Chapter 4

EU

Tariffs

Tariff Structure

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

<Outline of the Measures>

The current bound tariff rate and simple average of bound tariff rates for non-agricultural products is 100% and 3.9%, respectively. However, application of high tariff rates remains on several products, such as motor trucks (maximum 22%), footwear (maximum 17%), ceramics (maximum 12%), glass products (maximum 11%) and passenger cars (maximum 10%). Moreover, as of 2018, the applied tariff rates for electric appliances (maximum 14% [televisions, cameras, radio receivers, etc.], simple average 2.4%) and textiles (maximum 12%, simple average 6.6%) are higher than those of other developed countries, rendering imported products at a severe competitive disadvantage in comparison with domestically-made products.

<Concerns>

High tariff rates themselves do not conflict with the WTO Agreements unless they exceed the bound rates. However, in light of the spirit of the WTO Agreements of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to the lowest possible rate and to eliminate tariff peaks (see “Tariff Rates” in 1. of Chapter 5, Part II).

<Recent Developments>

With the aim of increasing the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations launched in May 2012 outside the Doha Round negotiations and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items was completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for the EU, elimination of tariffs started in July 2016. For example, high tariff items for which tariffs are to be eliminated by the EU include digital video cameras (14%), car audio devices (14%), television receivers (14%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Furthermore, the Japan-EU EPA for improving market access from Japan came into effect on February 1, 2019. This will allow elimination of tariffs on all non-agricultural products on the EU side, specifically, tariffs on passenger vehicles will be eliminated in the eighth year, more than 90% tariffs on automobile parts will be eliminated immediately and about 90% of tariffs on general machinery, chemical industrial products and electrical equipment will be eliminated immediately. With regard to agricultural, forestry and fisheries products as well, tariffs have been eliminated for almost all items, including important export items, such as beef, tea and fisheries products.

With regards to the U.K.’s decision to leave the EU (Brexit), since there are no Schedules of Concessions and Commitment of the country as of February 2020, the U.K. will need to submit them to the WTO when it withdraws from the EU. Currently, the proposal is being circulated to WTO members (for specific issues, please see page 133 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-).

Safeguards

Steel Safeguards

<Outline of the Measure>

In March 2018, the EU started a safeguard survey on imports of steel products, and on July, 19 of the same year, they launched provisional measures. The final measures were activated on February 2, 2019 (until June 30, 2021). Based on the averaged import amounts over the past three years (2015-2017) for 300 HSC 8-digit products (72081000-73069000) (hot rolled, cold rolled, stainless steel, etc.), the tariff rate quotas ((1) country quotas for countries with an export share of 5% or more, and (2) residual quotas for other countries collectively) have been prepared for each target item. An additional 25% tariff will be imposed when the import exhausts and exceeds the relevant tariff quota.

<Problems under International Rules>

As a background of the measures, the global steel oversupply import restrictions imposed by other countries and Section 232 measures implemented by the US are referred to. There is a room for debate on its consistency with "unforeseen developments" (generally interpreted as circumstances that could not be foreseen at the time of the tariff negotiation and that would cause changes in the competitive relationship between domestic and imported products, such as technological innovation and changes in consumers' preference), which is one of the prerequisites of imposing a safeguard measure (GATT Article 19.1(a)).

<Recent Developments>

In May 2019, the EU initiated a review investigation. In response to this, Japan submitted its government opinion and expressed concerns regarding the method of determining injury and operating tariff quotas at the safeguard committee and via bilateral consultations. Based on the review, on September 26, 2019, the EU announced its final decision to make partial changes to existing safeguard measures, such as the level and allocation of tariff quotas for each target item and updating the list of exclusions for developing countries. The decision came into effect on October 1, 2019.

Japan will closely monitor the trade diversions of the subject products to Asia, etc., and the risks of "rush" exports to the EU to quickly exhaust the tariff quotas, and reach out to the EU as necessary.

Standard and Conformity Assessment Systems

(1) EU Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Related Products (ErP)

<Outline of the Measure>

To establish a framework for designing environment-friendly products, the EU published the "Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Using Products" (EuP Directive) in 2005 and the "Directive Establishing a Framework for the Setting of Ecodesign Requirements for Energy-Related Products" (ErP Directive or Eco-design Directive) in October 2009.

