METI Priorities Based on the 2020 Report on Compliance by Major Trading Partners with Trade Agreements (Monday, May 25, 2020)

The 2020 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA - was today published by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures. The Report 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.

As mentioned in the Report, the WTO Dispute Settlement (DS) mechanism not only recommends corrections of the measures but also contains procedures for monitoring implementation of recommendations and the suspension of concessions countermeasures in the event of failure of implementation. Therefore, WTO recommendations are implemented at a high rate and contribute to maintaining the effectiveness of the WTO rules. Since the establishment of the WTO in 1995, the WTO DS procedures amount to 595 cases (As of May 25, 2020).

As Japan has requested 27 consultations since 1995, Japan has actively utilized the DS mechanism with the aim of eliminating disadvantages caused by other countries' measures that are inconsistent with international rules, and also developing rules through the accumulation of precedents, as one measures, amid the situation where establishment of multilateral rules has become increasingly difficult due to a rapid change in the environment on trade such as more serious antagonism between developed countries and emerging countries. Considering the situation in which the Appellate Body has ceased to function since last December, Japan will continue to work with other WTO members to find a long-lasting solution to the Appellate Body matter. In addition, METI will continuously utilize bilateral and multilateral consultations, the WTO DS mechanism, etc., to actively resolve individual issues.

The report raises the alarm at increasing concerns over possible distortion of competitive basis or market function, which is a fundamental of multilateral free trade systems due to market-distorting measures by some emerging countries in recent years, and at the situation where a swing back to a "results-oriented" approach has emerged in some developed countries. The COVID-19 has highlighted the importance of the rules-based multilateral system. METI will furthermore proceed with comprehensive measures to ensure to the level playing field through Japan-U.S.-Europe Trilateral Trade Ministers' Meetings, WTO, etc., in order to deliver a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment.

In addition to, METI concerns that protectionism is exacerbated and prevails by the challenges posed by COVID-19. To prevent an additional negative impact on global economy, METI will highlight the commitment that the emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent, and

temporary, and that they do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules. In order to ensure the commitment, the WTO and G20 will conduct ongoing supervision and follow-ups and efforts will be made to strengthen the functions of the WTO through its reforms.

Based on the above, METI will preferentially address the following cases based on policies and measures pointed out in the 2020 Report. The details of each case are shown in the Reference below.

(1) Issues for which the WTO DS procedures have already started

With respect to the following issues, Japan referred them to the WTO DS procedures and will request each country to abolish or correct the measures through the procedures.

- Korea：Measures Affecting Trade in Commercial Vessels 【Consultation】(The Ministry of Land, Infrastructure, Transport and Tourism(MLIT) is in charge)*
- Korea：Sunset Review on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures) 【Panel】
- India：Tariff Treatment on Certain Goods in the ICT Sector 【Panel】
- India：The Safeguard Measures on Hot-Rolled Steel Products【Appellate Body】

* The case is handled by MLIT, and METI provides certain advice from legal perspective.

(2) Issues to be resolved through bilateral and multilateral consultations with possible use of the WTO DS Mechanism

With respect to the following issues, Japan will examine the possible use of the WTO DS procedures while working on resolving issues through bilateral consultations, WTO ordinary committees, etc.

- China：Aluminum Subsidies
- China：Cybersecurity Law
- China：Inappropriate Application of AD Measures
- The United States：Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962
- The United States：Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products

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

With respect to the following issues, as a result of Japan and other countries having referred them to the WTO DS procedures, the WTO recommendations which required securing the conformity of measures have been adopted. Japan will request quick and complete implementation of the WTO recommendations and appropriate measures consistent with the purport of the WTO recommendations.

- The United States：Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping
- Korea：AD Duty Measures on Pneumatic Valves
- Brazil：Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.

(4) Issues on which close attention needs to be paid due to significant effect on trade and investment although details are unclear

With respect to the following issues, details of the system has not been clear or certain responses have been taken in countries where measures are applied through approaches by Japan, etc. However, METI will continue to pay close attention to the issues as they may give significant effect on trade and investment depending on the system design and implementation status of the relevant responses.

In addition to, METI keeps a close watch on measures implemented by individual countries to tackle COVID-19, such as quantitative restrictions and government procurement, in order to prevent the measures inconsistent with the WTO Agreements from being implemented and/or continued unnecessarily on the pretext of the legitimacy of the purpose.

- China：Foreign Investment Law
- China：Draft of Export Control Law
- Vietnam：Imported Automobile Certification System
- India：The Safeguard Investigation on Single-mode Optical Fiber【New】

(Reference 1) Details of the Individual Trade Policies and Measures Listed in the METI Priorities Based on the 2020 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2019 METI Priorities are as follows.

(1) Issues for which the WTO DS procedures have already started

- **Korea**：**Measures Affecting Trade in Commercial Vessels**

Since October 2015, Korea has been taking measures as public financial support for the shipbuilding industry of its own country which includes: (1) financial support for a domestic shipbuilder (Daewoo Shipbuilding & Marine Engineering Co., Ltd.) by public financial institution; (2) provision of refund guarantees for supporting orders placed with shipbuilders; (3) support for purchasing new commercial vessels for shipping companies through the New Shipbuilding Program (public-private fund), etc.; and (4) other measures such as subsidies for replacing with eco-ship (subsiding a part of the price of new ship). As the results of these public financial support measures, low cost orders for new ships were repeated by Korean companies, leading to substantial drop in the ship prices in the international markets. In addition, Japan's market share is falling substantially due to lost orders and competition abandonment following the decline of the market ship price. These public financial support measures are likely to distort the market and hamper early resolution of the excess supply capacity issues in the shipbuilding industry. Also, certain measures may be regarded as export subsidies as prescribed in the Agreement on Subsidies and Countervailing Measures (ASCM) and is likely to violate with Article 3 of the said agreement.

Japan requested Korea early abolition of the measures by pointing out the problem on multilateral occasions through such opportunities as the Council Working Party No.6 on Shipbuilding of the OECD or the director-general-level talk between Maritime Bureau of MLIT and Ministry of Trade, Industry and Energy Korea (MOTIE) in October 2018, but in vain. Consequently, Japan requested bilateral consultations based on the WTO Agreements in November 2018. and held the first bilateral consultations in December 2018. Thereafter, Japan made a request again in January 2020 and held the second bilateral consultations in March 2020.

Japan will continue to request Korea for the abolishment of these measures.

- **Korea**：**Sunset Review on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures**）

The Korean government initiated a sunset review for stainless steel bars produced in Japan in June 2016, and decided on a three-year extension of imposition of duties in June 2017.

