

Chapter 1

CHINA

Transparency, Uniform Administration and Judicial Review	2
(1) Transparency	2
(2) Uniform Administration	4
(3) Judicial Review	4
Export Restrictions	5
(1) Imposition of Export Tax	5
(2) Export restrictions on Raw Materials	5
(3) Export Control Bills	6
Right to Trade (Approval System for Trading)	7
TARIFFS	7
(1) Tariff Structure	7
(2) Violation of Bound Tariff Rate on Photographic Roll Films, etc.	7
Anti-Dumping Measures	8
(1) AD measures on Japanese-made polyvinylidene chloride (PVDC polymer)	8
(2) AD measures on Japanese-made acrylonitrile-butadiene rubber (NBR)	9
(3) Ad measures on Japanese-made orthodichlorobenzene	9
Subsidies	10
Subsidies for aluminum	10
Safeguards	12
Regulations on Safeguards	12
Trade-related Investment Measures (TRIMs)	12
Standards and Conformity Assessment Systems	16
(1) Information Security Regulations in China	17
(2) Security Regulation of IT Equipment by Chinese Banking Industry	18
(3) Chinese Cybersecurity Law	19
(4) Measures for Controlling Pollution by Electronic Information Products	19
(5) Regulations on New Cosmetic Ingredients	20
(6) Regulations on Cosmetic Labels	21
(7) Regulations on Chemical Substances	22
Trade in Services	22
(1) Distribution Services	23
(2) Construction, Architecture and Engineering	23
(3) Telecommunications Services	23
(4) Finance	25
(5) Chinese Cybersecurity Law	29
Protection of Intellectual Property	30
(1) Issues related to Counterfeit, Pirated and Other Infringing Products	31
(2) Issue of Bad Faith Filings	32
(3) Licensing Regulations on Patents and Know-How	34
Government Procurement	37

Transparency, Uniform Administration and Judicial Review

[Commitments upon Accession]

China now has obligations under the provisions of Article X of the GATT and Article VI of GATS to administer all measures in a reasonable, objective and impartial manner. China has specifically committed in the Protocol to: (1) apply the WTO Agreement to the entire customs territory of China, (2) observe its WTO obligations not only within the central government but also in local governments, (3) apply and administer the laws, regulations and measures covering trade in goods and services, TRIPS and management of foreign exchange in a consistent, transparent, and reasonable way, (4) implement only such laws, regulations, and measures which have been published and can be easily accessed by other WTO member countries, (5) have all administrative actions affecting trade subject to review by a judicial body independent of the agency entrusted with administrative enforcement. And China has also committed to: (6) establish a mechanism for the petitioning of complaints in cases of inconsistent application of trade-related systems and regular official publications with an inquiry point to ensure transparency.

[Status of Implementation and Points to Be Rectified]

(1) Transparency

<Status of Implementation>

Previously, many laws and regulations had been unpublished and even those that were published, particularly regulations at the local level, were difficult to obtain. Moreover, in many cases, the time from promulgation to implementation was so short that companies could not adequately prepare to respond to the new systems.

In recent years, China has made considerable efforts to improve the transparency of trade-related policies and measures, such as: (i) the active disclosure of laws and regulations through the Internet and the Official Gazette; (ii) the establishment of “the World Organization Notice Enquiry Center (World Trade Organization Notification Enquiry Center)” at the Ministry of Commerce; and (iii) the promulgation of Orders to introduce a comment period and to allow the holding of a public hearing prior to the actual promulgation of laws and orders.

On the legislative front, the Government Information Disclosure Ordinance (State Council) came into force in May 2008. This Ordinance stipulates that certain information - including information on the establishment of organizations within government institutions and their functions, administrative processes, etc. - should be made public through the Official Gazette, government websites or other means easily accessible to the general public. Moreover, some central government agencies and local governments (provinces and cities) have disclosed financial budget information. With regard to the Government Information Disclosure Ordinance (State Council), the Research Center for Government by Law at China University of Political Science and Law and other organizations have been hosting meetings of a study group for revising the Government Information Disclosure Ordinance since 2013, and have discussed revision of the ordinance on an ongoing basis. Amendment work is also under way at the State Council. At present, the ordinance has not been revised or replaced with new legislation. However, in the 2016 Legislation Plan of the State Council established in April 2016, this Ordinance was among matters of urgency to be addressed to deepen overall reform, and therefore revision work may be accelerating.

In addition, the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council issued the Opinions on Overall Promotion of Government Information Disclosure on February 17, 2016, and the General Office of the State Council issued the Notice of Administrative Instructions for the “Opinions on Overall Promotion of Administrative Information Disclosure” on November 10, 2016. In these documents administrative instructions are set out to promote the disclosure of information on decisions, enforcement, management, services and results (collectively referred to as “Five Disclosures”). Specific details of the above instructions include: (1) promotion and enhancement of Five Disclosures; (2) enhanced explanation about policies, (3) active

response to issues of concern, (4) enhanced development of platforms, (5) expansion of participation by the public, (6) enhanced provision of instructions to organizations, etc.

In addition, on July 30, 2016, the General Office of the State Council issued the Notice on Better Responses to Public Opinion on Administration in Administrative Information Disclosure Activity by the General Office of the State Council. This action was driven by a statement made by Premier Li Keqiang on February 17, 2016, that a modern government should respond to expectations and concerns of its people in a timely manner. It also was driven by an idea that administrative information disclosure and responses to public opinion regarding administration should be enhanced against the background of the frequent occurrence of expressions of public opinion due to the growth of the Internet and new media. Priority actions are directed towards issues such as: misunderstanding and misinterpretation of policies and measures; matters related directly to and having a relatively large impact on public interests; matters related to people's livelihood and those that greatly harm social morality; matters related to responses to emergency situations and natural disasters; and public opinion on administration that demand that higher levels of government take proactive measures on issues related to lower levels. In addition, there is clarification regarding the departments in charge of responses. Deadlines are also clarified by requiring a press conference to be held within 24 hours after the occurrence of a special serious incident or serious emergency incident and requiring a response to be made within 48 hours after the occurrence of other incidents.

On the judicial level, in December 2009, the Supreme People's Court promulgated the "Notice of Six Provisions on Judicial Transparency" and the "Certain Provisions on Acceptance by the People's Courts of Supervision by the Media and Public Opinion," thereby requesting that courts at levels make public the prosecution process, court proceedings, executions, public hearings, records and proceeding-related clerical work, and proactively accept supervision by media opinions.

Further, on February 28, 2017, the Supreme People's Court published "Judicial Reforms of Chinese Courts" (2013-2016) (White Paper), and on December 15, 2017, the State Council Information Office published "New Progress in Security of Human Rights in the Judicial Field of China" (White Paper). In the above papers, the status of Four Platforms for Judicial Transparency of the Supreme People's Court is summarized as follows:

Regarding disclosure of trial process, the China Trial Process Information Disclosure Website was launched on November 13, 2014. By October 16, 2017, 833,000 pieces of case information were disclosed on this platform, and the total number of access to the website reached 2.53 million times.

Regarding disclosure of court proceedings, by November 3, 2017, 404,000 cases of court proceedings were streamed on the China Court Proceeding Disclosure Website by courts at all levels, and the number of viewers reached 3.01 billion. Out of total 3,187 courts throughout the country, 90.43% is already connected to the China Court Proceeding Disclosure Website.

Regarding disclosure of judgments, verdicts and reconciliation statements, the Website of Judicial Opinions of China was launched on July 1, 2013. The number of judgments, verdicts and reconciliation statements disclosed by November 3, 2017 is 36.34 million. In addition, the number of access to the website reached 11.4 billion and in the access 210 countries and regions around the world are included.

Regarding disclosure of enforcement information, the China Enforcement Information Disclosure Website was launched on November 1, 2014. The number of persons subject to enforcement disclosed on this platform is 8.61 million and the number of pieces of information for the persons subject to enforcement is 45.09 million as of September 30, 2017.

The "Case Information Disclosure Website of the Supreme People's Procuratorate" was launched in October 2014. According to the report of the 30th Session of the 12th Standing Committee of the National People's Congress of the People's Republic of China on November 1, 2017, slightly more than 6.03 million pieces of case process information, slightly more than 300,000 pieces of material case information and slightly more than 2.24 million of legal documents were disclosed on the website. And accepted applications for reservation reached slightly more than 130,000.

<Problems under International Rules>

Although a certain level of progress has been observed recently, the progress seen in public disclosure since the Government Information Disclosure Ordinance went into effect has been inadequate, due to the absence of an administrative system for the dissemination of administrative instructions and such and to claims by local city governments that the information requested either qualifies as state secrets

or is not available. Furthermore, even though public comments are solicited, other issues are observed, such as the fact that the period for hearing opinions is inadequate or the existence of a public hearing is not widely known. If these issues relate to matters falling under the jurisdiction of the WTO Agreements, it is possible that they conflict with the provisions of GATT Article X and GATS Article VI, which provide for securing objectivity and impartiality of the measure, and Article 2 of the Accession Protocol, which provides for ensuring transparency, and Article 10 (Transparency) of the Agreement among Japan, Korea and China for the Promotion, Facilitation and Protection of Investment.

(2) Uniform Administration

<Status of Implementation>

Considering the business of the foreign companies, China needs to develop laws and orders that are consistent between the Ministries, Committees and Governments of central, provincial and local levels. Even under consistent laws and orders, foreign-owned companies may find barriers against inter-regional business development due to discretion in the application of laws and orders or inconsistency in their interpretation.

In recent years, China has instituted “vertical management” reforms in important sectors like customs, tax services, and finance, as well as sectors where the interests of the central and local governments tend to be at odds with one another. The country has also improved the inefficiency of administration caused by the lack of administrative consistency at each level to a certain extent. And the central government and some local governments have undertaken to simplify/merge government institutions.

However, the vertical management has made little progress in relations between the central and local governments. Indeed, the vertical control system for foods and medicines, for instance, has been abolished below the ministerial level in line with the wishes expressed by the central government to give local governments greater responsibility for the oversight of foods and medicines. In addition, there are still cases of non-uniform administration within the central government.

<Problems under International Rules>

As described above, inconsistent interpretation/operation exists between the central government and local governments, and this may be a violation of Item 2, Article 2 (A) of the Accession Protocol, which provides for uniform application and operation of laws, regulations, and measures between the central government and local governments.

(3) Judicial Review

<Status of Implementation>

Some improvement was seen in the judicial review systems, as China incorporated a rule designating that administrative decisions could be the subject of judicial review (for example “Anti-Dumping Regulation” and “Patent Law” etc.) and established the Chinese International Economy and Trade Arbitration Committee (CIETAC) as a court to arbitrate any disputes over commerce. In 2007 the CIETAC promulgated the enforcement order of Law on Administrative Reconsideration, which provided the protection of vested interests of applicants for the Administrative Reconsideration. The number of administrative lawsuits has increased in recent years and, as evidenced by a judicial interpretation handed down by the Supreme People’s Court in 2008 prescribing in detail the jurisdiction for administrative lawsuits and addressing the issue of lawsuit withdrawal, institutional improvements have been made. However, WTO member countries expressed their strong concern at the Accession Working Party on the neutrality and precision of Chinese legal judgments, as well as the sound and steady execution of judgments and rulings. For example, in implementing the Administrative Procedure Law (1990) of China, local courts for various reasons often refuse to accept administrative cases that they should accept. To deal with this problem, the Decision of the Standing Committee of the National People’s Congress on Revising the Administrative Procedure Law of the People’s Republic of China was adopted at the 11th Session of the 12th Standing Committee of the National People’s Congress of the People’s Republic of China on November 1, 2014. The decision was promulgated by the Order of the President of the People’s Republic of China (No.15) of 2014 and came into effect May 1, 2015. This was the first revision of the Administrative Procedure Law since it entered into effect October 1, 1990.

Under the conventional Administrative Procedure Law, it was difficult to bring a lawsuit, conduct a review, and execute a judgment or order. Therefore, issues that should be resolved through a lawsuit were often addressed through complaint letters and petitions, causing people these procedures instead of resorting to law. With regard to such issues, the recent revision lowered hurdles for lawsuits, expanded the scope of cases acceptable, eliminated obstructions against accepting a case, made the review standards stricter, and strengthened the responsibility to respond to an action. Continued improvement is desired with regard to judicial review in China.

<Problems under International Rules>

If a court unduly refuses to accept an administrative case as described above, it may constitute a violation of Item 2, Article 3 (D) of the Accession Protocol, which ensures the right to appeal administrative decisions to a court.

Export Restrictions

(1) Imposition of Export Tax

Please see pages 18-22 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Export restrictions on Raw Materials

<Outline of the Measure>

On January 1, 2002, China issued the “FY 2002 Catalog of Issuance of Licenses Based on Classification of Products Controlled with Export License” and a notice regarding related issues, which established an institute for issuing export licenses, as well as 54 items subject to export licenses. The “FY2015 Catalog of Goods Subject to Export License Administration” lists 591 items as subject to export licenses.

China thus continued to enforce quantitative restrictions on exports of raw materials and intermediate goods even after its accession to the WTO. GATT Article XX(g) stipulates that quantitative restrictions on exports may be permitted on an exceptional basis for measures “relating to the conservation of exhaustible natural resources”. However, where the design and structure of the China’s export restriction measures for the raw materials and the intermediate products is preferential treatment to Chinese domestic industry, then, the measures do not meet the criteria of “relating to the conservation of exhaustible natural resources”. GATT Article XX(g) also requires these restrictions be accompanied by “restrictions on domestic production or consumption”; it is not entirely clear whether such domestic restrictions had been put into place within China.

The Chinese Government has issued export licenses for many raw material products to exercise control over the parties permitted to export these products and the quantities that can be exported.

<Problems under International Rules>

GATT Article XX(g) stipulates that quantitative restrictions on exports may be permitted on an exceptional basis as measures “relating to the conservation of exhaustible natural resources”. However, where the design and structure of the China’s export restriction measures for rare earth and other materials is preferential treatment to Chinese domestic industry, then the measures do not meet the criteria of “relating to the conservation of exhaustible natural resources”. GATT Article XX(g) also requires these restrictions be accompanied by “restrictions on domestic production or consumption”; it is not entirely clear whether such domestic restrictions have been put into place within China. China’s compliance with GATT Article XI and Article XX(g) is thus in question.

