COLUMN:
20TH ANNIVERSARY OF CHINA'S ACCESSION TO THE WTO AND THE WTO TRADE POLICY REVIEW FOR CHINA

1. INTRODUCTION

20 years have passed since China joined the WTO in December 2001. By joining the WTO, China promoted domestic economic reform and expanded trade. China's GDP increased from 11.0863 trillion yuan to 114.3670 trillion yuan between 2001 and 2021[1], and it has become the world's second largest economy. The amount of trade between Japan and China has also increased, from 3.7637 trillion yen to 17.9844 trillion yen for exports from Japan to China and from 7.0267 trillion yen to 20.3775 trillion yen for imports from China to Japan[2], and economic relations between the two countries also expanded dramatically.

Supported by such economic growth, China has enhanced its presence in the world economy and trade since its accession to the WTO. At the same time, China's attitude toward the WTO and compliance with WTO Agreements has been increasingly questioned. Under such circumstances, the review based on the Trade Policy Review Mechanism (TPRM) was conducted for China ("TPR for China") at the WTO on October 20 and 22, 2021, the 20th anniversary of China's accession to the WTO. TPRM is a system for conducting periodic reviews on trade policies and measures of each WTO Member based on the reports by the Member under review and by the WTO Secretariat at the Trade Policy Review Body (TPRB), consisting of all Members (for more details and an explanation on the significance of the TPRM, please see Chapter 18, Monitoring Trade Policies/Measures). The frequency of reviews is determined based on the Member's share of world trade. Reviews are conducted once every three years for China, and this was the first review meeting since 2018.

With respect to the meeting of the TPR for China in 2021, the WTO Secretariat has established a related website[3] and published an outline of the proceedings[4]. In this column, the main exchanges between China and Members at the meeting are introduced.

2. OVERVIEW OF TPR FOR CHINA AND MAJOR ISSUES

For the TPR, Members submit advance written questions to the reports prepared by the Member under review and the Secretariat approximately two weeks before the meeting. With respect to the TPR for China, approximately 2,000 questions were submitted from 40 Members.

On the first day of the TPR meeting, China explained its policies at the outset, followed by specific questions and opinions from 65 Members. In general, China stated that it had been abiding by the WTO rules and defended the multilateral trading system for the 20 years since its accession to the WTO. On the other hand, several Members expressed their concerns that there had been an increase in measures suspected of violating the WTO Agreements, opaque measures and measures that constitute national treatment violation since 2018 when the last review was conducted. Specifically, some countries pointed out that, "China has used the imprimatur of WTO membership to become the WTO's largest trader, while doubling down on its state-led, non-market approach to trade, to the detriment of workers and businesses

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[1] National Bureau of Statistics of China and CEIC database. When converted into Japanese yen at 1 yuan = 19 yen, it increased from 210.6397 trillion yen in 2001 to 2,172.973 trillion yen in 2021.

[2] Ministry of Finance and CEIC database.

[3] https://www.wto.org/english/tratop_e/tpr_e/tp515_e.htm

[4] WTO Document WT/TPR/M/415.

in the other countries" and "Since the last review, China has increasingly tested global trade rules and norms by engaging in practices that are inconsistent with its WTO commitments," and concerns were expressed regarding the acts that were deemed to be "economic coercion."

In addition, on the first day of the meeting, specific concerns were also expressed by the participating countries to China, including lack of transparency, overcapacity, preferential treatment for state-owned enterprises (SOEs), overly broad data security regulations, forced technology transfer, SPS measures, forced labor, discriminatory treatment in government procurement, inadequate enforcement of intellectual property rights, restrictions on foreign investment and the use of competition law enforcement for industrial policy purposes.

In response to this, on the second day of the meeting, China stated its position on 12 issues: (1) Belt and Road Initiative, (2) forced transfer of technology and intellectual property rights protection, (3) Dual Circulation, (4) Antidumping and Countervailing measures taken by China, (5) non-transparent and unfair operation in China's government procurement practices, (6) non-market practices and the SOEs in China, (7) overcapacity, (8) forced labor, (9) economic coercive measures, (10) temporary preventive measures under the pandemic, (11) transparency, and (12) trade surplus.

The following are the main points of discussion between China and major developed countries.

(1) Transparency, Subsidy Notification and Government Procurement

Many countries pointed out China's problems with the transparency of its subsidy notification system and other policies. In particular, with respect to the notification obligation required under the Agreement on Subsidies and Countervailing Measures ("ASCM"), China explained its performance of the notification obligation under the ASCM, and explained that China notified 150 subsidy programs at the central level and 794 programs at the sub-central level in 2019 and 2021, respectively. On the other hand, many Members pointed out the problem with China's subsidy notification system. Specifically, some countries pointed out, "A lack of transparency with regard to China's state measures is a fundamental challenge to free and fair competition in the market. There persists a lack of transparency in China's industrial supports, due to the limited disclosure of information by the State and SOEs.... There is fairly limited disclosure of information on the real picture of the management of major state funds as well as financing and goods provision for industries through SOEs," and "Despite assurances in the Chinese Government report that it has 'fully fulfilled' its notification obligations, we note the Secretariat's report identified outstanding notifications. We remain concerned with the quality and timeliness of China's notifications, especially for industrial subsidies and agricultural domestic support. China's large subsidy programs, along with other non-market practices, distort global markets for major commodities. Improving the transparency of China's policies would strengthen its contribution to the multilateral trading system."

