

CHAPTER 8

ENERGY, ENVIRONMENT AND LABOUR

ENERGY

1. BACKGROUND OF THE RULES

The WTO, with the liberalization of international trade as a basic principle, prohibits exclusion without exception from not only mineral resources such as copper, nickel and rare earths, etc., but also energy resources such as natural gas, crude oil, and coal, etc.; it is an organization that aims to secure adequate distribution of energy and mineral resources by ensuring free trade. As Japan does not have an abundance of natural resources, establishing a secure supply of energy and mineral resources is one of its most important issues. In order to satisfy these requests within the scope of WTO's discipline, Japan makes efforts to reinforce the stable supply of energy and mineral resources in its EPA/FTAs.

2. JAPAN'S EFFORTS THROUGH EPAS/FTAS

Japan's relationship with Indonesia, Brunei, and Australia are particularly significant in the matter of energy and mineral resources. As a result, separate chapters are dedicated to the subject in EPAs with these countries (all the EPAs entered into force). With these EPAs, Japan is facilitating its efforts to further strengthen its ties in this sector with these countries.

(1) INDONESIA

Indonesia is Japan's major supplier of crude oil and coal as well as liquefied natural gas (LNG). In the Japan-Indonesia EPA that took effect in July 2008 Chapter 8 covers energy and mineral resources. This chapter aims to strengthen and stabilize the supplies of energy and mineral resources through promoting investment and trade in these areas. Energy and mineral resources are strategically important for sustainable economic growth in both Indonesia and Japan. Therefore, the transparency of government policies needs to improve, political dialogue enhanced, and cooperation promoted, based on the rules provided below:

Definitions (Article 97, Annex 11)

Mineral resources, such as copper and nickel, in addition to energy resources, such as natural gas, crude oil, and coal, shall be subject to this chapter.

Promotion and Facilitation of Investment (Article 98, Annex 12)

Each party shall cooperate in promoting and facilitating investments through ways such as discussing, exchanging information and supporting investment promotion activities.

Import and Export Restrictions (Article 99)

Each party shall have obligations to provide relevant information as early as possible, etc. when import and export restrictions are introduced.

Export Licensing Procedures and Administrations (Article 100)

Each party shall have obligations, including providing relevant information concerning the administration of the restrictions, etc., when export licensing procedures are adopted or maintained.

Energy and Mineral Resource Regulatory Measures (Article 101)

Each party shall have such obligations to ensure its regulatory bodies to avoid disruption of existing contractual relationship in application of the regulatory measure, and to notify the other party as soon as possible in adaptation of any new regulatory measure etc.

Environmental Aspects (Article 102)

Each party confirms the importance of avoiding or minimizing harmful environmental impacts and shall have such obligations to take account of environmental considerations etc.

Community Development (Article 103)

Each party welcomes any contribution by investors to community development.

Cooperation (Article 104)

Each party shall cooperate in the three areas including policy development, capacity building and technology transfer in Indonesia.

Sub-Committee on Energy and Mineral Resources (Article 105)

Parties shall establish a subcommittee as a place to exchanging information, reviewing, etc. In this committee, parties shall discuss energy security, and the development of an open and competitive market, etc.

(2) BRUNEI

Brunei is a major producer of liquefied natural gas (LNG), and one of Japan's top suppliers of LNG. The Japan-Brunei EPA that took effect in July 2008 was the first of Japan's EPAs/FTAs to include a chapter concerning energy. It encourages the maintenance and strengthening of a stable and mutually beneficial relationship for both countries by introducing rules on regulatory measures, conducting cooperation and establishing a framework of dialogue as specified below::

Basic Principle (Article 89)

Both parties recognize the importance of strengthening stable and mutually beneficial relationship in the energy sector.

Definitions (Article 90)

Natural gas and crude oil shall be subject to this Chapter.

Import and Export Restrictions (Article 91)

Each party shall have such obligations to give due consideration to contractual relationships in application of the import/export restrictions, and to give written notice, and hold consultation, upon the request, when import/export restrictions are introduced.

Energy Regulatory Measures (Article 92)

Each party shall have such obligations to seek to ensure its regulatory bodies minimize adverse effects upon contractual relationships in application of the regulatory measures, and to give written notice, and hold consultation, upon the request, when import/export restrictions are introduced etc.

Environmental Aspect (Article 93)

Each party shall endeavour to minimize, in an economically efficient manner, harmful environmental impacts of all activities related to energy.

Cooperation (Article 94)

Each party shall cooperate in the areas including policy development, human resource development and technological development, for strengthening stable and mutually beneficial relationship in the energy sector.

Sub-Committee on Energy (Article 95)

Parties shall establish a subcommittee as a place to exchanging information, reviewing, etc.

(3) AUSTRALIA

Australia is a major supplier of iron ore, coal and natural gas for Japan. The Japan-Australia EPA that took effect in January 2015 contains Chapter 8 on Energy and Mineral Resources. In consideration of the importance of the energy and mineral resources sector for both countries, this Chapter provides that the parties shall endeavour to take reasonable measures for a stable supply of these resources and not to introduce export prohibition/restriction measures under the WTO agreements (GATT Articles XI:2(a) and XX(g)). Furthermore, it also provides that when a Party adopts or maintains export licensing procedures or introduces new energy and mineral resource regulatory measures, implementation shall be undertaken in a transparent and predictable manner and the Party shall hold consultations on request of the other Party.

More concretely, the following rules are provided.

Basic Principle (Article 8.1)

The Parties recognize the importance of strengthening their stable and mutually beneficial relationship in the energy and mineral resources sector.

Definitions (Article 8.2)

The energy and mineral resources sector shall be subject to this Chapter.

Stable Supply of Energy and Mineral Resources (Article 8.3)

If a severe and sustained disruption to supply of an energy and mineral resource good or threat thereof arises, a Party may request consultations with the other Party, etc.

Export Restrictions (Article 8.4)

Each Party shall endeavour not to introduce or maintain any prohibitions or restrictions on the exportation or sale for export of any energy and mineral resource goods. Where a Party intends to adopt an export prohibition or restriction, the Party shall seek to limit such prohibition or restriction to the extent necessary, provide notice in writing, and on request provide the other Party with a reasonable opportunity for consultation, etc.

Export Licensing Procedures and Administrations (Article 8.5)

If a Party adopts or maintains export licensing procedures with respect to an energy and mineral resource good, the implementation shall be undertaken in a transparent and predictable manner, etc.

