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

The 2019 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA - was today published by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures. The Report points out wide-ranging trade policies and measures of major trading partners that are questioned in light of the WTO Agreements and other international rules.

As mentioned in the Report, the WTO Dispute Settlement (DS) mechanism not only recommends corrections of the measures but also contains procedures for monitoring implementation of recommendations and the suspension of concessions countermeasures in the event of failure of implementation. Therefore, WTO recommendations are implemented at a high rate and contribute to maintaining the effectiveness of the WTO rules. Since the establishment of the WTO in 1995, the WTO DS procedures amount to 584 cases (As of June 26, 2019).

Japan has actively utilized the DS mechanism with the aim of eliminating disadvantages caused by other countries' measures that are inconsistent with international rules, and also developing rules through the accumulation of precedents, as one measures, amid the situation where establishment of multilateral rules has become increasingly difficult due to a rapid change in the environment on trade such as more serious antagonism between developed countries and emerging countries. Since 1995, Japan has requested 26 consultations, and cases with emerging countries have been increasing in recent years. Out of 21 cases excluding five pending ones, disputes were resolved in line with Japan's arguments in 19 cases.

The report raises the alarm at increasing concerns over possible distortion of competitive basis or market function, which is a fundamental of multilateral free trade systems due to market-distorting measures by some emerging countries in recent years, and at the situation where a swing back to a "results-oriented" approach has emerged in some developed countries.

METI will proceed with comprehensive measures to ensure to the level playing field through Japan-U.S.-Europe Trilateral Trade Ministers' Meetings, while responding to structural problems with multilateral free trade systems through improvements of the WTO DS procedures, etc. and maintaining and strengthening such response. In addition, METI will continuously utilize bilateral and multilateral consultations, the WTO DS mechanism, etc., to actively resolve individual issues.

Furthermore, after the expiration of the term of office of two member of the Appellate Body in December 2019, the Appellate Body will not be able to hear new dispute cases if

succeeding members are not appointed during that period. Due to this reason, it may be the case that a dispute may remain unresolved as the result of judgment by the Appellate Body which became apparent by the Appellate Body Report of April 2019 pertaining to import ban measures by Korea for Japanese fishery products. With the problem inherent in the current dispute resolution system in mind, METI will continue to contribute to early resolution of the said issue actively so that the Appellate Body, which is the basis for utilizing the DS mechanism, functions appropriately.

Based on the above, METI will preferentially address the following cases based on policies and measures pointed out in the 2019 Report. The details of each case are shown in the Reference below.

1. Individual case

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

With respect to the following issues, Japan referred them to the WTO DS procedures and will request each country to abolish or correct the measures through the procedures.

- Korea : Measures Affecting Trade in Commercial Vessels【Consultation】【New】 (The Ministry of Land, Infrastructure, Transport and Tourism(MLIT) is in charge)※
- Korea : Sunset Review on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures) 【Panel】
- Korea : AD Duty Measures on Pneumatic Valves 【Appellate Body】
- India : Tariff Treatment on Certain Goods 【Consultation】
- India : The Safeguard Measures on Hot-Rolled Steel Products【Appellate Body】

※ The case is handled by MLIT, and METI provides certain advice from legal perspective.

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

With respect to the following issues, Japan will examine the possible use of the WTO DS procedures while working on resolving issues through bilateral consultations, WTO ordinary committees, etc.

- China : Aluminum Subsidies
- China : Cybersecurity Law
- China : Inappropriate Application of AD Measures
- The United States : Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962
- The United States : Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products
- Vietnam : Imported Automobile Certification System .

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

With respect to the following issues, as a result of Japan and other countries having referred them to the WTO DS procedures, the WTO recommendations which required securing the conformity of measures have been adopted. Japan will request quick and complete implementation of the WTO recommendations and appropriate measures consistent with the purport of the WTO recommendations.

- The United States : Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping

- 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

With respect to the following issues, details of the system has not been clear or certain responses have been taken in countries where measures are applied through approaches by Japan, etc. However, Japan will continue to pay close attention to the issues as they may give significant effect on trade and investment depending on the system design and implementation status of the relevant responses.

- China：Foreign Investment Law 【New】
- China：Draft of Export Control Law

2. Responses to problems over the WTO DS procedures

Based on the problem which became apparent by the Appellate Body Report concerning import ban measures by Korea for Japanese fishery products, Japan will actively contribute to discussions concerning the problems of the Appellate Body so that the WTO dispute settlement system functions appropriately.

（Reference 1）Details of the Individual Trade Policies and Measures Listed in the METI Priorities Based on the 2019 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2018 METI Priorities are as follows.

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

- **Korea**：**Measures Affecting Trade in Commercial Vessels**

Since October 2015, Korea has been taking measures as public financial support for the shipbuilding industry of its own country which includes: (1) financial support for a domestic shipbuilder (Daewoo Shipbuilding & Marine Engineering Co., Ltd.) by public financial institution; (2) provision of refund guarantees for supporting orders placed with shipbuilders; (3) support for purchasing new commercial vessels for shipping companies through the New Shipbuilding Program (public-private fund), etc.; and (4) other measures such as subsidies for replacing with eco-ship (subsiding a part of the price of new ship). As the results of these public financial support measures, low cost orders for new ships were repeated by Korean companies, leading to substantial drop in the ship prices in the international markets. In addition, Japan's market share is falling substantially due to lost orders and competition abandonment following the decline of the market ship price. These public financial support measures are likely to distort the market and hamper early resolution of the excess supply capacity issues in the shipbuilding industry. Also, certain measures may be regarded as export subsidies as prescribed in the Agreement on Subsidies and Countervailing Measures (ASCM) and is likely to violate with Article 3 of the said agreement.