<Recent Developments>

On October 13, 2016, the United States requested the establishment of a panel on export regulatory measures (export duties, export volume limitations, etc.) for antimony, indium, chromium, cobalt,

copper, graphite, lead, magnesia, talc, tantalum and tin (DS508).

(3) Export Control Bills

<Outline of the Measure>

The Chinese government had the Security Export Control System which only regulates items related to weapons of mass destruction. In June 2017, many consumer goods and technologies related to ordinary weapons were added to the control subjects and at the same time Export Control bills (the Exit Management System Law), which include many new measures such as retaliatory measures, re-export control and deemed export control, were announced and in July 2017, public comment was received. Details of the System is still unclear because a list of specific control subject items is not announced yet. However, there are provisions which are suspected to be inconsistent with the WTO Agreement as shown below. The system has a risk to affect the trade and investment environment between Japan and China depending on its operation.

<Problems under International Rules>

There is no precedent on how to interpret an exception of the security (GATT Article XXI), however the following measures which can be included in these bills are an excessive export control. They do not meet the requirement of GATT Article XXI, that is, the country to take measures accepts that it is necessary to protect the significant advantage of its national security, and may violate the ban of import and export restrictions (GATT Article XI).

(a) Risk of Excessive Expansion of Control Subject Items

In these bills, as factors to consider a list of control subject items and approval requirements, except “Security of the Nation”, those not considered to be included in the purpose of security such as “Impact on Competitiveness of Trade and Industry”, “Supply in the International Market”, “Development of Technologies”, “Impact on the Industrial Base of the Nation” and “Supply Situation in the Market” (Articles 16, 18, and 22) are raised. “Protection of Important Strategic Scarce Resources” is also raised in the explanation of drafting the bills as required for legislation. Therefore, items not included in the international regime of the security export control such as scarce resources may be included in the control subject items.

(b) Risk of Requests to Disclose Technologies

Because in Article 33 of the bill, “Agreements and Consultation Document”, “Technical Manual of Export Controlled Goods”, and “Other Document Required by the Export Control Management Division” are stipulated, there is a risk that disclosure of technologies is requested exceeding the necessary range for the classification at the time of examining the export license.

(c) Provisions of Retaliatory Measures (Principles of Equal)

Article 9 of the bill stipulates that if other countries and regions adopt discriminatory export control against China, China will take appropriate measures against such countries and regions. Therefore, based on this article, unilateral export control measures whose purpose is not necessarily security may be taken.

<Recent Developments>

The Japanese industries submit written opinions to China to realize a transparent system suitable to international rules and practices (in July 2017 by CISTEC, in December 2017 by six organizations including CISTEC and the Japan Machinery Center for Trade and Investment, and two organizations including the Japan Business Federation). In addition, in February 2018, 13 industry organizations including CISTEC, the Japan Machinery Center for Trade and Investment, the Japan Business Federation and the National Association of Manufacturers submit written opinions to China.

Our country urged China in the vice-ministerial-level regular consultation between the Ministry of Economy, Trade and Industry and China’s Ministry of Commerce in November 2017 and other meetings to realize a fair and transparent system which is suitable to international rules and practices. We will continue to discuss this issue in the bilateral and multilateral meetings.

Right to Trade (Approval System for Trading)

Please see pages 22 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

TARIFFS

(1) Tariff Structure

* 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.

<Outline of the Measure>

Although the average bound tariff rate on current non-agricultural products in China is 9.1%, there are high bound tariff rates for some items such as photographic films (up to 47%), motorcycles (up to 45%), TV (30%), large monitors (30%), projectors (up to 30%), and automobiles (25%). The average applied tax rate in China is 9.0%, and the binding ratio is 100%.

<Concerns>

As long as the high tariff itself does not exceed the bound tariff rate, there is no problem in terms of the WTO Agreement, but in light of the spirit of the WTO Agreement that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible.

In April 2003, the Information Technology Agreement (ITA) Committee approved the participation of China in the ITA that China promised at the time of accession in 2001. However, multifunction machines and projectors connected to computers are tariffed, although they should be tax free as the ITA subject items. There remains uncertainty in the fulfillment of the ITA Agreement.

<Recent Developments>

With the aim of expanding the number of items subject to elimination of tariffs on IT products, ITA expansion negotiations were launched in May 2012, and an agreement was reached in December 2015. Elimination of tariffs on 201 items started gradually in July 2016, and elimination of approximately 90% of tariffs on the subject items is planned to be completed by July 2019. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for China, elimination of tariffs on the subject items started in September 2016. For example, high tariff items for which tariffs are to be eliminated by China include television cameras (35%), recorders and players (30%), and television receivers (30%). Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

(2) Violation of Bound Tariff Rate on Photographic Roll Films, etc.

Refer to Pages 25-26 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Anti-Dumping Measures

[Commitments upon Accession]

Upon accession to the WTO, China committed to¹ bring its regulations and procedures on anti-dumping and countervailing measures into conformity with the Anti-Dumping (AD) Agreement and the Agreement on Subsidies and Countervailing Measures.

Additionally, when another WTO Member conducts an investigation in relation to anti-dumping measures on Chinese products and performs price comparisons (calculation of margins of dumping), that member is allowed to compare export prices with sales prices of an appropriate third country instead of China's domestic sales prices (Article 15 of China's WTO Accession Protocol). The idea behind this is that China is not yet a market economy and there are no appropriate domestic sales prices. Article 15 of China's WTO Accession Protocol provided a basis for the above arrangement, but subparagraph (a)(ii) of that article expired in December 2016, 15 years after the accession of China. After the special treatment expired, the status of China's market economy became an issue of international debate (what is known as the issue of China's Market Economy Status). For details, refer to the column provided in Part II, Chapter 6 of this report.

[Individual Measures]

China has started 234 AD investigations since 1995. Out of them, Japanese domestic products are included in the 43 cases² and for 35 of them, AD measures are invoked⁴ (as of the end of 2016 for both numbers). China's AD duties on Japanese 18 products are currently continuing (as of the end of June 2017).

As seen in the following cases, China's AD investigation and AD measures have points that are not consistent with the AD Agreement such as lacking objectivity in terms of determining damage and the relation between cause and effect. Also, concerning China's AD measures in the past, problems such as inappropriate sampling surveys and lack of transparency of procedures have been pointed out. Upon accession to the WTO, China committed to match its regulations and procedures on AD measures with the AD Agreement and we will continue to focus on the conformity with the WTO Agreement and ask for improvements if necessary.

(1) AD measures on Japanese-made polyvinylidene chloride (PVDC polymer)

<Outline of the Measure>

In April 2016, upon the request of the Chinese domestic companies, the Chinese authority initiated an AD investigation into Japanese polyvinylidene chloride. In April 2017, the Chinese authority made a final determination on the import of such product that there was dumping as well as damage to the domestic industry caused by the dumped imports.

<Problems under International Rules>

The final determination for the case at issue has a problem. It easily recognizes that there was downward pressure on prices only by comparing the price reduction range without comparing the prices of domestic products with those of investigated products.

In addition, in the period of damage investigation, the investigated products decreased in the absolute amount or the relative amount while the share of domestic industry continued to grow. However, the final determination fails to provide reasonable grounds to support that imports of investigated products caused damage to the domestic industry.

Furthermore, there was no adequate explanation about how imports of investigated products had an impact on the domestic industry in the situation where the production capacity of Chinese domestic

¹ China's WTO Accession Protocol (WT/L/432)

² https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf

³ https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsRepMemVsExpCty.pdf

⁴ https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresRepMemVsExpCty.pdf

producers increased significantly in the context of an increase in China's domestic demand, and the market share of investigated products decreased while the market share of domestic producers continued to grow.

<Recent Developments>

The Japanese government participated in a public hearing held in November 2016 and pointed out its concern that the investigation was not consistent with international rules, and in April 2017, at the AD Committee of the WTO, made the similar points and asked the Chinese government to conduct a careful investigation. Furthermore, in February 2017 after the preliminary determination, Japan submitted a government statement, pointing out the problems mentioned in the above "Problems under International Rules". Japan has been urging the Chinese government to make a final determination in the investigation at issue consistent with the WTO Agreement, however as a result the final determinations have doubts on the consistency with the WTO Agreement. Japan will continue to focus on China's actions so that it does not implement AD measures that are not consistent with the WTO Agreement.

(2) AD measures on Japanese-made acrylonitrile-butadiene rubber (NBR)

<Outline of the Measure>

In November 2017, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation into the imports of acrylonitrile-butadiene rubber (NBR) from Japan and Korea.

<Problems under International Rules>

When comparing Japanese products, Chinese products and Korean products, even if indicators such as sales of the Chinese domestic industries seem deteriorated because differences in pricing is anticipated and the Chinese companies are over-expanding production capacity compared to growth in domestic demand, a careful consideration seems to be needed to determine whether the cause is exports from Japan.

<Recent Developments>

Japan will continue to focus on China while cooperating with the industry so that the investigation will be conducted consistently with the WTO Agreement.

(3) Ad measures on Japanese-made orthodichlorobenzene

<Outline of the Measure>

In January 2018, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on imports of orthodichlorobenzene from Japan and India.

<Problems under International Rules>

In recent years, the amount of exports from Japan to China has significantly decreased, and it is hard to say that Japanese products are affecting the Chinese domestic industry. Despite the fact that chemical factories in China, which is the main supply destination of the products to be surveyed, have reduced the demand for such products due to strengthened domestic environmental regulations, Chinese companies seem to be excessively expanding their production capacity. Even if indicators such as sales of domestic Chinese industry are deteriorating, careful consideration seems to be needed as to whether the cause is exports from Japan.

<Recent Developments>

Japan will continue to focus on China while cooperating with the industry so that the investigation will be conducted consistently with the WTO Agreement.

Subsidies

[Commitments upon Accession]

Refer to page 29 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

[Notification of Subsidies and Problems]

There is an obligation in the ASCM to submit a detailed notification on subsidies every second year, and notified subsidies are reviewed at Subsidies Committee meetings. However, the first notification China submitted after its accession in 2001 was in April 2006. And for the first time in July 2016, China submitted a notification on local subsidies, however there is a problem that subsidies that should be originally notified are not notified. Japan will continue to cooperate with other countries in requesting China to ensure transparency with regard to subsidies by the central government and local governments.

Also in the WTO dispute settlement procedure, the subsidy of China is viewed as a problem. In December 2015, the U. S. requested consultation (DS 501), claiming that, while China exempts domestically produced aircraft from the value-added tax (VAT), it imposes the VAT on imported aircraft and such taxation measure is in violation of the national treatment under GATT.

For its part, Japan will work together with other member countries in continuing to make requests of the Chinese side through the WTO Subsidies Committee and bilateral consultations in order to ensure that China adheres to the commitments it made at the time of its accession, and that China's system is applied in a manner that is consistent with the WTO Agreement on Subsidies and Countervailing Measures.

Subsidies for aluminum

<Outline of the Measure>

In China, various subsidies to the aluminum industry are granted based on various industrial policies such as the Chinese government's non-ferrous metal industry five-year development special plan. As with the overproduction capacity problem in iron and steel, in aluminum also, rapidly expanding production capacity and excess supply in China has become an issue.

<Problems under International Rules>

The Chinese government subsidies bring excessive supply of aluminum ingot and other materials. This problem may violate Article 5 of the ASCM as having a negative impact on the interests of other Member States. Also, the Subsidies Committee and other committees proceed with discussions to solve problems in the part that cannot be captured by the current ASCM.

<Recent Developments>

In January 2017, the U. S. requested China a WTO bilateral consultation, claiming that subsidies to the aluminum ingot industry (policy finance and offering of inputs such as coal, alumina and electricity at low prices) violates the WTO ASCM. In the U. S. also, in June 2017, the International Trade Commission (ITC) announced the results of a survey on the factors affecting the competitiveness of the US aluminum industry (requested by the House of Representatives Revenue Commission). It was recognized that government intervention based on industrial policy is generalized in major aluminum producing countries such as China and the Middle Eastern countries and although the price of aluminum products worldwide declined due to oversupply of bare metal in 2011-2015 and the production capacity of the U. S. and Europe shrank by 19% and 11% respectively, in China and Middle Eastern countries, as a result of government intervention and technology investment, their production capacity increased by 40%. And in November 2017, the US Department of Commerce started an AD/CVD investigation on the Chinese-made aluminum sheet material as authority's examination for the first time in 26 years since the CVD investigation for the Canadian-made softwood in 1991. Furthermore, in January 2018, the US Department of Commerce recognized in the survey of Article 232 for aluminum (refer to Chapter

2 Unilateral Measures (2)) also that the worldwide excessive aluminum supply problem due to the subsidies of foreign governments such as China made a major negative impact on the production capacity of the aluminum ingot industry in the United States.

In May 2017, at the G7 Taormina Leadership Committee, as an initiative of Japan, the G7 countries committed to dealing with the worldwide overproduction capacity in steel, aluminum and other major industries, further strengthening cooperation and working with partners so that these problems do not occur in other industry fields. Moreover, in June 2017, Japan discussed with the Chinese government on the effort to eliminate excess supply in the aluminum field in the vice-ministerial-level regular consultation between the Ministry of Economy, Trade and Industry and China's Ministry of Commerce. Also in the Subsidies Committees in October 2016 and April 2017, Japan raised discussion on subsidies and excess supply issues together with the U. S. and the EU. We will proceed with discussions of solving the problem using bilateral and multilateral meetings.

