

Trade

Japan

1. Customs

Amendment to the Customs Tariff Law

On April 1, 2016, amendment to the Customs Tariff Law and other relevant laws were enacted. This amendment addresses the following matters:

- One year extension of applicable period of provisional tariff for 431 items, special emergency tariff program and emergency treatment for tariff on beef and pork;
- Amendment to tariff rate on individual items which includes lifting emergency tariff on bioethanol;
- Specifying products infringing trade secret as embargo goods;
- Allowing AEOs (Authorized Economic Operators) to file import and export declaration with any customs office regardless of jurisdiction of each customs office; and
- Update of tariff rate list in accordance with amendment to HS Convention applied from 2017.

Lifting Tariff for TPP

Japanese government committed in TPP to lift tariff on 2,135 agriculture, forestry and fishery items among 2,594 imported items. This includes 446 items that Japan has never agreed to lift the tariff on any other EPAs.

2. Export controls

Revision of End User list

The end user list was revised to 462 parties in 11 countries as of March 2016.

3. Sanctions

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Increased Sanctions on North Korea Effective From April 2016

In accordance with the United Nations Security Council's resolution (No. 2270) with regard to North Korea, the following luxury goods are added to the list of embargo:

- lead glass products
- snowmobile; and
- sport equipment and its parts.

Lifting Sanctions on Iran in January 2016

Japan has long imposed sanctions against Iran based on the resolutions of the UN Security Council, and additional sanctions based on Japan's own initiative.

After the Joint Comprehensive Plan of Action ("JCPOA") was concluded, the Japan government acknowledged lifting certain sanctions on Iran. Sanctions against Iran which are relevant with nuclear related activities still remain.

4. WTO/FTA

There are 15 EPAs which Japan signed and came into force up to date. Japan newly signed Japan – Mongolia EPA in February 2015. Japan is currently negotiating a number of other EPAs, including a Japan – ASEAN EPA, Japan – Canada EPA, Japan – Columbia EPA, Japan – China – ROK FTA, Japan – EU EPA, RCEP, Japan – Turkey EPA, Japan –GCC FTA, Japan – ROK EPA.

Japan – Mongolia EPA

The Japan – Mongolia EPA is expected to be enacted in June 2016. This EPA reinforced the strategic partnership between Japan and Mongolia through development of trade, and investment in the areas of energy, mineral resources and others.

Japan – EU EPA

The Japan – EU EPA is expected to be generally agreed within 2016. The Japan - EU EPA aims to lift tariff on industrial products.

5. Investment Related Agreements

Japan has concluded 35 investment related agreements, which have taken effect. This could grow to 79 agreements if the agreements which were signed but are not yet effective, or are still under negotiation, go into effect.

Japan – Iran BIT (Bilateral Investment Treaty)

The Japan – Iran Bilateral Investment Agreement was signed in February 2016 and is expected to go to effect coming summer in 2016. International investment between Japan and Iran can be protected by the Japan – Iran BIT which includes national treatment, most favored nations treatment, adequate protection on invested properties, and prohibition on expropriation without just compensation.

Commerce

Japan

6. Supply chain compliance

- There are various regulatory requirements imposed on various stages of supply chain, i.e., import, transportation, storage, labelling, sales of goods (depending on the type of goods, including chemical substances, pharmaceuticals, dangerous goods, electric equipment, etc.). Among those, regulatory requirements on precursor substances is one of the supply chain compliance issues that has been focused on after the incident occurred a few years ago which was caused by formaldehyde accidentally generated in upstream of the supply chain. Apart from those various regulatory requirements, what we recently often see are incidents in which the difference in level of consciousness of compliance among countries and even within companies (parent companies and subsidiaries in overseas) cause serious issue for business.

- There are various regulations that regulate activities of related parties in supply chain, including the Guideline of the Anti Monopoly Act, etc. in case of B2B, the Consumer Contract Act, the Act for Specified Commercial Transactions, etc in case of B2C, the Act against Anti-Social Forces.

Guidelines of the Anti-Monopoly Act

Distributorship in a supply chain is regulated by the "Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act" (the "Guidelines") issued by the Japanese Fair Trade Commission (JFTC). The Guidelines are now under discussion to amend criteria for the "safe harbor" that carves out companies not having dominant positions in a certain market (defining as a company who has 20% or less market share).

7. E-commerce

There are various regulations in Japan that govern e-commerce transactions, including, the Act for Specified Commercial Transactions, Specified Electronic Mail Act, the Act on Electronic Consumer Contracts, the Act on Electronic Contract, the Act on Limitation of Provide Liability, the Act on Unauthorized Computer Access, the Act on Electronic Signatures and Certification Business, the Act on Electronic Books Maintenance, and the E-Document Act, etc.

