METI Priorities Based on the 2021 Report on Compliance by Major Trading Partners with Trade Agreements (Friday, June 25, 2021)

The 2021 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA - was today published by the Industrial Structure Council's Subcommittee on Unfair Trade Policies and Measures. The Report points out wide-ranging trade policies and measures of major trading partners that are questioned in light of the WTO Agreements and other international rules.

As mentioned in the Report, the WTO Dispute Settlement (DS) mechanism not only recommends corrections of the measures but also contains procedures for monitoring implementation of recommendations and the suspension of concessions countermeasures in the event of failure of implementation. Therefore, WTO recommendations are implemented at a high rate and contribute to maintaining the effectiveness of the WTO rules. Since the establishment of the WTO in 1995, the number of WTO DS cases has reached 601 (As of June 25, 2021).

As Japan has requested 28 consultations since 1995, Japan has actively utilized the DS mechanism with the aim of eliminating disadvantages caused by other countries' measures that are inconsistent with international rules, and also developing rules through the accumulation of precedents, as a measure, amid the situation where establishment of multilateral rules has become increasingly difficult due to a rapid change in the environment on trade such as more serious antagonism between developed countries and emerging countries. METI will continuously utilize bilateral and multilateral consultations, the WTO DS mechanism, etc., to actively resolve individual issues.

With regard to the WTO dispute settlement mechanism, the WTO Appellate Body has ceased its functions since December 2019. Japan have been actively engaged in discussions on the dispute settlement mechanism, including submitting its proposals, and it will continue to work with other WTO members for early restoration of the function of the Appellate Body and to find a long-lasting solution for the dispute settlement mechanism.

In recent years, it has been concerned more that market-distorting measures by some emerging countries could result in risking a foundation of multilateral free trade systems such as the basis of competition or market function. With the spread of COVID-19 since last year, some trade-restrictive measures, such as export restrictions on medical products, have been implemented around the world in an "own-country-first" or "protectionist" manner. Attention must be paid to ensure that excessive measures under the name of crisis control do not distort the foundation of the multilateral free trade system.

METI will further proceed with comprehensive measures to ensure the level playing field through Japan-U.S.-Europe Trilateral Trade Ministers' Meetings, WTO, etc., in order to

deliver a “free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment”. METI will maintain the ongoing monitoring and follow-up efforts through WTO and G20, including the monitoring of trade and investment measures taken by countries in response to COVID-19, and our efforts will also be made to strengthen the functions of the WTO through its reforms. In response to the ongoing digitalization in all areas of society in the wake of the COVID-19 crisis, METI will work to develop new international rules and address unfair regulations on cross-border data transfers. Furthermore, Japan will carefully monitor and deal with measures taken by some countries on the grounds of national security, so that they will not be excessively broad.

Based on the above, METI will preferentially address the following cases based on the policies and measures pointed out in the 2021 Report. The details of each case are shown in the Reference below.

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

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

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

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

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

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

- China：Industrial Subsidies
- China：Cybersecurity Law and relevant regulations
- China：Forced Technology Transfer【New】
- China：Inappropriate Application of AD Measures
- Vietnam：Cybersecurity Law / the Draft Decree on Personal Data Protection【New】
- The Philippines：Safeguard Measures on Automobiles【New】
- The United States：Import Adjustment Measures pursuant to Section 232 of the Trade Expansion Act of 1962

- The United States and Emerging Economies：Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products

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

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

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

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

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

In addition, METI keeps a close watch on measures implemented by individual countries to tackle COVID-19, such as quantitative restrictions and government procurement, in order to prevent the measures inconsistent with the WTO Agreements from being implemented and/or continued unnecessarily on the pretext of the legitimacy of the purpose.

- China：Foreign Investment Law
- China：Export Control Law
- The United States：Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing In the Cases of Targeted Dumping
- India：Personal Data Protection Bill / Draft National e-Commerce Policy【New】
- India：Inappropriate Application of Trade Remedy Measures【New】

(Reference 1) Details of the Individual Trade Policies and Measures Listed in the METI Priorities Based on the 2020 Report on Compliance by Major Trading Partners with Trade Agreements

Details of the individual trade policies and measures listed in the 2021 METI Priorities are as follows.

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

- **China: Anti-Dumping Measures on Stainless Products**

In July 2018, China initiated an AD investigation on stainless steel slabs, hot rolled stainless steel coils and stainless steel plates from Japan, the EU, Indonesia and the Republic of Korea. In July 2019, China made a final determination to impose AD duties on the import of such products, recognizing dumped imports of such products as well as the injury to the domestic industry caused by the dumped imports.

The products under investigation (stainless slabs, and hot rolled plates and coils) includes a variety of non-interchangeable products with different physical characteristics, prices, sales channels and uses. However, China failed to substantially analyze the price effect of the covered imports on the domestic price in a way consistent with Article 3.2 of the AD Agreement, since it only pointed out the decreasing trends of the averaged prices of these various products.

In addition, China cumulatively assessed the effects caused by imports from countries/regions subject to the investigation (Japan, EU, Indonesia and South Korea). While such cumulative assessment is required to be based on the appropriate conditions of competition between the subject countries, it appears that China cumulatively assessed the various products with different price and characteristics from the four countries/regions without adequate reasons, which should be inconsistent with Article 3.3 of the AD Agreement.

Japan has expressed its concerns to the Chinese government regarding the above issues under the international rules, in the WTO AD committee and bilateral meetings. However, the issues have been unresolved and the measure has not been removed. Japan thus requested consultations with China pursuant to the WTO Agreement in June 2021.

Japan will continue to request China to withdraw this measure.

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

Since October 2015, Korea has been taking measures as public financial support for the shipbuilding industry of its own country which includes: (1) financial support for a domestic shipbuilder (Daewoo Shipbuilding & Marine Engineering Co., Ltd.) by public financial institution; (2) provision of refund guarantees for supporting orders placed with shipbuilders; (3) support for purchasing new commercial vessels for shipping companies through the New Shipbuilding Program (public-private fund), etc.; and (4) other measures such as subsidies for replacing with eco-ship (subsiding a part of the price of new ship). As the results of these public financial support measures, low cost orders for new ships were repeated by Korean

companies, leading to substantial drop in the ship prices in the international markets. In addition, Japan's market share is falling substantially due to lost orders and competition abandonment following the decline of the market ship price. These public financial support measures are likely to distort the market and hamper early resolution of the excess supply capacity issues in the shipbuilding industry. Also, certain measures may be regarded as export subsidies as prescribed in the Agreement on Subsidies and Countervailing Measures (ASCM) and is likely to violate with Article 3 of the said agreement.

