

# Trade & Customs 2022

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# Trade & Customs 2022

**Contributing editor****Gary N Horlick**

Law Offices of Gary N Horlick

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Lexology Getting The Deal Through is delighted to publish the tenth edition of *Trade & Customs*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Jordan and the United Kingdom.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Gary N Horlick of Law Offices of Gary N Horlick, for his continued assistance with this volume.



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# Japan

Yuko Nihonmatsu and Fumiko Oikawa

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## LEGAL FRAMEWORK

### Domestic legislation

1 | What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies is as follows:

- the Customs Tariff Act; and
- the Cabinet Order on Anti-Dumping Duties.

### International agreements

2 | In general terms what is your country's attitude to international trade? Has it raised tariffs in the last year?

Japan became a signatory to the General Agreement on Tariffs and Trade (GATT) in September 1955. Under GATT, Japan gradually liberalised trade and reaped many benefits as a nation from trade liberalisation generally. This helped Japan achieve the transition from post-Second World War recovery to industrial development.

Since the 1990s, the network of free trade agreements (FTAs) around the world has grown significantly. Even in Japan, a nation that has been a staunch supporter of multilateral trade arrangements under GATT and World Trade Organization (WTO), calls for FTAs have increased, and in January 2001, Japan began negotiating an economic partnership agreement (EPA) with Singapore, which was concluded in November 2002, becoming Japan's first EPA. By January 2021, Japan had EPAs in place with 21 other countries.

Japan's EPAs tend to extend beyond customs duties and liberalisation of services to cover investment, government procurement, intellectual property rights, migration and the business environment and are aimed at expanding both trade and investment between the countries, with the more comprehensive EPAs extending to topics not covered under WTO rules.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) between 11 member countries entered into force on 30 December 2018. The CPTPP is a significant agreement, as its members account for 12 per cent of world gross domestic product. It also has a level of liberalisation (rate of tariff elimination) in market access for goods higher than those of conventional FTAs and EPAs and covers the environmental, labour, intellectual property, competition and e-commerce matters.

Also, on 1 February 2019, the Agreement between the European Union and Japan for an Economic Partnership entered into force. The European Union is an important trading partner for Japan, accounting for approximately 11 per cent of exports and 12 per cent of imports. The European Union is the second-largest destination for Japanese investment after the United States, and the largest source of inward investment. The CPTPP and the Agreement between the European Union and Japan for an Economic Partnership will create a better

business environment for companies in countries party to the agreements, and by actively utilising these agreements, it is expected that business opportunities will expand for Japanese companies.

Since January 2020, Japan has been negotiating EPAs or FTAs with three counterparties, including China and South Korea, Colombia, and Turkey.

## TRADE DEFENCE INVESTIGATIONS (OUTSIDE THE WTO DISPUTE SETTLEMENT SYSTEM)

### Government authorities

3 | Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Ministry of Finance (MOF) and the Ministry of Economy, Trade and Industry (METI) are the authorities that conduct trade defence investigations and enforce the Customs Tariff Act in Japan.

### Complaint filing procedure

4 | What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Those with interests in Japanese industry (a domestic producer of foreign goods in the same category as the goods under investigation, or a producer that produces at least 25 per cent of the total domestic production of those goods) can make a complaint to the Minister of Finance for anti-dumping duties upon submission of the necessary documents with adequate evidence to establish the following facts:

- name and address or residence of the applicant;
- name, brand, product type and characteristics of the goods that have been dumped;
- name of the supplier of the dumped goods and the country of origin;
- background to the complainant's interests in industry in Japan;
- outline of the facts regarding the import of the dumped goods, and the effective damage, that the imports have caused to the industry in Japan;
- if requesting that any of the matters provided in the documents submitted, or all or part of the evidence submitted, be handled in confidence, a statement to this effect, and the reasons for requesting the same;
- the state of support for duties from related producers, or related labour unions; and
- other relevant matters.

The authority responsible for investigating the request will confirm that the necessary documents have been submitted that adequately evidence the above matters. Once they are satisfied, they will begin investigating whether or not to act on the request. Confirmation usually

takes about two months, and once an investigation starts it will generally be completed within one year after commencing the investigation (and no more than 18 months).

The guidelines for preparing the documents required when requesting anti-dumping duties can be found on the METI website.