Japan requested Korea early abolition of the measures by pointing out the problem on multilateral occasions through such opportunities as Council Working Party No.6 on Shipbuilding or holding a director-general-level talk between Maritime Bureau of MLIT and Ministry of Trade, Industry and Energy Korea (MOTIE) in October 2018, but in vain. Consequently, Japan requested bilateral consultations based on the WTO Agreements in November 2018 and held the bilateral consultations in December 2018.

Japan will continue to request Korea for the abolishment of these measures.

- **Korea**：**Sunset Review on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures**）

The Korean government initiated a sunset review for stainless steel bars produced in Japan in June 2016, and decided on a three-year extension of imposition of duties in June 2017.

This decision made by the Korean authorities is highly likely to be inconsistent with the AD Agreement as it does not take account of (i) the fact that products imported from Japan do not compete with the domestic products and the other imported products and (b) whether or not a significant increase of volume of products imported from third countries such as China,

Taiwan, etc., which are not subject to the AD duties, affects the injury to domestic industries.

Japan, aiming at resolving the matter through dialogue, pointed out issues under international rules multiple times at the WTO AD Committee to express serious concern about lengthening of the measure, and in May 2018, the Minister of METI of Japan requested the Minister of Trade, Industry and Energy of Korea to abolish the imposition of duties. However, since the Korean government has not abolished the duties and no improvement was observed afterwards, Japan requested Korea to hold the bilateral consultations based on the WTO Agreements on this matter in June 2018 and requested establishment of a panel in September 2018 in consideration of its outcome (the panel was established in the next month and composed in January 2019).

Japan will continue to request the abolishment of these measures through the panel procedure.

- **Korea**：**The AD Duty Measures on Pneumatic Valves**

In February 2014, the Korean government initiated AD investigations for pneumatic valves from Japan upon a request from domestic companies in Korea. Japan strongly appealed at the WTO AD Committee meetings and public hearings that careful consideration about damage and causation would be necessary in this issue and accordingly an appropriate decision should be made after fully considering the opinions of investigated companies. Nevertheless, the Korean government determined damage and causation in January 2015 and started to impose AD duties in August 2015.

Regarding these AD duty measures, Korea has failed to provide persuasive explanations on the possible influence of imported goods on the prices of domestic goods (Articles 3.1 and 3.2 of the AD Agreement). Furthermore, there are defects in Korea's determination of damage to domestic industries and causal relationships (Articles 3.1, 3.4 and 3.5 of the AD Agreement) due to dumping and there are also procedural flaws in the investigations such as the failure to disclose essential facts (Article 6.9 of the AD Agreement). Given these, the AD duty measures are likely to violate the AD Agreement.

Japan, aiming at resolving the issue through bilateral dialogue, continued to request the abolishment of the AD measures, but in vain. Therefore, in March 2016, Japan requested the Korean government to enter bilateral consultations based on the WTO Agreements on this matter, and requested the WTO in June 2016, to examine the issue at the panel in consideration of its outcome (the panel was established in the next month of the year). A panel report published in April 2018, following the examinations by the panel accepted the core of Japan's argument, admitted that the relevant AD measures were inconsistent with the WTO Agreement, citing that there were defects in Korea's determination of damage and causal relationships and procedural transparency, and recommended Korea to correct the AD measures. On the other hand, Japan's argument on some of the disputed points was neither accepted nor judged on the ground that it was beyond the scope of referred issues handled by the panel.

Based on the above mentioned panel report, Japan appealed to the WTO Appellant Body in order to seek its judgement on some of the disputed points in May 2018. Examinations

are currently underway at the Appellant Body.

Japan will assert in the Appellate Body its arguments to make Korea withdraw the AD measures which are inconsistent with the AD Agreements, and will continue to request Korea to completely withdraw the AD measures as soon as possible.

- **India** : **Tariff Treatment on Certain Goods**

The Government of India, by administrative notifications, introduced a 10% tariff raising measure for some IT products (HS code: 8517.62.90 and 8517.69.90 communication devices) which were set as non-leviable in India's WTO bound tariff binding schedule in March 2016. Thereafter, in July 2017, it raised tariff rates for mobile phones, ink cartridges, etc. (HS code: 8443.3290 other printing devices, etc., 8443.9551 and 8443.9952 ink cartridges, 8443.9953 ink spray nozzles, 8517.1210 and 8517.1290 mobile phones, and 8517.6100 base stations, 8517.7090 parts for telephone/telecommunication devices). Furthermore, it publicly issued a notification to raise the tariff rate for mobile phones from 10% to 15% in December 2017. In addition, it further raised it from 15% to 20% in February 2018.

Since India raised effective tariff rates for products such as mobile phones, parts for telephones/communication devices and base stations even though it exempted them from tariffs under the six-digit level of HS code, it clearly violates Article 2 of GATT.

Japan repeatedly expressed concerns through the WTO Market Access Committee, the Information Technology Agreement (ITA) Committee, the WTO Council on Trade in Goods, Embassy of Japan in India, etc., and has requested the Government of India to provide a detailed explanation and promptly abolish the measures. However, the Indian government only repeated the same answers that "those products did not exist when agreed on the ITA and they are not subject to the elimination of tariffs which the country promised at the ITA Committee" and so far, no improvement of the situation has been observed.

Japan requested India to hold consultations based on the WTO Agreements in May 2019. Japan will continue to request the abolishment of these measures through bilateral consultations and if such bilateral consultations do not bring favorable results, Japan will pursue the abolishment of the measures through the panel procedure.

