

# Chapter 1

# China

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## Transparency, Uniform Administration and Judicial Review

### [Commitments upon Accession]

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

### [Status of Implementation and Points to Be Rectified]

#### (1) Transparency

##### <Status of Implementation>

Previously, many laws and regulations had been unpublished and even those that were published, particularly regulations at the local level, were difficult to obtain.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

In recent years, China has made considerable efforts to improve the transparency of trade-related policies and measures, such as: (i) the active disclosure of laws and regulations through the Internet and the Official Gazette; (ii) the establishment of “the World Organization Notice Enquiry Center (World Trade Organization Notification Enquiry Center)” at the Ministry of Commerce; and (iii) the promulgation of Orders to introduce a comment period and to allow the holding of a public hearing prior to the actual promulgation of laws and orders. However, there are cases where the existence of unpublished laws/regulations and instruction documents are pointed out. In other cases, the content of the promulgated laws/regulations is abstract and the contents of the regulations are unclear.

In addition, notification of subsidies required by the WTO agreements has been pointed out to be insufficient by the WTO Subsidies Committee, etc. This is an example of imperfect transparency (for details, refer to the section on subsidies).

With regards to laws/regulations on information disclosure, the “Government Information Disclosure Ordinance (State Council)” came into force in May 2008. This Ordinance stipulates that certain information - including information on the establishment of organizations within government institutions and their functions, administrative processes, etc. - should be made public through the Official Gazette, government websites or other means easily accessible to the general public. Moreover, some central government agencies and local governments (provinces and cities) have disclosed financial budget information and policy information.

After the enforcement of the Government Information Disclosure Ordinance, the basic policies on the promotion of government information disclosure are indicated in major policy documents. The “opinion on deepening of administrative information disclosure and reinforcement of administrative services” issued on June 8, 2011 demands reinforcement of the implementation of the Government Information Disclosure Ordinance, disclosure of internal items of government institutions, etc. The “Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China”, which was approved in the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China on October 23, 2014, clearly described promotion of openness of administrative information and to uphold “always remaining transparent other than in exceptional cases, and ensure that decision-making, implementation, management, services, and outcomes are all open to the public”. The “Opinions on Overall Promotion of Government Information Disclosure” released on February 17, 2016 by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council stipulated the establishment of the negative list for administrative information disclosure. It clearly indicated that items outside of the list are disclosed in principle. “Notice of Administrative Instructions for the ‘Opinions on Overall Promotion of Government Information Disclosure’” issued on November 10 of the same year by the General Office of the State Council promotes disclosure of information on five items of administrative decisions, enforcement, management, services, and results, and demands proactive response to interests of public opinions and establishment of the platform to disclose government information.

In addition, on July 30, 2016, the General Office of the State Council issued the Notice on Better Responses to Public Opinion on Administration in Administrative Information Disclosure Activity by the General Office of the State Council. This action was driven by a statement made by Premier Li Keqiang on February 17, 2016, that a modern government should respond to expectations and concerns of its people in a timely manner. It also was driven by an idea that administrative information disclosure and responses to public opinion regarding administration should be enhanced against the background of the frequent occurrence of expressions of public opinion due to the growth of the Internet and new media. The Notice demands respective local governments and respective sections of the government to reinforce the response to public opinions regarding misunderstanding and misinterpretation of policies and measures or matters

related directly to and having a relatively large impact on public interests. Deadlines are also clarified by requiring a press conference to be held within 24 hours after the occurrence of a special serious incident or serious emergency incident.

The Government Information Disclosure Ordinance was revised on April 3, 2019, and was enforced starting on May 15 of the same year. The revised Ordinance consists of six chapters and 56 articles. It greatly expanded the provision contents from the former Ordinance, including expansion of the scope of disclosure, clarification of subjects and responsibilities of disclosure, and refinement of procedures. The chapter structure after the revision is: Chapter 1: General rules (Articles 1 through 9) Chapter 2: Subjects and scope of disclosure (Articles 10 through 18) Chapter 3: Voluntary disclosure (Articles 19 through 26) Chapter 4: Disclosure by disclosure request (Articles 27 through 45) Chapter 5: Supervision and security (Articles 46 through 53) Chapter 6: Appendix (Articles 54 through 56). Main revisions include clarification of the fundamental rule to always disclose in principle (Article 5), expansion of the scope of voluntary disclosure (Articles 19 through 21, 26), clarification of the subject responsible for information disclosure (Article 10), refinement of provisions regarding disclosure procedure in response to disclosure request (Article 33, etc.).

In recent years, the State Council has been distributing the “notification of the summary for government information disclosure activity” to each province, self-governing district, direct-controlled municipality, committee of each division of the State Council, and organization under direct control every year and instructing them to thoroughly promote the contents.

The said notification in June 2020 required the enhancement of administrative information disclosure. For instance, it includes ensuring fairness of market supervision and management by fully disclosing the market supervisory rules and standards to market entities, providing more accurate and convenient policy consultation to market entities by enhancing counter services in each section, and improving transparency and convenience of administrative services, etc.

The State Council has established “政務公開在行動”, which is a special website to externally transmit administrative information disclosure status, since 2016 and has been disclosing policies on administrative information disclosure through a special page in a chronological order.

As for the recent efforts related to judicial organizations, the Supreme People's Court released “opinions of the Supreme People's Court on further deepening of judicial information disclosure” in November 2018. The opinions stipulated that information on trials is swiftly disclosed, that disclosure is the principle and non-disclosure is exceptions, that public opinion supervision by the media is proactively accepted, etc. According to the “Judicial Reform of Chinese Courts (2013–2018)”, which was released by the Supreme People's Court on February 27 of 2019, information disclosure has been promoted on the internet since 2013, and information has already been disclosed through websites, such as “China Judgments

Online (containing approximately 91.95 million juridical documents)”, “China Trials Online (disclosing approximately 6.96 million live court trial videos)”, “China Judicial Process Information Online (has disclosed approximately 1.5 billion information cases regarding juridical process)”, “China Enforcement Information Online (releasing approximately 6.27 million subjects of enforcement)”, and “National Enterprise Bankruptcy Information Disclosure Platform (has disclosed approximately 70,000 cases of bankruptcy and compulsory liquidation)” .

### <Problems under International Rules>

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

## (3) Judicial Review

### <Status of Implementation>

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

Administrative Procedure Law since it entered into effect October 1, 1990. Under the conventional Administrative Procedure Law, it was difficult to bring a lawsuit, conduct a review, and execute a judgment or order. Therefore, issues that should be resolved through a lawsuit were often addressed through complaint letters and petitions, causing people these procedures instead of resorting to law. With regard to such issues, the 2015 revision lowered hurdles for lawsuits, expanded the scope of cases acceptable, eliminated obstructions against accepting a case, made the review standards stricter, and strengthened the responsibility to respond to an action. The Administrative Procedure Law was further amended in June 2017 to add a provision providing that if a government institution fails to perform its duties in accordance with laws, the People's Procuratorate shall file a lawsuit to the People's Court according to laws.

#### <Problems under International Rules>

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

## Export Restrictions

### (1) Imposition of Export Tax

China updated the adjustment table for duty rates and temporary duty rates on November 1, 2006. Since then, they have changed duty items and duty rates on multiple occasions.

However, China has expressed that they are discontinuing all duties and surcharges on export items, excluding the cases where duties are imposed on products (13 items, including ferromanganese, ferrochrome, crude steel, anode copper for electrolytic refining and copper and aluminum scrap) included in Annex 6 (list of exemptions from the ban on taxation on exports) under Item 2, Article 11 of the WTO Accession Protocol or cases where duties are imposed in conformity with the provision under Article VIII of the GATT. Due to this, if they impose taxation on products other than these exemptions, they are considered to be in violation of the treaty in the WTO Accession Protocol.

As for duty imposition measures for rare earths, tungsten, and molybdenum, the WTO dispute settlement processes (DS431, 432, 433 (Refer to: CHINA – MEASURES RELATED TO THE EXPORTATION OF RARE EARTHS, TUNGSTEN, AND MOLYBDENUM: Part II, Chapter 3, 4. Major cases (5))) determined that it was not in conformity with the agreement. China abolished it in May 2015.

Refer to pages 18-21 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO,

FTA/EPA and IIA - for details.

### (2) Export restrictions on Raw Materials

#### <Outline of the Measures>

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

The “2015 Catalog of Goods Subject to Export License Administration” lists 591 items as subject to export licenses.

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

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

#### <Problems under International Rules>

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

#### <Recent Developments>

In October 2016, the United States (DS508) and the EU

(DS509) requested the establishment of a panel on export regulatory measures (export duties, export volume limitations, etc.) for antimony, indium, chromium, cobalt, copper, graphite, lead, magnesia, talc, tantalum, and tin. However, the panel has not been established.

### **(3) Export Control Law**

#### **<Outline of the Measure>**

The Chinese government had the Security Export Control System which only regulates items related to weapons of mass destruction. In June 2017, many consumer goods and technologies related to ordinary weapons were added to the control subjects and at the same time Export Control bills (the Exit Management System Law) (first draft), which include new measures such as retaliatory measures, re-export control and deemed export control, were published. The second draft and the third draft were published in December 2019 and July 2020, respectively, and after receiving public comments and revising the draft, the Export Control Law was enacted on October 17, 2020 and enforced on December 1 of the same year. On the next day, December 2, a list of the controlled goods under the Export Control Law and the Cryptography Law was published (enforced on January 1, 2021), and import and export of cryptography related devices are now subject to application for license (these items were merged into a single list with items related to weapons of mass destruction, etc., which had previously been subject to export control in China, at the time of the regular revision of the list of items under import and export control on January 31, 2021). The whole picture of the System is still unclear. However, there are provisions which are suspected to be inconsistent with the WTO Agreement as shown below. The system has a risk to affect the trade and investment environment between Japan and China depending on its operation.

#### **<Problems under International Rules>**

The following measures referred to in (a) to (c) which can be included in this Law may be excessive as export control, not meeting the requirement of GATT Article XXI that the imposing country “considers (such measure) necessary for the protection of its essential security interests”, and thus may violate GATT Article XI that prohibits import and export restrictions.

##### **(a) Risk of Excessive Expansion of Control Subject Items**

This Law provides that a list of control subject items is

established “in accordance with the export control policy based on this Law and relevant laws/administrative regulations” (Article 9), and the said Article itself does not clearly describe specific matters to be considered. However, the “Concept of Overall National Security” (Article 33) mentioned as the purpose of export control practice under the Law is China’s unique national security concept, which includes a wide scope of factors (including security of economy, culture, society, science technology, resources, etc.), and is not limited to the purpose of national security in the narrow sense, but may include the purpose of industrial/trade protection. In addition, the “national security and interests” are mentioned as the purpose and factors to consider throughout the Law. Since the “national interests” was added in the final draft to the “national security” mentioned in the first and second draft, it may be understood that industrial policy is expected to be taken into account. Furthermore, a wide range of regulations can also be implemented based on temporary control of items not included in the list (Article 9(2) and Article 12(2)) and the blacklist system (Article 18), etc.

Considering that the “protection of important strategic scarce resources” was mentioned as a necessity for legislation in the explanation of drafting this Law, there is a concern that, for instance, control subject items may be excessively expanded by regulating strategic scarce resources such as rare earths, etc. based on the “resource security” included in the “Concept of Overall National Security”.

##### **(b) Risk of Requests to Disclose Technologies**

This Law provides the obligation to submit relevant materials as they are in accordance with laws/regulations for the application for export license of dual-use items (including technologies and services) (Article 21). It also provides the obligation regarding end users and end use to submit the exporter’s certificate (Article 15) and evaluation and investigation by the Chinese authorities (Article 17). Because of these provisions, there is a concern that this may allow the Chinese regulatory authorities to require excessive disclosure of important technological information such as source codes in determining the applicability, or to directly access and steal sensitive information of Japanese companies legally through the process of examining end users and end use. Since the details of both measures are left to the implementing regulations, we must pay close attention to specific provisions and operation of submitted documents by subordinate laws and regulations in the future.

