Chapter 2

United States

National Treatment

(1) Harbor Maintenance Tax “HMT”

Please see page 121 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA.

(2) Merchant Shipping Act of 1920 (Jones Act)

<Outline of the Measure>

The Jones Act specifies that only ships owned by US citizens, built in US shipyards and run by US crews are permitted to engage in domestic passenger and cargo transport within the United States and its territories. This restricts exports of foreign-made ships to the United States.

In 2010, the Open America's Water Act (S.3525) was proposed by a Republican Senator from Arizona and a Republican Senator from Idaho to repeal the Jones Act, but it did not pass the U.S. Congress.

<Problems under International Rules>

The measure is considered a violation of GATT Article III (National Treatment) and Article XI (General prohibition of quantitative restrictions). The United States, however, claimed that the measure is permitted under the special rule on the provisional application of GATT of 1947. During the Uruguay Round negotiation, Member countries other than the United States asserted that the special rule should not carry over to GATT 1994, but the United States maintained that the measure should continue, mostly to uphold the Jones Act. In the end, Member countries agreed to put the special provision in Paragraph 3 of GATT 1994. This Paragraph maintained under such unusual proceedings, causes considerable problems in light of basic principles of the WTO.

Therefore, Paragraph 3 of GATT 1994 provides that review shall take place within five years from the date of the Agreement’s entry into force and every two years afterward throughout the duration of the Agreement, on whether the US measure still needs to be maintained.

<Recent Developments>

The Jones Act has been discussed in the WTO General Council since July 1999, but the United States has insisted the exception should be continued since there has been no change in domestic laws and regulations. In addition, the United States have asserted that the measure has been implemented for the purpose of maintaining national security, making US shipyard capacity available to build and repair ships with potential military applications so as to keep US military readiness.

On the other hand, most Members including Japan have not received sufficient explanation as to the measure being a gross deviation from basic principles of GATT. (For additional information on maritime services, see “Trade in Services”.).

At the WTO General Council meeting in November to December 2015, Japan pointed out that the measure deviated significantly from basic principles of GATT. Other countries also pointed out the necessity for a substantial review process of the U.S. and expressed their concerns that the status of national treatment in the U.S. may continue to deteriorate. Japan also expressed concern about the fact that a law that gives preferential treatment to US-produced liquefied natural gas (LNG) carrying vessels was enacted in the United States in December 2014, indicating that such action runs counter to improvement of the situation.

In January 2017, the U.S. CBP (Customs and border protection) proposed a CBP notification amendment applying the Jones Act to offshore machine transport between U.S. ports and coastal offshore facilities, carried by foreign manufactured ships or with a foreign ship registry, but after connecting with other countries and applying concerns, the proposal was withdrawn in May of the same year due to considerations for overall circumstances.

At the 2018 WTO TPRM (Trade Policy Review Mechanism), Japan has raised an issue about the validity of the Jones Act.

Quantitative Restrictions

(1) Export Management System

*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>

Export management has hitherto been carried out based on the “Export Administration Act” in the United States. At present, however, the “International Emergency Economic Powers Act” of the United States gives the government the ability to invoke unilateral export restrictions on agricultural goods for reasons of foreign policy or domestic shortages. The Export Administration Act was used in 1973 to ban exports of soybeans and soybean products and, again in 1974, 1975, and 1980, to restrict exports of wheat to the Soviet Union and Poland. Such restrictions significantly impact the targeted countries.

<Concerns>

Regarding the import of agricultural products, the Uruguay Round Agreement requires the replacement of non-tariff border measures with tariffs, in principle, and reduction of tariff rates. Japan believes that the regulation on export bans and export regulations under Article 12 of the Agriculture Agreement is not strong enough and lacks transparency, predictability and stability. Although the US system does not directly infringe on international rules, it does have trade distorting effects and obstructs stable food imports by importing countries. Therefore, it may present problems in terms of food security.

<Recent Developments>

In the WTO agriculture negotiations, Japan expressed the need for regulation reinforcement by substituting export tariffs for bans on exports and other restriction measures in order to restore the balance of rights and obligations between exporting and importing countries and to maintain food security. In December 2008, in the chairperson's text of modalities of agriculture, the reinforcement of regulations concerning export bans and restrictions in WTO Agriculture Agreement Article 12.1 was noted. Japan has continued to urge reinforcement of regulations against export bans and restrictions at WTO agriculture negotiations and various occasions for bilateral discussions, and last year as well we performed analysis on the current state of prohibited/restricted exports and explained these to each country.

(2) Export Restrictions on Logs

<Outline of the Measure>

The United States enacted logging restrictions in order to protect spotted owls and other animals. These restrictions reduced the domestic supply of logs, which led to the “Forest Resource Conservation and Shortage Relief Act of 1990,” a law which restricts log exports. The United States currently bans the exportation of logs taken from federal and state-owned forests west of the 100 west longitude line except Alaska and Hawaii. However, a specific quantity of logs may be exported where they are recognized by the government as surplus materials that are not used by domestic log processors.

<Problems under International Rules>

The United States argues that this measure is for the conservation of exhaustible natural resources (GATT Article XX(g)) and therefore is allowed as an exception to Article XI, which prohibits quantitative restrictions. However, this is a restriction on the export of logs only; there are no restrictions on trade in logs within United States. The measure therefore cannot be justified under GATT Article XX(g) as a necessary and appropriate means of protecting forest resources. For this reason, it may be in violation of the GATT Article XI.

<Recent Developments>

Japan will continue encouraging improvements in these measures through such as multilateral and bilateral consultations.

TARIFFS

(1) High Tariff Products

* 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>

The current simple average bound tariff rate for non-agricultural products is 3.2%. Items with high tariffs include footwear (maximum 48%), glassware (maximum 38%), Apparel products (maximum 28.6%), porcelain and ceramics (maximum 26%), woolen goods (maximum 25%), trucks (25%), leather products, etc. (20%), cotton fabrics (16.5%), and titanium (maximum 15%). The tariff rate on trucks is very high at 25%, placing imported trucks under a severe competitive disadvantage; Japan has strong interests in seeing this tariff rate reduced. Furthermore, the binding coverage on non-agricultural products of the United States is 100% and the average applied tariff rate in 2017 was 3.1%.

<Concerns>

High tariff rates themselves do not, per se, conflict with WTO Agreements unless they exceed the bound rates. However, in light of the spirit of the WTO Agreements of promoting free trade and enhancing economic welfare, it is desirable to reduce tariffs to their lowest possible rate, and eliminate the tariff peaks (see "Tariff Rates" in 1. of Chapter 5, Part II) described above.

<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 54 members (see 2. (2) "Information Technology Agreement (ITA) Expansion Negotiation" in Chapter 5 of Part II for details). As for the United States, elimination of tariffs started in July 2016. For example, high tariff items for which tariffs are to be eliminated by the United States include parts such as microphones, and others (8.5%), binocular microscopes (7.2%), photoresist (6.5%), etc. Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by July 2019.

(2) Method of Calculating Tariffs on Clocks and Wristwatches

<Outline of the Measure>

The United States calculates tariffs on finished clocks and watches as the aggregate of the tariffs on their components. These calculations are complex and the trade procedures are onerous.

For example, the tariff on a wristwatch is the total of the tariffs on its: (a) movement; (b) case; (c) strap, band or bracelet; and (d) battery. A duty rate has not been set for 8 digit HS codes which classify wrist watches as completed products.

At the 9th and 10th digits of their HS Code, these components have numbers assigned unilaterally as Statistical Suffix according to the Statistical Notes to the Chapter 91 of the United States Tariff Schedule, and exporters are required to abide by them.

Although the rules were established for the purpose of protecting the US watch/clock industry, there is some opinion that the rules should be simplified from the point of view of benefitting of importers and consumers in the U.S.

<Problems under International Rules>

This calculation method is not a violation of WTO rules because it is in accordance with the US schedule of the tariff concession. However, the complex method of calculating tariffs and assignment of its own HS Code place excessive burdens on traders and is an obstacle to the promotion of smooth trade. The US calculation method assumes mechanical clocks/watches, which are currently extremely rare, but it has been also applied to electric clocks/watches, which doesn't reflect actual distribution.