- **India** : **The Safeguard Measures on Hot-Rolled Steel Products**

On September 7, 2015, the Government of India initiated an investigation on hot-roll steel products and decided the imposition of provisional safeguard measures on September 9, 2015, which is only two days after the initiation. The provisional safeguard measures were imposed on September 14, 2015 levying duties on hot-roll steel products. In March 2016 the Government of India made a public notice on imposing the definitive safeguard measures for a period of two years and six months, starting from the date of levy of the provisional safeguard duty.

As required under the WTO Agreements, the investigating authority needs to demonstrate clearly determine an increase in import resulting from the effect of the obligations incurred

under the GATT 1994 as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994. However, the Indian authority failed to clarify this in its investigation reports.

Moreover, as required under the WTO Agreements, the investigating authority needs to demonstrate the increase in import as the results of unforeseen development, in addition to the effect of the obligations incurred under the GATT. However, although the investigation reports prepared by the Indian authority recognize such facts as excessive overproduction in China and demand increase in India as unforeseen developments as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994, these facts are only changes in supply-demand relationships, which exert influence equally both on imported goods and domestic goods, and they do not cause disadvantageous changes in conditions of competition for domestic goods and do not fall under unforeseen developments.

Given these, the Indian authority cannot be held to have properly demonstrated the fulfilment of the requirements for imposing safeguard measures under Article XIX, paragraph 1 (a) of the GATT 1994.

Furthermore, Japan understands that the Indian authority has not fulfilled other requirements to impose safeguard measures. In addition, there were defects in the content of the notification to the WTO and consistency of its procedure to the WTO Agreements is thus questioned.

Japan has carefully monitored the actions taken by the Indian authority concerning this issue since September 2015 when the investigation was initiated, and submitted government opinions, held bilateral consultations, and participated in public hearings procedure. In the written opinions submitted, Japan suggested that the safeguard measures at issue may violate the WTO Agreements and requested to take due care in conducting the investigation. Nevertheless, the Indian government has decided to impose definitive safeguard measures following the investigations and has not corrected their measures since then. Therefore, in December 2016, Japan requested India to hold bilateral consultations under the WTO Agreements. In March 2017, Japan requested the WTO to establish a panel regarding the safeguard measures at issue and the panel was established in April 2017.

In November 2018, a panel report was published. The relevant safeguard measures lapsed during the consultation period, but most of Japan's arguments were accepted in the panel report. The report recommended India to bring the relevant measures into conformity as long as the effect remains since India's safeguard measures are inconsistent with the WTO Agreements. In December 2018, India appealed to the WTO Appellant Body and examinations are currently underway at the Appellant Body. Japan will appropriately respond to the examinations of the Appellant Body.

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

Japan will pay close attention to the issue and proceed with discussions aimed at its improvement and clarification in bilateral and multilateral consultations.

- **China**：**Aluminum Subsidies**

Various subsidies are granted by the Chinese government to the aluminum industry based on the Special Five Year Development Plan for the Non-Ferrous Metal Industry and various other industrial policies. Like the problem of excess production capacity in steel in China, rapid increase of production capacity and excess supply of aluminum has become a problem.

Concerning the problem of excess production capacity in primary aluminum, etc., caused by Chinese government subsidies, they may be in violation of Article 5 of the Agreement on Subsidies and Countervailing Measures (ASCM) as causing an adverse effect to the interests of other member countries. In addition, concerning parts not covered by the current ASCM, discussions to solve the relevant problems are proceeding in the Subsidies Committee, etc.

In May 2017, G7 countries including Japan committed in the G7 Taormina Leaders' Communiqué that they would further strengthen the cooperation and work with their partners in order to address global excess capacity in the steel, aluminum and other key industrial sectors and to avoid its emergence in other areas. Furthermore, in June 2017, in the regular vice-minister-level consultations between METI and the Chinese Ministry of Commerce, Japan discussed efforts aimed at the elimination of excess supply in the aluminum industry, etc. with the Chinese government. Also, in the Subsidies Committee meetings held in October 2016, and April 2017, and Trade Policy Review (TPR) of China in 2018, together with the U.S. and the EU, Japan also proposed discussions related to the problem of subsidies and excess supply. Moreover, the urgent need of avoiding excess capacity in sectors such as aluminum was pointed out in the Charlevoix G7 Summit Communiqué of June 2018 as well. The OECD investigation report published in January 2019 also pointed out the possibility of distorting the competitive conditions in the aluminum industries as large amounts of government support are provided in China, etc..

Japan will continue to proceed with discussions aimed at solving the problem in bilateral and multilateral consultations.

- **China**：**Cybersecurity Law**

In June 2017, the Chinese government enforced the "Cybersecurity Law". Since the Law stipulates that when selling network core products and specialized cybersecurity products, it is required to obtain a security certification following the related national standards and industry standards, it is assumed that technical regulations and conformity assessment procedures for these products will be established. However, regarding the Law, TBT (Technical Barriers to Trade) notifications have not been made, and therefore it may be

inconsistent with Article 2.9.2 of the WTO TBT Agreement. Although there is no provision for the specific contents of national standards and industrial standards in the Law and it is uncertain what sort of standards will be established, it may be in violation of Articles 2.4 of the TBT Agreement if such standards are not based on international standards. Furthermore, if the contents of the measures are more trade-restrictive than necessary to achieve the objective of "maintaining cyber space sovereignty and national security", it may violate Articles 2.2 and 5.1.2 of the TBT Agreement.

In addition, the Law stipulates that operators of important information infrastructure are obliged to store personal information and important data within China and to assess the safety of such information when it is transferred overseas. Therefore, if foreign business operators are substancially placed in a less favorable competitive condition than Chinese business operators, it may violate national treatment obligations stipulated in Article 17 of GATS.