Energy and Mineral Resource Regulatory Measures (Article 8.6)

In cases where a Party adopts any new energy and mineral resource regulatory measure, the Party shall ensure transparency of the measure in the energy and mineral resources sector, including notifying the other Party of such measure prior to the implementation of such measure, etc. and the Party shall, on request of the other Party, hold consultations with the other Party, etc.

Cooperation (Article 8.7)

The Parties shall promote cooperation for strengthening stable and mutually beneficial relationships in the energy and mineral resources sector.

Sub-Committee on Energy and Mineral Resources (Article 8.8)

The Parties hereby establish a Sub-Committee on Energy and Mineral Resources for reviewing and monitoring the implementation and operation of this Chapter and exchanging information, etc.

(4) CANADA

Canada is one of the world's major exporters of natural resources such as energy, metals, and minerals. Coal, fuels, minerals (iron ore, copper ore) account for approximately 30% of the import volume from Canada to Japan.

In "3.15 Other (Energy, minerals and foods)" of the "joint study report related to the potentials of Japan-Canada EPA", both countries agreed that special consideration should be given in the EPA for the Japan-Canada trade relationships in these fields.

Official negotiations for the Japan-Canada EPA commenced in November 2012.

3. PARTICIPATION IN INTERNATIONAL ENERGY DECISIONS

(1) ENERGY CHARTER TREATY (ECT)

The ECT, which has been in force since 1998, was created for the purpose of promoting market-oriented reform and enterprise activities, etc. in the area of energy in the post-Soviet and East European countries.

The ECT was signed by Japan in 1995 and became effective in 2002. It provides for free trade and transit of energy materials and products, as well as for protection of investments in the area of energy.

First, the ECT states that its provisions shall apply to trade in energy materials and products while any contracting party is not a party to GATT and related instruments (Article 29). The clause's objective is to facilitate the soft landing of Russia and post-Soviet and Eastern Europe countries that were not members of the WTO at the time the Treaty became effective into the GATT/WTO regime; thus, it serves as a transitional measure. The energy materials and products are defined in ANNEX EM, and include items such as uranium ore, coal, coal gas, tar, petroleum, refined petroleum, natural gas, bitumen, asphalt, electrical energy, fuel wood, and charcoal.

Second, the ECT provides that, with respect to the freedom of transit of energy materials and products, each contracting party shall not discriminate or unreasonably restrict transit based on the origin, destination or ownership of such energy materials and products. Transit is defined in Item 10

of Article 7, and basically covers transit of oil or natural gas via pipelines, or transit of electricity via electric transmission facilities running through three or more regions (countries).

The ECT also provides that: each contracting party shall work to promote competition (Article 6); each contracting party shall agree to promote access to and transfer of energy technology (Article 8); each contracting party shall strive to minimize harmful environmental impacts occurring within or outside its area, and strive to stimulate public awareness and cooperation (Article 19); measures for dispute settlement (Part V); and provisional application for contracting parties (Article 45).

As of December 2018, the ECT has been signed by 49 countries and states, and two international institutions. Russia, Australia, Belarus and Norway have signed, but not yet ratified. There are also several countries and international organizations which choose to remain as observers (US, Canada, China, Korea, WTO, OECD, IEA, ASEAN, etc.). (For more details, refer to <https://energycharter.org/>. The ECT also addresses issues related to energy other than those mentioned above. Please refer to Section III, Chapter 5 Investment.)

In addition, there have been efforts, mainly led by the EU, to promote the ECT as an international legal framework in the energy sector. In May 2015, the Ministerial Conference on the International Energy Charter was held in Hague, Netherlands. At this Conference, the International Energy Charter (IEC) was signed, which is a political declaration aiming to promote international cooperation in the field of energy and supporting the modernization of the Energy Charter Process. Compared to the past international frameworks, which mainly covered the former Soviet Union, East European countries, and the EU countries, the IEC achieved a wider geographic coverage, being signed not only by parties to existing frameworks but also by more than 20 countries where the Energy Charter Treaty had not been ratified yet, including China, Korea, Cambodia, and Chile. As of February 2019, 91 countries including Japan and international organizations have signed the IEC.

In November 2016, Japan held the first Energy Charter Conference in East Asia. Participated in by the parties, signatory countries, and observers of the IEC, as well as other Asian and African countries and institutions, this Conference contributed to the enhanced awareness and universalization of the Energy Charter. Active discussions were held as to how the Energy Charter process can contribute to major global energy issues, such as climate change and sustainable development. The results of these discussions were compiled into the Tokyo Declaration on the Energy Charter.

In November 2018, the 29th Energy Charter Treaty Conference was held in Bucharest, Romania. At the conference, there was discussion regarding the importance of energy conversion and innovation under the theme, “Promotion of innovation for energy national security, sustainability and ensuring prosperity.” Furthermore, as the outcome document of the conference, the “Bucharest Energy Charter Declaration” was issued, recognizing modernization of the Energy Charter Treaty and reduction of investment risk.

4. EXAMPLES OF LEGAL DISCIPLINES (TREATY) ON ENERGY (AND MINERALS AND RESOURCES) IN OTHER COUNTRIES

As examples of internationally recognized rules on minerals and resources, the provisions of NAFTA are discussed below.

NAFTA provides in Chapter 6 (Energy and Basic Petrochemicals) as follows. The renegotiation

of NAFTA started in August 2017 and the USMCA (the United States-Mexico-Canada Agreement) was signed in November 2018.

Principles (Article 601)

This article confirms: respect for the Constitutions of the member nations; desirability of strengthening the important role of trade in energy and basic petrochemical goods in the free trade area; and the importance of having viable and internationally competitive energy and petrochemical sectors to further the individual national interests of the member nations.

Definitions (Article 602)

Terms such as uranium ore, coal, coke, tar, naphtha, oil, bitumen oil, cogas, petroleum coke, a uranium compound, oxidation heavy hydrogen, ethane, and butane are classified under the Harmonized System using codes of 4 to 6 digits.

Annex 602.3 prescribes reservations and special provisions including the following: each party shall allow its state enterprises to negotiate performance clauses in their service contracts; the Mexican State reserves to itself strategic activities such as exploration and exploitation of crude oil and natural gas; and an enterprise of another party may acquire, establish, or operate an electricity generating facility for independent power production in Mexico.

Import and Export Restrictions (Article 603)

This article incorporates the provisions of the GATT with respect to import and export restrictions. In particular, minimum and maximum export price restrictions are prohibited, and other parties to NAFTA can resort to negotiation in circumstances where a party adopts or maintains a restriction on import or export of an energy or basic petrochemical good in connection with a non-party. In addition, provisions to the same effect are included in Chapter 3 on Trade in Goods (Article 309).