The issue was discussed during the Japan-US Deregulation Initiative talks in 2002 and 2003. The Report issued in June 2004 reflected Japanese concerns over clock and watch tariff rate calculation methodology and rules of origin certificates. The report stated that negotiations would continue with deference to both the Japanese government's position and the ongoing WTO discussions. In fact, however, no improvement has been made so far.

<Recent Developments>

Since 2002, Japan has capitalized on a range of opportunities, including the Japan-US Deregulation Initiative, Japan-US Trade Forum, and WTO Trade Policy Review (TPR) of the U.S., to ask them for some improvement and/or solution, only to find the problems left unresolved. We assume that the U.S. clock/watch business is faced with the same problems because they outsource production to contractors in Asia. To facilitate international trade, Japan will continue asking the United States for improvement.

Japan took part in negotiations for the Trans Pacific Partnership (TPP) Agreement negotiations, and, the participants reached the outline agreement in 2015, which should have paved the way for immediate elimination of US tariffs on wristwatches once the Agreement comes into effect. However, with its announcement of withdrawal from the Partnership, the issue has been left as a challenge to be solved.

Anti-Dumping Measures

The U.S. is a traditional user of AD measures. The number of AD measures imposed by the U.S. since 1995 is 427 (as of December 31, 2017), and this number is the largest among developed countries that are WTO Members[1].

The US's system for AD measures is highly transparent, because the US investigation authorities actively disclose related information[2]. This has made it easier for interested parties to assess the progress of and issues surrounding investigations and has secured opportunities for interested parties to submit their views and rebuttal arguments in order to protect their interests.

On the other hand, the U.S. still maintains some elements of unilateralism and protectionism in its operation of the AD system. The number of AD-related cases for which consultations were requested through the WTO dispute resolution process after the establishment of the WTO is 129, and of those, 54 cases arose from AD measures of the U.S[3]. It is important for Japan to continue to monitor the consistency of AD measures of the U.S. with the agreement.

In the past, Japan has pointed out numerous issues with the US's AD system to the U.S. Government, demanding that they be improved. These issues include the Byrd Amendment, improper dumping determination through use of the zeroing methodology, and long-term continuation of AD measures (the administration of "sunset reviews"). Following are major issues that have recently arisen.

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

2 For instance, the U.S. Department of Commerce makes available laws and regulations, manuals, inquiry formats, and other materials concerning AD investigation on its website (http://trade.gov/enforcement/operations/). Similar materials are also made available by the U.S. International Trade Commission (USITC) on its website (https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations.htm).

3 See the WTO website (https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6#).

(1) The Byrd Amendment (Amendment to the Tariff Act of 1930) (DS217/DS234)

Please see pages 70-72 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

(2) Calculation of the Margin of Dumping via the Zeroing Procedure (WT/DS184)

<Outline of the Measure>

The United States has applied a calculation method under which the price difference is regarded as “zero” in calculating the weighted average of the product when an individual model of, or an individual transaction of, product is exported at a higher price than the normal values in the domestic market (where they are not dumped). With this approach, the dumping margin is artificially inflated (See Figure I-2-1). This way of calculation is called “zeroing”.

<Problems under International Rules>

In the case of the AD measure applied by the EU to bed linen from India (DS141), the WTO Appellate Body found in March 2001 that when comparing the weighted average of export prices and that of normal values to calculate a dumping margin (known as W-W comparison), applying the zeroing methodology is inconsistent with the WTO Agreements. However, the United States, taking the position that the WTO ruling against zeroing methodology applied only to the specific case (“as applied”), and did not constitute a finding that the “zeroing” methodology “as such” violated the WTO Agreements, continued to use the methodology.

Japan’s industries, including the bearing industry Japan, as well as other sectors, have been subject to AD duties at a rate calculated using the zeroing methodology. In November 2004, Japan, claiming that application by the United States of the zeroing methodology to 13 cases of AD measures, such as Japan-made heavy steel plates and ball bearing, as well as the zeroing methodology itself, violated the WTO Agreements, requested WTO consultations with the United States (DS322) an February 2005, Japan also requested the establishment of a panel. In January 2007, the Appellate Body fully accepted the claims of Japan, and determined as summarized blow.

(i) Application of the zeroing procedures in original investigations (as such)

The Appellate Body supported the Panel’s ruling that the application of the zeroing methodology in original investigations violates the AD Agreement because recognition of dumping and dumping margin must be based on the relation to the product investigated as a whole, not individual transactions, and because the comparison of normal values and export prices must be considered in its entirety. The Appellate Body ruled that the United States violated Articles 2.1, 2.4, and 2.4.2 of the AD Agreement by applying the zeroing methodology in original investigations to calculate dumping margins based on comparison between individual transactions (known as T-T comparison).

(ii) Application of the zeroing procedures in periodic reviews (as such)

The Appellate Body dismissed the Panel’s ruling that the application of the zeroing methodology in periodic reviews and other processes does not violate the AD Agreement, pointing out the same reasons mentioned above in (i), and ruled that application of the zeroing methodology in periodic reviews violated Articles 2.4 and 9.3 of the Agreement as the former requires the members to make a “fair comparison” between export prices and normal values, and the latter stipulates that the total amount of AD duties must not exceed that dumping margin.

(iii) Application of the zeroing procedures in periodic reviews and sunset reviews (as applied)

The Appellate Body ruled that application of the zeroing procedures in periodic and sunset reviews of the AD measures violated the Articles 2.4, 9.3, 11.3 and other articles of the AD Agreement.

<Recent Developments>

To date, as in the above-mentioned case of DS322, etc., panels and the Appellate Body have found that zeroing in all stages of AD procedures, including original investigations and regular administrative reviews violates the AD Agreement. However, “if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison” (referred to as “targeted dumping”) “a normal value established on a weighted-average basis may be compared to prices of individual export transactions” pursuant to the second sentence of Article 2.4.2 of the AD Agreement. As this provision appears to assume a comparison of normal value with certain export transactions, some Members claim that the zeroing methodology is allowed under the provision. While, as described above, panels and the Appellate Body have repeatedly determined in past dispute cases that the zeroing methodology was inconsistent with the AD Agreement, none of these cases directly concerned targeted dumping under the second sentence of Article 2.4.2, and they have not explicitly determined that use of the zeroing methodology to calculate dumping margins in such cases violates the Agreement. In this respect, in recent years the United States have been finding targeted dumping in many cases and have been expanding and developing the use of the zeroing methodology.

The Republic of Korea in August 2013 and China in December of the same year requested the WTO consultations, claiming that the application of the zeroing methodology in cases where targeted dumping was determined violates the AD Agreement (DS464 and DS471). In 2016, the Appellate Body found in DS464 that the zeroing methodology is inconsistent with the AD Agreement, since the second sentence of Article 2.4.2 does not require to select certain export transactions while ignoring others.

The Panel in DS471 also found that the text of the second sentence of Article 2.4.2 does not allow zeroing and that the zeroing methodology is inconsistent with the Article. In this case, Panel's finding regarding zeroing was not appealed, but the Republic of Korea and China each made claims to the WTO in January and September 2018 respectively that the U.S. is not complying with this judgment and requested the authorization to suspend concessions to the U.S. in the annual amount of USD 7 billion.

However, the United States has been using the zeroing methodology through several analytical methods, such as Nails Test, Nails Test II and Differential Pricing Analysis, which it developed while making certain changes to its methodology to determine targeted dumping. Japan will continue to pay attention to the consistency of the targeted dumping determinations and methodologies used for determining dumping margins by the U.S. with the Anti-Dumping Agreement.

<Figure I-2-1> Application of the Zeroing Methodology to Calculation of Dumping Margins: An Example

	Domestic Price ($)	Export Price ($)	Dumping margin of individual product ($)
Product A	115	95	20
Product B	80	70	10
Product C	100	150	-50 (Under zeroing methodology: 0)
Product D	105	85	20
Total	400	400	

(For each product, domestic sales and exports volumes are all considered to be “1 unit” for ease of calculation.)