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

This Law includes a provision providing that when other countries abuse export restrictions against China and endanger China’s national security and interests,

China may take “appropriate measures” against such countries (Article 48). This provision was included in the draft prepared by the Ministry of Commerce, but deleted in the first and second draft, and then restored in the final draft. Based on this provision, there is a risk that unilateral export control measures whose purpose is not necessarily security may be taken.

In addition, in June 2019, Chinese Ministry of Commerce announced, as a measure in accordance with the Foreign Trade Law/Anti-Monopoly Law/National Security Law, etc., that China will introduce an “Unreliable Entities List” regime. Accordingly, foreign companies, organizations or individuals that violate market rules, break the contractual spirit, boycott, or cut off supplies to Chinese companies for non-commercial reasons, and causing serious damages to the legitimate rights and interests of Chinese companies would be listed as “Unreliable Entities”. Specific contents of this measure are yet to be announced. It explains that the objectives include compliance/maintenance of international rules and multilateral trading system and fight against unilateralism and trade protectionism, but there is a possibility that this measure may be used as a retaliation measure against restriction/prohibition of export by other countries. We need to continue paying close attention.

Other than the above, this Law also includes the provisions of (d) re-export control and extraterritorial application. In other words, violations of this Law by organizations/individuals outside of China are also subject to the discipline under the Law (Article 44) and the control of re-export is to be implemented (Article 45). But their details are left to the implementing regulations. For these provisions, there is a concern that, depending on the implementing regulations and specific operations, excessive extraterritorial application of domestic laws, which is not allowed under the international law, may take place.

#### <Recent Developments>

The Japanese industries submitted written opinions to China regarding the first draft to realize a transparent system suitable to international rules and practices (in July 2017 by Center for Information on Security Trade Controls (CISTEC), in December 2017 by six organizations including CISTEC and the Japan Machinery Center for Trade and Investment, and two organizations including the Japan Business Federation). In addition, in February 2018, 13 industry organizations including CISTEC, the Japan Machinery Center for Trade and Investment, the Japan Business Federation and the National Association of Manufacturers submitted written opinions to China. In January 2020, 14 organizations from Japan, U.S., and Europe (CISTEC/Japan Business Federation/Japan Machinery Center for Trade and Investment, etc.) submitted written opinions regarding the second draft based on the similar perspective. In November 2020, 10 industrial

organizations in Japan, including CISTEC, Japan Business Federation, and Japan Machinery Center for Trade and Investment, submitted a written request entitled “Extraterritorial Application Regulations of China and the United States” to point out the concerns regarding the Export Control Law of China and to request for response at the government level. In the same month, the Minister of Economy, Trade and Industry urged industries to identify the risks in their supply chains, and told that excessive withering beyond the respective countries’ measures is unnecessary. The Minister also stated that the Ministry of Economy, Trade and Industry will provide support at the front end if any unreasonable requests are made.

Japan has urged China in the WTO Council for Trade in Goods since March 2018, the vice-ministerial-level regular consultation between the Ministry of Economy, Trade and Industry and China’s Ministry of Commerce in December 2019 and other meetings to realize a fair and transparent system in accordance with international rules and practices.

### Right to Trade (Approval System for Trading)

Refer to page 22 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

## Tariffs

### Tariff Structure

\* This particular case was included in light of the following concerns despite it being a trade or investment policy or measure that does not expressly violate the WTO Agreements or other international rules.

#### <Outline of the Measures>

Although the average bound tariff rate on non-agricultural products as of 2019 is 9.1%, there are high bound tariff products including motorcycles (maximum 45%), photographic or film materials (maximum 35%), color monitors (20%), automobiles (15%), TVs (15%), projectors (maximum 12%), etc. Furthermore, the binding coverage on non-agricultural products is 100% and the simple average applied tariff rate on non-agricultural products was reduced from 8.8% to 6.5% in 2019.

#### <Concerns>

As long as the high tariff itself does not exceed the bound tariff, there is no problem in terms of the WTO

Agreements, but in light of the spirit of the WTO Agreements that promotes free trade and enhances economic welfare, it is desirable to reduce tariffs as much as possible.

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

### <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. By January 2024, tariffs on all 201 items will have been completely eliminated for 55 members (see 2. (2) “Information Technology Agreement (ITA) Expansion Negotiation” in Chapter 5 of Part II for details). As for China, elimination of tariffs on the subject items started in September 2016. For example, high tariff items include television cameras (35%), recorders and players (30%), and television receivers (30%). Tariffs on all subject items including the above items will be eliminated gradually and will have been completely eliminated by 2023.

In the Boao Forum for Asia held in April 2018, President of the People's Republic of China, Xi Jinping announced a key lecture and raised expansion of proactive import as one of the measures to expand the opening of the domestic market to foreign countries. Specifically, this included drastic reduction of automotive import duties and import duty reduction of other products.

On May 22 of the same year, the Chinese Customs Tariff Commission announced that the import duties for the total of 218 items, including automobiles and automotive parts, starting on July 1 of the same year (Public announcement by the Customs Tariff Commission [2018] #3). The duty was reduced from 20%~25% to 15% for automobiles, and it was reduced from 8%~25% to 6% for automobile parts. In the Standing Committee meeting of State Council held on May 30 of the same year, reduction of import duty rate for daily goods covering a wide scope was decided.

In the Standing Committee meeting of State Council held on September 26 of the same year, reduction of import duty rate for 1,585 industrial products, etc. starting on November 1 of the same year was announced (Public announcement by the Customs Tariff Commission [2018] #9). With this measure, the simple average applied tariff rate on non-agricultural products for Chinese customs was

reduced from 8.8% to 6.5% in 2019, as previously mentioned.

In addition, in accordance with the opening of the domestic market to foreign countries announced in the 1st China International Import Expo held in November of the same year, an announcement was made on December 22 of the same year that the import/export duties for some products are to be adjusted starting on January 1, 2019 (Public announcement by the General Administration of Customs [2018] #212). Duties were abolished for rapeseed meal and some raw materials for chemicals among the 706 target items on the same day.

In response to the impact of COVID-19, the following measures were taken as COVID-19 measures and economic measures.

In response to the impact of COVID-19, the following measures were taken as COVID-19 measures and economic measures.

- (i) Temporary elimination of import duty, indirect import value-added tax, and consumption tax on free (donated) imported goods (medical supplies and pharmaceuticals, medical devices, daily necessities, food and beverages, reagents used to prevent the spread of the disease condition, disinfectant products, medical masks, protective clothing, medical goggles, medical rubber gloves, etc.) used for COVID-19 epidemic prevention activities (from January 1, 2020 to September 30, 2020)
- (ii) Exemption of collection of import duty, indirect import value-added tax, or consumption tax on freights for which export declaration was made from January 1, 2020 to December 31, 2020 and which were re-imported within a year, and return of import duties already collected

## Anti-Dumping Measures

### [Commitments upon Accession]

Upon accession to the WTO, China committed to bring its regulations and procedures on anti-dumping and countervailing measures into conformity with the Anti-Dumping (AD) Agreement and the Agreement on Subsidies and Countervailing Measures<sup>1</sup>.

Additionally, when another Member conducts an investigation in relation to anti-dumping measures on Chinese products and performs price comparisons (calculation of margins of dumping), that member is

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



allowed to compare export prices with sales prices of an appropriate third country instead of China's domestic sales prices (Article 15 of China's WTO Accession Protocol).

The idea behind this is that market economy conditions do not prevail in China and there are no appropriate domestic sales prices. Article 15 (a) (ii), a part of Article 15 of China's WTO Accession Protocol, provides a basis for the above arrangement, but subparagraph (a)(ii) of that article expired in December 2016, 15 years after the accession of China. After the special treatment expired, the status of China's market economy became an issue of international debate (what is known as the issue of China's Market Economy Status). For details, refer to Part II, Chapter 6 of the Report.

## [Individual Measures]

China has initiated 288 AD investigations since 1995<sup>2</sup>. Out of them, Japanese domestic products are involved in the 53 cases<sup>3</sup> and for 42 of them, AD measures are imposed<sup>4</sup> (as of the end of June 2020 for both numbers). China's AD duties on Japanese 20 products are currently continuing (as of the end of June 2020).

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

### (1) **AD Measures on Japanese-Made Polyvinylidene Chloride (PVDC Polymer)**

In April 2017, the Chinese government decided an AD measure on Japanese-made polyvinylidene chloride. There is an issue regarding this decision that the explanations for setting of the price reduction and causality are both insufficient. The Japanese government pointed out the above aspect through public hearing for the matter and AD Committee meetings and requested improvement by submitting government opinions, etc. until the final decision was made. However, a decision, whose conformity to the WTO Agreements was questionable, was ultimately made. For details, refer to page 10 of the 2018 Report on Compliance by Major

Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -.

### (2) **AD Measures on Japanese-Made Acrylonitrile-Butadiene Rubber (NBR)**

#### <Outline of the Measures>

In November 2017, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on the imports of acrylonitrile-butadiene rubber (NBR) from Japan and Korea. In November 2018, the Chinese authorities made a final determination on the import of such product that there was dumping as well as injury to the domestic industry caused by the dumped imports.

#### <Problems under International Rules>

When comparing Japanese products, Chinese products, and Korean products, even if indicators such as sales of the Chinese domestic industries seem deteriorated a careful consideration is needed to determine whether the cause is exports from Japan because price differences is anticipated and the Chinese companies are over-expanding production capacity compared to growth in domestic demand. However, there is a problem that the causal link is recognized without such consideration. In addition, there is an issue of the "normal price" is not correctly because the Chinese government considered expenses that should be ignored, and used of inappropriate pricing for raw materials costs, and then the dumping margin was resulted in being unfairly high.

#### <Recent Developments>

The Japanese government participated in the public hearing held in May 2018, voicing concerns regarding international rules in this investigation as well as submitting an official government opinion. Furthermore, Japan also spoke at the AD Committee held in April and October 2018, indicating issues in the "International Rules issues" above. In this way, Japan has been cooperating with the industry and urging the Chinese government so that the investigation will be conducted in consistent with the WTO Agreement. However, in the end the Chinese government made the final determination in which there are doubts as to the WTO consistency. Japan will, in cooperation with the industry, continue to focus on China so that they will promptly terminate/correct AD measures that are inconsistent with the WTO Agreement.

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf)

<sup>3</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsRepMemVsExp.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsRepMemVsExp.pdf)

<sup>4</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_MeasuresRepMemVsExp.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresRepMemVsExp.pdf)

### **(3) AD Measures on Japanese-Made Orthodichlorobenzene**

#### **<Outline of the Measures>**

In January 2018, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on imports of orthodichlorobenzene from Japan and India. In January 2019, the Chinese authorities made a final determination on the import of such product that there was dumping as well as injury to the domestic industry caused by the dumped imports.

#### **<Problems under International Rules>**

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

#### **<Recent Developments>**

Japan will, in cooperation with the industry, continue to focus on China so that they will promptly terminate/correct AD measures that are inconsistent with the WTO Agreement.

### **(4) AD measures on Japanese-made Stainless Steel**

#### **<Outline of the Measures>**

In July 2018, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on stainless steel slabs, hot rolled stainless steel plates (cut sheets and thick plates), and hot rolled stainless steel coils from Japan, the EU, Indonesia, and the Republic of Korea. In July 2019, they made a final determination on AD tax imposition for the import of such product that there was dumping as well as injury to the domestic industry caused by the dumped imports.

#### **<Problems under International Rules>**

The physical characteristics, price ranges, commercial flows, and uses of the stainless products (slabs, hot rolled steel plates (cut sheets and thick plates), and hot rolled steel coils) subject to the investigation vary significantly and they contain a wide variety of products with no mutual substitutability. However, in finding the existence of the price effect, the Chinese government pointed out

only the decreasing trend of the average price of those wide variety of products and did not substantially analyze the impacts of the imported products concerned on domestic prices. Therefore, there is a concern that it is inconsistent with Article 3.2 of the AD agreement.