From the drafting stage of the law, not only Japan but also the governments of other countries, industrial organizations, etc., submitted opinion letters to the Chinese government on the public comments to express concerns as described above, but the Law was enforced in June 2017, not reflecting many of the opinions from the government of Japan, etc. Thereafter, the Chinese government sought public comments on drafts of "Measures on Security Assessment of Cross-border Data Transfer of Personal Information and Important Data" and "Cyber Security Multi-Level Protection Scheme". In May 2019, public comments on "Cybersecurity Review Measures" and "Measures for Data Security Management" were also started. However, concerns over whether the Law and related regulations are consistent with the WTO Agreements still remain.

Japan will continue to closely monitor the Law and developments of related regulations while urging China to correct the system through opportunities such as WTO TBT Committee meetings, the WTO Council for Trade in Services and bilateral consultations, etc.

- **China** : **Inappropriate Application of AD Measures**

The Chinese government initiated 258 AD investigations between 1995 and the end of 2017, and among which Japanese products were included as the subject product in 46 cases. Among these 46 cases, AD measures were applied in 36 case. AD duties remain in force in 18 cases as of the end of June 2018. China is the largest in terms of the country-based number of AD investigations and the number of application of AD measures against Japan.

Deteriorating business performance of Chinese companies is thought to have been caused by the excessive production structure in China. Nevertheless, it was determined that Chinese companies suffered injury due to dumped imports from Japan, revealing that Chinese AD measures are not consistent with the AD Agreement in areas such as lack of transparency in investigation procedures and arbitrary determination of injury and causation.

Regarding China's seemingly inappropriate AD investigations, Japan has been conveying government opinions to Chinese investigation authority and requesting it to improve the situation using various opportunities such as submission of written opinions to Chinese

investigation authority, consultations with Chinese government officials, participation in public hearings and attendance in WTO AD Committee meetings, etc. Furthermore, it has been cooperating with the U.S. and the EU which share the concerns about Chinese AD investigation procedures in ways such as submission of written opinions which mutually support arguments in the WTO DS procedures.

Japan will continue to encourage China to correct its inappropriate operation and application of AD measures.

- **The United States**：**Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962**

The President of the U.S., upon receipt of the investigation report from the Secretary of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, shall decide on import adjustment measures, such as the prohibition of imports, increase of tariff rates, quantitative restrictions of imports, tariff quotas, the opening of negotiations to limit imports, etc. when the President recognizes that imported products pose a threat to America's national security.

In accordance with Presidential proclamations issued on March 8 and 22, 2018 based on Section 232 of the Trade Expansion Act of 1962 (and more later),, the U.S. commenced to impose additional tariffs on steel and aluminum imported from Japan of 25% (ad valorem) and 10% (ad valorem), respectively, on March 23, 2018. The U.S. noted that if agreement can be reached on alternative means to ensure that imports do not threaten American national security, the tariffs may be changed or abolished (country-based exemptions). Tariffs were abolished for some countries such as South Korea. In May 2019, further agreements were reached with Canada and Mexico to withdraw the additional tariffs imports from these countries. In addition, upon a request from U.S. companies, exemptions from additional tariffs are granted (product-based exemptions) if it is approved that (1) the product at issue does not affect national security or (2) the substitute production of the product at issue cannot be made in the U.S.

It is likely that the increase in tariffs above the bound rates are inconsistent with Article 2 of GATT (Tariff Concessions). Furthermore, when quantitative restrictions (quotas) are set, it is likely that such measures are inconsistent with Article XI of GATT (Quantitative Restrictions) and Article 11 of the Agreement on Safeguards (Prohibition of Voluntary Export Control etc.). On the other hand, the U.S. may invoke Article XXI of GATT (Security Exceptions), stating that all measures pursuant to Section 232 are measures taken for national security purpose. However, imports of steel and aluminum from Japan, as an ally of the U.S., will not negatively affect American national security, and accordingly, the issue of whether or not these measures are justified by this Article will not arise.

Concerning steel products from Japan, Japan receives an exemption of additional tariffs equivalent to 116.2% of import figures of 2017 for steel products and equivalent to 201.9% of import figures of 2017 for aluminum products as of May 17, 2019. Following the confirmation in the joint statement of Japan and the U.S. in September 2018, that efforts would be made for the early solution concerning measures based on Section 232 for steel

and aluminum, Japan will continue working on the U.S. government firmly for the exemption of tariffs.

Concerning automobiles, etc., an investigation report including recommendations to President from the Secretary of Commerce was submitted on February 17, 2019. The details of the recommendations have not been disclosed to the present date. In accordance with Presidential proclamations issued on May 17, 2019, the U.S. decided to pursue negotiation for 180 days concerning import of automobiles, etc. with the EU and Japan, etc. to obtain agreements for addressing national security threat on the ground that automobile imports threaten to national security. (In the joint statement of Japan and the U.S. in September 2018, it was confirmed that Japan and the U.S. refrain from taking measures against the spirit of the joint statement during the process of these consultations, and consultations between the countries are underway according to this agreement.)

With respect to automobiles, etc., which are still under investigation by the Department of Commerce, the U.S., Canada and Mexico signed the USMCA Agreement in November 2018. At the same time, the Side Letters concerning automobiles, etc, were exchanged between the U.S. and Mexico and between the U.S. and Canada. In the Side Letters, an agreement was reached that certain passenger vehicles and auto parts as well as all light trucks would be excluded from import adjustment measures for automobiles if imposed based on the Section 232. However, no import adjustments have been imposed and it is uncertain how the agreement in the Side Letters will be implemented and applied in the future.