Japan requested Korea early abolition of the measures by pointing out the problem on multilateral occasions through such opportunities as the Council Working Party No.6 on Shipbuilding of the OECD or the director-general-level talk between Maritime Bureau of MLIT and Ministry of Trade, Industry and Energy Korea (MOTIE) in October 2018, but in vain. Consequently, Japan requested bilateral consultations based on the WTO Agreements in November 2018 and in January 2020 and is consulting with Korea. Japan also requested Korea to explain its public financial support measures to ensure transparency in November 2020 and in May 2021, at the Council Working Party No.6 on Shipbuilding of the OECD.

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

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

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

Article 11.3 of the AD Agreement provides that any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition or the latest review thereof, in principle, and that the continuation of the duty may be permitted exceptionally if only it is determined in a review that "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." In this case, products imported from Japan are mostly for special use purposes, while Korean domestic products and products subject to the investigation that are imported from India are mostly for general use purposes. Products imported from Japan are not in a competitive relationship that causes serious injury to Korean products, and there are a large number of low-priced imports from China etc. in the Korean market. Under such circumstances, there is a deficiency in the Korean decision that there is a possibility of recurrence of injury to Korean domestic industry due to the elimination of AD duties on products from Japan. Therefore, this decision is inconsistent with Article 11.3 of the AD Agreement. Japan, aiming at resolving the matter through dialogue, pointed out issues under international rules multiple times at the WTO AD Committee to express serious concern about lengthening of the measure, and in May 2018, the Minister of METI of Japan requested the Minister of Trade, Industry and Energy of Korea to abolish the imposition of duties. However, since the Korean government has not abolished the duties and no improvement was observed afterwards, Japan requested Korea to hold the bilateral consultations based on the WTO Agreements on this matter in June 2018 and requested establishment of a panel in September 2018 in consideration of its outcome (the

panel was established in the next month and composed in January 2019). After the trial, the panel issued a report in November 2020 and found that there is a deficiency in the Korean decision that there is a possibility of recurrence of injury to Korean domestic industry due to the elimination of AD duties on products from Japan and that the decision is inconsistent with Article 11.3 of AD Agreement, because Korean authorities did not properly take into account the facts that products from Japan are considerably more expensive than Korean products and that there are a large number of low-priced imports from China etc.. In January 2021, Korea appealed to the WTO Appellate Body.

Japan will continue to advance WTO dispute settlement procedures so that the case will solved appropriately in accordance with WTO rules, and demand Korea to promptly and faithfully correct its measures in accordance with the recommendations of the report so as to prevent unfair tariff burdens on Japanese companies from continuing.

- **India**：**Tariff Treatment on Certain Goods in the ICT Sector**

The government of India, by administrative notifications, introduced a 10% tariff raising measure for some IT products (HS code: 8517.62.90 and 8517.69.90 communication devices) which were set as non-leviable in India's WTO bound tariff binding schedule in July 2014. Thereafter, in July 2017, it raised tariff rates for ink cartridges and mobile phones, etc. (8517.1210 and 8517.1290[1] mobile phones, and 8517.6100 base stations, 8517.7090 parts for telephone/telecommunication devices). Furthermore, it publicly issued a notification to raise the tariff rate for mobile phones from 10% to 15% in December 2017. In addition, the government of India further raised this tariff rate for mobile phones from 15% to 20% in February 2018, and also raised the tariff rate for some telecommunication devices from 10% to 15% although bilateral consultations based on the WTO Agreements had been underway.

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

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

Japan requested India to hold consultations based on the WTO Agreements in May 2019 and pursued the abolishment of these measures. However, as the issue was not resolved through the consultations, Japan requested examinations by the panel in March 2020 and the panel was established in July 2020. EU and Chinese Taipei also requested the panel establishment and the panel was established in June and July 2020, respectively. Japan will pursue the abolishment of the measures through the panel procedure.

[1] In January 2020, HS codes were altered accompanying the modification of India's tariff schedule, and the tariff classification now consists of HS8517.1211, 8517.1219, and 8517.1290.

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

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

As required under the WTO Agreements, the investigating authority needs to demonstrate clearly determine an increase in import resulting from the effect of the obligations incurred under the GATT 1994 as prescribed in Article XIX, paragraph 1 (a) of the GATT 1994. However, the Indian authority failed to clarify this in its investigation reports.

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

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

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

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

In November 2018, a panel report was published. The relevant safeguard measures lapsed during the consultation period, but most of Japan’s arguments were accepted in the

panel report. The report recommended India to bring the relevant measures into conformity as long as the effect remains since India's safeguard measures are inconsistent with the WTO Agreements. In December 2018, India appealed to the WTO Appellate Body and is waiting for the examinations at the Appellate Body. Japan will appropriately respond to the examinations of the Appellate Body when it is resumed.

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

- **China**：**Industrial Subsidies**

The government of China has not fully fulfilled its notification obligation under Article 25 of the Agreement on Subsidies and Countervailing Measures (ASCM), which requires members to notify any subsidies that are specific every two years (since 2011, the Unite States has been filling notifications of certain Chinese subsidies (so called "counter notification") that should have been notified by China, including support regimes for China's strategic emerging industries). In July 2016, the government of China notified subsidies by its local governments for the first time. However, the issue that the subsidies that should have been notified were not notified has not sufficiently resolved. Insufficient transparency of subsidy would be likely to encourage market-distorting subsidies, thus is suspected to have led to excess capacity in certain industries such as steel and aluminum. Furthermore, it is concerned that a variety of the governmental financial support including loans by state-owned enterprises and government fund: i) increases influence of government on major companies, ii) may invoke concentration of private capital, and a huge amount of capital would flow into certain industries that would result in excess capacity, and iii) may be used for acquiring foreign companies that have highly advanced technology.

Regarding the problem of excess capacity in some industries including aluminum and steel caused by Chinese government subsidies, there may be some subsidies that are inconsistent with Article 5 of the ASCM as they cause an adverse effect to the interests of other member countries.

