METI Priorities Based on the 2023 Report on Compliance by Major Trading Partners with Trade Agreements (Friday, June 16, 2023)

The 2023 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 31 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 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 countermeasures 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 617 (As of June, 2023).

The WTO dispute settlement system, however, is facing a 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 piled up where appeals were made to leave the cases in limbo. Under such circumstances, as an interim measure until the dispute settlement function is restored, the Japanese government joined the MPIA (Multi-Party Interim Appeal Arbitration Arrangement) in March 2023. We will make maximum effort for the restoration of dispute settlement function and will ensure the effectiveness of WTO dispute settlement system in the interim by utilizing MPIA.

Moreover, in recent years, there has been an increasing concern that non-market measures by some emerging countries could present a risk to the foundation of the multilateral trading system, including fair competition and market functions. We will make further efforts, including rules-making, to ensure level playing field through various fora such as the WTO, G7, and the Trilateral Meeting of the Japan, U.S. and EU Trade Ministers.

Furthermore, there is an increasing concern about the use of or the threat of the use of economic coercive measures that interferes with legitimate choices of another government.

Considering such situation, we will enhance cooperation and strengthen coordination with like-minded partners to evaluate, prepare for, deter, and respond to such economic coercive measures.

The responses to the non-market measures and economic coercion are mentioned in the G7 Trade Ministers' Statement, G7 Leaders' Statement on Economic Resilience and Economic Security, and Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, which were publicized in April 2023, May 2023, and June 2023 respectively.

From this point of view, in addition to the systemic problems mentioned above, METI will prioritize addressing the following cases based on the policies and measures as specified in the 2023 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 【Appellate Body】
- 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
- 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: Cybersecurity Law and relevant regulations
- China: Forced Technology Transfer
- Vietnam: Cybersecurity Law / Decree on Personal Data Protection

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

With respect to the following issue, 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 have 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: Revision to the Government Procurement Law【New】
- China: Recommended National Standard for Office Devices 【New】
- China: Export Control Law
- China: Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits
- 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
- EU: Regulation on a Carbon Border Adjustment Mechanism（CBAM）
- India: Personal Data Protection Bill
- 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 2023 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2023 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.

The case still remains pending. Both Japan and China are the members of the MPIA (MPIA: Multi-Party Interim Appeal Arbitration Arrangement). With respect to this case, in April 2023, both countries entered into, and notified to the WTO, the agreed procedures for arbitration under Article 25 of the DSU, in which they mutually agreed to resort to MPIA procedure in case of any appeal against the Panel findings.

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 during the director-general-level talk between Maritime Bureau of MLIT and Ministry of Trade, Industry and Energy Korea (MOTIE) in October 2018, but the measures have not been withdrawn. Consequently, Japan requested bilateral consultations based on the WTO Agreements in November 2018 and in January 2020 and is consulting with Korea. Japan also has been raising concerns on Korea's support measures to its shipbuilding industry repeatedly through discussions at multilateral settings. In this regard, Japan requested Korea to explain its public financial support measures and to ensure their transparency at the Council Working Party on Shipbuilding of the OECD, in May 2023.

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 ICT 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.

[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%）.

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 Information Technology Agreement (ITA) Committee, the WTO Council on Trade in Goods, the Embassy of Japan in India, etc., and requested that the Government of India provide a detailed explanation and promptly withdraw the measures. However, the government of India continued 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.

In April 2023, a panel report was published which fully accepted Japan's arguments and found India's measures to increase tariffs on ICT (information and communications technology) products to be inconsistent with the WTO Agreements.

In May 2023, 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. Japan will also continue to request that India promptly and faithfully correct 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 293 AD investigations between 1995 and the end of June 2022, 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 22 cases as of the end of December 2022. 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.

- **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"). In addition, after February 2020, the U.S. began imposing additional tariffs at the same rates on derivative products of steel and aluminum (25% and 10% respectively) such as nails, cables, noting that despite the imposition of the Section 232 tariffs, imports of downstream products are increasing, and that the objective of the Section 232 tariffs are not being realized.

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 U.S. on the additional duties on imports of steel and aluminum from Japan based on Section 232. In February 2022, the U.S. 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 U.S. 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 2 of the GATT (Tariff Concessions). Furthermore, when quantitative restrictions, or quotas are set, it is likely that such measures are inconsistent with Article 11 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 21 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. In this regard, the panel reports for the cases brought by China, Norway, Switzerland, and Turkey were circulated to the WTO members, where the panel found in each case that the U.S. Section 232 measures cannot be justified under the security exception. The U.S. filed appeals against these four panel rulings.

