Chapter 2

ASEAN

1. Thailand

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>

However, the simple average applied tariff rate for non-agricultural products as of 2019 was 7.2%, and there are high bound tariff rates for particular categories such as clothing (average 29.6%) and transport equipment (average 22.8%), etc. As for individual items, there are high tariff items for automobiles (maximum 80%), washing machines and refrigerators (maximum 30%), etc. In addition, the simple average bound rate for non-agricultural products as of 2019 was 25.6%. The binding coverage is relatively low: 25.2% for transport equipment and 71.4% as a whole for non-agricultural products. Unbound items include automobile parts (maximum applied tariff rate of 30%) and bicycles (maximum applied tariff rate of 30%).

<Concerns>

As long as high tariff itself does not exceed the bound rate, there is no problem in terms of the WTO Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible and eliminate the tariff peaks (see "Tariff Rates" in 1. (1) (iii) of Chapter 5, Part II) described above.

Low binding rate 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 that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

With the aim of expanding the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were launched in May 2012, 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 as of 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 Thailand, elimination of tariffs on the subject items started in July 2016. For example, high tariff items include static converters (35%), parts for electric control panels and others (35%), and ink cartridges (30%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Meanwhile, the MFN tariff rate (Section 12 of the Thai Customs Tariff Decree [General Rate]) was drastically changed by Notification No.0518/Wor 982 of the Ministry of Finance on January 5, 2015. This change was a result of putting into effect the commitment made in the WTO Uruguay Round (January 10, 2012). The notification was applied retroactively to transactions from January 1, 2015.

Previously, the Thai government had applied the advance ruling system only to customs tariff classification, but it expanded the application to customs valuation on March 3, 2015 (Notification 38/2558) and determinations of origin on March 11 of the same year (Notification 40/2558). The Thai government promises to issue the ruling within 30 official days. The ruling is effective for two years. From January 1, 2015, Thailand improved market access for least-developed countries (LDCs), such as eliminating export duties and quotas for 6,998 items.

As the Japan-Thailand Economic Partnership Agreement came into effect in November 2007, tariffs have been removed on imports from Japan for automobile parts (parts for manufacturing) and steel products, and thus market access has improved.

In response to the impact of the COVID-19, the following measures were taken to prevent the COVID-19 spreading.

(i) Temporary reduction and elimination of tariffs on imported raw materials used for manufacturing surgical masks and pollution control masks based on the Regulation on Implementation of the Customs Tariff Law (Article 12 of B.E.2530 Emergency Order (No. 3)), and masks (from March 24, 2020 to September 20, 2020)

(ii) Temporary elimination of tariffs on pharmaceuticals medical devices (sterile injectable drugs, masks, and medical tools such as PPE sets, etc.) (from March 26, 2020 to September 30, 2020)

(iii) Temporary elimination of tariffs on 146 items pertaining to machine-related fields aimed at encouraging domestic investment in such fields based on the Regulation on Implementation of the Customs

Tariff Law (Article 12 of B.E.2530 Emergency Order (No. 5)) (from April 14, 2020 to December 31, 2020)

Standards and Conformity Assessment Systems

Technical Regulations for Steel Products

<Outline of the Measures>

With regard to the technical regulations for steel products introduced in 1993, the Thai Industrial Standards Institute (TISI) changed the regulations concerning the Thai Industrial Standards (TIS) conformity assessment and conformity-maintenance examination (acquisition of import licenses) in August 2016. In March 2017, TISI revised the technical regulations for section steels and introduced the technical regulations for Electrolytic Zinc-coated sheet steel (EG). In addition, TISI has also revised the technical regulations for hot-rolled steel sheets and cold-rolled steel sheets, and considers revising and introducing technical regulations for various steel materials in the future.

<Problems under International Rules>

Article 2.2 of the TBT Agreement stipulates that technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. The Thai Industrial Standards Institute (TISI) claims that the objective of the system is to secure health and safety of consumers through improved steel quality, however, such an objective cannot be achieved through regulations of intermediate goods such as steel products, but instead should be achieved through safety regulations of final products. Therefore, this system appears to be more trade restrictive than necessary in light of the policy objective and may violate Article 2.2 of the TBT Agreement.

<Recent Developments>

With regard to this regulation, at the Japan-Thai bilateral talks on steels, Japan has repeatedly pointed out that introducing technical regulations for steel products that are intermediate goods is not necessary from the point of view of end user protection.

Currently, however, a procedure is underway for introducing another set of technical regulations (TIS50-2561), which is for hot-dip zinc-coated steel sheets (GI). In addition, the technical regulation set aside only 90-day between the announcement and the implementation, as it may violate Article 2.12 of the TBT Agreement, which calls for a reasonable interval between the publication of technical regulations and their entry into force. Japan requested for the improvement in the Japan-Thai bilateral talks on steels held in February 2020. (The 4th WTO Ministerial Conference held in Doha in November 2001 agreed that the phrase 'reasonable interval' shall be understood to mean normally a period of not less than 6 months, .)

In July 2020, the Minister of Industry regulation concerning industrial standard marking, including steel products, was announced to make public the operation to make electronic information on licensing and industrial products visible when marking. It was also announced that this regulation would be enforced on January 21, 2021. Furthermore, in September of the same year, at the seminar by TISI, the operation to display QR codes on products was disseminated. As it is difficult to modify systems, etc. by the enforcement date, the Japanese steel industry make requests to the Thai government by utilizing the opportunity of the Japan-Thai bilateral talks on steels held in December 2020, etc. As a result, the enforcement date was postponed for six months to January 5, 2021.

Japan needs to continue to pay attention to the status of operation to ensure that the measures do not become trade-restrictive.

Trade in Services

Foreign Investment Restrictions, etc.

<Outline of the Measures>

Pursuant to the Foreign Business Act (revised in 1999 and entered into force in March 2000), Thailand divides businesses under restrictions into 43 types of businesses in three categories, and restricts entry of foreign companies (judicial persons whose shares are owned by 50% or more foreign investors) into these types of businesses. Almost all service businesses are subject to the restrictions, including engineering and various retail businesses. The types of businesses in which foreign companies can enter are limited to trade in intermediary services, wholesale and retail businesses, and construction businesses over a certain size, and therefore it is very difficult for foreign companies to run service businesses in Thailand.

Major restrictions on foreign investment are as shown in the <Figure I-2-1>.

(Exemption of MFN treatment of the Foreign Business Act in the Thailand-US Treaty of Amity and Economic Relations)

The United States and Thailand concluded a Treaty of Amity and Economic Relations in 1966. (Most sectors of the service industry are subject to the treaty, excluding fields such as communications, transport, investment management, banking, land/natural resource development, and inland transport of domestic agricultural products.) The treaty exempts American companies from the above Foreign Business Act and allows for commercial registry with the same examination criteria as Thai companies. This is privileged treatment compared to companies of other countries, which are subject to examinations based on the Foreign Business Act. Thailand included a ten-year time limit in its GATS Schedule of Specific Commitments for exemption of measures inconsistent with the MFN obligation; however, American companies continue to receive preferential treatment even after this exemption period has expired.

<Problems under International Rules>

The MFN exemption of the Foreign Business Act because of the Thailand-US Treaty of Amity and Economic Relations is an exceptional deviation from this principle; it should be abolished without delay, as it is stipulated in Annex 6 on exemptions of GATS Article II (MFN), that in principle, such exemptions should not exceed a period of 10 years. Annex 5 stipulates that such an MFN exemption expires on the specified date. That date has been exceeded in this case because Thailand specified 10 years as the exemption period in its Schedule of Specific Commitments (since it commenced on January 1, 1995, the exemption period ended on December 31, 2004). Continued maintenance of the measure after the end of the exemption period and the preferential treatment of American companies are most likely to be violations of GATS Article II: 1.

Japan will take the opportunity to encourage the Thai government to bring its measures into conformance with the GATS.

<Recent Developments>

In the Japan-Thailand EPA, signed in April 2007 and went into effect in November, Thailand pledged to make improvements, including the foreign capital ratio, with regard to wholesale and retail services, repair and maintenance services, logistics and consulting, advertising services, hotel and lodging services, restaurant services, maritime transport agency services, and cargo handling services. In recent years, Japanese service industries led by the food and drink sector have actively made inroads into the Thai market, including tourism and retailing. Japan will encourage relaxation of the foreign investment restrictions, through bilateral dialogues and EPA follow-up meetings.

Meanwhile, in response to instances of indirect investment made possible by interposing a Thai-owned company for a foreign-owned company, the Commerce Department is moving toward strict application of investment regulations to foreign-owned companies and of the sectors for which foreign equity investment is restricted. There had been rumors of problems with the revisions to the “Foreign Business Act” from 2006 to 2007, following which the revised bill was withdrawn after being opposed by the majority in a ruling by the Legislative Council. In a Cabinet decision of July 2016, it was approved that business related to commercial bank activities, asset management business, establishment of liaison offices, etc. were excluded from the scope of application of the Foreign Business Act. In June 2017, “Designation of service business for a foreign person without obtaining approval from the authorities” became effective and the establishment of liaison offices was excluded from the scope of the Foreign Business Act. Japan has been paying close attention to legal revisions related to strengthening the system for foreign capital, and has communicated its concerns to the government through the Japanese Embassy in Thailand. For the future, careful scrutiny of developments with these legal revisions and the effect on Japanese companies entering the country is required.

<Figure I-2-1> Major restrictions on foreign investment in Thailand

Sector	Outline of Regulations
Banking	In the banking sector, while the foreign investment ratio and foreign executive ratio are limited to 25% or less, foreign investment and the foreign executive ratio may be increased up to 49% and 50%, respectively, with approval from the central bank. In addition, foreign investment of more than 49% may also be possible with approval from the Ministry of Finance. Foreign banks may open up to 20 branch offices under certain conditions, etc. if transfer is made from branch offices to subsidiaries. To date, licenses for establishing local subsidiaries were granted to two foreign banks.
Insurance	In the insurance sector, while the foreign investment ratio and foreign executive ratio are limited to 25% or less, foreign investment and the foreign executive ratio may be increased up to 49% and 50%, respectively, with approval from the insurance authorities. In addition, foreign investment of more than 49% may also be possible with approval from the Ministry of Finance.
Telecommunication Services	The Telecommunications Business Act that changed the limitation of foreign equity ratios from 49% to 25% was put into effect in 2001. The law was revised in January 2006 in accordance with planned liberalization in the telecommunications sector in 2006 as committed in the GATS, and upper limits on the foreign investment ratios were eased to less than 50%. Foreign investment has been progressing, as equities of Shin Corporation were sold to Singapore on the business day after the deregulation was implemented. However, with this purchase, controlling rights effectively moved to a foreign-owned operator through its voting rights percentage. Therefore, the Thai Government regarded this move as a bypass of foreign investment regulations, marking the start of an amendment of the Foreign Business Act in 2006 mentioned later. The National Broadcasting and Telecommunications Commission (NBTC) was established in 2011 to supervise communications and broadcasting businesses in an integrated manner. In 2012, NBTC released a notification providing concrete cases that fall under "business control by foreigners". This notification requires telecommunications business operators to regularly report the situations of business control by foreigners.
Distribution Services	Foreign investment was allowed in cases of retail services whose minimum capital is 100 million baht or more, and where the minimum capital of each store is 20 million baht or more; and in cases of wholesale services whose minimum capital is 100 million baht or more. In cases that do not meet these conditions, foreign equity ratios are limited to less than 50%, as is the case for other services. In addition, "food and drink sales services" are also under restriction. Foreign investment in retail services dealing with food such as supermarkets is restricted to less than 50%.

