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

The 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA-, published today 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 Agreement and other international rules.

As mentioned in the Report, the WTO dispute settlement mechanism not only recommends correction of problematic trade policies and measures, but also puts in place procedures for monitoring implementation of recommendations and countermeasures in the event of failure thereof. Therefore, WTO recommendations, which tend to have a high probability of implementation, have contributed to maintaining the effectiveness of the WTO rules. Since the establishment of the WTO in 1995, the WTO dispute settlement procedures have been used in 551 cases (as of the date of the publication of the Report).

Japan has actively utilized the WTO dispute settlement mechanism with the aim of eliminating disadvantages caused by other countries' measures that are inconsistent with international rules. In addition, in a world where the environment for international trade has been rapidly changing caused from, for example, a heightened tension between advanced countries and emerging countries and subsequently making it more difficult to achieve multilateral rule-making, Japan has also actively utilized the WTO dispute settlement mechanism with the view to develop rules through the accumulation of precedents. Since 1995, Japan has requested 24 cases, and cases with emerging countries have been increasing in recent years. Out of 19 cases excluding five pending cases, disputes were resolved in line with Japan's arguments in 18 cases.

The 2018 Report raises the warning that, due to market-distortive measures taken by certain emerging countries, concerns over the potential distortion of competition infrastructure and the function of market, which are the foundations of multilateral free trade regime, have been expanding in recent years, and the backlash to the "result-oriented" movement has been observed in some advanced countries.

METI will advance its comprehensive efforts towards achieving a level playing field through fora such as the Japan-US-EU Trade Ministers Meeting (held in December 2017, and March and

May 2018). Furthermore, through various fora, METI will encourage the WTO Members that the escalation of WTO-inconsistent countermeasures do not bring any benefits to members, and the importance of attempts to sustain and strengthen the multilateral free trade regime by responding to structural issues the regime has through methods such as improving the dispute settlement mechanism. In addition, with respect to individual cases, Japan will continuously utilize bilateral and multilateral meetings as well as the WTO dispute settlement mechanism to achieve resolution, but will prioritize to address the following cases with respect to the policies and measures pointed out in the 2018 Report. The details of each case are shown below.

1, Issues to be resolved through bilateral/multilateral consultations with possible use of the WTO Dispute Settlement Mechanism

Cases listed below will seek resolution through bilateral consultations and WTO Committee meetings while at the same time, consider the possibility to utilize the WTO dispute settlement mechanism.

- The United States: Import Adjustments on Steel and Aluminum Products based on Section 232 of the Trade Expansion Act of 1962 [newly listed]
- The United States: 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 [newly listed]
- China: Subsidies on Aluminum [newly listed]
- China: Export Control Law Draft [newly listed]
- China: Cyber Security Law
- China: Inappropriate Regulation/Implementation of AD Measures
- Vietnam: Regulation for Import of Automobiles [newly listed]
- India: Tariff Increase on Certain IT Products [newly listed]

2, Issues already referred to the WTO dispute settlement mechanism

The following cases have already been referred to the WTO dispute settlement mechanism, and will urge each country to eliminate and correct the measure through the said 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 Valves (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

The following case(s) has already been referred to the WTO dispute settlement mechanism, and the reports that recommend the country to bring the measures into conformity with the WTO Agreement are adopted. Japan will urge each country to implement the recommendations promptly yet completely in a manner according to the purport of the WTO recommendations.

- The United States: Complete Abolition of Zeroing

[Reference] Details of the Individual Trade Policies and Measures Listed in the METI Priorities Based on the 2018 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2018 METI Priorities are as follows.

1, Issues to be resolved through bilateral/multilateral consultations with possible use of the WTO Dispute Settlement Mechanism

- **The United States: Import Adjustments on Steel and Aluminum Products based on Section 232 of the Trade Expansion Act of 1962**

The President of the United States has the authority to decide import adjustment actions, including embargo, additional tariffs, import restrictions and tariff rate quotas, and initiation of negotiations, when it determines, based on the Secretary of Commerce's report on the investigation under Section 232 of the Trade Expansion Act of 1962, that imports into the US threatens national security.

