

**“2019 Report on Compliance by Major
Trading Partners with Trade
Agreements – WTO, EPA/FTA, and IIA-”
and
“METI Priorities Based on the 2019
Report”**

June 2019

Dispute Settlement Office

Multilateral Trade System Department

Trade Policy Bureau

Overview

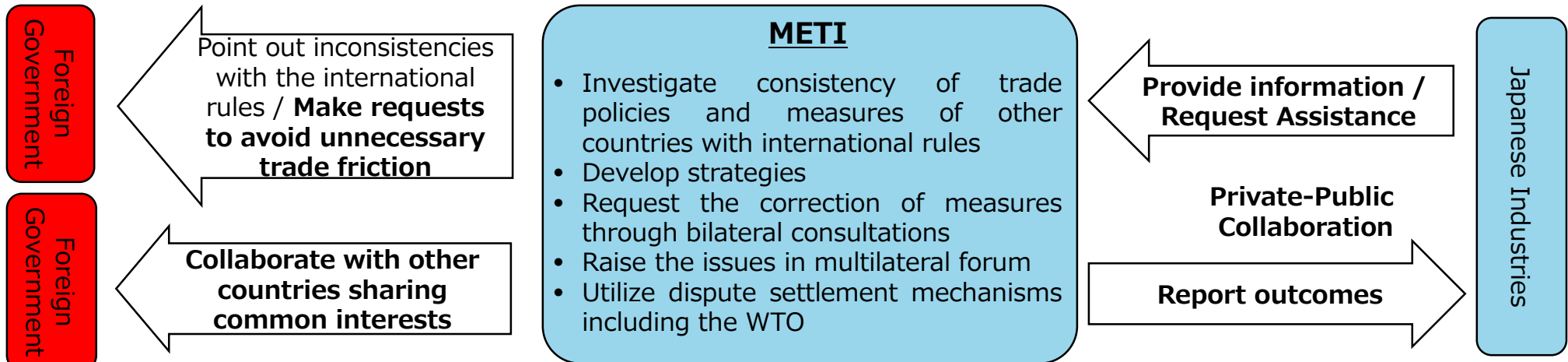
- Based on several sources of information such as the one provided by industries, METI makes public the Report on Compliance and METI Priorities every year.
- The report lists measures of foreign countries which seem inconsistent with international rules and gives some analyses of WTO-consistency.

“Report on Compliance by Major Trading Partners with Trade Agreements” (Report of the Subcommittee on Unfair Trade Policies and Measures)

- Experts of **Subcommittee on Unfair Trade policies and Measures under the Industrial Structure Council**, chaired by Mr. Fukunari KIMURA, Professor, Keio University, have analyzed problems of trade policies and measures of major trading partners based on international rules, including the WTO agreements.
- The Report has been published every year since 1992 (the 2019 Report is the 28th edition). **The 2019 Report was published on June 26, 2019.**
- The United States (National Trade Estimate Report on Foreign Trade Barriers) and the EU (Trade and Investment Barriers Report) also publish similar reports on a regular basis.

“METI Priorities”

- **Select priority issues** from measures analyzed in the Report and make public government actions and their outcomes.
- Promote collaboration with Japanese industries and foreign governments that share common interests.

