Chapter 11

INDIA

NATIONAL TREATMENT

1) Local content requirements (domestic-product preferential subsidies) on solar powered electricity facilities

<Outline of the measure>

In January 2010 the Indian government announced the Jawaharlal Nehru National Solar Mission (JNNSM) with the policy objectives of “making India the world leader in the solar industry” and “to expand solar energy within India”. The government proclaimed that it would attempt to popularize and promote solar energy by dividing the process into three periods. As a specific policy to popularize solar energy, the government introduced a feed-in tariff program of electricity generated by solar panels and solar-heat. The Ministry of New and Renewable Energy (MNRE), which has jurisdiction of the program, published guidelines for the program in July 2007 and began the solicitation of businesses that wished to participate in the FIT program. The Indian government required meeting a certain percentage of local content as a condition to participate in the program.

<Problems under international rules>

Japan believes that the measure obligating the use of power generation equipment produced within the state by setting the condition of being domestically value added is in breach of the national treatment obligation under the GATT Article III and TRIMs Agreement Article 2, and are a prohibited subsidy under Article 3 of the SCM Agreement.

<Recent developments>

Since there was a possibility that the local content requirements and the granting of subsidies with those requirements as conditions are in breach of the GATT Article III, TRIMs Agreement Article 2, and Article 3 of the SCM Agreement, Japan asked questions on this matter at the WTO Subsidies Committee meeting held in May 2011 and the TPR (Trade Policy Review) meeting held in September 2011. Furthermore, Japan has repeatedly expressed its concerns along with the US and the EU in the WTO TRIMS Committee held since May 2012. The US requested consultations under WTO dispute settlement procedure in February 2013, claiming that these measures are in violation of Article 3 of the GATT, Article 2 of TRIMS Agreement, and Article 3 of the SCM Agreement (The US requested consultations of additional items in February 2014) (Japan requested to participate to the consultation as a third party, but India denied the request). As the issue was not resolved through consultations, the US requested the establishment of a panel in April 2014, and the panel was established in May of the same year.

Japan is participating in the panel process as a third party, and will pay attention to the outcome.

2) Local content requirements on domestically manufactured electronic products

<Outline of the measure>

In April 2011, the Telecommunications Regulatory Authority of India (TRAI) made a policy recommendation to the Department of Telecommunication (DoT) of the Ministry of Communications and Information Technology for the purpose of developing and strengthening competitiveness of the electronics industry. This recommendation included measures such as;

(i) Introduction of preferential treatment for domestically manufactured products (e.g., providing preferential market access for products which meet a local content ratio, and obligating government licensees to give preference to domestic over imported products)

(ii) Adjustment of conditions of competition between imported and domestic goods with respect to internal taxation

Taking TRAI's recommendation into account, the Department of Information Technology (DIT) of the Ministry of Communications and Information Technology, after considering the policy of Preferential Market Access (PMA) for general electronic products, issued a notification providing preference to domestically manufactured electronic products, publicizing it on an official gazette in February 2012.

The notification made some changes to the TRAI's recommendation and required that;

(i) All ministries and departments concerned shall make publicly available in a notification the percentage of domestically manufactured products in its procurement (not less than 30%) and value added criteria with respect to those electronic products which have security implications

(ii) Each ministry shall make publicly available an appropriate incentive penalty to secure conformity with this policy

This notification was general instruction applicable across government procurement of electronic products including communication equipment. Pursuant to this notification, all ministries and departments concerned including DoT were required to specify and publicize covered equipment, entities that procure that equipment, the percentage of domestically manufactured products in its procurement (not less than 30%), and value added criteria in its governing sectors.

In responding to this notification, in October 2012, DoT issued a notification on preference to domestically manufactured products in procurements of telecommunication equipment. Furthermore, in November 2012, the Department of Electronics and Information Technology (DeitY; reorganized from DIT) of the Ministry of Communications and Information Technology issued a similar notification regarding government procurement of electronic products. While these notifications apply to government procurement, DoT has discussed another notification on providing preference to domestically manufactured products in procurements by private communication entities of communication equipment which have security implications; it invited public comments on the proposed notification in January 2013.

<Problems under international rules>

Once ministries and departments concerned implement policy measures pursuant to this notification, local content requirements on electric products based on this policy may violate the national treatment obligations of GATT and the TRIMs Agreement. Though the notification by DIT stresses security implication as background and provides that the necessity regarding security is judged by the Indian government on a case-by-case basis, it is not clear which provision of GATT Article XXI could be applicable; thus, making justifications based on the said provision would be difficult.

<Recent developments>

In December 2011, the Prime Minister of Japan requested amendment at a meeting with the Prime Minister Singh of India. Also the government of Japan requested reconsideration at the India-Japan Ministerial-Level Economic Dialogue in April 2012. In addition, in February 2013 the Minister of Economy, Trade and Industry of Japan requested the Minister of Communications and Information Technology of India to reconsider the policy. Industries in some countries also issued letters expressing concerns about this policy. At the WTO, Japan, together with the United States and the Europe Union, has been repeatedly expressing concerns at the TRIMs Committee meetings in May 2012, October 2012, and April 2013.