Protection of Intellectual Property

Issues related to Counterfeit, Pirated and Other Infringing Products

<Present State>

A study by Japan's related institution ("Survey Report on Counterfeit Distribution in Thailand 2020" by JETRO) has revealed many of counterfeit and pirated products are coming from the outside of Thailand, including China. According to a website of Department of Intellectual Property of Thailand, although there were 1,006 cases of seizure by customs and 3,870 cases of indictment by the police in 2019, counterfeit and pirated products continue to be sold on the market.

Behind the rampant infringement of intellectual property are an insufficient crackdown and poor punishment against infringement.

<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, requiring member countries to ensure their domestic legal systems which enable effective and prompt measures (Article 41). The Japan-Thailand Economic Partnership Agreement also provides that the both countries shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and promote efficiency and transparency in the administration of intellectual property protection system (Article 122); and that for the purposes of providing efficient administration of intellectual property protection system, each country shall take appropriate measures to streamline its administrative procedures concerning intellectual property (Article 126).

In light of the above regulations, cases where effective and prompt enforcement of rights is not ensured may violate obligations stipulated in these agreements.

2. Viet Nam

Safeguards

Safeguard Measures on Semi-Finished and Certain Finished Products of Alloy and Non-Alloy Steel and Anti-Circumvention Investigation

Refer to page 117 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA - for safeguard measures against semi-finished and certain finished products of alloy and non-alloy steel.

The following is on the anti-circumvention investigation.

<Outline of the Measures>

On July 26, 2018, Viet Nam's Minister of Commerce announced the initiation of anti-circumvention investigation for wire rods and steel wire in the official gazette. The products subject to this investigation, the increase of imports of which constitutes the reason for the initiation of the investigation, include secondary-processed products from the products subject to the original investigation (billet, steel/wire rods). In May 2019, additional tariffs of 10.9%, the same rate as the original safeguard measure, was determined and started to be imposed on wire rods and steel wire. (The duration was from May 28, 2019 to March 21, 2020.)

On March 20, 2020, Viet Nam's Ministry of Commerce announced the extension of the measure for three years in the official gazette.

<Problems under International Rules>

The Vietnamese government established a new domestic law that enables anti-circumvention measures to be applied to all trade remedial actions including safeguards for avoidance of circumvention, and then initiated this anti-circumvention investigation. However, neither the establishment of the domestic law nor this anti-circumvention investigation has been notified to the WTO.

A safeguard measure may be imposed “only following an investigation by the competent authorities” (Article 3 paragraph 1 of the Agreement on Safeguards). If this is a new safeguard measure, it requires to individually meet all the prerequisites for imposing safeguards. If this is a review of the product coverage of the original investigation, the aim of the investigation should be clearly stated to ensure that all the prerequisites for imposing safeguards are met for the entire product coverage taking into account the review.

Moreover, the products subject to this anti-circumvention investigation include products that had been excluded in the original safeguard measure and products which not been manufactured in Viet Nam (and thus there is no competition with imported products). These products do not cause injury to the domestic industry and then one of the prerequisites of safeguard measures is not satisfied (Article XIX: 1 (a) of GATT).

<Recent Developments>

Japan has expressed its concerns to the Vietnamese government regarding the above issues under international rules at the Safeguard Committee and via bilateral with the US consultations. We will continue to collect information and put pressure on the Vietnamese government, in order to reduce the negative impacts on Japanese products.

Standards and Conformity Assessment Systems

Imported Vehicle Certification System

<Outline of the Measures>

On October 17, 2017, the Vietnamese government promulgated a Decree No. 116 (116/2017/ND-CP) that stipulates conditions on automobile production, assembly, import, guarantee and maintenance services, and enforced it on January 1, 2018. In addition, Circular No. 3 (03/2018/TT-BGTVT), the implementation rules of the

Decree No. 116 was promulgated on January 24 of the same year and enacted on March 1. With these regulations, the Vietnamese government decided to impose strict requirements on automobiles imported into Viet Nam. Specifically, to import automobiles into Viet Nam, importers are obligated to submit a type certification issued by the foreign authorities to the Vietnamese authorities and have Vietnamese authorities' exhaust gas inspection and safe quality inspection by model for each import lot (a vessel).

With regard to the former requirement, a type certification is normally issued for an automobile used in each country based on each country's safety standards and environmental standards. Very few countries in the world have the system to issue a type certification for automobiles for export. In this regard, there is concern that it is difficult to actually obtain a "type certification issued by foreign authorities." With regard to the latter requirement, such inspections are expected to take a long time for each import lot. Thus, there is also concern that a period until manufacturers can sell automobiles in Viet Nam's market will be prolonged.

<Problems under International Rules>

(i) Obtaining a type certification issued by foreign authorities

All automobiles used in Viet Nam, regardless of domestically manufactured or imported, require a "type certificate issued by the Vietnamese authorities." However, the Decree No. 116 imposed on only imported automobiles an additional obligation to obtain a "type certification issued by foreign authorities." Furthermore, very few countries in the world have the system to issue a type certification for automobiles for export. Accordingly, imported automobiles are required two kinds of type certification. Since it is difficult to obtain a type certification issued by foreign authorities, imported automobiles are disadvantaged compared to domestic automobiles, which may violate Article 2.1 of the TBT Agreement. The Vietnamese government explains that the objectives of this system are to protect consumers and environments. Since it is considered that these objectives can be achieved by conforming to the Vietnamese domestic safety standards and environmental standards, it may be questioned if it is within the necessary extent to request an additional type certification issued by foreign authorities for only imported automobiles to achieve the legitimate objectives. This may also violate Article 2.2 of the TBT Agreement.

(ii) Inspection for each import lot (a vessel)

Automobiles used in Viet Nam are required to conform to the domestic exhaust gas standards and safety standards. The conformity to these standards used to be confirmed by submitting materials of quality assurance for new automobile issued by the manufacturer for both domestic and imported automobiles. However, the Decree No. 116 imposed on imported automobiles for each import lot (a vessel) obligations to have an exhaust gas inspection and a safety inspection by model conducted by the Vietnamese authorities. On the other hand, for domestic automobiles, it is said that the results of one inspection is effective for 36 months though the specific inspection time is unclear. Thus, the frequency of inspection of only imported automobiles has significantly increased. If they are disadvantaged compared to domestic automobiles, it may violate Article 5.1.1 of the TBT Agreement.

<Recent Developments>

Since October 2017 when the Decree No. 116 was signed, the Japanese government has been taking actions, including issuing a note verbale from the Japanese Embassy in Viet Nam, expressing concerns at the WTO TBT Committee, and conveying concerns by the Minister of Economy, Trade and Industry to the Vietnamese Minister of Industry and Trade. Furthermore, Japanese industries are working on officials of the Vietnamese government through Japanese Commercial and Industrial Associations in Viet Nam. The export of Japanese automobiles to Viet Nam has been suspended since the enactment in January 2018. While exports to Viet Nam resumed from October 2018 by operation decisions, going forward, this may cause serious damages to businesses of Japanese companies. As a result of Japan's repeated approaches, notification to the TBT Committee aiming at revising the Decree No. 116 was made in November 2019 and the revision was enforced in February 2020 as the Decree No. 17 of 2020. In addition, the Circular No. 5 (05/2020/TT-BGTVT) to partially amend the Circular No. 3 of 2018 was promulgated in February 2020 and enforced in April of the same year. As a result of these, the obligation of obtaining a type certification issued by foreign authorities has been repealed and the burden of inspection for each lot has been reduced to one inspection in three years at maximum. Japan still needs to be observant as concerns remain in implementation, say, how vehicles subject to inspection are selected. If necessary, Japan will continue to make high-level approaches and request the Vietnamese government to eliminate or improve these regulations at bilateral and multilateral talks.

Trade in Services

Cyber Security Law

<Problems under International Rules>

According to the bill, when foreign corporations provide electronic communication or internet services a branch or representative office must be established in Viet Nam and the bill includes provisions obligating domestic management of Vietnamese user information.

Generally, it is presumed that foreign companies centrally manage information outside Viet Nam. These obligations may impose additional burden on foreign companies when they establish a branch or representative office in Viet Nam and save data within the country. Viet Nam has committed to liberalize or partially liberalize various service fields based on GATS, including computer-related services and telecommunication services.

In these fields, if a foreign business operator is treated actually less favorably than Vietnamese business operators, it may violate the national treatment obligation in Article XVII of GATS.

Furthermore, in the government agreement related to executing the Cyber Security Law, the topics that are subject to this obligation are limited, but those operations must continue to be monitored carefully.

<Recent Developments>

At the meeting of the Council for Trade in Services in October 2017, Japan and the United States jointly registered this case as an issue and expressed concerns on the above problems. After that, Japan has expressed concerns about the issue at all the meetings of the Council for Trade in Services in 2018, 2019, and 2020. Japan will continue to closely watch the issues including bills concerning the Law in the future and will make a request that foreign companies do not receive unfavorable treatment, in coordination with relevant countries.

Protection of Intellectual Property

Issues related to Counterfeit, Pirated and Other Infringing Products

<Present State>

A study by Japan's related institution ("Survey Report on Counterfeit Distribution from China to Viet Nam at the boarder" 2016 by JETRO) has revealed that while many of counterfeit and pirated products are coming from China, only dozens to hundreds of cases of seizures at customs are reported. It is reasonably assumed that only a fraction of infringing products are stopped at customs.

In addition, according to another survey ("Survey concerning distribution of counterfeit products in Viet Nam 2020" by JETRO), counterfeit products, including mainly electrical products/electrical household appliances, clothes, motorcycles, and automobile parts, are reported to be available in various markets.

In this regard, counterfeit and pirated products of a wide variety of goods are reported to be still circulated in the market although Viet Nam has an inter-departmental government organization called National Steering Committee Against Smuggling, Trade Fraud, and Counterfeit Goods (National Steering Committee 389) and recently enhanced its efforts to uncover such products ("PROMOTING AND PROTECTING INTELLECTUAL PROPERTY IN VIETNAM" (May 2019), ICC BASCAP).

Furthermore, yet another survey ("Expansion of Piracy Websites Originated from Vietnam" October 2020, Working Group on Countermeasures Against Pirated Products, Publishing PR Center) reported that intellectual property rights infringements on cartoons are taking place broadly on piracy websites and the IP addresses of five of the top 10 websites with the most visits are located in Viet Nam.

Behind the rampant infringement of intellectual property are an insufficient crackdown and poor effectiveness of enforcement of rights against infringement.

<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, requiring member countries to ensure their domestic legal systems which enable effective and prompt measures (Article 41). The Japan-Viet Nam Economic Partnership Agreement also provides that the both countries shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting, and piracy, (Article 80); that for the purposes of providing efficient administration of intellectual property protection system, each country shall take appropriate measures to streamline its administrative procedures concerning intellectual property (Article 83);

and that the both countries shall take appropriate measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights (Article 85).

In light of the above regulations, cases where effective and prompt enforcement of rights is not ensured may violate obligations stipulated in these agreements.

<Recent Developments>

In 2019, the Ministry of Science and Technology of Viet Nam created a national-level intellectual property strategy with a vision to 2030 (Decision No. 1068/QD-TTg). While the strategy aims to make further improvement in the enforcement of intellectual property rights and reduce intellectual property infringements, it is necessary to keep a close watch on the Vietnamese government's efforts for realizing effective and prompt enforcement of rights.

