

TRADE & CUSTOMS

Japan



Trade & Customs

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Quick reference guide enabling side-by-side comparison of local insights, including into major domestic legislation and international agreements; trade defence investigations; customs duties; trade barriers; export controls; financial and other sanctions, including trade embargoes; and recent trends and hot topics.

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LEGAL FRAMEWORK

Domestic legislation

What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies includes the following law and orders:

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

Law stated - 20 May 2022

International agreements

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

Japan has been a member of the General Agreement on Tariffs and Trade (GATT 1947) since September 1955 and a member of the World Trade Organization (WTO) since January 1995. As a major trading country, Japan has benefitted from the multilateral trading system and has been an avid supporter of that system up until today.

However, as rule negotiations at the WTO reached a deadlock, Japan shifted the focus of its efforts for trade liberalisation from the WTO to economic partnership agreements (EPAs; also referred to as free trade agreements or regional trade agreements). Since it concluded its first EPA with Singapore in 2002, Japan has zealously negotiated EPAs with numerous countries, and as of January 2022, there are 20 bilateral and plurilateral EPAs in effect to which Japan is a party.

Notably, several 'mega' EPAs came into effect in succession since 2018. In December 2018, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), also known as TPP11, entered into force. The CPTPP evolved from the Trans-Pacific Partnership (TPP), which was signed among 12 countries (ie, Japan, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam) in 2016 but never came into force because of the United States' withdrawal in 2017. The CPTPP, signed among the 11 countries excluding the United States in March 2018, accounts for approximately 13 per cent of global GDP.

In February 2019, the Agreement between the European Union and Japan for an Economic Partnership (Japan-EU EPA) came into force. The European Union is one of Japan's largest trade partners, and the Japan-EU EPA accounts for approximately a quarter of global gross domestic product (GDP) and one-third of world trade.

Furthermore, in January 2022, the Regional Comprehensive Economic Partnership (RCEP) took effect. The RCEP is the world's largest EPA which was concluded among 15 Asia-Pacific nations (ie, Japan, Australia, Brunei, Cambodia, China, Indonesia, South Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Vietnam). The 15 member countries account for approximately 30 per cent of the world's population and 30 per cent of global GDP. The RCEP is Japan's first EPA with China and South Korea and is expected to have significant impact on trade among Japan, China and South Korea.

In addition, Japan recently concluded two important bilateral EPAs: one with the United States (the Trade Agreement between Japan and the United States of America) and the other with the United Kingdom (the Japan-UK Comprehensive Economic Partnership Agreement). These EPAs came into force in January 2020 and January 2021, respectively.

TRADE DEFENCE INVESTIGATIONS (OUTSIDE THE WTO DISPUTE SETTLEMENT SYSTEM)**Government authorities**

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

In accordance with the Customs Tariff Act and relevant cabinet orders, the Ministry of Finance (MOF) imposes anti-dumping, countervailing and safeguard duties (emergency duties). In accordance with the Foreign Exchange and Foreign Trade Act (FEFTA) and relevant ministry notices, the Ministry of Economy, Trade and Industry (METI) imposes safeguard quotas (emergency import quotas). Investigations are conducted jointly by MOF, METI and other government ministries in charge of the industries concerned.

Law stated - 20 May 2022

Complaint filing procedure

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 who have interests in Japanese industries (domestic producers or organisations of producers of particular goods that produce at least 25 per cent of the total domestic production of those goods, or labour unions that account for 25 per cent or more of the total number of workers engaging in the production of those goods in Japan) may request MOF to impose anti-dumping or countervailing duties. In addition to the Customs Tariff Act and cabinet orders, there are guidelines for trade remedy proceedings published by METI (in Japanese).

Pursuant to article 7, paragraph 1 of the Cabinet Order on Anti-dumping Duties and article 4, paragraph 1 of the Cabinet Order on Countervailing Duties, the applicant must submit a document stating the following information, accompanied by sufficient evidence of imports of dumped or subsidised goods and of material injury to the Japanese industries caused by such imports:

- name and domicile or residence of the applicant;
- descriptions, brands, types and characteristics of the goods;
- supplier or supplying country of the goods;
- circumstances under which the applicant is regarded as having interests in Japanese industries;
- summary of the facts regarding the dumping/subsidisation and the material injury to the Japanese industries caused by such imports;
- if the applicant requests that any information stated in the document, or the entirety of or any part of the evidence submitted, be treated as confidential, that fact and the reasons for said confidentiality;
- the details of support given by the producers or labour unions concerned; and
- any other relevant matters.

Once a request is made or there is sufficient evidence, the authorities will begin an investigation of the facts regarding dumped or subsidised imports and material injury caused thereby.

With regard to safeguard duties and quotas, there is no statutory system that allows domestic industries to request such remedies. However, any of the interested parties prescribed under article 12, paragraph 1 of the Regulations on Emergency Measures for Increased Imports and article 4, paragraph 1 of the Cabinet Order on Emergency Duties may

submit evidence and/or give testimony with respect to the facts regarding increased imports of particular goods and regarding the serious injury caused to Japanese industries, following the initiation of an investigation.

