

8th Annual Asia Customs & Trade Conference Import and Export Regional Updates

Japan

This paper provides an overview of recent developments with respect to the law, regulations and administration concerning trade in Japan. It gives a general analysis of

- i.) recent customs developments, including recent amendments to Japan's Customs Tariffs Act;
- ii.) export controls;
- iii.) sanctions; and
- iv.) the current status of free trade agreements and economic partnership agreements to which Japan is a partner.

Customs Developments

On March 29, 2013, Japan's Diet passed a law to modify the Customs Tariffs Act (*kanzei teiritsu hou*). The modification entered into force on April 1, 2013. The major changes to the Customs Tariffs Act under this law concern (i) extension of the applicable term of provisional tariff rates and (ii) rules for determining the customs value of imported products. The revisions are intended to modernize certain provisions of the Law to better apply to today's global and multinational supply chains. A significant change reflected in the amendment is the disallowance of a non-resident purchase price as the basis of customs value when applying the transaction value method.

1.1. Extension of the Applicable Term of Provisional Tariff Rates

The applicable term of provisional tariff rates was extended until the end of March 2014. Some examples of these provisional rates are as follows:

Beef: 50% → 38.5% (provisional rate)

Malt: JPY21.3/kg → zero (provisional rate)

Natural Cheese: 29.8% → zero (provisional rate)

(for making processed cheese)

1.2. Modernization of Rules Relating to Customs Values

A customs evaluation is undertaken to determine customs value, which is the basis for a customs tariff, as set out under the law. Provisions regarding customs evaluations as currently in effect in Japan were set out in 1980, at the same time as the enforcement of GATT. As circumstances have become more complex since that time, and the variety of transactions involving imported goods have increased as well, the number of cases in which customs values have been improperly declared has increased as well. Further, lawsuits regarding customs values have become more frequent. Under current Japanese law, it has become difficult to properly evaluate

customs values. The Customs Act was thus amended to clarify provisions relating to customs evaluation, to ensure importers are able to make a proper declaration based on the proper customs value. Examples of the modernization of the rules are as follows:

1.2.1. Royalty payment is included in the customs value

It was clarified that compensation for intellectual property rights, including patents paid in connection with the import transactions, are included in customs value.

1.2.2. Products of contract manufacturing

It was clarified that when a person or an entity in Japan imports products which were manufactured in a foreign country using materials provided by a person/entity in Japan, customs value consists of the manufacturing fee plus the value of materials provided.

1.2.3. Evidentiary requirements

The law includes a new provision that requires customs value to be reasonably supported by evidence, and to be calculated based on GAAP principles.

1.2.4. Exclusion of non-resident purchase price as a customs value under the transaction value method

One of the most significant changes under the 2013 revision to the Customs Tariffs Act is to Article 4 of the Act, which defines transaction value. Transaction value is the principal method of determining customs value and is generally calculated as the invoice price, plus additions for international freight, insurance, certain royalty payments, etc.

The new Article 4 specifically excludes from transaction value, transactions where the buyer does not have a place of business in Japan. A non-resident entity's purchase price will not be accepted as a customs value under the transaction value method, and non-resident importers will be required to calculate the customs value of imported products using alternative methods of customs valuation.

Export Controls

2.1. Trade Controls Based on the Foreign Exchange and Foreign Trade Law

Japan actively exchanges information with other countries, and collects information concerning circumstances in connection with prevention of exports to countries of concern, and relevant sensitive technology that may be targeted for circumventing exports, in order to increase the effectiveness of trade control.

Japan also acknowledges the importance of cooperating with other countries in introducing export control systems, and participates in outreach activities for government officials and industries in Asian countries to increase awareness of relevant issues. As part of its responsibilities in participating in international export control regimes, the Japanese Government also reviews information regarding the export control systems and export controls of other countries.

2.1.1. Revision of the List of Items Highly Likely to be Used for the Development, etc., of Nuclear Weapons as well as Other Items

Under international export control regimes concerning the non-proliferation of biological and chemical weapons, it was agreed that control should be strengthened over the export of general-purpose items to Syria. In response to the agreement, the Ministry of Economy, Trade

and Industry (METI) revised the "Export Procedures Concerning Complementary Export Control of Weapons of Mass Destruction and Conventional Weapons", and added related "general-purpose items" to be exported to Syria to the List of Items Highly Likely to be Used for the Development, etc., of Nuclear Weapons as well as Other Items.

