

Trade & Customs

Contributing editor
Gary N Horlick



2017

GETTING THE
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Trade & Customs 2017

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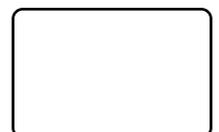


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

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First published 2012
Fifth edition
ISSN 2051-1272

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Japan

Yuko Nihonmatsu, Fumiko Oikawa and Mariko Sanno

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Overview

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

The main domestic legislation regarding trade remedies are:

- the Customs Tariff Act: <http://law.e-gov.go.jp/htmldata/M43/M43HO054.html> (Japanese only); and
- the Cabinet Order on Anti-Dumping Duties: <http://law.e-gov.go.jp/htmldata/H06/H06SE416.html> (Japanese only).

2 In general terms what is your country's attitude to international trade?

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

Since the 1990s, the network of free trade agreements (FTAs) around the world has grown significantly. Even in Japan, a nation that has been a staunch supporter of multilateral trade arrangements under GATT and WTO, calls for FTAs have increased and in January 2001 Japan began negotiating an economic partnership agreement (EPA) with Singapore, which was concluded in November 2002, becoming Japan's first EPA. By June 2016, Japan had EPAs in place with 15 other countries.

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

As of June 2016, Japan is negotiating EPA/FTAs with eight counterparties including ASEAN, EU, South Korea and Canada, in addition to negotiating the TPP and RCEP multilateral agreements. As of June 2015, trade with countries with which Japan has a trade agreement in force or signed up makes up 22.3 per cent of Japan's total trade; this rises to 84.6 per cent when you include those countries with which Japan is currently negotiating EPAs.

Trade defence investigations

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

The Ministry of Finance (www.mof.go.jp/english/index.htm) and the Ministry of Economy, Trade and Industry (www.meti.go.jp/english/index.html) are the authorities that conduct trade defence investigations and enforce the Customs Tariff Act in Japan.

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

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

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

The authority responsible for investigating the request will confirm that the necessary documents have been submitted that adequately evidence the above matters; once they are satisfied of this, they will begin investigating whether or not to act on the request. The confirmation usually takes around two months, and once an investigation starts it will generally be completed within one year after commencing investigations (and no more than 18 months).

In May 2016, the Ministry of Finance (MoF) and Ministry of Economy, Trade and Industry (METI) published guidelines for preparing the documents required when requesting anti-dumping duties: www.meti.go.jp/policy/external_economy/trade_control/boekikanri/download/trade-remedy/adgl_tebikiz.pdf (Japanese only), as well as examples of the way in which to prepare the documents: www.customs.go.jp/kaisei/sonota/adgl_annex1.pdf (Japanese only).

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

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

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

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

Japan is a member of the WTO.

The Customs Tariff Act incorporates into Japanese laws the provisions of article 6 of the General Agreement on Tariffs and Trade (GATT) Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement). In Japan, if an investigation is commenced into certain types of imported goods originating in China or Vietnam, there is a provision that allows provision of evidence

that market economies' conditions exist with respect to the production and sale of the designated goods, and as a rule, China and Vietnam are treated as countries with non-market economies. However, it should be noted that under WTO accession protocols for these countries, the above provision can only be applied until 10 December 2016 in the case of designated goods originating in China, and until 31 December 2018 in the case of designated goods originating in Vietnam.

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

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

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

Extension of the duty period

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

Revision, etc of the duty as a result of changed circumstances

Interested parties may make a request for revision or abolition of a dumping duty, NOT less than one year from the start of the designated period of duties with regard to a designated goods, if it is accepted, upon submitting adequate evidence, that the circumstances have changed regarding (i) dumping of the designated goods, or (ii) the facts of the actual damages, etc, caused to the Japanese industry as a result of the importation of the designated goods. A determination whether or not to revise or abolish the dumping duty generally takes not more than one year.

Refund of anti-dumping duties

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

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

To date, the Japanese government has only conducted seven anti-dumping investigations, six of which led to anti-dumping duties being imposed. This includes two that are currently under provisional measures and those for which the duty period has already been completed. In the past, Japan had been reticent about using anti-dumping duty measures, which might have been putting Japanese businesses in a difficult position.

