

METI Priorities on WTO Inconsistent Foreign Trade Policies

(Based on the 2006 Report on the WTO Inconsistency of Trade Policies by Major Trading Partners)

The 2006 Report on the WTO Inconsistency of Trade Policies by Major Trading Partners was released today by the Subcommittee on Unfair Trade Policies and Measures of the Industrial Structure Council. The Report examines trade policies and measures implemented by Japan's major trading partners that are inconsistent with the WTO agreements and other international rules.

In response to the Report, the issues that METI deems to be a high priority in implementing trade policies, and its policies to cope with these issues are as follows.

<United States>

The U.S. is among those countries that frequently implement so-called "trade remedy" measures. In particular, there are many problems with the rules applied by the U.S. in the AD sector and its enforcement, and many countries including Japan have been harmed by abusive use of US anti-dumping policies and measures.

METI will continue to take action to resolve problems caused by US trade remedy measures that it considers abusive. Although a law including repeal of the Byrd Amendment was enacted in the U.S., disbursements of AD and CVD duties will be continued under transition clause. Therefore, Japan, with other affected countries and territories, will request an immediate halt of disbursements. Japan will also continue efforts, through the WTO dispute settlement mechanism and other means, to secure the abolition of the system to calculate dumping margins by the zeroing method. Furthermore, Japan will urge the earliest possible implementation of the DSB recommendations on AD measures on hot-rolled steel.

- **The Byrd Amendment (Amendment to the Tariff Act of 1930)**
- **Calculation of dumping margins via the zeroing procedure**
- **Anti-dumping measures on certain hot-rolled steel products from Japan**

<China>

China made a wide range of commitments when it acceded to the WTO. Since accession, China has enacted and revised numerous laws and regulations. However, further improvements are still required in many instances (e.g., delays in appropriately enacting and revising domestic laws and regulations, the lack of transparency and consistency in enforcing them, and certain newly introduced systems and practices that appear to be protective in nature).

Japan is particularly concerned about the issues detailed below, which have led to serious problems. At various opportunities, including Vice Minister-level meetings between METI and China's State Development and Reform Committee and Ministry of Commerce, industry-specific dialogues between government officials and industries, and the Transitional Review Mechanism in the WTO, METI will continue to request that China fulfill its WTO obligations.

- **Issues related to the system for certifying finished vehicle characteristics**
- **Issues related to counterfeit, pirated and other infringing products**
- **Issues related to implementation of anti-dumping measures**
- **Issues related to regulating the import or export of toxic chemicals (new item)**

<European Union>

EU rules introduced as means to protect the environment, health, safety, etc., have the potential to seriously restrict trade and are causing serious concern among Japanese industries.

Japanese industries particularly express grave worries about the contents of the following rules, and METI will continue to request that these rules reflect the concerns of Japan.

- **Draft Regulations of Registration, Evaluation and Authorization of Chemicals (REACH)**
- **Directives on Waste Electric and Electronic Equipment (WEEE)**
- **Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)**

<ASEAN>

High tariffs on certain products, as well as trade restrictions affecting foreign investment in ASEAN countries, are the most serious concerns for Japanese industry. Though many of the problems are not necessarily WTO-inconsistent, they should be liberalized to promote free trade.

METI will do its utmost to tackle these problems, fully utilizing the Doha Round of WTO negotiations and EPA negotiations.

Japan will try to solve **the issues of tariffs on digital cameras imposed by Indonesia**. It will request exemption from the tariffs based on Indonesia's WTO obligations, and will consider the possibility of utilizing the WTO dispute settlement procedures.

<East Asian countries and territories (China, ASEAN, Republic of Korea, Chinese Taipei, Hong Kong and India)>

Issues related to counterfeit, pirated and other infringing products in Asian Countries and territories, especially in China, have caused Japanese industry serious problems.

In order to remedy this situation, METI will request each trading partner to improve relevant legislation, enforce legal protection appropriately and effectively, and further strengthen enforcement efforts by administrative and judicial branches. At the same time, METI will provide each trading partner with the support necessary to accomplish these changes.