In November 2013, Japan requested review at the Japan-India Joint Working Group meeting on IT Electronics in which public and private sectors of Japan and India participated, including the Commerce and Information Policy Bureau of the Ministry of Economy, Trade and Industry and DeitY.

In December 2013, DeitY issued a notification and confirmed that preferential treatment on domestic products only applies to government procurement and does not apply to private sector transactions. India reported at the second Japan-India Joint Working Group meeting in October 2014 that preferential treatment only applies to government procurement and does not apply to state procurement. However, Japan needs to continue to pay attention to future reviews and administration of the policy, as well as whether or not application to private sector transactions within DoT's jurisdiction is excluded.

TARIFFS

1) High Tariff Products

*** 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 simple average bound tariff rate for non-agricultural products is 34.5%.

Since fiscal year 2003, the Government of India has continued to implement reductions of the basic tariff rate, setting forth the objectives of (1) reducing the basic tariff rate (applied tariff rate) to the ASEAN level, and (2) shifting to a tariff system that applies a 10% tariff to finished products and a 5%-7.5% tariff to raw materials and parts. The government implemented a tariff reduction on specific capital goods and some parts and raw materials in January 2007, and reduced the basic tariff rate on automobile parts, electrical parts and machinery parts to 7.5%. In addition, in March 2007, the government reduced the maximum basic tariff rate on essentially all bound items excluding agricultural products from 12.5% to 10%, in principle. Through these series of measures, India appears to have achieved most of its objectives, with the exception of tariffs on some parts and raw materials, and can be evaluated to a certain degree as promoting free trade.

On the other hand, the binding coverage for non-agricultural products is 69.8%. Unbound items with high tariffs include passenger cars (applied tariff rate: 100-125%)and clothing (average bound tariff rate: 14.1%). Given these rates, there appears to be significant room for improvement.

<Concerns>

High tariff rates themselves do not, *per se*, conflict with WTO Agreements unless they exceed the bound rates. However, in light of the spirit of the WTO Agreements of promoting free trade and enhancing economic efficiency, it is desirable to reduce tariff rates to the lowest possible rate.

Low bound tariff rates 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 from the point of view of increasing predictability that unbound products be bound and the bound tariff rates be lowered.

<Recent developments>

The market access negotiations in the DDA for non-agricultural products are ongoing and include negotiations on reducing and eliminating tariff rates. In February 2011, the Japan-India Economic Partnership Agreement was signed and it went into effect in August 2011. This Agreement will eliminate tariffs on automobile parts (manufacturing parts) and steel products, etc. in 5 to 10 years after the effective date of the Agreement, etc., thereby improving market access.

2) Introduction of special additional tariffs on imported products

<Outline of the measure>

In India, customs duties comprising the basic customs duties (the above-mentioned applied tariff rates), countervailing duties, the additional customs duty and the education tax are collected by the customs authorities upon customs clearance. Assuming the assessed value on imports (C.I.F. price and landing charges) is 100, the basic customs duty 10%, the additional tariff rate 12%, the education tax rate 3%, and the additional customs duty 4%, as these figures were as of February 2013, then the final total tariff relative to the assessed value of 100 is 26.85, a higher level than the applied tariff rates that India usually presents at international negotiation venues such as the WTO. The method of calculating total tariffs is given in the table below.

Figure I-12 Method of Calculating Total Tariff Rates
(where the valuation amount is 100 and the basic tariff rate is 10%)

Item	Tariff rate	Amount (Tax)	Details of calculation
Assessed Value (CIF value + landing charges)		100	
Basic Customs duty	10%	10	100 x 10%
	(Subtotal)	110 (A)	Import value + Basic tariff
Additional Duty*	12%	13.20	(A) x 12%
	(Subtotal)	123.20 (B)	(A) + Additional tariff
Education Tax	3%	0.696	Tariff subtotal x 3% <(123.20 - 100) × 0.03>
	(Subtotal)	123.896 (C)	(B) + Education tax
Additional Customs Duty	4%	4.956	(C) x 4%
	(Subtotal)	128.852	(C) + Special additional tariff

Item	Tariff rate	Amount (Tax)	Details of calculation
Applied tariff rate (%)		28.852	

* In case of importing parts or raw materials and manufacturing or processing domestically
→ Countervailing (additional) tariff + special additional tariff (total 18.156) is deductible from excise tax on domestically manufactured products

(Source: J-FILE by JETRO)

<Problems under international rules>

As indicated above, the simple average bound tariff rate on non-agricultural products agreed to by India as a result of the Uruguay Round is 34.6%. However, the basic tariff rate is 10%, below the average bound rate. This basic tariff rate, so long as it is below the bound rate for individual items, is consistent with GATT Article II. On the other hand, the additional customs duty and the education tax are considered to come under the category of “ordinary customs duty” or “other duties or charges” as provided for in GATT Article II, paragraph 1(b). If these tariffs come under the former, then the tariffs imposed exceed the concession commitment regarding products for which a commitment was made to remove tariffs under ITA (Information Technology Agreement). If these tariffs come under the latter, they are in violation of the same concession commitment because they are not actually stated in India’s concession schedule (as they are required to be). For this reason, the additional customs duty and the education tax are likely to be in violation of GATT Article II regardless of the category they fall under.