○ Changes in Export Value-Added Tax Refund Rate

China has frequently adjusted the rate of the value-added tax (VAT) refund at the time of exports. In view of the financial crisis, in particular, China has moved to raise its VAT export refund rates. Still, promulgation and effectuation of regulations are still been done in very short notice. For example, the "Notice on Export Refund Rates for Certain Products" (Cai Shui [2014] No. 150) issued on December 31, 2014, set forth that the raising of the export refund rates for some high-value-added products, processed maize products, and textile and garments and the elimination of export refunds for boron steel were to come into effect on the following day, on January 1, 2015, and the lowering of the export refund rates for wigs, hair extensions, and their materials were to come into effect on April 1, 2015. In the latter, while there was an allowance of about 90 days until the lowering of the export tax refund rates was to come into effect, the raising of the refund rates and the elimination of the refunds came into effect the day following the issuance of the notice. Under such situation, companies cannot afford to respond to the policy change. In addition, the Notice on Export Refund Rates for Products Such as Electrical Equipment and Product Oils (Cai Shui [2016] No. 113) issued on November 4, 2016, states that export refund rates for a total of 418 items, including cameras, video cameras, internal combustion engines, gasoline, aircraft fuel, diesel oil, etc., are to be raised to 17%, but the date of enforcement is November 1, 2016, which is before the date of issuance. As shown in this example, regulations were enforced before issuance rather than being enforced on the day of issuance.

As such sudden changes in the regulations and measures undermine business predictability and could produce a serious impact on corporate management, there is growing awareness of this issue as an investment risk. Japan raised this issue in the past Japan-China Economic Partnership Consultation. Japan believes that China's economic and trade policies should be conducted in ways to secure transparency and predictability.

In addition, because reimbursement of indirect taxes is not deemed to be a subsidy under the Agreement on Subsidies and Countervailing Measures (ASCM), a refund of the value-added tax does not formally violate the ASCM. Because the refund rate has frequently been adjusted as described above, however, it could be argued that in actuality the VAT is arbitrarily controlled as part of industrial policies. It is therefore not consistent with the spirit of the ASCM Agreement, or the destination principle (which provides that the destination country, where the final consumers reside, has the right to tax), and can possibly be challenged under the ASCM as being in reality export subsidies.

Safeguards

Regulations on Safeguards

Refer to page 31 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Trade-related Investment Measures (TRIMs)

[Commitments upon Accession]

Upon accession, China agreed to eliminate measures banned in the TRIMs such as local content requirements (mandating the use of designated percentages of locally-produced items), which are in violation of GATT Article III, and foreign-exchange balancing requirements (permission to import raw materials and capital goods only in proportion to export earnings and volumes), which are in violation of GATT Articles III and XI. In addition, China also agreed to eliminate export performance requirements, transfer of technology, or any other performance requirements on the permission or rights for import and investment (Item 3, Article 7 of the Accession Protocol)

In addition, as promises concerning specific fields, China committed to: (1) regarding the authorization to manufacture automobiles, while maintaining the permission system by category, within two years after accession, restrictions on types, forms or models of automobiles are to be abolished and the maximum amount approved at the local level is to be raised from the current 30 million dollars to 60 million dollars after one year of accession, to 90 million dollars after two years of accession and to 150 million dollars after four years of accession. Finally, (2) China committed to removing the 50 percent foreign equity limit for joint-ventures regarding the manufacture of motor vehicle engines.

[Status of Implementation and Points to Be Rectified]

In line with the above commitments, from October 2000 to July 2001, China amended the “Foreign Capital Law” applied to 100% foreign-owned enterprises, the “Chinese-foreign Contractual Joint Venture Business Corporate Law” applied to contractual joint ventures, the “Chinese-foreign Joint Venture Business Corporate Law” applied to equity joint venture companies and these Implementation Guidelines and the provisions relating to export requirements, local content requirements, import/export balanced foreign currency balance requirements were deleted. The three foreign investment laws were partially amended in September 2016. As a result, matters that were previously subject to examination/approval now are managed through notifications.

On January 19, 2015, the Ministry of Commerce released the Foreign Investment Law of the People’s Republic of China (Exposure Draft), integrating the three foreign investment laws, and making amendments such as achieving consistency among related laws and regulations, including the Company Law. It invited public comments until February 17, 2015, however there has been no new moves since then, and it has not been promulgated yet.

In addition to the above three foreign investment laws, the new “Company Law,” which was amended and enforced in January 2006, applies to foreign-owned companies.

Although the above-listed amendments have been made to bring domestic laws in China into conformity with the WTO Agreement, non-conformance with the Agreement and restrictive measures on investment still exist and should be rectified speedily. On July 1, 2009, in order to encourage development of the domestic automobile industry and energy saving measures, the Ministry of Industry and Information Technology implemented a “Rule controlling entry of new energy automobile manufacturers and products” and “Entry conditions and evaluation requirements for entry of new energy automobile manufacturers”, as alternatives to the above rule. The rules require entering manufacturers to establish research and development institutes and to disclose technological information on the new energy automobile to be produced, and Japan intends to continue to scrutinize it closely. In addition, on November 26, 2014, the National Development and Reform Commission published the “Temporary

Provisions Controlling Entry of Newly-Established Pure Electric Automobile Manufacturers and Investment Project” concerning new energy vehicles. After public comments were invited from November 26 to December 2, 2014, the Commission released the “Provisions Controlling Entry of Newly-Established Pure Electric Automobile Manufacturers and Investment Project” on March 13, 2015, and public comments were invited again until March 28 of the same year. On June 4, 2015, the Commission promulgated the Provisions on Administration of Newly Established Pure Electric Passenger Vehicle Enterprises (Decree No. 27 of 2015), and the provisions came into effect on July 1, 2015. The purpose of enacting the policy was to remove industrial barriers and to have parties with superior technological capabilities in the market take part in competition in the electric passenger vehicle industry. While the scope of parties that can enter the industry was expanded, strict requirements were set for their research and development capabilities and innovation power.

Also, in the “New Energy Vehicle Production Companies and Product Entry Management Regulations” (promulgated on January 6, 2017 and enforced on July 1, 2017) of the “New Energy Vehicle Production Period Business and Product Management Regulations” Attachment 1 published in 2017, requirements are imposed in order to obtain permission to enter the new energy automobile manufacturing industry. The manufacturers are required to indicate that they understand and master related technologies. Although this requirement does not require a technology transfer to China on the text, due to the joint venture regulation and the investment ratio regulation, it is necessary for a foreign-owned automobile manufacturer to establish a joint venture in China to operate in China and to have 50% or less of the equity ownership ratio. In fact, there is a possibility that it is practically applied to foreign-affiliated car manufacturers in a manner requiring relocation of related technologies of new energy vehicles to China. It may violate Article 7, paragraph 3 of the China accession protocol which bans the request for technology transfer accompanying investment.

<Figure I-1-1> Matters concerning major trade related investment measures revised after WTO accession

	Amended regulations	Amendments
Establishment of a company, performance requirements, etc.	“Administrative Provisions on the Registration of Foreign-Funded Partnership Enterprises” (March 2010)	★ The provisions prohibit the establishment of foreign-funded partnership enterprises for industries requesting a foreign capital ratio or industries using the statements such as “limited to equity joint ventures,” “limited to contractual joint ventures,” “limited to equity joint ventures or contractual joint ventures,” “Chinese partner shall hold the majority of shares” or “Chinese partner shall hold the relative majority of shares.” * A revision was made on March 1, 2014 related to the change of the management method of all companies including domestic companies from the annual inspection method to the annual report method, however no substantial changes were made.
	Circular of the General Office of Circular of the General Office of the State Council on the Establishment of Security Review System Regarding Merger and Acquisition of Domestic Enterprises by Foreign Investors (February 2011)	★A security review system for mergers and acquisitions of domestic enterprises by foreign investors is established. The National Development and Reform Commission and the Ministry of Commerce are to lead the initiative in cooperation with related government agencies, depending on the related industries and fields of the merger or acquisition.
	Provisions on Implementation, by the	The provisions stipulate the procedures to be followed when the Ministry of Commerce implements the

	Amended regulations	Amendments
	Ministry of Commerce, of the Security Review System for Merger and Acquisition of Domestic Enterprises by Foreign Investors (August 2011)	security review system for mergers and acquisitions of domestic companies by foreign investors.
	Notice on Further Improving Management Measures Concerning Foreign-invested Companies by Ministry of Commerce and State Administration for Foreign Exchange (December 2011)	<p>★The circular prohibits use of domestic loans of foreign-funded investment companies for reinvestment in China.</p> <p>★With the approval of a local foreign exchange bureau, foreign-invested companies may directly use their legitimate income obtained in China for reinvestment in China. (Conventionally, income could be used for reinvestment in China only after registering capital)</p>

(Note) For major trade-related investment measures amended in or before 2009, see the 2013 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPAs, and BITs-.

On June 28, 2017, the seventh revised edition of the Catalogue for the Guidance of Foreign Investment Industries (Order No. 4 of Commerce Division, National Development and Reform Committee, hereinafter referred to as “the 2017 Edition Catalog”) was promulgated. Along with this, the Catalogue for the Guidance of Foreign Investment Industries (2015 revised edition) (hereinafter referred to as “the 2015 Edition Catalog”) was abolished. This is the seventh revision since the first promulgation of the Catalogue for the Guidance of Foreign Investment Industries (hereinafter referred to as “the Catalog”) in 1995.

The 2015 Edition Catalog contained limitation measures consisting of 93 articles (19 articles with requirements for equity percentage in encouragement, 38 articles with restrictions, and 36 articles with prohibitions), however in the 2017 Edition Catalog, the limitation measures consisting of 30 articles in the 2015 Edition Catalog are reduced and 63 articles are left (35 articles with restrictions and 28 articles with prohibitions). In the 2017 revised catalog, those designated as restricted industries and prohibited industries are as follows.

● Industry inventory restricting foreign investment

1. Selection of new varieties of agricultural crops and breeding and seeds production (equity control by the Chinese side)
2. Exploration and development (limited to joint ventures and alliances) of petroleum and natural gas (including coal seam gas, and excluding oil shale, oil sands, shale gas, etc.)
3. Exploration and mining of special and rare coal (equity control by the Chinese side)
4. Exploration and mining of graphite
5. Printing of publications (equity control by the Chinese side)
6. Refining and separation of rare earths (limited to joint ventures and alliances), smelting of tungsten
7. Manufacture of finished automobile products and special vehicles: The same foreign investor may establish up to two joint ventures producing finished automobile products of a similar kind (passenger cars, commercial vehicles) in China and the equity control shall not fall below 50%. In the case of merging domestic companies engaged in other automobile production in collaboration with a Chinese joint venture partner or establishing a joint venture company producing finished automobile products of pure electric vehicles, it shall not be subject to the restriction of two companies or less.
8. Design, manufacture and repair of vessels (including hull blocks) (equity control by the Chinese side)
9. Design, manufacture and repair of aircraft for mainlines and branchlines, design and manufacture of three ton class or higher helicopters, manufacture of aircraft using ground and water effect, and

- design and manufacture of drone and light aircraft (equity control shall be by the Chinese side)
10. Design, manufacture and repair of general purpose aircraft (limited to joint ventures and partnerships)
 11. Production of terrestrial reception equipment and important parts of satellite television broadcasting
 12. Construction and management of nuclear power plants (equity control shall be by the Chinese side)
 13. Construction and management of electricity transmission network (equity control shall be by the Chinese side)
 14. Construction and management of city gas, hot water and water supply and drainage network in cities with a population exceeding 500,000 people (equity control shall be by the Chinese side).
 15. Construction and management of the railway trunk network (equity control shall be by the Chinese side)
 16. Railway passenger carriers (equity control by the Chinese side)
 17. Domestic water carriers (equity control by the Chinese side), international maritime transport companies (limited to joint ventures, partnerships)
 18. Construction and management of private aerodromes (to be the relative equity control by the Chinese side)
 19. Public air carriers (It shall be owned by the Chinese side and the proportion of investment by foreign investors and their affiliates shall not exceed 25%. Legal representatives must be Chinese nationality holders.)
 20. General air carriers (Legal representative must have Chinese nationality. General air carriers in agriculture, forestry and fishery are limited to joint ventures, and other general air carriers are limited to equity control by the Chinese side.)
 21. Telecommunications carriers: Value added telecommunications service only within the scope where opening was approved at the time of China's WTO accession (The percentage of foreign capital shall not exceed 50%. excluding e-commerce.) and basic telecommunications services (equity control by the Chinese side)
 22. Purchase and wholesale of rice, wheat and corn
 23. Ship agents (equity control shall be by the Chinese side)
 24. Construction and management of gas station (In gas station chains where the same foreign investor establishes more than 30 branches and sells different kinds of brand oils that are supplied from multiple suppliers, equity control shall be by the Chinese side.)
 25. Banks (If a related party of the same overseas financial institution and under its control or joint control invest in a single Chinese commercial bank as the originator or strategic investors, its share shall not exceed 20%. If related parties of multiple overseas financial institutions and under its control or joint control invest as the originator or strategic investors, its share shall not exceed 25%. Overseas financial institutions investing in small and medium-sized financial institutions in rural areas must necessarily be bank related financial institutions. Overseas investors, the sole or controlling shareholders who establish branches of foreign banks, foreign investment banks, and China-foreign joint venture banks, must be foreign commercial banks, and non-controlling shareholders can be overseas financial institutions.
 26. Insurance operators (the percentage of foreign capital of a life insurance company shall not exceed 50%.)
 27. Securities companies (At the time of establishment, only engaged in underwriting, recommendation and guarantee of RMB common stock, capital stocks, government bonds and corporate bonds, brokerage of foreign share and brokerage of government bonds and corporate bonds and engagement with self-employment. Companies that meet the conditions at two years after the establishment can apply for the expansion of business scope. Equity control shall be by the Chinese side.) Securities investment fund management companies (Equity control shall be by the Chinese side)
 28. Futures traders (equity control shall be by the Chinese side)
 29. Market research (limited to joint ventures and partnerships. Of these, radio and television rating survey shall be owned by the Chinese side.)
 30. Surveyor and drawing company (equity control shall be by the Chinese side)
 31. Preschool educational institution, ordinary middle and high school educational institution and higher educational institution (limited to the cases of partnership between China and other countries)

