

PREFACE

The Report on Compliance by Major Trading Partners with Trade Agreements (WTO, FTA/EPA and IIA) (“the Report”) is a series of annual reports published by the Subcommittee on Unfair Trade Policies and Measures, a division of the Trade Committee of the Industrial Structure Council. The Industrial Structure Council is an official advisory body to the Minister of Economy, Trade and Industry of Japan. The first Report was released in 1992, and this is the twenty-seventh volume.

This Report is the only report to be published in Japan that analyzes the wide-ranging trade policies and measures of each country in light of compliance with the WTO Agreements, Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPAs) (FTA/EPAs) etc., in a comprehensive manner.

1. Introduction

This Report has consistently been asking what “fairness” means to pursue dispassionate and constructive solutions to trade friction.

“Result-oriented approach,” which allows a country to regard the trade policies and measures of its trading partner as unfair only because there are any unfavorable “results,” lacks objectivity and may evolve into managed trade and produce anti-competitive effects. “Fairness” of each country's trade policies and measures should be assessed not based on results but on internationally agreed-upon rules. When there is no appropriate international rules, the establishment of new rule should be pursued first, and fairness or unfairness should not be discussed without international discipline. This approach, or “rule-oriented approach,” is the “fairness” that this Report has insisted and the principle we have to be based on.

The origin of the multilateral free-trade system can be traced back to the Havana Charter, an agreement concluded to establish an International Trade Organization (ITO) for reconstructing the international trade system after World War II. The Charter failed because it was not ratified by the necessary number of signatory countries. However, the spirit has been inherited by the General Agreement on Tariffs and Trade (GATT), coming into effect 70 years ago, and then the World Trade Organization (WTO), inaugurated some 20 years ago. WTO members, 164 countries and regions, substantially cover the entire world economy. Countries have struggled to establish a multilateral free-trade system supported by effective, rule-based dispute settlement procedures, and it has facilitated the remarkable growth of emerging economies, the deepening of global value chains, and the progress of the Fourth Industrial Revolution, and thus a profound contribution to the global economy in its astonishingly rapid development. Many bilateral or regional EPAs and FTAs have been concluded to complement and/or strengthen the multilateral free-trade system. The number of International Investment Agreements (IIAs) concluded is also growing.

On the other hand, in the face of behaviors of some emerging economies - market-distorting subsidies, forced transfer of technology, infringement of intellectual property rights, and expansion of business activities under the influence of public-sector entities, such as governments and state-owned enterprises (SOE), a concern seems to be spreading that they might distort the base of competition and the function of the market which are the foundation of the multilateral free-trade system.

Some of the behaviors concerned to be market-distorting infringe on internationally agreed-upon rules while others have yet to be fully regulated by existing rules. Some others, it is pointed out, were beyond expectation when the current rules were formed. In other words, a concern is appearing among governments that when evaluating the soundness of a multilateral free-trade system in its functions, whether any of its existing rules are infringed may not fully serve as a sole relevant criterion. That is the fundamental difficulty lying under the current trade friction problems.

Among some developed economies, retrogression to “result-oriented approach,” an approach this Report has expressed worries about, is appearing. They may try to find a way to redress economic imbalance in some trade restrictive measures and/or impose countermeasures on each other, letting negative impact spreading all around the globe. This is another point that must be observed carefully.

For the multilateral free-trade system, implementation of rules forms an important pillar, and its core lies in

effective employment of a dispute settlement mechanism. There is also a growing recognition that market-distorting measures must be identified and regulated in a more appropriate manner that can capture the changing structure of economy and industry. Meanwhile, drastic changes in the environments of international trade, including the intensifying confrontation between developed and developing economies, make any multilateral rules much more difficult to establish. Governments, with the understanding as has been described above, are working hard to examine whether the existing rules can be interpreted in a subtler manner to make them applicable to a broader range of cases while organizing a variety of forums as part of their steady effort to review the rules and make them better, as this Report has recognized. Some of the achievements their effort has produced can be found in new rules adopted in EPAs, IIAs, and other international agreements.

