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

The 2022 Report on Compliance by Major Trading Partners with Trade Agreements, namely, WTO, EPA/FTA and IIA – hereinafter referred to as "the Report" - was published today by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures. The Report points out a wide range of trade policies and measures of major trading partners that are questionable in light of the WTO Agreements and other international rules.

The Report has consistently presented, for 30 years since its first issuance, the underlying concept of "rule-oriented". Japan has made a series of efforts with the aim of developing a new trade-related rules as well as actively utilizing the WTO dispute settlement system to eliminate disadvantages caused by other countries' measures that are found inconsistent with international rules, including through 28 consultations requested by Japan.

As noted in the Report, the WTO dispute settlement system mechanism not only recommends corrections to measures that are found inconsistent with the agreements, but also contains procedures for monitoring implementation of recommendations and applying counter measures in the event of failure of implementation thereof. In this way, WTO recommendations are implemented at a high rate, and thereby contribute to maintaining the effectiveness of the WTO rules. Since the establishment of the WTO in 1995, the number of WTO cases has reached 612 (As of June 27, 2022).

The WTO dispute settlement system, however, 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. Under such a situation, 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 referred in the "Reference 2" below.

Furthermore, in recent years, there has been increasing concern that market-distorting measures by some emerging countries could present a risk to the foundation of the multilateral trading system, including fair competition and market functions. METI will further proceed with comprehensive policy and measures, including rule-making through Japan-U.S.-Europe Trilateral Trade Ministers' Meetings, the WTO, and other fora, in order to ensure a level playing field and thereby deliver a "free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment".

From this point of view, METI will prioritize addressing the following cases based on the

policies and measures as specified in the 2022 Report. The details of each case are illustrated 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.

- China: Anti-Dumping Measures on Stainless Products 【Panel】
- 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) 【Appellate Body】
- India: Tariff Treatment on Certain Goods in the ICT Sector 【Panel】
- India: Safeguard Measures on Hot-Rolled Steel Products【Appellate Body】

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

(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: Inappropriate Application of AD Measures
- China: Issuance of Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits【New】
- The United States: Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962
- The United States and Emerging Economies: Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products

* As for the following issues, METI will proceed with 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

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.

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

(4) Issues for which close attention needs to be paid due to significant effects 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 by countries where measures are applied through approaches by Japan, etc. However, METI will continue to pay close attention to the issues as they may have a significant effect on trade and investment depending on the system design and implementation status of the relevant responses.

In addition, 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 any measures that are inconsistent with the WTO Agreements from being implemented and/or continued unnecessarily on the pretext of the legitimacy of the purpose.

- 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

(Reference 1) Details of the Individual Trade Policies and Measures Listed in the METI Priorities Based on the 2022 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2022 METI Priorities are as follows.

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

- **China: Anti-Dumping Measures on Stainless Products**

In July 2018, China initiated an AD investigation on stainless steel slabs, hot rolled stainless steel coils and stainless-steel plates from Japan, the EU, Indonesia and the Republic of Korea. In July 2019, China made a final determination to impose AD duties on the import of such products, recognizing dumped imports of such products as well as the injury to the domestic industry caused by the dumped imports.

The products under investigation (stainless slabs, and hot rolled plates and coils) include a variety of non-interchangeable products with different physical characteristics, prices, sales channels and uses. However, China failed to substantially analyze the price effect of the covered imports on the domestic price in a way consistent with Article 3.2 of the AD Agreement, since it only pointed out the decreasing trends of the averaged prices of these various products.

In addition, China cumulatively assessed the effects caused by imports from all countries/regions subject to the investigation (Japan, EU, Indonesia and South Korea). While such cumulative assessments, if utilized, are required to be based on the appropriate conditions of competition between the subject countries, China cumulatively assessed the various products from the four countries/region, each with different prices and characteristics, without providing adequate justification for such an action, which is inconsistent with Article 3.3 of the AD Agreement.

Japan requested consultations with China pursuant to the WTO Agreement in June 2021. However, the issues have not been resolved. Japan thus requested the establishment of a panel in August 2021 and it was established in September 2021.

Japan will continue to request that China withdraw this measure.

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

Since October 2015, Korea has been using public financial support by taking measures to support its domestic shipbuilding industry, which includes: (1) financial support by a public financial institution for a domestic shipbuilder (Daewoo Shipbuilding & Marine Engineering Co., Ltd.); (2) providing refund guarantees supporting orders placed with shipbuilders; (3) support for purchasing new commercial vessels for shipping companies through the New Shipbuilding Program (public-private fund); and (4) other measures such as subsidies for replacing current vessels with eco-ships (subsidizing a part of the price of

new ship). As results of these public financial support measures, Korean companies were able to repeatedly make low cost orders for new ships, leading to a substantial drop in ship prices in the international markets. In addition, Japan's market share has fallen substantially due to lost orders and due to Japanese companies giving up on competing in the market because of the decline of the market ship price. These measures may be inconsistent with Article 5 of the Agreement on Subsidies and Countervailing Measures (ASCM). The public financial support likely distort the market and hamper early resolution of the excess supply capacity issues in the shipbuilding industry. Further, , certain measures may be regarded as export subsidies prohibited under Article 3 of the ASCM.

Japan requested that Korea rapidly abolish the measures by pointing out the problem on multiple occasions such 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 no corrective action has been taken to date. Consequently, Japan requested bilateral consultations based on the WTO Agreements in November 2018 and in January 2020 and is consulting with Korea. Japan also requested that Korea explain its public financial support measures to ensure transparency in November 2021 and in April 2022, at the Council Working Party No.6 on Shipbuilding of the OECD.

Japan will continue to request that Korea abolish these measures.

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

The Korean government initiated a third 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 only if 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 Korean domestic products and products subject to the investigation that are imported from India are mostly for general use purposes. Products imported from Japan are not in a competitive relationship that causes serious injury to Korean products, and there is a large number of low-priced imports from China etc. in the Korean market. Under such circumstances, there is a deficiency in the Korean decision that there is a possibility of recurrence of injury to Korean domestic industry due to the elimination of AD duties on products from Japan. Therefore, this decision is inconsistent with Article 11.3 of the AD Agreement.

. Since the Korean government has not abolished the duties and no improvement was observed despite that Japan had repeatedly asked Korea to correct the measures bilaterally and at the WTO AD Committee, Japan requested that Korea 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). The panel issued a report in November 2020 and found that there is a deficiency in the Korean decision that there is a possibility of recurrence of injury to Korean domestic industry due to the elimination of AD duties on products from Japan, and that the decision is inconsistent with Article 11.3 of AD Agreement, because Korean authorities did not properly take into account the facts that products from Japan are considerably more expensive than Korean products and that there is a large number of low-priced imports from China etc.. In January 2021, Korea appealed to the WTO Appellate Body. The Korean government initiated a fourth sunset review in January 2020, and decided on a three-year extension of imposition of duties in January 2021.Japan will continue to advance the necessary procedures so that the case will be solved appropriately in accordance with WTO rules, and demand that Korea promptly and faithfully correct its measures in accordance with the recommendations of the report to prevent the unfair tariff burdens on Japanese companies from continuing.

