Chapter 4

European Union (EU)/United Kingdom (UK)[1]

[1] On January 31, 2020, the United Kingdom (UK) withdrew from the European Union (EU), and on December 31, 2020, the transition period for withdrawal ended, bringing the country completely out from under EU law. The measures related to the UK will be covered in a separate chapter from Chapter 4, European Union (EU), starting with the 2022 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

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>

As of 2019, the binding coverage and the simple average bound tariff rate for non-agricultural products are 100% and 3.9%, respectively. Items with high bound tariffs include motor trucks (maximum 22%), footwear (maximum 17%), porcelain and ceramics (maximum 12%), glassware (maximum 11%), and passenger cars (maximum 10%). Moreover, as of 2019, the applied tariff rates for electric appliances (maximum 14% [televisions, cameras, radio receivers, etc.], simple average 2.4%) and textiles (maximum 12%, simple average 6.6%) are higher than those of other developed countries, rendering imported products at a severe competitive disadvantage in comparison with domestically-made products.

<Concerns>

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.

<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 EU, elimination of tariffs started in July 2016. For example, high tariff items include digital video cameras (14%), car audio devices (14%), television receivers (14%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

In addition, the Japan-EU EPA agreement came into effect on February 1, 2019, tariffs were eliminated either immediately or gradually on items on all industrial products exported from Japan (passenger cars (eliminated in the eighth year), auto parts, general machinery, chemical products, electrical equipment, etc. and almost all agricultural, forestry and fishery products (beef, tea, marine products, etc.), and market access has improved.

With regards to the UK's departure from the EU (Brexit), since there had been no Schedules of Concessions and Commitment of the country, the UK newly created and submitted them to the WTO (for specific issues, please see page 133 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-).

In terms of the impact of the COVID-19, on April 3, 2020, EU government took measures to temporarily eliminate import tariffs and value-added taxes on certain items during the period from January 30, 2020 to July 31, 2020, with the aim of enabling authorized organizations by state agencies like charitable organizations to distribute necessary things and encourage people affected by the pandemic to use them with no charge. Each country can identify what are necessary things.

Safeguards

Steel Safeguards

<Outline of the Measure>

In March 2018, the EU started a safeguard survey on imports of steel products. The EU implemented provisional measures on July, 19 of the same year, and final measures on February 2, 2019 (effective until June 30, 2021). Based on the averaged import amounts over the past three years (2015-2017) for 26 categories of approximately 300 products with 8-digit HS code (72081000-73069000) (hot-rolled steel sheet, cold-rolled steel sheet, stainless steel sheet, etc.), the tariff rate quotas ((1) country quotas for countries with an export share of 5% or more, and (2) residual quotas for other countries collectively) have been prepared for each target item. An additional 25% tariff will be imposed when the import exhausts and exceeds the relevant tariff quota.

<Problems under International Rules>

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

<Recent Developments>

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

On February 14, 2020, the EU launched its second review investigation and announced its intention to complete the review investigation by June 30, 2020, if possible. In consideration of the impact of the COVID-19, on April 30 of the same year, the EU received a proposal from the domestic industry on the review of safeguard measures (reinforcing trade restrictions, such as a 75% reduction in tariff quotas), and solicited public comments, in addition to the initial public comment procedure in February. Japan submitted a government opinion expressing concern over the proposed reinforcement of trade restrictions. On June 30 of the same year, the EU announced its final decision to shorten the period of country-based import quotas for some items (from every year to every quarter), and to impose further restrictions on the use of the residual quotas by countries who have exhausted their own country-based quotas, which came into effect the following day, July 1. The proposed drastic reduction in tariff quotas, which had been of concern, was not adopted.

With regard to this safeguard measure, Turkey has requested the WTO consultation (DS595), claiming that it is inconsistent with the Safeguard Agreement, etc., and Japan has participated as a third country.

On February 26, 2021, the EU began an investigation to determine whether to extend the safeguard measure that would expire on June 30, 2021.

In addition, on October 1, 2020, the UK started the Transition Review of steel safeguard measures in connection with its withdrawal from the EU, and the UK announced that it would transit 19 out of the 26 categories of steel products that are subject to safeguard measures in the EU, and that it would impose additional tariffs of 25% if imports exceed the tariff rate quotas, which were set for two periods: January 1 to March 31, 2021 and April 1 to June 30, 2021. In response, at the Safeguard Committee, etc., Japan has expressed regret that the contents of the measures were announced without any investigation of the requirements under the Safeguard Agreement, such as "injury to domestic industry", and urged the UK to terminate the measures as soon as possible (see the column on the UK's withdrawal from the European Union).

