Chapter 3

ASEAN

1. Thailand

TARIFFS

Tariff Structure

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

<Outline of the Measure>

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

However, average applied tariff rates still remained high 7.7 % in 2015, especially for clothing (average 29.6%) and transport equipment (average 19.9%). There are high tariff items such as automobiles (maximum 80%), washing machines and refrigerators (maximum 30%) etc. In contrast, the simple average bound tariff rate for non-agricultural products was 25.6%. The binding coverage is relatively low: 25.2% for transport equipment and 71.4% as a whole for non-agricultural products. Unbound items include automobile parts (maximum applied tariff rate of 30%) and bicycles (applied tariff rate of 30%).

<Concerns>

High tariff rates themselves do not, per se, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic efficiency, it is desirable to reduce tariffs to their lowest possible rate, while eliminating the tariff peaks (see “Tariff Rates” in 1. of Chapter 5, Part II) described above.

Low binding ratio and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower are not a problem under WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates, it is desirable that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

With the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items is planned to be completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 54 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for Thailand, elimination of tariffs on the subject items started in July 2016. For example, high tariff items for which tariffs are to be eliminated by Thailand include static converters (35%), parts for electric control panels and others (35%), ink cartridges (30%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Meanwhile, the MFN tariff rate (Section 12 of the Thai Customs Tariff Decree [General Rate]) was drastically changed by Notification No.0518/Wor 982 of the Ministry of Finance on January 5, 2015. This change was a result of putting into effect the commitment made in the WTO Uruguay Round (January 10, 2012). The notification was applied retroactively to transactions from January 1, 2015.

Previously, the Thai government had applied the advance ruling system only to customs tariff classification, but it expanded the application to customs valuation on March 3, 2015 (Notification 38/2558) and determinations of origin on March 11 of the same year (Notification 40/2558). The Thai government promises to issue the ruling within 30 official days. The ruling is effective for two years.

From January 1, 2015, Thailand improved market access for least-developed countries (LDCs), such as eliminating export duties and quotas for 6,998 items.

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

Standards and Conformity Assessment

Technical Regulations for Steel Products

Please see page 69 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Trade in Services

Foreign Investment Restrictions, etc.

<Outline of the Measure>

Pursuant to the Foreign Business Act (revised in 1999 and entered into force in March 2000), Thailand divides businesses under restrictions into 43 types of businesses in three categories, and restricts entry of foreign companies (judicial persons of which 50% or more of capital is possessed by foreigners) into these types of businesses. Almost all service businesses are subject to the restrictions, including engineering and various retail businesses. The types of businesses in which foreign companies can enter are limited to trade in intermediary services, wholesale and retail businesses, and construction businesses over a certain size, and therefore, thus it is very difficult for foreign companies to run service businesses in Thailand.

Major restrictions on foreign investment are as shown in the <Figure I-3-2>.

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

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

<Problems under International Rules>

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

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

<Recent Developments>

In the Japan-Thailand EPA, signed in April 2007, Thailand pledged to make improvements, including the foreign capital ratio, with regard to wholesale and retail services, repair and maintenance services, logistics and consulting, advertising services, hotel and lodging services, restaurant services, maritime transport agency services, and cargo handling services. In recent years, Japanese service industries led by the food and drink sector have actively made inroads into the Thai market, including tourism and retailing. Japan is requesting relaxation of the foreign investment restrictions, through bilateral dialogues and EPA follow-up meetings.

Meanwhile, in response to instances of indirect investment made possible by interposing a Thai-owned company for a foreign-owned company, the Commerce Department is moving toward strict application of investment regulations to foreign-owned companies and of the sectors for which foreign equity investment is restricted. There had been rumors of problems with the revisions to the “Foreign Business Act” from 2006 to 2007, following which the revised bill was withdrawn after being opposed by the majority in a ruling by the Legislative Council. In a Cabinet decision of July 2016, it was approved that business related to commercial bank activities, asset management business, establishment of liaison offices, etc. were excluded from the scope of application of the Foreign Business Act. In June 2017, “Designation of service business for a foreign person without obtaining approval from the authorities” became effective and the establishment of liaison offices was excluded from the scope of the Foreign Business Act. Japan has been paying close attention to legal revisions related to strengthening the system for foreign capital, and has communicated its concerns to the government through the Japanese Embassy in Thailand. For the future, careful scrutiny of developments with these legal revisions and the effect on Japanese companies entering the country is required.

<Figure I-3-2> Major restrictions on foreign investment

Sector	Outline of Regulations
Banking	The foreign investment ratio and foreign executive ratio in the banking sector are limited to 25% or less in principle. In November 2009, a Five-Year Plan for the period from 2010 to 2014 (Financial Sector Master Plan Phase II) was approved at an economic ministers’ meeting. In 2013, it was decided to open the market to foreign banks for a certain period of time. To date the Thai government decided to license two foreign banks to open a subsidiary based on the Plan. If a branch office becomes a subsidiary, it will be able to open up to 20 branch offices under certain conditions, etc.
Insurance	In February 2008, while the foreign investment ratio and the ratio of foreign executives in the field of insurance are restricted to 25% or less, regulations were established to set forth exceptions where up to 49% of foreign investment is allowed on the condition of obtaining permission from the authorities and more than 49% of foreign investment is possible on the condition of obtaining approval from the Ministry of Finance.
Telecommunication Services	The Telecommunications Business Act that changed the limitation of foreign equity ratios from 49% to 25% was put into effect in 2001. The law was revised in January 2006 in accordance with planned liberalization in the telecommunications sector in 2006 as committed in the GATS, and upper limits on the foreign investment ratios were eased to less than 50%. Foreign investment has been progressing, as equities of Shin Corporation were sold to Singapore on the business day after the deregulation was implemented. However, with this purchase, controlling rights effectively moved to a foreign-owned operator through its voting rights percentage.

Sector	Outline of Regulations
	Therefore, the Thai Government regarded this move as a bypass of foreign investment regulations, marking the start of an amendment of the Foreign Business Act mentioned later. The National Broadcasting and Telecommunications Commission (NBTC) was established in 2011 to supervise communications and broadcasting businesses in an integrated manner. In 2012, NBTC released a notification providing concrete cases that fall under “business control by foreigners”. This notification requires telecommunications business operators to regularly report the situations of business control by foreigners.
Distribution Services	Foreign investment was allowed in cases of retail services whose minimum capital is 100 million baht or more, and where the minimum capital of each store is 20 million baht or more; and in cases of wholesale services whose minimum capital is 100 million baht or more. In cases that do not meet these conditions, foreign equity ratios are limited to less than 50%, as is the case for other services. In addition, “food and drink sales services” are also under restriction. Foreign investment in retail services dealing with food such as supermarkets is restricted to less than 50%.

2. Viet Nam

Safeguards

Safeguard Measures against Semi-Finished and Certain Finished Products of Alloy and non-Alloy Steel and Anti-Circumvention Investigation

Please see page 135 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA for Safe Guard measures against semi-finished steel products and alloy steel.

The following is on the anti-circumvention investigation.

<Outline of the Measure>

On July 26, 2018, Viet Nam's Minister of Commerce announced the initiation of anti-circumvention investigation for wire rods and steel wire, in the official gazette. The products subject to this investigation, the increase of imports of which constitutes the reason for the initiation of the investigation, include secondary-processed products from the products subject to the original investigation (billet, steel/wire rods).

<Problems under International Rules>

The Vietnamese government established a new domestic law that enables anti-circumvention measures to be applied to all trade remedial actions including safeguards for avoidance of circumvention, and then initiated this anti-circumvention investigation. However, neither the establishment of the domestic law nor this anti-circumvention investigation has been notified to the WTO.

A safeguard measure may be imposed “only following an investigation by the competent authorities” (Article 3.1 of the Agreement on Safeguards). If this is a new safeguard measure, it requires to individually meet all the prerequisites for imposing safeguards. If this is a review of the product coverage of the original investigation, the prerequisites must be met in combination with the original safeguard measure.