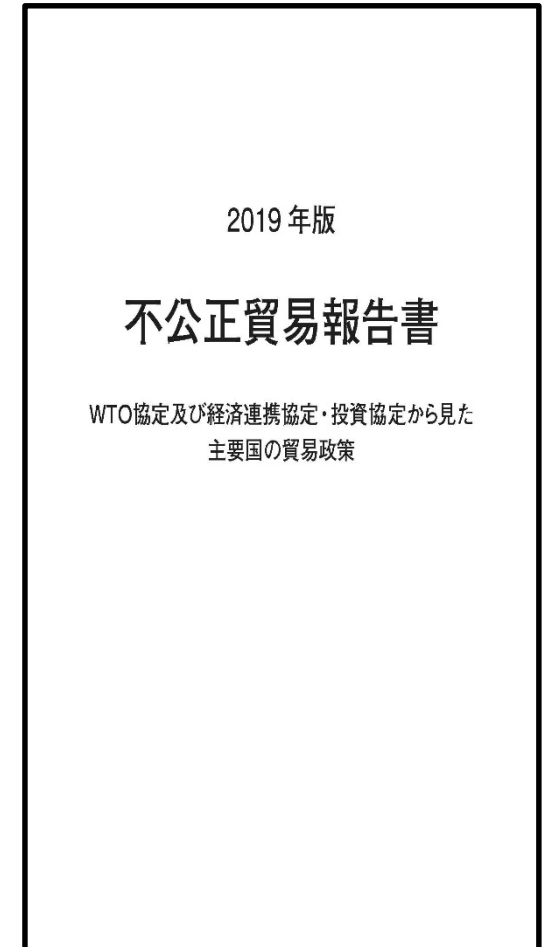


1. Report on Compliance by Major Trading Partners with Trade Agreements

Structure of the 2019 Report on Compliance by Major Trading Partners with Trade Agreements

- Composed of three parts, Part I points out various trade policies and measures of foreign countries and analyzes their consistency with the international rules including the WTO agreements. Part II (WTO agreements) and III (FTA/EPA) give a brief summary of international rules.

Preface	Presents the concept of “rule-based” approach, which is to determine the “fairness” of trade policies and measures based on internationally agreed rules
Part I	Points out approximately 150 policies and measures of 19 countries/regions (including China, the US, ASEAN countries, the EU, Korea, Russia, India, and Brazil)
Part II	Explains the WTO agreements and WTO-related discussions (including GATT, AD Agreement, Agreement on Subsidy and Countervailing Measures, Safeguard Agreement, GATS, TRIPS, Government Procurement, and E-Commerce) and major cases under each agreement
Part III	Explains Japan’s major EPA/FTA and investment treaties including the TPP
References	Exhibits the recent movement in the Ministerial Conferences of the WTO, and also provides a list of WTO dispute settlement (DS) cases.



Newly Listed Cases (13 cases)

Country	Measure	Outline	page
China	Shipbuilding Subsidies	Public financial support to the domestic shipbuilding industry which includes large-scale financial assistance by governmental financial institutions renders the world market distorted, and may consequently prevent early resolution of the excess capacity problem in shipbuilding industry.	P25
	Regulation on Admission of Investment in Automobile Industry	"Regulation on Admission of Investment in Automobile Industry" (effective as of January 2019) provides requirements for license on investment projects. Depending on the manner of its application, it may be inconsistent with Article 7.3 of Chinese Accession Protocol which prohibits performance requirements as conditions for investment (including technology transfer requirements, requirements for R&D in China).	P26
Viet Nam	Safeguard Measures against Semi-Finished Steel Products and Steel Bars, etc., and its "Anti-Circumvention" Measures	Viet Nam initiated in July 2018 the "anti-circumvention" investigation on wire rod and steel wire, processed products made of goods subject to the original safeguard measure. This investigation has not been notified to the WTO, and may be inconsistent with Article 3.1 of the Agreement on Safeguards and Article 19.1 of the GATT.	P75
Indonesia	Prepaid Income Tax on Imports and Tax Rates Increase	Indonesia collects certain rates of import value of the subject imports upon custom clearance as a prepayment of income tax, and then repays the excess upon the termination of tax year. This measure may be inconsistent with the National Treatment obligation as it imposes disadvantages such as interest cost only on imports, while domestic products are not subject to prepayment of income tax.	P79
	Protection of Pharmaceutical patents	Article 4 (f) of the Patent Act establishes stricter criteria for patentability in the technical fields of chemical substances and pharmaceuticals, and may be inconsistent with Article 27 paragraph 1 of the TRIPS Agreement which prohibits discrimination by technical fields.	P89
Philippines	Protection of Pharmaceutical patents	Article 22.1 of the Intellectual Property Code establishes stricter criteria for patentability in the technical fields of chemical substances and pharmaceuticals, and may be inconsistent with Article 27 paragraph 1 of the TRIPS Agreement which prohibits discrimination by technical fields.	P97

