Chapter 4

European Union (EU)/United Kingdom (UK)

1. European Union (EU)

TARIFFS

TARIFF STRUCTURE

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

<OUTLINE OF THE MEASURES>

The Union Customs Code, duty exemption system, and related legislation provide for basic tariff rates, provisional tariff rates, and elastic tariff rates (e.g., anti-dumping duties, countervailing duties, retaliatory duties, emergency duties, seasonal duties, and international cooperation duties). MFN or the Japan-EU Economic Partnership Agreement (Japan-EU EPA) tariff rates are applied to products imported from Japan. In addition, tariff preferences (reduction, exemption, and refund) are applied to imports of goods, raw materials, etc., intended for re-export.

In 2020, 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, in 2020, the simple average applied tariff rate for non-agricultural products is 4.1%; the 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 domestic 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 regard to the ITA expansion negotiations concluded in December 2015 to promote greater market access for IT products (see 2. (2) "Information Technology Agreement (ITA) Negotiation" in Chapter 5 of Part II for details), the EU began eliminating tariffs on 201 subject items in July 2016. For example, high tariff items include digital video cameras (14%), car audio devices (14%), television receivers (14%), etc. Tariffs on all the subject items including these will be eliminated by 2023.

In addition, the Japan-EU EPA came into effect on February 1, 2019, tariffs were eliminated 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 been improved.

In response to the spread of COVID-19, on April 3, 2020, the EU Government took measures to temporarily exempt from import tariffs and value-added taxes on certain items during the period from January 30, 2020 to July 31, 2020. The aim of this measures is to enable people affected by the pandemic to use necessary items distributed for free by charitable organizations authorized by state agencies. Subsequently, on April 19, 2021, this measure was extended until December 31, 2021. The actual items subject to the measure and tariff rates are left up to each Member country.

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>

EU's regulation requires that of safeguard measures be reviewed annually. For the first review in May 2019, Japan submitted a government opinion, expressing its concerns about the method of determining injury and the operation of tariff quotas. 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.

The second review, launched in February 2020, solicited opinions on a proposal from the domestic industry (requesting a significant tightening of trade restrictions, including a 75% reduction in tariff quotas, in consideration of the impact of the COVID-19 pandemic). Japan submitted a government opinion opposing the proposed tightening of the measure. 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 strengthen the restrictions on the use of the residual quotas, which came into effect the following day, July 1. The industry's proposals, such as reduction of tariff quotas, were not adopted.

The third review, launched in February 2021, led to some modifications, including the additional review process of the whole measure in the event of changes in the trade effects of the US Section 232 measure, but the measure itself is still in place.

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 party.

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>

The Japanese government and electrical and electronic industries submitted the following comments regarding the implementation regulations for electronic displays that were published in the official gazette in December 2019 and came into effect in March 2021: (i) excessive energy efficiency requirements that are difficult to achieve for the next-generation technology, such as 8K TV; (ii) resource efficiency requirements that are expected to cause excessive increase in handling cost (mandatory period for spare parts availability and expansion of information provision); (iii) duplication/inconsistency with existing regulations (RoHS Directive, WEEE Directive, etc.); and (iv) unclear requirements (including non-issuance of guidance documents). However, Japan's comments are not reflected in many of the requirements, and the manufacturers and importers are facing increased burdens in dealing with the requirements. Currently, the European Commission is considering implementation regulations that include resource efficiency requirements for smartphones, so it is necessary to continue to closely monitor developments related to this matter.

(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 EU 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 EU received feedback on the Inception Impact Assessment of the amendments to the REACH and CLP regulations from May 4, 2021 to June 1, 2021, after which the EU conducted a public consultation on the CLP Regulation from August 9, 2021 to November 15, 2021, and on the REACH Regulation from January 20, 2022 to April 15, 2022. Based on these results, the EU is planning to develop a draft amendment to the REACH regulation and the CLP regulation by the end of 2022. 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.

Changes have been seen in recent years in the application of REACH regulation restrictions, with proposals to ban all uses (BPA, PFOA, PFOS, PFHxA, etc.) except for certain exceptional applications and proposals of restrictions in substance groups (PFASs), rather than restrictions on the specific applications. In addition, although not limited to the REACH regulation, in Europe, there is a tendency to propose extremely low regulatory concentrations (e.g., tolerable daily intake (TDI)) compared to the past, based on the non-monotonic dose response (NMDR) observed in endocrine disruption and the like.