Policy makers often refer “fair competitive conditions” and “equal-footing of competitive conditions” as “level playing field”¹. What should be regarded as “fair competitive conditions” may differ depending on the standpoint from which one talks about the issue. However, it could be said that a broad consensus have been achieved for the idea that such conditions should have an accumulation of internationally agreed-upon rules as an integral part of its foundation. That demonstrates the past 26 volumes of this Report have succeeded in having the principle of “rule-oriented approach” understood and supported by a broad range of parties both in and out of Japan, an achievement we should like to welcome.

We highly think of the government of Japan in keeping away from any market-distorting measures that take advantage of loopholes in the rules or any unilateral measures designed from a “result-oriented” way of thinking, and instead holding fast to the “rule-oriented approach” as basic approach. In the first volume of this Report, we cited a phrase, “All are sinners.” It implies what is important is humble attitudes of asking all the parties concerned to work together and solve problems. We expect the government of Japan to give thought again to the importance of the concept and make significant contribution for securing the base of competition that underpins the multilateral free-trade system.

2. Objectives of this Report

This Report has three main objectives: (1) Securing of Compliance with International Rules (WTO Agreements, EPAs, etc.); (2) Presentation of “Rule-oriented Approach” as Basic Approach; and (3) Promotion of Further Understanding of International Rules.

(1) Securing of Compliance with International Rules (WTO Agreements, EPAs, etc.)

The first objective of this Report lies in making sure that countries will comply with international rules in their trade policies and measures by analyzing consistency between them.

So far this report, in light of WTO Agreements, as well as EPAs, FTAs and IIAs (collectively referred below in the Preface as “EPA and similar agreements”), has identified problems in trade policies and measures adopted by Japan's major trading partner countries and regions (sometimes referred below simply as “country(ies)”) to urge them to remove or otherwise remedy them.

With changes observed in the Japanese industry community in their trade and investment activities, both in quality and scale, and increased weight of new players in the order of global trade, this Report has increasingly important roles to play in analyzing consistency of their trade policies and measures with international rules and offering perspectives from which solutions should be designed.

(2) Presentation of “Rule-oriented Approach” as Basic Approach

The second objective is presentation of “rule-oriented Approach” as basic approach.

In early 1990s, when the first volume of this Report was produced, countries, inclined to evaluate trade policies and measures of their trading partners using “result-oriented approach,” often found themselves in all the greater

¹ For instance, the Japan, US and EU Trade Ministers Meeting (December 2017).
<http://www.meti.go.jp/press/2017/12/20171213001/20171213001.html>

difficulty in solving diverse and complex problems of the international economy. After the inauguration of the WTO in 1995, they more often take up the issue of consistency of trade policies and measures adopted by their counterparts with international rules. Such changes may be viewed as evidence that “rule-oriented approach,” the basic approach of this Report, has got widely accepted.

This Report has also pointed out the importance of using the dispute settlement procedures under the WTO as specific measures for solving international economic problems. Major trading countries around the world have come to recognize any trade policies or measures questionable under the WTO Agreements should be referred to the WTO dispute settlement procedures to ask for fair and objective judgment. Cases have also been accumulated of disputes settled through the arbitration procedures provided by an IIA or an FTA and those settled by an international arbitration body. Here, we would like to point out again the fact that practice of “rule-oriented approach,” under which governments and businesses actively make use of dispute settlement procedures, has laid the foundation for the stability of the multilateral trade system.

(3) Promotion of Further Understanding of International Rules

The third objective is promotion of further understanding of international rules (WTO Agreements and EPA and similar agreements).

Having come into force in 1995, the WTO Agreements serve as a fundamental framework that sets multilateral rules for international trade. EPA and similar agreements concluded by many countries are also important as new international rules that complement the WTO Agreements. However, it would be too early to say that these international rules have been broadly recognized or fully understood by businesses and people. Accordingly, this Report explains again the current rules, together with and basic principles lying behind them. We hope that these explanations, coupled with the analyses of the trade policies and measures of different countries under particular examples, will promote further understanding by various parties of the significance and potential of the WTO Agreements and other international rules.

3. “Rule-oriented approach” as Basic Approach

(1) Significance of “Rule-oriented Approach”

Since first published, this Report has been holding up the “rule-oriented approach,” an approach of evaluating trade policies and measures of countries based on internationally agreed-upon rules.

When mentioning the “rules” under the “rule-oriented approach,” this Report deals with three categories of rules below.