Country	Measures	Outline	Page
EU • Canada • Turkey • EAEU	Safeguard Measures against Steel Products	Each Member refers to the Section 232 measures by the US, other Members' protectionist trade measures, and global oversupply. However, adopting such import-restrictive measures would depress the global trade and may worsen the oversupply problems. Such measures may not be consistent with the requirements under Article 19.1(a) of the GATT.	P103,P118,P136,P137
Rep. of Korea	Shipbuilding Subsidies	Large-scale public financial support to the domestic shipbuilding industry by governmental financial institutions may be regarded as prohibited subsidies etc. under the Agreement on Subsidies and Countervailing Measures. It may distort the market and consequently prevent early resolution of the excess capacity problem in shipbuilding industry.	P111
India	Safeguard Measures against Solar Cells	This measure may be inconsistent with Article 3.1 of the Agreement on Safeguards, since the deadline for interested parties' registration was just the same as the date when the WTO notification became publicly available.	P125
	Personal Data Protection Bill	The Personal Data Protection Bill of India, published in July, 2018, has several issues: the scope of "sensitive personal information" and the unclear conditions for cross-border transfer of personal, and thus requires a close look on the legislation process.	P129

Columns

- The report provides in-depth analyses of security exceptions, international rulemaking on industrial subsidies, and the Appellate Body problem.

Part and Chapter	Title	Outline	Page
Part II Chapter 4 “Justifiable Reasons”	Security Exceptions – Issues related to the interpretation of GATT Art. XXI	The column provides an overview of the legal issues related to the interpretation of the security exceptions (GATT XXI), and the positions taken by major countries, as well as the how the issues are handled in the WTO dispute settlement.	P215
Part II Chapter 7 “Subsidies and Countervailing Measures”	Development of stronger rules on industrial subsidies	The column introduces recent international discussions on industrial subsidies at various fora, such as the Trilateral Meetings of Trade Ministers of Japan-EU-US, and shows several future challenges.	P265
Part II Chapter 17 “Dispute Settlement Procedures under WTO”	The WTO Appellate Body problem	We’ve updated last year’s column on the WTO Appellate Body problem. The column explains the five issues that the US has been raising, and gives an overview of recent movements including the joint proposals by the EU and other countries.	P397

2. METI's Priorities

METI Priorities Based on the 2018 Report on Compliance by Major Trading Partners with Trade Agreements (published on June 26, 2019)

- Resolve each dispute through various means such as bilateral/multilateral consultations and the WTO dispute settlement mechanism
 - As of June 26, 2019, there are a total of 584 WTO DS cases.
 - Japan so far has requested 26 consultations in total and achieved a satisfactory settlement in 19 cases out of 21 cases in accordance with Japan's request, except for 5 ongoing cases.
- Engage in rulemaking for ensuring level playing field through various fora such as the WTO and the Japan-US-EU Trilateral Ministerial Meeting
- Actively contribute to the discussion on the Appellate Body problem, taking into account the AB report on *Korea, Republic of — Import Bans, and Testing and Certification Requirements for Radionuclides* (DS495)

METI's Priority Cases listed in the 2019 Report

- 2 new measures by Korea and China are listed.
- Request for consultation under the WTO dispute settlement procedure was notified on May 5, 2019, for India's tariff treatment on certain goods.
- Category (4) is newly added, which lists cases that need special attention.
- Based on the AB report on import restrictions on Japanese fishery products, we describe our responses to the problems of the WTO dispute settlement Mechanism.

1. Individual Measures

(1) Issues for which the WTO DS procedures have already started

- Korea : Measures Affecting Trade in Commercial Vessels (Consultation) **[NEW]** (collaborate with the MLIT)
- Korea: Sunset Review Administration on Stainless Steel Bars from Japan (panel)
- Korea: The AD Duty Measures on Pneumatic Valve (Appellate Body)
- India : Tariff Treatment on Certain Goods (Consultation)
- India: The Safeguard Measures on Hot-Rolled Steel Products (Appellate Body)

(2) Issues to be resolved through bilateral and multilateral consultations with possible use of the WTO DS Mechanism

- China : Subsidies on Aluminum
- China : Cybersecurity Law
- China : Inappropriate Regulation/Implementation of AD Measures
- US : Import Adjustments based on the Section 232 of the Trade Expansion Act of 1962
- US : Sunset Review Practice (Term-end Review for the Continuation of AD Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products
- Viet Nam : Regulation for Import of Automobiles

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

- US : Complete Abolition of Zeroing
- Brazil : Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.