(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.

<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 November 2021 meeting of the TBT Committee, Japan requested investigation into the cause of and improvement of the delay in assessments for MDR certification, and enhancement of NB and guidance documents for IVDR certification. 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

<Outline of the Measures>

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.

<Problems under International Rules>

Since Article 2.2 of the TBT Agreement requires that not more trade-restrictive measures be employed than are necessary to fulfill legitimate objectives, it must be ensured that the procedures and requirements of the proposed regulations are not more trade-restrictive than are necessary to achieve the objectives of safe and sustainable production and recycling of batteries. GATT Articles I and III prohibit discrimination between imported products and between imported products and domestic products, and GATT Article XX allows measures for specific purposes under certain conditions, but prohibits the application of measures that would constitute arbitrary or unjustifiable discrimination. Article 2.1 of the TBT Agreement also prohibits discrimination. In light of these non-discriminatory regulations, each country has the right to determine its own domestic environmental protection policies and power source composition. Therefore, when applying a measure, it is desirable to consider whether the regulation is appropriate in light of different circumstances in the exporting country and whether it has the flexibility to reflect the domestic circumstances of the exporting country.

<Recent Developments>

Japan exchanged opinions on the proposed regulations at the Working Group on Automobiles under the EU-Japan Industrial Policy Dialogue held in March 2021, and

requested the EU to provide information on the calculation method of carbon footprint, recycling, data handling, etc. Japan will continue discussions with the EU and 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>

The latest amendment, which further amends the European Commission's 2016 amendment, was submitted by Portugal in 2021. The proposed amended regulation will be adopted by the Council of the European Union and the European Parliament through the ordinary legislative procedure provided for in Article 294 of the EU Treaty, using Article 207 of the EU Treaty as the legal basis. The proposed amendments to the regulation were already agreed upon by the Committee of Permanent Representatives, a subordinate body of the Council, in June 2021. The amendments were also adopted by the European Parliament at its first reading on December 14, 2021. The Council of the European Union, the European Parliament, and the European Commission are scheduled to hold a tripartite discussion on the proposed amendments, and it is necessary to closely monitor the discussions.

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, the 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 and France have since passed amendments to their design laws 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 mentioned 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 proposed the modernization of design protection in the EU, including the harmonization of the EU system for the protection of spare parts. The European Commission conducted a public consultation on the modernization of EU design protection from April to July 2021, including the question "Should design protection for spare parts be reviewed?" and published its summary report on its webpage in September 2021.

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", and the amendment to the Design Law was passed on October 9, 2020, and promulgated and enforced on December 2, 2020. As a result, in Germany, design right protection no longer extends to spare parts for repair purposes.

In France, a repair clause had not been introduced in the past due to unconstitutional decisions by the Constitutional Council on procedural grounds, etc., despite its adoption by the French Parliament, but in accordance with Article 32 of the "Law on combating climate change and strengthening resilience to its effects," passed on August 22, 2021, a new repair clause was established in the Intellectual Property Law, limited to certain spare parts related to automobiles, and an amendment was made to shorten the term of protection for other spare parts as well. The amended law is scheduled to go into effect on January 1, 2023.

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.

2. The UK

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 Customs and Excise Management Act, the Taxation (Cross-Border Trade) Act 2018, the European Union (Withdrawal) Act 2018, the Taxation (Post-transitional Period) Act 2020 and related legislation provide for various provisions on the import and export controls and customs, and the customs regime for the import and export of UK goods after leaving the EU. MFN or the Japan-UK Comprehensive Economic Partnership Agreement (Japan-UK EPA) tariff rates are applied to imports from Japan. In addition, there are special measures related to customs declarations following the end of the transitional period for leaving the EU as well as tariff incentives (tariff exemptions) for temporary admission, re-import/re-export, processing treatment, and goods imported for special use.