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

In July 2014, the Government of India, raised the tariff rate for some IT products (HS code: 8517.62-90 and 8517.69-90 parts of telecommunication devices) to 10% which were set as 0% in India's Concession Schedule under the WTO Agreement . Thereafter, in July 2017, it raised the tariff rates for ink cartridges（HS code:8443.9951 and 8443.9952）, mobile phones (HS code:8517.1210 and 8517.1290)[1] , base station（HS code:8517.6100） and parts of telephone/telecommunication devices（HS code:8517.7090）. Furthermore, in December 2017, it publicly issued a notification to raise the tariff rate for mobile phones to 15%. In addition, in February 2018, it raised the tariff rate for mobile phones and parts of telecommunication devices（HS code:8517.6290）to 20%. in April 2018, also raised the tariff rate for mobile phone printed circuit board assemblies（PCBA）（HS code:8517.7010）to 10% and in February 2020, further to 20%. In January 2022[2], it also raised the tariff rate for parts of telecommunication devices from 15% to 20% through the amendment of the tariff schedule of India.

Since India raised the effective tariff rates for products such as mobile phones, parts of telephone/telecommunication devices and base stations for which it has specified as non-leviable based on 6-digit HS code, this is in a clear violation of Article II of the GATT.

Japan repeatedly expressed concerns through the WTO Market Access Committee, the

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

[2] In January 2022, Through the amendment of the tariff schedule of India、telephones for other wireless networks, other than cellular networks（HS8517.12）was classified into HS8517.1300（Smartphones、the tariff rate 20%）and HS8517.1400（Other telephones for cellular networks or for other wireless networks、the tariff rate20%）, populated, loaded or stuffed printed circuit boards（HS8517.7010）was classified intoHS8517.7910（Populated, loaded or stuffed printed circuit boards、the tariff rate 20%）, (a) All goods other than the parts of cellular mobile phones and (b) Inputs or sub-parts for use in manufacture of parts mentioned at (a)（HS8517.7090）was classified into HS8517.7100（Aerials and aerial reflectors of all kinds; parts suitable for use therewith、the tariff rate 20%）andHS8517.7990（Other、the tariff rate 15%）.

Information Technology Agreement (ITA) Committee, the WTO Council on Trade in Goods, the Embassy of Japan in India, etc., and ~~has~~ requested that the Government of India provide a detailed explanation and promptly withdraw the measures. However, the Government of India continues to provide the same response that "those products did not exist when the ITA was concluded, 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.

In May 2019 Japan requested that the Government of India hold consultations based on the WTO Agreements and pursued the withdrawal of the measures. However, as the issue was not resolved through the consultations, in March 2020, Japan requested examinations by a panel and in July 2020, the panel was established. In June and July 2020, EU and Chinese Taipei also requested establishment of a panel and the panel was established, respectively. Japan will continue to pursue the withdrawal of the measures.

- **India: 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 to impose 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 clearly determine and demonstrate 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 facts, the Indian authority cannot be seen 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 for imposing safeguard measures. In addition, there were defects in the content of the notification to the WTO and thus the consistency of its procedure to the WTO Agreements is questionable.

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

The Chinese government initiated 292 AD investigations between 1995 and the end of June 2021, among which Japanese products were included as the subject product in 53 cases. Among these 53 cases, AD measures were applied in 44 cases. AD duties remain in force in 21 cases as of the end of December 2021. China has both the largest number of country-based AD investigations and applications 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 the Chinese investigation authority and requesting that it improve the situation using various methods such as submission of written opinions to the Chinese investigation authority, consultations with Chinese government officials, participation in public hearings and attendance in WTO AD Committee meetings, and others. Furthermore, Japan has been cooperating with the U.S. and the EU which have shared the concerns about Chinese AD investigation procedures using methods 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.

- **China: Issuance of Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits**

An Anti-Suit Injunction ("ASI") is an order issued by a court that prohibits a party from requesting for enforcement of a judgment, filing a suit or other legal proceedings in a foreign court when handling parallel litigations in different countries, in which substantially identical disputes are pending. In August 2020, the Supreme People's Court of China issued an ASI in a lawsuit relating to a standard essential patent for mobile communication technology. After that, lower Chinese courts have issued ASIs in lawsuits relating to standard essential patents for mobile communications technology. Some ASIs prohibited not only to pursuit legal proceedings pending, but also to file new lawsuits in foreign courts.

In February 2022, the EU requested consultations on China's ASI measures, arguing that ASIs are inconsistent with the TRIPS Agreement and other agreements.

Japan will pay close attention to the issuance of any anti-suit injunctions in China and appropriately respond to them to ensure that they are operated in a manner consistent with the Agreements, if any, in cooperation with the EU and other members.

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

(Steel / Aluminum)

In March 2018, the U.S. commenced to impose 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").

Tariffs were abolished for some countries (country-based exemptions) (imports from some countries, such as South Korea, are subject to absolute export quotas as an alternative to receiving country-based exemptions.).

In October 2021, it was announced that steel and aluminum from the EU would be partially exempted from additional tariffs in exchange for the introduction of tariff quotas, and that additional tariffs would be removed for derivative products. Accordingly, the tariff quotas have been in place since January 2022 (secondary rates of 25% for steel and 10% for aluminum tariffs are maintained).In November 2021, Japan started consultations with the US on the additional duties on imports of steel and aluminum from Japan based on Section 232. In February 2022, the US announced that it will implement a tariff rate quota on steel imports from Japan and will remove the tariffs on derivative products. However, steel products from Japan entering the US above-quota remains to be subject to the additional duty of 25 %, and the additional duty of 10% based on Section 232 continues to apply on aluminum imports from Japan. 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, upon a request from U.S. companies (product-based exemptions).

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 the WTO to the effect that Japan will reserve the right to take rebalancing measures against these tariffs imposed by the U.S.

Japan will continue to urge the U.S. towards the complete removal of the Section 232 tariffs.

(Automobiles and Auto Parts)

Concerning automobiles and auto parts, an investigation report including recommendations to the President from the Secretary of Commerce was submitted in February 2019. In accordance with Presidential proclamations issued on May 17, 2019, the President instructed the USTR to negotiate with the EU and Japan to address national security threats on the grounds that automobile imports from those countries threat to impair the U.S. national security. However, although November 2019, was the deadline, the U.S. has not yet made any decisions on appropriate measures.

In the joint statement by Japan and the U.S. in September 2018, it was confirmed that Japan and the U.S. would “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 meant that additional tariffs under Section 232 would not be imposed on Japanese automobiles and auto parts.

