

SUMMARY

“2022 Report on Compliance by Major Trading Partners with Trade Agreements – WTO, EPA/FTA, and IIA-” and “METI Priorities Based on the 2022 Report”

June 2022

**Multilateral Trade System Department
Trade Policy Bureau**

Overview

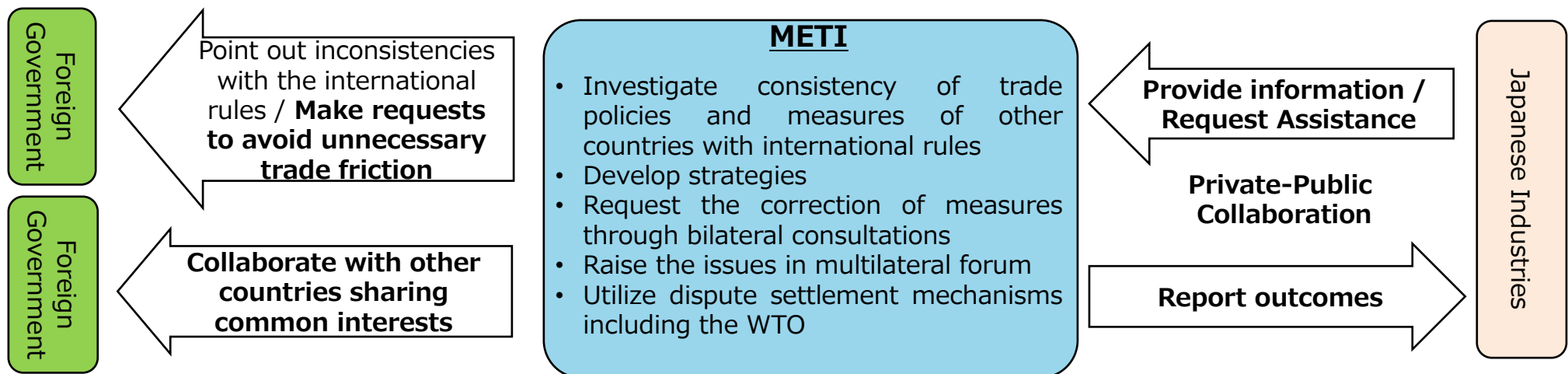
- The Report is a gathered of foreign government trade measures that are questioned in light of the WTO agreements and other international rules based on information from industry, in order to highlight the importance of the rules-based multilateral system.
- The Report has been published every year since 1992 (the 2022 Report is the 31th edition). **The 2022 Report was published on June 27, 2022.**
- **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.

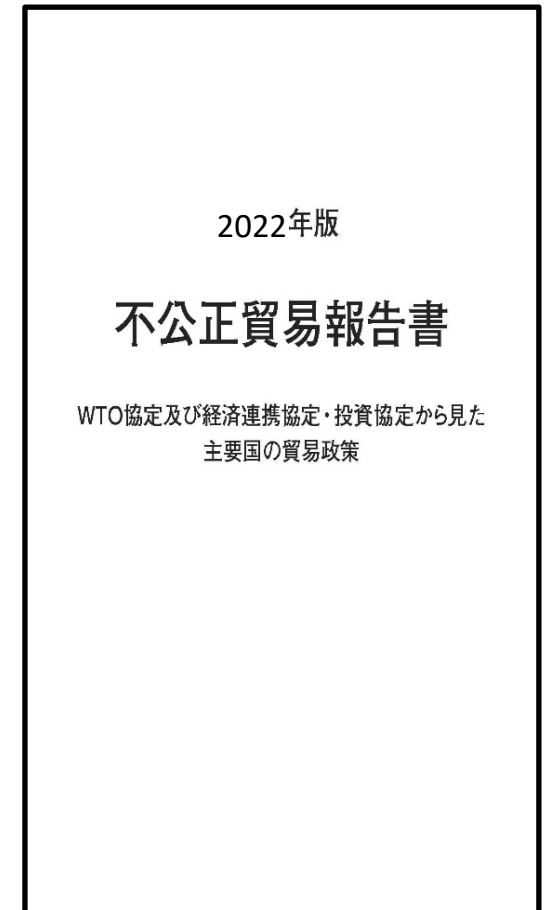


1. Report on Compliance by Major Trading Partners with Trade Agreements

Structure of the 2022 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 on WTO agreements; and Part III gives a brief summary of international rules related to EPA/FTA.

