Chapter 1

ISSUES ON TRADE IN GOODS

The economic partnership agreements that have been entered into by Japan are unique in nature for their comprehensiveness. The provisions on trade in goods alone provide, in addition to commitments by the parties to eliminate tariffs, rules of origin to determine the nationality of goods, disciplines on antidumping measures, standards and conformity assessment procedures and bilateral safeguard measures as the safety valve for liberalization undertaken pursuant to the FTAs/EPAs.

Tariffs

Upon entering into an FTA/EPA each country commits to trade liberalization in goods by either an immediate elimination of the tariffs on the goods of the counterparty country upon the entry into force of the agreement or a straight-line reduction of the present tariff rate over a certain number of years. At a time when industrial products are often manufactured through cross-border supply chains, it is important to deepen understanding about tariff elimination and reduction commitments by both Japan and foreign countries under their FTAs/EPAs.

The elimination of tariffs in FTAs/EPAs is regulated by Article XXIV of GATT, which states that tariffs concerning substantially all the trade within the relevant region must be eliminated within a reasonable length of time. Details of this requirement are contained in Part II, Chapter 15 of this Report.

Methods of Eliminating Tariffs

The method of eliminating tariffs in each ETA/EPA is determined by the tariff elimination period, the tariff rate that serves as criteria for elimination (base rate), and the tariff elimination formula set forth for each item.

(1) The tariff elimination period

(a) For Regional Trade Agreements among Developed Countries and Between Developed and Developing Countries

In some agreements, such as in the Singapore-New Zealand FTA, tariffs for all items are immediately eliminated upon the entry into force. Periods for tariff elimination range from immediate elimination (as in the case of many agreements), to ten (10) years (the permitted upper limitation under Article XXIV of GATT), and additional medium-term elimination periods are set at, for example, three (3); five (5); or seven (7) years.

(b) For Regional Trade Agreements between Developing Countries

The tariff elimination period is generally longer in FTAs/EPAs between developing countries. The China-ASEAN agreement sets the period of tariff reduction or elimination for China and the original 6 members of ASEAN at four (4) years (if the tariff rate is under 10%); or five (5) years (if the tariff rate is 10% or higher) or seven (7) years (for sensitive items)

In the case of CLMV (Cambodia, Laos, Myanmar and Vietnam). the period is ten (10) years in principle and thirteen (13) years for sensitive items Under CLMV, up to approximately 4.8% of the number of items of each country are permitted as tariff elimination items exceeding ten (10) years. While the specific number of years for tariff elimination is different for the original 6 members of ASEAN than it is for the CLMV, AFTA sets the range of tariff rates at between 0 - 5%, and provides that tariff elimination commitments should be effectuated in approximately 10 years.

(2) Benchmark for Tariff Elimination (Base Rate)

Although most-favored-nation (MFN) tariff rates at the time of negotiations are usually applied as the base rates that serve as criteria for elimination, there are cases where MFN tariff rates at the time of negotiations are not used as base rates. For instance, in the EPAs that Japan has concluded, if the other parties are countries that have adopted a generalized system of preferences (GSP), GSP tariff rates are used as base rates for items covered by the GSP with some exceptions (these items are removed from the list of items covered by the GSP after the EPA comes into effect). There are also cases where the sensitivity of a product is reflected in the base rate. In the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) and the Japan-Vietnam EPA, tariff rates higher than MFN tariff rates, but not exceeding the WTO bound rates, are used as base rates on such items as steel, steel products, automobile parts, and chemicals. This is because Vietnam insisted on the importance of inviting investment in and protecting investment plans for such industries.

Although FTAs/EPAs represent bilateral or multilateral preferential relations, signatory countries in some cases may voluntarily reduce the most-favored-nation (MFN) tariff rates below the FTA/EPA preferential tariff rates for some items. Therefore, there may be cases where MFN tariff rates are lower than EPA preferential tariff rates. Anticipating such cases, some of Japan's FTAs/EPAs provide that MFN tariff rates shall be at the same rates as ETA/EPA preferential tariff rates when MFN tariff rates are lower than ETA/EPA preferential tariff rates. Based on the view that FTA/EPA tariff rates are preferential and therefore should be always lower than MFN tariff rates, some FTAs such as the EU Chile Association Agreement and the Singapore-India FTA call for an FTA/EPA preferential tariff rate of an item to be reduced or eliminated when its MFN rate is lowered so that the preferential tariff rate always is lower that the MFN tariff rate.

(3) The tariff elimination formula

Basic tariff elimination methods are: (i) the immediate elimination upon the entry into force of the agreement; (ii) phased elimination by equal reductions; (iii) one-time elimination after the maintenance of present tariff rates for several years from the entry into force or until the elimination deadline; and (iv) the phased elimination with a substantial reduction in the

initial year, followed by equal reductions (as was applied to the tariff on automobiles of Thai origin under the Australia-Thailand agreement).

In many regional trade agreements the tariff elimination formula and period are generally based on the sensitivity of a product. NAFTA's tariff elimination periods are: (i) immediate elimination; (ii) four years; (iii) nine years; and (iv) fourteen years. It also provides a tariff elimination method for exceptional items individually.

In some agreements, the applicable tariff elimination periods and formulas are automatically determined by base rates. For example, the Australia-New Zealand Closer Economic Relations Trade Agreement ("ANZCERTA") determined to eliminate tariffs within five years if the base rate exceeded 5% and to eliminate them immediately if the base rate was 5% or less. The China-ASEAN FTA sets five methods of tariff elimination, depending on the base rate.

In addition, there are methods unique to regional trade agreements between developing countries which include an early harvest of partial tariff elimination and reduction in advance. For instance, in the India-Thailand FTA, an early harvest (tariff reductions prior to completion of negotiations) has been in effect since September 2004 in connection with 82 items, such as home electric appliances and automobile parts, and the tariffs have already been eliminated.

Exceptional Items in Tariff Elimination

Exceptions to tariff elimination can be classified as follows:

(i) Items subject not to tariff elimination but to reduction;

(ii) Items subject to a tariff quota;

(iii) Items that are exempted from tariff elimination or reduction upon the entry into force of the agreement and specified as items to be renegotiated in the future (renegotiation items);

(iv) Items subject to commitments to prohibit introduction of a new tariff or tariff increases (standstill) (some agreements, including the U.S.-Jordan FTA provide for the prohibition of new tariffs without explicitly prohibiting tariff increases); and

(v) Items not subject to any tariff reduction.

There are also cases where a partypromises to offer most-favored-nation treatment to the other partywith regard to tariff rates, which is often seen in the service chapter of FTAs. The U.S.-Peru FTA, which was concluded in December 2005, for instance, provides that if Peru promises, in an FTA/EPA with a third country, to offer lower tariff rates on some agriculture, forestry, and fishery products (such as beef, pork, milk, butter, and other prepared food stuffs) than the preferential tariff rates Peru promised to offer to the United States, the preferential rates offered to the third country shall apply to the United States.

Related Provisions

(a) Export Processing Zones

The tax exemption systems in export processing zones, often explicitly provided for in FTAs/EPAs, is frequently considered to be in breach of the WTO Agreement on Subsidies as export subsidies. However, such systems conform to WTO requirements from an *e contrario* interpretation of Footnote 1 of Article 1.1(a)(1)(ii), paragraph (i) of Annex I, and Part I of Annex III of the SCM Agreement.

(b) Export Duties

Paragraph 1 of Article XI of GATT explicitly excludes duties, taxes and other charges. It is thus considered that export duties are not subject to the disciplines under the WTO Agreement. However, as export duties have a trade distortion effect, EPAs which have been entered into by Japan have introduced strict restraints, exceeding those of the WTO Agreement. For example, the Japan-Singapore EPA and the Japan-Switzerland EPA (both Article 16) provide for the elimination of export duties. In addition, the Japan-Philippines EPA (Article 20) provides that both countries will use their best efforts to eliminate export duties.

Rules of Origin

Background of the Rules

Rules of origin are rules under domestic laws and regulations or FTAs which are used to assess the "nationality" of internationally traded goods. They can be generally classified into those applicable to preferential sectors and those applicable to non-preferential sectors. Those applicable to non-preferential sectors are subject to the WTO Agreement on Rules of Origin, and are currently being discussed (*see* Part II, Chapter 9 of this Report on Rules of Origin for details).