### Contesting trade remedies

#### 5 | What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Once a decision has been made to commence an investigation, the Minister of Finance will promptly notify directly interested parties (the importers of the goods under investigation) and the party or parties that requested the investigation in writing, providing the name of the goods to be investigated and the estimated term of the investigation, and will also announce this publicly in the Official Gazette. For a period specified by the MOF after the investigation starts, interested parties may make written representations to the Minister of Finance giving their opinions regarding the investigation.

The Minister of Finance will also notify directly interested parties in writing of important facts that form the basis of a final decision on whether to impose duties or the tariff rate to apply (reasons for a duty or dumping margin, etc). In response, directly interested parties may make counterarguments in writing within a designated period.

### WTO rules

#### 6 | Are the WTO rules on trade remedies applied in national law?

Japan is a member of the World Trade Organization.

The Customs Tariff Act incorporates into Japanese law the provisions of article 6 of the General Agreement on Tariffs and Trade Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement).

### Appeal

#### 7 | What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

A party subject to a dumping duty (ie, the importer) may appeal to the Minister of Finance within three months from the day after becoming aware of the unfavourable trade remedies. If the Minister's decision on the appeal is also unfavourable, the party may then take the matter to court to seek to have the trade remedies annulled, which must be done within six months from the day after becoming aware of the Minister's decision. If there are valid reasons for doing so, the process of appeal to the Minister may be bypassed, instead of going straight to an appeal to the court. However, generally speaking, it is highly unlikely that a trade remedy decision could be overturned by such appeal or court litigation process.

### Review of duties/quotas

#### 8 | How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

### Extension of the duty period

Anti-dumping duties can be imposed for a maximum of five years, but this may be extended if an interested party can submit evidence to the Minister of Finance (no later than one year before the end of the duty period) that adequately shows that actual damage would continue to be incurred, or would be incurred again, as a result of the importation of the designated goods to which the dumping duty applies or to Japanese

industry as a result; the Minister of Finance will then investigate the claim and may extend the dumping duty period for a further period of up to five years.

### Revision of the duty as a result of changed circumstances

Interested parties may request the revision or abolition of a dumping duty not less than one year from the start of the designated period of duties concerning designated goods, if it is accepted, upon submitting adequate evidence, that the circumstances have changed regarding:

- dumping of the designated goods; or
- the facts of the actual damages caused to the Japanese industry as a result of the importation of the designated goods.

A determination of whether or not to revise or abolish the dumping duty generally takes no more than one year.

### Refund of anti-dumping duties

If the amount of the anti-dumping duty paid by the importer of designated goods can be shown to be more than the actual amount of the difference that arose through the dumping of the designated goods, then the importer may request a refund of the dumping duty from the Japanese government upon presenting adequate evidence to support the request. Instigation of the request may result in either refunding the dumping duty up to the amount requested, or rejection if there is insufficient reason for doing so.

### Compliance strategies

#### 9 | What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

To date, the Japanese government has only conducted eight anti-dumping investigations, seven of which led to anti-dumping duties being imposed. In the past, Japan had been reticent about using anti-dumping duty measures, as they might have placed Japanese businesses in a difficult position. Also, the Japanese government has only conducted one countervailing duty and one safeguard duty.

In recent years, there has been an increase in concern over export dumping conduct globally, as economic growth in developing countries has slowed and industries find themselves with overcapacity, and Japanese companies have begun to take measures to fight dumping. The Japanese government has streamlined the process for companies to petition for an anti-dumping investigation, simplified how the investigations themselves are conducted, and taken other measures to improve the domestic anti-dumping system.

## CUSTOMS DUTIES

### Normal rates and notification requirements

#### 10 | Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments, if so, at what level? Is there a legally binding system of information for applied tariffs or similar in place? Are there prior notification requirements for imports?