In addition, at the Indian TPR in the WTO held in May 2007, India replied that the additional customs duty is an inland duty levied for the purpose of countervailing the value-added tax and the central sales tax. India also stated with respect to the education tax, which is imposed twice on imported products, that the first tax is an inland duty while the second tax is a customs duty. If this tax is regarded as an inland duty, it is covered not by GATT Article II but by GATT Article III, which stipulates national treatment. On this point, Japanese companies reported that, even for imported products for which the additional customs duty is imposed at customs, the value added tax and central sales tax are imposed at India’s domestic distribution stage. Thus, the additional customs duty and the education tax may be in violation of GATT Article III.

<Recent developments>

Japan has been requesting India to improve its tax system, including the additional customs duty, to be consistent with the WTO Agreement and highly transparent through Japan-India EPA negotiations etc. Regarding the refund system of the additional customs duty, problems were pointed out, including excessively strict conditions of application for refund and unclear details of the procedure. In November 2008, a relaxation of the conditions of application was announced. However, even after the introduction of new conditions, there have been only few cases in which the applicant could actually receive a refund. Therefore, further improvement of the system is necessary.

In 2009, Japan encouraged the Indian government to improve the system at the vice-ministerial level as well as on a private basis through the Japan-India Business Cooperation Committee and other opportunities. In response, India answered that it would promptly refund additional customs duties with respect to refund applications that had already been filed.

In addition, in February 2010, the additional customs duty (4%) was no longer imposed on imported products packed as finished products. Textile products, mobile phones and watches have become exempt from duties even where they are not packed, on the condition that they are retailed without being processed. However, after the introduction of these measures, the customs authorities strengthened monitoring of importation of finished products. In particular, as the authorities have required the attachment to individual products of labels describing MRP (maximum retail price) and the date of import, there have been many cases where cargoes without such a label are retained at the time of customs clearance. Therefore, Japan needs to monitor India's future responses and continue to approach India for improvements in the system.

The United States requested the establishment of a WTO panel regarding this measure. In July 2008, the Panel rejected the United States' claim, finding that the United States failed to establish that the Indian measure is inconsistent with Article II:2 of GATT. The United States appealed the Panel's decision to the Appellate Body (Japan participated as a third party). In October 2008, the Appellate Body held that the additional customs duty would be considered inconsistent with Article II:1(b) of GATT insofar as it results in the imposition of charges on imports in excess of the excise duties applied on like domestic products. Nevertheless, the Panel having made no findings of fact regarding the above, the Appellate Body made no recommendation regarding the measure.

<Reference 1: Outline of the refund system for the additional customs duty>

On September 14, 2007, India's Ministry of Finance announced a notification (No. 102/2007) concerning a refund of the uniform 4% additional customs duty imposed on products imported into India

(see http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/cs102-2k7.htm).

This notification has been applied to all imported products which clear customs after the date of the notification and states that the additional duty of customs paid on products (basically, only finished products) imported going through the conditions and procedures given below will be refunded afterward.

(1) The importer must pay all customs duties (base tariff, countervailing duty, and education tax), including additional duty of customs, at the time of customs clearance.

(2) The importer must indicate on invoices that are issued when said imported products are sold that they are not products such as parts or raw materials that can receive an input credit (see note below).

(3) The importer must pay all value added tax (VAT), state sales tax, and central sales tax (CST) imposed on domestic sales of said products.

(4) The importer may submit an application for a refund of additional duty of customs to the customs authorities of the port into which said products were transported, attaching the three documents identified below.

a. Documents evidencing payment of additional duty of customs on said imported goods

b. An invoice for the domestic sale of said imported goods

c. Evidences of payment of VAT and other sales taxes imposed upon the domestic sale of said imported goods

(5) An amount equivalent to additional duty of customs paid will be refunded to the importer with respect to refund applications that have been determined by customs authorities to have satisfied the above requirements.

Note: The CENVAT credit regulations (2004) allow a manufacturer to pay taxes to the tax authorities after deducting, as an input credit, the amount of excise tax (including additional duty of customs) paid on parts used in the firm's products from the total amount of excise taxes paid on said products.