- or led by China)
- 32. Medical institution (limited to joint ventures and partnerships)
- 33. Production business of radio and TV programs, films (limited to partnerships)
- 34. Construction and management of movie theaters (equity control shall be by the Chinese side)
- 35. Performance management agency (equity control shall be by the Chinese side)
- Catalog of industries banning foreign investment
 1. Research and development, cultivation of Chinese unique, rare and good breeds, and production of related propagating materials (including good genes in the business of cultivation, cattle breeding and fishery)
 2. Selection and breeding of genetically modified species of agricultural crops, livestock, poultry and fishery seedlings and production of genetically modified seeds thereof
 3. Catch of marine products in China's jurisdictional area and inland waters
 4. Exploration and mining of tungsten, molybdenum, tin, antimony and fluorite
 5. Exploration, mining and beneficiation of rare earths
 6. Exploration, mining and beneficiation of radioactive minerals
 7. Application of processing technology such as steaming, roasting, baking in the traditional Chinese medicines and production of secretly prescribed Chinese medicine products
 8. Smelting and processing of radioactive minerals, production of nuclear fuel
 9. Manufacture of weapons and ammunition
 10. Production of Xuan-paper (rice paper) and ingot-shaped tablets of Chinese ink
 11. Air traffic control
 12. Postal business entities, domestic delivery service of postal mails
 13. Wholesale and retail of leaf tobacco, cigarette, re-dried leaf tobacco and other tobacco products
 14. Social research
 15. Legal affairs consulting in China (excluding provision of information on the influence of the Chinese legal environment)
 16. Development and application of human stem cells, gene diagnosis and therapeutic techniques
 17. Geodetic survey, marine charting, aerial photography for mapping, surveying using ground mobile body, administrative mapping, topographic maps, the world administrative map, the national administrative map, administrative maps of the provincial level and below, national teaching maps, compilation of local teaching maps and 3D maps; compilation of navigation electronic maps; surveys relating to regional geological mapping, mineral geology, geophysics, geochemistry, hydrological geology, environmental geology, geological disaster and remote sensing geology
 18. Development of wild animal and plant resources which are native of China and protected by nation
 19. Compulsory educational institution
 20. Press (including but not limited to news service agencies)
 21. Editing and publishing business of books, newspapers and periodicals
 22. Editing, publishing and production business of video products and electronic publications
 23. Radio stations, TV stations, radio and TV channels, radio and television broadcasting networks (originating stations, relaying stations, radio and TV satellites, satellites' ground transmission stations, satellites' receiving and relaying stations, microwave stations, monitoring stations, cable radio and TV broadcasting networks), on-demand operations of radio and TV, installation services of terrestrial reception facilities of TV and radio satellites
 24. Management company of radio and television program production (including import operations)
 25. Film production company, issuing company, distribution and screening company
 26. Internet news information service, online publishing service, online program viewing service, provision of Internet service locations, management of products related to Internet cultures (excluding music), information dissemination service for general public by Internet
 27. Auctioneers of cultural materials, shops dealing with cultural materials
 28. Research institution of humanity and social science

[Individual Measures]

(1) Information Security Regulations in China

<Outline of the Measure>

In recent years, the Chinese government has developed various laws and regulations to strengthen information security related regulations. In 1999, the Office of the State Commercial Cryptography Administration (OSCCA) promulgated the Regulations for the Administration of Commercial Encryption. The Regulations require the permission of the Office of the State Commercial Cryptography Administration (OSCCA) when importing/manufacturing/selling products for encrypting information that is not a national secret and technologies (commercial encrypting products and technologies).

Also, in 2007, the Chinese Ministry of Public Security announced the “Multi-Level Protection Scheme: MLPS”. In the MLPS, the Ministry of Public Security of the Chinese Government categorizes IT security products used in systems related to four categories of (1) systems such as communication networks and data centers, (2) systems of finance, railway, energy, etc., (3) general systems of government agencies, and (4) system concerning the national secrets, into different grades (Grades 1 to 5) by security level and requires the use of Chinese products as core element if the level is Grades 3 to 5.

Furthermore, in 2016, the National Cryptographic Bureau of China implemented a public comment on the draft of the Cryptography Law. This bill stipulates that ciphers are classified as core cipher, ordinary cipher and commercial cipher, and each cipher requires permission for sales and use, or import and export, inspection and certification.

<Problems under International Rules>

Regarding the Regulations for the Administration of Commercial Encryption, the MLPS and the Cryptography Law, there are many uncertainties about the definition of the terms used in the text, the specific requirements of the examination, subject ranges, etc. The relationship of each regulation is also unclear. Depending on the details of the specific standards and conformity assessment procedures and the manner of operation, foreign-made IT security products may be disadvantageously handled in the Chinese market. Regulations may become restrictive beyond necessity to achieve the purpose of national security claimed by China and they may violate Articles 2.1, 2.2, 5.1 and 5.2 of the TBT Agreement.

<Recent Developments>

At the TBT Committees since 2010, Japan has been expressing concern about the Regulations for the Administration of Commercial Encryption and the MLPS, together with the U. S., the EU, etc. At the recent TBT Committee, China explained that the Regulations for the Administration of Commercial Encryption and the MLPS will be revised in accordance with the Cybersecurity Law enforced in June 2017. Regarding the Cryptography Law, the Japanese government submitted opinions at the time of public comment, as well as at TBT Committees since June 2017, we have been expressing concern together with other countries such as the U. S and the EU, however China explains that the Cryptography Law bills are currently under review and clear answers have not been obtained. Therefore, Japan will continue to pay close attention to developments regarding these information security regulations, and will request China to clarify the regulatory content and urge correction so that the regulations will not become unnecessarily strict.

(2) Security Regulation of IT Equipment

<Outline of the Measure>

On September 3, 2014, the Chinese government (China Banking Regulatory Commission, National Development and Reform Commission, Ministry of Science and Technology, and Ministry of Industry and Information Technology) issued the “Advisory Opinion on Network Security and Informatization of Banking Industry through Application of Information Security Control Technologies.” (hereinafter referred to as the “Advisory Opinion”). The content is: (1) The adopting ratio of safe and controllable information technology in the Chinese banking Industry should be raised to 75% by 2019. (2) Establish the network security auditing standards for the Chinese banking industry and strengthen security

examinations for information technology and products dedicated to the banking industry.

Furthermore, in response to the Advisory Opinion, guidelines on products and services related information and communications technology used by banks, etc. requiring the use of Chinese domestic intellectual property rights-based products, evaluation/authentication based on the China-specific standards, and introduction of specifications that obstruct data distribution across borders, etc. were issued only to a small number of interested parties on December 26, 2014. A supplementary description of the guidelines, stating among other things that a “country-by-country discrimination” does not exist, etc. in relevant requirements, was subsequently published on February 12, 2015.

Although the Advisory Opinion and guidelines are likely to be a technical regulation on information technology products in the banking industry, not only was the TBT Committee not notified of either of them, but also public comment procedures have not been initiated. In addition, the Advisory Opinion and supplementary description of the guidelines have been published, however the most important guidelines have not been disclosed, and they are expired and the detailed content is unknown.

<Problems under International Rules>

Unpublished guidelines had provisions requiring the use of products based on intellectual property rights in China (intellectual property rights owned by Chinese civilians, corporations, etc.). If the use of products that use core technologies based on Chinese domestic intellectual property rights is required, because the security level required for the Chinese banking industry is not clear, the legitimacy of such obligation (why the use of Chinese domestic intellectual property rights owned by Chinese private citizens, corporations, etc. are indispensable) is unknown. In addition, depending on the content of China-specific evaluation/authentication, similar concerns arise over its validity. From the point of view of necessity and procedures for obtaining licenses for the Chinese domestic intellectual property rights owned by Chinese private citizens/corporations, etc., these obligations cannot be regarded as being based on legitimate regulations, and may violate Article 2.1 of the TBT Agreement, which obligates securing no less favorable treatment to products manufactured overseas when the terms are relatively disadvantageous to overseas vendors, etc. (principle of non-discrimination between domestically produced and imported products). In addition, these obligations may also violate Article 2.2 of the TBT Agreement if they are more trade-restrictive than necessary to fulfill a legitimate objective (security level necessary for banking industry in China).

Because this regulation has not been notified to the TBT nor published, China may violate Article 2.9.2 of the TBT Agreement, which obligates prior notification of mandatory standard drafts etc., to the WTO for comments, and Article 5.8 of that Agreement, which obligates WTO members to immediately publicize all established mandatory standards, etc. to interest parties.

<Recent Developments>

On March 3, 2015, five organizations in the information and communication equipment industry jointly submitted a statement to the Chinese government to express their concerns over this system. In addition, on March 13 of the same year, the Japanese government raised its concerns to the Chinese government. Moreover, at the TBT Committee meetings from March 2015 onward, Japan, the United States, the EU and Canada have jointly expressed their concerns regarding this matter. Consequently, in April 2015, the Chinese government postponed the enforcement of the guidelines and they are currently in a state of inactivation, however since the Advisory Opinion itself has survived, Japan will continue to watch the development in China so that the same guidelines and detailed rules are not provided.

(3) Chinese Cybersecurity Law

* Refer to Page 34 for issues relating to the Trade in Services of this Law.

<Outline of the Measure>

On November 7, 2016, the Chinese government announced the enactment of a new cybersecurity law that is intended to enhance cybersecurity. The Law aims at “maintaining sovereignty and state security in cyberspace” and contains new regulations on building and operation of networks, supervision of cybersecurity and other matters. Specifically, the bill provides for (1) the formulation of new national and industry standards for core networking products and cyber security dedicated products and the

requirement for these products to obtain security authentication at the time of sale and provision, and (2) (i) the protection of personal information of citizens and (ii) preservation of personal information and important data within China (safety evaluation is required for bringing out data such as personal information overseas) by operators of key information infrastructures (networks for public communication and information services, energy, transportation, irrigation, finance, public services, and e-Government, etc.) in order to ensure the security of network data in accordance with the advancement of technology such as cloud computing and big data.

<Problems under International Rules>

The Cybersecurity Law provides that core networking products and cybersecurity dedicated products must conform to relevant national and industry standards and obtain security authentication at the time of sale. Therefore, it is presumed that compulsory standards and conformity certification procedures for products are established. However, regulations based on this Law have not been notified to the TBT Committee, which is considered to be in violation of Article 2.9.2 of the TBT Agreement that obliges the WTO to inform the compulsory standards in advance for opinions.

The specific content of the national and industry standards are not provided for in the Law and it is unknown what criteria will be used. If such standards are not in accordance with international standards, it may violate Article 2.4 of the TBT Agreement. In addition, if the Chinese measure is more trade-restrictive in terms of standardization and authentication requirements than is necessary compared with the purpose of the measure, which is to preserve cyberspace sovereignty and national security, it may be in violation of Articles 2.2 and 5.1.2 of the TBT Agreement.

<Recent Developments>

Regarding the Cybersecurity Law, the Japanese government and information and telecommunication related industries submitted written opinions at the stage of the bill and expressed concern in bilateral consultations, however in June 2017, the law was enforced almost without reflecting Japanese opinions. Japan has also expressed its concern over this Law at the TBT Committee meetings since March 2017. Recently, related enforcement regulations of the Cybersecurity Law such as the Safety Screening Method of Network Products and Services, the Cross-border Safety Assessment Law of Personal Information and Important Data, and the Important Infrastructure Safeguards Ordinance have been published. We will continue to keep a close watch on this Law and the development of any relevant regulations and to urge China to correct the problems.

(4) Measures for Controlling Pollution by Electronic Information Products

<Outline of the Measure>

Regarding six hazardous chemicals (lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE)), under the Measures for Controlling Pollution by Electronic Information Products, the Chinese government, since March 2007, has imposed obligations of (1) clearly indicating whether such chemicals are contained in electronic information products (radios, TVs, computers, and other electronic products for households) and (2) requiring a conformity mark.

In January 2016, along with expanding the subject products to electric appliances, the Chinese government promulgated the Management Measures for Restriction of Hazardous Substances in Electrical and Electronic Products (hereinafter referred to as the “Amended Controlling Measures”), in which a new certification system (acceptance evaluation system) was introduced to limit the use of six hazardous chemicals. However, with regard to details of the restriction on use of hazardous substances and conformity assessment, the Compliance Management Catalogue for Restriction on Use of Hazardous Substances in Electrical and Electronic products (Article 17) and the Conformity Assessment System (Article 18) are to be separately established and their details have not yet been made clear.

Thereafter, the Chinese government announced its policy of implementing the Amended Controlling Measures in two stages. Specifically, starting from July 2016, only the Labeling Requirement of Hazardous Substances was applied as the first step. And after the Compliance Management Catalog (providing for subject products for the containment limit) and the Acceptance Evaluation System (Conformity Assessment System) are established, as the second step, the Containment Limit of

Hazardous Substances is scheduled to be implemented (timing unknown).

<Problems under International Rules>

In July 2016, the Labeling Requirement of Hazardous Substances started to be applied as the first step, however a Frequently Asked Questions list providing necessary procedures for the regulations and the details of the regulations was published one and a half months before the start of the application, there were cases where companies did not have sufficient time to prepare themselves for the regulations.

Currently, the Chinese government is preparing for the introduction of the second step, the Restriction on the Containment of Hazardous Substances, and the specific contents of the scope of regulated products and the conformity evaluation system are being studied. If the conformity assessment system to be established in the future becomes stricter than necessary, it may violate Article 5.1.2 of the TBT agreement.

<Recent Developments>

Taking the opportunity of the TBT Committee meetings, Japan has requested China since November 2015 to (i) sufficiently hear opinions from companies and other parties, (ii) clarify regulated subjects and the conformity assessment procedures, (iii) introduce self-declaration of conformity, and (iv) set enough time for companies to prepare themselves. On October 13, 2017, the Compliance Management Catalog (products subject to the containment restriction) and the Application Exception List were notified to the WTO and TBT. However, regarding the Acceptance Evaluation System (the Conformity Assessment System) which provides for the content of its implementation, the status of establishment is still unknown. To avoid a situation where excessive regulations cause confusion among companies and pose an obstacle to trade, it is necessary for the Japanese government to continue to pay close attention to the enactment situation in China and to work on the Chinese side.

(5) Regulations on New Cosmetic Ingredients

<Outline of the Measure>

The Chinese government's State Food and Drug Administration (SFDA; which has been reorganized into the China Food and Drug Administration (CFDA) in March 2013) publicized the "Declaration of acceptance of administrative licensing requirements on cosmetics" (hereinafter referred to as "Declaration") for the purpose of consumer protection through securing cosmetics safety in December 2009 (the Declaration was enforced in April 2010 and its TBT notification was made in March 2010). In the Regulations concerning Hygiene Supervision over Cosmetics, which are superior regulations, it was provided that a cosmetics producer or importer shall need to apply for permission to the CFDA to undergo an examination by the CFDA before it uses or import for the first time a new cosmetic ingredient. But improving its operation method was started upon the publication of the Declaration.