Many Japanese automakers enter into the U.S., Mexico and Canada where they engage in corporate activities utilizing the current NAFTA. Noting that the WTO Agreements prohibit to take or seek to take voluntary export control (Article 11 of the Agreement on Safeguards) and that quantitative restrictions are generally prohibited except the case where such restrictions including tariff quotas are approved by the WTO Agreements (Article XI of GATT), Japan will continue to closely monitor the development while closely watching the related trends including the actual monitoring practice whether USMCA's Side Letters lead to managed trade that distorts free and fair trade.

In addition to the above, investigations based on Section 232 are currently underway for uranium (Secretary of Commerce already submitted an investigation report to President on April 14, 2019) and titanium sponge (investigation initiated on March 4, 2019). Import adjustment measures based on Section 232, do not simply close the U.S. market, but may have a large negative effect on the global market and the multilateral trading system as a whole. Each imports of product mentioned above from Japan, as an ally of the U.S., cannot pose a threat to American national security, and Japan will continue working on the U.S. government firmly for the avoidance of the measures.

- **The United States**：**Sunset Review Practice and Unreasonably Long-standing AD Measures on Japanese Products**

The AD Agreement stipulates that any definitive AD duties shall be terminated in five years (Sunset) unless the necessity for further continuation is determined. However, the U.S.

practice of sunset reviews is that AD measures are continued in general as long as a domestic company files an application for a review.

At the end of June, 2019, there are 17 definitive AD measures imposed by the U.S. government on Japanese products. The longest duration of the U.S. measure exceeds 35 years and the duration of the 6 measures exceeds 20 years. The results of such prolonged imposition of the AD duties excessively discourages exports of Japanese companies and imposing huge burdens on the importers and the users in the U.S. For example, some of Japanese iron or steel products are high quality and highly reliable and have won wide support from U.S. users, but they became unavailable to those customers due to the U.S AD measures, and it is pointed out that the users in the U.S. are forced to buy other country's products.

Accordingly, Japan has requested the early termination of these measures in the Japan-U.S. Economic Harmonization Initiative and repeatedly held WTO AD Committee meetings, etc. In August 2018, the AD measure imposed by the U.S. government on Japanese steel products for more than 35 years was terminated as the result of sunset review.

Japan will continue to work for improvement of the U.S. sunset review practice and abolition of the unreasonably long-standing AD measures on Japanese products as soon as possible.

- **Vietnam**：**Imported Automobile Certification System**

The Vietnamese government put in force Decree No. 116 which stipulates conditions of automobile manufacturing, assembling, import, and related services such as warrantee and maintenance on January 1, 2018. With this, when importing automobiles to Vietnam, it is obligatory to obtain vehicle-type approval (VTA) issued by foreign authorities, receive exhaust gas inspection and safety/quality inspection by type of vehicle for each import lot (one vessel), provided by Vietnamese authorities, etc.

Although VTA issued by foreign authorities is required to be obtained only for imported vehicles, even on a global scale, usually there is almost no system in which foreign authorities issue VAT certificates for exported automobiles. Accordingly, imported automobiles are in a disadvantageous situation compared to domestic automobiles since they are required to obtain VTA certificates which are substantially difficult to obtain. This may violate Article 2.1 of the TBT Agreement. Furthermore, it is questionable whether it is necessary or not to additionally request VTA certificates only for imported automobiles in order to achieve the objective of protecting consumers as well as the environment. This may be in violation of Article 2.2 of the TBT Agreement. In addition, imported automobiles are required to receive exhaust gas inspection and safety inspection by the type of automobile from Vietnamese authorities for each import lot (one vessel), but for domestic automobiles, the result of inspection is being considered valid for 36 months. Because of this, only imported automobiles are inspected much more frequently, resulting in a disadvantageous situation for imported automobiles compared to domesticautomobiles. This may violate Article 5.1.1. of the TBT Agreement.

So far, Japan has made several responses on this matter such as delivery of notes verbal

from the Japanese embassy in Vietnam, expressing the concerns of the Japanese government at WTO TBT Committee meetings as well as the Council for Trade in Goods, relaying concerns from the Minister of METI to the Minister of Industry and Trade in Vietnam, etc. After the Decree was put in force in January 2018, impacts such as the suspension of export of automobiles to Vietnam from Japan have been observed. Since October 2018, Japan is able to resume export under the practice that export to Vietnam is approved with VTA certificates obtained in third countries, however, the system could significantly damage Japanese companies in the future as no amendment has been made to Decree No. 116.

Japan will continue to request the Vietnamese government to abolish/improve this regulation at bilateral and multilateral consultations.

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

- **The United States** : **Zeroing(Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping**

In AD procedures, the U.S. had applied a methodology known as “zeroing” when calculating anti-dumping duties (dumping margin) for each exporter. This methodology takes into account only export transactions at prices lower than domestic prices while ignoring export transactions at higher prices (and thus assuming the differences from domestic prices as zero), which will artificially inflate dumping margins. Zeroing is an unfair methodology that ignores transactions in which dumping is not occurring, and violates Article 2.4.2, of the AD Agreement, etc., that provide for calculation method of dumping margins.

Japan requested consultations under the WTO DS procedures with the U.S. in November 2004 and requested the establishment of a panel in February 2005. The Appellate Body Report, which was circulated in January 2007, ruled that zeroing is inconsistent with the WTO Agreements. Further, the Panel and the Appellate Body of the compliance proceedings were undertaken, and eventually, the U.S. and Japan agreed on a memorandum for resolution of this dispute in February 2012. In accordance to the memorandum, in February 2012, the U.S. amended the Department of Commerce regulation and abolished zeroing. Japan continues to pay close attention to future developments so that zeroing will be completely abolished based on the memorandum and the amended regulation.

