CHAPTER 1

ISSUES ON TRADE IN GOODS

The economic partnership agreements that have been entered into by Japan are unique in nature for their comprehensiveness. The provisions on trade in goods alone provide, in addition to commitments by the parties to eliminate tariffs, rules of origin to determine the nationality of goods, disciplines on antidumping measures, standards and conformity assessment procedures and bilateral safeguard measures as the safety valve for liberalization undertaken pursuant to the EPAs/FTAs.

TARIFFS

Upon entering into an EPA/FTA each country commits to trade liberalization in goods by either an immediate elimination of the tariffs on the goods of the counterparty country upon the entry into force of the agreement or a reduction of the present tariff rate over a certain number of years. In this day where industrial products are often manufactured through cross-border supply chains, it is important to have a deep understanding of tariff elimination and reduction commitments by both Japan and foreign countries under their EPAs/FTAs. The elimination of tariffs in EPAs/FTAs is regulated by Article XXIV of GATT, which states that tariffs concerning substantially all the trade between the constituent territories should be eliminated within a reasonable length of time. Details of this requirement are contained in Part II, Chapter 16 of this Report.

1. METHODS OF ELIMINATING TARIFFS

The method of eliminating tariffs in each EPA/FTA is determined by the tariff elimination period, the tariff rate that serves as criteria for elimination (base rate), and the tariff elimination formula set forth for each item. These elements are, generally, stipulated in the tariff schedule, which is an annex of EPA/FTA.

(1) THE TARIFF ELIMINATION PERIOD

(a) For Regional Trade Agreements among Developed Countries and Between Developed and Developing Countries

In EPAs/FTAs among developed countries and between developed and developing countries, such as in the Singapore-New Zealand FTA (effective 2001), tariffs for all items are immediately eliminated upon the entry into force. In many cases, Periods for tariff elimination range from immediate elimination (as in the case of many agreements), to ten (10) years (the permitted limitation under Article XXIV of GATT), and additional medium-term elimination periods are set at, for example, three (3); five (5); or seven (7) years.

(b) For Regional Trade Agreements between Developing Countries

The tariff elimination period is generally longer in EPAs/FTAs between developing countries based on the Enabling Clause (*see* Part II, Chapter 1 Most-Favoured-Nation Treatment Principle, (b) Enabling Clause). The China-ASEAN agreement, under which the Trade in Goods Agreement

came into effect in 2005 (early harvest -- described below-- has been implemented since 2004 for some items), sets the period of tariff elimination for China and the original 6 members of ASEAN at four (4) years (if the tariff rate is under 10%); or five (5) years (if the tariff rate is 10% or higher) or seven (7) years for some items. In the case of CLMV (Cambodia, Laos, Myanmar and Viet Nam), the period is ten (10) years in principle and thirteen (13) years for some items. As to CLMV, up to approximately 4.8% of the number of items of each country are permitted as tariff elimination items exceeding ten (10) years. Under the AFTA CEPT (Common Effect Preferential Tariff), which came into force in 1993, tariff elimination was scheduled to be completed by 2010 in the original member states and by 2015 in CLMV (2018 for some exceptional items). In addition, tariffs on items subject to tariff reduction or elimination were scheduled to be decreased to 0-5% by 2003 in the original member state (tariffs were reduced to 0-5% in 2002 with some exceptions) and by 2010 in CLMV (Viet Nam: 2006, Myanmar and Laos: 2008, Cambodia: 2010). From January 2018, intra-regional tariffs of CLMV, a new member of ASEAN, were eliminated.

(2) Benchmark for Tariff Elimination (Base Rate)

Although most-favoured-nation (MFN) tariff rates at the time of negotiations are usually applied as the base rates that serve as criteria for elimination, there are cases where MFN tariff rates at the time of negotiations are not used as base rates. For instance, in the EPAs that Japan has concluded, if the other parties are countries that have adopted a generalized system of preferences (GSP), GSP tariff rates are used as base rates for items covered by the GSP with some exceptions (in principle, these items are removed from the list of items covered by the GSP after the EPA comes into effect). There are also cases where the sensitivity of a product is reflected in the base rate. In the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) and the Japan-Viet Nam EPA, tariff rates higher than MFN tariff rates, but not exceeding the WTO bound rates, are used as base rates on such items as steel, steel products, automobile parts, and chemicals in regard to Viet Nam. This is because Viet Nam insisted on the importance of inviting investment in and protecting investment plans for such industries.

Although EPAs/FTAs represent bilateral or multilateral preferential relations, signatory countries in some cases may voluntarily reduce the most-favoured-nation (MFN) tariff rates below the EPA/FTA preferential tariff rates for some items. Therefore, there may be cases where MFN tariff rates are lower than EPA preferential tariff rates. Anticipating such cases, some of Japan's EPAs/FTAs provide that EPA/FTA preferential tariff rates shall be at the same rates as MFN tariff rates when MFN tariff rates are lower than EPA/FTA preferential tariff rates (e.g. Article 2.4, paragraph 4, etc. of the Japan-Australia EPA). On the other hand, based on the view that EPA/FTA tariff rates are preferential and therefore should be always lower than MFN tariff rates, some FTAs such as the EU Chile Association Agreement and the Singapore-India FTA call for an EPA/FTA preferential tariff rate of an item to be reduced or eliminated when its MFN rate is lowered so that the preferential tariff rate always is lower that the MFN tariff rate.