The CFDA announced a "Guidelines on application and evaluation of new cosmetic ingredients" (hereinafter referred to as the "Guidelines") in May 2011 as guidelines on application and evaluation of new cosmetic ingredients (the Guidelines were enforced in July 2011 and their TBT notification was made in June 2011). Definitions of new cosmetic ingredients, matters to be observed, application procedures, and the principle of valuation were clarified to a certain degree by the guideline.

Although seven years have passed since introduction of that measure, only four applications for registration of a new cosmetic ingredient have been made by parties of the whole world, and the situation where cosmetics containing new ingredients cannot be produced or exported continues. Japan also has the following concerns regarding this measure.

According to (2), 2, II, Article 3 of the Guideline, new cosmetic ingredients must not be complex materials, which means that application and safety evaluation must be carried out on single materials. There are some plant extracts and fermentation liquids whose new substance is substantially hard to be isolated from the solvent, and even if a new substance is isolated, there is a possibility that the new substance will turn to a different one due to a chemical change in a process when it is compounded into cosmetics. Then safety cannot be properly evaluated through evaluating a single material. It is desirable from the perspective of ensuring safety of the new ingredients that application be carried out on same substance contained in the final product, as is done in the majority of countries including Japan, the United States and Europe.

The disclosure and release of information also needs improvement. There are cases where the Chinese government requires the disclosure of the details of an examination of new ingredients which are related to company secrets such as details on procedures, reaction process and reaction conditions in the manufacturing process, and there are cases where such information was posted on the CFDA website after an examination. In January 2014, the CFDA invited public comments on the revision of operation rules on permission for new ingredients in and after April 2014, showed the thought that it will prescribe that it shall give permission for new ingredients to each company and will not disclose company secrets such as manufacturing methods, for four years, and publicized a WTO-TBT notification in February 2014. Although this revision may improve the disclosure and release of information and accelerate acceptance of new ingredients, details remain unclear.

On the other hand, in July 2015, a bill to revise the Regulations concerning Hygiene Supervision over Cosmetics, which are superior regulations to the Declaration, was publicized (it will be the Regulations on Supervision and Administration of Cosmetics after revision), and introducing a system in which high-risk materials shall be registered and low-risk materials shall be only notified is considered. But the final bill or a revision schedule has not been shown yet.

<Problems under International Rules>

TBT Articles 2.2 and 5.1.2, stipulate that technical regulations and conformity assessment procedures shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. As mentioned above, the Chinese government claims that the objective of the regulation is to secure safe quality of cosmetics, but rational reasons for the registry of new cosmetic ingredients not progressing have not been given. Moreover, there is question that the measure, including single substance application and safety requirement, is more trade-restrictive than necessary in light of policy objectives, and there is question that the measure may violate those provisions.

<Recent Developments>

Japan sent a comment raising its concerns in response to China's TBT notification of June 2011, and also to the TBT enquiry point of the Chinese government in June 2012. In the TBT Committee meetings held since November 2011, Japan has raised questions about conformity with the TBT Agreement and has requested China to clarify the examination criteria/procedures and to relax scientifically groundless regulations. The United States and Europe also expressed their concerns at the Committee meetings.

While also continuing assessing the relationship between the amendment bill of the Regulations concerning Hygiene Supervision over Cosmetics that was published in July 2015 and the Declaration, Japan will continue to monitor whether there has been progress and, in cooperation with other concerned countries, to request improvement in the regulations.

(6) Regulations on Cosmetic Labels

<Outline of the Measure>

China's cosmetic labeling regulations were promulgated on November 15, 2014, and the China Food and Drug Administration (CFDA) gave the TBT notification on December 12, 2014 (the date of enforcing the regulations is planned to be July 1, 2015). The purposes of the regulations are to strengthen supervision and management of the cosmetic industry and protect the rights and interests of customers. The main contents of the draft regulations are as follows:

- (i) Cosmetic labels may not be amended or supplemented by means of adhesion, trimming, or modifying.
- (ii) The descriptions, such as manufacturer names, all ingredients, and quality guarantee periods, etc. must be listed on the labels. The descriptions to be listed also include the actual manufacturers/processors.
- (iii) When indicating the effect/efficacy testing results on the product labels, a report showing the details of the testing concerned must be made public on the website specified by CFDA and are subject to supervision.

<Problems under International Rules>

Regarding (ii), it is explained that the purpose of requiring producers to state their names and other matters on labels is to make it easy to accuse a producer of legal responsibility for an illegal product. But it is sufficient to state a company which legally accepts responsibility for quality although it is considered that who will take responsibility if a quality problem or the like arises is important information for consumers, and the need to require stating an actual producer and processor is not explained. Therefore, the regulations are suspected of being more trade-restrictive than necessary in light of the objective and may violate Article 2.2 of the TBT Agreement.

In addition, with regard to (iii), the purpose is said to be to facilitate companies in providing information to customers and to improve the technical details of products by disclosing the reports describing the details of effect/efficacy testing on the website. However, the regulations are suspected of being more trade-restrictive than necessary in light of the objective and may violate Article 2.2 of the TBT Agreement, because the necessity of providing this information is not explained, and, for instance, consumers are prevented from making appropriate decisions by not being aware of the details of the reports on effect/efficacy testing.

<Recent Developments>

In response to the TBT notifications on the draft regulations, Japan sent comments expressing its concerns to the TBT enquiry point of the Chinese Government in January 2015. Japan intends to request improvement of the draft regulations through active efforts at the TBT Committee meetings and bilateral consultations from March 2015 onward.

Regarding the regulation referred to in (i), it is not immediately clear from the provision whether adhesive labels, which are allowed at present, continue to be allowed. If adhesive labels are prohibited and using printed labels becomes compulsory, packages exclusively for China have to be produced for products exported to China from the beginning after adhesive labels are prohibited. Therefore, in the comments sent in response to China's TBT notifications, Japan requested China to clearly stipulate that adhesive labels would continue to be allowed.

It is expressed that the purpose of prohibiting adhesive labels is to prevent an illegal company from putting labels on a product many times. However it can be considered that it is possible to attain that purpose through adhesive labels hard to peel off. Then if other labels than printed ones are not allowed, there is a possibility that it may violate Article 2.2 of the TBT Agreement as it is more trade-restrictive than necessary. At a TBT Committee meeting in June 2015, China stated that over-labeling will continue to be allowed, and the entry into force of the regulations has been postponed from the initially scheduled July 1, 2015. China explained that the bill concerned will be reviewed according to the provisions of the Regulations concerning Hygiene Supervision over Cosmetics, which are superior regulations to the Declaration. Then while Japan verifies the state of revising the Regulations concerning Hygiene Supervision over Cosmetics (Regulations on Supervision and Administration of Cosmetics after revision), Japan will closely watch whether it becomes certain that adhesive labels continue to be allowed and will request China to improve other concerns (showing of actual producers and processors and disclosure of detailed reports on effect and efficacy tests) by actively working on China at the TBT Committee and bilateral talks.

(7) Regulations on Chemical Substances

Refer to page 42 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Trade in Services

[Commitments upon Accession]

Before China's entry into the WTO, in China, foreign-affiliated firms' entry into major service sectors was strictly restricted. For example, in the distribution industry, retailers' entry into the market is merely allowed on trial in limited large cities and special economic zones, and foreign-affiliated firms'

entry into the telecommunications industry was prohibited.

As a result of the WTO accession negotiations, China committed to the liberalization of various service sectors, which was intended to mitigate or do away with regulations like the geographical restrictions and the foreign equity restrictions pertaining to investment companies in a phased manner within roughly five years after acceding.

[Status of Implementation and Points to Be Rectified]

As the following will indicate, situations in which these accession commitments have not been completely fulfilled up to the present have been observed, and further responses will be sought from the Chinese Government in the future.

[Individual Measures]

(1) Distribution Services

Refer to page 44 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Construction, Architecture and Engineering

Refer to pages 49-50 of the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(3) Telecommunications Services

<Outline of the Measure>

In China, telecommunications services are classified into basic telecommunications services (services to provide public network infrastructures, public data transmission, and basic audio communication services) and value-added telecommunications services (services to provide telecommunication and information services by using public network infrastructures) in accordance with the Regulations on Telecommunications (promulgated in September 2000 and amended in August 2014 and February 2016). A telecommunications business license is required to provide a telecommunication service.

Regarding the entry of foreign investment companies in the telecommunications service market, the Catalogue on Telecommunications Services Classification (promulgated in December 2001 and amended in September 2008 and February 2016) and the Management Measures for Telecommunications Business Licenses (promulgated in March 2009), which were established based on the Regulations on Telecommunications, provide conditions for such entry.

China has been gradually easing restrictions including business scope, investment ratio, region of operations, and minimum capital requirement. Currently, the limitation on service provision areas has been eliminated, but foreign capital ownership for basic telecommunications services and value-added telecommunications services (excluding electronic commerce) is limited to 49% or less and 50% or less, respectively. The specific details of basic telecommunications services and value-added telecommunications services are shown in the “Catalog of Telecommunications Services Classifications” amended in December 2015. However, the scope of services actually provided by foreign companies is limited, making it virtually infeasible for foreign communications companies (including Japanese ones) operating in China to provide data center services, internet connection services, and other services for which there is a strong demand from Japanese companies operating in China.

In May 2010, the State Council promulgated the “Several Opinions of the State Council on the Encouragement and Guidance of Sound Development of Private Investment”, which allows private capital to enter the basic telecommunication operation market in the form of capital participation. Furthermore, the National Conference on Industry and Information Technology 2013, which was held in December 2012, advocated private participation in trials for the resale business and access network business of mobile communications. Specifically, mobile communication resales have been carried out

on trial in accordance with the Notice of Pilot Program for Mobile Communications Resale Business given by the Ministry of Industry and Information Technology in May 2013. However, regarding necessary conditions for application for the Pilot Program, it is provided that, in the case of a company listed in foreign countries, the percentage of equity acquired by foreign capital shall be not more than 10% and that its largest stockholder shall be a Chinese investor.

As of February 2018, the Telecommunications Law, which constitutes a fundamental law for telecommunications business in accordance with China's commitments upon its entry into the WTO, has not been promulgated or enforced yet.

<Problems under International Rules>

Before its entry into the WTO, in telecommunication services, China strictly restricted sales, and foreign capital's entry into the market was prohibited. However, China made the following promises at its entry and is working to improve systems in China.

- (i) Of basic telecommunication services (e.g. communication infrastructure facilities and data communication and speech communication services for the public), domestic and international call services and the like: The limit of investment of foreign capital is 49%.
- (ii) Mobile communication services: The limit of investment of foreign capital is 49%.
- (iii) Value-added services such as information and database searches: The limit of investment of foreign capital is 50%.

There is a possibility that the operation of related regulatory measures is in violation of Article 6 (Domestic Regulations) of the General Agreement on Trade in Services (GATS), which requires that such operation be performed in an impartial manner. China also undertook obligations outlined in the reference paper regarding telecommunications services, and so Japan needs to pay attention to violations of the commitments, such as "Public availability of licensing criteria", etc.

<Recent Developments>

Japan has made requests to China regarding elimination of minimum capital requirements, elimination or easing of foreign capital restrictions, etc., and has been encouraging it to fulfill its accession commitments through the WTO Doha Round negotiations, Japan-China Economic Partnership Consultation, the WTO's Trade Review Mechanism (TRM) for China, and other forums, and will need to pay attention to the country's regulatory status for telecommunication services within the trade frameworks of the China-Japan-Korea FTA and RCEP, etc. Moreover, caution is needed to see whether China will impose excessive regulations on telecommunications services in a way that breaks its commitments connected with the WTO regarding broadcasts of foreign produced dramas and animations, computer-related services and other adjacent services (*).

The restriction on foreign equity ratios, which previously had been limited to 50%, was abolished in the "Notice of the Ministry of Industry and Information Technology on Removing the Restrictions on Foreign Equity Ratios in Online Data Processing and Transaction Processing Business (Operating E-commerce)" (G.X.B.T. [2015] No. 196) promulgated by the Ministry of Industry and Information Technology on June 19, 2015.

The Catalogue on Telecommunications Services Classification had not been reviewed since its enforcement in 2003 and did not cover the actual conditions of telecommunications services that had developed rapidly. However, public comments were invited on a bill to revise that Catalogue in April 2013, and its revised edition was published in December 2015 (and put into effect in March 2016). It should be noted that in the revised Catalogue on Telecommunications Services Classification, the resale of mobile communications is clearly classified as a basic telecommunications service and the 49% limit on foreign investment is assumed to apply to commencement of commercial services of such resale.

(*) Regulations on broadcast and distribution of foreign movies, dramas, and animations

(i) Quantitative regulation and time regulation of foreign television programs

In the Provisions for Control over Import and Broadcast of Foreign Television Programs as enforced as of October 2004, it is provided that foreign movies and dramas may not be broadcast more than 25% of television dramas and movies broadcast in a day and that a foreign television drama or movie shall not be broadcast in prime time (from 7 p.m. to 10 p.m.) without gaining permission from the SAPPRFT.

Specifically, in February 2008, pursuant to the Notice on Much More Normative Control over Television Animation Broadcasts given by the SAPPRFT, foreign animation broadcasts were prohibited from 5 p.m. to 9 p.m., and the proportion of foreign animations to Chinese-made ones was restricted in the ratio of three to seven in the whole airtime on channels for minors.

(ii) Quantitative restriction of webcasting of foreign movies and dramas

In the Notice on Further Promotion of Certain Practice of Control over Foreign Movies and Dramas on the Internet given by the SAPPRFT in September 2014, it was provided that the total number of foreign movies and TV dramas purchased by a video site on the Internet in a year shall not be more than 30% of Chinese-made movies and TV dramas purchased and distributed by it in the preceding year.