Based on the principle of no taxation without legislation, some specific laws or treaties stipulate six main different customs duty rates:

- general rate (the Customs Tariff Act): a rate that is set from a long-term perspective based on the state of domestic industry;
- temporary rate (the Act on Temporary Measures concerning Customs): a provisional, flexible rate applied in special circumstances;
- generalised system of preferences (GSP) rate (the Act on Temporary Measures concerning Customs): a rate that is applied to imported

goods where the country of origin is a developing country that has requested preferential tariffs and Japan has accepted this request (generalised system of preferences beneficiary);

- least developed countries (LDCs) preferences rate (the Act on Temporary Measures concerning Customs): this is a rate that applies specifically to imported goods for which the country of origin is a preferential beneficiary and also an LDC, in which case the tax rate is zero. The LDC preferences rate (zero tax) will also apply in the case of the importation of general preferential goods originating from an LDC;
- World Trade Organization (WTO) treaty tariff rate: this is a rate that is agreed (binding rate) as the maximum duty applicable to imported goods originating from a WTO member country. It also applies to countries with beneficial customs duty treatment or countries with most-favoured-nation status under bilateral treaties; and
- economic partnership agreement (EPA) tariff rate: this is a rate that is set out in specific EPAs between Japan and certain other countries. Certain duties are reduced or eliminated for goods originating from such countries according to a schedule in the relevant EPA.

The rates described in the list above are set out in the Customs Tariff Act or other related laws and treaties based on the International Convention on the Harmonised Commodity Description and Coding System (the HS Treaty); Japan's customs tariff schedule as of 1 April 2020 can be found on the Japan Customs website ([https://www.customs.go.jp/english/tariff/2021\\_4/index.htm](https://www.customs.go.jp/english/tariff/2021_4/index.htm)).

Goods with a total customs value of ¥10,000 or less per parcel or customs declaration are exempted from customs duty and consumption tax, save that:

- alcoholic beverages are subject to liquor tax and tobacco (of whatever value) is subject to tobacco tax and special tobacco surtax; and
- the exemptions do not apply to goods such as leather bags, leather shoes and knitted apparel, as they are considered inappropriate from the viewpoint of their impact on domestic industries or other circumstances.

General import freight and international parcels with a total customs value of not more than ¥200,000 are subject to simplified tariffs, which sometimes leads to the application of customs rates lower than the general customs and other tariff rates. For example, cheese subject to simplified tariffs has a customs rate of 5 per cent, although the general customs and other tariff rates for cheese are in the range of 16.8 per cent to 40 per cent. However, the simplified tariff rates do not apply to personal items and unaccompanied baggage, goods exempt from tariffs or duty-free, and any goods for which it is not appropriate to apply the simplified tariff rates considering the impact on Japanese industries.

An importer may make an enquiry with Customs about the tariff classification (tariff code) and the tariff rate that would be applied to products that the importer is planning to import and obtain a written ruling in response, before commencing the importation (Advance Classification Ruling System). The tariff classification, tariff rate and statistical code listed on this Advance Classification Ruling System are then applied to the import declaration.

### Special rates and preferential treatment

#### 11 | Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

All tariff rates, including preference rates under EPAs, are outlined in the customs tariff schedule ([https://www.customs.go.jp/english/tariff/2021\\_4/index.htm](https://www.customs.go.jp/english/tariff/2021_4/index.htm)) on the Japan Customs website, and the list of GSP beneficiaries (countries and territories).

#### 12 | How can GSP treatment for a product be obtained or removed?

To receive preferential tariff treatment, an importer must submit a certificate of origin, the generalised system of preferences (GSP) (Form A), at the time of import declaration. This certificate must be issued at the time of exportation by customs authorities or any other officially authorised body, such as a chamber of commerce and industry in the country of origin, based on the declaration made by the exporter. The goods must be imported directly to Japan for preferential tariff treatment.

There is also a system whereby preferential tariffs are no longer available for products that originate from preferential treatment beneficiary countries or regions once the country's or region's economy has developed or achieved a high level of global competitiveness.

#### Entire graduation

A beneficiary country or region ('beneficiary') is excluded from the list of beneficiaries of Japan's GSP scheme for all items when:

- the beneficiary has been continuously classified as a high-income country in the World Bank Statistics, published by the International Bank for Reconstruction and Development (the 'the World Bank Statistics') for three years up to the previous; or
- the beneficiary has been continuously classified as an upper-middle-income country as well as the value of exports of the beneficiary is no less than 1 per cent of the total value of worldwide exports in the World Bank Statistics for three years up to the previous.

#### Partial graduation

Products originating from a beneficiary are excluded from preferential treatment when:

- (i) the beneficiary is classified as a high-income country in the World Bank Statistics of the previous year, or (ii) the beneficiary is classified as an upper-middle-income country as well as the value of its exports being no less than 1 per cent of the total value of worldwide exports in the World Bank Statistics of the previous year; and
- the value of Japan's imports of the product originating from such Beneficiary exceeds ¥1 billion and 25 per cent of the total value of Japan's worldwide imports of the product in the trade statistics for the previous two years.