The first category is the WTO Agreements. The WTO Agreements go beyond the scope of its predecessor (GATT, which covered only trade in goods) to provide rules for new areas such as trade in services and protection of intellectual property rights. These are the most comprehensive international rules regarding international trade.

The second set of rules we employ is found in international treaties other than the WTO Agreements, basic principles of international law and customary international law. These disciplines, international agreements concluded in the areas covered or not covered by the WTO Agreements and other standards supporting the international law system, are considered supplements to the WTO Agreements. Examples of these other rules and principles of international law include: EPA/FTAs; IIAs; bilateral agreements governing bilateral economic and trade issues and multilateral agreements other than the WTO Agreements.

The general principles of international law and other international customary law may not be codified in treaties, but they nevertheless constitute rules which Japan and all other countries are supposed to observe.

Trade policies and measures of countries should be evaluated according to “rule-oriented approach” for three reasons.

Maintenance of the base of internationally agreed-upon rules

Issues of fairness in market competition should not be focused on the results of competition, but on the rules under which competition takes place. As long as fair competition takes place under agreed-upon rules, challenging the fairness of results (result-based criteria) might destruct the base of agreed-upon rules.

Securing of effectiveness of international agreement

When countries reach agreement in international negotiations and commit to the fulfillment of mutual obligations, they should cite and seek remedies for the breach of those obligations. Such an approach is both justified and necessary to secure the effectiveness of agreements.

Avoidance of turning trade problems into political issues

An indispensable means of avoiding needless misunderstandings and emotionalism over trade concerns, as well as of preventing trade friction from becoming a political issue, is to evaluate objectively whether criticism and complaints about a country's trade policies and practices in fact have any basis under internationally agreed-upon rules. The WTO prohibits its members from unilaterally recognizing other countries' behaviors as violating the WTO Agreements and resorting to sanctions or countermeasures before any decision is made through its dispute settlement procedures. Also, under many of Japan's EPAs, forums have been established for discussing improvements to the business environment, enabling the parties to discuss the partner countries' systems for trade and investment and the implementation of these systems. Moreover, rules of dispute settlement under many EPA and similar agreements provide the procedures through which investors can obtain remedies based on international law by submitting a case to arbitration against the host state, in the case of problems arising between investors and states, which function as a useful tool to secure the implementation of rules. With Japan getting more closely linked with countries around the world in their economic relationships, the government of Japan must select effective tools and channels depending on types and characteristics of different trade issues to solve them in a dispassionate and constructive manner according to rules.

(2) Problems with “Result-oriented Approach”

This Report has so far pointed out problems of “result-oriented approach,” a contrary concept for “rule-oriented approach.” The “result-oriented approach” allows a country to brand as “unfair” or “unreasonable” the trade policies or measures of another country only because there are any “results” the country does not like, such as trade imbalance or poor export performance of specific products. There are many problems associated with this approach as described below.

Lack of Objectivity

The result-oriented approach has the most serious problem in its lack of objectivity as it allows a country to unilaterally evaluate trade policies and measures of other countries. The evaluation itself is not necessarily based on any internationally agreed-upon rules. The country may wrongly regard the “results” of trade as a consequence of any policies or measures adopted by its trading partner, and determine them “unfair” even when they are in fact not responsible.

Danger of Turning into “Managed Trade” (Anti-Competitive Effect)

The result-oriented approach may easily turn into “managed trade” as the approach often comes together with a policy that demands trading partners to achieve specific results (numerical targets), such as market share or import value of products imported from a specific country. Such demand involves risk that it may hinder functions of genuine competition, what should be called engine of the market economy. That would represent an abrogation of the basic principles of the WTO Agreements to develop the world economy according to market disciplines.

(3) Economic Perspectives that Supplement “Rule-Oriented Approach”

This Report, placing the legal analysis of trade policies and measures of countries at the core, also refers briefly to their “economic implications” to complement the analysis for three reasons.

The first reason is that trade policies and measures that depart from international trade rules and dispute settlement mechanisms that have been agreed upon generally have negative economic implications. They reduce

the predictability and transparency of international trade and distort the smooth flow of goods and services, thereby exerting a substantially detrimental influence on the economic welfare of each country. Complementary analysis of these economic effects should assist the better understanding of the importance of international trading rules and dispute-settlement mechanisms.