(3) The Tariff Elimination Formula

Basic tariff elimination methods are: (i) the immediate elimination upon the entry into force of the agreement; (ii) phased elimination by equal reductions; (iii) one-time elimination after the maintenance of present tariff rates for several years from the entry into force or until the elimination deadline; and (iv) the phased elimination with a substantial reduction in the first year, followed by equal reductions (as was applied to the tariff on automobiles of Thai origin under the Australia-Thailand agreement). In many regional trade agreements, the tariff elimination formula and period are generally based on the sensitivity of a product. NAFTA’s tariff elimination periods basically fall into the following four categories: (i) immediate elimination; (ii) four years; (iii) nine

years; and (iv) fourteen years. It also provides a tariff elimination method for exceptional items individually. In some agreements, the applicable tariff elimination periods and formulas are automatically determined by base rates. For example, the Australia-New Zealand Closer Economic Relations Trade Agreement ("ANZCERTA") determined to eliminate tariffs within five years if the base rate exceeded 5% and to eliminate them immediately if the base rate was 5% or less. The China-ASEAN FTA sets five methods of tariff elimination, depending on the base rate. In addition, there are methods unique to regional trade agreements between developing countries that include an early harvest of tariff elimination and reduction partially in advance. For instance, in the India-Thailand FTA, an early harvest (tariff reductions prior to completion of negotiations) has been in effect since September 2004 in regard to 82 items, such as home electric appliances and automobile parts, and the tariffs have already been eliminated. In the Taiwan-China Economic Cooperation Framework Agreement (ECFA), an early harvest was implemented in January 2011 through to January 2013 to eliminate tariffs on 806 items (539 items of China origin and 267 items of Taiwan origin), including petrochemical products, machinery, and textile products, etc.

There are also cases where a party promises to offer most-favoured-nation treatment to the other party with regard to tariff rates, which is often seen in the service chapter of FTAs. The U.S.-Peru FTA, which was concluded in December 2005, for instance, provides that if Peru promises, in an EPA/FTA with a third country, to offer lower tariff rates on some agriculture, forestry and fishery products (such as beef, pork, milk, butter and other prepared food stuffs) than the preferential tariff rates Peru promised to offer to the United States, the preferential rates offered to the third country shall apply to the United States.

Exceptions to tariff elimination can be classified as follows:

(i) Items subject not to tariff elimination but to tariff reduction;

(ii) Items subject to a tariff quota;

(iii) Items that are exempted from tariff elimination or reduction upon the entry into force of the agreement and specified as items to be renegotiated in the future (renegotiation items);

(iv) Items subject to commitments to prohibit introduction of a new tariff or tariff increases (standstill); and,

(v) Items not subject to any tariff concession (exclusion).

2. OTHER RELATED PROVISIONS

EXPORT DUTIES

With regard to export duties (see Column "Resources/Energy and WTO Rules" in Chapter 3, Part II), Paragraph 1 of Article XI of GATT explicitly excludes duties, taxes and other charges. It is thus considered that export duties are not subject to the disciplines under the WTO Agreements. However, as export duties have a trade distortion effect, in the EPAs that Japan has concluded, strict restraints which exceed those of the WTO Agreements are introduced. For example, the Japan-Singapore EPA, the Japan-Peru EPA and the Japan-Australia EPA provide for the elimination of export duties. In addition, the Japan-Philippines EPA (Article 20) provides that each country shall exert its best efforts to eliminate export duties.

RULES OF ORIGIN

1. BACKGROUND OF THE RULES

Rules of origin are rules used to assess the "nationality" of internationally traded goods. They can be categorized into two types: non-preferential rules of origin, which are used for such purposes as the application of the WTO Agreement tariffs and preparation of trade statistics data, and preferential rules of origin, which are used to grant preferential tariff treatment concerning specific products from specific countries (for example, the application of preferential tariffs under the Generalized Scheme of Preferences (GSP) or EPAs/FTAs).

Non-preferential rules of origin are stipulated by individual states in accordance with the WTO Agreement on Rules of Origin. Currently, harmonization of this type of rule is promoted (see Part II, Chapter 10 of this Report on Rules of Origin for details). The purpose of preferential rules of origin is to assess the originating goods of EPA/FTA contracting parties and to prevent a preferential tariff treatment under the relevant EPA/FTA from being applied to goods which are substantially produced in a non-contracting party and then imported to a contracting party through the other contracting party (prevention of circumvention).

2. OVERVIEW OF LEGAL DISCIPLINES

Rules of origin under EPA/FTAs are, in general, comprised of: (i) rules of origin; and (ii) origin certification procedures.

(1) RULES OF ORIGIN

Rules of origin are generally comprised of (a) origin criteria to determine the origin of goods; (b) 'provisions adding leniency' in the application of the rules of origin assessment process; and (c) provisions to prevent circumvention from a non-contracting party.

(a) Origin Criteria

The commonly adopted criteria to determine the origin of goods are:

(i) Wholly Obtained Goods

Goods that have been wholly produced within the territory of a contracting party (for example, livestock born and raised in a contracting party, ores mined in a contracting party, etc.)

(ii) Goods Produced Exclusively from Originating Materials

Goods produced in a contracting party using originating materials exclusively (materials that fulfill any of (i) to (iii) of the origin criteria).

