

Japan Business Council for Trade and Investment Facilitation

Recommendations for Improvements on Trade and Investment Barriers in 2019

I. Maintaining and Advancing the Free-Trade System

Japanese companies continue to have difficulties making the predictions which are essential for conducting business due to factors such as the escalation of trade friction between the U.S. and China, and the continued confusion and uncertainty surrounding the UK's withdrawal from the EU (Brexit) as the deadline for withdrawal once again draws near. Under these circumstances, we think that the conclusion of the trade agreement between Japan and the U.S. will facilitate the development of a free and fair global economy based on clear rules, improve the Japanese export industry's access to U.S. goods markets, and contribute significantly to the growth of trade between companies and mutual investment between the two countries. The expansion of free trade agreements on a global level is desired in order to secure greater predictability and increase business opportunities.

1. Creating an Environment for Reducing Trade Friction, Securing Japan's International Competitiveness, and Preventing It From Falling Behind Other Countries

- 1) The U.S. Trump administration continues to impose additional tariffs relating to the infringement of the intellectual property rights of U.S. companies by China on the basis of Section 301 of the 1974 Trade Act, and China is countering by imposing retaliatory tariffs. These policies are raising the risk of a downturn in the global economy.
- 2) Trade friction between the U.S. and China is having a huge impact on Japanese industry, which does business with both countries backed by extensive supply chains. This impact includes an increase in manufacturing costs.
- 3) The introduction of volume restrictions and foreign exchange clauses by the U.S. administration in the negotiations for the revision of the US-South Korea Free Trade Agreement and the USMCA (new NAFTA) casts doubt on the WTO agreements. Since this provides the basis for criticizing the monetary policies of the target countries, it forces Japanese companies, which have built their supply chains based on the WTO agreements and existing monetary policy, to review their strategies, thereby increasing the risk of losing competitiveness.

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- 4) There is concern that in markets such as MERCOSUR and South Korea, Japanese products will lose competitiveness compared to products from the EU and U.S., which are ahead of Japan in negotiating and concluding economic partnership agreements (EPA).

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) Utilize its relationship with the U.S. administration, which has been further strengthened through the conclusion of the trade agreement between Japan and the U.S., to urge said administration to reduce international friction, starting with its policy regarding China, and to seek solutions based on common global rules, including the WTO.
- 2) Following the Japan-EU EPA which came into effect this year and the trade agreement between Japan and the U.S which was concluded beforehand, advance negotiations over a Japan-MERCOSUR EPA, a post-Brexit EPA with the UK, and other agreements.
- 3) In addition to negotiating new EPA, review existing EPA (for example, shorten the staging period (10–15 years) of the Japan-Vietnam EPA, and eliminate discrepancies in the Japan-Mexico EPA regarding HS code lists used by each country).

2. Clarification of the Conditions Between Relevant Countries Following the UK's Withdrawal from the EU, and Ensuring Predictability for Business in the UK

- 1) Amid uncertainty regarding the UK parliament's approval of conditions for the withdrawal agreement, including bottleneck issues such as the handling of the border with Ireland, there is still a possibility of a No-Deal Brexit, despite the deadline for withdrawal being extended three times.
- 2) Since the outlook for employment issues, including migrants, and taxation issues after the withdrawal is unclear because of this, many companies have decided to transfer sites from the UK to the continent and to temporarily suspend operations after the withdrawal.

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Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) Urge both the UK and EU governments to avoid a No-Deal Brexit and to clarify their future relationship as quickly as possible in order to ensure predictability around the business environment after the UK's withdrawal from the EU.
- 2) Urge both sides to minimize the impacts and burdens imposed by the withdrawal from the EU on each specific matter that greatly affects the business strategy planning of Japanese companies, including tariffs, customs procedures, supply chains, and the movement of people, information, and assets.

II. Making improvements to tackle stagnation of progress in globalization and the trend of protectionism

As the world's economy globalizes, the products and services produced by Japanese industry are being delivered in a way that transcends national borders. However, in some countries, the progress of business is being impeded by the implementation of measures aimed at protecting said country's own industry and procedures, such as customs clearance, which are found to be complex, inefficient, and arbitrary according to the custom's officer responsible.

