulation) -- “The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin with respect for all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use”.

<Recent developments>

In November 2013, the Ministry of Economy, Trade and Industry of Japan and the Ministry of Trade of Indonesia held the “First Japan-Indonesia Policy Dialogue on Distribution” co-chaired by the Director-Generals having jurisdiction over the respective distribution industries. In this Dialogue, the Ministry of Economy, Trade and Industry requested the Ministry of Trade of Indonesia to remove measures concerning imported products on franchise business operators. Indonesia did not indicate an intention to remove the measures. In addition, the “Second Japan-Indonesia Policy Dialogue on Distribution” was held in June 2014, and the Ministry of Economy, Trade and Industry of Japan pointed out that the measures had been strengthened by the “Regulation of the Minister of Trade No. 70 of 2013” and requested immediate removal of the measures. The Ministry of Trade of Indonesia stated that it would take this issue back and discuss it within the government, and a proposal was made to hold working-level consultations. A dialogue was held again in November, and the Ministry of Trade of Indonesia expressed its opinion that exemptions had been established by the “Regulation of the Minister of Trade No. 56 of 2014”. In addition to these dialogues, Japan has been addressing the measures with the United States and the EU at the WTO TRIMs Committee and Council for Trade in Goods since June 2014. Japan will continue to request the immediate removal of the above-mentioned measures through utilization of bilateral and multilateral consultations, etc.

QUANTITATIVE RESTRICTIONS

Quantitative Import Restrictions

<Outline of the measure>

Indonesia has imposed a temporary import prohibition on rice, salt and other items to protect its domestic industries. The import of rice, for instance, public food corporation, rice manufactures/importers, or registered rice importers is permitted by the "Regulation of the Minister of Trade No. 19 of 2014". The import of salt is permitted to salt manufacturers/importers for salt for consumption and to salt manufacturers/importers and designated salt importers for salt for industrial use by the "Regulation of the Minister of Trade No. 58 of 2012".

Regulations on the import of used capital goods were introduced in 2003 to protect Indonesia's manufacturing industry. However, after that, decisions for continuation were made every one to three years. Under the current regulation (Regulation of the Minister of Trade No. 75 of 2013), used capital goods that are permitted for import include generators, heavy machines, printers, electric motors, power generation equipment, automobile parts, aircraft, ships, and medical devices. However, the Minister of Trade and other authorities can permit the import of additional items if they determine that they expand export and investment including factory relocation (Article 15 of the Regulation).

<Problems under international rules>

Considering the facts that import of certain items is prohibited except for some business operators and that expansion of export/investment is included in the conditions for import permission, import restrictions on rice, salt, used capital goods, etc. constitute prohibitions or restrictions on import/export. These measures therefore may violate Article XI of the GATT (general elimination of quantitative restrictions).

<Recent developments>

Particular types of used automobiles were formally permitted to be imported. Nevertheless, importation of all used automobiles has been prohibited since March 2007. At present, the Indonesian Government is considering permitting importing types of automobiles that are not produced in Indonesia.

It was determined that importation of used capital goods would be continued until the end of 2013 under the Regulation of the Minister of Trade No. 48/M-DAG/PER/12/2011, and new HS codes were specified for subjected goods.

Japan must continue to review this matter under WTO agreements and demand that the matter be corrected.

Import Restrictions (compulsory registration by importers of pharmaceutical products, foods, beverages, footwear, electrical equipment, children's toys, steel products, etc.)

<Outline of the measures>

In November 2008, the Indonesian Minister of Health issued an "Order of the Minister of Health No. 1010 of 2008" requiring that pharmaceuticals be assessed via a pharmaceuticals registration system to protect the public from pharmaceutical products that do not satisfy the required standards for safety and public health. This Order

mandated prior registration granted by the Minister of Health to obtain permission to sell pharmaceutical products within Indonesia, and stipulated in particular that imported pharmaceuticals could only be sold by registered pharmaceutical companies within Indonesia who had obtained written consent from overseas pharmaceutical manufacturing companies. In addition, the Order stipulated that such consent shall include the transfer of technology and the start of local production by the overseas pharmaceutical manufacturing company within five years.

An order by the Indonesian Minister of Trade dated January 2009 (Minister of Trade Decree No. 56/M-DAG/PER/12/2008) mandated the registration of importers of electrical products, clothing (ready-made), children's toys, shoes and other footwear, and food/beverage products, limited the entry of imports to the ports of Medan, Jakarta, Semarang, Surabaya, Makassar and all international airports, and required pre-loading inspections by surveyors. Cosmetics and traditional medicine also became subject to these restrictions by the Trade Minister Decree No. 57/M-DAG/PER/12/2010 and these restrictions were extended to December 31, 2015 by the Trade Minister Decree No. 83/M-DAG/PER/12/2012. At present, imported items listed under a little over 800 tariff codes belonging to electrical products, clothing, children's toys, footwear, food/beverage products, traditional medicine and supplements, and cosmetics require registration. The number of such items increased by more than 300 from the number at the commencement of the regulation. The entry of imports is limited, and recently the designated ports were reviewed by the Trade Minister Decree No. 73/M-DAG/PER/2/2014. Imports are growing for all of the aforementioned products. However, the Ministry of Trade explained that the import growth is due to the expansion of the market.

Furthermore, a registration system for importers of specific iron and steel products was established and pre-loading inspections were made mandatory from April 1. The period for restrictions was extended to December 31, 2015 by the Trade Minister Decree No. 08/M-DAG/PER/2/2012, which applies to the currently subjected 212 goods. Unlike the import regulations pertaining to the five aforementioned products (electrical products, clothing (ready-made), etc.), no limitations were placed on the ports available to imports, and exemptions were granted to imports of iron and steel based on the provisions governing imports of iron and steel agreed on bilateral treaties between Indonesia and foreign governments.

<Problems under international rules>

Because the requirements for registration necessary to sell pharmaceutical products within Indonesia listed in the import regulations for pharmaceutical products issued by the Indonesian Minister of Health demand pledges of technology transfer, etc., from overseas pharmaceutical manufacturers that apply only to imported pharmaceuticals, imported pharmaceutical products are placed at a disadvantage. As imported pharmaceuticals are accorded unfavorable treatment compared to pharmaceuticals produced within Indonesia, these requirements are not thought to be in accord with the national treatment principle stipulated in GATT Article III: 4. They are also not believed to be in conformity with the Article 2.2 of the TBT Agreement, which seeks to ensure that compulsory standards are not proposed, established, or applied for

the purpose or to the effect of creating unnecessary barriers to international trade.

The compulsory registration of importers under the Minister of Trade's order, and limiting entry points for imports, etc., limit the modes of imports to those by registered business operators and imports at certain ports, and may be in consistent with the general elimination of quantitative limitations in GATT Article XI.

<Recent developments>

A letter regarding the Minister of Health's order was sent in November 2008 by the local Japanese embassy in the ambassador's name to the Ministers of Health and Trade asking that improvements be enacted.

Questions were also submitted in January 2009 regarding the Minister of Trade's order pertaining to five products (electrical products, etc.) to confirm the Indonesian government's stance on the reasons for introducing these measures, their implementation, and their consistency with the WTO Agreement.

Furthermore, the local Japanese residents' association in March 2009 sent a letter regarding the Minister of Trade's order on iron and steel products to the Indonesian Ministry of Trade and the Ministry of Industry asking the Ministry of Trade to (1) exempt all iron and steel products imported from Japan, (2) postpone application of the ministerial order, and (3) host a meeting on the ministerial order with the Import Bureau of the Ministry of Trade's Foreign Trade Department, and relaying the Japan Iron and Steel Federation's requests pertaining to (1) and (2) above.

Export Restrictions on Logs and Lumber Products

<Outline of the measure>

In April 1998, the Indonesian Government, 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* duty (calculated according to price). Indonesia reduced the export duty to 30 percent in April 1998, to 20 percent in March 1999, and to 15 percent in December 1999. It also issued export regulations, including export quotas for logs and lumber products.

In October 2001, the Indonesian Government banned exports of logs as a measure against illegal logging. Furthermore, in September 2004, it banned exports of crossties and rough wood products, and in March 2006, it banned exports of other wood products, such as S4S materials that have cut end area that exceeds 4,000 square millimeters (with 4 section planed). Thereafter, there have been several modifications in details on standards of wood products that are permitted to be exported.