Certain countries or certain products originating from the beneficiary countries or regions are excluded from preferential treatment when certain conditions are met.

#### 13 | Is there a duty suspension regime in place? How can duty suspension be obtained?

Currently, there is no formal duty suspension regime in Japan.

Japan does have a tariff quota system under which a specified quota of certain products may be imported without tariffs or with low tariffs (primary tariff rate) to meet domestic demand for low-priced imported products, but once this quota is met, a relatively high tariff (secondary tariff rate) is applied to further imports to protect domestic producers. This tariff quota system differs from the duty suspension regime in that there is a limit to the number of imported goods.

#### 14 | Has your country applied tariffs for 'national security' reasons?

There are currently no cases where the Japanese government has applied tariffs for 'national security' reasons.

## Challenge

### 15 | Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Any person who is not satisfied with an administrative disposition taken by the Director-General of Customs under the Customs Act or other related laws and regulations may file a protest within three months from the day following the day of the receipt by the petitioner of the notification of the disposition (request for reinvestigation). For a request for reinvestigation, the Director-General of Customs reviews the validity of the administrative disposition and notifies the petitioner of the result with a copy of the decision letter.

If the petitioner is still not satisfied with the decision in response to a request for reinvestigation, it may file an appeal with the Minister of Finance within one month from the day following the day of the delivery of the decision letter. Instead of requesting an investigation, any person who is not satisfied with an administrative disposition taken by the Director-General of Customs may also directly file an appeal to the Minister of Finance within three months from the day following the day of the receipt by the petitioner of the notification of the administrative disposition. These procedures are called a 'request for review'. In a request for review, the Minister of Finance reviews and examines the validity of the administrative disposition and notifies the petitioner of the result with a copy of the written verdict.

If the petitioner is still not satisfied with the decision made by the Ministry of Finance it may file an appeal to the court within, in principle, six months from the day of the receipt of the written verdict.

## TRADE BARRIERS

### Government authorities

#### 16 | What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The government offices that handle complaints from domestic exporters against foreign trade barriers at the World Trade Organization (WTO) or under other agreements are the Ministry of Economy, Trade and Industry (METI), Ministry of Finance (MOF) and other ministries responsible for the specific industry in Japan.

In particular, METI publishes a 'Report on Compliance by Major Trading Partners with Trade Agreements – WTO, free trade agreement or economic partnership agreement (EPA) and IIA' and 'METI Priorities Based on the Report', to improve compliance among major trading partners whose trade policies and trade measures might not be consistent with the international rules of the WTO. The Multilateral Trade System Department and Office for WTO Compliance and Dispute Settlement, Trade Policy Bureau within METI has a website dedicated to dealing with enquiries regarding trade policies and measures of foreign countries that are faced by companies and business operators. This office will consider whether the foreign government's measures are consistent with WTO and other international rules and provide advice, including, in some circumstances, assisting with the launch of WTO dispute settlement procedures.

### Complaint filing procedure

#### 17 | What is the procedure for filing a complaint against a foreign trade barrier?

The Japanese government takes the approach of using the WTO and other international trade rules to settle disputes regarding international economic issues. When a company, export cooperative or other interested party is faced with a foreign trade barrier and brings the matter

to the attention of the ministry responsible for that particular industry, the ministry will interview the interested parties to ascertain the facts. If necessary, the ministry will collaborate with METI and other relevant ministries to handle the matter consistently from the Japanese government's perspective, which can include requesting discussions with the relevant foreign government and failing a satisfactory outcome through such negotiations, filing a complaint through dispute resolution procedures under the WTO or the relevant EPA.

### Grounds for investigation

#### 18 | What will the authority consider when deciding whether to begin an investigation?

When a company, export cooperative or other interested party is faced with a foreign trade barrier and brings the matter to the attention of METI, MOF and other Japanese ministries responsible, the Japanese government will look at the evidence provided and decide whether to begin an investigation based on whether the foreign government's actions violate WTO or other international rules.

### Measures against foreign trade barriers

#### 19 | What measures outside the WTO may the authority unilaterally take against a foreign trade barrier? Are any such measures currently in force?