3. Indonesia

National Treatment

(1) Local Content Requirement on Retail Services

<Outline of the Measures>

The Ministry of Trade of Indonesia issued "Regulation of the Minister of Trade No. 53 of 2012 regarding the Implementation of Franchising" in August 2012 with the aim of strengthening business partnerships between franchisers and medium and small-scale business operators and promoting the use of domestic products. This Regulation included a measure providing that "franchisers and franchisees have obligations to use local components or services for at least 80% of the raw materials, business equipment and merchandise used in the franchise" (Article 19 of the Regulation). Franchisers and franchisees violating the measure are subject to administrative penalties, including written warning and termination or revocation of franchise registration certificates, etc. (Article 33 of the Regulation).

Furthermore, in December 2013, the Ministry of Trade of Indonesia issued "Regulation of the Minister of Trade No. 70 of 2013 on Guidelines for Structuring and Development of Traditional Markets, Shopping Centers and Modern Stores" with the aim of optimizing the structuring and development of traditional markets, shopping centers and modern stores (minimarkets, supermarkets, department stores, hypermarkets, stores that sell goods in wholesale style) (effective as of June 2014). This Regulation included a measure providing that "shopping centers and modern stores have an obligation to provide domestic products which must account for at least 80% of the total amount of and types of goods that are sold" (Article 22 of the Regulation). This Regulation was partly revised by the "Regulation of the Minister of Trade No. 56 of 2014" to clearly state that the above-mentioned obligations were not applicable to modern stores in the form of stand-alone-brands that handle global supply-chain-sourced products requiring uniform production, etc. Shopping centers and modern stores violating the measure are subject to administrative penalties, including written warning and suspension or revocation of business licenses, etc. (Article 38 of the Regulation).

<Problems under International Rules>

These measures are a so-called local content requirement and unfairly treat imported products compared to domestic products. Therefore, these measures may violate GATT Article III (National Treatment on Internal Taxation and Regulation): 4 "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin with respect for all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use".

<Recent Developments>

In November 2013, the Ministry of Economy, Trade and Industry of Japan and the Ministry of Trade of Indonesia held the "First Japan-Indonesia Policy Dialogue on Distribution" co-chaired by the Director-Generals having jurisdiction over the respective distribution industries. In this Dialogue, the Ministry of Economy, Trade and Industry requested the Ministry of Trade of Indonesia to remove measures concerning imported products on franchise business operators. Indonesia did not indicate an intention to remove the measures. In addition, the "Second Japan-Indonesia Policy Dialogue on Distribution" was held in June 2014, and the Ministry of Economy, Trade and Industry of Japan pointed out that the measures had been strengthened by the "Regulation of the Minister of Trade No. 70 of 2013" and requested immediate removal of the measures. The Ministry of Trade of Indonesia stated that it would take this issue back and discuss it within the government, and a proposal was made to hold working-level consultations. A dialogue was held again in November, and the Ministry of Trade of Indonesia expressed its opinion that exemptions had been established by the "Regulation of the Minister of Trade No. 56 of 2014". In addition to these dialogues, Japan has been addressing the measures with the United States, the EU, and Australia at the WTO TRIMs Committee and Council for Trade in

Goods since June 2014.

(2) Measures of Income Tax Prepay System at time of Import and Increased Tax Rate

<Outline of the Measures>

Based on Article 22 of the Income Tax Law (2008 Act 36), Indonesia collects prepaid income tax of 2.5%, 7.5%, or 10% of the import amount for applicable products from the importer at the time of passing customs (abbreviated as PPh22 based on the article number), then the taxable amount is calculated at the end of the year and the overpaid amount is to be refunded. Products subject to the tax are consumer goods. Subject items and the prepaid tax rate thereof are determined under the order of the Ministry of Finance, considering the availability of domestic goods and domestic industry developments.

Regarding this system, Indonesia has increased the prepaid tax rate multiple times. Specifically, in 2013 the rate was raised from 2.5% to 7.5% for 502 items, and in 2015 it was raised from 7.5% to 10% for 240 items. Furthermore, in September 2018, for 1147 items, the prepaid tax rate was increased from 7.5% to 10% for (1) Luxury items such as complete vehicles, (2) Consumer goods that can be domestically manufactured, such as electronics, and (3) Goods used in the consumption process such as building materials and tires. The Indonesian Minister of Finance explained that the increase of rates in 2018 was to manage imports and encourage using domestic products as a rupiah safety measure.

The prepaid income tax at the time of import puts a financial burden of interest rates on the importer and worsens cash flow. Furthermore, there have been cases in which the tax bureau has unfairly reduced the refund amount. There is concern that the adverse effect may be worsened due to the increase in prepaid tax rate for many goods.

<Problems under International Rules>

The system of prepaying income tax at the time of import could be considered being inconsistent with national treatment principle with regard to internal tax or domestic regulations (GATT Article III: 2 or 4) since the procedural burden and the disadvantage on cash flow to bear interests is only imposed to imports, compared to domestic products for which there is no comparable regulations.

Furthermore, while the internal taxes under GATT Article III: 2 are taxes the payment obligation for which occurs based on the domestic incidents (such as distribution, sale, use or transport of imports in the importing country), the prepaying income tax at issue may be interpreted as an import tax/import duty rather than an internal tax, as this tax is imposed on the import amount of imported goods and thus it is imposed because of the act of import, rather than a domestic incident. If this tax can be characterized as an import tax/import duty, then depending on product category and whether the import tax is included on Indonesia's schedule of tariff concessions, there is a possibility that the measure is inconsistent with an agreement concerning import tax (GATT Article II: 1(b)).

Furthermore, the possibility of justification under GATT Article XX(d) (the purpose of securing compliance with domestic laws and regulations) (note: in case of the aforementioned measure, the domestic laws and regulations regarding tax system are the issue) is low. This is because it is difficult to admit circumstances in which, for ensuring tax collection, it is more difficult to impose tax on revenues of import products than it is to impose tax on revenues of domestic products, and thus this difference in handling domestically manufactured and imported products cannot be explained.

<Recent Developments>

In August 2018, after the Minister of Finance of Indonesia announced that the prepaid tax rate would be increased, Japan applied pressure to Indonesian government (including the Minister of Finance) to reconsider and to exclude intermediary goods, etc., through the Japanese Embassy in Indonesia. In May 2019, this matter was discussed in the public/private dialogue between Japan and Indonesia. Currently, goods subject to this system are restricted to consumer materials, but these measures need to be monitored closely to make sure that the scope is not enlarged.

Quantitative Restrictions

(1) Quantitative Import Restrictions (Rice, Salt, and Used Capital Goods)

<Outline of the Measures>

Indonesia has imposed a temporary import prohibition on rice, salt, and other items to protect its domestic industries. The import of rice is permitted to, for instance, public food corporation, rice manufactures/importers, or registered rice importers depending on the purpose of import, by the “Regulation of the Minister of Trade No. 19 of 2014”. The import of salt is permitted to salt manufacturers/importers for salt for consumption and to salt manufacturers/importers and designated salt importers for salt for industrial use by the “Regulation of the Minister of Trade No. 58 of 2012”.

Regulations on the import of used capital goods were introduced in 2003 to protect Indonesia’s manufacturing industry. However, after that, decisions for continuation were made every one to three years.

<Problems under International Rules>

Considering the facts that import of certain items is prohibited except for some business operators and that expansion of export/investment is included in the conditions for import permission, import restrictions on rice, salt, used capital goods, etc. constitute prohibitions or restrictions on import/export. These measures therefore may violate Article XI of the GATT (general elimination of quantitative restrictions).

<Recent Developments>

Particular types of used automobiles were formally permitted to be imported. Nevertheless, importation of all used automobiles has been prohibited since March 2007.

Additionally, in December 2015, under the Minister of Trade order No. 127 it was determined that the importation of used capital goods should be permitted only for three types of companies (companies that directly use the goods, repair companies and re-assembly companies), and the types of used capital goods that are permitted to be imported vary depending on the types of companies (this order continues to be effective until the end of December of 2018).

With regard to salt, a procedure was promulgated at the end of December 2015 based on the Minister of Trade order No. 125 (effective as of April 1, 2016) whereby a company intending to import industrial salt must submit the expected annual import volume to the Ministry of Industry; and based on approval at a meeting held by the Coordinating Minister for Maritime Affairs, the company must file an import application with the Ministry of Trade and actually import salt. Through the local embassy, Japan is approaching the Indonesian government to ensure smooth operation.

(2) Import Restriction (Compulsory Registration by Importers of Steel Products)

<Outline of the Measures>

With regard to steel products, a registration system for importers of non-alloy steel was established and pre-loading inspections at the place of export were made mandatory in accordance with Minister of Trade orders (No. 54 of 2010 and No. 113 of 2015). Furthermore, with regard to alloy steel, the Minister of Trade order (No. 28 of 2014) also requires that pre-loading inspections and quotas control be implemented. In line with expiration of the above two regulations at the end of December of 2016, the Indonesian government reviewed the content of the regulations and introduced a new regulation in December 2016. The new regulation has the same regulatory content as the previous ones but has expanded the scope of application to include secondary steel products. With the Minister of Trade order No. 22 implemented in February 2018, the customs procedure was simplified by allowing a self-declaration as well as online forms after passing the customs, not requiring obtaining the technical report from the Minister of Industry for import license. However, in the Minister of Trade order No. 110 (announced in December 2018 and executed in February 2019), certain procedures were introduced again in which it is required to obtain the technical report from the Minister of Industry and to check some actual products after passing customs was required. The Minister of Trade order No. 3 of 2020, which revised the Minister of Trade order No. 110, was executed on January 31, 2020, and for the license holders for manufacturers (API-P), it was clarified that it is not necessary to obtain the technical report from the Minister of Industry. At present, 480 items of steel products are subject to control based on the Indonesian national HS code (8 digits)

<Problems under International Rules>

Cases, such as where compulsory registration of importers under the Minister of Trade’s order or other requirements cause a significant delay in import permission procedures, or where import quotas are set with an automatic import permission system adopted, may be inconsistent with the Agreement on Import Licensing Procedures. Because the modes of imports are limited to those by registered companies, the above cases may also be inconsistent with the general elimination of quantitative limitations in GATT Article XI.

<Recent Developments>

Due to the introduction of the new regulation, import licensing procedures for steel products from Japan to Indonesia are behind schedule and import approvals for the quantities that are less than the quantities applied for are occurring. As such, through the local embassy or other channels, Japan requested the Indonesian government to ensure smooth importation procedures.

(3) Import Restrictions(Textiles and Textile Products)

<Outline of the Measures>

In December 2019, the Indonesian Government obligated prior import approval (PI-PTI) for imports of approximately 430 items of textiles and textile products under the Minister of Trade order (No. 77 of 2019). Under the said Minister of Trade order, imports for the purposes other than “provision of raw materials and subsidiary materials necessary for captive production” or “meeting demands of small- and medium-sized companies residing in Indonesia” are not allowed.

Since the imposition of the measure, some Japanese companies have been unable to obtain import approvals for their local agents, thus resulting in exports of textiles and textile products from Japan being stagnant, and practically causing the effect of import ban. The measures cover an excessively wide range of approximately 430 items of textiles and textile products, and therefore have strong trade restrictive effects.

<Problems under International Rules>

The measures may be inconsistent with the WTO agreements, e.g. the abolition of “discretionary ... import licensing schemes” (Article 11 of the Agreement on Safeguards) and the general elimination of quantitative restrictions (Article XI of GATT). In addition, since the WTO notification has not been made, and due to the lack of transparency such as the application prerequisites, examination criteria, and examination period, the measures are inconsistent with the Agreement on Import Licensing Procedures.