The US started to impose additional ad valorem tariffs of 25% on imported steel and of 10% on imported aluminum products from Japan as of March 23, 2018 under Section 232 of the Trade Expansion Act of 1962, as issued through the presidential decrees of March 8, March 22, and April 30. Such raises of tariffs which exceed the US's Schedules of Concessions may possibly be inconsistent with Article II of the GATT. Furthermore, in case a quota is established, it may possibly be inconsistent with Article XI of the GATT. The US on the other hand may invoke Article XXI of the GATT (national security) claiming that the measures under Section 232 of the Trade Expansion Act of 1962 fall under measures taken to protect the US's national security. It is questionable, however, whether the measures by the US could be justified under Article XXI of the GATT.

The US created the country-specific exemption that it may change or eliminate additional tariffs if the country in concern agreed with the US on alternative measures to ensure that the imports of concerned goods do not pose a threat to the US's national security. The Republic of Korea and a few other countries have acquired exemption from the additional tariffs upon reaching an

agreement with the US on alternative measures. However, with respect to steel imports from the Republic of Korea, an exemption was granted that the Republic of Korea agreed on the alternative measure to establish a special quota to export 70% of the average export amount of the period between 2015 and 2017. Such establishment of quotas may possibly be inconsistent with Article 11 of the Agreement on Safeguards which prohibits voluntary export restraints.

The measures taken by the US do not only close the US market, but also disrupt international steel and aluminum markets. As such, it may provide significant adverse effects on multilateral trading systems as a whole. In addition, on May 23, 2018, 232 an investigation on automobiles and auto parts started. This too, raises concerns that it will have a restrictive effect on a very large proportion of world trade.

On May 31, Japan and the EU announced in a joint statement their serious shared concerns of the measures and investigations under Section 232. Japan will thoroughly evaluate the impact on domestic industries and examine necessary responses.

- **The United States: Sunset Review Practice and Inappropriate Long-Standing AD Duty Orders on Japanese Products**

The AD Agreement stipulates that any definitive AD duty shall be terminated in five years (Sunset) unless the necessity for further continuation is determined. However, the U.S. practice of sunset reviews is that AD measures are continued in general as long as a domestic company files an application for a review.

At the end of June 2017, there are 18 definitive AD measures imposed by the United States on Japanese products. The longest duration of the U.S. measure exceeds 35 years and the duration of the 6 measures exceeds 20 years. The result of such prolonged imposition of the AD duties excessively discourage exports of Japanese companies and imposing huge burdens on the importers and the users in the United States. For example, some high quality and highly reliable Japanese iron or steel products that have won wide support from U.S. users are unavailable to those customers due to the U.S AD measures, and it is pointed out that these users in the United States are forced to buy other products.

Thus Japan is requesting the early termination of these measures in the Japan-U.S. Economic Dialogue, and at the recent meetings of the WTO AD Committee. Japan will continue requesting

improvement of the current U.S. sunset reviews practice and requests the termination of the long-standing AD measures on Japanese products as soon as possible.

- **China: Discriminatory Technology License Regulation**

In January 2002, the Chinese government enacted the Regulation on Technology Import and Export that establishes a basic system to control import and export of technologies in China. This regulation applies only to the international technology transfer contract made with Chinese firms. The regulation stipulates that, for example, technology exporters bear liability if technology importers are sued by a third party due to a violation of rights as a result of the use of transferred technology. The regulation also prohibits technology exporters to restrict technology importers from improving transferred technology, and it further provides that improved technology will belong to the party that improved such a technology. Compared to technology transfer contracts among domestic Chinese firms which are allowed to freely negotiate contract terms between parties, at face value the Regulation on Technology Import and Export provides less favorable treatment when foreign firms are the technology exporters. Thus, it may possibly be in violation of the national treatment obligation (Article 3) of the TRIPS Agreement.

Japan has been expressing its concern during the TRIPS Council meetings and bilateral meetings and has requested the Chinese government correct the measure. Japan will continue to urge the Chinese government to revoke/correct this discriminatory measure through different fora, including high-level consultations and both bilateral and multilateral meetings.