(4) Issues on which close attention needs to be paid due to significant effect on trade and investment although details are unclear

- China : Foreign Investment Law **[NEW]**
- China : Draft of Export Control Bill

2. Responses to the Issues regarding WTO Dispute Settlement Procedures





Contribute actively to discussions on issues surrounding the Appellate Body so that the WTO dispute Settlement Mechanism will function properly.

Progress since last year










- The progress from the 2018 edition is as follows.

2018 Priorities

(1) Issues already referred to the WTO Dispute Settlement Mechanism

-  Korea : Sunset Review Administration on Stainless Steel Bars
-  Korea : The AD Duty Measures on Pneumatic Valve
-  India : The Safeguard Measures on Hot-Rolled Steel Products
-  Brazil : Discriminatory Preferential Taxation

(2) Issues to be resolved through bilateral/multilateral consultation with possible use of the WTO dispute settlement mechanism






-  China : Discriminatory Technology License Regulation ⇒ Improve ment
-  China : Subsidies on Aluminum
-  China : Export Control Bill
-  China : Cybersecurity Law
-  China : Inappropriate Regulation/Implementation of AD Measures
-  US : Import Adjustments based on the Section 232
-  US : Inappropriate Long-Standing AD Duty Measures
-  India : Tariff Treatment on Certain Goods
-  Viet Nam : Regulation for Import of Automobiles

(3) Issues on which Japan urges Prompt Implementation of the WTO Recommendations







-  US : Complete Abolition of Zeroing

2019 Priorities

(1) Issues already referred to the WTO Dispute Settlement Mechanism

-  Korea : Measures Affecting Trade in Commercial Vessels (NEW)
(collaborate with the MLIT)
-  Korea : Sunset Review Administration on Stainless Steel Bars
-  Korea : The AD Duty Measures on Pneumatic Valve
-  India : Tariff Treatment on Certain Goods
-  India : The Safeguard Measures on Hot-Rolled Steel Products

(2) Issues to be resolved through bilateral/multilateral consultation with possible use of the WTO dispute settlement mechanism

-  China : Subsidies on Aluminum
-  China : Cybersecurity Law
-  China : Inappropriate Regulation/Implementation of AD Measures
-  US : Import Adjustments based on the Section 232
-  US : Inappropriate Long-Standing AD Duty Measures
-  Viet Nam : Regulation for Import of Automobiles

(3) Issues on which Japan urges Prompt Implementation of the WTO Recommendations

-  US : Complete Abolition of Zeroing
-  Brazil : Discriminatory Preferential Taxation

(4) Issues in which Japan gives special attention because details of measures are still unclear and potential impacts on trade and investment are relatively large