Export Taxes (Article 604)

The article provides that no party may adopt or maintain any duty, tax or other charge on the export of any energy or basic petrochemical good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on exports of any such good to the territory of all other parties; and any such good when destined for domestic consumption. In addition, Chapter 3 on Trade in Goods includes provisions to the same effect (Article 314; with basic foods such as eggs, salt and flour in Mexico excluded under Annex 314).

Other Export Measures (Article 605)

The article provides that a party may adopt or maintain a restriction otherwise justified under Articles XI: 2(a) or XX(g), (i) or (j) of GATT with respect to the export of an energy or basic petrochemical good to the territory of another party, only if:

- i) the restriction does not reduce the proportion of the total export shipments of the specific energy or basic petrochemical good made available to that other party relative to the total supply of that good of the party maintaining the restriction as compared to the proportion prevailing in the most recent 36-month period for which data is available prior to the imposition of the measure;
- ii) the party does not impose a higher price for exports of an energy or basic petrochemical good to the other party than the price charged for such good when consumed domestically; and,

iii) the restriction does not require the disruption of normal channels of supply to that other party or normal proportions among specific energy or basic petrochemical goods supplied to that other party, such as, for example, between crude oil and refined products and among different categories of crude oil and of refined products.

The clauses are applicable only to the bilateral relationship of the United States and Canada, and thus are not applicable to Mexico (Annex 605). Article 315, which is applied to goods in general, also includes provisions to the same effect, with Mexico being exempt (Annex 315).

Energy Regulatory Measures (Article 606)

This article states that each party shall strive to ensure that in the application of any energy regulatory measure, energy regulatory bodies within its territory will avoid disruption of contractual relationships to the maximum extent practicable.

ENVIRONMENT

1. BACKGROUND OF THE RULES

Today, an increasing number of EPAs/FTAs include provisions concerning environmental issues. This seems to reflect the recent growing awareness of environmental issues in each country. From an economic point of view, one main reason for this (as in the case of NAFTA) is the desire to respond to the concern that a failure of the counterparty country to comply with environmental (and labour) regulations may bring disadvantages to domestic industries, resulting in a race to the bottom for environmental regulations. This concern seems to strongly influence numerous investment agreements that include provisions confirming that it is inappropriate to invite investment (or encourage trade) by relaxing domestic environmental laws.

A second important reason for this trend is the view that when discrepancies exist between enterprises of counterparties to EPAs/FTAs with respect to compliance with environmental regulations, leveling off such discrepancies will improve and promote even-handed competition. Some multinational enterprises implement the world's highest level of environmental awareness regardless of the level required by environmental regulations of the countries in which they operate. In such cases, enhancing the level of the host countries' environmental regulations will serve to create better conditions for even-handed competition. The same situation may prevail in countries where the level of environmental regulations is high but enforcement is insufficient. When local enterprises do not fully comply with environmental regulations but foreign enterprises do comply (based on respect for compliance or corporate social responsibility), obtaining sufficient enforcement of environmental regulations is needed to bring about even-handed competitive conditions.

Against the background mentioned above, in submitting requests to EPA/FTA partner countries with regard to the development and enforcement of environmental regulations, it is conceivable that there might be requests for cooperation from the EPA/FTA partner country in question, for example, concerning technical assistance. In general, since it is often the case that countries with technologies and experience to solve environmental problems no longer have serious environmental problems, and in contrast, those with serious environmental problems do not yet have such technologies and experiences, bilateral cooperation between these countries will lead to global harmony. It is thus important that Japan play an active role and contribute to environmental protection on a global scale, maximizing the experience and technologies that it has cultivated in

the past and reducing the damage it might cause to the global environment. Furthermore, raising such cooperative measures from a bilateral ad-hoc level to an EPA/FTA level will further advance Japan's role in this area.

2. OVERVIEW OF LEGAL DISCIPLINES

The FTA/EPAs entered into by Japan so far address the environment as follows. Common content in these initiatives are provisions that investment should not be encouraged by relaxing environmental measures - (Investment Chapter), cooperation in the field of the environment - (Environment Chapter), and environmental regulations that a country considers necessary in relation to mutual recognition cannot be prevented - (Mutual Recognition Chapter). In addition to the following, environment-related provisions are also incorporated or discussed in the agreements yet to be ratified or under negotiation.

(1) JAPAN-SINGAPORE EPA

As a provision relating to environmental protection, the chapter on Mutual Recognition (Chapter 6) states, as a general exception to the chapter, that nothing in this chapter shall be construed to limit the authority of a party to take environmental measures it considers appropriate pursuant to a mutual recognition policy (Article 54). Article 31 of the Implementation Agreement expressly provides that the environment is a cooperative area of science technology.

(2) JAPAN-MEXICO EPA

The chapter on Investment (Chapter 7) includes provisions stating as follows: (i) a measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with the restriction on imposing or enforcing certain requirements on the other party (Article 65 1(f)); (ii) it is inappropriate to encourage investment by relaxing environmental measures (Article 74); and (iii) in investor-to-state investment arbitration, a tribunal may appoint one or more experts in the field of environmental matters to report to it in writing on any factual issue concerning matters of their expertise (Article 90).

The chapter on Cooperation (Chapter 14) includes a provision that contracting parties should cooperate on issues of environment. Such cooperation includes information exchange, improvement of skills, and promotion of trade of environmental goods/services.

Furthermore, the chapter on enforcement and implementation of the EPA (Chapter 16), provides that a public comment procedure shall not be required in an emergency case of protecting the environment (Article 161).

(3) JAPAN-MALAYSIA EPA

This EPA includes only two environment-related provisions: (i) the chapter on Investment (Chapter 17) includes the provision that investments should not be invited by relaxing environmental measures (Article 90); and (ii) the chapter on Cooperation (Chapter 12) includes the provision that expressly states the environment is an area of cooperation (Article 140 (g)).

(4) JAPAN-PHILIPPINES EPA

The chapter on Trade in Goods (Chapter 2) includes a provision on bilateral cooperation for the utilization of appropriate mechanisms in conformance with the importing party's environmental

standards (Article 27).

The chapter on Cooperation (Chapter 14) expressly identifies energy and environment as areas of cooperation (Article 144(d)). Furthermore, the chapter on Mutual Recognition (Chapter 6) includes the provision, as a general exception to the chapter, that nothing in this chapter shall be construed to limit the authority of a party to take measures it considers appropriate for protecting the environment (Article 66), and the chapter on Investment (Chapter 8) includes the provision that it is not appropriate to encourage investment by relaxing environmental measures (Article 102). The foreign affairs ministers exchanged letters, and in accordance with the Basel Convention, it was confirmed that hazardous wastes specified and prohibited by domestic laws of both countries will not be exported from Japan to the Philippines, and that related articles in the Japan-Philippines Economic Partnership Agreement will not hinder the adoption and implementation of such measures under existing and future laws, regulations and rules of either country.