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

Standards and Conformity Assessment Systems

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

<Outline of the Measures>

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

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

<Problems under International Rules>

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

violate Article 2.2 of the TBT Agreement.

<Recent Developments>

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

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

(2) Regulations on Chemicals (REACH/CLP)

<Outline of the Measures>

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

The characteristics of the regulation are as follows:

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

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

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

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

(5) If substances of very high concern (SVHC) exceed 0.1% concentration in an article, the notification and communication become mandatory in case the quantity of that substance exceeds 1 ton during a year. Regarding composite molded articles, the ECHA had interpreted that the concentration calculation matrix is the entire composite molded article. However, in September 2015, the European Court of Justice published their understanding that each component article that composes a composite article is the matrix. The manufacturers and importers of composite molded articles in the EU are obligated to calculate a concentration of high concern in each component that construct composite molded articles, and this is burdensome especially for importers who must collect information from outside the EU, which is not covered by the REACH.

(6) For chemical substances listed in Annex XIV as substances of very high concern, such as those that are carcinogenic, that are subject to authorization, market supply and usage is approved for each application (supply to the market is prohibited unless it is verified that the risk is properly managed in the industry and permission is granted). When substances are to be listed for authorization in Annex XIV, it is stipulated that they are decided on the basis of requirements, such as characteristics of CMR, PBT or vPvB, characteristics that might have the same extent of adverse effects as those characteristics (ELoC), widely distributed usage, and the high production volume.

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

In December 2018, proposal of the CLP regulation for the EU's 14th Adaptation to Technical and scientific Progress (ATP) was notified to TBT committee. The proposed draft regulation classified the powder mixtures containing 1% or more of titanium dioxide as a carcinogen

regardless of whether or not exposure of titanium dioxide by inhalation could occur. This could inappropriately broaden the scope of products to be regulated and may require warning labelling even for products distributed without being classified as carcinogenic under the GHS-compliant systems of other countries.

<Problems under International Rules>

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

<Recent Developments>

The Japanese industry that manufactures products containing titanium dioxide submitted comments to the EU responding to TBT notification regarding the CLP regulation in December 2018, and Japan has also expressed its concerns to the EU since the TBT Committee in March 2019. In February 2020, however, the EU published a proposal of the CLP regulation for the EU's 14th Adaptation to Technical and scientific Progress (ATP).

In October 2020, the European Commission also released the Chemicals Strategy for Sustainability (CSS), which aims to promote innovation regarding safe and sustainable chemicals and to strengthen health and environmental protection against hazardous chemicals. There are 56 action plans in the annex of CSS, and these actions will be implemented in the future. The REACH and CLP regulations will continue to update chemical substances to be regulated, so it is necessary to continue to pay attention to the chemical regulatory trends in the EU.

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

<Outline of the Measures>

The EU Medical Device Regulation (MDR) and In Vitro Diagnostic Medical Device Regulation (IVDR) came into force on May 25, 2017, and after a transition period, The MDR was scheduled to apply from May 26, 2020, and the IVDR from May 26, 2022. However, the number of Notified Bodies (NBs) designated by EU member states for MDR certification was insufficient even one year before the application of the MDR, and the accredited NBs had not yet started accepting new items for assessment in Japan, coupled with the delayed issuance of necessary guidance. Therefore, Japan has been expressing its concerns at the TBT Committee meetings since November 2019, and has been requesting actions such as postponement of the effective date. In this regard, on April 24, 2020, the EU announced a one-year postponement of the application of the MDR so that government agencies, research institutes, and the medical product manufacturing industry could focus on the response to the new coronavirus, and the postponed application was set to begin on May 26, 2021. (At present, there is no plan to postpone the start date of IVDR application.) The MDR stipulates that MDD (Medical Device Directive) compliant products that have been placed on the market prior to or on the above application date or during the validity period of the MDD certificate may continue to be made available on the market or put into service until May 27, 2025 and that for class II and III devices, the certificate acquired under the current scheme before the above application date will continue to be valid for a certain period after the application date.

In order for manufacturers exporting medical devices to Europe to be able to obtain MDR certification by May 26, 2021, the new effective date of the MDR, the following two points need to be realized:

(1) Prompt initiation of MDR assessments, execution of the assessments, and issuance of certificates by the Japanese branches of NBs designated by EU member states for MDR certification; (2) Issuance of necessary implementation guidance by the Medical Device Coordination Group (MDCG), which advises the European Commission on medical device regulations, and regular updates of the guidance issuance plan.