<Problems under international rules>

There is a possibility that measures such as the export ban and export quotas breach of GATT Article XI. In particular, the export ban on logs as a measure against illegal logging can hardly be justified as an exception based on GATT Article XX(g), because logging is not restricted within Indonesia except for some natural forests and peatlands, nor is the consumption/distribution of logs.

<Recent developments>

Limiting consumption of logs to domestic use only results in the domestic price of logs being lower than the international price. In response to this situation, discussions on resuming exports of logs are beginning to take place. Japan will make efforts to improve the situation with regard to the measures through multilateral/bilateral consultations.

Export Restrictions on Mineral Resources and Local Content Issue

<Outline of the measure>

In January 2009, Indonesia promulgated and enforced the revised Mining Law (the New Mining Law) and introduced the following measures:

(1) Obligation to increase the added value and to process within Indonesia

As for minerals mined in Indonesia, including nickel and copper, the Indonesian Government made it obligatory to process and smelt them in Indonesia.

(2) Control of production volumes and export volumes

The Indonesian Government can decide the annual production volumes and can control exports in order to give first priority to national interests.

(3) Local content requirement

The Indonesian Government made it obligatory to give priority to use of local labor force, domestic goods and services.

(4) Domestic supply obligation

The Indonesian Government required mineral resource producers within Indonesia to supply to domestic users a certain percentage prescribed by the Minister of Energy and Mineral Resources.

Subsequently, as detailed regulations on application of the Law, a ministerial order on added value obligations and a revision of the ordinance on obligations to transfer shares to investors were announced in February 2012. The former prohibits exports of raw minerals from January 2014 onward in order to achieve obligations to increase the added value and to process within Indonesia, and the latter provides that the percentage of Indonesian investment ratio shall be raised to 51% within 10 years after the investment. In addition, an order of the Ministry of Finance uniformly imposing a 20% export duty on mineral resources was issued in May 2012.

In January 2014, a ministerial order providing an obligation to increase the added value was revised just before the enforcement of export prohibition of raw minerals. The enforcement of export prohibition on some mineral concentrates (raw materials with the purity being raised to a certain level, such as copper concentrates) was postponed until January 2017 and at the same time an export duty was introduced for such mineral concentrates. Exports of other raw minerals, however, were prohibited from January 2014 onward. Exports of some mineral concentrates are allowed until 2017 under the export licensing system, but the rate of export duty will be gradually

increased from 25% up to 60% in the second half of 2016 (exports will be prohibited from 2017 onward). However, by the revision of the order of the Ministry of Finance of 2014, the rate of export duty will be discounted for exporters committed to construct refineries.

<Problems under international rules>

1) Obligations to increase the added value and to process within Indonesia-- If it becomes impossible to export minerals that are mined in Indonesia but not processed and refined, or if a licensing requirement such as commitments for the construction of refineries is imposed under the export licensing system, it would constitute a *de facto* export restriction which could be a violation of the GATT Article XI (general elimination of quantitative restrictions).

2) Control on production and exportation-- If the Government of Indonesia enforces arbitrary restrictions on exportation, such regulations could be violations of GATT Article XI, and also of Article 99 (import and export restrictions) of Japan-Indonesia Economic Partnership Agreement (EPA), which reaffirms the obligations to comply with the relevant regulations of the GATT on export and import of energy and mineral resources.

3) Local Content Requirements-- Imposition of an obligation to use domestic goods and services preferentially over imported goods may be a violation of the GATT Article III, the TRIM Article 2 (national treatment and quantitative restrictions) and the Japan-Indonesia EPA Article 63 (prohibition of performance requirements).

4) Obligation to give priority to domestic supply-- Disallowing exports without fulfilling prescribed domestic demands may violate GATT Article XI (general elimination of quantitative restrictions).

5) Divestment Obligation of shares-- Imposition of obligations to divest shares of Japanese enterprises so that Indonesian participants own majority may be a violation of the Japan-Indonesia EPA Article 59 (national treatment) and the Article 65 (expropriation and compensation).

6) Violations of investors' “fair and reasonable” expectations-- If the aforementioned regulations violate “fair and reasonable” expectations that Japanese investors had at the time of investment and cause damages or losses, it could be a violation of the Japan-Indonesia EPA Article 61 (general treatment).

<Recent developments>

Since the enactment of the new Mining Law, Japan has repeatedly expressed its concerns at WTO Council for Trade in Goods/Committee on TRIMs meetings and the meeting of the Investment Subcommittee, which was established pursuant to the Japan-Indonesia EPA. In addition, the Minister of Economy, Trade and Industry and the State Minister of Economy, Trade and Industry of Japan have repeatedly expressed Japan’s concerns to the Coordinating Minister for the Economy, the Minister of Industry, the Minister of Trade, and the Minister of Energy and Mineral Resources of Indonesia. Japan has repeatedly requested the immediate resolution the issue at the conference between the State Minister of Economy, Trade and Industry of Japan and the

Vice Minister of Energy and Mineral Resources of Indonesia in September 2014, the conference between the Ministers for Foreign Affairs of Japan and of Indonesia in November 2014, and the conference between the Prime Minister of Japan and the President of Indonesia in the same month. In addition, at the Japan-Indonesia Dialogue on Material & Mineral Resources Industries in August 2012 and the Indonesia-Japan Joint Economic Forum in October 2012, the Japanese Government as well as Japanese industries once again requested improvement of the measures and flexible treatment, and confirmed that the two countries would continue to have dialogues at various levels seeking an early resolution.

Although some improvements, such as postponing the enforcement of export prohibition on some mineral concentrates, have occurred in January 2014, etc., issues under international rules still remain since export prohibition on other raw minerals was enforced. It is therefore considered important that Japan continues to request improvement of the measures.

In Indonesia, a new Trade Law was approved by the Legislative Council in February 2014. This Law is a renewal of the former Trade Law established in 1934, and detailed regulations will be provided in presidential decrees and relevant ministerial orders in the future. However, there are provisions that grant the government authority regarding promotion of the use of domestic products, import/export restrictions, and compulsory use of domestic standards, etc. In addition, a new Industry Law was enacted in December 2013 and enforced in January 2014. It provides, as does the new Trade Law, that the Indonesian Government shall have the authority to enforce promotion of the use of domestic products and import/export restrictions etc., with the aims of development of industrial resources, industrial empowerment, rescue and protection of industry etc.

These Laws integrate the existing relevant rules and provide the legal bases for them. These laws alone do not enforce concrete measures, but they include provisions to grant the government authority regarding preferential use of domestic-product and import/export restrictions. Japan therefore needs to pay attention to the formulation and implementation status of these Laws and relevant detailed implementation regulations to ensure that trade-restrictive or discriminatory measures are not implemented.

TARIFFS

Tariff Structure

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<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 current bound tariff rates are high, 30% to 40% for most non-agricultural products, with a simple average bound tariff rate of 35.6%. The average applied tariff rate for non-agricultural products in 2012 is low at 6.9%, but some products have relatively higher tariff levels, such as

clothing (average 14.4%) and transport equipment (average 9.4%), etc.

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 was lowered from 60% in 2006 to 45% by 2010. In addition, the average applied tariff rate for electrical machinery was lowered to 5.8%.

However, the Finance Minister Decree No. 241 of 2010 was made public at the end of 2010 (December 22, 2010), and changes to the tariff rates on 2,164 products (accounting for 25% of all products -- tariff rates were raised for 1,248 products and lowered for 916 products) were suddenly promulgated, with regard to industrial products and agricultural products, etc., in the form of implementing a tariff rate adjustment plan set in 2004. These changes entered into force on the same day. Products on which tariffs were raised include many chemical products, etc. imported from Japanese companies. Japan needs to request improvements for these high-tariff products.

At the end of 2011, the Regulation of the Minister of Finance (No 213 2011) was promulgated. In this regulation, tariff increases from 5% to 10% were declared on 182 items, such as basic chemicals, machinery, electric and electronic goods and shipbuilding, to increase competitiveness for downstream industries.

<Concerns>

High tariffs themselves are not a problem as long as they do not exceed bound tariff rates. However, considering promotion of free trade and improving economic efficiency, it is desirable to eliminate the aforementioned tariff peaks (see “Tariff Rates” in 1. of Chapter 5, Part II) and reduce them as low as possible.