Amendment to the Act for Specified Commercial Transactions

The bill to amend the Act for Specified Commercial Transactions, which regulates mail-order marketing (internet sales) was submitted to the Diet in March 2016. The amendment would be to strengthen restrictions applicable to mail-order marketing, however amendment of the definition of "solicitation" in the context of mail order sales to include internet advertising (*i.e.*, an action against unspecified users), introduction of "cooling off" period (allowing cancelation of a transaction), etc., was put on hold this time.

Amendment to the Consumer Contract Act

The bill to amend the Consumer Contract Act was submitted to the Diet in March 2016. Possible changes would include expansion of rules whereby provisions that are unilaterally disadvantageous to consumers would be held void, etc., however, amendment of the definition of "solicitation" was put on hold this time.

Amendment of E-Documents Act

The amendment to the E-Documents Act went into effect in January 2016. The amendment expands the scope of documents which may be stored as an e-document format and eases the requirement for e-documents used as evidences for tax purposes.

Tax Treatment after the 2015 Japanese tax Legislation

JCT (an abbreviation of Japanese consumption tax) which is Japan's tax similar to VAT in the European context, is imposed at a flat 8% on the payment for the transfer or lease of assets in Japan, or the provision of services in Japan. The tax rate is slated to increase from 8% to 10% on April 1, 2017 (while it may be subject to the change).

Under the 2015 Tax Legislation, digital services provided by a service provider located outside of Japan (for example, the sale of e-books, the provision of music streaming services, or the provision of internet advertising services by a foreign service provider) are subject to JCT, effective from on or after October 1, 2015, if the recipient of the service is located in Japan.

Under the new rule, (1) in the case of B2B transactions (between business enterprises), JCT is to be collected by way of a reverse charge system. The proceeds of a sale by a foreign service provider would thus be exclusive of JCT. In the case of a B2B transaction, the law requires the foreign service provider to provide notice to the Japanese business customer that the transaction is subject to a reverse charge, and that the Japanese business customer is responsible for filing and paying the applicable JCT to the tax authorities. On the other hand, (2) in the case of B2C transactions (between a business enterprise to consumers), the foreign service provider will be required to file a JCT return and pay JCT through a tax administrator located in Japan. The sales proceeds collected by the offshore service provider would thus include the underlying price of the service in addition to applicable JCT.

The bifurcation between B2B transactions and B2C transactions is made based on either the nature of the services (e.g., whether the services are solely for business purposes per se - then categorized as B2B) or terms and conditions in the contract (e.g., whether

the B2C customers are substantially not allowed to enter into the contract - then categorized as B2B). Since only one of these two thresholds applies for the bifurcation, the scope of the B2B transactions and B2C transactions is not necessarily identical to those employed in the other countries' VATs.

8. Testing and labeling

The Act against Amendment of Unjustifiable Premiums and Misleading Representation

Responding to a number of recent incidents regarding false labelling of foods, the amendment to the Act against Amendment of Unjustifiable premiums and Misleading Representation came into force in April 2016. The amended Act introduced administrative surcharges on false representation.

9. Cyber Security

- There are no particular regulations regarding cyber security specifically relating to supply chains yet in Japan. In January 2015, however, a new Cyber Security Act came into force. The Cyber Security Act obliges government, critical infrastructure operators, and cyber business operators to make efforts to actively implement necessary measures to secure cyber security.

10. Data privacy

Amendment of the Personal Information Protection Act

The amendment to the Personal Information Protection Act was enacted in September 2015. The amendments should clarify how the Act will apply extraterritorially, and will set out certain obligations on overseas business operators who use personal information obtained in Japan.

Currently, the transfer of personal information among different legal entities within the same corporate group is generally possible without consent by the data subject, by applying the "joint-use" exemption. After enactment of amendments to the Act, however, the entity possessing the data will need to obtain consent of the data subject to the transfer, unless two requirements imposed by the Act are met. The requirements are that (i) the transferee has a data protection system at the required level, and (ii) the country of the transferee party is on a list maintained

by the government designated Committee, which has a data protection regime which is at least at the same level as that of the transferor. The Act also introduces the concept of "anonymous information," which is information regarding an individual that has been modified in order not to identify the individual. The Act allows business operators to use such anonymous information to promote big data businesses by protecting the rights of the data subject, so as to prevent reversion of the data to its non-anonymized state and identification of data subject.

The amendment to the Act is expected to fully come into force in late 2016 or early 2017.

11. Class Action

Newly Introduced Japan Class Action

The Act concerning Civil Procedures for Collective Recovery of Damages on Consumers' Properties was enacted in 2013. The Act allows certain specified eligible consumers groups file a lawsuit against companies for claiming compensation of consumers' damages on behalf of the consumers. This is so called "Japan class action." The Japan class action will come into force in October 2016.