The Directive requires to consider the environmental impact (e.g.: consumption of resources, emissions to air or water, noise, vibration, etc.) of products placed on the EU market in terms of their entire life cycle (during the period from procurement, manufacturing, and distribution to disposal) and demands to take action (the general environmental consideration system requirements). Some products are also required not to exceed a certain volume of electricity consumption and standby electricity consumption. (the specific environmental consideration system requirements). Requirements for each product are published in the "Implementing Measures."

<Problems under International Rules>

The draft "Implementing Measures" notified to the TBT Committee had some problems: (1) part of requirements is inconsistent with the existing regulations and is unclear regarding the scientific basis and effects and (2) some wording regarding requirement is not clearly defined. If the Directive is more trade-restrictive than necessary for the purpose of fulfilling legitimate policy objectives, it may violate

Article 2.2 of the TBT Agreement.

<Recent Developments>

In December 2015, the European Commission announced the "Circular Economy Policy Package". It suggests that the ErP Directive (Eco-design Directive) will include not only the existing energy efficiency standard for electricity consumption and standby electricity consumption, but also a requirement for resource efficiency as the specific environmental consideration system requirements.

In December 2018, the European Commission voted for implementing regulations of ten specific products and adopted them on October 1, 2019. The Japanese government and electrical and electronic industries submitted the following comments regarding the implementing regulations for electronic displays, which were notified to the TBT committee in October 2018: (1) excessive energy efficiency requirements that are difficult to achieve for the next-generation technology, such as 8K TV; (2) resource efficiency requirements that are expected to cause excessive increase in handling cost (mandatory period for spare parts availability and expansion of information provision); (3) duplication/inconsistent with existing regulations (RoHS Directive, WEEE Directive, etc.). However, these comments were not reflected in the adopted implementing regulations, raising a concern that they might disrupt the market. The Japanese government will continue to pay attention to these regulations. .

(2) Regulations on Chemicals (REACH/CLP/WFD)

<Outline of the Measures>

In the EU, the REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) (1907/2006), which is a regulation concerning the registration, evaluation, authorization and restriction of chemicals, was enforced on June 1, 2007.

The characteristics of the regulation are as follows:

(1) Any manufacturer or importer of chemical substances in the EU, in amounts greater or equal to 1 ton/year must be registered. In addition, a chemical safety report must be prepared by each registrant who manufactures or imports 10 tons or more quantities of chemical substance in a year.

(2) The responsibility of the safety assessment of existing substances which was taken by the government so far is imposed on the companies.

(3) Based on this regulation, the EU Chemical Substances Agency (ECHA) and member countries will evaluate (examine) the registered substances. The ECHA and member countries will prioritize the evaluated target substances based on hazards information, exposure information and amount of usage, and publish them in CoRAP (Community Rolling Action Plan) list.

(4) When an article contains intentionally released substances under certain conditions and its quantity exceeds 1 ton in a year, the registration becomes mandatory.

(5) If substances of very high concern (SVHC) exceed 0.1% concentration in an article, the notification and communication become mandatory in case the quantity of that substance exceeds 1 ton during a year. Regarding composite molded articles, the ECHA had interpreted that the concentration calculation matrix is the entire composite molded article. However, in September 2015, the European Court of Justice published their understanding that each component article that composes a composite article is the matrix. The manufacturers and importers of composite molded articles in the EU are obligated to calculate a concentration of high concern in each component that construct composite molded articles, and this is burdensome especially for importers who must collect information from outside the EU.

(6) For chemical substances listed in Annex XIV as substances of very high concern, such as those that are carcinogenic, that are subject to authorization, market supply and usage is approved for each application (supply to the market is prohibited unless it is verified that the risk is properly managed in the industry and permission is granted). When substances are to be listed for authorization in Annex XIV, it is stipulated that they are decided on the basis of requirements, such as characteristics of CMR, PBT or vPvB, characteristics that might have the same extent of adverse effects with those characteristics (ELoC), widely distributed usage, and the high production volume. However, there is a concern that the chemical substances which are not manufactured in the EU member states are added for the examination on a priority basis.

In January 2009, the CLP (Regulation on Classification, Labelling and Packaging of substances and mixtures) was enforced. Under the regulation, substances or mixtures classified as hazardous are required to be labelled accordingly.

In December 2018, proposal of the CLP regulation for the EU's 14th Adaptation to Technical and scientific Progress (ATP) was notified to TBT committee. The proposed draft regulation classified the powder mixtures containing 1% or more of titanium dioxide as a carcinogen regardless of whether or not exposure of titanium dioxide by inhalation could occur. This could inappropriately broaden the scope of products to be regulated and may require warning labelling even for products distributed without being classified as carcinogenic under the GHS-compliant systems of other countries.