(iii) Goods that Fulfill Applicable Substantial Transformation Criteria

Goods produced from non-originating materials, which fulfill relevant substantial transformation criteria (criteria for production and processing processes to grant originating status). Substantial transformation criteria are typically stipulated for each item as Product Specific Rules (PSR) and described in the form of the following three criteria. Moreover, methods for determining the fulfillment of the following three criteria are also stipulated under individual EPAs/FTAs.

CTC Rule: Change in Tariff Classification Rule

Under this rule, if the tariff classification of non-originating raw material and the tariff classification of the goods produced from such non-originating raw material differ production and processing within contracting parties, the goods will be deemed to have undergone substantial transformation and will be granted originating status. The required degree of substantial transformation is designated for each item in the form of the number of digits of the changed tariff classifications. Specifically, granting of originating status requires either a change in the first two digits (chapter) of the tariff classification number (referred to as CC or Change in Chapters), a change in the first four digits (heading) of the tariff classification number (referred to as CTH or Change in Tariff Headings), or a change in the first six digits (sub-heading) of the tariff classification number (referred to as CTSH or Change in Tariff Sub-Headings).

RVC Rule: Regional Value Content Rule

Under this rule, the value added by the process of implementing the procurement and processing of goods within the contracting parties' countries is converted into an amount, and if that amount exceeds a certain reference threshold amount, the substantial transformation criteria will be deemed to have been fulfilled and originating status will be granted to the goods. Under this rule, the higher the threshold, the more difficult it is to obtain originating status.

SP Rule: Specific Process Rule

Under this rule, the substantial transformation criteria are deemed to have been fulfilled if certain processing activities occurred within the contracting parties' countries, thereby granting originating status to the goods. This designates originating status processes that cannot be applied by changes in the tariff classifications. Examples of application of this rule can be seen in some chemical products, apparel products, semiconductors, etc.

(b) Leniency Provisions

Various types of leniency provisions are set forth in rules of origin in order to facilitate satisfying originating criteria. Major leniency provisions include:

(i) Accumulation/Cumulation

Accumulation/Cumulation is applicable to both CTC rule and RVC rule. If originating parts or raw materials of an EPA/FTA contracting party used in the production of the goods in the other FTA contracting party, they are regarded as originating parts or raw materials of the latter party. Under some EPAs/FTAs, accumulation of originating parts or raw materials and production occurring in a Party's territory may be regarded as production occurring in the other Party's territory. Accumulation/Cumulation has the effect of increasing exports of the exporting country's own products and in turn, promoting intra-regional trade and division of production activities within the FTA contracting parties.

(ii) Rollup

Rollup is a provision to calculate value-added amount of goods. If material has acquired originating status, the value of non-originating portion of such material may be counted (*i.e.*, cumulated with) as originating.

(iii) Tracing

Tracing is a provision to calculate the value-added amount of goods. If material is non-originating, the value of the originating portion of the material may be deducted from the value

of the non-originating material, and the value of the originating portion of the material may be added to the value of originating material.

(iv) De Minimis

Basically, where the CTC rule is required, originating status would nonetheless be granted to a good even though it does not fulfill the applicable PSR, if the value or weight of non-originating materials of the good which do not undergo the change in tariff classification does not exceed a certain percentage of the value or weight of the good. In other words, *de minimis* allows that the value or weight of non-originating material not more than the threshold provided may be disregarded for determining originating status.

(c) Provisions on Prevention of Circumvention from a Non-contracting Party

(i) Provision on Minimal Operation in Respect of which Originating Status is Not Granted

Minimal Operation is a safety net provision, stating that goods is not considered as originating if they seemingly satisfy the applicable PSR, but in fact were not substantially produced or processed within the contracting party.

(ii) Consignment Conditions

Consignment Conditions require direct transportation of goods from the exporting contracting party to the importing contracting party, but provides that goods will not lose their originating status as a result of minor processing thereof (*i.e.*, trans-shipment, or preservation of the goods), even if the vessel carrying the goods stops at a port of a non-contracting party for, *inter alia*, logistical and transportation reasons.

(2) ORIGIN CERTIFICATION PROCEDURE

The preferential origin certification systems in EPAs/FTAs generally can be categorized as either a third-party certification system or a self-certification system. The self-certification system can be divided into three categories by focusing on the subject of obligations and penalties: self-certification by approved exporters, self-certification by exporters, and self-certification by importers.

(a) Third-Party Certification System:

This is a system under which a certificate of origin is issued to an exporter by the authority of the exporting contracting party or the agency designated by the authority. This approach is used in Japan's various EPAs and AFTA (ASEAN Free Trade Area; a free trade agreement by 10 ASEAN member countries).

Features for this system are as follows:

- The authority of the exporting contracting party takes measures concerning the obligations of the receiver of a certificate (record keeping, etc.) and appropriate penalties.

(b) Self-Certification System:

(i) Self-certification by approved exporters

Exporters approved by the authority of the exporting contracting party make out an origin

declaration (a certificate of origin). This system is mainly used by the EU. The system has also been introduced in the Japan-Switzerland EPA, the Japan-Peru EPA and Japan-Mexico EPA (revision), which came into effect in September 2009, March 2012, and April 2012, respectively.