i.) *Eleven items were added*

Eleven general-purpose items were added to the List of Items Highly Likely to be Used for the Development, etc., of Nuclear Weapons as well as Other Items, which cannot be exported to Syria. The eleven items include: chemical products, respiratory protective equipment, bio-safety cabinet and glove boxes, batch-type centrifuges, fermenters, reactor vessels, clean rooms, vacuum pumps and parts, etc.

ii.) *The list of "Items Highly Likely to be Used for the Development, etc., of Nuclear Weapons as well as Other Items" and the Appended Table 1 of the Export Trade Control Order*

For the purpose of enhancing the efficiency of the Catch-All Control system¹, this item list provides exporters with information on items that are not included in the regulated items as listed in Appended Table 1 of the Export Trade Control Order (Cabinet Order No. 378 of 1949) (listed items) but are highly likely to be used for the development, etc., of nuclear weapons and other items. When exporters intend to export these items, they are required to check very carefully who will use the items and how the items will be used.

2.1.2. Review of End User List

METI has issued an "End User List" that provides exporters with information on entities belonging to foreign countries for which there is concern regarding development of weapons of mass destruction and other items. The purpose of this list is to enhance the effectiveness of the catch-all control on cargo and other loads relating to weapons of mass destruction and other items. METI has announced that it revised the End User List based on the updated information.

i.) *Revised End User List*

As a result of the review of the End User List based on the latest information available, the revised list contains 449 entities (increased by 75 entities from the previous list) in ten countries and regions.

The revised list contains 247 Iranian entities (increased by 65 entities from the previous list) and 119 North Korean entities (increased by eight entities from the previous list).

ii.) *Details of the End User List*

For the purpose of enhancing the effectiveness of the Catch-All Control system, the End User List provides exporters with referential information on entities belonging to foreign countries of remaining concern over development and other conducts of weapons of mass destructions and other items, which themselves are not on a list of embargoed goods. If the user of the cargo and other items to be exported is on the List, exporters must submit an application for an export license, except in a case where it is evident that those cargos and other items cannot be

¹ The catch-all control is a system that obliges exporters to submit an application for an export license for goods that may be used for the development of weapons of mass destruction even if they are not subject to export restrictions under the international agreements.

used for the development of (or other conduct relating to) weapons of mass destruction. The list has been issued every year since the catch-call control was introduced in April 2002.

Sanctions

3.1. Sanctions Against Iran

3.1.1. Addition of individuals and entities subject to asset-freezing measures as a result of involvement in Iran's Proliferation-Sensitive Activities

The government of Japan has implemented a series of measures against Iran's nuclear and other activities pursuant to United Nations Security Council Resolutions 1737, 1747, 1803 and 1929. Following the United Nations Security Council Sanctions Committee's additional designation of two individuals and three entities as being involved in Iran's proliferation-sensitive nuclear activities, the government decided to implement asset-freezing measures against them in February 2013.

(a) Specifics of the measures

On February 27, 2013, the government of Japan will impose the following measures under the Foreign Exchange and Foreign Trade Act on the individuals and entities to be newly added to the list of those involved in Iran's proliferation-sensitive nuclear activities through public notice from the Ministry of Foreign Affairs (MOFA) that will be promulgated on the same day.

i.) Payment restrictions

All payments to any of the individuals and entities designated by the MOFA public notice requires prior permission.

ii.) Capital transaction restrictions

All capital transactions with any of the individuals and entities designated by the MOFA public notice requires prior permission.

(b) Entities and individuals subject to the measures

As a result of the above addition, the total number of individuals and entities involved in Iran's proliferation-sensitive nuclear activities that are subject to the measures implemented by the government of Japan comes to 43 individuals and 78 entities.

The following parts are the sanctions which have been ongoing.

3.1.2. Sanctions based on UN Resolution 1929

Japan has introduced the following sanctions against Iran in line with Resolution 1929:

- (a) Freezing the assets of 75 identified associations and 41 individuals;
- (b) Specific permission must be obtained in order for those persons at (a) above to conduct capital transactions (including deposit contracts, trust contracts and loan agreements);
- (c) Prohibiting capital transactions and purchases of shares in Japanese companies conducting specific businesses (e.g., manufacturing of rockets and nuclear plants) by Iranian nationals and corporations; and
- (d) Prohibiting the flow of money between Japan and Iran: Permission must be obtained for payments made in connection with Iran's activities related to nuclear and large conventional weapons.

