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International Trade

Japan

Kozo Kawai, Kojiro Fujii, Noriko Yodogawa and Masahiro Heike
Nishimura & Asahi

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Law and Practice

Contributed by:
Kozo Kawai, Kojiro Fujii, Noriko Yodogawa and Masahiro Heike
Nishimura & Asahi see p.17

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1. Trade Agreements

1.1 World Trade Organization Membership or Plurilateral Agreements

Japan has been a WTO member since 1995 and a member of the General Agreement on Tariffs and Trade since 1955. Japan also has been a member of the WTO plurilateral agreements, including the Agreement on Government Procurement (since 1996) and the Agreement on Trade in Civil Aircraft (since 1980). Japan is also a member of the Trade Facilitation Agreement which entered into force in 2017.

1.2 Free Trade Agreements

As of 31 October 2020, Japan has been a member of 19 free trade agreements (FTAs) and economic partnership agreements (EPAs), including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Agreement between the European Union and Japan for an Economic Partnership (Japan–EU EPA) and the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership (Japan-UK EPA). For more details, please see the following website: Ministry of Foreign Affairs of Japan.

1.3 Other Trade Agreements

From 1 January 2020, the Trade Agreement between Japan and the United States of America and the Agreement between Japan and the United States of America Concerning Digital Trade came into effect. The former agreement provides market access commitments on industrial and agricultural goods while the latter agreement provides high-standard rules in the area of digital trade. For more details, please see the following website: Ministry of Foreign Affairs of Japan.

1.4 Future Trade Agreements

As of 31 October 2020, the following agreements are being negotiated:

- Regional Comprehensive Economic Partnership (RCEP);
- Japan–Turkey EPA;
- Japan–Columbia EPA; and
- Japan–China–Republic of Korea FTA.

1.5 Key Developments Regarding Trade Agreements

South-East Asia EPA

In regard to the Agreement on Comprehensive Economic Partnership among Japan and Members States of the Association of Southeast Asian Nations (Japan–ASEAN Comprehensive EPA), in 2019, the First Protocol to Amend the Japan–ASEAN Comprehensive EPA was agreed among Japan and ASEAN countries. This Protocol upgrades the existing agreement by adding new rules and commitments, including rules on trade in services, movement of natural persons and investments. Since 1 August 2020, this Protocol has been in force among Japan and several ASEAN countries, and will enter into force among the remaining ASEAN countries once the necessary procedures have been completed. For more details, please see the following website: Ministry of Foreign Affairs of Japan.

The UK

On 23 October 2020, Japan and the UK signed the Japan-UK EPA. The agreement entered into force on 1 January 2021. For more details, please see the following website: Ministry of Foreign Affairs of Japan.

1.6 Pending Changes to Trade Agreements

CPTPP

On 5 August 2020, the third Commission Meeting of CPTPP was held, and Japan, along with the other members, welcomed the accession intentions of countries such as the UK and Thailand.

RCEP

On 14 October 2020, the 11th RCEP Intersessional Ministerial Meeting was held, wherein the ministers reconfirmed commitment to the signing of RCEP in 2020 (as scheduled) while reconfirming that it was still open to India.

WTO Electronic Commerce Negotiations

Following the release of the Joint Statement on Electronic Commerce in 2017, Japan, by co-hosting formal and informal meetings with other like-minded countries, has actively been involved in the discussion to create new rules on electronic commerce.

2. Customs

2.1 Authorities Governing Customs

Customs Duty Rates

The principal laws governing customs duty rates in Japan are the following:

- Article 3 of the Customs Act;
- Articles 3, 3-2, 3-3 and 5 of the Customs Tariff Act; and
- Articles 2 and 8-2 of the Temporary Tariff Measures Act.

The Customs Act stipulates general rules applicable to customs administration, including rules related to determination, payment, collection, and refund of customs duties, as well as import/export customs, and the bonded system. Article 3 of the Customs Act prescribes that, in cases where a treaty provides special provisions for customs duties, such special provisions

shall apply. Thus, the customs duties prescribed in the EPA directly apply based on this provision.

The Customs Tariff Act mainly covers matters related to rates for customs duties, including rates for customs duties on individual items, reduction of and exemption from customs duties, and special tariffs (eg, anti-dumping duties, countervailing duties, safeguard duties, etc). This act sets forth the general rates of customs duties in its Appended Table.

The Temporary Tariff Measures Act stipulates temporary rates for customs duties as an exception to the Customs Act and Customs Tariff Act, taking into account the surrounding industrial and economic circumstances. For example, Article 8-2 of the Temporary Tariff Measures Act stipulates the duties under the generalised system of preferences (GSP).

Rules of Origin

The principal laws and regulations governing rules of origin are the following.

Non-preferential rules of origin

- Article 7-2 of the Customs Act;
- Article 4-2 of the Order for the Enforcement of the Customs Act; and
- Articles 1-6 and 1-7 of the Ordinance for the Enforcement of the Customs Act.

Preferential rules of origin (EPA)

The rules of origin described in the EPA directly apply without being converted into domestic rules or regulations, pursuant to Article 3 of the Customs Act.

Preferential rules of origin (GSP)

- Article 8-2 of the Temporary Tariff Measures Act;
- Article 26 of the Order for the Enforcement of the Temporary Tariff Measures Act; and
- Articles 8 and 9 of the Ordinance for the Enforcement of the Temporary Tariff Measures Act.

Customs Classification

When considering customs classification, the customs tariff schedule annexed to the Customs Tariff Act and notices which prescribe the interpretation of the schedule are generally referenced.

Customs Valuation

Customs valuation is principally governed by Article 3 of the Customs Act and Article 3 and Articles 4 through 4-9 of the Customs Tariff Act.

2.2 Enforcement Agencies Enforcing Customs Regulations

The Customs and Tariff Bureau, which is an internal department of Japan's Ministry of Finance (MOF), is in charge of matters related to customs laws and regulations. Japan Customs are the local branch offices of MOF, and the headquarters of regional customs are located in nine locations throughout Japan (ie, Hakodate Customs, Tokyo Customs, Yokohama Customs, Nagoya Customs, Osaka Customs, Kobe Customs, Moji Customs, Nagasaki Customs, and Okinawa Regional Customs).