Moreover, the products subject to this anti-circumvention investigation include products that had been excluded in the original safeguard measure and products which not been manufactured in Viet Nam (and thus there is no competition with imported products). These products do not cause injury to the domestic industry and then one of the prerequisites of safeguard measures is not satisfied (Article

XIX:1 (a) of GATT).

<Recent Developments>
Japan has expressed its concerns to the Vietnamese government regarding the above issues under international rules. We will continue to collect information and put pressure on the Vietnamese government, in order to reduce the negative impacts on Japanese products.

Standards and Conformity Assessment

(1) Cyber Security Law

For issues on “Trade in Services” in this Bill, please see Page 73.

<Outline of the Measure>
In January 2019, Viet Nam enacted the Cyber Security Law. This law includes provisions that obligate foreign companies in Viet Nam to establish a representative office in Viet Nam, to preserve personal information and important data in Viet Nam and to ensure security of information systems. This may hamper the free flow of information and participation of foreign companies in Viet Nam’s market.

<Problems under International Rules>
Although technical requirements for ensuring information security stipulated in this law and attached Decree, and the specific details of the examination criteria are unclear, if the details lack objectivity and transparency and impose a heavier burden on foreign companies than necessary, they may violate Article 2.2 of TBT Agreement.

<Recent Developments>
Japan submitted comments on the public comments for this law held in August 2017 and the public comments for the Decree in October 2018, and has expressed concerns at the WTO service trade board and the WTO-TBT Committee, with other countries such as the U.S. This law took effect in January 2019. Japan will continue to follow trends in Viet Nam and encourage the Vietnamese government to improve the law at bilateral consultations and international conferences like the WTO.

(2) Imported Vehicle Certification System

<Outline of the Measure>
On October 17, 2017, the Vietnamese government promulgated a Decree No.116 (116/2017/ND-CP) that stipulates conditions on automobile production, assembly, import, guarantee and maintenance services, and enforced it on January 1, 2018. In addition, Circular No.3 (02/2018/TT-BGTVT), the implementation rules of the Decree No. 116 was promulgated on January 24, 2018 and enacted on March 1, 2018. With these regulations, the Vietnamese government decided to impose strict requirements on automobiles imported into Viet Nam. Specifically, to import automobiles into Viet Nam, importers are obligated to submit a type certification issued by the foreign authorities to the Vietnamese authorities and have Vietnamese authorities’ exhaust gas inspection and safe quality inspection by model for each import lot (a vessel). With regard to the former requirement, a type certification is normally issued for an automobile used in each country based on the each country’s safety standards and environmental standards.

Very few countries in the world have the system to issue a type certification for automobiles for export. In this regard, there is concern that it is difficult to actually obtain a “type certification issued by foreign authorities.” With regard to the latter requirement, such inspections are expected to take a long time for each import lot. Thus there is also concern that a period until manufacturers can sell automobiles in Viet Nam’s market will be prolonged.

<Problems under International Rules>

i) Obtaining a type certification issued by foreign authorities

All automobiles used in Viet Nam, regardless of domestically manufactured or imported, require a "type certificate issued by the Vietnamese authorities." However, the Decree No. 116 imposed on only imported automobiles an additional obligation to obtain a "type certification issued by foreign authorities." Furthermore, very few countries in the world have the system to issue a type certification for automobiles for export. Accordingly, imported automobiles are required two kinds of type certification. Since it is difficult to obtain a type certification issued by foreign authorities, imported automobiles are disadvantaged compared to domestic automobiles, which may violate Article 2.1 of TBT Agreement. The Vietnamese government explains that the objectives of this system are to protect consumers and environments. Since it is considered that these objectives can be achieved by conforming to the Vietnamese domestic safety standards and environmental standards, it may be questioned if it is within the necessary extent to request an additional type certification issued by foreign authorities for only imported automobiles to achieve the legitimate objectives. This may also violate Article 2.2 of TBT Agreement.

ii) Inspection for each import lot (a vessel)

Automobiles used in Viet Nam are required to conform to the domestic exhaust gas standards and safety standards. The conformity to these standards used to be confirmed by submitting materials of quality assurance for new automobile issued by the manufacturer for both domestic and imported automobiles. However, the Decree No. 116 imposed on imported automobiles for each import lot (a vessel) obligations to have an exhaust gas inspection and a safety inspection by model conducted by the Vietnamese authorities. On the other hand, for domestic automobiles, it is said that the results of one inspection is effective for 36 months though the specific inspection time is unclear. Thus the frequency of inspection of only imported automobiles has significantly increased. If they are disadvantaged compared to domestic automobiles, it may violate Article 5.1.1 of TBT Agreement.

<Recent Developments>

Since October 2017 when the Decree No. 116 was signed, the Japanese government has been taking actions, including issuing a note verbatim from the Japanese Embassy in Viet Nam, expressing concerns at the WTO TBT Committee and the WTO Council for Trade in Goods, and conveying concerns by the Minister of Economy, Trade and Industry to the Vietnamese Minister of Industry and Trade. Furthermore, Japanese industries are working on officials of the Vietnamese government through Japanese Commercial and Industrial Associations in Viet Nam. Although the Vietnamese government published Circular No.3, the implementation rules of the Decree No. 116 in late January 2018, most of the details of required type certification are indefinite and companies have difficulty in dealing with this. The impact is that the export of Japanese automobiles to Viet Nam has been suspended since January 2018. While exports to Viet Nam resumed from October 2018 with operations, going forward, this may cause serious damages to businesses of Japanese companies. Japan will continue to make high-level approaches and request the Vietnamese government to eliminate or improve these regulations at bilateral and multilateral talks.

Trade in Services

(1) Cyber Security Law

* For issues on "Standards and Conformity Assessment" in this bill, please see page 72. <Outline of the Measure>

<Outline of the Measure>

In June 2018 the Cyber Security Law was established. This law includes provisions that obligate foreign companies in Viet Nam to establish a branch or representative office in Viet Nam, to preserve personal information and important data in Viet Nam, which depending on the details of the information, may block the free flow of information and discourage foreign companies to enter the Vietnamese market. Furthermore, the council proposal regarding implementation of Cyber Security was announced in November of the same year, and public comments were collected.

<Problems under International Rules>

In the bill, when foreign corporations provide electronic communication or internet services a branch or representative office must be established in Viet Nam and the bill includes provisions obligating domestic management of Vietnamese user information.

Generally, it is presumed that foreign companies centrally manage information outside Viet Nam. These obligations may impose additional burden on foreign companies when they establish a branch or representative office in Viet Nam and save data within the country. Viet Nam has committed to liberalize or partially liberalize various service fields based on GATS, including computer-related services and telecommunication services.

In these fields, if a foreign business operator is treated actually less favourably than Vietnamese business operators, it may violate the national treatment obligation in Article 17 of GATS.

Furthermore, in the government agreement related to executing the Cyber Security Law, the topics that are subject to this obligation are limited, but those operations must continue to be monitored carefully.

<Recent Developments>

At the meeting of the Board of Directors of WTO Trade in Services in October 2017, Japan and the United States jointly registered this case as an issue and expressed concerns on the above problems. After that, concern was also expressed at the Board of Directors of WTO Trade in Services in March, May, October and December 2018. Japan will continue to closely watch movements in drawing up a bill concerning the Law in the future too and will make a request that foreign companies do not receive unfavourable treatment, in coordination with relevant countries.

3. Indonesia

National Treatment

(1) Local Content Requirement on Retail Services

<Outline of the Measure>

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

Furthermore, in December 2013, the Ministry of Trade of Indonesia issued “Regulation of the Minister of Trade No. 70 of 2013 on Guidelines for Structuring and Development of Traditional Markets, Shopping Centers and Modern Stores” with the aim of optimizing the structuring and development of traditional markets, shopping centers and modern stores (minimarkets, supermarkets, department stores, hypermarkets, stores that sell goods in wholesale style) (effective as of June 2014). This Regulation included a measure providing that “shopping centers and modern stores have an obligation to provide at least 80% of the total amount of and types of goods that are sold” (Article 22 of the Regulation). This Regulation was partly revised by the “Regulation of the Minister of Trade No. 56 of 2014” to clearly state that the above-mentioned obligations were not applicable to modern stores in the form of stand-alone-brands that handle global supply-chain-sourced products requiring uniform production, etc. Shopping centers and modern stores violating the measure are subject to administrative penalties, including written warning and suspension or revocation of business licenses, etc. (Article 38 of the Regulation).

