Chapter 10

India

National Treatment

Local Content Requirements on Domestically Manufactured Electronic Products

Please see pages 113-114 in the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Tariffs

(1) High Tariff Products

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

<Outline of the Measure>

The current simple average bound tariff rate for non-agricultural products is high at 36.0%.

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

On the other hand, the bound rate for non-agricultural products is 70.1% and unbound items include high-tariff items such as passenger cars (average applied tariff rate of 60%), motorcycles (average applied tariff rate of 100%) and clothing (average applied tariff rate of 10%). The tariff rate on textile products is high considering the competitiveness of Indian products and the international standard.

<Concerns>

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

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

<Recent Developments>

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

(2) Introduction of Special Additional Tariffs on Imported Products

<Outline of the Measure>

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

<Problems under International Rules>

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

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

<Recent Developments>

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

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

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

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

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

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

(3) Increase in Tariffs on ICT Products

<Outline of the Measure>

For some ICT (Information and Communication Technology) products that are classified as being exempt from tariffs (0%) in India's concession schedule under the WTO Agreement, to promote the production in India, the Indian government introduced tariff increase measures through the Finance Bill (and subsequently the Finance Act) and the domestic notification. The government is repeatedly increasing tariffs on various products since 2014.

Specifically, in July 2014, the tariff rate was raised to 10% for some items of telecommunication equipment (HS8517.6290 and 8517.6990).

In July 2017, the tariff rates were raised to 10% for some items of ink cartridges, mobile phones (HS8517.1210 and 8517.1290), base stations (HS8517.6100), and parts of telephone and telecommunication equipment (HS8517.7090). In December 2017, the tariff rate on mobile phones was increased to 15%.

In February 2018, the Indian government raised the tariffs on mobile phones[1] again, and the tariff rate is 20% as of March 2020. The tariff rate for some items of telecommunication equipment (HS8517.6290) was also raised to 20%, and the tariff rates for TV LCDs, food, perfume, automobile parts, footwear, jewelry, furniture, watches, toys, etc. were also increased.

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

In July and August 2018, the tariff rate on several textile products was raised, and in September 2018, the tariff rates on consumer electronics, footwear, and jewelry were also raised.

In October 2018, the tariff rates for some items of base stations (HS8517.6100) and parts of telephone and telecommunication equipment (HS8517.7090) were raised to 20%, and the tariff rate for some printed circuit board assemblies (PCBA) (HS8517.7010) was raised to 10%.

In April 2016, as the above tariff increase measures continue, Japan, the EU and the US submitted a joint questionnaire regarding the measures to increase tariffs on ICT products. At the meetings of the WTO Committee on Market Access, the ITA Committee and the Council for Trade in Goods, Japan requested the Indian government to give a detailed explanation. However, India explained that "those products have been developed with new technologies and are not subject to the scope of tariff

[1] Mobile phones fall under HS8517.1211, 8517.1219, and 8517.1290 since the HS codes were changed in January 2020 because of correction of Indian Customs Tariff Decree.

elimination to which India committed under the ITA."

<Problems under International Rules>
The Indian government sets bound tariff rates for some ICT products at zero (0%) in its concession schedule under the WTO Agreement. However, it is raising the tariff rates on these products through the Finance Bill (and subsequently the Finance Act) and the domestic notification. These tariff increase measures are highly likely to violate GATT Article II, which provides that tariffs shall not be in excess of bound tariff rates.

<Recent Developments>
As the Indian government is repeatedly raising the tariffs, Japan repeatedly expressed concerns at the meetings of the WTO Committee on Market Access, the ITA Committee and the Council for Trade in Goods through the Japanese embassy. In the fall of 2018, several administrative-level meetings were held and Japan requested the Indian government to give a detailed explanation and withdraw the tariff measures. However, no improvement was seen.

Among these series of tariff increase measures, tariffs on some ICT products are highly likely to violate GATT Article II, which provides that tariffs shall not be in excess of the rates stated in the list of tariff concessions with respect to products imported from other countries. For instance, mobile phones (HS8517.1211, 8517.1219, and 8517.1290), base stations (HS8517.6100), telecommunication equipment (HS8517.6290), printed circuit board assemblies (PCBA) (HS8517.7010), and communication equipment parts (HS8517.7090) are classified as being exempt from tariffs (0%) at six-digit HS codes (HS8517.12, 8517.61, 8517.62, and 8517.70) in India's Concession Schedule.