2.3 Legal Instruments

In Japan, there are no legal instruments which are similar in nature to the Trade Barriers Regulation of the European Union or Section 301 of the US Trade Act of 1974.

However, as referential material, Japan's Ministry of Economy, Trade and Industry (METI) publishes (i) the Report on Compliance by Major Trading Partners with Trade Agreements (Compliance Report), and (ii) prioritised subjects based on the Compliance Report. Through these publications, METI identifies trade practices in other jurisdictions which have negative impacts and which are suspected to be inconsistent with the trade agreements (eg, WTO, EPA, etc). While these publications are not connected to any legal actions (and are published for policy reasons), they demonstrate that METI is concerned with such matters.

Moreover, there is a provision which allows Japan to impose retaliatory duties without relying on rules under the WTO. In particular, paragraph (2) of Article 6 of the Customs Tariff Act exceptionally prescribes retaliatory duties on countries which have not ratified the WTO Agreement, which are applicable in cases where any goods exported from or through Japan are treated less favourably than goods exported from or through any other country. These retaliatory duties have not been applied to any goods since the article was enacted.

2.4 Key Developments in Customs Measures

While blanket exemption or reduction measures for customs duties have not been introduced in relation to the COVID-19 pandemic, Japan has implemented several measures to facilitate importation and exportation including the following in response to the pandemic.

- Customs clearance has been prioritised for relief goods relating to countermeasures against the COVID-19 pandemic and for goods that require urgent clearance to maintain a lifeline. When such goods are imported, a simplified declaration form and other simplified required documents are also available.

- If the person consults with the customs office in advance, the person will be able to submit the import/export declaration at a customs office other than the customs office which has jurisdiction over the person.
- If the seals of the importer, exporter, or customs broker are difficult to affix to the documents submitted during examination of the import/export declaration or after permission of import/export, because of the effect of the COVID-19 pandemic, those seals will not be required.
- If it is difficult to submit the necessary original documents at the time of the import/export declaration, because of the effect of COVID-19, an electronic copy may be submitted instead.
- When EPA party foreign authorities suspend issuance of certificates of origin, etc, or when it is difficult to transport such certificates from foreign countries, deferment of submission of such certificates is permitted in relation to import declarations.

In addition, imported goods are exempted from customs duties and domestic consumption tax if they are proved to be donated free of charge, and some relief goods have been imported free of charge by using this regulation during the pandemic.

2.5 Pending Changes to Customs Measures

As of 31 October 2020, there are no major changes planned.

3. Sanctions

3.1 Sanctions Regime

Japan does not have a single comprehensive law authorising sanctions; sanctions are implemented through a patchwork of laws and regulations. While the majority of Japan's economic sanctions are derived from resolutions of the UN Security Council (UNSC), Japan also implements sanction measures based on international co-operation with other countries, and unilateral sanction measures against North Korea, which are not derived from UNSC resolutions or international co-operation.

The primary law in this area is the Foreign Exchange and Foreign Trade Act (FEFTA), under which the following types of transactions are subject to sanctions and must be approved by the Minister of Economy, Trade and Industry or the Minister of Finance:

- trade in goods (eg, import and export of goods);
- service transactions (eg, trade intermediaries between foreign countries, transfer of technology and software);
- international payments (eg, payments from Japan to a foreign state and payments between residents and non-residents); and
- capital transactions (eg, contracts for money deposits, trusts, money lending, and trading securities).

Other acts that implement sanctions include:

- the Act on Punishment of Financing for Offences of Public Intimidation, which implements the International Convention for the Suppression of the Financing of Terrorism and regulates the provision of funds and other benefits to terrorists;
- the Act on Special Measures Concerning Asset Freezing, etc, of International Terrorists Conducted by Japan Taking into Consideration United Nations Security Council Resolution 1267, etc, which restricts almost all transactions (including domestic) with terrorists listed by the UNSC or the Japanese government; and
- the Act on Prevention of Transfer of Criminal Proceeds, which aims to prevent money laundering by requiring financial institutions to check and report suspicious transactions, including transactions which violate sanction measures.

Unless otherwise specifically mentioned, the explanations in the rest of this Section (**3. Sanctions**) apply to sanctions regulated by the FEFTA.

3.2 Legal or Administrative Authorities Imposing Sanctions

As the primary act governing economic sanctions, the FEFTA sets out the types of transactions subject to sanctions and the conditions under which sanctions may be imposed (see **3.1 Sanctions Regime** and **3.3 Government Agencies Enforcing the Sanctions Regime**). Further details of the rules are stipulated by subordinate regulations and notices as follows.

- The Export Trade Control Order, which stipulates the areas and items subject to sanctions for export of goods.
- Other subordinate orders relating to the FEFTA (ie, the Foreign Exchange Order and the Import Trade Control Order), which authorise the competent ministers to further designate specific areas, items, and persons subject to sanctions on the import of goods, service transitions, international payments, and capital transactions. The competent ministers then publish notifications relating to the factors above, pursuant to such orders.

3.3 Government Agencies Enforcing the Sanctions Regime

Under the FEFTA, the relevant government agencies that impose and enforce sanctions differ depending on the type of subject transactions and the conditions relied on to impose/enforce sanctions.

In particular, sanctions could be imposed/enforced if the Minister of Finance or the Minister of Economy, Trade and Industry finds it necessary either (i) to fulfil Japan's international treaty obligations and other international agreements (eg, UNSC resolutions), or (ii) as part of Japan's contribution to international efforts to achieve international peace (eg, co-operation with the USA and EU). In this circumstance, the MOF will be in charge of sanctions on international payments, capital transactions, service transactions, and the METI will be in charge of sanctions on trade in goods and service transactions. With regard to service transactions, international payments, and capital transactions subject to sanctions, either the Minister of Finance or the Minister of Economy, Trade and Industry authorises the Minister of Foreign Affairs to designate individuals and entities subject to sanctions.

Sanctions could also be imposed/enforced if the Cabinet decides to take countermeasures necessary to maintain peace and security in Japan (eg, unilateral sanctions). In this circumstance, Cabinet decisions must be approved by the Diet and will be enforced by the METI or the MOF, depending on the types of subject transactions.