Japan also uses international trade rules outside the WTO to resolve disputes relating to international economic matters.

If the relevant government authority determines that there is a foreign trade barrier that is against an international trade rule, the Japanese government will conduct bilateral negotiations with the other country and take other appropriate measures, such as investor-state arbitration (where a bilateral investment treaty (BIT) exists) and other EPA or BIT dispute settlement processes.

The 2018 edition of the Government White Paper on Unfair Trade noted that, in recent years, due to market distortionary measures by some emerging-market countries, there have been growing concerns that the competitive basis or function of the markets underlying the multilateral free trade system may be being distorted, and there is also a warning that in some developed countries there is a swing back to the result-oriented concept that evaluates the trade policies and measures of other countries as unfair based only on the disadvantageous result of trade with specific partners.

In contrast, METI is promoting comprehensive efforts to secure a level playing field through the Trilateral Trade Ministers' Meeting between Japan, the European Union and the United States and so on, and for reciprocal countermeasures that do not conform to the WTO rules that will not benefit any country, the ministry is responding to the structural issues faced by the multilateral free trade system, such as by improving the WTO dispute resolution procedures and working on the importance of maintaining and strengthening it in various places. Also, for individual projects, the ministry has indicated that it will actively seek solutions while continuing to make use of bilateral and multilateral consultations and WTO dispute resolution procedures.

In December 2017, 70 WTO member countries and regions announced the Joint Ministerial Statement on Investment Facilitation for Development and called for the start of discussions to develop a multilateral and regional framework on investment facilitation. However, since there is a history of the launch of negotiations being postponed, negotiations on investment rules in the WTO have never been agreed. Also, in these discussions, given that market access, investment protection and investor-state dispute settlements are excluded from the debate, and those negotiations in the WTO cannot proceed without consensus among all member states and regions, methods outside the WTO, such

as bilateral agreements and multilateral discussions, are even now still considered more effective.

### Private-sector support

#### 20 | What support does the government expect from the private sector to bring a WTO case?

If an industry wishes to bring a WTO case, it must discuss the case with the relevant government authority in detail. As a part of this consultation process, the industry would be required, at its own cost, to collect data, conduct research and provide the necessary information to enable the authority to determine whether or not to begin an investigation and bring a WTO case.

### Notable non-tariff barriers

#### 21 | What notable trade barriers other than retaliatory measures does your country impose on imports?

Under the Customs Act, any person wishing to import goods must declare them to Customs, obtain an import permit and make payment of customs duty and excise taxes after necessary examination of goods as a general rule (Import Declaration).

The Customs Act prohibits the importation of the following goods:

- heroin, cocaine, methylenedioxymethamphetamine, opium, cannabis, stimulants, psychotropic substances and other narcotic drugs (excluding those designated by Ministry of Health, Labour and Welfare Ordinance);
- firearms (pistols etc), ammunition (bullets) thereof and pistol parts;
- explosives (dynamite and gunpowder, etc);
- precursor materials for chemical weapons;
- germs that are likely to be used for bioterrorism;
- counterfeit, altered or imitation coins, paper money, banknotes or securities, and forged credit cards;
- books, drawings, carvings and any other goods that may harm public safety or morals (obscene or immoral materials, eg, pornography);
- child pornography;
- goods that infringe upon intellectual property rights; and
- goods that constitute unfair competition under the Unfair Competition Prevention Law.

The Foreign Exchange and Foreign Trade Act and other laws and regulations control the import of cargoes that harm the economy, industries, sanitation, health, public safety or public morals in Japan by requiring permits, approvals or inspections by administrative agencies or satisfaction of other conditions on the import of such cargoes. For example, imported plants are required to go through plant quarantine, and the importation of certain plants from specific areas, harmful plants and animals such as insects, mites or bacteria, and soil and plants to which soil is attached is banned unless permission is obtained for use in testing and research (the Plant Protection Act). Also, to prevent the invasion of infectious animal diseases from overseas, imports of cloven-hoofed animals such as cattle, pigs and sheep, equine animals and fowl are banned unless a certificate of import quarantine is obtained upon inspection by the Animal Quarantine Service of the Ministry of Agriculture, Forestry and Fisheries or a permit is obtained from the Minister of Agriculture, Forestry and Fisheries (the Act on Domestic Animal Infectious Diseases Control).