3.1.3. Japan's additional sanctions

- (a) Suspending the sale of materials which could contribute to nuclear activities;
- (b) Freezing the assets of specified associations and individuals;
- (c) Prohibiting procurement of nuclear materials and missiles;
- (d) Prohibiting procurement of arms and related materials;
- (e) Controlling and restricting specific arms exports; and
- (f) Prohibiting overseas travel for persons involved with Iran's nuclear and missile programs.

3.1.4. Obligations and restrictions arising from Iran sanctions

- (a) *Report and audit:*
 - i.) Financial organizations are required to report monthly payments from Japan to Iran and receipt in Japan of payments from Iran; and
 - ii.) Intensive inspection of financial organizations will be conducted to ensure compliance.
- (b) *Restrictions on Insurance:* A permit must be obtained from the Japanese government to take out insurance with regard to transactions or acts for the purpose of contributing to:
 - i.) Activities related to nuclear activities in Iran; or
 - ii.) Activities related to supplying large conventional arms to Iran.
- (c) *Restrictions on Stock Brokerage:* A permit must be obtained for Japanese companies to engage in brokerage activities in connection with stock issued or to be issued by persons connected with Iran for the purpose of contributing to:
 - i.) Activities related to nuclear activities in Iran; or
 - ii.) Activities related to supplying large conventional arms to Iran.
- (d) *Request to refrain from concluding new correspondent contracts:* Japanese financial organizations and foreign financial organizations located in Japan are requested to refrain from concluding new correspondent contracts with financial organizations in Iran.
- (e) *Prohibition on establishing branch offices in Japan:* A request from an Iranian financial organization for a license to establish a branch office or subsidiary in Japan will be declined. Likewise, a Japanese financial organization's request for a license to establish a branch office or subsidiaries in Iran will also be declined.
- (f) *Compliance with Identity Verification Obligations:* Financial organizations are requested to thoroughly comply with the identity verification obligations and notification obligations for suspicious transactions.
- (g) *Trade sanctions:* Japan will not provide new guarantees for mid- or long term (i.e., greater than two years) export credits. With respect to short term export credit applications, new guarantees will be subject to appropriate conditions, including payment terms of less than one year and rigid examinations.
- (h) *Shipping sanctions:* The assets of Islamic Republic of Iran Shipping Lines (IRISL) and its related associations have been frozen and are subject to other restrictions.
- (i) *Energy investment sanctions:* New investment in the oil and gas sector in Iran has been suspended. Japan-based business

operators connected to the oil and gas sector have been requested to take a cautious approach to projects and large transactions with Iran (e.g., exploration, development, and enhancement of refining capacity), and to pay close attention to transactions based on existing contracts.

- (j) Exploration, development, and enhancement of refining capacity, and to pay close attention to transactions based on existing contracts.

3.2. Sanctions Against North Korea

Subsequent to the issue of UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (January 22, 2013) and 2094 (March 7, 2013), Japan introduced certain sanctions against North Korea. More recently, in 2013 Japan introduced sanctions based specifically on Resolution 2087 and 2094 as well as additional sanctions introduced by Japan in its discretion.

3.2.1 Sanctions based on UN Resolution 2087

Pursuant to United Nations Security Council Resolution 2087, the Security Council's Sanctions Committee additionally designated six entities and four individuals as being engaged in North Korea's nuclear, other WMD, and ballistic missile development programs and being subject to asset freezing measures. In response to this action, Japan will take measures to freeze the assets of these entities and individuals.

(a) Specifics of the measures

Pursuant to United Nations Security Council Resolution 2087, the Security Council's Sanctions Committee additionally designated six entities and four individuals as being engaged in North Korea's nuclear, other WMD, and ballistic missile development programs and being subject to asset freezing measures. In response to this action, Japan will take measures to freeze the assets of these entities and individuals.

i.) Payment restrictions

All payments to any of the individuals and entities designated by the MOFA's public notice are required to obtain the prior approval of the Government of Japan.

ii.) Capital transaction restrictions

All capital transactions with any of the individuals and entities designated by the MOFA's public notice are required to obtain the prior approval of the Government of Japan.

(b) Entities and individuals subject to the measures

The Government of Japan will request financial and other organizations to continue to pay special attention to transactions and other trading with North Korea financial organizations through strictly complying with the requirements of confirming and identifying customers based on the Act, as well as the requirements of identifying customers based on the Order for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds and reporting dubious notifications of transactions.

3.2.2 Sanctions based on UN Resolution 2094

Pursuant to United Nations Security Council (hereinafter referred to as the "Security Council") Resolution 2094, which has been adopted

recently, Japan has decided to designate two entities and three individuals as being engaged in North Korea's nuclear, other WMD, and ballistic missile development programs and also has decided to take measures to freeze the assets of these entities and individuals designated as those involved in the programs.