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.

It shall be noted that in February 2023, one year after Russia began its invasion of Ukraine, the U.S. increased tariffs on Russian aluminum pursuant to Section 232 from 10% to 200% (ad valorem). The measure was taken in view of the continued threat to national security imposed by Russian aluminum and the importance of the aluminum industry in the domestic industrial base in Russia.

(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 11 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 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 U.S. 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. In June 2022, it was reported that the imports of Neodymium magnets threaten the U.S. national security. Following the report, the President decided to not increase tariffs but to provide support, including supports

to bolster domestic production.

Imports of Neodymium magnets from Japan have contributed to strengthen the US supply chain and imports from Japan, as an ally of the U.S. cannot pose a threat to American national security.

- **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, 2023, there are 21definitive 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 12 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.

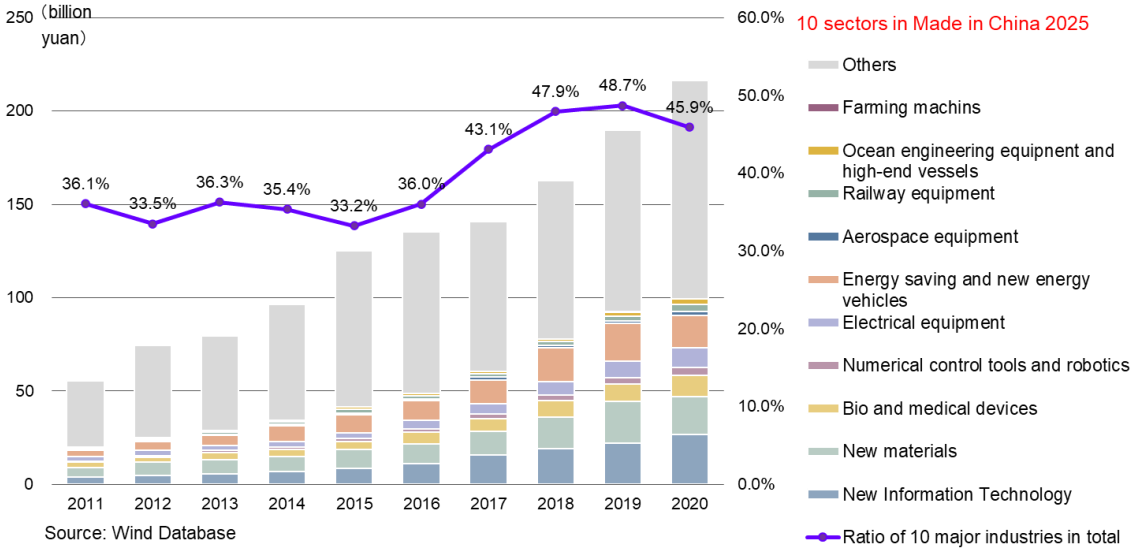
Japan will continue to work for improvement of the U.S. and emerging economies sunset review practice and abolition of the unreasonably long-standing AD measures on Japanese products at the earliest possible time.

- **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



Source: Wind Database

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 likely 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.

Moreover, 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), 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. Furthermore, the OECD series of reports on "Government support in industrial sectors" and "Government support and state enterprises in industrial sectors" published in April 2023 also show that i) industrial firms based in China receive disproportionately more support overall than firms based in OECD members and other non-OECD members such as India, Thailand, and Malaysia; that state-owned enterprises play an important role as recipients as well as providers of subsidies; that disclosure of information regarding government support and government ownership is limited and that the investment by China's government guidance funds aggravates this problem.

In the light of this situation, 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 brought up discussions related to the issues of subsidies and excess capacity.

In addition, while not targeting specific countries, the Trilateral Meeting of Trade Ministers among Japan, EU and the U.S., started in December 2017, also has held discussions on strengthening rules on industrial subsidies and state-owned enterprises. G7 countries including Japan also has repeatedly referred to the need to address harmful industrial subsidies in the G7 Leaders' Communiqué. 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**

Recently, the Chinese government has put in place various laws and regulations related to cybersecurity and data security. 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. Additionally, China has legislated relevant laws and regulations related to the three laws mentioned above.