<Problems under International Rules>

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

<Recent Developments>

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

(2) Measures of Income Tax Prepay System at time of Import and Increased Tax Rate

<Outline of the Measures>

Based on Article 22 of the Income Tax Law (2008 Act 36), Indonesia collects prepaid income tax of 2.5%, 7.5%, or 10% of the import amount for applicable products from the importer at the time of passing customs (abbreviated as PPh22 based on the article number), then the taxable amount is calculated at the end of the year and the overpaid amount is to be refunded. Products subject to the tax are consumer goods. Subject items and the prepaid tax rate thereof is determined under the order of the Ministry of Finance, considering the availability of domestic goods and domestic industry developments.

Regarding this system, Indonesia has increased the prepaid tax rate multiple times. Specifically, in 2013 the rate was raised from 2.5% to 7.5% for 502 items, and in 2015 it was raised from 7.5% to 10% for 240 items. Furthermore, in September 2018, for 1147 items, the prepaid tax rate was increased from 7.5% to 10% for (1) Luxury items such as complete vehicles, (2) Consumer goods that can be domestically manufactured, such as electronics, and (3) Goods used in the consumption process such as building materials and tires. The Indonesian Minister of Finance explained that the increase of rates in 2018 was to manage imports and encourage using domestic products as a rupiah safety measure.

The prepaid income tax at the time of import puts a financial burden of interest rates on the importer and worsens cash flow. Furthermore, there have been cases in which the tax bureau has unfairly reduced the refund amount. There is concern that the adverse effect may be worsened due to the increase in prepaid tax rate for many goods.

<Problems under International Rules>

The system of prepaying income tax at the time of import could be considered being inconsistent with national treatment principle with regard to internal tax or domestic regulations (GATT Article 3, Paragraphs 2 or 4) since the procedural burden and the disadvantage on cash flow to bear interests is only imposed to imports, compared to domestic products for which there is no comparable regulations.

Furthermore, while the internal taxes under GATT Article 3, Paragraph 2 are taxes the payment obligation for which occurs based on the domestic incidents (such as distribution, sale, use or transport of imports in the importing country), the prepaying income tax at issue may be interpreted as an import tax/import duty rather than an internal tax, as this tax is imposed on the import amount of imported goods and thus it is imposed because of the act of import, rather than a domestic incident. If this tax can be characterized as an import tax/import duty, then depending on product category and whether the import tax is included on Indonesia's schedule of tariff concessions, there is a possibility that the measure is inconsistent with an agreement concerning import tax (GATT Article 2, Paragraph 1(b)).

Furthermore, the possibility of justification under GATT Article 20 (d) (the purpose of securing compliance with domestic laws and regulations) (note: in case of the aforementioned measure, the domestic laws and regulations regarding tax system are the issue) is low. This is because it is difficult to admit circumstances in which, for ensuring tax collection, it is more difficult to impose tax on revenues of import products than it is to impose tax on revenues of domestic products, and thus this difference in handling domestically manufactured and imported products cannot be explained.

<Recent Developments>

In August 2018, after the Minister of Finance announced that the prepaid tax rate would be increased, Japan applied pressure to Indonesian government (including the Minister of Finance) to reconsider and to exclude intermediary goods, etc., through the Japanese Embassy in Indonesia. Currently, goods subject to this system are restricted to consumer materials, but these measures need to be monitored closely to make sure that the scope is not enlarged.

Quantitative Restrictions

(1) Quantitative Import Restrictions (Rice, Salt, and Used Capital Goods)

<Outline of the Measure>

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

Regulations on the import of used capital goods were introduced in 2003 to protect Indonesia’s manufacturing industry. However, after that, decisions for continuation were made every one to three years.

<Problems under International Rules>

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

<Recent Developments>

Particular types of used automobiles were formally permitted to be imported. Nevertheless, importation of all used automobiles has been prohibited since March 2007.

Additionally, in December 2015, under the Minister of Trade order No. 127 it was determined that the importation of used capital goods should be permitted only for three types of companies (companies that directly use the goods, repair companies and re-assembly companies), and the types of used capital goods that are permitted to be imported vary depending on the types of companies (this order continues to be effective until the end of December of 2018).

With regard to salt, a procedure was promulgated at the end of December 2015 based on the Minister of Trade order No. 125 (effective as of April 1, 2016) whereby a company intending to import industrial salt must submit the expected annual import volume to the Ministry of Industry; and based on approval at a meeting held by the Coordinating Minister for Maritime Affairs, the company must file an import application with the Ministry of Trade and actually import salt.

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

(2) Import Restriction (Compulsory Registration by Importers of Steel Products)

<Outline of the Measure>

With regard to steel products, a registration system for importers of non-alloy steel was established and pre-loading inspections at the place of export were made mandatory in accordance with Minister of Trade orders (No. 54 of 2010 and No. 113 of 2015). Furthermore, with regard to alloy steel, the Minister of Trade order (No. 28 of 2014) also requires that pre-loading inspections and quotas control be implemented. In line with expiration of the two above regulations at the end of December of 2016, the Indonesian government reviewed the content of the regulations and introduced a new regulation in December 2016. The new regulation has the same regulatory content as the previous ones but has expanded the scope of application to include secondary steel products.

With Minister of Trade order No. 22 implemented in February 2018, the customs procedure was simplified by allowing a self-declaration as well as online forms after passing the customs, not requiring obtaining the technical report from the Minister of Industry for import licence. However, in Minister of Trade order No. 110 (announced December 2018 and executed February 2019), certain procedures were introduced again in which it is required to obtain the technical report from the Minister of Industry and to check some actual products after passing customs was required.

<Problems under International Rules>

Cases, such as where compulsory registration of importers under the Minister of Trade’s order or other requirements cause a significant delay in import permission procedures, or where import quotas are set with an automatic import permission system adopted, may be inconsistent with the Agreement on Import Licensing Procedures. Because the modes of imports are limited to those by registered companies, the above cases may also be inconsistent with the general elimination of quantitative limitations in GATT Article XI.

<Recent Developments>

Import licensing procedures for steel products from Japan to Indonesia are behind schedule due to the introduction of the new regulation. As such, through the local embassy or other channels, Japan requested the Indonesian government to ensure smooth importation procedures.

(3) Export Restrictions on Logs and Lumber Products

<Outline of the Measure>

In April 1998, the Indonesian Government, under an IMF agreement, announced that it would switch from applying a specific duty on the export of logs and lumber products (calculated according to volume) to applying an ad valorem duty (calculated according to price). Indonesia reduced the export duty to 30 percent in April 1998, to 20 percent in March 1999, and to 15 percent in December 1999. It also issued export regulations, including export quotas for logs and lumber products.

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

<Problems under International Rules>

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

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

<Recent Developments>

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

(4) Export Restrictions on Mineral Resources and Local Content Issue

<Outline of the Measure>

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

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

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

(2) Control on production and exportation

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

(3) Local content requirement

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

(4) Obligation to give priority to domestic supply

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

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

In January 2014, a ministerial order providing an obligation to increase the added value was revised just before the enforcement of export prohibition of raw minerals. The enforcement of export prohibition on some mineral concentrates (raw materials with the purity being raised to a certain level, such as copper concentrates) was postponed until January 2017 and at the same time an export duty was introduced for such mineral concentrates. Exports of other raw minerals, however, were prohibited from January 2014 onward. On January 11, 2017, related ministerial orders were revised and put into force, extending the term of transition measures. As for copper, the term of the current transition measures (export permission system for mineral concentrates) has been extended by five years, and as for nickel, exports of low quality minerals are permitted for five years only if certain conditions are satisfied, such as allocation of 30% or more of domestic refining capacity to domestic refineries, and commitment made by a mining company to construct a refinery within five years.

<Problems under International Rules>

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

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

(2) Control on production and exportation

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

(3) Local content requirement

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

(4) Obligation to give priority to domestic supply

Disallowing exports without fulfilling prescribed domestic demands may violate GATT Article XI (general elimination of quantitative restrictions).

