Chapter 10

India

National Treatment

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;

1) 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)
2) 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;

1) 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
2) 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 in 2012) 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.

As of 2018 the Ministry of Electronics and Information Technology (MeitY (upgraded from DeitY in 2016() and DoT have designated 13 categories as the target.

On the other hand, in June 2017 the Department of Industrial Policy Promotion (DIPP) published (DIPP) Make in India Order. This is a system to provide a priority procurement in government procurement and public procurement to a supplier whose local content ratio is 50% or more (50% or more of domestically produced), being regarded as a local supplier. In September 2017, MeitY issued a notification that cyber security products will be added to the targets of this Directive. MeitY and DoT are said to be proceeding with an amendment to PMA by this Directive. Japan needs to pay attention to future amendments to PMA and the expansion of the scope of Make in India Order.

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 high at 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 70.5%. Unbound items with high tariffs include passenger cars (average applied tariff rate: 60%) and clothing (average applied tariff rate: 10%). 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>

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 (applied tariff rates), countervailing duties, (additional customs duties), the additional customs duty, and the education tax are collected by the customs authorities upon customs clearance. The total amount of these is at a higher level than the applied tariff rates that India usually presents at international negotiation venues such as WTO.

<Problems under International Rules>

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>

The Indian governmenr introduced Goods and Servie Tax (GST) on July 1, 2017 to unify indirect taxes suh as countervailing duties, the additional customs duty, value added tax and the central sales tax. As aresult, it was decided that the basic custom duty, educational tax, GST, GST additional tax (additional tax on high-quality goods and services) will be imposed on imported goods and services. On February 2, 2018, the education tax (3%) imposed on the basic customs duties were abolished, and instead, the social welfare surcharge (3% on crude oil and high-speed diesel oil, 10% on goods with some exceptions other than that oil) was introduced. The additional customs duty, together with value added tax and the central sales tax, was unified into GST and there will be no longer double taxation. Thus, it is expected that the additional customs duty will not violate GATT Article III. On the other hand, the social welfare surcharge that was introduced instead of the education tax may continue to violate GATT Article II as the education tax used to.

In addiiton, GST is supposed to be imposed on on crude oil, high-speed diesel oil, gasoline, natural gas, and aviation turbine fuel from the day of notice by the government. At present, the former countervailing duties, the additional customes duty, value added tax and the central sales tax continue to be imposed. For this reason, for these items, in additon to the social welfare surcharge in a violation of GATT Article II, the additional customs duty may continue to violate GATT Article II or Article III.

For instance, assuming the assessed value on imports (C.I.F. price and landing charges) is 100, the basic customs duty, the social welfare surchrge 10%, GST 12% and additional tax, the method of calculating total tariffs is given in the table below.

<Figure I-10> Method of Calculating Total Tariff Rates after Introducing GST (As of February 2018) (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 (a)	100 x 10%
Social Welfare Surcharge	10%	1 (b)	(a)×10%
GST*	12%	13.32 (c)	(100＋(a)＋(b))×12%
GST Additional Tax	10%	11.1 (d)	(100＋(a)＋(b))×10%
Total		135.42	100＋(a)＋(b)＋(c)＋(d)

(Source: prepared by the Ministry of Economy, Trade and Industry)
* GST tax rates are set at no tax, 5%, 12%, 18% and 28%, depending on goods and services.

Increase in Tariffs on IT Products

<Outline of the Measure>

Regarding some IT products (telecommunication equipment in HS8517.62.90 and 8517.69.90) that are classified as being exempt from tariffs in India's concession schedule under the WTO Agreement, the Indian government introduced measures to increase tariffs by 10% through an administrative notice in March 2016.

In April 2016, Japan, the EU and the US submitted a joint questionnaire regarding the Indian government's notice on its measures to increase tariffs on IT products. At the meetings of the WTO Committee on Market Access, the ITA Committee and the Council for Trade in Goods, Japan requested the Indian government to give a detailed explanation.

In response to the joint questionnaire submitted by Japan, the EU and the US, in November 2016, India answered that "those products have been developed with new technologies and are not subject to the scope of tariff elimination to which India committed under the ITA."

<Problems under International Rules>

In accordance with the ITA (the Ministerial Declaration on Trade in Information Technology Products) of 1996, India set bound tariff rates for relevant IT products at zero in its concession schedule under the WTO Agreement. In 2014, however, India issued a notice to revoke tariff exemption measures for four specific items such as IP telephones, which are classified in heading

8517. Even though telecommunication equipment that had been approved by the Indian government was excluded from the scope of the notice of 2014, the exclusion measures were revoked through the notice of 2016. In addition, its MFN customs tariff schedule of 2016 states that tariffs of 10% are to be imposed on HS8517.62.90 and 8517.69.90. This will be highly likely to violate GATT Article II, which provides that tariffs shall not be in excess of bound tariff rates.