- **China: Subsidies on Aluminum**

Based on various industrial policies implemented by the Chinese Government, including the 5-Year Development Special Plans on Non-Ferrous Metal Industry, a wide-range of subsidies have been granted on the aluminum industry in China. In the same manner to the excess capacity problem in the steel industry, the rapid expansion of aluminum production capacity and excess capacity of aluminum in China have become problematic in recent days.

With regard to the issue of excess capacity of primary aluminum as a result of the grant of subsidy by the Chinese Government, since such grant of subsidy has been causing adverse effects to the interests of other WTO Members, it may be in violation of Article 5 of the Agreement on

Subsidies and Countervailing Measures. Also, discussions have been proceeding in the Committee on Subsidies and other meetings to capture certain aspects of the issue that are not covered under the existing agreements.

During the G7 Taormina Summit in May 2017, as stated in the Leaders' Communique, Japan, along with other G7 members, commits itself to further strengthen the cooperation and work together with partners in order to address the global excess capacity in aluminum and other key industrial sectors and to avoid emergence of the same problems in other areas. Furthermore, during the regular vice-ministerial-level talks, which were held in June 2017 between the Chinese Ministry of Commerce and METI, the excess capacity problem in the aluminum sector and means to solve the problem were discussed. Japan, along with the US and the EU, also proposed the item in relation to subsidies and excess capacity problems for the Committee on Subsidies in October 2016 and April 2017. Furthermore, the Charlevoix G7 Summit in June 2018 Communique pointed out the urgent need to avoid excess capacity in aluminum and other sectors.

Japan will continue to actively raise the point of discussion, in both bilateral and multilateral fora, to solve the problem.

- **China: Export Control Law Draft**

The Chinese government traditionally conducts security export controls which control export items related to weapons of mass destruction. However, in June 2017, China announced the Export Control Law Draft which adds a large number of civil-use goods and technologies in relation to conventional arms to the subject of export control. At the same, the bill also contains various new provisions which establish, inter alia, counter measures, re-export regulations, and deemed export regulations.

The detail of the Draft is still obscure as the list of items subject to control has not been published yet. However, Japan is concerned that, inter alia, the new law : (a) may set up the list of subject items excessively by taking into consideration of purposes other than national security, such as competitiveness in trade and industry, technological development, protection of important strategic rare resources; (b) may require disclosure of technological information which may be beyond the necessary scope of item classification to obtain an export license; and, (c) provides the provision on counter measures against the discriminatory export regulations of other countries. These export

control provisions may be regarded as an excessive export regulation, which may transcend the scope of justification under Article XXI of the GATT and accordingly be in violation of Article XI of the GATT. Depending on the manner of administration of this measure, it may create significant adverse effects on trade and investment environment between China and Japan.

Japan has expressed its concerns on the Draft during the WTO Goods Council Meeting in March 2018 and the Japan-China High-Level Economic Dialogue which was held in Tokyo in April 2018, and requested China to establish the regulation based on international rules and practices and maintaining fairness and transparency.

Japan will continue to watch closely the deliberation of the Draft and the new law's enforcement and administration, and raise attention in both bilateral and multilateral fora to advance the discussion towards solving the issue.

- **China: Cybersecurity Law**

In June 2017, the Chinese government enforced the "Cybersecurity Law". Since the law stipulates that when selling core network products and specialized cybersecurity products, a security certification needs to be obtained in accordance with relevant national standards and industrial standards. Technical regulations and conformity assessment procedures for these products will be considered to be established. However, TBT notifications on regulations based on the law have not been made, and therefore it is likely to be inconsistent with Article 2.9.2 of the WTO TBT Agreement. If such standards are not based on international standards, it may be in violation of Article 2.4 of the TBT Agreement. Furthermore, the concrete measures specified are more trade-restrictive than necessary to achieve the objective of "maintaining cyber space sovereignty and national security" and specific measures such as standards and certifications, etc., it may violate Articles 2.2 and 5.1.2 of the TBT Agreement.

In addition, the law stipulates the obligation of storing personal information and important data within China and of conducting security assessments when transferring such information and data abroad. If foreign companies are exposed to less competitive situations than local companies, it may violate the national treatment obligation of article 17 of GATS.