As for anti-dumping and countervailing duties, the guidelines state that the authorities will determine whether to initiate an investigation, usually within about two months after the application is submitted. The Customs Tariff Act and the Regulations on Emergency Measures for Increased Imports require that an investigation of anti-dumping, countervailing, or safeguard duties and quotas normally be completed within one year after commencement.

Under the Customs Tariff Act, the authorities are vested with the power to start an investigation of anti-dumping, countervailing, or safeguard duties and safeguard quotas ex officio. In addition, the Economic Security Promotion Act passed by the Diet on 11 May 2022 sets forth measures to secure the stable supply of goods that significantly impact the public's survival and their daily lives and economic activities. Specifically, the Act provides that the relevant ministers may request the minister in charge of the trade remedy investigation to initiate an examination of anti-dumping, countervailing, or safeguard duties on the 'critical' goods to be specified in cabinet orders (such as rare earths, semiconductors, or medical products) where sufficient evidence of dumping, subsidisation or increase in imports is found, and material (or serious) injury is caused (or likely to be caused) to the relevant Japanese industries.

Law stated - 20 May 2022

Contesting trade remedies

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

Once a decision has been made to initiate an investigation of anti-dumping or countervailing duties, MOF will promptly notify directly interested parties (including the exporters of the goods under investigation), the importers and the applicant of the information related to the investigation such as the names of the goods to be investigated and the estimated term of the investigation, and will also announce this publicly in the Official Gazette. With regard to safeguard duties and quotas, METI will announce the initiation of such investigations in the Official Gazette.

Within the time limit specified by the authorities, the interested parties may submit evidence and give testimony regarding dumped, subsidised, or increased imports and material injury (or serious injury in terms of safeguard duties) to the Japanese industries affected by the imports and make written representations of their opinions regarding the investigation. As for anti-dumping and countervailing duties, the relevant guidelines state that the parties are normally required to submit evidence and an opinion within three and four months, respectively, from the commencement of the investigation.

The authorities will notify directly interested parties (including the exporter) of the provisional decision on the presumption of the facts regarding the dumped, subsidised, or increased imports and the material (or serious) injury to Japanese industries caused by the imports in writing and in the Official Gazette. With regard to anti-dumping duties and countervailing duties, according to the relevant guidelines, the notified parties may be requested by the authorities to submit evidence and/or state their opinion within a specified time period. The essential facts that constitute the basis of a final decision on imposing the anti-dumping duties or countervailing duties are also disclosed to the directly interested parties, and the parties may be requested to submit evidence within a specified time period.

The final determination of anti-dumping/countervailing duties or safeguard measures will normally be provided within one year from the commencement of the investigation.

Law stated - 20 May 2022

WTO rules

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

Japan is a member of the World Trade Organization (WTO).

The Customs Tariff Act and other applicable regulations (such as cabinet orders) generally reflect relevant provisions of the WTO Agreements, including Article VI of the General Agreement on Tariffs and Trade 1994, the Anti-dumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards. As such, trade remedy investigations in Japan generally follow WTO rules.

Under the relevant cabinet order and guidelines for anti-dumping investigations, China and Vietnam are treated as 'non-market economies' unless the producers of the goods establish the fact that the conditions of a market economy prevail with respect to the production and sale of the goods. The guidelines for anti-dumping proceedings clarify that the following facts are relevant to whether the conditions of a market economy prevail:

- the fact that producers' decisions regarding prices, costs, production, sales and investment are based on market principles and that there is no significant intervention by the government in these decisions;
- the fact that the costs of major inputs (raw materials, etc) reflect market prices;
- the fact that labourers' wages are determined through free negotiations between labourers and management;
- the fact that there is no government ownership or control in the means of production; and
- other facts that MOF deems appropriate which are conveyed to the producer at the start of the investigation.

Law stated - 20 May 2022

Appeal

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 who considers that its rights or legally protected interests have been infringed by any trade remedy decision may file a request for an administrative review to the authorities that have imposed the remedies within three months from the day on which it became aware of the unfavourable decision. The party who made the request for review may bring an action for revocation of the original trade remedy decision (or the administrative determination following the review) to the court either (1) within six months from the day on which it became aware of the authorities' administrative determination, or (2) within one year from the date of the administrative determination following the review. Also, an action for revocation of trade remedies decision can be brought directly to the court (ie, without first requesting an administrative review). In such a case, the action for revocation should be filed within six months from the day of the party becoming aware of the trade remedies decision or within one year from the date of that decision. Generally speaking, however, it is fairly unlikely that a trade remedy decision will be overturned by an administrative review or court proceedings.