In May 2019, to enhance the effectiveness of the discussion between the two countries, Japan requested for a consultation based on the WTO Dispute Settlement Understanding regarding the items that may violate GATT Article II. However, the consultation with India did not solve the problem.

In February 2020, the Indian government increased the tariff rate on mobile phone printed circuit board assemblies (PCBA) (HS8517.7010), which are the items subject to the consultation, to 20% (scheduled to take effect in April 2020) (*1). It also raised tariff rates on footwear, jewelry, etc.

Regarding this matter, the EU is requesting the establishment of a panel and Taiwan is requesting a consultation and holding a bilateral consultation. Japan will continue to cooperate with these countries and areas so that the Indian government will withdraw the tariff measures as earlier as possible.
*Japan requested the establishment of a panel to the Indian government in March 2020.

<Figure I-11> Main Products and Tariff Rates at the Time of Panel Establishment Request

Main products	India HS No.	Tariff rates
Smart phones	8517.1211	Raised from 0% to 20%
Feature phones	8517.1219	Raised from 0% to 20%
Mobile phone base stations	8517.6100	Raised from 0% to 20%
Digital microwave communication devices	8517.6290	Raised from 0% to 20%
Mobile phone printed circuit board assemblies	8517.7010	Raised from 0% to 20% (*1)
Smart phone LCD modules	8517.7090	Raised from 0% to 15%

*All the rates in India's Concession Schedule under the WTO Agreement is 0%.

Anti-Dumping Measures

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

In May 2017, the Indian government made a final decision on Japanese hot-rolled steel sheets and thick plates and Japanese cold-rolled steel sheets. In these final decisions, it is not specifically considered to which same kinds of domestic products the various products to be surveyed having different purposes and price ranges gave dosage effect and price effect when injury was determined. In addition, the AD duties will be imposed as a difference between the reference price and the export price of the products to be surveyed. However, the basis for the calculation of the reference price is not clarified, which raises doubts on the consistency with the AD Agreements. Until the final decision was made, the Japanese government had pointed out the above at the public hearing and the AD Committee and sought for improvement such as giving an opinion by submitting a government opinion. However, the final decision was made although there was still a concern for the consistency with the WTO Agreements. For details, refer to page 117 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

(2) AD Measures on Japanese Resorcinol

<Outline of the Measure>

In January 2018, the Indian government decided to take AD taxation measures against Japanese Resorcinol. In this decision, no reasonable basis has been shown for the calculation of the damping margins, cumulative assessment, and price effect, and the analysis of the effect of the exporting the target products on the domestic industries is insufficient. Thus, the AD agreement may be violated in terms of determination of injury. Until the final decision was made, the Japanese government had pointed out the above by submitting a government opinion. However, the final decision was made although there was still a concern for the consistency with the WTO Agreements. For details, refer to page 117 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

<Recent Developments>

In February and December 2017, Japan submitted a government opinion to the Indian government and pointed out the issues in the aforementioned international rules. Japan will continue to focus on the operation of the AD system by the Indian government.

Subsidies

National Food Security Act

<Outline of the Measure>

In India, the National Food Security Act, a program in which the government distributes grain that it bought from producers to the poor at low price, was enacted in September 2013. The purpose of the act is to stabilize the food supply to the poor, and people can buy rice, wheat, and cereals at 3 rupees/kg, 2 rupees/kg, and 1 rupee/kg up to 5 kg every month. Among all the households under Antyodaya Anna Yojana (a scheme released by the central government on December 25, 2000), all the households of up to 75% of the total population in the rural area and up to 50% of the total population in the urban area are covered under this scheme. According to the Indian government, the necessary grain amount under the current distribution program is 56.37 million tons, whereas the amount under the new system is 61.43 million tons. Thus, the Domestic Support is expected to increase.

<Problems under International Rules>

In expansion of the distribution program by the National Food Security Act, when necessary grain is purchased at an administrative price, it will be regarded as a price support policy for producers in the Agriculture Agreement and corresponds to the Domestic Support that is subject to reduction. In September 2014, India notified the agricultural committee of the Domestic Support of FY2004 to FY2010, which is provided in Article 18 of the Agriculture Agreement. During that period, the expenses related to the public stock system increased from 5.7 billion to 13.8 billion US dollars. The amount of grain purchased by the government also increased from 24.7 million to 34.2 million tons (rice) and 16.8 million to 22.5 million tons (wheat). The Domestic Support related to such measures is within the range of de minimis (10% of the agricultural production) until FY2010; therefore, there is a concern that the Domestic Support amount may further increase when the act is enforced although the aggregate measurement of support (AMS) is zero. It is important to monitor the details of the future domestic support notification and the relationship with the commitment level with the WTO.