In November 2018, the U.S., Canada and Mexico signed the USMCA Agreement. At the same time, the Side Letters concerning automobiles and autoparts, were exchanged between the U.S. and Mexico and between the U.S. and Canada. In the Side Letters, an agreement was reached that if the U.S. imposes a measure pursuant to Section 232 on automobiles or any autoparts, the U.S. shall exclude from such measures a certain number of automobiles and auto parts and to all light trucks imported from Mexico and Canada. However, no import adjustment measures based on Section 232 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 have entered the U.S., Mexico and Canada where they engage in corporate activities utilizing the USMCA Agreement. Noting that the WTO Agreements prohibit the taking or seeking to take voluntary export controls (Article 11 of the Agreement on Safeguards) and that quantitative restrictions are generally prohibited except for cases 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 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 the working group to have Japan, from which the U.S. imports approximately 94% of its titanium sponge, 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 from Japan, which is 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 is well controlled in terms of quality, and is highly reliable. Exports from Japan are meeting the domestic supply shortage in the U.S., and truly supports the national security of the U.S. Accordingly, measures to be agreed on through the consultations should be consistent with the WTO Agreements.

(Neodymium-iron-boron (NdFeB) permanent magnets)

In June 2021, the US initiated an investigation based on Section 232 on Neodymium-iron-boron (NdFeB) permanent magnets (referred to herein after as Neodymium magnets). This followed the 100-day supply chain reviews which pointed out the importance of such magnets, both to meet national defense and civil use purposes. Imports of Neodymium magnets from Japan have contributed to strengthen the US supply chain.

Imports 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 to avoid the imposition of any Section 232 measured thereto.

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

The AD Agreement stipulates that any definitive AD duties shall be terminated within five

years of commencement (Sunset provision) 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, 2022, there are 19 definitive AD measures imposed by the U.S. government on Japanese products. The longest duration of the U.S. measure exceeds 40 years and the duration of the 11 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 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 requested the early termination of these measures in the Japan-U.S. Economic Harmonization Initiative and repeatedly held WTO AD Committee meetings, in addition to other fora. In August 2018, the AD measure that had been imposed by the U.S. government on Japanese steel products for more than 35 years was terminated as the result of sunset review.

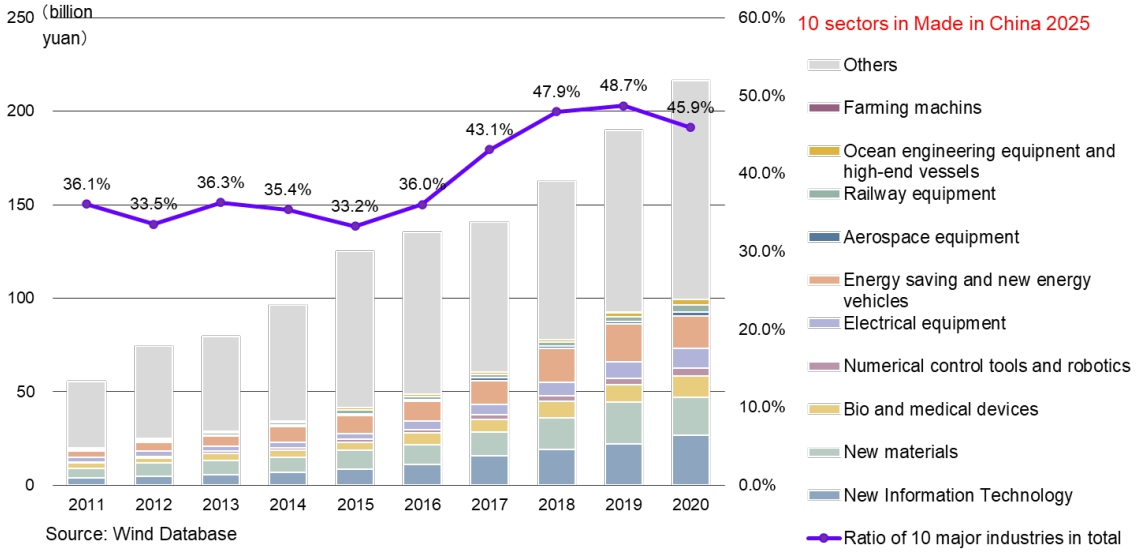
Moreover, an increasing number of continued AD measures by emerging economies based on lax determinations through sunset review proceedings, including the extended imposition of the duty on stainless steel bars by Korea as mentioned above, have been observed.

Japan will continue to work for improvement of the U.S. and emerging economies sunset review practice and abolition of the unreasonably long-standing AD measures on Japanese products at the earliest possible time.

- **China: Industrial Subsidies**

Based on the Wind database, which compiles financial data of listed companies in China, the amount of government subsidies reported in the annual reports of listed companies has increased steadily over the past decade, and it was found that 216.4 billion yuan (4,328 billion yen), 3.9 times the amount in 2011, was provided in 2020. Of these, subsidies to the 10 priority industries defined in "Made in China 2025" ,in particular, have grown significantly since 2015, when it was announced, and account for approximately 46% of the total by 2020 (Figure 1). Among these, a high percentage of subsidies are provided to the next-generation information technology industry (12.3% of the total), which includes semiconductor manufacturing, new materials (9.3%), and energy-saving and new energy vehicles (8.1%).

(Figure 1) Change in total subsidies amount and “Made in China 2025“ sectors



The government of China has not fully fulfilled its notification obligation under Article 25 of the Agreement on Subsidies and Countervailing Measures (ASCM), which requires members to provide notification of any subsidies that are specific every two years (since 2011, the Unite States has been filing notifications of certain Chinese subsidies (so called “counter notification”) that China should have provided notifications for, including support regimes for China’s strategic emerging industries). In July 2016, the government of China provided notifications for subsidies by its local governments for the first time. However, the issue that the subsidies for which notification should have been provided has not been sufficiently resolved. Insufficient transparency of subsidies would be likely to encourage market-distorting subsidies, and is suspected to have led to excess capacity in certain industries such as steel and aluminum. Furthermore, it is concerning that a variety of the governmental financial support initiatives including loans by state-owned enterprises and government funds: i) increases government influence on major companies, ii) may promote concentration of private capital, and a huge amount of capital would flow into certain industries that would result in excess capacity, and iii) may be used for acquiring foreign companies that have highly advanced technology.

Regarding the problem of excess capacity in some industries including aluminum and steel caused by Chinese government subsidies, there may be some subsidies that are inconsistent with Article 5 of the ASCM as they have an adverse effect on the interests of other member countries.