Law stated - 20 May 2022

Review of duties/quotas

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

A party who has an interest in a Japanese industry may request for the extension of the duty period by up to five years, no later than one year before the end of the duty period, by submitting to MOF a document containing the following information, accompanied by sufficient evidence demonstrating the likelihood that dumping or subsidisation and the material injury to a Japanese industry caused by the dumped or subsidised imports will continue or recur after the expiry of the said period:

- name and domicile or residence of the applicant;
- descriptions, brands, types and characteristics of the goods;
- supplier or supplying country of the goods;
- circumstances under which the applicant is regarded as having an interest in a Japanese industry;
- summary of the likelihood that the dumping/subsidisation of the goods and the fact of material injury to a Japanese industry caused by the imports will continue or recur after expiry of the designated period;
- if the applicant requests that the evidence submitted be treated as confidential, that request and the reasons for said confidentiality;
- the details of support given by the producers concerned or the labour unions concerned; and
- any other relevant matters.

With regard to safeguard measures (ie, emergency duties and emergency import quotas) – if it is found that serious injury to a Japanese industry caused by increased imports of the goods will continue even after the expiry of the designated period and that the Japanese industry is still in the process of structural adjustment – then the period of the remedy may be extended to a maximum period of eight years. However, the stented measure must be less import-restrictive than the original measure. In the case where an investigation has been initiated, interested parties (including exporters, importers or producers) may produce evidence or give testimony to MOF within the publicised time limit.

Revision of the duty as a result of changed circumstances

Suppliers, importers and other parties with an interest in a Japanese industry may request to alter or abolish the anti-dumping duties or countervailing duties (as appropriate) after the expiry of one year from the first day of the duty period by submitting to MOF a document containing the following information, accompanied by sufficient evidence demonstrating changes in circumstances related to dumping of/subsidies for the goods concerned, or to the fact of material injury to the Japanese industry caused by the imports:

- name and domicile or residence of the applicant;
- descriptions, brands, types and characteristics of the goods;
- supplier or supplying country of the goods;
- circumstances under which the applicant is regarded as being a supplier, importer or having an interest in a Japanese industry;
- summary of the changes in circumstances relating to dumping/subsidisation of the designated goods and/or to the fact of material injury to the Japanese industry caused by the imports;
- if the applicant requests that the evidence submitted be treated as confidential, that fact and the reasons for said confidentiality;
- the details of support given by the producers concerned or the labour unions concerned; and
- any other relevant matters.

In relation to safeguard measures (emergency duty and emergency import quotas), in cases where the designated period exceeds three years, the government shall conduct a review during the first half of the period in order to consider

withdrawing the measure or increasing the pace of liberalisation of the measure.

Refund of anti-dumping or countervailing duties

If the amount of the anti-dumping duties or countervailing duties paid by the importer of designated goods exceeds that of the actual margins of dumping or the subsidies actually provided for the designated goods, the importer may request a refund of such duties to an amount equivalent to the excess. The party requesting the refund must submit a written request for a refund, stating the amount of anti-dumping/countervailing duties to be refunded and the basis of the calculation of the amount, accompanied by evidence sufficient to support the request to the Director General of Customs who has given import permission for the designated goods. The investigation of the request will generally be concluded within one year from the date of the request.

Law stated - 20 May 2022

Compliance strategies

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

To date, the Japanese government has conducted only eight anti-dumping investigations. As of May 2022, two additional cases are being investigated and there are duties being imposed on six types of goods. Countervailing duties were imposed only in one case, which have already expired. Only one investigation for safeguard duties was conducted in the past, which did not result in final imposition of the duties.

Because trade remedy investigations are relatively rare in Japan, companies might wish to consider an appropriate strategy to address such measures on a case-by-case basis.

Law stated - 20 May 2022

CUSTOMS DUTIES

Normal rates and notification requirements

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?

Normal customs duty rates

There are three types of customs duty rates that normally apply in Japan:

1. general rate: a base rate listed in the appended table of the Customs Tariff Act from a long-term perspective;
2. temporary rate: a rate applied only for a certain period of time to modify the general rate due to certain political or other needs and set out in the Act on Temporary Measures Concerning Customs; and
3. WTO treaty tariff rate: a maximum rate applied to products from World Trade Organization (WTO) member countries, which may also apply to products from countries under most-favoured-nation (MFN) treatment under bilateral treaties or countries that treat Japan in a manner substantially equivalent to treatment for MFN tariff rates.

These rates are provided in the respective laws and treaties, as well as in the 'General', 'Temporary' and 'WTO' columns of Japan's tariff schedule .

Exemption for low-value shipments

Exemption

Goods with a total taxable value of ¥10,000 or less per customs declaration, or parcels sent from the same sender to the same addressee in the case of postal items, are exempted from customs duty and consumption tax ; provided, however, that if the goods are subject to other domestic excises, such as liquor or normal or special tobacco tax, they are not exempted from those taxes. In addition, the exemptions generally do not apply to goods such as (1) leather bags, shoes and gloves, (2) knitted clothing, and (3) ski boots.