The fact that some items are not subject to concessions because they are unbound and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower 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 and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent developments>

Negotiations are currently being conducted under the Doha Development Agenda in order to improve market for non-agricultural products by reduction or removal of tariffs (see the reference chapter for most updated information).

Due to the implementation of the Japan-Indonesia EPA in July 2008, market access was improved as tariffs were progressively removed from all automobiles and auto parts, electric and electronic products and a part of steel products, most of which

are exported from Japan.

ANTI-DUMPING MEASURES

AD measures on Japanese cold-rolled stainless steel sheet

<Outline of the measure>

In June 2011, the Komite Anti Dumping Indonesia (KADI) initiated AD investigations on cold-rolled steel sheets imported from five countries or regions (Japan, Republic of Korea, China, Taiwan and Viet Nam) upon application by domestic steel manufacturers. In December 2012, KADI issued a final report that AD measures should be imposed on these products. Upon receiving the report, the Minister of Finance of Indonesia made a final determination in March 2013 to impose AD duties on these products. In the final determinations, a high margin of dumping ranging from 18.6% to 55.6% was imposed on Japanese companies.

<Problems under international rules>

Most of the cold-rolled steel sheets exported by Japanese companies are high-quality steel materials used in the automobile or electric-electronic industries and do not compete with cold-rolled steel sheets produced in Indonesia because of the significant quality difference. However, KADI determined that there was injury and causal relationship of the imports of Japanese cold-rolled steel sheets to the domestic industry in its final report. This may be inconsistent with Article III of the AD Agreement.

Additionally, it may be inconsistent with Article VI (8) of the AD Agreement because the export price was determined by KADI on a "facts unavailable" basis in spite the Japanese company submitting data on the sales price of these products in Indonesia during the investigation.

<Recent developments>

During the period before the above-mentioned final determination was made, in October 2012, the Japanese government pointed out at the WTO AD committee meeting that the cold-rolled steel sheets exported by Japanese companies do not compete with the Indonesian-made products and therefore do not cause injury to the Indonesian domestic industry. Also, in November 2011 and October 2012, the Minister of Economy, Trade and Industry of Japan requested the Minister of Trade of Indonesia to exclude Japanese products from the imposition of AD duties, and the Minister of Economy, Trade and Industry of Japan requested this again in writing to Minister of Trade of Indonesia in January 2013. The Japanese government has appealed at every opportunity. The Minister of Economy, Trade and Industry of Japan made the same request again in April 2013, but the claims of Japan were barely reflected in the final determination in December of the same year.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

Technical Regulations for Steel Products

<Outline of the measure>

The Indonesian Government introduced a technical regulation system for hot-rolled steel sheets in May 2009, for aluminum-galvanized steel sheets in July 2009, for cold-rolled steel sheets in June 2011, for section steels, etc. in March 2012, and for steel bars in December 2014. In addition, the Indonesian Government also notified the WTO about the introduction of the technical regulation system for tin and water pipes. Introduction of the system for stainless cold-rolled coils/steel sheets is also under discussion.

<Problems under international rules>

Article 2.2 of the TBT Agreement stipulates that "technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create." Although the Indonesian government claims that the objective is to secure consumer safety by preventing the inflow of inferior steel materials, this objective cannot be achieved through regulations of intermediate goods such as steel products, but instead should be achieved through safety regulations. Therefore this system appears to be more trade-restrictive than necessary in light of the policy objective and may violate Article 2.2 of the TBT Agreement.

<Recent developments>

At the Japan-Indonesia EPA-related consultations held in 2009, Japan expressed concerns about the negative impacts, etc. on steel trade between Japan and Indonesia, and on the economies of both Japan and Indonesia. At the meeting of the TBT Committee in 2010; Japan raised issues concerning the conformity of the regulations with the WTO Agreement and other matters. In addition, Japan expressed concerns about the negative impact on steel trade between Japan and Indonesia and on the economy of both Japan and Indonesia and other matters at Japan-Indonesia EPA-related consultations held from 2010 onward.

As a result, the Indonesian Government included, in the Ministry of Industry General Bureau Director's Order, a provision that hot-rolled steel products imported by specific steel consumers (those in the automobile industry, the electric/electronic industry, etc.) for the purpose of using them as materials for their own products shall be exempt from the application of these technical regulations. The EU and Republic of Korea have expressed equal concerns at TBT committee meetings.

Although implementation for tin is uncertain, Japan has continuously expressed concerns following 2012 and 2013, at a series of TBT committee meetings held in 2014, as well as talks with Indonesia concerning steel in March 2014. In addition, as introduction of the system for stainless cold-rolled coils/steel sheets is still under discussion, Japan and Indonesia will continue to hold consultations to prevent the regulation from becoming more restrictive than necessary.

Regulations on Toys That Can Be an Entry Barrier for Foreign Companies

<Outline of the measure>

Indonesia enforced the "Indonesian Regulation on Toys" on April 30, 2014.

The main content of the Regulation includes the requirements to (1) obtain a product certificate to use the SNI sign (SPPTSNI) after passing the Indonesian National Standard (SNI) inspections and (2) attach SNI sign or SPPTSNI to the applicable products. For imported toys, the importers shall be the contact points for taking the SNI inspections.

Whereas the number of toys manufactured by domestic companies in Indonesia in a six-month period is 5,000, a manufacturing lot of imported toys far exceeds 5,000. However, SNI inspection requires domestically-manufactured toys to be inspected for each manufacturing lot and imported toys to be inspected for each shipment The certificates then need to be submitted. Because importers need to have inspections for each shipment, inspections are conducted multiple times when they are loaded on a ship on different days even if they are manufactured in the same lot. This imposes significant inspection costs on importers.

In addition, some of the restricted chemical substances examined in the SNI inspections are not found in the EU's REACH or in similar regulations of the major countries, and are extremely difficult to pass. More concretely, for phthalate ester, Indonesia included on its own accord four types of substances (in addition to six types of internationally regulated substances) on the list of regulated substances. In addition, because some types of azo dyes can cause damage when absorbed into the human body after being dissolved in sweat and decomposed into specific aromatic amines that are carcinogenic to skin, the residual amount in the fiber of clothes (including children's clothes) assumed to be in contact with the skin for a long period of time is restricted to 30 mg/kg or less in major countries other than Indonesia. In Indonesia, however, the residual amount in the fiber used in stuffed toys or clothes for dress-up dolls, which are not assumed to be in contact with the skin for a long period of time, is zero.

The SNI inspections are conducted at designated laboratories in Indonesia and laboratories in countries that have concluded bilateral agreements with Indonesia.

<Problems under international rules>

The reason that the frequency of inspecting imported toys is each shipment, while that of domestically manufactured toys is each manufacturing lot, is explained to be, as described above, that the number of toys manufactured by domestic companies in Indonesia in a six-month period and the number of imported toys in a shipment are almost the same. However, conducting inspections multiple times for the same manufacturing lot is meaningless in general. The above explanation shows that special consideration is given to domestic manufacturers with a small manufacturing lot size, and importers with a manufacturing lot size larger than 5,000 are unfavorably treated when compared to domestic manufacturers. Therefore, the conformity assessment procedures may violate Article 5.1.1 of the TBT Agreement, which requires non-discrimination between domestically manufactured and imported products.

In addition, while regulating chemical substances for the purpose of protecting children's health is justifiable, the necessity of applying more strict regulation criteria to

toys than that applied to the fiber used in clothes (including children's clothes) assumed to be in contact with the skin for a long period of time is not explained. Therefore, the regulation may be more strict than necessary. If that is the case, it may violate Article 2.2 of the TBT Agreement.

<Recent developments>

At the official meetings of the WTO TBT Committee in March and June 2014, Japan, the EU and the United States expressed their concerns. Japan will continue to request improvements in the system at the TBT Committee meetings and bilateral consultations.

TRADE IN SERVICES

Foreign Investment Restrictions, etc.

