

**“2018 Report on Compliance by Major  
Trading Partners with Trade  
Agreements – WTO, EPA/FTA, and IIA-”  
and  
“METI Priorities Based on the 2018  
Report”**

**June 2018**

**Multilateral Trade System Department**

**Trade Policy Bureau**

# Report on Compliance by Major Trading Partners with Trade Agreements and METI Priorities

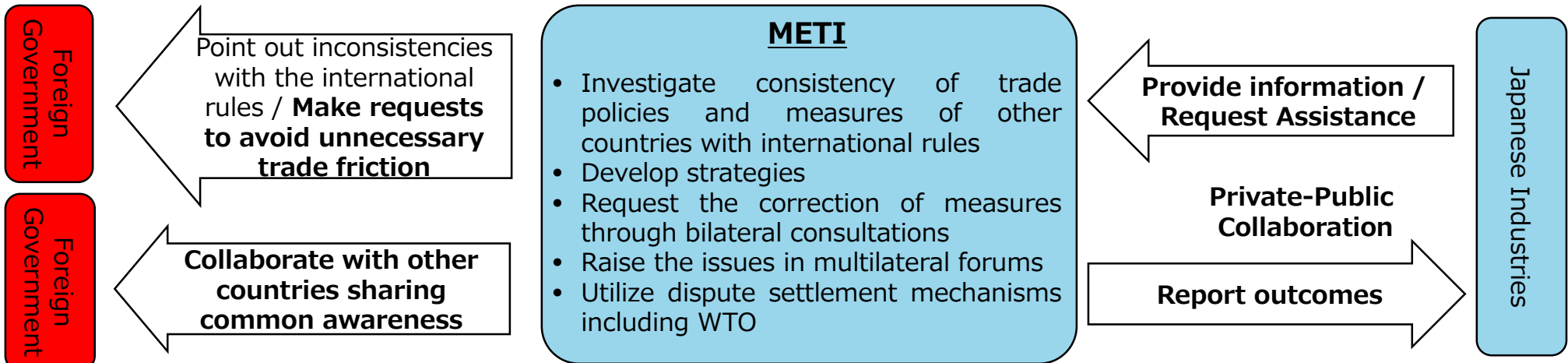
- Based on information provided by industries, etc., METI collected details of trade policies and measures of the foreign countries which are inconsistent with international rules, and made public such detail in the form of report and formulated METI's priorities.

## "Report on Compliance by Major Trading Partners with Trade Agreements" (Report of the Subcommittee on Unfair Trade Policies and Measures)

- Experts ("**Subcommittee on Unfair Trade policies and Measures**" under the **Industrial Structure Council**, chaired by Mr. Fukunari KIMURA, Professor, Keio University) analyzed problems with trade policies and measures of major trading partners based on international rules, including WTO agreements.
- The Report has been published every year since 1992 (the 2018 Report is the 27<sup>th</sup> edition). **The 2018 Report was published on June 18, 2018.**
- The United States (National Trade Estimate Report on Foreign Trade Barriers) and the EU (Trade and Investment Barriers Report) also publish the similar reports on a regular basis.

## "METI Priorities"

- Select priority issues** from among measures analyzed in the Report and made public government actions taken for priority issues and their achievement.
- Promote collaboration with Japanese industries and foreign governments sharing common awareness.



# **1. Report on Compliance by Major Trading Partners with Trade Agreements**

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

- Constructed from three parts, Part I points out various trade policies and measures on different countries with their consistency to the international rules including WTO agreements, Part II (WTO agreements) and III (FTA/EPA) explains the outlines of international rules.

Preface	Presents the concept of “rule-based” approach to determine the “fairness” of trade policies and measures based on internationally agreed rules
Part I	Points out approximately 136 policies and measures of 18 countries/regions (including China, the US, ASEAN countries, the EU, Korea, Russia, India, and Brazil)
Part II	Explains the WTO agreements (including Tariffs, AD Agreement, Agreement on Subsidy and Countervailing Measures, Safeguard Agreement, GATS, TRIPS, Government Procurement, and E-Commerce) and major cases under each agreement
Part III	Explains Japan’s major EPA/FTA and investment treaties including the TPP
References	Exhibits the recent movement in the Ministerial Conferences of the WTO, and also provide list of tables for cases referred to the WTO dispute settlement mechanism



# Revision of the Preface

- Based on recent change in international trade environment as represented by such as increase in the market-distortive measures taken by certain emerging countries and backlash to the “result-oriented” policies by certain advanced countries, the 2018 Report revised its preface which provides the basic understanding of the Report.
- Preface reaffirmed to maintain the “rule-based” approach as the foundation to achieve “level playing field”.