(ANNEX 1) Actions Related to the “METI Priorities” (April 2005)

Country/Territory	Priorities	Actions taken
US	The Byrd Amendment (Amendment to the Tariff Act of 1930)	In September 2005, countermeasures against the U.S. were imposed. In February 2006, the Deficit Reduction Act including repeal of the Byrd Amendment (with transition clause) was enacted.
	Anti-dumping measures on certain hot-rolled steel products from Japan	Japan did not approve a further extension of the deadline for implementation of the WTO recommendations for the U.S., and the deadline passed in July 2005.
	Calculation of dumping margins via the zeroing procedure	A panel was established in February 2005. The interim report was published in March 2006.
China	Failure to implement tariff concessions for photographic film	In January 2006, China reduced the specific tariff rates almost to the concession rate.
	Issues related to implementation of anti-dumping measures	Japan had several meetings with China, including the regular meeting with the Ministry of Commerce in April 2006.
	Issues related to the system for certifying finished vehicle characteristics	Japan had several meetings with China, including the regular meeting with the Ministry of Commerce in April 2006.
EU	Draft Regulations on Registration, Evaluation and Authorization of Chemicals (REACH)	Japan worked on the EU member states and the members of the European Parliament. The notion of one registration per substance was introduced.
	Directives on Waste Electrical and Electronic Equipment (WEEE) Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)	A consultation was held during the dialogue between Japan and the EU concerning regulatory reform in March 2005. The EU published FAQs regarding WEEE and RoHS in May 2005.
ASEAN	Malaysia: Problems related to imposition of internal taxes on automobiles	Japan requested a remedy during the EPA negotiations between Japan and Malaysia. In October 2005, the government of Malaysia announced the reduction of tariffs and excise duties on completely built-up units.
	Indonesia: Problems related to the imposition of tariffs on digital cameras	Japan had several meetings with Indonesia, including the bilateral meeting with Vice President Kalla in January 2006.
East Asian countries*	Issues related to counterfeit, pirated and other infringing products	Japan requested China to provide information on compliance with the TRIPS Agreement in October 2005. Multilateral and bilateral meetings were also held.

*East Asian countries include China, Hong Kong, Chinese Taipei, Republic of Korea, ASEAN countries and India.

(ANNEX 2)

Outline of Individual Trade Policies and Measures referred to in the “METI Priorities on WTO Inconsistent Foreign Trade Policies”

This section explains the individual trade policies and measures listed in the “METI Priorities,” and provides follow-up results on the trade priorities listed in the 2005 version of the “METI Priorities” issued in April 2005.

<US>

The Byrd Amendment (Amendment to the Tariff Act of 1930)

The so-called “Byrd Amendment” (Amendment to the Tariff Act of 1930) stipulates the distribution of revenue collected from anti-dumping and countervailing duties to US domestic companies that petitioned for the relevant measures.

The WTO panel, established at the request of 11 countries and territories including Japan and the EU, as well as the Appellate Body, found that the Byrd Amendment violates WTO agreements. The report of the Appellate Body was adopted in January 2003. As a result, the DSB recommended that the US repeal the Byrd Amendment. However, the December 2003 deadline for implementation passed without action by the US.

Subsequently, in January 2004, 7 countries and territories including Japan and the EU jointly submitted to the WTO an application to impose countermeasures. In August a WTO arbitrator decided the level of countermeasures and the application was approved in November. The EU and Canada implemented the countermeasures in May 2005, Mexico in August and Japan in September.

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005, which includes provisions to repeal the Byrd Amendment. Although the Byrd Amendment was repealed, the Deficit Reduction Act permits distribution of duties related to products that clear customs before October 1, 2007. Therefore, distribution will be continued for a substantial period of time.

The abolition of the Byrd Amendment, which is what Japan requested, is welcomed as a significant improvement. However, by virtue of the transitional measure, there still remain incentives to apply for AD measures, which continues the unfair advantage for US producers in competition with foreign producers. Japan will continue to cooperate with other Members to strongly request that the US government stop distribution immediately and completely abolish the Byrd Amendment.

Calculation of dumping margins via the zeroing procedure

The US applies a procedure known as “zeroing”, under which price differences for each transaction or model exported at higher prices than domestic prices are converted to zero and dumping margins for overall products are artificially inflated. As a result, the AD duty rates are raised unreasonably.