(Note)

When the zeroing methodology is not applied, a dumping margin is calculated as shown below:

[Dumping margin (%)] = [Weighted average of differences between domestic and export prices] x 100

$$= \frac{20+10-50+20}{95+70+150+85} \times 100 = 0\%$$

That represents no dumping having occurred. However, under the zeroing methodology:

$$[\text{Dumping margin (\%)}] = \frac{20+10+0+20}{95+70+150+85} \times 100 = 12.5\%$$

That represents a dumping having occurred.

<Figure I-2-2> List of Main Judgments of the WTO Panel and Appellate Body concerning Zeroing Disputes

		Original Investigation				Periodic Review	
		W-W Comparison		T-T Comparison			
		As applied	As such	As applied	As such	As applied	As such
EU - AD on Bed Linen from India (DS141)	Appellate Body Report circulated in March 2001	Violation	-	-	-	-	-
US - AD on Softwood Lumber from Canada (DS264)	Appellate Body Report circulated in August 2004	Violation	-	-	-	-	-
US – EU Zeroing (DS294)	Panel Report circulated in October 2005	Violation	Violation	-	-	No Violation	No Violation
	Appellate Body Report circulated in April 2006	-	-	-	-	Violation	-
US - AD on Softwood Lumber from Canada (Compliance) (DS264)	Appellate Body Report circulated in August 2006	-	-	Violation	-	-	-
US – Japan Zeroing (DS322)	Panel Report circulated in September 2006	Violation	Violation	-	No Violation	No Violation	No Violation
	Appellate Body Report circulated in January 2007	-	-	-	Violation	Violation	Violation

(3) Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (WT/DS184)

Please see pages 135-137 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(4) Unfairly Long-Term Continuation of AD Duties (Sunset Provision)

<Outline of the Measure>

Article 11.3) of the AD Agreement (the Sunset Provision) stipulates that any AD measure shall be terminated (sunsetted) in five years unless the authorities determine that the elimination of the AD duty would be likely to lead to continuation or recurrence of dumping and injury. The US AD law includes the Sunset Provision, and sunset reviews are undertaken in the U.S. However, many AD measures have actually been enforced for more than five years. As of the end of June 2018, there were 12 AD measures against Japanese products that had lasted for 10 years or more (Figure I-2-3).

<Problems under International Rules>

As described above, Article 11.3 of the AD Agreement stipulates that any definitive AD measure shall be terminated in five years unless the authorities determine in a sunset review that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. However, many of the AD measures imposed by the U.S. have been enforced for more than five years. Japan has shown its concern that the administration of the sunset review system by the U.S. may be inconsistent with the AD Agreement.

In January 2002, Japan requested bilateral consultations with US about the sunset review of AD measures against Japanese corrosion-resistant carbon steel flat product, that the interest of Japanese steel industry was high (DS244). A panel was established in May 2002 and the dispute was adjudicated under the WTO dispute settlement procedure. Brazil, Canada, Chile, the EU, India, the Republic of Korea and Norway participated in the Panel proceeding as third parties.

In August, 2003, the Panel rejected Japan’s claims and determined that the US decisions under the sunset review were not inconsistent with the WTO Agreements. Dissatisfied with the decision, Japan appealed in September to the Appellate Body on focused issues, and in December, the Appellate Body accepted part of Japan’s claims, but concluded that, there was an insufficient factual basis to complete the analysis of Japan’s claims that the United States did not act consistently with the WTO Agreements.

<Recent Developments>

In August 2018, because in part of pressure from Japan, among others, the U.S. decided that AD countermeasures against Japanese-manufactured stainless steel bar, would be terminated, after 22 years of imposition. However, with regard to the current application of sunset reviews by the U.S., the authorities appear to make a decision on the premise that “once the AD measures are terminated, exports would resume, leading to continuation or recurrence of dumping or injury,” without taking into consideration the global supply-demand situation and the perspectives of cost-benefit performances of companies that respond to administrative reviews and sunset reviews. This is one of the causes of long-term continuation of many AD measures.

Since 2013, at AD Committee meetings held in the spring and autumn, Japan has taken actions such as requesting early termination of measures continued for a long time, and it will continue to request the U.S. to strictly apply Article 11.3 of the AD Agreement, which sets out the principle of termination of AD measures within five years in most cases, and to perform appropriate reviews in accordance with the WTO Agreement.

<Figure I-2-3> AD Measures against Japan Continuing over 10 Years (As of June 2018)

Date of measure imposed	Products	Continuance
8 December 1978	Prestressed concrete steel wire strand	39 years
10 February 1987	Carbon steel butt-weld pipe fittings	31 years
12 August 1988	Brass sheet & strip	29 years
10 May 1991	Gray Portland cement & clinker	27 years
2 July 1996	Clad Steel Plate	21 years
15 September 1998	Stainless steel wire	19 years
27 July 1999	Stainless steel plates	18 years
26 June 2000	Large-diameter Carbon Steel Seamless Pipe	17 years
26 June 2000	Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ inches)	17 years
28 August 2000	Certain Tin Mill Products	17 years
6 December 2001	Welded Large Diameter Line Pipe	16 years

2 July 2003	Polyvinyl alcohol	14 years

(5) Anti-Dumping Investigation into Thick Plates from Japan

Please see page 47 of the 2018 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Subsidies and Countervailing Measures

The 2014 Farm Bill

<Outline of the Measure>

The United States introduced a price support loan program in 1930, and a deficiency payment system, which covers the difference between target prices and market prices subject to participation in production adjustment programs, in 1973. The 1996 Farm Bill (applicable period: from FY1996 to FY2002) eliminated the deficiency payment system, in which the amount of payments changed according to the market prices, along with the production adjustment, and replaced it with the production flexibility contract payment system, in which the amount of payments is fixed regardless of the level of the market prices.

However, the slump in grain prices that began in 1997 resulted in economic damage to farmers that could not be offset with the production flexibility contract payments alone, because the amount of such payments was set in advance. The United States therefore provided emergency farm assistance packages four times between 1998 and 2001 totaling $27.3 billion.

In consideration of such circumstances, the 2002 Farm Bill (applicable period: six years from FY2002 to FY2007) essentially continued the policies of the 1996 Farm Bill while introducing a counter-cyclical payment system to cover the differences between the target prices and the market prices as done in the abolished deficiency payment system.

The 2008 Farm Bill (applicable period: from FY2008 to FY2012) basically continued the policies of the 2002 Farm Bill while introducing a new Average Crop Revenue Election (ACRE) program to cover decreased income.

Serious discussions about the next Farm Bill began in 2011 as the expiration of the 2008 Farm Bill was nearing. However, discussions stalled because the majority and minority parties could not agree on the amount of farm budget reductions. Disagreement about reductions in the overall budget deficit and the presidential election in November 2012 also had an effect. The 2008 Farm Bill expired in September 2012 without being replaced by a new one. Discussions continued after the extension of the 2008 Farm Bill for a year in January 2013. The 2014 Farm Bill (applicable period: from FY2014 to FY2018) was enacted in February 2014. It abolished the deficiency payments, production flexibility contract payments and ACRE program and introduced agriculture risk coverage, price loss coverage and the supplemental coverage option, etc.