Article 11.3 of the AD Agreement provides that any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition or the latest review thereof,

in principle, and that the continuation of the duty may be permitted exceptionally if only it is determined in a review that "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." In this case, products imported from Japan are mostly for special use purposes, while products imported from India, which are also subject to the investigation, and Korean domestic products are mostly for general use purposes, and the volume of stainless steel bars imported from third countries such as China, Taiwan, etc., which are not subject to the AD duties, has been increasing significantly. Under such circumstances, it cannot be said that the possibility of continuation or recurrence of injury is high unless the AD duties on Japanese products are maintained. Therefore, this decision of extension made by the Korean authorities is highly likely to be inconsistent with the AD Agreement.

Japan, aiming at resolving the matter through dialogue, pointed out issues under international rules multiple times at the WTO AD Committee to express serious concern about lengthening of the measure, and in May 2018, the Minister of METI of Japan requested the Minister of Trade, Industry and Energy of Korea to abolish the imposition of duties. However, since the Korean government has not abolished the duties and no improvement was observed afterwards, Japan requested Korea to hold the bilateral consultations based on the WTO Agreements on this matter in June 2018 and requested establishment of a panel in September 2018 in consideration of its outcome (the panel was established in the next month and composed in January 2019).

Examinations by the panel are underway, and Japan will continue to request the abolishment of these measures through the panel procedure.

- **India** : **Tariff Treatment on Certain Goods in the ICT Sector**

The government of India, by administrative notifications, introduced a 10% tariff raising measure for some IT products (HS code: 8517.62.90 and 8517.69.90 communication devices) which were set as non-leviable in India's WTO bound tariff binding schedule in July 2014. Thereafter, in July 2017, it raised tariff rates for ink cartridges and mobile phones, etc. (8517.1210 and 8517.1290[1] mobile phones, and 8517.6100 base stations, 8517.7090 parts for telephone/telecommunication devices). Furthermore, it publicly issued a notification to raise the tariff rate for mobile phones from 10% to 15% in December 2017. In addition, the government of India further raised this tariff rate for mobile phones from 15% to 20% in February 2018, and also raised the tariff rate for some telecommunication devices from 10% to 15% although bilateral consultations based on the WTO Agreements had been underway.

Since India raised effective tariff rates for products such as mobile phones, parts for telephones/communication devices and base stations even though it exempted them from tariffs under the six-digit level of HS code, it clearly violates Article II of the GATT.

Japan repeatedly expressed concerns through the WTO Market Access Committee, the Information Technology Agreement (ITA) Committee, the WTO Council on Trade in Goods, Embassy of Japan in India, etc., and has requested the government of India to provide a

[1] In January 2020, HS codes were altered accompanying the modification of India's tariff schedule, and the tariff classification now consists of HS8517.1211, 8517.1219, and 8517.1290.

detailed explanation and promptly abolish the measures. However, the Indian government only repeated the same answers that “those products did not exist when agreed on the ITA and they are not subject to the elimination of tariffs which the country promised at the ITA Committee” and so far, no improvement of the situation has been observed.

Japan requested India to hold consultations based on the WTO Agreements in May 2019 and pursued the abolishment of these measures. However, as the issue was not resolved through the consultations, Japan requested examinations by the panel in March 2020. Japan will pursue the abolishment of the measures through the panel procedure.

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

On September 7, 2015, the government of India initiated an investigation on hot-rolled steel products and decided the imposition of provisional safeguard measures on September 9, 2015, which is only two days after the initiation. The provisional safeguard measures were imposed on September 14, 2015 levying duties on hot-rolled steel products. In March 2016 the government of India made a public notice 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 investigating authority needs to demonstrate clearly determine an increase in import 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, as required under the WTO Agreements, the investigating authority needs to demonstrate the increase in import as the results of unforeseen developments, in addition to the effect of the obligations incurred under the GATT. However, although the investigation reports prepared by the Indian authority recognize such facts as excessive overproduction in China and demand increase in India as unforeseen developments as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994, these facts are only changes in supply-demand relationships, which exert influence equally both on imported goods and domestic goods, and they do not cause disadvantageous changes in conditions of competition for domestic goods and do not fall under unforeseen developments.

Given these, the Indian authority cannot be held to have properly demonstrated 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 procedure. 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 India to 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.

In November 2018, a panel report was published. The relevant safeguard measures lapsed during the consultation period, but most of Japan's arguments were accepted in the panel report. The report recommended India to bring the relevant measures into conformity as long as the effect remains since India's safeguard measures are inconsistent with the WTO Agreements. In December 2018, India appealed to the WTO Appellate Body and is waiting for the examinations at the Appellate Body. Japan will appropriately respond to the examinations of the Appellate Body when it is resumed.

(2) Issues to be resolved through bilateral and multilateral consultations with possible use of the WTO DS Mechanism

- **China**：**Aluminum Subsidies**

Various subsidies are granted by the Chinese government to the aluminum industry based on the Special Five Year Development Plan for the Non-Ferrous Metal Industry and various other industrial policies. Like the problem of excess production capacity in steel in China, rapid increase of production capacity and excess supply of aluminum has become a problem.

Concerning the problem of excess production capacity in primary aluminum, etc., caused by Chinese government subsidies, they may be in violation of Article 5 of the Agreement on Subsidies and Countervailing Measures (ASCM) as causing an adverse effect to the interests of other member countries. In addition, concerning parts not covered by the current ASCM, discussions to solve the relevant problems are proceeding in the Subsidies Committee, etc.

In May 2017, G7 countries including Japan committed in the G7 Taormina Leaders' Communiqué that they would further strengthen the cooperation and work with their partners in order to address global excess capacity in the steel, aluminum and other key industrial sectors and to avoid its emergence in other areas. Furthermore, Japan had several discussions with the Chinese government for solving the problem. For example, in June 2017, in the regular vice-minister-level consultations between METI and the Chinese Ministry of Commerce, Japan discussed efforts aimed at the elimination of excess supply in the aluminum industry, etc., and in the consultations in December 2019 as well, Japan requested China to improve the transparency in its subsidy policies for the aluminum industry and other industries. Also, in the Subsidies Committee meetings held in October 2016, April 2017, and November 2019, and Trade Policy Review (TPR) of China in 2018, together with the U.S. and the EU, Japan also proposed discussions related to the problem of subsidies and excess supply. Moreover, the urgent need of avoiding excess capacity in sectors such as aluminum was pointed out in the Charlevoix G7 Summit Communiqué of June 2018 as well. The OECD investigation report published in January 2019 also pointed out the possibility of distorting the competitive conditions in the aluminum industries as large amounts of government support are provided in China, etc. Japan will continue to proceed with discussions aimed at solving the problem in bilateral and multilateral consultations.