Features for this system are as follows:

- The authority of the exporting contracting party takes measures concerning the obligations of the approved exporters (record keeping, etc.), and appropriate penalties.

(ii) Self-certification by exporters, etc.

Exporters of the exporting party make out a certificate (requirements are provided for under domestic laws). This system is used in NAFTA, Korea-Chile FTA, Australia-Chile FTA, Korea-US FTA, etc. It was also introduced in the Japan-Australia EPA, which entered into force in January 2015, the CPTPP, which entered into force in December 2018, and the Japan-EU EPA, which entered into force in February 2019.

Features of this system are as follows:

- The authority of the exporting contracting party takes measures concerning the obligations of the exporters, etc. (record keeping, etc.), and appropriate penalties.

(iii) Self-certification by importers

Importers make out a certificate. This approach is used in the U.S.-Australia FTA, Korea-US FTA, etc. It was also introduced in the Japan-Australia EPA, which entered into force in January 2015, the CPTPP, which entered into force in December 2018, and the Japan-EU EPA, which entered into force in February 2019.

Features for this system are as follows:

- The entities that make out a certificate of origin are importers. The authority of the importing contracting party takes measures concerning the duties of such importers (record keeping, etc.), and appropriate penalties.
- Verification of whether goods are originating ones is basically conducted for the importers by the customs authority of the importing contracting party.

3. EPA/FTA RULES OF ORIGIN IN JAPAN AND GLOBALLY

(1) EPA/FTA RULES OF ORIGIN IN JAPAN

For overviews of the rules of origin under the EPAs into which Japan has entered to date, see page 798 onward of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –. Of these EPAs, those which have been amended after the publication of the 2017 edition of the Report are listed below.

i) Japan-Singapore EPA

See page 690 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

ii) Japan-Mexico EPA

See page 690 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

iii) Japan-Malaysia EPA

See page 690 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

iv) Japan-Philippines EPA

See page 690 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

v) Japan-Chile EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

vi) Japan-Thailand EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

vii) Japan-Brunei EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

viii) Japan-Indonesia EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

ix) Japan-ASEAN EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

x) Japan-Viet Nam EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xi) Japan-Switzerland EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xii) Japan-India EPA

See page 691 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xiii) Japan-Peru EPA

See page 692 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xiv) Japan-Australia EPA

See page 692 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xv) Japan-Mongolia EPA

See page 692 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA –.

xvi) TPP

See page 692 of the 2017 Report on Compliance by Major Trading Partners with Trade

Agreements - WTO, EPA/FTA and IIA –.

xvii) CPTPP (TPP11)

See page 424 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA.

xviii) Japan-EU EPA

It is signed in July 2018 and entered into force in February 2019. For Japan, this is an economic partnership agreement with European countries following the Japan-Switzerland EPA. The basic composition is the same as that of Japan's EPA so far, but for the method of calculating value-added standards, the combination system with “Maximum use of non-originating materials (MaxNOM)” is adopted in addition to the “Regional Origin Ratio (RVC)” similar to that of Japan's EPA. The self-certification system by exporters, manufactures, and importers for the origin certification system is adopted.

(2) EPA/FTA RULES OF ORIGIN GLOBALLY

The rules of origin of existing EPA/FTAs in the world can roughly be classified into three types: the Americas Type (adopted by the U.S.); the European Type (adopted by the EU) and the Asian Type (adopted by countries in the Asia region).

(a) American Type

The product-specific rules (PSR) of Americas Type EPA/FTAs are based on the CTC rules and apply the RVC rules to some goods. The net cost method, which requires more precise RVC calculation than other methods, is applied to some goods. The origin procedures are based on Self-certification. (Please refer to the column below for further details on NAFTA’s Rules of Origin.)

(b) European Type

The product-specific rules (PSR) of European Type EPA/FTAs are based on the SP rules and the RVC rules of the EEA agreement (regional economic agreement among European Economic Area, which consists of the EU member countries, Iceland, Liechtenstein and Norway). The origin procedures are based on the combination of the self-certification by approved exporters system and the third-party certification system.

(c) Asian Type

The ASEAN Trade in Goods Agreement (ATIGA) came into effect in May 2010. It replaces the Common Effective Preferential Tariff (CEPT) of the ASEAN Free Trade Area (AFTA, which is the FTA among the ten ASEAN member countries) in order to establish a common market and local production bases and to promote further trade facilitation within the region. The product-specific rules (PSR) of Asian Type EPA/FTAs are based on a co-equal rule approach under which exporters or producers can choose to meet either RVC rules or CTC rules. As represented by AFTA, a third-party certification system (governmental certification) is the most popular origin procedures among Asian Type FTA/EPAs. However, a self-certification system by approved exporters is adopted by some Asian Type EPA/FTAs.

ANTIDUMPING AND COUNTERVAILING DUTY

1. BACKGROUND OF THE RULES

In recent years, upon entering into FTAs, non-application of trade remedy measures (including antidumping (AD) measures permitted under the WTO Agreements) within the relevant region and additional disciplines in excess of those under AD agreements often have been incorporated in the FTAs. The reason for the incorporation of such provisions into FTAs since the 1990s is to prevent the enhancement of market access among the FTA contracting parties' countries from (see Part II Chapter 6 for specific examples of anti-dumping) being frustrated by abuse of trade remedy measures, and to further enhance regional and bilateral free trade by replacing AD measures with the competition policy articulated in the FTA contracting parties' countries.

