Chapter 1

CHINA

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. Furthermore, 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Previously, many laws and regulations had been unpublished and even those that were published, particularly regulations at the local level, were difficult to obtain.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 and policy 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.

Most recently, in the State Council's Legislation Work Plan of March 2018, one of the laws deliberated at the NPC Standing Committee in the same year clearly stated the Revised Government Information Disclosure Ordinance. In the notice regarding government duties in public information issued by the State Council General Office, it was clearly stated that due to imperfections in legal procedures, unsound systems, delays in posting, poor performance, etc. in the public notification systems in some regions and some government organizations, there would be continuous progress in system improvements, digitization of the Official Gazette, and maintenance of the database. Furthermore, the National Administrative Trade Union Leading Group was established in October in the same year, headed by State Counselor Xiao Jie and made up of vice ministers from the Internet General Affairs Office, National Development and Reform Commission, Educational Department, Civil Department and other government divisions called, showing that progress is being made in the Government Information Disclosure System.

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, the status of Four Platforms for Judicial Transparency of the Supreme People's Court was publicized, such as when 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).

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 January 24, 2019, 2,349,000 cases of court proceedings were streamed on the China Court Proceeding Disclosure Website by courts at all levels, and the number of times the site was accessed reached approximately 14.3 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 January 24, 2019 is 62.75 million. In addition, the number of access to the website reached 21.9 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 continued to operate on November 1, 2014. The number of persons subject to

enforcement disclosed on this platform is approximately 13.01 million as of January 24, 2019.

<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 2015 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 9 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 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 Center for Information on Security Trade Controls (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, Council of Trade in Goods since March 2018 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 opportunities of bilateral and multilateral meetings.

Right to Trade (Approval System for Trading)

Please see page 14 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 to[1] 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 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 market economy conditions do not prevail in China and there are no appropriate domestic sales prices. Article 15 of China's WTO Accession Protocol provides 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 Part II, Chapter 6 of this report.

[Individual Measures]

China has initiated[2] 258 AD investigations since 1995. Out of them, Japanese domestic products are involved in the 46 cases[3] and for 36 of them, AD measures are imposed[4] (as of the end of 2017 for both numbers). China's AD duties on Japanese 18 products are currently continuing (as of the end of June 2018).

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 injury and the causal link. 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 bring its regulations and procedures on AD measures into conformity with the AD Agreement and we will continue to focus on the consistency with the WTO Agreement and ask for improvements if necessary.

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

See page 8 in the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

(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 on the imports of acrylonitrile-butadiene rubber (NBR) from Japan and Korea. In November 2018, the Chinese authorities made a final determination on the import of such product that there was dumping as well as injury to the domestic industry caused by the dumped imports.

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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

<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 a careful consideration is needed to determine whether the cause is exports from Japan because price differences is anticipated and the Chinese companies are over-expanding production capacity compared to growth in domestic demand. However, there seems to be a problem that the causal link is recognized without such consideration. Furthermore, there is an issue of the "normal price" is not correctly because the Chinese government considered expenses that should be ignored, and used of inappropriate pricing for raw materials costs, and then the dumping margin was resulted in being unfairly high.

<Recent Developments>

The Japanese government participated in the public hearing held in May 2018, voicing concerns regarding international rules in this investigation as well as submitting an official government opinion. Furthermore, Japan also spoke at the AD Committee held in April and October 2018, indicating issues as described in the "International Rules issues" above. In this way, Japan has been cooperating with the industry and urging the Chinese government so that the investigation will be conducted in consistent with the WTO Agreement. However, in the end the Chinese government made the final determination in which there are doubts as to the WTO consistency. There are doubts as to whether the final determinations that have been made are consistent with the WTO. Japan will continue to focus on China so that it does not implement AD measures that are not consistent 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. In January 2019, the Chinese authorities made a final determination on the import of such product that there was dumping as well as injury to the domestic industry caused by the dumped imports.

<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.

(4) AD measures on Japanese-made Stainless Steel

<Outline of the Measure>

In July 2018, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on stainless steel scraps, hot rolled stainless steel sheets and thick stainless steel sheets from Japan, the EU, Indonesia and the Republic of Korea.

<Problems under International Rules>

Based on the evidence submitted by the petitioner companies, the Chinese government threats products with different uses and made of different components as the same types of products, without sufficient considerations, for the accuracy or appropriateness of the claims varies by the companies regarding the injury or dumped imports based on this inappropriate categorization of the subject products and the causal relationship between these claimed by the firms. There is doubt as to the

validity of initiating an investigation described in Article 5.3 of the AD agreement. Furthermore, when determining whether if there has been the effect to depress prices, there is concern it is not conformed to Article 3.2 of the AD agreement if the investigating authority conducts in case of price comparison of products for which there is a significant difference and no substitutability. Also, as the conditions of competition between the subject countries must be equivalent in case of cumulative assessment of the effects caused by imports from countries subject to the investigation. If the investigation authority carries out a cumulative assessment without a rational reason, there is concern of noncompliance with Article 3.3 of the AD Agreement.