-  China : Foreign Investment Law (NEW)
-  China : Draft of Export Control Bill

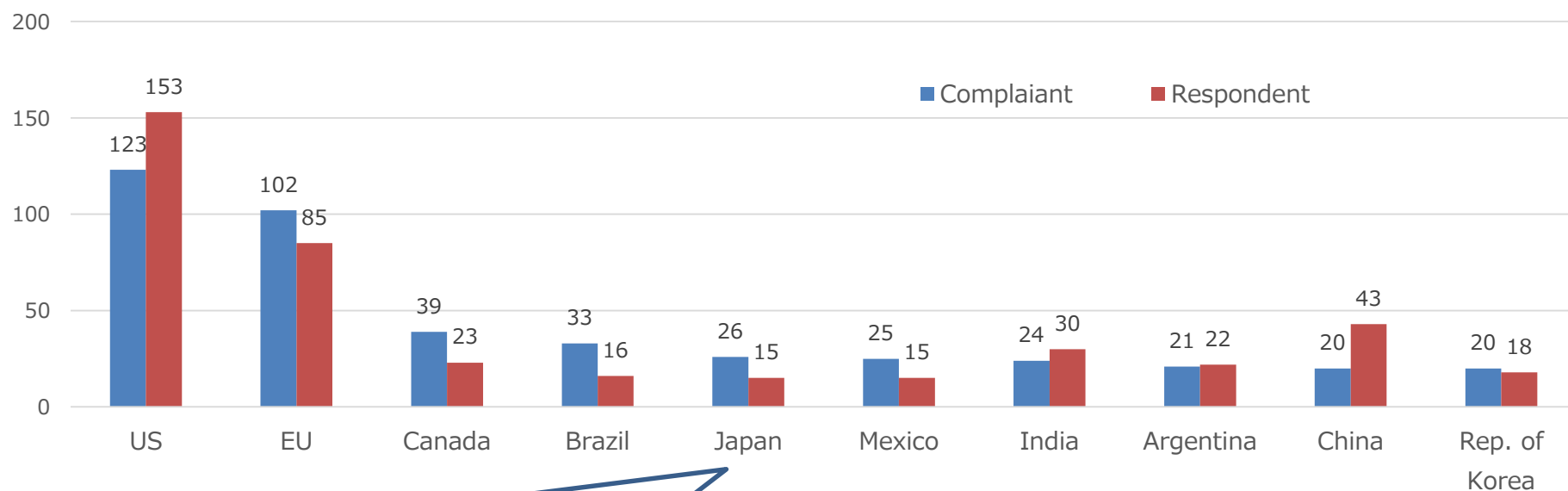
3 . Reference

(Reference 1) Changes in the number of country-specific measures listed in METI Priorities (past 5 years)

	2015	2016	2017	2018	2019
China	4	3	3	5	5
US	4	3	3	3	3
Korea	0	1	2	2	3
India	0	1	1	2	2
Brazil	1	1	1	1	1
Viet Nam	0	0	0	1	1
Indonesia	2	2	0	0	0
Argentina	1	1	1	0	0
Ukraine	1	0	0	0	0
Russia	1	0	0	0	0
Sum	1 4	1 2	1 1	1 4	1 5

(Reference 2) The Number of DS cases filed by each Member

- Both as a complainant and as a respondent, the US has initiated a largest number of cases, followed by the EU and then by Canada.
- Some developing countries, such as Brazil, Argentina, Mexico, India, actively utilize the DS.
- In recent years, cases involving China both as a complainant and as a respondent are increasing. Only after 15 years since its accession to the WTO in 2001, China already has the fourth largest number of cases.



	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	total
Complainant	1	2	1	1	2	1	0	2	0	1	0	0	0	2	0	1	0	3	2	0	2	2	0	2	1	26
Respondent	4	4	3	1	0	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	15

(Reference3) WTO Dispute Settlement Cases where Japan is/was a Complainant

- 19 recommendations of the DSB out of 21, except 5 on-going cases, were adopted in line with Japan's claims.

Name of Case	Date of Consultation	Establishment of Panel	Adoption of Report	Conclusion
1. US - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade act of 1974 (DS6)	1995.5	–	–	Terminated upon mutual agreement solution
2. Brazil - Certain Automotive Investment Measures (DS51)	1996.7	–	–	Consultation suspended (Brazil de facto abolished the measure)
3. Indonesia - Certain Measures Affecting the Automobile Industry (DS55, 64) *Count as 1 case	1996.10	1997.6	1998.7 (panel)	Japan's claims were upheld
4. US - Measure Affecting Government Procurement (DS95)	1997.10	1998.10	–	Panel lapsed (February 2000) (The US domestic court determined its unconstitutionality)
5. Canada - Certain Measures Affecting the Automotive Industry (DS139)	1998.7	1999.2	2000.6 (A.B)	Japan's claims were upheld
6. US - Anti-Dumping Act of 1916 (DS162)	1999.2	1999.7	2000.9 (A.B)	Japan's claims were upheld
7. US - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (DS184)	1999.11	2000.3	2001.8 (A.B)	Japan's claims were upheld
8. US - Continued Dumping and Subsidy Offset Act of 2000 (DS217)	2000.12	2001.9	2003.1 (A.B)	Japan's claims were upheld
9. US - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (DS244)	2002.1	2002.5	2004.1 (A.B)	Japan's claims were not upheld
10. US - Definitive Safeguard Measures on Imports of Certain Steel Products (DS249)	2002.3	2002.6	2003.12 (A.B)	Japan's claims were upheld