(5) Obligation to divest shares

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

Violations of investors' “fair and reasonable” expectations

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

<Recent Developments>

Since the enactment of the new Mining Law, Japan has repeatedly expressed its concerns at WTO Council for Trade in Goods/Committee on TRIMs meetings and the meeting of the Investment Subcommittee, which was established pursuant to the Japan-Indonesia EPA. At high-level of meetings of Heads of states and Ministers, Japan has repeatedly expressed concerns.

Although some improvements occurred, such as postponing the enforcement of export prohibitions on some mineral concentrates, issues under international rules still remain since export prohibition on other raw minerals was enforced. It is therefore important that Japan to continue to closely monitor the measures.

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

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

TARIFFS

Tariff Structure

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

<Outline of the Measure>

Indonesia improved its binding coverage on non-agricultural products to 95.8% as a result of the Uruguay Round. However, the current bound tariff rates are high, 30% to 40% for most non-agricultural products, with a simple average bound tariff rate of 35.6%. The average applied tariff rate for non-agricultural products in 2016 is low at 7.8%, but some products have relatively higher tariff levels, such as clothing (average 23.8%) and transport equipment (average 11.1%), etc.

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

As a result, the tariff rate for 1.5-3.0 liter gasoline-fueled cars and 2.5 liter diesel-fueled cars was lowered from 60% in 2006 to 45% by 2010. In addition, the average applied tariff rate for electrical machinery was lowered to 5.8%.

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

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

On July 23, 2015, the Indonesian government changed its most favoured nation (MFN) tariffs based on the Regulation of the Minister of Finance No. 132 of 2015 (132/PMK.010/2015), and raised the tariff rates mainly for food and beverages, clothes, and electric home appliances. In the field of food and beverages, the tariff rate for coffee and tea was raised from 5% to 20%, the rate for sausages and processed meat from 5% to 30%, and the rate for vegetables and fruits from 5% to 20%. Also, the tariff rate for automobiles was raised from 10-40% to 50%.

In February 2017, in the Order by the Minister of Finance (No.13/PMK.010/2017), export tariff items including mineral products and leather were reviewed.

<Concerns>

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

The fact that some items are not subject to concessions because they are unbound and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower are not a problem under WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates, it is desirable that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

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

Anti-Dumping Measures

AD Measures on Japanese Cold-Rolled Stainless Steel Sheet

<Outline of the Measure>

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

In addition, a sunset review in the case was initiated in September 2015.

<Problems under International Rules>

Most of the cold-rolled steel sheets exported by Japanese companies are high-quality steel materials used in the automobile or electric-electronic industries and do not compete with cold-rolled steel sheets produced in Indonesia because of the significant quality difference. However, KADI determined that there was injury and causal link of the imports of Japanese cold-rolled steel sheets to the domestic industry in its final report. This may be a violation of Article 3 of the AD Agreement.

Additionally, it may violate Article 6.8 of the AD Agreement because the export price was determined by KADI on a “facts available” basis (please see II Chapter 6) in spite of the fact that the Japanese company submitted data on the sales price of these products in Indonesia during the investigation.

Although a sunset review in the case was initiated in September 2015, the results of the investigation have not been published as of February 2018. This may be in violation of Article 11.4 of the AD Agreement.

<Recent Developments>

In April 2013, the Minister of Economy, Trade and Industry of Japan made the same request to exclude Japanese products from product under investigation, and as a result, KADI initiated a review process in April, 2014. However, the claims of Japan were barely reflected in the final determination in December of the same year. After that, although Japan continued to request the Indonesian government to terminate the imposition of AD duties in March 2016 as originally scheduled because the imposition of such duties causes significant costs to the users in Indonesia, a sunset review was initiated in September 2015. Since the permissible period of the measures already expired and the period set forth in the Indonesia AD Law also expired, Japan will continue to request the Indonesian government to notify the prompt termination of these measures in the official gazette. On the other hand, if the measures are continued, Japan will request that Japanese products be exempted from the imposition of the AD duties after appropriately examining the competitive relationship and substitutability between Japanese and Indonesian products, about which the Japanese government and companies have insisted since the initial investigation.

Trade-related Investment Measures (TRIMs)

Local Content Requirements for LTE Devices, etc.

<Outline of the Measure>

On May 4, 2015, the Indonesian Ministry of Communication and Informatics released a draft Regulation of the Minister stipulating a local content requirement of a certain percentage (a device that fails to satisfy a certain level of local content cannot be sold within Indonesia) and technical regulations for devices compatible with Long-Term Evolution (LTE) (a wireless communication standard for next-generation mobile terminals that can communicate at a high speed of 100 Mbps [smartphone, mobile PCs, etc.]). The Ministry invited public opinion on the proposals. The draft Regulation set forth that (i) simultaneously with the promulgation, wireless base station facilities and subscriber terminals must respectively satisfy local content of 30% and 20%, and (ii) within two years of the promulgation, wireless base station facilities and subscriber terminals must respectively satisfy local content of 40% and 30%. In addition, technical regulations to be applied to both wireless base station facilities and subscriber terminals were stipulated.

After that, on July 27, 2015, the Ministry of Communication and Informatics promulgated the Minister of Communication and Informatics Order No. 27, which required that target wireless base station facilities and subscriber terminals must respectively satisfy local content of 30% and 20%, retroactively from July 8, 2015 (no change from the time of inviting public opinion). On the other hand, a TBT notification dated as of February 10, 2016 regarding the above order states that local content of 20% is required as of 2017, which differs from the percentages set forth in the order. In addition, it was provided that (i) wireless base station facilities and subscriber terminals in the 800 MHz, 900 MHz, 1800 MHz, and 2100 MHz bands must satisfy local content of 40% and 30%, respectively, from January 1, 2017, and (ii) those in the 2300 MHz band must satisfy local content of 40% and 30%, respectively, from January 1, 2019 (partially changed from the time of inviting public opinion). Also, as at the time of inviting public opinion, technical regulations to be applied to both wireless base station facilities and subscriber terminals were stipulated.

Meanwhile, the Indonesian Ministry of Industry promulgated Regulations on the Terms and Procedures for Calculating Local Content Level Value of Electronics and Telematics Product (Regulation of the Minister of Industry no. 68) on August 19, 2015 (which entered into effect on August 24 of the same year), made the above-mentioned wireless base station facilities and subscriber terminals subject to the Regulations. The of the Minister of Industry Order No. 65 effective in July 2016 sets out how to calculate a local procurement rate, but specific aspects of the application of the above order are unknown in many cases.

<Problems under International Rules>

Japan believes that the system of requiring a certain domestic production ratio for target terminals to be sold within Indonesia conflicts with Article III:4 of GATT and Article 2 of the TRIMs Agreement as a violation of the obligation of national treatment.

<Recent Developments>

The Japanese Ministry of Economy, Trade and Industry and the Ministry of Internal Affairs and Communications submitted comments during the above-mentioned period for inviting public opinion. In addition, the relevant industries also submitted written comments. Japan also has been expressing concerns at occasions including the WTO's Council for Trade in Goods and the TRIMs Committee.

Standards and Conformity Assessment

(1) Technical Regulations for Steel Products

Please see page 121 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

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

<Outline of the Measure>

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

SNI inspection requires domestically-manufactured toys to be inspected for each six-month period of production lot and imported toys to be inspected for each shipment. The Indonesian government explains the reason that whereas the number of toys manufactured by domestic companies in Indonesia in a six-month period is 5,000, the number of imported toys in a shipment is 5,000. For imported toys, however, inspections are conducted multiple times when they are loaded on a ship on different days even if they are manufactured in the same lot. This imposes significant costs on importers.

SNI inspections are conducted only at designated laboratories located in Indonesia and laboratories in countries that have concluded bilateral mutual recognition agreements with Indonesia regarding the regulations on safety of toys.