In addition, cumulative (collective) assessment of the effects caused by imports from countries/regions subject to the investigation (Japan, EU, Indonesia, and Republic of Korea) were conducted. The cumulative assessment needs to be appropriate in terms of the conditions of competition among the importing/subject countries. However, it is suspected that in this case the products from four countries/regions with totally different prices ranges and product characteristics were assessed cumulatively without reasonable grounds. Therefore, there is a concern that it is inconsistent with Article 3.3 of the AD agreement.

#### **<Recent Developments>**

Japan has been expressing its concerns to the Chinese government regarding issues in the aforementioned international rules at the WTO AD Committee and bilateral consultations. However, duties questionable under the WTO Agreements are still continuing. Japan will, in cooperation with the industry, continue to request the Chinese government to promptly eliminate/correct the AD measures concerned that are inconsistent with the WTO Agreement through all possible means.

### **(5) Anti-Dumping Investigation into Vertical Machining Center from Japan**

#### **<Outline of the Measures>**

In October 2018, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on imports of vertical machining centers from Japan and Taiwan.

#### **<Problems under International Rules>**

Japanese vertical machining center and Chinese machining center, which are the subjects of the investigation, have different markets responding to the required specifications of the final product on the user side and the required specifications of the manufacturing process not in a competitive relationship or alternative relationship. In addition, small models and medium/large models among Japanese machining centers have different users and uses. Therefore, there is a concern that treating them as the same type of products may be in violation of AD Agreement Article 3.1. Furthermore, there was no drastic increase in the number of imported units from Japan to China during the investigation period compared to the number of imported units during the 3 years prior to this. Due to this, the situation does not cause serious

injury or does not present the possibility of causing serious injury to Chinese domestic industry. Therefore, there is a concern that determining injury to industries in China may be in violation of AD Agreement Article 3.5.

#### <Recent Developments>

The Japanese government with industry has pointed out the above international rules through the submission of an official government opinion supporting the opinion from industry to the Chinese government and spoke at the AD Committee meetings in October 2018 and April 2019, since the beginning of the investigation in October 2018. Japan has urged the Chinese government on multiple occasions especially regarding the point that there is no impact on the Chinese domestic industry and no injury can be confirmed, through repeated opinions. This AD investigation was terminated on April 13, 2020 that no injury to the Chinese domestic industry is confirmed, although the the existence of dumping was confirmed.

### (6) **AD Measures on Japanese-Made Polyphenylene Sulfide (PPS)**

#### <Outline of the Measures>

In May 2019, upon the request of the Chinese domestic companies, the Chinese government initiated an AD investigation on imports of polyphenylene sulfide (PPS) from Japan, United States, Republic of Korea, and Malaysia. In November 2020, the Chinese government made a final determination to impose AD duties on these products based on the finding of dumping, injury to the domestic industry, and a causal relationship between them.

#### <Problems under International Rules>

Although China's import volume of PPS increased during the period from 2015 to 2018, the sales volume of Chinese domestic products also increased at higher rate and the share of imported products is decreasing in China. This indicates that the PPS industry in China rather is growing as the production volume and the sales volume are increasing. Based on these facts, it is unlikely that injury has been caused to Chinese domestic industry. Therefore, there is a concern that the measures may be inconsistent with Article 3.4 of the AD agreement.

In addition, even if there is injury or threat of injury in China, it is due to the impact other than of imports from Japan, including the impact of excessive investment resulting from increased production capacity of the domestic industry, as mentioned above, and slump in sales of textile and extruded products which use the PPS products of the applicant. Therefore, there is a concern that the measures may be inconsistent with Article 3.5 of the AD agreement.

#### <Recent Developments>

Japan has repeatedly expressed its concerns to the Chinese government regarding issues in the aforementioned international rules at the WTO AD Committee and bilateral consultations. However, they made the final determination in which there are doubts as to the WTO consistency.

Japan will, in cooperation with the industry, continue to focus on China so that they will promptly terminate /correct AD measures that are inconsistent with the WTO Agreement.

## Subsidies

### [Commitments upon Accession]

Upon accession, China made a commitment to abolish the export subsidies and domestic product priority use subsidies stipulated in Article 3 paragraph 1 (a) and (b) of the Agreement on Subsidies and Countervailing Measures and reserved the right to benefit from while confirming it would not seek to invoke application of part of the provisions regarding special treatment of developing countries. China made commitments exceeding part of the provisions of the Agricultural Agreement, such as not maintaining/introducing export subsidies for agricultural products. Refer to page 29 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA - for details.

### [Notification of Subsidies and Problems]

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

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

that is consistent with the WTO Agreement on Subsidies and Countervailing Measures.

## **[Individual Measures]**

### **(1) Subsidies for aluminum**

#### **<Outline of the Measures>**

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

#### **<Problems under International Rules>**

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

#### **<Recent Developments>**

In January 2017, the U.S. requested China a WTO bilateral consultation, claiming that subsidies to the aluminum ingot industry (policy finance and offering of inputs such as coal, alumina, and electricity at low prices) violates the WTO ASCM.

In the U.S. also, in June 2017, the International Trade Commission (ITC) announced the results of a survey on the factors affecting the competitiveness of the US aluminum industry (requested by the House of Representatives Revenue Commission). It was recognized that government intervention based on industrial policy is generalized in major aluminum producing countries such as China and the Middle Eastern countries and although the price of aluminum products worldwide declined due to oversupply of bare metal in 2011-2015 and the production capacity of the U.S. and Europe shrank by 19% and 11% respectively, in China and Middle Eastern countries, as a result of government intervention and technology investment, their production capacity increased by 40%.

And in November 2017, the US Department of Commerce started an AD/CVD investigation on the Chinese-made aluminum sheet material as authority's examination for the first time in 26 years since the CVD investigation for the Canadian-made softwood in 1991. The investigating authority found the relevant subsidies and the damages based thereon in this investigation and it was decided in December 2018 to impose dumping duties and countervailing duties.

Furthermore, in January 2018, the US Department of Commerce recognized in the survey of Article 232 for

aluminum (refer to Chapter 3 Unilateral Measures (2)) also that the worldwide excessive aluminum due to the subsidies of foreign governments such as China made a major negative impact on the production capacity of the aluminum ingot industry in the United States.

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

In May 2017, at the G7 Taormina Leadership Committee, as an initiative of Japan, the G7 countries committed to dealing with the worldwide overproduction capacity in steel, aluminum, and other major industries, further strengthening cooperation and working with partners so that these problems do not occur in other industry fields. Moreover, in June 2017, Japan pointed out its concern over the WTO Agreement with regard to industrial subsidies in the aluminum sector in the vice-ministerial-level regular consultation between the Ministry of Economy, Trade and Industry and China's Ministry of Commerce. Japan continues to hold discussions with the Chinese government with the aim of solving the issue by requesting improvement of transparency for subsidy policies in industries, including aluminum, in the same consultation held in December 2019. Japan also raised discussions regarding subsidies and excess capacity along with the U.S. And the EU in the Subsidies Committee meetings held in October 2016, April 2017, November 2019, and October 2020. Japan has been pointing out that it has a concern over market-distorting government measures, which has been a cause of excessive supply in the aluminum sector, etc., and that while each country has been taking various government measures to deal with the spread of COVID-19 and its impact, ensuring a level playing field is becoming more important and continuing discussions on subsidies that can cause excess capacity, including the improvement of transparency of subsidies, is important.

### **(2) Changes in Export Value-Added Tax Refund Rate**

With regards to China's value-added tax refunds at the time of export, the period from the announcement of laws/regulations on refund rate adjustment to the

enforcement is often short.

For example, the reduction of value-added tax rate enforced on May 1, 2018 for industries, such as manufacturing industry, transportation, and basic communication services, and agricultural products, etc., was announced in March 28 of the same year. There was only approximately 1 month between the announcement and the enforcement. Furthermore, the increase of the refund rate for export value-added tax enforced on September 15, 2018, targeting 397 items, including integrated circuit and books, was announced on September 5 of the same year. There were only 10 days between the announcement and the enforcement. While this short period has been improved compared to before, it is still difficult for companies to respond to policy changes with sufficient time.

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

As many as four tax rate adjustments, including the above, were made during the two years of 2018 and 2019. Because reimbursement of indirect taxes is not deemed to be a subsidy under the Agreement on Subsidies and Countervailing Measures (ASCM), a refund of the value-added tax does not formally violate the ASCM. Because the refund rate has frequently been adjusted as described above, however, it could be argued that in actuality the VAT is arbitrarily controlled as part of industrial policies. Arbitrary control of the VAT is not consistent with the spirit of the ASCM Agreement, or the destination principle (which provides that the destination country, where the final consumers reside, has the right to tax), and can possibly be challenged under the ASCM as being in reality export subsidies.

### **(3) Subsidies for Shipbuilding**

#### **<Outline of the Measures>**

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

#### **<Problems under International Rules>**

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

#### **<Recent Developments>**

At the high level economic discussions between Japan and China in April 2018, the Japan-China-Korea summit in the following May, and Japan-China-Korea summit in December 2019, Japan stressed the necessity of early resolution to the excessive supply capacity issue in the shipbuilding industry. In addition, at the 131st OECD Council Working Party on Shipbuilding in November 2020, discussions were made on shipbuilding policies, including the structure of the Chinese shipbuilding industry and government subsidies, etc. We will continue to make efforts to collect more information regarding public aid in China and keep a close eye on its WTO-consistency.

## **Trade-related Investment Measures (TRIMs)**

### **[Commitments upon Accession]**

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

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

### **[Status of Implementation]**

In line with the above commitments, from October 2000 to July 2001, China amended the "Foreign Capital Law" applied to 100% foreign-owned enterprises, the "Chinese-foreign Contractual Joint Venture Business Corporate Law" applied to contractual joint ventures, the "Chinese-foreign Joint Venture Business Corporate Law" applied to equity

joint venture companies and these Implementation Guidelines and the provisions relating to export requirements, local content requirements, import/export balanced foreign currency balance requirements were deleted. These three foreign investment laws were partially amended in September 2016. As a result, matters that were previously subject to examination/approval now are managed through notifications.

Furthermore, on January 19, 2015, the Ministry of Commerce announced a draft of the “Foreign Investment Law of the People’s Republic of China” as a basic legislation related to investment in China by foreign companies, which consolidated the aforementioned three laws of foreign companies which include amendment of the Company Law and other related laws and ordinances to reflect changes of the relevant circumstances in times. The Ministry of Commerce invited public comments for the draft by February 2015, but there has been no response to the submitted public comments and in the end the draft was not made public. However, the State Council announced a new draft for the Foreign Investment Law in December 2018, and accepted public comments until February 2019.

The Foreign Investment Law was established at the 2nd session of the 13th Standing Committee of the National People's Congress of the People's Republic of China held in March 2019, and the enforcement took place on January 1, 2020. The Foreign Investment Law is the basic law regarding foreign companies’ investments in China and consists of 6 chapters (General Provisions, Investment Promotion, Investment Protection, Investment Management, Legal Liability, and Supplementary Provisions) and 42 articles. In addition to clearly indicating prohibition of transfer of technology by force (Article 22), this law provides treatment given to domestic citizens prior to joining the market (Article 4, etc.), equal treatment of Chinese products of foreign-funded enterprises in a government procurement (Article 16), free transfer of money overseas (Article 21), establishment of a complaint mechanism for foreign-funded enterprises (Article 26), etc. On the other hand, there are regulations regarding which other countries have concerns, such as the establishment of the safety review system for foreign investment (Article 35, etc.) and retaliation regulations against discriminatory measures by other countries (Article 40). Furthermore, the Foreign Investment Law itself does not stipulate specific contents, and the actual contents and impact of measures based on the said Law are largely dependent on the operation, including the detailed provisions.

