Chapter 10

India

National Treatment

Local Content Requirements on Domestically Manufactured Electronic Products

Please see pages 121 in the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

TARIFFS

(1) High Tariff Products

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

<Outline of the Measure>

The current simple average bound tariff rate for non-agricultural products is high at 34.6%.

Since fiscal year 2003, the Government of India has continued to implement reductions of the basic tariff rate, setting forth the objectives of (1) reducing the basic tariff rate (applied tariff rate) to the ASEAN level, and (2) shifting to a tariff system that applies a 10% tariff to finished products and a 5%-7.5% tariff to raw materials and parts. The government implemented a tariff reduction on specific capital goods and some parts and raw materials in January 2007, and reduced the basic tariff rate on automobile parts, electrical parts and machinery parts to 7.5%. In addition, in March 2007, the government reduced the maximum basic tariff rate on essentially all bound items excluding agricultural products from 12.5% to 10%, in principle.

On the other hand, the bound rate for non-agricultural products is 70.5% and unbound items include high-tariff items such as passenger cars (average applied tariff rate of 60%), motorcycles (average applied tariff rate of 100%) and clothing (average applied tariff rate of 10%). Given these rates, there appears to be significant room for improvement.

<Concerns>

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

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

<Recent Developments>

In February 2011, the Japan-India Economic Partnership Agreement was signed and it went into effect in August 2011. This Agreement will eliminate tariffs on automobile parts (manufacturing parts) and steel products, etc. in 5 to 10 years after the effective date of the Agreement, etc., thereby improving market access.

(2) Introduction of Special Additional Tariffs on Imported Products

<Outline of the Measure>

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

<Problems under International Rules>

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

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

<Recent Developments>

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

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

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

<Figure I - 10> Method of Calculating Total Tariff Rates after Introducing GST (As of February 2018) (where the valuation amount is 100 and the basic tariff rate is 10%)

Item	Tariff rate	Amount (Tax)	Details of calculation
Assessed Value (CIF value + landing charges)		100	
Basic Customs duty	10%	10 (a)	100 x 10%
Social Welfare Surcharge	10%	1 (b)	(a)×10%
Item	**Tariff rate**	**Amount (Tax)**	**Details of calculation**
GST*	12%	13.32 (c)	(100＋(a)＋(b))×12%
GST Additional Tax	10%	11.1 (d)	(100＋(a)＋(b))×10%
Total		135.42	100＋(a)＋(b)＋(c)＋(d)

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

(3) Increase in Tariffs on IT Products

<Outline of the Measure>

In July 2014, for some IT products(telecommunication equipment in HS8517.6290 and 8517.6990) that are classified as being exempt from tariffs in India's concession schedule under the WTO Agreement, the Indian government introduced measures to increase tariffs by 10% through the Finance Bill (and subsequently the Finance Act) in March 2016.

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

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

<Problems under International Rules>

In accordance with the ITA (the Ministerial Declaration on Trade in Information Technology Products) of 1996, India set bound tariff rates for relevant IT products at zero in its concession schedule under the WTO Agreement. In 2014, however, India issued a notification to revoke tariff exemption measures for four specific items such as IP Phones, etc. classified in heading of 8517 and 10% tariff was imposed on these items (classified as HS8517.6290 and 8517.6990). These tariff imposition is highly likely to violate GATT Article II, which provides that tariffs shall not be in excess of bound tariff rates.

<Recent Developments>

In July 2017, the tariff rates were raised to 10% for mobile phones, ink cartridges, etc. (other printing equipment of HS8443.3290, ink cartridge of 8443.9951 and 8443.9952, ink spray nozzle of

8443.9953, mobile phones of 8517.1210 and 8517.1290, base station of 8517.6100, and parts of telephone and telecommunication equipment of 8517.7090).

In December 2017, the tariff rate on mobile phones (HS8517.1210 and 8517.1290) was raised from 10% to 15%, increasing the tariff rate on IT products.

In February 2018, the tariff rate for mobile phones was raised from 15% to 20%, and the tariff rate for TV LCDs was further increased from 7.5% to 15% and the tariffs on food, perfume, automobile parts, footwear, jewelry, furniture, watches and toys. etc were also increased.

In April 2018, the tariff rates on mobile phone printed circuit board assemblies (PCBA) (HS8517.7010) was increased to 10%.