Japan had several discussions with the government of China to solve the issue. For instance, at the regular vice-minister-level consultation between METI and the Chinese Ministry of Commerce in December 2019, Japan requested China to improve transparency of its subsidy policies for each industry. Also in the Subsidies Committee meetings held in October 2016, April 2017, November 2019, October 2020 and April 2021, and Trade Policy Review (TPR) of China in 2018, together with the United States and the EU, Japan proposed discussions related to the issues of subsidies and excess capacity. OECD series of reports on "Measuring distortions in international markets", published in January 2019 (aluminum value chain), December 2019 (semiconductor value chain) and May 2021 (below-market finance), also indicate the relevance between distortion of a conditions of competition and the large amount of government support in the manner of below-market borrowings and equity in industries including aluminum, solar PV and semiconductor in China and others.

In addition, while not targeting certain countries, Trilateral Meeting of Trade Ministers

among Japan, EU and the United States, started in December 2017, also has held discussions on strengthening rules on industrial subsidies and SOEs. G7 countries including Japan also committed in May 2017 committed in the G7 Taormina Leaders' Communiqué to further strengthening the cooperation and working with their partners in order to address global excess capacity in the steel, aluminum and other key industrial sectors and to avoid its emergence in other areas. Furthermore, at the G7 Charlevoix Summit in June 2018, the leaders called on all members of the Global Forum on Steel Excess Capacity to fully and promptly implement its recommendations, and stressed the urgent need to avoid excess capacity in other sectors such as aluminum and high technology. In June 2021, in the G7 Carbis Bay Summit Communique, the G7 leaders also agreed to work together to modernize the global trade rulebooks to strengthen rules to protect against unfair practices, such as harmful industrial subsidies, including those that lead to excess capacity, and market-distorting actions of state-owned enterprises. G20 has also discussed excess capacity in the steel sector and industrial subsidies.

Japan, in cooperation with other WTO members, will continue discussion with China bilaterally and multilaterally so that China enhances the transparency of expenditure of industrial subsidies and activities of state-owned enterprises for not taking market-distorting measures, and that the system in China operates to be consistent with the ASCM.

- **China**：**Cybersecurity Law and relevant regulations**

In June 2017, the Chinese government enforced the "Cybersecurity Law". The Law stipulates that operators of important information infrastructure are obliged to store personal information and important data within China and to assess the safety of such information when it is transferred overseas. Therefore, if foreign business operators are substantially placed in a less favorable competitive condition than Chinese business operators, it may violate national treatment obligations stipulated in Article 17 of GATS. Besides, since China has agreed to the principle of free cross-border transfer of information in the RCEP Agreement (Article 12.14 and 12.15 of the RCEP Agreement), China should ensure that measures to restrict transfer of information are the minimum necessary and not excessively restrictive on trade.

In addition, since the Law stipulates that when selling network core products and specialized cybersecurity products, it is required to obtain a security certification following the related national standards and industry standards, it is assumed that technical regulations and conformity assessment procedures for these products will be established. However, regarding the Law, TBT (Technical Barriers to Trade) notifications have not been made, and therefore it may be inconsistent with Article 2.9.2 of the WTO TBT Agreement. Although there is no provision for the specific contents of national standards and industrial standards in the Law and it is uncertain what sort of standards will be established, it may be in violation of Articles 2.4 of the TBT Agreement if such standards do not use international standards as the basis. Furthermore, if the contents of the measures are more trade-restrictive than necessary to achieve the objective of "maintaining cyber space sovereignty and national security", it may violate Articles 2.2 and 5.1.2 of the TBT Agreement.

With regard to the Law, from the drafting stage of the law, not only the government of Japan but also the governments of other countries, industrial organizations, etc., submitted opinion letters to the Chinese government on the public comments to express concerns as described above, but the Law was enforced in June 2017, not reflecting many of the opinions from the government of Japan, etc. Thereafter, China continuously sought public comments on laws and regulations related to the Law. Of particular importance is “Data Security Law, for which public comments were made on the first version of the draft in July 2020 and the second version of the draft in April 2021. Data Security Law regulates data processing activities (including collection, storage, usage, processing, transfer, provision, disclosure, etc.) conducted by organizations and individuals in China in order to establish a data security management system by the Chinese government. However, many articles are unclear in terms of definitions of terms, specific requirements for various types of evaluations, and the scope of regulations. For example, there is no clear definition of "data processing activities that affect or could affect the national security," which is supposed to be subject to the "national security review”. Japan has called on China to ensure that there is no arbitrary application of the Law in which foreign enterprises are treated less favorably and at the same time, that measures to restrict transfer of information are the minimum necessary and not excessively restrictive on trade. Data Security Law has passed the Standing Committee of the National People’s Congress in June 2021, but the aforementioned concerns still remain.

China issued the ‘Draft Personal Information Protection Law’, which provides for unified treatment of personal information protection, with public comments on the first version of the draft in October 2020 and the second version of the draft in April 2021. The ‘Draft Personal Information Protection Law’ applies to activities conducted by organizations and individuals who handle personal information in China. As with ‘Data Security Law’, since there are some articles with unclear definitions of terms, the Japanese government has sought clarification of those articles. The ‘Draft Personal Information Protection Law’ also stipulates that personal information handlers shall store personal information collected and generated in China. However, there are concerns that foreign enterprises that set up servers overseas or use cloud services are substantially placed in a less favorable competitive condition, which may be a violation of the national treatment obligations under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement. Besides, since there is a security risk of storing the data in China, Japan has sought to remove the mandatory domestic storage requirement.

In May 2021, China issued “the Draft Provisions on Management of Automobile Data Security” for public comment. The draft applies to the collection, analysis and storage etc. of personal information and important data that occurs during the course of designing, selling and maintaining and managing automobiles within China and thus Japanese automobile industry has great concern. The draft also requires to store personal information and important data within China. Japan submitted its comment that requests China to remove the mandatory domestic storage requirement because it may substantially place foreign enterprises in a less favorable competitive condition and may violates the national treatment obligations under Article 17 of the GATS and Articles 8.4 and 10.3 of the RCEP Agreement.