FTA/EPA rules of origin purport to assess the originating goods of FTA/EPA contracting parties, and to prevent a preferential tax rate under the relevant FTA/EPA from being applied to goods which are substantially produced in a non-contracting partyand then imported to a contracting party through the other contracting party (prevention of circumvention).

Overview of Legal Disciplines

Rules of origin under FTAs are, in general, comprised of : (i) rules of origin; and (ii) origin certification procedures.

1. Rules of Origin

Rules of origin are generally comprised of (a) rules of origin criteria to determine the origin of goods; (b) 'provisions adding leniency' in the application of the rules of origin assessment process; and (c) provisions to prevent circumvention from a non-contractingparty.

i) Rules of Origin Criteria

The commonly adopted criteria to determine the origin of goods are:

(A) Wholly Obtained Criterion

The goods must be "wholly-obtained" within the contracting party. This criterion applies mainly to agricultural products and minerals (for example, the cow that was born and raised in the relevant country, iron ore that was extracted from a mine in the relevant country).

(B) Substantial Transformation Criterion

This criterion, applied to production/processed goods, requires that the content be substantially produced/processed within the contracting party to an extent sufficient to grant originating status to such goods which use imported raw materials (non-originating goods) from a non-contracting party. Substantial transformation is usually calculated using one of the following methods:

(a) CTC Rule: Change in Tariff Classification Rule

Under this rule, if the tariff classification of non-originating raw material and the tariff classification of the goods produced from such non-originating raw material differ upon production and processing within contracting parties' countries, the goods will be deemed to have undergone substantial transformation and will be granted originating status. The required degree of transformation is determined by the number of digits of the changed tariff classifications. A change in the first two digits (chapter) of the tariff classification number is referred to as CC (Change in Chapters), a change in the first four digits (heading) of the tariff classification number is referred to as CTH (Change in Tariff Headings), and a change in the first six digits (sub-heading) of the tariff classification number is referred to as CTSH (Change in Tariff Sub-Headings). The earlier the pre-transformation raw material is involved in the production process of such goods, the more the rule will require the implementation of substantial production and processing within the contracting parties' countries, and thus the more difficult it will be to obtain originating status. Generally, CTSH is the rule under which it is the easiest to obtain originating status.

(b) RVC Rule: Regional Value Content Rule

Under this rule, the value added by the process of implementing the procurement, production and processing of goods within the contracting parties' countries is converted into an amount, and if that amount exceeds a certain reference threshold amount, substantial transformation will be deemed to have taken place and originating status will be granted to the goods. Under this rule, the higher the threshold, the more difficult it is to obtain originating status. This rule is considered less burdensome than the CTC rule with respect to management of procurement and plant location decisions. However, the RVC rule poses significant burdens relating to collection and organization of detailed accounting data when evidencing the originating nature of goods, and obligations to disclose cost information to customers procuring such goods.

(c) SP Rule: Specific Process Rule

Under this rule, substantial transformation is deemed to have occurred if certain production and processing activities occurred within the contracting parties' countries, thereby granting originating status to the goods. This designates originating status processes that cannot be applied by changes in the tariff classifications. Examples of adoption of this rule can be seen in some textile products, agricultural products, semiconductors, machines such as copying machines, etc.

FTAs/EPAs usually stipulate the details for determining originating goods status as a result of substantial production/processing further to the three criteria described above. In addition, using these criteria, specific rules are generally prescribed for each item separately as "product-specific rules."

ii) Leniency Provisions

Various types of leniency provisions are set forth in order to facilitate the satisfaction of the originating status threshold. Major leniency provisions include:

(A) Accumulation

If parts and raw materials originating in the other party of FTA are imported by the relevant country and used in the production of other goods, such parts and raw materials are deemed to be of the relevant country's own origin. This has the effect of increasing exports of the exporting country's own products and in turn, promoting intra-regional trade and division of labor among the contracting parties.

(B) Rollup

In calculating the qualifying value-added amount of goods, if the primary material has acquired originating status, the non-originating portion of such primary material may also be rolled up and counted toward (*i.e.,* cumulated with) the originating material.

(C) Tracing

In calculating the qualifying value-added amount of the goods, if the primary material is non-originating material, the originating portion of such primary material may be counted toward (*i.e.* cumulated with) the originating material.

(D) *De Minimis*

If the relevant goods are subject to the CTC rule, and such goods were produced using non-originating raw material but did not result in a change of tariff classification sufficient to meet the applicable rules of origin and could thus not acquire originating status, originating status would nonetheless be granted if the percentage of such non-originating material is not more than a certain percentage of the price or weight of the goods. In other words, *de minimis* non-originating material may be disregarded under this rule.

iii)Provisions on Prevention of Circumvention from a Non-contracting Party

(A) Provision on Minor Processing in Respect of which Originating Status is Not Granted

This is a safety net provision, stating that goods will not be considered originating goods if such goods seemingly satisfy the applicable product-specific rules, but in fact were not substantially produced or processed within the contracting party.

(B) Consignment Conditions

This provision states that goods will not lose their originating status as a result of minor processing thereof (*i.e.*, trans-shipment, or preservation of the goods), even if the vessel carrying the goods stops at the port of a non-contracting partyfor, *inter alia*, logistical and transportation reasons.

(a) Origin Certification Procedure

The preferential origin certification systems in FTAs/EPAs can be generally categorized to two types: third-party certification system and self-certification system. The self-certification system can be divided into three categories: self-certification by approved exporters, self-certification by exporters, and self-certification by importers.

i. Third Party Certification System:

This is a system under which a certificate is issued to an exporter by the authority of the exporting country or the agency designated by the authority. This approach is used in Japanese EPAs and AFTA (ASEAN Free Trade Area; a free trade agreement by 10 ASEAN member countries).

Features

- The authority of the exporting country takes measures concerning the obligations of the receiver of a certificate (record keeping, etc.) and appropriate penalties or sanctions.
- Requests for verification from a customs house of the importing country are to be dealt with by the authority of the exporting country.
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ii. Self-Certification System:

(i) Self-certification by approved exporters

Exporters approved by the authority of the exporting country produce a certificate. This system is mainly used by the EU. The system has also been introduced in the Japan-Switzerland EPA, which came into effect in September 2009.

Features

- The authority of the exporting country takes measures concerning the obligations of the approved exporters (record keeping, etc.), and appropriate penalties or sanctions.
- Requests for verification from a customs house of the importing country are to be mainly dealt with by the authority of the exporting country.

(ii) Self-certification by exporters

- Exporter of the exporting country prepares a certificate (requirements are provided for under domestic laws). This system is used in the NAFTA, KOREA-Chile FTA, Australia-Chile FTA, etc.

Features
- The authority of the exporting country takes measures concerning the obligations of the exporters (record keeping, etc.).
- Requests for verification from a customs house of the other country are to be mainly dealt with by the authority of the exporting country.

iii. Self-certification by importers

Importers prepare certificates. This approach is used in the U.S.-Australia FTA, etc.

Features

- The entities that prepare certificates of origin are mainly importers. The authority of the importing country takes measures concerning the duties of such importers.

  Verification of certificates is basically conducted for the importers by the authority of the importing country. Or, verification is to be conducted on the exporters who provided information on the originating goods to the importers.

FTA/EPA Rules of Origin in Japan and Globally

A) FTA/EPA Rules of Origin in Japan

The rules of origin under the eight (8) EPAs Japan has entered into have similar requirements, but differ slightly.

1. Japan-Singapore EPA

The first EPA which Japan entered into, the Japan-Singapore EPA, was signed in January 2002 and entered into force in November of the same year. It has the minimum requisite provisions, following the rules of origin adopted under Japan's generalized system of preferences (GSP). However, the EPAs subsequently entered into by Japan discussed in (ii), (iii) and (iv) below cover a wide range of matters (*i.e.*, including provisions on inspection under which the relevant authority of the importing country may request information and

verification visits to the exporting country). As such additions make the rules of origin easier to apply, and because Singapore so suggested, negotiations were initiated to review the Japan-Singapore EPA in April 2006, and the EPA was amended in order harmonize it, to a certain extent, with the other more user-friendly EPAs entered into by Japan. The amended agreement entered into force in September 2007 and the product-specific rules of origin therein, in principle, permit for options between the CTC rule and the RVC rule, as permitted in the Japan-Malaysia EPA. As for the RVC rule, its threshold is 40%. The issuance of certificates of origin is done by third-party certification by the relevant party's Chamber of Commerce.