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

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Based on the principle of no taxation without law, there are specific laws or treaties that stipulate six main different customs duty rates:

- General rate (Customs Tariff Act): A rate that is set from a long-term perspective based on the state of domestic industry, etc.
- Temporary rate (Act on Temporary Measures concerning Customs): A provisional, flexible rate applied in special circumstances.
- Generalised system of preferences rate (Act on Temporary Measures concerning Customs): A rate that is applied to imported goods for which the country of origin is a developing country that has requested preferential tariffs and Japan has accepted this request (generalised system of preferences beneficiary).
- LDC preferences rate (Act on Temporary Measures concerning Customs): This is a rate that applies specifically to imported goods for which the country of origin is a preferential beneficiary and that is also an LDC, in which case the tax rate is zero. The LDC preferences rate (zero tax) will also apply in the case of the importation of general preferential goods originating from an LDC.
- WTO treaty tariff rate: This is a rate that is agreed (binding rate) as the maximum duty applicable to imported goods originating from a WTO member country. It also applies to countries with beneficial customs duty treatment, or countries with most favoured-nation status under bilateral treaties.
- EPA tariff rate: This is a rate that is set out in specific EPAs between Japan and certain other countries. Certain duties are reduced or eliminated for goods originating from such countries according to a schedule in the relevant EPA.

The rates described in the bullets above are set out in the Customs Tariff Act or other related laws and treaties based on the International Convention on the Harmonised Commodity Description and Coding System (HS Treaty), and the customs tariff schedule can be found on the Customs website: www.customs.go.jp/english/tariff/index.htm.

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

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

All tariff rates are set forth in the customs tariff schedule on the website listed above.

Countries that are given preference under EPAs are listed on the website: www.customs.go.jp/tokyo/zei/origin/flow/step01.htm.

GSP beneficiaries (countries and territories) are listed on the website: www.customs.go.jp/english/c-answer_e/imtsukan/1504_e.htm.

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

In order to receive preferential tariff treatment, it is necessary for a importer to submit a certificate of origin, the GSP (: Form A at the time of import declaration. This certificate has to be issued at the time of exportation by customs authorities or other officially authorised body, such as a chamber of commerce and industry, in the country of origin, based on the declaration made by the exporter. The goods must be imported directly to Japan for preferential tariff treatment.

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

Entire graduation

A country or territory is excluded from the list of beneficiaries of Japan's GSP scheme when the country or territory has been classified in the World Bank Statistics as a high-income country for three consecutive years.

Partial graduation

Products originating from a beneficiary are excluded from preferential treatment when the beneficiary is classified as a high-income economy in the World Bank Statistics of the previous year, and the value of Japan's imports of the product originating from the beneficiary exceeds ¥1 billion and 25 per cent of the total value of Japan's worldwide imports of the product in the trade statistics of two years ago.

There are also certain products originating from the beneficiaries that are excluded from preferential treatment under certain conditions (such as certain species of fish from a beneficiary believed to be against the conservation standards by a regional fisheries management organisation).

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

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

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

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

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

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

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

Trade barriers

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

The government offices that handle complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements are METI, MoF and other ministries responsible for the specific industry in Japan.

In particular, METI publishes a 'Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA' and 'METI Priorities Based on the Report', for the purpose of improving compliance among major trading partners whose trade policies and trade measures might not be consistent with the international rules of the WTO, etc. The Multilateral Trade System Department and Office for WTO Compliance and Dispute Settlement, Trade Policy Bureau within METI has a webpage dedicated to dealing with enquiries regarding trade policies and measures of foreign countries that are faced by companies and business operators. This office will consider whether the foreign government's measures are consistent with WTO and other international rules

and provide advice, including, in some circumstances, assisting with the launching of WTO dispute settlement procedures, etc.

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

The Japanese government takes the approach of using the WTO and other international trade rules to settle disputes regarding international economic issues. When a company, export cooperative or other interested party is faced with a foreign trade barrier and brings the matter to the attention of the ministry responsible for that particular industry, the ministry will interview the interested parties to ascertain the facts. If necessary, the ministry will collaborate with METI and other relevant ministries to handle the matter consistently from the Japanese government's perspective, which can include requesting discussions with the relevant foreign government, and failing a satisfactory outcome through such negotiations, filing a complaint through dispute resolution procedures under the WTO or the relevant EPA.