The UK officially left the EU on January 31, 2020 under the EU-UK Withdrawal Agreement, and the withdrawal transition period ended on December 31, 2020. During the withdrawal transition period, the UK was effectively part of the EU customs union, so the EU MFN rates and preferential rates were applied until December 31, 2020 and since January 1, 2021, the UK Global Tariff (UKGT) has been applied. By introducing UKGT, the nuisance tariff (tariff below 2.0%) and tariffs on items that have no or limited domestic production were eliminated, and tariff rates are simplified by removing the number after the decimal point. As an exception, the EU Common Customs Tariff rate will continue to be applied in Northern Ireland in accordance with the Northern Ireland Protocol to the EU-UK Withdrawal Agreement.

In addition, the applied tariff rates and bound tariff rates for high tariff items are treated almost the same as those in the EU.

<CONCERNS>

In preparation for leaving the EU, the UK prepared a new concession schedule and submitted it to the WTO on July 24, 2018. It largely followed the EU annex table except for tariff quotas, and technical amendments were made on May 19, 2020 and December 10, 2020. Meanwhile, on January 4, 2021, the UK submitted a communication to WTO Members clarifying the UK's position in the WTO after the withdrawal transition period. It stated that the UK would apply the concession schedule, although it has not yet been approved. Therefore, there is a possibility that WTO Members may appeal or take retaliatory measures against the UK for currently applying this unapproved concession schedule. In addition, on December 17, 2020, the UK notified that it would continue to implement the ITA and the expanded ITA, so under the concession schedule, tariffs on 201 subject items will be eliminated by 2023.

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>

Aiming to avoid any disruption to trade continuity, the UK negotiated the continuation of trade agreements with third countries concluded by the EU, during the withdrawal transition period, and many trade agreements continue to be applied in the UK after Brexit. With Japan too, the UK had government-level negotiations during the withdrawal transition period, and after the approval process completed in each country in December 2020, the Japan-UK EPA entered into force on January 1, 2021. This agreement basically follows the EU-Japan EPA . It maintains a business environment for Japanese companies to continue doing business with the UK, by providing catch-up provisions that apply the same reduced tariff rates as in the EU-Japan EPA from its effective date and cumulative and extended cumulative provisions that deem the use of EU materials and value-adding and machining processes in the EU region as those in the UK and Japan. In addition, the UK officially applied to join the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) on February 1, 2021, and is continuing

negotiations for accession to the CPTPP.

The following measures have been taken in response to the spread of the COVID-19:

1. Temporary tariff exemption for medical supplies, etc.

   Tariff exemption is temporarily granted for personal protective equipment, medical equipment, disinfectants and medical supplies deemed important for the prevention of the COVID-19 by WHO in June 2020, as well as key component vaccines for vaccine production specified by the WHO in July 2021; effective until December 31, 2022 for both.

2. Export restrictions on medicines

   To prevent shortages of medicines in the UK National Health Service, the export of more than 80 medicines is restricted after March 23, 2020.

SAFEGUARDS

SAFEGUARD MEASURES ON IMPORTS OF STEEL PRODUCTS [NEWLY ADDED]

<OUTLINE OF THE MEASURES>

On October 1, 2020, the UK announced that it would "transit" the EU's steel safeguard measures after leaving the EU, imposing an additional tariff of 25% on 19 of the 26 steel products subject to the EU safeguard measures if they exceed tariff quotas (from January 1, 2021 to June 30, 2021). At the same time, a Transition Review was initiated to determine the course of action after July. As soon as the UK left the EU in January 2021, it invoked the safeguard measures "transited" from the EU.

In May 2021, injury was determined and a recommendation was made to extend the measure on 10 items, and in June, a notification of extension of the measure was made. However, the measure taken the following July was applied to items different from the 10 items subject to the TRA recommendation. In particular, five more items were added by the decision of Secretary of State Truss. The duration of the measure is for three years in principle, but tentatively only for one year for the additional five items.

<PROBLEMS UNDER INTERNATIONAL RULES>

Under the WTO Agreement, there is no basis to legitimize "transiting" other countries' safeguard measures. In essence, the UK, as an individual country after leaving the EU, invoked the safeguard measures without conducting investigation procedures regarding the prerequisites, which is inconsistent with the WTO agreement on safeguard investigation procedures.