Recently, the U.S. has been resuming the application of zeroing increasingly applying based on its own interpretation that zeroing is exceptionally allowable under the second sentence of Article 2.4.2 of the AD Agreements, in the context of target dumping (dumped exports targeting certain purchasers, regions or time periods). This raised concerns that the aforementioned ruling to prohibit zeroing was being rendered invalid in practice.

Korea and China referred to the U.S. AD measures on their domestic products to the WTO DS procedures (The United States: Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464); and The United States: Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)), citing that

zeroing was used for their products when targeted dumping was determined. Japan participated in these cases as a third party and argued that the usage of zeroing violates the AD Agreement. The Panel and the Appellate Body of the former case (DS464) and the Panel of the latter case (DS471) (this issue was not appealed to the Appellate Body) adopted an interpretation consistent with Japan's arguments and determined that the zeroing procedure by the U.S. violated the AD Agreement. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation by December 2017) elapsed, in January 2018 Korea requested countermeasures against the U.S.'s failure to implement the recommendation, and countermeasures up to the amount of 84.81 million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation by August 2018 elapsed, in September 2018 China requested countermeasures against the U.S.'s failure to implement the recommendation, and an arbitration is being conducted.

The recent panel report on the AD duties imposed by the U.S. on Canadian softwood lumber (DS534) publicized in April 2019 admitted that zeroing might be permitted to address targeted dumping under certain conditions. However, it also found that the current s zeroing practice by the U.S. violates Article 2.4.2 of the AD agreement.

Japan will continue to monitor any alleged findings of targeted dumping of Japanese products and the consistency of such measures with the AD agreement.

- **Brazil** : **Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.**

The Brazilian government granted automobile manufacturers etc. with IPI credits in accordance with the cost of automobile parts procured locally on condition of achievement of the prescribed fuel efficiency standards and implementation of manufacturing processes in Brazil, etc., and thus, introducing and maintaining possible reduction (or offsetting) of IPI. Similarly, the Brazilian government introduced and maintained preferential taxation associated with the local content requirements to the information technology devices sector to exempt it substantially from various taxes and contributions including IPI on the condition of implementation of certain manufacturing processes in Brazil, use of locally produced parts, and R&D investments in Brazil, etc.

These measures treat imported parts in a discriminatory manner compared to local ones, violating Article 3 of the GATT (national treatment obligation) and other obligations under the WTO agreement.

In July 2015, Japan requested consultations with Brazil under the WTO Agreement regarding its discriminatory preferential taxation, etc., in the automobiles and information technology sectors, and then in September 2015, requested establishment of a panel. The Panel was established within the month. Regarding this matter, preceding Japan, the EU had requested Brazil to hold a bilateral consultation based on the WTO Agreements in December 2013 which was established in December 2014. Japan has been requesting Brazil to correct these measures through the same panel procedures as those of the EU.

The Appellate Body Report circulated in December 2018 largely accepted the assertion

of Japan and the EU, supporting the panel report that the discriminatory preferential taxation in the automobiles and information technology sectors are inconsistent with the national treatment obligation, and part of the above measures corresponds to prohibited local content subsidies. Despite rejecting the Panel's finding that certain discriminatory preferential taxation for export companies corresponds to the prohibited export subsidiaries, the Appellate Body recommended that Brazil bring the measures into compliance with the WTO agreement and withdraw the prohibited local content subsidiaries without delay.

Japan will monitor whether Brazil withdraws or brings into compliance its measures in accordance with the recommendation as well as the consistency of the new automobile policy (ROTA 2030) that replaced the previous policy with the WTO agreement.

(4) Issues, whose details are unclear, with significant impact on trade and investment and their operation in particular needs to be monitored

- **China**：**Foreign Investment Law**

In March 2019. the Chinese government repealed the three major laws on foreign investment (the Law on Chinese-Foreign Equity Joint Ventures, the Law on Wholly-Foreign owned Enterprises, and the Law on Chinese-Foreign Contractual Joint Ventures) and established "Foreign Investment Law" as the basic law. The Chinese government has been considering the establishment of this law since 2015. The revised draft law, including draft of provisions regarding prohibition of forced technology transfer, was publicized in December 2018 and enacted after a short period of deliberation by the NPC, which was also an action responding to the trade conflict between China and the U.S.

In response to foreign companies' conventional concerns, this law includes new provisions that contribute to protecting rights and interests of foreign companies, such as prohibition of forced technology transfer (Article 22), pre-admission national treatment (Article 4 etc.), equal treatment for foreign companies' products in china to be procured by the Chinese government (Article 16). On the other hand, the system for the security examination of foreign investment (Article 33 etc.) and retaliatory provisions against discriminatory treatment by foreign countries (Article 37) may damage the stability of investment environment, and depending on how they are implemented, they may raise concerns about inconsistency with the WTO agreement. As the text of the law consists of general provisions without detailed implementing regulations, it is necessary to monitor its application in the future.

Japan has been requesting China at opportunities, including Japan-China Economic Partnership Consultation in April 2019, to ensure that the regulations that contribute to protecting rights and interests of foreign companies are appropriately applied and operated by the national and local governments. At the same time, Japan has been requesting China to make the provisions with concerns consistent with the WTO agreement and to clarify the content of the draft law by developing detailed implementing regulations. Japan will continue to monitor the enforcement and operation of the law, and will proceed with discussions for its improvement and clarification in bilateral and multilateral consultations.

- **China**：**Draft of Export Control Law**

The Chinese government had implemented the security export control regulation in which only items related to weapons of mass destruction were subject to the regulation, but in June 2017, it announced a draft of Export Control Law which adds a number of consumer products and technologies that are related to ordinary weapons to the restricted items, and at the same time, includes various new measures such as retaliatory measures, re-export measures, deemed export regulations, etc.