## <Main Points>

- In order to pursue imperturbable yet constructive resolution of trade frictions, the report has been questioning what constitutes “fairness”.
- The “**result-oriented**” concept, which evaluates trade policies and measures of other countries as unfair only deciding from the disadvantageous “result” of the trade with specific partners, lacks objectivity, which may transform to the managed trade, and as a consequence it may bring anti-competitive effects.. The “fairness” of trade policies and measures should be determined in an objective manner based on internationally agreed rules, not results, and in case no such international rules are found, “rule-oriented” concept avoids to discuss fairness/unfairness without international rules, but prepares to establish rules first. This concept is the “fairness” which this report has been reiterating, and the principle which we should rely on
- Almost two decades has passed since the WTO was established, and the number of Member countries has increased to 164, which almost covers whole international economy. Multilateral free trade regime, which is sustained through effective dispute settlement mechanism based on the rules, has been created through specific effort from each country and contributing significantly to international economic development such as rapid economic development of emerging countries, deepening of global value chains, and advancement of the fourth industrial revolution. Various economic partnership agreements and free trade agreements in both bilateral and regional grounds have been agreed to supplement and strengthen multilateral free trade regime while the number of investment treaties is also significantly increasing.

- At the same time, however, concerns, such as the grant of market-distortive subsidies in certain emerging countries, forced technology transfer, abuse of intellectual properties, and the expansion of economic activities of public bodies under the influence of government or state-owned-enterprises, are growing that these acts have possibilities to distort level playing fields and market functions which are the foundations of the multilateral free trade regime.
- Doubts have been risen among various countries that the proper function of the multilateral free trade regime cannot be assessed solely through referring to the conflict with existing rules.
- **Backlash to “result-oriented” approach**, which this Report has continuously raised concern, has been observed in some advanced countries, and it is necessary to carefully watch the pursuance of trade restricting measures to correct economic imbalance and global proliferation of adverse effect through an escalation of counter measures.
- The term **“level playing field”** is often used among policy authorities to mean **“fair competitive condition”** and **“standardization of competitive condition”**. The view on what constitutes “fair competitive condition” may differ from the position of arguments, but wide support has been attained that the accumulation of internationally agreed rules will become the indispensable foundation of such condition.
- The Report recognizes the **adherence of the Government of Japan to “rule-oriented” approach as a basic principle, which keeps distance from the market-distortive measures taking advantage of lack of rules and unilateral measures that rest on the basis of “result-oriented” approach.** It reminds of the importance to promote mutual effort to resolve the issues with a modest attitude, and expects to contribute strongly in maintaining competitive foundation to support multilateral free trade regime.

# Newly Listed Cases(10 cases)

Country	Measure	Outline
China	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 Aluminium 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.
	AD Measures (2 cases) - Acrylonitrile-butadiene rubber (NBR) - 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.
US	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.
Viet Nam	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	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.

# Columns

- In-depth analysis of rules for anti-dumping, regulations on subsidies, issues concerning the Appellate Body, and comparison of data localization regulations.

Part and Chapter	Title	Outline
Part II Chapter 6 "Anti-Dumping"	"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.
Part II Chapter 7 "Subsidies"	Importance to Strengthen 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.
Part II Chapter 17 "Dispute Settlement"	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.
Part II Addendum 2 "E-Commerce"	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.



## **2. METI's Priorities**

# METI Priorities Based on the 2018 Report on Compliance by Major Trading Partners with Trade Agreements (published on June 18, 2018)

- The 2018 Report on Compliance by Major Trading Partners with Trade Agreements, published on June 18, 2018, by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures, **points out wide-ranging trade policies and measures of major trading partners that are questioned in light of the WTO Agreements and other international rules.**
- The Report raises the warning that the concerns over the potential distortion of competition infrastructure and the function of market, which are the foundations of multilateral free trade regime, are expanding in recent years due to market-distortive measures taken by certain emerging countries. The Report also warns that the backlash to the "result-oriented" movement has been observed in some advanced countries.
- **METI will advance its comprehensive efforts towards achieving level playing field** through such as Japan-US-EU Trade Ministers Meeting (held in December 2017, and March and May 2018). Furthermore, METI will encourage the WTO Members that the escalation of WTO-inconsistent countermeasures do not bring any benefits, and urge the Members the importance of attempt to sustain and strengthen the multilateral free trade regime by responding to structural issues the regime has through such as improving the dispute settlement mechanism. With respect to individual cases, **METI will continue to utilize bilateral and multilateral meetings as well as the WTO dispute settlement mechanism to achieve resolution, and will prioritize to address following cases with respect to the policies and measures that are pointed out in the 2018 Report.**