Simplified tariffs

Goods with a total taxable value of ¥200,000 or less are subject to simplified tariffs . Unlike a general tariff where it is necessary to find the applicable tariff from thousands of items, when a simplified tariff is applied, an importer can easily find the applicable tariff from one of seven categories. However, the simplified tariff rates do not apply to those items carried by entrants or their unaccompanied baggage, goods exempted from tariffs or duty-free, or any goods for which it is not appropriate to apply the simplified tariff rates considering the impact on Japanese industries. Unlike goods with a total customs value of ¥10,000 or less, those subject to simplified tariffs are not exempted from consumption tax.

Advance ruling

If an importer is uncertain of the tariff classification (ie, HS code), place of origin, or the tariff rate, including its reduction and exemption, to be applied to the products that it plans to import, it may make an enquiry with Japan Customs and obtain a written response in advance (advance ruling system). If the enquiry is made on a written basis, then customs will also respond in writing, and such written response will be respected at the import customs clearance for three years from its issuance. Enquiries may also be made on a verbal basis; however, the response from customs to such enquiries may not be respected at the import customs clearance.

Prior notification requirements

Any person who intends to import goods to which the customs declaration and payment system applies shall, at the time of importing the goods, file a declaration for payment of customs duties (see b (3) of the link) with the Director General of Customs, stating the tax base and other information concerning the goods, as well as the amount of tax and other necessary information.

Law stated - 20 May 2022

Special rates and preferential treatment

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

Special tariff rates

Generally, there are three types of special tariff rates in Japan:

1. EPA tariff rate: rates set out in economic partnership agreements (EPAs) between Japan and other countries. In accordance with EPAs, certain duties are reduced or exempted for goods originating from member countries. In order to apply an EPA tariff rate, the importer should submit a certificate of origin issued by the competent authority of the exporting country or other party. The specific requirements depend on each EPA, and the country of origin may be certified by a third party or importer, exporter, or producer. A certificate of origin is also required for Generalized System of Preferences (GSP) treatment (see Japan Customs, 'Origin certification procedure');
2. GSP rate: a rate provided for in the Act on Temporary Measures Concerning Customs and relevant laws. This rate is applied to certain imported goods ('general preferential items') whose country of origin is any developing country specified by a cabinet order ('preferential beneficiary'). The GSP rate is lower than the effective tariff rate (which is the basic tariff rate, the provisional tariff rate if applicable, or the WTO tariff rate); and
3. Least developed countries (LDC) preferences rate: a special-tariff rate (normally zero) that applies specifically to certain imported goods (either LDC or non-LDC preferential items) for which the country of origin is a preferential beneficiary and also an LDC specified by a cabinet order.

These rates are provided in the respective laws and EPAs, as well as in the 'Tariff rate (EPA)', 'GSP' and 'LDC' columns of Japan's tariff schedule.

General preferential items and LDC preferential items are listed on the Ministry of Foreign Affairs of Japan website.

Countries/territories that are given preference

GSP and LDC beneficiaries (countries and territories) are listed on the Japan Customs website.

Law stated - 20 May 2022

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

Obtainment

In order to apply GSP and LDC rates, the importer should generally submit documentary evidence relating to the origin of goods (ie, Combined Declaration and Certificate of Origin: Form A), at the time of import declaration. This certificate must be issued by customs or any other authorised body, such as a chamber of commerce and industry, at the time of exportation. The expiry date of the certificate is one year from the date of issuance. The goods must be imported directly into Japan for preferential tariff treatment, and if trans-shipment is made in a third country for transportation or other reasons, then a through bill of lading from the country of origin is required (see Japan Customs, 'Certification of origin').

Suspension and removal

Preferential tariffs are not available in the following cases:

Escape clause

If a product imported under preferential treatment causes or threatens to cause damage to a domestic industry, then such preferential treatment may be suspended temporarily by specifying the product and duration, and the countries

and territories, if necessary, in a cabinet order.

Partial graduation

Certain products originating from GSP beneficiary countries or territories are excluded from preferential treatment for one year (which may be extended for the following year if the requirements are met). A country or territory may be excluded from the list of GSP beneficiaries if (1) it has been classified as a 'high-income country' in the World Bank Statistics, or (2) it has been classified as an 'upper-middle-income country' in the same and its total value of exports is at least 1 per cent of the total value of worldwide exports. The products subject to partial graduation are those originating from the GSP beneficiary country or territory whose imports to Japan exceed ¥1 billion in value and 25 per cent of the total value of Japan's worldwide imports of the product in the trade statistics for the two-year period before the target year.

Entire graduation

This occurs when the country or territory is excluded from the list of GSP beneficiaries for satisfying either of the preceding criteria (ii)(1) or (ii)(2) for three consecutive years. In the case of entire graduation, all the products originating from the country or territory concerned are subject to graduation.

Exclusion by item

Among any items originating from preferential treatment countries, those whose total import value exceeds ¥4.5 billion and whose share of Japan's total import value of the same item from all over the world exceeds 5 per cent during the past three years are excluded from preferential tariff treatment for the subsequent three years.

Law stated - 20 May 2022

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

Currently, there is no duty suspension regime in Japan.

Law stated - 20 May 2022

Has your country applied tariffs for 'national security' reasons?