Since a concreate list of items to be subject to the regulation has not been publicized, among others, the contents of the new regulation are not clear yet. However, due to several points such as (i) there is a risk that items to be subject to the regulation could be excessively chosen with consideration for purposes other than the national security, including the competitiveness of trade and industry, development of technology, protection of strategically important rare resources, etc., (ii) there is a risk that disclosure of technologies could be required in the form of written application for export license beyond the extent necessary for the determination of whether the regulation is applicable or not to the subject product, (iii) it is provided that retaliatory measures against discriminatory export restrictions imposed by other countries could be implemented, etc., it is an excessive restriction on exports which may not be justified by Security Exceptions (Article 21 of GATT), and may be inconsistent with the prohibition of import/export restrictions (Article 11 of GATT). Depending on the operation of the law, it may significantly affect the environment of trade and industry between Japan and China.

Japan has been actively working on China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the relevant draft law at meetings of the WTO Council on Trade in Goods since March 2018, Trade Policy Review of China at WTO in 2018, Japan-China High Level Economic Dialogue held in April 2018, and Japan-China Economic Partnership Consultation in April 2019.

Japan will continue to monitor the deliberation of the draft law as well as enforcement and implementation of the law, and will proceed with discussions for the resolution of problems in bilateral and multilateral consultations.

（Reference 2）Proceedings of Individual Trade Policies and Measures Described in "METI Priorities Based on the 2018 Report on Compliance with Trade Agreements by Major Trading Partners" for the Past One Year

Name of the Country	Trade Policies and Measures	Proceedings
China	Technology Licensing Regulations that Discriminate between Domestic and Foreign Companies	Japan has repeatedly expressed concerns to China at various bilateral consultations (Japan-China Intellectual Working Group in January 2019 etc.) and the WTO framework (the Council for TRIPS). Japan also has repeatedly requested China to make the regulations to become consistent with the WTO agreement the Dispute Settlement procedure proposed by the U.S. (DS542) in which Japan participated as a third party. In response to this request, on March 18, 2019 the State Council announced removal of the provision that Japan had regarded as a problem (Order No.709 of the State Council of the People's Republic of China retroactively effective from March 2, 2019) Japan will continue to monitor the impact of the revision on practical operations (whether or not it is retroactively effective for the past contracts and whether it is thoroughly effective nation-wide, etc.) (Raised the issue at the Fifth Japan-China High Level Economic Dialogue held in April 2019 and Japan-China Innovation Cooperation Dialogue etc.).
	Aluminum Subsidies	G7 countries including Japan pointed out the urgent need of avoiding excess capacity in sectors such as aluminum in the Charlevoix G7 Summit Communiqué of June 2018. Japan raised the issues of China's subsidies and excessive supply in the Trade Policy Review of China at WTO in 2018. The OECD survey report published in January 2019 pointed out that the governments in China and other countries may have been supporting the aluminum industry with a significant amount of subsidies, distorting competitive conditions.
	Draft of Export Control Law	Japan has been actively working on China at meetings of the WTO Council on Trade in Goods since March 2018, Trade Policy Review of China at WTO in 2018, Japan-China High Level Economic Dialogue held in April 2018, and Japan-China Economic Partnership

		Consultation in April 2019.
	Cybersecurity Law	In addition to pointing out problems of the Law at the WTO Council for Trade in Services (March 2018, May 2018, October 2018, December 2018, and March 2019) and TBT Committee meetings (June 2018, November 2018, and March 2019), Japan took up this issue at bilateral consultations, etc., expressing concerns on the Law at Japan-China Economic Partnership Consultation in April 2019, Japan-China High Level Economic Dialogue and Japan-China Innovation Cooperation Dialogue in April 2019.
	Inappropriate Application of AD Measures	Japan expressed concerns as a government at public hearings about China's AD investigations which are considered inappropriate while pointing out problems of the investigation through submission of written opinions. Japan pointed out problems of the country's inappropriate AD investigations at WTO AD Committee meetings held in April 2019.
U.S.	Steel and Aluminum Import Restriction Measures based on Section 232 of the Trade Expansion Act of 1962	The U.S. obtained exclusion of additional tariffs on equivalent to 116.2 percent of the 2017 actual import of steel products from Japan as well as equivalent to 201.9 percent of the 2017 actual import of aluminum products from Japan as of May 17, 2019. In this regard, the U.S. confirmed at the Japan-U.S. joint statement in September 2018 that it would work out to resolve the problem of steel and aluminum import restriction measures based on the Section 232 as early as possible.
	Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products	Japan pointed out problems regarding the U.S. sunset review practice and measures at WTO AD Committee meetings held in April 2018 and October 2018.
	Zeroing (Inappropriate Calculation of AD	Korea and China protested against the U.S. AD measures, citing that zeroing was used when it determined targeted dumping (Korea: DS464, China:

