

**“2020 Report on Compliance by Major
Trading Partners with Trade
Agreements – WTO, EPA/FTA, and IIA-”
and
“METI Priorities Based on the 2020
Report”**

May 2020

Dispute Settlement Office

Multilateral Trade System Department

Trade Policy Bureau

Overview

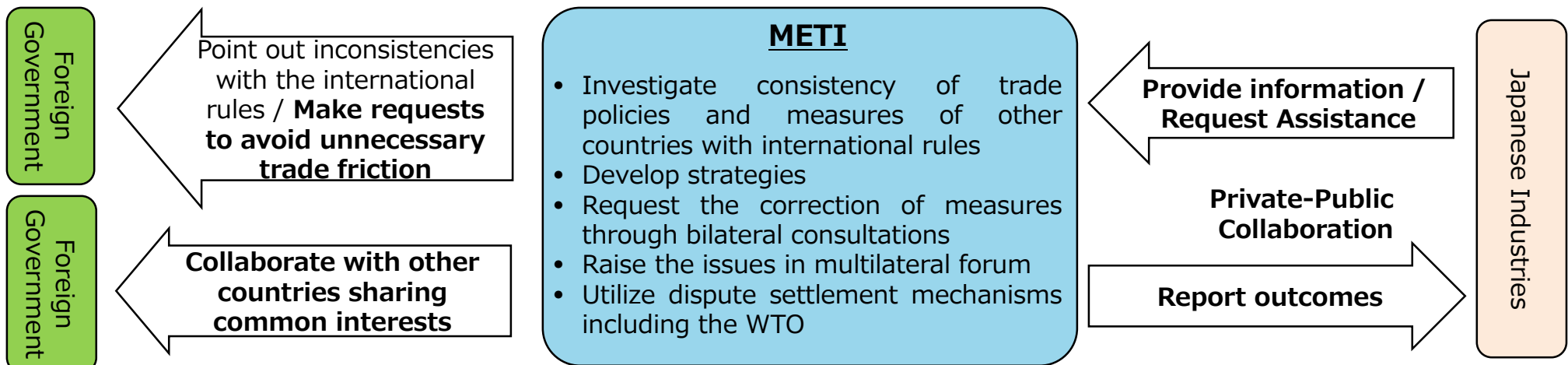
- The Report is a gathered of foreign government trade measures that are questioned in light of the WTO agreements and other international rules based on information from industry, in order to highlight the importance of the rules-based multilateral system.
- The Report has been published every year since 1992 (the 2020 Report is the 29th edition). **The 2020 Report was published on May 25, 2020.**
- **Select priority issues** from measures analyzed in the Report and make public government actions and their outcomes.

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

- This is the only report that comprehensively analyzes the status of trade measures in each country in accordance with international rules.
- Experts of **Subcommittee on Unfair Trade policies and Measures under the Industrial Structure Council** have analyzed problems of trade policies and measures of major trading partners based on international rules, including the WTO agreements.

“METI Priorities”

- From the measures pointed in the report, METI has picked up several measures as priority, taking into consideration the interests of the industry. Use to encourage foreign governments and promote collaboration with industry and foreign governments of similar interest.