- **China**：**Cybersecurity Law**

In June 2017, the Chinese government enforced the "Cybersecurity Law". Since the Law stipulates that when selling network core products and specialized cybersecurity products, it is required to obtain a security certification following the related national standards and industry standards, it is assumed that technical regulations and conformity assessment procedures for these products will be established. However, regarding the Law, TBT (Technical Barriers to Trade) notifications have not been made, and therefore it may be inconsistent with Article 2.9.2 of the WTO TBT Agreement. Although there is no provision for

the specific contents of national standards and industrial standards in the Law and it is uncertain what sort of standards will be established, it may be in violation of Articles 2.4 of the TBT Agreement if such standards are not based on international standards. Furthermore, if the contents of the measures are more trade-restrictive than necessary to achieve the objective of "maintaining cyber space sovereignty and national security", it may violate Articles 2.2 and 5.1.2 of the TBT Agreement.

In addition, the Law stipulates that operators of important information infrastructure are obliged to store personal information and important data within China and to assess the safety of such information when it is transferred overseas. Therefore, if foreign business operators are substantially placed in a less favorable competitive condition than Chinese business operators, it may violate national treatment obligations stipulated in Article 17 of GATS.

From the drafting stage of the law, not only Japan but also the governments of other countries, industrial organizations, etc., submitted opinion letters to the Chinese government on the public comments to express concerns as described above, but the Law was enforced in June 2017, not reflecting many of the opinions from the government of Japan, etc. Thereafter, the Chinese government sought public comments on drafts of "Measures on Security Assessment of Cross-border Data Transfer of Personal Information and Important Data" and "Cyber Security Multi-Level Protection Scheme." In May 2019, public comments on "Cybersecurity Review Measures" and "Measures for Data Security Management" began to be sought, and in June 2019, public comments on "Personal Information Outbound Transfer Security Assessment Measures" also began to be sought. The enforcement of Cybersecurity Review Measures on June 1, 2020, was announced, but concerns over whether the Law and related regulations are consistent with the WTO Agreements still remain.

Japan will continue to closely monitor the Law and developments of related regulations while urging China to correct the system through opportunities such as WTO TBT Committee meetings, the WTO Council for Trade in Services and bilateral consultations, etc.

- **China**：**Inappropriate Application of AD Measures**

The Chinese government initiated 284 AD investigations between 1995 and the end of June 2019, and among which Japanese products were included as the subject product in 52 cases. Among these 52 cases, AD measures were applied in 40 cases. AD duties remain in force in 18 cases as of the end of December 2019. China is the largest in terms of the country-based number of AD investigations and the number of application of AD measures against Japan.

Deteriorating business performance of Chinese companies is thought to have been caused by the excessive production structure in China. Nevertheless, it was determined that Chinese companies suffered injury due to dumped imports from Japan, revealing that Chinese AD measures are not consistent with the AD Agreement in areas such as lack of transparency in investigation procedures and arbitrary determination of injury and causation.

Regarding China's seemingly inappropriate AD investigations, Japan has been conveying

government opinions to Chinese investigation authority and requesting it to improve the situation using various opportunities such as submission of written opinions to Chinese investigation authority, consultations with Chinese government officials, participation in public hearings and attendance in WTO AD Committee meetings, etc. Furthermore, it has been cooperating with the U.S. and the EU which share the concerns about Chinese AD investigation procedures in ways such as submission of written opinions which mutually support arguments in the WTO DS procedures.

Japan will continue to encourage China to correct its inappropriate operation and application of AD measures.

- **The United States**：**Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962**

(Steel / Aluminum)

In 2018, the U.S. imposed additional tariffs on steel and aluminum imported from Japan of 25% (ad valorem) and 10% (ad valorem), respectively, pursuant to Section 232 of the Trade Expansion Act of 1962 (hereinafter “Section 232”). However, Tariffs were abolished for some countries such as South Korea (country-based exemptions). Further agreements were reached with Canada and Mexico to withdraw the additional tariffs imports from these countries as well in May 2019. In addition, upon a request from U.S. companies, exemptions from additional tariffs are granted if it is approved that (1) the product at issue does not affect national security or (2) the substitute production of the product at issue cannot be made in the U.S (product-based exemptions).

In addition to the above, the U.S. decided to impose additional tariffs on steel and aluminum derivatives (steel nails, aluminum cable, etc.) in January 2020, and commenced the imposition of additional tariffs of 25% and 10%, respectively, in February 2020. As the background to these additional tariffs, it is pointed out that import after processing into downstream products is increasing despite the imposition of measures based on Section 232 on steel and aluminum products, and that the U.S. has not been able to achieve more than 80% of capacity utilization rate as intended by the measures.

Furthermore, the U.S. commenced an investigation under Section 232 regarding imports of lamination and wound cores for incorporation into transformers, electrical transformers and transformer regulators. As a background of the investigation, it is said that imports of lamination and wound cores from Canada and Mexico increased as grain-oriented electrical steel sheets (GOES) for transformers were processed into these products therein due to existing measures based on Section 232 imposed on steel, and Japan is referred to as one of the producers of GOES..

It is likely that the increase in tariffs above the bound rates are inconsistent with Article II of the GATT (Tariff Concessions). Furthermore, when quantitative restrictions, or quotas are set, it is likely that such measures are inconsistent with Article XI of the GATT (Prohibition of Quantitative Restrictions) and Article 11 of the Agreement on Safeguards (Prohibition of Voluntary Export Control etc.). On the other hand, the U.S. may invoke Article XXI of GATT (Security Exceptions), stating that all measures pursuant to Section 232 are measures taken

for national security purpose. However, it is questionable whether these measures are justified as security exceptions.

Japan has repeatedly expressed concerns, asserting that import of steel and aluminum from Japan, an ally of the U.S., cannot pose a threat to American national security. At the same time, Japan has been working at various levels to seek acceleration and simplification of processes of product-based exemptions. Furthermore, Japan has participated as a third party in the panel proceedings on measures based on Section 232 imposed by the U.S. on steel and aluminum, and has notified to the WTO to the effect that Japan will reserve the right to take rebalancing measures against these tariffs imposed by the U.S.

In the joint statement of Japan and the U.S. in September 2019, it was confirmed that efforts would be made for the early solution concerning measures based on Section 232 for steel and aluminum, Japan will continue working on the U.S. government as necessary.