(5) JAPAN-CHILE EPA

The preamble of this EPA states that economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development. The strategic economic partnership can play an important role in promoting sustainable development.

Also, the chapter on Investment (Chapter 8) includes the provision that it is inappropriate to encourage investment by relaxing environmental measures (Article 87). In addition, when the agreement was signed, each party adopted the political declaration on the environment, confirming their intention continue to pursue high level environmental protection, to promote public awareness, and to encourage and facilitate cooperative activities in the field of environment such as promotion of projects under Clean Development Mechanism (CDM).

(6) JAPAN-THAILAND EPA

The chapter on Mutual Recognition (Chapter 6) includes the provision, as a general exception to the chapter, that nothing in this chapter shall be construed to limit the authority of a party to take measures it considers appropriate for protecting the environment (Article 68).

The chapter on Investment (Chapter 8) includes the provision that investment shall not be facilitated by relaxing environmental controls (Article 111). In addition, the chapter on Cooperation (Chapter 13) stipulates the environment as the field of cooperation (Article 153 (f)), and the political declaration, which was made when the agreement was signed, stipulates the promotion of cooperation in the areas of science and technology, energy and the environment.

Chapter 10 of the Implementing Agreements on Cooperation provides details regarding environmental cooperation, and says that the parties shall establish a sub-committee on cooperation in the fields of science and technology, energy and the environment. Also the parties exchange the documents between the foreign minister which reconfirms the rights and obligations regarding hazardous waste under the Basel Convention and states that the import/export of hazardous waste will be strictly regulated in compliance with the Basel Convention. It also provides that measures for the import/export of hazardous waste - notwithstanding the tariff elimination - can be applied in compliance with the Basel Convention, and that the parties will cooperate for environmental protection.

(7) JAPAN-BRUNEI EPA

In the preamble, it is recognized that economic development, social development and

environmental protection are independent and mutually reinforcing components of sustainable development and that the economic partnership can play an important role in promoting sustainable development.

Also, the chapter on Investment (Chapter 5) includes the statement that it is inappropriate to encourage investment by relaxing environmental measures (Article 71). The chapter on Energy (Chapter 7) includes the provisions that each Party shall endeavour to minimize harmful environmental impacts of all activities related to energy in its Area, and take into account environmental considerations throughout the process of formulation and implementation of its policy on energy. It also encourages favourable considerations for transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights, and promotes public awareness of environmental impacts of activities related to energy and of the scope for and the costs associated with the prevention or abatement of such impacts. (Article 93). In addition, the chapter on Cooperation (Chapter 9) stipulates the environment as the field of cooperation (Article 102 (h)).

(8) JAPAN-INDONESIA EPA

The chapter on Investment (Chapter 5) includes the statement that it is inappropriate to encourage investment by relaxing environmental measures (Article 74). The chapter on Mineral Resources and Energy (Chapter 8) includes the provisions that each party confirms the importance of avoiding or minimizing harmful environmental impacts of all activities related to energy and mineral resources in its area, and shall take into account environmental considerations, in accordance with its laws and regulations, throughout the process of formulation and implementation of its policy on energy and mineral resources. Also, it shall encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights, and promote public awareness of environmental impacts of activities related to energy and mineral resources and of the scope for and the costs associated with the prevention or abatement of such impacts (Article 102).

The chapter on Cooperation (Chapter 13) stipulates the environment as a field of cooperation (Article 134 (i)). Chapter 7 of the Implementing Agreements also includes a provision of the scope and system of cooperation in the field of the environment.

(9) JAPAN –ASEAN COMPREHENSIVE EPA

The chapter on Goods (Chapter 2) prescribes that none of the provisions in this chapter shall be construed to prevent a Party which is a party to the Basel Convention or any other relevant international agreement from adopting or enforcing any measure relating to hazardous wastes or hazardous substances based on its laws and regulations, in accordance with such international agreements (Article 16). Moreover, the chapter on Standards, Technical Regulations and Conformity Assessment Procedures (Chapter 5) stipulates, as a general exception to the chapter, that none of the provisions in the chapter shall restrict the right of a Party to prepare, adopt and apply standards and technical regulations, to the extent necessary in order to conserve the environment (Article 44), while the chapter on Economic Cooperation (Chapter 8) clearly specifies that the environment is a field for cooperation (Article 53 (k)).

(10) JAPAN –VIET NAM EPA

The chapter on Technical Regulations, Standards, and Conformity Assessment Procedures (Chapter 6) stipulates, as a general exception to the chapter, that it shall not impede a Party from

implementing the environmental regulations that it believes to be appropriate (Article 51). The chapter on Cooperation (Chapter 12) clearly specifies that the environment is a field for cooperation, while Chapter 10, which is the Implementing Agreement, prescribes the scope and forms of cooperation in the environmental field.

(11) JAPAN – SWITZERLAND EPA

The chapter on General Provisions (Chapter 1) states that the Parties shall promote trade in environmental products and environment-related services, in order to disseminate products and technologies that support the achievement of goals focused on environmental protection and development (Article 9). The chapter on Investment (Chapter 9) stipulates that it is inappropriate to ease health, safety or environment regulations in order to encourage investment (Article 101).

(12) JAPAN – INDIA EPA

By Japan's request, the chapter on General Provisions (Chapter 1) has an independent article stating that both signatory countries will work on environmental protection (Article 8). In the chapter on Investment (Chapter 8), it stipulates that it is inappropriate to relax environmental measures to encourage investment (Article 99). The chapter on Cooperation (Chapter 13) clearly states that the fields of cooperation shall include the environment (Article 129). Its scope and form may be set forth in the Implementing Agreement.