(Cont.) WTO Dispute Settlement Cases where Japan was a Complainant

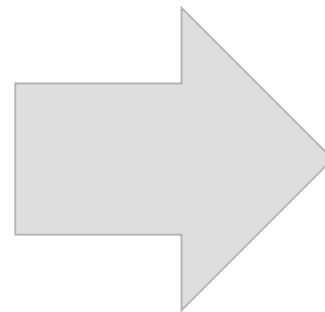
Name of Case	Date of Consultation	Establishment of Panel	Adoption of Report	Conclusion
11. US - Measures Relating to Zeroing and Sunset Reviews (DS322)	2004.11	2005.2	2007.1 (A.B)	Japan's claims were upheld
12. " (DS322) (Compliance Panel)	2008.4	2008.4	2009.8 (A.B)	Japan's claims were upheld
13. EC and its Member States — Tariff Treatment of Certain Information Technology Products (DS376)	2008.5	2008.9	2010.8 (panel)	Japan's claims were upheld
14. Canada - Certain Measures Affecting the Renewable Energy Generation Sector (DS412)	2010.9	2011.7	2013.5 (A.B)	Japan's claims were upheld
15. China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS433)	2012.3	2012.9	2014.8 (A.B)	Japan's claims were upheld
15. China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS433)	2012.3	2012.9	2014.8 (A.B)	Japan's claims were upheld
16. Argentina - Measures Affecting the Importation of Goods (DS445)	2012.8	2013.1	2014.1 (A.B)	Japan's claims were upheld
17. China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan (DS454)	2012.12	2013.5	2015.10 (A.B)	Japan's claims were upheld
18. Russian Federation - Recycling Fee on Motor Vehicles (DS463)	2013.7	—	—	Consultation suspended (Russia notified correction of the measure, January 2014)
19. Ukraine - Definitive Safeguard Measures on Certain Passenger Cars (DS468)	2013.10	2014.3	2015.7 (panel)	Japan's claims were upheld
20. Korea - Import Bans, and Testing and Certification Requirements for Radionuclides (DS495)	2015.5	2015.9	2019.4 (A.B)	Japan's claims weren't upheld
21. Brazil - Certain Measures Concerning Taxation and Charges (DS497)	2015.7	2015.9	2018.12 (A.B)	Japan's claims were upheld
22. Korea - Anti-Dumping Duties on Pneumatic Valves from Japan (DS504)	2016.3	2016.7		A.B established
23. India - Certain Measures on Imports of Iron and Steel Products (DS518)	2016.12	2017.4		A.B established
24. Korea - Anti-Dumping Duties on Stainless Steel Bar from Japan (DS553)	2018.6	2018.10		Panel established
25. Korea — Measures Affecting Trade in Commercial Vessels (DS571)	2018.11			Consultation
26. India — Tariff Treatment on Certain Goods (DS584)	2019.5			Consultation

(Reference4) Responses to the Issues regarding WTO dispute settlement system

- Presently, there remain only 3 AB members due to the blockage of selection process. Should there be no selection by December 10th when the remaining 2 AB members' term expires, the AB would become unable to hear new appeals.
- The AB report on *Korea, Republic of — Import Bans, and Testing and Certification Requirements for Radionuclides* demonstrates an inherent defect of the system that a dispute could remain unresolved even after the issuance of AB reports.
- Japan is determined to put its utmost efforts in solving this problem as soon as possible through leading international discussions for improving the WTO DS system.

Statement by Japan at the DSB meeting (April 26, 2019)

1. Japan finds it troubling that, while reversing the Panel's findings on account of insufficiency of the Panel's analysis, the Appellate Body Report neglects to express the long-awaited view on the WTO-consistency of the measures at issue.
2. Japan questions the attitude of the Appellate Body which shies away from delivering judgement on the WTO-consistency of the challenged measures. This unfortunate outcome also raises a systemic issue. Japan is keen to discuss, together with other WTO Members, this systemic issue collectively.



Lead the discussion about the reform of the DS system as a G20 chair

G20 Ministerial Statement on Trade and Digital Economy (June 9, 2019)

63. We agree that action is necessary regarding the functioning of the dispute settlement system consistent with the rules as negotiated by the WTO Members.