1. Raising Tariffs, High Import Duties, Safeguard Measures, and Long-term Anti-Dumping Measures

- 1) In the results of the study on "Issues and Requests for Improvements on Trade and Investment Barriers", the indication of problems with "Restrictive export/import trade, duty, and customs clearance" was the largest at 24.8% as a percentage of all the categories, and the number of cases increased from 366 in 2018 to 403, a year on year rise of about 10%.
- 2) Issues with import duties that were indicated included high rates and high duties on imports. Export companies are experiencing a heavy burden and loss in competitiveness due to high-duty frameworks in specific countries, such as additional tariffs levied on goods from China under Section 301 of the U.S. Trade Act of 1974, high duties based on the reward-sharing system in Thailand, high import duties in the U.S. due to the combination of fixed amount tax and ad valorem tax, and multiple layers of taxation in Brazil including VAT and goods and service taxes in addition to import duties.

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- 3) There were frequent cases of raising tariffs on steel products and invoking anti-dumping duty measures and safeguard measures in order to protect domestic industries (China, India, Indonesia, Thailand, Vietnam, Malaysia, Philippines, Canada, Mexico, Colombia, Brazil, Russia, Turkey, Morocco, South Africa, Australia, and South Korea). Despite the existence of the sunset clause to abolish anti-dumping duty after the end of a certain period, there is also a case in which such taxation is maintained over a long period (United States).

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) When measures to restrict imports are taken in a form that is contrary to the WTO agreements, actively urge the government in question to withdraw the measures through engaging in bilateral consultations and collaborate with third countries and regions with shared interests, as well as looking to the use of WTO dispute resolution procedures and other means.
- 2) When tariff increases, import restrictions and the like are implemented in the countries concerned, verify the consistency with WTO rules through engaging in bilateral consultations based on early liaison with the industries involved and collaborating with third countries and regions with shared interests.

2. Complexity, Opacity, and Inconsistency in Customs Clearance Procedures, Arbitrariness in Duty Classifications, and Difficulties in Obtaining Import Permits

- 1) Regarding non-tariff barriers in customs clearance procedures that Japanese companies face on a daily basis, many problems with complexity, opacity, and delays in customs procedures, and the arbitrariness of officials regarding the application of duties were indicated in many countries, primarily in emerging and developing countries (China, Indonesia, Thailand, Vietnam, Malaysia, Philippines, Mexico, Brazil, EU, Russia, Saudi Arabia, Egypt, etc.).
- 2) In China, the draft Export Control Law published in June 2017 stipulated re-export regulations aimed at advancing China's national security and interests, so many concerns were expressed, including concerns that it applies to many consumer products and technologies when enforced. In addition to this, there are problems regarding the imposition of import duty on samples, unclear exemption criteria for equipment imports and the import restrictions on books,

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foodstuffs, and used machinery and equipment, and a problem in that it is taking too long to clear customs in general.

- 3) In Brazil, there is an obligation to write product names and the like in documents related to import procedures in Portuguese, and a burden for exporters is the fact that the material and weight for each product must be stated on invoices.
- 4) In Egypt, there are problems with sudden changes to duty rates without any grace period, and the restriction of imports by Egypt's General Organization for Exports and Imports Control (GOEIC) until the completion of preregistration of plant and company name.
- 5) In Thailand, the customs reward-sharing system is resulting in demands for unfairly high duties.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) With the effectuation of the WTO Trade Facilitation Agreement, urgently support countries where the domestic legislation is not developed enough to implement the content of the Agreement to establish such legislation. Moreover, in relation to the Agreement, we request that the Japanese Government urge the countries concerned to establish an advance ruling system that covers tariff classifications, tariff assessments, and preferential and non-preferential origin rules.
- 2) Promote the further simplification and digitization of customs procedures and the construction of single-window systems.
- 3) When bilateral remedial action on measures such as the particular rules, procedures, licenses and so forth of specific countries suspected of WTO violations fail to work, consider filing a WTO complaint in collaboration with third countries such as the United States and Europe that are suffering damages as a result.
- 4) In China, request that simplified customs clearance procedures for air-freight are introduced at airports across the entire country.

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3. Regulations on Entry of Foreign Capital for Business Investment

- 1) With regards to business investment in overseas companies, some countries have implemented regulations on the entry of foreign capital. These include regulations on the establishment of a site office for each individual project in Myanmar; the situation in the United Arab Emirates (UAE) where foreign capital cannot take a majority stake in business investments in the country, and problems in Brazil such as foreign companies being denied approval to establish a representative office. In China, restrictions are being placed on opening new factories and the like in labor-intensive industries. In Indonesia, foreign investment firms are limited to a maximum stake of 33.3% when establishing a joint venture with a local company.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) Pursue the resolution of disparities and the establishment of an environment under which foreign capital can conduct business in a common market environment through bilateral consultations with Myanmar, through the early entry into force of the Japan-UAE Investment Agreement with the UAE, and with Brazil by promoting the conclusion of a Japan-MERCOSUR EPA.
- 2) With regard to country-specific issues, urge local governments to work toward creating an environment with local regulations that are close to international standards and in which is easy for foreign capital to enter through bilateral and, when necessary, multi-lateral frameworks.