<Recent Developments>

In July 2017, the tariff rates were raised to 10% for mobile phones, ink cartridges, etc. (other printing equipment of HS8443.3290, ink cartridge of 8443.9951 and 8443.9952, ink spray nozel of 8443.9953, mobile phones of 8517.1210 and 8517.1290, base station of 8517.6100, and parts of telephone and telecommunication equipment of 8517.7090).

In December 2017, India issued a notice stating that It will raise the tariff rates on IT products, including that on mobile phone (HS8517.1210 and 8517.1290) from 10% to 15%.

In addition to this, in February 2018, India raised tariff rates on mobile phone from 15% to 20%, on LCD for TV from 7.5% to 15% as well as on food, perfume, automobile parts, footwear, jewlry, watches, toys, etc.

Some of these targeted products for raising the tariff rate clearly violate GATT Article II. For instance, India raised applid tariff rates even though mobile phones (HS8517.1210 and 8517.1290), parts of telephone and telecommunication equipment (HS8517.7090) and base station (HS8517.6100) are cllasified as being exempt from tariffs at six-digit HS code in India's consession schedule.

At the meetings of the WTO Committee on Market Access, the ITA Committee, the Council for Trade in Goods, as well as from the Japanese embassy, Japan has repeatedly expressed its concern about this case and requested the Indian government to give a detailed explanation and withdraw the tariff measures as soon as possible. The Indian government, however, has only repeated the afore-mentioned reply without any improvement. Japan will continue to cooperate with the US and the EU that have the same concern in requesting India to withdraw the tariff measures as earlier as possible.

Anti-Dumping Measures

(1) AD Measures on Japanese Hot-Rolled Steel Sheets and Thick Plates; AD Measures on Japanese Cold-Rolled Steel Sheets

<Outline of the Measure>

In April 2016, the Indian government initiated an AD investigation into hot-rolled coils and hot-rolled thick plates from China, Japan, Russia, the Republic of Korea, Brazil and Indonesia, and cold-rolled steel sheets from China, Japan, the Republic of Korea and Ukraine. In May 2017, the Indian government made the final decision for each investigation.

<Problems under International Rules>

Items (hot-rolled coils and hot-rolled thick plates and cold-rolled steel sheets) subject to each of the investigations included a wide range of products with a variety of physical properties, intended uses, price ranges, etc. In the Indian authorities' decision, when determining injury, the Indian authorities did not specifically take into account which of the wide variety of products under investigation affected domestic like products in volume or price terms. This poses a question about consistency with the AD Agreement.

In addition, the Indian authorities' decision stated that a reference price shall be set and the difference between the reference price and the export price of an item subject to the investigation shall be imposed as AD duties. However, a basis for calculation of the reference price has not been disclosed, and it is also unclear whether it is ensured that the amount of provisional AD duties actually imposed does not exceed a margin of dumping for each exporter or producer. This poses a question about consistency with the AD Agreement.

<Recent Developments>

The Japanese government participated in public hearings held by the Indian authorities in October 2016 and January 2017, and pointed out that the investigation may violate the international rules mentioned above, and requested the Indian government to conduct careful investigations. At meetings of the AD Committee held in October 2016 and April 2017, Japan pointed out the problems mentioned above in "Problems under International Rules." Nevertheless, it is a problem that the final decision of the investigation was made without resolving the concerns about inconsistency with the WTO Agreement. Japan will continue to closely monitor India's operation of the AD system.

(2) AD Measures on Japanese Resorcinol

<Outline of the Measure>

In October 2016, the Indian government initiated an AD investigation into resorcinol from Japan and China. In January 2018, the Indian government made the final decision to impose AD duties.

<Problems under International Rules>

In this investigation, a base for calculation of dumping margins was unclear, which may violate the AD Agreement. In addition, the investigation may violate the AD Agreement from the viewpoint of determining injury because; a base for cumulative evaluation with Chinese products has not been indicated, a reasonable basis for price effect has not been indicated, analysis of impact of subject imports on its domestic industry is insufficient, and factors other than dumped imports for injury of the domestic industry has not been analyzed properly. Moreover, the party who requested the investigation did not provide a non-confidential summary of some important information, and such information has been treated as confidential. Sufficient time was not secured for stakeholders to provide their opinions on the disclosure of important facts. These are also problems from the viewpoint of due process.

<Recent Developments>

In February and December 2017, the Japanese government submitted a written statement to the Indian government and pointed out the problems mentioned above in "Problems under International Rules." Japan will continue to closely monitor the operation of the AD system by the Indian government.