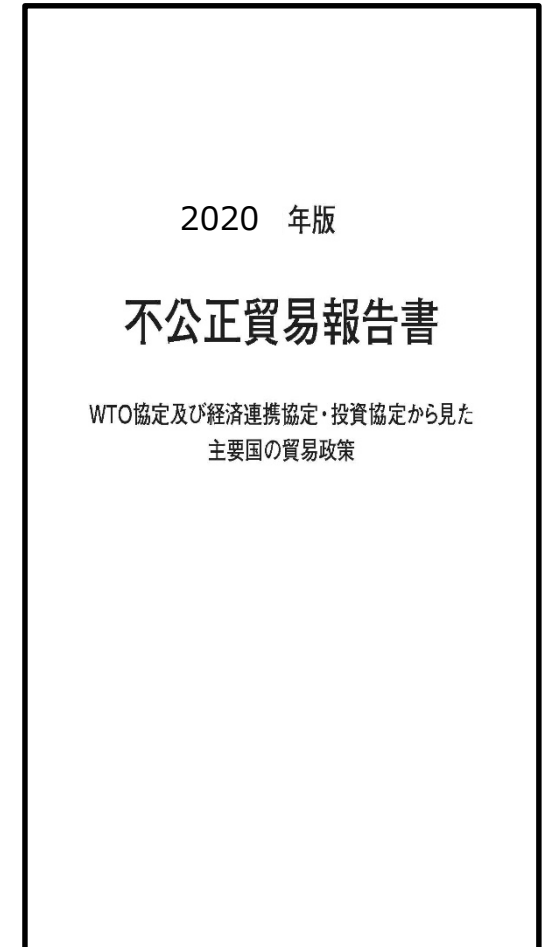


1. Report on Compliance by Major Trading Partners with Trade Agreements

Structure of the 2020 Report on Compliance by Major Trading Partners with Trade Agreements

- Composed of three parts, Part I points out various trade policies and measures of foreign countries and analyzes their consistency with the international rules including the WTO agreements. Part II (WTO agreements) and III (FTA/EPA) give a brief summary of international rules.

Preface	Presents the concept of “rule-based” approach, which is to determine the “fairness” of trade policies and measures based on internationally agreed rules
Part I	Points out approximately 143 policies and measures of 20 countries/regions (including China, the US, ASEAN countries, the EU, Korea, Russia, India, and Brazil)
Part II	Explains the WTO agreements and WTO-related discussions (including GATT, AD Agreement, Agreement on Subsidy and Countervailing Measures, Safeguard Agreement, GATS, TRIPS, Government Procurement, and E-Commerce) and major cases under each agreement
Part III	Explains Japan’s major EPA/FTA and investment treaties including the TPP
References	Exhibits the recent movement in the Ministerial Conferences of the WTO, and also provides a list of WTO dispute settlement (DS) cases.



Newly Listed Cases (5 cases)

(※In general, Measures are published as of end of February 2020)

Country	Measure	Outline
Part I Chapter 1 "China"	Anti-dumping investigation against the vertical machining centre	In October 2018, Government of China initiated the anti-dumping investigation against the vertical machining center imported from Japan and Taiwan, which is the first anti-dumping investigation on industrial machinery. Subject companies and the government of Japan argued that Japanese products do not compete with Chinese product and do not cause injury. * The investigation was terminated in April 2020 as the Chinese authority determined that there was no evidence of injury.
Part I Chapter 3 "Thailand" "Vietnam" "Indonesia" "India"	Issues related to Counterfeit and pirated goods	In those countries, many counterfeit and pirated goods have been distributed. In case each of their governments does not secure the effective enforcement of intellectual property, this situation might be inconsistent with Article 41 of TRIPS agreement.
Part I Chapter 4 "EU"	Restriction on enforcement of industrial design related to spare parts	Repair Clause, which excludes spare parts from design protection, in Industrial design laws in EU member countries and the Council Regulation (EC) No 6/2002 on Community designs might be inconsistent with Article 26.2 of the TRIPS agreement.
Part I Chapter 10 "India"	Safeguard measure on Single mode Optical Fiber	India initiated a safeguard investigation on Single Mode Optical Fiber on 23 September, 2019. On 6 November, 2019, India announced a preliminary finding and the investigation authority recommended the imposition of provisional safeguard duty at the rate of 25% ad valorem for 200 days on imports of Single Mode Optical Fiber. Japan has concerns on its consistency with "unforeseen developments", one of the prerequisites of imposing a safeguard measure. Also India does not seem to have confirmed an increase of imports as a result of the obligations under the WTO agreement, including tariff concessions.
Part I Chapter 12 "GCC"	Safeguard measure on Certain steel products	GCC(COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF) initiated a safeguard investigation on certain steel products (9 categories including Flat Hot Rolled Coils, Cold Rolled Flat Steel Coils, and Metallic Coated Steel) on 23 October, 2019. As a background of the initiation of the Investigation, GCC only indicates an overall steel overcapacity and the increasing number of trade measures taken by third countries on steel products, which cast doubt on its consistency with "unforeseen developments".

Columns

- 8 columns are posted (3 last year).
- We conducted deeply analysis on the attracted themes which are “Developing Country Status ” being discussed at the WTO, “Discussions for Strengthening Discipline on Subsidies” being considered at the Trilateral Meeting of Trade Ministers in Japan, the US and Europe, and “WTO Appellate Body Issue” which is an important issue of WTO reform.