From the drafting stage of the law, the governments of Japan and various other countries as well as industrial organizations, etc. submitted opinion letters to the Chinese government during the public comment invitation period to express concerns as described above, but many of the opinions were not reflected in the enacted Cybersecurity law. The law was enacted in June 2017, and Japan will continue to pay close attention to future developments in formulation of regulations based on the law. Japan will also urge China to correct the system through opportunities such as the WTO TBT Committee meetings, the WTO Council for Trade in Service and bilateral consultations, etc.

- **China: Inappropriate Regulation/Implementation of AD Measures**

The Chinese government initiated a total of 234 anti-dumping investigations during the period between 1995 and the end of 2016. Within these 234 cases, 43 cases involved Japanese products, and among these 43 cases, definitive AD measures were taken in 32 cases, and of which, 19 cases are still in force as of the end of 2016.

With regard to the Chinese AD measures. Injury to the Chinese domestic industry is determined as a result of dumped exports from Japan despite the fact that the deterioration of business activities by Chinese firms is often believed to be attributed to China's excessive production structure. Such determination of injury and causal linkage lack objectivity which is not consistent with the AD Agreement.

Japan has been transmitting its opinions and requesting China to improve practices on the AD investigations which Japan believes are inappropriate. It has also started using various opportunities and occasions such as submissions of opinion papers and consultations with Chinese government officials, participated in public hearings, and expressed regret during the WTO AD Committee meetings. In addition, Japan occasionally cooperates with the US and the EU which share the same concerns with that of Japan's on Chinese AD practices, and have submitted written submissions that mutually support the opinions in the dispute settlement procedure of the WTO.

Japan will continue to urge China to correct the inappropriate administration of the AD measures.

- **Vietnam : Regulation for Import of Automobiles**

On January 1, 2018, the Vietnamese government enforced Decree 116/2017ND-CP (Decree116) which sets up conditions in relation to production, assembly, import, and warranty and maintenance service operations for automobiles. It has become obligatory to acquire a vehicle type approval (VTA) issued by a foreign authority and to take emission inspections and safety and quality inspections for each model by the Vietnamese authorities for each import lot upon importing automobiles into Vietnam.

With respect to a VTA issued by foreign authorities, the acquisition of such a certificate is obligatory only for import automobiles, and such a system that requires foreign authority to issue a VTA for exporting automobiles is an uncommon practice worldwide. Accordingly, since the imported automobiles are required to obtain a VTA which is impractical to acquire, they are treated less favorably than domestic automobiles. Thus, such a practice may be inconsistent with Article 2.1 of the TBT Agreement. Furthermore, it is questionable that the additional requirement to obtain a VTA issued by a foreign authority just for importing automobiles with the purposes to protect consumers and the environment is necessary to achieve such purposes. If the scope of such purposes are more than necessary to achieve objectives, such conduct may be in violation of Article 2.2 of the TBT Agreement.

Moreover, Decree116 lays down mandatory emission inspection and safety inspection rules for each model by the Vietnamese authority for each import lot. However, the result of such inspections for domestic automobiles is said to be valid for 36 months. Frequency of inspection for importing automobiles is much higher than that of domestic automobiles, and since imported automobiles are placed into a less favorable situation compared to domestic automobiles, this may be in violation of Article 5.1.1 of the TBT Agreement.

Japan has so far delivered its note verbale from its embassy in Vietnam, expressed its concern during the TBT Committee and Council for Trade in Goods, and the Minister of Economy, Trade and Industry of Japan has also communicated with the Minister of Industry and Trade of Vietnam to express Japan’s concerns. Since its enforcement in January 2018, the export of automobiles from Japan to Vietnam has been suspended, and further impact and harms on business operations is expected. Japan will continue to request the Vietnamese government to eliminate and improve the requirements for imports of automobiles through different fora, including high-level consultations and both bilateral and multilateral meetings.