The zeroing procedure for calculating dumping margins is unfair since it essentially ignores transactions in which dumping is not occurring. Accordingly, Japan believes that the procedure is inconsistent with WTO agreements. In November 2004, Japan requested WTO consultations with the US over this issue. After the consultations failed to achieve satisfactory results, Japan requested that the WTO establish a panel; it was subsequently established in February 2005. At panel meetings, Japan highlighted the illegality of zeroing as applied by the US in each case where AD measures were imposed, and the illegality of the zeroing system as such. The US offered objections, saying that

Japan's claim was incorrect and the US's AD procedures were consistent with WTO agreements. The panel distributed an interim report to Japan and the US in March 2006. A panel report is expected to be issued by the middle of 2006.

Anti-dumping measures on certain hot-rolled steel products from Japan

With regard to AD measures that the US imposed on hot-rolled steel products from Japan in June 1999, both the WTO panel and the Appellate Body determined that the dumping margin calculation methodology was inconsistent with the WTO obligations of the US. Consequently, in August 2001, the DSB recommended that the US remedy the WTO inconsistency of its rules and measures.

During the originally-designated reasonable period of time (RPT) for compliance (which ended in November 2002), the US failed to fully implement the recommendations, including legislative amendments with respect to the US anti-dumping duty statute. Three times the US requested that the RPT be extended. In May 2005, a bill to implement the DSB recommendations (H.R.2473) was submitted to the Congress, but there was no prospect of adoption by the end of the RPT in July 2005 (the bill has not been adopted even at present). The US requested a fourth extension of the RPT, but Japan believes that further extension was unlikely to be effective and would damage the credibility of the WTO dispute settlement procedures. Therefore, recognizing the US intention to continue efforts to implement the DSB recommendations, Japan agreed with the US that the RPT should not be extended and that Japan would suspend its rights to take countermeasures.

Through several opportunities such as WTO/DSB meetings and bilateral consultations, Japan will continue to request that the US implement the recommendations as soon as possible.

<China>

Failure to fulfill tariff concessions for photographic film

China's WTO Accession Protocol included a commitment to reduce tariffs on photographic products (HS-37) to 0-53.5% ad valorem as of 2002. However, for around half of the photographic products covered (35 items, including ordinary photographic film), China has failed to implement the rates committed to at the time of its WTO accession. When translated into ad valorem terms, the specific duty levied by China was extremely higher than the concession rate.

Since 2002, Japan has requested that China remedy this situation. Japan strongly repeated the request, in particular at the regular meeting between METI and the Ministry of Commerce of China in April 2005, the expert meeting in August, and at the high-level meeting in October. As a result, in the revision of tariff rates published in January 2006, although there remain specific duties, the rates for some items concerned were reduced almost to the concession rate when translated into ad valorem terms.

Japan will continue to require corrections for items on which specific duties thus translate into ad valorem duties higher than concession rates, if any, are imposed. Furthermore, it is necessary to continue monitoring China's administration of the tariff system, as well as requesting transition to an ad valorem tariff system, because there is no tariff system ensuring that ad valorem duty equivalent rates do not exceed the bound tariff rates.

Issues related to the system for certifying finished vehicle characteristics

In order to enhance capacity to produce auto products and collect tariffs more strictly in China, the Auto Industry Development Policy (AIDP), promulgated in June 2004, adopted a system where

products that are recognized to have characteristics of finished vehicles ((i) knockdown parts, (ii) a combination of specified fabricating parts (auto bodies, engines, etc.), and (iii) imported parts accounting for 60% or more of the price of a finished vehicle) are to be treated, not as auto parts, but as finished vehicles, and are subject to the tariff rate for finished vehicles (25% as of July 2006) instead of that for auto parts (10%). This system for certifying finished vehicle characteristics has been partially put into force (It will be applied to imported parts that exceed the criterion (iii) above from July 1, 2006).

Japan expressed its concern that this system might be inconsistent with WTO agreements and requested China's Ministry of Commerce to remedy the problem at various opportunities, such as at the WTO Council for Trade in Goods (November 2005), the Japan-China Economic Partnership meeting (December 2005), the regular meeting between METI and the Ministry of Commerce (April 2006). However, China has only repeated that it does not believe the system violates WTO agreements.

Japan will continue to raise the question of consistency of this system with the GATT and the WTO Working Party's Report on China's Accession at WTO meetings and bilateral talks. On this issue, the US and the EU requested WTO consultations pursuant to the WTO dispute settlement procedure in the end of March 2006.