<Recent Developments>

Japan has expressed its concerns to the Chinese government regarding issues in the aforementioned international rules. 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 24 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.

[Individual Measures]

(1) 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 problems for which there is a possibility that they 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 law 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. The investigating authority found the relevant subsidies and the damages based thereon in this investigation and it was decided in December 2018 to impose dumping duties and countervailing duties.

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.

Furthermore, in January, 2019 OECD published a report analyzing distortion in international markets related to the aluminum value chain. This report points out: (1) That non-market factors, such as government subsidies, have contributed to the increase of the aluminum refining production capacity in recent years, and that there is an especially wide scale of support in China and middle eastern countries (Gulf Cooperation Council), (2) Chinese government subsidies mainly target Chinese manufacturers and the majority of support is financial support handled by the central banks. Such type of financial support is characterized by its large scale, (3) The subsidies for upstream business in the aluminum value chain (including imposing export tariffs on primary aluminum) allows cheap supply of raw materials to semi manufactured goods producers, which in turn provides vital support for downstream businesses.

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.

(2) 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.

(3) Subsidies for Shipbuilding

<Outline of the Measure>

In China, it is reported in the media that public funds such as large-scale financial support by government-related financial institutions are being provided to the nation's shipbuilding industry, and these sorts of measures distort the market and risk obstructing prompt resolution of the issue of excessive supply capacity.

<Problems under International Rules>

Public financial support for China's shipbuilding industry by the government has delayed resolution of the excessive supply capacity that the shipbuilding industry faces, and may negatively impact other countries.

<Recent Developments>

At the high level economic discussions between Japan and China in April 2018 and the Japan-China-Korea summit the following May, Japan stressed the necessity of early resolution to the excessive supply capacity issue in the shipbuilding industry. We will continue to make efforts to collect more information regarding public aid in China and keep a close eye on consistency with the WTO Agreement.

Safeguards

Regulations on Safeguards

Refer to see page 26 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]

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.

Furthermore, on January 19, 2015, the Ministry of Commerce announced a draft of the "Foreign Investment Law of the People's Republic of China" as a basic legislation related to investment in China by foreign companies, which consolidated the aforementioned three laws of foreign companies which include amendment of the Company Law and other related laws and ordinances to reflect changes of the relevant circumstances in times. The Ministry of Commerce invited public comments for the draft by February 2015, but there has been no response to the submitted public comments and in the end the draft was not made public. However, the State Council announced a new draft for the Foreign Investment Law in December 2018, and accepts public comments until February 2019. While the 2015 draft consisted of 170 articles of provision, the new draft consists of 39 articles and those articles merely provide very broad contents in general. The draft provides the purpose of Law as promoting foreign commercial investment, and clearly stipulated that China will comply with the provisions related to treatment of foreign investors in the international agreements and treaties that China has agreed or acceded. The draft also has many provisions to ensure the rights of foreign investors. At the same time, there are many provisions for which the content is abstract, and thus more detail and clarity is expected. Furthermore, regarding (1) provisions of not causing harm to national security or public interest (Article 6) and provisions introducing a foreign investment security inspection related to the impact on national security (Article 33), and (2) provisions that allow China to retaliate equally in case another country takes discriminatory measures against investment by China (Article 37), each may violate the WTO agreement and related investment agreements depending on elements to be taken into account as "national security" and specific measures that can be taken. This bill and related sub ordinances must be continued to be watched closely.

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.

[Problems]

Although there have been efforts, such as the above-listed amendments, to make domestic laws in

China consistent with the WTO Agreement, non-conformance with the Agreement and restrictive measures on investment still exist and should be rectified speedily.

(1) New Energy Automobile-related Investment Regulations

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.

(2) Automobile Industry Investment Management Regulations

<Outline of the Measure>

In July 2018, the National Development and Reform Commission (NDRC) announced the Automobile Industry Investment Management Regulations (bill), which stipulate the investment conditions for new investments and/or expansion of existing production by automobile manufacturers. NDRC announced the regulations in December of the same year (taking effect in January 2019), after conducting the public comment procedures and some amendments of the bill.