- **India: Tariff Increase on IT Products**

In March 2016, the Indian Government raised the tariff rate by 10% on certain IT products (communication equipment under HS8517.62.90 and 8517.69.90) which India has a binding commitment of 0% for India's WTO bound schedule. In July 2017, India also raised the tariff rate from 0% to 10% on IT products including mobile phone, ink cartridges and others (other printers under HS8443.32.90, ink cartridges under HS8443.99.51 and 8443.99.52, ink spray nozzles under HS8443.99.53, mobile phones under HS8517.12.10 and 8517.12.90, base stations under HS8517.61.00, and parts of mobile phones, etc. under HS8517.70.90). In addition, India raised the tariff rate on mobile phones from 10% to 15% in December 2017 and further increased it to 20% in February 2018.

For example, India commits duty free on HS sub-heading for mobile phones, parts of mobile phones, etc. and base stations in India's WTO bound schedule. Japan understands that those applied tariffs exceed India's binding commitment, and thus is clearly inconsistent with the obligation under Article II of the GATT.

Japan has repeatedly expressed its concerns on this issue during the WTO Market Access Committee, Information Technology Information (ITA) Committee, and the Council for Trade in Goods, as well as through the Japanese Embassy in India, and asked the Indian Government to provide detailed explanations and promptly revoke the tariff measures. However, no improvement in the situation has been observed because India has repeatedly stated that India considers these products under the current measures as "new" products that are not covered by the ITA, under which India is subject to the commitment of tariff elimination.

Japan will continue to work closely with other members, such as the US and the EU which share the same concerns on this matter, and call for India to promptly revoke these measures.

2, Issues already referred to the WTO dispute settlement mechanism

- **Korea: The AD Duty Measures on Stainless Steel Bars from Japan.**

The Republic of Korea (Korea) initiated a sunset review on stainless steel bars imported from Japan in June 2016, and determined a continuation of the measure for 3 years in June 2017.

The Korean authority's determination appears to be inconsistent with the AD Agreement because (i) Korea failed to consider a lack of competition between Japanese products and Korean domestic products, as well as a lack of competition between Japanese products and other counties' products which are under the measure, and (ii) Korea also failed to consider whether a significant increase of imports from third countries such as China and Taiwan, which are not under the measure, attributes to injury of the domestic industry.

Japan aimed to resolve the matter through dialogue, and pointed out issues of WTO inconsistency of the measure and expressed concern about prolonged measures in the Committee of Anti-Dumping in the WTO on several occasions. In addition, the Minister of Economy, Trade and Industry of Japan requests the Minister of Trade, Industry and Energy of Korea to eliminate the duty in May 2018. Korea, however, has maintained their position. Therefore, Japan requested a consultation with Korea in accordance with the WTO Agreement.

Japan continues to request the elimination of the measure in the bilateral consultation, and would seek to resolve the matter in a panel procedure should the consultation be unsuccessful.

- **India: The Safeguard Measures on Hot-Rolled Steel Products**

On September 7, 2015, the Indian government initiated an investigation on hot-roll steel products and decided the imposition of provisional safeguard measures on September 9, 2015, only two days after the initiation. The provisional safeguard measures were imposed on September 14, 2015 levying duties on hot-roll steel products. In March 2016 the Indian government published a notification on imposing the definitive safeguard measures for a period of two years and six months, starting from the date of levy of the provisional safeguard duty.

As required under the WTO Agreements, the party needs to clearly determine an increase in imports resulting from the effect of the obligations incurred under the GATT 1994 as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994. However, the Indian authority failed to clarify this in its investigation reports. Moreover, under Article XIX, paragraph 1 (a) of the GATT 1994, the alleged increase in import must have been brought about by the effect of the obligations incurred under the GATT 1994, and it is not permissible to take into account any import increase resulting from the effect of tariff concessions under the Comprehensive Economic Partnership

Agreement Between Japan and the Republic of India (IJCEPA). However, the investigation reports seem to indicate that the Indian authority did so.

Furthermore, the investigation reports prepared by the Indian authority recognize such facts as overproduction in China and demand increase in India as unforeseen developments as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994. However, these facts are only changes in supply-demand relationships, which exert influence equally both on imported and domestic goods, and they do not cause disadvantageous changes in the competitive conditions of domestic goods and do not fall under unforeseen developments.

Given these, the Indian authority cannot be held to have properly recognized the fulfilment of the requirements for imposing safeguard measures under Article XIX, paragraph 1 (a) of the GATT 1994.