2. RELATIONSHIP WITH WTO AGREEMENTS

The non-application of AD measures in EPAs/FTAs presupposes the full integration of the domestic markets of the contracting parties regarding trade in goods, and the establishment of free trade (such as the complete elimination of tariffs). Therefore, it is consistent with the purpose of the WTO. Meanwhile, stricter disciplines than provided by the WTO for procedural and substantive aspects of the regulations in respect of AD measures (WTO-plus disciplines), overlap with proposals made in the process of negotiating WTO AD rules (which are aimed at stricter disciplines). Therefore, it is possible to view such measures as a furtherance of disciplines for AD agreements implemented through bilateral EPAs/FTAs, which are stricter than under the WTO Agreements. However, there is concern that special treatment in respect of applying AD measures under rules stricter than those of the WTO in relation only to EPA/FTA parties' countries may be, depending on the content, in conflict with the principle of most-favoured nation treatment under GATT.

3. OVERVIEW OF LEGAL DISCIPLINES

Since the 1990s, while the regulation of AD measures in FTAs have been diversified and often amended, they can be grouped into the following three major categories (the provisions on countervailing duty measures follow the same grouping):

(1) REAFFIRMATION OF RIGHTS AND OBLIGATIONS UNDER THE WTO AND AD AGREEMENTS

In addition to provisions in EPAs/FTAs explicitly confirming rights and obligations under the WTO and AD Agreements, some agreements substantively allow the application of AD regulations under the WTO Agreements within the relevant region, by providing in the general provisions of the relevant EPA/FTA that the exercise of rights under GATT will not be prevented. The Japan-Singapore EPA (and many other EPAs/FTAs) falls under this category.

(2) STRICTER DISCIPLINES THAN THE WTO OR AD AGREEMENTS

Some FTAs executed by Singapore introduce stricter disciplines than the WTO Agreement on AD measures. For example, the Singapore-New Zealand FTA: (i) raises the *de minimis* margin of the export price below which AD duties cannot be imposed from 2% to 5% (Article 9, paragraph 1(a)); (ii) applies such stricter "*de minimis*" rule to review cases as well as new

investigation cases (Article 9, paragraph 1(b)); (iii) increases the volume of dumped imports which are regarded as negligible from 3% to 5%, and immediately terminates investigation if the import share falls below 5% (Article 9, paragraph 1(c)); (iv) provides that the time frame for determining the volume of dumped imports which can be regarded as negligible (mentioned in (iii) above) shall normally be at least 12 months (Article 9, paragraph 1(d)); and (v) reduces the period of imposition of the AD duties from five (5) years to three (3) years (Article 9, paragraph 1(e)). The Japan-EU EPA clearly specified the information that should be specifically disclosed in the disclosure of important facts (Article 5.12.3 (a)), and clarified that the notice of investigation should be reported at least 10 days before the start of the investigation (Article 5.14).

And the Korea-India trade agreement applies the lesser duty rule (which, when determining AD duty, makes it mandatory to apply a tariff rate sufficient to remove damage (lower than the dumping margin), if the damage to the domestic industry can be removed without imposing a tariff equivalent to the dumping margin) (Article 217), prohibits zeroing (See Part I, Chapter 2 "United States", "Anti-Dumping") (Article 218), and prohibits re-investigation within one year after abolition of the measures (Article 219).

In addition to such stricter substantive disciplines, some FTAs provide stricter procedural disciplines than exist in the WTO Agreements. For example, some FTAs provide that the investigative authority which received a relevant petition shall "promptly" notify the counterparty (*i.e.*, the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)) and provide the counterparty government with an opportunity for prior consultation before applying the relevant AD measures (*i.e.*, the Korea-U.S. Free Trade Agreement (KORUSFTA)). Others provide that acceptance of price undertaking is preferable to the imposition of AD duties (*i.e.*, the Thailand-Australia Free Trade Agreement (TAFTA)).

(3) Provisions on Non-Application of AD Measures Between Contracting Parties' Countries

In 1990, ANZCERTA ceased the application of AD measures in bilateral trade relations and simultaneously amended and reorganized domestic competition laws to abolish AD measures in respect of the counterparty, thereby making AD measures mutually inapplicable. In 2003, the Canada-Chile FTA also abolished the use of AD measures against intra-regional trade (Articles M-01, 03) while providing consultation on certain matters when unexpected situations occurred (Article M-04).

In the Japan-India EPA, which entered into force in August 2011, provisions were included, as WTO-plus procedural disciplines, to require the country that received an application for the initiation of an investigation to notify the other country of the receipt of the application within 10 working days before the initiation of investigation and to provide the full text of the application (Article 24). For Japan, this is the first example of specific enhancement of AD measures in EPAs.

However, FTAs which provide non-application of AD measures are the exception. Most FTAs confirm the rights and obligations between the contracting parties' countries under the WTO Agreements, and allow for the imposition of AD measures as well as countervailing duty measures as "remedies" against injury to a domestic industry due to dumping or illegal subsidies.

4. Overview of AD disciplines in Japan's EPAs/FTAs

In the EPAs concluded by Japan to date, WTO-plus disciplines are only included in the Japan-India EPA, and other EPAs only confirm the rights and obligations under the WTO Agreements (allowing AD measures within the region that are consistent with the WTO

Agreements) (see Figure III-1-2).