(i) Domestic Support

The 2014 Farm Bill abolished the previously-available deficiency payments, production flexibility contract payments and ACRE program, and introduced agriculture risk coverage, price loss coverage and supplemental coverage option. It also introduced a new insurance policy for cotton because of the ruling of the US-Brazil Cotton Panel. The price support loan program was basically retained, although the loan rates were changed because of the ruling of the US-Brazil Cotton Panel.

i. Agriculture risk coverage (introduced by the 2014 Farm Bill)

The agriculture risk coverage (ARC) covers the difference between the revenue of the current year and 86% of the three-year average revenue over the last five years when the revenue of the current year is lower than 86% of the average revenue. The upper limit of the amount paid by ARC is 10% of the average revenue, and choosing between the ARC and price loss coverage (see (b) below) is an option.

ii. Price loss coverage (introduced by the 2014 Farm Bill)

The price loss coverage (PLC) covers the difference between the target prices and the market prices (or the loan rates when the market prices are lower than the loan rates) when the market prices are lower than the predetermined target prices. This system makes payments based on the past planting results and is basically the same as the abolished deficiency payments, but the target prices are significantly raised when compared to deficiency payments.

iii. Price support loan program (continued)

The price support loan program provides farmers with short-term loans by the Commodity Credit Cooperation (CCC) and allows the farmers to suspend their obligations to guarantee repayments by mortgaging their products when the market prices are lower than the loan rates. The 2014 Farm Bill changed the loan rates for cotton because of the ruling of the US-Brazil Cotton Panel, and the conventional system was basically retained for other products.

iv. Supplemental coverage option (introduced by the 2014 Farm Bill)

The supplemental coverage option (SCO) is supplemental insurance covering the portion not covered by the agricultural insurance subscribed to by farmers. The difference between the guaranteed revenue/yields of the agricultural insurance subscribed to by farmers and 86% of the standard revenue/yields of the agricultural insurance is covered. The SCO is not allowed to be used concurrently with agricultural risk coverage.

(ii) Export Promotion of Agricultural Products

In the 1980s, the European Union, faced with a serious glut of agricultural products, increased its subsidized exports. In order to counter this, in the 1985 Farm Bill the U.S. introduced the export enhancement program (EEP) and dairy export incentive program (DEIP). However, in response to the growing criticism against export subsidies at the WTO, etc., in the 2008 Farm Bill the U.S. reduced the amount expended, and abolished the EEP and part of the export credit guarantee program. In addition, the DEIP was abolished and the guarantee period of the remaining export credit guarantee program was shortened by the 2014 Farm Bill.

Export credit guarantee program

The export credit guarantee program seeks to promote exports of US agricultural products by having the Commodity Credit Corporation (CCC) provide debt guarantees for loans to finance exports of US agricultural products imported on a commercial basis by developing countries. The 2002 Farm Bill provided: (1) a short-term credit guarantee program (GSM-102) that provided debt guarantees on export credit transactions for 90 days to three years; (2) a medium-term credit guarantee program (GSM-103) that provided debt guarantees on export credit transactions for three to 10 years; (3) a suppliers export credit guarantee program (SCGP) that guaranteed a part of accounts receivable by exporters of US agricultural products from importers; and (4) a facilities financing guarantee program (FGP) that provided debt guarantees on investments for improving facilities related to agriculture in importing countries, with the intention of promoting exports of US agricultural products in an emergent market. Of these, GSM-103 and SCGP were suspended in 2006 in view of the outcome of the 2004 US-Brazil Cotton Panel, etc., and were abolished by the 2008 Farm Bill. The upper limit on GSM-102 fees was abolished by the 2008 Farm Bill, and the upper limit of the debt guarantee period was shortened from three years to two years by the 2014 Farm Bill.

<Problems under International Rules and Recent Developments>

(i) Domestic Support

The WTO Doha Round negotiations on agriculture have featured debates not only on the rules for reducing the aggregate measure of support (AMS) subject to reduction, but also on the rules requiring reductions in overall trade-distorting support (OTDS), including blue-box policies and de minimis. As a result, in the 2014 Farm Bill, the flexible production payments contract, which are classified in the WTO Agriculture Agreement as a green permitted policy, was abolished while the price decline measures and revenue compensation measures were enhanced. In January 2017, the U.S. made a domestic support notification, and new agriculture coverage, price loss coverage and supplemental coverage options were classified as yellow policies (those subject to AMS reduction requirements).

Furthermore, in 2018, the U.S. announced subsidies for farmers for unfair retaliatory measures by foreign countries. Although the projected amount of AMS does not exceed the current commitment level, Japan needs to pay attention to consistency between AMS and the Agricultural Agreement.

(ii) Export Promotion of Agricultural Products

Although export subsidies were fully abolished by the 2014 Farm Bill, frequent use of export credits, which is insufficient in making the disciplines of the WTO Agreement on Agriculture effective, gives an advantage to US agricultural products in terms of export competitiveness. Under this system, the CCC takes on the debts when the guaranteed debts go into default, making the system extremely close to circumventing export subsidies.

At the 10th WTO Ministerial Conference in Nairobi, Kenya in December 2015, the members agreed on matters including the following with regard to agricultural export credits: (i) clearly define “export credits”; (ii) make the maximum repayment term no more than 18 months; and (iii) ensure that export credit programs are self-financing and cover the long-term operating costs and losses.

Safeguards

Safeguard for Crystalline Silicon Photovoltaic (CSPV) Products and Large Residential Washers

<Outline of the Measure>

The United States launched safeguard investigations on import of CSPV cells & modules and large residential washers in May and June 2017, respectively. In November to December of that year, the investigator, the United States International Trade Commission (USITC) submitted recommendations to the President that safeguard measures be imposed on the products. In January 2018, President Trump decided to impose safeguards on them, which were imposed in February of that year.

With these measures, imported CSPV cells & modules have ad valorem duties imposed on them over four years, from February 2018 through February 2022, at a rate of 30%, 25%, 20%, and 15% each year. (Only for imported cells, annual tariff quotas of 2.5 gigawatts (duty-free) are granted.)

<Problems under International Rules>

The petition filed by U.S. domestic producers, as well as the investigation report produced by the USITC, state that the main purpose of the safeguard measures for CSPV products in this case lies in taking action to rapid increases of low-priced and low-efficient CSPV products manufactured by Chinese companies. Given the principle of safeguard under the Article 5.1 of the Agreement on Safeguards and Article 19.1 (a) of the GATT, which state safeguard measures should be applied only to the necessary extent, exemption of high-priced and high-efficient CSPV products manufactured by Japanese producers should be considered as they are not directly relevant to the purpose of the measures. However, high-efficient products have yet to be exempted.

In its original investigation report, dated November 13, the USITC failed to examine one of the conditions for imposing safeguard measures, “unforeseen developments” (Article 19.1(a) of the GATT), and produced a supplemental report, dated December 27, only after requested by the United States Trade Representative (USTR) to do so. The supplemental report confirmed the existence of “unforeseen developments” on the grounds that anti-dumping measures and countervailing duties the United States had taken against Chinese firms over the past years failed as they moved their production bases overseas to avoid the duties. However, manufacturers’ attempts to evade trade remedies by moving its production bases are not unprecedented. Some may point out that such attempts should not be regarded as “unforeseen developments” that justify any safeguard measures.

<Recent Developments>

Regarding this safeguard on CSPV products, Japan, China, South Korea, Taiwan, the EU, Singapore and many other exporting countries requested consultation for compensation under Articles 8.1 and 12.3 of the Agreement on Safeguards. Furthermore, South Korea, insisting that the safeguard measures both for large residential washers and CSPV products are inconsistent with the WTO Agreements, filed a consultation request under the DSU in May 2018 (the panel established in September of that year). The U.S. announced product exclusions from measures of 8 types of products in September of that year, but this is only a part of the exclusion requests that includes Japanese products.

Japan will continue requesting the U.S. government to mitigate possible impact of the measures on Japanese products.

Rules of Origin

Special Marking Requirements of Origin on watches and clocks

<Outline of the Measure>

According to the rules of origin marking prescribed in the US Tariff Act of 1930, origin markings on watches and clocks must be stated on the component part (i.e., movements, batteries, cases, bands, etc.). In addition, the ways of marking, such as inscribing, carving, stamping, and embossing, are elaborately provided in the Act. Such rules impose severe burdens on manufacturers of watches/clocks in the context of production control. Therefore Japan urges the U.S. to reduce/simplify such marking requirement and leave the choice of marking methods to the discretion of the manufacturers.

Although the rules were established for the purpose of protecting the US watch/clock industry, some take the position that the rules should be simplified from the point of view of benefitting importers and consumers in the U.S.

<Problems under International Rules>

Simplification of these requirements is consistent with GATT Article IX: 2, which provides that the difficulties and inconveniences that marks of origin may cause to the commerce and industries of exporting countries should be reduced to a minimum. Such action would comport with the spirit of the Agreement on Rules of Origin.