The importing of endangered animals and plants is subject to restrictions under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (the Convention) and it is necessary to obtain an export permit issued by the government authority as stipulated by the Convention, as well as an import licence issued by METI.

## EXPORT CONTROLS

### General controls

#### 22 | What general controls are imposed on exports?

For exports from Japan, an export declaration, inspection and permit are required under the Customs Act. An export declaration requires submission of an export declaration in a prescribed form, an invoice, a packing list and other documents. When an exporter wishes to export cargo (or technology; hereinafter the same) that requires a permit or approval under laws or regulations other than the Customs Act, the exporter must be able to prove to customs that these requirements have been met.

### Government authorities

#### 23 | Which authorities handle the controls?

The Customs and Tariff Bureau of the Ministry of Finance (MOF) handles export customs clearance procedures, although permits and approvals for export of certain cargo are governed by other government agencies; the most important of these is the Foreign Exchange and Foreign Trade Act (the Foreign Exchange Act), the Ministry of Economy, Trade and Industry (METI) being the government agency responsible for permits and approvals for export of cargo under the Foreign Exchange Act.

### Special controls

#### 24 | Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

For security purposes, the Foreign Exchange Act controls the export of certain cargo using two methods: list control and catch-all control.

Specific cargo such as military equipment and dual-use equipment subject to export controls are designated in the Export Trade Control Order (Export Order) and the Foreign Exchange Order. List control requires exporters to obtain an export permit from METI if their export cargo is on the control list and falls within the specifications set out in the Ordinance of the Ministry Specifying Goods and Technologies Pursuant to Provisions of the Appended Table 1 of the Export Control Order and the Appended Table of the Foreign Exchange Order. Based on international export control regimes, the said list includes arms and other dual-use equipment that may be used for the development of weapons of mass destruction.

Catch-all control is a system whereby exporters must obtain a permit from METI for their export cargo other than those included in the control list (excluding food and timbers) if notified by METI to apply for an export permit (inform requirement) or if it is judged, based on expected usage and the end user, that such cargo might be used for the development of weapons of mass destruction.

### Supply chain security

#### 25 | Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

To implement the WCO's Framework of Standards to Secure and Facilitate Trade (SAFE), Japan amended the Customs Tariff Act and relevant laws in 2012 to introduce advance filing rules, which require shipping companies to submit information electronically to customs for maritime container cargo to be loaded on a vessel bound for a port in Japan at least 24 hours before departure of the vessel from the port of loading. Also, the Customs and Tariff Bureau of the MOF implemented the authorised economic operator (AEO) programme, a system conforming with international standards. Under this programme, companies that



have well-organised cargo security management and compliance systems are given the benefit of simple and reduced customs clearance procedures. By May 2022, Japan has signed mutual recognition of this AEO programme with 11 other countries and regions.

### Applicable countries

26 | Where is information on countries subject to export controls listed?

The catch-all control described in 'Government authorities' only applies to exports shipped to certain regions, and the Export Order exempts certain countries (white countries) from the catch-all control. Some of the catch-all control provides various cases where prior permits are required for cargo exported to countries and regions subject to a United Nations arms embargo, as listed in Appended Table 3-2 to the Export Order.

For national security and international cooperation, the Foreign Exchange Act requires exporters to obtain approval from METI for the export of cargos to certain regions. The destinations subject to this requirement are listed in the Export Order.

### Named persons and institutions

27 | Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

METI publishes an end-user list, which lists foreign companies and organisations believed to be involved in the development of weapons of mass destruction. The end-user list is not an embargo list, although export to companies and organisations on the list requires a permit from METI unless it is clear that the export cargo is not to be used for the development of weapons of mass destruction based on how the cargo will be used, how the cargo is traded, the terms of the transaction and other factors.

### Penalties

28 | What are the possible penalties for violation of export controls?

#### The Customs Act

- ten years' imprisonment with labour or a fine of not more than ¥30 million, or both for an individual;
- forfeiture of the embargoed goods and non-permitted export goods; and
- dual liability also applies.

#### The Foreign Exchange Act

- A fine of not more than ¥1 billion (in the case of a juridical person) and 10 years imprisonment with labour and or a fine of not more than ¥30 million (in the case of an individual), if five times the price of the subject of the violation exceeds ¥1 billion (in the case of a juridical person), ¥30 million (in the case of an individual), the fine increases to not more than five times that price;
- administrative sanction for banned export of cargos for a maximum of three years, and a prohibition on taking office as an officer in charge of another company; and
- dual liability also applies.

## FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

### Government authorities

29 | What government offices impose sanctions and embargoes?

The Ministry of Finance (MOF) and the Ministry of Economy, Trade and Industry (METI) have the authority to implement economic sanctions if they are deemed necessary to perform international agreements; they are deemed necessary for Japan to contribute to international efforts for world peace, or a cabinet decision is made to take countermeasures deemed necessary to maintain the peace and safety of Japan.

### Applicable countries

30 | What countries are currently the subject of sanctions or embargoes by your country?

Currently, comprehensive economic sanctions are in force in respect of North Korea, and partial economic sanctions are in force in respect of Iran, Iraq, Libya, Somalia, Syria and Ukraine. Details can be found on the METI website.

### Specific individuals and companies

31 | Are individuals or specific companies subject to financial sanctions?

Yes. See the 'List of economic sanctions and individuals/activities subject thereto' (from 7 May 2021) on the MOF website.

## OTHER RELEVANT ISSUES

### Other trade remedies and controls

32 | Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

## UPDATE AND TRENDS

### Recent developments

33 | Are there any emerging trends or hot topics in trade and customs law and policy in your jurisdiction? What effects are Brexit, the withdrawal of the US from TPP and TTIP, RCEP and negotiations of FTAs (such as the EU-Japan Free Trade Agreement, the Pacific-Alliance, etc) expected to have on your jurisdiction?

#### Japan-UK EPA

After the UK's withdrawal from the EU on 31 January 2020, the tariff rates between Japan and the UK during the 'transition period', which ended 31 December 2020 were subject to the tariff rates under the Japan-EU economic partnership agreement (EPA) pursuant to the Withdrawal Agreement between the EU and the UK. However, after the transition period, the tariff rates between Japan and the UK would revert to the tariff rates that had been effective before the effectuation of the Japan-EU EPA. For this reason, the Japanese and UK governments focused their efforts on the EPA negotiations with a view to bringing the Japan-UK EPA into force in January 2021. As a result, following the agreement in principle reached on 11 September 2021 and the approval by both governments at their Diet and Parliament in December 2020, the Japan-UK EPA came into effect on 1 January 2021. The Japan-UK EPA, replaces the Japan-EU EPA, setting forth a new framework for trade and investment between Japan and the UK after the UK's withdrawal from the EU. While the

Japan-EU EPA provides for elimination of high-level tariffs and improvement of access to markets in the fields of investment and services, such as high-level market access for the UK and high-level rules are still maintained in the Japan-UK EPA. Thus, the Japan-UK EPA basically follows the Japan-EU EPA. Therefore, business entities that have profited under the Japan-EU EPA are able to continue their business as before. For example, for tariff rates already being decreased in stages under the Japan-EU EPA, the decreased tariff rate will also be applied between Japan and the UK, and eventually the tariff rate between Japan and the UK in general will catch up with the tariff rate and tariff elimination period under the Japan-EU EPA. Specifically, the 10 per cent tariff on EU 'vehicles' under the Japan-EU EPA will be decreased in stages and eventually be eliminated in February 2026 which is the eighth year from the coming into effect of the Japan-UK EPA. From 1 January 2021 the applicable tariff reduction rate became 7.5 per cent, which is the same as the tariff reduction rate under the Japan-EU EPA as of the same date, and from 2 February 2021, the third year of the Japan-EU EPA, the tariff was reduced at the same pace as the reduction under the Japan-EU EPA. In addition, rules that were not found in the Japan-EU EPA are now in place under the Japan-UK EPA. For example, Trade and Women's Economic Empowerment was newly added, which provides for recognition of the significance of equal opportunities for women to participate in domestic and global economies, etc. The UK is Japan's 12th largest export partner, and the 20th largest import partner (trade statistics of 2019), and it is expected that the Japan-UK EPA will serve as an important basis to further strengthen and develop the good relationship between Japan and the UK.