<Problems under International Rules>

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

<Recent Developments>

Japan has expressed concerns about the regulation to the EU at the TBT Committee with other countries , and also held discussions with policy makers at bilateral dialogues. In particular, at the February 2021 meeting of the TBT Committee, Japan requested that the transition period for the IVDR be extended to May 2023, as the NBs were still focused on the MDR due to the postponement of the end of the transition period for the MDR. To ensure that Japanese companies are able to gain access to the medical device market in the EU, it is necessary to continue to request the EU to establish a system that allows a smooth transition to the new regulation.

(4) Rules for Batteries and Waste Batteries

On January 26, 2021, the EU notified the TBT committee of a new draft regulation on batteries and waste batteries. The draft regulation includes proposals for limiting market access in case of exceeding the maximum life cycle carbon footprint thresholds, and setting the rate of use of recycled materials, etc., for the purpose of safe and sustainable production and recycling of batteries. Japan will continue to urge the EU to ensure that these requirements and procedures are not more trade-restrictive than necessary to fulfill a legitimate objective.

Trade in Services

Audio-visual Service

Refer to pages 111-112 of the 2020 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-.

Government Procurement

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

<Outline of the Measure>

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

<Problems under International Rules>

Under the proposed regulation, the European Commission, by its authority or upon request from a stakeholder or a member country, can conduct a survey on "a restrictive or discriminatory procurement measure or practice" taken by a foreign country. As a result of the survey, in the case where it is determined that the foreign country adopts or maintains a restrictive or discriminatory procurement measure, the European Commission must request a consultation with the country. In the case where the consultation has not reached a satisfactory result within 15 months, the European Commission must take appropriate measures, including price adjustment measures, after ending the consultation. Specifically, up to 20% of a price penalty will be imposed on bidding by a supplier from the country or on goods or services of the country.

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

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

<Recent Developments>

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

progressed as of February, 2021. Going forward, Japan needs to closely follow deliberations of the proposal at the EU Council and the European Parliament.

Regional Integration

Increasing Binding Tariff Rates

Refer to page 133 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Protection of Intellectual Property

Design Right Enforcement Issues for Spare Parts

<Outline of the Measures>

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

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

According to the report published by the European Commission in 2020, "Evaluation of EU legislation on design protection", a "repair clause" has not been introduced in Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Lithuania, Malta, Portugal, Romania, Slovenia and Slovakia, while it has been introduced in Belgium, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, and Spain. Denmark, Sweden and Greece are reported to have different systems in place, e.g., with different protection periods, for restricting design rights for spare parts (as discussed below, Germany has since passed an amendment to its design law to add a "repair clause").

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

<Problems under International Rules>

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

<Recent Developments>

The debate in the EU over how to protect design rights of spare parts used for the purpose of repair has not yet been settled, and both Article 110 of the Community Design Regulation and Article 14 of the Design Directive stipulate the matter as a transitional provision. In 2004, the European Commission brought forward a proposal to include the "repair clause" in the Design Directive, but it was withdrawn in 2014 after no agreement was reached. Subsequently, the Circular Economy Action Plan published by the European Commission in March 2020 also mentions the introduction of a "right to repair" as a measure to ensure the sustainability of products, and the "Intellectual Property Action Plan" published by the European Commission in November 2020 also proposes the modernization of design protection in the EU, including the harmonization of the EU system for the protection of spare parts.

Meanwhile, in Germany, the introduction of a "repair clause" in the Design Law, which was positioned as one of the main measures for consumer protection by the Social

Democratic Party of Germany, was included in the agreement document of the coalition government formed in March 2018, and the federal government approved the introduction of the "repair clause" in the Design Law by the Cabinet decision in May 2019. In September and October 2020, the Bundestag (equivalent to the House of Representatives) and the Bundesrat (equivalent to the Senate) passed an amendment to the Design Act to add the "repair clause". This means that in Germany, design right protection does not extend to spare parts for repair purposes.

In France, the parliament adopted an amendment to add a "repair clause" regarding automobiles to the Design Law as part of the "Mobility Orientation Bill" in November 2019 and the "Bill for the Acceleration and Simplification of Public Action" in October 2020. However, the Constitutional Council found the amendment unconstitutional due to its lack of direct relationship with the bills and did not pass it.

Developments in these major European countries may influence future discussions on the revision of the Design Directive, etc., and future developments should be closely watched.

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

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