(Automobiles and Auto Parts)

Concerning automobiles and auto parts, an investigation report including recommendations to President from the Secretary of Commerce was submitted in February, 2019, but the details of the recommendations have not been disclosed to the present date. In accordance with Presidential proclamations issued on May 17, 2019, the U.S. decided to pursue negotiation for 180 days concerning import of automobiles, etc. with the EU and Japan, etc. to obtain agreements for addressing national security threat on the ground that automobile imports threaten to national security. However, although November 13, 2019, was the deadline for making the judgment, the U.S. has not made any decision on measures.

In the joint statement of Japan and the U.S. in September 2018, it was confirmed that Japan and the U.S. “refrain from taking measures against the spirit of this joint statement during the process of these consultations”. Furthermore, as agreements were reached for the Japan-U.S. Trade Agreement and the Japan-U.S. Digital-Trade Agreement in September 2019, both countries confirmed in the joint statement that “[w]hile faithfully implementing these agreements, both nations will refrain from taking measures against the spirit of these agreements and this Joint Statement”. The leaders of both countries confirmed that this means the non-imposition of additional tariffs based on Section 232 on Japanese automobiles and auto parts.

With respect to automobiles, etc., which are still under investigation by the Department of Commerce, the U.S., Canada and Mexico signed the USMCA Agreement in November 2018. At the same time, the Side Letters concerning automobiles, etc., were exchanged between the U.S. and Mexico and between the U.S. and Canada. In the Side Letters, an agreement was reached that even if import adjustment measures for automobiles are imposed based on Section 232, Section 232 will not be applied to up to a certain number of passenger cars and auto parts and to all light trucks imported from Mexico and Canada. However, no import adjustments have been imposed and it is still uncertain how the agreement in the Side Letters will be implemented and applied in the future.

Many Japanese automakers enter into the U.S., Mexico and Canada where they engage in corporate activities utilizing the current NAFTA. Noting that the WTO Agreements prohibit to take or seek to take voluntary export control (Article 11 of the Agreement on Safeguards)

and that quantitative restrictions are generally prohibited except the case where such restrictions including tariff quotas are approved by the WTO Agreements (Article XI of the GATT), Japan will continue to closely monitor the development while closely watching the related trends including the actual monitoring practice whether USMCA's Side Letters lead to managed trade that distorts free and fair trade.

(Titanium Sponge)

With respect to the investigation on titanium sponge initiated in March 2019, in November 2019, the Department of Commerce found a national security threat but recommended not to take import adjustment measures. In February 2020, the U.S. President concurred with the findings d that the import of titanium sponge will pose a national security threat, and directed the secretaries of the Department of Defense and the Department of Commerce to set up a working group, instead of imposing import adjustment measures (such as additional tariffs). The President directed that the working group to have Japan, from which the U.S. imports approximately 94% of titanium sponge, engaged in the discussions agree on measures to secure the access to titanium sponge for the U.S. national defense industry and critical industries in a national emergency.

The U.S. imports most of its titanium sponge from Japan, but products of Japan, an ally of the U.S., will never pose a threat to the national security of the U.S. Rather, titanium sponge exported from Japan, whose quality is strictly controlled, is highly reliable. A supply shortage in the U.S. has been covered by exports from Japan, and titanium sponge from Japan has supported the national security of the U.S. Accordingly, measures to be agreed on through the consultations should be consistent with the WTO Agreements.

(Mobile Crane)

In May 2020, an investigation based on Section 232 was also announced for the import of mobile cranes. Import adjustment measures based on Section 232, do not simply close the U.S. market, but may have a large negative effect on the global market and the multilateral trading system as a whole. Imports of mobile crane from Japan, as an ally of the U.S., cannot pose a threat to American national security, and Japan will continue working on the U.S. government firmly for the avoidance of the measures.

- **The United States**：**Sunset Review Practice and Unreasonably Long-standing AD Measures on Japanese Products**

The AD Agreement stipulates that any definitive AD duties 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 May, 2020, there are 17 definitive AD measures imposed by the U.S. government 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 results of such prolonged imposition of the AD duties excessively discourages exports of Japanese companies and

imposing huge burdens on the importers and the users in the U.S. For example, some of Japanese iron or steel products are high quality and highly reliable and have won wide support from U.S. users, but they became unavailable to those customers due to the U.S AD measures, and it is pointed out that the users in the U.S. are forced to buy other country's products.

Accordingly, Japan has requested the early termination of these measures in the Japan-U.S. Economic Harmonization Initiative and repeatedly held WTO AD Committee meetings, etc. In August 2018, the AD measure imposed by the U.S. government on Japanese steel products for more than 35 years was terminated as the result of sunset review.

Japan will continue to work for improvement of the U.S. sunset review practice and abolition of the unreasonably long-standing AD measures on Japanese products as soon as possible.

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

- **The United States** : **Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping**

In AD procedures, the U.S. had applied a methodology known as "zeroing" when calculating anti-dumping duties (dumping margin) for each exporter. This methodology takes into account only export transactions at prices lower than domestic prices while ignoring export transactions at higher prices (and thus assuming the differences from domestic prices as zero), which will artificially inflate dumping margins. Zeroing is an unfair methodology that ignores transactions in which dumping is not occurring, and violates Article 2.4.2, of the AD Agreement, etc., that provide for calculation method of dumping margins.

Japan requested consultations under the WTO DS procedures with the U.S. in November 2004 and requested the establishment of a panel in February 2005. The Appellate Body Report, which was circulated in January 2007, ruled that zeroing is inconsistent with the WTO Agreements. Further, the panel and the Appellate Body of the compliance proceedings were undertaken, and eventually, the U.S. and Japan agreed on a memorandum for resolution of this dispute in February 2012. In accordance to the memorandum, in February 2012, the U.S. amended the Department of Commerce regulation and abolished zeroing. 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 U.S. has been resuming the application of zeroing increasingly applying based on its own interpretation that zeroing is exceptionally allowable under the second sentence of Article 2.4.2 of the AD Agreements, in the context of target dumping (dumped exports targeting certain purchasers, regions or time periods). This raised concerns that the aforementioned ruling to prohibit zeroing was being rendered invalid in practice.

Korea and China referred to the U.S. AD measures on their domestic products to the WTO DS procedures (The United States: Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464); and The United States: Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)), citing that

zeroing was used for their products when targeted dumping was determined. Japan participated in these cases as a third party and argued that the usage of zeroing violates the AD Agreement. The panel and the Appellate Body of the former case (DS464) and the panel of the latter case (DS471) (this issue was not appealed to the Appellate Body) adopted an interpretation consistent with Japan's arguments and determined that the zeroing procedure by the U.S. violated the AD Agreement. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation (by December 2017) elapsed, in January 2018 Korea requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 84.81 million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation (by August 2018), in September 2018, China requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 3.57913 billion dollars were approved by arbitration decision in November 2019.

