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As stated in the Preface, one main objective of this report is to identify problematic trade policies and measures adopted by Japan's major trading partners and seek their elimination or rectification. Our analytical standards in this effort are the rules set forth in the Marrakech Agreement Establishing the World Trade Organization (WTO Agreement) and other international agreements.

Part I of this report examines trade policies and measures on a country-by-country basis. Below we have summarized those trade policies and measures that we find particularly troubling. (See individual chapters for details on individual trade policies and measures and their backgrounds.)

THE UNITED STATES

On March 20, 2002 the United States implemented *safeguard measures on imports of 14 steel products* under Section 201 of the Trade Act of 1974. The main problems in this were inappropriate definition of "like products," inappropriate fact-finding related to "increased imports," and unclear causal link between "increased imports" and "serious injury" (the locus of the problem is in the U.S. steel industry, which lacks competitiveness and has no prescription for structural reform). Japan requested the establishment of a panel to hear the case in May 2002. This panel was established in June and integrated with a panel on the same issue already established for the EU. The case is now being heard by a single panel established for a total of eight countries and regions including Japan and the EU. The report will be issued to in early May 2003.

With regard to anti-dumping measures, *the US "sunset" review provisions* diverge from the spirit and letter of the WTO Agreement on the implementation of the AD Agreement. The AD Agreement stipulates that anti-dumping duties automatically expire at the end of 5 years from imposing anti-dumping duties unless the measures are reviewed and it is determined that dumping and injury are likely to continue upon termination of the measures. However, the U.S. anti-dumping laws set unjustified high standards for revocation

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of Anti-Dumping measures. It is urgent that these problems be resolved. In May 2002 a panel was established at the request of Japan and deliberations currently continue.

The ***Anti-dumping Act of 1916*** (Article 72 of the Revenue Act of 1916) imposes fines and criminal sentences on parties importing or selling dumped goods with the intention of injuring domestic U.S. industry and also allows the victims of dumping to seek up to triple damages in compensation. This is a clear violation of WTO agreements. These measures are not the anti-dumping duties that the GATT provides but criminal sentences and fines. The procedures for the initiation of anti-dumping investigations are inconsistent with the Anti-dumping Agreement. Japan and the EU requested that panels and the Appellate Body hear the case. The panel report published in September 2000 found the U.S. measures in violation of the WTO agreements. The deadline for fulfillment of rulings and recommendations of WTO, December 2001 has now passed. Japan needs to continue to request that the United States repeals this law, and monitor its implementation.

The Agriculture Appropriations Act of 2001, which was passed by the U.S. Congress in October 2000, contains a provision partially amending the Tariff Act of 1930 as requiring that collected revenues from anti-dumping duties and countervailing duties be distributed to domestic U.S. companies that have filed or supported a petition (the ***"Byrd Amendment"***). The Byrd Amendment constitutes anti-dumping measures that are not permitted under the WTO Agreement and will have a strong trade-distorting effect. Japan and 10 other countries and regions jointly requested the establishment of a panel in July/August 2001. The Panel and the Appellate Body found in September 2002 and January 2003 respectively that the measure is WTO-inconsistent. We should urge the United States to repeal the Byrd Amendment immediately and continue to monitor its implementation.

The United States imposed ***anti-dumping Measures on Certain Hot- Rolled Steel and Steel Products from Japan***. Japan has requested consultations with the U.S. pursuant to the WTO dispute settlement procedures regarding the United States' anti-dumping measures on certain hot-rolled steel products from Japan. The Japanese challenge has several aspects that include (1) dumping margin calculation methodologies, (2) determination of "critical circumstances", (3) determination of injury and causal link, and (4) unfair investigation procedures. In August 2001, the DSB adopted the report of the Appellate Body which upheld most of Japan's claims. Although the U.S. implemented a certain part of the ruling and recommendation within the reasonable period of time to implement the recommendation in November 2002, it failed to fulfill all of its obligations. Therefore, Japan accepted an extension of the reasonable period of time to implement the remaining recommendations. Japan should continue to seek early fulfillment by the United States and monitors its implementations.

The U.S. is the most active user of WTO dispute settlement mechanisms, but it continues to maintain Article 301 and similar measures that allow for unilateral action, and there is a tendency to use Article 301 procedures in conjunction with WTO dispute settlement procedures in order to leverage negotiations. This is a trend that will require continued monitoring on Japan's part.

THE EUROPEAN UNION

On March 29, the EU implemented its first safeguard measures since the WTO had been established, ***provisional safeguards on imports of 15 steel products***, including flat and long products. The safeguard measures were in force for a period of six months, until September 28. On September 29, the day after the provisional measure expired, the EU implemented three year ***definitive safeguards against seven steel products***, including non-alloy hot rolled steel and cold rolled steel sheets. This measure was the result of investigations that began at the end of March. Japan appreciates EU limiting the detrimental impact caused by the measures on exporting countries. It narrowed the scope of the definitive measure from that of the provisional measure, and used a tariff quota system for both the definitive and provisional measures. Notwithstanding its stated purpose of preventing detrimental impact from the U.S. measure, the EU measure is still protectionist. The EU is one of the world's main producers and consumers of steel, and its implementation of the safeguard measures on the heels of the U.S. measure will have considerable influence on the world trade in steel. The result of the EU and U.S. measures has been to give new momentum to protectionism in the trade in steel around the world. During consultations with the EU, Japan raised questions regarding the WTO consistency of the provisional and definitive safeguard measures, and expressed its concerns that they would merely exacerbate protectionism. Japan should continue to consult with the EU as necessary while monitoring the impact of the measures on Japanese industry.