<Reference 2: Goods and service tax>

In a government budget draft for fiscal year 2006, the Indian government announced that it would organize and integrate indirect taxes imposed by the central and state governments into a goods and service tax (GST) and that the GST would be effective from April 2010. In response to this, vigorous discussions have been held within India. For example, the Empowered Committee of State Finance Ministers presented a discussion paper in November 2009. Furthermore, the 13th Finance Commission Report was submitted to the President at the end of 2009. However, there have been many news reports that the introduction of GST would be significantly later than the original schedule for reasons such as the necessity of long periods of time needed for constitutional revisions, which serve as a premise of the introduction of GST, and coordination with state governments. The domestic situation of India involves many unclear points. In particular, regarding additional customs duty, while the Empowered Committee of State Finance Ministers proposes, in its discussion paper, the abolition of the additional customs duty along with the introduction of GST, the 13th Finance Commission Report does not refer to the additional customs duty. It is necessary to continuously keep a watch on the trends of discussions within India.

ANTI-DUMPING MEASURES

Abuse of AD measures and lack of transparency

<Outline of the measure>

India initiated 704 AD investigations from 1995 to the end of June 2014 (* AD investigations on the same item from multiple countries are counted as one). Although the number of AD investigations initiated and AD measures applied by the Indian Government declined from 2003 to 2007, it has increased since then, so India is still one of the world's most frequent utilizers of AD measures. Among these, 25 cases were against Japan. The measures were mainly imposed on chemical products.

<Problems under international rules>

Japan should request that India make improvements in their AD authority's operation because there are many issues regarding India's AD investigation procedure, such as:

1) Low level of transparency in the investigation procedure
2) Insufficient explanation by the investigating authority for the basis for judgement and their determination
3) Inadequate opportunity for interested parties to present their views

Following is detailed information on the issues in individual cases.

1) India does not impose AD duties according to dumping margins based on Article 9.1 of the AD Agreement, but rather imposes just enough duty to remove injury to domestic industries (the lesser duty rule). The injury margin is thus calculated separately. However, despite a competitive Indian domestic market and little difference in the price among companies investigated, there are cases where there is a great difference in injury margin determined for each company. Since the investigating authority's basis for judgment is not properly explained, it is difficult for the company being investigated to confirm the facts.

2) In the injury determination, the final determination does not cover all data related to the 15 factors of injury under Article 3.4 of the AD Agreement, which should be examined by the authorities, and the disclosure by Indian authorities in some cases does not meet the obligations provided in Article 12.2 of the AD Agreement. In such cases, the interested parties could not conduct any effective data analysis regarding the grounds of the decision, which limited their ability to offer rebuttal arguments. As a result, they lost the opportunity to protect their own interests. This situation is not consistent with Article 6.1 of the AD Agreement.

3) Article 12.2 of the AD Agreement requires public notification regarding preliminary determinations, final determinations and the termination of AD duties. In addition, the Article states that said notifications and reports are to be sent to interested parties. However, there are cases where it is unclear whether notifications are being properly made to interested parties, including intergovernmental notifications made to the Japanese Government. Japan's concern continues regarding these procedures.

<Recent developments>

Sunset reviews on AD measures against aniline from Japan were initiated in October 2010 and, according to the WTO notification, the AD measures were terminated. However, no public notice of the termination of the measures was given in India. This raises a problem in light of Article 12.2 of the AD Agreement, which obligates public notice of the termination of AD measures. At the AD Committee meeting held in October 2012, Japan questioned India about the status of this measure as well as the termination date of the measure and reasons for public notice not being given in case the measures were terminated. India replied that the period of AD duties expires within five years in principle under domestic laws in India, and thus there is no need to give a public notice and AD measures terminate upon expiration of the period.

In May 2014, investigations on phthalic anhydride were also initiated. Japan needs to continue monitoring AD measures by the Indian Government, pointing out any problems inconsistent with the AD Agreement, and requesting improvement.

SUBSIDIES

National Food Security Act

<Outline of the measure>

In September 2013, the National Food Security Act was established in India as a program to provide people with very low income with food grains, which the government purchased from producers, at low price. This program aims to stabilize food supply to people with very low income and enables them to purchase rice, wheat, and cereals at low prices of 3 rupees/kg, 2 rupees/kg, and 1 rupee/kg, respectively, up to 5 kg every month. Of all families accepted under the Antyodaya Anna Yojana scheme (a scheme initiated by the central government on December 25, 2000), a maximum of 75% of the population in rural areas and a maximum of 50% of the population in urban areas are eligible. According to the Indian government, the amount of grains necessary under the present provision program is 56,370,000 tons and that under the new system will be 61,430,000 tons; thus an increase in domestic support is expected.

<Problems under international rules>

The purchasing of food grains at administrative prices under the National Food Security Act is regarded as price support for producers, or domestic support, under the Agreement on Agriculture, and should be subject to reduction. In September 2014, India submitted notifications on domestic support to the Committee on Agriculture, as provided for in Article 18 of the Agreement for the period between FY2004 and FY2010. For that period, the expenses on the public stockholding system increased from 5.7 billion US dollars to 13.8 billion US dollars and the amount of food grains purchased by the government sharply increased from 24.7 million tons to 34.2 million tons for rice and from 16.8 million tons to 22.5 million tons for wheat. The aggregate measure of support (AMS) was zero because the amount of domestic support with respect to these measures was within the de minimis limit (10% of the amount of agricultural product production). However, the expected increase in the amount of domestic support due to the implementation of the said Act also poses a concern. Japan needs to pay attention to the content of future notifications on domestic support and to the relation of the domestic support to the WTO commitment level.