The purpose of these provisions is to prepare the criteria for participating in the automobile industry investment project and to lead private capital to rational investments as well as to control new manufacturing capacity of conventional fuel vehicles and to enhance development of new energy vehicle. Furthermore, specific licensing requirements of the investment project are stipulated according to the drive system of the manufactured vehicle and the category of manufactured parts. Main examples of provisions of these licensing requirements are listed below.

(i) Fuel vehicles: Automobile that runs using an engine. This includes conventional fuel vehicles, normal hybrid vehicles and plug-in hybrid vehicles.

- New investment by individual automobile manufacturers is prohibited.
- Manufacturing expansion by existing automobile manufacturers requires that all of the

following conditions be met. (however, (b) and (e) do not apply to the plug-in hybrid vehicle investment project)

(a) The automobile manufacturing capacity use rates for both of the preceding two fiscal years exceed the average rate for the industry.
(b) The ratio of manufactured new energy vehicles for both of the preceding two fiscal years exceeds the average ratio for the industry.
(c) The research and development expense accounts for at least 3% of the main business proceeds for both of the preceding two years.
(d) The product has international competitiveness.
(e) The automobile manufacturing capacity use rates of the province where the project is located have exceeded the industry average rates for the same product category for both of the past two years, and there is no fuel vehicle corporation in the same province in the same product category subject to special public notification in the industry management department.

(ii) Pure electric vehicles: Automobile that runs using a motor. Includes pure electric vehicles and fuel-cell vehicles.

- Regarding new investment in independent pure electric vehicle corporations, the province where the investment project is located, the company that newly establishes the investment project and stockholders must each fulfill the following conditions.
  (a) Affiliated province: The automobile manufacturing capacity use rates have exceeded the industry average rates for both of the past two years, or the pure electric vehicle company investment project in the same category as the existing new independent one are complete, and the number of annual vehicles produced has reached the construction scale.
  (b) Company: The company has a product research and development institution and/ or research and development expert team, and the experience and capability for concept design/system and structural design, has researched and developed products with a high main technical index in the industry, has the intellectual rights of its core technology, and has obtained authorization/confirmation.
  (c) Stockholders: Will not withdraw capital until the project is complete and the annual manufactured number of vehicles has reached construction scale, and owns the intellectual rights and has the production capacity for the core parts, etc.
- For manufacturing expansion of pure electric vehicles of the same category by an existing automobile manufacturer, a fuel vehicle company must have an automobile manufacturing capacity use rates for both of the preceding two fiscal years that exceed the average use rates for the industry, and a pure electric vehicle company must have an annual production number of vehicles that reaches the construction scale of the previous fiscal year.

(iii) Battery to install in vehicle

- New investment has the production capacity of the core parts and a research and development facility and expert research and development team.

<Problems under International Rules>

For the licensing requirements for the investment project of (1) requiring establishment of a research and development institution, and (2) requiring ownership of the intellectual property rights of the core technology of the company establishing the investment project and acquiring authorization/confirmation, what effects the wording of the laws actually has should be examined.

Specifically, regarding (1), in case establishment of a research and development facility in China is required in effect,, and in case (2) is applied in effect in the form of requiring transfer of new energy car related technology to China for foreign automobile manufacturers through the combined application with the joint venture regulations and investment ratio regulation (see (1) above), such distribution of investment rights possibly violate Article 7 Paragraph 3 of the Accession Protocol of China, which stipulates that China shall ensure that the distribution of the right of investment is not conditioned on performance requirements of any kind (including request for transfer of technology, and request for research and development to be implemented in China).

<Recent Developments>

After implementing the public comment for this bill, Japan indicated concern for possible violation of the WTO agreement and demanded the relevant amendments, to the NDRC multiple times, including through high level discussions. The Japanese industry also submitted public comments. As a result, the requirement that ratio of exported vehicles to the number of manufactured vehicles had to meet a certain level, was deleted, after being included in the initial draft for manufacturing expansion of fuel vehicle investment projects. However, as there are still conditions that may violate the WTO agreement when applied, operational status must be watched carefully going forward

<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 Ministry of Commerce, of the Security Review System for Merger and Acquisition of Domestic Enterprises by Foreign Investors (August 2011)	The provisions stipulate the procedures to be followed when the Ministry of Commerce implements the 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)	★The circular prohibits use of domestic loans of foreign-funded investment companies for reinvestment in China. ★ 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)

(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-.

(3) Negative List for Foreign Investment Entry

On June 28, 2018, the “Special Administrative Measures for Foreign Investment Access to Pilot Free Trade Zones 2018 Version” (hereinafter referred to as “the Negative List for Foreign Investment Entry 2018 Ver.”) was publicized (Order No. 18 of Ministry of Commerce and National Development and Reform Committee, enacted July 28, 2018). In the past, the fields in which foreign investment were restricted/prohibited were listed in the Catalog for the Guidance of Foreign Investment Industries (hereinafter referred to as “the Catalog”), but from now on the list has been made independent as the "Negative List for Foreign Investment Entry."