<Recent Developments>

Japan has expressed its concern at the meetings of the WTO Council for Trade in Goods and the Trade Policy Review of Indonesia, etc. Japan will continue to put pressure on the Indonesia government to reduce the impact on Japanese products.

(4) Export Restrictions on Logs and Lumber Products

<Outline of the Measures>

In April 1998, the Indonesian Government, under an IMF agreement, announced switch from a specific duty (calculated according to volume) to an ad valorem duty (calculated according to price) on the export of logs and lumber products. Indonesia reduced the export duty to 30% in April 1998, to 20% in March 1999, and to 15% in December 1999. It also issued export regulations, with export quotas for logs and lumber products.

In October 2001, the Indonesian Government banned exports of logs as a measure against illegal logging. Furthermore, in September 2004, it banned the exports of crossties and rough wood products. In March 2006, it banned exports of other wood products, such as S4S materials that have cut end area exceeding 4,000 square millimeters (with 4 section planed). Thereafter, there have been several modifications on standards of wood products that are permitted to be exported.

<Problems under International Rules>

Prohibition of exports of logs and lumber products may violate the GATT Article XI restriction. In particular, the export ban on logs as a measure against illegal logging can hardly be justified as an exception based on GATT Article XX(g), because logging is not restricted within Indonesia except for some natural forests and peatlands, nor is the consumption/distribution of logs.

<Recent Developments>

Japan will make efforts to improve the situation with regard to the measures through multilateral/bilateral consultations with the Indonesian Government.

(5) Export Restrictions on Mineral Resources and Local Content Issue

<Outline of the Measures>

In January 2009, Indonesia promulgated and enforced the revised Mining Law (the New Mining Law) and introduced the following measures:

(i) Obligation to increase the added value and to process within Indonesia

As for minerals mined in Indonesia, including nickel and copper, the Indonesian Government made it obligatory to process and smelt them in Indonesia.

(ii) Control on production and exportation

The Indonesian Government can decide the annual production volumes and can control exports in order to give first priority to national interests.

(iii) Local content requirement

The Indonesian Government made it obligatory to give priority to use of local labour force and domestic goods and services.

(iv) Obligation to give priority to domestic supply

The Indonesian Government required mineral resource producers within Indonesia to supply to domestic users a certain percentage prescribed by the Minister of Energy and Mineral Resources.

Subsequently, as detailed regulations on application of the Law, a ministerial order on added value obligations and a revision of the ordinance on obligations to transfer shares to investors were announced in February 2012. The former prohibits exports of raw minerals from January 2014 onward in order to achieve obligations to increase the added value and to process within Indonesia, and the latter provides that the percentage of Indonesian investment ratio shall be raised to 51% within 10 years after the investment. In addition, an order of the Minister of Finance uniformly imposing a 20% export duty on mineral resources was issued in May 2012.

In January 2014, a ministerial order providing an obligation to increase the added value was revised just before the enforcement of export prohibition of raw minerals. The enforcement of export prohibition on some mineral concentrates (raw materials with the purity being raised to a certain level, such as copper concentrates) was postponed until January 2017 and at the same time an export duty was introduced for such mineral concentrates. Exports of other raw minerals, however, were prohibited from January 2014 onward. On January 11, 2017, related ministerial orders were revised and put into force, extending the term of transition measures. As for copper, the term of the current transition measures (export permission system for mineral concentrates) has been extended by five years, and as for nickel, exports of low quality minerals were permitted for five years only if certain conditions were satisfied, such as allocation of 30% or more of domestic refining capacity to domestic refineries, and commitment made by a mining company to construct a refinery within five years. However, a ministerial order issued in August 2019 shortened the five-year transition measures which allowed some nickel exports by two years, effectively banning export of nickel ores from January 1, 2020. As a result of the revision of the new Mining Law in June 2020, in November of the same year, the export permission expiry date for raw minerals was extended from January 11, 2022 to June 10, 2023 only for some mineral concentrates for which export is currently permitted, but for nickel ores, complete trade embargo continues.

<Problems under International Rules>

(i) Obligation to increase the added value and to process within Indonesia

If it becomes impossible to export minerals that are mined in Indonesia but not processed and refined, or if a licensing requirement such as commitments for the construction of refineries is imposed under the export licensing system, it would constitute a de facto export restriction which could be a violation of the GATT Article XI (general elimination of quantitative restrictions).

(ii) Control on production and exportation

If the Government of Indonesia enforces arbitrary restrictions on exportation, such regulations could be violations of GATT Article XI, and also of Article 99 (import and export restrictions) of Japan-Indonesia Economic Partnership Agreement (EPA), which reaffirms the obligations to comply with the relevant regulations of the GATT on export and import of energy and mineral resources.

(iii) Local content requirement

Imposition of an obligation to use domestic goods and services preferentially over imported goods may be a violation of the GATT Article III, the TRIMs Article 2 (national treatment and quantitative restrictions) and the Japan-Indonesia EPA Article 63 (prohibition of performance requirements).

(iv) Obligation to give priority to domestic supply

Disallowing exports without fulfilling prescribed domestic demands may violate GATT Article XI (general elimination of quantitative restrictions).

(v) Obligation to divest shares

Imposition of obligations to divest shares of Japanese enterprises so that Indonesian participants own majority may be a violation of the Japan-Indonesia EPA Article 59 (national treatment) and Article 65 (expropriation and compensation).

Violations of investors' "fair and reasonable" expectations

If the aforementioned regulations violate "fair and reasonable" expectations that Japanese investors had at the time of investment and cause damages or losses, it could be a violation of the Japan-Indonesia EPA Article 61 (general treatment).

<Recent Developments>

Since the enactment of the new Mining Law, Japan has repeatedly expressed its concerns at WTO Council for Trade in Goods/Committee on TRIMs meetings and the meeting of the Investment Subcommittee, which was established pursuant to the Japan-Indonesia EPA. At high-level of meetings of Heads of states and Ministers, Japan has repeatedly expressed concerns.

Although some improvements occurred, such as postponing the enforcement of export prohibitions on some mineral concentrates, issues under international rules still remain since export prohibition on other raw minerals was enforced. It is therefore important for Japan to continue to closely monitor the measures.

In Indonesia, a new Trade Law was approved by the Legislative Council in February 2014. This Law is a renewal of the former Trade Law established in 1934, and detailed regulations will be provided in presidential decrees and relevant ministerial orders in the future. However, there are provisions that grant the government authority regarding promotion of the use of domestic products, import/export restrictions, and compulsory use of domestic standards, etc. In addition, a new Industry Law was enacted in December 2013 and enforced in January 2014. It provides, as does the new Trade Law, that the Indonesian Government shall have the authority to enforce promotion of the use of domestic products and import/export restrictions etc., with the aims of development of industrial resources, industrial empowerment, and rescue and protection of industry, etc.

These Laws integrate the existing relevant rules and provide the legal bases for them. These laws alone do not enforce concrete measures, but they include provisions to grant the government authority regarding preferential use of domestic-product and import/export restrictions. Japan therefore needs to pay attention to the formulation and implementation status of these Laws and relevant detailed implementation regulations to ensure that trade-restrictive or discriminatory measures are not implemented.

For the measures concerned, the EU requested consultations under the WTO dispute resolution procedure in November 2019, and the Panel was established in February 2021. At present, the Panel procedures are continuing (DS592 (Indonesia - Measures Relating to Raw Materials)).

(6) Import Restrictions on Air Conditioners

<Outline of the Measures>

On August 25, 2020, the Indonesian government established the Trade Minister Regulation No. 68 of 2020 that would make electrical products (air conditioners), automobiles, three wheel vehicles, and shoe products subject to the import license system and enforced it on August 28 of the same year.

Under the measure, air conditioners, etc. can only be imported by the holders of general import licenses (API-U) and import approval from the Ministry of Trade in advance is required. In making application, an import plan for one year needs to be attached, and the valid period of import approval is one year. Importers must report the results of imports to the Ministry of Trade every month. After the enforcement, there have been cases where issuance of import approvals were delayed and where the quantities approved were less than the quantities applied.

<Problems under International Rules>

The delay of approvals and restricted quantities approved under this import license system are likely to be import restrictions in violation of GATT Article XI:1. It is explained that the objective of this import license system is to “support smooth flow of goods, provide business reliability, and improve the effects of import policy”. However, restrictions on import opportunities by the measures concerned exceed the extent necessary for such objective of regulation and do not satisfy the justifications under GATT.

<Recent Developments>

Japan has expressed its concern to the Indonesian government through bilateral consultations, and raised its concern over the measures at the meetings of the TRIMs Committee and the WTO Council for Trade in Goods in March 2021 to urge correction of the measures.

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>

Indonesia improved its binding coverage on non-agricultural products to 95.8% as a result of the Uruguay Round. However, as of 2019, the simple average bound rate was 30.5% for most items of non-agricultural products and the simple average bound tariff rate for the entire non-agricultural products was high at 35.5%. The simple average applied tariff rate for non-agricultural products was 8.0% in 2019, and among them clothing and transport equipment posted especially high rates, 23.9% and 13.5%, respectively.

In accordance with the tariff adjustment plan prepared for each sector in 2004, the government decided to lower tariff rates in phases between January 1, 2005 and 2010, with respect to 1,964 items in six categories (mainly agricultural products). In December 2005, under the adjustment plan, the government developed a tariff reduction plan targeting farm equipment, finished vehicles (automobiles and motorcycles), audio and visual equipment, plastic products, alcoholic beverages, and ethanol. As a result, the tariff rate for 1.5-3.0 liter gasoline-fueled cars and 2.5 liter diesel-fueled cars were lowered from 60% in 2006 to 45% by 2010. In addition, the average applied tariff rate for electrical machinery was lowered to 5.8%.

However, the Finance Minister Decree No. 241 of 2010 was made public on December 22, 2010, and changes to the tariff rates on 2,164 products (accounting for 25% of all products - tariff rates were raised for 1,248 products and lowered for 916 products) were promulgated and enforced on the same day, with regard to industrial products and agricultural products, etc., in the form of implementing a tariff rate adjustment plan set in 2004. Products on which tariffs were raised include many chemical products, etc. imported from Japanese companies. Japan needs to request improvements of these high-tariff products from Indonesia.

At the end of 2011, the Regulation of the Minister of Finance (No 213 2011) was promulgated. In this regulation, tariff increases from 5% to 10% were declared on 182 items, such as basic chemicals, machinery, electric and electronic goods, and shipbuilding, to strengthen competitiveness for downstream industries. On July 23, 2015, the Indonesian government changed its most favored nation (MFN) tariffs based on the Regulation of the Minister of Finance No. 132 of 2015 (132/PMK.010/2015), and raised the tariff rates mainly for food and beverages, clothes, and electric home appliances. In the field of food and beverages, the tariff rate for coffee and tea was raised from 5% to 20%, the rate for sausages and processed meat from 5% to 30%, and the rate for vegetables and fruits from 5% to 20%. Also, the tariff rate for automobiles was raised from 10-40% to 50%.

In February 2017, in the Order by the Minister of Finance (No. 13/PMK.010/2017), export tariff items including mineral products and leather were reviewed.

<Concerns>

As long as the high tariff itself does not exceed the bound rate, there is no problem in terms of the WTO Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible, and eliminate the tariff peaks (see “Tariff Rates” in 1. (1) (iii) of Chapter 5, Part II) described above.

Low binding rate 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 that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

Due to the implementation of the Japan-Indonesia EPA in July 2008, market access was improved as tariffs were progressively removed from almost all automobiles and auto parts, electric and electronic products and a part of steel products exported from Japan.