2. Japan-Mexico EPA

This EPA was signed in September 2004 and entered into force in March 2005. This EPA, substantively follows NAFTA, and has relatively detailed provisions compared to other Japanese EPAs. The change in tariff classification rule is the basis of the product-specific rules of origin memorialized in the agreement. The value-added threshold varies depending on the products. The major threshold of value-added is 50%. The certificate of origin is issued through third party certification by the relevant party's Chamber of Commerce.

3. Japan-Malaysia EPA

This EPA was signed in December 2005 and entered into force in July 2006. This EPA was drafted based on Japan's experience with the Japan-Singapore EPA and the Japan-Mexico EPA. Rules of origin in the Japan–Malaysia EPA became a model for drafting rules of origin in subsequent negotiations with ASEAN countries. The Japan-Malaysia EPA generally incorporates the basic requirements (most of the items listed in (2)(a) and (2)(b) above) concerning the rules of origin and certification procedures, which are relatively simple. The product-specific rules of origin are basically structured to permit the parties to choose either the RVC rule or the CTC rule ("Co-equal" rules.). As for the RVC rule, its threshold is 40%. The certificate of origin is issued through third-party certification by the relevant party's Chamber of Commerce.

4. Japan-Philippines EPA

This EPA was signed in September 2006 and entered into force in December 2008. It is essentially the same as the Japan-Malaysia EPA. Minor differences exist in the product-specific rules of origin. As for the value added rule, its threshold is 40%.

5. Japan-Chile EPA

This EPA was signed in March 2007 and entered into force in September 2007. It was written based on experiences with Japan's bilateral EPAs with the ASEAN member countries and Mexico. The Japan-Chile EPA provides for value-added thresholds that differ depending on calculation methods for value-added standards. If the value-added calculation is based on price of non-originating materials (build-down method), the value-added threshold is 45%. If the value added calculation is based on price of originating materials as part of the FOB price of products (build-up method), the value-added threshold is 30%.

6. Japan-Thailand EPA

This EPA was signed in April 2007 and entered into force in November 2007. Basically, it is the same as the Japan-Malaysia EPA. Regarding product-specific rules, however, unlike the Japan-Malaysia agreement, it introduces the specific process rule for chemicals upon the request of Thailand. As for the value-added rule, its threshold is 40%.

7. Japan-Brunei EPA

This EPA was signed in June 2007 and is essentially the same as the Japan-Malaysia EPA. Minor differences exist in the product-specific rules of origin. As for the value-added rule, its threshold is 40%.

8. Japan-Indonesia EPA

This EPA was signed in August 2007 and is essentially the same as the Japan-Malaysia EPA. Minor differences exist in the product-specific rules of origin. As for the value added rule, its threshold is 40%.

9. Japan-ASEAN EPA

This EPA was signed in April 2008 and entered into force in December the same year. It is Japan's first multilateral EPA. This EPA is expected to enhance the ASEAN production network by liberalizing the production flow that bilateral EPAs cannot cover. As for the product- specific rules of origin, not less than 40% of the regional value content or a CTC at the 4-digit level are applied in principle, unless otherwise specific rules are provided in the Annex.

10. Japan-Vietnam EPA

This EPA was signed in December 2008 and entered into force in October 2009. Its structure is basically the same as that of the Japan-ASEAN EPA.

11. Japan-Switzerland EPA

This EPA was signed in February 2009 and entered into force in September 2009. It is Japan’s first EPA with an advanced country in the West. With respect to certificates of origin, the Japan-Switzerland EPA has introduced a system of self-certification by approved exporters, in addition to the third party certification system. This marks the first usage of self-certification by approved exporters for Japan’s EPAs.

B) FTA Rules of Origin Globally

Globally, FTA rules of origin can generally be grouped into three categories: the U.S. Type (adopted by the U.S.); the European Type (adopted by the EU); and the Asian Type (adopted by countries in the Asia region).

1. U.S. Type

This approach is based on the CTC rule and incorporates the RVC rule with respect to key items. In connection with the value added computation method, the U.S. Type approach requires a more precise calculation for originating status by using the “cost method” and the

"originating material accumulation method." Self certification is the certification method. (Please refer to the column below for further details on NAFTA Rules of Origin.)

2. European Type

This approach is based on the SP rule and the RVC rule of the EEA agreement (regional economic agreement among European Economic Area, EU member countries, Iceland, Liechtenstein and Norway). The authorized exporter approach is the certification method.

3. Asian Type

This approach is based on the RVC rule of AFTA (ASEAN Free Trade Area (*i.e.*, the FTA among the ten member countries of ASEAN)). It is under review and, with respect to some products, may incorporate the same system as that of Japan's bilateral EPA. It has been agreed that either the RVC rule or the CTC rule will prevail. Most countries adopt governmental certification (third party organization certification) as the certification method, but some countries use both the authorized exporter system and the self certification system, depending on the FTA.

Column ♦ Rules of Origin of NAFTA

The rules of origin under NAFTA, which was signed in 1992 and entered into force in 1994, are distinctive because NAFTA introduced extremely detailed rules regarding the criteria for originating goods, while generously providing measures to alleviate industry costs in respect to certification. This approach became a model for the Rules of Origin in subsequently executed FTAs (particularly in the Americas).

Summary

In principle, the rules of origin of NAFTA adopt either CTC (as in the US-Canada FTA), or RVC with either CTC or independently for certain items (*i.e.*, automobiles, and consumer electronics). The formula for the calculation under RVC is determined by either of the following two methods: the "transaction value method," in respect of which calculations are made based on the transaction value of the goods; and the "net cost method," in respect of which detailed calculations are based on material cost or personnel cost. In addition, under the provisions with respect to accessories, shipping containers and packaging; handling of trans-shipment in a third country; and treatment of indirect material, application costs for enterprises are alleviated and convenience is enhanced by simplifying the calculations and determinations; and under certain conditions, permitting a stopover in a non-contracting party for customs reasons. Further, the self-certification system is used (under the self-responsibility principle) for the purpose of minimizing the industry's origin certification costs.

Product-Specific Rules

1. Textiles

In order for textile products to be recognized as being of NAFTA origin, all processes, starting from the production of yarn, must be conducted in the NAFTA region, except with respect to those items described in Chart 1-1. However, NAFTA permits the application of a less strict rule of origin by establishing a threshold amount for qualified products for each year

(which is in effect a "tariff quota" approach employing the rules of origin).

Chart 1-1 Rules of Origin of Textile Products under NAFTA

Production of Yarn	Production of Textiles	NAFTA Originating status of Apparel Product
Within the region	Within the region	Yes
Outside the region	Within the region	No
	Outside the region	No

2. Automobiles

With respect to automobiles, in addition to the change in the heading (first four digits) of the tariff classification, achievement of a certain intra-regional value content ratio is required to grant originating status. The intra-regional value content ratio to be achieved was 50% when NAFTA first entered into force, and was gradually increased to 62.5% (net cost method).

Antidumping and Countervailing Duty

Background of the Rules

In recent years, upon entering into FTAs, non-application of trade remedy measures (including antidumping (AD) measures permitted under the WTO Agreement) within the relevant region and additional disciplines in excess of those under AD agreements often have been incorporated in the FTAs. The reason for the incorporation of such provisions into FTAs since the 1990s is to prevent the enhancement of market access among the FTA contracting parties' countries from being frustrated by abuse of trade remedy measures, and to further enhance regional and bilateral free trade by disabling AD measures and replacing them with the competition policy articulated in the FTA contracting parties' countries.