4. Employment-Related Problems

- 1) Many problems were indicated around local labor legislation with a strong tone of worker protection, primarily in emerging and developing countries. Issues such as sharply rising personnel expenses due to frequent increases in minimum wages and strict labor and safety standards are onerous for Japanese companies, which are employers. There are legal systems that excessively protect workers not only in developing and emerging countries such as China, Indonesia, Brazil, Mexico, Venezuela, and Saudi Arabia, but also in South Korea, a developed country, and companies are struggling to take countermeasures.

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- 2) Delays and complexity in the acquisition and renewal procedures for working visas and residency permits for expatriate and seconded employees were indicated, primarily in developing and emerging countries.
- 3) With regards to the employment of local people, regulations were indicated that include the obligation to employ a certain percentage of local people relative to the number of foreign employees (expatriate employees). For every one foreign employee, companies must employ four Thai employees in Thailand, three Indonesian employees in Indonesia, and five Turkish employees in Turkey. In Saudi Arabia, there is an obligation to employ a certain percentage of Saudi people, which is called Saudization.
- 4) Country-specific problems include the obligation to submit an employment contract in Burmese in Myanmar, the employee profit sharing system in Mexico, the obligation for the compulsory enrollment of foreign employees (expatriate employees) in local social insurance in Vietnam, and the strict attainment criteria under the Broad-Based Black Economic Empowerment (B-BBEE) measures being implemented in South Africa. These are considered to differ from normal international practices, forming stumbling blocks to the entry of Japanese companies.
- 5) The duplication of social security expenses for expatriate employees due to the obligation to make payments in both Japan and the country in which the employee has been posted is putting a burden on companies in countries with which Japan has yet to conclude a social security agreement (Indonesia, Malaysia, Philippines, Poland, Denmark, Norway, Turkey, Russia, and Mexico).

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) With regard to labor legislation, practices, decisions on mediation and judgements that are advantageous to workers and labor unions, urge its neutral and flexible application in accordance with international practices. At the same time, seek for improvements on the compulsory enrollment of employees dispatched from Japan in local social insurance.
- 2) Seek for the inclusion of provisions on facilitating the movement of people as well as the expansion of social security agreements with countries that conclude new EPAs with Japan. Urge to employ a one-stop service in application procedures for residency and work permits together with the introduction of a

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comprehensive service to link the various procedures for visa issuance in a complementary manner for countries with which Japan has concluded an EPA. Encourage that convenience and promptness will be assured for entry, residence and work permits, social security, tax payment procedures, and the issue of driving licenses for employees dispatched from Japan, including their accompanying family members.

- 3) The APEC Business Travel Card (ABTC) has been introduced by APEC and its introduction has been encouraged by the CPTPP. It is a useful convenience for business people who travel frequently within APEC. With this card as a model, encourage the introduction and expansion of such a card in countries with which Japan has concluded an EPA and countries and regions with which Japan is conducting negotiations for conclusion of an EPA.
- 4) Urge streamlined and faster acquisition of temporary residence and work visas and provision of smoother convenience in entry and departure screening for key persons such as executives, senior managers, and specialist employees such as engineers assigned to overseas affiliates or alliance partners as internally transferred employees who create large numbers of local jobs and who do not compete in the local labor market. Also, request that it be arranged to exclude these key persons from the scope of regulations on the percentage of total employees and total amount of salaries accounted for by foreign employees at the time of bilateral or EPA negotiations.

Eliminating Deviations From International Rules and Promoting Consistency

In areas such as taxation, intellectual property rights, industrial/safety standards, and environmental regulations, international organizations, such as the WTO and OECD, and international agreements have negotiated shared, universal rules so that corporations can engage in global business activities based on common rules. On the other hand, the application of rules in accordance with such international standards is difficult depending on the country (as rigorous compliance and operation is required), and it is a fact that unique rules based on national circumstances are introduced, and as with intellectual property, there are variations in the level of protection depending on the country. In order to lighten the burden on Japanese companies, we request the establishment of an environment in order to reduce divergence from international rules by the countries in question as much as possible and to enable business to be conducted on a common global platform.