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

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

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

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

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

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

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

20 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 Customs, obtain an import permit and make payment of customs duty and excise taxes after necessary examination of goods (Import Declaration).

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

In addition, with respect to import cargos which have an adverse impact on the economy, industries, sanitation, health, public safety or public morals,

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

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

Export controls

21 What general controls are imposed on exports?

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

22 Which authorities handle the controls?

The Custom and Tariff Bureau of the MoF handles export customs clearance procedures, although permits and approvals for export of certain cargo are governed by other government agencies pursuant to the laws and regulations that require such permits and approvals. The most important of these is the Foreign Exchange and Foreign Trade Act (Foreign Exchange Act), and the METI is the government agency responsible for permits and approvals for export of cargo under the Foreign Exchange Act.

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

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

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

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

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

In order to implement the WCO's SAFE Framework of Standards, Japan amended the Customs Tariff Act and relevant laws in 2012 to introduce the advance filing rules which requires shipping companies to electronically submit to Customs information for maritime container cargo to be loaded on a vessel bound for a port in Japan, in principle at least 24 hours before departure of the vessel from the port of loading. In addition, the Customs and Tariff Bureau of the MoF implemented the authorised economic operator (AEO) programme; a system conforming with international standards.

Under this programme, companies that have well-organised cargo security management and compliance systems are given the benefit of simple and reduced custom clearance procedures. Currently, Japan has signed mutual recognition of this AEO programme with seven other countries.

25 Where is information on countries subject to export controls listed?

The catch-all control described in No. 23 only applies to exports shipped to certain regions, and the Export Order exempts certain countries ('white countries') from the catch-all control. Also, some of the catch-all controls provides for various cases where prior permits are required for cargo exported to countries and regions subject to a UN arms embargo as listed in the Export Order. Reference: www.meti.go.jp/policy/anpo/securityexportcontrol3.html.

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

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

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

The End User List (as of 29 March 2016) can be found at: www.meti.go.jp/policy/anpo/law_document/tutatu/kaisei/20160329_3.pdf.

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

Customs Act

- Ten years of imprisonment with labour or a fine of not more than ¥30 million, or both;
- forfeiture of the embargoed goods and unpermitted export goods; and
- dual liability also applies.

Foreign Exchange Act

- Ten years of imprisonment with labour or a fine of not more than ¥10,000,000, or both, provided, however, that if the price of the subject of the violation, when multiplied by five, exceeds ¥10 million, a fine shall be not more than five times of that price;
- administrative sanction for banned export of cargoes for a maximum of three years; and
- dual liability also applies.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The MoF and the METI have the authority to implement economic sanctions if (i) deemed necessary in order to perform international agreements, (ii) deemed especially necessary for Japan to contribute to international efforts for world peace, or (iii) a cabinet decision is made to take counter-measures deemed necessary to maintain peace and safety of Japan.

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

Currently, comprehensive economic sanctions are in force in respect of North Korea, and a partial economic sanction is in force in respect of Iran, Libya, Syria, Somalia and Eritrea.

Details at: www.meti.go.jp/policy/external_economy/trade_control/01_seido/04_seisai/seisai_top.html (Japanese only).

30 Are individuals or specific companies subject to financial sanctions?

Yes. See 'List of economic sanctions and individuals/activities subject thereto' (as of 20 May 2016), www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/list.html (Japanese only).

Miscellaneous**31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.**

Not applicable.

32 What effects are mega-regional trade agreements, such as the TPP, TTIP and RCEP, expected to have on your jurisdiction?

Japan signed the TPP Agreement in February 2016, and discussions are being held in the Diet to establish procedures for obtaining the Diet's approval for the TPP Agreement and laws to implement it. When the TPP Agreement is brought into effect in domestic law and, as an effect, Japan

moves on to a new growth track (equilibrium position), Japan's real GDP level is expected to increase by 2.6 per cent, an increase of approximately ¥14 trillion. In addition, the labour supply is expected to rise by approximately 800,000.

In addition, Japan has been participating in RCEP negotiations since 2013. If signed, RCEP will create a broad economic bloc of approximately 3.4 billion people (almost half of the world's population) and accounting for combined a GDP of approximately US\$20 trillion (30 per cent of the world's GDP). Some estimates show that RCEP will push up Japan's real GDP.



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Trade & Customs
ISSN 2051-1272



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