Relationship with WTO Agreement

The non-application of AD measures in FTAs/EPAs presupposes the full integration of the domestic markets of the contracting parties regarding trade in goods, and the establishment of free trade (such as the complete elimination of tariffs). Therefore, it is consistent with the purpose of the WTO. Meanwhile, stricter disciplines than provided by the WTO for procedural and substantive aspects of the regulations in respect of AD measures (WTO-plus disciplines), overlap with proposals made in the process of negotiating WTO AD rules (which are aimed at stricter disciplines). Therefore, it is possible to view such measures as a furtherance of disciplines for AD agreements implemented through bilateral FTAs/EPAs, which are stricter than under the WTO Agreement. However, there is concern that special treatment in respect of applying AD measures under rules stricter than those of the WTO in relation only to FTA/EPA parties' countries may be, depending on the content, in conflict with the principle of most-favored nation treatment under GATT.

Overview of Legal Disciplines

Since the 1990s, while the regulation of AD measures in FTAs have been diversified and often amended, they can be grouped into the following three major categories (the provisions on countervailing duty measures follow the same grouping):

a) Reaffirmation of Rights and Obligations under the WTO and AD Agreements

In addition to provisions in FTAs/EPAs explicitly confirming rights and obligations under the WTO and AD Agreements, some agreements substantively allow the application of AD regulations under the WTO Agreement within the relevant region, by providing in the general provisions of the relevant FTA/EPA that the exercise of rights under GATT will not be prevented. The Japan-Singapore EPA (and many other FTAs/EPAs) falls under this category.

b) Stricter Disciplines than the WTO or AD Agreements

Some FTAs executed by Singapore introduce stricter disciplines than the WTO Agreement on AD measures. For example, the Singapore-New Zealand FTA: (i) raises the *de minimis* margin of the export price below which AD duties cannot be imposed from 2% to 5% (Article 9, paragraph 1(a)); (ii) applies such stricter "*de minimis*" rule to review cases as well as new investigation cases (Article 9, paragraph 1(b)); (iii) increases the volume of dumped imports which are regarded as negligible from 3% to 5%, and immediately terminates investigation if the import share falls below 5% (Article 9, paragraph 1(c)); (iv) provides that the time frame for determining the volume of dumped imports which can be regarded as negligible (mentioned in (iii) above) shall normally be at least 12 months (Article 9, paragraph 1(d)); and (v) reduces the period of imposition of the AD duties from five (5) years to three (3) years (Article 9, paragraph 1(e)). And the Korea-India trade agreement applies the lesser duty rule (which, when determining AD duty, makes it mandatory to apply a tariff rate sufficient to remove damage (lower than the dumping margin), if the damage to the domestic industry can be removed without imposing a tariff equivalent to the dumping margin) (Article 217), prohibits zeroing (See "Vol. 1, Chapter 2 Anti-Dumping") (Article 218), and prohibits re-investigation within one year after abolition of the measures (Article 219).

In addition to such stricter substantive disciplines, some FTAs provide stricter procedural disciplines than exist in the WTO Agreement. For example, some FTAs provide that the investigative authority which received a relevant petition shall "promptly" notify the counterparty (*i.e.*, the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)) and provide the counterparty government with an opportunity for prior consultation before applying the relevant AD measures (*i.e.*, the Korea-U.S. Free Trade Agreement (KORUSFTA)). Others provide that acceptance of price undertaking is preferable to the imposition of AD duties (*i.e.*,, the Thailand-Australia Free Trade Agreement (TAFTA)).

c) Provisions on Non-Application of AD Measures Between Contracting Parties' Countries

In 1990, ANZCERTA ceased the application of AD measures in bilateral trade relations and simultaneously amended and reorganized domestic competition laws to abolish AD measures in respect of the counterparty, thereby making AD measures mutually

inapplicable. In 2003, the Canada-Chile FTA (Articles M-01, 03) also abolished the use of AD measures against intra-regional trade, and introduced certain competition policy provisions to address dumping exportation. However, FTAs which provide non-application of AD measures are the exception. Most FTAs confirm the rights and obligations between the contracting parties' countries under the WTO Agreement, and allow for the imposition of AD measures as well as countervailing duty measures as "remedies" against injury to a domestic industry due to dumping or illegal subsidies.

Special provisions regarding AD measures or non-application of AD measures were considered in the process of executing EPAs that Japan has entered into. In the report by a study group on the Japan-Singapore EPA (September 2000), an option was proposed which permitted a mutual exemption from applying AD measures, subject to the creation of a cooperative mechanism in competition policy. At the same time the possibility of stricter disciplines than those under the current WTO AD Agreement was considered, such as an increase of the *de minimis* threshold, the import volume which can be regarded as negligible, or the shortening the duty imposition period. However, certain issues were pointed out (such as the lack of a comprehensive competition law in Singapore at that time, concern about the need to protect domestic industries, and the possible adverse effects on the WTO's Doha Round negotiations caused by the low level of disciplining AD rules in EPAs), and as a result, the Japan-Singapore EPA confirmed the rights and obligations in respect of AD measures under the WTO Agreement (Article 14, paragraph 5(b)). Other EPAs that Japan has entered into also confirm the right to make AD measures consistent with the WTO Agreement.

Although not included in the agreement, upon the signing of the Japan-Singapore EPA (January 2002), joint declarations at the ministerial level were issued expressing concern regarding the abuse of AD measures, urging restraint in imposing AD measures, and confirming cooperation in more strictly disciplining AD measures than in the WTO Agreement (paragraph 2). The joint declaration upon the signing of the Japan-Mexico EPA (September 2004) also confirmed the importance of cooperating with more strictly discipline AD measures in the process of WTO negotiations (paragraph 12). The Japan-Mexico EPA (Article 11(b)) and the Japan-Malaysia EPA (Article 16 (b)(ii)) explicitly provide that AD duties will not be included in customs duty (which is the subject of a reduction or elimination of tariffs).

Chart 1-2 Summaries of Provisions of FTAs and EPAs on AD and Countervailing Duties

	Provisions on AD Duties	Provisions on Countervailing Duties
Japan-Singapore	Cooperation toward more strictly regulated AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreement (preamble), intra-regional applicability (Article 14, paragraph 5(b)).	
Japan-Mexico	Cooperation toward more strictly regulated AD measures of the WTO (joint statement). Reaffirmation of rights and obligations under the WTO Agreement (Article 167), intra-regional applicability (Article 11(b)).	
Japan-Malaysia	Reaffirmation of rights and obligations under the WTO Agreement (Article 11, paragraph 1), intra-regional applicability (Article 16 (b)(ii)).	
Japan-Philippines	Reaffirmation of rights and obligations under the WTO Agreement (Article 11, paragraph 1), intra-regional applicability (Article 18, paragraph 4(b)).	
Japan-Chile	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regional applicability (Article 28, paragraph (d) (ii)).	
Japan-Thailand	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regional applicability (Article 15, paragraph (b) (ii)).	
Japan-Indonesia	Cooperation toward more strictly regulating AD measures of the WTO (joint statement), intra-regional applicability (Article 20, paragraph 4 (b)).	
NAFTA	A bilateral panel may be established in connection with the final determinations of AD and countervailing duties (Chapter Nineteen).	
U.S.-Singapore	Reaffirmation of rights and obligations under the WTO Agreement (Article 1.1). Intra-regional applicability.	
U.S.-Chile	Retaining of rights and obligations under the WTO Agreement (Article 8.8). Intra-regional applicability.	
U.S.-Jordan	Reaffirmation of rights and obligations under the WTO Agreement (Article 1). Intra-regional applicability.	
U.S.-Israel	Exports from the contracting party countries to the FTA which entered into force and effect before January 1, 1987 (applicable only to the U.S.-Israel FTA in 1985) will not be subject to accumulation (Uruguay Round Agreements Act, Section 222 (e)).	
U.S.-Korea	Retain rights and obligations under the WTO Agreement; notification and consultations before initiating an investigation; undertakings on price and quantity (Article 10.7), establishing a Committee on Trade Remedies to exchange information, oversee implementation, and provide a forum to discuss other relevant topics including issues relating to the WTO Doha Round Rule negotiations (Article 10.8).	
Canada-Chile	Intra-regionally inapplicable from the date on which the tariff of both parties is eliminated or January 1, 2003, whichever comes first (Articles M-01, 03).	Provides inapplicability of AD rules but does not provide inapplicability of countervailing duties, and is intra-regionally applicable. Also has a provision on negotiation toward elimination of countervailing duties (Article M-05).
EC-Mexico	Confirmation of rights and obligations arising from the WTO Agreements (Article 14). Intra-regional applicability.	
Singapore-EFTA	Intra-regionally inapplicable (Article 16).	Disciplined by GATT Article VI and the WTO SCM Agreement. Intra-regional applicability (Article 15).