<Problems under International Rules>

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

Furthermore, SNI inspections are conducted only at designated laboratories located in Indonesia and laboratories in countries that have concluded bilateral mutual recognition agreements with Indonesia, but currently very few if any countries have concluded a mutual recognition agreement with Indonesia. Therefore, virtually no SNI inspections can be conducted at overseas laboratories and such inspections need to be conducted at laboratories in Indonesia. This puts a great burden on companies.

<Recent Developments>

Since the WTO TBT Committee in March 2014, Japan, the EU and the United States have expressed their concerns. On October 11, 2018, the amended regulation was published and entered into force, and the new certification scheme was introduced, which incorporated a quality management system in the production process. However, regulations concerning inspection frequency for each shipment and overseas testing laboratories were not revised. Japan will continue to urge the Indonesian government to improve the system at the TBT Committee and bilateral consultations.

Trade in Service

(1) Foreign Investment Restrictions, etc.

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

<Outline of the Measure>

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

The Negative List was revised in May 2016 as well (Presidential Regulation No. 44 of 2016). Refrigerated and frozen goods warehouses, restaurants, cafes, production and distribution of movies, electronic commerce transactions involving 100 billion Rupiah or more, etc. are removed from the Negative List, 100% foreign investments is supposed to be permitted. In addition, as for department stores with a selling floor size of 400 to 2,000 square meters, warehouses, distributors affiliated with no manufacturer, travel agencies, vocational training, etc., the foreign capital regulations have been relaxed, allowing up to 67% foreign investment. On the other hand, in the construction-related field, local companies with foreign capital can no longer participate in projects for which the construction amount, necessary technologies and risks are at a low or medium level. This is the case at least for public construction projects.

Major restrictions on foreign investment are as follows.

(1) Telecommunication services

In the 2014 negative list, the upper limit of the foreign investment ratio for wire and wireless/satellite communication network business was raised to 65%, while that for content services, value added telephone services such as call centers, internet access service businesses, data communication system services, public telephone line internet services, internet interconnection services (NAP), and other multimedia services of communication services business was lowered to 49%. In addition, the upper limit for operations of communication networks integrated with communication services (assumed to be the mobile communication network businesses) was set at 65% and telecommunication tower suppliers/managers (operation and renting) and construction service providers were required to be 100% Indonesian-owned companies.

In the telecommunication services field, a local content requirement is imposed for certain products. In January 2009, domestic production ratios of at least 40% and 30% were imposed respectively on base station facilities and communication terminals used for wireless broadband services using the radio frequency bands of 2.3 GHz and 3.3 GHz. Further, in July 2015, domestic production ratios of at least 30% and 20% respectively were newly imposed on base station facilities and communication terminals, such as smartphones, for products using LTE that were manufactured or assembled in or imported to Indonesia, based on the Regulation of the Ministry of Communication and Informatics No. 27 of 2015 regarding Technical Requirement of Equipment and/or Telecommunication Devices in Long Term Evolution Technology Basis (Permenkominfo 27/2015). Moreover, under the Regulation, the domestic production ratios required for products in the 800/900/1800/2100 MHz bands will be raised to 40% and 30% respectively for base station facilities and communication terminals starting January 1, 2017, and the ratios will be raised to 40% and 30% respectively for base station facilities and communication terminals also with regard to products in the 2300 MHz band, starting January 1, 2019. Request for local content requirement may be inconsistent with the obligations of the WTO Agreements and Japan-Indonesia Economic Partnership Agreement, Japan needs to pay close attention to such requirements.

In the field of electronic commerce, an ordinance and related regulations on electronic systems and implementation of electronic commerce set out the obligation of establishing a data center in Indonesia and the obligation of disclosing some source codes. Furthermore, as for companies (so-called OTTs) that have no communications networks on their own and provide and distribute SNS services, smartphone apps, content, etc., a draft regulation on OTT service providers (draft regulation of Minister of Communications and Informatics on provision of OTT Application and/or Content Services via the Internet) was published in April 2016. In this draft regulation, various obligations are imposed, such as requiring foreign companies providing OTT services in Indonesia to provide such services through a permanent establishment built in accordance with the Indonesian taxation system and to make payments through the National Payment Gateway. Some of these regulations may violate the market access commitment set forth in Article 16 of the GATS and Article 78 of the Japan-Indonesia EPA, the national treatment set forth in Article 17 of the GATS and Article 79 of the Japan-Indonesia EPA and prohibition of requirements for performance of specific measures in relation to investment set forth in Article 63 of the Japan-Indonesia EPA.

(2) Distributions Services

The 2016 negative list continues to state that retail businesses be 100% Indonesian-owned companies. More specifically, stores of less than 1,200 ㎡ are regarded as supermarkets and stores of less than 400 m2 are regarded as mini markets, both of which are limited to 100% domestic investment. Presidential Directive 2007 No. 112 established regulations on improvements to commercial facilities. Stipulations were also made regarding the sites, facilities (parking lots, safety requirements), business hours, etc., of large-scale commercial facilities open to foreign participation.

(3) Audio-Visual Services and Advertising Services

Indonesia barred foreign film and video tape distributors from its markets. All importation and distribution had to be done by 100% Indonesian-owned companies. Although in the 2016 negative list, film production, film technology services, film distribution, staging, recording studies, etc. are opened to 100% foreign capital companies, film promotional facility services (advertisements, posters, photos, films, banners, pamphlets, etc.) continue to be limited to 100% Indonesian-owned companies (a foreign investment ratio of up to 51% is allowed for investment from ASEAN countries)

<Concerns>

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

<Recent Developments>

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

In addition, as mentioned above, the negative list stipulating types of businesses in which foreign investment is restricted was revised in May 2016 for the first time in two years. This revision also aimed at protecting domestic micro-, small- and medium-sized enterprises, such as by allowing only such enterprises to engage in construction work valued up to 50 billion Rupiah or consulting services valued up to 10 billion Rupiah.

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

(2) Freight Retention

<Outline of the Measure>

The Indonesia Minister of Trade announced a Trade Minister Regulation (2017/82) in October 2017 that obligates use of an Indonesian carrier for transporting coal and palm oil from Indonesia. At first, it was planned to go into effect in April 2018, but due to insufficient transport capacity with Indonesian carriers, another Trade Minister Regulation to postpone the first one for two years (2018/48) was announced in April 2018, but the content has not been reviewed.

Furthermore, the Trade Minister Regulation requiring use of Indonesian insurance companies

(2018/80) is planned to take effect from February 2019.

<Problems under International Rules>
Collating with the basic regulations of GATS, in addition to problems with market access and citizen preferential treatment, the measures violates the promised contents of Indonesian international maritime transport services in the list for specific fields, and must be improved as quickly as possible. The situation is the same for the Japan-Indonesia EPA promises.

<Recent Developments>
From March 2018, Japan has put in applications for discussion to review the Japan-Indonesia EPA, and is also applying pressure in bilateral talks, along with other countries

Protection of Intellectual Property

(1) Suspension of Infringing Goods at Borders

<Outline of the Measure>
According to Article 51 of the TRIPS agreement, member countries shall adoptprocedures to enable a right holder to lodge an application for the suspension of importation of counterfeit trademark or pirated copyright goods. Regarding this point, Article 54 of the Indonesia Tax Law (Act 10, 1995, amended by Act 17 2006) stipulates that the court order the suspension to the custom authorities based on a application from the rights holder, and this provision corresponds to Article 51 of the TRIPS Agreement. After that, from August 2017, "Indonesian Government Regulation No. 20 of 2017 on Control of Import and Export of Goods Resulting from Intellectual Property (IP) Infringement (Regulation 20/2017)" was enacted. Furthermore, in order to execute this government order, in April 2018 "Indonesia Government Regulation NO. 40 (PMK.04/2018) Related to Registration, Suspension, Collateral, Temporary Suspension, Monitoring and Evaluation of Import and Export of Goods Resulting from Intellectual Property (IP) Infringement" was issued and enacted from June 16, 2018. This allowed trademark and copyright holders to register the trademark or copyright to the custom authorities. The customs authorities implements suspension of goods suspected of infringing rights based on this registration information.