(13) JAPAN – PERU EPA

In the preamble, the parties commit to implement this Agreement in a manner consistent with environmental protection and conservation. The chapter on Government Procurement (Chapter 10) stipulates that each Party may prepare, adopt, or apply technical specifications to protect the environment. Furthermore, in the chapter on Cooperation (Chapter 14), it is clearly stated that the fields of cooperation shall include the environment (Article 200). In the Implementing Agreement, Chapter 3 Article 25 specifies the areas and forms of cooperation. Additionally, on the occasion of signing the agreement, the Joint Statement on Trade and Environment was released, reaffirming the importance of, and the parties' commitments to, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

(14) JAPAN-AUSTRALIA EPA

The chapter on Investment (Chapter 14) stipulates, as a general exception to the chapter, that "measures necessary to protect human, animal or plant life or health" include environmental measures necessary to protect human, animal or plant life or health. In addition, the chapter on Government Procurement (Chapter 17) stipulates that a Party may prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

(15) JAPAN-MONGOLIA EPA

The chapter on Investment (Chapter 10) stipulates that the Parties shall refrain from encouraging investment by relaxing their respective health and safety standards. In addition, in the chapter on Cooperation (Chapter 15), it is clearly stated that the fields of cooperation shall include the environment (Article 15.1). In the Implementing Agreement, Article 5.10 specifies the areas and forms of cooperation in the environment sector.

(16) TPP

An environment chapter was provided as a separate chapter for the first time in an EPA signed by Japan. The chapter sets forth rules such as those for confirming commitments and further cooperation under multilateral environmental agreements (MEAs) and those for preservation and sustainable management of fisheries, with the aim of promoting trade policy and environment policy that mutually complement each other; providing high-level protection for the environment; promoting effective enforcement of laws and regulations on the environment; and enhancing the ability of contracting parties to respond to environmental issues related to trade. In addition, three-stage consultations (Articles 20.20 to 20.22) are provided as dispute settlement procedures, and if an issue is not solved through these consultations, the dispute settlement chapter of the TPP is to be applied.

(17) JAPAN-EU EPA

The chapter of Trade and Sustainable Development (Chapter 16) of the EPA, entered into force on February 1, 2019, stipulates prohibition of derogation from laws and regulations related to the environment (and labour) in a manner affecting affect trade or investment, recognition of the importance of international agreements related to the environment (and labour), and promotion of cooperation regarding improvement of environmental technology. Moreover, it is noteworthy that the clear stipulation of discussion with civil society in the chapter.

Furthermore, in the event of disagreement between the Parties in these fields, the chapter of Dispute Settlement Procedure (Chapter 21) is not applied. First a government consultation is held between the Parties. If no solution is reached through the conference, the Committee can be held. And if the Parties do not reach a mutually satisfactory resolution of the matter, a Party may request to that a panel of experts be convened. The Chapter of Sustainable Development also stipulates that civil society can contribute to the Dispute Settlement Procedure.

(18) ENERGY CHARTER TREATY (“ECT”)

The Energy Charter Treaty, which is not an FTA but an international agreement regulating transfer of energy resources and investment protection, provides that contracting parties shall strive to minimize in an economically efficient manner harmful environmental impacts. The contracting parties agree to the Polluter Pays Principle (the polluter should, in principle, bear the cost of pollution). The ECT further provides that: contracting parties (or the parties involved) shall take into account environmental considerations throughout the formulation and implementation of their energy policies; promote market-oriented price formation and fuller reflection of environmental costs and benefits throughout the Energy Cycle; have particular regard for cooperation in the field of international environmental standards, improving energy efficiency for developing and using renewable energy sources; promote public awareness of the environmental impacts of energy systems; and promote transparent assessment at an early stage (Article 19, Item 1).

The ECT provides that, at the request of one or more contracting parties, disputes concerning the application or interpretation of provisions therein shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference with the aim of finding a solution (Article 19, Item 2).

3. *PROVISIONS ON THE ENVIRONMENT IN EPAs/FTAS SIGNED BY OTHER COUNTRIES*

Some countries have signed EPAs/FTAs that take a more active and positive approach toward environmental protection.

(1) UNITED STATES

Many trade agreements signed by the United States include independent chapters on the environment. The agreements in particular with Singapore, Chile, Australia, Bahrain and Morocco set forth an organizational framework promoting cooperation on environmental issues and monitoring the compliance of domestic environmental rules and regulations.

For example, the North American Agreement on Environmental Cooperation between the government of Canada, the government of the United Mexican States and the government of the United States, inter alia, that: (i) each party shall periodically prepare and make publicly available reports on the state of the environment (Article 2); (ii) each party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations (Article 3); (iii) each party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available (Article 4); and (iv) each party shall effectively enforce its environmental laws and regulations through appropriate governmental action (Article 5).

A Commission for Environmental Cooperation which is comprised of a Council, a Secretariat and a Joint Advisory Committee was established (Article 8). The Council shall prepare an annual report of the Commission in accordance with instructions (Article 12) as well as preparing a report in its own initiative (Article 13), and a factual report based on information furnished by non-governmental organizations or individuals demonstrating negligence by effective enforcement of environmental rules and regulations. Such reports shall be made publicly available upon the Council's decision (Article 15).

This agreement further provides that any contracting party may request consultations with any other party regarding whether there has been a persistent pattern of failure by that other party to effectively enforce its environmental law (Article 22). If the matter has not been resolved, the Council shall convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies or sectors that produce goods or provide services (Article 24). Moreover, agreements concluded in recent years, such as those between the United States and Singapore, the United States and Chile, the United States and Australia, the United States and Bahrain, the United States and Morocco, and the United States and the Republic of Korea, have set forth organizational frameworks for promoting cooperation relating to environmental problems and monitoring the enforcement of domestic environment legislation.

(2) EU

Regional trade agreements signed by EU member states set the principles and scope of environmental cooperation as a cross-sectoral theme for promoting and ensuring sustainable development based on the principle of environmental integration provided for in Article 11 of the Treaty on the Functioning of the EU and the provisions on foreign policy provided for in Article 21.2 of the EU Treaty. For example, the EU-Chile Association Agreement includes a

provision that the intent of environmental cooperation is to encourage conservation and improvement of the environment, prevent contamination and degradation of natural resources and ecosystems, and encourage rational use of the ecosystem in the interest of sustainable development. The agreement further provides that the following are particularly significant: the relationship between poverty and the environment; the environmental impact of economic activities; environmental problems and land-use management; projects to reinforce Chile's environmental structure and policies; exchanges of information, technology and experience in areas including environmental standards and models, training and education; environmental education and training to involve citizens more; and technical assistance and joint regional research programs (Article 28).

The EU-Korea FPA, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and EU-Japan EPA, as well as the EU-Viet Nam FTA and the EU-Singapore FTA on which the negotiations have terminated, include provisions that pursue high levels of environmental protection, compliance with the multinational environmental agreements, trade and investment promotion in environmental goods and services, enforcement of environmental law, prohibition of relaxing environmental regulations, and cooperation in the environmental field.