At the Japan-US Deregulation Initiative talks in 2002 and 2003. Japan made a request to simplify the requirements. The Report issued in June 2004 reflected Japanese concerns over clock and watch tariff rate calculation methodology and rules of origin certificates. The report stated that negotiations would continue with deference to both the Japanese government’s position and the ongoing WTO discussions. In fact, however, no improvement has been made so far.

<Recent Developments>

Since 2002, Japan has capitalized on a range of opportunities, including the Japan-US Deregulation Initiative, Japan-US Trade Forum, and WTO Trade Policy Review (TPR) of the U.S., to ask them for some improvement and/or solution, only to find the problems left unresolved. We assume that the U.S. clock/watch business is faced with the same problems because they outsource production to contractors in Asia. To facilitate international trade, Japan will continue asking the United States for improvement.

Standards and Conformity Assessment

(1) American Automobile Labeling Act

Please see pages 145 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Regulation on Corporate Average Fuel Economy (CAFE)

Please see page 146 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(3) Adoption of the Metric System

Please see pages 147 in the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.
Note) The State of Alabama permits measurements being indicated solely under the metric system.

Trade in Services

(1) The Foreign Investment and National Security Act of 2007: FINSA

* 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>

The Foreign Investment and National Security Act of 2007 authorizes the President to investigate acquisitions, mergers and takeovers of US firms by foreign persons or entities, and to suspend or prohibit transactions that threaten US national security.

This Act, generally known as the “Exon-Florio Amendment”, is a revision of Article 721 of the Defense Production Act of 1950, which governs matters concerning foreign investment examinations in terms of national security. Major changes made in this revision include: establishing the Committee on Foreign Investment in the United States (CFIUS) as a statutory institution, instituting reviews of examination criteria (incorporating the impact on critical infrastructure and technology), and strengthening Congressional oversight (requiring notification to Congress of the examination results of individual cases), etc. Furthermore, according to the Foreign Investment Risk Review Modernization Act (FIRRMA) established in August 2018, review scope has been expanded (some small-scale investments, such as investments that may include access to undisclosed technology, are now subject to review), review period has been lengthened, obligation of pre-screening for certain transactions has been enforced, reviewed elements have been added (contribution to nations of concern, influence on cybersecurity, etc.), etc., strengthening CFIUS authority. Actual application is set to 30 days from the public notice in the official gazette related to completing regulation preparations with implementation by the Ministry of Finance, or 18 months after the day the law was enacted, whichever is sooner.

The specific legal procedure includes prior submission for some investments, and upon submission of allegations by the parties concerned or requests from CFIUS members, CFIUS decides whether to conduct an investigation, and, where it does, submits a report to the President. The President decides on suspension or prohibition of the investment on the basis of the report.

In the past, several Japanese firms had to change their original plans because of CFIUS investigations of their acquisitions of US firms. For example, when Toshiba purchased the Westinghouse Electric Co in 2006, an examination was conducted by CFIUS since, among other products, Westinghouse built nuclear power plants.

<Concerns>

Although the WTO Agreement has no general rules on investment, the GATS disciplines service trade activities through investment. Although this Act itself does not necessarily violates the WTO Agreements and the GATS Agreement allows exceptions for national security reasons under certain conditions, it is necessary for the United States to operate its investment restriction measures in conformity with the WTO Agreement and the GATS.

<Recent Developments>

Japan has been pointing out the problem of transparency and fairness in administration of foreign investment examinations.

According to the CFIUS' report to Congress in 2015, 143 notifications were issued by CFIUS in 2015. There have been 12 cases in which Japanese companies were involved (screenings and examinations were conducted on 66 cases out of the 143 cases). In 2013, an examination was conducted regarding investment by SoftBank in Sprint Nextel Corporation. Therefore, it is necessary to keep watch to ensure that this Act will not unfair impact investments by Japanese firms in the United States in the future.

(Reference) Implementation status of screening, etc. by CFIUS based on the Foreign Investment and National Security Act

No. of subject transactions, withdrawn cases, and President's decision (2013 - 2015)						
Year	No. of notifications		No. of notifications withdrawn during the screening period	No. of investigations	No. of notifications withdrawn during investigations	No. of President's decisions
		No. of notifications for investment from Japan				
2013	97	18	3	48	5	0
2014	147	10	3	51	9	0
2015	143	12	3	66	10	0
Total	387	40	9	165	24	0

No. of cases subject to notification in which Japanese companies were involved by form of transaction (2012 – 2014)				
Manufacturing Industries	Mining and Public Projects, and Construction	Wholesaling, Retail and Transport	Finance, Information & Communication and Services	Total
20	5	4	12	41

(Prepared by the Ministry of Economy, Trade and Industry based on the "CFIUS ANNUAL REPORT TO CONGRESS (public/unclassified version)")

(2) Financial Services

Refer to page 88 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(3) Telecommunications

* 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>

The United States retains foreign ownership restrictions for direct investment in wireless telecommunications services by virtue of Article 310 of the Federal Communications Act (direct investment up to 20%, indirect investment up to 25% (unless the indirect investment is in the public interest)).

In case of investment by a foreign country in radio station licenses, “public interest” determination under the “Foreign Carrier Entry Order” of 1996 requires the degree of market opening in the country of the foreign company to be at the same level as that in the United States (equivalency test); investments that exceed the upper limits of the investment ratios may be approved after taking into consideration other public interest factors presented by the Executive Office of the President, including concerns over national security, law enforcement, foreign policies, and trade policies.

In the WTO Agreement on Basic Telecommunications Services of February 1997, the United States retained restrictions only for direct investment (20%) and committed to eliminate restrictions for indirect investment. In consideration of this, with regard to indirect investments, equivalency determination was eliminated for WTO member countries, and the U.S. adopted interpretation to enable free entry in principle that, in the FCC (Federal Communications Commission) regulations (November 1997) on the entry of foreign carriers, the public interest is served even when the investment by WTO member countries does exceed 25%. However, the regulation has not yet been eliminated. In order to ensure a flexible network of foreign telecommunication business, elimination of the regulation is desired. Also, concerning the eligibility criteria of “public interest” for entry of foreign businesses into the US market in relation to Articles 214 and 310(b)(4) of the Federal Communications Act as set forth by the above-mentioned FCC regulations, preliminary reviews based on factors not related to telecommunications policies, such as “trade concerns”, “foreign policy”, and “significant danger to competition”, inhibit the period and predictability for foreign business entries, and thus constitute substantial barriers to foreign company participation in the market. As an example, it took an inordinately long time for a Japanese company’s subsidiary to be granted a license.

Furthermore, in these public interest examinations, there is no legal basis to have a body called “Team Telecom” from authorities concerned, and the content of examinations is also unclear.

Elimination or clarification of the examination criteria is desired to ensure opportunities and predictability for foreign business entries.

<Concerns>

The abovekmentioned measures do not violate the WTO Agreement so long as they do not contravene GATS commitments of indirect investment on radio station license. However, it is desirable that liberalization be made under the spirit of the WTO and the GATS.

<Recent Developments>

Japan has raised concerns and requested improvement in the above problems on several occasions. The Federal Communications Commission (FCC) decided to refrain from applying the regulations for direct investments under Article 310(b)(3) of the Federal Communications Act in August 2012, and took measures such as clarifying some procedures in relation to regulations on indirect investments under Paragraph (b)(4) of the same article for radio stations for public communications services and for broadcasting stations in August 2013 and April 2017, respectively. (However, these measures are not intended to abolish the regulations).

(4) Maritime Transport

Please see pages 90 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA.

Protection of Intellectual Property

(1) Trademarks Systems (WT/DS176, US Omnibus Act 211)

No specific actions have been taken for solving problems. For more, including specific problems, see pages 82-83 in the 2017 Report on Compliance by Major Trading Partners with Trade Agreements

-WTO, FTA/EPA and IIA-.

At present it has not directly affected Japan's interests, but from the point of view of securing the effectiveness of the WTO Agreements, it is necessary to keep watch continuously on the status of deliberations in the Congress to see if a similar bill is introduced.

