CHAPTER 2

ASEAN

1. THAILAND

TARIFFS

* 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.For definitions of tariff, tariff rate, binding ratio, and bound tariff rate, see Chapter 5.1.

<OUTLINE OF THE MEASURES>

The Customs Law, Customs Tariff Declaration and related regulations provide for general tariff rates, the ASEAN Common Effective Preferential Tariff ("CEPT") rate, various Economic Partnership Agreement ("EPA") tariff rates, tariff rates under the Generalized System of Preferences (GSP), tariff rates under the Global System of Trade Preferences (GSTP), and other tariff rates. MFN or EPA (the Japan-Thailand Economic Partnership Agreement (Japan-Thailand EPA), the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Agreement, the Regional Comprehensive Economic Partnership (RCEP) Agreement) tariff rates, or other tariff rates, are applied to products imported from Japan. In addition, preferential tariff treatments (e.g., tariff refunds) are applied to goods and materials intended for re-export.

To strengthen the competitiveness of its manufacturing industry, Thailand government is reducing its applied tariff rates as part of tariff structure adjustments. In September 2003, the Thailand Government made a cabinet decision to reduce tariffs on 1,391 items, including rubber products, textiles, steel products, general machinery, and electrical machinery. In principle, tariffs were reduced to 10% for finished products, 5% for semi-finished products, and 1% for raw materials. The rate for CKD (assembly) parts for automobiles was also to be lowered from 33% to 30%.

However, the simple average applied tariff rate for non-agricultural products in 2021 was 8.4% in Thailand, 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, such as automobiles (maximum 80%), washing machines and refrigerators (maximum 30%). In addition, the simple average bound rate for non-agricultural products in 2021 was 25.7%. The binding coverage is relatively low: 25.2% for transport equipment and 71.5% as a whole for non-agricultural products. Unbound items include automobile parts (maximum 30%) and bicycles (maximum 30%).

<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.

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 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), Thailand began eliminating tariffs on 201 subject items 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 the other subject items will be 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.

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 been improved.

In response to the spread of COVID-19, in April 2020, the Ministry of Finance announced a measure to temporarily exempt customs duties on medicines (12 items), medical equipment (38 items: laboratory equipment, masks, etc.) and toxic substances for cleaning and disinfection (2 items: sodium hypochlorite concentrate and hydrogen peroxide concentrate) for the period from March 2020 to September 2020. In April 2021, this measure was extended until March 2022. Subsequently, this measure was not extended further and expired.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

<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 technical regulations 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.

<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 is considering revising and introducing technical regulations for various steel materials in the future.

<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.

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

<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, accounting services, advertising, and other 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

<PRESENT STATE>

A study by Japan's related institution ("Survey Report on Counterfeit Distribution in Thailand 2022" 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, there were 484 cases of seizure by customs in 2021, a significant decrease from 1,541 in the previous year. On the other hand, the number of cases of police indictment was 1,381, down from 1,685 in the previous year.

Inadequate enforcement systems and light penalties for intellectual property rights infringement will lead to an increase in the distribution of counterfeit and pirated products, and should continue to be closely monitored in the future.

<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 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 systems, and provide for measures for exercising intellectual property rights against infringement, counterfeiting, and piracy, (Article 122); that both countries shall take necessary 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 128); and that for the purposes of providing efficient administration of intellectual property protection systems, 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

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.)

In addition, on March 20, 2020, Viet Nam's Ministry of Commerce announced the extension of the measure for three years in the official gazette (the duration is from March 22, 2020 to March 21, 2023).

Furthermore, on November 4, 2022, the Viet Nam's Ministry of Commerce announced in the official gazette the commencement of the review investigation for the second extention.

<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

<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 were promulgated on January 24 of the same year and enacted on March 1. With these regulations, automobiles imported into Viet Nam are subject to Vietnamese authorities' exhaust gas inspection and safe quality inspection by model for each import lot (per vessel). If inspections are conducted as stipulated, there is a concern that it may take a long time for one import lot to be inspected and the period until the automobiles can be sold domestically will be prolonged.

<PROBLEMS UNDER INTERNATIONAL RULES>

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 took 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.

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 burden of inspection for each lot has been reduced to one inspection in three years at maximum. However, Japan still needs to be observant as concerns remain in implementation, for example, how vehicles subject to inspection are selected.

TRADE IN SERVICES

<OUTLINE OF THE MEASURES>

The Cybersecurity Law (effective January 2019) imposed an obligation on certain domestic and foreign companies to store data in Viet Nam and on certain foreign companies to establish branches or representative offices in Viet Nam; however, the details of such obligations were not expressly provided for in the law.