If these laws place foreign business operators in substantially less favorable competitive conditions than Chinese business operators, it might violate the national treatment obligations stipulated in Article 17 of GATS, as well as Articles 8.4 and 10.3 of the RCEP Agreement. In addition, it might also violate the provisions of free flow of data across borders and prohibition of computing facilities location requirements in the RCEP Agreement

(Articles 12.14 and 12.15 of the RCEP Agreement), depending on the implementations.

Although not only the Japanese but also other foreign governments, and industry groups, etc., had submitted public comments to the Chinese government and expressed their concerns, these laws came into force without reflecting much of those concerns.

Subordinate laws and regulations relevant to the three laws are also subject to public comment procedures one after another. The subordinate laws and regulations pertaining to cybersecurity and data have many unclarities such as definitions of terms, detailed requirements for examination, contents of particular standards and conformity assessment procedures, scopes of coverage. In addition, there are significant business concerns with regard to the obligations to cooperate with public security authorities and national security agencies for national security and criminal investigations.

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

Japan will continue to closely monitor legislative developments, enforcement and implementation of Chinese regulations related to cybersecurity and data. Japan will also continue to urge China, in cooperation with like-minded countries, to improve those regulations through opportunities such as the WTO Council for Trade in Services, the WTO TBT Committee meetings and bilateral consultations, etc.

Relevant subordinate regulations that were announced 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 Administration of Security Vulnerability of Network Products (Regulation on obligation of security vulnerability for network product providers)	June 2019	September 2021
The Provisions on Management of Automobile Data Security (For Trial Implementation) (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	January 2023
Outbound Data Transfer Security Assessment Measures (draft) (Details of security assessments when personal data and important data are transferred overseas)	October 2021	September 2022
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
Measures for Standard Contracts for Cross-border Transfer of Personal Information (Regulation on the method of contract for "personal information processor" and the oversea recipient to transfer personal information cross-border)	June 2022	June 2023

- **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 continues 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. In addition, Japan conveyed its concerns at the regular vice-minister-level consultation between METI and the Chinese Ministry of Commerce in December 2019 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 also raised the issue of forced technology transfer at the 2021 Trade Policy Review of China. 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, at the Trilateral Meetings of Trade Ministers of Japan, the U.S. and the European Union, the issue of forced technology transfer has been discussed. Also, G7 members, including Japan, have repeatedly mentioned the need for addressing forced technology transfer in the past G7 Leaders Communiqués.

Japan, in cooperation with other member countries, will continue to proceed with discussions aimed at solving the problem through 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 / Decree on Personal Data Protection**

The Vietnamese government enforced the Cybersecurity Law in January 2019. The law requires certain domestic and foreign companies to store data within Vietnam, and obliges certain foreign companies to establish branches or representative offices in Vietnam. In October 2022, Decree 53, stipulating the detailed requirements to store data within Vietnam and to establish branches or representative offices according to the Cybersecurity Law, was

enforced. Furthermore, the Draft Decree on the Management, Provision, and Use of Internet Services and Online Information (72/2013/ND-CP) (announced in November 2021), which the Cybersecurity Law governs, requires that the data of users of data center service, Vietnamese organizations or persons, must be stored within Vietnam. Additionally, the Draft Decree obliges information contents service provider on social networking websites or mobile networks to locate servers in Vietnam.

If these obligations place foreign business operators in de facto less favorable competitive conditions than Vietnamese business operators in the sectors where Vietnam has committed itself to liberalization, the Draft Decree might violate the national treatment obligations stipulated in Article 17 of GATS as well as Articles 9.4 and 10.3 of the CPTPP. Additionally, since Vietnam has agreed to the provisions of free flow of data across borders and prohibition of computing facilities location 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 Cybersecurity Law and the Draft Decree on the Management, Provision, and Use of Internet Services and Online Information might violate these provisions, depending on the implementation. Since Decree 53 requires a specific form in relation to the obligation to establish branches or representative offices in Vietnam, it might violate the market access obligations stipulated in Article 16 of GATS and the prohibition of requirement to establish an enterprise in its territory stipulated in Article 10.6 of the CPTPP Agreement.

In February 2021, the Vietnamese government announced the Draft Decree on Personal Data Protection under the Cybersecurity Law and other relevant laws. The Draft Decree stipulated that the personal data of Vietnamese citizens is allowed to be transferred across borders when all of the following four conditions are met: consent by the data to the transfer; storage of original data in Vietnam; issuance of adequacy proof regarding level of protection of the personal data in a country where the data is transferred, and a written approval by the Personal Data Protection Commission of Vietnam. In May 2023, the Vietnamese government published Decree (to be enforced on July 1st, 2023), in which the obligation to store data of the personal data of Vietnamese citizens is eliminated.