*** This particular case was included in light of the following concerns despite it being a trade or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

In Indonesia, sectors for which the entry of private companies is disallowed, sectors that are open under certain conditions, and the equity restriction ratio of foreign companies are specified for each business type in a negative list. The 2010 Negative List (Presidential Regulation No. 36 of 2010) was revised in April 2014 (Presidential Regulation No. 39 of 2014). This revision relaxed foreign investment regulations in nine sectors, allowing up to 49% of foreign investment for the operations of land transportation/passenger terminals, etc. in the transport sector, for which foreign capital participation was previously prohibited (this requires a letter of recommendation from the Minister of Transportation) and up to 51% for film advertising equipment (advertisements and posters, etc.) in the culture and tourism sector, which was previously limited to domestic investment, subject to investment from ASEAN countries, etc. In contrast, however, restrictions on foreign investment were strengthened in some sectors. For instance, investment for oil/gas mining services on land and design/engineering services, etc. in the energy and mineral resources sector, for which foreign investment of up to 95% was previously allowed, were limited to domestic investment only, and restrictions (up to 33%) were newly imposed on the sectors that are not specified in the negative list and for which 100% foreign investment was previously allowed, including warehouses and distributors in the commercial sector, etc.

Major restrictions on foreign investment are as follows.

- Telecommunication Services

In the new negative list, the upper limit of the foreign investment ratio for wire and wireless/satellite communication network business was raised to 65%, while that for content services, value added telephone services such as call centers, internet access service businesses, data communication system services, public telephone line internet services, internet interconnection services (NAP), and other multimedia services of

communication services business was lowered to 49%. In addition, the upper limit for operations of communication networks integrated with communication services (assumed to be the mobile communication network businesses) was set at 65% and telecommunication tower suppliers/managers (operation and renting) and construction service providers were required to be 100% Indonesian-owned companies.

The measure was introduced in January 2009, which imposed domestic production ratios of at least 40% and 30% on base stations and terminals used for wireless broadband services using the radio frequency bands of 2.3 GHz and 3.3 GHz, respectively. As the regulation may be inconsistent with the obligations of the WTO Agreements and the Japan-Indonesia Economic Partnership Agreement, Japan needs to pay close attention to such efforts.

- Distribution Services

The new negative list continues to state that small retail businesses be 100% Indonesian-owned companies. More specifically, supermarkets of less than 1,200 m^2 and department stores of less than 2,000 m^2 were regarded as retail companies and limited to 100% domestic investment. Presidential Directive 2007 No. 112 established regulations on improvements to commercial facilities. Stipulations were also made regarding the sites, facilities (parking lots, safety requirements), business hours, etc., of large-scale commercial facilities open to foreign participation.

- 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% Indonesian-owned companies. Although the new negative list still restricts all film production, film technology services, film distribution, staging, and recording studies to 100% Indonesian-owned companies, filming studios, film processing facilities, and dubbing facilities, which had previously been limited to 100% Indonesian-owned companies by the 2010 revision, were opened to foreign investment, permitting the foreign investment ratio to be up to 49%. The 2014 revision allowed a foreign investment ratio of up to 51% for film advertising equipment production services (advertisements, posters, photographs, films, banners, pamphlets, etc.) subject to investment from ASEAN countries, etc.

<Concerns>

The various restrictions on foreign investment described above do not violate the WTO Agreement because they do not contradict Indonesia's GATS commitments. However, it is desirable that efforts towards liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

Attempts to expand the range of services as to which Indonesia would undertake commitments were made through the Japan-Indonesia EPA (signed on August 20, 2007). In the telecommunications sector, new commitments were made in five areas, including exclusive lines and information and online database search services (up to 40% Japanese capital). In the audio-visual sector, a commitment was made to provide Japanese capital (up to 40% Japanese capital) for audio and video tape production and

distribution services, as well as film projection services.

In addition, as mentioned above, the negative list stipulating types of businesses in which foreign investment is restricted was revised in May 2010. Foreign investment restrictions were relaxed in the fields of construction services, film-related services, medical services, courier services, etc. However, restrictions were not relaxed for distribution services. This revision also aimed at strengthening competitiveness of domestic industries, newly establishing the upper limit of the foreign investment ratio for 11 sectors, etc.

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

PROTECTION OF INTELLECTUAL PROPERTY

Suspension of infringing goods at borders

<Outline of the measure>

Article 51 of the TRIPS Agreement provides that member countries shall adopt procedures that allow rights holders to file an application for import suspension of counterfeit trademark products or copyright infringing goods. Article 54 of the Customs Act of Indonesia (Act No 10 of 1995 as revised by Act No. 17 of 2006) provides that courts may issue a suspension order to customs based on an application by the rights holders, and corresponds to the provisions of Article 51 of the TRIPS Agreement. However, detailed regulations necessary for actual enforcement are not yet available, and thus operations based on the above provisions are not functioning. It has been pointed out, therefore, that suspension of infringing goods at borders is in reality impossible in Indonesia.

<Problems under international rules>

The "Indonesian Supreme Court Regulation No. 4 of 2012 on Temporary Suspension Orders" was issued/enforced in July 2012, and it was expected that this would contribute to the achievement of the above operations. However, to date there has been no cases where suspension has been ordered. In addition, additional regulations need to be developed in order to actually implementing suspension, thus indicating the operation has yet to function effectively. This situation is problematic from the point of view of consistency with Article 51 of the TRIPS Agreement. Japan therefore needs to encourage Indonesia to improve the situation and pay attention to future developments.

<Recent developments>

In December 2013, the Japanese Government, in cooperation with the Japan External Trade Organization (JETRO) and the International Intellectual Property Protection Forum (IIPPF), held a meeting with the Directorate General of Customs and Excise and exchanged opinions concerning measures to suspend infringing goods at Indonesia's borders. The fact that the Indonesian Customs held a workshop on this

issue in October 2014 is a sign of progress. Japan intends to continue paying attention to developments in Indonesia and encouraging them to make improvements.

Execution of Japan-Indonesia EPA

<Outline of the measure>

The Japan-Indonesia EPA, which entered into force on July 1, 2008, provides for stronger protection than that provided for in the TRIPS Agreement, including the introduction of the "partial design protection system" for expanding the scope of protection to industrial designs related to parts of the article that are neither subject to trade nor distributed (paragraph 3 of Article 113); introduction of the "well-known trademarks of foreign parties system", which rejects or cancels application of trademarks identical with or similar to trademarks well known in a foreign country for unfair intentions (paragraph 2 of Article 114); introduction of electromagnetic "rights management information" system for patents, etc. (paragraph 4 of Article 115); introduction of the "general assignment system", which enables granting of comprehensive power of attorney for all existing and future applications and/or registrations of the person in question (paragraph 5 of Article 109); and strengthening of "border measures" to make the suspension of infringing goods applicable not only to imported products but also to exported products (Article 119), etc.

<Problems under international rules>

Although the systems that correspond to the EPA obligations are considered to exist for part of the rights management information system, well-known trademarks of foreign parties system and partial design protection system, however, the systems mentioned in the previous paragraph have not yet been introduced in Indonesia, and the existence of inconsistencies with the provisions of the corresponding EPAs is suspected.

<Recent developments>

In Indonesia, draft revisions of relevant laws are being prepared, but deliberations at the Legislative Council have not taken place. In order to resolve this issue, Japan is making efforts to promote the revision of laws at bilateral consultations, etc. The Commissioner of the Patent Office of Japan urged revision of the laws at bilateral consultations held in February 2012 and April 2013. Japan intends to continue paying attention to the progress in the revisions of laws and is encouraging Indonesia to revise the laws.

3. MALAYSIA

NATIONAL TREATMENT

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

<Outline of the measure>

In Malaysia, automobiles manufactured by certain domestic companies (presently 4 companies, namely, 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.)

In January 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 of 0% to 60% were imposed.

After that, in October 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).

Reportedly, the Malaysian Government also maintains non-tariff barriers to give preferential treatment to Bumiputera companies (companies with certain percentages of Malaysian capital). The Malaysian government grants import licenses called “AP (Approved Permit)” only to Bumiputera companies and quantitative restrictions are actually applied to the imports of CBU cars by companies manufacturing automobiles in Malaysia under the import licensing system.

<Problems under international rules>

Tax rates are discounted only for some national cars. 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 GATT Article III:2. If quantitative restrictions under the importing licensing system are actually implemented, they may violate the general prohibition of quantitative restrictions under GATT Article XI.

<Recent developments>

Regarding the excise duty, due to a change in the tax rate in October 2005, it appears that discriminatory treatment seems to have been solved gradually, but since the discriminatory measures were taken without written provisions, it is necessary to continue to closely monitor the case.

In Malaysia, it is not permitted to import any automobiles, including used automobiles, without AP. For AP, an import ceiling is allocated to each country, which has been a disincentive to free trade. AP has been scheduled to be abolished in stages by December 31, 2010, in line with the WTO’s request for trade liberalization.