In October 2022, the Vietnamese Government put into force Decree No. 53 (Minister of Public Security) to elaborate on the abovementioned obligation to store data and establish branches or representative offices in Viet Nam. This Decree imposes an obligation on domestic enterprises (those established, registered and having their head office in Viet Nam under the laws of Viet Nam) to keep the "data subject to storage" (i.e., (i) personal information of service users, (ii) data created by service users (e.g., account names or IP addresses of users), and (iii) data on relationships of service users (e.g., friends of such service users)) in Viet Nam. On the other hand, "foreign enterprises" (i.e., enterprises established and registered under foreign laws), who provide certain services to service users in Viet Nam, are required to store "data subject to storage" in Viet Nam as well as to establish a branch or representative office in Viet Nam, in the event that their services are used for activities that violate the Cybersecurity Law, and where the Ministry of Public Security has notified the relevant foreign enterprise of such violation and required the foreign enterprise to take remedial action, but the foreign enterprise has not responded to the request.

In addition, the draft amendment to the Decree on the Management, Provision and Use of Internet Services and Online Information (Decree No. 72 of 2013) (released in November 2021. It is not yet approved as of the publication of this Report) (Minister of Information and Communications), also stipulates, for example, that the data of Vietnamese service users (i.e., organizations and individuals) must be stored within Viet Nam with regard to data center services. The draft amendment also requires social networking sites and providers of information services on mobile networks to install servers in Viet Nam.

<PROBLEMS UNDER INTERNATIONAL RULES>

Foreign businesses doing business globally generally seem to use servers or cloud services outside of Viet Nam to manage the collected data centrally. Therefore, if foreign businesses are required to install a separate server in Viet Nam due to domestic data localization requirement, it would possibly create concerns about entering or continuing business in the Vietnamese market, and at the same time, it would possibly make foreign businesses compete on unfavorable conditions compared to operators who have stored and managed data within Viet Nam. Thus, if a foreign business is virtually treated less favorably than Vietnamese domestic businesses, it may violate the national treatment obligation under Article XVII of the GATS and Articles 9.4 and 10.3 of the CPTPP Agreement.

In addition, Viet Nam has agreed in the CPTPP and RCEP Agreements to the principle of free cross-border transfer of information and the prohibition on requiring computing facilities to be located domestically (Articles 14.11 and 14.13 of the CPTPP, and Articles 12.15 and 12.14 of the RCEP Agreement)[1], and provisions on the domestic storage of "data subject to storage" under Decree No. 53 may conflict with these provisions.

In addition, under Decree No. 53, certain foreign enterprises may be required to establish a branch or representative office in Viet Nam, which may violate the market access obligation under Article 16 of the GATS, which prohibits certain modes of supply of services, and Article 10.6 of the CPTPP, which prohibits the establishment of a representative office or any form of enterprise.

<RECENT DEVELOPMENTS>

With regard to the Cyber Security Law, the Japanese government submitted comments during the Public Comment period in March 2018 and has also raised this issue of the Cyber Security Law in a

[1] Under the CPTPP, the Japanese government and the Vietnamese government have exchanged a side letter stipulating that measures under Viet Nam's Cybersecurity Law or cybersecurity-related laws and regulations are exempted from the dispute settlement provisions for five years after the enactment.

joint effort with the United States on the WTO Trade in Services Council since October 2017, expressing its concerns about the issues as mentioned earlier. Japan also raised these problems at the WTO Trade Policy Review (TPR) meeting dealing with Viet Nam held in April 2021. Japan will continue to closely monitor the enforcement and implementation of this law and relevant laws and regulations and seek to ensure that foreign business is not treated less favorably by utilizing relevant international fora, including WTO Trade in Services Council, in coordination with countries concerned.

<OUTLINE OF THE MEASURES>

In February 2021, the Vietnamese Government released the Draft Decree under the Cybersecurity Law and other laws (not yet approved as of the publication of this Report).

The Draft Decree provides that the personal data of Vietnamese citizens can be transferred out of the country only if all of the following conditions are met[2].

a) Consent of the individual regarding the transfer

b) Domestic storage of the original data

c) Issuance of a certificate of adequacy regarding the personal data protection level in the destination country

d) Approval of the Personal Data Protection Commission in a written format

The Draft Decree also stipulates that cross-border transfers of personal data must be terminated if it is impossible or difficult, etc. for a data holder to protect, etc. his/her legitimate interests.

<PROBLEMS UNDER INTERNATIONAL RULES>

The Draft Decree stipulates domestic storage of the original data as one of the requirements for cross-border transfers. Foreign businesses doing business globally generally seem to use servers or cloud services outside of Viet Nam to manage the collected data centrally. Therefore, if foreign businesses are required to install a separate server in Viet Nam due to domestic data localization requirement, it would possibly create concerns about entering or continuing business in the Vietnamese market, and at the same time, it would possibly make foreign businesses compete on unfavorable conditions compared to operators who have stored and managed data within Viet Nam. If a foreign business is essentially treated less favorably than Vietnamese business operators, it may violate the national treatment obligation under Article XVII of the GATS and Articles 9.4 and 10.3 of the CPTPP Agreement.