<Problems under International Rules>

These regulations may violate Article 2.1 of the TBT Agreement when they bring disadvantages to non-EU companies compared to local companies. The REACH and CLP regulations aim to protect human health, but if they are more trade-restrictive than necessary for the purpose of fulfilling the relevant policy objectives, they may be inconsistent with Article 2.2 of the TBT Agreement. In addition, if the CLP regulation is not based on the GHS, which is an international standard for labeling and classifying hazardous products, it would be inconsistent with Article 2.4 of the TBT Agreement.

<Recent Developments>

The Japanese industry that manufactures products containing titanium dioxide submitted comments to the EU responding to TBT notification regarding the CLP regulation in December 2018, and Japan has also expressed its concerns to the EU since the TBT Committee in March 2019.

In November 2019, a proposal to add restrictions on PFOA (PerFluoroOctanoic Acid) contain to existing EU POPs (Persistent Organic Pollutants) regulation was announced. This will make the PFOA restrictions stipulated in the REACH regulation to be absorbed by the POPs regulation. However, according to the current proposal to revise POPs regulation, the range of exemptions approved by the REACH regulation is narrower and the exemption period is shorter, which may have an impact on industry.

Moreover, in September 2019, the ECHA published information requirements for SCIP database (the database containing information regarding the molded articles contain Substances of Very High Concern (SVHCs) above the 0.1% weight by weight (w/w) threshold) built based on the EU Waste Framework Directive (WFD), and stated that companies placing the molded articles on the EU market will need to submit information to the database from 5 January 2021. There are many unclear points regarding the information requirements for the SCIP database and the requirements contain more information than that collected by the existing information transmission schemes used by industry (such as chemSHERPA), which may create confusion in supply chains when responding to the requirements.

The REACH and CLP regulations will continue to update chemical substances to be regulated, so it is necessary to continue to pay attention to the chemical regulatory trends in the EU.

(3) Medical Device Regulation (MDR) and In Vitro Diagnostic Medical Device Regulation (IVDR)

<Outline of the Measures>

The EU Medical Device Regulation (MDR) and In Vitro Diagnostic Medical Device Regulation (IVDR) came into force on May 25, 2017. After the transition period, the MDR and IVDR will enter into application on May 26, 2020 and May 26, 2022, respectively. The MDR stipulates that MDD (Medical Device Directive) compliant products that have been placed on the market prior to or on the above application date or during the validity period of the MDD certificate may continue to be made available on the market or put into service until May 27, 2025 and that for class II and III devices, the certificate acquired under the current scheme before the above application date will continue to be valid for a certain period after the application date.

However, there are some problems with the MDR including (1) lack of information, such as implementation measures necessary for companies to adapt to the new system and (2) lack of NBs (Notified Bodies). The number of NBs designated by EU member states to certify MDR has reached 14,

but there are some NBs in Japan that are still unable to perform conformity assessment and also there are many NBs that do not take the conformity assessment of new projects. In particular, the problem of (2) is serious with increasing cases where NBs are not taking MDR audits and applicants are told that the audit will be done one year after applying. There is also concern that applicants may have to wait for longer to receive audits even if they apply in the future. This may become a substantial obstacle to trade because after the application date, companies may not be able to export their existing projects to the EU that require the involvement of a new NB due to the classification change as well as new products that require MDR certification.

<Problems under International Rules>

The delay in establishing a system to adapt to the new EU regulation could stagnate the export of medical devices to the EU, which could practically be a trade-restrictive measure.

<Recent Developments>

Japan has expressed concerns about the regulation to the EU at the TBT Committee with other countries that are also concerned about the regulation, requested an extension of the transition period and also held discussions with policy makers at bilateral dialogues. To ensure that Japanese companies are able to gain access to the medical device market in the EU, it is necessary to continue to request the EU to establish a system that allows a smooth transition to the new regulation.

Trade in Services

Audio-visual Service

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

<Outline of the Measure>

For the purposes of protecting cultural values, the EU issued Directive 89/552/EEC "Television without Frontiers" (revision: 97/36/EC) and requested member states to reserve at least half of the television air time for European programs in a feasible and appropriate way (except for news, sports/event, game, commercial and teletext programs). All member states have completed domestic legislation implementing the directive. For example, France provides that at least 60% of movies on television must be made in Europe and that more than 40% of the programs must be broadcast in French (Government ordinance No. 86- 1067 issued on January 18, 1992). Thereafter, this Directive was given new life as an "Audiovisual Media Services Directive" that went into force on December 19, 2007. In this Directive, disciplinary rules governing television advertising, video-on-demand, etc., have been newly added.