As the Cabinet approved the asset-freezing measures in accordance with the purpose of Resolution 2094 on April 5, 2013, Japan has also decided to take the measures to freeze the assets of one entity and four individuals.

(a) Specifics of the measures

Pursuant to the Foreign Exchange and Foreign Trade Act ("Act"), on and after April 5, 2013, the Government of Japan will impose the following measures on the two entities and three individuals who are designated by a public notice titled "Partial Development Programs who are subject to Asset-freezing Measures pursuant to the United Nations Security Council Resolution," promulgated by the MOFA on the same day.

i.) Payment restrictions

All payments to any of the individuals and entities designated by the MOFA's public notice are required to obtain the prior approval of the Government of Japan.

ii.) Capital transaction restrictions

All capital transactions with any of the individuals and entities designated by the MOFA's public notice are required to obtain the prior approval of the Government of Japan.

iii.) Measures regarding Financial Institutions

In response to the adoption of Resolution 2094, Japan will take the following measures regarding financial institutions:

I. Prohibition of the correspondent relationship

II. Prohibition of the transfer of equity interest

III. Prohibition of establishing branch offices

IV. Identification of the persons and Notification of Suspicious Trades

iv.) Asset Freezing

In accordance with the purpose of Security Council Resolution 2094, on April 5, 2013, the Cabinet approved the Asset-freezing Measures against Entities and Individuals Involved in North Korea's Nuclear, other WMD, and Ballistic Missile Development Programs, for the purpose of assisting Japan's contribution to global efforts to achieve world peace with the aim to resolve concerns over North Korea. At the same time, an entity and four individuals are designated in the approval as those involved in North Korea's nuclear, other WMD, and ballistic missile development programs. In response to this action, Japan has decided to take measures to freeze the assets of the entity and individuals based on the Act.

FTA Developments

Although Japan has been enthusiastic in its pursuit of free trade and economic partnership agreements in recent years, the negotiation of several FTA/EPA had bogged down for a period of time. In the past year, however,

FTA/EPA negotiations have become active, and there have been a number of new developments:

Japan, PRC and South Korea FTA: initiation of negotiations announced in November 2012;

TPP (Trans-Pacific Strategic Economic Partnership Agreement): Finally, Japan declared its intension to join TPP negotiations. Although some countries unofficially indicated their approval of Japan's participation, some countries indicated an intention to have all products potentially free of customs tariffs, with no exception. In light of this, it remains to be seen whether Japan will ultimately join the negotiations;

EPA with Mongolia: both parties have indicated enthusiasm for negotiations and the third meeting was held in April 2013;

EPA with Colombia: The first meeting was held in November 2012;

EPA with Canada: the second meeting was held in April 2013;

RCEP (Regional Comprehensive Economic Partnership): as well as the TPP, Japan is also active in FTAs in Asia. Notice of initiation of negotiations was declared in November 2012. The members are ASEAN (10 countries), Japan, China, South Korea, India, Australia and New Zealand;

EPA with EU: After a long standstill, the parties have indicated a desire to initiate EPA negotiations;

EPA with Turkey: the parties are preparing for the negotiations, and study sessions were held in November 2011 and February 2012; and

EPA with Australia: the sixteenth round of negotiations was held in June 2012; the negotiations are at their last stages.

For reference, Tables 1 and 2 below provide an overview of the status of Japan's concluded and proposed EPAs and FTAs.

Table 1: CONCLUDED EPAs		
Country/Region	Effective Date	Key Features
ASEAN	December 2008 (between Japan, Singapore, Laos, Vietnam and Myanmar)	<ul style="list-style-type: none"> - Japan's only multi-party EPA - Liberalizes and facilitates trade in goods and services - Facilitates negotiation of IP rights and investment
Brunei	July 2008	<ul style="list-style-type: none"> - Customs duty to be zero on most goods and services from both countries - Aims to provide Japan with stable supply of energy resources
Chile	September 2007	<ul style="list-style-type: none"> - Aims to provide Japan with stable supply of mineral resources
India	August 2011	<ul style="list-style-type: none"> - Market access advantages for Japan in industrial products, some