In response to the impact of the COVID-19, to support the manufacturing industry affected by the COVID-19, on September 22, 2020 , the Indonesian government took measures to temporarily eliminate import tariffs of semi-finished products or raw materials of 33 items for the period until December 31, 2020 (disinfectant soaps, rubber gloves, personal protective equipment, masks, etc.) meeting one of the following conditions (Regulation of Minister of Finance No. 134 of 2020).

(i) Not manufactured in Indonesia
(ii) Manufactured in Indonesia, but the required specifications cannot be met
(iii) Manufactured in Indonesia, but the quantity supplied cannot meet the demand

Anti-Dumping Measures

AD Measures on Japanese Cold-Rolled Stainless Steel Sheet

<Outline of the Measures>

In June 2011, the Komite Anti-Dumping Indonesia (KADI) initiated AD investigations on cold-rolled steel sheets imported from five countries or regions (Japan, Republic of Korea, China, Taiwan, and Viet Nam) upon application by domestic steel manufacturers. In December 2012, KADI issued a final report that AD measures should be imposed on these products. Upon receiving the report, the Minister of Finance of Indonesia made a final determination in March 2013 to impose AD duties on these products. In the final determinations, a high margin of dumping ranging from 18.6% to 55.6% was imposed on Japanese companies.

In addition, a sunset review in the case was initiated in September 2015.

<Problems under International Rules>

Most of the cold-rolled steel sheets exported by Japanese companies are high-quality steel materials used in the automobile or electric-electronic industries and do not compete with cold-rolled steel sheets produced in Indonesia because of the significant quality difference. However, KADI determined that there was injury and causal link of the imports of Japanese cold-rolled steel sheets to the domestic industry in its final report. This may be a violation of Article 3 of the AD Agreement.

Additionally, it may violate Article 6.8 of the AD Agreement because the export price was determined by KADI on a “facts available” basis (please see II Chapter 6) in spite of the fact that the Japanese company submitted data on the sales price of these products in Indonesia during the investigation.

Although a sunset review in the case was initiated in September 2015, the results of the investigation have not been published as of November 2020. This may be in violation of Article 11.4 of the AD Agreement.

<Recent Developments>

In April 2013, the Minister of Economy, Trade and Industry of Japan made the same request to exclude Japanese products from product under investigation, and as a result, KADI initiated a review process in April, 2014. However, the claims of Japan were barely reflected in the final determination in December of the same year. After that, although Japan continued to request the Indonesian government to terminate the imposition of AD duties in March 2016 as originally scheduled because the imposition of such duties causes significant costs to the users in Indonesia, a sunset review was initiated in September 2015. Since the permissible period of the measures already expired and the period set forth in the Indonesia AD Law also expired, Japan will continue to request the Indonesian government to notify the prompt termination of these measures in the official gazette. On the other hand, if the measures are continued, Japan will request that Japanese products be exempted from the imposition of the AD duties after appropriately examining the competitive relationship and substitutability between Japanese and Indonesian products, about which the Japanese government and companies have insisted since the initial investigation.

Safeguards

Safeguard Measures on Carpets and Other Textile Floor Coverings

<Outline of the Measures>

The Indonesian government initiated a safeguard investigation on carpets and other textile floor coverings on June 10, 2020. On September 21 of the same year, the investigation authority recommended additional tariffs for three years (85,679 Rupiah/m^2 in the first year, 81,763 Rupiah/m^2 in the second year, and 78,027 Rupiah/m^2 in the third year). In response to this recommendation, the Indonesian Government imposed a safeguard measure on February 17, 2021 (for the period from February 17, 2021 to February 16, 2024).

<Problems under International Rules>

In Indonesia, due to the quantitative restriction measures introduced in December 2019 (refer to 3.(3)), imports of the items covered have already been significantly reduced. Some Japanese companies have been unable to obtain import approvals for their local agents, thus resulting in exports of carpets and other textile floor coverings from Japan being stagnant. Under such circumstances, injury to domestic producers by increased imports of these products would not occur, and therefore, the prerequisites for imposing safeguard measures were not met (Article 2 paragraph 1 of the Agreement on Safeguards and Article XIX: 1(a) of GATT).

In addition, with the imposition of the safeguard measure, additional tariffs would be 150% or more of the current ratio on an ad valorem basis, resulting in the costs for raw material to be 1.8 times as much as before. Therefore, there is a concern that the measure may be inconsistent with Article 5.1 of the Agreement on Safeguards providing that "the safeguard measure is imposed only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment".

<Recent Developments>

After the commencement of the investigation, Japan submitted a government opinion and expressed its concern at public hearings, meetings of the Safeguard Committee and the Council for Trade in Goods, and Trade Policy Review of Indonesia, etc. In addition, a bilateral consultation for compensation (Articles 12 paragraph 3 of the Agreement on Safeguards) was held on November 16, 2020 to urge exclusion from the measure of Japanese products that do not compete with Indonesian products. Japan will continue to put pressure on the Indonesia government to reduce the impact on Japanese products.

Trade-related Investment Measures (TRIMs)

(1) Local Content Requirements for LTE Devices, etc.

<Outline of the Measures>

On May 4, 2015, the Indonesian Ministry of Communication and Informatics released a draft Regulation of the Minister stipulating a local content requirement of a certain percentage (a device that fails to satisfy a certain level of local content cannot be sold within Indonesia) and technical regulations for devices compatible with Long-Term Evolution (LTE) (a wireless communication standard for next-generation mobile terminals that can communicate at a high speed of 100 Mbps [smartphone, mobile PCs, etc.]). The Ministry invited public opinion on the proposals. The draft Regulation set forth that (i) simultaneously with the promulgation, wireless base station facilities and subscriber terminals must respectively satisfy local content of 30% and 20%, and (ii) within two years of the promulgation, wireless base station facilities and subscriber terminals must respectively satisfy local content of 40% and 30%. In addition, technical regulations to be applied to both wireless base station facilities and subscriber terminals were stipulated.

After that, on July 27, 2015, the Ministry of Communication and Informatics promulgated the Minister of Communication and Informatics Order No. 27, which required that target wireless base station facilities and subscriber terminals must respectively satisfy local content of 30% and 20%, retroactively, from July 8 of the same year (no change from the time of inviting public opinion). On the other hand, a TBT notification dated as of February 10, 2016 regarding the above order states that local content of 20% is required as of 2017, which differs from the percentages set forth in the order. In addition, it was provided that (i) wireless base station facilities and subscriber terminals in the 800 MHz, 900 MHz, 1800 MHz, and 2100 MHz bands must satisfy local content of 40% and 30%, respectively, from January 1, 2017, and (ii) those in the 2300 MHz band must satisfy local content of 40% and 30%, respectively, from January 1, 2019 (partially changed from the time of inviting public opinion). Also, as at the time of inviting public opinion, technical regulations to be applied to both wireless base station facilities and subscriber terminals were stipulated.

Meanwhile, the Indonesian Ministry of Industry promulgated Regulations on the Terms and Procedures for Calculating Local Content Level Value of Electronics and Telematics Product (Regulation of the Minister of Industry no. 68) on August 19, 2015 (which entered into effect on August 24 of the same year), made the above-mentioned wireless base station facilities and subscriber terminals subject to the Regulations. The Minister of Industry Order No. 65 effective in July 2016 sets out how to calculate a local procurement rate, but specific aspects of the application of the above order are unknown in many cases.

<Problems under International Rules>

Japan believes that the system of requiring a certain domestic production ratio for target terminals to be sold within Indonesia conflicts with Article III: 4 of GATT and Article 2 of the TRIMs Agreement as a violation of the obligation of national treatment.

<Recent Developments>

The Japanese Ministry of Economy, Trade and Industry and the Ministry of Internal Affairs and Communications submitted comments during the above-mentioned period for inviting public opinion. In addition, the relevant industries also submitted written comments. Japan also has been expressing concerns at occasions including the WTO's Council for Trade in Goods and the TRIMs Committee.

(2) Local Content Requirements for TVs, etc.

<Outline of the Measures>

The Indonesian government provided in the Ministry of Communication and Informatics Regulation No. 4 of 2019 (enforced in June 2019, effective in June 2020) that the "domestic content level" of 20% must be met for televisions for terrestrial digital broadcasting, etc.

<Problems under International Rules>

Although the method of calculating the "domestic content level" and the details of the status of operation of this Regulation are not clear, since the use of domestically produced parts is counted in the domestic content level, the measures give preferential treatment to their use and may violate Article 2 paragraph 1 of the TRIMs Agreement and Article III: 4 of GATT. The Indonesian government explained at the meetings of the WTO Council for Trade in Goods and the Committee on TRIMs, etc. that the overall local content measures, including TVs, are "introduced in relation to government procurement, fulfillment of Indonesian people's demands for daily necessities, and control of strategic resources". However, application of the measures concerned is not limited to government procurement, and therefore, the government procurement exemption prescribed in Article III: 8(a) of GATT does not apply. In addition, other purposes of the Regulation also do not satisfy justifiable reasons, as the relationship with the measures concerned is unclear.

<Recent Developments>

Japan has been expressing its concern and requesting detailed explanation and correction of the measures at the meetings of the WTO Council for Trade in Goods since November 2020, Trade Policy Review of Indonesia in December of the same year, and the meeting of the TRIMs Committee in March 2021.

Standards and Conformity Assessment Systems

Technical Regulations for Steel Products

The Indonesian Government started introducing a technical regulation for steel products including hot-rolled steel sheets and cold-rolled steel sheets from 2009. In addition, the Indonesian Government also notified the WTO about the introduction of the technical regulation system for tin and water pipes.

Article 2.2 of the TBT Agreement stipulates that technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. Although the Indonesian government claims that the objective of the regulation is to secure consumer safety by preventing the inflow of inferior steel materials, this objective cannot be achieved through regulations of intermediate goods such as steel products, but instead should be achieved through safety regulations of final products. Therefore, this system appears to be more trade restrictive than necessary in light of the policy objective and may violate Article 2.2 of the TBT Agreement.

Through bilateral meetings under the TBT Committee and consultations in Indonesia, Japan has pointed out the problems of the regulation. As a result, some improvements have been made including the recognition of exemption from the technical regulations for specific purposes of use. Japan will continue to pay attention to the management of the system and encourage improvements through bilateral talks on steel and the like as needed.

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 Measures>

In Indonesia, sectors for which the entry of private companies is disallowed, sectors that are open under certain conditions, and the equity restriction ratio of foreign companies are specified for each business type in a negative list. The 2010 Negative List (Presidential Regulation No. 36 of 2010) was revised in April 2014 (Presidential Regulation No. 39 of 2014). This revision relaxed foreign investment regulations in nine sectors, allowing up to 49% of foreign investment for the operations of land transportation/passenger terminals, etc. in the transport sector, for which foreign capital participation was previously prohibited (this requires a letter of recommendation from the Minister of Transportation) and up to 51% for film advertising equipment (advertisements and posters, etc.) in the culture and tourism sector, which was previously limited to domestic investment, subject to investment from ASEAN countries, etc. In contrast, however, restrictions on foreign investment were strengthened in some sectors. For instance, investment for oil/gas mining services on land and design/engineering services, etc. in the energy and mineral resources sector, for which foreign investment of up to 95% was previously allowed, were limited to domestic investment only, and restrictions (up to 33%) were newly imposed on the sectors that are not specified in the negative list and for which 100% foreign investment was previously allowed, including warehouses and distributors in the commercial sector, etc. The Negative List was revised in May 2016 as well (Presidential Regulation No. 44 of 2016). Refrigerated and frozen goods warehouses, restaurants, cafes, production and distribution of movies, electronic commerce transactions involving 100 billion Rupiah or more, etc. are removed from the Negative List, 100% foreign investments are supposed to be permitted. In addition, as for department stores with a selling floor size of 40 to 2,000 square meters, warehouses, distributors affiliated with no manufacturer, travel agencies, vocational training, etc., the foreign capital regulations have been relaxed, allowing up to 67% foreign investment. On the other hand, in the construction-related field, local companies with foreign capital can no longer participate in projects for which the construction amount, necessary technologies and risks are at a low or medium level. This is the case at least for public construction projects.