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1. Taxation Problems and Problems of Responding to the Internationally Agreed Taxation System, Including Japan (Taxation Area)

- 1) Brazil's tax system, which is complex and does not correspond to OECD guidelines, is placing an additional burden on companies due to multiple layers of taxation involving many types of tax, including federal taxes, state taxes, and city taxes.
- 2) In regard to transfer pricing documentation requirements following the BEPS final report, some countries (Vietnam, Philippines) have set shorter deadlines than recommended by the report, placing excessive burdens on companies.
- 3) Although U.S. Congress approval for the new Protocol to Amend the Japan-U.S. Tax Treaty had been delayed, it came into effect on August 30, 2019.
- 4) The application of PE assessment is often being seen in countries including China, India, and Myanmar. This causes problems as employees on long business trips who spend at least 180 days per year in the country are assessed as PE, leading to them being taxed in said country as well as Japan.
- 5) In emerging countries, it is reported that refund procedures for value added tax in China, and value added tax and consumption tax and the like in Indonesia, Malaysia, Philippines, Mexico, Morocco, and other countries, are complex, and that there are many cases in which refunds are delayed.
- 6) The arbitrary nature of tax authorities in tax law interpretation, tax classifications, and tax audits was indicated (China, India, Indonesia, Thailand, Mexico, and others).

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) Urge that sufficient consideration be given to not increasing procedural costs and taxation risk for Japanese industry through excessive administrative burdens and information disclosure in the implementation of the OECD/G20 BEPS final report in each country.
- 2) There are many types of taxation problems ranging from direct taxation issues (transfer pricing tax system, PE assessment, etc.) to indirect taxation issues (value added taxes, GST, etc.) and unlike trade and investment, there is no

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institution for solving international conflicts in this area. Therefore, there are many cases where solutions are pursued bilaterally through Mutual Agreement Procedures (MAP) and the like. At the same time, as the globalization of business advances, the number of cases requiring international cooperation is increasing. We ask the Japanese government to promote international cooperation in order to preserve and enhance the international competitiveness of Japanese companies.

2. Problems with Intellectual Property Rights, Including Insufficient Protection of Intellectual Property Rights and Inadequate Controls on Counterfeit Goods (Intellectual Property System and Management Area)

- 1) Although there was an especially high number of indications concerning problems with counterfeit and pirated goods in Asia, topped by China and including Malaysia Thailand, Vietnam, and India, there were also indications from all over the world, including Russia and the United Arab Emirates. In China in particular, counterfeit and pirated goods are becoming increasingly sophisticated and worsening in quality, and infringements are being made over and over without any sign of abatement. There have been large problems in terms of execution and operation, including weakness in administrative execution, high criteria for criminal prosecution, and mild punishments. Additionally, there continue to be indications that insufficient border control by Chinese customs is inviting the spread of counterfeit goods into overseas markets.
- 2) In China, South Korea, and other countries, licensing agreements need to be registered to become effective with third parties. In China in particular, the same documents concerning patent licensing agreements must be submitted to many different government departments, and national and regional regulations can differ, making the procedure very difficult.
- 3) In countries such as India, Thailand, Vietnam, Turkey, and Brazil, delayed patent examinations are a problem, and the level of examination can vary depending on officials.
In India, the conditions for the use of early examination systems are limiting, making them difficult to use.
- 4) Brazil has a registration system for technology licensing agreements that requires agreements to be approved by the National Institute of Industrial Property. In practice, this means that the government is exercising the right of

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assessment through registration.

- 5) In the U.S., it is indicated that the obligation to disclose prior technology, the obligation to disclose overseas filings and examination information, and the obligation to submit an inventor's oath and transfer document are very onerous.
- 6) First country filing obligations under which an invention completed in a certain country cannot be filed in another country without first being filed in that country are stipulated by laws and regulations in many countries, including the U.S., UK, China, Singapore, India, Malaysia, and Vietnam, but as these laws and regulations are ambiguous, there are cases where it is difficult to secure valid intellectual property rights. Also, as modern business requires multinational research and development, there is concern about the risk of running afoul of first country filing obligations.
- 7) The following problems were indicated regarding the private copying compensation system that limits copying of content, including music and video, for private use, particularly in the EU.
 - 1) There were many instances where payments were not collected due to insufficient enforcement.
 - 2) There were differences in the approach taken by each participating country leading to duplicate demands in cases of cross-border transactions.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) As well as promoting the inclusion of provisions in intellectual property sections of EPA/FTA that are the same level or higher than TRIPS, one of the annexes to the Agreement Establishing the WTO, work on strengthening the protection of intellectual property rights between the countries involved.
Also, in regard to the SDGs, we expect anti-counterfeiting measures realized through support for regulatory bodies in each country from Japanese companies engaged in anti-counterfeiting measures and the Japanese government to contribute to solving various issues related to poverty, security, safety and the like faced by developing countries.
- 2) Further advance Patent Prosecution Highways with India, Thailand, Vietnam, and Brazil to eliminate delayed patent examinations. Also, in regard to problem of registration system for non-exclusive licenses and the problem concerning technology licensing agreements in Brazil, urge movement from the