This is the eighth revision since the first promulgation of the Catalog in 1995. Coincidentally, the restricted/prohibited industries in the previous "Catalog" made public in 2017 will be abolished, but the recommended industries will remain valid. There are 62 restrictive measures (35 restricted industries and 28 prohibited industries) included in the 2017 version of the "Catalog," but in the "Negative List for Foreign Investment Entry 2018 Ver." this has been reduced to 48 items (21 restricted industries and 27 prohibited industries). The major points of interest are that opening up of the service industry was expanded on a wide scale, especially the financial industry (elimination of the foreign stock-holding regulation for the banking industry), and the basic opening of the manufacturing industry.

Those designated as restricted industries and prohibited industries in the Negative List for Foreign Investment Entry 2018 Edition are as follows.

● Industry inventory restricting foreign investment

1. Selection of new varieties of wheat and corn, 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. Printing of publications (equity control by the Chinese side)
4. Excluding special vehicles and new energy vehicles, ratio complete vehicle manufacturing held by Chinese must not drop below 50%, and the same foreign investor may establish up to two joint ventures in China that manufacture finished vehicle products in the same category (passenger vehicles and commercial vehicles). (The foreign stock-holding ratio restrictions for commercial vehicle manufacturing will be abolished in 2020. In 2022 the regulation for foreign stock-holding ratio for passenger vehicles will be abolished, and the restriction that allows only up to two joint ventures in China that manufacture finished vehicle products in the same category (passenger vehicles and commercial vehicles) will be abolished)
5. Production of terrestrial reception equipment and important parts of satellite television broadcasting
6. Construction and management of nuclear power plants (equity control shall be by the Chinese side)
7. 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).
8. Domestic water carriers (equity control by the Chinese side)
   (Note: The restriction on international maritime carriers has been abolished)
9. Domestic ship agents (equity control by the Chinese side)
10. Construction and management of private aerodromes (to be the relative equity control by the Chinese side)
11. 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.)
12. 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.)

13. 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)
14. Foreign-held stock for insurance companies must not exceed 51%. (The foreign stock-holding ratio restrictions will be abolished in 2021.)
15. Foreign-held stock for securities companies must not exceed 51%. Foreign-held stock for securities investment fund management companies must not exceed 51%. (The foreign stock-holding ratio restrictions will be abolished in 2021.)
16. Foreign-held stock for future commodity transaction companies must not exceed 51%. (The foreign stock-holding ratio restrictions will be abolished in 2021.)
17. Market research (limited to joint ventures and partnerships. Of these, radio and television rating survey shall be owned by the Chinese side.)
18. 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)
19. Medical institution (limited to joint ventures and partnerships)
20. Construction and management of movie theaters (equity control shall be by the Chinese side)
21. 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. Production of Xuan-paper (rice paper) and ingot-shaped tablets of Chinese ink
10. Wholesale and retail of leaf tobacco, cigarette, re-dried leaf tobacco and other tobacco products
11. Air traffic control
12. Postal business entities, domestic delivery service of postal mails
13. Social research
14. Legal affairs consulting in China (excluding provision of information on the influence of the Chinese legal environment) and becoming a partner with a Chinese domestic legal firm are not allowed
15. Development and application of human stem cells, gene diagnosis and therapeutic techniques
16. 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
17. Development of wild animal and plant resources which are native of China and protected by nation
18. Required education facilities and religious education facilities
19. Press (including but not limited to news service agencies)

20. Editing and publishing business of books, newspapers and periodicals
21. 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
22. Management company of radio and television program production (including import operations)
23. Film production company, issuing company, distribution and screening company
24. Internet news information services, online publishing services, online program viewing services, management of products related to Internet cultures (excluding music), information dissemination services for general public by Internet
25. Auctioneers and National Heritage Museum of cultural materials, shops dealing with cultural materials
26. Literary art performance groups
27. Research institution of humanity and social science

[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

Standards and Conformity Assessment Systems

[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 Chinese Ministry of Public Security 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.

In 2018, the Chinese Ministry of Public Security implemented public comments for the draft of the "Cyber Security Multi-Level Protection Scheme" as a replacement for the MLPS. This scheme classifies networks according to security level (Grades 1 to 5), and for networks classified as Grade 3 or higher, it is required to use products corresponding to the grades and encryption technology approved by the National Cryptography Administration.