In accordance with Article XXI(b)(iii) of the General Agreements on Tariffs and Trade, the WTO treaty tariff rate may not be applied when a country considers it necessary for the protection of its essential security interests in times of war or other emergencies in international relations. On 20 April 2022, Japan amended the Act on Temporary Measures Concerning Customs and promulgated a cabinet order pursuant to that amended Act. Since 21 April 2022, the WTO treaty tariff rates have ceased to apply to all goods originating from Russia, and general tariff rates, and temporary tariff rates if applicable, are applied instead (see Customs Director Wataru Sakata, 'Appropriate tariff rate application for cargo originating from Russia' – in Japanese only).

Law stated - 20 May 2022

Challenge

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

Customs decisions may be challenged in the following ways:

Request for reinvestigation to the Director-General of Customs

If a person wishes to challenge a customs decision made by the Director-General of Customs, the person may file a request for reinvestigation to the Director-General. Such request for reinvestigation should be made within three months from the day following the receipt by the petitioner of the notification of the customs decision. When such request is filed, the Director-General reviews the validity of the customs decision and notifies the petitioner of the result with a copy of the decision letter.

Request for administrative review to the Minister of Finance

If the petitioner wishes to challenge the decision in response to a request for reinvestigation, it may file a request for administrative review with the Minister of Finance within one month from the day following the delivery of the decision letter. In addition, instead of requesting a reinvestigation, anyone not satisfied with a customs decisions taken by the Director-General may directly file a request to the Minister of Finance within three months from the day following the receipt by the petitioner of the notification of the administrative disposition. After receiving the request, the Minister of Finance reviews and examines the validity of the administrative decision and notifies the petitioner of the result with a copy of the written ruling.

Appeal with the court

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

Law stated - 20 May 2022

TRADE BARRIERS

Government authorities

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

When a domestic manufacturer, exporter or other interested party in a particular industry wishes the government to bring forward a complaint against foreign trade barriers at the World Trade Organization (WTO) or under other agreements, the government ministry responsible for that industry will normally serve as the primary contact point and handle the matter. In practice, the Ministry of Economy, Trade and Industry is often the ministry in charge as it is responsible for the steel, chemical and other important manufacturing industries. However, other ministries, such as the Ministry of Agriculture, Forestry and Fisheries (handling complaints in the agriculture, forestry and fishery sectors) and Ministry of Land, Infrastructure, Transport and Tourism (handling complaints, eg, in the shipbuilding industry), may also be the ministry in charge, depending on the specific industry or product in question.

In addition, the Ministry of Foreign Affairs, which is responsible for international public law (including international

trade agreements) and diplomatic relations in general, always participate in the process and cooperates closely with the ministry responsible for the relevant industry. The Ministry of Justice and other government departments may also play a role, depending on the case.

Law stated - 20 May 2022

Complaint filing procedure

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

When a manufacturer or exporter of a product, or other interested party (eg, an industrial association) has a concern over a foreign trade barrier that appears to be inconsistent with the WTO Agreement or other trade agreements, that party may bring the matter to the attention of the ministry responsible for the industry. The ministry will hear from the complaining party and other interested parties to assess facts and the economic impact of the trade barrier on the industry, as well as whether and to what extent that trade barrier is inconsistent with the WTO Agreement or other international agreements. The ministry will also consult with the Ministry of Foreign Affairs and other relevant ministries to seek their views of the matter and whether the government should initiate a formal procedure under the WTO Agreement or other trade agreements. In most cases, the government will have bilateral discussions with the relevant foreign authorities with the aim to settle the dispute amicably before filing a formal complaint before the WTO or under other trade agreements.

Law stated - 20 May 2022

Grounds for investigation

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

The authorities will take a number of factors into consideration when deciding whether to begin an investigation of a foreign trade barrier with a view to filing a formal complaint at the WTO or under other trade agreements. Such factors include: the legal viability of the claims made (from both factual and legal perspectives), the economic impact of the trade barrier on the domestic industry, any 'systemic' concerns arising from the trade-restrictive measure in question, and political and diplomatic relations between Japan and the state imposing the measure. Thus, even if a measure imposed by a foreign government appears to be inconsistent with an international trade agreement (such as the WTO Agreement), the Japanese government may choose not to file a complaint based on other, non-legal considerations.

Law stated - 20 May 2022

Measures against foreign trade barriers

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

Unilateral trade measures (such as unilateral trade sanctions) are generally not allowed under the WTO Agreement, and Japan maintains a very cautious stance towards taking such measures. The exceptions include measures related to export controls and economic sanctions, which the authorities may take under the Foreign Exchange and Foreign Trade Act to achieve certain specified objectives, such as to maintain national security and international peace.