Issues related to implementation of anti-dumping measures

Since China's accession to the WTO in December 2001, it has initiated 103 anti-dumping investigations (as of the end of December 2005), 22 of which involve Japanese products. It is noteworthy that the number of anti-dumping investigations in China has risen markedly compared to before its WTO accession.

China's anti-dumping investigations involve various problems, including:

- Authorities determine the initiation of investigation without performing sufficient examinations of the accuracy and adequacy of the evidence provided in the application.
- The basis for injury determination (such as analysis of indices) is not clear, and is not sufficiently disclosed.
- In using facts available, authorities do not provide the reason for rejecting evidence submitted by the interested parties and do not provide opportunities for making further explanations and comments.

Japan requested that China remedy the problems during the China TRM process (transitional review mechanism) at the AD Committee in October 2005 and the regular meeting between METI and the Ministry of Commerce in April 2006. Japan will continue to make further strong appeals at WTO AD Committee meetings, bilateral discussions, etc. to ensure that authorities in China follow procedures consistent with WTO agreements in implementing anti-dumping measures.

Issues related to regulating the import or export of toxic chemicals (new item)

Foreign companies that export chemicals listed in the "List of Toxic Chemicals Severely Restricted in the People's Republic of China" to China are obliged to pay charges of 10,000 US dollars to the State Environmental Protection Administration (SEPA) for each contract and to apply for issuance of a "Registration Certificate for Environmental Management on the Import and Export of Toxic Chemicals." In order to strengthen regulations for the import and export of toxic chemicals, SEPA revised the List of Toxic Chemicals on December 28, 2005, and added 158 chemicals to the 31 items listed in February 1995, when the original List was put into effect. This revision was put into effect on January 1, 2006.

Japan questioned the inconsistency of the revision with the WTO agreements in demarches by the Japanese Embassy in Beijing to SEPA and the Ministry of Commerce, at the regular meeting between METI and the Ministry of Commerce etc. However, there has been no satisfactory reply from China. Japan will take every opportunity to request China to correct this problem, collaborating with the US and the EU.

<EU>

Draft Regulations on Registration, Evaluation and Authorization of Chemicals (REACH)

In May 2003, the European Commission published draft regulations on the Registration, Evaluation and Authorization of Chemicals (known as REACH), which is designed to provide more rigorous control and risk evaluation of chemical substances. The final draft was adopted in October 2003. A procedure to approve this draft is now underway at the European Parliament and the European Council. Although the idea of these regulations, which is to protect human health and the environment, is understandable, the draft includes measures that might be trade-restrictive if operated incorrectly. For example, chemical substances must be registered for each business entity even if they are the same, and the kinds of chemical substances covered by the regulations are not clear. Japan took every opportunity, such as the WTO/TBT Committee and the dialogue between Japan and the EU concerning regulatory reform, to request an amendment of this draft. As a result, through adoption at the European Parliament in November 2005 and changes agreed to by the Competitiveness Directorate in December 2005, significant improvements were observed, such as an introduction of the idea of one registration per substance and the decision to list up chemical substances covered by the regulations.

However, Japan still has concerns about the extent of the registration exemption of monomers consisting of polymers, and will continue to take actions depending on the progress of discussions within the EU.

Directives on Waste Electrical and Electronic Equipment (WEEE) **Directives on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)**

WEEE aims at promoting the reuse of wastes through recycling and other processes for preventing the generation of waste electric and electronic equipment and reducing the level of disposed waste. RoHS seeks to harmonize regulations in force in EU member states that restrict the use of hazardous substances in electric and electronic equipment, thereby protecting human health and promoting the reuse of waste electric and electronic equipment via environmentally friendly means.

Both Directives took effect in February 2003 and member countries were to improve relevant legislation by August 2004, but many of them failed to complete it by the deadline. Even at present, relevant legislation remains undeveloped in Malta (WEEE) and the United Kingdom (WEEE, RoHS).