Furthermore, in 2017, the National Cryptography Administration 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 Regulation on the Administration of Commercial Cypher Codes, Cyber Security Multi-Level Protection Scheme and the Cryptography Law, there are many uncertainties regarding the definition of the terms used in the text, the concrete requirements of the review and evaluation, the scope of regulations, etc. The relationship of each regulation is also unclear. Depending on the concrete details of the standards and conformity assessment procedures governing its implementation, imported IT security products may be disadvantageously handled in the Chinese market. Regulations might be more trade-restrictive than necessary to achieve the purpose of national security claimed by China and may violate Articles 2.1, 2.2, 5.1 and 5.2 of the TBT Agreement.

<Recent Developments>

Regarding the Cryptography Law, the Japanese government submitted comments at the time of public comment and we have been expressing concern together with other countries such as the U. S and the EU since the TBT Committees in June 2017, however China explains that the draft Cryptography Law is currently under review and clear answers have not been obtained.

Furthermore, at recent TBT Committees, China explained that the MLPS would be replaced with the Cyber Security Multi-Level Protection Scheme, and that the Regulation on the Administration of Commercial Cypher Codes is planned to be revised under the encryption law in the future. Therefore, Japan will continue to pay close attention to developments regarding these information security regulations, and will request that China 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 favourable 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 30 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 law 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 important 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 unclear 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 certification 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 implementing measures for the Cybersecurity Review of Network Products and Services, Security Assessment Measures for Cross-Border Transfer of Personal Information and Important Data, Regulations on Protection of Critical Information Infrastructure Security, and Block chain Information Service Management Regulations 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 that they would implement the Amended Controlling Measures in two stages. Specifically, only the Labeling Requirement of Hazardous Substances was applied from July 2016 as the first step. Then, after the Compliance Management Catalog (providing for subject products for the containment limit) and the Acceptance Evaluation System (Conformity Assessment System) are established, the Containment Limit of Hazardous Substances is scheduled to be implemented from March 12, 2019 as the second step.

<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 March 12, 2018, the Compliance Management Catalog (products subject to the containment restriction) and the Application Exception List were publicized. However, while the Acceptance Evaluation System (the Conformity Assessment System) which provides for the content of its implementation is planned to be implemented from March 12, 2019, as of the end of January 2019, the details of the system are still unclear. 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 China Cosmetic Management Bureau (State Food and Drug Administration (SFDA), reorganized into the China Food and Drug Administration (CFDA) from March 2013, reorganized into the National Medical Products Administration (NMPA) from March 2018) 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 China Cosmetic Management Bureau to undergo an examination by the China Cosmetic Management Bureau before it uses or import for the first time a new cosmetic ingredient, and improving its operation method was started upon the publication of the Declaration.

The China Cosmetic Management Bureau 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 eight 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 Article 3 II 2 (2) 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 from those is actually compounded into cosmetics due to a chemical change in the process. 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 information which is 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 China Cosmetic Management Bureau website after an examination. In January 2014, the China Cosmetic Management Bureau invited public comments on the revision of operation rules on permission for new ingredients in and after April 2014, showed the thought 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 notified to the WTO-TBT committee in February 2014. Although this revision may improve the provision on disclosure and release of information and accelerate acceptance of new ingredients, details remain

unclear.

In December 2018, China notified to the TBT Committee of the amendments of "Cosmetics Supervision and Administration Regulation", which is the fundamental law of these regulations. It is considered to establish a system was in which high-risk substances are subject to registration and low-risk substances only required a declaration, but there was no resolution for a method for information disclosure and safety evaluation. Furthermore, the schedule for implementation still has not been presented.

<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 of "Cosmetics Supervision and Administration Regulation" that was published in TBT in December 2018 and the Declaration, Japan will continue to follow 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 in November 2014, and the China Cosmetic Management Bureau (China Food and Drug Administration (CFDA), reorganized into the National Medical Products Administration (NMPA) from March 2018) notified to the TBT committee in December 2014. 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 designated by China Cosmetic Management Bureau 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. However, it is sufficient to state a company which legally accepts responsibility for quality because 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 to facilitate companies in providing information to customers and to improve product technology 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(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 inquiry 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.

It is clearly stated to allow use of adhesive labels in the "Cosmetics Supervision and Administration Regulation" notified to the TBT committee in December 2018, which is the fundamental law of these regulations. Meanwhile, with the addition of new provision, "Adhesive Chinese labels shall be consistent with the original labels of the packaging," doesn't change the situation in which manufacturers need to prepare Chinese packaging for products to be sold in China from the beginning. Furthermore, the provisions (ii) and (iii) have still remained. While checking the amendment status of the Cosmetics Supervision and Administration Regulation, we will request that China revise the above mentioned requirements by actively applying pressure at the TBT Committee and bilateral meetings.