When this came into effect, the Law of the People's Republic of China on Chinese-foreign Joint Ventures, Sole Proprietorship Enterprise Law, and Law of the People's Republic of China on Chinese-foreign Cooperative Enterprises, which were the existing laws for foreign investments, were abolished. In joint ventures, the board of directors possesses the highest authority. There used to be unique systems, such as unanimous agreement

of the board of directors being required for dissolution, etc. of joint ventures. However, these systems were abolished along with the abolishment of the three foreign investment laws and unified into the system according to the Company Act.

## **[Problems]**

Although there have been efforts, such as the above-listed amendments, to make domestic laws in China consistent with the WTO Agreement, non-conformance with the Agreement and restrictive measures on investment still exist and should be rectified speedily.

## **[Recent Developments]**

At the vice-ministerial-level consultation between the Ministry of Economy, Trade and Industry and China’s Ministry of Commerce on December 9, 2019 and the Japan-China Economic Partnership Consultation on November 9, 2020, Japan requested China to ensure effective operation of the Foreign Investment Law around the country, including by local governments, and establish a functional complaint resolution mechanism as provided for in the Foreign Investment Law.

### **(1) New Energy Automobile-related Investment Regulations**

On July 1, 2009, in order to encourage development of the domestic automobile industry and energy saving measures, the Ministry of Industry and Information Technology implemented a “Rule controlling entry of new energy automobile manufacturers and products” and “Entry conditions and evaluation requirements for entry of new energy automobile manufacturers”, as alternatives to the above rule. The rules require entering manufacturers to establish research and development institutes and to disclose technological information on the new energy automobile to be produced. In addition, the purpose of the “Provisions on Administration of Newly Established Pure Electric Passenger Vehicle Enterprises” (Decree No. 27 of 2015) (enforced on July 1 of the same year) promulgated by the National Development and Reform Commission on June 4, 2015 was to remove industrial barriers and to have parties with superior technological capabilities in the market take part in competition in the electric passenger vehicle industry. While the scope of parties that can enter the industry was expanded, strict requirements were set for their research and development capabilities and innovation power. Also, in the Attachment 1 “New Energy Vehicle Production Companies and Product Entry Management Regulations” of the “New Energy Vehicle Production Companies and Product Entry Management Regulations” published in 2017 (promulgated on January 6, 2017 and enforced on July 1, 2017), requirements are imposed in order to obtain permission to enter the new energy

automobile manufacturing industry. The manufacturers are required to indicate that they “understand and master” related technologies. Although this requirement does not require a technology transfer to China on the text, due to the joint venture regulation and the investment ratio regulation, it is necessary for a foreign-owned automobile manufacturer to establish a joint venture in China to operate in China and to have 50% or less of the equity ownership ratio. Therefore, there was a concern that it would practically be applied to foreign-affiliated car manufacturers in a manner requiring relocation of related technologies of new energy vehicles to China, and it might violate Article 7, paragraph 3 of the China accession protocol which bans the request for technology transfer accompanying investment.

### <Recent Developments>

In February 2020, the Ministry of Industry and Information Technology released a draft revision of the above “New Energy Vehicle Production Companies and Product Entry Management Regulations” (first draft) and accepted public comments until March of the same year. In the first draft, the provisions to demand foreign-owned enterprises, etc. to have research and development bases for the overall new energy automobiles/core parts/core technologies and technology information database in joint ventures (within China) were deleted, and the requirements for manufacturers were simplified mainly into (1) to possess technology assurance capabilities responding to the new energy automobiles to be manufactured (no specifications regarding parts and technology fields), and (2) to possess testing capabilities.

On April 7 of the same year, the Ministry of Industry and Information Technology published a new draft revision of the said provisions (second draft) and accepted public comments until May 7 of the same year. In the second draft, the technology hurdle was lowered by deleting “product design and development capabilities” (Article 5) from the conditions for entry. In addition, the provisions on “public disclosure of NEV companies that have terminated production for 12 months or more” (Article 23) was revised by replacing “12 months or more” with “24 months or more” to allow longer production termination period. On August 19 of the same year, the Ministry of Industry and Information Technology promulgated the revised “New Energy Vehicle Production Companies and Product Entry Management Regulations” (full text), which was enforced on September 1 of the same year.

In the revised Law, the conditions for entry into the new energy automobile manufacturing industry were relaxed. Therefore, in conjunction with the abolition of the limitation on the foreign investment ratio in new energy automobile manufacturing in 2018, a concern over practical technology transfer, etc. based on these regulations is considered to have been mostly resolved.

## (2) Automobile Industry Investment Management Regulations

### <Outline of the Measures>

In July 2018, the National Development and Reform Commission (NDRC) announced the Automobile Industry Investment Management Regulations (bill), which stipulate the investment conditions for new investments and/or expansion of existing production by automobile manufacturers. The Regulations came into effect in January 2019.

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

- (i) Fuel vehicles: Automobile that runs using an engine. This includes conventional fuel vehicles, normal hybrid vehicles and plug-in hybrid vehicles.
  - New investment by individual automobile manufacturers is prohibited.
  - Manufacturing expansion by existing automobile manufacturers requires that all of the following conditions be met. (however, (b) and (e) do not apply to the plug-in hybrid vehicle investment project)
    - (a) The automobile manufacturing capacity use rates for both of the preceding two fiscal years exceed the average rate for the industry.
    - (b) The ratio of manufactured new energy vehicles for both of the preceding two fiscal years exceeds the average ratio for the industry.
    - (c) The research and development expense accounts for at least 3% of the main business proceeds for both of the preceding two fiscal years.
    - (d) The product has international competitiveness.
    - (e) The automobile manufacturing capacity use rates of the province where the project is located have exceeded the industry average rates for the same product category for both of the preceding two fiscal years, and there is no fuel vehicle corporation in the same province in the same product category subject to special public notification in the industry management department.
- (ii) Pure electric vehicles: Automobile that runs using a motor. Includes fuel-cell vehicles.
  - Regarding new investment in independent pure electric vehicle corporations, the province where the investment project is located, the company that newly establishes the investment project and stockholders must each fulfill the following conditions.
    - (a) Affiliated province: The automobile

manufacturing capacity use rates have exceeded the industry average rates for both of the preceding two fiscal years, or the pure electric vehicle company investment project in the same category as the existing new independent one is complete, and the number of annual vehicles produced has reached the construction scale.

- (b) Company: The company has a product research and development institution and/ or research and development expert team, and the experience and capability for concept design/system and structural design, has researched and developed products with a high main technical index in the industry, has the intellectual rights of its core technology, and has obtained authorization/confirmation.
- (c) Stockholders: Will not withdraw capital until the project is complete and the annual manufactured number of vehicles has reached construction scale, and owns the intellectual rights and has the production capacity for the core parts, etc.
- For manufacturing expansion of pure electric vehicles of the same category by an existing automobile manufacturer, a fuel vehicle company must have an automobile manufacturing capacity use rates for both of the preceding two fiscal years that exceed the average use rates for the industry, and a pure electric vehicle company must have an annual production number of vehicles that reaches the construction scale of the previous fiscal year.
- (iii) Battery to install in vehicle
  - New investment has the production capacity of the core parts and a research and development facility and expert research and development team.

#### **<Problems under International Rules>**

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

Specifically, regarding (1), in case establishment of a research and development facility in China is required in effect, and in case (2) is applied in effect in the form of requiring transfer of new energy car related technology to

China for foreign automobile manufacturers through the combined application with the joint venture regulations and investment ratio regulation (see (1) above), such distribution of investment rights possibly violate Article 7 Paragraph 3 of the Accession Protocol of China, which stipulates that China shall ensure that the distribution of the right of investment is not conditioned on performance requirements of any kind (including request for transfer of technology, and request for research and development to be implemented in China).

#### **<Recent Developments>**

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



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

	Amended regulations	Revised matters
Establishment of a company, performance requirements, etc.	“Administrative Provisions on the Registration of Foreign-Funded Partnership Enterprises” (March 2010)	<p>★ The provisions prohibit the establishment of foreign-funded partnership enterprises for industries requesting a foreign capital ratio or industries using the statements such as “limited to equity joint ventures,” “limited to contractual joint ventures,” “limited to equity joint ventures or contractual joint ventures,” “Chinese partner shall hold the majority of shares” or “Chinese partner shall hold the relative majority of shares.”</p> <p>* A revision was made on March 1, 2014 related to the change of the management method of all companies including domestic companies from the annual inspection method to the annual report method, however no substantial changes were made.</p>
	Circular of the General Office of Circular of the General Office of the State Council on the Establishment of Security Review System Regarding Merger and Acquisition of Domestic Enterprises by Foreign Investors (February 2011)	★ A security review system for mergers and acquisitions of domestic enterprises by foreign investors is established. The National Development and Reform Commission and the Ministry of Commerce are to lead the initiative in cooperation with related government agencies, depending on the related industries and fields of the merger or acquisition.
	Provisions on Implementation, by the Ministry of Commerce, of the Security Review System for Merger and Acquisition of Domestic Enterprises by Foreign Investors (August 2011)	★ The provisions stipulate the procedures to be followed when the Ministry of Commerce implements the security review system for mergers and acquisitions of domestic companies by foreign investors.
	Notice on Further Improving Management Measures Concerning Foreign-invested Companies by Ministry of Commerce and State Administration for Foreign Exchange (December 2011)	<p>★ The circular prohibits use of domestic loans of foreign-funded investment companies for reinvestment in China.</p> <p>★ With the approval of a local foreign exchange bureau, foreign-invested companies may directly use their legitimate income obtained in China for reinvestment in China. (Conventionally, income could be used for reinvestment in China only after registering capital)</p>
	Measures for Handling Complaints of Foreign-invested Enterprises (October 2020)	<p>★ China’s Ministry of Commerce provided the rules on handling complaints to government institutions by foreign-invested enterprises aimed at strengthening protection of interests of foreign-invested enterprises and improving the investment environment.</p> <p>★ National Center for Complaints of Foreign-Invested Enterprises was established within the Investment Promotion Agency of the Ministry of Commerce, and the counters in charge are opened in each province, municipality, and self-governing district (the Measures provide that a counter in charge of handling complaints shall be established in provinces and higher level governments).</p>
	Measures for National Security Review of Foreign Investment (January 2021)	<p>★ China’s Ministry of Commerce and National Development and Reform Committee promulgated the rules on security review when foreign-invested enterprises make investments in China in accordance with the Foreign Investment Law and the National Security Law.</p> <p>★ The scope of application is provided to be “military-related matters, important agricultural products related to national security, critical energy and resources, manufacture of critical equipment, important infrastructure, important transportation services, important cultural products and services, important information technologies and internet products/services, important financial services, key technologies, and other important fields”, but the specific scope is unclear.</p>

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

### (3) Negative List for Foreign Investment Entry

On June 23, 2020, the “Special Administrative Measures for Foreign Investment Access to Pilot Free Trade Zones (Negative List) 2020” (hereinafter referred to as the “2020 Negative List for Foreign Investment Entry”) was

publicized (Order No. 32 of Ministry of Commerce and National Development and Reform Committee, enforced on July 23 of the same year).

This is the tenth revision since the first promulgation of the List in 1995. There are 40 restrictive measures included in the 2019 version, but in the “2020 Negative List for Foreign Investment Entry”, this has been reduced to 33 items. Those designated as restricted industries and

prohibited industries in the “2020 Negative List for Foreign Investment Entry” are as follows.