<Recent Developments>

At the 9th WTO Ministerial Conference in December 2013, the member countries agreed with a temporary measure to bring the case into a dispute resolution if the Domestic Support violates the domestic support reduction obligation in the WTO Agricultural Agreement when a developing country performs a public stock system for the purpose of the National Food Security Act, even. In response to the request by India, at the WTO General Council meeting on November 27, 2014, we agreed that the provisional measure continues until a permanent solution is adopted and that maximum effort will be made so that the solution will be adopted by the end of 2015. However, there is no progress in the discussion for the adoption of this solution, and it was confirmed that the discussion will be continued to the special meeting of the Agricultural Affairs Committee at the 10th WTO Ministerial Conference in December 2015. It is necessary to carefully observe how the discussion for the permanent solution influences the regulation of the Domestic Support. It is reported that the act was enforced in all the states from June 2016, but it is not enforced in some states and areas under direct control (being enforced in 32 states/areas in total).

Safeguards

(1) Safeguard Measure on Hot-Rolled Flat Products

<Outline of the Measure>

The Indian government initiated a safeguard investigation of hot-rolled flat products on September 7, 2015. On September 9, 2015, the government decided to impose provisional safeguard measures, and started to impose the provisional safeguard measures (20%) for 200 days from September 14, 2015.

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

<Problems under International Rules>

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

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

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

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

<Recent Developments>

Since the investigation was initiated in September 2015, Japan has submitted written comments, participated in public hearings and taken other opportunities to point out that the measures taken by India may violate the WTO Agreement. However, since progress for revoking the measure was not evident, Japan requested consultations with India based on the WTO Agreement in December 2016 (DS518). Based on the results of the consultations, Japan requested the WTO to conduct a panel hearing on March 9, 2017 and the panel was established on April 3, 2017.

On 6th November, 2018, the panel circulated a panel report which represented a ruling, upholding most of Japan’s claims, that this measure was inconsistent with the WTO Agreement for the following reasons: (1) India failed to sufficiently prove the fact that there was a logical connection between the unforeseen development of the events and the increase in imports based on objective evidence (SG Agreement Articles 2.1, 4.2(a) and GATT Article XIX: 1(a)), (2) India failed to appropriately examine the injury factors (i.e., price and profitability) of the domestic industry in determining the “serious injury” to the domestic industry and also failed to determine the injury based on any objective data (SG Agreement Article 4.2(a)). (3) India failed to make reasoned findings in its determination as to the causal link between the increase in imports and the serious injury to the domestic industry (SG Agreement Article 4.2(b)). Further, the panel recommended India to make the safeguard measure consistent with the Agreements to the extent that the measure continues to have any effects, while the measure had been already expired.

India appealed the panel’s judgment on December 14, 2018; however, the Appellate Body cannot judge the case currently (refer to the column “Problems of WTO Appellate Body” in Chapter 17, Part II).

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

(2) Safeguard Measures regarding Solar Panels

<Outline of the Measure>

The Indian Government started a safeguard investigation on solar panel modules on December 9th, 2017. On July 30th, 2018, and launched safeguard measures with an additional tariff of 25% (25% during 2018/7/30-2019/7/29, 20% during 2019/7/30-2020/1/29, 15% during 2020/1/30-2020/7/29). Furthermore, at the same time as the safeguard measures were activated, India has started to require imported solar panels to obtain Indian domestic certification (BIS), the procedure of which has been said to have significant export restrictive effects in combination with this safeguard measure.

<Problems under International Rules>

In this safeguard investigation, the deadline for registration as interested parties had already passed at the time of the WTO notification by India, and then timely notifications and ensuring opportunities for participation in the procedure (Article 3 (1) of the Agreement on Safeguards) have not been met. Further, this measure is an investigation triggered due to a rapid increase in imports of low-priced Chinese products, and it is not appropriate to include Japanese products that are not in competition with domestic products.