(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 45 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.

On June 29, 2018, the National Development and Reform Commission and Commerce Department announced the Special Foreign Investment Access Management Measures (2018 Negative List).

Therefore, the foreign share-holding ratio for life insurance companies was mitigated to 51%, and all restrictions on this ratio in the financial field will be abolished in 2021.

(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 the 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.

During summit meetings between Japan and China on May 9, 2018, both countries agreed to establish RMB clearing banks and complete the work to conclude a JPY-RMB currency swap as soon as possible, and for China to issue bond service licenses to Japanese financial institutions as soon as possible while also efficiently investigating certification applications related to Japanese security companies entering the Chinese market.

On June 29, 2018, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures (2018 Negative List)". Therefore, restrictions on foreign shareholding in banks (20% per foreign company, total foreign share within 25%) were abolished and the allowed foreign share-holding rate for securities companies and life insurance companies was mitigated to 51%. Furthermore, restrictions on all foreign share-holding in the financial fields will be abolished in 2021.

(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.

After that, in November 2017, the Chinese Government announced a foreign investment policy in the securities industry (allowing a maximum foreign share-holding rate of 51% and to abolish the restrictions after 3 years). Furthermore, in April 2018, the China Securities Regulatory Commission amended the Foreign Investment Securities Company Establishment Regulations and announced it as the Foreign Commercial Investment Securities Company Management Law, and stipulated the detailed provisions ((1) Ratio for foreign investment must not exceed the maximum allowed by the national government; (2) Conditions restricting the joint venture partner to securities companies are abolished; (3) The scope of services at the time of establishment are limited to investment bank services).

On May 9, 2018 at the leader talks between Japan and China, China agreed to grant 200 billion RMB (approximately 3.4 trillion JPY) worth of RMB Qualified Foreign Institutional Investor (RQFII) rights to Japan.

On June 29, 2018, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures (2018 Negative List)". Therefore, the foreign share-holding ratio for securities companies was mitigated to 51%, and all restrictions on this ratio in the financial field will be abolished in 2021.

(iv) Financial Information

Refer to page 55 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 21 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 unfavourable 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, March, May, October and December 2018, 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 related bills in the future too and will make a request that foreign companies do not receive unfavourable 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 WTO members (especially developed countries) especially made strong demands for improvement at the Working Party on the accession as the more serious problem of illegal goods such as counterfeit and pirated products in China and other matters are reflected. 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 the amount of damage, facilitating 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 November 2017, the Anti-unfair Competition Law was amended, adding regulations for unfair competition behavior in internet industries. Furthermore in January 2019, the E-Commerce Law was enacted, establishing rules for business with an E-Commerce platform. This type of series of initiatives is promising in terms of leading to healthy development of the E-Commerce transaction market and strengthening consumer protections in E-Commerce, and will be something to watch.

In addition, after establishment of intellectual property courts in Beijing, Shanghai and Guangdong as well as establishing experts in intellectual property rights cases in intermediate courts, due to the "Decisions regarding small issues in judicial procedures in intellectual property rights cases such as patent," implemented in January 2019, the jurisdictions of second instance in civil and criminal cases related have been consolidated in the Supreme People's Court, and even in the legal framework, it is expected that China will provide stronger protection of intellectual property thanks to more consistency in judgments and experts.

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 some 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 2016 arose most frequently in China regarding production, transit points, and sales and offering (FY2017 Survey Report on Counterfeit Damage, by the Japan Patent Office in March 2018) and the survey results showing that China accounted for over 90% (92.2%, 28,250 cases) of countries of shipment in 30,627 cases of import suspension of goods infringing intellectual property rights at customs in Japan (State of Suspension of Goods Infringing Intellectual Property Rights at Customs in 2017 publicized by the Ministry of Finance in March 2018). 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 efforts for improvements through a series of revisions of the laws and recent amendment to the Trademark Law, the Anti-Unfair Competition Law and other laws, triggered by accession to the WTO can be appreciated. However, in order to secure effective protection of

intellectual property rights as set forth in the TRIPS Agreement and domestic laws, regarding enforcement by civil, administrative and criminal procedures, it is essential that systems for that enforcement will be improved and operated so that enforcement will be realized quickly and efficiently and in a fair and equitable manner. 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 provide 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 remedies (injunction based on court judgment, damage, restoration 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 revision of the Anti-unfair Competition Law was passed and the Anti-unfair Competition Law has been enforced as of January 1, 2018. Then we will continues to keep a close watch on the state of operating that Law in the future.