<Concerns>

The above measure does not violate the WTO Agreements because the EU has made no commitment concerning the AV sector in the WTO's services negotiations and has registered an MFN exemption. However, the GATS should cover all services and efforts towards further liberalization are desirable.

MFN is one of the most important pillars for achieving liberalization in the multilateral trade regime and is a basic principle of the WTO Agreements. MFN exemptions are a deviation from this most important principle and it is desirable that this exemption should be removed. The GATS stipulates that MFN exemptions are temporary and ought not to exceed ten years. In this regard, the EU itself made a statement, in a document published in July 2009, titled "Staff Working Document on the External Dimension of Audiovisual Policy," which encourages countries intending to accede to the WTO in the future to register an MFN exemption without making any commitment in terms of audio-visual services in order to establish a cultural cooperative relationship with the EU. This is hard to accept from the

perspective of the spirit of the WTO.

<Recent Developments>

As mentioned above, in November 2007, the European Parliament adopted the European Parliament and European Council Directive Bill to correct the 89/552/EEC Council Directive (Television without Frontiers Directive) concerning coordination of part of the Members regulatory policy relating to television broadcast activities (COM (2005, 646)) (Draft of Audiovisual Media Services Directive); it was enacted in December. The time frame for implementation of this directive to be integrated into member states' domestic law was within 24 months (by December 19, 2009). All member countries have made notification to the European Commission of measures adopted to implement the directive in their own countries.

On March 29, 2011, the European Commission requested 16 member countries to provide information on the status of their adoption of the "Audiovisual Media Services Directive". The Commission analyzed and thoroughly examined the domestic laws that each member country adopted and determined whether elements in the directive were properly reflected in the domestic laws. In addition, from July to September, 2015, a public consultation was held for stakeholders and users in order to obtain feedback concerning the Audiovisual Media Services Directive, and the European Commission submitted a revised proposal for the directive to the European Parliament on May 25, 2016. On April 25, 2017, the revised proposal for the directive was agreed at the European Parliament's Committee on Culture and Education. After the discussion at a trilateral meeting of the European Commission, the European Parliament and the European Council, the European Parliament approved a revised proposal of this directive on October 2, 2018, and the European Council adopted a revised proposal of this directive on November 6 of the same year. Where the means used when content is viewed and listened to is changing from traditional televisions to online media, the revision aims to review regulations for audiovisual service providers from the viewpoint of protecting consumers. In particular, it is noteworthy that the proposed revision includes a quota that requires a certain amount of European works to be deliver for on-demand services as well.

Cultural preservation policies continue to be stringently carried out in the EU. Japan is requesting that the EU improve its liberalization commitments in the ongoing WTO services negotiations, etc.

Government Procurement

Proposed New Regulation on Public Procurement (Proposal on International Procurement Instruments)

<Outline of the Measure>

In March 2012, for the purpose of giving more incentives for trade partners to open up public procurement markets that are not sufficiently open, the European Commission proposed a new regulation on public procurement (COM (2012)124). In January 2016, the European Commission published an amendment to the proposed regulation (COM(2016)34). The proposed regulation provides the scheme where the European Commission will conduct a survey on a foreign procurement market and in the case where the Commission determines that the market "adopts or maintains a restrictive or discriminatory procurement measure or practice," the Commission will consult with the country to resolve the problem. If the consultation fails, the Commission will take price adjustment measures for procurement from the country.

<Problems under International Rules>

Under the proposed regulation, the European Commission, by its authority or upon request from a stakeholder or a member country, can conduct a survey on "a restrictive or discriminatory procurement measure or practice" taken by a foreign country. As a result of the survey, in the case where it is determined that the foreign country adopts or maintains a restrictive or discriminatory procurement measure, the European Commission must request a consultation with the country. In the case where the

consultation has not reached a satisfactory result within 15 months, the European Commission must take appropriate measures, including price adjustment measures, after ending the consultation. Specifically, up to 20% of a price penalty will be imposed on bidding by a supplier from the country or on goods or services of the country.

This proposed regulation is applied only to the procurement of goods and services that are not covered by an international agreement (non-covered goods and services). In other words, this proposed regulation is applied to (1) goods and services of the third country that has not signed an international agreement with the EU, and (2) non-covered goods and services of the third country that has signed an international agreement with the EU.