Japan will continue to closely monitor trends in development of these laws and related

regulations while urging China to correct the system through opportunities such as, the WTO Council for Trade in Services, the WTO TBT Committee meetings and bilateral consultations, etc.

Other relevant regulations that were issued for public comment

Name of regulations	**Date of public comment**	**Enforcement**
Cyber Security Multi-Level Protection Scheme （Regulation on protection level of cybersecurity.）	June 2018	Not enforced
Cybersecurity Review Measures (Regulation on review process of "important infrastructure operator" ）	May 2019	June 2020
Critical Information Infrastructure Protection Regulations (Regulation on treatment of important infrastructure information）	July 2017	Not enforced
Measures for Data Security Management (Regulation on data collection, storage and process etc. through the Internet in China ）	May 2019	Not enforced
Personal Information Outbound Transfer Security Assessment Measures （Regulation on "national security review" which is applied to when a network operator transfers personal information overseas）	June 2019	Not enforced

- **China**：**Forced Technology Transfer**

In Paragraph 7.3 of its Protocol of Accession to the WTO, China commits to ensure that the distribution of means of approval for importation, the right of importation or investment by national and sub-national authorities is not conditioned on technology transfer requirements. In Article 10.6 of the RCEP Agreement, China also commits to prohibit performance requirements including technology transfer requirements and royalty regulations. In addition, the Chinese government has stipulated in the Foreign Investment Law, which came into effect in January 2020, that administrative agencies and their officials shall not use administrative means to force technology transfer, but there continue to be systems in place that could result in forced technology transfer depending on their operation. For example, the Draft Data Security Management Measures published in May 2019 includes a clause requiring businesses to provide data to the State Council, which may require them to provide technical information. There is also concern that the Export Control Law, which came into effect in October 2020, may require disclosure of technology beyond necessary in situations such as determining whether a product is relevant or not, and investigating end users and applications.

Japan has conveyed its concerns to the Chinese government through the submission of public comments on various legislations, and has also held bilateral consultations on the following issues: prohibition of requests for disclosure of sensitive technical information including source code and cryptography; prohibition of requests for technology transfer in connection with acquisitions, joint ventures, and other investment transactions; and prohibition of support and instructions for outbound investment for the purpose of acquiring technology. In the WTO, Japan has raised the issue of forced technology transfer at the 2018 Trade Policy Review on the grounds that there are cases where foreign companies are required to effectively transfer technology in order to obtain licenses and permits.

In addition, while not targeting specific countries, the Trilateral Meeting of Trade Ministers of Japan, the United States, and the European Union has been discussing the issue of forced technology transfer. At the meeting in January 2020, they discussed the need to reach out to other WTO Members on possible elements of core disciplines, and the development of new rules, among others. In the May 2017 G7 Taormina Leaders' Communiqué, the G7, including Japan, committed to push for the removal of all trade-distorting practices including forced technology transfer, so as to foster a truly level playing field. In the June 2018 Charlevoix G7 Summit Communiqué, the G7 also committed to work together to address forced technology transfer, enforce existing international rules, and develop new rules where needed. Furthermore, in the June 2021 Carbis Bay Summit Communiqué, the G7 agreed to work together to modernize the global trade rulebook to strengthen rules to protect against unfair practices, including forced technology transfer.

Japan, in cooperation with other member countries, will continue to proceed with discussions aimed at solving the problem in bilateral and multilateral consultations to ensure that the Chinese system is operated in a manner consistent with its Protocol of Accession to the WTO, etc.

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

The Chinese government initiated 292 AD investigations between 1995 and the end of December 2020, and among which Japanese products were included as the subject product in 53 cases. Among these 53 cases, AD measures were applied in 43 cases. AD duties remain in force in 21 cases as of the end of December 2020. China is the largest in terms of the country-based number of AD investigations and the number of application of AD measures against Japan.

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

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

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

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

- **Vietnam：Cybersecurity Law / the Draft Decree on Personal Data Protection**

The Vietnamese government enforced the “Cybersecurity Law” in January 2019. Under the law, domestic and foreign service suppliers on the Internet and other value added services in cyberspace in Vietnam carrying out activities of collecting and using data generated by service users in Vietnam must store such data in Vietnam for a specified period stipulated by the government. These foreign service suppliers must also have branches or representative offices in Vietnam. Regarding the obligation to store data within Vietnam, it is generally assumed that foreign services or service suppliers centrally collect and manage data outside Vietnam and they may have to cover the additional cost to store data domestically and undertake security assessment. Therefore, it is likely that foreign service suppliers are substantially placed in a less favorable competitive condition than Vietnamese services or service provides that have collected and managed data within Vietnam. If foreign service suppliers are substantially placed in a less favorable competitive condition than Vietnamese service suppliers in the sectors Vietnam has committed themselves to liberalization, such measures may violate national treatment obligations stipulated in Article 17 of GATS. Regarding the obligation to have branches or representative offices in Vietnam, since it requires a specific type of entity, it may violate market access obligations stipulated in Article 16 of GATS.

In addition, in February 2021, the Vietnamese government published the “Draft Decree on Personal Data Protection” pursuant to the Cybersecurity Law. The Draft Decree requires that, before transferring Vietnamese citizens’ personal data out of Vietnam, all of the following four conditions be fulfilled: (i) data subject's consent is granted for the transfer; (ii) original data is stored in Vietnam; (iii) a document is granted proving that the recipient territory has personal data protection at a sufficient level; and (iv) a written approval is obtained from the Personal Data Protection Commission. If foreign service suppliers are substantially placed in a less favorable competitive condition than Vietnamese service suppliers in the sectors Vietnam has committed themselves to liberalization, the Draft Decree may violate national treatment obligations stipulated in Article 17 of GATS.

Regarding the Cybersecurity Law and the Draft Decree on Personal Data Protection, Japan has been actively engaged with Vietnam to realize the establishment of a fair and transparent system which reflects international rules and practices, submitting public comments to the Vietnamese government and expressing concerns on the legislations at the WTO Trade Policy Review on Vietnam, the Council for Trade in Services, etc.

Japan will continue to monitor the developments of the legislations as well as their enforcement and implementation, and will proceed with discussions for improvement and

clarification in the WTO Council for Trade in Services, bilateral consultations, etc.