<Recent Developments>

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

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

(3) Safeguard Measures regarding Single Mode Optical Fibres

<Outline of the Measure>

The Indian government started a safeguard investigation for single mode optical fibres on September 23, 2019. On November 6, it released a preliminary finding, and the investigation authority recommended provisional measures with 25% additional tariffs for 200 days.

<Problems under International Rules>

As a background of the safeguard investigation, India referred to the global optical fibre oversupply and import restrictions imposed by other countries. There is a room for debate on its inconsistency with “unforeseen developments” (generally interpreted as circumstances that could not be foreseen at the time of tariff concession negotiations, and that would cause changes in competitive relationship between domestic and imported products, such as technological innovation and changes in consumers’ preference), which is one of the prerequisites for imposing a safeguard measure (GATT Article 19.1(a)).

In addition, increase in imports under GATT Article 19.1(a) must be the effect of the obligations of the WTO Agreements (including tariff concession); however, there is no trace of examining this point in the preliminary finding.

<Recent Developments>

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

Standards and Conformity Assessment Systems

(1) Technical Regulations for Steel Products

<Outline of the Measure>

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

<Problems under International Rules>

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

<Recent Developments>

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

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

Japan needs to continue to pay attention to the operation of the system and have bilateral discussion.

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

<Outline of the Measure>

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

<Problems under International Rules>

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

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

<Recent Developments>

Since 2010, industrial groups in Japan, the United States and Europe have been expressing their concerns to the Indian government. In October, Japanese industrial circles (four groups) issued a letter expressing their concerns again to the Indian government. As Japanese government, on the occasion of the ASEAN plus 6 Economic Ministers' Meeting in August 2010 (in Viet Nam) and the East Asia Summit meeting in October (in Viet Nam), the Minister of Economy, Trade and Industry of Japan expressed Japan's concerns to the Minister of Commerce and Industry of India. Also at the India-Japan Ministerial-Level Economic Dialogue in April 2012, Japan requested the Indian government to take adequate measures to address this problem. Furthermore, Japan, the United States and EU have been expressing their concerns on this matter at the meeting of the WTO TBT Committee since November 2010.

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

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

<Outline of the Measure>

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

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

<Problems under International Rules>

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

<Recent Developments>

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

In July 2018, a new standard for secondary batteries IS16046 (Part 1) and (Part 2) was announced. It is necessary to test and register batteries again based on the new standard and to change the indications on the batteries. Since guidelines and authentication test laboratories could not be prepared, the implementation of the standard was postponed until March 14, 2020 in response to the request by the industry. However, the industry is making request for the extension again because there is a concern that they cannot make the deadline due to the delay in the actions of the authorities and test laboratories. Since a drastic solution is required regarding newly added items subject to the standard and a transitional period for revising technical standards, Japan will continue to request the Indian government to improve the system.

Trade in Services

(1) Foreign Investment Restrictions, etc.

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

<Outline of the Measure>

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

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

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

(i) Financial Services

(a) Banks

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

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

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

(b) Insurance

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

(ii) Distributions Services

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

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

establishing a store.

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

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

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

<Concerns>

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

<Recent Developments>

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

(2) Personal Information Protection Bill

<Outline of the Measure>

In June 2018, a committee formed by the Indian government submitted a report on data protection and a draft of the "Personal Information Protection Bill" to the Ministry of Electronics and Information Technology (MeitY). In July 2018, the bill (hereinafter referred to as the "2018 Bill") was made public. The bill was not enacted, but the Indian government made the Personal Information Protection Amendment Bill (hereinafter referred to as the "2019 Bill") public in December 2019 reflecting the public comments on the 2018 Bill. The 2019 Bill basically follows the 2018 Bill with several amendments. It continues to include (1) the obligation to store the "sensitive personal data" inside India when the data is transferred outside India (Article 33, Paragraph 1); (2) the obligation to process data specified as "critical personal data" in India (Article 33, Paragraph 2, it is stated that "critical personal data" will be notified by the central government); and (3) provisions related to the transfer of "sensitive personal data" and "critical personal data" outside India (Article 34). The 2019 Bill also has new provisions such as, exemption of the actions of the central government from the law for national security and public order protection (Article 35), and obligations to provide non-personal data to the central government (Article 91, Paragraph 2).