Moreover, Viet Nam has agreed to the principle of free cross-border transfer of information and the prohibition on requiring computing facilities to be located domestically under the CPTPP and RCEP Agreements (Articles 14.11 and 14.13 of the CPTPP Agreement, Articles 12.14 and 12.15 of the RCEP Agreement), and therefore the Draft Decree may conflict with these rules, depending on its implementation.

<RECENT DEVELOPMENTS>

The Japanese government submitted written comments during the Public Comment period in April 2021 and has also expressed its concerns regarding the Draft Decree at the WTO TPR meeting dealing with Viet Nam in April 2021 and at the WTO Trade in Services Council and relevant bodies.

Japan will continue to closely monitor the enforcement and implementation status of the above Draft Decree, etc., and will continue discussions for improvement and clarification of the Draft Decree by utilizing relevant international fora, including the WTO Trade in Services Council, in coordination with countries concerned.

PROTECTION OF INTELLECTUAL PROPERTY

<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 is 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

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[2] A separate provision specifies when cross-border transfer of personal data is allowed, therefore, there is some debate as to whether all of these four conditions need to be met for cross-border transfer of personal data.

[3] Regulation of the Minister of Finance No. 34 of 2020

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). The strategy aims to make further improvement in the enforcement of intellectual property rights and reduce intellectual property infringements.

In April 2021, a Memorandum of Cooperation (MOC) in Protection and Enforcement of Intellectual Property Rights was signed between the Japan Patent Office (JPO) and the Viet Nam Directorate of Market Surveillance of the Socialist Republic of Viet Nam's Ministry of Industry and Trade. In November 2021 and November 2022, a seminar was held in Ho Chi Minh City hosted by the JPO and JETRO to provide practical know-how on counterfeit goods control for the officials of the General Department of Vietnam Customs and the Market Surveillance Agency, etc. It is hoped that both countries continue to work together to strengthen enforcement.

3. INDONESIA

NATIONAL TREATMENT

<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.

<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

<OUTLINE OF THE MEASURES>

Indonesia has been imposing various import restrictions on a wide range of products, including rice, salt, iron and steel, textile goods, electrical products, and other items as below, to protect its domestic industries.

- Rice import registration system (Regulation of the Minister of Trade No. 19 of 2014): Allows the importation of rice only for the public food corporation, rice manufacturing importers, or registered rice importers depending on the purpose of importation.
- Import restrictions on salt (Regulation of the Minister of Trade No. 58 of 2012): Allows the importation of salt only for manufacturing importers for retail consumption and for salt manufacturing importers and designated salt importers for industrial use.
- Import restrictions on used capital goods: Regulations were initiated in 2003. In order to protect Indonesia's manufacturing industry, a limited list of items that can be imported for each type of business of the importer of used capital goods (i.e., use, reconditioning, remanufacturing) was made. Thereafter, a decision has been made every one to three years whether to continue allowing such importation. Prior import approval and pre-loading inspections are required for imports of regulated products.
- Import restrictions on steel products: For non-alloy steel, importers are required to be registered and are subject to pre-loading inspections at the place of export (Regulation of the Minister of Trade No. 54 of 2010 and No. 113 of 2015). For alloy steel, pre-loading inspections and quotas control were initiated (Regulation of the Minister of Trade No. 28 of 2014). After the expiration of the above two regulations, in December 2016, regulations were introduced to expand the scope of application to include secondary steel products. With the Regulation of the Minister of Trade No. 22 implemented in February 2018, the customs procedure was simplified by allowing a self-declaration as well as online forms after the goods passed customs, and no longer requiring a technical report from the Minister of Industry for the import license. However, in the Regulation of the Minister of Trade No. 110 (announced in December 2018 and executed in February 2019), certain procedures were introduced again in which it was required to obtain a technical report from the Minister of Industry and to check some actual products after they passed customs. The Regulation of the Minister of Trade No. 3 of 2020, which revised the above Regulation of the Minister of Trade 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 a technical report from the Minister of Industry.
- Textiles / textile products import registration system: In December 2019, the Regulation of the Minister of Trade No. 77 of 2019 required prior import approval (PI-PTI) for the import of approximately 430 items of textiles and textile products. The said regulation has a strong effect of restricting imports, such as not allowing imports for purposes other than the "provision of raw materials and subsidiary materials necessary for captive production" or "meeting the demands of small- and medium-sized companies residing in Indonesia".
- Import restrictions on electrical products: Under the Regulation of the Minister of Trade No. 68 of 2020 (enacted on August 25, 2020 and effective on August 28, 2020), electrical products (such as air conditioners), bicycles, tricycles, and footwear are now subject to the import licensing system. The importation of air conditioners, etc. is limited to holders of a general import license (API-U), and prior import approval (valid for one year) from the Minister of Trade is required. In addition to the need to attach a one-year import plan to the application, importers are required to report monthly on their import performance to the Ministry of Trade. Furthermore, there have been cases where the issuance of import licenses has been delayed by several months, and there have also been cases where a limited number of licenses for the import of air conditioners, etc. had been approved compared to the number of licenses applied for.