In July and August 2018, the tariff rate on several textile products was raised from 10% to 20%, and in September 2018, the tariff rates on consumer electronics, foot wear and jewels were also increased.

In October 2018, the tariff rates for specific items（HS8517.6290）such as base stations (HS8517.6100) and IP Phones were raised from 10% to 20% and the tariff rates for 8 items of printed circuit board assembly (PCBA) (HS8517.7010) were increased to 10%.

Some of these targeted products for raising the tariff rate clearly violate GATT Article II. For instance, India raised applied tariff rates even though mobile phones (HS8517.1210 and 8517.1290), base station (HS8517.6100), four specific items of IP phones (HS8517.6290), 8 specific items of printed circuit board assembly (PCBA) (HS8517.7010) and communication equipment parts (HS8517.7090)) are classified as being exempt from tariffs at six-digit HS code in India's Concession Schedule.

At the meetings of the WTO Committee on Market Access, the ITA Committee, the Council for Trade in Goods, as well as through the Japanese embassy in India, Japan has repeatedly expressed its concern about this matter. Furthermore, in the fall of 2018, several administrative-level meetings were held and Japan requested the Indian government to give a detailed explanation and withdraw the tariff measures. However, the Indian government only repeated the same answers above and no improvement was seen. Japan will continue to cooperate with the US and the EU that have the same concern in requesting India to withdraw the tariff measures as earlier as possible.

Anti-Dumping Measures

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

Please see pages 125 in the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

(2) AD Measures on Japanese Resorcinol

Please see page 126 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Subsidies

National Food Security Act

Please see pages 189 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Safeguards

(1) Safeguard Measure on Hot-Rolled Flat Products

<Outline of the Measure>

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

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

<Problems under International Rules>

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

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

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

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

<Recent Developments>

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

On 6th November, 2018, the panel circulated a panel report which represented a ruling, upholding most of Japan's claims, that this measure was inconsistent with the WTO Agreement for the following reasons: (1) India failed to sufficiently prove the fact that there was a logical connection between the unforeseen development of the events and the increase in imports based on objective evidence (SG

Agreement Articles 2.1, 4.2(a) and GATT Article XIX: 1(a)), (2) India failed to appropriately examine the injury factors (i.e., price and profitability) of the domestic industry in determining the "serious injury" to the domestic industry and also failed to determine the injury based on any objective data (SG Agreement Article 4.2(a)). (3) India failed to make reasoned findings in its determination as to the causal link between the increase in imports and the serious injury to the domestic industry (SG Agreement Article 4.2(b)). Further, the panel recommended India to make the safeguard measure consistent with the Agreements to the extent that the measure continues to have any effects, while the measure had been already expired. India appealed the panel's judgment on December 14, 2018 and Appellate Body procedures are underway.

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

(2) Safeguard Measures regarding Solar Panels

<Outline of the Measure>

The Indian Government started a safeguard investigation on solar panel modules on December 9th, 2017. On July 30th, 2018, and launched safeguard measures with an additional tariff of 25% (25% during 2018/7/30-2019/7/29, 20% during 2019/7/30-2020/1/29, 15% during 2020 / 1/30-2020/7/29).

<Problems under International Rules>

In this safeguard investigation, the deadline for registration as interested parties had already passed at the time of the WTO notification, and then timely notifications and ensuring opportunities for participation in the procedure (Article 3 (1) of the Agreement on Safeguards) have not been met. Further, this measure is an investigation triggered due to a rapid increase in imports of low-priced Chinese products, and it is not appropriate to include Japanese products that are not in competition with domestic products. Furthermore, at the same time as the safeguard measures were activated, India has started to require imported solar panels to obtain Indian domestic certification (BIS), the procedure of which has been said to have significant export restrictive effects in combination with this safeguard measure.

<Recent Developments>

Although an Indian solar cell manufacturer filed a domestic lawsuit seeking reversal of the measure (The bonded zones in India were also treated as foreign countries and were subject to the safeguard measures), which suspended the safeguard measures, this lawsuit has ended and the measures have been imposed.

Japan expressed its concern in the government opinion, at the Safeguard Committee, etc. It will continue to work with the Indian government to reduce the impact on Japanese products.

