

Summary of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements

- The 2018 Report on Compliance by Major Trading Partners with Trade Agreements consists of three parts: Part I points out issues according to international rules, such as the WTO Agreement, and Parts II (WTO Agreement) and III (Economic Partnership Agreements, etc.) explain an overview of international rules. The report also provides in-depth analysis results in the featured articles focusing on topics attracting attention.
- Part I highlights 136 measures, etc. taken by 18 countries and regions, including the United States' import control restrictions on steel and aluminum products on the basis of the investigation conducted under Section 232 of the Trade Expansion Act and China's Bill for the Export Control Act.
- In light of recent changes in the international trade environment, the 2018 Report revised its preface, which provides the necessary information for understanding the Report, to reaffirm Japan's commitment to a "rule-based" approach as the foundation to achieve a "level playing field".

1. Revision of the Preface section

- In light of recent changes in the international trade environment, the 2018 Report revised its preface which provides the necessary information for understanding the Report.
- This preface explains growing concerns regarding possible distortions to the "rules based system" that underscores global open trade, thus jeopardizing level playing fields and market mechanisms which are the foundations of the multilateral free trade regime. In addition, the preface highlights the backlash to a "result-oriented" approach, which has been observed in some industrialized economies.
- The section also describes that the "fairness" of trade policies and measures should be determined in an objective manner based on internationally agreed upon rules; not results. In case no such international rules exist, a "rule-oriented" approach should first be adopted in establishing rules before discussions of fairness/unfairness take place. Moreover, it also recognizes and confirms the Government of Japan's adherence to the "rule-oriented" approach as a basic principle, which is distinctly different from approaches that employ market-distortive measures, take advantage of a lack of rules, and employ unilateral measures that rest on the basis of a "result-oriented" approach. .

2. Ten new trade measures that the 2018 report points out

▫ China (four measures)

- Export Control Law Draft

→ China's Export Control Law Draft is potentially in violation of the prohibition of import and export restriction because: the Draft has potential to excessively widen the scope of items subject to export control based on other elements from national security (e.g. the Bill may include rare resources as subject of export control); the Bill might require disclosure of technological information; and the Bill establishes provisions on countermeasures.

- Subsidies on aluminum industry

→ Granting various unclear subsidies on aluminum industry contributed to the rapid increase in production capacity, and created an issue of excess capacity similar to that in the steel industry.

- Imposition of anti-dumping duties (two measures)

(Acrylonitrile-butadiene rubber) (ortho-dichlorobenzene)

→ Despite that exports from Japan remain steady or have even been decreasing, China initiates anti-dumping investigation based on the assumption that the export from Japan causes injury to domestic industry even though China's excess production capacity of its industry greatly attributes to the deterioration of business activities by Chinese firms.

▫ United States (three measures)

-Safeguard Measure on Solar Panels and Large Residential Washing Machines based on Section 201 of the Trade Act of 1974

→It is often criticized that the definitive safeguard measure was imposed with insufficient consideration given to the increase in imports that occurred "as a result of unforeseen developments" and that the injury was determined without sufficient consideration given to causal links between imports and injury to domestic industry.

- Section 301 of the Trade Act of 1974 and Relevant Provisions

→Section 301 of the Trade Act of 1974 authorize the USTR to take certain actions when the rights of the US under any trade agreement are being denied or the practices of a foreign country are unjustifiable and burdens or restricts US commerce. If the tariff rates are increased above the US's WTO tariff commitments based on the Section 301 investigation without taking appropriate procedure under the WTO dispute settlement mechanism, such conduct may possibly be inconsistent with the WTO agreements. In 2018, the US determined that certain measures including the technology transfer measure taken by China results in burden on the US commerce, and the US began to consider the imposition of additional tariffs and to restrict investment while at the same time requested consultation on China's discriminatory technology license regulation under the WTO dispute settlement procedure.

- Import Adjustments on Steel and Aluminum Products under Section 232 of the Trade Expansion Act of 1962

→ Addressing the alleged threat to national security posed by the imports of steel and aluminum products, the US determined to impose additional tariff rates of 25% on steel and 10% on aluminum products. These additional import duties exceed the duties in the US' schedule of Concessions, and exemption of certain countries from the measures appear to be inconsistent with the MFN obligation.

▫ **Vietnam (two measures)**

- Draft Cybersecurity Law

→ Provisions requiring the storage of personal information and important data in Vietnam and adaption to Vietnam's national standards for cyber related products and services have the potential to hinder foreign firms from market access.

- Regulation for Import of Automobiles

→ Imported automobiles are treated less favorably than that accorded to domestic automobiles (excessive procedure) with respect to acquisition of vehicle type approval and the frequency of inspection.

▫ **Indonesia (one measure)**

- Amended Patent Act

→ The absence of manufacturing of patented product in Indonesia for 36 months from the grant of the patent right may lead to the abolishment of the right.

3. Featured articles in the 2018 report (five columns)

▫ **“Anti-Circumvention” and Trade Rules**

→ The issue of “anti-circumvention” was previously mentioned in discussion in light of methods evading anti-dumping or countervailing duties. This column outlines the background and historical development, and points to the concern that the US investigation based on Section 232 of the Trade Expansion Act of 1962 can be seen as the expansion of the anti-circumvention measure that was not seen before and that such movement can be considered protectionist.

▫ **Use of Sales Prices of a Third Country in relation to Anti-Dumping Duties Imposed on China (the Issue of China's Market Economy Status)**

→ This column provides updated information from last year's Report, such as: (1) re-determination of non-market economy status during the US AD investigation against China; (2) amendment of EU's AD Regulation and recognition of significant market distortion in China based on the amended AD

Regulation; and, (3) recent development in the WTO dispute settlement procedures.

▫ **Importance of Strengthening Subsidy Discipline to Enhance Transparency of Subsidies**

→Industrial support in the form of subsidies by governments or relevant bodies distorts markets and can result in the creation of excess capacity, but the actual situation is difficult to comprehend because WTO's subsidy notification requirement is not functioning properly. This column outlines the transparency disciplines on subsidies, their limitations, and possibilities to strengthen such disciplines on transparency.

▫ **Issues concerning the Appellate Body**

→While the US raises systemic concerns regarding the Appellate Body and the Members countries have not arrived at a consensus to start the selection process to fill the three current vacancies of the Appellate Body. This column outlines the current Appellate Body situation.

▫ **Comparison of Data Localization Regulations**

→While the concept of free flow of data across borders has been recognized in various international fora, certain countries have introduced regulations that require localization of important data to protect human rights, industries, and national security interests, etc. This column compares and outlines general data regulations concerning data localization in different countries.