In recent years, the moves to collectively manage the import restriction system, which has been established for each item as described above, has gained prominence. The Regulation of the Minister of Trade No. 20 of 2021, which stipulates detailed

regulations for import and export control, was announced on April 1, 2021, and came into effect on November 15, 2021. This regulation is supposed to replace the respective regulations previously applied on a product-by-product basis. Importers importing regulated goods are required to apply electronically to the Minister of Trade for an Import Business Approval through the Indonesia National Single Window System (INSW), a web portal for customs clearance.

<PROBLEMS UNDER INTERNATIONAL RULES>

If the licensed quantity to be imported is limited to a substantial degree, 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, it may also be inconsistent with the Agreement on Import Licensing Procedures in that it lacks WTO notification, that the application prerequisites, examination criteria, and examination period are unclear, and that there may be significant delays in the import approval process.

Although significant delays in import licensing procedures occurred for various goods under the previous system, the current system has not changed the situation of significant delays in import licensing procedures for many products, including steel products and textile products. In addition, import licenses are only granted for quantities far below the amount applied for, which is a constant problem. This practice is nothing short of a serious import barrier, and in addition to violating the Agreement on Import Licensing Procedures mentioned above, it is highly likely to contravene the general abolition of quantity restrictions under GATT Article XI.

<RECENT DEVELOPMENTS>

Based on the Presidential Regulation No. 32 of 2022, the government of Indonesia started implementing the "Commodity Balance System (Neraca Komoditas)" in February 2022, whereby import and export approvals for five commodities (e.g., rice, beef, fishery products) are issued according to the supply-demand balance determined by the government. Furthermore, on May 17, 2022, by the Regulation of the Minister of Trade No. 25 of 2022, which further revised the Regulation of the Minister of Trade No. 20 of 2021, 19 commodity groups, including steel, textiles, plastic raw materials, and electrical products such as air conditioners, were determined to be subject to the issuance of import and export approval from 2023 under the "Commodity Balance System". The importation of these products is subject to SPI (import approval letter), and the issuance of export and import approval letters is based on the supply-demand balance of the commodity as determined by the government. The management of such imports and exports is supposed to be carried out through the National Commodity Balance System (SINAS-NK which integrates and unifies the systems of various ministries and agencies.

However, while the conventional application system ceased operation in December 2022, there have been delays and problems in the operation of SINAS-NK, which corresponds with the new system, causing major disruption in imports. In particular, there have been serious impacts on steel products, as business operators have not been able to file import applications through the system for a considerable period. The Indonesian government is reportedly taking measures such as postponing the operation of the new system for some products, but the future schedule is unknown.

Japan has traditionally been active in expressing its concerns at various WTO committees, such as the Council for Trade in Goods and the WTO / TRIMs Committee, as well as at the TPR meeting with Indonesia, etc. In addition, depending on the state of the industrial damage, Japan has also flexibly exchanged views bilaterally, for example, by making a request to the Indonesian government through its embassy in Indonesia. The Minister of Economy, Trade and Industry, during his meeting with relevant Indonesian ministers, lobbied for the smooth and transparent operation of each import approval procedure.

Japan will continue to closely monitor the transition and operation of the system and put pressure on the Indonesian government to reduce the impact on Japanese products.

<OUTLINE OF THE MEASURES>

In April 1998, the Indonesian Government, under an IMF agreement, announced the 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 implemented export regulations including 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 (surfaced on 4 sides) materials that have cut end area exceeding 4,000 square millimeters. 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) (measures for conservation of exhaustible natural resources), 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 closely monitor these measures.

<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).

(vi) 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. In November 2022, a panel report was released which found that Indonesia's export ban and domestic processing requirement on nickel ore are inconsistent with the WTO agreements (i.e., they do not constitute grounds for exception or justification for export prohibitions or restrictions in violation of GATT Article XI, Paragraph 1) (for more details, see Part II, Chapter 3 (Quantitative Restrictions (Export Restrictions)). In response, in December 2022, the Indonesian government appealed against the Panel's report, and the case is now pending before the Appellate Body.

TARIFFS

∗ 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.

For definitions of tariff, tariff rate, binding ratio, and bound tariff rate, see Chapter 5.1.