<Recent developments>

At the 9th WTO Ministerial Conference in Bali in December 2013, it was agreed as an interim measure that when a developing country implements a public stockholding system for food security purposes, member countries shall refrain from referring the matter to dispute settlement procedures even if the domestic support violates the domestic support reduction commitments under the Agreement on Agriculture. At the WTO General Council meeting on November 27, 2014, it was agreed, in response to India's request, to continue the interim measure until a permanent solution is adopted and to make best efforts to adopt the solution by the end of 2015. Japan needs to pay attention to this issue while taking into account the impacts of the discussions toward permanent solution on the regulations of domestic support.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

(1) India's Technical Regulations for Steel Products

<Outline of measures>

In September 2008, the Indian government published in its official gazette the Steel and Steel Products (Quality Control) First Order and the Steel and Steel Products (Quality Control) Second Order, and announced that technical regulations would be implemented for certain steel products Since then, steel manufacturing companies are required to obtain the Indian industrial standards (Bureau of Indian Standards [BIS] Standards) for specified steel products imported into India and to ensure conformity with these standards.

Technical regulations were enforced from September 2008 for the six products covered in the First Order (e.g., bar steel and steel wire) and from September 2012 for products covered in the Second Order (e.g., hot-rolled steel sheets, hot-dip galvanized steel sheets, tin, non-oriented electromagnetic steel sheets, oriented electromagnetic steel sheets, plates, and semi-finished steel products for general structure). Technical regulations were enforced in September 2012, March and October 2013, and April, July and October 2014. Technical regulations are not applicable to products for certain use for two years from August 2013, but deformed steel bars, etc., which were not previously subject to technical regulations, were included in the subjects for technical regulations.

<Problems under international rules>

The Indian government has explained that the policy objectives in establishing this system are to ensure the safety and quality of products and to protect the environment. However, these objectives cannot be achieved through regulations of intermediate goods such as steel products but instead should be achieved through safety regulations; thus, Japan deems the Indian system unnecessary. Therefore, this system is suspected of being more trade-restrictive than necessary in light of the policy objective and may violate Article 2.2 of the TBT Agreement.

<Recent developments>

In the TBT Committee meetings held since 2009, industrial representatives and the Governments of Japan, the EU, and Republic of Korea have repeatedly expressed to the Indian government their concerns about the introduction of technical regulations for steel products.

An official gazette published in March 2012 stated that technical regulations on the Second Order would be enforced in September 2012. In response, a request to postpone the enforcement and to clarify the regulation was submitted by the Japan Iron and Steel Federation in July 2012, to the Indian Minister of Steel and Minister of Commerce and Industry. The Japanese Vice Minister of Economic, Trade and Industry expressed concerns to the Indian Minister of steel at the meeting held during his visit to

Japan in the same month. As a result of these efforts, the official gazette published in September 2012 stated the postponement of enforcement to March 31, 2013 for hot-rolled steel sheets, oriented electromagnetic steel sheets, and thick steel sheets, and the sudden stop of imports of hot-rolled steel sheets used for automobiles, which was especially a concern for Japanese industries, was avoided.

Since September 2012, the India Japan Chamber of Commerce and Industry and the Japan Iron and Steel Federation have been continuously requesting that India comply with internationally approved standards for consumer safety regarding steel products in which consumer safety is ensured by application of the standard to the final product.

Continuous observation on the management of this system is necessary and bilateral discussions must be held.

(2) Technical Regulations for Automobile Tires

<Outline of measures>

In November 2009, the Indian government announced technical regulations on automobile tires (enforced May 2011). Former voluntary regulations become mandatory technical regulations and also became applicable to imported tires. This prohibited the manufacture, import, storage for the purpose of sale, selling, and distribution of automobile tires which do not conform to the regulations, and on which the BIS (Bureau of Indian Standards) mark is not affixed. These regulations on automobile tires differ from the automobile standards set in the United Nations' UN/ECE/1958 Agreement, which are widely adopted in the world. Therefore, additional actions became necessary to export automobile tires to India.

More concretely, the license fee is calculated based on the number of tires marked with BIS marks, which means that the license fee must be paid for tires sold outside of India. In addition, the Indian government requires a bank guarantee of 10,000 US dollars per factory for foreign capital manufacturers, which creates an unnecessary discrepancy in competitiveness between Indian and foreign-capital manufacturers.

<Problems under international rules>

Under this system, the license fee must also be paid for tires sold outside of India, but no reasonable explanation for the license fee calculation has been given by India. Therefore, it may violate Article 5.2.5 of the TBT Agreement, which stipulates that conformity assessment fees must be equitable.