(iii) Quantitative regulation and time regulation of overseas formatted programs

In the Notice on Powerful Promotion of Independent Innovative Work for TV-broadcast programs publicized by the SAPPRFT in June 2016, it was provided that more than two overseas formatted programs may not be broadcast from 7:30 p.m. to 10:30 p.m. on the general channels of satellite broadcasting in one year. Thereafter, in the Notice to Make the General Channels of Satellite TV Broadcasting a Cultural Mass-media Platform publicized by the SAPPRFT in August 2017, it is provided that overseas-formatted programs shall not be basically broadcast in prime time.

(4) Finance

(i) Insurance

<Outline of the Measure>

In June 2006, the State Council publicized the Ten Proposals for Reform and Development of Insurance Business, which state that China will go ahead with opening the domestic market to foreign countries, to fulfill China's promise upon China's entry into the WTO. However there is a problem with the transparency in administrative procedures for approval for licenses, branches (including local incorporated companies), products and other matters in such a case as it takes time to give authorization to foreign-affiliated insurance companies.

With regard to foreign-invested companies' capital participation in local insurance companies in China, the China Insurance Regulatory Commission (CIRC) promulgated the "Measures for Administering Insurance Companies' Equity Interest" on May 4, 2010. According to this, in the case of an insurance company for which the investment/capital participation ratio of foreign-invested shareholders is less than 25% of the company's registered capital, investment exceeding 20% by a single shareholder (including those on the related side) is permitted if the following conditions are satisfied: Although a foreign financial institution holds 15% or more of shares of an insurance company as a single shareholder, (1) it is a major shareholder that can directly or indirectly control the insurance company and has continuous investment ability and its financial reports demonstrated that it was profitable for the most recent three accounting years, (2) its net assets are not less than 200 million yuan, and (3) it is in high repute and also holds a leading position the industry.

In addition, Article 5 of the "Measures for Administering Insurance Companies' Equity Interest" (insurance companies for which the foreign investment ratio or the shareholding ratio is 25% or less, where two or more insurance companies are under the control of the same institution, shall not operate insurance businesses of similar kind that involve conflict of interest or competitive relationship) prohibits so-called double licenses, but there is a problem because no clear standard has been indicated with regard to the aforementioned control standard.

In terms of reinsurance business, the provisional regulations of "preferential treatment for domestic reinsurers" were removed from the new "Insurance Law", which came into effect in October 2009. Following this, the contents of the "Measures for the Administration of Reinsurance Business" (CIRC 2005), which was revised on May 21, 2010, were also adjusted. This adjustment enables foreign insurance companies to compete with domestic companies fairly as they are no longer regulated under the "preferential treatment for domestic reinsurers". However, transactions of reinsurance with affiliate companies by foreign insurance companies are prohibited without a permit issued by the CIRC (Article 23).

<Problems under International Rules>

Regarding automobile insurance, the Regulations on Automobile Traffic Accident Liability Compulsory Insurance were formally enforced as of July 1, 2006, and compulsory insurance and voluntary insurance have come to be operated separately. Then several foreign-affiliated non-life insurance companies have gotten a license for voluntary automobile insurance. However, foreign-invested nonlife insurance companies were disadvantaged in terms of competition compared to domestically-invested insurance companies, as they had to separately secure statutory insurance at domestic insurance companies when dealing with voluntary insurance.

Moreover, in December 2006 the CIRC released the “Directive on Strengthening Information Disclosures for Reinsurance Transactions by Foreign-Invested Insurance Companies and their Affiliated Companies.” Enacted on January 1, 2007, the directive calls for greater information disclosures by foreign insurance companies. As there is the potential that foreign insurance companies will not receive treatment that is equal to local insurance companies in China, the above regulations may possibly represent a violation of the country’s accession commitments. In order to operate in China, foreign-invested life insurance companies are required to establish joint ventures with maximum foreign investment of 50%. Moreover, regarding licenses for establishing branches or local incorporated companies, although China has promised to give licenses without consideration of economic demand and quantitative restriction of licenses given, cases where a license is given to a foreign-affiliated insurance company a long time after the passage of the standard transaction time have been seen. If foreign-affiliated insurance companies’ entry is substantially restricted, there is a possibility that China may break promises upon entry.

<Recent Developments>

Concerning these measures, at China’s TRM at the WTO’s Council for Trade in Services in October 2009, Japan sought indications regarding the details of China’s system and its consistency with China’s accession commitments, but has not received satisfactory responses. As mentioned above, due to the revision of “Insurance Law”, restrictions were eliminated in cases where foreign insurance companies develop their business in the Chinese reinsurance market. Furthermore, pursuant to the Decision on Amendment to Regulations of Eight Ministries, including the Regulations on Establishment and Administration of Insurance Institutions Formed by Insurance Companies of the China Insurance Regulatory Commission (CIRC Order No. 3 of 2015), the Measures for the Administration of Reinsurance Business (as amended in 2015) was promulgated on October 19, 2015, and the old Article 23 provision that a foreign-affiliated insurance company shall not transact reinsurance business with its affiliated companies unless it receives ratification from the China Insurance Regulatory Commission was deleted. However, it is expected that the monopolization of the market by domestic companies will not change in the short term as domestic reinsurance companies prefer conducting their business through “personal connections”.

In terms of auto insurance, in August 2011, the CIRC distributed a press release titled “promoting development of China’s mandatory insurance system”, which stated that it would “actively conduct a study on opening the market to foreign investors”. Following this, in February 2012, the policy to open the market to foreign investors was made public in the US-China joint fact sheet at the bilateral meeting between the Chinese Vice-President and the US President. In May 2012, the mandatory insurance system was opened to foreign investors. In April and May 2014, Japanese non-life insurance companies received approval for business scope change, which is the first stage of the two ones of approval necessary for handling compulsory automobile liability insurance, from the CIRC. Then in November 2014, some Japanese non-life insurance companies received the second stage approval for product sales and started to handle compulsory automobile liability insurance. Furthermore, the 119th Standing Committee of the State Council approved the Decision on Partial Amendment to Administrative Regulations (the Circular of the State Council of China No. 666) on January 13, 2016, and promulgated it on February 6, 2016. In the past, approval of the China Insurance Regulatory Commission was required to provide automobile traffic accident liability statutory insurance services, but Article 50 of the Decision revised that rule to allow any insurance company to provide the services without obtaining such approval.

(ii) Banks

<Outline of the Measure>

Regarding the renminbi business, the Regulations on the Administration of Foreign-owned Banks and the Detailed Rules for Implementation of the Foreign-owned Bank Control Regulations have been enforced as of December 2006, and then the Regulations on Administration of Financial Institutions with Foreign Capital (as promulgated in 2001) were repealed. Thus the renminbi business has been opened to foreign-affiliated banks.

However, a foreign-affiliated bank may conduct the renminbi business entirely for Chinese individuals substantially on condition that the bank establishes a local incorporated company. In addition, the renminbi business for individuals in China by a branch of a foreign bank is limited to a fixed deposit of 1 million yuan or more per account. Moreover, when a branch of a foreign bank turns to a local incorporated company, the branch will be in the same position as Chinese banks. But as a consequence, such a provision that a bank may finance one company not more than 10% of the balance of its capital will be newly imposed as regulations.

Moreover, the Chinese authorities have established foreign bond limits regulations to restrict the influx of foreign money, in order to prevent speculative funds (hot money) from flowing into real estate and shares, and those regulations have a certain effect of regulating gross amount. However if the regulations cause a hindrance to companies' fund raising, there is concern that the sound development of the Chinese economy may be affected.

<Problems under International Rules>

China has promised to abolish the existing measures to restrict foreign capital investment ratio, business, corporate forms and other matters, except those to maintain an orderly financial system, within five years after its entry into the WTO. Then there is a possibility that conditions on business development and other conditions imposed on foreign-affiliated banks may be a breach of China's promises upon entry.

<Recent Developments>

In September 2010, the United States submitted a request for consultations with China pursuant to WTO Agreements, on the grounds that permitting business operators in China monopolize credit-card transactions on a Chinese yuan basis and not allowing foreign credit card companies to enter such transactions is inconsistent with China's WTO accession commitments. Thereafter, the problem could not be settled through the consultation, and a dispute resolution panel was established in February 2011. In July 2012, the WTO dispute resolution panel judged that, while there was no proof of Chinese domestic dealers' monopoly on yuan-based credit card clearance, duties to display logos and to install terminals and other duties advantageous to Chinese domestic dealers were unfair discrimination against foreign credit card companies and constituted a breach of the WTO Agreement. In October 2014, the State Council adopted regulation relaxation measures, which allowed foreign credit card companies to handle Chinese yuan-based transactions and to establish transaction companies in China, and opened the market to foreign-invested companies.

In the "China (Shanghai) Pilot Free Trade Zone" established by the Chinese Government in September 2013, regulation relaxation measures have been implemented on a trial basis in various sectors, and a series of financial liberalization policies were introduced, including lifting the prohibition, with usage restrictions, etc., on cross-border yuan transactions by companies within the Zone. (e.g. Notifications Nos. 20 and 22 of the Shanghai Headquarters of the People's Bank of China on February 18 and 20, Regulations No. 26 (Re: Commercial Factoring) of the Shanghai Pilot Free Trade Zone Administration Committee on February 21, Notification No. 26 of the Shanghai City Branch of State Administration of Foreign Exchange on February 28 (the lifting of the ban on international intensive settlement and netting pooling among group companies). A movement in which such deregulation in the China (Shanghai) Pilot Free Trade Zone has developed into other areas is seen. Then deregulation measures for conversion of foreign currency capitals into yuan which are allowed by the above Notification No. 26 have come to be developed in 16 districts in China pursuant to the Notification No. 36 of the State Administration of Foreign Exchange on July 4 and in all over China pursuant to the Notification No. 65 of the State Council on December 21.

On December 20, 2014, the "Decision of the State Council on Revision of Bylaws for Management of Foreign-Owned Banks" was promulgated (the Decision was promulgated on December 20, 2014 and

enforced on January 1, 2015; the Circular of the State Council of China No. 657) to work out a relaxation in conditions for foreign-affiliated banks' entry and conducting the renminbi business. Also, on April 8, 2015, the "Circular of the General Office of the State Council on Issuing the Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones" to be applied to the four Free Trade Zones of Shanghai, Guangdong, Tianjin, and Fujian was promulgated.

On December 23, 2015, Announcement No. 40 of 2015 of the People's Bank of China and the State Administration of Foreign Exchange was promulgated. Then from January 4, 2016, the closing time of the operation of the transaction system of the China Foreign Exchange Trade System (CFETS) was extended from 16:30 to 23:30 (Beijing Time), and foreign banks were also allowed to carry out yuan exchange transactions in the interbank market by becoming a member of the foreign exchange market through application to the CFETS.

(iii) Securities

<Outline of the Measure>

The opening to foreign countries which the Chinese government promised upon China's entry into the WTO was as follows: (i) in establishing a securities investment fund management company in the form of merger, regarding the foreign capital investment ratio, up to 33% would be allowed at the entry and up to 49% within three years after the entry; and (ii) establishing a securities company in the form of merger would be allowed within three years after the entry, but the foreign capital investment ratio should not exceed one-third. Merged securities companies may conduct underwriting and selling business for A-shares, but entry into the distribution market of A-shares is not permitted. In addition, merged Chinese companies are required to be securities companies, and merged securities companies cannot engage in the same business as the parent companies (so-called "competition prohibition rules"). The "Decision on Amendments to the 'Regulations on the Establishment of Foreign-Invested Securities Companies'," which was promulgated in October 2012, stipulates that foreign investment ratio has been raised to 49%.

<Recent Developments>

In 2002, a system in which Qualified Foreign Institutional Investors (QFII) are allowed to purchase yuan with foreign currencies and invest the yuan in securities was introduced as a relaxation of the regulations for cross-border yuan transactions, and in April 2012, the China Securities Regulatory Commission announced expansion of the total of the amount of investment by QFII to 80 billion dollars, and also announced in July 2013 that the total investment limit would be raised to 150 billion dollars.

In February 2016, the Regulations on Foreign Exchange Administration for Domestic Securities Investments by Qualified Foreign Institutional Investors (QFII) (Announcement No. 1 of 2016 of the State Administration of Foreign Exchange) were promulgated. Then regarding QFIIs' acquiring domestic securities investment limits, an application by a QFII for the limits not more than basic limits (the upper limits are 5 billion dollars) calculated based on its asset size and the asset size of securities managed by it has been changed to administration through notification. Also, a measure was taken to shorten to three months the lock-up period during which the investment principal cannot be remitted overseas.

Additionally, in December 2011, the Renminbi Qualified Foreign Institutional Investor (RQFII) was introduced as a system for investing in Chinese domestic securities with offshore Renminbi funds, and the investment limit was raised to 270 billion yuan in November 2012. It initially applied to Hong Kong financial institutions; then the investment limit was raised to 80 billion yuan for the UK (London) and 50 billion yuan for Singapore in 2013, to 80 billion yuan for France, 80 billion yuan for the Republic of Korea, 80 billion yuan for Germany, 30 billion yuan for Qatar, 50 billion yuan for Australia, and 50 billion yuan for Canada in 2014, and 60 billion yuan for the Republic of Korea and 30 billion yuan for Singapore in 2015. In accordance with the Notice on Issues Relevant to Administration of Domestic Securities Investment by Renminbi Qualified Institutional Investors (Yinfa [2016] No. 227), the acquisition of an investment quota by a RQFII within the same basic quota (upper limit of 5 billion dollars) as that for QFII, has been subject to management through notification since September 2016.

Furthermore, two-way exchanges between the Shanghai Stock Exchange and the Hong Kong Stock Exchange were allowed to a certain extent in November 2014 (a daily maximum of 13 billion yuan and

total amount of 300 billion yuan for investment in Shanghai, and the daily maximum of 10.5 billion yuan and total amount of 250 billion yuan for investment in Hong Kong), thereby enabling foreign investors to acquire Chinese yuan-based stocks in the Shanghai Stock Exchange via the Hong Kong Stock Exchange.

On February 17, 2016, the People's Bank of China promulgated the "Announcement on More Appropriate Implementation of Matters Concerning Investment by Foreign Institutional Investors in Interbank Bond Markets" (Announcement No. 3 of the People's Bank of China in 2016). As a result, it became possible for foreign institutional investors such as foreign banks and securities companies to conduct bond transactions on China's interbank markets after completing a notification procedure with the People's Bank of China.