- **The Philippines: Safeguard Measures on Automobiles**

On 6 February 2020, the Philippines initiated safeguard investigation on automobiles (passenger car and light commercial trucks, excepting luxury cars and special purpose vehicles). On 1 February 2021, it started imposing a provisional safeguard measure (for 200 days, PHP70,000 per passenger car, PHP110,000 per light commercial vehicle).

While the Philippines notified the measure as a safeguard pursuant to the WTO Agreement (provisional safeguards under Article 6 of the Agreement on Safeguards), the covered products are not included in the Philippines' list of WTO concession. This measures is then inconsistent with the phrase "of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions" in Article XIX:1(a) of the GATT, and may not be recognized as a safeguard under the WTO Agreement (violating the obligation of most favorable treatment under Article I of the GATT). Also, since that most of increased imports have been from Thailand, Indonesia, and Japan, which are covered by the preferential tariff treatments under the EPAs, then it will not suffice the prerequisite of “unforeseen developments” under Article 19.1(A) of the GATT. Furthermore, there is a doubt on its consistency of the other prerequisites such as increased imports, injury to the domestic industry and the "causal link". If the measure is, due to the above issues, not recognized as a safeguard pursuant to the WTO Agreement, another legal issue with respect to the inconsistency with Philippines’ obligations under the relevant Economic Partnership Agreement (EPA) such as the Japan-Philippines EPA (JPEPA) and the ASEAN-Japan Comprehensive Economic Partnership (AJCEP), i.e. the obligations on the elimination/reduction of customs duties and the prohibition of other duties or charges.

After the initiation of the safeguard investigation, Japan expressed its concerns to the Philippines in a variety of channels such as consultation under Article 12.3 of the Agreement on Safeguards (March 2021), submission of the government opinion, statements in the WTO SG Committee.

Japan will continue to request the Philippines not to impose officially the SG measure by using bilateral consultations and the WTO mechanism.

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

(Steel / Aluminum)

In 2018, the U.S. imposed additional tariffs on steel and aluminum imported from Japan of 25% (ad valorem) and 10% (ad valorem), respectively, pursuant to Section 232 of the Trade Expansion Act of 1962 (hereinafter “Section 232”). However, Tariffs were abolished for some countries such as South Korea (country-based exemptions). Further agreements were reached with Canada and Mexico to withdraw the additional tariffs imports from these countries as well in May 2019. In addition, upon a request from U.S. companies, exemptions from additional tariffs are granted if it is approved that (1) the product at issue does not affect

national security or (2) the substitute production of the product at issue cannot be made in the U.S (product-based exemptions).

In addition to the above, the U.S. decided to impose additional tariffs on steel and aluminum derivatives (steel nails, aluminum cable, etc.) in January 2020, and commenced the imposition of additional tariffs of 25% and 10%, respectively, in February 2020. As the background to these additional tariffs, it is pointed out that import after processing into downstream products is increasing despite the imposition of measures based on Section 232 on steel and aluminum products, and that the U.S. has not been able to achieve more than 80% of capacity utilization rate as intended by the measures.

Furthermore, the U.S. commenced an investigation under Section 232 regarding imports of transformers, electrical transformers, and transformer regulators, as well as lamination and wound cores for incorporation into such items. As a background of the investigation, it is said that imports of lamination and wound cores from Canada and Mexico increased as grain-oriented electrical steel sheets (GOES) for transformers were processed into these products therein due to existing measures based on Section 232 imposed on steel, and Japan is referred to as one of the producers of GOES..

It is likely that the increase in tariffs above the bound rates are inconsistent with Article II of the GATT (Tariff Concessions). Furthermore, when quantitative restrictions, or quotas are set, it is likely that such measures are inconsistent with Article XI of the GATT (Prohibition of Quantitative Restrictions) and Article 11 of the Agreement on Safeguards (Prohibition of Voluntary Export Control etc.). On the other hand, the U.S. may invoke Article XXI of GATT (Security Exceptions), stating that all measures pursuant to Section 232 are measures taken for national security purpose. However, it is questionable whether these measures are justified as security exceptions.

Japan has repeatedly expressed concerns, asserting that import of steel and aluminum from Japan, an ally of the U.S., cannot pose a threat to American national security. At the same time, Japan has been working at various levels to seek acceleration and simplification of processes of product-based exemptions. Furthermore, Japan has participated as a third party in the panel proceedings on measures based on Section 232 imposed by the U.S. on steel and aluminum, and has notified to the WTO to the effect that Japan will reserve the right to take rebalancing measures against these tariffs imposed by the U.S.

In the joint statement of Japan and the U.S. in September 2019, it was confirmed that efforts would be made for the early solution concerning measures based on Section 232 for steel and aluminum, Japan will continue working on the U.S. government as necessary.

(Automobiles and Auto Parts)

Concerning automobiles and auto parts, an investigation report including recommendations to President from the Secretary of Commerce was submitted in February, 2019, but the details of the recommendations have not been disclosed to the present date. In accordance with Presidential proclamations issued on May 17, 2019, the U.S. decided to pursue negotiation for 180 days concerning import of automobiles, etc. with the EU and Japan, etc. to obtain agreements for addressing national security threat on the ground that automobile imports threaten to national security. However, although November 13, 2019,

was the deadline for making the judgment, the U.S. has not made any decision on measures.

In the joint statement of Japan and the U.S. in September 2018, it was confirmed that Japan and the U.S. “refrain from taking measures against the spirit of this joint statement during the process of these consultations”. Furthermore, as agreements were reached for the Japan-U.S. Trade Agreement and the Japan-U.S. Digital-Trade Agreement in September 2019, both countries confirmed in the joint statement that “[w]hile faithfully implementing these agreements, both nations will refrain from taking measures against the spirit of these agreements and this Joint Statement”. The leaders of both countries confirmed that this means the non-imposition of additional tariffs based on Section 232 on Japanese automobiles and auto parts.

With respect to automobiles, etc., which are still under investigation by the Department of Commerce, the U.S., Canada and Mexico signed the USMCA Agreement in November 2018. At the same time, the Side Letters concerning automobiles, etc., were exchanged between the U.S. and Mexico and between the U.S. and Canada. In the Side Letters, an agreement was reached that even if import adjustment measures for automobiles are imposed based on Section 232, Section 232 will not be applied to up to a certain number of passenger cars and auto parts and to all light trucks imported from Mexico and Canada. However, no import adjustments have been imposed and it is still uncertain how the agreement in the Side Letters will be implemented and applied in the future.