However, according to the new policy published in October 2009, franchise AP (permitting import of only new automobiles of specific manufacturers) will be terminated in stages by the last day of 2020, and open AP (import permit free from restrictions in terms of the types of automobiles and suppliers) will be terminated by the last day of 2015. The complete abolition of AP was postponed for 5–10 years compared to the initial goal. In the new policy, the NAP (National Automobile Policy) was reviewed. The new policy contributes to developing the domestic automobile industry through sound competition, securing consumer safety, and protecting the environment, while reflecting liberalization of markets, and the concept of "human is above everything else." The NAP was reviewed in January 2014, but for AP, it stated only that detailed examination on the impacts would be continued and no changes in the operations, etc. were made. Japan needs to continue to request that the Malaysian Government administer its automotive industry policy in a manner that is consistent with WTO Agreement.

Excise Tax Exemption System on Domestic Automobile Parts

<Outline of the measure>

The Malaysian Government introduced a refund system for excise tax called the Industrial Linkage Program (ILP) under "The Ninth Five-Year Plan" and the "National Automobile Policy (NAP)" announced by the Malaysian Industrial Development Authority (MIDA) in March 2006. In this system, excise tax is refunded according to the ratio of domestic added value of a finished automobile, such as domestically procured parts. It is possible to receive a refund of the excise tax on the condition that the minimum ratio requirement on the domestic added value* (over 30% for automobiles under 2,500 cc's, and 10-20% for automobiles over 2,500 cc's) is met and that the domestically produced automobile parts are procured from suppliers that have met certain conditions. The reviews of the NAP in January 2014, which focused on the Energy Efficient Vehicle (EEV) Program, also revised the refund system for excise tax. More concretely, (1) the minimum ratio requirement on the domestic added value was removed and (2) the domestic added value ratio of EEV would be calculated using the Industrial Adjust Fund Multiplier (the Multiplier would be higher if important parts such as hybrid engine systems used in EEVs, etc. are domestically manufactured), thereby enabling the effect of the tax reductions to be enjoyed.

* Domestic-added value= (Ex-factory price) – (Import raw materials value) = (Local content materials + Labor costs + Direct costs + Profit). For imports processed through the ASEAN Industry Cooperation (AICO) scheme, 20% of imported raw materials is considered domestic-added value.

<Problems under international rules>

The ratio of domestic added value which is a condition of this refund system (local content) is relatively easy for domestically produced cars to meet, but difficult for imported cars, and this system may potentially violate GATT Article III:2. In addition, in order to clear the domestic added value criterion, it is inevitable that the purchase of domestically produced parts is much more preferable than the purchase of imported parts, and there is also a possibility of it violating GATT Article III:4.

Moreover, it may also violate the TRIMs Agreement, which prohibits local content as trade related investment measures, and the Agreement on Subsidies and Countervailing Measures, which prohibits subsidies giving priority on domestic products.

<Recent developments>

Following the introduction of the ILP, it appears that a disparity in retail prices emerges when the system is utilized as opposed to when it is not. Japan must further assess the actual situation in the future, and it is necessary to request Malaysia to make the system consistent with international rules at all opportunities.

QUANTITATIVE RESTRICTIONS

Export Restrictions on Logs

<Outline of the measure>

Since 1985, The Malaysian Government has banned exports of 27 designated tree species and all logs exceeding 12 inches in diameter with a view to increasing the degree of domestic lumber processing. The State of Sabah introduced export restrictions in November 1996 and set an annual export quota of 0.15 million cubic meters in 2015. The State of Sarawak has implemented export quotas since 1999 to set aside a certain share (60% in 2015) of logs produced in its territory for in-state processing. It has also implemented export restrictions on Ramin logs and Hollow Alan Batu logs since 1980 and 1993, respectively.

<Problems under international rules>

There is a possibility that these measures such as the export ban and export quotas breach of Article XI of the GATT.

<Recent developments>

Japan will encourage improvements in these measures through multilateral/ bilateral consultations.

Import Tax Exemption Ceiling System on Steel Sheets

<Outline of the measure>

A high tariff, generally about 50%, is imposed on steel products including electro-galvanized (EG) steel sheets in Malaysia. On the other hand, the Ministry of International Trade and Industry (MITI) and the Malaysian Industrial Development Authority (MIDA) introduced a system that gives a tax exemption ceiling for one year to importers for steel sheets that cannot be procured domestically. However, the number of cases where the tax exemption quantity was restricted has increased because the procedures and standards for granting tax exemptions are not clear and authorities have an intention to raise the percentage of domestic products in the procurement of steel sheets. In addition, the time it takes to be granted a tax exemption ceiling for

imports also became longer; there are some cases where it takes around six months.

<Problems under international rules>

Obtaining a license is contingent on the use of domestic parts. Since MIDA asks domestic manufacturers if it is possible to procure those parts domestically, domestic steel manufacturers have de facto sole discretion over MIDA's decision. This may violate Note 13 of the Japan-Malaysia EPA, which provides that tax exemption shall be allowed when products that meet user requirements are not domestically manufactured, and Article 1 of the Licensing Agreement, which provides for obligations for fair and equitable operation of import license procedure provisions. Also, the evaluation process for granting the license is taking around six months from the initial application to approval, and this may violate Licensing Agreement Article 3:5(f) which provides for an application processing period of within 30 days.

<Recent developments>

From the point of view of implementing Note 13 of the Japan-Malaysia EPA, intergovernmental and public-private sector consultations on the operation of the tax exemption ceiling system were held in October 2014, and shared common understandings to (1) properly consider users' opinions in making the decision of whether or not domestic procurement is possible, (2) disclose the reason in writing when the tax exemption ceiling applied was not approved, (3) clarify documents required for submitting an application, and (4) make efforts in granting a tax exemption ceiling within four weeks after completion of an application. In response to this, at the public-private sector workshop held in November 2014, Malaysia explained for the first time the content and the forms of documents required for application and the method for calculating tax exemption ceilings, and clarified to a certain extent operations of the system. Further improvement of the operations of the system needs to be promoted through intergovernmental and public-private sector consultations.

TARIFFS

Increased Tariff on Steel Plates and other issues

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

The current binding rate and the simple average bound tariff rate on non-agricultural products in Malaysia were 81.9% and 14.9% respectively. The average applied tariff rate in 2012 was 5.8%.

In March, 2002, Malaysia increased tariffs on 199 steel products, including hot and cold rolled sheets, from levels traditionally ranging from 0-25% to 50% at maximum. In addition, the Ministry of International Trade and Industry (MITI) announced a review of the steel industry policy in June 2009 and the tariff on steel bars was reduced to 10% on August 1, 2009 and to 5% on January 1, 2010. The tariff on

steel sheets was reduced from 50% to 25% on August 1, 2009 and is scheduled to 0–10% by January 1, 2018 (see QUANTITATIVE RESTRICTIONS with regard to the review of the steel industry policy).

<Concerns>

Although this tariff increase does not necessarily involve a violation of WTO rules because the products represent unbound items, the tariffs were increased so sharply and rapidly in March 2002 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. Since these tariffs are scheduled to be reduced from August 2009, Japan needs to pay close attention to whether tariffs are reduced as scheduled.

<Recent developments>

In response to a tariff increase measure by Malaysia in March 2002, Japan repeatedly issued requests to withdraw the measure. Subsequently, with the effectuation of the Japan-Malaysia EPA in July 2006, Malaysia committed to reduce the applied tariff rate to zero on steel products exported from Japan to Malaysia, with the exception of some hot-rolled steel products, within 10 years.

On the other hand, as part of the review of the steel industry policy, a new tax exemption system (MIDA Scheme) was put into operation in August 2009. Under the former tax exemption system, imports for seven specific sectors were subject to exemption regardless of whether or not those items were domestically produced. In the MIDA Scheme, the tax exemption system for specific use was abolished and tax exemption was made applicable only to those items that cannot be procured domestically. The criteria for judgment are not clearly documented, and judgments are made by the Malaysian Government after hearing opinions of local companies. Therefore the operation of the system is unclear. In contrast, criteria for tax exempt items are clearly defined under the tax exemption system for steel use (Note 13 Scheme) promised under the Japan-Malaysia EPA, and the Japanese Government is pursuing consultations with the Malaysian Government toward putting the system into operation as soon as possible (see QUANTITATIVE RESTRICTIONS for details).