Law stated - 20 May 2022

Private-sector support

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

If a manufacturer, exporter, industry or other interested party wishes the Japanese government to bring forward a WTO complaint against a measure taken by a foreign government, that party will need to initially collect relevant facts and data and provide them to the government authorities for their consideration. In this process, the party will incur certain costs, such as lawyers' fees and translation costs. In addition, when the government decides to file a formal complaint before the WTO, it may, depending on circumstances, request the industry or other interested party (which will benefit from the proceedings) to bear part of the legal fees and other costs that the government will incur during the proceedings.

Law stated - 20 May 2022

Notable non-tariff barriers

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 the Director-General of Customs and obtain an import permit. An import permit will be issued after the necessary examination of the goods and payment of customs duties and excise taxes.

Further, Article 69-11 of the Customs Act prohibits the importation of the following goods, with limited exceptions:

- narcotics and psychotropics, cannabis, opium and opium poppies, stimulants (including raw materials for stimulants thereof as referred to in the Stimulants Control Act) and utensils for opium smoking;
- hand-guns, rifles, machine guns, cannons, and bullets thereof and parts of hand-guns;
- explosives;
- propellants;
- certain specified substance used for the manufacture of chemical weapons;
- certain specified pathogens;
- counterfeit, altered or imitation coins, money bills, bank notes, revenue stamps, postal stamps, securities and forged credit cards;
- books, drawings, sculptures or other goods that are detrimental to public security or that corrupt public morals;
- child pornography;
- goods that infringe patent rights, utility model rights, design rights, trademark rights, copyrights, neighbouring rights, layout-design exploitation rights or breeders' rights; and
- goods that compose 'unfair competition' within the meaning of the Unfair Competition Prevention Act.

There are a number of other laws that prohibit or restrict the importation of particular goods for certain policy objectives. Such laws include, among others:

- the Wildlife Protection, Control, and Hunting Management Act;
- the Firearms and Swords Possession Control Act;
- the Poisonous and Deleterious Substances Control Act;
- the Pharmaceutical Affairs Act;
- the Agricultural Chemicals Regulation Act;

- the Act on Price Adjustment of Sugar and Starch;
- the Explosive Control Act;
- the Act on the Regulation of Manufacture and Evaluation of Chemical Substances;
- the High Pressure Gas Safety Act;
- the Food Sanitation Act;
- the Plant Protection Act;
- the Act on Domestic Animal Infectious Diseases Control; and
- the Rabies Prevention Act.

Further, under Article 52 of the Foreign Exchange and Foreign Trade Act, the government can impose on importers the obligation to obtain prior import approval when it is necessary to: (1) achieve the sound development of foreign trade and the national economy; (2) implement a treaty or any other international agreement; or (3) contribute to international efforts for international peace. This provision is particularly relevant to import prohibition or restrictions as a means of economic sanction.

In addition, the importation of certain endangered animals and plants is subject to the restrictions under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (the Washington Convention) and the Foreign Exchange and Foreign Trade Act.

Law stated - 20 May 2022

EXPORT CONTROLS

General controls

What general controls are imposed on exports?

Under the Customs Act, an exporter of goods must file an export declaration with the customs office and obtain permission after the necessary inspection. An export declaration is made in a prescribed form and submitted to the customs office, together with a purchase order and other documents. When an exporter intends to export goods that are subject to export restrictions under laws or regulations other than the Customs Act, the exporter must file a permit or approval required under such laws or regulations to the customs office when making an export declaration.

Law stated - 20 May 2022

Government authorities

Which authorities handle the controls?

Export controls for weapons and dual-use items are administered by the Ministry of Economy, Trade and Industry in accordance with the Foreign Exchange and Foreign Trade Act and other relevant legal instruments. In addition, for the export of certain categories of goods, export controls are carried out by the following agencies in accordance with relevant laws and regulations:

- the Agency for Cultural Affairs: goods regulated under the Act on Protection of Cultural Properties;
- the Ministry of the Environment: goods regulated under the Wildlife Protection, Control, and Hunting Management Act;
- the Ministry of Health, Labour and Welfare: goods regulated under the Narcotics and Psychotropics Control Act, the Cannabis Control Act, the Opium Control Act and the Stimulants Control Act;
- the Ministry of Agriculture, Forestry and Fisheries: goods regulated under the Rabies Prevention Act, the Act on

Domestic Animal Infectious Diseases Control and the Plant Protection Act; and

- the Ministry of Land, Infrastructure, Transport and Tourism: goods regulated under the Road Transport Vehicle Act.

When exporting goods regulated under these specific laws and regulations, an exporter is required to obtain a permit, approval, or other licence from the relevant agency and certify to the customs office at the time of an export declaration or inspection.

Law stated - 20 May 2022

Special controls

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

As a member of all four multilateral export control regimes (the Nuclear Supplier Group, the Australia Group, the Missile Technology Control Regime and the Wassenaar Arrangement), Japan has implemented relevant domestic export controls legislations including the Foreign Exchange and Foreign Trade Act in accordance with those regimes. The Ministry of Economy, Trade and Industry (METI) administers export controls.

Export controls under the Foreign Exchange Act consist of the 'list' control and 'catch-all' control.