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

(Titanium Sponge)

With respect to the investigation on titanium sponge initiated in March 2019, in November 2019, the Department of Commerce found a national security threat but recommended not to take import adjustment measures. In February 2020, the U.S. President concurred with the findings d that the import of titanium sponge will pose a national security threat, and directed the secretaries of the Department of Defense and the Department of Commerce to set up a working group, instead of imposing import adjustment measures (such as additional tariffs). The President directed that the working group to have Japan, from which the U.S. imports approximately 94% of titanium sponge, engaged in the discussions agree on measures to secure the access to titanium sponge for the U.S. national defense industry and critical industries in a national emergency.

The U.S. imports most of its titanium sponge from Japan, but products of Japan, an ally of the U.S., will never pose a threat to the national security of the U.S. Rather, titanium sponge exported from Japan, whose quality is strictly controlled, is highly reliable. A supply shortage in the U.S. has been covered by exports from Japan, and titanium sponge from

Japan has supported the national security of the U.S. Accordingly, measures to be agreed on through the consultations should be consistent with the WTO Agreements.

(Others: transformers, electrical transformers and transformer regulators, and lamination and wound cores for incorporation into such items; vanadium)

In May, 2020, an investigation based on Section 232 was also announced for the import of transformers, electrical transformers and transformer regulators, and lamination and wound cores for incorporation into such items. It is reported that the Secretary of Commerce submitted its report to the President in October, 2020 (the details of the recommendations have not been disclosed to the present date.). With respect to this investigation, the then administration announced it would have a consultation regarding transshipment and announced the agreement with Mexico to establish a monitoring system, but no measures has been announced concerning other countries.

With respect to imports of vanadium, an investigation based on Section 232 was initiated in June 2020. It is said that the report is submitted in February 2021, although the details of the recommendations have not been disclosed to the present date. No measures of adjustment are announces to date.

Imports from Japan, as an ally of the U.S. cannot pose a threat to American national security, and Japan will continue working on the U.S. government firmly for the avoidance of the measures.

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

The AD Agreement stipulates that any definitive AD duties shall be terminated in five years (Sunset) unless the necessity for further continuation is determined. However, the U.S. practice of sunset reviews is that AD measures are continued in general as long as a domestic company files an application for a review.

At the end of May, 2021, there are 20 definitive AD measures imposed by the U.S. government on Japanese products. The longest duration of the U.S. measure exceeds 40 years and the duration of the 10 measures exceeds 20 years. The results of such prolonged imposition of the AD duties excessively discourages exports of Japanese companies and imposing huge burdens on the importers and the users in the U.S. For example, some of Japanese iron or steel products are high quality and highly reliable and have won wide support from U.S. users, but they became unavailable to those customers due to the U.S AD measures, and it is pointed out that the users in the U.S. are forced to buy other country's products.

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

Moreover, an increasing number of continued AD measures by emerging economies based on lax determinations through sunset review proceedings, including the extended

imposition of the duty on stainless steel bars by Korea as mentioned above, have been observed.

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

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

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

The Brazilian government introduced preferential taxation associated with the local content requirements to the automobile sector and the information technology devices sector to exempt it substantially from various taxes and contributions on the condition of implementation of certain manufacturing processes in Brazil, use of locally produced parts, and R&D investments in Brazil, etc.

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

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

The Appellate Body Report circulated in December 2018 largely accepted the assertion of Japan and the EU, supporting the panel report that the discriminatory preferential taxation in the automobiles and information technology sectors are inconsistent with the national treatment obligation, and part of the above measures corresponds to prohibited local content subsidies. Despite rejecting the panel's finding that certain discriminatory preferential taxation for export companies corresponds to the prohibited export subsidiaries, the Appellate Body recommended that Brazil bring the measures into compliance with the WTO Agreements and withdraw the prohibited local content subsidiaries without delay.

Japan will monitor and confirm whether Brazil has withdrawn or brought into compliance the taxation measures inconsistent with the WTO Agreement, and also will monitor the consistency of the new regulations (e.g. ROTA 2030 in automobile sector) with the WTO Agreements.

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

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

In March 2019, the Chinese government repealed the three major laws on foreign investment (the Law on Chinese-Foreign Equity Joint Ventures, the Law on Wholly-Foreign owned Enterprises, and the Law on Chinese-Foreign Contractual Joint Ventures) and established “Foreign Investment Law” as the basic law regarding the investment in China by foreign companies, which was put into effect in January 2020. The Chinese government had been considering the establishment of this law since 2015. The revised draft law, including draft of provisions regarding prohibition of forced technology transfer, was publicized in December 2018 and enacted after a short period of deliberation by the NPC, which was also an action responding to the trade conflict between China and the U.S.

In response to foreign companies’ conventional concerns, this law includes new provisions that contribute to protecting rights and interests of foreign companies, such as prohibition of forced technology transfer (Article 22), pre-admission national treatment (Article 4, etc.), equal treatment for foreign companies’ products in China to be procured by the Chinese government (Article 16), free overseas remittance (Article 21), and creation of a mechanism to resolve complaints from foreign companies (Article 26). On the other hand, the system for the security examination of foreign investment (Article 35, etc.) and retaliatory provisions against discriminatory treatment by foreign countries (Article 40) may damage the stability of investment environment, and depending on how they are implemented, they may raise concerns about inconsistency with the WTO Agreements. As the text of the law consists of general provisions without detailed implementing regulations, it is necessary to monitor its application in the future, including concrete provisions of the implementing regulations, with regard to the actual content and influence of measures based on this law.

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

- **China**：**Export Control Law**

The Chinese government had implemented the security export control regulation in which only items related to weapons of mass destruction were subject to the regulation, but in October 2020, the Export Control Law is established. The Export Control Law adds a number of consumer products and technologies that are related to ordinary weapons to the restricted items, and at the same time, includes various new measures such as retaliatory measures, re-export measures, deemed export regulations, etc. The Law is enforced from December 1st 2020.