Part and Chapter	Title	Outline
Part II Chapter 1 “Most-Favoured Nation”	Developing Country Status – Issues related to Special and Differential Treatment (S&D)	This column introduces the proposal by the United States in February 2019 concerning the thresholds for graduation from the developing country status based on self-designation under the WTO and the history and change of the role of S&D.
Part II Chapter 4 “Justifications”	Security Exceptions – Issues related to the interpretation of GATT XXI	The column provides an overview of the current discussions regarding security exceptions, in particular referring to the first WTO Panel decision on GATT XXI and other developments since 2019.
Part II Chapter 6 “Anti-dumping measures”	Korea – Pneumatic Valves (DS504) Appellate Body Report	This column analyzes and explains the Panel Report and Appellate Body Report (adopted Sep 2019), which approved the core claims of Japan and determined that Korea’s AD measures were inconsistent with the WTO Agreements, in light of the international disciplines on anti-dumping measures (the concept of price comparability, in particular)
Part II Chapter 7 “Subsidies and Countervailing Measures”	Discussions for Strengthening Discipline on Subsidies	Showing recent international actions for strengthening discipline on industrial subsidies, such as the Trilateral Meeting of Trade Ministers held in January 2020, this column explores problems being considered including the issues of problematic types of subsidy, state-owned enterprises, and transparency of subsidies.

Part and Chapter	Title	Outline
Part II Chapter 7 "Subsidies and Countervailing Measures"	Aibus (DS316) & Bowling (DS353) disputes and subsidies disciplines	Introduction of the recent panel/AB decisions on DS316/353, having been disputed for years, in order to analyze the recent trend of interpretation and application of the SMC Agreement
Part II Chapter 13 "Intellectual property"	Dispute about Forced technology transfer	This column provides trends and problems in each country, caused by forced technology transfer that expressed concern in the Joint statement on Trilateral Meeting of the Trade Ministers of the US, Japan, and EU in Paris(May,2018)
Part II Chapter 15 "Unilateral measures"	Full Application of Title III of the Helms-Burton Act	Title III of the Helms-Burton Act, which authorizes U.S. nationals who hold claim to properties confiscated by the Cuban Government to file suit in the United States, came into effect in May 2019. This column provides an overview of the content of Title III of the Helms-Burton Act and the reactions of foreign governments.
Part II Chapter 17 "Dispute Settlement"	WTO Appellate Body Issue	This column addresses the issue of the Appellate Body that stopped functioning since December 2019 and introduces the United States' long-standing criticisms and discussions at the WTO over the proposals for the Appellate Body reform as well as the discussion regarding the interim arrangement during the current impasse.

2. METI's Priorities

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

- Considering the situation in which the Appellate Body has not worked, we will promote discussions among WTO member toward the reform of the permanent WTO dispute settlement. As for individual cases, we try to resolve the issue through bilateral / multilateral discussions and WTO dispute settlement.
- Engage in rulemaking for ensuring level playing field through various fora such as the WTO and the Japan-US-EU Trilateral Ministerial Meeting
- We continue to monitor and follow up to trade and investment measures which are being taken by each country to deal with COVID-19 as a member of the WTO and G20, and strengthen the function of the WTO through WTO reforms.

METI's Priority Cases listed in the 2020 Report

- A new measures by India(Safeguard measure on Single mode Optical Fiber) is listed.

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

- Korea : Measures Affecting Trade in Commercial Vessels (Consultation) (collaborate with the MLIT)
- Korea: Sunset Review Administration on Stainless Steel Bars from Japan (panel)
- India : Tariff Treatment on Certain Goods (panel)
- India: The Safeguard Measures on Hot-Rolled Steel Products (Appellate Body)

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

- China : Subsidies on Aluminum
- China : Cybersecurity Law
- China : Inappropriate Regulation/Implementation of AD Measures
- US : Import Adjustments based on the Section 232 of the Trade Expansion Act of 1962
- US : Sunset Review Practice (Term-end Review for the Continuation of AD Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products

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

- US : Complete Abolition of Zeroing
- Korea: The AD Duty Measures on Pneumatic Valve
- 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

- China : Foreign Investment Law
- China : Draft of Export Control Bill
- Viet Nam : Regulation for Import of Automobiles
- India : Safeguard investigation on Single mode Optical Fiber **[NEW]**






※ METI also 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.