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 150 policies and measures of 20 countries/regions (including China, ASEAN countries, the US, the EU·UK, 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 CPTPP
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 (10 cases)

(※In general, Measures are published as of end of February 2022)

Country	Measure	Outline
Part I Chapter 1 "China"	The Data Security Law	In September 2021, the Data Security Law became effective. The Law regulates all data processing activities, including collection, storage, usage, processing, transfer, offer, and disclosure, in China and stipulates the management and supervision of their security. Since many unclear articles regarding the definition of terms etc. are founded in the Law, foreign business operators may be placed in de facto less favorable competitive conditions than businesses who operate within China, which may violate national treatment obligations stipulated in Article 17 of GATS as well as Article 8.4 and 10.3 of the RCEP Agreement.
Part I Chapter 1 "China"	The Personal Information Protection Law	In November 2021, the Personal Information Protection Law that is China's first comprehensive personal information law became effective. While the Law applies to certain activities that process domestic personal information outside of China, there are many unclear articles regarding the scope and standards of regulations etc.. In addition, under the Law, the obligation to store data within China and the restrictions on cross-border transfers for specific businesses are stipulated. Due to such regulations if foreign businesses are placed in de facto less favorable competitive conditions than businesses who operate within China, it may violate national treatment obligations stipulated in Article 17 of GATS as well as Article 8.4 and 10.3 of the RCEP Agreement.
Part I Chapter 1 "China"	Issuance of Anti-Suit Injunctions by Chinese courts in standard essential patent lawsuits	An anti-suit injunction ("ASI") is an order that prohibits a party from requesting for enforcement of a judgment, filing a suit or other legal proceedings in a foreign court. In August 2020, the Supreme People's Court of China issued an ASI in a case on standard essential patent. Following this case, lower Chinese courts issued several ASIs, including ASIs that prohibited not only to pursue pending cases, but also to file new lawsuits in foreign courts. In February 2022, the EU requested consultations in the WTO on China's ASI measures. Japan will pay close attention to this case, including the discussions relating to the measures' consistency with the TRIPS Agreement.
Part I Chapter 1 "China"	Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures	In January 2021, Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures came into effect. This rule enables the government to take measures to counteract the impact on China caused by unjustified extra-territorial application of foreign legislation and other measures for the purpose of safeguarding national sovereignty, security and development interests, etc. This rule may make a person or other organization in third countries caught in a dilemma between the risk of non-compliance with the foreign legislation and other measures and the risk of claim for compensation in China. On the other hand, a citizen, legal person or other organization of China may obtain exemption from compliance with a prohibition order and be exempted from liability for damages, which may constitute a violation of the national treatment obligation stipulated in Article 17 of GATS.

Newly Listed Cases (10 cases)

Country	Measure	Outline
Part I Chapter 1 "China"	Anti-foreign Sanctions Law	In June 2021, Anti-foreign Sanctions Law came into effect. This law stipulates that where foreign countries employ discriminatory restrictive measures against China's citizens, China has the right to employ corresponding countermeasures. However, specific countermeasures taken by China against other countries may violate the prohibition of unilateral measures insofar as China considers measures taken by other countries to be inconsistent with the WTO Agreement. In addition, depending on the content of China's countermeasures to be implemented, such countermeasures may be inconsistent with substantive disciplines of the WTO Agreement.
Part I Chapter 1 "China"	Provisions on the Unreliable Entity List	In September 2020, Provisions on the Unreliable Entity List came into effect. These provisions enable the government to adopt measures for the purpose of safeguarding national sovereignty, security and development interests etc.. The provisions are vague, and what measures will actually be taken is also not clear. Therefore, since the predictability regarding the administration of those provisions is significantly low, these provisions may be inconsistent with Article X:3(a) of the GATT 1994, which requires the administration of measures in a uniform, impartial, and reasonable manner.
Part I Chapter 2 "Vietnam"	The Draft Decree on Personal Data Protection	In February 2021, the Vietnamese government published the Draft Decree on Personal Data Protection pursuant to the Cybersecurity Law. The Draft Decree stipulates that, in principle, the personal data of Vietnamese citizens will be transferred out of Vietnam if several conditions, including the domestic storage of original data, are fulfilled. Depending on the operation of the decree, foreign business operators may be placed in de facto less favorable competitive conditions than Vietnamese business operators, which may violate Article 17 of GATS as well as Articles 9.4 and 10.3 of the CPTPP Agreement.