- List of industries restricting foreign investment

1. The equity ratio on the Chinese side in the selective breeding and seed production of new varieties of wheat shall not be less than 34%. The equity ratio in the selective breeding and seed production of new varieties of corn shall be controlled by the Chinese side.
2. The equity ratio in the printing of publications shall be controlled by the Chinese side.
3. The equity ratio on the Chinese side in the manufacturing of finished vehicle products, excluding special vehicles, new energy vehicles, and commercial vehicles, shall not be less than 50%, and the same foreign investor may establish up to two joint ventures in China that manufacture finished vehicle products in the same category (passenger vehicles and commercial vehicles). (In 2022, the restriction on foreign equity ratio in the manufacturing of passenger vehicles will be abolished, and the restriction that allows only up to two joint ventures in China that manufacture finished vehicle products in the same category will be abolished.)
4. Production of terrestrial reception equipment and important parts of satellite television broadcasting
5. The equity ratio in the construction and management of nuclear power plants shall be controlled by the Chinese side.
6. The equity ratio in domestic water carriers shall be controlled by the Chinese side.
7. The equity ratio in public air carriers shall be controlled by the Chinese side, the proportion of investment by foreign investors and their affiliates shall not exceed 25%, and legal representatives must be Chinese nationality holders. Legal representatives of general air carriers must have Chinese nationality, general air carriers in agriculture, forestry and fishery shall be limited to joint ventures, and the equity ratio of other general air carriers shall be controlled by the Chinese side.
8. The equity ratio in the construction and management of private aerodromes shall be controlled by the Chinese side. Foreign enterprises must not be involved in the construction and operation of airport control towers.
9. Telecommunications carriers: The percentage of foreign investment in value-added telecommunications services, only within the scope where opening was approved at the time of China's WTO accession, shall not exceed 50% (excluding e-commerce, domestic multiple communication, data storage/transfer, and call centers). The equity ratio in basic telecommunications services shall be controlled by the Chinese side.

10. Market research shall be limited to joint ventures.

Of these, the equity ratio in radio and television rating survey shall be controlled by the Chinese side.

11. The operation of preschool educational institutions, ordinary upper secondary education institutions, and higher educational institutions shall be limited to the partnership between China and other countries and led by China (principals or main business managers shall have the nationality of China and the percentage of Chinese members in the executive board or the Joint Management Committee shall not be less than 1/2).

12. Medical institutions shall be limited to joint ventures.

- List of industries banning foreign investment

1. Research and development, cultivation of Chinese unique, rare, and good breeds, and production of related propagating materials (including good genes in the business of cultivation, cattle breeding and fishery)
2. Selective breeding of genetically modified species of agricultural crops, livestock, poultry, and fishery seedlings and production of genetically modified seeds thereof
3. Catch of marine products in China's jurisdictional area and inland waters
4. Exploration, mining and beneficiation of rare earths, radioactive minerals, and tungsten
5. Application of processing technology such as steaming, roasting, baking in the traditional Chinese medicines and production of secretly prescribed Chinese medicine products
6. Wholesale and retail of leaf tobacco, cigarette, re-dried leaf tobacco and other tobacco products
7. Postal business entities, domestic delivery service of postal mails
8. Internet news information services, online publishing services, online program viewing services, management of products related to Internet cultures (excluding music), information dissemination services for general public by Internet
9. Legal affairs consulting in China (excluding provision of information on the influence of the Chinese legal environment) and becoming a partner with a Chinese domestic legal firm are not allowed
10. Social research
11. Development and application of human stem cells, gene diagnosis and therapeutic techniques
12. Research institution of humanity and social science
13. Geodetic survey, marine charting, aerial photography for mapping, surveying using ground mobile body, administrative mapping, topographic maps, the world administrative map, the national administrative map, administrative maps of the provincial level and below, national teaching maps, compilation of local teaching maps and 3D maps;

- compilation of navigation electronic maps; surveys relating to regional geological mapping, mineral geology, geophysics, geochemistry, hydrological geology, environmental geology, geological disaster and remote sensing geology
14. Required education facilities and religious education facilities
  15. Press (including but not limited to news service agencies)
  16. Editing and publishing business of books, newspapers, and periodicals
  17. Radio stations, TV stations, radio and TV channels, radio, and television broadcasting networks (originating stations, relaying stations, radio and TV satellites, satellites' ground transmission stations, satellites' receiving and relaying stations, microwave stations, monitoring stations, cable radio and TV broadcasting networks), on-demand operations of radio and TV, installation services of terrestrial reception facilities of TV and radio satellites
  18. Management company of radio and television program production (including import operations)
  19. Film production company, issuing company, distribution and screening company
  20. Auctioneers of cultural materials and works of art, shops dealing with cultural materials and works of art, and National Heritage Museum
  21. Literary art performance groups

## Standards and Conformity Assessment Systems

### [Individual Measures]

#### (1) Information Security Regulations in China

##### <Outline of the Measures>

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

Also, in 2007, the Chinese Ministry of Public Security promulgated the "Information security Multi-Level Protection Scheme" (MLPS). In the MLPS, the Chinese Ministry of Public Security categorizes IT security

products used in systems related to four categories of (1) systems such as communication networks and data centers, (2) systems of finance, railway, energy, etc., (3) general systems of government agencies, and (4) system concerning the national secrets, into different grades (Grades 1 to 5) by security level and requires the use of Chinese products as core element if the level is Grade 3 or higher.

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

Furthermore, in 2017 and 2019, the National Cryptography Administration of China implemented a public comment on the draft of the Cryptography Law. This Law was passed by the National People's Congress of the People's Republic of China in October 2019 and entered into effect on January 1, 2020. This Law stipulates that ciphers are classified as core cipher, ordinary cipher and commercial cipher, and each cipher requires permission for sales and use, or import and export, inspection and certification.

##### <Problems under International Rules>

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

##### <Recent Developments>

Regarding the Cryptography Law, the Japanese government submitted comments at the time of public comment in 2017 and 2019, and we have been expressing concerns together with other countries such as the U.S and the EU at the TBT Committees since June 2017. However, concerns of other countries were not reflected on the Cryptography Law adopted in October 2019. The Regulation on the Administration of Commercial Encryption was formulated under the new Encryption Law and public comments were invited in September 2020. The Japanese government submitted comments indicating that the definition of terms, the concrete

requirements of the review and evaluation and the scope of regulations were still unclear, etc. Japan also pointed out these points at the TBT Committee in October 2020. In addition, as for the Cyber Security Multi-Level Protection Scheme, China explained that the scheme was still in the draft stage at the TBT Committee. Therefore, Japan will continue to pay close attention to developments regarding these information security regulations, and will request that China clarify the regulatory content and urge correction so that the regulations will not become unnecessarily strict through the TBT Committee, etc.

## **(2) Chinese Cybersecurity Law**

\* For issues on “Trade in Services” in this Law, refer to Page 40.

### **<Outline of the Measures>**

On November 7, 2016, the Chinese government announced the enactment of new cybersecurity law that is intended to enhance cybersecurity. The Law aims at “maintaining sovereignty and state security in cyberspace” and contains new regulations on building and operation of networks, supervision of cybersecurity and other matters. Specifically, the law provides for (1) the formulation of new national and industry standards for core networking products and cyber security dedicated products and the requirement for these products to obtain security authentication at the time of sale and provision, and (2) (i) the protection of personal information of citizens and (ii) preservation of personal information and important data within China (safety evaluation is required for bringing out data such as personal information overseas) by operators of important information infrastructures (networks for public communication and information services, energy, transportation, irrigation, finance, public services, and e-Government, etc.) in order to ensure the security of network data in accordance with the advancement of technology such as cloud computing and big data.

### **<Problems under International Rules>**

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

The specific content of the national and industry

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

### **<Recent Developments>**

Regarding the Cybersecurity Law, the Japanese government and information and telecommunication related industries submitted written opinions at the stage of the draft and expressed concern in bilateral consultations, however in June 2017, the law was enforced almost without reflecting Japanese opinions. Japan has also expressed its concern over this Law at the TBT Committee meetings since March 2017. Recently, as enforcement regulations related to the Cybersecurity Law, the “Cyber Security Review Measures” was enforced on June 1, 2020 and drafts of the “Data Safety Management Measures”, the “Security Assessment Measures for Cross-Border Transfer of Personal Information and Important Data”, the “Critical Information Infrastructure Protection Regulations”, and the “Block chain Information Service Management Regulations” have been published. We will continue to keep a close watch on this Law and the development of any relevant regulations and to urge China to correct the problems.

## **(3) Regulations on Cosmetics**

### **<Outline of the Measures>**

TBT notification was made in December 2018 by the China Cosmetic Management Bureau (reorganized into National Medical Products Administration (NMPA) in March 2018) regarding the draft of “Cosmetics Supervision and Administration Regulations” (hereinafter referred to as the “Supervision and Administration Regulation”) to revise the “Cosmetics Hygiene Supervision Regulations” (hereinafter referred to as the “Hygiene Supervision Regulation”), which is the fundamental law for cosmetics. The Supervision and Administration Regulation was promulgated in June 2020 and enforced on January 1, 2021. The objectives of the Supervision and Administration Regulation are to standardize cosmetics production and sales activities, reinforce supervision/management of cosmetics, guarantee the quality/safety of cosmetics, and assure consumers’ health. In response to the revision of the regulation, the Chinese government also planned the announcement/enforcement of sub-regulations to stipulate

specific details. Part of them has already been enforced or notified to the TBT Committee. The Supervision and Administration Regulation and its sub-regulations are proposed in a manner that reflect part of the requests that Japan had repeatedly expressed at the TBT Committee and other occasions but concerns still remain as follows.

#### 1) Regulations on New Cosmetic Ingredients

In the “Cosmetics Hygiene Supervision Regulations”, it was provided that a cosmetics producer or importer shall need to apply for permission to the China Cosmetic Management Bureau and need to undergo an examination by the China Cosmetic Management Bureau before it uses or imports for the first time a new cosmetic ingredient. The “Declaration of acceptance of administrative licensing requirements on cosmetics” (enforced in April 2010), which is the sub-regulation, and the “Guidelines on application and evaluation of new cosmetic ingredients” (July 2011), which are guidelines for application and evaluation of new cosmetic ingredients, clarified the definition of new cosmetic ingredients, compliance rules, application procedure, evaluation principles, etc. to a certain extent. However, while there have been only four new ingredients that were registered, cosmetics containing new ingredients have not been able to be produced or exported.

In addition, according to Article 3 II 2 (2) of the above Guideline in the Hygiene Supervision Regulations, new cosmetic ingredients must not be complex materials, which means that application and safety evaluation must be carried out on single materials. There are some plant extracts and fermentation liquids whose new substance is substantially hard to be isolated from the solvent, and even if a new substance is isolated, there is a possibility that the new substance will turn to a different one from those is actually compounded into cosmetics due to a chemical change in the process. Due to this, there is a concern that evaluation on single materials may not be adequate for safety.

There are cases in evaluation of new ingredients under the Hygiene Supervision Regulations that are required to disclose information which is related to confidential corporate information such as details on procedures, reaction process and reaction conditions in the manufacturing process, and there are cases where such information was posted on the China Cosmetic Management Bureau website after the examination. In January 2014, the China Cosmetic Management Bureau invited public comments on the revision of operation rules on permission for new ingredients in and after April 2014. It will give permission for new ingredients to each company and will not disclose confidential corporate information such as manufacturing methods, for four years, and notified to the TBT Committee in February 2014. Although this revision may improve the provision on disclosure and release of information and accelerate acceptance of new ingredients, details remain unclear.

The Supervision and Administration Regulation, in

response to these aspects, proposes that new cosmetic ingredients are categorized and managed through registration and application in accordance with the risk, showing a certain improvement regarding the evaluation speed.

However, the Supervision and Administration Regulation does not provide anything as to whether or not safety evaluation by complex ingredients is allowed, and those provisions in a “relevant information of ingredients is disclosed to the general public” regarding information on new ingredients. Depending on the scope of the relevant information, confidential corporate information may fall within the scope of disclosure. In addition, China notified to the TBT Committee of the draft “Instructions for New Cosmetic Ingredient Registration and Notification Dossiers”, which is a related sub-regulation, in November 2020. The said draft Instructions require that the documents to be submitted include the items that may contain confidential corporate information such as the limited quantity for use of raw materials and quality standards, etc., and that toxicological test items for new cosmetic ingredients are performed in accordance with the test methods provided in the “Safety and Technical Standards for Cosmetics”, thus limiting the use of internationally recognized alternative test methods. In order to correct these problems, the Japanese government submitted a comment on the TBT notification in January 2021 and raised a problem at the TBT Committee in February of the same year.