<Problems under International Rules>
While the aforementioned Finance Ministry Regulations, etc. were established, according to the articles of these regulations, this customs registration is restricted to only allow companies located within Indonesia, and there is still risk that any other Japanese trademark or copyright holders cannot suspend infringing products.
Japan will continue to apply pressure on Indonesia Customs regarding this issue in order to ensure an opportunity to take effective measures against infringement of intellectual property rights, and going forward will also continue to collect information regarding movement in operations of this issue and influence on Japanese companies, and applying pressure as necessary.

(2) Implementation of Japan-Indonesia EPA

<Outline of the Measure>
The Japan-Indonesia EPA, which entered into force on July 1, 2008, provides for stronger IP protection than that provided for in the TRIPS Agreement, including the introduction of the “partial design protection system” for expanding the scope of protection to industrial designs related to parts of the article (paragraph 3 of Article 113); introduction of a system for protection of well-known trademarks of foreign parties, which rejects or cancels application of trademarks identical with or similar to trademarks well known in either signatory country with unfair intentions (paragraph 2 of Article 114); introduction of the "comprehensive power of attorney" system, which enables granting of comprehensive power of attorney for multiple patents, utility models, designs, trademarks (paragraph 5 of Article 109).

<Problems under International Rules>

However, there is a possibility that the system mentioned in the previous paragraph has still not been implemented in Indonesia, leading to concerns about conformity with corresponding EPA regulations. For instance, the Indonesia's Trademark Law has provisions concerning the protection of well-known trademarks, but the practice is unclear as to whether a trademark that is well-known only in Japan could be ground for refusal or invalidity under the provisions.

<Recent Developments>

In Indonesia, while the reformed patent law entered into force on August 26, 2016 and the reformed trademark law was enacted on November 15, 2016, introduction of the "comprehensive power of attorney" system has not been confirmed and operational response has also not been confirmed.

Furthermore, regarding "protection of foreign well-known trademarks," while the trademark law was revised on November 15, 2016, it is unclear if the revision was actually made for well-known trademarks, and there is concern that trademarks well-known in Japan are not protected sufficiently in Indonesia.

Furthermore, regarding the "partial design" system, discussion of the proposed revisions to the design law have not begun at the council, so introduction of a revised system has not been realized. While there are reports that action is being taken for operations, clear operations according to the investigation guidelines have not been confirmed.

Therefore, Japan needs to collect information on the status of implementation in Indonesia of the Japan-Indonesia EPA, including the operational details, and to make necessary approaches to the Indonesian authorities.

(3) Indonesia's Amended Patent Law

<Outline of the Measure>

In Article 20 (1) of the revised Patent Law enacted on August 26, 2016, it is stipulated that a patent owner is obligated to manufacture the patented product or use the patented method in Indonesia. In addition, in case a patent owner does not perform the obligation, when thirty six months have passed without performing the obligation after the patent was issued, the patent will be subject to granting a compulsory license (Article 82 (1) (a) of the Patent Law) or subject to patent cancellation (Article 132 (1) (e) of the Patent Law).

In addition Article 20 (2) of the Patent Law stipulates that the aforementioned "manufacturing a patented product or use of a patented method" shall contribute to technology transfer, inward investment, and provision of employment (in Indonesia).

<Problems under International Rules>

Paragraph 1 of Article 27 of the TRIPS Agreement stipulates that patent shall be available and patent right shall be enjoyable without discrimination as to the place of invention, the fields of technology, and whether a patented product is imported or locally produced. Thus, the situation that a compulsory license will be granted or the patent will be subject to cancellation in the case where domestic implementation requirements are not fulfilled may have a problem from the perspective of consistency with Article 27 of TRIPS Agreement.

<Recent Developments>

With regard to this revised Patent Law, in May 2017, the Japanese government, EU, the US and Switzerland jointly conveyed the above-mentioned concerns to the Indonesian government and requested them to thoroughly comply with provisions of the TRIPS Agreement. After that, a Minister Order related to domestic implementation of patent rights was issued on July 11, 2018 and according to the order, patent holders who cannot execute inventions can request a five year grace period by submitting an application with a reason for postponement to the Ministry of Legal Rights, and that grace period can also be renewed.

owever, as this Minister Order does not provide fundamental solution of the issue, Japan should continue to collecte information such as the effects on Japanese companies and apply the necessary pressure.

(4) Patent protection for medical goods (new format/use of already known chemical compounds)

<Outline of the Measure>

According to the patent law revision entered into force on August 28, 2016, in Article 4 (f), "New application of existing and/or known product," and "a new form of an existing chemical compound for which significant effect improvement has not been found and there is no difference from the chemical structure related to those already known for the chemical compound," are excluded from patent protection.

Therefore, for example, in case the chemical compound itself is already known, even if someone is successful in developing new medical treatment effects with that compound as a new medicinal use, there is a concern that this won't be granted patent protection, and pharmaceutical companies could not get sufficient incentive to invest in the research and development, and this would hinder the innovation.

<Problems under International Rules>

Article 4 (f) of the Patent Law consists of relatively strict criteria for patentability in the fields of chemical substance and pharmaceutical technology, and there is a possibility that it is not consistent with Article 27 Paragraph 1 of the TRIPS Agreement, which prohibits discrimination in the technology field. Especially Article 4 (f) of the Patent Law stipulated “new application and new forms of chemical compounds” as “discovery” instead of as "inventions," the new uses of chemical compounds and new forms were created by humans, so there is a possibility that this would be interpreted as being covered by "invention" as stipulated in Article 27 Paragraph 1 of TRIPS.

<Recent Developments>

Examination guidelines have been drafted and plan to be made public in 2019 as a principle in examination practices of Article 4 (f) of the Patent Law. Going forward, while checking the content after announcements, and keeping a close eye on the operational situation, Japan should apply pressure for the abolition of this stipulation.

4. Malaysia

National Treatment

(1) Imposition of Internal Taxes on Automobiles and Import Restrictions on Automobiles Based on the AP System

Please see page 101 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

(2) Excise Tax Exemption System on Domestic Automobile Parts

Please see page 103 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Quantitative Restrictions

(1) Export Restrictions on Logs

<Outline of the Measure>

Since 1985, The Malaysian Government has banned exports of 27 designated tree species and all logs exceeding 12 inches in diameter with a view to increasing the degree of domestic lumber processing. The State of Sabah introduced export restrictions in November 1996 and set an annual export quota of 0.16 million cubic meters in 2018. The State of Sarawak has implemented export quotas since 1999 to set aside a certain share (80% from July 2017) of logs produced in natural forests for in-state processing. It has also implemented export restrictions on Ramin logs and Hollow Alan Batu logs since 1980 and 1993, respectively.

<Problems under International Rules>

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

<Recent Developments>

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

(2) Import Tax Exemption Ceiling System on Steel Sheets

Please see page 127 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

TARIFFS

Tariff Structure

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

<Outline of the Measure>

The current simple average bound tariff rate on non-agricultural products in Malaysia is 14.9% while there are some products with a high bound tariff rate, including electrical equipment up to 40%, rubber tire for automobiles of 40% and clothing up to 30%. The binding rate on all non-agricultural products is 81.9%. Unbound items include tractors (maximum applied tariff rate of 30%) and automobiles (applied tariff rate of 30%). The average applied tariff rate in 2016 was 5.4%.

<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.

<Recent Developments>

With the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items is planned to be completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for Malaysia, elimination of tariffs on the subject items started in July 2016. For example, high tariff items for which tariffs are to be eliminated by Malaysia include new-type semiconductors (30%), television receivers (30%), gaming consoles (30%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Meanwhile, with regard to electrical machinery and equipment, and parts thereof, Malaysia reduced or eliminated MFN tariff rates for seven items (HS8419, HS8421) under Order No. P.U. (A) 305/2015, and reduced or eliminated the ASEAN Trade in Goods Agreement (ATIGA) for 14 items (HS8419, HS8421, HS8511) under Order No. P.U. (A) 306/2015 from January 1, 2016.

Standards and Conformity Assessment

Technical Regulations for Steel Products

Please see page 129 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Trade in Services

Foreign Investment Restrictions, etc.

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

<Outline of the Measure>

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

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

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

Major foreign investment restrictions in Malaysia are as follows.

