

PANORAMIC

# TRADE & CUSTOMS

Japan



LEXOLOGY

# Trade & Customs

Contributing Editor

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# Contents

## Trade & Customs

### LEGAL FRAMEWORK

- Domestic legislation
- International agreements

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

- Government authorities
- Complaint filing procedure
- Contesting trade remedies
- WTO rules
- Appeal
- Review of duties/quotas
- Compliance strategies

### CUSTOMS DUTIES

- Normal rates and notification requirements
- Special rates and preferential treatment
- Challenge

### TRADE BARRIERS

- Government authorities
- Complaint filing procedure
- Grounds for investigation
- Measures against foreign trade barriers
- Private-sector support
- Notable non-tariff barriers

### EXPORT CONTROLS

- General controls
- Government authorities
- Special controls
- Supply chain security
- Applicable countries
- Named persons and institutions
- Penalties

### FINANCIAL AND OTHER SANCTIONS AND TRADE EMBARGOES

- Government authorities
- Applicable countries
- Specific individuals and companies

## OTHER RELEVANT ISSUES

Other trade remedies and controls

## UPDATE AND TRENDS

Recent developments

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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 include:

- 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 - 12 6 2024

**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, it has benefitted from the multilateral trading system it supports avidly.

When rule negotiations at the WTO reached a deadlock, Japan shifted its focus from the WTO towards trade liberation through 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 have come 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 (Australia, Brunei, Canada, Chile, Japan, 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 remaining 11 countries in March 2018, accounts for approximately 13 per cent of global GDP. In June 2023, the United Kingdom signed the Protocol of Accession and is expected to formally join the CPTPP in the second half of 2024, once the CPTPP parties complete their ratification process.

In February 2019, the Agreement between the European Union and Japan for an Economic Partnership (the 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 one-quarter of global gross domestic product (GDP) and one-third of world trade. Updates to the JapanEU EPA commenced in 2022, when Japan and the European Union initiated negotiations regarding the inclusion of a protocol to facilitate cross-border data flows. This protocol aims to provide greater legal certainty around data flows and to mitigate the administrative

requirements that hamper the free flow of data between the two sides. As Japan and the European Union signed the protocol in January 2024 and European Parliament adopted the protocol in March 2024, the protocol will enter into force once it has been ratified by Japan.

Furthermore, in January 2022, the Regional Comprehensive Economic Partnership (RCEP) took effect. The RCEP is the world's largest EPA that was concluded among 15 Asia-Pacific nations (Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, 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.

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. In addition, on 28 March 2023, Japan and the United States signed the Agreement between the Government of Japan and the Government of the United States on Strengthening Critical Minerals Supply Chains (the Japan–US Critical Minerals Agreement), which entered into force upon signature. This agreement is expected to build robust supply chains among Japan, the United States and other like-minded countries of critical minerals essential to the production of electric vehicles in light of the requirements of the Inflation Reduction Act of 2022 enacted in the United States in August 2022.

Law stated - 12 6 2024

## 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). Under the Foreign Exchange and Foreign Trade Act 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 - 12 6 2024

### 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 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 a Japanese industry;
- summary of the facts regarding the dumping or subsidisation and the material injury to a Japanese industry 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.

Regarding 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 give testimony on the facts regarding increased imports of goods and the serious injury caused to a Japanese industry, 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 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 - 12 6 2024

### **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. Regarding safeguard duties and quotas, METI will announce the initiation of such investigations in the Official Gazette.

Within the time limit specified by the authorities, 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 on 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. Regarding anti-dumping and countervailing duties, according to the relevant guidelines, the notified parties may be requested by the authorities to submit evidence and state their opinion within a specified time period. The essential facts that constitute the basis of a final decision on imposing anti-dumping or countervailing duties are also disclosed to directly interested parties, and the parties may be requested to submit evidence within a specified time period.