Major restrictions on foreign investment are as follows.

(i) Telecommunication services

In the 2014 negative list, the upper limit of the foreign investment ratio for wire and wireless/satellite communication network business was raised to 65%, while that for content services, value added telephone services such as call centers, internet access service businesses, data communication system services, public telephone line internet services, internet interconnection services (NAP), , and other multimedia services of communication services business was lowered to 49%. In addition, the upper limit for operations of communication networks integrated with communication services (assumed to be the mobile communication network businesses) was set at 65% and telecommunication tower suppliers/managers (operation and renting) and construction service providers were required to be 100% Indonesian-owned companies.

In the telecommunication services field, a local content requirement is imposed for certain products. In January 2009, domestic production ratios of at least 40% and 30% were imposed respectively on base station facilities and communication terminals used for wireless broadband services using the radio frequency bands of 2.3 GHz and 3.3 GHz. Further, in July 2015, domestic production ratios of at least 30% and 20% respectively were newly imposed on base station facilities and communication terminals, such as smartphones, for products using LTE that were manufactured or assembled in or imported to Indonesia, based on the Regulation of the Ministry of Communication and Informatics No. 27 of 2015 regarding Technical Requirement of Equipment and/or Telecommunication Devices in Long Term Evolution Technology Basis (Permenkominfo 27/2015). Moreover, under the Regulation, the domestic production ratios required for products in the 800/900/1800/2100 MHz bands will be raised to 40% and 30% respectively for base station facilities and communication terminals starting January 1, 2017, and the ratios will be raised to 40% and 30% respectively for base station facilities and communication terminals also with regard to products in the 2300 MHz band, starting January 1, 2019. As the local content requirement may be inconsistent with the obligations of the WTO Agreements and Japan-Indonesia Economic Partnership Agreement, Japan needs to pay close attention to such requirements.

In the field of electronic commerce, an ordinance and related regulations on electronic systems and implementation of electronic commerce set out the obligation of establishing a data center in Indonesia and the obligation of disclosing some source codes. Furthermore, as for companies (so-called OTTs) that have no communications networks on their own and provide and distribute SNS services, smartphone apps, content, etc., a draft regulation on OTT service providers (2016 draft regulation of Minister of Communications and Informatics on provision of OTT Application and/or Content Services via the Internet) was published in April 2016. In this draft regulation, various obligations are imposed, such as requiring foreign companies providing OTT services in Indonesia to provide such services through a permanent establishment built in accordance with the Indonesian taxation system and to make payments through the National Payment Gateway. Some of these regulations may violate the market access commitment set forth in Article XVI of the GATS and Article 78 of the Japan-Indonesia EPA, the national treatment set forth in Article XVII of the GATS and Article 79 of the Japan-Indonesia EPA and prohibition of requirements for performance of specific measures in relation to investment set forth in Article 63 of the Japan-Indonesia EPA.

In October 2019, the Indonesian government revised the Regulation on Implementation of Electronic Systems and Transactions (Government Regulation No. 82 of 2012) and promulgated a new regulation on the same subject (Government Regulation No. 71 of 2019). The new regulation is expected to bring a change to policies concerning the location of data storage, including the repeal of obligations to store data held by private companies inside Indonesia.

(ii) Distributions Services

The 2016 negative list continues to state that retail businesses be 100% Indonesian-owned companies. More specifically, stores of less 1,200 m^2 are regarded as supermarkets and stores of less 400 m^2 are regarded as mini markets, both of which are limited to 100% domestic investment. Presidential Directive 2007 No. 112 established regulations on improvements to commercial facilities. Stipulations were also made regarding the sites, facilities (parking lots, safety requirements), business hours, etc., of large-scale commercial facilities open to foreign participation.

(iii) Audio-Visual Services and Advertising Services

Indonesia barred foreign film and video tape distributors from its markets. All importation and distribution had to be done by 100% Indonesian-owned companies. Although in the 2016 negative list, film production, film technology services, film distribution, staging, recording studios, etc. are opened to 100% foreign capital companies, film promotional facility services (advertisements, posters, photos, films, banners, pamphlets, etc.) continue to be limited to Indonesian-owned companies (a foreign investment ratio of up to 51% is allowed for investment from ASEAN countries).

<Concerns>

The various restrictions on foreign investment described above do not necessarily violate the WTO Agreement because they do not contradict Indonesia's GATS commitments. However, it is desirable that efforts towards liberalization be made under the spirit of the WTO and the GATS. In addition, the Indonesian government has imposed cross-sectoral, extensive regulations of foreign worker employment, which some point out is preventing the establishment of local footholds and the increase of investment.

<Recent Developments>

Attempts to expand the range of services as to which Indonesia would undertake commitments were made through the Japan-Indonesia EPA (signed on August 20, 2007). In the telecommunications sector, new commitments were made in five areas, including exclusive lines and information and online database search services (up to 40% Japanese capital). In the audio-visual sector, a commitment was made to provide Japanese capital (up to 40% Japanese capital) for audio and video tape production and distribution services, as well as film projection services.

In addition, as mentioned above, the negative list stipulating types of businesses in which foreign investment is restricted was revised in May 2016 for the first time in two years. This revision also aimed at protecting domestic micro-, small- and medium-sized enterprises, such as by allowing only such enterprises to engage in construction work valued up to 50 billion Rupiah or consulting services valued up to 10 billion Rupiah.

In March 2020, the Indonesian Financial Services Agency revised the OJK Regulation No.38/2016 requesting commercial banks to establish IT systems within the country and put into effect the OJK Regulation No. 13/2020 relaxing the requirements on the location data storage to a limited extent.

Japan will continue to monitor amendments to laws concerning foreign investment regulations and encourage further relaxation of foreign investment regulations through bilateral policy dialogues and EPA follow-up meetings, etc.

(2) Freight Retention

<Outline of the Measures>

The Indonesia Minister of Trade announced a Trade Minister Regulation (2017/82) in October 2017 that obligates use of an Indonesian carrier for transporting coal and palm oil from Indonesia. At first, it was planned to go into effect in April 2018, but due to insufficient transport capacity with Indonesian carriers, another Trade Minister Regulation (2018/48) to postpone the first one to May 1, 2020 was announced in April 2018. In addition, in April 2020, a Trade Minister Regulation (2020/40) to limit the scope of application of the obligation to use Indonesian carriers to cases of using vessels with dead-weight capacity of 15,000 tons or less was announced, and the Regulation came into effect on May 1, 2020. After that, in July 2020, a Trade Minister Regulation (2020/65) to further limit the scope of application of the obligation to use Indonesian carriers to cases of using vessels with dead-weight capacity of 10,000 tons or less was announced and put into effect on July 15, 2020.

<Problems under International Rules>

In light of the basic principles of GATS, problems of market access and national treatment exist. In addition, the measures violate the promised contents of Indonesian international maritime transport services in the list for specific fields in the GATS and the Japan-Indonesia EPA, and therefore, the measures must be improved as quickly as possible.

<Recent Developments>

Since March 2018, Japan has been requested to abolish the Regulation at every meeting of the Services in Trade

Sub-Committee on General Review of Japan-Indonesia EPA, and has been also applying pressure in multi-lateral talks, etc. in cooperation with other countries.

Protection of Intellectual Property

(1) Suspension of Infringing Goods at Borders

<Outline of the Measures>

According to Article 51 of the TRIPS agreement, member countries shall adopt procedures to enable a right holder to lodge an application for the suspension of importation of counterfeit trademark or pirated copyright goods. Regarding this point, Article 54 of the Indonesia Tax Law (Act 10, 1995, amended by Act 17 2006) stipulates that the court order the suspension to the custom authorities based on an application from the rights holder, and this provision corresponds to Article 51 of the TRIPS Agreement. After that, from August 2017, “Indonesian Government Regulation No. 20 of 2017 on Control of Import and Export of Goods Resulting from Intellectual Property (IP) Infringement (Regulation 20/2017)” was enacted. Furthermore, in order to execute this government order, in April 2018 “Finance Ministry Regulation NO. 40 of April 2018 (PMK.04/2018) Related to Registration, Suspension, Collateral, Temporary Suspension, Monitoring and Evaluation of Import and Export of Goods Resulting from Intellectual Property (IP) Infringement” was issued and enacted from June 16, 2018. This allowed trademark and copyright holders to register their trademark or copyright to the custom authorities. Accordingly, the customs implements suspension of goods suspected of infringing rights based on this registration information. The first suspension based on the customs registration was implemented in December 2019.

<Problems under International Rules>

While the aforementioned Finance Ministry Regulations, etc. were established, according to the articles of these regulations, as a requirement, this customs registration is restricted to only companies located within Indonesia, and the situation still remains that the customs registration to suspend infringing products may not be available to other trademark or copyright holders including those located in Japan.

<Recent Developments>

With regard to this matter, the Japanese government communicated the above concern and requested that the customs registration requirement be eased by sending a letter to the Indonesian government in February 2019 and exchanging views in February and October 2019. In response, the Indonesian government gave an account of the purport of the customs registration requirement. Japan, however, needs to gather information of related regulations, their future development and impact on Japanese companies while continuing to take necessary approaches to the Indonesian government to ensure Japanese intellectual property right holders have access to opportunities where effective measures can be taken against infringement of intellectual property rights.

(2) Implementation of Japan-Indonesia EPA

The Japan-Indonesia EPA, which entered into force on July 1, 2008, provides for stronger IP protection than that provided for in the TRIPS Agreement, including introduction of the “comprehensive power of attorney” system, which enables granting of comprehensive power of attorney for multiple patents, utility models, designs, trademarks (paragraph 5 of Article 109).

<Problems under International Rules>

However, the “comprehensive power of attorney” system has still not been implemented in Indonesia, which has led to concerns about conformity with corresponding EPA regulations.

<Recent Developments>

In Indonesia, the revised Patent Law and the revised Trademark Law were put into effect on August 26, 2016 and November 15, 2016, respectively. In addition, the Employment Creation Omnibus Law including the revised Patent Law and the revised Trademark Law was announced and put into effect on November 2, 2020, but the “comprehensive power of attorney” system has not been introduced and operational response has not been made either.

Therefore, Japan needs to collect information on the status of implementation of the Japan-Indonesia EPA in Indonesia, including the operational details, and to make necessary approaches to the Indonesian authorities.

(3) Indonesia’s Amended Patent Law

<Outline of the Measure and Concerns>

In Article 20 (1) of the revised Patent Law enforced on August 26, 2016, it is stipulated that a patent owner is obligated to manufacture the patented product or use the patented method in Indonesia(hereinafter referred to as the “domestic implementation requirements”). It is also stipulated that when 36 months have passed without performing the obligation after the patent was issued, the patent will be subject to granting a compulsory license

(Article 82 (1) (a) of the Patent Law) or subject to patent cancellation (Article 132 (1) € of the Patent Law).