	Provisions on AD Duties	**Provisions on Countervailing Duties**
Singapore-Australia	Reaffirmed commitment to the provisions of WTO Agreement on AD, stricter disciplines for investigation period, and duty imposition rules (Article 8). Intra-regional applicability.	Reaffirmation of commitment to abide by the provisions of WTO SCM Agreement, and agreement to prohibit export subsidies (Article 7). Intra-regional applicability.
Singapore-New Zealand	Intra-regional applicability. Greater discipline on the imposition requirements (*de minimis* margin, accumulation), investigation period, and applicable period (Article 9).	Reaffirmation of commitment to abide by the provisions of the WTO SCM Agreement, and agreement to prohibit export subsidies (Article 7). Intra-regional applicability.
Singapore-India	Intra-regional applicability. Provides notification upon initiation of investigation, exchange and use of information, and conditions for considering the WTO Committee on AD (Article 2.7).	Reaffirmation of commitment to abide by the provisions of WTO SCM Agreement (Article 2.8). Intra-regional applicability.
Singapore-Jordan	Intra-regional applicability. Stricter disciplines for imposition requirements (*de minimis* margin, accumulation), investigation period, applicable period and calculation method upon review (Article 2.8).	Governed by Article VI of GATT and the WTO SCM Agreement. Intra-regional applicability (Article 2.6).
Singapore-Korea	Maintenance of rights and obligations under the WTO Agreement on AD, stricter disciplines for principles of imposing AD duties (Article 6.2). Intra-regional applicability.	Governed by Article VI of GATT and the WTO SCM Agreement (Article 6.3). Intra-regional applicability.
Thailand-Australia	Reaffirmation commitment to the provisions of the WTO Agreement on AD, and extension of reasonable consideration to price undertakings (Article 206). Intra-regional applicability	Confirmation of compliance with the WTO SCM Agreement (Article 207). Intra-regional applicability
Thailand-New Zealand	Retaining of rights and obligations under the WTO Agreement on AD, while mindful of Article 15 (special consideration for developing country members) (Article 5.1). Intra-regional applicability.	Retaining of rights and obligations under the WTO SCM Agreement (Article 5.2). Intra-regional applicability.
Australia-New Zealand （ANZCERTA）	Abolished disciplines for AD on July 1, 1990 and introduced competition law. Intra-regionally inapplicable (protocol dated August 18, 1988).	Maintenance of the obligations under agreements on subsidies such as Article VI, etc. of GATT (Article 16). Intra-regional applicability.
P4 (Singapore, Brunei, New Zealand, Chile)	Maintenance of rights and obligations under the WTO AD and SCM Agreements (Article 6.2). Intra-regional applicability.	

	Provisions on AD Duties	Provisions on Countervailing Duties
Korea-EFTA	Endeavoring to refrain from initiating AD investigation; notification and consultations before initiating an investigation; applying the "lesser duty" rule; reviewing the necessity of extension of AD measures five years after the entry into force of the Agreement; and thereafter, biennial reviews (Article 2.10)	Notifying before initiating and allowing for 30 days for mutually acceptable solution; consultation within 10 days from notification. (Article 2.9)
Korea-Chile	Maintenance of rights and obligations under the WTO AD and SCM Agreements (Article 7.1). Intra-regional applicability.	

Safeguards

Background of the Rules

(a) Bilateral Safeguard Measures Under FTAs/EPAs

Most FTAs and EPAs provide bilateral safeguard measures which apply to imports of products from the other party and which are covered by, *inter alia*, tariff concessions. These measures allow for the temporary withdrawal of the commitment to eliminate or reduce tariffs under the relevant FTA/EPA, returning to most-favored nation GATT tariff levels as an emergency measure if serious injury to the domestic industry, or threat thereof, occurs due to an increase in imports resulting from the elimination or reduction of tariffs under the agreement. They also provide the substantive and procedural rules regarding investigations and imposition of safeguard measures. Bilateral safeguard measures function as a type of safety valve, enabling the parties to make commitments for a reduction in or elimination of tariffs for more items, including sensitive items, in the process of negotiation in connection with liberalizing FTAs/EPAs between them. So they are an important component in the FTA/EPA negotiation process.

(b) Types of Bilateral Safeguard Measures

Bilateral safeguard measures may be grouped into the following four categories based on their nature: (1) those mostly governed by the WTO Agreement (i.e., U.S.-Australia FTA, U.S.-Singapore FTA, Japan-Singapore EPA, Japan-Mexico EPA, Korea-Singapore FTA and Chile-ASEAN FTA); (2) those mostly governed by Article XIX of GATT (*i.e.,* AFTA, Australia-New Zealand EPA); (3) those having no general bilateral safeguard systems (*i.e.,* Korea-Chile FTA, (although the Korea-Chile FTA does contain safeguards on agricultural products)); and (4) those of the European type, which allow for the imposition of safeguard measures under certain conditions (*i.e.*, allowing the imposition of safeguards when there is injury to the industry which might result in a worsened local economy, or when economic, social or environmental issues arise) (EFTA, EU-Mexico FTA). All bilateral safeguard measures under Japan's EPAs are fall under category (1). Following is a summary of the characteristics and specific examples of bilateral safeguards, with a focus on the first type.

Overview of Legal Disciplines

(a) Characteristics of Bilateral Safeguard Measures

(i) Restrictions on Tariff Increase

Bilateral safeguard measures are fundamentally different from safeguard measures taken under the WTO Agreement in that the imposition of bilateral safeguard measures is mostly restricted to cases where the elimination or reduction of tariffs based on ETAs/EPAs results in an increase in imports, while WTO safeguard measures can be taken in any circumstances that were unforeseeable during the WTO round of negotiations.

The WTO Agreement on Safeguards permits quantitative restrictions, in addition to tariff measures, to be imposed on goods (Article 5, paragraph 1). In contrast, bilateral safeguard measures under FTAs/EPAs often permit only increases in customs duty. In addition, while the WTO Agreement on Safeguards does not have any special provisions on the permissible extent to which tariffs may be increased, bilateral safeguard measures often provide for suspension of tariff reduction under the FTAs/EPAs or increase of the tariff rate up to the then most-favored-nation rate in respect of import duties (by lowering the rate of either the then most-favored-nation import duties as of the time of the bilateral safeguard measure or as of the day before the agreement entered into force). The rationale for this is that bilateral safeguard measures are merely safety valves against trade liberalization under bilateral FTAs/EPAs, and may be permitted only to the extent of the liberalization (or tariff reduction) required there under.

(ii) Regulations of Imposition Requirements and Measures

In light of the aim of FTAs/EPAs to establish free trade zones through the elimination of tariff and non-tariff measures, disciplines for bilateral safeguard measures under FTAs/EPAs are often stricter than they are in the WTO Agreement on Safeguards. Examples include provisions restricting events triggering the imposition of safeguard measures to an absolute increase in import, provisions restricting the application of bilateral safeguard measures to a certain transition period, provisions setting the maximum limit of the imposition period to a period shorter than under the WTO Agreement on Safeguards, and provisions prohibiting imposition of provisional measures. In addition, although Japan has not executed any agreement of this nature, some FTAs (*i.e.*, the Singapore-India FTA) introduce a *de minimis* standard below which the application of safeguard measures is prohibited.