#### 2) Regulations on Cosmetic Labels

In November 2014, public opinion acceptance was announced for China’s cosmetic labeling regulations, which were formulated under the Hygiene Supervision Regulation. In December of the same year, a notification was made to TBT committee from the China Cosmetic Management Bureau (the said regulations have not been enforced as of now).

The regulations stipulate “Cosmetic labels may not be amended or supplemented by means of adhesion, trimming, or modifying.” There is a possibility that labeling by means of adhesion will be prohibited. If labeling by printing becomes required, companies will be required to manufacture products for China by using special packages for China in the first place.

In addition, the above regulations stipulate that the name of the manufacturer/processor must be included on the label in addition to descriptions, such as manufacturer name, all ingredients, and quality guarantee periods, etc. While they explain that the objective is to make it easy to accuse a producer of legal responsibility for an illegal product, it is sufficient to state a company which legally accepts responsibility for quality. The objective to require stating an actual manufacturer/processor is not explained.

In addition, the said regulations stipulate that a report showing the details of the testing concerned must be made public on the website designated by China Cosmetic

Management Bureau and are subject to supervision when indicating the effect/efficacy testing results on the product labels.

In response to these, while the Supervision and Administration Regulation clearly states that labeling by means of adhesion is allowed, a new provision has been added saying “Adhesive Chinese labels shall be consistent with the original labels of the packaging”. However, labeling for original packaging is designed to comply with the laws/regulations of the original country, so there is a concern that the contents may not necessarily comply with Chinese laws/regulations.

In addition, the Supervision and Administration Regulation includes a number of parties as those who should guarantee cosmetics quality/safety, including “manufacturer/seller”, “registrant or filer”, and “cosmetics manufacturing company”, etc., and the party responsible for the product has not been unified. The name of the manufacturer continues to be required to be included in the label.

Furthermore, the Supervision and Administration Regulation states “the summary of the scientific basis for the promoted effect must be disclosed on the website specified by the chemical product management division of the State Council to undergo supervision by the general public”. Research data and effect testing materials that are the basis for the promoted effect include company secrets, and some contents of “summary of the scientific basis” may require confidential corporate information to be disclosed.

In addition, China notified to the TBT Committee of the draft “Administrative Measures for Cosmetic Labelling”, which were formulated under the Supervision and Administration Regulation, in November 2020. The draft Administrative Measures for Cosmetic Labelling require that the product safety and effect/efficacy descriptions contained in Chinese language labels to be adhered match the content displayed on the original package and that manufacturing companies, in addition to the registrant/filer (or person in charge within China for imported products) who are the person in charge of safety, are also displayed.

In addition, while it is an international practice to describe ingredients of less than 1% in the list of all ingredients in an arbitrary order, the draft Administrative Measures for Cosmetic Labelling provides that only the ingredients of 0.1% or less may be listed in arbitrary order and that the efficacy can only be indicated as being “assessed and verified” if it is confirmed by tests conducted by testing institutions accredited in China. In order to correct these problems, the Japanese expressed its concern at the TBT Committee in October 2020 and February 2021, and submitted a comment on the TBT notification in January 2021.

### 3) Other regulations

The “Regulation on Administration of Cosmetics Registration/Notification Examination” was notified to

TBT Committee in February 2019, and was promulgated and enforced as the “Standard for Testing Work for Registration/Notification of Cosmetics” in September 2019. Concerns of the said Standard for Testing Work are as follows.

(1) While testing institutions are required to obtain the China Inspection Body and Laboratory Mandatory Approval (CMA) prior to conducting testing for application of cosmetics, CMA can only be obtained by Chinese testing institutions. Due to this, results of tests conducted internally or in foreign testing institutions are not recognized.

(2) Testing methods for whitening products are unclear, and the system for testing institutions that can conduct whitening tests has not been established.

In addition, China notified to the TBT Committee of the draft “Regulation on Administration of Cosmetics Registration” in August 2020 and of the draft “Instructions for Cosmetics Registration and Notification Dossiers” in November 2020. The said Regulation on Administration clearly states that trade secrets and undisclosed information must not be disclosed, reflecting the request that Japan has continuously been making. On the other hand, the Cosmetics Supervision and Administration Regulations provide that the content of registration/notification of cosmetics and new ingredients must be disclosed and that the summary of the scientific basis for the promoted effect must be disclosed on the website to undergo supervision by the general public. Therefore, it is important to continue to request that the said Regulations and other implementation rules also clearly state that trade secrets and undisclosed information must not be disclosed. In addition, the draft “Guidelines for Assessing the Promoted Effects of Cosmetics” notified to the TBT Committee in November 2020 lists items that may contain confidential corporate information such as evaluation methods and decision criteria for efficacy as items to be included in the summary of the scientific basis for the promoted effect. Furthermore, while the Regulation on Administration and the Instructions above-mentioned provide that changes to the matters not relating to safety and promoted effects must be notified promptly, they provide that when changing product name or composition, registration/notification will be canceled and application must be made anew.

There is also a concern that the scope of the draft “Regulation on Administration of Toothbrushing” notified to the TBT Committee in November 2020 include solid toothpaste that has not previously been subject to cosmetics manufacturing permission.

### <Problems under International Rules>

As mentioned above, while the Supervision and Administration Regulation and its sub-regulations show signs of partial improvement, there are still measures whose necessity has not been sufficiently explained and measures that may require disclosure of confidential

corporate information, etc. If these regulations are more trade-restrictive than necessary in view of the policy objectives to guarantee cosmetics quality and safety and to assure consumers' health, they may be in violation of TBT Agreement Article 2.2 and Article 5.1.2.

### <Recent Developments>

Japan submitted comments expressing concerns regarding the TBT notification involving the "Cosmetics Supervision and Administration Regulation" in December 2018, the TBT notification involving the "Regulation on Administration of Cosmetics Registration/Notification Examination" in February 2019, the TBT notification involving the "Regulation on Administration of Registration of Cosmetics for Non-Special Use" in June 2019, the "Regulation on Administration of Cosmetics Registration" and "Regulation on Administration of Cosmetics Manufacture and Operation" in August 2020, the "Technical Guidelines for Assessing Cosmetics Safety" in September 2020, the "Administrative Measures for Cosmetic Labelling", "Regulation on Administration of Toothbrushing", "Regulation on Administration of Cosmetics Registration", "Instructions for New Cosmetic Ingredient Registration and Notification Dossiers", and "Guidelines for Assessing the Promoted Effects of Cosmetic" in November 2020. Japan raised its concern regarding their TBT agreement consistency also in the TBT Committee and requested that the measures do not become more trade-restrictive than necessary. The United States and Europe, etc. also expressed their concerns at the Committee meetings.

Japan will continue to follow whether there has been progress and, in cooperation with other concerned countries, to request improvement in the regulations.

## Trade in Services

### [Commitments upon Accession]

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

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

### [Status of Implementation and Points to Be Rectified]

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

### [Individual Measures]

#### (1) Distribution Services

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

#### (2) Construction, Architecture and Engineering

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

#### (3) Telecommunications Services

##### <Outline of the Measures>

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

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

China has been gradually easing restrictions including business scope, investment ratio, region of operations, and minimum capital requirement. Currently, the limitation on service provision areas has been eliminated, but foreign capital ownership for basic telecommunications services and value-added telecommunications services (excluding electronic commerce, domestic multiple communication, data storage/transfer, and call centers) is limited to 49% or less and 50% or less, respectively. The specific details of basic telecommunications services and value-added telecommunications services are shown in the "Catalog of Telecommunications Services Classifications"

amended in December 2015. However, the scope of services actually provided by foreign companies is limited. Although some of the limitations on the foreign investment ratio have been removed, foreign investment is still restricted for value-added telecommunication service, such as data center and cloud services, etc. for which there is a strong demand from Japanese companies operating in China.

In May 2010, the State Council promulgated the “Several Opinions of the State Council on the Encouragement and Guidance of Sound Development of Private Investment”, which allows private capital to enter the basic telecommunication operation market in the form of capital participation. Furthermore, the National Conference on Industry and Information Technology 2013, which was held in December 2012, advocated private participation in trials for the resale business and access network business of mobile communications. Specifically, mobile communication resales have been carried out on trial in accordance with the Notice of Pilot Program for Mobile Communications Resale Business given by the Ministry of Industry and Information Technology in May 2013. However, regarding necessary conditions for application for the Pilot Program, it is provided that, in the case of a company listed in foreign countries, the percentage of equity acquired by foreign capital shall be not more than 10% and that its largest stockholder shall be a Chinese investor.

As of February 2021, the Telecommunications Law, which constitutes a fundamental law for telecommunications business in accordance with China’s commitments upon its entry into the WTO, has not been promulgated or enforced yet.

#### <Problems under International Rules>

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

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

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

#### <Recent Developments>

Japan has made requests to China regarding elimination of minimum capital requirements, elimination or easing of foreign capital restrictions, etc., and has been encouraging

it to fulfill its accession commitments through the WTO Doha Round negotiations, Japan-China Economic Partnership Consultation, the WTO’s Trade Review Mechanism (TRM) for China, and other forums, and will need to pay attention to the country’s regulatory status for telecommunication services in trade negotiations. Moreover, caution is needed to see whether China will impose excessive regulations on telecommunications services in a way that breaks its commitments connected with the WTO regarding broadcasts of foreign produced dramas and animations, computer-related services, and other adjacent services(\*).

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

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

On June 30, 2019, the National Development and Reform Commission and Commerce Department announced the “Special Foreign Investment Access Management Measures” (2019 Negative List). In the field of value-added telecommunications, they abolished restrictions for foreign investments for three service items, including domestic multiple communication, data storage/transfer, and call centers.

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

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

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

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



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

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

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

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

# **(4) Financial Services**

## **(i) Insurance**

### **<Outline of the Measures>**

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

With regard to foreign-invested companies' capital participation in local insurance companies in China, the China Insurance Regulatory Commission (CIRC) promulgated the "Measures for Administering Insurance Companies' Equity Interest" on May 4, 2010. According to this, in the case of an insurance company for which the investment/capital participation ratio of foreign-invested shareholders is less than 25% of the company's registered capital, investment exceeding 20% by a single shareholder (including those on the related side) is permitted if the following conditions are satisfied: (1) a foreign financial institution holds 15% or more of shares of an insurance company as a single shareholder or (2) it is a major

shareholder that holds less than 15% of shares but can directly or indirectly control the insurance company, and that (i) it has continuous investment ability and its financial reports demonstrated that it was profitable for the most recent three accounting years, (ii) its net assets are not less than 200 million yuan, and (iii) it is in high repute and also holds a leading position the industry.

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

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

### **<Problems under International Rules>**

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

Moreover, in December 2006, the CIRC released the "Directive on Strengthening Information Disclosures for Reinsurance Transactions by Foreign-Invested Insurance Companies and their Affiliated Companies." Enacted on January 1, 2007, directive calls for greater information disclosures by foreign insurance companies. As there is the potential that foreign insurance companies will not receive treatment that is equal to local insurance companies in China, the above regulations may possibly represent a violation of the country's accession commitments. In order to operate in China, foreign-invested life insurance companies are required to establish joint ventures with maximum foreign investment of 50%. Moreover, regarding licenses for establishing branches or local incorporated companies,

although China has promised to give licenses without consideration of economic demand and quantitative restriction of licenses given, cases where a license is given to a foreign-affiliated insurance company a long time after the passage of the standard transaction time have been seen. If foreign-affiliated insurance companies' entry is substantially restricted, there is a possibility that China may break promises upon entry.

### <Recent Developments>

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

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

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

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

The Financial Stability and Development Committee of the State Council announced the "11 articles on opening of the financial industry to foreign countries" on July 20, 2019, and announced that the originally established 2021 was going to be advanced by one year.