Progress since last year







- The progress from the 2019 edition is as follows.

2019 Priorities



(1) Issues already referred to the WTO Dispute Settlement Mechanism

-  Korea : Measures Affecting Trade in Commercial Vessels (collaborate with the MLIT)
-  Korea : Sunset Review Administration on Stainless Steel Bars
-  Korea : The AD Duty Measures on Pneumatic Valve
-  India : Tariff Treatment on Certain Goods
-  India : The Safeguard Measures on Hot-Rolled Steel Products



(2) Issues to be resolved through bilateral/multilateral consultation with possible use of the WTO dispute settlement mechanism

-  China : Subsidies on Aluminum
-  China : Cybersecurity Law
-  China : Inappropriate Regulation/Implementation of AD Measures
-  US : Import Adjustments based on the Section 232
-  US : Inappropriate Long-Standing AD Duty Measures
-  Viet Nam : Regulation for Import of Automobiles ⇒ Improvement

(3) Issues on which Japan urges Prompt Implementation of the WTO Recommendations





-  US : Complete Abolition of Zeroing
-  Brazil : Discriminatory Preferential Taxation

(4) Issues in which Japan gives special attention because details of measures are still unclear and potential impacts on trade and investment are relatively large







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2020 Priorities




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-  China : Foreign Investment Law
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 **India : Safeguard investigation on Single mode Optical Fibrer**

Individual (NEW) Countries : Measures such as quantitative restrictions and government procurement regarding COVID-19 (NEW)

3. Reference

Various Measures and WTO Rules for COVID-19^①

- Since the global spread of the COVID-19, various measures have been taken in various countries around the world, such as export restrictions on medical products and support to affected industries. Measures pretending Legitimate measures must not distort the competitions and market functions that underlie the multilateral free trade system.

(1) quantitative restrictions

- According to the WTO, 80 countries and regions have conducted quantitative restrictions on medical supplies. (as of April 23)
- GATT generally put a ban on the quantitative restrictions, but the measures which fall under exemptions like GATT Article XI:2(a) "export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party" and Article XX(b) (measures) "necessary to protect human, animal or plant life or health" are not inconsistent with the agreement.
- It is necessary to keep a close watch to prevent WTO-inconsistent measures from being implemented and continued unnecessarily on the pretext of the legitimacy of the purpose.

(2) Tariffs

- At the moment, there are actions to reduce tariffs on the medical supplies necessary, but there are no measures which are inconsistent with the WTO rules.
- As tariffs are a typical trade barrier, many countries raised tariff rates to protect domestic industries during the economic crisis following the Lehman Shock.
- Some countries are beginning to take similar measures, although they are within the bound rates. In the future, in case the ongoing crisis turns into an economic crisis, it is necessary to keep a close watch whether the action which will aim to protect domestic industries will spread in the same way as after the Lehman Shock.

Various Measures and WTO Rules for COVID-19②

(3) Subsidies

- In the 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, it is necessary to keep a close watch even on emergency measures implemented to deal with the novel coronavirus pandemic 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.

(4) Trade-Related Investment Measures

- There are discussions in various countries to strengthen investment screening because of the protection of important industries, including ensuring health, and the caution against the risk of acquisition of foreign companies from important industries during economic downturns such as stock prices.
- There are discussions in various countries to strengthen investment screening for the protection of important industries, including ensuring health, and the caution against the risk of acquisition of foreign companies from important industries during economic downturns such as stock prices.
- The WTO Agreements do not yet cover general rules concerning investment, but GATS regulates the provision of services through foreign investment. 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 prohibition of restrictions on market access (GATS Article XVI) and prohibition of discrimination between domestic and foreign services (GATS Article XVII). Such measures may be justified when they fall under general exceptions under GATS Article XIV ((a) measures necessary to maintain public order, (b) measures necessary to protect human life and health, etc.).
- In the investment agreements, domestic treatment obligations and fair and equitable treatment obligations to foreign companies after investment are generally guaranteed, so it is necessary to pay attention to the consistency with such international rules

Various Measures and WTO Rules for COVID-19③

(5) Protection of Intellectual Property

- At the moment, 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.

(6) Government Procurement

- 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.
- 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.