<OUTLINE OF THE MEASURES>

The Customs Law and related regulations provide for general tariff rates (import and export duties), special duties (anti-dumping duties and safeguard duties), and procedures for the refund of fines and surcharges. MFN or EPA (the Japan-Indonesia Economic Partnership Agreement (Japan-Indonesia EPA), the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Agreement), or the Regional Comprehensive Economic Partnership (RCEP) (which came into force in January 2023 in Indonesia) tariff rates and other tariff rates are applied to products imported from Japan. In addition, preferential tax treatments (reduction or exemption of customs duties, VAT, and luxury goods sales tax) are applied to imports for environmental, public, and scientific purposes, to temporary imports of small-lot goods, and to imports of raw materials intended for re-export.

Indonesia improved its binding coverage on non-agricultural products to 95.8% as a result of the Uruguay Round. However, Indonesia's simple average bound tariff rate for non-agricultural products was high at 35.8% in 2021. The simple average applied tariff rate for non-agricultural products was 8.0% in 2021, and

among them clothing and transport equipment were especially high, 23.9% and 13.5%, respectively.

<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.

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>

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 spread of COVID-19, in April 2020, import duties on hand sanitizers, disinfectants, masks (other than N95 masks), and pharmaceuticals to be imported for the purpose of protecting against COVID-19 were temporarily exempted [3]. Subsequently, the exemption was lifted for hand sanitizers and disinfectants, etc. under the July 2020 revision[4], and for masks (other than N95 masks) under the October 2020 revision[5], and oxygen concentrators and oxygen generators, etc. were newly added to the list[6], and the exemption was lifted for some pharmaceuticals under the November 2022 revision[7].

ANTI-DUMPING MEASURES

<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 February 2023. 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

<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, additional tariffs would be 150% or more on an ad valorem basis, resulting in the costs for raw material to be 1.8 times as much as before. Therefore, the measure is considered to be inconsistent with Article 5.1 of the Agreement on Safeguards that stipulates that "the safeguard measure is imposed only to the extent necessary to prevent or remedy serious injury and to facilitate

[3] Regulation of the Minister of Finance No. 34 of 2020
http://repository.beacukai.go.id/download/2020/04/24b0a4122ce259f620158035bc24c42e-salinan-pmk-34.pdf
[4] Regulation of the Minister of Finance No. 83 of 2020
https://peraturan.bpk.go.id/Home/Details/140493/pmk-no-83pmk042020
[5] Regulation of the Minister of Finance No. 149 of 2020
https://peraturan.bpk.go.id/Home/Details/148019/pmk-no-149pmk042020
[6] Regulation of the Minister of Finance No. 92 of 2021
https://peraturan.bpk.go.id/Home/Details/172512/pmk-no-92pmk042021
[7] Regulation of the Minister of Finance No. 164 of 2022
https://peraturan.bpk.go.id/Home/Details/231872/pmk-no-164pmk042022

adjustment".

<Recent Developments>

Japan submitted a government opinion during the investigation, and subsequently expressed its concerns at the Safeguard Committee, the Council for Trade in Goods, the TPR meeting with Indonesia, a bilateral consultation for compensation (Article 12.3 of the SG Agreement), etc. Japan has urged the exclusion of Japanese products that are not in competition with Indonesian products. Japan will continue to put pressure on the Indonesian Government to reduce the impact on Japanese products.

<Outline of the Measures>

In October 2020, Indonesia launched a safeguard investigation into apparel products (articles of apparel and closing accessories). Injury was found in February 2021, and the measures were put into effect in November 2021 (for three years; first year: 19,260 to 63,000 Rupiah (about 154 to 505 yen) per garment; second year: 18,297 to 59,850 Rupiah; third year: 17,382 to 56,858 Rupiah).

<PROBLEMS UNDER INTERNATIONAL RULES>

Additional duties are applied to a wide range of products, as the measures cover apparel products in general. As the subject items include items which showed no increase in imports during the period under investigation and items that were not related to the "unforeseen developments" found (increase in imports from China, Viet Nam, Bangladesh, etc.), the determination of causation and injury is inappropriate. Thus, the measures are suspected to be inconsistent with Article 4.2 (b), etc., of the Agreement on Safeguards, which stipulates that the causal link must be demonstrated based on objective evidence.

In addition, during the investigation, the latest trade data (up to June 2020) was requested to the interested parties, yet the period of investigation was set to 2017-2019, in which increased imports and injury were found. According to the statistics, imports of the subject products decreased by approximately 13% year on year in 2020. Although Indonesia was aware of this fact during the investigation, seemingly it arbitrarily recognized an increase in imports. Therefore, the measures are likely to be inconsistent with Articles 2.1, 4.2, etc., of the Agreement on Safeguards, which provide that the findings of an increase in imports and causal link based on objective evidence.