Negotiations regarding market access for non-agricultural products in the Doha Round negotiations are ongoing and include negotiations on reducing and eliminating tariff rates. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations have been taking place since May 2012 outside the Doha Round negotiations (see (2) "Information Technology Agreement (ITA) Expansion Negotiation" in 5. of Chapter 5, Part II for details).

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

Technical Regulations for Steel Products

<Outline of the measure>

The Malaysian Government introduced technical regulations for 57 kinds of steel products in November 2008. In addition, the number of steel products subject to the technical regulations was increased to 627 on August 1, 2009. However, the Malaysian Government decided to tentatively suspend the technical regulations for two months on August 13. The Malaysian Government put the technical regulations into operation again on October 13, 2009, reducing the number of subject steel products to 187 and introducing various exemption measures for the automobile and electric-electronic industries. After this, it was announced in January 2013 that the conformity assessment procedures would be strengthened with HS codes for 141 products from August 2013 as an alternative for the previous system (at present approximately 170 products are subjected to the system). Under the new system, obtaining product certification through annual factory audits by the Standards and Industrial Research Institute of Malaysia (SIRIM) or overseas inspection institutions or receiving sampling inspection by SIRIM or overseas inspection institutions for each shipment is required.

<Problems under international rules>

The Malaysian Government asserts that the policy objective of the conformity assessment procedures is to secure the health and safety of consumers. However, this objective cannot be achieved through regulations of intermediate goods such as steel products, but instead should be achieved through safety regulations. Therefore this system appears to be more trade-restrictive than necessary in light of the policy objective and may violate Article 5.1.2 of the TBT Agreement. Furthermore, Article 5.6.2 of the TBT Agreement stipulates that "Whenever the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedures may have a significant effect on trade of other Members, Members shall notify other Members through the Secretariat…together with a brief indication of its objective and rationale." However, as there is no evidence to date that Malaysia notified the WTO Secretariat of these conformity assessment procedures, Malaysia may be violating this obligation to notify.

<Recent developments>

With regard to the conformity assessment procedures reinforced in August 2013, at the meeting of the Japan-Malaysia EPA talks in February 2013, Japan expresses its concern about the conformity of Malaysia's measures with the WTO Agreement and Japan also asserted that the measures may be inconsistent to the WTO agreements and expressed its concerns at the meetings of the TBT committee held in March 2013 and onwards. Japan will continue to raise this matter at bilateral consultations in the future.

TRADE IN SERVICES

Foreign Investment Restrictions, etc.

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the**

WTO Agreements or other international rules.

<Outline of the measure>

The government restricts foreign capital participation to a maximum 30% in businesses affecting national interests, specifically, water, energy/electric supply, broadcasting, defense, security, etc. The foreign investment ratios for other private companies depend on the investment conditions attached to licenses, permits and approvals granted by the competent authorities.

Regarding the foreign investment ratio for sales/service businesses for which no license is required, the guidelines of the Foreign Investment Committee (FIC) required that at least 30% of total capital must be possessed by Bumiputera. However, the Malaysian Government attaches importance to the vitalization and growth of the service sector as the engine of economic growth, and it thus announced the a liberalization policy for the service sector on April 22, 2009, stating that it also contributes to inviting foreign investment. Pursuant to it, the Malaysian Government immediately lifted the restriction requiring that at least 30% of total capital must be possessed by Bumiputera for 27 fields of the service sector, and wholly foreign-owned companies subsequently were approved (see <Recent developments>).

On June 30, 2009, the FIC's Guidelines for the Acquisition of Assets, Mergers, or Take-overs by Foreign or Malaysian Interests (revised, issued on January 1, 2008) were abolished, and the FIC was dissolved. However, the capital conditions that have already been attached to existing companies by licenses and approvals which are issued by other competent organs remained effective.

Major foreign investment restrictions in Malaysia are as follows.

- Financial Services

On April 27, 2009, the Prime Minister of Malaysia announced the liberalization of the financial sector through the relaxation of regulations concerning (1) issuance of new licenses, (2) relaxation of restrictions on foreign investment, and (3) relaxation of operations and business. The details are as follows.

○ The Central Bank of Malaysia announced issuance of new commercial bank licenses (full bank licenses) for five foreign banks, including two Japanese banks, specifically, Mizuho Corporate Bank, Ltd. and Sumitomo Mitsui Banking Corporation.

○ Relaxed restrictions on foreign capital in investment banks, Islamic banks, insurance companies, and Islamic insurance (Takaful) companies from 49% in the past to 70%. (However, restriction on foreign capital in commercial banks in Malaysia is left unchanged at 30%. The ceiling on investment by one foreign company is also left unchanged at 20 %.).

○ From 2010, permitting foreign-owned commercial banks that have become local corporations to establish four full-scale branch offices (however, the offices shall consist of one in an urban area, two in preparatory city areas and one in a local area) and existing foreign banks to establish 10 branch offices which carry out microfinance.

In order to secure the soundness of financial institutions and safety of financial

systems, the “Financial Services Act 2013” was enforced in May 2013 with the aim of establishing/reinforcing a legal regulatory framework. Four laws under the jurisdiction of the Central Bank of Malaysia (the Banking and Financial Institutions Act 1989, Insurance Act 1996, Payment Systems Act 2003, and Exchange Control Act 1953) were abolished and unified into the Financial Services Act. (Laws regulating banks and insurance that uses Islamic financial methods were unified into the Islamic Financial Services Act).

The main content of the revision includes restrictions on business scope for banks, prudential standards for financial institutions, qualification requirements for directors of financial institutions, etc., qualification requirements for shareholding financial institutions, introduction of regulations on financial holding companies, and partial relaxation of regulations on foreign exchange transactions, etc. Through these measures, entry regulations were tightened for many business categories (for example, banks, investment banks and insurance companies were formerly subject to approval by the Central Bank, but require approval by the Minister of Finance after the revision).

- Telecommunication Services

In October 2011, the Prime Minister of Malaysia, in 2012 Budget Speech in the parliament, announced liberalization of 17 service sectors including telecommunication services. Thereafter, from January 2012, nine service sectors were liberalized, and as for telecommunication services, 100% foreign capital was allowed for enterprises with licenses for application services (licenses to provide specific functions such as IP services and data services). By November 16, 2012, the Malaysian Government announced the liberalization of six out of 17 service sectors and, 70% foreign capital was allowed for those with a license for network installation services (licenses to own networks such as satellite stations and optic fibre cables) and a license for network services (licenses to provide basic connection and bandwidths). In contrast, the telecommunications sector is subject to conditions for licensing, including 30% capital participation by Bumiputera.

- Distribution Services

The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) announced a revision of the “Guidelines on Foreign Participation in the Distributive Trade Services” on May 12, 2010 (retroactively effective to January 6, 2010). In the new guidelines, the condition requiring that at least 30% of total capital must be possessed by Bumiputera was deleted, except for hypermarkets (self-service stores with a sales floor area of 5,000 m2 or more) and superstores (self-service stores with a sales floor area of 3,000 m2 or more but less than 4,999 m2), and the establishment of wholly foreign-owned companies became possible. This is a significant improvement. 24-hour convenience stores, however, are still included in the types of businesses for which foreign capital participation is prohibited. (The types of businesses for which foreign capital participation is prohibited in distribution services are listed below.) The MDTCC serves as the competent authority for foreign capital participation, acquisition, merger, etc., and approval from the MDTCC is required for doing such transactions. In addition, the old guidelines stipulated the minimum capital as a million ringgit; there

was no change in the amount in the new guidelines. However, the new guidelines clearly stipulated that capital shall refer to common shares.

The types of businesses for which foreign capital participation is prohibited in distribution services are as follows:

○ Supermarkets/minimarkets (in which the sales floor area is less than 3,000 square meters)

○ Food stores/general sales outlets

○ 24-hour convenience stores

○ Newspaper sales outlets and sales outlets for sundry articles

○ Pharmacies (those dealing with traditional herbs and herbal medicines)

○ Gas stations

○ Permanent markets (wet markets) and street outlets

○ Businesses involved in areas of national strategic advantage

○ Fabric stores, restaurants (not high-class), bistros, jewelry stores, etc.