Although the May 2021 TRA recommendation included a quantitative analysis of increased imports, injury to the domestic industry, etc., it was questionable whether the finding was sufficient to provide a basis for an extension of the safeguard. In addition, 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, but there are concerns about the consistency of these factors with the concept of "unforeseen developments" as a prerequisite for imposing a safeguard measure (GATT Article XIX: 1(a)).

Further, there are products that were not included in the TRA's recommendation for extension in May, including the five products that were newly added by decision of the Secretary of State in July. The measures on these products are inconsistent with the WTO Agreement, as they have been extended without finding whether the various requirements for extension (continued necessity for prevention of injury, Article 7.2 of the Safeguard Agreement, etc.) are met.

<RECENT DEVELOPMENTS>

In September 2021, the UK initiated a "Reconsideration" procedure of the measures in force (with notification under Article 12.1 of the Safeguard Agreement). Possible modifications in tariff quota items and quotas are being discussed.

At the Safeguard Committee, etc., Japan has expressed regret that the measures were invoked without any investigation of the requirements under the Safeguard Agreement, such as injury to the domestic industry, and urged the UK to terminate the measures as soon as possible.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

REGULATIONS ON CHEMICALS (REACH/CLP)

<OUTLINE OF THE MEASURE>

With the end of the withdrawal transition period on December 31, 2020, many of the EU regulations that directly applied to the UK prior to Brexit have been transposed into UK domestic law with the necessary amendments made in accordance with UK domestic law. The EU REACH regulation also continues to apply to the UK after the withdrawal transition period as one of the "retained EU laws" that have been transposed into UK domestic law. As a result of the Northern Ireland Protocol, the UK REACH regulation applies only to the island of Great Britain, while the EU REACH regulation continues to apply to Northern Ireland as part of the EU single market. Therefore, businesses in Northern Ireland will retain their status under the EU REACH Regulation after the end of the withdrawal transition period.

After the withdrawal transition period, in order to sell products on the market in the EU and the UK, chemical substances will need to be registered in both the EU and the UK. Currently, there are no major differences in requirements and procedures for REACH regulations in the

EU and the UK, but their regulations may gradually diverge in the future. In this case, businesses may be required to respond differently in order to comply with regulations in the EU and the UK, which may increase the burden on businesses.

As a result of Brexit, the UK is a third country from the perspective of the EU, and therefore, registrants located in the UK (manufacturers, producers, importers or Only Representatives) are not considered to be registered in the EU. Therefore, in order to maintain status under the EU REACH regulation, it was necessary to switch to registration in an EU member state or appoint an OR in an EU member state before the end of the withdrawal transition period. It should be noted that if such procedures have not been taken, the status of the business may have changed under the EU REACH regulation. In addition, businesses registered under EU-REACH located in the UK will need to apply for registration again after a grace period determined by the volume of production and imports, etc., obtained through Grandfathering. Even if they use safety data that they have already paid for in their registration under EU-REACH, if they want to use the test data in the UK REACH, they may have to pay for the use of the data again.

As one of the "retained EU laws," the EU CLP regulation was also transposed into UK domestic law. Specifically, in the UK after the withdrawal transition period, the regulations governing the classification, labeling and packaging of chemicals placed on the UK market apply under the UK CLP regulation 2008 and the UK CLP regulation 2015. The Secretary of State is empowered to amend these regulations. In addition, the role played by the European Chemicals Agency (ECHA) under the EU CLP regulation before Brexit will be taken over by the Health and Safety Executive as the supervisory authority under the UK CLP regulation in the post-Brexit UK. Currently, rules under the UK CLP regulation are not significantly different from those under the EU CLP regulation, but they may gradually diverge between the EU and the UK in the future.

<PROBLEMS UNDER INTERNATIONAL RULES>

These regulations may violate Article 2.1 of the TBT Agreement when they bring disadvantages to non-UK 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>

On November 9, 2021, the Environment Act 2021 was passed. Section 140 of the Act authorizes the Secretary of State to amend regulations under the UK REACH regulation to update the regulation of chemicals in the post-Brexit UK, in accordance with Schedule 21. In addition, the Secretary of State is empowered to extend the scope of criminal penalties for enforcing the UK REACH regulation and to specify the criminal penalties to be applied. It is stated that the Secretary of State may exercise these powers as he or she considers it necessary and appropriate. It remains to be seen how these powers granted to the Secretary of State will be exercised in practice.