<Recent developments>

At the meetings of the TBT Committee in March 2008 and thereafter, Japan, the EU and Republic of Korea has expressed concerns about the opacity of the system, the need to provide a sufficient time limit for acquiring certification preparatory period, negative effects on economic activities, and other matters. On recent occasions, Japan requested improvements in the above-mentioned issues of license fee calculations and bank guarantees required for foreign-capital manufacturers.

Japan will continue to request improvements in these regulations in cooperation with other countries that have similar concerns.

(3) Strengthening of Restrictions on Conditions for Licensing Telecommunications Carriers

<Outline of measures>

In March 2010, the Indian government published a notification titled "Ensuring Security and Safety before Purchase of Telecommunications Equipment from Foreign Companies" and published regulations on procurement of telecommunications equipment in India for the purpose of ensuring security in information and telecommunications. The content of the regulations was partially relaxed in May 2011, but Indian carriers are obligated to obtain network security approvals from inspection authorities in India when purchasing telecommunications equipment from foreign telecommunications equipment manufacturers. This system was scheduled to be enforced in July 2014, but it was confirmed at the TBT Committee meeting in November 2014 that its enforcement was delayed until April 2015. Other than this, details of the measure, including product coverage and security requirements, are unclear at this point.

<Problems under international rules>

Although the contents of these notifications are unclear in some points, if inspections by domestic inspection authorities, etc. require that telecommunications equipment have specific security features, they may be de facto compulsory conformity assessments of the equipment by the government, etc. Therefore, the Indian government may assume the obligation to notify the WTO of the restrictions.

The requirement that only equipment which is approved by domestic inspection authorities are allowed to be included can cause discriminatory treatment of foreign products. Therefore, it may violate national treatment under GATT Article III:4 and Article 2.1 of the TBT Agreements.

<Recent developments>

Since 2010, industrial groups in Japan, the United States and Europe have been expressing their concerns to the Indian government. In October, Japanese industrial circles (four groups) issued a letter expressing their concerns again to the Indian government.

As government efforts, on the occasion of the ASEAN plus 6 Economic Ministers' Meeting in August 2010 (in Vietnam) and the East Asia Summit meeting in October (in Vietnam), the Minister of Economy, Trade and Industry of Japan expressed Japan's concerns to the Minister of Commerce and Industry of India. Also at the India-Japan Ministerial-Level Economic Dialogue, Japan requested the Indian government to take adequate measures to address this problem. Furthermore, Japan, the United States and Europe have been expressing their concerns on this matter at the meeting of the WTO TBT Committee since November 2010.

Japan will continue to request details of these regulations and consistency with international IT security systems.

(4) Introduction of technical regulation on electronic and information technology devices

<Outline of measures>

In September 2012, the Indian government (Ministry of Communication and Information Technology) announced legislation to obligate the registration of electronic and information technology devices, the "Regulation on electronic and information technology devices 2012 (mandatory registration duties)" (notification to the TBT Committee was made in October of the same year). Preliminary registration and labeling in accordance with domestic safety standards on 15 items of electric home appliances and electronic devices became obligatory (projectors were newly added to the subject items in July 2013). This regulation was fully enforced in January 2014.

At present a very large number of applications for testing are being made for both domestic and foreign products, but the testing period is getting longer due to the testing capacity of the designated testing institutions. In addition, a large number of documents are required for application, and thus many applications for registration have not been completed. As a result, there has been a confused situation where exports of subject items are not possible.

<Problems under international rules>

Article 5.1.2 of the TBT Agreement stipulates that "conformity assessment procedures shall not be more trade-restrictive than necessary". However, registration procedures of this regulation require excessive procedures such as submission of a large number of documents, and no reasonable explanations or reasons for the necessity of such excessive procedures have been given by India. Therefore, this regulation is suspected of being conformity assessment procedures that are more trade-restrictive than necessary in light of the policy objectives of this system, and may violate this Article.

<Recent developments>

In October 2012, India made WTO/TBT notifications regarding this regulation. Four groups of Japanese relevant industries (Japan Electronics and Information Technology Industries Association (JEITA), Japan Electrical Manufacturers' Association (JEMA), Japan Business Machine and Information System Industries Association (JBMIA), and Communications and Information network Association of Japan (CIAJ)) submitted comments in December of the same year in response to the notifications, requesting the postponement of enforcement in order to secure time for preparation and to ensure conformity to international standards.

Later, in February 2013, the Minster of Economic, Trade and Industry of Japan expressed concerns to the Indian Minister of Communication and Information Technology. Also, at the WTO/TBT Committee meeting held in March and October 2013, Japan, the United States, Europe and Republic of Korea raised questions concerning this matter. As a result of these efforts, the scheduled enforcement date was delayed from April 2013 to July 2013 and further deterred until January 2014 under certain conditions. However, testing and registration procedures are still taking a long time and exports remain stagnant.

As the expansion of items subject to this measure is assumed to be under discussion, it is necessary to continuously demand that the Indian government make improvements to speed up testing and registration procedures.