	Duties) Including Abusive Zeroing In the Cases of Targeted Dumping	DS471). Japan also participated as a third country. Each Panel and the Appellate Body determined that the application of zeroing even to address targeted dumping was inconsistent with the WTO agreements, in line with Japan's view. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation by December 2017 elapsed, in January 2018 Korea requested countermeasures against the U.S.'s failure to implement the recommendation, and countermeasures up to the amount of 84.81 million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation by August 2018, In September 2018 China requested countermeasures against the U.S.'s failure to implement the recommendation, and an arbitration is being conducted. The panel report on the AD duties imposed by the U.S. on Canadian softwood lumber AD (DS534) publicized in April 2019 admitted that zeroing to address targeted dumping might be permitted under a certain conditions. However, it also found that the current U.S.'s zeroing practice by the U.S. itself violates Article 2.4.2 of the AD agreement.
Korea	Sunset Review Practice on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures)	Japan pointed out concerns several times about the issue from the perspective of international rules at WTO AD Committee meetings, expressing serious concern about the prolonged measure. The Minister of METI requested the Korean Minister of Trade, Industry and Energy to abolish the taxation in May 2018. However, since the Korean government did not abolish the relevant taxation and no improvement was made afterwards, Japan requested consultations based on the WTO Agreements with Korea on this issue in June 2018. Based on the results of the consultations, Japan requested the establishment of a panel in September 2018 (The Panel was established the next month and composed in January 2019).
	The AD Duty Measures on Pneumatic Valves	The Panel report was circulated in April 2018, in which the core of Japan's argument (Korea's AD measures contain defects in their determination of injury and causal relationships and procedural transparency) was accepted. However, Japan's arguments on some of the

		disputed points were neither accepted nor judged on the grounds that they were beyond the scope of referred issues handled by the Panel. Japan appealed against some of the disputed points to the Appellate Body in May 2018 in order to seek the judgement of the WTO Appellate Body and complete abolishment of the measures.
India	The Safeguard Measures on Hot-Rolled Steel Products	In November 2018, the Panel report was circulated where Japan's assertion was largely accepted. India appealed in December 2018.
	Increases of Tariff on IT Products	The Indian government raised the applied tariff rates multiple times on part of ICT products that are duty-free under the WTO bound tariff schedule. Even though Japan has repeatedly expressed concerns in the relevant WTO Committees and requested to withdraw the measures, India further raised the tariffs, showing no sign of improvement. In May 2019, Japan requested consultations with India in accordance with the WTO agreement.
Brazil	Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.	The Panel report was circulated in August 2017 in which the Panel determined that Brazil's Discriminatory Preferential Taxation was inconsistent with the GATT (national treatment obligation) and the ASCM. Brazil made an appeal to the Appellate Body in September 2017 and the Appellate Body report was circulated in December 2018. Although Appellate Body rejected the panel's finding on the export subsidies, it upheld the panel's determination that certain measures were inconsistent with the national treatment obligation as well as constituting local content subsidiaries, which are prohibited. The Panel and Appellate Body reports were adopted by the Dispute Settlement Body (DSB) in January 2019, and Brazil is to implement recommendations by December 2019.
Vietnam	Imported Automobile Certification System.	Since March 2018, Japan has pointed out problems at meetings of the WTO Council on Trade in Goods and TBT Committee meetings and has worked on Vietnam. In this regard, although Japan has resumed export of automobiles under practice of the Vietnam authorities since October 2018, the Decree No. 116 has not been modified at all. Thus Japan has continued expressing

		concerns at meetings of the WTO Council on Trade in Goods and TBT Committee meetings.

(Reference 3) Responses to the Issues regarding WTO Dispute Settlement Procedures

Four members' terms out of seven of the Appellate Body have ordered since June 2017. However, the Dispute Settlement Body (DSB) has yet established a consensus to commence procedures to select successors. Another two members are expected to complete their term this December, and the number of members of the Appellate Body will be less than three that is the minimum number required to address a dispute.

The U.S. that opposes commencing selection procedures has raised an issue where the Appellate Body and the panel have been expanding rights or reducing obligations that were agreed by Member States. Furthermore, it raises five specific concerns: (1) the duration of proceedings by the Appellate Body have exceeded 90 days, (2) members of the Appellate Body Report whose terms expired are continuing their duties, (3) unnecessary opinions are expressed to settle individual disputes, (4) examination by members of the Appellate Body beyond the scope of their duties (examination of municipal laws), and (5) precedential value of the Appellate Body (the Appellate Body requests the panel to obey its interpretation unless cogent reasons are presented). While the U.S. insists that it cannot agree to commence procedures to select successors until the above problems are resolved, other countries are discussing to resolve the problems.

In fear that functions of the dispute settlement system cease to exist, discussions are being conducted at various levels, not only in Geneva but also among leaders and ministerial-level officials. Dr. Walker as New Zealand's WTO Ambassador was appointed to serve as facilitator in January 2019 for continual discussions through informal meetings. Multiple Member States presented proposals for resolving the problems, including Japan that presented a joint proposal with Australia and Chile in April 2019, regarding the issue of Appellate Body's exceeding its authority. As the Appellate Body Report revealed that the dispute settlement system has underlying issues, including a problem that the dispute regarding Korea's import restrictions on Japanese marine products may be left unsettled, in April 2019 in addition to the joint proposal, the Japan presented to the DSB a request document calling for discussion to make the WTO dispute settlement mechanism function properly. Japan also pointed out at the regular meeting of the DBS in May 2019 that the Appellate Body deviated from its roles in the aspect that the Report indicated the Appellate Body decided not to judge the consistency with the WTO agreement, which should be judged in conclusion, and raised the problem with Member States for improvement.

In addition, at a WTO informal ministerial meeting held in the OECD Council in May 2019, and the G20 Ministerial Meeting on Trade and Digital Economy in June 2019, lively discussions were carried out at the political level. Especially, at G20 Ministerial Meeting on Trade and Digital Economy in June 2019, as the host country, Japan summarized a ministerial statement "We agree that action is necessary regarding the functioning of the dispute settlement system consistent with the rules as negotiated by the WTO members."

Japan places emphasis on the WTO dispute settlement system as a core pillar for the multinational trade system. Based on the ministerial statement of the G20 Ministerial Meeting on Trade and Digital Economy in June 2019, Japan will make efforts to enable the

WTO dispute settlement system to function properly to resolve the problem earlier.

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