Furthermore, Japan understands that the Indian authority has not fulfilled other requirements to impose safeguard measures. In addition, there were defects in the content of the notification to the WTO and consistency of its procedure to the WTO Agreements is thus questioned.

Japan has carefully monitored the actions taken by the Indian authority concerning this issue since September 2015 when the investigation was initiated, and submitted government opinions, held bilateral consultations, and participated in public hearings procedures. In the written opinions submitted, Japan suggested that the safeguard measures at issue may violate the WTO Agreements and requested to take due care in conducting the investigation. Nevertheless, the Indian government has decided to impose definitive safeguard measures following the investigations and has not corrected their measures since then. Therefore, in December 2016, Japan requested that India hold bilateral consultations under the WTO Agreements. In March 2017, Japan requested the WTO to establish a panel regarding the safeguard measures at issue and the panel was established in April 2017.

Japan will continue requesting the termination of the safeguard measures through the panel procedures under the WTO dispute settlement framework.

- **Korea: The AD Duty Measures on Pneumatic Valves From Japan**

In February 2014, the government of Korea initiated AD investigations for pneumatic valves from Japan upon a request from Korean companies. At the WTO AD Committee meetings and public hearings on these AD measures, Japan advocated that products under investigation included uncompetitive products and that the Korean investigating authority should carefully review the requirements concerning injury and causation, and strongly demanded proper determination with due consideration to the opinions of investigated companies. Nevertheless, the Korean government determined the injury and causation in January 2015 and started to impose AD duties in August 2015.

Upon imposing these AD duty measures, Korea has failed to provide persuasive explanations on the possible influence of imported goods on the prices of domestic goods (Articles 3.1 and 3.2 of the AD Agreement). Furthermore, there are defects in Korea's determination of injury to domestic industries and causal relationships (Articles 3.1, 3.2, 3.4 and 3.5 of the AD Agreement) and there are also procedural flaws in the investigations such as the failure to disclose essential facts (Article 6.9 of the AD Agreement). Given these, the AD duty measures are likely to violate the AD Agreement.

Japan continued to request the withdrawal of these AD measures, which are inconsistent with the AD Agreement, and tried to resolve this issue through bilateral consultations, but in vain. Therefore, in March 2016, Japan requested consultations with Korea on this matter under the WTO Agreements. Following the consultations, in June 2016, Japan requested the WTO to establish a panel, and the panel was established in July 2016. The panel report, published in April 2018, admitted Japan's main arguments that Korea's determination of injury to domestic industries and causal relationships and its failure to ensure the transparency of the investigation procedure was not consistent with the WTO Agreement, and recommended that Korea must correct the measures. However, in other topics, some of Japan's arguments were rejected, or were not decided since the panel recognized them as out of its terms of reference.

In May 2018, Japan requested an appeal to the WTO Appellate Body regarding these issues for the Appellate Body's ruling on them.

Japan will continue to make requests to Korea to correct these measures through the WTO dispute settlement framework.

- **Brazil: Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.**

In September 2011, the Brazilian government announced to raise tax on industrialized products (IPI) by 30% for domestic as well as imported automobiles. However, manufacturers were to be exempt from the additional IPI, provided that the manufacturer became an "accredited company" by fulfilling the following requirements: (i) the average local content ratio within the MERCOSUR area is 65% or more, (ii) among eleven manufacturing processes for automobiles, including assembly process and press process, six or more processes are carried out in Brazil, etc.

These measures were temporary that were to be terminated in December 2012, but in October 2012, in lieu of these measures, the Brazilian government announced a new program called the Inovar-Auto. The Inovar-Auto keeps the imposition of the additional 30% IPI on automobiles for five years from 2013 until 2017, while granting automobile manufacturers IPI credits that allow reduction and exemption from IPI using the credits, on the condition of achieving the prescribed fuel efficiency standards, undertaking certain manufacturing processes in Brazil etc. Additionally, , the Brazilian government introduced preferential taxation associated with the local content requirements in information technology goods and other wide-ranging sectors in addition to the automobile sector. Significant reduction and exemption from IPI and other taxes and burdens are granted on the condition that certain manufacturing processes are carried out in Brazil, domestic components are used, and R&D investments are made in Brazil, etc. Furthermore, in August 2014, the Brazilian government is stringently applying the local content requirements for automotive parts: the Brazilian government made it obligatory for automotive parts manufacturers to report the place of origin of automotive parts and adopted measures to reduce the aforementioned IPI credits when the required local content ratios are not satisfied for secondary and tertiary parts, in addition to primary parts.