In advance of this above, in the agreement document for the US-China meeting released on January 15, 2020, Chapter 4 stipulated specific actions to be taken by the two countries regarding the financial service sector, including areas of banking, credit rating, electronic transaction, financial asset management, insurance, and security/fund management/futures services with the aim of providing fair, effective, and nondiscriminatory market access. While these are consistent with the above "11 articles on opening of the financial industry to foreign countries" by the Financial Stability and Development Committee of the State Council announced on July 20, 2019, for the most part, they include specific business operators as interests of both parties.

On June 23, 2020, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures" (2020 Negative List). As a result, all restrictions on the foreign share-holding ratio in the financial field, including that for life insurance companies, etc., are decided to be abolished (actually abolished on April 1 of the same year).

### (ii) Banks

#### <Outline of the Measures>

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

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

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

development of the Chinese economy may be affected.

### <Problems under International Rules>

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

### <Recent Developments>

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

In the "China (Shanghai) Pilot Free Trade Zone" established by the Chinese Government in September 2013, regulation relaxation measures have been implemented on a trial basis in various sectors, and a series of financial liberalization policies were introduced in 2014, including lifting the prohibition, with usage restrictions, etc., on cross-border yuan transactions by companies within the Zone. (e.g., Notifications Nos. 20 and 22 of the Shanghai Headquarters of the People's Bank of China on February 18 and 20, respectively, Regulations No. 26 (Re: Commercial Factoring) of the Shanghai Pilot Free Trade Zone Administration Committee on February 21, Notification No. 26 of the Shanghai City Branch of State Administration of Foreign Exchange on February 28 (the lifting of the ban on international intensive settlement and netting pooling among group companies.)) A movement in which such deregulation in the China (Shanghai) Pilot Free Trade Zone has developed into other areas is seen. Then deregulation measures for conversion of foreign currency capitals into yuan which are allowed by the above Notification No. 26 have come to be developed in 16 districts in China pursuant to the Notification No. 36 of the State Administration of Foreign Exchange on July 4 and in all over China pursuant to the Notification No. 65 of the State Council on December 21.

On December 20, 2014, the "Decision of the State

Council on Revision of Bylaws for Management of Foreign-Owned Banks" was promulgated (the Decision was promulgated on December 20, 2014 and enforced on January 1, 2015; the Circular of the State Council of China No. 657) to work out a relaxation in conditions for foreign-affiliated banks' entry and conducting the renminbi business. Also, on April 8, 2015, the "Circular of the General Office of the State Council on Issuing the Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones" to be applied to the four Free Trade Zones of Shanghai, Guangdong, Tianjin, and Fujian was promulgated.

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

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

On June 29, 2018, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures" (2018 Negative List). Therefore, restrictions on foreign shareholding in banks (20% per foreign company, total foreign share within 25%) were abolished.

### (iii) Securities

#### <Outline of the Measures>

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

stipulates that foreign investment ratio has been raised to 49%.

### <Recent Developments>

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

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

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

Furthermore, two-way exchanges between the Shanghai Stock Exchange and the Hong Kong Stock Exchange were allowed to a certain extent in November 2014 (a daily maximum of 13 billion yuan and total amount of 300 billion yuan for investment in Shanghai, and the daily maximum of 10.5 billion yuan and total amount of 250 billion yuan for investment in Hong Kong), thereby enabling foreign investors to acquire Chinese yuan-based stocks in the Shanghai Stock Exchange via the Hong Kong Stock Exchange.

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

companies to conduct bond transactions on China's interbank markets after completing a notification procedure with the People's Bank of China.

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

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

On May 9, 2018, at the leader talks between Japan and China, China agreed to grant 200 billion RMB (approximately 3.4 trillion JPY) worth of RMB Qualified Foreign Institutional Investor (RQFII) rights to Japan. On September 10, 2019, the State Administration of Foreign Exchange announced the abolishment of the investment limit restrictions for Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investor (RQFII). On June 29, 2018, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures" (2018 Negative List). Therefore, the foreign share-holding ratio for securities companies was mitigated to 51%, and all restrictions on this ratio in the financial field will be abolished in 2021.

The Financial Stability and Development Committee of the State Council announced the "11 articles on opening of the financial industry to foreign countries" on July 20, 2019, and announced that its establishment originally scheduled for 2021 was going to be advanced by one year. On October 11 of the same year, the China Securities Regulatory Commission announced that the abolishment would start on January 1, 2020 for futures companies, April 1 of the same year for fund management companies, and December 1 of the same year for securities companies.

On June 23, 2020, the National Development and Reform Commission and Commerce Department announced the "Special Foreign Investment Access Management Measures" (2020 Negative List). As a result, all restrictions on the foreign share-holding ratio in the financial field, including that for securities companies, securities investment fund management companies, and future commodity transaction companies, etc., are decided to be abolished (actually abolished on January 1 of the same year for future commodity transaction companies and on April 1 of the same year for securities companies).

**(iv) Financial Information**

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

**(5) Chinese Cybersecurity Law**

\* Refer to page 32 for the issues of the Standards and Conformity Assessment Systems relating to the said Law.

**<Outline of the Measures>**

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

**<Problems under International Rules>**

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

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

necessary to secure the quality of services, there is also a possibility that it may constitute a breach of the duty of domestic regulations as set forth in Article VI: 5 of the GATS.

**<Recent Developments>**

In response to the enforcement of the Cybersecurity Law on June 1, 2017, Japan expressed concern about the enforcement of the said Law at the meeting of the Council for Trade in Services on June 1, 2017. Thereafter, at all the meetings of the Council for Trade in Services in October 2017, 2018, 2019, and 2020, Japan registered the matter concerned as an item on the agenda jointly with the U.S. and expressed concern about the above problems again. Japan will continue to closely watch movements in drawing up a bill concerning the Law in the future too and will make a request that foreign companies do not receive unfavorable treatment, in coordination with relevant countries.

On December 9, 2019, the 19th vice-ministerial-level regular consultation between the Ministry of Economy, Trade and Industry and China’s Ministry of Commerce was held, and discussions on cyber security in relation to business environment establishment were held.

**Protection of Intellectual Property****[Commitments upon Accession]**

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

**[Status of Implementation]**

In terms of China’s recent developments regarding

intellectual property protection, the Patent Law was revised in October 2020 to enhance the protection of rights, including the introduction of the punitive compensation system, increase of the statutory upper limit of compensation amount, introduction of the partial design system, and extension of the protection period for design rights, etc. In addition, the Copyright Law was revised in November 2020 to enhance the protection of rights, just like the Patent Law, including the clarification of provisions on the protection of rights over the Internet, expansion of the scope of protection, introduction of the punitive compensation system, and increase of the upper limit of statutory compensation amount, etc. Both of them are scheduled to be enforced in June 2021. In addition, the revised Anti-unfair Competition Law was enforced in April 2019. This clarified the types of infringement of trade secrets and reinforced the legal responsibilities for acts of infringement. In September 2020, the “Interpretation of Some Issues in the Application of Laws in the Disposition of Criminal Cases of Infringement of Intellectual Property Rights (3)” (judicial interpretation by the Supreme People's Court and the Supreme People's Procuratorate) and the “Decision on Revising the Criteria for Assembling and Prosecuting Criminal Cases of Infringement of Trade Secrets” (Supreme People's Procuratorate, Ministry of Public Security) were enforced to relax the criteria for assembling/prosecuting criminal cases of infringement of trade secrets. Furthermore, the “Provisions on Some Issues in the Application of Laws in the Review of Civil Cases Pertaining to Trade Secrets” (judicial interpretation by the Supreme People's Court), which enforced in the same month, provide the objects of trade secrets, constituent elements, judgment criteria for rights infringement, and preservative measures, etc. in civil cases to clarify judicial practice. This type of series of initiatives is expected to lead to the deterrence and effective relief of infringement of trade secrets, and we must pay attention to future trends of operations.

The Trademark Law, which was revised at the same time as the Anti-unfair Competition Law, was enforced in November 2019. This reinforced the punishment for acts of infringement of trademarks in addition to the reinforcement of regulation on filing of trademarks with malicious intent (so-called bad faith filings). “Provisions on some issues in the application of laws in the review of act preservation cases pertaining to intellectual property rights disputes” (judicial interpretation by the Supreme People's Court) was enforced in January 2019, and specifics of the “act preservation” procedure, which is part of the rights preservation procedures in civil disputes, were established in January 2019. This type of series of initiatives is expected to lead to the deterrence of infringement of intellectual property rights, and we must pay attention to future trends of legal operations.

In addition, after establishment of intellectual property courts in Beijing, Shanghai and Guangdong as well as establishing experts in intellectual property rights cases in intermediate courts, due to the “Decisions regarding small

issues in judicial procedures in intellectual property rights cases such as patent,” implemented in January 2019, the jurisdictions of second instance in civil and criminal cases related have been consolidated in the Supreme People's Court, and even in the legal framework, it is expected that China will provide stronger protection of intellectual property thanks to more consistency in judgments and experts.

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

## **[Problems]**

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

It has been noted, however, from the point of view of the actual situation of distribution of infringing products such as counterfeit/pirated products, etc., that there are still a number of counterfeit cases coming from China and that we cannot say that sufficient improvement has been made, in spite of the proactive efforts of the Chinese authorities. The following sections specifically identify points where further remedies or improvements are sought.

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

For protection of intellectual property rights, improvement to substantive provisions is first needed. In this respect, China's efforts for improvements through a series of revisions of the laws triggered by accession to the WTO, revisions of the Trademark Law and the Anti-Unfair Competition Law, etc. in 2019, and revisions of the Patent Law and the Copyright Law, etc. based on the effect of the trade agreement between the United States and China, etc. in 2020 can be appreciated. However, in order to secure effective protection of intellectual property rights as set forth in the TRIPS Agreement and domestic laws, regarding enforcement by civil, administrative and criminal procedures, it is essential that enforcement procedures provide expeditious and efficient remedies. In addition, responses are required for new issues, such as sophisticated counterfeit products operators, counterfeit products on the internet, and cross-border distribution channels for counterfeit products.

Furthermore, this is supported by the survey results showing that counterfeit damage which Japanese companies suffered in fiscal 2018 arose most frequently in China/Hong Kong regarding production, transit points, and sales and offering (FY2019 Survey Report on Losses Caused by Counterfeiting, by the Japan Patent Office in March 2020) and the survey results showing that China accounted for slightly above 80% (82.8%, 19,814 cases) of countries of shipment in 23,934 cases of import suspension of goods infringing intellectual property rights

at customs in Japan, still showing a high number (State of Suspension of Goods Infringing Intellectual Property Rights at Customs in 2019 publicized by the Ministry of Finance in March 2020). China still remains the top intellectual property rights infringing country for Japanese companies.

The following section notes several issues mainly on enforcement for anti-counterfeiting measures in China in the future.

#### <Problems under International Rules>

##### (i) Inadequate administrative and civil remedies and criminal punishment

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

###### (Administrative Regulation)

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

###### (Civil Remedies)

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

Based on these circumstances, the revised Trademark Law which was entered into force in November 2019 included the provision to enable increase of the compensation amount for trademark infringement with bad faith up to 5 times (it was conventionally 3 times) and the provision to set the statutory compensation amount at 5 million yuan (it was conventionally 3 million yuan) or less. Similarly, the Patent Law revised in October 2020 and the Copyright Law revised in November of the same year (both of them are scheduled to be enforced in June 2021) include the provision to enable increase of the compensation amount up to 5 times if certain conditions are met and the provision to increase the statutory compensation amount to 5 million yuan (from 1 million yuan for the Patent Law and 0.5 million yuan for the Copyright Law). We must keep a close eye on future trends in law enforcement.