<RECENT DEVELOPMENTS>

Although there are few direct exports from Japan of the subject products, local retail stores of Japanese manufacturers have voiced their concerns that the duties on their purchases (imports from China and other countries) will negatively affect their business profits. Japan will continue to request Indonesia correct the measures.

TRADE-RELATED INVESTMENT MEASURES (TRIMS)

<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. In October 2021, a regulation was issued to increase the local procurement rate for 4G and 5G subscriber equipment to be used in Indonesia from 30% to 35%, with the aim of promoting the domestic information and communication-related equipment industry (Regulation of the Minister of Communication and Informatics No. 13 of 2021). It will become effective 6 months after promulgation.

<PROBLEMS UNDER INTERNATIONAL RULES>

Japan believes that the system of requiring a certain domestic production ratio for target terminals to be sold within Indonesia violates the national treatment obligation under Article III: 4 of GATT and Article 2 of the TRIMs Agreement, and also conflicts with obligations under the Japan-Indonesia EPA.

<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 meeting of the TRIMs Committee held in October 2022 and the meeting of the WTOs Council for Trade in Goods held in November 2022.

<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 expressed its concerns and requested a detailed explanation and correction of the measures at the meeting of the TRIMs Committee in October 2022 and the meeting of the WTO Council for Trade in Goods in November 2022.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

<OUTLINE OF THE MEASURES>

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 TBT about the introduction of the technical regulation system for tin and water pipes.

<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. Although the Indonesian government claims that the objective of the technical regulations 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, the mandatory technical regulations appear 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>

Through bilateral meetings and consultations in Indonesia, Japan has pointed out the problems of the mandatory technical regulations. 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 mandatory technical regulations and encourage improvements through bilateral talks on steel and the like as needed.

TRADE IN SERVICES

* 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, a Presidential Regulation specifies sectors for which the entry of private companies is disallowed, sectors that are open under certain conditions, the equity restriction ratio of foreign companies, etc., for each business type in accordance with the Investment Law. Such a regulation also concerns Mode 3 (commercial presence) in trade in services, as it covers industries including manufacturing and services.

The Presidential Regulation (known as the "Negative List") under the Investment Law has undergone a series of revisions. Changes of the past 10 years or so are summarized below. 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, 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 other areas, including oil/gas mining services on land and design/engineering services in the energy and mineral resources sector as well as warehouses, distributors, etc., in the commercial sector. Under the Negative List revised in May 2016 (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. Law No. 11 of 2020 on Job Creation (Omnibus Law) entered into force on November 2, 2020, amending existing investment-related laws including Law No. 25 of 2007 (Investment Law). In accordance with the Omnibus Law, Presidential Regulation No. 10 of 2021 on the investment business sector came into effect in March 2021 as well, replacing the 2016 Negative List. Compared to the 2016 Negative List, the number of business sectors with specific requirements (such as foreign investment ratio restrictions), business sectors reserved for small and medium-sized companies, etc., and business sectors in which partnerships with them are mandatory have decreased, and it is believed that 100% foreign investment is allowed in sectors no longer included in the Negative List.

Major restrictions on foreign investment are as follows.

(i) TELECOMMUNICATION SERVICES

Under the "Presidential Regulation No. 10 of 2021" on the investment business sector, the establishment of commercial broadcasting organizations, subscription broadcasting organizations, radio community broadcasting organizations, and television community broadcasting organizations is limited to 100% domestic investment, and up to 20% foreign investment is allowed in the business addition or development. 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 continued to require that retail businesses be 100% Indonesian-owned companies. More specifically, stores of less than 1,200 m^2 were regarded as supermarkets and stores of less than 400 m^2 were regarded as mini markets, both of which were limited to 100% domestic investment. Presidential Regulation No. 112 of 2007 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. “Presidential Regulation No. 10 of 2021” on the investment business sector also classifies mini markets as "reserved for micro, small, and medium-sized companies and cooperatives" that are in effect limited to 100% domestic investment, so mini markets continue to be limited to 100% domestic investment.

<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. Discussions are ongoing for further deregulation in line with the general review of the Japan-Indonesia EPA from 2014 onward.

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.

<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

<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. In the Japan-Indonesia officials dialogue held on March 1 and 2, 2022 by the Directorate General of Intellectual Property of Indonesia (DGIP) in cooperation with the Japan Patent Office (JPO), the Japan International Cooperation Agency (JICA), and the Japan External Trade Organization (JETRO), the Indonesian customs explained that there was a precedent for allowing local entities that have capital ties with a right holder to register with the Indonesian customs after confirming documents (e.g., certificate of incorporation) proving that such entity was authorized to manage intellectual property rights. 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.

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 Omnibus Law on Job Creation 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.