Regarding the Cybersecurity Law and the Draft Decree on Personal Data Protection (announced in 2021), Japan has actively engaged with Vietnam, and submitted public comments of our concerns to the Vietnamese government and expressed concerns on the laws at the WTO Trade Policy Review on Vietnam, or the WTO Council for Trade in Services, etc. Additionally, Japan has encouraged Vietnam to establish a fair and transparent system that reflects international rules and practices,

Japan will continue to monitor legislative developments and their enforcement and implementation and will proceed with discussions pursuing improvements and clarifications in the WTO Council for Trade in Services or 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 3 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 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: Revision to the Government Procurement Law of the People's Republic of China**

The Government Procurement Law of the People's Republic of China, which came into effect in January 2003, carried out the first round of public comment on the proposed amendments from December 2020 to January 2021 and the second round from July to August 2022, respectively. A summary of the proposed amendments is the following:

(1) "Other procurement entities" is added to the definition of procuring entities under

Article 12, expanding the scope to include not only government agencies but also public interest state-owned enterprises.

(2) Article 23 of the proposed amendment maintains the current Article 10, which provides that "the government shall procure domestic goods, construction and services, except in one of the following situations: where the goods, construction or services needed are not available within the territory of the People's Republic of China or, though available, cannot be acquired on reasonable commercial terms" and adds a new local content requirement providing preferential treatment in government procurement for products with a high added value ratio within China.

(3) Article 24 further expands the provision on state security which was added in the proposed amendment released in December 2020.

Regarding Articles 12 and 23, if the products and suppliers are limited to those in China even for procurements that do not fall under "procurement by government agencies" as stipulated in Article 3.8(a) of the GATT and Article 13.1 of the GATS, it may violate national treatment obligation under Article 3.4 of the GATT and Article 17 of the GATS.

In addition, procurements by state-owned enterprises and state-invested enterprises for commercial or nongovernmental use do not constitute government procurement, and could be in violation of their commitments under the WTO Accession Protocol under which China committed those enterprises to be subject to Article 3 of the GATT and Article 17 of the GATS, among others.

Regarding Article 23, it clearly provides preferential treatment for domestic products, which may raise the issue of consistency with Article 4 (non-discrimination) of the Agreement on Government Procurement (GPA) of the WTO, which China is currently negotiating to join.

Regarding Article 24, the scope of government procurement activities that have to do with state security stipulated under the government procurement security review system is extremely unclear and vague, and there is a risk that the scope of this provision may exceed the scope permitted under the security exception under the WTO Agreement and be applied in a very broad and arbitrary manner. In addition, there is a risk of violating the transparency rule under in Article 16.4.1 of the RCEP Agreement to which China is a party.

Japan has submitted its government's opinion in response to the public comment made by the government of China in 2022, and has also expressed its concerns at bilateral and other consultations. Japan will continue to advance discussions to resolve these concerns.

- **China - Recommended National Standard for Office Devices**

It is reported that the Chinese government is in the process of formulating a recommended national standard on office devices. The standard reportedly requires that office devices, such as multifunction printers, and their critical components procured by government departments or critical information infrastructure operators are designed, developed, and manufactured in China. While the Chinese government has announced that the standard on information security for office devices is at the drafting stage for revision, the draft standard has not been officially publicized at this point of time. Standards that require

design, development, manufacturing, and other processes regarding products and their components to be domestically conducted must be consistent with international rules such as the WTO Agreements.

Since July 2022, the Japanese government has raised this issue at WTO Committees, such as the TBT Committee and TRIMS Committee. We will continue to closely monitor future development of the standard and take necessary measures in cooperation with industry to ensure that Japanese companies are not unfairly disadvantaged.

- **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 21 of the GATT) and be inconsistent with the prohibition of import/export restrictions (Article 11 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 as a subordinate regulation of the Export Control Law 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. Moreover, in December 2022, China published a revised draft of “Catalogue of Technologies Prohibited and Restricted from Export”, established in accordance with the Foreign Trade Law and the Regulation on Technology Import and Export Administration, which states that photovoltaic silicon manufacturing technology will be subject to export restrictions. It is also necessary to monitor the development of the draft.

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, at the Trade Policy Review of China at WTO, 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.