#### TPP • CPTTP

The Trans-Pacific Partnership (TPP) is an economic partnership agreement to reduce tariffs, promote the liberalisation of services and investments and establish rules suited for the 21st century for a wide range of fields, including intellectual property and financial services, in the Asia-Pacific region. Although 12 countries, including Japan, signed the TPP Agreement in February 2016, as the US declared its withdrawal in January 2017, ultimately a substitute agreement, the CPTPP (Comprehensive and Progressive Trans-Pacific Partnership), came into effect on 30 December 2018, with the participation of 11 countries, including Japan. While the return of the US to the TPP/CPTPP remains unclear, as both the post-Brexit UK and China are showing interest in joining the TPP/CPTPP, there is much interest in future developments in this area.

#### Japan-US trade agreements

After the United States withdrew from the Trans-Pacific Partnership Agreement (TPP) in January 2017, discussions on trade relations between Japan and the United States have been held within a bilateral framework. On 7 October 2019, the Trade Agreement between Japan and the United States (the Japan-US Trade Agreement) and the Agreement between Japan and the United States concerning Digital Trade (the Japan-US Digital Trade Agreement) were signed in Washington DC, and both agreements entered into force on 1 January 2020. The US-Japan Trade Agreement abolishes or reduces tariffs on agricultural and industrial products to expand bilateral trade between Japan and the United States, which accounts for approximately 30 per cent of global gross domestic product, in a strong, stable and mutually beneficial manner. Specifically, the United States will abolish or reduce tariffs mainly on industrial products, while Japan is required to abolish or reduce tariffs on certain agricultural products and processed foods, including pork and beef. Also, the Japan-US Digital Trade Agreement provides rules to promote smooth, reliable, and free digital trade between the two countries. Given that the agreement stipulates rules at a level equal to or higher than the TPP, the business community hoped that Japan would contribute to discussions on the formulation of e-commerce rules led



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by the World Trade Organization and G20. However, there is differing opinion between countries concerning the distribution and protection of digital data, for example, the United States places emphasis on free data distribution, the European Union aims for reliable data protection and China seeks data management based on national sovereignty. Therefore, how to adjust the position of each country is a future issue.

#### RCEP

On 15 November 2020, the RCEP (Regional Comprehensive Economic Partnership Agreement) was signed by 15 countries, namely Japan, ASEAN nations (10 countries), China, South Korea, Australia and New Zealand. The RCEP will come into effect 60 days after domestic procedures are completed by a majority of the ASEAN members and a majority of the other five countries, which, at the earliest, could be at the end of 2021. When the RCEP comes into effect, it will create a giant economic region covering approximately 30 per cent of the world's GDP, volume of trade, and population.

The RCEP consists of three pillars:

- gradual elimination of tariffs on the trade in goods;
- liberalisation of the trade in services and investment; and
- establishment of common business rules, such as customs procedures and intellectual property protection.

With respect to (1) (elimination of tariffs), although the subject items and elimination schedule would vary depending on the counterparty, tariffs will ultimately be eliminated on 91 per cent of the products in the participating countries. However, five sensitive agricultural products that Japan has claimed for exemption (rice, wheat, beef and pork, dairy products and sugar) were excluded from tariff reductions.

For Japan, RCEP will be the first economic partnership agreement to be executed with China and South Korea. China and South Korea will abolish their tariffs on auto parts in stages over 20 years, at most. The percentage of industrial products which will become subject to zero tariffs will increase from 8 per cent to 86 per cent for China, and from 19 per cent to 92 per cent for South Korea. Thus, the RCEP will serve as an important basis for promotion of Japan's trade with China and South Korea. The structuring of (2) (liberalisation of trade of services and investment), and (3) (establishment of common business rules such as customs procedures and intellectual property protection) is expected to accelerate economic development among the participating countries.

**Coronavirus**

- 34 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Covid-19 has been designated as a designated infectious disease in Japan and the Act on Special Measures against Novel Influenza, etc, and its Enforcement Regulations have been amended and are now applicable to covid-19. In addition, the Quarantine Act and its Enforcement Regulations have been revised, but no new legislation has been enacted at present.

To protect businesses, employment and the general standard of living, support measures are being implemented, including support for leave allowances through employment adjustment subsidies, financial aid to restaurants that closed their business in response to government's requests, monthly support for businesses affected by the state of emergency measures, financial aid to large-scale facilities that shortened their business hours in response to government's requests, support measures for liquor sellers, support for expenses due to cancellation of events, and support for local tourism.

Regulatory measures include immigration restrictions, strengthened quarantine systems and limitations on the number of airports where aircraft may arrive from overseas.

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