Newly Listed Cases (10 cases)

Country	Measure	Outline
Part I Chapter 2 "Indonesia"	Safeguard Measures on Apparel Products	In November 2021, Indonesia started imposing safeguard measure on apparel products (cloths and fasion accessories) (duration: 3 years (1st year: 19,260-63,000 Rupia per piece, 2nd year: 18,297-59,850 Rupia per piece, 3rd year: 17,382-56,858 Rupia per piece). Inappropriate finding of causation/injury is likely to be inconsistent with Article 4.2(b) of Safeguards Agreement, which requires demonstration of causation based on positive evidence.
Part I Chapter 3 "US"	A Bill on Tax Incentives on Electric Vehicles	The US Congress is considering a legislation that would include electric vehicle (EV) tax incentives. The bill would provide tax credits for the purchase of EVs that meet requirements such as installation of U.S. batteries (domestic production requirement) and assembly in unionized U.S. plants (union requirement). There is also a provision that such tax incentives will not apply to imported vehicles after 2027. Such tax incentives may be inconsistent with Article 3.4 of GATT and Article 3.1(b) of the SCM Agreement.
Part I Chapter 4 "EU· United Kingdom"	Safeguard Measures on Steel Products	At the time of Brexit in January 2021, the UK "transited" the safeguard measures on steel products by EU. Among 26 items subject to the EU's measures, 19 items have been subject to the transited measures with tariff quotas and additional tarrifs until June 30, 2021. In July 2021, the UK extended the measures upon 15 items (3 years for 10 items and 1 year for 5 items). Since there is no provision on "transiting" other WTO Member's safeguard measures, the UK's measures without proper investigation is inconsistent with the WTO Agreement.

Columns

- 9 columns are posted.
- We conducted deep analysis on recent topics such as “The 30-year History of the Report”, “The 20th Anniversary of China’s accession to the WTO and the Trade Policy Review of China”, “Global Trends Concerning Corporate Supply Chains and Human Rights” and “Countervailing Duty Measures in Japan”, “Trilateral Meetings of Trade Ministers”.

Part and Chapter	Title	Outline
(PREFACE)	The 30-year History of the Report	Since its first report in 1992, the Report on Compliance by Major Trading Partners with Trade Agreements has continuously presented the concept of "rule-oriented" approach, exploring the notion of "fairness", in order to solve trade conflicts dispassionately and constructively. This column, looking back the original aim of its start, reviews the 30-year history of this report, dividing its history into four periods.
Part I Chapter 1 “China”	The 20th Anniversary of China’s accession to the WTO and the Trade Policy Review of China	In October 2021, which marks 20 years since China’s accession to the WTO, the review of the trade policies Mechanism (TPRM) of China took place at the WTO. This column overviews the main points that discussed among WTO Members.
Part II “Overview of the WTO Agreements”	COVID-19 and Trade	This column introduces progress regarding COVID-19 and trade in the international field, including the WTO(e.g., the Ottawa Group's Trade and Health Initiative, etc.) and provides an overview of COVID-19 trade related measures' consistency with the WTO rules.
Part II “Overview of the WTO Agreements”	Trade and Environment: Overview and WTO Consistency of Carbon Border Adjustment Measures	As the EU published a proposal of carbon border adjustment mechanism in July 2021, the article describes a summary of EU's proposal and the recent developments of international discussion regarding measures to address climate change including carbon border adjustment measures, also revisiting relevant issues under WTO rules.