3.4 Persons Subject to Sanctions Laws and Regulations

In most cases, the obligation to obtain permission under FEFTA applies to both: (i) residents, who are natural persons with a domicile or residence in Japan, or a legal entity with a principal office in Japan; and (ii) non-residents, who are natural persons or a legal entities other than residents. Specifically, the persons below must obtain permission from the competent authorities when conducting a transaction subject to sanctions.

- For trade in goods (eg, import and export of goods) subject to sanctions, both residents and non-residents who export goods from Japan or import goods into Japan must obtain permission.
- For service transactions subject to sanctions, only residents are required to obtain permission when they intend to conduct service transactions with non-residents.
- For international payments subject to sanctions, (i) residents or non-residents who intend to make payments from Japan to a foreign state, and (ii) residents who intend to make payments to or receive payments from non-residents must obtain permission.
- For capital transactions subject to sanctions, both residents and non-residents are required to obtain permission. Note that, even when conducted in a foreign state, a non-resident who intends to issue or offer securities subscriptions which are denominated or payable in Japanese currency must obtain permission.

The FEFTA also applies to actions taken in a foreign country by the representative, agent, employee, or other worker of (i) a legal entity with a principal office in Japan, or (ii) a person with a domicile in Japan, if such transactions are undertaken in connection with the assets or business of that legal entity/person.

3.5 List of Sanctioned Persons

The Minister of Foreign Affairs, authorised either by the Minister of Finance or the Minister of Economy, Trade and Industry, designates sanctioned individuals and entities under the FEFTA (see **3.2 Legal or Administrative Authorities Imposing Sanctions**).

3.6 Sanctions against Countries/Regions

Japan unilaterally implements a general ban on imports and exports to/from North Korea, and a general ban on imports from the Autonomous Republic of Crimea and the city of Sevastopol.

3.7 Other Types of Sanctions

Japan prohibits North Korean nationals, vessels, and aircraft from entering Japan, as part of its unilateral sanctions.

3.8 Secondary Sanctions

Japan does not apply secondary sanctions.

3.9 Penalties for Violations

Penalties for violating FEFTA and relevant regulations with respect to international payments, capital transactions, and service transactions are as follows:

- penalties imposed on natural persons –
  (a) imprisonment for not more than three years, and/or
  (b) a fine of not more than JPY1million or three times the value of the service, whichever is higher;
- penalties imposed on legal entities – a fine of not more than JPY1 million or three times the value of the service, whichever is higher.

Penalties for violating FEFTA and relevant regulations with respect to trade in goods are as follows:

- penalties imposed on natural persons –
  (a) imprisonment for not more than five years; and/or
  (b) a fine of not more than JPY10 million or five times the value of the exported goods, whichever is higher;
- penalties imposed on legal entities – a fine of not more than JPY500 million or five times the value of the exported goods, whichever is higher.

Please note: penalties will be imposed on a legal entity only if a violation by a natural person is committed in connection with the business or assets of the legal entity.

3.10 Sanctions Licences
The FEFTA requires a person to obtain permission for transactions subject to economic sanctions. However, such permission generally will not be granted.

3.11 Compliance
Although there are no specific compliance guidelines for sanctions, the MOF provides an internal compliance checklist for financial institutions to comply with the FEFTA and the Act on Prevention of Transfer of Criminal Proceeds, and conducts foreign exchange inspections to check whether financial institutions comply with the related acts. The METI also provides internal compliance guidelines for companies, which stipulate adequate compliance rules for export control.

Moreover, the FEFTA provides for a post-review system, under which the Minister of Economy, Trade and Industry conducts post-reviews to clarify the cause and prevent recurrence of incidents regarding payments, service transactions, and imports/exports subject to sanctions, where it later becomes clear they were not approved by the Minister of Economy, Trade and Industry and thus may violate FEFTA sanction regulations.

3.12 Sanction Reporting Requirements
Under the FEFTA, banks and other financial institutions are prohibited from conducting transactions unless they have confirmed that international payments or capital transactions subject to sanctions have been permitted by the relevant ministers.

The Act on Prevention of Transfer of Criminal Proceeds also requires banks and other financial institutions to notify the government of "suspicious transactions", including transactions suspected to be related to specific crimes, terrorism, and exports/imports that violate economic sanctions.

3.13 Adherence to Third-Country Sanctions
Japan does not adhere to any third-country sanctions.

3.14 Key Developments Regarding Sanctions
Although there have been periodic updates to the list of sanctioned individuals and entities, there have been no significant changes or developments during the past 12 months.

3.15 Pending Changes to Sanction Regulations
The Financial Action Task Force (FATF) is currently reviewing Japan's compliance with FATF's recommendations regarding anti-money laundering measures; depending on the results of the review, the Japanese government may decide to introduce new economic sanction-related measures or amend existing ones.

4. Exports

4.1 Export Controls
In Japan, the FEFTA provides the legal basis for export controls as follows.

- Article 48 of the FEFTA provides a framework for regulation of the export of goods and delegates the specific goods subject to export control to the Export Trade Control Order (ETCO). The rules specified in the ETCO are further detailed by relevant Ministry Orders.
- Article 25 of the FEFTA provides a framework for regulation of the transfer of technologies and delegates the specific technologies subject to export control to the Foreign Exchange Order (FEO). The rules specified in the FEO are further detailed by relevant Ministerial Orders.

4.2 Administrative Authorities for Export Controls
See **4.1 Export Controls**.

4.3 Government Agencies Enforcing Export Controls
When a person/entity intends to export goods or transfer technologies subject to export control, such person/entity is required to obtain a licence from METI.

4.4 Persons Subject to Export Controls
In Japan, there are two main types of export controls for goods and technologies: "list control" and "catch-all control". Items subject to these export controls, together with the person required to obtain a licence are as follows.

Export Control on Goods
List control
The specific goods subject to the "list control" are detailed in the Appended Table 1 of the ETCO as categories 1 through 15, and correspond to goods regulated under the international regimes in which Japan is a member, such as the Wassenaar Arrangement and the Australia Group.