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governments of the countries concerned through means such as inter-governmental dialogue and exchanges of opinions.

- 3) With regards to the private copying compensation system, abolish the system or eliminate inadequacies such as lapses in execution and inconsistencies between participating countries.
- 4) With regards to first country filing obligations, given the reality of global corporate activities under which research and development spans many countries, realize the abolition of first country filing obligations or relaxation of the application of first country filing obligations based on multi-lateral or bilateral agreements.

3. Local-Specific Standards that Deviate from International Standards

- 1) There were indications that local-specific standards that deviate from international standards are a barrier to trade and investment. These include the China Compulsory Certificate (CCC) and Guobiao standards in China, which are tightly regulated and have approval procedures that are complicated and opaque. In Egypt, confirmation of conformity with new standards takes time and is a cause of business stagnation. In Saudi Arabia, there are complex pre-shipment and customs inspections associated with compliance with Saudi Standard Specifications, the local-specific standard. In Colombia, there are concerns about discrimination between domestic and foreign businesses, and problems with the complexity of compliance assessment procedures relating to that country's energy conservation certification standard.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) With regards to proprietary standards that increase the cost of product development, urge the relevant countries to seek conformity with international standards, such as IEC; work through bilateral consultations and Japan's overseas diplomatic establishments based on requests from corporations and industries; and encourage improvements through utilization of the WTO's TBT Agreement and other processes.

4. Problems Related to Environmental Issues and Waste Disposal, etc.

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- 1) In China and the United Arab Emirates, RoHS, which prohibits inclusion of specific hazardous substances in products, has been introduced, but it is inconsistent with regulation in the EU, where RoHS originated. Specifically, it includes obligations for registration before product launch, the submission of test reports, and the like which are onerous for companies.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) With regards to environmental regulations, urge the establishment of common global systems and structures through bilateral consultations in collaboration with the EU, a developed region which is the source of regulations, so as to minimize the burden on companies.

IV. Promoting a Shift to the Digital Economy

The evolution of information and communications technology is driving the full-scale digitalization of the economy. The key to the development of this digital economy is the usage and application of data, which is said to be the oil of the 21st century, and “Data Free Flow with Trust,” championed by Prime Minister Abe at the World Economic Forum held in Davos in January 2019, has become the digital economy’s growth engine. Some countries seem to be moving toward isolating their own country’s data which risks blocking the progress of businesses that use digital data. In order to expand business opportunities found in the digital economy, securing a “free flow of data with trust” on a global level is crucial.

- 1) China’s Cyber Security Law restricts the movement of personal information from within China to other countries, so there is concern that it will limit the business activities of Japanese companies. There are also internet browsing restrictions that limit the activities of Japanese who are expatriate employees or on a business trip in the country.
- 2) In January, the EU approved the adequacy of Japan’s Act on the Protection of Personal Information and recognized it as equivalent to the EU’s General Data Protection Regulation (GDPR), building a framework for the transfer of personal data between Japan and the EU. Alongside this, the formulation of regulations based on the Electronic Money Directive (ePrivacy Regulations) that went into effect in 2011 is underway, but it has been indicated that there is inconsistency over conditions between EU member countries, including conditions for

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consent.

- 3) The conclusion this year of the Agreement between Japan and the United States of America concerning Digital Trade has advanced digital economic interaction between the U.S. and Japan and increased the stability of trade between the two countries.

Requests to Japanese Government for Improvement

We request the Japanese Government to do the following:

- 1) Utilizing multi-lateral frameworks such as the WTO, encourage the rapid formulation of electronic commerce rules and the inclusion of the four principles for electronic commerce rules adopted by the Agreement Between Japan and the United States of America Concerning Digital Trade in all future EPAs as well as urge countries that adopt protectionist digital policies, such as China, to abolish such regulations.
- 2) Following the EU, build frameworks for the transfer of personal data with other countries (regions).

End