In particular, agreements that have been concluded or negotiated by the EU in recent years have separate chapters on environment and sustainable development. Any conflicts or violation concerning the provisions in these chapters are to be solved under their own dispute settlement mechanisms provided in the same chapters, such as consultation and a panel of experts, for example.

(3) OTHER COUNTRIES

Canada has signed agreements with Chile and Costa Rica following the NAFTA model. The Trans-Pacific SEP (an EPA among Brunei, Chile, Singapore and New Zealand) includes the Environmental Cooperation Agreement among the parties to the Trans-Pacific Economic Partnership Agreement (as an annex). In addition, the MERCOSUR includes the provision that each party will cooperate in the implementation of international environmental agreements to which they are parties (Article 5).

LABOUR

1. BACKGROUND OF THE RULES

Cases of including labour-related provisions in EPAs/FTAs are also increasing in number. The same economic background as environmental issues is considered to have led to growing awareness of labour issues among countries. That is, first, domestic industries complying with labour regulations in the counterparty country may suffer a disadvantage in terms of their competitiveness and result in a battle of labour regulation relaxation ("race to the bottom"). In responding to such a concern, many EPAs/FTAs include provisions confirming that it is inappropriate to invite investment (or encourage trade) by relaxing domestic labour regulations. Second, as in the field of environmental issues, there are cases in which an EPA/FTA includes provisions that aim to improve and promote even-handed competition through leveling off discrepancies with respect to compliance with labour regulations where discrepancies with respect to compliance with labour regulations exist among different enterprises in an EPA/FTA partner country. In particular, when local enterprises do not fully comply with labour regulations but foreign enterprises do comply (based on respect for compliance or corporate social responsibility), securing sufficient

enforcement of labour regulations will bring about fair competition environments.

As described above, environmental and labour issues share similar economic background. EPAs/FTAs of the United States and the EU refer to these issues as “Sustainable Development” and treat them in a single chapter, with special procedures (particularly on procedures such as dispute settlement) that differ from those used in other areas (see “Labour issues in FTAs of other countries”).

2. OVERVIEW OF LEGAL DISCIPLINES

Due to interest in the above-mentioned issues, including provisions confirming that it is inappropriate to invite investment by relaxing domestic labour laws and provisions requiring the promotion of labour protection in EPAs/FTAs are increasing. As described in the next section, “Labour issues in EPAs/FTAs of other countries”, EPAs/FTAs concluded by the United States and the EU, in particular, include provisions requiring the protection and enhancement of labour rights.

The labour-related provisions of the individual EPAs concluded by Japan are described below. These labour-related provisions are mainly provided in the chapters on Investment, Trade in Services and Government Procurement. Of the EPAs concluded by Japan to date, for example, provisions confirming that it is inappropriate to invite investment by relaxing domestic labour laws are included in the Japan-Philippines EPA, the Japan-Switzerland EPA, and the Japan-Mongolia EPA. Other labour-related provisions include provisions requiring parties to ensure that the EPA rules do not prohibit the application of labour-related measures of the respective countries such as prison labour, provisions requiring them not to apply the provisions of the chapter on Trade in Services to measures affecting natural persons seeking access to the employment market of a country or measures regarding employment on a permanent basis, and provisions requiring parties not to limit total employment in the services sector, etc. Further, in the Trans-Pacific Partnership (TPP) Agreement, a labour chapter was provided as a separate chapter for the first time in an EPA signed by Japan.

(1) JAPAN - SINGAPORE EPA

The chapter on Trade in Goods includes the provision that nothing in that chapter shall be construed to prevent the adoption or enforcement of measures relating to the products of prison labour, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other party (Article 19, Paragraph 1 (e)). In addition, the chapter on Investment includes the provision that nothing in that chapter shall be construed to prevent the adoption or enforcement of measures relating to prison labour (Article 83, Paragraph 1(d)).

(2) JAPAN - MEXICO EPA

The chapter on Services includes a provision that the aforementioned chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 97, Paragraph 2 (h)). The chapter on Entry and Temporary Stay of Nationals for Business Purposes stipulates that the chapter reflect the necessity of protecting the labour force and permanent employment in both countries (Article 113, Paragraph 1), and the chapter shall not be applied to measures that affect those who try to participate in the employment market, or that pertain to permanent employment (Article 114, Paragraph 2).

The chapter on Government Procurement includes the provision that nothing herein prevents

taking measures relating to goods or services of prison labour (Article 126, Paragraph 2(d)). Moreover, the chapter on Cooperation refers to exchange of information related to best practices on technical and vocational education and training, including labour policy, as an area for developing cooperation (Article 143 (a)).

(3) JAPAN - MALAYSIA EPA

The chapter on Trade in Services stipulates that it shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 94, Paragraph 2(d)).

(4) JAPAN - PHILIPPINES EPA

The chapter on Investment includes provisions concerning investment and labour. These provisions provides that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labour laws, and that each party shall strive to ensure that it does not take measures that weakens or reduces adherence to the internationally recognized labour rights such as: the right of association, the right to organize and bargain collectively, labour protections for children and young people, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health (Article 103). The same article also provides that if a party considers that the other party has offered such an encouragement, it may request consultations with the other party.

(5) JAPAN - CHILE EPA

The chapters on Services and Financial Services include provisions that these chapters shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 106, Paragraph 2 (f), Article 117, Paragraph 4 (d)). Furthermore, the chapter that prescribes Entry and Temporary Stay of Nationals for Business Purposes, includes the provisions that this chapter reflect the necessity of protecting the labour force and permanent employment in both countries (Article 129, Paragraph 1) and is not applied to measures affecting those who are seeking access to the employment market, or measures that pertain to permanent employment (Article 130, Paragraph 2). The chapter on Government Procurement includes the provision that nothing herein prevents taking measures relating to goods or services of prison labour (Article 151 (d)).

(6) JAPAN - THAILAND EPA

The chapter on Services includes the provision that this chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 72, Paragraph 2 (e)), and that the total number of employees in a specific service shall not be limited in the sectors where market-access commitments are undertaken (Article 74, Paragraph 2 (d)). Moreover, the chapter on the Movement of Natural Persons includes the provision that this chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 115, Paragraph 2).

(7) JAPAN - BRUNEI EPA

The chapter on Services includes the provision that this chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 73, Paragraph 2 (d)), and that the total number

of employees in a specific service shall not be limited in the sectors where market-access commitments are undertaken (Article 75, Paragraph 2 (d)).