Japan has held several discussions with the government of China to solve the issue. For instance, at the regular vice-minister-level consultation between METI and the Chinese Ministry of Commerce in December 2019 and the Japan-China Economic Partnership Consultation in November 2021, headed by Senior Deputy Minister for Foreign Affairs and attended by representatives of METI as well as other relevant ministries and agencies, Japan requested that China improve transparency of its subsidy policies for each industry. Also in the Subsidies Committee meetings and Trade Policy Review (TPR) of China at the

WTO, together with the United States, the EU and others, Japan proposed discussions related to the issues of subsidies and excess capacity. The OECD series of reports on "Measuring distortions in international markets", published in January 2019 (aluminum value chain), December 2019 (semiconductor value chain) and May 2021 (below-market finance), also indicate the relationship between distortion of conditions of competition and the large amount of government support in the manner of below-market borrowings and equity in various industries, including aluminum, solar PV and semiconductors in China and other countries.

In addition, while not targeting specific countries, the Trilateral Meeting of Trade Ministers among Japan, EU and the United States, started in December 2017, also has held discussions on strengthening rules on industrial subsidies and SOEs. G7 countries including Japan also committed in May 2017, in the G7 Taormina Leaders' Communiqué, to further strengthening the cooperation and working 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, at the G7 Charlevoix Summit in June 2018, the leaders called on all members of the Global Forum on Steel Excess Capacity to fully and promptly implement its recommendations, and stressed the urgent need to avoid excess capacity in other sectors such as aluminum and high technology. In June 2021, in the G7 Carbis Bay Summit Communique, the G7 leaders also agreed to work together to modernize the global trade rulebooks to strengthen rules to protect against unfair practices, such as market-distorting actions by state-owned enterprises, and harmful industrial subsidies, including those that lead to excess capacity, and. G20 has also discussed excess capacity in the steel sector and industrial subsidies.

Japan, in cooperation with other WTO members, will continue discussion with China bilaterally and multilaterally so that China enhances the transparency of its expenditure related to industrial subsidies and state-owned enterprises to ensure market-distorting measures are not taken, and that the system in China operates within the confines of the ASCM.

- **China: Regulations related to Cybersecurity and Data**

In recent years, the Chinese government has put in place various laws and regulations to strengthen regulations related to cyber security and data security-related regulations. The Cybersecurity Law in June 2017, the Data Security Law in September 2021 and the Personal Information Protection Law in November 2021 respectively became effective, and the relevant laws and regulations related to these three laws have also been legislated.

The Cybersecurity Law stipulates that operator of important information infrastructure are obliged to store personal information and important data within China and has the obligation to assess the safety of such information when it is transferred overseas. It is generally assumed that foreign services or service providers centrally collect and manage data outside of China, and these obligations may impose additional burdens in some cases. Accordingly, foreign service providers may be placed in de facto less favorable competitive conditions than Chinese domestic services or service providers that have collected and managed data

within China.. Therefore, if foreign business operators are placed in substantially less favorable competitive conditions than businesses who operates 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. Besides, since China has agreed to the principle of free cross-border transfer of information and the prohibition of computer-related equipment installation requirements in the RCEP Agreement (Article 12.14 and 12.15 of the RCEP Agreement), the Cybersecurity Law may violate these provisions depending on the operation of the Law.

In addition, since the Law stipulates that when selling network core products and specialized cybersecurity products, obtaining a security certification following the related national standards and industry standards is a requirement, it is assumed that technical regulations and conformity assessment procedures for these products will be established in related subordinate laws and regulations. However, TBT (Technical Barriers to Trade) notifications regarding these technical regulations have not been made, and therefore it may be inconsistent with Article 2.9.2 of the WTO TBT Agreement. Although there are no provisions 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 and 5.4 of the TBT Agreement if such technical regulations and conformity assessment procedures that China will establish are not based on international standards and guidelines of international standards institutions. 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” in terms of the specific measures of technical regulations and conformity assessment procedures, it may violate Articles 2.2 and 5.1.2 of the TBT Agreement.

The Data Security Law regulates all data processing activities (including collection, storage, usage, processing, transfer, offer, disclosure, etc.) in China and stipulates the management and supervision of their security . Many articles in this law are unclear about definitions of terms, specific requirements for various types of evaluations, and the scope of regulations. For example, there is no clear definition of "data processing activities that affect or could affect national security," which is supposed to be subject to the "national security review”. If such articles are applied arbitrarily so that foreign business operators are placed in substantially 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. In addition, this law stipulates export restrictions as well. Due to the export restrictions, if foreign business operators are placed in substantially 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. Besides, if the export restrictions refer to the obligation to store data domestically or the restrictions on cross-border transfers, , the export restrictions under this law may violate Article 12.14(the prohibition of computer related equipment installation) and Article 12.15(the principle of free cross border transfer of information) of the RCEP, depending on the operation of the Data Security Law. .

The Personal Information Protection Law is China’s first comprehensive personal information law, which applies to certain activities that process domestic personal

information outside of China. Although there are many unclear articles regarding the scope and standards of regulations etc., if such articles are applied arbitrarily so that foreign business operators are placed in less favorable treatment 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. In addition, 'operators of important information infrastructure' and 'personal information processors whose processed personal information reaches a certain amount stipulated by the Cyberspace Administration of China' are obligated to store personal information and important data within China and are required to pass the safety assessment by the government when transferring personal information and important data overseas. These regulations may place foreign services or service operators in de facto less favorable competitive conditions than businesses who operates within China. if foreign business operators are placed in substantially less favorable competitive conditions than businesses who operates 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. Besides, depending on the operation of the Personal Information Protection Law, it may violate Article 12.14(the prohibition of computer related equipment installation) and Article 12.15(the principle of free cross border transfer of information) of the RCEP.

Although not only the Japanese but also other foreign governments, and industry groups, etc. had submitted opinions to the Chinese government for public comments of these laws and expressed concern about these laws, these laws came into force without reflecting many of the comments.

Subordinate regulations related to these three laws are also subject to public comment procedures one after another. In the subordinate regulations related to cyber and data, there are many unclear articles regarding the definition of terms, the specific requirements for examination, the content of specific standards and conformity assessment procedures, the scope of coverage, etc. In addition, there are also significant business concerns about the stipulated obligations to cooperate with public safety authorities and national security agencies for the purpose of national security and criminal investigations. Furthermore, some of the regulations also cover data processing activities outside of China, as well as institutions, organizations and individuals outside of China. Since it is international practice to limit regulations to what is necessary and reasonable so as not to impose excessive burdens on businesses, we need to pay attention to these regulations.

Japan has expressed its concerns through bilateral consultations such as a vice-ministerial level regular consultation between METI and Ministry of Commerce of the People's Republic of China in December 2019 and the Japan-China Economic Partnership Meeting held in November 2021, which were attended by representatives of METI and other relevant ministries and agencies with the Deputy Minister of Foreign Affairs serving as the Japanese delegation leader.