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 March 2010, the Department of Industrial Policy and Promotion (DIPP) of the Ministry of Commerce and Industry published a new Consolidated FDI Policy that consolidates policies concerning inward direct investment by foreign enterprises (revised on April 5, 2013). Under this Consolidated FDI Policy, business types/forms for which foreign direct investment was prohibited/restricted, business types with upper limits on the foreign investment ratios, and business types requiring individual approval by the Foreign Investment Promotion Board (FIPB), etc. were provided in a negative list. Business types for which foreign direct investment was prohibited included eight areas that have not been opened to private companies, including nuclear energy, railways, real estate businesses, construction, farming businesses, lotteries, gambling including casinos, and tobacco production.

In May 2014, the Bharatiya Janata Party (BJP, Prime Minister Narendra Modi), which became the ruling party after the general election, relaxed foreign investment regulations in certain sectors. In August of the same year, the upper limit of the foreign investment ratio in the defense sector was raised from 26% to 49% and the ratios for high-speed railway, urban railway corridor, and designated cargo railway businesses were raised to 100%. In addition, the requirements for investment in foreign real estate/construction businesses were relaxed in October of the same year. The Cabinet decided to reduce the minimum scale (area) of properties as to which investment is allowed from 50,000 m2 to 20,000 m2.

An overview of foreign investment regulations on financial services and distribution services sectors, etc. is given below.

1) Financial Services

(a) Banking

Regarding relaxed restrictions on foreign investment in private banks, foreign banks have become able to establish wholly-owned subsidiaries in India, provided that they (1) are under the jurisdiction of the competent authorities of their home countries, and (2) meet approval requirements of the Reserve Bank of India (RBI), which is India's central bank. These points are also provided for in the Consolidated FDI Policy. Also, a revised provision in the current banking regulation law which stipulates that foreign voting rights shall be restricted to a maximum 10% of all voting rights in domestic private banks was approved in a Cabinet meeting in December 2012 with an increase to 26%. This is to be put into effect through an official notice (and announcement of new guidelines) by the RBI, but no such notice had been issued as of February 2012. As for non-banks, foreign investment up to 100 percent is permitted in 18 sectors, including commercial banks such as designated merchant banks and home financing. However, minimum capital requirements are prescribed according to investment ratios. In this case, it is also required to follow the guidelines of the RBI.

The Japan-India Economic Partnership Agreement (EPA) entered into force in August 2011, and officially was signed it in February 2011. As an achievement in the financial field, Japan acquired special treatment. Specifically, India will give positive consideration to Japanese banks' applications for the establishment of up to 10 branches in four years, though there is a quantitative restriction stipulating that no more than 20 branches of foreign banks can be established annually within India. However, the authorities' approval for the establishment of branches is still taking a long time.

In November 2013, RBI announced measures to promote conversion of branches to subsidiaries by allowing foreign banks to receive administrative treatment similar to that given to domestic banks.

(b) Insurance

India had previously proposed that the ceiling on permissible foreign investments in insurance companies be raised from 26% to 49%. The bill was sent to the Parliament after being approved at a Cabinet meeting but it was not passed. Under the Modi administration, a bill with the same content was not passed by the Parliament, but a Presidential Decree to allow foreign investments of up to 49% was issued in December 2014. (However, the Presidential Decree needs to be approved by the Parliament within six weeks after the beginning of the next Parliament session).

(2) Distribution Services

With the relaxation of regulations concerning foreign investment of 2012, the upper limit on foreign capital investment for single-brand retailers was raised from 51% to 100% under certain conditions (enforced in January 2012). Additional regulatory relaxations took place at the same time with the subsequent relaxation of regulations on multi-brand retailers. Major conditions for the regulatory relaxation are as follows.

- Products must be single-brand.
- In cases where foreign capital is over 51%, retailers must make efforts to procure 30% on average of their goods from medium and small-scale domestic suppliers for five years after establishing a store.

In contrast, regulations on multi-brand retailers for which foreign entry was previously prohibited were relaxed to allow up to 51% of foreign capital investment (enforced in September 2012), and further relaxation was decided by the Cabinet in

August 2013). Major conditions for the regulatory relaxation are as follows, which practically impose entry barriers.

- Minimum investment is 100 million US dollars.
- A minimum of 50% of the invested amount shall be directed at infrastructure other than land purchase or rent (backend infrastructure such as manufacture, packaging, distribution, and storage, etc.) within three years of initial investment.
- 30% of products procured shall be from domestic small-size industries (with investment in buildings and facilities of 2 million US dollars or less). For the first five years, this can be achieved by the average of total product procurement, but it shall be achieved every year.
- Applies only to the states that have approved the relaxation of the restriction (as of December 2013, 11 states expressed their acceptance).