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

(2) Issue of Bad Faith Filings

(i) Bad Faith Trademark Filings

<Outline of the Measure and Concerns>

It has been reported that there were many cases where Japanese companies' trademarks or characters were applied for and registered as trademark by third parties (bad faith filings). Many Japanese companies are still being harmed by misappropriated applications of trademarks, and responding to it remains one of the important issues in China.

For the purpose of preventing trademarks applied in bad faith from being registered, the Japanese government is continuously working on providing information about trademarks applied in bad faith prior to publication to the national market supervisory office. As for initiatives that have been taken to reform the above mentioned problems, see pages 28-29 of the 2018 Report on Compliance by Major Trading Partner with Trade Agreements - WTO, FTA/EPA and IIA.

<Recent Developments>

At the annual Trademark 5 (TM5) meeting held on November 1-2, 2018 between Japan, the US, EU, China and the Republic of Korea, Japan agreed to host a joint workshop with users under the theme, “Trademarks filed with malicious intent,” to coincide with the International Trademark

Association (INTA) general meeting held in May 2019, and to add cases to the "Examples of trademark applications with malicious intent," as part of the Trademarks filed with Malicious Intent Project headed by Japan.

Furthermore, in 2018 frequency of the investigation/publication of trademark applications/registration status of place names/regional brands from Japan, in China, was changed from once annually to once quarterly, promoting speedy countermeasures by the true rights holder.

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.

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

<Outline of the Measure and Concerns>

It is reported that there have been many cases in China where patent and utility models invented in a foreign country or a design created in a foreign country have been filed by a person other than the inventor or designer and registered by the patent office (so-called "misappropriated application"). In China, misappropriated application does not constitute a reason for rejection or invalidity. Remedy is available only by requesting verification of the ownership 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 ownership of a right, such a situation where counterfeit damage caused by misappropriated application cannot be checked. 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 China National Intellectual Property Administration (CNIPA) and other opportunities.

Moreover, China does not adopt a substantive examination system for utility models and designs. Furthermore, a duty to submit a patent evaluation report drawn up by an examiner on the validity of a right is not required at the time of enforcement. Then industry is strongly worried that provisions for prevention of abuse of rights are insufficient.

<Recent Developments>

In January 2019, the People's Republic of China Patent Law Amendment (draft) was published by the Standing Committee of the National People's Congress and Article 20 of draft provided, "Patent applications and exercising patent rights must comply with the rules of good faith. Abuse of patent rights, infringing on legal rights of others and eliminating or restricting competition are not allowed.". This provisions stipulate that the rules of good faith must be complied with for patent applications as well as exercising patent rights, however it is lack of clarity as to whether it is applicable to blocking a misappropriated application.

Furthermore, this draft does not provide a substantive examination system for utility models and designs and obligatory requirement for submitting a patent evaluation report at the time of exercising rights and is also unclear in terms Article 20 of the draft as to whether or not it is effective as prevention for abuse of patent rights.

It is necessary to continue to keep a close watch on the movements for future reforms and to raise concerns through bilateral consultations and framework of multiple countries.

(3) Licensing Regulations on Patents and Know-How

<Outline of the Measure>

China has regulated contracts approving licensing intellectual property exploitation between foreign and Chinese domestic companies (so-called cross-border licensing agreements) through the Technology Import and Export Management Ordinance, the Technology Import and Export Management Ordinance Application Rules, and the Technology Export and Import Contract Registration Administrative Statute, etc.

<Problems under International Rules>

The provisions to regulate licensing agreements in China, which came into question through its accession negotiations, have been getting consistent with the TRIPS Agreement through the enforcement of the Technology Exports and Imports Administrative Ordinance (hereinafter referred to as "Administrative Ordinance"), etc. While China's effort to improve its regulations in this regard can be appreciated, many restriction clauses and compulsory guarantees included in the Administrative Ordinance could come into question in light of their consistency with Article 28, paragraph 2 of the TRIPS Agreement, which stipulates licensees' right to conclude licensing contracts, from the viewpoint of Article 3 (National Treatment) of the said Agreement.

The section below notes several issues on the consistency with the TRIPS Agreement.