(A) Cases Involving Restriction of Triggering Events and Measures

The Japan-Singapore and the Japan-Chile EPAs, for example, limit the triggering events for the imposition of safeguard measures to an absolute import increase. Some FTAs/EPAs set shorter maximum applicable periods for safeguard measures than provided for by the Safeguard Agreement, including two years in principle or four years at maximum in the Japan-Singapore ETA and four years in principle or five years maximum in the Japan-Malaysia EPA. An example of a *de minimis* requirement can be found in the Singapore-India FTA, which provides that if the import of goods subject to investigation account for a market share of 2% or less in respect of domestic sales or 3% or less of the aggregate imports from all countries (during the 12 month period before the application for investigation), bilateral safeguard measures may not be taken.

(B) Cases Involving Elimination of Bilateral Safeguard Measures

Some FTAs restrict the application of bilateral safeguard measures to a transition period, and eliminate bilateral safeguard measures after the transition period terminates. For example, ANZCERTA provides that the transition period shall be the period during which tariffs, quantitative restrictions, tariff quotas, export incentives and price stabilization measures, and subsidies which hinder the development of trade opportunities exist. The transition period for ANZCERTA subsequently terminated with the complete liberalization of trade in July 1990, and the bilateral safeguard measures were abolished.

Figure 1-3 shows FTAs/EPAs categorized by requirements (such as triggering events (absolute or relative increase of import)), applicable period (transition period or perpetual), imposition period, no re-imposition period, compensation, and rebalancing.

(b) Relationship between WTO Agreement and EPA Bilateral Safeguard Measures

As previously mentioned, the bilateral safeguard measures permitted under the EPAs executed by Japan are aimed at suspension of tariff reduction there under or at an increase of the tariff rate up to the present most-favored-nation rate of tariff. These measures are considered, in principle, not to give rise to any issue of inconsistency with the WTO Agreement (although it is potentially arguable that these measures fall under more restrictive regulations of commerce under paragraph 8 of GATT Article XXIV, which requires that measures must be eliminated on substantially all trade).

Chart 1-3 Comparison between Safeguard Systems under Existing FTAs/EPAs and Safeguard Systems under the WTO Agreement

	Japan-Chile Agreement (Bilateral SG) Signed: 2007.3.27 Effective: 2007.9.3	Japan-Thailand Agreement (Bilateral SG) Signed: 2007.4.3 Effective: 2007.11.1	Japan-Brunei Agreement (Bilateral SG) Signed: 2007.6.15 Effective: Not yet effective	Japan-Indonesia Agreement (Bilateral SG) Signed: 2007.8.20 Effective: Not yet effective	Japan-Philippines Agreement (Bilateral SG) Signed: 2006.9.9 Effective: Not yet effective	Japan-Malaysia Agreement (Bilateral SG) Signed: 2005.12.13 Effective: 2006.7.13	Japan-Mexico Agreement (Bilateral SG) Signed: 2004.9.17 Effective: 2005.4.1	Japan-Singapore Agreement (Bilateral SG) Signed: 2002.1.13 Effective: 2002.11.30	NAFTA (Bilateral SG) Signed: 1992.12 Effective: 1994.1.1	SG Agreement (General SG)
Subject Countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	Limited to contracting party countries	All WTO member countries
Imposition Requirements	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes a substantial cause of serious injury, or threat thereof, to a domestic industry (Article 20, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes a substantial cause of serious injury, or threat thereof, to a domestic industry (Article 22, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes a substantial cause of serious injury, or threat thereof, to a domestic industry (Article 20, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes a substantial cause of serious injury, or threat thereof, to a domestic industry (Article 24, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 22, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 23, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 53, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 18, paragraph 1)	If an absolute increase in imports, as a result of reduction or elimination of tariffs provided by such agreement, constitutes substantial cause of serious injury, or threat thereof, to a domestic industry (Article 801, paragraph 1)	As a result of (i) unforeseen developments or (ii) the effect of obligations incurred by a contracting party under the Agreement (including tariff concessions) (Article XIX of the GATT), (i) absolute or (ii) relative increase in import, which causes or threatens to cause serious injury to the domestic industry (Article 2, paragraph 1)
Applicable Period	Review if necessary after 10 years from the date of entry into force of the Agreement (Article 26, paragraph 4)	Review if necessary after 15 years from the date of entry into force of the Agreement (Article 22, paragraph 10)	Review if necessary after 5 years from the date of entry into force of the Agreement (Article 21, paragraph 11)	Review if necessary after 5 years from the date of entry into force of the Agreement (Article 24, paragraph 11)	Review if necessary after 10 years from date of entry into force of the Agreement (Article 22, paragraph 12)	Review if necessary after 10 years from date of entry into force of the Agreement (Article 23, paragraph 11)	Review if necessary after 10 years from date of entry into force of the Agreement (Article 53, paragraph 13)	Limited to transition period (10 years from the date of entry into force of the Agreement) (Article 18, paragraph 1)	Limited to transition period (in principle, 10 years from the date of entry into force of the Agreement, maximum of 15 years depending on the item) (applicable after the transition period with consent of the other Party) (Article 801, subparagraphs 1,2 (c)(ii))	Perpetual system

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Contents of Imposition	Suspension of gradual reduction of any rate of customs duty (Article 23, subparagraph 1(a)) Increase of the rate of customs duty to a level not exceeding the lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the MFN applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 20, subparagraph 2(a)) (Article 20, subparagraph 2(b))	The same as Japan-Chile (Article 22, subparagraph 1(a)) (Article 22, subparagraph 1(b))	The same as Japan-Chile (Article 21, subparagraph 2(a)) (Article 21, subparagraph 2(b))	The same as Japan-Chile (Article 24, subparagraph 1(a)) (Article 24, subparagraph 1(b))	Suspension of gradual reduction of any rate of customs duty (Article 22, subparagraph 1(a)) Increase of the rate of duty to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 22, subparagraph 1 (b)) Until the last day of the 7th year, may increase the rate of customs duty to the level of most-favored-nation applied rate of customs duty in effect upon imposition of the measure (Article 22, paragraph 10)	Suspension of gradual reduction of any rate of customs duty (Article 23, subparagraph 1(a)) Increase of the rate of duty to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 23, subparagraph 1 (b))	Suspension of gradual reduction of any rate of customs duty (Article 53, subparagraph 2(a)) Increase of the rate of duty to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 53, subparagraph 2(b))	Suspension of gradual reduction of any rate of customs duty (Article 18, subparagraph 1(a)) Increase of the rate of duty to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 18, subparagraph 1(b))	Suspension of gradual reduction of any rate of customs duty (Article 801, subparagraph 1(a)) Increase of the rate of duty to a level not exceeding lesser of either the most-favored-nation applied rate of customs duty in effect upon imposition or the most-favored-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of the Agreement (Article 801, subparagraph 1(b))	May increase rate of customs duty or take import quantitative restriction measures (Article 5, paragraph 1)
Notice upon Investigation	Shall deliver a notice to the other party upon initiating an investigation (Article 23, subparagraph 1(a))	Shall deliver a notice to the other party upon initiating an investigation and identifying an injury (Article 22, subparagraph 3(a))	Shall deliver a notice to the other party upon initiating an investigation (Article 21, subparagraph 4(a))	Shall deliver a notice to the other party upon initiating an investigation (Article 24, subparagraph 4(a))	Shall deliver a notice to the other Party upon initiating an investigation (Article 22, subparagraph 5(a))	Shall deliver a notice to the other Party upon initiating an investigation (Article 23, subparagraph 4(a))	Shall deliver a notice to the other Party upon initiating an investigation (Article 53, paragraphs 7 and 8)	Shall deliver a notice to the other Party upon initiating an investigatory process or making a finding of injury (Article 18, subparagraph 3(a))	NA	Shall notify the Committee on Safeguards upon initiating an investigatory process, or making a finding of serious injury (Article 12, paragraph 1)