In contrast, paragraph 1 of Article 27 of the TRIPS Agreement stipulates that patent shall be available and patent right shall be enjoyable without discrimination as to the place of invention, the fields of technology, and whether a patented product is imported or locally produced.

Thus, the situation where a compulsory license will be granted or the patent will be subject to cancellation in the case where the above-mentioned domestic implementation requirements are not fulfilled may have a problem from the perspective of consistency with Article 27 of TRIPS Agreement. For this reason, the Japanese government, the EU, the US, and Switzerland jointly conveyed the concerns to the Indonesian government and requested them to thoroughly comply with the TRIPS Agreement.

As a result, a Ministerial Order concerning domestic implementation of patent rights was issued on July 11, 2018. According to the Ministerial Order, patent holders who execute inventions in Indonesia can request a five year grace period by submitting an application with a reason for postponement to the Ministry of Legal Rights, and that grace period can also be renewed. In addition, the format for the application was released on January 24, 2019.

<**Recent Developments**>

Under such circumstances, in February 2020, the Indonesian government submitted the Employment Creation Omnibus Law that would revise the various existing legal systems, including the Patent Law, to the Legislative Council. After signed by the President, the Law was put into effect in November 2020. This Law revises Article 20 of the Patent Law and provides that although the domestic implementation requirements will remain, imports and licensing will be included in the modes of implementation.

Since Article 20 of the Patent Law after the revision provides that imports are accepted as a mode of implementation, if the procedures based on the said Law are steadily carried out, the above-mentioned problem of inconsistency with Article 27 of the TRIPS Agreement can be resolved.

However, even after the revision of the Patent Law, if manufacture, import, and licensing, etc. of products are not carried out in Indonesia within 36 months after the patent was issued, it may still be subject to cancellation of rights or compulsory license. It is therefore unclear whether making an application based on the above-mentioned Ministerial Order guarantees the grace period. The Minister Order is subordinate to the Patent Law to begin with. Accordingly, if a lawsuit is filed concerning the granting of a compulsory license or the cancellation of a patent, the provisions of the Patent Law may take precedence and the Minister Order may be nullified.

Japan needs to continue to pay attention to the future development concerning the Employment Creation Omnibus Law and collect necessary information.

(4) Patent protection for medical goods (new format/use of already known chemical compounds)

<Outline of the Measures>

According to the patent law revision entered into force on August 28, 2016, in Article 4 (f“, "New application of existing and/or known produ”t," a“d "a new form of an existing chemical compound for which significant effect improvement has not been found and there is no difference from the chemical structure related to those already known for the chemical compou”d," are excluded from patent protection.

Therefore, for example, in case of an already-known chemical compound, 1) if someone is successful in developing new therapeutic effects with that compound as a new medicinal use, or 2) if a new form (e.g., a new crystal structure) has been found, which is not recognized to have improved medicinal effect but still significantly improves important physical properties, other than therapeutic effect, of a medicine (e.g., preservation stability), there is a concern that this ’on't be granted patent protection. As pharmaceutical companies could not obtain sufficient incentive to invest in research and development, their innovation may be hindered.

<Problems under International Rules>

Article 4 (f) of the Patent Law consists of relatively strict criteria for patentability only in the fields of chemical substance and pharmaceutical technology, and there is a possibility that it is not consistent with Article 27 Paragraph 1 of the TRIPS Agreement, which prohibits discrimination on the grounds of technology field.

<Recent Developments>

Examination guidelines were being drafted and planned to be made public in 2019 as a principle in examination practices of Article 4 (f) of the Patent Law. However, they have not been released as of February 2021. Expectations are high for their expedited release.

In addition, regarding Article 4 (f) of the Patent Act, Japan has recently announced that at the meeting of the Trade Policy Review of Indonesia (2020), questions were made regarding the interpretation of the provisions and the consistency with Article 27 paragraph 1 of the TRIPS Agreement.

Japan needs to continue to keep an eye on the status of operation of the Article 4 (f) of the Patent Law, including checking the content of the examination guidelines after the announcement and consistency with international rules such as the Paris Convention and TRIPS Agreement.

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

<Present State>

With regard to the state of damage in Indonesia resulting from counterfeit products, a survey by the country's organization against counterfeit products, and others reports that economic loss in the country is on the rise, estimated to be 65.1 trillion Indonesian Rupiah (around 592.4 billion yen) in 2014, and for some products including leather products, clothing, software, and printer ink cartridges, counterfeit products account for more than 30% of the total products. (*Source: The 2018 Manual on Counterfeit Measures)

Behind the rampant infringement of intellectual property are an insufficient crackdown and poor effectiveness of enforcement of rights against infringement.

<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, requiring member countries to ensure their domestic legal systems which enable effective and prompt measures (Article 41).

The Japan-Indonesia Economic Partnership Agreement also provides that the both countries shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for enforcement of intellectual property rights against infringement, counterfeiting, and piracy, (Article 106); that for the purposes of providing efficient administration of intellectual property protection system, each country shall take appropriate measures to improve its administrative procedures concerning intellectual property rights in line with international standards (Article 109); and that the both countries shall endeavor to promote public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights (Article 111).

In light of the above regulations, cases where effective and prompt enforcement of rights is not ensured may violate obligations stipulated in these agreements.

<Recent Developments>

While regulations to implement suspension of suspected infringing goods are claimed to be in place in Indonesian customs, problems still exist as discussed in (1) Suspension of Infringing Goods at Borders above. It is necessary to keep a close watch on the Indonesian government's efforts for realizing effective and prompt exercise of rights.

4. Malaysia

National Treatment

(1) Imposition of Internal Taxes on Automobiles and Import Restrictions on Automobiles Based on the AP System

In Malaysia, automobiles manufactured by certain domestic companies are designated as "national cars". Automobiles manufactured in Malaysia by other companies are subject to a discriminatory excise duty. Other than the excise duty system, non-tariff barriers are established for the purpose of favorably treating Bumiputera companies. More concretely, the Malaysian government grants import licenses called "AP (Approved Permit)" only to Bumiputera companies funded at least partially by Malays and there is a possibility that quantitative restrictions are actually applied to the imports of finished cars by companies manufacturing automobiles in Malaysia under the import licensing system.

For details, refer to page 94 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

(2) Excise Tax Exemption System on Domestic Automobile Parts

The Malaysian Government introduced a refund system for excise tax called the Industrial Linkage Program (ILP) under "The Ninth Five-Year Plan" and the "National Automobile Policy (NAP)" announced by the Malaysian Industrial Development Authority (MIDA) in March 2006. In this system, excise tax is refunded according to the ratio of domestic added value of a finished automobile, such as domestically procured parts, under a condition that domestically produced automobile parts are procured from suppliers that have met certain conditions. The reviews of the NAP in January 2014, which focused on the Energy Efficient Vehicle (EEV) Program, also revised the refund system for excise tax, thereby enabling the effect of the tax reductions to be enjoyed.

For details, refer to page 95 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

Quantitative Restrictions

(1) Export Restrictions on Logs

Since 1985, the Malaysian Government has banned exports of 27 designated tree species and all logs exceeding 12 inches in diameter with a view to increasing the degree of domestic lumber processing. The State of Sabah introduced export quantitative restrictions in November 1996 and export ban on logs in May 2018. The State of Sarawak has implemented export quotas since 1999 to secure a certain share (80% from July 2017) of logs produced in natural forests for in-state processing. It has also implemented export ban on Ramin logs and Hollow Alan Batu logs in 1980 and 1993, respectively.

<Problems under International Rules>

There is a possibility that these measures such as the export ban and export quotas may breach the Article XI of the GATT.

<Recent Developments>

Japan will continue to encourage improvements in these measures through multilateral and bilateral consultations with the Malaysian Government.

(2) Import Tax Exemption Ceiling System on Steel Sheets

While a high tariff, generally about 50%, has been imposed on steel products including electro-galvanized (EG) steel sheets in Malaysia, since 2009 the Ministry of International Trade and Industry (MITI) and the Malaysian Industrial Development Authority (MIDA) have introduced a system that gives a tax exemption ceiling for one year to importers for steel sheets that cannot be procured domestically. However, the system's procedures and criteria used to decide whether domestic production is possible are unclear and opinions of domestic steel manufacturers carry more weight than others' when judging the possibility of domestic procurement, which has resulted in some cases where Japanese companies are put at a disadvantage -- not being granted tax exemption for the whole amount or examination and obtaining a tax exemption ceiling taking time. Based on the above situation, intergovernmental and public-private sector consultations were held several times on the operation of the tax exemption system, where common understanding was reached between the two countries while operations of the system were clarified to a certain extent and some improvement was made. From the perspective of ensuring the system is operated in a fair and equitable manner, Japan needs to remain observant of clarification of judgment criteria for import tax exemption and further streamlining of the relevant procedures.

Refer to page 110 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA - for details.

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 simple average bound tariff rate on non-agricultural products in Malaysia as of 2019 was 14.9% while there are some high bound tariff rates, including that for electrical equipment of up to 40%, that for rubber tire for automobiles of 40%, and that for clothing of up to 30%. In addition, the bound tariff rate for non-agricultural products as of 2019 was 81.9%. Unbound items include tractors (maximum applied tariff rate of 30%) and automobiles (maximum applied tariff rate of 30%). The simple average applied tariff rate as of 2019 was 5.3%.

<Concerns>

As long as the high tariff itself does not exceed the bound rate, there is no problem in terms of the WTO Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible.

<Recent Developments>

With the aim of expanding the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were launched in May 2012, and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016. By January 2024, tariffs on all 201 items 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 Malaysia, elimination of tariffs on the subject items started in July 2016. For example, items with high tariff rates include new-type semiconductors (30%), television receivers (30%), and gaming consoles (30%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Meanwhile, with regard to electrical machinery and equipment, and parts thereof, Malaysia reduced or eliminated MFN tariff rates for seven items (HS8419, HS8421) under Order No. P.U. (A) 305/2015, and reduced or eliminated the ASEAN Trade in Goods Agreement (ATIGA) for 14 items (HS8419, HS8421, HS8511) under Order No. P.U. (A) 306/2015 from January 1, 2016. Due to the implementation of the Japan-Malaysia EPA in July 2006, market access was improved as tariffs were removed, within the subsequent 10-year period, from almost all industrial products exported from Japan.

In response to the impact of the COVID-19, the Malaysian Government took measures to temporarily eliminate import duties, sales tax, and excise tax on masks from March 23, 2020, and on undenatured and denatured ethanol alcohol used for production of hand sanitizer from March 30, 2020.

Standards and Conformity Assessment Systems

Technical Regulations for Steel Products

In 2008, the Malaysian government introduced technical regulations for steel products, requiring exporters of subject items to Malaysia to obtain Certificate of Approval (COA). As well, obtaining product certification through annual factory audits by the Standards and Industrial Research Institute of Malaysia (SIRIM) or overseas inspection institutions or receiving sampling inspection by SIRIM or overseas inspection institutions for each shipment is required.

The Malaysian Government asserts that the policy objective of the conformity assessment procedures is to secure the health and safety of consumers. 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. Therefore, this system appears to be more restrictive than necessary in light of the policy objective and may violate Article 5.1.2 of the TBT Agreement. Furthermore, Article 5.6.2 of the TBT Agreement stipulates that "Whenever the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedures may have a significant effect on trade of other Members, Members shall notify other Members through the Secretariat…together with a brief indication of its objective and rationale." However, as there is no evidence to date that Malaysia notified the WTO Secretariat of these conformity assessment procedures, Malaysia may be violating this obligation to notify.