Standards and Conformity Assessment Systems

(1) Technical Regulations for Steel Products

<Outline of the Measure>

In September 2008, the Indian government announced that it would introduce technical standards for steel products and steel products imported into India. After the enforcement date, steel manufacturers were required to acquire Indian Industrial Standards ("IS Standard", IS = Bureau of Indian Standards) and to ensure conformance with the standards.

<Problems under International Rules>

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

<Recent Developments>

The technical standard by the Indian government has been operated by "First Order 2008 for Steel and Steel Products", "Second Order 2008", "Second Order 2012", "Order 2015", "Modified Order 2017" and "Stainless Products Order 2016", etc.

In February 2018, the government announced the "Steels and Steel Products Order 2018", and the standard for steel and steel products until then was integrated into this order. In June of the same year, the Indian government added 16 new standards, including wire rods and structural steel materials, to the "Steel and Steel Products Order 2018", which came into effect on December 18, 2018. In August 2018, an official gazette was announced to integrate "Stainless Steel Product Order 2016" into "Steel and Steel Product Order 2018" and it came into effect on the same day.

In August, 2018, the Indian Government announced a circular for the request of non-applicable grades of technical standards. Manufacturers have to submit their product information in the said application form and submit it to the Indian government and then it is determined by deliberation at the Technical Review Committee whether or not the products are subject to technical standards. There are two ways of judgement: Exemption and Clarification. India's Ministry of Steel and Iron explained that Exemption is to allow to exclude products from scope of technical standards, but it is necessary to obtain the IS Standard within the grace period because the period and quantity is limited. On the other hand, Clarification is to determine that products are not subject to technical standards and there are no particular time and quantity restrictions.

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

(2) Technical Regulations for Automobile Tires

<Outline of the Measure>

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

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

<Problems under International Rules>

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

<Recent Developments>

At the meetings of the TBT Committee in March 2008 and thereafter, Japan, the EU and Republic of Korea has expressed concerns about the lack of transparency of the system, the need to provide a sufficient time for acquiring certification, negative effects on economic activities, and other matters. On recent occasions, Japan requested improvements in the above-mentioned issues of calculations for the marking fee at the TBT Committee. Japan will continue to request improvements in these regulations in cooperation with other countries that have similar concerns. Additionally as for the frequency of production management tests, a notice regarding a significant increase in the frequency of tests was issued in March 2015. Subsequently, comments from the business community were submitted to the BIS, and Japan continuously requested improvements at meetings of the TBT Committee. As a result, a new notice was issued in July 2016 and the initially planned increase in the frequency of tests was reduced to approximately one-sixth.

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

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

<Outline of the Measure>

In March 2010, the Indian government published a notification titled "Ensuring Security and Safety before Purchase of Telecommunications Equipment from Foreign Companies" and published regulations on procurement of telecommunications equipment in India for the purpose of ensuring security in information and telecommunications. The content of the regulations was partially relaxed in May 2011, but Indian carriers are obligated to obtain network security approvals from inspection authorities in India when purchasing telecommunications equipment from foreign telecommunications equipment manufacturers. The date of implementation for this system was scheduled for July, 2014 but it had been postponed many times thereafter. However, details regarding the measures such as security, requirements are not clear.

<Problems under International Rules>

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

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

<Recent Developments>

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

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

(4) Introduction of Technical Regulation on Electronic and Information Technology Devices

<Outline of the Measure>

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

In November 2014, the Indian government published official gazette stating that it will newly make 15 items subject to the system. This measure was planned to become effective in May 2015, but was postponed for eight of the items. It was fully enforced in June 2016.At present, a very large number of applications for testing are being made for both domestic and foreign products, but the testing period is getting longer due to the qualification suspension or insufficient testing capacity of the designated testing institutions. In addition, a large number of documents are required for application, and thus many applications for registration have not been completed. As a result, there has been a confused situation where exports of subject items are delayed.

<Problems under International Rules>

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

<Recent Developments>

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

The Government of India issued a revised market audit document, “Market Surveillance Policy May 2018 (v1)” on May 20, 2018 and BIS Conformity Assessment Regulations 2018 on June 4 of the same year. The operation of the market audit have been clearly documented but the provisions for prepaid costs and cancellation of registration by the manufacturer are unreasonable and unclear. Further, additional requests, such as displaying BIS website information (URL) on equipment and packaging, is also included.