The Japan-India EPA, which came into effect in August 2011, contains a provision that goes beyond the regulations of the WTO, and according to which, when the authority of the investigating party received a written application by or on behalf of its domestic industry for the initiation of an investigation regarding a good from the other party, the former party is required to notify the other party at least ten working days in advance of the initiation of the investigation, and provide it with the full text of the application (Article 24). For Japan, this is the first example of a provision that concretely strengthens the provisions of AD measures in its EPAs.

In the TPP signed in February 2016, rights and obligations relating to AD/CVD under the WTO Agreement were confirmed, and specific procedures used in the course of investigations, etc. are provided as measures to promote transparency and appropriate procedures although such specific procedures are not mandatory. These rules do not set forth rights and obligations of contracting parties, but it is expected that sharing measures to promote transparency reduces the abuse of AD measures and CVD measures by contracting parties.

Figure III-1-2 Summaries of Provisions of Major FTAs and EPAs on AD and Countervailing Duties

EPAs/FTAs of Japan	Provisions on AD Duties	Provisions on Countervailing Duties
Japan-Singapore	Cooperation toward more strictly regulated AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreements (preamble), intra-regionally applicable (Article 14, paragraph 5(b)).	
Japan-Mexico	Cooperation toward more strictly regulated AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreements (Article 167), intra-regionally applicable (Article 11(b)).	
Japan-Malaysia	Reaffirmation of rights and obligations under the WTO Agreements (Article 11, paragraph 1), intra-regionally applicable (Article 16 (b)(ii)).	
Japan-Philippines	Reaffirmation of rights and obligations under the WTO Agreements (Article 11, paragraph 1), intra-regionally applicable (Article 18.4 (b)).	
Japan-Chile	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regionally applicable (Article 28, paragraph (d) (ii)).	
Japan-Thailand	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regionally applicable (Article 15, paragraph (b)(ii)).	
Japan-Brunei	Reaffirmation of rights and obligations under the WTO Agreements (Article 9, paragraph 1), intra-regionally applicable (Article 13 (b)(ii))	
Japan-Indonesia	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regionally applicable (Article 20, paragraph 4(b)).	
Japan-ASEAN	Reaffirmation of rights and obligations under the WTO Agreements (Article 10, paragraph 1), intra-regionally applicable (Article 13 (a)(ii))	
Japan-Viet Nam	Reaffirmation of rights and obligations under the WTO Agreements (Article 9, paragraph 1), intra-regionally applicable (Article 13 (b)(ii))	
Japan-Switzerland	Study the prompt notification of initiating investigations, and possibility of consultations based on requests. Cooperation toward more strictly regulating AD measures of the WTO (joint statement), reaffirmation	Reaffirmation of rights and obligations under the WTO Agreements (Article 7, paragraph 1), intra-regionally applicable (Article 11, paragraph (c)(ii)).

EPAs/FTAs of Japan	Provisions on AD Duties	Provisions on Countervailing Duties
	of rights and obligations under the WTO Agreements (Article 7, paragraph 1), intra-regionally applicable (Article 11, paragraph (c)(ii)).	
Japan-India	Reaffirmation of rights and obligations under the WTO Agreements (Article 12, paragraph 1), intra-regionally applicable (Article 16 (b)(ii)) Notification before the initiation of investigation and provision of the full text of the application before, concluding country that received the notification can make notifications to exporters, etc. (Article 24)	Reaffirmation of rights and obligations under the WTO Agreements (Article 12, paragraph 1), intra-regionally applicable (Article 16 (b)(ii))
Japan-Peru	Reaffirmation of rights and obligations under the WTO Agreements (Article 2, paragraph 1), intra-regionally applicable (Article 18 (e)(ii))	
Japan-Australia	Reaffirmation of rights and obligations under the WTO Agreements (Article 2.11), intra-regionally applicable (Article 1.2 (f) (ii))	
Japan-Mongolia	Reaffirmation of rights and obligations under the WTO Agreements (Article 2.17), intra-regionally applicable (Article 2.1 (f) (ii))	
Japan-EU	Reaffirmation of rights and obligations under the WTO Agreement (Article 5.11), intra-regionally applicable (Article 2.4(b)), clarification of information to be specifically disclosed (Article 5.12.3(a)), and clarification of notification that should be made at least 10 days before investigation (Article 5.14)	Reaffirmation of rights and obligations under the WTO Agreements (Article 5.11), intra-regionally applicable (Article 2.4(b)), clarification of information to be specifically disclosed (Article 5.12.3(b))
TPP	Prescribes measures to promote transparency and appropriate procedures as stipulated in Reaffirmation of rights and obligations under the WTO Agreements (Article 6.8), Annex VI-A	

SAFEGUARDS

1. BACKGROUND OF THE RULES

(1) EPA SAFEGUARD MEASURES BETWEEN CONTRACTING PARTIES

Most FTAs and EPAs provide bilateral safeguard measures which apply to imports of products from the other party and which are covered by, *inter alia*, tariff concessions. These measures allow for the temporary withdrawal of the commitment to eliminate or reduce tariffs under the relevant EPA/FTA, returning to most-favoured nation GATT tariff levels as an emergency measure if serious injury to the domestic industry, or threat thereof, occurs due to an increase in imports resulting from the elimination or reduction of tariffs under the agreement. They also provide the substantive and procedural rules regarding investigations and imposition of safeguard measures. Safeguard measures between contracting parties function as a type of safety valve, enabling the parties to make commitments for a reduction in or elimination of tariffs for more items, including sensitive items, in the process of negotiation in connection with liberalizing EPAs/FTAs between them. So they are an important component in the EPA/FTA negotiation process.