<Problems under International Rules>

The 2019 Bill also provides that the “critical personal data” shall be processed inside India. It is concerned that the definition or the meaning of the “critical personal data” to be subject to the obligation in the bill are unclear. In addition, although the scope of the data is limited compared to the 2018 Bill, the obligation to store the “sensitive personal data” (including financial data, health data, etc.) inside India continues to remain. Because of these obligations, there are concerns that foreign operators may be more likely to receive disadvantaged treatment than Indian operators. It is necessary to keep an eye to avoid excessive data localization requirements.

Regarding the cross-border data transfer, compared with the 2018 Bill, elements that are considered at the approval standard of the cross-border transfer scheme of group companies and standard contract articles are clarified. However, the scope of the data subject to the bill is not clear. Further, regarding the cross-border transfer of “sensitive personal data,” the request is considered excessive because the bill further requires an explicit agreement of the data holder even if the cross-border transfer scheme of group companies and standard contract articles are used.

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

<Recent Developments>

In February 2020, the Japanese government submitted its opinion on the 2019 Bill. The bill was submitted to the lower house in December 2019 and is now under deliberation of national assembly. We will continue to work with industry to closely monitor future legalization processes and related laws and regulations to avoid unfair infringement on the free flow of information and the rights of foreign operators.

Protection of Intellectual Property

(1) Issues related to Counterfeit, Pirated and Other Infringing Products

<Current state>

According to the investigation conducted by an Indian business community etc. on the situation of damage caused by counterfeit, pirated, and other infringing products in India, the sales loss in 2012 caused by counterfeit and pirated products in seven sectors, which are automobile parts, alcohols, computer equipment, daily goods, food, mobile phones, and cigarettes is 730 billion rupees. Among them, about 30% of the products in the automobile parts market are counterfeit products (*according to the FICCI report).

On the other hand, India is not sufficiently cracking down on counterfeit products that are spreading. It is taking 10 years or more from disclosure to criminal punishment in some cases. It has been reported that counterfeit products in the market are not decreasing because the substantial deterrent effect of the infringement is insufficient.

<Concerns>

One of the serious issues shared by emerging/developing countries concerning intellectual property is that there are many cases of intellectual property infringements occurring in these countries through manufacturing/distribution of counterfeit, pirated and other infringing products and that the effectiveness of exercising rights to eliminate such intellectual property infringements is not fully ensured.

Rights are not fully protected just by developing actual regulations concerning intellectual property and creating and improving the relevant systems. For the full protection of rights, the following measures are indispensable: appropriate and effective management of bodies that grant and register rights in terms of acquisition of rights; and effective and prompt handling of right infringements through relief measures by judicial proceedings, border measures by customs, and criminal regulations and sanctions in terms of enforcement of rights against infringements.

Substantial part (from Article 41 to Article 61) of the TRIPS Agreement is set aside for regulations concerning enforcement of such rights and requiring member countries to ensure their domestic legal systems which enable effective and prompt measures (Article 41).

Also, in order to secure the efficient operation of the system related to the protection of intellectual property, Japan-India Economic Partnership Agreement obligates taking appropriate measures for simplifying the domestic administrative procedures related to intellectual property (Article 103).

In light of such a provision, if effective and quick enforcement of rights cannot be obtained, the duties of these agreements may be violated.

<Recent Developments>

In recent years, in order to shorten the examination period of patent applications, the Indian government is working on approaches such as “Patent Prosecution Highway” and increasing the number of examiners.

In addition, the Indian government states that the enforcement of the rights is one of the pillars in the “National Intellectual Property Rights Policy” compiled in 2016 and “Intellectual Property Rights System of India - Initiative by Government” published in 2019.

In addition, on-line counterfeit products are increasing with the rapid growth of the e-commerce market. In recent years, the Department for Promotion of Industry and Internal Trade of India published an E-Commerce Policy and Department of Consumer Affairs, Ministry of Consumer Affairs, Food &Public Distribution of India published 2019 Guidelines for Consumer Protection (E-Commerce). In the future, it is necessary to focus on the Indian government’s approaches against effective and quick right execution.

(2) Protection of Patents in Relation to Pharmaceuticals, etc.

<Outline of the Measure>

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

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

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

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

Other applications for setting compulsory licenses that have been made, have been rejected by the Indian Patent and Trademark Office.

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

<Problems under International Rules>

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

<Recent Developments>

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

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