De Facto Royalty Regulations

Before 1993, under the "principles of instruction for conclusion and examination of technology-introduction contracts", the maximum royalty rate was set to be 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 permission on establishing joint venture enterprises or the procedure for registering technology 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 resulting from another technology licenssed under cross-border licensing agreements shall belong to the party that has improved that technology. In addition, Article 29, paragraph 3 of the said Ordinance prohibits the original technology licensor from restricting a technology licensee's right to improve the technology licensed under licensing agreements or to use such improved technology.

n the other hand, regarding domestic technology transfer or licensing agreements in China, Article 354 of the Contract Law of China provides that a party to a contract may provide how and who to assume the products from technology improvement. 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 indicates that the Administrative Ordinance, which is a special law, is applied and supersedes 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 licensor. Then the said Ordinance, which provides that an improved technology shall automatically belong to the party that has improved the provided technology, irrespective of contractual terms between the parties, is designed to work as a mandatory provision applied only to foreign companies that become a technique licensor. Then there is a possibility that the Ordinance is inconsistent with the national treatment obligation under Article 3, paragraph 1 of the TRIPS Agreement as discriminatory treatment against foreign countries.

Licensor's Liability on Third Party Infringement (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 technology licensee was sued by a third party for infringement of its right as a consequence of using the technology provided under the licensing agreement, 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 its right. Furthermore, Article 24, paragraph 3 of the Administrative Ordinance provides that, if the licensee's usage of the

technology provided by the licensor in accordance with the provisions of a technology import contract infringes third party's legitimate interests, the licensor shall assume liability for that infringement, just the same as the old ordinance does. It is possible that a licensor would be exempted from liability in such a case as licensee's usage of the licensed technology which is not consistent with the contract terms infringes third party's legitimate interests. But it seems that a licensor must assume liability for infringement to a third party even if it has not been involved in that infringement, until it is clearly demonstrated that the licensor shall be exempted from the liability.

n 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 dealt with by a mutual contract between the parties.

Therefore, as mentioned above, the provision in the Administrative Ordinance that the licensor 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 discriminatory treatment between domestic and foreign technology transfer.

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

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

In this way, foreign persons providing technology are still in the situation where they must be cautious in providing technology. In the future, Japan needs to request China to further clarify and deregulate the provisions under the Administrative Ordinance, and also to continue closely watching the authorities' operation to register, administer and permit the international license contracts, including the differences from the regulations on domestic technology provision contracts, including licensing contracts, between Chinese domestic companies.

<Recent Developments>

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 treatments against foreign companies under the provisions of that Ordinance. 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 obstacles to the investment in China.

In addition to Minister of Economy, Trade and Industry Seko directly expressing concern to Commerce Minister Zhong Shan that the provisions in the ordinance are discriminatory in nature in October 2018, at the Japan-China intellectual property rights working group held in January 2019, Japan put pressure on China via a variety of opportunities for dialogue between both or multiple countries, for systemic reform and improving clarity of the Ordinance.

Moreover, in the 2018 edition of the Special 301 Report by the U.S. Trade Representative (USTR), China continues to be on the Priority Watch List, with the concern that technology licensing regulations based on China's laws and administrative polices are compulsive obligation imposed only on foreign companies. Also, based on Section 301 in the 1974 Trade Reform Act, investigation on the issue of China's transfer of technology/intellectual property rights was initiated in August 2017, and the investigation report made public in March 2018 indicated that the U.S. technology owners' abilities to negotiate the terms of technology transfer on a market-based conditions have been

damaged by China's regulations related to technology licensing. Furthermore, the revised version of the above mentioned report made public in November 2018 indicated that China's policies had not been changed and expressed its plan to discuss the discriminatory license regulations at the WTO panel process.

Regarding measures related to China's intellectual property rights protections, including the Administrative Ordinance, the U.S. made a request for consultation in March 2018 based on the WTO Agreement, and since no resolution was reached through bilateral consultation, in November 2018 the WTO dispute settlement panel was established (see U.S. Chapter '(1) 1974 Trade Reform Act Article 301 and Related Regulations' on page ([ ])).

Furthermore, in June 2018 the EU requested consultation for measures related to China's technology transfer, including the management ordinance (in December, the consultation request was updated to expand the scope of the consultation).

GIt is still important to continue giving the necessary pressure, as well as keeping a close watch on the implementation and movements for future reforms.

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[5]. 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,[6] 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,[7] the second one in November 2011,[8] the third one in November 2012,[9] the fourth one in December 2013,[10] and the fifth one in December 2014.[11] 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. President of the People's Republic of China, Xi Jinping spoke of acceleration of the process for acceding the GPA in his speech at the Boao Forum for Asia in April 2018, and further reform is expected in the next reform 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

[5] 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)

[6] GPA/ACC/CHN/1

[7] GPA/ACC/CHN/16

[8] GPA/ACC/CHN/30

[9] GPA/ACC/CHN/41

[10] GPA/ACC/CHN/44

[11] GPA/ACC/CHN/45

watch whether the China's related legislation, including the Government Procurement Law, is consistent with the promises in the GPA.