Japan will continue to closely monitor the formulation, enforcement and operation of these regulations related to cyber and data while urging China to correct the system through opportunities such as the WTO Council for Trade in Services, the WTO TBT Committee meetings and bilateral consultations, etc with like-minded countries.

Relevant subordinate regulations that were issued for public comment

Name of regulations	**Date of public comment**	**Enforcement**
Critical Information Infrastructure Protection Regulations (Regulation on treatment of important infrastructure information for operators)	July 2017	September 2021
Cyber Security Multi-Level Protection Scheme(draft) (Grade protection system according to the importance of the network)	June 2018	Not enforced
Measures for Data Security Management (draft) (Regulation on data collection, storage and processing etc. through the Internet in China)	May 2019	Not enforced
Personal Information Outbound Transfer Security Assessment Measures (draft) （Regulation on national security review which is applied when a network operator transfers personal information overseas）	June 2019	Not enforced
The Provisions on Management of Automobile Data Security (Regulation on treatment of data for Automobile Data Processors)	May 2021	October 2021
Measures for the Administration of Data Security in the Field of Industrial and Information Technology Sectors (For Trial Implementation) (Regulation on treatment of data for the Industry and Information Technology Sector)	September 2021 and February 2022	Not enforced
Outbound Data Transfer Security Assessment Measures (draft) (Details of security assessments when personal data and important data are transferred overseas)	October 2021	Not enforced
Measures for Network Data Security Management(draft) (Regulation on treatment of data for data processors)	November 2021	Not enforced
Cybersecurity Review Measures (Regulation on review process of “important infrastructure operator”)	July 2021 and January 2022	February 2022

Information Security Technology – Guideline for Identification of Important Data (Draft for Comments) (National standard for identification of important data)	January 2022	Not enforced

- **China: Forced Technology Transfer**

In Paragraph 7.3 of its Protocol of Accession to the WTO, China commits to ensure that the distribution of means of approval for importation, the right of importation or investment by national and sub-national authorities is not conditioned on technology transfer requirements. In Article 10.6 of the RCEP Agreement, China also commits to prohibit performance requirements including technology transfer requirements and royalty regulations. In addition, the Chinese government stipulated in the Foreign Investment Law, which came into effect in January 2020, that administrative agencies and their officials must not use administrative means to force technology transfer. However, there remains concerns with the ambiguity of the conditions under which administrative agencies may request businesses to provide technical information, as well as the difficulties in collecting evidence when an unlawful request was made through state-owned enterprises or other public entities. There also continue to be systems in place that could result in forced technology transfer depending on their operation. In addition, the systems still exist which could result in forced technology transfer depending on their operation. For example, multiple laws contain clauses requiring businesses to provide data to government authorities, which may require them to provide technical information including source codes and encryption. Such laws include: the Measures for Data Security Management (draft) published in May 2019, the Measures for the Administration of Data Security in the Field of Industrial and Information Technology Sectors (For Trial Implementation) published in September 2021 and February 2022, the Outbound Data Transfer Security Assessment Measures (draft) published in October 2021, the Measures for Network Data Security Management (draft) published in November 2021, the Provisions on Management of Automotive Data Security which came into effect in October 2021 and the Cybersecurity Review Measures (Revised) which came into effect in February 2022.

Japan has conveyed its concerns to the Chinese government through the submission of public comments on various laws, and has also held bilateral consultations. In the WTO, Japan raised the issue of forced technology transfer at the 2021 Trade Policy Review requesting China to explain if any measure is taken to prevent government authorities from coercing foreign investors and businesses to transfer their technologies, as well as available remedies for forced technology transfer.

In addition, while not targeting specific countries, the Trilateral Meeting of Trade Ministers of Japan, the United States and the European Union has been addressing the issue of forced technology transfer. At the meeting in January 2020, they discussed possible elements of core disciplines to prevent forced technology transfer by third countries. The G7, including Japan, has repetitively referred to the necessity of addressing issues of forced technology transfer; The most recent one is the June 2021 Carbis Bay Summit Communiqué, where the G7 agreed to work together to modernize the global trade rulebook to strengthen

rules to protect against unfair practices, including forced technology transfer.

Japan, in cooperation with other member countries, will continue to proceed with discussions aimed at solving the problem in bilateral and multilateral consultations to ensure that the Chinese system is operated in a manner consistent with the rules and commitments including its Protocol of Accession to the WTO.

- **Vietnam: Cybersecurity Law / the Draft Decree on Personal Data Protection**

The Vietnamese government enforced the Cybersecurity Law in January 2019. Under the law, domestic and foreign companies that provide the Internet services and other value added services in cyberspace in Vietnam, and carry out activities of collecting and using data generated by service users in Vietnam must store such data in Vietnam for a specified period stipulated by the government. In addition, these foreign companies must also establish branches or representative offices in Vietnam. Furthermore, the Draft Decree on the Management, Provision and Use of Internet Services and Online Information (72/2013/ND-CP) (published in November 2021), which is governed by the Cyber Security Law, stipulates that the data of Vietnamese service users for news sites, social networking sites, and data center services must be stored in Vietnam, and that servers for these services must be located in Vietnam. . Regarding the obligation to store data within Vietnam, it is generally assumed that foreign services or service providers centrally collect and manage data outside of Vietnam, and these obligations may impose additional burdens in some cases. Therefore, foreign service providers are placed in de facto less favorable competitive conditions than Vietnamese services or service providers that have collected and managed data within Vietnam. If foreign business operators are placed in substantially less favorable competitive conditions than Vietnamese business operators, it may violate national treatment obligations stipulated in Article 17 of GATS, as well as Article 9.4 and 10.3 of the CPTPP. Besides, since Vietnam has agreed to the principle of free cross-border transfer of information and the prohibition of computer-related equipment installation requirements in the CPTPP and RCEP Agreements (Articles 14.11 and 14.13 of the CPTPP Agreement and Articles 12.14 and 12.15 of the RCEP Agreement)[3], the Cybersecurity Law may violate these provisions, depending on the operation of the Law. Furthermore, regarding the obligation to establish branches or representative offices in Vietnam, since the obligation requires a specific type of entity, it may violate market access obligations stipulated in Article 16 of GATS and Article 10.6 of the CPTPP.

In February 2021, the Vietnamese government published the Draft Decree on Personal Data Protection pursuant to the Cybersecurity Law. The Draft Decree requires that, before transferring Vietnamese citizens' personal data out of Vietnam, all of the following four conditions be fulfilled: (i) data subject's consent is granted for the transfer; (ii) original data is stored in Vietnam; (iii) a document is granted proving that the recipient territory has a sufficient level of personal data protection; and (iv) written approval is obtained from the

[3] Under the CPTPP Agreement, the Government of Japan and the Government of Vietnam have exchanged a side letter to the effect that measures under Vietnam's cybersecurity law or cybersecurity-related laws and regulations are exempted from the dispute settlement provisions for five years after entry into force.