Subsidies

National Food Security Act

Please see pages 163-164 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Safeguards

Safeguard Measure on Hot-Rolled Flat Products

<Outline of the Measure>

The Indian government initiated a safeguard investigation of hot-rolled flat products on September 7, 2015. On September 9, 2015, the government decided to impose provisional safeguard measures, and started to impose the provisional safeguard measures on September 14, 2015. The provisional safeguard measures for a period is said not to exceed 200 days.

On March 15, 2016, the Director General of Safeguards of the India, Ministry of Commerce and Trade published a final report finding an increase in imports of hot-rolled flat products, and threat of serious injury to the domestic industry. In response, the Indian Ministry of Finance published a notice in the official gazette on March 29, 2016 to the effect that the safeguard measures would be imposed for two years and six months from the commencement of the provisional measures.

<Problems under International Rules>

The increased import of products subject to the measure must be "as a result of … the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions" as prescribed in Article XIX: 1(a) of GATT. However, while India's final report describes that the India's bound rate under GATT is 40%, it does not appropriately find that the imports have increased as a result of the effect of India's obligations under GATT.

Japan and India concluded the Japan-India Comprehensive Economic Partnership Agreement (Japan-India CEPA), under which tariffs on the relevant items have been reduced. However, the tariff concession obligation under the Japan-India CEPA is not the above-mentioned obligation incurred under GATT as prescribed in Article XIX: 1(a) of GATT. Therefore, increased imports that have occurred as a result of the effect of the tariff concession under the Japan-India CEPA should not be taken into account in an investigation for imposing safeguard measures under the WTO Agreement.

Furthermore, India's investigation report finds facts such as the excess of capacity of steel products in China and increased demand in India to be unforeseen developments as prescribed in Article XIX: 1(a) of GATT. However, the excess of production capacity falls under the scope of anticipation as such excess results from a mere change of supply and demand. In addition, such "unforeseen developments" are interpreted as developments that create a change in the competitive relationship between domestic and imported goods to the detriment of domestic goods only. However, the described facts triggered by excess production capacity does not detrimentally affect only to the domestically produced goods. Thus, Japan believes the circumstances explained in the report do not meet the "unforeseen developments" criteria under Article XIX: 1(a) of the GATT.

As above, the Indian authority has not appropriately determined the above-mentioned requirement for the imposition of safeguard measures, so the measure may be inconsistent with the WTO Agreements including Article XIX: 1(a) of GATT.

<Recent Developments>

Since the investigation was initiated in September 2015, Japan has submitted written comments, participated in public hearings and taken other opportunities to point out that the measures taken by India may violate the WTO Agreement. However, since progress for revoking the measure was not evident, Japan requested consultations with India based on the WTO Agreement in December 2016. Based on the results of the consultations, Japan requested WTO to conduct a panel hearing on March 9, 2017 and the panelwas established on April 3, 2017.

Japan will proceed with necessary procedures subject to the WTO rules so that the case will be resolved in an appropriate manner.

Standards and Conformity Assessment Systems

(1) Technical Regulations for Steel Products

<Outline of the Measure>

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.

In March 2012, the Indian government published in its official gazette the Steel and Steel Products (Quality Control) Second Order for thick plates, semi-finished steel products for general structure, liner rods, non-oriented electromagnetic steel sheets, and oriented electromagnetic steel sheets. Technical regulations were enforced in September 2012, March and October 2013, April, July, October 2014, and April 2016. In December 2015, the Indian government published in its official gazette the Steel and Steel Products Order 2015 for cold-rolled steel sheets, hot-rolled steel sheets, semi-finished steel products, etc. and technical regulations were enforced in March and December 2016.

<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 of final products; 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 June 2016, the Indian government published Order 2016 in an official gazette to introduce technical regulations on three kinds of stainless steel products and the Order entered into force in February 2017. In April 2017, it was published that the standards would be partially revised and the existing standards would be abolished in October 2017. However, since the period until the enforcement was very short, the enforcement date was postponed to April 2018. Regarding this case, Japan Stainless Steel Association submitted a written request to the Ministry of Steel, requesting an early consideration of change in evaluation procedures, its subsequent extension of the existing measures, and the extension of enforcement of the new standards.

For the standards of four kinds of ordinary steel products (cold-rolled steel sheets and hot-rolled steel sheets) in the Steel and Steel Product Order 2015 enforced in December 2016, the Indian government issued a public notice of revision of the standards in December 2016 and May 2017, stating the existing standards would be abolished in June and November 2017 respectively. Since no consideration was made for evaluation procedure like stainless products, the Japan Iron and Steel Federation submitted a written request to postpone the enforcement of the measure and the enforcement dates were postponed to March, May and June 2018.

In October 2017 the Indian government published in an official gazette the Steel and Steel Products (Quality Control) Order 2017 for three kinds of steel products of high-carbon steel wire rods and colored steel sheets to be enforced in January 2018. In addition, in November 2017, the Indian government started seeking public comments on the establishment of technical regulations on 19 kinds of steel products by the Steel and Steel Products Second Order 2017. The Japan Iron and Steel Federation, Special Steel Association of Japan, and Japan Wire Products Association submitted a written request to postpone the enforcement date.