The details of the new measure are to be provided in implementing regulations, and not

clear yet. Having said that, the measure may be regarded as an excessive export restriction that has little relevance with the national security objective, and thus may fail to satisfy the requirements under national security exception (Article XXI of the GATT) and be inconsistent with the prohibition of import/export restrictions (Article XI of the GATT, in particular for the following points: (i) there is a risk that items to be subject to the regulation could be excessively chosen, considering that the policy objectives of the Law explicitly include protection of "state interest"; (ii) there remains a risk that disclosure of technologies could be required in the form of written application for export license beyond the extent necessary for the determination of whether the regulation is applicable or not to the subject product or for identifying end users and end use; (iii) the Law has a provision of retaliatory measures against discriminatory export restrictions imposed by other countries.

As a particular example of concerns for excessive scope of subject goods, China published the draft regulation of rare earth management as of January 2021. As the draft regulations provides that export of rare earth "shall comply with the laws and regulations regarding export control and others", it needs to be monitored closely whether there will be an impact the export of rare earth products.

Japan has been actively working on China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the Law (including itsdraft) at meetings of the WTO Council on Trade in Goods since March 2018, Trade Policy Review of China at WTO in 2018, and vice-minister-level consultations between METI and the Chinese Ministry of Commerce in December 2019.

Japan will continue to monitor the enforcement and implementation of the Law, and will proceed with discussions for the resolution of problems in bilateral and multilateral consultations.

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

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

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

completely abolished based on the memorandum and the amended regulation.

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

Korea and China referred to the U.S. AD measures on their domestic products to the WTO DS procedures (The United States: Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (DS464); and The United States: Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)), citing that zeroing was used for their products when targeted dumping was determined. Japan participated in these cases as a third party and argued that the usage of zeroing violates the AD Agreement. The panel and the Appellate Body of the former case (DS464) and the panel of the latter case (DS471) (this issue was not appealed to the Appellate Body) adopted an interpretation consistent with Japan's arguments and determined that the zeroing procedure by the U.S. violated the AD Agreement. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation (by December 2017) elapsed, in January 2018 Korea requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 84.81 million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation (by August 2018), in September 2018, China requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 3.57913 billion dollars were approved by arbitration decision in November 2019.

The panel report on the AD duties imposed by the U.S. on Canadian softwood lumber (DS534) circulated in April 2019 held that zeroing might be permitted to address targeted dumping under certain conditions. However, it also found that the current zeroing practice by the U.S. is inconsistent with Article 2.4.2 of the AD Agreement. (The report has not been adopted as Canada appealed.)

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

- **India**：**Personal Data Protection Bill / Draft National e-Commerce Policy**

The Indian government published the "Personal Data Protection Bill" in December 2019. The Bill stipulates that "sensitive personal data" which includes financial data, health data, and biometric data shall be stored in India, and it can be processed outside India only under certain conditions. The Bill also stipulates that transferring sensitive personal data out of India is possible only when such transfer is based on contracts approved by the authority, adequacy decisions on the level of protection in the recipient country, etc., in addition to obtaining consent from the data subjects. Regarding "critical personal data", which is designated by the central government, the operators are obliged to process it in India. In

addition, the “Draft National e-Commerce Policy” published in February 2019 by the Department for Promotion of Industry and Internal Trade stipulates that a legal and technological framework will be created that provide the basis for imposing restrictions on cross-border flow of data collected by IoT devices installed in public space or generated by users in India by various sources, including e-commerce platforms, social media, search engines, etc.

Regarding such restrictions on cross-border data flow, foreign service suppliers that centrally collect and manage employee data of overseas offices outside India may have security concerns about storing data within India and may have to cover an additional cost. It may become difficult for such foreign companies to enter the Indian market or continue their business there. At the same time, it is likely that foreign service suppliers are substantially placed in a less favorable competitive condition than Indian service suppliers that have centrally collected and managed data domestically, so such restrictions may violate national treatment obligations stipulated in Article 17 of GATS

Japan has been actively engaged with India to realize the establishment of a fair and transparent system which reflects international rules and practices, submitting public comments to the Indian government and expressing concerns described above at occasions such as the WTO Trade Policy Review on India.

Japan will continue to monitor the developments of the legislations, and will proceed with discussions for improvement and clarification in bilateral and multilateral consultations.

- **India**：**Inappropriate Application of Trade Remedy Measures**

The Indian government initiated 1,071 AD investigations between 1995 and the end of December 2020, which is the largest number of all WTO Members, and among which Japanese products were included as the subject product in 44 cases. Among these 44 cases, AD measures were applied in 32 cases. AD duties remain in force in 7 cases as of the end of December 2020. India initiated 46 SG investigations between 1995 and the end of December 2020, and among which SG measures were applied in 22 cases. The first SG investigation pursuant to Japan-India CEPA was also initiated.

Regarding the AD and SG measures imposed by India, possible inconsistencies with the relevant WTO Agreements, including AD and SG Agreements, have been observed. The possible inconsistencies include the lack of objectiveness in determination of injury and causal link, such that it was determined that the Indian companies suffered injury due to the dumped imports or increased imports from Japan even though the injury occurred because of deterioration in domestic demands and increase in market share of the domestic competitors. In some AD investigations, the notifications to the interested parties, including the subject companies, were not made appropriately and in timely manner, which prevented the subject companies from effectively respond to the investigation and would constitute the lack of procedural transparency.

Regarding India’s seemingly inappropriate AD and SG investigations, Japan has been conveying government opinions to Indian investigating authority and requesting it to improve the situation using various opportunities such as submission of written opinions to Indian

investigating authority, consultations with Indian government officials, participation in public hearings and attendance in WTO AD and SG Committee meetings, etc.

Japan will continue to encourage India to correct its inappropriate operation and application of the trade remedy measures.