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

Anti-Suit Injunction ("ASI") is a court order that prohibits a party from requesting for enforcement of a judgment, or from filing a suit and other legal proceedings in a foreign court for parallel legal suits of substantially identical disputes. 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. Thereafter, lower Chinese courts issued ASIs in lawsuits relating to standard essential patents for mobile communications technology. Some ASIs prohibited not only to pursue legal proceedings in foreign courts, but also to file new lawsuits therein.

In February 2022, the EU requested consultations on China's ASI measures, arguing that they are inconsistent with the TRIPS Agreement and other agreements (DS 611), and in December 2022, the EU requested the establishment of a panel (Japan is a third country participant in the case).

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

- **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: Tax Credits on Electric Vehicles**

In August 2022, the U.S. enacted the Inflation Reduction Act of 2022 (the "IRA") which included provisions regarding tax credits on electric vehicles etc.("EVs"). Pursuant to the IRA, tax credits are granted upon purchase of EVs with final assembly in North America. 3,750 USD tax credits are granted if the critical minerals contained in the battery is extracted or processed in the U.S. or a country with which the U.S. has a free trade agreement; and

3,750 USD tax credits are granted if the battery components are manufactured or assembled in North America (the tax credit can be granted up to 7,500 USD in total). It should also be noted that in connection to the IRA, in March 2023, Japan and the U.S. signed the Japan-U.S. Critical Minerals Agreement, which aims to establish robust supply chains through coordination between Japan and the U.S. and among like-minded countries. Following the signing of this agreement the U.S. Treasury announced a guidance which stated that Japan is a country with which the U.S. has a free trade agreement as stated in the IRA.

The eligibility requirement that requires the final assembly in North America may be inconsistent with the Article 1.1 (Most Favoured Nation obligation) and Article 3.4 (National Treatment obligation) of GATT. In addition conditioning the EV tax credits to the use of battery components manufactured or assembled in North America, or to the use of critical minerals extracted or processed in the U.S. or a country with which the U.S. has a free trade agreement may fall under the prohibited subsidies under Article 3.1 (b) of the ASCM, and may be inconsistent with Article 1.1 (Most Favoured Nation obligation) and Article 3.4 (National Treatment Obligation) of GATT. Further, the provision that states that an eligible EV may not contain any battery components that are manufactured by a foreign entity of concern and critical minerals from a foreign entity of concern may be inconsistent with Article 1.1 (Most Favoured Nation obligation) and Article 3.4 (National Treatment Obligation) of GATT.

Japan has raised concerns to the U.S. about the EV tax credits from the viewpoint of its consistency with WTO rules on various occasions. Japan will coordinate with the industry and other countries and continue to closely look into the relevant laws and guidance as well as the operation of the IRA.

- **EU: 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) and the European Commission, the European Parliament and the European Council subsequently agreed on a final draft in December 2022, which was enacted in May 2023. The CBAM 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 CBAM, 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 October 2023, but will be subject to a transitional period until the end of 2025. 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.

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 the 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 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.

Another issue is that the Regulation suggests the possibility of future support measures for exports from the EU, and that, if such measures are to be considered, WTO consistency should be taken into account. But in general, support conditional on export is likely to fall under export subsidies, which are prohibited by the ASCM. The ASCM clearly provides that the refund of indirect taxes upon export does not constitute an export subsidy. But the burden under the EU-ETS is not a domestic tax levied on goods, and is not an indirect tax. Thus, it is not easy to ensure WTO consistency for a system that exempts export products from the burden of emission credits.

Japan, for its part, will continue to engage in bilateral discussions with the EU and 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)), among others. 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**: **Digital Personal Data Protection Bill**

The Indian government withdrew the “Personal Data Protection Bill” published in 2019 and published a new bill for personal data protection named “Digital Personal Data Protection Bill” in November 2022. The Bill stipulates that a “Significant Data Fiduciary” shall appoint a “Data Protection Officer” based in India, the “Significant Data Fiduciary” shall undertake “Data Protection Impact Assessment”, and the Indian government may notify countries or territories to which personal data is to be transferred.

Foreign companies might be treated unfavorably depending on the implementation of the Bill. If the Bill is implemented in a manner that affects the provision of services and if the service or the service provider in WTO member countries are treated less favorably than those in India, it might violate the national treatment obligations stipulated in Article 17 of GATS. Moreover, companies in certain foreign countries might be treated more or less favorably than those in other foreign counties, which might violate the MFN obligation

stipulated in Article 2 of GATS.

Japan has actively engaged with India and submitted public comments to express our concerns to the Indian government. Additionally, Japan has encouraged India to establish a fair and transparent system that reflects international rules and practices.