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

Trade in Services

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

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

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

1. Financial Services

(a) Banks

Regarding relaxed restrictions on foreign investment in private banks, foreign banks have become able to establish wholly-owned subsidiaries in India, provided that they (1) are under the jurisdiction of the competent authorities of their home countries, and (2) meet approval requirements of the Reserve Bank of India (RBI), which is India's central bank. These points are also provided for in the Consolidated FDI Policy. Also, a revised provision in the current banking regulation law which stipulates that foreign voting rights shall be restricted to a maximum 10% of all voting rights in domestic private banks was approved in a Cabinet meeting in December 2012 with an increase to 26%. As for non-banks, foreign investment up to 100 percent was permitted in 18 sectors, including commercial banks such as designated merchant banks and home financing. Since October 2016, the scope of sectors has been expanded to include "other financial services." However, minimum capital requirements are prescribed according to investment ratios. In this case, it is also required to follow the guidelines of the RBI.

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

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

(b) Insurance

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

2. Distributions Services

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

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

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

In contrast, regulations on multi-brand retailers for which foreign entry was previously prohibited were relaxed to allow up to 51% of foreign capital investment (enforced in September 2012), and further relaxation was decided by the Cabinet (in August 2013). Major conditions for the regulatory relaxation are as follows, which practically impose entry barriers.

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

<Concerns>

Although the WTO Agreements contain no general rules on investment, the GATS disciplines service trade activities relating to investment. The restrictions on foreign investment described above do not violate the WTO Agreements so long as the restrictions do not contravene India’s GATS commitments. However, it is desirable that liberalization efforts be made in accordance with the spirit of the WTO and the GATS in mind.

<Recent Developments>

Bharatiya Janata Party (BJP), which became the ruling party after the general election in May 2014, had expressed its position of being cautious about relaxing foreign investment regulations on general retail businesses after the election. After the establishment of the new administration, the Minister of Commerce and Industry again expressed opposition to the relaxation of foreign investment regulations on general retail businesses. Although developments relating to relaxing the above regulations were observed in June and October 2016, Japan will continue to monitor the trends of amended laws related to the reinforcement of restrictions on foreign investment and will work on the relaxation of such restrictions through bilateral policy dialogues and other occasions.

(2) Personal Information Protection Bill

<Outline of the Measure>

In June 2018, a committee formed by the Indian government submitted a report on data protection and a draft of the "Personal Information Protection Bill" to the Ministry of Electronics and Information Technology (MeitY). In July 2018, the Indian government made the above draft public. According to the bill,
(1) Every data fiduciary shall ensure the storage of a copy of personal data on a server or data center located in India (although, the central government may exempt from such requirements on the grounds of necessity or strategic interests)(Article 40, paragraphs 1 and 3); (2) the government shall notify categories of personal data as "critical personal data" that shall be processed inside India (Article 40, Paragraph 2); and
(3) conditions (such as the transfer being subject to standard contractual clauses, or obtaining Authority approvals for intra-group schemes and others.) are set out for cross-border data transfer (Art 41).

<Problems under International Rules>

According to the provisions of the Personal Information Protection Bill, the scope is limited to personal data. However, the scope of "critical personal data" is at the discretion of the government and is not always clear.

Further, regarding the obligation to store data domestically, there are concerns that foreign operators may be more likely to receive disadvantaged treatment than Indian operators. It is necessary to keep an eye to avoid excessive data localization requirements.

Furthermore, the conditions for cross-border data transfer are also unclear. For example, there are concerns that the contents of the standard contractual clauses, the factors that may be considered in the approval standards for intra-group transfer schemes, and the approval process itself are not clarified.

It is necessary to keep paying attention to these aspects during the processes of drafting legislations and establishing related laws and regulations.

<Recent Developments>

In September 2018, the Japanese government submitted its opinion on the Personal Information Protection Bill. We will continue to work with industry to closely monitor future legalization processes and related laws and regulations so as not to unfairly infringe on the free flow of information and the rights of foreign operators.

Protection of Intellectual Property

Protection of Patents in Relation to Pharmaceuticals, etc.

<Outline of the Measure>

Although the TRIPS Agreement stipulates that patents will be granted for inventions in all technical fields (whether products or methods) that have novelty, inventive step and industrial applicability (Article 27 (1)), For countries that do not have a substance patent system that allows patents for inventions related to pharmaceuticals and other chemical substances in developing countries, a 10-year period was allowed after the TRIPS Agreement entered into force (Article 65, paragraph 4) until the introduction of this system.