Columns (continued)

Part and Chapter	Title	Outline
Part II “Overview of the WTO Agreements”	Global Trends Concerning Corporate Supply Chains and Human Rights	This column reviews global trends in regulations that require businesses to respect human rights, which are being implemented by a growing number of countries, especially in the EU and the US. It also introduces the Japanese government's efforts to promote corporate initiatives to respect human rights in their supply chains.
Part II Chapter 1 “Most-Favored-Nation Treatment Principle”	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 recent development of discussions as well as the history and change of the role of S&D.
Part II Chapter 7 “Subsidies and Countervailing Measures”	Challenges and Actions to Improve Access to Countervailing Duty Measures in Japan	This column introduces The Subcommittee on Trade Remedy Measures under the Industrial Structure Council has now put together the recommendations about Challenges and Actions to Improve Access to Countervailing Duty Measures in Japan, after discussing the challenges involved and directions for action based on the experts' opinions.
Part II Chapter 7 “Subsidies and Countervailing Measures”	Trilateral Meetings of Trade Ministers of Japan, the U.S., and the EU	This column introduces the series of the Trilateral Meetings of the Trade Ministers of Japan, the U.S. and the EU. The first meeting was convened in December 2017, seeking to enhance cooperation to address market-distorting practices by third countries. Themes discussed so far includes strengthening rules on industrial subsidies and state-owned enterprises and addressing forced technology transfer.
Part II Chapter 17 “Dispute Settlement Procedures under WTO”	WTO Appellate Body Issue	This column addresses the issue of the Appellate Body that has suspended its functions 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 Multi-Party Interim Appeal Arbitration Arrangement (MPIA), and other recent movements of major countries.

2. METI's Priorities

Summary of METI Priorities Based on the 2022 Report on Compliance by Major Trading Partners with Trade Agreements (published on June 27, 2022)

- The Report has consistently presented, for 30 years since its first issuance, the concept of “rule-oriented”. Japan has made efforts to develop new trade-related rules, and actively used the WTO dispute settlement procedures to eliminate adverse effects brought by the rule-inconsistent measures by trade partners.
- The WTO dispute settlement system is facing the crisis where rule-based governance for international trade would not function well as the WTO Appellate Body has ceased functioning with all the members being vacant since December 2019, and “appeal-into-the void” cases have been cumulated where appeals were made despite that the appeal procedures cannot progress.
- While Japan continues to make maximum efforts towards restoring the functions of the WTO dispute settlement system, the METI will also advance the considerations and implementation of new approaches built upon the Interim Report of the Special Task-Force.
- There is a concern that competition base or market function, on which multilateral free trade system is based, would lose their function due to market-distorting measures by some emerging economies.
- We further promote efforts, including rule-making, to ensure level playing field through various fora such as the WTO and the Japan-US-EU Trilateral Ministerial Meeting, and thereby sustain a “free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment”.

METI's Priority Cases listed in the 2022 Report

- ASI by Chinese courts in standard essential patent lawsuits is listed as a new issue to be resolved through bilateral and multilateral consultations with possible use of the WTO DS Mechanism.
- The US's A Bill on Tax Incentives on Electric Vehicles , EU's A Draft Regulation on a Carbon Border Adjustment Mechanism are also added to the list.

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

- China: Anti-Dumping Measures on Stainless Products (panel)
- Korea : Measures Affecting Trade in Commercial Vessels (Consultation) (collaborate with the MLIT)
- Korea: Sunset Review Administration on Stainless Steel Bars from Japan (Appellate Body)
- 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 : Inappropriate Application of AD Measures
- China: Issuance of Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits <New>
- US : Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962
- US and Emerging Economies : Sunset Review Practice (Term-end Review for the Continuation of AD Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products

※ As for the following issues, METI will proceed with comprehensive policy measures, including rule-making, to ensure a level playing field, in addition to the efforts to address these issues through the WTO and bilateral consultations with possible use of the WTO DS Mechanism based on the current WTO rules.

- China : Industrial Subsidies
- China: Regulations related to Cybersecurity and Data
- China: Forced Technology Transfer
- Vietnam: Cybersecurity Law / the Draft Decree on Personal Data Protection

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

- 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: Export Control Law
- The United States: Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping
- The United States: A Bill on Tax Incentives on Electric Vehicles <New>
- EU: A Draft Regulation on a Carbon Border Adjustment Mechanism (CBAM) <New>
- India: Personal Data Protection Bill / Draft National e-Commerce Policy
- India: Inappropriate Application of Trade Remedy Measures









Progress since last year

2021 Priorities


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

-  China : AD Measures on Stainless Products
-  Korea : Measures Affecting Trade in Commercial Vessels
(collaborate with the MLIT)
-  Korea : Sunset Review Administration on Stainless Steel Bars
-  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 : Industrial Subsidies
-  China : Cybersecurity Law and relevant regulations
-  China : Forced Technology Transfer
-  China : Inappropriate Application of AD Measures
-  Vietnam : Cybersecurity Law etc.
-  The Philippines : SG Measures on Automobiles ⇒Improvement
-  US : Import Adjustments based on the Section 232
-  US and Emerging Economies : Inappropriate Long-Standing AD Duty Measures