The list control covers sensitive items that can be potentially used for the development, manufacture, use and storage of weapons of mass destruction (WMDs) and conventional weapons. To export items subject to the list control, an exporter is required to obtain an export licence from METI regardless of their destination, although the specific procedure for obtaining the licence may vary depending on the type of items being exported and their destination. The items subject to the list control are listed in the Appended Table 1 of the Export Trade Control Order and the appended Table of the Foreign Exchange Order, while specifications of the items are stipulated in the Ministerial Order Specifying Goods and Technologies Pursuant to the Provisions of the Appended Table 1 of the Export Trade Control Order and the Appended Table of the Foreign Exchange Order.

The catch-all control covers all items that are not subject to the list control (except for certain items such as foods and lumber). Even if an item is not subject to the list control, a prior export licence may be required depending on its end use and end user. As to the end use, in general, a prior export licence may be required when an exporter is aware or has been informed by the Minister of Economy, Trade and Industry that the item will be used for WMD-related activities or the development, manufacture and use of conventional weapons, under certain conditions. As to the end user, in general, a prior export licence may be required when an exporter is aware that the end user is or was involved in the development, manufacture, use and storage of WMDs or, the end user is listed on the Foreign End User List.

Law stated - 20 May 2022

Supply chain security

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

In June 2005, the World Customs Organization (WCO) adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) to deter international terrorism, secure revenue collections and promote trade facilitation. In light of this Framework, Japan amended the Customs Tariff Act in 2012 and introduced advance filing rules. Under those rules, ship operators are required to submit to customs information regarding maritime

container cargo to be shipped to a port in Japan at least 24 hours before departure of the vessel from the port of loading. Also, in response to the WCO's SAFE Framework of Standards, Japan introduced the authorised economic operator (AEO) programme in 2006 and to date, over 700 Japanese businesses have participated in the programme. Under this programme, the customs office provides simplified and expedited customs procedures for businesses that have been certified and meet requirements related to legal compliance systems and cargo safety. By May 2022, Japan signed mutual recognition of this AEO programme with 13 other countries and regions.

Law stated - 20 May 2022

Applicable countries

Where is information on countries subject to export controls listed?

The list control covers all regions, and there is no region to which controlled items can be exported without any licence. However, various kinds of 'bulk' (as opposed to individual) export licences are available, depending on the types of items being exported and their destinations, so it is often not necessary to obtain an export licence for each individual export.

The catch-all control on weapons of mass destruction covers most countries and regions, whereas the catch-all control on conventional weapons mainly applies to countries and regions subject to United Nations arms embargoes. The catch-all controls do not apply where the destination is one of the Group A (or 'white') countries, namely, those listed in the Appended Table 3 of the Export Trade Control Order. The listed countries are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States.

Law stated - 20 May 2022

Named persons and institutions

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

METI maintains the Foreign End User List in connection with the catch-all control. This list provides exporters with information on foreign entities which are suspected of involvement in certain activities such as the development of WMDs. Unlike the Entity List under the US Export Administration Regulations, the Foreign End User List does not prohibit exports to the listed end users generally. Instead, the permissibility of an export to a listed end user will be assessed on a transaction-by-transaction basis. For example, even if an end user is listed on the Foreign End User List, a prior export licence is not required if it is clear that the item in question will be used for a purpose other than WMD-related activities.

In addition, in response to Russia's military action against Ukraine, Japan has imposed various economic sanctions against Russia under the Foreign Exchange and Foreign Trade Act. Those sanctions include the ban on exports to certain named Russian entities.

Law stated - 20 May 2022

Penalties

What are the possible penalties for violation of export controls?

The Customs Act

A person, who exports narcotics and psychotropic drugs, cannabis, opium and opium poppies, or stimulants, is subject to imprisonment with work for not more than 10 years, a fine of not more than ¥30 million, or both. In addition, a person that exports child pornography and goods that infringe upon intellectual property rights, etc, can be punished by imprisonment with work for not more than 10 years, a fine of not more than ¥10 million, or both.

The Foreign Exchange and Foreign Trade Act

A person who engages in a transaction of certain technology or exports certain goods without obtaining the requisite licence can be punished by imprisonment for not more than seven years, a fine of not more than ¥20 million, or both. A person who engages in a transaction of certain technology or exports certain goods related to WMDs without obtaining the requisite licence can be punished by imprisonment for not more than 10 years, a fine of not more than ¥30 million, or both.

In addition, METI may prohibit a person who has engaged in a transaction of certain technology or exported certain goods without obtaining the requisite licence from engaging in a transaction of technology or exporting goods, for a period not exceeding three years.

Law stated - 20 May 2022

FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

Government authorities

What government offices impose sanctions and embargoes?

In principle, sanctions on payments and receipt of payments, conducting capital transactions and foreign direct investment are imposed and administered by the Minister of Finance (MOF), while sanctions on imports and exports of goods and related capital transaction are imposed and administered by the Minister of Economy, Trade and Industry (METI).