(Reference 2) Proceedings of Individual Trade Policies and Measures Described in "METI Priorities Based on the 2020 Report on Compliance with Trade Agreements by Major Trading Partners" for the Past One Year

Name of the Country	Trade Policies and Measures	Proceedings
China	Aluminum Subsidies	In the Subsidies Committee meetings held in October 2020 and April 2021, Japan proposed discussions related to the problem of subsidies and excess supply, including the necessity to improve the transparency of subsidies, together with the U.S. and the EU.
	Cybersecurity Law	Japan continuously expressed concerns about the Cybersecurity Law in the TBT Committee meetings in May and October 2020 and in February 2021, the WTO Council for Trade in Services in July, October, and December 2020 and in May 2021.
	Inappropriate Application of AD Measures	Japan expressed its concerns about China's AD investigations which are considered inappropriate while pointing out problems of the investigation through submission of written opinions. Japan pointed out problems of the China's inappropriate AD investigations at the WTO AD Committee meetings held in October 2020, April 2021.
	Foreign Investment Law	Japan has requested China at bilateral consultations held in FY 2020 the improvement of business environment for Japanese companies that invested in China.
	Draft of Export Control Law	Japan has been actively working on China to realize the establishment of a fair and transparent system which reflects international rules and practices, expressing concerns against the law (including its draft) at meetings of the WTO Council on Trade in Goods since March 2018.
U.S.	Measures based on Section 232 of the Trade Expansion Act of 1962	In May 2020, the U.S. initiated 232 investigations on mobile crane, and then on transformers, electrical transformers and transformer regulators and lamination and wound cores for incorporation into such items. Further, in June 2020, 232 investigations on vanadium was initiated. With respect to mobile crane, the DOC announced to terminate the investigation. Japan will continue working on the U.S. government for the avoidance and abolishment of the relevant

		measures.
	Sunset Review Practice (Term-end Review for the Continuation of Anti-Dumping (AD) Measures) and Inappropriate Long-Standing AD Duty Measures on Japanese Products	Japan has pointed out problems regarding the U.S. sunset review practice and measures at the WTO AD Committee meetings held in October 2020 and April 2021.
	Zeroing (Inappropriate Calculation of AD Duties) Including Abusive Zeroing in the Cases of Targeted Dumping	Korea and China protested against the U.S. AD measures, citing that zeroing was used when it determined targeted dumping (Korea: DS464, China: DS471). Japan also participated as a third country. Each panel and the Appellate Body determined that the application of zeroing even to address targeted dumping was inconsistent with the WTO Agreements, in line with Japan's view. With respect to DS464, soon after the period for the U.S. to implement the DSB recommendation by December 2017 elapsed, in January 2018, Korea requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 84.81 million dollars were approved by arbitration decision in February 2019. In the case of DS471 as well, soon after the period for the U.S. to implement the recommendation by August 2018, in September 2018, China requested retaliation measures against the U.S.'s failure to comply with the recommendation, and suspension of concessions up to the amount of 3.57913 billion dollars were approved by arbitration decision in November 2019. The panel report on the AD duties imposed by the U.S. on Canadian softwood lumber AD (DS534) circulated in April 2019 held that zeroing to address targeted dumping might be permitted under certain conditions. However, it also found that the current zeroing practice by the U.S. itself is inconsistent with Article 2.4.2 of the AD Agreement. (Canada appealed.)

Korea	Measures Affecting Trade in Commercial Vessels	Japan requested to hold consultations in November 2018 and in January 2020 and is consulting with Korea. Further, in November 2020 and in May 2021,Japan also requested Korea to explain its public financial support measures to ensure transparency at the Council Working Party No.6 on Shipbuilding of the OECD.
	Sunset Review Practice on Stainless Steel Bars (Term-end Review for the Continuation of AD Measures)	The panel report issued in November 2020 found that there is a deficiency in the Korean decision that there is a possibility of recurrence of injury to Korean domestic industry due to the elimination of AD duties on products from Japan and that the decision is inconsistent with Article 11.3 of AD Agreement, because Korean authorities did not properly take into account the facts that products from Japan are considerably more expensive than Korean products and that there are a large number of low-priced imports from China etc.. In January 2021, Korea appealed to the WTO Appellate Body. Japan will continue to advance WTO dispute settlement procedures so that the case will solved appropriately in accordance with WTO rules, and demand Korea to promptly and faithfully correct its measures in accordance with the recommendations of the report so as to prevent unfair tariff burdens on Japanese companies from continuing.
	The AD Duty Measures on Pneumatic Valves	The Appellate Body Report circulated in September 2019 accepted the assertion of Japan and confirmed that it is unreasonable that the panel had avoided making the judgment. The Report also accepted the core of Japan's argument, including the lack of examinations on the equivalence in prices between imports from Japan and Korean domestic products (Article 3.2 of the AD Agreement), and recommended Korea to make corrections of the measures. Korea expressed the intention to correct the measures in October 2019, and Korea agreed with Japan to correct the measures by May 30, 2020. In May 2020, Korea announced that it corrected the part inconsistent with the Agreement and then would continue imposing them, but would end the AD duties in August 2020, which was the end of the period of the AD measures. As announced above, the AD duties were eliminated in August 2020.

India	Tariff Treatment on Certain Goods in the ICT Sector	Japan requested bilateral consultations based on the WTO Agreements in May 2019 and requested examinations by the panel in March 2020. The panel was established in July 2020 and the proceedings continue.
	The Safeguard Measures on Hot-Rolled Steel Products	As the Appellate Body stopped its functions in December 2019, examination procedures by the Appellate Body has been suspended.
	The Safeguard Measures on Single-mode Optical Fiber	On 21 August 2020, the investigating authority announced its final determination which recommended the imposition of 10% additional tariffs. However, the government of India did not accept this recommendation and decided not to impose any safeguard measures (its public notice on 18 November 2020, and its WTO notification on 29 March 2021). Japan appreciates India's decision not to impose a measure, taking into account the issues expressed by Japan, related to its consistency with the WTO Agreement.
Brazil	Discriminatory Preferential Taxation and Charges Affecting Automobile Sectors, etc.	The implementation deadline was the end of December 2019, and Brazil declared its commitment to completely implementing the recommendation at the DSB meeting in January 2020. However, the measures taken as corrective measures appear to be insufficient. Japan will continuously watch Brazil's taxation in light of the complete implementation of the recommendation.
Vietnam	Imported Automobile Certification System	TBT notification was made with regard to the draft amendment of the Decree No. 116 of 2018, and the amended Decree was entered into force on February 5, 2020 as Decree No.17 of 2020. Since the requirement for a vehicle type approval issued by overseas agencies, for which Japan had expressed concerns, was deleted by the amendment and some improvements are observed. Japan will closely watch so that the operation of the amended Decree should not be more trade-restrictive than necessary.

End