Japan needs to continue to pay attention to the management of the system and have bilateral dialogues.

(2) Technical Regulations for Automobile Tires

<Outline of the Measure>

In November 2009, the Indian government announced technical regulations on automobile tires and they were enforced in 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 marking fee is calculated based on the number of tires marked with BIS marks, which means that the fee must be paid also for tires sold outside of India as long as they have the BIS mark affixed to them. Moreover, the frequency of conformity of production tests for products related to BIS certification was drastically changed in March and November 2015, and Japan is concerned that the frequency of tests has become more than eight times higher than before depending on the item or the quantity involved.

<Problems under International Rules>

Under this system, the marking fee also must be paid for tires sold outside of India, but no reasonable explanation for the 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 calculations for the marking fee at the TBT Committee. Japan will continue to request improvements in these regulations in cooperation with other countries that have similar concerns. Additionally as for the frequency of conformity of production tests, a notice regarding a significant increase in the frequency of tests was issued in March 2015. Subsequently, comments from the business community were submitted to the BIS, and Japan continuously requested improvements at meetings of the TBT Committee. As a result, a new notice was issued in July 2016 and the initially scheduled increase in the frequency of tests was reduced to approximately one-sixth.

Japan will continue to request improvements in these regulations in cooperation with other countries that have similar concerns to the above ones, while utilizing dialogues between authorities and the business community.

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

<Outline of the Measure>

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 its enforcement was delayed until April 2016, and repeatedly delayed to April 2017 and April 2018. Other than this, details of the measure, including product coverage and security requirements, are still 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 the Measure>

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.

In November 2014, the Indian government published official gazette stating that it will newly make 15 items subject to the system. This measure was planned to become effective in May 2015, but was postponed for eight of the items. This regulation was fully enforced in June 2016. 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 qualification suspension or insufficient 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 delayed.

<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>

There have been frequent s of the qualification of many institutions as designated testing institutions has been questioned, resulting in prolonged inspection periods and increase in cost caused by replacing testing institutions and resubmission of the samples and documents.

In August 2017, the Indian government published that TV/monitor up to 32 inches, CCTV etc., and 13 other items would be subject to the system. Registration of these items will be obligated from February 2018, six months after the publication. The updated IS 616 standards for AV equipment require not only registration of new models but also re-testing and registration of renewal of registered models. However, due to the delay of designating testing institutions regarding testing new items, it is expected that a practical transitional period would be further shortened. Moreover, due to the concentration of many applications for updating of standards with designated testing institutions, there is concern that the registration of additional 13 items may not be completed by the deadline of February 2018.

Since a drastic solution is required to add new items subject to the system and set a transitional period for revising technical standards, Japan will continue to request the Indian government to improve the system.

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, through PPP, 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 50,000m2 to 20,000m2.

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

(1) Financial Services

(a) Banks

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%. As for non-banks, foreign investment up to 100 percent was permitted in 18 sectors, including commercial banks such as designated merchant banks and home financing. Since October 2016, the scope of sectors has been expanded to include “other financial services.” 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. 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

In the field of insurance, a bill proposing to raise the ceiling on permissible foreign investments in insurance companies from 26% to 49% was approved at a Cabinet meeting in July 2014 after the Modi administration came into office. Since the bill was not deliberated at the budget session or the winter session of Parliament in 2014 due to opposition by the opposition parties, the government issued a Presidential Decree at the end of December of the same year as a provisional measure to raise the foreign investment ratio. In March 2015, a bill for amending insurance laws passed the Parliament, and foreign investments of up to 49% became allowed.

(2) Distributions 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, villages, etc., for five years after establishing a store.

Furthermore, as for products that are developed with state-of-the-art or cutting-edge technologies and cannot be procured domestically in India, retailers are to be exempted from the above goal for three years after the first branch store is opened; the exemption is to cease in the fourth year and is scheduled to be enforced in June 2016.

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. 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. Although developments relating to relaxing the above regulations were observed in June and October 2016, Japan will continue to monitor the trends of amended laws related to the reinforcement of restrictions on foreign investment and will work on the relaxation of such restrictions through bilateral policy dialogues and other occasions.

Protection of Intellectual Property

Protection of Patents in Relation to Pharmaceuticals, etc.

<Outline of the Measure>

Please see pages 169-170 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

<Problems under International Rules>

Please see page 170 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

<Recent Developments>

Japanese industries demanded improvements in transparency of the management of the compulsory license system. Japan will continue to pay attention from the point of view of consistency with international rules such as the Paris Convention and the TRIPS Agreement. For the past background of others, please see page 170 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-