As for WEEE, even among EU member states that completed legislation, there is no unified method for registering manufacturers and no unified definition of product marketing. Furthermore, the marking standard which is supposed to be attached to items covered by WEEE has not yet been developed. Japan is concerned about clarification of the scope of the regulations and the definition. Also, for RoHS, Japan is concerned that the scope of the regulations and the process to decide the conditions for exemption are not clear, and the implementation date in July 2006 is approaching. The European Commission published FAQs regarding WEEE and RoHS in May 2005, but many parts remain unclear, and an exhaustive guide on WEEE and RoHS, which was scheduled to be published in August 2005, has not yet been published.

Japan requested that the EU remedy the problem during the dialogue between Japan and the EU concerning regulatory reform in March 2005, and will continue to take various opportunities to resolve this issue.

<ASEAN>

Indonesia: Issues related to imposition of tariffs on digital cameras

Indonesia, a participant to the ITA (Information Technology Agreement), had agreed to eliminate the tariff on digital cameras from 2003. However, Indonesia continued to impose a 5% tariff even after 2003, and subsequently changed the classification of digital cameras in January 2004, starting to impose a 15% tariff on some of them.

Japan requested the government of Indonesia to correct the situation several times, and repeated the request at various opportunities, such as the bilateral meeting between Minister Nikai and Vice President Kalla in January 2006, other bilateral meetings and WTO/ITA Committee meetings. However, the problem has not yet been solved. Japan will continue efforts to solve it, and will consider initiating WTO/DSB procedures.

Malaysia: Problems related to imposition of internal taxes on automobiles

Malaysia has imposed excise duties that discriminate between designated “national cars” manufactured by certain domestic manufacturers and “non-national cars” manufactured by other manufactures, including Japanese ones. During the EPA negotiations between Japan and Malaysia held in 2004, Japan requested that Malaysia provide information about its national car policy and abolish the discriminatory excise duties. The government of Malaysia published a new automobile policy, new tariff rates, and new excise duty rates on October 19, 2005, and decided to (i) reduce CEPTs, which are applied to ASEAN member countries, for completely built-up units (CBU) by 15% without exception, (ii) MFN tariffs by 30% without exception, and (iii) excise duties by 10 to 50%. As a result, discriminatory treatment regarding excise duties between national cars and non-national cars manufactured by other domestic manufactures including Japanese ones seems to have been eliminated. However, Japan needs to further monitor this case, because these discriminatory measures were originally invisible without written provisions, and the elimination of the measures has not been put into statutory form.

Furthermore, the government of Malaysia continues to limit the import of automobiles through an import license system. Japan will continue to request that the operation of these measures must be consistent with WTO agreements.

<East Asian countries and territories (China, ASEAN countries, Republic of Korea, Chinese Taipei, Hong Kong, and India)>

Issues related to counterfeit, pirated and other infringing products

Regarding issues related to counterfeit, pirated and other infringing products in China and other Asian countries and territories, Japan has requested the countries and territories to improve relevant legislation, enforce legal protection appropriately and effectively, and strengthen enforcement efforts by administrative and judicial branches. These requests have been made at multilateral and bilateral discussions under the auspices of APEC, WIPO, WTO, etc. Also, Japan supports the training of personnel in related local organizations (e.g., customs, police, courts and intellectual property offices) in order to improve control measures in countries and territories where serious damage has been caused by counterfeit products.

The Office of Intellectual Property Protection, the government's unified contact established in METI, takes the initiative in supporting various activities, for example, responding to the requests of individual enterprises for advice and provision of information, dispatching a joint mission with the government and the International Intellectual Property Protection Forum (IIPPF), and exchanging opinions with the Chinese government and Chinese industries by field of business. Furthermore, Japan conducted questionnaire surveys to understand the damage suffered by Japanese enterprises and the current status of controls by Chinese authorities.

Although a partial improvement has been observed, the number of criminal prosecutions for infringement of intellectual property rights has been on an upward trend in China. The abundance of counterfeit, pirated and other infringing products still poses a serious problem, and remains very damaging to Japanese enterprises.

Japan requested that the Chinese authorities provide information pursuant to the Article 63.3 of the TRIPS Agreement in October 2005, in order to collect actual data for clarification of the current infringement level of intellectual property rights in China and its improvement. . The same requests were also made by US and Switzerland..

Japan will continue to request that these countries and territories enforce legislation appropriately and effectively, strengthen criminal and administrative control, and provide information regarding intellectual property enforcement.