Japan will continue to monitor legislative developments of the Bill and will proceed with discussions pursuing improvements and clarifications in bilateral and multilateral consultations.

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

The Indian government initiated 1,130 AD investigations between 1995 and the end of December 2022, which is the largest number of all WTO Members, and among which Japanese products were included as the subject product in 46 cases. Among these 46 cases, AD measures were applied in 33 cases. AD duties remain in force in 3 cases as of the end of December 2022 . India initiated 47 SG investigations between 1995 and the end of December 2022, among which SG measures were applied in 23 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) Proceedings of Individual Trade Policies and Measures Described in "METI Priorities Based on the 2022 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	The case still remains pending. Both Japan and China are the members of the MPIA (MPIA: Multi-Party Interim Appeal Arbitration Arrangement). With respect to this case, in April 2023, both countries entered into, and notified to the WTO, the agreed procedures for arbitration under Article 25 of the DSU, in which they mutually agreed to resort to MPIA procedure in case of any appeal against the Panel findings.
	Inappropriate Application of AD Measures	Japan expressed its concerns about China's AD investigations which are considered inappropriate by 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.
	Anti-Suit Injunctions (ASI) by Chinese courts in standard essential patent lawsuits	In December 2022, the EU requested the establishment of a panel. Japan is a third country participant in the case.
	Industrial Subsidies	In the Subsidies Committee meetings, 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	Outbound Data Transfer Security Assessment Measures in September 2022 and Measures for the Administration of Data Security in the Field of Industrial and Information Technology Sectors (For Trial Implementation) in January 2023 respectively became effective. Japan submitted comments to the public comments on the draft revision to Cybersecurity Law. Japan expressed concerns in the TBT Committee meetings and the WTO Council for Trade in Services.
	Forced	Japan conveyed its concerns through bilateral and

	Technology Transfer	multilateral consultations.
	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.
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 December 2022, four panel reports were circulated with respect to the cases brought by China, Norway, Switzerland, and Turkey. The panels found that the Section 232 measures on steel and aluminum cannot be justified under the security exception. The U.S. appealed. In September 2022, following the report of the Section 232 investigation on Neodymium magnets, although no import adjustment measures were imposed, the U.S. decided to impose support measures on the products.
	Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products	Japan pointed out problems regarding the U.S. sunset review practice and measures at the WTO AD Committee meetings.
	Zeroing (Inappropriate Calculation of AD	Japan pointed out problems regarding the U.S. Zeroing practice at the WTO AD Committee meetings.

	Duties) Including Abusive Zeroing in the Cases of Targeted Dumping	
	EV Tax Credits	In August 2022, the Inflation Reduction Act of 2022（the "IRA"） was enacted in the U.S. The IRA includes provisions regarding tax credits for electric vehicles etc. In March 2023, Japan and the U.S. signed the Japan-U.S. Critical Minerals Agreement in connection with the IRA. The Agreement aims to establish robust supply chains through coordination between Japan and the U.S. and among like-minded countries.
EU	Regulation on a Carbon Border Adjustment Mechanism （CBAM）	The European Commission, the European Parliament and the European Council agreed on a final draft of the regulation on a Carbon Border Adjustment Mechanism (CBAM) in December 2022, which was subsequently enacted in May 2023. The CBAM is scheduled to enter into force in October 2023, but will be subject to a transitional period until the end of 2025. 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.
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 2022 and in May 2023, Japan also requested that Korea explain its public financial support measures to ensure transparency at the Council Working Party on Shipbuilding of the OECD.
	Sunset Review Practice on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures)	In January 2021, Korea appealed to the WTO Appellate Body. Japan will continue to 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	In April 2023, a panel report was published. In May 2023, 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. Japan will continue to request that India promptly and faithfully

		correct its measures.
	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	The Personal Data Protection Bill published in 2019 has been withdrawn and a new “Digital Personal Data Protection Bill” was published in November 2022. Japan submitted comments to the public comments on the Bill published in November 2022.
	Inappropriate Application of Trade Remedy Measures	Japan pointed out problems of India’s inappropriate AD investigations at the WTO AD Committee meetings.
Vietnam	Cybersecurity Law, Draft Decree on Personal Data Protection	The Decree guiding the implementation of Cybersecurity Law has been published in August 2022 and became effective in October 2022. Japan continuously expressed concerns on the law and decree in the WTO Council for Trade in Services and the TBT Committee.
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 continuously monitors Brazil's taxation in accordance with the complete implementation of the recommendation.

End