The new guidelines also include items giving consideration to Bumiputera. For example, the guidelines include a statement that "each company must make clear its policy and plan concerning support for Bumiputera's participation in the industry." In addition, although the capital restriction is eliminated, conditions such as appointment of Bumiputera directors remain (business hours, prohibited matters, and other conditions differ depending on the type of business, such as hypermarkets and specialty stores).

<Concerns>

Various restrictions on foreign investment described above do not violate the WTO Agreement because they do not contradict Malaysia's GATS commitments. However, it is desirable that efforts toward liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

A series of measures to relax regulations in Malaysia, including the elimination of foreign investment restrictions in the 27 fields of the service sector, are highly valued as measures countervailing protectionism movements. However, Japanese companies are not able to enter the above-mentioned businesses for which foreign capital participation is prohibited, including 24-hour convenience stores, etc., even in the form of merger with local companies.

In 2012 the Budget Speech of the Prime Minister of Malaysia to the parliament, he announced that the gradual relaxation of regulations on foreign investment would be implemented in 17 service sub-sectors as of 2012. 100% foreign capital participation will be allowed for the sub-sectors that are selected to be targets of this measure. Since then, in January 2012, nine sub-sectors were liberalized. 100% foreign investment is allowed for these nine fields (including (1) certified accountants and certified tax accountants, (2) courier services, (3) department stores and speciality stores, (4)

incineration services, (5) private hospitals, (6) skill training services, (7) communication services, (8) skill/vocational training services, (9) skill/vocational training services (for students who need special support) and the entry of foreign specialists was approved. On November 16, 2012, a schedule to ease the restriction on foreign investment on a further six sub-sectors was announced. In the schedule, for (1) legal services, the advancement of foreign attorneys and foreign law firms as well as international partnerships will be approved if the immigration criteria are fulfilled. 100% foreign investment will be allowed for (2) doctors, (3) dentists, (4) international schools, (5) private universities, and as mentioned above, 70% foreign investment will be allowed for (6) telecommunication services (licenses for network installation services and licenses for network services). Regarding the remaining two sub-sectors of the 17 (architecture and engineering) and new sub-sectors (quantity surveyor) that are being considered for easing the restrictions on foreign investment, revision of the relevant law is expected to be announced as soon as it is approved.

Japan keeps a careful watch on the trends and implementation status of amendments to laws concerning foreign investment restrictions, and continues to call for further relaxation of foreign investment restrictions through bilateral policy dialogues, the WTO service negotiations, follow-up meetings for the EPA negotiations, and other opportunities.

○ 27 fields in the service industry for which Bumiputera capital restriction was eliminated (announced on April 22, 2009)

- Computer and related services

1. Consultancy services related to the installation of computer hardware (CPC841)
2. Software implementation services (systems and software consulting services, systems analysis services, systems design services, programming services, and systems maintenance services) (CPC842)
3. Data processing services (input preparation services, data processing and tabulation services, time sharing services, and other data processing services) (CPC843)
4. Database services (CPC844)
5. Maintenance and repair services of computers (CPC845)
6. Other services (data preparation services, training services, data recovery services, and development of creative content) (CPC849)

- Health and social services

7. Veterinary services (CPC9320)
8. Welfare services delivered through residential institutions to the elderly and the handicapped (CPC93312)
9. Welfare services delivered through residential institutions to children
10. Day care services for children (CPC93321)
11. Vocational rehabilitation services for the handicapped (CPC93324)

- Tourism services

12. Theme park (CPC96194)
13. Convention and exhibition centers (with a seating capacity of 5,000 or more) (CPC87909)

14. Travel agencies and tour operators services (for inbound travel only) (CPC7471)

15. Hotel and restaurant services (for four- and five-star hotels only) (CPC64110 and CPC64199)
16. Food serving services (for services provided in four- and five-star hotels only) (CPC642)
17. Beverage serving services for consumption on the premises (for services provided in four- and five-star hotels only) (CPC643)

- Transport services

18. Class C freight transportation (Private Carrier License – to transport own goods) (CPC7123)

- Sporting and other recreational services

19. Sporting services (sports event promotion and organization services) (CPC9641)

- Business services

20. Regional distribution centers (CPC87909)
21. International procurement centers (CPC87909)
22. Technical testing and analysis services (CPC8676)
23. Management consulting services (general, financial [excluding business tax], marketing, human resources, production, and public relations services) (CPC8650)

- Rental/leasing services without operators

24. Rental/leasing services of ships (excluding cabotage and offshore trades) (CPC83103)
25. Rental of cargo vessels without crew (bareboat charter) for international shipping (CPC83103)

- Transportation services in inland waterway

26. Maritime agency services (CPC7454)
27. Vessel salvage and refloating services (CPC7454)

INTELLECTUAL PROPERTY

The problems of distribution of copyright infringing DVDs

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

Under the “2010 Trade Descriptions (Optical Disc Label) Order” of Malaysia, optical disc labels (hereinafter referred to as “ODL”) must be affixed to all optical discs which contain information on contents or are provided in the process of transactions or at the other stages of business operations, or of offering the provisions.

ODLs are issued by the Malaysian Government and sold to applicants. The Malaysian Government assesses contents of applications, and verifies that applicants are

holders of the rights or the users of the rights permitted by the holders. Nevertheless, a large number of DVDs that are infringing copyrights of Japanese enterprises and are sold at retailers and on the internet are affixed with ODLs and distributed to countries other than Malaysia.

<Concerns>

The ODL system was introduced for the purpose of copyright protection and infringement control within Malaysia. For that purpose, it is consistent with international rules such as the TRIPS Agreement. However, the viability of this system has not been established due to insufficient verification as to whether applicants are true holders of the rights or whether use by applicants is permitted by the holders. Rather, it makes DVDs that are infringing copyrights look as if they were official versions authorized by the Malaysian Government, resulting in the Malaysian Government helping to spread copyright infringing products. Article 16 of the Berne Convention, to which Article 9 of the TRIPS Agreement refers, provides that member countries shall make copyright infringing products liable to seizure. The situations with ODLs as described above decreases effectiveness of this provision, and thus improvements are desirable.

<Recent developments>

On July 8, 2011, the government office for countermeasures against counterfeiting and piracy of Japan received a complaint from an industry group regarding the Malaysian system for investigating intellectual property right violations of foreign rights holders. On August 4, the Japanese Government determined to conduct an investigation on the status of the damage and the relevant systems in Malaysia. As the result of the investigation, it became clear that a large number of Japanese enterprises are suffering harm and that there is the aforementioned problem in the system in Malaysia. After these findings, on February 17, 2012, Japan decided to request the Malaysian Government to promptly improve the situation. Intergovernmental discussions were held with Malaysia four times in April and June of the same year, June 2013, and February 2014, and future actions are being considered. Japan will continue to request improvement and observe Malaysia's actions regarding this case.

4. PHILIPPINES

QUANTITATIVE RESTRICTIONS

Export Restrictions on Raw Minerals

<Outline of the measure>

The draft revision of the Mining Law submitted to the House of Representatives in July 2014 and to the Senate in August of the same year is intended to impose obligations to process raw minerals in the Philippines and export prohibition on raw minerals, etc. At present, the draft revision has not been approved. If it is approved and

implemented, however, it may adversely affect stable operation of mines to which Japanese companies are seeking entry and stable supply to domestic refineries in Japan. This measure is the same as the content of the new Mining Law of the Philippines, and a concern exists that the export restrictions on minerals suspected of being inconsistent with the WTO Agreements are spreading.

<Concerns>

The draft revision of the Mining Law submitted to the Philippines Congress includes export prohibition on raw minerals, and therefore may violate GATT Article XI:1, which provides for general elimination of quantitative restrictions.

<Recent developments>

After the submission of the draft revision of the Mining Law to the Congress, Japan conducted hearings with government officials about the background and prospect for the establishment, etc. of the draft revision, and explained Japan's concerns. Japan will continue to pay attention to the developments in the Philippines Congress and urge them to follow the international rules through bilateral consultations, etc.

TARIFFS

Tariff Structure

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

Bound tariff rates of some items remain high, including textile products (maximum 50%) and electric appliances (maximum 50%). The simple average bound tariff rate for non-agricultural products is at high level of 23.4%. Moreover, the binding coverage for non-agricultural products remains at 61.9%. Unbound items include clocks, watches and automobiles.