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

Law stated - 12 6 2024

### **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 (eg, raw materials) 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 - 12 6 2024**

## 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:

- within six months from the day on which it became aware of the authorities' administrative determination; or
- 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 this case, the action for revocation must 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 - 12 6 2024**

## 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 or 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. If an investigation has been initiated, interested parties (including exporters, importers and 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 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 or 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 or subsidisation of the designated goods 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 will 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 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 or 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 - 12 6 2024**

### **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 12 anti-dumping investigations, and there are duties being imposed on six types of goods. In March 2023, the government initiated a new investigation to assess whether to extend the period of existing duties for one of those goods. The most recent anti-dumping investigation, of graphite electrodes from China, was announced by the Japanese government on 24 April 2024. 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 - 12 6 2024

## 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:

- general rate: a base rate listed in the appended table of the Customs Tariff Act;
- 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
- World Trade Organization (WTO) treaty tariff rate: a maximum rate applied to products from WTO member countries, which may also apply to products from (1) countries under most favoured nation (MFN) treatment and bilateral treaties or (2) 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

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:

- leather bags, shoes and gloves;
- knitted clothing; and
- ski boots.

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, 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 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, which 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 must, at the time of importing the goods, [file a declaration for payment of customs duties](#) (see section b(3)) 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 - 12 6 2024**

### **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:

- EPA tariff rate: rates set out in economic partnership agreements (EPAs) between Japan and other countries. Under EPAs, certain duties are reduced or exempted for goods originating from member countries. To apply an EPA tariff rate, the importer must 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 Generalised System of Preferences (GSP) treatment (see [Japan Customs, 'Origin Certification Procedure'](#));
- 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
- least developed countries (LDC) preferences rate: a 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 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 and territories that are given preference

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

Law stated - 12 6 2024

## Special rates and preferential treatment

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

Obtainment

To apply GSP and LDC rates, the importer must 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, 'Certificate 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:

- it has been classified as a 'high-income country' in the World Bank Statistics; or
- 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.

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 for three consecutive years. If entire graduation occurs, all 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 - 12 6 2024**

### Special rates and preferential treatment

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 - 12 6 2024**

### Special rates and preferential treatment

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 the amended Act. Since 21 April 2022, 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).



## 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, it may file a request for reinvestigation to the Director-General. Such request for reinvestigation must be made within three months from the day following the receipt by the petitioner of the notification of the customs decision. When the 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 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 - 12 6 2024

## 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 international 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 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 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, participates 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 - 12 6 2024**

### **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 a 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 on 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 - 12 6 2024**

### **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 a WTO agreement),

the Japanese government may choose not to file a complaint based on other, non-legal considerations.

Law stated - 12 6 2024

### **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 WTO agreements, 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 in a manner consistent with the security exception provisions of WTO agreements (such as article XXI of the GATT 1994).

Law stated - 12 6 2024

### **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 offer 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 - 12 6 2024

### **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.

Furthermore, article 69(11) of the Customs Act prohibits the importation of the following goods, with limited exceptions:

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- narcotics and psychotropics, cannabis, opium and opium poppies, stimulants (including raw materials for stimulants as referred to in the Stimulants Control Act) and utensils for opium smoking;
- handguns, rifles, machine guns, cannons and bullets thereof and parts of handguns;
- explosives;
- propellants;
- certain substance used for the manufacture of chemical weapons;
- certain 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 comprise 'unfair competition' within the meaning of the Unfair Competition Prevention Act.

There are several other laws that prohibit or restrict the importation of 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 Explosives 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.

In addition, 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:

- achieve the sound development of foreign trade and the national economy;
- implement a treaty or any other international agreement; or

- 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 and the Foreign Exchange and Foreign Trade Act.

Law stated - 12 6 2024

## 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 - 12 6 2024

### 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 (METI) 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 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 present it to the customs office at the time of an export declaration or inspection.

Law stated - 12 6 2024

### 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. 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 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 METI 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 - 12 6 2024

### 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 (the 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 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 had signed mutual recognition of the AEO programme with 13 other countries and regions.