Thus, under the basic scheme of this proposed regulation, procurement for which the EU commits national treatment under an international agreement is said to be not applicable to the above regulation. However, for instance, when, in the case of bidding by a supplier from a third country where a restrictive or discriminatory procurement measure or practice is identified, the total amount of goods from the country exceeds 50% of the bidding amount and a considerable quantity of Japanese goods are also included, Japanese goods may be subject to the price adjustment measures under this proposed regulation, and it cannot be denied that the regulation may violate the non-discrimination principle (Paragraph 1 of Article 4 of the WTO Agreement on Government Procurement).

<Recent Developments>

Subject to Article 207 of the EU Treaty, the amendment to the new proposed regulation is supposed to be adopted through the ordinary legislative process (co-decision procedure by the EU Council and the European Parliament). Although the European parliament has discussed the proposed regulations, its discussion has not been progressed in the EU Council. In order to break the deadlock on the discussion, the European Commission presented a revised proposal. However, the discussion has still not been progressed as of February, 2020. Going forward, Japan needs to closely follow deliberations of the proposal at the EU Council and the European Parliament.

Regional Integration

Increasing Binding Tariff Rates

Please see page 133 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Protection of Intellectual Property

Enforcement of Design Rights over Spare Pars

<Outline of the Measures>

In the EU, there has been much debate over how to protect replacement component parts (spare parts) of complex products by design rights.

As a result, Article 110 of the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (hereinafter, “Community Design Regulation”), entitled “Transitional provision” provides the so-called “repair” clause stipulating that even if a right holder has the design right of a spare part for a complex product, he/she is not permitted to enforcement the right if the spare part is used for the purpose of the repair of that complex product so as to restore its original appearance. In addition, regarding the above “repair clause”, Article 14 of the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (hereinafter, “Design Directive”), which aims to harmonize the design systems across the EU Member States stipulates that Member States shall retain the legal status quo on spare parts design protection and introduce changes

to those provisions only if the purpose is to liberalize the market for such parts. There is no unification in protection of spare parts by design right among EU countries.

According to the report published by the European Commission in 2016, "Legal Review on Industrial Design Protection in Europe", Australia, France, Germany, Lithuania, Portugal, Slovenia, Sweden, the Czech Republic and Denmark did not have the "repair clause", while Italy, Luxembourg, the Netherlands, Poland, the United Kingdom and Spain had the "repair clause".

By all rights, if a right holder has the design rights of a spare part itself, it means that he/she has the exclusive right to the design of the spare part. Therefore, the right holder should be able to eliminate any counterfeit of the spare part, regardless of whether it is for the purpose of repairing so as to restore the original appearance of a complex product. However, the introduction of the "repair clause" excludes these spare parts from design protection, which could cripple innovations especially in the automobile industry.

<Problems under International Rules>

Article 26(2) of TRIPS stipulates that Member States may provide limited exceptions to the protection of industrial designs, and the three cumulative conditions (three-step test) must be fulfilled for the exceptions to be approved, which are (1) confined to certain special cases; (2) no conflict with a normal exploitation; (3) no reasonable prejudice to the legitimate interests of the owners of rights, taking account of the legitimate interests of third parties. Therefore, it is still debatable regarding whether the exception of design right protection for spare parts used for the purpose of repair in Community designs and EU Member States is consistent with Article 26(2) of TRIPS.

<Recent Developments>

The debate in the EU over how to protect design rights of spare parts used for the purpose of repair has not yet been settled, and both Article 110 of the Community Design Regulation and Article 14 of the Design Directive stipulate the matter as a transitional provision. In 2004, the European Commission brought forward a proposal to include the "repair clause" in the Design Directive, but it was withdrawn in 2014 after no agreement was reached.

Meanwhile, in May 2019, the German federal government made a cabinet decision to introduce the "repair clause" in the Design Act. As of November 2019, it was still under deliberation, but since Germany has traditionally been showing a careful stance on the introduction of the "repair clause", such policy change in Germany may affect the future discussions on the revisions to the Design Directive, which will be something to watch.

Japan has continuously requested the EU to abolish the "repair clause". In November 2019, at the 1st Meeting of the Committee on Intellectual Property under the Agreement between the European Union and Japan for an Economic Partnership, Japan took up the protection of the design rights of spare parts as one of the agenda and requested the EU to abolish the "repair clause".

In the future. Japan needs to continue to pay close attention to the discussion and urge abolition of the "repair clause" from the design and community design systems of each EU Member State.