Personal Data Protection Commission.[4] If foreign business operators are placed in de facto less favorable competitive conditions than Vietnamese business operators in the sectors where Vietnam has committed themselves to liberalization, the Draft Decree may violate national treatment obligations stipulated in Article 17 of GATS as well as Articles 9.4 and 10.3 of the CPTPP. Besides, since Vietnam has agreed to the principle of free cross-border transfer of information and the prohibition of computer-related equipment installation requirements in the CPTPP and RCEP Agreements (Articles 14.11 and 14.13 of the CPTPP Agreement and Articles 12.14 and 12.15 of the RCEP Agreement), the Draft Decree may violate these provisions, depending on the operation of the Decree.

Regarding the Cybersecurity Law and the Draft Decree on Personal Data Protection, Japan has been actively engaged with Vietnam to realize the establishment of a fair and transparent system which reflects international rules and practices, submitting public comments to the Vietnamese government and expressing concerns on the laws at the WTO Trade Policy Review on Vietnam, the WTO Council for Trade in Services, etc.

Japan will continue to monitor the developments of the laws as well as their enforcement and implementation, and will proceed with discussions for improvement and clarification in the WTO Council for Trade in Services, during bilateral consultations, etc.

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

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

The Brazilian government introduced preferential taxation associated with the local content requirements to the automobile sector and the information technology devices sector, exempting it substantially from various taxes and contributions 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 (in September 2015, it requested establishment of a panel, and the panel was established within the month). Regarding this matter, in advance of the request by Japan, the EU had requested that Brazil hold a bilateral consultation based on the WTO Agreements in December 2013 which was established in December 2014. Japan requested that Brazil 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

[4] There is another provision that stipulates when personal data can be transferred across borders (Article 21, Paragraph 3), and there is some debate as to whether all four of these conditions need to be met.

of Japan and the EU, supporting the panel report that the discriminatory preferential taxation in the automobile 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 and confirm whether Brazil has withdrawn or brought into compliance the taxation measures inconsistent with the WTO Agreement, and also will monitor the consistency of the new regulations (e.g. ROTA 2030 in automobile sector) with the WTO Agreements.

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

- **China: 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 October 2020, the Export Control Law is established. The Export Control Law adds a number of consumer products and technologies that are related to conventional 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. The Law is enforced from December 1st 2020.

The details of the new measure are to be provided in implementing regulations, and are not yet clear. Having said that, the measure may be regarded as an excessive export restriction that has little relevance with the national security objective, and thus may fail to satisfy the requirements under national security exception (Article XXI of the GATT) and be inconsistent with the prohibition of import/export restrictions (Article XI of the GATT, in particular for the following points: (i) the scope of items subject to control may be excessively broad in consideration of the fact that the policy objectives of the Law explicitly include protection of "state interests"; (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 or for identifying end users and end use; (iii) the Law has a provision of retaliatory measures against discriminatory export restrictions imposed by other countries.

As a particular example of concerns for excessive scope of subject goods, China published the draft regulation of rare earth management as of January 2021. As the draft regulations provides that export of rare earth "shall comply with the laws and regulations regarding export control and others", it needs to be monitored closely whether there will be an impact the export of rare earth products. In addition, the Draft Export Control Regulations for Dual-Use Items was issued in April 2022. However, items covered by this draft are not listed and the details of re-exports etc. remain unclear. Therefore, it is necessary to continue

to monitor the development of the draft closely.

Japan has been taking active steps to convince China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the Law (including the draft version) at meetings of the WTO Council on Trade in Goods since March 2018, at the Trade Policy Review of China at WTO in 2018, and vice-minister-level consultations between METI and the Chinese Ministry of Commerce in December 2019.

Japan will continue to monitor the enforcement and implementation of the Law, and will proceed with discussions for the resolution of problems in bilateral and multilateral consultations.

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

In AD procedures, the U.S. applies 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 the calculation method for 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 with 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 the practice 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 which prohibited zeroing was being rendered invalid in practice.

Korea and China referred 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 retaliatory 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 retaliatory 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.

- **The United States: A Bill on Tax Incentives on Electric Vehicles**

In November 2021, the U.S. House of Representatives passed the Build Back Better bill ("BBB Bill"), which includes the electric vehicle (EV) tax incentives described below. The BBB Bill, which includes this incentive, is under consideration by the U.S. Senate as of June 2022. The Bill includes a tax credit for the purchase of EVs that satisfy the qualifications. Additional tax credits would be available for EVs assembled with U.S. batteries and for those that are assembled at a U.S. facility operating under a union bargaining collective bargaining agreement under the U.S. law. In addition, after January 1, 2027, the tax credit under the bill would not apply to EVs unless final assembly of the vehicle occurs in the United States.

A purchase is allowed certain tax credits conditional on the use of U.S. batteries. This provision may constitute a subsidy prohibited by Article 3.1(b) of the ASCM. It may also be inconsistent with Article 3.4 (National Treatment Obligation) of GATT since it treats imported batteries less favorably in relation to domestically produced batteries. In addition, the provisions that state that the tax credits can rise if the vehicle satisfies the domestic assembly qualifications, requiring the assembly to occur at a factory under a collective bargaining agreement negotiated by an employee organization in the US; and that stated that the tax credit would not apply to imported vehicles after 2027, may also violate Article 3.4 of GATT (National Treatment Obligation).

Japan has been reached out to the U.S. government and others on various occasions to raise concerns about the WTO-inconsistency of the proposed tax incentives for EVs.

Japan will coordinate with the industry and other countries and continue to closely monitor the discussions on the bill, which includes the EV tax incentives.

- **EU: A Draft Regulation on a Carbon Border Adjustment Mechanism（CBAM）**

In July 2021, the European Commission published a draft regulation on a Carbon Border Adjustment Mechanism (CBAM) that would impose a levy on importers of goods imported into the EU based on the carbon content of the product in question. The amount of the levy would be calculated as follows: CBAM certificate price (P/CO2-ton) x emissions per unit of product (CO2-ton/Q) x amount of product imported (Q). The CBAM certificate price would be linked to the emissions trading price in the EU-ETS, the EU's greenhouse gas emissions trading system. In the proposed CBAM, only the carbon price (carbon tax or emission allowance price) paid outside the region will be taken into account as a burden accompanied with carbon emission outside the region in a manner of a deduction from the levy. The CBAM is scheduled to enter into force in January 2023, but will be subject to a transitional period of three years until January 2026. During the transitional period, importers will not be obliged to pay the import levy, but will be obliged to report information such as emissions per unit of product.