Catch-all control
The "catch-all control" is included in the Appended Table 1 of the ETCO as category 16, and, in abstract, covers any transaction of goods falling within the specified chapters of the Harmonized System nomenclature, when either of the following conditions are met:

- *when exporters confirm, by checking the end-use and end-users, that goods to be exported from Japan could be used to (i) develop, manufacture, use or store weapons of mass destruction or (ii) develop, manufacture or use conventional weapons; or
- when the Minister of Economy, Trade and Industry considers that goods to be exported from Japan could be used for the purposes of (i) or (ii) above, and provides notice of such to the exporters.

Note that the exact conditions listed in the first bullet point* above differ depending on the destination of goods and whether the concern is related to weapons of mass destruction or conventional weapons. In addition, the catch-all control described above does not apply when the destination of goods is a country listed in the Appended Table III of the ETCO (so-called "white countries"; however, METI has recently introduced a policy to call these countries "group A" countries).

Persons subject to the export licence requirement

Exporters, regardless of their nationality, who plan to export controlled goods should obtain a licence.

Export Control on Technologies

List control

The specific technologies subject to the list control are detailed in the Appended Table of the FEO as categories 1 through 15, and correspond to technologies regulated under the international regimes in which Japan is a member, such as the Wassenaar Arrangement and the Australia Group.

Catch-all control

The catch-all control is included in the Appended Table of the FEO as category 16, and in abstract, covers any transfer of technologies relating to goods falling within the specified chapters of the Harmonized System nomenclature, when either of the following conditions are met:

- *when transferors confirm, by checking the end-use and end-users, that technologies to be transferred could be used to (i) develop, manufacture, use or store weapons of mass destruction or (ii) develop, manufacture or use conventional weapons; or
- when the Minister of Economy, Trade and Industries considers that technologies to be transferred could be used for the purposes of (i) or (ii) above, and provided notice of such to the transferors.

Similar to transactions of goods, the exact conditions listed in the first bullet point* above differ depending on the location to which the technologies are transferred, the nationality of the receiver, and whether the concern is related to weapons of mass destruction or conventional weapons. In addition, the catch-all control described above does not apply when the destination of the technology transfer is any of the white countries (group A countries) – including exports of medium containing controlled technologies and electronic transmission of controlled technologies to the white countries (group A countries) – or a non-resident who has the nationality of a white country (group A country).

Persons subject to the licence requirement

The following persons who plan to transfer controlled technologies should obtain a licence:

- a resident or non-resident who intends to conduct a transaction for the purpose of transferring a controlled technology in a particular foreign country;
- a resident who intends to conduct a transaction for the purpose of transferring a controlled technology to a non-resident of a particular foreign country; or
- a resident or non-resident who intends to export mediums which include a controlled technology to a particular foreign country or who electronically sends information containing a controlled technology for the purpose of receiving such information in a particular foreign country.

4.5 Restricted Persons

METI compiles a list of foreign end-users that may be involved in developing, manufacturing, using or storing weapons of mass destruction ("Foreign End User List"). Exporters/transferors need to check whether their end-users fall under this Foreign End User List in determining whether their exports or technology transfers are subject to the catch-all control. If the end-user is listed in the Foreign End User List, exporters/transferors need to obtain a licence from the Minister of Economy, Trade and Industry except where it is obvious that the goods or technologies will not be used to develop, manufacture, use or store weapons of mass destruction.

4.6 Sensitive Exports

See **4.4 Persons Subject to Export Controls**. As mentioned in **4.1 Export Controls**, ETCO and FEO specify the export controls and contain lists of sensitive exports. The lists are made and updated according to the international export control regimes (the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group, and the Wassenaar Arrangement) and the Chemical Weapons Convention; thus, the controlled items are basically identical to those specified by them.

4.7 Other Export Controls

See **4.4 Persons Subject to Export Controls**.

4.8 Penalties

There are administrative sanctions and criminal penalties for those who export controlled goods or transfer controlled technologies without obtaining licences.

Specifically, a natural person or legal entity that violated the FEFTA may face administrative sanctions, imposed by the Minister of Economy, Trade and Industry, that prohibit any (or some) exports or technology transfers for a period of up to three years. It is worth noting that administrative sanctions have no statute of limitations, and there are cases where administrative sanctions were imposed even when the criminal penalties were not imposed due to the statute of limitations.

A natural person that violates the FEFTA may face criminal penalties which include up to seven years of imprisonment and/or a fine of up to JPY20 million or no more than five times the value of the goods/technologies that were exported/transferred, whichever is higher. When a natural person (ie, representative or employee) commits a violation in connection with a legal entity's business, the legal entity may also be fined up to JPY700 million or five times the value of the exported goods or transferred technologies, whichever is higher.

4.9 Export Licences

If goods and technologies are subject to export control, they cannot be exported or transferred without obtaining individual licences for each transaction or obtaining bulk licences. There are several types of bulk licences depending on the specific details of the transactions, including their scheme, as well as the types of goods/technologies covered by the transactions and their destinations.

4.10 Compliance

Under the FEFTA, a party who exports controlled goods or transfers controlled technologies on a regular basis is obliged to comply with legally defined standards (ie, Compliance Standards for Exporters and Persons Conducting Similar Transactions) which set conditions related to in-house compliance mechanisms. Furthermore, as one of the conditions to obtain certain bulk licences, a party is required to establish and register with the relevant authorities an in-house compliance mechanism in which certain processes specified by METI must be adopted.

4.11 Export Reporting Requirements

There are several instances where a party is requested/obliged to report to the authority, including the following.

- A party who notices or suspects that goods to be exported or technologies to be transferred would be used to develop, manufacture, use or store weapons of mass destruction, is required to report such information to METI. Upon receipt of such report, depending on the circumstances, the Minister of Economy, Trade and Industry may send a notice to that party that it must apply for a licence for the relevant goods exportation or technology transfer.
- While there are no general requirements for reports applicable to every transaction, the Minister of Economy, Trade and Industry has broad authority to request reports, as necessary, from parties involved in good exportation or technology transfers, such as those who plan to implement or have implemented potentially relevant transactions.
- When bulk licences are granted, exporters of goods or transferors of technologies are required to make periodic reports.

4.12 Key Developments Regarding Exports

In 2019, Japan adopted the following changes related to the Republic of Korea.