CHINA

While China has joined the WTO, it still has many issues left to tackle in the fulfillment of its WTO obligations: enhancement and amendment of a vast body of domestic law, establishment of transparent and uniform administration, and training of human resources.

Japan must encourage China to fulfill its WTO obligations in bilateral consultations, the WTO Transitional Review Mechanism and, where necessary, in dispute settlement procedures.

On May 21, 2002, China implemented ***provisional safeguard measures on imports of steel products (covering 48 customs categories)***. These were followed on November 20 with ***definitive safeguard measures on imports of steel products (27 customs categories)***. We find Chinese safeguard measures have problems of WTO consistency, and see them as further evidence of growing, worldwide protectionism in the

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steel sector, following as they do the U.S. and EU measures. Japan has made use of many opportunities to point out the problems of the measure in terms of WTO inconsistency. We should continue to monitor the Chinese response and will respond to developments in China as consistent with Japanese interests.

On the day that the definitive safeguards measures took effect, the government of China (State Economic and Trade Commission) published the final results of the injury investigation that acknowledged that there was no serious injury to domestic industry for some of the products covered in the safeguard measures. Japan has been encouraging China to remove these products immediately from the list retroactive to November 20, and also seeking prompt response on this issue.

Failure to fulfill tariff concessions on certain photographic and cinematographic products is another large issue. When China joined the WTO, it committed the concession tariff rates of 0-53.5% on 35 items of photographic products (including ordinary photographic film) in HS Chapter 37, on ad valorem (levied on yuan / yuan) basis. However, those items are currently subject to specific import duties (levied on yuan / square meter basis) which are far more excessive than the bound rate. The application of those duties is clearly inconsistent with Article II of the GATT.

In light of this situation, Japan has been seeking improvements from China through bilateral channels and the WTO Market Access Committee on several occasions from early 2002. China revised its tariffs on several items, but China has maintained tariffs that are clear violations of its tariff concessions. We will continue to urge the government of China to correct these problems in a timely manner.

China's **import quotas for automobiles and major auto parts** also require remedial action. The accession protocol allows China to maintain an import quota system until the end of 2004, expanding quota values at a rate to 15% per year from an initial \$6 billion, and providing for allocation procedures, allocation standards, and reallocation of unconsumed quotas. The import quota for 2002 was \$7.94 billion, but actual imports were only \$3.12 billion between April and December, raising concerns that quotas have not been implemented as promised. During the transitional review mechanism, China failed to provide explanations that would alleviate these concerns. Japan should continue to monitor the administration of the system and to seek a timely response from China that would address the concerns raised.

Intellectual property rights infringements, including counterfeits and piracy have long been a serious problem in China. The Chinese authorities have taken steps to deal with the problem, but little improvement has been seen. The situation will require appropriate and effective administration of laws and enforcement by the judicial and administrative branches of government, not just improvements in laws themselves. We look for drastic improvements in the enforcement of the existing protection. During the first year transitional and legislative review held by the TRIPS Council in September 2002, Japan noted

the importance of enforcement against counterfeits, piracy and other infringements on intellectual property rights, and commented on the requests provided by the business community. Japan should continue to monitor improvements in laws and their enforcement by China and ask China to address problems.

OTHERS

Asian countries

The largest problem that Asian countries have in common is that of intellectual property rights infringements from the ***production and distribution of counterfeit*** and pirated products (China, Chinese Taipei and Korea are the three largest offenders). This problem is exacerbated by the inability of many Asian governments to effectively enforce rights and eliminate infringements.

Countries are in the process of enhancing their legal systems for the protection of intellectual property rights. Japan should continue to monitor improvements in the administration of the system in order to ensure proper protection of intellectual property and proper implementation of the TRIPS Agreement.

China, India, Indonesia, Thailand etc.

A serious issue in relation to anti-dumping measures is the spread of ***abuse and misuse of anti-dumping measures*** on the part of developing countries. Anti-dumping investigations and measures have increased sharply in several developing countries. Data from the first half of 2002 shows that developing countries accounted for 63 of the 104 anti-dumping investigations initiated (data from the WTO secretariat). China, India, Indonesia and Thailand have enacted anti-dumping measures without sufficient evidence or analysis. These measures are extremely problematic in terms of adherence to the procedures mandated by the Anti-dumping Agreement. We anticipate further spread in the abuse and misuse of anti-dumping measures by developing countries. Japan should work for further clarifications and improvements to the Anti-dumping Agreement, and will continue to appropriately monitor and respond to trends in this area.

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