The panel report on the AD duties imposed by the U.S. on Canadian softwood lumber (DS534) circulated in April 2019 held that zeroing might be permitted to address targeted dumping under certain conditions. However, it also found that the current zeroing practice by the U.S. is inconsistent with Article 2.4.2 of the AD Agreement. (The report has not been adopted as Canada appealed.)

Japan will continue to monitor any alleged findings concerning targeted dumping of Japanese products and the consistency of such measures with the AD Agreement.

- **Korea**：**AD Duty Measures on Pneumatic Valves**

In February 2014, the Korean government initiated AD investigations for pneumatic valves from Japan upon a request from domestic companies in Korea, and started to impose AD duties in August 2015.

Regarding these AD duty measures, Korea has failed to provide persuasive explanations on the alleged price effects of imported goods on the domestic goods (Articles 3.1 and 3.2 of the AD Agreement). Furthermore, there are defects in Korea's determination on injury to domestic industries and its causal relationships with dumping (Articles 3.1, 3.4 and 3.5 of the AD Agreement). 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 violate the AD Agreement.

Japan, aiming at resolving the issue through bilateral dialogue, continued to request the abolishment of the AD measures, but in vain. Therefore, in March 2016, Japan requested bilateral consultations pursuant to the WTO Agreements on this matter, and then in consideration of its outcome, requested the WTO in June 2016, to examine the issue at the panel (the panel was established in the next month of the year). The panel report published in April 2018 stated that the relevant AD measures lacked examinations on the price comparability between imports from Japan and Korean domestic products, and failed to properly determine the price effects on domestic products (violation of Article 3.1 and Article 3.5 of the AD Agreement) and accepted the core claims of Japan, recommending that Korea

should correct the AD measures. On the other hand, Japan's claims on some other issues were rejected or kept undecided on the ground that they were out of the panel's terms of reference. Therefore Japan filed an appeal in May 2018.

The Appellate Body Report circulated in September 2019 accepted Japan's arguments and confirmed that the panel's avoiding making the judgment was unreasonable. The Report also accepted the core claims of Japan again, including the lack of examinations on the price comparability between imports from Japan and Korean domestic products (Article 3.2 of the AD Agreement), and recommended that Korea should make corrections of the measures. The Appellate Body Report was adopted by the Dispute Settlement Body (DSB) in the same month, and in October 2019, Korea accepted this recommendation and expressed the intention to correct the measures.

Japan will keep paying close attention to the status of the corrections and continuously request Korea to completely abolish these AD duty measures promptly.

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

The Brazilian government granted automobile manufacturers etc. with IPI credits in accordance with the cost of automobile parts procured locally on condition of achievement of the prescribed fuel efficiency standards and implementation of manufacturing processes in Brazil, etc., and thus, introducing and maintaining possible reduction (or offsetting) of IPI. Similarly, the Brazilian government introduced and maintained preferential taxation associated with the local content requirements to the information technology devices sector to exempt it substantially from various taxes and contributions including IPI on the condition of implementation of certain manufacturing processes in Brazil, use of locally produced parts, and R&D investments in Brazil, etc.

These measures treat imported parts in a discriminatory manner compared to local ones, violating Article III of the GATT (national treatment obligation) and other obligations under the WTO Agreements.

In July 2015, Japan requested consultations with Brazil under the WTO Agreements regarding its discriminatory preferential taxation, etc., in the automobiles and information technology sectors, and then in September 2015, requested establishment of a panel. The panel was established within the month. Regarding this matter, preceding Japan, the EU had requested Brazil to hold a bilateral consultation based on the WTO Agreements in December 2013 which was established in December 2014. Japan has been requesting Brazil to correct these measures through the same panel procedures as those of the EU.

The Appellate Body Report circulated in December 2018 largely accepted the assertion of Japan and the EU, supporting the panel report that the discriminatory preferential taxation in the automobiles and information technology sectors are inconsistent with the national treatment obligation, and part of the above measures corresponds to prohibited local content subsidies. Despite rejecting the panel's finding that certain discriminatory preferential taxation for export companies corresponds to the prohibited export subsidiaries, the Appellate Body recommended that Brazil bring the measures into compliance with the WTO

Agreements and withdraw the prohibited local content subsidiaries without delay.

Japan will monitor whether Brazil withdraws or brings into compliance its measures in accordance with the recommendation as well as the consistency of the new automobile policy (ROTA 2030) that replaced the previous policy with the WTO Agreements.

(4) Issues, whose details are unclear, with significant impact on trade and investment and their operation in particular needs to be monitored

- **China** : **Foreign Investment Law**

In March 2019, the Chinese government repealed the three major laws on foreign investment (the Law on Chinese-Foreign Equity Joint Ventures, the Law on Wholly-Foreign owned Enterprises, and the Law on Chinese-Foreign Contractual Joint Ventures) and established "Foreign Investment Law" as the basic law, which was put into effect in January 2020. The Chinese government had been considering the establishment of this law since 2015. The revised draft law, including draft of provisions regarding prohibition of forced technology transfer, was publicized in December 2018 and enacted after a short period of deliberation by the NPC, which was also an action responding to the trade conflict between China and the U.S.

In response to foreign companies' conventional concerns, this law includes new provisions that contribute to protecting rights and interests of foreign companies, such as prohibition of forced technology transfer (Article 22), pre-admission national treatment (Article 4, etc.), equal treatment for foreign companies' products in China to be procured by the Chinese government (Article 16), free overseas remittance (Article 21), and creation of a mechanism to resolve complaints from foreign companies (Article 26). On the other hand, the system for the security examination of foreign investment (Article 35, etc.) and retaliatory provisions against discriminatory treatment by foreign countries (Article 40) may damage the stability of investment environment, and depending on how they are implemented, they may raise concerns about inconsistency with the WTO Agreements. As the text of the law consists of general provisions without detailed implementing regulations, it is necessary to monitor its application in the future, including concrete provisions of the implementing regulations, with regard to the actual content and influence of measures based on this law.

Japan has been requesting China at opportunities, including Japan-China Economic Partnership Consultation in April 2019, to ensure that the regulations that contribute to protecting rights and interests of foreign companies are appropriately applied and operated by the national and local governments. At the same time, Japan has been requesting China to make the provisions with concerns consistent with the WTO Agreements and to clarify the content of the draft law by developing detailed implementing regulations. Japan will continue to monitor the enforcement and operation of the law, and will proceed with discussions for its improvement and clarification in bilateral and multilateral consultations.