(2) Copyright and Related Rights

No specific actions have been taken for solving problems. For more, including specific problems, see pages 55-56 in the 2018 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

Government Procurement

<Outline of the Measure>

The U.S. has adopted rules for government procurement which require the federal government and governments of some states to purchase US-made products or use US-made materials (known as Buy American rules).

Buy American schemes are legislated as the Buy American Act and the Buy America Act.

The Buy American Act, having come into effect in 1933, provides that US-made products should be treated favourably in procurement by the federal government. The Buy American Act is implemented according to the Federal Acquisition Regulation (FAR). Under the FAR, bid prices offered by potential suppliers of foreign products for federal procurement and foreign materials for federal public works projects are added by 6-12% and 6%, respectively, to treat US-made products and materials favourably.

In some cases, the Buy American Act may not apply. The Trade Agreement Act (TAA) provides exempted products from the Buy American Act when they come from a country the United States has signed a trade agreement with. Specifically, procurement of products and services from the signatories of the WTO Agreement on Government Procurement (GPA) and countries the United States has signed an FTA with, or "designated countries," is exempted from the Buy American Act to the extent of national treatment the United States has committed to with the countries for government procurement. However, any product is regarded as produced in a "designated country" only when the product is wholly manufactured or substantially transformed in the country.

The Buy America Act, offering a separate scheme from the Buy American Act, requires state governments to procure steel and other materials produced in the United States for large-scale transport and infrastructure projects they carry out with subsidies granted by the federal government. The Act is implemented by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railway Administration (FRA), and Federal Aviation Administration (FAA) under their own rules. For instance, when a project is financed with a federal fund administered by the FTA, steel and other materials used for the project must be US-made. Under criteria the FTA has set, steel and other materials are regarded as manufactured in the United States only when they are fully manufactured through the processes based in the United States and all their components are also manufactured within the United States. However, secondary (subordinate) parts produced in foreign countries are not ruled out here.

The Buy America Act is considered as free from the obligations the United States assumes under any international agreement it has concluded. This is because of the reservations made by the United States to the application of the WTO GPA to large-scale transport and road projects financed by the federal government. As most of the large-scale projects in the United States are at least partially financed by the federal government, the reservations allow the United States to deny national treatment to suppliers from other countries.

<Problems under International Rules>

As described above in "Outline of the Measure", the United States has in place schemes for treating favourably domestic products or prohibiting procurement of anything other than domestic products.

Depending on the manner they are implemented, the schemes may violate the WTO GPA and other international rules.

<Recent Developments>

(a) The Fixing America's Surface Transportation (FAST) Act

The FAST Act is an amendment to the Buy America Act. Intended to make obligatory more use of domestic products, including train control, power equipment and vehicles and prototypes, the FAST Act requires the share of domestic components for a vehicle account for at least 60%, 65%, and 70% of the cost in 2016 and 2017, 2018 and 2019, and 2020 onwards, respectively, and that the final assembling of vehicles be carried out in the United States.

(b) Movements of New York and Texas for introduction of their Buy American and Buy America Acts

In June 2017, the New York State Legislature passed the New York Buy American Act, signed by the Governor into law in December. The Act requires state agencies to purchase US-made products when procuring goods or services above a specific amount.

In Texas, the state legislature also passed a law that reinforces the Buy America Act in May 2017. A major difference from the federal Buy America Act lies in the level of cost increases in a project for which it is exempted from the Buy America Act. Under the federal act, projects are relieved from the obligation to use steal produced in the United States when that would result in an increase of cost by 0.1% or 2,500 dollars. The state law exempts a project from the Buy America rules only when its cost would increase by 20%.

Both state laws are mainly intended to narrow the range of exemption from the federal Buy America Act at the state level. With the reservations made by the United States to the WTO GPA, as mentioned above, the Buy America rules do not immediately violate the Agreement in terms of trade with Japan. However, it is necessary to watch carefully whether any movements of states for preferential treatment or obligatory procurement of domestic products may violate international rules.

Unilateral Measures

(1) Section 301 of the Trade Act of 1974[4]

<Outline of the Measure>

Section 301 of Trade Act of 1974 authorizes the United States Trade Representative (USTR) to take action in cases such as where US rights under a trade agreement are violated, or where measures, policies, etc. of a foreign country violate or are inconsistent with a trade agreement. For amendments that had been made before to the Section, please see the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

[Investigation Procedures]

The USTR engages in the following investigation procedures: (a) initiates investigations into trade practices based on complaints from interested parties or on its own authority (Section 302); (b) simultaneously requests consultations with the country in question (Section 303); (c) determines whether there is any practice, etc. that necessitates implementing an action or what action the USTR should take, within a set period of time (for investigations under a trade agreement, 30 days from the conclusion of dispute settlement procedures or 18 months from the beginning of investigation, whichever comes sooner; for others, 12 months from the beginning of investigation) (Section 304); and (d) implements the action, in principle, within 30 days of the decision (though the USTR may delay action for a period of up to 180 days) (Section 305).

[Reason for Measures]

[4] Sections (1), and Section (2) below, are written as of April 25, 2018.

For mandatory action (Section 301(a))

The USTR shall take action if the act, policy or practice of a foreign government (a) is in violation of the GATT or other trade agreements or otherwise denies benefits to the United States; or (b) is unjustifiable and burdens or restricts US commerce.

For discretionary action (Section 301(b))

The USTR must take action in cases where a measure, policy, etc. of a foreign country is unreasonable or discriminatory and burdens or restricts US commerce and action by the United States is appropriate.

As for the meaning of "unreasonable" measures, etc. taken by a foreign country, the law stipulates that it applies to measures, etc. that are "not necessarily in violation of or inconsistent with US legal rights under international laws," but which are "deemed to be unfair and inequitable" (Section 301(d)(3)(A))

In addition, several measures have been cited as examples of unreasonable measures, etc. taken by a foreign country, such as "violation of opportunities to establish a company," and "denial of appropriate protection of intellectual property rights" (Section 301(d)(3)(B)).

<Problems under International Rules>

In November 1998, the EU requested WTO consultations with the United States because procedures based on Section 304 of the Trade Act of 1974 and other provisions could potentially permit unilateral decisions or measures by the US government without waiting for a WTO panel decision or WTO Dispute Settlement Body (DSB) approval. Because no agreement was reached in the consultations, a panel was established in March 1999. Japan participated as a third party and presented arguments in support of the EU's position. The panel report (WT/DS152/R) was adopted at the DSB meeting in January 2000.

The panel found that the wording of Section 304 of the Trade Act of 1974 and other provisions seemed to contravene DSU Article 23.2, but when read in conjunction with the interpretative guidelines for the Trade Act prepared by the US President (Statement of Administrative Action) and other statements by the U.S. government ("the United States will administer those provisions in a manner that is consistent with its obligations under the WTO Agreement"), Section 304 and other provisions are not WTO violations. The panel decision is based on the assumption that the United States will adhere to statements it made during the panel meetings. Therefore, Japan will need to continue to watch for faithful administration of the US statement.

<Recent Developments>

In August 18, 2017, the USTR launched on its own authority an investigation under Section 301 for technology transfer pressures and other acts by China. In March 22, 2018, the USTR found that the designated targets of the investigation were unreasonable or discriminatory, imposing burdens and/or restrictions on commercial activities of the United States.

(a) Forced technology transfer

The government of China used opaque and discretionary administrative processes for approval, joint venture requirements, foreign ownership restrictions, government procurement, and a range of other measures to regulate and/or intervene in the US firms in their business in the country, in order to force them to transfer their technology and/or intellectual properties to Chinese companies.

(b) Mandatory inclusion of certain provisions in license contracts, etc.

The government of China adopted laws, policies, and other measures to force US firms to include certain provisions (on compensation, ownership of improved technologies, etc.) into contracts, depriving them of abilities to set market-based conditions when negotiating with Chinese companies for licensing and other technology-related issues, and consequently weakening their technological dominance in China.

(c) Systematic acquisition of US firms

The government of China instructed or unfairly encouraged Chinese companies to invest in or acquire US firms to obtain cutting-edge technologies and intellectual properties and have technologies transferred between them in a large scale in critical sectors for industrial planning.