# METI's Priority Cases listed in the 2018 Report

- Request for consultation under the WTO dispute settlement procedure was notified on June 18, 2018, for Korea's prolonged AD measures against Japanese stainless steel bars.
- Six measures by the US (1), China (3), Viet Nam (1), and India (1) are newly listed
- China's Banking IT Equipment Security Regulation, Argentina's Elimination of Import Restrictions on a Wide-Range of Items, and the US' Halt of Distribution of Duty Revenues Collected through AD and Countervailing Duty Measures to U.S. Companies based on the Byrd Amendment are dropped from the priority cases due to improvement in the situation and decrease in the level of concerns.

## **1 Issues to be resolved through bilateral/multilateral consultation with possible use of the WTO dispute settlement mechanism**

- US: Import Adjustments on Steel and Aluminium Products based on the Section 232 of the Trade Expansion Act of 1962 (NEW)
- US: Sunset Review Practice (Term-end Review for the Continuation of AD Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products
- China: Discriminatory Technology License Regulation (NEW)
- China: Subsidies on Aluminium (NEW)
- China: Export Control Bill (NEW)
- China: Cybersecurity Law
- China Inappropriate Regulation/Implementation of AD Measures
- Viet Nam: Regulation for Import of Automobiles (NEW)
- India: Tariff Increase on Certain IT Products (NEW)

## **2 Issues already referred to the WTO Dispute Settlement Mechanism**

- Korea: Sunset Review Administration on Stainless Steel Bars from Japan (Consultation Requested)
- India: The Safeguard Measures on Hot-Rolled Steel Products (Panel)
- Korea: The AD Duty Measures on Pneumatic Valve (Appellate Body)
- Brazil: Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc. (Appellate Body)

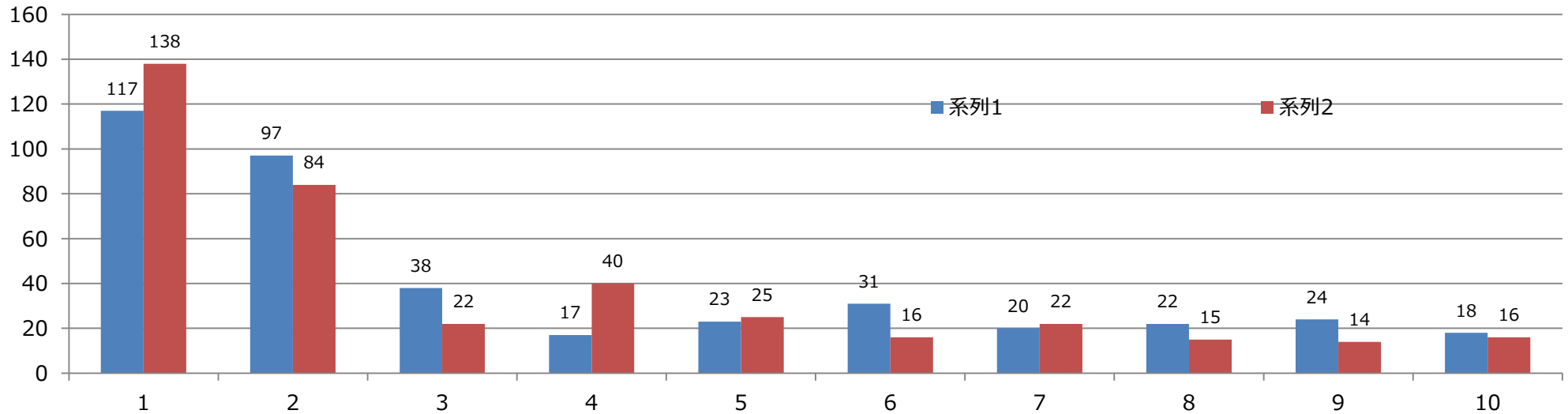
## **3 Issues on which Japan urges Prompt Implementation of the WTO Recommendations**

- US: Complete Abolition of Zeroing

# (Reference) The Number of WTO/DS cases by Members

- Both as complainant and as respondent, the US has the largest number of cases, followed by EU and then Canada.
- Some developing countries, such as Brazil, Argentina, Mexico, India, actively utilize DS mechanism.
- In recent years, cases involving China as both complainant and respondent are increasing. Only after 15 years since its accession to WTO in 2001, China already has the fourth largest number of cases.