(8) JAPAN - INDONESIA EPA

The chapter on Services includes the provision that this chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 76, Paragraph 2 (e)), and that the total number of employees in a specific service shall not be limited in the sectors where market-access commitments are undertaken (Article 78, Paragraph 2 (d)). In addition, the chapter on the Movement of Natural Persons includes the provision that this chapter shall not apply to measures affecting natural persons seeking access to the employment market of a country, or measures regarding employment on a permanent basis (Article 92, Paragraph 2).

(9) JAPAN – VIET NAM EPA

The chapter on Services stipulates that, adhering to the basic principle of GATS, it does not treat the provision of labour - that is to say, natural persons seeking to enter the employment market - as a service, so the provisions of the chapter on Services do not apply to measures that have an impact on such natural persons and measures relating to nationality, residence or employment on a permanent basis (Article 57, Paragraph 2 (d)). Moreover, in fields in which a commitment has been made regarding the obligation of market access in relation to trade in services, it is stipulated that the total number of those employed in a specific service field must not be restricted (Article 59, Paragraph 2 (d)). Furthermore, the chapter on the Movement of Natural Persons also prescribes that its provisions on the movement of natural persons do not apply to measures that have an impact on natural persons seeking access to the employment market and measures relating to nationality, residence or employment on a permanent basis (Article 74, Paragraph 2).

(10) JAPAN – SWITZERLAND EPA

The chapter on Investment stipulates that it is inappropriate to relax domestic labour standards in order to encourage investment. The chapter on Services stipulates that, adhering to the basic principle of GATS, it does not treat the provision of labour - that is to say, natural persons seeking to enter the employment market - as a service, so the provisions of the chapter on Services do not apply to measures that have an impact on such natural persons and measures relating to nationality, residence or employment on a permanent basis (Article 50, Paragraph 2). Moreover, in fields in which the obligation of market access in relation to trade in services has not been withheld, it is stipulated that the total number of those employed in a specific service field must not be restricted (Article 46, Paragraph 2 (d)). Furthermore, the chapter on the Movement of Natural Persons also prescribes that its provisions on the movement of natural persons do not apply to measures that have an impact on natural persons seeking access to the employment market and measures relating to nationality, residence or employment on a permanent basis (Article 62, Paragraph 2); it also sets forth the principle that the chapter on the Movement of Natural Persons reflects the necessity of protecting the domestic workforce and permanent employment in each signatory country (Article 63, Paragraph 1).

(11) JAPAN – INDIA EPA

The Chapter on Services specifies that the Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, or measures regarding employment on a permanent basis (Article 57, Paragraph 2(c)). The Chapter on The Movement of Natural Persons

also specifies that the Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis (Article 74, Paragraph 2).

(12) JAPAN – PERU EPA

The Chapter on Services specifies that it shall not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in that Party and shall not confer any right on that national with respect to that access or employment (Article 104, Paragraph 4). Additionally, Article 106(d) of the same chapter stipulates that Neither Party shall maintain or adopt limitations in the form of numerical quotas on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service.

The Chapter on Entry and Temporary Stay of Nationals for Business Purposes specifies that the chapter reflects the need to protect the domestic labour force and permanent employment in either Party (Article 133, Paragraph 1), and the Chapter shall not apply to measures regarding employment on a permanent basis (Article 134, Paragraph 2). Additionally, the Chapter on Government Procurement specifies that nothing in the Chapter shall be construed to prevent a Party from imposing measures relating to goods or services of prison labour (Article 161, Paragraph 2).

(13) JAPAN-AUSTRALIA EPA

The Chapter on Trade in Services stipulates that it shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis (Article 9.1, Paragraph 2(d)). Article 9.3, Paragraph 1 (d) of the Chapter on Trade in Services stipulates that a Party shall not adopt or maintain measures that are defined as limitations on the total number of natural persons who may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service.

The Chapter on Movement of Natural Persons stipulates that the Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, or residence or employment on a permanent basis (Article 12.1, Paragraph 2). The Chapter on Government Procurement stipulates that nothing in the Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions or of prison labour (Article 17.20, Paragraph 2 (d)).

(14) JAPAN-MONGOLIA EPA

The Chapter on Investment stipulates that the Parties shall refrain from encouraging investment by lowering their labour standards (Article 10.17). The Chapter on Trade in Services stipulates that it shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis (Article 7.1, Paragraph 2 (f)), and that a Party shall not maintain or adopt measures that are defined as limitations on the total number of natural persons who may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service (Article 7.5, Paragraph 2 (d)).

In addition, the Chapter on Movement of Natural Persons stipulates that the Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding nationality or citizenship, or residence or employment on a permanent basis (Article 8.2, Paragraph 2).

(15) TPP

Further, in the Trans-Pacific Partnership (TPP) Agreement, a labour chapter was provided as a separate chapter for the first time in an EPA signed by Japan. More specifically, the chapter sets out that each contracting party shall: (1) enforce its laws, etc. directly related to the internationally accepted rights of workers; (2) adopt and maintain in its laws, etc. rights (elimination of forced labour, abolition of child labour, elimination of discrimination in respect of employment and occupation, etc.) described in the International Labour Organization Declaration of 1998 on Fundamental Principles and Rights at Work and its Follow-up (ILO Declaration) (Article 19.3); (3) not take measures such as waiving or otherwise derogating from its laws, etc. in a manner that affects trade or investments of other contracting parties in cases such as where the waiver or derogation would be inconsistent with a right of workers set out in Article 19.3.1; (4) promote public awareness of its labour laws (Article 19.8). In addition, the labour chapter provides a framework for involving the public (Article 19.9) and general principles of cooperation (Article 19.10), etc.

3. LABOUR ISSUES IN FTAs OF OTHER COUNTRIES

(1) UNITED STATES

(a) NAFTA

While main text of NAFTA does not include provisions concerning labour policies, its preamble states that the agreement aims to create new employment opportunities, to improve working conditions and living standards, and to protect, enhance and enforce basic workers' rights.

North American Agreement on Labour Cooperation of NAFTA

In August 1993, the trilateral North American Agreement on Labour Cooperation, which was to complement NAFTA in the area of labour protection, was concluded between the United States, Canada and Mexico. The agreement became effective in January 1994, simultaneously with NAFTA. The conclusion of the complementary agreement was in response to the opposition to NAFTA, expressed by groups such as the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO), due to concerns that NAFTA would promote shifting of factories to Mexico (whose labour conditions, including wages, were considered to be less stringent than those of the US), and thereby worsen the already tough US employment conditions. An outline of the provisions related to labour issues (principal items) of this agreement is as follows:

Promotion of Labour Principles

The three countries -- the United States, Canada and Mexico -- promote, in accordance with their respective domestic laws: i) freedom of association; ii) right to collective bargaining; iii) right to strike; iv) prohibition of forced labour; v) labour protection for children and young persons; vi) minimum employment standards; vii) elimination of employment discrimination; viii) equal pay for women and men; ix) prevention of occupational injuries and illnesses; x) compensation for occupational injuries and illness; and xi) protection of migrant workers.