< Concerns >

Although the WTO Agreements contain no general rules on investment, the GATS disciplines service trade activities relating to investment in sectors in which commercial presence obligations are included in a Member's schedule of services commitments. The restrictions on foreign investment described above do not violate the WTO Agreements so long as the restrictions do not contravene India's GATS commitments. However, it is desirable that liberalization efforts be made in accordance with the spirit of the WTO and the GATS in mind.

<Recent developments>

Bharatiya Janata Party (BJP), which became the ruling party after the general election in May 2014, had expressed its position of being cautious about relaxing foreign investment regulations on general retail businesses after the election. After the establishment of the new administration, the Minister of Commerce and Industry again expressed opposition to the relaxation of foreign investment regulations on general retail businesses. No significant developments have since been observed. Japan will continue to monitor the trends of amended laws related to the reinforcement of restrictions on foreign investment and work on the relaxation of such restrictions through bilateral policy dialogues and WTO services negotiations.

PROTECTION OF INTELLECTUAL PROPERTY

Protection of Patents in Relation to Pharmaceuticals, etc.

<Outline of the measure>

Article 27.1 of the TRIPS Agreement stipulates that patents shall be available for any inventions, whether products or processes. However, a 10-year transition period was granted to developing countries which lacked patent systems that grant patents on pharmaceuticals and other chemicals, etc. (Article 65.4).

India did not maintain a system for product patents for pharmaceuticals (Patent

Act of 1970). In December 2004, nearing the end of the implementation term (expiration of transition period) of January 2005, the President of India decreed the Patents (Amendment) Ordinance of 2004 (Ordinance No. 7 of 2004), introducing a product patent system. Later, (the third) amended Patent Act of 2005 was deliberated, adopted in the Parliament, and was made public in April 2005. With the exception of some provisions, the amended law was retroactively enforced starting January of the same year. The main points of the reformed law of 2005 include: (1) introduction of a product patent system (Article 5 of the Indian Patent Act deleted); (2) introduction of the definition of pharmaceutical substances (Article 2(ta) of the Act); (3) eliminating the provisions (Articles 24:A through F of the Act) for exclusive marketing rights (EMR); (4) limiting the rights of patent rights holders and others involving mailbox applications (Article 11:A(7) of the Act); and (5) introduction of compulsory licenses for export of pharmaceutical products under certain exceptional situations (both manufacturing and export) (Article 92:A of the Act).

Since the enforcement of the revised Patent Act of 2005, pharmaceutical inventions have been granted patents. However, pharmaceutical inventions, which have been granted patents in major countries, are rejected in India unless Article 3(d) of the Patent Act is met.

In addition, recently, there are trends to make this mandatory. In March 2012, the Controller General of Patent Designs and Trademarks (CGPDTM) of India established a compulsory license for pharmaceutical patents owned by foreign pharmaceutical companies based on applications of domestic generic pharmaceutical companies. In May 2012, the foreign pharmaceutical companies filed an appeal to the Intellectual Property Appellate Board (IPAB) against the CGPDTM on this decision, but the requested provisional cessation was dismissed in March 2013. The foreign pharmaceutical companies appealed to the Mumbai High Court in May of the same year, but the appeal was dismissed in July 2014. They then filed a special leave petition to the Supreme Court, but it was rejected in December 2014.

<Problems under international rules >

It is highly appreciated that a product patent system was introduced and TRIPS obligations were implemented. However, Article 3(d) of the Indian Patent Act, which excludes “the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance” from items subject to patent as “not inventions”, establishes more severe patentability criteria for chemical substances and pharmaceuticals, and thus may be inconsistent with Article 27, Paragraph 1 of the TRIPS Agreement, which prohibits discrimination in technological sectors.

<Recent developments>

A revised version of the report (Mashelkar Report) of the Technical Expert Group on Patent Law Issues (chairman: Mr. Mashelkar), which is a committee established by the Indian Ministry of Commerce and Industry, was published in March 2009. The report draws no conclusion, stating that the group has not been granted the authority to examine consistency between Section 3(d) of the Indian Patent Act and the TRIPS

Agreement (Article 27) in relation to the abovementioned issue. In April 2013, the Supreme Court of India ruled that a patent should not be granted to the concerned patent application for anticancer drugs by foreign pharmaceutical companies in accordance with Article 3(d) of the Indian Patent Act. This was the first case in which the highest judicial organ in India gave its interpretation of Article 3(d) of the Indian Patent Act. It is necessary to pay close attention in the future to the practices of the product patent system, including decisions during patent examination and trials. The lack of clarity of the provision of Article 3(d) of the Indian Patent Act has also been pointed out to be a problem. Japan questioned the interpretation of Article 3(d) of the Indian Patent Act at the Trade Policy Review (TPR) of India meeting in October 2011.

Japanese industries also demanded improvements in transparency of the management of the compulsory license system. In order to deepen the understanding of the Indian system/administration of pharmaceutical patents, Japan held a round table on the theme of pharmaceutical patents in March 2015 and invited judges of the Supreme Court of India.

Japan will continue to pay attention also from the point of view of consistency with international rules such as the Paris Convention and the TRIPS Agreement.