Following the Commission's submission of the above draft regulation, the European Council agreed to a general approach on the CBAM on March 15, 2022, and the Environment, Public Health and Food Safety Committee (ENVI) of the European Parliament adopted a report on May 17, 2022, which included proposals for amendments to the Commission's draft regulation. The report, which was subsequently amended to include a proposal for export rebates, was adopted by the plenary session of the European Parliament on June 22 of the same year. The draft CBAM regulation will be further subject to a reconciliation process among the Commission, the European Parliament, and the European Council.

Since the CBAM is a border measure that imposes a levy on imports, it will naturally have an impact on trade, but the basic premise is that it must be designed to be consistent with WTO rules such as national treatment. In particular, whether CBAM can satisfy justifications under WTO rules may become an issue. An issue closely related to consistency with rules is that restrictions on trade need to be the minimum necessary to achieve the objective, with many issues to be considered in this regard. For example, first, in order to be considered a measure aimed at preventing carbon leakage, it would need to be confirmed that the carbon intensity of imported goods exceeds that of domestically produced goods. This is because if the carbon intensity of imported goods is equal to or lower than that of domestic goods, there is no carbon leakage associated with imports, and there is thus no basis for requiring the payment of a levy at the border. In addition, how to determine whether or not an individual good actually poses a significant carbon leakage risk, how to measure and evaluate carbon emissions per unit of a good on the same international basis, and how to compare the intensity of measures taken by each exporting country, including how to verify the carbon cost of each country's emission reduction efforts, covering burdens imposed that are effectively proportional to the amount of emissions, are all issues that require careful consideration.

Under the proposed regulation, the CBAM is considered to be an alternative to the free

allowances under the EU-ETS, the EU's emissions trading system, and the amount of the CBAM levy would be adjusted to reflect the level of the free allowances. However, the phase-out of the EU-ETS's free allowances has not been definitively spelled out due to ongoing discussions within the EU on the merits and schedule, and the specific adjustment to take into account the free allowances in the calculation of the CBAM levy amount is not yet clear. Until these points are clarified, the evaluation of the consistency of the CBAM proposal with international rules cannot be completed, and questions are likely to be raised by other countries about proceeding with the introduction of the system prematurely under such circumstances.

Japan, for its part, will continue to engage in bilateral discussions with the EU, discussions on the above issues among member countries in various WTO committees (especially the Committee on Trade and Environment and the Trade and Environmental Sustainability Structured Dialogue (TESSD)), and ambitious discussions in the G7 and G20 on the climate club, a framework among willing countries to achieve greenhouse gas emission reductions and eliminate competitive disadvantages. Japan will examine and engage with the EU's CBAM proposal from the perspective of its consistency with global rules and its appropriateness as a trade and climate measure.

- **India**: **Personal Data Protection Bill / Draft National e-Commerce Policy**

The Indian government published the “Personal Data Protection Bill” in December 2019. The Bill stipulates that “sensitive personal data” which includes financial data, health data, and biometric data must be stored in India, and it can be processed outside India only under certain conditions. The Bill also stipulates that transferring sensitive personal data out of India is possible only when such transfer is based on contracts approved by the authority, adequacy decisions on the level of protection in the recipient country, etc., in addition to obtaining consent from the data subjects. Regarding “critical personal data”, which is designated by the central government, operators are obliged to process the data in India. In addition, the “Draft National e-Commerce Policy” published in February 2019 by the Department for Promotion of Industry and Internal Trade stipulates that a legal and technological framework will be created that provide the basis for imposing restrictions on cross-border flow of data collected by IoT devices installed in public spaces or generated by users in India from various sources, including e-commerce platforms, social media, search engines, etc.

Regarding such restrictions on cross-border data flow, foreign service suppliers that centrally collect and manage employee data of overseas offices outside India may have security concerns about storing data within India and may be burdened with additional costs. It may become difficult for such foreign companies to enter the Indian market or continue their business there. At the same time, it is likely that foreign service suppliers are substantially placed in a less favorable competitive condition than Indian service suppliers that have centrally collected and managed data domestically, so such restrictions may violate national treatment obligations stipulated in Article 17 of GATS.

Japan has actively engaged with India to realize the establishment of a fair and

transparent system which reflects international rules and practices, submitting public comments to the Indian government and expressing the concerns described above at occasions such as the WTO Trade Policy Review on India.

Japan will continue to monitor the developments of the legislation, and will proceed with discussions in order to improve and clarify issues in bilateral and multilateral consultations.

- **India**: **Inappropriate Application of Trade Remedy Measures**

The Indian government initiated 1,071 AD investigations between 1995 and the end of June 2021, which is the largest number of all WTO Members, and among which Japanese products were included as the subject product in 44 cases. Among these 44 cases, AD measures were applied in 32 cases. AD duties remain in force in 4 cases as of the end of December 2021

20. India initiated 46 SG investigations between 1995 and the end of December 2020, among which SG measures were applied in 22 cases. The first SG investigation pursuant to Japan-India CEPA was also initiated.

Regarding the AD and SG measures imposed by India, possible inconsistencies with the relevant WTO Agreements, including AD and SG Agreements, have been observed. The possible inconsistencies include the lack of objectiveness in determination of injury and causal link, such that it was determined that the Indian companies suffered injury due to dumped imports or increased imports from Japan even though the injury occurred because of deterioration in domestic demands and increase in market share of the domestic competitors. In some AD investigations, the notifications to the interested parties, including the subject companies, were not made appropriately and in a timely manner, which prevented the subject companies from effectively responding to the investigation which constitutes a lack of procedural transparency.

Regarding India's seemingly inappropriate AD and SG investigations, Japan has been conveying government opinions to Indian investigating authority and requesting that it improve the situation using various opportunities such as submission of written opinions to Indian investigating authority, consultations with Indian government officials, participation in public hearings and attendance in WTO AD and SG Committee meetings, etc.

Japan will continue to encourage India to correct its inappropriate operation and application of the trade remedy measures.

(Reference 2) Policy Response to the Issues Related to the WTO Dispute Settlement System

The dispute settlement procedure in the WTO is one of the central pillars of WTO, which aims to avoid politicization of trade issues and international economic disputes between nations, and achieve objective solutions based on internationally agreed rules. The Appellate Body, however, has suspended its function to conduct proceedings with all the members being vacant since December 2019 under circumstances where new members could not be appointed due to opposition from the U.S. and members have completed their terms of office one after another since June 2017. As panel findings appealed cannot be adopted until after the completion of appeal hearings, since the suspension of function of the Appellate Body, there have been several cases where appeals were made by some member states despite that the appeal procedure cannot progress – so called “appeal into the void”. As a result, the finalization and adoption of panels' findings is prevented, and the dispute settlement procedure is left in a state of limbo. As for the cases to which Japan is a party, the respondent countries have already filed appeals into the void in the cases of (1) India's safeguard measure on steel products (DS518) and (2) Korea's anti-dumping measures on Japanese stainless-steel bars (DS553). Also, the two on-going cases at the panel stage (India's measure to increase tariffs on ICT products (DS584) and China's anti-dumping measure against Japanese stainless steel products (DS601)) may also be appealed into the void.