- The Republic of Korea was removed from the list of the white countries (group A countries). This change resulted in transactions of goods and transfers of technologies related to the Republic of Korea being subject to catch-all control, if the conditions explained in **4.4 Persons Subject to Export Controls** are met.
- Exporters shall apply for an individual export licence for export of fluorinated polyimide, resist, and hydrogen fluoride, and their relevant technologies to the Republic of Korea. This is because the relevant bulk licences for those three items are no longer applicable.

4.13 Pending Changes to Export Regulations

As of 31 October 2020, no major changes are planned.

5. Anti-dumping and Countervailing (AD/CVD)

5.1 Authorities Governing Anti-dumping and Countervailing (AD/CVD)

The principal laws governing anti-dumping duties (AD), countervailing duties (CVD) and safeguards (SG – collectively "trade remedies") are the following:

- investigation and imposition of AD are provided in Article 8 of the Customs Tariff Act and Cabinet Order on Anti-Dumping Duty;
- investigation and imposition of CVD are provided in Article 7 of the Customs Tariff Act and Cabinet Order on Countervailing Duty; and
- investigation and imposition of SG are provided in Article 9 of the Customs Tariff Act and Cabinet Order on Emergency Duty, etc. While these provisions cover SG based on the

WTO rules, Japan may also impose bilateral SG based on FTA/EPA.

5.2 Government Agencies Enforcing AD/CVD Measures

Various government agencies would be involved in the decision-making process, in particular, the Minister of Finance and the Minister of Economy, Trade and Industry, and any other minister who is responsible for the specific industry subject to the trade remedies.

5.3 Petitioning for a Review

In Japan, investigations of trade remedies generally would be initiated at the request of members of domestic industries; however, the relevant laws also allow the investigating authority to self-initiate an investigation.

There has only been one case in which the initiation of the investigation was requested by the relevant minister – namely, the SG case against leeks, raw shiitake mushrooms, and tatami mats. This investigation was conducted in 2000-01. For review proceedings, which will be initiated and conducted once trade remedies are imposed, please see **5.9 Frequency of Reviews**.

5.4 Ad Hoc and Regular Reviews

In Japan, there are no time restrictions for initiating investigations (for both initial impositions and re-impositions) and the initial imposition of trade remedies, and domestic industries can request initiation of an investigation on an ad hoc basis. However, there is a time restriction on re-imposing SG.

Specifically, when an SG is re-imposed on products which were subject to a previous SG (ie, an SG that has expired or been terminated), re-imposition of an SG is allowed only after a period of time equivalent to the period during which the previous SG was taken or a period of two years (whichever is longer) has elapsed from the day on which the previous SG expired or was terminated. AD and CVD have no time restrictions for re-imposition.

For review proceedings, which will be conducted once trade remedies are imposed, please see **5.9 Frequency of Reviews**.

5.5 Non-domestic Company Participation

In Japan, non-domestic companies are allowed to participate in the investigation as relevant parties. For review proceedings which will be conducted once trade remedies are imposed, please see **5.9 Frequency of Reviews**.

5.6 Investigation and Imposition of Duties and Safeguards

Process for Imposing AD

The typical steps and timelines for imposing AD are as follows.

- The investigating authority would review the petition submitted by the domestic industry, and decide whether sufficient facts are presented to initiate the investigation. This review will typically take two months.
- Once the investigation is initiated, the investigating authority will send a questionnaire to the interested parties. The investigating authority may also send a follow-up questionnaire. In general, responses to the questionnaire should be provided within three months from the initiation of the investigation.
- When requested by interested parties, the investigating authority will conduct a simultaneous examination process which allows one interested party to raise questions to another interested party in a meeting. In general, this process will be held around five months from the initiation of the investigation.
- The investigating authority will conduct on-site verifications of the submitted information. In general, this process will be held around six months from the initiation of the investigation.
- A preliminary determination will be published around eight months from the initiation of the investigation. If it is deemed to be necessary, provisional measures could be taken based on this determination.
- Disclosure of essential facts, which will be the basis for the final determination, will be made around ten months from the initiation of the investigation. Interested parties can provide comments to the disclosure.
- A final determination typically will be published within one year from the initiation of the investigation, but can be extended up to six months.

Process for Imposing CVD

The typical steps and timelines for imposing CVD are similar to those of AD as explained above.

Process for Imposing SG

The typical steps and timeline for imposing SG are as follows:

- once the investigation is initiated, the investigating authority will send a questionnaire to the interested parties;
- after responses to the questionnaire are provided, a public hearing is held;
- a preliminary determination could be published, and if it is deemed to be necessary, provisional measures could be taken based on this determination; and

- a final determination will be published within one year (but can be extended) from the initiation of the investigation.

5.7 Publishing Reports

The investigating authority publishes the following reports during the investigation of trade remedies.

- Preliminary findings: a finding explaining a preliminary determination and the facts that form the basis for provisional measures. This finding would be published as a notice (*kokuji*) in the official gazette.
- Final findings: a finding explaining a final determination and the facts that form the basis for definitive measures. This finding would be published as a notice (*kokuji*) in the official gazette.

In addition, when conducting an investigation of AD/CVD, the investigating authority also provides the disclosure of essential facts to the interested parties in writing (see **5.6 Investigation and Imposition of Duties and Safeguards**). This finding explains the facts which will be the basis for the final determination.

5.8 Jurisdictions with No Imposition of Duties and Safeguards

The matter is not relevant in this jurisdiction.

5.9 Frequency of Reviews

Review of AD

There are several review processes for AD measures, as detailed below.

- New shippers review: a new shipper may request initiation of an investigation to calculate their individual dumping margin. The investigation should be completed promptly and within one year, but can be extended up to six months.
- Interim review: interested parties may request initiation of an investigation to review the AD measure once the measure has been in force for one year. The review will examine whether there are any changes in circumstances relating to dumping, injury of domestic industry, and their causation. The investigation should be completed within one year, but can be extended.
- Sunset review: domestic industry may request initiation of a sunset review up to one year before the end of the AD measure. The review will examine whether the AD measure should be extended. The investigation should be completed within one year, but can be extended.

Review of CVD

There are several review processes for CVD measures, as detailed below.