Law stated - 20 May 2022

Applicable countries

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

Under the Foreign Exchange and Foreign Trade Act, sanctions or embargoes may be imposed: (1) where it is necessary for Japan to sincerely implement the obligations under a treaty or any other international agreement; (2) where it is particularly necessary for Japan to contribute to international efforts for international peace; or (3) where a cabinet decision and Diet approval are made. To date, only sanctions and embargoes against North Korea have been implemented under point (3). Currently, North Korea, Iran, Somalia, Libya, Syria, Russia and Iraq are subject to sanctions and/or embargoes. Information of those measures can be found on the METI website.

Law stated - 20 May 2022

Specific individuals and companies

Are individuals or specific companies subject to financial sanctions?

Yes. The latest information on individuals or specific companies subject to asset freeze measures is available at the MOF website. Recently, the Japanese government has significantly expanded its sanctions to cover numerous Russian government officials (including President Putin), their affiliates and financial institutions.

Law stated - 20 May 2022

OTHER RELEVANT ISSUES

Other trade remedies and controls

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

Not applicable.

Law stated - 20 May 2022

UPDATE AND TRENDS

Recent developments

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–US trade agreements

After the United States withdrew from the Trans-Pacific Partnership Agreement (TPP) in January 2017, Japan and the United States entered into negotiations on a bilateral trade 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, and those agreements entered into force on 1 January 2020.

The Japan–US Trade Agreement eliminates or reduces tariffs on agricultural and industrial products in order to expand bilateral trade between the two countries, which together accounts for approximately 30 per cent of the world's gross domestic product (GDP). Specifically, the Agreement stipulates that the United States will eliminate or reduce tariffs mainly on industrial products. The Agreement also stipulates that Japan will eliminate or reduce tariffs on certain agricultural products and processed foods, including pork and beef.

The Japan–US Digital Trade Agreement provides rules to strengthen economic ties regarding digital trade and promote smooth, reliable and free digital trade between the two countries. In addition to provisions similar to those in the TPP, this Agreement includes new elements that further strengthen TPP rules, such as the prohibition of disclosure requirements for algorithms and ciphers, as well as provisions regarding civil liability for service providers such as social networking services.

Brexit

After the United Kingdom (UK) withdrew from the European Union on 31 January 2020, Japan entered into trade negotiations with the UK and, as a result, the Japan-UK Comprehensive Economic Partnership Agreement was signed on 23 October 2020 and took effect on 1 January 2021. This Agreement is aimed at maintaining the previous access to the UK market under the Japan-EU economic partnership agreement (EPA). The Agreement also improved access to the UK market for some items, such as rolling stock and auto parts. In addition, the Agreement provides more advanced rules in some areas, such as e-commerce and financial services, than the Japan–EU EPA.

RCEP

Negotiations on the Regional Comprehensive Economic Partnership (RCEP) started in November 2012, and it was signed on 15 November 2020 among 15 countries: Japan, Australia, Brunei, Cambodia, China, Indonesia, Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Vietnam. The agreement entered into force on 1 January, 2022 among 10 countries: Japan, China, Australia, New Zealand, Brunei, Cambodia, Laos, Singapore, Thailand and Vietnam. It also took effect for Korea on 1 February and Malaysia on 18 March 2022.

RCEP is an economic partnership agreement covering the Asia-Pacific region and accounts for about 30 per cent of the world's GDP, total trade and population and about 50 per cent of Japan's total trade. The agreement improves market access and introduces new rules in various areas, including intellectual property and e-commerce, across a diverse group of countries at different stages of development.

Economic Security Promotion Act

On 11 May 2022, the Economic Security Promotion Act was enacted at the national Diet. The Act consists of measures for: (i) ensuring a stable supply of 'critical' goods; (ii) ensuring a stable supply of key infrastructure services; (iii) making patent applications regarding certain critical technologies confidential; and (iv) supporting the development of certain key advanced technologies. The Act will come into force incrementally from early 2023.

The Act establishes a basic policy and the necessary framework to ensure economic security to address the economic measures and activities that may harm the national security and its citizens.

Economic sanctions against Russia

In response to Russia's military action against Ukraine, Japan has imposed various economic sanctions against Russia under the Foreign Exchange and Foreign Trade Act, in close cooperation with the United States, the European Union, and like-minded countries. These sanctions are the most extensive economic sanctions ever imposed by Japan and consist of restrictions on payments, capital transactions, securities issuance, and imports and exports.

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Law stated - 20 May 2022

Jurisdictions

	Chile	Porzio Ríos García
	Colombia	Araújo Ibarra International Trade Consultants SAS
	Eurasia	Dentons
	European Union	Fieldfisher
	Japan	Mori Hamada & Matsumoto
	Jordan	AL Armouti Lawyers & Consultants
	Malaysia	SKRINE
	Mexico	Galicia Abogados SC
	Thailand	Weerawong, Chinnavat & Partners Ltd
	Turkey	ACTECON
	Ukraine	Sergii Koziakov & Partners
	United Kingdom	Clifford Chance
	USA	Cassidy Levy Kent LLP