Table 1: CONCLUDED EPAs

Country/Region	Effective Date	Key Features
		<p>agricultural, forestry and fisheries products</p> <ul style="list-style-type: none"> – Market access advantages for India in automobile parts, and fresh produce – Ten year customs duty reduction timeline – Stringent rules of origin criteria
Indonesia	July 2008	<ul style="list-style-type: none"> – Provides Japan with a stable supply of liquid natural gas from Indonesia
Malaysia	July 2006	<ul style="list-style-type: none"> – Improved market access for Malaysia in tropical fruits, bananas and forestry products – Improved market access for Japan in industrial products and some temperate fruits
Mexico	February 2011	<ul style="list-style-type: none"> – Duty eliminated by Mexico on Japanese imports of automobile parts and ink-jet printer paper – Reduced tariffs on Mexican imports of beef, pork, chicken and orange juice into Japan – MFN rates to apply if lower than EPA rates – Introduction of “Certified Exporters System”
Peru	Agreement signed on May 31, 2011; took effect in March 2012	<ul style="list-style-type: none"> – Duty on 99% of trade from Japan to Peru and around 99% of trade from Peru to Japan has been or will be zero within ten years – Improved market access for Japan in steel, automobile and automobile parts, electric and electron products, pharmaceutical products and stationery – Duty on all industrial products exported from Peru to Japan will be eliminated – Improved market access for Peru for pork, chicken and processed chicken products, corn (for sweets and

Table 1: CONCLUDED EPAs

Country/Region	Effective Date	Key Features
		<p>drinks), lumber, and fishery products</p> <ul style="list-style-type: none"> – Improved market access for Japan in Chinese yam, apples, pears, Japanese persimmon, green tea, and refined sake – Comprehensive partnership in customs clearance proceedings
Philippines	December 2008	<ul style="list-style-type: none"> – Duty to be eliminated for Japan on exports of most industrial products including steel and automobile parts by 2018 – Market access improvements for Philippines for bananas, pineapples and fishery products – Proposed comprehensive partnership on investment, IP and services
Singapore	November 2002	<ul style="list-style-type: none"> – Zero duty on all trade from Japan to Singapore and on 94% of trade from Singapore to Japan
Switzerland	September 2009	<ul style="list-style-type: none"> – Zero duty on 99% of trade from both countries by 2019 – Duty immediately eliminated on industrial products from both countries
Thailand	November 2007	<ul style="list-style-type: none"> – Zero duty on steel products from Japan – Reduced duty on automobile parts from Japan – Improved market access for Thailand for agricultural and fisheries products – Comprehensive partnership on customs clearance proceedings, including mutual recognition of conformity assessment of certain equipment
Vietnam	October 2009	<ul style="list-style-type: none"> – Duty on 88% of trade from Japan to Vietnam will be brought to zero within ten years (around 93% in 16 years) – Zero duty on 95% of trade from

Table 1: CONCLUDED EPAs		
Country/Region	Effective Date	Key Features
		<p>Vietnam to Japan within ten years</p> <ul style="list-style-type: none"> – Improved market access for Japanese exporters for steel products, automobile and automobile parts, electric and electron products – Duty immediately eliminated on industrial products exported from Vietnam

Table 2: EPAs UNDER NEGOTIATION		
Country/Region	Stage of Negotiations	Proposed Features
Australia	Sixteenth round of negotiations held in June 2012. It is likely to be concluded shortly.	<ul style="list-style-type: none"> – Stability of access to natural resources from Australia is expected to be a key feature
Gulf Cooperation Council	Second round in January 2007; unofficial meetings in 2007, 2008 and 2009	
South Korea	Most recent meetings held in May 2011	No progress since 2011.
Japan, PRC and South Korea FTA	The initiation of the negotiation was declared in November 2012.	Parties have made efforts to accelerate the negotiations.
TPP	Sixteenth round of negotiations was held at Singapore in March 2013.	Japanese government announced it would be joining the negotiations, and it started discussion with other parties while waiting for approval from the other members.
Mongolia	Third meeting was held in April 2013.	<ul style="list-style-type: none"> – Stability of Energy and mineral resources supplying mechanism is expected to be a key feature
Colombia	The first meeting was held in November 2012.	The parties are aiming at a comprehensive and high level EPA.

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Table 2: EPAS UNDER NEGOTIATION

Country/Region	Country/Region	Country/Region
Canada	Second meeting was held in April 2013	Stability of energy, mineral resources and food supply is expected to be a key feature.
RCEP	The initiation of the negotiation was declared in November 2012.	Comprehensive, high level and mutually-beneficial EPA is aiming at among ASEAN and its FTA partners.
EU	The parties are positive to initiate EPA negotiations.	
Turkey	Pre-negotiation study sessions were held in November 2011 and February 2012.	