- **China** : **Draft of Export Control Law**

The Chinese government had implemented the security export control regulation in which only items related to weapons of mass destruction were subject to the regulation, but in June 2017, it announced the first draft of Export Control Law, which adds a number of consumer products and technologies that are related to ordinary weapons to the restricted items, and at the same time, includes various new measures such as retaliatory measures, re-export measures, deemed export regulations, etc. Thereafter, the Chinese government announced the second draft modifying the first draft in December 2019 and sought public comments until January 26, 2020.

The contents of the new regulation are not clear yet, as a concreate list of items to be subject to the regulation has not been publicized, and the following points need to be closely watched: (i) there is a risk that items to be subject to the regulation could be excessively chosen with consideration for purposes other than the national security, based on China's National Security Commission, which includes a broad range of elements (including security of the economy, culture, society, science and technology, and resources) as the coverage of national security; (ii) there remains a risk that disclosure of technologies could be required in the form of written application for export license beyond the extent necessary for the determination of whether the regulation is applicable or not to the subject product; (iii) the provision that retaliatory measures against discriminatory export restrictions imposed by other countries could be implemented was deleted, but the Chinese government separately announced the idea to list up foreign companies, organizations, and individuals that suspend or discontinue supply to Chinese companies based on non-commercial purposes as organizations with low credibility in June 2019, and there remains the possibility that this may be utilized as retaliatory measures against export restrictions or bans imposed by other countries. The new regulation may impose an excessive restriction on exports which may not be justified by Security Exceptions (Article XXI of the GATT), and may be inconsistent with the prohibition of import/export restrictions (Article XI of the GATT). Depending on the operation of the law, it may significantly affect the environment of trade and industry between Japan and China.

Japan has been actively working on China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the relevant draft law at meetings of the WTO Council on Trade in Goods since March 2018, Trade Policy Review of China at WTO in 2018, Japan-China High Level Economic Dialogue held in April 2018, Japan-China Economic Partnership Consultation in April 2019, and vice-minister-level consultations between METI and the Chinese Ministry of Commerce in December 2019.

Japan will continue to monitor the deliberation of the draft law as well as enforcement and implementation of the law, and will proceed with discussions for the resolution of problems in bilateral and multilateral consultations.

- **Vietnam**：**Imported Automobile Certification System**

The Vietnamese government put in force Decree No. 116 which stipulates conditions of automobile manufacturing, assembling, import, and related services such as warrantee and

maintenance on January 1, 2018. With this, when importing automobiles to Vietnam, it is obligatory to obtain vehicle-type approval (VTA) issued by foreign authorities, receive exhaust gas inspection and safety/quality inspection by type of vehicle for each import lot (one vessel), provided by Vietnamese authorities, etc.

Although VTA issued by foreign authorities is required to be obtained only for imported vehicles, even on a global scale, usually there is almost no system in which foreign authorities issue VAT certificates for exported automobiles. Accordingly, imported automobiles are in a disadvantageous situation compared to domestic automobiles since they are required to obtain VTA certificates which are substantially difficult to obtain. This may violate Article 2.1 of the TBT Agreement. Furthermore, it is questionable whether it is necessary or not to additionally request VTA certificates only for imported automobiles in order to achieve the objective of protecting consumers as well as the environment. This may be in violation of Article 2.2 of the TBT Agreement. In addition, imported automobiles are required to receive exhaust gas inspection and safety inspection by the type of automobile from Vietnamese authorities for each import lot (one vessel), but for domestic automobiles, the result of inspection is being considered valid for 36 months. Because of this, only imported automobiles are inspected much more frequently, resulting in a disadvantageous situation for imported automobiles compared to domestic automobiles. This may violate Article 5.1.1. of the TBT Agreement.

So far, Japan has made several responses on this matter such as delivery of notes verbal from the Japanese embassy in Vietnam, expressing the concerns of the Japanese government at WTO TBT Committee meetings as well as the Council for Trade in Goods, relaying concerns from the Minister of METI to the Minister of Industry and Trade in Vietnam, etc. Thereafter, TBT notification was made with regard to the draft amendment of the Decree No. 116 at the end of November 2019, and the amended Decree was entered into force on April 15, 2020. The amendment deleted some requirements regarding to vehicle-type approval (VTA) issued by foreign authorities and inspections by type of vehicle for each import lot (one vessel), for which Japan had expressed concerns, but there remains a risk of influence on companies' businesses, depending on how the amended Decree is implemented.

Japan will closely watch the developments concerning Vietnamese Imported Automobile Certification System, and will request the Vietnamese government to improve this system, as needed, at bilateral and multilateral consultations.

- **India**：**The Safeguard Measures on Single-mode Optical Fiber**

On September 23, 2019, the government of India initiated an investigation on single-mode optical fiber and publicized a provisional decision on November 6, 2019, and the investigation authority recommended the imposition of additional tariffs of 25% as provisional safeguard measures for 200 days.

There is a concern about the consistency with the requirement of unforeseen developments under the WTO Agreements, and the government of India does not seem to have confirmed an increase in imports as a result of the effect of the obligations incurred by

a contracting party under the WTO Agreements (including tariff concessions). Additionally, the investigation method (annualization), which was determined as a violation in the panel report on the safeguard measures on hot-rolled steel products, was also used for this case, which poses another concern. Incidentally, examination procedures by the Appellate Body has been suspended due to the suspension of functions of the Appellate Body in December 2019.

Japan has already expressed concerns in the WTO Safeguard Committee, but will continue working on the Indian government to make its measures consistent with the WTO Agreements, at bilateral and multilateral consultations.

(Reference 2) Proceedings of Individual Trade Policies and Measures Described in "METI Priorities Based on the 2019 Report on Compliance with Trade Agreements by Major Trading Partners" for the Past One Year

Name of the Country	Trade Policies and Measures	Proceedings
China	Aluminum Subsidies	In December 2019, in the regular vice-minister-level consultations between METI and the Chinese Ministry of Commerce, Japan requested China to improve the transparency in its subsidy policies for the aluminum industry and other industries. In the Subsidies Committee meeting held in November 2019, Japan proposed discussions related to the problem of subsidies and excess supply, together with the U.S. and the EU.
	Cybersecurity Law	Japan continuously expressed concerns about the Cybersecurity Law in the TBT Committee meetings in June and November 2019, the WTO Council for Trade in Services in 2019, and the TBT Committee meeting in February 2020.
	Inappropriate Application of AD Measures	Japan expressed its concerns as a government at public hearings about China's AD investigations which are considered inappropriate while pointing out problems of the investigation through submission of written opinions. Japan pointed out problems of the China's inappropriate AD investigations at the WTO AD Committee meetings held in April and November 2019.
	Foreign Investment Law	Japan has been requesting China at opportunities, including Japan-China Economic Partnership Consultation in April 2019, to ensure that the regulations that contribute to protecting rights and interests of foreign companies are appropriately applied and operated by the national and local governments. At the same time, Japan has been requesting China to make the provisions with concerns consistent with the WTO Agreements and to clarify the content of the draft law by developing detailed implementing regulations.
	Draft of Export Control Law	Japan has been actively working on China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the relevant draft law at meetings of