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Notice/Consultation before Implementation	Prior notice to the other party and consultation before taking or extending SG measures (Article 23, subparagraph 1(b) (Article 24, paragraph 1)	Prior notice to the other party and consultation before taking or extending SG measures (Article 22, subparagraph 3(c))	Prior notice to the other party and consultation before taking or extending SG measures (Article 21, subparagraph 4(c))	Prior notice to the other party and consultation before taking or extending SG measures (Article 24, subparagraph 4(c))	Prior notice to the other Party and consultation before taking or extending SG measures (Article 22, subparagraphs 5(a) and (d))	Prior notice to the other Party and consultation before taking or extending SG measures (Article 23, subparagraphs 4(a) and (c))	Prior notice to the other Party and consultation before taking or extending SG measures (Article 53, paragraphs 8 and 9)	Prior notice to the other Party and consultation before taking or extending SG measures (Article 18, subparagraphs 3(a) and (c))	Deliver a request for consultation regarding the institution of an SG proceeding (Article 801 subparagraph 2(a))	Shall notify the Committee on Safeguards and consult with Members having an interest before applying SG measures (Article 12, paragraphs 1 and 3)
Provisional Measures	Available (within 200 days) (Article 25, paragraph 4)	Available (within 200 days) (Article 22, paragraph 7(a))	Available (within 200 days) (Article 21, paragraph 9(a))	Available (within 200 days) (Article 24, paragraph 9(a))	Available (within 200 days) (Article 22, paragraph 4)	Available (within 200 days) (Article 23, paragraph 9)	Available (within 200 days) (Article 54)	NA	NA	Available (within 200 days) (Article 6)
Imposition Period (Maximum)	In principle, within three (3) years;, up to a total maximum period of four (4) years (Article 22, subparagraph (a))	In principle, within three (3) years;, up to a total maximum period of five (5) years (Article 22, subparagraph 3(d))	In principle, within three (3) years;, up to a total maximum period of four (4) years (Article 21, subparagraph 4(d))	In principle, within three (3) years;, up to a total maximum period of four (4) years (Article 24, subparagraph 4(d))	In principle, within three (3) years; up to a total maximum period of four (4) years (Article 22, subparagraph 5(e))	In principle, within four (4) years; up to a total maximum period of five (5) years (Article 23, subparagraph 4(d))	In principle, within three (3) years; up to a total maximum period of four (4) years (Article 53, paragraph 5)	In principle, within one (1) year; up to a total maximum period of three (3) years (Article 18, subparagraph 3(d))	In principle, within three (3) years (Article 801, subparagraph 2(c))	Initially within four (4) years; extension possible for additional four (4) years (within a total of eight (8) years) (Article 7, paragraphs 1 to 3)
Progressive Liberalization of Measures	If over one (1) year, progressive liberalization (Article 22, subparagraph (b))	If over one (1) year, progressive liberalization (Article 22, subparagraph 3(d))	If over one (1) year, progressive liberalization (Article 21, subparagraph 4(d))	If over one (1) year, progressive liberalization (Article 24, subparagraph 4(d))	If over one (1) year, progressive liberalization (Article 22, subparagraph 5(e))	If over one (1) year, progressive liberalization (Article 23, graph 4(d))	If over three (3) years, must present a schedule leading to progressive elimination (Article 53, paragraph 5)	If over one (1) year, must present a schedule leading to progressive elimination (Article 18, subparagraph 3(d))	NA	Measures over one (1) year, progressive liberalization; measures over three (3) years, must review the situation not later than mid-term of the measure (Article 7, paragraph 4)
No Re-imposition Period	SG measures may not be applied again to goods, which had already been subject to such measures, for a period of time equal to the duration of the previous SG measure period (however, SG measures may not be applied for at least one (1) year (Article 22, subparagraph (c))	SG measures may not be applied again to goods, which had already been subject to such measures, for a period of time equal to the duration of the previous SG measure period (however, SG measures may not be applied for at least one (1) year (Article 22, subparagraph3 (e))	SG measures may not be applied again to goods, which had already been subject to such measures, for a period of time equal to the duration of the previous SG measure period (however, SG measures may not be applied for at least one (1) year (Article 21, subparagraph4 (d))	SG measures may not be applied again to goods, which had already been subject to such measures, for a period of time equal to the duration of the previous SG measure period (however, SG measures may not be applied for at least one (1) year (Article 24, subparagraph4 (d))	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 22, subparagraph 5(f))	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 23, subparagraph 4(e))	Measures may not be applied again to already imposed good for a period of time equal to duration of the previous imposition period (however, may not be applied for at least one (1) year) (Article 53, paragraph 6)	Measures may not be applied again to already imposed good (Article 18, subparagraph 3(e))	Measures may not be applied again to already imposed good (Article 801, subparagraph 2(d))	Measures may not be applied again to already imposed product for a period of time equal to duration of the previous imposition period (however, may not be applied for at least two (2) years) (Article 7, paragraph 5)

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Compensation	Substantially equivalent tariff measure (Article 24, paragraph 4)	Substantially equivalent tariff measure (Article 22, paragraph 4(b))	Substantially equivalent tariff measure (Article 21, paragraph 5(b))	Substantially equivalent tariff measure (Article 24, paragraph 5(b))	Substantially equivalent tariff measure (Article 22, subparagraph 6(a))	Substantially equivalent tariff measure (Article 23, subparagraph 5(a))	Substantially equivalent tariff measure (Article 53, paragraph 10)	Substantially equivalent tariff measure (Article 18, paragraph 4)	Substantially equivalent trade liberalizing compensation (Article 801, paragraph 4)	Endeavour to maintain a substantially equivalent level of concessions and other obligations (Article 8, paragraph 1)
Rebalance	Substantially equivalent tariff measure possible (Article 24, paragraph 3)	A substantially equivalent tariff measure may be applied (i) immediately after the imposition of an SG measure if the increase in import is relative, or (ii) after 24 or more months from the imposition if the increase in import is absolute (Article 22, subparagraph 4 (b)(d))	Substantially equivalent tariff measure possible (Article 21, paragraph 5(d))	Substantially equivalent tariff measure possible (Article 24, paragraph 5(d))	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition, (ii) absolute, then after 12 months from imposition (Article 22, subparagraphs 6(b)(c))	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition, (ii) absolute, then after 18 months from imposition (Article 23, subparagraphs 5(b)(c))	Substantially equivalent tariff measure possible (Article 53, paragraph 11)	Same as column immediately to the left (Article 18, paragraph 4)	Substantially equivalent tariff action possible (Article 801, paragraph 4)	Substantially equivalent tariff measure possible; if the increase in import is (i) relative, then immediately after imposition (Article 8, paragraph 2), (ii) absolute, then after three (3) years from imposition (Article 8, paragraph 3)

Standards and Conformity Assessment Systems

Background of the Rules

The WTO has an agreement on technical barriers to trade (the WTO Agreement on Technical Barriers to Trade)(TBT Agreement), which contains provisions on, *inter alia*, the promotion of international harmonization and securing transparency in order to prevent standards and conformity assessment systems from causing unnecessary barriers to international trade (*see* Part II, Chapter 10 for details). FTAs/EPAs also have provisions concerning standards and conformity assessment, while taking into account technical aspects of the regulatory system and special characteristics of the region.