- Review for exporters not subject to the initial investigation: exporters not subject to the initial investigation may request initiation of an investigation to calculate their individual duty rate. The investigation should be completed promptly and within one year, but can be extended up to six months.
- Interim review: interested parties may request initiation of an investigation to review the CVD measure once the measure has been in force for one year. The review will examine whether there are any changes in circumstances relating to subsidies, injury of domestic industry, and their causation. The investigation should be completed within one year, but can be extended.
- Sunset review: domestic industry members may request initiation of a sunset review up to one year before the end of the CVD measure. The review will examine whether the CVD measure should be extended. The investigation should be completed within one year, but can be extended.

Review of SG

Domestic industry members may request initiation of a review which will examine whether the SG measure should be extended. The investigation should be completed within one year, but can be extended.

5.10 Review Process

See **5.9 Frequency of Reviews**.

5.11 Appeal Process

Preliminary and final determinations to impose trade remedies are likely capable of being appealed to the district court, but there are no precedents of such in Japan.

5.12 Key Developments Regarding AD/CVD Measures

The matter is not relevant in this jurisdiction.

5.13 Pending Changes to AD/CVD Measures

In Japan, historically, the number of investigations has remained low. However, recently, the number of AD investigations has been trending upward. While there are undoubtedly various reasons which explain this trend, one of the main causes is the investigating authority's effort to increase awareness and understanding of trade remedies and the domestic industries' acknowledgement of AD measures as useful tools to respond to dumped imports.

6. Investment Security

6.1 Investment Security Mechanisms

In Japan, the FEFTA, together with its subordinate regulations, the Cabinet Order on Inward Direct Investment and the Order

on Inward Direct Investment, are the primary legal instruments of foreign investment regulation.

In the FEFTA, "foreign investors" making "foreign direct investments" (acquisitions of shares, equity, bonds, etc, of Japanese companies) or "specified acquisitions" (acquisitions of shares or equity in non-listed Japanese companies from another foreign investor) must file either a prior notification (ie, pre-closing notification) or post-investment report, generally depending on whether the investments are made in "designated business sectors".

See **6.3 Transactions Subject to Investment Security Measures** and **6.4 Mandated Filings/Notifications** for the definitions of foreign investors, foreign direct investments, and designated business sectors.

When a prior notification is filed according to the FEFTA, the Minister of Finance and ministers who have jurisdiction over the target business will conduct a review. The standard waiting period is 30 days, which could be shortened to two weeks or, in very rare cases, extended to up to five months.

Aside from the FEFTA, sector-specific laws and regulations – such as the Civil Aeronautics Act, the Broadcast Act, and the Radio Act – also regulate certain foreign investments by limiting the ratio of shareholding by foreign investors.

6.2 Agencies Enforcing Investment Security Measures

The MOF is primarily responsible for implementation of the FEFTA. When a prior notification is filed according to the FEFTA, the Minister of Finance and ministers who have jurisdiction over the target business will review if the investment is likely to impair national security, impede public order, compromise public safety, or have a significant adverse effect on the smooth management of the Japanese economy. If they find that the investment is likely to impair national security, etc, they may recommend, and ultimately order, modification or discontinuation of the investment.

6.3 Transactions Subject to Investment Security Measures

In general, if a foreign investor is making a foreign direct investment or specified acquisition, the investor is required to file either a prior notification or post-investment report.

A prior notification is also required if the nationality or county of location of the foreign investor is neither Japan nor a white-listed country. The white list includes 173 countries, including China, Russia, and Sudan, but does not include countries such as Iraq, North Korea, Somalia, South Sudan, etc. Certain types of transactions that involve parties related to Iran are also subject to a prior notification obligation. However, since investors are usually concerned about regulation regarding a foreign direct investment in the designated business sectors, the following focuses on the regulation of these types of investments.

The term "foreign investor" is defined in Article 26, paragraph 1 of the FEFTA and includes, but is not limited to, the following persons:

(a) an individual that is a non-resident;
(b) a legal entity or other organisation established pursuant to foreign laws and regulations, or a legal entity or other organisation with its principal office in a foreign state; and
(c) a company in which the sum total number of votes held directly or indirectly by persons as set forth in items (a) and (b) above make up at least 50% of the number of votes of all shareholders or all members.

A foreign direct investment includes the following actions, as well as actions that are equivalent to these actions:

- an acquisition of shares or voting rights in a listed company, which makes up 1% or more of the total number of issued shares or voting rights in that company;
- an acquisition of shares or equity in a non-listed company (except when acquired from another foreign investor, which is a specified acquisition);
- a transfer of shares or equity in a non-listed company, from a person who acquired the shares or equity prior to becoming a non-resident to a foreign investor after becoming a non-resident;
- consent given for a substantial modification of a company's business purpose, consent given for a proposal to appoint the foreign investor or its affiliate as a director or an auditor, and consent given for a proposal to transfer all of the company's business activities, mergers, splits, dissolution, etc (if the company is a listed company, there are additional investment size thresholds applicable);
- establishment of a branch office or other such place of business in Japan (such as manufacturing facilities), or a substantial modification of the type or business purpose of a branch office or other such place of business in Japan by a foreign investor who falls under (a) or (b) above;
- the lending of money to a legal entity having its principal office in Japan (excluding lending by a person engaged in the banking business, etc, and lending made in Japanese currency by certain foreign investors), for a term exceeding one year, which makes the outstanding balance of the accumulated lending from the foreign investor to the legal entity more than JPY100 million and meets some other investment size thresholds; or

- a takeover of a business from a resident that is a legal entity through the transfer of the business, absorption-type split, or merger.

6.4 Mandated Filings/Notifications

If a foreign investor is making a foreign direct investment or specified acquisition in designated business sectors, prior notification is required.

Designated business sectors are those that are closely related to national security, the maintenance of public order, and the protection of public safety, etc. More specifically, business sectors relating to weapons, aircraft, nuclear facilities, space, dual-use technologies, cybersecurity, electricity, gas, telecommunications, water supply, railways, oil, heat supply, broadcasting, public transportation, biological chemicals, security services, agriculture, forestry and fisheries, leather manufacture, air transportation, and maritime transportation fall into designated business sectors.