(2) TYPES OF SAFEGUARD MEASURES BETWEEN CONTRACTING PARTIES

SG measures between contracting parties may be grouped into the following four categories based on their nature. That is, (1) Content that mainly conforms to the WTO SG Agreement (US Australia, US Singapore, Japan-Singapore, Japan-Mexico, Korea-Singapore, etc.), and (2) Content that mainly conforms to Article XIX of the GATT (NAFTA, USMCA, CPTPP, etc.), (3) Those that do not have a general contracting party SG system (Korea-Chile, etc.). and (4) those of the European type, which allow for the imposition of safeguard measures under certain conditions (i.e., allowing the imposition of safeguards when there is injury to the industry which might result in a worsened local economy, or when economic, social or environmental issues arise) (EFTA, EU-Mexico FTA). Currently, all SG measures between contracting parties under Japan's EPAs fall under category (1) and (2). Following is a summary of the characteristics and specific examples of SG measures between contracting parties.

2. OVERVIEW OF LEGAL DISCIPLINES

(1) CHARACTERISTICS OF SAFEGUARD MEASURES BETWEEN EPA CONTRACTING PARTIES

As mentioned above, the SG measures between contracting parties function as a safety valve against trade liberalization under EPA/FTA. Therefore, the measures may be permitted only to the extent of the liberalization (or tariff reduction) required there under, and they may have a slightly different character than WTO SG measures. The characteristics are as follows.

(a) Measures more restrictive than WTO SG measures

The WTO Agreement on Safeguards permits quantitative restrictions, other than to tariff measures, to be imposed on goods (Article 5, paragraph 1), in contrast, SG measures between contracting parties under EPAs/FTAs are often permitted only for customs duty. In addition, while the WTO Agreement on Safeguards does not have any special provisions on the permissible extent to which tariffs may be increased, safeguard measures between contracting parties often provide for suspension of tariff reduction under the EPAs/FTAs or increase of the tariff rate up to the then

most-favoured-nation rate in respect of import duties (by lowering the rate of either the then most-favoured-nation import duties as of the time of the bilateral safeguard measure or as of the day before the agreement entered into force).

This characteristic is inevitably derived from the above basic philosophy of SG measures between contracting parties called the safety valve against trade liberalization under EPA/FTA. The raising tariffs exceeding the effective MFN rate based on the EPA/FTA regulations between specific countries and limiting import quantities from contracting parties may cause conflict with the obligation of most-favoured nation treatment of the WTO agreement and it would be difficult to be justified under GATT Article XXIV (Free Trade Area).

(b) Restrictions on imposition requirements and period

The imposition of SG measures between contracting parties is required often where the elimination or reduction of tariffs based on EPA/FTA results in an increase in imports, but it can be requested in any circumstances that were unforeseeable during the EPA/FTA negotiations. There may be some increase in imports as a contracting party due to the EPA/FTA, which stipulates the elimination or reduction of tariffs, which is more advanced than the GATT concession. In light of the basic aim of EPA/FTA to establish free trade zones through the elimination of tariff and non-tariff measures, disciplines for SG measures between contracting parties are often stricter than they are in the WTO SG agreement.

For example, the Japan-Singapore and the Japan-Chile agreements, the triggering requirement is limited to an absolute import increase.

The application of SG measures between contracting parties is restricted to a certain transition period after the FPA/ETA comes into effect or after elimination and reduction of tariffs (CPTPP and EU-Japan etc.)[1]

Some EPA/FTA set the maximum limit for applicable period shorter than the one provided by the safeguard agreement, such as two years in principle or four years at maximum in the Japan-Singapore agreement and four years in principle or five years maximum in the Japan-Malaysia agreement.

It may be regarded as example of strengthening SG measures discipline, in the case where there is no regulation for provisional measure, and prohibiting imposition before completing the SG investigation (CPTPP and USMCA etc.)

In addition, an example of introducing a de minimis standard can be found in the Singapore-India FTA, which prohibits the application of SG measures that if the import of goods subject to investigation account for 2% share or less of the domestic market sales or 3% or less of the aggregate imports (during the 12 months before the application for investigation), SG measures between contracting parties may not be taken.

[1] In fact, an example that SG measure between the Contracting Parties was abolished by expiry of the transition period also exists. In the Australia-NZ economic cooperation agreement (ANZCERTA), as a transition period, it was set forth when price stability measures and subsidy exists that disturbs custom duties, quantity restrictions, tariff assignment, export incentive and development of trade opportunity. In July 1990, the transition period was also expired with complete liberalization of the article trade, and the SG measure between two countries was abolished.