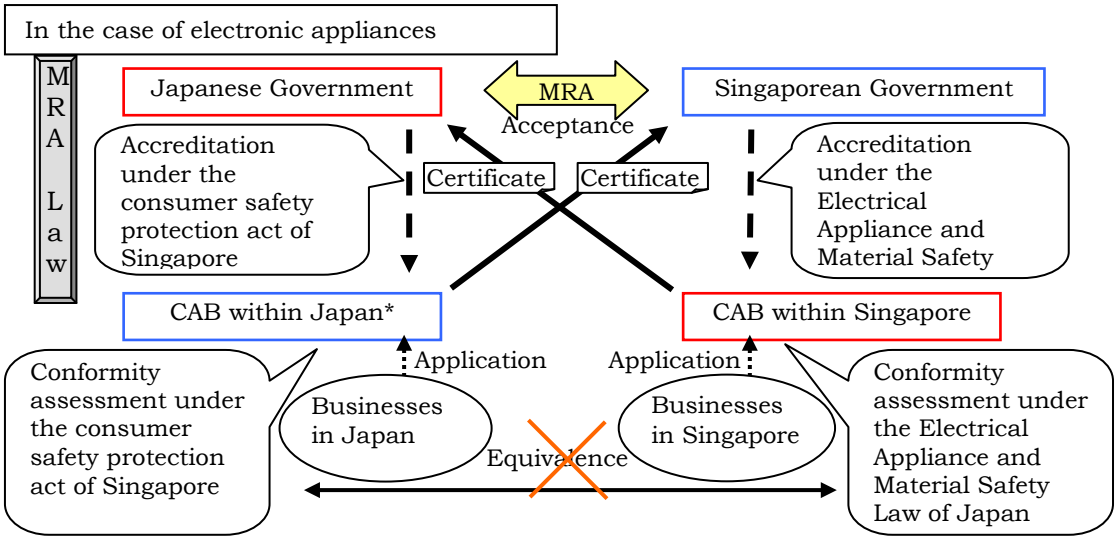
Overview of Legal Disciplines

The area of standards and conformity assessment involves technical aspects of the regulatory system and special characteristics of the region. Thus, the appropriate and effective means to ensure the systematic transparency and international consistency of technical criteria and the like is to share concerns on systematic issues through multilateral consultations amongst experts (such as the WTO TBT Committee and the APEC/SCSC (Sub-Committee on Standards and Conformance)), while harmonizing standards and conformity assessments with other countries. In order to meet the objective of the TBT Agreement, namely to prevent actual standards and conformity assessment systems from causing unnecessary barriers to international trade, Japan's existing EPAs include the following provisions on standards and conformity assessment. The Japan-Mexico EPA, Japan-Malaysia EPA, Japan-Chile EPA, Japan-ASEAN EPA, Japan-Vietnam EPA, and Japan-Switzerland EPA mainly reconfirm the rights and obligations contained in the TBT Agreement. The Japan-Singapore EPA has a provision on mutual recognition agreement (MRA), stipulating, with regard to electrical goods, that the importing country accepts the results of the conformity assessment conducted by a conformity body designated by the government of the exporting country, and based on the standards and procedures of the exporting country. In order to ensure appropriate implementation of the MRA, Japan has enacted the MRA Act (Act for Implementation of the Mutual Recognition between Japan and Foreign States in Relation to Results of Conformity Assessment Procedures of Specified Equipment). The MRA chapters in the Japan-Philippines EPA and the Japan-Thailand EPA stipulate a system under which "an importing country" designates a conformity assessment body of the exporting country based on the relevant laws of the importing country (the Electrical Appliance and Material Safety Law, in the case of Japan), and the importing country accepts the results of conformity assessment conducted by the assessment body. (This Chapter deals with measures and recognition in connection with trade in goods; please also see Chapter 3 "Movement of Natural Persons" for "mutual recognition of qualifications," which is a measure regarding the movement of natural persons.)

a) Japan-Singapore EPA

Chapter 6 of the Japan-Singapore EPA contains a section on the mutual recognition of conformity assessments. This system allows for the mutual acceptance of the results of conformity assessments conducted by a body designated by the government of the exporting country (based on the criteria and procedures of the importing country), as providing the same assurance as the conformity assessment conducted within the importing country. For

example, under this system, if the Japanese government grants accreditation to a body within Japan as the body responsible for assessing conformity with the domestic regulations of Singapore, the results of a conformity assessment by such body shall be accepted by Singapore. The system applies to electronic products, communication terminal equipment, and wireless devices. In order to ensure appropriate implementation of the MRA, Japan has enacted the MRA Act (Act for Implementation of the Mutual Recognition between Japan and Foreign States in Relation to Results of Conformity Assessment Procedures of Specified Equipment).



* CAB stands for Conformity Assessment Body, and is a body which conducts authorizations and tests.

- MRA stands for Mutual Recognition Agreement. The MRA Act (Act for Implementation of the Mutual Recognition between Japan and Foreign States in Relation to Results of Conformity Assessment Procedures of Specified Equipment) was enacted in order to perform the obligations of Japan under the MRA as well as secure appropriate implementation of the MRA in Japan.

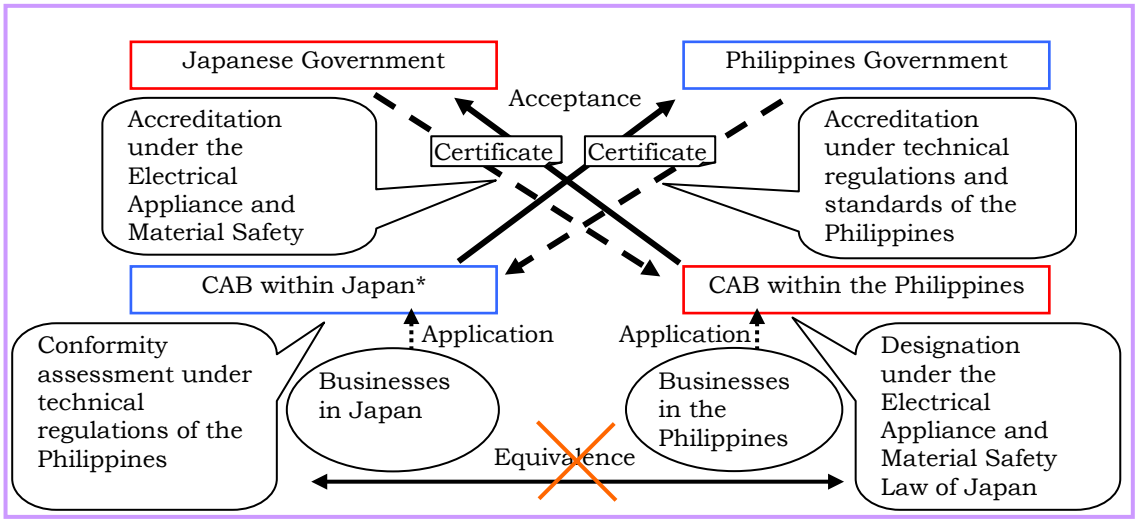
(b) Japan-Mexico EPA, Japan-Malaysia EPA, Japan-Chile EPA

Section 3 of Chapter 3 of the Japan-Mexico EPA, Chapter 5 of the Japan-Malaysia EPA, and Chapter 7 of the Japan-Chile EPA cover technical regulations, standards and conformity assessment procedures. These sections reaffirm the rights and obligations under the WTO/TBT Agreement, and provide for the exchange of information and cooperation in joint research and the like in relation to technical regulations, standards and conformity assessment procedures, establishment of subcommittees, and designation of enquiry points by the governments of both contracting parties' countries. In addition, the dispute resolution provisions of these EPAs do not apply with respect to technical regulations, standards and conformity assessment procedures.

(c) Japan-Philippines EPA, Japan-Thailand EPA

Chapter 6 of the Japan-Philippines EPA and the Japan-Thailand EPA contains a section on the mutual recognition of conformity assessments. It provides for the mutual acceptance of the direct accreditation (registration) and supervision of the Conformity Assessment Body within the exporting country by the government of the importing country. For example, under this system, if the Japanese government grants accreditation to a body within the Philippines as the body responsible for assessing conformity with the regulations of Japan, the result of conformity assessment by such body shall be accepted by Japan. The system applies to electronic products in both Japan-Philippines EPA and Japan-Thailand EPA.

Under the Japan-Singapore EPA, the Singapore government grants accreditation to a Conformity Assessment Body in Singapore under the Electrical Appliance and Material Safety Law of Japan, and the certificate issued by such body is accepted by the Japanese government. In order to ensure appropriate implementation of the MRA, Japan has enacted the MRA Act (Act for Implementation of the Mutual Recognition between Japan and Foreign States in Relation to Results of Conformity Assessment Procedures of Specified Equipment). In contrast, under the Japan-Philippines EPA and the Japan-Thailand EPA, it is the "Japanese government" which grants accreditation to a Conformity Assessment Body in the Philippines or Thailand, respectively, under the Electrical Appliance and Material Safety Act of Japan, and the certificate issued by such body is accepted by the Japanese government. It is backed by existing laws (Electrical Appliances and Materials Safety Act), not by the MRA Act.



- Under the Electrical Appliance and Material Safety Law of Japan, it is possible within the legal structure to designate a CAB outside of Japan.
- The regulatory authority does not need to understand the domestic laws of the counterparty country.
- If designations are to be made outside the country, no implementing legislation (MRA Act) is necessary because it is possible to address issues within the framework of regulation.
- Depending on the legal system of each country, designation outside the country does not necessarily require bilateral agreements.