With respect to foreign direct investments in non-designated business sectors, in general, post-investment reports are required (for acquisitions of shares, equity, etc, only investments of 10% or greater shareholding require post-investment reports).

The MOF publishes a list that categorises Japanese listed companies into companies that engage in business activities in (i) "core designated business sectors", (ii) "non-core designated business sectors", and (iii) "non-designated business sectors". This list can be found at the MOF website.

See **6.5 Exemptions** for the explanation on core designated business sectors and non-core designated business sectors.

6.5 Exemptions

If a foreign investor, for whom review is deemed not to be particularly important, is acquiring shares, equity, voting rights, etc, the prior notification obligation is exempted under the following conditions.

For Listed Companies

If the investments are made in listed companies in designated business sectors, a financial institution is exempted from the prior notification requirement if the investment meets the following conditions:

(a) the investor and its closely related persons will not become a board member of the investee company;
(b) the investor will not propose any transfer or disposition of the investee company's business activities in the designated business sectors at the general shareholders' meeting; and
(c) the investors will not access non-public information about the investee company's technology in relation with business activities in the designated business sectors.

If a foreign financial institution does not file a prior notification in accordance with this exemption, a post-investment report is required when the investor acquires 10% or more of the shareholdings.

If the investor is a general investor (ie, a foreign investor who is not a foreign financial institution), there are two different types of exemption systems for investments made in core designated business sectors and non-core designated business sectors from among the designated business sectors.

Among the designated business sectors, the business sectors that are most likely to affect national security are designated as core designated business sectors. They include all businesses relating to weapons, aircraft, nuclear facilities, space, and dual-use technologies and a portion of the businesses relating to cybersecurity, electricity, gas, telecommunications, water supply, railways, and oil.

If a general investor is only investing in non-core designated business sectors, the prior notification exemption applies if the investment meets exemption conditions (a), (b), and (c) above.

If a general investor is investing in core designated business sectors, the prior notification exemption applies to investments of less than 10% shareholding, provided that the investment meets exemption conditions (d) and (e) below, as well as conditions (a), (b), and (c) above:

(d) the investor will not attend the investee companies' executive board meetings or committees that have the authority to make important decisions regarding activities in core designated business sectors;
(e) the investor will not make written proposals to the executive board of the investee company or board members requiring their responses and/or actions by certain deadlines regarding business activities in core designated business sectors.

If a general investor does not file a prior notification in accordance with this exemption, the general investor must file a post-investment report when the shareholding ratio reaches 1% and 3% for the first time.

For Non-listed Companies

When investments are made in non-listed companies in non-core designated business sectors, exemption from the prior noti-

fication obligation applies if the investment meets conditions (a), (b), and (c) above. There is no exemption system available for investments made in core designated business sectors. Even if an investor does not file a prior notification in accordance with this exemption, the investor must file a post-investment report.

6.6 Penalties and Consequences

If the Minister of Finance and the minister(s) who have jurisdiction over the target business find, upon review of the prior-notification, that the investment at issue is likely to impair national security, etc, they may recommend, and ultimately order, modification or discontinuation of the investment. However, there has only been one case of such an order to date.

Failure to file a prior notification or provision of false information in the prior notification, violation of the waiting period, and failure to comply with the order to modify or discontinue the investment are subject to criminal penalties of up to three years' imprisonment, a fine of up to three times the value of the investment, or JPY1million, whichever is higher, or both (FEFTA, Article 70).

Failure to file a post-investment report or the provision of false information in the post-investment report are subject to criminal penalties of up to six months imprisonment or a fine of up to JPY500,000 (FEFTA, Article 71).

6.7 Fees

There are no fees required for submission of notifications required by the FEFTA.

6.8 Key Developments Regarding Investment Security

The FEFTA was amended on 29 November 2019, which came into effect on 8 May 2020 and became fully applicable starting 7 June 2020. This amendment was motivated by the current global trend to tighten control over foreign investments from a national security viewpoint, in line with the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) in the USA or the EU's new framework for the screening of foreign direct investments, which was adopted in 2018.

What was notable about the amendment was that the threshold for the prior notification requirement was lowered from 10% to 1% shareholding, with respect to an acquisition of shares or equity in listed companies in the designated business sectors. The amendment also expanded the scope of foreign direct investments, subject to regulation under the FEFTA by including actions such as giving consent to the (i) appointment of the foreign investor as a director or an auditor and (ii) transfer or abolishment of the company's business in designated business sectors. This amendment also introduced an exemption system from the prior notification obligation, in order to maintain balance between the strengthening of foreign investment screening and encouragement of foreign investments.

6.9 Pending Changes to Investment Security Measures

As of 31 October 2020, no major changes are planned.

7. Other Measures Affecting Production and Trade

7.1 Subsidy and Incentive Programmes for Domestic Production

There are no general subsidy programmes in Japan aimed at reducing imports and/or encouraging domestic production. Nevertheless, the Japanese government has adopted some special programmes to deal with emergency situations (eg, the 2008 financial crisis, 2010 rare-earth crisis, 2011 Tohoku earthquake, and 2019 COVID-19 pandemic). In response to the COVID-19 pandemic, the Japanese government has recently adopted some production-related subsidy programmes including the following.

- The Programme for Promoting Investment in Japan to Strengthen Supply Chains aims to strengthen supply chain resilience by supporting businesses in building new plants and introducing new facilities in Japan for the products and materials that are essential for people's wellbeing. Further detail can be obtained through the METI website.
- The Subsidy Programme for *Monodukuri*, Commerce and Services aims to provide SMEs and small enterprises with subsidies for business-related equipment investment expenditures. Further detail can be obtained through the following website (in Japanese): Monodukuri-hojo.