(1) Financial Services

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

- ○ In June 2010, the Central Bank of Malaysia announced issuance of new commercial bank licenses (full bank licenses) for five foreign banks. It decided to issue the license to two Japanese banks, namely, Mizuho Corporate Bank, Ltd. and Sumitomo Mitsui Banking Corporation.
- ○ Relaxed restrictions on foreign capital in investment banks, Islamic banks, insurance companies, and Islamic insurance (Takaful) companies from 49% in the past to 70%. (However, restriction on foreign capital in commercial banks in Malaysia is left unchanged at 30%. The ceiling on investment by one foreign company is also left unchanged at 20 %.).

○ From 2010, permitting foreign-owned commercial banks that have become local corporations to establish four full-scale branch offices and existing foreign banks to establish 10 branch offices which carry out microfinance.

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

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

(2) Telecommunication

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

(3) Distribution Services

The Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) announced a revision of the "Guidelines on Foreign Participation in the Distributive Trade Services" on May 12, 2010 (retroactively effective to January 6, 2010). In the new guidelines, the condition requiring that at least 30% of total capital must be possessed by Bumiputera was deleted, except for hypermarkets (self-service stores with a sales floor area of 5,000m2 or more) and superstores (self-service stores with a sales floor area of 3,000m2 or more but less than 4,999m2), and the establishment of wholly foreign-owned companies became possible. This is a significant improvement. 24-hour convenience stores, however, are still included in the types of businesses for which foreign capital participation is prohibited. (The types of businesses for which foreign capital participation is prohibited in distribution services are listed below.) The MDTCC serves as the competent authority for foreign capital participation, acquisition, merger, etc., and approval from the MDTCC is required for doing such transactions. In addition, the old guidelines stipulated the minimum capital as a million ringgit; there was no change in the amount in the new guidelines. However, the new guidelines clearly stipulated that capital shall refer to common shares.

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

○ Supermarkets/minimarkets (in which the sales floor area is less than 3,000 square meters)
○ Food stores/general sales outlets
○ 24-hour convenience stores
○ Newspaper sales outlets and sales outlets for sundry articles
○ Pharmacies (those dealing with traditional herbs and herbal medicines)
○ Gas stations
○ Permanent markets (wet markets) and street outlets

○ Businesses involved in areas of national strategic advantage
○ Fabric stores, restaurants (not high class), bistros, Jewelry stores, etc.

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

<Concerns>

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

<Recent Developments>

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

In 2012 the Budget Speech of the Prime Minister of Malaysia to the parliament, he announced that the gradual relaxation of regulations on foreign investment would be implemented in 17 service sub-sectors as of 2012. Since then, in January 2012, nine sub-sectors were liberalized. 100% foreign investment is allowed for these nine fields (including (1) certified accountants and certified tax accountants, (2) courier services, (3) department stores and specialty stores, (4) incineration services, (5) private hospitals, (6) skill training services, (7) communication services, (8) skill/vocational training services, (9) skill/vocational training services (for students who need special support)) and the entry of foreign specialists was approved. On November 16, 2012, a schedule to ease the restriction on foreign investment on a further six sub-sectors was announced. In the schedule, for (1) legal services, the advancement of foreign attorneys and foreign law firms as well as international partnerships will be approved if the immigration criteria are fulfilled. 100% foreign investment will be allowed for (2) doctors, (3) dentists, (4) international schools, (5) private universities. As mentioned above,70% of foreign investment will be allowed for (6) telecommunication services (licenses for network installation services and licenses for network services). Regarding the remaining two sub-sectors (architecture and engineering) and new sub-sectors (quantity surveyor) that are being considered for eased restrictions on foreign investment, revision of the relevant law is expected to be announced as soon as it is approved. As for engineering services, the Registration of Engineers (Amendment) Act 2014 was enforced in 2014 and the Registration of Engineers (Amendment) Regulations 2015 ("Amended REA Legislation"), an enforcement regulation of the act, entered into force on July 31, 2015. As a result, 100% foreign capital companies are allowed to engage in Engineering Consultancy Practice if at least 70% of investments in such companies are made by Professional Engineers with Practicing Certificates (foreigners can be registered as these engineers if they are a resident in Malaysia for six months). Japan keeps a careful watch on the developments and implementation status of amendments to laws concerning foreign investment restrictions, and continues to call for further relaxation of foreign investment restrictions through bilateral policy dialogues and other opportunities.

<Figure 1-3-3> 27 fields in the service industry for which Bumiputera capital restriction were eliminated (announced on April 22, 2009).

○ Computer and related services

1. Consultancy services related to the installation of computer hardware (CPC841)
2. Software implementation services (systems and software consulting services, systems analysis services, systems design services, programming services, and systems maintenance services) (CPC842)
3. Data processing services (input preparation services, data processing and tabulation services, time

sharing services, and other data processing services) (CPC843)
4. Database services (CPC844)
5. Maintenance and repair services of computers (CPC845)
6. Other services (data preparation services, training services, data recovery services, and development of creative content) (CPC849)

○ Health and social services
7. Veterinary services (CPC9320)
8. Welfare services delivered through residential institutions to the elderly and the handicapped (CPC93311)
9. Welfare services delivered through residential institutions to children (CPC93312)
10. Day care services for children (CPC93321)
11. Vocational rehabilitation services for the handicapped (CPC93324)

○ Tourism services
12. Theme park (CPC96194)
13. Convention and exhibition centers (with a seating capacity of 5,000 or more) (CPC87909)
14. Travel agencies and tour operators services (for inbound travel only) (CPC7471)
15. Hotel and restaurant services (for four- and five-star hotels only) (CPC64110 and CPC64199)
16. Food serving services (for services provided in four- and five-star hotels only) (CPC642)
17. Beverage serving services for consumption on the premises (for services provided in four- and five-star hotels only) (CPC643)

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

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

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

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

○ Transportation services in inland waterway
26. Maritime agency services (CPC7454)
27. Vessel salvage and refloating services (CPC7454)

5. The Philippines

Quantitative Restrictions

Export Restrictions on Raw Minerals

Please see page 136 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

TARIFFS

Tariff Structure

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

international rules.

<Outline of the Measure>

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

The Philippine Government had undertaken tariff reforms since 1980 and had indicated that it would unify the applied tariff rates for all items at 5% by 2004, except on some agricultural and fishery products. But, the Philippine Government decided in 2003 to review tariff rates and increased the tariffs on over 1,000 items, resulting in high tariffs on automobiles (maximum 30%), electric appliances (maximum 30%) and some textile products (maximum 30%). And the simple average of applied tariff rate of non-agricultural products in 2016 was 5.7%.

<Concerns>

High tariff rates themselves do not, per se, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic efficiency, it is desirable to reduce tariffs to their lowest possible rate, while eliminating the tariff peaks (see "Tariff Rates" in 1. of Chapter 5, Part II) described above.

Low binding ratio and the existence of a gap between the applied tariff rates and the bound tariff rates with the applied tariff rates being lower are not a problem under WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates, it is desirable that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

With the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items is planned to be completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) "Information Technology Agreement (ITA) Expansion Negotiation" in Chapter 5 of Part II for details). As for the Philippines, elimination of tariffs started in July 2017. For example, high tariff items for which tariffs are to be eliminated by the Philippines include new-type semiconductors (50%), recorders and players (50%), switching devices (50%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

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

Trade in Services

Foreign Investment Restrictions, etc.

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

<Outline of the Measure>

The Philippines permits foreign investment in principle, but bans it in exceptional cases. The foreign investment negative list that enumerates areas in which foreign investment is prohibited is announced periodically under the Foreign Investment Act (RA8179). In October 2018, the 11th FINL (Foreign Investment Negative List) was issued, which was the most recent version at the time of publication.

Main points include:

-In the building industry the allowed maximum was raised from 25% to 40%.

-In the telecommunication industry the allowed maximum was raised from 20% to 40%.

-There were no changes in the retail industry.

The retail industry, in which Japanese companies have high interest, was one of the issues that President Duterte addressed in November 2018, saying that quick resolution would be taken (Presidential Notification No. 16), but the regulations were not mitigated in the current 11th edition of the FINL. The Trade Industry minister is stating that they want to revise the individual law first (Retail Freedom Law that regulates retail).