Moreover, in response to the Chinese government's policy, the People's Bank of China and the Hong Kong Monetary Supervisory Bureau are going ahead with establishing a system for international bond trading as in the case of shares. On July 3, 2017, access to Chinese bonds via Hong Kong has been opened to foreign investors antecedently.

(iv) Financial Information

Refer to page 49 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(5) Chinese Cybersecurity Law

* Refer to page 26 for the issues of the Standards and Authentication System relating to the said Law.

<Outline of the Measure>

On November 7, 2016, the Chinese government announced the enactment of a new cybersecurity law that is intended to enhance cybersecurity. The Law aims at "maintaining sovereignty and state security in cyberspace" and contains new regulations on building and operation of networks, supervision of cybersecurity and other matters. Specifically, the Law provides for (1) formulation of new national and industry standards for network products and the like and compulsory security authentication in selling and providing key network products and (2) (i) protection of citizens' personal information and (ii) preservation of personal information and important data in China by operators of key information infrastructures (e.g. public communication and information services, energy, transportation, water supply, finance, public services, and e-Government) (carrying out data, such as personal information, overseas requires safety evaluation) for the safety of network data in line with technological development in cloud computing, big data and the like.

<Problems under International Rules>

The Cybersecurity Law and related laws and regulations impose duties to preserve personal information and important data in China and to conduct a safety evaluation when those information and data are transferred across the border. It is surmised that foreign network operators generally gather and manage data uniformly outside China. Then cases where those duties would cause installation of extra servers in China and a burden of additional expenses for safety evaluation for data transfer are contemplated. Although the provisions apply equally to domestic and foreign operators, there is quite a possibility that foreign operators practically have to compete on unfavorable conditions compared with Chinese operators that gather and manage data in China.

Pursuant to the GATS, China has promised to realize liberalization in whole or in part in many service sectors, including computer-related services and telecommunication services. If foreign operators are treated substantially in a disadvantageous way compared with Chinese operators in those sectors, there is a possibility that it may constitute a breach of the duty of national treatment as referred to in Article 17 of the GATS. Otherwise, if the national standards and criteria for evaluation as set forth in those related laws and regulations and other matters lack objectivity or transparency and cause a burden more than necessary to secure the quality of services, there is also a possibility that it may constitute a breach of the duty of domestic regulations as set forth in Article 6, 5 of the GATS.

<Recent Developments>

In response to the enforcement of the Cybersecurity Law on June 1, 2017, Japan expressed concern about the enforcement of the said Law at the meeting of the Council for Trade in Services in June 2017. At the meeting of the Council for Trade in Services in October 2017, Japan registered the matter concerned as an item on the agenda jointly with the U.S. and expressed concern about the above problems again. Japan will continue to closely watch movements in drawing up a bill concerning the Law in the future too and will make a request that foreign companies do not receive unfavorable treatment, in coordination with relevant countries.

Protection of Intellectual Property

[Commitments upon Accession]

China's system of protecting intellectual property was one of areas to which member nations (especially developed countries) especially made strong demands for improvement at the Working Party on entry as the more serious problem of illegal goods such as counterfeit and pirated products in China and other matters are reflected. Following Working Party negotiations, China committed to adhering to the TRIPS Agreement immediately upon accession. That is, China stated that it would observe the duties under the TRIPS Agreement at the time of accession without requesting application of transitional measures for developing countries and specifically promised to amend and improve legislation, such as the Patent Law (including provisions for patents, utility models, and designs), Trademark Law, and Copyright Law in order to make it consistent with the TRIPS Agreement. In the area of enforcement, China further committed to performing its obligations under the TRIPS Agreement by rationalizing compensation payments for losses, bolstering its system for suspending products, strengthening administrative measures and border measures, easing requirements for applying criminal penalties, as well as educating and enlightening the public.

[Status of Implementation]

In China, protection of intellectual property is prescribed substantively by the Patent Law, Trademark Law, Copyright Law, Law against Unfair Competition (Anti-unfair Competition Law), some regulations prohibiting acts infringing trade secrets, Protection Regulations on Layout Designs of Integrated Circuits, Regulations on Protection of Computer Software, Technology Exports and Imports Administrative Ordinance and other laws and regulations and procedurally by the General Rules and the General Provisions of the Civil Law, Law on Liability for Infringement of Rights, Criminal Law, Customs Law, Regulations on Customs Protection of Intellectual Property. Numerous new laws have been established or amended and old laws and ordinances abolished to bring the legal system into conformance with the TRIPS Agreement.

In recent movements, in May 2017, the Gist of National Activities to Expose Infringement of Intellectual Property Rights and Production and Sale of Imitations of Poor Quality was presented by the State Council. Moreover, in September 2017, the Plan of Action to Protect Intellectual Property Rights of Foreign Merchant Invested Companies was announced, and it states that activities to strictly expose illegal and criminal acts of infringing intellectual property rights will be intensively carried out before December 2017. Then movements deserve attention.

In addition, a court of intellectual property rights was established in Beijing, Shanghai, and Guangzhou. Furthermore, a specialized court for intellectual property right cases has been established in intermediate people's courts in the Cities of Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao and other cities. Then the unification of judgments and strengthening of intellectual property protection by experts can also be expected in the judicial field.

Refer to pages 50-51 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA- for other movements in the past.

[Problems]

As to the legal system for protecting intellectual property rights, in general, China has brought it into approximate conformance with the TRIPS Agreement, though further improvements are still considered necessary or desirable on a number of issues.

It has been noted, however, from the point of view of the actual situation of distribution of infringing products such as counterfeit/pirated products, etc., that little improvement has been seen in spite of the efforts of the Chinese authorities. This is supported by the survey results showing that counterfeit damage which Japanese companies suffered in fiscal 2015 arose most frequently in China regarding production, transit points, sales, and provision (FY2016 Survey Report on Counterfeit Damage drawn up by the Japan Patent Office in March 2017) and the survey results showing that China accounted for over 90% (91.9% and 23,916 cases) of countries of shipment in 26,034 cases of import suspension of articles infringing intellectual property rights at customs in Japan (State of Suspension of Articles Infringing Intellectual Property Rights at Customs in 2016 publicized by the Ministry of Finance in March 2017). In order to rectify such real state of affairs, not only improvement to substantive legislation but further improvement to the operation of approaches, including appropriate and effective operation of legislation and tightening up of control in judicial and administrative departments, is needed. Moreover, despite such circumstances, the “Action Plan for Further Implementation of the National IP Strategy” announced by the State Council of China in December 2014 stated that the goals of the “Outline of National Intellectual Property Rights Strategy (June 2008)”, which aimed at clear reduction of counterfeit/pirated products within the five-year period, were basically achieved. Then it is necessary to resolve the differences of understanding between China and Japan. The following sections specifically identify points where further remedies or improvements are sought.

(1) Issues related to Counterfeit, Pirated and Other Infringing Products

For protection of intellectual property rights, improvement to substantive provisions is first needed. In this respect, China’s being working for improvements through a series of changes in the law and recent amendment to the Trademark Law and other laws with its entry into the WTO as an opportunity can be appreciated. However, in order to make protection of intellectual property rights as set forth in the TRIPS Agreement and domestic laws effective, regarding exercise of rights (enforcement) by using civil, administrative and criminal procedures, it is essential that systems for that exercise of rights will be improved and operated so that the exercise of rights will be realized quickly and efficiently and in a fair and just way. The following section notes several issues on enforcement, which play a large role in protecting intellectual property in China.

<Problems under International Rules>

(i) Inadequate administrative and civil remedies and criminal punishment

For intellectual property rights infringements, Chinese laws and regulations recognize administrative penalties (suspension of infringements, levying of administrative fines, confiscation and disposal of goods infringing rights, etc. by the administrative authorities), and allow for civil recourse (embargo based on court judgment, compensation for losses, rehabilitation of reputation through advertisements expressing apologies, etc.), as well as criminal sanctions (imprisonment, fines, etc.).

Administrative Regulation

While the Chinese Government has enforced administrative penalties, the penalties are insufficient. Refer to page 52 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA- for this respect.

Civil Remedies

Regarding civil remedies, although claiming damages for infringing an intellectual property right is allowed and the trend of a little rising damage is seen, it has been still pointed out that adequate damages are not always allowed or that damages cannot be received even in the case of a winning suit. Refer to pages 52-53 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA- for this respect.

In addition, a bill to revise the Anti-unfair Competition Law was passed and the Anti-unfair Competition Law has been enforced as of January 1, 2018. Then the state of operating that Law in the future deserves attention.

Criminal Punishment

Refer to pages 53-54 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(ii) Local Protectionism

Refer to page 54 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Issue of Bad Faith Filings

<Outline of the Measure and Concerns>

(i) Bad Faith Trademark Filings

It has been reported that there were many cases where Japanese companies' trademarks or characters were applied for and registered by third parties (bad faith filings). If such an application is notified and registered, a risk of business obstruction or the like may arise in such a way as a demand to purchase a trademark right, illegal commercialization through a free ride on reputation or suing the original brand owner company having entered the Chinese market for infringement of a trademark right to the State Administration for Industry and Commerce. Moreover, when an original brand owner company files for a petition for administrative control on counterfeits to a local office of the State Administration for Industry and Commerce, the counterfeit producer concerned will insist that it has applied for registering the trademark, in making a plea, despite its making an infringement application. Then imposing administrative control is suspended until the trademark office makes a decision on the infringement application. Thus such a situation where counterfeit damage cannot be checked quickly arises.

Many Japanese companies are still being harmed by misappropriated applications of trademarks, and responding to it remains one of the important issues in China.

Japan has requested improvement at various bilateral talks between Japan and China as well as at multilateral forums. Then the Supreme People's Court promulgated "Opinions on several issues concerning maximizing functions of the intellectual property rights court, promoting significant development and prosperity of socialism culture and economic development through voluntary cooperation (as enforced in December 2011)." This clarified that China will regulate unethical applications by appropriately ascertaining the intentions of trademarks, and that, in cases where an indictment for violation of trademark rights is filed against the initial owners, their counterargument of being the original users of the trademark rights will be acknowledged. Moreover, in the framework of the Five Trademark Offices Conference (TM5) established by Japan, the U.S, Europe, China, and South Korea, a Bad-faith Trademark Filing⁵ Project was pushed ahead with as one of projects under Japan's leadership. As part of that Project, in December 2014, a report on the Laws and Examination Guidelines and Practices of the TM5 Offices against Bad-faith Trademark Filings, in which information about systems and their operation in countries is compiled, was published. In March 2016, a seminar to inform bad-faith trademark filing cases was held in Tokyo to share the latest cases in the offices with many users. At the fifth annual assembly of the TM5 in October 2016, a symposium on bad-faith trademark filings was held according to China's proposal and had about 200 participants consisting mainly of trademark users in China. In the symposium, lectures about bad-faith trademark filing cases were given by the TM5 offices, persons of learning and experience, and participants from companies. Moreover, in May 2017, the Collection of Bad-faith Trademark Filing Cases, which contains 50 cases in the TM5 offices, including cases in China was drawn up under Japan's leadership and publicized to many users through a joint workshop held under the auspices of the Japan government and the International Trade Marks Association (INTA). Moreover, that Collection is also posted on the TM5 website (<http://tmfive.org/>). In addition, for the purpose of preventing trademarks applied in bad faith from being registered, the Japanese government is working on providing information about trademarks applied in bad faith prior to public notice to the Trademark Office of the State Administration for Industry and

⁵ It refers to a third party's applying for other person's trademark in bad faith by utilizing the trademark's not having been registered.

Commerce. Continuous close monitoring will be necessary to prevent the expansion of injury by bad faith filings and respond by utilizing the opportunities at bilateral consultations and multilateral frameworks in light of the purpose of Article 41 Clause 1 of the TRIPS Agreement (prompt action of rescue measures to prevent violations).

(ii) Abuse of Misappropriated Applications/Non-Examination System on Inventions of Foreign Countries

Some Japanese companies reported that there have been many cases in China where patent applications and utility models for an invention or a design created in a foreign country have been submitted by a person other than the authentic inventor and a patent is granted by the patent office. In China, infringement application does not constitute a reason for rejection or invalidity. Remedy is available only by making a request to verify the belonging of a right (Articles 85 and 86 of the Implementation Regulations for the Patent Law). If it takes time to execute an administrative procedure or to continue a suit, to verify the belonging of a right, such a situation where counterfeit damage caused by an application by other person than the inventor or creator cannot be checked in a time in which the market is active would arise. Then in view of the purport of Article 41, paragraph 1 (Prompt Remedies to Prevent Infringement) of the TRIPS Agreement, Japan has pressed China for improvement to effectively prevent counterfeit damage from spreading through the government-private joint mission to visit to China in the International Intellectual Property Protection Forum, exchange of views with the State Intellectual Property Office (SIPO) of China and other opportunities.

Moreover, China does not adopt a substantive examination system not only for utility models (substantive examinations are conducted for utility models in Japan) but for designs. Furthermore, a duty to submit a patent evaluation report drawn up by an examiner on the validity of a right is not imposed on exercising that right. Then industry is strongly worried that provisions for prevention of abuse of rights are insufficient. Japan continues to make efforts in improving the situation by facilitating the understanding of differences in the systems through the framework of China-Japan-Korea Patent Office meetings and seminars in China, etc., and requesting China to make obligatory the submission of patent examination reports at the time of exercising the rights in public comments to seek amendment of the Patent Law, etc.

* Moreover, in relation to the protection of well-known trademarks, trade and investment related policies and measures, regarding which it cannot be clearly said that a problem lies in them from the viewpoint of consistency with international rules, including the WTO Agreement, are described in light of the following concerns.