<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 obligations”). 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) (e) 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 obligations are not performed may have a problem from the perspective of consistency with Article 27, Paragraph 1 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 Omnibus Law on Job Creation that would revise the various existing legal systems, including the Patent Law, to the Legislative Council in order to promote foreign investments. 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 obligations 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 and licensing are accepted as a mode of implementation, if the procedures based on the said law are steadily carried out, the problem of inconsistency with Article 27, Paragraph 1 of the TRIPS Agreement can be resolved.

In accordance with the enforcement of the Omnibus Law on Job Creation, in February 2021, another Ministerial Order was issued, abolishing the grace period for domestic implementation obligations.

On November 25, 2021, the Constitutional Court of the Republic of Indonesia ruled that the Omnibus Law on Job Creation was conditionally unconstitutional since there was a problem in its lawmaking procedure. In addition, on December 30, 2022, a replacement decree containing the same provisions as the Patent Law part of the Omnibus Law on Job Creation was signed by the President and enacted by the Indonesian government.

On the other hand, in August 2021, the Directorate General of Intellectual Property of Indonesia (DGIP) released a draft amendment to the Patent Law to the public. The draft amendment to

the Patent Law newly establishes Article 20A, which states that the patentee will be obligated to report annually to the Minister on the status of implementation of the patent in Indonesia. If this rule is introduced, there is concern that the burden on applicants will increase. The amendment is expected to enter into Indonesia's national legislative program and begin parliamentary deliberations in 2023.

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

<OUTLINE OF THE MEASURES>

According to the revised Patent Law entered into force on August 26, 2016, in Article 4 (f), "New application of existing and/or known product, and 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 compound," 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 will not 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 formulated as a principle in examination practices of Article 4 (f) of the Patent Law. The guidelines state that inventions related to new medicinal uses of known materials are patentable when claims are described in a specific format (the so-called EPC 2000 type). The guidelines were released at a seminar hosted by the Directorate General of Intellectual Property of Indonesia (DGIP) in November 2021, and have already been put into operation. However, the guidelines are not publicly available on the Directorate General's website.

In the meantime, a draft amendment to the Patent Law was released to the public in August 2021. The amendment deletes Article 4 (f) of the Patent Law. Japan continues to closely monitor the developments regarding Article 4 (f) of the Patent Law.

<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

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 -.

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

In 1985, the Malaysian Government started prohibiting 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. Since then, two tree species have been added, and currently 29 tree species are banned for export. In the State of Sabah, log exports were banned beginning in May 2018 in order to meet the demand for the state's lumber industry and create job opportunities. In January 2022, the measure was withdrawn and log exports were allowed under certain conditions (logs from natural forests may be exported up to 20% of production; logs from artificial forests are unrestricted). The State of Sarawak has implemented export quotas since 1999 to secure a certain share (80% from July 2017 and 60% from July 2020 to June 2022 during the novel coronavirus pandemic) of logs produced in natural forests for in-state processing. It has also implemented export ban on Ramin logs since 1980, and Hollow, Alan and Batu logs since 1993.

<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 closely monitor these measures.

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. In May 2022, the Japanese Chamber of Trade & Industry, Malaysia (JACTIM) asked the Royal Malaysian Customs Department (DDB) and MITI to improve the delay of the refund of import duties on steel products. While the two countries have recognized the issues and made improvements such as clarifying the operations of the system, it is necessary to continue to closely monitor the system in order to ensure that it is operated in a fair and equitable manner, clarify the judgment criteria for import tax exemptions and further streamline 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

* 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. For definitions of tariff, tariff rate, binding ratio, and bound tariff rate, see Chapter 5.1.

<OUTLINE OF THE MEASURES>

The Customs Acts (1967, Act 235) and related regulations provide for tariff rates and special duties (e.g., countervailing duties and anti-dumping duties). MFN or EPA (the Japan-Malaysia Economic Partnership Agreement (Japan-Malaysia EPA), the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), or the Regional Comprehensive Economic Partnership (RCEP) Agreement) tariff rates, etc. are applied to products imported from Japan. In addition, preferential tariff treatments (e.g., exemption of import duties) are applied to imports of machinery, equipment, and raw materials for direct use in the import company's own manufacturing processes.

The simple average bound tariff rate on non-agricultural products in Malaysia in 2021 was 14.9% while there are some high bound tariff rates, including that for electrical equipment (maximum 40%), that for rubber tire for automobiles (40%), and that for clothing (maximum 30%). In addition, the binding ratio for non-agricultural

products in 2021 was 81.9%. Unbound items include tractors (maximum 30%) and automobiles (maximum 30%). The simple average applied tariff rate in 2021 was 5.2%.

<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 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), Malaysia began eliminating tariffs on 201 subject items 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 the subject items including these will be eliminated by 2023.

Due to the implementation of the Japan-Malaysia EPA in July 2006, market access was improved as tariffs for almost all industrial products exported from Japan were removed, within the subsequent 10-year period.