Also, a revised bill for the 2000 Retail Freedom Law was approved by the lower house in December 2018. The current minimum paid-in capital is currently USD 2.5 million will be lowered to USD 0.2 million. Furthermore,the discussion schedule in the upper house was not yet determined at the time of publication. Other regulations on foreign investment in the Philippines are as shown in <Figure I-3-4>.

<Concerns>

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

<Recent Developments>

Japanese companies have invested in the Philippines service sectors since the conclusion of the Japan-Philippines EPA, as evidenced by one commercial shipping company's efforts to open a school to train Filipino technicians and the participation by IT companies in the call center business.

As part of its 10-point socioeconomic agenda, the Duterte Administration, which entered office in June 2016, upholds the goal of "Increasing competitiveness and the ease of doing business, for example by pursuing the relaxation of the Constitutional restrictions on foreign ownership, in order to attract foreign direct investment," and as stated above, the 11th Foreign Investment Negative List was announced in October 2018.

Japan is monitoring amendments to laws related to foreign investment regulations and is requesting their relaxation, through bilateral dialogues, the Regional Comprehensive Economic Partnership (RCEP) negotiations and Japan-Philippines EPA follow-up meetings.

<Figure I-3-4> Major regulations on foreign investment

Sector	Outline of Regulations
Banking	Foreign capital regulations in the banking sector were provided for in the following two laws, etc. The investment ratio for domestic banks by foreign banks was limited to 60% and an upper limit was established for the number of foreign banks that can open branch offices, making it difficult for foreign banks that have not yet entered the Philippines market to open new branch offices. • Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (enacted in May 1994) • General Banking Law of 2000 (enacted in May 2000) However, the Act Allowing the Full Entry of Foreign Banks in the Philippines (Republic Act No. 10641) was enacted in July 2014. This allowed new entry of foreign banks in the following three forms, subject to approval of the central bank of the Republic of the Philippines. • Acquisition of domestic banks (100% foreign investment by foreign banks; and elimination of the 60% upper limit of the foreign investment ratio) • Establishment of new local subsidies • Opening of branch offices (elimination of the upper limit number of foreign banks that can open branch offices)
Insurance	• Department Order No. 31-01 issued in December 2001 (which was partially

Sector	Outline of Regulations
	amended by Department Order No. 19-06 and No. 27-06 of 2006) imposes a minimum capital requirement commensurate with the foreign equity investment ratio, but the ministerial order of June 2012 made the requirement uniform independent of the foreign equity investment ratio (legislated in 2013) • For reinsurance transactions, ceding reinsurance of automobile insurance to an overseas insurance company is prohibited. • Act No. 10881 in the Republic of the Philippines entered into force in August 2016, eliminating foreign investment restrictions for non-banks (financing companies, lending companies, investment houses and insurance adjustment companies). Before the elimination, the upper limit on foreign investment was 60% for financing companies, less than majority ownership (49%) for lending companies and investment houses and 40% for insurance adjustment companies, but the elimination has paved the way for 100% foreign investments in the above businesses.
Construction Services	The Philippines permits foreign investment except in sectors found on the negative list created under the Foreign Investment Act. Construction is not on the list, but under the Constructors License Law (CLL) (RA 4566), a construction permit must be obtained before actual construction work can be done from the Philippine Contractors Accreditation Board that is the subordinate organization of Construction Industry Authority of the Philippines that oversees the construction industry under the direct control of the Department of Trade and Industry. Under the detailed enforcement regulations of the CLL, "regular licenses," which are the same as those given to ordinary domestic companies, is granted to companies with less than 40% foreign ownership. In contrast, companies with more than 40% foreign ownership must apply for a license for each individual project, and a special license that is only effective for that project is granted. At the same time, the foreign investment ratio for public works that are financed within the Philippines (excluding those subject to international bidding) is restricted to a maximum of 25% under the 11th Foreign Investment Negative List (which came into effect in October 2018).

Protection of Intellectual Property

Patent protection for medical goods (new format/use of already known chemical compounds)

<Outline of the Measure>

In Article 22.1 of the Intellectual Property Law, it is stipulated that "new forms or property of already known substances, that are no more than a discovery that doesn't improve the already known effects of the substance," "no more than discovery of a new property or new use of an already known substance," and, "no more than use of an already known method," are excluded from patent protection.

Therefore, for example, in the case that the substance itself is already known, even if someone is successful in developing new medical treatment effects with that substance as a new medicinal use, there is a concern that this won't be granted patent protection, and pharmaceutical companies could not get sufficient incentive to invest in the research and development, and this would hinder the innovation.

<Problems under International Rules>

Article 22.1 of the Intellectual Property Law establishes relatively strict criteria for patentability in the fields of chemical substance and pharmaceutical technology, so there is a possibility that it is not consistent with Article 27 Paragraph 1 of the TRIPS Agreement, which prohibits discrimination in the technology field. Especially Article 22.1 of the Intellectual Property Law stipulated "new use and new forms of substances” as “discovery” instead of as "inventions,", the new uses of substances and new forms were created by humans, so there is a possibility that this would be interpreted as being covered by "invention" as stipulated in Article 27 Paragraph 1 of TRIPS.

<Recent Developments>

Regarding examination practices of Article 22.1 of the Intellectual Property Law, while the examination guidelines have been announced, it is necessary to closely watch the operational situation and appeal the abolition of this provision in the future.

6. Myanmar

Trade in Services

Foreign Investment Restrictions, etc.

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

<Outline of the Measure>

The revision of the Foreign Investment Law (established in November 1988), which is the basic law in Myanmar for foreign investment, was enacted on November 2, 2012. After that, the Foreign Investment Act and Domestic Investment Act were combined and a revised investment law was enacted in October 2016.

In the Investment Restriction Industry Notification (No.15/2017) issued by Myanmar Investment Committee (MIC) based on the Investment Act announced on April 10, 2017, 9 industries for which of "investment activities are only to be implemented by the federal government, 12 industries for which "investment activities are not allowed by foreign investors," 22 industries for which "Investment activities are not allowed by foreign investors only in the form of joint investment between Myanmar citizens and business entities owned by Myanmar citizens, and 126 industries for which "investment activities are allowed only when approved by the related government ministry," are stipulated as industries for which investment is restricted.

<Concerns>

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

<Recent Developments>

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

In January 31, 2014, the Myanmar Investment Commission published Notification No. 2/2014. It clearly specifies the means for obtaining MIC permits for investment in Myanmar by foreign investors. This notice contains detailed information, such as that service fees are not required in the procedures to obtain MIC permits, etc. In January 2015, the Ministry of Commerce of Myanmar issued Notification 96/2015, which allowed the entry of foreign owned companies in the four categories of chemical fertilizers, seeds, insecticides, and hospital equipment, on condition that a foreign company establish a joint venture with a Myanmar company. Regulation on the foreign ownership ratio is not specifically mentioned in the Notification.

In the revised Investment Law enacted on October 18, 2016, which combined the Foreign Investment Law and the Domestic Investment Law, specific details regarding limit on foreign investment ratios and other matters are planned to be set forth in MIC notifications, laws on operations of each government agency, etc. In the notification on trade business issued by the Ministry of Commerce of Myanmar in June 2017, trade business by a wholly owned foreign company was approved for five items: chemical fertilizers, seeds, insecticides, and hospital equipment, and construction materials. In May 2018, the Trade Ministry issued Notification No. 25/2018, and the prohibition on certain conditions for the retail/wholesale industries that did not formerly allow entry of foreign companies, was lifted.

Furthermore, the New Company Act was enacted in December 2017 and executed in August 2018. According to this law, companies that were formerly subject to foreign investment regulations if even one share was held by a foreign entity, are now handled as domestic companies if the foreign investment is 35% or lower.

Japan will continue to observe the trends of the related Investment Law provisions, and will monitor the management so that activities of Japanese companies that are currently in Myanmar will not be impeded by the revision of the law. Additionally, Japan will encourage Myanmar to ensure transparency of management of the law through bilateral meetings.