The Philippine Government had undertaken tariff reforms since 1980 and had indicated that it would unify the applied tariff rates for all items 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 tariffs on over 1,000 items, resulting in high tariffs on automobiles (maximum 30%), electric appliances (maximum 30%) and some textile products (maximum 30%) . And the simple average of applied tariff rate of non-agricultural products in 2012 was 5.7%.

<Concerns>

High 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 efficiency, it is desirable to reduce tariffs to the lowest possible rate, while eliminating the tariff peaks (see "Tariff Rates" in 1. of Chapter 5, Part II) described above.

Low binding ratio and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower 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 and the bound tariff rates be lowered 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. In addition, with the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations have been taking place since May 2012 outside the Doha Round negotiations (see (2) "Information Technology Agreement (ITA) Expansion Negotiation" in 5. of Chapter 5, Part II for details).

Improvements in market access have been made with the Japan-Philippines EPA coming into force in December 2008, among these being the phased elimination of tariffs on almost all automobiles and automotive parts, electronics/electrical products and components, and some iron and steel products exported from Japan.

TRADE IN SERVICES

Foreign Investment Restrictions, etc.

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<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 periodically under the Foreign Investment Act (RA 8179).

As for changes made in the 9th Foreign Investment Negative List (Executive Order No. 98) was published in November 2012, real estate service, respiratory therapy and psychology were added to specialized businesses requiring license that are regulated for foreign capital entry, whereas financial and loan corporations were added to fields of foreign investment allowed up to 49%, However, the negative list stipulates retail businesses of which capital paid-up is less than 2.5 million US dollars as the main businesses in which foreign capital participation continues to be prohibited. In addition, there has been no change to restrictions such as restricting the foreign investment ratio to a maximum 20% for the running of radio stations, and restricting the foreign investment ratio to a maximum 30% for advertising businesses. Filipino citizenship is required for those in the management level in the advertising industry. Incidentally, capital of 2.5 million US dollars or more is necessary for the establishment of a wholly foreign-owned company. If the amount of capital is less than that, the ownership is limited up to 40%. In addition, even if a person establishes a wholly foreign-owned

company, he/she is allowed, under the current system, to possess up to 40% of the land necessary for the business.

Major regulations on foreign investment are as follows:

Sector	Outline of regulations
Financial Services	
(1) Banking	・ Foreign capital regulations in the banking sector were provided for in the following two laws, etc. The investment ratio for domestic banks by foreign banks was limited to 60% and an upper limit was established for the number of foreign banks that can open branch offices, making it difficult for foreign banks that have not yet entered the Philippines market to open new branch offices. (a) Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (enacted in May 1994) (b) General Banking Law of 2000 (enacted in May 2000) ・ However, the Act Allowing the Full Entry of Foreign Banks in the Philippines (Republic Act No. 10641) was enacted in July 2014. This allowed new entry of foreign banks in the following three forms, subject to approval of the central bank of the Republic of the Philippines. (a) Acquisition of domestic banks (100% foreign investment by foreign banks; and elimination of the 60% upper limit of the foreign investment ratio) (b) Establishment of new local subsidies (c) Opening of branch offices (elimination of the upper limit of the number of foreign banks that can open branch offices) ・ As restrictions on liquidity of foreign currencies, foreign banks are obliged to cover 30% of the balance of debts on a foreign currency basis (including deposits) by specific liquidity (short-term release of funds to financial institutions, interbank loans, etc.).
(2) Insurance	・ Department Order No. 31-01 issued in December 2001 (which was partially amended by Department Order No. 19-08 and No. 27-06 of 2006) imposes a minimum capital requirement commensurate with the foreign equity investment ratio, but the ministerial order of June 2012 made the requirement uniform independent of the foreign equity investment ratio. ・ For reinsurance transactions, ceding reinsurance of automobile insurance to an overseas insurance company is prohibited.

Telecommunication Services	The Philippines permits only Philippine-capital companies (at least 60% 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%. However, in January 2009, the Department of Justice (DOJ) of the Philippines expressed its view that value-added services do not fall under the services subject to the restrictions in some cases, and in that case, wholly foreign-owned companies can participate in the telecommunication sector (January 12, 2009; Secretary's Opinion No. 2).
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 detailed enforcement regulations of the CLL, however, only grant "regular licenses," which are the same as those given to ordinary domestic companies, to companies with less than 40% foreign ownership (limited to up to 25% for public works projects and defense facilities projects). In contrast, companies with more than 40% foreign ownership must apply for a license for each individual project. In recent years, these regulations have been reviewed and amendments were proposed at a public hearing of the Philippine Contractors Accreditation Board (PCAB) held on January 23, 2013. However, while the contents of the amendment allow establishment of a 100% foreign-owned construction firm, the conditions are unrealistic (requiring capital of 1 billion pesos, construction contracts of 10 billion pesos or more, etc.). In addition, for firms categorized as B, C, and D (capital of less than 9 million pesos), 100% Philippine investment is required and foreign investment is not approved, blocking the entry of foreign construction firms. Therefore, while it should be possible to establish a 100% foreign-owned construction firm, the reality is that none exist.

<Concerns>

The various restrictions on foreign investment described above do not violate the WTO Agreements, because they do not contradict Philippine's GATS commitments. However, it is desirable that efforts toward liberalization be made under the spirit of the WTO and the GATS.

<Recent developments>

Inroads have been made into the Philippines by Japanese service companies since the conclusion of the Japan-Philippines EPA, as evidenced by one commercial shipping company's efforts to open a school to train Filipino technicians and the

participation by IT companies in the call center business.

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 follow-up meetings.

5. MYANMAR

TRADE IN SERVICES

Foreign Investment Restrictions, etc.

*** This particular case was included in light of the following concerns despite it being a** trade **or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.**

<Outline of the measure>

On November 2, 2013, a revision of the Foreign Investment Law (established in November 1988), which is the basic law in Myanmar for foreign investment, was enacted on November 2, 2012.

The Myanmar government was to stipulate the provision in detail within 90 days of enactment, however, and Notification No. 1/2013 of the Myanmar Investment Commission (MIC) and Notification No. 11/2013 of the Ministry of National Planning and Economic Development (MNPED) were published.

Notification No. 1/2013 of the Myanmar Investment Commission (MIC) listed 21 fields that are not approved for foreign investment (business related to defense and environmental destruction, etc.), 42 fields that are approved only in cases of joint venture with Myanmar companies (large-scale mineral development and transport infrastructure development, etc.), 115 fields that require opinions of the competent authority or approval from the federal government, 27 fields that are approved under special conditions (livestock business, etc.), and 34 fields that are approved with environmental assessment as a condition (large-scale manufacturers, petroleum and natural gas development, etc.). Notification No. 11/2013 of the Ministry of National Planning and Economic Development (MNPED) stipulates the form, application and permission procedures for foreign investment.

Although a Myanmar language (Burmese) version of these notifications was published, there are several unclear matters such as no details are given for the case where 100% foreign investment is possible in fields that are not prohibited. Moreover, the discretionary power of the Myanmar Investment Commission is very large and the transparency of investment management must be ensured.

<Concerns>

The Myanmar government has no commitments under the WTO GATS for a majority of services (its Schedule of Commitments only partially liberalizes tourism and travel services). Therefore, this amendment of the Foreign Investment Law does not

violate GATS. However, as described above, although a Myanmar language (Burmese) version of these notifications was published, there are several unclear matters, such as that no details are given for the case where 100% foreign investment is possible in fields that are not prohibited. In addition, the discretionary power of the Myanmar Investment Commission is extremely large.

<Recent developments>

Concerns on the Foreign Investment Law were expressed at the conference held between the Minister of Economy, Trade and Industry and the Minister of National Planning and Economic Development of Myanmar, before the revision in August 2012, and the transparency of investment management was requested at the conference held between the State Minister of Economy, Trade and Industry and the Minister of National Planning and Economic Development of Myanmar after the revision in February 2013.

In January 31, 2014, the Myanmar Investment Commission published Notification No. 2/2014. It clearly specifies the means for obtaining MIC permits for investment in Myanmar by foreign investors. This notice contains detailed information, such as that service fees are not required in the procedures to obtain MIC permits, etc.

As the official English version of the detailed provisions will be issued in the near future, Japan will continue to observe the trends of the related Foreign Investment Law provisions and will monitor the management so that activities of Japanese companies that are currently in Myanmar will not be impeded. Additionally, Japan will encourage Myanmar to ensure transparency of management of the law through bilateral meetings.