India did not recognize drug substances patents in the 1970 Patent Law but in December 2004, ahead of the January 2005 deadline (expiration), the revised 2004 Patent Law (Presidential Decree) including the introduction of the substance patent system was promulgated. After that, the Parliament deliberated and adopted the 2005 Amendment Act (3rd), promulgated in April 2005 and it was implemented retroactively as effective from January of the same year excluding some articles. The points of the 2005 revised law included (1) Introduction of substance patent system (Deletion of Patent Act Article 5) (2) Introduction of definitions of medicinal substances (Article 2 (ta)), (3) Deletion of exclusive sales rights (EMR) provisions (Article 24A-F), (4) Restrictions on rights of patentees, etc. related to mailbox applications (Article 11A (7)) and (5) Introduction of compulsory license (manufacturing and export) for the export of pharmaceuticals under certain exceptional circumstances (Article 92A), etc.

Since the enforcement of the revised law in 2005, patents have been granted for pharmaceutical-related inventions. However, pharmaceutical-related inventions that have been patented in major countries are “non-inventions” in India, such as “simply discovering a new form of a known substance and not increasing the known efficacy of the substance”. In some cases, it is rejected under Article 3 (d) of the Patent Law, which is excluded from the subject of patents. In reality, in April 2013, the Supreme Court decided that patent applications relating to anticancer drugs of foreign pharmaceutical manufacturers should not be patented under Article 3 (d) of the Patent Act.

Further, there is a movement to activate compulsory licenses for pharmaceutical-related inventions. In March 2012, the Indian Patent Design Trademark Office, based on the application of a generic manufacturer in Japan, it was certified that “foreign drug manufacturers did not set the appropriate price and did not supply a sufficient amount of medicine at a reasonable price in India”. A compulsory license was set for pharmaceutical-related patents owned by the foreign pharmaceutical manufacturer based on one of the conditions for invoking compulsory licenses: “Patented inventions are not available to the public at a reasonably reasonable price” [Patent Act Article 84, Paragraph 1 (b)].

Regarding the establishment of this compulsory license, in May 2012, foreign pharmaceutical manufacturers were dissatisfied with the decision by the Directorate General of Indian Patent Design Trademark and an appeal was filed with the Indian Intellectual Property Appeals Board. However, it was rejected in March, 2013. In May of the same year, a foreign pharmaceutical manufacturer filed a complaint with the Mumbai High Court, but it was rejected in July 2014. In correspondence to that, a special permission application was made to the Supreme Court, but it was rejected in December 2014. Other applications for setting compulsory licenses that have been made, have been rejected by the Indian Patent and Trademark Office.

Regarding other background history, see Page 170 of the 2017 Unfair Trade Practices Report.

<Problems under International Rules>

It can be appreciated that a substance patent system has been introduced and the obligations under the TRIPS Agreement have been fulfilled. On the other hand, Regarding Article 3 (d) of the Patent Act, this clause states that “it is merely a discovery of a new form of an already known substance and does not increase the efficacy of the said substance and thus, cannot be patented”. Therefore, it may be inconsistent with Article 27 (1) of the TRIPS Agreement, which prohibits discrimination in the technical field, as it establishes stricter criteria that allow patenting for the technical field of chemical substances and pharmaceuticals.

<Recent Developments>

Regarding Article 3 (d) of the Patent Act, Japan has recently announced that at the meeting of the Trade Policy Review System (TPR) for India (2015), questions were made regarding the interpretation of the provisions and the consistency with Article 27 paragraph 1 of the TRIPS Agreement. At this time, similar questions have been received from the EU, Switzerland, and the United States, and the consistency between this provision and TRIPS Agreement Article 27 (1) was pursued.

In March 2018, 60 health organizations submitted a letter to Prime Minister Modi about two types of anti-TB drugs. The government requested the establishment of a compulsory license (Article 92 of the Patent Law) based on a notification from the central government, but it has not yet been put into operation. There is a request from the Japanese industry to improve transparency regarding the system and operation of compulsory licenses and even hereafter, it will be necessary to keep an eye on the consistency with international rules such as the Paris Convention and TRIPS Agreement.