(d) Theft of trade secrets

The government of China had carried out and/or supported the hacking of commercial computer networks in the United States and/or the stealing of intellectual properties, business secrets, and/or any other confidential information from US companies.

On that day, having received the findings of the USTR investigation, President Trump instructed:

- That the USTR release a list of items on which additional 25% duties should be imposed;
- That the USTR deal with discriminatory practices of China for technology licensing through the dispute settlement procedures at the WTO; and
- That the Department of Finance propose regulations for investments by China in sensitive technologies of the United States.

After this the USTR, claiming that China's Regulations on Technology Import and Export Administration impose discriminatory technology licensing requirements and violate the national treatment and other obligations under the TRIPS Agreement (Article 3), filed a request for consultations with China at the WTO on March 23. On April 3, the USTR also released a candidate item list for tariffs on Chinese products (airspace related, ICT, logistics, manufacturing machines, medical supplies, etc; including 1300 items (scale of USD 50 billion)).

In response to the actions above, China announced on April 4, 2018, to impose a 25% additional duty on 106 items within 14 categories of commodities originated from the United States, including soybeans, automobiles, and chemical products. On the same day, claiming that tariff measures taken by the United States might violate concession obligations (Article 2 of the GATT), China requested consultations at the WTO. After that, the tariff war between the United States and China until the end of 2018 were as follows.

Date	Country	Scale of imports of target products (tax amount)
July 6	United States	USD 34 billion (25%)
	China	USD 34 billion (25%)
August 23	United States	USD 16 billion (25%)
	China	USD 16 billion (25%)
September 24	United States	USD 200 billion (10%)
	China	USD 16 billion (5-10%)
TBD	United States	USD 267 billion (tax amount TBD)

December 18 was the deadline for application for exemption from the tariffs worth the equivalent to USD 16 billion. Furthermore, a list of exempt products worth the equivalent of USD 34 billion was announced on December 28, where approximately 1,000 products were exempt.

At the summit meeting between the United States and China on December 1, both countries agreed that the United States would not raise tariffs further on imported goods equivalent to USD 200 billion, during the 90-day period of trade negotiations between the two countries. In the event the countries had not reached an agreement within the 90 day negotiation period, the United States would have raise the tariff to 25% on imported products from China for the equivalent of USD 200 billion. For other major investigations launched recently under Section 301 of the Trade Act, please see the 2016 Report on Compliance by Major Trading Partners with Trade Agreements -WTO, FTA/EPA and IIA-.

(2) Section 232 of the Trade Expansion Act of 1962

<Outline of the Measure>

Under Section 232 of the Trade Expansion Act of 1962, the President of the United States can take measures to adjust imports of products, when imports threaten the national security. Prior to the president’s decision to take measures, the Secretary of Commerce investigated whether there is a threat to national security from these imported products. Within 270 days after the initiation of the investigation, the Secretary of Commerce must submit an investigation report to the President. In the event the Secretary of Commerce determined there was a threat to national security in the imported products, that would be reported and a recommendation of whether to make import adjustments would be issued.

Upon receipt of the report that import of the product threatens the national security, the President must decide within 90 days whether he concurs with the findings in the report and decide whether he will take any action to adjust its imports. After the President decides to take an action to adjust imports (embargo, tariff increase, import quantity limit, tariff quota, commence negotiations to limit imports, etc.), it will be implemented within 15 days.

[Investigation Procedures]

Upon request of the head of any department or agency, upon application of an interested party, or upon his/her own motion, the Secretary of Commerce: (i) immediately initiates an appropriate investigation to determine the effects on the national security of imports of the article (Section 232(b)(1)(A)); and (ii) immediately provide notice to the Secretary of Defense of any investigation initiated (Section 232(b)(1)(B)). In the course of the investigation, the Secretary of Commerce: (i) consults with the Secretary of Defense regarding methodological and policy questions raised in the investigation; seek information and advice from, and consult with, appropriate officers of the United States; and (iii) if it is appropriate and after reasonable notice, holds public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation (Section 232(b)(2)(A)). Upon the request of the Secretary of Commerce, the Secretary of Defense must provide the Secretary of Commerce an assessment of the defense requirements of any article that is the subject of an investigation conducted (Section 232(b)(2)(B)).

Within 270 days after the launch of the investigation, the Secretary of Commerce must submit an investigation report to the President. When having found the imported product threatens to impair the national security, the Secretary of Commerce must report the findings to the President (Section 232(b)(3)(A)). Any portion of the report which does not contain classified information must be published in the Federal Register (Section 232(b)(3)(B)).

<Problems under International Rules>

Among the import adjustment measures by the U.S. under Section 232 of the Trade Expansion Act of 1962, increases of tariffs above the rate stated in the list of tariff concessions, may be inconsistent with Article 2 of the GATT (Tariff Concessions) and embargo and quantity restrictions may be inconsistent with Article 11 of the GATT (Quantitative Restrictions), respectively. In this respect, the U.S. may invoke Article 21 of the GATT (Security Exceptions).

One of the points at issue on Article 21 of the GATT is whether the Panel has the authority to review this article. On this issue, members have quite different opinions between them. Some countries, including the United States, argues that Article 21 is a self-judging clause and that the Panel does not have the authority for review. The U.S. also argues that national security is a political matter that cannot be settled through dispute settlement procedures at the WTO. (The U.S. takes this position also with resepcet to Section 232 measures on steel and aluminum as mentioned below)

There are no prior decisions adopted regarding the interpretation of Article 21 of the GATT. However, if this article is broadly interpreted allowing extremely broad range of exceptions for national security reasons, there is concern of abuse of the national security exception and the risk of shrinking the global trade.

For example, the measures taken by the U.S. under Section 232 regarding steel and aluminum, discussed later, not only close the US market but also disrupt the global steel and aluminum markets, giving a significant negative impact on the entire multilateral trade system. Furthermore, import volume quota was introduced as a maximum limit of country exclusions, but taking or seeking to take voluntary export restraints is prohibited under the WTO Agreement (Article 11 of the Agreement on Safeguards). How the quota mentioned above is implemented should be carefully watched.

<Recent Developments>

(a) Section 232 Measures for Steel/Aluminum

In April 2017, the U.S. initiated a Section 232 investigation on imported steel and aluminum.

In January 2018, Commerce Secretary Ross submitted reports for each of the investigations to the president and recommended that import restrictions in the form of additional tariffs or volume allotment, or a combination of both, be imposed on imported stainless steel/aluminum (the report was published in February).

The U.S. started imposing additional tariffs on steel and aluminum on March 23, 2018. However, Australia (steel/aluminum), South Korea, which accepted restricted volume (steel), Brazil (steel) and Argentina (steel/aluminum) were excluded from these tariff measures.Furthermore, with respect to products that cannot be sufficiently produced in the U.S., and products that has national security concerns, exclusion is determined by the Secretary of Commerce based on applications of individuals and organizations operating within the U.S. in steel/aluminum product supply to building/manufacturing industries or consumers.

China, the EU, Canada, Mexico, Norway, Russia, Turkey, India and Switzerland each brought separate cases against the U.S. regarding Section 232 measures. Panels were established in November 2018 (in December for India and Switzerland) for these matters.

Furthermore, the EU, China, India, Russia, and Turkey, arguing that the measures taken by the U.S. is in effect safeguard measures, have initiated countermeasures under Article 8 of the Agreement of Safeguard (or rebalancing measures. See Part II Chapter 8, 1(2)(i) and (5)(3)) . In response to this, the U.S. argues that Section 232 measures are based on security and that they are not Safe Guard measures, requesting WTO consultation regarding the countries that initiated rebalancing (Panels were established for each case in November 2018).

Japan has repeatedly expressed our concerns to the U.S., arguing that imports of steel and aluminum from Japan give no harmful effect to their national security. At the same time, in order to accelerate and simplify the product exclusion process, Japan tries to the extent possible, at a variety of levels, to avoid adverse effects on the industry. Also, as well as other exporting countries, considering that the nature of the U.S. measures is essentially that of safeguard measures, Japan has notified to the WTO of its intent to reserve its rights to take rebalancing measures (May 2018). Furthermore, Japan has a systemic concern and is participating in the panel proceedings for U.S. Section 232 measures and rebalancing measures against the U.S.