Law stated - 12 6 2024

## 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 and the United States.

Law stated - 12 6 2024

## 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 that are suspected of involvement in certain activities such as the development of WMDs. Unlike the Entity List under the US Export Administration Regulations (EAR), 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, Belarus, the 'Donetsk People's Republic' and the 'Luhansk People's Republic' under the Foreign Exchange and Foreign Trade Act. Those sanctions include a ban on exports to certain named persons and institutions in these countries and regions.

Law stated - 12 6 2024

## Penalties

### What are the possible penalties for violation of export controls?

#### 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 can be punished by imprisonment with work for not more than 10 years, a fine of not more than ¥10 million, or both.

#### 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 - 12 6 2024

## 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), under the Foreign Exchange and Foreign Trade Act.

[The Act on Special Measures concerning Prohibition of Entry of Specified Ships into Ports](#), which was primarily introduced to impose sanctions on North Korea,



empowers the cabinet to unilaterally prohibit designated vessels from entering ports in Japan.

[The Act on Special Measures Concerning Freezes of International Terrorists' Assets Taken by the Government in Accordance with United Nations Security Council Resolution 1267](#) restricts certain (mainly domestic) transactions that involve designated terrorists and are not subject to restrictions under the Foreign Exchange and Foreign Trade Act (which are applicable mainly to international transactions). This Act is administered by the national and prefectural Public Safety Commissions.

Law stated - 12 6 2024

## 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 where:

1. it is necessary for Japan to sincerely implement the obligations under a treaty or any other international agreement;
2. it is particularly necessary for Japan to contribute to international efforts for international peace; or
3. a cabinet decision and Diet approval are made.

To date, only sanctions and embargoes against North Korea have been implemented under point (3). North Korea, Iran, Somalia, Libya, Syria, Russia and Iraq are all subject to sanctions or embargoes. Information of those measures can be found on the METI website.

Following Russia's military action against Ukraine in February 2022, the Japanese government has been implementing various economic sanctions against Russia, Belarus, the 'Donetsk People's Republic' and the 'Luhansk People's Republic'. The measures are listed below.

Financial sanctions include:

- asset freezes against designated individuals and institutions of Russia, Belarus, the 'Donetsk People's Republic' and the 'Luhansk People's Republic', which include restrictions of certain capital transactions between a resident of Japan and one of those parties, and payments from Japan or a resident of Japan to one of those parties;
- restrictions on certain outward direct investments related to Russian businesses;
- restrictions on providing certain services relating to trusts, accounting and audits, and management consulting to Russia; and
- restrictions on certain transactions relating to securities issued by the Russian government and other designated Russian parties.

Trade sanctions include:

- restrictions on exports and technology transfers to designated parties of Russia and Belarus;
- restrictions on exports of, and transfers of technologies relating to, certain goods to Russia and Belarus;
- restrictions on imports of certain goods from Russia;
- restrictions on exports to and imports from the 'Donetsk People's Republic' and the 'Luhansk People's Republic'; and
- ban on exports of petroleum products of Russian origin with a price higher than the designated 'price cap' set by the G7, EU and Australia, and related services.

Other sanctions include:

- suspension of MFN treatment for Russia by amending the Temporary Tariff Measures Act;
- making crypto-assets trading subject to restrictions under the Foreign Exchange and Foreign Trade Act by amending the Act and its subordinate regulations; and
- support for the exclusion of certain Russian banks from SWIFT imposed by the European Union and other allies (although no specific measures were taken under Japanese law).

Law stated - 12 6 2024

### 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. The Japanese government has been significantly expanding its sanctions to cover numerous officials, their affiliates, entities and financial institutions of Russia and Belarus, as well as self-proclaimed officials of the 'Donetsk People's Republic' and the 'Luhansk People's Republic'.

Law stated - 12 6 2024

## 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 - 12 6 2024

## 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. The agreements entered into force on 1 January 2020.

The Japan–US Trade Agreement eliminates or reduces tariffs on agricultural and industrial products to expand bilateral trade between the two countries, which together account for approximately 30 per cent of the world’s 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 withdrew from the European Union on 31 January 2020, Japan entered into trade negotiations with the United Kingdom 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: Australia, Brunei, Cambodia, China, Indonesia, Japan, Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Vietnam. The agreement entered into force on 1

January 2022 among 10 countries: Australia, Brunei, Cambodia, China, Japan, Laos, New Zealand, Singapore, Thailand and Vietnam. It also took effect for Korea on 1 February 2022, Malaysia on 18 March 2022 and Indonesia on 2 January 2023.