		the WTO Council on Trade in Goods since March 2018, Japan-China Economic Partnership Consultation in April 2019, and vice-minister-level consultations between METI and the Chinese Ministry of Commerce in December 2019.
U.S.	Measures based on Section 232 of the Trade Expansion Act of 1962	In January 2020, the U.S. expanded the coverage of the steel and aluminum import measures based on Section 232 to include steel and aluminum derivatives and in May 2020, 232 investigations on imports of lamination and wound cores, and on imports of mobile cranes were announced. Japan will continue working on the U.S. government for the avoidance and abolishment of the relevant measures. Regarding titanium sponge, it was decided to hold consultations between the U.S. and Japan. Japan will endeavor to ensure that the measures to be agreed on through the consultations are consistent with the WTO Agreements.
	Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products	Japan has pointed out problems regarding the U.S. sunset review practice and measures at the WTO AD Committee meetings held twice a year.
	Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing in the Cases of Targeted Dumping	Korea and China protested against the U.S. AD measures, citing that zeroing was used when it determined targeted dumping (Korea: DS464, China: DS471). Japan also participated as a third country. Each panel and the Appellate Body determined that the application of zeroing even to address targeted dumping was inconsistent with the WTO Agreements, in line with Japan's view. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation by December 2017 elapsed, in January 2018, Korea requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 84.81

		million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation by August 2018, in September 2018, China requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 3.57913 billion dollars were approved by arbitration decision in November 2019. The panel report on the AD duties imposed by the U.S. on Canadian softwood lumber AD (DS534) circulated in April 2019 held that zeroing to address targeted dumping might be permitted under certain conditions. However, it also found that the current zeroing practice by the U.S. itself is inconsistent with Article 2.4.2 of the AD Agreement. (Canada appealed.)
Korea	Measures Affecting Trade in Commercial Vessels	Japan requested to hold consultations again in January 2020 and held them in March 2020.
	Sunset Review Practice on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures)	The panel was composed in January 2019 and is now carrying out examinations. In the panel procedure, Japan asserts that this measure violates Article 11.3 of the AD Agreement and requests its abolishment.
	The AD Duty Measures on Pneumatic Valves	The Appellate Body Report circulated in September 2019 accepted the assertion of Japan and confirmed that it is unreasonable that the panel had avoided making the judgment. The Report also accepted the core of Japan's argument, including the lack of examinations on the equivalence in prices between imports from Japan and Korean domestic products (Article 3.2 of the AD Agreement), and recommended Korea to make corrections of the measures. The Appellate Body Report was adopted by the Dispute Settlement Body (DSB) in the same month, and Korea accepted this recommendation and expressed the intention to correct the measures in October 2019. Japan will keep paying close attention to the status of the corrections and continuously request Korea to completely abolish these AD duty measures promptly.

India	Tariff Treatment on Certain Goods in the ICT Sector	Japan requested bilateral consultations based on the WTO Agreements in May 2019 and requested examinations by the panel in March 2020.
	The Safeguard Measures on Hot-Rolled Steel Products	As the Appellate Body stopped its functions in December 2019, examination procedures by the Appellate Body has been suspended.
Brazil	Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.	The implementation deadline was the end of December 2019, and Brazil declared its commitment to completely implementing the recommendation at the DSB meeting in January 2020. However, the Act enacted as a corrective measure has yet to be enforced. Japan will continuously request complete implementation of the recommendation.
Vietnam	Imported Automobile Certification System	TBT notification was made with regard to the draft amendment of the Decree No. 116, and the amended Decree was entered into force on April 15, 2020. Since some requirements, for which Japan had expressed concerns, was deleted by the amendment and some improvements are observed. Japan will closely watch so that the operation of the amended Decree should not be more trade-restrictive than necessary.

(Reference 3) Measures Implemented by Countries Concerning the COVID-19

Since the onset of the COVID-19 pandemic, countries around the world have implemented various measures, including the application of export restrictions to medical products and the provision of support for industries affected by the pandemic. Those measures may be justified under the WTO rules as efforts to overcome the crisis situation, depending on their objective and level of intensity. However, the competitive basis and market functions, which represent fundamentals of the multilateral free trade system, must not be distorted by excessive measures implemented as a pretext for dealing with the crisis situation. Described below is an overview of the relationship between the WTO rules and measures implemented by countries in response to the new coronavirus pandemic.

A. Quantitative Restrictions

Some quantitative restrictions have been applied to medical products, among other items, in response to the novel coronavirus pandemic (according to a report published by the WTO on April 23, 80 countries/regions were applying quantitative restrictions). Article XI, paragraph 1 of the GATT prescribes the general prohibition of quantitative restrictions. This provision, which generally prohibits quantitative restrictions because they are more likely to distort free trade than tariff measures, constitutes a basic principle of the GATT. However, "export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party" under GATT XI, paragraph 2 (a), which is a provision concerning exemption from application of GATT XI, paragraph 1, and measures "necessary to protect human, animal or plant life or health under GATT XX (b), which is a provision concerning exceptions and justifications, are not considered to be inconsistent with the WTO Agreements. In this respect, GATT XI, paragraph 2 (a) sets the criteria requiring (i) that products to be exempted should be "essential" ones, (ii) that the shortages of products to be exempted should be "critical," and (iii) that the measures implemented should be temporary, while GATT XX (b) sets the criterion requiring that the measures implemented should be necessary to protect human life and health, etc. Some quantitative restrictions applied in order to deal with the novel coronavirus disease (particularly restrictions applied to medical products) may meet the strict criteria set by Article XI, paragraph 2 (a), at least until the crisis situation improves. Others may meet the criterion set by Article XX (b) in light of the importance of the purpose of protecting the people's lives and health, etc. and the global shortages of products necessary to protect the lives and health in countries due to the pandemic. Therefore, unless quantitative restrictions are obviously excessive, it is difficult to deny their legitimacy on their face. Also, it may be possible that so-called gray-zone measures will increase. Therefore, it is necessary to keep a close watch in order to prevent measures inconsistent with the WTO Agreements from being implemented and/or continued unnecessarily on the pretext of the legitimacy of the purpose.