7.2 Standards and Technical Requirements

There are no standards or other technical requirements in Japan aimed at reducing imports and/or encouraging domestic production. The Japanese government has adopted technical regulations and standards in various fields to ensure the safety and quality of products, including the following:

- the Food Sanitation Act establishes technical regulations for foods, food additives, and food contact materials in order to avoid harm to human health;
- the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices establishes technical regulations to secure the safety, efficacy, and quality of medicines and medical devices in order to avoid harm to human health;

- the Electrical Appliances and Materials Safety Act establishes technical regulations for certain electrical appliances, in order to maintain the safety of such products;
- the Telecommunications Business Act establishes technical regulations for telecommunication facilities, in order to ensure that telecommunications services are provided smoothly and without connection defects;
- the Radio Act establishes technical regulations for radio equipment, in order to ensure the fair and efficient utilisation of radio waves;
- the Road Transport Vehicles Act and the relevant regulations designate types of automotive equipment and parts and establish technical requirements in order to ensure the safety of motor vehicles;
- the Act on Japanese Agricultural Standards establishes technical regulations and standards for foods and agricultural products in order to certify the quality and the uniqueness of the products; and
- the Industrial Standardisation Act establishes standards for industrial products, in order to ensure quality and interoperability between the products.

7.3 Sanitary and Phytosanitary Requirements

There are no sanitary or phytosanitary requirements in Japan aimed at reducing imports and/or encouraging domestic production. The Japanese government has adopted various sanitary and phytosanitary requirements to ensure food safety and to prevent incursion of animal and plant illnesses caused by imported products, including the following:

- the Act on Domestic Animal Infectious Diseases Control stipulates cargo which are prohibited from importation and cargo that must be quarantined in order to prevent the infiltration and spread of infectious livestock diseases;
- the Plant Protection Act stipulates cargo which are prohibited from importation and cargo that must be quarantined in order to prevent the infiltration and spread of invasive animals and plants injurious to native flora; and
- the Food Sanitation Act establishes import notification procedures and inspection procedures for imported foods and related products to ensure the safety of those products.

7.4 Policy and Price Controls

The government of Japan has adopted some price support measures to support and encourage domestic production of certain agriculture products, including subsidy programmes adopted by the Agriculture & Livestock Industries Corporation (ALIC). ALIC's programmes apply to products such as beef and veal, pork, milk, vegetables and sugar. Further details are explained in ALIC's brochure.

7.5 State and Privatisation Measures

There are no state trading, state-owned enterprises, and privatisation measures in Japan specifically aimed at reducing imports and/or encouraging domestic production. Nevertheless, the Japanese government has adopted state trading systems for the following products:

- leaf tobacco;
- opium (for medical use);
- rice, wheat and barley;
- dairy products.

Further details on the state trading systems adopted by the Japanese government can be found in the notification made by the Japanese government to the WTO (G/STR/N/18/JPN) – see WTO (state trading).

7.6 "Buy Local" Requirements

Since December 1995, the Japanese government has been a member of the Agreement on Government Procurement (GPA), which prohibits discrimination between domestic and imported products of GPA member origin. Moreover, the Japanese government has so far adopted a policy to treat GPA members and non-GPA members equally. As such, in Japan, there are no "buy national/local" requirements applied to government procurement.

7.7 Geographical Protections

There are no geographical indication (GI) protection measures aimed at reducing imports and/or encouraging domestic production. In Japan, GIs are protected under the Act on Protection of the Names of Specific Agricultural, Forestry and Fishery Products and Foodstuffs (GI Act), and such protection was further strengthened in accordance with the Japan-EU EPA. Explanation of the GI Act and a list of GI products can be found at the following website: Japan Geographical Indications.

8. Other Significant Issues

8.1 Other Issues or Developments

There are no other significant issues that need to be addressed.

Nishimura & Asahi is a pioneer in the practice of trade remedies law in Japan, with an unrivalled knowledge base and extensive experience acting on behalf of Japanese industries and foreign companies filing for and defending against anti-dumping and countervailing investigations by Japanese authorities. N&A proactively advises both private companies and governmental agencies in Japan with regard to international trade laws, such as WTO Agreements, regional trade agreements and international investment agreements. The firm's lawyers have widespread experience as outside and in-house counsel to companies, governmental agencies, and the WTO. N&A also advocates for international trade policies on behalf of domestic and foreign companies and industry groups, analysing relevant international trade law issues and approaching governmental authorities to support the interests of various companies and industries. Finally, N&A assists various companies with regard to matters pertaining to export control and economic sanctions matters.

Authors

Kozo Kawai is a partner and a leading expert in antitrust/competition matters and international trade affairs. He is recognised as a pioneer of trade laws in Japan, and has represented domestic and overseas clients in almost all trade-remedy measure cases in Japan, as well as having frequently represented Japanese clients in trade remedy cases in foreign countries. Currently, he is advising various industry associations in relation to international trade affairs. He has also represented clients in disputed government procurement cases before the dispute settlement body created under the WTO government procurement agreement.

Kojiro Fujii is a partner specialising in international trade law. He has acted on behalf of various industries with regard to anti-dumping and countervailing duties. When he served as a deputy director at Japan's Ministry of Economy, Trade and Industry (METI), he handled several important WTO disputes on behalf of the Japanese government. He continues to advise both the public and private sectors in Japan on WTO disputes, trade remedies, investment treaties, and Regional Trade Agreements. He has also advised many clients with regard to matters related to export control, economic sanctions and customs.

Noriko Yodogawa works as counsel, and has extensive experience having worked at the Ministry of Foreign Affairs of Japan, the World Trade Organization, the Energy Charter Secretariat (the secretariat to the Energy Charter Treaty, which is a multilateral trade and investment treaty dedicated to the field of energy), and a large Japanese manufacturing corporation. In every position, she focused on international trade law matters, which continues to be her specialty at N&A. In particular, in her previous position as an in-house lawyer at a manufacturing corporation and currently at N&A, she represented, and continues to represent, exporters responding to trade remedy investigations in various jurisdictions.

Masahiro Heike is an associate of Nishimura & Asahi, where he specialises in international trade law (WTO, FTAs, trade remedies, export controls, etc) and competition law (anti-monopoly), and frequently advises private companies and government agencies in such matters. Masahiro worked in the Ministry of Economy, Trade and Industries of Japan from 2016 to 2018 and has been involved in various international trade disputes

Nishimura & Asahi

Otemon Tower
1-1-2 Otemachi
Chiyoda-ku
Tokyo 100-8124
Japan

Tel: +81-3-6250-6200
Fax: +81-3-6250-7200
Web: www.jurists.co.jp/en/