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. It 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 (ESPA) was enacted at the national Diet. The ESPA consists of provisions for:

- ensuring a stable supply of 'critical' goods;
- ensuring a stable supply of key infrastructure services;
- making patent applications regarding certain critical technologies confidential; and
- supporting the development of certain key advanced technologies.

The ESPA establishes a basic policy and the necessary framework to ensure economic security and address the economic measures and activities that may harm national security and Japan's citizens.

On 1 August 2022, the general provisions of the ESPA and those relating to ensuring a stable supply of 'critical' goods and supporting the development of certain key advanced technologies came into effect. On 23 December 2022, the Cabinet Order Concerning the Enforcement of the ESPA was enacted, and certain products such as rare earths, permanent magnets, and semiconductor devices and integrated circuits were designated as 'specified critical products' for the purposes of the provision for ensuring a stable supply of 'critical' goods. Regarding the provision for ensuring a stable supply of key infrastructure services, the System for Ensuring Stable Provision of Essential Infrastructure Services under ESPA came into full effect on 17 May 2024. This system requires business entities specified as essential infrastructure service providers to file a notification to competent authorities when such entities intend to introduce important facilities from an outside supplier or entrust maintenance and/or management of such facilities to a third party.

#### Economic sanctions in response to Russia's military action against Ukraine

In response to Russia's military action against Ukraine, Japan has imposed various economic sanctions against Russia, Belarus, the 'Donetsk People's Republic' and the 'Luhansk People's Republic' under the Foreign Exchange and Foreign Trade Act, in close cooperation with the United States, the European Union and other 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.

#### Japan-US Critical Minerals Agreement

On 28 March 2023, Japan and the United States entered into the Agreement Between the Government of Japan and the Government of the United States of America on Strengthening Critical Minerals Supply Chains (the Japan–US Critical Minerals Agreement). This agreement is intended to strengthen and diversify the supply chain of critical minerals that are essential to the production of batteries for electric vehicles in light of the requirements of the Inflation Reduction Act of 2022, which was enacted in the United States in August 2022.

#### Recent changes in export controls policy applicable to Korea

In July 2019, Japan strengthened export controls of three items (ie, hydrogen fluoride, fluorinated polyimide and resist) bound for Korea by excluding them from the scope of the Special General Bulk Export License and requiring an individual export licence for the export of these items. In August 2019, Japan excluded Korea from the list of ‘white’ (or Group A) countries, to which a more permissive export controls policy is applicable. However, in light of the recent improvement of Japan–Korea relations, Japan relaxed its export controls policy for the three items destined for Korea as of 23 May 2023 by making the Special General Bulk Export License available for these items again. Ultimately, the Japanese government reinstated Korea as a Group A country in June 2023.

#### Strengthening of export controls for advanced semiconductors manufacturing equipment

The Japanese government has been reviewing its long-standing export control policy and shifting from an approach based on the multilateral export control regimes towards an approach based on cooperation with its allies. In July 2023, the Japanese government added 23 types of semiconductor manufacturing equipment to its control list, in accordance with a trilateral agreement reached between Japan, the United States and the Netherlands. Furthermore, in April 2024, the Minister of Economy, Trade and Industry issued a draft amendment to the applicable ministerial order to add four items related to quantum and semiconductors to Japan’s control list. This addition also seems to reflect a plurilateral agreement with like-minded countries.

#### Multi-Party Interim Appeal Arbitration Arrangement

In light of the paralysis of the World Trade Organization (WTO) Appellate Body since December 2019, some WTO members launched the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in April 2020 as an alternative appeal mechanism. On 10 March 2023, Japan notified the WTO Dispute Settlement Body of its intention to participate in the MPIA.

**Law stated - 12 6 2024**