WTO Members that lose at the panel stage of WTO dispute settlement procedures can block recommendations for correction by the Dispute Settlement Body through appeals into the void. This poses a crisis that rules-based governance in the international trade system would not function. In order to overcome this situation, Japan has been endeavoring to restore the function of the Appellate Body and to reform the dispute settlement system. However, whether these efforts may be achieved will depend on the attitudes of the other countries and regions concerned, and it is difficult to predict that the outcome of such efforts will be achieved in a short period of time.

The EU and several other Members, on the other hand, have taken alternative measures to cope with the malfunction of the Appellate Body, including establishing the “Multi-Party Interim Appeal Arbitration Arrangement” (MPIA) and institutionalizing counter measures against the appeal-into-the void. In addition to working to tackle with the reform of the WTO’s dispute settlement system, Japan also needs to consider interim and alternative measures.

The METI established, in this view, the special task-force composed of relevant experts in May 2022 (the "Task-Force on Policy Response under the Suspension of the Functions of the WTO Appellate Body", chaired by Professor KAWASE Tsuyoshi of Sophia University). Based on the Interim Report issued by the task-force, it is expected to further consider and implement approaches that complement the WTO.

(Reference 3) Proceedings of Individual Trade Policies and Measures Described in "METI Priorities Based on the 2021 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	Anti-Dumping Measures on Stainless Products	Japan requested consultations with China pursuant to the WTO Agreement in June 2021. However, the issues have not been resolved. Japan thus requested the establishment of a panel in August 2021 and the panel was established in September 2021.
	Industrial Subsidies	In the Subsidies Committee meetings held in October 2021 and April 2022, Japan proposed discussions related to the problem of subsidies and excess capacity, including the necessity to improve the transparency of subsidies, together with the U.S., the EU and others.
	Cybersecurity Law and relevant regulations	Japan continuously expressed concerns in the TBT Committee meetings held in February, June, November of 2021 and March of 2022, the WTO Council for Trade in Services held in July, December of 2021, March and May of 2022, and in the Japan-China Economic Partnership Meeting held in November 2021, which were attended by representatives of METI and other relevant ministries and agencies with the Deputy Minister of Foreign Affairs serving as the Japanese delegation leader. Japan submitted comments to the public comments on each of the aforementioned regulations and requested improvement of the seregulations.
	Forced Technology Transfer	Japan conveyed its concerns in the Japan-China Economic Partnership Meeting held in November 2021, which were attended by representatives of METI and other relevant ministries and agencies with the Deputy Minister of Foreign Affairs serving as the Japanese delegation leader. Japan also raised the issue of forced technology transfer at the 2021 Trade Policy Review of China. Japan has furthered discussion with like-minded countries with a view to strengthening the rules to protect businesses from unfair practices by third countries including forced

		technology transfer.
	Inappropriate Application of AD Measures	Japan expressed its concerns 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 China's inappropriate AD investigations at the WTO AD Committee meetings held in October 2021, April 2022.
	Foreign Investment Law	Japan requested that China operate the system in an effective manner at the bilateral consultations held in FY 2021.
	Export Control Law	Japan has been actively attempting to convince China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the law (including its draft)at meetings of the WTO Council on Trade in Goods since March 2018.
U.S.	Measures based on Section 232 of the Trade Expansion Act of 1962	In November 2021, Japan started consultations with the US on the additional duties on imports of steel and aluminum from Japan based on Section 232. In February 2022, the US announced to implement a tariff rate quota on steel imports from Japan and to remove the tariffs on derivative products. However, steel products entering the US above-quota remains to be subject to the additional duty of 25 %, and the additional duty of 10% based on Section 232 continues to apply on aluminum imports from Japan. Japan considers that the WTO consistency of additional duties based on Section 232 is questionable. In September 2021, the DOC initiated an investigation under Section 232 on imports of Neodymium magnets. Japan will continue working on the U.S. government towards the avoidance and the complete abolishment of the Section 232 measures.
	Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on	Japan pointed out problems regarding the U.S. sunset review practice and measures at the WTO AD Committee meetings held in October 2021 and April 2022.

	Japanese Products	
	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 retaliatory 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 retaliatory 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 consultations in November 2018 and in January 2020 and is consulting with Korea. Further, in November 2021 and in April 2022, Japan also requested that Korea explain its public financial support measures to ensure transparency at the Council Working Party No.6 on Shipbuilding of the OECD.

	Sunset Review Practice on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures)	The panel report issued in November 2020 found that the Korean decision is inconsistent with Article 11.3 of AD Agreement, because Korean authorities did not properly take into account the facts that products from Japan are considerably more expensive than Korean products and that there are a large number of low-priced imports from China etc.. In January 2021, Korea appealed to the WTO Appellate Body. Japan will continue to advance necessary procedures so that the case will be solved appropriately in accordance with WTO rules, and demand that Korea promptly and faithfully correct its measures in accordance with the recommendations of the report so as to prevent unfair tariff burdens on Japanese companies from continuing.
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 panel was established in July 2020 and the proceedings continue.
	Safeguard Measures on Hot-Rolled Steel Products	As the Appellate Body stopped functioning in December 2019, examination procedures by the Appellate Body have been suspended.
	Personal Data Protection Bill / Draft National e-Commerce Policy	Japan requested to clarify the contents and development status in the WTO Trade Policy Review on India in January 2021.
	Inappropriate Application of Trade Remedy Measures	Japan pointed out problems of India's inappropriate AD investigations at the WTO AD Committee meetings held in October 2021, April 2022.Regarding the first SG investigation (on the imports of suspension polymerization PVC resin) under Japan India Comprehensive Economic Partnership Agreement (CEPA), the investigation procedure was delayed due to the COVID-19 pandemic, but in July 2021, this investigation was terminated due to the withdrawal of the application by the applicant company, and the measure was not triggered.
Vietnam	Imported Automobile Certification System	TBT notification was made with regard to the draft amendment of Decree No. 116 of 2018, and the amended Decree was entered into force on February 5, 2020 as Decree No.17 of 2020. Since then the

		requirement for a vehicle type approval issued by overseas agencies, for which Japan had expressed concerns, was deleted by the amendment and some improvements are observed. Japan will closely monitor the situation to ensure that the operation of the amended Decree is not more trade-restrictive than necessary.
The Philippines	Safeguard Measures on Automobiles	Provisional measures had been imposed since Feruary 2021, but the investigating authority recommended non-implementation of the definitive measures and terminated the investigation in July 2021. Department of Trade and Industry in Philippines decided to adopt that recommendation in August, and then the provisional measures were terminated.
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 measures taken as corrective measures appear to be insufficient. Japan will continuously monitor Brazil's taxation in accordance with the complete implementation of the recommendation.

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