Japan, the US and the EU commented during the WTO's legislative review on the inadequacies of China's protection for well-known trademarks in particular (an issue of great concern also to many other developed countries). In China, regarding well-known trademarks, only Chinese companies' ones had been once protected by drawing up a list of them. This was an issue in connection with Article 3 (National Treatment) of the TRIPS Agreement. But it can be appreciated that foreign right holders' well-known trademarks are also being recognized at present. However, to be under protection for well-known trademarks pursuant to Article 13 of the new Trademark Law of China as enforced on May 1, 2014, it is interpreted that a trademark has to be well known to the public "in China." Moreover, Article 32 of the new Trademark Law, which can be used to prohibit registration of trademarks applied in bad faith, provides that registering a trademark having been used by other person and having a certain influence by wrongful means shall not be allowed. Although the phrase "in China" is not specified in that Article, it is interpreted that the fact that a trademark at issue has been already used in China and has a certain influence is the necessary condition. Then the present situation where China does not work to protect trademarks well known only in foreign countries has not changed. In order to check bad-faith trademark applications, it would be desirable to work on China to utilize information provision prior to public notice and introduce a system of that information provision and to introduce a provision pursuant to which an application for a trademark well known in foreign countries shall also be rejected (which corresponds to Article 4, paragraph (1), item (xix) of the Trademark Act of Japan). Meanwhile, new paragraph 2 added to Article 15 of the new Trademark Law provides that, if a person who has a contract or trade connections with other person and evidently knows the existence of a trademark used by that other person makes an application for that trademark for a product of the same class or a similar product,

that application shall be rejected by filing an objection. Then movements in operating that paragraph in the future deserve attention.

(3) Licensing Regulations on Patents and Know-How

<Outline of the Measure>

China regulates contracts approving patent exploitation (so-called licensing agreements) between foreign and Chinese companies through the Technology Introduction Contract Administrative Ordinance, the Technology Introduction Contract Administrative Ordinance Application Rules, and the Technology Export and Import Contract Registration Administrative Statute.

<Problems under International Rules>

The provisions to regulate licensing agreements in China, which came into question through entry negotiations, have been getting consistent with the TRIPS Agreement since the enforcement of the Technology Exports and Imports Administrative Ordinance (hereinafter referred to as “Administrative Ordinance”). China’s effort to improve its regulations in this regard can be appreciated. However, many restriction clauses and compulsory warranties included in the Administrative Ordinance could come into question in light of their consistency with Article 28, paragraph 2 of the TRIPS Agreement, which allow patentees’ right to enter into a license contract, from the viewpoint of Article 3 (National Treatment) of the said Agreement.

The section below notes several issues in possible contravention of the TRIPS Agreement.

De Facto Royalty Regulations

Before 1993, under the “principles of instruction for conclusion of technology-introduction contracts and permit assessment”, the maximum royalty rate was 5% of net sales. Although this rule has already been abolished, there are some causes where controls are still imposed on the maximum royalty rate or contract terms due to administrative instructions by local government during the process of assessment for establishing joint venture enterprises or the procedure for registering technical licensing contracts. It is contemplated that foreign companies will often be in a position of a licensor in forming a joint venture. Then it can be said that such regulation of licenses regarding royalty rates can affect patentee’s right to enter into a license contract. Thus there is a possibility that the regulation may be inconsistent with the duty of national treatment as referred to in Article 3, paragraph 1 of the TRIPS Agreement.

Ownership of Improved Technology (Article 27 & 29(3) of the Administrative Ordinance)

Article 27 of the Administrative Ordinance provides that an improved technology of another technology provided under license terms shall belong to the party that has improved that another technology. In addition, Article 29, paragraph 3 of the said Ordinance prohibits a technology provider from restricting a technology receiver’s right to improve the technology provided under license terms or to use the technology so improved.

On the other hand, regarding technique transfer or license contracts in China, Article 354 of the Contract Law of China provides that a party to a contract may specify the division of results from an improved technique. In the said Law, such a compulsory provision as those in the Administrative Ordinance cannot be found. In addition, Article 355 of the Contract Law provides that, if laws or administrative regulations set separate provisions for technology import and export contracts, patent contracts or patent application contracts, such provisions shall govern. This handling indicates that the Administrative Ordinance, which is a special law, is applied with priority to license contracts that fall under technology import and export while Article 354 of the Contract Law of China is applied to other ordinary domestic technology transfer or licensing contracts.

In technology export and import, to which the Administrative Ordinance applies, it is contemplated that foreign companies are often in a position of a technology provider. Then the said Ordinance, which provides that an improved technique shall automatically belong to the party that has improved the provided technique, irrespective of contractual terms between the parties, is designed to work as a mandatory provision applied only to foreign companies that become a technique provider. Then there is a possibility that the Ordinance is inconsistent with the duty of national treatment as referred to in Article 3, paragraph 1 of the TRIPS Agreement as the Ordinance includes measures to discriminate against

foreign countries.

Licensor Liability (Article 24 of the Administrative Ordinance)

The old ordinance (the Technology Introduction Contract Administrative Ordinance and the Technology Introduction Contract Administrative Ordinance Application Rules) had provided that, in technology export and import, if a technique receiver was sued by a third party for infringement of a right as a consequence of using a technique provided under license terms, the licensor would be obliged to respond to that suit. This duty to respond to a suit was abolished when the old ordinance was repealed. However, Article 24(2) of the Administrative Ordinance still provides for the obligation to cooperate in responding to a third party's claim for infringement of a right. Furthermore, Article 24, paragraph 3 of the Administrative Ordinance provides that, if the receiving party's using the technique provided by the providing party in accordance with the provisions of a technology import contract infringes third party's legitimate interests, the providing party shall assume liability for that infringement, as the old ordinance does. It is possible that a licensor would be exempted from liability in such a case as licensee's using the licensed technique in a way not in accordance with the contract infringes third party's legitimate interests. But it seems that a licensor must take some steps for liability for infringement to a third party even if it has not been involved in that infringement until it has turned out that the licensor is exempted from the liability.

On the other hand, the Contract Law of China (Article 353), which governs contracts between Chinese companies, provides that liability for compensation in the case of infringement of a third party's rights and interests may be separately provided for by a contract between the parties.

Therefore, as mentioned above, the provision in the Administrative Ordinance that the supplier bears certain obligation and liability for infringement of a third party's rights and interests irrespective of agreements between the parties can be inconsistent with the national treatment obligation set forth in Article 3.1 of the TRIPS Agreement, as a measure that discriminates between Chinese and foreign technology transfer.

Guarantee of Completeness, etc. of Provided Technology (Article 25 of the Administrative Ordinance)

In Article 25 of the Administrative Ordinance, there remains, from the old ordinance, a provision that a technique provider shall warrant that the technique provided by it is complete, free from defects and valid as well as can attain the objective of the technique as set forth in the contract. Then, as it is possible that a licensor may be pressed for compulsory fulfillment to attain the objective of a technique, that provision can be an obstacle to entering into a license contract for a technique provider.

In this way, foreign persons providing techniques are still in the situation where they cannot but be deliberate in providing techniques. In the future, Japan needs to request China to clarify the Administrative Ordinance much more and to deregulate as well as to continue closely watching the authorities' operation to register and administer or permit international license contracts and the like, including differences in regulations on technology provision contracts, including license contracts, which are entered into between Chinese domestic companies.

<Recent Developments>

Concerning China, transitional reviews (China TRM) to verify its compliance with the TRIPS Agreement regarding both systems and operation of improving domestic legislation and exercise of rights (enforcement) were annually conducted at meetings of the TRIPS Council over eight years after China's accession in December 2001 pursuant to the provisions of the Accession Protocol. The last review was conducted in October 2011. At the TRIPS Council China TRMs conducted in October 2009 and October 2011, Japan set forth the aforementioned areas where further improvements were needed and especially pointed out the importance of enforcement with respect to counterfeits, piracy and other infringements of intellectual property rights. The United States and the EU made similar comments on the need to improve this enforcement.

Japan has requested improvement on intellectual property issues, centering on enforcement, at various meetings, such as the meetings held with the chief of State Administration for Industry and Commerce of China (SAIC) (May and December 2011, May 2012), bilateral meetings with the State Intellectual Property (SIPO), the Trilateral Policy Dialogue meeting among Japan, China, and the United

States, and also at the high-level mission (September 2012) with the International Intellectual Property Protection Forum (IIPPF), which takes measures against cross-border imitation and pirated goods by private enterprises. Furthermore, pursuant to the Memorandum on Cooperation and Exchanges in Intellectual Property Protection exchanged between the Ministry of Economy, Trade and Industry of Japan and the Ministry of Commerce of China at the Japan-China High-level Economic Dialogue in June 2009, meetings of the Japan-China Intellectual Property Rights Working Group were held in November 2009, October 2010, October 2011, May 2015, June 2016, and December 2017. In those working groups, the Japanese government exchanged opinions on a wide range of subjects for discussion about intellectual property protection with the Chinese government. Moreover, in August 2009, the Ministry of Economy, Trade and Industry concluded the Memorandum on Cooperation in Protecting Intellectual Property with the State Administration of Industry and Commerce (SAIC) of China. Pursuant to the said Memorandum, in July 2010 and January 2012, meetings of the Japan-China Counterfeit Affairs Working Group were held. In the meetings, Japan exchanged opinions on trademark right infringement and violation of the Law against Unfair Competition of China with the State Administration of Industry and Commerce (SAIC) of China. Moreover, pursuant to the Memorandum, in January 2012, a meeting of the Japan-China Trademark Administrators Conference was held. In that meeting, Japan exchanged opinions on the status of considering amendment to the Trademark Law of China, the standards for trademark agents, and the problem of trademark application and registration by third parties (the problem of trademark application in bad faith) with the State Administration for Industry and Commerce (SAIC) of China. Japan will continue to monitor the status of developments in the intellectual property legislative system in China as well as operation of the system at various opportunities of bilateral discussions, and to take actions to rectify problems as situations arise.

Moreover, in order to realize strengthening of enforcement by the Chinese government, development of the ability of the various administrative authorities of the Chinese government is essential at the same time. From such a viewpoint, Japan is providing support in such ways as accepting trainees, dispatching experts and holding various seminars. Assistance provided by Japan to China for the improvement of its legal system has included exchanges of opinions pertaining to revisions to the patent law and trademark law. What is important from a medium- to long-term perspective is creating a wide-ranging program to work on the development of specialized human resources in the judicial branch and the administrative branch responsible for examination and enforcement, and to conduct educational activities to communicate the need for respect and protection of intellectual property to the general public. The private sector conducted various activities, with the view of encouraging, and cooperating with, the Chinese authorities to further address the issues, including: requesting for crackdown and providing information company by company; strengthening enforcement capacity by the IIPPF, a cross-industry organization; and working through the Quality Brand Protection Committee (QBPC) with participants including European and American companies. In order to support such activities, JETRO provides varied information to Japanese companies, and has established consultation offices in Beijing, Shanghai, and Guangzhou as a mediator with the Chinese Government. It is important for the Government of Japan itself to encourage the vigorous activities of private companies, and to provide necessary support for the further promotion of efforts.

With regard to regulations on licensing, etc. of patents, know-how, etc., Japan has requested China to clarify the application of the Administrative Ordinance at the China TRMs of the TRIPS Council. At the Council meeting in 2008, China responded that a transferor shall not be liable as long as the user uses the item concerned in proper environment and in a proper way. In the last review in October 2011, Japan pointed out discriminatory treatment against foreign companies under the provisions of that Ordinance. Then China responded that the Ordinance includes no provision for discrimination against foreign companies. Also, at the industry-academia-government study meeting on the Free Trade Agreement (FTA) among Japan, China and Republic of Korea (the 3rd meeting held at the beginning of December 2010 and the 7th meeting in December 2011), Japan pointed out that the Administrative Ordinance and other regulations on technology transfer, including discriminatory treatment in relation to the liability for guaranteeing infringement against a third party, are disincentives to investment in China.

Moreover, in the 2017 edition of the Special 301 Report by the U.S., China continues to be on the Priority Watch List, and concern is expressed as duty is compulsorily imposed only on foreign companies by the Administrative Ordinance regarding belonging of improved techniques and licensors'

duty in the case of infringement of a third party's right. Moreover, in August 2017, the United States Trade Representative (USTR) announced that it has started a survey of the problem of intellectual property in China pursuant to Section 301 of the Trade Act of 1974. Then the Administrative Ordinance is expressly included in the objects of the survey.

It is important to be working on China to clarify the Administrative Ordinance much more and to deregulate, through bilateral and multilateral talks in the future too.

Government Procurement

[Commitments upon Accession]

A government procurement agreement is a so-called agreement among several countries and a rule that binds only countries that opt to accede to that agreement. Therefore, only a subset of countries, mainly developed countries, has have acceded to the GPA. At the time of its entry into the WTO, China promised to accede to the GPA in the future, to participate in it as an observer for the time being, to secure transparency in the procedure for government procurement, and to give non-discriminatory treatment in the case of procurement from foreign countries.⁶ After its entry into the WTO, in February 2002, China has gained a qualification for the observer of the government procurement committee.

In December 2007, China submitted an application for the accession to the GPA and the initial offer referred to in Annex I,⁷ and accession negotiations were started. However, various problems with the initial offer were pointed out, and other countries requested early submission of a revised offer. In response to it, China submitted the first revised offer in July 2010,⁸ the second one in November 2011,⁹ the third one in November 2012,¹⁰ the fourth one in December 2013,¹¹ and the fifth one in December 2014.¹² In the fifth revised offer, such improvements as the addition of the offers of local agencies and offering of some state-owned enterprises (SOEs) were seen. But it is pointed out that the conditions of the revised offer are still unsatisfactory. Then further improvements are expected in the next revised offer.

[Status of Implementation]

China has enforced the Government Procurement Law as of January 2003. Other Chinese laws and regulations on government procurement include the Law of the People's Republic of China on Tendering and Bidding and the Implementation Regulations thereof, in addition to the Implementing Regulations of the Government Procurement Law.

The Government Procurement Law includes a provision that requires procurement of domestic products ("buy-domestic" provision). Then when China accedes to the GPA, it is necessary to closely watch whether the China's related legislation, including the Government Procurement Law, is consistent with the promises in the GPA.

⁶ Report of the Working Party on the Accession of China (WT/ACC/CHN/49), Protocol on the Accession of the People's Republic of China (WT/L/432)

⁷ GPA/ACC/CHN/1

⁸ GPA/ACC/CHN/16

⁹ GPA/ACC/CHN/30

¹⁰ GPA/ACC/CHN/41

¹¹ GPA/ACC/CHN/44

¹² GPA/ACC/CHN/45