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






-  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





-  China : Foreign Investment Law
-  China : Export Control Law
-  US : Zeroing
-  India : Personal Data Protection Bill etc.
-  India : Inappropriate Application of Trade Remedy Measures

2022 Priorities





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

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

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

-  China : Inappropriate Application of AD Measures
-  **China: Issuance of Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits** <New>
-  US : Import Adjustments based on the Section 232
-  US and Emerging Economies : Inappropriate Long-Standing AD Duty Measures







※ issues to be resolved with comprehensive policy measures for ensuring level-playing field, including rule-making, in addition to WTO and other bilateral consultations.

-  China : Industrial Subsidies
-  China: Regulations related to Cybersecurity and Data
-  China: Forced Technology Transfer
-  Vietnam: Cybersecurity Law / the Draft Decree on Personal Data Protection

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

-  Brazil : Discriminatory Preferential Taxation

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

-  China: Export Control Law
-  US: Zeroing
-  **US: A Bill on Tax Incentives on Electric Vehicles** <New>
-  **EU: A Draft Regulation on a Carbon Border Adjustment Mechanism (CBAM)** <New>
-  India: Personal Data Protection Bill / Draft National e-Commerce Policy
-  India: Inappropriate Application of Trade Remedy Measures

Response to Issues Related to WTO DS System

- The DS procedures is one of the central pillars of WTO. The Appellate Body (AB), however, has suspended its function with all the members being vacant since Dec 2019. Since then, there have been several cases where appeals were made despite that the appeal procedure cannot progress – so called “appeal into the void”. Consequently, the dispute settlement procedure for these cases is left in a state of limbo.
- There are two on-going cases at Panel of which Japan is the concerned Member – India: Tariff Treatment on Certain Goods in the ICT Sector; and China: Anti-Dumping Measures on Stainless Products. As such, these cases may be appealed into the void.
- If “appeal into the void” blocks an opportunity for DSB to bring the measure at issue into conformity with the WTO rules, this poses a crisis that rules-based governance in the international trade system would not function well.
- Japan has been endeavoring to restore the AB function and reform the DS system in an aim to address the issues. But it is difficult to predict that the outcome of such efforts will be achieved in a short period of time.
- EU and several other Members, on the other hand, has taken alternative measures, including establishing the “Multi-Party Interim Appeal Arbitration Arrangement” (MPIA) and institutionalizing counter measure against appeal-into-the void.
- Against such backdrop, Japan also needs to consider interim and alternative measure. METI established, in this view, the Special Task-Force composed of relevant experts in May. The Interim Report of the Task-Force was issued on 27th June. Based on the Interim Report, it is expected to further consider and implement approaches that complement the WTO.

Summary of Interim Report – Japan’s Policy Response in a Critical Stage

- **Pose a crisis where rule-based governance in the international trade system would not function.**
 - ⇒ Need to make maximum efforts to reform and restore the WTO DS system, and thereby to restore and develop the international economic order.
- On the other hand, it is difficult to predict the outcome of such efforts will be achieved in a short period of time.
 - ⇒ **Need to restore “rule of law”, including an approach to complement the WTO with new ideas.**

Suggested Policy Response 1: Participating in MPIA

It is expected the Panel report on China’s measure will be issued. In order to avoid the possibility of applying “appeal-into-the-void” by China, joining and utilizing the MPIA would be an effective and practical option. That would also bring an additional benefit of encouraging the WTO members concerned to engage in consultations for mutually satisfactory solutions.

Suggested Policy Response 2: Use of Arbitration Process other than MPIA

Use of the arbitration process other than the MPIA would also be effective when seeking solutions with non-MPIA members. However, this option would not be possible when the opponent WTO members reject it. As such, the use of the MPIA would be more effective and practical vis-à-vis the MPIA members.

Suggested policy Response 3: Counter Measures against Appeal-into-the-Void

Built upon the special task-force report, need to further consider a concrete institutional framework for applying counter measures against appeal-into-the-void with a view to pressing the WTO members concerned to engage in the MPIA and the arbitration process.