(件数)



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	合計
Complainant	1	3	1	1	2	1	0	2	0	1	0	0	0	1	0	1	0	3	2	0	2	2	0	1	24
Respondent	4	4	3	1	0	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	15

# (Reference) WTO Dispute Settlement Cases where Japan was a Complainant

- 18 recommendations of the DSB out of 19, except 5 on-going cases, were adopted in line with Japan's claims.

Name of Case	Date of Consultation	Establishment of Panel	Adoption of Report	Conclusion
1. US - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974 (DS6)	1995.5	–	–	Terminated upon mutual agreement solution
2. Brazil - Certain Automotive Investment Measures (DS51)	1996.7	–	–	Consultation suspended (Brazil de facto abolished the measure)
3. Indonesia - Certain Measures Affecting the Automobile Industry (DS55, 64) *Count as 1 case	1996.10	1997.6	1998.7 (panel)	Japan's claims were upheld
4. US - Measure Affecting Government Procurement (DS95)	1997.10	1998.10	–	Panel lapsed (February 2000) (The US domestic court determined its unconstitutionality)
5. Canada - Certain Measures Affecting the Automotive Industry (DS139)	1998.7	1999.2	2000.6 (A.B)	Japan's claims were upheld
6. US - Anti-Dumping Act of 1916 (DS162)	1999.2	1999.7	2000.9 (A.B)	Japan's claims were upheld
7. US - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (DS184)	1999.11	2000.3	2001.8 (A.B)	Japan's claims were upheld
8. US - Continued Dumping and Subsidy Offset Act of 2000 (DS217)	2000.12	2001.9	2003.1 (A.B)	Japan's claims were upheld
9. US - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (DS244)	2002.1	2002.5	2004.1 (A.B)	Japan's claims were not upheld
10. US - Definitive Safeguard Measures on Imports of Certain Steel Products (DS249)	2002.3	2002.6	2003.12 (A.B)	Japan's claims were upheld

# (Cont.) WTO Dispute Settlement Cases where Japan was a Complainant

Name of Case	Date of Consultation	Establishment of Panel	Adoption of Report	Conclusion
11. US - Measures Relating to Zeroing and Sunset Reviews (DS322)	2004.11	2005.2	2007.1 (A.B)	Japan's claims were upheld
12. " (DS322) (Compliance Panel)	2008.4	2008.4	2009.8 (A.B)	Japan's claims were upheld
13. EC and its Member States — Tariff Treatment of Certain Information Technology Products (DS376)	2008.5	2008.9	2010.8 (panel)	Japan's claims were upheld
14. Canada - Certain Measures Affecting the Renewable Energy Generation Sector (DS412)	2010.9	2011.7	2013.5 (A.B)	Japan's claims were upheld
15. China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS433)	2012.3	2012.9	2014.8 (A.B)	Japan's claims were upheld
15. China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS433)	2012.3	2012.9	2014.8 (A.B)	Japan's claims were upheld
16. Argentina - Measures Affecting the Importation of Goods (DS445)	2012.8	2013.1	2014.1 (A.B)	Japan's claims were upheld
17. China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan (DS454)	2012.12	2013.5	2015.10 (A.B)	Japan's claims were upheld
18. Russian Federation - Recycling Fee on Motor Vehicles (DS463)	2013.7	–	–	Consultation suspended (Russia notified correction of the measure, January 2014)
19. Ukraine - Definitive Safeguard Measures on Certain Passenger Cars (DS468)	2013.10	2014.3	2015.7 (panel)	Japan's claims were upheld
20. Korea - Import Bans, and Testing and Certification Requirements for Radionuclides (DS495)	2015.5	2015.9		Panel established
21. Brazil - Certain Measures Concerning Taxation and Charges (DS497)	2015.7	2015.9		Panel established
22. Korea - Anti-Dumping Duties on Pneumatic Valves from Japan (DS504)	2016.3	2016.7		Panel established
23. India - Certain Measures on Imports of Iron and Steel Products (DS518)	2016.12	2017.4		Panel established
24. Korea - Anti-Dumping Duties on Stainless Steel Bar from Japan (DS553)	2018.6			Consultation requested