With regard to the conformity assessment procedures, Japan expressed its concerns at the past bilateral meetings under the TBT Committee. Japan will continue to pay attention to the management of the system.

Trade in Services

Foreign Investment Restrictions, etc.

Refer to pages 99-102 of the 2020 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

5. The Philippines

Quantitative Restrictions

Export Restrictions on Raw Minerals

Similar to the New Mining Law of Indonesia, the draft revision of the Mining Law submitted to the Congress of the Philippines in 2014 is intended to impose obligations to process raw minerals in the Philippines and export prohibition on raw minerals, etc. As there is a concern that the export restrictions on minerals suspected of being inconsistent with the WTO Agreements are spreading, Japan will continue to pay attention to the development in the Congress of the Philippines while encouraging them to comply with international rules through bilateral consultations. Refer to page 118 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA - for details.

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 simple average bound tariff rate on non-agricultural products as of 2019 was 23.4%, and there are high bound tariff rates for particular categories such as textile products (maximun 50%) and electrical equipment (maximum 50%), etc. Moreover, the binding coverage for non-agricultural products as of 2019 remained at 61.9%. Unbound items include clocks, watches, and automobiles.

The Philippine Government had undertaken tariff reforms since 1980 and had indicated that it would unify the applied tariff rates for all items at 5% by 2004, except on some agricultural and fishery products. However, the Philippine Government decided in 2003 to review tariff rates and increased the tariffs on over 1,000 items, resulting in high applied tariff rates on automobiles (maximum 30%), electrical equipment (maximum 30%), and some textile products (maximum 20%). And the simple average of applied tariff rate of non-agricultural products as of 2019 was 5.5%.

<Concerns>

As long as the high tariff itself does not exceed the bound rate, there is no problem in terms of the WTO Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs to as much as possible. and eliminate the tariff peaks (see "Tariff Rates" in 1. (1) (iii) of Chapter 5, Part II) described above.

Low binding ratio 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 that unbound products be bound and the bound tariff rates be lowered from the point of view of increasing predictability.

<Recent Developments>

With the aim of expanding the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were launched in May 2012, and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016. 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 Philippines, elimination of tariffs on the subject items started in July 2017. For example, items with high tariff rates include new-type semiconductors (50%), recorders and players (50%), and switching devices (50%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

Improvements in market access have been made with the Japan-Philippines EPA coming into force in December 2008, among these being the phased elimination of tariffs on almost all automobiles and automotive parts, electronics/electrical products and components, and some iron and steel products exported from Japan.

In response to the impact of the COVID-19, the following measures were taken.

(i) Temporary elimination of import duties on health-care equipment and consumables (pharmaceuticals, medical equipment and devices, personal protective equipment, surgical instrument and consumables, experimentation equipment and reagent and its package, medical supplies, tools and consumables (alcohol, antiseptic solutions, thermometers), raw materials, and examination kits by certified producers and suppliers and other items required in the supply chain such as capital equipment, spare parts, and accessories, etc.) (from March 24, 2020 to May 23, 2020)

(ii) On March 25, 2020, it was announced that imposition of additional tariffs of 5% on all imported products is being considered. However, there has been no announcement of the implementation of the measures, and import duties have not been increased.

(iii) Temporary increase of import duties on crude petroleum and petroleum products to 10% (from May 2 to November 1, 2020)

(iv) Temporary abolition of import tariffs on personal computers, laptop PCs, tablets, and other devices appropriate for use in schools, in addition to medical consumables referred to in ① (from September 18, 2020 to December 19, 2020)

Safeguards

Safeguard Measures on Automobiles

<Outline of the Measures>

The Philippines government initiated safeguard investigation on automobiles (passenger vehicles and commercial vehicles, excluding some luxury vehicles/special vehicles, etc.) on February 6, 2020, and started imposing duties (passenger vehicles: 70,000 pesos per vehicle, commercial vehicles: 110,000 pesos/vehicle) based on provisional measures for 200 days from February 1, 2021.

<Problems under International Rules>

The Philippine government argued that it was a safeguard measure under the WTO Agreement (provisional safeguard measures under Article 6 of the Agreement on Safeguards). However, the subject items were not in its list of the WTO concession and the requirement of "as a result of the effect of the obligations ..." under the GATT was not met. Therefore, the measures may violate Article XIX: 1(a) of GATT, or may not characterized as safeguard measures under the WTO Agreement (violating the most favored nation obligation (Article I of GATT)) (DS490/496, Indonesia - Safeguard on Certain Iron or Steel Products, Appellate Body Report; refer to Part II, Chapter 8, 2. Major cases (7)).

In addition, although the evidence has not been disclosed because it remains as a "provisional decision" (Article 6 of the Agreement on Safeguards) at the time of initiation of the safeguard measures, the consistency with the various prerequisites for imposing a safeguard measures such as the presence of rapid increase in imports, injury to the domestic industry, and a causal relationship, etc. is doubtful. In addition, when the majority of the increased imports (major importing countries: Thailand, Indonesia, and Japan, etc.) are the items subject to various preferential duties (the ASEAN, Japan-Philippines EPA, and AJCEP Agreement, etc.) , "unforeseen development" (Article XIX: 1(a) of GATT), a prerequisite for imposing a safeguard measure, is also not met.

If the measures concerned are not characterized as a legitimate safeguard measure under the WTO Agreement, with other justifiable reasons not likely to exist, it may be a violation of concession commitment under various EPAs such as Japan-Philippines EPA and AJCEP Agreement, etc. (violation of Article 18, paragraph 1 of the Japan-Philippines EPA and Article 16, paragraph 1 of the AJCEP Agreement) and/or a violation of the obligation not to impose surcharge (Article 18, paragraph 3 of the Japan-Philippines EPA). This is an issue of the DS procedures of the EPA concerned; refer to Part III Outline, 3. (2) for the outline of the Japan-Philippines EPA and the AJCEP Agreement).

Furthermore, the selection of countries exempted based on the exemption for developing countries (Article 9 of the Agreement on Safeguards) is also considered inappropriate. There are some countries exempted from the duties that are considered not meeting the requirement of import share of 3% of less, etc. Also some exempted countries can manufacture the covered products with great international competitiveness today. Treatment of developing countries and this type of special and differential treatment (S&D) for developing countries should be dealt with in a consistent manner with the discussion on the positions of developing countries within the entire WTO to the extent possible. (For the positions of developing countries, refer to the column in Chapter 1, Part II.)

<Recent Developments>

After the commencement of the safeguard investigation, Japan submitted a government opinion and expressed its concern at the meeting of the Safeguard Committee. In addition, a consultation for compensation (Article 12, paragraph 3 of the Agreement on Safeguards) was held in March 2021. Japan will continue to urge the Philippines government to reduce the impact on Japanese products.

Trade in Services

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 Measures>

The Philippines permits foreign investment in principle, but bans it in exceptional cases. The foreign investment negative list that enumerates areas in which foreign investment is prohibited is announced periodically under the Foreign Investment Act (RA8179). In October 2018, the 11th FINL (Foreign Investment Negative List) was issued, which was the most recent version at the time of publication.

Main points included:

- In the building industry, the allowed maximum was raised from 20% to 40%;
- In the telecommunication industry, the allowed maximum was raised from 20% to 40%; and
- There were no changes in the retail industry.

The retail industry, in which Japanese companies have high interest, was one of the issues that President Duterte addressed in November 2018, saying that quick resolution would be taken (Presidential Notification No. 16), but the regulations were not mitigated in the current 11th edition of the FINL. The Trade Industry minister is stating that they want to revise the individual law first (Retail Freedom Law that regulates retail).

Also, a revised bill for the 2000 Retail Freedom Law was approved by the lower house in December 2018. The minimum paid-in capital is currently USD 2.5 million, which will be lowered to USD 0.2 million. Furthermore, the discussion schedule in the upper house was not yet determined at the time of publication. Other regulations on foreign investment in the Philippines are as shown in <Figure I-2-2>.

<Concerns>

The various restrictions on foreign investment described above do not violate the WTO Agreements, because they do not contradict Philippine's GATS commitments. However, it is desirable that efforts toward liberalization be made under the spirit of the WTO and the GATS.

<Recent Developments>

Japanese companies have invested in the Philippines service sectors since the conclusion of the Japan-Philippines EPA, as evidenced by one commercial shipping company's efforts to open a school to train Filipino technicians and the participation by IT companies in the call center business.

As one of its 10-point socioeconomic agenda, the Duterte Administration, which entered office in June 2016, upholds the goal of "Increasing competitiveness and the ease of doing business, for example by pursuing the relaxation of the Constitutional restrictions on foreign ownership, in order to attract foreign direct investment," and as stated above, the 11th Foreign Investment Negative List was announced in October 2018.

Japan will continue to monitor amendments to laws concerning foreign investment regulations and encourage relaxation of these foreign investment regulations through bilateral policy dialogues and EPA follow-up meetings, etc.

<Figure I-2-2> Major regulations on foreign investment in the Philippines

Sector	Outline of Regulations
Banking	Foreign capital regulations in the banking sector were provided for in the following two laws, etc. The investment 60% domestic banks by foreign banks was limited to 60% and an upper limit was established for the number of foreign banks that can open branch offices, making it difficult for foreign banks that have not yet entered the Philippines market to open new branch offices. • Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines (enacted in May 1994) • General Banking Law of 2000 (enacted in May 2000) However, the Act Allowing the Full Entry of Foreign Banks in the Philippines (Republic Act No. 10641) was enacted in July 2014. This allowed new entry of foreign banks in the following three forms, subject to approval of the central bank of the Republic of the Philippines. • Acquisition of domestic banks (100% foreign investment by foreign banks; and elimination of the 60% upper limit of the foreign investment ratio) • Establishment of new local subsidies • Opening of branch offices (elimination of the upper limit number of foreign banks that can open branch offices)
Insurance	• Department Order No. 31-01 issued in December 2001 (which was partially amended by Department Order No. 19-06 and No. 27-06 of 2006) imposes a minimum capital requirement commensurate with the foreign equity investment ratio, but the ministerial order of June 2012 made the requirement uniform independent of the foreign equity investment ratio (legislated in 2013) • For reinsurance transactions, ceding reinsurance of automobile insurance to an overseas insurance company is prohibited. • Act No. 10881 in the Republic of the Philippines entered into force in August 2016, eliminating foreign investment restrictions for non-banks (financing companies, lending companies, investment houses and insurance adjustment companies). Before the elimination, the upper limit on foreign investment was 60% for financing companies, less than majority ownership (49%) for lending companies and investment houses and 40% for insurance adjustment companies, but the elimination has paved the way for 100% foreign investments in the above businesses.
Construction Services	The Philippines permits foreign investment except in sectors found on the negative list created under the Foreign Investment Act. Construction is not on the list, but under the Constructors License Law (CLL) (RA4566), a construction permit must be obtained before actual construction work can be done from the Philippine Contractors Accreditation Board that is the subordinate organization of Construction Industry Authority of the Philippines that oversees the construction industry under the direct control of the Department of Trade and Industry. Under the detailed enforcement regulations of the CLL, “regular licenses,” which are the same as those given to ordinary domestic companies, is granted to companies with less than 40% foreign ownership. In contrast, companies with more than 40% foreign ownership must apply for a license for each individual project, and a special license that is only effective for that project is granted. At the same time, the foreign investment ratio for public works that are financed within the Philippines (excluding those subject to international bidding) is restricted to a maximum of 25% under the 11th Foreign Investment Negative List (which came into effect in October 2018).

6. Myanmar

Trade in Services

Foreign Investment Restrictions, etc.

Refer to page 106 of the 2020 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.