(c) Limitation on application (Multilateral EPA/FTA)

This is a specific issue for EPA/FTA having more than three countries, but the system design may vary for SG measures between contracting parties, such as (i) whether it is applied to the entire region regardless of the import source or (ii) whether it is applied to specific contracting party. In CPTPP, each contracting country recognizes the satisfaction of requirements such as increased imports and risk of damage to domestic industries, and imposes SG tax only on imports from contracting countries that meet the requirements ((ii) above).

(2) Relationship between WTO Agreements and Safeguard Measures between EPA Contracting Parties

As stated previously in Part II, Chapter 8, 1. (2), when excluding EPA contracting parties from the scope of SG measures under the WTO agreement, the problem may cause in relation to the responsive principle of WTO Safeguard (Parallelism). In the Japan's EPA/FTA, even if SG measures between contracting parties have been imposed, under the Japanese legislative system special restrictions (i.e., exclusion of EPA/FTA contracting parties from the subject of safeguard measures) will not be placed on the imposition of safeguard measures under the WTO Agreements, and EPA/FTA regulations ensure that there will be no exceptions to WTO agreements in principle.

In addition, as mentioned above, trade restriction measures by SG between EPA contracting parties may be a problem of the consistency with WTO agreements (especially the obligations for most-favoured nation treatment). The SG measures between contracting parties permitted under the EPA executed by Japan allows only suspension of tariff reduction thereunder or an increase of the tariff rate up to the present MFN rate of tariff. These measures are considered, in principle, not to give rise to any issue of inconsistency with the WTO Agreements. (However, EPA/FTA has the discipline that "restrictive regulations of commerce" must be abolished for "substantially all the trade" in the region (GATT Article 24:8). Note that there is a possibility of conflicting with this separately depending on the design and operation of SG measures between contracting parties.)

Standards and Conformity Assessment Systems

1. Background of the Rules

The WTO has the Agreement on Technical Barriers to Trade(TBT Agreement), which contains provisions on, *inter alia*, the promotion of international harmonization and securing transparency in order to prevent standards and conformity assessment systems from causing unnecessary barriers to international trade (*see* Part II, Chapter 11, "Standard and Conformity Assessment" for details). EPAs/FTAs also have provisions concerning standards and conformity assessment, while taking into account technical aspects of the regulatory system and special characteristics of the region.

2. Overview of Legal Disciplines

The area of technical regulations, standards and conformity assessment procedures involves technical aspects of the regulatory system and special characteristics of the region. Thus, one of the appropriate and effective means to ensure the transparency of the regulatory system and consistency of technical criteria with relevant international standards is to share concerns on issues through multilateral consultations amongst experts (such as the WTO TBT Committee and the APEC/SCSC (Sub-Committee on Standards and Conformance)) and discuss them constructively with other countries. In order to meet the objectives of the WTO/TBT Agreement,

particularly to prevent technical regulations, standards and conformity assessment procedures from creating unnecessary barriers to international trade, Japan's existing EPAs, except for the Japan-Indonesia EPA and the Japan- Brunei EPA, include the following provisions on technical regulations, standards and conformity assessment procedures.

The Japan-Mexico EPA, Japan-Malaysia EPA, Japan-Chile EPA, Japan-ASEAN EPA, Japan-Switzerland EPA, Japan-Viet Nam EPA, Japan-India EPA, Japan-Peru, EPA, Japan-Australia EPA, and Japan-Mongolia EPA reaffirm the rights and obligations contained in the TBT Agreement. Some agreements include elements beyond the reaffirmation of rights and obligations of the TBT Agreement regarding the Articles on technical regulations, conformity assessment procedures and transparency. (This Chapter deals with measures and recognition in connection with trade in goods; please also see Chapter 3 "Movement of Natural Persons" for "mutual recognition of qualifications," which is a measure regarding the movement of natural persons).

(1) Japan-Mexico EPA, Japan-Malaysia EPA, Japan-Chile EPA, Japan-ASEAN EPA, Japan-Switzerland EPA, Japan-Viet Nam EPA, and Japan-Peru EPA

See page 701 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(2) Japan-Singapore EPA

See pages 701-702 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(3) Japan-Thailand EPA, Japan-Philippines EPA

See pages 702-703 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(4) Japan-India EPA

See page 703 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(5) Japan-Australia EPA

See pages 703-704 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(6) Japan-Mongolia EPA

See page 704 of 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(7) TPP TBT Chapter

See page 429 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA

(8) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Same as the TPP explained above.

(9) Japan-EU TBT

In the Chapter 7, article “Technical Barriers to Trade” is stipulated. It reaffirms the rights and obligations based on the WTO/TBT agreement and adopts a method that incorporates the main articles into the Japan-EU agreement (similar to CPTPP) .

In preparation of technical regulations, it stipulates that the available alternative measures of the proposed technical regulations are evaluated, and the adopted technical regulations are reviewed at an appropriate interval not exceeding five years as much as possible. The names of international organizations that can create international standards (ISO, IEC, ITU, etc.) are shown as examples, and it is stipulated that standards created by these organizations are considered as relevant international standards subject to the principles and procedures set forth in the WTO TBT Committee decision (“six principles for international standards”). In addition, after notifying the technical regulations and proposed conformity assessment procedures to the WTO for transparency, it is stipulated that other parties can give comments for 60 days in principle and set the “appropriate period” between the publication of technical regulations and their entry into force means normally a period of at least six months. As with existing EPA, “contact points”are set out and the Ad Hoc Committee is established.