In response to the spread of the COVID-19, on March 24, 2020, the Malaysian Ministry of Finance took measures to temporarily exempt from import duties, sales tax, and excise tax on medical equipment, laboratory equipment, personal protective equipment and disposable products effective March 25, 2020, and on undenatured and denatured ethanol alcohol used for production of hand sanitizer effective March 30, 2020. This measure will remain in effect until the government declares that the COVID-19 is under control.

STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

<OUTLINE OF THE MEASURES>

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.

<PROBLEMS UNDER INTERNATIONAL RULES>

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, the conformity assessment procedures appear 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.

<RECENT DEVELOPMENTS>

Japan expressed its concerns with regard to the conformity assessment procedures. Japan will continue to pay attention to the management of the system.

TRADE IN SERVICES

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

Similar to the New Mining Law of Indonesia, the draft revisions of the Mining Law, one submitted in 2014 and the other re-submitted in 2016 to the Congress of the Philippines, are intended to impose obligations to process raw minerals in the Philippines and export prohibition on raw minerals, etc., and there is a concern that the export restrictions on minerals suspected of being inconsistent with the WTO Agreements are spreading. At this time, these draft revisions have not been enacted, but a similar bill was introduced in the House of Representatives in 2021. Japan will continue to closely monitor developments in the Philippine Congress, and encourage action in accordance with international rules at bilateral consultations and other forums. 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

* 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. For definitions of tariff, tariff rate, binding ratio, and bound tariff rate, see Chapter 5.1.

<OUTLINE OF THE MEASURES>

The Tariff Act, Customs Modernization and Tariff Act, and related regulations provide for tariff rates and special duties (e.g., countervailing duties, anti-dumping duties, safeguard duties, etc.). MFN or EPA (the tariff rates under the Japan-Philippines Economic Partnership Agreement (Japan-Philippines EPA), or the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Agreement) tariff rates, etc. are applied to products imported from Japan.

The simple average bound tariff rate on non-agricultural products in the Philippines in 2021 was 23.5%, and there are high bound tariff rates for particular categories such as textile products (maximum 50%) and electrical equipment (maximum 50%), etc. Moreover, the binding coverage for non-agricultural products in 2021 remained at 61.8%. 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, in 2003, the Philippine Government decided 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 in 2021 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.

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 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 Philippines began eliminating tariffs on 201 subject items 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 the subject items including these will be 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.

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* 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 11th edition of the FINL. In this regard, the Trade Industry minister stated that they wanted to revise the individual law first (Retail Freedom Law that regulates retail), and in December 2021 President Duterte signed a bill to ease foreign investment restrictions in the Retail Freedom Law (enacted in 2000). The current Retail Freedom Law has strict regulations for foreign companies entering the retail industry in the Philippines from the viewpoint of protecting domestic businesses, but the revised law will ease various regulations that have been barriers to entry for foreign companies entering the retail industry in the Philippines.

The following are the main points:

- The amount of paid-in capital will be reduced across the board to 25 million pesos (approx. 57.5 million yen, approx. 2.3 yen to the peso) or more, from 2.5 million dollars (approx. 289.5 million yen, approx. 115.8 yen to the dollar) or more for foreign companies with less than 60% foreign capital and 7.5 million dollars (approx. 868.5 million yen, approx. 115.8 yen to the dollar) or more for foreign companies with 100% foreign capital.
- For foreign companies operating brick-and-mortar stores, the amount of investment in each store will be reduced from $830,000 (approx. 96.11 million yen, approx. 115.8 yen to the dollar) or more to 10 million pesos (approx. 23 million yen, approx. 2.3 yen to the peso) or more.
- Some requirements have been eliminated, such as having at least five years of retail experience, having at least five retail stores or franchises on a worldwide basis, and the parent company's net assets being at least a certain amount.

Also, in 2022, the Public Service Act is expected to be revised. The current Public Service Act, passed in 1936, allows entry into the operation and management of "public utilities" only to Filipinos or companies that are at least 60% owned by Filipinos. However, since the definition of "public utility" was not clear in the act, a wide range of fields have been considered "public utilities," which has created a barrier to entry for foreign companies doing business in the Philippines. The revision to the act will clarify the definition of "public utility."

The following are the main points:

- "Public utilities" refer to electric power transmission and distribution, pipeline transportation systems for petroleum or petroleum products, water supply, sewerage, ports, and public transportation vehicles.
- Restrictions on foreign capital investment will be eased in the sectors of telecommunications, transportation, air transportation, and railroads and subways.

Other regulations on foreign investment in the Philippines are as shown in <Figure I-2-2>.

<CONCERNS>

There have been some improvements in the various restrictions on foreign investment mentioned above. These restrictions do not violate the WTO Agreements as long as they do not conflict with 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 40% under the 11th Foreign Investment Negative List (which came into effect in October 2018).

6. MYANMAR

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