These measures treat imported parts in a discriminatory manner compared to domestic like parts and are likely to be inconsistent with Article III of the GATT (national treatment obligation) and other obligations under the WTO Agreement.

The Japanese Minister of Economy, Trade and Industry pointed out to the Brazilian Minister of Development, Commerce and Industry the possible infringement of the WTO Agreements in May and November 2012, respectively. Further, Japan expressed concerns and requested cooperation

including information provision at the Japan-Brazil Joint Committee on Promoting Trade and Investment held in September 2014. Jointly with the United States and the EU, etc., Japan also expressed concerns several times at meetings of the WTO Council on Trade in Goods and the Committee on Trade-Related Investment Measures (TRIMs).

Since no improvement was made by the Brazilian Government, in July 2015, Japan requested consultations with Brazil under the WTO dispute settlement procedures regarding the Brazilian government's discriminatory preferential taxation etc. in the automobiles and information technology sectors. Following Japan's request to establish a panel in September, 2015, the panel was then established in September 2015. Before Japan made the request, the EU had requested consultations under the WTO dispute settlement procedures in December 2013 regarding the same measures, and the panel was established in December 2014.

In August 2017, the panel report was circulated and its findings were in line with Japan and the EU, and it determined that each tax incentive measure by Brazil was inconsistent with the WTO Agreement. The Panel concluded that Brazil should bring each measure into compliance with the WTO Agreement. Brazil appealed the case in September 2017.

Japan will continue requesting Brazil to correct these measures through the Appellate Body process.

3, Issues on which Japan urges prompt implementation of the WTO recommendations

- **The United States: Complete Abolition of Zeroing**

The United States had applied a methodology known as "zeroing" when calculating anti-dumping duties (dumping margin) for each exporter. This methodology only takes into account export transactions at prices lower than domestic prices, and ignores export transactions at prices higher than domestic prices (assuming the differences from domestic prices as zero). Accordingly, the dumping margins will be artificially inflated. Zeroing is an unfair methodology as it ignores transactions in which dumping is not occurring, and is inconsistent with Article 2.4.2 of the AD Agreement that provide for calculation methods of dumping margins.

Japan requested consultations under the WTO dispute settlement procedures with the United States in November 2004 and requested the establishment of a panel in February 2005. The

Appellate Body Report (circulated in January 2007), ruled that zeroing is WTO-inconsistent. Further, after the panel and the Appellate Body of the compliance proceedings were undertaken, in February 2012, Japan and the United States agreed on a memorandum for resolution of this dispute. In accordance to the memorandum, the United States amended the Department of Commerce regulation and abolished zeroing in February 2012. Japan continues to pay close attention to future developments so that zeroing will be completely abolished based on the memorandum and the amended regulation.

Recently, the United States has resumed zeroing based on its own interpretation that zeroing is allowable exceptionally in the context of target dumping (dumped imports targeting certain purchasers, regions or time periods) pursuant to the second sentence of Article 2.4.2 of the AD Agreement. This raised concerns that the ruling to prohibit zeroing was being rendered invalid in practice. Korea and China referred the U.S. AD measures on their domestic products to the WTO dispute settlement procedures, arguing that the United States applied zeroing in target dumping cases (United States: Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464); and United States: Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)). Japan participated in these cases as a third party and argued that the application of zeroing violates the AD Agreement. The panel and the Appellate Body of DS464 as well as the panel of DS471 found in line with Japan's arguments, determining that the target dumping findings including application of the zeroing procedure by the United States is inconsistent with the AD Agreement.

Japan will continue to pay attention to the possible application of targeted dumping to Japanese products and the consistency of such measures with the WTO Agreement.

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