General Obligations Prescribed by the Agreement

The agreement sets forth the general obligations of the parties to, inter alia: i) improve working conditions and living standards; ii) promote effective enforcement by each party of its labour laws; iii) cooperate and coordinate to promote the principles of the agreement; and iv) encourage publication and exchange of information to enhance the mutual understanding of the statutes, institutions and legal frameworks governing labour in each country.

Establishment of Commission for Labour Cooperation

Pursuant to the agreement, the Commission for Labour Cooperation is to be established, which shall consist of the Ministerial Council, the Secretariat and the National Administrative Offices (NAO). The Ministerial Council oversees the implementation of the agreement and directs the work and activities of the Secretariat. The Secretariat is to be established as a permanent body and give technical assistance to the Ministerial Council as well as prepare and submit periodic reports thereto. The NAO is to be established in each member state, and serve as a point of contact and provides information.

Dispute Settlement Mechanism

- (1) When a dispute arises concerning the issue such as occupational safety and health, child labour and minimum wage, the NAO will exchange related information, followed by convening of the Ministerial Council upon the request of at least one member state, and the Evaluation Committee of Experts (ECE) will then resolve the dispute. The ECE will conduct research concerning the respective issues, prepare a report thereon and submit it to the Ministerial Council. In cases where the issue is of a structural nature and cannot be resolved in the Ministerial Council, an arbitration panel comprised of experts will be established upon the request of at least two member states.
- (2) When the arbitration panel determines, after the examination of a case, that the state complained against failed to effectively enforce labour standards or regulations, such state should within 60 days adopt and agree to an action plan to solve the problem. If agreement is not reached within the prescribed period, the panel may evaluate the action plan or present a counter plan within another 60 days.
- (3) In order to ensure implementation of the action plan, the arbitration panel may be convened as necessary and impose a monetary contribution on a state complained against that does not implement the action plan. If the panel determines that such state has not made the required monetary contribution and continues to refrain from implementing the action plan, the panel may suspend the payment of benefits under NAFTA within a certain amount (maximum of USD 20,000,000) with regard to the United States and Mexico, or file a suit in a federal court of Canada to implement the payment and action plan with regard to Canada.

(b) *Other FTAs concluded by U.S.*

The US-Jordan FTA provides in Article 6 that the parties thereto reaffirm their obligations as members of the International Labour Organization (ILO), and that the parties shall strive to ensure protection by domestic law of internationally recognized labour rights such as the right of association; the right to organize and bargain collectively; prohibition on the use of any form of forced or compulsory labour; a minimum wage for the employment of children; and acceptable of labour conditions with respect to minimum wages and hours of work, etc. (Paragraph 1). The parties also recognize that it is inappropriate to encourage trade by relaxing domestic labour laws.

Accordingly, each party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other party (Paragraph 2). Moreover, each party shall strive to ensure that its laws provide for labour standards consistent with internationally recognized labour rights (Paragraph 3), and each party shall not fail to effectively enforce its labour laws (Paragraph 4(a)) or to recognize that each party retains the right to exercise discretion with respect to making decisions regarding the allocation of resources (Paragraph 4(b)). The Joint Committee shall consider any cooperation opportunity (Paragraph 5).

Other FTAs signed by the U.S. include similar provisions on labour (e.g., U.S.-Singapore, U.S.-Panama, U.S.-Bahrain, U.S.-Australia, U.S.-Chile, and CAFTA-DR). In the recently concluded US-Korea FTA (entered into force in March 2012), labour-related provisions are provided for in Chapter 19. They include provisions reaffirming the party's obligations as members of the ILO (Article 19.1 and Article 19.2, Paragraph 1), and compliance with the provisions requiring no relaxation of labour regulations in a manner affecting trade or investment between the Parties (Article 19.2, Paragraph 2), and the provisions on labour cooperation mechanism (Annex 19-A), etc.

(2) EU

The FTAs by the EU deal with labour issues within the framework for cooperation. For example, the EC-Chile Association Agreement (in force since 2003) recognizes the importance of social development along with economic development, and gives priority to the creation of employment and respect for fundamental social rights, notably by promoting the relevant conventions of the ILO covering such issues as the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour, and equal treatment between men and women (Article 44, Paragraph 1). In addition, the Agreement lists priority measures aimed at: reduction of poverty and the fight against social exclusion; promoting the role of women in the economic and social development process; developing and modernizing labour relations, working conditions, social welfare and employment security; promoting vocational training and development of human resources; and promoting projects and programs which generate opportunities for the creation of employment within micro-, small- and medium-sized enterprises (Paragraph 4).

The EU-Egypt Association Agreement (in force since 2004) also reaffirms the importance of the fair treatment of workers legally residing and employed in the territory of the contracting party, and upon the request of a counter party, each party agrees to initiate talks related to working conditions (Article 62). The agreement further provides that the parties thereto shall conduct regular dialogue on social matters, and that this dialogue shall be used to find ways to achieve progress in the field of movement of workers and equal treatment and social integration of the nationals legally residing in the territories of their host countries (Article 63).

Subsequently, as a general rule on external actions, universality and indivisibility of human rights and fundamental freedoms are explicitly provided for in Article 21 of the Treaty on The European Union via the Treaty of Lisbon that entered into effect on December 1, 2009.

The recently concluded FTA with the Republic of Korea (which entered into force in July 2011) includes a chapter on environment and labour as "Trade and Sustainable Development (Article 13)". It includes provisions reaffirming their obligations as members of the ILO (Article 13.4, Paragraph 3), on the establishment of a Domestic Advisory Group(s) (Article 13.12, Paragraphs 4 and 5), on the establishment of a Civil Society Forum (Article 13.13), and on independent dispute settlement mechanisms (Articles 13.14, 13.15, and 13.16), etc. Further, the FTA signed by Japan

and Canada (CETA) in October 2016 also provides a chapter on trade and labour, setting out matters such as confirmation of obligations of ILO member states and ratification and performance of the ILO Fundamental Conventions (Article 23.3) and a unique mechanism for dispute settlement as in the FTA with the Republic of Korea (Articles 23.9 to 23.11). The same types of provisions are also included in the Japan-EU EPA (Chapter 16 Trade and Sustainable Development) issued on February 1, 2019.