(b) 232 Measures regarding Automobile/Automobile Parts

In May 2018, the U.S. initiated a Section 232 investigation on automobiles and automobile parts. The Secretary of Commerce submitted an investigation report to the president on February 17, 2019 (the report has not been made public).

In the Summit Meeting between Japan and the U.S. in September 2018, it was agreed that both countries refrain from taking measures against the spirit of the joint statement during the process of the consultations, in other words, that no additional duties based on Section 232 would be imposed on Japanese automobiles.

In the USMCA side letter, Canada and Mexico each agreed with the U.S. respectively to be excluded from Section 232 measures up to a certain volume and amount of automobiles and automobile parts. As mentioned previously, according to the WTO agreement, taking or seeking to take voluntary export restraints is also prohibited (Safe Guard Agreement Article 11), and quantitative restrictions are generally prohibited except for tariff quotas, etc. which are explicitly allowed in the WTO Agreement, (GATT Article 11). While at this stage the details of the final measures of Section 232 have not been made clear, such approaches as agreeing on exclusions from Section 232 measures, expressing certain export volume and amounts, raise a question on their consistency with the above agreements.

Import of automobiles and automobile parts from Japan will not negatively affect the security of the U.S. Rather, it greatly contributes to U.S. industry and employment. Also, Japan stands in opposition of measure that contribute to managed trade that distorts free and fair trade, and believe that measures in all trade should be consistent with the WTO agreement. Japan is making this position to the U.S. in a various opportunities.

Also, many Japanese companies, such as automobile manufacturers, have a presence in the U.S., Mexico and Canada. These Japanese corporations have been operating under NAFTA. Regarding the USMCA side letter, we should especially continue to monitor future behavior carefully.

(3) Special 301

<Outline of the Measure>

Special 301 sets forth a process introduced as a result of a revision to Section 182 of the Trade Act of 1974 based on Article 1303 of the Omnibus Foreign Trade and Competitiveness Act of 1988. Under this provision, the USTR is to identify (a) countries that “deny adequate and effective protection to the intellectual property rights” and (b) countries that “deny fair and equitable market access to United States persons that rely upon intellectual property protection” as “priority foreign countries” in the report to be submitted within 30 days after the submission of the annual National Trade Estimate Report on Foreign Trade Barriers. The USTR must initiate investigations and consultations with the “priority foreign countries” within 30 days after such identification (Section 302(b)(2)(A) and Section 303 of the Trade Act of 1974), and within 30 days from the conclusion of dispute settlement procedures or 6 months from the beginning of investigations determine whether there is any practice, etc. that necessitates implementing a countermeasure and, if so, what action the USTR should take (Section 304(a)(3)).

The USTR has prepared a Priority Watch List and a Watch List to promote the process under Special 301.

<Problems under International Rules>

There is the same concern as for procedures regarding Section 301 of the Trade Act of 1974.

<Recent Developments>

In the “2017 Special 301 Report” released by the USTR in April 2017, 11 countries including Algeria, Argentina, Chile, China, India, Indonesia, Kuwait, Russia, Thailand, Ukraine and Venezuela were placed on the Priority Watch List, and other 23 countries were placed on the Watch List.

(4) US Re-export Control Regimes

<Outline of the Measure>

The U.S. re-export control regime is a system that imposes restriction on specific products that are exported from the U.S. and then re-exported to third countries. It requires permits from the U.S. government for all exports, including from Japan, in cases of: (1) U.S. made products (cargoes, software, technologies); (2) products including US-made products over a certain level (built-in product); (3) specified direct products produced by using US-made technologies and software; (4) products produced at a plant with U.S. direct products as major parts. These rules are applied even to exports that have passed through the export control procedures of the government of Japan, which adheres faithfully to all international agreements on export control.

There is no need to impose the duplicated restrictions on the exports from countries, including Japan, which are members of various international regimes on export controls. In addition, U.S. exporters are not obliged to provide sufficient information on commodities exported from the U.S. (Export Control Commodity Number (ECCN), etc.)to importers (re-exporters). Therefore, importers (re-exporters) have difficulties in identifying commodities and determining the applicability of the regulation to their commodities. This might hinder proper processes for export control.

<Problems under International Rules>

The U.S. re-export control regime is a potential violation of international law because it entails broad extraterritorial application of domestic laws.

<Recent Developments>

On occasions such as the Japan-U.S. Deregulation and Competition Policy Initiative (hereinafter referred to as the Japan-U.S. Deregulation Initiative) held since 2001, Japan pointed out the possibility of excessive exterritorial application of U.S. domestic laws. Furthermore, Japan requested that the U.S. exempt exports from Japan which have participated in various international regimes on export control and implemented export control fully and effectively from the application of U.S. re-export control. At the same time, Japan requested the U.S. to introduce a tentative measure until the re-export control operation is improved: (1) to establish a Japanese web site and a help desk at the Embassy of the U.S. in Japan that lets Japanese companies understand the details of the legislations; and (2) to mandate that U.S. exporters provide sufficient product information so Japanese companies can determine the applicability of the regulation to their products.

As a result of Japan's request, in 2003, the US Department of Commerce (DOC) posted on its website a brief description in Japanese of its Re-export Control Regime. The US government also took measures to deepen understanding of its Re-export Control Regime, such as holding a seminar regarding the Regime in Tokyo. In November 2003, DOC created the "Best Practices for Transit, Transshipment, and Re-export of Items Subject to the Export Administration Regulations (hereinafter referred to as "Best Practices"), stipulating that exporters should provide commodity information such ECCN to their customers.

Although no change in the operation was observed, in a statement it released in January 2014, the Bureau of Industry and Security (BIS) indicated its position that "BIS recommends that US exporters send the EECN's of exporting products to foreign importers and obtain copies of import licenses in the respective countries before exporting based on 'Best Practices'". The BIS also provides the SNAP-R (Simplified Network Application Redesign) system online to enable application for re-exports and checking of the classification of items, etc.

However, these "Best Practices" do not have legal binding force and cannot fundamentally solve the problems of importers (re-exporters) in acquiring information regarding commodities exported from the U.S. Based on these points, in 2006, 2007, and 2008, at the Japan-US Deregulation Initiative, Japan presented a formal request to the US government. Also, the same request was made in economic talks between the Japan and the U.S. in 2011.

In June 2011, the Strategic Trade Authorization (STA) was added as a new exception to U.S. export control regulations, as an initiative to revise the U.S. export control system. As a condition of the STA, U.S. exporters are obliged to provide an ECCN for commodity information to importers. Further discussions are necessary to secure the provision of sufficient commodity information on commodities that are not excluded from the STA.

In the U.S., emerging and foundational technology is included in the Export Control Reform Act, established in August 2018. Currently, public comment scheme is being designed regarding the definition and basic regulation methods for technology, but while it is preferable that opinions of industry are seriously considered, for an effective import export control system so that it doesn't significantly hinder corporate activities or research and development. At the same time, these sort of new regulations also must be watched carefully so that the effect on re-export control regime is minimized. The commercial section of the Embassy of the U.S. in Japan and the BIS jointly hold briefing, etc. in Japan on a regular basis to make the system widely known. On the most recent occasions, briefings were held on April 23-24, 2014 to explain and answer questions about related systems.

Other Matters

Container size regulations for alcoholic beverages

<Outline of the Measure and Concerns>

In the United States, distribution of distilled alcoholic beverage is allowed only in containers of specific sizes, such as 1,750 ml, 1,000 ml, 750 ml, and 500 ml. Alcoholic beverages cannot be exported to the country in bottles of sizes traditional in Japan, for instance 1,800 ml and 720 ml, a high barrier to exporters.

On this issue, in a letter it exchanged with Japan, the Department of Finance promised that on receipt of request from the Japanese alcoholic beverage industry, it would publish a proposal for amendments to the container size regulations and invite public comments to initiate procedures for getting the proposal approved.

<Recent Developments>

At the Japan-US summit meeting in November 2017, the United States confirmed they were considering amending container size regulations for distilled beverages.