###### (Criminal Punishment)

Refer to pages 53-54 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA -. The Criminal Law whose amendment was approved in December 2020 and which will be enforced on March 2021 toughens the penalties for crimes of counterfeiting, manufacturing, or selling registered trademarks (Article 213-5) under particularly serious circumstances by increasing the maximum term of sentence from seven years to ten years.

##### (ii) Local Protectionism

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

## (2) Issue of Bad Faith Filings

### (i) Bad Faith Trademark Filings

#### <Outline of the Measure and Concerns>

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

Japan needs to pay close attention to the operation after the revision to strengthen the regulation on filing of trademarks with malicious intent in November 2019 as well as effective prevention of expansion of injury by bad faith filings, and respond by utilizing the opportunities at bilateral consultations and multilateral frameworks.

#### <Recent Developments>

At the annual Trademark 5 (TM5) meeting held on October 26 to 28, 2020 between Japan, the US, EU, China and the Republic of Korea, an agreement was made regarding the “Bad Faith Project” led by Japan that the updated version of the “Report on Operation of the System for Bad-Faith Trademark Filings” and cartoons created by the respective agencies for enlightenment purposes would be released on the TM5 website as soon as they are completed and that public awareness would be further promoted in the future.

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

#### <Outline of the Measure and Concerns>

It is reported that there have been many cases in China where patent and utility models invented in a foreign country or a design created in a foreign country have been filed by a person other than the inventor, designer, and creator and registered by the patent office (so-called “misappropriated application”). In China, misappropriated application does not constitute a reason

for rejection or invalidity. Remedy is available only by requesting verification of the ownership of a right (Articles 85 and 86 of the Implementation Regulations for the Patent Law). If it takes time to execute an administrative procedure or to continue a suit, to verify the ownership of a right, such a situation where counterfeit damage caused by misappropriated application cannot be prevented. Then in view of the purport of Article 41, paragraph 1 (Prompt Remedies to Prevent Infringement) of the TRIPS Agreement, Japan has encouraged China for improvement to effectively prevent counterfeit damage from spreading through the government-private joint mission to visit to China in the International Intellectual Property Protection Forum, exchange of views with the China National Intellectual Property Administration (CNIPA) and other opportunities.

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

#### <Recent Developments>

Article 20 of the revised Patent Law of October 2020 includes provisions providing that “Patent applications and exercising patent rights must comply with the rules of good faith. Abuse of patent rights, infringing on the public interest or legal rights of others are not allowed.”. This provisions stipulate that the rules of good faith must be complied with for patent applications as well as exercising patent rights, however it is lack of clarity as to whether it is applicable to blocking a misappropriated application.

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

It is necessary to keep a close watch on the operation of the revised Patent Law and to raise concerns through bilateral consultations and framework of multiple countries.

### **(3) Licensing Regulations on Patents and Know-How**

#### <Outline of the Measure and Concerns>

China has conventionally regulated contracts approving licensing intellectual property exploitation between foreign and Chinese domestic companies (so-called cross-border licensing agreements) through the Regulation on the Administration of Import and Export of Technologies (hereinafter referred to as “TIER”), the implementing rule of Regulation on the Administration of Import and Export of Technologies, and the Technology Export and Import Contract Registration Administrative Statute, etc. Issues

with the said regulations had been pointed out in light of their consistency with Article 28, paragraph 2 of the TRIPS Agreement, which stipulates licensees’ right to conclude licensing contracts, from the viewpoint of Article 3 (National Treatment) of the said Agreement.

On March 18, 2019, by the decision of the State Council, China removed part of the articles of the TIER, for which Japan, the U.S., and EU had expressed concerns. We must continue paying attention the actual operation after the revision of the TIER, especially to whether or not appropriate operation will be carried out based on the legal revision in local governments, in the future. The section below notes several issues on the consistency with the TRIPS Agreement, which had been conventionally pointed out.

#### **Ownership of Improved Technology (Article 27 & 29(3) of the former TIER)**

Article 27 of the former TIER (removed in March 2019) provided that an improved technology resulting from another technology licensed under cross-border licensing agreements shall belong to the party that has improved that technology. In addition, Article 29, paragraph 3 of the former TIER prohibited the original technology licensor from restricting a technology licensee’s right to improve the technology licensed under licensing agreements or to use such improved technology.

On the other hand, regarding domestic technology transfer or licensing agreements in China, Article 354 of the former Contract Law of China (Article 875 of the Civil Code) provides that a party to a contract may provide how and who to assume the products from technology improvement. In the said Law, such a compulsory provision as those in the former TIER cannot be found. In addition, Article 355 of the former Contract Law (Article 877 of the Civil Code) provides that, if laws or administrative regulations set separate provisions for technology import and export contracts, patent contracts or patent application contracts, such provisions shall govern. This indicates that the former TIER, which is a special law, is applied and supersedes license contracts that fall under technology import and export, while Article 354 of the former Contract Law of China is applied to other ordinary domestic technology transfer or licensing contracts. In technology export and import, to which the former TIER applies, it is contemplated that foreign companies are often in a position of a technology licensor. Then the former TIER, which provides that an improved technology shall automatically belong to the party that has improved the provided technology, irrespective of contractual terms between the parties, is designed to work as a mandatory provision applied only to foreign companies that become a technique licensor. It had been pointed out that there is a possibility that the former TIER is inconsistent with the national treatment obligation under Article 3, paragraph 1 of the TRIPS Agreement as discriminatory treatment against foreign countries.



### **Licensor's Liability on Third Party Infringement (Article 24 of the former TIER)**

Article 24 Paragraph 2 of the former TIER (removed in March 2019) had provided that, in technology export and import, if a technology licensee was sued by a third party for infringement of its right as a consequence of using the technology provided under the licensing agreement, the licensor was required to cooperate with the response to the third party's infringement claim. Furthermore, Article 24, paragraph 3 of the former TIER provides that, if the licensee's usage of the technology provided by the licensor in accordance with the provisions of a technology import contract infringes third party's legitimate interests, the licensor shall assume liability for that infringement. It is possible that a licensor would be exempted from liability in such a case as licensee's usage of the licensed technology which is not consistent with the contract terms infringes third party's legitimate interests. But it seems that a licensor must assume liability for infringement to a third party even if it has not been involved in that infringement, until it is clearly demonstrated that the licensor shall be exempted from the liability.

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

Therefore, as mentioned above, it had been pointed out that the provision in the former TIER that the licensor bears certain obligation and liability for infringement of a third party's rights and interests irrespective of agreements between the parties can be inconsistent with the national treatment obligation set forth in Article 3 paragraph 1 of the TRIPS Agreement, as a discriminatory treatment between domestic and foreign technology transfer.

### **Guarantee of Completeness, etc. of Licensed Technology (Article 25 of the former TIER)**

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

In this way, foreign companies providing technology are still in the situation where they must be cautious in providing technology. Japan needs to ask China to further clarify and deregulate the provisions under the TIER, and also to continue closely watching the authorities' operation

to register, administer and permit the international license contracts, including whether there is the differences from the regulations on domestic technology provision contracts, including licensing contracts, between Chinese domestic companies.

### **<Recent Developments>**

With regards to restrictions for licenses. for patents/know-how, etc., in addition to Minister of Economy, Trade and Industry Seko directly expressing concern to Commerce Minister Zhong Shan that the provisions in the former TIER are discriminatory in nature in October 2018, each governments had an opinion exchange on this issues at the Japan-China intellectual property rights working group held in January 2019, Japan put pressure on China via a variety of opportunities for dialogue between both or multiple countries, for systemic reform and improving clarity of the TIER. Moreover, in the 2018 edition of the Special 301 Report by the U.S. Trade Representative (USTR), China continues to be on the Priority Watch List, with the concern that technology licensing regulations based on China's laws and administrative polices are compulsive obligation imposed only on foreign companies. Also, based on Section 301 in the 1974 Trade Reform Act, investigation on the issue of China's transfer of technology/intellectual property rights was initiated in August 2017, and the investigation report made public in March 2018 indicated that the U.S. technology owners' abilities to negotiate the terms of technology transfer on a market-based conditions have been damaged by China's regulations related to technology licensing. Furthermore, the revised version of the above mentioned report made public in November 2018 indicated that China's policies had not been changed and expressed its plan to discuss the discriminatory license regulations at the WTO panel process.

Regarding measures related to China's intellectual property rights protections, including the TIER, the U.S. made a request for consultation in March 2018 based on the WTO Agreement, and since no resolution was reached through bilateral consultation, in November 2018 the WTO Dispute Settlement Panel was established.

Furthermore, in June 2018, the EU requested consultation for measures related to China's technology transfer, including the TIER.

Since then, China revised the TIER in March 2019 and removed a lot of the provisions that had been expressed concerns. As a result, after a temporary suspension, the above panel review was terminated in June 2020.

In January 2020, China signed the first stage economic and trade agreement with the United States. The agreement document provides a promise not to carry out

technology transfer between private companies by governmental pressure, prohibition to request or exert pressure through the means of administrative procedures or licensing requirements, enhancement of civil and criminal actions against acts of infringement of trade secrets, and prohibition of improper disclosure of trade secrets and confidential information by government agencies, etc.

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

## Government Procurement

### [Commitments upon Accession]

A government procurement agreement is a so-called agreement among several countries and a rule that binds only countries that opt to accede to that agreement. Therefore, only a subset of countries, mainly developed countries, has have acceded to the GPA. At the time of its entry into the WTO, China promised to accede to the GPA in the future, to participate in it as an observer for the time being, to secure transparency in the procedure for government procurement, and to give non-discriminatory treatment in the case of procurement from foreign countries<sup>5</sup>. After its accession to the WTO, in February 2002, China has gained a qualification for the observer of the government procurement committee.

In December 2007, China submitted an application for the accession to the GPA and the initial offer referred to in Annex I <sup>6</sup>, and accession negotiations were started. However, various problems with the initial offer were pointed out, and other countries requested early submission of a revised offer. In response to it, China submitted the first revised offer in July 2010 <sup>7</sup>, the second one in November 2011<sup>8</sup>, the third one in November 2012<sup>9</sup>, the fourth one in December 2013<sup>10</sup>, the fifth one in December 2014<sup>11</sup>, and the sixth one in October 2019<sup>12</sup>. President of the People's Republic of China, Xi Jinping spoke of acceleration of the process for acceding the GPA in his

speech at the Boao Forum for Asia held in China in April 2018, and swift GPA accession is expected.

### [Status of Implementation]

For the Government Procurement Law, which was enforced in January 2003, public comments were invited on its draft revision for the period from December 2020 to January 2021. Other Chinese laws and regulations on government procurement include the Law of the People's Republic of China on Tendering and Bidding and the Implementation Regulations thereof, in addition to the Implementing Regulations of the Government Procurement Law.

The draft revision of the Government Procurement Law for which public comments were invited included the same provision that requires procurement of domestic products ("buy-domestic" provision <sup>13</sup>) as before the revision. Therefore, when China accedes to the GPA, it is necessary to closely watch whether the China's related legislation, including the Government Procurement Law, is consistent with the regulations in the GPA.

In addition, the Foreign Investment Law enforced in January 2020 and its implementation regulations stipulate the security of foreign investment companies' participation in government procurement activities through fair competition and that government procurement would treat products and services produced within China by foreign investment companies with fairness<sup>14</sup>.

<sup>5</sup> Report of the Working Party on the Accession of China (WT/ACC/CHN/49), Protocol on the Accession of the People's Republic of China (WT/L/432)

<sup>6</sup> GPA/ACC/CHN/1

<sup>7</sup> GPA/ACC/CHN/16

<sup>8</sup> GPA/ACC/CHN/30

<sup>9</sup> GPA/ACC/CHN/41

<sup>10</sup> GPA/ACC/CHN/44

<sup>11</sup> GPA/ACC/CHN/45

<sup>12</sup> GPA/ACC/CHN/51

<sup>13</sup> Article 10 of Government Procurement Law of the People's Republic of China (June 29, 2002).

<sup>14</sup> Article 16 of Foreign Investment Law of the People's Republic of China (January 1, 2020).