B. Tariffs

The WTO rules, while allowing member countries/regions to impose tariffs at the same time as prohibiting quantitative restrictions in principle, aim to reduce tariff barriers by requiring the members to commit themselves to the maximum tariff rate on a product-by-product basis and to gradually lower the maximum rate (bound rate). Article II of the GATT requires that member countries/regions do not apply tariff rates higher than the bound rates.

Amid the ongoing crisis due to the novel coronavirus pandemic, there are moves to lower tariff rates for medical products necessary for treating the disease, but no case of tariff hike that would violate the WTO rules has been confirmed. On the other hand, as tariffs represent a typical trade barrier, many countries raised tariff rates amid the economic crisis that followed the collapse of Lehman Brothers in 2008 (Lehman Shock) in order to protect domestic industries (see The 2009 Report on Compliance by Major Trading Partners with Trade Agreements, "Protectionist measures in the current economic crisis and actions by the Ministry of Economy, Trade and Industry"). This time, too, some countries are starting to take similar measures, albeit within the limits of bound rates. Therefore, if the ongoing crisis turns into an economic crisis in nature, it is necessary to keep a close watch as to whether or not moves to raise tariff rates for the purpose of protecting domestic industries, will spread, as was the case after the Lehman Shock.

C. Subsidies

In order to deal with the impact of the novel coronavirus pandemic on domestic industries and companies, countries around the world are introducing or considering introducing many government support measures, including the following: support for industries and companies that have suffered damage due to the restrictions on the movement of people and the shrinkage of economic activity; support and economic stimulus measures intended mainly to maintain jobs and prevent failures of micro, small, and medium-size enterprises; and bailout of companies through governmental investment and nationalization.

Under the WTO Agreement on Subsidies and Countervailing Measures, there is no provision for an exemption of measures implemented for the purpose of protecting human life and health, etc. In consideration of this, it is necessary to keep a close watch even on emergency measures implemented to deal with the novel coronavirus disease especially in cases where the support program, in the nature of its design, goes beyond the necessity for dealing with the crisis or where the measures are continued after the pandemic has been brought under control, because their implementation may be regarded as a violation of the Agreement on Subsidies and Countervailing Measures for producing adverse effects on other member countries.

In light of the view that large-scale subsidies provided by countries after the Lehman Shock may have indirectly led to the current problem of excess production capacity, it is necessary to keep a close watch on future developments of measures implemented by countries in order to make sure that such measures do not lead to another excess capacity problem by producing excessive market-distorting effects.

D. Investment Restrictions

With respect to the current coronavirus pandemic, discussions have been held in various

countries about strengthening investment screening due to the need for the protection of important industries, including healthcare, and wariness about the risk of foreign companies making acquisitions in important industries at the time of economic downturns, including stock price slumps.

The WTO Agreements do not yet cover general rules concerning investment, but regarding services trade, GATS already regulates the provision of services through foreign investment. In other words, cases where investment restrictions affect services trade and where countries applying the restrictions have committed themselves to some degree of liberalization regarding the relevant services based on GATS may constitute a violation of the provision for prohibition of restrictions on market access (Article XVI of GATS) and/or the provision for prohibition of discrimination between domestic and foreign services (Article XVII of GATS) as far as the restrictions breach the commitment. Under the WTO Agreements, measures may be justified in cases where they fall under general exceptions as specified under Article XIV of GATS ((a) measures necessary to maintain public order, (b) measures necessary to protect human life and health, etc.). It is possible to argue that measures implemented for the purpose of dealing with a severe outbreak of an infectious disease are equivalent to those measures. Moreover, investment treaties generally require national treatment and fair and equal treatment for foreign companies after investment.

It is necessary to keep a close watch on consistency with those international rules.

E. Intellectual Property

The intellectual property system aims to provide the foundation for economic development and innovation based on intellectual property by promoting intellectual creative activity through providing incentives for such activity in the form of some exclusive (monopolistic) rights to persons who have developed and created intellectual property, including inventions, and by encouraging efficient use of resources for research and development concerning new technology and knowledge. The TRIPS Agreement prescribes rules intended to promote and protect creative activity and has provisions for exclusion from patentability (Article 27, paragraphs 2 and 3) and exceptions to rights conferred (Article 30) due to consideration for such matters as public order and the interests of third parties, and security exceptions (Article 73) as well.

The TRIPS Agreement also stipulates that under the prescribed conditions, countries are allowed to license use by third parties other than the right holders (so-called compulsory licensing under Article 31 and Article 31bis) and that in the event of a national emergency or other circumstances of extreme urgency, some of those conditions may be waived. In addition, the Doha Declaration, adopted at the ministerial conference in 2001, affirmed that the TRIPS Agreement "can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all" (Paragraph 4). It also affirmed that "each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted" (Paragraph 5 (b)) and that "each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis,

malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency" (Paragraph 5 (c)).

As of now, there are no evidence that the patent exclusivity is an obstacle to the access to remedies for novel coronavirus infections, and any specific measures taken by other countries which unreasonably restrict the intellectual property rights has not been recognized. But it is necessary to keep a close watch as to whether or not each country will take measures to unreasonably limit intellectual property beyond the scope allowed under the TRIPS agreement in the name of an emergency.

F. Government Procurement

Amid the novel coronavirus pandemic, the needs for some particular products, such as pharmaceuticals and medical equipment, are growing rapidly, causing governments to procure those products.

While the procurement of goods and services by governments accounts for a substantial portion of the international economy, government procurement is treated as an exception to the national treatment obligation under the GATT rules (Article III, paragraph 8 (a) of the GATT). However, in light of the impact of government procurement on international trade, the rules on government procurement to which WTO members (47 countries/regions) have voluntarily acceded provide for national treatment and the most-favored-nation obligations, and they prescribe fair and transparent procurement procedures. Even so, in government procurement, a policy of preferential treatment for domestic products is often implemented for purposes such as national security and protection of specific industries. Such discriminatory government procurement is considered to constitute a violation of the national treatment obligation. From the policy viewpoint, although discriminatory government procurement may make some contributions to the achievement of industrial policy goals in the short term, the international competitive environment will be distorted in the long term, and it could also lead to the weakening of domestic industries through excessive protection. Also, it can be pointed out that as an industrial policy tool, government procurement is lacking in transparency concerning the financial value of assistance compared with production subsidies.

Under the Agreement on Government Procurement, there are provisions for general exceptions for measures "necessary to protect human, animal or plant life or health" (Article III-2 (b)) and measures "necessary to protect public morals, order or safety (Article III-2 (a)). It is necessary to keep a close watch on future developments as to whether or not government procurement will undermine the purpose of the agreement and whether or not it will become a protectionist measure by excluding foreign companies and promoting preferential treatment for domestic products.

End