A lack of transparency in the Chinese market has also been pointed out with respect to government procurement. China stated that the Government Procurement Law clearly provided that suppliers should not be subject to different or discriminatory treatment under unreasonable conditions and that the Foreign Investment Law required that domestic and foreign-invested enterprises were treated equally in government procurement. However, several Members raised concerns about the transparency of China's government procurement market, stating that "it has been reported that unpublicized internal government documents promote the procuring of Chinese products."

(2) Non-market Practices and SOEs

Several Members expressed their concerns about China's delayed economic reform, non-market practices and the large presence of SOEs. In response to this, China stated as follows: It has continuously promoted and deepened the process of marketization. At present, more than 97% of China's goods and service prices are determined by the market. The scope of pricing set by the government is mainly limited to public utilities and public welfare services. As independent market entities that operate on their own, the SOEs in China take responsibilities for their profits or losses, assume their own risks, participate in market competition in the same manner as enterprises of other ownerships and do not enjoy any privileges. Since 2018, the reform of the SOEs has achieved profound progress. The number of SOEs with mixed ownership accounts for more than 70% of the total and the imports and exports of SOEs in China accounted for only 14.3% of China's total foreign trade. Furthermore, the Government of China does not grant subsidies on the basis of the types of ownership.

In response to this, several Members expressed their concerns about the extensive intervention in the market by the Chinese authorities and preferential treatment for SOEs. Specifically, some countries pointed out, "China's industrial policies, including market access limitations, investment restrictions and preferential treatment for SOEs and other Chinese enterprises, go well beyond guiding and supporting domestic industries, and skew the playing field against imported goods and services and foreign manufacturers and services suppliers through an array of supporting measures," and "We are concerned about the competition distortions caused by the activities of SOEs. Chinese SOEs are major beneficiaries and providers of opaque subsidies and are often responsible for overcapacity, distorted prices, and discriminatory behavior. We call on China to fully observe its WTO accession commitments by eliminating these distortions." As the Secretariat's report also pointed to the increase in the number of SOEs in industrial sectors, the significant roles they play in China's economy, and the public support for SOEs, some Members pointed out that such a trend should be incompatible with China's goal of creating a market-oriented, law-based, and internationalized business environment.

(3) Overcapacity

Several Members pointed out the problems of excess capacity resulting from the aforementioned opaque policies and measures and preferential treatment for SOEs. With respect to this issue, China stressed that it has been carrying out a supply-side structural reform since 2015, producing remarkable progress in over-capacity reduction. Taking crude steel production capacity as an example, China pointed out that it had reduced over 150 million tons of crude steel production capacity between 2018 and 2020 and that the utilization rate returned to an appropriate range of over 80%. China stated that it maintained control over new capacity and was committed to establishing and improving a long-term mechanism for resolving excess capacity through marketization and rule of law.

In response to this, several Members expressed their concerns that there were signs of setback, including an increase in China's steel production capacity since 2019 and its withdrawal from the Global Forum on Steel Excess Capacity at the end of 2019 and that massive support measures have been extended to other advanced industries that could cause excess capacity.

(4) Intellectual Property Rights and Forced Technology Transfer

The issue of intellectual property rights has long been pointed out as a challenge for China. However, China emphasized its track record of strengthening the protection of intellectual property rights, stating that the number of patent applications in China has been ranking first globally in several years and that the amount of intellectual property fees paid by China reached USD 37.6 billion. While several Members expressed their concerns over the issue of forced technology transfer, China argued that in its current laws and regulations, there was no provision that forces foreign companies to transfer their technology to the Chinese companies and that the Administrative Licensing Law of China and the Foreign Investment Law both explicitly stipulated that administrative agencies and their staff in China should not force the transfer of technology.

In response to this, some Members pointed out that although they acknowledge China's intellectual property system has improved, these changes were insufficient and that the enforcement of intellectual property rights was inadequate. With respect to the issue of forced technology transfer, some Members pointed out that there were cases where foreign companies based in China have been obliged to transfer their technology to Chinese companies closely linked to the government.

(5) Lack of Clarity in Domestic Regulation and Cybersecurity Regulation

Several Members expressed their concerns over the lack of clarity in domestic laws and regulations although China did not address this issue in its response or additional comments on the second day of the meeting. Specifically, several Members expressed their concerns over the broad concept of "national security" and the impact of the government's intervention that lacks transparency and fairness on foreign companies. In this regard, concerns were raised about the severity of cybersecurity regulations.