Second, the existing international trading rules and dispute settlement mechanisms serve as institutional frameworks for the economic activities of national governments, producers, and consumers and have a significant effect on the level of economic welfare that is achieved thereunder. Understanding the economic implications of the rules and mechanisms is of importance to understanding the meaning and significance of the current system.

Third, international trade rules and dispute-settlement mechanisms are not set in stone. They are merely institutional frameworks that can be changed at any time if there is an international consensus to do so. In searching for new international disciplines, we must have an accurate understanding of the implications that possible alternative rules and mechanisms will have on countries' economic welfare, and we must make a choice regarding the systems that we prefer.

4. Structure of this Report

Main parts and their objectives

This Report consists of three main parts.

Part I deals with Japan's major trade partners' policies and measures that are problematic under the WTO Agreements and other international rules.

Part II contains an overview of what Part I starts from, namely, the WTO Agreements and other international rules. (In this regard, Part II does not offer the whole picture of the WTO Agreements.)

Part III provides analysis and explanations concerning rules of EPA and similar agreements, sector by sector.

Also, there are several columns which discuss special topics every year. From this volume, columns deal in principle with issues for the year. For columns that have been offered in the past, see the website of the Ministry of Economy, Trade and Industry below: (http://www.meti.go.jp/policy/trade_policy/wto/3_dispute_settlement/32_wto_rules_and_compliance_report/322_past_columns/past_columns_list.html)

The part of Reference Materials deals with recent developments of the Doha Development Agenda and other issues.

In general terms, in order to seek to improve another country's policy/measure based on international rules, it is necessary for the private citizens including the industries and experts, and governments to function together. Again in this volume, we try to provide information on developments of the WTO Agreements and EPA and similar agreements in an active manner.

In Part I, we have described a three-step framework in principle, namely, i) outline of the measure, ii) problems under international rules, and iii) recent developments. These descriptions indicate how a country's measures could be problems under the WTO Agreements, and will lead to a better understanding the WTO Agreements for readers. Moreover, we have tried to describe the reactions of the Japanese Government specifically. We hope that these feedbacks of our policy information will lead to understanding of trade policies in general and help promote public-private cooperation. For this purpose, before preparing this report, the Secretariat announced a list of topics to be included for this volume of the Report and invited public comments on these and any other topics.

Criteria for Selecting Trading Partners

We have made it a rule to cover in Part I of the Report a dozen or so economies important to Japan, based on the amount of bilateral trade with each (total exports and imports). In this 2018 volume of the Report, we covered the economies of China, the United States, ASEAN countries*, EU, Republic of Korea, Chinese Taipei, Australia, Canada, Russian Federation, India and Brazil in accordance with the said criteria.

*Although ASEAN did not accede to the WTO as an independent customs territory, it is collectively dealt with in one chapter because there are problems addressed that are common to ASEAN countries.

Figure P-1 Amount of Trade with Japan

China	33.3
ASEAN countries	23.4
The United States	23.2
European Union	17.4
Republic of Korea	9.1
Chinese Taipei	7.4
Australia	6.1
Canada	2.3
Russian Federation	2.2
India	1.5
Brazil	1.1
World Total	153.6

Source: Ministry of Finance “2017 Customs Statistics (final report)”. In trillion yen.

Policies and Measures Discussed

In Part I, the trade and investment policies and measures of the covered economies are discussed. Business practices and such that have nothing to do with the policies and measures taken by a particular government are not discussed here. Among the policies and measures of each economy, Part I conducts examinations on those that may be problematic in terms of consistency with the WTO Agreements and other international rules with a focus on those that are considered to be important to Japan’s economic and trade activities.

There also are some trade and investment policies and measures that do not expressly violate the WTO Agreements or other international rules, but that contravene the spirit of the WTO and should be liberated or controlled under new rules. These areas generally include high tariffs, non-concession, service and government procurement, etc. They are included with the statement “this particular case was included in light of the following concerns despite it being a trade or investment policy or measure that does not expressly violate the WTO Agreements or other international rules” at the beginning of each case.

Other Matters

Unless otherwise stated, this Report indicates the state of affairs as of the end of February 2018.

The Report is available on the METI website.

http://www.meti.go.jp/policy/trade_policy/wto_compliance_report/index.html